

Compassionate release after *Rutherford* and *Fernandez* — What remains for practitioners

By Alan Ellis, Esq., and Ian Gold, Esq., The Law Offices of Alan Ellis

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Earlier this year, writing before the Supreme Court decided *Rutherford v. United States* and *Fernandez v. United States*, we predicted that the Court, through those cases, was likely to “articulate a clearer boundary between sentence-modification discretion and collateral attack.” On May 28, as the term drew to a close, the Court did just that.¹

The two decisions together closed important avenues that defendants had been using to seek compassionate release under 18 U.S.C. § 3582(c)(1)(A).

In *Fernandez*, the majority made clear that compassionate release cannot be used to challenge the validity of a conviction. *Rutherford* held that a nonretroactive change in sentencing law could not itself constitute an extraordinary and compelling reason for release when Congress had deliberately chosen not to make that change retroactive.

But the decisions have not foreclosed compassionate release beyond a narrow set of medical or family circumstances. Nor did the Court attempt comprehensively to define what may qualify as “extraordinary and compelling.” Indeed, the opinions expressly leave significant questions unanswered.

For practitioners, the task after *Rutherford* and *Fernandez* is therefore one of careful line-drawing: understanding what the Court has excluded, what remains available, and how to construct a motion that does not ask § 3582(c) to do work the Court has said Congress assigned to another remedy.

The two lines drawn by the Court

Justice Amy Coney Barrett wrote for the Court in both cases, but the two opinions draw somewhat different lines.

In *Fernandez*, the defendant argued that developments after his conviction undermined the validity of the judgment against him. The Court held that such a challenge belongs under 28 U.S.C. § 2255, not § 3582(c)(1)(A).

Congress established a detailed collateral-review mechanism for challenging federal convictions, including the well-known limitations on successive petitions. Permitting defendants to raise the same claims through compassionate release, the

majority reasoned, would put the two statutes “at cross-purposes.”²

The majority also found significance in the historical understanding of compassionate release, exemplified by the very term itself. Section 3582(c)(1)(A), it reasoned, is a mechanism for mercy in light of extraordinary circumstances, and should not be seen as alternative means of correcting legal error.

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Rutherford involved a different problem. The First Step Act had ended the practice of “stacking” multiple § 924(c) convictions charged in a single prosecution to produce consecutive 25-year mandatory sentences that the Supreme Court had first sanctioned in *Deal v. United States*.³

Congress, however, expressly declined to make that reform fully retroactive. *Rutherford* argued that the enormous disparity between the 924(c) sentence he received and the sentence he likely would receive today could nevertheless be considered an extraordinary and compelling reason for compassionate release.

The Court rejected that argument. Congress had made a deliberate judgment about retroactivity, the majority

concluded, and § 3582(c) could not be used to override it. “The disparity that results from Congress’s decision to leave a sentence untouched,” the Court held, “cannot serve as one of those reasons.”⁴

Nor can the prohibited change in law become extraordinary and compelling simply by being combined with other factors.

Taken together, the cases establish at least two narrow propositions. Section 3582(c) cannot be used as an alternative vehicle for attacking the legality of a conviction, and it cannot be used to circumvent Congress’s deliberate decision that a sentencing reform will not apply retroactively.

An unusual textualist debate

The dissents are worth attention not simply because they would have reached different results, but because they challenge the majority on methodological grounds.

In *Fernandez*, Justice Ketanji Brown Jackson acerbically accused the majority of imposing an “atextual” restriction on a statute Congress drafted broadly. Although Justices Sonia Sotomayor and Elena Kagan had concurred in the judgment the Court, the Justices in fact endorsed the thrust of the dissent’s reasoning.

Thus, although *Fernandez* was formally an 8-1 decision, the Court was less unified about the majority’s categorical treatment of conviction-related considerations.

The Court’s conservative majority, ordinarily reluctant to read unwritten limitations into statutory language, concluded that the broad phrase “extraordinary and compelling reasons” must be limited by the structure and purposes of neighboring post-conviction statutes. The dissenters responded that Congress knew how to impose categorical exclusions and did not do so here.

Rutherford produced a cleaner 6-3 division. Justice Sotomayor’s dissent likewise accused the majority of substituting its own judgment about compassionate release for the broad discretion Congress conferred on sentencing courts and the Sentencing Commission.

Whatever one makes of that methodological disagreement, it matters going forward. The majority did not purport to supply a comprehensive definition of extraordinary and compelling reasons. Instead, it identified particular reasons that are impermissible because allowing them would conflict with other congressional choices.

Future litigation will therefore concern where that structural logic ends.

What remains open

The Court was conspicuously careful about questions it was not deciding.

In *Rutherford*, the majority distinguished earlier cases involving disparities among codefendants and unusual postjudgment developments, expressly stating that it did not need to decide

whether those circumstances could support compassionate release.⁵

Fernandez similarly did not resolve whether a significant codefendant disparity may constitute an extraordinary and compelling reason.

Taken together, the cases establish at least two narrow propositions. Section 3582(c) cannot be used as an alternative vehicle for attacking the legality of a conviction, and it cannot be used to circumvent Congress’s deliberate decision that a sentencing reform will not apply retroactively.

Other questions are already appearing in the lower courts. In *United States v. Moore*, the Eleventh Circuit confronted an argument that a change in constitutional law could serve as an extraordinary and compelling reason. The court did not need to reach the question of whether *Rutherford* could be extended to this situation, but the decision stands as a example of area that remain open after the decisions.⁶

Early decisions applying *Rutherford* and *Fernandez* have treated them as establishing categorical exclusions without exhaustively defining permissible grounds for sentencing reductions. Courts continue to recognize individualized circumstances identified in U.S.S.G. §1B1.13 — including serious medical conditions, age, family circumstances and abuse while in custody — as potential grounds for relief.⁷[6]

Rehabilitation remains important as well. By statute, rehabilitation alone cannot constitute an extraordinary and compelling reason. But nothing in *Rutherford* or *Fernandez* prevents courts from considering rehabilitation in conjunction with an independently permissible basis for relief or later under § 3553(a).

What the numbers tell us

Justice Sotomayor’s *Rutherford* dissent placed considerable emphasis on the Sentencing Commission’s compassionate-release statistics. The numbers are useful because they test the premise that § 3582(c) had become an uncontrolled mechanism for evading otherwise final sentences.

The Commission’s final fiscal year 2025 data show 2,795 motions for which the outcome could be determined. Courts granted 394 and denied 2,401 — a grant rate of approximately 14.1%.⁸

The preliminary fiscal year 2026 data through March 31, 2026, look remarkably similar: 125 grants among 894 determinable motions, or 14.0%.⁹ In other words, immediately before *Rutherford* and *Fernandez*, approximately six out of every seven compassionate-release motions were being denied.

The Supreme Court has narrowed compassionate release at important points, but it has not converted § 3582(c)(1)(A) into a closed list of circumstances or fully displaced the individualized judgment the statute continues to require.

The successful cases also disproportionately involve lengthy sentences. In fiscal year 2025, 50% of defendants granted compassionate release had originally received sentences of 20 years or more, and another 25.8% had received sentences between 10 and 20 years.¹⁰

The reasons courts gave are instructive as well. Rehabilitation was among the most frequently recorded considerations supporting grants, but, as expected, it was never the only reason. In every case in which rehabilitation was cited, the court identified at least one additional basis for relief. An unusually long sentence or change in law under § 1B1.13(b)(6) — the provision directly affected by *Rutherford* — was also among the most frequently recorded grounds.

The data therefore suggest something more complicated than an indiscriminate release mechanism. Compassionate release was difficult to obtain even before the Supreme Court's intervention, and successful motions tended to involve defendants serving very long sentences and presenting multiple individualized considerations.

There is also substantial geographic variation. Preliminary fiscal year 2026 data through March show grant rates ranging from 47.6% in the First Circuit (10 out of 21 cases) and 38.5% in the Second Circuit (10 out of 26) to 6.7% in the Sixth (6 out of 90), 5.4% in the Seventh (3 out of 56) and 3.2% in the Eighth (6 out of 187).¹¹

These numbers should be interpreted with caution, as the sample sizes are small, but they confirm something practitioners already know: compassionate-release practice remains highly dependent on circuit, district, and judge.

Five lessons for the next motion

What, then, should practitioners take from the decisions?

First, identify an independently permissible extraordinary and compelling reason. A motion may no longer rely

principally on the proposition that the conviction was legally infirm or that Congress later reduced the punishment for the offense. *Fernandez* and *Rutherford* give the government ready responses to both arguments.

Second, do not appear to be disguising a collateral attack as an appeal to equity. If the heart of the argument is that the conviction or sentence was unlawful when imposed, § 2255 is the prescribed vehicle, and the defendant may be out of luck. Labeling the same contention “extraordinary and compelling” will not change its character.

Third, build a layered case. Medical conditions, age, family circumstances, abuse in custody, rehabilitation, institutional history, length of incarceration and other individualized developments may combine to present a compelling picture. But *Rutherford* makes clear that a prohibited nonretroactive change in law cannot become permissible merely because counsel adds other considerations to it.

Fourth, keep eligibility and § 3553(a) analytically distinct. Establishing extraordinary and compelling circumstances is the gateway. Only then does the court determine whether release is warranted under the sentencing factors. Once that barrier is surmounted, there is no bar to discussing factors that may have been prohibited at the first step, such as sentence length.

Fifth, pay attention to what the Court left open. Codefendant disparities, some postjudgment developments and potentially certain changes in constitutional law remain subjects for litigation. Practitioners should avoid reading *Rutherford* and *Fernandez* more broadly than the Court wrote them.

What comes next

Courts will now have to determine how far the *Rutherford* majority's reasoning extends beyond deliberately nonretroactive statutory reforms and what kinds of postjudgment developments remain cognizable after *Fernandez*.

The data will also bear watching. The Sentencing Commission's current fiscal year 2026 statistics end on March 31 — two months before the Supreme Court decided these cases.

Later quarterly and year-end reports should provide the first national indication whether *Rutherford* and *Fernandez* materially reduce the number of compassionate-release grants or simply change the grounds on which successful motions are brought.

Earlier this year, we described federal post-conviction law as undergoing a “recalibration, not a revolution.” That still appears to be the right description.

The Supreme Court has narrowed compassionate release at important points, but it has not converted § 3582(c)(1)(A) into a closed list of circumstances or fully displaced the individualized judgment the statute continues to require.

For practitioners, the lesson is straightforward. The broad “this sentence would be lower today” motion is substantially harder after *Rutherford*, and a motion perceived to be a disguised collateral attack is foreclosed after *Fernandez*.

The strongest reduction in sentence motions will instead identify a permissible gateway, document it carefully, build the defendant’s post-sentencing history around it, and make a separate and persuasive case under § 3553(a).

Notes:

¹ *Rutherford v. United States*, No. 24-820 (U.S. May 28, 2026); *Fernandez v. United States*, No. 24-556 (U.S. May 28, 2026).

² *Fernandez v. United States*, No. 24-556 (U.S. May 28, 2026).

³ 508 U.S. 129 (1993).

⁴ *Rutherford v. United States*, No. 24-820 (U.S. May 28, 2026).

⁵ *Id.* See, *inter alia*, the Court’s discussion distinguishing codefendant disparities and other postjudgment developments from disparities resulting directly from Congress’s decision not to make a statutory reform retroactive.

⁶ *United States v. Moore*, No. 25-13539 (*per curiam*) (11th Cir. June 10, 2026).

⁷ See e.g., *United States v. Risher*, No. 19-CR-539 (FB) (E.D.N.Y. June 29, 2026) (granting compassionate release based on incapacitation of defendant’s mother and rehabilitation and concluding that “nothing in *Fernandez* or *Rutherford* precludes the court from considering whether defendant’s personal circumstances” are extraordinary and compelling).

⁸ U.S. Sentencing Commission, *Compassionate Release Data Report, Fiscal Year 2025*, Figure 2.

⁹ U.S. Sentencing Commission, *Compassionate Release Data Report, Fiscal Year 2026, Second Quarter* (data through Mar. 31, 2026).

¹⁰ U.S. Sentencing Commission, *Compassionate Release Data Report, Fiscal Year 2025*.

¹¹ U.S. Sentencing Commission, *Compassionate Release Data Report, Fiscal Year 2026, Second Quarter*.

About the authors



Alan Ellis (L) is a founding partner at **The Law Offices of Alan Ellis**. He is nationally recognized for his federal sentencing and post-conviction practice. He is a Fulbright Award recipient, and the co-author of “Federal Prison Guidebook: Sentencing and Post Conviction Remedies.” He can be reached at aelaw1@alanellis.com. **Ian Gold (R)**, a former assistant federal public defender, is an attorney in private practice in Boston and of counsel to the firm. He can be reached at ian.gold@alanellislaw.com

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