No. 21-7245

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JAN 21 2022
OFFICE OF THE CLERK

JULIA ANN POFF, Petitioner

VS.

UNITED STATES OF AMERICA, Respondent

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Does the District Court and Appellate Court abuse their discretion when they treat an inmate filed compassionate release motion different than one filed by an attorney?

2. Most Circuits (2nd, 4th, 5th, 6th, 7th, 9th, and 10th) have agreed that United States Sentencing Guidelines Section 1B1.13 "only applies when the Director of the Bureau of Prisons files and not when the inmate/defendant does." So what constitutes "extraordinary and compelling" reasons for a sentence reduction under 18 U.S.C. Section 3582(c)(1)(A) and are they different when filed by an attorney verses an inmate?

3. Congress writes the wording of the statutes, do the Courts and/or Prosecutors have the authority to change it?

4. In 2011, this Court ruled in Pepper v. United States, 562 U.S. 476, that a court "must consider post-offense developments in conducting a 3553(a) analysis," is this applicable to the amended Section 3582 motions filed by an inmate? Can "just punishment" warrant a sentence that uniquely exposes a particularly vulnerable individual to a life-threatening illness, especially when the Bureau of Prisons is failing to protect?

5. In Torres v. Lynch, 136 S.Ct. 1619 (2016) this Court ruled that Section 844 was not a "crime of violence," because it could pertain to the destruction of one's own property. Can the Bureau of Prisons using Program Statement 5162.05 from 2009 continue to penalize them as "violent" and prevent the release of a medically vulnerable individual under the CARES Act? Can a Judge erroneously state this in her denial as well?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

RELATED CASES

The original judgment of conviction in Case No. 4:17-cr-669 of Petitioner in the United States District Court for the Southern District Of Texas was not reported and is attached hereto as Appendix "A."

On August 20, 2020 the "Emergency Motion For Compassionate Release" was filed in the sentencing court. The Honorable Vanessa Gilmore denied it on August 24, 2020. The Petitioner never received a copy of the Order, even though filed Pro Se.

On September 14, 2020 a "Motion For Reconsideration" and "Notice Of Appeal" was filed. On September 29, 2020 Judge Gilmore denied the "Motion for Reconsideration," it was not reported and is attached hereto as Appendix "B."

On September 29, 2021 the denial was affirmed by the Court of Appeals for the Fifth Circuit, it was not reported and is attached hereto as Appendix "C." Ms. Poff filed a "Petition for Rehearing En Banc."

On January 7, 2022 the "Petition for Rehearing En Banc" was denied and is attached hereto as Appendix "D." Ms. Poff filed a "Motion to Stay the Mandate" on January 13, 2022.

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JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on September 29, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C Section 844(d):

"Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully to damage or destroy any building, vehicle, or other real or personal property shall be imprisoned for not more than ten years..."

18 U.S.C. Section 871:

"Whoever knowingly and willfully deposits for conveyance in the mail or for a delivery from any post office or by any letter carrier any letter, paper, writing, print, missive, or document containing any threat to take the life of, to kidnap, or to inflict bodily harm upon the President of the United States, the President-elect, the Vice President or other officer next in order of succession to the Office of President of the United States, or the Vice-President elect, or knowingly and willfully otherwise makes any such threat against the President, President-elect, Vice President or other officer next in the order of succession to the office of President or Vice President-elect, shall be fined under this title or imprisoned not more than five years, or both."

18 U.S.C. Section 879:

"Whoever knowingly and willfully threatens to kill, kidnap, or inflict bodily harm upon-

(1) a former President or member of the immediate family of a former President;

2) a member of the immediate family of the President, the President-elect, the Vice President, or the Vice President-elect;

3) a major candidate for the office of President or Vice President, or a member of the immediate family of such candidate; or

4) a person protected by the Secret Service under Section 3056(a)(6)

Shall be fined under this title or imprisoned not more than five years, or both."

18 U.S.C. Section 1038:

"Whoever engages in any conduct with intent to convey false or misleading information under circumstances where such information may reasonably be believed and where such information indicates that an activity has taken, is taking, or will take place that would constitute a violation of chapter 2 ... 40 ... shall -

A) be fined under this title or imprisoned not more than 5 years, or both ..."

18 U.S.C Section 3582(c)(1)(A):

As amended by the First Step Act:

(c) Modification of an imposed term of imprisonment - The court may not modify a term of imprisonment once it has been imposed except that -

(1) in any case -

(A) the court, upon motion of the Director of the Bureau of Prisons, 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. Section 3553(a):

a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider --

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed-

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;...

28 U.S.C. Section 994(t)

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

UNITED STATES SENTENCING GUIDELINES

Section 1B1.13 is found in Appendix B.

BOP PROGRAM STATEMENTS

5162.05- Categorization of Offenses is attached as Appendix E.

STATEMENT OF THE CASE

Ms. Poff's landlord after receiving an illegal eviction used her trash to set her up. He wanted revenge and retaliated against the Poff family after Ms. Poff received a $304,000 default judgment against him. This truth the Court refuses to acknowledge.

After being denied Lupus medication for 315 days, denial of visitation with her husband and youngest child, and the right to have a fair trial, Ms. Poff was forced to plead guilty to a crime she still maintains her innocence in. On July 1, 2019 she plead guilty to one count of 18 U.S.C. Section 844(d) - "Transportation of Explosives With the Intent to Kill, Injure, or Intimidate." She understood and believed she was only pleading to intimidate because the packages were intentionally designed to be both INOPERABLE and INCAPABLE of hurting anyone. Recently, discovered the Government changed the wording of the statute to "and" making it conjunctive instead of disjunctive. On November 19, 2019 Judge Gilmore erroneously cross-referenced intimidation with "attempted-murder," and sentenced her to the maximum statutory sentence of 120 months. The Judge clearly made her hatred of Ms. Poff known at sentencing when she called Ms. Poff a "living monster."

Ms. Poff was one of the 20,000+ inmates who filed a motion for a compassionate release, in fear for her life because of the Coronavirus. Ms. Poff has several medical issues documented by both the guidance provided by the Department of Justice and the Center for Disease Control. Judge Gilmore instantly denied

Ms. Poff's motion for counsel. She then gave no honest consideration to Ms. Poff's motion and denied it in four (4) days. Like other motions Ms. Poff has filed pro se, she didn't even bother to send Ms. Poff a copy of her Order. Ms. Poff heard about it from a third-party.

Ms. Poff immediately filed a "Notice of Appeal," and a "Motion for Reconsideration," at the same time. The Judge had stated that "Ms. Poff hadn't exhausted her administrative remedies." This was plain error since April to August is most definitely more than 30 days. She corrected that error but then quoted United States Sentencing Guidelines Section 1B1.13 and did not properly consider any positive factors under Section 3553(a). The Judge relied on erroneous information and what most circuits have stated is an "inapplicable policy statement," clearly abusing her discretion. The Court of Appeals affirmed on the same erroneous information.

So is the policy statement only "inapplicable" when filed by an attorney (all of the ones that ruled were) and not when filed by a defendant pro se?

Ms. Poff continues to fight her wrongful conviction and in the meantime with her medical issues she is not receiving adequate treatment (has not seen a Rheumatologist since 2019) for, she is facing an unconstitutional undeserved inhumane death sentence at the hands of the Bureau of Prisons.

REASONS FOR GRANTING THE WRIT

No one ever expected a pandemic or the impact it has taken on our nation. The loss of over 5 million lives worldwide, with over 800,000 in the United States alone. The COVID pandemic continues and inmates are still dying at the inhumane hands of the Bureau of Prisons, what is the actual number of lives lost? No one really knows that answer because the Department of Justice continues to forge the numbers. How many of those lives could have been saved? Other countries have released their inmates and America deemed "Land of the Free," continues to let them perish.

In a recent opinion Circuit Judge Calabresi wrote: "The First Step Act of 2018, Pub.L. 115-391, 132 Stat. 5194 ("First Step Act"), was simultaneously monumental and incremental. Monumental in that its changes to sentencing calculations, mandatory minimums, good behavior credits and other parts of our criminal laws lead to the release of thousands of imprisoned people whom Congress and the Executive believed did not need to be incarcerated. Incremental, in that, rather than mandating more lenient outcomes, it often favored giving discretion to an appropriate decisionmaker to consider leniency." However, there is no consistency across the nations with Judges. Out of the 20,000+ Compassionate release motions that have been filed in light of the COVID pandemic, only roughly 3,700 have been granted. That is basically one out of five. Why? The District of Oregon granted 82 out of 127 which gave them an approval rate of 64.6%. Lucky you, if you are out of Oregon, but go

South to Georgia, which only granted 4 out of 230, which gave them a denial rate 98.3%. In fact most of the Northern States granted more releases than the Southern states. They also appointed attorneys in most of the cases that have been granted. What is the secret formula they used to determine their releases? Why is there such a large disparity?

Several issues have been brought to light, what one Judge feels is an extraordinary and compelling reason, another does not think it is. The coronavirus is not discriminating against anyone, it attacks everyone so how can the Judges be discriminatory during these times? Most circuits have decided that United States Sentencing Guidelines 1B1.13 does not apply to defendant filed motions... that are filed by an ATTORNEY. Why are those of us who are unable to afford an attorney or not fortunate enough to be appointed one penalized? Isn't that a violation of the Sixth Amendment? Also shouldn't post-sentencing rehabilitation count for anything and shouldn't the courts be required to do a full Section 3553 analysis to look at the complete picture? Several circuits think not.

Times have changed since sentencing and the courts need to take into consideration the pandemic and address each case individually asking, "would it be just punishment for this person to die at the hands of the BOP," if not then release or other measures would be appropriate.

Question 1: CAN THE LOWER COURT'S DISREGARD A PREVIOUS RULING OF THIS COURT?

This Court has actually ruled on the issue of Pro Se litigants in multiple cases. Most of the current Supreme Court Justices in Erickson v. Pardus, 551 U.S. 89 (2007) held that:

> "a document filed pro se is to be liberally construed, and a pro se complaint, however inartfully pleaded must be held to less stringent standards than formal pleadings drafted by lawyers."

If this is the way it should be then why was Ms. Poff's issues addressed differently than those filed by an attorney?

In United States v. Jones, 2020 U.S. App. LEXIS 36620 (6th Cir.), it was filed by an attorney from the Federal Public Defender's Office and on Page 6 it states:

> "At no point did the district court refer to U.S.S.G.§ 1B1.13, the Sentencing Commission's policy statement regarding compassionate release."

Then in United States v. Shkambi, 2021 U.S. App. LEXIS 10053 (5th Cir.) again filed by an attorney on Page 3 it states:

> "A district court cannot rely on pieces of text in an otherwise inapplicable policy statement."

It even quotes on Page 7 another case again filed by an attorney, United States v. McCoy, 2020 U.S. App. LEXIS 37661 (4th cir), (refusing to "do some quick judicial surgery on §1B1.13 ... [and] assume that what remains ....applies to defendant-filed as well as BOP-filed motions").

Now let's look at Ms. Poff's orders. In the District Court order dated September 29, 2020 (See Appendix B), she not only cited § 1B1.13 multiple times but she used almost half of the second page to quote it. But yet the Court of Appeals affirmed the denial? It states in their order dated exactly one year later on September 29, 2021:

> "While the district court discussed U.S.S.G. § 1B1.13 in its order, there is nothing in the record to indicate that it felt bound by this policy statement and its commentary." (See App. C)

The following statement used in the District Court's order is a "piece of text in an otherwise inapplicable policy statement," that the Fifth Circuit said "cannot be relied on," but yet Ms. Poff's denial was affirmed?

> "Additionally, no evidence has been presented that indicates that the Defendant no longer poses a danger to the safety of any person or the community." (See U.S.S.G § 1B1.13(2)).

The above statement is not found in the Section 3553(a) factors but is plainly a "requirement" under Section 1B1.13. "And because satisfying the 1B1.13 policy statement is no longer a requirement for a defendant-filed compassionate release motions, the policy statement's requirement that the defendant not be a danger to the community no longer provides an independent basis for denying compassionate release." United States v. Hampton, 985 F.3d 530 (6th Cir. 2021), another case filed by an attorney.

In three different circuits, motions filed by attorneys was ruled on differently regarding the same issues Ms. Poff raised independently filing pro se. Why was hers ruled different and her denial affirmed when this Court has held that hers should be "liberally construed?"

Question 2: THERE ARE SPLIT DECISIONS/OPINIONS ON A FEDERAL QUESTION THAT HAS NOT BEEN ANSWERED BY THIS COURT AND THE COURT OF APPEALS ABUSED ITS DISCRETION BASED ON ERRONEOUS INFORMATION

Historically, for thirty-four (34) years only the Bureau of

Prisons ("BOP") could bring compassionate release motions and the BOP rarely exercised this power. The BOP approved only 6% of 5,400 compassionate release applications received between 2013 and 2017. See Christie Thompson, "Frail, Old, and Dying but Their Only Way Out of Prison Is a Coffin," N.Y. Times (March 7, 2018). Not only that, the program was plagued by mismanagement as the BOP's implementation of the program was inconsistent and resulted in ad hoc decision making. Furthermore, they had no timeliness standards in reviewing requests. Between 2013 and 2017, 266 persons died in custody waiting for the Director to review their applications, half of whom were serving time for nonviolent fraud or drug crimes. A 2013 report from the Office of Inspector General revealed that, on average only 24 incarcerated people per year were released on BOP motions. United States v. Brooker, 976 F.3d 228, 231 (2d Cir. 2020).

The passing of the "First Step Act" (FSA), in 2018, Section 603(b) entitled, "Increasing the Use and Transparency of Compassionate Release," couldn't have come at a better time, opening a window to inmates/defendants to seek release on their own under the amended 18 U.S.C. Section 3582(c)(1)(A). "The First Step Act removed the BOP from its former role as a gatekeeper over compassionate release petitions." McCoy (4th Cir. 2020).

This has left Judges across the nation stumped by the question "What is an extraordinary and compelling reason," that could justify a release for the inmate? Some judges have been very liberal, others conservative, and then of course like Ms. Poff's sentencing judge, some who think NOTHING constitutes extraordinary and compelling. The Director of the Bureau of Prisons was to utilize United States Sentencing Guidelines Section 1B1.13 to determine what constituted as extraordinary and compelling. But all of the Circuits except for the 11th have ruled "that 1B1.13 does not govern motions that are filed by an inmate." Brooker (2d Cir. 2020); McCoy (4th Cir. 2020); Shkambi (5th Cir. 2021); Jones (6th Cir. 2020); United States v. Gunn, 980 F.3d 1178 (7th Cir. 2020); United States v. Aruda, 993 F.3d 797 (9th Cir. 2021); and United States v. Maumau, 993 F.3d 821 (10th Cir. 2021). Again, all filed by an attorney.

When Ms. Poff filed her "Emergency Motion for Compassionate Release," on August 20, 2020, Judge Gilmore denied it independently in four (4) days. She never even bothered to send Ms. Poff a copy of her Order even though Ms. Poff filed pro se. Through the grapevine, Ms. Poff learned that it was denied stating that Ms. Poff "did not exhaust her administrative remedies." The Government never had a chance to respond to the motion, so was it error itself for the Judge to raise the issue of exhaustion herself? In another case, Judge Failla stated in his ruling "that Section 3582(c)(1)(A)'s exhaustion requirement is not jurisdictional, but rather a claims-processing rule that the Government can waive by failing to raise an exhaustion argument." United States v. Gentille, 2020 U.S. Dist. LEXIS 62680 (S.D.N.Y. April 9, 2020). Either way Judge Gilmore was completely wrong. Seizing on partial language of Section 3582(c)(1)(A) it states:

> "... or lapse of 30 days from the receipt of such request by the Warden of the defendant's facility, whichever is earlier..."

Again prejudice is shown towards Ms. Poff filing pro se, had an attorney filed then the Judge would not have pulled this nonsense. Attached to Ms. Poff's original motion was the Warden's denial letter dated April 9, 2020. Ms. Poff filed in August, that is definitely over 30 days. "Exhaustion occurs when BOP denies a defendant's application or let's thirty days pass without responding to it." Brown v. United States, 411 F. Supp. 3d. 446 (S.D. Iowa 2019). The Court refused to even acknowledge their error and stated in the order on Page 2:

> "Defendant states that she has now exhausted her administrative remedies under §3582(c)(1)(A)."

Ms. Poff only reiterated the fact that April to August is more than 30 days. The Judge still refused to let the Government respond when Ms. Poff filed her "Motion for Reconsideration," pointing out the error. Since Judge Gilmore has ignored other filings from Ms. Poff, she expected no response so at the same time Ms. Poff filed a "Notice of Appeal." The filing of a notice of appeal is an event of jurisdictional significance, "which" confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal. Griggs v. Provident Consumer Disc. Co. 459 U.S. 56 (1982). In addition to that Ms. Poff's direct appeal was still pending in the court of appeals so where did jurisdiction lie?

On September 29, 2020 the Judge denied Ms. Poff's "Motion for Reconsideration." Judge Gilmore's order was four (4) pages liberally and she quoted U.S.S.G. Section 1B1.13 which took up most of the second page. The Appeals Court wants to believe that a Judge would use 40% of their order to quote a guideline, but not use it to base at least part of their decision. That is absurd! There is no record because the Judge ruled independently, so if she didn't use this guideline then what was her decision based on?

The Sixth Circuit has the right idea when it created a three-step process or test that should be followed when analyzing a compassionate release motion. Jones, (6th Cir. 2020). "Because this three-step test is consistent with the plain language of Section 3582(c)(1)(A), we adopt the test for use in this circuit." Maumau, (10th Cir. 2021) and United States v. McGee, 992 F.3d 1035, 1042-43 (10th Cir. 2021)(adopting test established in Jones). The Fifth Circuit has not adopted the test that is outlined and detailed below:

Step One: A court must find whether extraordinary and compelling reasons warrant a sentence reduction. 18 U.S.C. § 3582(c)(1)(A)(i)

In relation to the COVID-19 pandemic, there have been two guidelines put out that list illnesses which should take extra precautions to prevent contracting the Coronavirus. Ironically, the Department of Justice posted a list containing certain conditions that have been identified as potentially satisfying the standard of an "extraordinary and compelling reason" for release in context of the pandemic. The list includes: 1) asthma; 2) chronic kidney disease; 3) chronic lung disease; 4) diabetes; 5) hemoglobin disorders; 6) liver disease; 7) heart conditions, including hypertension; 8) immunocompromised, including from cancer treatment; and 9) obesity (over 30 B.M.I.). The C.D.C. has also published a similar list. As documented in her medical records

Ms. Poff has three (3) of these conditions. Ms. Poff was diagnosed with Rheumatoid arthritis in 2014 and systemic lupus erythematosus (lupus) in 2015 both of which are autoimmune diseases which means she is immunocompromised. Since Ms. Poff was denied her Lupus medication (hydroxychloriquine or aka plaquenil) for 315 days to force her to plead guilty, she has now been diagnosed with Raynaud's Syndrome and Stage One Heart Disease. Ms. Poff is also considered obese with a B.M.I. of 34.

The District Court utilyzing U.S.S.G. Section 1B1.13 clearly abused her discretion when she listed the conditions but then stated: "The Court finds that these medical conditions do not cause an increased risk for severe illness from COVID-19 and/or her medical records indicate that she has recovered from the medical condition." Is Judge Gilmore a medical professional as well as a Judge to overrule incoming medical data and the guidelines issued by the Center for Disease Control (CDC)? Again, the Court of Appeals affirmed this erroneous information.

Lupus alone is a chronic autoimmune condition in which the immune system attacks its own tissue. It is a non-curable serious debilitating illness, that causes chronic pain and extreme fatigue which can be exacerbated by additional medical complications like rheumatoid arthritis which Ms. Poff has also been diagnosed with. Furthermore, the District Court felt she had the authority to overrule another Judge's previous ruling from multiple outside doctors including Specialists that Ms. Poff's illness was "severe" as documented from her social security records previously supplied as an exhibit in the Government's Sentencing memorandum. Rheumatoid arthritis means that her body mounts an inappropriate immune response to her own cells and tissues, specifically the joints. The chronic inflammation also increases the risk for cardiovascular disease by accelerating athero-sclerosis. Lupus requires constant monitoring and ready access to medication. As a result of the lack of institutional medical care, Ms. Poff developed Raynaud's Syndrome. Raynaud's is a disorder that affects blood circulation, basically the blood vessels narrow and almost completely shut down. Due to the harsh conditions of incarceration

Ms. Poff is at risk of having several fingers amputated. She has also been diagnosed with Stage One Heart Disease. The lack of medical care was brought to the Sentencing Judge's attention numerous times and continues to be ignored. Carswell is notorious for providing poor medical care, and is essentially a large nursing home that is severely understaffed. Ms. Poff has sought medical attention for these problems from prison medical staff on a regular basis and has not been followed up with by staff. Unfortunately, as shown by the DOJ's own Inspector General, the BOP is unable to fill even basic institutional health care positions, and has cancelled all but emergency transport to outside medical facilities. (See oig.justice.gov). At this point, the District Court should have gone through each condition listed and analyzed it, like other Court's did but again they were filed by attorneys. Ms. Poff, did it for her but it seems like she didn't even bother to read it at all.

The Fourth circuit recently reversed a compassionate release denial because the district court failed to consider the appellant's obesity. The Court indicated that their standard of review here was "Abuse of Discretion." The Court also noted that when considering extraordinary and compelling circumstances, the court was "empowered... to consider any extraordinary and compelling reason for release that a defendant might raise in deciding whether to grant a defendant-filed motion." United States v. Brown, 2021 U.S. App. LEXIS 29406 (4th Cir. 2021) (quoting McCoy, (4th Cir. 2021). "A district court abuses its discretion when it acts arbitrarily or irrationally, fails 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. Kibble, 992 F.3d 326, 329 (4th Cir. 2021)(quoting United States v. Dillard, 891 F.3d 151, 158 (4th Cir. 2018)(holding the district court abused its discretion by failing to consider all appropriate factors in analysis). The District Court failed to acknowledge or consider the severity of any of Ms. Poff's medical conditions, which also includes obesity.

At least one court has considered the BOP's indifference to an inmate's urgent medical needs as a factor contributing to an extraordinary and compelling reason for reducing the inmate's sentence. In United States v. Beck, 425 F.Supp.3d 573 (M.D.N.C. June

28, 2019), the defendant discovered lumps in her breast and sought prompt medical attention. However, the BOP delayed for months in: taking the inmate for imaging, scheduling consultations, having a biopsy, scheduling surgery, and more. The court noted that the BOP's treatment of Beck, was "grossly inadequate" and "abysmal" and that absent judicial oversight she is unlikely to receive better treatment going forward. Again, this case was filed by an attorney.

Ms. Poff was in remission on November 9, 2017 when she was arrested, at home with her family. She got physically ill when the F.B.I began to drive away. They had to stop the vehicle and she returned inside her home to change clothes. Upon arriving at F.D.C. Houston she was still sick and was taken the next day to the Emergency Room, she was diagnosed with Costochrondritis which is inflammation around the heart a common complication of lupus. She told the Officers, medical personnel, and the Court was also made aware of her medical issues at her first arraignment and bond hearing. Blood tests on November 30th confirmed the diagnosis and that she was no longer in remission. However, her condition was ignored for almost a year. Ms. Poff even wrote letters to Judge Gilmore who also ignored her. In a severe flare with blisters all over her hands and a rash covering her body, Ms. Poff was taken to the Emergency room on August 23, 2018 She then finally saw a Rheumatologist on September 17, 2018 for the first time since her arrest. At that time she was finally put back on her lupus medication but permanent heart damage had already been done. The second and LAST time Ms. Poff has seen a Rheumatologist was April 2019 (almost 3 years ago), and a multitude of tests were ordered including the echocardiogram that initially showed Ms. Poff's heart damage. However, since she has never returned or seen anyone else these results were never revealed to her. After she filed her original compassionate release motion she received an updated copy of her medical records and heart disease was listed. When Ms. Poff saw Dr. Robinson-Brown in February 2021 she asked her about the diagnosis and the doctor herself was clueless. After researching Ms. Poff's records for about 30 minutes she said, "You were diagnosed in 2019." If diagnosed in 2019 then why was it not added to Ms. Poff's medical records until September 2020? Ms. Poff asked Dr. Robinson-Brown if she was diagnosed in 2019 why has she never seen a Cardiologist? The doctor simply stated, "because a consult has never been ordered." This conversation took place on February 26, 2021 ironically six days after the passing of Ms. Poff's mother from a fatal heart attack. On April 16, 2021 Ms. Poff saw Dr. Kline, a Cardiologist and he confirmed the diagnosis and ordered another echocardiogram. The echocardiogram was done in August. Ms. Poff saw Dr. Kline for the second time on October 15th, he was in disbelief that Ms. Poff had still not seen a Rheumatologist. He wanted to wait until she was seen but felt he couldn't wait any longer and started Ms. Poff on Lisinopril and ordered a stress test to determine why her heart is weak. It took three (3) weeks just to get this prescription filled.

Prisons have a responsibility to provide adequate medical care to the persons in their custody. Brown v. Plata, 563 U.S. 493, 511 (2011) ("A prison that deprives prisoners of ... adequate medical care, is incompatible with the concept of human dignity and has no place in civilized society"). Several more courts have found that a prison's failure to provide adequate or appropriate medical care can constitute an extraordinary and compelling circumstance warranting compassionate release. United States v. Arreola-Bretado, 445 F. Supp. 3d 1154, 1158-59 (S.D. Cal. 2020); United States v. Jacobs, 470 F. Supp. 3d 969, 975 (S.D. Iowa 2020).

Again, most if not all of these cases were filed by an attorney so do they have different understandings from Judges that a pro se person can't duplicate to a Judge no matter how hard they try or do they just receive more favor from a Judge? It should be clear that Ms. Poff met Step one in more than one way, so we proceed to step two.

Step Two: A court must find whether such a reduction is consistent with applicable policy statements issued by the United States Sentencing Commission.

District courts, in applying the first part of 18 U.S.C. Section 3582(c)(1)(A)'s statutory test, have the authority to determine for themselves what constitutes extraordinary and compelling reasons, but that this authority is effectively circumscribed by the second part of the statutory test, i.e., the requirement that a district court find that a reduction is consistent with applicable policy statements issued by the Sentencing

Commission pursuant to 28 U.S.C. Section 994(a)(2)(C) and (t). In other words, Congress did not, by way of Section 994(t), intend for the Sentencing Commission to exclusively define the phrase extraordinary and compelling reasons, but rather for the Sentencing Commission to describe those characteristic or significant qualities or features that typically constitute extraordinary and compelling reasons, and for those guideposts to serve as part of the general policy statements to be considered by district courts under the second part of the statutory test in Section 3582(c)(1)(A).

In 28 U.S.C. Section 994(t), Congress, in outlining the Sentencing Commission's duties, chose to employ the word "describe" rather than the word "define." The word "describe" is commonly defined to mean to use words to convey a mental image or impression of (a person, thing, scene, situation, event, etc.) by referring to characteristic or significant qualities, features, or details. In contrast, the word "define" is commonly understood to mean to set bounds to, to limit, restrict, confine. Congress's choice of the word "describe" in 28 U.S.C. Section 994(t) makes sense when considered in light of the fact that the specific duty imposed by Section 994(t) is part of the Sentencing Commission's overarching duty to promulgate general policy statement's regarding the sentencing modification provisions in 18 U.S.C. Section 3582(c)(1)(A).

Though the statute dictates that rehabilitation "alone" is insufficient to constitute extraordinary and compelling reasons, 28 U.S.C. Section 994(t), rehabilitation can combine with other factors to satisfy the statutory standard. After all "for the word 'alone' to do any work-as it must- that means courts can consider rehabilitation as part of a compassionate release motion." United States v. Brown, 457 F. Supp. 3d. 691, 701 (S.D Iowa 2020). Indeed, "legislators' use of the modifier 'alone' evidences that they believed that rehabilitation is relevant to the question of whether a sentence should be reduced and that rehabilitation, when considered together with other equitable factors, could constitute 'extraordinary and compelling reasons' for a sentence reduction." United States v. Millan, 2020 WL 1674058 (S.D.N.Y. April 6, 2020). Thus, "as a number of courts have recognized, rehabilitation combined with other factors can constitute, in their entirety, extraordinary and compelling reasons." United States v. Hasanoff, 2020 WL 6285308 (S.D.N.Y. Oct. 27, 2020); United States v. Ngo, 2021 WL 778660 (S.D. Cal. Mar. 1, 2021); United States v. Lopez, 2020 WL 6298061 (D. Haw. Oct. 27, 2020); United States v. Ledezma-Rodriguez, 472 F.Supp.3d 498 (S.D. Iowa 2020); United States v. Clausen, 2020 WL 4260795 (E.D. Pa July 24, 2020); and United States v. Taniguchi, 2020 WL 6390061 (S.D. Ohio Nov. 2, 2020). The common denominator for the above cases is they were all from the Northern States which has granted more releases than the South.

Further, at least one Court of Appeals has held in the context of a motion filed under Section 3582 (c)(1) that a district court "must provide a rationale as to why defendant's who have placed themselves on a positive life trajectory, despite the challenges of a lengthy period of incarceration, should receive no relief for their rehabilitation." United States v. Martin, 916 F.3d 389, 397 (4th Cir. 2019) and United States v. McDonald, 986 F.3d 402, 412 (4th Cir. 2021). Both of these again were filed by attorneys.

As documented all the way back to Ms. Poff's sentencing memorandum she has been engaged in continuous self-improvement courses. To date she has obtained over 100 certificates and completed roughly 1,400 hours. In addition to that she is currently completing the Blackstone Paralegal certificate program which is 915-hours. She is using it as a refresher course to her Paralegal degree she earned twenty plus years ago, so she can sit for the Certified Legal Assistant (CLA) exam once she is released. At the same time, she is also completing a second Associate's Degree in Christian Counseling from International Christian College and Seminary. Ms. Poff still maintains her innocence in this case and while she continues to fight to have her wrongful conviction overturned she isn't going to sit back and do nothing, doesn't this count for anything? Apparently not because the district court failed to even acknowledge any positive factors in her order.

Based on the statutory interpretation, Ms. Poff should have easily passed this step so let's consider the final step.

Step Three: Section 3582(c)(1)(A) instructs a court to consider any applicable Section 3553(a) factors and determine whether, in its discretion, the reduction authorized by steps one and two is warranted in whole or in part under the particular circumstances of the case.

District courts should consider all relevant Section 3553(a) factors before rendering a compassionate release decision. Gall v. United States, 552 U.S. 38, 41 (2007)(reasoning, in context of original sentencing decisions, that "after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the Section 3553(a) factors to determine whether they support the sentence requested by a party"). This again must only apply to a motion filed by an attorney and not filed by an inmate. There is no indication the district court considered anything and no argument between the parties. The Judge alone played Judge, jury, and prosecutor. In 3582(c)(1)(A) cases, we do not tolerate "exceedingly slim" records. United States v. Latham, 809 F. App'x 320, 321 (6th Cir. 2020)(vacating sentence-modification decision under 18 U.S.C. Section 3582(c)(1)(B) and remanding because "the record as to the initial sentencing and the modified one is exceedingly slim here which did not provide any basis for meaningful review of the court's decision"). Absent thorough record evidence of the judge's factual decisions, district courts should not issue single-sentence or otherwise exceedingly slim compassionate release decisions or cite Section 1B1.13 or the Section 3553(a) factors without any analysis of their requirements. Judge Gilmore has done both. While this original motion is still pending Ms. Poff filed a second compassionate release motion providing updated medical records and new scientific data for people like her. The Judge denied it with a single-line, "This Petition for relief is DENIED."

Ms. Poff's original district court order is a liberal four (4) pages, the Judge devoted less than a page to the Section 3553(a) factors. It consist of seven (7) sentences and clearly cites 1B1.13. Chavez-Meza v. United States, 138 S. Ct. 1959 (2018)("a district court's use of a barebones form order... would be inadequate"). Let's analyze each sentence:

> "Even if the Court were to find the Defendant's medical conditions did make her more susceptible to COVID-19, the Court must consider whether the sentence reduction would be consistent with the applicable Section 3553(a) factors, which includes the nature of the offense, the need for the sentence to reflect the seriousness of the offense, deter criminal conduct, and provide effective medical treatment to the defendant." See 18 U.S.C. Section 3582(c)(1)(A), 3553(a).

The next sentence reads:

> "Here the Defendant plead guilty to the transportation of explosives with the intent to kill and injure." (Instrument No. 80 at 1).

The Judge failed and continues to properly identify the charge that Ms. Poff was forced to plead to. 18 U.S.C. section 844(d) is the "transportation of explosives with the intent to kill, injure, or INTIMIDATE." Ms. Poff's attorney's told her that she was only pleading to intimidation only as they referenced in the sentencing memorandum:

> "Because there was no accompanying note or letter indicating a desire to kill or injure, and the fact that the devices were constructed in such a manner that they would not work, the only rational conclusion would be that they were sent in an attempt to intimidate."

The Judge completely omitted the word "intimidate" from her order, placing more weight on "kill and injure." She clearly knows that the alleged "devices" were both inoperable and incapable of hurting anyone. The same thing she did at sentencing when she cross-referenced "attempted-murder" for intimidation and gave Ms. Poff the statutory maximum sentence.

The third sentence states:

"She has served 36 months out of a sentence of 120 months, which is about 30% of her sentence."

This was another error on the District court for several reasons. One, the First Step Act awards "54 days of good-time credit for every year sentenced at the time of sentencing." That alone would add an additional 18 months, or does this again only apply when an attorney files the motion? This is also where the court should have taken into consideration all the courses that Ms. Poff has taken because that would add at least another twelve months. "The length of sentence already served is not dispositive as to whether compassionate release should be granted, but rather it is a factor which the Court must consider under 18 U.S.C. Section 3553(a)." United States v. Barber, 2020 U.S. Dist. LEXIS 83457 (D. Or. May 2020) released due to obesity and diabetes even though he only served 8 1/2 months of his 60-month sentence).

The fourth sentence states:

"Defendant's crime was a crime of violence, involving the mailing of destructive devices to the President of the United States, the Governor of Texas, and the acting Social Security Administrator in October 2016." (Instrument No. 80 at 7).

This was also stated in error because Section 844 is not a crime of violence. This Court has held that statutes requiring destruction of "any property" include one's own property and sweep more broadly than the "physical force against the person or property of another" element. Torres v. Lynch, 136 S. Ct. 1619 (2016). Another aspect that shows this statute is not a crime of violence is documented in Mathis v. United States, 136 S. Ct. 2243 (2016) (holding that a "sentencing judge may look only to the elements of the offense, not to the facts of the defendant's conduct") (quoting Taylor v. United States, 495 U.S. 575 (1990)). The court is required by the categorical approach to look at the broadest conception of the crime which in this case would be intimidation. When a statute defines an offense in a way that allows for both violent and non-violent means of commission, that offense is not categorically a crime of violence under the force clause. A good example used in United States v. Lecron, 2019 U.S. Dist. LEXIS 110617 (N.D. Ohio July 2, 2019) was "let's say a defendant drives explosives to the home of someone he has hired to blow up his own house for insurance proceeds." This would violate Section 844 but not use force against anyone or the property of another. The devices also do not meet the definition of a destructive device since there was no ignition mechanism readily available.

The next sentence states:

> "The nature of Defendant's offense and the length of time of Defendant has served indicates that a reduction in sentencing would not reflect the seriousness of this crime, promote respect for the law, nor provide just punishment of the offense."

The Sentencing Commission is the authority that comes up with what they feel "just punishment" is for a crime. The correct sentencing guidelines for this crime should have been 37-46 months which Ms. Poff has fully completed. The Government and the District court judge continues to stress the crime involved the President and is so severe, however look at 18 U.S.C. Sections 871, 879 and 1038 and notice the maximum sentence for all of these is only 5 years and they also involve the President or former President. So why does "intimidation" have a stronger penalty than a threat, aren't they essentially the same thing? Is a threat an "attempted-murder," if not then how can intimidation? "The basic purpose of 18 U.S.C. Section 844(d) suggests that it is not designed to punish pure "frightening" without any element of intent to injure, or to affect future conduct, or to cause some other sort of relatively serious harm." United States v. Norton, 808 F.2d 908 (1st Cir. 1987). The average sentence for the above statutes is 21-51 months which is inline where Ms. Poff's guidelines should have been.

This is Ms. Poff's first felony offense and she has very minimal criminal history dealing with bad checks from trying to take care of and support her family. She has never been incarcerated and has completed several deferred adjudications for misdemeanors with no violations and before their scheduled time. "A sentence of 24-months is a significant sentence, especially to an offender who has never been incarcerated as well." United States v. Lenagh, 2009 U.S. Dist. LEXIS 9226 (D. Neb. Feb. 6, 2009). A death sentence was not an option and would surely not be "just punishment" or promote respect for the law.

The next sentence in the order states the requirement of U.S.S.G. Section 1B1.13(2) that the "defendant not be a danger to the society," that has been previously discussed and the Courts have ruled "inapplicable" in other cases... filed by an attorney.

The final sentence states:

> "Thus, the Court finds that a reduction in sentence would not be consistent with the applicable Section 3553(a) factors and the Sentencing Guideline's policy. See U.S.S.G Section 1B1.13."

Again, the district court cited 1B1.13 but the Court of Appeals said she didn't use that to base her decision? She never stated one positive factor about Ms. Poff. So how exactly did the District Court weigh the 3553(a) factors? Quite simply put - She did not! What record or basis did the Court of Appeals affirm on... simply put - None! "We require judges to write more extensively in Section 3582(c)(1)(A) decisions where the record bears little indication that the district judge considered all the defendant's evidence and arguments before granting or denying compassionate release." United States v. Ruffin, 978 F.3d 1000 (6th Cir. 2020) (citing Chavez-Meza (2018)).

Ms. Poff should have successfully passed the three-steps and been granted a compassionate release. The District Court erred in following the inapplicable policy statement U.S.S.G. Section 1B1.13 and the Court of Appeals abused its discretion in failing to acknowledge the errors. Unless this inapplicable statement only applies to attorney-filed motions?

Question 3: CONGRESS MEANT WHAT THEY STATED: KILL, INJURE, OR INTIMIDATE

This argument has been raised over and over again, so is it again something only an attorney can argue?

Ms. Poff was forced to plead to 18 U.S.C. Section 844(d) which reads:

> "Whoever transports or receives, or attempts to transport or receive, in interstate or foreign commerce any explosive with the knowledge or intent that it will be used to kill, injure, or intimidate any individual or unlawfully damage or destroy any building, vehicle, or other real or personal property..."

Going all the way back to the original indictment, the word "or" has been replaced by the word "and." All throughout the statute the word "or" is used which leads us to believe that Congress meant what they stated: "kill, injure, or intimidate." "A given term is used to mean the same thing throughout a statute." Brown v. Gardner, 513 U.S. 115 (1994). In fact, in the few other cases she was able to research on this statute, hers is the only one in which the word has been changed. Why?

For the past fifty years, dictionaries and statutory-construction treatises have instructed that when the term "and" joins a list of conditions, it requires not one or the other, but all of the conditions. The indictment reads, "kill, injure, and intimidate," it is clearly stating that Ms. Poff had the intent to do all three, which goes against the facts of the case and not what Ms. Poff understood that she was being forced to plead to.

The Supreme Court has recognized that, when congress uses conjunctions such as "and" and "or" those word's meaning is often ambiguous and informed by the statute's structure, context, purpose, and history. As a matter of formal logic, when the word "and" is used in its ordinary conjunctive sense, it "combines items." Antonin Scalia & Bryan A. Garner, "Reading Law: The Interpretation of Legal Texts 116 (2012). Thus, if one says, "You must have A, B, and C-are required." In other words, the statement means: "You must have A," and "You must have B," and "you must have C."

The word "or" is almost always disjunctive, that is the words it connects are to "be given separate meanings." United States v. Woods, 571 U.S. 31 (2013) and Reiter v. Sonotone Corp., 442 U.S. 330 (1979). "As a general rule, the use of a disjunctive in a statute indicates alternatives and requires that they be treated separately." Some statutes like 844(d) contain elements

Which might also include alternative means of satisfying those elements in ascending order of severity. United States v. Strange, 892 F. 2d. 1044 (6th Cir. 1989). Actually, alternative means are common in criminal Statutes. "Legislators frequently enumerate alternative means of committing a crime without intending to define separate elements or separate crimes." Schad v. Arizona, 501 U.S. 624 (1991). It could also be argued that the Government's changing of the word made the indictment duplicitous but being on lockdown and very limited access to a law library it isn't something Ms. Poff can fully research. The wording "kill, injure, and intimidate" clearly represents three (3) different action words which could each stand alone as a separate crime itself.

The District Court continues to use the conjunctive words and doesn't even acknowledge what Ms. Poff was lead to believe she was pleading to. This has been and continues to be prejudicial to Ms. Poff and has unconstitutionally enhanced her sentence.

Question 4: THERE ARE SPLIT DECISIONS/OPINIONS ON A FEDERAL QUESTION THAT HAS NOT BEEN ANSWERED BY THIS COURT

In 2011, this Court ruled in Pepper v. United States, 562 U.S. 476, that a Court "must consider post-offense developments in conducting a 3553(a) analysis," is this applicable to the amended Section 3582 motions? There seems to be split decisions, the 1st, 2nd, 5th, 8th, 9th, and 10th say the "3553(a) factors analysis is discretionary." United States v. Concepcion, 991 F.3d. 279 (1st Cir. 2021); United States v. Moore, 975 F.3d. 84, 88-92 (2d Cir. 2020); United States

v. Batiste, 980 F.3d. 466, 479-80 (5th Cir. 2020); United States v. Kelley, 962 F.3d. 470, 475-76 (9th Cir. 2020); United States v. Moore, 963 F.3d. 725, 727 (8th Cir. 2020); and United States v. Mannie, 971 F.3d. 1145, 1154-55 (10th Cir. 2020). Underlying this tradition is the principle that "the punishment should fit the offender and not merely the crime." Williams v. New York, 337 U.S. 241 (1949). So given the times and the unpredicted pandemic does that principle still ring true?

As explained in McCoy (4th Cir. 2020), "as required by Section 3582 (c)(1)(A), the district court also considered the relevant sentencing factors under Section 3553 (a) and found 'an individualized application' of those factors supported compassionate release." With that being said it should be a requirement in this motion just as it is stated in Pepper. As highlighted in Pepper, the analysis at this stage provides "the most up-to-date picture" of a defendant's history and characteristics and "sheds light on the liklihood that a defendant will engage in future criminal conduct." There is absolutely nothing Ms. Poff can do to get Judge Gilmore to give her a fair assessment under the 3553 (a) factors, she didn't at sentencing and she won't now.

Potentially, fatal consequences would not constitute "just punishment." Even if the Court felt that a sentence of 120 months constituted "just punishment" under other circumstances, those circumstances have changed, and the real risk to Ms. Poff's health and life if she remains in custody and is infected with the Coronavirus. The possibility that the punishment for this crime could instead be that she pay for it with her life during the remaining time left on this sentence would not constitute "just punishment."

In a case recently granted because of Lupus, the Judge stated, "the sentencing purpose of 'just punishment' cannot warrant a sentence that includes exposing a particularly vulnerable individual to a life-threatening illness which threatens him uniquely." United States v Sanchez, 2020 U.S. Dist. LEXIS 70802 (D.Conn. April 22, 2020). Again he was represented by counsel and even though Ms. Poff has the same issue the Judge never even considered hers.

In December 2020 a vaccine was made available to the Officers and since so many refused, the extras were given to the inmates. Ms. Poff was one of the first ones on December 18, 2020 to receive the Pfizer vaccine. She received the second dose on January 5, 2021 a week before 95% of her unit became infected and sick. The vaccines for COVID-19, including the Pfizer vaccine have demonstrated excellent real world effectiveness in the broad sense. In terms of the vast majority of people who get vaccinated, the vaccines will be extremely effective at preventing severe illness or death from the virus, and they are also very effective at preventing even mild illness.

However, there are some people who remain at high risk from the virus, even if vaccinated. Specifically, people who are immuno-compromised still remain at increased risk for severe illness or death from COVID-19. The large trials that were conducted prior to the use of these vaccines did not include immunocompromised people. They are never part of vaccine trials because including them may confound the data. Secondly, people who are immunocompromised are not expected to have a robust immune response to a vaccine because they have blunted T&B cell responses either due to their underlying disease or because of medications they are taking to suppress their immune systems.

Data coming in now is showing roughly 50-55% of people like Ms. Poff have developed antibodies to the virus following the vaccination. See Roeker L. et al, "COVID-19 Vaccine Efficacy in Patients With Chronic Lympocytic Leukemia," Leukemia (May 13, 2021) available at https://www.nature.com/articles/s41375-021-01270-w; Boyarsky, B. etal, "Antibody Response to 2-Dose Sars-COV-2 mRNA Vaccine Series In Solid Organ Transplant Recipients," JAMA (May 5, 2021) available at https://jamanetwork.com/journals/jama/fullarticle/2779852. Thus, people who are immunocompromised remain vulnerable to infection and a poor outcome from the virus because their immune systems are incapable of fighting the Infection effectively.

Ms. Poff is immunocompromised by two (2) diseases: Lupus and Rheumatoid arthritis previously mentioned. To counter inflammation she takes immunosuppressive medication, the same as those other conditions listed above that the studies have been done on. Prednisone is a glucocorticoid and adrenocorticosteroid that decreases the production of immune cells which renders her body unable to mount an appropriate immune response to infections, including viruses such as SARS-COV-2.

Medications like prednisone also result in a decreased host response to immunizations. Ms. Poff is immunocompromised by both her diseases and the medications she takes, she remains at risk for infection and subsequent severe illness or death from COVID-19, even though she has been vaccinated with the Pfizer vaccine.

In addition, there is some concern based on the emerging variants, including the Delta, Omicron, and Deltacron which are more easily transmissable and has also been infecting vaccinated people. Full immunity is important to adequately protect against these variants. Immunity that has waned (either from having had the virus or have been vaccinated more than a year earlier), or that is low because of a lower immune response (such as in older people), may not be sufficient.

The pandemic continues to rage in the world and the numbers at Carswell are continuing to rise. A newsletter reported on January 11, 2022 there are currently 177 cases and their has been at least 20 deaths. With these numbers, Ms. Poff has every reason to be in fear. The Eighth Amendment prohibition on cruel and unusual punishment includes unreasonable exposure to dangerous conditions in custody, but yet that is what she is facing today. It is no secret that the officers, contractors, and volunteers who interact in the public daily are not all vaccinated. The last update Ms. Poff has heard on 7-11-21 only approximately 51% of the BOP staff on a national level have been vaccinated. At FMC Carswell, the proportion of staff is 46% and the website

Stated only 282 of them have been vaccinated. In addition to the staff, the report shows that there are 184 volunteers and 91 contractors who work in the facility. The vaccination status of them is unknown. These people are the ones playing Russian roulette with medically vulnerable people like Ms. Poff.

Reflecting back to the District court's order in the opening statement referring to the 3553(a) factors she mentions "...and provide effective medical treatment to the defendant." This is found under Section 3553(a)(2)(D) but she fails to mention anything else about it like she did the rest of her statement. So as the Court of Appeals assumes she weighed and balanced the 3553(a) factors, how was inadequate medical care taken into consideration? The Judge has never considered Ms. Poff's medical issues, she ignored the multiple letters sent begging for her medication and she is still ignoring her now.

When a defendant files a motion under 18 U.S.C. Section 3582(c)(1)(A) they are notifying the Judge that something has changed from the date of their original sentence. Laws, people, and circumstances change all the time, so it only makes sense for a Judge to re-evaluate and look at the entire picture. Evidence of post-sentence rehabilitation is likely the most critical core of consideration in this scenario. It is also highly relevant to several 3553(a) factors. For example, evidence of post-sentence rehabilitation may plainly be relevant to the history and characteristics of the defendant. (3553(a)(1)). Such evidence may also be pertinent to the need for the sentence imposed to serve the general purposes of sentencing and to impose a sentence sufficient but not greater than necessary. (3553(a)(2)). In particular, to afford adequate deterrence to criminal conduct, protect the public from further crimes of the defendant, and provide the defendant with needed educational or vocational training or other correctional treatment in the most effective manner. (3553(a)(2)(B-D)). United States v. Hicks, 2021 U.S. Dist. LEXIS 75084 (N.D. OK April 20, 2021).

How can a Judge say that this is "discretionary," this should be a mandatory documented analysis shown in the Judge's order? The explicit wording of 18 U.S.C. Section 3582(c)(1)(A) as amended by the First Step Act says, "after considering the factors set forth in section 3553(a)," doesn't give a "discretionary" intent displayed by the wording Congress chose.

A sentencing reduction based on post-conviction rehabilitation can hardly be said to be inconsistent with the policies underlying an award of good time credit under 18 U.S.C. Section 3624(b) because the two serve distinctly different interest. An award of good time credit by the BOP does not affect the length of court imposed sentence, rather it is an administrative reward to provide an incentive for prisoners to comply with institutional disciplinary regulations. Such credits may be revoked at any time before the date of prisoner's release.

In Contrast, a court's imposition of a reduced sentence based on post-sentencing rehabilitation changes the very terms of imprisonment and recognizes that the defendant's conduct since his initial sentencing warrants less severe criminal punishment. Once imposed, a sentence may be modified only in very limited circumstances. Instead, the difference between the two is reflected most obviously, in the fact that the BOP has no authority to award good time credit where the defendant's good behavior occurs after a sentence has already been served. Pepper (2011).

Question 5: ONCE A COURT RULING FROM THIS COURT IS MADE CAN THE BOP CONTINUE TO PUNISH AN INMATE BY USING OUT DATED MATERIAL

A national emergency was declared in March 2020, as thousands of people started dying from the Coronavirus. On or about March 27, 2020 the President signed into law the "Coronavirus Aid, Relief and Economic Security Act (CARES)." Under this legislation, if the Attorney General "finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a person in home confinement under the first sentence of Section 3624(c)(2) of Title 18 U.S.C. as the Director determines appropriate."

Attorney General Barr also issued a memo on April 3, 2020 that encouraged the Bureau of Prisons to "expand home confinement, particularly for those older prisoners who have served substantial parts of their sentences and no longer pose a threat and may have underlying conditions that make them particularly vulnerable," to slow the spread of the infection and most recently even for inmates who have served less than 50% of their total sentence. It is clear that Ms. Poff would be much safer at home than in prison, where she would still be under the supervision of the federal government. (See App. F for latest memo issued)

Ms. Poff recently met with her unit manager to discuss the qualifications for release and they are:

1. Twelve months of clear conduct - Ms. Poff has 50.

2. PATTERN score of low or minimum - Ms. Poff's score is a -5 and a 3 which results in a low score.

3. Verifiable Release Plan - With the recent passing of her mother, Ms. Poff plans to reside with her father.

4. No history of violence - Ms. Poff has no history of violence. The error in classification of this crime explained in detail below is the only obstacle preventing her release.

5. No sex offense or terrorism offense - There is none.

6. No current detainers - There is none

7. COVID-19 vulnerability - As previously explained, Ms. Poff has several medical issues that make her vulnerable.

8. U.S. Citizen - Ms. Poff is one.

9. Served 50% of sentence - With good-time credits awarded, Ms. Poff has served over 50% of her erroneous sentence and over 100% of guidelines sentence.

The only obstacle standing in her way of release to home confinement is Program Statement 5162.05 which is from 2009 and states "Section 844 is a crime of violence." This has not been updated even though multiple cases from many courts including this one have ruled other-wise. See Torres v. Lynch, 136 S. Ct. 1619 (2016); United States v. Salas, 889 F.3d 681 (10th Cir. 2018), cert. denied 139 S. Ct. 2773 (2019); United States v. Leckron, 2019 U.S. Dist LEXIS 110617 (N.D. Ohio July 2, 2019); and United States v. Wheeler, 483 F. Supp. 3d 305 (N.D. Ohio Sept. 1, 2020).

This is by no means a collateral attack on her sentencing or conviction so not subject to any waiver. This is an attack on how the BOP is carrying out that sentence and how using outdated material is prejudicial to her. The Court's are the ones who sentence the defendant's under statutes, so does the BOP have the ability to override the rulings of

Of those statutes that have changed? This alone is preventing many vulnerable people like Ms. Poff from being released and is an error that needs to be corrected.

CONCLUSION

Given her age (50), poor health, and the fact that she will live with family for the foreseeable future argues convincingly that her chance of recidivism is extremely low, and that she would NOT be a threat to the community if released. She has taken various courses, and has turned her life around to the extent as shown by her PATTERN score, she is in a strong position to become a positive member of society, and is limited risk to recidivate. She will be released to her loving family, who would provide her with housing, medical care, and transportation. A release at this time would not minimize the seriousness of her offense, but would recognize the reality of her failing health in the middle of a worldwide pandemic that greatly affects her life.

As previously set forth, Petitioner has established her eligibility to relief, the abuse of discretion from both the District Court and the Court of Appeals for the Fifth Circuit, and Defendant / Petitioner respectfully moves this Honorable Court to grant this petition for writ of Certiorari, appoint counsel to represent Petitioner in Subsequent proceedings, and all other relief that this

Honorable Court deems just.

Date: January 15, 2022

Respectfully Submitted,

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