

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

BOBBY EARL KEYS, PETITIONER


VS.

UNITED STATES OF AMERICA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

APPENDIX


Mr. Bobby Earl Keys, Pro Se
Reg. No. 03344-043
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 1031
COLEMAN, FLORIDA 33521-1031

APPENDIX

1

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

April 30, 2021

Lyle W. Cayce
Clerk

No. 20-61192
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

BOBBY EARL KEYS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 1:11-CR-79-1

Before DAVIS, STEWART, and DENNIS, *Circuit Judges.*

PER CURIAM:*

Bobby Earl Keys, federal prisoner # 03344-043, pleaded guilty to mail fraud in violation of 18 U.S.C. § 1341. The district court sentenced him to 150 months of imprisonment followed by three years of supervised release. Keys now appeals the district court's refusal to reconsider its denial of his

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), as amended by the First Step Act of 2018 (FSA), Pub. L. No. 115-391, § 404, 132 Stat. 5194. Whether this appeal is considered an appeal from the denial of a § 3582(c)(1)(A)(i) motion or an appeal from the denial of a motion for reconsideration, review is for abuse of discretion. *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020); *United States v. Rabhan*, 540 F.3d 344, 346-47 (5th Cir. 2008).

According to Keys, the district court misunderstood the breadth of its authority to grant relief under the compassionate release statute as amended by the FSA. Keys complains that the district court treated U.S.S.G. § 1B1.13, p.s., as binding and limited its consideration of extraordinary and compelling reasons to those listed in Application Note 1 of its commentary even though the policy statement does not, by its own terms, apply in cases where a motion for compassionate release is brought by a prisoner and not the Bureau of Prisons. He further argues that the district court erred in balancing the 18 U.S.C. § 3553(a) factors, especially with respect to his criminal history.

Keys has also filed a motion seeking a limited remand to the district court for additional consideration of his request for compassionate release. Additionally, he has moved for release pending the disposition of his appeal under 18 U.S.C. § 3143(b)(1).

Here, the district court cited to and quoted § 1B1.13, p.s., and its commentary, but it is not clear from the court's order that it treated § 1B1.13, p.s., as the dispositive boundary of what may be judicially determined to be extraordinary and compelling reasons for a sentence reduction. We need not resolve whether the district court's consideration of § 1B1.13, p.s., constituted legal error because, aside from its determination that Keys had failed to establish extraordinary and compelling reasons for a sentence

reduction under § 3582(c)(1)(A)(i), the court also concluded that Keys had not shown that the § 3553(a) factors weighed in favor of early release.

Keys challenges the district court's consideration of the § 3553(a) factors, especially its reliance on his prior armed bank robbery conviction, which is nearly 30 years old. He claims that despite his criminal history, his post-sentencing conduct shows that he is no longer a danger to the public.

Despite Keys's claim to the contrary, the district court gave due consideration to his post-sentencing rehabilitative efforts and his lack of any significant disciplinary infractions while incarcerated. Though Keys claims that the district court gave too much weight to his criminal history, his argument amounts to a mere disagreement with the court's balancing of the § 3553(a) factors, which "is not a sufficient ground for reversal." *Chambliss*, 948 F.3d at 694 (citation omitted).

The district court's order is **AFFIRMED**. Keys's motion for limited remand is **DENIED**, and his motion for release pending the disposition of his appeal is **DENIED** as moot.

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA

v.

BOBBY EARL KEYS

§
§
§
§
§
§
§

Criminal No. 1:11cr79-HSO-JCG-1

**ORDER DENYING DEFENDANT BOBBY EARL KEYS'S MOTION [110] FOR
RECONSIDERATION**

BEFORE THE COURT is Defendant Bobby Earl Keys's Motion [110] for Reconsideration. For the reasons that follow, the Court finds that this Motion [110] should be denied with prejudice.

I. BACKGROUND

A. Procedural history

Pursuant to a Plea Agreement with the Government, on November 4, 2011, Defendant Bobby Earl Keys ("Defendant" or "Keys") pleaded guilty to one count of mail fraud in violation of 18 U.S.C. § 1341. Indictment [1] at 2-3; Plea Agreement [23] at 1. On June 5, 2012, the Court sentenced Keys to a 150-month term of imprisonment, followed by three years of supervised release. Min. Entry, June 5, 2012. Keys is presently incarcerated at Coleman Low Federal Correctional Institution ("Coleman FCI") in Sumterville, Florida, and his anticipated release date is March 10, 2024. See Mot. [110]; Reply [104] at 15; Def. Ex. 4, Inmate Data [104-4] at 1.

Keys filed his initial Motion [95] for Compassionate Release on May 12, 2020, asking that the Court grant him early release or permit him to serve the remainder of his sentence in home confinement. Mot. [95] at 4; Reply [104] at 19. The Government opposed Keys's Motion on grounds that he had not yet exhausted administrative remedies, or alternatively that it should be denied on the merits. *See* Resp. [99] at 7, 11 (citing 18 U.S.C. § 3582(c)(1)(A)). On June 25, 2020, the Court entered an Order [108] denying Keys's Motion [95] without prejudice because he had not complied with the mandatory exhaustion requirements of 18 U.S.C. § 3582(c)(1)(A). Order [108].

B. Keys's Motion [110] for Reconsideration

Keys filed a pro se Motion [110] for Reconsideration on October 6, 2020, asking the Court to grant him compassionate release because he has now exhausted his administrative remedies under 18 U.S.C. § 3582(c)(1)(A). Mot. [110] at 1. Keys avers that he has exhausted his administrative remedies because he submitted an appeal of his request for compassionate release to the General Counsel on or before August 19, 2020, Ex. I [110-1] at 22, and he has not received a response to that request as of the date of the filing of his present Motion, Mot. [110] at 4-5; *see* Ex. G [110-1] at 17; Ex. H [110-1] at 19. On the merits, Keys argues that his medical conditions, particularly diabetes and hypertension, constitute "extraordinary and compelling reasons" warranting compassionate release due to the COVID-19 pandemic, Mot. [110] at 7-8, and that he does not pose a threat to the public under the applicable 18 U.S.C. § 3553(a) factors, *id.* at 10-12.

On November 23, 2020, Keys filed a Supplement [114] to his Motion [110], ostensibly to supplement his prior arguments in support of his present Motion for Reconsideration. Suppl. [114]; *see* Mot. [110]. Keys asserts that his age and pre-existing medical conditions including hypertension, moderate obesity, and diabetes, place him “at a higher risk of severe COVID-19 infection.” Suppl. [114] at 3. He maintains that the applicable 18 U.S.C. § 3553(a) factors weigh in favor of a reduction in his sentence because of his “recent history, including his successful operation of his own drywall and painting business,” his “in-fraction-free record” at Coleman FCI, and his completion of numerous educational programs offered by the Bureau of Prisons (“BOP”). *Id.* at 5.

The Government opposes Keys’s Motion [110], arguing that he has not demonstrated any extraordinary and compelling reasons warranting a sentence reduction. Resp. [113] at 3-5. The Government takes the position that despite Keys’s medical conditions, “his medical records indicate that he is receiving appropriate healthcare for all of his medical issues,” and he has therefore “failed to establish an ‘extraordinary and compelling’ reason for a sentence reduction.” *Id.* at 5. The Government also maintains that Keys’s request for compassionate release should be denied because he still poses a significant danger to the safety of the community, and because the applicable factors set forth at 18 U.S.C. § 3553(a) weigh against his release. *See id.* at 5-6.

II. DISCUSSION

A. Whether Keys has exhausted his administrative remedies

Section 3582(b) of Title 18 of the United States Code provides that a judgment of conviction constitutes a final judgment, although it can be modified pursuant to the provisions of 18 U.S.C. § 3582(c). At issue in this case is a requested modification under § 3582(c)(1)(A)(i), which states in relevant part as follows:

[t]he court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

- (A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant *after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons 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--
 - (i) extraordinary and compelling reasons warrant such a reduction

18 U.S.C. § 3582(c)(1)(A)(i) (emphasis added).

While 18 U.S.C. § 3582(c)(1)(A) contains a mandatory exhaustion requirement, *see United States v. Franco*, 973 F.3d 465, 468 (5th Cir. 2020), it appears that Keys has now exhausted his administrative remedies by the lapse of 40 days from the receipt of his appeal to the General Counsel, Ex. I [110-1] at 22; *see* 28 C.F.R. § 542.18 (stating a response is required by the General Counsel within

40 calendar days of an inmate's filing of a BP-11); *see also* 28 C.F.R. §§ 542.13 through 542.15 (setting forth the BOP's Administrative Remedy Procedure, which would entail appealing the warden's decision to the appropriate regional director, and then, if unsatisfied with the regional director's decision, appealing this decision to the General Counsel of the BOP). The Government has not brought forth any evidence to dispute or contradict Keys's assertions in this regard, nor has it argued that Keys has not exhausted his administrative remedies. The Court therefore considers the merits of Keys's request.

B. Whether Keys is entitled to a sentence reduction

Even if Keys has exhausted his administrative remedies, the Court finds that his Motion [110] for Compassionate Release should also be denied on the merits.

A sentencing court may reduce a term of imprisonment on motion by a defendant for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A) if it finds that "extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). In considering district courts' denials of similar motions, the Fifth Circuit has considered the policy statement issued by the Sentencing Commission at United States Sentencing Guidelines ("U.S.S.G.") § 1B1.13. *See, e.g., United States v. Smith*, 828 F. App'x 215, 216 (5th Cir. 2020) (citing U.S.S.G. § 1B1.13, p.s.). Under § 1B1.13(1)(A), a reduction is appropriate when, after considering the factors set forth in 18 U.S.C. § 3553(a) to the extent they are applicable, a court determines that extraordinary and

compelling reasons warrant a reduction, and the defendant is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. § 3142(g).

See U.S.S.G. § 1B1.13.

According to Application Note 1 of § 1B1.13, the following are deemed extraordinary and compelling reasons warranting a reduction: (1) the defendant's medical condition; (2) the defendant's age; (3) family circumstances; or (4) other reasons. U.S.S.G. § 1B1.13, cmt. n.1. With respect to a defendant's medical condition, the Application Note contemplates terminal illnesses, serious physical or medical conditions, serious functional or cognitive impairments, or deteriorating physical or mental health because of the aging process, that "substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover." *Id.* at cmt. n.1(A). "Other reasons" is a catchall category defined as "extraordinary and compelling reasons other than, or in combination with" medical condition, age, or family circumstances as "determined by the Director of the Bureau of Prisons." *Id.* at cmt. n.1(D).

Keys maintains that his pre-existing health conditions, particularly his medical conditions of diabetes, moderate obesity, and hypertension, constitute "extraordinary and compelling reasons" warranting compassionate release due to the COVID-19 pandemic. Mot. [110] at 11; Suppl. [114] at 3. He avers "the fact that he takes Lisinopril, amlodipine, Atorvastatin, Hydralrine, Hydrochlorathiazide [sic] and is Insulin-Dependen[t] (i.e. twice day) to treat his diabetes, heart

conditions, hypertension, and moderate [obesity] medical conditions likely place him at higher risk for severe COVID-19 infection.” Suppl. [114] at 3. Keys further alleges that Coleman FCI “is the site of the leading coronavirus BOP’s facility in the United States from COVID-19.” Mot. [110] at 9.¹ He points to guidance from the Centers for Disease Control and Prevention (“CDC”) that highlights diabetes and hypertension as pre-existing conditions that result in an increased risk of contracting COVID-19. *Id.* at 11.

Courts have considered this question and agree that generalized concerns of contracting COVID-19 do not constitute “extraordinary and compelling reasons” justifying release. *See, e.g., United States v. Perez-Serrano*, No. CR 5:13-CV-2-DCB-LRA, 2020 WL 2754914, at *2 (S.D. Miss. May 27, 2020); *United States v. Wright*, No. CR 16-214-04, 2020 WL 1976828, at *6 (W.D. La. Apr. 24, 2020); *United States v. Ayala-Calderon*, No. 419CR00276ALMKPJ, 2020 WL 1812587, at *2 (E.D. Tex. Apr. 8, 2020); *United States v. Clark*, No. CR 17-85-SDD-RLB, 2020 WL 1557397, at *4 (M.D. La. Apr. 1, 2020); *United States v. Munguia*, No. 3:19-CR-191-B (03), 2020 WL 1471741, at *4 (N.D. Tex. Mar. 26, 2020); *see also United States v. Eberhart*, No. 13-CR-00313-PJH-1, 2020 WL 1450745, at *2 (N.D. Cal. Mar. 25, 2020); *United States v. Fitzgerald*, No. 2:17-cr-00295-JCM-NJK, 2020 WL 1433932, at *2 (D. Nev. Mar. 24, 2020). This must be the rule because if it were otherwise and courts were required to release every prisoner with a fear or risk of contracting COVID-19, the

¹ However, BOP reporting (updated daily) on Coleman FCI shows 1 reported case of a positive test among inmates and 22 reported cases of positive tests among staff members, with 224 inmates and 11 staff members recovered from COVID-19, as of the date the of filing of this Order. U.S BUREAU OF PRISONS, COVID-19 Update, <https://www.bop.gov/coronavirus/> (last visited December 1, 2020).

courts “would then be obligated to release every prisoner.” *Wright*, 2020 WL 1976828, at *5.

The Court has not located any Fifth Circuit precedent directly addressing this question, but the Third Circuit has cited this logic approvingly and noted that “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.” *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). The Court finds this logic persuasive and that it should apply with equal force to this case.

Other courts considering the effect of pre-existing medical conditions on this analysis have held that such conditions “in and of itself [are] not sufficient to establish extraordinary and compelling reasons to justify a reduction in [d]efendant’s sentence.” *See, e.g., United States v. Takewell*, No. CR 3:14-00036, 2020 WL 4043060, at *3 (W.D. La. July 17, 2020) (finding that defendant’s “general complaint” of obesity was “not consistent with extraordinary or compelling circumstances” justifying release); *United States v. Stiger*, No. 3:12-CR-54-L-2, 2020 WL 3884485, at *2 (N.D. Tex. July 9, 2020) (finding that defendant’s chronic medical conditions, including hypertension and diabetes, insufficient to justify reduction in sentence because defendant did not establish “exceptional and compelling circumstances”); *United States v. Olejniczak*, No. 1:15-CR-00142 EAW, 2020 WL 2846591, at *4 (W.D.N.Y. June 2, 2020) (finding defendant’s pre-existing

medical conditions, including hypertension, insufficient to justify reduction in sentence).

Keys's generalized concern of contracting COVID-19 is not an "extraordinary and compelling reason" justifying his release under 18 U.S.C. § 3582(c)(1)(A), despite his diagnoses of pre-existing medical conditions. Keys's medical records show that he has received several prescriptions to control his diabetes, including diabetic test strips and insulin. Ex. 5 [107-1] at 4-6, 13-25 (filed restricted). He was also prescribed lisinopril, amlodipine, atorvastatin, hydralazine, and hydrochlorothiazide to control his blood pressure and hypertension. *Id.* at 7. The medical records indicate that Keys's health conditions are being monitored and treated with prescription drugs, *id.* at 7-9, and that he is under the supervision of health care professionals at the BOP, *id.* at 26-59. While Keys's health conditions may be characterized as "chronic," the medical evidence supports the conclusion that they do not "substantially diminish[] the ability of the defendant to provide self-care within the environment of a correctional facility," U.S.S.G. § 1B1.13 n.1(A)(ii), as evidenced by his ability to receive medical care from BOP for these conditions and administer prescribed medications himself, *id.* This is insufficient to demonstrate an "extraordinary and compelling reason" justifying a sentence reduction under 18 U.S.C. § 3582(c)(1)(A).

Keys also contends that his moderate obesity places him at an increased risk of contracting COVID-19. Suppl. [114] at 2-3. However, obesity does not meet the extraordinary and compelling standard established by the Sentencing Guidelines

policy statement. U.S.S.G. § 1B1.13, cmt. n.1. Keys, as a result of his obesity, is not suffering from a serious physical or medical condition, serious functional or cognitive impairment, or deteriorating physical or mental health because of the aging process that “substantially diminishes” his ability to provide self-care within Coleman FCI. *See id.* While it is true that, according to CDC guidance, obesity is an underlying health condition that poses increased risk for severe illness from COVID-19, by itself it does not afford adequate grounds for compassionate release. *See Takewell*, No. CR 3:14-00036, 2020 WL 4043060, at *3; *see also United States v. Gheith*, No. CR 14-69, 2020 WL 5850162, at *4 (E.D. La. Oct. 1, 2020) (noting that “courts have found obesity does not provide adequate grounds for compassionate release” and finding that defendant’s obesity “does not rise to the level of extraordinary and compelling”); *United States v. Denault*, No. 11 CRIM. 121-7 (GBD), 2020 WL 2836780, at *2 (S.D.N.Y. June 1, 2020) (finding defendant’s pre-existing medical condition of obesity insufficient to justify reduction in sentence).

Here, Keys’s medical records also reveal that he has received counseling services for dieting, exercising, and weight loss, *see* Ex. 5 [107-1] at 32, indicating that he is capable of self-care while incarcerated and has access to services to address his obesity. Given that Keys takes regular medication for his hypertension and diabetes, he has shown that he is capable of managing his obesity, and based upon the medical evidence submitted, *see* Ex. 5 [107-1], Keys’s pre-existing medical conditions are not sufficient to establish extraordinary and compelling reasons to justify a reduction in his sentence.

Keys also asserts that his age qualifies as an extraordinary and compelling reason to justify a sentence reduction. Suppl. [114] at 3. According to the Sentencing Commission's policy statement on compassionate release, a defendant's age may qualify as an extraordinary and compelling reason for a sentence reduction. U.S.S.G. § 1B1.13, cmt. n.1(B). The defendant's age makes him eligible for compassionate release if he meets three criteria: (i) defendant "is at least 65 years old"; (ii) defendant "is experiencing a serious deterioration in physical or mental health because of the aging process"; and (iii) defendant "has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less." *Id.* Here, Keys is 58 years old, Ex. B [114-2] at 2, he has served approximately 72 percent of his 150-month term of imprisonment, and there is no indication that he is experiencing a serious deterioration in his physical or mental health. Keys has failed to establish that his age qualifies as an extraordinary and compelling reason for a sentence reduction.

Nor has Keys demonstrated that the applicable factors set forth under 18 U.S.C. § 3553(a) weigh in favor of his early release. These factors include:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and sentencing range established for the applicable category of offense or defendant;
- (5) any pertinent policy statement;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records; and
- (7) the need to provide restitution to any victims of the offense.

United States v. Chambliss, 948 F.3d 691, 693 n.3 (5th Cir. 2020) (citing 18 U.S.C. § 3553(a)).

Keys notes that he has no disciplinary incidents while incarcerated and has completed “at least 70 hours of education courses.” Mot. [110] at 13. He claims that he has created a plan to transition back into society, including living with his wife and his granddaughter. *Id.* at 14. Keys states that the Court should take into consideration his reentry plan and his “more recent history, including his successful operation of his own drywall and painting business, in which he had provided 16 [families] with a job prior to failing from grace due to his underlying criminal offense.” Suppl. [114] at 5. Keys has attached his sentencing computation data, Ex. A [114-1] at 2-3, to his Supplement [114] to his Motion, and has also attached his individualized reentry plan, Ex. B [114-2] at 2-4. The Government counters that a reduction in Keys’s sentence would “demean the serious nature” of the underlying offense he committed, and that the applicable § 3553(a) factors weigh against compassionate release. Resp. [113] at 6.

Keys is currently serving a 150-month term of imprisonment, of which he has served approximately 108 months. Resp. [113] at 6. According to the Presentence Investigation Report (“PSR”) prepared in this case, Keys’s offense level was a 27, and his criminal history was a category V, with a Guidelines imprisonment range of 120 to 150 months. PSR [32] at 14-19 (filed under seal). Keys was convicted of a serious offense, mail fraud, and the sentence imposed in this case reflects that seriousness, as well as the need for deterrence and protection of the public under

the applicable factors set forth at § 3553(a). Keys also has a significant criminal history, including convictions of armed bank robbery and conspiracy to transport stolen money orders. PSR [32] at 14-19 (filed under seal). The Court finds that releasing Keys from incarceration at this time would not reflect the gravity of his offense, protect the public, or afford adequate deterrence. *See* 18 U.S.C. § 3553(a). For these reasons as well, Keys's Motion [110] should be denied on the merits.

III. CONCLUSION

IT IS, THEREFORE, ORDERED AND ADJUDGED that, Defendant Bobby Earl Keys's Motion [110] for Reconsideration is **DENIED**.

SO ORDERED AND ADJUDGED, this the 1st day of December, 2020.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE

APPENDIX

3

|

97.1
**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHSN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 1:11cr00079-HSO-JMR

BOBBY EARL KEYS

**Reply in Support of Motion for Compassionate Release
Under 18 U.S.C. § 3582(c)(1)(A)**

Comes now Defendant Bobby Earl Keys and files this Reply in support of his Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A). In support of this Reply, Mr. Keys presents the following:

I. Introduction.

This Reply is filed in support of the pro se Motion for Compassionate Release filed by Mr. Keys on May 12, 2020. Dkt. #95. The government filed a Response in opposition to the Motion on May 26, 2020. Dkt. #99. Given that the original motion was filed without benefit of counsel, Mr. Keys asks the Court to consider certain facts and points of law that were not originally raised in the Motion. Should the government wish to file a surreply, Mr. Keys will not oppose such a request.

In summary, Mr. Keys is currently incarcerated at Coleman Low FCI in Sumterville, Florida and seeks compassionate release because he is at high-risk from COVID-19 due to his medical condition. He suffers from diabetes, hypertension, and obesity, all of which put him at greater risk of severe illness or death should he become infected with COVID-19. In light of these circumstances, Mr. Keys respectfully requests early release or home confinement. The Court has the authority to grant such relief under 18 U.S.C. § 3582, which allows for compassionate release of an incarcerated person based on dangers posed by COVID-19 under its “extraordinary and compelling reasons” provision.

II. This Court has the authority to grant 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 BOP to resentence prisoners under 18 U.S.C. § 3582(c)(1)(A)(i), if “extraordinary and compelling reasons” exist. Moreover, the justifications for resentencing need not involve only terminal illness or urgent dependent care for minor children.

In addition to expanding upon the reasons for granting compassionate release, 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 initiate release, a court can now resentence “upon motion of the defendant,” after the inmate

His request was denied on April 8, 2020. *See* Warden's Denial, Exhibit 3. More than thirty days has elapsed since his request was received by the BOP, therefore Mr. Keys has satisfied the exhaustion requirements of 18 U.S.C. § 3582. The Court may now consider his motion on its merits.

IV. The COVID-19 pandemic warrants release of Mr. Keys to home confinement.

The COVID-19 outbreak presents a compelling and extraordinary circumstance that warrants compassionate release. On March 11, 2020, the World Health Organization officially classified the new strain of coronavirus, COVID-19, as a pandemic.¹ The pandemic has led to the infection of at least 8,242,999 people worldwide, leading to 445,535 confirmed deaths as of June 18, 2020.² According to the Centers for Disease Control and Prevention (CDC), approximately 2,132,321 people have been infected in the United States alone, leading to 116,862 deaths as of June 18, 2020.³ In response to the pandemic, the White House declared a national emergency, under Section 319 of the Public Health Service Act, 42 U.S.C. § 247(d)).⁴

¹ "WHO Characterizes COVID-19 as a Pandemic," World Health Organization (March 11, 2020), available at <https://bit.ly/2W8dwpS>.

² "Corona Virus Disease Pandemic," World Health Organization, available at: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019>

³ "Coronavirus Disease 2019," Center for Disease Control, available at: <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>

⁴ The White House, Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak (March 13, 2020), available at

Unfortunately, the high-density conditions of confinement at BOP facilities creates an optimal environment for the transmission of contagious disease.⁵ 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.”⁶ As of June 16, 2020, the facilities at Coleman Low have at least one staff with an “active” case of COVID-19.⁷ However, the BOP acknowledges that its numbers are not necessarily an indication of the true extent of COVID-19 in its facilities. Asked whether 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.”⁸

<https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-COVID-19-outbreak/>.

⁵ 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>.

⁶ “Achieving a Fair and Effective COVID-19 Response,” Yale Law School, available at: https://law.yale.edu/sites/default/files/area/center/ghjp/documents/final_covid-19_letter_from_public_health_and_legal_experts.pdf

⁷ “COVID-19 Coronavirus,” Federal Bureau of Prisons, available at: <https://www.bop.gov/coronavirus/>

⁸ 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>.

In addition to the dangers of known active cases of COVID-19, the risk factors for a rapid increase are present. 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.”⁹ 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.¹⁰ The coronavirus is highly contagious and those who are infected can spread the virus even if they are asymptomatic.¹¹ Given the high-density and frequent arrival and departure of staff, BOP facilities are a nearly ideal incubation environment for COVID-19.

Partly because of these conditions, the growth in cases within BOP facilities does not appear to be under control. As of June 17, 2020, BOP has identified 1,190 federal inmates and 170 BOP staff with active cases of COVID-19.¹² Tragically, at least 85 inmates have now died from COVID-19 while in BOP custody, as well as one staff member.¹³

⁹ “Coronavirus Disease 2019 (COVID-19), How It Spreads,” Center for Disease Control and Protection, Mar. 4, 2020, available at: <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>

¹⁰ *Id.*

¹¹ “Features, Evaluation and Treatment Coronavirus (COVID-19),” National Center for Biotechnology Information, May 18, 2020, available at: https://www.ncbi.nlm.nih.gov/books/NBK554776/#_ncbi_dlg_citbx_NBK554776.

¹² “COVID-19 Coronavirus,” Bureau of Prisons, available at: <https://www.bop.gov/coronavirus/>

¹³ *Id.*

Since the reported BOP figures are limited to only confirmed cases, the actual COVID-19 problem is likely much larger than these numbers suggest. As the court noted in *United States v. Esparza*, “testing inside prisons has been scant except for people who self-report symptoms — which means that statistics about the number of infections already in BOP facilities are largely meaningless.” No. 1:07-CR-294, 2020 WL 1696084, *2 (D. Id. Apr. 7, 2020), *appeal pending*, No. 20-30083 (9th Cir.). *See also* Order at 5, *United States v. Caddo*, No. 3:18-cr-08341-JJT, ECF No. 174 (D. Ariz. Mar. 23, 2020) (“it is unknowable whether BOP detainees or inmates have COVID-19 until they are tested, and BOP has not conducted many or any such tests because, like the rest of the country, BOP has very few or no actual COVID-19 test packets”).

Despite the widespread understanding of the need to prevent further exposure of inmates and staff within BOP facilities, very little of substance has been done to decrease the risk of spreading COVID-19. 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.¹⁴

In recognition of the unique risks that correctional facilities pose to both inmates and employees, more than 400 former DOJ leaders, attorneys, and federal judges recently 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-19.¹⁵ Similarly, 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.”¹⁶ On April 3, 2020, Attorney General Barr issued a memorandum directing the BOP to move vulnerable prisoners into home confinement with due “dispatch.”¹⁷ 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

¹⁴ 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>.

¹⁵ 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>.

¹⁶ 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.

¹⁷ 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>.

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.”¹⁸

Inmates are not the only people at risk from BOP facilities and asking for help. 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” at BOP facilities nationwide.¹⁹ The union listed 100 of 122 facilities nationwide with alleged safety or health hazards.²⁰ The complaint details numerous failings by the BOP in maintaining a safe environment for its workers, and by extension, the inmates as well.

Based on the BOP complaint, it appears that there is widespread belief among the rank and file of BOP staff that the facilities are unsafe and that BOP is not taking the actions necessary to prevent the spread of COVID-19. This is consistent with what we know from numerous medical experts: jails and prisons

¹⁸ 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>.

¹⁹ U.S. Department of Labor, OSHA Complaint, (June 15, 2020), p. 3, available at: <https://www.nacdl.org/getattachment/65cffe9c-0b2b-4018-a7a4-d1006c262141/bop-osh-complaint.pdf>

²⁰ *Id.* at p.5

are among the most dangerous places to be during an epidemic because they create the ideal environment for transmission of contagious diseases.²¹ According to Dr. Jaime Meyer of the Yale Law School Liman Center, prisons pose a particular risk for the spread of contagious disease.²² 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;” “infection control is challenging in these settings,” according to public health experts.²³ Jails and prisons are sites of disproportionate infectious disease rates.²⁴ 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.²⁵

²¹ 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> (“Thisefore, 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>.

²² “Expert Declaration of Dr. Jamie Meyer, Assistant Professor of Medicine at Yale School of Medicine,” Yale Law School, (June 12, 2020) available at: https://law.yale.edu/sites/default/files/area/center/liman/20.03.12_exp._declaration_outline_final_and_signed2_dr._jaimie_meyer.pdf

²³ “Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Othis 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.

²⁴ 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).

²⁵ *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>.

~~Based on the experience of governments across the world,~~ it appears that there is no easy way to make prisoners safe while in custody. In China, officials have confirmed the coronavirus spreading rapidly in Chinese prisons.²⁶ 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.”²⁷ Courts across Iran have granted 54,000 inmates furlough as part of the measures to contain coronavirus across the country.²⁸ As these other countries are beginning to recognize, the only effective strategy available is to identify non-violent inmates, especially those at elevated risk of infection, and remove them from the prison population. Where prison administrators have failed to take this approach, the results have been predictably disastrous.

²⁶ 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>.

²⁷ 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>.

²⁸ 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/af98b0a38aaabedbc059092db356697>.

One tragic example of ~~COVID-19's~~ potential for exponential growth is a guard at Rikers Island in New York City who recently tested positive.²⁹ Just three days later, at least 38 people at Rikers had tested positive.³⁰ Despite efforts to release hundreds of detainees to try to stem the tide of infection there,³¹ the virus continues to spread rapidly. As of April 10, 2020, 304 inmates and 518 staffers had tested positive, and one inmate had died.³² 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."³³ On April 14, 2020, another Rikers inmate died of COVID-19.³⁴

²⁹ *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>.

³⁰ *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>.

³¹ 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/>.

³² 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/>.

³³ 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.

³⁴ Rosenberg, *supra*.

Even diligent attempts to prevent the spread within a prison have proved inadequate. On March 23, two inmates in Cook County, Illinois 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.³⁵ On April 19, the count has risen to 395 inmates and 225 staff members, and four inmates had died.³⁶ The emerging conclusion is clear: only through judicious release of non-violent offenders can further unnecessary deaths be avoided.

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.”³⁷ “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.”³⁸

³⁵ 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>.

³⁶ *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/>.

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

³⁸ *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).

~~At this point, early release to home confinement for the most vulnerable~~
 inmates is the only realistic way to control the outbreak within BOP facilities. Mr. Keys is powerless to take the preventative self-care measures directed by the CDC to remain safe from COVID-19 infection. He cannot self-quarantine or employ social distancing while incarcerated. BOP facilities typically have a number of community spaces, including a common room, laundry facilities, barbershop, medical areas, dining hall, library, and gym. These high-density areas are precisely the kind of spaces that contribute to the propagation of COVID-19. Correctional health experts worry that no matter what precautions are taken by crowded prisons, these facilities may become incubators for the COVID-19 disease.³⁹ Prisons cannot maintain the level of separation and sanitation necessary to prevent widespread infection.⁴⁰ As stated above, BOP is not taking adequate steps to contain the virus and protect the inmate population. Releasing Mr. Keys will not only protect him from these conditions, but would allow BOP to lower the population density at its facilities, thereby reducing the spread of COVID-19, and assisting in the effort of saving lives of both inmates and staff.

V. Mr. Keys' poor health puts him at higher risk for infection and death from COVID-19.

³⁹ 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>.

⁴⁰ "Prisons and Jails are Vulnerable to COVID-19 Outbreaks," *The Verge* (Mar. 7, 2020), available at <https://bit.ly/2TNcNZY>.

~~Mr. Keys is 58 years old, and has currently served approximately 85 months~~
of his 150-month sentence. *See* BOP Inmate Data, Exhibit 4. According to the BOP, his projected release date is March 10, 2024, and he will be eligible for home confinement on September 10, 2023. *Id.* at p.2. Mr. Key's sentence was imposed as a result of his conviction for mail fraud, a non-violent offense. As noted in his PSR, his criminal history category is V. PSR, ¶ 74, Dkt. #32.

Mr. Keys suffers from multiple medical conditions that put him at higher risk of serious illness or death should he become infected with COVID-19. First, he has Type II diabetes, which requires ongoing treatment with daily insulin. *See* BOP Medical Records, Exhibit 5, p.3-5. In addition, Mr. Keys has been diagnosed by the BOP with hypertension, with recent blood pressure readings as high as 160/94. *Id.*, at p.2. According to the CDC, any blood systolic pressure reading above 140 or diastolic reading above 90 constitutes stage 2 hypertension.⁴¹ The CDC lists both diabetes and hypertension among the conditions which increase the risk associated with contracting COVID-19.⁴²

Given these conditions, the risk of COVID-19 for Mr. Keys is especially great. The CDC recommends those in higher risk categories, such as Mr. Keys,

⁴¹ High Blood Pressure, Diagnosis & Treatment," Mayo Clinic (June 3, 2020), available at: <https://www.mayoclinic.org/diseases-conditions/high-blood-pressure/diagnosis-treatment/drc-20373417>.

⁴² "Groups at Highis Risk for Severe Illness," Center for Disease Control and Protection, June 18, 2020, available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

make special effort to avoid exposure.⁴³ For those at higher risk, every precaution must be made, especially in light of the most recent CDC research which suggests COVID-19 is twelve times more deadly for those at elevated risk than it is for the general population.⁴⁴

There is an urgent need to act now, because COVID-19 has already spread to the facilities at Coleman, and it is likely to spread more quickly in prison than in the general community. The BOP's efforts to combat this pandemic may be well-intentioned, but they are inarguably inadequate, as demonstrated by the more than 80 deaths that have thus far occurred in BOP facilities.

The dangerous environment at Coleman, coupled with Mr. Keys' documented medical condition, constitute the sort of extraordinary conditions that warrant compassionate release. Release after serving seven years would not erase the message this Court sent to him, and to the public, about the seriousness of his offense. Every day of the last seven years in prison has been a reminder of the mistakes he made, and the restrictions placed upon him during his supervised release will be a further reminder of his need to obey the law. Moreover, just as the Court must assure that Mr. Keys is adequately punished, there is also a need to ensure that he is safe. It was not this Court's intention to put Mr. Keys in danger

⁴³ *Id.*

⁴⁴ Stokes EK, Zambrano LD, Anderson KN, et al. Coronavirus Disease 2019 Case Surveillance — United States, January 22–May 30, 2020. MMWR Morb Mortal Wkly Rep. ePub: 15 June 2020. DOI: <http://dx.doi.org/10.15585/mmwr.mm6924e2>

for his life, but as long as there is no adequate treatment for COVID-19, his continued incarceration is a possible death sentence. In recognition of these extraordinary circumstances, early release is the most reasonable option.

VI. Mr. Keys is not a danger to the public.

Since his incarceration, Mr. Keys been doing his best to rehabilitate himself. He has made the most of his time with the BOP since his incarceration in 2013, completing at least more than 70 hours of educational courses, including a current course in real estate. *See* BOP Inmate Education Data, Exhibit 6. From a statistical perspective, people in Mr. Keys age group are unlikely to commit further crimes, as there is a marked decrease in criminal activity among people over fifty years old. Even among those with a Criminal History Category V, only 29.4% of inmates released between the ages of 50-59 are ever reincarcerated.⁴⁵

Given the above factors and the non-violent nature of Mr. Keys' offense, compassionate release can be granted without any risk to public safety. Mr. Keys implores the Court to grant his request. Every day that he remains incarcerated poses a serious and avoidable risk to his health.

VII. If released, Mr. Keys would be able to live in a much safer environment than that provided by the BOP.

⁴⁵ "The Effects of Aging on Recidivism Among Federal Offenders," United States Sentencing Commission, A-44, 2017. Available at: https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf

If granted compassionate release, Mr. Keys would return home to live with his wife Connie Keys in their home in Gulfport, Mississippi. ~~See Affidavit of~~ Connie Keys, Exhibit 7. He would share the three bedroom, two bathroom home with his wife and Ms. Keys' granddaughter. *Id.* The United States Office of Probation has previously inspected the home and noted that it is approximately 2,800 square feet in size, and "well kept." See PSR, ¶ 92. Given the cramped ^{Overcrowding} ~~population at FCC Coleman low whereas social distancing is impossible~~ living conditions in BOP facilities, and the ongoing infections among inmates and staff there, Mr. Keys will be significantly safer from infection at home than he would be in BOP custody. Unlike his current conditions at Coleman, he will be in close contact with only two other persons, and will be able to follow all social distancing recommendations to keep himself and those around him safe. He will also live in much more sanitary conditions at home than he would at BOP, having access to hand sanitizers, private bathrooms and eating facilities. All these factors make early release a safer option for him than BOP custody.

VIII. Conclusion.

The COVID-19 virus is highly transmissible, extraordinarily dangerous, and poses a severe threat to all inmates at BOP facilities, especially those in poor health such as Mr. Keys. The conditions at BOP facilities do not allow Mr. Keys to take the self-care measures prescribed by the CDC. This leaves him unsafe, and could result in an effective life sentence for his offense. Granting early release or home

~~confinement~~ would allow him to protect himself and help contribute to the national effort to control the spread of COVID-19. While incarcerated, ~~he has shown that~~ he has accepted the seriousness of his offense, and committed himself to being a responsible member of society. Because of the extraordinary circumstances presented by the combination of the global COVID-19 pandemic and his increased vulnerability from his serious medical conditions, he respectfully asks the Court to grant his motion and order his early release, or to allow the remainder of his sentence to be served in home confinement.

WHEREFORE, Defendant Bobby Earl Keys asks this Court to grant his Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A).

Respectfully submitted June 19, 2020.

Bobby Earl Keys,
Defendant

by: s/ Joshua T. Kadel
Joshua Kadel (MB # 105825)
Research & Writing Specialist
Southern District of Mississippi
2510 14th Street, Suite 902
Gulfport, MS 39501
Phone: (228) 865-1202
Fax: (228) 867-1907
Email: josh_kadel@fd.org

Attorney for Defendant

**Additional material
from this filing is
available in the
Clerk's Office.**