**IN THE UNITED STATES DISTRICT COURT**

**FOR THE SOUTHERN DISTRICT OF TEXAS**

**[ ] DIVISION**

**UNITED STATES OF AMERICA**

**v. Cr. No. [-XX-XXXX]**

**[DEFENDANT]**

**O R D E R**

This matter is before the Court on Defendant [ ] Motion for Compassionate Release, in which he asks the Court to release him from his term of imprisonment under 18 U.S.C. § 3582(c)(1)(A)(i), in light of [insert reason from USSG §1B1.13] and the increasing health risks that the current global pandemic of coronavirus (COVID-19) poses to incarcerated persons, particularly those over 65 years of age and those with underlying health conditions, including diabetes, high blood pressure, chronic lung disease including some forms of asthma, HIV and other immunocompromised conditions such as cancer, liver disease, kidney disease and heart disease.[[1]](#footnote-1) The Court also takes into account the determination of Congress and the President that the COVID-19 emergency requires expanding the authority of the Attorney General to release eligible prisoners to home confinement.[[2]](#footnote-2) Having fully considered the applicable law and the parties’ arguments, Defendant’s motion is granted.

1. **Background**

[Nature of charges and facts of plea or trial]

[Sentencing]

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

1. **Discussion**

Defendant moves for a reduction of his 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).

* 1. **Exhaustion**

The Court finds that Defendant has satisfied or is excused from satisfying the exhaustion of remedies requirement of Section 3582(c)(1)(A) because

The Director of the Bureau of Prisons has initiated this motion before the Court; or

Defendant has fully exhausted all administrative rights to appeal with the Bureau of Prisons; or

Defendant has shown that a period of 30 days has lapsed since the warden of the institution in which he is incarcerated received Defendant’s request that the Bureau of Prisons make such motion on his behalf; or

Defendant is excused from exhausting administrative remedies or waiting for the requisite 30 days because the COVID-19 crisis is an “extraordinary circumstance” that justifies application of the exception to administrative exhaustion when “irreparable injury will result absent immediate judicial review.” *See Dawson Farms, LLC v. Farm Service Agency*, 504 F.3d 592, 606 (5th Cir. 2007) (citing *Rhodes v. United States*, 574 F.2d 1179, 1181 (5th Cir. 1978)).[[3]](#footnote-3)

* 1. **Extraordinary and compelling reasons**

The United States Sentencing Commission policy statements applicable to this case provide, in relevant part, that “extraordinary and compelling reasons exist” where “

1. (Medical Condition of Defendant) the defendant suffers from (i) a terminal illness or (ii) suffers from a serious physical or medical condition or a serious functional or cognitive impairment or otherwise is experiencing deteriorating physical and/or mental health because of the aging process, that substantially diminishes his ability to provide self-care within the environment of a correctional facility and from which he is not expected to recover; or
2. (Age of Defendant) the defendant is at least 65 years old, is experiencing a serious deterioration in physical or mental health because of the aging process and has served at least 10 years or 75 percent of his term of imprisonment (whichever is less); or,
3. (Family circumstances) the death or incapacitation of the caregiver of the defendant’s minor child(ren) or 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; or,
4. (Other reasons) [as determined by the Director of the Bureau of Prisons], any other extraordinary or compelling reasons other than, or in combination with, the reasons described in (A) through (C).

*See* USSG § 1B1.13(1)(A) and Application Note 1.

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

* 1. **Section 3142(g) factors**

The policy statements further provide that the reduction in sentence may be granted when, in addition to the foregoing “extraordinary and compelling circumstances,” the district court finds that the defendant “is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. §3142(g). *See* USSG §1B1.13(2). Factors relevant to this inquiry include: (1) the nature and circumstances of the offenses of conviction; (2) the weight of the evidence; (3) the defendant’s history and characteristics; and (4) the nature and seriousness of the danger posed by the defendant’s release. See 18 U.S.C. § 3142(g).

In this case, the Court finds that the reduction in sentence and the release of the defendant satisfy this requirement that the defendant is not a danger to the safety of any other person or the community. [Describe balancing of statutory factors in favor of reduction in sentence]

* 1. **Section 3552(a) factors**

The final criterion for a reduction in sentence requires the Court to consider whether a reduction is consistent with the applicable § 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, *inter alia*, any needed medical treatment in the most effective manner. *See* 18 U.S.C. § 3553(a).

In this case, the Court finds that the Section 3553(a) factors, as considered in the specific context of the facts of this case, warrant granting the reduction in sentence for the following reasons:

1. **Conclusion**

It is, therefore, ORDERED that Defendant’s motion for a reduction in sentence, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), is GRANTED.

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. [ALTERNATIVE: Release to the custody of a particular person immediately after approval of a release plan by the United States Probation office].

[OPTIONAL SUPPLEMENTAL ORDERS:

Defendant is ORDERED restricted to his residence at all times (home detention), except for medical necessities and court appearances or other activities specifically approved by the Court, for a period of [ ] MONTHS as a condition of supervised release.

Defendant will be monitored by the form of location monitoring technology at the discretion of the probation office for that period of [ ] MONTHS, and he must follow the rules and regulations of the 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.]

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

SIGNED at Houston, Texas, on the day of April 2020.

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

UNITED STATES DISTRICT JUDGE

1. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> [↑](#footnote-ref-1)
2. Coronavirus Aid, Relief and Economic Security Act. Pub. L. 116-136. 134 Stat. 281, 516 (Sec. 12003(b)(2)). March 27, 2020. [↑](#footnote-ref-2)
3. The Department of Justice asserts that the Court is without legal authority to address a petition for compassionate release until the petitioner exhausts administrative remedies or 30 days have passed since making the request to the warden of his facility. The United States Attorney, therefore, does not agree that the Court has authority to proceed based on a finding of an excuse from such statutory requirements.  [↑](#footnote-ref-3)