

APPENDIX

APPENDIX A--FOURTH CIRCUIT COURT OF APPEAL, DECEMBER 17, 2022,
COMPASSIONATE RELEASE/FIRST STEP ACT APPEAL DENIAL

APPENDIX B--NORTHERN DISTRICT COURT OF WEST VIRGINIA, SEPTEMBER 9,
2022-COMPASSIONATE RELEASE DENIAL (Judge Gina M. Groth).

APPENDIX A

FILED: December 27, 2022

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7093
(3:03-cr-00031-GMG-10)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

ACZEL CARDENA-SOSA, a/k/a Jesus Garcia, a/k/a Jorge Cardenas-Sosa, a/k/a
Gasel Sosa, a/k/a Jorge Cardenas

Defendant - Appellant

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-7093

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

ACZEL CARDENA-SOSA, a/k/a Jesus Garcia, a/k/a Jorge Cardenas-Sosa, a/k/a
Gasel Sosa, a/k/a Jorge Cardenas,

Defendant - Appellant.

Appeal from the United States District Court for the Northern District of West Virginia, at
Martinsburg. Gina M. Groh, District Judge. (3:03-cr-00031-GMG-10)

Submitted: December 20, 2022

Decided: December 27, 2022

Before NIEMEYER and QUATTLEBAUM, Circuit Judges, and FLOYD, Senior Circuit
Judge.

Affirmed by unpublished per curiam opinion.

Aczel Cardena-Sosa, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Aczel Cardena-Sosa appeals the district court's order denying his motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). We review a district court's denial of a compassionate release motion for abuse of discretion. *See United States v. High*, 997 F.3d 181, 185 (4th Cir. 2021). Upon review, we discern no reversible error in the district court's denial of Cardena-Sosa's motion. We therefore affirm the district court's order. *United States v. Cardenas-Sosa*, No. 3:03-cr-00031-GMG-10 (N.D. W. Va. Sept. 9, 2022). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO.: 3:03-CR-31-10
(GROH)

ACZEL CARDENAS-SOSA,
aka Jesus Garcia,
aka Jorge Cardenas-Sosa,
aka Gasel Sosa,
aka Jorge Cardenas,

Defendant.

ORDER DENYING DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE

Now before the Court is the Defendant's Motion for a Reduced Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i)(ii), For Compassionate Release and the First Step Act of 2018, which the Court construes as a Motion for Compassionate Release. ECF No. 529. Therein, the Defendant moves the Court to release him from incarceration due to his health concerns related to the contaminated ground drinking water at FCI Fort Dix. The Court has carefully reviewed and considered the Defendant's motion in this matter, which is now ripe for adjudication.

Federal courts are authorized to reduce the sentences of federal prisoners facing extraordinary health conditions and other serious hardships, but courts may do so only under very limited circumstances. Before a court can grant a compassionate release motion, "extraordinary and compelling reasons" to warrant the reduction must exist. See 18 U.S.C. 3582(c)(1)(A). The First Step Act of 2018 amended § 3582(c)(1)(A) to add a provision allowing courts to consider motions by defendants for compassionate release

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without a motion by the BOP Director, as long as the defendant asked the Director to bring such motion and the director fails or refuses. Specifically, courts may now consider motions for compassionate release “upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the BOP to bring a motion on the defendant’s behalf or the lapse of thirty (30) days from receipt of such request by the warden of the defendant’s facility, whichever is earlier[.]” See id.; see also First Step Act of 2018, Pub. L. 115-391, Title VI § 603, 132 Stat. 5194 (Dec. 21, 2018).

In 28 U.S.C. § 994(t), Congress delegated to the United States Sentencing Commission the authority to “describe what should be extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” Within the United States Sentencing Guidelines, the Sentencing Commission provided examples of “extraordinary and compelling reasons,” including when a defendant is suffering from a serious physical or mental condition that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover. U.S.S.G. § 1B1.13 cmt. n.1(A)(i). In addition to demonstrating extraordinary and compelling reasons for a sentence reduction, the defendant must also not present “a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)” and the reduction must otherwise be consistent with the policy statement. U.S.S.G. § 1B1.13.

For purposes of the instant motion, the Court must determine whether extraordinary and compelling circumstances exist to warrant compassionate release. The defendant avers without any corroboration or proof that his medical concerns created by

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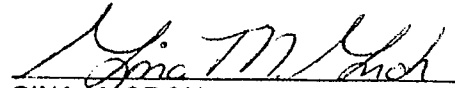
the contaminated drinking water at FCI Fort Dix create extraordinary and compelling reasons to warrant his release. The Court finds that this is not sufficiently extraordinary and compelling to warrant the defendant's release from custody.

The defendant also contests his sentence in his motion for compassionate release. The Court will not consider this as part of the defendant's argument, as a motion for compassionate release is an inappropriate forum to address this type of relief. The defendant's sentencing argument should be filed as a 28 U.S.C. § 2241 habeas corpus petition.

Accordingly, the Defendant's Motion for Compassionate Release [ECF No. 529] is **DENIED**.

The Clerk of Court is **DIRECTED** to transmit copies of this Order to all counsel of record herein and to mail a copy by certified mail, return receipt requested to the Defendant at his last known address as reflected upon the docket sheet.

DATED: September 9, 2022


GINA M. GROH
UNITED STATES DISTRICT JUDGE