IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	**:**	
v.	**:**	**CRIMINAL NO. 03-271**
JEREMY RODRIGUEZ	**:**	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO REDUCE SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)(i)

Defendant Jeremy Rodriguez seeks compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). This motion should be denied, as he does not set forth any circumstance warranting this extraordinary relief.

Rodriguez is in generally good health, and does not present the type of extraordinary medical circumstances for which compassionate release is intended.

He presents a concern regarding exposure to COVID-19, which is understandable, but his circumstances are similar to those of many thousands of federal inmates. The Bureau of Prisons is taking extraordinary measures in an effort to protect the health of inmates during the pandemic, while also carrying out its mission of incarcerating sentenced prisoners to protect the public. Thus, a panel of the Third Circuit recently denied a motion for release pending appeal

that was based on similar concerns presented by Rodriguez. The same result should apply here.

Rodriguez cites his rehabilitation in custody, and desire to return to his family. As a matter of law, these are not justifiable bases for compassionate release.

Finally, Rodriguez makes the extraordinary suggestion that this Court possesses what amounts to a parole power, and can reduce his sentence based on speculation regarding how this case would be charged today. No such power exists.

In short, compassionate release is designed to address exceptional circumstances, generally involving medical situations such as terminal illness, or the need to care for ailing family members. Rodriguez presents no such circumstance, and his motion should be denied.

I. Background.

From May 13, 2002 through August 29, 2002, Jeremy Rodriguez and his long-time partner and the mother of their children, Jasmine Perez, conspired to sell heroin to an undercover Philadelphia Police narcotics officer on 12 separate occasions. On the last of these occasions, on August 29, 2002, after the officer gave Perez $500 in exchange for 91 packets of heroin, officers arrested Rodriguez and Perez, and searched their residence. There, the officers found 37 more packets of heroin, along with a Smith & Wesson .44 caliber magnum loaded with five live rounds of ammunition underneath Rodriguez's bed.

On August 19, 2004, based on these events, Rodriguez pled guilty to one count of conspiracy to distribute heroin, in violation of 21 U.S.C. § 846; one count of distribution of heroin, in violation of 21 U.S.C. § 841(a)(1); one count of possession of heroin with intent to distribute; one count of possession of a firearm in furtherance of a drug trafficking crime, in violation of 18 U.S.C. § 924(c); and one count of possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g).

As set forth in the presentence report, Rodriguez had five prior Pennsylvania convictions for possession of a controlled substance with intent to deliver, all involving cocaine or crack cocaine. PSR ¶¶ 48-52. The Probation Office determined that Rodriguez was responsible in this case for 12.15 grams of heroin. The Section 2D1.1 base offense level for this quantity was lower than the base offense level for the Section 922(g) offense, which, under U.S.S.G. § 2K2.1, carried a base offense level of 24. PSR ¶ 35. Nevertheless, because Rodriguez had three prior convictions for "serious drug offenses," he was classified as an armed career criminal pursuant to 18 U.S.C. § 924(e) ("ACCA") and Section 4B1.4, as well as a career offender under Section 4B1.1. Rodriguez's enhanced offense level was 34 under both Sections 4B1.1 and 4B1.4. With a three-level reduction for acceptance of responsibility, his total offense level was 31. Rodriguez was in criminal history category VI regardless of his career criminal status. Because of the Section 924(c) conviction, his guideline range, pursuant to Section 4B1.1(c)(2), was 262 to 327 months. Rodriguez was subject to a mandatory

minimum sentence of 180 months on the felon-in-possession count, and a mandatory consecutive sentence of 60 months for the Section 924(c) offense.

At the sentencing hearing on March 9, 2005, this Court adopted the guideline range in the presentence report but varied from this range and sentenced Rodriguez to the ACCA mandatory minimum sentence of 180 months on the felon-in-possession count, and a 60-month mandatory consecutive sentence on the Section 924(c) count, for a total term of imprisonment of 240 months.

Despite the appellate waiver provision in his plea agreement, Rodriguez filed an appeal. The government moved to dismiss the appeal and the Third Circuit granted the motion. Rodriguez has since filed a number of meritless motions for post-conviction release, all of which have been denied.

Rodriguez is presently serving the sentence at FCI Elkton (Ohio), with an anticipated release date (assuming continued good behavior) of October 23, 2021. On February 25, 2020, he made a request of the warden that BOP move for compassionate release on his behalf. On March 17, 2020, the warden denied the request, stating, "The reasons you cite for consideration are not listed in the Program Statement and are not deemed to meet the criteria to be considered for a Compassionate Release/Reduction in Sentence."

On March 25, 2020, Rodriguez filed his motion in this Court for compassionate release (docket no. 127) ("Motion"), to which the government responds here.[1]

II. The Compassionate Release Statute.

As amended by the First Step Act of 2018, Section 3582(c)(1)(A)(i) provides:

> (c) Modification of an imposed term of imprisonment.--The court may not modify a term of imprisonment once it has been imposed except that--
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> (1) in any case--
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> (A) the court, upon motion of the Director of the Bureau of Prisons, *or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier,* may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--
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> (i) extraordinary and compelling reasons warrant such a reduction . . .
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> and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . .

In Section 603(b) of the First Step Act, Congress added the italicized passage that permits a defendant, after denial of a request to BOP that it sponsor a request for

[1] The Court has scheduled a conference call regarding this matter for March 27, 2020, at 2 p.m. We understand that the Court requested the participation of the Warden of FCI Elkton. Senior CLC Attorney Marisa Nash of the Bureau of Prisons will participate in the call on behalf of the Warden.

compassionate release, or the passage of a specified period of time after seeking BOP's acquiescence, to himself move the court for relief. Previously, only BOP could initiate a motion for compassionate release.[2]

Critically, the statute provides that any sentence reduction must be "consistent with applicable policy statements issued by the Sentencing Commission." Based on the Congressional mandate, the Sentencing Commission set forth the policy statement in U.S.S.G. § 1B1.13 governing motions for compassionate release. In defining the extraordinary circumstances that may warrant relief, the Commission focused on medical condition, age, and family responsibilities. Application note 1 states that "extraordinary and compelling reasons exist under any of the circumstances set forth below":

(A) Medical Condition of the Defendant.--

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[2] This Court has authority to consider the defendant's motion at this time. On March 26, 2020, the defendant filed a Supplemental Motion to Waive Exhaustion Requirements Due to COVID-19 Public Health Emergency (docket no. 128), suggesting that, absent a waiver by this Court, he "is now required to exhaust 'all administrative rights to appeal' [the warden's] denial before he can bring his motion before the Court." That is incorrect. The statute allows the filing of a motion by the inmate "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." Here, the warden received the request on February 25, 2020, and more than 30 days has lapsed since that time. Rodriguez need not await the exhaustion of administrative remedies. To be sure, in many cases there are good reasons for a court to await the completion of administrative review, as a matter of the court's discretion, to benefit from BOP's complete consideration of a request, which may rest on complex medical issues within the purview of the BOP medical staff. But no such delay is necessary here, as Rodriguez's request is plainly insufficient under the statute.

> (i) 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.
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> (ii) The defendant is--
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> > (I) suffering from a serious physical or medical condition,
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> > (II) suffering from a serious functional or cognitive impairment, or
> >
> > (III) experiencing deteriorating physical or mental health because of the aging process,
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> that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

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

(C) Family Circumstances.--

> (i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.
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> (ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons.--As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

Addressing subsection (D), BOP has issued a regulation defining its own consideration of requests for compassionate release. That regulation appears at

Program Statement 5050.50, available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf. This program statement was amended effective January 17, 2019, following passage of the First Step Act. It replaces the previous program statement, 5050.49, CN-1. It sets forth in detail BOP's definition of the circumstances that may support a request for compassionate release, limited to the same bases identified by the Sentencing Commission: medical condition, age, and family circumstances.

III. Rodriguez Has Not Set Forth a Basis for Compassionate Release.

Rodriguez does not set forth any circumstance identified in the policy statement as permitting compassionate release.

A. He Does Not Suffer from an Extraordinary Medical Condition.

Rodriguez states that "[h]e is diabetic, [and] has high blood pressure." Motion at 2.

These are not serious medical conditions "that substantially diminish[] the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover." § 1B1.13 app. note 1(A).

Indeed, Rodriguez's records reveal that he is classified by the BOP medical staff in Medical Care Level 1. That is the lowest of the four medical care levels assigned to BOP inmates. This level applies to inmates who are generally healthy with limited needs for clinician evaluation and monitoring. The records show that

Rodriguez's conditions are not unusual, and are controlled with ordinary dosage of a statin, a medication to reduce blood pressure, and a medication for his type II diabetes. Rodriguez, who is currently 44 years old, requires infrequent checkups. During his most recent, on January 24, 2020, the clinician's principal recommendation was that he attempt to exercise more and reduce his calorie consumption, in order to lose weight. In other words, Rodriguez's present condition is similar to that of countless men of his age.

Compassionate release is not permitted in these circumstances. *See, e.g.*, *United States v. Willis*, 352 F. Supp. 3d 1185, 1188 (D.N.M. 2019) (relief is "rare" and "extraordinary"); *United States v. Lisi*, 2020 WL 881994, at *4 (S.D.N.Y. Feb. 24, 2020) ("a defendant's medical condition must be one of substantial severity and irremediability"); *United States v. Polnitz*, 2020 WL 1139836, at *2 (E.D. Wis. Mar. 9, 2020) (must be extraordinary; "Many inmates suffer from pain and mental illness."); *United States v. Lynn*, 2019 WL 3082202 (S.D. Ala. July 15, 2019), *appeal dismissed*, 2019 WL 6273393 (11th Cir. Oct. 8, 2019) (compassionate release, sought on the basis of a variety of health ailments, is denied, as none affect the inmate's ability to function in a correctional environment); *Cannon v. United States*, 2019 WL 5580233, at *3 (S.D. Ala. Oct. 29, 2019) (the 71-year-old defendant suffers from significant back and stomach issues, as well as high blood pressure, diabetes, skin irritation, loss of hearing, and various other complications, but relief is denied: "First, there is no indication that Cannon is terminally ill. Second, despite the many medical afflictions

Cannon identifies, he does not state, much less provide evidence, that his conditions/impairments prevent him from providing self-care within his correctional facility. Rather, the medical records provided by Cannon show that his many conditions are being controlled with medication and there is no mention that his conditions are escalating or preventing him from being from being able to provide self-care."); *United States v. Mitchell*, 2020 WL 544703 (W.D. Ark. Feb. 3, 2020) (the defendant suffers from ordinary geriatric issues, including hypertension, gastroesophageal reflux disease, lower back pain, and benign prostatic hyperplasia, which do not prevent him from holding a job or providing self-care); *United States v. Clark*, 2019 WL 1052020, at *3 (W.D.N.C. Mar. 5, 2019) (defendant suffers from declining health, diabetes, kidney failure, and back problems requiring a walker; court holds that, even assuming the defendant is suffering from a serious physical or medical condition or deteriorating physical health due to age, she still falls short of the "extraordinary and compelling" standard because she has not demonstrated that her condition substantially diminishes her ability to provide self-care within the corrections environment or that she is not expected to recover).

B. The Risk Presented by COVID-19 Does Not Justify Release.

Rodriguez further posits that he is at significant risk because of the COVID-19 pandemic because he is a type II diabetic with high blood pressure. However, BOP is engaged in extraordinary actions to protect inmates during the pandemic, and Rodriguez does not present any concern that does not similarly apply to

many thousands of other inmates. *See United States v. Gileno*, 2020 WL 1307108, at *4 (D. Conn. Mar. 19, 2020) (compassionate release based on COVID-19 pandemic denied, as "Mr. Gileno has also not shown that the plan proposed by the Bureau of Prisons is inadequate to manage the pandemic within Mr. Gileno's correctional facility, or that the facility is specifically unable to adequately treat Mr. Gileno.").

We are certainly sensitive to the issue Rodriguez raises, and along with the Bureau of Prisons are monitoring the situation on a daily, even hourly basis. We do not minimize the concern or the risk. But at the moment, BOP has taken aggressive action to mitigate the danger. If the situation changes, it will take action to attempt to protect all inmates, including those, like Rodriguez, who may be more susceptible to adverse results due to existing ailments. The problem should be addressed in a comprehensive manner at the appropriate time.

BOP has been planning for potential coronavirus transmissions since January. At that time, the agency established a working group to develop policies in consultation with subject matter experts in the Centers for Disease Control (CDC), including by reviewing guidance from the World Health Organization (WHO).

On March 13, 2010, BOP announced that it was implementing the Coronavirus (COVID 19) Phase Two Action Plan ("Action Plan") in order to minimize the risk of COVID-19 transmission into and inside its facilities. The

Action Plan comprises several preventive and mitigation measures, including the following:

Screening of Inmates and Staff: All new BOP inmates are screened for COVID-19 symptoms and risk of exposure. Asymptomatic inmates with a documented risk of exposure will be quarantined; symptomatic inmates with documented risk of exposure will be isolated and tested pursuant to local health authority protocols. In areas with sustained community transmission, all facility staff will be screened for self-reported risk factors and elevated temperatures. (Staff registering a temperature of 100.4 degrees F or higher will be barred from the facility on that basis alone.)

Contractor access to BOP facilities is restricted to only those performing essential services (e.g. medical or mental health care, religious, etc.) or those who perform necessary maintenance on essential systems. All volunteer visits are suspended absent authorization by the Deputy Director of BOP. Any contractor or volunteer who requires access will be screened using the same procedures as applied to staff prior to entry.

Quarantine Logistics: The Action Plan directs all BOP institutions to assess their stockpiles of food, medicines, and sanitation supplies and to establish quarantine areas within their facilities to house any detainees who are found to be infected with or at heightened risk of being infected with coronavirus pursuant to the above-described screening protocol.

Suspension of Social Visits and Tours: BOP has placed a 30-day hold on all social visits, such as visits from friends and family, to limit the number of people entering the facility and interacting with detainees. In order to ensure that familial relationships are maintained throughout this disruption, BOP has increased detainees' telephone allowance to 500 minutes per month. Tours of facilities are also suspended for at least the first 30 days that the Action Plan is in effect.

Suspension of Legal Visits: BOP has also placed a 30-day hold on legal visits, though such visits will be permitted on a case-by-case basis after the attorney has been screened for infection in accordance with the screening protocols for prison staff.

Suspension of Inmate Movements: BOP has also ceased the movement of inmates and detainees among its facilities for at least the first 30 days that the Action Plan is in effect. Though there will be exceptions for medical treatment and similar exigencies, this will prevent transmissions between institutional populations. Likewise, all official staff travel has been cancelled, as has most staff training.

Modified Operations: Finally, the Action Plan requires wardens at BOP facilities to modify operations in order to maximize social distancing. Among the possible actions are staggering of meal times and recreation time.

Further details regarding these efforts are available at: https://www.bop.gov/resources/news/20200313_covid-19.jsp

and at a regularly updated resource page:

https://www.bop.gov/coronavirus/index.jsp

In addition, on March 26, 2020, the Attorney General directed the Director of the Bureau of Prisons to "prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic." This initiative is aimed at ameliorating the possibility of harm to those most at risk of adverse outcomes, that is, elderly inmates and those suffering from terminal illnesses.[3]

Taken together, these measures are designed to sharply mitigate the risks of COVID-19 transmission in a BOP institution. We trust that BOP professionals will continue to monitor this situation and adjust its practices as necessary to maintain the safety of prison staff and inmates while also fulfilling its mandate of incarcerating all persons sentenced or detained based on judicial orders.

Accordingly, we do not advocate action by judges in individual cases that do not involve immediate risk. Along these lines, in *United States v. Davis*, No. 19-1604, on March 20, 2020, a motions panel of the Third Circuit denied a motion for bail pending appeal that rested on very similar assertions as those

[3] Rodriguez does not fall in these categories. Under 34 U.S.C. § 60541(g), BOP has statutory authority to transfer to home confinement a person who is terminally ill, or one who is 60 years of age or older and has served at least 2/3 of his sentence. Rodriguez, age 44, does not qualify. He is subject to the statute applicable to all inmates, 18 U.S.C. § 3624(c), which permits BOP to transfer him to community confinement when one year remains in his term (that will likely be this October), and to home confinement when six months remains (likely in April 2021).

stated by Rodriguez. Appellant Davis is 69 years old and suffers from ailments somewhat common for his age (asthma, high blood pressure, etc.). The Court of Appeals ruled: "Appellant's Emergency Motion for Bail Pending Appeal Due to Coronavirus Risk is denied. Appellant may renew the Emergency Motion if he is diagnosed with COVID-19."

For all of these reasons, compassionate release based on COVID-19 is not appropriate.

C. Rodriguez May Not Receive Compassionate Release Based on Rehabilitation.

Rodriguez also stresses his efforts at rehabilitation, and his desire to reunite with his family. Motion 10-11. These are not appropriate bases for compassionate release. *See* 28 U.S.C. § 994(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.").[4]

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[4] Rodriguez is to be commended for his efforts. We note that he has incurred two infractions during his confinement: for testing positive for alcohol (vodka) in December 2013, and possessing a cell phone in July 2019. The latter is a serious infraction, which resulted in disciplinary segregation for 60 days and his loss of 41 days of good conduct time. Similar misconduct will delay the anticipate release dates set forth in this memorandum.

D. Rodriguez May Not Receive Compassionate Release Based on Speculation Regarding the Sentence He Would Receive if Prosecuted Today.

Rodriguez speculates that he would be prosecuted differently and receive a lower sentence today, and seeks compassionate release on that basis. His speculation is wrong, but more importantly, this is an impermissible ground for compassionate release under Section 3582(c)(1)(A)(i).

1. Any sentence reduction must be consistent with the Sentencing Commission's policy statement.

As explained above, the compassionate release statute explicitly directs the Sentencing Commission to determine the permissible grounds for compassionate release, and none of the grounds allowed by the Commission in Section 1B1.13 involve reassessment of the propriety of a sentence. Instead, they focus on extraordinary medical and family circumstances unique to a defendant.

Actually, the Congressional directive is expressed in several statutes. Congress directed the Sentencing Commission to adopt policy statements regarding "the appropriate use of . . . the sentence modification provisions set forth in section[] . . . 3582(c) of title 18." 28 U.S.C. § 994(a)(2)(C). Providing further guidance, Section 994(t) states: "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." And finally, Section 3582(c)(1)(A) conditions judicial relief on fidelity to the applicable policy statement, which appears at U.S.S.G. § 1B1.13, stating that a reduction must be "consistent with applicable policy statements issued by the Sentencing Commission."

The defendant suggests that the resulting guideline is only advisory, Motion at 7, but that is not true of this guideline. This policy statement is binding under the express terms of Section 3582(c)(1)(A), and because it concerns only possible sentence reductions, not increases, it is not subject to the rule of *Booker v. United States*, 543 U.S. 220 (2005), that any guideline that increases a sentence must be deemed advisory.

This issue was resolved by the Supreme Court in *Dillon v. United States*, 560 U.S. 817 (2010), which the defendant does not address, but makes clear that the statutory requirement in Section 3582 that a court heed the restrictions stated by the Sentencing Commission is binding.

Dillon concerned a motion for a reduction in sentence under 18 U.S.C. § 3582(c)(2), which allows a sentence reduction in limited circumstances upon the Commission's adoption of a retroactive guideline amendment lowering a guideline range. That subsection allows such an action "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission" – language identical to that which appears in Section 3582(c)(1)(A) with respect to a court's consideration of a motion for compassionate release ("if

it finds . . . that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission").

The *Dillon* Court held that the Commission's pertinent policy statement concerning retroactive guideline amendments (U.S.S.G. § 1B1.10) is binding, particularly its directive that a permissible sentence reduction is limited to the bottom of the revised guideline range, without application of the rule of *Booker*. *See Dillon*, 560 U.S. at 826. *Dillon* emphasized that a sentence reduction under Section 3582(c)(2) is not a resentencing proceeding, but rather "represents a congressional act of lenity intended to give prisoners the benefit of later enacted adjustments to the judgments reflected in the Guidelines," without any possibility of increase in a sentence. *Id*. at 828. The Court stressed the opening passage of 18 U.S.C. § 3582(c) – "The court may not modify a term of imprisonment once it has been imposed except that" – and the specific language of Section 3582(c)(2), which gives a court power to "reduce" a sentence, not increase it. For this and numerous other reasons – that the provision applies only to a limited class of prisoners, that Federal Rule of Criminal Procedure 43(b)(4) does not require the defendant's presence at any proceeding under Section 3582(c), and that Congress explicitly gave the Sentencing Commission a significant role in determining eligibility – *Dillon* held that the *Booker* rule is inapplicable and the Commission's relevant policy statement is controlling.

Every consideration identified in *Dillon* appears here. A motion for compassionate release rests on an act of Congressional lenity. It appears under

the same prefatory language of Section 3582(c) ("The court may not modify a term of imprisonment once it has been imposed except that"), and explicitly refers to an action to "reduce" a sentence. It applies only to a limited class of prisoners, and does not warrant a full resentencing procedure. There is no basis for any conclusion other than that the statutory language is binding: a court may reduce a sentence based on "extraordinary and compelling reasons" only if "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."

Thus, the defendant's position, that Congress aimed to afford courts discretion to determine in individual cases whether there is a basis for a sentence reduction, simply ignores the text of the actual statutes, not to mention the *Dillon* decision.

The defendant cites S. Rep No. 98-225 (1983), Motion at 6, but it does not contradict the statutes (not that it could). This Senate report was issued in relation to the Comprehensive Crime Control Act of 1984, in which the compassionate release provision was adopted. At the time, Congress endeavored to abolish indeterminate sentencing and the related parole system, determining that fairness required consistent and predictable sentencing of like offenders. The report observed:

> The Committee believes that there may be unusual cases in which an eventual reduction in the length of a term of imprisonment is justified by changed circumstances. These would include cases of severe illness, cases in which other extraordinary and compelling circumstances justify a reduction of an unusually long sentence, and some cases in which the

> sentencing guidelines for the offense of which the defender was convicted have been later amended to provide a shorter term of imprisonment. The Committee believes, however, that it is unnecessary to continue the expensive and cumbersome Parole Commission to deal with the relatively small number of cases in which there may be justification for reducing a term of imprisonment. The bill, as reported, provides instead in proposed 18 U.S.C. 3583(c) for court determination, subject to consideration of Sentencing Commission standards, of the question whether there is justification for reducing a term of imprisonment in situations such as those described.

S. Rep. 98-225, at 55-56. The Committee later described "the unusual case in which the defendant's circumstances are so changed, such as by terminal illness, that it would be inequitable to continue the confinement of the prisoner. In such a case, under subsection (c)(1)(A), the Director of the Bureau of Prisons could petition the court for a reduction in the sentence, and the court could grant a reduction if it found that the reduction was justified by 'extraordinary and compelling reasons' and was consistent with applicable policy statements issued by the Sentencing Commission." *Id.* at 121. These statements are fully consistent with the statutes as ultimately passed, which direct courts to grant compassionate release only as consistent with the policy statement of the Sentencing Commission.

In the First Step Act of 2010, in amending Section 3582(c)(1)(A), Congress granted inmates a new procedural right: the opportunity to bring motions for compassionate release directly. In so providing, Congress did not alter the substantive criteria governing motions for compassionate release, which remain subject to binding guidance of the Sentencing Commission.

2. The parole power suggested by the defendant is completely antithetical to the statute and the entire federal sentencing scheme.

The Sentencing Commission's binding guidance does not provide any basis for compassionate release based on reevaluation of the severity of the original sentence. This is not surprising. The compassionate release statute is part of an intricate sentencing scheme. The 1984 sentencing reform of which this statute is part was animated by the Congressional determination "that sentencing in the Federal courts is characterized by unwarranted disparity and by uncertainty about the length of time offenders will serve in prison." S. Rep. 98-225, at 49. Thus, Congress created the Sentencing Commission to "provide certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar criminal conduct while maintaining sufficient flexibility to permit individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices . . . ." 28 U.S.C. § 991(b)(1)(B). *See also Peugh v. United States*, 569 U.S. 530, 535 (2013); *United States v. Booker*, 543 U.S. 220, 264 (2005) (majority opinion of Breyer, J.); *Koon v. United States*, 518 U.S. 81, 113 (1996) ("The goal of the Sentencing Guidelines is, of course, to reduce unjustified disparities and so reach toward the evenhandedness and neutrality that are the distinguishing marks of any principled system of justice. In this respect, the Guidelines provide uniformity,

predictability, and a degree of detachment lacking in our earlier system."). Justice Breyer, an architect of the sentencing reform effort, explained:

> The Sentencing Reform Act (SRA) has two overall objectives. *See Barber v. Thomas*, 130 S.Ct. 2499, 2505 (2010); *see also* United States Sentencing Commission, Guidelines Manual § 1A3, p. 1.2 (Nov.1987) (USSG) (addressing statutory objectives). First, it seeks greater honesty in sentencing. Instead of a parole commission and a judge trying to second-guess each other about the time an offender will actually serve in prison, the SRA tries to create a sentencing system that will require the offender actually to serve most of the sentence the judge imposes. *See Mistretta v. United States*, 488 U.S. 361, 367 (1989) ("[The SRA] makes all sentences basically determinate"). Second, the Act seeks greater fairness in sentencing through the creation of Guidelines that will increase the likelihood that two offenders who engage in roughly similar criminal behavior will receive roughly similar sentences. *See Barber, supra*, at 2505 (noting that Congress sought to achieve, in part, "increased sentencing uniformity").

Setser v. United States, 566 U.S. 231, 244 (2012) (Breyer, J., dissenting).

Thus, the Act calls for consistent sentencing, and provides extremely limited grounds for later alteration of a sentence. Specifically, Section 3582(c) prohibits a court from modifying a sentence of imprisonment except in three limited circumstances: (1) where extraordinary and compelling reasons warrant a reduction, § 3582(c)(1)(A); (2) where another statute or Federal Rule of Criminal Procedure 35 expressly permits a sentence modification, § 3582(c)(1)(B); or (3) where a defendant has been sentenced to a term of imprisonment based on a sentencing range that was subsequently lowered by the Commission and certain other requirements are met, § 3582(c)(2). *See also United States v. Washington*, 549 F.3d 905, 915-16 (3d Cir. 2008) (holding that a sentence may only be modified pursuant to Section 3582(c) or Rule 35, and a district court otherwise

lacks jurisdiction to modify a previously imposed sentence; here, the district court vacated a sentence upon learning that the defendant had been prosecuted under a false name he provided, in order to conceal his full criminal history, and the Court of Appeals reversed this action as exceeding the court's jurisdiction). Under Section 3582(c), "[i]n the sentencing context, there is simply no such thing as a 'motion to reconsider' an otherwise final sentence." *United States v. Dotz*, 455 F.3d 644, 648 (6th Cir. 2006).

Accordingly, consistent with the statutory scheme, the grounds for compassionate release identified by the Commission are all based on inherently individual circumstances – health, age, and family responsibilities – and, not surprisingly, nothing remotely comparable to the propriety of long-final sentences.

Indeed, the remedy sought by the defendant would mark a profound alteration of the sentencing scheme carefully designed by Congress. It would afford individual judges the authority to, in effect, exercise a parole power that Congress specifically acted in 1984 to abolish, or exercise a clemency function that the Constitution affords exclusively to the President. *See* U.S. Const., Art. II, § 2, cl. 1.[5] A judge could, for instance, impose a mandatory sentence as dictated by Congress, and then after the judgment became final act to reduce it, upon a

[5] Rodriguez states, "Essentially, Congress viewed Section 3582(c) as enabling courts to reduce sentences which had previously been managed via the parole system." Motion at 6. Exactly the opposite is true.

declaration that imposition of the sentence in the particular case is "extraordinary" and unwarranted. This power would inevitably result in varying determinations by different courts, demolishing the certainty and consistency in sentencing that Congress required through passage of the Sentencing Reform Act. The suggested course would also undermine the finality of sentences, a concept "which is essential to the operation of our criminal justice system. Without finality, the criminal law is deprived of much of its deterrent effect." *Teague v. Lane*, 489 U.S. 288, 309 (1989).[6]

Under still-controlling law, Congress has tasked the Sentencing Commission, not the courts, with determining what constitutes an "extraordinary and compelling reason" that can justify compassionate release. In a detailed and still-controlling policy statement, the Commission has set forth four categories of reasons that qualify. The reasons that the defendant relies upon in his motion do not align with any of the reasons given by the Commission. Because of this, he is statutorily ineligible for compassionate release.

3. Rodriguez is incorrect that courts themselves may define what counts as an extraordinary circumstance under the statute.

Rodriguez then tries another tack, asserting that the Court now has authority to itself define what qualifies as an "extraordinary and compelling

[6] Likewise, it would be inappropriate for the Bureau of Prisons, in the exercise of its authority to recommend compassionate release, to assume for itself the authority to reject lengthy sentences in individual cases based on disagreement with Congressional penalty enactments.

circumstance." To be sure, some district courts have agreed with the proposition that a court may now itself define the circumstances that permit compassionate release, unfettered by the Commission's policy statement, but none addresses the extensive arguments presented here concerning the clear statutory language. Indeed, none recognizes or addresses the significance of the Supreme Court's *Dillon* decision in addressing this issue. *See United States v. Rodriguez*, 2019 WL 6311388, at *7 (N.D. Cal. Nov. 25, 2019); *United States v. Brown*, 2019 WL 4942051, at *4 (S.D. Iowa Oct. 8, 2019); *United States v. O'Bryan*, 2020 WL 869475 (D. Kan. Feb. 21, 2020); *United States v. Perez*, 2020 WL 1180719 (D. Kan. Mar. 11, 2020); *United States v. Bucci*, 2019 WL 5075964, at *1 (D. Mass. Sept. 16, 2019); *United States v. Fox*, 2019 WL 3046086, at *3 (D. Me. July 11, 2019); *United States v. Urkevich*, 2019 WL 6037391 (D. Neb. Nov. 14, 2019); *United States v. Beck*, 2019 WL 2716505, at *6 (M.D.N.C. June 28, 2019); *United States v. Young*, 2020 WL 1047815, at *6 (M.D. Tenn. Mar. 4, 2020); *United States v. Cantu*, 2019 WL 2498923, at *5 (S.D. Tex. June 17, 2019); *United States v. Maumau*, 2020 WL 806121 (D. Utah Feb. 18, 2020); *United States v. Redd*, 2020 WL 1248493 (E.D. Va. Mar. 16, 2020).

Other courts disagree, and concur with the government's view that the policy statement remains controlling. *See, e.g.*, *United States v. Lynn*, 2019 WL 3805349, at *3-4 (S.D. Ala. Aug. 13, 2019); *United States v. Shields*, 2019 WL 2359231, at *4 (N.D. Cal. June 4, 2019); *United States v. Willingham*, 2019 WL 6733028, at *2 (S.D. Ga. Dec. 10, 2019) (disagreeing with decisions cited above,

stating, "[t]hese cases, however, rest upon a faulty premise that the First Step Act somehow rendered the Sentencing Commission's policy statement an inappropriate expression of policy. This interpretation, and it appears to be an interpretation gleaned primarily from the salutary purpose expressed in the title of Section 603(b) of the First Step Act, contravenes express Congressional intent that the Sentencing Commission, not the judiciary, determine what constitutes an appropriate use of the 'compassionate release' provision"); *United States v. McGraw*, 2019 WL 2059488, *2 (S.D. Ind. 2019); *United States v. Neubert*, 2020 WL 1285624, at *3 (S.D. Ind. Mar. 17, 2020) ("a reduction under § 3582(c)(1)(A) is not warranted because the disparity between Mr. Neubert's actual sentence and the one he would receive if he committed his crimes today is not an 'extraordinary and compelling circumstance.' Instead, it is what the plain language of § 403 [of the First Step Act] requires."); *United States v. Schmitt*, 2020 WL 96904, at *3 (N.D. Iowa Jan. 8, 2020); *United States v. Washington*, 2019 WL 6220984, at *2 (E.D. Ky. Nov. 21, 2019); *United States v. Willis*, 382 F. Supp. 3d 1185, 1187 (D.N.M. 2019); *United States v. Ebbers*, 2020 WL 91399, *4 (S.D.N.Y. Jan. 8, 2020); *United States v. Overcash*, 2019 WL 1472104, at *2 (W.D.N.C. Apr. 3, 2019); *United States v. Hunter*, 2020 U.S. Dist. LEXIS 4305, at *5 (S.D. Ohio Jan. 9, 2020); *United States v. York*, 2019 WL 3241166, at *4 (E.D. Tenn. July 18, 2019). *Cf. United States v. Rivernider*, 2019 WL 3816671, at *3 (D. Conn. Aug. 14, 2019) ("In support of his claim under subdivision (D), the defendant makes a variety of assertions: his convictions and sentence are

unlawful, he has served substantially more time in prison than he expected to serve when he pleaded guilty, he has been mistreated and treated unfairly, and his minor children are suffering in his absence. None of these factors is comparable to the Commission's criteria for compassionate release.").

Notably, to date, only five reported district court decisions – *O'Bryan*, *Urkevich*, *Young*, *Maumau*, and *Redd* – have granted the relief the defendant seeks here: a grant of relief based solely on rehabilitation (which the statute states cannot be the sole basis of relief) and the revision of sentencing policy.[7]

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[7] *Young* held that relief was warranted in light of the change in 924(c) penalties, in combination with the defendant's medical condition and rehabilitation, even though his medical condition and rehabilitation by itself would not warrant relief. 2020 WL 1047815.

Perez, 2020 WL 1180719, granted compassionate release both because the sentence was imposed under mandatory guidelines, and because the defendant meets the BOP criteria for relief for older inmates. In that case, the government stated only that the availability of relief was unsettled, while acknowledging that the "majority" view permitted the court to replace BOP in determining eligibility for compassionate release. The government did not present the thorough arguments offered here.

In *Brown*, 2019 WL 4942051, the Iowa district court suggested that relief may be afforded based on the length of 924(c) sentences, but denied the request, as the defendant had not yet completed the sentence that would be imposed under current law; the court instead suggested that the Department of Justice support a request for executive commutation of the sentence.

In *Fox*, the Maine district court stated, "I agree with the courts that have said that the Commission's existing policy statement provides helpful guidance on the factors that support compassionate release, although it is not ultimately conclusive given the statutory change." 2019 WL 3046086, at *3. But the court then evaluated, and denied, the defendant's request on the basis of the considerations outlined in the policy statement, declining to consider the defendant's argument that changes in sentencing law and disparate treatment of

In every other case in which a district court has articulated a power to consider circumstances not identified by the Sentencing Commission, the relief granted was in fact based on the traditional considerations of health, age, and family circumstances that are identified by the Commission as possible extraordinary circumstances. *See Cantu*, 2019 WL 2498923, at *1 (identifying the defendant as "elderly," and the government agreed that home confinement was warranted); *Beck*, 2019 WL 2716505 (relief granted on the basis of invasive cancer and BOP's purported history of indifference to the defendant's medical condition); *Rodriguez*, 2019 WL 6311388 (defendant's claim was exclusively based on medical condition, and the court upon analysis denied the motion); *Bucci*, 2019 WL 5075964 (defendant is sole available caregiver for ailing mother); *Schmitt*, 2020 WL 96904 (defendant suffered from metastatic breast cancer); *United States v. Cantu-Rivera*, 2019 WL 2578272 (S.D. Tex. June 24, 2019) (although the court suggested that the policy statement is not binding, its grant of release was nonetheless based on the defendant's advanced age and significant

other offenders presented extraordinary circumstances warranting relief. The court reasoned: "I conclude that those other extraordinary and compelling reasons should be comparable or analogous to what the Commission has already articulated as criteria for compassionate release. Despite Fox's understandable frustration over the unfairness he perceives in others getting sentencing benefits while he does not, the compassionate release provision is not an end-run around the Commission's authority to make certain Guideline changes not retroactive or Congress's decision to reduce sentences for some crimes but not others, or a means to redress perceived disparities with other sentenced defendants." *Id.* In other words, this case as well stands in opposition to the relief sought here.

health issues, as well as the fact that he would receive a lower sentence under current law).

Thus, there is little authority for the remedy that the defendant seeks. *See Willingham*, 2019 WL 6733028 at *2 (an assertion that the defendant's "sentence [was] too harsh, especially as compared to that of" other defendants, did "not even move the needle toward the extraordinary and compelling circumstances that must exist before the Court should grant compassionate release"; an "attempt to relitigate the propriety of her sentence under the auspice of 'compassionate release' . . . falls completely flat.").

Further, to the extent that some courts have perceived expanded judicial authority in considering motions for compassionate release, those decisions are without legal basis. *Cantu* presents one of the more extensive discussions, and is most frequently cited. It devotes most of the pertinent discussion, 2019 WL 2498923, at *3-5, to the indisputable proposition that the portion of the guideline commentary that conditions relief on a BOP motion, consistent with the earlier statute, is no longer operative, as a policy statement may not conflict with a governing statute.[8] From that premise, however, *Cantu* unjustifiably concludes

[8] Application note 4 of Section 1B1.13, which states the prior requirement of a BOP motion, has not been amended in light of the First Step Act, as the Commission currently lacks a quorum.

Application note 4 also encourages BOP to be liberal in filing such motions and states that a "court is in a unique position to determine whether the circumstances warrant a reduction." But this language does not empower a court to ignore the policy statement's substantive directives and adopt a freestanding

"that when a defendant brings a motion for a sentence reduction under the amended [Section 3582(c)(1)(A)], the Court can determine whether any extraordinary and compelling reasons other than those delineated in U.S.S.G. § 1B1.13 cmt. n.1(A)-(C) warrant granting relief." *Id.* at *5.

In support, *Cantu* relies first on the proposition that Congress aimed to increase the award of compassionate release, and the fact that the title of Section 603(b) of the First Step Act is "Increasing the Use and Transparency of Compassionate Release." But as the court explained in its lengthy rejection of *Cantu* in *United States v. Lynn*, 2019 WL 3805349, at *3-4 (S.D. Ala. Aug. 13, 2019), there is much in the First Step Act that expands the availability of compassionate release, from the authorization of direct defense requests to a sentencing court, to provisions requiring notification and assistance to prisoners who may prepare requests.[9] Nothing in the Act, however, revises the explicit directives in Sections 994(t) and 3582(c)(1)(A) requiring compliance with the

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power to declare what circumstances may justify a sentence reduction. To the contrary, the note restates the court's obligation to adhere to consideration of the circumstances identified by the Commission.

[9] Besides allowing direct defense motions to the court, removing BOP as the gatekeeper, the First Step Act added subsection (d) to Section 3582, imposing enhanced requirements on BOP to notify prisoners of their right to seek compassionate release, with particular requirements (including mandates that BOP assist certain prisoners in preparing motions) where the inmate is terminally ill or suffers from a physical or mental impairment limiting the ability to prepare a motion. Additionally, the First Step Act added subsection (e), which requires a report by BOP to Congress in three years regarding the consideration of compassionate release motions.

Sentencing Commission's policy statement. And as *Lynn* correctly concluded, "[i]f the policy statement needs tweaking in light of Section 603(b), that tweaking must be accomplished by the Commission, not by the courts." 2019 WL 3805349, at *4; *see id.* at *4 n.5 (noting it is not "easy to believe that Congress, which plainly desired the Commission to pour content into 'extraordinary and compelling reasons,' intended to eliminate that content by allowing defendants to move for compassionate release.'").

Next, *Cantu* relies on application note 1(D), which authorizes a reduction if, "[a]s determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)." 2019 WL 2498923, at *4-5. Because the BOP is no longer the "sole determiner of what constitutes an extraordinary and compelling reason," *Cantu* suggests, application note 1(D) "is not applicable when a defendant requests relief under § 3582(c)(1)(A)," and the district court, rather than the BOP, now may identify extraordinary and compelling reasons warranting a sentence reduction other than those set forth elsewhere in the policy statement. *Id.* Neither conclusion follows. First, even where a defendant moves for compassionate release, it remains sensible to permit BOP to use its expertise to identify additional extraordinary circumstances warranting compassionate release, whether specific to the defendant or applicable generally, as set forth in the program statement. And second, even if application note 1(D) does not apply where a defendant

moves for compassionate release, *Cantu* does not explain how that note or any other portion of Section 1B1.13 grants courts unfettered authority to determine what constitutes an extraordinary and compelling reason untethered to those set forth elsewhere in the policy statement. In other words, even after the First Step Act, Congress has "left the task of fleshing out the universe of extraordinary and compelling reasons to the Commission, not the judiciary. The Court is not freed by congressional silence but bound by Commission policy statements that Congress has expressly required the courts to follow." *Lynn*, 2019 WL 3805349, at *5. *See United States v. Ebbers*, 2020 WL 91399, *4 (S.D.N.Y. Jan. 8, 2020) ("Congress in fact only expanded access to the courts; it did not change the standard.").

In granting relief in *United States v. Maumau*, 2020 WL 806121 (D. Utah Feb. 18, 2020), the court took a different approach, stating:

> The court briefly notes that, in reaching this conclusion, its reasoning is slightly different from some of the other district courts cited above. A few of those cases frame the First Step Act as shifting discretion from the Bureau of Prisons Director to the district courts. *See, e.g.*, *Fox*, 2019 WL 3046086 at *3 ("I treat the previous BOP discretion to identify other extraordinary and compelling reasons as assigned now to the courts."); *Brown*, 2019 WL 4942051 at *4 (same). But in this court's view, the district courts have always had the discretion to determine what counts as compelling and extraordinary. The courts have never been a rubber stamp for compassionate release decisions made by the Bureau of Prisons. . . . The key change made by the First Step Act is not a redistribution of discretion, but the removal of the Director's role as a gatekeeper.

Maumau, 2020 WL 806121, at *4 n.5.

But *Maumau*, like all the decisions in agreement with it, entirely ignores the statutory command that, when exercising the discretion it possesses, a district court may only grant a reduction that "is consistent with applicable policy statements issued by the Sentencing Commission." *Maumau* never addresses that provision, or the Supreme Court's interpretation of such language in *Dillon*. It is because of that provision that a court cannot grant relief based solely on disagreement with the length of a sentence, or based on application of an otherwise non-retroactive change in sentencing law, as the Sentencing Commission has not authorized any reduction on such bases.

As stated, the defendant's suggestion could severely undermine the plain goals of the Sentencing Reform Act to reduce disparity in sentencing and to afford offenders, victims, and the public a clear understanding at the time of sentencing of the actual punishment imposed. It would remove certainty in sentencing, allowing individual judges years after the fact to revise terms based on their then-determined views of the reasonableness of sentencing law. Whatever the merit of such a plan, it may only be instituted by Congress.[10]

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[10] On March 5, 2020, another judge in this district, the Hon. Harvey Bartle III, denied a similar motion for compassionate release filed by defendant Terrence Gibbs, in an unreported opinion. Gibbs sought relief from the life sentence he is serving, that was imposed in 1997, on the grounds that the sentence was imposed under mandatory guidelines that would now be advisory in light of the subsequent decisions in *Apprendi* and *Booker*. Gibbs, similar to Rodriguez, argued that such a change in law may stand as an extraordinary circumstance justifying compassionate release, notwithstanding the fact that the policy statement does not authorize relief on that basis. In the *Gibbs* case (No. 96-539-02), the government presented the same exhaustive arguments stated to

4. Rodriguez himself would not be sentenced differently today.

Finally, for purposes of completeness, we observe that Rodriguez's sentence in fact would not be different today. The power that Rodriguez asks this Court to create and invoke is even more sweeping than that expressed in the handful of district court decisions on which he relies. In those cases, courts acted to address undisputed disparity that exists, as a matter of law, between mandatory sentences imposed today and at the time of the defendants' original conduct for the same violations. Most concern the application of "stacked" sentences under 18 U.S.C. § 924(c), which as a result of a non-retroactive

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this Court, and Judge Bartle denied the motion. The Court declined to follow recent decisions such as *O'Bryan*, *Maumau*, and *Urkevich*, as "[n]one of these cases adheres to the plain language of the relevant statutes or to the principles of the federal sentencing regime." Mem. op. 7. Rather, the Court stated, "we are following in the footsteps of a number of other courts which have correctly read the relevant statutes and rules." *Id.* at 8. The Court agreed with the government:

> The federal sentencing regime with certain limited exceptions is now one of determinate sentences and finality of judgments. See 18 U.S.C. § 3582(b); Dillon v. United States, 560 U.S. 817, 824 (2010). Gone are the days of the parole system under which a prisoner's rehabilitation after incarceration was a ticket to early release. If Gibbs and the cases he cites are correct, the effect will be to return to a parole system which Congress has discarded.
>
> In sum, 18 U.S.C. § 5852(c)(1)(A)(i), 28 U.S.C. § 994(t), and § 1B1.13 of the Sentencing Guidelines clearly prohibit a reduction in sentence or release from confinement based on rehabilitation alone. Nor does the law as presently written authorize a compassionate sentencing reduction because the court is now allowed to impose a lower term of imprisonment if the sentencing were held today.

Mem. op. 7.

provision of the First Step Act now produces sentences decades less than terms still being served by previous inmates. The present case involves nothing of the kind. Rodriguez acknowledges that "[t]here have been no intervening changes in the law since Mr. Rodriguez was sentenced which would change his designation." Motion at 9. Instead, he asks this Court to speculate how a prosecutor would today exercise his or her discretion. *Id*. This is an entirely inappropriate basis for compassionate release, without precedent.[11]

Further, his speculation is incorrect. Rodriguez suggests that the government would not pursue application of the Armed Career Criminal Act or present a charge under Section 924(c). That is not true.[12] Rodriguez's history was disturbing, and fully justified application of these stringent provisions. He was a habitual drug pusher. Five different times, between the ages of 18 and 21, he was apprehended selling narcotics. Jail sentences did not deter him. In 1993, at age 18, he was found in possession of 40 vials of cocaine. PSR ¶ 48. In 1994, at age 19, he was arrested three separate times selling cocaine or crack. PSR ¶¶ 49-51. In 1996, at age 21 – after serving part of a 9-23 month state sentence – he was again

[11] Rodriguez's request to the warden for compassionate release was based on a different assertion, that as a result of the First Step Act part of his mandatory sentence in this case would not apply. In the motion, counsel recognizes that that is incorrect, and follows a different course.

[12] Rodriguez relies in part on a 2010 policy statement of Attorney General Holder, Motion at 9-10, that was rescinded by the current administration. In fact, we do not believe that this case would be processed differently under the Holder memorandum, either, for the reasons stated above.

arrested selling crack. He was then sentenced to 20-40 months in prison. PSR ¶¶ 52. When he left prison, he returned to selling drugs. The first sale in this case took place on May 13, 2002, when he was 26 years old. He and his paramour then repeatedly sold heroin, and he possessed a loaded gun (in a home they shared with their children) to protect his stash. And throughout, he almost never had any legitimate employment.[13]

The penalties applied to armed career criminals are suited for an offender with this history, then and now. Even if this Court could consider compassionate release based on reevaluation of a sentence – and it cannot – this would not be an appropriate case for that relief.

III. Conclusion.

In sum, compassionate release is meant for unusual situations in which inmates face extraordinary medical or family situations justifying release. Rodriguez does not present any qualifying circumstance, and his motion should be denied.

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[13] It is not to Rodriguez's credit that he continues to minimize his offenses, suggesting that the gun had no relation to the drug offenses, Motion at 1, even though he expressly pled guilty to that connection, and attempting to pin the blame on his paramour for the bulk of the conduct, Motion at 2, even though he admitted participation in the conspiracy that involved their joint distribution from the home they shared.

Respectfully yours,

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