

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
)	Case No. 1:99-cr-10045-JBM-JAG-1 ¹
v.)	Hon. Joe Billy McDade
)	
NELSON HALLAHAN,)	
)	
<i>Defendant.</i>)	

**DEFENDANT NELSON HALLAHAN'S
MOTION FOR COMPASSIONATE RELEASE**

Respectfully submitted,

/s/ Todd Pugh

BREEN & PUGH
Todd S. Pugh
Jonathan M. Brayman
53 West Jackson Boulevard
Suite 1215
Chicago, Illinois 60604
(312) 360-1001 (t)
(312) 362-9907 (f)
tpugh@breenpughlaw.com
jbrayman@breenpughlaw.com

COBURN & GREENBAUM PLLC
Marc Eisenstein
1710 Rhode Island Ave, NW
2nd Floor
Washington, DC 20036
(202) 470-2695 (t)
(866) 561-9712 (f)
marc@coburngreenbaum.com
(will seek admission *pro hac vice*)

¹ This motion is being simultaneously filed in the above-captioned case and in *United States v. Hallahan*, Case No. 1:12-cr-10054-JBM-JAG-1, as Mr. Hallahan moves for compassionate release in both cases.

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**DEFENDANT NELSON HALLAHAN'S
MOTION FOR COMPASSIONATE RELEASE**

Defendant NELSON HALLAHAN by his attorneys, BREEN & PUGH, and COBURN & GREENBAUM (will seek admission *pro hac vice*), respectfully requests that the Court enter an order granting him compassionate release under 18 U.S.C. § 3582(c)(1)(a) (the “First Step Act”) and reduce his sentence to time served, effective immediately, followed by five years of supervised release. Mr. Hallahan is an honorably discharged, Navy veteran who was awarded a Bronze Star and a National Defense Service Medal, for his service during the Vietnam War. Mr. Hallahan’s health has significantly declined since appearing before the Court for sentencing on November 28, 2012. He is a 73-year-old man who suffers from a number of serious medical conditions, including Parkinson’s disease, diabetes, hypertension, and end-stage renal disease. Mr. Hallahan’s medical issues have rendered him unable to care for himself. He is only able to perform very limited self-care and is confined to his bed or a chair the majority of the day. Mr. Hallahan is also forced to rely on the assistance of fellow inmates to perform almost every daily task, from getting dressed to eating. In addition, Mr. Hallahan’s age and serious health issues place him squarely within the vulnerable population at heightened risk of getting extremely sick and potentially dying from COVID-19. In the event he is released, Mr. Hallahan has a strong family support system release plan.

Mr. Hallahan respectfully submits that these circumstances present “extraordinary and compelling reasons” to warrant compassionate release under the First Step Act. Prior to filing this Motion, undersigned counsel conferred with Assistant United States Attorney Darilynn J. Knauss, who acknowledged that Mr.

Hallahan has suffered from medical issues for an extended period of time, but represented that the government objects to the requested reduction in sentence.

STATEMENT OF FACTS

Mr. Hallahan and his wife, Janet, were charged in 1999 with engaging in a fraudulent scheme. The government alleged that from 1993 to 1999, the couple defrauded investors by making false promises of returns on investments in insurance policies, mutual funds, and businesses. They were charged with numerous counts of mail fraud, money laundering, bank fraud, and related conspiracy charges. Mr. Hallahan pleaded guilty to conspiracy to commit mail and bank fraud, in violation of 18 U.S.C. §§ 371, 1341, and 1344, and conspiracy to commit money laundering, in violation of 18 U.S.C. § 1956(h). Regrettably, Mr. Hallahan fled and did not appear for sentencing. He remained at large until May 12, 2012, when he and his wife were arrested in Arizona. He was also charged with failure to appear in violation of 18 U.S.C. § 3146(a)(1), to which he pleaded guilty on October 31, 2012.

On November 28, 2012, the Court sentenced Mr. Hallahan to a term of 210 months imprisonment on Count Eighteen (money laundering conspiracy) and 60 months imprisonment on Count 17 (conspiracy to commit mail and bank fraud), with the sentences to run concurrently, to be followed by a period of three (3) years of supervised release. The Court sentenced Mr. Hallahan to 60 months imprisonment for failure to appear, to run consecutively to the 210 months of

imprisonment imposed in the underlying matter, and three years of supervised release, to run concurrently to the supervised release in the underlying matter.

The first time Mr. Hallahan brought the deterioration of his health to the attention of the Court after sentencing appears to be in a letter submitted in November 2015. *See* ECF Dkt. No. 116 (Case No. 1:99-cr-10045-JBM-JAG-1). In the letter, Mr. Hallahan described the progression of his Parkinson's disease since his incarceration in 2012 and the difficulty in performing basic living skills. Mr. Hallahan believed that a transfer to a Federal Medical Center within the Bureau of Prisons ("BOP") might improve his quality of life and asked the Court to recommend the transfer. The letter also referenced the compassionate release criteria and his perceived ineligibility because of not serving enough of his sentence but noted pending legislation that may result in him becoming eligible. Mr. Hallahan was subsequently transferred to the U.S. Medical Center for Federal Prisoners in Springfield, Missouri where he remains today.

The legislation Mr. Hallahan referenced in his November 2015 letter has become law. Mr. Hallahan is now eligible to seek compassionate release under 18 U.S.C. § 3582(c)(1)(A) (the First Step Act). He has filed a number of requests for compassionate release with the warden of his current place of incarceration. On January 16, 2020, Mr. Hallahan, through his counsel, filed a request for compassionate release, noting in the request that it would serve to supersede any other pending request filed by Mr. Hallahan. On February 26, 2020, Ken Hyle, Assistant Director/General Counsel of the BOP, issued a memo to Warden M.D.

Smith, denying Mr. Hallahan's request for compassionate release. Upon receipt of the denial from Mr. Hyle, Mr. Hallahan exhausted his administrative remedies related to his request for compassionate release based on his medical condition.

The world is in the midst of a global pandemic caused by COVID-19. In response to COVID-19 and its impact on individuals in federal jails and prisons, Congress and the President included a provision in the CARES Act that expands the BOP's authority to place inmates on home confinement. This provision of the CARES Act extends the authority set forth in 18 U.S.C. § 3624(c)(1). On April 4, 2020, Mr. Hallahan, through his counsel, requested that the BOP exercise its expanded authority pursuant to the CARES Act and transfer him to home confinement. Warden Smith denied that request in a letter dated April 14, 2020.

COMPASSIONATE RELEASE AND THE FIRST STEP ACT

Congress first enacted 18 U.S.C. § 3582(c)(1) as part of the Comprehensive Crime Control Act of 1984 to serve as a "safety valve" for judges to assess whether a sentence reduction was warranted by factors that previously would have been addressed through the abolished parole system. S. Rep. No. 98-225, at 121 (1983). "This legislative history demonstrates that Congress, in passing the Comprehensive Crime Control Act of 1984, intended to give district courts an equitable power to employ on an individualized basis to correct sentences when 'extraordinary and compelling reasons' indicate that the sentence initially imposed on an individual no longer served legislative objectives." *United States v. Millan*, No. 91-CR-685 (LAP), 2020 US Dist. LEXIS 59955, at *16 (S.D.N.Y. Apr. 6, 2020).

The compassionate release statute empowered courts to reduce a defendant's sentence whenever "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). Congress delegated to the United States Sentencing Commission the responsibility of defining what constituted "extraordinary and compelling reasons." *See* 28 U.S.C. § 994(t). However, it was not until 2007, more than two decades after the statute was enacted, that the Commission responded. It issued a guideline stating that "extraordinary and compelling reasons" include medical conditions, age, family circumstances, and "other reasons." U.S.S.G. § 1B1.13 app. n.1(A)-(D).

As explicitly delineated in the guideline, a medical condition can satisfy the "extraordinary and compelling reasons" requirement of compassionate release. Application Note 1(A)(ii) to Section 1B1.13 of the United States Sentencing Guidelines ("Guidelines") states extraordinary and compelling reasons include when:

The defendant is—

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

Id.

Application Note 1(B) identifies extraordinary and compelling reasons to include when "[t]he defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and

(iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.” Although Mr. Hallahan has not yet served 10 years or 75 percent of his sentence, he does satisfy both (i) and (ii) of Application Note 1(B). Furthermore, Application Note 1(D) created a catch-all provision, for when the Director of the BOP determined “there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).”

As originally enacted, the statute left sole discretion for filing compassionate release motions with the Director of the BOP, who adopted a program statement governing compassionate release that in many ways narrowed the criteria established by the Commission. *See* BOP Program Statement 5050.49. During the span of more than three decades, the BOP rarely filed motions on behalf of inmates who met the eligibility criteria. The Office of the Inspector General for the Department of Justice concluded in 2013 that “[t]he BOP does not properly manage the compassionate release program, resulting in inmates who may be eligible candidates for release not being considered.” Dep’t of Justice, Office of the Inspector General, *The Federal Bureau of Prisons’ Compassionate Release Program* (April 2013), at 11, available at <https://oig.justice.gov/reports/2013/e1306.pdf>; *see also* Dep’t of Justice, Office of the Inspector General, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* (May 2015), at 51, available at <https://oig.justice.gov/reports/2015/e1505.pdf> (“Although the BOP has revised its compassionate release policy to expand consideration for early release to aging

inmates, which could help mitigate the effects of a growing aging inmate population, few aging inmates have been released under it”); U.S.S.G. § 1B1.13, app. n.4 (admonishing BOP for its past failure to pursue relief on behalf of eligible inmates). Heeding this criticism, Congress acted.

The title of Section 603(b) of the First Step Act — “Increasing the Use and Transparency of Compassionate Release” — leaves no doubt as to Congress’ intent in modifying 18 U.S.C. § 3582(c)(1)(A). Through the First Step Act, enacted December 21, 2018, Congress sought to resuscitate compassionate release by, *inter alia*, allowing defendants to directly petition courts for relief, rather than leaving that power solely in the hands of the BOP. *See* 18 U.S.C. § 3582(c)(1)(A).

I. Mr. Hallahan’s Deteriorating Health Presents An “Extraordinary and Compelling” Reason Warranting a Reduced Sentence

The extraordinary and compelling criteria necessary for a Court to grant compassionate release can be met where there is “a serious physical or medical condition” that “substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility from which he or she is not expected to recover.” U.S.S.G. § 1B1.1. “[C]ourts have universally turned to U.S.S.G. § 1B1.13 to provide guidance on the ‘extraordinary and compelling’ reasons that may warrant a sentence reduction.” *United States v. McGraw*, No. 2:02-cr-00018-LJM-CMM-01, U.S. Dist. LEXIS 78370, at *6 (S.D. Ind. May 9, 2019) (internal citations omitted). Mr. Hallahan’s impairments and inability to perform most daily tasks due to his medical conditions satisfies the requirement of U.S.S.G. § 1B1.13.

District Courts have granted compassionate release under the First Step Act to release inmates with circumstances similar to Mr. Hallahan. Courts have released defendants suffering from chronic medical issues, even those serving significant sentences for violent crimes, as described below.

In *United States v. Williams*, the court granted compassionate release to a defendant who was convicted of multiple crimes of violence, including armed bank robbery. No. 3:04-cr-95 (MCR), 2020 U.S. Dist. LEXIS 63824 (N.D. Fla. April 1, 2020). The defendant was classified a Career Offender and sentenced to life imprisonment and a consecutive 7 years. *Id.* at *3. In granting compassionate release after the defendant served 15 years, the court noted the defendant suffered a heart attack while in BOP custody and has a number of serious medical conditions, which include “severe coronary and peripheral vascular disease, congestive heart failure, left ventricular dysfunction, end-stage renal disease, hyperlipidemia, and prediabetes.” *Id.* at *7. While the Court could not conclude that the defendant “poses no risk at all to public safety – based on the nature and circumstances of his offenses...” the court held that the “risk of [defendant] engaging in further criminal conduct is minimal and can be managed through home confinement and the terms of his supervised release.” *Id.* at **8-9. The court reduced the life sentence to time served, followed by five years of supervised release, and a 12-month period of home confinement with electronic monitoring. *Id.* at *12.

In *United States v. Dingle*, the court granted compassionate release to an 82-year-old man suffering “from a number of significant health problems which

diminish his ability to care for himself in the prison setting.” *Id.*, 2020 U.S. Dist. LEXIS 68604 (C.D. Ill. April 20, 2020). The defendant suffered from Parkinson’s disease, anemia, hypertension, and bladder diverticulum. *Id.* at **1-2. The court found that “based on all of the circumstances...the approximately 45 months [defendant] has served are sufficient to satisfy the purposes of sentencing. *Id.* at *5. The court granted compassionate release and reduced the defendant’s sentence to time served, ordered his immediate release, and imposed three years of supervised release. *Id.*

In *United States v. Spears*, the court granted compassionate release to a defendant who was sentenced to life imprisonment after being convicted of a large drug conspiracy, in which he possessed a gun. No. 3:98-cr-0208-SI-22, 2019 U.S. Dist. LEXIS 177991 (D. Or. Oct. 15, 2019). The 77-year-old defendant, who had a prior conviction for conspiracy to commit murder for which he was sentenced to 25 years, suffered from a litany of medical issues after serving 20 years and nine months in prison, including prostate cancer, diabetes, diabetic eye disease, and chronic kidney disease. *Id.* at **3-4. In granting compassionate release, the court found that the defendant did not pose a significant risk to the community in light of his “age and [] physical and medical condition,” and the 20 years he had served in prison was a “significant sanction.” *Id.* at *16.

Mr. Hallahan’s criminal conduct was non-violent and much less egregious than others that have been granted compassionate release. He defrauded individuals out of significant sums of money and is truly remorseful for his conduct.

As with the cases cited above, the time Mr. Hallahan has served and his debilitating medical condition that renders him unable to care for himself are sufficient to grant compassionate release under the First Step Act.

Mr. Hallahan suffers from a number of significant medical conditions and ailments. Based on a review of his BOP medical records, he suffers from: (1) Parkinson's disease; (2) End-stage renal disease; (3) Secondary hyperparathyroidism; (4) Diabetes; (5) Anemia; (6) Essential tremor; (7) Retinopathy; (8) Sensorineural hearing loss; (9) Hypertension; and (10) Nonrheumatic aortic valve disorder. *See Exhibit A, Excerpt of Mr. Hallahan's Medical Records*². This is not a complete list of all of his conditions but identifies all of the serious conditions that impact his everyday life. The request for reduction in sentence is based primarily on Mr. Hallahan's diagnosis of Parkinson's disease and the current state he is in as a result of this condition. However, the litany of other ailments also contribute to his inability to care for himself and render him eligible for a reduction in sentence based on a debilitating medical condition.

Mr. Hallahan's health has declined significantly in the past few years. He has suffered from Parkinson's since approximately 2010. He has been incarcerated since 2012 and his medical records detail a drastic deterioration in his health. In April 2013, Mr. Hallahan noticed a worsening of his symptoms and reported them to medical staff. It was documented that he suffered from resting tremors that made feeding himself difficult. His tremors primarily impacted his hands, but he also had

² Given the sensitive nature of these medical records, the undersigned will seek leave to file them under seal.

difficulty with his posture and balance and would stumble at times while walking. As the disease progressed, his muscles stiffened and he struggled to write and speak. Later in 2013, Mr. Hallahan requested more time to eat as his tremors made eating within the BOP's allotted time impossible. He also requested a device to help him feed himself with the tremors as he reported that he could not hold the food tray or drink out of a cup.

Parkinson's disease has ravaged Mr. Hallahan's body and his physical condition is such that he is not able to care for himself, much less pose a danger to anyone if released. He is now housed at a BOP medical facility where he relies on a walker to ambulate and is unable to eat, dress himself, or perform simple daily tasks unassisted. Dr. Moose is his primary physician, but a number of outside specialists have been engaged in the hopes of controlling Mr. Hallahan's Parkinson's disease symptoms and improving his quality of life. Unfortunately, there is nothing more that can be done for him. BOP staff and a number of specialists have reported that Mr. Hallahan's medication is at the maximum dosage and cannot be increased. One option that was discussed was brain surgery, but he is not eligible for the treatment due to his age and pre-existing heart condition.

On January 28, 2020, Wendy Clanton, a Healthcare for Reentry Veterans Specialist for the Veterans Healthcare System of the Ozarks met with Mr. Hallahan during an outreach visit to the prison where he is residing. Ms. Clanton, a licensed clinical social worker, describes Mr. Hallahan as a "frail . . . male with severely limited mobility and motor deficits due to his diagnosis of Parkinson's Disease, not

to mention, multiple other comorbid diagnoses . . .” See Exhibit B, Letter from Wendy Clanton, LCSW. She watched as he “struggle[d] to even hold a pen while attempting to sign his name.” *Id.* Through her discussions with prison staff, she learned Mr. Hallahan’s tremors are so severe that he “must now use an *eight-pound* fork just to be able to stabilize his hand so he can feed himself.” *Id.* (emphasis added).

Mr. Hallahan is blessed with a supportive family that is ready, willing, and able to assist in his care should he be released to home confinement. His sister, Tracy Masterson-Stolz, lives in Albuquerque, New Mexico. Tracy and her husband, Jim Stolz, are prepared to assist Mr. Hallahan. They own their home and have a bedroom where he can stay. They also renovated their bathroom to make it handicap accessible; the shower area has a bench and can accommodate a wheelchair. Joseph Golino, a Pretrial officer from a field office in New Mexico, was impressed with the home’s amenities when he visited in connection with a previous request for early release. Mr. Golino offered that his Office would approve of the residence if Mr. Hallahan was released from custody.

Tracy and her family are prepared to assist Mr. Hallahan. Tracy works from home and has two adult children living nearby. She understands that Mr. Hallahan will rely heavily on her for his daily care and to take him to his medical appointments. Tracy and her children will be available to take Mr. Hallahan to any necessary appointments and have already located a facility that can perform his dialysis. In addition to outfitting her house, she has purchased eating utensils that

are specifically made for individuals suffering from Parkinson's disease. In terms of health insurance and income, Tracy has made contact with the Social Security Office, Veteran's Affairs, and identified a health care insurance provider that will be able to offer a plan to Mr. Hallahan upon release. She confirmed that the dialysis center near her home accepts the insurance plan she has identified.

II. COVID-19 Constitutes an Extraordinary and Compelling Reason for Reduction in Sentence

Courts across the country have held that they have the authority to define "extraordinary and compelling reasons" for release under § 1B1.13 app. n. 1(D) and that the risks associated with COVID-19 can constitute an "extraordinary and compelling reason" for a sentence reduction. A non-exhaustive list includes:

- *U.S. v. Ben-Yhwh*, No. 15-00830, 2020 U.S. Dist. LEXIS 65677, at **14-15 (D. Haw. Apr. 13, 2020) (granting compassionate release to inmate that has Parkinson's disease, asthma, and diabetes, noting and finding that these conditions place him at a high risk of hospitalization requiring intensive care unit admission should he contract COVID-19);
- *United States v. Coles*, No. 00-cr-20051, 2020 U.S. Dist. LEXIS 72327 (C.D. Ill. Apr. 24, 2020) (granting compassionate release to inmate who had served 19 years of 24-year sentence based on his vulnerability to COVID-19 because of hypertension, prostate issues, bladder issues, and a dental infection and because he is prediabetic);
- *United States v. Robinson*, No. 18-cr-00597-RS-1, 2020 U.S. Dist. LEXIS 73575 (N.D. Cal. Apr. 27, 2020) (granting compassionate release to prisoner at FCI Lompoc who suffers from severe psoriasis for which he takes immunosuppressant medication);
- *United States v. Gorai*, No. 2:18-CR-220-JCM (CWH), 2020 U.S. Dist. LEXIS 72893 (D. Nev. Apr. 24, 2020) (granting compassionate release in light of COVID-19 to inmate who suffers from asthma);
- *United States v. Joling*, No. 11-cr-60131-AA, 2020 U.S. Dist. LEXIS 67953, at *12 (D. Ore. Apr. 17, 2020) (granting compassionate release to inmate at

Butner in light of COVID-19 and his underlying conditions, including hypertension, atherosclerosis, a history of transient ischemic attacks, dyslipidemia, obesity, history of left lower extremity fracture, and diagnosis of prostatic adenocarcinoma);

- *United States v. Samy*, Case No. 16-20610-1, 2020 U.S. Dist. LEXIS 66864 (E.D. Mich. Apr. 16, 2020) (granting compassionate release because “Samy squarely fits the definition of an individual who has a higher risk of dying or falling severely ill from COVID-19” because of her age and underlying medical conditions, including a serious heart condition, diabetes, and asthma);
- *United States v. Smith*, No. 12 Cr. 133 (JFK), 2020 U.S. Dist. LEXIS 64371 (S.D.N.Y. Apr. 13, 2020) (granting immediate release for individual with asthma, high cholesterol, blood clots, a thyroid condition, and suspected multiple myeloma in light of presence of COVID-19 at place of imprisonment);
- *United States v. Burrill*, No. 17-cr-0491-RS-1, ECF No. 308 (N.D. Cal. Apr. 10, 2020) (granting compassionate release because defendant, a 75-year-old man, “suffers from asthma, high blood pressure, high cholesterol, diabetes, diverticulosis, blood clots, hearing loss, glaucoma, cataracts, and lower back nerve pain,” placing him at a “heightened risk of becoming severely ill from COVID-19”);
- *United States v. Rodriguez*, No. 2:03-cr-00271-AB-1, 2020 U.S. Dist. LEXIS 64371, at *17 (E.D. Pa. Apr. 1, 2020) (“Mr. Rodriguez’s circumstances—particularly the outbreak of COVID-19 and his underlying medical conditions that place him at a high risk should he contract the disease—present ‘extraordinary and compelling reasons’ to reduce his sentence.”);
- *United States v. Miller*, No. 16-cr-20222-1, 2020 U.S. Dist. LEXIS 62421, at **11-12 (E.D. Mich. Apr. 9, 2020) (“Miller squarely fits the definition of an individual who has a higher risk of falling severely ill from COVID-19. . . . [t]herefore, the Court finds that extraordinary and compelling reasons exist for his immediate compassionate release.”);
- *United States v. Zukerman*, No. 16 Cr. 194 (AT), 2020 U.S. Dist. LEXIS 59588, at *11 (S.D.N.Y. Apr. 3, 2020) (“The Court also finds that Zukerman has set forth ‘extraordinary and compelling reasons’ to modify his sentence, 18 U.S.C. § 3582(c)(1)(A)(i), because of the great risk that COVID-19 poses to an elderly person with underlying health problems.”);

- *United States v. Colvin*, No. 3:19-cr-179 (JBA), 2020 U.S. Dist. LEXIS 57962, at *9 (D. Conn. Apr. 2, 2020) (concluding that Defendant Colvin has “demonstrated extraordinary and compelling reasons justifying her immediate release” based on his underlying medical conditions and COVID-19);
- *United States v. Edwards*, No. 6:17-cr-00003, 2020 U.S. Dist. LEXIS 60095, at *14 (W.D. Va. Apr. 2, 2020) (concluding defendant “has demonstrated an extraordinary and compelling reason for his compassionate release” in light of COVID-19 and preexisting health conditions);
- *United States v. Perez*, No. 17-cr-0513-AT, ECF No. 98 (S.D.N.Y. Apr. 1, 2020) (finding defendant’s pre-existing medical condition combined with the risk of contracting COVID-19 at MDC Brooklyn constitutes “extraordinary and compelling reasons” to reduce his sentence to time served);
- *United States v. Gonzalez*, No. 2:18-CR-0232-TOR-15, 2020 U.S. Dist. LEXIS 56422 (E.D. Wash. Mar. 31, 2020) (granting compassionate release because COVID-19 and defendant’s medical conditions, including chronic obstructive pulmonary disease (COPD), constitute extraordinary and compelling reasons);
- *United States v. Muniz*, No. 4:09-CR-0199-1, 2020 U.S. Dist. LEXIS 59255, at *6 (S.D. Tex. Mar. 30, 2020) (“Because Defendant is at high-risk for severe illness from COVID-19 and because inmates in detention facilities are particularly vulnerable to infection, the Court finds that Defendant has demonstrated an extraordinary and compelling reason for compassionate release.”);
- *United States v. Trent*, No. 16-cr-00178-CRB-1, 2020 U.S. Dist. LEXIS 62790 (N.D. Cal. Apr. 9, 2020) (finding extraordinary and compelling reasons based on combination of COVID-19 pandemic and defendant’s medical conditions);
- *United States v. Hansen*, No. 07-CR-00520(KAM), 2020 U.S. Dist. LEXIS 61946, at *25 (E.D.N.Y. Apr. 8, 2020) (granting compassionate release in light of “the unique risks posed by the COVID-19 pandemic to prisoners like Mr. Hansen, who is elderly and infirm”).

Section 603(b) of the First Step Act fundamentally changed the role of courts in the compassionate release process vesting them with the authority to determine

what constitutes extraordinary and compelling reasons for release. This pandemic, as applied to Mr. Hallahan, is an extraordinary and compelling circumstance.

A. Mr. Hallahan’s Vulnerability To COVID-19 Presents an “Extraordinary and Compelling” Reason Warranting a Reduced Sentence.

The Centers for Disease Control (“CDC”) have identified several factors that put individuals at higher risk for severe illness. “Based on currently available information and clinical expertise, older adults and people of any age who have serious underlying medical conditions might be at higher risk for severe illness from COVID-19.” CDC, *People Who Are at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>. The risk factors include:

- “People 65 years and older;”
- “People who live in a nursing home or long-term care facility;”
- “People with chronic lung disease or moderate to severe asthma;”
- “People who have serious heart conditions;”
- “People with diabetes.”

Id.

A recent study published in the Journal of the American Medical Association (JAMA) found that, among 5,700 patients in New York City who were hospitalized with COVID-19, the most common underlying medical conditions were hypertension (56.6 percent), obesity (41.7 percent), and diabetes (33.8 percent). *See* Safiya Richardson et al., *Presenting Characteristics, Comorbidities, and Outcomes Among*

5700 Patients Hospitalized with COVID-19 in the New York City Area, JAMA, available at <https://jamanetwork.com/journals/jama/fullarticle/2765184>. Similarly, as Judge Chuang noted in a recent opinion ordering the release of a defendant from the Central Treatment Facility in Washington, D.C., “as of March 2020, three-fourths of individuals who died from COVID-19 in Italy had hypertension.” *United States v. Keaton*, No. TDC-18-0215, ECF No. 84 at *5 (D. Md. Apr. 23, 2020) (citing *Coreas v. Bounds*, No. TDC-20-0780, 2020 U.S. Dist. LEXIS 59211 (D. Md. Apr. 3, 2020)).

Mr. Hallahan has several of the risk factors identified by the Centers for Disease Control and studies on those infected: (1) diabetes; (2) hypertension; (3) nonrheumatic aortic valve disorder (heart condition); and (4) his age. Mr. Hallahan’s particular vulnerability to COVID-19 constitutes an extraordinary and compelling reason for relief given the spread of the virus within the Bureau of Prisons.

According to the Bureau of Prisons website, there are no reported cases of COVID-19 at FMC Springfield, where Mr. Hallahan resides. BOP, *COVID-19 Cases*, <https://www.bop.gov/coronavirus/>. However, this statistic is not the whole picture. There is a concern that the number of infections within BOP facilities is not accurate due to the lack of COVID-19 tests available to inmates. We understand that the Bureau of Prisons (BOP) briefed congressional staff on April 7, 2020 regarding COVID-19 and statistics of staff and inmate infections where BOP clarified that the statistics published on their website only identify **lab positive**

cases of COVID-19. BOP also has more than 4,000 “open” cases, which they define as “suspected, presumed positive, or clinically confirmed.” There is also evidence that some of the people who contract COVID-19 do not exhibit symptoms until 2-14 days after infection, or do not show symptoms at all, but can nevertheless infect others. WORLD HEALTH ORG., CORONAVIRUS DISEASES 2019 (COVID-19) SITUATION REPORT – 73 2 (Apr. 2, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2. This information suggests that the fact that a particular correctional facility does not appear on the BOP website does not mean there are no presumptive positive or clinically confirmed cases of COVID-19 inside the facility.

While the Bureau of Prisons has made efforts to reduce the spread of the virus throughout the federal prison system, the rate of infection is exponentially greater within the Bureau of Prisons than within the community at large, and continues to spread at an alarming rate, as the below statistics demonstrate.

Table 1. BOP-Reported Positive Tests for COVID-19 Nationwide³

	Number of Positive Inmates	Number of Positive Staff	Number of Inmate Deaths	Total BOP Cases ²
3/20/2020	0	2	0	2
3/21/2020	1	2	0	3

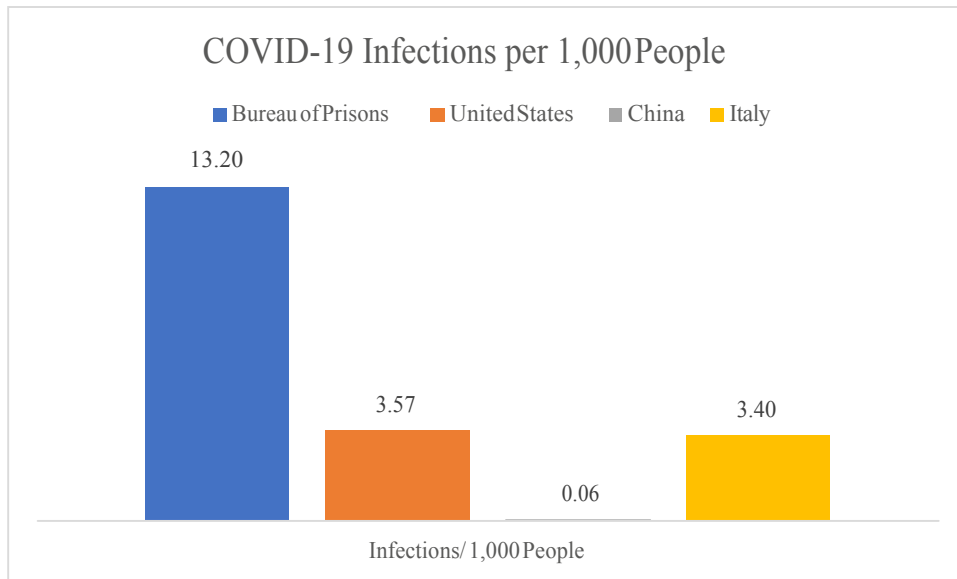
³ Numbers obtained from www.bop.gov/coronavirus. There is good reason to believe that the numbers reported by the BOP understate the actual number of tested-positive cases. Compare M. Licon-Vitale, MCC Warden, and D. Edge, MDC Warden, *Response to EDNY Administrative Order 2020-14* (Apr. 7, 2020) https://www.nyed.uscourts.gov/pub/bop/MDC_20200407_042057.pdf (3 positive inmates at MDC Brooklyn) *with COVID-19 Cases* Federal Bureau of Prisons (Apr. 7, 2020) at www.bop.gov/coronavirus (2 positive inmates at MDC Brooklyn).

3/22/2020	1	2	0	3
3/23/2020	3	3	0	6
3/24/2020	6	3	0	9
3/25/2020	6	3	0	9
3/26/2020	10	8	0	18
3/27/2020	14	13	0	27
3/28/2020	19	19	1	38
3/29/2020	19	19	1	38
3/30/2020	28	24	1	52
3/31/2020	29	30	1	59
4/1/2020	57	37	3	94
4/2/2020	75	39	6	114
4/3/2020	91	50	7	141
4/4/2020	120	54	8	174
4/5/2020	138	59	8	197
4/6/2020	196	63	8	259
4/7/2020	241	72	8	313
4/8/2020	272	105	8	377
4/9/2020	283	125	8	408
4/10/2020	318	163	9	481
4/11/2020	335	185	9	520
4/12/2020	352	189	10	541
4/13/2020	388	201	13	589
4/14/2020	446	248	14	694
4/15/2020	451	280	16	731
4/16/2020	473	279	18	752
4/17/2020	465	296	18	761
4/18/2020	479	305	21	784
4/19/2020	495	309	22	804
4/20/2020	497	319	22	816
4/21/2020	540	323	23	863
4/22/2020	566	342	24	908
4/23/2020	620	357	24	977
4/24/2020	649	336	25	985
4/25/2020	730	317	26	1047

4/26/2020	799	319	27	1118
4/27/2020	1046	330	28	1376
4/28/2020	1314	335	30	1649
4/29/2020	1534	343	31	1877
4/30/2020	1692	349	33	2041
5/1/2020	1842	343	36	2185
5/2/2020	1919	349	37	2268
5/3/2020	1926	350	38	2276
5/4/2020	1984	356	40	2340

Table 2. Comparing COVID-19 Rate of Infection Between BOP and Statistics from Different Countries

Location	Cases	Population	Infections / 1,000 People	Infection Rate as Percent of Population
BOP Population	2,340	177,310	13.20	1.3197%
United States	1,176,905	329,604,965	3.57	0.3571%
Italy	211,938	62,402,659	3.40	0.3396%
China	83,965	1,394,015,977	0.06	0.0060%



Amid this rapidly-unfolding crisis, the universally-recommended antidote is simple: reduce the prison population by releasing those whose continued incarceration is not necessary to protect the public so that correctional institutions

can better protect those who need to remain incarcerated.⁴ Mr. Hallahan is exactly the type of individual who should be compassionately released: he is at risk of severe illness and, as will be discussed in the next section, his release does not pose a danger to the community. After balancing the Section 3553(a) factors, Mr. Hallahan's unique circumstances warrant the requested relief.

III. The Relevant Section 3553(a) Sentencing Factors Warrant Modifying Mr. Hallahan's Sentence to Allow Him to Serve the Remainder of His Term on Home Confinement

Under the compassionate release statute, when a defendant establishes the existence of extraordinary and compelling circumstances justifying relief, courts will consider the relevant sentencing factors of 18 U.S.C. § 3553(a) to determine whether a sentencing reduction or modification is warranted. *See* 18 U.S.C. § 3582(c)(1)(A)(i).

⁴ Recognizing the unique risks that correctional facilities pose to inmates and employees, members of Congress asked the BOP on March 19, 2020, to allow for the immediate release of elderly, non-violent inmates. *See* Letter of Representatives Jerrold Nadler and Karen Bass (March 19, 2020) ("DOJ and BOP must also do all they can to release as many people as possible who are currently behind bars and at risk of getting sick. Pursuant to 18 U.S.C. 3582(c)(1)(A), the Director of the Bureau of Prisons may move the court to reduce an inmate's term of imprisonment for "extraordinary and compelling reasons."). The next week, Attorney General Barr urged the BOP to prioritize home confinement for such vulnerable individuals. *See* <https://www.themarshallproject.org/documents/6820452-Memorandum-from-Attorney-General-to-BOP-re-Home>. On March 27, 2020, more than 400 former DOJ leaders, attorneys, and federal judges sent an open letter to the President, asking that he take immediate action to reduce the population in correctional facilities to prevent the catastrophic spread of COVID-19, in particular by commuting the sentences of elderly and medically vulnerable inmates who have already served a majority of their sentence. *See* <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Letter-to-Trump-from-DOJ-and-Judges-FINAL.pdf>. The same day, dozens of public health experts made a similar request, asking the President to commute the sentences of elderly inmates, noting they are at the highest risk of dying from the disease and pose the smallest risks to public safety. *See* <https://thejusticecollaborative.com/wp-content/uploads/2020/03/Public-Health-Expert-Letter-to-Trump.pdf>. On April 3, 2020, pursuant to his authority under the CARES Act, Attorney General Barr directed the BOP to expand the use of home confinement upon finding that "emergency conditions are materially affecting the functioning of the Bureau of Prisons." *See* <https://www.justice.gov/file/1266661/download>.

Here, Mr. Hallahan's advanced age, compromised physical health, and the unique danger he faces of contracting COVID-19 and becoming severely ill, when combined with the other Section 3553(a) sentencing factors, warrant relief.

Granting Mr. Hallahan's request for compassionate release would not diminish the seriousness of the offense, nor would it place the public in any danger. The extraordinary and compelling circumstances presented by his debilitating medical condition and the uncontrolled spread of COVID-19 — compounded by the heightened risks faced by Mr. Hallahan, whose ability to engage in basic self-protective measures is restricted — warrant relief. The time Mr. Hallahan has served in prison and the deterioration of his physical health is "sufficient, but not greater than necessary" to satisfy the goals of sentencing under § 3553(a). Mr. Hallahan seeks an order reducing his sentence to time served.

A. Mr. Hallahan's Character and Personal History

Mr. Hallahan is 73 years old. He was born in Springfield, Massachusetts and raised in Connecticut with his two younger siblings. Mr. Hallahan's father was a master electrician and his mother was a homemaker for part of his childhood. Both of his parents had a keen interest in antiques and became antique dealers during Mr. Hallahan's childhood. After graduating from high school, Mr. Hallahan joined the United States Navy and served two tours in Vietnam. In his four years of service to his country, he was part of two successful campaigns and awarded two service medals, the Vietnam Service Medal with one bronze star and National Defense Service Medal. *See Exhibit B at p. 2 (DD214).* During his tour of duty, Mr.

Hallahan was stationed on the USS Black, a ship that was in close proximity to operations that involved the use of Agent Orange, including missions attacking the Ho Chi Min Trail. The Department of Veterans Affairs considers Parkinson's disease and Diabetes mellitus type 2 service-connected conditions for individuals exposed to Agent Orange while serving in Vietnam. This exposure likely contributed to or caused his current medical conditions, including his Parkinson's disease and Diabetes⁵. Mr. Hallahan is most likely eligible for disability compensation and health care if he were released to home confinement. *See Exhibit B.*

Upon his honorable discharge from the Navy, Mr. Hallahan took advantage of the GI Bill and followed in his father's footsteps by attending trade school and becoming a journeyman electrician with IBEW Local Union 25. Following a work-related accident and injury, Mr. Hallahan decided to change professions and went to school to learn the insurance business. He saw great success working in the insurance industry prior to the conduct that brought him before the Court. He has two adult children.

B. The Nature and Circumstances of the Offense and Need for the Sentence Imposed

We do not seek to minimize the harm Mr. Hallahan inflicted on his victims and his disregard for the judicial system by failing to appear and remaining at large. However, it is significant to note that his conduct did not involve any allegations of violence. His convictions in this case represented his first contact with the criminal justice system. He sincerely regrets his unlawful conduct and

⁵ <https://www.va.gov/disability/eligibility/hazardous-materials-exposure/agent-orange/related-diseases/> (last visited May 25, 2020).

absconding for 12 years. He accepted responsibility by pleading guilty shortly after being charged, but panicked before sentencing. It is a decision that Mr. Hallahan thinks about every day and will for the rest of his life. Through his actions since 2012, he has attempted to show the Court that his criminal conduct and flight were out of character when viewed through the long lens of his life. His contrition is manifest and, while he owes the Court many more years of confinement, he will most likely not survive the balance of his sentence.

The Court sentenced Mr. Hallahan to serve a significant period of incarceration based on the nature of the charges for which he pleaded guilty and his actions prior to sentencing. Mr. Hallahan has served 7 ½ years of his 21 years and 8 months of his sentence, or approximately 35% of his sentence. The undersigned respectfully submits that the sentence may have reflected the seriousness of the offense and provide general and specific deterrence to criminal conduct, but that analysis has changed since 2012. His debilitating physical condition and risk of infection and death from COVID-19 changes the calculus and favors his release.

Mr. Hallahan is not a danger to anyone. His physical state does not allow him to get dressed or eat without assistance. His mobility is severely impaired and he can only move with a wheelchair or by shuffling while relying on a walker. Compassionate release will not eliminate the Court's supervision over Mr. Hallahan and he respectfully asks this Court to reduce his sentence to time served, effective immediately, followed by five years of supervised release with any conditions deemed necessary. The time Mr. Hallahan has served in prison to date, his daily

physical and medical struggles, and his obligations to the Court and Pretrial Services through a modified sentence, meet the “sufficient but not greater than necessary” requirement of 18 U.S.C. § 3553(a).

CONCLUSION

Defendant Nelson Hallahan respectfully requests that the Court grant his motion for compassionate release, hold a hearing on this motion, and/or grant any other equitable and appropriate relief. Mr. Hallahan has demonstrated extraordinary and compelling reasons for compassionate release and asks this Court to reduce his sentence under the First Step Act to time served.

Respectfully submitted,

/s/ Todd Pugh

BREEN & PUGH
Todd S. Pugh
Jonathan M. Brayman
53 West Jackson Boulevard
Suite 1215
Chicago, Illinois 60604
(312) 360-1001 (t)
(312) 362-9907 (f)
tpugh@breenpughlaw.com
jbrayman@breenpughlaw.com

COBURN & GREENBAUM PLLC
Marc Eisenstein
1710 Rhode Island Ave, NW
2nd Floor
Washington, DC 20036
(202) 470-2695 (t)
(866) 561-9712 (f)
marc@coburngreenbaum.com
(will seek admission *pro hac vice*)

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that the following document:

**DEFENDANT NELSON HALLAHAN'S
MOTION FOR COMPASSIONATE RELEASE**

was served on May 25, 2020, in accordance with Federal Rule of Criminal Procedure 49, Federal Rule of Civil Procedure 5, Local Rule 49.3, and the General Order on Electronic Case Filing (ECF) pursuant to the district court's system as to ECF filers.

By: /s/ Todd Pugh