

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
EL PASO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE RODOLFO ESCAJEDA,

Defendant.

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**SEALED**

CAUSE NO. EP-06-CR-2507-KC

**GOVERNMENT’S RESPONSE TO DEFENDANT’S SENTENCE REDUCTION  
MOTION**

Defendant, Jose Rodolpho Escajeda, (ESCAJEDA) filed a motion pursuant to 18 U.S.C. § 3582(c)(1)(A) asking this Court to reduce his term of imprisonment to time served (ECF No. 339: Defendant’s Motion page 1). The Government opposes ESCAJEDA’s motion, for failing to demonstrate extraordinary and compelling reasons and failing to identify factors that would support a sentence reduction pursuant to 18 U.S.C. § 3553(a).

**I. FACTUAL BACKGROUND**

**A. Offense Conduct, Criminal History, and Sentence.**

On December 20, 2011, ESCAJEDA was convicted of Conspiracy to Import over 1,000 kilograms marijuana and over five kilograms of cocaine in violation of Title 21 U.S.C. 963, 952(a) & 960(b)(1)(B) and 960(b)(1)(G). (PSR ¶ 1-3 ECF No. 201). ESCAJEDA had no criminal convictions prior to his conviction on the instant offense.

Based on ESCAJEDA’s conduct and criminal history, his total offense level was 43, calling

for a guideline sentence of life. (PSR ¶ 58). The Government filed a motion for a reduction of his sentence pursuant to USSG 5K1.1 based on defendant's substantial assistance. The plea agreement specifically called for a sentence of 420 months based on an agreement under FRCrP 11(c)(1)(b).

On March 06, 2012, the Court imposed a sentenced of 420 months imprisonment (ECF No. 206: Judgement). On March 28, 2022, ESCAJEDA filed the instant pro-se motion requesting "compassionate release" based on "extraordinary and compelling" medical reasons (ECF No. 339: Defendant's Motion p. 3).

### **B. Current Term of Imprisonment**

Defendant is not scheduled for release until October 9th, 2039. *See* Fed. Bureau of Prisons, Find an inmate, <https://www.bop.gov/coronavirus/>. At the time of filing BOP reported 0 inmates testing positive of COVID-19 at FCI Phoenix. *See id.* Two (2) inmates have died of COVID-19, and 431 inmates have recovered. *Id.*

Defendant has the following disciplinary sanctions:

July 17, 2012, Defendant sanctioned for refusing to work.

October 2, 2012, Defendant sanctioned for possessing a dangerous weapon; "Two sticks with a Razor."

May 18, 2014, Being in unauthorized area.

March 10, 2015, Assaulting with serious injury and Phone abuse. *See* Government's Exhibit (G-Ex) 1: Inmate discipline.

### **C. Previous Motions**

On October 13, 2020, the Defendant filed his first motion, asking for "Compassionate Release" relying in part on the threat posed by the COVID-19 pandemic. (ECF No. 318 p. 2)

The Court entered an order denying without prejudice and advising the Defendant that he must exhaust all of his remedies and supplement his request with medical records. (ECF No. 319).

#### **D. BOP's Response to COVID-19**

In response to the COVID-19 pandemic, BOP has modified its operations plan to protect the health of inmates at BOP facilities. *See* Fed. Bureau of Prisons, BOP Modified Operations at [https://www.bop.gov/coronavirus/covid19\\_status.jsp](https://www.bop.gov/coronavirus/covid19_status.jsp). Under this plan, BOP is limiting inmate movement to maximize social distancing; screening inmates involved in certain essential group activities; isolating and testing symptomatic inmates potentially exposed to the virus; and quarantining asymptomatic inmates potentially exposed. BOP is also testing new inmates and limiting movement between facilities (with exceptions for needed medical treatment, legal proceedings, and reducing overcrowding). BOP has suspended official staff travel and training (except for relocation travel and training for new staff) and has limited contractors to those providing essential services. Screening for staff and contractors entering BOP facilities includes temperature checks and self-reporting.

As vaccines have become available, BOP has begun administering them to staff and inmates. *See* Fed. Bureau of Prisons, *COVID-19 Vaccine Implementation*, COVID-19 Coronavirus, <https://www.bop.gov/coronavirus/>. (last visited May 16, 2022). So far BOP has administered 316,976 total doses including 1258 full inmate inoculations at Phoenix FCI. Although BOP has prioritized vaccinating correctional staff to guard against virus transmission into and out of prisons, the vaccine is also becoming available to inmates. *See* Fed Bureau of Prisons, *COVID-19 Vaccine Guidance 5* (Jan. 4, 2021), [https://www.bop.gov/resources/pdfs/2021\\_covid19\\_vaccine.pdf](https://www.bop.gov/resources/pdfs/2021_covid19_vaccine.pdf). Inmates are assigned priority based on factors such as job assignment, age, and medical condition. *Id.* at 5-7. At Phoenix FCI in particular, BOP has fully vaccinated 168 staff members and 1258 inmates. Fed. Bureau of Prisons, *COVID-19 Vaccine Implementation*, COVID-19 Coronavirus,

<https://www.bop.gov/coronavirus/>. (last visited May 16, 2022) (click on “Learn more about vaccinations and view individual facility stats.”)

BOP also continues to designate prisoners who pose the least threat to the community to serve their terms of imprisonment in home confinement. Home confinement is not a sentence reduction; instead, BOP designates an inmate’s residence as the place he or she will serve a term of imprisonment. *See* 18 U.S.C. § 3624(c)(2); 34 U.S.C. § 60541. Under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), BOP may now “lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement.” CARES Act, Pub. L. No. 116-136, § 12003, 134 Stat. 281, 516 (2020). The Attorney General has directed that BOP prioritize and maximize transfers to home confinement of inmates vulnerable to COVID-19 in appropriate circumstances. BOP is devoting all available resources to carrying out that directive. As of this filing, BOP has transferred 42,071 inmates to home confinement since March 26, 2020. *See* Fed. Bureau of Prisons, *COVID-19 Home Confinement Information*, COVID-19 Coronavirus, (last visited May 16, 2022).

#### **E. Administrative Requests and Consideration**

On December 13, 2020, ESCAJEDA filed an “Inmate Request to Staff” asking that “BOP review his record for recommendation under 18 U.S.C. § 3582(c)(1)(A)(i) [] compassionate release.” (See G-Ex: 2) On January 8, 2021, Warden W. Lothrop denied the reduction in sentence (RIS) request, noting ESCAJEDA did not allege “extraordinary or compelling” circumstances. (See G-Ex: 3)

#### **F. Defendant’s Current Motion**

On March 28, 2022, Defendant filed a motion pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) seeking a reduction in sentence to time served or home confinement based on his underlying medical conditions including Type 2 diabetes, obesity (BMI 31.6), polysubstance and tobacco use. (ECF No. 339 p. 2).

## ARGUMENT

A district court “generally ‘may not modify a term of imprisonment once it has been imposed.’” *Dillon v. United States*, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. § 3582(c)). A motion for compassionate release invokes one of the “few” and “limited” exceptions to this general rule. *Ward v. United States*, 11 F.4th 354, 359, 361 (5th Cir. 2021). Under this exception, a defendant who has exhausted administrative remedies is eligible for a sentence reduction if a district court finds that (1) “extraordinary and compelling reasons warrant such a reduction” and (2) “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” *Id.* at 359-60 (quoting § 3582(c)(1)(A)). If a district court finds those requirements satisfied, then the court “may” reduce the defendant’s sentence “after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent they are applicable.” *Id.* at 360 (quoting § 3582(c)(1)(A)). But a court’s resolution of a compassionate-release motion is “inherently discretionary.” *Id.* “[T]he burden falls on the defendant to convince the district judge to exercise discretion to grant the motion . . . after considering the Section 3553(a) factors.” *Id.* at 361.

### **I. Defendant has not identified extraordinary and compelling reasons for a sentence reduction.**

Although Defendant has exhausted administrative remedies, Defendant has failed to show extraordinary and compelling reasons for a reduction. Defendant has also failed to show that the statutory sentencing factors outlined in 18 U.S.C. § 3553(a) would support a reduced prison term. “Fear of COVID-19 doesn’t automatically entitle a prisoner to release.” *Thompson*, 984 F.3d at 435. Rather, the policy statement’s commentary, which informs a court’s analysis of whether medical conditions count as extraordinary and compelling reasons for a sentence reduction,

focuses on circumstances in which a medical condition is sufficiently serious to warrant a sentence reduction. *Thompson*, 984 F.3d at 433 (quoting USSG § 1B1.13, cmt. n.1(A)).

**A. Defendant has been fully vaccinated including receiving the booster COVID-19 vaccination.**

Defendant cannot show that he still faces a substantial risk from COVID-19, even in combination with other conditions, because he has already received the COVID-19 vaccine and the COVID-19 booster. See *United States v. T aylor*, 16 F.4th 485, 487 (6th Cir. 2021); *United States v. Beltran*, No. 6:16cr4, 2021 WL 398491, at \*3-4 (S.D. Tex. Feb. 4, 2021); *United States v. Isidaehomen*, No. 3:16cr240, 2021 WL 243458, at \*3 (N.D. Tex. Jan. 25, 2021). Defendant received the Moderna Vaccine on April 6, 2021, (See G-Ex: 4). The second vaccine was administered on May 4, 2021, and the Moderna booster was administered on December 8, 2021. (See G-Ex: 5) All COVID-19 vaccines currently available in the United States have been shown to be safe and effective at preventing COVID-19. Ctrs. for Disease Control, Benefits of Getting a COVID-19 Vaccine (Feb. 25, 2022), at <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/vaccine-benefits.html>. Therefore, Defendant cannot show that the COVID-19 pandemic, even in combination with his claimed medical conditions, is an extraordinary and compelling reason justifying immediate release.

**II. Defendant has not shown that the sentencing factors in 18 U.S.C. § 3553(a) support a reduced prison term.**

This Court must also consider the sentencing factors in 18 U.S.C. § 3553(a). See 18 U.S.C. § 3582(c)(1)(A); *United States v. Chambliss*, 948 F.3d 691, 694 (5th Cir. 2020). At Defendant's sentencing, this Court determined that those factors supported his current sentence of 420 months. (ECF No: 206 Judgment) Those factors continue to support that sentence rather than the time

served or home confinement sentence Defendant seeks. Moreover, his disciplinary history further supports continued incarceration.

**A. Nature and circumstances of offense, § 3553(a)(1), and seriousness of offense, § 3553(a)(2)(A).**

The nature, circumstances, and seriousness of Defendant's offense remain unchanged and reinforce the just nature of this Court's sentence. The Defendant was a high-ranking member of the Juarez Cartel, working in the "Valle de Juarez," an area that abuts the international border across from rural areas in El Paso and Hudspeth County, Texas. (PSR ¶8). ESCAJEDA's duties included securing tactical gear, firearms, and ammunition to expand and defend the interests of the Juarez Cartel in his area of operation to included preventing the Sinaloa Cartel from establishing a presence in the area. (PSR ¶9). ESCAJEDA participated in the implementation and management of the tax system devised by the Juarez Cartel known as the "piso." It was this taxing system that fueled the corruption which was vital to the continuity and success of the Juarez Cartel. ESCAJEDA and other members would charge a tax on the marihuana transported to the border for further staging and importation. The money raised from the "piso" would be used to pay corrupt members of law enforcement and the military. (PSR ¶ 13).

The Court applied a four (4) level adjustment for ESCAJEDA's role as a leader organizer of criminal activity. ESCAJEDA directed several groups of Juarez Cartel members, including stash house personnel in the United States (PSR ¶ 14-15), corrupt members of law enforcement (PSR ¶ 13) and gateway personnel (PSR ¶ 16).

ESCAJEDA was also involved in and directed two incursions into the United States, wherein he used threats of violence against members of United States law enforcement. On November 17, 2005, CBP agents and Hudspeth County Deputies were unloading bales of

marihuana from a dump truck loaded with marihuana that was stuck in the Rio Grande. Armed personnel from the Escajeda DTO managed to pull the vehicle back to Mexico. (PSR ¶ 16).

On January 23, 2006, ESCAJEDA directed a second incursion of multiple load vehicles into the United States. Members of the Texas Department of Public Safety, Hudspeth County Deputies, and CBP responded to the area and observed a vehicle stuck in the Rio Grande. Several men with firearms were attempting to unload the vehicle along with other personnel in military attire. After failing to pull the vehicle back to the United States the vehicle was set on fire. (PSR ¶ 17). ESCAJEDA himself confirmed these events in a signed affidavit highlighting the presence of the individuals, setting the vehicle on fire after being in direct communications with the Juarez Cartel hierarchy. (G-Ex: 6; Affidavit and photographs).<sup>1</sup> During ESCAJEDA's membership in the Juarez Cartel he was responsible, directly, or indirectly with the importation of 129,268 kilograms of marijuana and 150 kilograms of cocaine. (PSR ¶25)

**B. Need to protect public and deter further crimes, § 3553(a)(2)(B)-(C).**

For over a decade, ESCAJEDA rose up the ranks of the Juarez Cartel, ending his reign in the midst of the Juarez Drug war. He received a very serious sentence in terms of time, based on quantities (129 metric tons of marijuana) and adjustments for role, obstruction, and dangerous weapon. He did attempt to mitigate his circumstances by cooperating with the Government and signing an affidavit in support of an extradition. However, his continued criminal conduct while serving his sentence is truly the touchstone of future behavior. ESCAJEDA is designated to FCI Phoenix a medium security prison. During his time in prison, he has engaged in an assault with serious injury as well as other dangerous conduct. Although ESCAJEDA was in possession of a dangerous weapon and actually assaulted another inmate, his most dangerous act may be the possession of a telephone. His conduct while being a high-ranking member of the Juarez Cartel

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<sup>1</sup> The attached affidavit is written in Spanish and bears ESCAJEDA's signature. A translation of the relevant paragraph 15 is attached as page 5 of the exhibit.



and in charge of the lucrative “Valle” is shocking. It is not uncommon for high-ranking cartel members to orchestrate their continued drug activities while in prison. He certainly was a threat for the victim of the assault while being supervised in a Federal prison, surely the public will be endangered as well. In sum, Defendant has failed to show that the sentencing factors in § 3553(a) support the reduced sentence he seeks.<sup>2</sup>

### **III. This Court should deny Defendant’s request for home confinement.**

This Court should also deny any request for an order directing BOP to designate him to serve his sentence in home confinement. A prisoner has no constitutional right to confinement in any particular place, including in home confinement. *See Sandin v. Conner*, 515 U.S. 472, 478 (1995); *Meachum v. Fano*, 427 U.S. 215, 224 (1976). And federal statute grants BOP, not courts, the sole authority to determine the place of incarceration. 18 U.S.C. § 3621(b); *United States v. Voda*, 994 F.2d 149, 151-52 (5th Cir. 1993); *Moore v. U.S. Att’y Gen.*, 473 F.2d 1375, 1376 (5th Cir. 1973). Section 3582(c)(1)(A) permits a court to reduce prison term when a defendant meets all the criteria discussed above, but Defendant’s request for designation to home confinement does not reduce any prison term. According to BOP, Defendant has not been considered for home confinement. Upon release from BOP ESCAJEDA will be remanded to the custody of ICE.

### **IV. Amendment 782 Sentencing Reduction**

ESCAJEDA wrote “official court documents, [exist, that] he is eligible for the 2-level reduction of his sentence.” However, on August 18, 2016, the Court entered an Order denying a sentence reduction pursuant to 18 U.S.C. §3582(c)(2). (ECF 294).

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<sup>2</sup> For the same reasons, Defendant has not shown that he would not pose “a danger to the safety of any other person or to the community a danger,” as the policy statement that informs courts’ analysis of sentence-reduction motions invites courts to consider, *see* USSG § 1B1.13(2).

## CONCLUSION

ESCAJEDA has failed to show extraordinary medical circumstances. Diabetes is certainly a serious condition when compounded with obesity. However, multiple diagnoses are not an automatic formula for compassionate release. “[O]besity alone or even paired with other medical conditions does not provide adequate grounds for compassionate release.” *United States v. Contreras*, 92021 WL 1536504 (E.D.Texas, April 19, 2021) (quoting *United States v. Sentimore*, (WL 7630778 (E.D. La. De. 22, 2020)). ESCAJEDA remains a relatively healthy person despite his diabetes and obesity. Both of these maladies are commonplace and people with these conditions are “at a higher risk of severe illness from COVID-19.”<sup>3</sup> However, even a combination of these conditions do not render a defendant’s medical condition “extraordinary.” *United States v. Thompson*, 984 F. 3d 431, 434, (5<sup>th</sup> Cir. 2021). In ESCAJEDA’s case this was in fact confirmed, as he remained asymptomatic during quarantine. His RIS assessment concluded that he “is not terminal, elderly with medical conditions or considered medically debilitated.” (G-Ex; 7 Reduction in Sentence Report). ESCAJEDA is 45 years old and has served just over 50% of his sentence. He continues to be a threat to the public as he was during his time as a high-ranking member of the Juarez Cartel.

If this Court disagrees and grants a sentence reduction that results in Defendant’s early release, the government requests that the Court’s order accommodate the need to quarantine Defendant for a period of at least 14 days to protect public health. To ensure that pre-release quarantine occurs, this Court should advise the parties of its decision while retaining jurisdiction over the motion for 14 days. BOP will then place Defendant in quarantine. If Defendant has not displayed symptoms or tested positive for COVID-19 for a period of 14 days, this Court’s sentence-reduction order will then issue. If Defendant instead tests positive during the 14-day period, the government will notify the Court and seek an extension of any release date until Defendant has tested negative and displayed no symptoms for at 14 days.

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<sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (People with Certain Medical Conditions).

