

21 - 6135

NO.:

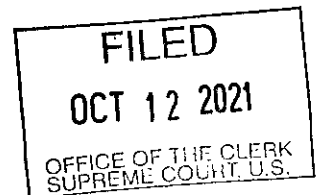
IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER, TERM, 2021

JESUS RAMIREZ-BARRERA,
PETITIONER,

VS.

UNITED STATES OF AMERICA,
RESPONDENT.



PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

JESUS RAMIREZ-BARRERA
MCFP-Springfield
Reg. No.: 34763-057
P.O. Box 4000
Springfield, Mo 65801

QUESTION PRESENTED

- I. WHETHER THE DISTRICT COURT ERRED IN DECIDING THAT PETITIONER HAS NOT SHOWN EXTRAORDINARY AND COMPELLING REASONS; AND THAT HE WAS A DANGER TO THE COMMUNITY?

INTERESTED PARTIES

CATHERINE C. EAGLE, U.S. DISTRICT JUDGE.

CIRCUIT JUDGE, AGEE.

CIRCUIT JUDGE, KING.

CIRCUIT JUDGE TRAXTER.

JESUS RAMIREZ-BARRERA, PETITIONER

TABLE OF CONTENTS

QUESTION PRESENTED.....	i
INTERESTED PARTIES.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
OPINION OF THE COURT BELOW.....	2
JURISDICTION.....	2
CONSTITUTIONAL PROVISION.....	3
REASON FOR GRANTING THE PETITION.....	4
CONCLUSION.....	8
CERTIFICATE OF SERVICE.....	8

INDEX OF APPENDICES

APPENDIX: A, District court order

APPENDIX: B, Fourth Circuit order

TABLE OF AUTHORITIES

CASE	PAGES
MALIANA-MARTINEZ V. UNITED STATES, 136 S.Ct. 1338, 194 L.Ed.2d 444 (2016)	6, 7
PULLMAN V. SWIN, 456 U.S. 273, 102 S.Ct. 1897, 201 L.Ed.2d 66 (1982)....	6
UNITED STATES V. DOMINQUES-BENTIEZ, 542 U.S. 74, 76, 82, 124 S.Ct. 2333, 159 L.Ed.2d 15 (2004).....	6
UNITED STATES V. DILLER, 891 F.3d 151 (4th Cir. 2018).....	5
UNITED V. KIBBLE, 992 F.3d 326 (4th Cir. 2021).....	4
UNITED STATES V. MCCOY, 981 F.3d 271 (4th Cir. 2020).....	4,5
UNITED STATES V. UMANA, 772 F.3d 1328 (10th Cir. 2014).....	4,5
STATUTE	
18 U.S.C. § 3553(a).....	2, 5, 6
18 U.S.C. § 3582(c)(1)(A).....	2, 4, 5
28 U.S.C. § 1254(i).....	2
UNITED STATES SENTENCING GUIDELINES (U.S.S.G.) 1B1.13.....	5
ROSALES-MIRALES V. UNITED STATES, 138 S.Ct. 1897, 1908, 201 L.Ed.2d 376 (2018).....	7

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

JESUS RAMIREZ-BARRERA,
PETITIONER,

VS.

UNITED STATES OF AMERICA,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioner, Jesus Ramirez-Barrera, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit, entered in the proceedings on September 9, 2021. See Appendix: B.

OPINION OF THE COURT BELOW

Petitioner filed a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), asking the district court to reduce his sentence because there was extraordinary and compelling reasons to justify release and the § 3553(a) sentencing factors supported his release. The district court denied his petition on March 3, 2021. See Appendix: A.

On September 9, 2021 the Fourth Circuit affirmed the district court opinion. See Appendix: B.

JURISDICTION

The judgment of the Court of Appeals affirming the judgment of the United States District Court was entered on September 9, 2021. This petition is timely filed pursuant to Rule 20, of the Supreme court, as amended. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(i).

CONSTITUTIONAL PROVISION

U.S. CONST. AMEND. VIII.

Excessive bail shall not be required nor excessive fines imposed nor cruel and unusual punishment inflicted.

REASON FOR GRANTING THE WRIT

I. WHETHER THE DISTRICT COURT ERRED IN DECIDING THAT PETITIONER HAS NOT SHOWN EXTRAORDINARY AND COMPELLING REASONS; AND THAT HE WAS A DANGER TO THE COMMUNITY?

Petitioner argues that the district court and the Fourth Circuit erred in deciding whether he presented "extraordinary and compelling reasons" and that he was a danger to the community for a reduction of sentence.

Petitioner cited his concerns over the COVID-19, and its numerous variants, specifically, the Delta, and MU variants.

The Fourth circuit held that the United States Commission Guidelines Manual § 1B1.13 (2018) is not presently an applicable policy statement for motion for sentence modifications and compassionate release filed by prisoners pursuant to 18 U.S.C. § 3582(c)(1)(A). *United States v. McCoy*, 981 F.3d 271, 273 (4th Cir. 2020).

Petitioner argues that the district court and the Fourth Circuit erred by considering same but not all relevant § 3553(a) factors. Specifically, he asserts that he had made significant progress toward rehabilitation; that there was no violence involved in his history.

The district court may reduce a term of imprisonment under 18 U.S.C. § 3582(c)(1)(A) as amended by the First Step Act (FSA) of 2018, Pub.L. No. 115-391 § 603(b), 132 Stat. 5294, "if extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A).

The Fourth Circuit review a district court denial of compassionate release motion for a abuse of discretion. See *United States v. Kibble*, 992 F.3d 329 (4th Cir 2021). "A district court abuses its discretion when it acts arbitrarily, or irrationally, fail to consider Judicially

recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises or commits an error of law." *United States v. Dillard*, 891 F.3d 151, 158 (4th Cir. 2018) (internal quotation marks omitted). Under the FSA, district courts may reduce a term of imprisonment, if "extraordinary and compelling reasons warrants such a reduction" upon motion of the Bureau of Prisons (BOP) or upon motion of the defendant after he has fully exhausted his administrative remedies with the BOP. 18 U.S.C. § 3582(c)(1)(A). If a district court finds that extraordinary and compelling reasons exists it must then consider the § 3553(a) "to the extent that they are applicable." 18 U.S.C. § 3582(c)-(1)(A). finally, a district court may grant a reduction only if it is "consistent with applicable policy statement issued by the Sentencing Commission. *Id.* "As of now, there is no Sentencing Commission policy statement, applicable' to [a petitioner's] compassionate release motion[]," as opposed to such motion brought by the BOP. *McCoy*, 981 F.3d at 283. Thus, United States Sentencing Guidelines Manual § 1B1.13, p.s., does not bind a district court when a district court considers a compassionate release motion brought by a defendant and courts therefore may consider "any extraordinary and compelling reason for release that a defendant might raise." *McCoy*, 981 F3d at 284 (internal quotation marks omitted). However, the policy statement "remain helpful guidance to courts consideration of such motions. See *id.* at 282 N.7.

Here, the district court denied relief based on that such reasons did not exist, an evaluation of the § 3553(a) factors shows that [Petitioner] is not an appropriate candidate for a sentence reduction. His crime was serious, involving firearms and many grams of Methamphetamine.

Typical deterrents to recidivism, such as a severe medical condition, have also proven ineffective for him. Indeed, while [Petitioner] cites his kidney failure as the basis for his release, he committed his current offense while receiving dialysis. A sentence reduction is inappropriate ... motion for release will be denied. See Appendix: A, at 5-6.

The Fourth Circuit held that upon review of the record, we conclude that the district court did not abuse its discretion in ruling that the applicable 18 U.S.C. § 3553(a) factors weighed against compassionate release. See Appendix: B, at 2.

In that way, the district court's application of an otherwise mandating Sentencing Guidelines prohibition affected petitioner's sentencing outcome if not more "systemic[ally]" than a discretionary-but-frequently adopted a Guideline range. *Molina-Martinez v. United States*, 136 S.Ct. 1338, 194 L.Ed.2d 444 (2016) (*United States v. Dominguez-Bentiez*, 542 U.S. 74, 76, 82 124 S.Ct. 2333, 159 L.Ed.2d 15 (2004)), and as a result, the court never had an opportunity to evaluate whether release was warranted upon balancing of the Section 3553(a) factors and consideration of release restriction. *Id.* at N. 32.

An error will effect the defendant's substantial right if there is a "reasonable probability that, but for the error, the outcome of the proceeding would have been different. *Molina-Martinez*, 136 S.Ct. at 1338.

Because the district court treated U.S.S.G. § 1B1.13's criterion as a categorical bar of relief." The record is silent as to what the district court might have done" upon balancing all the factors as an exercise of informed discretion. *Molina-Martinez*, 136 S.Ct. 1346. And the discretion afforded by Section 3553(a) if the district court's exercise in the first instance. *Pullman v. Swin*, 456 U.S. 273, 102 S.Ct. 1782, 72 L.Ed.2d 66

(1982)(when a district court "has failed to make a finding because of an erroneouness view of the law the usual rule is that there should be a remand for further proceedings to permit the trial court to make the missing findings.").

Because "the record is silent as to what might have done had it considered the correct" factors, the district court reliance on an incorrect Guidelines Statement is "sufficient to show an affect on [Petitioner's] substantial rights. **Molina-Martinez**, 136 S.Ct. 1347.

Petitioner has sough compassionate release asserting extraordinary and compelling circumstances for expedition relief. If the Court do not correct this error, the Court would permonently close the door on any prospect of that release, and even on the district court's discretion consideration of all the factors bearing on such a decision. As this Court has explained in an analgous circumstances, the "risk of unnecessary deprivation of liberty particularly the firness, or public reputation of judicial proceedings in the context of plain Guidelines error because of the rule the district court plays" in applying the Guidelines "and the relative ease of correcting the error." **Rosales-Mireles v. United States**, 138 S.Ct. 1897, 1908, 201 L.Ed.2d 376 (2018). Indeed, "what reasonable citizen wouldn't rightly dimished view of the judicional process and its intergrity if court's refused to correct obvious errors of their own devise that threanten to require individuals to linger in federal prison than the law demands?" Id. at 1908 (quoting **United States v. Umana**, 772 F.3d 1328, 1333-1334 (10th Cir. 2014)(Grosuch, J.)).

CONCLUSION

For the reasons stated, Petitioner pray that this Court issue a writ of certiorari and consider the decision below.