No. _____

IN THE SUPREME COURT OF THE UNITED STATES

GREGORY BARTUNEK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

APPENDIX

Appellate Case No. 26-1024

District Case No. 8:17CR28

By

Gregory Bartunek, Pro Se
29948-047
Federal Correctional Institution
P.O. Box 9000
Seagoville TX, 75159

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UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 26-1024

United States of America

Plaintiff - Appellee

v.

Gregory Bartunek

Defendant - Appellant

Appeal from U.S. District Court for the District of Nebraska - Omaha
(8:17-cr-00028-RFR-1)

JUDGMENT

Before LOKEN, SMITH, and BENTON, Circuit Judges.

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

January 14, 2026

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

/s/ Susan E. Bindler

A01

12/19/25

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiff, v. GREGORY BARTUNEK, Defendant.	**8:17CR28** **MEMORANDUM AND ORDER**

This matter is before the Court on defendant Gregory Bartunek's ("Bartunek") latest motion for sentencing relief under 18 U.S.C. § 3582(c)(1)(A)(i) (Filing No. 599), often referred to as "compassionate release." On June 30, 2025 (Filing No. 588), the Court disposed of Bartunek's last motion for compassionate release. Following the denial of that motion, Bartunek appealed to the United States Court of Appeals for the Eighth Circuit which affirmed this Court's decision. Bartunek also filed a petition for writ of certiorari, which was likewise denied. This is Bartunek's fifth motion for compassionate release and it comes just four months after the last denial of relief on substantially the same grounds.

The Court has reviewed in detail the arguments made in Bartunek's 49-page brief, as it has with previous submissions. The only additional basis for relief advanced by Bartunek is that he "has a new advocate – the United States President, Donald J. Trump." Bartunek apparently sent a letter to the President with an idea of how the President could support and assist inmates like Bartunek. A response letter was apparently sent from the White House thanking Bartunek for sharing his idea and telling him "your creativity and determination reflect the spirit that make our country great. I wish you the very best of luck as you pursue your goals and work to bring your ideas to life." Bartunek cites this as another "extraordinary and compelling reason" to grant him relief.

A02

Such an exchange of correspondence does not rise to the level of being an extraordinary or compelling reason to reduce Bartunek's sentence or to release him as he seeks. The present submission, beyond the notation of the correspondence with the White House, presents no new issues.

For the reasons stated the Court's four prior rulings on the same issues in Bartunek's previous requests for compassionate relief, his latest Motion for Reduction in Sentence/Compassionate Release (Filing No. 599) is denied.

IT IS SO ORDERED.

Dated this 11th day of December 2025.

BY THE COURT:

Robert F. Rossiter, Jr.
Chief United States District Judge

A03

18 U.S.C. § 3553. Imposition of a sentence

(a) Factors to be considered in imposing a sentence. The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider—

(1) the nature and circumstances of the offense and the history and characteristics of the defendant;

(2) the need for the sentence imposed—

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and the sentencing range established for—

(A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—

(i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(ii) that, except as provided in section 3742(g) [18 USCS § 3742(g)], are in effect on the date the defendant is sentenced; or

(B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have

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A04

yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);

(5) any pertinent policy statement—

(A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and

(B) that, except as provided in section 3742(g) [18 USCS § 3742(g)], is in effect on the date the defendant is sentenced.[;]

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and

(7) the need to provide restitution to any victims of the offense.

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

(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;

28 U.S.C. § 994. Duties of the Commission

(t) The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

28 U.S.C. § 2255. Federal custody; remedies on motion attacking sentence

(a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.

(b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

(c) A court may entertain and determine such motion without requiring the production of the prisoner at the hearing.

(d) An appeal may be taken to the court of appeals from the order entered on the motion as from the final judgment on application for a writ of habeas corpus.

(e) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

(f) A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of—

(1) the date on which the judgment of conviction becomes final;

(2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;

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(3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

(g) Except as provided in section 408 of the Controlled Substances Act [21 USCS § 848], in all proceedings brought under this section, and any subsequent proceedings on review, the court may appoint counsel, except as provided by a rule promulgated by the Supreme Court pursuant to statutory authority. Appointment of counsel under this section shall be governed by section 3006A of title 18.

(h) A second or successive motion must be certified as provided in section 2244 [28 USCS § 2244] by a panel of the appropriate court of appeals to contain—

(1) newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense; or

(2) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable.

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Rule 11. Pleas

(c) Plea Agreement Procedure.

(1) *In General.* An attorney for the government and the defendant's attorney, or the defendant when proceeding pro se, may discuss and reach a plea agreement. The court must not participate in these discussions. If the defendant pleads guilty or nolo contendere to either a charged offense or a lesser or related offense, the plea agreement may specify that an attorney for the government will:

(A) not bring, or will move to dismiss, other charges;

(B) recommend, or agree not to oppose the defendant's request, that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request does not bind the court); or

(C) agree that a specific sentence or sentencing range is the appropriate disposition of the case, or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor does or does not apply (such a recommendation or request binds the court once the court accepts the plea agreement).

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A09

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

(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 orig- inal 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 deter- mines 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 de- fendant 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 compel- ling reasons exist under any of the following circumstances or a combina- tion 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 be- cause of the aging process,

that substantially diminishes the ability of the defendant to pro- vide self-care within the environment of a correctional facility and from which

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A19

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 deteriora- tion 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 emer- gency declared by the appropriate federal, state, or local au- thority;

(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 man- ner.

(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 disabil- ity or a medical condition.

(B) The incapacitation of the defendant's spouse or registered part- ner 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 relation- ship 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***"

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2994804
A11

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);

that was committed by, or at the direction of, a correctional officer, an employee or contractor of the Bureau of Prisons, or any other individ- ual who had custody or control over the defendant.

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 a finding in an administrative proceeding, unless such proceedings are unduly delayed or the defendant is in imminent dan- ger.

(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 impris- onment, a change in the law (other than an amendment to the Guide- lines 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 considera- tion 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

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29948047
A12

reduction.

(d) REHABILITATION OF THE DEFENDANT.—Pursuant to 28 U.S.C. § 994(t), re- habilitation of the defendant is not, by itself, an extraordinary and compel- ling reason for purposes of this policy statement. However, rehabilitation of the defendant while serving the sentence may be considered in combi- nation with other circumstances in determining whether and to what ex- tent a reduction in the defendant's term of imprisonment is warranted.

(e) FORESEEABILITY OF EXTRAORDINARY AND COMPELLING REASONS.—For pur- poses of this policy statement, an extraordinary and compelling reason need not have been unforeseen at the time of sentencing in order to war- rant 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 noti- fied.

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).

Historical Note	Effective November 1, 2006 (amendment 683). Amended effective November 1, 2007 (amendment 698); November 1, 2010 (amendment 746); November 1, 2016 (amendment 799); November 1, 2018 (amendment 813); November 1, 2023 (amendment 814).

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2994804
A13

§2G2.2. Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor

(a) Base Offense Level:

(1) **18**, if the defendant is convicted of 18 U.S.C. § 1466A(b), § 2252(a)(4), § 2252A(a)(5), or § 2252A(a)(7).

(2) **22**, otherwise.

(b) Specific Offense Characteristics

(1) If (A) subsection (a)(2) applies; (B) the defendant's conduct was lim- ited to the receipt or solicitation of material involving the sexual ex- ploitation of a minor; and (C) the defendant did not intend to traffic in, or distribute, such material, decrease by **2** levels.

(2) If the material involved a prepubescent minor or a minor who had not attained the age of 12 years, increase by **2** levels.

(3) (Apply the greatest):

(A) If the offense involved distribution for pecuniary gain, increase by the number of levels from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the retail value of the material, but by not less than **5** levels.

(B) If the defendant distributed in exchange for any valuable consid- eration, but not for pecuniary gain, increase by **5** levels.

(C) If the offense involved distribution to a minor, increase by **5** lev- els.

(D) If the offense involved distribution to a minor that was intended to persuade, induce, entice, or coerce the minor to engage in any illegal activity, other than illegal activity covered under subdivi- sion (E), increase by **6** levels.

(E) If the offense involved distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by **7** lev- els.

(F) If the defendant knowingly engaged in distribution, other than distribution

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described in subdivisions (A) through (E), increase by **2** levels.

(4) If the offense involved material that portrays (A) sadistic or masochistic conduct or other depictions of violence; or (B) sexual abuse or exploitation of an infant or toddler, increase by **4** levels.

(5) If the defendant engaged in a pattern of activity involving the sexual abuse or exploitation of a minor, increase by **5** levels.

(6) If the offense involved the use of a computer or an interactive com- puter service for the possession, transmission, receipt, or distribution

of the material, or for accessing with intent to view the material, in- crease by **2** levels.

(7) If the offense involved—

(A) at least 10 images, but fewer than 150, increase by **2** levels;

(B) at least 150 images, but fewer than 300, increase by **3** levels;

(C) at least 300 images, but fewer than 600, increase by **4** levels; and

(D) 600 or more images, increase by **5** levels.

(c) Cross Reference

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, apply §2G2.1 (Sexually Exploiting a Minor by Produc- tion of Sexually Explicit Visual or Printed Material; Custodian Per- mitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), if the resulting offense level is greater than that determined above.

Commentary

Statutory Provisions: 18 U.S.C. §§ 1466A, 2252, 2252A(a)–(b), 2260(b). For additional statutory provision(s), *see* Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

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A15

"***Computer***" has the meaning given that term in 18 U.S.C. § 1030(e)(1).

"***Distribution***" means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, related to the transfer of material involving the sexual exploitation of a minor. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

"***Distribution for pecuniary gain***" means distribution for profit.

"***The defendant distributed in exchange for any valuable consideration***" means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other child pornographic material, preferential access to child pornographic material, or access to a child.

"***Distribution to a minor***" means the knowing distribution to an individual who is a minor at the time of the offense.

"***Interactive computer service***" has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

"***Material***" includes a visual depiction, as defined in 18 U.S.C. § 2256.

"***Minor***" means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

"***Pattern of activity involving the sexual abuse or exploitation of a minor***" means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same minor; or (C) resulted in a conviction for such conduct.

"***Prohibited sexual conduct***" has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

"***Sexual abuse or exploitation***" means any of the following: (A) conduct described in 18 U.S.C. § 2241, § 2242, § 2243, § 2251(a)–(c), § 2251(d)(1)(B), § 2251A, § 2260(b), § 2421, § 2422, or § 2423; (B) an offense under state law, that would have been an offense under any such section if the offense had occurred within the special maritime or territorial jurisdiction of the United States; or (C) an attempt or conspiracy to commit any of the offenses under subdivisions (A) or (B). "Sexual abuse or exploitation" does not include possession, accessing with intent to view, receipt, or trafficking in material relating to the sexual abuse or exploitation of a minor.

2. **Application of Subsection (b)(3)(F).**—For purposes of subsection (b)(3)(F), the defendant "knowingly engaged in distribution" if the defendant (A) knowingly committed the distribution,

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29948047
A16

(B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.

3. **Application of Subsection (b)(4)(A).**—Subsection (b)(4)(A) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, access with intent to view, receive, or distribute such materials.

4. **Interaction of Subsection (b)(4)(B) and Vulnerable Victim (§3A1.1(b)).**—If subsec- tion (b)(4)(B) applies, do not apply §3A1.1(b).

5. **Application of Subsection (b)(5).**—A conviction taken into account under subsection (b)(5) is not excluded from consideration of whether that conviction receives criminal history points pursuant to Chapter Four, Part A (Criminal History).

6. **Application of Subsection (b)(7).—**

(A) **Definition of "Images".**—"***Images***" means any visual depiction, as defined in 18 U.S.C. § 2256(5), that constitutes child pornography, as defined in 18 U.S.C. § 2256(8).

(B) **Determining the Number of Images.**—For purposes of determining the number of images under subsection (b)(7):

(i) Each photograph, picture, computer or computer-generated image, or any similar vis- ual depiction shall be considered to be one image. If the number of images substan- tially underrepresents the number of minors depicted, an upward departure may be warranted.

(ii) Each video, video-clip, movie, or similar visual depiction shall be considered to have 75 images. If the length of the visual depiction is substantially more than 5 minutes, an upward departure may be warranted.

7. **Application of Subsection (c)(1).—**

(A) **In General.**—The cross reference in subsection (c)(1) is to be construed broadly and includes all instances where the offense involved employing, using, persuading, inducing, en- ticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing any visual de- piction of such conduct or for the purpose of transmitting live any visual depiction of such conduct.

(B) **Definition.**—"***Sexually explicit conduct***" has the meaning given that term in 18 U.S.C. § 2256(2).

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A17

8. **Cases Involving Adapted or Modified Depictions.**—If the offense involved material that is an adapted or modified depiction of an identifiable minor (*e.g.*, a case in which the defendant is convicted under 18 U.S.C. § 2252A(a)(7)), the term "material involving the sexual exploitation of a minor" includes such material.

9. **Upward Departure Provision.**—If the defendant engaged in the sexual abuse or exploitation of a minor at any time (whether or not such abuse or exploitation occurred during the course of the offense or resulted in a conviction for such conduct) and subsection (b)(5) does not apply, an upward departure may be warranted. In addition, an upward departure may be warranted if the defendant received an enhancement under subsection (b)(5) but that enhancement does not ade- quately reflect the seriousness of the sexual abuse or exploitation involved.

Background: Section 401(i)(1)(C) of Public Law 108–21 directly amended subsection (b) to add subdivision (7), effective April 30, 2003.

Historical Note	Effective November 1, 1987. Amended effective June 15, 1988 (amendment 31); November 1, 1990 (amendment 325); November 1, 1991 (amendment 372); November 27, 1991 (amendment 435); November 1, 1996 (amendment 537); November 1, 1997 (amendment 575); November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); April 30, 2003 (amendment 649); November 1, 2003 (amendment 661); November 1, 2004 (amendment 664); November 1, 2009 (amendments 733 and 736); November 1, 2016 (amendment 801).

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IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Case No. 26-1024

UNITED STATES OF AMERICA

Plaintiff-Appellee,

v.

GREGORY BARTUNEK,

Defendant-Appellant

BRIEF OF APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA
(8:17-cr-00028-RFR-1)

Gregory Bartunek
29948-047
Federal Correctional Institution
P.O. Box 9000
Seagoville, TX 75159

SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT

In support of Bartunek's current and previous motions for a compassuionate Release, he included over two dozen extraordinary and compelling reasons to grant relief which were similar in gravity to the extraordinary and compelling reasons to grant relief specified in the Sentencing Commission's § 1B1.13 Program Statement, as required by 18 U.S.C. § 3582(c)(1)(A).

And, even though many other courts throughout this nation granted compassionate releases based on the vast majority of Bartunek's extraordinary and compelling reasons, taken alone or in combination; and Bartunek presented unequivocal facts showing that these reasons were extraordinary and compelling, by definition; and his time-served sentence met the 18 U.S.C. § 3553(a) sentencing factors; and that there was over a 99% certainty that he would not present a danger to society if released, the district court still denied him relief.

In the court's denials,, it erred by refusing to consider several nontrivial extraordinary and compelling reasons, simply ingoring them or assuming they were beyond the scope of the 18 U.S.C. § 3582(c)(1)(A) reasons to grant relief, when they clearly were not; refusing to accept valid scientific evidence supporting Bartunek's motions; using false information and erroneous beliefs to support its denials; misinterpreting the § 1B1.13 Program Statement; and misunderstanding Congress' intent to materially reduce the prison population using compassionate releases.

As a result of these errors, Bartunek's compassionate release must be granted. Bartunek requests 15 minutes of oral argument.

A20

TABLE OF CONTENTS

SUMMARY OF THE CASE AND REQUEST FOR ORAL ARGUMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

JURISDICTIONAL STATEMENT 1

STATEMENT OF THE ISSUES 2

STATEMENT OF THE CASE 2

I. Procedural History 2

II. Extraordinary and Compelling Reasons 2

III. The District Court's Findings 4

A. Extraordinary and Compelling Reasons Ignored 4

B. Manifest Errors Committed 5

SUMMARY OF THE ARGUMENT 7

ARGUMENT 8

I. Standard of Review 8

II. Legal Framework 8

III. The Court Erred in Refusing to Rule that Bartunek's Time-Served Sentence Meets the § 3553(a) Sentencing Factors 12

IV. The Court Erred in Ruling that None of Bartunek's Reasons Were Extraordinary and Compelling, Either Taken Alone, or in Combination with Eachother 16

A. The Court Erred in Rejecting Valid Scientific Evidence 23

B. The Court Erred in Trivializing Highly Important Reasons 23

V. Selected Authorities Support Bartunek's Motions 25

VI. Summary of Bartunek's Extraordinary and Compelling Reasons 29

VII. Standard of Proof 30

CONCLUSION 30

A21

TABLE OF AUTHORITIES

Cases

Concepcion v. U.S., 142 S. Ct. 2389 (2022) 2, 9, 10, 21, 25

Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018) 22

Radaanower v. Touch Ross & Co., 426 US 148 (1976) 21

Wachovia Bank v. Schmidt, 546 US 303 (2006) 22

U.S. v. Abraham, 994 F. Supp. 2d 773 (D. Neb. 2013) 2, 25

U.S. v. Amerson, 2023 U.S. Dist. LEXIS 120004 (E.D.N.Y. 2023) 2, 27

U.S. v. Black, 999 F.3d 1071 (7th Cir. 2021) 13

U.S. v. Crandall, 25 F.4th 582, 2022 U.S. App. LEXIS 3526 (8th Cir. 2022) 17

U.S. v. Cuevas, 2021 U.S. Dist. LEXIS 66363 (E.D. Ark. 2021) 2, 27

U.S. v. Dillon, 560 US 817 (2010) 30

U.S. v. Harper, 2024 WL 1053547 (N.D. Ga. 2024) 8

U.S. v. Kerby, 2022 U.S. Dist. LEXIS 204371 (D. Neb. 2022) 27

U.S. v. McCoy, 981 F.3d 271 (4th Cir. 2020) 21

U.S. v. McDonald, 944 F.3d 769 (8th Cir. 2019) 8

U.S. v. Penglase, 2023 U.S. Dist. LEXIS 46024 (D. Minn. 2023) 27

U.S. v. Perry, 2024 U.S. Dist. LEXIS 72490 (D. Neb. 2024) 27

U.S. v. Rodriguez-Mendez, 65 F.4th 1000, 2023 U.S. App. LEXIS 9909 (8th Cir. 2023) 9, 19

U.S. v. Rollins, 540 F. Supp. 3d 804 (N.D. Ill. 2021) 28

U.S. v. Roper, 72 F.4th 1097 (10th Cir. 2023) 9, 19

U.S. v. Trenkler, 47 F.4th 42 (1st Cir. 2022) 20

U.S. v. Wesley, 78 F.4th 1221, 2023 U.S. App. LEXIS 22591 (10th Cir. 2023) 20, 21

A22

Statutes

18 U.S.C. § 3231 1

18 U.S.C. § 3553(a) 2, 4-7, 10, 13, 16-19, 25, 27

18 U.S.C. § 3582 ..... 1, 2, 7-10, 12, 16, 19-22

28 U.S.C. § 994(t) 10

28 U.S.C. § 1291 1

28 U.S.C. § 2255 ..... 19, 20, 21, 22

Federal Rules of Criminal Procedure

Fed. R. Crim. P. 11(c)(1)(C) 28

Sentencing Guidelines

U.S.S.G. § 1B1.13 ..... 2, 4-7, 10, 13, 16-19, 25, 27

U.S.S.G. § 2G2.2 ..... 7, 15, 25, 28

JURISDICTIONAL STATEMENT

Jurisdiction in the U.S. District Court was based on 18 U.S.C. § 3231, because Bartunek was charged and convicted of an offense against the laws of the United States. Bartunek filed an 18 U.S.C. § 3582 motion to reduce his sentence on October 9, 2025, which was denied by the district court on December 11, 2025, the day he received the court's denial.

This court's jurisdiction is based on 28 U.S.C. § 1291, which provides for jurisdiction over a final judgment for a U.S. District Court.

STATMENT OF THE ISSUES

I. WHETHER THE DISTRICT COURT VIOLATED DUE PROCESS AND THE LAW BY FAILING TO GRANT BARTUNEK'S MOTION FOR COMPASSIONATE RELEASE WHEN IT BASED ITS DECISION ON ARBITRAIRNESS, CAPRICIOUSNESS, AND IRRATIONALITY, RATHER THAN ON THE FACTS, LAW, LOGIC, AND REASON

Concepcion v. U.S., 142 S. Ct. 2389 (2022)

U.S. v. Abraham, 994 F. Supp. 2d 773 (D. Neb. 2013)

U.S. v. Amerson, 2023 U.S. Dist. LEXIS 120004 (E.D.N.Y. 2023)

U.S. v. Cuevas, 2021 U.S. Dist. LEXIS i6373 (E.D. Ark. 2021)

STATEMENT OF THE CASE

I. Procedural History

Bartunek has been imprisoned since February 16, 2017. And. his current projected release date is August 13, 2031. Bartunek's current § 3582 motion (Filing No. 599) was denied by the district court (Filing No. 601), finding there were no extraordinary and compelling reasons to grant relief.

He previously filed four other § 3582 motions (Filing Nos. 424, 508, 511, 555, 556, 585) which were also denied (Filing Nos. 425, 514, 567, 588). The basis for the denials was that none of Bartunek's reasons to reduce his sentence were extraordinary and compelling; many were beyond the scope of a § 3582 motion; rejecting any reason which didn't precisely match one of the examples listed in the U.S.S.G. § 1B1.13 Program Statement.

II. Extraordinary and Compelling Reasons

In support of Bartunek's current an previous motions for a compassionate release, he included over two dozen extraordinary

A25

and compelling reasons to grant relief; advanced age; heridity and environment; deteriorating health due to the aging process; risk of severe illness or death from infectious diseases; harshness of his conditions of confinement; unusually long sentence; trial penalty; prosecutor's extraordinary behavior severly biasing the court's judgments; the court's mistaken sentencing beliefs; unconstitutional sentencing enhancements; sentencing disparities; cost of Bartunek's unnecessary continued incarceration; unmet need for medical treatment; exemplary behavior in prison, rehabilitation; extremely low recidivism rates; strong family support; a sound release plan; support by President Trump; luck of the draw; using outdated and inflated sentencing statistics; court's misunderstanding of Congress' intent to significantly increase compassionate releases; denial of the zero-point criminal history reduction; downward adjustment of his recidivism rate; the sentence was essentially a death sentence; age alone; prosecution by the federal government rather than the state; and court's manifest errors in fact and law.

And, even though other courts throughout the nation granted compassionate releases based on the vast majority of Bartunek's extraordinary and compelling reasons, and Bartunek presented unequivocal facts showing that his reasons were extraordinary and compelling, and his time-served sentence met the 18 U.S.C. § 3553(a) sentencing factors, and that there was over a 99% certainty that he would not present a danger to any person or his community, the district court still refused use logic and reason and follow the law to grant Bartunek's motion.

III. The District Court's Findings

Of all Bartunek's reasons, the court only considered one possible extraordinary and compelling reason: Bartunek's "age and documented medical issues." (Filing No. 514, p. 5). But it rejected this reason because Bartunek's circumstances didn't exactly match those in the example under U.S.S.G. § 1B1.13(b)(2).

A. Extraordinary and Compelling Reasons Ignored

In the court's most recent Order and Memorandum, it stated "[t]he only additional basis for relief advanced by Bartunek is that he 'has a new advocate-the United States President Donald J. Trump.'" (Filing No. 601, p. 1). However, there were also nine new reasons sited in Bartunek's motion that were simply ignored by the court: luck of the draw-the length of his sentence was not based on a carefull study of the facts and law, but rather dependent on the prosecutor and judge assigned to his case; basing his sentence on outdated and inflated sentencing statistics adversly affecting the length of his sentence; the court's misunderstanding of Congress' intent to materially increase the use of compassionate releases; unreasonable denial of the zero-pont criminal history reduction; newly computed downward reduction of his recidivism rate; his sentence was essentially a death sentence-the length of his sentence exceeds his expected life; age taken alone; prosecution by the federal government rather than the state; and the court's manifest errors in fact and law.

The court also failed to address several other extraordinary and compelling reasons in Bartunek's past motions: rehabilitation

efforts; lack of criminal history; no disciplinary offenses in prison; good release plan; strong family support; sentencing errors; mistaken sentencing beliefs; unconstitutional sentencing enhancements; harshness of confinement; trial penalty; and the prosecutor's extraordinary actions taken to convince the court to maximize the length of Bartunek's sentence.

B. Maifest Errors Commited

In the court's previous denials, it made several material errors in judgment when assessing Bartunek's extraordinary and compelling reaons for relief, because they were not based on the facts, law, or any reasonable conclusions.

One of the first extraordinary and compelling reasons Bartunek sited in his motions was the imminent risk of severe illiness or death from COVID-19. (Filing Nos. 525, p. 2-3; 508, p. 11-12). The court denied his first motion on procedural grounds without reaching the merits of this reason.

In denying Bartunek's second motion, it stated, "[Bartunek] also complains of the risk of COVID-19 in BOP facilities generally and to him specifically. That broad-brush claim without more, including faculty-specific, and risk-specific evidence does not provide a basis for relief." (Filing No. 567, p. 4). But this is unequivocally false, as Bartunek's circumstances precisely met the Medical Circumstances under U.S.S.G. § 1B1.13(b)(1)(D). And, Bartunek, did provide specific evidence supporting this extraordinary and compelling reason. (Filing Nos. 508, Ex. 10; 599, p. 24).

Another extraordinary and compelling reason Bartunek sited was that the BOP failed to provide him any medical treatment for several conditions that he is suffering from under U.S.S.G. § 1B1.13(b)(1)(C). (Filing Nos. 555, p. 12-13; 599, p. 23). But the court ruled that there was no "evidence that the conditions complained of cannot be adequately monitored and treated by the BOP." (Filing No. 567, p. 4). Clearly, there was such evidence presented in Bartunek's motions and exhibits included therein, showing the court's claim was totally false.

Bartunek also raised the issue that his trial penalty of 10-13 years was an extraordinary and compelling reason to reduce his sentence. (Filing No. 508, p. 6-7). But the court tried to justify this gross disparity, believing that "[s]ome of that evidence [used during sentencing] was not available when Bartunek rejected the government's plea offer." (Filing No. 514, p. 5). The facts show that all evidence was available well before the plea was offerred to Bartunek. (See Filing No. 599, p. 5-8). Again, the court's belief regarding this reason was unequivocally false.

And, another false belief held by the court was that Bartunek's age at the time of the crime and at sentencing was a factor against a reduction in his sentence. (Filing Nos. 514, p. 5; 567, p. 4). However, according to the Sentencing Commission's statistices and other scientific studies, Bartunek's advanced age is a postitive factor supporting a sentence reduction since his recidivism rate is lower than younger offernders regardless of when it is measured. (Filing 599, p. 19-21).

A29

In Bartunek's motions he sited several other extraordinary and compelling reasons supported by evidence from the Sentencing Commission, the law, and other scientific studies, which showed: 1) Bartunek's offense level under U.S.S.G. § 2G2.2 was outdated and unreasonable, because for the vast majority of offenders the level (prior to acceptance of responsibility) is so great that the resulting sentencing range includes the maximum statutory sentence of 20 years; 2) his alleged underlying conduct was no more, or less egregious, than these offenders; 3) his offense level was based on erroneous facts and assumptions, resulting in an overstated offense level and guidelines sentencing range; and 4) Bartunek's sentence was unusually long compared almost all other offenders. (See Filing No. 599, p. 17-18, 26-29, 33, Exhibits 2-5). But, the court refused to accept these facts, and failed to rule whether these were extraordinary and compelling reasons to grant relief.

SUMMARY OF THE ARGUMENT

In the court's denial of Bartunek's current and previous motions to reduce his sentence, it erred by refusing to consider several nontrivial extraordinary and compelling reasons, simply ignoring them or assuming they were beyond the scope of the 18 U.S.C. § 3582(c)(1)(A) reasons to grant relief, when they clearly were not; refusing to accept valid scientific evidence supporting Bartunek's motions; using false information and erroneous beliefs to support its denials; misinterpreting the § 1B1.13 Program Statement; and misunderstanding Congress' intent to materially reduce the prison population using compassionate releases.

ARGUMENT

I. Standard of Review

This court reviews de novo the applicability of the First Step Act to a defendant's case, including whether a defendant is eligible for a sentence reduction. And, it reviews for an abuse of discretion the district court's decision to grant or deny an authoriced sentence reduction. (United States v. McDonald, 944 F.3d 769, 771 (8th Cir. 2019).

II. Legal Framework

"Compassionate release exists for the purpose of releasing incarcerated individuals when continued imprisonment no longer serves the goals of our justice system." United States v. Harper, 2024 WL 1053547, at *1 (N.D. Ga. Mar. 11, 2024). "Section 3582(c)(1)(A)(i) of the 1984 Sentencing Reform Act codifies this process." Id. In 2018, when Congress enacted the First Step Act, it expanded the scope of § 3582(c)(1)(A) with the aim of "Increasing the use and transparency of compassionate release." First Step Act of 2018, Pub. L. No. 115-391, § 603, 132 Stat 5194 (Dec. 21, 2018).

The compassionate release provision in § 3582(c)(1)(A) authorizes a court to modify a 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 ... and that such reduction is consistent with the applicable policy statements issued by the Sentencing Commisson."

In 2022 the Supreme Court clarified the reasons which could be used to reduce a sentence. (Concepcion v. United States, 597 US 482, 142 S. Ct. 2389, 321 L. Ed. 2d 731 (2022). Although Concepcion dealt with a sentence reduction under Section 404 of the First Step Act, the same reasoning in that case applies to a sentence reduction under Seciton 603 in cases like Bartunek's.

Concepcion makes a very broad and undeniable statement that the reasons to reduce a sentence are not limited to only one part of the First Step Act. (See Part II of Concepcion at 2398-2401). Concepcion also speaks directly to what a district court may consider "when deciding" both "whether to modify a sentence at all, and if so, to what extent." (Id. at 2400). (emphasis added). And, therefore, the reasoning in Concepcion applies to both the threshold or elibibility (extraordinary and compelling reasons) to seek a reduction in sentence, as well as, the size of the reduction (3553(a) factors) in an 18 U.S.C. § 3582(c)(1)(A) motion under section 603 of the First Step Act. (See also United States v. Roper, 72 F.4th 1097, 1100-1100 (10th Cir. 2023) ("[Concepcion's] understanding of the district court's broad discretion equally applied to § 3582(c)(1)(A)" and the "extraordinary and compelling reasons" to grant relief; United States v. Rodriguez-Mendez, 65 F.4th 1000, 2023 U.S. App. LEXIS 9909 *8 (8th Cir. 2023) (the "court's reasoning [in Concepcion] would apply when a motion for compassionate release establishes an extraordinary and compelling reason for relief other than a nonretroactive change in the law.").

A32

The Concepcion court also stated that "district courts are always obligated to consider nonfrivolous arguments presented by the parties" in any sentencing proceeding. (Concepcion at 2396). And, the "only limitations on a court's discretion to consider any relevant materials at an initial sentencing or in modifying that sentence are those set forth by Congress in a statute or by the Constitution." (Id. at 2400).

The only limitations that either the Constitution or Congress have imposed on sentence reductions are in the 18 U.S.C. § 3582 and 28 U.S.C. § 994(5) statutes. And, Congress tasked the Sentencing Commission 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." (18 U.S.C. § 994(t)).

And, the only limitations in the Commission's applicable Program Statement, § 1B1.13, are: 1) any extraordinary and compelling reason must be similar in gravity to health, age, or family circumstances, or victim of abuse while in prison (§ 1B1.13(b)(5)); 2) a nonretroactive change in the law or the guidelines shall not be an extraordinary and compelling reason, unless it significantly reduces an unusually long sentence (§ 1B1.13(c)); and 3) rehabilitation alone is not an extraordinary and compllling reason (§ 1B1.13(d)).

Based on the definitions of nonfrivolous and gravity, it follows that a reason is extraordinary and compelling if it is important, as long as the reason is not forbidden by the Commission's § 1B1.13 Program Statement. But, how important

A 33

should it be? What may seem very important to one person may not be that important to another. As, the saying goes, "one man's trash is another man's treasure."

Another definition can be found in Black's Law Dictionary, which states that "extraordinary" is "[b]eyond what is usual, customary, regular, or common" and "compelling" is a reason for which "irreparable harm or injustice would result if [the relief] is not [granted]." (Black's Law Dictionary (2019)).

Another definition for beyond is "greater than." And, another meaning for common is "average." It follows that a reason is "extraordinary" if it is "greater than average." This definition lends itself well to emperical data compiled by the Sentencing Commission, Bureau of Prisons (BOP), other government agencies, and academic scholars.

An example of this would be to use the BOP's FSA Recidivism Risk Assessment report, which takes into account several factors which are known to reduce recidivism, such as age, low or no criminal history, education, etc. And the inmate's time-served could be compared to the average time-served based on the type of crime. An inmate would meet the extraordinary and compelling reaon to reduce his sentence based on theses factors as follows:

MINIMUM RISK INMATES WHO HAVE SERVED ABOVE-AVERAGE SENTENCES

a. Inmate's BOP FSA Risk Assessment meets the following:

Minimum Risk Level;

Zero Violent Offense Score;

Zero Criminal History Score;

Total Scores of Zero or Less; and

A34

b. Inmate has served a sentence greater than the average time served by inmates convicted of the same type of crime, derived from the average length of sentences compiled by the sentencing commission.

Clearly, a person meeting these conditions, who has an over 95% certainty of leading a crime-free life if released, and has served more time than the average offender convicted of the same crime, should be eligible for a sentence reduction. And it also addresses the need to reduce sentencing disparities, by allowing judges to give a second chance to defendants who have unusually long sentences. And it is much less subjective than other extraordinary and compelling reasons, which would bring more consistency in determining who was eligible for a sentence reduction.

But, in Bartunek's case, the court refused to accept this or any other of his reasons, which were extraordinary and compelling based on the forgoing definitions of this phrase. Instead, it arbitrarily, capriciously, and irrationally imposed additional limitations, ignoring or rejecting valid nonfrivolous extraordinary and compelling reasons to grant relief, and violating due process and the law.

III. The Court Erred in Refusing to Rule that Bartunek's Time-Served Sentence Meets the § 3553(a) Sentencing Factors

18 U.S.C. § 3582(c)(1)(A) authorizes a court to modify a term of imprisonment "after considering the factors set forth in section 3553(a)." And, in Bartunek's current motion, he specifically asked the court to rule that his time-served sentence would meet the § 3553(a) sentencing Factors. However,

the court failed to do so, as it has in all of it previous rulings.

Instead, the court simply enumerated some of the sentencing factors listed in § 3553(a), and stated that Bartunek's factors were "largely the same factors the Court considered in granting a downward variance and imposing Bartunek's sentence in March 2019." (Filing Nos. 514, p.3; 567, p. 2).

This is simply untrue. The only factors in Bartunek's motions that the court considered were his age and health. And, regardless of whether or not these or other factors were known or anticipated at sentencing, this doesn't preclude their use to support a sentence reduction. See U.S.S.G. § 1B1.13(e). And, it "did not signal that it took into account other statutory changes, including the First Step Act, that could be relevant and alter the weight of these factors." United States v. Black, 999 F. 3d 1071, 1071 (7th Cir. 2021).

And one extremely important factor is the need to avoid unwarranted sentencing disparities, § 3553(a)(6). This was one of the primary reasons for passing the Sentencing Reform Act in 1984. And even though several of Bartunek's extraordinary and compelling reasons showed that his sentencing disparity was unwarranted, they were simply ignored or rejected out of hand by the court.

Bartunek's reasons include the fact that his sentence was based on an outdated and unreasonable guideline; his offense level was miscalculated; his sentence was premised on the 2017 sentencing statistics instead of the 2019 statistics, leading

A36

the court to believe that the average sentence was greater than it was when Bartunek was sentenced; and the 2021 U.S.S.C. Report on child pornography offenders, which was not available at sentencing, which showed that Bartunek's alleged underlying conduct was no different than the vast majority of other offenders, and yet, his sentence was extremely long compared to other offeners sentenced in 2019. Also, unknown to the court at sentencing was that Bartunek's downward variance of 15% was significantly less than the average downward variance of about 60% for other Nebraska offenders sentenced under the U.S.S.G. § 2G2.2 guideline. (See Statistical Study of Child Pornography Cases in Nebraska (2022), Filing Nos. 458, p. 35-52; 508, Exhibit 5).

In addition to these factors, there were several other personal factors which were not presented or known at sentencing including Bartunek's extremely low recidivism rates; his post-sentencing health problems; and his life expectancy, essentially turning his sentence into a death sentence; just to name a few.

The court simply avoided the question of whether or not Bartunek's time-served sentence would meet the § 3553(a) sentencing factors, only seemly to address the question of whether Bartunek's reasons were extraordinary and compelling. But based on the facts and law, any reasonable person would agree that his time-served sentence does meet the § 3553(a) sentencing factors, and that keeping him in prison no longer serves the goals of our justice system.

Bartunek has repeatedly shown that his time-served sentence is greater than necessary to serve these goals using the facts, law, case law, the district court's previous rulings, science and mathematics, and sound logic and reasoning. (See Filing Nos. 555, p. 3-7; 585, p. 7-8; 599, p. 7-8). The facts showing that Bartunek's time-served sentence meets the § 3353(a) sentencing factors are: 1) Bartunek was a first-time offender; 2) he was not convicted of a violent crime; 3) his alleged underlying conduct is no mor egregious than the average offender; 4) his time-served sentence is greater thatn the average and median times other offenders serve, having completed their entire sentences; 5) the vast majority of offenders sentenced in 2019, the same year Bartunek was sentenced, have been released from prison; 6) his time-served sentence is greater than several other offenders in the Eighth Circuit, which have been granted compassionate releases; 7) Bartunek's recidivism rates are 40 times lower than the average rate of other offenders who have been released from prison; and 8) his time-served sentence is greater than the time he would have served if he had accepted his plea, even taking into account the trial penalty imposed by the sentencing guidelines. (The source of this empherical data is from the Sentencing Commission; and all offenders mentioned were sentenced under the same § 2G2.2 guidelines, the same guidelines used in Bartunek's sentencing proceeding).

Clearly, any reasonable person would agree that these other offender's time-served sentence met the § 3553(a) sentencing factors, since they were released from prison; and by

A38

implication, Bartunek's time-served sentence also meets these sentencing factors.

Obviously, the district court judge erred in failing to reach the same conclusion, rejecting these facts, the law, case law, scientific and emperical evidence, and the logic and reasoning supporting a sentence reduction. Whatever his reason for his judgement, or lack thereof, whether he is incapable of rational thought; cannot overcome his innate desire to punish; believes his original judgment must be final, and he shouldn't be acting as a quasi-parole officer; doesn't believe in science or mathematics; or simply disagrees with the law, his judgment in this matter is manifestly injust.

IV. The Court Erred in Ruling that none of Bartunek's Reasons Were Extraordinary and Compelling, Either Taken Alone, or in Combination With Eachother

In the district court's current and previous denials of Bartunek's motions to reduce his sentence, it erred by refusing to consider several nontrivial extraordinary and compelling reasons to grant relief, either ignoring them, or assuming they were beyond the scope of the § 3582(c)(1)(A) reasons specified in § 1B1.13, when they were not; rejected other important reasons which were extraordinary and compelling by definition; rejected case law presented by Bartunek, demonstrating that the vast majority of Bartunek's reasons were extraordinary and compelling; refusing to accept valid scientific evidence supporting Bartunek's motions; used false information and held erroneous beliefs to support its denials; misinterpreted the § 1B1.13 Program Statement; and misunderstood Congress' intent

to materially reduce the prison population through the increased use of Reductions in Sentences / Compassionate Releases.

In the courts' denials of Bartunek's motions, it stated that it followed the law, having "reviewed and considersd all Bartunek's arguments, and all of the applicable § 3553(a) factors" but found "no 'extraordinary and compelling reasons' to warrant a sentence reduction." (See, e.g., Filing No. 567, p. 4-5). And, if an objective observer only looks at the court's denials, he may reach the same conclusion. But, if one also studies Bartunek's motions, the law, other case law, and the judge's own past judgements of other sentence reduction motions, it is apparent that he simply covered his bases, and in fact, his claim was unequivocally false, and that he violated Bartunek's due process and failed to follow the law.

Bartunek performed a thorough search of the LEXIS database, and found that the only motions for compassionate release that the Court granted were cases where the defendant's circumstances precisely met one of the examples in the § 1B1.13 program statement. And in Bartunek's case, the court only gave some weight to Bartunek's circumstances which matched parts of the examples, his advanced age and medical conditions, ignoring or rejecting any other nonfrivolous reason which didn't exactly match one of the examples.

Further evidence that the court erroneously limited its scope of reasons to grant relief was its reliance on the case United States v. Crandall, 25 F.4th 582, 2022 U.S. App. LEXIS 3526 *4 (8th Cir. 2022) (stating that the district court

believed that "extraordinary and compelling reasons" should be limited only to "issues of health, age, and family, or other circumstances which are similarly personal or individualized."). (See Filing Nos. 514, p. 2, 5; 588, p. 4).

These limitations by Bartunek's district court judge were in direct conflict with § 1B1.13(b)(5)-Other reaons, which states that they only need to be "similar in gravity", not similar in nature. Clearly, the court erred in severly limiting its scope in this way.

The court also erred by performing a reason-by-reason analysis instead of considering the reasons in combination, also in direct conflict with § 1B1.13(b)(5). For example, the court stated that "avoidance of unwarranted sentencing disparities . . . is one of the 3553(a) factors this Court considered at sentencing and considers now, it does not move the needle here." (Filing No. 567, p. 4). He also stated, "issues like waste, fraud, and abuse in government spending-though always important-do not tip the scales." (Filing No. 588, p. 5). And he stated, "[s]uch an exchange of correspondence does not rise to the level of being an extraordinary or compelling reason to reduce Bartunek's sentence or to release him as he seeks." (Filing No. 601, p. 2).

Clearly, these and other reasons that Bartunek sited in his motion carried some weight, or they wouldn't even be on the scale. And the court erred in failing to recognize that the whole is greater than the sum of its parts.

The court also errored in believing that the foreseeability of an extraordinary and compelling reason at the time of sentencing

A41

precludes consideration of this reason in a future sentence reduction. But this is in direct conflict with § 1B1.13(e). Evidence of the court's error can be found when it rejected to consider many of Bartunek's extraordinary and compelling reasons to reduce his sentnece, stating that it had already taken them into account when it varried bartunek's sentence downard from the recommended guideline's sentence from 20 to 17 years. (See Filing Nos. 514, p. 3; 567, p. 2).

And, as previously discussed, the court also failed to address several of Bartunek's extraordinary and compelling reasons, contrary to Concepcion's mandate to consider all nonfrivolous arguments. (See p. 4-5 above). And, the court made several errors in judgment when assessing Bartunek's extraordinary and compelling reaons. (See p. 5-7 above).

The court also erred in refusing to consider any extraordinary and compelling reasons related to his trial, conviction, or sentence, believing these reasons were more properly brought up in a 18 U.S.C. § 2255 motion. (See Filing No. 567, p. 4; 588, p. 3-4). But this is in opposition to both Concepcion's mandate, which the Roper and Rodriguez-Mendez decisions concurr. (See p. 9-10 above). And, it is contrary to the Sentencing Commission's reports on compassionate releases, which identify "Conviciton/sentencing errors" as legitimate bases for compassionate release under § 3582(c)(1)(A). See U.S.S.C, Compassionate Release Data Report (2020 to 2022), at 18, 12 (Dec. 2022); and its Compassionate Release Data Report (May 2023) at 17.

A42

Further insight why the district court errored can be found in United States v. Trenkler, 47 F.4th 42, 48 (1st Cir. 2022)) which correctly held that "habeas and compassionate release are distince vehicles for relief," and that district courts had the discretion to consider any argument as an "extraordinary and compelling reason" under § 3582(c)(1)(A). A § 2255 motion mandates that a court vacate a conviction if they violated the Constitution or the law. Whereas a § 3582 motion uses an extraordinary and compelling reason as a gateway for an inmate to receive a reduction in his sentence. And, in a § 3582 motion, "the prisoner concedes, at least for the purpose of his motion for compassionate release, that the sentence is currently valid and lawful, but nevertheless appeals to the equitable discretion of the judge for a sentence modification." United States v. Wesley, 78 F.4th 1221; 2023 U.S. App. LEXIS 22591 *13 (10th Cir. 2023) (Judge Rossman dissenting).

Other court's, like Bartunek's, who have imposed this additional restriction on the extraordinary and compelling reasons needed to grant relief in a § 3582(c)(1)(A) motion have relied on: 1) Congress' silence; 2) finality; and 3) the general/specific cannon.

On the matter of Congress' silence, these courts argue that because Congress failed to make it clear that defendants can make an end-run-around the restrictions of § 2255, they can't use reasons which could also be used as alleged grounds for a vacatur of a sentence under § 2255. But, these courts have overread Congress' silence because "[d]rawing meaning from silience is

A43

particularly 'inappropriate' in the sentencing context, 'for Congrass has shown that it knows how to direct sentencing parctices in express terms.'" (Concepcion at 2402). And in over 30 years, Congress has imposed no such limitation.

These court's argument based on finality fares no better. "No one doubts the importance of finality. Here, however, the Court intreprets a statute whose very purpose is to reopen final judgments." (Concepcion at 2398 n.3). See also, United States v. McCoy, 981 F.3d 271, 288 (4th Cir. 2020) (noting that § 3582(c)(1)(A) "represents Congress' judgment that the generic interest in finality must give way in certain individual cases, and authorizes judges to implement that judgment").

And, the general/specific cannon doesn't support these court's possition, either. The cannon states, "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." Radzanower v. Touch Ross & Co., 426 US 148, 153 (1976).

But, which statute, § 2255 or § 3582 is more specific? The § 2255 statute "broadly covers all situations where the sentence is 'open to colleratal attack.' As a remidy, it is intended to be used as broad as habeas corpus... The compassionate release statute, by contrast,"provides a limited remedy (a reduced sentence) in limited situations "extraordinary and compelling reasosn."" (Wesley at *12).

But a different, and far more germane, statutory construction principle- the related -statutes cannon, requires harmonious

A44

intrepretation of these statutes. "[U]nder the in pari materia cannon of statutory construction, statutes address the same subject matter generally should be read 'as if they were one law." (Wachovia Bank v. Schmidt, 546 US 303, 315-16 (2006)). When the courts are "confronted with two Acts of Congress allegedly touching on the same topic," they are "not a 'liberty to pick and choose among contressional enactments' and must instead strive 'to give effect to both.'"" (Epic Sys. Corp v. Lewis, 138 S. Ct. 1612, 1624 (2018)). And since these two satutes are readily harmonized, its the courts obligation, absent clear contray congressional intent, to give effect to each.

Finally, these courts fail to explain why allowing district courts to consider the § 2255 reasons at the "extraordinary and compelling" stage would circumvent the post-conviciton process, but allowing them to consider thosc same reasons when weighing the 18 U.S.C. § 3553(a) factors would not.

In the end, nothing in § 3582(c)(1)(A)'s history, text, or purpose suggests that Congress imposed an unwritten yet unyielding limitation on the district court's ability to determine what constitutes extraordinary and compelling reasons for a sentence reduction. And, it is in the interest of justice for this court to grant this appeal and prevent lower courts from rewriting § 3582(c)(1)((A) in a way that overrides Congress' efforts to expand access to compassionate release, limits the ability of imprisoned individuals to present the true account of their individual cirumstances, and get a second chance to reduce their sentence when there are extraordinary and compelling reasons.

A45

A. The Court Erred in Rejecting Valid Scientific Evidence

The court refused to believ, minimized, or ignored valid emperical evidence from the Sentencing Commission, the Federal Bureau of Prisons, other government agencies, and scientific studies. This included Bartunek's extremely low recidivism rates; the length of his sentence was extraordinarily long; life expectancy rates and factors known to cause a premature death, including incarceration and Bartunek's increased risk of extreme illness and death from highly infectious diseases such as COVID-19 and the flu, which can't be controled in his prison environment; and the positive measurable effects of rehabilation.

And, if valid scientific evidence is discarded by the courts, as was done in Bartunek's case, every American is in danger of being unjustly harmed and punished; and America will be thrown back into the dark ages, where wizzards, fanatics, and charatons were able to convice the courts to inflict pain and suffering, imprisonment, and even kill many innocent people, without a rational basis for doing so. Clearly, this reason, alone, is a sufficient extraordinary and compelling reason for this court to reject the district court's judgment, and grant this appeal.

B. The Court Erred in Trivializing Highly Important Reasons

The court abused its discretion in trivializing the cost of Bartunek's continued unnecessary incarceration and support by President Donald J. Trump of Bartunek's creative ideas ot reduce disparities in sentencing and the gross prison overpopulation problem using logic and reason, together with science and mathematics to form a rational basis for a reduction in sentence.

A46

In Bartunek's motions, he argued that the continued cost of his incarceration (over a quarter of a million dollars) was unwarrented because it no longer met the needs of justice. And keeping him in prison was in direct opposition to President Trump's mandate to reduce the waste, fraud, and abuse in government spending, which he was elected to do. (See Filing Nos. 585, p. 2-8; 599, p. 4-5).

The court agreed that "issues like waste, fraud, and abuse in government spending" are "always important." (Filing No. 588, p. 4-5) (emphasis added). It follows that this reason is an extraordinary and compelling reason to reduce Bartunek's sentence based on Concepcion and the ordinary meaning of this phrase. And therefore, the court erred in rejecting this reason.

And, in court's most recent denial of Bartunek's motion to reduce his sentence, the court stated that an "exchange of correspondence [with President Trump] does not rise to the level of being an extraordinary and compelling reason to reduce Bartunek's sentence or helease him as he seeks." (Filing No. 601, p. 2). This simply is not true.

First of all, the court failed to site any factual or legal basis showing it was common for a sitting President of the United States to respond to an inmate's letter, let alone encourage him to advance his ideas regarding sentence reductions. Second, Bartunek scoured the LEXIS database, and could find no cases where President Trump had communicated with a prisoner. Clearly, this support from the President is an extraordinary and compelling reason, and the court erred in rejecting it out of hand.

V. Selected Authorties Support Bartunek's Motions

There are literlly hundreds, if not more, cases and other authorties which show that virtually all of Bartunek's over two dozen reasons to reduce his sentence are extraordinary and compelling, either taken alone, or in combination. In Bartunek's most recent motion, he included a compilation of some of these cases. (See Filing No. 599, Exhibit 1: a copy of this exhibit is included in the appendix). And below are a select few cases or other authorities.

A. Concepcion v. U.S., 142 S. Ct. 2389 (2022)

This Supreme Court case shows that there are no limits on the reasons which can be used as extraordinary and compelling reasons to merit relief (except for the § 1B1.13 limitations).

B. U.S. v. Abraham, 994 F. Supp. 2d 773 (D.Neb. 2013)

Judge Gerrard clearly shows that the U.S.S.G. § 2G2.2 guideline is not a reliable indication of the Sentencing Commission's view of what a fair sentence chould be using this guideline because it is outdated; the offense level does not measure the culpability of an offender; in virtually every case, the guideline sentencing range (before credit for acceptance of responsibility) included the statutory maximum, even for the run-of-the-mill first-time offenders. His conclusions were based on his own experience and the 2012 Sentencing Commission's Report on offenders sentenced under this guideline based on empherical data.

This is highly significant, because it also shows that Bartunek's alleged underlying conduct is no different than a

A48

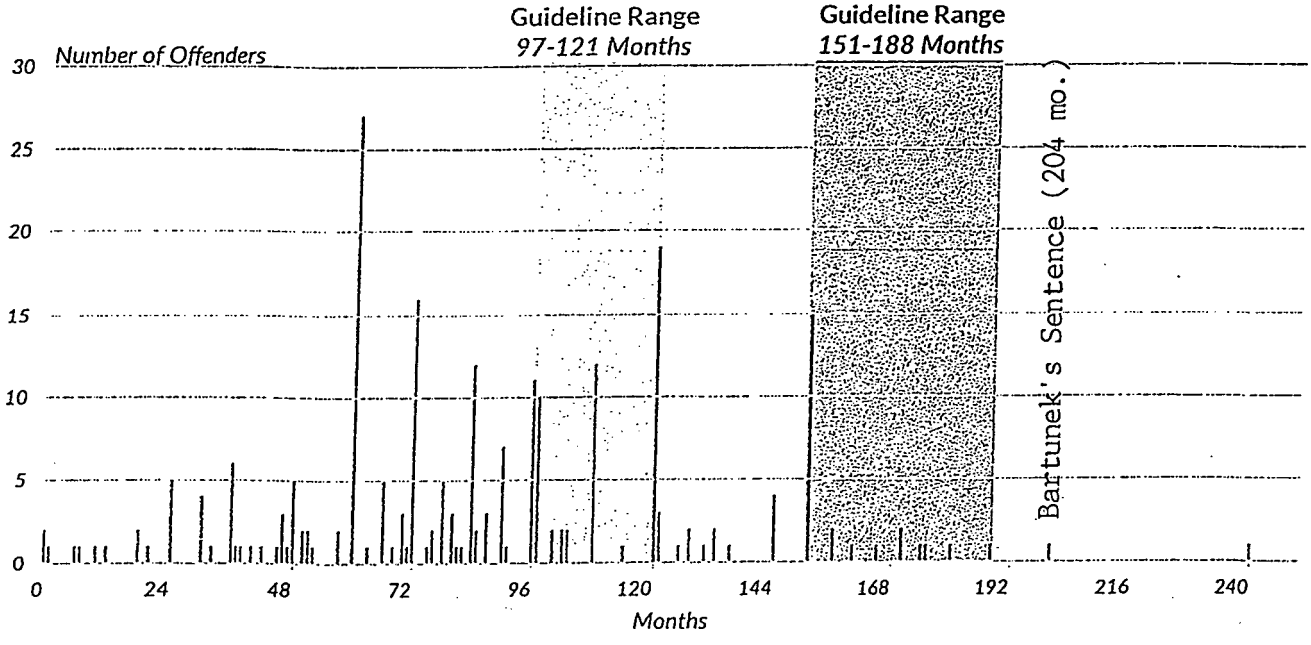
run-of-the-mill offenders, and yet, his sentence was greater than 99% of other offenders sentenced under this guideline.

But, during sentencing, Judge Rossiter rejected this sound scientific evidence, saying Judge Gerrard's opinion was outdated, and not binding on him. However, the 2021 Report on offenders sentenced under this guideline in 2019, the year Bartunek was sentenced, confirms everything Judge Gerrard stated.

Clearly, Bartunek's sentence was arbitrary, capricious, unduly long, and not based on logic or reason, because it was based on an outdated and unreasonable guideline. And this is an extra-ordinary and compelling reason to grant Bartunek's motion.

Below is a graph showing just how disparate Bartunek's sentence was compared to similarly situated offenders. (The guideline ranges include a -3 level decrease for acceptance of responsibility). (See Filing No. 599, Exhibit 4; a copy of this exhibit is included in the appendex).

Variation of Sentence Length Among Similarly Situated Possession and Distribution Offenders with Same Distribution Enhancement
Fiscal Year 2019



A49

C. U.S. v. Amerson, 2023 U.S. Dist. LEXIS 120004 (E.D.N.Y. 2023)

This case shows Bartunek met the § 1B1.13(b)(1)(D) extraor. and compelling reason and others similar to Ammerson's which were age; cronic medical condistion due to aging, highest risk of extreeme illness or death from infectious diseases; inmate at FCI-Seagoville; harshness of incarceration during pandemic; and unusually long sentence because it was greater than the average and median sentences for the same type of crime.

D. U.S. v. Cuevas, 2021 U.S. Dist. LEXIS 66373 (E.D. Ark 2021).

Like Bartunek, Ceuevas' reasons are: unusually long sentence because of trial penalty, plea was 12-15 years but senteced to life in prison with offens level of 46; sentencing disparity -- co-conspirators who plead guilty sentenced 10 months to 10 years; 58 years old; served about 50% of sentence; health concerns; COVID-19 a factor: and rehabilitation.

E. U.S. v. Kerby, 2022 U.S. Dist. LEXIS 204371 (D. Neb. 2022)

Kerby only had 4 extraordinary and compelling reasons: age; length of sentence, sentencing disparities, and rehabilitation. Youth was Kerby's age factor; not a factor in the examples under § 1B1.13; but Bartunek's age is a factor. And his recidivism rate is 40 times lower than Kerby's. Also, Kerby had 15 criminal history points and disciplinary issues in prison, but Bartunek had 0 points and an exempliary prison record.

F. U.S. v. Penglase, 2023 U.S. Dist. LEXIS 46024 (D. Minn 2023)

This case shows how charging practices, the prosecutor's ability to control the guidelines offense level, and the trial penalty can greate highly disparate sentences. Had Penglase

A50

gone to trial, the prosecutor had enough evidnece to convict him of the same crimes as Bartunek, and apply the same sentencing enhancments to bring his offense level to 42, like Bartunek's. But Penglase took a plea and was sentenced to 10 years. The only reason bartunek is now in prison is because he made a poor decision, not because he commited a crime, as he has already paid for the crimes he was convicted of committing. And since it is uncommon for someone to not accept a plea, this is, by definition, and extraordinary and compelling reason.

G. U.S. v. Rollins, 540 F. Supp. 3d 804 (N.D. Ill. 2021)

Rollins reasons include: disparity between his sentence and the average sentence for the same offense; unusually long sentence; trial penalty; first-time offender; non-violent crime; subject to prosecutor charging practices; exemplary prison record; and rehabilitation.

H. U.S. v. Perry, U.S. Dist. LEXIS 72490 (D. Neb. 2024)

Judge Rossiter ruled an 11(c)(1)(C) plea sentence satisfies the § 3553(a) sentencing factors, but refused to grant Perry's motion because he accepted the plea and had to live with it. This shows Bartunek's time-served sentence is sufficient to meet the § 3553(a) factors, too, since he has served more time then he would have, had he accepted the plea.

I. Federal Sentencing of Child Pornography: Non-Production Offenders, U.S. Sentencing Commission (2021)

This report is valid scientific evidence showing that Bartunek's sentence was unusually long, even though his alleged underlying conduct was the same as the vast majority of offenders sentenced under the same § 2G2.2 guideline.

A51

VI. Summary of Bartunek's Extraordinary and Compelling Resons

- I am an elderly inmate, over 71 years old. (Physicological age over 79 years.)
- I have cronic medical conditions related to the aging process.
- I have pain in my shoulders, knees, and back due to arthritis and bone spurs.
- I am both visually and hearing impaired.
- These medical condistions diminish my ability to function in prison.
- My personal characteristics and history favor a reduced sentence.
- I have studied and taken classes in prison to improve/rehabilitate myself.
- I have an exemplary prison record with no incidents.
- I have no history of violence.
- I have Zero Criminal History Points.
- My FSA Risk Assessment Level is Minimum, the lowest you can get.
- I have a good release plan.
- I was offered a plea of 4-7 years for admitting possession only.
- I was convicted of possession and distribution in a jury trial.
- I was sentenced to an unduly long sentence of 17 years in 2019.
- My sentence is 243%-425% greater than my plea agreement sentence.
- The child pornography guidelines are unreasonable, not based on emperical data.
- Most offender's guideline sentence includes the statutory maximum (before plea).
- Most of these offenders receive a 60% downward variance from the guidelines.
- Over 98% convicted of possession also engaged in receipt, dist., or prod.
- My alleged conduct was not atypical from other child pornography offenders.
- My guideline offense level was miscalculated, several levels too high.
- My sentence was unconstitutionally enhanced by judge-found facts, without a jury.
- I have already been incarcerated for over 8½ years.
- The average child pornography offender spends less than 7½ years in prison.
- My sentence was 2 times greater than these average offenders.
- It was greater than 99% of all the child pornography sentences in 2019.
- It was greater than 98% of the average sentences of any crime in 2019.
- Over 80% of child pornography offenders sentenced in 2019 have been released.
- Child pornography offenders have a 33% lower recidivism rate than average.
- My recidivism rate of less than 0.66% is 40 times lower than average.
- My risk of committing a contact sexual offense is less than 0.031%.
- The guidelines offense level has no effect on recidivism.
- Acceptance of responsibility (taking a plea) has no effect on recidivism.
- The length of sentences greater than 1 yr. have no effect on recidivism.

A52

VII. Standard of Proof

"The defendant bears the burden of proving, by a preponderance of evidence, that extraordinary and compelling reasons exist to justify his compassionate release." United States v. Noack, 2025 U.S. Dist. LEXIS 93712 *3 (D.N.J. May 20, 2025); United States v. Dillon, 560 US 817, 828 (2010) (same). This is the "more likely than not" standard. And as Bartunek's sentencing hearing showed, this evidence can come from uncorroborated tripple hearsay evidence from the Probation Office' Presentence Investigation Report from an unreliable source. And, clearly, the evidence presented to support Bartunek's motion to reduce his sentence to time-served meets this standard.

CONCLUSION

In denying Bartunek's motion to reduce his sentence to time-served, the district court refued to accept that any of his overwhelming number of reasons, either taken alone, or in combination, were extraordinary and compelling. Instead of applying the facts to the law, it arbitrarily, capriciously, and irrationally imposed additional limitations, ignoring, minimizing, or rejecting Bartuenk's valid nonfrivolous (important) reasons to grant relief, violating due process and the law.

And, based on the forgoing reasons, Bartunek submits that this court reverse the district courts judgment and order it to grant Bartunek's motion to reduce his sentence to time-served, and any other actions it deems appropriate under the law, in the interest of justice.

Respectfully Submitted,

Gregory P. Bartunek

01/10/2026
Date

Gregory Bartunek
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CERTIFICATE OF SERVICE

I, Gregory Bartunek certify under the penalty of perjury that I placed a true and ~~correct copy~~ (on 01/10/2026) of this brief and appendix in the Prison Mailbox, which will be mailed via prepaid 1st class mail to the Clerk of the District Court. *

Exectued on: 01/10/2026

By: Gregory P. Bartunek

* (Placed in Prison Mailbox on January 10, 2026)

A54

Exhibit 2

EXTRAORDINARY AND COMPELLING REASONS MERITING RELEASE FROM PRISON

United States v. Martinez Encinias, No. 13-CR-2225-MV, 2023 U.S. Dist. LEXIS 123128, 2023 WL 4578452 (D.N.M. July 18, 2023) (unanticipated harshness of pandemic-era incarceration); *United States v. Belin*, No. 10-CR-2213-MV, 2023 U.S. Dist. LEXIS 99019, 2023 WL 3867751 (D.N.M. June 7, 2023) (inadequate provision of medical care in custody); *United States v. Herrera*, No. 17 Crim. 415 (PAC), 2023 U.S. Dist. LEXIS 91224, 2023 WL 3614343 (S.D.N.Y. May 24, 2023) (victim of sexual assault by correctional officer); *United States v. Ramos*, No. 03-cr-315 (ERK), 2023 U.S. Dist. LEXIS 18718, 2023 WL 1766279 (E.D.N.Y. Feb. 2, 2023) (saved life of correctional officer); *United States v. Rodriguez*, No. 19-CR-4693-GPC, 2023 U.S. Dist. LEXIS 18025, 2023 WL 1486147 (S.D. Cal. Feb. 2, 2023) (newborn baby); *United States v. Harrison*, Crim. No. CCB-06-0478, 2023 U.S. Dist. LEXIS 13470, 2023 WL 403029 (D. Md. Jan. 25, 2023) (current maturity); *United States v. Rogers*, No. CR-13-15-BU-BMM, 2023 U.S. Dist. LEXIS 2768, 2023 WL 121224 (D. Mon. Jan. 6, 2023) (strong family support); *United States v. Davila*, 584 F. Supp. 3d 1001 (D. Kan. 2022) (rehabilitation in combination with other factors); *United States v. Marshall*, 604 F.Supp.3d 277 (E.D. Pa. 2022) (long-term solitary confinement); *United States v. Londono*, No. 05-cr-495 (JGK), 2022 U.S. Dist. LEXIS 231255, 2022 WL 17905065 (S.D.N.Y. Dec. 23, 2022) (noncitizen unable to make use of release options); *United States v. Bernhardt*, No. 96-cr-203-WJM, 2022 U.S. Dist. LEXIS 203529 (D. Colo. Nov. 8, 2022) (declining health); *United States v. Kanui*, Crim. No. 13-00667 JMS, 2022 U.S. Dist. LEXIS 162750, 2022 WL 4120784 (D. Haw. Sept. 9, 2022) (personal hardships); *United States v. Glover*, Crim. No. 8:07-cr-00960-JMC-15, 2022 U.S. Dist. LEXIS 137031, 2022 WL 3025753 (D.S.C. Aug. 1, 2022) (post-sentencing change of law); *United States v. Golding*, No. 05-cr-538 (JSR), 2022 U.S. Dist. LEXIS 133940, 2022 WL 2985014 (S.D.N.Y. July 27, 2022) (youth at time of offense); *United States v. Payne*, No. 94-CR-150-TCK, 2022 U.S. Dist. LEXIS 111098, 2022 WL 2257044 (N.D. Okla. June 23, 2022) (disparity in sentences among codefendants); *United States v. Hudec*, Crim. No. 4:91-1-1, 2022 U.S. Dist. LEXIS 104763, 2022 WL 2118974 (S.D. Tex. June 9, 2022) (amount of time spent incarcerated); *United States v. Burr*, No. 16-CR-04081-SRB-1, 2022 U.S. Dist. LEXIS 59526, 2022 WL 989225 (W.D. Mo. Mar. 31, 2022) (miscalculation of the Guidelines resulting in a two-year delay in plea negotiations); *United States v. Cleveland*, No. 3:13-CR-479-K-1, 2022 U.S. Dist. LEXIS 31445, 2022 WL 562829 (N.D. Tex. Feb. 23, 2022) (good conduct and lack of disciplinary history in prison); *United States v. Watkins*, No. 10-20545, 2022 U.S. Dist. LEXIS 6567, 2022 WL 130977 (E.D. Mich. Jan. 12, 2022) (pressured into plea agreement); *United States v. Rollins*, 540 F. Supp. 3d 804 (N.D. Ill. 2021) (disparity between individual's sentence and the average sentence for the same offense); *United States v. Meeks*, No. 1:97-cr-00169-4, 2021 U.S. Dist. LEXIS 263610, 2021 WL 9928774 (N.D. Ill. Dec. 15, 2021) (extraordinary acts of character, including saving the life of a fellow prisoner); *United States v. Pardo*, Crim. No. 1:14-cr-376 (RDA), 2021 U.S. Dist. LEXIS 225673, 2021 WL 5447658 (E.D. Va. Nov. 22, 2021) (high-risk pregnancy); *United States v. Howard*, Crim. No. CCB-11-494, 2021 U.S. Dist. LEXIS 224192, 2021 WL 5416950 (D. Md. Nov. 18, 2021) (disparity between actual sentence and likely sentence for same conduct committed today); *United States v. Pham*, No. 1:99-cr-0100, ECF No. 96 (E.D. Va. Aug. 24, 2021) (old age, exceptional employment history); *United States v. Jordan*, No. 2:13-cr-00221-APG-CWH, 2021 U.S. Dist. LEXIS 152673, 2021 WL 3612400 (D. Nev. Aug. 13, 2021) (lack**{2024 U.S. App. LEXIS 10}** of serious criminal history); *United States v. Suggs*, No. 3:99cr244 (JBA), 2021 U.S. Dist. LEXIS 120221, 2021 WL 2661874 (D. Conn. June 28, 2021) (history of drug addiction); *United States v. Shobe*, No. 11-CR-0149-003-CVE, ECF No. 376 (N.D. Okla. June 24, 2021) (mandatory minimum sentences deprived the sentencing court an opportunity to exercise discretion based on totality of circumstances); *United States v. Jackson*, No. 3:90-cr-85-MOC-DCK, 2021 U.S. Dist. LEXIS 103083, 2021 WL 2226488 (W.D.N.C. June 1, 2021) (robust release plan); *United States v. Evans*, No. 2:01-CR-603-DAK, 2021 U.S. Dist. LEXIS 92488, 2021 WL 1929798 (D. Utah May 13, 2021) (childhood abuse); *United States v. Edwards*, Crim. No. 14-323-4, 2021 U.S. Dist. LEXIS 54294, 2021 WL 1105341 (E.D. Pa. Mar. 23, 2021) (caretaking responsibilities); *United States v. Nafkha*, No. 2:95-CR-00220-001-TC, 2021 U.S. Dist. LEXIS 5814, 2021 WL 83268 (D. Utah Jan. 8, 2021) (length of sentence); *United States v. Adeyemi*, 470 F.Supp.3d 489 (E.D. Pa. 2020) (mitigating circumstances of the offense); *United States v. Derricoatte*, No. 1:11-cr-91-10, 2020 U.S. Dist. LEXIS 172543, 2020 WL 5629095 (N.D. Ohio Sept. 21, 2020) (lack of access to necessary substance abuse services); *United States v. Smith*, Crim. No. 9-187, 2020 U.S. Dist. LEXIS 129218, 2020 WL 4047485 (W.D. Pa. July 20, 2020) (could not participate in addiction treatment program while incarcerated); *United States v. Blye*, No. CR15-348RSL, 2020 U.S. Dist. LEXIS 101795, 2020 WL 3064225 (W.D. Wash. June 9, 2020) (would lose parental rights if not released).

Exhibit 2

EXTRAORDINARY AND COMPELLING REASONS TO REDUCE GREGORY BARTUNEK'S SENTENCE

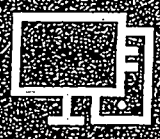
- I am an elderly inmate, over 71 years old. (Physicological age over 79 years.)
- I have cronic medical conditions related to the aging process.
- I have pain in my shoulders, knees, and back due to arthritis and bone spurs.
- I am both visually and hearing impaired.
- These medical condistions diminish my ability to function in prison.
- My personal characteristics and history favor a reduced sentence.
- I have studied and taken classes in prison to improve/rehabilitate myself.
- I have an exemplary prison record with no incidents.
- I have no history of violence.
- I have Zero Criminal History Points.
- My FSA Risk Assessment Level is Minimum, the lowest you can get.
- I have a good release plan.
- I was offered a plea of 4-7 years for admitting possession only.
- I was convicted of possession and distribution in a jury trial.
- I was sentenced to an unduly long sentence of 17 years in 2019.
- My sentence is 243%-425% greater than my plea agreement sentence.
- The child pornography guidelines are unreasonable, not based on emperical data.
- Most offender's guideline sentence includes the statutory maximum (before plea).
- Most of these offenders receive a 60% downward variance from the guidelines.
- Over 98% convicted of possession also engaged in receipt, dist., or prod.
- My alleged conduct was not atypical from other child pornography offenders.
- My guideline offense level was miscalculated, several levels too high.
- My sentence was unconstitutionally enhanced by judge-found facts, without a jury.
- I have already been incarcerated for over 8½ years.
- The average child pornography offender spends less than 7½ years in prison.
- My sentence was 2 times greater than these average offenders.
- It was greater than 99% of all the child pornography sentences in 2019.
- It was greater than 98% of the average sentences of any crime in 2019.
- Over 80% of child pornography offenders sentenced in 2019 have been released.
- Child pornography offenders have a 33% lower recidivism rate than average.
- My recidivism rate of less than 0.66% is 40 times lower than average.
- My risk of committing a contact sexual offense is less than 0.031%.
- The guidelines offense level has no effect on recidivism.
- Acceptance of responsibility (taking a plea) has no effect on recidivism.
- The length of sentences greater than 1 yr. have no effect on recidivism.

All sentencing factors and statistics come from the Sentencing Commission Reports.

A56

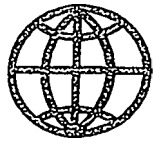
Exhibit 3

Key Findings



1 Facilitated by advancements in digital and mobile technology, non-production child pornography offenses increasingly involve voluminous quantities of videos and images that are graphic in nature, often involving the youngest victims.

- *In fiscal year 2019, non-production child pornography offenses involved a median number of 4,265 images, with some offenders possessing and distributing millions of images and videos.*
- *Over half (52.2%) of non-production child pornography offenses in fiscal year 2019 included images or videos of infants or toddlers, and nearly every offense (99.4%) included prepubescent victims.*



2 Constrained by statutory mandatory minimum penalties, congressional directives, and direct guideline amendments by Congress in the PROTECT Act of 2003, §2G2.2 contains a series of enhancements that have not kept pace with technological advancements. Four of the six enhancements—accounting for a combined 13 offense levels—cover conduct that has become so ubiquitous that they now apply in the vast majority of cases sentenced under §2G2.2.

- *For example, in fiscal year 2019, over 95 percent of non-production child pornography offenders received enhancements for use of a computer and for the age of the victim (images depicting victims under the age of 12).*
- *The enhancements for images depicting sadistic or masochistic conduct or abuse of an infant or toddler (84.0% of cases) or having 600 or more images (77.2% of cases) were also applied in most cases.*

A57



3 **Because enhancements that initially were intended to target more serious and more culpable offenders apply in most cases, the average guideline minimum and average sentence imposed for non-production child pornography offenses have increased since 2005.**

- *The average guideline minimum for non-production child pornography offenders increased from 98 months in fiscal year 2005 to 136 months in fiscal year 2019.*
- *The average sentence increased more gradually, from 91 months in fiscal year 2005 to 103 months in fiscal year 2019.*



4 **Although sentences imposed remain lengthy, courts increasingly apply downward variances in response to the high guideline ranges that apply to the typical non-production child pornography offender.**

- *In fiscal year 2019, less than one-third (30.0%) of non-production child pornography offenders received a sentence within the guideline range.*
- *The majority (59.0%) of non-production child pornography offenders received a variance below the guideline range.*
- *Non-government sponsored below range variances accounted for 42.2 percent of sentences imposed, and government sponsored below range variances accounted for 16.8 percent.*

AJ8



5 Section 2G2.2 does not adequately account for relevant aggravating factors identified in the Commission's 2012 *Child Pornography Report* that have become more prevalent.

- *More than forty percent (43.7%) of non-production child pornography offenders participated in an online child pornography community in fiscal year 2019.*

- *Nearly half (48.0%) of non-production child pornography offenders engaged in aggravating sexual conduct prior to, or concurrently with, the instant non-production child pornography offense in fiscal year 2019. This represents a 12.9 percentage point increase since fiscal year 2010, when 35.1 percent of offenders engaged in such conduct.*



6 Consistent with the key aggravating factors identified in the Commission's 2012 *Child Pornography Report*, courts appeared to consider participation in an online child pornography community and engaging in aggravating sexual conduct when imposing sentences, both in terms of the length of sentence imposed and the sentence relative to the guideline range.

- *In fiscal year 2019, the average sentence imposed increased from 71 months for offenders who engaged in neither an online child pornography community nor aggravating sexual conduct, to 79 months for offenders who participated in an online child pornography community, to 134 months for offenders who engaged in aggravating sexual conduct.*

- *In fiscal year 2019, offenders who engaged in aggravating sexual conduct were sentenced within their guideline ranges at a rate nearly three times higher than offenders who did not participate in online child pornography communities or engage in aggravating sexual conduct (44.3% compared to 15.6%).*

A59

7 As courts and the government contend with the outdated statutory and guideline structure, sentencing disparities among similarly situated non-production child pornography offenders have become increasingly pervasive. Charging practices, the resulting guideline ranges, and the sentencing practices of judges have all contributed to some degree to these disparities.

- *For example, the sentences for 119 similarly situated possession offenders ranged from probation to 228 months though these 119 possession offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.*

- *The sentences for 52 similarly situated receipt offenders ranged from 37 months to 180 months though these 52 receipt offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.*

- *The sentences for 190 similarly situated distribution offenders ranged from less than one month to 240 months though these 190 distribution offenders had the same guideline calculation through the application of the same specific offense characteristics and criminal history category.*



8 When tracking 1,093 non-production child pornography offenders released from incarceration or placed on probation in 2015, 27.6 percent were rearrested within three years.

- *Of the 1,093 offenders, 4.3 percent (47 offenders) were rearrested for a sex offense within three years.*

- *Eighty-eight offenders (8.1% of the 1,093) failed to register as a sex offender during the three-year period.*

A60

Exhibit 4

offenders. The only difference between the two groups of offenders is the starting point of their guideline calculation based on the statute of conviction. Applying §2G2.2 resulted in a guideline range of 97 to 121 months for the possession offenders and 151 to 188 months for the distribution offenders. Thus, the guideline provided different sentencing ranges for two groups of offenders who seemingly engaged in the same conduct.

Figure 30 below again shows marked differences in how these similarly situated possession and distribution offenders were sentenced. The average sentences for these distribution offenders (100 months) was 43 months longer than the similarly situated possession offenders (57 months).[130] Taken together, the overall spread of sentences for the 272 similarly situated offenders is substantial, ranging from time served to 240 months. Thus, consistent with the Commission's finding in the 2012 *Child Pornography Report*, disparities between these similarly situated possession and distribution offenders remain pronounced, as do disparities among offenders within the same group.

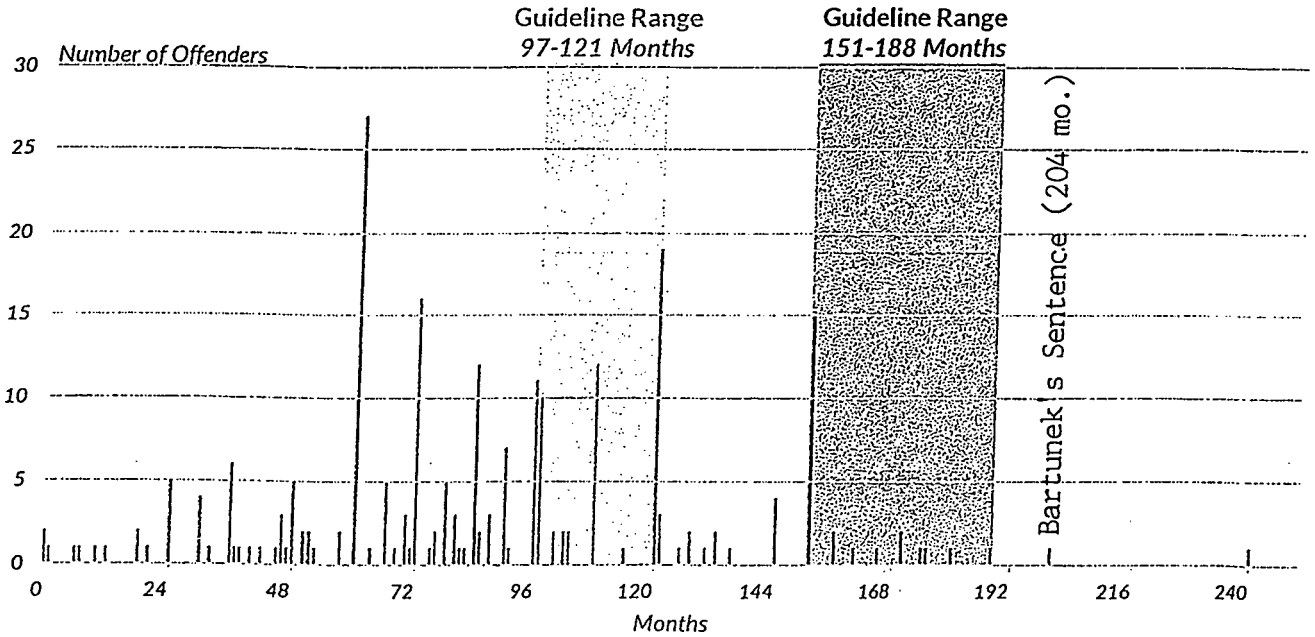


§2G2.2 Guideline Application

Possession vs. Distribution

18	22	**§2G2.2(a)** *Base Offense Level*
+2	+2	**§2G2.2(b)(2)** *Victim prepubescent or under 12*
+2	+2	**§2G2.2(b)(3)** *Other distribution*
+4	+4	**§2G2.2(b)(4)** *Sadistic or masochistic conduct or abuse of an infant or toddler*
+2	+2	**§2G2.2(b)(6)** *Use of a computer*
+5	+5	**§2G2.2(b)(7)** *600 or more images*
-3	-3	**§3E1.1** *Acceptance of Responsibility*
30	34	**Final Offense Level**

Figure 30.
Variation of Sentence Length Among Similarly Situated Possession and Distribution Offenders with Same Distribution Enhancement
Fiscal Year 2019



A61

Exhibit 5

Table 7

SENTENCE LENGTH BY TYPE OF CRIME
Fiscal Year 2019

	National			Nebraska		
TYPE OF CRIME	Mean Months	Median Months	N	Mean Months	Median Months	N
TOTAL	42	18	76,538	59	30	527
Administration of Justice	12	8	698	12	0	6
Antitrust	6	4	20	--	--	0
Arson	76	60	68	--	--	0
Assault	64	36	787	18	12	13
Bribery/Corruption	22	12	341	--	--	1
Burglary/Trespass	16	14	64	--	--	0
Child Pornography	103	84	1,368	90	78	19
Commercialized Vice	24	20	90	--	--	1
Drug Possession	2	0	563	--	--	2
Drug Trafficking	76	60	19,830	104	100	191
Environmental	3	0	179	0	0	4
Extortion/Racketeering	32	27	185	--	--	0
Firearms	50	39	8,481	44	37	36
Food and Drug	9	0	48	--	--	0
Forgery/Counter/Copyright	15	12	276	--	--	0
Fraud/Theft/Embezzlement	21	12	6,390	14	6	42
Immigration	9	6	29,354	6	4	144
Individual Rights	29	3	68	--	--	0
Kidnapping	171	120	96	--	--	0
Manslaughter	70	60	74	--	--	0
Money Laundering	61	33	1,177	89	83	10
Murder	255	240	373	--	--	0
National Defense	42	24	195	--	--	0
Obscenity/Other Sex Offenses	20	18	393	16	15	11
Prison Offenses	11	8	628	--	--	1
Robbery	109	92	1,825	137	108	22
Sexual Abuse	205	180	1,165	175	102	10
Stalking/Harassing	29	24	223	35	25	8
Tax	16	12	547	0	0	3
Other	3	0	1,032	56	0	3

Of the 76,538 National cases, no cases were excluded.

Of the 527 cases from the District of Nebraska, no cases were excluded.

Sentences of 470 months or greater (including life) and probation were included in the sentence average computations as 470 months and zero months, respectively. The information in this table includes conditions of confinement as described in USSG §5C1.1.

SOURCE: U.S. Sentencing Commission, 2019 Datafile, USSCFY19.

A62

Exhibit C

Warden
FCI-Seagoville
2113 North Highway 175
Seagoville, TX 75159

August 11, 2025

Dear Warden,

This is a request for a Reduction in Sentence under Section 7 of BOP's Program Statement 5050.50, because there are extraordinary or compelling reasons to warrant a reduction to time-served,.

These extraordinary or compelling reasons include: age; medical conditions; no criminal history; no disiplinary infractions; good release plan (on file); unusually long sentence based on erroneous and unreasonable sentencing factors; time-served is greater than average time-served by other child pornography offenders; time-served is sufficient to comply with the 18 U.S.C. § 3553(a) sentencing factors; public is protected from undue risk based on FSA Recidivism Level and extremely low rate based on the Sentencing Commission's statistics; cost of unjustifiable continued incarceration; and support by President Trump.

I contacted President Trump regarding an idea I shared with him on how he could support and assist inmates like me, whose time-served sentence meets the 18 U.S.C. § 3553(a) sentencing factors, including the need to protect the public from undue risk; and helps reduce the prison's extreme overpopulation problem, and the waste, fraud, and abuse caused by keeping inmates in prison longer than needed to meet these factors.

President Trump responded favorably to my idea, indicating:

> "Your creativity and determination reflect the spirit that makes our country great. I wish you the very best of luck as you pursue your goals and work to bring your ideas to life."

While the BOP Program Statement states that there are three categories which may be used to support a RIS request (age, medical conditions, and family circumstances), Section 7 clearly enumerates the factors which should be used to evaluate the circumstances in RIS requests; it states that these are "neither exclusive or weighted." Furthermore, the Sentencing Commission has encouraged the Director of the BOP to file a 18 U.S.C. § 3582 motion if an inmate meets any of the circumstances in the § 1B1.13 Guideline, including Other Reasons, similar in gravity to the categories listed, like my reasons.

Therefore, I am requesting that you use your discretion granted by the Statute, Sentencing Commission, and Section 7 of the Program Statement, to evaluate my individual factors, which are highly favorable to reducing my sentence to time-served, and grant my request.

Gregory P. Bartunek

Gregory Bartunek
29948-047
Federal Correctional Institution
P.O. Box 9000
Seagoville, TX 75159

AC3

FSA Recidivism Risk Assessment (PATTERN 01.03.00)

Register Number:29948-047, Last Name:BARTUNEK

U.S. DEPARTMENT OF JUSTICE — FEDERAL BUREAU OF PRISONS

Register Number: 29948-047	Risk Level Inmate....: R-MIN
Inmate Name	General Level.....: R-MIN (-15)
Last.....: BARTUNEK	Violent Level.....: R-MIN (-8)
First.....: GREGORY	Security Level Inmate: LOW
Middle.....:	Security Level Facl..: LOW
Suffix.....:	Responsible Facility.: SEA
Gender.....: MALE	Start Incarceration..: 03/12/2019

PATTERN Worksheet Summary

Item	Value	General Score	Violent Score
Current Age	70	0	0
Walsh w/Conviction	TRUE	2	0
Violent Offense (PATTERN)	FALSE	0	0
Criminal History Points	0	0	0
History of Escapes	0	0	0
History of Violence	0	0	0
Education Score	HighSchoolDegreeOrGED	-2	-2
Drug Program Status	NoNeed	-6	-3
All Incident Reports (120 Months)	0	0	0
Serious Incident Reports (120 Months)	0	0	0
Time Since Last Incident Report	N/A	0	0
Time Since Last Serious Incident Report	N/A	0	0
FRP Refuse	FALSE	0	0
Programs Completed	4	-9	-3
Work Programs	0	0	0
	Total	-15	-8

PATTERN Worksheet Details

Item: Programs Completed, Value: 4

General Score: -9, Violent Score: -3

Risk Item Data

Category	Assignment	Start	Stop
EDC	AARP	04/07/2022 14:58	04/07/2022 14:58
EDC	CRIM JUST	07/17/2023 00:01	07/17/2023 00:01
EDC	GREEK	09/18/2023 16:24	09/18/2023 16:24
EDC	PARALEGAL	08/29/2024 17:46	08/29/2024 17:46

Item: Work Programs, Value: 0

General Score: 0, Violent Score: 0

Risk Item Data

No Data

A64