TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

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CASE NO. _____

Supreme Court, U.S.
FILED
SEP 05 2022
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SUPREME COURT OF THE UNITED STATES

ROBERT MILLER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA
(Case No. 20-3079)

PETITION FOR WRIT OF CERTIORARI

Robert Miller
Petitioner
Reg. No. 28126-016
FCI Edgefield
P.O. Box 725
Edgefield, SC 29824

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

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SUBJECT: ROBERT MILLER'S QUESTIONS PRESENTED
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QUESTIONS PRESENTED

I. Whether Certiorari should be granted to assess whether the District and Appellate Court erred in declaring that Appellant failed to meet his burden of demonstrating Extraordinary and Compelling reasons that warrant a sentence reduction?

II. Whether Certiorari should be granted to assess where in light of 18+ years of incarceration with no actions committed by the Appellant of further criminal activity with no pattern of repeated criminal activity to the charges in the instant case supports a denial of Compassionate Release when Appellant's correctional, educational, therapeutic, religious/spiritual and program history while incarcerated far supports his post-offense rehabilitation and whether his contributions to others supplements his entitlement to a reduction in sentence.

III. Whether Certiorari should be granted to assess whether using a criminal history of 18+ years to deny the Appellant is unreasonable especially when the last 18+ years have been full of meritorious reasons to grant a sentence reduction and is more consistent with fairness than to deny the Appellant a reduction in sentence on the basis of a stale charge, especially in light of Judge Reidinger's decisions in United States v. Bruce Lee Richardson, 2021 U.S. Dist. LEXIS 208899 (October 29, 2021) and United States v. Michael Balais, 2020 U.S. Dist. LEXIS 198980 (October 26, 2021) and whether Equal Protection of Law principles apply and have been violated.

IV. Whether Certiorari should be granted to assess whether Equal Protection of Law principles were violated when other Defendants in like circumstances in the same District Court are released from prison and whether there is an appropriate governmental interest suitably favoring differential treatment.

V. Whether Certiorari should be granted in light of looking at the Appellant in relationship to Pepper, Kuhn, Rivera Doctrine, etc. to assess whether the Appellant was entitled to a Reduction of Sentence because he has already achieved the Objectives of Sentencing pursuant to U.S. Supreme Court precedent.

VI. Whether Certiorari should be granted when the government conceded the Appellant's argument by failing to serve him their response to his motion for a reduction in the lower court by failing to plead, thereby failing to preserve their standing issue by waiving or abandoning it pursuant to Kontrick v. Ryan, 540 U.S. 443, 458 n.13, 124 S.Ct. 906, 157 L.Ed.2d 867 (2004) as cited in United States v. Noble, 762 F.3d 509 (Aug. 8, 2014) quoting United States v. Washington, 380 F.3d 236, 240 n.3 (6th Cir. 2004)

PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the United States Court of

Appeals for the District of Columbia. More specifically, the Petitioner, Robert Miller and the Respondent United States of

America are the only parties.

Neither party is a company, corporation, or subsidiary of any company or corporation.

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
TO:
SUBJECT: ROBERT MILLER'S TABLE OF CONTENTS
DATE: 08/27/2022 12:10:22 PM

****

TABLE OF CONTENTS

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
TO:
SUBJECT: ROBERT MILLER'S INDEX OF APPENDIX
DATE: 09/05/2022 12:31:09 PM

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INDEX OF APPENDICES

APPENDIX A. October 21, 2020 Minute Order from Judge Leon denying Petitioner's Motion for Compassionate Release

APPENDIX B. May 26, 2021 Order from United States Court of Appeals for the District of Columbia granting Extension of Time to file Appellee's Memorandum of Law and Fact

APPENDIX C. July 14, 2021 Amended Order from United States Court of Appeals for the District of Columbia granting Appellant's Motion for Extension to file Reply Brief

APPENDIX D. November 22, 2021 Judgment from the United States Court of Appeals for the District of Columbia affirming the District Court's denial of the Petitioner's Motion for Compassionate Release

APPENDIX E. January 13, 2022 Order from the United States Court of Appeals for the District of Columbia granting Leave to file a Petition for Rehearing En Banc

APPENDIX F. March 23, 2022 Order from the United States Court of Appeals for the District of Columbia granting an extension to file Petition for En Banc Review

APPENDIX G. April 19, 2022 Mandate from the United States Court of Appeals for the District of Columbia affirming the U.S. Court of Appeals denial of Petitioner's cause

APPENDIX H. July 25, 2022 granting extension of time for Petitioner to file his Petition for Writ of Certiorari

APPENDIX I. Amended Table of Exhibits presented to the United States Court of Appeals for the District of Columbia delineating Petitioner's everyday life to evaluate Petitioner's accurate Personality and Characteristics present today 18 & 1/2 years after the charges were lodged

APPENDIX J. News Article from Criminal Legal News, September 2021, titled, "Trial Penalty: The Harm in Coercive Prosecutorial Tactics

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
TO:
SUBJECT: ROBERT MILLER'S TABLE OF AUTHORITIES
DATE: 08/28/2022 06:25:04 PM

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TABLE OF AUTHORITIES

Basank v Decker, 449 F. Supp. 3d 205, 211 (S.D.N.Y. 2020)
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Casey v United States, No. 4:18-cr-4, 2020 WL 2297184 (E.D. Va. May 6, 2020)
Coreas v Bounds, No. TDC-20-0780, 2020 U.S. Dist. LEXIS 59211, 2020 WL 1663133, at *2 (D. Md. Apr. 3, 2020)
Farmer v Brennan, 511 U.S. 815, 832, S. Ct. 1970, 128, L. Ed. 2d 811 (1994)
Fernandez-Rodriguez v Licon-Vitale, 470 F. Supp. 3d 323, 2020 U.S. Dist. LEXIS 116749 (1994)
Harrell v United States, 13-20198, 2020 WL 2768883 (E.D. Mich. May 28, 2020)
Howard v United States, 16-cr-2022202, 2020 WL 2615509 (E.D. Mich. May 22, 2020)
Johnson v United States, 529 U.S. 694, 696-97, 120 S. Ct. 1795, 146 L. Ed. 2d 727 (2000)
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Miller v United States, 2020 WL 1814084, at *2 (E.D. Mich. Apr. 9, 2020)
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Pepper v United States, 562 U.S. 476, 491-92, 131 S. Ct. 1229, 179, L. Ed. 2d, 196 (2011)
Tyler v United States, 2020 U.S. Dist. LEXIS 171702 (Sep. 18, 2020)
United States v Aherns, 2020 U.S. Dist. LEXIS 156464 (Aug. 28, 2020)
United States v Al-Jumail, 2020 U.S. Dist. LEXIS 83120 (May 12, 2020)
United States v Alexander, No. 1:04-CR-529, 2020 U.S. Dist. LEXIS 198526, at *10 (N.D. Ohio, Oct. 26, 2020)
United States v Amarrah, No. 17-20464, 2020 WL 2301199, ar *4 (May 7, 2020)
United States v Anderson, 15-cr-30015, 2020 WL 2521513 (C.D. Ill. May 18, 2020)
United States v Anderson, No. 16-CR-824-1 (S.D.N.Y. June 6, 2020)
United States v Ardila, 3:03-cr-00264-SRU-1, 2020 WL 2097736 (D. Conn. May 1, 2020)
United States v Asara, 2020 U.S. Dist. LEXIS 68044 (Apr. 17, 2020)
United States v Barber, 2020 U.S. Dist. LEXIS 114545 (June 16, 2020)
United States v Barber, 6:18-cr-00446-AA, 2020 WL 2404679 (D. Or. May 12, 2020)
United States v Bass, 2021 U.S. Dist. LEXIS 11719 (Jan. 22, 2021)
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United States v Bertrand, 3:00-cr-00012-LC-1, 2020 WL 2179387 (N.D. Fla. Apr. 29, 2020)
United States v Bess, No. 16-CR-156, 455 F. Supp. 3d 53, 2020 U.S. Dist. LEXIS 71056, 2020 WL 1940809, at *9 (W.D.N.Y. Apr. 22, 2020)
United States v Bikundi Sr., 2020 U.S. Dist. LEXIS 103457 (June 12, 2020)
United States v Bischoff, No. 17-cr-196-JD, 460 F. Supp. 3d 122, 2020 U.S. Dist. LEXIS 88981, 2020 WL 2561423 (D. N.H. May 18, 2020)
United States v Bivens, 2020 U.S. Dist. LEXIS 66644 (Apr. 15, 2020)
United States v Bolden, 4:16-CR-00353-WTM-CLR (July 17, 2020)
United States v Braccia, 2021 U.S. Dist. LEXIS 18310 (Feb. 1, 2021)
United States v Brickhouse, 2020 U.S. Dist. LEXIS 84987 (May 14, 2020)
United States v Bright, No. 2:15CR00015-005, 2020 U.S. Dist. LEXIS 88316, 2020 WL 2542725 (D. Conn. May 19, 2020)
United States v Brown, 411 F. Supp. 3d at 446, 449 (D. Iowa 2019)
United States v Brown, 4:05-cr-00227-RP-CFB-1, 2020 WL 2091802 (S.D. Iowa, Apr. 29, 2020)
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United States v Brooker, 967 F.3d at 238, 2020 U.S. Dist, LEXIS 30605 (Sep. 25, 2020)
United States v Burke, 4:17-CR-3089, 2020 WL 3000330 (D. Neb. June 4, 2020)
United States v Burrill, 17-CR-00491-RS-2, 2e (N.D. Cal. Apr. 10, 2020)
United States v Campagna, No. 16-CR-78-01 (LGS), 2020 U.S. Dist. LEXIS 54401, 2020 WL 1489829, at *1, *3 (S.D.N.Y. Mar. 27, 2020)
United States v Campanella, No. 18-CR-00328-PAB-12, 2020 U.S. Dist. LEXIS 147774, 2020 WL 4754041, at *3 (D. Col. Aug. 17, 2020)
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United States v Coker, 2020 WL 1877800, at *3 (E.D. Tenn. Apr. 15, 2020)
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United States v Colvin, No. 3:19-CR-00179 (JBA), F. Supp. 3d, 2020 U.S. Dist. LEXIS 57962, 2020 WL 1613943, at *4 (D. Conn. Apr. 2, 2020)
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United States v Curtis, No. 1:03-CR-533, 2020 U.S. Dist. LEXIS 70804, 2020 WL 1935543, at *3 (D.D.C. Apr. 22, 2020)
United States v Daugerdas, No. 09-CR-581, 2020 U.S. Dist. LEXIS 77658, 2020 WL 2097653, at *3 (S.D.N.Y. May 1, 2020)
United States v Dawson, No. 18-40085-HLT, 2020 U.S. Dist. LEXIS 64383, 2020 WL 1812270, at *7 (D. Kan. Apr. 9, 2020)
United States v Decator, 2020 U.S. Dist. LEXIS 60109 (Apr. 6, 2020)
United States v Delgado, 457 F. Supp. 3d 85, 89 (D. Conn. 2020)
United States v Diep Thi Vo, No. 15-cr-00310-BLF-2, 2020 WL 2300101, at *3 (N.D. Cal. May 7, 2020)
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United States v Doshi, No. 13-20349, ECF No. 145 U.S. Dist. LEXIS 55572, 2020 WL 1546422, at *4
United States v Douglas Jr., 2021 U.S. Dist. LEXIS 10755 (Jan. 20, 2021)
United States v Draccia, 2021 U.S. Dist. LEXIS 18310 (Feb. 1, 2021)
United States v Dubois, 2021 U.S. Dist. LEXIS 29848 (E.D. Pa. Feb. 17, 2021)
United States v Dunlap, 2020 U.S. Dist. LEXIS 76337 (Apr. 29, 2020)
United States v El-Hanafi, 10-CR-162, 2020 WL 2538384 (S.D.N.Y. May 19, 2020)
United States v Ennis, No. EP-02-CR-1430-PRM-1, 2020 WL 2513109, at *6 (W.D. Tex. May 14, 2020)
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United States v Feucht, 11-CR-60025-MIDDLEBROOKS, 2020 WL 2791600 (S.D. Ga. May 28, 2020)
United States v Frost, 2020 WL 3869294, at *4 (D. S.D. July 9, 2020)
United States v Franco, No. 12-CR-932, 2020 U.S. Dist. LEXIS 111169, 2020 WL 4344834, at *3 (S.D.N.Y. June 24, 2020)
United States v Foreman, No. 3:19-cr-62 (VAB), 2020 WL 2315908, at *3 (D. Conn. May 11, 2020)
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United States v Ghorbani, 18-cr-255-PLF (D.D.C. Apr. 3, 2020)
United States v Ginsberg, No. CR 462, 2020 WL 2494643, at *2 (N.D. Ill. May 14, 2020)
United States v Gonzalez, 12-CR-326, 2020 WL 2766046 (S.D.N.Y. May 28, 2020)
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United States v Graham, 2020 U.S. Dist. LEXIS 193430 (Oct. 20, 2020)
United States v Graves, U.S. Dist. LEXIS 236957 (Dec. 16, 2020)
United States v Gray, 2019 U.S. Dist. LEXIS 160593 (Sep. 20, 2019)
United States v Gray, RDB-16-0364, 2020 WL 2932838 (D. Md. June 3, 2020)
United States v Greene, 2020 U.S. Dist. LEXIS 142007 (Aug. 10, 2020)
United States v Griggs, 4:19-cr-00216-DCC, 2020 WL 2614867 (D. S.C. May 22, 2020)
United States v Gross, 1:15-cr-00769-AJN-3, 2020 WL 1673244 (S.D.N.Y. Apr. 6, 2020)
United States v Gunn, 2020 WL 6813995, at *2 (7th Cir. Nov. 20, 2020)
United States v Gutman, 1:19-cr-00069-RDB-2, 2020 WL 2467435 (D. Md. May 13, 2020)
United States v Guzman-Soto, 1:18-cr-10086-IT-1, 2020 WL 2104787 (D. Mass. May 1, 2020)
United States v Hammond, 1:02-00294-BAH-1, 2020 WL 1891980 (D.D.C. Apr. 16, 2020)

United States v Handy, No. 3:10-cr-128-8 (RNC), 2020 WL 2487371, at *1 (D. Conn. May 12, 2020)
United States v Handy, PJM 04-0559, 2020 WL 2041666 (D. Md. Apr. 28, 2020)
United States v Hansen, 1:07-cr-00520-KAM-2, 2020 U.S. Dist. LEXIS, 61946 2020 WL 1703672 (E.D.N.Y. Apr. 8, 2020)
United States v Harpine, 6:91-cr-60156-MC-1, Dkt. No. 221 (D. Or. Mar. 27, 2020)
United States v Haynes, 456 F. Supp. 3d 496, 514 (E.D.N.Y. 2020)
United States v Hernandez, No. 19-CR 834-04 (PAE), 451 F. Supp. 3d 301, 2020 U.S. Dist. LEXIS 58739 2020 WL 1684062, at *3 (S.D.N.Y. 2020)
United States v Herring, 2020 U.S. Dist. LEXIS 220299 (Nov. 24, 2020)
United States v Hickman, 2020 U.S. Dist. LEXIS 204143 (Nov. 2, 2020)
United States v Hickman-Smith, No. 8:14CR367, 2020 U.S. Dist. LEXIS 170995, 2020 WL 5593908, at *3 (D. Neb. Sep. 18, 2020)
United States v Hill, 1:05-CR-0081-LMM, Doc. 45, at *9
United States v Hill, No. 3:19-cr-00038 (JAM), 2020 U.S. Dist. LEXIS 87751, 2020 WL 2542725 (D. Conn. May 19, 2020)
United States v Hilow, 15-cr-170-JD, 2020 WL 2851086 (D. N.H. June 2, 2020)
United States v Holloway, 68 F. Supp. 3d 310, 2014 U.S. Dist. LEXIS 102278 (E.D.N.Y. July 25, 2014)
United States v Horn, 2020 U.S. Dist. LEXIS 217288 (Nov. 19, 2020)
United States v Jackson, 2020 U.S. Dist. LEXIS 71601 (Apr. 23, 2020)
United States v Jackson, 5:02-cr-30020, 2020 WL 2735724 (W.D. Va. May 22, 2020)
United States v Jacobs, 2020 U.S. Dist. LEXIS 116539 (July 2, 2020)
United States v Jamil, 15-CR-00264-LHK-4, 2020 WL 2614877 (N.D. Cal. May 21, 2020)
United States v Jennings, 2020 U.S. Dist. LEXIS 70800 (Apr. 22, 2020)
United States v Jepsen, 19 Civ. 73, 2020 U.S. Dist. LEXIS 57007, 2020 WL 1640232, at *5 (D. Conn. Apr. 1, 2020)
United States v Johnson, 15-cr-125, 2020 U.S. Dist. LEXIS 86309, 2020 WL 3041923 (D.D.C. May 18, 2020)
United States v Johnson, 529 U.S. 53, 59, 120 S. Ct. 1114, 146 L. E.d 2d 39 (2000)
United States v Joling, 6:15-cr-00113-AA-1, 2020 WL 1903280 (D. Or. Apr. 17, 2020)
United States v Jones, 2020 U.S. Dist. LEXIS 1211717 (July 9, 2020)
United States v Kalivretenos, 2020 U.S. Dist. LEXIS 157384 (May 31, 2020)
United States v Kamaka, 18-00085 SOM, 2020 WL 2820139 (D. Haw. May 29, 2020)
United States v Kennedy, No. 18-20315, 2020 U.S. Dist. LEXIS 53359, 2020 WL 1493481, at *2 (E.D. Mich. Mar. 27, 2020)
United States v Knight, 2020 U.S. Dist. LEXIS 173834 (Apr. 23, 2021)
United States v Kowalski, 2:13-First Step Act-00045-rws-jcf, Doc. 251 (N.D. Ga. Apr. 30, 2020)
United States v Lacy, No. 15-cr-30038, 2020 U.S. Dist. LEXIS 76849, 2020 WL 2093363, at *6 (C.D. Ill. May 1, 2020)
United States v Ladson, No. 01-697 2020 U.S. Dist. LEXIS 108551, 2020 WL 3412574, at *7-*8 (E.D. Pa. June 22, 2020)
United States v Levy, No. 17-20033-JAR, 2020 WL 3218110, at *4 (D. Kan. June 15, 2020)
United States v Lewis, 2020 U.S. Dist. LEXIS 156842 (Aug. 28, 2020)
United States v Liggins, 2020 U.S. Dist. LEXIS 150627 (Aug. 20, 2020)
United States v Llewellyn, 09-CR-0332, 2020 WL 2615762 (N.D. Ill. May 22, 2020)
United States v Lopez, 1:18-cr-02846-MV-1, 2020 WL 2489746, (D. N.M. May 14, 2020)
United States v Loyd, No. CR 15-20394-1, 2020 U.S. Dist. LEXIS 89357, 2020 WL 2572275, at *5 (E.D. Mich. May 21, 2020)

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
TO:
SUBJECT: ROBERT MILLER'S TABLE OF AUTHORITIES 2
DATE: 08/28/2022 06:22:19 PM

United States v Mann, 2021 U.S. Dist. LEXIS 95915 (May 20, 2021)
United States v Marks, No. 09-CR-6033, 455 F. Supp. 3d 17, 2020 U.S. Dist. LEXIS 68828, 2020 WL 1908911, at *13, 25-26 (W.D.N.Y. Apr. 20, 2020)
United States v Marrero, 2020 U.S. Dist. LEXIS 222883 (Nov. 29, 2020)
United States v Marshall, No. 1:16-CR-352-RWS-1, Doc. 337, at 6-7 (N.D. Ga. Dec. 4, 2020)
United States v Mason, No. 317-CR-104(CWR)(LRA)3, 2020 WL 3065303, at *2 (S.D. Miss. June 9, 2020)
United States v Massingille, 2020 U.S. Dist. LEXIS 141365, (Aug. 7, 2020)
United States v Mattingly, 6:15-CR-00005-NKM-JCH, 2020 WL 2499707 (W.D. Va. May 14, 2020)
United States v Maumau, No. 2:08-CR-00758-TC-11, 2020 U.S. Dist. LEXIS 28392, 2020 WL 806121, at *6-*7 (D. Utah, Feb. 18, 2020)
United States v McCarthy, No. 3:92-CR-0230 (JCH), 2020 WL 1698732, at *5 (D. Conn. Apr. 8, 2020)
United States v McClellan, No. 1:92-CR-268, 2020 U.S. Dist. LEXIS 97136, at *8 (N.D. Ohio June 3, 2020)
United States v McGraw, 2019 U.S. Dist. LEXIS 7837 (May 19, 2019)
United States v Mel, 2020 U.S. Dist. LEXIS 74491 (Apr. 28, 2020)
United States v Millage, 3:13-CR-234-SI, 2020 WL 2857165 (D. Or. June 2, 2020)
United States v Millan, No. 91-CR-685, 2020 U.S. Dist. LEXIS 59955, 2020 WL 1674058, at *7 (S.D.N.Y. Apr. 6, 2020)
United States v Miller, 2:16-CR-20222-AJT-RSW-1, 2020 WL 1814084 (E.D. Mich. Apr. 9, 2020)
United States v Ministro-Tapia, 470 F.3d 137, 141 (2d Cir. 2006)
United States v Mitchell, 2020 U.S. Dist. LEXIS 132229 (July 27, 2020)
United States v Mondaca, 2020 U.S. Dist. LEXIS 37483 (Mar. 3, 2020)
United States v Moore, No. 3:16-CR-00171-JO, 2020 U.S. Dist. LEXIS 89222, 2020 WL 2572529 (D. Or. May 21, 2020)
United States v Morris, 12-154, 2020 WL 2735651 (D.D.C. May 24, 2020)
United States v Morse, No. 10-20361-CR, 2020 WL 6534899, at *3 (S.D. Fla. Nov. 3, 2020)
United States v Muniz, 4:09-CR-00199-1, 2020 U.S. Dist. LEXIS 59255, 2020 WL 1540325 (S.D. Tex. Mar. 31, 2020)
United States v Musumeci, 1:07-cr-00402-RMB-1, Dkt. No. 58 (S.D.N.Y. Apr. 28, 2020)
United States v Nazzal, No. 10-20392, 2020 U.S. Dist. LEXIS 101391, 2020 WL 3077948, at *4 (E.D. Mich. June 10, 2020)
United States v Nicholson, No. 09-cr-00058-RPCase CFB (S.D. Iowa, June 6, 2020)
United States v Noble, 2021 U.S. Dist. LEXIS 53476 (Jan. 8, 2021)
United States v Nunez, 2020 U.S. Dist. LEXIS 159654, 2020 WL 5237272, at *4 (E.D. Pa. Sep. 1, 2020)
United States v Ollie, 2020 U.S. Dist. LEXIS 111149 (June 24, 2020)
United States v Pabon, 2:17-cr-00165-AB-1, 458 F. Supp. 3d 296, 299, 302, 2020 U.S. Dist. LEXIS 78245, 2020 WL 2112265 (E.D. Pa. 2020)
United States v Panton, 2020 U.S. Dist. LEXIS 138678 (2d Cir. Aug. 4, 2020)
United States v Parker, 2:98-cr-00749-CAS-1, 2020 WL 25772525 (E.D. Mich. May 21, 2020)
United States v Pates, No. 3:17-cr-164 (JBA), 2020 WL 3187980, at *1 (D. Conn. June 15, 2020)
United States v Pawlowski, 967 F. 3d 327, 331 (3rd Cir. 2020)
United States v Pelichet, 2020 U.S. Dist. LEXIS 218463 (Nov. 20, 2020)
United States v Pena, No. 15-cr-551 (AJN), 2020 WL 2301199, at *4 (S.D.N.Y. May 8, 2020)
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United States v Reddy, 2:13-cr-20358-MFL-JLM-1, 2020 WL 2320093, at *1 (E.D. Mich. May 11, 2020)
United States v Reid, No. 3:17-cr-00175-CRB-2, 2020 WL 2128855, at *1 (N.D. Cal. May 5, 2020)
United States v Resnick, No. 1:12-CR-00152-CM-3, 2020 WL 1651508 (S.D.N.Y. Apr. 2, 2020)
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19, 2020)
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United States v Smith 482 F. Supp. 3d 1218, 1226 (M.D. Fla. 2020)
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United States v Wade, 2020 U.S. Dist. LEXIS, 69474 (Apr. 13, 2020)
United States v Walls, 2020 U.S. Dist. LEXIS, 71515 (Apr. 23, 2020)
United States v Wen, No. 17-CR-6173, 454 F. Supp. 3d 187, 2020 U.S. Dist. LEXIS 64395, 2020 WL 1845104, at *8 (W.D.N.Y. Apr. 13, 2020)
United States v White, No. 13-CR-20653-1, U.S. Dist. LEXIS 88542, 2020 WL 2557077, at *5 (E.D. Mich. May 20, 2020)
United States v Whitted, 2021 U.S. Dist. LEXIS 192476 (Jan. 28, 2021)
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United States v Williams, No. 04-CR-95, 2020 U.S. Dist. LEXIS 63824, 2020 WL 1751545, at *3 (N.D. Fla. Apr. 1, 2020)
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United States v Williams, No. 19-cr-134 (D. Md. June 10, 2020)
United States v Williams-Bethea, 18-cr-78, 2020 WL 1851086, at *8 (S.D.N.Y. June 2, 2020)
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Wilson v Williams, No. 20-3447, slip op. at *21 (6th Cir. June 9, 2020)

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
TO:
SUBJECT: ROBERT MILLER'S STATEMENT OF JURISDICTION
DATE: 09/05/2022 12:24:27 PM

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PETITION FOR A WRIT OF CERTIORARI

Robert Miller, the Petitioner herein, respectfully prays that a Writ of Certiorari issue to review the judgment of the United States District Court for the District of Columbia as well as the United States Court of Appeals for the District of Columbia, entered in the herein noted cases.

STATEMENT OF JURISDICTION

OPINIONS BELOW

Appendix A. The Minute Order which precipitated the instant Appeal was held by U.S. District Judge Richard J. Leon in the United States District Court for the District of Columbia Case No. 1:05-CR-00143-RJL dated 10/21/2020.

Appendix B. Appellee requested an Extension of Time to file a Memorandum of Law and Fact and it was granted by the United States Court of Appeals in Case No. 20-3078, dated May 26, 2021.

Appendix C. Appellant requested an Extension of Time to file a Reply Brief which was entered by the United States Court of Appeals for the District of Columbia as an amended Order in Case No. 20-3078, on July 14, 2021.

Appendix D. Judgment was rendered in the Appellant's Appeal in Case No. 20-3079 on November 22, 2021 by the United States Court of Appeals for the District of Columbia.

Appendix E. An Order was issued granting Appellant's request for Leave to file a Petition for Rehearing En Banc in the United States Court of Appeals for the District of Columbia in Case No. 20-3079 on January 13, 2022.

Appendix F. An Order was granted extending the time for the Appellant to file his petition for Rehearing En Banc in Case No. 20 -3079 in the United States Court of Appeals for the District of Columbia on March 23, 2022.

Appendix G. A Mandate was issued by the United States Court of Appeals for the District of Columbia denying the Appellant's Appeal in Case No. 20-3079 on April 19, 2022.

Appendix H. A request for an Extension of Time was made to the United States Supreme Court which was granted on July 25, 2022 pursuant to United States Court of Appeals for the District of Columbia, Case No. 20-3079.

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

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The Fifth Amendment to the Constitution of the United States provides as follows:

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be out twice in jeopardy of life or limb, nor 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; nor shall private property be taken for public use, without just compensation.

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
TO:
SUBJECT: STATEMENT OF THE CASE & LEGAL STANDARD
DATE: 09/02/2022 10:03:44 AM

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"EXTRAORDINARY AND COMPELLING REASONS WHICH WARRANT A REDUCTION IN SENTENCE

Robert Miller filed 11 motions and 2 letters requesting a compassionate release pursuant to the First Step Act due to "extraordinary and compelling reasons", reasons which included that his punishment be commensurate with the gravity of the crime and reflect his potential for reform based on his history over the last 17 years, which are hereby incorporated by reference. The Appellant has shown "extraordinary and compelling reasons" which warrant a sentence reduction, in spite of the government's allegation that the Appellant has not. Even in the government's brief on page 13, the government concedes that people of Appellant's age with with a serious heart condition or cardiomyopathy face risk of severe illness from COVID-19. the government also concedes that people such as the Appellant with hypertension, use of corticosteroids might also be at increased risk. As stated by Jose Rojas, VP of the SE Region's Prison Staff Union, in the Appellant's Traverse to Government's Opposition to Appellant's Emergency Motion for Compassionate Release, "There's no oversight on the BOP." Not only does the Appellant fall within the dictates of USSG 1B1.13, but all reasons proffered by the Appellant support his reduction of sentence to time served. The Appellant has proved by FCI Edgefield's own deliberate indifference that the BOP is incapable of protecting the Appellant. The government has conceded the Appellant's medical conditions as well as the medications the Appellant takes every day. The Appellant challenged every material falsification made by the government and at no time has the government traversed Appellant's assertions. The Appellant addressed his very unfair sentence and one of the reasons why the First Step Act amended 18 U.S.C. 3582(c)(1)(A) was to correct disparate sentences which equates to an "extraordinary and compelling reason" for a reduction of sentence. Once again, the government failed to respond, thereby conceding Robert Miller's argument. Hundreds of U.S. District judges across the country have recognized that defendants are entitled to relief under the First Step Act for "extraordinary and compelling reasons" for all reasons stated by the Appellant, but especially to fix unfair sentences. All allegations made by the Appellant in his Defendant's Traverse to Government's Opposition filed 09/24/2020 were conceded by the government, hereby incorporated by reference. In the Appellant's Fourth Supplement, filed 10/07/2020, he alleged a sentence reduction is consistent with USSG 1B1.13. He showed that his post-offense rehabilitation supported a reduction in sentence. Appellant asserted that he is a low custody level inmate and that the 3553(a) factors favor release. Appellant asserted that he voluntarily participated in educational and correctional treatment programming and that he has been paying restitution 8 years, now 11 years. The Appellant asserted his inability to self-care in his congregate environment, and that social distancing was impossible. The Appellant offered a suitable release plan. The government at no time rebutted the

Appellant's arguments, thereby conceding to every attestation. This brief filed on 10/07/2020 is hereby incorporated by reference. In the Appellant's Fifth Supplemental brief, he established that the U.S. Sentencing Commission lacked a policy statement, that the guidelines were helpful but not absolute, that the Appellant's condition fits both the medical conditions as well as other reasons that the Courts could make independent determinations and that the Appellant fit the medical criteria for a reduction in sentence, pursuant to Application Note 1. The Appellant once again apprised the Court of his cardiomyopathy, his hypertension, his pre-diabetes, his degenerative disc disease and his high-risk category which was recognized as "extraordinary and compelling circumstances" for release. Appellant supported his arguments with CDC guidelines, case law and the fact that the BOP action plan was flawed, that they couldn't protect the Appellant from harm, ever though the BOP has an obligation to protect inmates. These arguments made in the 09/01/2020 filing were conceded by the government, and are hereby incorporated by reference. In the Appellant's Sixth Supplement, filed on 09/01/2020, Appellant has alleged that he was denied medical care, that due to his preexisting conditions, these amounted to "extraordinary and compelling reasons" for a reduction. Appellant further apprised the Court of the current conditions at FCI Edgefield and further supported his reasons why he is unable to self-care. These allegations, filed 09/01/2020, were never rebutted by the government, thereby were conceded and are hereby incorporated by reference. The Seventh Supplement, filed on 09/01/2020, addressed the 3553(a) factors, Appellant's rehabilitation through religious programs, the need to avoid sentence disparity among similarly situated defendants, his age, his lack of need on dependence on criminal activity, the evidence that he had been paying restitution for 8 years, his medical care, proposed court findings and a conclusion that all his reasons warranted a sentence reduction which were filed on 09/01/2020, never rebutted by the government thereby conceding same which are hereby incorporated by reference. On 09/01/2020, a letter to Judge Leon from the Appellant was filed about a warden in the BOP attempting to conceal the fact that someone in his custody died of COVID-19. The government never rebutted these facts and proffered evidence, thereby conceding same which is hereby incorporated by reference. In the Appellant's Eighth Supplement, filed on 09/01/2020, Appellant apprised the Court in almost real time about the current conditions at FCI Edgefield, the continued impossibility to social distance, and further rehabilitative programming which was never rebutted by the government thereby conceding same, hereby incorporated by reference. Appellant sent a letter to Judge Leon, filed 10/21/2020, which addressed the Zullo finding in the 2nd Circuit about the language in USSG 1B1.13 being outdated and not fully applicable, about the BOP's dysfunction, their "deliberate indifference", how devastating the pandemic actually is and how dangerous it is for the Appellant under its present circumstances, which was never rebutted by the government thereby conceding same which is hereby incorporated by reference. Appellant hereby incorporates all previous filings by reference.

LEGAL STANDARD OF REVIEW

Following the Supreme Court's decisions in United States v. Booker, 543 U.S. 22, 125 S.Ct. 738, 160 L.Ed.2d 621 (2005), and Gall v. United States, 552 U.S. 38, 128 S.Ct. 586, 169 L.Ed.2d 445 (2007), appellate courts review sentences under an Abuse of Discretion standard and set aside sentences found to be "unreasonable." Booker, 543 U.S. at 261-63; Gall, 128 S.Ct. at 597. This review proceeds in two steps: First, the court must ensure that the district court committed no procedural error, "such as failing to calculate (or improperly calculating) the Guidelines range, treating the guidelines as mandatory, failing to consider the 3553(a) factors, selecting a sentence based clearly on erroneous facts, or failing to adequately explain the chosen sentence -- including an explanation for any deviation from the guidelines range." Gall, 128 S.Ct. at 597. Once the appellate court determines that a sentence is procedurally sound, it reviews the substantive reasonableness of the sentence under an abuse of discretion standard. Id,; see also United States v. Gardelini, 545 F.3d 1089, 1092-93, 383 U.S. App. D.C. 278 & n.2 (D.C. Cir. 2008), as cited in In Re: Sealed Case, 552 F.3d 841, 384 U.S. App. D.C. 188; 2009 U.S. App. LEXIS 674 (Jan. 16, 2009). In applying the clearly erroneous standard, an appellate court must remain mindful that judicial findings of fact are presumptively correct. See Bose v. Consumers Union of U.S., Inc., 466 U.S. 485, 500, 104 S.Ct. 1949, 80 L.Ed.2d 502 (1984). This presumption "recognizes and rests upon the unique opportunity afforded the trial court judge to evaluate the credibility of witnesses and to weigh the evidence," Inwood Labs, Inc. v. Ives Lab, Inc., 456 U.S. 844, 855, 102 S.Ct. 2182, 72 L.Ed.2d 606 (1982), the comparative expertise of trial and appellate judges, and the cost of duplicative appellate decision-making., Anderson v. Bessemer City, 470 U.S. 564, 574-75, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985). Pursuant to this presumption, a finding of fact will not be overturned as "clearly erroneous" unless "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." Id. at 573, Harry T. Edwards & Linda A. Elliot, Federal Standards of Review - Review of District Court Decisions, and Agency Actions 62 (2007). "However, when a district judge Altogether fails to make findings with respect to a material issue, appellate courts normally vacate the judgment and remand for the judge to make those findings." Id. at 63. "Fact-finding is the basic responsibility of district courts, rather than the appellate courts, and... the court of appeals should not... resolve in the first instance a factual dispute which had not been considered by the district court. "Pullman Standard, 456 U.S. at 291-92 (second and third alterations added) The question that we face in the instant matter is did the district court judge make factual findings sufficient to survive appellate review? Appellant believes there is a reasonable probability that the court just signed off on the government's collections of allegations which were clearly erroneous. As cited in U.S. v. Dubois, 2021 U.S. Dist. LEXIS 29848 (E.D. Pa. Feb. 17, 2021), Judge Jan E. Dubois held generally "extraordinary" means "beyond what is usual, customary, regular, or common," and a "compelling need" is a "need so great that irreparable harm or injustice would result if it is not met." United States v. Rodriguez, 451 F. Supp. 3d

392, 401 (E.D. Pa. 2020)(quoting Extraordinary, Black's Law Dictionary (11th ed. 2019)).

"Extraordinary and compelling reasons," for purposes of & 3582(c)(1)(A)(i), were previously defined by a policy statement in & 1B1.13 of the United States Sentencing Guidelines, which cites the (A) medical conditions, (B) age, and (C) family circumstances of the defendant and (D) "reasons other than, or in combination with, the reasons described in subdivisions (A) through (C)," as determined by the B.O.P. U.S.S.G. & 1B1.13 xmt. n.1(A)-(D). Although courts have concluded that the policy statement is no longer binding after enactment of the First Step Act, the "old policy statement provides helpful guidance" for courts applying & 3582(c)(1)(A)(i). United States v. Beck, 425 F. Supp. 3d 573, 2019 WL 2716505, at *6 (M.D.N.C. 2019); see also Coleman v. United States, No. 20-1769, 2020 U.S. Dist. LEXIS 76426, 2020 WL 2079406, at *6 (E.D. Pa. Apr. 30, 2020)(DuBois, J.). An inmate may be able to establish extraordinary and compelling circumstances when the inmate suffers from a medical condition that the CDC has identified as a risk factor for COVID-19.

As cited in U.S. v. Vargas, 2020 U.S. Dist. LEXIS 220531 (S.D.N.Y. Nov. 24, 2020), appellant contends that his lengthy sentence, his age and health considered in connection with the ongoing COVID-19 pandemic, his interest in caring for his ill elderly mother and his demonstrable rehabilitation together amount to extraordinary and compelling reasons warranting compassionate release. Court is not bound by BOP's determination of what constitutes extraordinary or compelling circumstances; instead, this Court can exercise its broad discretion to consider any factor or collection of factors it deems relevant. Despite having had the opportunity to do so, the Government did not supplement its initial brief with additional arguments in opposition to appellant's motion. The Court, infers that the Government does not dispute appellant's arguments concerning the draconian nature of his sentence or his rehabilitation.

FROM: 28126016
TO:
SUBJECT: STATEMENT OF RELEVANT FACTS
DATE: 08/26/2022 06:55:03 PM

APPELLEE HAS PRESENTED MERITLESS THEORIES AND ARGUMENTS NOT SUPPORTED BY SUFFICIENT EVIDENCE

Appellant's opponent presented meritless theories and arguments not supported with evidence and it cannot be relied upon because the prosecutor subjectively made determinations to assist the court to deny the Appellant the relief on the basis of the government's baseless conclusions. Appellant framed his response according to his opponent's response. This Appellant requests this court to weigh the many different and frequently opposed issues and value propositions that were offered by the government. Petitioner cautions this court to avoid being fooled by the government's alleged logical sleight of hand because the government has a vested interest in convincing this court about false theories against the interests of justice. The government, at every stage of litigation to date has been very successful at relitigating facts of this case which infers that the Petitioner is different than who he truly is, more culpable than not, restaging actions alleged which occurred prior to his arrest or before, but this court should finally recognize the government's abuse of logic which has been perpetrated on the lower courts in an attempt to create the illusion that the Petitioner's culpable actions are more than likely second nature. Remember, even the government's bad arguments however are effective, and have somehow convinced the lower court and though the government's conclusions don't follow from their premises, yet the lower court still believed them in the past, hence the court was fooled by false and pernicious beliefs because they were fooled by faulty arguments. In the case at hand, the government has offered an informal fallacy where the conclusion doesn't follow from the premises because the content of the premises and the conclusions were unsupported by real and substantive evidence. The government would normally falsely shift the burden of proof. This court needs to understand that ad hominem attacks are far more effective than worthy. This Appellant could retort with an ad hominem in turn, but this would just be stooping to the opponent's level. The government in the past has undermined the credibility of their arguments by appealing to some facts about the Appellant, whereas these facts are inconsistent with the actual facts of the immediate case and the Appellant's facts and advocacy of his argument today. All that matters is the case at hand today and who the Appellant is today. The government's charges are irrelevant. The government's argument was made on the basis of what may be called "anonymous authority." The phrase "that's what they say" or "experts say" is the most common form of this argument, except that we must also believe what the government says so "if you swallow gum, it wraps around your heart and you die." "How do you know that?" "Well, that's what they say..." The government cannot be trusted or believed, hence the appeal to this type of authority is illegitimate. Such an implicit and unquestioning acceptance of authority just doesn't cut it. The government has made its best attempt in the past at impugning the Petitioner's character, however contrary to those lame attempts, facts are facts,

regardless of how the government feels about them; Just because a fact makes the government angry, that doesn't stop it from being true. The Appellant has offered evidence in the past that completely contradicts the government's argument yet because he was not as savvy lost in the final round. The government is attempting to appeal to the court on the basis that the Appellant proffers no argument or prima facie case, by justifying a conclusion by instilling fear against the alternative, which factually says something contrary, that the Appellant presents no danger to any other party. The government would attempt to convince this court without evidence of any kind, imagining either the worst thing that has happened in an attempt to convince themselves and the lower court that it has happened on the basis of Murphy's Law or the court should make a subjective decision which may help the court abuse its discretion. It's not a good idea to believe something if you don't have adequate evidence to believe it's true. The government would essentially ask the Appellant to prove a negative which is rather difficult to do. After all, how could the AUSA disprove the existence of aliens, short of exploring every inch of the universe? If the AUSA doesn't budge, we can reduce his position to absurdity by showing his move allows anyone to justify anything. So if the court accepts the government's argument, they should also accept that there are fairies at the bottom of the garden; after all, the government can't prove otherwise, and by their logic, if you can't disprove something, you must accept it. The government's argument might be understated as resting on a false dilemma. The government argument involves proving non-existence. In determining the probability of an event E, the base rate probability that E will happen is disregarded, and specific facts about the herein case years ago are used instead. Information about the overall probability of an unlawful event happening in the future life of the Appellant is ignored when estimating how likely it is to occur to begin with should the Appellant have a shorter sentence than he does. After analyzing the government's reasoning for their argument, they argue for a conclusion on the basis of a set of premises, where the truth of the premises assumes the truth of the conclusion. To demonstrate this, "my cult leader is infallible; if he tells me so, I know what he tells me is true, because he's infallible." The government's argument argues that contentious conclusion on the basis of uncontentious, or at least less contentious premises, so if the premises themselves are justified only on the basis of the conclusion, the argument can't work: there is no more reason to accept the premises than there is to accept the conclusion. An argument requires justification. The government must provide a valid reason why we should accept what it says. But the government's argument may just fail to provide a justification, because it probably repudiates the very requirement. The government refuses to justify their assertion at all, falsely by their action to have the right to make accusations by fiat. The government's proposition is not justified because the legal and scientific authority could be proffered by the Appellant to make his argument more likely to be true, especially due to the government's failure to provide adequate facts and authority to make their case. It should also be noted that if a judge takes the incentive to relitigate an issue on the basis of

constitutional violations, other inmates will read and hear about it and discard and disregard the idea of justice as a myth or a waste of time. With the Appellant's very extraordinary situation, it is easy to refute the government's argument by drawing absurd consequences from its argument which follow from a caricatured misrepresentation of actual facts about the Appellant. The Appellant is NOT this big criminal mastermind, he is simply someone who exercised very poor judgment in the past and out of necessity, he has transformed his character with self-rehabilitation because the time behind bars and his realization of his own mortality has knocked more sense into him then he has ever realized in the past.

FROM: 28126016
TO:
SUBJECT: STATEMENT OF RELEVANT FACTS
DATE: 08/26/2022 06:57:38 PM

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RESPONSE TO PANEL DECISION

The panel decision stated that the reply primarily consisted of new or conclusory arguments. This is not accurate. All arguments were related to the Appellant's medical condition, post offense rehabilitation or the 3553(a) factors such as in the appendix whereby the Appellant provided private communications between him and 3rd parties to demonstrate his personality and characteristics such as with Maryland State departments, to prove that his company AFIC actually owned 12 houses when Government stated that he owned none, where the Secret Service never had jurisdiction to arrest the appellant, and the Secret Service recently returned to the Appellant all of his equipment, etc. which were the alleged fruits of the crime, as well as evidence that at least one Warden had lied to a District Judge, evidence that the Veterans Administration would provide better medical care than the BOP and updated Cardiology Reports since the filing of the initial brief supported Appellant's heart condition was getting worse, showing also that BOP was operating without informed consent when they scheduled the Appellant to surgery which demonstrates they presumed intent, with an attached Medical Summary demonstrating how severe the Appellant's medical condition is, Appellants communications with prison staff, demonstrating his character adverse to 3553(a) determination by Judge Leon, to include communications with accreditation organizations to find schools to self rehabilitate, communication with Secondary and Post Graduate schools demonstrating Appellant's desire to self-rehabilitate, communications with religious organizations supporting transformation of character, communication with theological secondary and post graduate schools supporting Appellants desire to self rehabilitate through religion, communications with numerous ministries further supporting a transformation of character, communications with law-schools to further Appellants legal education to attain his LL.M, communications with lawyers that the Appellant has worked with to assist their inmate clients as well as himself, evidence of Post-Offense rehabilitation which represents that the Appellant was pretrial enrolled in 2 Universities, and 1 Institute. Appellant also offered evidence in the Appendix of current enrollment in 4 universities and 3 institutes, including correctional and therapeutic programs, planned projected Post Graduate school enrollment, pro bono assistance to persons in the community offering charitable and substantial assistance where Appellant reaped only a moral but satisfying benefit, as well as evidence of preparation for release to the community, evidence of manufactured jurisdiction, evidence of a restitution guarantee upon release, current public policy on criminal justice reform, Prison Reentry booklet created for inmates by Appellant, communications to Government officials related to criminal justice reform and 51 examples of pro bono legal assistance from the thousands

Appellant has helped in the over 18 years in prison, medical explanations of Appellant's medical conditions, personal family circumstances, current state of COVID-19 and expert witnesses attesting to appellant's arguments, all related to Appellant's first motion and the Appellant's response to the government's response. Appellant hereby incorporates all previous filings by reference. All arguments were analyzed and supported by sufficient case law. The arguments were all related to Appellant's initial brief and contradicted & rebutted Judge Leon's reasoning to deny the Appellant a Compassionate Release. Likewise, the Appellant did not need to explain why the contents of supplemental appendix are material because the material proffered was plain on the face. To affirm the lower court's minute order is contrary to serving the greater ends of justice. The panel decision is contrary to justice and defies reason. It is impossible for all the cases the Appellant has proffered for all the same issues as the Appellant in the District of Columbia to receive a Compassionate Release and for the appellant to be denied. The District Court clearly abused its discretion, especially when an equal protection of law argument is applied which violates a persons rights, whereby how can the district court do for others far more detrimental to society then was done to the Appellant? If the court is a court of equity, it remains to be seen.

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
TO:
SUBJECT: REASONS FOR GRANTING THE WRIT
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REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT ROBERT MILLER'S PETITION FOR WRIT OF CERTIORARI BECAUSE JUDGE LEON AND THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WITH REGARD TO "COMPASSIONATE RELEASE" AS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION, SPECIFICALLY WHEN VIEWED UNDER EQUAL PROTECTION OF THE LAW PRINCIPLES

Supreme Court Rule 10 provides in relevant part as follows:

CONSIDERATIONS GOVERNING REVIEW
ON WRIT OF CERTIORARI

A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered: (a) a United States court of appeals has rendered a decision in conflict with the decision of another United States court of appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision ... Id. Supreme Court Rule 10(a).

This Court has never hesitated to exercise its power of supervision where the lower courts have substantially departed from the accepted and usual course of judicial proceedings with resulting injustice to one of the parties. McNabb v. United States, 318 U.S. 332(1943). See also GACA v. United States, 411 U.S. 618 (1973); United States v. Jacobs, 429 U.S. 909 (1976); Rea v. United States, 350 U.S. 214 (1956); Benanti v. United States, 355 U.S. 96 (1957); United States v. Behrens, 375 U.S. 162 (1963); Elkins v. United States, 364 U.S. 206 (1960). As the Court stated in McNabb: "... the scope of our reviewing power over convictions brought here from the federal courts is not confined to ascertainment of Constitutional validity. Judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence." McNabb, 318 U.S. are 340.

Because there are material, factual and legal matters overlooked in the decisions of this court, this Court should reconsider its prior denial of the Appellant's Request. He asserts that his correspondences with the court has always been timely but receipt from the court has not. Evidence is something that tends to prove or disprove the existence of an alleged fact. Robert Miller came to prison a convicted felon, but will leave a Religious Scholar.

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SUBJECT: REASONS FOR GRANTING THE WRIT
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INTRODUCTION

This is an exceptionally important case which necessitates a decision by the entire U.S. Supreme Court. There are 13 District of Columbia cases among many others in this circuit where 8 reasonable U.S. District Judges made reasonable determinations granting Compassionate Release, contrary to Judge Leon's determination denying the Appellant a Compassionate Release. There are many reasons that Appellant should have been granted a compassionate release and those reasons are demonstrated in the following cases alone. For instance, Judge John Bates in U.S. v. Reginald Douglas, 2021 U.S. Dist. LEXIS 10755 (Jan. 21, 2021), held that extraordinary and compelling reasons existed due to Petitioner's Hypertension and insufficient treatment yet Judge Leon didn't consider Appellant's hypertension or FCI Edgefield's insufficient treatment extraordinary and compelling. Appellant has a non-violent offense. Mr. Douglas committed murder. Mr. Douglas has left ventricular hypertrophy. Appellant also has left ventricular hypertrophy as well as a left bundle branch block. Mr. Douglas engaged in rehabilitative programs and his age was extraordinary yet the Appellants numerous rehabilitative programs and his age at 68 years old didn't matter. Why is Mr. Douglas's circumstances extraordinary and compelling and the Appellant's is not? In U.S. v. Greene, 2021 U.S. Dist. LEXIS 19243 (Feb. 2, 2021), Judge Ketanji Brown - Jackson gave an Armed Bank Robber a Compassionate Release. This man killed a U.S. Marshal. The Appellant has a non-violent offense. Mr. Greene attended a College. The Appellant is currently in 2 Master's degree and 1 Doctoral program and enrolled at 3 universities. Mr. Greene has extensive programming, and the Appellant has even more. Mr. Greene completed a drug program while the Appellant completed two. Staff wrote Mr. Greene letters of recommendation, while staff from various prisons also wrote letters for the Appellant. Mr. Greene threatened a Correctional Officer. The Appellant never threatened anyone, and has only served the officers by writing letters of recommendation to BOP's Regional Offices and Headquarters, as well as Senator Lindsey Graham. Mr. Greene preexisting medical conditions were considered extraordinary and compelling while Appellant's were not according to Judge Leon. In U.S. v. Morris General Johnson, 464 F. Supp. 3d 22; 2020 U.S. Dist. LEXIS 86309, Mr. Johnson was convicted of serious weapons charges, weapons that can kill people. Appellant was convicted of a non-violent offense. Mr. Johnson had preexisting medical conditions, as the Appellant does. Mr. Johnson is an Honorably discharged Veteran just as the Appellant is. Mr. Johnson received a Compassionate Release from Judge Ketanji Brown-Johnson. The Appellant was denied a compassionate release by Judge Leon. In U.S. v. D'Angelo Dunlap, 485 F. Supp 3d 129; 2020 U.S. Dist. LEXIS 159610 (Nov. 4, 2021). Judge Ketanji Brown - Johnson granted a Compassionate Release to a Bank Robber who alleged he was obese and stated he had a heart problem without medical record support. Appellant is a

non-violent offender and has medical records that prove he has heart problems, among many other medical issues, yet Mr. Dunlap received a Compassionate Release and the Appellant was denied a compassionate release by Judge Leon. In U.S. v. Danson, 2020 U.S. Dist. LEXIS 112138 (June 25, 2020) Judge Paul L. Friedman gave a Trafficker of PCP, Heroin, and Cocaine a Compassionate Release because he had a history of smoking and sometimes he fainted with no medical record support. Appellant has a history of smoking and medical record support for numerous high risk medical conditions to include 2 episodes of syncope. It is said that neither person committed a crime of violence, yet drugs kill people. Mr. Danson and the Appellant both demonstrated rehabilitation, yet Mr. Danson received a Compassionate Release and the Appellant didn't because he was denied one by Judge Leon. Judge Huvelle in U.S. v. Ronald Harrison, 2020 U.S. Dist. LEXIS 176312 (Sept. 24, 2020) gave a Compassionate Release to Mr. Harrison on the basis that he completed 1 drug treatment program, his GED and due to the conditions of his confinement. The Appellant has completed 2 drug treatment programs, is currently enrolled in 2 Masters and 1 Doctoral Degree programs at 3 accredited universities and is experiencing the same conditions of confinement as Mr. Harrison did, yet he was denied a compassionate release by Judge Leon. Judge Beryl A. Howell in U.S. v. Paul Edward Hammond, 2020 U.S. Dist. LEXIS 67331 (April 16, 2020) gave a Armed Robber with a history of violence a Compassionate Release due to his age, and prostate cancer. Appellant, without a history of violence who could die from a heart attack at any time was denied a Compassionate Release from Judge Leon. Judge Ellen S. Huvelle in U.S. v. Brynee Baylor, 2020 U.S. Dist. LEXIS 186515 (Oct. 8, 2020) gave Mr. Baylor a Compassionate Release due to 2 medical conditions to the Appellant's at least 8 medical conditions. Both parties are non-violent offenders, both promised employment upon release, yet Mr. Baylor received a Compassionate Release and Appellant was denied by Judge Leon. Judge Thomas F. Hogan in U.S. v. Darryl D. Williams, 2021 U.S. Dist. LEXIS 216129 (Nov. 9, 2021) gave Mr. Williams who killed people and trafficked narcotics a Compassionate Release. Mr. Williams had high cholesterol as does Appellant who has at least an additional 7 other medical issues, had substantial rehabilitation as does the Appellant, completed a wide variety of prison programs, as did the Appellant, yet Mr. Williams received a Compassionate Release and the Appellant was denied one by Judge Leon. In U.S. v. Edward Tyrone Farley, 2020 U.S. Dist. LEXIS 145520 (Aug. 13, 2020), Mr. Farley was convicted of a drug conspiracy, drugs that kill people. Mr. Farley stated he had Diabetes, Hypertension and Obesity just like the Appellant, yet Mr. Farley received a Compassionate Release by Judge Paul L. Friedman and the Appellant was denied one by Judge Leon even though he has a non-violent offense. Judge Rudolph Contreras in U.S. v. Andre P. Brown, 2020 U.S. Dist. LEXIS 160789 (July 2, 2020) gave a Compassionate Release to Mr. Brown who with a weapon assaulted a police officer. He was also convicted of firearms and drug trafficking offenses. He was given a Compassionate Release because he had COPD, Diabetes and Obesity, yet the Appellant who has Cardiomyopathy, Diabetes and Obesity was denied a compassionate release by Judge Leon even though

Appellant has a non-violent offense. Judge Ellen S. Huvelle in U.S. v. Helery Price, 496 F. Supp. 3d 83; 2020 U.S. Dist. LEXIS 184784 (Oct. 6, 2020) gave a Compassionate Release to Mr. Price serving a life sentence for drug convictions, drugs which kill people. The sentence disparity was never addressed in the Appellant's case and he has a non-violent offense but was denied by Judge Leon anyways. Judge Huvelle in U.S. v. Anthony Suggs, 2020 U.S. Dist. LEXIS 180348 (Sept. 29, 202) gave a Compassionate Release to Mr. Suggs who was convicted of a Conspiracy to Distribute PCP which has killed countless persons in DC & Maryland because he had Diabetes and Hypertension, where as the Appellant was convicted of a non-violent offense and also has diabetes and Hypertension. The court ruled Mr. Suggs spent substantial amount of time in prison, where the Appellant has spent at least 3 more years in prison than Mr. Suggs, yet he was denied a compassionate release by Judge Leon. There is a grave appearance of impropriety in the Appellant's case, so the question is, is Judge Leon right and all 8 other Judges wrong, or is Judge Leon the odd man out? There does not appear to be a sense of fairness and if equity does exist, it doesn't exist in United States v. Robert Miller.

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18 U.S.C. 3553(a) FACTORS

See U.S. v. Douglas, 2021 U.S. Dist.LEXIS 10755, at Parker, 461 F. Supp. 3d at 983 (citing United States v. Redd, 444 F. Supp. 3d717, 727 (E.D. Va. 2020)). Indeed to subject Douglas to continued incarceration amidst an outbreak of a deadly pandemic may well increase his punishment beyond what is "sufficient, but not greater than necessary" to comply with the 3553(a) factors. Not only will he risk serious illness or death if infected, he will be forced to deal with the constant psychological stress of living through an outbreak knowing his own vulnerability to the virus in an environment where infection control is nearly impossible. See Salvagno, 456 F. Supp. 3d at 426 ("Prisons are 'powder kegs for infection' and have allowed the 'COVID-19 virus to spread with uncommon and frightening speed." (quoting United States v. Skelos, No. 15 -CR-317, 2020 U.S. Dist. LEXIS 64639, 2020 WL 1847558, at *1 (S.D.N.Y. Apr. 12, 2020)) This heightened level of punishment is not commensurate with the Court's expectation in 2012 that Douglas would be release from incarceration in his mid-to-late-fifties. see also Rodriguez, 2020 U.S. Dist. LEXIS 181004, 2020 WL 5810161, at *3 ("The actual severity of defendant's sentence as a result of the COVID-19 outbreak exceeds what the Court anticipated at the time of sentencing." (quoting United States v. Mel, No. TDC-18-0571, 2020 U.S. Dist. LEXIS 74491, 2020 WL 2041674, at *3 (D. Md. Apr. 28, 2020)). The only question remaining is whether releasing Douglas after serving just over four years of his ten year sentence would undermine respect for the law. The Court concludes that imposing a formalistic quantitative frame on this query would be arbitrary and contrary to the purpose of the First Step Act in light of the circumstances justifying release here. See Johnson, 464 F. Supp. 3d at 25 ("One key aspect of the First Step Act expands the authority of federal sentencing courts to revisit, and reduce, a previously imposed term of imprisonment" when analyzing compassionate release motions (citing First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5239 (2018)). Federal courts have granted relief to defendants with lengthy portions of their sentences remaining unserved, including in cases like Douglas' where a consecutive federal sentence has begun more recently following a more substantial state sentence. For example, in United States v. Redwine, the U.S. District Court for the Eastern District of Virginia released a man convicted of several armed bank robberies in 1988 "roughly eight months" into his twenty-five year federal consecutive sentence after he was granted parole in Virginia where he served approximately thirty-three years in state prison. See Crim. No. 3:87CR70, 2020 U.S. Dist. LEXIS 218000, 2020 WL 6829848, at *3 (E.D. Va. Nov. 20, 2020). Other Courts have reduced life without parole sentences doled out for heinous and repeated criminal conduct, including multiple killings, where extraordinary and compelling circumstances have been found to justify release. See, e.g., United States v. Tidwell, F. Supp. 3d 66, 2020 U.S. Dist. LEXIS 139434, 2020 WL 4504448, at *1

(E.D. Pa. Aug. 5, 2020); see also United States v. Wildcat, Case No. 4:99-cr-00002-BLW, 2020 U.S. Dist. LEXIS 246297, 2020 WL 7872509, at *1 (D. Idaho Dec. 31, 2020. Douglas has grave medical concerns amidst conditions at FCI Edgefield, "that are relatively dire among federal prisons," so "although his original release date may be far off, the threat of COVID-19 is at his doorstep." Salvagno, 456 F. Supp. 3d at 429 (quoting United States v. Zukerman, 451 F. Supp. / 3f 329, 334 (S.D.N.T. 2020)). Douglas has shown through his conduct while incarcerated that he is prepared to reenter society with an abiding and infectious respect for the law which he has already passed on to younger inmates. The Court will impose conditions upon Douglas's release to safeguard against any lingering risk of recidivism and confirm his reduced sentence to the factors discussed above. As imposed in Douglas's initial sentence, he will continue to be subject to sixty months probation in consideration of the seriousness of the underlying offense and the substantial portion of his original sentence yet to be served. The Court believes that this sentence, which spares Douglas from continued exposure to the precautious conditions at FCI Ray Brook, will be "sufficient, but not greater than necessary" to achieve the statutory objectives of sentencing. As cited in U.S. v. Price, 2020 U.S. Dist. LEXIS 184784 (Oct. 6, 2020), The government argues that the 3553(a) factors weigh against a sentence reduction because Mr. Price has not shown that he "is not a danger to the safety of any other person or to the community." The only facts the government relies on to support its view are that defendant "received a life sentence for his role in a serious crime;" he had several prior convictions and arrests before his arrest before his conviction in this case; and he is serving his sentence on a "medium" security prison. As Judge Contreras recently pointed out, if the Court were to agree that these facts, without more, were sufficient to demonstrate that a defendant would pose a "danger to public safety," "very few, if any, defendants who have served lengthy sentences would be able to take advantage of the First Step Act... a result that appears contrary to the purpose of the First Step Act amendments." See United States v. Brown, No. 92-cr-0345, 2020 U.S. Dist. LEXIS 160789, (D.D.C. July 2, 2020), ECF No. 93. Rather, the Court must consider the entire record, and based on this record, the Court concludes that Mr. Price does not pose a danger to the community. First, he did not engage in any violent conduct. In addition, moreover, although he is housed in a medium security facility, his prison record does not include any history of violent infractions. Finally, the life sentence that Defendant is serving was based on the offense of convictions and his prior convictions; it did not reflect this Court's judgment that Defendant posed a danger to the public, none of the purposes of sentencing would be served by continuing to incarcerate Defendant. He has been incarcerated since 2007, so he has already served over 13 years. The underlying criminal conduct, while serious, did not involve any firearms or allegations of violence. With good time credits, the usual nature of this case and unjustified disparities in sentencing. Defendant has had minimal disciplinary issues over the 13 years he has been in prison, and he has completed a number of programs, and his release plan has been reviewed. Taking all the above into consideration, the Court

does not agree that additional time in prison is necessary to achieve any of the goals of sentencing. As cited in U.S. v. Bass, 2021 U.S. Dist. LEXIS 11719 (Jan. 22, 2021), Factors to be considered in imposing a sentence. The Government solely opposes Defendant's release based on the potential danger he poses to the community. Defendant's record of rehabilitation from 22 years of incarceration significantly mitigates his risk of recidivism. See Pepper v. United States, 562 U.S. 476, 491, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011) (stating "evidence of post sentencing rehabilitation" is "highly relevant" in evaluating the 3553(a) factors). See Pepper, 562 U.S. at 488 ("For the determination of sentences, justice generally requires consideration of more than the particular acts by which the crime was committed and that there be taken into account the circumstances of the offense together with the character and propensities of the offender") (quoting Pennsylvania ex rel. Sullivan v. Ashe, 302 U.S. 51, 55, 58 S. Ct. 59, 82 L. Ed. 43 (1937)). The nature of Appellant's crimes balanced with the circumstances under which they were committed shows that Appellants years of incarceration is "sufficient, but not greater than necessary," to fulfill the purposes of his Punishment. 18 U.S.C. 3553(a); see also Pepper, 562 U.S. at 487-88)"The punishment should fit the offender and not merely the crime")(quoting Williams v. New York, 337 U.S. 241, 247, 69 S. Ct. 1079, 93 L. Ed. 1337 (1949). Therefore, considering that over 18 years have passed since his crimes were committed, the Court evaluates Defendant not as he was on the day of sentencing, but as he is today after spending years facing his past. See United States v. Bryson, 229 F.3d 425, 426, (2nd Cir. 2000) (per curiam) ("A court's duty is always to sentence the defendant as he stands before the court on the day of sentencing and resentencing"), see also United States v. Core, 125 F.3d 74, 77 (2nd Cir. 1997) (stating that the court, in resentencing, was "required to consider the Defendant as he stood before the court at that time"). Appellant has committed himself to taking full advantage of the rehabilitation and educational programs available to him through the BOP. Appellant attended classes geared toward building an inmate's character, as well as his interpersonal, cognitive, and vocational skills. He consciously avoided negative influences and focused his energy on changing and "learning who he really was." (Id). Looking back at his life, Appellant expresses deep remorse and shame over his past judgments and lifestyle and claims prison gave him the opportunity to become "the person who he was meant to be." Appellant has spent a considerable amount of time transforming his spiritual life. His natural abilities of listening, understanding those he listens to, and making informed decisions has been enhanced due to his commitment at excelling inside, and outside the classroom. It is clear to all in the FCI Edgefield Community that he will become an impressive Coach, Orator, Author and Pastor once he is exposed to the community. Appellant's pastors look forward to witnessing the continued growth of Appellant's knowledge and skill-set. He has the full support of the entire religious community behind him, success is inevitable, and it is with great pride and joy, that, they look forward to congratulating him on his future accomplishments and success. Appellant also plans to use his religious skills to mentor youth in the religious community. Appellant's transformation is not only evident to those who have worked with him in prison

but also to those who the Court has received letters detailing his growth. All who know Appellant encourage him to follow his dreams and "stay on track." As cited in U.S. v. Bost, 2021 U.S. Dist. LEXIS 19127 (Feb. 2, 2021), "Defendant is described as a goodhearted person. Numerous letters were submitted by family and friends in support of previous motions, which reflect the continuing support of those closest to the Appellant. One of those letters indicated that defendant will have a job if he is released from prison, which would greatly assist the Appellant in transitioning from incarceration to becoming a productive member of the community. Although at sentencing, Appellant had no reported health problems, over the intervening years he has been diagnosed with a myriad of medical conditions and is on medication for all of them. The Bureau of Prison's records classify defendant as low custody. Appellant has served approximately 212 months, 154 months state and, and based on credit received for good conduct, defendant has as anticipated release date of Oct. 2023, with good conduct time, Appellant has served approximately 90% of his 191 month sentence. During that time Appellant has taken advantage of the resources the Bureau of Prisons offer to help better himself through educational programs and work detail opportunities. Defendant's exemplary behavior, coupled with the compelling and extraordinary circumstances found above, support a reduction in sentence. In considering defendant's request for compassionate release, the Court also takes into account the extensive release plan defendant has developed his reentry into society. Defendant will live with his partner. Defendant has a job awaiting his release, and his employer is aware of, and will work with any limitations created by defendant's health. This individual is aware of defendant's past legal issues and will help support him as he transitions back into society.

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REHABILITATION

As cited in U.S. v. Topete, 2021 U.S. Dist. LEXIS 41752 (Mar. 5, 2021), Defendant's behavior in prison and the imminent threat of COVID-19 change the decision that the court originally considered and support reducing Defendant's sentence. Defendant's history and characteristics weigh in favor of a sentence reduction. Now, Defendant's history provides even more reason for a lower sentence because of his prison record, which reflects his efforts at rehabilitation. See Pepper v. United States, 562 U.S. 476, 491, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011)(stating that "evidence 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"). This continued positive history weighs in favor of reducing his sentence. As cited in U.S. v. Vargas, 2020 U.S. Dist. LEXIS 220531 (S.D.N.Y. Nov. 24, 2020), Defendant asserts that he has been completely rehabilitated, an additional factor to consider in weighing whether he has established extraordinary and compelling reasons justifying his release. There can be no reasonable contention that by considering Defendant's rehabilitation the Court would be doing so in isolation, considering the exercise of its discretion to consider factors such as appellant's severe sentence, his health amid an ongoing pandemic and his deteriorating health. There is ample precedent for courts to consider a defendant's rehabilitation as one of multiple factors warranting compassionate release, and here, where the Defendant's rehabilitation appears to be dramatic, the Court would be remiss to ignore it entirely. See e.g., United States v. Phillips, No. 94-Cr-631, 2020 U.S. Dist. LEXIS 117108, 2020 WL 4742908, at *3-4 (S.D.N.Y. June 30, 2020)("Rehabilitation remains 'relevant to whether there are extraordinary and compelling reasons for a sentence reduction.'" (quoting United States v. Torres, 464 F. Supp. 3d 651, 2020 WL 2815003, at *9 (S.D.N.Y. 2020)); Marks, 455 F. Supp. 3d at 25-26 (collecting cases finding that combination of changes to outdated and unjust practice of "stacking" sentences coupled with defendant's rehabilitation establishes extraordinary and compelling reasons justifying compassionate release); United States v. Millan, No. 91-CR-685, 2020 U.S. Dist. LEXIS 59955, 2020 WL 1674058, at *7 (S.D.N.Y. Apr. 6, 2020)(finding that Congress believed "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"). Eric Millan-Colon facilitated the catholic services at FCI Fairton at the same time the Appellant facilitated the Jewish services. He is released and the Appellant isn't. In Brooker, the 2nd Circuit affirmed that rehabilitation, especially considered in conjunction with the COVID-19 pandemic and the "injustice" of a lengthy sentence, can "weigh in favor of a sentence reduction." See Brooker, 976 F 3.d at 238; see also United States v. Rodriguez, No. 00-Cr-761 -2, 2020 U.S. Dist. LEXIS 181004, 2020 WL 5810161, at

*4 (S.D.N.Y. Sept. 30, 2020)(granting compassionate release due to complete rehabilitation, medical issues, and COVID-19 pandemic). He has been rehabilitated and transformed himself into "an asset to the community." "Goes above and beyond to self-rehabilitate," and his incarceration has humbled him and rehabilitated him." Considering appellant's rehabilitation in conjunction with his unduly harsh sentence, his medical issues and heightened risk of severe illness or death due to the COVID-19 pandemic, and his intention to care for his ailing, elderly, domestic partner the Court should find that appellant has demonstrated extraordinary and compelling reasons justifying a sentence reduction. As cited in U.S. v. Panton, 2020 U.S. Dist. LEXIS 138678 (2d Cir. Aug 4, 2020), there can be no doubt that appellant has fully rehabilitated himself, and there is no need for further incarceration to protect the public from additional crimes by Appellant. As noted above, the numerous courses he has completed while incarcerated have solidified his commitment to a law-abiding life and prepared him to be a productive-and employed-member of society. His stellar record is also a demonstration of his ability to have a law-abiding life. Of course, the Court is cognizant that it may not grant relief under the FSA only for rehabilitation, but Defendant presents several other reasons to grant relief. Almost two decades in high and medium security facilities, Defendant has taken advantage of numerous courses and other opportunities to enable a law-abiding life. He has also evidenced a desire to help the outside community by contributing $100 monthy to Mt. New Moriah Christian Center which demonstrates incredible empathy and compassion. Unfortunately, he developed several serious health issues. Appellant also has a viable post-release plan. The combination of these factors constitutes "extraordinary and compelling circumstances" warranting release. Clearly, appellant has taken advantage while incarcerated of every opportunity to improve himself and to prepare for a law-abiding, productive life. As cited in U.S. v. Holloway, 68 F. Supp. 3d 310, 2014 U.S. Dist. LEXIS 102278 (E.D.N.Y. July 25, 2014), a unique case and a unique defendant in many ways. Defendant's record while he's been in the custody of the Bureau of Prisons is extraordinary. There are a few infractions, but none of them are violent or involve drugs. It's clear that he took advantage to better himself and to take advantage of the educational and other opportunities that the BOP provides. The way he has handled himself during this period of incarceration is extraordinary. As cited in U.S. v. Bryson, 229 F.3d 425, 2000 U.S. App. LEXIS 6550 (Apr. 11, 2016), we did not foreclose the possibility - however remote - of rehabilitation that might occur between our decision and the resentencing. This Court has consistently held that a court's duty is always to sentence the defendant as he stands before the court on the day of sentencing. See United States v. Core, 125 F.3d 74, 77 (2d Cir. 1997)(overturning refusal to consider post-conviction rehabilitation in resentencing, holding, "the court was required to consider the defendant as he stood before the court at that time."). As cited in U.S. v. Barber, 2020 U.S. Dist. LEXIS 114545 (June 16, 2020), exemplary rehabilitative progress in prison, discussed above, suggests he is a different person today. As cited in U.S. v. Noble, 2021 U.S. Dist. LEXIS 53476 (Jan. 8, 2021), while incarcerated, appellant,

prior to COVID-19's curtain, successfully completed a number of relevant programs including a Drug Abuse Treatment Program, the prerequisite workshop for Trauma Recovery Psychology Treatment Program, and university religious studies These efforts show signs of rehabilitation on Appellant's part. Finally, appellant has served over 18+ years in prison. The 212 months so far served has provided serious punishment for crimes and affords adequate deterrence under the circumstances. As cited in U.S. v. Mann, 2021 U.S. Dist. LEXIS 95915 (May 20, 2021), Defendant has made 10 years of payments on his court indebtedness through the Inmate Financial Responsibility Program. He volunteers at FCI Edgefield Education Dept. as a Post Secondary School Advisor. Defendant contends the biggest change in his life has been pursuing spiritual growth through the Prison Fellowship and participation in faith-based programs that he credits with changing his life. Defendant does have incident reports, but as cited in U.S. v. Ladson, 2020 U.S. Dist. LEXIS 108551 (E.D. Pa. Jun. 22, 2020), Appellant's conduct: while incarcerated at FCI Edgefield, helped him take accountability for things which happened in his past. Appellant enrolled in the Residential Drug Abuse Program at FCI Edgefield, Appellant has also mentored many younger inmates. As cited in U.S. v. Pete, 819 F. 3d 1121; 2016 U.S. App. LEXIS 6550 (Apr. 11, 2016), Defendant provided substantive evidence to support the argument that his prison record does not suggest he lacked the capacity for rehabilitation. As cited in U.S. v. Porter, 472 F. Supp. 3f 388; 2020 U.S. Dist. LEXIS 150475 (Jul. 14, 2020), Defendant has taken classes in drug education, health, release preparation planning, and career skills over the course of his decade in BOP custody. All the evidence on the record suggests that Appellant has matured and developed as a person over the course of his incarceration. There is little added benefit to keeping him in prison for the remaining 2 years of his sentence. As cited in Musa v. U.S., 2020 U.S. Dist. LEXIS 219306 (Nov. 23, 2020), Appellant argues principally that his sentence is unfairly long given both recent sentencing law reforms and his rehabilitation over the intervening decades. As cited in U.S. v. Rodriguez, 451 F. Supp. 3d 392; U.S. Dist. LEXIS 58718 (Apr. 1, 2020), Defendant has served seventeen years, keeping him in prison makes a marginal difference to his punishment. But the difference to his health could be profound. He has also shown rehabilitation in prison. While serving his sentence, he has also taken classes about fitness, parenting, decision-making. Appellant has had infractions in 18+ years of incarceration, 1 every 2 years; neither were violent or raise concerns about recidivism. Appellants rehabilitation alone may not constitute an extraordinary and compelling reason, but the qualifier "alone" implies that rehabilitation can contribute to extraordinary and compelling reasons. That is how the Commission has understood the statute. See U.S.S.G. 1B1.13 cmt. n3 ("Pursuant to 28 U.S.C. 994(t), rehabilitation of the Defendant is not, by itself, an extraordinary and compelling reason for purpose of this policy statement")(emphasis added); Brown, 411 F. Supp. 3d at 449 ("The Commission implies that rehabilitation may be considered with other factors.") I consider rehabilitation in conjunction with the other reasons outlined here. Without the COVID-19 pandemic-an undeniably extraordinary event- Defendant's health problems, and rehabilitation would present extraordinary and compelling reasons to

reduce his sentence; taken together, they warrant reducing his sentence. As cited in U.S. v. Massingille, 2020 U.S. Dist. LEXIS 141365 (Aug. 7, 2020), Army veteran, father of two has worked to improve himself while in custody in the Veteran's Re-entry Program. As cited in U.S. v. Herring, 2020 U.S. Dist. LEXIS 220299 (Nov. 24, 2020), Defendant has shown that he has been an exemplary programming student in prison. As cited in U.S. v. Hickman, 2020 U.S. Dist. LEXIS 204143 (Nov. 2, 2020), the full picture of Appellant's time in BOP custody shows that he has made significant improvements and efforts toward rehabilitation. As cited in U.S. v. Aherns, 2020 U.S. Dist. LEXIS 156464 (Aug. 28, 2020), as an added component, Defendant's exemplary rehabilitative efforts bolsters the case for extraordinary and compelling reasons. See United States v. Brown, 411 F. Supp. 3d 446, 449 Iowa 2019)(explaining that rehabilitation may be considered in conjunction with other factors). He has also undertaken substantial educational and opportunities to prepare for life beyond prison, all in all for a sentence reduction. As cited in U.S. v. Bass, 2021, U.S. Dist. LEXIS 11719 (Jan. 22, 2021), The gravity of releasing a defendant must be approached with extraordinary care and only be granted in cases of transformational redemption. This is such a case Appellant, is quite simply, a BOP success case. An exemplary inmate and man who has turned the pain and darkness of his former life into a light for those still lost in its grips. A guide to his fellow prisoners and family alike, He has proven that he has more than enough self-motivation to continue his rehabilitation journey outside of the confines of the prison walls.

FROM: 28126016
TO:
SUBJECT: REASONS FOR GRANTING THE WRIT
DATE: 08/28/2022 12:25:26 PM

TRANSFORMATION OF CHARACTER WHILE IN PRISON
FAITH AND PURPOSE WHILE IN PRISON

While in prison, the Appellant has claimed his religious preference and participated in faith specific chapel offerings. He was able to have the opportunity to learn more about different religious traditions. Through self spiritual exploration and deepening of his own spiritual practices, he connected to a wider community of support and care for his lifetime through the contacts on the outside that he developed while incarcerated. The defendant has had the opportunity to explore his spirituality and has undergone a transformation of character as a result.

Spiritual growth can exist in the BOP to help a person live a life of purpose, value and meaning. For some people their purpose is connected to satisfying work, responsibilities to your family/friends, or through care of others. While the Bureau offers opportunities in all of these areas, through the Chaplaincy Services, the Defendant has been able to expand his discovery of his own spiritual self which has allowed him to establish spiritual practices and religious observances to allow him to claim his sacred worth and live a life of meaning in all aspects of his life, even while incarcerated.

Living a life of spiritual purpose for the Appellant was about exploring his own truth and claiming his own choices. No matter the ups and downs of life, he realizes that he lives in a constant state of possibility, opening more and more to live out his personal and communal values and faith. The Defendant has been successfully able to make positive life changes to prepare him for a successful reentry with purpose.

Some people measure success by the wealth they accumulate, power they attained, or the status they achieved. Yet, even though they have reached success by their own definition, they may seek something more. Although everyone is different, we share common threads that bind our lives with purpose. The Defendant's wealth is in the togetherness of his family. The Appellant believes that people who live a purposeful life have core beliefs and values that influences their decisions, shapes their daily actions, and determines their priorities. He believes our core beliefs are achieved whether you're in prison or living out in the community. As Mahatma Gandhi said, "The main purpose of life is to live rightly, think rightly, act rightly," and the Defendant totally agrees with this.

Living a life of purpose for the Defendant means cherishing every moment he lives and seeking to live without regret. This has also enabled him to find joy in all experiences, even the difficult ones, acknowledging that the lessons he has and continues to learn builds the character he is building. The Defendant has learned a hard lesson and feels he will be very successful due to the adversity he has undergone and overcome during the period of his incarceration.

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SUBJECT: REASONS FOR GRANTING THE WRIT
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DETERRENCE

Releasing the Appellant is consistent with the objectives of sentencing. As cited in U.S. v. Massinggille, 2020 U.S. Dist. LEXIS 141365 (Aug. 7, 2020), releasing Defendant is consistent with the goal of deterrence. The Defendant has served a substantial sentence in prison, and that lengthy period of custody is also long enough to achieve both general and specific deterrence. The Court is impressed by Appellant's re-entry plan and by the economic support that is available to the defendant upon release substantially diminish the risk of him re-offending and render additional time in custody unnecessary to achieve specific deterrence. As cited in U.S. v. Whitted, 2021 U.S. Dist.. LEXIS 15706 (Jan. 28, 2021), The need for the sentence imposed to afford adequate deterrence to criminal conduct and protect the public from further crimes of the Defendant. The third factor to consider the need for the sentence served to adequately deter criminal conduct and protect the public from further criminal activity by the Defendant-weighs in favor of reduction in sentence. Courts have viewed evidence of a Defendant's rehabilitation as support for such deterrence and protection of the public from future harm. "He has shown rehabilitation and the desire to become a productive member of the community" though his efforts while incarcerated)(citing United States v. Curtis, No. 03-533, 2020 U.S. Dist. LEXIS 70804, at *14 (D.D.C. Apr. 22, 2020) (looking to factors such as a education courses, and completion of a drug rehabilitation program as evidence the Defendant was no longer a danger to the community)). The sentence the Appellant has served thus far has afforded adequate deterrence to criminal conduct and that the length of his sentence will remain sufficient, but not greater than necessary to fulfill the original goals of sentencing. As such, the 3553(a) factors weigh in favor of reducing the Appellant's sentence.

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

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SUBJECT: REASONS FOR GRANTING THE WRIT
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RECIDIVISM

The case supports a reduction in sentence for the Appellant. As cited in U.S. v. Bikundi, Sr., 2020 U.S. Dist. LEXIS 103547 (Jun. 12, 2020), crime though unquestionably serious, was nonviolent and the conditions of his supervised release and the low likelihood that defendant, with fraud on his record, will be able to obtain such high-level financial responsibility again, mean any risk of recidivism is vanishingly small. As cited in U.S. v. Russell, 2021 U.S. Dist. LEXIS 78514 (Apr. 23, 2021), The Sentencing Commission has found that "offenders over the age of 40 whose crime of conviction was nonviolent recidivated at half the rate of violent offenders." United States v. Smith, 482 F. Supp. 3d 1218, 1226 (M.D. Fla. 2020)(citing Recidivism Among Federal Violent Offenders, United States Sentencing Commission (2019), at 3, available at https://www.ussc.gov/sites/default/files.pdf/research-and-publications/research-publications/2019/20190124_Recidivism_Violencepdf). Moreover, Appellant's prison record shows evidence of rehabilitation. The Supreme Court has held that courts "may consider evidence of the defendant's post-sentencing rehabilitation." Pepper v. United States, 562 U.S. 476, 481 (2011). Defendant has also taken advantage of many educational opportunities and all of these things into consideration, Appellant's characteristics support granting him relief. As cited in U.S. v. Whitted, 2021 U.S. Dist. LEXIS 15706 (Jan 28, 2021), as to the need to protect the public, United States Sentencing Commission studies have found that recidivism declines with increasing age of release of federal offenders, with drug trafficking offenders over age of 60 having a substantially lower re-arrest rate than their younger counterparts. (ECF No. 466 at 9.) Studies show that only about 4% of inmates released over the age of 65 return to prison, "older offenders have the lowest recidivism rate of any age group in U.S. prisons." The High Costs of Low Risk: The Crisis of America's Aging Prison Population, The Osbourne Association (2018) at 11.

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

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SUBJECT: REASONS FOR GRANTING THE WRIT
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THE APPELLANT DOES NOT POSE A THREAT TO SOCIETY

The Appellant has not assaulted or harmed any other person, before, during or after the offense conduct and has in fact been the subject of assaults while under Federal Bureau of Prison's control. The base offense level is not necessary to protect the public from further crimes of the Client. 18 U.S.C. 3553(a)(c)(C). The Appellant has never used a firearm in connection with a crime of violence or drug trafficking offense. An an employed man, the Appellant's risk of recidivism is exceedingly low. U.S. Sentencing Commission, Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines, 15, 12 & Exs. 9, 10 (2004).

DEFENDANT WAS CONVICTED OF A NON-VIOLENT OFFENSE

As cited in Whitted, 2021 U.S. Dist. LEXIS 15706 (Jan. 28, 2021), Appellant argues that, despite the fact that his crime was very serious, he was convicted of a non-violent crime and has "worked hard to improve himself" through numerous education and personal well-being courses while incarcerated. Appellant further argues that he has grown in maturity over the course of his incarceration and has recognized the errors of his past decisions and actions, and the impact it has had on his family, his friends and his community. While it is not possible to undo the past, Defendant has worked to make amends for his prior actions and looks forward to becoming an upstanding, law-abiding member of his community. Defendant in Whitted was granted a compassionate release.

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SUBJECT: REASONS FOR GRANTING THE WRIT
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MILITARY SERVICE

The following cases support a reduction in sentence for the Appellant who has served his country in the United States Armed Forces as a Military Police Officer and Criminal Investigation Division (CID) Commissioned Undercover Narcotic's Agent during the period of 1970-1976 during the Vietnam War and also received numerous medals, badges and campaign ribbons. His highest rank achieved was Sergeant, yet at no time was credited for his service. As cited in U.S. v. Johnson, 2020 U.S. Dist. LEXIS 86309 (May 16, 2020), The Court concluded that "military service, individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from a typical one covered by the guidelines," and thus a two-level downward departure under section 5H1.11 was appropriate. The Court sentenced Johnson to 41 months of imprisonment the bottom of the applicable guideline range after a departure for military service. As cited in U.S. v. Johnson, 2020 U.S. Dist. LEXIS 167063 (Sep. 14, 2020), Johnson served in the United States Army receiving an honorable discharge after achieving the rank of Sergeant First Class, during the midst of the Vietnam War, completed several tours of duty. He received several medals, badges, citations, and campaign ribbons for his service. Having served his country well, it is not this Court's intention that he should contract coronavirus while in prison. This man was also given a compassionate release.

THERE'S A NECESSITY TO SENTENCE DEFENDANT AS HE STANDS BEFORE THE COURT NOT WHO THE COURT BELIEVES HE WAS AT THE TIME OF THE ORIGINAL OFFENSE

As cited in U.S. v. Barber, 2020 U.S. Dist. LEXIS 114545 (June 16, 2020), Judge Sullivan held "Defendant has made a concerted effort to improve his life and will be a productive member of society upon his release." Defendant is a different person today than he was at his original sentencing. As cited in U.S. v. Pete, 819 F.3d 1121, 2016 U.S. App. LEXIS 6550 (Apr. 11, 2016), critical to the question before us is the well-established principle that "a court's duty is always to sentence the defendant as he stands before the court on the day of sentencing." See United States v. Quintieri, 306 F.3d 1217, 1230 (2d Cir. 2002)(citation omitted), "A district court may consider evidence of a defendant's rehabilitation since his prior sentencing." Applying those precepts, we have rejected the contention that at resentencing a district court should not consider intervening events.

FROM: 28126016
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SUBJECT: REASONS FOR GRANTING THE WRIT
DATE: 08/26/2022 06:50:24 PM

RELEASE PLAN

The following cases support a reduction in sentence for the Appellant. As cited in U.S. v. Panton, 2020 U.S. Dist. LEXIS 138678 (2nd Cir. Aug. 4, 2020), Appellant has a viable release plan with exceptional family support, who will support him emotionally, financially alo9ng with a loving home and enviorment in California. This high level of family support will assist Defendant in living a law-abidng like. As cited in U.S. v. Rountree, 460 F. Supp. 3d 224; 2020 U.S. Dist. LEXIS 91064 (Mar. 18, 2020), See United States v. Wen, No. 17-CR-6173, 454 F. Supp 3d 187, 2020 U.S. Dist. LEXIS 64395, 2020 WL 1845101, at *8 (W.D.N.Y. Apr. 13, 2020)(counting in defendant's favor his "supportive family with whom he will reside once released"). He also has a church community in Troy, where he will volunteer with at-risk youth and continue his Bible studies. See also, Rodriguezm 2020 U.S. DIst. LEXIS 58718, 2020 WL 1627331, at *11 ("I also find that Mr. Rodriguez is not a danger to the community during this pandemic because he...adequate reentry plan.").

SUPERVISED RELEASE

The following cases support a reduction in sentence for the Appellant. As cited in U.S. v. Graves, 2020 U.S. Dist. LEXIS 236957 (Dec. 16, 2020), Incarceration is not only "kind of sentence available." Id. 3553(a)(3). A noncustodial sentence will limit Defendant's liberty interests through supervised release and he will face harsh consequences if he violates the special conditions activated upon his release from BOP custody. United States v. Gall. 374 F. Supp. 2d 758, 763 (S.D. Iowa 2005), rev'd, 446 F. 3d 884 (8th Cir. 2006), rev'd 552 U.S. 38, 128 S. Ct. 586, 169 L. Ed. 2d 445 (2007). Those special conditions promote respect for the law, protect the public and do not constitute any approval of Appellant's criminal conduct. As cited in U.S. v. Conner, 2020 U.S. Dist. LEXIS 99936 (Jun. 8, 2020), Supervised release will reduce whatever risk Appellant may pose to the public. See Schmitt, 2020 WL 96904, at *5. As cited in U.S. v. Rice, 2020 U.S. Dist. LEXIS 134016 (Jun. 8, 2020), Supervised release plays a vital role in the success of citizens reentering society. For the past years Appellant has lived in a highly structured environment, he has had no responsibility to pay for his meals, clothes, housing, electricity, water, or phone. He is reentering a world that has been utterly transformed by technology. In addition, he reenters with a felony conviction and all of its attendant barriers, including no financial foundation needed to survive legally and successfully. Appellant's behavior while incarcerated shows that he can make positive choices. If he hopes to avoid a return to prison, he will have to continue to make the right choices. He will need to make an honest daily commitment to do the right thing, and to make amends for his past by finding ways to build up his community. This will be essential to his success. As cited in U.S.

v. Johnson, 2020 U.S. Dist. LEXIS 167063 (Sep. 14, 2020), Although Johnson's criminal history is of concern, the Court is of the view that the conditions of supervised release (which already include a period of home confinement), can control the risk that he will reoffend. Among other things, Johnson will be required to report regularly to a probation officer, to truthfully answer and inquiries by the officer, and to submit to random visits. Additionally, Johnson must permit the probation officer to search his person, residence, vehicle, place of business, and other locations within his control. Johnson will know that if he reoffends while on supervised release, he will be subjected to the revocation of his supervised release and reimprisonment.

TRULINCS 28126016 - MILLER, ROBERT FRANK - Unit: EDG-C-D

FROM: 28126016
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SUBJECT: STATEMENT OF RELEVANT FACTS
DATE: 08/26/2022 07:00:19 PM

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FINAL CONSIDERATION

The following cases support a reduction of sentence for the Appellant. As cited in U.S. v. Ladson, 2020 U.S. Dist LEXIS 108551 (E.D. Pa. June. 22, 2020), Appellant like Ladson is not under investigation and there is no suggestion that he is involved with violent gangs or would resort to criminal ways if released. Like Echevarria , Mr. Ladson's crime took place over twenty years ago. He had served over fifteen years. As in Williams, the risk of the Appellant engaging in further criminal conduct can be managed through the terms of his supervised release. Because Mr. Ladson's charged offense took place many years ago, the court held that we must concentrate our efforts, as Judge Brody did in Rodriguez, to Mr. Ladson's personal history and characteristics. This review weighs in favor of Mr. Ladson's release. As in Curtis, Mr. Ladson rehabilitated himself while in prison. He underwent counseling who helped him take accountability for the things which happened in his past. He received many certificates. He has mentored younger peers and seeks to continue his involvement with them. Appellant enrolled in numerous Programs over the years. While he may not be considered a model inmate as in Copeland, his disciplinary track record does not indicate he would be dangerous member of his community. As noted in Readus, a clean inmate disciplinary history is not a prerequisite to compassionate release. We look to Mr. Ladson's exclusively nonviolent disciplinary infractions, his attainment of certificates, and his willingness to attend counseling and to counsel younger members of his community to demonstrate his improved character like the Petitioner in Curtis and Rodriguez. Appellant understands the importance of beginning a new and productive life, and has credibly asserted his willingness to work for an honest living. Weighing all evidence available this court as well as the lower court should conclude that the Petitioner would not endanger his community upon his release. As cited in U.S. v. Pete, 819 F. 3d 1121; 2016 U.S. App. LEXIS 6550 (Apr. 11, 2016), Appellant is a different person than he was when he committed his offense. The isolation, frequent transfer, and mistreatment are also relevant to his sentence. Prison is a "rough journey" and has taken a mental and emotional toll on him; and thinking he felt he had "to better himself with knowledge, wisdom, understanding, and to...have goals...he maintains that he had changed quite a bit. He has developed morals, principles, and a code in his daily routine, he has "changed", "matured" and "grown a lot." As cited in U.S. v. Porter, 472 F. Supp. 3d 388; 2020 U.S. Dist. LEXIS 150475 (Jul. 14, 2020), Conclusion... his conduct in prison his demonstrated that extent to which he has changed as a person, however the pandemic has put unpararalleled stress on the Bureau of Prisons and provided extraordinary and compelling reasons to release individuals, such as the Appellant who are at risk of severe adverse health results should they contract the virus, and who have demonstrated that they no longer pose a danger to the community. As cited in U.S. v. Gravens, 2020 U.S.

Dist. LEXIS 236957 (Dec. 16, 2020), Appellant has demonstrated an exemplary rehabilitative initiative. Appellant has prepared for a sound and secure release plan that assures a residence, a supportive network of individuals who are prepared to further his rehabilitation, and a formidable plan for financial support and security so that he will not be vulnerable or at risk. He has programmed extensively, and has the promise of a sound and supportive residence and network to assure a successful transition and re-entry. As cited in U.S. v. Noble, 2021 U.S. Dist. LEXIS 53476 (Jan. 8, 2021), Appellant has acknowledged the severity of his crime. As cited in U.S. v. Pelichet, 2020 U.S. Dist. LEXIS 74491 (Apr. 28, 2020), Appellant has a stable support system, and does not pose a risk to others or to his community if release. See United States v. Ladson, 2020 WL 3412574, at *8-10 (E.D. Pa. Jun. 22, 2020)(concluding defendant's strong family ties and stable home weighed against finding defendant a danger to the community). As cited in U.S. v. Massingille, 2020 U.S. Dist. LEXIS 141365 (Aug. 7, 2020), Defendant highlights that he has a support system and a plan in place for re-entering the community upon his release. The combination of (1) Defendant's heightened susceptibility to a severe outcome from COVID-19, (2) his inability to practice self-care and to follow CDC guidelines while in custody, and (3) the outbreak of COVID-19 in the community surrounding FCI Edgefield amount to extraordinary and compelling reasons that support Defendant's compassionate release. First, Defendant's heightened risk of severe complications (or death) from COVID-19 supports a finding of extraordinary and compelling circumstances. The combination of Defendant's medical issues places him at increases risk of a severe outcome (including death) from the virus. Courts have found that Defendant's serious medical conditions amount to extraordinary and compelling circumstances during the COVID-19 pandemic. See, e.g., United States v. Rountree, 2020 U.S. Dist. LEXIS 91064, 2020 WL 2610923, at *7 (N.D.N.Y. May 18, 2020). As cited in U.S. v. Aherns, 2020 U.S. Dist. LEXIS 156464 (Aug. 28, 2020), the period of incarceration Defendant has endured to date is sufficiently serious to atone for that offense. His personal history and characteristics, meanwhile, weigh in favor of release and demonstrate a lack of future dangerousness. The Court is already cognizant of the limitations imposed by his medical conditions. Defendant appears to enjoy strong support from his extended family, and also holds an offer for stable employment upon release. As cited in U.S. v. Skelos, 2020 U.S. Dist. LEXIS 64639 (Apr. 12, 2020), The Court "joins the growing chorus of courts imploring the coordinate branches to take action in response to the threat COVID-19 poses to incarcerated people before it is too late." Gross, 2020 U.S. Dist. LEXIS 60554, at *8; see Nkanga, 2020 U.S. Dist. LEXIS 56188, at *2. The current public health crisis demands a systemic response, rather than judge-by-judge determinations, which vary depending on which judge is deciding the compassionate release. As cited in U.S. v. Jacobs, 2020 U.S. Dist. LEXIS 116539 (Jul. 2, 2020), the Court must assess Defendant as a whole person. Koon, 518 U.S. at 113. The Court is "simply suggesting that he is a human being," with flaws, virtues, and a need for empathy. Richard S. Arnold, Remarks Before the Judicial Conference of the Eighth Circuit: The Art of

Judging (Aug. 8, 2002). As cited in Musa v. U. S., 2020 U.S. Dist. LEXIS 219306 (Nov. 23, 2020), First, Defendant asserts that he served more than enough time given the nature and circumstances of his offense and that the purposes of sentencing have been satisfied. Defendant argues that the government used enhancements as a means of punishing him for refusing to plead guilty and notes that such enhancements have historically been disproportionately employed against economic crime cases. Defendant argues that he has rehabilitated himself during his years of incarceration and that he is ready to become a productive member of society. "There is added exigency to securing his immediate release" given "the ongoing COVID-19 pandemic." As cited in U.S. v. Bass, 2021 U.S. Dist. LEXIS 11719 (Jan. 22, 2021), by definition, a compassionate release request, when granted, reduces the sentence imposed either by a sentencing judge or a jury. This is permissible under the compassionate release statute, which states that "a sentence to imprisonment can subsequently be...modified pursuant to the provisions of subsection (c)." 18 U.S.C. 3582(b). It also explicitly allows the Court to "modify a term of imprisonment once it has been imposed...in any case." 18 U.S.C. 3582(c). Barring sentence reduction because it contradicts the original sentence, would render the statute inoperative. As cited in U.S. v. Beltran, 2021 U.S. Dist. LEXIS 23280 (Feb. 1, 2021), According to the Centers for Disease Control and Prevention (CDC), older adults (age 65 and above) and people of any age who have certain underlying medical conditions are at higher risk for severe illness from COVID-19. People with Certain Medical Conditions, CDC (Dec. 1, 2020), https://www.cdc.gov /coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html. People of any age with the following conditions are at increase risk of severe illness from COVID-19: Cancer, Chronic kidney disease; COPD (chronic obstructive pulmonary disease); Obesity; Serious heart conditions, such as cardiomyopathies. People with the following conditions might be at an increased risk for severe illness from COVID-19: Hypertension; use of corticosteroids, or use of other immune weakening medicines. Defendant has served his sentence. He has changed his offending attitudes. He also takes full responsibility for his actions, but he will not accept the degree of culpability alleged by the government who at every turn didn't play fair. Defendant taking responsibility is something that happened within him. He will not rationalize the offense just because he was shamed, humiliated and embarrassed. The Defendant is a good person. He has many people who believe in him. He has a very positive outlook about his future. He changed the way he measures-success in his life. He now has emotional support system, and will have employment. All in all, he has changed his value system and he is a better man as a result for all involved. He suffers from a serious medical conditions, which together render him particularly vulnerable to contracting, and dying from, COVID-19, Defendant's conditions according to the Center for Disease Control and Prevention ("CDC"), places him in the "high risk" category for COVID-19. "Were the defendant's to contract COVID-19, because of stress and his underlying conditions, he is likely at considerably heightened risk of becoming severely ill and even dying. He is not a violent offender. He has already served a sufficient amount of time to satisfy his punishment.

FROM: 28126016
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SUBJECT: ROBERT MILLER'S CONCLUSION
DATE: 08/28/2022 12:29:30 PM

CONCLUSION

If 13 random cases alone ruled on by 8 District Judges held that the same issues as the Appellant created extraordinary and compelling reasons for Compassionate Release and if all these violent offenders can receive a Compassionate Release, then how is it possible that Judge Leon has not abused his discretion? Judge Leon's and the panel judge's decision conflicts with at least 8 judges of the district court among others as well as many other circuits. Accordingly, Robert Miller respectfully requests that this court grant this Appellant an audience in this matter. As cited in U.S. v. Mitchell, 2020 U.S. Dist. LEXIS 132229 (Jul. 27, 2020), It is the Court's role to balance justice with mercy, and relying solely on Defendant's past behavior when he has demonstrated a heightened health risk would complicate that role. See Walker v. Martel, 709 F.3d 925, 950 (9th Cir. 2013)(Goud, J., concurring in part and dissenting in part)("Mercy bears richer fruits than strict justice.")(internal quotations omitted)). As cited in U.S. v. Jacobs, 2020 U.S. Dist. LEXIS 142007 (Aug. 10, 2020), A Court's decision does not cease to be an "exercise of reason simply because it is also an exercise of compassion." United States v. Likens, 464 F.3d 823, 827 (837 (8th Cir. 2006)(Bright, J., dissenting), cited with approval in Gall, 552 U.S. at 52 n.7. As cited in Offut v. U.S., 348 U.S. 15, Justice Frankfurter held that "justice must satisfy the appearance of justice." As cited in U.S. v. Kellogg, 2020 U.S. Dist. LEXIS 147596 (Jul. 8, 2020), After review of the Appellant's motion, exhibits, and medical records, the court should find that he has met his burden of showing extraordinary and compelling circumstances that warrant sentence reduction due to his documented medical conditions. The field of law is controlled by the text of statutes. Statutes are memorialized with a combination of written words and the cardinal rule of statutory construction is the plain meaning of the language. But what good are the statutes if the judges didn't follow the statutes? For instance, all U.S. Sentencing Guidelines have the force and effect of law because the guidelines and policy statements promulgated by the commission are issued pursuant to section 994(a) of Title 28 U.S. Code. The principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes, yet when the appellant detailed all the statutes that confirmed his eligibility and entitlement to receive downward departures pretrial prior to sentencing, every one of them were discounted without further consideration. Prior to the trial, defense counsel told the appellant at DC Jail on a legal visit, after a chambers conference, "Judge Leon believes you're guilty." From that point on, it appeared that all Judge Leon's decisions toward Robert Miller were subjective in nature, even as far back as the Suppression Hearing held March 2006. If a judge agrees to a general rule on principle about something, only to suspend it in a particular instance,

without any good reasons for doing so, how is that not subjective? If a judge agrees with a general law, then you have to agree with it in all cases. If you find that it cannot apply to certain circumstances, then you disagree with the law; else you need to refine the law, or perhaps demonstrate that the spirit of the law does not warrant its extension to this case. What a judge cannot do however is accept the law in general and yet refuse to apply it to a particular case. To do so is self-contradictory. If a judge believes there are exceptions, he's not committed to the rule, because when you start to make exceptions, you're not committed to the rule. Unfortunately some judges either make or find and declare the law depending on one's particular jurisprudential views. See Chafee, Do Judges Make or Discover Law? 91 Proc. Am. Philos. Soc. 405. The appellant has rebutted both the government's arguments as well as Judge Leon's Minute Order for misrepresenting the appellant's actual position, to include an accurate characterization of his personality and characteristics. The government's response/rebuttal cuts no ice. The appellant felt it of great importance in illuminating the issues with the hope that Appellate judges with more experience will see the principal values and strengths of the Appellant to recognize that the Appellant's cause serves the "greater ends of justice." Logic dictates Judge Leon abused his discretion. Reason dictates the appellant is both eligible and entitled to a Compassionate Release. The Appellate Court also got it wrong!!!

August 5, 2022

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