

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 18-20562-CR-COOKE

UNITED STATES OF AMERICA,

vs.

DAYMI ARIAS BOFILL,

Defendant.

**ORDER DENYING MOTION FOR COMPASSIONATE RELEASE
PURUSANT TO 18 U.S.C. §3582(c)(1)(A)(i)**

THIS MATTER is before me on Defendant's Motion for Compassionate Release Pursuant to 18 U.S.C. §3582(c)(1)(A)(i). (ECF No. 31). The United States opposes the requested relief (ECF No. 37). For the reasons discussed below, the Motion is **DENIED**.

The Defendant pled guilty to conspiracy to commit health care fraud on September 26, 2018. ECF No. 14. The Defendant siphoned approximately \$4.6M of Medicare funds over the course of her fraudulent scheme. The Defendant, who was sentenced on January 9, 2018, is currently serving a 46-month sentence. ECF No. 30. On June 23, 2020, the Defendant filed this motion, seeking compassionate release and asking to serve the remainder of her sentence on home confinement. The Defendant contends that COVID-19 presents a higher risk to her because she has suffered from "high blood pressure, tachycardia, and hypothyroidism." ECF No. 31 at 1.

The First Step Act provides district courts with the authority to reduce a defendant's sentence based on extraordinary and compelling circumstances. 18 U.S.C. § 3582(c)(1)(A)(i). In addition, the Sentencing Commission's policy statements, applicable to motions for reduction of imprisonment sentences pursuant to 18 U.S.C. § 3582(c)(1)(A), define "extraordinary and compelling reasons" in Section 1B1.13 of the Sentencing Guidelines. According to the accompanying notes

of the Guidelines, extraordinary and compelling reasons exist where Defendant's medical condition "substantially diminishes [his] ability...to provide self-care within the environment of a correctional facility..." U.S.S.G. 1B1.13 comment n.1(A)(i)-(ii). Having reviewed Defendant's Motion, the Government's Opposition, and the record, I find no extraordinary and compelling reasons to grant Defendant's Motion.¹

Although the Defendant alleges that she suffers high blood pressure, tachycardia and hypothyroidism,² the record does not support a finding that she is "suffering from a serious physical or medical condition that substantially diminishes" her "ability to provide self-care with the environment of a correctional facility." U.S.S.G. 1B1.13 comment n.1(A)(i)-(ii). Rather, the medical records indicate that the Bureau of Prisons is providing appropriate medical care to address the Defendant's conditions. *See* ECF No. 40.

In addition, the § 3553 factors militate against a sentence reduction here. The Defendant was convicted of health care fraud—a serious offense. Health care fraud is rampant in this district and this Defendant has served just over a third of her sentence. The Defendant's fraudulent conduct led to the loss of over \$4M from the Medicare program. Medicare funds are intended for the health care of the most vulnerable in our society. In fact, the present pandemic indicates the precious need for health care dollars for equipment, medicine, and care. An early release from incarceration for this Defendant discounts the serious nature of her offense and the harm this type of crimes does to the South Florida community. *See* 18 U.S.C. § 3553(a)(2)(A). Moreover, as noted above, the Defendant has served only a small portion of her sentence.

¹ I am mindful that the United States in other similar cases has maintained that the Bureau of Prisons, pursuant to 18 U.S.C. § 3582(c), must first address such requests before a defendant may request relief from the Court. I do not find that argument persuasive. "Instead, the exhaustion requirement in § 3582(c)(1)(A) merely controls who -- the BOP or defendant -- may move for compassionate release and when such a motion may be made." *United States v. Haney*, No.19-00541, 2020 WL 1821988, at *2 (S.D.N.Y April 13, 2020). In any event, The Bureau of Prisons denied the Defendant's request for compassionate release on June 1, 2020 and this motion was filed on June 10, 2020.

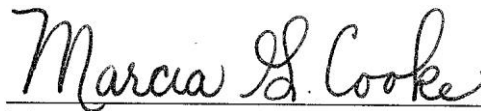
² The Defendant also submitted health records which are sealed. *See* ECF No. 40. These records do not indicate that any of the Defendant's health conditions diminishes her ability to care for herself in a penal environment.

One of the objectives of § 3553 is to deter criminal conduct. Permitting this Defendant's release from custody after such a short period of incarceration does not promote respect for the law or afford adequate deterrence for this type of extensive criminal conduct.

I recognize that the COVID-19 pandemic affects incarcerated inmates, maybe at a greater rate than other members of society. However, the existence of the virus alone does not render Defendant's circumstances compelling.

Accordingly, it is **ORDERED and ADJUDGED** that Defendant's Motion (ECF No. 31) is **DENIED**.

DONE and ORDERED in chambers at Miami, Florida, this 6th day of July 2020.



MARCIA G. COOKE
United States District Judge

Copies furnished to:
Counsel of Record