UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 01-CR-00607-RAR-1

UNITED STATES OF AMERICA

v.

GILBERTO CHINEAG,

Defendant.
_____/

ORDER DENYING MOTION FOR SENTENCE REDUCTION

In 2002, Gilberto Chineag[1] was convicted by a jury of three conspiracy counts in connection with a reverse sting operation. Because Mr. Chineag had two prior convictions for state felony drug offenses, the Government sought an enhanced penalty of mandatory life imprisonment. The sentencing court granted that enhancement. Mr. Chineag has exhausted appeals of his conviction.

In 2018, Congress reduced the penalties for felony drug offenses through section 401(a) of the First Step Act ("FSA"). First Step Act of 2018, Pub. L. No. 115–391, § 401(a), 132 Stat. 5194, 5220–21 (modifying 21 U.S.C. § 841(b)(1)(A)). Now, the prior felony drug offenses that led to Mr. Chineag's imprisonment in 2001 would not trigger the sentencing enhancements that applied to him at the time of sentencing. But the FSA expressly made section 401(a) nonretroactive—in other words, Mr. Chineag does not qualify for a sentence reduction under the FSA, because he was convicted sixteen years prior to the Act's passage.

[1] Mr. Chineag states in his Medical Records that his full name, as written on his Cuban birth certificate, is "Gilberto Chinea," and that the "g" that appears at the end of his last name "was a mistake of the person who wrote [his] name in the Indictment." [ECF No. 227-1] at 21. The Court regrets this error. However, because all filings in this case since its initiation have referred to Mr. Chinea as "Mr. Chineag," the Court will refer to him as "Mr. Chineag" for the sake of consistency.

Mr. Chineag has since moved for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). That statute allows courts to reduce a defendant's otherwise final sentence if "extraordinary and compelling reasons" warrant the reduction and tasks the United States Sentencing Commission ("Commission") with describing what circumstances are "extraordinary and compelling" through a policy statement. *See* 18 U.S.C. § 994(t). In 2023, the Commission amended its existing policy statement ("Policy Statement") to establish six "extraordinary and compelling reasons" for a sentence reduction. *See* U.S. Sent'g Guidelines Manual § 1B1.13 (U.S. Sent'g Comm'n 2023). Mr. Chineag says that he is eligible for a sentence reduction based on three enumerated categories in the Policy Statement: his age, his "unusually long sentence," and "other reasons" that may justify a reduction, including the circumstances surrounding his arrest. *See* U.S.S.G. §§ 1B1.13(b)(2), (5), (6).[2]

The Court concludes that Mr. Chineag cannot establish that he is eligible for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A). Neither his age nor the circumstances of his arrest are sufficient to render him eligible for relief under the Policy Statement's plain terms. *See* U.S.S.G. §§ 1B1.13(b)(2), (5). And Mr. Chineag cannot rely on his unusually long sentence as a basis for relief. The Court cannot apply that provision of the Policy Statement—section 1B1.13(b)(6)—as a matter of law, because it exceeds the scope of the Commission's delegated authority in allowing courts to consider expressly nonretroactive changes in law, like section 401(a) of the FSA, as "extraordinary and compelling reasons" for a sentence reduction. Because Mr. Chineag has failed to establish that he is eligible for a sentence reduction, the Court **DENIES** the Motion.

[2] The Motion has been fully briefed and is ripe for review. *See* Motion for Reduction of Sentence, [ECF No. 242]; Government's Response in Opposition, [ECF No. 245]; Defendant's Reply in Support, [ECF No. 252]; and Defendant's Notice of Supplemental Authority, [ECF No. 253].

BACKGROUND

A. Factual and Procedural History

This case arises out of a reverse sting Hobbs Act robbery. [ECF No. 245] at 13; [ECF No. 87] at 13. On June 26, 2001, a grand jury issued a five-count indictment charging Mr. Chineag and his co-Defendants with: (I) conspiracy to commit a robbery affecting interstate commerce, *see* 18 U.S.C. § 1951(a); (II) conspiracy to possess with intent to distribute more than five kilograms of cocaine, *see* 18 U.S.C. §§ 841(a)(1); 841(b)(1)(A); 846; (III) conspiracy to carry a firearm during and in relation to a drug-trafficking crime and a crime of violence, *see* 18 U.S.C. §§ 924(c)(1)(A); 924(o); (IV) knowingly carrying a firearm during and in relation to a drug-trafficking crime and a crime of violence, *see* 18 U.S.C. §§ 924(c)(1)(A); 924(c)(2); and (V) being a felon in possession of a firearm, *see* 18 U.S.C. § 922(g)(1). [ECF No. 15]. Because Mr. Chineag had been previously convicted of state felony charges for possessing cocaine, *see* [ECF No. 38], the Government sought an enhanced penalty against Defendant under 21 U.S.C. § 841(b)(1)(A) for a mandatory term of life imprisonment. *See* [ECF Nos. 38, 51].

After a five-day jury trial, Mr. Chineag was found guilty as to Counts I, II, and III, but found not guilty as to Counts IV and V. [ECF No. 67]. Following the trial, the Court sentenced Mr. Chineag to life imprisonment on Count II, and 240-months' imprisonment on Counts I and III, to be served concurrently, followed by ten years of supervised release. In addition, the Court imposed a fine of $7,500.00. [ECF No. 101].

On January 25, 2021, Mr. Chineag submitted a sentence-reduction request to the warden of his prison facility, noting that his age and medical problems, including high blood pressure and a history of heart attacks, would be grounds for a reduction. [ECF No. 212] at 133. The warden denied this request on May 21, 2021. *Id.* at 14. On May 21, 2021, Mr. Chineag filed a Motion for Sentence Reduction, emphasizing that his age, along with his health issues, would place him at

high risk of contracting the COVID-19 virus. [ECF No. 212] at 1, 10. The Court denied the Motion on November 2, 2021, [ECF No. 222], following then-Magistrate Judge Jacqueline Becerra's recommendation. [ECF No. 219]. Mr. Chineag filed another Motion for a Sentence Reduction on March 24, 2023, *see* [ECF No. 226]. While the Court concluded that Mr. Chineag had exhausted his administrative remedies as required by section 3582(c)(1)(A), the Court denied the Motion without prejudice so that Mr. Chineag could refile in light of the Commission's 2023 amendments to Policy Statement § 1B1.13, which added new "extraordinary and compelling" reasons for relief. *See United States v. Chineag*, No. 01-00607, 2024 WL 1332022, at *4 (Mar. 28, 2024).

Mr. Chineag now files the instant Motion for a Sentence Reduction pursuant to 18 U.S.C. § 3582(c)(1)(A). [ECF No. 242]. Mr. Chineag provides three "extraordinary and compelling reasons" under section 1B1.13 for a sentence reduction. Mr. Chineag's primary reason is that his sentence is "unusually long." If sentenced today, Mr. Chineag's guideline range would be reduced from mandatory life imprisonment to 262–327 months (approximately 21 to 27 years in prison). *See* [ECF No. 252] at 6–7 (citing U.S.S.G. § 1B1.13(b)(6)); *see also id.* (citing U.S.S.G. § 2D1.1(c) (lowering drug offense levels based on drug quantities)). This, in Mr. Chineag's view, constitutes a "gross disparity" that qualifies him for relief under section 1B1.13(b)(6). Mr. Chineag also contends that his age and overall circumstances warrant relief. *See* [ECF No. 252] at 10–20 (citing U.S.S.G. § 1B1.13(b)(2), (b)(5)). The Government maintains that "a multitude of other factors" could support a sentence reduction, but states that "the Sentencing Commission exceeded its authority in promulgating [U.S.S.G. § 1B1.13(b)(6)]." [ECF No. 245]. As an alternative form of relief, the Government encourages Mr. Chineag to file a petition for clemency. *Id.* at 11–14.

B. Legal Framework

Federal sentencing is "the function of determining the scope and extent of punishment." *Mistretta v. United States*, 488 U.S. 361, 364 (1989). This is a delicate matter, and defining that scope relies on the input of Congress, the courts, and the executive branch. *Id.* Congress "has the power to fix the sentence for a federal crime," and "the scope of judicial discretion with respect to a sentence is subject to congressional control." *Id.* (citations omitted). Pursuant to that power, and prior to federal sentencing reforms, Congress defined maximum sentences, allowed judges to impose sentences within a statutory range, and permitted the Executive Branch's parole officials to determine the actual duration of imprisonment through "parole boards." *Id.* at 365.

This tripartite division of authority created fundamental challenges. Prior to 1984, "sentencing judges . . . had unbridled discretion to arrive at any sentence they pleased." *United States v. Irey*, 612 F.3d 1160, 1180 (11th Cir. 2010) (en banc). Parole boards could cabin a judge's discretion in theory by choosing "to release a prisoner after he had served as little as one third of his sentence." *United States v. Bryant*, 996 F.3d 1243, 1248 (11th Cir. 2021). But in practice, a parole board's arbitrary decision "obscure[ed] at sentencing the actual amount of time a defendant would serve." *Id.* The parole boards' use of "rehabilitation" as a rationale for release also led to arbitrary results. Through "rehabilitation," parole boards suggested that "it was realistic to attempt to rehabilitate the inmate and thereby to minimize the risk that he would resume criminal activity upon his return to society." *Mistretta*, 488 U.S. at 363.

However, this ensured that judges and parole officers could make "sentencing and release decisions upon *their own* assessments of the offender's amenability to rehabilitation." *Id.* Consequently, this led to parole commissions and judges "second-guess[ing] each other about the time an offender will actually serve in prison." *Steser v. United States*, 566 U.S. 231, 248 (2012) (Breyer, J., dissenting). The sentencing disparities this created spurred criticism from lawmakers

and judges alike. *See Irey*, 612 F.3d at 1181 (describing the prior sentencing regime as "a non-system in which every judge is a law unto himself or herself and the sentence a defendant gets depends on the judge he or she gets" (quoting Marvin E. Frankel, *Jail Sentence Reform*, N.Y. TIMES, Jan. 15, 1978, at E21)). In particular, advocates from all corners of the law came to question rehabilitation "as a sound penological theory." *Mistretta*, 488 U.S. at 365 (collecting literature); *see also United States v. McCall*, 56 F.4th 1048, 1052 n.1 (6th Cir. 2022) (en banc) (collecting further literature critiquing a rehabilitation-oriented penological theory).

The Sentencing Reform Act of 1984 ("SRA") addressed these critiques head-on by "channel[ing] district courts' sentencing discretion" and "reduc[ing] disparity in sentencing." *Irey,* 612 F.3d at 1181; *see* Sentencing Reform Act of 1984, Pub. L. No. 98–473, 98 Stat. 1987 (codified as amended at 18 U.S.C. §§ 3551–3586 (1988) and 28 U.S.C. §§ 991–998 (1988)); *see also Bryant*, 996 F.3d at 1257 (citing *United States v. Booker*¸543 U.S. 220, 264 (2005)). Congress designed several features of the new sentencing laws to achieve these aims. In doing so, it also established the Commission and charged it with "promulgat[ing] and distribut[ing] to all courts of the United States" guidelines and policy statements that would be "consistent with all pertinent provisions of any Federal statute." 28 U.S.C. § 994(a). A sentencing court would use the Guidelines "in determining the sentence to be imposed in a criminal case." *See* § 994(a)(1). Congress also mandated that the Commission create "general policy statements regarding application of the guidelines or any other aspect of sentencing" to assist in clarifying and furthering the purposes of the Guidelines. § 994(a)(2).

To reduce sentence disparities, Congress abolished the discretionary parole system and "prohibited courts from 'modify[ing] a term of imprisonment once it ha[d] been imposed.'" *Bryant*, 996 F.3d at 1248–49 (citing 18 U.S.C. § 3582(c)). Instead, Congress, through the SRA,

"provided three narrow exceptions to [the] general prohibition on sentence modification." *Bryant*, 996 F.3d at 1249.

One of those statutory exceptions allowed district courts to modify a previously imposed term of imprisonment only if the Bureau of Prisons ("BOP") filed a motion indicating that "extraordinary and compelling reasons warrant[ed] a reduction." Sentencing Reform Act of 1984, 98 Stat. at 1998–99 (current version at 18 U.S.C. § 3582(c)(1)(A)(i)). But Congress expressly required the Commission to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples" by "promulgating general policy statements." 28 U.S.C. § 994(t). To cast aside the legacy of the parole boards, Congress added a textual limitation to section 994(t), mandating that the Commission could *not* consider "[r]ehabilitation of the defendant alone" as an extraordinary and compelling reason for a sentence reduction. As the Eleventh Circuit has explained, the interaction between section 994(t) and section 3582(c)(1)(A)(i) has "made clear that a district court cannot grant a motion for reduction if it would be inconsistent with the Commission's policy statement defining 'extraordinary and compelling reasons.'" *Bryant*, 996 F.3d at 1249 (citing 18 U.S.C. § 3582(c)(1)(A)(i)).

Twenty years passed before the Commission developed a substantive definition of "extraordinary and compelling reasons" in a policy statement. Yet even after the Commission defined the term in 2006 through an "unenlightening" policy statement that "parroted" section 3582(c)(1)(A)(i), *United States v. Jones*, 980 F.3d 1098, 1104 (6th Cir. 2020), *see* U.S.S.G. § 1B1.13 (U.S. Sent'g Comm'n 2007), the BOP rarely filed motions for a sentence reduction. *See Bryant*, 996 F.3d at 1250. In response, the Commission repeatedly revised the policy statement's application notes in an attempt to expand the "circumstances" where "extraordinary and compelling reasons" would exist, in order to "encourage the [BOP Director] . . . to file a motion

under section 3582(c)(1)(A) when the criteria in this policy statement are met." U.S.S.G. App. C, Amend. 799 at 136 (Reason for Amendment) (effective Nov. 1, 2016). All the while, the BOP failed to file motions for those prisoners who would otherwise qualify for relief under section 1B1.13. Still, Congress never amended the text of section 3582(c)(1)(A)(i) to clarify the meaning of "extraordinary and compelling reasons," and the Commission never described the definition of the term in the text of section 1B1.13.

In 2018, the FSA altered several features of the existing sentencing regime relevant to this case. *See* Pub. L. 115-391, Title VI, 132 Stat. 5194. The FSA lowered the mandatory minimums that would be imposed for individuals who had been previously convicted of two or more counts of a "serious drug felony," though it made this change explicitly nonretroactive. *See* § 401, 132 Stat. 5220–21 (modifying 21 U.S.C. § 841(b)(1)(A)). In response to popular outcry, the FSA also made retroactive certain statutory penalties for crack-cocaine offenses that had been prospectively reduced by the Fair Sentencing Act of 2010. *See* Pub. L. 115-391, Title VI, § 404, 132 Stat. 5194, 5220–21; *Concepcion v. United States*, 597 U.S. 481, 488 (2022) (explaining the history of section 404 of the First Step Act).

But the FSA made only one statutory change to the sentence-reduction framework in section 3582. *See United States v. Jenkins*, 50 F.4th 1185, 1193 (D.C. Cir. 2021) ("The First Step Act did not alter the other statutory restrictions on compassionate release, including the requirement of 'extraordinary and compelling reasons.'"). To overcome the BOP's unwillingness to file motions for a sentence reduction, Congress allowed courts to consider defendant-filed motions if the defendant had exhausted all administrative remedies to appeal a failure of the BOP to bring a motion on the defendant's behalf. This "procedural" change had significant effects. *Bryant*, 996 F.3d at 1247. Removing the BOP's gatekeeping role enabled thousands of defendants to file motions for sentence reduction after the Act's passage. *See* U.S. Sent'g Comm'n,

Compassionate Release Data Reports (last updated Oct. 17, 2024), accessible at https://www.ussc.gov/research/data-reports/compassionate-release-data-reports.

The state of the law led to confusion. The FSA required the Commission to develop an "applicable policy statement" for defendant-filed motions brought under section 3582(c)(1)(A)(i). But from 2019 to 2022, the Commission did not have the requisite quorum to update its policy statements. Courts did not know whether the Commission's *existing* Policy Statement 1B1.13 was *applicable* to defendant-filed motions.

While the Eleventh Circuit concluded that section 1B1.13 *was* applicable to defendant-filed motions, most circuits did not. *Compare Bryant*, 996 F.3d at 1247–48, *with United States v. Brooker*, 976 F.3d 228, 235 (2d Cir. 2020); *United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2021); *United States v. McCoy*, 981 F.3d 271, 282 (4th Cir. 2020); *United States v. Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021); *United States v. Elias*, 984 F.3d 516, 519–20 (6th Cir. 2021); *United States v. Gunn*, 980 F.3d 1178, 1180–81 (7th Cir. 2020); *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021); *United States v. McGee*, 992 F.3d 1035, 1050 (10th Cir. 2021); *United States v. Long*, 997 F.3d 342, 355 (D.C. Cir. 2021). Because the Eleventh Circuit in *Bryant* concluded that section 1B1.13 applied to defendant-filed motions as well as BOP-filed ones, it further held that the Commission's existing Policy Statement could not "give courts effectively unlimited discretion to grant or deny motions" under the catch-all provision of the Commission's Policy Statement. *Bryant*, 996 F.3d at 1248 (citing U.S.S.G § 1B1.13 (U.S. Sent'g Comm'n 2018)).

Meanwhile, courts that concluded section 1B1.13 was inapplicable to defendant-filed motions still had to confront the limits of their discretionary authority when evaluating "extraordinary and compelling reasons" for a sentence reduction. These circuits had to address a thorny issue that the Eleventh Circuit explicitly declined to address in *Bryant*—whether a district

court may consider nonretroactive changes in law as extraordinary and compelling reasons for a sentence reduction. *See id*. at 1257.

The circuits divided over the issue. The First, Fourth, Ninth, and Tenth Circuits concluded that such changes in law could be considered in combination with other factors. *See United States v. Ruvalcaba*, 26 F.4th 14, 24 (1st Cir. 2022); *McCoy*, 981 F.3d at 287–88; *United States v. Chen*, 48 F.4th 1092, 1095 (9th Cir. 2022); *McGee*, 992 F.3d at 1047 (10th Cir. 2021). The Third, Fifth, Sixth, Seventh, Eighth, and D.C. Circuits disagreed, holding that nonretroactive changes in law could never form a basis for relief either in isolation or in combination with other factors. *See Andrews*, 12 F.4th at 535, *aff'd*, *United States v. Rutherford*, 120 F.4th 360, 375 (3d Cir. 2024); *United States v. Escajeda*, 58 F.4th 184, 187 (5th Cir. 2023), *aff'd*, *United States v. Austin*, No. 24-30039, 2025 WL 78706, at *2 (5th Cir. Jan. 13, 2025); *McCall*, 56 F.4th at 1055; *United States v. Thacker*, 4 F.4th 569, 573–74 (7th Cir. 2021); *United States v. Crandall*, 25 F.4th 582, 585 (8th Cir. 2022); *Jenkins*, 50 F.4th at 1198–99.

In 2023, the Commission finally obtained a quorum to amend section 1B1.13 and described "extraordinary and compelling reasons" for defendant-filed motions that seek a sentence reduction. The Commission defined six reasons for relief in the Policy Statement that could either exist in isolation or in combination. *See* U.S.S.G. § 1B1.13 (U.S. Sent'g Comm'n 2023). Three of these reasons are at issue in this case:

> (b) **Extraordinary and Compelling Reasons**.--Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:
>
> . . .
>
> (2) **Age of the Defendant.**--The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.
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> . . .

> (5) **Other Reasons.**-- The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).
>
> (6) **Unusually Long Sentence.**--If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

U.S.S.G. § 1B1.13(b).[3]

The Commentary on section 1B1.13(b)(6) made clear that the Commission wished to resolve the circuit split on its own terms. After noting that judges are in "a unique position to determine whether the circumstances warrant a reduction," the Commission stated that "[t]he amendment agrees with the circuits that authorize a district court to consider non-retroactive changes in the law as extraordinary and compelling circumstances warranting a sentence reduction but adopts a tailored approach that narrowly limits that principle in multiple ways." Sentencing Guidelines for Federal Courts, 88 Fed. Reg. 28,254, 28,258 (May 3, 2023).

The amended section 1B1.13(b)(6) was not without controversy. It passed with a 4–3 vote, with three members contending that the amended Policy Statement would both "go[ ] further than the Commission's legal authority extends" and also "make a seismic structural change to our criminal justice system without congressional authorization or directive." *See* United States Sentencing Commission, Public Meeting 60 (Apr. 5, 2023). Those members also voiced concern

[3] Three other "extraordinary and compelling" reasons are not at issue here, but they include: (1) Medical Circumstances of the Defendant, *see* U.S.S.G. § 1B1.13(b)(1); (3) Family Circumstances of the Defendant, *see* U.S.S.G. § 1B1.13(b)(3); and (4) whether the defendant was a "Victim of Abuse" while in custody when serving out his term of imprisonment, *see* U.S.S.G. § 1B1.13(b)(4). The Court notes that all of these "extraordinary and compelling reasons," with the exception of section 1B1.13(b)(6), require the court to evaluate purely factual questions about the movant.

that the amended section 1B1.13(b)(6) would "provide[ ] a second look to revisit duly imposed criminal sentences at the ten-year mark based on intervening legal developments that Congress did not wish to make retroactive." *Id.* at 61. The Department of Justice voiced this same concern prior to section 1B1.13(b)(6)'s passage, *see* Letter from Jonathan Wroblewski, Director, Off. of Pol'y & Legis., Criminal Division, U.S. Dep't of Just., to Hon. Carlton Reeves, Chair, U.S. Sent'g Comm'n 6–8 (Feb. 15, 2023), as did Senior Judge Julie E. Carnes of the Eleventh Circuit, *see* Letter from Hon. Julie E. Carnes, Senior Circuit Judge, U.S. Court of Appeals for the Eleventh Circuit, to Hon. Carlton W. Reeves, Chair, U.S. Sent'g Comm'n 6–9 (Mar. 14, 2023).

The amended section 1B1.13(b)(6) has created controversy. Two circuit courts, relying on past precedent, have held that the Policy Statement exceeds the Commission's delegated authority. *See generally Rutherford*, 120 F.4th at 360 (*aff'g Andrews*, 12 F.4th at 255); *Austin*, 2025 WL 78706 (*abrogating United States v. Jean*, 108 F.4th 275 (5th Cir. 2024)); *see also United States v. Ramos*, No. 96-815-4, 2024 WL 4710905, at *4 n.8 (N.D. Ill. Nov. 6, 2024). And though most district courts in this circuit have used *Bryant* to apply section 1B1.13(b)(6),[4] at least one court has cast doubt on its applicability in cases involving a nonretroactive change in law.[5]

[4] *See generally, e.g.*, *United States v. Evans*, No. 93-00123, 2024 WL 5080545 (S.D. Fla. Dec. 10, 2024) (Middlebrooks, J.); *United States v. Franklin*, No. 95-00787, 2024 WL 4295912 (S.D. Fla. Sept. 18, 2024) (Graham, J.); *United States v. Qazi*, No. 12-60298, 2024 WL 4212886 (S.D. Fla. Sept. 17, 2024) (Bloom, J.); *United States v. Adley*, No. 03-20678, 2024 WL 1961484 (S.D. Fla. May 3, 2024) (Altonaga, C.J.); *see also generally United States v. Jean*, No. 11-97, 2024 WL 3948834 (M.D. Fla. Aug. 26, 2024) (Steele, J.); *United States v. Padgett*, No. 06-13, 2024 WL 676767 (N.D. Fla. Jan. 30, 2024) (Hinkle, J.); *United States v. Ware*, 720 F. Supp. 3d 1351 (N.D. Ga. 2024) (Jones, J.); *United States v. Allen*, 717 F. Supp. 3d 1308, 1314–15 (N.D. Ga. 2024) (Batten, C.J.); *United States v. Harper*, No. 04-00218, 2024 WL 1053547 (N.D. Ga. Mar. 11, 2024) (Grimberg, J.).

[5] *See generally United States v. Bradley*, No. 216-012, 2025 WL 43578 (S.D. Ga. Jan. 7, 2025). However, *Bradley* did not analyze whether the Commission exceeded its authority when it allowed for nonretroactive changes of law to be considered "extraordinary and compelling reasons," which the Court addresses herein.

LEGAL STANDARD

Generally, "[a] 'court may not modify a term of imprisonment once it has been imposed except' in certain circumstances established by statute or rule." *United States v. Handlon*, 97 F.4th 829, 831 (11th Cir. 2024) (quoting 18 U.S.C. § 3582(c)). Under section 3582(c)(1)(A), a district court may consider a defendant's motion for a sentence reduction if he "has fully exhausted" his administrative remedies. 18 U.S.C. § 3582(c)(1)(A). Mr. Chineag has clearly exhausted his administrative remedies, and neither party places this issue in dispute. *See Chineag*, 2024 WL 1332022, at *4 (concluding that Mr. Chineag had exhausted his administrative remedies and encouraging him to refile his motion for a sentence reduction in light of the Commission's updates to section 1B1.13); *see also* [ECF No. 227-1] at 2 (supplemental filing of a BOP form dated February 14, 2023, requesting that the warden of Mr. Chineag's facility bring a section 3582(c)(1)(A) motion on his behalf).

After this procedural bar has been met, a defendant must bear the burden of showing that he is *eligible* for a sentence reduction. *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014). Thus, the defendant must show the Court that he qualifies under either one or a combination of the six factors enumerated in section 1B1.13. Even if one or some combination of the extraordinary and compelling reasons listed above is present, the Court must still determine that early release remains consistent with "the factors set forth in section 3553(a) to the extent that they are applicable" before a sentence reduction is proper. *See* 18 U.S.C. § 3582(c)(1)(A). These factors include "the nature and circumstances of the offense, the history and characteristics of the defendant, the seriousness of the crime, the promotion of respect for the law, just punishment, protecting the public from the defendant's further crimes, and adequate deterrence." *United States v. Prada*, No. 22-13059, 2024 WL 1298461, at *1 (11th Cir. Mar. 27, 2024) (citing 18 U.S.C. § 3553(a)).

The section 3553(a) inquiry is separate from section 3582(c)(1)(A). *See Dillon v. United States*, 560 U.S. 817, 826–27 (2010) (noting that a court must first determine whether a sentence reduction is consistent with the Commission's policy statements before evaluating whether the reduction is warranted under section 3553(a)). While analyzing eligibility under section 3582(c)(1)(A) requires that courts assess whether a defendant qualifies under the terms of the sentence-reduction statute, section 3553(a) allows courts to determine in their discretion whether "the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a)." *Bryant*, 996 F.3d at 1251 (quoting *Dillon*, 560 U.S. at 826–27); *see also id.* (referring to the section 3582(c)(1)(A) analysis as a question of statutory interpretation that is reviewed *de novo* on appeal, and the section 3553(a) analysis as a discretionary one reviewed for abuse of discretion).

Thus, under section 3582(c)(1)(A), the district court may reduce a movant's term of imprisonment if: (1) there are "extraordinary and compelling reasons" for doing so, (2) the factors listed in section 3553(a) favor doing so, and (3) doing so is consistent with the policy statements in section 1B1.13. *United States v. Tinker*, 14 F.4th 1234, 1237 (11th Cir. 2021). If the district court finds against the movant on any one of these requirements, it cannot grant relief, and need not analyze the other requirements. *United States v. Giron*, 15 F.4th 1343, 1347–48 (11th Cir. 2021); *Tinker*, 14 F.4th at 1237–38 (explaining that "nothing on the face of 18 U.S.C. § 3582(c)(1)(A) requires a court to conduct the compassionate-release analysis in any particular order").

ANALYSIS

The Government argues that the Commission exceeded its authority in promulgating the 2023 amendment that revised section 1B1.13(b)(6). [ECF No. 245] at 8–10. Because of this, the Government contends that section 1B1.13(b)(6) is invalid as applied to Mr. Chineag and invalid

on its face. The Court addresses this initial question regarding the validity of section 1B1.13(b)(6) first, because it must consider which of Mr. Chineag's three proffered reasons for relief (an unusually long sentence, age, and "other reasons") are viable in combination with one another to determine Mr. Chineag's eligibility to be considered for a sentence reduction. *See United States v. O'Neill*, 735 F. Supp. 3d 994, 1011 (E.D. Wisc. 2024) (adopting a similar analysis in considering whether section 1B1.13(b)(6) was a valid exercise of the Commission's authority).

The Court first considers the scope of the Commission's authority as a general matter and evaluates whether the Eleventh Circuit's decision in *Bryant* changed that paradigm. The Court then assesses whether the Commission exceeded its delegated authority under section 3582(c)(1)(A) by promulgating a policy statement stating that courts may consider nonretroactive changes in law as "extraordinary and compelling reasons" for a sentence reduction either in isolation or in combination with other factors.

As discussed below, the Court concludes that it cannot apply section 1B1.13(b)(6) of the Commission's Policy Statement. Specifically, the Court concludes that the section runs contrary to 28 U.S.C. § 994(t) and 18 U.S.C. § 3582(c)(1)(A), because the Commission exceeded the scope of its expressly delegated authority to "describe extraordinary and compelling reasons" for a sentence reduction in promulgating the section. Because of this conclusion, the Court cannot grant relief to Mr. Chineag under section 1B1.13(b)(6). The Court then reviews whether Mr. Chineag's two alternative bases for relief—his age and "other reasons"—warrant a sentence reduction and concludes that neither basis is independently or in combination sufficient for relief. Because none of Mr. Chineag's reasons are "extraordinary and compelling," the Court cannot grant him relief under section 3582(c)(1)(A) as he is not eligible under that section's terms. And because the Court concludes that Mr. Chineag is not eligible for relief under section 3582, the Court need not reach the application of section 3553 to his case. *Giron*, 15 F.4th at 1347–48.

A. The Scope of the Sentencing Commission's Authority

Mr. Chineag contends that "the Eleventh Circuit held that the Commission's policy statement . . . is mandatory authority for courts considering § 3583(c)(1)(A) motions."[6] [ECF No. 252] at 5. Mr. Chineag's position rests on the Eleventh Circuit's statement in *Bryant* that "the Commission is tasked with defining the universe of 'extraordinary and compelling circumstances.'" 996 F.3d at 1255. The Government rejects this argument, reading *Bryant* to suggest that a court may not grant a sentence reduction "unless a reduction would be consistent with [section] 3582(c)(1)(A)." *Bryant*, 996 F.3d at 1262.

These arguments require addressing three questions: First, what is the statutory basis of authority for the Commission to define "extraordinary and compelling reasons" for a sentence reduction? Second, are there limitations on that authority? And finally, did *Bryant* change any prior understanding of the Commission's scope of authority to promulgate Guidelines and policy statements that describe the definition of "extraordinary and compelling" reasons for a sentence reduction?

Upon careful review, the Court concludes that the Government's position rests on more solid footing. It is clear, as a matter of structure and precedent, that the Commission can be likened to an agency with an explicit delegation of authority to define and issue rules concerning the ambiguous phrase, "extraordinary and compelling reasons." Yet every delegation of authority to an agency has its limits, and the Commission is no exception to that principle. Time and again, the Supreme Court and Eleventh Circuit have reasoned that the Commission's policy statements must be consistent with the federal statutes that authorize their existence. The Eleventh Circuit in *Bryant* did not change that fundamental understanding. That panel instead affirmed the more

[6] Mr. Chineag raises this argument in the context of 18 U.S.C. § 3583(c)(1)(A), but the Court assumes that this is a scrivener's error, given that Mr. Chineag has filed a motion under 18 U.S.C. § 3582(c)(1)(A).

general principle that an agency rule made pursuant to an explicit delegation of authority is binding unless it contravenes federal law. 996 F.3d at 1263. But *Bryant* did not address the critical issue here: whether the Commission can authorize a district court to consider nonretroactive changes in law under section 3582(c)(1)(A).

"The Sentencing Commission unquestionably is a peculiar institution within the framework of our Government." *Mistretta*, 488 U.S. at 384. Though the Commission is placed within the judicial branch, "the Commission is not a court" and "does not exercise judicial power." *Id.* at 393. Instead, the Court has treated the Commission as "an independent agency in every relevant sense." *Id.* Several features of the Commission support this conclusion. The seven voting members of the Commission are "appointed by the President 'by and with the advice and consent of the Senate.'" *Id.* at 368 (quoting 28 U.S.C. § 994(a)). Each voting member can be removed by the President. 28 U.S.C. § 994(a). Congress designed the Commission to have agency expertise. *Cf. Bureau of Alcohol, Tobacco & Firearms v. FLRA*, 464 U.S. 89, 98 n.8 (noting that although an agency's interpretation of a statute "cannot bind a court," that interpretation may be informative "to the extent it rests on factual premises within [the agency's expertise]"). "At least three of the members shall be Federal judges," 28 U.S.C. § 994(a), and the Commission's members "fill an important institutional role" by "ha[ving] the capacity courts lack to base its determinations on empirical data and national experience, guided by a professional staff with appropriate expertise." *Pepper v. United States*, 562 U.S. 476, 501 (2011). These features of the Commission have led the Supreme Court to note that the Guidelines promulgated by the Commission are "the equivalent of legislative rules adopted by federal agencies." *Stinson v. United States*, 508 U.S. 36, 45 (1993); *cf. Ryder Truck Lines v. United States*, 716 F.2d 1369, 1377 (11th Cir. 1983) (noting that the difference between a legislative rule and a policy statement is dependent on whether the agency action establishes a "binding norm").

Congress has expressly delegated to the Commission the authority to "describe extraordinary and compelling reasons for relief" through its policy statements. 28 U.S.C. § 994(t); *cf. Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394–95 (2024) (noting that some statutes empower executive agencies to prescribe rules to "fill up the details" of a statutory scheme (citing *Wayman v. Southard*, 10 Wheat. 1, 43 (1825)).[7] The Eleventh Circuit has concluded that this delegation is permissible. *See United States v. Corker*, No. 22-10192, 2023 WL 1777195, at *3 (11th Cir. Feb. 6, 2023) ("Although the United States Sentencing Commission is not an executive agency, Congress permissibly delegates authority to the Commission to issue Guidelines in the same way it delegates authority to executive agencies." (citing *Mistretta*, 488 U.S. at 374–80)).

Contrary to Mr. Chineag's intimations, this express delegation does not grant the Commission *carte blanche* authority to describe the term. The Commission's authority is limited by the federal statutes that constrain it. Though the Commission is certainly tasked with "periodically review[ing] the work of the courts, and [ ] mak[ing] whatever clarifying revisions to

[7] Other courts, in reviewing this issue, have invoked the Supreme Court's opinion in *Loper Bright*. *See, e.g.*, *United States v. Uriarte*, No. 09-332-4, 2024 WL 4111867, at *4 (N.D. Ill. Sept. 6, 2024); *see also United States v. Glover*, No. 04-940, 2024 WL 4753811, at *3 (N.D. Ill. Nov. 12, 2024); *cf. Ramos*, No. 96-815-4, 2024 WL 4710905, at *4 n.8 (holding that the Commission exceeded its authority in promulgating section 1B1.13(b)(6) and noting that "[t]he Sentencing Commission is not an agency, *per se*, but *Loper*'s logic and import are highly relevant in this context."). *But see United States v. Reedy*, No. 18-00087-2, 2024 WL 5247954, at *2–3 (N.D. Ill. Dec. 30, 2024) (noting that Congress expressly delegated authority to the Commission to promulgate policy statements and concluding that "the *Loper Bright* decision does not call into question the Court's deference to the Commission's policy statements").

Crucially, *Loper Bright* assessed a regulation subject to the Administrative Procedures Act (APA). 603 U.S. at 392–93. Yet the Eleventh Circuit has flatly concluded that the Commission "is not an 'agency' subject to the requirements of the APA," and that its policy statements are "not subject to APA review." *United States v. Maiello*, 805 F.3d 992, 997–98 (11th Cir. 2015). This Court accordingly declines to expand *Loper Bright*'s reach to encompass agencies like the Commission that do not rely on the APA as the source of their authority. And in any event, because this case presents a "pure, narrow question of law prime for judicial resolution"—whether the Commission exceeded its legal authority to promulgate a policy statement that permits district courts to consider nonretroactive changes in law as the basis for a sentence reduction—the Court can use its interpretive toolbox to resolve ambiguity. *Turner v. U.S. Att'y Gen.*, No. 22-11207, 2025 WL 339495, at *10 (11th Cir. Jan. 30, 2025).

the Guidelines conflicting judicial decisions would suggest," *Braxton v. United States*, 500 U.S. 344, 348 (1991), the Commission must still "bow to the specific directives of Congress." *United States v. LaBonte*, 520 U.S. 751, 758 (1997). In other words, even when clarifying circuit splits (as the Commission did here), the Commission must adhere to explicit Congressional instruction.

The limits on the Commission's authority are well-established. As a general matter, the Commission cannot promulgate policy statements that contravene federal law, however well-meaning those statements may be. *See, e.g.*, *Koons v. United States*, 584 U.S. 700, 707 (2018) (noting that "policy statements cannot make a defendant eligible for a sentence reduction" when a statute precludes it); *cf. Pepper*, 562 U.S. at 501 (noting that district courts may impose non-Guidelines sentences where "the Commission's views rest on wholly unconvincing policy rationales *not reflected in the sentencing statutes Congress enacted*" (emphasis added)). This makes sense. It would fly in the face of our carefully constructed separation of powers "to permit an agency to expand its power in the face of a congressional limitation on its jurisdiction," as such a permission "would be to grant to the agency power to override Congress." *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374–75 (1986); *see also Ball, Ball & Brosamer, Inc. v. Reich,* 24 F.3d 1447, 1450 (D.C. Cir. 1994) ("An agency can neither adopt regulations contrary to statute nor exercise powers not delegated to it by Congress."). Neither the Commission's expertise nor its status as a unique agency render the policy statements it promulgates immune from review. *Cf. United States v. Adair*, 38 F.4th 351, 359 (3d Cir. 2022) (concluding that commentary to the Guidelines that would violate a federal statute "has no force of law and is not controlling"). Statutory text simply reinforces this conclusion, as the Commission must promulgate policy statements that are "*consistent with* all pertinent provisions of any Federal statute." 28 U.S.C. § 994(a).

Although *Bryant* concluded that "1B1.13 is an applicable, binding policy statement for all section 3582(c)(1)(A) motions," *see* 996 F.3d at 1262, it did not disrupt the settled understanding that "[p]olicy statements and commentary in the Guidelines are not binding on the federal courts if they 'violate[ ] a federal statute.'" *Id.* at 1263 (quoting *Stinson*, 508 U.S. at 45); *see also id.* ("If a policy statement 'is at odds with' a federal statute, it must 'bow to the specific directives of Congress,' and the conflicting portion 'must give way' to the statutory directive." (citing *LaBonte*, 520 U.S. at 757)). Two additional features of the *Bryant* opinion provide further support. First, *Bryant* did not alter the principle that a policy statement must relate to, and follow from, the statute it implements. *See* 996 F.3d at 1256 (noting that an "applicable policy statement is one that *corresponds with* the reduction motion's authorizing statute" (emphasis added)); *id.* ("[A] court should find the 'applicable' policy statement *by looking at the statute it implements*." (emphasis added)). And though *Bryant* did not address what courts should do if a party argues that a policy statement does *not* follow from the statute it implements, the opinion's concern with judicial discretion provides some guidance for the Court as it reviews section 1B1.13(b)(6).

First, *Bryant* took issue with a purposivist reading of the Policy Statement, cautiously stating that "it is not our role to predict what the Sentencing Commission will do or what Congress wants it to do. Our role is to interpret the relevant legal texts and apply them as they exist." *Id.* at 1261. Underlying this concern was a reluctance to allow judges to exceed their discretionary authority in sentencing; *Bryant* noted that "the FSA did not give courts the freedom to define 'extraordinary and compelling' reasons," but instead "expanded access to the courts for adjudicating motions under existing criteria." *Id.* at 1264. *Bryant* sets forth another limiting principle: the term "extraordinary and compelling" is not license for district courts to impose their own interpretation of what federal sentencing law should be. *See id.* at 1258 ("[W]e should not

interpret 'applicable policy statement' in a way that gives 'extraordinary and compelling' . . . different meanings depending on who files a motion.").

The Court is aware that most sister courts in this circuit have concluded that section 1B1.13(b) does allow a Court to consider nonretroactive changes in law, because *Bryant* stated that "1B1.13 is *the* policy statement the Commission adopted to comply with [section 3582]."[8] *E.g.*, *Allen*, 717 F. Supp. 3d at 1315 (quoting 996 F.3d at 1255 (emphasis in original)); *see also Harper*, 2024 WL 1053547, at *2. But the Commission's Policy Statement is applicable only to the extent that it complies with federal law. The Supreme Court has never indicated that a district court must follow a policy statement even when doing so would run afoul of a federal statute. *Cf. DePierre v. United States*, 564 U.S. 70, 87 (2011) ("We have never held that, when interpreting a term in a criminal statute, deference is warranted to the Sentencing Commission's interpretation of the same term in the Guidelines."). Mr. Chineag's maximalist reading of *Bryant* is flawed because it presumes absolute deference to the Commission's interpretation and provides no discernible limiting principle for the Commission's authority to "describe what should be considered extraordinary and compelling reasons for [a] sentence reduction." 28 U.S.C. § 994(t).

Bryant certainly instructs that the Commission is "tasked with defining the universe of 'extraordinary and compelling circumstances' that can justify a reduction." 996 F.3d at 1255. But reading *Bryant* to conclude that the Commission has *absolute* authority to *grant* judicial discretion

[8] Mr. Chineag argues that the Government's position "contradicts the government's own prior arguments" made in the Supreme Court and other courts in this district. If Mr. Chineag intends to invoke the doctrine of judicial estoppel, his argument fails. That doctrine "is intended to protect courts against parties who seek to manipulate the judicial process by changing their legal positions to suit the exigencies of the moment." *Slater v. United States Steel Corp.*, 871 F.3d 1174, 1176 (11th Cir. 2017). In the Eleventh Circuit, courts confronted with the question will assess "(1) whether the party took an inconsistent position under oath in a separate proceeding," and whether "(2) these inconsistent positions were 'calculated to make a mockery of the judicial system.'" *Id.* at 1181 (internal citation omitted). After looking at "all the circumstances of the case," the Court cannot conclude that the Government has "intended to mislead" either the Court, Mr. Chineag, or other courts in this district. *Id.* at 1185–86.

by expanding its delegated authority should be looked at with disfavor. In that sense, the term "extraordinary and compelling" should have at least some discernible limit; describing the universe of extraordinary and compelling reasons for a reduction cannot, for example, be reasonably interpreted as a delegation of authority to describe *un*remarkable and *un*compelling reasons. *Cf. Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983) (noting that an agency rule made pursuant to an express grant of congressional authority may be set aside if it "is so implausible that it could not be ascribed to a difference in view or the product of agency expertise"). Yet Mr. Chineag's reading would allow such contrary interpretations to persist in policy statements through the blanket assertion that a policy statement is otherwise "binding" on the federal courts. *Cf. Loper Bright*, 603 U.S. at 408 ("[T]he basic nature and meaning of a statute does not change when an agency happens to be involved."). Our system clearly trusts members of the Commission to follow their prescribed and expressly delegated authority—but within legally permissible bounds.

B. Section 1B1.13(b)(6) Exceeds the Scope of the Commission's Statutory Authority to "Describe Extraordinary and Compelling Reasons" for a Sentence Reduction

Having established the bounds of the Commission's authority to promulgate policy statements that describe "extraordinary and compelling" reasons for relief, the Court now considers whether the Commission exceeded its authority in defining the term. *See LaBonte*, 520 U.S. at 757. As district courts in this circuit have noted, the Eleventh Circuit has not provided clarity on the outer bounds of the phrase.[9] And Congress, in expressly delegating the authority to

[9] Sister courts in this circuit have suggested that other circuits' contrary interpretations of the phrase "extraordinary and compelling reasons" imply that the phrase is inherently ambiguous, and said ambiguity should be left to the Commission to resolve. *See, e.g.*, *Ware*, 720 F. Supp. 3d at 1360; *United States v. Elie*, 739 F. Supp. 3d 1032, 1053 (M.D. Fla. 2024). To be clear, Congress expressly delegated to the Commission the authority to "describe extraordinary and compelling reasons" for a sentence reduction, indicating that Congress expressed a desire for the Commission to "gap-fill" latent statutory ambiguity. But this point, though well-taken, is unpersuasive. Every circuit that has considered this issue was confronted with an odd question: in the absence of an "applicable policy statement," what would the term "extraordinary and

the Commission to describe the phrase, has not defined it on its own terms. Because understanding the phrase "extraordinary and compelling" is necessary to address the parties' arguments, the Court considers its plain meaning. *People for the Ethical Treatment of Animals, Inc. v. Miami Seaquarium*, 879 F.3d 1142, 1146 (11th Cir. 2018). In doing so, the Court relies on text, structure, and statutory history to conclude that the ordinary meaning of the phrase "extraordinary and compelling" cannot refer to nonretroactive changes in law either in isolation or in combination with other factors. Mr. Chineag cannot use section 841(b)(1)(A) as a basis for a sentence reduction because section 841(b)(1)(A) is expressly nonretroactive. And because a nonretroactive change in law is not an "extraordinary and compelling" reason under section 3582(c)(1)(A)(i), the Court concludes that the Commission exceeded its authority in promulgating section 1B1.13(b)(6) by allowing courts to base an "unusually long sentence" reduction on expressly nonretroactive changes in law.

(i) Text

The Court begins with the words of the statute. *Harris v. Garner*, 216 F.3d 970, 972 (11th Cir. 2000) (en banc). Section 3582(c)(1)(A)(i) states that a district court may grant a defendant-filed motion for a sentence reduction if "extraordinary and compelling reasons warrant" it. Interpreting this term requires the Court to consider "the ordinary meaning of its text when enacted." *Bryant*, 996 F.3d at 1252 (citing *Wis. Cent. Ltd. v. United States*, 585 U.S. 274, 283 (2018)); *see Bostock v. Clayton Cnty.*, 590 U.S. 644, 654 (2020). As Congress has not updated the

compelling" mean on its own terms? The issue here is markedly different. Since the Commission has now described the term with reference to nonretroactive changes in law through an "applicable policy statement," the issue is whether that description of "extraordinary and compelling" runs afoul of federal law. Whether the term "extraordinary and compelling" is ambiguous is secondary to the issue here. In any event, the Court is not tasked with divining all possible meanings of the phrase "extraordinary and compelling". Rather, the Court is concerned with discerning a sensible limit to the phrase, as the Commission cannot give the phrase a meaning it cannot bear.

phrase "extraordinary and compelling" since 1984, the Court reviews the ordinary meaning of the statute as it was enacted in 1984.

Dictionary definitions are a helpful start. An "extraordinary" reason is "not ordinary." *Extraordinary*, *Black's Law Dictionary* (5th ed. 1979). In other words, it "designat[es] a proceeding or action not *normally* required by law, or not prescribed for the *regular* administration of the law." *Extraordinary*, *Webster's New International Dictionary* 903 (2d. ed 1958) (establishing a legal definition of the phrase) (emphasis added); *see also McCabe*, 56 F.4th at 1055 (defining "extraordinary" as "most unusual," "far from common," or "having little or no precedent" (citing *Extraordinary*, *Webster's Third International Dictionary* 807 (3d ed. 1971)). The reasons a defendant offers must not only be "extraordinary" but also "compelling." *See Pulsifer v. United States*, 601 U.S. 124, 161 (2024) (Gorsuch, J., dissenting) (noting that "and" is an "'additive' conjunction" that indicates that "the words it connects should be added together" (citation omitted)). And to be a "compelling" reason, it must "tend[ ] to convince or convert by or as if by forcefulness of evidence." *Compelling*, *Webster's Third New International Dictionary* 463 (3d ed. 1961); *see also Compelling*, *Webster's New International Dictionary* 544 (2d ed. 1958) ("[f]orcing attention, acquiescence, or obedience"). Taken together, an "extraordinary and compelling reason" must be a circumstance having little or no precedent *that is also* forceful and convincing enough to warrant a sentence reduction.

Context helps clarify text. *See Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 599 U.S. 280, 289 (2010). Two principles relevant to federal sentencing law help divine a clearer reading of the statute as applied to the retroactivity issue at hand.

Modern sentencing law—and our criminal justice system more broadly—are concerned with preserving the *finality* of a conviction. This principle has sensible, practical underpinnings. "Without finality, the criminal law is deprived of much of its deterrent effect." *Spencer v. United*

States, 773 F.3d 1132, 1144 (11th Cir. 2014) (quoting *Teague v. Lane*, 489 U.S. 288, 309 (1989)). Enabling defendants to freely attack their initially imposed sentence—whether through collateral review or on a motion for sentence reduction—creates a procedural system that "permits an endless repetition of inquiry into facts and law" that "cannot but war with the effectiveness of underlying substantive commands." *Id*. (citing *McCleskey v. Zant*, 499 U.S. 467, 492 (1991)). As the Sixth Circuit has explained, Congress has given this principle "statutory weight" in generally prohibiting a district court from modifying a sentence once it has been imposed. *McCall*, 56 F.4th at 1055 (citing 18 U.S.C. § 3582(b)–(c)).

To further finality, our criminal system is concerned with *retroactivity*. Congress often updates its criminal statutes to reflect society's understanding of the punitive sanctions that ought to apply for a given unlawful action. But Congress makes laws with the future in mind. *Cf. Freeman v. United States*, 564 U.S. 522, 531 (2011) (noting that "[r]etroactive reductions in sentencing ranges are infrequent"). This observation rings especially true in federal sentencing law, where "the ordinary practice is to apply new penalties to defendants not yet sentenced, while withholding that change from defendants already sentenced." *Dorsey v. United States*, 567 U.S. 260, 280 (2012). Nonretroactivity is therefore presumed for statutes absent an express statement or clear implication otherwise. *See* Antonin Scalia & Brian A. Garner, *Reading Law, The Interpretation of Legal Texts* 261 (2012) (explaining that the presumption against retroactivity is "basic to our rule of law"); *see also Landgraf v. USI Film Prods.*, 511 U.S. 244, 286 (1994) (Scalia, J., concurring in judgment) (noting that "a legislative enactment affecting substantive rights does not apply retroactively absent a clear statement to the contrary); *United States v. McMaryion*, No. 21-50450, 2023 WL 4118015, at *2 (5th Cir. June 22, 2023) (noting that the presumption against retroactive legislation in sentencing is "deeply rooted in our jurisprudence" and "embodies a legal doctrine centuries older than our Republic" (citations omitted)); *Lindh v.*

Murphy, 521 U.S. 320, 326 (1997) ("In determining whether a statute's terms would produce a retroactive effect . . . our normal rules of construction apply.").

It is difficult to square section 1B1.13(b)(6) with the text of the statute in this light. A purely prospective change in criminal penalties, like section 401(a) of the First Step Act, is part and parcel of the regular administration of law. More broadly, the fact that Congress may increase or decrease criminal penalties in response to changing social norms and political considerations is not itself "extraordinary." *Crandall*, 25 F.4th at 586; *see also United States v. King*, 40 F.4th 594, 595 (7th Cir. 2022). To accept Mr. Chineag's argument, one would expect that Congress stated, or even intimated, that its changes to the sentencing laws were themselves "extraordinary" and "compelling." But the FSA did nothing of the sort.

Congress did not vitiate prior law or cast doubt on the thousands of lawful, final sentences that had been previously established pursuant to section 841(b)(1)(A). Instead, it made a clear statement based on myriad considerations that the policy concerns that motivated prior sentencing laws needed to be updated. Congress's choice to revise its sentencing laws cannot, by any stretch, be considered "forceful" or "convincing" enough to warrant a sentence reduction. *See Jenkins*, 50 F.4th at 1198. The Court presumes that Congress says what it means and means what it says. *Wiersum v. U.S. Bank, N.A.*, 785 F.3d 483, 488 (11th Cir. 2015) (citing *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54 (1992)). And if Congress explicitly chooses to make a statute nonretroactive, it would be truly abnormal and extraordinary—in every sense of the word—for a court to poke around that statute to find imaginary exceptions.

(ii) Structure

The plain meaning of "extraordinary and compelling" must be viewed with the structure of the sentencing laws in mind. *See Eddison v. Douberly*, 604 F.3d 1307, 1310 (11th Cir. 2010). And the structure of both the sentencing laws and the FSA show that Congress did not intend to

make changes in law retroactive without clearly saying so. *See United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988) ("A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme . . . because only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law."). The powers that Congress has given the Commission demonstrate that Congress makes clear when it wants changes in law to have retroactive effect. Section 994 allows the Commission to give certain retroactive effect to certain amendments of the Guidelines but requires that the Commission "specify in what circumstances and by what amount the sentences of prisoners serving terms of imprisonment for the offense may be reduced." 28 U.S.C. § 994(u); *see also LaBonte*, 520 U.S. at 755 ("Pursuant to its authority under [section 994(u)], the Commission opted to give Amendment 506 retroactive effect."). Yet section 994 mandates that Congress carefully review the Commission's changes to the Guidelines, including any potential revisions to retroactivity. *See* § 994(p). To be sure, the Guidelines and policy statements are different, and so the procedures for congressional review vary as a statutory matter; while section 994(p) requires Congressional review of Guideline amendments, it makes no prescription for policy statements. *Compare* § 994(a)(1) (describing the role of the guidelines) *with* § 994(a)(2) (describing the role of policy statements).

But given that the Commission must promulgate policy statements that are "consistent with all pertinent provisions of *any* Federal statute," 28 U.S.C. § 994(a), it seems odd to allow a loophole that would permit the Commission to develop Guidelines that must obey principles of retroactivity and finality, while also permitting the Commission to promulgate policy statements that disregard those principles and explicitly nonretroactive statutes elsewhere in the U.S. Code. And even though section 1B1.13(b)(6) does not *mandate* that courts disregard relevant federal statutory provisions, it would have the *effect* of doing so. Allowing the Commission to consider changes in

law when other provisions of federal statutory law preclude it from doing so would strap retroactivity into statutes where that change was never authorized. *See* 1 U.S.C. § 109 (creating a presumption that Congress does not repeal federal criminal penalties unless it says so "expressly").

Mr. Chineag's reply contends that the fact that Congress chose not to react to the new Policy Statement evinces its approval of the Statement itself. [ECF No. 252] at 4–5. But courts should not "read[ ] congressional intent into congressional inaction," *see Kimbrough v. United States*, 552 U.S. 85, 106 (2007), and the Court is wary of assuming that Congress's failure to reject the Policy Statement "means that it effectively adopted that interpretation with respect to the statute." *DePierre*, 564 U.S. at 87 n.13. When reading the sentencing laws, "drawing meaning from silence is particularly inappropriate . . . for Congress has shown that it knows how to direct sentencing practices in express terms." *See Concepcion*, 597 U.S. at 498 (quoting *Kimbrough*, 552 U.S. at 103).

The statutes surrounding section 3582(c)(1)(A) indicate that Congress can distinguish between nonretroactive and retroactive changes in law. To preserve retroactivity, Congress has precluded courts from "modify[ing] a term of imprisonment that has been imposed." 28 U.S.C. § 3582(c). Only two narrow exceptions exist. Section 3582(c)(1), the sentence-reduction provision here, contains no retroactive limitation. But the neighboring section 3582(c)(2), which was added to the U.S. Code at the same time as section 3582(c)(1), states that "[i]n the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range *that has subsequently been lowered by the Commission* pursuant to 28 U.S.C. § 994(o) . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a)." § 3582(c)(2) (emphasis added). If Congress provided for the retroactive application of some changes in sentencing law, then it would make no sense to conclude that section 3582(c)(1) would

also contain a retroactivity exception where none is explicitly provided. *See McCall*, 56 F.4th at 1056.

Nowhere is the distinction between retroactivity and nonretroactivity more evident than in the provisions of the FSA that Mr. Chineag uses to support his argument. Mr. Chineag concedes that section 401 of the FSA is explicitly nonretroactive. *See* [ECF No. 242] at 5. He is correct on this point; as the Eleventh Circuit has clearly stated, "Congress did not make [section 401 of] the First Step Act retroactive." *United States v. Abston*, No. 21-11031, 2022 WL 1164741, at *4 (11th Cir. Apr. 20, 2022) (affirming a denial of sentence reduction after *Bryant* because "changes to sentencing found in § 401(c)" would not apply to the movant). Yet consider that the FSA expressly provided for the retroactive application of lower sentences in section 404(b). *See* Pub. L. No. 115-391, § 404(b), 132 Stat. 5222 ("A court that imposed a sentence for a covered offense may, on motion of the defendant . . . impose a reduced sentence *as if* sections 2 and 3 of the Fair Sentencing Act of 2010 were in effect at the time the covered offense was committed.") (emphasis added); *see also Concepcion*, 597 U.S. at 497 (concluding that the phrase "as if" indicates Congress's intent to "defeat the presumption" that Congress does not repeal criminal penalties unless expressly noted). Moreover, Congress made clear that it intended to make other provisions of the FSA nonretroactive. *See, e.g.*, Pub. L. No. 115-391, § 403, 132 Stat. 5221. If Congress carefully chose to distinguish between nonretroactive and retroactive penalties in *each* provision of the FSA that concerned sentencing reform, it is implausible to say that Congress's expression of "extraordinary and compelling"—a phrase Congress left unchanged since the SRA's passage in 1984—would somehow render the FSA's distinctions moot.

The Court also notes that a different provision of the sentence-reduction statutes already allows for the kind of discretionary determination Mr. Chineag wants present in the statutory scheme. Section 3582(c)(1)(A)(ii) allows for a sentence reduction if

> the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g).

18 U.S.C. § 3582(c)(1)(A)(ii). If Congress has shown that it can acquire political consensus to develop a sensible, cabined rule to correct long sentences *without* having to resort to the phrase "extraordinary and compelling reasons," it makes no sense for the Court to permit the Commission to construct an alternative basis for relief that flatly contradicts statutory text.

Mr. Chineag asserts that sentence-reduction motions have been used to correct "unjust, disparate sentences." [ECF No. 252] at 9. This argument falls flat. As the Government correctly notes, *see* [ECF No. 245] at 9, a claim challenging the "justness" of one's sentence can be made only through a section 2255 motion, which is the "exclusive remedy" to collaterally attack the lawfulness of one's sentence. *Antonelli v. Warden, U.S.P. Atl.*, 542 F.3d 1348, 1351 n.1 (11th Cir. 2008); *see also Rudolph v. United States*, 92 F.4th 1038, 1047 (11th Cir. 2024) (citing *Jones v. Hendrix*, 599 U.S. 465, 473, 474, 479 (2023)). Because section 2255 is the sole "venue for a federal prisoner's collateral attack on his sentence," *see Jones*, 599 U.S. at 479, courts have repeatedly concluded that a motion for sentence reduction cannot serve as an independent means to challenge a sentence's legality. *United States v. Guerrero*, No. 23-10248, 2023 WL 3961416, at *1 (11th Cir. June 13, 2023) ("[S]ection 3582(c) does not authorize a district court to consider collateral attacks on a prisoner's conviction."); *see McCall*, 56 F.4th at 1058; *Jenkins*, 50 F.4th at 1203–04 (describing a "habeas-channeling rule" that forecloses using sentence-reduction motions to correct sentencing errors).

To be clear, Mr. Chineag is not framing his motion for a sentence reduction as a 2255 motion, as he has already exhausted that avenue for relief. *See* [ECF No. 172]; *Chineag v. United*

States, 223 F. App'x 948, 948 (11th Cir. 2007). But Mr. Chineag's argument would suggest that his initially imposed sentence, which Congress later changed prospectively, was somehow invalid. *See Jenkins*, 50 F.4th at 1202. The Sixth Circuit has made this point well:

> Put another way, a compassionate release petitioner argues that, although his sentence is lawful, other unrelated factors, such as health or age, counsel in favor of early release. A habeas petitioner argues that his sentence is unlawful. Entertaining an argument that implies a sentence is unlawful at the threshold level of a compassionate release analysis blurs these two forms of relief. And it is precisely because . . . habeas and compassionate release serve different purposes, that we won't blur these lines in a way that ignores context.

McCall, 56 F.4th at 1058. Allowing Mr. Chineag's argument to prevail would "return us to the pre-SRA world of disparity and uncertainty" by enabling district courts to grant section 3582(c)(1)(A) motions "only 30 days after imposing a sentence" without being "bound by . . . statutory minimums." *See Bryant*, 996 F.3d at 1257. The Court accordingly declines to enable defendants to file multiple motions for sentence reductions that would have the effect of upsetting Congress's carefully constructed collateral-review procedures.

(iii) Statutory History

Though statutory history is an imperfect way to divine a statute's meaning, *see Exxon Mobil Corp. v. Allapattah Servs.*, 545 U.S. 546, 568 (2005), the history behind the Sentencing Reform Act and First Step Act confirms that "extraordinary and compelling" cannot implicate nonretroactive changes in law. *See Bryant*, 996 F.3d at 1256 ("As between two competing interpretations, we must favor the 'textually permissible interpretation that furthers rather than obstructs' the statute's purposes." (quoting Scalia & Garner, *supra*, at 63)).

The Senate Report for the SRA ("Report") provides helpful context in understanding the reasons why Congress overhauled the prior sentencing regime. *Mistretta*, 488 U.S. at 652 (citing S. Rep. No. 98-225 (1983)). The Report pointed out the "inevitable" disparities that resulted from

"judges in the same district and by judges in different districts and circuits in the federal system" imposing varied sentences on similarly situated defendants. S. Rep. No. 98-225 at 41. The Report also noted that the existence of parole boards incentivized "judicial fluctuation by encouraging judges to keep the availability of parole in mind when they sentence[d] offenders." *Id.* at 46.

To limit these indiscretions and promote uniformity, Congress added section 3582(c), which was meant to describe "unusual cases in which an eventual reduction in the term of a sentence of imprisonment is justified by changed circumstances." *Id.* at 55. Congress indicated that this provision would be reserved for "a relatively small number of cases," indicating that it "would include cases of severe illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, and some cases in which the sentencing guidelines for the offense of which the defendant was convicted have later been amended to provide for a shorter term of imprisonment." *Id.* Yet nowhere in this statutory history did Congress state that the small set of "some cases" could swallow Congress's more general presumptions regarding finality and retroactivity.

If the SRA was designed to eliminate parole boards, Mr. Chineag's reading of section 1B1.13(b)(6) renders that elimination meaningless. It does so by allowing judges in various circuits to determine for themselves what is or is not an appropriate reason for a sentence reduction whenever a criminal defendant presents an intervening change in law. *See* Letter from Hon. Julie E. Carnes, *supra*, at 12 ("Figuring out when it would be inequitable not to reduce a sentence will burden appellate courts by necessitating their creation of a de facto set of guidelines that may well differ between each circuit."). This defeats uniformity and promotes disparity.

The fact that Congress precluded the Commission from considering rehabilitation in evaluating a defendant's eligibility for a sentence reduction also shows that Congress did not wish to return to the prior parole-board system. *See* 28 U.S.C. § 994(t). That system would often reduce

sentences "based on concepts of the offender's possible, indeed probable, rehabilitation." *Mistretta*, 488 U.S. at 363. But because granting reductions based on rehabilitation produced uncertain, indeterminate results in sentencing, many legal scholars and advocates came to question "[r]ehabilitation as a sound penological theory." *Id.* at 365. To that end, the Report explicitly critiqued the "'outmoded rehabilitation model' for federal sentencing" and bemoaned the "unjustifi[ed]" and "shameful" consequences created by that theory. *See id.* at 366 (citing S. Rep. No. 98-225). Given this context, section 994(t) should be read as a warning from the prior Congress to the Commission to avoid using rehabilitation as an indeterminate and nonuniform reason for a sentence reduction.

The history of the FSA does not change how courts should interpret the SRA. The FSA did not modify the SRA's substantive definition of "extraordinary and compelling reasons," but instead changed only *who* could bring a motion under section 3582(c)(1)(A).[10] *See Bryant*, 996 F. 3d at 1291. The Court recognizes that some judges have disagreed with this procedural reading of the FSA, contending that the Supreme Court's decision in *Concepcion*—which assessed a provision of the FSA—suggests a "broad and expansive view of sentencing discretion." *See McCall*, 56 F.4th at 1074 (Gibbons, J., dissenting); *see also United States v. Chen*, 48 F.4th 1092, 1095–96 (9th Cir. 2022). The Eleventh Circuit, however, has chafed at this argument for several

[10] Though not persuasive authority, the Court notes that Senators Chuck Grassley and Mitch McConnell wrote to the Commission prior to passage of the amended section 1B1.13(b)(6) to voice concern with the proposed addition of changes of law as "extraordinary and compelling." Senator Grassley, who was the lead author of the First Step Act in the Senate, noted that "Congress didn't intend to make the entire act retroactive," and instead "made careful retroactivity determinations with regard to specific provisions within the First Step Act itself." *See* Letter from Sen. Chuck Grassley, Ranking Member, Senate Judiciary Committee, to Hon. Carlton W. Reeves, Chairman, U.S. Sent'g Comm'n 2 (Jan. 19, 2023). Senator McConnell made a more pragmatic point on Congressional incentives, noting that such a change would "poison the well in Congress with respect to any future proposed changes in law to reduce sentences," because legislators would come to expect that legislation like the First Step Act would "reduce the sentences of *current* prisoners, whether they intend it or not." Letter from Sen. Mitch McConnell, Sen. Republican Leader, to Hon. Carlton W. Reeves, Chairman, U.S. Sent'g Comm'n 2 (Feb. 8, 2023) (emphasis in original).

reasons, stating that "*Concepcion* did not change the analysis for determining whether a movant is eligible for a § 3582(c) sentence reduction." *United States v. Williams*, No. 22-13150, 2023 WL 4234185, at *3–4 (11th Cir. June 28, 2023). As the *Williams* court explained when denying a sentence reduction based on a nonretroactive, intervening change in law, *Concepcion* analyzed section 404 of the FSA, which Congress explicitly made retroactive. *Id.* at *3. In doing so, *Concepcion* neither "address[ed] compassionate release motions" nor did it change the settled understanding that "Congress may cabin what district courts may consider when sentencing (or resentencing) a defendant." *Id*. at *4 (citing *Concepcion*, 597 U.S. at 495). *Concepcion* is inapplicable here, as Mr. Chineag has cited a different, nonretroactive change in law (section 401(a)), and "*Concepcion* does not bear on the initial question of whether the movant is *eligible* for" a sentence reduction. *Id.* at *3 n.3 (collecting cases).

The Court recognizes that this conclusion limits the amount of discretion judges may have when reducing sentences, and that judges have *historically* had more discretionary authority over sentencing. *See Concepcion*, 597 U.S. at 491 (citing Kate Stith & Jose Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 9 (1998)). But "[i]t is the legislature, not the Court, which is to define a crime, and ordain its punishment." *United States v. Wiltberger*, 18 U.S.C. (5 Wheat.) 76, 95 (1820). Congress, through the SRA's passage, limited the bounds of that discretionary authority. Endorsing Mr. Chineag's view incentivizes Congress to sit on its hands and toss sensitive, policy-laden debates of national importance to unelected judges and bureaucrats. A textual, carefully circumscribed approach to sentencing law enables judges to exercise discretion when Congress—and the people by extension—permit it. And it incentivizes Congress to act on and clarify latent ambiguities, instead of allowing courts to do Congress's job and risk reading policy into plain text. Congress has had occasion to make the FSA wholly retroactive since its passage but has chosen not to pass that legislation. *See* First Step

Implementation Act of 2023, S. 1251, § 101(c) (118th Cong. 2023) (making section 401 of the First Step Act retroactive). In the absence of affirmative legislation, the Court declines to assume quasi-legislative authority that rewrites federal sentencing law in a manner that would contravene the text, structure, and history of the SRA.

The Court does not doubt the well-intentioned policy rationale that led the Commission to promulgate this Policy Statement. And the Court recognizes the hard work undertaken by the Commission to cabin the terms of section 1B1.13(b)(6). *See* Public Meeting, *supra*, at 4–10 (Apr. 5, 2023). A court may consider a change in law only if (1) the defendant has served at least ten years of their sentence; (2) there would be a "gross disparity" between the sentence being served and the sentence likely to be imposed after the change in law came into effect; and (3) individualized circumstances demand it. This clearly evinces a good-faith effort on the Commission's part to narrowly tailor the class of defendants who would be eligible for a sentence reduction. But "[a]textual good policy cannot overcome clear text." *Ins. Mktg. Coal. Ltd. v. Fed Commc'ns Comm'n*, 2025 WL 289152, at *8 (11th Cir. Jan. 24, 2025) (citing *Util. Air. Regul. Grp. v. EPA*, 573 U.S. 302, 325 (2014)). If a statute, like section 401(a) of the First Step Act, is clearly nonretroactive, it cannot be rendered retroactive by simply adding the label "extraordinary and compelling."

C. Mr. Chineag Provides No Other Independent Basis for Relief

As discussed, the Court cannot apply section 1B1.13(b)(6) as a matter of law to Mr. Chineag's Motion, because the Commission exceeded its authority to describe the term "extraordinary and compelling reasons" for a sentence reduction by allowing courts to consider nonretroactive changes in law like section 401(a) of the First Step Act. And as explained below, Mr. Chineag has failed to present sufficient facts to render him eligible for a reduction under either section 1B1.13(b)(2) or section 1B1.13(b)(5). *See Green*, 764 F.3d at 1356 (holding that a

defendant must bear the burden of showing that he is eligible for a sentence reduction). Because none of Mr. Chineag's reasons for a sentence reduction are sufficient under section 3582, the Court cannot grant his Motion. *See United States v. Jarvis*, 999 F.3d 442, 444 (6th Cir. 2021) ("Adding a legally impermissible ground to [ ] insufficient factual considerations does not entitle defendant to a sentence reduction.").

(i) Age

Mr. Chineag contends that he is eligible for relief under section 1B1.13(b)(2)'s "Age of the Defendant" category as he is 80 years old. A defendant qualifies under this section if he "(A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less." U.S.S.G. § 1B1.13(b)(6). It is clear that Mr. Chineag is over 65 years old and has served at least ten years of his sentence; the question here, therefore, is whether Mr. Chineag is "experiencing a serious deterioration in physical or mental health because of the aging process."

Mr. Chineag asserts that he suffered a stroke "on or about the year 2015/2016" and that he has been taking "pills for his heart issues." [ECF No. 227-1] at 21. While the Court recognizes that a stroke is a serious medical condition and that Mr. Chineag may have suffered a stroke, Mr. Chineag's proffered medical records do not present any evidence of a stroke that occurred during that time. *See Green*, 764 F.3d at 1356 (establishing that the defendant bears the burden of showing that he is eligible for a sentence reduction); *United States v. Diaz-Rosado*, No. 21-10834, 2023 WL 2129555, at *4 (11th Cir. Feb. 21, 2023) (concluding that district court did not abuse its discretion in denying sentence reduction for defendant who did not have evidence to substantiate claim of severe or chronic kidney disease). Further, the medical records Mr. Chineag has presented indicate that his neurologic systems are "within normal limits" and that his general motor systems

are normal. *See* [ECF No. 227-1] at 25–27. Mr. Chineag also states that he has "high blood pressure" and "high cholesterol," for which he requires daily medication. But again, his medical records provide no indication that Mr. Chineag has either experienced a "serious deterioration" due to his high blood pressure or has not received adequate care from the BOP to mitigate that condition. Indeed, Mr. Chineag's medical records indicate that his blood pressure is "controlled" by the medicine the BOP has provided. [ECF No. 227-1] at 31.

At core, Mr. Chineag seeks a sentence reduction because of his age. *See* [ECF No. 252] at 11 (referring to Mr. Chineag's age and "[t]he average 80-year-old man," and generally noting that "time in prison shortens an individual's life expectancy"). But "age, without more, is not enough." *United States v. Monaco*, 832 F. App'x 626, 629 (11th Cir. 2020). Further medical records may indicate that Mr. Chineag has actually experienced a "serious deterioration" in his health *because of* the aging process, but the materials Mr. Chineag has provided at present do not sufficiently connect his health to his age in a way that would render him eligible for relief under section 1B1.13(b)(2).

(ii) Other Reasons

Mr. Chineag argues that he is eligible for relief under section 1B1.13(b)(5). That provision of the Policy Statement allows a court to reduce a sentence if "[t]he defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) to (4), are similar in gravity to those described in paragraphs (1) through (4)." U.S.S.G. § 1B1.13(b)(5). Mr. Chineag argues that the "unique aspects of this case," including the fact that Mr. Chineag was convicted through a reverse sting Hobbs Act robbery, make him eligible for the Policy Statement's "catch-all" provision. Specifically, Mr. Chineag argues that a reverse sting "stash house" operation "has garnered significant criticism and drawn comparisons to entrapment." [ECF No. 252] at 13–14.

As explained, this argument appears to attack the legality of Mr. Chineag's conviction and sentence, and he has exhausted his ability to file a 2255 motion—the sole vehicle for a collateral attack of that nature. But even if Mr. Chineag could raise this challenge through a motion for sentence reduction, the Eleventh Circuit has consistently held that reverse sting operations like the one Mr. Chineag was involved in are lawful. *See, e.g.*, *United States v. Ciszkowski*, 492 F.3d 1264, 1271 (11th Cir. 2007) ("Government-created reverse sting operations are recognized and useful methods of law enforcement investigation."); *United States v. Clarke*, 649 F. App'x 837, 845 (11th Cir. 2016) ("The fact that the government's fictitious reverse sting operation involved a large quantity of drugs does not amount to the type of manipulative governmental conduct warranting a downward departure in sentencing." (quoting *United States v. Sanchez*, 138 F.3d 1410 (11th Cir.1998)); *United States v. Dixon*, 626 F. App'x 959, 963 (11th Cir. 2015) (concluding that a reverse sting operation would not amount to "outrageous government conduct" and noting that the Eleventh Circuit has "repeatedly approved reverse sting operations" in situations involving a conspiracy to rob a cocaine stash house); *see also United States v. Brown*, 625 F. App'x 945, 947 ("[E]ven if we agreed with Brown's criticisms of the use of reverse sting operations, we are not at liberty to disregard our prior precedent and create new law.").

Indeed, the Eleventh Circuit has cast doubt on the argument advanced by Mr. Chineag—that a reverse sting operation can be likened to entrapment. *See United States v. Cazy*, 618 F. App'x 569, 572 (affirming district court's denial of a judgment of acquittal based on entrapment in a reverse sting operation involving a conspiracy to rob a stash house because a reasonable jury could conclude that defendant was "predisposed" to commit the crime by having been "given opportunities to back out of illegal transactions but fail[ing] to do so."). Given the aforementioned precedent from the Eleventh Circuit, Mr. Chineag's supplemental authority—a district court case granting a motion for sentence reduction based on the Seventh Circuit's determination that reverse

sting operations are "tawdry" and questionable—is inapposite. *See United States v. King*, No. 6-50074, 2024 WL 4274793, at *1 (N.D. Ill. Sept. 20, 2024) (first citing *United States v. Lewis*, 641 F.3d 773, 777 (7th Cir. 2011); then citing *Conley v. United States*, 5 F.4th 781, 787 (7th Cir. 2021); and then citing *United States v. Kindle*, 698 F.3d 401, 416 (7th Cir. 2012), *vacated on other grounds sub nom. United States v. Mayfield*, 771 F.3d 417 (7th Cir. 2014)).

D. Mr. Chineag's Rehabilitation in Prison, While Commendable, Is Insufficient To Maintain Eligibility for Relief Under 1B1.13(b)(6).

Mr. Chineag has failed to show that he is eligible for relief under any independent provision of section 1B1.13(b). None of Mr. Chineag's proffered reasons can provide a basis for relief in combination. Mr. Chineag concedes that "rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason," *see* U.S.S.G. § 1B1.13(d) (citing 28 U.S.C. § 994(t)), but contends that "rehabilitation of the defendant while serving the sentence may be considered in combination with other circumstances in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted." *Id.*

Mr. Chineag presents no set of circumstances under the Policy Statement or section 3582(c)(1)(A) that would make him eligible for release. That said, the Court commends him for his rehabilitation while in prison. As a BOP officer noted, Mr. Chineag is "a model inmate." [ECF No. 242] at 11. During his time in prison, Mr. Chineag has had only one minor infraction. [ECF No. 245-4]. He has completed numerous educational courses in basic business finance, Spanish, ESL, and Spanish Guitar. He is also a mentor to his community; BOP officials have noted that Mr. Chineag "is always there to lend a helping hand" to young men and "is constantly mentoring younger inmates on changing their lives and being a productive member of society." [ECF No. 242] at 11. And he has maintained regular contact with his family, who have all

commended his strong family and community ties. *Id.* at 15. If rehabilitation alone were sufficient, Mr. Chineag would clearly qualify for relief.

E. The Court Need Not Analyze the Section 3553(a) Factors Here

Because Defendant has not cleared the section 3582(c)(1)(A)(i) threshold for "extraordinary and compelling reasons" to reduce his sentence, the Court need not analyze the section 3553(a) factors. See 18 U.S.C. § 3582(c)(1)(A). Only when eligibility for a sentence reduction is established does a court have to determine whether "the authorized reduction is warranted, either in whole or in part, according to the factors set forth in § 3553(a)." *Bryant*, 996 F.3d at 1251 (quoting *Dillon*, 560 U.S. at 826 (2010)). If the district court finds against the movant on any one of these requirements, it cannot grant relief, and need not analyze the other requirements. *Giron*, 15 F.4th at 1347–48. Accordingly, though Defendant's rehabilitation efforts are laudable, the Court need not address the section 3553(a) factors here.

CONCLUSION

Because Mr. Chineag has failed to show that he is eligible for a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), his Motion for Reduction of Sentence, [ECF No. 242], is **DENIED**.

DONE AND ORDERED in Miami, Florida this 6th day of February, 2025.

RODOLFO A. RUIZ II
UNITED STATES DISTRICT JUDGE