

No.

IN THE SUPREME COURT OF THE UNITED STATES

JAMES YORK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

PETITION FOR WRIT OF CERTIORARI

FAY ARFA, A LAW CORPORATION
Fay Arfa, Attorney - CA SBN 100143
10100 Santa Monica Blvd., #300
Los Angeles, CA 90067
Tel.: (310) 841-6805
Fax :(310) 841-0817
fayarfa@sbcglobal.net

Attorney for Appellant
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QUESTION PRESENTED

Whether the District Court Abused its Discretion
by Denying Mr. York's Motion for Compassionate
Release?

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James York petitions for a writ of certiorari to review the United States Court of Appeals for the Ninth Circuit's Memorandum affirming the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(I). (Appendix A)

OPINION BELOW

On May 25, 2022, the Ninth Circuit Court of Appeals entered a Memorandum affirming York's denial of his motion for compassionate release. (Appendix A)

JURISDICTION

The Court has jurisdiction. 28 U.S.C. § 1254(1)

CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

18 U.S.C. § 3553(a)

CUSTODY STATUS OF PETITIONER

Mr. York is in custody serving a prison sentence of 168 months in federal prison.

STATEMENT OF THE CASE

On June 11, 2018, Mr. York pled guilty to three counts of a 26-count Indictment. He pleaded guilty to Conspiracy to Commit Murder in Aid of Racketeering (Ct. 1; 18 U.S.C. § 1959(a)(5)); Use of a Facility of Interstate Commerce to Promote Prostitution (Ct. 13; 18 U.S.C. § 1952(a)); and Possession of an Unregistered Firearm (Ct. 26; 26 U.S.C. § 5861(d).) Judgment was entered on October 5, 2018. (Docs. 591, 734)

On October 5, 2018, the district court sentenced him to 168 months (14 years) in federal prison, followed by a 36-

month term of supervised release, and a \$300 special assessment. (Doc. 734)

On March 29, 2021, the district court appointed counsel to represent Mr. York. (Doc. 930) On May 17, 2021, Mr. York, through counsel, filed an amended motion for compassionate release from incarceration. 18 U.S.C. § 3582(c)(1)(A). On June 4, 2021, the prosecution filed an opposition to York's supplemental motion and Mr. York filed a reply to the prosecution's opposition. (Docs. 934, 937)

On July 6, 2021, the district court denied Mr. York's motion for compassionate release. (Appendix B)

FACTS ELICITED FROM THE PSR

In 2014, investigators with the California Department of Justice and the Fresno Police Department launched an investigation of Dog Pound Gangsters (DPG) criminal street gang, the largest African American gang in Fresno. PSR ¶¶ 5, 6. In February 2016, investigators developed sufficient cause to obtain court-ordered intercepts of communications made by several telephones associated with DPG members.

PSR ¶ 9.

The investigation revealed that James York was a leader and high-ranking member of the DPG who exerted significant influence amongst the members. PSR ¶ 14. As more particularly described below, York conspired to murder a rival gang member, brutally prostituted women, and sold an unregistered assault-style weapon to another person. PSR ¶¶ 10-32. (ER)

1. Count 1: 18 U.S.C. § 1959(a)(5), Conspiracy to Commit Murder in Aid of Racketeering

On March 23, 2016, Kenneth Wharry, a DPG member, was shot while driving on North Golden State Boulevard, in Fresno. PSR ¶ 10. DPG members believed the shooters were TWAMP gang members, and as a result, DPG intensified their efforts to retaliate against TWAMP members, and the more senior members of the gang encouraged others to act. PSR ¶ 10. In the following weeks, there were numerous conversations between DPG members agreeing to murder rival gang members. PSR ¶ 10.

The following individuals were identified as DPG members that were involved in the conspiracy to murder rival gang members: James York; Trenell Monson; Deandre Stanfield; Darrell Maxey; Davon Millro; Kenneth Wharry; Kenneth Johnson; Kiandre Johnson; Anthony Windfield; and William Lee. PSR ¶ 10.

On April 5, 2016, Kylin Baca, a DPG member, was shot. PSR ¶ 11. In an intercepted call, Darrell Maxey chastised Baca for not shooting back. PSR ¶ 11. That same day, a mandatory meeting occurred, which was attended by Trenell Monson, Davon Millro, Darrell Maxey, Anthony Windfield, Kenneth Johnson, and Kiandre Johnson. PSR ¶ 12. Prior to the meeting, in an intercepted call, Maxey explained to Kenneth Johnson his dissatisfaction with some of the current DPG members. Maxey said if DPG members were not in attendance at the meeting, they would no longer be allowed to claim they were active DPG members and they would get “disrespected.” PSR ¶ 13.

In an intercepted call, Kiandre Johnson informed

James York regarding the meeting. PSR ¶ 14. York advised he would not be in attendance but stated that he (Kiandre) needed to listen to the advice of Kenneth Wharry and Trenell Monson. PSR ¶ 14. Based on intercepted calls, during the meeting, Trenell Monson told other DPG members they had one week to shoot a rival TWAMP gang member. PSR ¶ 15.

Monson planned another meeting in seven days. PSR ¶ 15. In several intercepted calls after Monson's order, multiple DPG members discussed attempts to obtain firearms. PSR ¶ 15. In one of the intercepted calls, after Kiandre asked York to pay half the cost to purchase a firearm, James York told Kiandre Johnson that he would loan Kiandre a gun. PSR ¶ 15.

On April 6, 2016, Trevan Wingfield was shot in a drive-by shooting by TWAMP gang members. PSR ¶ 16. TWAMP gang members traveled further into the DPG territory where Davon Millro fired shots towards them. PSR ¶ 16.

Immediately following the shooting, DPG members,

including Trenell Monson, Kiandre Johnson, Davon Millro, discussed securing firearms, magazines, and ammunition. PSR ¶ 16.

On April 7, 2016, a meeting was held at the San Joaquin Hotel in Fresno. PSR ¶ 17. Kenneth Wharry, Davon Millro, Kenneth Johnson, Kiandre Johnson, and William Lee, among other DPG members, were in attendance. PSR ¶ 17. That same day, during an intercepted call, William Lee offered to provide Kiandre Johnson a firearm. PSR ¶ 17. In an intercepted call, Trenell Monson spoke with Kenneth Wharry and inquired if “they were good.” PSR ¶ 18. Wharry responded by saying he did not know and “they” have not “hit that nigga.” PSR ¶ 18.

During the evening of April 7, 2016, a shooting occurred at Fink White Playground. PSR ¶ 19. Based on the investigation, Kiandre Johnson’s cell phone was in the area at the time of shooting. PSR ¶ 19. In an intercepted text, Kiandre informed William Lee, who provided Kiandre with a firearm, that the gun failed to fire a bullet. PSR ¶ 19. Lee

picked up Kiandre to test the firearm. PSR ¶ 19. Officers initiated a traffic stop and identified Kiandre and Lee. PSR ¶ 19.

A search of the vehicle did not reveal a firearm. PSR ¶ 19. However, a black bag was located on the side of the road on the same path Lee drove. PSR ¶ 19. Inside the bag was a firearm and ammunition. PSR ¶ 19. Lee and Kiandre were released at the scene. PSR ¶ 19. In an intercepted call, William Lee advised Kenneth Wharry about the traffic stop. PSR ¶ 20. Lee said he heard radio traffic on a scanner describing his vehicle and became suspicious that law enforcement was following him. PSR ¶ 20.

During the investigation, numerous calls were intercepted between Deandre Stanfield and DPG members. PSR ¶ 21. Stanfield attempted to motivate his fellow gang members to a kill opposing gang members. PSR ¶ 21. Stanfield provided direction and resources to younger DPG members in furtherance of the DPG. PSR ¶ 21. In intercepted calls with James York and Trenell Monson,

Stanfield provided guidance and advice on activities of the DPG. PSR ¶ 21. Stanfield told York that York was “up there” and compared York to the President. PSR ¶ 21. Stanfield said the President sends military people to go to war, but he does not go himself. PSR ¶ 21. York agreed. PSR ¶ 21.

2. Count 13: 18 U.S.C. § 1952(a), Use of a Facility of Interstate Commerce to Promote Prostitution

1. *K.G.*

On March 26, 2016, during an intercepted phone call, James York called K.G. PSR ¶ 22. K.G. worked as a prostitute for York. PSR ¶ 22. During the call, K.G. asked York if he was going to pick her up. PSR ¶ 22. York told her to walk to the tracks.¹ PSR ¶ 22. K.G. replied there were no tracks around and that hotel management kept coming to her and telling her to leave. PSR ¶ 22. York said he would call the office and have a female come pick her up. PSR ¶ 22. Skarika Gaines was identified as the person who picked up

¹“Tracks” is a term for areas walked by prostitutes.

K.G. PSR ¶ 22. York was known to have several females working for him as prostitutes and used fear and intimidation to maintain control over the women. PSR ¶ 23. The prostitutes engaged in sex acts for money and then gave the money to York, who would provide them food, clothing, and supplies. PSR ¶ 23. York took care of making sure advertisements were posted, the prostitutes had supplies such as condoms, lubricant, and wipes. PSR ¶ 23. He would rent hotel rooms for the prostitutes to use in providing their services. PSR ¶ 23.

2. N.P.

On March 7, 2016, during an intercepted phone call, a female referred to as N.P. told York she made \$460. PSR ¶ 24. He told her to make money, so they can go to Las Vegas. PSR ¶ 24. N.P. told York that he was scaring her, and he said, “Bitch you ain’t seen scared yet. PSR ¶ 24. What you mean? Scared of what? PSR ¶ 24. That’s good, cause I need to beat your mother fucking ass for past shit you done did. PSR ¶ 24. I had it up to here. PSR ¶ 24. This shit might

come out like mother fuckin Mike Tyson when I see you.” PSR ¶ 24. N.P. complained that she did not feel well and had been “trappin”² for 24, 36 hours, 46 hours.” PSR ¶ 24. York interrupted her and said, “Hey, Hey, I shouldn’t have to talk to you like this! PSR ¶ 24. You ain’t new to this. You aint new bitch to me.” PSR ¶ 24. When N.P. asked York why he was treating her bad, he said, “No! Why the fuck you taking a nap on the job bitch, the next time put a mother fucking broom stick up that ass.” PSR ¶ 24.

On March 8, 2016, during an intercected phone call with Trenell Monson, York said he was having a problem with one of his “hoes” and kicked her out of his car at a gas station in Tulare, on the way to Las Vegas, Nevada. PSR ¶ 25. Agents believe as York and N.P. were driving to Las Vegas, N.P. disrespected York. PSR ¶ 25. York struck N.P. in the face and he stopped and kicked her out of the vehicle. PSR ¶ 25. He took her belongings, which included her

²“Trappin” is a term for committing acts for prostitution.

clothes, social security card, and birth certificate. PSR ¶ 25.

On March 13, 2016, during an intercepted phone call, N.P. told York that she wanted her social security card and birth certificate returned and she expressed she no longer wanted to commit acts of prostitution. PSR ¶ 26. York refused to allow N.P. to stop performing acts of prostitution and used force and fear to get her to continue working as a prostitute. PSR ¶ 26. York threatened to have his friends kidnap N.P. PSR ¶ 26.

On March 21, 2016, during an intercepted phone call, York spoke with N.P. PSR ¶ 27. N.P. tried to provide York with additional women for York to enlist into his prostitution ring. PSR ¶ 27. Agents believe York repeatedly used threats of force and intimidation on N.P. to force her to actively recruit new women for him. PSR ¶ 27. It appeared N.P. was trying to recruit for York so she could “buy her way out” of York’s prostitution contract. PSR ¶ 27. York refused to allow N.P. to stop working for him. PSR ¶ 27.

3. *N.B.*

On March 4, 2016, during an intercepted phone call, York told N.B. he was trying to think of another plan because one of his girls was not making enough money. PSR ¶ 28. He demanded N.B. recruit the girl in the next-door motel room and they would go to Las Vegas. PSR ¶ 28. From the intercepted phone calls, agents concluded York controlled N.B. PSR ¶ 28. Further, York not only required N.B. to commit acts of prostitution, but also assigned her to recruit other prostitutes into his group. PSR ¶ 28. It is believed he used fear and intimidation as he ordered N.B. to recruit another prostitute to join them on a trip to Las Vegas for prostitution. PSR ¶ 28. Because of the investigation, agents identified approximately nine women and an additional four women who were not able to be identified, working as prostitutes for York. PSR ¶ 29.

3. Count 26: 26 U.S.C. § 5861(d), Possession of an Unregistered Firearm

During multiple wiretaps, James York agreed to sell a

firearm to Troy Franklin for \$700. PSR ¶ 30. On March 5, 2016, York arrived at a residence in Clovis, California, and met with Troy Franklin. PSR ¶ 31. Agents observed York carrying an object wrapped in cloth. PSR ¶ 31. They could clearly see the butt stock portion of an AR-15 style rifle protruding from the towel held by York. PSR ¶ 31.

After York left the area, Troy Franklin led officers on a vehicle pursuit after which he barricaded himself inside a nearby apartment. PSR ¶ 31. After Franklin's arrest, officers sized an illegal assault weapon from his vehicle. PSR ¶ 32. The barrel and pistol grip had been modified. PSR ¶ 32. The AR-15 had a barrel length of less than 16 inches. PSR ¶ 32. The defendant did not register the firearm in the National Firearms Transfer and Registration Record. PSR ¶ 32. On April 22, 2016, York was arrested inside an apartment in Tucson, Arizona. PSR ¶ 33.

REASON TO GRANT CERTIORARI

I. THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING MR. YORK'S MOTION FOR COMPASSIONATE RELEASE

A. Introduction

Mr. York (DOB: 04/01/1977) faced a specific and imminent threat due to the COVID virus because Mr. York's fragile health condition placed him at risk. Mr. York suffers from asthma and breathing problems. (Doc. 936) He has suffered from asthma since childhood. “[S]ometimes he has to breathe in a bag which he has been doing since childhood to feel like he is breathing normally again.” (Doc. 936) On January 2021, he was prescribed an Albuterol Inhaler. (Doc.936)

The COVID-19 pandemic has killed millions, sickened millions, and disrupted the stability and security of billions worldwide. In the United States, as of May 14, 2021, 32,923,177 people have contracted COVID and 585,699 have died of COVID. Worldwide, 162,196, 067 cases and 3,364,690

deaths have been reported.³ Johns Hopkins Corona Virus Resource Center, <https://coronavirus.jhu.edu/map.html>.

"The COVID-19 pandemic is extraordinary and unprecedented in modern times in this nation." *United States v. Hernandez*, 451 F. Supp. 3d 301, 304 (S.D.N.Y. 2020). Prisoners like Mr. York are more vulnerable to infection because of the inability of prisoners to take the requisite necessary precautions. See, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/needs-extra-precautions/For-People-Living-in-Prisons-and-Jails.pdf>

Mr. York's medical condition in light of COVID-19 justifies his compassionate release

B. Standard of Review

Although the Ninth Circuit has apparently not set the standard of review for sentence reduction decisions under 18 U.S.C. § 3582(c)(1), sentence reduction decisions are

³As of November 1, 2021, 46,006,251 people in the United States have contracted COVID-19 and 746,289 people in the United States have died from COVID-19. <https://coronavirus.jhu.edu/map.html>

reviewed for abuse of discretion. *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013). Similarly, § 3582(c)(1) sentence reduction decisions are reviewed for abuse of discretion. *United States v. Aruda*, 993 F.3d 797, 799 (9th Cir. 2021)

C. The Law

"[A] court may not modify a term of imprisonment once it has been imposed" except pursuant to statute. *United States v. Kachina*, 2020 U.S. Dist. LEXIS 87341, 2020 WL 2539270, at *1 (D. Minn. May 19, 2020) (citing 18 U.S.C. § 3582(c)); see also *United States v. McIndoo*, No. 1:15-CR-00142 EAW, 2020 U.S. Dist. LEXIS 80487, at *2 (W.D.N.Y. May 6, 2020).

The compassionate release provision, as amended on December 21, 2018, by the First Step Act, is such a statutory exception. 18 U.S.C. § 3582(c)(1)(A). The First Step Act amended 18 U.S.C. § 3582(c)(1)(A) with the goal of increasing "the use and transparency of compassionate release" and the section now allows defendants to petition

district courts directly for compassionate release. *United States v. Stephenson*, 2020 U.S. Dist. LEXIS 89591, 2020 WL 2566760, at *2 (S.D. Iowa May 21, 2020).

Previously, defendants could only petition the Board of Prisons (BOP) Director, who could then make a motion, at his or her discretion, to the district court. See U.S. Sentencing Guidelines Manual ("USSG") § 1B1.13 cmt. n.4 (U.S. Sentencing Comm'n 2018). The amended provision provides, “[T]he court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant . . . 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. § 3582(c)(1)(A)

Although the statute does not define "extraordinary and compelling reasons," Congress authorized the Sentencing Commission to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." 28 U.S.C. § 994(t). The Commission enumerates several "extraordinary and compelling reasons" justifying a reduction of sentence, including the "medical condition of the defendant," the defendant's "age" and "family circumstances." USSG 1B1.13 cmt. n.1(A)-(C). An inmate's medical condition alone may be sufficiently extraordinary and compelling under § 3582(c)(1)(A). USSG § 1B1.13 cmt. 1(A)(i) (noting that the condition must be "serious and advanced with an end of life trajectory" or "substantially diminish the ability of the inmate to provide self-care" within the facility and be one "from which he or she is not expected to recover.").

Alternatively, an inmate's serious medical condition "in combination with" additional factors may also justify

compassionate release. USSG§ 1B1.13 cmt. n.1(A)-(D). On April 8, 2021, the Ninth Circuit held that “. . . the current version of U.S. Sentencing Guidelines Manual (“U.S.S.G.”) § 1B1.13 is not an ‘applicable policy statement[] issued by the Sentencing Commission’ for motions filed by a defendant under the recently amended § 3582(c)(1)(A).” *United States v. Aruda*, 993 F.3d 797) The Sentencing Commission’s statements in U.S.S.G. § 1B1.13 may inform a district court’s discretion for § 3582(c)(1)(A) motions filed by a defendant, but they are not binding. [Citation].” *Id.*

D. Mr. York Exhausted His Administrative Remedies

On September 8, 2020, York filed a request for relief under the Compassionate Release Program and requested that the warden reduce his sentence. (1-ER-8-9) Because more than thirty days passed and warden did not make a decision, Mr. York satisfactorily pursued his administrative remedies. 18 U.S.C. § 3582(c)(1)(A); *United States v. Gray*, 2019 WL 4572816, at *3 (S.D. Ind. Sept. 20, 2019) (where

warden did not deny request for compassionate release until more than 30 days after request was made, the defendant may file a motion for compassionate release in district court under 18 U.S.C. § 3582(c)(1)(A) without further exhausting administrative remedies).

E. The Massive Number of COVID 19 Cases in the Federal Correctional Facilities, including FCI Mendota, Justifies Compassionate Release

As of May 14, 2021, the BOP had 128,573 federal inmates in BOP-managed institutions and 13,768 in community-based facilities. The BOP staff comprised 36,000 people. Seventy three federal inmates and 153 BOP staff had confirmed positive test results for COVID-19 nationwide. When York made his motion, 45,968 inmates and 6,784 staff recovered. Two hundred and thirty five federal inmates and four BOP staff members died from the COVID-19.⁴

⁴ Nationwide, as of October 29, 2021, 155 federal inmates and 369 BOP staff tested positive for COVID-19. About 42,776 inmates and 8,169 staff have recovered. Two hundred and sixty six and seven BOP staff have died from COVID-19.

<https://www.bop.gov/coronavirus/> As of May 14, 2021, at FCI

Mendota where Mr. York lives, 31 inmates have recovered from COVID-19 and 33 staff members have recovered.

<https://www.bop.gov/coronavirus/>. As of May 14, 2021, 606 inmates have been tested for COVID, and 75 inmates tested positive.⁵ *Id.*

F. Mr. York’s Asthma Justified His Compassionate Release

Mr. York has suffered from asthma since his early childhood. (2-ER-47-50, 61, 64, 70, 72-80) Asthma, a serious health condition, puts him at high risk of developing serious complications if he contracts COVID-19. He identifies his race as “black.” PSR at 4. The CDC states, “Adults of any age with the following conditions [including asthma] can be more

<https://www.bop.gov/coronavirus/?jsessionid=D8CA007F8A6395D7F7D54C251D0CBD7D>

⁵At FCI Mendota, as of October 29, 2021, 69 inmates and 41 BOP staff have recovered from COVID-19. One staff member tested positive and one inmate died
<https://www.bop.gov/coronavirus/?jsessionid=D8CA007F8A6395D7F7D54C251D0CBD7D>

likely to get severely ill from COVID-19. Severe illness means that a person with COVID-19 may need: Hospitalization; Intensive care; A ventilator to help them breathe; Or they may even die”

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> “Long-standing systemic health and social inequities have put various groups of people at increased risk of getting sick and dying from COVID-19, including many racial and ethnic minority groups and people with disabilities. – *Studies have shown people from racial and ethnic minority groups are also dying from COVID-19 at younger ages. People in minority groups are often younger when they develop chronic medical conditions and may be more likely to have more than one condition.*” *Id.* (Italics added.) The CDC states, “People with moderate-to-severe or uncontrolled asthma are more likely to be hospitalized from COVID-19.”

[https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html?](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html)

CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fspecific-groups%2Fasthma.html.

The CDC also cautioned that residential congregate settings, such as correctional facilities, may face a high turnover of residents, a higher risk of transmission, and challenges in maintaining recommended physical distancing. For example, the CDC states, “Living in prisons and jails puts you at higher risk for getting COVID-19 because:

- It may be hard to stay at least 6 feet [fn omitted] away (2 arm lengths) from other people.
- There may not be enough space to keep people with COVID-19 away from others
- You may be sharing space with someone who has the virus and does not know it, because they are not coughing or showing other symptoms.
- Staff or visitors may have the virus and not know it.”

The CDC even “acknowledges it may be difficult to stay 6 feet apart and avoid crowds in these settings.”

<https://www.cdc.gov/coronavirus/2019-ncov/downloads/needs-extra-precautions/For-People-Living-in-Prisons-and-Jails.pdf>

G. United States District Court Decisions Support Mr. York's Compassionate Release

The heightened dangers from COVID-19 posed to Mr. York, in light of his health concerns, constitute extraordinary and compelling reasons to order his immediate release from FCI Mendota. District Courts have released people who suffer from asthma like Mr. York. See, *United States v. Burnside*, No. 6:18-CR-2068-CJW-MAR, 2020 WL 3443944, at *3-4 (N.D. Iowa June 18, 2020) (compiling cases); *United States v. Avenarius*, No. 15-CR-1010-CJW-MAR, 4 (N.D. Iowa Dec. 14, 2020) (finding extraordinary and compelling reason where defendant had asthma)(listing cases); *United States v. Williams*, 2020 WL 1974372, at *4 (D.Conn. Apr. 24, 2020) (granting compassionate release where defendant has asthma that placed him at greater risk from COVID-19)(also listing cases); *United States v. Wen*, No. 6:17-CR-06173, 2020 WL 1845104 (W.D.N.Y. Apr. 13, 2020) ("Defendant suffers from asthma, placing him at an increased risk of falling seriously ill from COVID-19. And

this pandemic itself is unprecedented in modern history, presenting a clear and present danger to free society of reason that need no elaboration."); *United States v. Alvarado*, 462 F. Supp. 3d 948, 949 (D. Minn. 2020) (finding extraordinary and compelling reasons based on defendants asthma and the heightened risk to defendant's health from COVID-19 pandemic); *United States v. Amarrah*, 458 F. Supp. 3d 611, 615 (E.D. Mich. 2020) (finding extraordinary and compelling circumstances where the defendant suffered . . . [from] asthma even where there were no cases in defendant's facility); *United States v. Hernandez*, 451 F. Supp. 3d at 305. (finding extraordinary and compelling reasons where defendant had asthma, the crowded nature of the facility presented an outsized risk that COVID-19. would spread once it gained entry, and high-risk inmates who contracted the virus would face challenges in caring for themselves).

H. The Section 3553(a) Sentencing Factors Support Mr. York's Release

Mr. York was arrested on April 22, 2016 and, on October 1, 2018 was sentenced to 168 months (14 years) in prison. As of May 15, 2021, he had spent five actual years and 26 actual days in prison.⁶ Reducing his sentence would not be an "abrupt departure from [defendant's] current sentence." See. *United States v. Applewhite*, No. 08-CR-60037, 2020 U.S. Dist. LEXIS 5376, 2020 WL 137452, at *2 (D. Or. Jan. 13, 2020). Section 3582(c)(1)(A) requires a court to consider the sentencing factors in 18 U.S.C. § 3553(a) before granting compassionate release.

Section 3553(a) requires the Court to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence to reflect the seriousness of the offense, promote respect for the law, provide just punishment, and provide rehabilitative

⁶As of November 1, 2021, York has spent five years, 6 months, and 11 days or 66 months and 11 days in federal prison.

opportunities and care to the defendant; (3) the kinds of sentences available; (4) the sentencing range as set by the U.S.S.G.; (5) any pertinent policy by the United States Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities among similarly situated defendants; and (7) the need for restitution to any victims. Guideline section 1B1.13(2) provides that compassionate release appropriate only when "the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)[.]"

The section 3553(a) sentencing factors supported Mr. York's release. Mr. York's asthma supports, "the need for the sentence imposed . . . to provide the defendant with . . . medical care . . . in the most effective manner." 18 U.S.C. § 3553(a)(2)(D). Mr. York's personal characteristics required consideration because he had a "hard and challenging" childhood. When Mr. York was six years old, his father left his mother. Their separation significantly impacted Mr. York and made him feel neglected. His single mother received

welfare, and they sometimes went without necessities. PSR ¶ 88. At age 13 or 14, Mr. York became involved with the Dog Pound Gang. PSR ¶ 98.

Mr. York, by timely notifying authorities that he intended to plead guilty, helped authorities. PSR ¶ 64. The probation officer felt “sympathetic to [Mr. York’s] challenging childhood. [Mr. York] has no formal education, a limited employment history, and a history of drug use.” PSR at 29.

When the probation officer asked Mr. York how he felt about his circumstances, Mr. York said, “I feel discouraged and let a lot of people down. I’m through with ties to the gangs. When I was out, I intended to break away.” PSR ¶ 38.

Since Mr. York’s incarceration, he has successfully enriched himself by taking about eighty educational courses. He earned certificates in the automotive and warehousing professions. (2-ER-82, 88, 90) Mr. York has completed a variety of Adult Continuation Education classes (ACE) in

subjects such as What is potential energy?, Lewis and Clark's Journey, Live of Justice Ginsberg, Ancient Myths and Mysteries, Inside the Living Body, Protect Your Finances, Money Management, America's COVID Response, Starting Your Own Business, Hubble's Amazing Journey, Inside the White House, San Andreas Fault, Anatomy and Physiology, incredible Human Machine, Emotional Intelligence, Conflict Management, Communication Skills, Business Etiquette, Attitude Adjustment, Job Fair, Ready-to-Work, Job Search, Interview, Resume Writing, Starting Your Own Business, Basic Cognitive Skills. (2-ER- 82-94)

I. The District Court Abused its Discretion by Denying Mr. York's Motion for Compassionate Release

The district court acknowledged the "ongoing threat of COVID-19" and "the improvements in responding to it." (But the district court found that, as of June 30, 2021, no inmates or staff tested positive for COVID-19 and since the pandemic began, 30 inmates and 33 staff recovered from COVID-19. (1-ER-6) The district court also noted that the

BOP had been “taking significant steps to try to reduce the threat of further COVID infection in its facilities.”⁷ (1-ER- 6)

The district court found forty-four-year-old York was “below the age of greater vulnerability to COVID,” and the prison controlled and treated Mr. York’s asthma.” (1-ER- 6) The district court found Mr. York’s did not “diminsh[] his ability to self-care for himself in the prison and Mr. York’s medical condition did not justify compassionate release.” (1-ER-6) The district court also noted that Mr. York had been vaccinated and had a reduced risk of contracting or being “severely harmed” by COVID-19. (1-ER-7).

The district court also found that despite Mr. York’s educational enrichment in prison, Mr. York’s criminal history and past violations of supervised release weighed against Mr. York’s release. (1-ER-7). The district court further found Mr. York to be a danger to the safety of others

⁷Since the district court’s denial, the number of COVID-19 cases have increased and one inmate died. (See fn. 4)

and the community. U.S.S.G. § 1B1.13(2).

Mr. York disagrees because Mr. York has demonstrated extraordinary and compelling reasons for compassionate release. Mr. York has a high-risk for severe illness from COVID-19 because inmates in detention facilities are particularly vulnerable to infection . . . His institution suffers from an ongoing outbreak of cases.

<https://www.bop.gov/coronavirus/>. Mr. York's asthma significantly diminishes his ability to provide self-care at FCI Mendota. provide self-care within the environment.

United States v. Colvin, 451 F. Supp. 3d 237, 240 (D. Conn. 2020).

The nature and circumstances of Mr. York's offense conduct, while serious, have been mitigated by his current characteristics. Mr. York's sentence served, his age and medical condition, will deter him from further criminal conduct, protect the public, and promote respect for the law. When released from prison, Mr. York will return to a safe, stable, and supportive environment. He planned to live with

his fiancé, Latoya Newsome, and their daughter. (1-ER-10)

Mr. York would comply with court orders and any terms of his supervised release. If Mr. York failed to follow any condition of release, the district court could appropriately sanction him. Because of his serious medical conditions, the nature of his original offense, his record while in BOP custody, and the length of time already served, Mr. York will not pose a threat to the community.

CONCLUSION

Mr. York respectfully requests that this Court grant Certiorari.

DATED: June 16, 2022

Respectfully submitted,
FAY ARFA, A LAW CORPORATION

/s Fay Arfa

Fay Arfa, Attorney for Appellant

APPENDIX

NOT FOR PUBLICATION**FILED****UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT****MAY 25 2022**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 21-10196

Plaintiff-Appellee,

D.C. No.
1:16-cr-00069-LHR-SKO-1

v.

JAMES YORK, AKA YD, AKA Jamari
York, AKA York Dog,

MEMORANDUM*

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of California
Lee H. Rosenthal, District Judge, Presiding**

Submitted May 17, 2022***

Before: CANBY, TASHIMA, and NGUYEN, Circuit Judges.

James York appeals from the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). We have jurisdiction

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

** The Honorable Lee H. Rosenthal, United States District Judge for the Southern District of Texas, sitting by designation.

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

APPENDIX A

under 28 U.S.C. § 1291. Reviewing for abuse of discretion, *see United States v. Keller*, 2 F.4th 1278, 1281 (9th Cir. 2021), we affirm.

York contends that the district court abused its discretion by denying his motion because his asthma puts him at severe risk from COVID-19, and his rehabilitative efforts in prison and release plan show that releasing him to home confinement would satisfy the 18 U.S.C. § 3553(a) sentencing factors. We reject this contention. The district court reasonably concluded that York's asthma did not justify compassionate release, given York's age, vaccination status, and the care he was receiving in prison. Moreover, the court reasonably concluded that, in light of York's criminal history and history of violating conditions of supervision, as well as the danger he posed to the community, the § 3553(a) factors did not support relief. Accordingly, it did not abuse its discretion by denying York's motion. *See Keller*, 2 F.4th at 1284; *see also United States v. Robertson*, 895 F.3d 1206, 1213 (9th Cir. 2018) (district court abuses its discretion only if its decision is illogical, implausible, or not supported by the record).

AFFIRMED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,) Case No: 1:16-CR-00069-LHR-SKO
)
Plaintiff,) MEMORANDUM OPINION AND
) ORDER DENYING COMPASSIONATE
v.) RELEASE
)
JAMES YORK,)
)
Defendant.)
)

I. Introduction

James York pleaded guilty to conspiracy to commit murder in aid of racketeering, use of a facility of interstate commerce to promote prostitution, and possession of an unregistered firearm, in violation of 18 U.S.C. §§ 1952(a), 1959(a)(5), and 26 U.S.C. § 5861(d). The charges arose from York's April 2016 arrest following a state investigation of the Dog Pound Gangsters, a criminal gang in which York was a high-ranking member. York pleaded guilty to conspiring to murder rival gang members, prostituting several women, and selling a modified and unregistered assault rifle. He was sentenced to 168 months. With good-time credit, his scheduled release date is in March 2028. He has served 62 months, or 37 percent, of his 168-month sentence.

York moved for compassionate release and for the appointment of counsel. (Docket Entry Nos. 914, 926). The court appointed the Federal Public Defenders Office to represent York on his compassionate-release motion. (Docket Entry No. 929). York supplemented his motion, the government responded, and York replied. (Docket Entry Nos. 934, 937, 940). York asks the court to modify his sentence to allow him to spend the remaining 122 months of his custodial sentence on home detention, based on a medical condition that increase his vulnerability to COVID-19. (Docket Entry No. 934).

APPENDIX B

For the reasons set out more fully below, the court denies York's motion.

II. Analysis

A. The Legal Standard

Courts generally "may not modify a term of imprisonment once it has been imposed." *Dillon v. United States*, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)). But a court may reduce a defendant's sentence if "the factors set forth in section 3553(a)" and "extraordinary and compelling reasons" justify a reduction. 18 U.S.C. § 3582(c)(1)(A).

After a defendant has been sentenced to a term of imprisonment, a court "may reduce the term" if, after considering the 18 U.S.C. § 3553(a) factors, the court finds that "extraordinary and compelling reasons warrant such a reduction" and "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). The comments to the United States Sentencing Guidelines § 1B1.13 provide four "extraordinary and compelling reasons" that may justify reducing a prison term: (1) medical conditions, (2) age, (3) family circumstances, and (4) other reasons. U.S.S.G. § 1B1.13 cmt. n.1(A)–(D) (2018). A medical condition might be sufficiently serious to warrant release if the condition is either "terminal" or it "substantially diminishes the [defendant's ability] to provide self-care." *Id.* at cmt. n.1(A)). Although those statements by the Sentencing Commission are not binding on compassionate-release motions filed by a defendant, they provide guidance for determining whether extraordinary and compelling reasons exist that justify granting compassionate release. *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021).

"In some exceptional cases," compassionate release may be warranted if a defendant "demonstrate[s] an increased risk of serious illness if he or she were to contract COVID." *United States v. Thompson*, 984 F.3d 431, 434 (5th Cir. 2021). Courts granting compassionate release

have generally done so “for defendants who had already served [most of their] sentences and [had] multiple, severe, health concerns.” *Id.* at 434–35. Compassionate release typically does not extend to otherwise healthy defendants or defendants with well-managed health conditions. *Id.* at 435.

B. Analysis

The court acknowledges the ongoing threat of COVID-19, as well as the improvements in responding to it. At the facility where York is incarcerated, FCI Mendota, as of June 30, 2021, no inmates or staff are testing positive for COVID. Since the pandemic began, 30 inmates and 33 staff members have contracted COVID and recovered. *See* BOP COVID-19 Resource Page, <https://www.bop.gov/coronavirus> (last visited June 30, 2021). The BOP is taking significant steps to try to reduce the threat of further COVID infection in its facilities.

York argues that compassionate release is justified because he has asthma. An inmate’s medical conditions support compassionate release if those conditions “substantially diminish[] the ability of the defendant to provide self-care.” U.S.S.G. § 1B1.13 cmt. n.1(A). An inmate who is at least 65, is experiencing a serious deterioration in physical or mental health, and has served the lesser of 10 years or 75 percent of their sentence, may also present a compelling case for release. York is 44 years old, below the age of greater vulnerability to COVID. York’s medical records show that, although he has asthma, the condition is well-controlled and is being treated in the prison. (Docket Entry No. 937-1 at 12, 14–15, 17–18, 22, 36, 43, 46, 61 (Exh. 2) (sealed)). York has not shown that his asthma severely diminishes his ability to self-care within prison. Compassionate release is not justified by York’s medical condition. *See Thompson*, 984 F.3d at 434–35 (compassionate release is “largely” granted for defendants with “multiple, severe, health concerns” that create “an increased risk of serious illness if [they] were to contract COVID”).

York also argues that the threat of COVID justifies compassionate release. York has been fully vaccinated against COVID, which substantially reduces the risk that he will contract, or be severely harmed by, COVID. (Docket Entry No. 937-1 at 39 (Exh. 2) (sealed)); *See United States v. Smith*, --- F. Supp. 3d ---, 2021 WL 1890770, at *3 (E.D. Cal. May 11, 2021) (“district courts across the country, including within this Circuit, have held almost uniformly that a defendant’s vaccination undercuts any claims of ‘extraordinary and compelling reasons’ based on a high risk of infection”); *United States v. Ruben Baraja-Guerrero*, No. 1:17-cr-00148, 2021 WL 1839728, at *6 (E.D. Cal. May 7, 2021) (“Defendant has failed to carry his burden of establishing his entitlement to a sentence reduction based on his purported susceptibility to COVID-19 because he is now fully vaccinated and has not cited any evidence indicating that he continues to be at severe risk from the virus.”).

The § 3553(a) factors also support denying relief. Although York has taken advantage of educational opportunities while in prison, his criminal history and his past violation of supervised-release conditions weigh against an early release. The record weighs in favor of finding that York is a danger to the safety of others and the community. U.S.S.G. § 1B1.13(2). The § 3353(a) factors add to the reasons for denying relief.

III. Conclusion

York’s motion for an order modifying the remainder of his sentence to take place in home detention is denied.

SIGNED on July 6, 2021, at Houston, Texas.



Lee H. Rosenthal
Chief United States District Judge