APPENDICES

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 22-1798

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

WOLFGANG VON VADER,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Wisconsin.
No. 3:99CR00125-001 — **James D. Peterson**, *Chief Judge.*

ARGUED JANUARY 12, 2023 — DECIDED JANUARY 24, 2023

Before SYKES, *Chief Judge*, and EASTERBROOK and RIPPLE, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. After pleading guilty in the Western District of Wisconsin to distributing methamphetamine, Wolfgang Von Vader was sentenced to 270 months' imprisonment. When sentencing him in 2000, the court ruled that his prior convictions make him a "career

offender" for the purpose of U.S.S.G. §4B1.1. He did not appeal. In 2012 Von Vader pleaded guilty to possessing heroin in prison. That led to an additional ten-year sentence, imposed by the District of Kansas.

Developments since 2000 call into question the length of the 270-month sentence. Von Vader contends, and we shall assume, that *Johnson v. United States*, 576 U.S. 591 (2015), and *Mathis v. United States*, 579 U.S. 500 (2016), show that one or more of his previous convictions should not have been counted toward the number required for classification as a career offender. In 2017 Von Vader sought collateral relief under 28 U.S.C. §2255. But the district court dismissed the petition as untimely, whether measured from *Johnson* or from *Mathis*, and added that Von Vader had not met the requirements for equitable tolling of the time limit set by §2255(f). 2018 U.S. Dist. LEXIS 205763 (W.D. Wis. Dec. 6, 2018). We denied Von Vader's request for a certificate of appealability.

Von Vader then recast his *Johnson* and *Mathis* arguments. He applied to the district courts in both Kansas and Wisconsin for compassionate release under 18 U.S.C. §3582(c)(1), contending that the (asserted) sentencing error in 2000 is an "extraordinary and compelling" reason for release. We held in *United States v. Gunn*, 980 F.3d 1178 (7th Cir. 2020), that district courts may grant prisoner-initiated petitions under this statute, notwithstanding the absence of an applicable Guideline, but that release is possible only if the statutory threshold of "extraordinary and compelling" reasons has been satisfied. Both the District of Kansas and the Western District of Wisconsin denied Von Vader's applications. We have nothing more to say about the former, because appellate review is in the Tenth Circuit. The latter is within our jurisdiction.

According to the United States, however, the Western District of Wisconsin itself lacked jurisdiction to consider Von

Vader's application. That is because his 2000 sentence has expired and custody now depends on the 2012 sentence. The United States contends that §3582(c) does not authorize release from an expired sentence, which makes Von Vader's application in Wisconsin moot.

We may assume without deciding that a retroactive reduction is unauthorized by statute, but do not see how this moots Von Vader's request. If §3582(c) does not supply authority for the relief Von Vader wants, then he loses on the merits, not for lack of jurisdiction. See *Bell v. Hood*, 327 U.S. 678 (1946).

Relief is possible if Von Vader is right on the law. The judge in Wisconsin could order the Bureau of Prisons to treat the Wisconsin sentence as if it had expired earlier and to reduce the time remaining on the Kansas sentence accordingly. Or the court in Wisconsin could make an adjustment in the length of supervised release, on the Wisconsin sentence, that will follow the conclusion of the Kansas sentence. As long as relief is possible in principle, the fact that a given request may fail on statutory grounds does not defeat the existence of an Article III case or controversy. *Chafin v. Chafin*, 568 U.S. 165, 171–72 (2013); *Shahi v. Department of State*, 33 F.4th 927, 931 (7th Cir. 2022).

This brings us to the merits, and we can be brief. Von Vader contends that his original sentence is legally defective. We have held, however, that a legal contest to a sentence must be resolved by direct appeal or motion under §2255, not by seeking compassionate release under §3582. See, e.g., *United States v. Thacker*, 4 F.4th 569 (7th Cir. 2021); *United States v. Martin*, 21 F.4th 944 (7th Cir. 2021); *United States v. Brock*, 39 F.4th 462 (7th Cir. 2022); *United States v. King*, 40 F.4th 594 (7th Cir. 2022). Accord, *United States v. Jenkins*, 50 F.4th 1185 (D.C. Cir. 2022). As we put it in *Brock*:

> Judicial decisions, whether characterized as announcing new law or otherwise, cannot alone

> amount to an extraordinary and compelling circumstance allowing for a sentence reduction. To permit otherwise would allow §3582(c)(1)(A) to serve as an alternative to a direct appeal or a properly filed post-conviction motion under 28 U.S.C. §2255. We rejected that view in *Thacker* and *Martin* and do so again here.

39 F.4th at 466. In other words, the sort of "extraordinary and compelling" circumstance that §3582(c)(1) addresses is some new fact about an inmate's health or family status, or an equivalent post-conviction development, not a purely legal contention for which statutes specify other avenues of relief—avenues with distinct requirements, such as the time limits in §2255(f) or the need for a declaration by the Sentencing Commission that a revision to a Guideline applies retroactively. See 18 U.S.C. §3582(c)(2); U.S.S.G. §1B1.10.

According to Von Vader, *Thacker* and its successors are beside the point because an institutional rather than a legal error affected him. He tells us that the Sentencing Commission's staff compiled a list of inmates potentially affected by *Johnson* and *Mathis*, distributing the information to federal defenders' offices for use in seeking relief under §2255. Von Vader maintains that either the Commission left him off its list or the federal defender in Western Wisconsin fell down on the job; one way or another, no one approached him with an offer to file a timely §2255 motion.

Yet prisoners do not have a right, either constitutional or statutory, to legal assistance in initiating a request for collateral relief. The Criminal Justice Act permits district judges to appoint counsel to assist prisoners seeking collateral relief, 18 U.S.C. §3006A(a)(2)(B), but does not require that step, either before or after a §2255 petition is on file. The norm in federal procedure is for a prisoner to file his own §2255 motion and seek appointment of counsel afterward. That norm

was followed in Von Vader's situation, which therefore cannot be called "extraordinary and compelling". A norm is the opposite of anything extraordinary. And §3582(c) assuredly is not a means to obtain indirect review of a district court's ruling, in an action filed under §2255, that the prisoner is not entitled to equitable tolling of the statutory time limit.

AFFIRMED

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

May 3, 2023

Before

DIANE S. SYKES, Chief Judge

FRANK H. EASTERBROOK, Circuit Judge

KENNETH F. RIPPLE, Circuit Judge

No. 22-1798 UNITED STATES OF AMERICA, *Plaintiff-Appellee*, *v.* WOLFGANG VON VADER, *Defendant-Appellant.*	Appeal from the United States District Court for the Western District of Wisconsin. No. 3:99CR00125-001 James D. Peterson, *Chief Judge*.

O R D E R

Defendant-Appellant filed a petition for rehearing and rehearing en banc on March 10, 2023. No judge in regular active service has requested a vote on the petition for rehearing en banc, and all the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WOLFGANG M. VON VADER,

Defendant.

OPINION and ORDER

99-cv-125-jdp

Defendant Wolfgang M. Von Vader is serving long sentences for two drug crimes. He filed a pro se motion for compassionate release under 18 U.S.C. § 3582(c). Dkt. 45. Von Vader is now represented by counsel from Federal Defender Services, and the motion is briefed and ready for decision. Defendant has satisfied the exhaustion requirement, so I'll consider the motion on its merits. To prevail, Von Vader must show first that extraordinary and compelling reasons warrant a reduction of his sentence, and then that release would be consistent with the purposes of sentencing.

Von Vader offers two main reasons in support of a reduction in his sentence: (1) his obesity, hypertension, and hepatitis C increase his risk of severe illness from COVID-19; and (2) he was sentenced incorrectly under the career criminal guidelines and he is thus serving a disproportionately long sentence.

The first reason, based on Von Vader's health problems, doesn't have much traction in light of *United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021), which held that the risk of COVID-19 infection is not an extraordinary and compelling

reason for prisoners who have access to a vaccine. See also *United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021). Von Vader is fully vaccinated and boosted. Dkt. 50-1. Von Vader argues that the omicron variant poses new risks that have emerged since *Ugbah* and *Broadfield* were decided. Dkt. 51, at 6–8. But that's a generic argument untethered to Von Vader's circumstances. His institution, FCI Williamsburg is at Level 1 operations, which means substantially normal operations, and it currently has no infections among inmates or staff. I conclude that, despite a generalized increase in the rate of COVID-19 infection since last summer, Von Vader's health status is not an extraordinary and compelling reason for compassionate release.

Von Vader devotes most of his briefing to the second reason, which is that he is serving an unfairly long sentence because he was wrongly sentenced under the career offender guideline. I'll begin my consideration of this reason with a bit of background on Von Vader's criminal history and his previous attempts to get relief from his sentences.

In 2000, Wolfgang M. Von Vader pleaded guilty to distribution of methamphetamine. *United States v. Von Vader*, Western District of Wisconsin Case No. 99-cr-125. The sentencing judge, my predecessor, found that Von Vader qualified as a career offender under the U.S. Sentencing Guidelines § 4B1.1 because he had two or more prior convictions for serious drug crimes or crimes of violence. At the time, the Guidelines were treated as mandatory, and Von Vader was sentenced to 270 months of imprisonment. He did not appeal or seek postconviction relief until he petitioned pro se to vacate his sentence under 28 U.S.C. § 2255 on December 11, 2017. The motion was set up as Case No. 17-cv-931.

I concluded that Von Vader was correct: under a categorical analysis of his predicate convictions, Von Vader did not have two prior convictions that satisfy § 4B1.1. But I denied

Von Vader's § 2255 petition because it was untimely and he had not shown that he was entitled to equitable tolling. Dkt. 12 in Case No. 17-cv-931. Von Vader appealed, again pro se, but the Seventh Circuit found no substantial showing of the denial of a constitutional right and denied a certificate of appealability. Dkt. 25 in Case No. 17-cv-931. The sentence for the 2000 conviction would have been completed by now, if not for another drug conviction.

In 2012, Von Vader pleaded guilty in the District of Kansas to possession of heroin, a crime he committed while incarcerated at USP Leavenworth. Von Vader's guideline range was, as in 2000, calculated on the basis of his career offender status, although in 2012 the guidelines were only advisory. Von Vader was sentenced to a below-guideline sentence of ten years' incarceration, consecutive to the 270 months from his 2000 conviction.

In 2021, Von Vader, now with counsel, sought compassionate release in the district court in Kansas, asserting essentially the same argument he makes here. The district court accepted that Von Vader's health conditions were extraordinary and compelling reasons for compassionate release. But the court denied the motion because of the seriousness of the offense and his criminal history.

Von Vader now asks me for compassionate release. The government opposes Von Vader's motion for several reasons based on his criminal history. The government argues that I don't have authority to grant compassionate release because Von Vader is no longer serving a sentence from this court; he's serving the sentence from the District of Kansas, and that court has already denied his request for compassionate release. The government also contends that Von Vader's challenge to his career offender status would not succeed under current law. But I do not have to reach these issues, because the government's main argument is dispositive.

The government's main argument is that Seventh Circuit precedent forecloses Von Vader's argument that a sentencing error can be an extraordinary and compelling reason for compassionate release. I agree.

The parties focus on *United States v. Thacker*, 4 F. 4th 569 (7th Cir. 2021), *cert. denied*, No. 21-877, 2022 WL 827870 (U.S. Mar. 21, 2022), which held that a change in sentencing law cannot serve as the "extraordinary and compelling" reason to justify a sentence reduction under § 3582(c). *Thacker* involved a request for compassionate release by an inmate who had received mandatory minimum sentences of seven and 25 years for "stacked" § 924(c) firearm charges. His sentence was lawful when imposed, but had he been sentenced after the First Step Act, he would not have faced the enhanced 25 year sentence on the second § 924(c) charge. Thacker argued that the disparity between his sentence and those of defendants sentenced after the First Step Act was an "extraordinary and compelling" reason for resentencing. The court of appeals concluded that it would be inappropriate to use compassionate release to open the door to resentencing when Congress, through First Step Act, made the changes to § 924(c) prospective only.

Von Vader argues that *Thacker* is distinguishable because Von Vader is relying on a change in sentencing law that applies retroactively. This is a fair point of distinction with *Thacker*, but Von Vader misses the larger underlying principle, made clear in *United States v. Martin*, 21 F.4th 944 (7th Cir. 2021). As the court of appeals explained:

> [W]e conclude that a claim of errors in the original sentencing is not itself an extraordinary and compelling reason for release. But this conclusion does not limit a court, after a prisoner has presented an extraordinary and compelling reason for release, from reconsidering how it originally evaluated at sentencing a defendant's

> arguments in mitigation. When a prisoner has furnished an extraordinary and compelling reason for release, the second step of the court's analysis is whether the sentencing factors in 18 U.S.C. § 3553(a) weigh in favor of a reduced sentence. At that stage, in weighing those § 3553(a) factors, a district court may revisit how it balanced those factors at sentencing.

Martin, 21 F.4th at 946 (citations omitted).

It is true that Von Vader seeks the benefit of a change in sentencing law that applies retroactively, unlike the purely prospective change at issue in *Thacker*. But in both *Martin* and *Thacker*, the Seventh Circuit applied the general principle that compassionate release does not provide a means to revisit sentencing errors for which Congress has already provided a specific path for relief. "That path is embodied in the specific statutory scheme authorizing post-conviction relief in 28 U.S.C. § 2255 and accompanying provisions." *Thacker*, at 574. I have already concluded in my ruling on Von Vader's § 2255 petition that that path was no longer open to him. To hold that Von Vader can now make the same argument in a motion for compassionate release would eviscerate the stringent time limits that Congress has imposed on petitions under § 2255 and other avenues of collateral attack on criminal sentences.

One hopes that there are very few in Von Vader's situation—those who missed out on the benefit of a retroactive change in sentencing law. But a decision in his favor now would thoroughly erode the finality of criminal judgments, opening the door to a torrent of time-barred petitions being refiled as motions for compassionate release.

I conclude that Von Vader has not shown extraordinary and compelling reasons for his compassionate release. And thus I do not have the authority to reweigh the original sentencing considerations and reduce Von Vader's sentence.

ORDER

IT IS ORDERED that Petitioner Wolfgang M. Von Vader's motion for compassionate release under 18 U.S.C. § 3582(c), Dkt. 45, is DENIED.

Entered April 8, 2022.

BY THE COURT:

/s/

JAMES D. PETERSON
District Judge

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

WOLFGANG M. VON VADER,

Defendant.

OPINION and ORDER

99-cv-125-jdp

I denied defendant Wolfgang M. Von Vader's motion for compassionate release. Dkt. 52. Von Vader moves for reconsideration. Dkt. 53. Von Vader contends that I misunderstood one of his main arguments.

Von Vader says that he was not arguing that his incorrect sentence under the career offender was itself one of the extraordinary and compelling reasons he was offering in support of his motion. Rather it was the *institutional failures* that caused him to miss out on the opportunity for resentencing when so many others in similar circumstances got that opportunity. Those institutional failures, combined with his vulnerability to COVID-19, constitute extraordinary and compelling reasons for compassionate release. Von Vader contends that that argument, focused on the institutional failures rather than the original sentencing error, is not foreclosed by *United States v. Martin*, 21 F.4th 944 (7th Cir. 2021).

I did not miss the point of Von Vader's argument. I recognize both that Von Vader was incorrectly sentenced under the guidelines and that he had missed out on the opportunity to

be resentenced, due to what Von Vader labels "institutional failures." Many offenders in Von Vader's situation were identified and assisted in getting resentenced. I accept that Von Vader missed out on the opportunity, in significant part, because institutional actors somehow missed his case. But he had a path to relief from those institutional failures through equitable tolling. In connection with his § 2255 petition, I gave Von Vader the opportunity to explain why he would be entitled to equitable tolling. Dkt. 7, in Case No. 17-cv-931. But I ultimately concluded that he was not entitled to equitable tolling because he waited too long after he was aware of the grounds for his request for relief. His petition was thus untimely.

Congress provided Von Vader with a path to gain relief from the institutional failures that he now cites as a reason for compassionate release. Allowing Von Vader to use compassionate release to win what is essentially § 2255 relief would undermine the limits Congress imposed on § 2255. I don't see how that can be squared with the principles expressed in *Martin*.

ORDER

IT IS ORDERED that defendant Wolfgang M. Von Vader's motion for reconsideration, Dkt. 53, is DENIED.

Entered April 22, 2022.

BY THE COURT:
/s/

JAMES D. PETERSON
District Judge

APPENDIX E

18 U.S.C. § 3582 – Imposition of a sentence of imprisonment

(a) Factors To Be Considered in Imposing a Term of Imprisonment.—

The court, in determining whether to impose a term of imprisonment, and, if a term of imprisonment is to be imposed, in determining the length of the term, shall consider the factors set forth in section 3553(a) to the extent that they are applicable, recognizing that imprisonment is not an appropriate means of promoting correction and rehabilitation. In determining whether to make a recommendation concerning the type of prison facility appropriate for the defendant, the court shall consider any pertinent policy statements issued by the Sentencing Commission pursuant to 28 U.S.C. 994(a)(2).

(b) Effect of Finality of Judgment.—Notwithstanding the fact that a sentence to imprisonment can subsequently be—

(1) modified pursuant to the provisions of subsection (c);

(2) corrected pursuant to the provisions of rule 35 of the Federal Rules of Criminal Procedure and section 3742; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742; a judgment of conviction that includes such a sentence constitutes a final judgment for all other purposes.

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(1) in any case—

(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant

after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission; and

(B) the court may modify an imposed term of imprisonment to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure; and

(2) in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has

subsequently been lowered by the Sentencing Commission pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau of Prisons, or on its own motion, the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

(d) Notification Requirements.—

(1) Terminal illness defined.—

In this subsection, the term "terminal illness" means a disease or condition with an end-of-life trajectory.

(2) Notification.—The Bureau of Prisons shall, subject to any applicable confidentiality requirements—

(A) in the case of a defendant diagnosed with a terminal illness—

(i) not later than 72 hours after the diagnosis notify the defendant's attorney, partner, and family members of the defendant's condition and inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) not later than 7 days after the date of the diagnosis, provide the defendant's partner and family members (including extended family) with an opportunity to visit the defendant in person;

(iii) upon request from the defendant or his attorney, partner, or a family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(iv) not later than 14 days of receipt of a request for a sentence reduction submitted on the defendant's behalf by the defendant or the defendant's attorney, partner, or family member, process the request;

(B) in the case of a defendant who is physically or mentally unable to submit a request for a sentence reduction pursuant to subsection (c)(1)(A)—

(i) inform the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A);

(ii) accept and process a request for sentence reduction that has been prepared and submitted on the defendant's behalf by the defendant's attorney, partner, or family member under clause (i); and

(iii) upon request from the defendant or his attorney, partner, or family member, ensure that Bureau of Prisons employees assist the defendant in the preparation, drafting, and submission of a request for a sentence reduction pursuant to subsection (c)(1)(A); and

(C) ensure that all Bureau of Prisons facilities regularly and visibly post, including in prisoner handbooks, staff training materials, and facility law libraries and medical and hospice facilities, and make available to prisoners upon demand, notice of—

(i) a defendant's ability to request a sentence reduction pursuant to subsection (c)(1)(A);

(ii) the procedures and timelines for initiating and resolving requests described in clause (i); and

(iii) the right to appeal a denial of a request described in clause (i) after all administrative rights to appeal within the Bureau of Prisons have been exhausted.

(3) Annual report.—Not later than 1 year after December 21, 2018, and once every year thereafter, the Director of the Bureau of Prisons shall submit to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives a report on requests for sentence reductions pursuant to subsection (c)(1)(A), which shall include a description of, for the previous year—

(A) the number of prisoners granted and denied sentence reductions, categorized by the criteria relied on as the grounds for a reduction in sentence;

(B) the number of requests initiated by or on behalf of prisoners, categorized by the criteria relied on as the grounds for a reduction in sentence;

(C) the number of requests that Bureau of Prisons employees assisted prisoners in drafting, preparing, or submitting, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(D) the number of requests that attorneys, partners, or family members submitted on a defendant's behalf, categorized by the criteria relied on as the grounds for a reduction in sentence, and the final decision made in each request;

(E) the number of requests approved by the Director of the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(F) the number of requests denied by the Director of the Bureau of Prisons and the reasons given for each

denial, categorized by the criteria relied on as the grounds for a reduction in sentence;

(G) for each request, the time elapsed between the date the request was received by the warden and the final decision, categorized by the criteria relied on as the grounds for a reduction in sentence;

(H) for each request, the number of prisoners who died while their request was pending and, for each, the amount of time that had elapsed between the date the request was received by the Bureau of Prisons, categorized by the criteria relied on as the grounds for a reduction in sentence;

(I) the number of Bureau of Prisons notifications to attorneys, partners, and family members of their right to visit a terminally ill defendant as required under paragraph (2)(A)(ii) and, for each, whether a visit occurred and how much time elapsed between the notification and the visit;

(J) the number of visits to terminally ill prisoners that were denied by the Bureau of Prisons due to security or other concerns, and the reasons given for each denial; and

(K) the number of motions filed by defendants with the court after all administrative rights to appeal a denial of a sentence reduction had been exhausted, the outcome of each motion, and the time that had elapsed between the date the request was first received by the Bureau of Prisons and the date the defendant filed the motion with the court.

(e) Inclusion of an Order To Limit Criminal Association of Organized Crime and Drug Offenders.—

The court, in imposing a sentence to a term of imprisonment upon a defendant convicted of a felony set forth in chapter

95 (racketeering) or 96 (racketeer influenced and corrupt organizations) of this title or in the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801 et seq.), or at any time thereafter upon motion by the Director of the Bureau of Prisons or a United States attorney, may include as a part of the sentence an order that requires that the defendant not associate or communicate with a specified person, other than his attorney, upon a showing of probable cause to believe that association or communication with such person is for the purpose of enabling the defendant to control, manage, direct, finance, or otherwise participate in an illegal enterprise.