

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA           §  
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V.                                               §           NO. 3:14-CR-2277-DCG-01  
                                                          §  
                                                          §  
ISIDRO PEREZ RAMIREZ               §

**ISIDRO RAMIREZ’S MOTION FOR SENTENCE REDUCTION  
PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)(i)**

TO THE HONORABLE DAVID C. GUADERRAMA, UNITED STATES DISTRICT  
JUDGE IN THE WESTERN DISTRICT OF TEXAS:

Isidro Perez Ramirez respectfully moves this Court, under 18 U.S.C. § 3582(c)(1)(A), to reduce his sentence to time-served or, alternatively, to modify his judgment to allow him to serve a portion of his sentence on home confinement.<sup>1</sup> He makes this request based on the “extraordinary and compelling reasons” presented by the COVID-19 pandemic and his unique vulnerability to infection. Specifically, Mr. Ramirez is at a higher risk of contracting COVID-19 and experiencing severe illness and/or death due to the massive outbreak of COVID-19 in Bureau of Prisons (BOP) facilities—including his facility, Lompoc FCC—as well as his age and underlying health conditions, which include conditions recognized by the CDC as placing individuals at a higher risk: diabetes, hypertension, and stage 4 kidney

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<sup>1</sup> This motion is not brought under the home confinement provisions of Section 12003 of the CARES Act, but rather pursuant to § 3582(c)(1)(A) which permits the Court to reduce a sentence and modify the terms of supervised release, *See, e.g. United States v. Coker*, No. 3:14-CR-085 (RLJ), 2020 WL 1877800 (E.D. Tenn. Apr. 15, 2020) (ordering the defendant be sentenced to time-served and modifying conditions of supervised release to include a term of home confinement).

disease. Because Mr. Ramirez's continued incarceration places him, his fellow inmates, and staff at Lompoc FCC at significant risk, he asks the Court to consider this motion on an expedited basis.

### Introduction

Mr. Ramirez is 62 years old and suffers from many serious medical conditions as documented by his lengthy BOP medical records. Of the greatest concern in the current environment are his diagnoses of: diabetes, high blood pressure, and Stage 4 kidney disease.<sup>2</sup> According to the CDC and other experts, diabetes, high blood pressure, and chronic kidney disease are among the most common conditions placing individuals at a high risk of severe illness from COVID-19.<sup>3</sup> Around the country, including in the Western District of Texas, these conditions have served as grounds for sentence reductions.

For a person suffering from health conditions like Mr. Ramirez, there are few more dangerous places to be during this pandemic than an American prison.<sup>4</sup> To date, there have been 87 inmate deaths and one staff death attributed to COVID-19 in the

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<sup>2</sup> Counsel has had limited contact with Mr. Ramirez, in light of recent lockdown precautions at Lompoc, and made numerous efforts for months to obtain medical records for Mr. Ramirez. Counsel finally received records from June 2019 to June 2020, on June 16, 2020. *See* Exhibit 1, Medical Records. Additionally, the Presentence Investigation Report details that, as of 2015, Mr. Ramirez suffered from diabetes and hypertension. Doc. No. 49, ¶¶ 55-56. Mr. Ramirez has reported that he was diagnosed with kidney disease since being incarcerated. Mr. Ramirez' exhibits have been submitted by separate Motion to Seal due to the personal information contained therein.

<sup>3</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People Who Are At Higher Risk*, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last accessed June 4, 2020).

<sup>4</sup> Michael Balsamo, *Over 70 percent of tested inmates in federal prisons have COVID-19* (Apr. 29, 2020), <https://www.pbs.org/newshour/nation/over-70-of-tested-inmates-in-federal-prisons-have-covid-19> (last accessed May 21, 2020). These estimated number is consistent with state prisons and jails, too. Equal Justice Initiative, *Covid-19's Impact on People in Prison* (updated May 21, 2020), <https://eji.org/news/covid-19s-impact-on-people-in-prison/> (last accessed May 21, 2020)

BOP system.<sup>5</sup> The vast majority of those inmates were noted to have “long-term, pre-existing medical conditions, which the CDC lists as risk factors for developing more severe COVID-19[.]”<sup>6</sup> Mr. Ramirez has these “long-term, pre-existing medical conditions” and while the mere fact of his incarceration puts him at significant risk, he faces the added threat of being housed at Lompoc FCC, arguably the most severely affected facility in the BOP system. Between Lompoc FCI and USP, over 1,000 inmates and 42 staff members have tested positive for the virus, the most inmates of any facility in the country.<sup>7</sup> Four inmates have died.<sup>8</sup> Media outlets described the surge of cases at Lompoc in April and May as an “explosion” and a “time bomb.”<sup>9</sup> The conditions at Lompoc are devastating and perfectly suited to the spread of the virus, particularly to vulnerable inmates like Mr. Ramirez.

Mr. Ramirez has been incarcerated for nearly 6 years for a non-violent drug offense that occurred in 2014. This was his first criminal conviction. Mr. Ramirez is a family man, with a wife of over 40 years and two children, who became addicted to drugs and committed the present offense in the throes of that addiction. During his incarceration he has ceased using drugs and has had zero disciplinary incidents. *See*, Exhibit 2, Progress Report. He would pose no threat to the public if released, particularly given his age and limited mobility due to his health conditions. He was

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<sup>5</sup> BOP COVID-19 Update, <https://www.bop.gov/coronavirus/> (last accessed June 22, 2020).

<sup>6</sup> BOP Resources, *Press Releases*, [https://www.bop.gov/resources/press\\_releases.jsp](https://www.bop.gov/resources/press_releases.jsp) (last accessed June 22, 2020).

<sup>7</sup> Federal Bureau of Prisons, *COVID-19 Coronavirus*, <https://www.bop.gov/coronavirus/> (last accessed June 22, 2020).

<sup>8</sup> *Id.*

<sup>9</sup> Tyler Harden, *Lompoc Prison Explodes with Active COVID-19 Cases*, Santa Barbara Independent (May 13, 2020), available at: <https://www.independent.com/2020/05/13/lompoc-prison-explodes-with-active-covid-19-cases/>.

sentenced to 135 months in 2015 and is scheduled to be released in June, 2024. The nearly 6 years he has served more than adequately reflects the seriousness of his offense, particularly given the risks posed by his medical conditions during the current crisis.

Upon reentry, Mr. Ramirez can quarantine and live with his wife, Viola Ramirez, in San Bernardino County, California. There, Mrs. Ramirez can provide a supportive and stable environment for Mr. Ramirez while he adjusts to life outside of prison. Additionally, he can assist in the care of their son, who suffers from cerebral palsy. In the past two months, courts around the country have granted compassionate release to many inmates—particularly to those who, like Mr. Ramirez, suffer from significant health conditions, are housed in severely impacted BOP facilities, and have already served significant sentences for non-violent crimes. As an older inmate suffering from numerous CDC recognized medical conditions, residing at Lompoc, and having served a significant portion of his sentence for a non-violent crime, Mr. Ramirez likely should have already been released by BOP under Attorney General William Barr's guidance.<sup>10</sup> This Court should order Mr. Ramirez's immediate release, given the significant and avoidable risks he faces otherwise.

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<sup>10</sup> See William Barr, United States Attorney General, *Memorandum for Director of Bureau of Prisons* (Mar. 26, 2020), available at <https://www.justice.gov/file/1262731/download> (last accessed June 22, 2020); William Barr, United States Attorney General, *Memorandum for Director of Bureau of Prisons* (Apr. 3, 2020), available at <https://www.justice.gov/file/1266661/download> (last accessed June 22, 2020).

## II. Background

### A. Procedural Background

In December of 2014, Mr. Ramirez was indicted on two counts related to importing methamphetamine from Mexico into the United States, in violation of 21 U.S.C. §§ 952(a) and 841(a)(1). *See* Doc. No. 10. Mr. Ramirez was unable to post bond and has been in federal custody from the time of his arrest on November 20, 2014. In February of 2015, a superseding indictment was filed stating four counts related to the same conduct. *See* Doc. No. 22. In May of 2015, he pleaded guilty to Count Four of that indictment, for possession with intent to distribute methamphetamine in violation of 21 U.S.C. § 841(a)(1). *See* Doc. No. 44. Mr. Ramirez had no prior convictions and the Probation Department calculated his Guidelines range as 168-210 months, based on a total offense level of 35 and a criminal history category of I. *See* Doc. No. 49, PSR, ¶ 69. Ultimately, on August 12, 2015, Mr. Ramirez was sentenced to 135 months imprisonment. *See* Doc. No. 58. Mr. Ramirez has now served nearly 6 years of that sentence and is eligible for release in June of 2024, with good-time credit. *See* Exhibit 2, Progress Report.

On April 3, 2020, Mr. Ramirez filed a formal written request for compassionate release with the Warden at Lompoc FCC, given the COVID-19 pandemic and the extreme risk presented to him by his medical conditions and his placement at Lompoc. He reported to counsel he gave the request directly to a staff counselor and also mailed a letter to the BOP Director.<sup>11</sup> Out of an abundance of caution, counsel

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<sup>11</sup> Lompoc staff has not located this request and counsel is unable to obtain written verification from Mr. Ramirez because: a) he has been held in lockdown for months in a different facility with no access to his belongings, and b)

submitted a formal renewed request before the filing of this motion, on June 5, 2020. *See* Exhibit 3, Counsel’s Letter to Warden. As of the filing of this motion, Mr. Ramirez has not received a response from the Warden. He now asks this Court to grant compassionate release because “extraordinary and compelling reasons” warrant it.

**B. The Impact of COVID-19 on the Federal Bureau of Prisons and Oakdale FCC**

The world has changed dramatically in the past few months because of the COVID-19 pandemic. As of June 22, 2020, over 9 million people have been infected globally and over 471,000 people have died. In the United States alone, nearly 2.4 million people have been infected and over 122,000 people have died.<sup>12</sup>

Public health experts have warned that incarcerated individuals “are at special risk of infection” and are “less able to participate in proactive measures to keep themselves safe.”<sup>13</sup> The conditions in BOP facilities provide a uniquely hospitable environment for COVID-19 to spread.<sup>14</sup> Inmates must share communal living spaces, such as cells, restrooms, recreation rooms, dining halls, libraries, and exercise yards. To make matters worse, hand sanitizer, an effective disinfectant recommended by the

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counsel’s contact with Mr. Ramirez has been limited by Lompoc staff to two brief phone calls. According to Mr. Ramirez, he has a copy of his letter in his long-term cell in the low security facility, and he has asked numerous staff people over the past two months to retrieve that and other belongings, to no avail.

<sup>12</sup> “COVID-19 Coronavirus Pandemic,” available at <https://www.worldometers.info/coronavirus> (last accessed June 22, 2020).

<sup>13</sup> “Achieving a Fair and Effective COVID-19 Response: An Open Letter to Vice-President Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the United States” (March 2, 2020), at <https://bit.ly/2W9V6oS>.

<sup>14</sup> Joseph A. Bick, “Infection Control in Jails and Prisons,” *Clinical Infectious Diseases* 45(8): 1047-1055 (2007), available at <https://doi.org/10.1086/521910>; Vice, “Sick Staff, Inmate Transfers, and No Tests: How the U.S. is Failing Federal Inmates as Coronavirus Hits” (Mar. 24, 2020), available at [https://www.vice.com/en\\_us/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits](https://www.vice.com/en_us/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits).

CDC to reduce transmission, is deemed forbidden “contraband” in BOP facilities because of its alcohol content.<sup>15</sup> Recognizing the unique risks that correctional facilities pose to both inmates and employees, Attorney General Barr has twice urged the Director of the BOP to prioritize home confinement for inmates who are elderly, housed in low- or minimum-security facilities, and are otherwise vulnerable.<sup>16</sup>

Despite the BOP’s efforts to take precautionary measures, they are unprepared to contain the virus’s spread.<sup>17</sup> As of June 22, 2020, Lompoc FCC has had at least 1,114 inmates and 42 staff members test positive for COVID-19, more total infections than any other federal prison in the country.<sup>18</sup> That is out of a total 2,572 inmates housed between Lompoc FCI, USP and two camps—at least 43% of the inmate population at Lompoc FCC has been infected. Four inmates have died of

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<sup>15</sup> Keri Blakinger and Beth Schwarzapfel, “How Can Prisons Contain Coronavirus When Purell is Contraband?,” *ABA Journal* (March 13, 2020), available at <https://www.abajournal.com/news/article/when-purell-is-contraband-how-can-prisons-contain-coronavirus>.

<sup>16</sup> William Barr, United States Attorney General, *Memorandum for Director of Bureau of Prisons* (Mar. 26, 2020), available at <https://www.justice.gov/file/1262731/download> (last accessed Apr. 2, 2020); William Barr, United States Attorney General, *Memorandum for Director of Bureau of Prisons* (Apr. 3, 2020), available at <https://www.justice.gov/file/1266661/download> (last accessed Apr. 12, 2020).

<sup>17</sup> See e.g., Luke Barr, *Bureau of Prisons coronavirus response under fire: ‘Reactive,’ not ‘proactive,’ inmates, staff say* (Apr. 10, 2020), <https://abcnews.go.com/Health/bureau-prisons-coronavirus-response-fire-reactive-proactive-inmates/story?id=70063263> (last accessed Apr. 12, 2020). Numerous facilities have also acknowledged limited or no testing capability for COVID-19. See e.g., James Hill and Luke Barr, *No COVID-19 tests available for prisoners at center of New York outbreak, court documents show*, (Apr. 4, 2020), <https://abcnews.go.com/Health/covid-19-tests-prisoners-center-york-outbreak-court/story?id=69969077> (last accessed Apr. 20, 2020) (According to the warden of the Metropolitan Correctional Center in New York City, “MCC New York does not have COVID-19 tests[.]”); Kimberly Kindy, *Inside the deadliest federal prison, the seeping coronavirus creates fear and danger*, *The Washington Post* (Apr. 10, 2020), [https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0\\_story](https://www.washingtonpost.com/national/inside-the-deadliest-federal-prison-the-seeping-coronavirus-creates-fear-and-danger/2020/04/09/deeceb6e-75b4-11ea-a9bd-9f8b593300d0_story) (Bureau officials acknowledge that, for FCI Oakdale, “only those ill enough to be taken to a hospital are tested for the coronavirus.”).

<sup>18</sup> Federal Bureau of Prisons, *COVID-19 Coronavirus: COVID-19 Cases*, <https://www.bop.gov/coronavirus/>, (last accessed June 14, 2020); Annalisa Merelli, *There are more Covid-19 cases in some US prisons than in entire countries*, *Quartz* (June 12, 2020), available at: <https://qz.com/1868445/there-are-more-covid-19-cases-in-some-us-prisons-than-in-entire-countries/> (calculating total cases at Lompoc Prison Complex as 1,114).

complications related to COVID-19, including two already in June. The conditions at Lompoc are dire. One media outlet has noted the number of COVID-19 cases at Lompoc exceeds those of entire countries, including Jamaica, Rwanda, and Cyprus.<sup>19</sup> A survey of available data indicates that nearly 100 countries around the world have fewer documented COVID-19 cases than Lompoc FCC.<sup>20</sup>

It is unsurprising the virus spread so rapidly throughout the facility. As one inmate described “it’s horrible . . . they are pretty much stuck to their bunks, and this is 160 men all over each other. They are not practicing social distancing at all[.]”<sup>21</sup> The same inmate stated he is not getting proper medical attention and was told by a nurse in the facility that Lompoc stopped testing inmates in order to “hide the true high numbers.”<sup>22</sup> Another inmate explained how Lompoc administrators are manipulating data by “taking off those COVID-19 positive inmates who have ‘apparently recovered’ from the list of reported cases, when in fact none of them were ever re-tested.”<sup>23</sup> These inmates have detailed the conditions at the prison despite reports of retaliation against those who speak out.<sup>24</sup> The facility has been the subject

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<sup>19</sup> Annalisa Merelli, *There are more Covid-19 cases in some US prisons than in entire countries*, Quartz (June 12, 2020), available at: <https://qz.com/1868445/there-are-more-covid-19-cases-in-some-us-prisons-than-in-entire-countries/>.

<sup>20</sup> “COVID-19 Coronavirus Pandemic,” available at <https://www.worldometers.info/coronavirus> (last accessed June 14, 2020).

<sup>21</sup> Naja Hill, *Lompoc inmate speaks out on conditions in prison during COVID-19* (May 16, 2020), <https://keyt.com/news/santa-maria-north-county/2020/05/16/lompoc-inmate-speaks-out-on-conditions-in-prison-during-covid-19/>.

<sup>22</sup> *Id.*

<sup>23</sup> Tyler Hayden, *Lompoc Prison Inmates and Families Describe ‘Cruel’ COVID-19 Conditions*, Santa Barbara Independent (May 6, 2020), available at: <https://www.independent.com/2020/05/06/lompoc-prisoninmates-and-families-describe-cruelcovid-19-conditions/>.

<sup>24</sup> *Id.* (on inmate predicted the BOP “would subject him to ‘diesel therapy,’ an unsanctioned form of punishment whereby shackled prisoners are aimlessly transported between institutions for days and weeks on end.”); Tyler

of protests by families and religious leaders, calls for mass testing and improved care by legislators, and a lawsuit filed by the American Civil Liberties Union (ACLU), for allegations inmates are denied basic sanitary supplies and healthcare, are prevented from showering, and are fed rotten food.<sup>25</sup>

The BOP's response to this crisis is insufficient and too slow.<sup>26</sup> BOP issued medical and screening guidance in January and February, it instituted a nationwide lockdown on March 24th, and yet, BOP's self-reported numbers establish a rising curve.<sup>27</sup> And the virus is growing at a faster rate in the federal prison population versus the national population.<sup>28</sup> Of the 86 inmates who have died from COVID-19 complications, nearly every press release issued by the BOP indicates that the inmate suffered from at least one of the preexisting medical conditions identified by the CDC as risk factors.<sup>29</sup> And many of those inmates who have died of COVID-19 complications were low-risk drug cases.<sup>30</sup>

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Hayden, *Third Inmate Dies as Families Protest Against Lompoc Prison COVID Conditions*, Santa Barbara Independent (May 26, 2020), available at: <https://www.independent.com/2020/05/26/third-inmate-dies-as-hundreds-protest-against-lompoc-prison-covid-conditions/> (one inmate “wanted to remain anonymous because correctional officers ‘actively retaliate against any inmate who’s directly or indirectly providing information to the media.’”).

<sup>25</sup> *Id.*; *ACLU sues over Terminal Island, Lompoc prison conditions that let COVID-19 spread*, ABC7 (May 17, 2020) available at: <https://abc7.com/covid-19-coronavirus-prisons-in/6191680/>.

<sup>26</sup> Nicholas Chrastil, *Oakdale inmate dies from COVID-19 two days after scheduled release* (May 12, 2020), <https://thelensnola.org/2020/05/12/oakdale-inmate-dies-from-covid-19-two-days-after-scheduled-release/> (last accessed May 12, 2020) (reporting the six-week delay in transferring Mr. Escamilla into home confinement without being quarantined or otherwise protected from contracting the rapidly spreading virus in FCI Oakdale).

<sup>27</sup> *See* Federal Defenders of New York, *supra* note 8.

<sup>28</sup> The Federal Defenders of New York, Southern and Eastern, update these statistics daily: <https://federaldefendersny.org/>.

<sup>29</sup> BOP, Press Releases (ongoing updates) [https://www.bop.gov/resources/press\\_releases.jsp](https://www.bop.gov/resources/press_releases.jsp) (last accessed Apr. 30, 2020).

<sup>30</sup> Mike Wilson, *3 deaths and rampant infections at a Fort Worth lockup are fueling criticism of how federal prisons are handling the pandemic* (Apr. 29, 2020), <https://www.dallasnews.com/news/public-health/2020/04/29/3-deaths->

None of this surprises doctors and epidemiologists. Prisons “have long been known to be associated with high transmission” of infectious diseases like “tuberculosis, multi-drug resistant tuberculosis, MRSA, and viral hepatitis,”<sup>31</sup> notes Dr. Chris Beyrer, a medical doctor and epidemiologist at Johns Hopkins working on the pandemic response.<sup>32</sup> The virus is 5-to-35 times more deadly than influenza, and one-in-five infected will require medical intervention.<sup>33</sup> The BOP cannot hospitalize 20% of the inmate population. And a new epidemiological model predicts “COVID-19 could claim the lives of approximately 100,000 more people than current projections stipulate if jail populations are not dramatically and immediately reduced[.]”<sup>34</sup>

As this alarming crisis continues to unfold, the universally recommended antidote is to reduce the prison population.

### III. Argument

The First Step Act empowers Courts to reduce a defendant’s sentence upon his or her motion for compassionate release. 18 U.S.C. § 3582(c)(1)(A)(i). While

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[and-rampant-infections-at-a-fort-worth-lockup-are-fueling-criticism-of-how-federal-prisons-are-handling-the-pandemic/](#) (last accessed Apr. 30, 2020).

<sup>31</sup> Beyrer Decl. para. 11.

<sup>32</sup> See also Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases*, 1047, 1047 (2007) (available at: <https://doi.org/10.1086/521910>); Cntrs. for Disease Control & Prevention, *Interim Guidance on Mgmt. of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) (available at: <https://bit.ly/2VufGhP>) (“There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress.”).

<sup>33</sup> Beyrer Decl. para. 5.

<sup>34</sup> ACLU, *Failure to reduce jail population is the Achilles heel for the efforts to mitigate the spread of COVID-19 in the U.S.* (Apr. 22, 2020), <https://www.aclu.org/press-releases/new-model-shows-covid-19-death-toll-100000-higher-current-projections>.

compassionate release motions could previously only be brought by the Director of the Bureau of Prisons, the Act enabled defendants to seek relief on their own behalf.<sup>35</sup>

Under § 3582(c)(1)(A), a court can reduce a sentence when: 1) the inmate has exhausted his or her remedies or 30 days have passed since receipt of the inmate's request by the Warden; 2) "extraordinary and compelling reasons" warrant the reduction; 3) the Court has considered the factors set forth in § 3553(a); and 4) such a reduction is "consistent with applicable policy statements issues by the Sentencing Commission.

**A. Mr. Ramirez has satisfied the 30-day waiting period outlined in 18 U.S.C. § 3582(c)(1)(A).**

Under 18 U.S.C. § 3582(c)(1)(A), a defendant ordinarily must exhaust administrative remedies with the BOP or wait until 30 days have passed since the warden received his or her request for compassionate release to the warden, whichever comes first. 18 U.S.C. § 3582(c)(1)(A).

Mr. Ramirez has satisfied the exhaustion requirements. Alternatively, the court should waive the 30-day waiting period.<sup>36</sup>

*1. Mr. Ramirez has satisfied the statute's exhaustion requirements.*

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<sup>35</sup> See, e.g., *United States v. Cantu*, 2019 WL 2498923, at \*3-4 (S.D. Tex. June 17, 2019) (vesting BOP with authority to determine whether extraordinary and compelling reasons are present "no longer describes an appropriate use of sentence-modification provisions and is thus not part of the applicable policy statement binding the Court"); *United States v. Ebberts*, 2020 WL 91399, at \*4 n.6 (S.D.N.Y. Jan. 8, 2020) ("[T]he First Step Act reduced the BOP's control over compassionate release and vested greater discretion with courts. Deferring to the BOP would seem to frustrate that purpose.").

<sup>36</sup> Finally, if the Court finds waiver is not applicable, Mr. Ramirez asks the Court to issue a ruling on his motion on or after July 6, 2020, which will be 31 days after counsel requested the BOP for compassionate release on Mr. Ramirez's behalf.

On April 3, 2020, Mr. Ramirez requested compassionate release from the Warden of Lompoc FCC and from the BOP Director. He received no response from either. Staff at Lompoc suggested his request was never received and simultaneously restricted Mr. Ramirez's access to both his belongings and counsel, so he cannot provide evidence of this request. Counsel was informed Mr. Ramirez attempted to mail him documents in connection with this case, which were never received, and Mr. Ramirez has been significantly restricted in his ability to speak with counsel, having been limited to two phone calls of under 20 minutes each.

It is beyond dispute that the Lompoc facility is overwhelmed by the COVID-19 crisis. The complex has experienced more infections than any other federal facility in the country and has had to take the unprecedented step of constructing a Hospital Care Unit within the prison walls to respond to the crisis.<sup>37</sup> Mr. Ramirez has been moved from the low security facility to the medium security facility and has been in lockdown without most of his possessions for months. Just this past week, he was moved again to "M Unit" after testing negative for COVID-19, where he is sharing a room with a new cellmate. The daunting challenges facing the facility call into question whether staff is equipped to track and process requests like those coming from Mr. Ramirez, while their focus is understandably on addressing the direct threat of COVID-19.

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<sup>37</sup> Federal Bureau of Prisons, *Hospital Care Unit at FCC Lompoc* (May 4, 2020), [https://www.bop.gov/resources/news/pdfs/20200505\\_press\\_release\\_lox.pdf](https://www.bop.gov/resources/news/pdfs/20200505_press_release_lox.pdf).

Not only have 30 days passed since Mr. Ramirez's request, but Lompoc has demonstrated the futility of continuing with the administrative process. Other courts have found that the exhaustion requirement can be effectively satisfied where a defendant makes a request and the futility of their continued attempts is evidenced. *See United States v. Atkinson*, No. 2:19-cr-55, 2020 WL 1904585 (D. Nev. Apr. 17, 2020) (finding defendant "exhausted administrative remedies because he filed an application with the warden, followed up with the warden for a determination or status report, and received a generic response that did not indicate any action was being [sic] regarding his application."); *United States v. Gonzalez*, No. 2:18-CR-0232-TOR-15, 2020 WL 1536155, at \*1 (E.D. Wash. Mar. 31, 2020) ("The Court finds that Defendant has effectively exhausted her administrative remedies by petitioning the BOP, giving them notice, and being told she does not have any other administrative path or remedies she can pursue. Any further attempt to exhaust administrative remedies at this time would be futile.").

Therefore, the Court should find that Mr. Ramirez has satisfied the exhaustion requirement of the statute, both because 30 days have passed and further engagement with the process would be futile.

*2. The Court has the power to waive the exhaustion requirement.*

Should the Court find Mr. Ramirez has not satisfied the exhaustion requirements, it can waive the requirement, as many courts have done during the COVID-19 pandemic. The Government has conceded in other parts of the country that the exhaustion requirement in § 3582(c)(1)(A) is a non-jurisdictional

requirement that it can, and has, waived. *See, e.g., United States v. Gentile*, No. 19-CR-590, Doc. 31 (S.D.N.Y. Apr. 6, 2020) (Government conceding that the 30-day waiting period can be waived and that it is a non-jurisdictional requirement); *United States v. Roberts*, No. 18-CR-528-5, 2020 WL 1700032, at \*1 (S.D.N.Y. Apr. 8, 2020) (same). Even where the Government has not agreed to bypass the 30-day waiting period, countless courts around the country have judicially waived the non-jurisdictional waiting period because this pandemic is a matter requiring courts to act in an urgent manner. *See, e.g., United States v. Coles*, No. 00-CR-20051, 2020 WL 1976296, at \*5 (C.D. Ill. Apr. 24, 2020) (“Mandating the exhaustion requirement in this case and other cases around the country during the COVID-19 pandemic cannot be what Congress intended.”); *United States v. Gorai*, No. 218CR220JCMCWH, 2020 WL 1975372, at \*2 (D. Nev. Apr. 24, 2020) (rejecting the holding of *Raia*, noting “in light of COVID-19, 30 days is anything but exceptionally quick—indeed, each day, perhaps each hour, that elapses, threatens incarcerated defendants with greater peril.”) (citations omitted); *United States v. Thorson*, No. 5:16-CR-00017-TBR, 2020 WL 1978385, at \*2 (W.D. Ky. Apr. 24, 2020) (finding a delay would unduly prejudice the defendant and waiving the exhaustion requirement); *United States v. Smith*, No. 12-CR-133 (JFK), 2020 WL 1849748, at \*4 (S.D.N.Y. Apr. 13, 2020) (“[T]he First Step Act did not empower the Government with the sole authority to decide when and under what conditions exhaustion must be waived, and it agrees with certain of its sister courts that judicial waiver is permissible in light of the extraordinary threat

certain inmates face from COVID-19.”).<sup>38</sup> Numerous courts have reversed their own prior positions regarding exhaustion on this issue, and have waived the exhaustion requirement, given the overwhelming exigency of the pandemic and the growing judicial consensus to that effect. *See, e.g., United States v. Scparta*, No. 1:18-CR-578 (AJN), 2020 WL 1910481 (S.D.N.Y. Apr. 20, 2020). In waiving the exhaustion requirement, courts have recognized that the purpose of the First Step Act’s modifications to § 3582 was to ensure inmates obtained meaningful judicial review promptly. *United States v. Russo*, No. 16-CR-441 (LJL), 2020 WL 1862294, at \*6 (S.D.N.Y. Apr. 14, 2020) (“[T]he plain language of Section 3582(c) evinces congressional intent that a defendant has a right to a prompt and meaningful judicial determination of whether she should be compassionately released, regardless of whether administrative remedies have been exhausted.”). Given that the entire purpose of the modification to § 3582(c) was to give an inmate meaningful judicial review, regardless of what the BOP determines of his or her request for compassionate release, it would be illogical to use that 30-day time-frame to prevent relief, especially during a pandemic. The statistical likelihood Mr. Ramirez will suffer a further bad outcome underscores the need for the Court to take urgent action on his request.

The results of delaying the release of inmates like Mr. Ramirez are swift and devastating. In another case in the Western District of Texas an at-risk inmate

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<sup>38</sup> While many courts have ruled that the 30 days is waivable and/or excusable, other courts have declined to find such an exception. *See e.g. United States v. McCann*, No. 5:13-CR-52, 2020 WL 1901089 (E.D. Ky. Apr. 17, 2020).

requested compassionate release in light of the likelihood of his contracting COVID-19. *See United States v. Ramos*, No. 5:11-CR-836-XR-7, Doc. 397 (Apr. 29, 2020). Within three days he had tested positive for COVID-19, in another two days he was believed to have been placed on a ventilator, and three days after that he coded and was placed in a medically induced coma on a ventilator. *Id.* He has since passed away.<sup>39</sup> The immediate risk to Mr. Ramirez and the potential for tragedy posed by delaying his release any further are not mere hyperbole. He is in grave danger of contracting COVID-19 as he is housed at the Lompoc complex. His continued incarceration places him at risk, his fellow inmates at risk, and the staff that works at Lompoc at risk.

The Court has the power to spare Mr. Ramirez further unnecessary medical risk and should exercise that power here by immediately granting his motion for compassionate release.

**B. Mr. Ramirez has shown that extraordinary and compelling circumstances warrant compassionate release.**

Although the Sentencing Guidelines have not been updated to reflect the changes created by the First Step Act, or COVID-19, they provide some guidance on what “extraordinary and compelling” reasons entail. These include: suffering from a terminal illness (including end-stage organ disease); “suffering from a serious physical or medical condition ... that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and

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<sup>39</sup> *See* Federal Bureau of Prisons, *Inmate Death at FMC Fort Worth*, (May 10, 2020), available at: [https://www.bop.gov/resources/news/pdfs/20200510\\_press\\_release\\_ftw.pdf](https://www.bop.gov/resources/news/pdfs/20200510_press_release_ftw.pdf).

from which he or she is not expected to recover;” or “other reasons,” found to be “extraordinary and compelling.” U.S.S.G. §1B1.13, comment. n.1(A)(i), (A)(ii)(I), (D).

Since the First Step Act took effect, courts have embraced their broad discretion under § 3582(c)(1)(A) to grant compassionate release, and have found “extraordinary and compelling reasons” to do so in circumstances beyond the few (age, medical condition, and family needs) the BOP traditionally relied on or are listed in §1B1.13.<sup>40</sup> “While Sentencing Commission and BOP criteria remain helpful guidance, the amended [compassionate-release statute] vests courts with independent discretion to determine whether there are ‘extraordinary and compelling reasons’ to reduce a sentence.” *United States v. Decator*, Crim. No. CCB-95-0202, 2020 WL 1676219, at \*3 (D. Md. Apr. 6, 2020); *see also United States v. Maumau*, No. 2:08-CR-00758-TC-11, 2020 WL 806121, at \*2 (D. Utah Feb. 18, 2020) (collecting cases and joining the majority of district courts to find the court is not bound to the outdated policy statement).<sup>41</sup>

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<sup>40</sup> *See United States v. Muniz*, No. 4:09-CR-199-1, 2020 WL 1540325, at \*1 (S.D. Tex. Mar. 30, 2020); *United States v. Owens*, No. 97-CR-2546-CAB, ECF No. 93 at 4 (S.D. Cal. Mar. 20, 2020); *United States v. Redd*, No. 1:97-cr-0006-AJT, 2020 WL 1248493, at \*8 (E.D. Va. Mar. 16, 2020); *United States v. Perez*, No. 88-10094-JTM, 2020 WL 1180719, at \*2 (D. Kan. Mar. 11, 2020); *United States v. Young*, No. 2:00-cr-0002-1, 2020 WL 1047815, at \*6 (M.D. Tenn. Mar. 4, 2020); *United States v. O’Bryan*, No. 96-10076-03-JTM, 2020 WL 869475, at \*2 (D. Kan. Feb. 21, 2020); *Maumau*, 2020 WL 806121, at \*3; *United States v. Schmitt*, No. CR12-4076-LTS, 2020 WL 96904, at \*3 (N.D. Iowa Jan. 8, 2020); *United States v. Valdez*, No. 3:98-cr-0133-01-HRH, 2019 WL 7373023, at \*2 (D. Alaska Dec. 31, 2019); *United States v. Rodriguez*, No. 17-cr-00021-WHO-1, 2019 WL 6311388, at \*7 (N.D. Cal. Nov. 25, 2019); *United States v. Urkevich*, No. 8:03CR37, 2019 WL 6037391, at \*3 (D. Neb. Nov. 14, 2019); *United States v. Walker*, No. 1:11 CR 270, 2019 WL 5268752, at \*2 (N.D. Ohio Oct. 17, 2019); *United States v. Beck*, No. 1:13-CR-186-6, 2019 WL 2716505, at \*5-6, 8-9 (M.D.N.C. June 28, 2019); *United States v. Cantu-Rivera*, No. H-89-204, 2019 WL 2578272, at \*2 n.1 (S.D. Tex. June 24, 2019); *United States v. Cantu*, No. 1:05-CR-458-1, 2019 WL 2498923, at \*5 (S.D. Tex. June 17, 2019).

<sup>41</sup> “[A] majority of district courts have concluded that the ‘old policy statement provides helpful guidance, [but] ... does not constrain [a court’s] independent assessment of whether “extraordinary and compelling reasons” warrant a sentence reduction under § 3582(c)(1)(A).” *United States v. Rodriguez*, No. 2:03-CR-271-AB-1, 2020 WL 1627331, at \*4 (E.D. Pa. Apr. 1, 2020) (citing *United States v. Beck*, ---F.3d---, No. 13-CR-186-6, 2019 WL 2716505 (M.D.N.C. June 28, 2019).

1. *Mr. Ramirez has satisfied the threshold for “extraordinary and compelling” because his specific medical conditions place him at significant risk at a BOP facility suffering from a COVID-19 outbreak.*

Mr. Ramirez’s health conditions constitute “extraordinary and compelling reasons,” under either the Sentencing Guidelines catchall provision at U.S.S.G. §1B1.13, comment. n.1(D) or based on this Court’s substantial discretion to define what justifies compassionate release. Because of the COVID-19 pandemic and his incarceration at Lompoc FCC, Mr. Ramirez faces a grave risk of serious illness or even death if he contracts COVID-19 because he suffers from diabetes, high blood pressure, and stage 4 kidney disease.

As detailed above, the mere presence of the COVID-19 pandemic and the horrors it has wrought on the prison population, justify compassionate release of inmates on an overarching systemic level. Prison populations have experienced infection rates much higher than those in the general public. Congress, the President, and the Attorney General have all directed, in one way or another, that BOP must identify inmates appropriate for home confinement or early release, in order to stymie the spread of the virus. It is a simple fact the current circumstances are extraordinary and the BOP must reduce the prison population in order to respond to the pandemic and care for its inmate population.

At least one district court in the Fifth Circuit, has adopted the philosophy that the pandemic and BOP’s inadequate response at another severely infected facility justify compassionate release of any inmate, regardless of the inmate’s age or the absence of any underlying medical conditions. *See United States v. Kelly*, No. 3:13-CR-59 (CWR-LRA), 2020 WL 2104241 (S.D. Miss. May 1, 2020). In *Kelly*, the court

granted compassionate release to a defendant in his twenties with no underlying medical conditions, finding “[g]iven the steadily growing death toll and the apparent continued spread of the disease at Oakdale I, COVID-19 creates an ‘extraordinary and compelling reason’ potentially warranting a reduced sentence.” *Id.* at \*8. Mr. Ramirez is housed at Lompoc, which has suffered nearly five times as many infected inmates as Oakdale, and, unlike Mr. Kelly, he is in his 60s and suffers from numerous conditions, which place him at more risk to COVID-19 than Mr. Kelly, and yet he remains incarcerated.

Those conditions include, most notably: diabetes, hypertension, and stage 4 kidney disease, or kidney failure, for which he needs but is not receiving dialysis. *See* Exhibit 1, Medical Records, at 3, 10-11, 22-24, 137-40. Additionally, medical records indicate that Mr. Ramirez suffers from: high cholesterol, peripheral neuropathy in connection with his diabetes, vitamin d deficiency, anemia, and secondary hyperparathyroidism. *Id.* at 11, 24, 137-40. Mr. Ramirez has reported he takes 8 different medications for his conditions, which is supported by the medical records, and he is supposed to see a doctor every 3 months for his kidneys, but has not in over 6 months. *See id.*, at 10, 34-39. His kidneys cause him significant pain, making basic tasks like standing, walking, or shaving painful. His mobility is limited to where he had to stop working in custodial services.

His diabetes, in particular, places him at a greater risk in light of the COVID-19 pandemic.<sup>42</sup> Diabetes is among those conditions identified by the CDC as placing people at a high-risk for serious illness from COVID-19.<sup>43</sup> The disease suppresses the body's ability to fight off infections, compromising the immune system.<sup>44</sup> A study published on April 22, 2020 in the Journal of the American Medical Association found, "Of the patients who died, those with diabetes were more likely to have received invasive mechanical ventilation or care in the ICU compared with those who did not have diabetes."<sup>45</sup> And, "[t]he percentage of patients who developed acute kidney injury was increased in the subgroups with diabetes compared with the subgroups without these conditions."<sup>46</sup> One court has found that for a diabetic inmate, "nothing could be more extraordinary and compelling than this pandemic."<sup>47</sup> Early research shows that diabetes patients, like Mr. Ramirez, have mortality rates that are more than twice as high as overall mortality rates from COVID-19.<sup>48</sup> According to one

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<sup>42</sup> Safiya Richardson MD, MPH; Jamie S. Hirsch, MD, MA, MSB, et al. *Presenting Characteristics, Comorbidities, and Outcomes Among 5700 Patients Hospitalized with COVID-19 in the New York City Area*, JAMA (Apr. 22, 2020), available at <https://jamanetwork.com> (last accessed Apr. 23, 2020).

<sup>43</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): People Who Are At Higher Risk*, available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last checked May 12, 2020).

<sup>44</sup> See Maria Lally, *Coronavirus: how diabetics, asthma and other underlying illnesses affect how you cope*, The Telegraph (May 17, 2020), <https://www.telegraph.co.uk/health-fitness/body/coronavirus-diabetes-underlying-health-conditions-asthma-heart/>; Claire Gillespie, *If You're Immunocompromised, You Are at a Higher Risk of Coronavirus—Here's What That Means*, Health.com (Mar. 11, 2020), <https://www.health.com/condition/infectious-diseases/what-is-immunocompromised>.

<sup>45</sup> *Id.* at p. E6

<sup>46</sup> *Id.*

<sup>47</sup> *United States v. Rodriguez*, No. 2:03-CR-00271 (AB), 2020 WL 1627331, at \*1 (E.D. Pa. Apr. 1, 2020).

<sup>48</sup> *Id.* (citing Tom Avril, How much diabetes, smoking, and other risk factors worsen your coronavirus odds, Philadelphia Inquirer (Mar. 31, 2020), <https://www.inquirer.com/health/corona-virus/coronavirus-underlying-conditions-heart-lung-kidney-cdc-20200331.html>)).

recent study, one in ten coronavirus patients with diabetes dies within a week of hospitalization.<sup>49</sup> Consequently, courts around the country, including in this district, have found diabetes to be among the most compelling existing conditions that justifies compassionate release during the pandemic.<sup>50</sup> Numerous have even noted that diabetes, even absent other medical conditions, constitutes “extraordinary and compelling” reason for release, given the pandemic.<sup>51</sup> The Department of Justice’s Office of the Solicitor General has conceded diabetes is an “extraordinary and compelling” reason for released as defined in the Application Notes for Section 1B1.13.<sup>52</sup>

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<sup>49</sup> Shelby Lin Erdman, *One in 10 Covid-19 patients with diabetes die within a week, study finds*, CNN (May 30, 2020), <https://www.cnn.com/2020/05/29/health/diabetes-study-covid-19-deaths/index.html>

<sup>50</sup> See, e.g. *United States v. Ennis*, EP-02-CR-1430-PRM-1, at \*5, 26 (W.D. Tex. May 14, 2020) (granting compassionate release to a defendant with diabetes, asthma, hypertension, hyperlipidemia, arthritis, and hypothyroidism); *United States v. Amarrah*, No. 17-CR-20464 (JEL), 2020 WL 2220008 (E.D. Mich. May 7, 2020) (granting compassionate release to inmate suffering from diabetes, hypertensive heart disease, cardiac arrhythmia, sleep apnea, and asthma.); *United States v. Rivera*, No. 86-CR-1124, 2020 WL 2094094 (S.D.N.Y. May 1, 2020) (granting compassionate release pursuant to F.R.C.P. 35(b) in light of COVID-19 and underlying health condition of diabetes); *United States v. Lacy*, No. 15-CR-30038, 2020 WL 2093363 (C.D. Ill. May 1, 2020) (granting compassionate release in light of COVID-19 and underlying health conditions of diabetes, hypertension, and obesity); *United States v. Bertrand*, No. 3:00-CR-12, 2020 WL 2179387 (N.D. Fla. Apr. 29, 2020) (granting compassionate release in light of COVID-19 and multiple serious health conditions, including diabetes, pulmonary embolism, chronic kidney disease, asthma, and hypertension); *United States v. Ben-Yhwh*, No. 15-CR-830, 2020 WL 1874125 (D. Hawaii Apr. 13, 2020) (granting compassionate release in light of COVID-19 and underlying health conditions of asthma, high blood pressure, diabetes); *United States v. Zukerman*, No. 16-CR-194 (AT), 2020 WL 1659880 (S.D.N.Y. Apr. 3, 2020) (releasing defendant because his diabetes, hypertension, and obesity increase her risk of severe illness if he contracts COVID-19); *United States v. Colvin*, No. 3:19-CR-179 (JBA), 2020 WL 1613943 (D. Conn. Apr. 2, 2020) (releasing defendant because her diabetes and hypertension increase her risk of severe illness if she contracts COVID-19); *United States v. Rodriguez*, No. 2:03-CR-271-AB-1, 2020 WL 1627331, at \*4 (E.D. Pa. Apr. 1, 2020) (releasing defendant because his diabetes, high blood pressure, and liver abnormalities increase his risk of severe illness if he contracts COVID-19); *United States v. Resnick*, No. 14-CR-810 (CM), 2020 WL 1651508, at \*7 (S.D.N.Y. Apr. 2, 2020) (releasing defendant in light of COVID-19 and his diabetes and end-stage liver disease).

<sup>51</sup> See *United States v. Colvin*, 2020 WL 1613943, at \*4 (D. Conn. Apr. 2, 2020) (granting compassionate release on the basis of defendant’s diabetes); *Lacy*, 2020 WL 2093363, at \*6; see also *Ennis*, EP-02-CR-1430-PRM-1, at \*19, n. 9 (“The Court notes that the Government...concedes that Defendant’s diabetes, in conjunction with the risk of COVID-19, may satisfy Application Note 1(A)’s standard for ‘extraordinary and compelling reasons’ warranting relief.”).

<sup>52</sup> See also Reply in Support of Application for Stay at 18 n. 4, *Miller v. Wilson*, No. 19A1047 (June 4, 2020) (“The Department of Justice has taken the position in litigation that, under present circumstances, an inmate’s diagnosis with a medical condition that the CDC has identified as a risk factor for COVID-19, and from which the inmate is

Similarly, Mr. Ramirez’s high blood pressure (hypertension) diagnosis presents significant risks if he is exposed to COVID-19. The state of New York, which has the most robust data set on the subject, recently released a report on the most dangerous and frequent comorbidities occurring with COVID-19-related fatalities.<sup>53</sup> Hypertension was identified as the top comorbidity. Experts have likewise concluded those suffering from hypertension are at a higher risk of contracting COVID-19 than otherwise healthy patients and at a higher risk of death if they contract the virus.<sup>54</sup> Hypertension has been among of the most common grounds for compassionate release during the COVID-19 pandemic.<sup>55</sup>

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not expected to recover, presents an extraordinary and compelling reason that may warrant compassionate release if other criteria are also met.”) (citation omitted); United States’ Unopposed Motion for Remand at 7-8, *United States v. Ramon Garcia*, No. 20-1716 (Seventh Circuit Court of Appeals, June 8, 2020).

<sup>53</sup> New York State Department of Health COVID-19 Tracker, available at <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no> (last accessed Apr. 24, 2020).

<sup>54</sup> See Dara K. Lee Lewis, MD, *How does cardiovascular disease increase the risk of severe illness and death from COVID-19?*, Harvard Health (Apr. 2, 2020), <https://www.health.harvard.edu/blog/how-does-cardiovascular-disease-increase-the-risk-of-severe-illness-and-death-from-covid-19-2020040219401> (“Increased risk [of death] has also been seen in people with high blood pressure (hypertension) and coronary artery disease (CAD), though it is not clear why.”); Lei Fang, George Karakiulakis, and Michael Roth, *Are patients with hypertension and diabetes mellitus at increased risk for COVID-19 infection*, *The Lancet*, [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30116-8/fulltext#seccestitle10](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30116-8/fulltext#seccestitle10) (Mar. 11, 2020) (finding hypertension as a significant comorbidity to COVID-19 and hypothesizing that certain treatments for hypertension might contribute to that fact); Jessica Ferguson et al., *Characteristics and Outcomes of Coronavirus Disease Patients under Nonsurge Conditions, Northern California, USA, March–April 2020*, CDC (May 14, 2020), [https://wwwnc.cdc.gov/eid/article/26/8/20-1776\\_article](https://wwwnc.cdc.gov/eid/article/26/8/20-1776_article); Dave DeCapprio et al., *Building a COVID-19 Vulnerability Index*, medRxiv (Mar. 23, 2020), <https://www.medrxiv.org/content/medrxiv/early/2020/03/30/2020.03.16.20036723.full.pdf>; see also Ryan Prior, *Those with high blood pressure are at a greater risk for Covid-19*, CNN (Apr. 17, 2020), <https://www.cnn.com/2020/04/17/health/blood-pressure-coronavirus-wellness/index.html>.

<sup>55</sup> See, e.g., *United States v. Joling*, 2020 WL 1903280, at \*4 (D. Or. April 17, 2020); *United States v. Hammond*, 2020 WL 1891980, \*8 (D.D.C. April 16, 2020); *United States v. Zukerman*, 2020 WL 1659880, at \*4 (S.D.N.Y. Apr. 3, 2020). Some courts have even found that hypertension alone may constitute an extraordinary and compelling reason for a reduction in sentence during this pandemic. See *United States v. Sawicz*, 2020 WL 1815851, at \*2 (E.D.N.Y. Apr. 10, 2020); *United States v. Lacy*, 2020 WL 2093363, at \*6 (C.D. Ill. May 1, 2020) (“Besides obesity, Defendant suffers from hypertension and diabetes...Any one of these three factors alone would increase the serious risks of COVID-19[.]”).

Additionally, Mr. Ramirez suffers from stage 4 kidney disease, which has resulted in anemia, and for which he needs either dialysis or a transplant. *See* Exhibit 1, Medical Records, at 10. The CDC has recognized those suffering from chronic kidney disease and receiving dialysis treatments are at an increased risk, because, “[d]ialysis patients are more prone to infection and severe illness because of weakened immune systems; treatments and procedures to manage kidney failure; and coexisting conditions such as diabetes.”<sup>56</sup> Mr. Ramirez is supposed to be receiving dialysis treatments but has not been able to see his doctor for six months. Medical records confirm that he raised this issue during a doctor check at his cell on May 1, 2020, in which the doctor noted his last nephrologist appointment had been in December of 2019, and that he was supposed to have had a follow up within 6 weeks. *See* Exhibit 1, Medical Records, at 10, 34.<sup>57</sup> The CDC does not recommend missing dialysis treatments simply to avoid COVID-19 risks.<sup>58</sup> Rather, the CDC has recognized that chronic kidney disease itself is associated with increased illness severity and adverse outcomes.<sup>59</sup> And the failure of Lompoc staff to provide necessary medical care or administer the dialysis treatments Mr. Ramirez needs should not weigh against a finding of “extraordinary and compelling reasons.” Rather, this

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<sup>56</sup> Centers for Disease Control and Prevention, *Coronavirus Disease 2019 (COVID-19): At Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>.

<sup>57</sup> The doctor’s note from May 1, 2020 actually indicates the last kidney appointment had been in November, but medical records show that he had last seen a nephrologist, on December 12, 2019, who consulted on Stage 3-4 kidney disease, and recommended a return visit within 6 weeks. *See* Exhibit 1, Medical Records, at 34-39.

<sup>58</sup> *Id.*

<sup>59</sup> Centers for Disease Control and Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html> (last accessed June 4, 2020) (“Heart disease, hypertension, prior stroke, diabetes, chronic lung disease, and chronic kidney disease have all been associated with increased illness severity and adverse outcomes.”)

further demonstrates the inadequacy of care the BOP facilities can provide to the most vulnerable inmates during this crisis. Kidney disease itself places individuals at enormous risk from COVID-19. Studies have shown that the prevalence of underlying chronic kidney disease was significantly more frequent among those with severe disease from COVID-19.<sup>60</sup> The risks associated with kidney disease are in part related to the increased co-occurrence of conditions like diabetes and hypertension, but also to the immunosuppression that results from the treatments or from the underlying kidney disease itself.<sup>61</sup> A court in this District just last week granted compassionate release for a man found to be immunocompromised, because the disproportionate risk related to COVID-19 constituted extraordinary and compelling reasons. *See United States v. Arroyo*, No. 3:06-cr-0479-PRM, Doc. No. 156 (W.D.T.X. June 16, 2020). And chronic kidney disease itself has frequently served as grounds for compassionate release, without reference to whether the inmate was receiving dialysis, particularly where the inmate also suffers from diabetes.<sup>62</sup> A court in this district recently granted compassionate release to an inmate who suffered from, among other things, stage 3 kidney disease, and was taking immunosuppressing

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<sup>60</sup> Paul M. Palevsky, MD, Jai Radhakrishnan, MD MS, Raymond R. Townsend, MD, *Coronavirus disease 2019 (COVID-19): Issues related to kidney disease and hypertension* (June 1, 2020), <https://www.uptodate.com/contents/coronavirus-disease-2019-covid-19-issues-related-to-kidney-disease-and-hypertension>.

<sup>61</sup> Richard Coward, *Coronavirus: what risks do people with kidney disease face?* (May 4, 2020), <https://theconversation.com/coronavirus-what-risks-do-people-with-kidney-disease-face-137097> (“patients with kidney disease are commonly immunosuppressed – meaning they are less able to fight infections. This can be due to their underlying kidney disease or because they need to take medicines to treat their on-going kidney disease by suppressing their immune system.”)

<sup>62</sup> *See United States v. Pomante*, No. 19-20316, 2020 WL 2513095 (E.D. Mich. May 15, 2020); *United States v. Saad*, No. 16-20197, 2020 WL 2251808 (E.D. Mich. May 5, 2020); *United States v. Bertrand*, No. 3:00CR12/LAC, 2020 WL 2179387 (N.D. Fla. Apr. 29, 2020).

medications, while housed at FMC Carswell and having similarly served roughly 60% of a sentence for a non-violent methamphetamine offense. *See United States v. King*, No. SA-13-CR-FB-1, Doc. No. 202 (W.D.T.X. June 11, 2020).

The danger to Mr. Ramirez is even more acute given his incarceration at Lompoc FCC where over 1,000 inmates have tested positive for COVID-19 and 4 have died. There is a high probability he will contract COVID-19,<sup>63</sup> based on the number of inmates who have tested positive in his facility and there is a likelihood, based on the CDC guidelines, he will experience severe illness from COVID-19 because of his underlying medical conditions.<sup>64</sup> Courts, including in this district, increasingly recognize that those housed in significantly impacted BOP facilities may be eligible for compassionate release, particularly where they suffer from conditions identified as high-risk by the CDC. *See e.g. United States v. Madrid*, No. 5:08-CR-0890-XR, Doc. 279 (W.D.T.X. May 18, 2020) (finding defendant established an “extraordinary and compelling reason” for release and noting “[g]iven the severity of his medical conditions continued placement at Ft. Worth FMC is problematic given the outbreak of COVID-19 cases at that facility.”). Here too, Mr. Ramirez is housed at a facility

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<sup>63</sup> It should be noted that Mr. Ramirez’s Progress Report indicates that he is “COVID-19 RECOVERED.” *See* Exhibit 2, Progress Report. The language is confusing, but Mr. Ramirez’s medical records confirm he has not contracted the virus. He was tested for COVID-19 in April and May based on flu-like symptoms, and he tested negative. *See* Exhibit 1, Medical Records, at 139. An additional test was ordered on June 15, 2020, as a matter of “mass testing.” *See* Exhibit 1, Medical Records, at 1. Mr. Ramirez has reported to counsel his test came back negative on June 19, 2020.

<sup>64</sup> *People Who Are at Higher Risk for Severe Illness* (last reviewed May 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last accessed May 17, 2020).

overrun with COVID-19 and suffers from numerous conditions the CDC recognizes heighten the risk of severe illness.<sup>65</sup>

Mr. Ramirez’s serious health conditions and the unique risks posed by his incarceration at Lompoc FCC constitute extraordinary and compelling reasons for compassionate release.

*2. Mr. Ramirez suffers from serious medical conditions and he cannot care for himself in the prison environment, especially given COVID-19.*

Mr. Ramirez also satisfies the express provisions of the Sentencing Guidelines for release, because he suffers from serious medical conditions which substantially diminish his ability to provide self-care. *See* U.S.S.G. §1B1.13, comment. n.1(A) (ii)(I).

Counsel is aware that on May 18, 2020, the Department of Justice issued Guidance to U.S. Attorney’s Offices that where inmates suffer from chronic medical conditions, that are recognized by the CDC to place him or her at greater risk from COVID-19, the Government should not oppose a finding of “extraordinary and compelling reasons” under U.S.S.G. §1B1.13, comment. n.1(A) (ii)(I).<sup>66</sup> The Government has begun enacting this Guidance in this district, even conceding that “severe obesity” satisfies the “extraordinary and compelling” criteria because it is

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<sup>65</sup>Centers for Disease Control and Prevention, *People Who Are at Higher Risk for Severe Illness* (last reviewed May 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last accessed May 17, 2020).

<sup>66</sup> *See* Letter Amending Government’s Response, *United States v. Wise*, 1:18-cr-00072-ELH, Doc. 185 (D.Md. May 18, 2020) (“Undersigned counsel has been informed that the Department of Justice has taken the position that inmates who suffer from a condition identified by the Centers for Disease Control and Prevention (‘CDC’) as putting them at higher risk for severe illness from COVID-19 and who are not expected to recover from that condition, present an ‘extraordinary and compelling reason’ to be considered for compassionate release—even if that condition in ordinary times would not meet the terms of the policy statement.”).

recognized as a COVID-19 risk.<sup>67</sup> While counsel requested the position of the government, they have not stated whether they will oppose a finding of “extraordinary and compelling reasons” in this case.

The conditions discussed above, however, are undoubtedly “serious.” And, they are conditions recognized by the CDC as ones associated with severe illness and/or death if infected with COVID-19. They affect Mr. Ramirez’s immune system, his kidney functioning, and his cardiovascular and respiratory health. He has limited mobility due to the kidney pain he experiences from even standing or walking, which has impaired his ability to work in his job or provide basic self-care, like shaving. He cannot properly provide self-care because the conditions at Lompoc FCC make social distancing impossible and, therefore, prevent him from protecting himself from the virus. During the pandemic, courts have recognized that an inability to socially distance or otherwise protect oneself in prison can constitute an inability to “self

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<sup>67</sup> See *United States v. Blystone*, No. 5:14-CR-172-DAE, Doc. 522 (W.D. Tex. May 19, 2020) (granting compassionate release to an inmate housed at FMC Carswell where the government conceded that severe obesity was an extraordinary and compelling reason for release).

care.”<sup>68</sup> And numerous of his conditions—i.e. diabetes and kidney disease—are incurable and so, the risks will persist indefinitely.<sup>69</sup>

Mr. Ramirez has shown he suffers from “serious medical condition[s] . . . that substantially diminish[] the ability of the defendant to provide self-care within the environment of a correctional facility and from which he . . . is not expected to recover.” *See* U.S.S.G. §1B1.13, comment. n.1(A) (ii)(I).

**C. Consideration of the § 3553(a) sentencing factors—including Mr. Ramirez’s offense, the amount of the sentence served, and his positive rehabilitation at BOP—favors a sentence reduction.**

Under § 3582(c)(1)(A)(i), when a defendant establishes the existence of extraordinary and compelling circumstances justifying compassionate release, courts must consider the relevant 18 U.S.C. § 3553(a) sentencing factors to determine whether a sentencing reduction or modification is warranted. Here, § 3553(a) factors warrant a sentence reduction, especially given the COVID-19 outbreak at Lompoc FCC. Mr. Ramirez has served nearly 6 years in prison, as a first-time, non-violent drug offender. He is a family man, whose struggles with addiction led him to commit a regrettable offense. He has taken responsibility for his actions, though, and has

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<sup>68</sup> *See United States v. Pomante*, No. 19-CR-20316-DPH, 2020 WL 2513095 (E.D. Mich. May 15, 2020) (“The Court finds that Defendant’s condition is serious and the inability to effectively practice social distancing in prison diminishes Defendant’s ability to provide self-care for his medical conditions.”); *United States v. Perez*, --- F.Supp.3d---, 2020 WL 1546422, at \*4 (S.D.N.Y. Apr. 1, 2020) (granting compassionate release under U.S.S.G. §1B1.13, comment. n.1(A) (ii)(I), and finding “[c]onfined to a small cell where social distancing is impossible, Perez cannot provide self-care because he cannot protect himself from the spread of a dangerous and highly contagious virus.”); *United States v. Colvin*, No. 3:19-CR-179-JBA, 2020 WL 1613943 (D. Conn. Apr. 2, 2020) (“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.”).

<sup>69</sup> Not only is stage 4 chronic kidney disease incurable, but at 60 years old, the life expectancy for a man suffering from the condition is 5.6 years. *See* Ann Pietrangelo, *What to Know About Stage 4 Kidney Disease* (Feb. 21, 2020) available at: <https://www.healthline.com/health/stage-4-kidney-disease#prognosis>.

even expressed gratitude for the opportunity that prison presented for him to get sober. Now he has served a significant sentence without any disciplinary infractions, and asks to return to his wife and children, so he might avoid the risks posed by his further incarceration, and help his wife care for their disabled son.

*Defendant's History and Characteristics.* Mr. Ramirez's background is unusual for somebody convicted of trafficking a significant amount of methamphetamine. Before this offense, he had never been convicted of a crime. He was a family man, with a wife and two children, who had previously held a good job as an aircraft mechanic with Lockheed Martin for 15 years. It was only after he began to struggle with methamphetamine addiction that he made the mistake that resulted in his present incarceration. *See generally* Doc. 49, PSR.

Mr. Ramirez was born in Mexicali, Mexico in 1957, and reports having a good childhood, despite the death of his mother during childbirth. In 1974, at 17, he immigrated to California, where he met his wife, Viola Ramirez. They married in 1977. In 1978, he obtained lawful residence and he became a naturalized U.S. citizen in 1985. His immigration to the United States afforded him opportunities not available in Mexico, and he obtained his GED and a certification in Aeronautics from Chaffey College. With that training he found a job working on airplanes, at Lockheed Martin, which enabled him to support his wife, step-daughter, Adriana, daughter, Viola, and son, Isidro, who is afflicted with cerebral palsy and is confined to a wheelchair. Mr. Ramirez retired from Lockheed Martin in 2012, and continued to

work on cars to supplement his pension from his prior employer. *See generally* Doc. 49, PSR.

Roughly 10 years before the present offense, Mr. Ramirez began experimenting with methamphetamine with friends. He reports he barely remembers how this happened but he very quickly became addicted to the drug, and ultimately resorted to assisting in the underlying drug trafficking offense to support his habit.

***Offense and Sentence.*** Mr. Ramirez's present offense was related to the trafficking of 95.68 kilograms of crystal and liquid mix of methamphetamine. While his offense was serious, it did not involve violence.

Mr. Ramirez attempted to enter the United States in an RV, through the Bridge of Americas Port of Entry in El Paso, Texas, when he was stopped by authorities. A search of the RV identified the propane tank contained a mixture, which tested positive for methamphetamine. According to the PSR, Mr. Ramirez explained that he had been recruited by smugglers. He accepted responsibility and pleaded guilty to the charge. *See generally* Doc. 49, PSR.

Mr. Ramirez was sentenced to 135 months in prison, slightly more than the 10-year statutory minimum. Mr. Ramirez has been in federal custody since November of 2014, or roughly 5 years and 7 months. He is scheduled to be released in June of 2024, with good time. Thus, he has served nearly 60% of his expected sentence.

***Post-Sentencing Rehabilitation.*** Mr. Ramirez has been a model inmate since his incarceration began in 2014. He arrived at "FCC Lompoc-Low" in September of 2015, after his sentencing, and "has maintained clear conduct during his

incarceration. His interaction with staff and inmates is appropriate and no management concerns are noted at this time.” *See* Exhibit 2, Progress Report at 2. He has participated in classes related to managing his health and his prior drug addiction. He reported to counsel he is grateful for the time he has spent in prison, because it helped him to get and stay clean. He was previously working, cleaning residential areas at Lompoc, but had to stop because his kidney pain had grown so severe.

Near the onset of the COVID-19 pandemic, Mr. Ramirez reports he had spoken with his case manager, Mr. Hernandez, who informed him of his likely eligibility for release under the CARES Act. However, as the facility moved into lockdown, he had limited access to Mr. Hernandez, and heard no further about his potential release, despite reporting he sent a letter to the Warden in early April.

His wife, Viola Ramirez, has explained in a letter to the Court she thinks “it was the drugs [that made him commit the crime]. My husband never would have done anything like this. He always worked and always provided until he started messing around with drugs. That stuff completely changes the way you are. No one can believe he did this because it’s just not the kind of person he is.” Exhibit 4, Letter from Viola Ramirez. She notes further “Since he has been in prison he sounds back to his normal self. He has always been a kind person.” *Id.*

***Viable Reentry Plan.*** Mr. Ramirez has a viable reentry plan, should this Court grant his release. He plans to live with his wife, Viola Ramirez, in Fontana, California. They have been married for over 40 years, and she still lives with their

two adult children, Viola and Isidro. Viola has two young children as well who also live in the home. Isidro suffers from cerebral palsy and is confined to a wheelchair, so Mrs. Ramirez stays at home full-time to care for him. Mr. Ramirez is particularly anxious to return home so he can assist in the care of his son. His family is incredibly supportive of him, and could provide a safe and loving environment for him stay and to quarantine if necessary. *See generally* Exhibit 4, Letter from Viola Ramirez. If released, Mr. Ramirez could get necessary medical care, which is not the case currently at Lompoc. For instance, Mr. Ramirez was told over 6 months ago he would need dialysis soon. Despite that fact, and his doctor informing him he should see the nephrologist within 6 weeks of that appointment, Mr. Ramirez has not seen any doctor, let alone his kidney specialist, in over 6 months. Dialysis is common for a person with stage 4 kidney disease, and regular appointments to monitor the condition—i.e. every 3 months—are crucial to its management.<sup>70</sup> Mr. Ramirez is currently suffering extreme pain from a deadly condition because Lompoc cannot provide him necessary or adequate care for his kidneys in this environment.

***Deterrence and Public Protection.*** Mr. Ramirez is 62 years old and suffers from numerous medical conditions that significantly decrease the likelihood of his reoffending. As discussed above, his kidney disease has left him in such severe pain he struggles to stand for long periods of time, to walk, and to engage in basic self-care like shaving. He is no longer using drugs and has successfully rehabilitated during a

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<sup>70</sup> See Ann Pietrangelo, *What to Know About Stage 4 Kidney Disease* (Feb. 21, 2020) available at: <https://www.healthline.com/health/stage-4-kidney-disease>.

nearly 6-year prison sentence with zero disciplinary incidents and consistently positive marks for his work performance. Studies have shown that inmates over the age of 60 are exceedingly unlikely to recidivate.<sup>71</sup> His decreased likelihood of reoffending is made even more evident by the fact that this is his first offense, and over 5 years of incarceration is more than adequate to deter future bad conduct.<sup>72</sup>

Mr. Ramirez's incarceration serves only to further crowd the prison system when experts are advocating for a decrease in prison population to mitigate the spread of COVID-19.<sup>73</sup> Attorney General Barr issued a memorandum to BOP to heed expert advice and release to home confinement not just the elderly, but also those who have had good behavior in BOP and are low-risk and are housed in particularly impacted facilities.<sup>74</sup> BOP has been directed to reduce the overall prison population by focusing on inmates precisely like Mr. Ramirez. He is not only at a high-risk for

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<sup>71</sup> See, e.g., United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders* (December 2017) available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207\\_Recidivism-Age.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2017/20171207_Recidivism-Age.pdf) (finding that older inmates have a significantly reduced recidivism rate, with a reincarceration rate of those aged 60-64 of roughly 8.8%).

<sup>72</sup> See United States Sentencing Commission, *Recidivism Among Federal Offenders: A Comprehensive Review* (March 2016), available at: [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism\\_overview.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2016/recidivism_overview.pdf) (identifying significantly reduced recidivism rates among those with: criminal history scores of 0, over the age of 60, and serving shorter sentences).

<sup>73</sup> See e.g. John Pfaff, Executive Summary, *Local Officials Should Quickly Reduce Jail Populations to Slow the Spread of the Coronavirus* (Apr. 2020), <http://filesforprogress.org/memos/reducing-jail-populations-coronavirus.pdf> (last accessed Apr. 2, 2020); Joseph A. Bick, "Infection Control in Jails and Prisons," *Clinical Infectious Diseases* 45(8): 1047-1055 (2007), available at <https://doi.org/10.1086/521910>; Vice, "Sick Staff, Inmate Transfers, and No Tests: How the U.S. is Failing Federal Inmates as Coronavirus Hits" (Mar. 24, 2020), available at [https://www.vice.com/en\\_us/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits](https://www.vice.com/en_us/article/jge4vg/sick-staff-inmate-transfers-and-no-tests-how-the-us-is-failing-federal-inmates-as-coronavirus-hits); Letter of Representatives Jerrold Nadler and Karen Bass (March 19, 2020), <https://judiciary.house.gov/sites/democrats.judiciary.house.gov/files/documents/5.24.18%20hjc%20dems%20letter%20to%20potus.pdf> (last accessed Apr. 2, 2020) ("DOJ and BOP must also do all they can to release as many people as possible who are currently behind bars and at risk of getting sick. Pursuant to 18 U.S.C. 3582(c)(1)(A), the Director of the Bureau of Prisons may move the court to reduce an inmate's term of imprisonment for "extraordinary and compelling reasons.").

<sup>74</sup> William Barr, United States Attorney General, *Memorandum for Director of Bureau of Prisons* (Mar. 26, 2020), available at <https://www.justice.gov/file/1262731/download> (last accessed Apr. 2, 2020).

contracting the virus and falling fatally ill, he is a low-risk to the community, which warrants compassionate release.

A reduction or modification of Mr. Ramirez's sentence would not diminish the seriousness of the offense, nor would it place the public in any danger. The extraordinary and compelling circumstances presented by the rapid spread of COVID-19—compounded by the heightened risks faced by Mr. Ramirez, whose ability to engage in basic self-protective measures is restricted—warrant a reduced and/or modified sentence.

### **Conclusion**

For the reasons stated above, Mr. Ramirez asks the Court to reduce his sentence to time-served or modify his sentence to allow him to serve the remainder of his sentence on home confinement.

Respectfully submitted.

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/S/

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**CERTIFICATE OF SERVICE**

I certify that on the 24<sup>th</sup> day of June, 2020, I electronically filed the foregoing Isidro Ramirez's Motion for Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) with the Clerk of Court using the CM/ECF system and I will send notification of such filing to:

Assistant United States Attorney Office  
700 E. San Antonio, Ste. 200  
El Paso, Texas 79901

/s/ EDGAR H. HOLGUIN  
*Attorney for Isidro Perez Ramirez*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA	§	
	§	
V.	§	NO. 3:14-CR-2277-DCG-01
	§	
	§	
ISIDRO PEREZ RAMIREZ	§	

**ORDER**

The Court considers this case under its authority under 18 U.S.C. § 3582(c)(1)(A)(i) and Federal Rule of Criminal Procedure 43(b)(4). Having considered Defendant's Motion for Compassionate Release and the sentencing factors in 18 U.S.C. § 3553(a), the Court finds the extraordinary and compelling circumstances presented by the global pandemic of COVID-19, combined with the Defendant's low-risk of danger to the community, warrant his immediate release.

Accordingly, the Court **ORDERS**:

- (1) Defendant's Motion for Compassionate Release is **GRANTED**;
- (2) Defendant's 135-month sentence of imprisonment is reduced to time-served;
- (3) Defendant's terms and conditions of supervised release are modified to include \_\_\_\_\_ of home confinement.
- (4) All other terms and provisions of the original judgment remain in effect.
- (5) A copy of this order shall be transmitted to the Bureau of Prisons immediately.

**SO ORDERED** on this the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

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DAVID C. GUADERRAMA  
United States District Judge