

ENTERED

August 25, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ROMULO CHAPA,

Defendant.

§
§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. 7:18-cr-00960-9

ORDER

The Court now considers Movant Romulo Chapa's "Amended Emergency Motion for Compassionate Release Pursuant to 18 U.S.C. 3582(c)(1)(A)(i)"¹ and the "Government's Opposition to Defendant Romulo Chapa's Motion for Compassionate Release Pursuant to 18 U.S.C. 3582(c)(1)(A)(i)."² Under the First Step Act of 2018 and 18 U.S.C. § 3582(c)(1)(A)(i), "[a] court, on a motion by the BOP [Federal Bureau of Prisons] or by the defendant after exhausting all BOP remedies, may reduce or modify a term of imprisonment, probation, or supervised release after considering the factors of 18 U.S.C. § 3553(a), if 'extraordinary and compelling reasons warrant such a reduction.'"³

I. LEGAL STANDARDS**a. Timing and Exhaustion of Administrative Remedies**

While the First Step Act authorizes a reduction in sentence—commonly referred to as compassionate release—Movant must first "fully exhaus[t] all administrative rights to appeal a

¹ Dkt. No. 1177.

² Dkt. No. 1194.

³ *United States v. Chambliss*, 948 F.3d 691, 692 (5th Cir. 2020) (quoting 18 U.S.C. § 3582(c)(1)(A)(i)).

failure of the Bureau of Prisons” to bring a motion for compassionate release on Movant’s behalf, or 30 days must have lapsed since the warden of Movant’s facility received Movant’s administrative request, whichever is earlier.⁴ Movant can satisfy the exhaustion requirement in one of two ways: (1) availing of the Administrative Remedy Program,⁵ or (2) submitting a compassionate release request to the warden,⁶ in accordance with the requirements under those respective programs and regulations.⁷ “Courts have recognized these two options impose a mandatory requirement that a defendant submit a request to the warden of [the] facility before filing in court.”⁸ Furthermore, “[t]he statute is clear that the 30 day clock starts when the Warden receives the letter, not when the inmate sends it.”⁹ The exhaustion requirement is “mandatory” and that “[t]hose who seek a motion for compassionate relief under the First Step Act must first file a request with the BOP” and cannot obtain relief without doing so.¹⁰ This exhaustion requirement applies to new arguments or grounds for compassionate release developed after an earlier request for compassionate release.¹¹ If Movant does not exhaust the administrative process, the Court cannot grant relief.¹²

⁴ 18 U.S.C. § 3582(c)(1)(A) (emphasis added); see *United States v. Garrett*, 15 F.4th 335, 338 (5th Cir. 2021) (“[A] prisoner may wait 30 days after filing his request and—whether the BOP has ruled on the request or not—he is free to file a motion in the district court.”); *United States v. Jenkins*, No. 4:15-CR-3079, 2020 WL 2814437, at *2 (D. Neb. May 26, 2020) (Gerrard, C.J.).

⁵ See 28 C.F.R. §§ 542.10–19.

⁶ See 28 C.F.R. § 571.61.

⁷ See FED. BUREAU OF PRISONS, COMPASSIONATE RELEASE/REDUCTION IN SENTENCE: PROCEDURES FOR IMPLEMENTATION OF 18 U.S.C. §§ 3582 AND 4205(g), document no. 5050.50, https://www.bop.gov/policy/progstat/5050_050_EN.pdf.

⁸ *United States v. Crinel*, No. CR 15-61, 2020 WL 955054, at *4 (E.D. La. Feb. 27, 2020) (quotation omitted).

⁹ *United States v. Miller*, No. 2:16-CR-00269-BLW, 2020 WL 2202437, at *1, 2020 U.S. Dist. LEXIS 80817, at *3 (D. Idaho May 6, 2020).

¹⁰ *United States v. Franco*, 973 F.3d 465, 468–69 (5th Cir.), *cert. denied*, No. 20-5997, 141 S. Ct. 920 (2020) (mem.); see *United States v. Edwards*, 456 F. Supp. 3d 953, 963, 966 (M.D. Tenn. 2020) (collecting cases rejecting the proposition that the administrative exhaustion requirement can be waived); *United States v. Britton*, 473 F. Supp. 3d 14, 21–22 (D.N.H. 2020) (holding the exhaustion requirement is not subject to equitable or exigent exceptions).

¹¹ *United States v. Rivas*, 833 F. App’x 556, 558 (5th Cir. 2020).

¹² See *Ross v. Blake*, 136 S. Ct. 1850, 1857 (2016) (“[M]andatory exhaustion statutes like the PLRA establish mandatory exhaustion regimes, foreclosing judicial discretion.”); *Booth v. Churner*, 532 U.S. 731, 741 n.6 (2001) (“[W]e stress the point . . . that we will not read futility or other exceptions into statutory exhaustion requirements where Congress has provided otherwise.”); *United States v. Orellana*, No. 4:17-cr-0220, 2020 WL 1853797, at *1

b. Extraordinary and Compelling Reasons to Grant Compassionate Release

“Prior to the passage of the First Step Act [of 2018], only the Director of the Bureau of Prisons (BOP) could file a motion for compassionate release, and that very rarely happened. [The First Step Act has] the intent of ‘increasing the use and transparency of compassionate release.’”¹³ The First Step Act authorizes a sentence reduction when “extraordinary and compelling reasons warrant such a reduction” with due consideration to sentencing factors, such as the seriousness of an inmate’s offense and the need to prevent recidivism.¹⁴ The statute itself does not define what constitutes “extraordinary and compelling reasons,”¹⁵ but the words used indicate the reasons must be “[b]eyond what is usual, customary, regular, or common” and involve so great a need that irreparable harm or injustice would result if the requested relief is not granted.¹⁶ The Court must “provide specific factual reasons, including but not limited to due consideration of the § 3553(a) [sentencing] factors, for its decision” on whether to grant a reduction in sentence,¹⁷ but the Court’s opinion need not be exhaustive or extensive,¹⁸ and necessarily involves the exercise of judgment in weighing sentencing factors.¹⁹ Although some courts have considered their determination of

(S.D. Tex. Apr. 10, 2020) (Ellison, J.) (“Because Defendant has not attempted to exhaust his administrative rights, the Court is unable to grant compassionate release.”).

¹³ *United States v. Gutierrez*, No. CR 05-0217 RB, 2019 WL 1472320, at *1 (D.N.M. Apr. 3, 2019) (footnote omitted) (quoting First Step Act, Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239 (Dec. 21, 2018)); see *United States v. Redd*, 444 F. Supp. 3d 717, 725 (E.D. Va. 2020) (the First Step Act “eliminated the BOP Director’s role as the *exclusive* channel through which a sentence reduction could be considered by courts”).

¹⁴ 18 U.S.C. § 3582(c)(1)(A)(i) (citing 18 U.S.C. § 3553(a)); see *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020).

¹⁵ *Crowe v. United States*, 430 F. App’x 484, 485 (6th Cir. 2011) (holding the statute does not “define—or place any limits on—what ‘extraordinary and compelling reasons’ might warrant such a reduction”).

¹⁶ See *United States v. Cantu*, 423 F. Supp. 3d 345, 352 (S.D. Tex. 2019) (Marmolejo, J.).

¹⁷ *United States v. Chambliss*, 948 F.3d 691, 693 (5th Cir. 2020) (footnote omitted).

¹⁸ *United States v. Pina*, 846 F. App’x 268, 269 (5th Cir. 2021); *United States v. McLin*, 840 F. App’x 804, 804–05 (5th Cir. 2021) (per curiam) (citing *Rita v. United States*, 551 U.S. 338, 356 (2007)).

¹⁹ Cf. *United States v. Coats*, 853 F. App’x 941, 943 (5th Cir. 2021) (per curiam) (quoting *United States v. Chambliss*, 948 F.3d 691, 694 (5th Cir. 2020) and citing *United States v. Nguyen*, 854 F.3d 276, 283 (5th Cir. 2017)) (holding that disagreement with the Court’s evaluation of sentencing factors does not support reversal); *United States v. Crawford*, 839 F. App’x 916, 917 (5th Cir. 2021) (per curiam) (“Crawford’s mere disagreement with the district court’s weighing of the sentencing factors is not sufficient to demonstrate abuse of discretion.”).

whether to grant a sentencing determination bound by the United States Sentencing Commission Guidelines,²⁰ the Sentencing Guidelines are not binding on this Court generally²¹ or with respect to compassionate release.²² The Court's decision is unfettered by the Sentencing Guidelines or the commentary to the Sentencing Guidelines, and is instead bound only by the language of 18 U.S.C. § 3582(c)(1)(A)(i) and "the sentencing factors in [18 U.S.C. §] 3553(a)."²³ The nonbinding Sentencing Guidelines may be informative criteria,²⁴ but the Court makes its own determination.²⁵

The Coronavirus Disease 2019 (COVID-19) pandemic in and of itself and its relationship to prisons or associated fears of contracting the illness do not warrant compassionate release,²⁶ but

²⁰ See 28 U.S.C. § 994(t) ("The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples."); *United States v. Avery*, No. 2:07-cr-20040-2, 2020 WL 3167579, at *5, 2020 U.S. Dist. LEXIS 104951, at *11 (W.D. Tenn. June 9, 2020) (collecting cases).

²¹ *United States v. Gagne*, 451 F. Supp. 3d 230, 234 (D. Conn. 2020) (citing *United States v. Booker*, 543 U.S. 220 (2005)) ("The Court recognizes that 'extraordinary and compelling' circumstances may exist outside of those circumstances delineated by the U.S. Sentencing Commission, given the advisory nature of the guidelines . . ."); *United States v. Gonzales*, No. SA-05-CR-561-XR, 2019 WL 5102742, at *3 (W.D. Tex. Oct. 10, 2019) ("Inasmuch as the Sentencing Guidelines are no longer mandatory, it seems inconsistent to hold that judges are nevertheless bound by U.S.S.G. § 1B1.13. But with regard to all sentencing decisions, a judge should consider the Guidelines.").

²² See *United States v. Aruda*, 993 F.3d 797, 801–02 (9th Cir. 2021) (collecting cases holding that the Sentencing Commission has no applicable policy statement governing compassionate release).

²³ *United States v. Shkambi*, 993 F.3d 388, 393 (5th Cir. 2021); accord *United States v. Jones*, 980 F.3d 1098, 1111 (6th Cir. 2020) ("In cases where incarcerated persons file motions for compassionate release, federal judges may skip step two of the § 3582(c)(1)(A) inquiry and have full discretion to define 'extraordinary and compelling' without consulting the policy statement § 1B1.13."). But see *United States v. Willingham*, 2019 WL 6733028, at *2, 2019 U.S. Dist. LEXIS 212401 (S.D. Ga. Dec. 10, 2019).

²⁴ See U.S. SENT'G GUIDELINES MANUAL § 1B1.13 application notes (U.S. SENT'G COMM'N 2018) (including the inmate's medical condition, family circumstances, and age as relevant factors).

²⁵ *Shkambi*, 993 F.3d at 393; see *Ward v. United States*, 11 F.4th 354, 360 (5th Cir. 2021) (citing *United States v. Cooper*, 996 F.3d 283, 289 (5th Cir. 2021)) ("[A] district court errs by treating Section 1B1.13 as binding."); *United States 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.").

²⁶ *United States v. Koons*, 455 F. Supp. 3d 285, 291 (W.D. La. 2020) ("The Court stresses that the rampant spread of the coronavirus and the conditions of confinement in jail, alone, are not sufficient grounds to justify a finding of extraordinary and compelling circumstances. Rather, those circumstances are applicable to all inmates who are currently imprisoned and hence are not unique to any one person. The Court cannot release every prisoner at risk of contracting COVID-19 because the Court would then be obligated to release every prisoner."); *United States v. Williams*, No. 4:16-CR-120 (2), 2020 WL 3078599, at *3 (E.D. Tex. June 9, 2020) (quoting *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020)) ("[T]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP's statutory role, and its extensive and professional efforts to curtail the virus's spread."); *United States v. Clark*, 451 F. Supp. 3d 651, 656 (M.D. La. 2020) ("Defendant cites no authority for the proposition that the fear of contracting a

of course “[i]t would be odd to deny [compassionate release] to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”²⁷ Accordingly, Movant must identify individualized extraordinary and compelling reasons for compassionate release,²⁸ such as a combination of risk-enhancing medical conditions²⁹ or advanced age and associated impediments.³⁰ Furthermore, “[t]he law closely guards the finality of criminal sentences against judicial change of heart”³¹ and an increased individual vulnerability to illness persists whether or not an inmate is incarcerated, so Movant must show some indicia that a

communicable disease warrants a sentence modification.”); *United States v. Eberhart*, 448 F. Supp. 3d 1086, 1090 (N.D. Cal. 2020) (“[A] reduction of sentence due solely to concerns about the spread of COVID-19 is not consistent with the applicable policy statement of the Sentencing Commission”); *United States v. Dodge*, No. 17-323-01, 2020 U.S. Dist. LEXIS 119493, at *10–11 (W.D. La. July 6, 2020).

²⁷ *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

²⁸ See generally *United States v. Elias*, 984 F.3d 516, 521 (6th Cir. 2021) (“Relying on official guidelines from the CDC is a common practice in assessing compassionate-release motions.”); *United States v. Blevins*, 832 F. App’x 192, 192 (4th Cir. 2020) (per curiam) (quoting *United States v. Feiling*, 453 F. Supp. 3d 832, 841 (E.D. Va. 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.”).

²⁹ See, e.g., *United States v. Muniz*, No. 4:09-CR-0199-1, 2020 U.S. Dist. LEXIS 59255, at *5 (S.D. Tex. Mar. 30, 2020) (Ellison, J.) (granting compassionate release to a prisoner with end stage renal disease, diabetes, arterial hypertension, and a mobility handicap); *United States v. Foster*, No. 1:14-cr-324-02, 2020 U.S. Dist. LEXIS 82985, at *9 (M.D. Pa. Apr. 3, 2020) (granting compassionate release to a prisoner with chronic lung disease); *United States v. Rodriguez*, 451 F. Supp. 3d 392, 401 (E.D. Pa. 2020) (granting compassionate release to a prisoner with diabetes, neuropathy, hypertension, and liver abnormalities indicating disease); *United States v. Pabon*, No. 17-165-1, 2020 U.S. Dist. LEXIS 78245, at *1 (E.D. Pa. May 4, 2020) (granting compassionate release to a 54-year-old prisoner who “suffers from diabetes, hypertension, hemophilia, atopic dermatitis, gastroesophageal reflux disease, peptic ulcer, and diverticulitis”).

³⁰ See *United States v. Cantu-Rivera*, No. H-89-204, 2019 U.S. Dist. LEXIS 105271, at *3 (S.D. Tex. June 24, 2019) (Lake, J.) (granting compassionate release to a 69-year-old prisoner with “arthritic conditions in multiple joints, cataracts, diabetes, prostate conditions” who had already served 30 years in jail and indicated successful rehabilitation); *United States v. McGraw*, No. 2:02-cr-00018-LJM-CMM-01, 2019 U.S. Dist. LEXIS 78370, at *3 (S.D. Ind. May 9, 2019) (granting compassionate release to a 72-year-old prisoner with “Type II Diabetes, insulin-dependent, with peripheral neuropathy; hyperlipidemia; emphysema; chronic kidney disease stage III; Hepatitis C type 1A (treatment completed and no sign of disease noted); and[] chronic pain” and uncontrollable diarrhea); *United States v. Dunlap*, 458 F. Supp. 3d 368, 370 (M.D.N.C. 2020) (granting compassionate release to a 77-year-old prisoner with “hypertension, severe thyroid problems, arthritis, acute nerve pain, muscle wasting and atrophy, as well as a bladder disorder” and need for an ambulatory walker); cf. *United States v. Ebberts*, 432 F. Supp. 3d 421, 428 (S.D.N.Y. 2020) (“Because the Age of Defendant Note does not mention self-care, a substantially diminished ability to provide self-care is impliedly not required when the defendant is relying on his age as the basis for his requested relief.”).

³¹ *United States v. Goodwyn*, 596 F.3d 233, 235 (4th Cir. 2010) (quotation omitted) (collecting cases).

sentence reduction is the better course than continued imprisonment,³² but the Court is mindful that “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.”³³ “Relying on official guidelines from the CDC is a common practice in assessing compassionate-release motions.”³⁴

c. Consideration of Sentencing Factors Set Forth in 18 U.S.C. § 3553

Even if the Court finds “extraordinary and compelling reasons” to warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), Movant will not necessarily be entitled to compassionate release. The Court has a duty³⁵ to “conside[r] the factors set forth in section 3553(a) to the extent that they are applicable.”³⁶ For example, the Court considers “the nature and

³² See *United States v. Clark*, 451 F. Supp. 3d 651, 656–57 (M.D. La. 2020) (collecting cases discussing the movant’s failure to show that the BOP plan was inadequate in the context of movant’s demonstration of extraordinary and compelling reasons for a sentence reduction). *But see United States v. Atkinson*, No. 2:19-CR-55 JCM (CWH), 2020 WL 1904585, at *3 (D. Nev. Apr. 17, 2020) (noting “obvious shortcomings” in the BOP action plan to address COVID-19 and therefore diminishing the hurdle an inmate must clear to obtain compassionate release); *United States v. Millage*, 464 F. Supp. 3d 1218, 1223–24 (D. Or. 2020) (holding that the BOP’s failure to conduct widespread COVID-19 testing, even in the absence of symptomatic inmates, did not defeat a motion for compassionate release).

³³ *United States v. Williams*, No. 3:04-cr-95/MCR, 2020 U.S. Dist. LEXIS 63824, at *4 (N.D. Fla. Apr. 1, 2020) (quotation omitted); see *United States v. Stephens*, 447 F. Supp. 3d 63, 65 (S.D.N.Y. 2020) (citing Joseph A. Bick, *Infection Control in Jails and Prisons*, 45.8 CLINICAL INFECTIOUS DISEASES 1047 (2007), <https://doi.org/10.1086/521910> (finding increased vulnerability to certain infectious diseases among the incarcerated population)) (“[I]nmates may be at a heightened risk of contracting COVID-19 should an outbreak develop.”); Brendan Saloner et al., *COVID-19 Cases and Deaths in Federal and State Prisons*, 324.6 J. AM. MED. ASS’N 602 (2020), <https://jamanetwork.com/journals/jama/article-abstract/2768249> (“The COVID-19 case rate for prisoners was 5.5 times higher than the US population case rate of 587 per 100,000 [in June 2020].”); *United States v. Jackson*, No. 4:14-CR-00576, 2020 WL 1955402, at *4 (S.D. Tex. Apr. 23, 2020) (Ellison, J.) (citing Timothy Williams et al., ‘Jails Are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars, N.Y. TIMES, Nov. 30, 2020, <https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html>) (“The Court is also very aware that prisons are particularly conducive to the spread of COVID-19.”); *United States v. Burrill*, 445 F. Supp. 3d 22, 26 (N.D. Cal. Apr. 10, 2020) (“Federal correctional institutions, which had reported zero COVID-19 cases only weeks ago, and despite the steps the BOP has taken to contain the disease within its facilities, are now reporting numerous virus-related deaths.”).

³⁴ *United States v. Elias*, 984 F.3d 516, 521 (6th Cir. 2021).

³⁵ *Ward v. United States*, 11 F.4th 354, 360 (5th Cir. 2021) (“[T]he district court is obligated to consider the Section 3553(a) factors before deciding whether to order compassionate release . . .”).

³⁶ 18 U.S.C. § 3582(c)(1)(A); see *United States v. Smith*, 828 F. App’x 215, 216 (5th Cir. 2020) (per curiam) (holding that the district court sufficiently articulated reasons for denying a prisoner’s motion by discussing the sentencing factors).

circumstances of the offense and the history and characteristics of the defendant”³⁷ and “the need to protect the public from further crimes.”³⁸ “Eligibility for resentencing under the First Step Act, however, does not equate to entitlement. The district court has broad discretion in deciding whether to resentence.”³⁹ For example, when an outsize proportion of the sentence imposed remains to be served, such as 23 months remaining on a 27-month custodial sentence, a reduction in sentence likely contravenes the § 3553(a) factors and will preclude compassionate release.⁴⁰

II. ANALYSIS

Movant included an exhibit document dated February 10, 2022, in which counsel for Movant requests compassionate release from the Warden at FMC Butner.⁴¹ Because more than 30 days have lapsed since the warden of Movant’s facility received Movant’s administrative request, the Court finds that Movant has satisfied the administrative exhaustion requirement and is entitled to be considered by the Court for compassionate release.

Movant’s motion asserts that “Defendant has been diagnosed with metastatic cancer in various parts of his body”⁴² Movant includes medical records from the Bureau of Prisons. Therein, an administrative note performed by movant’s healthcare provider on March 10, 2022,

³⁷ 18 U.S.C. § 3553(a)(1).

³⁸ *United States v. Glenewinkel*, 831 F. App’x 158, 159 (5th Cir. 2020) (per curiam).

³⁹ *United States v. Whitehead*, 986 F.3d 547, 550 (5th Cir. 2021) (quotations and citations omitted).

⁴⁰ See *United States v. Green*, No. 2:11-CR-00468-TLN, 2020 WL 3047840, at *3 (E.D. Cal. June 8, 2020); *United States v. Garcia*, 847 F. App’x 262 (5th Cir. 2021) (“Given the nature and circumstances of Garcia’s alien transportation offense and that he had served less than half of his sentence, the district court did not abuse its discretion in determining that the § 3553(a) factors weighed against a compassionate release sentence reduction.”); *United States v. Hoopes*, No. CR 16-509-02, 2020 WL 6889211, at *5 (E.D. Pa. Nov. 24, 2020) (“Mr. Hoopes has also not served the bulk of his sentence. Accounting for his credit for good conduct, he has only served approximately 16 months, or not quite 30%, of his 54-month sentence. An early release would be contrary to the § 3553(a) factors.”); *United States v. Shulick*, No. CR 16-428, 2020 WL 3250584, at *5 (E.D. Pa. June 16, 2020) (“While defendant has served 19 months thus far for his crimes, there is still a substantial amount of time remaining in defendant’s 60-month sentence. Releasing defendant now would cut his current sentence by well over half and would not appropriately reflect the nature and circumstances of his offenses, promote just punishment, or afford adequate deterrence to criminal conduct.”); *United States v. Hasan-Hafez*, No. 16 CR. 221-2 (KPF), 2020 WL 2836782, at *5 (S.D.N.Y. June 1, 2020) (“It would undercut the § 3553(a) factors for the Court to allow Mr. Hasan-Hafez to serve just 13 months of a 45-month sentence.”).

⁴¹ Dkt. No. 1177-1.

⁴² Dkt. No. 1177 at 1.

states that Movant suffers from stage IV colon cancer and his “[p]rognosis as per medical oncologist is 18 mos.”⁴³ Thus, “Defendant has a life expectancy of a little over one year.”⁴⁴ Additionally, Movant suffers from type 2 diabetes, polyneuropathy, and glaucoma.⁴⁵

At the time of sentencing, the Court was informed that Defendant had been diagnosed with cancer and took the diagnosis into consideration in light of the §3553(a) sentencing factors. However, at that time, the Court was not aware of the terminal prognosis.

Defendant was sentenced to a term of 151 months in custody and 3 years of supervised release,⁴⁶ after pleading guilty to count 5 of the indictment.⁴⁷ Defendant’s crime involved transporting large amounts of cocaine and currency for the Villalobos drug trafficking organization.⁴⁸ The Fifth Circuit Court of Appeals affirmed the judgment of this Court on August 5, 2022.⁴⁹ Thus, as of the date of this order, Defendant has served approximately 12 months out of a total of 151 months in custody. Not including supervised release, Defendant has served roughly 8 percent of his sentence.

As previously mentioned, even if Movant’s terminal prognosis were to be considered an extraordinary and compelling circumstance to warrant a sentence reduction under 18 U.S.C. § 3582(c)(1)(A), the Court still has a duty to consider the §3553(a) sentencing factors. After a consideration of those factors, the Court does not find that compassionate release is warranted here. Given the seriousness of the offense and the small percentage of the sentence served, the Court finds that release would not promote respect for the law and just punishment for Defendant’s offense. Additionally, the Court notes that Defendant is receiving medical care for his illness at

⁴³ Dkt. No. 1177-3 at 2.

⁴⁴ Dkt. No. 1177 at 2.

⁴⁵ Dkt. No. 1177-3 at 3.

⁴⁶ Dkt. No. 927.

⁴⁷ Minute Entry (May 20, 2019).

⁴⁸ Dkt. No. 450.

⁴⁹ Dkt. No. 1194-2.

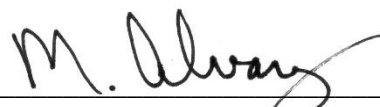
the Bureau of Prisons. There is no showing/claim that Defendant is not receiving proper medical care. Additionally, Defendant does not claim that his cancer will go into remission if released from prison, or even that his prognosis will improve.

III. CONCLUSION AND HOLDING

For the foregoing reasons, the Court finds that Defendant's motion for compassionate release should be and is hereby **DENIED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 25th day of August 2022.

A handwritten signature in black ink, appearing to read 'M. Alvarez', is written over a horizontal line.

Micaela Alvarez
United States District Judge