

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
SAN ANGELO DIVISION**

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
v.	:	Case No: 6:07-cr-058-C(02)
	:	
JESSE B. RODRIGUEZ,	:	
	:	
Defendant.	:	
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**MEMORANDUM OF LAW IN SUPPORT
OF JESSE RODRIGUEZ’S UNOPPOSED MOTION TO
MODIFY SENTENCE PURSUANT TO 18 U.S.C. § 3582**

Nicole W. Friedlander
Michele C. Materni
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
(212) 558-4332
(212) 558-3703
friedlandern@sullcrom.com
maternim@sullcrom.com

Stephanie M. Kelly
SULLIVAN & CROMWELL LLP
1700 New York Avenue, Suite 700
Washington, D.C. 20006
Tel: 202-956-7536
kellys@sullcrom.com

Counsel for Defendant Jesse Rodriguez

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
BACKGROUND	3
A. Mr. Rodriguez Pled Guilty to Two Counts of Distributing Marijuana.....	3
B. Mr. Rodriguez Has Used His Fifteen Years of Incarceration to Date to Successfully Rehabilitate Himself, and He Has a Plan for Successful Reentry Upon Release	4
ARGUMENT.....	7
A. Under the First Step Act, This Court Has the Authority to Reduce Mr. Rodriguez’s Sentence.....	7
B. A Reduction of Mr. Rodriguez’s Term of Imprisonment to Time Served Is Warranted Under 18 U.S.C. § 3582.....	8
C. There Are Extraordinary and Compelling Reasons to Reduce the 262 Month Sentence Mr. Rodriguez Is Currently Serving for His Non-Violent Marijuana Offense.....	9
1. Since Mr. Rodriguez Was Sentenced, the Government Has Significantly Modified Its Approach to Prosecuting the Sale and Use of Marijuana.....	11
2. If Sentenced Today, Mr. Rodriguez Would Likely Receive a Significantly Lower Sentence	13
3. Mr. Rodriguez’s Chronic Health Conditions Provide Another Extraordinary and Compelling Reason for His Release	18
D. Mr. Rodriguez is Fully Rehabilitated and Has a Comprehensive Release Plan	21
E. Compassionate Release Is Consistent with Section 3553 Sentencing Factors	23
CONCLUSION.....	25

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Borden v. United States</i> , 141 S. Ct. 1817, 1834 (2021).....	17
<i>Concepcion v. United States</i> , 142 S. Ct. 2389 (2022).....	16
<i>Gail v. United States</i> , 552 U.S. 38 (2007).....	18
<i>Jordan v. United States</i> , 2019 WL 4418538 (W.D. Tex. Sept. 16, 2019).....	17, 18
<i>Kimbrough v. United States</i> , 552 U.S. 85 (2007).....	18
<i>Pepper v. United States</i> , 562 U.S. 476 (2011).....	24
<i>Rodriguez v. Barnhart</i> , 1:16-cv-00323, Dkt. No. 5 (May 5, 2016 W.D. La)	6
<i>Standing Akimbo, LLC v. United States</i> , 141 S. Ct. 2236 (2021).....	13
<i>United States v. Booker</i> , 543 U.S. 200 (2005).....	18
<i>United States v. Bryant</i> , 2020 WL 2085471 (D. Md. Apr. 30, 2020)	9
<i>United States v. Cantu-Rivera</i> , 2019 WL 2578272 (S.D. Tex. June 24, 2019)	9
<i>United States v. Carreon-Garcia et al</i> , 1:21-cr-00654, Dkt. 61 (S.D. Tex. Jan. 14, 2022)	15
<i>United States v. Cavera</i> , 550 F.3d 180 (2d Cir. 2008) (<i>en banc</i>)	18
<i>United States v. Chambliss</i> , 948 F.3d 691 (5th Cir. 2020)	8

<i>United States v. Cooper</i> , 996 F.3d 283 (5th Cir. 2021)	9, 16
<i>United States v. Cooper</i> , 2021 WL 5027498 (S.D. Tex. July 15, 2021).....	9
<i>United States v. Dozier</i> , 2021 WL 4953266 (E.D. Tex. Oct. 25, 2021)	9, 21
<i>United States v. Franco</i> , 973 F.3d 465 (5th Cir. 2020)	7, 8
<i>United States v. Garcia</i> , 2017 WL 4270742 (S.D. Tex. Sept. 25, 2017)	18
<i>United States v. Gomez</i> , 23 F.4th 575 (5th Cir. 2022)	17
<i>United States v. Guston</i> , 2021 WL 149018 (S.D. Miss., Jan. 15, 2021)	19, 20
<i>United States v. Hebert</i> , 2021 WL 5918009 (E.D. Tex. Dec. 8, 2021).....	21, 22
<i>United States v. Hernandez</i> , 2021 WL 3192161 (C.D. Ill. July 28, 2021).....	10
<i>United States v. Miles</i> , 340 Fed. Appx. 982 (5th Cir. 2009) (unpublished).....	18
<i>United States v. Mohr</i> , 554 F.3d 604 (5th Cir. 2009)	17
<i>United States v. Muniz</i> , 2020 WL 1540325 (S.D. Tex., Mar. 30, 2020).....	19
<i>United States v. Orozco</i> , 2021 WL 2325011 (E.D. Wash. June 7, 2021).....	10
<i>United States v. Pearce Jr.</i> , 5:21-cr-00719, Dkt. 62 (S.D. Tex. Dec. 1, 2021)	15
<i>United States v. Pena</i> , 459 F. Supp. 3d 544 (S.D.N.Y. 2020).....	20
<i>United States v. Rodriguez</i> , 451 F. Supp. 3d 392 (E.D. Pa. 2020)	21, 22

<i>United States v. Samuels</i> , 2020 WL 7265378 (W.D. La. Dec. 10, 2020)	20, 21
<i>United States v. Shkambi</i> , 993 F.3d 388 (5th Cir. 2021)	9
<i>United States v. Thompson</i> , 984 F.3d 431 (5th Cir. 2021)	8, 9
<i>United States v. Valles-Resendez et al</i> , 1:21-cr-00655, Dkt. 127 (S.D. Tex. March 30, 2022)	15
<i>United States v. Vigneau</i> , 473 F. Supp. 3d 31 (D.R.I. 2020)	10, 15, 16
Statutes, Rules, and Regulations	
18 U.S.C. § 3553(a)	<i>passim</i>
§ 3582.....	<i>passim</i>
First Step Act of 2018, § 603(b), Pub. L. 115–391, 132 Stat. 5194, 5238 (2018).....	7
U.S. Sent’g Guidelines Manual	<i>passim</i>
Other Authorities	
<i>Attorney General Announces Formal Medical Marijuana Guidelines</i> , Dep. Of Justice (Oct. 9, 2009), https://www.justice.gov/opa/pr/attorney-general-announces-formal-medical-marijuana-guidelines	12
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Hearing on Fiscal 2022 Budget Request for the Justice Department Before the H. Appropriations Subcommittee, 117th Cong. (2021).....	12
<i>House Passes Landmark Marijuana Legalization Bill</i> , NBC News (Apr. 1, 2022), https://www.nbcnews.com/politics/congress/house-vote-bill-legalize-marijuana-rcna22527	13
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PRELIMINARY STATEMENT

In 2008, Jesse Rodriguez was sentenced to a 262-month term of incarceration for a non-violent marijuana trafficking offense. This nearly 22-year sentence, which is over *three times* the maximum sentence Mr. Rodriguez would face today under the Sentencing Guidelines, far exceeds even the median lengths of sentences imposed in recent years for the most serious crimes, including murder (20 years), sexual abuse (15 years), and kidnapping (10 years). The First Step Act grants this Court the authority to issue compassionate relief to inmates for “extraordinary and compelling reasons.” Because such reasons exist here, the Court can and should exercise its discretion to grant Mr. Rodriguez’s unopposed motion for compassionate relief from his excessive and disparate sentence.

First, it is widely recognized that sentencing disparities are an extraordinary and compelling reason to grant early release. Mr. Rodriguez was sentenced to nearly 22 years in prison for conspiracy to distribute and possession with intent to distribute over 50 kg of marijuana. The offense was entirely non-violent, and no weapon was involved. It was also Mr. Rodriguez’s first drug trafficking offense. Since Mr. Rodriguez was sentenced, both societal views on and the legal treatment of marijuana have changed dramatically. While federal law still prohibits its use and distribution, 37 states (including Mr. Rodriguez’s home state of Texas), three territories, and the District of Columbia have legalized the medical use of marijuana, and 19 states, two territories, and the District of Columbia have legalized adult recreational use. Relatedly, marijuana-trafficking prosecutions have fallen dramatically, and when prosecuted, 80% of offenders are sentenced to less than five years in prison, with an average sentence of 30 months.

By contrast, Mr. Rodriguez received a sentence of over *eight times* this length, an extraordinary and unfair sentencing disparity that has exacted an enormous, unnecessary toll on

Mr. Rodriguez and his family. During his prolonged period of imprisonment, Mr. Rodriguez has lost the majority of his close family members, including his mother, sister, godfather and godmother, two uncles, two aunts, and two cousins. He has missed watching both his daughters, and now his grandchildren, grow up.

Second, Mr. Rodriguez suffers from chronic health conditions, including hyperlipidemia, esophageal reflux, hearing loss, anxiety, nerve pain, an injured knee, a ruptured rotator cuff, a bicep tear, a deviated septum, deformities of feet and ankles, and severe deterioration of all fingernails in his right hand. These conditions substantially diminish Mr. Rodriguez's ability to provide self-care at FCI Williamsburg, and have been exacerbated—and in some instances, even caused—by the Bureau of Prison's ("BOP") lack of care.

Third, Mr. Rodriguez has shown proof of successful rehabilitation. During his over 15 years of incarceration, he has taken upwards of 45 educational courses and has been a model custodial maintenance BOP employee, receiving a special certificate of appreciation from his supervisors. Mr. Rodriguez describes himself as a "sincerely remorseful and a rehabilitated 56 year-old changed mature and responsible man." Furthermore, his comprehensive release plan—which includes residing in a safe and drug-free home with his fiancée, whom he plans to marry, and her children, whom he plans to adopt, as well as an offer of employment from a local company—will also ensure that Mr. Rodriguez not only will not pose any recidivism risk, but rather, he will be a contributing member of society.

Considering these extraordinary and compelling factors in conjunction with the 18 U.S.C. § 3553(a) factors, which also support Mr. Rodriguez's request, we urge the Court to grant this motion under 18 U.S.C. § 3582 for a reduction of Mr. Rodriguez's sentence to time served. The Government is unopposed to the relief sought by Mr. Rodriguez.

BACKGROUND

A. Mr. Rodriguez Pled Guilty to Two Counts of Distributing Marijuana.

On March 7, 2008, Mr. Rodriguez pled guilty to two counts of marijuana trafficking, including conspiracy to distribute and possess with intent to distribute 50 kilograms or more of marijuana pursuant to 21 U.S.C. § 846, and possession with intent to distribute 50 kilograms or more of marijuana pursuant to 21 U.S.C. §§ 841(a)(1) & (b)(1)(C). *See* Judgment, *United States of America v. Rodriguez*, 6:07-cr-058-02-C, Dkt. No. 104 at 1 (N.D. TX Mar. 7, 2008) (“Judgment”). Mr. Rodriguez had been arrested on September 27, 2007 at a traffic stop while driving a vehicle that contained marijuana in the backseat and trunk. *See* Presentence Report, *United States of America v. Rodriguez*, 6:07-cr-058-02-C, Dkt. No. 117 at 3–4 (N.D. TX May 1, 2008) (“PSR”). There were no allegations, and there have never been any allegations, of violence or possession or use of weapons in connection with the offense. This was also Mr. Rodriguez’s first and only arrest for selling drugs.

Prior to this offense, Mr. Rodriguez had only an isolated criminal history stemming from incidents that occurred in his 20s and early 30s, when he struggled with substance abuse following a childhood with an alcoholic, violent father. *See* PSR at 6–9 (detailing convictions for offenses from 1985–1998, including Driving While Intoxicated, Public Intoxication, Possession of Cocaine, Driving While License Suspended, Escape,¹ and Criminal Trespass); *see* Ex. 1 (Declaration of Jesse B. Rodriguez at 1) (describing his upbringing in a “very violent home” and

¹ Mr. Rodriguez was arrested in 1995 for charges that were eventually dropped in full. While he was in custody, his beloved aunt and uncle were hit and killed by a drunk driver. On the day of the funeral, Mr. Rodriguez was allowed out of his cell to take a call and walked out the front door, intending to attend the funeral. He was apprehended minutes later. In recognition of these mitigating circumstances, Mr. Rodriguez was sentenced to only probation and a fine. PSR at 8.

getting married at 15 years old “just to get away. . .”). These same substance abuse issues played a role in his assault convictions in 1998 and 1999. While Mr. Rodriguez cannot recall the details of the former offense, the 1999 incident concerned an altercation involving his then-girlfriend and her ex-husband while using alcohol and cocaine. *See* Ex. 1 (Rodriguez Decl.) at 1–2. Mr. Rodriguez stopped using cocaine after the incident, for which he was deeply remorseful and apologized. *Id.* Notably, for nearly ten years after that time, Mr. Rodriguez had no further interactions with the law.

Due to these two nearly decade-old assault convictions, Mr. Rodriguez was subjected to the Career Offender Provisions of U.S. Sentencing Guidelines Manual § 4B1.1 when sentenced for his non-violent marijuana trafficking offense. This penalty increased his base offense level by 12 levels, resulting in a Guidelines range of 210–262 months. PSR at 15. If sentenced without the career enhancement, Mr. Rodriguez would have a Guidelines sentence of just 70–87 months. Mr. Rodriguez was ultimately sentenced to the very top of this range at 262 months. Judgment at 2–3.

B. Mr. Rodriguez Has Used His Fifteen Years of Incarceration to Date to Successfully Rehabilitate Himself, and He Has a Plan for Successful Reentry Upon Release.

Mr. Rodriguez has now served nearly 77% of his extraordinary sentence, with his current projected release date set for July 27, 2026. *See* BOP Inmate Locator, *available at* <https://www.bop.gov/inmateloc/> (last visited July 8, 2022). Mr. Rodriguez’s 15 years of incarceration have served as a more than appropriate punishment for his offense. While serving his sentence, his mother, sister, godfather, godmother, two uncles, two aunts, and two cousins have passed away, leaving Mr. Rodriguez unable to say goodbye or attend their funerals. His two daughters have grown up, and he has been unable to meet his grandchildren. Because he is housed

at FCI Williamsburg, which is located across the country from his family in Texas, in-person visits are not possible—meaning Mr. Rodriguez has not had an in-person visit in over three years. Furthermore, the past two years of Covid-19 outbreaks have taken an enormous toll on Mr. Rodriguez’s mental health, given the difficulty of social distancing in prison and his fear of becoming ill and being forced to quarantine in solitary confinement. These fears continue, given that even as recently as August 25, 2022, FCI Williamsburg was again on Code 3 status due to a Covid-19 outbreak. Despite the spread, Mr. Rodriguez was prohibited from receiving N-95 masks from his family.

In the face of these difficulties, Mr. Rodriguez has made significant efforts throughout his incarceration to better himself. Prior to his sentence, he struggled with substance abuse. While incarcerated, he completed a BOP drug education course and stopped using any drugs many years ago. *See* Ex. 2 (Mr. Rodriguez’s Individualized Needs Plan), at 1. He has also completed over 45 other BOP educational programs, including courses on leadership, health and wellness, stress and anger management, and personal finance and business, among many others. *Id.* at 1–2. Mr. Rodriguez also obtained a certificate in custodial management, and has been selected as the head orderly in a number of prison work assignments. Despite ongoing health issues, he has continued to work as the morning head orderly for the recreation yard since January 2021, and his hard work has been recognized by his BOP supervisors with a special Certificate of Appreciation. *See* Ex. 3 (Certificate of Appreciation) (noting that Mr. Rodriguez is “always on time and very professional, and highly respected”). These are extraordinary and consistent achievements for Mr. Rodriguez, who lacked education, support, and guidance as a child and was raised in an abusive household.

Also notable, particularly given the long period of his incarceration, is that

Mr. Rodriguez's disciplinary history while in prison has been minimal, and none of the incidents concerning Mr. Rodriguez involved violence.² Mr. Rodriguez has had no incidents since he moved to FCI Williamsburg over two years ago. *See* Ex. 4 (Mr. Rodriguez's Inmate Discipline Data).

Mr. Rodriguez also has a strong support system waiting for him upon his release. He has a fiancée, Ms. Graciela Gonzalez, to whom he has been engaged for four years. They intend to get married upon his release, and Mr. Rodriguez plans to adopt her nine-year-old son Jayden and twenty-year-old daughter Katelyn, with whom he has formed a close relationship. Ms. Gonzalez is actively involved in her church community and maintains a drug and alcohol-free home. *See* Ex. 5 (Letters of Support at 2). Ms. Gonzalez as well as her pastor attest that her church will provide a welcoming community in which Mr. Rodriguez can integrate and actively participate. *Id.* at 5. Additionally, Mr. Rodriguez's family loves and misses him and is willing to support him in his reentry, as both his daughter, aunt, and cousin have attested. *Id.* at 3–4.

In addition to family support, Mr. Rodriguez has a plan for his successful reentry. Ms. Gonzalez has confirmed that Mr. Rodriguez will live in her home, which she keeps free of

² In his over 15 years in custody in prisons, Mr. Rodriguez has had only three disciplinary infractions, two of which he strongly contests. In 2019, Mr. Rodriguez was sanctioned for testing positive for drugs or alcohol, and, in 2015, Mr. Rodriguez was written up for being in possession of tobacco, as well as “possessing a dangerous weapon” and a “non-hazardous tool.” Ex. 4 (Inmate Discipline Data), at 1. Mr. Rodriguez asserts that the positive test result in 2019 was a side-effect from Fluticasone, a nasal steroid he was prescribed at the time, and the 2015 incident involved an implement found in a large “open bay” dormitory that was not his. He unsuccessfully challenged the 2015 charges via a § 2241 petition in district court. *See* Judgment, *Rodriguez v. Barnhart*, 1:16-cv-00323, Dkt. No. 5 (May 5, 2016 W.D. La). While Mr. Rodriguez did not formally challenge the 2019 incident report, his medical record supports his account of events, showing that he was first put on Fluticasone on May 5, 2019, the positive drug test occurred five months later on October 17, 2019, and on February 19, 2020, his doctor wrote that he would “[r]esume nasal steroid,” implying he had at some point in the interim been taken off Fluticasone. Ex. 7 (Inmate Health Data), at 7, 16. Furthermore, at this time he was prescribed a new nasal steroid, Flunisolide. *Id.* Mr. Rodriguez does not dispute the sanction in 2016 for “being . . . untidy.” Ex. 4 (Inmate Discipline Data), at 1.

drugs and alcohol. *Id.* at 2. Ms. Gonzalez’s brother, Clemente Gonzalez, has offered Mr. Rodriguez a position as a mechanic’s assistant at his company, TexSan Oilfield Services. *Id.* at 1. Mr. Rodriguez’s local church community also intends to support him. *Id.* at 5. Mr. Rodriguez also plans to give back by mentoring at-risk youth, so that he might share the lessons he’s learned to positively impact his community. Taken together, these plans ensure that Mr. Rodriguez will not pose any recidivism risk, but rather, he will be a contributing member of society.

ARGUMENT

A. Under the First Step Act, This Court Has the Authority to Reduce Mr. Rodriguez’s Sentence.

On December 21, 2018, President Donald J. Trump signed the First Step Act of 2018 (the “First Step Act”) into law. *See* First Step Act of 2018, § 603(b), Pub. L. 115–391, 132 Stat. 5194, 5238 (2018). The legislation was designed to better promote the rehabilitation of federal prisoners and reverse course on policies—notably, an aggressive approach to drug offenses—that have led to decades of mass incarceration. *Id.*; *see also* The First Step Act of 2018: An Overview, CRS (Mar. 4, 2019), <https://fas.org/sgp/crs/misc/R45558.pdf>. To do so, the First Step Act amended § 3582(c)(1)(A) to shift authority from the BOP to the federal courts, granting the judiciary the authority to “reduce the term of imprisonment . . . after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. § 3582(c)(1)(A)(i).

To obtain such relief, an inmate must first “fully exhaust[] all administrative rights.” 18 U.S.C. § 3582(c)(1)(A). This occurs after either the BOP has denied an inmate’s compassionate release request or when 30 days have elapsed from the receipt of such a request by the warden of the defendant’s correctional facility, whichever is earlier. *Id.*; *see also United States*

v. *Franco*, 973 F.3d 465, 467–69 (5th Cir. 2020) (clarifying that “[t]hose who seek a motion for compassionate relief under the First Step Act must first file a request with the BOP”).

Mr. Rodriguez has properly exhausted his administrative remedies here. Mr. Rodriguez’s request for compassionate release was delivered to FCI Williamsburg’s warden via email on May 7, 2022. *See* Ex. 6 (May 7, 2022 Request to Warden). Thirty days have since elapsed without a response. Accordingly, Mr. Rodriguez has satisfied the exhaustion requirement of Section 3582, and this Court has jurisdiction to rule on his motion.

B. A Reduction of Mr. Rodriguez’s Term of Imprisonment to Time Served Is Warranted Under 18 U.S.C. § 3582.

Under the First Step Act, a court has the discretion to modify a defendant’s sentence upon consideration of the Section 3553(a) sentencing factors if the Court finds that “extraordinary and compelling reasons warrant the reduction.” *See* 18 U.S.C. § 3582(c)(1)(A)(i); *see also United States v. Chambliss*, 948 F.3d 691, 692–93 (5th Cir. 2020). Such reasons exist here.

In reviewing what constitutes an “extraordinary and compelling” reason for compassionate relief, district courts have broad discretion. While the first Application Note to U.S. Sent’g Guidelines Manual § 1B1.13 lists three specific “extraordinary and compelling” circumstances—including (1) an inmate’s medical condition; (2) an inmate’s age; and (3) an inmate’s family circumstances—the note also provides a catch-all provision to allow for the exercise of judicial discretion in discerning “an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).” U.S. Sent’g Guidelines Manual § 1B1.13 cmt. n.1 (D). Moreover, the Fifth Circuit has recently held that while these factors may “inform” a court’s review of whether “extraordinary and compelling” circumstances exist, they are not dispositive. *United States v. Thompson*, 984 F.3d 431, 433 (5th

Cir. 2021); *see also United States v. Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021) (“[N]either the policy statement nor the commentary to it binds a district court addressing a prisoner’s own motion under § 3582.”). Accordingly, “district courts are free to consider any relevant fact in determining if ‘extraordinary and compelling reasons’ exist.” *United States v. Dozier*, 2021 WL 4953266, at *2 (E.D. Tex. Oct. 25, 2021).

C. There Are Extraordinary and Compelling Reasons to Reduce the 262 Month Sentence Mr. Rodriguez Is Currently Serving for His Non-Violent Marijuana Offense.

Courts in this Circuit and elsewhere have determined that unusually long sentences, particularly in light of a disparity with the likely modern-day sentence, can constitute extraordinary and compelling reasons for relief. *United States v. Cooper*, 2021 WL 5027498, at *3 (S.D. Tex. July 15, 2021) (finding that “the change in sentencing law, combined with the length of [the defendant’s] sentence and the facts of his case, present extraordinary and compelling reasons for a sentence reduction”); *United States v. Cantu-Rivera*, 2019 WL 2578272, at *2 (S.D. Tex. June 24, 2019) (recognizing “change to sentencing policy” as a factor in establishing extraordinary and compelling reasons for relief); *United States v. Bryant*, 2020 WL 2085471, at *3 (D. Md. Apr. 30, 2020), *aff’d sub nom. United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020) (“The fact that [the defendant], if sentenced today for the same conduct, would likely receive a dramatically lower sentence than the one he is currently serving, constitutes an ‘extraordinary and compelling’ reason justifying potential sentence reduction”). This also applies to non-retroactive changes in law. *See United States v. Cooper*, 996 F.3d 283, 289 (5th Cir. 2021) (holding that a “district court [can] consider, in the first instance, whether the non-retroactive sentencing changes . . . either alone or in conjunction with any other applicable considerations, constitute extraordinary and compelling reasons for a reduction in sentence.”).

Mr. Rodriguez’s unusually long sentence and the changed approach to sentencing his offenses, coupled with his chronic health conditions, present extraordinary and compelling reasons that make him a prime candidate for early release. District courts across the country have recognized that “the changing societal norms and attitudes towards marijuana in recent years constitute an extraordinary and compelling reason to consider a sentence reduction.” *United States v. Hernandez*, 2021 WL 3192161, at *4 (C.D. Ill. July 28, 2021) (finding extraordinary and compelling reasons for sentence reduction solely on basis of changing social norms where defendant, with prior federal marijuana conviction, was sentenced to 240 months for possession with intent to distribute 1,344 kilograms of marijuana); *United States v. Orozco*, 2021 WL 2325011, at *2 (E.D. Wash. June 7, 2021) (granting motion for compassionate relief for defendant convicted of marijuana offense with a gun enhancement and sentenced to 15 years in part due to the fact that “society’s attitude toward marijuana has drastically changed”); *United States v. Vigneau*, 473 F. Supp. 3d 31, 38 (D.R.I. 2020) (granting compassionate release petition in part based on the changing legal and societal views of marijuana, finding “[t]he disparity between then and now is a factor in finding extraordinary and compelling reasons to grant [the defendant] relief”). Furthermore, under current law, Mr. Rodriguez would no longer qualify for the career offender enhancement, meaning his 262-month sentence would be cut in more than half, to just 70–87 months. Finally, Mr. Rodriguez suffers from a multitude of health conditions, several of which are hard to properly treat in a correctional facility. Mr. Rodriguez urges the Court to take a holistic view of all of these extraordinary and compelling factors when evaluating his case.

1. Since Mr. Rodriguez Was Sentenced, the Government Has Significantly Modified Its Approach to Prosecuting the Sale and Use of Marijuana.

Societal views regarding marijuana have undergone a transformation in the past 14 years. When Mr. Rodriguez was sentenced in 2008, not a single state or territory within the United States allowed for legalized marijuana use. Today, 37 states, three territories, and the District of Columbia have legalized the medical use of marijuana, and 19 states, two territories, and the District of Columbia have legalized adult recreational use of marijuana. *See* NCSL, *Cannabis Laws* (May 27, 2022), *available at* <https://www.ncsl.org/research/health/state-medical-marijuana-laws.aspx>. Mr. Rodriguez's home state of Texas legalized medical marijuana in 2015 under the Compassionate Use Act, and expanded qualifying conditions in 2019. *Id.* And in the past few months, the decriminalization movement has gained momentum across the state. In May 2022, the city of Austin voted to approve a local ballot measure decriminalizing marijuana by 85% of voters. *See* Shelly Hagan, *Voters approve decriminalization of marijuana, ban 'no-knock' warrants in Texas capital*, *Chron.* (May 8, 2022), *available at* <https://www.chron.com/politics/article/Texas-Austin-decriminalize-marijuana-ban-no-knock-17157539.php>. Since then, five other Texas cities have added cannabis reform to the ballot for this coming November. *See* Tom Angell, *Voters in Five Texas Cities Will Decide on Marijuana Decriminalization in November, Activists Say*, *Marijuana Moment* (June 6, 2022), *available at* <https://www.marijuanamoment.net/voters-in-five-texas-cities-will-decide-on-marijuana-decriminalization-in-november-activists-say/>. Tellingly, in a recent public opinion poll, 91% of Americans support marijuana legalization—with 31% supporting legalization for medical use, and 60% supporting full legalization for recreational purposes. Ted Van Green, *Americans Overwhelmingly Say that Marijuana Should be Legal for Recreational or Medical Use*, *Pew*

Research Center (Apr. 16, 2021), *available at* <https://www.pewresearch.org/fact-tank/2021/04/16/americans-overwhelmingly-say-marijuana-should-be-legal-for-recreational-or-medical-use/>.³

While marijuana remains classified as a controlled substance under the Controlled Substances Act at the federal level, all three branches of the federal government have drastically altered their approach to regulating marijuana since Mr. Rodriguez was sentenced. For instance, the “Cole Memorandum,” issued by the Department of Justice in 2009, directed federal prosecutors not to expend federal resources prosecuting any individuals or businesses that operated under state marijuana legalization laws. *See Attorney General Announces Formal Medical Marijuana Guidelines* (Oct. 9, 2009), <https://www.justice.gov/opa/pr/attorney-general-announces-formal-medical-marijuana-guidelines>. While the policy was technically rescinded under then-Attorney General Jeff Sessions in January 2018, Attorney General Merrick Garland recently stated to Congress that “[t]he department’s view on marijuana use is that enforcement is not a good use of our resources.” *See* Hearing on Fiscal 2022 Budget Request for the Justice Department Before the H. Appropriations Subcommittee, 117th Cong. (2021).

Echoing this approach, since 2015 Congress has enacted appropriations legislation each year prohibiting the Department of Justice from using federal funds to interfere with state

³ This general shift toward marijuana legalization is also reflective of recent scientific research that has shown that marijuana is far less harmful and dangerous than other drugs as well as alcohol, and also offers therapeutic benefits. *See* Dirk W. Lachenmeier & Jurgen Rehm, *Comparative Risk Assessment of Alcohol, Tobacco, Cannabis and Other Illicit Drugs Using the Margin of Exposure Approach*, *Nature Magazine* (Jan. 30, 2015), *available at* <https://www.nature.com/articles/srep08126>; Nat’l Academy of Sciences, Engineering, and Medicine, et al., *The Health Effects of Cannabis and Cannabinoids: The Current State of Evidence and Recommendations for Research, Chapter 4: Therapeutic Effects of Cannabis and Cannabinoids* (Jan. 2017), *available at* <https://www.ncbi.nlm.nih.gov/books/NBK425767/>.

laws “that authorize the use, distribution, possession, or cultivation of medical marijuana.” *Funding Limits on Federal Prosecutions of State-Legal Medical Marijuana*, CRS (Feb 4, 2022), available at <https://crsreports.congress.gov/product/pdf/LSB/LSB10694>. Furthermore, on April 1, 2022, the United States House of Representatives passed the Marijuana Opportunity Reinvestment and Expungement Act, which would decriminalize marijuana nationwide and eliminate criminal penalties for anyone who manufactures, distributes, or possesses the substance, while also establishing procedures to expunge past marijuana convictions. See Rebecca Shabad, *House Passes Landmark Marijuana Legalization Bill*, NBC News (Apr. 1, 2022), available at <https://www.nbcnews.com/politics/congress/house-vote-bill-legalize-marijuana-rcna22527>.

Even the United States Supreme Court has taken note of this profound cultural shift, with Justice Thomas writing in a recent opinion that in light of “the Federal Government’s current approach to marijuana . . . [a] prohibition on intrastate use or cultivation of marijuana may no longer be necessary *or* proper” to support the government’s enforcement approach. *Standing Akimbo, LLC v. United States*, 141 S. Ct. 2236, 2238 (2021) (emphasis in original).

Mr. Rodriguez remains deeply remorseful for his offense. Nonetheless, his 262-month sentence for a non-violent marijuana offense is wildly disproportionate to any sentence that would be imposed today for the same conduct in light of changed laws and social norms.

2. If Sentenced Today, Mr. Rodriguez Would Likely Receive a Significantly Lower Sentence.

The shift in societal attitudes and government enforcement is reflected in current sentencing for marijuana trafficking. If sentenced today, Mr. Rodriguez would almost certainly receive a far shorter sentence. This disparity is further compounded due to the fact that, under current law, Mr. Rodriguez would no longer receive a sentence enhancement as a career offender.

Federal marijuana prosecutions have precipitously declined since Mr. Rodriguez was sentenced, and when such actions are prosecuted they typically result in far shorter sentences. Notably, federal prosecutions for marijuana trafficking have decreased by over 80% since 2012. *See Federal Marijuana Trafficking Convictions Have Fallen Dramatically Following Enactment of Statewide Legalization Laws*, NORML (July 8, 2021), available at <https://norml.org/blog/2021/07/08/federal-marijuana-trafficking-convictions-have-fallen-dramatically-following-enactment-of-statewide-legalization-laws/>. In 2012, just four years after Mr. Rodriguez was sentenced, roughly 6,000 individuals nationwide were convicted for marijuana trafficking. *See Feds: Marijuana Trafficking Falls Following Statewide Legalization*, NORML (May 20, 2016), available at <https://norml.org/blog/2016/05/20/feds-marijuana-trafficking-falls-following-statewide-legalization/>. By contrast, in 2021, the government convicted just 996 federal marijuana trafficking offenders nationwide. *See Quick Facts, Marijuana Trafficking Offenses, U.S. Sentencing Commission*, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Marijuana_FY21.pdf. This data raises the prospect that if Mr. Rodriguez committed his offense in 2020 rather than 2007, he may not even have been prosecuted.

Additionally, the U.S. Sentencing Commission reported that in 2020, the average sentence for federal marijuana trafficking was just 30 months, or two and a half years. *Id.* The Fifth Circuit's sentencing statistics are similar for 2021, with an average sentence of 30 months for marijuana trafficking and a median sentence of 20 months. *See Federal Offenders in Each District, Fiscal Year 2021, USSC*, available at <https://ida.ussc.gov/analytics/saw.dll?Dashboard> (last visited May 30, 2022). Indeed, a representative sample of individuals charged in the Fifth Circuit in the past year for the *same exact crimes* as Mr. Rodriguez illustrates this point, with

sentences awarded including just 24 months,⁴ 12 months and 1 day,⁵ and three years' probation.⁶ Of all marijuana-trafficking convictions nationwide in 2021, only 3.9% of defendants received a sentence of ten or more years, with 15.8% sentenced to five to ten years, and 80.3% receiving a sentence of less than five years' incarceration. *See* Quick Facts, Marijuana Trafficking Offenses, U.S. Sentencing Commission, *available at* https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Marijuana_FY21.pdf.

By contrast, Mr. Rodriguez received a 262-month, or nearly 22-year, sentence for a non-violent marijuana trafficking offense—a term of imprisonment that is *more than eight times* the average 30-month sentence imposed for the same offense in 2020. *Id.* Indeed, Mr. Rodriguez's sentence exceeds even the average sentences imposed in recent years for the most serious and heinous offenses prosecuted in our justice system. *See Vigneau*, 473 F. Supp. 3d at 37 (concluding that a sentencing disparity exists for a defendant convicted of marijuana distribution where the sentence was equivalent to or exceeded “the median lengths of sentences imposed in 2019 for a

⁴ *United States v. Valles-Resendez et al*, 1:21-cr-00655, Dkt. 127 (S.D. Tex. March 30, 2022) (convicting defendant indicted for (1) conspiracy to possess with intent to distribute more than 50 kilograms of marijuana under 21 USC §§ 846, 841(a)(1), and 841(b)(1)(C), and (2) possession with intent to distribute more than 50 kilograms (approx. 91 kilograms (200 pounds)) of marijuana under 21 USC §§ 841(a)(1) and 841(b)(1)(C) and 18 USC § 2; first count dismissed, sentenced to 24 months).

⁵ *United States v. Carreon-Garcia et al*, 1:21-cr-00654, Dkt. 61 (S.D. Tex. Jan. 14, 2022) (convicting defendant indicted for (1) conspiracy to possess with intent to distribute more than 50 kilograms of marijuana under 21 USC §§ 846, 841(a)(1), and 841(b)(1)(D), and (2) possession with intent to distribute more than 50 kilograms (approx. 31.98 kilograms (70.50 pounds) of marijuana) under 21 USC §§ 841(a)(1) and 841(b)(1)(D) and 18 USC § 2; first count dismissed, sentenced to 12 months and one day).

⁶ *United States v. Pearce Jr.*, 5:21-cr-00719, Dkt. 62 (S.D. Tex. Dec. 1, 2021) (convicting defendant indicted for (1) conspiracy to possess with intent to distribute in excess of 50 kilograms of marijuana under 21 USC §§ 846, 841(a)(1), and 841(b)(1)(C), and (2) possession with intent to distribute in excess of 50 kilograms of marijuana under 21 USC §§ 841(a)(1) and 841(b)(1)(C) and 18 USC § 2; second count dismissed, sentenced to three years' probation).

selection of especially heinous crimes: twenty years for murder, fifteen years for sexual abuse, and ten years for kidnapping”) (citation omitted).

Compounding the injustice of Mr. Rodriguez’s excessive sentence is the fact that, if sentenced today, he would not be subject to the career offender 12-point-offense level enhancement under the Sentencing Guidelines, resulting in a far less severe sentence—precisely the non-retroactive change in law that both the Supreme Court and the Fifth Circuit have urged courts to consider when deciding motions for compassionate release. *See Concepcion v. United States*, 142 S. Ct. 2389, 2396 (2022) (“[A] district court adjudicating a motion under the First Step Act may consider other intervening changes of law (such as changes to the Sentencing Guidelines) or changes of fact (such as behavior in prison) in adjudicating a First Step Act motion.”); *Cooper*, 996 F.3d at 289 (“non-retroactive sentencing changes . . . either alone or in conjunction with any other applicable considerations” can constitute extraordinary and compelling reasons for a reduction in sentence). If sentenced today, Mr. Rodriguez would face only a sentence of 70–87 months, or 5.8 to 7.25 years—time he has already served *more than twice over*. The Court should take this into account in deciding this motion to achieve a fair and just result.

An individual is subject to upward enhancement under the Career Offender provisions of U.S. Sentencing Guidelines Manual § 4B1.1 when they are at least 18 years old at the time of the instant offense, the instant offense of conviction is a felony that is a controlled substance offense, and the defendant has at least two prior felony convictions for crimes of violence.⁷ U.S. Sent’g Guidelines Manual § 4B1.1. Mr. Rodriguez’s PSR simply notes, without

⁷ Under the current guidelines, the term “crime of violence” “means any offense under federal or state law, punishable by imprisonment for a term exceeding one year, that . . . has as an element the use, attempted use, or threatened use of physical force against the person of another,

further detail, that “[he] has at least two prior felony convictions crimes of violence.” PSR at 6. An examination of his criminal history shows that the only possible qualifying offenses are (1) Escape (1995), (2) Assault Causing Bodily Injury (1998), and (3) Aggravated Assault with Serious Bodily Injury (1999). PSR at 8–9. Under the law as it stands today, Mr. Rodriguez would have, at most, *one* previous qualifying offense, and as such, he would not be subject to the career offender enhancement.

Since Mr. Rodriguez was sentenced, the Supreme Court and Fifth Circuit have narrowed what offenses qualify as crimes of violence. In *Borden v. United States*, the Supreme Court held that a criminal offense that requires only a *mens rea* of recklessness cannot count as a “violent felony” under the Armed Career Criminal Act. 141 S. Ct. 1817, 1834 (2021).⁸ The Fifth Circuit subsequently found that an “assault offense under Texas Penal Code §§ 22.01(a)(1), 22.02(a)(2),” which is defined as “intentionally, knowingly, or *recklessly* caus[ing] bodily injury to another,” is not a crime of violence. *United States v. Gomez*, 23 F.4th 575, 577 (5th Cir. 2022) (emphasis added). Accordingly, Mr. Rodriguez’s 1998 assault offense is no longer a predicate offense under the Sentencing Guidelines.

Mr. Rodriguez’s 1995 Escape offense pursuant to Texas Penal Code § 38.06 also would no longer qualify as a crime of violence because the offense “plainly does not contain any element requiring the attempted, threatened or actual use of force.” *Jordan v. United States*, 2019

or . . . is murder, voluntary manslaughter, kidnapping, aggravated assault, a forcible sex offense, robbery, arson, extortion, or the use of unlawful possession of a firearm . . . or explosive material.” U.S. Sent’g Guidelines Manual § 4B1.2(a).

⁸ The Fifth Circuit interchangeably applies holdings interpreting a “violent felony” under the Armed Career Criminal Act to analyze the definition of crimes of violence under § 4B1.2, and vice versa. See *United States v. Mohr*, 554 F.3d 604, 609 (5th Cir. 2009).

WL 4418538, at *4 n.6 (W.D. Tex. Sept. 16, 2019); *see also United States v. Miles*, 340 Fed. Appx. 982, 984 (5th Cir. 2009) (unpublished) (accepting Government’s concession that the defendant’s prior escape conviction was not a crime of violence under the Career Offender provision); *United States v. Garcia*, 2017 WL 4270742, at *3 (S.D. Tex. Sept. 25, 2017) (“The Government concedes that Movant’s . . . conviction for [Texas third degree felony] Escape does not constitute a violent felony.”). Without these two offenses, Mr. Rodriguez no longer meets the requirements for the enhancement. If sentenced today with no enhancement, Mr. Rodriguez would have a Guidelines sentence of 70–87 months, or 5.8 to 7.25 years. Mr. Rodriguez, who has spent the past 15 years behind bars, has already served more than double this time.⁹

In light of these facts, as even the Government agrees, Mr. Rodriguez’s unusually long and disparate sentence constitutes an extraordinary and compelling reason to grant him compassionate release.

3. Mr. Rodriguez’s Chronic Health Conditions Provide Another

⁹ At the time of Mr. Rodriguez’s sentencing, courts rarely deviated from the guidelines in career offender cases—indeed, Mr. Rodriguez was sentenced to the very top of his enhanced guidelines range at 262 months. However, following the decisions in *United States v. Booker*, 543 U.S. 200 (2005), *Kimbrough v. United States*, 552 U.S. 85 (2007), and *Gail v. United States*, 552 U.S. 38 (2007), which granted district courts the authority to vary below the guideline range (the latter two which were decided shortly before Mr. Rodriguez was sentenced), courts began to deviate from guideline recommendations when the recommended sentence is more severe than necessary to serve sentencing purposes. By 2021, 54.8% of career offenders received a variance from the guidelines, 99% of which was a below-range variance. *See Quick Facts, Career Offenders*, USSC, available at https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Career_Offenders_FY21.pdf. Of the remaining 45.2% of career offenders sentenced under the guidelines, 56.3% received a departure sentencing below the recommended range. *Id.* These downward departures recognize that career offender guideline sentences are among the most severe and least likely to promote the statutory purposes of sentencing. *See United States v. Cavera*, 550 F.3d 180, 192 (2d Cir. 2008) (*en banc*) (encouraging policy-based variances when defendant’s criminal history was less serious than other offenses included in § 4B1.2’s “wide spectrum of offenses of varying levels of seriousness, from, on the one hand, murder or rape, to, on the other hand, attempted burglary of a dwelling”). This fact also supports reducing Mr. Rodriguez’s remaining sentence to time served.

Extraordinary and Compelling Reason for His Release.

Mr. Rodriguez also suffers from a number of chronic health conditions, including hyperlipidemia, gastroesophageal reflux, hearing loss, anxiety, an injured knee, a ruptured rotator cuff, a bicep tear, a deviated septum, deformities of feet and ankles, and severe deterioration of all fingernails in his right hand. *See* Ex. 7 (Inmate Health Data), at 3–7, 12. As a result, Mr. Rodriguez must wear medical shoes, a hearing aid, and knee braces; is barred from any climbing or lifting more than 15 pounds; and frequently suffers from refractory pain. *Id.* at 2-3. Under the Sentencing Commission’s guidelines, an extraordinary and compelling reason for release exists where a prisoner has a “serious physical or medical condition,” which “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.” U.S. Sent’g Guidelines Manual § 1B1.13 cmt. 1(A)(ii)(I). Mr. Rodriguez’s ailments, which in certain instances have been left untreated by BOP medical staff, constitute such conditions.¹⁰

Mr. Rodriguez’s medical well-being and ability to provide self-care within FCI Williamsburg are further endangered by the risk that COVID-19—now mutated into Omicron, the virus’s most transmissible strain yet—presents to his health, a risk that district courts both in this Circuit and across the country have recognized. *See, e.g., United States v. Muniz*, 2020 WL 1540325 at *1 (S.D. Tex., Mar. 30, 2020) (granting compassionate release on basis of inmate’s serious medical conditions, given that “individuals housed within our prison systems nonetheless

¹⁰ *See* Ex. 7 Health Data at 15 (documenting May 28, 2020 appointment where doctor recounted that due to untreated bicep tear—incurred while Mr. Rodriguez was performing his BOP work duties—he would “have difficulties with screwdrivers, drills, and possible weight lifting” without surgery. Despite Mr. Rodriguez explaining that these tasks were critical to his post-release job prospects, he was told that the surgery would not be provided by the BOP). With the help of his family, Mr. Rodriguez intends to pay for the surgery himself once released.

remain particularly vulnerable to infection”); *United States. v. Guston*, 2021 WL 149018 at *3 (S.D. Miss., Jan. 15, 2021) (noting that “[t]he risks to incarcerated persons [from COVID-19] are significant” before finding that inmate’s health characteristics that placed him at an increased risk of contracting the virus constituted extraordinary and compelling circumstances). Mr. Rodriguez’s risk of contracting Covid-19 remains acute, as demonstrated by the fact that his residence, FCI Williamsburg, is on Level 3 status, or the highest and most restrictive level under the BOP’s Covid-19 Modified Operations Plan, due to a current outbreak as of August 25, 2022. *See FCI Williamsburg*, available at <https://www.bop.gov/locations/institutions/wil/>.

Mr. Rodriguez is also at a higher risk of negative outcomes from Covid-19 due to his hyperlipidemia and gastroesophageal reflux (“GERD”) diagnoses. *See* Ex. 7 (Inmate Health Data), at 38 (listing hyperlipidemia diagnosis); *id.* at 36 (listing daily proton pump inhibitor Omeprazole prescription to treat GERD).¹¹ Courts have recognized the link between these conditions and an increased COVID-19 risk, and have granted compassionate release on this basis. *See, e.g., United States v. Pena*, 459 F. Supp. 3d 544, 550 (S.D.N.Y. 2020) (granting compassionate release “given the health risk that continued incarceration poses” due to inmate’s hypertension and hyperlipidemia diagnoses); *Guston*, 2021 WL 149018, at *2 (noting that

¹¹ According to the Centers for Disease Control and Prevention, heart conditions such as hyperlipidemia can make an individual “more likely to get very sick from COVID-19.” CDC COVID-19, *People with Certain Medical Conditions* (May 2, 2022), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>. GERD also causes an increased risk of Covid-19, particularly for patients like Mr. Rodriguez who take proton pump inhibitors. *See* Karina Toledo, *Gastroesophageal reflux may increase risk of dying from COVID-19, study suggests*, Agencia FAPESP (Oct. 28, 2020), available at <https://agencia.fapesp.br/gastroesophageal-reflux-may-increase-risk-of-dying-from-covid-19-study-suggests/34468/>; Christopher V. Almario, MD, MSHPM, et al., *Increased Risk of COVID-19 Among Users of Proton Pump Inhibitors*, Nat’l Lib. Of Medic., Aug. 25, 2020, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7473791/>.

“[p]eople with . . . high cholesterol are more likely to suffer from Covid-19”); *United States v. Samuels*, 2020 WL 7265378 (W.D. La. Dec. 10, 2020) (granting compassionate release due to [inmate’s] GERD, among other factors, which increased his risk of COVID-19). The significantly increased risk to Mr. Rodriguez’s health—brought on by Covid-19 and exacerbated by prison conditions, constitutes another extraordinary and compelling reason for his immediate release.

D. Mr. Rodriguez is Fully Rehabilitated and Has a Comprehensive Release Plan.

District courts, including in this Circuit, have recognized that rehabilitation “can be a significant factor warranting a sentence reduction” when an inmate has an otherwise qualifying condition. *See Dozier*, 2021 WL 4953266, at *3; *United States v. Hebert*, 2021 WL 5918009, at *3 (E.D. Tex. Dec. 8, 2021); *see also United States v. Rodriguez*, 451 F. Supp. 3d 392, 405 (E.D. Pa. 2020) (noting that the Sentencing Commission itself has interpreted § 3582(c)(1)(A) as allowing consideration of an inmate’s rehabilitation).

Mr. Rodriguez has demonstrated both contrition and rehabilitation. He accepted responsibility for his crimes by pleading guilty and has since served over 77% of his extraordinary sentence. He has also used his time in prison to educate and rehabilitate himself. He has completed over 45 different educational courses, on topics ranging from Pre-Release Stress Management to How to Keep a Job to Spanish Guitar. *See* Ex. 2 (Individualized Needs Plan), at 1–2. He has been a model employee throughout his time in prison, serving as the Head Orderly for custodial maintenance work while incarcerated at Texarcana, and continuing to work as the head orderly in the Recreation Yard at FCI Williamsburg, work that has been recognized with a special Certificate of Appreciation from his current supervisors. *See* Ex. 3 (Certificate of Appreciation). He has also experienced personal growth during this period, completing a drug treatment course and entering

into a long-term relationship with his fiancée. Mr. Rodriguez has written a letter to the Court expressing, in his own words, the impact of his rehabilitation over the past 15 years. He states:

Your honor, I take full responsibility for my actions and poor decisions. I honestly repent and am truly, sincerely remorseful and a rehabilitated 56 year old changed mature and responsible man. I know that I cannot change my past, but if given a second chance I'll do everything that I can to try and get my life back together so that I may be the best husband to my future wife . . . and the best father and grandfather to all our children and all our grandchildren and a rehabilitated, productive law abiding citizen of my community and our United States of America.

Rodriguez Decl. at 4–5.

Moreover, Mr. Rodriguez has a comprehensive and actionable release plan. He intends to reside at his fiancée's home, from which he will assist with his future step-children's care. Mr. Rodriguez also already has a job offer to work at TexSan Oilfield Services as a mechanic's assistant. He also hopes to contribute further to his community by joining his local church and mentoring at-risk youth.¹²

These circumstances show that Mr. Rodriguez has both the personal determination as well as the community support necessary to be successful upon reentry. Consequently, in combination with the other reasons described above, Mr. Rodriguez's rehabilitation provides additional support for finding "extraordinary and compelling" circumstances to support release here. *See Hebert*, 2021 WL 5918009, at *8 (granting compassionate release given demonstrated rehabilitation, in addition to excessive sentence under outdated sentencing scheme); *Rodriguez*, 451 F. Supp. 3d at 405–06 (finding extraordinary and compelling reasons to reduce sentence upon

¹² Mr. Rodriguez has researched mentoring programs such as the Crisis Text Hotline and All Things Made New, and plans to reach out to such programs upon release, in addition to starting his own program through his family's church. He hopes to reach at-risk youth before they get in trouble and to share the valuable lessons he has learned from his mistakes. Rodriguez Decl. at 3.

a showing of defendant's rehabilitation, along with other factors).

E. Compassionate Release Is Consistent with Section 3553 Sentencing Factors

In determining whether Mr. Rodriguez is eligible for compassionate release, the Court must also consider “the factors set forth in 18 U.S.C. § 3553(a).” 18 U.S.C. § 3582(c)(1)(A). As is relevant here, courts must consider: (1) “the nature and circumstances of the offense and the history and characteristics of the defendant”; and (2) the need for the sentence imposed, including to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense and adequate deterrence, to protect the public from further crimes of the defendant, to provide the defendant with needed educational or vocational training and medical care. 18 U.S.C. § 3553(a). The Government agrees that these factors support Mr. Rodriguez's request.

First, the nature and circumstances of Mr. Rodriguez's offense, while serious, pertain to the non-violent crime of possession with intent to distribute significant amounts of marijuana. This was also Mr. Rodriguez's first drug-trafficking arrest, and the crime did not involve a firearm or any identifiable victim. Mr. Rodriguez has accepted responsibility for his offense and has made significant rehabilitative efforts, including participating in drug-treatment and other educational courses, and working numerous prison jobs.

Second, the 15 years of imprisonment already served by Mr. Rodriguez reflect the seriousness of the offense, promote respect for the law, and have both provided more than just punishment for his non-violent offense, as well as adequately served to deter him from future crimes. The “need for the sentence imposed” is particularly weak here, especially when compared to current sentencing for marijuana-trafficking offenses, and when contrasted with the significantly lower median sentences imposed for far more serious crimes such as murder, rape, and kidnapping. *See supra* III.C.2. Mr. Rodriguez's sentence to date has served as a meaningful and substantial

punishment for his crimes, and he will continue to have his liberty sharply curtailed via supervised release, thus furthering specific deterrence.

Third, the potential for any future criminal conduct by Mr. Rodriguez is extremely low, such that he does not pose a risk to the safety of the community. Pursuant to the Sentencing Guidelines, a defendant seeking compassionate release must show that he “is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g).” U.S. Sent’g Guidelines Manual § 1B1.13(2). As already discussed, Mr. Rodriguez is serving time for a non-violent, no-weapon marijuana offense. He also has no record of violence while in prison, nor does he have any affiliations with any criminal organizations or gangs. To the contrary, he has made the most of his time while incarcerated, completing his education and participating in treatment programs, all while maintaining a number of work assignments. Mr. Rodriguez’s prior criminal convictions also all occurred more than 23 years ago, during a time when he struggled with substance abuse. Since that time, Mr. Rodriguez has matured, learned from his mistakes, and expresses great remorse for those offenses. Given Mr. Rodriguez’s advanced age and deteriorating physical condition, it is extremely unlikely—if not straight out impossible—that he will recidivate. Furthermore, any concerns in this respect can also be adequately addressed through specific conditions of release and community supervision.

If released, Mr. Rodriguez will live with his fiancée and help care for her children, whom he intends to adopt. He has already procured a standing offer of employment. His strong family support network should further alleviate any recidivism concerns. Taking into account these post-offense developments, which the Supreme Court has indicated provide “the most up-to-date picture” of a defendant’s likelihood to “engage in future criminal conduct,” *Pepper v. United States*, 562 U.S. 476, 490–93 (2011), the Court can rest assured that Mr. Rodriguez will

not pose a risk to the public, but rather, he will be a contributing member of his community.

Fourth, Mr. Rodriguez's incarceration has already served its rehabilitative purpose, allowing him to address his substance abuse issues and prepare for reentry through educational programming. Releasing Mr. Rodriguez would allow him to procure the medical care he needs, and allowing his family to take over this responsibility would free up scarce prison resources.

In sum, given Mr. Rodriguez's rehabilitation and his 15-year prison sentence already served, which amounts to 77% of what would today be considered an outrageously disproportionate sentence, little stands to be gained by incarcerating Mr. Rodriguez for an additional four years and inflicting further unnecessary pain on him and his family.

CONCLUSION

For the foregoing reasons, Mr. Rodriguez respectfully moves the Court for an order modifying his term of imprisonment to the amount of time served.

Dated: August 25, 2022

Respectfully submitted,

By: /s/ Nicole W. Friedlander

Nicole W. Friedlander
Michele C. Materni
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Tel: 212-558-4332
friedlandern@sullcrom.com
maternim@sullcrom.com

Stephanie M. Kelly
SULLIVAN & CROMWELL LLP
1700 New York Avenue, Suite 700
Washington, D.C. 20006
Tel: 202-956-7536
kellys@sullcrom.com
Counsel for Defendant Jesse B. Rodriguez

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2022, I electronically filed and served a copy of the foregoing Motion for Compassionate Release through the Court's CM/ECF system upon:

Jeffrey R. Haag
U.S. Attorney's Office
1205 Texas Avenue, 7th Floor
Lubbock, Texas 79401
Tel: 806-472-7351
Fax: 806-472-7394
Email: jeffrey.haag@usdoj.gov

/s/ Nicole W. Friedlander
Nicole W. Friedlander

CERTIFICATE OF CONFERENCE

On August 15 and August 24, 2022, Michele Materni, Stephanie Kelly, and Jeffrey Haag met and conferred regarding the merits of the motion. As noted in Attachment 1 below, the United States does not oppose a sentence reduction under 18 U.S.C. § 3582(c)(1)(A) to time served.

/s/ Nicole W. Friedlander

Nicole W. Friedlander

Government's Position Regarding Jesse B. Rodriguez's Compassionate Release Motion

The Government does not oppose a sentence reduction under 18 U.S.C. § 3582(c)(1)(A) to time served.

The Government takes this position for two reasons. First, Rodriguez presents “extraordinary and compelling reasons” for a sentence reduction. Recently, the United States Supreme Court held that district courts can consider intervening changes of law or fact in exercising their discretion to reduce a sentence pursuant to the First Step Act. *Concepcion v. United States*, 142 S. Ct. 2389, 2404 (2022). As Rodriguez argues—and the Government agrees—he would not be a career offender if sentenced today and, therefore, would face a remarkably lower advisory guideline range. This is an extraordinary and compelling reason for a sentence reduction.

Second, a sentence of time served (about 178 months) would accurately capture the 18 U.S.C. § 3553(a) factors at play in this case. Most notably, it would reflect the nature and circumstances of the offense, Rodriguez's role in the offense, and provide a just punishment.