

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

AUG 19 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ESTEBAN PARRA-REYES,

Defendant-Appellant.

No. 22-10023

D.C. No. 2:20-cr-00432-SRB-1

District of Arizona,

Phoenix

ORDER

Before: S.R. THOMAS, PAEZ, and LEE, Circuit Judges.

Appellee's motion (Docket Entry No. 14) to summarily affirm the district court's order denying appellant's motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) is granted. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (stating standard). Even if the court incorrectly believed that appellant had been vaccinated, it did not abuse its discretion in concluding that the 18 U.S.C. § 3553(a) factors, including appellant's history and characteristics, did not support compassionate release. *See United States v. Wright*, ___ F.4th ___, No. 20-50361, 2022 WL 3009398, at *5-*6 (9th Cir. July 29, 2022) (holding that when a district court properly denies compassionate release on one ground, an error made at another step of the analysis is harmless).

AFFIRMED.

APPENDIX “B”

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

v.

Esteban Parra-Reyes,

Defendant.

No. CR-20-00432-001-PHX-SRB

ORDER

Defendant, Esteban Parra Reyes filed his Emergency Motion for Compassionate Release Pursuant to 18 U.S.C. § 3582 (C)(1)(A) on September 30, 2021. The Government responded in opposition on October 6, 2021. Counsel was then appointed for Defendant and filed a Supplement to Emergency Motion for Compassionate Release on December 10, 2021. The Government filed a Supplemental Response to Defendant's Motion for Compassionate Release on December 22, 2021. No Reply was filed.

I. DEFENDANT'S CRIMINAL HISTORY

On May 27, 2021, Defendant was sentenced to 48 months in the Bureau of Prisons after pleading guilty to Reentry of a Removed Alien in violation of 8 U.S.C. § 1326 (a) and (b)(1). In 2011, Defendant was convicted of his first felony Reentry of a Removed Alien and served a 63 month prison sentence. He was released and removed to Mexico on November 17, 2016. Defendant's criminal history dates back to 2000. In addition to his two Reentry felonies, Defendant has five prior felony convictions and several misdemeanor convictions. His felony convictions include one drug trafficking conviction involving over

1 233 kilograms of marijuana in 2003 for which he was sentenced to 2 years in prison
2 followed by 5 years on supervised release. He violated supervised release by returning to
3 the United States illegally and committing a new state felony, Misconduct Involving
4 Weapons in 2007. He was sentenced to 4.5 years in state prison in 2008 for Misconduct
5 Involving Weapons.

6 Upon Defendant's release from state prison in 2011 he was transferred to federal
7 custody and charged with Reentry of a Removed Alien and a supervised release violation
8 in connection with his 2003 drug trafficking conviction. On March 12, 2012 Defendant
9 was sentenced to 63 months in federal prison for the Reentry conviction followed by a 7
10 month consecutive sentence for the supervised release violation. He was released and
11 removed to Mexico on November 17, 2016. Defendant was in continuous custody from
12 the date of his arrest for Misconduct Involving Weapons on December 1, 2007 until his
13 release from federal custody and removal to Mexico on November 17, 2016, a total of just
14 under 9 years in continuous custody.

15 Defendant was arrested in this case on February 5, 2020 but admitted in his
16 presentence interview that he had returned to the United States illegally one to two years
17 after his November 17, 2016 removal. His advisory guidelines range at sentencing was 84
18 to 105 months but after a bargained-for fast track two level departure his guideline range
19 was reduced to 70-87 months. The Court granted Defendant a variance based on an
20 overstatement of both his Criminal History category and his Offense Level and sentenced
21 him to 48 months in prison on May 27, 2021. Four months later Defendant filed his request
22 for compassionate release.

23 **II. LEGAL STANDARD & ANALYSIS**

24 **A. First Step Act & Applicable Policy Statements**

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26 Federal district courts "may not modify a term of imprisonment once it has been
27 imposed" except in limited circumstances. 18 U.S.C. § 3582(c); *Dillon v. United States*,
28 560 U.S. 817, 824–25 (2010). Defendant seeks a sentence reduction pursuant to 18 U.S.C.

1 § 3582(c)(1)(A), as amended by the First Step Act. *See* First Step Act of 2018, Pub. L. No.
2 115-391, 132 Stat. 5194 (2018). Section 3582(c)(1)(A) provides that a court may reduce a
3 term of imprisonment if, after determining that the prisoner satisfied administrative
4 exhaustion requirements, (1) “extraordinary and compelling reasons” warrant a reduction,
5 (2) the reduction would be “consistent with any applicable policy statements issued by the
6 Sentencing Commission,” and (3) the applicable sentencing factors under 18 U.S.C.
7 § 3553(a) warrant a reduction. *Dillon*, 560 U.S. at 824; 18 U.S.C. § 3582(c)(1).

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10 Congress has not defined “extraordinary and compelling reasons” except to note
11 elsewhere that “rehabilitation . . . alone” does not suffice. *See* 28 U.S.C. § 994(t). Pursuant
12 to its delegated authority and before passage of the First Step Act, the Sentencing
13 Commission issued a policy statement defining “extraordinary and compelling reasons.”
14 U.S.S.G. § 1B1.13. Section 1B1.13 states that “extraordinary and compelling reasons”
15 include: (A) medical condition; (B) age; (C) family circumstances of the defendant; and
16 (D) “other reasons”—a catch-all provision permitting the BOP to determine that “reason[s]
17 other than, or in combination with, the reasons described in subdivisions (A) through (C),”
18 rise to the level of “extraordinary and compelling.” *Id.* § 1B1.13 cmt. n.1(A)–(D).

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22 The Ninth Circuit Court of Appeals has held that courts are not limited by U.S.S.G.
23 § 1B1.13 in determining what constitutes extraordinary and compelling reasons for
24 compassionate release and have discretion to consider reasons other than those enumerated
25 in U.S.S.G. § 1B1.13, Application Note 1. *United States v. Aruda*, 993 F.3d 797, 802 (9th
26 Cir. 2021). In *Aruda*, the Court explained that the Sentencing Guidelines policy statement
27 may inform the court’s discretion in deciding compassionate release motions. *Id.*
28

B. Extraordinary and Compelling Reasons Have Not Been Shown

Defendant claims that he has several medical conditions that put him at higher risk of severe illness if he were to contract COVID-19. The conditions listed by Defendant are benign prostatic hyperplasia, constipation, degenerative joint disease, gastritis, hypertension and hyperlipidemia. His Supplemental Motion also lists being overweight (but not obese) as an additional condition placing him at risk of severe illness from COVID-19. As the Government notes in its Responses, Defendant's medical conditions are not listed by the CDC as increasing the risk of severe illness from COVID-19. With respect to hyperlipidemia (high cholesterol) and hypertension (high blood pressure), the Government responds that these are common ailments extremely prevalent in adults in the United States. They are also not listed by the CDC as placing individuals at higher risk of severe illness from COVID-19.¹ And Defendant is only overweight according to his body mass index (BMI) of 26.95 well below a BMI of 30 or greater to be categorized as obese.

Defendant is admittedly fully vaccinated for COVID-19 but argues in his Supplemental Motion that this does not eliminate the increased danger he faces. He acknowledges that severe breakthrough cases are extremely rare. The Government reports in its Supplemental Response that Defendant's institution has effectively limited COVID-19 exposure citing a history of only 1 death and 37 infections since the onset of the pandemic and a case count of zero as of December 21, 2021.

¹ The CDC advises that hypertension may "possibly" place an individual at higher risk of severe illness.

1 The Court finds that Defendant has not shown extraordinary and compelling reasons
2 that would justify his release. He does not suffer from medical conditions that have been
3 recognized by the CDC as placing him at risk for severe illness where he to contract
4 COVID-19. He is fully vaccinated against COVID-19 and is housed at an institution that
5 has few or no COVID-19 cases.
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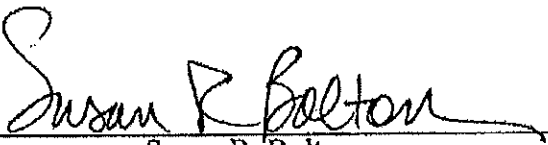
7
8 **C. The §3553(a) Factors Weigh Against Release**

9 Defendant's long history of criminal conduct in the United States is set out in some
10 detail above. Despite spending almost 9 years in prison before his 2016 removal, he
11 returned to the United States soon thereafter. While his arrest in 2020 did not involve
12 criminal conduct-he was stopped for a traffic violation, Defendant's 20-year history of
13 felony and misdemeanor convictions in the United States and the seriousness of at least
14 two of those prior convictions demonstrate the type of history and characteristics that do
15 not favor early release. Defendant also has not been deterred from illegally returning to
16 the United States. He admittedly returned not long after serving almost nine years in
17 prison. He also shows little insight in the prohibition of his remaining in the United States.
18 His Release Plan stated in his Motion is to live with his mother in Phoenix, Arizona.
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22 While Defendant's good conduct in prison in the eight months since he was
23 sentenced is laudable, it does not overcome the §3553(a) factors. Defendant's argument
24 that his age of 52 years lessens his risk of recidivism does not persuade the Court that
25 Defendant would not commit another felony Reentry as he was convicted of this most
26 recent felony at age 50.
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1 IT IS ORDERED denying Defendant's Emergency Motion for Compassionate
2 Release Pursuant to 18 U.S.C. § 3583 (C)(1)(A) and Supplement to Emergency Motion for
3 Compassionate Release. (Docs. 72 & 78)
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5 Dated this 24th day of January, 2022.
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10 Susan R. Bolton
United States District Judge
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APPENDIX “C”

FILED	LODGED
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JUL 14 2021	
CLERK U.S. DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

RCVD JUL 12 2021
US MARSHALS

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

United States of America

v.

Esteban Parra-Reyes

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

No. CR-20-00432-001-PHX-SRB

Mark Jeffrey Andersen (CJA)
Attorney for Defendant

THE DEFENDANT ENTERED A PLEA OF guilty on September 2, 2020 to the Information.

ACCORDINGLY, THE COURT HAS ADJUDICATED THAT THE DEFENDANT IS GUILTY OF THE FOLLOWING OFFENSE(S): violating Title 8, U.S.C. §1326(a), Reentry of Removed Alien, with sentencing enhancement pursuant to Title 8, U.S.C. §1326(b)(1), a Class C Felony offense, as charged in the Information.

IT IS THE JUDGMENT OF THIS COURT THAT the defendant is committed to the custody of the Bureau of Prisons for a term of **FORTY-EIGHT (48) MONTHS**, with credit for time served. Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **THIRTY-SIX (36) MONTHS**.

CRIMINAL MONETARY PENALTIES

The defendant shall pay to the Clerk the following total criminal monetary penalties:

SPECIAL ASSESSMENT: \$100.00 FINE: WAIVED RESTITUTION: N/A

The Court finds the defendant does not have the ability to pay a fine and orders the fine waived.

The defendant shall pay a special assessment of \$100.00 which shall be due immediately.

If incarcerated, payment of criminal monetary penalties are due during imprisonment at a rate of not less than \$25 per quarter and payment shall be made through the Bureau of Prisons' Inmate Financial Responsibility Program. Criminal monetary payments shall be made to the Clerk of U.S. District Court, Attention: Finance, Suite 130, 401 West Washington Street, SPC 1, Phoenix, Arizona 85003-2118. Payments should be credited to the various monetary penalties imposed by the Court in the priority established under 18 U.S.C. § 3612(c). The total special assessment of \$100.00 shall be paid pursuant to Title 18, United States Code, Section 3013 for Count 1 of the Information.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, (10) costs, including cost of prosecution and court costs.

Any unpaid balance shall become a condition of supervision and shall be paid within 90 days prior to the expiration of supervision. Until all restitutions, fines, special assessments and costs are fully paid, the defendant shall immediately notify the Clerk, U.S.

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District Court, of any change in name and address. The Court hereby waives the imposition of interest and penalties on any unpaid balances.

SUPERVISED RELEASE

It is ordered that while on supervised release, the defendant must comply with the mandatory and standard conditions of supervision as adopted by this court, in General Order 17-18, which incorporates the requirements of USSG §§ 5B1.3 and 5D1.2. Of particular importance, the defendant must not commit another federal, state, or local crime during the term of supervision. Within 72 hours of sentencing or release from the custody of the Bureau of Prisons the defendant must report in person to the Probation Office in the district to which the defendant is released. The defendant must comply with the following conditions:

MANDATORY CONDITIONS

- 1) You must not commit another federal, state or local crime.
- 2) You must not unlawfully possess a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted.
- 3) You must refrain from any unlawful use of a controlled substance. The use or possession of marijuana, even with a physician's certification, is not permitted. Unless suspended by the Court, you must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

STANDARD CONDITIONS

- 1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of sentencing or your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
- 2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
- 3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
- 4) You must answer truthfully the questions asked by your probation officer.
- 5) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
- 6) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your

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- supervision that he or she observes in plain view.
- 7) You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
 - 8) You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
 - 9) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
 - 10) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
 - 11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
 - 12) If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
 - 13) You must follow the instructions of the probation officer related to the conditions of supervision.

SPECIAL CONDITIONS

The following special conditions are in addition to the conditions of supervised release or supersede any related standard condition:

- 1) If deported, you must not re-enter the United States without legal authorization.

THE COURT FINDS that you have been sentenced in accordance with the terms of the plea agreement and that you have waived your right to appeal and to collaterally attack this matter.

The Court may change the conditions of probation or supervised release or extend the term of supervision, if less than the authorized maximum, at any time during the period of probation or supervised release. The Court may issue a warrant and revoke the original or any subsequent sentence for a violation occurring during the period of probation or supervised release.

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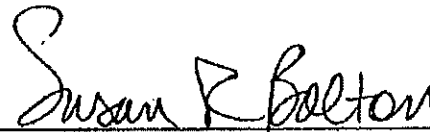
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The Court orders commitment to the custody of the Bureau of Prisons.

The defendant is remanded to the custody of the United States Marshal.

Date of Imposition of Sentence: **Thursday, May 27, 2021**

Dated this 27th day of May, 2021.

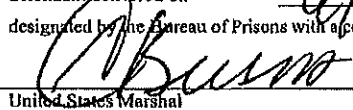


Susan R. Bolton
United States District Judge

RETURN

I have executed this Judgment as follows:

defendant delivered on 6/25/21 to Cove Civic at McKae, the institution
designated by the Bureau of Prisons with a certified copy of this judgment in a Criminal case.



United States Marshal

By:

Deputy Marshal