

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2024

OREN SNOWDEN, *Petitioner*,

v.

UNITED STATES OF AMERICA, *Respondent*.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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THE QUESTIONS PRESENTED

1. Did the district court abuse its discretion in denying Oren Snowden motion for compassionate release when Oren Snowden suffered from and continues to suffer from serious medical conditions, including end-stage kidney disease?

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I.

PRAYER FOR RELIEF

Oren Snowden petitions for a writ of certiorari to review the decision of United States Court of Appeals for the Ninth Circuit that affirmed the district court’s order denying Oren Snowden’s motion for compassionate release. A petition for writ of certiorari should be granted when the district court abused its discretion in denying the motion for compassionate release when Oren Snowden continues to suffer from one or more serious medical conditions. For the reasons stated herein, Oren Snowden’s petition should be granted.

II.

OPINION BELOW

The United States Court of Appeals for the Ninth Circuit affirmed the decision of the district court that denied Oren Snowden’s motion for compassionate release. *United States v. Oren Snowden*, 2024 U.S. App. LEXIS 15130, 2024 WL 3086030 (9th Cir. 2024). *Appendix A*. The Ninth Circuit held that there has not been an abuse of discretion by the district court, and instead was a “mere disagreement” with the district court’s weighing of the § 3553(a) factors. *Appendix A*.

III.

BASIS FOR JURISDICTION

On June 21, 2024, the United States Court of Appeals for the Ninth Circuit issued a decision that affirmed the decision of the district court in denying Oren Snowden's motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). *Appendix A*. This is the final judgment for which a writ of certiorari is sought. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

IV.

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS INVOLVED IN THE CASE

18 U.S.C. § 3582(c)(1)(A)(i) provides an exception to the general rule that a federal court may not modify a term of imprisonment once it has been imposed. Also known as “compassionate release,” the statute at the time Oren Snowden filed his motion read as follows:

(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...

See 18 U.S.C. § 3582(c)(1)(A).

V.

STATEMENT OF THE CASE

A. Jurisdiction of the Courts of First Instance.

The district court had jurisdiction under 18 U.S.C. § 3582. The Ninth Circuit Court of Appeals had jurisdiction pursuant to 28 U.S.C. § 1291.

B. Facts Material to the Questions Presented.

In March of 2018, Oren Snowden pleaded guilty to: (a) one count of Possession with Intent to Distribute a Controlled Substance pursuant to 21 U.S.C. § 841(a)(1) and (b)(1)(C), and (b) one count of Felon in Possession of a Firearm pursuant to 18 U.S.C. § 922(g)(1) and 924(a)(2). In June of 2018, the federal district court sentenced Oren Snowden to a total of one hundred and five months per count, concurrent to each other, in the custody of the Federal Bureau of Prisons. After his custodial sentence, Oren Snowden will have a supervised release period of three years per count, concurrent to each other.

On September 19, 2022, appointed counsel for Oren Snowden filed a motion for compassionate release under the First Step Act. On September 26, 2022, the

government filed a response to the motion. Oren Snowden's counseled reply to his motion was filed on October 3, 2022.

On November 22, 2023, the federal district court issued an order that denied Oren Snowden's motion for compassionate release. Specific findings in the order were:

- a. Oren Snowden did not establish extraordinary and compelling reasons that warrant a sentence reduction.
- b. Oren Snowden has not demonstrated that his medical condition "substantially diminish[ed] the ability of" Oren Snowden to "provide self-care within the environment of a correctional facility."
- c. Courts facing similar requests have denied motions for compassionate release.
- d. Oren Snowden did not satisfy the 18 U.S.C. § 3553(a) factors.
- e. Under the 18 U.S.C. § 3553(a) factors, Oren Snowden poses a danger to the community because Oren Snowden has multiple felony convictions, and "many misdemeanor convictions, evincing a general disrespect for the rule of law."

On November 30, 2023, Oren Snowden, through counsel, filed a notice of appeal of the denial of the motion for compassionate release. Following briefing, the Ninth Circuit issued a memorandum that affirmed the decision of the district court.

This petition follows.

VI.

REASONS SUPPORTING ALLOWANCE OF THE WRIT

This writ should be granted to allow this Court to correct the erroneous decision by the Ninth Circuit Court of Appeals that affirmed the decision of the federal district court in denying Oren Snowden's motion for compassionate release. The issues raised in this petition state a valid claim of the denial of a constitutional right when: (1) the statutory requirements were met for compassionate release, (2) Oren Snowden's medical symptoms constituted extraordinary and compelling reasons for a reduction of the term of imprisonment, and (3) the 18 U.S.C. § 3553(a) factors weighted in favor of compassionate release. It is thus respectfully requested that Oren Snowden's petition for writ of certiorari be granted.

A. A Writ of Certiorari Should be Granted When Oren Snowden Met the Statutory Requirements for Compassionate Release.

The compassionate release statute previously permitted sentence reductions only upon motion of the Director of the Bureau of Prisons, however Congress expanded the statute in the First Step Act of 2018. Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239 (Dec. 21, 2018). As amended, Section 3582(c)(1)(A)(i) permits courts to consider motions filed by a defendant so long as "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 after "the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier[.]" Therefore,

“while the First Step Act did preserve the BOP’s role relative to a sentence reduction in certain limited respects, it eliminated the BOP Director’s role as the *exclusive* channel through which a sentence reduction could be considered by courts.” *United States v. Redd*, No. 1:97-CR-00006-AJT, 2020 WL 1248493, at *7 (E.D. Va. Mar. 16, 2020).

18 U.S.C. § 3582(c)(1)(A)(i) provided the district court with the requisite authority to reduce Oren Snowden’s sentence of imprisonment because there were “extraordinary and compelling reasons” to do so. The statutory requirements for sentence reduction were that the district court: (1) determined whether extraordinary and compelling reasons warrant a sentence reduction, (2) evaluated whether a reduction would be consistent with applicable policy statements issued by the Sentencing Commission, and (3) considered and weighed the factors set forth in 18 U.S.C. § 3553(a) to decide whether the requested sentence reduction is warranted under the particular circumstances of the case. *United States v. Wright*, 46 F.4th 938, 945 (9th Cir. 2022). As demonstrated, the statutory requirements for a sentence reduction under compassionate release existed in this case.

B. A Writ of Certiorari Should be Granted When Oren Snowden’s Medical Symptoms Constituted Extraordinary and Compelling Reasons for a Reduction of the Term of Imprisonment.

- a. Oren Snowden’s Underlying Medical Conditions Should Have Qualified for Compassionate Release Prior to the 2023 Amendments to the Compassionate Release Guidelines.

Oren Snowden’s underlying medical conditions should have qualified him for

compassionate release under the guidelines in place at the time Oren Snowden filed his compassionate release motion. The compassionate release statute did not expressly define or limit what constitutes an “extraordinary and compelling” reason for a sentence reduction. Black’s Law Dictionary defines “extraordinary” as “[b]eyond what is usual, customary, regular, or common.” Black’s Law Dictionary (11th ed. 2019). Its definition of “compelling need,” is one “so great that irreparable harm or injustice would result if [the relief] is not [granted].” *Id.*

Underlying diabetes and chronic kidney disease should have constituted “extraordinary and compelling reasons” for home confinement for the remainder of Oren Snowden’s sentence. The policy statement for United States Sentencing Guideline Section 1B1.13 provided examples of “extraordinary and compelling reasons” for a sentence reduction in the application notes. The examples fall into four categories and are based on the defendant’s (1) terminal illness, (2) debilitating physical or mental health condition, (3) advanced age and deteriorating health in combination with the amount of time served, or (4) compelling family circumstances. U.S.S.G. § 1B1.13 comment. n.1(A)-(C). The commentary also includes a catch-all provision for “extraordinary and compelling reasons other than, or in combination with, the reasons described in subdivisions (A) through (C)” as determined by the Director of the Bureau of Prisons. U.S.S.G. § 1B1.13, comment. n.1(D). The Application Note states that a defendant suffers from a “terminal illness” if they have a “serious and advanced illness...[with] and end of life trajectory” and provides an

example of terminal illness as “end-stage organ disease.” § 1B1.13, cmt. n.(1)(A)(i).

Even where courts have not deemed Section 1B1.13 entirely inapplicable due to lack of amendment, said courts held that judges have authority based on the catch-all provision in Application Note 1(D) to find extraordinary and compelling reasons other than those listed. *See, e.g., United States v. Fox*, No. 2:14-cr-03-DBH, 2019 WL 3046086, at *3 (D. Me. July 11, 2019) (stating that the existing policy statement provides “helpful guidance,” but “is not ultimately conclusive given the statutory change”). In *Redd*, the court explained that “Application Note 1(D)’s prefatory language, which requires a determination by the BOP Director, is, in substance, part and parcel of the eliminated requirement that relief must be sought by the BOP Director in the first instance.” 2020 WL 1248493, at *7 (citing cases); *see also United States v. Perez*, No. 88-10094-1-JTM, 2020 WL 1180719, at *2 (D. Kan. Mar. 11, 2020).

The court in *United States v. Young* followed a majority of district courts in recognizing that § 1B1.13’s defined categories are not exclusive: “In short, federal judges are no longer constrained by the BOP Director’s determination of what constitutes extraordinary and compelling reasons for a sentence reduction.” *United States v. Young*, No. 2:00-CR-00002-1, 2020 WL 1047815, at *6 (M.D. Tenn. Mar. 4, 2020); *see also United States v. Maumau*, No. 2:08-cr-00758-TC-11, 2020 WL 806121, at *2-3 (D. Utah Feb. 18, 2020) (“[A] majority of district courts to consider the question have embraced Mr. Maumau’s position” that limiting the catch-all provision to circumstances identified by the BOP is inconsistent with the law) (citing ten other

cases); *United States v. Brown*, 411 F. Supp. 3d 446, 451 (S.D. Iowa 2019) (“[I]f the [First Step Act] is to increase the use of compassionate release, the most natural reading of the amended § 3582(c) and [28 U.S.C.] § 994(t) is that the district court assumes the same discretion as the BOP Director when it considers a compassionate release motion properly before it. . . . Thus, the Director’s prior interpretation of ‘extraordinary and compelling’ reasons is informative, but not dispositive.” (internal quotation marks and citations omitted)); *United States v. Beck*, No. 1:13-CR-186-6, 2019 WL 2716505, at *6 (M.D.N.C. June 28, 2019) (“While the old policy statement provides helpful guidance, it does not constrain the Court’s independent assessment of whether ‘extraordinary and compelling reasons’ warrant a sentence reduction under § 3582(c)(1)(A)(i).”).

Conditions of confinement with the threat of COVID-19 were “extraordinary and compelling” in their own right, and in addition to Oren Snowden spending months in the hospital and near death in 2021 due to contracting COVID-19 with his serious underlying health conditions. The overriding factor under § 3553(a) that was not present at the time of sentencing is the spread of COVID-19 and the grave danger it poses to inmates and staff of suffering serious illness or death from its complications. The sentencing purpose of just punishment does not warrant a sentence that includes exposure to a life-threatening illness. *See United States v. Zukerman*, No. 16 Cr. 194 (AT), 2020 U.S. Dist. Lexis 59588, at ** 15-16 (S.D.N.Y. Apr. 3, 2020) (Although “the severity of Zukerman’s conduct remains unchanged, . . . [w]hen the Court sentenced

Zukerman, the Court did not intend for that sentence to ‘include incurring a great and unforeseen risk of severe illness or death’ brought on by a global pandemic.”).

The global pandemic combined with lack of testing to prevent data on the prevalence of COVID-19 in the facility with other relevant circumstances, presented an extraordinary and compelling basis for a sentence reduction, regardless of whether it fell within one of the existing categories in the commentary for § 1B1.13. Conditions of imprisonment created and still create the ideal environment for the transmission of contagious diseases. Incarcerated and detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.

As a Federal Bureau of Prisons inmate, it was and is impossible for Oren Snowden to follow the CDC’s recommendations to protect himself from exposure to this highly-transmissible disease due to the close living quarters. Courts continued to find pretrial release necessary “for the compelling reason that it will protect Defendant, the prison population, and the wider community during the COVID-19 pandemic” – “[e]ven if Defendant did not have a heightened susceptibility to COVID-19.” *United States v. Kennedy*, No. 18-20315, 2020 WL 1493481, at *4 (E.D. Mich. Mar. 27, 2020), reconsideration denied, No. 18-20315, 2020 WL 1547878 (E.D. Mich. Apr. 1, 2020). Taking into consideration Oren Snowden’s underlying medical conditions, the sentence of confinement should have been reduced under the prior version of the compassionate release statute and guidelines.

- b. Oren Snowden’s Underlying Medical Conditions Should Have Qualified for Compassionate Release Under the 2023 Amendments to the Compassionate Release Guidelines.

Oren Snowden should have qualified for compassionate release under the 2023 amendments to the compassionate release guidelines. To clarify what constitutes “extraordinary and compelling reasons,” the United States Sentencing Commission in January of 2023 published proposed amendments to § 1B1.13. The proposed amendments included added categories for “extraordinary and compelling reasons,” specifically:

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

(D) The defendant presents the following circumstances –

(i) the defendant is housed at a correctional facility affected or at 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) 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 mitigated in a timely or adequate manner.

...
(6) OTHER CIRCUMSTANCES – [3 options provided for other circumstances]

United States Sentencing Commission, *Proposed Amendments to the Sentencing*

Guidelines (Preliminary) (January 12, 2023), available at: https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230112_prelim_RF.pdf.

Under the current and proposed changes to the Sentencing Guidelines, Oren Snowden should have qualified for compassionate release. Oren Snowden suffers from end-stage kidney disease, and requires dialysis three times per week to survive. People like Oren Snowden with chronic kidney disease of any stage can make it “more likely to get very sick from COVID-19.” Centers for Disease Control and Prevention, *COVID-19 Medical Conditions* (updated May 11, 2023), available at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html

Under the 2023 proposed amendments to § 1B1.13, Oren Snowden’s underlying serious health conditions should have qualified him for compassionate release when said conditions have been found to place him at a higher risk of developing serious COVID-19 symptoms. This risk cannot be mitigated in a timely or adequate manner. A federal prison’s structure and physical layout increases the risk for spread of the virus and prevent those who are at risk from being able to engage in social distancing and self-quarantine precautions as recommended by the CDC. Conditions such as shared toilets and sinks, shared shower facilities, restrictions on movement, small

shared spaces, and bunks three feet apart create an unreasonable risk of harm to an inmate such as Oren Snowden. Taking into consideration Oren Snowden's underlying medical conditions, the sentence of confinement should have been reduced under the amended version of the compassionate release statute and guidelines.

C. A Writ of Certiorari Should be Granted When Information was Not Considered as to Oren Snowden's Medical Issues and Rulings of Other Courts Under Similar Circumstances.

Oren Snowden's motion under the compassionate release statute, 18 U.S.C. § 3582(c)(1)(A)(i), should have been granted due to documented and continuing medical issues. Oren Snowden submitted one or more motions for compassionate release that included sealed medical records detailing end-stage kidney disease following a lengthy hospitalization, with underlying Type 1 diabetes. Oren Snowden suffers an average of two seizures per month. Oren Snowden requires dialysis three times per week to survive, and is not consistently receiving said level of care while incarcerated.

As of the time of the 2023 order denying Oren Snowden's motion for compassionate release, the amendments to the "compassionate release" guidelines not only addressed circumstances from the COVID-19 pandemic, but also recognized that there are medical conditions that require long-term care that is not being provided while in custody. United States Sentencing Commission, *2023 Amendments in Brief*, available at: <https://www.ussc.gov/policymaking/amendments/2023-compassionate-release-amendment>. The specific language includes a circumstance by which:

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

United States Sentencing Commission, *Proposed Amendments to the Sentencing Guidelines (Preliminary)* (January 12, 2023), available at: https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230112_prelim_RF.pdf. Additionally, the proposed amendments to § 1B1.13 contemplated the ability of inmates to file motions for one of the following catchall “other” reasons:

(6) OTHER CIRCUMSTANCES – The defendant presents any other circumstance or a combination of circumstances similar in nature and consequence to any of the circumstances described [above].

(6) OTHER CIRCUMSTANCES – As a result of changes in the defendant’s circumstances [or intervening events that occurred after the defendant’s sentence was imposed], it would be inequitable to continue the defendant’s imprisonment or require the defendant to serve the full length of the sentence.

(6) OTHER CIRCUMSTANCES – The defendant presents an extraordinary and compelling reason other than, or in combination with, the circumstances described [above].

Id.

Many courts have found that end-stage kidney failure rises to the “extraordinary and compelling” level to grant a defendant’s motion for compassionate release. *See United States v. Brigham*, 2020 U.S. Dist. LEXIS 188253, 2020 WL 5995188 at *8 (E.D. Cal. Oct. 9, 2020); *see also United States v. Sarkisyan*, 2020 U.S. Dist. LEXIS 88082, 2020 WL 2542032 (N.D. Cal May 19, 2020). Dialysis-dependent

end-stage kidney failure “falls within the Commission’s definition of a qualifying terminal illness.” *United States v. Cotinola*, 487 F.Supp. 3d 1132 (D.N.M. May 18, 2020). Chronic kidney disease at “any stage is...a serious...medical condition...that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” *United States v. Johnson*, 2020 U.S. Dist. LEXIS 139033, 2020 WL 4501513, at *5 (N.D. Cal May 19, 2020).

In this case, in the federal district court’s written order denying Oren Snowden’s motion for compassionate release, the federal district court did not state that it had reviewed or considered the medical records in reaching its decision. Additionally, the federal district court based its denial upon case law examples with a COVID-19 finding, but not cases in which there was underlying kidney disease suffered by the defendant. The omission by the district court in the consideration of the supplement along with medical records thereto results in a “clearly erroneous finding of material fact” pursuant to *United States v. Dunn*, 728 F.3d 1151, 1155 (9th Cir. 2013).

Had the district court, and thereafter the United States Court of Appeals for the Ninth Circuit in its review, considered the provided medical information or relevant case law, compassionate release would have been granted for “long-term or specialized medical care, without which the defendant is at risk of serious deterioration in health or death, that is not being provided in a timely or adequate manner” or 18 U.S.C. § 3582(c)(1)(A)(i), the “other circumstances” portion of the proposed amendments. Oren

Snowden's end-stage kidney disease should qualify as a "medical condition that requires long-term or specialized medical care, without which the defendant is at risk of serious deterioration in health or death, that is not being provided in a timely or adequate manner" under the proposed amendments to § 1B1.13. Oren Snowden's end-stage kidney disease with underlying Type 1 diabetes and recurrent seizure activity should alternatively qualify under the "other circumstances" proposed amendments due to the continuing health and safety risk posed by his serious medical condition.

When extraordinary and compelling reasons are established, the district court must consider the relevant sentencing factors in Section 3553(a) to determine whether sentence reduction is warranted. 18 U.S.C. § 3582(c)(1)(A)(i). Under all of the circumstances in this case, the district court and the United States Court of Appeals for the Ninth Circuit should have concluded that the term of imprisonment Oren Snowden has already served was sufficient to satisfy the purposes of sentencing. The totality of the circumstances demonstrated that reducing Oren Snowden's sentence was "sufficient, but not greater than necessary, to comply with" all the purposes of sentencing under Section 3553(a).

The district court and thereafter the United States Court of Appeals for the Ninth Circuit abused its discretion in denying Mr. Snowden's motion for compassionate release. Oren Snowden respectfully requests that the petition for writ of certiorari be granted for compassionate release under 18 U.S.C. § 3582(c)(1)(A) based on the "extraordinary and compelling reasons" presented.

D. A Writ of Certiorari Should be Granted When the 3553(a) Factors Weighed in Favor of Oren Snowden’s Compassionate Release.

Oren Snowden’s history as well as his underlying medical conditions should have qualified him for compassionate release under the 18 U.S.C. § 3553(a) factors. In denying Oren Snowden’s motion for compassionate release, the district court rested its decision under the relevant standard of review “on a clearly erroneous finding of material fact.” *United States v. Dunn*, 728 F.3d at 1155 (9th Cir. 2013).

When extraordinary and compelling reasons are established, the district court must consider the relevant sentencing factors in Section 3553(a) to determine whether sentence reduction is warranted. 18 U.S.C. § 3582(c)(1)(A)(i). The district court denied the compassionate release motion based upon findings that Oren Snowden was a danger to the community, and that the other 18 U.S.C. § 3553(a) did not favor compassionate release. The district court specifically found that Oren Snowden had “multiple felon[y] criminal convictions for similar offenses” and “many misdemeanor convictions, evincing a general disrespect for the rule of law.”

Under the 18 U.S.C. § 3553(a) factors, Oren Snowden does not pose a danger to the community when a vast majority of Oren Snowden’s prior offenses were from well over a decade ago. This is analogous to a review in a pretrial release context, where the detention of a defendant cannot be on a presumption of danger to the community alone without proof of future dangerousness. *United States v. Dominguez*, 783 F.2d 702 (7th Cir. 1986). While the Criminal History Score confirms that Oren Snowden

had a troubled past, offenses from well over a decade ago do not demonstrate proof of current or future dangerousness:

- a. April 2007/over 17 years ago. Assault with a Deadly Weapon involving Oren Snowden in a dispute with his brother where a clothes iron that was kicked and the clothes iron broke the window of a vehicle in a parking lot.
- b. October 2007/approximately 17 years ago. Possession of a Controlled Substance with Intent to Sell involving 2.8 grams of marijuana and 6.9 grams of crack cocaine.
- c. October 2008/approximately 16 years ago. Driving Under the Influence for being under the influence of marijuana and involved in a motor vehicle accident.
- d. August 2009/approximately 15 years ago. Unregistered Vehicle and No Proof of Insurance. No other details provided.
- e. October 2010/approximately 14 years ago. Giving False Information to Public Officer.
- f. March 2011/approximately 13 years ago. Possession of a Firearm by a Convicted Felon with drugs and a firearm located.

In January 2017, after another six years elapsed without an offense, Oren Snowden obtained a charge of drug possession that remains unresolved due to the instant federal offense and related period of incarceration. The instant offense was for one

count of Possession with Intent to Distribute a Controlled Substance pursuant to 21 U.S.C. § 841(a)(1) and (b)(1)(C), and one count of Felon in Possession of a Firearm pursuant to 18 U.S.C. § 922(g)(1) and 924(a)(2). Pursuant to the analogous case of *Dominguez*, the district court should not rely on past indications of dangerousness to assess Oren Snowden's current motion for compassionate release. The significant period of incarceration of one hundred and five months per count concurrent, plus supervised release period of three years per count concurrent, results in a release from custody when Oren Snowden is or will be at least thirty-six years of age.

Under 18 U.S.C. § 3553(a)(1) and (2), including the nature and circumstances of the offense, the need for the sentence imposed to reflect the seriousness of the offense and providing just punishment, Oren Snowden's conviction ought to be reviewed in a compassionate release context under *United States v. Duarte*, 101 F. 4th 657 (9th Cir. 2024) reh'g en banc granted, opinion vacated, No. 22-50048, 2024 U.S. App. LEXIS 17601, 2024 WL 3443151 (9th Cir. July 17, 2024). In *Duarte*, the United States Court of Appeals for the Ninth Circuit vacated a conviction for firearm possession pursuant to 18 U.S.C. § 922(g)(1) because the conviction violated the defendant's Second Amendment rights and was unconstitutional to the defendant, a "non-violent offender who had served his time in prison and reentered society because he was an American citizen, and thus one of the people whom the Second Amendment protected." *Id.* Oren Snowden's conviction for firearm possession pursuant to 18 U.S.C. § 922(g)(1) should also be reviewed in the current compassionate release context post-*Duarte*, or any

decisions reached thereafter, considering it involved the same conviction at issue.

Another 18 U.S.C. § 3553(a) factor that does not appear to have been included in the district court's decision was providing the defendant with needed medical care in the most effective manner pursuant to 18 U.S.C. § 3553(a)(2)(D). Oren Snowden submitted one or more motions for compassionate release that included sealed medical records detailing end-stage kidney disease following a lengthy hospitalization, with underlying Type 1 diabetes. Oren Snowden suffers an average of two seizures per month. Oren Snowden requires dialysis three times per week to survive, and is not consistently receiving said level of care while incarcerated.

A factor under § 3553(a) that was not present at the time of sentencing was the spread of COVID-19 and the grave danger it posed to inmates and staff of suffering serious illness or death from its complications. The sentencing purpose of just punishment does not warrant a sentence that includes exposure to a life-threatening illness. *See United States v. Zukerman*, No. 16 Cr. 194 (AT), 2020 U.S. Dist. LEXIS 59588, at ** 15-16 (S.D.N.Y. Apr. 3, 2020).

Under all the circumstances in this case, the term of imprisonment that Oren Snowden already served is sufficient to satisfy the purposes of sentencing. The totality of the circumstances demonstrated that reducing Oren Snowden's sentence was "sufficient, but not greater than necessary, to comply with" all the purposes of sentencing under Section 3553(a). Oren Snowden respectfully requests that the petition for writ of certiorari be granted on this basis.

VII.

CONCLUSION

For the foregoing reasons, Oren Snowden respectfully asks this Court to grant this petition for writ of certiorari.

Dated: September 16, 2024.

Respectfully submitted,

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