


FILED
Clerk
District Court
JUL 15 2024

for the Northern Mariana Islands
By 
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS**

UNITED STATES OF AMERICA,
Plaintiff,

v.

VINCENT DAVID CABRERA, JR.,
Defendant.

Case No.: 1:18-cr-00006-01

**DECISION AND ORDER DENYING
DEFENDANT’S MOTION FOR
COMPASSIONATE RELEASE AND
MOTION FOR COUNSEL**

Defendant Vincent David Cabrera, Jr., a pro se inmate at Federal Correctional Institute Sheridan (“FCI Sheridan”) serving a 180-month sentence of imprisonment (Crim. J. 2, ECF No. 163), filed a motion for compassionate release (Mot. Compassionate Release, ECF No. 260) and a motion for counsel (Mot. Counsel, ECF No. 261). Cabrera cites “his suffering at Sheridan FCI and the lack of rehabilitative services and important services being provided to him during the COVID-19 pandemic” as justification for his compassionate release. (Mot. Compassionate Release 6.) The Government opposes the motion for compassionate release. (Opp’n, ECF No. 262.) To date, the Government has not filed any response to the motion for counsel, and Cabrera has not filed any reply in support of his motion for compassionate release. *See* LR 7.1(c). The Court finds oral arguments unnecessary and adjudicates Cabrera’s motions without oral arguments. *See* LR 7.1(a)(2), (a)(3)(E). Having considered the record, controlling law and the evidence provided, the Court DENIES Cabrera’s motions for the following reasons.

I. BACKGROUND

1
2 In March 2019, Cabrera was sentenced in this instant case to 180 months imprisonment for
3 conspiracy to manufacture methamphetamine, which was affirmed by the Ninth Circuit. (J. 1-2; Mem.,
4 ECF No. 234.) In sentencing Cabrera, the Court granted him a downward variance over the
5 Government's objection as the manufacturing was a small scale "shake and bake operation."
6 (Statement of Reasons, ECF No. 163-1.)

7 On July 27, 2023, Cabrera submitted a request for compassionate release to Warden Jacquez
8 "due to the COVID-19 pandemic in conjunction with the lack of rehabilitative services." (Mot.
9 Compassionate Release 1; Inmate Request to Staff, ECF No. 260-1.)

II. LEGAL STANDARD

11 Generally, "[t]he court may not modify a term of imprisonment once it has been imposed." 18
12 U.S.C. § 3582(c); *see Dillon v. United States*, 560 U.S. 817, 824 (2010) ("A judgment of conviction
13 that includes a sentence of imprisonment constitutes a final judgment and may not be modified by a
14 district court except in limited circumstances." (cleaned up)). The narrow exception is that the Court
15 may grant an inmate's motion to reduce the term of imprisonment, provided that the inmate satisfy
16 certain conditions. § 3582(c)(1)(A). First, "the defendant [must] fully exhaust[] all administrative
17 rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the
18 lapse of 30 days from the receipt of such a request *by the warden of the defendant's facility*, whichever
19 is earlier[.]" § 3582(c)(1)(A) (emphasis added). Second, after considering the factors laid out in 18
20 U.S.C. § 3553(a), the Court must find that: (1) "extraordinary and compelling reasons warrant such a
21 reduction," and (2) "that such reduction is consistent with applicable policy statements issued by the
22 Sentencing Commission." § 3582(c)(1)(A)(i).
23
24

III. DISCUSSION

1
2 Cabrera seeks compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). (Mot.
3 Compassionate Release 1.) Before addressing Cabrera’s motion for compassionate release, the Court
4 first considers Cabrera’s motion for counsel, which the undersigned interprets as a request to assist in
5 his motion for compassionate release.

6 *A. Motion for Counsel*

7 There is neither a Sixth Amendment nor statutory right to counsel with respect to a motion
8 under § 3582(c) that seeks modification of a sentence imposed. *United States v. Bond*, No. LA CR94-
9 00563 JAK, 2020 WL 4340257, at *1 (C.D. Cal. Feb. 25, 2020) (citing *United States v. Townsend*, 98
10 F.3d 510, 512-513 (9th Cir. 1996)). “A person for whom counsel is appointed shall be represented at
11 every stage of the proceedings from his initial appearance . . . through appeal, including ancillary
12 matters appropriate to the proceedings.” 18 U.S.C. 3006A(c). “A motion brought under 18 U.S.C. §
13 3582(c) does not constitute an ‘ancillary matter[.]’ through which an appointment of counsel must
14 continue.” *Bond*, 2020 WL 4340257, at *1 (citing *United States v. Whitebird*, 55 F.3d 1007 (5th Cir.
15 1995)). “[T]he decision whether to appoint counsel in post-conviction proceedings (including requests
16 for compassionate release or for 2255 motions) rests with the discretion of the district court.” *United*
17 *States v. Torres*, No. 1:07-cr-00235-DCN, 2021 WL 3037405, at *1 (D. Idaho July 19, 2021) (citing
18 *United States v. Harrington*, 410 F.3d 598, 600 (9th Cir. 2005)).

19
20 Here, Cabrera requests counsel as he is “not skilled in the law and will not be able to argue
21 with the government[.]” (Mot. Counsel 1.) Although Cabrera is unsuccessful in his motion for
22 compassionate release, Cabrera provided numerous case cites and thorough analysis all without
23 counsel. Thus, the Court finds that Cabrera has not demonstrated sufficient good cause for
24

1 appointment of counsel and thus DENIES his motion for counsel. *See Bond*, 2020 WL 4340257, at *2
2 (denying request for counsel for insufficient good cause).

3 ***B. Exhaustion of Administrative Remedies***

4 For the Court to decide a motion for compassionate release filed directly by an inmate as
5 opposed to the Director of the Federal Bureau of Prisons (“BOP”), the moving inmate must first
6 exhaust the available administrative remedies “to appeal a failure of the Bureau of Prisons to bring a
7 motion on the defendant’s behalf.” 18 U.S.C. § 3582(c)(1)(A); see *United States v. Keller*, 2 F.4th
8 1278, 1281 (9th Cir. 2021) (per curiam). Alternatively, the inmate can satisfy the exhaustion
9 requirement by sending a letter requesting compassionate release to the “warden of the defendant’s
10 facility,” and after the passage of 30 days without a response, may seek a direct review by the district
11 court. § 3582(c)(1)(A). The Ninth Circuit held, as a matter of first impression, that the “administrative
12 exhaustion requirement imposes a mandatory claim-processing rule that must be enforced when
13 properly invoked” by the Government, rather than serving as a jurisdictional bar. *Keller*, 2 F.4th at
14 1282. Thus, it is “mandatory in the sense that a court must enforce the rule if a party properly raise[s]
15 it, but the objection may be forfeited if the party asserting the rule waits too long to raise the point.”
16 *Id.* (citations omitted) (cleaned up).

17
18 The Government contends that while Cabrera sent a request for compassionate release to the
19 Warden, he failed to exhaust his administrative remedies as “his request did not describe any
20 extraordinary or compelling circumstances.” (Opp’n 3 (first citing § 3582(c)(1)(A); and then citing 28
21
22
23
24

1 C.F.R. § 571.61).¹ Cabrera cites the COVID-19 pandemic and the lack of rehabilitative services as
2 justification for his compassionate release in his letter to the Warden. (Inmate Request to Staff.)
3 Cabrera submitted his request to the Warden on July 27, 2023, (*id.*; Mot. Compassionate Release 1),
4 and more than thirty days has lapsed since then. Even though the Court agrees with the Government
5 that Cabrera’s request to the Warden lacks details to support a finding of extraordinary and compelling
6 reasons, the facts presented nevertheless support a finding of an exhaustion of administrative remedies.

7 ***C. Extraordinary and Compelling Reasons***

8 Next, the inmate must demonstrate that: (1) “extraordinary and compelling reasons warrant
9 such a reduction,” and (2) “that such a reduction is consistent with applicable policy statements issued
10 by the Sentencing Commission.” § 3582(c)(1)(A)(i). Previously, while the Ninth Circuit “recognized
11 that the version of USSG § 1B1.13 in effect before November 1, 2023, was not an applicable policy
12 statement governing compassionate release motions filed by defendants under § 3582(c)(1)(A),” it
13 “opined that the Sentencing Commission’s statements in the version of USSG § 1B1.13 then in effect
14 could inform this court’s discretion.” *United States v. Nishida*, No. CR 19-00025, 2023 WL 7222875,
15 at *2 (D. Haw. Nov. 2, 2023) (citing *United States v. Aruda*, 993 F.3d 797, 801-02 (9th Cir. 2021)).²
16 Although the “the Ninth Circuit has not yet examined whether the Sentencing Commission’s newly
17 amended [2023] guidelines constitute applicable policy statements,” district courts within the Ninth
18 Circuit have nevertheless applied the 2023 amendment of U.S.S.G. § 1B1.13 to motions for
19
20
21

22 ¹ An inmate’s request for compassionate release to the warden must contain “[t]he extraordinary or compelling
23 circumstances *that the inmate believes* warrant consideration.” 28 C.F.R. § 571.61 (emphasis added).

24 ² Even applying the 2021 version of the Sentencing Guidelines, the Court still concludes that Cabrera has failed to
demonstrate extraordinary and compelling reasons warranting compassionate release.

1 compassionate release filed by defendants. *See id.*; *United States v. Ottinger*, No. 10-CR-05016-H-1,
2 2023 WL 8719458, at *6 (S.D. Cal. Dec. 18, 2023) (“U.S.S.G. § 1B1.13 was amended on November
3 1, 2023 to reflect that a defendant is authorized to file a motion under 18 U.S.C. § 3582(a)(1)(A),
4 meaning that the policy statement is now applicable to both defendant-filed and BOP-filed motions.”
5 (citations omitted)); *United States v. Brown*, No. CR16-0259JLR, 2023 WL 8650290, at *3 (W.D.
6 Wash. Dec. 14, 2023) (“Because the current policy statement post-dates the First Step Act, *Aruda* no
7 longer controls—the policy statement does.” (citations omitted)); *United States v. Gouveia*, No. CR
8 08-00739 SOM, 2024 WL 2214556, at *2 (D. Haw. May 15, 2024) (“Effective November 1, 2023,
9 USSG § 1B1.13 was amended to apply to motions brought by both the BOP Director and individual
10 defendants. The provision is now the applicable policy statement with respect to compassionate release
11 motions.” (citations omitted)).
12

13 The relevant statements explain that a court may reduce a term of imprisonment if it determines
14 that (1) “extraordinary and compelling reasons warrant the reduction,” (2) “the defendant is not a
15 danger to the safety of any other person or to the community,” and (3) “the reduction is consistent with
16 this policy statement.” U.S.S.G. § 1B1.13(a) The Guidelines further explain that

17 Extraordinary and compelling reasons exist under any of the following
18 circumstances or a combination thereof:

19 (1) Medical Circumstances of the Defendant.—

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

24 (B) The defendant is—

- 1 (i) suffering from a serious physical or medical condition,
- 2 (ii) suffering from a serious functional or cognitive impairment, or
- 3 (iii) experiencing deteriorating physical or mental health because of
- 4 the aging process, that substantially diminishes the ability of the
- 5 defendant to provide self-care within the environment of a
- 6 correctional facility and from which he or she is not expected to
- 7 recover.

8 (C) The defendant is suffering from a medical condition that requires long-

9 term or specialized medical care that is not being provided and without which

10 the defendant is at risk of serious deterioration in health or death.

11 (D) The defendant presents the following circumstances—

- 12 (i) the defendant is housed at a correctional facility affected or at
- 13 imminent risk of being affected by (I) an ongoing outbreak of
- 14 infectious disease, or (II) an ongoing public health emergency
- 15 declared by the appropriate federal, state, or local authority;
- 16 (ii) due to personal health risk factors and custodial status, the
- 17 defendant is at increased risk of suffering severe medical
- 18 complications or death as a result of exposure to the ongoing
- 19 outbreak of infectious disease or the ongoing public health
- 20 emergency described in clause (i); and
- 21 (iii) such risk cannot be adequately mitigated in a timely manner.

22 U.S.S.G. § 1B1.13(b).

23 Three years prior to the 2023 amendment, this Court observed that “the ongoing pandemic—

24 grave as it is—does not entitle every federal inmate to immediate release” but found that Jordan Jucutan, an obese and asthmatic inmate at FCI Sheridan, presented “exceptional” circumstances such that it granted his motion for compassionate release in September 2020. *United States v. Jucutan*, No. 1:15-CR-00017, 2020 WL 5801705, at *1, *5 (D. N. Mar. I. Sept. 10, 2020). In rendering its decision, the Court observed that Jucutan had documentation from his physicians noting his recent medical

1 history and had served almost 75% of his 28-month sentence for wire fraud and aggravated identity
2 theft. *Id.* at *1-2. Further, the Court recognized the prosecutor’s remarks at Jucutan’s sentencing, that
3 Jucutan

4 is not an individual who is, like, corrupt or evil to his core. Rather, that he is a good
5 person, who made a bad mistake repeatedly over a short period of time. . . .I don’t
6 think he is an individual that needs to be rehabilitated. I don’t think this is a crime that
7 [he] will repeat.

8 *Id.* at *1. “Jucutan has maintained in prison the same positive character that the prosecutor described
9 at his sentencing” as his “BOP progress report indicates that his behavior at FCI Sheridan is
10 exemplary.” *Id.* at *5.

11 Here, the Court finds that Cabrera’s proffered reasons do not constitute extraordinary and
12 compelling circumstances that warrant compassionate release. Cabrera explains that because of the
13 COVID-19 pandemic, FCI Sheridan has become almost inhabitable with deplorable conditions, such
14 as lack of running water for days on end and prison guards assaulting various inmates; further, the
15 pandemic has limited his access to rehabilitative services. (Mot. Compassionate Release 1-4.) He
16 states that he is a high-risk patient susceptible to contracting COVID-19 and he “continues to have
17 severe coughing fits, chronic muscle fatigue, joint pain, frequent headaches, and is frequently short of
18 breath.” (*Id.* at 5.)

19 Although Cabrera asserts that he is a high-risk individual susceptible to COVID-19, he does
20 not specify his underlying condition(s). Cabrera is only forty-six years old. (Am. Final PSR 2, ECF
21 No. 133.) Nevertheless, a review of his amended final presentence investigation report reveals that
22 similar to Jucutan who was asthmatic and obese, Cabrera suffers from asthma and sinus problems. (*Id.*
23 ¶¶ 118-119.) However, and more importantly, the world is no longer plagued by COVID-19 without
24

1 any vaccination to allay an infection as it was in September 2020, when the Court granted Jucutan
2 compassionate release. First, COVID-19 vaccinations are now readily available to provide protection
3 from this virus. Second, the U.S. Congress in early 2023 passed a joint resolution terminating the
4 President's national emergency declaration related to the COVID-19 pandemic. National Emergencies
5 Act, Pub. L. No. 118-3, 137 Stat. 6 (2023). Thus, there is not an ongoing public health emergency to
6 support a finding of extraordinary and compelling reasons related to COVID-19 pursuant to U.S.S.G.
7 § 1B1.13(b)(1)(D)(i)(ii).

8 Further, as to Cabrera's complaint regarding his limited access to rehabilitative services, prior
9 courts have found such circumstances insufficient to constitute extraordinary and compelling reasons
10 justifying compassionate release. *United States v. Pankey*, No. 2:20-CR-149, 2023 WL 3166716, at
11 *4 (S.D. Ohio May 1, 2023) (collecting cases).³ Therefore, the Court concludes that Cabrera's
12 circumstances do not constitute extraordinary and compelling reasons necessary for compassionate
13 release.
14

15 ***D. Section 3553(a) Factors***

16 Finally, even assuming that extraordinary and compelling reasons exist in this case, the Court
17 would still deny Defendant's motion on a balancing of the 18 U.S.C. § 3553(a) sentencing factors.
18 This inquiry requires the Court to examine the following seven factors under § 3553(a) in deciding a
19 motion for compassionate release: (1) the nature and circumstances of the offense and the history and
20 characteristics of the defendant; (2) the need for the sentence imposed; (3) the kinds of sentences
21


22
23 ³ Moreover, to the extent that Cabrera asserts limited access to rehabilitative services, such a claim undercuts a finding that
24 Cabrera is no longer a danger to the safety of any other person or to the community, especially given the gravity of his conviction.

1 available; (4) the established sentencing range; (5) any pertinent policy statement; (6) the need to avoid
2 unwarranted sentencing disparities; and (7) the need to provide restitution to any victims. Here, unlike
3 Jucutan, who the prosecutor described as “a good person, who made a bad mistake” and was unlikely
4 to recidivate, Cabrera has a lengthy criminal history beginning with his prior federal conviction of
5 possession with intent to distribute, and numerous local convictions for domestic violence and stalking
6 (Am. Final PSR ¶¶ 97-100.) Moreover, Cabrera has only been incarcerated for sixty-four months, and
7 with his credit for time served of 354 days, (*id.* ¶ 18), he has served about 42% of his 180-month
8 sentence compared to the almost 75% that Jucutan had served. *See United States v. Garcia*, No. 1:18-
9 cr-00126-DAD-BAM-1, 2021 WL 5054415, at *7 (E.D. Cal. Oct. 30, 2021) (“The length of the
10 sentence remaining is an additional factor to consider in any compassionate release analysis, with a
11 longer remaining sentence weighing against granting any such motion.” (collecting cases).) Cabrera’s
12 lengthy criminal history, which involved a prior federal imprisonment as well the nature of the latest
13 conviction for the serious crime of conspiracy to manufacture methamphetamine, one involving the
14 dangerous “shake and bake” method, all counsel against early release.
15

16 IV. CONCLUSION

17 The conditions Cabrera describes while incarcerated are reprehensible; however, Cabrera’s
18 personal circumstances as presented do not rise to the level of extraordinary or compelling reasons to
19 warrant compassionate release. Based on the foregoing, Cabrera’s motion for counsel and motion for
20 compassionate release are DENIED.
21

22 IT IS SO ORDERED this 15th day of July 2024.

23 
24 _____
RAMONA V. MANGIONA
Chief Judge