

NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA

LEONARD GRIFFIN  
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. 20-60876

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**PETITION FOR WRIT OF CERTIORARI**

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## **QUESTION PRESENTED FOR REVIEW**

Whether the district court erred by denying Mr. Griffin'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.

## TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED FOR REVIEW .....	ii
PARTIES TO THE PROCEEDING.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES .....	vi
I. OPINIONS BELOW .....	1
II. JURISDICTIONAL STATEMENT.....	3
III. STATUTE INVOLVED .....	4
IV. STATEMENT OF THE CASE .....	5
A. Basis for federal jurisdiction in the court of first instance.....	5
B. Statement of material facts.....	5
V. ARGUMENT .....	7
A. Introduction.....	7
B. Review on certiorari should be granted in this case.....	8
C. The evolution of compassionate release .....	8
D. The history of the COVID-19 pandemic .....	13
E. The COVID-19 pandemic warrants releasing Mr. Griffin from BOP custody .....	25
1. Introduction.....	25
2. Mr. Griffin's health conditions, his age and his race, combined with the	

dangers posed by the COVID-19 pandemic, present an extraordinary and compelling circumstance that warrants compassionate release .....	26
3. Mr. Griffin's mother's health condition presents an extraordinary and compelling circumstance that warrants compassionate release.....	29
4. Analysis of the relevant § 3553(a) factor warrants Mr. Griffin's compassionate release.....	31
VI. CONCLUSION.....	33
CERTIFICATE OF SERVICE .....	34
(Appendices 1, 2 and 3)	

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<u>cases:</u>	
<i>United States v. Beck</i> , No. 1:13-CR-186-6, 2019 WL 3805349 at *6 (M.D. N.C. June 28, 2019).....	11
<i>United States v. Bucci</i> , 409 F. Supp. 3d 1 (D. Mass. 2019) .....	29
<i>United States v. Cantu</i> , 423 F. Supp. 3d 345 (S.D. Tex. 2019).....	11
<i>United States v. Cantu-Rivera</i> , No. CR H-89-204, 2019 WL 2578272 (S.D. Tex. June 24, 2019).....	11
<i>United States v. Dimasi</i> , 220 F.Supp.3d 173 (D. Mass. 2016) .....	11
<i>United States v. Fox</i> , No. 2:14-CR-03-DBH, 2019 WL 3046086 (D. Me. July 11, 2019).....	11
<i>United States v. Hernandez</i> , Case No. 16-20091 (S.D. Fl. April 3, 2020).....	30
<i>United States v. Lisi</i> , 2020 U.S. Dist. LEXIS 31127 (S.D.N.Y. Feb. 24, 2020).....	30
<i>United States v. Lynn</i> , No. CR 89-0072-WS, 2019 WL 3805349 (S.D. Ala. Aug. 13, 2019).....	12
<i>United States v. Pena</i> , No. 15-CR-551 (AJN), 2020 WL 2301199 (S.D.N.Y. May 8, 2020) .....	27
<i>United States v. Riley</i> , No. 2:12-cr-62, 2020 U.S. Dist. LEXIS 82909 (D. Vt. May 12, 2020) .....	30

*United States v. Salvagno*,  
No. 5:02-cr-00051-LEK, ECF No. 1181 (N.D.N.Y. June 22, 2020).....26, 27

*United States v. Sawicz*,  
No. 08-CR-287 (ARR), 2020 WL 1815851 (E.D.N.Y, Apr. 10, 2020) .....27

*United States v. Scparta*,  
No. 18-CR-578 (AJN), 2020 WL 1910481 (S.D.N.Y. Apr. 20, 2020) .....27

*United States v. Soto*,  
No. 1:18-CR-10086-IT, 2020 WL 2104787 (D. Mass. May 1, 2020).....27

statutes:

18 U.S.C. § 922.....	1, 5
18 U.S.C. § 924.....	1
18 U.S.C. § 3231 .....	5
18 U.S.C. § 3553 .....	4, 7, 13, 26, 30, 31
18 U.S.C. § 3582 .....	<i>passim</i>
18 U.S.C. § 3583 .....	13
28 U.S.C. § 994.....	10
28 U.S.C. § 1254.....	3
42 U.S.C. § 247.....	14
Comprehensive Crime Control Act of 1984 .....	8
First Step Act .....	4, 7, 8, 11, 12

rules:

Rule 10, Supreme Court Rules.....	8
-----------------------------------	---

Rule 13.1, Supreme Court Rules.....	3, 11
Rule 29.5, Supreme Court Rules.....	34
<b><u>United States Sentencing Guidelines:</u></b>	
U.S.S.G. § 1B1.13.....	10, 11

## I. OPINIONS BELOW

The prosecution filed an Indictment against Mr. Griffin charging him with the nonviolent crime of felon in possession of a firearm in violation of 18 U.S.C. §§ 922(g)(1) and 924(e). It filed the Indictment in the United States District Court for the Southern District of Mississippi on July 11, 2007, under case number 3:07cr75-TSL-LRA.

Mr. Griffin accepted full responsibility for his actions by entering a timely guilty plea on September 6, 2007. His sentencing hearing followed on January 4, 2008. The court sentenced Mr. Griffin to serve 180 months in prison, followed by three years of supervised release. It also ordered a \$1,500 fine. The court entered a Judgment reflecting this sentence on January 8, 2008. Mr. Griffin has been in prison since the government took him into custody on the subject felon in possession charge in 2007.

Mr. Griffin filed a *pro se* Motion for Compassionate Release on July 17, 2020. He requested release from prison based on the dangers posed by the COVID-19 pandemic. The same day the Mr. Griffin filed the *pro se* Motion, the district court entered a General Order that appointed the Office of the Federal Public Defender to represent him on the compassionate release issue.

The district court entered an order denying Mr. Griffin's Motion on August 4, 2020. The court denied the motion, without prejudice, based on a ruling that he

failed to exhaust administrative remedies with the Bureau of Prisons (hereinafter “BOP”). Alternatively, the court denied the motion on the merits of Mr. Griffin’s arguments. This Order is important on appeal because after Mr. Griffin exhausted the BOP administrative remedies and he filed a Second Motion for Compassionate Release, the district court adopted the analysis in this Order when it denied compassionate release a second time. The August 4, 2020, Order is attached hereto as Appendix 1.

After exhausting the BOP administrative remedies, Mr. Griffin filed a Second Motion for Compassionate Release on September 2, 2020. The district court entered an Order denying the Motion with prejudice September 16, 2020. As stated above, this September 16 Order adopted much of the analysis presented in the August 4 Order. The September 16, 2020, Order is attached hereto as Appendix 2.

Mr. Griffin filed a Notice of Appeal on September 23, 2020, after the district court entered the September 16 Order. The Fifth Circuit case number is 20-60876. The Fifth Circuit affirmed the district court’s rulings via an opinion filed on February 10, 2021. It filed a Judgment on the same day. The Fifth Circuit’s Opinion and Judgment are attached hereto as composite Appendix 3. This Petition for Writ of Certiorari followed.

## **II. JURISDICTIONAL STATEMENT**

The United States Court of Appeals for the Fifth Circuit filed both its Order and its Judgment in this case on February 10, 2021. 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. Griffin's Motion for Compassionate Release is based on The First Step Act. Relevant to Mr. Griffin'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 BOP associated with the COVID-19 pandemic. The underlying criminal conviction against Mr. Griffin was for the non-violent and non-drug related crime of felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and (e). 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. Griffin arose from the laws of the United States of America.

### **B. Statement of material facts.**

Mr. Griffin's preexisting health conditions are relevant to deciding whether he should be granted compassionate release because of the COVID-19 pandemic. Mr. Griffin suffers from high blood pressure / hypertension. He takes Propanol, 20 mg tablets, twice daily for this condition. Mr. Griffin also suffers from hyperthyroidism. He takes Methimazole, 20 mg tablets, once daily for this condition.

Mr. Griffin's mother's health condition is also relevant to deciding whether he should be granted compassionate release. She is elderly and suffers from COPD. This condition requires her to wear an oxygen mask.

Other facts relevant to the issue on appeal relate to whether Mr. Griffin will be a danger to society if he is released. He has taken 59 education courses offered by BOP. This demonstrates his desire to productively assimilate back into mainstream society.

Mr. Griffin's Presentence Investigation Report indicates that his last felony conviction before the subject felon in possession conviction was almost 24 years ago in December of 1996. The age of this prior conviction is relevant to deciding whether compassionate release should be granted.

Finally, we note that Mr. Griffin is a 50-year-old African American. The relevance of these facts is discussed below. According to BOP information, Mr. Griffin's projected release date is January 17, 2023, and he is eligible for home detention on July 17, 2022.

Mr. Griffin's last felony conviction before the subject felon in possession conviction was over 15 years ago in January of 2005. Finally, no jurisdiction has a detainer filed against Mr. Griffin.

## **V. ARGUMENT**

### **A. Introduction.**

This case involves the district court’s denial of Mr. Griffin’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. Griffin argued that a combination of his health conditions and the dangers posed by the COVID-19 pandemic warrant his release from BOP custody. He also argued that his mother’s poor health condition and her need for constant care warrant compassionate release.

To establish entitlement to compassionate release under the First Step Act, Mr. Griffin 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).

As analyzed below, Mr. Griffin suffers from debilitating health conditions. His health conditions, combined with the dangers posed by the COVID-19 pandemic, as well as his mother’s need for care, represent “extraordinary and compelling reasons” to release him from BOP custody.

**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. Griffin’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).”).<sup>1</sup>

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<sup>1</sup> *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 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

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 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 resented, without waiting for it to be made by the BOP.

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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).

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 in Mr. Griffin’s case. On March 11, 2020, the World Health Organization (hereinafter “WHO”) officially classified the new strain of coronavirus, COVID-19, as a pandemic.<sup>2</sup> As of June 28, 2021, COVID-19 has infected at least 180,654,652 worldwide, leading to at least 3,920,463 deaths.<sup>3</sup> As of June 28, 2021, the WHO also indicates that in the United States, approximately 33,285,377 have been infected, leading to 598,504 deaths.<sup>4</sup> These numbers almost certainly underrepresent the true scope of the crisis.

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<sup>2</sup> “WHO Characterizes COVID-19 as a Pandemic,” World Health Organization (Feb. 19, 2021), available at <https://bit.ly/2W8dwpS>.

<sup>3</sup> <https://www.who.int>.

<sup>4</sup> *Id.*

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)).<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

The Centers for Disease Control and Prevention (hereinafter “CDC”) have also issued guidance related to the deadly effects of COVID-19 on certain high-risk patients of the population. The CDC updated their list of people who need to take extra precautions on May 13, 2021.<sup>8</sup> According to the CDC, “[h]aving heart conditions such as heart failure, coronary artery disease, cardiomyopathies, and possibly high blood pressure (hypertension) can make you more likely to get severely ill from COVID-19.”<sup>9</sup>

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<sup>5</sup> 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/>.

<sup>6</sup> 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>.

<sup>7</sup> Fink, “White House Takes New Line After Dire Report on Death Toll,” *New York Times*.

<sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html#MedicalConditionsAdults>.

<sup>9</sup> *Id.* (bold emphasis in original; italicized and underlined emphasis added).

Conditions of confinement at Talladega FCI, the prison where Mr. Griffin is housed, create an optimal environment for the transmission of contagious disease.<sup>10</sup> 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.”<sup>11</sup>

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.”<sup>12</sup> 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.<sup>13</sup> The coronavirus is highly contagious and those who are infected can spread the virus

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<sup>10</sup> 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>.

<sup>11</sup> “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>.

<sup>12</sup> CDC, Coronavirus Disease 2019 (COVID-19), How It Spreads, Mar. 4, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>.

<sup>13</sup> *Id.*

even if they are asymptomatic.<sup>14</sup> Additionally, studies have shown that the coronavirus can survive from three hours to three days on various surfaces.

COVID-19 cases have been confirmed at multiple BOP facilities, and with every day that passes, BOP identifies additional cases at additional institutions.<sup>15</sup>

As of June 25, 2021, BOP has identified 54 inmates and 135 staff members that are currently positive with COVID-19.<sup>16</sup> A total of 44,387 inmates have tested positive since the pandemic's outbreak.<sup>17</sup> As of June 25, 2021, 240 inmates have died in BOP custody and four BOP staff members have died because of the COVID-19 pandemic.<sup>18</sup> 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."<sup>19</sup>

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<sup>14</sup> 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](https://www.ncbi.nlm.nih.gov/books/NBK554776/#_ncbi_dlg_citbx_NBK554776).

<sup>15</sup> U.S. Bureau of Prisons, COVID-19 Coronavirus (updated daily),  
<https://www.bop.gov/coronavirus/>.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> 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>.

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 symptoms, would not be tested for the virus, and may be “unwitting spreaders.”<sup>20</sup> 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.”<sup>21</sup>

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.<sup>22</sup>

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

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<sup>20</sup> 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>.

<sup>21</sup> *Id.*

<sup>22</sup> 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>.

for the immediate release of elderly, non-violent inmates.<sup>23</sup> The following week, Attorney General Barr urged the Director of the BOP to prioritize home confinement for such vulnerable individuals.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

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

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<sup>23</sup> 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](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.””).

<sup>24</sup> 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>.

<sup>25</sup> 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>.

<sup>26</sup> 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>.

medically-compromised, elderly, and pregnant prisoners in the custody of the BOP.”<sup>27</sup> On April 3, 2020, Attorney General Barr issued a memorandum directing the BOP to move vulnerable prisoners into home confinement with due “dispatch.”<sup>28</sup> 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.”<sup>29</sup>

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:

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<sup>27</sup> 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](https://judiciary.house.gov/uploadedfiles/3.30.20_letter_to_ag_barr_re_covid19.pdf).

<sup>28</sup> 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>.

<sup>29</sup> 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](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>.

- 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;
- Authorized the movement of inmates with suspected 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.”<sup>30</sup>

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.<sup>31</sup> The declaration of Dr. Jaime Meyer, a Yale Law School Liman Center Affiliate, explains the particular risks of contagious diseases in prison. Inmates are

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<sup>30</sup> *Id.*

<sup>31</sup> 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>.

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;” “infection control is challenging in these settings,” according to public health experts.<sup>32</sup> Jails and prisons are sites of disproportionate infectious disease rates.<sup>33</sup> 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.<sup>34</sup>

In China, officials have confirmed the coronavirus spreading rapidly in Chinese prisons.<sup>35</sup> China is not the exception to the rule, as other countries have severe problems with the prison population. For example, former Secretary of State Mike Pompeo 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

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<sup>32</sup> “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](https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf).

<sup>33</sup> 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).

<sup>34</sup> *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>.

<sup>35</sup> 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>.

basic human decency.”<sup>36</sup> Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.<sup>37</sup>

It was reported on March 18, 2020, that a guard at Rikers Island in New York City had tested positive for COVID-19.<sup>38</sup> Three days later, at least 38 people at Rikers had tested positive.<sup>39</sup> Despite efforts to release hundreds of detainees to try to stem the tide of infection there,<sup>40</sup> the virus continues to spread rapidly; as of April 10, 2020, 304 inmates and 518 staffers had tested positive, and one inmate had died.<sup>41</sup> 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

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<sup>36</sup> 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>.

<sup>37</sup> 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>.

<sup>38</sup> *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>.

<sup>39</sup> *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>.

<sup>40</sup> 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/>.

<sup>41</sup> 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-tyson-rikers-island-inmate-dies-covid-19/>.

anything called a justice system, a death in such circumstances is a failure.”<sup>42</sup> On April 14, 2020, another Rikers inmate died of COVID-19.<sup>43</sup> On March 23, two inmates in Cook County jail were placed in isolation cells after testing positive for COVID-19. On April 8, after a little over two weeks, the virus had infected 238 inmates and 115 staff members.<sup>44</sup> On April 19, the count has risen to 395 inmates and 225 staff members, and four inmates had died.<sup>45</sup> 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.”<sup>46</sup>

“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.”<sup>47</sup> As a prominent group of Yale School of Medicine “medical

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<sup>42</sup> 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](https://www.washingtonpost.com/outlook/doctor-rikers-compassionate-release/2020/04/10/07fc863a-7a93-11ea-9bee-c5bf9d2e3288_story.html).

<sup>43</sup> Rosenberg, *supra*.

<sup>44</sup> 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>.

<sup>45</sup> *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/>.

<sup>46</sup> *38 Positive for Coronavirus at Rikers*, *supra*.

<sup>47</sup> *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).

professionals and experts in infectious disease and/or prison populations” wrote to Connecticut Supreme Court Associate Justice Andrew J. McDonald, the way to safeguard inmates is to reduce jail populations now.<sup>48</sup> “Once a case of COVID-19 [is] identified in a facility, it will likely be too late to prevent a widespread outbreak.”<sup>49</sup> Two doctors who are contracted experts for the Department of Homeland Security’s Office of Civil Rights and Civil Liberties said that COVID-19 presents an “imminent risk to the health and safety” of detainees in ICE detention centers, as well as the general public.<sup>50</sup>

Mr. Griffin 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

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<sup>48</sup> Letter from Dan Barrett to Justice Andrew McDonald (Mar. 26, 2020), *available at* [https://www.aclu.org/sites/default/files/field\\_documents/2020-03-](https://www.aclu.org/sites/default/files/field_documents/2020-03-26_letter_to_committee_requesting_emergency_alteration_of_rules.pdf)

<sup>49</sup> *Id.*

<sup>50</sup> 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>.

prisons because of its alcohol content.<sup>51</sup> Correctional health experts worry that no matter what precautions are taken by crowded prisons, these facilities may become incubators for the COVID-19 disease.<sup>52</sup> Prisons cannot maintain the level of separation and sanitation necessary to prevent widespread infection.<sup>53</sup> As stated above, BOP is NOT taking adequate steps to contain the virus and protect the inmate population.

#### **E. The COVID-19 pandemic warrants releasing Mr. Griffin from BOP custody.**

##### **1. Introduction.**

As an initial note, the parties do not dispute that Mr. Griffin exhausted the BOP's administrative remedies before filing the subject Motion in district court. Therefore, exhaustion of administrative remedies is not at issue on appeal.<sup>54</sup>

We must analyze two factors to determine whether the district court erred by denying Mr. Griffin's Motion for Compassionate release. First, under 18 U.S.C. § 3582(c)(1)(A)(i), we must determine if "extraordinary and compelling reasons

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<sup>51</sup> 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>.

<sup>52</sup> 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>.

<sup>53</sup> "Prisons and Jails are Vulnerable to COVID-19 Outbreaks," *The Verge* (Mar. 7, 2020), available at <https://bit.ly/2TNcNZY>.

<sup>54</sup> The administrative remedy provision is set forth in 18 U.S.C. § 3582(c)(1)(A).

warrant” a sentence reduction. In Mr. Griffin’s case, this involves two sub-issues – whether his own health conditions represent “extraordinary and compelling reasons” that warrant a sentence reduction, and whether Mr. Griffin’s mother’s health condition represents an “extraordinary and compelling reason” warranting a sentence reduction. Second, under § 3582(c)(1)(B), we must consider the factors stated in 18 U.S.C. § 3553(a).

**2. Mr. Griffin’s health conditions, his age and his race, combined with the dangers posed by the COVID-19 pandemic, present an extraordinary and compelling circumstance that warrants compassionate release.**

Mr. Griffin suffers from high blood pressure / hypertension. According to the CDC, high blood pressure / hypertension possibly “**can make you more likely** to get severely ill from COVID-19.”<sup>55</sup> (Emphasis in original). “People with high blood pressure or high cholesterol are more likely to suffer from Covid-19 complications because of problems with how the heart pumps blood around the body.”<sup>56</sup> The increased risk of COVID-19 health issues for people with high blood pressure is also recognized by the American Heart Association.<sup>57</sup>

Case law supports a conclusion the Mr. Griffin’s hypertension warrants compassionate release. *See, e.g., United States v. Salvagno*, No. 5:02-cr-00051-

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<sup>55</sup> *See supra*, footnote 9.

<sup>56</sup> <https://www.msn.com/en-za/health/medical/health-conditions-that-put-you-at-risk-of-covid-19/ar-BB11QqT>

<sup>57</sup> <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”).

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 she suffers from hypertension. This condition increases her 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 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).

Mr. Griffin takes Propanol, 20 mg tablets, twice daily to combat his hypertension malady. He also suffers from hyperthyroidism, for which he takes Methazimazole, 20 mg tablets, once a day.

Another factor that we must consider is Mr. Griffin's age. He is 50 years old. According to the CDC, the risk of "getting very sick from COVID-19" increases with age.<sup>58</sup> "The risk increases for people in their 50s[.]"<sup>59</sup> Mr. Griffin's age provides more support for a ruling that he should be released from prison because of risks associated with the COVID-19 pandemic.

A final factor that we must consider is Mr. Griffin's race. He is African American. According to the CDC, race is a factor that warrants consideration in the COVID-19 analysis. "Long-standing systemic health and social inequities have put many people from racial and ethnic minority groups at increased risk of getting sick and dying from COVID-19[.]"<sup>60</sup> Mr. Griffin's status as a racial minority is another building block supporting compassionate release.

Because development of treatment regimens for COVID-19 related illness is still ongoing, the CDC recommends those in a higher risk category avoid being exposed to the virus.<sup>61</sup> As described in the declaration of Dr. Jamie Meyer, an infectious disease specialist and Assistant Professor of Medicine at Yale School of Medicine, inmates are uniquely vulnerable:

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<sup>58</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

<sup>59</sup> *Id.*

<sup>60</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

<sup>61</sup> [http://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html).

[t]he risk posed by infectious diseases in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected.

Dr. Meyer describes the inadequate pandemic preparedness plans in many detention facilities and the difficulty of separating infected or symptomatic inmates from others.

Based on the above analyses, this Court should find that under 18 U.S.C. § 3582(c)(1)(A)(i), Mr. Griffin's health conditions, his age and his race represent "extraordinary and compelling reasons" that warrant releasing him from BOP custody.

**3. Mr. Griffin's mother's health condition presents an extraordinary and compelling circumstance that warrants compassionate release.**

Mr. Griffin's elderly mother suffers from COPD and has to wear an oxygen mask. Mr. Griffin's need to return home and care for his ailing mother provides another reason to grant compassionate release.

Courts have recognized that caring for a parent when there is no one else to fill that role constitutes an "extraordinary and compelling" reason to grant compassionate release.<sup>62</sup> *United States v. Bucci*, 409 F. Supp. 3d 1, 2 (D. Mass. 2019) (When a defendant is the "only available caregiver" for an incapacitated

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<sup>62</sup> In candor to the Court, the undersigned acknowledges that the defense has not presented proof that Mr. Griffin is the only person that can care for his mother. Nevertheless, Mr. Griffin asks the Court to consider this issue. Even if it does not provide a self-standing reason to grant compassionate release, we ask the Court to consider the issue in the totality of the circumstances warranting compassionate release.

parent (perhaps a more unique occurrence given that inmates may have siblings or other family members able to care for their parents), then, it is likewise an “extraordinary and compelling” reason warranting compassionate release.); *United States v. Riley*, No. 2:12-cr-62, 2020 U.S. Dist. LEXIS 82909 (D. Vt. May 12, 2020) (compassionate release granted based on age, asthma, and defendant’s father’s failing health and him being the only person available to provide his father’s daily care.); *United States v. Hernandez*, Case No. 16-20091 (S.D. Fl. April 3, 2020) (extraordinary and compelling reasons warranting a compassionate release reduction where defendant was the only possible caregiver for his 84-year-old mother suffering from degenerative ocular disease and cancer (in remission) that renders her functionally blind and has mobility issues); *see also United States v. Lisi*, 2020 U.S. Dist. LEXIS 31127 (S.D.N.Y. Feb. 24, 2020) (court found that if the defendant’s claims are factually accurate, and he is the only person capable of caring for his mother, then that would constitute an extraordinary and compelling reason for compassionate release.).

Under this case law, Mr. Griffin asks the Court to grant him compassionate release so he can help care for his mother. Next considered is § 3582(c)(1)(B), which requires us to analyze the factors stated in 18 U.S.C. § 3553(a).

**4. Analysis of the relevant § 3553(a) factor warrants Mr. Griffin's compassionate release.**

Our emphasis is on whether Mr. Griffin presents a danger to society if he is released. This factor is covered under 18 U.S.C. § 3553(a)(2)(C). This is the only § 3553(a) factor addressed by either the undersigned in the subject Motion or the district court below. Because § 3553(a)(2)(C) is the only relevant § 3553(a) in Mr. Griffin's case, it is the only factor considered herewith.

Mr. Griffin, who is now 50 years old, was sentenced to serve 180 months in prison for the non-violent crime of felon in possession of a firearm. The Court entered the Judgment on January 8, 2008, almost 13 years ago. According to BOP information, Mr. Griffin's projected release date is January 17, 2023, and he is eligible for home detention on July 17, 2022.

Mr. Griffin will not be a danger to the community if the sentence is modified or reduced. His BOP Inmate Education Transcript indicates that he has taken 59 courses during his prison term. Mr. Griffin's desire to further himself through BOP education courses demonstrates a motivation to productively assimilate back into mainstream society.

Mr. Griffin's Presentence Investigation Report indicates that his last felony conviction before the subject felon in possession conviction was almost 24 years ago in December of 1996. The age of this prior conviction further supports a

finding that Mr. Griffin is not a danger to society, and that he should be granted compassionate release.

## VI. CONCLUSION

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

Submitted July 7, 2021 by:



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NO. \_\_\_\_\_

IN THE  
SUPREME COURT OF THE UNITED STATES  
OF AMERICA

LEONARD GRIFFIN  
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. 20-60876

**CERTIFICATE OF SERVICE**

I, Michael L. Scott, appointed under the Criminal Justice Act, certify that  
today, July 7, 2021, 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.  
774192149318, addressed to:

The Honorable Elizabeth Prelogar  
Acting 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.



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**Michael L. Scott**  
Assistant Federal Public Defender