# UNITED STATES DISTRICT COURT

# SOUTHERN DISTRICT OF TEXAS

# [ ] DIVISION

**UNITED STATES OF AMERICA §**

**§**

**v. § Cr. No. [-XX-XXXX]**

**§**

**[DEFENDANT] §**

**ORDER**

Defendant has moved for “compassionate release,” asking the Court for release from the remaining term of imprisonment pursuant to Title 18, United States Code, Section 3582(c)(1)(A)(i). Having fully considered the applicable law and the parties’ positions, Defendant’s motion is **GRANTED**.

***1. Background.***

**[Summarize charges and facts of plea or trial]**

**[Summarize sentencing]**

Defendant has now served \_\_ months in the Federal Bureau of Prisons. Defendant’s projected release date is \_\_\_\_.

***2. Discussion.***

In light of the current COVID-19 emergency, Defendant moves for a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(1)(A), which authorizes a district court to grant such a reduction either upon motion by the Director of the Bureau of Prisons or upon motion of the defendant “after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” Defendant specifically seeks this reduction in sentence under Section 3582(c)(1)(A)(i), which permits the sentencing court to grant such a motion where “extraordinary and compelling reasons warrant such a reduction” and “a reduction [would be] consistent with applicable policy statements issued by the Sentencing Commission,” following consideration of the factors set forth in 18 U.S.C. § 3553(a).

***a. Exhaustion.***

The United States and the Defendant agree that the Defendant has fulfilled the requirement of 18 U.S.C. § 3582(c)(1)(A) because either (i) the Defendant has exhausted administrative remedies within the Bureau of Prisons or (ii) a period of 30 days has elapsed since the warden of the institution in which Defendant is incarcerated received Defendant’s request that the Bureau of Prisons make such motion on Defendant’s behalf. The Court accepts the agreement of the United States and the Defendant.

***b. Claim of “extraordinary and compelling” reasons.***

The applicable United States Sentencing Commission policy statement provides that extraordinary and compelling reasons for early release exist where:

(A) Medical Condition of Defendant –

(i) The defendant is suffering from a terminal illness …. A specific prognosis of life expectancy … is not required. …

(ii) The defendant is

(I) suffering from a serious physical or medical condition,

(II) suffering from a serious functional or cognitive impairment, or

(III) experiencing deteriorating physical or mental health because of the aging process,

that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he is not expected to recover;

(B) Age of the Defendant. – The defendant is (i) at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less;

(C) Family circumstances. –

(i) The death or incapacitation of the caregiver of the defendant’s minor child or minor children.

(ii) The incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons. – As determined by the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary or compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

(U.S.S.G. § 1B1.13(1)(A), Application Note 1.)

**[Discuss factual reasons for granting relief in accordance with (A) through (D) above]**

***c. Defendant’s danger to the safety of any other person or the community.***

Even if “extraordinary and compelling reasons” for early release exist, the Guidelines’ policy statements provide for a reduction in sentence only if a defendant “is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. §3142(g).” (U.S.S.G. § 1B1.13(2).) Factors relevant to this inquiry include: (1) the nature and circumstances of the offenses of conviction, including whether the offense is a crime of violence, or involves a minor victim, a controlled substance, or a firearm, explosive, or destructive device; (2) the weight of the evidence; (3) the defendant’s history and characteristics; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant’s release. *See* 18 U.S.C. § 3142(g).

In this case, the Court finds that Defendant’s release from imprisonment **would not** pose a danger to the safety of any other person or the community. **[Discuss nature and seriousness of any danger, and reasoning.]**

***d. Section 3553(a) factors.***

The final criterion for a reduction in sentence requires the Court to consider whether a reduction is consistent with the applicable section 3553(a) factors. *See* 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13. The applicable statutory factors include, among others: the defendant’s history and characteristics; the nature and circumstances of the offense; the need for the sentence to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; the need to deter criminal conduct and protect the public from further crimes of the defendant; the need to provide the defendant with, among other things, any needed medical treatment; and the various kinds of sentences available. *See* 18 U.S.C. §§ 3553(a)(1)-(7).

In this case, the Court finds that the section 3553(a) factors, as considered in the specific context of the facts of Defendant’s case, **do** warrant a reduction in Defendant’s sentence, for the following reasons:

**[Discuss reasons]**

***C.* *Conclusion.***

The Court therefore **GRANTS** Defendant’s motion for a reduction in sentence, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i).

**[CHOOSE ONE]**

* Defendant is re-sentenced to a term of credit for time served in the Bureau of Prisons, followed by a term of \_\_\_ years of supervised release. The Bureau of Prisons is ORDERED to release Defendant from its custody immediately. However, the Bureau of Prisons is authorized to quarantine Defendant for a period of up to 14 days at an appropriate Bureau of Prisons facility prior to such release, upon a determination by the Bureau of Prisons that such quarantine is necessary in the interests of protecting the public from the spread of COVID-19.
* Defendant is re-sentenced to a term of credit for time served in the Bureau of Prisons, followed by a term of \_\_\_ years of supervised release. The Bureau of Prisons is ORDERED to release Defendant to the custody of **[a specific person – insert name]** immediately after approval of a release plan by the United States Probation Office.

**[OPTIONAL SUPPLEMENTAL ORDERS]**:

The Court further ORDERS the following:

* As a condition of supervised release, Defendant is ORDERED restricted to his residence at all times (home detention), except for medical necessities as approved by the Probation Officer, court appearances, or other activities specifically approved by the Court, for a period of \_\_\_ months. Defendant will be monitored by the form of location monitoring technology at the discretion of the United States Probation Office for that period of \_\_\_ months, and Defendant must follow the rules and regulations of that location monitoring program. Defendant must pay the costs of the program based on ability to pay as determined by the probation officer. The probation officer will initiate the monitoring program as soon as practicable and when deemed appropriate given the current COVID-19 outbreak.
* As a condition of supervised release, Defendant is ORDERED to be quarantined to his residence for a period of 14 days. Defendant’s compliance with the quarantine order will be monitored by the United States Probation Office by any means determined appropriate by that Office, including location monitoring technology, and Defendant must follow the rules and regulations of that monitoring program chosen by the United States Probation Office. Defendant must pay the costs of the program based on ability to pay as determined by the probation officer. The probation officer will initiate the monitoring program as soon as practicable and when deemed appropriate given the current COVID-19 outbreak.

All other conditions of supervised release imposed in the original judgment entered on **[DATE]** remain in effect.

SIGNED at \_\_\_\_\_\_\_\_, Texas, on this \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_, 2020.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

UNITED STATES DISTRICT JUDGE