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COMPASSIONATE RELEASE BASICS FOR FEDERAL DEFENDERS

Stephen R. Sady and Elizabeth G. Daily

January 2, 2019

Under the compassionate release statute, the sentencing judge, upon motion of the Bureau of Prisons, may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction. 18 U.S.C. § 3582(c)(1)(A)(i). For over three decades, the BOP claimed unlimited and unreviewable discretion to refuse to file motions to reduce, no matter how clearly our clients deserved a second look by the sentencing judge. All that has fundamentally changed because, on December 21, 2018, the President signed the First Step Act into law. Among other criminal justice reforms, Congress amended § 3582(c)(1)(A)(i) to permit the defense to initiate the request for relief under the compassionate release statute once administrative remedies are exhausted. The sentencing judge now has jurisdiction to consider a defense motion for reduction of sentence under the subsection when "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[.]''

This introduction to compassionate release litigation has three parts. First, we address the need for appointment of counsel and for cooperation among offices to develop facts and to exhaust administrative remedies. Second, we outline the three areas for the motion, which are the "extraordinary and compelling reasons," the

application of § 3553(a) factors, and the release plan. Third, we provide some history and resources that may be useful in changing the culture of super-deference to the BOP to a culture of judicial independence, humane sentencing, and fiscal responsibility.

A. Appointment Of Counsel And Inter-Office Cooperation

For our clients with "extraordinary and compelling reasons" for a second look at their sentence, we need to be sure they have counsel at this critical stage of their criminal case. The Supreme Court recognized that the right to counsel extends to post-sentencing proceedings related to the underlying judgment in *Mempa v. Rhay*, 389 U.S. 128, 135 (1967). The need for counsel is especially great for folks with physical and mental disabilities, as Justice Ginsburg reasoned in finding a due process right to counsel on appeal in *Halbert v. Michigan*, 545 U.S. 605, 607 (2005) ("Persons in Halbert's situation, many of whom have little education, learning disabilities, and mental impairments, are particularly handicapped as self-representatives."). While we see the § 3582(c)(1)(A)(i) proceedings as a critical stage under the Sixth Amendment, there should at least be a right to counsel in these circumstances under 18 U.S.C. § 3006(A) as an ancillary proceeding. The Criminal Justice Act specifically provides that a person who had counsel appointed under the CJA for a felony charge is entitled to be represented at every stage of the proceedings, "including ancillary matters appropriate to the proceedings." 18 U.S.C. § 3006A(c).

For terminally ill prisoners, the First Step Act's notification provisions expressly contemplate our involvement as the defendant's attorney. The new statute defines "terminally ill" as "a disease or condition with an end-of-life trajectory." 18 U.S.C. § 3582(d)(1). According to BOP statistics provided to Congress, between 2014 and 2017, the BOP received 3,122 requests for compassionate release, 817 of which involved terminal illness (81 one whom died before a decision was made). Under new § 3582(d)(2), the BOP shall, "not later than 72 hours after the diagnosis [of terminal illness] notify the defendant's attorney, partner, and family members that they may prepare and submit on the defendant's behalf a request for a sentence reduction pursuant to subsection (c)(1)(A)[.]" So for almost 25 percent of folks seeking compassionate release, the statute contemplates a defender role from the start of the compassionate release process. The statute's notification section goes on to provide for an opportunity for family visitation, assistance with the administrative process of seeking compassionate release, and attorney assistance with the process,

especially for those "physically or mentally unable to submit a request for a sentence reduction[.]" 18 U.S.C. § 3582(d)(2)(B).

Compassionate release cases usually involve defender offices in two districts: where the sentence was imposed, and where the sentence is being served. The initial contact can come from the client or family either to the original lawyers or to lawyers serving their district's federal prison. Either way, our offices are likely to need to coordinate client contact and exhaustion of administrative remedies. In the past, we have focused on the district of confinement because that is where we would file habeas corpus petitions under 28 U.S.C. § 2241 petition trying to compel the filing of a motion. Now that we have a path directly to the sentencing judge, we still need to have client contact, factual development, and work with the BOP prior to filing. For example, the Oregon office will be assisting any other office with a client at FCI Sheridan who has developed "extraordinary and compelling reasons."

The assistance with administrative remedies can be critical. We should not underestimate the value of the BOP initiating our clients' motions to reduce sentence. Our clients are required to "fully" exhaust administrative remedies prior to filing a defense motion (unless the BOP delays review). The more we can assist in assuring our clients' cases are effectively presented, the greater the likelihood that the sentencing judge will have a BOP-approved motion with which to agree or, at least, an administrative record with all our facts favorable to a sentence reduction. Under the current practice, when the Warden makes a favorable recommendation, the packet goes straight to the BOP's national office; for unfavorable recommendations, the administrative remedies include review by the Regional Director, followed by review by the national office. The denial by the Director or General Counsel of the BOP constitutes a "final administrative decision" that an inmate may not appeal through the Administrative Remedy Procedure. 28 C.F.R. § 571.63(d).

Our assistance with the initial application for compassionate release places us in relatively unfamiliar territory. But counsel can provide essential services both to assist the BOP in arriving at the correct decision and to establish the solid record of relevant facts and procedural ripeness for litigation if necessary. The administrative remedy process involves time limits on appeals to the warden, to the regional office, and to the central office. Program Statement 1330.18, Administrative Remedy Program (Jan. 6, 2014). We need to mine the standards of both Program Statement 5050.49 and § 1B1.13 to make sure that all relevant grounds are asserted and that, to the extent possible, are documented in the request for compassionate release.

While our terminal clients may receive direct assistance from counsel, others may need to proceed on their own but with our guidance on what grounds and documentation should be asserted, including appropriate release plans. Timely administrative appeals are important to full exhaustion. For our clients in dire circumstances, delay is our enemy.

The case becomes ripe for filing the defense motion under the statute when either the director or general counsel of the BOP says no after full administrative exhaustion ("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 when the national office exceeds the statutory 30-day limit ("the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier"). Remember that the administrative remedy process involves an "appeal" to the warden as well as to regional and national offices. As with our trial cases, the administrative steps are critical to providing the strongest position on the motion before the sentencing judge, so the factors supporting the grant of the motion by the sentencing judge that follow provide the outline for presentations to the BOP.

B. Presenting The Sentencing Judge With A § 3582(c)(1)(A)(i) Motion

Once administrative remedies have been exhausted, we can file a motion for reduction of sentence before the sentencing judge. We have a suggested outline for a motion attached, but, as with all defender legal writing, pleadings will evolve as we gain more experience with this type of litigation. But we will always need to address at least three basic areas.

1. "Extraordinary And Compelling Reasons"

There are competing standards for "extraordinary and compelling reasons" from the BOP and from the Sentencing Commission. In the Sentencing Reform Act of 1984, Congress, as authorized by 28 U.S.C. § 994(a)(2)(C), expressly delegated to the Sentencing Commission the task of defining § 3582(c)(1)(A)(i)'s "extraordinary and compelling reasons" in 28 U.S.C. § 994(t). But until 2007, the Commission failed to do so, leaving the BOP to make up its own criteria, which in their current form can be found in Program Statement 5050.49, *Compassionate Release/Reduction in Sentences* (Mar. 25, 2015). In 2016, the Sentencing Commission, based on hearings and comment, expanded the definition of "extraordinary and compelling reasons" and strongly urged the BOP to bring

motions for reduction in sentence whenever the prisoner met the Commission's criteria. U.S.S.G. § 1B1.13.

In Application Note 1 of § 1B1.13, the Commission set out categories of qualifying reasons: (A) "Medical Conditions of the Defendant," including subparagraphs for terminal illness and for other serious conditions and impairments; (B) "Age of the Defendant," for those 65 and older with serious deterioration related to aging who have completed at least 10 years or 75 percent of the term of imprisonment; (C) "Family Circumstances," where a child's caregiver dies or becomes incapacitated or a spouse becomes incapacitated without an alternative caregiver; and (D) "Other Reasons" as defined by the BOP. This last provision is why we need to make sure we review the BOP program statement because, under subsection (D), the BOP can add to circumstances that can be considered "extraordinary and compelling reasons." The BOP added to the criteria in section 4(a) of Program Statement 5050.49: "Inmates sentenced for an offense that occurred on or after November 1, 1987 (*e.g.*, "new law"), who are age 70 years or older and have served 30 years or more of their term of imprisonment." Since Congress delegated the definition only to the Commission, our position is that the BOP can expand but cannot limit the scope of "extraordinary and compelling reasons."

That means that, whenever we are assessing a potential § 3582(c)(1)(A)(i) motion, we will need to review the standards for "extraordinary and compelling reasons" from both the Sentencing Commission in U.S.S.G. § 1B1.13 and the Bureau of Prisons in Program Statement 5050.49. We figure out which of those standards (medical condition, age, family circumstances) apply to our client with a preference for the more generous Guideline criteria. For example, as reflected in the Sentencing Commission's Statement of Reason for Amendment 799 (U.S.S.G. Supp. to App. C at 126 (Nov. 2018)), the 2016 version of § 1B1.13 considered and rejected aspects of the BOP's stricter standard.

- If your client has a terminal illness, the BOP program statement calls for a life expectancy of less than 18 months, while § 1B1.13 application note 1(A)(i) explicitly states, "A specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required."

- The BOP program statement requires that the condition upon which the motion is based arose after the initial sentence was imposed, while § 1B1.13's Application Note 2 states, "an extraordinary and compelling

reason need not have been unforeseen at the time of sentencing in order to warrant a reduction in the term of imprisonment."

- The BOP program statement requires an approved release plan, while Application Note 4 of § 1B1.13 calls for the sentencing judge to apply the sentencing standards under 18 U.S.C. § 3553(a) and to consider the motion "if the defendant meets any of the circumstances set forth in Application Note 1."

For our clients who may qualify based on aging under Application Note 1(B) of § 1B1.13, we should be sure to count good time credits earned under 18 U.S.C. § 3624(b) in determining whether the client has served 10 years or 75 percent of the term of imprisonment, whichever is less. If the dates are simple, you can just use a Date Duration Calculator to count the days between arrest and the BOP's projected release date (from Inmate Locator on the BOP website), then count the days between arrest and today, then divide the first number into the second for the percentage served.

Once we have determined the bases for seeking sentence reduction, we need to assist our clients in seeking compassionate release on all available grounds. In doing so, we assist in providing the BOP the strongest available documentation, as well as the strongest release plan.

2. Section 3553(a) Factors And Risk To Others And The Community

This section involves many of the factors at the original sentencing with key additions. Most importantly, the time already served should have met many of the original sentencing goals: the Supreme Court's opinion in *Pepper v. United States*, provides an excellent format for relating post-offense rehabilitation to § 3553(a) factors. 562 U.S. 476, 490-93 (2011). To figure out what an equivalent sentence your client has served with good time credits would be, you can use the chart at this link to add good time to actual time, assuming adjustment for any loss of good time credits.[1] You can file a separate sealed submission with the presentence report, BOP progress report and disciplinary record, and medical reports relevant to your client's condition. Any intervening favorable developments should be included, such as

[1] https://www.fd.org/sites/default/files/criminal_defense_topics/essential_topics/sentencing_resources/clemency/good-time-chart.pdf

attempts to pay restitution, family reconciliation, and actions demonstrating sincere remorse.

Although danger to the community is considered under § 3553(a)(1)(C) ("to protect the public from further crimes of the defendant"), the Sentencing Commission included as a separate determination that "the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)." U.S.S.G. § 1B1.13(2). The statutory reference is to the Bail Reform Act, which includes consideration of safety of others and the community: "the nature and seriousness of the danger to any person or the community that would be posed by the person's release." 18 U.S.C. § 3142(g)(4). As in any sentencing presentation, we argue the factors supporting low risk factors, but the "extraordinary and compelling reasons" are likely to provide strong arguments on this question. Further, especially for those moving under "age of defendant," the statistics on recidivism of prisoners over 65 years old should help neutralize these concerns. *See* United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders* (Dec. 2017).

You should be aware of a lurking issue on risk to others: prior to the Fair Sentencing Act, the BOP routinely denies compassionate release under section 7 of Program Statement 5050.49, claiming that release would minimize the severity of the offense and pose a danger to the community. In our prior litigation, we have asserted that the BOP was usurping a judicial function that the BOP had no business taking on for itself for two reasons. First, § 3582(c)(1)(A)(i) delegates only to the sentencing judge consideration of § 3553(a) factors such as the seriousness of the offense and protection of the community. Second, in the second subparagraph of the statute relating solely to elderly prisoners, Congress expressly included BOP consideration of risk to the community. 18 U.S.C. § 3582(c)(1)(A)(ii) (requiring a determination by the BOP director that the defendant is not a danger under § 3142(g)). The express inclusion in one part of the statute forecloses tacit delegation in the other part. *See Dean v. United States*, 137 S. Ct. 1170, 1177 (2017) ("We have said that '[d]rawing meaning from silence is particularly inappropriate' where 'Congress has shown that it knows how to direct sentencing practices in express terms.'") (quoting *Kimbrough v. United States*, 552 U.S. 85, 103 (2007)). Under both the statute and the separation of powers, the sentencing judge should be the sole determiner, with all the facts, of the sentencing decisions related to the offense and public safety. *Setser v. United States*, 132 S. Ct. 1463, 1470-71 (2012) ("[T]he Bureau is not charged with applying § 3553(a) . . . . It is much more natural for a

judge to apply the § 3553(a) factors . . . than it is for some such decisions to be made by a judge . . . and others by the Bureau of Prisons.").

The flip side of potential danger to the community is our clients' vulnerability in prison due to medical "extraordinary and compelling reasons," which are now defendant characteristics under § 3553(a)(1). Even under the mandatory Guidelines system prior to 2005, the Supreme Court recognized that vulnerability in prison constituted a legitimate basis for downward departures. *Koon v. United States*, 518 U.S. 81, 107 (1996) (recognizing susceptibility to abuse in prison as a basis for downward departure) (citing *United States v. Lara*, 905 F.2d 599 (2d Cir. 1990)). Our frail and impaired clients may have a number of vulnerabilities that we will need to develop specific to the "extraordinary and compelling reasons" in the individual case. Clients may have diseases that involve compromised immune systems that make group living and inevitable exposure to contagions especially dangerous for them. Our clients' weakness and the potentially catastrophic consequences of physical attack may be an important consideration. For some conditions such as diabetes, the BOP has, anecdotally, a terrible time providing for appropriate care given the need for constant testing of blood sugar levels, control of diet, and scheduled insulin injections. Where medical considerations need to be explained, we need to develop facts for the sentencing judge using public sources, medical support organizations, and, where appropriate, expert assistance.

The most important consideration under § 3553(a) is the overarching obligation for the sentencing judge to follow the parsimony principle and impose a sentence "sufficient, but not greater than necessary," to accomplish the goals of sentencing. *Dean*, 137 S.Ct. at 1175; *Kimbrough*, 552 U.S. at 101. The question for terminally ill clients is whether the judge should impose a life sentence. For our clients, there is a profound difference between facing death in prison surrounded by strangers and being with family and loved ones as death approaches. Our clients have done wrong but the reason for compassionate release, as its name suggests, is to add some degree of humanity to our brutal system. And for those judges more interested in things fiscal, as suggested by the Sentencing Commission in § 5H1.4, the costs of caring for the dying in prison is much higher than when our clients are able to die at home. Beyond our terminally ill clients, we now have explicit recognition by the Sentencing Commission of factors that warrant consideration for shorter sentences based on client characteristics and social history.

3. Modification of Conditions Of Supervised Release To Accommodate The Reasons For The Sentencing Reduction

If your client is fortunate, the BOP will already have approved a release plan that takes into account the extra needs created by the reasons for the sentence reduction. In any event, our experience with clemency, retroactive Guidelines amendments, and collateral attacks on enhanced sentences teaches that the BOP, the Probation Office, and defense counsel (with defender alternatives staff), when working together, can put together the smoothest transition for reentry. There may need to be amendments to the conditions of supervised release, including release to the district where supportive family live or release to some number of days in a reentry center while resources are marshalled to assist the client. The more solid the plan, the better the chances at a sentence reduction; no one wants an ailing and vulnerable client on the street with inadequate resources.

C. The Historical Shift Accomplished By The First Step Act

For over 30 years, federal defense lawyers have agonized and improvised when clients and their families tell us of developments that make further incarceration inhumane and unreasonable but the BOP refuses to file a motion. For many years, federal defenders have been joining with prisoner support organizations in trying to change what has been a truly awful system by urging change before the Sentencing Commission, in submissions to congressional committees, and by providing comments on BOP regulations. We hope that the BOP will embrace the new legislation and that we are on the cusp of a time when the BOP will be joining us in many more motions for deserving clients. But if we are in litigation, the BOP is likely refusing to file the motion to reduce sentence. In that context, it is helpful to know the history and arguments that preceded the First Step Act.

As a matter of policy, the BOP's implementation of § 3582(c)(1)(A)(i) has been a miserable failure. The Department of Justice's Office of the Inspector General has repeatedly found that the program resulted in needless and expensive incarceration and was administered ineffectively. Department of Justice, Office of the Inspector General, *The Federal Bureau of Prisons' Compassionate Release Program*, at 11 (April 2013) ("The BOP does not properly manage the compassionate release program, resulting in inmates who may be eligible candidates for release not being considered."); DOJ, OIG, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons*, at 51(May 2015) ("Although the BOP has revised its compassionate release policy to expand consideration for early release

to aging inmates, which could help mitigate the effects of a growing aging inmate population, few aging inmates have been released under it."). Aside from expense and inefficiency, the human costs of incarceration that no longer serves the purposes of sentencing have been documented by prisoner advocates. Human Rights Watch & Families Against Mandatory Minimums, *The Answer Is No: Too Little Compassionate Release in US Federal Prisons* (Nov. 2012); Mary Price, *A Case For Compassion*, 21 Fed. Sent. Rptr. 170 (Feb. 2009); Stephen Sady & Lynn Deffebach, *Second Look Resentencing Under 18 U.S.C. § 3582(c) As An Example Of Bureau Of Prisons Policies That Result In Overincarceration*, 21 Fed. Sent. Rptr. 167 (Feb. 2009).

Not only has the implementation of the statute been ineffective, federal defenders have argued that the program has been implemented in violation of the statute and Constitution. Rather than unlimited and unreviewable discretion, the statute provided standards and delegated authority in such a manner that the only legitimate function of the BOP was to assess whether "extraordinary and compelling reasons" existed and, if so, to notify the sentencing judge by filing a motion. Those legal arguments based on the statutes' history and the separation of powers are set out in the linked briefs in Steven Avery's case by federal defenders and the supporting amicus curiae brief of prisoner advocates.[2] It is especially helpful to know how the build-up of bad case law on the statute derived from confusion and conflation of the old parole statute with the present statute.

Conclusion

We just received an important addition to our job description: making sure deserving clients receive a serious and compassionate second look at the sentence they are serving when "extraordinary and compelling reasons" exist. We will often be helping clients and their families during distressing and traumatic times. While making sure our legal arguments take full advantage of the new law, we will also be marshalling investigators, social workers, and alternatives specialists to present our clients' cases and to provide the best community resources, including hospice

[2] http://or.fd.org/system/files/case_docs/Steven%20Avery%20v.%20Justin%20Andrews%20AOB.pdf

http://or.fd.org/system/files/case_docs/Steven%20Avery%20%20FAMM%20amicus.pdf

services, for effective release plans. The First Step Act left much undone, but we should be making sure our clients receive the full benefits from what has been given.

[Attorney information]

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,	**Case No. _____**
Plaintiff,	
v.	**MOTION TO REDUCE SENTENCE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)(i)**
[CLIENT],	
Defendant.	

The defendant, Client, through his attorneys, respectfully moves this Court pursuant to the newly-amended 18 U.S.C. § 3582(c)(1)(A)(i) for an order reducing his sentence to time served based on his terminal _____. After the Warden at FCI _____ determined that "extraordinary and compelling reasons" existed, the Bureau of Prisons denied reduction of sentence. Pursuant to the First Step Act, the Court has jurisdiction to determine whether "extraordinary and compelling reasons" warrant a sentence reduction after consideration of sentencing factors under 18 U.S.C. § 3553(a) and the Sentencing Commission's policy statement on reduction of sentence in U.S.S.G. § 1B1.13. Because Client's circumstances fall within the Sentencing Commission's standards for reduction of sentence based on ____ as described in Application Note __ of U.S.S.G. § 1B1.13, we respectfully request that the Court grant the

requested sentence reduction to time served and modify the terms of supervised release to accommodate the release plan Client presented to the Warden, as updated by the Probation Office.

Jurisdiction

On December 21, 2018, the President signed the First Step Act into law. Among the criminal justice reforms, Congress amended 18 U.S.C. § 3582(c)(1)(A)(i) to provide the sentencing judge jurisdiction to consider a defense motion for reduction of sentence under the subsection when "the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendants behalf[.]" First Step Act of 2018 at 119. Client exhausted all available administrative remedies by seeking compassionate release through the Warden at FCI ____, which resulted in denial by the General Counsel on _____, 2018. Appendix A. [Or the 30-day period has elapsed without a decision.] The denial constitutes a "final administrative decision" that an inmate may not appeal through the Administrative Remedy Procedure. 28 C.F.R. § 571.63(d).

Sentence Reduction Authority Under 18 U.S.C. § 3582(c)(1)(A)(i)

This Court has discretion to reduce the term of imprisonment imposed in this case based on § 3582(c)(1)(A)(i), which states in relevant part that the Court "may reduce the term of imprisonment, after consideration the factors set forth in section 3553(a) to the extent they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction[.]" Pursuant to the requirement of 28 U.S.C. § 994(t), as authorized by 28 U.S.C. § 994(a)(2)(C), the Sentencing Commission promulgated a policy statement that sets out the criteria and examples of "extraordinary and compelling reasons" in U.S.S.G. § 1B1.13 that include Client's circumstances:

> 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.

U.S.S.G. § 1B1.13, comment. n.1(A)(i) (Nov. 1, 2016). Client has exhausted available administrative remedies. The Court's exercise of sentencing discretion based on the extraordinary and compelling reasons will depend on both Client's current medical condition, his background as reflected in the presentence report submitted under seal, and the service of the substantial portion of his sentence. This submission will be supplemented by updated medical records and other information that has been requested.

Factual And Procedural Background

Client has been in custody in connection with the present offenses of _____ since his arrest on _____, which amounts to ____ years of actual incarceration plus another _____ for good time credits. He has served a term of imprisonment of approximately __ months. On _____, Client entered a guilty plea to Counts __ of the indictment charging him with _____. [Detail the prior Guidelines calculation and disposition].

During the service of the sentence [describe how the "extraordinary and compelling reasons" were discovered and the efforts at the prison to obtain a reduction in sentence]. [If applicable, describe the release plan approved by the Warden].

On _____, the BOP General Counsel denied the request to file a sentence reduction motion. Applying the BOP's program statement that creates its own standards for "extraordinary and compelling reasons," which differ in some important respects from the Commission's standards, the BOP attorney recognized that Client has [qualifying condition if applicable], which fulfills the definition of a "terminal medical condition" under BOP program statement 5050.49 section 3(a):

[insert findings]

Despite this finding, the BOP refused to file a motion for sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i) based on factors related to public safety listed in section 7 of program statement 5050.49:

[Insert language of denial].

Client has no pathway for further administrative remedy.

[Describe any litigation on compassionate release that preceded the First Step Act].

As part of the First Step Act that President Trump signed on December 21, 2018, Congress removed a major obstacle from judicial review of sentences to determine whether conditions such as terminal illness made a sentence reduction "sufficient, but not greater than necessary," under 18 U.S.C. § 3553(a). Under the Act, this Court is afforded jurisdiction to make the § 3553(a) determination of whether Client's ____ years in prison, in light of his age, terminal illness, and other debilitating conditions, is "sufficient, but not greater than necessary," to accomplish the goals of sentencing.

A. Client's Terminal Illness And Other Incapacitating Illnesses Constitute Extraordinary And Compelling Reasons Warranting A Sentence Reduction.

Client easily meets the threshold requirement of "extraordinary and compelling reasons" because he has a terminal illness [or insert relevant Application Note subsections that may apply] within the meaning of Application Note 1(A)(i) of U.S.S.G. § 1B1.13 ("The defendant is suffering from a terminal illness (*i.e.*, a serious and advanced illness with an end of life trajectory)."). [Present details of the "extraordinary and compelling reasons].

B. With Full Consideration Of The § 3553(a) Factors, Client's Time Served Constitutes A Sentence Sufficient But Not Greater Than Necessary To Accomplish The Goals Of Sentencing.

Under § 3553(a), the extraordinary and compelling reasons, under both the BOP and Sentencing Commission descriptions, warrant sentence reduction based on the characteristics of the defendant, the need for effective and supportive environment for medical care, and the accomplishment of the deterrence and public safety purposes of sentencing. The time already served has met many of the original sentencing goals. [Argue the § 35553(a) factors].

C. The Conditions Of Supervised Release Should Be Modified To Accommodate The Reasons For The Sentencing Reduction.

As with defendants in recent years coming out from long sentences through clemency, retroactive Guidelines amendments, and Supreme Court definitions of predicate convictions for enhanced sentencing, the BOP, the Probation Office, and the defense Court have formulated a solid reentry plan. The BOP previously approved release to the care of Client's [describe release plan and efforts to assure that Client receives appropriate care]. [Request any appropriate modifications of the conditions of supervised release such as release to the district where family lives and transitional time in a reentry center].

Conclusion

For the foregoing reasons, Client respectfully requests that the Court grant reduction in sentence to time served and amend the conditions of supervised release as requested.

Respectfully submitted this _____ day of December, 2018.

/s/_____

Attorney for Defendant