

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No: 23-1312

United States of America

Plaintiff - Appellee

v.

Gilberto Arreola Chavez

Defendant - Appellant

Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:19-cr-00064-RGE-1)

JUDGMENT

Before GRUENDER, BENTON, and SHEPHERD, Circuit Judges.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the order of the district court denying compassionate release is summarily affirmed. See Eighth Circuit Rule 47A(a).

February 28, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

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v.

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Appeal from U.S. District Court for the Southern District of Iowa - Central
(4:19-cr-00064-RGE-1)

ORDER

The petition for rehearing by the panel is denied.

April 18, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

GILBERTO ARREOLA CHAVEZ,

Defendant.

No. 4:19-cr-00064-RGE-HCA

**ORDER DENYING
DEFENDANT'S MOTION FOR
COMPASSIONATE RELEASE**

Before the Court is Defendant Gilberto Arreola Chavez's Motion for Compassionate Release under 18 U.S.C. § 3582(c)(1)(A). ECF No. 66. Arreola Chavez files the motion without the assistance of counsel. *Id.* The Federal Public Defender declined to appear on behalf of Arreola Chavez. Notice Nonappearance, ECF No. 67. The Government resists the motion. Gov't's Resp. Def.'s Mot. Compassionate Release, ECF No. 71. Arreola Chavez has also filed supplemental materials in support of his motion. *See* ECF Nos. 68, 70, 72–73, 75–76, 78. After considering the applicable sentencing factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the United States Sentencing Commission, the Court denies Arreola Chavez's motion.

Under the First Step Act of 2018, prisoners may bring motions for compassionate release “once they have exhausted their administrative remedies.” *See United States v. Vangh*, 990 F.3d 1138, 1140 (8th Cir. 2021) (acknowledging amendment to 18 U.S.C. § 3582(c)(1)(A)). “Exhaustion occurs at the earlier of either (1) when the prisoner has ‘fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion’ on his behalf or (2) ‘the lapse of 30 days from the receipt of such a request by the warden of the [prisoner’s] facility.’” *United States v. Houck*, 2 F.4th 1082, 1083 (8th Cir. 2021) (quoting § 3582(c)(1)(A)).

Exhaustion under the statute is a “mandatory claim-processing rule,” meaning “it must be enforced so long as the opposing party properly raises it.” *Id.* at 1084.

Arreola Chavez requested a reduction in his sentence from the warden of his facility in August 2022. ECF No. 70. He asserts he has not received any response. ECF No. 66 at 3. The Court finds Arreola Chavez has satisfied the exhaustion requirement of 18 U.S.C. § 3582(c)(1)(A). *See also* ECF No. 71 ¶ 4 (Government conceding exhaustion satisfied).

A district court may grant a defendant’s motion for compassionate release if it finds “extraordinary and compelling reasons” warrant such a sentence reduction and the reduction is consistent with the applicable advisory policy statements issued by the United States Sentencing Commission.¹ 18 U.S.C. § 3582(c)(1)(A)(i). Even if the Court finds the foregoing criteria are met, the Court must still consider the 18 U.S.C. § 3553(a) sentencing factors before granting a reduction. *Id.* § 3582(c)(1)(A).

Arreola Chavez argues he is entitled to compassionate release based on his underlying health conditions of diabetes, obesity, high cholesterol, vision loss, and high blood pressure in light of the COVID-19 pandemic. ECF No. 66 at 5. Arreola Chavez is 33 years old. *See Inmate Locator*, Federal Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Jan. 31, 2023). Individuals who have diabetes, obesity, and high blood pressure may be more likely to become very sick with COVID-19. *See People with Certain Medical Conditions*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/>

¹ “[T]he policy statement in [United States Sentencing Commission, *Guidelines Manual*], § 1B1.13 regarding compassionate release has not been amended since the passage of the First Step Act.” *United States v. Rodd*, 966 F.3d 740, 746 (8th Cir. 2020). Regardless, the decision to grant compassionate release “still lies within the district court’s discretion.” *Vangh*, 990 F.3d at 1140. A district court may look to this commentary as relevant but not binding in determining whether health conditions at time of compassionate release request were extraordinary and compelling reasons to warrant a reduction. *United States v. Marcussen*, 15 F.4th 855, 859 (8th Cir. 2021).

people-with-medical-conditions.html (last visited Jan. 31, 2023).

Arreola Chavez also argues recent changes in the law invalidate his classification as an armed career criminal.² ECF No. 66 at 5. Specifically, he asserts his conviction for intimidation with a dangerous weapon under Iowa law no longer qualifies as a predicate felony to enhance his penalties under 18 U.S.C. § 924(e). *Id.* (citing *Borden v. United States*, 141 S. Ct. 1817 (2021) and *United States v. Frazier*, 48 F.4th 884, 887 (8th Cir. 2022)). The Government does not respond to this argument. Nonetheless, accepting without deciding that this conviction no longer applies, intervening changes in the law which are not retroactive cannot serve as extraordinary and compelling reasons for a reduction in sentence under § 3582(c)(1)(A).³ *United States v. Crandall*, 25 F.4th 582, 586 (8th Cir. 2022) (“The compassionate release statute is not a freewheeling opportunity for resentencing based on prospective changes in sentencing policy or philosophy.”).

Even if Arreola Chavez could show any of these factors were extraordinary and compelling, the Court also would deny the motion based on relevant § 3553(a) factors. Arreola Chavez pleaded guilty to being a felon in possession of a firearm. Sealed J. Crim. Case 1, ECF No. 50. With a total offense level of 31 and criminal history category of VI, Arreola Chavez’s applicable sentencing guideline range was 188 to 235 months imprisonment. *Id.* at 8. On November 14, 2019, the Court sentenced Arreola Chavez to 180 months in prison. *Id.* at 2.

² Arreola Chavez raises this argument in his pending motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255. See Amended Motion 4, *Arreola Chavez v. United States*, No. 4:21-cv-00146-RGE (S.D. Iowa), ECF No. 7-1; Pet’r’s Mot of Suppl. Authority, *id.*, ECF No. 10.

³ District courts may consider intervening changes of law or fact in deciding whether to resentence a defendant under § 404 of the First Step Act. *Concepcion v. United States*, 142 S. Ct. 2389, 2396 (2022). Arreola Chavez, however, does not seek a reduced sentence under § 404, but instead brings this motion under the compassionate release portion of the First Step Act, 18 U.S.C. § 3582(c)(1)(A). *Concepcion* does not discuss “extraordinary and compelling” circumstances, and the Supreme Court gave no indication its holding should apply to compassionate release cases as well.

Arreola Chavez was arrested after law enforcement officers were alerted by witnesses that Arreola Chavez was pointing a firearm at people. Final Presentence Investigation Report ¶ 5, ECF No. 41. At the time of his arrest, Arreola Chavez admitted to possessing a loaded .22 caliber pistol between the vehicle's center console and the front passenger seat. *Id.* ¶¶ 9–10. At sentencing, the Court noted this was not a usual felon-in-possession case, but one “where the defendant was in a public space with other individuals and he was brandishing a firearm.” Sent. Tr. 31:21–24, ECF No. 56. Further, Arreola Chavez did not immediately comply with requests to place his hands in the air, and the circumstances of brandishing a gun in a public setting “creates an incredible danger to the community.” *Id.* at 32:3–13. Finally, the Court also noted Arreola Chavez had a lengthy criminal history, including prior gun violence. *Id.* at 32–33.


Arreola Chavez's expected release date is March 13, 2033. *See Inmate Locator*, Federal Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Jan. 31, 2023). The Court is concerned a reduction in sentence would not adequately reflect the seriousness of the offense, promote respect for the law, protect the public from additional crimes by Arreola Chavez, and would not allow for continued training, education, or treatment. For the reasons stated above and other sentencing factors under 18 U.S.C. § 3553(a), the Court denies compassionate release.

For the foregoing reasons,

IT IS ORDERED that Defendant Gilberto Arreola Chavez's Motion for Compassionate Release, ECF No. 66, is **DENIED**.

IT IS SO ORDERED.

Dated this 2nd day of February, 2023.


REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE