

SEP 01 2021

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No. 21-6378

IN THE
SUPREME COURT OF THE UNITED STATES

SEVERO GARCIA-MEZA — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

SEVERO GARCIA-MEZA, #10814-040
(Your Name)

P.O. Box 1000
(Address)

CUMBERLAND, MD. 21501
(City, State, Zip Code)

(301) 784-1000
(Phone Number)

ORIGINAL

QUESTION(S) PRESENTED

1. WHETHER A DISTRICT COURT MUST RELY SOLELY ON A DEFENDANT'S ORIGINAL SENTENCING FACTORS IN 18 U.S.C. 3553(a) WHEN DETERMINING A COMPASSIONATE RELEASE MOTION/REDUCTION IN SENTENCE UNDER 18 U.S.C. 3582(c)(1)(A)(i), AND WHETHER A DISTRICT COURT HAS THE AUTHORITY AT THEIR OWN DISCRETION TO CHOOSE EXTRAORDINARY AND COMPELLING REASONS.
2. WHETHER A DISTRICT COURT VIOLATES THE EIGHTH AMENDMENT'S CRUEL AND UNUSUAL PUNISHMENT CLAUSE OF THE UNITED STATES CONSTITUTION IN KEEPING A DEFENDANT INCARCERATED DURING A GLOBAL PANDEMIC WHO MEETS THE MEDICAL THRESHOLD TEST IN NOTE 1(A), AND WHO ALSO MEETS THE CENTER FOR DISEASE CONTROL AND PREVENTION'S GUIDELINES AS ELIGIBLE FOR COMPASSIONATE RELEASE UNDER 18 U.S.C. 3582(c)(1)(A)(i).

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

UNITED STATES V. GARCIA-MEZA, NO. 1:02-CR-00056-1, U.S. DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN, JUDGEMENT ENTERED JULY 2003

UNITED STATES V. GARCIA-MEZA, NO. 21-1208, U.S. COURT OF APPEALS FOR
THE SIXTH CIRCUIT, JUDGEMENT ENTERED JULY 7, 2021

TABLE OF CONTENTS

OPINIONS BELOW	1
JURISDICTION.....	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	4- 12
REASONS FOR GRANTING THE WRIT	13
CONCLUSION.....	14

INDEX TO APPENDICES

APPENDIX A

UNITED STATES V. GARCIA-MEZA, NO. 21-1208, U.S. COURT OF APPEALS (6TH CIR)

APPENDIX B

UNITED STATES V. GARCIA-MEZA, NO. 1:02-cr-00056, U.S. DIST. COURT (W.D. MI)

APPENDIX C

UNITED STATES V. GARCIA-MEZA, NO. 21-1208, U.S. COURT OF APPEALS - REHEARING

APPENDIX D

UNITED STATES V. GARCIA-MEZA, NO. 21-1208, U.S. COURT OF APPEALS - MANDATE

APPENDIX E

APPENDIX F

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
UNITED STATES V. GARCIA-MEZA, NO. 12-2108 (6TH CIR. 2021)	5
UNITED STATES V. ZUKERMAN, 2020 WL 1659880, at *6	5
UNITED STATES V. RODRIGUEZ, 2020 WL 1627331, at *12	5
UNITED STATES V. EZPARZA, 2020 WL 1696084, at *6	5
MILLER V. UNITED STATES, NO. 16-20222-1 (E.D. MICH 2020)	6
UNITED STATES V. BOZON-PAPPA, NO. 95-00084 (SO. DIST. FLA. 2021)	6, 13
UNITED STATES V. MANG-LONA, NO. CR-14-5393 (W.D. WASH. 3/3/21)	6, 9, 13
UNITED STATES V. ZULLO, NO. 19-3268-CR (2d. CIR. 9/25/20)	6
UNITED STATES V. JONES, NO. 20-3701 (6TH CIR. 2020)	6

STATUTES AND RULES

18 U.S.C. 3582 (C)(1)(A)	3
18 U.S.C. 3553(a)	3; 6-9
18 U.S.C. 3553(a)(6)	4, 7
U.S.S.G. 1B1.13	6, 9
U.S.S.G. NOTE 1(A)	4
18 U.S.C. 3142(g)	3, 6, 9
18 U.S.C. 1111(a)	5
18 U.S.C. 113(a)(3)	5
FED. R. APP. P. 35 & 40	5

OTHER

EIGHTH AMENDMENT - CRUEL AND UNUSUAL PUNISHMENT	3
CDC.GOV/COVID19	6
FOX 5 NEWS (MAR. 31, 2021)	8
ABC NEWS (APR. 1, 2021)	8
health.harvard.edu	8

BLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
UNITED STATES V. GUNN, NO. 20-1959 (7TH Cir. 2020)	6
UNITED STATES V. ADAMS, NO. 6:18-cr-063 (E.D. KY. 2/21)	7
UNITED STATES V. FEILING, 453 F. SUPP. 3d 832, 841 (E.D. VA. 2020)	7
PEPPER V. UNITED STATES, 562 U.S. 476, 491 (2011)	8
UNITED STATES V. MCCOY	8
UNITED STATES V. WILLIAMS, NO. 1:92-cr-83 (E.D. VA. JAN. 2021)	8
UNITED STATES V. COOK, NO. 20-13293 (11TH Cir.)	9
UNITED STATES V. BRYANT, NO. 19-14161 (11TH Cir.)	9
UNITED STATES V. MCKREITH, NO. 20-10450 (11TH Cir.)	9
UNITED STATES V. FRIEDLANDER, NO. 19-13347 (11TH Cir.)	9
UNITED STATES V. KINSEY, NO. 20-11208 (11TH Cir.)	9
UNITED STATES V. WHITE, 2021 WL 268719 (M.D. TN. 1/27/21)	9
UNITED STATES V. ROBINSON, NO. 3:10-cr-261 (E.D. VA. 7/17/20)	10
UNITED STATES V. POWELL, NO. 05-cr-61 (D. DC. 6/18/20)	10
UNITED STATES V. AGOMUCHI, NO. 2020 WL 2526113 (E.D. MICH. 5/11/20)	10
UNITED STATES V. SANDERS, 2020 WL 2320094 (E.D. MICH. 3/11/20)	10
UNITED STATES V. MCGEE, NO. 205047 (10TH Cir. 2021)	12
UNITED STATES V. WEAVER, NO. 1:17-cr-235 (E.D. VA. 5/18/20)	12
UNITED STATES V. MORGAN, 473 F. SUPP. 3d 544, 547 (Dist. SC. 2020)	12
UNITED STATES V. EDWARDS, 451 F. SUPP. 3d 562, 565 (W.D. VA. 2020)	12
OTHER	
STATEMENT OF THE BOB AVAIL. APPROPRIATIONS. HOUSE. GOV. HEARINGS	10

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was JULY 7, 2021.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: AUGUST 13, 2021, and a copy of the order denying rehearing appears at Appendix C.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. THIS CASE INVOLVES CRUEL AND UNUSUAL PUNISHMENT IN THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION, IT SAYS:

EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL PUNISHMENT INFLICTED.

2. THIS CASE INVOLVES UNITED STATES SENTENCING COMMISSION GUIDELINES 1B1.13 REDUCTION IN TERM OF IMPRISONMENT UNDER 18 U.S.C. 3552 (c)(1)(A) POLICY STATEMENT, IT SAYS:

A COURT MAY REDUCE A TERM OF IMPRISONMENT (AND MAY IMPOSE A TERM OF SUPERVISED RELEASE WITH OR WITHOUT CONDITIONS THAT DOES NOT EXCEED THE UNSERVED PORTION OF THE ORIGINAL TERM OF IMPRISONMENT) IF, AFTER CONSIDERING THE FACTORS SET FORTH IN 18 U.S.C. 3553(a), TO THE EXTENT THAT THEY ARE APPLICABLE, THE COURT DETERMINES THAT - (1)(A) EXTRAORDINARY AND COMPELLING REASONS WARRANTS THE REDUCTION.

3. THIS CASE ALSO INVOLVES 18 U.S.C. 3142 (g), FACTORS TO BE CONSIDERED, IN RELEVANT PART IT SAYS:

... AND THE SAFETY OF ANY OTHER PERSON AND THE COMMUNITY.

STATEMENT OF THE CASE

ON OCTOBER 13, 2020, GARCIA-MEZA SENT A REQUEST TO THE WARDEN AT FCI CUMBERLAND PETITIONING THE WARDEN TO FILE A MOTION ON HIS BEHALF FOR COMPASSIONATE RELEASE/REDUCTION IN SENTENCE. THE WARDEN DENIED GARCIA-MEZA'S REQUEST ON OCTOBER 27, 2020. HE EXHAUSTED ALL ADMINISTRATIVE REMEDIES WITH HIS COUNSELOR AND UNIT MANAGER DENIED HIM A BR9 TO APPEAL THE WARDEN'S DECISION.

ON NOVEMBER 10, 2020, GARCIA-MEZA PETITIONED THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF MICHIGAN FOR COMPASSIONATE RELEASE/REDUCTION IN SENTENCE. IN HIS PETITION, HE INFORMED THE DISTRICT COURT THAT HE SUFFERS FROM HYPERTENSION, HIGH CHOLESTEROL, TYPE 2 DIABETES AND OBESITY. HE IS CURRENTLY 51 YEARS OLD, 5'9" 215 LBS., HIS BODY MASS INDEX (BMI) IS OVER 30. GARCIA-MEZA MEETS THE THRESHOLD CONDITIONS SET FORTH IN NOTE 1 (A). HE IS LESS ABLE TO PROTECT HIMSELF AGAINST AN UNFAVORABLE OUTCOME OF COVID-19 OR ANY OF ITS VARIANTS. THE CENTER FOR DISEASE CONTROL AND PREVENTION (CDC) MANDATES THAT HYPERTENSION, DIABETES, OBESITY, AND AGE FALL WITHIN THEIR GUIDELINES AS A HIGH RISK TO CONTRACT COVID-19.

THE DISTRICT COURT COURT DENIED GARCIA-MEZA'S MOTION ON FEBRUARY 12, 2021 Citing THAT HE DID NOT ESTABLISH EXTRAORDINARY AND COMPELLING REASONS AND THAT 18 U.S.C. 3553 (a) (6) ARE AGAINST HIM. HOWEVER, THE CDC STRONGLY CONTRADICTS THE DISTRICT COURT BY SAYING THAT PEOPLE WHO ARE AT HIGH RISK TO CONTRACT COVID-19 OR ANY OF ITS VARIANTS ESTABLISH EXTRAORDINARY AND COMPELLING REASONS.

THE GOVERNMENT RESPONDED TO GARCIA-MEZA'S APPEAL ON APRIL 7, 2020. ON APRIL 20, 2021, GARCIA-MEZA STRONGLY OBJECTED TO THE GOVERNMENT'S RESPONSE.

1
REQUEST TO THE WARDEN, ON FILE WITH THE DISTRICT COURT (OCT. 13, 2020)

2
WARDEN'S RESPONSE, ON FILE WITH THE DISTRICT COURT (OCT. 27, 2020)

3
COUNSELOR AND UNIT MANAGER'S DENIAL ON FILE WITH THE DISTRICT COURT (NOV. 4, 2020)

4
MEDICAL RECORDS, ON FILE WITH THE DISTRICT COURT (NOV. 10, 2020)

ON JULY 7, 2021, THE SIXTH CIRCUIT AFFIRMED THE DISTRICT COURT'S DECISION. SEE UNITED STATES V. GARCIA-MEZA, CASE NO. 21-1208.

ON JULY 19, 2021, GARCIA-MEZA PETITIONED THE SIXTH CIRCUIT FOR A REHEARING (EN BANC) PURSUANT TO FED. R. APP. 35 AND 40, AND THE SIXTH CIRCUIT'S LAR. ON AUGUST 13, 2021, THE REHEARING (EN BANC) WAS DENIED.

GARCIA-MEZA IS CURRENTLY 51 YEARS OLD; HE IS SERVING A LIFE SENTENCE FOR VIOLATING 18 U.S.C. 1111 (A) AND 18 U.S.C. 113 (A)(3). HE HAS SERVED APPROXIMATELY 20 YEARS OF HIS SENTENCE. HE IS CURRENTLY HOUSED AT FCI CUMBERLAND IN MARYLAND. GARCIA-MEZA'S MEDICAL CONDITIONS ARE HYPERTENSION, HIGH CHOLESTEROL, AND TYPE 2 DIABETES. HE IS 5'9, 215 LBS., HIS BMI IS OVER 30, MAKING HIM OBESE. THESE MEDICAL CONDITIONS FALL WITHIN THE CDC GUIDELINES AS HIGH RISK FOR REINFECTION TO CONTRACT COVID-19 AND/OR ITS DIFFERENT TYPE OF VARIANTS (E.G. DELTA). HE ALREADY MEETS THE THRESHOLD TEST OF MEDICAL CONDITIONS IN NOTE 1(A). GARCIA-MEZA HAS SHOWN SERIOUS MEDICAL CONDITIONS THAT PLACE HIM AT A HIGHER RISK OF SERIOUS COMPLICATIONS OR DEATH IF HE WOULD BE REINFECTED WITH COVID-19 OR ITS VARIANTS. DISTRICT COURT'S AROUND THE COUNTRY HAD FOUND IN UNITED STATES V. ZUKERMAN, 2020 WL 1659880, AT *6 CITING UNITED STATES V. RODRIQUEZ, 2020 WL 1627331, AT *12 "THE COURT DID NOT INTEND FOR THAT SENTENCE TO INCLUDE INCURRING A GREAT AND UNFORSEEN RISK OF SEVERE ILLNESS OR DEATH BROUGHT ON BY A GLOBAL PANDEMIC. CONTINUING INCARCERATION OF A PERSON AT HIGH RISK TO CONTRACT COVID-19 AND/OR ITS VARIANTS IS A VIOLATION OF THE EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

DESPITE THE BOP'S PROTECTION MEASURES, INDIVIDUALS HOUSED IN PRISONS REMAIN PARTICULARLY VULNERABLE TO INFECTION. SEE UNITED STATES V. MUNIZ, 2020 WL 1540325, AT *1, SEE ALSO UNITED STATES V. ESPARZA, 2020 WL 1696084, AT *1 NOTING THAT EVEN THE BEST RUN PRISONS, OFFICIALS MIGHT FIND IT DIFFICULT OR IMPOSSIBLE TO FOLLOW CDC GUIDELINES FOR PREVENTING THE SPREAD OF THE VIRUS AMONG INMATES AND STAFF: PRACTICING FASTIDIOUS HYGIENE AND KEEPING A DISTANCE OF AT LEAST SIX FEET FROM OTHERS.

A COURT NEED NOT WAIT UNTIL AN OUTBREAK OCCURS AT A SPECIFIC PRISON FACILITY TO DETERMINE THAT A PETITIONER HAS A PARTICULARIZED RISK OF CONTRACTING THE DISEASE. SEE MILLER V. UNITED STATES, CASE NO. 16-20222-1 (6th D. MICH. 2020) "PRISON POPULATIONS ARE SUBJECT TO HEIGHTENED VULNERABILITY TO THE COVID-19 PANDEMIC."

THE CDC PRESENTED TWO SEPARATE LISTS OF CONDITIONS THAT EITHER DEFINITELY ENTIALED A GREATER RISK OF SEVERE ILLNESS OR "MIGHT" ENTAIL A GREATER RISK. IT ALSO BEARS NOTING THAT ALTHOUGH AGE IS NOT LISTED AS A SEPARATE RISK FACTOR, THE CDC HAS EMPHASIZED THAT IT IS AN IMPARTANT INDICATOR OF RISK. "MORE THAN 80% OF COVID-19 DEATHS OCCUR IN PEOPLE OVER AGE 65, AND MORE THAN 95% OF COVID-19 DEATHS OCCUR IN PEOPLE OLDER THAN 45." GARCIA-MEZA IS CURRENTLY 51 YEARS OLD,

THE DISTRICT COURT AND THE SIXTH CIRCUIT BOTH ERRED WHEN THEY RULED THAT GARCIA-MEZA DOES NOT MEET THE MEDICAL TEST OF CONDITIONS AND THE 3553(a) FACTORS. COURTS AROUND THE COUNTRY HAD FOUND EXTRAORDINARY AND COMPELLING REASONS FOR PEOPLE WITH DIABETES, HYPERTENSION, OBESITY, RESPIRATORY CONDITIONS, LIVER PROBLEMS, ETC. CASE IN POINT, UNITED STATES V. BOZON-PROPP, NO. 95-00084, SOUTHERN DIST. OF FLORIDA, SHE WAS SENTENCED TO LIFE IN PRISON, SHE WAS OBESSE, AND A SMOKING STRONG. THE DISTRICT COURT GRANTED HER COMPASSIONATE RELEASE MOTION, UNITED STATES V. MANGLONA, NO. CR-14-5393, "OBESITY LIKELY DEPRIVES THE EFFECTIVENESS OF THE VACCINE BECAUSE OBESSE INDIVIDUALS ARE LIKELY TO PRODUCE FEWER ANTIBODIES IN RESPONSE TO THE VACCINE." BOTH COURTS HAVE FOUND EXTRAORDINARY AND COMPELLING REASONS FOR RELEASE.

A COURT NEED NOT TO CONSIDER 18 U.S.C. 3553(b)(1), WHICH INSTRUCTS COURTS TO APPLY THE FACTORS SET FORTH IN 18 U.S.C. 3553(b)(1). COURTS AROUND THE COUNTRY HAVE FOUND THAT THIS NO LONGER APPLIES TO COMPASSIONATE RELEASE MOTIONS FILED BY DEFENDANTS. SEE UNITED STATES V. ZULLO (19-3218-CR) (2d. CIR. SEPT. 25, 2020); UNITED STATES V. JONES (20-3701) (6th CIR. 2020); UNITED STATES V. GUNN (20-1959) (7th CIR. 2020).

THE DISTRICT COURT DENIED GARCIA-MEZA'S MOTION BASED ON THE 3553(a)(6) FACTORS, AND THE SIXTH CIRCUIT AFFIRMED IT. HOWEVER, THEIR REASONING IS AT ODDS WITH HIS PROGRESS REPORT, ISSUED BY HIS CASE MANAGER (JULY 14, 2021). THIS PROGRESS REPORT STATES THAT GARCIA-MEZA 1) IS PROGRAMING 2) HE IS CURRENTLY EMPLOYED AT UNICOR, WHERE HE IS RECEIVING GOOD WORK EVALUATIONS 3) HE HAS COMPLETED DIFFERENT EDUCATIONAL PROGRAMS 4) HE HAS MAINTAINED CLEAR CONDUCT SINCE HIS INCARCERATION IN NOVEMBER 2003 5) HE IS NOT CONSIDERED TO BE A MANAGEMENT CONCERN 6) PSYCHOLOGY HAS EXPRESSED NO CONCERNS 7) HIS FINES ARE PAID IN FULL. THE BOP'S FINDINGS ARE AT ODDS WITH THE DISTRICT COURT. THIS IS A MAN WHO IS REHABILITATED AND WHO IS NOT A DANGER TO ANYONE ELSE OR TO THE COMMUNITY. THE DISTRICT COURT DID NOT CORRECTLY APPLY THE 3553(a) FACTORS TO GARCIA-MEZA. THIS PROGRESS REPORT IS AVAILABLE TO THIS COURT FOR EXAMINATION IF NEEDED. GARCIA-MEZA MEETS THE FACTORS SET FORTH IN 18 U.S.C. 3553(a).

IN JANUARY 2021, FCI CUMBERLAND HAD AN OUTBREAK OF COVID-19, 220 INMATES AND 22 STAFF MEMBERS CONTRACTED THIS VIRUS. AT THAT TIME, GARCIA-MEZA'S HOUSING UNIT HELD 114 INMATES, 70 INMATES INCLUDING GARCIA-MEZA CONTRACTED THE VIRUS. THIS IS ROUGHLY 62% OF THE HOUSING UNIT. THIS ALONE IS EXTRAORDINARY AND COMPELLING REASONS.

IN THE EASTERMAN DISTRICT OF KENTUCKY, THE GOVERNMENT REFUSED TO ADDRESS THIS COVID-19 OUTBREAK, AT FCI CUMBERLAND. THAT DISTRICT HAD STATED IN UNITED STATES V. ADAMS, NO. G:18-cr-063 (Feb. 2021) "WE ARE VERY CONCERNED ABOUT FCI CUMBERLAND'S STRUGGLE TO CONTAIN THE VIRUS". GARCIA-MEZA'S DISTRICT COURT IGNORED FCI CUMBERLAND'S STRUGGLE TO CONTAIN THE VIRUS. IN THE CONTEXT OF A COVID-19 OUTBREAK, COURTS HAVE FOUND EXTRAORDINARY AND COMPELLING REASONS FOR COMPASSIONATE RELEASE WHEN AN INMATE SHOWS BOTH A PARTICULARIZED SUSCEPTIBILITY TO THE DISEASE AND A PARTICULARIZED RISK OF CONTRACTING THE DISEASE AT HIS PRISON FACILITY. SEE UNITED STATES V. FELLING, 453 F. Supp. 3d 832, 841 (E.D. VA. 2020).

POSITIVELY AND PRODUCTIVELY REHABILITATION IN ASSESSING.... DETERRENCE, PROTECTION OF THE PUBLIC AND REHABILITATION.... THERE WOULD SEEM TO BE NO BETTER EVIDENCE THAN A DEFENDANT'S POST-CONVICTION CONDUCT. SEE *PEPPER V. UNITED STATES*, 562 U.S. 476, 491 (2011). IN LIGHT OF *UNITED STATES V. MCCOY*, A COURT HAS FOUND THAT WHETHER A DEFENDANT IS A DANGER TO THE COMMUNITY IS NO LONGER A STANDALONE FACTOR. *UNITED STATES V. WILLIAMS*, NO. 1:92-cr-83, OKT. NO. 349, at *7 n.3 (G.O. VA. JAN. 2021) FACTOR PROMULGATED BY A SENTENCING GUIDELINES THAT NO LONGER GOVERNS MOTIONS FOR COMPASSIONATE RELEASE IN EVALUATING A MOTION FOR COMPASSIONATE RELEASE. A COURT MUST CONSIDER ONLY THE FACTORS SET FORTH IN SECTION 3553(a) TO THE EXTENT THAT THEY ARE APPLICABLE TO DETERMINE WHETHER A SENTENCE REDUCTION IS WARRANTED.

GARCIA-MERA DID REFUSE THE VACCINE, BECAUSE IT IS AGAINST HIS RELIGION AND HIS CONSTITUTIONAL RIGHT TO EXERCISE HIS FIRST AMENDMENT RIGHT.

A NEW YORK WOMAN TESTED POSITIVE FOR COVID-19 ONE MONTH AFTER RECEIVING HER SECOND AND FINAL DOSE OF THE PFIZER VACCINE. AFTER RECEIVING THE PFIZER VACCINE, IMMUNITY FROM COVID-19 LASTS 6 MONTHS. GARCIA-MERA'S UNIT OFFICER RECEIVED HIS SECOND AND FINAL DOSE OF THE PFIZER VACCINE IN FEBRUARY 2021; HE CONTRACTED THE VIRUS AGAIN IN JULY 2021. PEOPLE WHO RECOVERED FROM COVID-19 SUFFER FROM NUMEROUS HEALTH ISSUES, WHICH ARE COLLECTIVELY CALLED "LONG COVID-19" OR POST COVID-19 SYNDROME. RESEARCHERS IDENTIFIED THAT IT IS A COLLECTION OF AT LEAST 4 DISTINCT CLINICAL ENTITIES WHICH ARE POST-INTENSIVE CARE SYNDROME, POST-VIRAL FATIGUE SYNDROME, PERMANENT ORGAN DAMAGE, AND LONG TERM COVID-19 SYNDROME (E.G. PNEUMOTHORAX, PNEUMOMEDIASTINUM, ETC.). THE CDC HAS FOUND THAT THOSE BETWEEN THE AGES OF 50 AND 64 ARE 25 TIMES MORE LIKELY TO BE HOSPITALIZED FROM COVID-19.

FOX 5 NEWS (MAR. 31, 2021)

ABC NEWS (APR. 1, 2021)

health.harvard.edu

IT SEEMS TO BE SOME CONFUSION WHEN A COURT CONSIDERS THE 3553(a) FACTORS. IN THE ELEVENTH CIRCUIT, THE ISSUE IS WHETHER THE DISTRICT COURT IS RESTRICTED BY THE SENTENCING COMMISSION'S POLICY STATEMENT IN U.S.S.G. 1B1.13, COMMENT, (n.1), THE DEFINITION OF EXTRAORDINARY AND COMPELLING REASONS AND WHETHER A DISTRICT COURT IS REQUIRED TO CONSIDER THE 3553(a) FACTORS BEFORE DENYING A MOTION FOR COMPASSIONATE RELEASE. SEE E.G. UNITED STATES V. COOK, NO. 20-13293; UNITED STATES V. BRYANT, NO. 19-14267; UNITED STATES V. MCKREITH, NO. 20-10450; UNITED STATES V. FRIEDLANDER, NO. 19-13347; UNITED STATES V. KINSEY, NO. 20-11208

THIS COURT HAS CASES PENDING BEFORE THEM, THEY ARE SCHEDULED TO BE HEARD IN THE FALL OF 2021. BRYANT V. UNITED STATES, NO. 20-1732, WHETHER SECTION 1B1.13 OF THE U.S.S.G. IS AN APPLICABLE POLICY STATEMENT THAT BINDS A DISTRICT COURT IN CONSIDERING A DEFENDANT-FILED MOTION FOR COMPASSIONATE RELEASE UNDER 18 U.S.C. 3582 (c)(1)(A); AND HOUSTON V. UNITED STATES, NO. 20-1479, WHETHER A SENTENCING COURT MUST CONSIDER APPLICABLE SENTENCING FACTORS CODIFIED IN 3553(a) WHEN DECIDING WHETHER TO IMPOSE A REDUCED SENTENCE.

U.S.S.G. 1B1.13, 18 U.S.C. 3553(a) AND 18 U.S.C. 3142(g) ALL ASK A COURT TO CONSIDER IF AN DEFENDANT IS A DANGER TO THE COMMUNITY OR NOT; 1) A COURT CANNOT FINALLY CONSIDER THIS WITHOUT INVESTIGATING A DEFENDANT'S POST-CONVICTION RECORD AND 2) CANNOT DEEM AN DEFENDANT A DANGER TO THE COMMUNITY UNDER ONE STATUTE AND NOT A DANGER TO THE COMMUNITY IN ANOTHER STATUTE.

COURTS HAVE GRANTED COMPASSIONATE RELEASE TO DEFENDANTS WHO HAVE BEEN VACCINATED NOTING THE RISK AND OTHER UNKNOWN ABOUT THE EFFICACY OF THE VACCINE. SEE UNITED STATES V. WHITE, 2021 WL 268719, at *4 (M.D. TN. 1/27/21)

GRANTING COMPASSIONATE RELEASE AND NOTING NEW COVID-19 VARIANTS CAN EVADE VACCINE INDUCED IMMUNITY; UNITED STATES V. MANGLONA, NO. 3:14-cr-5396, DKT. NO. 205, at *3 (W.D. WASH. 3/3/21) GRANTING COMPASSIONATE RELEASE TO A DEFENDANT WHO RECEIVED BOTH DOSES OF COVID-19 VACCINE, NOTING RISK APPEARS TO REMAIN BUT IT IS REDUCED TO A UNKNOWN DEGREE.

ON APRIL 14, 2021, A HEARING WAS HELD IN THE SENATE JUDICIARY COMMITTEE ABOUT OVERSIGHT IN THE BOP. SENATORS PRESSED THE DIRECTOR OF THE BOP ON CONDITIONS IN FEDERAL PRISONS, INCLUDING INADEQUATE MEDICAL CARE, IMPROPER SOCIAL DISTANCING MEASURES, ETC.

ON JUNE 21, 2021, THE DIRECTOR OF THE BOP TESTIFIED BEFORE CONGRESS AND STATED "WE ARE BEGINNING TO FLATTEN THE CURVE." HE WAS WRONG. THE BOP REPORTED AT LEAST 167 DEATHS OF INCARCERATED PEOPLE. SOME OF THESE DEATHS WERE SURGICALLY PREVENTABLE. THE BOP REPORTED THAT THE MAJORITY OF THESE INDIVIDUALS (83) WERE KNOWN TO BE AT A HIGH RISK TO CONTRACT COVID-19.

COURTS THROUGHOUT THE COUNTRY HAVE SOUNDLY REJECTED THE ARGUMENT THAT AN INDIVIDUAL IS SOMEHOW SAFER IN PRISON DURING THIS PANDEMIC. SEE UNITED STATES V. ROBINSON, NO. 3:10-cr-261, ECF. NO. 86 at *10 (E.D. VA 7/17/20); UNITED STATES V. POWELL, NO. 05-cr-61, ECF. NO. 78 at *9 (D. DC 6/18/20). "IT CANNOT BE DISPUTED THAT AN INDIVIDUAL IN PRISON IS LESS ABLE TO CONTROL HIS OWN SURROUNDINGS AND EXPOSURE THAN HE WOULD BE IF LIVING IN A SINGLE FAMILY RESIDENCE IN THE COMMUNITY," UNITED STATES V. AGOMUOH, 2020 WL 2526113, at 8-9 (E.D. MICH 5/19/20). "IT IS IRRELEVANT WHETHER A DEFENDANT COULD CONTRACT COVID-19 OUTSIDE OF HIS PRISON," UNITED STATES V. SANDERS, 2020 WL 2320094, at *8 (E.D. MICH 5/11/20). "THE COURT WILL NOT COUNTENANCE THE CYNICAL AND ILLOGICAL POSITION THAT A DEFENDANT IS SAFER IN PRISON AS A REASON TO SUPPORT DETENTION."

THE BOP HAS INSTALLED A COVID-19 MODIFIED OPERATIONS PROCEDURE. THIS TIERED APPROACH ADDRESSES INFECTION CONTROL MEASURES, INMATE PROGRAMMING, AND STAFF SCREENING/TESTING GUIDANCE IN ACCORDANCE WITH THE CONTINUED USE OF THE BOP'S COVID-19 PANDEMIC PLAN.

9

STATEMENT OF THE DIR. OF THE BOP AVAILABLE AT appropriations.house.gov/hearings

THIS TIERED APPROACH UTILIZES THREE INDICATORS FOR EACH INSTITUTION TO DETERMINE A MODIFIED OPERATION LEVEL. THE MODIFIED OPERATIONS LEVEL IS MONITORED ONLY BY THE INSTITUTION'S HEALTH SERVICE ADMINISTRATOR (HSA), AND REPORTED TO THE WARDEN AT EACH RESPECTIVE LOCATION.

THE THREE INDICATORS ARE: 1) MEDICAL ISOLATION RATE WITHIN THE INSTITUTION (ACTIVE CASES); 2) FACILITY VACCINATION RATE WITHIN THE INSTITUTION (INCLUDES STAFF AND INMATES); AND 3) COMMUNITY TRANSMISSION RATES IN THE SURROUNDING COMMUNITIES OF THE INSTITUTION.

A PERCENTAGE-BASED FORMULA IS APPLIED TO THESE THREE INDICATORS AND DETERMINES THE LEVEL OF MODIFIED OPERATIONS. THOSE THREE LEVELS ARE: LEVEL ONE (GREEN) OPERATIONS - MINIMAL MODIFICATIONS; LEVEL TWO (YELLOW) OPERATIONS - MODERATE MODIFICATIONS; AND LEVEL THREE (RED) OPERATIONS - INTENSE MODIFICATIONS. FCJ CUMBERLAND IS CURRENTLY UNDER A LEVEL 3 (RED) OPERATIONS - INTENSE MODIFICATIONS.

LEVEL 3 (RED) OPERATIONS - INTENSE MODIFICATIONS

MEDICAL ISOLATION RATE $\geq 7\%$

OR

FACILITY VACCINATION RATE $< 50\%$

OR

COMMUNITY TRANSMISSION RATE ≥ 100

PER 100,000 OVER THE LAST 7 DAYS

GARCIA-MEZA DOES NOT DISPUTE THE SERIOUSNESS OF THIS INSTANT OFFENSE. CONTINUED INCARCERATION IS NOT NECESSARY TO PROTECT THE PUBLIC. THIS IS EVIDENT BASED ON THE WILLINGNESS TO ENGAGE IN PROGRAMS WHILE INCARCERATED.

AGE EXERTED A STRONG INFLUENCE ON RECIDIVISM ACROSS ALL SENTENCING LENGTH CATEGORIES. OLDER OFFENDERS WERE LESS LIKELY TO RECIDIVATE AFTER RELEASE THAN YOUNGER OFFENDERS WHO HAD SERVED SIMILAR SENTENCES,¹⁰ REGARDLESS OF THE LENGTH OF THE ORIGINAL FEDERAL SENTENCE.

GARCIA-MERA MAINTAINED CLEAN CONDUCT, HE HAS PROGRAMED, HE WORKS IN UNICOR. HIS REMARKABLE RECORD OF REHABILITATION MUST ADD TO THE DETERMINATION THAT PRESENTS EXTRAORDINARY AND COMPELLING REASONS TO SUPPORT A SENTENCE REDUCTION; AND IF RESENTENCED AND EVENTUALLY RELEASED, HE HAS A COMPREHENSIVE REENTRY PLAN IN PLACE THAT INCLUDES SUPPORT FROM HIS FAMILY¹¹ AND EMPLOYMENT SKILLS IN WHICH HE HAS LEARNED BY WORKING IN UNICOR.

GARCIA-MERA'S PHYSICAL HEALTH AND AGE, AND THE UNIQUE DANGER HE FACES OF REINFECTION AND BECOMING SEVERELY ILL. THE PRESENT INCREASE PRESENTS A GRAVE DANGER. GARCIA-MERA COULD BE PRESUMED, WHICH IN THIS CASE, COULD RESULT IN DEATH. HE HAS SHOWN A MORE THAN SPECULATIVE RISK OF INFECTION TO THE VIRUS AT HIS INSTITUTION. HE HAS ESTABLISHED EXTRAORDINARY AND COMPELLING REASONS.¹²

FOR ALL THE REASONS SET FORTH AND FOR ANY OTHER REASONS THIS COURT DEEMS NECESSARY. SEVERO GARCIA-MERA RESPECTFULLY PETITIONS THIS COURT TO GRANT HIS WRIT OF CERTIORARI.

¹⁰

U.S.S.C.'S REPORT ON THE EFFECTS OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS (2017)

¹¹

UNITED STATES V. MCGEE (2021) NO. 20-5047 (10TH CIR).

¹²

UNITED STATES V. WEAVER, NO. 1:17-cr-235, 2020 WL 4810123, at *2 (E.D. VA. 5/18/20);

UNITED STATES V. MORGAN, 473 F. SUPP. 3d 544, 547 (DIST. SC. 2020); UNITED STATES V.

EDWARDS, 451 F. SUPP. 3d 562, 565 (W.D. VA. 2020).

RESPECTFULLY SUBMITTED

Severo Garcia Mera
SEVERO GARCIA-MERA, #10814-040

OCTOBER 14, 2021

(DATE)

REASONS FOR GRANTING THE PETITION

THE DISTRICT COURT AND THE SIXTH CIRCUIT BOTH ERRED WHEN THEY RULED THAT GARCIA-MERA DOES NOT MEET THE MEDICAL TEST OF CONDITIONS AND THE 3553(a) FACTORS. COURTS AROUND THE COUNTRY HAVE FOUND EXTRAORDINARY AND COMPELLING REASONS FOR PEOPLE WITH DIABETES, HYPERTENSION, OBESITY, RESPIRATORY CONDITIONS, HEART CONDITIONS, ETC. CASE IN POINT, UNITED STATES V. BOZON-APPA, NO. 95-00084, SOUTHERN DISTRICT OF FLORIDA (2021); SHE WAS SENTENCED TO LIFE IN PRISON, SHE WAS OBESE, AND A SMOKING STATUS. THE DISTRICT COURT GRANTED HER COMPASSIONATE RELEASE MOTION; UNITED STATES V. MARGOLAN, NO. 3:14-cr-5396 (C.D. WASH. 3/3/21) "OBESITY LIKELY DEPRIVES THE EFFECTIVENESS OF THE VACCINE BECAUSE OBESE INDIVIDUALS ARE LIKELY TO PRODUCE FEWER ANTIBODIES TO THE VACCINE." BOTH COURTS FOUND EXTRAORDINARY AND COMPELLING REASONS FOR RELEASE.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Severo Garcia

Date: October 14, 2021