# Appendix A:

Fifth Circuit opinion and judgment entered July 15, 2026 (No. 24-50343, Document 76-1).

# United States Court of Appeals for the Fifth Circuit

No. 24-50343
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
July 15, 2026
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee*,

*versus*

FRANCISCO BALDERRAMA,

*Defendant—Appellant*.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:00-CR-141-1

Before HAYNES, GRAVES, and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Francisco Balderrama, federal prisoner # 27085-180, appeals the denial of his omnibus motion for a (i) sentence reduction pursuant to 18 U.S.C. § 3582(c)(2), based on Amendments 782 and 788 to the Sentencing Guidelines; (ii) sentence reduction pursuant to § 404 of the First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194, 5222 (2018) (FSA); and (iii) compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). Our review is

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

for abuse of discretion. *See United States v. Stewart*, 964 F.3d 433, 435 (5th Cir. 2020); *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020); *United States v. Calton*, 900 F.3d 706, 710 (5th Cir. 2018).

As to (i), above, Balderrama shows no abuse of discretion in the district court's conclusion that Amendments 782 and 788 did not lower his statutorily mandated life sentence for his continuing criminal enterprise (CCE) offense under 21 U.S.C. § 848(b)(1)(A). *See Calton*, 900 F.3d at 710. His argument that the drug quantity used to enhance his sentence for his CCE offense to life imprisonment was never alleged in his indictment or proven to a jury is factually incorrect and, in any event, not cognizable in the context of a § 3582(c)(2) proceeding. *See United States v. Whitehead*, 55 F.3d 1007, 1011 (5th Cir. 1995).

As to (ii), above, to be eligible for relief under § 404, a defendant must have violated a statute, the penalties for which were modified by specific provisions of the Fair Sentencing Act of 2010. *See Concepcion v. United States*, 597 U.S. 482, 495-96 (2022). Those provisions of the Fair Sentencing Act modified the penalties for crack-cocaine offenses. *See id.* at 488; Fair Sentencing Act of 2010, Pub. L. No. 111-220, §§ 2-3, 124 Stat. 2372 (2010). Because Balderrama was not convicted of any crack-cocaine offenses, he has shown no abuse of discretion in the district court's conclusion that he was ineligible for relief under § 404 of the FSA. *See Stewart*, 946 F.3d at 435.

As to (iii), above, Balderrama fails to demonstrate any abuse of discretion in the district court's conclusion that he failed to demonstrate that extraordinary and compelling circumstances exist for compassionate release. *See Chambliss*, 948 F.3d at 693. Because Balderrama has not shown that the district court abused its discretion in denying his motion on the basis that he did not present extraordinary and compelling reasons, we need not reach his

arguments as to the district court's consideration of the 18 U.S.C. § 3553(a) factors. *See United States v. Jackson*, 27 F.4th 1088, 1093 n.8 (5th Cir. 2022).

AFFIRMED.

# *United States Court of Appeals*

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**
**CLERK**

**TEL. 504-310-7700**
**600 S. MAESTRI PLACE,**
**Suite 115**
**NEW ORLEANS, LA 70130**

July 15, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing or Rehearing En Banc

No. 24-50343 USA v. Balderrama
USDC No. 7:00-CR-141-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

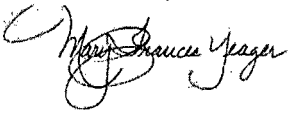
Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari**. Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Mary Frances Yeager, Deputy Clerk
504-310-7686

Enclosure(s)

Mr. Francisco Balderrama
Mr. Zachary Carl Richter

# United States Court of Appeals for the Fifth Circuit

No. 24-50343
Summary Calendar

United States Court of Appeals
Fifth Circuit
**FILED**
July 15, 2026
Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

*Plaintiff—Appellee,*

*versus*

FRANCISCO BALDERRAMA,

*Defendant—Appellant.*

Appeal from the United States District Court
for the Western District of Texas
USDC No. 7:00-CR-141-1

JUDGMENT

Before HAYNES, GRAVES, and RAMIREZ, *Circuit Judges.*

This cause was considered on the record on appeal and the briefs on file.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

for stay of mandate, whichever is later. See FED. R. APP. P. 41(B). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

# Appendix B:

Fifth Circuit Clerk letter dated August 14, 2026 stating that no action would be taken on the rehearing petition because the Rule 40 time had expired.

# *United States Court of Appeals*

**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**

**LYLE W. CAYCE**
**CLERK**

**TEL. 504-310-7700**
**600 S. MAESTRI PLACE,**
**Suite 115**
**NEW ORLEANS, LA 70130**

August 14, 2026

#27085-180
Mr. Francisco Balderrama
FCI Yazoo City Medium
P.O. Box 5000
Yazoo City, MS 39194-5000

No. 24-50343 USA v. Balderrama
USDC No. 7:00-CR-141-1

Dear Mr. Balderrama,

We will take no action on your petition for rehearing. The time for filing a petition for rehearing under Fed. R. App. P. 40 has expired.

Sincerely,

LYLE W. CAYCE, Clerk

Renee McDonough

By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

cc:
Mr. Zachary Carl Richter

**IN THE UNITED STATES COURT OF APPEALS**

**FOR THE FIFTH CIRCUIT**




**No. 24-50343**

**UNITED STATES OF AMERICA,**

Plaintiff–Appellee,

v.

**FRANCISCO RIOS BALDERRAMA,**

Defendant–Appellant.

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**APPELLANT'S PETITION FOR REHEARING EN BANC UNDER FED. R. APP. P. 40, INCORPORATING THE STANDARDS FORMERLY SET FORTH IN FED. R. APP. P. 35**

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**Respectfully submitted,**
FRANCISCO RIOS BALDERRAMA
Reg. No. 27085-180
FCI Yazoo City Medium
FEDERAL CORRECTIONAL INSTITUTION
P.O. BOX 5000
YAZOO CITY, MS 39194
**Pro Se Appellant**

**PETITION FOR REHEARING EN BANC UNDER FED. R. APP. P. 40, INCORPORATING THE STANDARDS FORMERLY SET FORTH IN FED. R. APP. P. 35**

## STATEMENT REQUIRED FOR REHEARING EN BANC

Pursuant to **Fed. R. App. P. 40(b)(2) and (c), formerly Fed. R. App. P. 35(a) and (b)**, Appellant Francisco Balderrama respectfully states that rehearing en banc is warranted because:

(1) the panel decision presents questions of exceptional importance concerning the proper application of 18 U.S.C. § 3582(c)(1)(A), amended U.S.S.G. § 1B1.13, and unusually long federal sentences;

(2) full-court consideration is necessary to maintain uniformity in this Circuit's application of the post-November 2023 compassionate-release framework;

(3) the panel's treatment of the distinction between 21 U.S.C. § 848(a) and § 848(b) presents an important recurring question concerning whether a statutory mandatory-life provision may be treated as controlling without fully resolving whether its additional statutory requirements apply; and

(4) the decision should be reconsidered in light of Supreme Court and Fifth Circuit authority requiring individualized consideration of relevant post-sentencing circumstances and the governing Sentencing Commission policy statement.

Current Rule 40 preserves the substance of former Rule 35: rehearing en banc is not favored and ordinarily is appropriate only where necessary to maintain decisional uniformity, to address a conflict with Supreme Court or other authoritative appellate precedent, or to decide a question of exceptional importance.

## I. FORMER RULE 35 AND CURRENT RULE 40 SUPPORT EN BANC REVIEW

Before December 1, 2024, Federal Rule of Appellate Procedure 35 provided that rehearing en banc was not favored and ordinarily would not be ordered unless:

consideration by the full court was necessary to secure or maintain uniformity of the court's decisions; or

the proceeding involved a question of exceptional importance.

Those substantive standards were not eliminated. They were transferred into **Federal Rule of Appellate Procedure 40** as part of the December 2024 consolidation of Rules 35 and 40. The Fifth Circuit expressly recognized that change and transferred Fifth Circuit Rule 35 into Fifth Circuit Rule 40.

Accordingly, although Appellant refers to the traditional **Rule 35 en banc standard**, this Petition is properly filed under current **Fed. R. App. P. 40(b)(2) and (c)**.

## II. THIS CASE PRESENTS QUESTIONS OF EXCEPTIONAL IMPORTANCE UNDER FORMER RULE 35(a)(2) AND CURRENT RULE 40(b)(2)(D)

This case involves more than disagreement with the outcome of an individual sentence-reduction motion.

It presents recurring questions concerning how federal courts must evaluate prisoners serving extraordinarily long sentences imposed decades before Congress expanded compassionate release and before the Sentencing Commission substantially revised § 1B1.13.

Balderrama has served more than twenty-five years. His appellate filings identified advancing age, extensive rehabilitation, decades of educational programming, reduced recidivism risk, sentencing disparity, intervening Guideline developments, and the unusual length of his sentence.

His filings also specifically invoked Amendment 814 and the amended § 1B1.13 provisions governing "Other Reasons" and an "Unusually Long Sentence."

Yet the panel disposed of the compassionate-release claim by concluding that Balderrama failed to establish extraordinary and compelling reasons and therefore expressly declined to reach the § 3553(a) arguments.

Whether that abbreviated analysis adequately accounts for the revised § 1B1.13 framework is a question extending well beyond this case.

## III. EN BANC REVIEW IS WARRANTED TO MAINTAIN UNIFORMITY WITH FIFTH CIRCUIT PRECEDENT

Former Rule 35(a)(1), now incorporated into Rule 40(b)(2)(A), permits rehearing where full-court consideration is necessary to secure or maintain uniformity of the Court's decisions.

Balderrama respectfully submits that further review is necessary to reconcile the disposition here with the principles addressed in **United States v. Jean, 108 F.4th 275 (5th Cir. 2024).**

The amended version of § 1B1.13 materially changed the compassionate-release framework. It now applies to defendant-filed motions and identifies multiple categories of extraordinary and compelling reasons, including certain unusually long sentences and combinations of circumstances.

Balderrama did not rely upon rehabilitation alone. His claim was expressly cumulative and individualized. His reply identified:

- more than twenty-five years served;
- age-related decline;
- extensive rehabilitation;
- Amendment 782;
- an unusually long life sentence;
- modern sentencing disparities; and
- current individualized circumstances.

The question for rehearing is therefore whether the panel's summary treatment of extraordinary and compelling circumstances is consistent with the individualized analysis required under the current policy statement.

## IV. THE PANEL OVERLOOKED OR MISAPPREHENDED THE SIGNIFICANCE OF § 848(a) VERSUS § 848(b)

The panel stated that Balderrama's sentence was a "statutorily mandated life sentence" under § 848(b)(1)(A).

But Balderrama repeatedly argued that he was convicted under **§ 848(a)** and disputed the assumption that § 848(b) automatically controlled his sentence.

The distinction is consequential.

Section 848(a) defines and penalizes the continuing criminal enterprise offense.

Section 848(b) imposes mandatory life only upon satisfaction of additional statutory criteria.

Because the mandatory-life premise controls the panel's entire § 3582(c)(2) analysis, whether § 848(b) properly applies cannot simply be treated as immaterial.

Balderrama's appellate reply specifically argued that the district court did not fully resolve this question and instead assumed § 848(b)'s applicability.

Rehearing is warranted to address that contention directly.

## V. APPRENDI SHOULD BE ADDRESSED AS PART OF THE STATUTORY QUESTION, NOT AS A COLLATERAL ATTACK

Balderrama relied on **Apprendi v. New Jersey, 530 U.S. 466, 490 (2000)** for the proposition that a fact increasing the authorized punishment generally must be charged and proven beyond a reasonable doubt.

His appellate filing argued that the facts triggering § 848(b)'s mandatory-life consequence required appropriate findings.

The panel responded that the factual argument was incorrect and, alternatively, not cognizable in a § 3582(c)(2) proceeding, citing *United States v. Whitehead.*

Appellant does not ask the Court to use § 3582(c)(2) as a substitute for collateral review.

Rather, he asks the Court to distinguish between:

**(a)** impermissibly reopening the underlying conviction; and

**(b)** determining which statutory sentencing provision actually governs when deciding whether a Guidelines amendment can lower the applicable sentencing range.

That threshold question is inherent in applying § 3582(c)(2).

## VI. AMENDMENTS 782 AND 788 REMAIN RELEVANT IF THE STATUTORY-MINIMUM PREMISE IS NOT CONTROLLING

Amendment 782 generally reduced by two levels the offense levels assigned to many drug quantities, and Amendment 788 made Amendment 782 retroactive.

The Government argued that these amendments cannot benefit Balderrama because § 848(b)'s life minimum overrides the otherwise amended Guideline calculation.

That reasoning depends entirely upon the premise that § 848(b) conclusively controls.

If that premise is unsettled, the Court must determine the amended Guidelines range before concluding that § 3582(c)(2) affords no possible relief.

Balderrama's reply specifically argued that Amendment 782 materially changes the Guidelines framework if § 848(a), rather than a mandatory § 848(b) floor, supplies the operative sentencing range.

## VII. CONCEPCION REINFORCES THE IMPORTANCE OF INTERVENING DEVELOPMENTS WHERE THE STATUTE AUTHORIZES RESENTENCING DISCRETION

In **Concepcion v. United States, 597 U.S. 481 (2022),** the Supreme Court recognized the traditional breadth of information sentencing courts may consider where Congress authorizes sentence modification.

Balderrama relied on *Concepcion* to argue for meaningful consideration of intervening law and fact.

Appellant acknowledges that *Concepcion* does not itself create eligibility under § 404 of the First Step Act. The panel correctly noted that § 404 concerns offenses whose penalties were modified by the Fair Sentencing Act and that Balderrama was not convicted of crack-cocaine offenses.

The rehearing petition therefore should not principally challenge that eligibility holding.

Instead, *Concepcion* supports the broader proposition that, once Congress authorizes sentencing reconsideration under an applicable statute, courts ordinarily assess relevant intervening circumstances rather than freeze the inquiry at the original sentencing record.

## VIII. THE COMPASSIONATE-RELEASE ANALYSIS SHOULD ADDRESS § 1B1.13(b)(5) AND (b)(6)

Balderrama expressly relied upon the revised Sentencing Commission policy statement.

His filing quoted the provision allowing "Other Reasons" where circumstances, alone or in combination, are similar in gravity to enumerated reasons. It also invoked the "Unusually Long Sentence" provision concerning a defendant who has served at least ten years and whose circumstances meet the policy statement's additional requirements.

These provisions matter because Balderrama has served far more than ten years and did not rely on any one circumstance in isolation.

His claim was that the combined force of:

- the length of imprisonment;
- his age;
- rehabilitation;
- educational achievements;
- diminished recidivism risk;
- sentencing developments; and
- disparity

created extraordinary and compelling circumstances.

A rehearing decision should expressly address whether the district court evaluated that combination under the current version of § 1B1.13.

## IX. REHABILITATION IS NOT OFFERED AS A STAND-ALONE BASIS

Under 28 U.S.C. § 994(t), rehabilitation alone cannot constitute an extraordinary and compelling reason.

Balderrama does not dispute that rule. Instead, rehabilitation is one component of the totality of circumstances. His filings describe more than eighty positive programming and educational certificates accumulated during lengthy incarceration. His appellate reply also stated that he was enrolled in RDAP and serving as a mentor.

The proper question is therefore not whether rehabilitation standing alone justifies release, but whether rehabilitation may strengthen other qualifying circumstances when considered collectively.

## X. PEPPER SUPPORTS CONSIDERATION OF POST-SENTENCING REHABILITATION

In **Pepper v. United States, 562 U.S. 476, 491 (2011)**, the Supreme Court emphasized the relevance of post-sentencing rehabilitation to an individualized sentencing determination. Balderrama cited *Pepper* in support of consideration of his post-sentencing conduct.

Although *Pepper* arose in a resentencing context, its underlying principle is relevant to § 3553(a): sentencing must assess the individual before the court, not merely the historical offense conduct.

## XI. THE § 3553(a) ANALYSIS SHOULD NOT END WITH THE SERIOUSNESS OF THE ORIGINAL OFFENSE

The Government emphasized the seriousness of the underlying drug organization, alleged kidnapping and murders, escape conduct, and prison disciplinary incidents.

Those considerations are unquestionably relevant. But § 3553(a) requires more than consideration of offense seriousness. It also directs courts to consider the defendant's history and characteristics, deterrence, protection of the public, available sentences, and the need to avoid unwarranted disparities.

Balderrama argued that more than twenty-five years of incarceration, advancing age, reduced recidivism risk, programming, rehabilitation, and deportation consequences materially affect those factors today. The panel declined to reach those arguments because it affirmed on the threshold extraordinary-and-compelling-reasons determination. If rehearing is granted on that threshold issue, the § 3553(a) analysis should also be reconsidered.

## XII. THE COURT SHOULD AT MINIMUM REMAND FOR APPLICATION OF THE CORRECT LEGAL FRAMEWORK

Balderrama need not establish in this petition that immediate release is mandatory.

The narrower requested relief is remand.

Remand would permit the district court to determine, in the first instance:

1. whether the operative Count One statutory framework was correctly identified;
2. the effect, if any, of Amendments 782 and 788;
3. whether the current § 1B1.13 framework was properly applied;
4. whether Balderrama's circumstances should be evaluated collectively;

5. what weight should be afforded rehabilitation and age;
6. whether any gross sentencing disparity exists under the applicable policy statement; and
7. whether the present-day § 3553(a) factors support any reduction.

That relief respects the district court's discretion while ensuring that discretion is exercised under the correct legal framework.

## PRAYER FOR RELIEF

**WHEREFORE,** Francisco Balderrama respectfully requests that this Court:

1. grant panel rehearing under Fed. R. App. P. 40;
2. separately grant rehearing en banc under Fed. R. App. P. 40(b)(2) and (c), incorporating the standards formerly codified in Fed. R. App. P. 35;
3. withdraw or amend the July 15, 2026 panel opinion;
4. vacate the judgment affirming denial of compassionate-release relief;
5. remand for reconsideration under the amended version of U.S.S.G. § 1B1.13;
6. direct consideration of the statutory distinction between 21 U.S.C. §§ 848(a) and 848(b) to the extent necessary to resolve sentence-modification eligibility;
7. direct consideration of Balderrama's individualized post-sentencing circumstances and § 3553(a) arguments; and
8. grant any additional relief the Court deems just and proper.

August 9, 2026

**Respectfully submitted,**



FRANCISCO RIOS BALDERRAMA
Reg. No. 27085-180
FCI Yazoo City Medium
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YAZOO CITY, MS 39194
**Pro Se Appellant**

## CERTIFICATE OF SERVICE

I, FRANCISCO RIOS BALDERRAMA, Reg. No. 27085-180, hereby certify that I have served a true and correct copy of:

**APPELLANT'S PETITION FOR REHEARING EN BANC UNDER FED. R. APP. P. 40, INCORPORATING THE STANDARDS FORMERLY SET FORTH IN FED. R. APP. P. 35**

[which is considered filed/served at the moment it was delivered to prison authorities for mailing as provided for in Houston v. Lack, 487 U.S. 266, 101 a complete copy of the above-described materials in a sealed envelope affixed with the appropriate pre-paid first-class United States postage:

**UNITED STATES COURT OF APPEALS**
**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**
**600 S. MAESTRI PLACE**
**NEW ORLEANS, LA 70130-3408**

And deposited same in the United States Legal Mail System at the:

**FCI Yazoo City Medium**
**FEDERAL CORRECTIONAL INSTITUTION**
**P.O. BOX 5000**
**YAZOO CITY, MS 39194**

Pursuant to Title 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

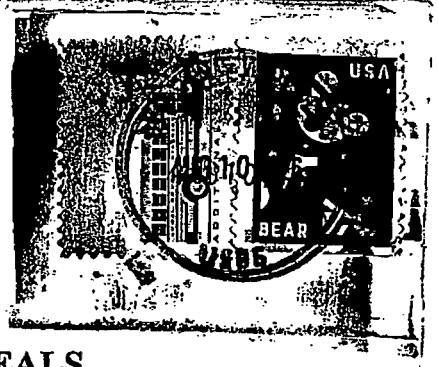
Dated and executed on August 9, 2026.

Signature 

FRANCISCO RIOS BALDERRAMA
Reg. No. 27085-180
FCI Yazoo City Medium
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Case: 24-50343 Document: 80-1 Page: 11 Date Filed: 08/13/2026

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**UNITED STATES COURT OF APPEALS**
**FIFTH CIRCUIT**
**OFFICE OF THE CLERK**
**600 S. MAESTRI PLACE**
**NEW ORLEANS, LA 70130-3408**

70130$3440 C027

# Appendix C:

District court order denying the sentence-reduction/compassionate-release motion that was reviewed in No. 24-50343.

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**MIDLAND/ODESSA DIVISION**

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA** | § | |
| | § | |
| v. | § | **MO:00-CR-00141-DC** |
| | § | |
| **(1) FRANCISCO RIOS BALDERRAMA** | § | |
| | § | |

**ORDER**

Francisco Rios Balderrama seeks a sentence reduction (1) under 18 U.S.C. § 3582(c)(2) based on amendments to the U.S. Sentencing Guidelines, (2) Section 404 of the First Step Act, and (3) under 18 U.S.C. § 3582(c)(1)(A) for compassionate release. After reviewing the parties' briefing, the Court finds that (1) Amendment 782 did not impact Balderrama's guideline range and the Section 3553(a) sentencing factors do not support reduction, (2) Section 404 of the First Step Act does not change Balderrama's sentencing exposure or guideline range, and (3) Balderrama has failed to show extraordinary and compelling reasons—and that he is no longer a danger to the community—for compassionate release under Section 3582(c)(1)(A). Because none of Balderrama's rationales warrant reduction, the Court **DENIES** his motion.[1]

**DISCUSSION**

During the latter part of the '90s, Balderrama led the criminal organization "Los Tres De La Sierra" which ran the small border town of Ojinaga, Mexico giving it exclusive control over all the marijuana imported into the U.S. through the region. Under

[1] ECF No. 1365.

Balderrama's leadership, the organization imported around 114,400 pounds of marijuana valued at over $57 million.

Balderrama was also no stranger to violence and intimidation. Trial testimony revealed that Balderrama ordered the kidnapping of Sabino Gardea, who owed the organization drug proceeds. Gardea was taken by gun point, blindfolded, and driven into Mexico to meet Balderrama. Balderrama released Gardea only after Gardea agreed to provide vehicles to the organization to pay off his debt. In another event, Balderrama accused Israel Pena Ocon of stealing 800 pounds of the organization's marijuana. When Ocon denied the theft, Balderrama told him that "someone" would pay him a visit if the marijuana wasn't returned. A few days later, a man named "El Chapo" gunned down and murdered Ocon outside of his house. In yet another event, Balderrama accused Rigoberto Loera of stealing marijuana from the organization. When Loera denied the theft, Balderrama told him to "watch out because [he] was going to kill Loera or a member of Loera's family."[2] Some time passed before Balderrama's co-defendant invited Loera to his house in Mexico. When Loera arrived, another Balderrama co-defendant opened fire and killed Loera. Apparently Mexican authorities advised Balderrama and other organization leaders to dump the bodies in the U.S. Later, Balderrama revealed that Loera was not killed over the theft but because he suspected Loera was an informant.

Balderrama and a co-conspirator were ultimately arrested at the 2000 Olympic Games in Sydney. While in a maximum-security prison in Australia, Balderrama and a co-defendant escaped by stealing a delivery truck and ramming through the facility gates. When Australian

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[2] ECF No. 1370 at 2–3.

authorities caught him a few days later during a failed attempt to buy a fraudulent passport, Balderrama was extradited to the U.S. After a four-week trial, a jury of his peers convicted him on fifteen of the twenty-four counts he faced.

The Government moved to vacate Count Two of the indictment because it was a lesser-included offense and therefore the Court did not consider it during sentencing. But based on Balderrama's conduct and criminal history, the guideline range for his continuing-criminal-enterprise conviction resulted in a statutory mandatory minimum life sentence. The Court considered the Section 3553(a) factors and selected life imprisonment on Count One, 480 months running concurrently for the marijuana trafficking counts, and 280 months running concurrently for the money laundering counts.

Balderrama has since appealed[3] and filed numerous collateral motions. As a result, this Court vacated his conviction on Count Three for conspiracy to import more than 1,000 kilograms of marijuana. For naught. Balderrama's sentence did not change due to his mandatory term of life imprisonment for Count One. Balderrama persisted. A couple of years ago, Balderrama sought recalculation of his sentences under Section 3582(c)(2) and Amendments 782 and 788 of the sentencing guidelines. This Court denied his motion. Balderama then sought reconsideration under Section 3582(c)(2) and also filed a motion to amend judgment under Rule 59(e) of the Federal Rules of Criminal Procedure. The Court responded by dismissing his motion to amend judgment and issued an amended order denying resentencing but noted that Balderrama's eligibility for reduced sentences on all but Count One under the calculated guideline ranges did not upset his mandatory life sentence.

[3] The Fifth Circuit affirmed this Court's judgment. *United States v. Quiroz*, 137 Fed. Appx. 667 (5th Cir. 2005).

The Court also allowed Balderrama to file a separate motion under the First Step Act once he'd exhausted his administrative remedies. This motion is the result.

## I. Section 3583(c)(2) and the Section 3553(a) factors

Section 3583(c)(2) does not authorize reduction of Balderrama's imprisonment term if "an amendment listed in subsection (d) does not have the effect of lowering the defendant's applicable guideline range."[4] This Court previously found that Amendment 782 did not lower Balderrama's guideline range for his Count One life imprisonment term. While these reductions are not mandatory, "this section merely gives the district court discretion to reduce a sentence under limited circumstances."[5] Even if Balderrama produced a new argument this time around, the Section 3553(a) factors remain unchanged. The nature, circumstances and seriousness of his offense are the same as they have been. Though Balderrama claims to have turned a new page and is no longer his formerly "immature and irresponsible" self, his involvement in multiple fights with other inmates, seriously injuring one in the process, say otherwise. Together, it seems that Balderrama continues to remain a threat to the public and may likely continue to violate the law. Balderrama also does not require medical treatment available only by reduction, nor has he identified any such needs. Moreover, reduction would ignore the statutory minimum life imprisonment prescribed by Congress.

## II. Section 404 of the First Step Act

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[4] U.S. Sent'g Guidelines Manual §1B1.10(a)(2)(B).

[5] *United States v. Doublin*, 572 F.3d 235, 238 (5th Cir. 2009) (per curiam).

Balderrama is ineligible for relief under Section 404. Section 404 gives courts discretion to reduce sentences for defendants convicted of certain cocaine offenses "as if the reduced statutory minimum penalties implemented by the Fair Sentencing Act ("Fair") of 2010 were in place at the time the offenses were committed."[6] In exercising its discretion, a court may consider "intervening changes of law or fact."[7] But Balderrama was not convicted of cocaine-related offenses. Rather, he was convicted of 21 U.S.C. § 848(b) for trafficking over 30,000 kilograms of marijuana. He therefore does not qualify for reduction under Section 404 of the First Step Act.

## III. Compassionate Release

Balderrama likewise fails to show compassionate release is warranted under Section 3582(c)(1)(A). Courts may grant sentence reduction under this section only if "extraordinary and compelling reasons"[8] justify it. Balderrama claims that his rehabilitation in prison is extraordinary and compelling enough to warrant reduction. However, Congress has made clear that rehabilitation alone does not qualify.[9] The Court likewise sees no other circumstances that would provide sufficient basis for relief.[10] Finally, the Court analyzed above that Balderrama continues to pose a threat to the community while discussing the Section 3553(a) factors.

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[6] *United States v. Stewart*, 964 F.3d 433, 433 (5th Cir. 2020); *Dorsey v. United States*, 567 U.S. 260, 269 (2012).
[7] *Concepcion v. United States*, 142 S.Ct. 2389, 2396–04 (2022).
[8] 18 § 3582(c)(1)(A).
[9] 28 U.S.C. § 994(t) ("Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.").
[10] *See* U.S. Sent'g Guidelines Manual § 1B1.13(b)(5).

## CONCLUSION

For the reasons stated above, the Court **DENIES** Balderrama's motion.[11]

It is so **ORDERED**.

SIGNED this 5th day of April, 2024.

DAVID COUNTS
UNITED STATES DISTRICT JUDGE

[11] ECF No. 1365.

# Appendix D:

Fifth Circuit Court of Appeals Docket.

**General Docket**
**United States Court of Appeals for the Fifth Circuit**

**Court of Appeals Docket #:** 24-50343 **Docketed:** 05/03/2024
USA v. Balderrama **Termed:** 07/15/2026
**Appeal From:** Western District of Texas, Midland Odessa
**Fee Status:** Fee Paid

**Case Type Information:**
1) Criminal (NCRIM)
2) Post-Conviction
3)

**Originating Court Information:**
**District:** 0542-7 : 7:00-CR-141-1
**Originating Judge:** Walter David Counts, III, U.S. District Judge
**Date Filed:** 09/29/2000
**Date NOA Filed:** 04/30/2024
**Date Rec'd COA:** 05/01/2024

**Prior Cases:**
03-50153 **Date Filed:** 02/07/2003 **Date Disposed:** 06/20/2005 **Disposition:** Affirmed

**Current Cases:**
None

**Panel Assignment:** Not available

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| United States of America<br>Plaintiff - Appellee | Zachary Carl Richter, Assistant U.S. Attorney<br>Direct: 512-370-1254<br>Email: zachary.c.richter@usdoj.gov<br>[COR LD NTC Government]<br>U.S. Attorney's Office<br>Western District of Texas<br>Suite 334<br>903 San Jacinto Boulevard<br>Austin, TX 78701 |
| v. | |
| Francisco Balderrama, also known as Kiko<br>(Federal Prisoner: #27085-180)<br>Defendant - Appellant | Francisco Balderrama<br>[NTC Pro Se]<br>FCI Yazoo City Medium<br>P.O. Box 5000<br>Yazoo City, MS 39194-5000 |

United States of America,

Plaintiff - Appellee

v.

Francisco Balderrama,
Defendant - Appellant

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|---|---|---|
| 05/03/2024 | 1<br>4 pg, 1.12 MB | NON-DIRECT CRIMINAL CASE docketed. NOA filed by Appellant Mr. Francisco Balderrama [24-50343] (JJF) [Entered: 05/03/2024 11:33 AM] |
| 05/08/2024 | 6<br>3 pg, 62.61 KB | INITIAL CASE CHECK by Attorney Advisor complete. Action: Case OK to Process. [6] Initial AA Check Due satisfied.. Fee due on 05/23/2024 for Appellant Francisco Balderrama [24-50343] (JJF) [Entered: 05/08/2024 01:59 PM] |
| 05/20/2024 | 7 | FEE PAID by Appellant Mr. Francisco Balderrama. Fee deadline satisfied [24-50343] (MFY) [Entered: 05/22/2024 08:36 AM] |
| 05/22/2024 | 8<br>6 pg, 102.02 KB | BRIEFING NOTICE ISSUED A/Pet's Brief Due on 07/01/2024 for Appellant Francisco Balderrama. [24-50343] (MFY) [Entered: 05/22/2024 09:03 AM] |
| 05/22/2024 | 9 | ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 7:00-CR-141-1. Electronic ROA due on 06/06/2024. [24-50343] (MFY) [Entered: 05/22/2024 09:09 AM] |
| 06/12/2024 | 10 | ELECTRONIC RECORD ON APPEAL FILED. Admitted Exhibits on File in District Court? Yes. Video/Audio Exhibits on File in District Court? No Electronic ROA deadline satisfied. [24-50343] (DDL) [Entered: 06/12/2024 12:59 PM] |
| 06/13/2024 | 12<br>4 pg, 88.25 KB | MOTION filed by Appellant Mr. Francisco Balderrama to extend time to file brief as appellant until 07/31/2024 [12]. [24-50343] (MFY) [Entered: 06/18/2024 11:57 AM] |
| 06/18/2024 | 13<br>1 pg, 48.63 KB | CLERK ORDER granting Motion to extend time to file appellant's brief filed by Appellant Mr. Francisco Balderrama [12] A/Pet's Brief deadline updated to 07/31/2024 for Appellant Francisco Balderrama [24-50343] (MFY) [Entered: 06/18/2024 05:00 PM] |
| 07/29/2024 | 14<br>37 pg, 992.2 KB | APPELLANT'S BRIEF FILED by Mr. Francisco Balderrama. A/Pet's Brief deadline satisfied. Appellee's Brief due on 09/13/2024 for Appellee United States of America [24-50343] (CAG) [Entered: 08/14/2024 11:26 AM] |
| 09/13/2024 | 15<br>6 pg, 115.08 KB | MOTION to dismiss the appeal for lack of jurisdiction; alternatively [15], to extend time to file brief of appellee for 21 days after the denial of the motion to dismiss and [15], to view and obtain sealed document. Response/Opposition due on 09/23/2024. [24-50343] REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: MOTION filed by Appellee USA to dismiss the |

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| | | appeal [15], to extend time to file brief of appellee until 10/04/2024 [15], to view and obtain sealed document. Date of service: 09/13/2024 via US mail - Appellant Balderrama; email - Attorney for Appellee: Gay [24-50343] (Joseph H. Gay Jr.) [Entered: 09/13/2024 08:46 AM] |
| 10/10/2024 | 20<br>6 pg, 195.25 KB | DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the response/opposition to motion to dismiss appeal for lack of jurisdiction received from Appellant Mr. Francisco Balderrama because it is out of time. [24-50343] (CAG) [Entered: 10/17/2024 11:23 AM] |
| 02/19/2025 | 28<br>3 pg, 111.79 KB | COURT ORDER remanding case to the WTX - Midland Odessa. The case is remanded to the district court for the limited purpose of considering whether to extend Balderrama's deadline for filing a notice of appeal. [24-50343] (MFY) [Entered: 02/19/2025 01:52 PM] |
| 04/10/2025 | 31<br>1 pg, 140.86 KB | DISTRICT COURT ORDER of 04/07/2025 limited remand. Notice of Appeal deadline is extended to April 30, 2024. [24-50343] (PAC) [Entered: 04/10/2025 10:17 AM] |
| 04/10/2025 | 32 | SUPPLEMENTAL ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 7:00-CR-141-1. Supplemental Electronic ROA due on 04/25/2025. [24-50343] (PAC) [Entered: 04/10/2025 10:18 AM] |
| 05/09/2025 | 35 | SUPPLEMENTAL ELECTRONIC RECORD ON APPEAL FILED. Electronic ROA deadline satisfied. Admitted Exhibits are on File in District Court? No. Video/Audio Exhibits on file in District Court? No. [24-50343] (MFY) [Entered: 05/09/2025 09:42 AM] |
| 07/25/2025 | 42<br>3 pg, 151.12 KB | COURT ORDER remanding case to the Western District of Texas - Midland Division for the limited purpose of determining whether there is excusable neglect or good cause to warrant an extension of time. Upon making this finding, the district court shall return the case to this court for further proceedings. [15] [15] . [15] [24-50343] (MFY) [Entered: 07/25/2025 03:22 PM] |
| 03/06/2026 | 50<br>2 pg, 217.99 KB | COURT ORDER denying Motion to dismiss appeal for lack of jurisdiction filed by Appellee USA [15]; granting Motion to extend time to file appellee's brief filed by Appellee USA [15] E/Res's Brief deadline updated to 03/27/2026 for Appellee United States of America; granting Motion to view and obtain sealed documents filed by Appellee USA [15] [24-50343] (MFY) [Entered: 03/06/2026 11:38 AM] |
| 03/12/2026 | 54<br>5 pg, 485.6 KB | DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the motion to view sealed documents received from Appellee USA because request is duplicative as Court |

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| | | granted the motion on March 6, 2026. [24-50343] (MFY) [Entered: 03/18/2026 01:11 PM] |
| 03/24/2026 | 55<br>3 pg, 65.62 KB | MOTION filed by Appellee USA to extend time to file brief of appellee until 04/10/2026 [55]. Date of service: 03/24/2026 via US mail - Appellant Balderrama; email - Attorney for Appellee: Richter [24-50343] (Zachary Carl Richter ) [Entered: 03/24/2026 03:14 PM] |
| 03/25/2026 | 56<br>1 pg, 112.49 KB | CLERK ORDER granting Motion to extend time to file appellee's brief filed by Appellee USA [55] Appellee's Brief due on 04/10/2026 for Appellee United States of America [24-50343] (NMF) [Entered: 03/25/2026 04:13 PM] |
| 04/10/2026 | 57<br>25 pg, 171.98 KB | APPELLEE'S BRIEF FILED E/Res's Brief deadline satisfied. Reply Brief due on 05/01/2026 for Appellant Francisco Balderrama [24-50343]<br>REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by USA. Date of service: 04/10/2026 via US mail - Appellant Balderrama; email - Attorney for Appellee: Richter [24-50343] (Zachary Carl Richter ) [Entered: 04/10/2026 02:12 PM] |
| 05/01/2026 | 58<br>21 pg, 3.76 MB | APPELLANT'S REPLY BRIEF FILED by Mr. Francisco Balderrama.<br>Reply Brief deadline satisfied [24-50343] (RSM) [Entered: 05/04/2026 08:07 AM] |
| 07/15/2026 | 76<br>5 pg, 220.32 KB | UNPUBLISHED OPINION FILED. [24-50343 Affirmed ] Judge: CH , Judge: JEG , Judge: ICR Mandate issue date is 08/05/2026 [24-50343] (MFY) [Entered: 07/15/2026 01:20 PM] |
| 07/15/2026 | 77<br>2 pg, 113.6 KB | JUDGMENT ENTERED AND FILED. [24-50343] (MFY) [Entered: 07/15/2026 01:25 PM] |
| 08/05/2026 | 79<br>6 pg, 371.86 KB | MANDATE ISSUED. Mandate issue date satisfied. [24-50343] (LEF) [Entered: 08/05/2026 08:12 AM] |
| 08/13/2026 | 80<br>12 pg, 440.91 KB | DOCUMENT RECEIVED - NO ACTION TAKEN. No action will be taken at this time on the petition for rehearing en banc received from Appellant Mr. Francisco Balderrama because it is out of time [24-50343] (RSM) [Entered: 08/14/2026 11:12 AM] |