

United States District Court

Eastern District of Tennessee

UNITED STATES OF AMERICA
v.
VICENTE CORONA

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Case Number: 3:05-CR-148

Stephen Ross Johnson
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s): ____
 pleaded nolo contendere to count(s) ____ which was accepted by the court.
 was found guilty on count(s) 1,2,3,4, and 5 of the Indictment after a plea of not guilty.

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
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See next page.

The defendant is sentenced as provided in pages 2 through 7 of this judgment and the Statement of Reasons. The sentence is imposed pursuant to the Sentencing Reform Act of 1984 and 18 U.S.C. §3553.

The defendant has been found not guilty on count(s) ____.
 Count(s) ____ [] is [] are dismissed on the motion of the United States.

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and the United States attorney of any material change in the defendant's economic circumstances.

March 5, 2010

Date of Imposition of Judgment

s/Thomas W. Phillips

Signature of Judicial Officer

THOMAS W. PHILLIPS, United States District Judge

Name & Title of Judicial Officer

March 5, 2010

Date

DEFENDANT: VICENTE CORONA
CASE NUMBER: 3:05-CR-148

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
21 U.S.C. §§ 846 and 841(a)(1)	Conspiracy to Distribute and Possess With Intent to Distribute Five Kilograms or More of Cocaine Hydrochloride and Marijuana	January 7, 2006	1
18 U.S.C. §§ 1956(a)(1)(A)(i) and 1956(h)	Conspiracy to Commit Money Laundering	January 7, 2006	2
21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A) and Title 18 U.S.C. § 2	Aiding and Abetting the Distribution of Five or More Kilograms of Cocaine Hydrochloride and Marijuana	May 6, 2005	3
21 U.S.C. §§ 841(a)(1)	Aiding and Abetting the Distribution of Five or More Kilograms of Cocaine Hydrochloride	May 26, 2005	4
21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), and Title 18 U.S.C. § 2	Aiding and Abetting the Distribution of Five or More Kilograms of Cocaine Hydrochloride	June 17, 2005	5

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of Life.

This term of imprisonment consists of terms of Life as to each of Counts One, Three, Four, and Five, and 240 months as to Count Two, to run concurrent.

The court makes the following recommendations to the Bureau of Prisons:

The Court will recommend that the defendant receive 500 hours of substance abuse treatment from the BOP Institution Residential Drug Abuse Treatment Program.

Furthermore, the court recommends that the defendant be placed in a BOP Facility located in Southern California, and that the defendant receive credit for all time served while in federal custody.

The defendant is remanded to the custody of the United States Marshal.

[] The defendant shall surrender to the United States Marshal for this district:
[] at __ [] a.m. [] p.m. on __.
[] as notified by the United States Marshal.

[] The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
[] before 2 p.m. on ____.
[] as notified by the United States Marshal.
[] as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at , with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: VICENTE CORONA
CASE NUMBER: 3:05-CR-148

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of ten years.

This term consists of a term of ten years as to Counts One, Three, Four, and Five, and three years as to Count Two, all such terms to run concurrently.

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state, or local crime.

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependants and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

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SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in a program of testing and/or treatment for drug and/or alcohol abuse, as directed by the probation officer, until such time as he is released from the program by the probation officer.

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CRIMINAL MONETARY PENALTIES

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 6. The assessment is ordered in accordance with 18 U.S.C. § 3013.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
Totals:	\$ 500.00	\$	\$

The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

The defendant shall make restitution (including community restitution) to the following payees in the amounts listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, if the United States is a victim, all other victims, if any, shall receive full restitution before the United States receives any restitution, and all restitution shall be paid to the victims before any restitution is paid to a provider of compensation, pursuant to 18 U.S.C. §3664.

<u>Name of Payee</u>	<u>*Total Amount of Loss</u>	<u>Amount of Restitution Ordered</u>	<u>Priority Order or Percentage of Payment</u>
TOTALS:	\$ <u> </u>	\$ <u> </u>	

If applicable, restitution amount ordered pursuant to plea agreement \$

The defendant shall pay interest on any fine or restitution of more than \$2500, unless the fine or restitution is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. §3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

The interest requirement is waived for the fine and/or restitution.

The interest requirement for the fine and/or restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A Lump sum payment of \$ 500.00 due immediately, balance due
[] not later than ___, or
[] in accordance with [] C, [] D, or [] E or [] F below; or

B Payment to begin immediately (may be combined with [] C, [] D, or [] F below); or

C Payment in __ (e.g., equal, weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after the date of this judgment; or

D Payment in __ (e.g., equal, weekly, monthly, quarterly) installments of \$ __ over a period of __ (e.g., months or years), to commence __ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E Payment during the term of supervised release will commence within __ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Unless otherwise directed by the court, the probation officer, or the United States attorney, all criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be made to **U.S. District Court, 800 Market St., Suite 130, Knoxville, TN 37902**. Payments shall be in the form of a check or a money order, made payable to U.S. District Court, with a notation of the case number including defendant number.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

[] Joint and Several

Defendant Name, Case Number, and Joint and Several Amount:

[] The defendant shall pay the cost of prosecution.

[] The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:

\$2,600,000 in United States currency

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)
v.)
VICENTE CORONA)) No. 3:05-CR-148

MEMORANDUM AND ORDER

In March 2010, the Honorable Thomas W. Phillips sentenced the defendant to an enhanced statutory minimum sentence of life imprisonment for controlled substance and money laundering offenses. The defendant is presently housed at FCI Victorville Medium I. *See* Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Nov. 3, 2020).

Now before the Court is the defendant's counseled motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). [Doc. 638]. The United States has responded in opposition to the motion, and the defendant has submitted a reply. [Docs. 642, 643]. For the reasons that follow, the motion will be denied.

I. BACKGROUND

The defendant brings his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i), as amended by the First Step Act of 2018. In support, he cites the COVID-19 pandemic, his age (51), his rehabilitative efforts and family support, and the possibility that he would receive a lesser term of imprisonment if sentenced today under current law.

II. DISCUSSION

Section 3582(c)(1)(A)(i) allows district courts to consider prisoner motions for sentence reduction upon a finding of “extraordinary and compelling reasons.” That statute, as amended by the First Step Act of 2018, provides in relevant part:

[T]he 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 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 ... and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission....

18 U.S.C. § 3582(c)(1)(A). Prior to the First Step Act, a motion for compassionate release could only be brought by the BOP Director, not a defendant. *See* 18 U.S.C. § 3582(c)(1)(A) (2017). The First Step Act amended § 3582(c)(1)(A) to allow a defendant to file a motion for compassionate release after first asking the BOP to file such a motion on his behalf. *See, e.g., United States v. Alam*, 960 F.3d 831, 832 (6th Cir. 2020). Beyond this change, the statute still applies the same requirements to a defendant’s motion for compassionate release as previously applied to motions by the BOP Director. *See, e.g., United States v. Beck*, 425 F. Supp. 3d 573, 578-79 (M.D.N.C. 2019).

The United States Sentencing Commission has promulgated a policy statement regarding compassionate release under § 3582(c), which is found at U.S.S.G. § 1B1.13 and the accompanying application notes. *See United States v. McGraw*, No. 2:02-cr-00018-

LJM-CMM, 2019 WL 2059488, at *3 (S.D. Ind. May 9, 2019). While that particular policy statement has not yet been updated to reflect that defendants (and not just the BOP) may move for compassionate release, courts have universally turned to U.S.S.G. § 1B1.13 to provide guidance on the “extraordinary and compelling reasons” that may warrant a sentence reduction. *Id.* at *2 (citations omitted).

As provided in § 1B1.13, consistent with the statutory directive in § 3582(c)(1)(A)(i), the compassionate release analysis requires several findings. First, the Court must address whether “[e]xtraordinary and compelling reasons warrant the reduction” and whether the reduction is otherwise “consistent with this policy statement.” U.S.S.G. § 1B1.13(1)(A), (3). If the movant clears that hurdle, the Court must determine whether he or she is “a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” U.S.S.G. § 1B1.13(2). If not, then the Court must consider the § 3553(a) factors, “to the extent they are applicable.” U.S.S.G. § 1B1.13.

A. Exhaustion

In this case, the record demonstrates that the defendant has previously asked the BOP to file a compassionate relief motion on his behalf. [Doc. 638, ex. 1]. Thirty days have passed since that request was received by the warden of his facility. [*Id.*]. The Court thus has authority under § 3582(c)(1)(A) to address the instant motion. *See Alam*, 960 F.3d at 832.

Nonetheless, citing district court authority from outside this circuit, the United States argues that the Court is barred from considering most of the defendant’s arguments because he did not expressly raise them in his request to the BOP. [Doc. 642, p. 11]. For

purposes of the present motion, the Court will presume that it indeed has authority to consider all of the arguments presented here because, in any event, those arguments do not amount to “extraordinary and compelling reasons” for compassionate release.

B. Merits

1. Extraordinary and Compelling Reasons

The Application Notes to guideline 1B1.13 provide, in material part:

1. Extraordinary and Compelling Reasons.— ... [E]xtraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing 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.

(B) Age of the Defendant. —

The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances. —

- (i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.
- (ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons.— As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S.S.G. § 1B1.13 cmt. n.1.

The defendant's motion touches on subsections (A)(ii) through (D). He discusses the COVID-19 pandemic, his age (51), his rehabilitative efforts and family support, and the possibility that he would receive a lesser term of imprisonment if sentenced under current law.

The Court finds that subsection (A)(ii) is not satisfied in this case. The record before the Court contains no supporting documentation as to the severity of any medical conditions or their impact on the defendant's present functioning. His age is by no means extraordinary, and the BOP SENTRY Report shows that he is categorized as Care Level 1. "Care Level 1 inmates are less than 70 years of age and are generally healthy. They may have limited medical needs that can be easily managed by clinician evaluations every 6 to 12 months."

See http://www.bop.gov/resources/pdfs/care_level_classification_guide.pdf (last visited Nov. 3, 2020). The Court therefore does not find that the defendant's health substantially diminishes his ability to provide self-care within the prison environment, as required by guideline 1B1.13's policy statement.

Further, the COVID-19 pandemic is a concern for all inmates and does not alone constitute an “extraordinary and compelling reason” for release. *See, e.g., United States v. Bolze*, No. 3:09-CR-93-TAV-CCS-1, 2020 WL 2521273, at *7 (E.D. Tenn. May 13, 2020) “[T]he COVID-19 pandemic cannot present an extraordinary and compelling reason alone because the policy statement directs courts to consider individual reasons for compassionate release, not general threats to the prison population.”) (citations omitted).¹

The defendant’s age plainly does not satisfy subsection (B), which applies only to persons age 65 or older. Similarly, his family support [doc. 638, ex. 4], while appreciated, is not the sort of family circumstance contemplated by subsection (C).

That leaves subsection (D) (“there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)”). Whether, under this subsection, “*district courts* may find additional and extraordinary reasons other than those in the commentary” or whether “the note’s catchall [subsection (D)] delegates to the Bureau of Prisons (*not the courts*) the task of identifying other reasons” remains an open question in this circuit. *United States v. Ruffin*, ___ F.3d ___, No. 20-5748, 2020 WL 6268582, at * 5-7 (6th Cir. Oct. 26, 2020) (emphasis added); compare also *United States v. Young*, No. 2:00-cr-00002-1, 2020 WL 1047815, at *6 (M.D. Tenn. Mar. 4, 2020) (subsection (D) may be employed by the BOP or by the courts), with *United States v. Bolze*, No. 3:09-CR-93-TAV-CCS-1, 2020 WL 2521273, at *7 (E.D. Tenn. May 13, 2020) (BOP only). This Court need not enter into that dispute today because the

¹ The instant defendant tested positive for COVID-19 in late July 2020. [Doc. 642, ex. 3]. As of August 12, 2020, he was noted to have recovered. [Id., ex. 2].

justifications offered by the defendant, taken together, do not constitute “extraordinary and compelling reasons” for compassionate release.

Being 51 may well place one in greater danger of harm from COVID-19 than being 21 or 31, and the defendant’s family support—as noted—is a good thing. These facts, however, are not remarkably outside the norm.

Next, the defendant’s SENTRY Report shows participation in educational and vocational programming, and his two disciplinary infractions during the current imprisonment were not serious. However, “rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason[.]” U.S.S.G. § 1B1.13 cmt. n.3.

Lastly, the defendant’s argument regarding the sentence he might receive today is a reference to Section 401(a)(1) and (a)(2) of the First Step Act. Those sections, respectively, redefine the types of prior convictions that can be used to enhance a defendant’s sentence under 21 U.S.C. § 851 and they reduce the enhanced mandatory minimum sentences for certain controlled substance offenses.

However, pursuant to section 401(c) of the First Step Act, Section 401 applies only to persons who had not yet been sentenced as of December 21, 2018. *See* 132 Stat. 5194, 5221. The instant defendant was sentenced in 2010, more than eight years before the First Step Act became law. Section 401 of the First Step Act therefore does not apply to him, and this Court will not use guideline subsection (D) to circumvent Congress’s express intent. *See, e.g., United States v. Cisneros*, CR. NO. 99-00107 SOM, 2020 WL 3065103, at *3 (D. Haw. June 9, 2020) (“[T]his court hesitates to conclude that it should reduce Cisneros’s sentence solely on the ground that the change in the law constitutes an extraordinary and

compelling circumstance. Otherwise, every inmate who might receive a reduced sentence today would be eligible for compassionate release, and Congress's decision not to make the First Step Act retroactive would be meaningless.”).

Having considered the issues raised by the defendant, individually and in combination, the Court does not find extraordinary and compelling reasons justifying the requested compassionate release.

III. CONCLUSION

The Court genuinely sympathizes with several of the arguments presented by the defendant. However, in light of the pertinent legal authority and the present record, the defendant's motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) [doc. 638] must be and is **DENIED**.

IT IS SO ORDERED.

ENTER:

s/ Leon Jordan
United States District Judge

NOT RECOMMENDED FOR PUBLICATION
File Name: 21a0282n.06

No. 20-6309

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

VICENTE CORONA,

Defendant-Appellant.

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FILED

Jun 08, 2021

DEBORAH S. HUNT, Clerk

BEFORE: SUTTON, Chief Judge; SUHRHEINRICH and NALBANDIAN, Circuit Judges.

SUHRHEINRICH, Circuit Judge. A jury convicted Vicente Corona of narcotics and money laundering conspiracies. He now seeks a sentence reduction under the “compassionate release” statute, 18 U.S.C. § 3582(c)(1)(A). The district court denied his request, concluding that Corona had not established any extraordinary and compelling reasons for compassionate release. We affirm.

In 2008, a jury found Corona guilty of conspiracy to transport cocaine and marijuana, conspiracy to commit money laundering and aiding and abetting others in distributing five or more kilograms of cocaine on three separate occasions. *See United States v. Corona*, 493 F. App’x 645, 647 (6th Cir. 2012). Because he had three prior felony convictions, the district court enhanced his sentence under 21 U.S.C. §§ 851 and 841(b)(1)(A), from 360 months to life imprisonment. We affirmed Corona’s conviction and sentence. *Id.* at 659.

In December 2018, Congress enacted the First Step Act. *See* Pub. L. No. 115-391, 132 Stat. 5194. Section 401 of the Act reduced the enhanced mandatory minimum sentences for certain controlled substance offenses. 132 Stat. at 5220–21. Prior to 2018, a violation of § 841(b)(1)(A) carried a mandatory minimum sentence of twenty years if a prior conviction was for a “felony drug offense.” 21 U.S.C. § 841(b)(1)(A) (pre-2018 provision). Section 401 reduced the mandatory minimum to fifteen years, and only if the prior offense was a “serious drug felony.” *Id.* (current version). However, Congress did not extend this change to a defendant sentenced before the First Step Act’s enactment. The Act explicitly states that § 401 applies only to defendants sentenced after the Act’s passage. *United States v. Tomes*, 990 F.3d 500, 505 (6th Cir. 2021); 132 Stat. at 5221.

In July 2020, Corona filed a motion for compassionate release under § 3582(c)(1)(A), which allows a district court to reduce a defendant’s sentence if “extraordinary and compelling reasons” exist and the 18 U.S.C. § 3553(a) factors also justify a sentencing reduction. *United States v. Hampton*, 985 F.3d 530, 531 (6th Cir. 2021). In support of the motion Corona cited a COVID-19 outbreak at his prison facility, his age, rehabilitative efforts, family support, and § 401’s reduction of mandatory minimums for certain drug offenses. As to the final factor, Corona argued that two of his three prior drug felony convictions would not qualify as a “serious drug felony” under § 401 because for those two offenses he had not “served a term of imprisonment of more than 12 months.” *See* 21 U.S.C. § 802(57).

After considering the factors “individually and in combination” the district court concluded that Corona had not proven any extraordinary and compelling reasons to warrant a compassionate release and denied the motion. Applying the application notes for USSG § 1B1.13,¹ the court held

¹ At the time the district court issued its decision, it was unclear whether the court was bound by the Sentencing Guidelines’ definition of “extraordinary and compelling reasons.” We resolved that question in *United States v. Elias*,

that Corona had not offered any documentation to substantiate the severity of any medical conditions; his age (51) was not considered extraordinary under the guideline, which applies only to persons 65 and older; and his family support was positive and not like the dire circumstances envisioned by the guideline. As to the § 401 factor, the court held § 401 did not apply to Corona because he was sentenced eight years before the First Step Act was passed. And to characterize the change in law as an extraordinary and compelling circumstance would “circumvent Congress’s express intent.”

Corona stays the course on appeal, arguing that the aforementioned factors “collectively provide extraordinary and compelling reasons to reduce” his life sentence.

Corona’s argument is foreclosed by our recent decisions in *Tomes* and *United States v. Jarvis*, --- F.3d ----, 2021 WL 2253235 (6th Cir. June 3, 2021). The defendant in *Tomes* asserted that “the presence of COVID-19 in prisons, coupled with his increased susceptibility to serious illness from the virus because of [his] chronic asthma” constituted “extraordinary and compelling reasons” for a reduced sentence. *Tomes*, 990 F.3d at 501. He further claimed that “his rehabilitation, strong family support, and apparently inequitable sentence were extraordinary and compelling reasons for release.” *Id.* at 502. He explained that if the First Step Act applied, his prior state convictions for trafficking in cocaine would not qualify as “serious drug felonies” and that the mandatory floor would therefore no longer have applied to him, resulting in a lower sentence. *Id.* at 505. The district court held that the defendant had failed to substantiate his medical condition claims. *Id.* The court also rejected *Tomes*’s assertion that his rehabilitation, family

holding that district courts have full discretion to define the term without consulting the USSG § 1B1.13. 984 F.3d 516, 519–20 (6th Cir. 2021).

circumstances, and sentence, even when considered holistically, were extraordinary and compelling. *Id.* at 502.²

This court affirmed the district court’s rejection of the defendant’s chronic asthma and prison conditions argument. *Id.* at 504–05. We also held that the non-retroactive First Step Act amendment does not constitute an “extraordinary and compelling” reason to justify a sentence reduction, explaining that “we will not render § 401(c) useless by using § 3582(c)(1)(A) as an end run around Congress’s careful effort to limit the retroactivity of the First Step Act’s reforms.” *Id.* at 505. We therefore affirmed the district court’s denial of the defendant’s motion for compassionate release. *Id.*

Jarvis involved similar issues. There, *Jarvis* moved for compassionate release. He argued that “if he were sentenced for the same offenses today, he would receive a sentence of 25 years, not 40 years.” 2021 WL 2253235, at *1. In *Jarvis*’s eyes, that fact, combined with COVID-19, *Jarvis*’s high blood pressure, and his rehabilitation, amounted to an “extraordinary and compelling reason” for release. We disagreed. For a district court to consider a disparity arising from a non-retroactive or partially retroactive sentencing change, whether by itself or in combination with other factors, as part of its inquiry into extraordinary and compelling reasons would end run around congressional design. *Id.* at *1–2.

In this case, *Corona* raises a virtually identical argument to that in *Tomes* and *Jarvis*, that is, the current COVID-19 outbreak in his prison, his age, his rehabilitative efforts, his family support, and the First Step Act “collectively provide extraordinary and compelling reasons” for compassionate release. Like the court in *Tomes*, the district court in this case considered all of the

² In the lower court *Tomes* explicitly argued that the sentence disparity, along with his rehabilitative efforts, family circumstances, and medical conditions “combine to present extraordinary and compelling reasons.” R. 244, *United States v. Hollis*, No. 3:16-cr-00113-DJH-HBB-2 (W.D. Ky. May 26, 2020) (emphasis added).

reasons presented by Corona, and concluded that none of them, individually or collectively, created extraordinary and compelling reasons warranting compassionate release. Thus, the district court did not abuse its discretion in finding no extraordinary and compelling reasons existed. *Tomes*, 990 F.3d at 504–05; *see also United States v. Wills*, --- F.3d ---, No. 20-6142, 2021 WL 1940430, at *2 (6th Cir. May 14, 2021) (affirming the district court’s denial of compassionate release when it declined to circumvent Congress’s expressed intent to consider the sentencing disparity as extraordinary and compelling).

Another recent decision of this court does not alter this conclusion. *See United States v. Owens*, No. 20-2139, 2021 WL 1811538 (6th Cir. May 6, 2021). Although acknowledging *Tomes*’s holding that a non-retroactive amendment does not qualify as an extraordinary and compelling reason for a sentence reduction, the *Owens* majority nonetheless states that a district court may still consider First Step Act arguments in combination with other factors that may constitute extraordinary and compelling reasons for compassionate release. *Id.* at *7. As we recognized in *Jarvis*, this conclusion cannot be squared with *Tomes*, where like Corona, the defendant bundled his age, his rehabilitation efforts, and strong family ties to his First Step Act argument. *Tomes*, 990 F.3d at 502; *see Jarvis*, 2021 WL 2253235, at *3–4. As noted in *Tomes*, such a back door attempt to reintroduce an expressly excluded factor thwarts congressional intent in making the First Step Act non-retroactive. *Tomes*, 990 F.3d at 505. We therefore decline, as we must, to follow *Owens* because *Tomes* was decided first and therefore controls. *See Jarvis*, 2021 WL 2253235, at *4; *see also Salmi v. Sec’y of Health & Hum. Servs.*, 774 F.2d 685, 689 (6th Cir. 1985) (holding that one panel of this court cannot overrule the decision of another panel absent an intervening Supreme Court decision or en banc consideration).

We end our analysis here. *See United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021) (clarifying that “district courts may deny compassionate-release motions when any of the three prerequisites listed in § 3582(c)(1)(A) is lacking and do not need to address the others”); *see also United States v. Ruffin*, 978 F.3d 1000, 1005 (6th Cir. 2020) (noting that the district court has “substantial discretion” in weighing the § 3582(c)(1)(A) factors).

We affirm.