

# APPENDIX

**FILED**

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

AUG 19 2021

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

CHI MAK, AKA Dazhi Mai, AKA Daichi  
Mak, AKA Jack Mak, AKA Taichi Mak,  
AKA Seal A,

Defendant-Appellant.

No. 20-50171

D.C. No.  
8:05-cr-00293-CJC-1

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Cormac J. Carney, District Judge, Presiding

Submitted August 3, 2021\*\*  
Pasadena, California

Before: PAEZ, CALLAHAN, and BENNETT, Circuit Judges.

Chi Mak appeals the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1). We have jurisdiction under 28 U.S.C. § 1291. Reviewing for abuse of discretion, *United States v. Aruda*, 993

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

F.3d 797, 799 (9th Cir. 2021), we affirm.

Mak contends, first, that the district court legally erred by denying his motion for compassionate release without addressing each of the enumerated factors in 18 U.S.C. § 3553(a), and second, that the district court abused its discretion in determining that the seriousness of his offense, his character, and the need for his sentence tipped the balance of the § 3553(a) factors against granting his motion for release. We disagree.

First, the legal standard for compassionate release does not require the district court to recite each of the provisions of § 3553(a). 18 U.S.C. § 3582(c)(1)(A) (stating that district courts must consider “the factors set forth in section 3553(a) *to the extent that they are applicable*” (emphasis added)); *cf. United States v. Carty*, 520 F.3d 984, 992 (9th Cir. 2008) (“The district court need not tick off each of the § 3553(a) factors to show that it has considered them.”).

Second, while Mak may disagree with how the district court balanced the § 3553(a) factors, there is no basis for us to conclude the district court abused its discretion. The district court fully explained its reasons for reaching its conclusion, which is supported by the record. *See United States v. Robertson*, 895 F.3d 1206, 1213 (9th Cir. 2018) (explaining that a district court abuses its discretion only if its decision is illogical, implausible, or without support in the record). Further, we find no error in the district court’s determination that the balance of the § 3553(a)

factors weigh against Mak's release. This determination is a sufficient basis to affirm the district court's denial of Mak's motion for compassionate release. In light of this determination, we need not address Mak's contention that the district court erred in finding he had not shown "extraordinary and compelling" circumstances warranting his release. *United States v. Keller*, 2 F.4th 1278, 1284 (9th Cir. 2021).

**AFFIRMED.**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHI MAK,

Defendant.

} Case No.: SACR 05-00293-CJC

} ORDER DENYING DEFENDANT'S  
MOTION FOR COMPASSIONATE  
RELEASE [Dkts. 856, 860]

I. INTRODUCTION & BACKGROUND

Defendant Chi Mak led a conspiracy to pass sensitive naval technology to the People's Republic of China (the "PRC"). On May 10, 2007, after a six-week trial, a jury found Mr. Mak guilty of conspiracy to export defense articles, attempted export of defense articles, acting as an unregistered agent of a foreign government, and making a false statement. (Dkt. 605 [Jury Verdict].) On March 24, 2008, the Court sentenced Mr. Mak to a term of 293 months in prison. (See Dkt. 177.) Mr. Mak is currently serving

1 that sentence at Lompoc Federal Correctional Institute. Defendant filed this motion for  
 2 compassionate release in light of the COVID-19 pandemic. (Dkt. 856 [Motion]; Dkt. 860  
 3 [Amended Motion, hereinafter “Mot.”]) The government opposes Mr. Mak’s motion.  
 4 (Dkt. 866 [hereinafter “Opp.”].) For the following reasons, Mr. Mak’s motion is  
 5 **DENIED.**<sup>1</sup>

## 7 II. ANALYSIS

9 Mr. Mak argues that he should be released under the compassionate release  
 10 provisions of the First Step Act, which allow a sentencing court to reduce a sentence  
 11 where “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C.  
 12 § 3582(c)(1)(A)(i). He argues such reasons exist here because he “has been infected with  
 13 COVID-19 and has a higher risk for death or developing serious medical complications  
 14 from the virus, due to his age” of 79, and “additional time in custody is not required to  
 15 satisfy the objectives of sentencing.” (Mot. at 1.)

16 Even assuming Mr. Mak exhausted his administrative remedies<sup>2</sup>, however, the  
 17 seriousness of his crimes precludes his early release. Any decision to reduce a term of  
 18 imprisonment under the First Step Act requires a court to “consider[] the factors set forth  
 19 in section 3553(a).” 18 U.S.C. § 3582(c)(1)(A)(i). These factors include the nature and  
 20 circumstances of the offense, the history and characteristics of the defendant, and the  
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23 <sup>1</sup> Having read and considered the papers presented by the parties, the Court finds this matter appropriate  
 24 for disposition without a hearing. *See* Fed. R. Crim. P. 57(b). Accordingly, the hearing set for June 22,  
 2020 at 1:30 p.m. is hereby vacated and off calendar.

25 <sup>2</sup> The government argues Mr. Mak failed to exhaust administrative remedies because he submitted a  
 26 Compassionate Release Request to the warden in October 2019, before the COVID-19 outbreak, and  
 27 because his March 30, 2020 inquiry about his 2019 request for early did not release mention any  
 28 COVID-19 concerns. (Opp. at 8; *see* Mot. Ex. H [Compassionate Release Request]; Dkt. 866-9 at 4  
 [March 30, 2020 Inquiry].) However, the warden’s April 24, 2020 denial of Mr. Mak’s request states  
 that Mr. Mak “requested a reduction in sentence (RIS) based on concerns about COVID-19.” (Dkt. 860-  
 10.)

need for the sentence imposed. 18 U.S.C. § 3553(a). The nature of Mr. Mak’s crimes was extraordinarily serious. He organized and led a conspiracy to pass the “crown jewels” of naval technology to the PRC. As the Court explained in its Statement of Reasons for Mr. Mak’s sentence,

Mr. Mak betrayed the United States. We entrusted him with our national security and the safety of our courageous men and women in the armed forces. He betrayed that sacred trust by being an agent of the PRC and attempting to pass sensitive naval technology to that country. To make matters worse, Mr. Mak lied to avoid prosecution and conviction. We will never know the full extent of the damage that Mr. Mak has done to our national security.

(Dkt. 690 [hereinafter “SOR”] at 2.) Mr. Mak’s crimes were “treasonous,” made possible by his position of public and private trust and his national security clearance. (*Id.* at 5.) As “the organizer and leader of” the crimes, he was “the most culpable defendant” in the conspiracy. (*Id.* at 3–4.) And he showed a “pattern of deceit,” with lies at trial that were “demonstrable, material, and willful.” (*Id.* at 7–8.) Given all these factors, the Court determined that a high-end advisory guideline sentence was necessary to “provide a strong deterrent to the PRC not to send its agents here to steal American military secrets,” and to “ensure that Mr. Mak will never attempt to pass any of our military secrets to the PRC again.” (*Id.* at 2, 9–10.) To grant Mr. Mak early release after serving only sixty percent of the sentence the Court imposed would not advance the goals set forth in 18 U.S.C. § 3553(a). *See, e.g., United States v. Stone*, 2020 WL 2836794, at \*3 (E.D. Cal. June 1, 2020) (concluding that release of Lompoc inmate who tested positive for COVID-19 was inappropriate under 18 U.S.C. § 3553(a), particularly because he remained a danger to the community).

Mr. Mak contends that “his conduct in custody demonstrates that release is appropriate in this case,” citing his 14 and a half years in custody “without one

1 disciplinary incident,” and his work and tutoring history in prison. (Mot. at 6; Dkt. 867  
 2 [Reply] at 5.) But these are exactly the sorts of traits that the Court concluded did not  
 3 warrant leniency at sentencing. Specifically, the Court found “that Mr. Mak’s lack of  
 4 criminal history, good reputation in the community and professional accomplishments  
 5 contributed to his ability to carry out and conceal his crimes over an extended period of  
 6 time. . . . But for his good reputation and covert behavior, Mr. Mak never could have  
 7 committed his crimes against the United States.” (SOR at 11.) Moreover, there is  
 8 evidence that Mr. Mak has no remorse for his actions, and that in 2014, while in prison,  
 9 he told government agents that “he was entirely innocent of the charges he was earlier  
 10 convicted of, that the government had unfairly targeted him from the outset, and was out  
 11 to get him because he was ethnic Chinese and it fit the desired U.S. government narrative  
 12 regarding espionage by China.” (Dkt. 866-1 [Declaration of James E. Gaylord] ¶¶ 3–4.)  
 13 Even if Mr. Mak has behaved well in prison, this does not warrant his early release.

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15 Finally, the Court is not persuaded that the severity of the outbreak at Lompoc or  
 16 Mr. Mak’s positive test for COVID-19 constitute sufficiently extraordinary and  
 17 compelling circumstances to warrant his release. *See, e.g., Stone*, 2020 WL 2836794, at  
 18 \*3; (denying Lompoc inmate’s motion for compassionate release after testing positive for  
 19 COVID-19); *United States v. Vargas*, 2020 WL 3056794, at \*4–5 (D. Or. June 9, 2020)  
 20 (same); *United States v. Purry*, 2020 WL 2773477, at \*2 (D. Nev. May 28, 2020) (same).  
 21 This is so especially in light of the measures Lompoc has taken in response to the  
 22 outbreak, including “the installation of a hospital care unit at the facility and universal  
 23 testing.” *Purry*, 2020 WL 2773477, at \*2; (Opp. at 14–15 [detailing the Bureau of  
 24 Prisons’ response to the Lompoc outbreak]).

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1           **III. CONCLUSION**

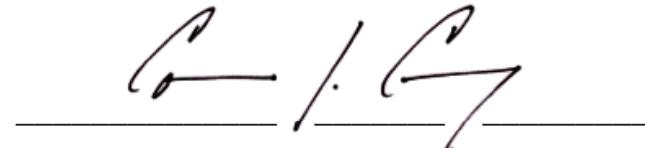
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3           For the foregoing reasons, Mr. Mak's motion for compassionate release is

4           **DENIED.**

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6           DATED:    June 11, 2020



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8           CORMAC J. CARNEY

9           CHIEF UNITED STATES DISTRICT JUDGE

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