APPENDIX

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APPENDIX A

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 29, 2022 Decided July 21, 2023

No. 21-3074

UNITED STATES OF AMERICA,

APPELLEE

v.

LOUIS A. WILSON, ALSO KNOWN AS SPUDS,

APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:96-cr-00319-1)

Anthony F. Shelley argued the cause and filed the memorandum of law and fact and reply for appellant. Alexandra E. Beaulieu entered an appearance.

David P. Saybolt, Assistant U.S. Attorney, argued the cause for appellee. With him on appellee's memorandum of law and fact were *Chrisellen R. Kolb* and *John P. Mannarino*, Assistant U.S. Attorneys.

Before: CHILDS, *Circuit Judge*, and ROGERS, *Senior Circuit Judge*.[†]

Opinion for the Court filed by *Circuit Judge* CHILDS.

CHILDS, *Circuit Judge*: Louis Wilson appeals the denial of his motion for compassionate release made pursuant to 18 U.S.C. § 3582(c)(1)(A). First Step Act of 2018, Pub. L. No. 115-391, § 602(b)(1), 132 Stat. 5194, 5239 (2018) (codified at 18 U.S.C. § 3582(c)(1)(A)). He argues that intervening changes in law, in combination with other factors, warrant that his motion be granted.

Wilson waited the required time of thirty days after the warden received his initial request for compassionate release, but chose not to bring it on his behalf, to file his own motion in district court. That motion included additional grounds for his release, like his increased weight and a change in sentencing law, not found in his request to the warden. See Req. for Compassionate Release 1–2.

The government maintains that Wilson failed to properly exhaust his administrative remedies as to these additional grounds such that the court may not consider Wilson's contentions on the merits. This Court, however, assumes without deciding that Wilson properly exhausted his administrative

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[†]Senior Circuit Judge Silberman was a member of the panel before his death on October 2, 2022. Judges Childs and Rogers have acted as a quorum in this opinion. *See* 28 U.S.C. § 46(d).

remedies and nonetheless affirms the district court's denial of Wilson's motion.

We hold that Section 3582(c)(1)(A) is not jurisdictional because Congress did not use express language making it so.

And per *United States v. Jenkins*, 50 F.4th 1185, 1192, 1198 (D.C. Cir. 2022), Wilson's change in law arguments cannot constitute extraordinary and compelling reasons, whether alone or in combination with other factors.

I.

A.

A court can grant a defendant compassionate release from prison if they meet certain criteria. 18 U.S.C. § 3582(c)(1)(A). They must demonstrate, in the court's judgment, an extraordinary and compelling reason for release. *Id.* (c)(1)(A)(i). And that reason must be consistent with the various factors Congress instructs courts to consider when sentencing defendants. *Id.* (c)(1)(A)(ii); 18 U.S.C. § 3553(a).

But before defendants may file a motion for compassionate release, they must first exhaust their administrative remedies. Two pathways are available for them to do so. 18 U.S.C. § 3582(c)(1)(A). Either is sufficient. *Id.* First, defendants can "fully exhaust[] all administrative rights [by] appeal[ling] a failure of the Bureau of Prisons to bring a motion on the defendant's behalf." *Id.* Alternatively, they may file a motion for compassionate release "30 days from the receipt of such a request [to] the warden." *Id.*

B.

In 1997, Wilson was convicted of several federal crimes, including killing a federal witness with the intent to prevent him from testifying. Wilson is serving a sentence of life imprisonment plus one consecutive five-year term.

On September 18, 2020, Wilson first submitted his request for compassionate release to the warden at Federal Correction Institution (FCI) Petersburg. The warden denied the request on October 6, 2020. On April 7, 2021, 201 days after submitting his request, Wilson filed a *pro se* motion for compassionate release in the district court. In that motion, Wilson added factors not included in his request to the warden, such as his increased "weight" and "length of time served." *See* Req. for Compassionate Release 1–2. The government argued that Wilson did not properly exhaust his administrative remedies as to those additional grounds under Section 3582(c)(1)(A) but nonetheless addressed them. *United States v. Wilson*, No. CR 96-319-01, 2021 WL 107 5292457, at *3 n.4 (D.D.C. Aug. 6, 2021), *recons. denied*, 2021 WL 5292460 (D.D.C. Sept. 28, 2021). The district court considered the merits of these additional grounds and did not deny the motion for failure to issue exhaust. *Id.* (citation omitted); *see also id.* at *4–6.

Wilson maintains that the following extraordinary and compelling reasons support his release: (i) if *United States v. Booker*, 543 U.S. 220 (2005), and *Apprendi v. New Jersey*, 530 U.S. 466 (2000), were issued prior to his sentence, he would have received twenty-five years instead of life imprisonment because the district court considered additional facts

during sentencing not proven to a jury; (ii) the national sentencing statistics for murder have trended downward; and (iii) his medical conditions plus his exemplary prison citizenship.

Wilson argued to the district court that the purported intervening changes in law went to his length of time served and should constitute extraordinary and compelling reasons. The district court concluded, however, that time served in prison "does not in [and] of itself constitute an extraordinary and compelling circumstance." *Wilson*, 2021 WL 5292457, at *3; *see also id.* at *4–6. After considering the Section 3553(a) factors, the district court also decided that "the severity of his crime, the need for the sentence imposed, and the risk to the public outweigh[ed] th[e] factors that weigh[ed] in Mr. Wilson's favor." *Id.* at *6. Thus, the district court denied Wilson's motion.

Wilson timely appealed. On appeal, Wilson also contends that if the district court failed to consider his change in law arguments as extraordinary and compelling reasons under Section 3582(c)(1)(A)(i), they should have been considered under the district court's Section 3553(a) analysis. Appellant's Mem. Br. 17–18.

II.

We have jurisdiction to review this appeal. 28 U.S.C. § 1291; *United States v. Long*, 997 F.3d 342, 352 (D.C. Cir. 2021). This Court reviews the district court's denial of Wilson's motion for compassionate release for abuse of discretion. *United States v. Jackson*, 26 F.4th 994, 1001 (D.C. Cir. 2022); *see also*

United States v. Smith, 896 F.3d 466, 470 (D.C. Cir. 2018).

III.

A.

Because this Court cannot assume it has jurisdiction, we first answer whether Section 3582(c)(1)(A) is jurisdictional. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998). Joining our sister circuits that have considered the question, we think not and thus address the merits of Wilson's contention without deciding whether issue exhaustion is required under Section 3582(c)(1)(A).

Begin with the text. Section 3582 (c)(1)(A) provides:

> (1) [I]n 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[.]
>
> 18 U.S.C. § 3582(c)(1)(A) (emphasis added).

Jurisdictional rules "govern a court's adjudicatory authority," *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) (quotations and citation omitted), while nonjurisdictional claim-processing rules simply "promote the orderly progress of litigation . . . . " *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011). Congress must "clearly state[]" when a provision is jurisdictional. *Fort Bend Cnty. v. Davis*, 139 S. Ct. 1843, 1850 (2019) (internal quotations and citation omitted). Thus, the question of whether a statutory provision is jurisdictional is governed by a "clear statement" rule where the statute must "expressly refer to subject-matter jurisdiction or speak in jurisdictional terms." *Musacchio v. United States*, 577 U.S. 237, 246 (2016). That high standard makes sense because "[j]urisdictional requirements cannot be waived or forfeited, must be raised by courts *sua sponte*, and . . . do not allow for equitable exceptions." *Boechler, P.C. v. Comm'r of Internal Revenue*, 142 S. Ct. 1493, 1497 (2022).

Absent Congress's clear command, mandatory language does not transform a statutory provision into a jurisdictional requirement. *Musacchio*, 577 U.S. at 246; *United States v. Wong*, 575 U.S. 402, 410 (2015). For example, in *Wilkins v. United States*, 143 S. Ct. 870, 875 (2023), the Court considered whether Section 2409a(g), a provision of the Quiet Title Act, was jurisdictional. The provision at issue stated that action "shall be barred unless it is commenced within twelve years of the date upon which it accrued." 28

U.S.C. § 2409a(g). Yet, the Court held that it was nonjurisdictional not only because the "text sp[oke] only to a claim's timeliness," but also because the provision was placed outside of the jurisdictional grant section of the statute. *Wilkins*, 143 S. Ct. at 877 (citation omitted). In *Boechler*, a provision of the Tax Code stated that, "The person may, within 30 days of a determination under this section, petition the Tax Court for review of such determination (and the Tax Court shall have jurisdiction with respect to such matter)." 26 U.S.C. § 6330(d)(1). Because "to such matter[,]" *id.*, lacked a clear antecedent and contained "multiple plausible interpretations," the Court still held that the provision was nonjurisdictional. *Boechler, P.C.*, 142 S. Ct. at 1498. And this Court "presume[s] [that an administrative] exhaustion [requirement] is non-jurisdictional unless Congress states in clear, unequivocal terms that the judiciary is barred from hearing an action until the administrative agency has come to a decision . . . ." *Avocados Plus Inc. v. Veneman*, 370 F.3d 1243, 1248 (D.C. Cir. 2004) (quotations and citation omitted).

Here, Section 3582(c)(1)(A) is a nonjurisdictional claim-processing rule. Congress did not speak clearly that this provision is jurisdictional, *Fort Bend*, 139 S. Ct. at 1850, nor does it appear in the jurisdictional portion of the criminal code. *See* 18 U.S.C. § 3231. Nothing in Section 3582(c)(1)(A) uses any mandatory language that would deprive this Court of jurisdiction should the defendant fail to satisfy either exhaustion pathway. 18 U.S.C. § 3582(c)(1)(A). Therefore, the plain text of Section 3582(c)(1)(A) does not permit this Court to infer that Congress intended it to be jurisdictional.

Every circuit to have considered this question agrees. *United States v. Texeira-Nieves*, 23 F.4th 48, 52–53 (1st Cir. 2022); *United States v. Saladino*, 7 F.4th 120, 121–24 (2d Cir. 2021); *United States v. Muhammad*, 16 F.4th 126, 129–30 (4th Cir. 2021); *United States v. Franco*, 973 F.3d 465, 467–68 (5th Cir. 2020), *cert. denied*, 141 S. Ct. 920 (2020); *United States v. Alam*, 960 F.3d 831, 833–34 (6th Cir. 2020); *United States v. Gunn*, 980 F.3d 1178, 1179 (7th Cir. 2020); *United States v. Houck*, 2 F.4th 1082, 1084 (8th Cir. 2021); *United States v. Keller*, 2 F.4th 1278, 1281–82 (9th Cir. 2021); *United States v. Hemmelgarn*, 15 F.4th 1027, 1030–31 (10th Cir. 2021).

Since we conclude that Section 3582(c)(1)(A) is a nonjurisdictional claim-processing rule, we need not reach whether it requires defendants to exhaust each issue in their submitted requests before the warden before filing in district court. *See Texeira-Nieves*, 23 F.4th at 53. Instead, this Court assumes without deciding that Wilson properly exhausted as to each of his grounds for compassionate release.

B.

We next answer whether Wilson's change in law arguments can be extraordinary and compelling reasons warranting compassionate release. They cannot. Accordingly, this Court need not reach Wilson's contention that his change in law arguments should still be considered as Section 3553(a) factors because, under *Jenkins*, the district court did not abuse its discretion in denying Wilson's motion for lack of an extraordinary and compelling reason. 50 F.4th at 1198.

Nevertheless, we recognize that since this Court decided *Jenkins*, the United States Sentencing Commission amended its guidelines regarding what constitutes an extraordinary and compelling reason for release. 88 Fed. Reg. 28,254 (May 3, 2023). That update will become effective on November 1, 2023. *Id.* at 28,254/1. The guidelines state that district courts "may . . . consider[]" a "change in the law" to "determine[] whether the defendant presents an extraordinary and compelling reason" for release if he has "served at least 10 years" of "an unusually long sentence." *Id.* at 28,255/2. However, this Court does not decide whether Wilson's contentions would constitute extraordinary and compelling reasons under the not-yet-effective guidelines.

Wilson largely relays the same argument as this Court rejected in *Jenkins*: if *Booker*, 543 U.S. at 224, and *Apprendi*, 530 U.S. at 483–84, were issued before his conviction, he would have received a twenty-five-year sentence, instead of a life sentence. He then supplements that position with additional claims about general downward nationwide trends for murder sentences, his overall medical conditions, and his exemplary prison citizenship. But intervening judicial decisions, regardless of whether they are combined with other factors, are barred as extraordinary and compelling bases for release. *Jenkins*, 50 F.4th at 1192, 1198. Consequently, we do not reach whether Wilson's arguments were properly considered under Section 3553(a).

* * *

For the foregoing reasons, we affirm the denial of Wilson's motion for compassionate release.

So ordered.

APPENDIX B

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. LOUIS ANTHONY WILSON, Defendant.	 Crim. Action No. 96-319-01 (CKK) [ECF No. 394, eFiled 09/28/21]

MEMORANDUM OPINION AND ORDER

(August 6, 2021)

Pending before this Court is Defendant Louis Anthony Wilson's [386] Emergency Motion to Reduce Sentence under the First Step Act for Compassionate Release.[1]Defendant Louis Wilson ("Defendant" or

[1] In connection with this Memorandum Opinion and Order, the Court considered Defendant's Emergency Motion to Reduce Sentence under the First Step Act for Compassionate Release. ("Def.'s Mot."), ECF No. 386, and the exhibits attached thereto; the United States' Opposition to Defendant's Emergency Motion for Compassionate Release Under 18 U.S.C. § 3582(c)(1)(A)(i) ("Govt. Opp'n"), ECF No. 388, and the exhibits attached thereto; Defendant's Addendum to his Emergency Motion to Reduce Sentence under the First Step Act for Compassionate Release ("Def.'s Addendum"), ECF No. 389; Letters regarding Defendant's Character, ECF Nos. 390 & 391;

"Mr. Wilson") requests that this Court issue an order reducing his sentence to time served, "due to the COVID-19 pandemic and because Defendant's medical conditions, including hypertension and early stages of kidney disease, Defendant's age, and "other" extraordinary and compelling reasons render Defendant especially vulnerable to COVID-19." Def.'s Mot., ECF No. 386, at 1.

The Government opposes Defendant's Motion on grounds that Defendant "has received both doses of the Pfizer-BioNTech COVID-19 vaccine and therefore, cannot establish extraordinary and compelling reasons for relief based upon his asserted medical conditions and age." Govt. Opp'n, ECF No. 388, at 1. The Government asserts further that Defendant has not shown that consideration of the factors in 18 U.S.C. Section 3553(a) warrants a sentence modification. *Id.* For the reasons set forth herein, Defendant's [386] Emergency Motion is DENIED.

I. BACKGROUND

On September 19, 1996, Defendant was charged with seven counts: (1) conspiracy to kill a federal witness in violation of 18 U.S.C. § 371; (2) killing a federal witness with the intent to prevent him from

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Defendant's Response to the Government's Reply to his Motion ("Def.'s Reply"), ECF No. 393, and the entire record in this case.

In an exercise of its discretion, the Court finds that holding oral argument in this action would not be of assistance in rendering a decision. *See* LCrR 47(f).

testifying in violation of 18 U.S.C. § 1512(a)(1)(A); (3) retaliating against a federal witness in violation of 18 U.S.C. § 1513(a)(1)(B); (4) first-degree murder while armed in violation of D.C. Code §§ 22-2401 and 3202; (5) two counts of using a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. § 924(c); and (6) possession of a firearm during a crime of violence or dangerous offense, in violation of D.C. Code § 22-3204(b). *See* Indictment, ECF No. 3. On February 28, 1997, a jury trial commenced before the Honorable Norma Holloway Johnson, and Mr. Wilson was found guilty on all counts on March 21, 1997. *See* Verdict Form, ECF No. 146. On September 10, 1007, Defendant was sentenced to a life sentence plus two consecutive five-year terms of incarceration, *see* Judgment, ECF No. 201, and his conviction was affirmed by the United States Court of Appeals for the District of Columbia Circuit on November 20, 1998, with the exception of vacating one of Defendant's two Section 924 (c) convictions for use of a firearm. *See United States v. Wilson*, 160 F.3d 732, 750 (D.C. Cir. 1998), *cert. denied*, 528 U.S. 828 (1999).

Defendant has been incarcerated for approximately twenty-five years, *see* Govt. Ex. 1 (sentence computation), and he is serving his sentence at FCI Petersburg Medium, in Hopewell, Virginia. As of August 3, 2021, there were no inmates or staff members who tested positive for Covid-19; 254 inmates and 22 staff members have recovered, and there has been one death at FCI Petersburg.[2] Defendant's Bureau of Prisons ("BOP") medical

[2] *See* https://www.bop.gov/coronavirus/index.jsp (last visited on August 3, 2021).

records show that he received his first dose of Pfizer-BioNTech COVID-19 vaccine on March 1, 2021 and received his second dose on March 25, 2021. *See* Govt. Ex. 2 (BOP Medical Records). Defendant has filed an emergency motion requesting compassionate release, which is opposed by the Government and is ripe for resolution by this Court.[3]

II. LEGAL STANDARD

The concept of "compassionate release" is embodied in the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5239 (2018) ("Increasing the Use and Transparency of Compassionate Release"). While federal courts are generally forbidden to modify a term of imprisonment that has been imposed, *see United States v. Smith*, 467 F.3d 785, 788 (D.C. Cir. 2006) (noting "that Congress has, in language with a somewhat jurisdictional flavor, limited district court authority to *modify* sentences""), this "rule of finality is subject to a few narrow exceptions." *Freeman v. United States*, 564 U.S. 522, 526 (2011). The First Step Act addresses one of those exceptions permitting a "[m]odification of an imposed term of imprisonment." *See* First Step Act, Pub. L. 115-391, §603(b) (amending 18 U.S.C. §3582(c) to permit a defendant — rather than the Bureau of Prisons ("BOP") — to move for a sentencing reduction).

Pursuant to 18 U.S.C. § 3582(c)(1)(A), courts may, in certain circumstances, grant a defendant's motion to reduce his or her term of imprisonment. Section

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[3] This case was reassigned from Judge Holloway Johnson to the undersigned on March 24, 2003.

3582(c)(1)(A) of Title 18 "authorizes federal courts to entertain a motion for a sentence reduction brought by the Director of the BOP of by the defendant," provided that certain conditions are met. *United States v. Greene* No. 71-cr-1913, 2021 WL 354446, at *6 (D.D.C. Fed. 2, 2021). If defendant is the movant, he must have "fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf" or that 30 days have passed "from the receipt of such a request by the warden of the defendant's facility, whichever is earlier[.]" 18 U.S.C. § 3582(c)(1)(A).

Once the exhaustion requirement is met, a defendant must carry his "burden of establishing that he is eligible for a sentence reduction under [Section] 3582(c)(1)(A)(i)." *United States v. Holroyd*, 464 F. Supp. 3d 14, 17 (D.D.C. 2020). Applying that provision, courts may grant a defendant's motion for compassionate release only if "after considering the factors set forth in 18 U.S.C. § 3553(a)," the court finds that "extraordinary and compelling reasons warrant such a reduction" and "such a reduction is consistent with the applicable policy statement issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). In their evaluation of extraordinary and compelling reasons, courts have looked previously to a United States Sentencing Commission policy statement - U.S.S.G. § 1B1.13 cmt. n.1(A) - issued in 2018 and not yet updated concerning compassionate release to reflect the First Step Act's changes. *See United States v. Long*, 997 F.3d 342, 348-349 (D.C. Cir. 2021) (noting that the policy statement refers only to motions brought by the BOP and not by defendants on their own behalf).

In *Long*, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") "like seven other circuits, h[e]ld that this policy statement is not 'applicable to compassionate release motions filed by defendants" under the First Step Act. *Id.* at 347. The D.C. Circuit did not however address how district courts should evaluate extraordinary and compelling circumstances. Other circuits have held that even if the policy statement is not controlling regarding defendant-filed motions, it may still provide important "guideposts." *United States v. McGee*, 992 F.3d 1035, 1045 (10th Cir. 2021); *United States v. Thompson*, 984 F.3d 431, 433 (5th Cir. 2021) ("Although not dispositive, the commentary to the United States Sentencing Guidelines [ ] § 1B1.3 informs our analysis as to what reasons may be sufficiently 'extraordinary and compelling' to merit compassionate release."); *United States v. Gunn*, 980 F.3d 1178, 1180 (7th Cir. 2020) (indicating that the policy statement may provide guidance as to the extraordinary and compelling nature of a defendant's circumstances).

The defendant bears the burden of establishing entitlement to a sentencing reduction. *United States v. Jones*, 836 F.3d 896, 899 (8th Cir. 2016); *United States v.* Green, 764 F.3d 1352, 1356 (11th Cir. 2014). Accordingly, a defendant who moves on his own for compassionate release "must [first] show that he has exhausted his administrative remedies with the Bureau of Prisons and that there are 'extraordinary and compelling reasons' warranting relief." *United States v. Oliver*, No. 00-cr-157-21, 2021 WL 2913627, at *4 (D.D.C. July 12, 2021) (quoting Section 3582(c)(1)(A)(i)). If the defendant demonstrates exhaustion and extraordinary and compelling

reasons, a court "may reduce the [defendant's] term of imprisonment . . . after considering the relevant factors set forth in 18 U.S.C. § 3553(a)." *United States v. Winston*, No. 94-cr-296-11, 2021 WL 2592959, at *3 (D.D.C. June 24, 2021).

III. DISCUSSION

In the instant case, there is no dispute that Defendant "has exhausted his administrative remedies with respect to his claims that he should be granted compassionate release based on his age and the fact that he has hypertension and his assertion that he is in danger of having kidney disease." Govt. Opp'n, ECF No. 388, at 12.[4]

A. Analysis of Extraordinary and Compelling Reasons

Defendant asserts that he is 63 years old, with a body mass index ("BMI") of over 30, and his medical records indicate that he suffers from early signs of kidney disease and hypertension. Def.'s Mot., ECF No. 386, at 3; Def.'s Reply, ECF No. 393, at 19. This Court will address Defendant's obesity and hypertension but will not address his claim of early

[4] In his Motion, Defendant seeks compassionate release also based on his weight and the length of time served. These factors were not mentioned in his request to the Warden at FCI Petersburg, and as such, the Government contests exhaustion based on these factors. *See* Govt. Opp'n, ECF No. 388, at 12. Nevertheless, "in the interest of efficiency, the [G]overnment addresses the merits of these unexhausted claims[.]" *Id.*

kidney disease as there is no cited support for this in his medical records.[5] Defendant is currently at FCI Petersburg, and he alleges generally that the BOP is not adequately protecting inmates from the risks associated with the COVID-19 pandemic. *See id.* at 7-14. Furthermore, Defendant asserts that the Court should consider the length of time he has served - 25 years – as a factor that demonstrates extraordinary and compelling reasons (though this is not mentioned in the policy statement). This "length of time served" factor will be addressed in connection with consideration of the Section 3553(a) factors, as it does not in of itself constitute an extraordinary and compelling circumstance. *See United States v. Moreira*, No. 06-20021-01-KHV, 2020 WL 6939762, at *6 (D. Kan. Nov. 25, 2020) ("Nothing in the First Step Act suggests that Congress authorized courts to grant relief under the compassionate release provision of Section 3582(c)(1)(A) based on a request that the Court reconsider whether the sentence is too long.")

As a preliminary matter, the Government argues that the COVID-19 pandemic "cannot alone provide a basis for a sentence reduction." Govt. Opp'n, ECF No. 388, at 13; *see United States v. Raia*, 954 F.3d

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[5] In Defendant's Ex. C (Form Request for Compassionate Release/Reduction in Sentence), Mr. Wilson self-indicated that "as of 7-15-20 Dr. Laybourn placed [him] on medication for signs of oncoming kidney diseases due to recent lab work done." This diagnosis was not mentioned by Dr. Laybourne in the July 15, 2020 medical records attached to Defendant's Motion as Ex. D (identifying Mr. Wilson's chief complaint as hypertension and prescribing medication for hypertension).

594, 597 (3d Cir. 2020) ("[T]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release.") The Government acknowledges that "[i]f an inmate is elderly and/or has a chronic medical condition that has been identified as elevating the inmate's risk of becoming seriously ill from COVID-19, that condition may satisfy the standard of 'extraordinary and compelling reasons.'" Govt. Opp'n, ECF No. 388, at 13. In the instant case, the Government argues however that Mr. Wilson has now "been fully vaccinated, which is the best protection against COVID-19 inside or outside of prison, [and accordingly,] he has not established an extraordinary and compelling reason based on his medical conditions and/or his age [63 years old]." Govt. Opp'n, ECF No. 388, at 13.

In his Addendum, Defendant asserts that vaccines do not provide complete protection against COVID-19; Def.'s Addendum, ECF No. 389, at 2; vaccinated people are still advised to "take[] precautions like physical distancing and avoiding large groups," *id.* at 3; and there are variants of COVID-19, for which vaccines may not be effective. *Id.* at 5-12. Mr. Wilson alleges further that a defendant's vaccination status does not preclude a court from granting compassionate release. Def.'s Addendum, ECF No. 389, at 4-5 (citing cases). The Court notes that the cases cited by Defendant do not necessarily support a grant of compassionate release for inmates that have already been vaccinated, but rather, they indicate that courts may consider motions for compassionate release despite a defendant's vaccination status. *See United States v.*

Manglona, No. CR 14-5393 (RJB), 2021 WL 808386, at *1 (W.D. Wash. Mar. 3, 2021) (courts should consider compassionate release requests from persons vaccinated during the pendency of the motion); *see also United States v. Browning*, No. CR 19-20203-2, 2021 WL 795725, at *3 (E.D. Mich. Mar. 2, 2021) (considering the number of cases of COVID-19 at the BOP facility where the defendant resided).

Turning now to medical conditions that increase the risk of COVID-19, "[t]he Defendant's BOP medical records verify that he currently suffers from hypertension." Govt. Opp'n, ECF No. 388, at 14; *see* Def.'s Ex. D (BOP medical records) at 51 (noting defendant's history of "hypertension which appears adequately controlled.") Furthermore, "a note from July 15, 2020 reflects that [defendant] weighed 198.8 pounds" and at a height of 5'10," he would have a "BMI of 28.4, thus qualifying as overweight." Govt. Opp'n, ECF No. 388, at 16. The Government concludes that if Defendant had not been offered a vaccine, he "would have established an extraordinary and compelling reason based on his obesity, and possibly hypertension." *Id.* But, through vaccination, "[D]efendant's risk of serious complications from COVID-19 is significantly diminished," and the vaccine would "substantially mitigate any increased risk" due to potential exposure to COVID-19. Govt. Opp'n, ECF No. 388, at 16-17; *see also id.* at 17-21 (discussing the efficacy of the vaccines).

This Court finds that the increased risk of COVID-19 due to Defendant's age and medical conditions of hypertension and obesity has been mitigated by the fact that Mr. Wilson has been

vaccinated as well as the fact that there are no known COVID-19 cases at FCI Petersburg, where Mr. Wilson is incarcerated. Accordingly, Defendant fails to establish extraordinary and compelling circumstances that warrant compassionate release.

B. Analyzing the Section 3553(a) Factors

Even if there were extraordinary and compelling reasons to reduce Defendant's term of imprisonment, the Court must reassess the sentencing factors that Congress established at 18 U.S.C. Section 3553(a) to the extent applicable, including the need for the sentence imposed "to reflect the seriousness of the offense" and "afford adequate deterrence" and "to protect the public from further crimes of the defendant," 18 U.S.C. Section 3553(a)(2)(A)-(C), and any reduction must likewise be consistent with the Sentencing Commission's expressed policy concern about the release of dangerous offenders.[6] *See United States v. Chambliss*, 948 F.3d 691, 694 (5th Cir. 2020) (considering the defendant's "severe" conduct, his serious drug crime, his criminal history, and the

[6] The Section 3553(a) factors include "the nature and circumstances of the offense;" "the history and characteristics of the defendant," and also the need for a sentence "to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense," "to afford adequate deterrence to criminal conduct," "to protect the public from further crimes of the defendant," and "to provide the defendant with needed educational or vocational training, medical care, and other correctional treatment in the most effective manner." 18 U.S.C. § 3553(a).

timing of the commission of the underlying offense while defendant was on parole); *see also* U.S.S.G. Section 1B1.13(2) (stating that, before granting a motion for compassionate release, courts should make a finding that "the defendant is not a danger to the safety of any other person or to the community").

Considering the nature and circumstances of the offense and the need for the sentence imposed to reflect the seriousness of the offense, the Government explains that Mr. Wilson received a life sentence for commission of a serious crime that resulted in the death of person who was supposed to testify against his brother, thus "thwarting the justice system." Govt. Opp'n, ECF No. 388, at 23. "The case was strong, as shown by the affirmance on direct appeal and denial of [Defendant's] collateral attacks." *Id.*[7] Defendant asserts generally that "[s]hortening [his] sentence does not undermine the seriousness of the offense, or fail to respect the law, provide just punishment, or adequately deter criminal conduct." Def.'s Reply, ECF No. 393, at 17. Defendant spends a significant amount of time arguing that the sentence that he received would be shorter if he was sentenced now, and that this should be considered as an extraordinary and compelling circumstance. The Court notes that the purpose of compassionate release is not a revisiting of a defendant's term of incarceration although a court may look at the length of time served versus the length of the sentence imposed. *See generally United*

[7] The Government does note however that the decedent's next of kin "support the defendant's request to be released, and that they feel 'he has served enough time.'" Govt. Opp'n, ECF No. 388, at 23.

States v. Farley, Criminal No. 08-01185 (PLF), 2020 WL 4698434, at *1 (D.D.C. August 13, 2020) (granting compassionate release to a defendant who "has already served approximately 95% of his fifteen year sentence"); *United States v. Thomas*, 10-Cr-00023 (ESH/DLF) (D.D.C. 2020), May 27, 2020 Order, ECF No. 28, at 1 (granting compassionate release to defendant who "has served almost all of his 151-month sentence" and was projected to be released within the year).

In the instant case, this Court finds that releasing Mr. Wilson after 25 years may well "minimize the nature and seriousness of the offense." *United States v. Logan*, Crim. Action No. 1:96-CR-20-TBR, 2020 WL 730879, at *3 (W.D. Ky. Feb. 13, 2020) (denying relief to an 81-year old defendant, who served 22 years of his life sentence for an arson that killed four people and whose medical conditions of prostate cancer, glaucoma, blindness, and diabetes made him eligible for consideration); *United States v. Evans*, Crim. Action No. 18-103 (EGS), 2020 WL 3542231, at *4-5 (D.D.C. June 30, 2020) (denying compassionate release for an inmate who suffered from severe obesity, high blood pressure, hypertension, and sleep apnea because of the nature of his extortion offense); *United States v. Wright*, 991 F.3d 717, 719 (6th Cir. 2021) (the district court did not abuse its discretion in denying relief from life sentences for an inmate who had served 19 years for commission of "a cold blooded killing," as well as distribution of large quantities of cocaine and doing business with cartels); *Walker v. United States*, Case No. 16-21973-Civ-Scola, 2020 WL 2308468, at *1 (S.D. Fla. May 8, 2020) (whether or not defendant had medical conditions, the court declined to reduce his life sentence after he

had served sixteen years because defendant's instant and earlier offenses were very violent); *United States v. Levine*, No. 2:91 CR 3, 2020 WL 2537786, at * 4 (N.D. Ind. May 19, 2020) (concluding that release should be denied for a 78-year old defendant who was serving a life sentence for orchestrating the murder of two family members); *United States v. Epstein*, Crim. Action No. 14-287-1 (FLW), 2020 WL 2537648, at * 3 (D.N.J. May 19, 2020) (denying release to a 74-year old defendant who had numerous medical issues for which he was receiving treatment, where his kidnapping offenses were "severe and violent").

Considering the parties arguments and the caselaw cited, this Court finds that the nature and circumstances of Defendant's offense and the need for the sentence imposed to reflect the seriousness of the offense weigh against Defendant's request for compassionate release.

Turning next to the history and characteristics of the Defendant, the Government notes that, "this case is defendant's only adult conviction." Govt. Opp'n, ECF No. 388, at 24. Furthermore, while incarcerated, Defendant has been sanctioned only twice, once for a 100-level offense in 2010 for possession of drugs/alcohol (taking medication of another inmate) and in 2011 for a lower level offense – being insolent to a staff member. *Id.*

Defendant asserts that he has "maintained employment while in BOP custody" and "receiv[ed] excellent work reports." Def.'s Mot., ECF No. 386, at 21 (noting that he "worked for the past 15 years in the vocational barbershop"). Furthermore, he has "demonstrated a strong commitment to

rehabilitation, self-improvement and assisting others while in federal prison" and he is "on a waiting list to attend Barber School and Autocab Classes." Def.'s Reply, ECF No. 393, at 19. The Court notes that numerous persons associated with Mr. Wilson filed letters of support on his behalf. The Government contends that "[a]lthough the defendant has earned his GED while incarcerated, his participation in vocational and behavioral classes has been limited," . . . with defendant completing "only 41 hours of programming" since 2010. Govt. Opp'n, ECF No. 388, at 24. The Government comments further that "[D]efendant's Proposed Release Plan is sparse" insofar as Defendant is going to live in the District of Columbia with his ex-wife, and he has presumably "secured employment with Pure Air as a cleaning technician but provides no documentation from the purported employer" or information about wages and benefits. *Id.* Moreover, Defendant identifies Catholic Charities generally as a possible source of additional housing and employment resources, and he volunteers without further explanation his son and niece as being able to assist with medical needs, as he has no health insurance. *Id.* The Government concludes that "[w]ithout a detailed and feasible plan in place, it is more likely that the defendant's transition back to civil society will be a more difficult one, thereby placing the community at greater risk." Govt. Opp'n, ECF No. 25, at 25.

While some of Defendant's history and characteristics (lack of criminal history, employment while at BOP, family support) weigh in favor on his request for compassionate release, the severity of his crime, the need for the sentence

imposed, and the risk to the public outweigh those factors that weigh in Mr. Wilson's favor. Accordingly, this Court finds that the Section 3553(a) factors do not favor granting Mr. Wilson's request for compassionate release, despite his acknowledged medical conditions. *See, e.g., United States v. Gotti*, 433 F. Supp. 3d 613, 615 (S.D.N.Y. 2020) (On a compassionate release motion, a court is "still required to consider all the Section 3553(a) factors to the extent they are applicable, and may deny such a motion if, in its discretion, compassionate release is not warranted because Section 3553(a) factors override, in any particular case, what would otherwise be extraordinary and compelling circumstances.")

IV. CONCLUSION

On the record before this Court, the Court finds that Defendant has not demonstrated extraordinary and compelling reasons based on his age and medical conditions (obesity and hypertension) because he has been fully vaccinated and he is incarcerated at a facility with no known COVID-19 cases. Nor do the sentencing factors set forth in 18 U.S.C. Section 3553(a) weigh in favor of Defendant's request for compassionate release, particularly in light of the serious nature of the crime on which he is serving a life sentence and this Court's need to consider public safety.

Accordingly, it is this 6th day of August 2021,

ORDERED that Defendant's [386] Emergency Motion to Reduce Sentence under the First Step Act for Compassionate Release be and hereby is DENIED.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA v. LOUIS ANTHONY WILSON, Defendant.	Crim. Action No. 96-319-01 (CKK) [ECF No. 396, eFiled 09/28/21]

MEMORANDUM OPINION AND ORDER

(September 28, 2021)

On August 6, 2021, this Court issued its [394] Memorandum Opinion and Order denying Defendant's request for compassionate release. The Court found that "Defendant ha[d] not demonstrated extraordinary and compelling reasons based on his age and medical conditions (obesity and hypertension) because he ha[d] been fully vaccinated and he [was] incarcerated at a facility with no known COVID-19 cases." Memorandum Opinion and Order, ECF No. 394, at 12. Nor did the sentencing factors set out in 18 U.S.C. Section 3553 (a) weigh in Defendant's favor, "particularly in light of the serious nature of the crime [for] which he is serving a life sentence and this Court's need to consider public safety." *Id.*

Pending before this Court is Defendant Louis Anthony Wilson's [395] Motion for Reconsideration concerning his earlier request for compassionate

release. Defendant asks this Court to reconsider his request for compassionate release because of alleged "new law and changes in the circumstances[.]" Def.'s Motion, ECF No. 395, at 1.[1] To prevail on a motion for reconsideration, the movant bears the burden of identifying an "intervening change of controlling law, the availability of new evidence, or the need to correct a clear error or prevent manifest injustice." *Firestone v. Firestone,* 76 F.3d 1205, 1208 (D.C. Cir. 1996).

In his Motion, Defendant proffers nothing more than a reiteration of certain arguments noted in his previous motion. Defendant alleges that he made a "showing" in his "reply motion" that focuses on "consideration of the factors in 18 U.S.C. Section 3553(a)," but he argues that this Court did not consider it. Def.'s Motion for Reconsideration, ECF No. 395, at 3. Defendant's allegation is incorrect as Mr. Wilson's "Response to the Government's Reply to his Motion [for Compassionate Release]," ECF No. 393, was both noted and considered by this Court in its Memorandum Opinion and Order, ECF No. 394; *see id*. at 9-11 (discussing Mr. Wilson's arguments that the sentence he received would be shorter if he were sentenced now, and how this should be considered by the Court as an extraordinary and compelling circumstance). Accordingly, Defendant Louis Wilson has not proffered any new law or changes in circumstances that would warrant

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[1] Pending before this Court is Defendant's Motion for Reconsideration, ECF No. 395. The Court did not request that the Government file a response thereto. This Court incorporates by reference the background and analysis in its Memorandum Opinion and Order, ECF No. 394.

reconsideration of this Court's decision to deny compassionate release, or warrant granting his request for counsel. It is hereby this 28th day of September 2021,

ORDERED that Louis Wilson's [395] Motion for Reconsideration be and hereby is DENIED.

/s/
COLLEEN KOLLAR-KOTELLY
UNITED STATES DISTRICT JUDGE

APPENDIX D

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-3074 **September Term, 2022**
FILED ON: JULY 21, 2023

UNITED STATES OF AMERICA,
APPELLEE

v.

LOUIS A. WILSON, ALSO KNOWN AS SPUDS,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:96-cr-00319-1)

Before: CHILDS, *Circuit Judge*, and ROGERS, *Senior Circuit Judge**

J U D G M E N T

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia and was argued by counsel. On consideration thereof, it is

ORDERED and **ADJUDGED** that the denial of Wilson's motion for compassionate release be

affirmed, in accordance with the opinion of the court filed herein this date.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Daniel J. Reidy
Deputy Clerk

Date: July 21, 2023

Opinion for the court filed by Circuit Judge Childs.

* Senior Circuit Judge Silberman was a member of the panel before his death on October 2, 2022. Judges Childs and Rogers have acted as a quorum in this judgment. *See* 28 U.S.C. § 46(d).

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) [*18 USCS § 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 [*18 USCS § 3742*]; or

(3) appealed and modified, if outside the guideline range, pursuant to the provisions of section 3742 [*18 USCS § 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) [*18 USCS § 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) [*18 USCS § 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) [*18 USCS § 3142*];

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) [*18 USCS § 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 the date of enactment of this subsection, 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 [*18 USCS §§ 1951* et seq.] (racketeering) or 96 [*18 USCS §§ 1961* et seq.] (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.

18 U.S.C. app. § 1B1.13. Reduction in Term of Imprisonment Under *18 U.S.C. § 3582(c)(1)(A)* (Policy Statement) (Nov. 1, 2023)

(a) In General. Upon motion of the Director of the Bureau of Prisons or the defendant pursuant to *18 U.S.C. § 3582(c)(1)(A)*, the court may reduce a term of imprisonment (and may impose a term of supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment) if, after considering the factors set forth in *18 U.S.C. § 3553(a)*, to the extent that they are applicable, the court determines that—

(1)

(A) extraordinary and compelling reasons warrant the reduction; or

(B) the defendant (i) is at least 70 years old; and (ii) has served at least 30 years in prison pursuant to a sentence imposed under *18 U.S.C. § 3559(c)* for the offense or offenses for which the defendant is imprisoned;

(2) the defendant is not a danger to the safety of any other person or to the community, as provided in *18 U.S.C. § 3142(g)*; and

(3) the reduction is consistent with this policy statement.

(b) Extraordinary and compelling reasons. Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:

(1) Medical circumstances of the defendant.

(A) The defendant is suffering from a terminal illness (*i.e.*, a serious and advanced illness with an end-of-life trajectory). A specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(B) The defendant is—

(i) suffering from a serious physical or medical condition,

(ii) suffering from a serious functional or cognitive impairment, or

(iii) experiencing deteriorating physical or mental health because of the aging process,

(iv) 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.

(C) The defendant is suffering from a medical condition that requires long-term or specialized medical care that is not being provided and without which the defendant is at risk of serious deterioration in health or death.

(D) The defendant presents the following circumstances—

(i) the defendant is housed at a correctional facility affected or at imminent risk of being affected by (I) an ongoing outbreak of infectious disease, or (II) an ongoing public health emergency declared by the appropriate federal, state, or local authority;

(ii) due to personal health risk factors and custodial status, the defendant is at increased risk of suffering severe medical complications or death as a result of exposure to the ongoing outbreak of infectious disease or the ongoing public health emergency described in clause (i); and

(iii) such risk cannot be adequately mitigated in a timely manner.

(2) Age of the defendant. The defendant (A) is at least 65 years old; (B) is experiencing a serious deterioration in physical or mental health because of the aging process; and (C) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(3) Family circumstances of the defendant.

(A) The death or incapacitation of the caregiver of the defendant's minor child or the defendant's child who is 18 years of age or older and incapable of self-care because of a mental or physical disability or a medical condition.

(B) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

(D) The defendant establishes that circumstances similar to those listed in paragraphs (3)(A) through (3)(C) exist involving any other immediate family member or an individual whose relationship with the defendant is similar in kind to that of an immediate family member, when the defendant would be the only available caregiver for such family member or individual. For purposes of this provision, 'immediate family member' refers to any of the individuals listed in paragraphs (3)(A) through (3)(C) as well as a grandchild, grandparent, or sibling of the defendant.

(4) Victim of Abuse. The defendant, while in custody serving the term of imprisonment sought to be reduced, was a victim of:

(A) sexual abuse involving a 'sexual act,' as defined in *18 U.S.C. § 2246(2)* (including the conduct described in *18 U.S.C. § 2246(2)(D)* regardless of the age of the victim); or

(B) physical abuse resulting in 'serious bodily injury,' as defined in the Commentary to §1B1.1 (Application Instructions);

(C) that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individual who had custody or control over the defendant.

(D) For purposes of this provision, the misconduct must be established by a conviction in a criminal case, a finding or admission of liability in a civil case, or finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent danger.

(5) Other reasons. The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).

(6) Unusually long sentence. If a defendant received an unusually long sentence and has served at least 10 years of the term of imprisonment, a change in the law (other than an

amendment to the Guidelines Manual that has not been made retroactive) may be considered in determining whether the defendant presents an extraordinary and compelling reason, but only where such change would produce a gross disparity between the sentence being served and the sentence likely to be imposed at the time the motion is filed, and after full consideration of the defendant's individualized circumstances.

(c) Limitation on changes in law. Except as provided in subsection (b)(6), a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) shall not be considered for purposes of determining whether an extraordinary and compelling reason exists under this policy statement. However, if a defendant otherwise establishes that extraordinary and compelling reasons warrant a sentence reduction under this policy statement, a change in the law (including an amendment to the Guidelines Manual that has not been made retroactive) may be considered for purposes of determining the extent of any such reduction.

(d) Rehabilitation of the defendant. Pursuant to *28 U.S.C. § 994(t)*, rehabilitation of the defendant is not, by itself, an extraordinary and compelling reason for purposes of this policy statement. However, rehabilitation of the defendant while serving the sentence may be considered in combination with other circumstances in determining whether and to what extent a reduction in the defendant's term of imprisonment is warranted.

(e) Foreseeability of extraordinary and compelling reasons. For purposes of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment. Therefore, the fact that an extraordinary and compelling reason reasonably could have been known or anticipated by the sentencing court does not preclude consideration for a reduction under this policy statement.

Commentary

Application Notes:

1. Interaction with Temporary Release from Custody Under *18 U.S.C. § 3622* ("Furlough"). A reduction of a defendant's term of imprisonment under this policy statement is not appropriate when releasing the defendant under *18 U.S.C. § 3622* for a limited time adequately addresses the defendant's circumstances.

2. Notification of Victims. Before granting a motion pursuant to *18 U.S.C. § 3582(c)(1)(A)*, the Commission encourages the court to make its best effort to ensure that any victim of the offense is reasonably, accurately, and timely notified, and provided, to the extent practicable, with an opportunity to be reasonably heard, unless any such victim previously requested not to be notified.

Background: The Commission is required by *28 U.S.C. § 994(a)(2)* to develop general policy statements regarding application of the guidelines or other aspects of sentencing that in the view of the Commission would further the purposes of sentencing

(*18 U.S.C. § 3553(a)(2)*), including, among other things, the appropriate use of the sentence modification provisions set forth in *18 U.S.C. § 3582(c)*. In doing so, the Commission is required by *28 U.S.C. § 994(t)* to "describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples." This policy statement implements *28 U.S.C. § 994(a)(2)* and (t).