
APPENDIX:

A

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SUPREME COURT, U.S.

United States Court of Appeals For the First Circuit

No. 19-2210

UNITED STATES,

Appellee,

v.

EUSEBIO ESCOBAR DE JESUS,

Defendant - Appellant.

Before

Torruella, Selya and Thompson,
Circuit Judges.

JUDGMENT

Entered: July 23, 2020

The defendant appeals the district court's order of October 31, 2019, denying his properly exhausted Motion to Reduce Sentence under the First Step Act of 2018 and 18 U.S.C. § 3582(c)(1)(A). In its only argument preserved for appeal, the motion requested compassionate release because the defendant's time served purportedly exceeds any term that could be imposed if he were being sentenced today in light of Apprendi v. New Jersey, 530 U.S. 466 (2000); two other Apprendi-themed decisions; and certain sentencing changes wrought by the First Step Act.

As the government noted below, the defendant "was sentenced to a life sentence triggered by a jury conviction of life terms as to Count One, Ten, Twelve, and Twenty of the Indictment." (We, and no doubt the district court as well, have disregarded certain inconsequential errors in the government's opposition.) The defendant's Apprendi claim was denied on the merits almost twenty years ago and that ruling was not appealed. His repurposed Apprendi argument does not furnish an "extraordinary and compelling reaso[n]" for his discretionary release. § 3582(c)(1)(A). The denial of relief was well within the district court's discretion.

Affirmed. The defendant's additional "Emergency Motion" for compassionate release on COVID-19 grounds is denied without prejudice to a procedurally appropriate request before the Bureau of Prisons or the district court.

United States Court of Appeals For the First Circuit

No. 19-2210

UNITED STATES

Appellee

v.

EUSEBIO ESCOBAR DE JESUS

Defendant - Appellant

ORDER OF COURT

Entered: August 18, 2020
Pursuant to 1st Cir. R. 27.0(d)

The mandate issued on August 13, 2020 is hereby vacated as it was issued in error.

By the Court:

Maria R. Hamilton, Clerk

cc:

Honorable Juan M. Perez-Gimenez
Maria Antongiorgi Jordan, Clerk, (D.P.R.)
Max J. Perez-Bouret
Thomas F. Klumper
Jose A. Ruiz-Santiago
George A. Massucco-LaTaif
Mariana E. Bauza Almonte
Antonio Perez-Alonso
Angela Jean Clifford-Salisbury
Eusebio Escobar De Jesus

United States Court of Appeals

For the First Circuit

No. 19-2210

UNITED STATES

Appellee

v.

EUSEBIO ESCOBAR DE JESUS

Defendant - Appellant

MANDATE

Entered: January 21, 2021

In accordance with the judgment of July 23, 2020, and pursuant to Federal Rule of Appellate Procedure 41(a), this constitutes the formal mandate of this Court.

By the Court:

Maria R. Hamilton, Clerk

cc:

Mariana E. Bauza Almonte
Angela Jean Clifford-Salisbury
Eusebio Escobar De Jesus
Thomas F. Klumper
George A. Massucco-LaTaif
Antonio Perez-Alonso
Max J. Perez-Bouret
Jose A. Ruiz-Santiago

United States Court of Appeals For the First Circuit

No. 19-2210

UNITED STATES,

Appellee,

v.

EUSEBIO ESCOBAR DE JESUS,

Defendant - Appellant.

Before

Howard, Chief Judge,
Selya, Lynch, Thompson,
Kayatta and Barron, Circuit Judges.

ORDER OF COURT

Entered: January 14, 2021

The petition for rehearing having been denied by the panel of judges who decided the case, and the petition for rehearing en banc having been submitted to the active judges of this court and a majority of the judges not having voted that the case be heard en banc, it is ordered that the petition for rehearing and the petition for rehearing en banc be denied.

By the Court:

Maria R. Hamilton, Clerk

cc:

Max J. Perez-Bouret

Thomas F. Klumper

Jose A. Ruiz-Santiago

George A. Massucco-LaTaif

Mariana E. Bauza Almonte

Antonio Perez-Alonso

Angela Jean Clifford-Salisbury
Eusebio Escobar De Jesus

APPENDIX:
B

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA

Plaintiff,

v.

[1] EUSEBIO ESCOBAR-DE-JESUS,
Defendant.

CRIMINAL NO. 90-130 (PG)

**OPPOSITION TO MOTION FOR COMPASSIONATE RELEASE
BASED ON FIRST STEP ACT OF 2018**

TO THE HONORABLE COURT:

COMES NOW the United States of America, herein represented through its attorneys and very respectfully submits the following response:

Procedural Background

“On April 1993, a jury convicted [1] Eusebio Escobar De Jesus of sixteen drug, assault, and weapons-related counts, including Count 1, engaging in a continuing criminal enterprise in violation of 21 U.S.C. §848 (a) and (c), and Count 12, causing an intentional killing while engaged in a continuing criminal enterprise in violation of 21 U.S.C. § 848 (e).” *United States v. Escobar-de-Jesus*, 187 F.3d 148 (1st Cir. 1999). On appeal, the First Circuit affirm all of the defendant’s convictions. *Id.*

Defendant was sentenced to: 1) life terms of imprisonment as to Count One, Ten, Twelve, and Twenty; 2) ten (10) year terms of imprisonment as to Counts Eleven, Seventeen and Eighteen; 3) four (4) year terms of imprisonment as to Counts nineteen, Twenty-Three, Twenty-Four, and Thirty-Three terms to be served concurrently with each other. ECF No. 945 and Sentencing Hearing Transcript at 30.

Defendant Escobar de Jesus has requested various sentence reduction prior to the First Step Act (*see* Motion by Eusebio Ecobar-De-Jesus, pro se to Reduce Sentence ECF. No 1097, Motion to Reduce Sentence ECF No. 1138, and Motion to Reduce Sentence as to Counts 1,2,10,20 ECF No. 1171) all of them have been denied by this Court. ECF No. 1100, 1145, and 1174. The reason being, defendant has several life sentences which are triggered by his convictions of Count One 21 U.S.C. §848, Count Ten 21 U.S.C. §841 (a)(1), Count Twelve 21 U.S.C. §848(e)(1)(a), and Twenty 21 U.S.C. §§952, 960 and 963. At sentencing the Court also noted his role in the organization, his a criminal history of VI and his participation in causing an intentional killing while involved criminal enterprise. ECF No. 1175 (asserting all grounds by the Government in Response to ECF. 1173 are legally correct).

On April 22, 2019, the defendant filed a Motion for Compassionate Release based on the First Step Act of 2018. ECF No. 1306. The United States avers that defendant Eusebio Escobar De Jesus is ineligible for relief based on the First Step Act of 2018 and therefore, the Government respectfully requests that the Court summarily deny defendant's motion.

Discussion

Section 603(b) of the First Step Act amends 18 U.S.C. § 3582 to permit inmates in specified circumstances to file motions in court seeking "compassionate release." Previously, only the Director of BOP could file such a motion. Under the First Step Act, an inmate may file a motion after exhausting administrative review of the denial of a request to BOP for compassionate release, or after 30 days have passed since the request was made to the warden, whichever is earlier.

As the proponent of the motion, the defendant bears the burden of proving both that he has satisfied the procedural prerequisites for judicial review, that he has "exhausted all administrative

rights to appeal a failure of the Bureau of Prison to bring a motion on inmates behalf", or that 30 days have lapsed "from the receipt of such a request by the warden" and that "extraordinary and compelling reasons" exist to support the motion. 18 U.S.C. § 3582(c)(1)(A); see *United States v. Butler*, 970 F.2d 1017, 1026 (2d Cir. 1992) ("A party with an affirmative goal and presumptive access to proof on a given issue normally has the burden of proof as to that issue."); cf. *United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013) ("[A] defendant, as the § 3582(c)(2) movant, bears the burden of establishing that a retroactive amendment has actually lowered his guidelines range in his case.").

As under prior law, in assessing the merits of an inmate's motion for compassionate release under Section 3582(c)(1)(A), the court's ultimate decision must be "consistent with applicable policy statements issued by the Sentencing Commission." Further, 28 U.S.C. § 994(t) provides: "The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, 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. **Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.** Accordingly, the policy statement of the Commission is binding on the court. See *Dillon v. United States*, 560 U.S. 817, 827 (2010) (where 18 U.S.C. § 3582(c)(2) permits a sentencing reduction based on a retroactive guideline amendment, "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission," the Commission's pertinent policy statements are binding on the court).

Section 603(b) of the First Step Act also adds special provisions related to inmates suffering from a terminal illness, which now appear in 18 U.S.C. § 3582(d). In the Act, "terminal

illness” is defined as “a disease or condition with an end-of-life trajectory.” 18 U.S.C. § 3582(d)(1). The Section 1B1.13 policy statement defines “terminal illness” as “a serious and advanced illness with an end of life trajectory,” adding, “[a] specific prognosis of life expectancy is not required. The newly amended BOP program statement refers to an inmate who is “diagnosed with a terminal, incurable disease and whose life expectancy is eighteen (18) months or less, and/or has a disease or condition with an end-of-life trajectory under 18 USC § 3582(d)(1).” Program Statement 5050.50 at 4.

The main purpose of this section is to provide for a qualifying inmate an accelerated path to a compassionate release. As stated before the defendant has the burden of proving he meets the requirements for a compassionate release. Defendant Eusebio Escobar de Jesus has not met such requirements.

In his motion defendant limits his arguments to mentioning some illnesses, but fails to provide a medical record with a terminally ill diagnosis or an extraordinary and compelling condition as defined by §3582. Defendant submits all his accomplishments for courses taken and his good behavior, but as stated by Section 603 **rehabilitation alone shall not be considered an extraordinary and compelling reason.**

On January 17, 2019, defendant received a response statement made by the BOP stating that he is not eligible for compassionate release. ECF No. 1306-5. Defendant was sentenced to a life sentence triggered by a jury conviction of life terms as to Count One, Ten, Twelve, and Twenty of the Indictment. ECF No. 1248.

In light of this plain statutory text, defendant is tasked with the burden of proving that **an extraordinary and compelling reason may justify compassionate release**. Defendant Escobar-De-Jesus has not meet this burden of proof.

On April 1, 2019, the defendant filed the instant Motion, asserting that he is eligible for a compassionate release under the First Step Act. ECF No. 1306. However, a review of the record evidences that the defendant's has not met the burden of proof that merits a compassionate release under the First Step Act of 2018. Therefore, the Act does not provide this Court with jurisdiction to modify the Defendant's sentence. As such, the First Step Act affords the defendant no relief.

WHEREFORE, the United States of America respectfully submits that the defendant is ineligible for a sentence reduction pursuant to the First Step Act of 2018, and respectfully requests that the Court summarily deny the Defendant's Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30 day of August, 2019.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney

/S/MAX PÉREZ-BOURET
Max Pérez-Bouret -222612
Assistant United States Attorney
U.S. Attorney's Office
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FRC

**United States District Court
District of Puerto Rico (San Juan)
CRIMINAL DOCKET FOR CASE #: 3:90-cr-00130-ADC-1**

Case title: USA v. Escobar-De-Jesus et al
Related Case: 3:12-cv-01539-PG

Date Filed: 04/11/1991
Date Terminated: 05/24/1993

Assigned to: Judge Aida M. Delgado-Colon

Appeals court case numbers: '06-1676',
'09-2187', '09-2257', 00-1681, 11-1004,
16-1250, 19-2210

Defendant (1)

Eusebio Escobar-De-Jesus
TERMINATED: 05/24/1993

represented by **Eusebio Escobar-De-Jesus**
Reg. No. 03903-069
FCI Fairton
P. O. Box 420
FAIRTON, NJ 08320
PRO SE

Rafael F. Castro-Lang
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PO Box 9023222
San Juan, PR 00902-3222
787-723-3672 787-644-1448
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Max J. Perez-Bouret
(See above for address)
TERMINATED: 08/30/2019
Designation: Retained

Pending Counts

21:841(a)(1) and 18:2: A/A,
NARCOTICS - SELL, DISTRIBUTE,
OR DISPENSE COCAINE
(1)

Disposition

IMPRISONMENT FOR A TERM OF
LIFE AS TO CTS 1, 10, 20. SMA
\$50.00 PER COUNT. Sentence
reduction Amendment 782 denied.

21:841(a)(1) and 18:2: A/A,
NARCOTICS - SELL, DISTRIBUTE,
OR DISPENSE COCAINE
(10)

IMPRISONMENT FOR A TERM OF
LIFE AS TO CTS 1, 10, 20. SMA
\$50.00 PER COUNT. Sentence
reduction Amendment 782 denied.

21:952, 960, 963 and 18:2: A/A,
NARCOTICS - IMPORT COCAINE
(20)

IMPRISONMENT FOR A TERM OF
LIFE AS TO CTS 1, 10, 20. SMA
\$50.00 PER COUNT. Sentence
reduction Amendment 782 denied.

Highest Offense Level (Opening)

Felony

Terminated Counts

21:952, 960, 963 and 18:2: A/A,
NARCOTICS - IMPORT COCAINE
(2)

Disposition

VACATED BY THE COURT

Highest Offense Level (Terminated)

Felony

Complaints

None

Disposition

Interested Party

US Probation

Plaintiff

USA

represented by **G. Andrew Massucco-LaTaif**
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District of Puerto Rico
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Designation: Retained

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Designation: AUSA Designation

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TERMINATED: 04/01/2004
Designation: Retained

Date Filed	#	Docket Text
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07/11/2018	<u>1304</u>	JUDGMENT of USCA (certified copy) as to Eusebio Escobar-De-Jesus (1) re <u>1292</u> Notice of Appeal - Final Judgment; summarily AFFIRMED. (xi) (Entered: 07/11/2018)
08/03/2018	<u>1305</u>	MANDATE of USCA (certified copy) as to Eusebio Escobar-De-Jesus (1) re <u>1292</u> Notice of Appeal - Final Judgment; summarily AFFIRMED. RE: <u>1304</u> JUDGMENT of USCA (xi) (Entered: 08/03/2018)
08/03/2018		Appeal Record Returned as to Eusebio Escobar-De-Jesus (1): <u>1292</u> Notice of Appeal - Final Judgment RE: <u>1305</u> USCA Mandate, <u>1301</u> Supplemental Record Sent USCA, <u>1294</u> Appeal Record Sent to USCA, <u>1304</u> USCA Judgment. (xi) (Entered: 08/03/2018)
04/22/2019	<u>1306</u>	MOTION to Reduce Sentence - First Step Act by Eusebio Escobar-De-Jesus (1), Pro se. (Attachments: # <u>1</u> A, # <u>2</u> B, # <u>3</u> C, # <u>4</u> D, # <u>5</u> E, # <u>6</u> Appendix F, # <u>7</u> Envelope)(gav) (Entered: 04/23/2019)
05/06/2019	<u>1307</u>	MOTION to Reduce Sentence - First Step Act by Eusebio Escobar-De-Jesus (1), Pro se. (Attachments: # <u>1</u> Compassionate Release and Medical documents, # <u>2</u> R&R 782, # <u>3</u> Supervised Release documents, # <u>4</u> Property related documents, # <u>5</u> Summary Reentry Plan, # <u>6</u> Inmate skills development, # <u>7</u> Property deed, # <u>8</u> Envelope)(gav) Modified on 5/7/2019 (gav). (Entered: 05/07/2019)
08/23/2019	1308	ORDER as to Eusebio Escobar-De-Jesus (1) re <u>1307</u> Motion to Reduce Sentence - First Step Act & <u>1306</u> Motion to Reduce Sentence - First Step Act filed by Eusebio Escobar-De-Jesus. The Government shall respond in thirty (30) days. Signed by Judge Juan M. Perez-Gimenez on 8/23/19. (cmd) (Entered: 08/23/2019)
08/30/2019	<u>1309</u>	RESPONSE in Opposition by Eusebio Escobar-De-Jesus re <u>1307</u> MOTION to Reduce Sentence - First Step Act filed by Eusebio Escobar-De-Jesus (Perez-Bouret, Max) (Entered: 08/30/2019)
09/23/2019	<u>1310</u>	REPLY TO RESPONSE to Motion by Eusebio Escobar-De-Jesus (1), Pro se, re <u>1307</u> MOTION to Reduce Sentence - First Step Act filed. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C, # <u>4</u> Exhibit D, # <u>5</u> Envelope)(gav) (Entered: 09/25/2019)
10/25/2019	<u>1311</u>	MOTION Requesting Order for Entry of Default by Eusebio Escobar-De-Jesus (1), Pro se. Responses due by 11/8/2019. NOTE: Pursuant to FRCP 6(a) an additional three days does not apply to service done electronically. (Attachments: # <u>1</u> Envelope)(gav) (Entered: 10/28/2019)
10/31/2019	1312	ORDER denying <u>1311</u> Motion Requesting Order as to Eusebio Escobar-De-Jesus (1) Signed by Judge Juan M. Perez-Gimenez on 10/31/2019. (om) (Entered: 10/31/2019)
10/31/2019	1313	ORDER as to Eusebio Escobar-De-Jesus (1) denying <u>1306</u> Motion to Reduce Sentence - First Step Act; denying <u>1307</u> Motion to Reduce Sentence - First Step Act; granting United States' Opposition for compassionate release based on First Step Act of 2018. For the reasons stated at ECF No. 1309, defendant's request is denied. Signed by Judge Juan M. Perez-Gimenez on 10/31/2019.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff,

v.

[1] EUSEBIO ESCOBAR-DE-JESUS,

Defendant.

CRIMINAL NO. 90-130 (PG)

OPPOSITION TO MOTION FOR COMPASSIONATE RELEASE
BASED ON FIRST STEP ACT OF 2018

TO THE HONORABLE COURT:

COMES NOW the United States of America, herein represented through its attorneys and very respectfully submits the following response:

Procedural Background

“On April 1993, a jury convicted [1] Eusebio Escobar De Jesus of sixteen drug, assault, and weapons-related counts, including Count 1, engaging in a continuing criminal enterprise in violation of 21 U.S.C. §848 (a) and (c), and Count 12, causing an intentional killing while engaged in a continuing criminal enterprise in violation of 21 U.S.C. § 848 (e).” *United States v. Escobar-de-Jesus*, 187 F.3d 148 (1st Cir. 1999). On appeal, the First Circuit affirm all of the defendant’s convictions. *Id.*

Defendant was sentenced to: 1) life terms of imprisonment as to Count One, Ten, Twelve, and Twenty; 2) ten (10) year terms of imprisonment as to Counts Eleven, Seventeen and Eighteen; 3) four (4) year terms of imprisonment as to Counts nineteen, Twenty-Three, Twenty-Four, and Thirty-Three terms to be served concurrently with each other. ECF No. 945 and Sentencing Hearing Transcript at 30.

Defendant Escobar de Jesus has requested various sentence reduction prior to the First Step Act (*see* Motion by Eusebio Ecobar-De-Jesus, pro se to Reduce Sentence ECF. No 1097, Motion to Reduce Sentence ECF No. 1138, and Motion to Reduce Sentence as to Counts 1,2,10,20 ECF No. 1171) all of them have been denied by this Court. ECF No. 1100, 1145, and 1174. The reason being, defendant has several life sentences which are triggered by his convictions of Count One 21 U.S.C. §848, Count Ten 21 U.S.C. §841 (a)(1), Count Twelve 21 U.S.C. §848(e)(1)(a), and Twenty 21 U.S.C. §§952, 960 and 963. At sentencing the Court also noted his role in the organization, his a criminal history of VI and his participation in causing an intentional killing while involved criminal enterprise. ECF No. 1175 (asserting all grounds by the Government in Response to ECF. 1173 are legally correct).

On April 22, 2019, the defendant filed a Motion for Compassionate Release based on the First Step Act of 2018. ECF No. 1306. The United States avers that defendant Eusebio Escobar De Jesus is ineligible for relief based on the First Step Act of 2018 and therefore, the Government respectfully requests that the Court summarily deny defendant's motion.

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Section 603(b) of the First Step Act amends 18 U.S.C. § 3582 to permit inmates in specified circumstances to file motions in court seeking "compassionate release." Previously, only the Director of BOP could file such a motion. Under the First Step Act, an inmate may file a motion after exhausting administrative review of the denial of a request to BOP for compassionate release, or after 30 days have passed since the request was made to the warden, whichever is earlier.

As the proponent of the motion, the defendant bears the burden of proving both that he has satisfied the procedural prerequisites for judicial review, that he has "exhausted all administrative

rights to appeal a failure of the Bureau of Prison to bring a motion on inmates behalf”, or that 30 days have lapsed “from the receipt of such a request by the warden” and that “extraordinary and compelling reasons” exist to support the motion. 18 U.S.C. § 3582(c)(1)(A); *see United States v. Butler*, 970 F.2d 1017, 1026 (2d Cir. 1992) (“A party with an affirmative goal and presumptive access to proof on a given issue normally has the burden of proof as to that issue.”); *cf. United States v. Hamilton*, 715 F.3d 328, 337 (11th Cir. 2013) (“[A] defendant, as the § 3582(c)(2) movant, bears the burden of establishing that a retroactive amendment has actually lowered his guidelines range in his case.”).

As under prior law, in assessing the merits of an inmate’s motion for compassionate release under Section 3582(c)(1)(A), the court’s ultimate decision must be “consistent with applicable policy statements issued by the Sentencing Commission.” Further, 28 U.S.C. § 994(t) provides: “The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, 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. **Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.** Accordingly, the policy statement of the Commission is binding on the court. *See Dillon v. United States*, 560 U.S. 817, 827 (2010) (where 18 U.S.C. § 3582(c)(2) permits a sentencing reduction based on a retroactive guideline amendment, “if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission,” the Commission’s pertinent policy statements are binding on the court).

Section 603(b) of the First Step Act also adds special provisions related to inmates suffering from a terminal illness, which now appear in 18 U.S.C. § 3582(d). In the Act, “terminal

illness” is defined as “a disease or condition with an end-of-life trajectory.” 18 U.S.C. § 3582(d)(1). The Section 1B1.13 policy statement defines “terminal illness” as “a serious and advanced illness with an end of life trajectory,” adding, “[a] specific prognosis of life expectancy is not required. The newly amended BOP program statement refers to an inmate who is “diagnosed with a terminal, incurable disease and whose life expectancy is eighteen (18) months or less, and/or has a disease or condition with an end-of-life trajectory under 18 USC § 3582(d)(1).” Program Statement 5050.50 at 4.

The main purpose of this section is to provide for a qualifying inmate an accelerated path to a compassionate release. As stated before the defendant has the burden of proving he meets the requirements for a compassionate release. Defendant Eusebio Escobar de Jesus has not met such requirements.

In his motion defendant limits his arguments to mentioning some illnesses, but fails to provide a medical record with a terminally ill diagnosis or an extraordinary and compelling condition as defined by §3582. Defendant submits all his accomplishments for courses taken and his good behavior, but as stated by Section 603 **rehabilitation alone shall not be considered an extraordinary and compelling reason.**

On January 17, 2019, defendant received a response statement made by the BOP stating that he is not eligible for compassionate release. ECF No. 1306-5. Defendant was sentenced to a life sentence triggered by a jury conviction of life terms as to Count One, Ten, Twelve, and Twenty of the Indictment. ECF No. 1248.

In light of this plain statutory text, defendant is tasked with the burden of proving that **an extraordinary and compelling reason may justify compassionate release**. Defendant Escobar-De-Jesus has not meet this burden of proof.

On April 1, 2019, the defendant filed the instant Motion, asserting that he is eligible for a compassionate release under the First Step Act. ECF No. 1306. However, a review of the record evidences that the defendant's has not met the burden of proof that merits a compassionate release under the First Step Act of 2018. Therefore, the Act does not provide this Court with jurisdiction to modify the Defendant's sentence. As such, the First Step Act affords the defendant no relief.

WHEREFORE, the United States of America respectfully submits that the defendant is ineligible for a sentence reduction pursuant to the First Step Act of 2018, and respectfully requests that the Court summarily deny the Defendant's Motion.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30 day of August, 2019.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney

/S/MAX PÉREZ-BOURET
Max Pérez-Bouret -222612
Assistant United States Attorney
U.S. Attorney's Office
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Tel.: (787) 766-5656
Email: max.j.perez@usdoj.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to defense counsel as stated below and by regular mail to: Eusebio Escobar De Jesus, Register # 03903-069, USP Coleman II, U.S. Penitentiary, P.O. BOX 1034, Coleman, FL 33521.

/S/MAX PÉREZ-BOURET

MaxPérez-Bouret-222612.

Assistant United States Attorney

APPENDIX:

C

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT**

APPEAL NO. 19-2210

UNITED STATES
Appellee

v.

EUSEBIO ESCOBAR-DE JESUS
Defendant-Appellant

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

BRIEF FOR APPELLEE

W. Stephen Muldrow
United States Attorney

Mariana E. Bauzá-Almonte
Assistant United States Attorney
Chief, Appellate Division

Angela Jean Clifford-Salisbury
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Standard of Review:

The standard of review applicable to district court decisions on sentence reduction motions brought pursuant to section 3582(c) is abuse of discretion. *See United States v. Zayas-Ortiz*, 808 F.3d 520, 523 (1st Cir. 2015). Though the circumstances for sentence reduction under each of the subsections of section 3582(c) differ, both subsections provide that a court “may ... reduce the term of imprisonment” - thereby vesting the ultimate decision to the discretion of the district court. The abuse of discretion standard therefore is applicable to a review of § 3582(c)(1) decisions.

Discussion:

The district court properly denied Escobar’s § 3582(c)(1)(A) motion. The district court concisely based its ruling on the reasons set forth in the Government’s opposition to Escobar’s motion. (*See* DE 1309, 1313). As discussed fully below, those reasons included the fact that Escobar does not suffer from a medical condition constituting an “extraordinary and compelling” circumstance, and that his good behavior alone is not sufficient to justify compassionate release. (DE 1309). Accordingly, the Court should

affirm the district court's order denying Escobar's motion for compassionate release.

Under 18 U.S.C. § 3582(c), a district court may not modify a term of imprisonment once it has been imposed except under certain, limited circumstances. 18 U.S.C. § 3582(c); *United States v. Griffin*, 524 F.3d 71, 83 (1st Cir. 2008). The court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if the court finds “(i) extraordinary and compelling reasons warrant such a reduction” or (ii) if the defendant is 70 years of age, has served at least 30 years in prison for a sentence imposed under section 3559(c), for the offense(s) for which the defendant is currently imprisoned, and the Director of the Bureau of Prisons makes a determination that the defendant is not a danger to the safety of others. 18 U.S.C. § 3582(c)(2).

If the district court finds one of those two elements are met (namely, that there are either extraordinary and compelling reasons in (i), or that the defendant has met the age and sentence threshold of (ii)), the court may reduce the term of imprisonment only “if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A); see *Dillon v. United States*, 560 U.S. 817, 821 (2010). In

determining whether or not to reduce a sentence pursuant to § 3582(c), the district court conducts a two-part inquiry. *United States v. Candelaria-Silva*, 714 F.3d 651, 656 (1st Cir. 2012) (citing *Dillon*, 560 U.S. at 827).

First, it must determine whether the prisoner is eligible for a sentence modification and the extent of the reduction authorized. *Id.* If the prisoner is eligible for a sentence reduction, the district court must then “consider any applicable § 3553(a) factors and determine whether, in its discretion, the reduction authorized by [section 1B1.10 of the United States Sentencing] is warranted in whole or in part under the particular circumstances of the case.” *Dillon*, 560 U.S. at 827.

A. Escobar does not qualify for a sentencing reduction under 18 U.S.C. § 3582(c)(1)(A)(ii).

As a matter of law, Escobar does not qualify for a sentencing reduction under section 3582(c)(1)(A)(ii) because he fails to meet the requisite statutory thresholds. Escobar is less than 70 years of age and has not served at least 30 years in prison. (DE 1307-5). There is nothing on the record indicating the Director of BOP has made a safety determination about Escobar. (DE 1306, 1307, 1310). Thus, Escobar does not qualify for a sentencing reduction under this subsection.

B. The Court properly denied Escobar's motion since Escobar was not eligible for a sentence reduction and a reduction would not have been consistent with the policy statements of the Sentencing Commission.

Escobar's failed to meet the evidentiary threshold required demonstrating eligibility for a sentence reduction. The district court may, in its discretion, reduce a sentence under section 3582(c)(1)(A)(i) when "extraordinary and compelling reasons warrant such a reduction," and only if a reduction "is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). The U.S. Sentencing Guidelines Manual, Section 1B1.13 provides guidance, detailing a three-part analysis for district courts. U.S. SENTENCING GUIDELINES MANUAL, 1B1.13 (2018). First, subsection (1)(A) states there must be extraordinary and compelling reasons. USSG§ 1B1.13. Section 1B1.13 goes on to list two additional requirements: The court must determine that the defendant is not a danger to the safety of any other person or to the community, and that the reduction is consistent with the policy statement contained within section 1B1.13. USSG § 1B1.13 (2) and (3).

Section 1B1.13 contains Commentary and Application Notes in order to provide courts with further guidance on the meaning of "extraordinary

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