

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 2:13-cr-20600
)	
FARID FATA,)	
)	
Defendant.)	

**MOTION FOR REDUCTION OF SENTENCE PURSUANT
TO 18 U.S.C. § 3582(c)(1)(A)**

Farid Fata (“Fata”), by and through the undersigned counsel, respectfully submits this Motion for Reduction of Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A). In support thereof, Fata offers the following:

I. INTRODUCTION

In December 2018, Congress enacted the First Step Act (“FSA”) which modified Title 18 of the United States Code Section 3582(c)(1) to allow a defendant to bring a motion for modification of sentence where “extraordinary and compelling reasons warrant such as reduction[.]”

Fata previously sought a Compassionate Release/Reduction in Sentence pursuant to Bureau of Prisons (“BOP”) Program Statement 5050.50 based on Fata’s deteriorating health. The Warden at FCI Williamsburg denied Fata’s request, but more than 30 days after Fata submitted his request. Now, with the recent outbreak of the novel COVID-19 virus and present conditions under which Fata is housed, Fata respectfully requests the Court’s immediate intervention in granting Fata Compassionate Release pursuant to 18 U.S.C. § 3582(c)(1)(A).

II. APPLICABLE LAW

The First Step Act of 2018 modified 18 U.S.C. § 3582(c) to read as follows:

(c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—

(A) the court, upon motion of 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*, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the

unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it find that—

(i) extraordinary and compelling reasons warrant such a reduction; or

(ii) the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission;

18 U.S.C. § 3582(c)(1)(A) (emphasis added).

As many district courts have noted post-Fair Sentencing Act, “Congress has not specified the circumstances that qualify as ‘extraordinary and compelling reasons’ except to state that a reduction pursuant to this provision must be ‘consistent with applicable policy statements issued by the Sentencing Commission.’” *United States v. Bucci*, No. CR 04-10194-WGY, 2019 WL 5075964, at *1 (D. Mass. Sept. 16, 2019). The applicable policy

statement of the Sentencing Commission can be found at U.S.S.G.

§ 1B1.13, which its commentary states:

1. Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2) [not a danger to society], extraordinary and compelling reasons exist under any of the circumstances set forth below:

(A) Medical Condition of the Defendant.—

(i) The defendant is suffering from a terminal illness (*i.e.*, a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(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 or she is not expected to recover.

(B) Age of the Defendant.—The defendant (i) is at least 65 years old; (ii) is experiencing 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 a 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 and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

U.S.S.G. § 1B1.13.

Since the enactment of the First Step Act, district courts across the country have found and given various meanings to the term “extraordinary and compelling.” *See, e.g., United States v. Ebberts*, No. S402CR11443VEC, 2020 WL 91399 (S.D.N.Y. Jan. 8, 2020) (“The rapid decline [in health] coupled with Ebberts’s age present ‘extraordinary and compelling reasons’”); *United States v. Urkevich*, No. 8:03CR37, 2019 WL 6037391 (D. Neb. Nov. 14, 2019) (concluding that the stacking provision of 18 § 924(c)

constitutes extraordinary and compelling reason for reduction in sentence after the First Step Act); *United States v. Bucci*, No. CR 04-10194-WGY, 2019 WL 5075964 (D. Mass. Sept. 16, 2019) (finding the defendant’s role as the only potential caregiver to his ailing mother extraordinary and compelling reason for compassionate release); and *United States v. Beck*, No. 1:13-CR-186-6, 2019 WL 2716505 (M.D.N.C. June 28, 2019) (“Ms. Beck’s invasive cancer and the abysmal health care BoP has provided qualify as ‘extraordinary and compelling reasons’ warranting a reduction in her sentence to time served.”).

III. JURISDICTION

Fata submitted his request for Compassionate Release on November 22, 2019.¹ More than 30 days passed before the Warden denied Fata’s request.² Accordingly, this Court has jurisdiction pursuant to 18 U.S.C. § 3582(c)(1)(A).

¹ See Exhibit A.

² See Exhibit B.

**IV. A REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A)
IS WARRANTED**

Fata sought Compassionate Release/Reduction in Sentence from the BOP based on his debilitating medical conditions. Fata is 55 years old and suffers from the following comorbidities: Type-2 diabetes with diabetic neuropathy and vision complications; immune-compromised with persistent low white blood cell count and low neutrophil count; gastro-intestinal bleeding and esophageal acid reflux with a history of H. Pylori gastritis; and mild cognitive impairment/early dementia. Fata is currently prescribed and taking duloxetine, metformin, atorvastatin and omeprazole.³

To compound these issues, the recent outbreak of COVID-19 within the BOP institutions means that Fata is at significant risk of infection. People of any age who suffer from the following have an elevated risk: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune

³ See Exhibit C (filed under seal)

deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications; severe obesity; diabetes; chronic kidney disease or undergoing dialysis; or liver disease.⁴

With Fata's medical conditions and age, contracting COVID-19 could very well prove to be fatal. As of May 5, 2020, 1,984 federal inmates and 356 BOP staff have confirmed positive test results for COVID-19 nationwide.⁵ Tragically, there have been at least 40 federal inmate deaths due to COVID-19. *Id.* Given COVID-19's recent surge in the federal prison system, several district courts have granted inmates' compassionate release requests just within the past week. *See United States v. Foster*, No. 1:14-cr-324-02 (M.D. Pa. Apr. 3, 2020) ("The circumstances faced by our prison system during this highly contagious,

⁴ Centers for Disease Control and Prevention, *Groups at Higher Risk for Severe Illness*, <https://bit.ly/3dYDrqI>; *Coronavirus disease (COVID-19) advice for the public: Myth busters*, World Health Organization, <https://cutt.ly/dtEiCyc> ("Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.").

⁵ <https://www.bop.gov/coronavirus/>

potentially fatal global pandemic are unprecedented. It is no stretch to call this environment ‘extraordinary and compelling,’ and we all believe that, should we not reduce Defendant’s sentence, Defendant has a high likelihood of contracting COVID-19 from which he would “not expected to recover.” USSG SS 1B1.13. No rationale is more compelling or extraordinary.”); *United States v. Colvin*, No. 3:19-cr-179 (JBA), 2020 WL 1613943 (D. Conn. Apr. 2, 2020) (“She has diabetes, a ‘serious ... medical condition,’ which substantially increases her risk of severe illness if she contracts COVID-19.... Defendant is ‘unable to provide self-care within the environment of FDC Philadelphia in light of the ongoing and growing COVID-19 pandemic because she is unable to practice effective social distancing and hygiene to minimize her risk of exposure, and if she did develop complications, she would be unable to access her team of doctors at Bridgeport Hospital. In light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risk faced by Defendant will be minimized by her immediate release to home, where she will quarantine

herself.”); *United States v. Brannan*, No. 4:15-cr-80-01 (S.D. Tx. Apr. 2, 2020) (emergency motion was granted same day of filing for prisoner who had served 9 months of a 36-month sentence for fraud at FCI Oakdale and had not exhausted BOP remedies); *United States v. Resnik*, No. 1:12-cr-00152-CM (S.D.N.Y. 2020) (“Releasing a prisoner who is for all practical purposes deserving of compassionate release during normal times is all but mandated in the age of COVID-19”); *United States v. Williams*, No. 3:04-cr-95-MCR (N.D. Fla. Apr. 1, 2020) (“Williams’ cardiovascular and renal conditions compromise his immune system, which, taken with his advanced age, put him at significant risk for even more severe and life threatening illness should he be exposed to COVID-19 while incarcerated....Based on these facts, the Court finds that Williams’ deterioration in physical health is sufficiently serious to satisfy the medical criteria for a reduction in sentence.”); and *United States v. Jepsen*, No. 3:19-cr-00073 (VLB), 2020 WL 1640232 (D. Conn. Apr. 1, 2020) (“Mr. Jepsen is in the unique position of having less than eight weeks left to serve on his sentence, he is immunocompromised and suffers from multiple

chronic conditions that are in flux and predispose him to potentially lethal complications if he contracts COVID-19, and the Government consents to his release. The Court finds that the totality of the circumstances specific to Mr. Jepsen constitute ‘extraordinary and compelling’ reasons to grant compassionate release.”).

Lastly, the 18 U.S.C. § 3553(a) factors support granting Fata a reduction in this unprecedented time. . In *Pepper v. United States*, 131 S.Ct. 1229, 1241 (2011), the Court emphasized the vital nature of post-sentence rehabilitation, stating that “there would seem to be no better evidence than a defendant’s post incarceration conduct.” *Id.* Since his over six years of incarceration, Fata has been a model inmate. He has maintained clear disciplinary history and participated in numerous education and religious programs.⁶

⁶ See Exhibit D

V. CONCLUSION

Fata suffers from debilitating medical conditions that make him at risk for severe illness if he contracts COVID-19 under the CDC Guidelines. As many district courts have found, such circumstances amount to extraordinary and compelling reasons for compassionate release. Accordingly, Fata respectfully prays that the Court will enter an Order granting this 18 U.S.C. § 3582(c)(1)(A) motion.

Respectfully submitted,

/s/ Jeremy Gordon

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was duly served on all counsel of record via the Court's CM/ECF system this 5th day of May 2020.

/s/ Jeremy Gordon