

IN THE UNITED STATES DISTRICT COURT
FOR THE [REDACTED]
[REDACTED]

----- X
UNITED STATES OF AMERICA, :
 :
 :
 Plaintiff :
 :
 - v. - : [REDACTED]
 :
 [REDACTED] :
 :
 Defendant. :
----- X

EMERGENCY MOTION FOR COMPASSIONATE RELEASE

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<i>United States v. Copeland</i> , 2:05-cr-135-DCN (D.S.C. March 24, 2020).....	18
<i>United States v. Copeland</i> , No. 02-CR-01120 (FB), 2020 WL 2537250 (E.D.N.Y. May 19, 2020).....	14
<i>United States v. Dawson</i> , No. 18-40085-HLT, 2020 WL 1812270 (D. Kan. Apr. 9, 2020).....	11
<i>United States v. Delgado</i> , No. 3:18-CR-17-(VAB)-1, --- F. Supp. 3d ---, 2020 WL 2464685 (D. Conn. Apr. 30, 2020).....	11
<i>United States v. Early</i> , No. 09-CR-282, 2020 WL 2112371 (N.D. Ill. May 4, 2020)	7
<i>United States v. Fischman</i> , No. 16-cr-00246-HSG-1 (N.D. Cal. May 1, 2020).....	20
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<i>United States v. Gentile</i> , No. 19-CR-90 (KPF), 2020 WL 1814158 (S.D.N.Y. Apr. 9, 2020).....	17

<i>United States v. Gross</i> , No. 15-CR-769 (AJN), --- F. Supp. 3d ---, 2020 WL 1673244 (S.D.N.Y. Apr. 6, 2020)	12
<i>United States v. Haney</i> , No. 19-CR-541 (JSR), --- F. Supp. 3d ---, 2020 WL 1821988 (S.D.N.Y. Apr. 13, 2020)	5
<i>United States v. Hansen</i> , No. 17-CR-50062, 2020 WL 2219068 (N.D. Ill. May 7, 2020)	7
<i>United States v. Hernandez</i> , No. 18-cr-834-04 (PAE), --- F. Supp. 3d ---, 2020 WL 1684062 (S.D.N.Y. Apr. 2, 2020)	22
<i>United States v. Heyward</i> , No. 17-cr-527 (D. Md. June 30, 2020)	20
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U.S.S.G. § 1B1.13, cmt n.1(A)(ii)	6
U.S.S.G. § 1B1.13 n.1(D)	7
Other Authorities	
Abby Haglage, <i>Obesity May Be Fueling Coronavirus Hospitalizations — An Expert Explains Why</i> , Yahoo Lifestyle (Apr. 2, 2020), https://www.yahoo.com/lifestyle/obesity-may-be-fueling-coronavirus- hospitalizations-expert-explains-why-194605061.html	10
Achieving a Fair and Effective COVID-19 Response: An Open Letter to Vice- President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States (March 2, 2020), available at https://bit.ly/2W9V6oS	18

Alicia Lozano, <i>1,000 federal inmates at Texas prison test positive for COVID-19</i> , NBC News (July 17, 2020), https://www.nbcnews.com/news/us-news/1-000-federal-inmates-texas-prison-test-positive-covid-19-n1234256	1, 16
BMI Calculator, National Heart, Lung, and Blood Institute, https://www.nhlbi.nih.gov/health/educational/lose_wt/BMI/bmicalc.htm (last visited July 28, 2020).....	9
Body Weight and Cancer Risk, American Cancer Society, https://www.cancer.org/cancer/cancer-causes/diet-physical-activity/body-weight-and-cancer-risk/adult-bmi.html	9
BOP COVID-19 Charts and Graphs, Fed. Defenders of New York Southern & Eastern Districts, https://federaldefendersny.org/assets/uploads/BOP_COVID-19_Charts_and_Graphs.4.22.pdf	8
Casey Tolan, <i>Inside the federal prison where three out of four inmates have tested positive for coronavirus</i> , CNN (Aug. 8, 2020), https://www.cnn.com/2020/08/08/us/federal-prison-coronavirus-outbreak-invs/index.html	19
COVID-19 Coronavirus, Fed. Bureau of Prisons, https://www.bop.gov/coronavirus/index.jsp	8, 9
COVID-19 Coronavirus Pandemic, Worldometers, https://www.worldometers.info/coronavirus	8
David S. Ludwig and Richard Malley, <i>Americans Are Already Too Diseased to Go Back to Work Right Now</i> , N.Y. Times (Mar. 30, 2020), https://www.nytimes.com/2020/03/30/opinion/obesity-us-health-coronavirus.html	10
Dawson White, <i>Are People Who Are Obese at Higher Risk of Coronavirus? Here's What Experts Say</i> , Miami Herald (Mar. 26, 2020), https://www.miamiherald.com/news/coronavirus/article241523151.html	10, 11
Emmanuel Ocbazghi, <i>How COVID-19 Affects People with Diabetes, Cancer, and Other Conditions</i> , Business Insider (Apr. 2, 2020), https://www.businessinsider.com/how-covid-19-affects-conditions-diabetes-asthma-cancer-underlying-copd-2020-3	13
Graham Readfearn, <i>What happens to people's lungs when they get coronavirus?</i> , The Guardian (Apr. 14, 2020), https://www.theguardian.com/world/2020/apr/15/what-happens-to-your-lungs-with-coronavirus-covid-19	13

Joel Achenbach, *New CDC Data Shows Danger of Coronavirus*, Washington Post, (March 31, 2020), https://www.washingtonpost.com/health/new-cdc-data-on-underlying-health-conditions-in-coronavirus-patients-who-need-hospitalization-intensive-care/2020/03/31/0217f8d2-7375-11ea-85cb-8670579b863d_story.html13

Joseph A. Bick, *Infection Control in Jails and Prisons*, Clinical Infectious Diseases 45(8): 1047-1055 (2007), <https://doi.org/10.1086/521910>18

Katherine Fung, *America’s 3 Largest Coronavirus Prison Outbreaks, Located in Teas, Have Infected Over 2,100 Inmates*, Newsweek (July 21, 2020), <https://www.newsweek.com/americas-3-largest-coronavirus-prison-outbreaks-located-texas-have-infected-over-2100-inmates-1519440>18

Kevin Reece, *Federal prison in Seagoville reports first COVID death as infections soar*, ABC News (July 17, 2020), <https://www.wfaa.com/article/news/health/coronavirus/federal-prison-in-seagoville-reports-first-covid-death-as-infections-soar/287-8687438d-777a-44d1-8cce-83ddd14d748d>.....16

LaVendrick Smith, *As coronavirus spreads through Seagoville prison, inmates and family fear ‘a waiting game’ to get sick*, The Dallas Morning News (July 14, 2020), <https://www.dallasnews.com/news/public-health/2020/07/14/as-coronavirus-spreads-through-seagoville-prison-inmates-and-family-fear-a-waiting-game-to-get-sick/>16, 19

Lisa Freeland et al., *We’ll See Many More Covid-19 Deaths in Prisons if Barr and Congress Don’t Act Now*, Wash. Post (Apr. 6, 2020), <https://www.washingtonpost.com/opinions/2020/04/06/covid-19s-threat-prisons-argues-releasing-at-risk-offenders/>8

Manuel Bojorquez, *Florida, Texas and California fuel surge of new COVID-19 infections*, CBS News (July 14, 2020), <https://www.cbsnews.com/news/florida-texas-california-surge-new-coronavirus-infections-2020-07-13/>9

Maria Guerrero, *North Texas Federal Prison Has Largest Number of COVID-19 Cases Among Inmates in the Nation*, NBC (July 10, 2020), <https://www.nbcdfw.com/news/coronavirus/north-texas-federal-prison-has-largest-number-of-covid-19-cases-among-inmates-in-the-nation/2404541/>1, 15

Natalie Brophy, *A Wisconsin county says a resident was “reinfected” with COVID-19, though scientist have not proof that can happen yet*, USA Today (Aug. 4, 2020), <https://www.postcrescent.com/story/news/2020/08/04/coronavirus-wisconsin-reinfection-reported-la-crosse-county/3294345001/>.....20

People with Certain Medical Conditions, CDC (July 30, 2020) https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html	10, 11
Roni Caryn Rabin, <i>A Covid-19 Lesson: Some Seriously Ill Patients Can Be Treated at Home</i> , N.Y. Times (July 18, 2020), https://www.nytimes.com/2020/07/18/health/coronavirus-home-care.html?referringSource=articleShare	15
WHO Director-General's Opening Remarks at the Media Briefing on COVID-19, World Health Organization (March 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020	7
Yu Chen et al., <i>Active or latent tuberculosis increases susceptibility to COVID-19 and disease severity</i> , available at https://www.medrxiv.org/content/10.1101/2020.03.10.20033795v1.full.pdf	12, 13

BACKGROUND

On [REDACTED], [REDACTED] pled guilty to conspiracy to possess with intent to distribute a controlled substance. On [REDACTED], Judge [REDACTED] sentenced [REDACTED] to eighty-eight months in prison³ to be followed by five years of supervised release. *See* Dkt. No. 206. [REDACTED] is currently incarcerated in accordance with that sentence. However, given the unprecedented COVID-19 pandemic, [REDACTED] now must grapple with more than what the terms of his sentence required: a potential death sentence due to his positive diagnosis for COVID-19.

[REDACTED], [REDACTED], has been incarcerated in a state facility since 2015, and has been in federal prison at FCI Seagoville for nineteen months. During this time, [REDACTED] has been an exemplary inmate: he has no history of violence and no incident reports. Indeed, [REDACTED] has taken his education seriously while incarcerated, and has enrolled in many practical courses such as criminal justice, data processing, social security courses, and an electrical vocation unit.

[REDACTED] suffers from chronic conditions that make his COVID-19 diagnosis more life-threatening. While incarcerated in the state facility, [REDACTED] was diagnosed with [REDACTED], which is a shortness of breath that can range from mild and temporary to serious and long-lasting. [REDACTED] results in severe chest pain and feeling smothered or suffocated as a result of his breathing difficulties, which has increased since he tested positive for COVID-19. Fowler Decl., Ex. J. He also has a history of [REDACTED], and has tested positive for [REDACTED] as recently as 2020. Fowler Decl., Ex. K. In addition to his chronic breathing problems, [REDACTED] also has [REDACTED]

³ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] [REDACTED]
[REDACTED], [REDACTED], and suffers from [REDACTED]. *See id.* His family also has a history of [REDACTED], including [REDACTED].

ARGUMENT AND AUTHORITIES

[REDACTED] motion for compassionate release should be granted by the Court for several reasons. First, [REDACTED] has fulfilled the administrative exhaustion requirement, as more than 30 days have passed since he requested his release with the warden. Second, the extraordinary nature of the COVID-19 pandemic provides a compelling reason for [REDACTED] release, given that his [REDACTED], [REDACTED], and [REDACTED] can make his COVID-19 infection more severe. Third, the conditions at FCI Seagoville have made it impossible for [REDACTED] to receive adequate treatment for the COVID-19 infection, and increases the likelihood that he will both infect other inmates in the prison and contract the virus for a second time. Lastly, [REDACTED] has served nearly half of his expected in-prison sentence for a nonviolent drug offense and has a supportive family that will facilitate a safe integration back into his community.

I. THIRTY DAYS HAVE LAPSED SINCE [REDACTED] FILED AN ADMINISTRATIVE REQUEST FOR COMPASSIONATE RELEASE.

A court may act on a motion for compassionate release “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.” 18 U.S.C. § 3582(c)(1)(A) (emphasis added). The latter option is plainly met here: [REDACTED] submitted his request on June 30, 2020, and the warden has yet to respond.⁴

⁴ [REDACTED] affixes to this motion a rejection notice from Warden [REDACTED], informing [REDACTED] that his request for “a reduction in sentence (RIS) based on concerns about COVID-19” has been denied. Fowler Decl., Ex. A. As COVID-19 cases have continued to rise across the country and

██████████ circumstances are particularly urgent, given that he has recently contracted COVID-19, and is not receiving adequate healthcare because he is imprisoned in a facility that is overwhelmed by the sheer volume of cases. As several courts have recognized, “§ 3582(c)(1)(A) does not contain an exhaustion requirement in the traditional sense,” because it “does not necessarily require the moving defendant to fully litigate his claim before [BOP] before bringing his petition to court.” *United States v. Haney*, No. 19-CR-541 (JSR), --- F. Supp. 3d ---, 2020 WL 1821988, at *3 (S.D.N.Y. Apr. 13, 2020). Rather, the defendant may seek judicial release where, as here, he “exhaust[s] administrative remedies *or simply ... wait[s] 30 days* after serving his petition on the warden of his facility.” *Id.* (emphasis added). Giving the BOP a thirty-day exclusive period to review a request for compassionate release, but no more, is consistent with Congress’ intent for the First Step Act to serve as an “accelerant to judicial review” of compassionate release requests. *See United States v. Russo*, No. 16-CR-441 (LJL), --- F. Supp. 3d ---, 2020 WL 1862294, at *1 (S.D.N.Y. Apr. 14, 2020).

II. THE COVID-19 OUTBREAK PRESENTS A COMPELLING AND EXTRAORDINARY CIRCUMSTANCE THAT WARRANTS COMPASSIONATE RELEASE FOR ██████████, WHO IS A HIGH RISK FATALITY PATIENT

A. The First Step Act Authorizes Courts to Independently Determine Whether “Extraordinary and Compelling Reasons” Justify Release

The First Step Act, signed into law in 2018, gives the court independent authority to reduce a defendant’s term of imprisonment for “extraordinary and compelling reasons” under 18 U.S.C. § 3582(c)(1)(A)(i) without requiring a motion from the Director of BOP. *See e.g., United States v. Cantu*, 423 F. Supp. 3d 345, 352 (S.D. Tex. 2019) (vesting BOP with authority to determine whether extraordinary and compelling reasons are present “no lon ger describes an appropriate use

in FCI-Seagoville, ██████████ filed a second request with the warden for RIS on June 30, 2020. Fowler Decl., Ex. B. At the time of this filing, the warden has not responded to this request.

[REDACTED] [REDACTED]

of sentence-modification provisions and is thus not part of the applicable policy statement binding the Court”). Thus, courts may amend a sentence “upon motion of the defendant” after he has exhausted administrative remedies with the BOP, or after 30 days following the warden’s receipt of a compassionate release request, whichever comes first. 18 U.S.C. § 3582(c)(1)(A).

Congress did not define what constitutes an “extraordinary and compelling reason” for reducing a defendant’s sentence under Section 3582(c), but instead delegated its authority to the United States Sentencing Commission. *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.”). However, the policy statement was last amended in November 2018, before the First Step Act, which permits defendants to directly petition the courts for compassionate release, was enacted. *See* 18 U.S.C. § 3582(c)(1)(A). The November 2018 criteria for release include the following four categories of circumstances: (1) terminal illness, (2) debilitating physical or mental health condition, (3) advanced age and deteriorating health in combination with the amount of time served, or (4) compelling family circumstances. U.S.S.G. § 1B1.13 cmt. n.1(A)-(C). The commentary also includes a fifth catchall provision for “extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)” as determined by the BOP Director. *Id.* § 1B1.13 cmt. n.1(D). Most applicable to [REDACTED] case, the policy statement recognized release would be appropriate in cases where the defendant suffers from “a serious physical or medical condition” for which the defendant cannot “provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13, cmt n.1(A)(ii).

Furthermore, since the passage of the First Step Act, courts have found “extraordinary and compelling reasons” in circumstances wholly apart from, or in combination with, the limited factors the United States Sentencing Commission policy (age, medical condition, and family needs). *See United States v. Owens*, No. 97-CR-2546 (CAB), ECF No. 93 (S.D. Cal. Mar. 20, 2020) (“In the wake of the First Step Act, numerous courts have recognized the court can determine whether extraordinary and compelling reasons exist to modify a sentence — and may do so under the ‘catch all’ provision similar to that recognized in U.S.S.G. Manual § 1B1.13 n.1(D), that is, ‘an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)’ relating to prisoner health or family relations.”) A growing number of courts have found that this “open-ended provision” is “broad enough” to cover situations where a defendant is seeking compassionate release based on his risk of serious illness should he contract COVID-19. *See United States v. Early*, No. 09-CR-282, 2020 WL 2112371, at *3 (N.D. Ill. May 4, 2020); *United States v. Hansen*, No. 17-CR-50062, 2020 WL 2219068, at *2 (N.D. Ill. May 7, 2020) (same).

B. The COVID-19 Pandemic Is An “Extraordinary and Compelling Reason” for Compassionate Release

COVID-19 is an extraordinary and compelling reason for a court to grant relief under compassionate release. On March 11, 2020, the World Health Organization (“WHO”) officially classified the spread of COVID-19, the disease caused by the novel coronavirus, as a pandemic.⁵ In the weeks since this pronouncement, COVID-19 has continued to spread at an alarming rate. As of August 6, 2020, more than 19 million people have been infected globally and nearly 714,000

⁵ *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19*, World Health Organization (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

people have died. In the United States, more than 4 million people have been infected and more than 162,000 people have died.⁶

As quickly as COVID-19 is spreading across the country, it is spreading through the federal prison system even faster: currently the cumulative rate of rise in COVID-19 cases is nearly twice that of the national cumulative rate of rise.⁷ As of August 6, 2020, at least 108 inmates have died in BOP custody.⁸ That figure does not include individuals who have died in pretrial or presentence detention at local facilities. According to the BOP, as of August 6, 2020, at least 1,807 inmates and 531 staff at 111 facilities have tested positive for COVID-19 and prisoners have tested positive in BOP facilities in every region of the country.⁹ While the infection rate based on available BOP data is disturbing, “because testing has been grossly insufficient, these numbers are almost certainly an undercount.”¹⁰

There has been a recent surge of COVID-19 infections in Texas, which has correspondingly led to dangerous outbreaks in BOP facilities such as FCI Seagoville. FCI

⁶ COVID-19 Coronavirus Pandemic, Worldometers (updated regularly), <https://www.worldometers.info/coronavirus>.

⁷ See BOP COVID-19 Charts and Graphs, Fed. Defenders of New York Southern & Eastern Districts, https://federaldefendersny.org/assets/uploads/BOP_COVID-19_Charts_and_Graphs.4.22.pdf (last visited Aug. 6, 2020) (indicating the cumulative BOP rate of rise since March 20, 2020, as of April 19, 2020, is 934.19%, while the national cumulative rate of rise for that period is 487.17%).

⁸ See COVID-19 Coronavirus, Fed. Bureau of Prisons, <https://www.bop.gov/coronavirus/index.jsp> (last visited Aug. 6, 2020).

⁹ *Id.*

¹⁰ Lisa Freeland et al., *We’ll See Many More Covid-19 Deaths in Prisons if Barr and Congress Don’t Act Now*, Wash. Post (Apr. 6, 2020), <https://www.washingtonpost.com/opinions/2020/04/06/covid-19s-threat-prisons-argues-releasing-at-risk-offenders/>.

Seagoville currently has 226 outbreaks among the inmate population.¹¹ Indeed, one of every five new cases in the world is coming from one of three states: Florida, Texas, and California.¹² In Texas, hospitalizations have surged nearly 60% over the last few weeks, smaller hospitals are having to turn away COVID patients, and in some cities ambulances have a five to twelve hour wait time to deliver patients to the hospital. Unsurprisingly, the conditions within local federal correctional institutions are even worse. Not only does keeping ██████ in the prison increase the risk of exposure for other inmates, but also results in him attempting to recover from a severe viral infection in a facility that simply cannot provide the medical care that he needs, particularly given his heightened risks factors.

i. Obesity Increases Risk for Those Infected With COVID-19

█████ medical conditions put him at high risk of serious illness or death in light of the COVID-19 pandemic. ██████ medical records reflect that, as of his last weight check, he is ██████ and ██████ feet tall, which places him as medically obese in the United States.¹³ See Fowler Decl., Ex. K. Moreover, as of ██████ most recent medical records he has a BMI of ██████¹⁴, but he recently reports that he currently weighs approximately ██████ pounds, which would mean that he has a BMI of ██████.¹⁵ Whether utilizing the weight reported in ██████ most

¹¹ COVID-19 Coronavirus, Fed. Bureau of Prisons, <https://www.bop.gov/coronavirus/index.jsp>.

¹² Manuel Bojorquez, *Florida, Texas and California fuel surge of new COVID-19 infections*, CBS News (July 14, 2020), <https://www.cbsnews.com/news/florida-texas-california-surge-new-coronavirus-infections-2020-07-13/>.

¹³ Body Weight and Cancer Risk, American Cancer Society, <https://www.cancer.org/cancer/cancer-causes/diet-physical-activity/body-weight-and-cancer-risk/adult-bmi.html> (last visited July 28, 2020).

¹⁴ BMI Calculator, National Heart, Lung, and Blood Institute, https://www.nhlbi.nih.gov/health/educational/lose_wt/BMI/bmicalc.htm (last visited July 28, 2020).

¹⁵ *Id.*

recent medical records, or ██████████ most recent self-reported weight, he is currently categorized as obese in the United States. *See* Fowler Decl., Ex. J. People with obesity are more susceptible to contracting viruses and prone to complications from these viruses. Upon review of ██████████ medical records, Dr. Scalettar determined that an individual at ██████████ weight would not be able to breathe properly while suffering from COVID-19, due to the additional weight on his lungs. Fowler Decl., Ex. J.

The Center for Disease Control and Prevention recognizes severe obesity as a condition that places individuals at a higher than average risk of suffering from COVID-19 complications.¹⁶ “Obesity can increase inflammation and weaken a person’s immune system, making it more difficult to combat infections.”¹⁷ “Excessive weight, and the poor-quality diet that causes it, is strongly associated with insulin resistance, chronic inflammation and other abnormalities that may lower immunity to viral respiratory infection or predispose to complications.”¹⁸ “In general, patients with severe obesity are a more challenging population to manage in the intensive care setting” and “will have less physiologic reserve if they develop any severe illness, particularly a respiratory infection like COVID-19.”¹⁹ “Extra weight can also put

¹⁶ *See* People with Certain Medical Conditions, CDC (July 30, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> (last visited July 28, 2020) (“People with Certain Medical Conditions”).

¹⁷ Dawson White, *Are People Who Are Obese at Higher Risk of Coronavirus? Here’s What Experts Say*, Miami Herald (Mar. 26, 2020), <https://www.miamiherald.com/news/coronavirus/article241523151.html> (“*Obese at Higher Risk*”).

¹⁸ David S. Ludwig and Richard Malley, *Americans Are Already Too Diseased to Go Back to Work Right Now*, N.Y. Times (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/opinion/obesity-us-health-coronavirus.html>.

¹⁹ Abby Haglage, *Obesity May Be Fueling Coronavirus Hospitalizations — An Expert Explains Why*, Yahoo Lifestyle (Apr. 2, 2020), <https://www.yahoo.com/lifestyle/obesity-may-be-fueling-coronavirus-hospitalizations-expert-explains-why-194605061.html>.

pressure on the lungs and make it more difficult to breathe, making complications from COVID-19 — a respiratory illness — more likely.”²⁰ Indeed, the CDC has recognized that people of any age with a body mass index of greater than 30 “are at increased risk of severe illness from COVID-19.”²¹ In *United States v. Delgado*, No. 3:18-CR-17-(VAB)-1, --- F. Supp. 3d ---, 2020 WL 2464685, at *3 (D. Conn. Apr. 30, 2020), the court cited a study that found that “obesity of patients was the single biggest [chronic] factor, after age, in whether those with COVID-19 had to be admitted to a hospital.” (citing Tiernan Ray, *NYU Scientists—Largest US study of COVID-19 finds obesity the single biggest ‘chronic’ factor in New York City’s hospitalizations*, ZDNet (Apr. 12, 2020), available at <https://www.zdnet.com/article/nyu-scientists-largest-u-s-study-of-covid-19-finds-obesity-the-single-biggest-factor-in-new-york-critical-cases/>).

Courts across the country have agreed that the potential for COVID-19 complications associated with obesity can constitute extraordinary and compelling reasons to grant compassionate release. In fact, obesity alone creates such significant complications for individuals that contract COVID-19 that courts have considered it sufficient to grant compassionate release. See e.g. *United States v. Dawson*, No. 18-40085-HLT, 2020 WL 1812270, at *7 (D. Kan. Apr. 9, 2020) (granting compassionate release to an incarcerated person based on his obesity alone: “He has a medical condition (obesity) that the CDC recognizes puts him at an increased risk of developing serious illness if he were to become infected with COVID-19.”); *United States v. Mishler*, No. 19-CR-00105-RS-2, 2020 WL 3791590, at *2 (N.D. Cal. July 7, 2020) (“The heightened risk COVID-19 poses to individuals such as Mishler who suffer from

²⁰ *Obese at Higher Risk*, <https://www.miamiherald.com/news/coronavirus/article241523151.html>.

²¹ *People with Certain Medical Conditions*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

severe obesity constitutes an extraordinary and compelling reason warranting his release.”); *United States v. Williams-Bethea*, No. 18-CR-78 (AJN), --- F. Supp. 3d ---, 2020 WL 2848098, at *4 (S.D.N.Y. June 2, 2020) (granting compassionate release where the “defendant put forward compelling and undisputed evidence that obesity is...a comorbidity for COVID-19, and that individuals who are severely obese, especially those in the Defendant’s age group, are significantly more likely to face serious risk from the virus”). Even where obesity is not the *sole* explanation for granting compassionate release, courts consider obesity a significant factor in the release determination. *United States v. Ullings*, No. 1:10-CR-00406, 2020 WL 2394096, at *4 (N.D. Ga. May 12, 2020) (finding Defendant’s age, hypertension, and obesity satisfied an extraordinary and compelling reason); *United States v. Foreman*, No. 3:19-cr-62, 2020 WL 2315908, at *3 (D. Conn. May 11, 2020) (defendant was 58 years old and suffering from hypertension and obesity); *United States v. Gross*, No. 15-CR-769 (AJN), --- F. Supp. 3d ---, 2020 WL 1673244, at *1 (S.D.N.Y. Apr. 6, 2020) (granting compassionate release to an incarcerated person who was “severely overweight and suffers from high blood pressure and sleep apnea,” finding that “the combination of [his] health conditions and his incarceration compounds the risk COVID-19 poses to him, placing him in particularly grave danger” (internal citation omitted)).

ii. Breathing Problems, Such As Latent Tuberculosis and Dyspnea, Increase Risk for Those Infected With COVID-19

██████████ medical records also reflect that he suffers from ██████████ (difficult and labored breathing) and has ██████████—both of which exacerbate the risk of serious illness or death for those that contract the virus. *See* Fowler Decl., Exs. J & K. ██████████ first tested positive for ██████████ in ██████████, and tested positive again as recently as this year. According to one early, small-scale study, entitled “Active or latent tuberculosis increases susceptibility to COVID-19 and disease severity,” Dr. Chen et al., found that “tuberculosis history (both of active

TB and latent TB) to be an important risk factor for SARS-CoV-2 infection. Patients with active or latent TB were more susceptible to SARS-CoV-2, and COVID-19 symptom development and progression were more rapid and severe.”²²

All breathing problems, including dyspnea and latent tuberculosis, are concerning for those who may contract COVID-19 because the coronavirus “attacks the edges of the lungs” and “anything that’s foreign or unusual that enters the lungs often triggers an asthmatic response and causes the airways to narrow further and . . . become wheezy.”²³ See also Fowler Decl., Ex. J. [REDACTED] history of respiratory ailments make his COVID-19 infection more life-threatening because “[l]ike influenza and the common cold, coronavirus can cause an upper respiratory infection, which can make breathing difficult.”²⁴ Indeed, although the body’s initial immune response is “first to try and destroy [the virus] and limit its replication,” the immune response “can be impaired in some groups, including people [like [REDACTED]] with underlying...lung conditions.”²⁵ The dangerous effects of COVID-19 on those that already have a history of breathing problems are apparent here. [REDACTED] currently reports that he is constantly hyperventilating with shortness of breath. See Fowler Decl., Ex. M.

²² Available at <https://www.medrxiv.org/content/10.1101/2020.03.10.20033795v1.full.pdf>, 1-2.

²³ Emmanuel Ocbazghi, *How COVID-19 Affects People with Diabetes, Cancer, and Other Conditions*, Business Insider (Apr. 2, 2020), <https://www.businessinsider.com/how-covid-19-affects-conditions-diabetes-asthma-cancer-underlying-copd-2020-3>.

²⁴ Joel Achenbach, *New CDC Data Shows Danger of Coronavirus*, Washington Post, (March 31, 2020), https://www.washingtonpost.com/health/new-cdc-data-on-underlying-health-conditions-in-coronavirus-patients-who-need-hospitalization-intensive-care/2020/03/31/0217f8d2-7375-11ea-85cb-8670579b863d_story.html.

²⁵ Graham Readfearn, *What happens to people’s lungs when they get coronavirus?*, The Guardian (Apr. 14, 2020), <https://www.theguardian.com/world/2020/apr/15/what-happens-to-your-lungs-with-coronavirus-covid-19>.

way to effectively care for his COVID-19 infection. *See* Fowler Decl., Ex. J. [REDACTED] is not currently able to receive any of the aforementioned tests, or any treatment for his COVID-19 infection, and because of this Dr. Scalettar has concluded that it is his “medical opinion that [REDACTED] [REDACTED] is not able to receive the medical care that he needs while within the custody of FCI Seagoville.” *See* Fowler Decl., Ex. J.

The infection is so widespread in FCI Seagoville that the facility simply cannot provide even the most basic care that he needs: the facility is not providing inmates with additional masks, he only receives temperature checks twice a day (one in the morning and one at noon) and the air conditioning system has been broken, and inmates report that “it feels like it’s about 110-degrees.”²⁶ *See id.* Moreover, [REDACTED] has received absolutely no additional medical attention since he has tested positive for COVID-19, and, most troublingly, there is absolutely no medical staff at the facility at night. *See id.* [REDACTED] reports that the facility has left 340 inmates in the dorm to recover on their own, and consider them “recovered” even though they have not re-tested anyone and have provided nothing to help them recover. *See* Fowler Decl., Ex. M. Under these incredibly difficult circumstances, the illness is more likely best treated at home.²⁷

²⁶ *North Texas Federal Prison Has Largest Number*, <https://www.nbcdfw.com/news/coronavirus/north-texas-federal-prison-has-largest-number-of-covid-19-cases-among-inmates-in-the-nation/2404541/>.

²⁷ Roni Caryn Rabin, *A Covid-19 Lesson: Some Seriously Ill Patients Can Be Treated at Home*, N.Y. Times (July 18, 2020), <https://www.nytimes.com/2020/07/18/health/coronavirus-home-care.html?referringSource=articleShare>.

[REDACTED] [REDACTED]

The conditions at the facility are not exaggerated.²⁸ As one inmate explained, “[t]here is no proper isolation. There is inadequate health care and slow medical response.”²⁹ Tragically, last month an inmate who suffered from pre-existing conditions and was serving time for a non-violent offense, contracted COVID-19 and died.³⁰ Other family members of inmates report that that “Seagoville wasn’t prepared” in part because “the guards really weren’t trained.”³¹

As explained in, *United States v. Mapp*, No. 95-CR-01162 (FB), --- F. Supp. 3d ---, 2020 WL 3410344, at *2 (E.D.N.Y. June 19, 2020), “the United States Sentencing Guidelines provide that compassionate release may be warranted if a defendant ‘suffer[s] from’ ‘deteriorating physical health’ ...that ‘substantially diminishes’ *their ability ‘to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.’*” (citing Application Note 1(A)) (emphasis added). [REDACTED] current COVID-19 diagnosis, “medical conditions, coupled with the emergence and rapid spread of COVID-19 at federal correctional facilities like” FCI Seagoville “substantially diminish[]’ his ability to ‘provide self-care within the environment of a correctional facility.’” *Id.* Since his COVID-19 diagnosis, [REDACTED] has

²⁸ Kevin Reece, *Federal prison in Seagoville reports first COVID death as infections soar*, ABC News (July 17, 2020), <https://www.wfaa.com/article/news/health/coronavirus/federal-prison-in-seagoville-reports-first-covid-death-as-infections-soar/287-8687438d-777a-44d1-8cce-83ddd14d748d> (“*Seagoville Reports First COVID Death*”).

²⁹ LaVendrick Smith, *As coronavirus spreads through Seagoville prison, inmates and family fear ‘a waiting game’ to get sick*, The Dallas Morning News (July 14, 2020), <https://www.dallasnews.com/news/public-health/2020/07/14/as-coronavirus-spreads-through-seagoville-prison-inmates-and-family-fear-a-waiting-game-to-get-sick/> (“*As Coronavirus Spreads Through Seagoville*”).

³⁰ *1,000 Federal Inmates*, <https://www.nbcnews.com/news/us-news/1-000-federal-inmates-texas-prison-test-positive-covid-19-n1234256>.

³¹ *Seagoville Reports First COVID Death*, <https://www.wfaa.com/article/news/health/coronavirus/federal-prison-in-seagoville-reports-first-covid-death-as-infections-soar/287-8687438d-777a-44d1-8cce-83ddd14d748d>.

continued to experience hot flashes, an inability to control his arms and hands, feeling like “somebody is grabbing [him] by [his] head and pushing in” and an inability to swallow. *See* Fowler Decl., Ex. M.

“Courts have found that a defendant can present a sufficient extraordinary or compelling reason for release if he or she receives inadequate care following a COVID-19 diagnosis or has underlying health conditions.” *United States v. Jacobs*, No. 19-cr-149, ECF No. 84 at 11 (S.D. Iowa July 2, 2020). In *Jacobs*, the court granted compassionate release in part because the defendant had contracted COVID-19 and had been “given nothing more than Tylenol, ineffective antibiotics, and a now-dirty mask as he battles with this virus[.]” The court found this insufficient care from the facility to be “compelling at the very least.” *Id.* at 12. *See also United States v. Arreola-Bretado*, Case No. 3:19-cr-3410, ECF No. 50 at 5 (S.D. Cal. May 15, 2020) (grant[ing] compassionate release in part because “[the defendant] would have a higher level of medical care outside of the facility).

Furthermore, courts are increasingly heeding the call from legal and medical experts by releasing medically vulnerable inmates from overcrowded facilities, and this Court should do so for [REDACTED]. For example, in *United States v. Castillo*, No. H-08-146-01, 2020 WL 2820401, at *4 (S.D. Tex. May 29, 2020), the court noted that the defendant suffered “from serious medical issues that have resulted in her assignment to FMC-Carswell and which place her at a heightened risk for severe illness or death if she were to contract COVID-19.” In making this determination, the court considered that “it is apparent that cases of COVID-19 have spread rapidly through the federal prison system, including FMC-Carswell where the defendant is located, despite the BOP’s commendable efforts to stop the virus from spreading.” *Id.*; *see also United States v. Gentile*, No. 19-CR-90 (KPF), 2020 WL 1814158, at *1 (S.D.N.Y. Apr. 9, 2020) (granting defendant’s motion

ECF No. 76 (N.D. Cal. May 1, 2020) (granting compassionate release from Terminal Island to COVID-19-positive defendant); *United States v. Kriglstein*, No. 1:16-cr-00663-JCH, ECF No. 60 (D.N.M. Apr. 27, 2020) (staying for 5 days release of defendant who was tested for COVID-19 as condition of order granting compassionate release, with positive result); *United States v. Huntley*, No. 13-cr-119-1 (ABJ), ECF No. 263, at 8 n.9, 10 (D.D.C. May 5, 2020) (ordering compassionate release for defendant who tested positive for COVID-19 while motion was being litigated); *Yeury J.S. v. Decker*, No. 2:20-cv-5071-KM, ECF. No. 20 (D.N.J. May 11, 2020) (ordering release for COVID-19-positive immigration detainee); *United States v. Kess*, No. ELH-14-0480, ECF No. 57 at 11-13 (D. Md. June 17, 2020); *United States v. Williams*, No. 19-cr-0134-PWG, ECF No. 70 at 7 (D. Md. June 10, 2020).

In summary, the COVID-19 virus is highly transmissible, extraordinarily dangerous, and poses a severe threat of death to those with a high-risk medical profile of [REDACTED]. The conditions at FCI Seagoville do not allow [REDACTED] to take the self-care measures required by the CDC to protect his safety. These compelling and extraordinary circumstances support [REDACTED]. [REDACTED] compassionate release during an unprecedented global pandemic.

III. THE RELEVANT § 3553(A) SENTENCING FACTORS WARRANT REDUCING [REDACTED] SENTENCE TO TIME SERVED.

The relevant sentencing factors also favor this Court granting relief because [REDACTED] original crime was non-violent, he has already served nearly half of his sentence, he is not a threat to society, and his release plan ensures a safe transition to the community where he can receive the medical care that he needs to recover from his COVID-19 infection. When extraordinary and compelling reasons are established, the Court must consider the relevant sentencing factors in §3553(a) to determine whether a sentencing reduction is warranted. 18 U.S.C. § 3582(c)(1)(A)(i). Under *Pepper v. United States*, 562 U.S. 476, 490-93 (2011), the Court can, and indeed must,

home confinement, not to exceed the balance of his original prison sentence) under the compassionate release provision of the First Step Act, 18 U.S.C. § 3582(c)(1)(A).

Dated: August 10, 2020

Respectfully submitted,

[REDACTED]



CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 47.1 I hereby certify that on August 7 and 10, 2020 Defendant's counsel conferred with counsel of record by email regarding the relief sought in this Emergency Motion for Compassionate Release and the parties were unable to reach agreement as to the issues involved.

[Redacted]

CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2020, I electronically filed and served a copy of the foregoing Defendant [REDACTED] Emergency Motion for Order Reducing Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) through the Court's CM/ECF system upon:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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