

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

RAY ANTHONY CHANEY
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 20-60498

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether the district court erred by denying Mr. Chaney's Motion for
Compassionate Release under 18 U.S.C. § 3582(c)(1)(A).

PARTIES TO THE PROCEEDING

All parties to this proceeding are named in the caption of the case.

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I. OPINIONS BELOW

The prosecution filed an Indictment against Ms. Chaney charging: (1) theft of a firearm in violation of 18 U.S.C. § 922(u); (2) receipt, concealment, storage or sale of a stolen firearm in violation of 18 U.S.C. §§ 922(j) and 923(a)(2); and (3) felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1). The case went to trial beginning July 16 and ending July 17, 2007. The jury returned guilty verdicts on all counts.

On October 26, 2007, the court sentenced Mr. Chaney to a 120-month term of imprisonment on each of counts one and two, and a 235-month term of imprisonment on count three, all to run concurrent. The court also sentenced him to serve three years supervised release on each of counts one and two, and five year's supervised release on count three, all to run concurrent. The district court entered a Judgment on October 29, 2007.¹ Mr. Chaney appealed the conviction to the United States Court of Appeals to the Fifth Circuit, and the Fifth Circuit, and the Court affirmed the district court's rulings.

Mr. Chaney filed the subject Motion for Compassionate Release on May 4, 2020. The district court denied the Motion on June 17, 2020.² He appealed the district court's decision to the Fifth Circuit on the same day – June 17, 2020. Then

¹ The district court's Judgment is attached hereto as Appendix 1.

² The district court's Order is attached hereto as Appendix 2.

on September 29, 2020, the Fifth Circuit entered an order affirming the district court's rulings. The court entered a Judgment on the same day.³ The Fifth Circuit did not designate the Opinion for publication, but it is in the Westlaw electronic database at 2020 WL 5805468.⁴

³ The Fifth Circuit's Opinion and Judgment are attached hereto as composite Appendix 3.

⁴ The Westlaw rendition of the Opinion is attached hereto as Appendix 4.

II. JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on September 29, 2020. This Petition for Writ of Certiorari is filed within 150 days after entry of the Fifth Circuit's Judgment as required by Rule 13.1 of the Supreme Court Rules, which was amended by this Court's COVID-19 related Order dated March 19, 2020. This Court has jurisdiction over the case under the provisions of 28 U.S.C. § 1254(1).

III. STATUTE INVOLVED

Mr. Chaney's Motion for Compassionate Release is based on The First Step Act. Relevant to Mr. Chaney's case is the codified portion of the First Step Act at 18 U.S.C. § 3582(c)(1)(A), which states:

The court, upon motion of the Director of the Bureau of Prisons ("BOP"), or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the [BOP] to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction . . .

IV. STATEMENT OF THE CASE

A. Basis for federal jurisdiction in the court of first instance.

This case involves a Motion for Compassionate Release because of dangers within the Bureau of Prisons (hereinafter “BOP”) associated with the COVID-19 pandemic. The underlying criminal conviction against Mr. Chaney was for: theft of a firearm in violation of 18 U.S.C. § 922(u); receipt, concealment, storage or sale of a stolen firearm in violation of 18 U.S.C. §§ 922(j) and 923(a)(2); and felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e)(1).

The court of first instance, which was the United States District Court for the Southern District of Mississippi, had jurisdiction over the case under 18 U.S.C. § 3231 because the criminal charges levied against Mr. Chaney arose from the laws of the United States of America.

B. Statement of material facts.

Facts relevant to the issue on appeal pertain to Mr. Chaney’s health condition, his propensity, or lack thereof, to be a danger to society if he is granted compassionate release, and whether he has adequately paid his debt to society. Mr. Chaney’s medical conditions are not in dispute. As the district court found, “Defendant, a 59-year-old male … cites his type II diabetes, epilepsy, hypertension, and hepatitis C as medical problems which could potentially have him more vulnerable to the virus. These conditions are present in Chaney’s

medical records.” We also note that Mr. Chaney is African American, a fact that is relevant for reasons set forth below in the “Arguments” section of this Brief.

Mr. Chaney’s history while in custody of the BOP is relevant to determining whether Mr. Chaney can peacefully and productively assimilate back into society. As of April 28, 2020 (over five months ago), he had served 72.8 percent of his full prison term. Since his incarceration began in 2007, he has had no disciplinary infractions. He has completed no fewer than 23 courses offered by BOP.

We must also look at Mr. Chaney’s criminal history. Mr. Chaney’s last felony conviction before the subject conviction was in April of 1999, over 21 years ago.

A final relevant factor is Mr. Chaney’s re-entry plan. Ernest Chaney (“Ernest”) is inmate Ray Chaney’s brother. An attorney with the Office of the Federal Public Defender spoke with Ernest Chaney by telephone. Ernest stated that he and Ray have arranged for Ray to live with him at Ernest’s home in Pensacola Florida. Ernest has no prior felony convictions. He is a semi-retired welder, and stated that Ray could work with him in the welding business if he is released.

V. ARGUMENT

A. Introduction.

This case involves the district court’s denial of Mr. Chaney’s Motion for Compassionate Release Under 18 U.S.C. § 3582(c)(1)(A), which is a codified portion of the First Step Act. Through his Motion for Compassionate Release, Mr. Chaney argued that a combination of his health conditions and the dangers posed by the COVID-19 pandemic warrant his release from BOP custody.

To establish entitlement to compassionate release under the First Step Act, Mr. Chaney must establish two factors. First, he must establish “extraordinary and compelling reasons” that warrant a sentence reduction. 18 U.S.C. § 3582(c)(1)(a)(i). Second, he must satisfy the § 3553(a) factors. 18 U.S.C. § 3582(c)(1)(B).

The district court appeared to agree that Mr. Chaney’s health conditions combined with the COVID-19 pandemic represent an extraordinary and compelling reason to grant compassionate release. As analyzed below, these circumstances certainly do represent extraordinary and compelling reasons to release Mr. Chaney from BOP custody.

The district court denied Mr. Chaney’s Motion on a conclusion that the § 3553(a) factors do not support his release. However, as analyzed in detail below, when we break down the individual factors, they do support a ruling that Mr.

Chaney is entitled to release from prison under the First Step Act. Therefore, this Court should grant certiorari and review the district court's denial of the Motion for Compassionate Release.

B. Review on certiorari should be granted in this case.

Rule 10 of the Supreme Court Rules states, “[r]eview on writ of certiorari is not a matter of right, but of judicial discretion.” District courts and federal courts of appeal are inundated with motions for compassionate release based on the COVID-19 pandemic. Yet to date, this Court has not provided a roadmap to analyze the issue. As indicated by the analysis in the following subsection of this Petition titled “The evolution of compassionate release,” Supreme Court guidance on the issue is needed in order to fulfill Congressional intent when it enacted the First Step Act. Granting certiorari in Mr. Chaney’s case will give the Court an opportunity to provide such guidance.

C. The evolution of compassionate release.

Under changes made to the compassionate release statute by the First Step Act, courts do not have to wait for a motion from the Director of the BOP to resentence prisoners under 18 U.S.C. § 3582(c)(1)(A)(i), if “extraordinary and compelling reasons” exist. Importantly, the reasons that can justify resentencing need not involve only terminal illness or urgent dependent care for minor children.

The first modern form of the compassionate release statute is codified at 18 U.S.C. § 3582 as part of the Comprehensive Crime Control Act of 1984. Section 3582(c) states that a sentencing court can reduce a sentence whenever “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. § 3582(c)(1)(A)(i). In 1984, Congress conditioned the reduction of sentences on the Director of BOP filing an initial motion to the sentencing court. Absent such a motion, sentencing courts had no authority to modify a prisoner’s sentence for compassionate release. *Id.*

Congress never defined what constitutes an “extraordinary and compelling reason” for resentencing under Section 3582(c). But the legislative history to the statute gives an indication of how Congress thought the statute should be employed by the federal courts. The Senate Committee stressed how some individual cases, even after the abolition of federal parole, still may warrant a second look at resentencing:

The Committee believes that there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These 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 been later amended to provide a shorter term of imprisonment.

S. Rep. No. 98-225, at 55-56 (1983) (emphasis added). Congress intended for circumstances listed in § 3582(c) to act as “safety valves for modification of

sentences,” *id.* at 121, enabling judges to provide second looks for possible sentence reductions when justified by various factors that previously could have been addressed through the abolished parole system. This safety valve statute would “assure the availability of specific review and reduction of a term of imprisonment for ‘extraordinary and compelling reasons’ and [would allow courts] to respond to changes in the guidelines.” *Id.* Noting that this approach would keep “the sentencing power in the judiciary where it belongs,” rather than with a federal parole board, the statute permitted “later review of sentences in particularly compelling situations.” *Id.* (emphasis added).

Congress initially delegated the responsibility for outlining what could qualify as “extraordinary and compelling reasons” to the U.S. Sentencing Commission (“Commission”). *See* 28 U.S.C. § 994(t) (stating “[t]he Commission ... shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.”). The Commission took considerable time to promulgate its policy in response to Congress’s directive. It finally acted in 2007, almost a generation later, with the very general guidance that “extraordinary and compelling reasons” may include medical conditions, age, family circumstances, and “other reasons.” U.S.S.G. § 1B1.13, app. n.1(A). However, this guidance did little to spur the BOP to file on behalf of prisoners who might have met these general standards.

After a negative Department of Justice Inspector General report found that the BOP rarely invoked its authority under the statute to move for reduced sentences, the Commission felt compelled to act again. *See U.S. Dep’t of Justice, Office of the Inspector General, The Federal Bureau of Prisons’ Compassionate Release Program, I-2023-006* (Apr. 2013). The Commission amended its policy statement on “compassionate release” in November 2016. *See U.S.S.G. § 1B1.13 Amend. (11/1/2016)*. In addition to broadening the eligibility guidelines for sentencing courts, the new policy statement admonished the BOP for its past failures to file motions on behalf of inmates who had met the general criteria identified in U.S.S.G. § 1B1.13. *See U.S.S.G. § 1B1.13, n.4; see also United States v. Dimasi*, 220 F. Supp. 3d 173, 175 (D. Mass. 2016) (discussing the history of the BOP, DOJ and Commission’s interplay in developing guidance for “compassionate release” motions). Notably, the Commission concluded that reasons beyond medical illness, age, and family circumstances could qualify as “extraordinary and compelling reasons” for resentencing. *Id.*, n.1(A) (including a category for “Other Reasons,” when there is “an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).”).⁵

⁵ See *United States v. Cantu*, No. 1:05-CR-458-1, 2019 WL 2498923, at *4 (S.D. Tex. June 17, 2019) (holding that, given the changes to the compassionate release statute by the First Step Act, U.S.S.G. § 1B1.13, application note 1(D) “no longer fits with the statute and thus does not comply with the congressional mandate that the policy statement must provide guidance on the appropriate use of sentence-modification provisions under § 3582.”); *United States v. Fox*, No. 2:14-CR-03-DBH, 2019 WL 3046086, at *3 (D. Me. July 11, 2019) (“I treat the previous BOP

The Commission’s actions, however, did little to change the dearth of filings by the BOP on behalf of inmates who satisfied the Commission’s general guidance. During the more than three decades during which the BOP was the exclusive gatekeeper for “compassionate release” motions, very little effort was made to implement Congress’s intention to provide a safety valve to correct injustices or allow relief under extraordinary and compelling circumstances.

Finally, this changed with the passage of the First Step Act in 2018. *See* P.L. 115-391, 132 Stat. 5194, at § 603 (Dec. 21, 2018). Section 603 of the First Step Act changed the process by which § 3582(c)(1)(A) compassionate release occurs. Instead of depending upon the BOP Director to determine an extraordinary circumstance and move for release, a court can now resentence “upon motion of the defendant,” after the inmate exhausts administrative remedies with the BOP, or after 30 days from the receipt of the inmate’s request for compassionate release

discretion to identify other extraordinary and compelling reasons as assigned now to the courts.”); *United States v. Cantu-Rivera*, No. CR H-89-204, 2019 WL 2578272, at *2 n.1 (S.D. Tex. June 24, 2019) (“Because the current version of the Guideline policy statement conflicts with the First Step Act, the newly-enacted statutory provisions must be given effect.”); *United States v. Beck*, No. 1:13-CR-186-6, 2019 WL 2716505, at *6 (M.D.N.C. June 28, 2019) (holding that application note 1(D) is “inconsistent with the First Step Act, which was enacted to further increase the use of compassionate release and which explicitly allows courts to grant such motions even when BoP finds they are not appropriate,” and courts thus may “consider whether a sentence reduction is warranted for extraordinary and compelling reasons other than those specifically identified in the application notes to the old policy statement”); *but see United States v. Lynn*, No. CR 89-0072-WS, 2019 WL 3805349, at *4 (S.D. Ala. Aug. 13, 2019) (holding that application note 1(D) governs compassionate release reductions of sentence and federal judges have no authority to create their own criteria for what constitutes an “extraordinary and compelling” reason for resentencing).

with the warden of the defendant’s facility, whichever comes earlier. 18 U.S.C. § 3582(c)(1)(A). Thus, under the First Step Act, a court may now consider the defendant’s own motion to be resentenced, without waiting for it to be made by the BOP.

Courts are now authorized to consider a defendant’s motion, even one which the BOP opposes, and order resentencing if a court finds that “extraordinary and compelling reasons” warrant a reduction and such a reduction is consistent with the Section 3553(a) factors. 18 U.S.C. § 3582(c)(1). Resentencing courts are also advised that any decision to reduce a previously ordered sentence be “consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3583(c)(2).

D. The history of the CIVID-19 pandemic.

The COVID-19 outbreak presents a compelling and extraordinary circumstance that warrants compassionate release or release to home confinement in Mr. Chaney’s case. On March 11, 2020, the World Health Organization (“WHO”) officially classified the new strain of coronavirus, COVID-19, as a pandemic.⁶ As of October 6, 2020, COVID-19 has infected at least 35,347,404 worldwide, leading to at least 1,039,406 deaths.⁷ As of October 6, 2020, the WHO

⁶ “WHO Characterizes COVID-19 as a Pandemic,” World Health Organization (May 17, 2020), available at <https://bit.ly/2W8dwpS>.

⁷ <https://www.who.int>.

also indicates that in the United States, approximately 7,341,406 have been infected, leading to 208,433 deaths.⁸ These numbers almost certainly underrepresent the true scope of the crisis; test kits in the United States have been inadequate to meet demand, and presently, some states are mandated to cease testing asymptomatic individuals because of the backlog in testing.

On March 13, 2020, the White House declared a national emergency, under Section 319 of the Public Health Service Act, 42 U.S.C. § 247(d)).⁹ On March 16, 2020, the White House issued guidance recommending that, for the next eight weeks, gatherings of ten persons or more be canceled or postponed.¹⁰ These drastic measures followed the issuance of a report by British epidemiologists, concluding from emerging data that 2.2 million Americans could die without drastic intervention to slow the global spread of the deadly disease.¹¹

The Centers for Disease Control and Prevention (“CDC”) have also issued guidance related to the deadly effects of COVID-19 on certain high-risk patients of

⁸ *Id.*

⁹ The White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020), available at <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

¹⁰ Sheri Fink, “White House Takes New Line After Dire Report on Death Toll,” *New York Times* (March 17, 2020), available at <https://www.nytimes.com/2020/03/17/us/coronavirus-fatality-rate-white-house.html?action=click&module=Spotlight&pgtype=Homepage>.

¹¹ Fink, “White House Takes New Line After Dire Report on Death Toll,” *New York Times*.

the population. The CDC updated their list of people who need to take extra precautions on July 17, 2020.¹² The updated report states:

People of any age with the following conditions **are at increased risk** of severe illness from COVID-19:

Cancer

Chronic kidney disease

COPD (chronic obstructive pulmonary disease)

Immunocompromised state (weakened immune system) from solid organ transplant

Obesity (body mass index [BMI] of 30 or higher)

Serious heart conditions, such as heart failure, coronary artery disease, or cardiomyopathies

Sickle cell disease

Type 2 diabetes mellitus¹³

(Bold emphasis in original; underlined and italicized emphasis added). The

updated report goes on to state:

Based on what we know at this time, people with the following conditions **might be at an increased risk** for severe illness from COVID-19:

Asthma (moderate-to-severe)

Cerebrovascular disease (affects blood vessels and blood supply to the brain)

Cystic fibrosis

Hypertension or high blood pressure

Immunocompromised state (weakened immune system) from blood or bone marrow transplant, immune deficiencies, HIV, use of corticosteroids, or use of other immune weakening medicines

Neurologic conditions, such as dementia

Liver disease

Pregnancy

Pulmonary fibrosis (having damaged or scarred lung tissues)

Smoking

Thalassemia (a type of blood disorder)

¹² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>

¹³ *Id.*

Type 1 diabetes mellitus¹⁴

(Bold emphasis in original; underlined and italicized emphasis added).

The CDC has now identified populations who need extra precautions. Those groups include the following: *racial and ethnic minority groups*, people with disabilities, people with developmental and behavioral disorders, pregnant people and people experiencing homelessness.¹⁵

Conditions of confinement at Oakdale I FCI, the prison where Mr. Chaney is housed, create an optimal environment for the transmission of contagious disease.¹⁶ People who work in the facility leave and return daily; and people deliver items daily to the prison. These inmates share restrooms and showers. Public health experts are unanimous in their opinion that incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe,” and “infection control is challenging in these settings.”¹⁷

These “special risks of infection” are apparent when we analyze the COVID-19 infection rate at Oakdale I FCI. As of October 6, 2020, a total of 217 inmates

¹⁴ *Id.*

¹⁵ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/other-at-risk-populations.html>

¹⁶ Joseph A. Bick, “Infection Control in Jails and Prisons,” *Clinical Infectious Diseases* 45(8): 1047-1055 (2007), available at <https://doi.org/10.1086/521910>.

¹⁷ “Achieving a Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

and 34 staff members have been infected.¹⁸ Seven inmates have died as a result of COVID-19 infection at Oakdale I FCI.¹⁹

The CDC advises that the coronavirus is “spread mainly from person-to-person . . . [b]etween people who are in close contact with one another . . . [t]hrough respiratory droplets produced when an infected person coughs or sneezes.”²⁰ The droplets can land in the mouths or noses, or can be inhaled into the lungs, of people who are within about six feet of the infected person.²¹ The coronavirus is highly contagious and those who are infected can spread the virus even if they are asymptomatic.²² Additionally, studies have shown that the coronavirus can survive from three hours to three days on various surfaces.²³ At this time, there is no known treatment, vaccine, or cure for COVID-19.²⁴

¹⁸ <https://www.bop.gov/coronavirus/>

¹⁹ *Id.*

²⁰ CDC, Coronavirus Disease 2019 (COVID-19), How It Spreads, Mar. 4, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>.

²¹ *Id.*

²² Marco Cascella, *et al.*, Features, Evaluation and Treatment Coronavirus (COVID-19), National Center for Biotechnology Information (“NCBI”), Mar. 20, 2020, https://www.ncbi.nlm.nih.gov/books/NBK554776/#_ncbi_dlg_citbx_NBK554776.

²³ National Institute of Allergy and Infectious Diseases, New coronavirus stable for hours on surfaces, Mar. 17, 2020, <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (“[S]cientists [from the National Institutes of Health, CDC, UCLA and Princeton University] found that [coronavirus] was detectable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on cardboard and up to two to three days on plastic and stainless steel.”).

²⁴ CDC, Coronavirus Fact Sheet, Mar. 20, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/2019-ncov-factsheet.pdf>.

COVID-19 cases have been confirmed at multiple BOP facilities, and with every day that passes, BOP identifies additional cases at additional institutions.²⁵ As of October 6, 2020, BOP has identified 1,541 inmates and 722 staff members that are currently positive with COVID-19.²⁶ A total of 15,178 inmates have tested positive since the pandemic's outbreak.²⁷ As of October 6, 2020, 125 inmates have died in BOP custody and two BOP staff members have died as a result of the COVID-19 pandemic.²⁸ Asked whether the BOP's figures "could be relied upon as an accurate reflection of the number of inmates and staff that are infected," BOP Public Information Supervisor Sue Allison acknowledged that "reporting of cases while tied to positive cases, does not necessarily account for unconfirmed (non-tested) cases."²⁹

Because transmission may happen asymptotically, BOP is quarantining inmates even in institutions where there are no positive cases. The CDC now warns that as many as 25 percent of people infected with the virus have no

²⁵ U.S. Bureau of Prisons, COVID-19 Coronavirus (updated daily), <https://www.bop.gov/coronavirus/> (last visited August 3, 2020).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Walter Pavlo, *Bureau of Prisons Underreporting COVID-19 Outbreaks in Prison*, FORBES (Apr. 1, 2020), available at <https://www.forbes.com/sites/walterpavlo/2020/04/01/bureau-of-prisons-underreporting-outbreaks-in-prison/#268a97f7ba32>.

symptoms, would not be tested for the virus, and may be “unwitting spreaders.”³⁰

Dr. Jeffrey Shaman, an infectious disease expert at Columbia University, explains: “The bottom line is that there are people out there shedding the virus who don’t know that they’re infected.”³¹

To this day, inmates must share communal living spaces, such as cells, recreation rooms, dining halls, libraries, and exercise yards. To make matters worse, hand sanitizer, an effective disinfectant recommended by the CDC to reduce transmission, is deemed forbidden “contraband” in BOP facilities because of its alcohol content.³²

Recognizing the unique risks that correctional facilities pose to both inmates and employees, members of Congress asked the BOP on March 19, 2020, to allow for the immediate release of elderly, non-violent inmates.³³ The following week, Attorney General Barr urged the Director of the BOP to prioritize home

³⁰ Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y. TIMES (Apr. 1, 2020), available at <https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html?action=click&module=Top%20Stories&pgtype=Homepage>.

³¹ *Id.*

³² Keri Blakinger and Beth Schwarzapfel, *How Can Prisons Contain Coronavirus When Purell is Contraband?*, ABA J. (Mar. 13, 2020), available at <https://www.abajournal.com/news/article/when-purell-is-contraband-how-can-prisons-contain-coronavirus>.

³³ Letter from Rep. Jerrold Nadler & Rep. Karen Bass to U.S. Attorney General William P. Barr (Mar. 19, 2020), available at https://judiciary.house.gov/uploadedfiles/2020-03-19_letter_to_ag_barr_re_covid19.pdf (“DOJ and BOP must also do all they can to release as many people as possible who are currently behind bars and at risk of getting sick. Pursuant to 18 U.S.C. 3582(c)(1)(A), the Director of the Bureau of Prisons may move the court to reduce an inmate’s term of imprisonment for “extraordinary and compelling reasons.”).

confinement for such vulnerable individuals.³⁴ On March 27, 2020, more than 400 former DOJ leaders, attorneys, and federal judges sent an open letter to the President, asking that he take immediate action to reduce the population in correctional facilities to prevent the catastrophic spread of COVID-19, in particular by commuting the sentences of elderly and medically vulnerable inmates who have already served a majority of their sentence.³⁵ The same day, dozens of leading public health experts made a similar request, asking the President to commute the sentences of all elderly inmates, noting that these individuals are at the highest risk of dying from the disease and pose the smallest risks to public safety.³⁶ On March 30, 2020, members of Congress wrote Attorney General Barr again to implore him “to do the right thing” and “immediately move to release medically-compromised, elderly, and pregnant prisoners in the custody of the BOP.”³⁷ On April 3, 2020, Attorney General Barr issued a memorandum directing the BOP to move

³⁴ Memorandum from Attorney General William P. Barr to Director of Bureau of Prisons (Mar. 26, 2020), *available at* <https://www.justice.gov/file/1262731/download>.

³⁵ Letter from Julie Abbate, *et al.* to President Donald J. Trump (Mar. 27, 2020), *available at* <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Letter-to-Trump-from-DOJ-and-Judges-FINAL.pdf>.

³⁶ Letter from Sandro Galea, *et al.* to President Donald J. Trump (Mar. 27, 2020), *available at* <https://thejusticecollaborative.com/wp-content/uploads/2020/03/Public-Health-Expert-Letter-to-Trump.pdf>.

³⁷ Letter from Rep. Jerrold Nadler & Rep. Karen Bass to U.S. Attorney General William P. Barr (Mar. 30, 2020), *available at* https://judiciary.house.gov/uploadedfiles/3.30.20_letter_to_ag_barr_re_covid19.pdf.

vulnerable prisoners into home confinement with due “dispatch.”³⁸ On April 10, 2020, members of Congress wrote again to Attorney General Barr, noting that “since the last time we wrote to you, there have been at least eight deaths in BOP custody,” all of which involved prisoners with “long-term, pre-existing medical conditions,” and asked why BOP “did not see fit to take action concerning these individuals before it was too late.”³⁹

On March 31, 2020, BOP employees filed a complaint with the Occupational Safety and Health Administration, alleging that federal prisoners are “proliferating the spread” of COVID-19 and citing “imminent danger” conditions at BOP facilities nationwide. The union listed 100 of 122 facilities nationwide with alleged safety or health hazards. The complaint alleges that the BOP has:

- Directed staff members to return to work within 48 hours of being in close proximity to those with coronavirus or show symptoms of having the virus;

³⁸ Attorney General William P. Barr, Memorandum for Director of Bureau of Prisons (“Barr April 3 Memorandum”), Apr. 3, 2020, *available at* <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>.

³⁹ Letter from Rep. Jerrold Nadler & Rep. Karen Bass to U.S. Attorney General William P. Barr (Apr. 10, 2020), *available at* https://judiciary.house.gov/uploadedfiles/2020-04-10_letter_to_doj_on_covid-19.pdf; *see also* Luke Barr, Bureau of Prisons Coronavirus Response Under Fire: ‘Reactive,’ Not ‘Proactive,’ Inmates, Staff Say: BOP Has More COVID-19 Cases Than Three States, ABC News (Apr. 1, 2020, 10:49 AM), <https://abcnews.go.com/Health/bureau-prisons-coronavirus-response-fire-reactive-proactive-inmates/story?id=70063263>.

- Authorized the movement of inmates with suspended or confirmed coronavirus cases to areas nationwide that did not have any known infections;
- Failed to mitigate the spread of COVID-19 in facilities by using air filters or improving ventilation in other ways;
- Failed to maintain social distancing guidelines for inmates and staff; and
- Although BOP has fit tested staff for masks, it “failed to provide the proper N-95 masks to staff who are transporting and have custodial control over hospitalized inmates testing positive for the virus.”⁴⁰

Jails and prisons are among the most dangerous places to be during an epidemic because they create the ideal environment for transmission of contagious diseases.⁴¹ The declaration of Dr. Jaime Meyer, a Yale Law School Liman Center Affiliate, explains the particular risks of contagious diseases in prison. Inmates are confined in close proximity and the staff leave and return daily. Incarcerated individuals “are at special risk of infection, given their living situations,” and “may also be less able to participate in proactive measures to keep themselves safe;”

⁴⁰ *Id.*

⁴¹ Matthew J. Akiyama, *et al.*, Flattening the Curve for Incarcerated populations – COVID-19 in Jails and Prisons, *NEW ENGLAND J. MED.* (Apr. 2, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMp2005687> (“Therefore, we believe that we need to prepare now, by ‘decarcerating,’ or releasing, as many people as possible”); Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *CLINICAL INFECTIOUS DISEASES* 8, 1047–55 (Oct. 15, 2007), available at <https://doi.org/10.1086/521910>.

“infection control is challenging in these settings,” according to public health experts.⁴² Jails and prisons are sites of disproportionate infectious disease rates.⁴³ Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails and prisons dealt with high numbers of cases.⁴⁴ In China, officials have confirmed the coronavirus spreading rapidly in Chinese prisons.⁴⁵ Secretary of State Mike Pompeo has called for Iran to release Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions defies basic human decency.”⁴⁶ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the

⁴² “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States,” (Mar. 2, 2020), available at https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf.

⁴³ Leonard S. Rubenstein, *et al.*, *HIV, Prisoners, and Human Rights*, LANCET (July 14, 2016), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)30663-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)30663-8/fulltext).

⁴⁴ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, THE VERGE (Mar. 7, 2020), <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>.

⁴⁵ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500 Cases Have Erupted, Prompting the Ouster of Several Officials*, BUS. INSIDER (Feb. 21, 2020, 5:11 PM), <https://www.businessinsider.com/500-coronavirus-cases-reported-in-jails-in-china-2020-2>.

⁴⁶ Jennifer Hansler & Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020), <https://www.cnn.com/2020/03/10/politics/mike-pompeo-iran-release-detained-americans-coronavirus/index.html>.

country.⁴⁷ It was reported on March 18 that a guard at Rikers Island in New York City had tested positive for COVID-19.⁴⁸ Three days later, at least 38 people at Rikers had tested positive.⁴⁹ Despite efforts to release hundreds of detainees to try to stem the tide of infection there,⁵⁰ the virus continues to spread rapidly; as of April 10, 2020, 304 inmates and 518 staffers had tested positive, and one inmate had died.⁵¹ An op-ed ran in the *Washington Post* on April 10, 2020 with the title: “I’m a doctor on Rikers Island. My patients shouldn’t have to die in jail: In anything called a justice system, a death in such circumstances is a failure.”⁵² On April 14, 2020, another Rikers inmate died of COVID-19.⁵³ On March 23, two inmates in Cook County jail were placed in isolation cells after testing positive for

⁴⁷ Claudia Lauer and Colleen Long, *US Prisons, Jails On Alert for Spread of Coronavirus*, ASSOCIATED PRESS (Mar. 7, 2020, 8:12 PM), <https://apnews.com/af98b0a38aaabedbcb059092db356697>.

⁴⁸ *NYC Officials Call for Release of ‘Most at Risk’ on Rikers Island as More Test Positive for Virus*, NBC N.Y., ASSOCIATED PRESS (Mar. 18, 2020), <https://www.nbcnewyork.com/news/local/nyc-officials-call-for-release-of-most-at-risk-on-rikers-prison-as-more-test-positive-for-virus/2333348>.

⁴⁹ *38 Positive for Coronavirus at Rikers, NYC Jails*, N.Y. TIMES, ASSOCIATED PRESS (Mar. 21, 2020), <https://www.nytimes.com/aponline/2020/03/21/us/ap-us-virus-outbreak-inmates.html>.

⁵⁰ Craig McCarthy, *NYC To Release 300 More Rikers Inmates Admit Coronavirus Pandemic*, N.Y. POST (Mar. 25, 2020 7:25 AM), <https://nypost.com/2020/03/25/nyc-to-release-300-more-rikers-inmates-amid-coronavirus-pandemic/>.

⁵¹ Rebecca Rosenberg, *Second Rikers Island inmate Dead From Coronavirus After Failed Release*, N.Y. POST (Apr. 14, 2020, 11:00 AM), <https://nypost.com/2020/04/14/second-rikers-island-inmate-dead-from-coronavirus/>; Justin Carissimo, *First Rikers Island Inmate Dies After Testing Positive for Coronavirus*, CBS NEWS (Apr. 7, 2020 2:36 PM), <https://www.cbsnews.com/news/coronavirus-michael-typson-rikers-island-inmate-dies-covid-19/>.

⁵² Rachael Bedard, *WASH. POST* (Apr. 10, 2020, 9:47 a.m. EDT), https://www.washingtonpost.com/outlook/doctor-rikers-compassionate-release/2020/04/10/07fc863a-7a93-11ea-9bee-c5bf9d2e3288_story.html.

⁵³ Rosenberg, *supra*.

COVID-19. On April 8, after a little over two weeks, the virus had infected 238 inmates and 115 staff members.⁵⁴ On April 19, the count has risen to 395 inmates and 225 staff members, and four inmates had died.⁵⁵

The large-scale release of detainees reflects the growing recognition that “[i]t’s like an approaching tsunami. Once it hits, it’s too late. . . . We should release as many as it’s safe to release in order to avoid a situation like the one at Rikers.”⁵⁶ “The coronavirus is invading U.S. jails and prisons, prompting inmate releases, reduced bail requirements and other extraordinary measures as officials rush to avert a potentially disastrous spread of the virus among crowded inmate populations.”⁵⁷ As a prominent group of Yale School of Medicine “medical professionals and experts in infectious disease and/or prison populations” recently wrote to Connecticut Supreme Court Associate Justice Andrew J. McDonald, the way to safeguard inmates is to reduce jail populations now.⁵⁸ “Once a case of

⁵⁴ Timothy Williams & Danielle Ivory, Chicago’s jail Is Top U.S. Hot Spot as Virus Spreads Behind Bars, N.Y. TIMES (Apr. 8, 2020), <https://www.nytimes.com/2020/04/08/us/coronavirus-cook-county-jail-chicago.html>.

⁵⁵ *4th Detainee at Cook County Jail Dies after Contracting Coronavirus*, NBC CHICAGO (Apr. 19, 2020, 9:37 PM), <https://www.nbcchicago.com/news/local/4th-detainee-at-cook-county-jail-dies-after-contracting-coronavirus/2258480/>.

⁵⁶ *38 Positive for Coronavirus at Rikers*, *supra*.

⁵⁷ *Releasing Inmates, Screening Staff: U.S. Jails and Prisons Rush to Limit Virus Risks*, N.Y. TIMES, REUTERS (Mar. 22, 2020), <https://www.nytimes.com/reuters/2020/03/22/us/22reuters-health-coronavirus-usa-inmates.html> (emphasis added).

⁵⁸ Letter from Dan Barrett to Justice Andrew McDonald (Mar. 26, 2020), *available at* https://www.aclut.org/sites/default/files/field_documents/2020-03-26_letter_to_committee_requesting_emergency_alteration_of_rules.pdf.

COVID-19 [is] identified in a facility, it will likely be too late to prevent a widespread outbreak.”⁵⁹ Two doctors who are contracted experts for the Department of Homeland Security’s Office of Civil Rights and Civil Liberties said recently that COVID-19 presents an “imminent risk to the health and safety” of detainees in ICE detention centers, as well as the general public.⁶⁰ Mr. Chaney is powerless to take the preventative self-care measures directed by the CDC for him to remain safe from COVID-19 infection. He cannot self-quarantine or partake in “social distancing” in his prison facility. BOP facilities typically have a number of community spaces, including a common room, laundry facilities, barbershop, medical areas, dining hall, small library and gym. These high-density areas are precisely the kind of spaces that have caused the alarmingly high-spread rates of COVID-19. Hand sanitizer, an effective disinfectant recommended by the CDC to reduce transmission rates, is contraband in jails and prisons because of its alcohol content.⁶¹ Correctional health experts worry that no matter what precautions are taken by crowded prisons, these facilities may become incubators

⁵⁹ *Id.*

⁶⁰ Catherine E. Shoichet, *Doctors Warn of ‘Tinderbox Scenario’ if Coronavirus Spreads in ICE Detention*, CNN (Mar. 20, 2020, 8:21 PM ET), <https://www.cnn.com/2020/03/20/health/doctors-ice-detention-coronavirus/index.html>.

⁶¹ Keri Blakinger and Beth Schwarzapfel, “How Can Prisons Contain Coronavirus When Purell is Contraband?,” *ABA Journal* (March 13, 2020), available at <https://www.abajournal.com/news/article/when-purell-is-contraband-how-can-prisons-contain-coronavirus>.

for the COVID-19 disease.⁶² Prisons cannot maintain the level of separation and sanitation necessary to prevent widespread infection.⁶³ As stated above, BOP is NOT taking adequate steps to contain the virus and protect the inmate population.

E. The COVID-19 pandemic warrants either releasing Mr. Chaney from BOP custody or ordering him to serve the remainder of his prison term on home confinement.

1. Introduction.

We must analyze two factors to determine whether the district court erred by denying Mr. Chaney’s Motion for Compassionate release. First, under 18 U.S.C. § 3582(c)(1)(A)(i), we must determine if “extraordinary and compelling reasons warrant” a sentence reduction. Second, under § 3582(c)(1)(B), we must consider the factors stated in 18 U.S.C. § 3553(a).

2. Mr. Chaney’s health conditions combined with the dangers posed by the COVID-19 pandemic presents a compelling and extraordinary circumstance that warrants compassionate release or release to home confinement.

While not definitive, it appears that the district court agreed the “extraordinary and compelling” circumstances factor is met because of the COVID-19 pandemic and Mr. Chaney’s health conditions. The court went through a lengthy analysis of the issue, then before proceeding to the § 3553(a) analysis the

⁶² Michael Kaste, “Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’,” *NPR* (March 13, 2020), available at <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>.

⁶³ “Prisons and Jails are Vulnerable to COVID-19 Outbreaks,” *The Verge* (Mar. 7, 2020), available at <https://bit.ly/2TNcNZY>.

court stated, “much weight should be placed on Defendant’s medical condition and incarceration at FCI Oakdale”. Because of the uncertainty of the district court’s ruling on the “extraordinary and compelling” circumstances factor, it is analyzed herewith.

What has become the blatantly obvious dangers of the COVID-19 pandemic are set forth above in the subsection of this Brief titled “History of the COVID-19 pandemic.” At this point, we focus on Mr. Chaney’s health conditions.

Based on a review of Mr. Chaney’s medical records, the district court found that he suffers from type II diabetes, hypertension, epilepsy and hepatitis C. It is also undisputed that Mr. Chaney is 59 years old.

Clearly, the CDC recognizes that people suffering from type II diabetes “are **at increased risk** of severe illness from COVID-19[.]”⁶⁴ This health condition combined with the perils of the COVID-19 pandemic, in and of itself, represents an “extraordinary and compelling reason” to reduce Mr. Chaney’s sentence. But that does not end the story.

Mr. Chaney also suffers from hypertension. The CDC recognizes that people suffering from hypertension “**might be at an increased risk** for severe illness from COVID-19[.]”⁶⁵ “People with high blood pressure or high cholesterol

⁶⁴ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>. (bold emphasis in original; italicized and underlined emphasis added).

⁶⁵ *Id.* (emphasis in original)

are more likely to suffer from Covid-19 complications because of problems with how the heart pumps blood around the body.”⁶⁶ The increased risk of COVID-19 health issues for people with high blood pressure is also recognized by the American Heart Association.⁶⁷ As the district court found in Mr. Chaney’s case, “high blood pressure can increase a patient’s risk of becoming seriously ill from COVID when combined with other conditions, such as diabetes.”

Case law supports a conclusion the Mr. Chaney’s hypertension warrants compassionate release. *See, e.g., United States v. Salvagno*, No. 5:02-cr-00051-LEK, ECF No. 1181 (N.D.N.Y. June 22, 2020); *see also United States v. Pena*, No. 15-CR-551 (AJN), 2020 WL 2301199, at *4 (S.D.N.Y. May 8, 2020) (“This Court has repeatedly recognized that COVID-19 presents a heightened risk for individuals with hypertension[.]”); *United States v. Soto*, No. 1:18-CR-10086-IT, 2020 WL 2104787, at *2 (D. Mass. May 1, 2020) (“Defendant’s medical records show that he suffers from hypertension. This condition increases his risk for serious complications from contracting COVID-19, including death.”); *United States v. Scparta*, No. 18-CR-578 (AJN), 2020 WL 1910481, at * 9 (S.D.N.Y. Apr. 20, 2020) (finding hypertension to be a comorbidity that increases the risk of

⁶⁶ <https://www.msn.com/en-za/health/medical/health-conditions-that-put-you-at-risk-of-covid-19/ar-BB11QqT>

⁶⁷ <https://newsroom.heart.org/news/what-people-with-high-blood-pressure-need-to-know-about-covid-19> (stating people with high blood pressure “may face an increased risk for severe complications if they get the virus”).

death from COVID-19, and “reject[ing] the Government's contention that Mr. Scparta's general good health before the pandemic speaks to whether he should now be released.”); *United States v. Sawicz*, No. 08-CR-287 (ARR), 2020 WL 1815851 (E.D.N.Y. Apr. 10, 2020) (granting compassionate release to a defendant convicted of possession of child pornography who suffers from hypertension).

Also, Mr. Chaney is African-American. The CDC has said that current data supports a disproportionate number of cases and death in racial minority groups.⁶⁸ The CDC goes on to explain the possible reason for minorities to be suffering more from the virus. The CDC points out that racial minorities are over represented in prisons which have specific risks because of congregated living.

In addition to Mr. Chaney's medical conditions and his race, we must consider the overall conditions of Oakdale FCI. As the district court recognized:

The Eastern District of Louisiana found extraordinary and compelling reasons to release a 63-year-old inmate with relevant underlying medical conditions from an Oakdale facility. *United States v. Prasad*, No. 19-CR-71, 2020 WL 2850147, at *3 (E.D. La. Jun. 2, 2020). The Northern District of Texas ordered a 54-year-old inmate with “asthma, bronchitis, hypertension” and other conditions released based in part on ‘the rapid spread of COVID-19 at FCI Oakdale’” *United States v. Heitman*, No. 3:95-CR-0160(4)-G, 2020 WL 3163188, at *4 (N.D. Tex. Jun. 12, 2020) (referring to *United States v. Lee*, No. 3:07-CR-289-M-2 (N.D. Tex. Apr. 23, 2020)).

⁶⁸ www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html

Based on four bodies of facts – the situation created by COVID-19, Mr. Chaney’s health conditions, his race, and the conditions at Oakdale I FCI – this Court should find that “extraordinary and compelling reasons” exist for either releasing Mr. Chaney from BOP custody or ordering him to serve the remainder of his prison term on home confinement.

3. The § 3553(a) factors support ordering a sentence reduction.

a. Introduction.

As stated above, § 3582(c)(1)(B) requires a court to consider the factors stated in § 3553(a) when considering a motion for compassionate release. The factors relevant to Mr. Chaney’s case are:

- “the nature and circumstances of the offense” (§ 3553(a)(1));
- “the history and characteristics of the defendant” (*id.*);
- “to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense” (§ 3553(a)(2)(A));
- “to afford adequate deterrence to criminal conduct” (§ 3553(a)(2)(B));
- “to protect the public from further crimes of the defendant” (§ 3553(a)(2)(C)); and
- “to provide a defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner” (§ 3553(a)(2)(D)).

Each of these factors is considered below.

b. The nature and circumstances of the offense under § 3553(a)(1).

There is nothing unusual or egregious about Mr. Chaney's crime. There is no evidence in the record that he did anything aggressive toward the arresting officers or anyone at all. He did nothing to obstruct justice during the course of the crime. These facts weigh in Mr. Chaney's favor.

c. The history and characteristics of the defendant under § 3553(a)(1).

The district court focused on Mr. Chaney's criminal history when it denied his Motion for Compassionate Release. It stated, "the court is concerned about the lengthy criminal history of the defendant". We must, however, look at the total picture rather than just the number of prior convictions. Mr. Chaney's last felony conviction before the subject conviction was in April of 1999, over 21 years ago. This, combined with Mr. Chaney's advance age of 59 years, minimizes the importance of his prior convictions in this analysis.

More important is what Mr. Chaney has done since 2007, when he was taken into BOP custody. Under § 3553(a)(1), a court can consider an inmate's discipline history at the BOP. *United States v. Maddox*, No. 2:09-CR-045, 2020 WL 3349622 (E.D. Tenn. June 18, 2020). Since his incarceration in 2007, Mr. Chaney has had no disciplinary infractions. Also, Mr. Chaney has worked on self-

improvement by taking 23 courses offered by BOP. These facts weigh in Mr. Chaney's favor.

d. Just punishment for the offense and adequate deterrence to criminal conduct under § 3553(a)(2)(A) and (B).

Mr. Chaney has been in prison for the subject conviction since 2007. His projected release date is April 5, 2023, less than three years from now. As of April 28, 2020, Mr. Chaney had served 14 years, 3 months and 4 days in prison, or 72.8 percent of his full prison term. He has served over five months in prison since then.

In summary, Mr. Chaney has already served a long time in prison on the current conviction. The remainder of his sentence is not long, but it exposes him to the dangers of COVID-19 nevertheless. Under these facts, the goals of just punishment and deterrence will be served even if Mr. Chaney is granted compassionate release.

e. Protection of the public from further crimes of the defendant under § 3553(a)(2)(C).

Mr. Chaney is 59 years old, with the majority of his life behind him. Nevertheless, he has taken measure to ensure his peaceful and productive reintegration into mainstream society. As stated above, Mr. Chaney has completed 23 courses offered by BOP, and he has had no disciplinary infractions during

several years of BOP custody. These facts indicate that Mr. Chaney will not be a danger to society upon release from prison.

Another relevant factor is Mr. Chaney's re-entry plan. The undersigned personally spoke to Ernest Chaney, inmate Ray Chaney's brother. Ernest stated that he and Ray have arranged for Ray to live with him at Ernest's home in Pensacola Florida. Ernest has no prior felony convictions. He is a semi-retired welder, and stated that Ray could work with him in the welding business if he is released.

All of these facts weigh in favor of a ruling that Mr. Chaney will not be a danger to society when he is released from prison.

f. The need for educational or vocational training, medical care, or other correctional treatment under § 3553(a)(2)(D).

The need for "medical care" is the relevant consideration under § 3553(a)(2)(D). The medical care needed in this situation is preventive care from contracting COVID-19. By either ordering his early release from prison or ordering him to serve the remainder of his sentence on home confinement, Mr. Chaney will be able to further protect himself from contracting this potentially deadly virus.

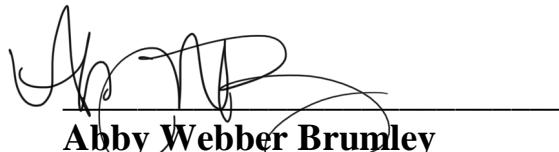
g. Conclusion: § 3553(a) analysis.

All of the relevant § 3553(a) factors support a finding that the district court erred by denying Mr. Chaney's Motion for Compassionate Release. Therefore, he asks this Court to grant certiorari, and ultimately reverse the district court's ruling.

VI. CONCLUSION

Based on the arguments presented above, Mr. Chaney asks the Court to grant his Petition for Writ of Certiorari in this case.

Submitted October 19, 2020 by:



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NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OF AMERICA

RAY ANTHONY CHANEY
Petitioner-Defendant

v.

UNITED STATES OF AMERICA
Respondent

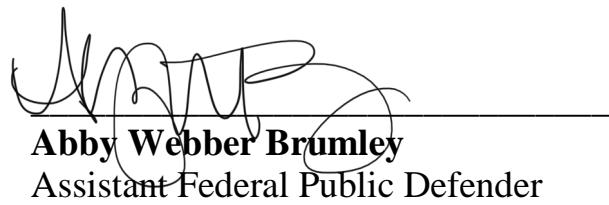
On Petition for Writ of Certiorari from the
United States Court of Appeals for the Fifth Circuit.
Fifth Circuit Case No. 20-60498

CERTIFICATE OF SERVICE

I, Abby Webber Brumley, appointed under the Criminal Justice Act, certify
that today, October 19, 2020, pursuant to Rule 29.5 of the Supreme Court Rules, a
copy of the Petition for Writ of Certiorari and the Motion to Proceed In Forma
Pauperis was served on Counsel for the United States by Federal Express, No.
771832025871, addressed to:

The Honorable Noel Francisco
Solicitor General of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

I further certify that all parties required to be served with this Petition and the Motion have been served.



Abby Webber Brumley
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