

APPENDIX: A.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

ORDER

The defendant-inmate, Jesus Ramirez-Barrera, has filed a motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), asking the Court to reduce his sentence. Because there are no extraordinary and compelling reasons to justify release and because the § 3553(a) sentencing factors do not support release, his motion will be denied.

Procedural History

In 2019, Mr. Ramirez-Barrera pled guilty to distribution of 50 grams or more of methamphetamine. Minute Entry 5/09/2019; Doc. 24. On August 27, 2019, the Court sentenced him to 120 months of imprisonment followed by four years of supervised release. Minute Entry 8/27/2019; Doc. 37.

In December 2019, Mr. Ramirez-Barrera submitted a reduction-in-sentence request solely based on his hypertension and end-stage renal disease to the warden of MCFP Springfield. Doc. 44. The warden denied his request, *id.* at 4, and on September 8, 2020, Mr. Ramirez-Barrera filed a motion for compassionate release. Doc. 40. Mr. Ramirez-Barrera did not mention the COVID-19 virus in his motion nor his initial RIS

request. *See* Docs. 40, 44. The Court appointed counsel on his behalf, Doc. 47, who submitted a new RIS to the warden on November 18, 2020, based on both his end-stage renal disease and the increased risk of medical complications posed by COVID-19. *See* Doc. 49-1. Mr. Ramirez-Barrera filed this amended motion for compassionate release on December 11, 2020. Doc. 49. Briefing is complete and the matter is ripe for decision.

Background

On February 22, 2018, law enforcement officers executed a search warrant at Mr. Ramirez-Barrera's residence. Doc. 35 at ¶ 5.¹ The officers discovered digital scales, multiple baggies filled with a white powdery substance, a small bag of marijuana, multiple passports, over \$10,000 in cash, and multiple firearms. *Id.* Laboratory results identified the white powdery substance contained in the baggies as methamphetamine, with a total weight of over 880 grams. *Id.* He was interviewed and arrested that same day. *Id.* at ¶ 6.

Mr. Ramirez-Barrera is now 47 years old. *Id.* at 2. Outside the present offense, he has no significant criminal history. *See id.* at ¶ 32 (reflecting a criminal history score of zero). He is not a United States citizen and will likely be deported at the end of his sentence. *Id.* at 2. He has been in custody since his arrest on February 22, 2018, *id.* at 1, and has served well less than half of his 120-month sentence. He is scheduled for release on August 31, 2026. *See Find an inmate*, FED. BUREAU OF PRISONS, <https://www.bop.gov/inmateloc/> (last visited Mar. 11, 2021).

¹ The Court adopted the presentence report without changes. Doc. 39.

Mr. Ramirez-Barrera has end-stage chronic kidney disease and has received dialysis for the last four years.² Doc. 41 at 3; Doc. 44 at 3; Doc. 52 at 54 (showing diagnosis date in 2016). He is “dialysis dependent” and undergoes dialysis treatment three days per week. Doc. 41 at 6; Doc. 52 at 2. The CDC advises that people with chronic kidney disease have an increased risk of serious complications should they contract COVID-19. *People with Certain Medical Conditions*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last visited Mar. 11, 2021). Mr. Ramirez-Barrera has already contracted COVID-19 once, but fortunately he appears to have made a full recovery. *See, e.g.*, Doc. 52 at 6–7, 55, 58. He has also received the first shot of a COVID-19 vaccine on December 30, 2020. *Id.* at 59. A lay review of his medical records indicates that he is otherwise receiving adequate medical care. *See generally id.*

Mr. Ramirez-Barrera is currently housed at MCFP Springfield, which was hit hard by the COVID-19 virus early in the pandemic. Over the last year, there have been 18 inmate deaths, 383 inmate recoveries, and 247 staff recoveries. *See COVID-19 Coronavirus*, FED. BUREAU OF PRISONS, <https://www.bop.gov/coronavirus/> (last visited Mar. 11, 2021). Presently, the BoP reports only one active case among inmates and one

² In his original motion for compassionate release, Mr. Ramirez-Barrera also asserted various other medical conditions, including hypertension, anemia, and congestive heart failure. Doc. 40 at 2–3. He does not mention these conditions in his renewed motion, *see generally* Doc. 49, and a lay review of his medical records shows that his hypertension is in remission, Doc. 52 at 32, and he is receiving adequate treatment for his other ailments. *See generally id.*

case among staff, *id.*, but there is no evidence before the Court about the extent of ongoing testing for the virus at this facility.

Upon release, he intends to live with his daughter, Doc. 44 at 1, and to resume dialysis at Mt. Airy Dialysis Center, where he says he received dialysis before his 2018 arrest. Doc. 49 at 10; *see* Doc. 35 at ¶ 42. If deported, he intends to live with his wife in Mexico. Doc. 49 at 10.

Analysis

Courts do not have unfettered jurisdiction or discretion to modify criminal sentences. *United States v. Goodwyn*, 596 F.3d 233, 235–36 (4th Cir. 2010). A court may modify a sentence only when a provision in the Federal Rules of Criminal Procedure or a statute expressly permit it to do so. *See* 18 U.S.C. § 3582(c). Section 3582(c)(1)(A), often called the “compassionate release” provision, is one such statutory provision.

For a sentence reduction under § 3582(c)(1)(A) to be appropriate, the defendant must satisfy the exhaustion requirement. *United States v. Alam*, 960 F.3d 831, 833 (6th Cir. 2020). The defendant must then show that the reduction is consistent with any applicable policy statements issued by the Sentencing Commission and that extraordinary and compelling reasons and the relevant § 3553(a) sentencing factors merit a reduction. *See United States v. McCoy*, 981 F.3d 271, 275 (4th Cir. 2020).

The parties disagree as to whether Mr. Ramirez-Barrera has satisfied his exhaustion requirements. Mr. Ramirez-Barrera filed his original motion on September 8, 2020, Doc. 40, more than 30 days after he submitted his first RIS request to the warden. *See* Doc. 44. However, that request and its associated motion for release were based

solely on his end-stage renal disease and did not mention COVID-19. *See* Docs. 40, 44.

Mr. Ramirez-Barrera's renewed RIS request and renewed motion for compassionate release both remedy this omission, *see* Docs. 49, 49-1, but the motion was filed on December 11, 2020—less than 30 days after the renewed RIS request was submitted on November 18, 2020. Docs. 49, 49-1. The Court will assume without deciding that exhaustion is satisfied here.

The government concedes that end-stage renal disease, when combined with a serious risk of contracting COVID-19, can constitute extraordinary and compelling circumstances.³ Doc. 51 at 5. But the government points out that Mr. Ramirez-Barrera has already contracted and recovered from COVID-19, that he has already received his first dose of a COVID-19 vaccination, and that he will soon be fully vaccinated. *Id.*

The mere existence of the pandemic is not, by itself, an extraordinary and compelling reason for a sentence reduction. *United States v. Raia*, 954 F.3d 594, 596–97 (3d Cir. 2020). And in light of Mr. Ramirez-Barrera's already successful recovery from COVID-19, the fact that he will soon be fully vaccinated, and the low number of cases presently reported at MCFP Springfield, the risk of a second bout of COVID-19 is substantially diminished. Without more, extraordinary and compelling reasons do not exist to justify a sentence reduction.

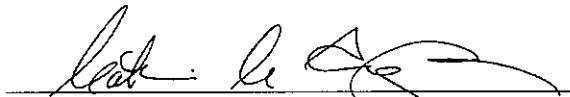
Even if such reasons did exist, an evaluation of the § 3553(a) factors shows that Mr. Ramirez-Barrera is not an appropriate candidate for a sentence reduction. His crime

³ *See United States v. Williams*, No. 1:13-CR-370-4, 2020 WL 5097490, at *3 n.4. (M.D.N.C. Aug. 28, 2020) (collecting cases).

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 Mr. Ramirez-Barrera cites his kidney failure as the basis for his release, he committed his current offense while receiving dialysis. Doc. 35 at ¶ 42; Doc. 49 at 6. A sentence reduction is inappropriate, and Mr. Ramirez-Barrera's motion for release will be denied.

It is **ORDERED** that the defendant's motion and amended motion for compassionate release, Docs. 40, 49, are **DENIED**.

This the 11th day of March, 2021.



UNITED STATES DISTRICT JUDGE

APPENDIX: B.

FILED: September 9, 2021

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-6374
(1:18-cr-00477-CCE-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

JESUS RAMIREZ-BARRERA

Defendant - Appellant

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 21-6374

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JESUS RAMIREZ-BARRERA,

Defendant - Appellant.

Appeal from the United States District Court for the Middle District of North Carolina, at Greensboro. Catherine C. Eagles, District Judge. (1:18-cr-00477-CCE-1)

Submitted: August 27, 2021

Decided: September 9, 2021

Before KING and AGEE, Circuit Judges, and TRAXLER, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Jesus Ramirez-Barrera, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Jesus Ramirez-Barrera, a federal prisoner, appeals from the district court's order denying his motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act of 2018, Pub. L. No. 115-391, § 603(b)(1), 132 Stat. 5194, 5239. 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 United States v. High*, 997 F.3d 181, 188-91 (4th Cir. 2021). Accordingly, we affirm. We deny Ramirez-Barrera's motion to appoint counsel. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED