NO:

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2021

DARIO PINSON,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

***Respondent*.**

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

WHETHER THE DISTRICT COURT'S FAILURE TO PROPERLY CONSIDER THE APPROPRIATE FACTORS PURSUANT TO 18 U.S.C. § 3582(c) BEFORE DENYING MR. PINSON'S MOTION FOR COMPASSIONATE RELEASE VIOLATED HIS RIGHT TO DUE PROCESS?

INTERESTED PARTIES

There are no parties to the proceeding other than those named in the caption of the case.

RELATED PROCEEDINGS

United States District Court (S.D. Fla.):

United States v. Dario Pinson, No. 15-20184-Cr-Altonaga (September 9, 2015)

United States Court of Appeals (11th Cir.):

United States v. Dario Pinson, No. 21-10721 (June 3, 2022)

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Dario Pinson respectfully petitions the Supreme Court of the United States for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit, rendered and entered in case number 21-10721 in that court on June 3, 2022, which affirmed the denial of compassionate release of the United States District Court for the Southern District of Florida.

OPINION BELOW

A copy of the decision of the United States Court of Appeals for the Eleventh Circuit, which affirmed the denial of compassionate release of the United States District Court for the Southern District of Florida, is contained in the Appendix (A-1).

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and PART III of the RULES OF THE SUPREME COURT OF THE UNITED STATES. The decision of the court of appeals was entered on June 3, 2022. This petition is timely filed pursuant to SUP. CT. R. 13.1. The district court had jurisdiction because petitioner was charged with violating federal criminal laws. The court of appeals had jurisdiction pursuant to 28 U.S.C. § 1291 and 18 U.S.C. § 3742, which provide that courts of appeals shall have jurisdiction for all final decisions of United States district courts.

STATUTORY AND OTHER PROVISIONS INVOLVED

Petitioner intends to rely on the following constitutional and statutory provisions:

> **U.S. Const. amend. V**: "No person shall be. . .compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . ."

18 U.S.C. § 3582(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; or
>
> (ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g); and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission;

18 U.S.C. § 3553

(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. . . .

U.S.S.G. § 1B1.13

[T]he court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—

(1)(A) Extraordinary and compelling reasons warrant the reduction; or

(B) The defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;

(2) 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); and

(3) The reduction is consistent with this policy statement.

Commentary

Application Notes:

1. **Extraordinary and Compelling Reasons.**—Provided the defendant meets the requirements of subdivision (2), extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) **Medical Condition of the Defendant.—**

(i) The defendant is suffering from a terminal illness (*i.e.*, a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) **Age of the Defendant.**—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) **Family Circumstances.—**

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) **Other Reasons.**—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

2. **Foreseeability of Extraordinary and Compelling Reasons.**—For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

3. **Rehabilitation of the Defendant.**—Pursuant to 28 U.S.C. § 994(t), rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement.

STATEMENT OF THE CASE

On March 20, 2015, a federal grand jury returned an indictment against Mr. Pinson charging him with two counts of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951(a) (Counts 1 and 6); four counts of Hobbs Act robbery, in violation of 18 U.S.C. §§ 1951(a) and 2 (Counts 2, 4, 7 and 9); and four counts of using and brandishing a firearm during a crime of violence, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii) and 2 (Counts 3, 5, 8 and 10). The indictment also contained a forfeiture provision. On June 30, 2015, pursuant to a written plea agreement, Mr. Pinson pled guilty to Counts 1-6, with the government agreeing to dismiss Counts 7-10 after sentencing. On September 5, 2015, the district court sentenced Mr. Pinson to a 424-month term of imprisonment. The judgment was not appealed.

On January 4, 2021, Mr. Pinson filed a *pro se* motion pursuant to 18 U.S.C. § 3582(c)(1)(A) for compassionate release and reduction of sentence. The government filed a response in opposition to the motion. On February 2, 2021, the district court denied the motion. Mr. Pinson timely appealed and the Eleventh Circuit affirmed.

The parties stipulated that had this case proceeded to trial, the Government would have proved beyond a reasonable doubt that the following facts occurred in Miami-Dade County, in the Southern District of Florida and elsewhere:

From or around February 24, 2015, through February 26, 2015, a group of individuals including Dario Pinson ("PINSON"), Kendrick Belfon ("BELFON") and

additional unnamed persons were participants in one or more conspiracies to commit robbery in Miami-Dade County, Florida, Broward County Florida and elsewhere.

On February 24, 2015, PINSON, BELFON and an unnamed associate conspired to rob the Little Caesar's restaurant in Plantation, Florida. BELFON provided the vehicle used to transport the conspirators. Once inside, PINSON and his unnamed associate secured property from persons inside the Plantation Little Caesar's including currency belonging to the business, through threat of violence. During the February 24 Plantation Little Caesar's robbery, victims were restrained with a tape product and placed in the business' cooler by PINSON and his associate. A firearm was possessed by at least one conspirator during the February 24 Little Caesar's robbery. The parties stipulated the robbery interfered with interstate commerce.

On February 24, 2015, PINSON, BELFON and an unnamed associate conspired to rob the Subway restaurant in Plantation, Florida. BELFON provided the vehicle used to transport the conspirators and surveilled the location before the robbery was conducted. Once inside, PINSON and his unnamed associate secured property from persons inside the Plantation Subway, including currency belonging to the business, through threat of violence. During the February 24 Plantation Subway robbery, victims were restrained with a tape product and placed in the business' freezer by PINSON and his associate. A firearm was possessed by at least

one conspirator during the February 24 Plantation Subway robbery. The parties stipulated the robbery interfered with interstate commerce.

On February 26, 2015, PINSON and Jesse Foots ("FOOTS") conspired to rob a MetroPCS business in Miami-Dade County, Florida. Once inside, PINSON and FOOTS secured property from persons inside the Miami-Dade MetroPCS, including currency belonging to the business, through threat of violence. During the February 26 MetroPCS robbery, victims were restrained with a tape product and struck with a firearm. The parties stipulated the robbery interfered with interstate commerce.

On February 26, 2015, PINSON and FOOTS conspired to rob a Pizza Hut restaurant in Miami Shores, Florida. Once inside, PINSON and FOOTS secured property from persons inside the Miami Shores Pizza Hut, including property belonging to the business, through threat of violence. During the February 26 Pizza Hut robbery victims were restrained with a tape product and struck with a firearm. The parties stipulated the robbery interfered with interstate commerce.

On January 4, 2021, Mr. Pinson asked the district court to grant his motion for Compassionate Release/Reduction in Sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) and 18 U.S.C. § 3553(a). In his motion he asserted that there are extraordinary and compelling circumstances warranting relief. Specifically, he noted that based on his medical condition, "[t]he defendant is suffering from medical conditions that's causing his organs to deteriorate," specifically, Type-1 Diabetes Mellitus, which has affected his kidneys which will likely lead to future dialysis and his "vision has begun to

deteriorate as a result of High A1C levels." "Type-1 Diabetes Mellitus has lowered defendant's immune system and healing process." Mr. Pinson noted that "he's been hospitalized more than two times since he'd been incarcerated, each time longer than a week," and his "health condition is serious and shouldn't be subjected to a person of the age of 24 years old." Accordingly, he asserted that his "deteriorating health condition" satisfies one of the four categories described in § 1B1.13.

Mr. Pinson also stated that he "battles with Major Depression Disorder at a high level that's unhealthy for any human-being." He stated that his mental health condition has gotten worse since his incarceration and that he brings his mental health to the court's attention to show that he has "extraordinary and compelling reasons" under the four categories described in § 1B1.13, which would make him eligible for a sentencing reduction pursuant to Section 3553(a).

In addition, Mr. Pinson brought to the court's attention "the gross disparity between the sentence a defendant would receive before the First Step Act and the sentence a defendant would receive after the First Step Act." He asked the court to consider this when "construing the Motion in whole." He then addressed three areas where he anticipated an objection from the government: "dangerousness of the defendant, defendant's criminal history, and as well as post-conviction conduct."

Regarding dangerousness, Mr. Pinson states that he is not "a danger to any other person or community." "Defendant will clearly still have over a decade of time to serve for his sentence" even if he receives a sentence reduction to 208 months. This

reduced term of imprisonment "will still satisfy the Sentencing Commission policy and make for promoting respecting for the law and providing just punishment."

Mr. Pinson then addressed his post-conviction conduct, arguing that since he's been in the Challenge Program unit, he "has displayed a major change in behavior and programing process." He referred the court to psychology records attached to his motion which attested to his positive behavior. He has a job in Food Service and identified multiple certificates of achievement in various programs he has completed in order to be rehabilitated. Although Mr. Pinson has not earned a G.E.D. it is because he is currently unable to enroll in those classes due to a lack of resources from the Coronavirus pandemic. He intends to complete his G.E.D. as soon as he is able. Although he acknowledged that there are some disciplinary incidents, he "has begun the process of change and is continually working toward rehabilitation." He also pointed out his acceptance of responsibility acknowledging his wrong doings. He concluded by stating that he satisfies the three-factor test for granting a sentence reduction.

In response the government argued that Mr. Pinson's request for relief should be denied because "it is not predicated on circumstances that can properly be deemed extraordinary." The government argued that Mr. Pinson's activity in the BOP:

> reflects an inmate with the physical capacity to engage in acts of violence and misconduct. Moreover, the BOP has been able to successfully treat the defendant's medical conditions. Lastly, as the defendant has not shown an extraordinary circumstance is present based on post First Step Act sentencing disparity with his current term.

The government conceded that Mr. Pinson has exhausted his administrative remedies but asserted "there are no merit-based reasons to grant the requested relief."

The district court denied Mr. Pinson's motion, finding that "although a defendant sentenced today would not receive the section 924(c) sentences Defendant did in 2015, the Court finds the section 3553(a) factors and Defendant's dangerousness bar the relief requested." The district court further found that "Defendant does not have any health condition that would make for a worse outcome should he contract COVID-19 in prison and so on that basis also does not present an extraordinary and compelling reason for compassionate release." In addressing his health conditions, the district court found that "Defendant is receiving adequate treatment for his Type-1 Diabetes at the BOP. . . . And the Court is unaware that depression constitutes a risk factor for a worse outcome if Defendant were to contract COVID-19." The district court agreed with the government's argument that "the sentencing factors weigh strongly against a Defendant's release after having served approximately 70 months of his below-Guidelines' 424 sentence." The district court acknowledged Mr. Pinson's efforts at improving his education, completing courses at the BOP and working in the kitchen but concluded that:

> Defendant's violent offense conduct in this case evinces depravity and an utter disregard for the life and safety of others. The healthy and relatively young Defendant's early release would minimize the severity of the offenses of conviction, undermine respect for the law and deterrence to criminal conduct, and fail to protect the public from further crimes of the Defendant. *See* 18 U.S.C. Section 3553(a)(2). Given Defendant's criminal history, his offense conduct, and

> disciplinary record, the Court cannot say Defendant is not a danger to the community.

Accordingly, the district court denied Mr. Pinson's motion but encouraged the BOP to administer a COVID-19 vaccine once it is available. On March 1, 2021, Mr. Pinson timely appealed to the Eleventh Circuit Court of Appeals. On June 3, 2022, the Eleventh Circuit affirmed the district court's decision.

REASON FOR GRANTING THE WRIT

THE DISTRICT COURT'S FAILURE TO PROPERLY CONSIDER THE APPROPRIATE FACTORS PURSUANT TO 18 U.S.C. § 3582(c) BEFORE DENYING MR. PINSON'S MOTION FOR COMPASSIONATE RELEASE VIOLATED HIS RIGHT TO DUE PROCESS.

"Federal judges have long been able to release prisoners for compassionate reasons such as terminal illness. Until recently that authority depended on a motion by the Bureau of Prisons." *United States v. Gunn*, 980 F.3d 1178, 1179 (7th Cir. Nov. 20, 2020). That changed when Congress passed the First Step Act of 2018, and transformed the process for compassionate release. *Id.*; see also Pub. L. 115-391, 132 Stat. 5194, at § 603 (Dec. 21, 2018).

Specifically, the compassionate release statute, 18 U.S.C. § 3582(c)(1), was first enacted as part of the Comprehensive Crime Control Act of 1984. It provided that a district court could modify a final term of imprisonment if there existed "extraordinary and compelling reasons" warranting the reduction. However, although the courts had the final decision-making authority over whether a sentence would be reduced, that authority could be invoked only upon a motion by the Director of the Bureau of Prisons ("BOP"). Without such a motion, district courts were powerless to reduce a prisoner's sentence, even if the court concluded that extraordinary and compelling reasons warranted the reduction. § 3582(c)(1)(A)(i); *see also* Pub. L. 98–473 (H.J.Re.s 648), Pub. L. 98– 473, 98 Stat. 1837 (Oct. 12, 1984).

Frustrated by the BOP's extreme reluctance to invoke its compassionate release authority, Congress amended the statute as part of the First Step Act of 2018.

See P.L. 115-391, 132 Stat. 5194, at § 603 (Dec. 21, 2018). Specifically, Section 603 of the Act amended § 3582(c) to allow a defendant to bring his own motion for compassionate release "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." § 3582(c)(1)(A). Thus, Section 603 "created a judicial power to grant compassionate release on a prisoner's own request, provided that the prisoner first allowed the Bureau [of Prisons] to review the request and make a recommendation (or it let 30 days pass in silence)." *Gunn*, 980 F.3d at 1179 (citing § 3582(c)(1)(A)).

Mr. Pinson filed a motion for compassionate release in the district court pursuant to 18 U.S.C. § 3582(c)(1)(A). In its order denying Mr. Pinson's motion, the district court failed to provide a clear and sufficient basis for that denial or to demonstrate that it had properly weighed and considered the appropriate factors. The district court's failure to weigh and consider the appropriate factors and the Eleventh Circuit's order sanctioning the failure violated Mr. Pinson's right to due process.

When deciding whether to grant a motion for compassionate release, the district court must consider: (1) whether the movant "has offered 'extraordinary and compelling reasons' and whether a reduction or release would be consistent with the policy statement found at U.S.S.G. § 1B1.13;" and (2) whether the 18 U.S.C. § 3553(a) factors support release. *United States v. Cook*, 998 F.3d 1180, 1184 (11th Cir. 2021)

(quotation marks omitted). Here, the district court failed to adequately address either U.S.S.G. § 1B1.13 or 18 U.S.C. § 3553(a).

> The policy statement found at U.S.S.G. § 1B1.13, permits a reduction:
>
> if, after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable, the court determines that—
>
> **(1)(A)** Extraordinary and compelling reasons warrant the reduction; or
>
> **(B)** The defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under 18 U.S.C. § 3559(c) for the offense or offenses for which the defendant is imprisoned;
>
> **(2)** 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); and
>
> **(3)** The reduction is consistent with this policy statement.

U.S.S.G. § 1B1.13. Section 1B1.13 lists four extraordinary and compelling reasons: the medical condition of the defendant, the age of the defendant, family circumstances, and other reasons. U.S.S.G. § 1B1.13 cmt. n.1. Mr. Pinson brought his motion under the category of medical condition.

The only specific mention the district court made in its order regarding U.S.S.G. § 1B1.13 was as follows: "Furthermore, the Court must deny a request for compassionate release unless it determines the defendant 'is not a danger to the safety of any person or to the community[.]' U.S.S.G. § 1B1.13(2) (alteration added)." Ultimately, the district court stated, "Given Defendant's criminal history, his offense conduct, and disciplinary record, the Court cannot say Defendant is not a danger to the community."

In assessing dangerousness, the district court failed to acknowledge Mr. Pinson's argument that he could not be a danger because the relief requested would automatically prevent him from being a danger to the safety of any person or the community because he was not asking for release but only a reduction in sentence. If the district court had granted the motion and resentenced Mr. Pinson, he would still have a lengthy sentence of 138 months' imprisonment left to serve. With such a long period of incarceration remaining, Mr. Pinson argued that he could not have been a danger because he would still be in custody for a significant period of time. The district court's failure to recognize, consider or address Mr. Pinson's dangerousness argument demonstrates that the court did not properly evaluate the dangerousness component of § 1B1.13.

Further, there are errors in the district court's findings regarding the extraordinary and compelling reasons warranting a reduction under § 1B1.13. Mr. Pinson argued that the "extraordinary and compelling reasons" warranting a reduction were due to his numerous serious, chronic, and deteriorating physical and mental health conditions, not based on a concern over COVID-19. Instead of considering and addressing Mr. Pinson's physical and mental health conditions as extraordinary and compelling reasons warranting a sentence reduction, the district court found that, "Defendant does not have any health condition that would make for a worse outcome should he contract COVID-19 in prison and so on that basis also does not present an extraordinary and compelling reason for compassionate release." The district court continued, focusing again on COVID-19, and found that, "the Court

is unaware that depression constitutes a risk factor for a worse outcome if Defendant were to contract COVID-19." There is no evidence that the district court properly considered Mr. Pinson's serious, chronic and deteriorating physical and mental health conditions, but only considered COVID-19's possible effect on him in making its ruling.

In addition, the district court's order shows that the court disregarded Mr. Pinson's rehabilitation progress. Although rehabilitation alone is not an extraordinary and compelling reason warranting a sentencing reduction, when considered in conjunction with Mr. Pinson's serious medical condition it can certainly be a factor. *See* U.S.S.G. § 1B1.13, comment. (n.3).

Although every other circuit to have considered this issue disagrees, in the Eleventh Circuit, when adjudicating compassionate release motions, district courts must ensure that any sentence reduction is consistent with the policy statement found at U.S.S.G. § 1B1.13. *United States v. Bryant*, 996 F.3d 1243 (11th Cir. 2021); *but see United States v. Brooker*, 976 F.3d 228, 235-236 (2d Cir. 2020); *United States v. Jones*, 980 F.3d 1098, 1109-1111 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020); *United States v. McCoy*, 981 F.3d 271, 275-277, 280-284 (4th Cir. 2020); *United States v. McGee*, 992 F.3d 1035, 1048-1051 (10th Cir. 2021); *United States v. Maumau*, 993 F.3d 821, 832-837 (10th Cir. 2021); *United States v. Aruda*, 993 F.3d 797, 799-802 (9th Cir. 2021); *United States v. Shkambi*, 993 F.3d 388, 392-393 (5th Cir. 2021); *United States v. Long*, 997 F.3d 342 (D.C. Cir. 2021). In *United States v. Bryant*, a panel of the Eleventh Circuit held that Guideline

§ 1B1.13 and its accompanying application note apply to defendant-filed compassionate release motions because the statement is "capable of being applied" to those motions. *Bryant*, 996 F.3d at 1247. Because the district court limited its analysis to COVID-19, the record fails to show that the district court properly weighed and considered whether extraordinary and compelling reasons existed under the medical condition provision of § 1B1.13. The Eleventh Circuit's order affirming the failure was error.

Consideration of the 18 U.S.C. § 3553(a) factors is also lacking in the record. Although the district court is not required to explicitly discuss each factor under 18 U.S.C. § 3553(a), the record must indicate that the court considered some of the factors. Otherwise, remand is required. *See United States v. Kuhlman*, 711 F.3d 1321, 1326 (11th Cir. 2013); *United States v. Douglas*, 576 F.3d 1216, 1220 (11th Cir. 2009); *United States v. Dorman*, 488 F.3d 936, 944 (11th Cir. 2007). The record here shows that the district court's order states, "the Court finds the section 3553(a) factors and Defendant's dangerousness bar the relief requested." The order, however, fails to weigh and analyze those factors but simply concludes, that "the sentencing factors weigh strongly against the Defendant's release after having served approximately 70 months of his below-Guidelines' 424-month prison sentence." The district court added:

> Defendant's violent offense conduct in this case evinces depravity and an utter disregard for the life and safety of others. The healthy and relatively young Defendant's early release would minimize the severity of the offenses of conviction, undermine respect for the law and deterrence to criminal conduct, and fail to protect the public from

> further crimes of the Defendant. *See* 18 U.S.C. Section 3553(a)(2). Given Defendant's criminal history, his offense conduct, and disciplinary record, the Court cannot say Defendant is not a danger to the community.

The district court's order shows that the court gave undue weight to Section 3553(a) factors focusing on the past rather than evaluating these factors anew in light of Mr. Pinson's current medical conditions and rehabilitative progress.

"[E]vidence of postsentencing rehabilitation may be highly relevant to several of the § 3553(a) factors that Congress has expressly instructed district courts to consider at sentencing," including " 'the history and characteristics of the defendant," and "the need for the sentence imposed' to serve the general purposes of sentencing" such as "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.' " *Pepper v. United States*, 562 U.S. 476, 491, 131 S. Ct. 1229, 1242 (2011) (quoting 18 U.S.C. § 3553(a)). Additionally, a defendant's post-sentencing rehabilitation may "critically inform a sentencing judge's overarching duty under § 3553(a) to 'impose a sentence sufficient, but not greater than necessary,' to comply with the sentencing purposes set forth in § 3553(a)(2)." *Id.*

Mr. Pinson presented evidence of post-sentencing rehabilitation. That evidence included an absence of recent disciplinary infractions, as well as pursuit of numerous educational courses and programs to turn his life around, such as the Challenge Program. (DE 238:78-88). In requesting a reduction in his sentence, Mr. Pinson

argued that these factors should be considered in deciding whether the § 3553(a) factors weighed in favor of a sentence reduction. The district court, however, did not consider, Mr. Pinson's post-sentencing rehabilitation argument in denying his motion. Certainly, a district court need only acknowledge that it has considered the defendant's arguments and the § 3553(a) factors. *United States v. Sarras*, 575 F.3d 1191, 1291 (11th Cir. 2009); *United States v. Talley*, 431 F.3d 784, 786 (11th Cir. 2005) ("[A]n acknowledgement by the district court that it has considered the defendant's arguments and the factors in section 3553(a) is sufficient under *Booker*."). But here, the district court did not acknowledge that it considered Mr. Pinson's arguments. Because the district court failed to consider all of Mr. Pinson's arguments, its denial of Mr. Pinson's request for compassionate release and the Eleventh Circuit's affirmance of the failure violated Mr. Pinson's right to due process.

CONCLUSION

Based upon the foregoing petition, the Court should grant a writ of certiorari to the Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

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