

Reporting Shenanigans

Failing to Report Private Prisons Numbers Until Reporters Demanded. “For the first time since coronavirus outbreaks began in federal prisons in March, the agency that oversees them is reporting the number of sick prisoners in 11 facilities run by private contractors.”

“The bureau released the new numbers days after The Marshall Project asked the agency why the official tally did not include its privately run prisons, and more than a month since officials began reporting federal prison numbers. A [one-page memo](#) with the new numbers, posted on the agency’s website Thursday, didn’t explain the delay in reporting them.”

BOP refuses to reveal how many tests it has run. “It also did not provide answers sought by doctors and public health experts fighting the pandemic, including how many prisoners were tested and how many guards and other staff members have been tested or confirmed positive.

The bureau won’t provide those numbers, according to BOP spokesman Justin Long. He did not explain why.”

BOP has clusters, but is refusing to perform mass testing; experts are positive would reveal more. “18 States that have responded to prison clusters with comprehensive testing have found that a majority of inmates are positive with coronavirus.

“You cannot convince me that there are only 110 cases in these prisons,” said Brinkley-Rubinstein. “It’s impossible to understand what is going on at the facilities.”

—Joseph Neff, *Why Did It Take the Feds Weeks to Report COVID-19 Cases In Privately Run Prisons?*, The Marshall Project (May 8, 2020) (available at: <https://bit.ly/2WG9zaL>)

Releases from Facilities with No Confirmed Cases

In *United States v. Atkinson*, No. 2:19-CR-55 JCM (CWH), 2020 WL 1904585, **2-4 (D. Nev. Apr. 17, 2020), Judge Mahan granted compassionate release to defendant Atkinson, notwithstanding that FCI Atwater where he was housed had seen no cases of COVID-19. Judge Mahan recognized how the realities of prison life make it impossible for medically vulnerable inmates like Mr. Atkinson to follow CDC guidelines to protect themselves in the face of COVID-19. *Id.* at *4. Similarly, in *United States v. Amarrah*, 2020 WL 2220008 (E.D. Mich. May 7, 2020), a district court in Michigan released a medically vulnerable inmate from FCI Loretto, despite no reported COVID-19 cases at the facility, because he could not adequately protect himself in line with CDC guidelines. *Id.* at *2-3. In fact, many judges have released inmates from prisons that have no confirmed cases of COVID-19. *See United States v. Ben-Yhwh*, No. CR 15-00830 LEK, 2020 WL 1874125 (D. Haw. Apr. 13, 2020); *United States v. Asaro*, No. 17-CR-127 (ARR), 2020 WL 1899221 (E.D.N.Y. April 17, 2020) (“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. Burrill*, No. 17-CR-00491-RS-1, 2020 WL 1846788, at *4 (N.D. Cal., April 10, 2020) (“Prison conditions mean incarcerated individuals,

as well as society as a whole, are safer the more defendants are released.”); *U.S. v. Kellogg*, No. 12-cr-383, ECF No. 405 at 10–11 (N.D. Ga. July 8, 2020) (“Nor is the court swayed by the government’s argument that the defendant is somehow safer in FDC SeaTac, just because no inmates there have tested positive for COVID-19.”).

Covid-Positive Releases + Risk of Reinfection

U.S. v. Armstrong, No. 18-cr-5108, ECF No. 45 at 6 (S.D. Cal. July 30, 2020) (granting release to recovered inmate; noting that another inmate at Terminal Island “was hospitalized and died . . . **after** the BOP had shown him recovered” and court “finds it particularly persuasive that an inmate, being housed at the same facility as Mr. Armstrong, was hospitalized and died after he was pronounced ‘recovered’ by the BOP . . . [A]nnouncing that an inmate has ‘recovered’ does not mean that Mr. Armstrong is completely safe”); *U.S. v. Davis*, No. 06-cr-20020, ECF No. 337, at (C.D. Ill. July 20, 2020) (granting sentence reduction for obese diabetic inmate who tested covid-positive where “the Court finds that there is a chance that Defendant may contract COVID-19 again” and “the CDC recognizes that it is possible for an individual who had COVID-19 to become infected again by the virus”); *U.S. v. Malufau*, 2020 WL 4218038, at *1 (D. Haw. July 22, 2020) (granting sentence reduction for inmate with obesity, diabetes, who “tested positive for [COVID]-19 and was hospitalized for nine days”); *U.S. v. Moore*, No. 15-cr-55, ECF No. 46 at 5-6 (C.D. Cal. July 16, 2020) (releasing “recovered” inmate and noting uncertainty regarding reinfection); *U.S. v. Carter*, No. 16-cr-156, at *1 (D.D.C. June 10, 2020) (granting sentence reduction for 76-year old sex offender having served 48-months of 80-month sentence and who had tested positive, was asymptomatic, “no other documented health issues,” and noting inmate was at “heightened risk of developing serious complications should he be exposed again,” and if released, inmate “will be able to more effectively avoid contracting COVID-19”); *United States v. Brown*, No. 2:18-cr-360, Dkt. No. 35 (N.D. Ala. May 22, 2020); *United States v. Arreola-Bretado*, Case No. 3:19-cr-3410, Dkt. No. 50 (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); *United States v. Fischman*, 16-cr-00246-HSG-1, ECF No. 76 (N.D. Cal. May 1, 2020) (granting compassionate release from Terminal Island to COVID-19-positive defendant); *United States v. Kriglstein*, 1:16-cr-00663-JCH-1, ECF No. 60 (D.N.M. Apr. 27, 2020) (staying for 5 days release of defendant who was tested for COVID-19 as condition of order granting compassionate release, with positive result); *United States v. Huntley*, No. 13-cr-119-ABJ, ECF No. 263, at 8 n.9, 10 (D.D.C. May 5, 2020) (ordering compassionate release for defendant who tested positive for COVID-19 while motion was being litigated); *Yeury J.S. v. Decker*, Case No. 2:20-cv-5071-KM, ECF. No. 20 (D.N.J. May 11, 2020) (ordering release for COVID-19-positive immigration detainee); *United States v. Kess*, No. ELH-14-0480, ECF No. 57 at 11-13 (D. Md. June 17, 2020); *United States v. Williams*, No. PWG-19-0134, ECF No. 70 at 7 (D. Md. June 10, 2020); *United States v. Heyward*, No. 17-cr-527, ECF No. 83 (D. Md. June 30, 2020) (releasing inmate with hepatitis C, hypertension, who tested positive and “has since recovered from the virus” and noting that government does not dispute that “secondary contraction of COVID-19 is possible”); *United States v. Jacobs*, No. 19-cr-149, ECF No. 84 (S.D. Ia. July 2, 2020) (defendant tested positive and has been treated with “Tylenol and sequestration,” continues to test positive a month later, and is

granted 3582 sentence reduction while still held at county jail); *U.S. v. Plank*, No. 17-cr-20026, at *5-6 (D. Kan. July 2, 2020) (noting “despite the BOP’s measures” over “one-third of the population has been infected” at Forrest City, and finds that despite being covid-positive, “the risk to defendant remains, as it has not been established that a person becomes completely immune to the virus after infection”); *U.S. v. Lipp*, No. 17-cr-40057 (D. Kan. July 2, 2020) (inmate already “contracted COVID-19 . . . which caused him to be hospitalized,” and “[a]lthough he has recovered, health concerns remain”); *U.S. v. McCall*, No. 18-cr-95, at 14 (M.D. Ala. June 4, 2020) (granting motion for covid-positive inmate with sickle cell disease; “the court finds the BOP completely unequipped with regard” providing adequate care and the “fatal risk posed to McCall if he does not receive this necessary care”); *U.S. v. Vazquez Torres*, No. 19-cr-20342, at *6 (S.D. Fla. July 10, 2020) (releasing defendant with diabetes, hypertension, and other medical issues due to “BOP’s apparent inability to adequately treat Defendant’s COVID-19 infection”).

Zero Cases in Facility

U.S. v. Campbell, No. 03-cr-4020, ECF No. 53 at 7 (N.D. Ia. July 31, 2020) (granting release and finding “no confirmed cases does not mean that COVID-19 is not present at the facility,” nor “does it mean there will not be a future outbreak at the facility”); *U.S. v. Gardner*, No. 14-cr-20735, ECF No. 48 at 5 (E.D. Mich. July 22, 2020) (releasing inmate from facility with no confirmed covid-cases because “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”).

“Zero confirmed COVID-19 cases is not the same thing as zero COVID-19 cases. The Bureau of Prisons recently discovered this when it found that 70 percent of the inmates it tested were positive for the disease. See Sadie Gurman, *More Than 70% of Inmates Tested in Federal Prisons Have Coronavirus*, *The Wall Street Journal* (Apr. 30, 2020), <https://www.wsj.com/articles/more-than-70-of-inmates-tested-in-federal-prisons-have-coronavirus-11588252023> (noting that “prison officials expect [this number] to rise as they expand testing with a focus on the hardest-hit facilities”).

The Southeast Regional Vice President of the Council of Prison Locals referred to “the inside of a[prison] institution” as a “little petri dish...a life and death situation [that prison officials then take] home to our families.” *Id.* This disease spreads asymptomatically, which means the Court and the prison system can take no comfort in a lack of confirmed cases, and all parties should be deeply concerned by the lack of universal testing of inmates and staff. See *How COVID-19 Spreads*, CDC (Apr. 3, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covidspreads.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fprepare%2Ftransmission.html.”

. . . . “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.

— *United States, v. Atheir Amarrah*, No. 17-20464, 2020 WL 2220008, at *6 (E.D. Mich. May 7, 2020)

Inadequate Medical Care

U.S. v. Vazquez Torres, No. 19-cr-20342, at * (S.D. Fla. July 10, 2020) (releasing defendant with diabetes, hypertension, and other medical issues due to "'BOP's apparent inability to adequately treat Defendant's COVID-19 infection"); *U.S. v. Delateur*, No. 18-cr-5364, ECF No. 82 at *6 (W.D. Wash. July 1, 2020) (granting release for multiple-time CP offender because defendant "presents multiple health issues that raise serious questions regarding the ability to provide adequate measures and medical care while incarcerated"); *United States v. Beck*, 425 F. Supp. 3d 573, 580–81 (M.D.N.C. 2019) ("Ms. Beck has invasive breast cancer and has received grossly inadequate treatment for her condition while serving her sentence in BOP custody. During the lengthy delays, her cancer spread to her lymph nodes. Absent judicial oversight, she is unlikely to receive better treatment at FCI Aliceville going forward. She is in urgent need of appropriate treatment to prevent the further spread of her disease and the potential loss of her life. These are 'extraordinary and compelling reasons' to reduce her sentence under § 3582(c)(1)(A)(i).").

Inadequate Mental Health Care

Bruno v. U.S., No. 17-cr-72, ECF No. 130 at 6–7 (E.D. Va. July 16, 2020) (releasing in part due to finding "mental health needs are being neglected" for inmate with bi-polar disorder and "[t]his outcome is plainly unacceptable").

Age

U.S. v. Curington, No. 12-cr-20115, ECF No. 645 at *2 (S.D. Fla. July 7, 2020) ("The virus presents a danger to senior inmates within correctional institutions. There is little ability to maintain social distance in confinement, and it is difficult—if not impossible—to practice other necessary behaviors, such as frequent hand washing to reduce the spread of the virus."); *U.S. v. Williams*, No. 15-20462, 2020 WL 4040706 (E.D. Mich. July 17, 2020) (granting compassionate release to a 68-year-old and placing him on a six-month period of home detention); *United States v. Carter*, No. 16-cr-156 (TSC), ECF No. 48 (D.D.C. June 10, 2020) (granting compassionate release to a 76-year-old defendant who "has no other documented health issues"); *U.S. v. Regas*, No. 391-cr-00057, 2020 WL 2926457 (D. Nev. June 3, 2020) (granting compassionate release to a 77-year-old incarcerated at a facility with no confirmed Covid-19 cases; finding that court's discretion to finding "extraordinary and compelling circumstances" is not limited to U.S.S.G. § 1B1.13 note circumstances).

Inability to Maintain Distance

Torres v. Milusnic, No. 20-cv-4450, ECF No. 45 at 17 (C.D. Cal. July 14, 2020) (“The physical configuration of the facilities at Lompoc—i.e., dormitories, multi-person cells, open configurations, community restrooms, and units/rooms shared by 8-10 person rooms precludes meaningful social distancing.”); *U.S. v. Curington*, No. 12-cr-20115, ECF No. 645 at *2 (S.D. Fla. July 7, 2020) (“The virus presents a danger to senior inmates within correctional institutions. There is little ability to maintain social distance in confinement, and it is difficult—if not impossible—to practice other necessary behaviors, such as frequent hand washing to reduce the spread of the virus.”).

Life Sentence Reduced

United States v. Jaen, 91-cr-814, ECF No. 505 (S.D. Fla. July 6, 2020) (reducing life sentence to time served for 81-year old convicted of 600-lb cocaine distribution and assault on federal officer); *United States v. Rice*, Case No. 1:03-cr-441 (D.D.C. July 8, 2020) (reducing life sentence to approximately 16.5 years); *United States v. Jenkins*, No. 4:93-cr-11 (W.D. Mich. June 12, 2020) (reducing life sentence based on age and multiple health conditions); *United States v. Naranjo*, No. 93-cr-418 (D.D.C. May 11, 2020) (granting compassionate release reducing life sentence to time served due to age and health conditions placing him at risk for COVID); *United States v. Smith*, 6:04-cr-2002 (N.D. Iowa July 10, 2020) (reducing mandatory life sentence to time served based on health conditions and COVID after serving approximately 16 years of sentence); *United States v. Rodriguez-Barron*, Case No. 2:94-cr-00559-GW (C.D. Cal. Jul. 9, 2020) (reducing then mandatory life sentence based on health conditions and COVID); *United States v. Barron*, 2:94-559-GW, Dkt. 424 (C.D. Cal. Jul. 10, 2020) (reducing life sentence based on age and health conditions); *United States v. Parker*, Case No. 2:98-cr-00749-CAS-1, 2020 WL 2572525, at *14 (C.D. Cal. May 21, 2020) (reducing life sentence to approximately 22 years, time served for 65-year-old defendant experiencing deteriorating health and particularly susceptible to COVID-19 due to several conditions resulting from the aging process); *United States v. Barrenechea*, Case No. 92-cr-00403-MMC-3, 2020 WL 2315638, at *1 (N.D. Cal. May 7, 2020) (granting compassionate release and reducing life sentence to 332 months time served for defendant with increased risk of illness from COVID-19); *United States v. Williams*, No. 3:04-cr-00095-MCR-CJK, ECF No. 91 (N.D. Fla. Apr. 1, 2020) (granting compassionate release of defendant who served 15 years of life sentence to aging prisoner with medical issues making him vulnerable to COVID-19); *United States v. Smith*, 2020 WL 2844222 (N.D. Iowa June 1, 2020) (reducing life sentence based on lung cancer and other medical conditions); *United States v. Kubinski*, No. 3:93-cr-28 (EDNC May 13, 2020) (reducing life sentence based on age and deterioration in physical health); *United States v. Perez*, No. 6:88-cr-10094 (D. Kan. March 11, 2020) (reducing life sentence based on age and rehabilitation); *United States v. Curtis*, No. 03-cr-533, 2020 WL 1935543 (D.D.C. Apr. 22, 2020) (granting compassionate release to a 43-year-old defendant who had served 17 years of life sentence for sex trafficking children based on his advanced MS, Covid-19, and changes to the career offender guideline); *United States v. Plunk*, No. 94-cr-36-TMB (D. Alaska Apr. 9, 2020) (granting compassionate release to prisoner serving two life sentences for drug offenses based on medical conditions and vulnerability to the COVID-19 pandemic due to age); *United States v. Regas*, No. 391CR00057MMDNA1, 2020 WL 2926457, at *4 (D. Nev. June 3, 2020) (reducing life sentence due to age and vulnerability to COVID-19); *United States v. Ledezma-Rodriguez*, No. 3:00-cr-71 (S.D. Iowa July 14, 2020) (mandatory life from two 851s would no longer apply and finding sentencing disparity combined with rehabilitation, COVID-19, and a dependent family member justified release).

Exhaustion

United States v. Fischman, Case No. 4:16-cr-246, Dkt. No. 76 (N.D. Cal. May 1, 2020) (“The Court has serious concerns that the government’s apparent case-by-case approach to its position on the legal question of exhaustion 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. Amarrah*, 2020 WL 2220008 (E.D. Mich. May 7, 2020) (government’s ‘cutting in line’ argument “offends the Court”); *United States v. Dillard*, Case No. 1:15-cr-170-SAB, Dkt. No. 71 (E.D. Wash. Apr. 27, 2020) (“The Court is frustrated by the fact that the warden has apparently ignored the first request. . . . By ignoring these requests, the warden is inviting the Court’s involvement. The Court will accept that invitation.”); *United States v. McIndoo*, -- F. Supp. 3d --, 2020 WL 2201970 (W.D.N.Y. May 6, 2020) (“By insisting, in the face of a once-in-a-century pandemic, on opposing motions for compassionate release on technical grounds, the Government has helped create a fundamentally unjust, chaotic system in which an inmate’s opportunity to even have his motion heard depends on the judge or prosecutor who is assigned to his case.”); *Casey v. United States*, 2020 WL 2297184 (E.D. Va. May 6, 2020) (“The Government’s position on the exhaustion requirement is illogical, given the Bureau of Prisons’ past administration of compassionate release, the administrative burden presented by the current crisis, and the consensus that this Petitioner should be granted relief.”); *U.S. v. Curington*, No. 12-cr-20115, ECF No. 645 at *1 n.1 (S.D. Fla. July 7, 2020) (finding exhaustion exceptions and declaring “I do not find [the government’s] argument persuasive”).

Sotomayor statement in *Valentine on Ross v. Blake*. “This Court has made clear that the PLRA requires exhaustion only of “available” judicial remedies. *Ross v. Blake*, 578 U. S. ___, ___ (2016) (slip op., at 8). “[T]he ordinary meaning of the word ‘available’ is ‘capable of use for the accomplishment of a purpose.’” *Ibid.* (some internal quotation marks omitted). Thus, when a grievance procedure is a “dead end”—when “the facts on the ground” indicate that the grievance procedure provides no possibility of relief—the procedures may well be “unavailable.” *Id.*, at ___ (slip op., at 9). The Fifth Circuit seemed to reject the possibility that grievance procedures could ever be a “dead end” even if they could not provide relief before an inmate faced a serious risk of death. But if a plaintiff has established that the prison grievance procedures at issue are utterly incapable of responding to a rapidly spreading pandemic like Covid-19 the procedures may be “unavailable” to meet the plaintiff’s purposes, much in the way they would be if prison officials ignored the grievances entirely. *Ibid.*” — *Valentine v. Bryan*, 590 U.S. ___ (2020) (Sotomayor, J.) (statement on denial of vacatur)

Issue Exhaustion

U.S. v. Gluzman, 2020 WL 4233049, at *11 (S.D.N.Y. July 23, 2020) (penning an extensive rejection of the government’s issue-exhaustion argument, noting “[a]s a matter of statutory interpretation, however, the statute contains no requirement that the basis for the defendant’s motion for compassionate release to the court be identical to the basis of the defendant’s request to the warden of the BOP to bring a motion on the defendant’s behalf”);

U.S. v. Fletcher, No. 05-cr-179, ECF No. 856 at 3 (D. Md. July 13, 2020) (rejecting argument that exhaustion was unfulfilled because defendant’s “earlier requests [to BOP] did not reference the COVID-19 pandemic,” and “the statute includes no language conditioning exhaustion on precise identity between the specific arguments” made to BOP and those made to the court); *U.S. v. Jaen*, No. 91-cr-814, ECF No. 505 at *3 (S.D. Fla. July 6, 2020) (life sentence reduced to time served and rejecting government’s argument that BOP sentence-reduction request was “incomplete” because defendant “did not identify or include reference to other conditions listed in the pending motion” before the court); *U.S. v. Dillard*, No. 15-cr-170, ECF No. 71 at *4 (E.D. Wa. Apr. 27, 2020) (“The statute does not require issue exhaustion as argued by the United States and even if the Court was inclined to impose that requirement, it would be futile. The Court is frustrated by the fact that the warden has apparently ignored the first request. There is nothing in the record to suggest a second request by Defendant would be treated in any other way.”); *U.S. v. Arey*, No. 05-cr-29, ECF No. 230 at *4 (W.D. Va. May 13, 2020) (rejecting government’s argument “that Arey has not exhausted his administrative remedies because he did not present COVID-19 as a reason for release to the BOP”); *U.S. v. Coker*, 2020 WL 1877800, at *3 (E.D. Tenn. Apr. 15, 2020) (“the government argues that the instant motion is based on COVID-19 which is a different fact and circumstance that what was presented” to BOP “and thus the ‘new’ request must be presented to BOP first The Court disagrees . . . the present motion is not a new request which must be first presented to BOP”); *U.S. v. Beck*, 475 F. Supp. 3d 573 (M.D.N.C. June 28, 2019) (considering information and events that occurred after the December 2018 request for compassionate release, including the growth of new lumps in defendant’s right breast in January of 2019, a PET scan in March of 2019, and appointments with oncologists in April and May of 2019); *U.S. v. Edwards*, No. 6:17-CR-00003, 2020 WL 1650406, at *9-10 (W.D. Va. Apr. 2, 2020) (“To be sure, Defendant presented a strong case for compassionate release on account of his incurable brain cancer even before the outbreak of the COVID-19 pandemic. But Defendant’s request was further substantiated with a particularized showing that he is susceptible to contracting COVID-19”).

Probation Mitigates Danger

U.S. v. Delateur, No. 18-cr-5364, ECF No. 82 at *6 (W.D. Wash. July 1, 2020) (granting release for multiple-time CP offender found not a danger because “the risk of Delateur reoffending may be reasonable mitigated with strict conditions of immediate release as well as the [already] imposed lifetime of supervised release”).

Catchall

U.S. v. Jones, No. 18-cr-43, ECF No. 71 at 4 (W.D. Penn. July 31, 2020) (“the Court also agrees with the Defendant that, consistent with the amendments made by the First Step Act, it may find ‘other reasons’ sufficient under Subsection 1(D) of Application Note 1. Though the Government argues against the reasoning of other district courts—including at least two in this District—that courts are not constrained by the Application Note’s outdated text, the Court is persuaded by their reasoning.”) (citing *U.S. v. Rodriguez*, 2020 WL 1627331, at *3–6 (E.D. Pa. Apr. 1, 2020) (concluding, as have the “majority of district courts” to consider the issue, that the “old policy statement provides helpful guidance but does not constrain a

court's independent assessment of whether extraordinary and compelling reasons warrant a sentence reduction"); *U.S. v. Somerville*, 2020 WL 2781585, at *6–7 (W.D. Pa. May 29, 2020) (finding the limitation in subdivision (D) to determinations made by the BOP is a “relic of the prior procedure that is inconsistent with the amendments implemented by the First Step Act”); *U.S. v. Dodd*, No. 03-cr-18, ECF No. 815 at 6 (D. Ia. July 29, 2020) (employing catchall provision and holding “the Commission lacks an applicable policy statement regarding when a court can grant compassionate release,” and “[t]he result is that the district court can consider anything—or at least anything the BOP could have considered—when assessing a defendant’s motion”; this “now appears to be the majority position”); *U.S. v. Vigneau*, ___ F. Supp. ___, 2020 WL 4345105, at ___ (D.R.I. 2020) (“the Sentencing Commission has not made any updates since the passage of the FSA, leaving the introductory phrase of policy statement . . . the introductory phrase to commentary Note 1(D) (‘as determined by the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary and compelling reason’ . . . inconsistent with the FSA”); *U.S. v. Fandel*, No. 12-cr-3009, ECF No. 276 at 6 (D. Ia. July 27, 2020) (“This Court has concluded U.S.S.G. Section 1B1.13, although it is a helpful guidepost, does not retrain a court’s assessment of whether extraordinary and compelling reasons exist to release a defendant.”); *U.S. v. Stewart*, No. 98-cr-40097, ECF No. 139 at 6 (D. Kan. July 24, 2020) (following “the lead of a majority of other district courts in holding that U.S.S.G. § 1B1.13 should now be applied as giving the district courts the same discretion given to the BOP Director under (D) to determine extraordinary and compelling reasons in the district courts); *U.S. v. Adeyemi*, No. 2020 WL 3642478 (E.D. Penn. July 6, 2020) (discussing in depth why courts may apply the catchall provision and rejecting government’s argument to contrary); *U.S. v. McRae*, No. 10-cr-127, ECF No. 134 at 6 (July 7, 2020) (un-updated guidelines are “clearly inconsistent with the current language of 18 U.S.C. § 3582(c)(1)(A)” after the First Step Act, and thus, “courts across the country, including this Court, have held that a district court has independent discretion to determine the ‘extraordinary and compelling reasons’ that warrant a sentence reduction”); *U.S. v. Kellogg*, No. 12-cr-383, ECF No. 405 at 4 (N.D. Ga. July 8, 2020) (“the court reaffirms that it is not limited to the technical requirements set forth in § 1B.1.13 in assessing whether a defendant’s application for compassionate release provides ‘extraordinary and compelling reasons’ for a sentence reduction”); *U.S. v. Perez*, 2020 WL 1546422, at *4 (S.D.N.Y. Apr. 1, 2020) (applying catchall Note (D) of guidelines and citing cases); *U.S. v. Beck*, 425 F. Supp. 3d 573, 579 (M.D.N.C. 2019) (“While the old policy statement provides helpful guidance, it does not constrain the Court’s independent assessment of whether ‘extraordinary and compelling reasons’ warrant a sentence reduction.”); *U.S. v. Saenz*, No. 97-cr-2106, ECF No. 116, at *4 (S.D. Cal. July 9, 2020) (“The Court finds more persuasive the line of cases affording courts discretion to determine whether ‘other’ extraordinary and compelling reasons exist”); *Bruno v. U.S.*, No. 17-cr-72, ECF No. 130 at 3 (E.D. Va. July 16, 2020) (finding U.S.S.G. § 1B1.13 “now outdated following the passage” of the First Step Act and courts may independently evaluation what is extraordinary and compelling); *United States v. Lavy*, No. 17-20033-JAR, 2020 WL 3218110, at *3–4 (D. Kan. Jun. 15, 2020) (holding court may make “independent assessment” and holding that courts have “anything less than the same discretion as the Director of the BOP would be antithetical to the First Step Act,” and have “the perverse effect of penalizing prisoners who take advantage of the First Step Act’s fast-track procedures and

rewarding prisoners who endure the BOP-related delay that the Act sought to alleviate”); *United States v. Younger*, No. 16-40012-02-DDC, 2020 WL 3429490 at *4-*5 (D. Kan. Jun. 23, 2020) (and ““overwhelming majority of courts have rejected” the government’s argument that only BOP can use the catchall provision; the majority have “concluded that a court may make the necessary determination that other circumstances warrant relief”); *United States v. Jackson*, No. 08-20150-02-JWL, 2020 WL 2812764 at *3 (D. Kan. May 29, 2020)(“The overwhelming majority of courts, . . . have . . . concluded that a court may make the necessary determination that other circumstances warrant relief under this statute.”); *United States v. Perez*, No. 88-10094-JTM, 2020 WL 1180719 (D. Kan. Mar. 11, 2020) (“[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.”); *United States v. Brown*, No. 4:05-CR-00227-1, 2019 WL 4942051, at *4 (S.D. Iowa Oct. 8, 2019) (“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” and “[u]nqualified deference to the BOP no longer makes sense now that the First Step Act has reduced the BOP’s role”); *U.S. v. Locke*, 2020 WL 3101016, at *4 (W.D. Wash. June 11, 2020) (Jones, J.) (“this Court agrees with the position taken by numerous courts that the ‘old policy statement provides helpful guidance, [but] ... does not constrain [a court’s] independent assessment’”); *U.S. v. Van Cleave*, 2020 WL 2800769, at *5 (W.D. Wash. May 29, 2020) (granting sentence reduction for defendant 5-months into a 20-year sentence due to sarcoidosis and holding that “[a]n increasing number of district courts within and beyond this Circuit have reached the same result regarding the Court’s discretion to consider additional factors that might constitute extraordinary and compelling circumstances”); *U.S. v. McPherson*, 2020 WL 1862596, at *4 (W.D. Wash. Apr. 14, 2020) (Bryan, J.) (“the listing of examples [in the policy statement] hardly sets the criteria for a finding of extraordinary and compelling reasons for a sentence reduction, leaving it to the Court to determine what qualifies, after appropriate analysis”); *U.S. v. Dorsey*, 2020 WL 2562878, at *1 (W.D. Wash. May 19, 2020) (Coughenour, J.) (in addition to being unable to provide self-care, “when an inmate has health conditions that make them significantly more vulnerable to COVID-19, that likewise may constitute an extraordinary and compelling circumstance”)

Legislative History

See *U.S. v. Adeyemi*, No. 2020 WL 3642478 (E.D. Penn. July 6, 2020). The case dives deep into the catchall provision and the binding nature of guideline policy statements. This is an important case to read on legislative history as well.

Legislative History — Unusually Long Sentences

United States v. Vigneau, __ F. Supp. __, 2020 WL 4345105, at *4 (D.R.I. July 21, 2020) (“The Senate Report from when Congress passed the Comprehensive Crime Control Act of 1984 shows that Congress wanted the courts to be able to reduce ‘unusually long sentences’” “The act was to serve as “ ‘safety valves’ for modification of sentences,” enabling judges to provide second looks for sentence reductions when justified by various factors that previously could have been addressed through the abolished parole system.” “Congress

looked to “assure the availability of specific review and reduction of a term of imprisonment for ‘extraordinary and compelling reasons’ and to respond to changes in the Guidelines.” *Id.* Noting that this approach would keep ‘the sentencing power in the judiciary where it belongs,’ rather than with a federal parole board, the statute permitted ‘later review of sentences in particularly compelling situations.’”) (citing S. Rep. No. 98-225, at 55-56 (1983); 1983 WL 25404).

The court in *Vigneau* also noted: “The Court in sentencing Mr. Vigneau was not allowed to consider a sentence outside the range. Thus, it is now proper for the Court to consider the fact that the Guidelines have changed—from mandatory to discretionary—in determining whether to grant compassionate release. S. Rep. No. 98-225, at 121 (“specific review and reduction of a term of imprisonment for ‘extraordinary and compelling reasons’ and to respond to changes in the guidelines.”)

BOP Policies Don’t Work

U.S. v. Dodd, No. 03-cr-18, ECF No. 815 at 3 (D. Ia. July 29, 2020) (“the virus has continued to spread despite months of such measures because no prison can be truly quarantined. New prisoners continue to arrive, and guards continue to traverse to and from the unquarantined world”); *U.S. v. Fletcher*, No. 05-cr-179, ECF No. 856 at 3 (D. Md. July 13, 2020) (“The trajectory of cases at FCI-Elkton illustrates that regardless of the efforts of prison officials . . . FCI-Elkton has been fighting a losing battle to contain the coronavirus”); *U.S. v. Saenz*, No. 97-cr-2106, ECF No. 116 at *6 (S.D. Cal. July 9, 2020) (while BOP is trying, “it cannot be ignored that those in institutional settings are at heightened risk and that cases of COVID-19 in California continue to increase”).

“Although symptom screening is important, an investigation of a COVID-19 outbreak in a skilled nursing facility found that approximately one half of cases identified through facility-wide testing were among asymptomatic and presymptomatic persons, who likely contributed to transmission (4). These data indicate that symptom screening alone is inadequate to promptly identify and isolate infected persons in congregate settings such as correctional and detention facilities. Additional strategies, including physical distancing, movement restrictions, use of cloth face coverings, intensified cleaning, infection control training for staff members, and disinfection of high-touch surfaces in shared spaces are recommended to prevent and manage spread within correctional and detention facilities.” — CDC, *COVID-19 in Correctional and Detention Facilities — United States, February–April 2020* (May 6, 2020) (available at: <https://bit.ly/2SXr715>).

Below Mandatory Minimum (But Not Disparity / 924(c) Cases)

Cotton v. United States, No. 16-20222, ECF No. 443 (E.D. Mich. June 26, 2020); *United States v. Shannon*, No. 1:13-cr-0535, ECF No. 97 at 1 (E.D. Ill. June 26, 2020); *United States v. Martin*, No. DKC-04-0235, 2020 WL 3447760, at *5 (D. Md. June 24, 2020); *United States v. Fillmore*, No. 1:18-cr-030-PB, ECF No. 54 at 1 (D.N.H. June 24, 2020); *Segars v. United States*, No. CR 16-20222-3, 2020 WL 3172734 (E.D. Mich. June 15, 2020); *Snell v. United States*, No. CR 16-

20222-6, 2020 WL 2850038 (E.D. Mich. June 2, 2020); *United States v. Hilow*, No. 15-cr-170-JD at 1 (D.N.H. June 2, 2020); *United States v. Somerville*, 12-CR-225-NR, 2020 WL 2781585, at *12 (W.D. Pa. May 29, 2020); *United States v. Jenkins*, ___ F. Supp. 3d ___, 202 WL 2466911, at *1 (D. Colo. 2020); *Howard v. United States*, No. 16-CR-20222-2, 2020 WL 2615509, at *1 (E.D. Mich. May 22, 2020); *United States v. Brown*, No. 2:18-cr-0360-KOB-JEO, ECF No. 35 (S.D. Ala. May 22, 2020); *United States v. Loyd*, No. CR 15-20394-1, 2020 WL 2572275 (E.D. Mich. May 21, 2020); *United States v. Readus*, No. 16-20827-1, 2020 WL 2572280 (E.D. Mich. May 21, 2020); *United States v. Bess*, No. 16-CR-156, 2020 WL 1940809, at *11 (W.D.N.Y. Apr. 22, 2020); *United States v. Yahoshua Ben-Yhwh*, CR-15-00830-LEK, ___ F.Supp.3d ___, 2020 WL 1874125, at *7 (D. Haw. Apr. 13, 2020); *United States v. Rodriguez*, ___ F.Supp.3d ___, 2020 WL 1627331, at *12 (E.D. Pa. Apr. 1, 2020); *United States v. Schmitt*, 2020 WL 96904, at *6 (N.D. Iowa Jan. 8, 2020).

ICE Detainers / Undocumented-Aggravated Felony

United States v. Pompey, No. 97-cr-638, ECF No. 646 at (D. N.M. July 14, 2020) (releasing non-citizen with ICE detainer and noting “[t]he Government offers no persuasive reason that the Court may not grant compassionate release and order immediate release from BOP custody to ICE pursuant to the detainer”); *United States v. Ledezma-Rodriguez*, No. 00-cr-71, ECF No. 218 at 4 (D. Ia. July 14, 2020) (granting sentence reduction for non-citizen who would be “deported following release”); *United States v. Reyes-Cantu*, Case No. 1:18-CR-934, Dkt. No. 32 (S.D. Tx. July 14, 2020) (granting compassionate release for an undocumented defendant subject to an ICE detainer following a conviction for an aggravated felony where extraordinary and compelling reasons were found due to defendant’s serious health conditions); *United States v. Reyes-De La Rosa*, No. 5:18-CR-55, 2020 WL 3799523 (S.D. Tx. July 7, 2020) (releasing undocumented defendant convicted of illegal re-entry despite ICE detainer, with no opposition from government given defendant’s health conditions, the unavailability of home confinement for Defendant, and the nonviolent nature of his underlying offense); *United States v. Reyes-Flores*, Case No. 4:12-CR-132-D, Dkt. No. 112 (E.D. NC. July 2, 2020) (releasing undocumented defendant convicted of an aggravated felony, based on a finding that extraordinary and compelling reasons exist due to his age at 72 years old and terminal illness); *U.S. v. Arenales-Monroy*, Case No. 16-CR-20374, Dkt. No. 42 at *1 (S.D. Fla. June 15, 2020), (wherein the government conceded release of an undocumented defendant “so that a pending detainer may be executed by” ICE); *United States v. Kalkat*, Case No. 2:17-CR-0022-WFN-1, Dkt. No. 327 (E.D. Wa. July 6, 2020) (releasing undocumented defendant who is a Canadian citizen subject to deportation upon release from BOP custody); *United States v. Gonzalez*, Case No. 5:10-CR-172-BO, Dkt. No. 156 (E.D. NC. April 13, 2020) (releasing undocumented defendant convicted of an aggravated felony, with an ICE detainer, in light of compelling factors including his age at 62 years, serious heart condition, and service of a significant portion of the sentence); *United States v. Salabarría*, Case No. 7:00-CR-95-1-BO, Dkt. No. 125 (E.D. NC. April 14, 2020) (releasing undocumented defendant convicted of an aggravated felony, based on a finding that extraordinary and compelling reasons exist due to his medical condition, including diabetes and cardiovascular disease); and *United States v. Bayuo*, No. 15-cr-576 (JGK), 2020 U.S. Dist. LEXIS 108696 (S.D.N.Y. June 20, 2020) (releasing undocumented defendant convicted of multiple aggravated felony

counts despite ICE detainer in light of extraordinary and compelling reasons due to client's heightened vulnerability to severe symptoms of COVID-19); *United States v. Bennett*, No. 05 CR. 1192-1 (NRB), 2020 WL 2539077, at *2 (S.D.N.Y. May 18, 2020) (granting a motion under Section 3582(c)(1)(A) as to a defendant against whom an ICE detainer existed); *United States v. Guzman Soto*, No. 1:18-CR-10086-IT, 2020 WL 2104787, at *3 (D. Mass. May 1, 2020) (granting compassionate release where defendant was "subject to an immigration detainer whereby, upon release, he w[ould] be taken into custody by [ICE] for removal"); *United States v. Ardila*, No. 3:03-CR-264 (SRU), 2020 WL 2097736, at *2 (D. Conn. May 1, 2020) (finding that, in light of COVID-19, defendant's "medical condition and current conditions of confinement constitute extraordinary and compelling reasons for a reduction in sentence)

Not Safer in Jail

United States v. Robinson, Case No. 3:10-cr-261, ECF No. 86 at 10 (E.D. Va. July 17, 2020) (rejecting government's argument that inmates are safer in prison than in communities with ongoing spread and noting that "the BOP's [test] positivity rate of twenty-nine percent" shows that they are only testing the sickest inmates and that they are therefore likely dramatically undercounting the number of sick inmates in custody); *United States v. Powell*, No. 05-cr-61, ECF No. 78 at 9 (D.D.C. June 18, 2020) ("[I]t cannot seriously be disputed that an individual in prison is less able to control his own surroundings and exposure than he would be if living in single-family residence in the community."); *United States v. Agomuoh*, No. 16-20196, 2020 WL 2526113, at *8–9 (E.D. Mich. May 18, 2020) (Levy, J) ("[I]t is irrelevant whether Defendant could contract COVID-19 outside of FCI Morgantown. The pertinent question is whether there is some product of Defendant's combined medical conditions and conditions of confinement that "substantially diminish" his ability to provide self-care "within the environment of a correctional facility." (emphasis in original)); *United States v. Sanders*, No. 19-20288, 2020 WL 2320094, at *8 (E.D. Mich. May 11, 2020) (Berg, J.) ("[T]he Court will not countenance the cynical and illogical position that a defendant is 'safer in prison' as a reason to support detention."); *United States v. Esparza*, 2020 WL 1696084 (D. Idaho Apr. 7, 2020) (concluding based on review of unique transmission risks associated with correctional settings that "despite the best efforts of BOP officials, the likelihood of contracting the virus is greater in prison than if a defendant were able to fully self-isolated at home."); *Coreas v. Bounds*, 2020 WL 1663133, at *5 (D. Md. Apr. 3, 2020) (characterizing the "claim that someone will be safer from a contagious disease while confined in close quarters with dozens of other detainees and staff than while at liberty" as "an absurdity").

CR for Healthy Clients

See *United States v. Chestnut*, 09-CR-06071-DGL-MWP, (DE 925) (W.D.N.Y. Apr. 29, 2020) (granting compassionate release request despite the fact that Mr. Chestnut was not vulnerable based on a compromised immune system or pre-existing medical condition, see DE 922: 10)); *United States v. Kelly*, 13-CR-59-CWR-LRA, (DE 145: 1 & 13) (S.D. Miss. May 1, 2020) (granting compassionate release to an individual in his late 20s without any health issues where BOP failed to control the outbreak of COVID-19 at the facility); see also *United States v. Barkman*, 19-CR-00052-RCJ-WGC, 2020 WL 1811343 (D. Nev. Mar. 17, 2020) (suspending the defendant's intermittent confinement, because of the risks of being

incarcerated during the pandemic even though the defendant did not allege that he fell within any particularly vulnerable age or health class, (see DE 20)); *United States v. Barkman*, 19-CR-00052-RCJ-WGC, Doc. No. 27 (D. Nev. Apr. 17, 2020) (further extending the suspension of the defendant's intermittent confinement in light of ongoing nature of pandemic).

Hypertension Only

See, e.g., United States v. Robinson, No. 10-cr-261, ECF No. 86 (July 17, 2020) (finding extraordinary and compelling reason based solely on defendant's hypertension); *United States v. Salvagno*, No. 5:02-cr-00051-LEK, ECF No. 1181 (N.D.N.Y. June 22, 2020); *see also United States v. Pena*, No. 15-CR-551 (AJN), 2020 WL 2301199, at *4 (S.D.N.Y. May 8, 2020) ("This Court has repeatedly recognized that COVID-19 presents a heightened risk for individuals with hypertension[.]"); *United States v. Soto*, No. 1:18-CR-10086-IT, 2020 WL 2104787, at *2 (D. Mass. May 1, 2020) ("Defendant's medical records show that he suffers from hypertension. This condition increases his risk for serious complications from contracting COVID-19, including death."); *United States v. Scparta*, No. 18-CR-578 (AJN), 2020 WL 1910481, at *9 (S.D.N.Y. Apr. 20, 2020) (finding hypertension to be a comorbidity that increases the risk of death from COVID-19, and "reject[ing] the Government's contention that Mr. Scparta's general good health before the pandemic speaks to whether he should now be released."); *United States v. Sawicz*, No. 08-CR-287 (ARR), 2020 WL 1815851 (E.D.N.Y. Apr. 10, 2020) (granting compassionate release to a defendant convicted of possession of child pornography who suffers from hypertension). Notably, the Department of Justice found that "[d]efendants released through the compassionate release program are less than a tenth as likely to recidivate as the average federal prisoner." [*U.S. v. Osorto*, 2020 WL 2323038, at *5 \(N.D. Cal. May 11, 2020\)](#) (citing Dept. of Justice, Office of the Inspector General, *The Federal Bureau of Prisons' Compassionate Release Program* 49–50 (2013) ("Inspector General Report")). Moreover, it has estimated that "broader use of compassionate release could save taxpayers millions and free desperately needed space in BOP facilities." *Id.* (citing Inspector General Report at 45–48). --*United States v. Copeland*, 2020 WL 2547250, at *4 (E.D.N.Y. May 19, 2020).

Caretaker — Parents

Courts have recognized that caring for a parent when there's no one else to fill that role constitutes an "extraordinary and compelling" reason to grant compassionate release. *United States v. Bucci*, 409 F. Supp. 3d 1, 2 (D. Mass. 2019)(When a defendant is the "only available caregiver" for an incapacitated parent (perhaps a more unique occurrence given that inmates may have siblings or other family members able to care for their parents), then, it is likewise an "extraordinary and compelling" reason warranting compassionate release.); *United States v. Riley*, No. 2:12-cr-62, 2020 U.S. Dist. LEXIS 82909 (D. Vt. May 12, 2020)(compassionate release granted based on age, asthma, and defendant's father's failing health and him being the only person available to provide his father's daily care.); *United States v. Hernandez*, Case No. 16-20091 (S.D. Fl. April 3, 2020)(extraordinary and compelling reasons warranting a compassionate release reduction where defendant was the only possible caregiver for his 84-year-old mother suffering from degenerative ocular disease and cancer (in remission) that

renders her functionally blind and has mobility issues); see also United States v. Lisi, 2020 U.S. Dist. LEXIS 31127 (S.D.N.Y. Feb. 24, 2020)(court found that if the defendant's claims are factually accurate, and he is the only person capable of caring for his mother, then that would constitute an extraordinary and compelling reason for compassionate release.).

Died with CR Motions Pending

- Andre Williams (motion granted and died while family was en route to pick him up) (docket number unknown - SDFL) – Butner FCI
- Alvin Turner (motion pending) 2:12-cr-20617 (E.D. Mi.) – Elkton FCI
- Guadalupe Ramos (motion pending) 5:11-CR-836-XR-7 (W.D. Tex.) – Fort Worth FMC
- George Lewis Escamilla, Sr. (motion pending) 1:08-CR-337-LY-1 (W.D. Tex.) – Oakdale FCP
- Stephen Cook (motion pending) 2:11-cr-20006 (W.D. Tn.) – FMC Lexington

Less Than Half Time Served

United States v. Robinson, 18-03042-04-CR-S-SRB (WDMO) (served approximately 28 of his 132 month sentence); *United States v. Harrison*, 17-00264-01-CR-W-GAF (WDMO) (served approximately 23 of 112 month sentence); *United States v. Rodriguez-Acedo*, Case No. 19-cr-3539, Dkt. No. 44 (S.D. Cal. July 21, 2020) (served approximately 11 months of a 37 month sentence); *United States v. Tubbs-Smith*, No. 18-20310, ECF No. 65 (E.D. Mich. July 2, 2020) (release after 26 months of 10 year sentence to serve state sentence); *United States v. Torres*, 2020 WL 4019038 (S.D.Fla., July 14, 2020) (5 months into 24 month sentence); *United States v. Loyd*, No. CR 15-20394-1, 2020 WL 2572275 (E.D. Mich. May 21, 2020) (release after 3 years of 10 year sentence); *United States v. Locke*, No. 18-cr-132, 2020 WL 3101016, at 1, 6 (W.D. Wash. June 11, 2020) (compassionately releasing a defendant who had “served no more than six months of his 62-month sentence”); *United States v. Brown*, Case No. 2:18-cr-360, Dkt. No. 35 (N.D. Ala. May 22, 2020) (granting compassionate release to defendant 11 months into 60 month sentence); *United States v. Ben Yhwh*, --- F. Supp. 3d ---, 2020 WL 1874125, at *2 (D. Hawaii Apr. 13, 2020) (granting compassionate release to defendant less than 13 months into 60 month sentence); *United States v. Delgado*, 2020 WL 2464685, at *1, *4 (D. Conn. Apr. 30, 2020) (granting compassionate release to defendant 29 months into 120 month sentence); *United States v. Winston*, Case No. 1:13-cr-639-RDB, Dkt. No. 295 (D. Md. Apr. 28, 2020) (granting compassionate release to defendant 36 months into 120 month sentence).

Mental Health as a Basis for Relief

United States v. Pina, No. 18-CR-179 (JSR), 2020 WL 3545514 (S.D.N.Y. June 29, 2020) (granting compassionate release due to increased vulnerability to COVID-19 flowing from post-traumatic stress disorder (“PTSD”); “The very steps being taken to prevent Pina from contracting the virus have aggravated his mental condition . . . More generally, his confinement to his cell for 22 hours a day cannot help but exacerbate his depression and

anxiety.”); *United States v. Lavy*, No. 17-CR-20033-JAR, 2020 WL 3218110, at *5 (D. Kan. June 15, 2020) (“Defendant’s age, hypertension, and mental health issues ... satisfy the Court that Defendant faces a heightened risk of serious illness or death if infected with COVID-19.”); *United States v. Ozols*, No. 16-CR-692-7 (JMF), 2020 WL 2849893, at *2 (S.D.N.Y. June 2, 2020)(granting compassionate release to a forty-two years old suffering from anxiety and depression stemming from his service in the Latvian military.); *United States v. Johnson*, No. 15-cr-125, 2020 WL 3041923 (D.D.C. May 16, 2020) (granting compassionate release due to increased vulnerability to COVID-19 flowing from grievous mental health conditions).

In immigration cases: *Marvin A.G. v. Decker*, No. CV 20-1689 (ES), 2020 WL 3481746 (D. N.J. June 26, 2020) (ordering the release of a foreign national, detained in Hudson County Correctional Center awaiting for his removal proceedings, in part because Crohn’s disease, ulcerative colitis, hypertension, and depressive disorder); *Kolawole O T. v. Ahrendt*, No. CV 19-21802 (MCA), 2020 WL 3073940 (D.N.J. June 10, 2020) (ordering the release of a foreign national awaiting for removal proceedings, in part because he suffers from PTSD, and depression with anxiety and atypical psychosis); *Jose B.R. v. Tsoukaris*, No. CV 20-3347 (MCA), 2020 WL 2744586 (D.N.J. May 27, 2020) (ordering the release of a foreign national, awaiting for his removal proceedings, because he suffers from visual and auditory hallucinations, indicative of schizophrenia, which “significantly worsened” while in custody, among other medical issues; “Current public health strategies for preventing and slowing the spread of COVID-19, such as social distancing, ‘may be less effective for certain marginalized groups, notably those with schizophrenia and related disorders’ ”); *Doe v. Barr*, No. 20-cv-02263 (RMI), 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”); *Durel B. v. Decker*, No. CV 20-3430 (KM), 2020 WL 1922140 (D.N.J. Apr. 21, 2020) (ordering the release of a foreign national, awaiting for his removal proceeding, in part because he suffers from PTSD, Unspecified Schizophrenia Spectrum, and the antipsychotic medication he takes he takes for his medical conditions is “associated with decreased immunity.”)’

Defendant Not In BOP Custody

US v. Jacobs, No. 19-149 (RP-HCA), ECF 84 (S.D. Iowa July 2, 2020) (granting release to COVID-19 positive defendant detained in county jail; government conceded exhaustion); *US v. Morrison*, No. 19-284 (PWG), ECF 44 (D. Md. June 24, 20) (granting release to defendant detained in regional jail; government conceded exhaustion); *US v. Williams*, No. 19-134 (PWG), ECF 70 (D. Md. June 10, 2020) (granting release to COVID-19 positive defendant detained in local jail; government conceded exhaustion); *US v. Green*, No. 10-761 (TDC), ECF 335 (D. Md. June 4, 2020) (granting release to defendant detained at local jail; government did not oppose exhaustion); *US v. Jackson*, No. 02-30020 (MFU), ECF 1528 (W.D.V.A. May 26,

2020) (granting release to defendant detained at local jail; government conceded exhaustion); *United States v. Johnson*, __ F. Supp. 3d __, 2020 WL 3041923, at *10 (D.D.C. May 16, 2020) (granting compassionate release from local jail (CTF) to veteran who suffered from hypertension, obesity, and PTSD and who had served 14 months of a 41-month sentence for various violations of firearm laws); *US v. Arreola*, 19-3410 (BTM), ECF 50 (S.D.C.A. May 15, 2020) (granting compassionate release to non-citizen, COVID-positive defendant detained at private detention facility); *US v. Carver*, 19-644 (SMJ), ECF 76 (E.D. Wa. April 8, 2020) (denying compassionate release but excusing administrative exhaustion for defendant detained in local jail); *United States v. Ghorbani*, No. 18-cr-00255-PLF, ECF No. 133 (D.D.C. Apr. 6, 2020) (granting compassionate release to inmate at DC Jail, reducing defendant's 30-month sentence to time served, and restricting him to his residence for 10 months, the remainder of his sentence); *US v. Daniel Hernandez*, No. 18-834 (PAE), ECF 451 (SDNY Apr. 2, 2020) (finding exhaustion and granting compassionate release to defendant detained "in the custody of the United States Marshals at a private facility"); *United States v. Jepsen*, No. 3:19-CV-00073(VLB), 2020 WL 1640232 (D. Conn. Apr. 1, 2020) (granting compassionate release and excusing exhaustion for defendant detained at private detention facility); *United States v. Gonzalez*, No. 2:18-CR-0232-TOR-15, 2020 WL 1536155, at *1 (E.D. Wash. Mar. 31, 2020) (granting compassionate release to defendant in county jail); *United States v. Powell*, No. 94-cr-316-ESH, 2020 WL 1698194 (D.D.C. Mar. 28, 2020) (granting release to defendant housed at DC Jail); *US v. Teresa Ann Gonzalez*, No. 18-232 (TOR), ECF 834 at 2 (E.D. Wa. Mar. 25, 2020) (granting compassionate release to defendant detained in a local jail who had no received BOP designation).

Halfway house: *US v. Gonzalez-Quiroz*, No. 18-4517 (DMS), ECF 84 (S.D.C.A. July 9, 2020) (granting unopposed compassionate release to defendant in halfway house); *United States v. Damian Campagna*, No. 16-78 (LGS), 2020 WL 1489829 (S.D.N.Y. Mar. 27, 2020) (granting motion of defendant in halfway house upon the government's consent); *United States v. James Arberry*, No. 15-594 (JPO), ECF Dkt. 84 (S.D.N.Y. Nov. 12, 2019) (granting compassionate release to defendant with terminal cancer, who was then at a halfway house, upon the government's consent notwithstanding that no request had been made upon any warden).

Home detention: *U.S. v. Gamboa*, No. 09-1741 (JAP), ECF 123 (D.N.M. June 11, 2020) (granting compassionate release to defendant serving remainder of sentence under home confinement).

Government Briefing Is Cut-and-Paste; No Real Specifics

U.S. v. McIndoo, __ F. Supp.3d __, 2020 WL 2201970, at *4 (W.D.N.Y. May 6, 2020) (The government's brief "appears to be a classic copy-and-paste job, with a general discussion about BOP efforts but no real specifics" concerning this facility).

Various Links

More prevalent in prisons. B. Saloner, Ph.D., et al., *COVID-19 Cases and Deaths in Federal and State Prisons*, J. Am. Med. Assoc. (July 8, 2020) (“The COVID-19 case rate for prisoners was 5.5 times higher than the US population case rate of 587 per 100 000,” and “[r]eported case rates for prisoners therefore likely understated the true prevalence of COVID-19 in prisons.”) (available at: <https://bit.ly/3fbmngt>)

UCLA Law Behind Bars Data Project. <https://bit.ly/2P8h7j0--UCLADatabase>. (See also email string from Kalind Parish detailing data. The positive test rate is 13% for prisoners versus 9%, which may not sound like much, but the rate increase is more than one-third. The death rate is 31% higher in prison.)

Long lasting virus damage.

<https://bit.ly/2P7xoosNEJMMultiorgan>

<https://bit.ly/39FpOuY--JAMA--Cardiology>

<https://bit.ly/3ggmKaS--HeartDamageAfterCovid>

Bail

Rose v. Baker, No. 17-15009, Dkt. No. 62 (9th Cir. Apr. 9, 2020) (granting bail pending resolution of habeas case and noting that COVID-19 is “a global crisis . . . that is heightened for [] prisoners” one of “the most vulnerable groups among us” (quoting *Coleman v. Newsom*, __ F. Supp. 3d __, 2020 WL 1675775 (E.D. Cal / N.D. Cal. 2020)); *United States v. Chavol*, No. 20-50075 (9th Cir. Apr. 2, 2020) (stipulation in a FRAP(9) appeal to release on conditions); *United States v. Creek*, Case No. 20-4251, Dkt. No. 18 (4th Cir. Apr. 15, 2020) (remanding denial of bail “for the limited purpose of having the district court consider in the first instance the severity of the risk that the COVID-19 virus poses to the defendant, given his existing medical conditions and the current COVID-19 situation at the facility where he is being held, and whether that risk, balanced against the other Bail Reform Act factors, rises to the level of a “compelling reason” for temporary release under 18 U.S.C. § 3142(i)”; *United States v. Ramirez-Rodriguez*, Case No. 20-cr-28, Dkt. No. 42 (D. Minn. Apr. 14, 2020) (releasing 53-year-old undocumented diabetic immigrant with 15 prior removals from jail with no confirmed COVID-19 cases because “it is just a matter of time before the first case is identified”); *United States v. Sharp*, No. 19-cr-03, Dkt. No. 45 (D. Mont. Apr. 14, 2020) (extending deadline for self-surrender by 90 days “in light of the COVID-19 pandemic and the rapidly evolving public health situation in federal detention facilities”); *United States v. Cole*, No. 2:08-cr-102-SRB, Dkt. No. 87 (D. Ariz. Apr. 13, 2020) (. “[E]ven with all recommended precautions, residents and staff at a facility such as Dismas Charities are at a higher risk for spread of the virus. *Solely based on this increased risk of harm to Defendant, the Court finds that the previously ordered 180 day confinement in a residential re-entry center should not be implemented at this time[.]*”); *United States v. Mahan*, Case No. 1:19-cr-233-DCN, Dkt. No. 67

(D. Idaho Apr. 10, 2020) (releasing 36-year-old asthmatic defendant with significant criminal history, including aggravated assault and parole violations, charged in 10-year mandatory minimum drug case due to compelling risk posed by COVID-19); *United States v. Nkanga*, 18-cr-713, Dkt. No. 120 (S.D.N.Y. Apr. 7, 2020) (granting bail pending adjudication of habeas petition in light of “the precise timing of the sentencing proceeding . . . in relation to the emerging COVID-19 pandemic”); *United States v. Tovar*, No. 1:19-cr-341-DCN, Dkt. No. 42 (D. Idaho Apr. 2, 2020) (releasing defendant previously detained in presumption case after finding COVID-19 a compelling basis for release under § 3142(i)); *United States v. Campos*, No. 4:20-cr-56, Dkt. No. 22 (D. Ariz. Apr. 2, 2020) (COVID-19 a changed circumstance justifying pretrial release for defendant, facing 20-year mandatory minimum and with ties to foreign country, accused of trafficking 24 kilograms of cocaine); *United States v. Garcha*, No. 19CR00663EJD1VKD, 2020 WL 1593942 (N.D. Cal. Apr. 1, 2020) (granting temporary pretrial release to defendant who is HIV-positive, has a brain tumor, and suffered a pulmonary embolism); *United States v. Roeder*, 2020 WL 1545872 (3d Cir. Apr. 1, 2020) (reversing district court’s denial of defendant’s motion to delay execution of his sentence due to the COVID-19 pandemic); *United States v. Claudio-Montes*, No. 3:10-cr-212-JAG-MDM, Dkt. No. 3374 (D.P.R. Apr. 1, 2020) (“[G]iven the COVID-19 pandemic afflicting the world, rather than issue an arrest warrant at this time, the Court will instead issue a summons[.]”); *United States v. Meekins*, Case No. 1:18-cr-222-APM, Dkt. No. 75 (D.D.C. Mar. 31, 2020) (post-plea, pre-sentence release order releasing defendant with three pending assault charges due to extraordinary danger COVID-19 poses to folks in detention); *United States v. Davis*, No. 1:20-cr-9-ELH, Dkt. No. 21 (D. Md. Mar. 30, 2020) (releasing defendant due to the “urgent priority” of decarcerating, to protect both the defendant and the community, and to preserve Sixth Amendment rights in this perilous time); *Fraihat v. Wolf*, No. 20-CV-590 (C.D. Cal. Mar. 30, 2020) (noting risk of asymptomatic spread and unsafe conditions in immigration detention mean “[t]he balance of equities tip sharply in [Fraihat’s] favor” and thus ordering release); *United States v. Hector*, Case No. 2:18-cr-3-002, Dkt. No. 748 (W.D. Va. Mar. 27, 2020) (granting release pending sentencing after Fourth Circuit remanded detention decision requiring court to specifically consider extraordinary danger posed by COVID-19 to folks in prison); *United States v. Kennedy*, No. 5:18-cr-20315, Dkt. No. 77 (E.D. Mich. Mar. 27, 2020) (post-plea presentence release of defendant whose pretrial release was revoked because “the COVID-19 pandemic constitutes an independent compelling reason” for temporary release and “is necessary for Defendant to prepare his pre-sentence defense”); *United States v. Mclean*, No. 19-cr-380, Dkt. No. (D.D.C. Mar. 28, 2020) (“As counsel for the Defendant candidly concedes, the facts and evidence that the Court previously weighed in concluding that Defendant posed a danger to the community have not changed – with one exception. That one exception – COVID-19 – however, not only rebuts the statutory presumption of dangerousness, see 18 U.S.C. § 3142(e), but tilts the balance in favor of release.”); *United*

States v. Powell, 2020 WL 1540485 (N.D. Cal. Mar. 27, 2020) (sua sponte granting extension of self-surrender in light of dangers of COVID-19); *United States v. Michaels*, 8:16-cr-76-JVS, Minute Order, Dkt. No. 1061 (C.D. Cal. Mar. 26, 2020) (“Michaels has demonstrated that the Covid-19 virus and its effects in California constitute ‘another compelling reason’” justifying temporary release under § 3142(i).); *United States v. Jaffee*, No. 19-cr-88 (D.D.C. Mar. 26, 2020) (releasing defendant with criminal history in gun & drug case, citing “palpable” risk of spread in jail and “real” risk of “overburdening the jail’s healthcare resources”; “the Court is . . . convinced that incarcerating the defendant while the current COVID-19 crisis continues to expand poses a greater risk to community safety than posed by Defendant’s release to home confinement”); *United States v. Harris*, No. 19-cr-356 (D.D.C. Mar. 26, 2020) (“The Court is convinced that incarcerating Defendant while the current COVID-19 crisis continues to expand poses a far greater risk to community safety than the risk posed by Defendant’s release to home confinement on . . . strict conditions.”); *United States v. Perez*, No. 19 CR. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (releasing defendant due to the “heightened risk of dangerous complications should he contract COVID-19”); *United States v. Stephens*, 2020 WL 1295155, __ F. Supp. 3d __ (S.D.N.Y. Mar. 19, 2020) (releasing defendant in light of “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic”); *In re Manrique*, 2020 WL 1307109 (N.D. Cal. Mar. 19, 2020) (“The risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail.”); *In re Request to Commute or Suspend County Jail Sentences*, Docket No. 084230 (N.J. Mar. 22, 2020) (releasing large class of defendants serving time in county jail “in light of the Public Health Emergency” caused by COVID-19); *United States v. Matthaei*, No. 1:19-CV-00243-BLW, 2020 WL 1443227, at *1 (D. Idaho Mar. 16, 2020) (extending self-surrender date by 90 days in light of COVID-19); *Thakker v. Doll*, No. 1:20-cv-480-JEJ (Mar. 31, 2020) (granting TRO releasing high-risk immigration detainees from custody due to the dangers of COVID-19); *Basank v. Decker*, No. 20-cv-2518, (S.D.N.Y. Mar. 26, 2020) (“[t]he nature of detention facilities makes exposure and spread of the [coronavirus] particularly harmful” so granting TRO and releasing high-risk plaintiffs); *Coronel v. Decker*, 20-cv-2472-AJN, Dkt. No. 26 (Mar. 27, 2020) (granting TRO and releasing from immigration detention facility in light of COVID-19); *Basank v. Decker*, 20-cv-2518 (S.D.N.Y. Mar. 26, 2020) (same).

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