**CASES BASED ON AGE AND/OR MEDICAL CONDITION**

United States v. Austin, 2020 WL 3447521 (S.D.N.Y. June 22, 2020)

* Not in custody, had won 2255, victory was overturned on appeal by government, had to turn himself back in, had surrender date
* Cites behavior in two years out

United States v. Burnside, 2020 WL 3443944, at \*6 (N.D. Iowa June 18, 2020)

* In contrast, other courts that have found the lapse of 30 days sufficient regardless of a warden's denial have cited the plain language of Section 3582(c)(1)(A).
  + Exhaustion requirement vs just waiting 30 days, discussion
  + Court here finds plain language is unambiguous, cites other cases
* Asthma attack, high blood pressure and pulse, cites stages of hypertension and puts defendant in stage 2 based on 150/91, obesity, prediabetes
* FCI Milan
* Served half the sentence, a year

United States v. Ladson, 2020 WL 3412574, at \*1 (E.D. Pa. June 22, 2020)

* November 1, 2022, FCI Allenwood, extensive rehabilitation
* Diabetes, gout, high blood pressure, over 65 years old, cites treatment for these and medications
* “As of June 16, 2020 the five largest known clusters of COVID-19 in this country grew inside correctional institutions. In the last month, the number of known infected incarcerated people doubled and prison deaths increased by seventy-three percent. Testing remains of paramount importance, as one in seven virus tests conducted on incarcerated people have come back positive, and the vast majority of positive people in prison are asymptomatic--yet still shed the virus.”
* DIABETES ANALYSIS – “A recent meta-analysis of nine studies from China showed a significant correlation between diabetes and the severity of COVID-19 symptoms, and a recent study from the United States found a fourfold increase in mortality rates from COVID-19 among diabetic patients. How exactly diabetes impacts COVID-19 severity is unclear, but there are a number of potential factors. Poor blood sugar control impairs many innate and adaptive immune responses to viral infections, and similarly impairs immune response to secondary bacterial infections of the lungs common among COVID-19 patients. Defects in the activity of immune system cells, “namely inappropriate T-cell action, impaired natural killer cell activity and defects in complement action,” reduce the body’s ability to clear viruses. In addition, pre-existing comorbidities associated with diabetes, like hypertension, can lead to worse outcomes from COVID-19. Low blood sugar can occur during the treatment of COVID-19, which is particularly dangerous for those with diabetes and may worsen clinical outcomes.

United States v. Lee, 2020 WL 3422772, at \*1 (E.D. Va. June 22, 2020)

* Defendant, who is 46 years old, has been incarcerated for almost 30 years as a result of two acts committed when he was 16 and 20 years old

United States v. Stone, 2020 WL 3429452, at \*1 (W.D. Ark. June 23, 2020)

* MCFP Springfield, asthma, hypertension, and polycythemia vera
* Sentenced in 2009, for 150 months, release date is August 2020
* Rejects argument that hypertension and asthma “were both under control”
  + Court stresses that this was narrow view by physician, that it was irrelevant to what risk was based on COVID specifically
* “However, as the first wave of viral infection in this country has not yet passed and the number of infections continues to climb”

United States v. Rainone, 2020 WL 3468307, at \*1 (N.D. Ill. June 19, 2020)

* Projected release September 2028, 180-month sentence
* 65 years old, skin cancer, cataracts, liver disease, heart issues, breathing problems
* 1B1.13 - This fourth factor evinces broad discretion for the BOP and courts in determining what constitutes an extraordinary and compelling circumstance
* Here, the most important factor involves medical care and the COVID-19 crisis.
* Notes recidivism decreases with age

United States v. Mapp, 2020 WL 3410344, at \*1 (E.D.N.Y. June 19, 2020)

* The First Step Act should not be construed as a vehicle for resentencing a convicted criminal, but it does recognize that a sentence once imposed is not immutable and that changed circumstances during a period of incarceration can support a recalculation of the sentence if those circumstances rise to the level of “extraordinary and compelling reasons.” 18 U.S.C. § 3582(c)(1)(A)(i). Moreover, the court must be satisfied that the defendant “is not a danger to the safety of any other person or to the community.” Sentencing Guideline § 1B1.13. The court must also weigh the prospect of release against the interests of continued incarceration—namely, deterrence, punishment, and incapacitation. *See* 18 U.S.C. § 3553(a). Thus, the Act incorporates a sense of compassion and humanity not previously embraced by the federal criminal justice system.
* Had served 26 years, got GED, counselor submit letter in support
* FCI Otisville, 450-month sentence, eligible for halfway house in August 2025

United States v. Ennis, 2020 WL 2513109, at \*2 (W.D. Tex. May 14, 2020)

* Life sentence, talks about how nice he is and no discipline and UNICOR
* BOP issued medications to Defendant to treat diabetes, mellitus, hypertension, arthritis, asthma, hypothyroidism and hyperlipidemia. Level 2 care category
* Can’t walk anymore

United States v. Lopez, 2020 WL 2489746, at \*3 (D.N.M. May 14, 2020)

* 62 years old and suffers from high blood pressure and type II diabetes, the latter of which required the amputation of two of his toes and part of his left leg
* Gets Marshall to tell him confirmed cases

United States v. Cosgrove, 2020 WL 1875509, at \*5 (W.D. Wash. Apr. 15, 2020)

* Defendant, 70 years old, liver transplant in 2015, heart attacks, degenerative disc disease
* Defendant served only half of 60-month sentence, presented “serious concerns,” had not paid restitution
  + Release date January 2022
* Acknowledging that BOP’s “preventive and mitigation measures include screening of staff and incoming inmates, limited contractor visits, suspension of nearly all attorney, social, and volunteer visits, limited inmate movements between facilities, and staggered times for meals and recreation.
* “The Court does not discount the tremendous efforts taken by the BOP and staff at Terminal Island during this extraordinary time. However, even with these efforts in place, the BOP has reported eight infections at the facility as of April 14, 2020.”

United States v. Jackson, 2020 WL 3396901, at \*2 (N.D. Ind. June 19, 2020)

* FCI Elkton, The toll COVID-19 is taking is especially evident in our nation’s prisons, jails, and correctional institutions.
* “At present, Jackson has not tested positive for COVID-19, however, he testified that he has not been tested for the virus for several weeks. He further testified that despite the fact he is in a dormitory at FCI Elkton for inmates who have not contracted COVID-19, multiple inmates who initially tested negative were in fact positive and have since been transferred out of the unit. Thus, it seems that at least for some period, Jackson and other inmates were housed in the same, open, dormitory-style unit as individuals who were unknowingly infected with COVID-19.”
* 31 years old, obese, hypertension, history of respiratory illness in the form of chronic bronchitis
* Jackson’s specific case is a close call on the medical question, but I think he falls on the side of sufficiently showing he is at an increased risk of contracting a fatal case of COVID-19

United States v. Kidd, 2020 WL 3270850, at \*1 (E.D. Wis. June 17, 2020)

* “lung disease, asthma, and emphysema;” that he had been diagnosed with Hepatitis C and high blood pressure; that his lungs were physically damaged when he was shot in the chest as a young man; that he was hospitalized for pneumonia twice in 2019; and that he had had two surgeries in 2017 regarding his heart and thyroid
* Release in two months

Delacruz v. United States, 2020 WL 3270503, at \*3 (D.N.H. June 17, 2020)

* The court need not determine just how severe Delacruz’s asthma is when properly treated. Even assuming his asthma is mild, that condition in combination with his hypertension make him a high-risk inmate who is more likely to experience severe illness from COVID-19 should he catch it. See Harrell, 2020 WL 2768883, at \*3 (finding extraordinary and compelling reason supporting release because even assuming defendant’s conditions did not “independently and perfectly fit the definition of severity, as outlined by the CDC, his conditions still exacerbate each other, placing him in a much more vulnerable position”); see also United States v. Hilow, No. 15-CR-170-JD, 2020 WL 2851086, at \*4 (D.N.H. June 2, 2020) (finding extraordinary and compelling reason based on defendant’s combination of chronic health issues, including mild asthma, hypertension, high cholesterol, prediabetes, and borderline obesity).
* Although BOP records indicate that Delacruz’s asthma is in “remission,” Delacruz testified that he currently experiences asthma symptoms, including fatigue, occasional shortness of breath, and excessive coughing because he is not receiving proper treatment while at the Strafford County House of Corrections
* DENIES BASED ON DANGER AND 3553

United States v. Morrison, 2020 WL 3447757, at \*5 (D. Md. June 24, 2020)

* Here Mr. Morrison argues that extraordinary and compelling reasons exist given the nature of the COVID-19 pandemic and that he is at high risk for complications given his potential prostate cancer. ECF No. 37 at 14. Further, Mr. Morrison argues that he is not a danger to the community and if released will be transferred to ICE or CBP custody and then deported to Jamaica.
* ICE detainer

United States v. Champagne, 2020 WL 3472911, at \*1 (D.N.D. June 25, 2020)

* 360-month sentence, armed career criminal
* 77 years old, 271 months served, FMC Rochester, Care Level 4, million medical conditions, dementia

United States v. Danson, 2020 WL 3467887, at \*2 (D.D.C. June 25, 2020)

* 192 months of incarceration, has served 122 months, release December 2022
* FMC Lexington, 35 years old, alcohol addiction and history of smoking, heart condition that causes fainting, dizziness and vomiting
* History of smoking and alcohol addiction
* “undiagnosed, underlying health condition” causes dizziness, chest pain

United States v. Harris, 2020 WL 3483559, at \*1 (C.D. Ill. June 26, 2020)

* USP Florence, projected release June 2024
* Kidney failure, obesity, hypertension
* “While USP Florence does not have any confirmed cases of COVID-19 at the current time, the same could have previously been said of each of the BOP facilities that has experienced an outbreak of the virus”

UNITED STATES OF AMERICA, Plaintiff, v. SPENCER HARRIS, Defendant., No. 06-CR-30058, 2020 WL 3483559, at \*4 (C.D. Ill. June 26, 2020)

United States v. Fields, 2020 WL 3129056, at \*1 (W.D. La. June 11, 2020)

* Sarcoidosis, Fort Worth FMC, 38 months left on 180-month sentence, scheduled release September 2023, 37 years old, prescribed prednisone
* Rejects gov’t argument that condition is controlled
* Government agrees that 1B1.13 can be satisfied by chronic medical condition that substantially diminishes the ability of the defendant to provide self-care within…and ability to guard against serious injury or death **as a result of COVID-19** is substantially diminished.

United States v. Miller, 2020 WL 3187348, at \*2 (D. Conn. June 15, 2020)

* Prior to sentencing, she was diagnosed with Chronic Obstructive Pulmonary Disease (COPD), emphysema, asthma, arthritis in her shoulders, neck and hips, and frequent headaches
* FMC Carswell, requires oxygen and other relief

United States v. Rivera, 2020 WL 3186539 (D. Conn. June 15, 2020)

* Release date June 2021, FMC Devens
* Type 2 diabetes, “relatively well controlled” by two meds, morbid obesity, high cholesterol
* Cites “limited duration remaining on Defendant’s sentence as an additional consideration favorable to granting his motion for compassionate release”

United States v. White, 2020 WL 3244122, at \*1 (S.D.W. Va. June 12, 2020)

* Elkton, projected release date is April 9, 2022
* Hepatitis C, no disciplinary record

United States v. Madrigal, 2020 WL 3188268, at \*1 (N.D. Cal. June 15, 2020)

* 24 years old. He suffers from severe obesity and hypertension
* At Santa Rita jail, not BOP, sentenced to 12 months

United States v. Bikundi, 2020 WL 3129018, at \*1 (D.D.C. June 12, 2020)

* Inmate has “documented comorbidities of cancer, hypertension, Hepatitis-C and tuberculosis”
* Release date August 2022, 84-month sentence
* Butner
* Rejects government argument that defendant is danger to community since PO has too many to supervise

United States v. Heitman, 2020 WL 3163188, at \*1 (N.D. Tex. June 12, 2020)

* 70 year old man with Stage IV metastatic prostate cancer, has 60 months to live.
* At Butner

United States v. Knox, 2020 WL 3207799, at \*2 (N.D. Ala. June 15, 2020)

* Releases from Aliceville FCI, 59 years old, Parkinson’s disease, neurologic disorder, hypertension, restless leg syndrome, depression and anxiety

United States v. Bayuo, 2020 WL 3415226 (S.D.N.Y. June 20, 2020)

* May 2019, sentenced to 36 months, ICE detainer, will be deported
* 49 years old, diabetes and hypertension

United States v. Liew, 2020 WL 3246331, at \*1 (N.D. Cal. June 15, 2020)

* FCI Lompoc, release date November 26, 2020
* 62 years old, fatty liver, high cholesterol, recently hospitalized
* Government concedes diabetes is risk factor and is a compelling and extraordinary compassionate release

United States v. Lynn, 2020 WL 3229302, at \*2 (S.D. Ala. June 15, 2020)

* High cholesterol, reflux, cervical disc degeneration, enlarged prostate (benign), sleep apnea, high blood pressure, carpal tunnel syndrome, and various dental issues; 65 years old, has served over 30 years
* Discussed other prong aside from extraordinary and compelling reasons

United States v. Patel, 2020 WL 3187980, at \*1 (D. Conn. June 15, 2020)

* Seventy-three years old and suffers from a number of health conditions including chronic ischemic heart disease, hypertension, and Type 2 diabetes
* FMC Devens, deemed appropriate for home confinement and assigned transfer date of July 15, 2020
* Government does not oppose, defers

Segars v. United States, 2020 WL 3172734 (E.D. Mich. June 15, 2020)

* Hypertension, recent stroke before incarceration left him partially paralyzed, 48 years old
* Discusses hypertension, rejects government argument regarding pulmonary hypertension
  + “the Court reads the CDC’s list to be merely inclusive rather than exclusive and exhaustive” and cites studies showing hypertension “is an independent risk factor in some patients, increasing the severity of illness”
* Not persuaded that there are no reported cases at FCI Morgantown, cites number of cases in the county
* Release date June 2022

United States v. Williams, 2020 WL 3097615, at \*1 (D. Minn. June 11, 2020)

* Elkton, 300 months, projected release date is September 3, 2027
* Heart disease, obesity, 50 years old
  + Cites USSC finding that 50 years old is less likely to recidivism

United States v. DeBartolo, 2020 WL 3105032 (D. Rhode Island. June 11, 2020)

* Fort Dix, stage 3 chronic kidney disease, hypertension
* Notes CDC has not listed hypertension as increased risk factor, but cites research that has recognized it “increases the relative risk of mortality two-fold for a patient hospitalized with COVID-19”

United States v. Padilla, 2020 WL 3100046 (S.D. Cal. June 11, 2020)

* 30-month sentence, FMC Carswell, has served 10 months
* 47 years old, COPD, heart failure, kidney failure, ulcer, heart function 40%, asthma, hypertension, sleep apnea
* Finds that medical conditions “weigh heavily in favor of her release”
* “Any incarcerated person with one of the underlying conditions identified by the CDC is unlikely to be able to provide self-care within the environment…”
* Heart attacks while in custody, unable to see doctor during incarceration or get access to medical equipment; has witnessed people dying of infection and unable to get treatment
* Finds she can get mental health and substance abuse treatment if released

United States v. Jay, 2020 WL 3103796, at \*2 (N.D. Cal. June 11, 2020)

* Because Jay has served over half of his thirty-month sentence, early release is not inconsistent with “the nature and circumstances of the offense and the history and characteristics of the defendant,” providing just punishment and adequate deterrence, the applicable sentencing range and policy statements of the Sentencing Commission, and the need to avoid unwarranted sentencing disparities. Because Jay is a non-violent offender and has had no disciplinary incidents while in custody, early release is consistent with “protect[ing] the public from further crimes of the defendant.”  And, as discussed in greater detail below, the “need...to provide the defendant with needed...medical care...in the most effective manner” weighs in favor of early release
* Diabetes and heart disease, confined to small cell raises risk

United States v. O'Neil, 2020 WL 2892236, at \*4 (S.D. Iowa June 2, 2020)

* Asthma, bronchitis, sleep apnea; rejects argument that BOP knows how to treat the conditions; “Yet that misses the point. The Court’s concern, rather, is that Defendant’s preexisting medical conditions create an untenable risk of death...”
  + “The case for release becomes more compelling, still, for a defendant with a small fraction of his sentence left.”
    - Because “the benefits of keeping him in prison for the remainder of his sentence are minimal, and the potential consequences of doing so are extraordinarily grave.”
  + Release date November 2023, in custody since 2011
    - More than 73% of time served
* Denied home confinement due to medium risk score
* Discusses 1B1.13, non-binding
* Historical reluctance of BOP to file

United States v. Williams-Bethea, 2020 WL 2848098, at \*1 (S.D.N.Y. June 2, 2020)

* FCI Danbury in Connecticut. Her scheduled release date from custody is May 14, 2022, and the BOP has authority to transfer her to home confinement as early as November 2021
* Waives exhaustion
* 40-month sentence, first offender, 3553(a) factors different under COVID-19, 50 years old, hypertension and morbid obesity
* Acknowledges BOP efforts but rejects them as insufficient
* Rejects zero confirmed cases argument, “this fact changes nothing about the inherent risks posed by carceral settings to vulnerable inmates”
* Argument that release to Queens is worse than BOP “strains credulity”

United States v. Prasad, 2020 WIL 2850147 (E.D. La. June 2, 2020)

* Oakdale, 24-month sentence beginning in March 30, 2020
* 63 years old, coronary artery disease, hypertension, diabetes, auto-immune disorders, had stents put in in 2018

United States v. Chapman, 2020 WL 2850984 (N.D. Ill. June 2, 2020)

* Two consecutive sentences totaling 125 months, Forrest City
  + Has served 110 months, release date March 2021
* 66 years old, 85% of his sentence, hypertension, hyperlipidemia, prostate cancer in 2019
  + Uncontrolled outbreak at FCI

United States v. Smith, 2020 WL 2844222 (N.D. Iowa. June 1, 2020)

* Life sentence for meth and firearm
* Chest x-ray due to asthma and COPD, had chemo for lung cancer
* Morbid obesity, sleep apnea, hyperlipidemia, hypertension, antisocial personality, depression, anxiety
* COVID-19 only increases urgency but basically holding extraordinary reasons exist due to cancer
* Long string cite

United States v. Riley, 2020 WL 3034843, at \*1 (D. Md. June 4, 2020)

* 43 years old, enlarged heart, heart failure, blood clots, cardiac arrest
* USP Lompoc, was initially at minimum security Lompoc but moved due to COVID outbreak
* Eligible for HC June 2021, projected release is December 2021
  + Court stresses this in 3553 analysis
* Discusses nature of COVID, contagious, cites CDC guidance on prisons, cites American Heart Association guidance regarding people with heart disease

United States v. Smith, 2020 WL 3027197, at \*1 (C.D. Ill. June 5, 2020)

* Defendant was diagnosed with sleep apnea, hypertension, and morbid obesity, diabetes, inmate is 37 years old and black
* Yazoo City
* Release date would be April 2024, 120-month sentence

United States v. Dickerson, 2020 WL 2841523 (E.D. Mo. June 1, 2020)

* 67 years old, FCI Terre Haute, 180-month sentence
* Hepatitis C, congestive heart failure, COPD
* Only 30 months remaining, Projected 2022

United States v. Quinn, 2020 WL 3275736, at \*2 (N.D. Cal. June 17, 2020)

* There are two primary reasons for this 30-year disparity. First, at the time of Quinn's sentencing, the “stacking” of multiple § 924(c) charges in the same indictment was mandatory; a sentencing court had no choice but to impose consecutive 5-year and 20-year mandatory minimums for two § 924(c) charges in the same indictment. *See* *Deal v. United States*, 508 U.S. 129, 113 S.Ct. 1993, 124 L.Ed.2d 44 (1993); *see also* *United States v. Quinn*, 18 F.3d 1461, 1467 (9th Cir. 1994) (reversing district court's attempt to impose only 5-year sentences for each § 924(c) offense). Second, the Guidelines defined “crime of violence” broadly, such that Quinn's criminal history resulted in him being classified as a “career offender,” which significantly increased his Guidelines sentence. Lastly, at the time, the Guidelines were considered mandatory, so courts lacked discretion to deviate from the strictures of the Guidelines range, even in exceptional circumstances.

United States v. Castillo, 2020 WL 2820401 (S.D. Tex. May 29, 2020)

* 65 years old, 12 years into life sentence, non-violent drug crime
* Diabetes and heart issues at sentencing, since starting sentence she now has diabetes, hypertension, high cholesterol, glaucoma
* Hypertension and diabetes are CDC identified
* FMC Carswell
* Doesn’t have to waive but notes that Higginson concurrence supports waiver, collects cases
* Grants “despite the BOP’s commendable efforts”

United States v. Kamaka, 2020 WL 2820139 (D. Hawaii. May 29, 2020)

* 12-month sentence, USP Lompoc, most important factor is “absence of evidence in the record establishing that officials at USP Lompoc are adequately protecting Kamaka,” dormitory setting, “invites the further spread of the coronavirus, and the Bureau of Prisons has failed to show that it is taking the steps necessary to protect vulnerable inmates”
* Social security fraud
* 49 years old, hypertension, sleep apnea
* Goes into detail regarding BOP procedures and lockdown measures, “communal dormitories that make social distancing impossible,” sharing toilets and showers

United States v. Baclaan, 2020 WL 2820199 (D. Hawaii. May 29, 2020)

* 62-year-old inmate with chronic pain, heart attack in 2010, asthma, coronary artery disease, obstructive sleep apnea, type 2 diabetes, hypertension, degenerative disc disease, radiculitis, has required emergency treatment while in custody
* No disciplinary sanctions at FDC Honolulu

United States v. Etzel, 2020 WL 2096423, at \*4 (D. Or. May 1, 2020)

* “It is undisputed that the defendant suffers from hypertension, Hepatitis C, coronary and cardiac issues, and he complains of chronic bronchitis. It is well documented that these underlying issues, particularly hypertension and coronary diseases are associated with increased risk of infection and worse outcomes in lung injury and mortality.”
* FCI Sheridan, no confirmed cases
* Meets 1B1.13

United States v. Almontes, 2020 WL 1812713 (D. Conn. April 9, 2020)

* 262-month sentence for cocaine and firearm
* Discusses how BOP “fell short in its gatekeeper role” and FSA addressed failure to file enough compassionate release motions
* Finding “nearly all district courts hold that--since the FSA’s passage--section 1B1.13 is not binding, but is, rather, helpful guidance”
* Had never had more than 3-year sentence before
* Involvement in “street-level” dealing was motivated by drug addiction
* “At least one court has considered the BOP’s indifference to an inmate’s urgent medical needs as a factor contributing to an extraordinary and compelling reason for reducing the inmate’s sentence” - failure to address medical needs warrants release
  + Aliceville - in *Beck*, prison delayed in getting her imaging, scheduling consultations, biopsy, scheduling surgery, and more, and as a result the cancer spread
  + Inmate here is unable to get the serious spinal surgery he needs
* FCI Danbury

United States v. Fields, 2020 WL 2744109, at \*1 (D. Alaska. May 6, 2020)

* Exhaustion 30-day analysis, without response or with?
* Terminal Island, Release date October 2022, 47-year-old inmate

United States v. Muniz, 4:09-cr-199, Dkt. No. 578 (S.D. Tex. Mar. 30, 2020)

* Renal disease, diabetes, hypertension, at Butner
* 188-month sentence starting April 2009

United States v. Cardenas, 2:11-cr-00414-APG-CWH, Dkt. 150 (D. Nev. May 19, 2020)

* 88.5 months of 120-month sentence, 2 months left on sentence, 44 days will not alter deterrent effect or protection of public
* Asthma, getting COVID-19 makes punishment greater than necessary
* Requires 14 day quarantine

United States v. Hill, 2020 WL 2542725 (D. Conn., May 19, 2020)

* Hypertension and splenectomy that compromises immune system
* Arrested October 2018, got 30 month sentence, at Danbury
* 1B1.13 not binding

United States v. Bright, 2020 WL 2537508 (W.D. Va., May 19, 2020)

* 84-month sentence starting in July 2016
* COPD, asthma, “unspecified kidney problems,” hypothyroidism, herniated discs, high blood pressure, heart problems
* Release date October 2021
* Elkton inmate, 51 years old

United States v. Sarkisyan, 2020 WL 2542032 (N.D. Cali., May 19, 2020)

* Five months left on 15-month sentence
* Hypertension, chronic kidney disease, obesity, counts under 1B1.13

United States v. Copeland, 2020 WL 2537250 (E.D.N.Y., May 19, 2020)

* At Fort Dix, meets 1B1.13, hypertension, pre-diabetic, high cholesterol, latent tuberculosis infection, hepatitis C, over 65 years old
* “Compassionate relief matters. It matters so that courts may account for tragically unforeseeable events, as when an illness or disability renders proper care impossible while the defendant remains incarcerated…It matters too, as present circumstances make clear, when public-health calamities threaten inmates with literal death sentences. It matters even when no crisis looms, but simply when continued incarceration would be “greater than necessary” to achieve the ends of justice

United States v. Mattingly, 6:15-cr-0005-NKM-JCH, Dkt. 154 (W.D. Va., May 14, 2020)

* Satisfies 1B1.13 criteria
* Amputee and age, and hypertension and diabetes “are both identified by health experts as increasing one’s susceptibility to COVID-19”
* Only 2 inmates and 2 staff testing positive, but looks at surrounding community for evidence of more

United States v. Hilow, 2020 WL 2851086 (D. NH. June 2, 2020)

* Served 62 months of 120-month sentence, release date is September 2022
* Participated in extensive treatment programs to address mental health and substance abuse issues
* Asthma, high blood pressure, migraines, high cholesterol, acid reflux, prediabetes, borderline obese
* FCI Danbury
* Open dormitory conditions of confinement

United States v. Hodges, 2020 WL 2935101 (N.D. Ill. June 3, 2020)

* 38 years old, 25-year sentence, release in December 2021
* Atrial fibrillation, cardiac condition

United States v. Millage, 2020 WL 2857165, at \*2 (D. Or. June 2, 2020)

* When a defendant has a chronic medical condition that may substantially elevate his risk of becoming seriously ill or dying from COVID-19, that condition may satisfy the standard of extraordinary and compelling reasons. Under these circumstances, a chronic medical condition (*i.e.*, one from which a defendant is not expected to recover) reasonably may be found to be both serious and capable of substantially diminishing the ability of the defendant to provide self-care within the environment of a correctional facility, even if that condition would not have constituted an extraordinary and compelling reason absent the heightened risk of COVID-19.
* Served 90% of his 108-month sentence, release date January 2021
* FCI Victorville, completed RDAP; lupus, autoimmune, high blood pressure (medicated), 32 years old
* Rejects lack of confirmed cases argument, since there is no mass testing

United States v. McClellan, 2020 WL 2933588, at \*2 (N.D. Ohio June 3, 2020)

* Firearms and drug trafficking, career offender
* Release date May 24, 2022, approved for 12 months at halfway house and home confinement
* FMC Rochester, 58 years old, hypertension and high blood pressure
* Cites stacking 924(c) as well

United States v. Arey, 5:05-cr-00029-MFU, Dkt. 230 (W.D. Va., May 13, 2020)

* 42-year reduction but denied immediate release
* Crim history at the time was misdemeanor possession, concealed firearm while possessing, misdemeanor assault battery and trespass
* 61 years old now, due to stacked 924(c), “dramatic change” counts as extraordinary and compelling

United States v. Burke, 2020 WL 3000330, at \*2 (D. Neb. June 4, 2020)

* Seizure disorder possibly associated with a brain injury, hypertension, and latent tuberculosis, hypertension (a known comorbidity)
* Scheduled for halfway home release in October, release April 2021

Samy v. United States, 2020 WL 1888842, at \*1 (E.D. Mich. Apr. 16, 2020)

* 72 years old, Uncontrolled Hypertension, Congestive Heart Failure, Type II Diabetes, and Asthma
* Waiving exhaustion
* “Furthermore, the persuasive precedent for granting compassionate release under the current circumstances is overwhelming.”

United States v. Malone, 2020 WL 3065905, at \*1 (W.D. La. June 9, 2020)

* Butner Medium I, projected release date is June 2, 2023, half of 117-month sentence
* Discusses conditions in prison
* 53 years old, liver transplant and immunosuppressant medications, diabetes, high blood pressure, physical injuries that inhibit movement, eye cancer, Care Level 3, hepatitis C (chronic liver disease)
* Says he hasn’t met 1B1.13 under first prong for serious medical condition but did meet the catchall

United States v. Silkeutsabay, 2020 WL 2747401 (E.D. Wash. May 27, 2020)

* Defendant, age 72, is an insulin dependent diabetic, has asthma, anemia, and end stage (stage 5) kidney disease, now in wheelchair
* Release August 2022, 924(c) and large quantity of marijuana, violated terms of release, sentenced in 2015

United States v. Whyte, No. 2020 WL 2754761, at \*2 (W.D. Va. May 27, 2020)

* Defendant is 75 years old. Second, he was previously diagnosed with prostate cancer and underwent radiation therapy in mid- to late 2019. Although he has finished his treatment, his immune system remains compromised, with his white blood cell count below the normal range
* Butner, served over half of his sentence

United States v. Gonzalez, 2020 WL 2766048, at \*1 (S.D.N.Y. May 28, 2020)

* “Gonzalez’s chronic hypertension and obesity place him in this high-risk group”
* “First, as numerous courts have concluded, the threat of COVID-19 to those in prison constitutes an extraordinary and compelling reason for compassionate release, especially for those whose preexisting medical conditions put them at heightened risk,” 45 years old, served more than 8 years in prison
* 3553 “weighs differently in the current circumstances”

United States v. Body, 2020 WL 2745972, at \*2 (N.D. Ill. May 27, 2020)

* “Even though the Court already took Body's medical condition into account and gave him a significant break on his sentence, matters have changed significantly.”
* “The Court can say, unequivocally, that the amount of time served to date by Body does not adequately account for the seriousness of his offense. He is essentially a lifelong, unrepentant drug dealer”
* Terre Haute
* Diabetes, tracheostomy, cancer, gout, severe arthritis, high cholesterol
* Sentenced to 42-month sentence, reported in January 2020

Harrell v. United States, 2020 WL 2768883 (E.D. Mich. May 28, 2020)

* 180-month sentence, release date June 2026, FCI Danbury
* Hypertension, high cholesterol, type 2 diabetes, 45-years-old
* Analyzes effect of hypertension and diabetes
* Rejects government argument that condition is managed, “The Government’s arguments about medical minutiae, while noted by the Court, are dismissed as unpersuasive”

United States v. Norris, 3:18-cr-243, Dkt. 37 (SRU) (D. Conn. Apr. 16, 2020)

* Defendant has asthma and uses inhaler
* “Health officials have recognized that individuals with chronic respiratory disease are deemed at greater risk of COVID-19. Due to his incarceration, brown is unable to properly safeguard against infection.”

United States v. Torres and Torres, 2020 WL 2815003 (S.D.N.Y. June 1, 2020)

* Releasing heroin brothers incarcerated for 33 years of life sentence
* Had spent half their life in prison and had “exemplary record” and sentencing judge wrote in support of commutation, “have rehabilitated themselves so completely and have rejected their criminal pasts so resoundingly”
  + “Fully and unconditionally rehabilitated”
  + Basically grants motion based on extraordinary rehabilitation
* Waives exhaustion, detailed analysis of administrative law principles
* Very wide discretion to define extraordinary and compelling, “consider the totality of the brothers’ circumstances”
* Hypertension, age, stroke, high blood pressure, diabetes, arthritis

United States v. Hernandez, 2020 WL 1684062, at \*3 (S.D.N.Y. Apr. 2, 2020)

* Granting release due to defendant's asthma and the “heightened medical risk presented to [the defendant] by the COVID-19 pandemic”)
* Government does not oppose
* Sentenced in November 2018 to 24-month term, over August 2020
* “COVID-19 presents a heightened risk for incarcerated defendants like Mr. Hernandez with respiratory ailments such as asthma.”
* Collecting cases---

United States v. Van Cleave, 2020 WL 2800769 (W.D. Wash. May 29, 2020)

* Nevada Southern Detention Center
* Firearms theft and more, caught selling drugs at FDC Seatac (meth)
* 15 years imprisonment, 19 years concurrent
* Scheduled for release October 2020, halfway house RCC in Seattle but was revoked for going missing
* “Defendant represents that he requested the relevant BP-9 application from NSDC staff but was informed that he could not make a compassionate release request because he is being held at a private, non-BOP facility. See Dkt. #137 at 6. Defendant has demonstrated that neither the warden at NSDC nor the BOP will consider his request. The government agrees that defendant’s compassionate release requests will not be considered. See Dkt. #140 at 3. In these circumstances, no viable administrative remedy is available to defendant.”
* Hypothyroidism, sarcoidosis, history smoking, chronic lung disease, sarcoidosis

United States v. Adam Field, 18 Cr. 426 (JPO), Dkt. No. 38 (S.D.N.Y. May 4, 2020)

* Granting CP defendant with hypertension and “nonphysical health conditions” incarcerated at FCI Danbury compassionate release

United States v. Dillard, 2020 WL 2564638 (D. Idaho Apr. 27, 2020)

* 53-year-old with grievous health problems granted compassionate release after serving approximately half of 87-month sentence for second federal non-production child porn offense
* Obesity, diabetes, hypertension, COPD
* “The COVID-19 virus is rapidly impacting Defendant's prison location, FCI-Terminal Island, which is overcrowded. It puts everyone at risk of infection, particularly medically vulnerable people such as Defendant. The BOP is no longer able to safeguard Defendant's health as before the pandemic. Defendant's health cannot be protected adequately in an overcrowded federal prison, but the safety of the community can be protected in ways other than by incarcerating Defendant. At \*2.”

United States v. Gileno, 2020 WL 1916773, at \*5 (D.Conn., Apr 20, 2020)

* Granting where defendant suffers from “chronic asthma and other respiratory issues that put him at increased risk”

United States v. Delgado, 3:18-cr-00017-VAB, Dkt. 76 (D. Conn., April 30, 2020)

* Obesity and sleep apnea, extensive discussion of obesity
* Released into home confinement

United States v. Scparta, 2020 WL 1910481, at \*9 (S.D.N.Y., April 20, 2020)

* Hypertension, sleep apnea, high blood pressure, high cholesterol
* “Given this dangerous set of conditions and Kafkaesque approach” regarding the 14 day quarantine and restarting it when someone tests positive
* Served half of his sentence, at Butner

### United States v. Saad, 2020 WL 2251808 (E.D. Mich., April 29, 2020)

### release based on age and medical condition, FCI Milan

United States v. Minor, 9:18-cr-80152-DMM, Dkt. 35 (S.D. Fla., April 17, 2020)

* 71-year-old diabetic, cardio disease, hypertension, sleep apnea, prostate cancer, strokes, has to rely on others
* release January 22, 2022, serving 41 months in prison
* waives exhaustion, undue prejudice
* home detention release

United States v. Wen, 2020 WL 1845104 (W.D.N.Y., Apr. 13, 2020)

* Granting reduction for 48-year old defendant where only risk factor was history of asthma; noting *possible* positive case at institution

United States v. Tran, 2020 WL 1820520 (C.D. Cal., Apr. 10, 2020)

* Granting reduction for defendant serving a 15-year sentence for Hobbs Act robbery and possession of a machine gun where defendant suffered from asthma since childhood and was housed in a facility with an active COVID-19 outbreak

United States v. Pena, 2020 WL 2301199, at \*5 (S.D.N.Y., May 8, 2020)

* Fort Dix inmate, 2/3 of 84-month sentence, release date Feb 2022 but notes could be released to HC earlier
* Waive exhaustion; 30 days may be too long “even though, as the Government proffers, the Bureau of Prisons has taken significant action to reduce the risk COVID-19 poses to prisoners. Gov't Br. at 6–7. The Court lauds these efforts and urges continued and increased vigilance
* Notes confinement in “low-security facility” as factor favoring release.
* 60 with hypertension and hyperlipidemia
* “This Court has repeatedly recognized that COVID-19 presents a heightened risk for individuals with hypertension.”

United States v. Pena, 2020 WL 2798529 (D. Mass. May 29, 2020)

* Asks for remand from First Circuit to grant motion
* 32-month sentence for fraud, 70 years old at FMC Devens
* Lack of testing, no contact tracing to see if they interact with infected people
* Paul Manafort

United States v. Stephenson, 2020 WL 2566760 (S.D. Iowa May 21, 2020)

* Defendant has hepatitis C
* “Yes, releasing defendants from incarceration is a delicate business-but not any more so than incarcerating them initially.”
* Stating “several courts have cited a weakened immune system as a basis for granting compassionate release,” citing *Campagna*
* Government argues that defendant was cured in 2018, but Court cites permanent effects of Hepatitis C, such as liver scarring
* Defendant’s two claims, weakened immune system and a damaged liver
* “The Court will not brush off those concerns as just another downside of prison. No person deserves such callousness.”
* “Here, Defendant may be out of prison if the law was in 2006 what it is now,” citing mandatory minimum
* Many courts, including this one, have concluded this means the Commission lacks an applicable policy statement regarding when a court can grant compassionate release
* Now appears to be the majority position, citing United States v. Scott, 2020 WL 2508894 (E.D. Wisc., May 15, 2020)

United States v. White, 2020 WL 2557077 (E.D. Mich., May 20, 2020)

* 120-month sentence, release date March 2022, served 80%
* Hypertension and obesity, incarcerated at FCI Milan, has outbreak
* Cocaine and firearm possession as a felon, significant criminal history, guidelines was 151-188 months
* “While incarcerated, White has undertaken a number of steps to improve himself,” completed courses
* Waives exhaustion, “Excusing strict exhaustion under 3582(c)(1)(A) during the COVID-19 pandemic is consistent with the congressional intent underlying the exhaustion requirement.”
* Under 1B1.13, unable to provide self-care in the form of social distancing and other preventative measures

United States v. Love, 1:14-cr-00004-PLM, Dkt. 41 (W.D. Mich., April 21, 2020)

* Defendant was 66 with strokes, Elkton, 114 months starting August 2014
* Waiving exhaustion

United States v. Goins, 2020 WL 3064452 (E.D. Mich. June 9, 2020)

* Drug and firearm for total of 157 months
* FCI Elkton
* Defendant served more time than intended since he didn’t get time served for state sentence, release would be summer 2022, now it’s April 2024
* Cites rehabilitation, family experienced tragedy, niece was raped and murdered, mother and siblings have all died
* Hypertension, unclear if he has been diagnosed by BOP but he is medicated
* Degenerative disc disease that takes medication steroid which weakens him
* Hypertension plus Prednisone heighten risk
* Government argues that Elkton has improved over the past several weeks
* The Government counters that only pulmonary hypertension – not the general, non-pulmonary hypertension from which Goins suffers – presents an increased risk for COVID-19…There is some basis for this argument. *See* *Malam v. Adducci*, No. 20-10829, 2020 WL 2616242, at \*4–5 (E.D. Mich. May 23, 2020) (considering the evidence that only pulmonary hypertension presents an increased risk for COVID-19, but ultimately concluding that a prisoner’s non-pulmonary hypertension – in addition to her obesity – put her “at substantially heightened risk of severe illness and/or death from COVID-19”). Research about the relationship between non-pulmonary hypertension and COVID-19 continues to develop.1 *See id.* But at least three courts that have addressed this issue have concluded that non-pulmonary hypertension is a risk factor associated with severe COVID-19 outcomes.”
* Concludes and cites courts stating that non-pulmonary hypertension is still a risk factor

United States v. Foster, 1:14-cr-324-02, Dkt. 191 (M.D. Pa. April 3, 2020)

* Bronchiectasis, airway blocks with mucus, 60-month sentence from 2017, release date April 2021
* Already approved for home confinement, 45 days from the date

United States v. Copeland*,*No. 2:05-cr-135-DCN (D.S.C. Mar. 24, 2020)

* granting compassionate release to 73 y/o defendant in part due to “Congress’s desire for courts to release individuals the age defendant is, with the ailments that defendant has during this current pandemic”)
* Diabetes, obese, prostate cancer
* “Based on defendant’s current sentence relative to his likely sentence under the current regime, his age, his health, his ability to obtain better medical treatment outside the federal prison system”

United States v. Marin, No. 15-cr-252, Dkt. No. 1326 (E.D.N.Y. Mar. 30, 2020)

* “for the reasons stated in his motion, including his advanced age, significantly deteriorating health, elevated risk of dire health consequences due to the current COVID-19 outbreak, status as a non-violent offender, and service of 80% of his original sentence.”

United States v. Bertrand, 2020 WL 2179387, at \*1 (N.D. Fla. Apr. 29, 2020)

* “Defendant states that he is 71 years old and shows that he suffers or suffered from multiple, serious health conditions, including prostrate cancer, a pulmonary embolism, diabetes with two related eye surgeries, chronic kidney disease, asthma and hypertension. (Doc. 541 at 4, ex. B). Defendant further asserts that his health has become more problematic because of the current COVID-19 pandemic, which has now significantly spread into the Federal Correctional Institution at Butner, North Carolina, where he is incarcerated.”
* Finding “given Defendant's proximity to his release date, the relative lack of violence in his criminal record, his exemplary conduct in prison, his age and diminished health, and the ongoing threat posed to him by the COVID-19 pandemic, he qualifies for a compassionate release.”
* 292-month sentence, release date April 2021

United States v. Gray, 2020 WL 2932838, at \*1 (D. Md. June 3, 2020)

* “Gray is 66 years of age and suffers from coronary artery disease (“CAD”), hypertension, Type II diabetes with diabetic neuropathy, and osteoarthritis of the knees. He is currently serving an 84-month (7-year) term of imprisonment for conspiracy to distribute and possess with intent to distribute heroin in violation of 21 U.S.C. § 846. Gray has been in federal custody since August 18, 2016. (*Id.*) Accordingly, he has served over 45 months of his 84-month sentence.”
* FMC Lexington

United States v. Regas, 2020 WL 2926457 (D. Nevada June 3, 2020)

* 77 years old, life sentence, solitary confinement, has served 27 years
* Despite lack of confirmed cases at FCI Herlong, “remains a significant risk of infection to Defendant in light of his age and vulnerability”
* “The fact that there are no confirmed COVID-19 cases at Herlong is not reassuring, given that there is no facility-wide testing being done there to separate those with COVID-19 from those who do not.

United States v. Williams, No. 3:04-cr-95-MCR-CJK, Dkt. No. 91 (N.D. Fla. Apr. 1, 2020)

* Medical condition, elderly, at Butner, life sentence
* Unfortunately, in the context of institutional confinement, social distancing can be nearly impossible to implement and follow, given the large numbers of inmates held together in crowded, closed facilities. In light of this reality, courts around the country have recognized that the risk of COVID-19 to people held in jails and prisons “is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected.”

United States v. Harper, 2020 WL 2046381, at \*3 (W.D. Va. Apr. 28, 2020)

* In the context of the COVID-19 outbreak, courts have found extraordinary and compelling reasons for compassionate release when an inmate shows both a particularized susceptibility to the disease and a particularized risk of contracting the disease at his prison facility.
* Butner inmate, release date November 2021, 62 years old COPD, asthma, hypertension, sleep apnea

United States v. Jenkins, Case No. 1:99-cr-439, Dkt. No. 485 (D. Co. May 8, 2020)

* Defendant in custody since 1998.
* Released because he’s been a model UNICOR inmate
* Has suffered strokes and other medical ailments in prison, and because he’s vulnerable to COVID-19 and
* even though the BOP has taken a number of measures to protect inmates – the disease has breached facility walls

United States v. Gomez, 2020 WL 2061537, at \*2 (S.D. Tex. Apr. 29, 2020)

* “Courts around the country, including the Fifth Circuit, have noted that the exhaustion requirement can be waived during the ongoing COVID-19 pandemic due to extraordinary and compelling reasons such as the petitioner defendant’s age, underlying health conditions, and family circumstances”
* DENYING due to lack of health reasons

Valentine v. Collier, 956 F.3d 797 (5th Cir. 2020)

* “Second, our reasoning on PLRA’s exhaustion requirement does not foreclose federal prisoners from seeking relief under the First Step Act’s provisions for compassionate release. See 18 U.S.C. § 3582(c)(1)(A)(i). Though that statute contains its own administrative exhaustion requirement, several courts have concluded that this requirement is not absolute and that it can be waived by the government or by the court, therefore justifying an exception in the unique circumstances of the COVID-19 pandemic.”
* Higginson concurrence

United States v. Jackson, 2020 WL 1955402, at \*4 (S.D. Tex. Apr. 23, 2020)

* Inmate’s “high vulnerability to COVID-19 amount to extraordinary and compelling reasons for reducing his sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i)”
* Need for kidney transplant
* 30-day lapse
* Conditions - The Court finds that any lingering concerns can be addressed through tailored conditions of release. The Court determines that Mr. Jackson should be placed on home confinement for the first eighteen months of probation, and be subject during that period to whatever location monitoring services the Probation Office sees fit to impose.

United States v. Zukerman, 2020 WL 1659880 (S.D.N.Y. Apr. 3, 2020)

* Waiving exhaustion and granting immediate release
* Defendant convicted in multi-million-dollar fraud scheme
* “The severity of Zukerman’s conduct remains unchanged. What has changed, however, is the environment where Zukerman is serving his sentence. When the Court sentenced Zukerman, the Court did not intend for that sentence to ‘include a great and unforeseen risk of severe illness or death’ brought on by a global pandemic”
* Age, diabetes, hypertension, obesity

United States v. Edwards, 2020 WL 1650406, at \*5 (W. Va. Apr. 2, 2020)

* “Had the Court known when it sentenced Defendant in 2018 that the final 18 months of his term in federal prison would expose him to a heightened and substantial risk presented by the COVID-19 pandemic on account of Defendant’s compromised immune system, the Court would not have sentenced him to the latter 18 months”
* Terminal illness; 1B1.13 analysis

United States v. Resnik, 2020 WL 1651508 (S.D.N.Y. Apr. 2, 2020)

* “Releasing a prisoner who is for all practical purposes deserving of compassionate release during normal times is all but mandated in the age of COVID-19”
* 65 y/o, diabetes, liver disease
* Given (1) the highly infectious nature of COVID-19, (2) the limitations in a prison environment (even a prison medical center) on practicing the hygienic and social distancing techniques that the Center for Disease Control has put in place to prevent rapid transmission, and (3) the fact that Mr. Resnick suffers from ailments that have already been identified as “high risk,” this Court finds that Mr. Resnick's legitimate medical risk is a sufficiently extraordinary and compelling basis for granting compassionate release (\*7)
* “Prisoner mailbox rule,” “inmate’s papers are deemed filed the day that they are signed and given to prison officials for mailing”

United States v. Rodriguez, 2:03-cr-271-AB, Dkt. No. 135 (E.D. Pa. Apr. 1, 2020)

* granting release after finding risk factors for COVID-19 constitute extraordinary and compelling reason and noting that prisons are “tinderboxes for infectious disease”
* Elkton inmate, 17 years into 20-year mandatory minimum drug and firearm case, one year from home confinement eligibility
* Diabetes, HBP, liver problems
  + Statistics on diabetes

United States v. Gonzalez, No. 2:18-cr-232-TOR, Dkt. No. 834 (E.D. Wash. Mar. 31, 2020)

* releasing defendant one month into a 10 month sentence in light of medical issues; ordinarily these conditions would be manageable but “these are not ordinary times”
* Waived exhaustion, not yet in BOP custody
* 64 y/o, COPD, emphysema, inhaler
* “Impossible to practice social distancing or isolation in a jail setting”

United States v. Colvin, 2020 WL 1613943 (D. Conn. Apr. 2, 2020)

* 7 days left on sentence
* Multiple health conditions and inability to social-distance in prison and concluding that “[i]n light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risks faced by Defendant will be minimized by her immediate release to home confinement”

United States v. Norris, 2020 WL 2110640 (E.D. NC Apr. 30, 2020)

* Life threatening, not transferred to BOP facility yet
* Pneumonia while incarcerated
* Not bound by 1B1.13

United States v. Harris*,* No. 18-cr-364 (PGG) (S.D.N.Y. Apr. 8, 2020),

* finding extraordinary and compelling reasons for release of inmate with asthma and Crohn’s disease, which made him particularly vulnerable to COVID-19

United States v. Sawicz, 2020 WL 1815851 (E.D.N.Y. Apr. 10, 2020)

* Releasing child pornography offender based on “[t]he COVID-19 outbreak at FCI Danbury, combined with the fact that the defendant is at risk of suffering severe complications if he were to contract COVID-19 because of his hypertension,” despite medication, acknowledges hypertension doesn’t “squarely” fit within 1B1.13

United States v. McCarthy, 2020 WL 1698732 (D. Conn. Apr. 8, 2020)

* Waiving exhaustion
* Bank robbery, 38 months
* MDC but was supposed to go to Danbury for discharge
* 65 years old, COPD and asthma, pneumonia while in BOP custody

United States v. Brooks, 2020 WL 2509107 (C.D. Ill., May 15, 2020)

* 247-months, reduced to 200, started in 2007, Elkton
* Projected release is May 26, 2027
* 45 years old, morbid obesity, severe asthma, high blood pressure, recovering from bowel surgery
* Rejects narrow 1B1.13, talks at length about effect of First Step Act

United States v. Gonzalez, 2020 WL 2511427 (D. Conn., May 15, 2020)

* Govt doesn’t dispute extraordinary and compelling reasons, danger to community and inadequate release plan
* 4-year sentence, 6 months left to serve
* Recovering from cancer before sentencing, Allenwood in PA, eligible for halfway house in May 2020
* Only 1 confirmed case at the time at Allenwood, “But because the general lack of testing and prevalence of COVID-19 among asymptomatic persons, it seems reasonably likely from the single positive test result that there is some ongoing COVID-19 infiltration at Allenwood.”

United States v. Hansen, 2020 WL 1703672 (E.D.N.Y. Apr. 8, 2020)

* COVID-19 pandemic and medical problems justifies 7-month reduction in sentence

United States v. Johnson, 2020 WL 2515856, at \*13 (D.D.C. May 16, 2020)

* “Moreover, under the circumstances presented in this case, it is clear to the Court that continued detention would now be greater than necessary to comply with the purposes of punishment, based on the Court’s reexamination of the section 3553(a) factors and the Sentencing Commission’s stated policy concerns about the release of dangerous offenders.”
* Case “fits squarely within the intended scope of the First Step Act’s compassionate-release authorization”
* Inmate was vet, no priors, PTSD, weapons offenses after trial
* 41-month sentence starting April 2019
* High blood pressure and PTSD, “also just shy of the severe-obesity threshold”
* Pulmonary hypertension and obesity

United States v. Moskowitz, 2020 WL 2187770, at \*2 (E.D.N.Y. May 5, 2020)

* “Defendant suffers from Scimitar’s Syndrome, a birth defect which caused him to be born with an undeveloped right lung due to his heart shifting to his right side during prenatal development. As a result, Defendant lives with one functional lung.”
* Sentenced in August 2014 to 151 months, oxycodone and money laundering

United States v. Young, 2020 WL 2514673 (D. Mass., May 15, 2020)

* 41 years old, asthma and obesity
* Danbury, 30-month sentence, has served 23 months, scheduled release December 31, 2020

United States v. Quintero, 2020 WL 2175171, at \*2 (W.D.N.Y. May 6, 2020)

* 12-month sentence, hypertension, obesity, diabetes
* Decision is consistent with both the recently enacted CARES Act and with the forceful Memorandum from the Attorney General of the United States
* Notes not many years left

United States v. Ardila***,*** 2020 WL 2097736 (D Conn. May 1, 2020)

* Ice detainer
* 71 years old, diabetes, hypertension, obesity, lung-related condition

Casey v. United States, 2020 WL 2297184 (E.D. Va. May 6, 2020)

* 76 y/o, heart condition
* Waives exhaustion
* FCI Petersburg

United States v. Howard, 2020 WL 2200855 (E.D. NC May 6, 2020)

* Obesity, COPD, diabetes, at Butner
* Scheduled for release August 2021

United States v. Coles, 202 WL 1976296 (C.D. Ill., April 24, 2020)

* Elkton inmate, 293-month sentence in 2002, hypertension, prediabetic, bladder issues, 19 years of 24-year sentence
* Waiving exhaustion

United States v. Garcia, 2:95-cr-00142-JPS, Dkt. 196 (E.D. Wisc., March 27, 2020)

* 296 months of 360-month sentence, career offender due to 1971 conviction
* Over 65 years old, served at least 10 years, serious medical conditions

United States v. Haney, 1:19-cr-00541-JSR, Dkt. 27 (S.D.N.Y., April 13, 2020)

* 33 months of 42 month sentence at MDC
* 61 years old
* Waives exhaustion, long analysis by Rakoff
* Relatively in good health but has history of substance abuse

United States v. Morgan, 4:92-cr-04013-WS-CAS, Dkt. 2337 (N.D. Fla., April 27, 2020)

* Life sentence originally, resentenced to 420 months and 420 months, had finished 288 months, release June 2022
* Discusses Andre Williams dying before his release
* Sick cell disease

United States v. Halliburton, 2020 WL 3100089, at \*1 (C.D. Ill. June 11, 2020)

* FCI Forrest City Low, projected release date of January 7, 2025, 120-month sentence
* 42 years old, diagnosed with asthma and obesity, had SSI disability
* Tested positive and placed in isolation
* Discusses lack of immunity, “Defendant continues to be at risk of imminent harm based on his underlying medical conditions”
  + “Very real risk of relapse or reinfection, Defendant also may suffer side effects from COVID-19”
  + Cites study showing “that for some people affected by COVID-19, a full recovery may not happen for years”
    - Can cause lingering cardiovascular problems

United States v. Park, 16-cr-473 (S.D.N.Y., April 24, 2020)

* Asthma and immune-compromising diseases, 44 years old
* Danbury inmate caught in shifting BOP guidelines, set transfer for April 30
* “Given the undisputed severity of Ms. Park’s health condition and the acute danger presented to her by continuing to be housed at FCI Danbury, the Court can no longer wait for Ms. Park to be released.”
  + Ordered immediate release
* Defrauded 40 individuals of $23 million
* 3553 - nonviolent, little risk of recidivating, tutors other women and rehabilitative efforts
* Served about half her sentence

United States v. Reddy, 2020 WL 2320093 (E.D. Mich. May 11, 2020)

* 30-month sentence for healthcare fraud
* 73 years old, diabetes, hypertension, orthopedic problems
* FMC Carswell

United States v. Tran, 8:08-cr-00197-DOC, Dkt. 405 (C.D. Cal., April 10, 2020)

* Hobbs Act robbery, firearms, 15-year sentence, had served “vast majority”
* Asthma since childhood
* Oakdale
* Case manager declined to accept request, “a refusal to accept a request for release, as Defendant has proffered occurred here, should not ‘deprive him of judicial review…The Court finds that Defendant’s multiple attempts to request release from the BOP, and the lack of action taken to adjudicate such a request, is a constructive denial of his request.”

United States v. Connell, 2020 WL 2315858 (N.D. Cal. May 8, 2020)

* Started 12 month sentence in October 28, 2019, would be transferred to RCC June 9, 2020, finish September 2020
* Lompoc
* Waives exhaustion, notes split across the country
* Notes government has conceded jurisdictional and mandatory rule in several cases

United States v. Al-Jumail, 2020 WL 2395224 (E.D. Mich. May 12, 2020)

* 120-month sentence, release date March 19, 2014 (served more than half)
* Healthcare fraud
* 60 years old, Fort Dix, coronary arterial disease, diabetes, retinal disease, HBP, heart stints
* Waives administrative remedies based on threat to health
* Non-violent, took advantage of beneficial prison programs, “evidence of post-sentencing rehabilitation may sometimes support a downward departure during a resentencing.
* Finds that COVID-19 and medical condition fit under 1B1.13
* Holds that it has authority to modify sentence to home confinement

United States v. Ramirez, 2020 WL 2404858 (D. Mass. May 12, 2020)

* MDC inmate; 2 inmates and 9 staff testing positive
* Finds 1B1.13 not-binding
* Language regarding “particularized” risk, not just general threat; “Where particularized conditions do exist, compassionate release is more appropriate.”
* Waives exhaustion, “The COVID-19 crisis is the kind of situation where an exception to the exhaustion requirement applies”
* 57 y/o, diabetes, hypertension, high cholesterol
* Had served 43 months of 66-month sentence for fentanyl, no history of violence

United States v. Richardson, 2020 WL 3402410, at \*2 (E.D. Cal. June 19, 2020)

* This Court recently noted that over the past few months, the BOP has—on several occasions—incorrectly represented the status of inmates’ exhaustion efforts. See U.S. v. Levario, No. 12-cr-00399-JAM, at \*4 (E.D. Cal. June 15, 2020). While the Court is not assuming bad faith, it bears mentioning that these mistakes come at a cost to defendants. The Court therefore finds the BOP’s alleged lack of records in this case not to be controlling.
* But Defendant does not ask the Court to consider his circumstances under the general threat of COVID-19. Rather, Defendant claims that his hypertension, severe obesity, and pre-diabetes, coupled with the critical situation at Terminal Island
  + Hypertension or obesity alone—regardless of age—place a defendant at higher risk of COVID-19 complications
  + 3553(a) - “Terminal Island has not demonstrated that it is equipped to do that” - provide adequate medical care

United States v. Hunt[,](https://casetext.com/case/united-states-v-hunt-230?ref=ArmlS6!7chtnj)2020 WL 2395222 (E.D. Mich. May 12, 2020)

* 30-month sentence, FCI Milan, served 30% of his sentence; release date July 2021
* Identity fraud
* 30-year-old defendant, congestive heart failure, diabetes, asthma, obesity, sleep apnea, hospitalized multiple times while incarcerated for respiratory emergencies and heart failure, x-ray showed fluid in lungs
* Was quarantined in special unit
* Waives exhaustion
* Criminal history – risk to health and availability of conditions of release outweigh recidivism risk and long criminal history, two armed robberies and drug trafficking crimes

United States v. Rivernider, 2020 WL 2393959 (D. Conn. May 12, 2020)

* 144-month sentence for wire fraud, started in 2013, 50% of his sentence (65% with credit for good time)
  + Acknowledges wire fraud was “unusually long”
* 54 y/o, diabetes, heart disease, hypertension, underwent bypass surgery while in custody

United States v. Velencia, 2020 WL 2319323 (S.D.N.Y. May 11, 2020)

* Danbury inmate
* Sentenced to 120 months on November 2016
* Heart disease, HBP, seizures, anxiety, heart attack in 2018
* Waives exhaustion, analysis under “administrative law principles” and separately under equitable principles

United States v. Simpson, 2020 WL 2323055 (N.D. Cal. May 11, 2020)

* 120-month sentence starting March 2013, oxycodone distribution, Release Date is September 2021, has served 80% of sentence
* 62 y/o, asthma and diabetes
* Waives exhaustion
* Government opposes on exhaustion but does not oppose on the merits

United States v. Guzman, 2020 WL 2781713 (N.D. Ill. May 28, 2020)

* Renewed motion, “release as soon as practicable and consistent with the judgment of medical personnel”
* FCI Elkton, discusses conditions

United States v. Somerville, 2020 WL 2781585 (W.D. Pa. May 29, 2020)

* Hypertension, obesity, hyperlipidemia, chronic bronchitis, asthma, at FCI Danbury
* Already has one close call “exposure to an infected prisoner” in his unit, 40 others did, 10 tested positive since, describes “open, dorm-like share space”
* 3553, “because the original sentencing judge was constrained to impose a 15-year, mandatory-minimum sentence, no court has been permitted to fully factor… mitigating characteristics into his sentence.”
  + Non-violent, low-level nature of the drug-dealing offenses that resulted in his criminal history being overstated”
* 180-month sentence
* Statistics of BOP rarely filing motions, “poor management, inconsistent implementation, a lack of clear standards”
* “Some courts have read into this second prong of the statute that the prisoner may seek judicial relief after “the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility” only **if the warden hasn’t responded**. Under this view, the 30-day waiting period only applies if the Warden stays silent. If instead the Warden, as here, has issued a written summary denial, then some courts have held that the inmate must proceed through a full appeal process within the BOP and must fully exhaust that process before being able to file in court…Respectfully, the Court finds that reading to be unmoored from the statutory test, as have others.”
* “Independent assessment” since 1B1.13 not binding

United States v. Foreman, 2020 WL 2315908 (D. Conn. May 11, 2020)

* Starting 12-month sentence on February 2020
* Holds 1B1.13 is not binding
* 58 y/o inmate at Danbury, hypertension and obesity, no COVID-19 cases at the camp at Danbury where inmate is
  + Court agrees with defendant that staff move between the two
* Extraordinary and compelling reasons exist when a defendant shows he or she has “pre-existing health conditions—respiratory conditions in particular—in combination with the increased risks of COVID-19 in prison”
* “First-time offender of a non-violent offense”

United States v. Barenechea, 2020 WL 2315638 (N.D. Cal. May 7, 2020)

* Life sentence to time served
* Nonviolent drug offense, due to stacked 924(c) counts, 28 years already served, “record of rehabilitation,” risk due to age and tuberculosis

United States v. Ullings, 2020 WL 2394096 (ND Ga. May 12, 2020)

* 66 y/o, pleaded guilty in January 2020 for Antitrust, fix certain rates for air cargo
* Waive exhaustion for defendant not in custody yet
* 8-month sentence, at RAD
* Finds 1B1.13 is not binding

United States v. Atwi, 2020 WL 1910152 (E.D. Mich. Apr. 20, 2020)

* FCI Milan
* 4-month sentence, active tuberculosis when he filed
* Discusses autistic kids and need to support
* Government says it is already treating tuberculosis
* Waives exhaustion, “The requirement states that if a defendant hears nothing from his warden about a compassionate-release motion in 30 days, he may proceed to court. See 18 U.S.C. § 3582(c)(1)(A). Thus, Congress contemplated that a defendant would be able to seek court redress quickly. But 30 days when the statute was passed and 30 days in the world of COVID-19 are very different. Congress likely did not contemplate that a once-in-a-lifetime pandemic would lead hundreds of federal prisoners to seek compassionate release all within a four-week window. Or, using Judge Rakoff’s words, “[b]ecause of the pandemic, prisoners have inundated the BOP with requests for release.”
* And Atwi has been diagnosed with an infection, which, although it is not currently serious, could make him more susceptible to COVID-19 and serious health consequences. So in light of Atwi’s TB diagnosis and the serious dangers caused by the spread of COVID-19 in prison facilities, Atwi has met his burden of demonstrating that compelling and extraordinary reasons justify compassionate release.

United States v. Gileno, 2020 WL 1916773 (D. Conn. Apr. 20, 2020)

* Began 12-month sentence on January 2020, at FCI Schuylkill, would be eligible for HC in October 2020
* Asthma and other respiratory issues, has had multiple bouts of pneumonia
* Waives exhaustion
* “Even a few weeks’ delay carries the risk of catastrophic health consequences”

United States v. Joling, 2020 WL 1903280 (D. Ore. Apr. 17, 2020)

* 2015 offense got 97 months; 2016 offense got 6 months consecutive
* Has served 56 months at Butner
* 30 days passed
* 1B1.13 not binding
* Hypertension, atherosclerosis, obesity, prostate cancer
* Court is “sympathetic to the efforts made by the BOP to combat this outbreak, that response has been insufficient as evidenced by the number of infections and deaths which have already occurred in federal custodial institutions”

United States v. Hansen, 2020 WL 1703672 (E.D.N.Y. Apr. 8, 2020)

* COVID-19 pandemic and medical problems justify 7- month reduction in sentence

United States v. Lacy*,*2020 WL 2093363 (C.D. Ill. May 1, 2020)

* Severe obesity, hypertension, and diabetes
* Projected release August 2020, 80 months from 2016 conviction
* Forrest City Low, Blount’s Disease

United States v. Trent*,*Case No. 16-cr-178, ECF No. 106 (N.D. Cal. Apr. 9, 2020)

* Obesity, HIV, diabetes

United States v. Pinkerton, 2020 WL 2083968 (C.D. Ill., April 30, 2020)

* 50 grams of meth, sentenced to 84 months, release date 2023
* Diabetes, high blood pressure, bone graft, neuropathy
  + BOP mismanaged diabetes now uses wheelchair often, Charcot foot, weakened bones
* Waives exhaustion, cites “equitable exceptions to statutory rules have been recognized in the past”
* “Not an exhaustion requirement in the traditional sense”
* Waiver appropriate on “case-by-case basis”
* Served over 3 years of her sentence with only one minor infraction

United States v. Logan, 1:12-cr-307, Dkt. No. 179 (N.D.N.Y. Apr. 22, 2020)

* granting compassionate release to 58 years old w/ diabetes, hypertension, hypercholesterolemia, and coronary artery disease

United States v. Anderson, 2020 WL 2521513 (C.D. Ill., May 18, 2020)

* 96-month sentence, release date May 12, 2021, Forrest City
* High blood pressure, tested negative for COVID-19 on May 16, 2020
* “The spread of COVID-19 presents extraordinary and unprecedented challenges for the country and creates a serious issue for prisons. Due to the infectious nature of the virus, the Centers for Disease Control and Prevention (CDC) and state governments have advised individuals to practice good hygiene and social distancing and isolation. Socially distancing can be difficult for individuals living or working in a prison.”
* Waiving exhaustion

United States v. Clark, 2020 WL 3395540, at \*2 (S.D. Iowa June 17, 2020)

* “high blood pressure and respiratory problems, among other issues, created a risk of COVID-19 complications. *Id.* at 2–3. He also cited the amount of time he has served, his spotless disciplinary record in prison, and his general rehabilitation”
* Citing cases of grants, The number of courts agreeing the COVID-19 pandemic constitutes an extraordinary and compelling reason for release still grows by the day
* The number of courts agreeing the COVID-19 pandemic constitutes an extraordinary and compelling reason for release still grows by the day
* The case for release becomes more compelling, still, for a defendant with a very small fraction of his sentence left
* USP Leavenworth, no confirmed cases but no testing

United States v. Cotinola, 2020 WL 2526717 (D.N.M., May 18, 2020)

* 12-year sentence, release date July 2024
* 53 y/o, Heart attack, neuropathy, diabetes, hepatitis C, kidney failure,
* Significant amount of meth, significant criminal history including violence against women

United States v. Lee, 2020 WL 2512415 (N.D. Cal., May 15, 2020)

* Asthma, moderate to severe, didn’t have access to inhaler, asthma since he was 12, hospitalized due to it at age 16
* 12-month sentence, release July 2020

United States v. Ginsberg, 2020 WL 2494643 (N.D. Ill., May 14, 2020)

* Time served conditioned on modification of the terms of his supervised release to include home confinement and location monitoring
* Fraud defendant, charged in 2014, pleaded in 2018
* 55-56 years old, history of cardiac and respiratory disease, no inmates positive at facility
* Reported to prison in June 2019, 33 months in prison

United States v. Blye, 2020 WL 3064225 (W.D. Wash. June 9, 2020)

* Violated conditions while at halfway house so was sent back to FDC SeaTac
* 60-month sentence, scheduled release in October 2020
* Court says elevated risk not necessarily sufficient, looks at underlying conditions
* Has been treated for respiratory disorders while in custody, including acute upper respiratory infection
* Hypertension, prediabetic, heart murmur that hasn’t been tested for, history of mental health issues
* No cases at FDC SeaTac, this is based on finding that the “possibility of outbreak remains high”

United States v. Griggs, 2020 WL 2614867 (D.S.C., May 22, 2020)

* Drugs and guns defendant, criminal history of theft, had served 10 years before (but let out after 21 months in prison due to parole)
  + “This case involves the most egregious violations of non-violent federal firearm offenses that the undersigned has witnessed during his time on the bench.”
* 25 months in August 2019, half through sentence, June 2021 is release date
* “The United States Sentencing Guidelines do not specifically contain a policy statement that addresses motions for reductions in terms of imprisonment that are filed by an inmate.” – says 1B1.13 is for motions brought by BOP director; 1B1.13 only applies to motions brought by BOP director
* Informal request, Inmate Request to Staff on April 13, 2020, counts
* 54-year-old man, spinal issues, degenerative disc disease, high cholesterol, high blood pressure, COPD, diabetes, anxiety, and depression, on opioid pain medicine, at Butner
  + Extensive analysis of COPD and obesity/overweight
  + Complaints about BOP medical care
* Discusses how inmates in general have underlying issues, statistics about inmates with chronic conditions, high blood pressure is very common
* “While the Court must acknowledge that the BOP is taking proactive measures to prevent the spread of COVID-19 among inmates at Butner and other facilities, there will likely be many more inmates and staff infected as well as more deaths. Public health organizations, political leaders, and medical experts have cautioned the American people with preexisting condition that they should wear masks, frequently wash their hands, and be scrupulous about social distancing. Those measures are simply not feasible in most custodial settings.”
  + “Must acknowledge the severity of the COVID-19 problem at FCI Butner Low”
  + Number of cases “stifles the opportunity for Defendant to receive prompt and adequate treatment”
* Has spot on his lungs and has COPD
* “In light of the complications that would almost certainly arise from a COVID-19 infection, and the limitations on medical care Defendant faces during the pandemic, the Court finds that this factor weighs heavily in favor of a reduced sentence.”

United States v. Galloway***,***2020 WL 2571172 (E.D. Mich. May 21, 2020)

* 235-month for kilo of heroin (charged with firearms and 924c too), has served 10 years since 2010, original sentence was 292 months
* 1B1.13 “does not constrain the Court’s analysis,” says courts have “independent discretion” but finds that condition and risk falls within 1B1.13, “substantially diminishes his ability…to provide self-care within the environment of a correctional facility and from which he is not expected to recover.”
* 52-year-old inmate, seizures, aphasia, gastro reflux, diabetes, hepatitis, hypertension, gastritis, at Schuylkill
* Rejecting government argument that defendant “has exaggerated the effects of his condition” because he has work assignment and expressed interest in “performing pull-ups and lifting weights…This selective reading of the record presents an incomplete picture of Galloway’s life in prison.”

United States v. Parker, 2020 WL 2572525 (C.D. Cal. May 21, 2020)

* Inmate sentenced to life, crooked cops that seized drugs and sold them
* Degenerative joint disease, diabetes, hypertension, over 65 years old
* At Florence
* Found exhaustion requirement met despite it not being specifically raised on COVID-19 and cites other cases, requests submit pre-COVID, “Sheer sophistry” – it was enough that it raises his medical condition
* 1B1.13 not binding
* Reasons – age, medical, changes in law making his sentence lesser
* Violent conduct in 3553, but “evidence of post-sentencing rehabilitation may plainly be relevant to the history and characteristics of the defendant”

Discusses inmate getting degrees, being a suicide companion

United States v. Thompson, 2020 WL 3470301, at \*1 (C.D. Ill. June 25, 2020)

* June 13, 2027, USP Thomson
* Combined sentence
* 51 years old, AA, sickle cell trait, clinically obese
  + Discusses how sickle cell trait comes with complications from low oxygen levels, dehydration, etc. “conceivable” that it would be worse with COVID

Cotton v. United States, 2020 WL 3488752, at \*1 (E.D. Mich. June 26, 2020)

* Mr. Cotton is 64 years old. He seeks release due to his obesity, hyperlipidemia, pre-diabetes, asthma and age
* 60-month sentence, FCI Morgantown, not dissuaded by the prison’s report of zero confirmed cases…”is more likely a result of a lack of testing than a lack of the virus’ presence in the prison.”
  + Looks at count where prison is, has several confirmed cases

United States v. Smith, 2020 WL 3429150, at \*1 (E.D. Mo. June 23, 2020)

* Defendant is 43 years old and suffers from obesity, hypertension, osteoarthritis and several other physical and mental health conditions including anxiety, depression
* FCI Pekin, 10-month sentence

United States v. Davis, 2020 WL 3443400, at \*1 (E.D. Cal. June 23, 2020)

* 84-month sentence, release date September 2022, Lexington FMC
  + COPD, atrial fibrillation, edema, high blood pressure

United States v. Vence-Small, 2020 WL 2572742 (D. Conn. May 21, 2020)

* 52 years old, splenectomy, diabetes, hypertension
* Hazelton, recently confirmed positive case, had denied previously due to lack of confirmed cases

United States v. Kelley, 2020 WL 2850280 (N.D. Cal. June 2, 2020)

* Sex crimes with minor, 120 months, served about 49 months, half his sentence
* Two years to live with cancer of prostate

United States v. Anderson, 2020 WL 2849483 (S.D.N.Y. June 2, 2020)

* Served 2/3 of 84-month sentence for non-violent drug offense
* “First, as many courts have recognized, the threat of COVID-19 to those in prison constitutes an extraordinary and compelling reason for compassionate release, especially for those whose preexisting medical conditions put them at heightened risk.”
  + Here, severe obesity puts him at high risk, 47 years old
    - Cited CDC and NYT article
* 3553(a) - initial sentence was warranted based on offense, lengthy criminal history; now weigh differently due to COVID-19
* Rejects lack of confirmed cases argument, cites lack of testing

United States v. Reece, 2020 WL 1659854, at \*1 (S.D. Tex. Mar. 27, 2020)

* Mr. Reece meets the age-related definition of extraordinary and compelling circumstances in U.S.S.G. § 1B1.13, comment (n. 1(B)). He is 71 years old, he is experiencing serious deterioration in physical health because of the aging process (chronic viral hepatitis C, an enlarged prostate, and stage III chronic kidney disease), and he has served both 10 years and more than 75 percent of his term of imprisonment.
* Also cites “extraordinary degree of rehabilitation”

United States v. Nazzal, 2020 WL 3077948, at \*1 (E.D. Mich. June 10, 2020)

* Age (65), history of heart disease, including pre-incarceration catheterization, severe asthma, benign prostate cancer, and high blood pressure
* FCI Milan
* Release date November 2021, served 69% of sentence, half of restitution
* “Government rather anemically disputes the seriousness” of health conditions

United States v. Pippin, 2020 WL 2602140 (W.D. Wash. May 20, 2020)

* Child pornography, had a previous sex offense involving children
* 84-month sentence, Lompoc, conditions “which consist of dormitories housing 80 or more people with approximately two to three feet between each person…making effective social distancing…out of the question”
* Pancytopenia and other medical conditions, immune-compromised

United States v. Green, 2020 WL 2992855, at \*1 (D. Md. June 4, 2020)

* Multiple violations of supervised release
* Release date of September 3, 2020
* At CTF, DC jail, court grants despite situation there improving

United States v. Schneider, 2020 WL 2556354 (C.D. Ill. May 20, 2020)

* Drug offense, revoked probation several times, release date September 2020
* Asthma, immune disorder, pregnant, notes asthma is controlled with use of inhaler
* Waives exhaustion, lists recognizing equitable exceptions to statutory rules, says it must be a case-by-case basis
* Cites asthma as condition meriting release despite being controlled with inhaler, notes stats

United States v. Dorsey, 2020 WL 2562878 (W.D. Wash. May 19, 2020)

* 120-month sentence, FCI Florence
* 63 years old, congestive heart failure, high blood pressure, obesity, diabetes, inhaler
* Has served 4 years of a 10-year sentence, “which was a product of a mandatory minimum the Court was required to impose”

United States v. El-Hanafi, 2020 WL 2538384(S.D.N.Y. May 19, 2020)

* Terrorism offense, provided material support to Al Queda
* 15-year sentence, at Butner Low, has been incarcerated for 10 years, projected release date is February 2023
* Waives exhaustion
* Discusses crowded condition, inmate tested positive who may have had exposure to the unit where inmate was assigned, 150-160 other inmates in the dormitory, two and three-person cubicles
* Hypertension, kidney failure, deep vein thrombosis
* Signs of remorse and rehabilitation during his four years or pre-sentence incarceration, spotless institutional records throughout ten years of incarceration and has participated in a long list of educational, rehabilitative, and job-readiness programs

United States v. Bischoff, 2020 WL 2561423 (D. N.H. May 18, 2020)

* 48-month sentence, release date is December 2021, FMC Devens
* Orders immediate release, not 14-day quarantine
* 79 years old, hypertension, “high-risk category”

United States v. Bennett, 2020 WL 2539077 (S.D.N.Y. May 18, 2020)

* 16-year sentence, has served 73%, release date is April 2022, served 13.6 years and meets AG Barr’s memo, model inmate teaching GED and other things at FCI Fort Dix
* Has ICE detainer on him
* 71 years old, Moshannon Valley correctional Center

United States v. Little, 2020 WL 2613034, at \*1 (N.D. Ohio May 23, 2020)

* “It is true that as of the date of Little’s Motion and the government’s response, less than 30 days had passed since the warden received Little’s request and therefore this provision was not satisfied. However, as of the date of this Order, 30 days have lapsed since the warden received Little’s request. Thus, the statutory requirement is satisfied and the Court will consider the merits of the Motion.”
  + Exhaustion met
* Felon in possession of firearm, 30-month sentence, FM Lexington, recent kidney transplant and takes immunosuppressant medication
* Notes “marked increase” in cases from filing date and order
  + Recognizes BOP efforts but still experiencing severe outbreak
* \*2, Notes sentences for at risk inmates “living in fear during a COVID-19 outbreak in their facility experience an incarceration significantly more laborious than before COVID-19”
  + “The laborious nature of this incarceration causes the § 3553(a) factors to favor release before the defendant was served his or her full sentence”

United States v. Lewellen, 2020 WL 2615762 (N.D. Ill. May 22, 2020)

* FCI Coleman, 64 years old, severe obesity, hypertension, atrial fibrillation, 18-year sentence for drug trafficking
* Release date in 2026, no disciplinary issues, “little less than 78 months to serve,” 57.6% of time in prison
* Rejects government that Lewellen “would be at greater risk if he were exhibiting symptoms of his diagnosed conditions”
* Discusses inmates from different units mingling for meals and that food service workers do not wear masks or gloves

United States v. Brown, 2020 WL 2615616 (E.D. Pa. May 22, 2020)

* 15-year sentence in February 2015, 7-million dollar home loan fraud scheme
* June 2019 diagnoses with myeloma and blood cancer, FDC Philadelphia, denied prior COVID-19 petition
* Neuropathy and asthma

United States v. Morris, 2020 WL 2735651 (D.D.C. May 24, 2020)

* Waives exhaustion, BOP cannot locate his request
* USP Lewisburg, has one case
* 71 years old set to be released June 2020
* Hypertension, COPD
* “The text, context, and history of the compassionate release statute thus make clear that, far from enacting a bar to judicial review, “the 30-day rule was meant as an accelerant to judicial review.”

United States v. Jackson, 2020 WL 2735724, at \*3 (W.D. Va. May 26, 2020)

* Jackson suffers from type 2 diabetes, asthma, sleep apnea, and obesity. While none of these medical conditions alone constitute an extraordinary and compelling reason warranting a sentence reduction under Application Note A, when taken together, they exacerbate the risk that COVID-19 poses to Jackson.
* Waives exhaustion, futile since not in custody
* 12-month sentence

United States v. Gutman, 2020 WL 24674345, at \*2 (D. Md. May 13, 2020)

* Defendant is 56 years of age and suffers from multiple sclerosis and hypertension, inmates positive at facility

United States v. Molina Acevedo, 2020 WL 3182770, at \*1 (S.D.N.Y. June 15, 2020)

* CI Moshannon Valley, a private correctional facility located outside Pittsburgh, Pennsylvania, and is scheduled to be released in October 2020
* ICE custody, diabetes, hypertension, coronary artery disease
* Discusses facility, sharing toilets and showers, etc

United States v. Plunk, 3:94-cr-36-TMB (D. Alaska Apr. 9, 2020)

United States v. Coker, 3:14-cr-00085-RLJ-DCP, Dkt. 869 (E.D. Tenn., April 15, 2020)

**NO UNDERLYING MEDICAL CONDITION**

United States v. Chestnut, 6:09-cr-06071-DGL-MWP, Dkt. 923, 925 (W.D.N.Y, April 29, 2020)

* waiving exhaustion requirement and granting release to inmate with no medical conditions

United States v. Calabrese, 2020 WL 3316139, at \*2 (D. Mass. June 18, 2020)

* 55 years old and, other than his age, has not pointed to any specific medical conditions that place him at a higher risk.
* While the situation at FMC Lexington has improved over the last month, I cannot say that based on the current number of positive cases and the deaths which have occurred that continued incarceration does not place an individual like Mr. Calabrese at risk of exposure to the virus.
* FMC Lexington

United States v. Rich, 2020 WL 2949365, at \*2 (D.N.H. June 3, 2020)

* Had “history of chronic bronchitis and other respiratory illnesses puts him at substantial risk of experiencing severe illness should he contract COVID-19. He further contends that he has an increased risk of becoming infected with the virus because inmates and staff members at FMC Devens have tested positive”
* History as cigarette smoker makes him immunocompromised
* “The court acknowledges that defendant’s more recent medical records from his current incarceration do not reflect any ongoing respiratory issues”
* “The government argues that the court should not find defendant particularly vulnerable to COVID-19 because he does not have a documented diagnosis for “chronic bronchitis.” Given the novelty of the coronavirus and the medical community’s evolving knowledge about who is high risk, the court is not inclined to read defendant’s medical records as narrowly as the government urges. Although defendant’s doctor did not use the phrase “chronic bronchitis” to describe defendant’s condition, the doctor described defendant as “prone to bronchitis” with “a history of reactive airway disease.” That is close enough to “chronic bronchitis” for the court. Moreover, defendant not only has a history of bronchitis, he also has a history as a heavy smoker. These two issues place him in a high-risk category.”

United States v. McClellan, 2020 WL 2933588 (N.D. Ohio June 3, 2020)

* Release date May 2022, 12 months of home confinement, FMC Rochester
* 58 years old, hypertension and high blood pressure
* A growing list of federal courts have concluded that the public health crisis presented by the Covid-19 pandemic in conjunction with a defendant’s pre-existing health condition establishes an extraordinary and compelling reason for compassionate release.
* “Defendant does not offer evidence that he has a medical condition of the type and gravity insufficiently addressed by the BOP. However, the Court finds that the perils presented by the Covid-19 pandemic are one factor among several which warrant the sentence reduction.”

United States v. Grimm, 2020 WL 2789886, at \*5 (D. Nev. May 29, 2020)

* Under these circumstances, the court is inclined to release defendant. However, this conclusion is predicated on an uncertain premise: whether defendant does, in fact, have lupus. In her initial motion, defendant suggested she may have lupus only in passing.
* It was only in her reply brief that defendant expanded on this putative diagnosis. (*See* ECF No. 785). And defendant has neither been formally diagnosed with lupus nor did she present evidence of lupus beyond what is consistent with her other conditions.
* However, the court is unable to rule on the instant motion until defendant has a definitive diagnosis. Thus, the court will hold defendant's motion in abeyance and to give the BOP an opportunity to have defendant brought before a medical professional for the purpose of definitively determining whether she has lupus. If she has lupus, the BOP should determine whether it can provide defendant with chloroquine or hydroxychloroquine while incarcerated.

### United States v. Kelly, 2020 WL 2104241 (S.D. Miss., May 1, 2020)

* waiving exhaustion and granting release to Oakdale I inmate
* “Despite his youth and lack of health issues”

United States v. Mel, 2020 WL 2041674, at \*2 (D. Md. Apr. 28, 2020)

* Although the presence of the historic COVID-19 pandemic in prisons arguably could alone establish extraordinary and compelling reasons, Mel has been incarcerated at FCI-Danbury, one of the hardest hit federal prisons.
* Thyroid mass, not yet malignant but unknown, “the Court cannot conclude with certainty that Mel has a high-risk health condition, particularly where she has not undergone any cancer treatment. *See Groups at Higher Risk for Severe Illness*, Ctrs. for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html, last visited Apr. 26, 2020 (identifying cancer treatment, not cancer itself, as a high-risk condition).
* Nevertheless, the Court finds that the historic COVID-19 pandemic, the fact that Mel has been incarcerated in one of the federal prisons most profoundly impacted by COVID-19, and the fact that as a result of the outbreak, she has effectively been prevented from receiving necessary medical care for a potentially life-threatening condition.”
* “The fact that Mel has been incarcerated at FCI-Danbury during a serious outbreak of COVID-19 inside the facility sufficiently increased the severity of the sentence beyond what was originally anticipated that the purposes of sentencing are fully met even with the two-week reduction.”
* Scheduled release May 22, 2020, must be quarantined for 2 weeks

United States v. Le, 1:19-cr-10199, Dkt. 99 (D. Mass. May 6, 2020)

* Releasing pretrial defendant in drug trafficking case in light of COVID-19 even though he lacks “physical conditions that put him at high risk” from COVID-19 because “[t]he reduction in the prison population in and of itself” is important to combatting the virus

Matter of Extradition of Kubicki, 20-MJ-00034-STV, Dkt.19 (D. Co. May 5, 2020)

* Granting release in pending extradition matter where relator had argued, in part, that the COVID-19 pandemic was a “special circumstance” warranting release but had not argued an individual susceptibility to COVID-19 complications

United States v. Mason, 10-cr-625, (DE 61) (D. Md. May 5, 2020)

* Releasing supervisee with “extensive and serious criminal history” from custody because COVID-19 is “so contagious” making it “imperative that D.C. Jail and CTF take all reasonable steps to prevent its spread within the jails” and recognizing the importance of reducing jail populations during the COVID-19 pandemic);

United States v. Cordova, 4:19-cr-40025-TSH, (DE 133) (D. Mass. May 1, 2020)

* Granting pretrial release to a 36 year old defendant, (*see* DE 120: 2), who was alleged to be a career offender facing a ten year mandatory minimum sentence

**ALREADY COVID-19 POSITIVE**

United States v. Gaitan, 2020 WL 3469395, at \*1 (S.D. Cal. June 25, 2020)

* Mr. Gaitan is almost thirty years old. At the time of his Probation interview he “reported he is physically healthy overall,” but that he suffers from an arrythmia and has a defibrillator installed to manage his heart rate
* Two cardiac arrests, since he has tested COVID-19 positive, 6 months of 10-month sentence
  + Says medical staff is too overwhelmed to assist him with further follow up
    - At Terminal Island
    - Cites “strong possibility that he will continue to face complications because of his exposure and his heart problems
      * Served more than half his sentence

United States v. Yellin, 2020 WL 3488738, at \*1 (S.D. Cal. June 26, 2020)

* MOSKOWITZ, Terminal Island, release date is September 2021
* 47 months served of 72-month sentence for child pornography
* Tested positive but no symptoms, had expert witness declaration and information about COVID-19 reinfection
* Rejects government argument that COVID-19 test means he needs to submit new request and wait a new 30 days
* 76 years old, diabetes, hypertension, heart disease, high blood pressure, lymphoma, remission of prostate cancer
* Conditions at TI
  + “The particular conditions at Terminal Island heighten the potential lethality of Mr. Yellin's situation. Although the BOP has taken substantial measures to combat COVID-19 at Terminal Island, they have not alleviated Mr. Yellin's circumstances. Terminal Island is overcrowded by 133%, which is higher than the federal average. (ECF No. 148, Exh. B, at 5.) Current inmates are not tested for COVID-19 unless they display symptoms or are linked to a COVID-19 outbreak. (ECF No. 148, Exh. A (“Prioleau Decl.”), 1 46.) Inmates are confined in dormitory-style units with dozens of others, making social distancing impossible. (ECF No. 148, Exh. B, at 5.) Both prisoners and staff are given limited personal protective equipment but are not mandated to wear them in all settings”
    - The Government has not presented evidence that Mr. Yellin would not likely contract COVID-19 again”
    - “the possibility of reinfection persists. The virus is so new that the scientific community does not yet have answers to whether reinfection is possible”
    - Cites Adrian Solarzano
* Any risk of danger to the community can be addressed by Court and US probation office

United States v. Common, 2020 WL 3412233, at \*1 (C.D. Ill. June 22, 2020)

* FCI Forrest City Low, projected release date of April 5, 2026
* Hypertension, asthma (hospitalized, had since child)
* Had already contracted COVID-19 once
  + “The risk of reinfection is not merely theoretical”
  + Cites USS Theodore Roosevelt, soldiers were re-infected, cites Columbia University on endemic coronaviruses
  + Also cites study that “full recovery may not happen for years, if at all”

United States v. Platte, 2020 WL 3441979, at \*2 (D.N.H. June 22, 2020)

* morbid obesity, hypertension, obstructive sleep apnea, asthma, and a history of pulmonary embolism
* FMC Rochester, served 85% of his sentence
* Release date January 24, 2023, been incarcerated 30 years
* Diabetes, hypertension, hyperlipidemia, family history of heart disease
* Had tested positive, can get re-infected
  + When inmate has tested positive, “this does not end the inquiry. Instead, the analysis shifts to the adequacy of the available medical treatment in the defendant’s facility.”
    - Placed on observation for only 10 days, then returned
    - Despite positive test result, not scheduled for any follow-up care for another three months
* Only recently began 41-month sentence

United States v. Cruz, 2020 WL 3265390, at \*1 (D. Or. June 17, 2020)

* FCI Lompoc, 5 months left on sentence
* Tested positive then released from isolation after 11 days without symptoms
* To date, the BOP has not set a date for Cruz's release to community corrections, despite his eligibility and my letter recommending he receive the maximum time in community corrections
* Apparently, the conditions at FCI Lompoc have rendered it unable to perform basic and statutorily mandated administrative functions
* Combination of medical risk, etc plus recommendation for most time in community confinement

United States v. Kess, 2020 WL 3268093, at \*1 (D. Md. June 17, 2020)

* Medical history includes congestive heart failure, diabetes, morbid obesity, and hypertension, is incarcerated at FCI Lompoc, in Lompoc, California.
* Tested positive May 9, “seems to have recovered
* Served half his sentence, 70 months of 12-year sentence
* Discusses social distancing in depth, difficulties of incarceration
* Cites other judges that have released recovered inmates, defendant argues that he was never re-tested, BOP relied on “visual cues and timing,” could still be shedding the virus and long term effects are unknown
* Morbid obesity
* 3553 – extensive history but was young

Snell v. United States, 2020 WL 2850038 (E.D. Mich. June 2, 2020)

* FCI Milan, release date August 2022 for a 5-year sentence for heroin
* 56 years old, tested positive for COVID-19 on April 11, has been discharged from isolation
  + “Because Snell already contracted, and has largely recovered from, the COVID-19 virus, his main health concern is the strain the pandemic has placed on his access to medical care.”
    - Spina bifida, must self-catheter and gets UTIs
    - Notes that FCI Milan “is not a medical facility”
  + Not designed to provide acute medical en masse. Accordingly, what little medical resources FCI Milan has are now being funneled to COVID-19 patients, leaving inmates with chronic conditions, like Snell, more vulnerable to deterioration or infection.”
  + Immunity - “seeing that it is a novel virus, researchers cannot definitively conclude whether Snell could contract it again.
    - Cites BBS article, “Immunity to Covid-19 is not as clear cut as we might hope.”
      * “Snell will not be a guinea pig to test this possibility.”
      * FCI Milan “is not a conducive facility for Snell’s health, both in regards to the virus and his underlying condition”

United States v. Parramore, 2020 WL 3051300, at \*1 (W.D. Wash. June 8, 2020)

* FCI Terminal Island with a projected release date of July 22, 2020
* 52 years old, needs urgent surgery to fix deteriorating vision from glaucoma
* BOP has failed to treat him, he has also tested positive and been deemed recovered

United States v. Williams, 2020 WL 3073320, at \*2 (D. Md. June 10, 2020)

* 11 months left on his 27-month sentence, release date is in 7 months
* DC CTF has COVID outbreak, no warden so it’s futile
* Obese and harsh lockdown, cites other judges who find obesity to be a contributing factor to risk level
* COVID positive in May 2020, “ostensibly recovered and had been released back into the general inmate population”
* Uncertain if he can contract it more than once, and long-term effects of the illness are still undetermined
* “Notwithstanding Mr. Williams’ ostensible recovery, much is still unknown regarding COVID-19 and any lingering complications, and the CTF is experiencing constrained resources”

US v. Fischman, 2020 WL 2097615 (N.D. Cal., May 1, 2020), releasing inmate from Terminal Island who tested positive

* Notes RDAP and halfway house shortens length of time to serve
* 72 year old first time offender, 72 month sentence
* Notes government contradicting itself, “case-by-case approach…results in arbitrary differences in the treatment of similarly-situated defendants”
  + “The government’s interpretation of § 3582(c) should not change based on whether an inmate is incarcerated in New York or California.”

United States v. McCall, 2020 WL 2992197, at \*1 (M.D. Ala. June 4, 2020)

* May 20, McCall tested positive for COVID-19, has sickle cell disease
* Defendant at Forrest City Low, argues BOP does not have specialized medical care
* Court had hearing with BOP medical staff, none had expertise in sickle cell disease
* Resources at Forrest City are going to other COVID, BOP failed to isolate him and treat him like COVID patient

United States v. Brown, 2:18-cr-360, Dkt. No. 35 (N.D. Ala. May 22, 2020)

* On reconsideration
* Forrest City, inmate participated in video conference hearing
* Waives exhaustion
* COVID-19 positive on May 19
* Asthma diagnosis, affects respiratory tract and can cause asthma attack, and possibly lead to pneumonia and acute respiratory disease
* Says medical treatment at BOP is inadequate, inmate is isolated, use of firearm in drug trafficking
* Says HC and conditions are not “get out of jail free” card

US v. Razzouk, 1:11-cr-00430, Dkt. 136 (EDNY) - releasing inmate who tested positive, has COPD

* Excusing failure to exhaust
* BOP was already releasing him, “additional time in prison risks denying Razzouk timely and adequate access to medical care that he may require, in light of his diagnosis” and “exposing him a second time to the virus”

United States v. Kringlstein, No. 16-cr-633, ECF No. 60 (D.N.M. Apr. 27, 2020)

United States v. Huntley, No. 13-cr-119-ABJ, ECF No. 263, at 10 (D.D.C. May 5, 2020).

* Butner, 120-month sentence
* Spinal cord injury and other health conditions, paraplegic
* Significant criminal history

*See* Jed Rakkouf’s letter, article, Covid and the Courts

* However, the application of this policy to actual prisoners has been slow and accompanied by strange conditions, such as that the prisoner must be quarantined for fourteen days before his release, in case he has somehow already contracted Covid-19 (in which case he will not be released even though he might receive far better treatment outside).

Yeury J.S. v. Decker, Case No. 2:20-cv-5071-KM, Dkt. No. 20 (D.N.J. May 11, 2020)

* Releasing immigration detainee who tested positive, TRO

United States v. Bacon, 7:16-cr-00002-JL-TQL, Dkt. 537 (M.D. Ga., May 1, 2020)

* COVID-19 positive, at Butner
* Went back and forth due to shifting BOP guidelines

United States v. Barber, 2020 WL 2404679 (D. Ore. May 12, 2020)

United States v. Arreola-Bretado, 2020 WL 2535049 (S.D. Cal. May 15, 2020)

* Granting compassionate release to defendant who tested positive for COVID-19 after concluding she will receive superior medical care outside of the custody of the Otay Mesa detention facility
* Also citing that she will be deported upon release
* Waives exhaustion based on futility, since there is no BOP warden
* 1B1.13 not binding

United States v. Kurtz, 16-cr-20036, Dkt. 40 (D. Kan. May 12, 2020)

* Granting compassionate release to 73-year-old CP defendant hospitalized with COVID-19, who spent 18-20 days on a ventilator, “was non-responsive, non-verbal,” and whose “prognosis was poor”

United States v. Sholler, 2020 WL 2512416, at \*4 (N.D. Cal. May 15, 2020)

* “Defendant has submitted a medical summary from the Bureau of Prisons (“BOP”), dated April 8, 2020, indicating that he has the following diagnoses: Parkinson's disease, major depressive disorder, acute sinusitis, diabetes mellitus (type II), hyperlipidemia, ulcerative colitis, and COVID-19 virus infection.”
* Terminal Island, hospitalized in April 2020
* COVID-19 positive, “The parties agree that it remains unclear whether recovering from COVID-19 renders one immune from new infection”
  + “At the very least, the Court disagrees with the government's position that defendant would be at lower risk of reinfection at Terminal Island, which has seen seven prisoners die of COVID-19 and has recorded the second-highest number of infected prisoners in the BOP system, than he would at a halfway house.”
* Release August 2023

<https://www.nbcnews.com/health/health-news/some-have-tested-positive-covid-19-after-recovering-what-does-n1210361> - but not contagious?

<https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19>

**NO CONFIRMED CASES**

United States v. Dana, 2020 WL 3056791, at \*2 (D. Or. June 9, 2020)

* 59 years old, two pulmonary embolisms, cancer, compromised immune system and history of tobacco and methamphetamine use and that causes shortness of breath
* FCI Sheridan, no cases
  + “The BOP’s information, however, is only of limited value” due to lack of testing
* Release date is December 2020, has served 80% of 48-month sentence
* Has been approved for transfer to halfway house in July 2020
* Meets 1B1.13 - “When a defendant has a chronic medical condition that may substantially elevate the defendant's risk of becoming seriously ill or dying from COVID-19, that condition may satisfy the standard of extraordinary and compelling reasons.”
  + Alternatively says court has discretion beyond 1B1.13

United States v. Flores, 2020 WL 3041640, at \*1 (W.D.N.Y. June 8, 2020)

* Danbury FCI, served approximately 20 months of the 37-month sentence
* 44 years old, cancer survivor, thyroid cancer
* Obese, high blood pressure, prediabetic
* Criticizes conditions at Danbury

United States v. Krashna, 2020 WL 3053194, at \*1 (N.D. Cal. June 8, 2020)

* Release date is September 5, 2020
* 51 years old, heart attacks and strokes, coronary artery disease
* Chest pain and shortness of breath while in custody
* Government only opposes based on exhaustion
* Court stays release until 30 days are up

United States v. Fettis, 2020 WL 3027198, at \*1 (C.D. Ill. June 5, 2020)

* 68 months, release date May 2022, firearms and marijuana
* FCI Talladega
* No disciplinary violations, good behavior
* Had firearms but no violence or force in his crime
* 65 years old, high blood pressure, sleep apnea, COPD, lung infections, cites statistics

United States v. Asher, 2020 WL 3424951, at \*1 (N.D. Ga. June 15, 2020)

* Asher is a 54-year-old man who suffers from a myriad of serious health conditions that make him more susceptive to becoming infected with COVID-19, including Parkinson's Disease with dysphagia (swallowing problems), chronic heart disease, hypertension, and arrhythmia, and his medical records suggest that he could have Ankylosing Spondylitis, an autoimmune disease
* FCI Jesup, child pornography
* Discusses conditions of detention and communicable diseases, inability at FCI Jesup to socially distance
  + “physical layout of the low security satellite camp where he is housed makes it impossible to socially distance. Mot. for Compassionate Release at 34. Asher cohabits a dormitory-style room rather than an individual or two-person cell. Id. Sixty inmates in the unit share four sinks, showers, and toilets. Id. The unit has one entrance and one common room.”
  + DOJ guidance - United States v. Firebaugh, No. 16-20341-CR-UU (S.D. Fla. June 1, 2020) [Doc. 183-2] (“On May 18, 2020, the Department of Justice issued internal guidance which directs that the Government concede that Defendants who have certain CDC risk factors, including ... [i]mmunocompromised ... [s]erious heart conditions, including ... pulmonary hypertension ... can establish that ‘extraordinary and compelling reasons’ warrant the reduction in sentence

United States v. Feucht, 2020 WL 2781600 (S.D. Fla. May 28, 2020)

* FCI Jesup, diabetes, hypothyroidism, hypertension, hyperlipidemia, obesity, edema
* 151-month sentence for child porn, served 112, November 2021
* I find that the 30-day period should be measured from the date on which a prisoner submits his or her request to the BOP, not the date the request is received by the Warden. In making this determination, I am guided by the “prisoner mailbox rule,” which provides that a *pro se* prisoner’s legal submission is considered filed on the date it is delivered to prison authorities for mailing,” rather than the date it is received by the Court.”
* Waives exhaustion, based on undue prejudice
* Even if there were no confirmed cases, still unsafe

United States v. Scott, 2020 WL 2467425, at \*3 (D. Md. May 13, 2020)

* “Multiple district courts have reasoned that “the First Step Act’s change in how sentences should be calculated when multiple § 924(c) charges are included in the same indictment constitutes an extraordinary and compelling reason under 18 U.S.C. § 3582(c)(1)(A).” See United States v. Owens, No. 97-CR-2546-CAB, ECF 93 at 4 (S.D. Cal. Mar. 20, 2020) (collecting cases). The court agrees with the reasoning of these courts.”
* FCI Jesup
* 1B1.13, not binding, can allow stacked 924(c) charges to serve as extraordinary and compelling reasons

United States v. Connor, 2020 WL 3053368, at \*1 (N.D. Iowa June 8, 2020)

* Rochester FMC and his projected release date is May 14, 2023, 210-month sentence, based on past criminal history
* Medical condition meets criteria even without COVID-19 -diabetes, diabetic neuropathy, hypertension, chronic kidney, vitamin deficiencies, heart failure, spinal issues, arthritis, ulcers, morbid obesity, multiple instances of respiratory failure, COPD, drug history, sleep apnea
* Disregards lack of confirmed cases, says it means little without knowing more about testing measures
* Grants release despite release plan sending defendant to Iowa veterans home that has COVID cases

United States v. Rountree, 2020 WL 2610923 (N.D.N.Y. May 18, 2020)

* FPC Schuyllkill, prison camp
* However, whether an individual BOP facility has reported a positive test is not dispositive, for several reasons. First, BOP’s self-reported numbers “must be treated with great caution, as the BOP has so far only tested for COVID-19 those prisoners who seem to be sufficiently unhealthy as to be in need of possible hospitalization…Second, even if BOP were testing for COVID-19 consistently enough that its statistics could be relied upon, prison still poses a significant threat to individuals with health conditions like Rountree’s because they serve as incubators that accelerate the spread of the disease
* “While the Court commends BOP’s efforts to stem the course of the virus, see Opp'n at 2–5, the ease of transmission within the prison environment, coupled with a dearth of testing, results predictably in deadly outbreaks of the disease.”
* Cites examples of mass testing
* Cites layout of prison camp, share water fountain and phones, share computers
* Emphasizes no violence in. drug offense
* Exemplary record during incarceration, rehabilitation, release warranted despite “somewhat lengthy criminal history” but occurred over 15 years ago
* Has 5 years (55 months) left on his sentence, 188-month sentence
  + Has served 85 months, release date January 2025
* Waives exhaustion

United States v. Burrill, 2020 WL 1846788, at \*4 (N.D. Cal., April 10, 2020)

* Warden accepted request then denied that it was proper request, lawyer supplemented in a letter; warden failed to take action
* Was at Duluth, no confirmed cases

United States v. Asaro, 2020 WL 1899221, at \*3 (E.D.N.Y. Apr. 17, 2020)

* “Still, absent more information about how much testing the BOP is conducting, it is possible that undetected cases are present in the facility

United States v. Hansen, 2020 WL 2219068, at \*2 (ND Ill. May 7, 2020)

* No confirmed cases at Terre Haute, but “the Court has no solid information about how much testing has been done, and it is only fair to say that the fact that there are no confirmed cases does not mean that no one in the prison has contracted coronavirus. And if and when that happens, it is likely to spread more quickly than in the general population due to, among other things, the difficulty of accomplishing social distancing in a prison environment and the constant influx of people coming and going from outside the prison, including correctional staff.

United States v. Early, 2020 WL 2112371, at \*3 (N.D. Ill. May 4, 2020)

* Diabetes and hypertension, Terre Haute
* Inmate’s history was “one of the worst histories of recidivism that this Court has seen in eighteen years as a lawyer and just over twenty as a judge.”
* Served most of his time, crediting time he could serve in RRC and home confinement
* Order is “cutting his overall sentence by a little over nine months, meaning that he would serve 133 months in custody as compared with 142. And it would be cutting his prison sentence by only seven weeks.”
  + Eliminating last 7 weeks
  + Release appropriate “so long as it is combined with a change to his supervised release conditions.”

United States v. Doshi[,](https://casetext.com/case/united-states-v-doshi-1?ref=ArmlS6!9tZ9hx)2020 WL 2556794 (E.D. Mich. May 20, 2020)

* 84-month sentence in November 2018, had recommended that inmate be placed in HC, release date was November 2023
* Waives exhaustion finding it futile and prejudicial “and defeat the goals of 3582”
* 64 years old, hypertension, diabetes, asthma, Lipitor for hyperlipidemia, coronary artery syndrome, hypertrophy, uses inhaler a lot
* Morgantown, “This fact is meaningless…for there is no evidence of how many inmates have been tested”

Howard v. United States, 2020 WL 2615509 (E.D. Mich. May 22, 2020)

* 60-month sentence for heroin and money laundering, at Morgantown
* Diabetes, hypertension, and asthma
* Hypertension, “The CDC states that people with hypertension are vulnerable because, a respiratory illness from COVID-19 could make it harder for a person’s heart to work, which can lead to a worsening of COVID-19 symptoms
  + Government argues only “pulmonary hypertension” and not primary hypertension counts, and diabetes and asthma are well managed”
  + “The Government’s arguments about medical minutiae, while noted by the Court, are dismissed as unpersuasive. Even if, assuming arguendo, Howard’s conditions do not independently and perfectly fit the definition of severity, as outlined by the CDC, his conditions still exacerbate each other, placing him in a much more vulnerable position than a healthy person, if he were to get COVID-19”

United States v. Acoff, 2020 WL 2781798 (D. Conn. May 29, 2020)

* 96 months, USP Lewisburg
* Close call, obesity, pulmonic stenosis
* 31 years old, substantial criminal record, Release date July 2022

United States v. Pabon, 2020 WL 2112265, at \*4-5 (E.D. Pa. May 4, 2020)

* 54 years old, Diabetes, hypertension, reflux, ulcer, etc, first time offender
* 46-month sentence beginning on April 19, 2019 (14 months), projected release is June 2022
* “Although the government represents that Lewisburg Camp has no cases of COVID-19, the government never says whether anyone has been tested. Only 2,700 of approximately 150,000 federal inmates in this country have been tested, and of those tested 70% have COVID-19.Correctional facilities that have made the decision to undertake mass testing have discovered dramatically higher numbers of infected inmates than previously imagined.
* Because the BOP has tested so few inmates, however, these statistics almost certainly underestimate the true number of infections and the number of affected BOP facilities.”
* Without mass testing—and any detailed information about the current conditions at the Lewisburg Camp—the Court may be getting a false picture. If the Court waits to act until the BOP confirms its first case of COVID-19 at Lewisburg, it may be too late for vulnerable inmates like Mr. Pabon. The Court is not willing to take that risk.

United States v. Amarrah, 2020 WL 2220008 (E.D. Mich. May 7, 2020)

* Defendant, 45 y/o, diabetic, hypertensive, asthmatic, served 21 months of 60 month sentence at FCI Loretto. Got three misconduct tickets. No cases at Loretto.
* Revoked pretrial bond due to obstruction of justice
* May 2020, Defendant has served 21 months of 60-month term
* “…unless and until FCI Loretto implements a universal testing regimen, the Court gives no weight to the zero “confirmed” COVID-19 cases statistic—particularly because BOP is housing detainees together, because the United States could not give the Court any information regarding current testing practices, and because basic disinfecting tools such as soap and hand sanitizer are not universally provided to the population. To the contrary, the Court finds that the lack of testing aggravates its concerns about Defendant’s likelihood to contract COVID-19 while in federal custody. Accordingly, the Court finds that extraordinary and compelling circumstances warrant a reduction of Defendant’s sentence. The current conditions of Defendant’s confinement at FCI Loretto, which Defendant has no power to alter, expose him to a substantial risk of contracting COVID-19.” (\*6)

United States v. Atkinson**,** 2020 WL 1904585, \*2-4 (D. Nev. Apr. 17, 2020)

* Discussing BOP’s “list” and confusion around it
* Crediting inmate account of cleaning supplies and conditions over BOP
* No confirmed cases at FCP Atwater
* Other courts throughout the country have noted the “obvious shortcomings” in the BOP's COVID-19 Action Plan: “First, testing inside prisons has been scant except for people who self-report symptoms—which means that statistics about the number of infections already in BOP facilities are largely meaningless. And second, the plan provides no additional protections for high-risk individuals
* Government “summarily contends” that inmate hasn’t met burden

United States v. Ben-Yhwh, 2020 WL 1874125 (D. Hawaii Apr. 13, 2020)

* Defendant, 73, psychiatric conditions, asthma, diabetes
* Court disagreed with mandatory minimum
* Waived exhaustion
* At an FMC with no confirmed cases, does not defer to BOP representations that it is taking “substantial proactive national measures to mitigate and contain the spread of COVID-19 within its facilities”

United States v. Moore, 2020 WL 2572529 (D Ore. May 21, 2020)

* 57-month sentence, release date June 2020
* Asthma requiring inhaler, respiratory issues after being shot
* “While there have been no identified cases of COVID-19 at FCI Sheridan as of the date of this opinion, infection can spread with deadly speed. Some BOP facilities have seen out breaks grow into hundreds of confirmed cases in a matter of weeks.”
* Cites “performance while in prison,” despite “leafy substance” found on a bed in his quarters
* “Takes seriously the government’s concerns,” as a result includes home confinement condition

United States v. Brown, 2020 WL 2091802, at \*6–7 (S.D. Iowa Apr. 29, 2020)

* Drastic mandatory minimum under 924(c)
* Despite no confirmed cases
* “The most natural reading of the amended § 3582(c) and § 994(t) is that the district court assumes the same discretion as the BOP director when it considers a compassionate release motion”
* FCI Williamsburg, no confirmed cases
  + “But these numbers almost certainly do not provide the whole picture. Testing appears to remain limited…Nor is it clear what the future holds as states, including South Carolina, FCI Williamsburg's host, relax restrictions on gathering for free residents, including BOP employees.
  + Recognizing BOP’s “emergency measures”
* Hypertension and “listed a history of asthma, although recent medical records do not mention it”
  + Rejects government argument that “Defendant’s evidence is insufficient and that he never really had asthma”
* 210-month sentence, but judge recognized it was too long, mandatory minimum
* Defendant's counsel consulted Doctor Mark J. Davis, who works for the California Department of Corrections and has experience fighting epidemics abroad. ECF No. 234 at 1. Davis found the foregoing medical problems as well as Defendant's history of chronic migraines and methamphetamine abuse concerning in light of COVID-19. Id. at 4…These are all respiratory concerns that can have devastating and life-threatening consequences for a person infected with [COVID-19]. The risks of death are even higher for someone housed in a closed population such as prison and especially high for Mr. Brown given his medical history and presentation. Not every inmate is at serious risk. Mr. Brown is an exception. He has unique medical concerns that present a heightened risk for infections and serious medical complications if he contracts the COVID-19 disease.
* Finds exhaustion met despite request being filed in 2019, 1B1.13 not binding, discusses Congress’s intent in expanding
* Cites compassionate release grants granting in part due to massive sentencing disparities caused by changes to 924(c)

United States v. Joseph, 2020 WL 2315806 (N.D. Cal. May 8, 2020)

* Over 60 years old “and suffers from lung scarring resulting from coccidioidomycosis, also known as Valley Fever”
* False statement for passport, sentenced to 12 months starting January 2020; at Atwater
* Sent email to warden who told him to see the unit team, so he filled out BP form; court continued to let the BOP process play out
  + BOP denied furlough but selected for home confinement

Poulios v. United States, 2020 WL 1922775 (E.D. Va. Apr. 21, 2020)

* Length criminal history of armed robbery and credit card fraud
* Waives exhaustion, “The COVID-19 pandemic, which could result in catastrophic health consequences for petitioners vulnerable to infection, implicates all three exceptions justifying the waiver of the exhaustion.”
* Finds 1B1.13 not binding
* “Petitioner suffers from serious health conditions that would render him virtually defenseless if he were to become infected with COVID-19.”
* Inmate at FCI Beckley

United States v. Rahim, 2020 WL 2604857 (E.D. Mich. May 21, 2020)

* 72-month sentence, FCI Morgantown, release date March 8, 2024 and began serving sentence January 28, 2019
* 67 years old, COPD, diabetes, hypertension, coronary artery disease, hypertrophy, congestive heart failure
* “Government contends that notwithstanding his underlying conditions, Defendant is at no greater risk of contracting COVID-19 than any other inmate.” – response: “But it is the heightened risk of severe illness…”
* Stats on elderly people and COVID-19
* Recognizes that FCI Morgantown has no cases, “But the Court is not persuaded that a lack of confirmed cases alone is a compelling reason not to grant relief if a defendant otherwise qualifies”
* Releasing defendant “under these unusual circumstances—his poor health and the COVID-19 pandemic—will not undermine the goal of general deterrence”

Wise v. United States 2020 WL 2614816, at \*2 (D. Md. May 22, 2020)

* Releasing “despite Wise’s long history of criminal convictions in Maryland courts, he had never served a lengthy period of incarceration”
  + “Consistent with Wise’s lifelong struggle with drug addiction”
* Diabetes, heart disease, hypertension, chronic kidney, asthma, gout, arthritis, all medicated
* Allenwood Low
* Release date June 2024, 72-month sentence
* Noting “for many years the safety valve of § 3582 languished” until First Step Act, similarly finds not bound by 1B1.13, says binding is “minority view”
* The virus is highly contagious; it spreads “easily and sustainably” from person-to-person.*See Coronavirus Disease 2019 (COVID-19), How COVID-19 Spreads*, CTR. FOR DISEASE CONTROL & PREVENTION (Apr. 2, 2020), https://bit.ly/2XoiDDh. Asymptomatic carriers can spread COVID-19, and scientists estimate that the average infected person transmits the disease to between two and four others. *See*Jenny Gross & Mariel Padilla, *From Flattening the Curve to Pandemic: A Coronavirus Glossary*, N.Y. TIMES (Mar. 18, 2020), <https://nyti.ms/3aW4yAI>.
* Discusses inability to employ effective social distancing measure sin prison

United States v. Pomante, 2020 WL 25130-5 (E.D. Mich., May 15, 2020)

* 12-month sentence, wire fraud
* Sentenced for “gain” but loss amount was $107 million
* 69 years old, Morgantown facility, chronic kidney, kidney cancer, hypertension, obesity, diabetes
* Notes staff can get virus from people in community and bring it in

United States v. Readus, 2020 WL 2572280 (E.D. Mich. May 21, 2020)

* 60-month sentence for fentanyl and felon with firearm, 60 months, projected release date is March 2, 2022
* FCI McKean, court had recommended HC, BOP said no
* COVID-19 fits under 1B1.13
* Obesity, 33 years old, sleep apnea (severe), “Such respiratory problems can only predict an adverse reaction to COVID-19,” hypertension (emerging medical consensus),” prediabetes, “Courts have found that prediabetes and obesity have been sufficient”
* No cases but “this fact is meaningless…for there is no evidence on the record that any inmates have been tested”
* Government “emphasizes the assiduous measures the BOP is taking…including restrictions on visitors, mandatory quarantines, and rapid medical responses. These measures are good, but without testing….”
  + “Past the age of hotheaded youth”
  + “Has done several stints in prison, starting when he was a teenager, the two years and seven months he’s served in BOP custody has been several times longer than his earlier sentences, and the Court believes that he has learned from his time at FCI McKean. His prison infractions are minor and non-violent.”
  + Takes classes, “turning point,” GED, works as orderly
  + “Readus’s crimes are serious, but his five-year sentence was meant to bring him to a place of maturity, not to put his health or life in jeopardy. The specific and general deterrence of similar criminal conduct was accomplished at the date of his original sentence. Neither Readus nor anyone else contemplating crimes such as is would gamble that another pandemic might arise and give him the opportunity to petition for compassionate release.”

United States v. Perdigao, 2020 WL 1672322 (E.D. La., April 2, 2020)

* Court concerned with inmate’s “access to quality medical care while in the custody of the Bureau of Prisons”
* 188-month sentence, inmate had completed over 86%
* Bradycardia, atrial fibrillation, colitis, hypertension
* Inmate at FCI Pollock

United States v. Schafer, 2020 WL 2519726, at \*1 (W.D.N.Y. May 18, 2020)

* Allenwood FCI, no cases, government does not contest condition but says it is well-controlled
* D says steps “have proven ineffectual and a lack of testing throughout the BOP makes it impossible to definitively state that there are no individuals in the facility who have the virus; only that there are no positive tests”
* Cites Manafort, who was in facility with no COVID-19 cases
* 1B1.13 is “anachronistic,” says catch-all provision is now for the court’s discretion
* Asthma is the condition, seems to be the sole reason
* Allenwood is overcrowded, 30% over-capacity
* Court cites experience at Buffalo Federal Detention Facility that had sudden spike after no reported cases
* Defendant had awful record on pretrial release, violated and was remanded into custody, but was related to his underlying substance abuse issues
* 30-month sentence, began serving in late 2018; scheduled to be released on October 2020, halfway house in July 2020

Casey v. United States, 2020 WL 2297184, at \*2 (E.D. Va. May 6, 2020)

* Moreover, the Government's concession that Petitioner “has met his burden establishing extraordinary and compelling reasons for compassionate release,” implicitly acknowledges the harm that could come to Petitioner if there is an outbreak of COVID-19 at Petersburg Low.

United States v. Agomuoh, 2020 WL 2526113 (E.D. Mich., May 18, 2020)

* 69 years old, hypertensive heart disease, diabetes, glaucoma
* Morgantown, 60-month sentence
* As of May 2020, had served 9 months of 60-month sentence

United States v. Gonzalez, 2020 WL 2766048 (S.D.N.Y. May 28, 2020)

* 2014, 14-year sentence, consecutive from two cases
* “career of crime spanning from 1997 to 2011”
* Hypertension and obesity, 45 years old, has served 8 years in prison, only one incident for non-violent incident

United States v. Chester, 2020 WL 2771077 (W.D.N.Y. May 29, 2020)

* 44 years old, failure to register as sex offender, child sex abuse was underlying, 21-month sentence, revoked supervised release
* Heart failure, pulmonary hypertension
* FMC Devens
* Anachronistic nature of 1B1.13
* Discusses BOP failures

Loyd v. United States, 2020 WL 2572275, at \*2 (E.D. Mich. May 21, 2020)

* Here, Loyd has presented “Other Reasons” in combination with his serious medical conditions, to warrant compassionate release. While the COVID-19
* Was initially told he was eligible for HC and encouraged to apply, then told after new guidelines that he hadn’t served 50% of his sentence, “After his family began to prepare for his release”
* Obesity, hypertension, immunocompromised from cortisone hip injections
  + Being treated for hypertension
  + Cites osteoarthritis
* The CDC states that people who have a prolonged use of treatments like these have weakened immune systems and are less able to fight a virus like COVID-19. *Groups at Higher Risk for Severe Illness*, CENTERS FOR DISEASE CONTROL AND PREVENTION, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-highim-risk.html (last visited May 21, 2020), \*3
* Rejects government’s argument that “these conditions are not severe enough”
* Rejects no confirmed cases, Loretto, “The Court refuses to join FCI Loretto in its ignorance of a deadly virus hidden in plain sight”
* Even if, assuming arguendo, Loyd’s conditions do not independently and perfectly fit the definition of severity, as outlined by the CDC, all of his conditions compounded still place Loyd in a much more vulnerable position than a healthy person, if he were to get COVID-19.
* “While inmates are being subjected to mandatory quarantine, they are still not provided basic protections from the virus in the facilities. Inmates must purchase their own soap. Hand sanitizer is contraband. In low security facilities, inmates are being quarantined with their own unit, as opposed to individual cells, preventing them from complying with social distancing recommendations”

**Mental Health**

United States v. Lavy, 2020 WL 3218110, at \*1 (D. Kan. June 15, 2020)

* Release date November 17, 2020, 48-month sentence, Forrest City Low FCI
* Bipolar, depression, hypertension, 58 years old
* “But the CDC has not yet determined whether hypertension alone renders an individual particularly vulnerable to severe illness stemming from COVID-19. The Court therefore considers Defendant’s age and hypertension in connection with his two mental health diagnoses, bipolar disorder and major depressive disorder.”
* The Court finds there is scientific support linking bipolar disorder and immune system dysfunction. And there is at least some indication that a substantial subset of individuals with major depressive disorder and bipolar disorder exhibit atypical immune responses
* Michael Maes & Andre F. Carvalho, The Compensatory Immune-Regulatory Reflex System (CIRS) in Depression and Bipolar Disorder, 55 MOLECULAR NEUROBIOLOGY 8885 (2018)
* Joshua D. Rosenblat & Roger S. McIntyre, Bipolar Disorder and Immune Dysfunction: Epidemiological Findings, Proposed Pathophysiology and Clinical Implications, NAT'L INST. OF HEALTH (Oct. 30, 2017), https://doi.org/10.3390/brainsci7110144

Doe v. Barr, 2020 WL 1984266 (N.D. Cal. Apr. 27, 2020)

* Ordering the release of a foreign national, detained in a county jail awaiting for his removal proceedings, in part because he suffers from PTSD and “[g]rowing evidence demonstrates that PTSD, anxiety/stress, and depression can lead to decreased immune response and increased risk of infections” and thus “compound his susceptibility” to COVID-19”

United States v. Ozols, 2020 WL 2849893 (S.D.N.Y. June 2, 2020)

* Inmate would get deported
* Served 75% of 39-month sentence
* 3553 “The balance weighs differently in the current circumstances. Importantly, due to the COVID-19 pandemic, the history and characteristics of the defendant and the need to provide the defendant with needed medical care, § 3553(a) now weigh heavily in favor of defendant’s release, given the health risk that continued incarceration poses to him.”
  + Was not mastermind of his offense, has shown remorse
* 42 years old, anxiety, depression, family history of heart and lung disease

**USSC Policy Statement 1B1.13 Definition NOT Binding**

United States v. Razzouk, 1:11-cr-00430, Dkt. 136 (E.D.N.Y., April 19, 2020)

* “anachronistic because it pre-dates the First Step Act itself”

United States v. Delgado, 2020 WL 2464685, at \*2 (D. Conn., April 30, 2020)

* Citing “majority of district courts” finding that courts can independently define “extraordinary and compelling reasons.”

United States v. Mace, 4:17-cr-00618, Dkt. 56 (S.D. Tex., April 1, 2020)

* “Because the policy statements were not updated after enactment of the First Step Act, the Court may determine whether the defendant has shown extraordinary and compelling reasons for compassionate release

United States v. Asaro, 2020 WL 1899221, at \*3 (E.D.N.Y. Apr. 17, 2020)

* “anachronistic because it pre-dates the First Step Act itself,” courts make an “independent assessment,” using 1B1.13 for “guidance”

United States v. Jepsen, 2020 WL 164-232, at \*4 (D. Conn., April 1, 2020)

* “The Court may determine that ‘extraordinary and compelling’ reasons may exist beyond those delineated by the commentary.”

United States v. Atkinson, 2020 WL 1904585, at \*3 (D. Nev. Apr. 17, 2020)

* “The presence of COVID-19 . . . necessitates a more expansive interpretation of what self-care means” to include Covid-vulnerability coupled with the inability to practice CDC-recommended procedures to safeguard against transmission)

United States v. Hird, 2:13-cr-39-TJS, Dkt. No. 650 (E.D. Pa. May 19, 2020)

* Government response, concession that “the risk of COVID-19” to a vulnerable inmate “presents ‘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”)

United States v. Perez, 2020 WL 1180719, at \*2 (D. Kan. Mar. 11, 2020)

* Holding “a majority of federal district courts have found that “the most natural reading of the amended § 3582(c) and § 994(t) is that the district court assumes the same discretion as the BOP director when it considers a compassionate release motion properly before it.”

**SERVED ONLY SHORT AMOUNT OF TIME**

United States v. Brannan, 2020 WL 1698392, at \*1 (S.D. Tex. Apr. 2, 2020)

* Release of defendant who had only served 9 months of a 36 months Sentence for Fraud, based on "extraordinary and compelling circumstances."

United States v. Delgado, 3:18-cr-00017-VAB, Dkt. 76 (D. Conn., April 30, 2020)

* Defendant only 29 months into 120-month sentence

United States v. Echevarria, 2020 WL 2113604, at \*3 (D. Conn., May 4, 2020)

* Defendant had asthma, 9 months into 48-month sentence
* Despite “substantial criminal record”
* “Strong pretrial adjustment” and “substantial rehabilitative efforts” prior to imposition of the sentence

United States v. Barber, 2020 WL 2404679 (D Ore. May 12, 2020)

* Drug offense, 60 months starting in August 2019
* Served 8.5 months, at Lompoc, projected release date is January 2024
* Regarding 1B1.13, courts are “not constrained by the BOP’s determination,” notes “a majority of federal district courts”
* Hypertension, obesity, diabetes
* Hospital Care Unit at Lompoc not a sufficient measure
* Government concedes “if an inmate has a chronic medical condition that has been identified by the CDC as elevating the inmate’s risk of becoming seriously ill from COVID-19 that condition may satisfy the standard of ‘extraordinary and compelling reasons’
* Was sentenced above the Guidelines due to mandatory minimum of 5 years
* Rejects 14-day request, orders immediate release and cites other courts that have immediately released inmates
* Has tested positive for COVID-19

United States v. Locke, 2020 WL 3101016, at \*1 (W.D. Wash. June 11, 2020)

* Defendant at FDC Sea-Tac, severe obesity, chronic kidney disease, diabetes, severe obstructive sleep apnea, shortness of breath, and recurrent chest pain
  + Had been in diabetic coma at one point
* 62-month sentence, has only served 6 months, scheduled release is May 2024

**REASONS BASED ON CARETAKER/DEPENDENTS**

United States v. Hansen, 2020 WL 2219068, at \*2 (N.D. Ill. May 7, 2020)

* Hansen was and would reasonably be expected to be Mr. Hansen's primary caregiver
* Hansen had several conditions too

United States v. Kataev, 1:16-cr-763-LGS, Dkt. No. 778 (S.D.N.Y. Apr. 14, 2020)

* 51-year-old defendant suffering from “chronic sinusitis” and whose wife is disabled such that she cannot care for their 10-year-old child
* “Defendant’s unique health and family circumstances together, and in light of the COVID-19 public health crisis, constitute ‘extraordinary and compelling reasons’ to modify Defendant’s sentence”
* Release date February 2021, Otisville, 36-month sentence
* Government does not object

United States v. Reyes, 2020 WL 1663129, at \*3 (N.D. Ill. Apr. 3, 2020)

* Further, Reyes attached a letter from an aunt who has stage four cancer and who notes that managing her care has been difficult for the Reyes family. She writes that “[Reyes’s] help is desperately needed.” (Id.) The policy statement’s third condition mentions only a spouse or dependent children, but the Court again notes that the “other” condition is meant to give discretion and especially recognize non-traditional family arrangements and the need for others in the family to contribute when a relative is sick. Thus, Reyes’s family circumstances contribute to allowing the Court to make a finding that extraordinary and compelling circumstances exist.
* Finally, although rehabilitation alone cannot be an extraordinary and compelling circumstance, see 28 U.S.C. § 994(t), the Court is entitled to consider rehabilitation and give it appropriate analytical weight. The Court finds that Reyes has compiled an impressive record of rehabilitation.

United States v. Brewington, Jr., 2:12-cr-00009-JPJ, Dkt. 279 (W.D. Va., May 11, 2020)

* Release date November 2020
* Incapacity of his mother, who is caretaker to his daughter, and COVID

United States v. Reed, 2020 WL 3128904, at \*1 (N.D. Cal. June 13, 2020)

* Lompoc, in custody since 2012, release date 2025
* Diabetes, hypertension, obesity
* Is needed as primary caretaker for spouse who has epilepsy and is recovering from back surgery and parent to son
* Government argues diabetes and hypertension are “resolved”
* Regarding caretaker argument:
  + These circumstances give rise to additional burdens in light of the shelter-in-place orders and concomitant uncertainties in school and childcare brought on by the pandemic. These facts, taken together, rise to a level sufficiently compelling to support a reduction of sentence under the circumstances.

**BOP Historically Reluctant**

Until 2013, on average, “only [twenty-four] inmates were released each year.” *Hearing on Compassionate Release and the Conditions of Supervision Before the U.S. Sentencing Comm'n* (2016) (statement of Michael E. Horowitz, Inspector General, Dep't of Justice). That number increased to eighty-three inmates between August 2013 and September 2014 following complaints to the BOP from the Inspector General's office. *Id.* Since Congress still amended the program following this increase, one can infer Congress thought eighty-three was still insufficient. Because rather than “effectively ratif[ying]” the BOP's position, Congress sought to overturn it by statute. *Brown & Williamson Tobacco Corp.*, 529 U.S. at 144, 120 S.Ct. 1291.

The Act listed these changes under the title of “Increasing the Use and Transparency of Compassionate Release.” § 603(b), 132 Stat. at 5239. That title is “especially valuable” here. *Yates*, 135 S. Ct. at 1090. The Court assumes the BOP Director faithfully executes the narrowly drawn policy and program statements related to compassionate release. Therefore, the only way direct motions to district courts would increase the use of compassionate release is to allow district judges to consider the vast variety of reasons that may be “extraordinary and compelling.”

**Informal Requests/Missing Records**

United States v. Head, 2020 WL 3180149, at \*3 (E.D. Cal. June 15, 2020)

* Noting “at least two other district court have found that the “30-day period should be measured from the date on which a prisoner submits his or her request to the BOP, not the date the request is received by the Warden.” United States v. Feucht, No. 11-CR-60025, 2020 WL 2781600, at \*2 (S.D. Fla. May 28, 2020); see also United States v. Resnick, No. 14 CR 810 (CM), 2020 WL 1651508, at \*6 (S.D.N.Y. Apr. 2, 2020),” prisoner mailbox rule
* Asthma, despite not being reported consistently on health records, and defendant himself stating he was healthy and not mentioning asthma in his PSR
  + Asthma is chronic and cannot be cured, symptoms vary over the years
  + Cites cases where asthma was established through declarations from defendant and wife
  + Occasional references in record is enough

United States v. Echevarria, 2020 WL 2113604, at \*2 (D. Conn. May 4, 2020)

* Here, I find that Mr. Echevarria has satisfied that requirement. He submitted an “Inmate Request to Staff” form dated March 29, 2020, in which he requested to “be placed in home confinement to complete [his] sentence” due to his asthma and the “COVID-19 pandemic.” ECF No. 54-3. During the telephonic status conference on May 1, 2020, the Government stipulated that the warden of Mr. Echevarria’s facility received this request on March 29 or shortly thereafter. Because 30 days have elapsed since the BOP’s receipt of Mr. Echevarria’s request to modify his sentence, Mr. Echevarria has exhausted his administrative remedies, as required by statute.

United States v. Cassidy, 2020 WL 1969303, at \*1 (W.D.N.Y. Apr. 24, 2020)

* Cassidy twice submitted requests for compassionate release to the Bureau of Prisons. He submitted his first request on April 4, 2020, by way of an “Inmate Request to Staff” form addressed to his case manager and through a contemporaneous email to the warden. (See Docket No. 57-1, pp. 3-5.) He submitted his second request on April 15, 2020, by way of another “Inmate Request to Staff” form addressed to his case manager. (See Docket No. 57-1, p. 2.) While the government represents that Cassidy never sent his email to the warden and never submitted his first request to his case manager, it has submitted no affidavits in that regard and, in fact, it readily obtained and submitted copies of these documents that were reportedly never received.

United States v. Reid, 2020 WL 2128855, at \*2 (N.D. Cal. May 5, 2020)

* Reid has satisfied these requirements. First, he has exhausted his administrative remedies because more than thirty days have now lapsed since he, on April 4, 2020, petitioned the warden at Taft for relief in light of the COVID-19 pandemic. See Mot. at 29–30 (“Inmate Request to Staff”)

United States v. Brunston, No. 18-CR-40145, Dkt. 56 (S.D. S.Dak.)

* BOP said there was no request, probation had to obtain all material from BOP pursuant to court’s standing order, revealed stamped copy

United States v. Saldana, No. 16-CR-00116 (D. Ida)

* Govt says BOP and case manager reviewed records and reported that BOP had no record of request, defendant responded with copy of email

United States v. Resnick, 2020 WL 1651508, at \*5 (S.D.N.Y. Apr. 2, 2020)

* Request submitted on or about February 26, 2020. It was not stamped received by the warden's office until March 16, 2020

United States v. Trent, 2020 WL 1812214, at \*1 (N.D. Cal. Apr. 9, 2020)

* “The Government also argues that Trent failed to exhaust his administrative remedies. But that argument relies entirely on the BOP’s representation that it cannot confirm that Trent submitted an earlier request for compassionate release. Trent represents that he did submit such a request. Confronted with the conflicting evidence, the Court credits Trent’s representation, which is based on direct knowledge rather than failure to confirm the existence of a filing from over a month ago.”

United States v. Young, 2020 WL 2614745, at \*2 (W.D. Wash. May 22, 2020)

* “Confronted with the apparently conflicting evidence, the Court credits Young’s representation, which is based on direct knowledge rather than failure to confirm the existence of a filing from over a month ago,” finds exhaustion met
* Despite best efforts, 70% tested positive at Lompoc
* 64 years old, hypertension and chronic kidney disease, African American
* Long battle with addiction
* 60-month heroin sentence, had only served 15 months
* Granted despite “the majority of the factors weigh against compassionate release”

United States v. Bess, 2020 WL 1940809, at \*2 (W.D.N.Y. Apr. 22, 2020)

* Court “finds that the request was submitted on April 8, 2020” even though Government claimed it was not received until a week later

United States v. Turner*,* No. 2:17-cr-000132 (E.D. Pa)

* BOP told the government no records, as told by social worker, defendant provided proof and the government conceded

**Halfway House**

United States v. West, 1:17-cr-390-AT-1 (N.D. Ga., March 30, 2020), Dkt. 53

* “BOP’s somewhat restrictive definitions of compassionate release under its January 2019 policy”
* At-risk, and will place others at risk, including staff members at serious risk
* Positive cases at Arizona RRC
* Warranted whether in prison or halfway house
* Only had a few months left

United States v. Garcia-Zuniga, 2020 WL 3403070, at \*2 (S.D. Cal. June 19, 2020)

* Defendant argues that extraordinary and compelling reasons for a modification exist because: (1) despite the court's recommendation, she did not have the opportunity to participate in the MINT program; (2) she has remained at GEO for most of her pretrial detention; (3) she was returned to GEO soon after giving birth and has not seen or held her infant child since; (4) the COVID-19 pandemic has led to lockdown of all federal facilities and a discontinuation of social visitation and programming; (5) transfers between BOP facilities after sentencing are indefinitely suspended; and (6) the court imposed a split sentence for her codefendant, Anahi Angulo, who will soon be placed in an RRC because of the structure of her sentence.
* Holding “congressional intent - specifically with respect to § 3582(c)(1)(A) - supports providing federal courts discretion to determine whether § 3582(c) movants have established extraordinary and compelling reasons justifying compassionate release, 1B1.13

United States v. Campagna, 2020 WL 1489829 (S.D.N.Y. Mar. 27, 2020)

* Was in RCC

United States v. Jepsen, 2020 WL 1640232 (D. Conn. Apr. 1, 2020)

* Waiving exhaustion
* Immunocompromised defendant with 8 weeks left to serve in light of severe risks posed by COVID-19
* Halfway house
* Government does not object

United States v. McPherson, 3:94-cr-5708, Dkt. No. 209 (W.D. Wash. Apr. 14, 2020)

* Releasing defendant serving astronomical sentence on stacked § 924(c) based on injustice of sentence and risk factors for COVID-19, noting that no “civilized society” could permit continued incarceration under these circumstances

United States v. Wen, 2020 WL 1845104 (W.D.N.Y., April 13, 2020)

* 48 year old with asthma, shortness of breath, sinusitis
* Eligible for home confinement in July 2020, release date October 2020
* RCC Hope Village, inmate was there

United States v. Connell, 2020 WL 2315858 (ND Cal. May 8, 2020)

* Releasing inmate slated to go to RCC June 9, 2020

United States v. Webster, 2020 WL 618828, at \*4 (E.D. Va. Feb. 10, 2020)

* Defendant submitted his request to the BOP staff.

United States v. Gamboa, 2020 WL 3091427, at \*1 (D.N.M. June 11, 2020)

* May 13, 2020, the BOP placed Defendant in home confinement
* 120-month sentence and 60-month consecutive for 180 months, began sentence May 2010, projected release is February 2023
* Rectal abscess, Crohn’s disease, immunosuppressant meds
* Rejects government’s argument that him in HC makes this moot

**Unopposed Motions**

United States v. Powell, No. 1:94-cr-316-ESH, Dkt. No. 98 (D.D.C. Mar. 28, 2020)

* granting unopposed motion for compassionate release in light of COVID-19
* Waiving exhaustion, finding it “would be futile” to require defendant to first exhaust in light of open misdemeanor case
* 55-year-old with sleep apnea and asthma
* 3 months left on 262-month sentence
* Recognizes futility exception to exhaustion

United States v. Johnson, 2020 WL 3316221, at \*1 (D. Md. June 17, 2020)

* Johnson’s asthma and the associated risk of serious complications due to COVID-19 creates an extraordinary and compelling reason warranting compassionate relief
* Government consents
* Release October 2020

United States v. Holmers, 2020 WL 3036598, at \*1 (D. Minn. June 5, 2020)

* Unopposed
* 42 years old, “Elevated body mass index, and that he suffers from high blood pressure, hypothyroidism, sleep apnea, anxiety, and depression”
* Eligible for halfway house in 6 months, 120 months sentence
* FCI Oxford
* “Combination of conditions will reasonably ensure the safety of the community”

United States v. Oreste, Case No. 1:14-cr-20349-RNS-1, Dkt. No. 200 (S.D. Fla. Apr. 6, 2020)

* Unopposed motion
* 60 months into 100-month sentence, release date June 2022
* Renal failure, heart failure, respiratory illnesses, heart surgery in January 2017 following heart attack

United States v. Campagna, 2020 WL 1489829 (S.D.N.Y. Mar. 27, 2020)

United States v. Hernandez, No. 18-cr-20474, Dkt. No. 41 (S.D. Fla. Apr. 2, 2020)

* granting unopposed motion for compassionate release for defendant with cancer & immunosuppression and just under 12 months left to serve on 39-month sentence);

United States v. Clagett, Case No. 2:97-cr-265-RSL, Dkt. No. 238 (W.D. Wash. Apr. 9, 2020)

* stipulated motion
* 70 years old, diabetes, hypertension, coronary artery, Butner, BOP agreed

United States v. Gentry, 2:19-cr-00078-CCC, Dkt. 98 (D.N.J., April 5, 2020)

* Government letter to court acknowledging exhaustion because Gentry not yet in BOP custody

United States v. Handy, 2020 WL 2487371 (D. Conn., May 14, 2020)

* RDAP counts towards time
* Release date February 2021, sentenced to 150 months in November 2011
* Talks about his course work and being a good student; RDAP was rescinded
* 53 years old, congestive heart failure, hypertension, obesity, “chronic knee issues for which he receives immunosuppressant steroid injections”
* At Wyatt Detention Center, “dozens of confirmed COVID cases”
* Government does not object