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CLERK US DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY MJ
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA,
Respondent/Plaintiff,

Case No. EP-06-CR-2507(2)-KC
Motion for order Reducing
Sentence or Modify Judgment
under 18 U.S.C. § 3582(c)(1)(A)

v.

JOSE RODOLFO ESCAJEDA,
Petitioner/Defendant.

Certification: This motion is timely filed per 18 U.S.C. § 3582(c)(1)(A) due to "extraordinary and compelling reasons" presented by the COVID-19 pandemic. Mr. Escajeda's medical records, Exhibit-A, show he is at high risk for sever illness form COVID-19 and reinfection that can result in death. Because release is appropriate Under 18 U.S.C. § 3553(a)'s sentencing factors, Mr. Escajeda asks this Court to reduce his 420 month sentence to time served (12 years), leaving the 5 years term of supervised release intact. Mr. Escajeda Respectfully request for Appointment of Counsel to help him litigate his 18 U.S.C. § 3582(c)(1)(A) motion, at this honorable Court's discretion.

1 **II. Background**

2 **A. Factual Background**

3 In September 4, 2009, Defendant Jose Rodolfo Escajeda were
4 arrested and charged with Conspiracy to distribute 1000 Kilograms of
5 marijuana and 5 Kilograms of Cocaine, 21 U.S.C. § 841(a)(1), 846,
6 952, 960, and 963.

7 Defendant eventually pled guilty to conspiracy to Import 1000
8 kilograms of marijuana, and Count Two(2) 5 kilograms of cocaine was
9 dismissed pursuant to plea agreement, and was sentenced on March
10 1, 2012. The Defendants Criminal History Category was Category I,
11 with a Base Offense Level of 43, putting him in a guideline range
12 of Life. He received a 3-level reduction under § 3E1.1, thus, giving
13 him a Base offense level of 40, putting him in a guideline range of
14 292-365 months. The sentencing Judge, sentence the defendant to a
15 term of 420 months (35 years) imprisonment to be followed by 5 years
16 supervised release.

17 Defendant has served approximately 144 months (34%) of his
18 sentence and has a projected release date, after good time credit, of
19 10/9/39. He now moves the Court to reduce his sentence to time
20 served and/or order him release to home confinement because his
21 underlying medical conditions Type 2 Diabetes, Obesity (BMI 31.6),
22 polysubstance abuse, and tobacco history), make him particulary
23 vulnerable to severe illness or death should he contract COVID-19
24 and become reinfected in prison.
25
26

1 **III. Legal Framework for Compassionate Release**

2 The compassionate release statute, 18 U.S.C. 3582(c)(1)(A), as
3 amended by the First Step Act of 2018, Pub. L. 115-391, 132 Stat.
4 5222 (Dec. 21, 2018), empowers this Court to reduce Mr. Escajeda's
5 sentence if "extraordinary and compelling reasons warrant such a
6 reduction," and "after considering the factors set forth in section
7 3553(a) to the extent that they are applicable, 18 U.S.C. 3582(c)(1)
8 (A)(i).

9 On December 21, 2018, the First Step Act became law, significa-
10 ntly changing 18 U.S.C. §3582(c) by allowing defendants to directly
11 petition courts for relief, instead of leaving relief decisions
12 solely with the BOP. 18 U.S.C. § 3582(c)(1)(A). And, the compassionate
13 statute authorizes district courts to grant relief whenever
14 "extraordinary and compelling reasons warrant such a reduction"-
15 regardless of the BOP's position.

16 **IV. ANALYSIS**

17 **A. Exhaustion**

18 Defendant submitted a request for Compassionate release to
19 CMC, Mrs. Wastell, (Case Manager Coordinator) on January 3, 2022,
20 which was denied on January 21, 2022. Defendant then appealed that
21 decision to the Warden, Mr. R. A. Heisner, on February 2, 2022, and
22 was denied on February 8, 2022. Exhibit-B

23 **B. Extraordinary and Compelling Circumstances**

24 The applicable United States Sentencing Commission policy statement
25 provides that extraordinary and compelling reasons for early release
26

1 exist where:

2 **(A) Medical Condition of the Defendant.-**

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

9 (ii) The defendant is-

10 (I) suffering from a serious physical or medical condition,

11 (II) suffering from a serious functional or cognitive

12 impairment, or

13 (III) experiencing deteriorating physical or mental health
14 because of the aging process,

15 that substantially diminishes the ability of the defendant to
16 provide self-care within the environment of a correctional
17 facility and from which he or she is not expected to recover.

18 **(B) Age of the Defendant.-**

19 The defendant is (i) at least 65 years old; (ii) is experienc-
20 ing a serious deterioration in physical or mental health
21 because of the aging process; and (iii) has served at least 10
22 years or 75 percent of his or her term of imprisonment, which-
23 ever is less;

24 **(C) Family Circumstances.-**

25 (i) The death or incapacitation of the caregiver of the
26 defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered
partner when the defendant would be the only available
caregiver for the spouse or registered partner.

(D) Other Reasons.-

As determined by the Director of the Bureau of Prisons, there
exists in the defendant's case an extraordinary or compelling
reason other than, or in combination with, the reasons
described in subdivisions (A) through (C). U.S.S.G. § 1B1.13(1)
(A), Application Note 1.

"A review of a motion for release based on COVID-19 is highly fact-
intensive and dependent on the specific conditions of confinement and
medical circumstances faced by the defendant." United States v.

1 Koons, 455 F. Supp. 3d 285, 2020 WL 1940570, at *4 (W.D. La. 2020)
2 (citing United States v. Raia, 954 F.3d 594, 597 (3d Cir. 2020)).

3 Defendant is 45 years old. His medical records from the BOP
4 indicate that he suffers from Type 2 Diabetes, Obesity, Polysubstance
5 Abuse, and Tobacco history. Exhibit-A1, pg. 2. According to the
6 Centers for Disease Control and Prevention (CDC), adults of any age
7 who are obese or suffer from type 2 diabetes are at an increased
8 risk of severe illness or death from COVID-19. People with certain
9 Medical Conditions, CDC.Gov (Dec. 29, 2020), [https://www.cdc.gov/
10 coronavirus/2019-ncov/need-extra-precautions/people-with-medical-
11 conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html).

12 "It is especially important for people at increased risk of
13 severe illness from COVID-19, and those who live with them, to
14 protect themselves from getting COVID-19." People with Certain
15 Medical Conditions, CDC.GOV (Dec. 29, 2020),
16 [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/
17 /people-with-medical-conditions.html](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html). "Social distancing
18 [staying at least 6 feet from other people] should be practiced
19 in combination with other everyday preventive actions to reduce
20 the spread of COVID-19, including wearing masks, avoiding
21 touching your face with unwashed hands, and frequently washing
22 your hands with soap and water for at least 20 seconds."
23 Social Distancing, CDC.GOV(Nov. 17, 2020), [https://www.cdc.gov/
24 coronavirus/2019-ncov/prevent-getting-sick/social-distancing.
25 html](https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html).

26 Defendant states that he is unable to take adequate precautions
against **COVID-19** while incarcerated, such as social distancing, and
he does not have access to a medical grade mask or gloves in perform-
ing his assigned duties as an orderly, which include cleaning the
Dayrooms used by the approximately 130 men in his unit.

Courts have held that, for inmates like Defendant who have
certain underlying health conditions, "nothing could be more
extraordinary and compelling than this pandemic."

1 United States v. Rodriguez, 451 F. Supp. 3d 392, 2020 WL 1627331, at
2 *1 (E.D. Pa. 2020)(granting **compassionate release** to defendant who
3 was "especially vulnerable" to COVID-19 due to his diagnoses of
4 Type 2 diabetes mellitus with diabetic neuropathy, essential
5 hypertension, obesity, and 'abnormal liver enzymes in a pattern
6 most consistent with non-alcoholic fatty liver disease''"); see also
7 United States v. Muniz, 2020 U.S. Dist. LEXIS 59255, 2020 WL 1540325,
8 at *2 (S.D. Tex. Mar. 30, 2020)(finding extraordinary and compelling
9 circumstances where "Defendant has been diagnosed with serious
10 medical conditions that, according to reports from the Centers[s]
11 for Disease Control, make him particularly vulnerable to severe
12 illness from COVID-19...includ[ing] inter alia, end stage renal
13 disease, diabetes, and arterial hypertension"); United States v.
14 Kendon, No. 2: 16-cr-542, D.E. 39, pp. 3-4 (S.D. Tex. May 26, 2020)
15 (granting **compassionate release** because diabetes and hypertension put
16 the defendant "at risk for suffering life threatening illness due to
17 COVID-19").

18 In the instant case, Escajeda is not suffering from a terminal
19 illness, and he is not 65 years old. Additionally, Escajeda does not
20 argue that any family circumstances might warrant a reduction of his
21 sentence under Subsection C. Accordingly, Subsections B and C of the
22 Application Note do not apply. Instead, Escajeda argues that his
23 case falls within Subsection A and D. Subsection A and D requires a
24 finding of extraordinary and compelling reasons to justify a
25 reduction of sentence. The Sentencing Guidelines were last amended on
26 November 1, 2018, and therefore the policy statement has not been

1 updated since the enactment of the First Step Act on December 21,
2 2018. Before the enactment of the First Step Act, only the Bureau of
3 Prisons could move for compassionate release under Section 3582. The
4 First Step Act amended Section 3582(c) to allow a defendant to bring
5 a motion for compassionate release "if he has exhausted his
6 administrative rights to appeal the BOP's failure to bring such a
7 motion or has waited 30 days after the warden's receipt of the
8 request, whichever is earlier."

9 In light of the First Step Act, there has been disagreement over
10 whether courts may determine what constitutes an extraordinary and
11 compelling reason under the catchall provision in Subsection D.

12 Recent Fifth Circuit caselaw instructs that reference to the
13 Guidelines is one step in the district court's own determination of
14 whether extraordinary and compelling reasons warrant a reduction of
15 sentence. The Guidelines are not "the dispositive boundary of what
16 may be judicially determined to be extraordinary and compelling
17 reasons for a sentence reduction for medical reasons." Accordingly,
18 "the decision of whether to ultimately grant a modification is left
19 to the sound discretion of the trial court," and such decisions are
20 reviewed on appeal for abuse of discretion.

21 Escajeda argues that extraordinary and compelling reasons exists
22 for his compassionate release because of the risks a Covid-19
23 reinfection might pose to his health, (A) Medical Condition of the
24 Defendant, (ii) The defendant is-(1) Suffering from a serious physical
25 or medical condition, that substantially diminishes the ability of
26 the defendant to provide self-care within the environment of a

1 correctional facility and from which he or she is not expected to
2 recover. Escajeda provides medical documentation showing that he
3 suffers from diabetes and obesity amongst other issues. See Exhibit
4 A1, pg. 2. In addition, the CDC has stated that people with
5 type 2 diabetes are at an increased risk of severe illness from
6 COVID-19. Therefore, this Court should find that Escajeda's
7 medical conditions, in particular type 2 diabetes and Obesity,
8 make him particularly vulnerable to severe illness from COVID-19 so
9 as to warrant a finding of "extraordinary and compelling"
10 circumstances.

11 **C. Amendment 782 to the Sentencing Guidelines**

12 According to official court documents, Federal Judge Kathleen
13 Cardone signed a document notifying Escajeda that he is eligible for
14 the 2-level reduction of his sentence. This also presents
15 "extraordinary and compelling" circumstances, thus, giving authority
16 to honorable Judge Kathleen Cardone to reduce Mr. Escajeda's
17 sentence, pursuant to Amendment 782, modification of the drug
18 quantity table in U.S.S.G. § 2D1.1 and reduce by two levels the
19 offence level applicable to drug trafficking.
20

21 **D. Section 3553(a) Factors Weigh in Favor of Reducing Escajeda's Sentence**

22 Having found that "extraordinary and compelling" circumstances
23 warrant a reduction in sentence, the Sentencing Guidelines' policy
24 statement regarding **compassionate release** states that a defendant's
25 sentence may be reduced only if "the defendant is not a danger to the
26 safety of any other person or to the community, as provided in

1 18 U.S.C. § 3142(g)," and the Court's determination is in line with
2 "the factors set forth in 18 U.S.C. § 3553(a)."

3 Escajeda argues that his release is supported by the section 3553(a)
4 factors, and he does not pose a danger to any person or to society if
5 released. Also, Mr. Escajeda further indicates that he was not a
6 threat to the community because he would be deported back to Mexico
7 if his pre-release address is not approved, in the event should the
8 Court grant his Motion for compassionate release.

9 Section 3142(g) sets out the factors courts must consider in deciding
10 whether to release a defendant pending trial. The factors related to
11 whether a petitioner is a danger to the community include: "the nature
12 and circumstances of the offense charged," "the history and character-
13 istics of the person," including "the person's character, physical and
14 mental condition, family ties, employment, financial resources, length
15 of residence in the community, community ties, past conduct, history
16 relating to drug or alcohol abuse, [and] criminal history," and "the
17 nature and seriousness of the danger to any person or the community
18 that would be posed by the person's release." Section 3553(a), which
19 sets forth the factors to consider in initially imposing a sentence,
20 requires the Court to consider:

21 (1) the nature and circumstances of the offense and the history and
22 characteristics of the defendant; [and]

23 (2) the need for the sentence imposed-

24 (A) to reflect the seriousness of the offense, to promote respect
25 for the law, and to provide just punishment for the offense;

25 (B) to afford adequate deterrence to criminal conduct;

26 (C) to protect the public from further crimes of the defendant; and

1 (D) to provide the defendant with needed educational or vocational
2 training, medical care, or other correctional treatment in the most
effective manner[.]

3 On December 20, 2012, Escajeda pled guilty to Count(s) One (1)
4 of the Second Superseding Indictment; and Coun(s) Two (2) of the
5 Second Superseding Indictment, the Court dismissed. Escajeda admitted
6 to conspiracy to import 1,000 kilograms or more of marijuana in
7 furtherance of the drug trafficking offense. Escajeda was subsequently
8 convicted by guilty plea on March 1, 2012 as to Count(s) One (1) of the
9 Second Superseding Indictment. The district court sentenced Escajeda
10 to 35 years imprisonment to be followed by 5 years of supervise
11 release.

12 Escajeda is a 45-year-old, Mexican male. He has only one
13 criminal history for the instant case, Conspiracy to import 1,000
14 kilograms of marijuana. Escajeda has only one criminal history point,
15 thus, putting him in criminal history category One (1), and his
16 offense is a non-violent drug offense.

17 Escajeda has not received any disciplinary Incident Reports in
18 the last 7 years. He has continued to educate himself by programming
19 and taking use of the BOP's Educational Courses at FCI Phoenix.
20 See Program Review Document; Inmate Discipline Data Sheet; and
21 Education Transcript.

1 Escajeda's strong community ties back in Mexico, and close ties
2 with his children whom are citizens of the U.S. and his wife, are
3 also appropriate considerations under Section 3142(g). Upon release,
4 Escajeda will return to Mexico, as he has a pending ICE Detainer if
5 ICE choose to deport him back to Mexico. If ICE choose to not deport
6 Mr. Escjeda, he has family here in the U.S. with whom he can live with
7 and have gainful employment available to him if released.

8 Taking all of these factors into consideration, the Court
9 should finds ttha with appropriate support, Escajeda is not a danger
10 to the safety of any other person or to the community, and a
11 sentence reduction is warranted under section 3553(a). However,
12 Escajeda has no prior drug convictions, and no prior criminal history.
13 The instant offense for which Escajeda is guilty of, it was a non-
14 violent in nature.

15
16 Accordingly, having considered all of the relevant factors under
17 Section 3142(g) and Section 3553(a), and having weighed the totality
18 of the relevant circumstances, the defendant prays that this Court
19 finds the factors weigh in favor of Escajeda's request for
20 compassionate release.

21
22 **V. CONCLUSION**

23 for the reasons stated herein and pursuant to 18 U.S.C. § 3582 (c)(1)
24 (A)(i), the defendant, prays that this honorable court finds that
25 extraordinary and compelling reasons warrant a reduction of
26 Escajeda's sentence. Mr. Escajeda does not pose a danger to any other

1 person or the community here in the United States or in Mexico,
2 the Section 3553(a) factors support a reduction, and the reduction
3 is consistent with applicable U.S. Sentencing Commission policy
4 Statement.

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On this date: March 18, 2022.

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CERTIFICATE OF SERVICE

1
2 I, Jose Rodolfo Escajeda, mailed a copy of the 18 U.S.C. 3582
3 (c)(1)(A) Motion for Compassionate Release to the UNITED STATES
4 DISTRICT COURT, OFFICE OF THE CLERK, WESTERN DISTRICT OF TEXAS:
5 EL PASO DIVISION, 525 Magoffin Ave.; Suite 105; El Paso, Texas 79901,
6 by placing into the Institutional Mailbox, on the 18th day of March,
7 2022.
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14 Respectfully Submitted

15 Jose Escajeda
16 Jose Rodolfo Escajeda
17 Reg. No. 69445-280
18 Acting Pro Se
19 FCI PHOENIX
20 37910 N. 45th Ave.
21 Phoenix, Arizona 85086
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PROPOSED RELEASE PLAN

To the extent the following information is available to you, please include the information requested below. This information will assist the U.S. Probation and Pretrial Services Office to prepare for your release if your motion is granted.

A. Housing and Employment

Provide the full address where you intend to reside if you are released from prison:

[REDACTED]

Provide the name and phone number of the property owner or renter of the address where you will reside if you are released from prison:

[REDACTED]

Provide the names (if under the age of 18, please use their initials only), ages, and relationship to you of any other residents living at the above listed address:

If you have employment secured, provide the name and address of your employer and describe your job duties:

[REDACTED]

List any additional housing or employment resources available to you:

SIGNATURE

I declare under penalty of perjury that the facts stated in this attachment are true and correct.

3-18-2022
Date

Signature

Jose Rodolfo Escajeda
Name

69445-280
Bureau of Prisons Register #

Federal Correction Institution Phoenix
Bureau of Prisons Facility

37910 N. 45th Ave.; Phoenix, Arizona 85086
Institution's Address