



Sentence Reduction Motions/ Compassionate Release

2023 National Seminar

August 29, 2023

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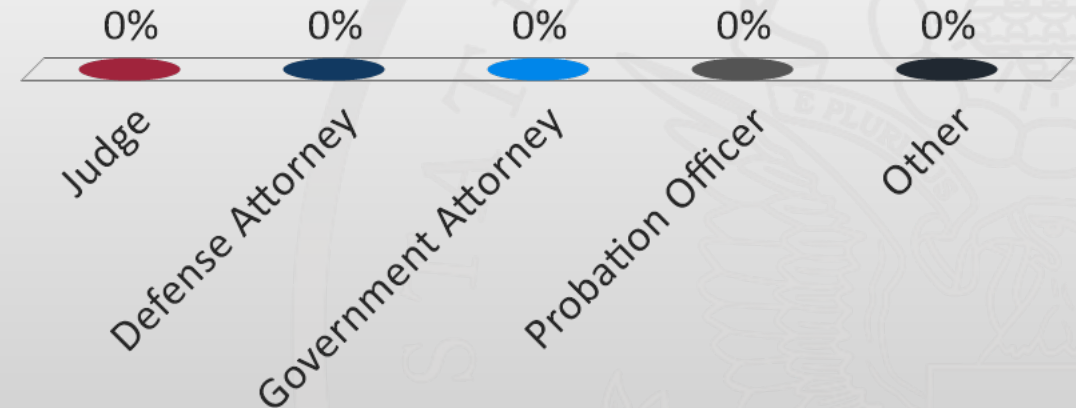
Presentation Overview

- Legal Background
- Selected Data on “Compassionate Release” Sentence Reductions
- Commission’s Amendment to §1B1.13
- Appellate Review



Who is with us today?

- A. Judge
- B. Defense Attorney
- C. Government Attorney
- D. Probation Officer
- E. Other



Motion after enactment of the First Step Act?

- A. Yes
- B. No



Part 1
Legal Background



Relevant Statutes and Policy Statements

- 18 U.S.C. § 3582(c)(1)(A)
- 18 U.S.C. § 3553(a)
- USSG §1B1.13



“Compassionate Release”

18 U.S.C. § 3582(c)(1)(A)(i)

A court may reduce a sentence of imprisonment:

1. for “extraordinary and compelling reasons”;
2. if a reduction is warranted after review of the 18 U.S.C. § 3553 sentencing factors;
3. and consistent with the applicable policy statements of the Sentencing Commission. (USSG §1B1.13)

Effect of the First Step Act

- Authorized a *defendant* to file a motion in federal court (after meeting an exhaustion requirement).
- Before the Act, only the Bureau of Prisons could file a motion.

“The court, upon the motion of the Director of the Bureau of Prisons, or upon motion of the defendant . . . may reduce the term of imprisonment after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent that they are applicable, if it finds that—extraordinary and compelling reasons warrant such a reduction . . .

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission”

Does §1B1.13 Apply?

NO

United States v. Ruvalcaba, 26 F.4th 14 (1st Cir. 2022)

United States v. Brooker, 976 F.3d 228 (2d Cir. 2020)

United States v. Andrews, 12 F.4th 255 (3d Cir. 2021)

United States v. McCoy, 981 F.3d 271 (4th Cir. 2020)

United States v. Shkambi, 993 F.3d 388 (5th Cir. 2021)

United States v. Jones, 980 F.3d 1098 (6th Cir. 2020)

United States v. Gunn, 980 F.3d 1178 (7th Cir. 2020)

United States v. Aruda, 993 F.3d 797 (9th Cir. 2021) (per curiam)

United States v. McGee, 992 F.3d 1035 (10th Cir. 2021)

United States v. Long, 997 F.3d 342 (D.C. Cir. 2021)

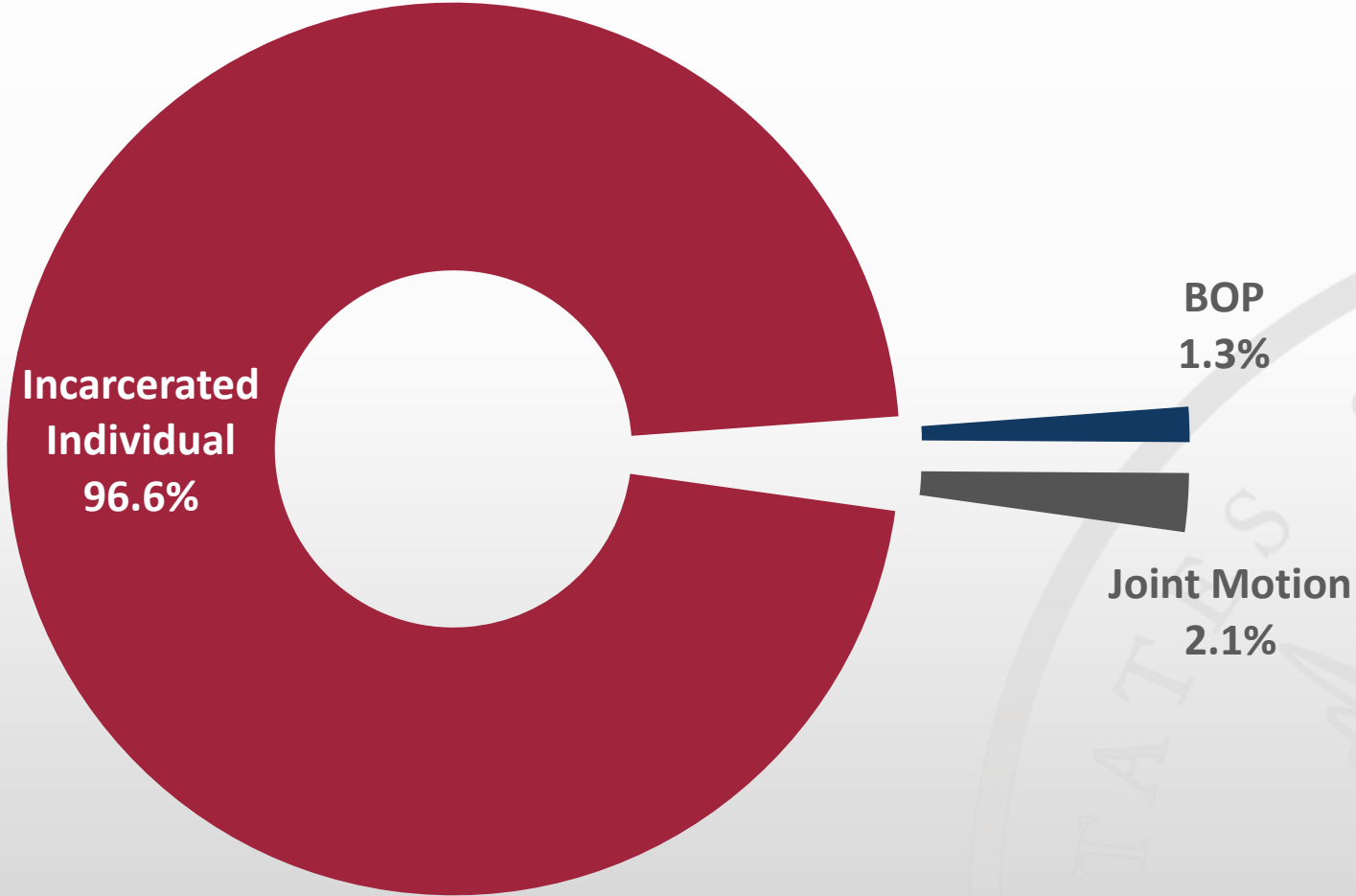
YES

United States v. Bryant, 996 F.3d 1243 (11th Cir. 2021)

TBD

United States v. Crandall, 25 F.4th 582 (8th Cir. 2022)

Origin of Compassionate Release Motions for Individuals Granted Relief



SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY23 2nd Quarter.

Two Considerations

Can the circumstances be considered within the first-step “extraordinary and compelling” analysis?

- If yes, how?

Can the circumstance be considered within the second-stage analysis of the section 3553(a) sentencing factors?



Circuit Split: Changes in Law

May Not Consider

United States v. Andrews, 12 F.4th 255 (3d Cir. 2021)

United States v. McMaryion, 2023 WL 4118015 (5th Cir. 2023)

United States v. McCall, 56 F.4th 1048 (6th Cir. 2022)

United States v. King, 40 F.4th 594 (7th Cir. 2022)

United States v. Crandall, 25 F.4th 582 (8th Cir. 2022)

United States v. Jenkins, 50 F.4th 1185 (D.C. Cir. 2022)

May Consider

United States v. Ruvalcaba, 26 F.4th 14 (1st Cir. 2022)

United States McCoy, 981 F.3d 271 (4th Cir. 2020)

United States v. Chen, 48 F.4th 1092 (9th Cir. 2022)

United States v. McGee, 992 F.3d 1035 (10th Cir. 2021)

United States v. Brooker, 976 F.3d 228 (2d Cir. 2020)*

Conviction or Sentencing Errors

May Not Consider

United States v. Ferguson, 55 F.4th 262 (4th Cir. 2022)

United States v. Escajeda, (5th Cir. 2023).

United States v. West, 70 F.4th 341 (6th Cir. 2023)

United States v. Martin, 21 F.4th 944 (7th Cir. 2021)

United States v. Wesley, 60 F.4th 1277 (10th Cir. 2023)

United States v. Jenkins, 50 F.4th 1185 (D.C. Cir. 2022)

United States v. Amato, 48 F.4th 61 (2d Cir. 2022)*

United States v. Fine, 982 F.3d 1117 (8th Cir. 2020)*

May Consider

United States v. Trenkler, 47 F.4th 42 (1st Cir. 2022)

United States v. Brooker, 976 F.3d 228 (2d Cir. 2020)*

Other Limitations

Third Circuit: substantial assistance cannot be sole reason but can be a relevant factor

United States v. Claude, 16 F.4th 422, 426–27 (3d Cir. 2021)

Sixth Circuit: limits consideration of sentencing disparity at both stages of the analysis

United States v. Hunter, 12 F.4th 555, 571–72 (6th Cir. 2021); *United States v. Bass*, 17 F.4th 629 (6th Cir. 2021)

Seventh Circuit: series of cases limiting whether and how the risks associated with COVID-19 may be considered

United States v. Broadfield, 5 F.4th 801, 803 (7th Cir. 2021); *United States v. Kurzynowski*, 17 F.4th 756, 760–61 (7th Cir. 2021); *United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021)

Amendment to §1B1.13

The Commission's promulgated amendments were delivered to Congress on April 27, 2023, and will go into effect November 1, 2023, absent Congressional action to the contrary.

Between today and November 1, circuit case law controls (but courts might consider the amendments).

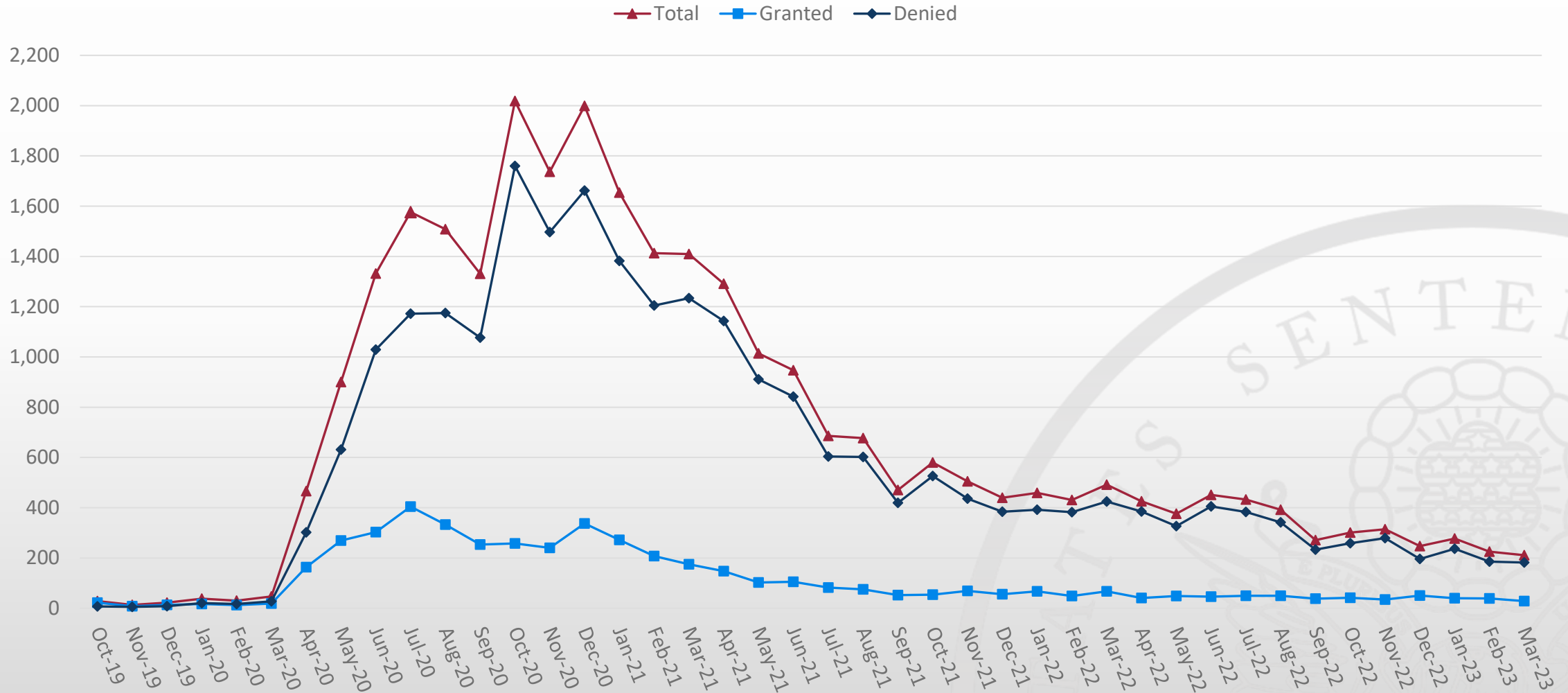
On November 1, 2023, all courts will apply the new policy statement.

- Section 3582(c)(1)(A) requires that a reduction be “consistent with” the Commission’s “applicable” policy statements.

Part 2
Selected Data

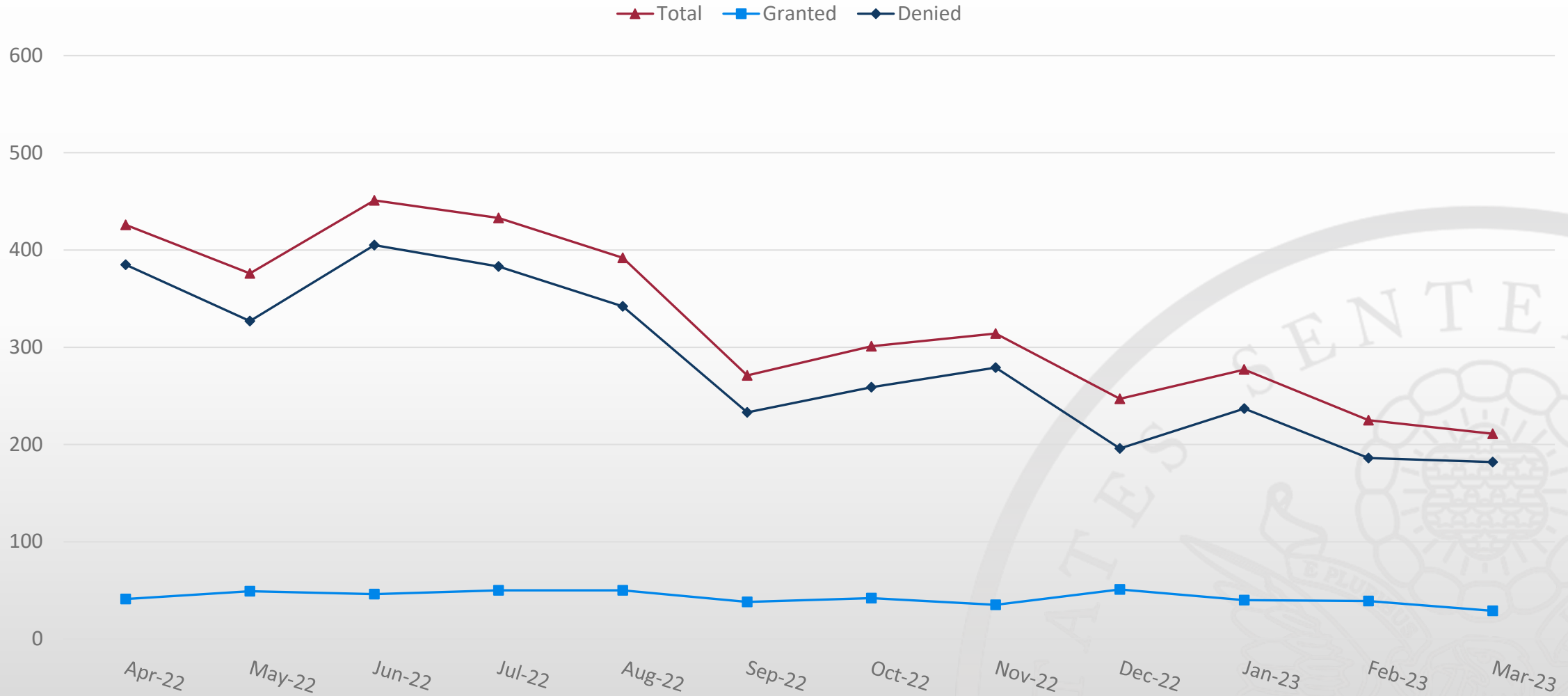


Trend in Compassionate Release



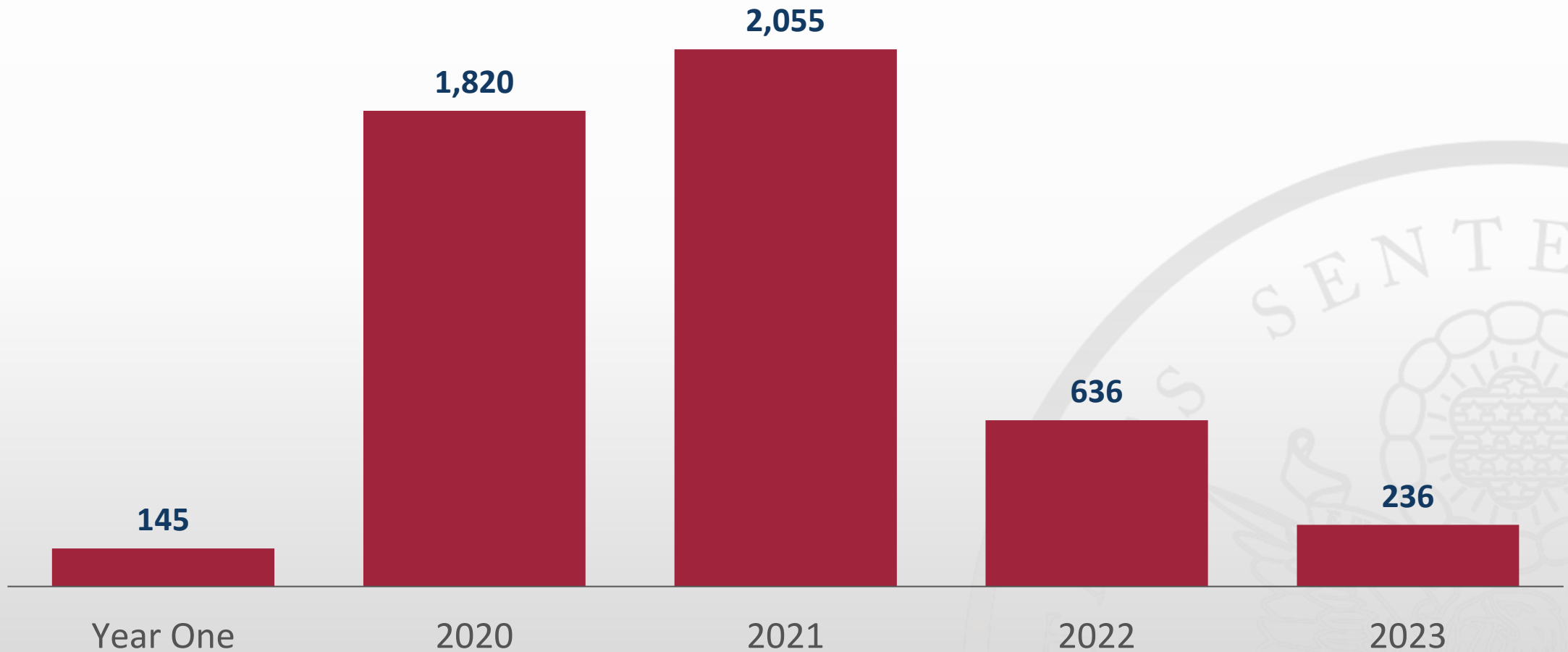
SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY20-FY23 2nd Quarter.

Trend in Compassionate Release



SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY22-FY23 2nd Quarter.

Number of Compassionate Release Grants

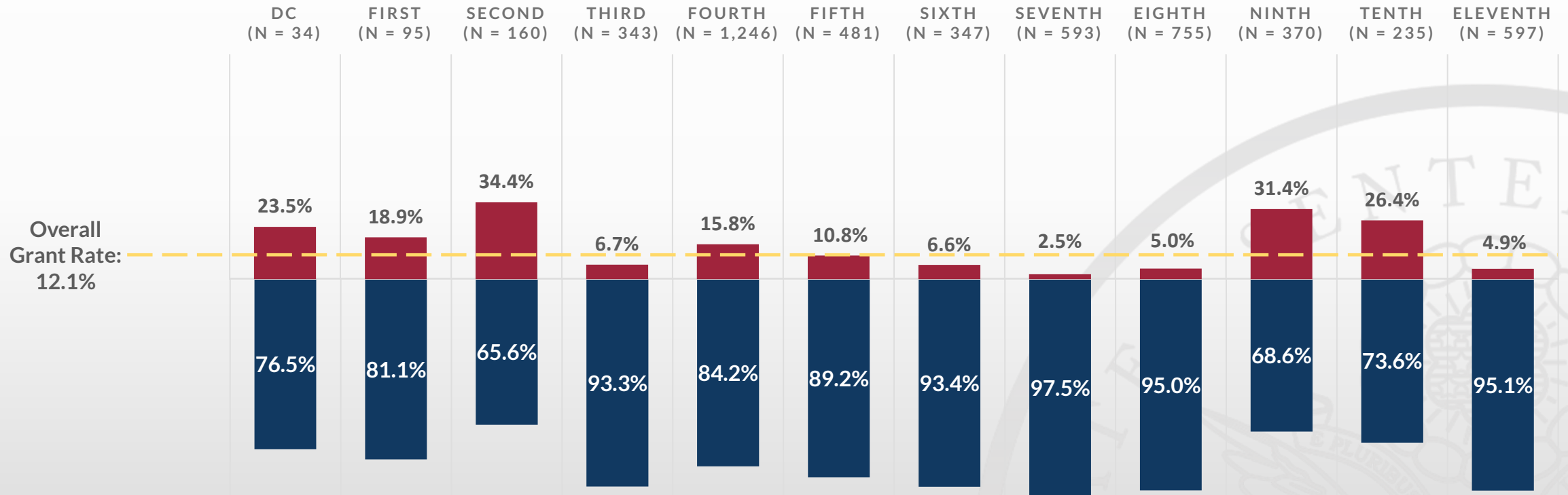


SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY20-FY23 2nd Quarter.

Grant and Denial Rates by Circuit for Compassionate Release

Fiscal Year 2022

■ Granted ■ Denied

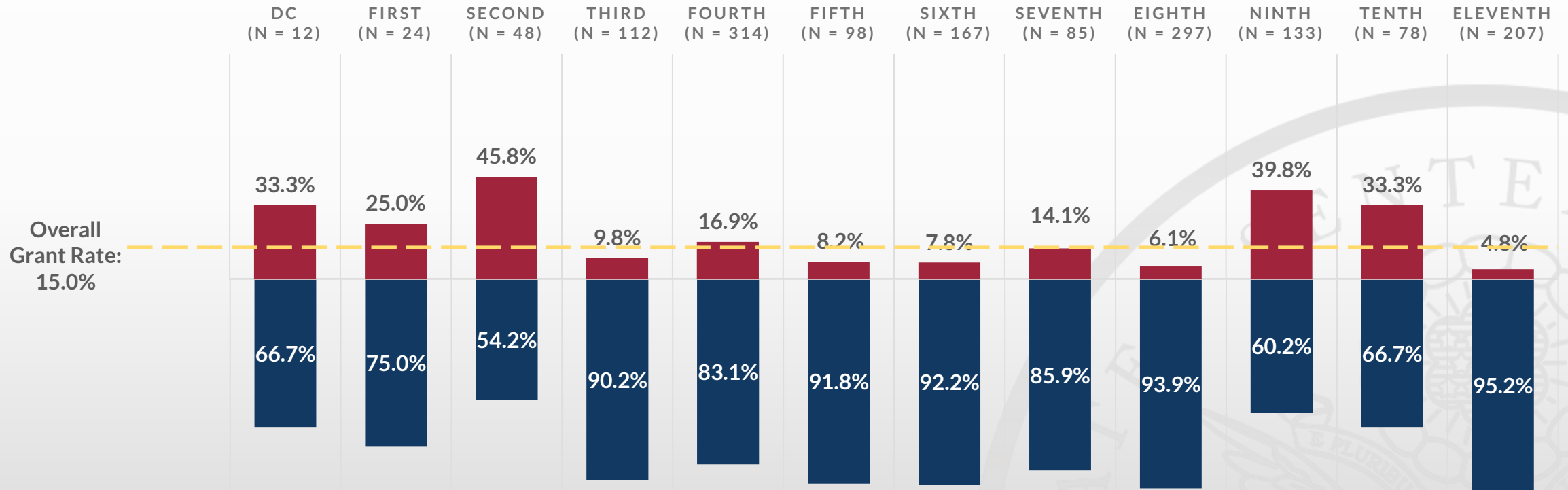


SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY22.

Grant and Denial Rates by Circuit for Compassionate Release

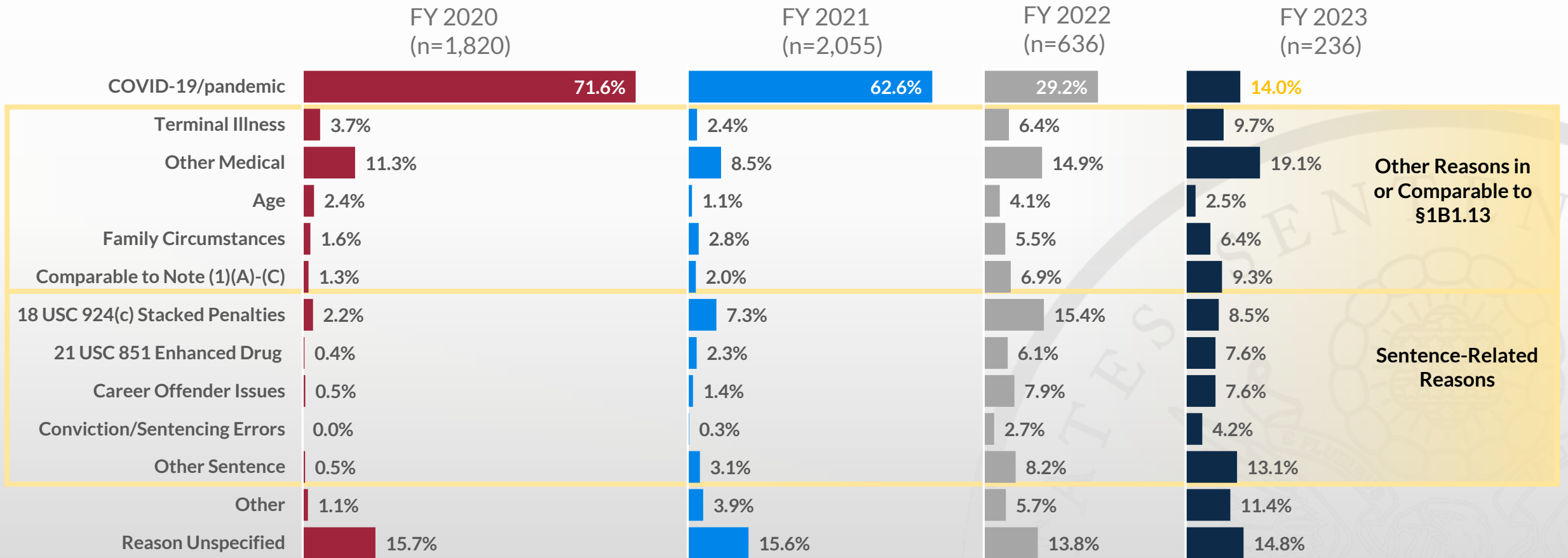
Fiscal Year 2023 2nd Quarter

■ Granted ■ Denied



SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY23 2nd Quarter.

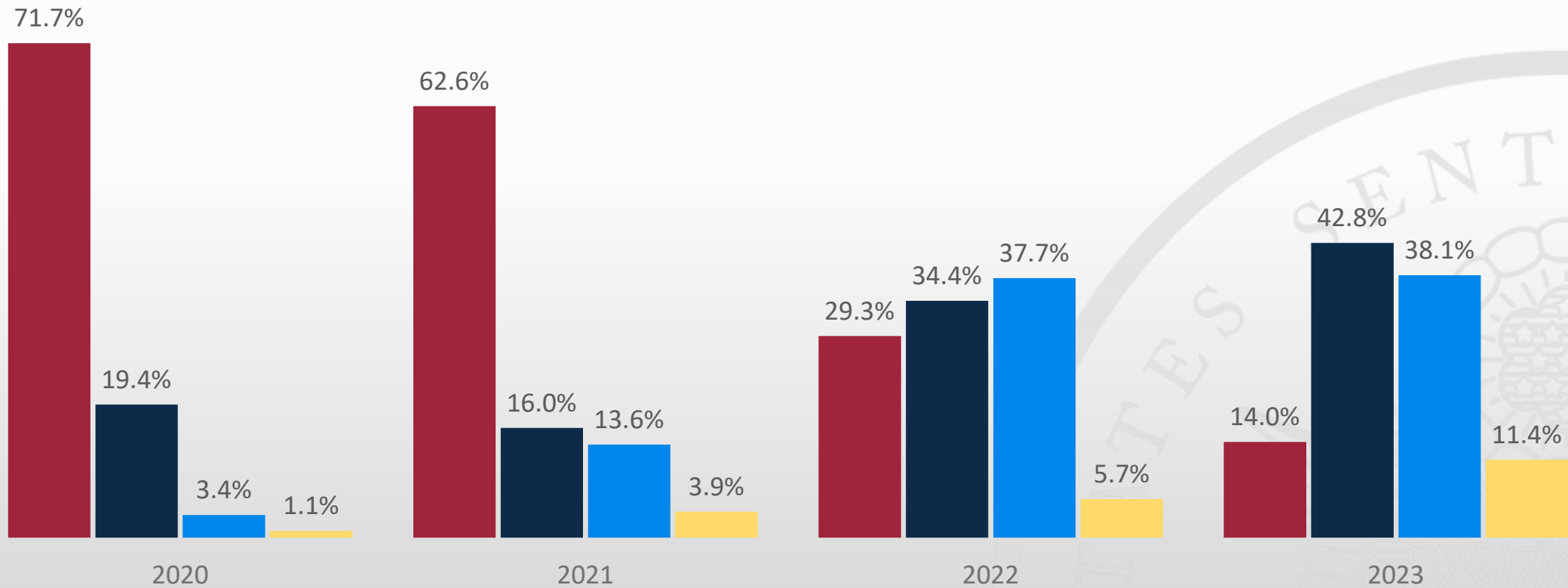
Reasons Cited for Granting Relief



SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY20-FY23 2nd Quarter.

Reasons Cited for Granting Compassionate Relief

■ COVID-19 ■ Comparable to 1B1.13 ■ Sentence-Related ■ Other



SOURCE: U. S. Sentencing Commission, Compassionate Release Datafile, FY20-FY23 2nd Quarter.

Part 3
Amendment to §1B1.13



Key Changes to §1B1.13

1

Applies to Defendant-Filed Motions

2

Moves Commentary to Guidelines

3

Revises and Expands E&C

4

Adds New Commentary

Key Changes to §1B1.13

1

Applies to Defendant-Filed Motions

Amends §1B1.13

Deletes App. Note 4

Deletes App. Note 5

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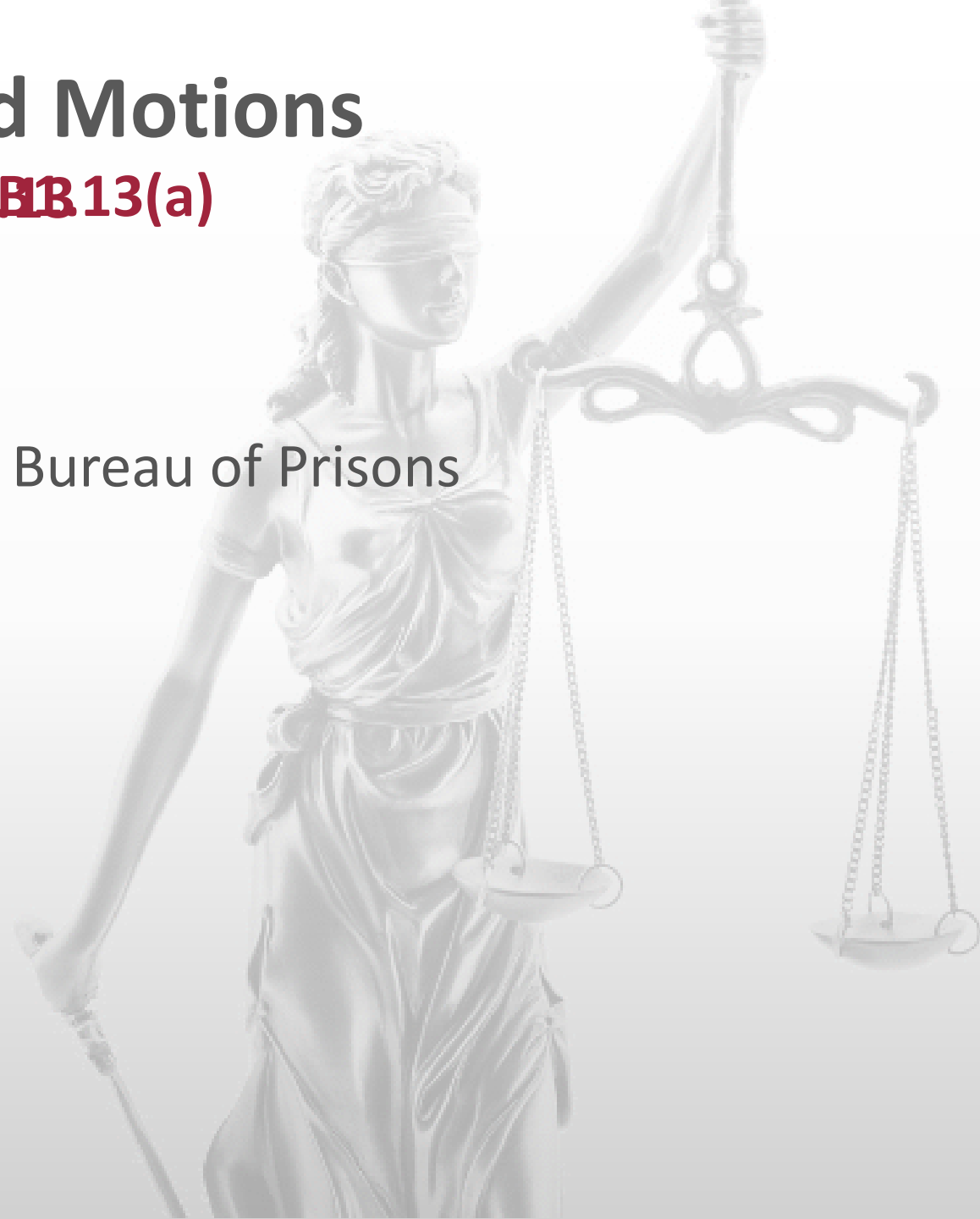
Defendant-Filed Motions

Propagated § 1B 13(a)

(a) In General -

Upon motion of the Director of the Bureau of Prisons

on the defendant pursuant to ...



Defendant-Filed Motions

Current § 1101.1(a), App. § 1101.1(b), 4 & 5

4. **Motion by the Director of the Bureau of Prisons.**—A reduction under this policy statement may be granted only upon motion by the Director of the Bureau of Prisons....

5. **Application of Subdivision (3).**—Any reduction made pursuant to a motion by the Director of the Bureau of Prisons for the reasons set forth in subdivisions (1) and (2) is consistent with this policy statement.

Key Changes to §1B1.13

2

Moves Commentary to Guidelines

Extraordinary and Compelling Reasons

Foreseeability

Rehabilitation

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Key Changes to §1B1.13

2

Moves Commentary to Guidelines

Extraordinary and Compelling Reasons

App. Note 1(A) (Medical Condition)

§1B1.13(b)(1)

App. Note 1(B) (Age of Defendant)

§1B1.13(b)(2)

App. Note 1(C) (Family Circumstances)

§1B1.13(b)(3)

App. Note 1(D) (Other Reasons)

§1B1.13(b)(5)

Key Changes to §1B1.13

2

Moves Commentary to Guidelines

Foreseeability

App. Note 2

§1B1.13(e)



Key Changes to §1B1.13

2

Moves Commentary to Guidelines

Rehabilitation

App. Note 3

§1B1.13(d)

Other Factors



Rehabilitation



Key Changes to §1B1.13

3

Revises and Expands E & C

Medical Circumstances

Family Circumstances

Victims of Abuse

Catchall

Unusually Long Sentences



Key Changes to §1B1.13

3

Revises and Expands E & C

Medical Circumstances

Inadequate Medical Care

Health Emergencies



Inadequate Medical Care

Promulgated §1B1.13(b)(1)(C)

1

Long-Term or
Specialized Medical
Care

2

Not Being Provided

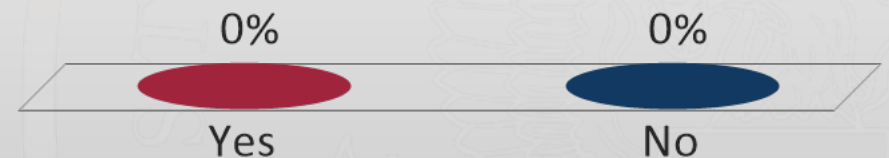
3

Serious Deterioration
in Health or Death

The movant has a hypercoagulation disorder that puts him at risk of increased blood clots and requires regular application of specialized compression sleeves. This accommodation has not been followed and defendant's health has significantly declined. However, he is still able to provide self-care in the facility.

Can this be considered under the new provision at (b)(1)(C)?

- ✓ A. Yes
- B. No



Health Emergencies

Promulgated §1B1.13(b)(1)(D)

1

Infectious Disease or
Public Health
Emergency

2

Severe Medical
Complications or
Death

3

Inadequate Mitigation

Key Changes to §1B1.13

3

Revises and Expands E & C

Family Circumstances

Children Incapable of Self-Care

Incapacitated Parents

Catchall for Family Circumstances

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Children Incapable of Self Care

~~Comment App. § 101e 13)(a)(B)(A)~~

The death or incapacitation of the caregiver of the defendant's minor child or **the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.**



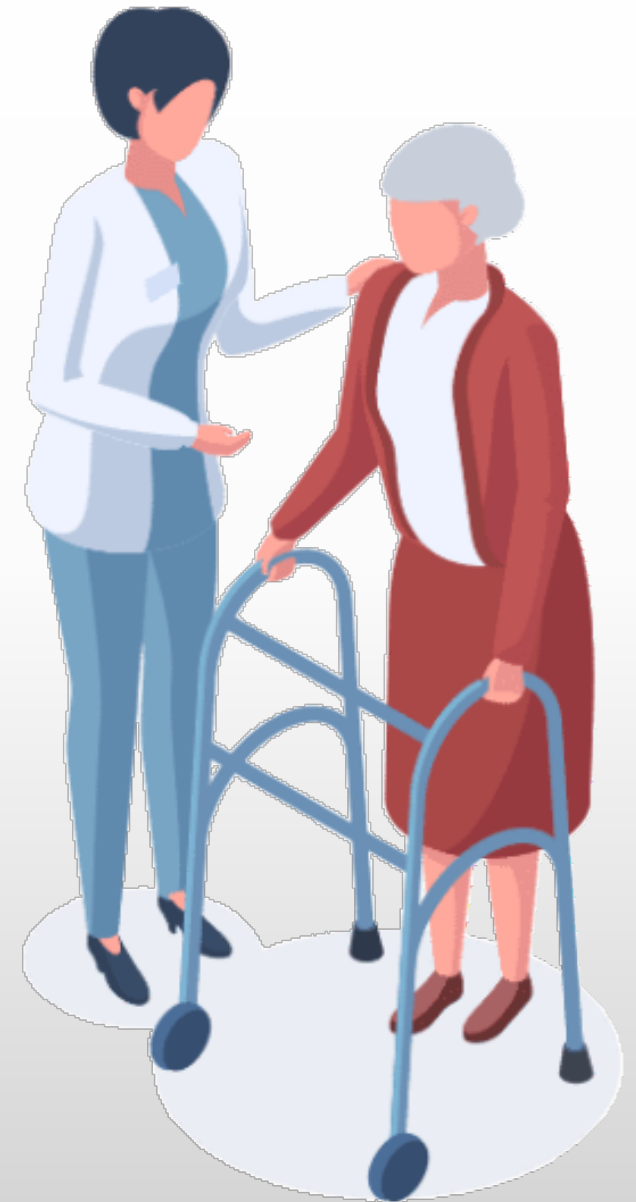
Incapacitated Parents

Promulgated §1B1.13(b)(3)(C)

Defendant's Parent Becomes Incapacitated

AND

Defendant Only Available Caregiver



Family Circumstances Catchall

Promulgated §1B1.13(b)(3)(D)

Circumstances like the need to care for child, spouse, or parent involving...

1. Grandchild, Grandparent, Sibling,
or
2. Person like a Child, Spouse, Parent,
Grandchild, Grandparent, or Sibling



The movant's uncle currently has progressive Alzheimer's disease and dementia and requires full-time care. The movant lived with his uncle from ages 10 through 13.

Can this be considered under the new provision at (b)(3)?

- ✓ A. Yes, if the movant is the only available caregiver.
- B. No, he is not his parent.
- C. No, movant did not live with his uncle for long enough.
- D. Yes, because he requires full-time care.



Key Changes to §1B1.13

3

Revises and Expands E & C

Victims of Abuse

Sexual or Physical Abuse

Prior Findings

Exception to Prior Findings

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Victims of Abuse

Promulgated §1B1.13(b)(4)

Sexual Abuse Involving a Sexual Act

OR

Physical Abuse Resulting in Serious Bodily Injury



BOP

Victims of Abuse: Prior Findings

Promulgated §1B1.13(b)(4)



Criminal Conviction

Civil Case

or

Administrative Proceeding

Victims of Abuse: Exceptions to Prior Findings

Promulgated §1B1.13(b)(4)



Undue Delay



Imminent Danger

Key Changes to §1B1.13

3

Revises and Expands E & C

Catchall



Catchall

Promulgated §1B1.13(b)(5)

Other
Circumstance

Combination
of Other
Circumstances

Similar in gravity to...

Medical

Age

Family

Abuse

Key Changes to §1B1.13

3

Revises and Expands E & C

Unusually Long Sentences



Changes in Law

Promulgated §§1B.13(b)(6), (c)



Changes in Law

Unusually Long Sentences



Otherwise E & C



§ 3553(a) Factors



Unusually Long Sentences

Promulgated §1B1.13(b)(6)

1

Unusually
Long
Sentence

2

Ten Years
Served

3

Change in
Law Creates
Gross
Disparity

4

Individualized
Circumstances

In January 2024, Alan Morehoffer moves for a sentencing reduction, arguing that his individualized circumstances and stacked § 924(c) convictions, stemming from two different 2015 robberies, constitute extraordinary and compelling reasons for relief.

Is Mr. Morehoffer eligible for a sentencing reduction?

A. Yes

✓ B. No



Key Changes to §1B1.13

4

Adds New Commentary

Interaction with BOP Furlough

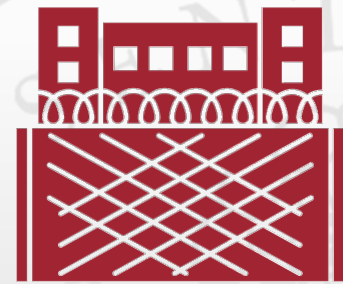
Victims



Interaction with BOP Furlough

Promulgated §1B1.13, App. Note 1

No Reduction in Sentence if . . .



BOP Furlough **Adequately**
Addresses

Victim Notification

Promulgated §1B1.13, App. Note 2



Defendant filed a sentencing reduction motion. Victims, I want to hear from you before ruling.

Thanks for letting me know.

Ok, thanks.



Part 4

Sentencing Procedure and Appellate Review



Appellate Review

Abuse of discretion standard

May deny a motion for any of three reasons; do not have to address each or address them in order

If E&C standard is met, must consider the § 3553(a) factors in deciding whether to grant

- Not required to “provide an exhaustive explanation of every § 3553 factor” and “just how much of an explanation is required” will depend on a given case
- Must “allow for meaningful appellate review”

Examples of Insufficient Statements

United States v. Handlon, 53 F.4th 348 (5th Cir. 2022)

- “[C]annot deny a second or subsequent motion . . . ‘for the reasons stated’ in a prior denial where the subsequent motion presents changed factual circumstances and it is not possible to discern from the earlier order what the district court thought about the relevant facts.”

United States v. Malone, 57 F.4th 167 (4th Cir. 2023)

- “Considering these facts and the 3553(a) factors . . . no further relief is warranted.”
- Last record of district court considering factors was 2008 sentencing hearing
- “[A] ‘rote’ statement lacking the necessary rebalancing regarding [the defendant’s] conditions *at the time his motion was filed*” was not sufficient.

Reversals on the Merits

United States v. Bass, 17 F.4th 629 (6th Cir. 2021)

- Reversing district court's grant and order of release
- Misapplied 3553(a)(6) factor and substantively unreasonable balancing of factors

United States v. Brown, No. 21-7752, 2023 WL 5257673 (4th Cir. 2023)

- Reversing district court's denial and remanding with instructions to reduce sentence by 20 years
- The defendant's "disparate sentence so clearly meets the 'extraordinary and compelling reasons' standard, and the § 3553(a) factors so clearly favor a sentence reduction, that it would be arbitrary or irrational to deny [his] motion"

Questions?



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