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Federal Compassionate Release After the First Step Act

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Federal Compassionate Release After the First Step Act

U.S. district courts enjoy the discretion to reduce the sentence of federal prisoners on grounds of compassionate release on the motion of the Bureau of Prisons (BOP), or, after enactment of the First Step Act, on the motion of the prisoner.

A district court must first find that granting the motion is consistent with the generally applicable sentencing factors, is warranted for extraordinary and compelling reasons, *and* is in conformity with applicable Sentencing Commission guidelines. A prisoner must also demonstrate that he has exhausted his administrative remedies, unless the government has waived the administrative exhaustion requirement.

The Sentencing Commission has yet to promulgate guidelines governing prisoner motions, but district courts may look for guidance to the guidelines governing BOP motions. Extraordinary and compelling circumstances are rare. The generally applicable sentencing factors that call for respect for the law, just punishment, and public safety may present an insurmountable hurdle for prisoners with a criminal record.

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Charles Doyle
Senior Specialist in
American Public Law

Contents

Introduction	1
Background	1
District Court Discretion	2
Prerequisites to Compassionate Release	3
Exhaustion.....	3
Extraordinary and Compelling Reasons.....	3
Sentencing Commission Policy Statement.....	5
Section 3553(a) factors	6

Contacts

Author Information.....	8
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Introduction

In the years leading up to passage of the First Step Act of 2018, the federal prison population grew dramatically and had become increasingly costly to maintain. For instance, in 2017, the Bureau of Prisons (BOP) had custody of six times as many inmates as it had in 1980, and the BOP's appropriations grew from less than \$900 million to more than \$7 billion.¹ Congress responded with a package of First Step Act curatives, one of which it captioned: "Increasing the Use and Transparency of Compassionate Release."² That provision permits prisoners to petition for sentence reduction and became effective just as the Coronavirus Disease 2019 (COVID-19) pandemic arrived. In fiscal year 2020, prisoner petitions accounted for 96% of those granted and COVID-19 health risks as a basis for more than 70% of the sentence reductions granted.³ Since then, some courts have suggested that health challenges can be managed in prison without the need for sentence reductions⁴ and that statutory sentencing factors may trump health concerns.⁵

Background

Until 1984, Congress permitted district courts to reduce a federal prisoner's sentence to time served on the motion of the Bureau of Prisons (BOP).⁶ The Sentencing Reform Act repealed the authority and replaced it with 18 U.S.C. § 3582(c), allowing federal courts to grant federal prisoners their release at the request of the BOP.⁷ When exercised, section 3582(c) authority encompasses the power to reduce a sentence imposed in obedience to a statutory mandatory minimum.⁸

In 2006, the U.S. Sentencing Commission issued an implementing guideline, U.S.S.G. § 1B1.13, addressing compassionate release under Section 3582(c).⁹

¹ CRS In Focus IF10573, *Federal Correctional Reform and the First Step Act of 2018*, by Ben Harrington and Nathan James. Related CRS products include CRS Report R45558, *The First Step Act of 2018: An Overview*, by Nathan James, and CRS Legal Sidebar LSB10611, *Crack Cocaine Offenses and the First Step Act of 2018: Overview and Implications of Terry v. United States*, by Michael A. Foster and Joanna R. Lampe.

² P.L. 115-391, § 603(b), 132 STAT. 5194, 5239 (2018) (codified as amended at 18 U.S.C. § 3582(c)). Section 3582(c) continues the practice of referring to "defendants," but the benefits of the section are only available to those in custody. *United States v. Fower*, 30 F.4th 823, 825 (9th Cir. 2022) ("[A] convicted defendant is not entitled to seek statutory compassionate relief prior to incarceration."). The Sentencing Commission in its various reports refers to "defendants" or "offenders." U.S. SENTENCING COMM'N, *THE FIRST STEP ACT OF 2018: ONE YEAR OF IMPLEMENTATION* (2020); U.S. SENTENCING COMM'N, *COMPASSIONATE RELEASE: THE IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC* (2022).

³ U.S. SENTENCING COMM'N, *COMPASSIONATE RELEASE: THE IMPACT OF THE FIRST STEP ACT AND COVID-19 PANDEMIC, KEY FINDINGS 3* (2022) (discussing activity between October 2019 and September 2020).

⁴ *United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021); *United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021).

⁵ *United States v. Jones*, 17 F.4th 371, 374 (2d Cir. 2021); *United States v. Jenkins*, 22 F.4th 162, 170 (4th Cir. 2021); *United States v. Saccoccia*, 10 F.4th 1, 8 (1st Cir. 2021); *United States v. Keller*, 2 F.4th 1278, 1284 (9th Cir. 2021).

⁶ 18 U.S.C. § 4205(g) (1982) ("Time of eligibility for release on parole . . . (g) At any time upon motion of the Bureau of Prisons, the court may reduce any minimum term to the time the defendant has served.")

⁷ P.L. 98-473, §212(a), 98 STAT. 1837, 1998 (1984) (codified at 18 U.S.C. § 3582(c) (1988)).

⁸ *United States v. Halvon*, 26 F.4th 566, 570 (2d Cir. 2022).

⁹ U.S.S.G. § 1B1.13.

In 2013, the Justice Department’s Inspector General issued a report criticizing the BOP’s exercise of its authority under the statute.¹⁰ The report found that “the existing BOP compassionate release program is poorly managed and that its inconsistent and ad hoc implementation has likely resulted in potentially eligible inmates not being considered for release.”¹¹ The First Step Act allows prisoners to invoke the BOP statute in the face of BOP inaction.¹²

The COVID-19 pandemic further altered the use of compassionate release. Rather than allowing federal courts to reduce a prisoner’s sentence and compassionately release him, the Coronavirus Aid, Relief, and Economic Security (CARES) Act allows the BOP to release prisoners to serve their time in home confinement.¹³

District Court Discretion

[A]s revised by the First Step Act of 2018, the compassionate-release provision states that, upon receiving a motion filed by either the BOP or the defendant, the court “*may* reduce the term of imprisonment . . . [1] after considering the factors set forth in section 3553(a) to the extent that they are applicable, [2] *if it finds* that . . . extraordinary and compelling reasons warrant such a reduction . . . and [3] [*if it finds*] that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.”¹⁴

District courts have the discretion to grant or deny a compassionate-release sentence reduction motion.¹⁵ Appellate courts review their decisions under a deferential, abuse of discretion standard that assesses whether the district court made a mistake on the law, the facts, or the application of the law to the facts.¹⁶ A district court’s decision must reflect the fact that it considered the section 3553(a) factors and explain its decision with sufficient particularity to persuade the appellate court it had done so.¹⁷

¹⁰ U.S. DEP’T OF JUSTICE, OFFICE OF THE INSPECTOR GENERAL, THE FEDERAL BUREAU OF PRISONS’ COMPASSIONATE RELEASE PROGRAM, I-2013-006 (2013) <https://www.oversight.gov/sites/default/files/oig-reports/e1306.pdf>.

¹¹ *Id.* at 53.

¹² 18 U.S.C. § 3582(c).

¹³ Coronavirus Aid, Relief, and Economic Security Act (CARES Act), P.L. 116-136, § 12003(b)(2), 134 STAT. 281, 516 (2020). Prisoners transferred to home confinement have been released from prison and are thus no longer eligible for compassionate release. *United States v. Shorter*, 27 F.4th 572, 575-76 (7th Cir. 2022). Some of the prisoners transferred to home confinement have been encouraged to petition for a presidential commutation (reduction) of their sentences. See U.S. Dept. of Justice, Office of the Pardon Attorney, *Frequently Asked Questions*, <https://www.justice.gov/pardon/frequently-asked-questions>.

¹⁴ *United States v. Hargrove*, 30 F. 4th 189, 194 (4th Cir. 2022) (quoting 18 U.S.C. § 3582(c)(1)(i)); see also *United States v. Jackson*, 27 F.4th 1088, 1089 (5th Cir. 2022); *United States v. Jackson*, 26 F.4th 994, 1001 (D.C. Cir. 2022); *United States v. Ruvalcaba*, 26 F.4th 14, 18-19 (1st Cir. 2022); *United States v. McKinnie*, 24 F.4th 583, 586 (6th Cir. 2022) .

¹⁵ *United States v. Teixeira-Nieves*, 23 F.4th 48, 55 (1st Cir. 2022).

¹⁶ *Hargrove*, 30 F.4th at 195 (“[A] district court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law”) (internal citations omitted); *Jackson*, 27 F.4th at 1091 (“We review the denial of a compassionate-release motion for abuse of discretion. That occurs when the district court bases its decision on an error of law or a clearly erroneous assessment of the evidence”) (internal citations omitted); *United States v. Halvon*, 26 F.4th 566, 569 (2d Cir. 2022) (“Mere disagreement with how the district court balanced the § 3553(a) factors therefore is not a sufficient ground for finding an abuse of discretion. Instead, a district court abuses its discretion if it bases its ruling on an erroneous view of the law or on a clearly erroneous assessment of the evidence,, or renders a decision that cannot be located within the range of permissible decisions”) (internal citations omitted).

¹⁷ *Hargrove*, 30 F.4th at 199 (“[T]he touchstone in assessing the sufficiency of the district court’s explanation must be

Prerequisites to Compassionate Release

Exhaustion

Section 3582(c) comes with an apparent threshold exhaustion requirement that insists that a prisoner first petition the BOP to file a motion with the court on his behalf before filing his own motion.¹⁸ The requirement, however, is not jurisdictional, and thus is only an impediment if pressed by the government. If the government waives the exhaustion requirement, the court may entertain a prisoner’s motion.¹⁹

Extraordinary and Compelling Reasons

Neither Congress nor the Sentencing Commission have defined “extraordinary and compelling reasons” for granting a prisoner’s motion for compassionate release. The Sentencing Commission has issued a guideline governing BOP motions, U.S.S.G. § 1B1.13, which, although not binding, district courts may refer to for guidance.²⁰

“[C]ourts have found extraordinary and compelling reasons for compassionate release when an inmate shows both a particularized susceptibility to [COVID-19] and a particularized risk of contracting the disease at his prison facility.”²¹ Sentencing courts have granted compassionate-release motions most often because of the COVID-19 pandemic,²² yet appellate courts have found denial appropriate when any health risks can be mitigated by treatment in prison, especially by vaccination.²³

whether the district court set forth enough to satisfy our court that it has considered the parties’ arguments and has a reasoned basis for exercising its own legal decision making authority so as to allow for meaningful appellate review”) (internal citations omitted); *Halvon*, 26 F.4th at 570 (“When reviewing a motion for a sentence modification, a district court need only adequately explain the chosen sentence to allow for meaningful appellate review”); *United States v. Tinker*, 14 F.4th 1234, 1241 (11th Cir. 2021) (“While a district court need not exhaustively analyze each § 3553(a) factor or articulate its findings in great detail, it must provide enough analysis that meaningful appellate review of the factors’ application can take place”) (internal citations omitted).

¹⁸ 18 U.S.C. § 3582(c)(1)(A) (“the court, . . . upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment. . . .”).

¹⁹ *Teixeira-Nieves*, 23 F.4th at 53 (“[T]his exhaustion requirement is not a jurisdictional limitation”); *United States v. Hemmelgarn*, 15 F.4th 1027, 1030 (10th Cir. 2021) (“[W]e conclude § 3582(c)(1)(A)’s exhaustion requirement is a claim-processing [as opposed to a jurisdictional] rule. All the other circuits that have addressed this issue have reached the same conclusion.”) (collecting cases in accord); *cf. United States v. Keitt*, 21 F.4th 67, 71 (2d Cir. 2021) (“[A]bsent waiver or forfeiture by the government, an inmate must exhaust administrative remedies by requesting such relief from prison authorities.”).

²⁰ *United States v. Hargrove*, 30 F.4th 189, 194 (4th Cir. 2022); *United States v. Jackson*, 27 F.4th 1088, 1090 (5th Cir. 2022); *United States v. Rucker*, 27 F.4th 560, 562 (7th Cir. 2022); *United States v. Ruvalcaba*, 26 F.4th 14, 23 (1st Cir. 2022).

²¹ *Hargrove*, 30 F.4th at 196 (quoting *United States v. Feiling*, 433 F. Supp. 3d 832, 841 (E.D. 2020)).

²² U.S. SENTENCING COMM’N, U.S. SENTENCING COMMISSION COMPASSIONATE RELEASE DATA REPORT, FISCAL YEARS 2021 TO 2021 Tables 10 & 11 (2022) (identifying reasons given by sentencing courts for granted motions).

²³ *E.g.*, *United States v. Lemons*, 15 F.4th 747, 751 (6th Cir. 2021) (“[A] defendant’s incarceration during the COVID-19 pandemic—when the defendant has access to the COVID-19 vaccine—does not present an ‘extraordinary and compelling reason’ warranting a sentence reduction.”) (citing *United States v. Broadfield*, 5 F.4th 801, 803 (7th Cir. 2021)); *United States v. Ugbah*, 4 F.4th 595, 597 (7th Cir. 2021) (“The Bureau of Prisons offers vaccination to all federal prisoners. Ugbah has never contended that he is medically unable to receive or benefit from the available

In addition to rehabilitation, which is statutorily disqualified,²⁴ the following circumstances do not qualify as “extraordinary and compelling reason[s]” for sentence reduction on compassionate release grounds, at least in some circuits:

- Circumstances that existed at the time of sentencing;²⁵
- Post-sentence, substantial assistance;²⁶
- First Step Act’s non-retroactive amendment of the statute under which the prisoner was sentenced;²⁷
- Non-retroactive changes in the sentencing case law under which the prisoner was sentenced.²⁸

A finding of extraordinary and compelling reasons is necessary but not sufficient for compassionate sentence reduction.²⁹ District courts are free to bypass or to disregard such a finding, based on their findings under section 3553(a)’s sentencing factors.³⁰

vaccines.”); *United States v. Hemmelgarn*, 15 F.4th 1027, 1032 (10th Cir. 2021) (“The district court’s finding that Hemmelgarn was receiving treatment for his medical issues is also not clearly erroneous. . . . [T]he district court’s finding that there were no confirmed cases of COVID-19 at the time of the ruling is not clearly erroneous.”); *United States v. Marcussen*, 15 F.4th 855, 857 (8th Cir. 2021) (“Defendant’s [health concerns] are well controlled, as he is receiving and taking all of his prescription medications Based on the foregoing, defendant has failed to demonstrate that his conditions are not well-controlled or that he is unable to care for himself in a prison environment.”).

²⁴ 28 U.S.C. § 994(t) (“Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.”); *United States v. Ruvalcaba*, 26 F.4th 14, 25 (1st Cir. 2022); *United States v. McKinnie*, 24 F.4th 583, 588 (6th Cir. 2022).

²⁵ *United States v. Hunter*, 12 F.4th 555, 571 (6th Cir. 2021).

²⁶ *United States v. Claude*, 16 F.4th 422, 427 (3d Cir. 2021).

²⁷ *United States v. Crandall*, 25 F.4th 582, 585 (8th Cir. 2022); *United States v. Andrews*, 12 F.4th 255, 260-61 (3d Cir. 2021); *United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021); *United States v. Jarvis*, 999 F.3d 442, 444 (6th Cir. 2021). *But see Ruvalcaba*, 26 F.4th at 27 (“These arguments . . . cannot support a categorical rule that nonretroactive changes in sentencing laws, even when considered on an individual basis, may never support a reason for a sentence reduction under section 3582(c)(1)(A)”). *United States v. McGee*, 992 F.3d 1035, 1047 (10th Cir. 2021) (“The plain text of § 401(c) of the First Step Act makes clear that Congress chose not to afford relief to *all* defendants who, prior to the First Step Act, were sentenced to mandatory life imprisonment under § 841(b)(1)(A). But nothing in § 401(c) or any other part of the First Step Act indicates that Congress intended to prohibit district courts, on an individualized case-by-case basis, from granting sentence reductions under § 3582(c)(1)(A)(i) to *some* of these defendants”).

²⁸ *McKinnie*, 24 F.4th at 587.

²⁹ *See United States v. Jones*, 17 F.4th 371, 374 (2d Cir. 2021).

³⁰ *United States v. Teixeira-Nieves*, 23 F.4th 48, 55 (1st Cir. 2022); *see also United States v. Rucker*, 27 F.4th 560, 562-63 (7th Cir. 2022) (“Rucker first argues that the district court erred by relying on the outdated policy statement set forth in U.S.S.G. § 1B1.13 [relating to extraordinary and compelling reasons for release] But any error here is harmless because the court acted within its broad discretion in finding that the § 3553(a) factors did not favor release.”); *United States v. Keitt*, 21 F.4th 67, 73 & n.4 (2d Cir. 2021) (“[W]hen a district court denies a defendant’s motion under § 3582(c)(1)(A) in sole reliance on the applicable § 3553(a) sentencing factors, it need not determine whether the defendant has shown extraordinary and compelling reasons that might (in other circumstances) justify a sentence reduction.”) (citing in accord *United States v. Saccoccia*, 10 F.4th 1, 8 (1st Cir. 2021); *United States v. Elias*, 984 F.3d 516, 519 (6th Cir. 2021); *United States v. Keller*, 2 F.4th 1278, 1284 (9th Cir. 2021); *United States v. McGee*, 992 F.3d 1035, 1043 (10th Cir. 2021); *United States v. Tinker*, 14 F.4th 1234, 1240 (11th Cir. 2021)).

Sentencing Commission Policy Statement

The Sentencing Commission may define what constitutes “extraordinary and compelling reasons” for purposes of compassionate release.³¹ For most of time since passage of the First Step Act, however, the want of a quorum has precluded the Sentencing Commission from issuing the implementing guidelines specifically governing prisoner motions.³² Section 1B1.13 of the sentencing guidelines continues to apply to cases brought by the BOP. It states:

Provided the defendant meets the requirements of subdivision (2) [“the defendant is not a danger to the safety of any other person or to the community”], extraordinary and compelling reasons exist under any of the circumstances set forth below:

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

(ii) The defendant is—

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

- (B) Age of the Defendant.—The defendant (i) is at least 65 years old;
- (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and
 - (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.—(i) The death or incapacitation of the caregiver of the 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 and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

Although Section 1B1.13 does not limit consideration of prisoner motions,³³ courts have found it instructive in such cases.³⁴

³¹ 28 U.S.C. § 994(t) (“The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason.”).

³² *Ruvalcaba*, 26 F.4th at 21 (“The simple fact of the matter is that the Sentencing Commission has lacked a quorum for most of the time that has elapsed since the FSA’s passage.”); *United States v. Hald*, 8 F.4th 932, 938 n.4 (10th Cir. 2021); *United States v. Black*, 999 F.3d 1071, 1074 (7th Cir. 2021).

³³ *Hargrove*, 30 F.4th at 197; *United States v. Jackson*, 27 F.4th 1088, 1090 (5th Cir. 2022); *United States v. Rucker*, 27 F.4th 560, 562 (7th Cir. 2022).

³⁴ *Hargrove*, 30 F.4th at 197 (“[W]e have observed that because U.S.S.G. § 1B1.13 addresses what is, in the medical context, an ‘extraordinary and compelling reason’ for release, it ‘remains helpful guidance even when motions are filed

Section 3553(a) factors

The sentencing factors of section 3553(a) are the same factors that apply whenever a court imposes a sentence³⁵ and consequently they may constitute a substantial obstacle to a prisoner originally sentenced to a long term of imprisonment, based, at least in part, on the same sentencing factors.³⁶ Although some of the circumstances, disqualified as part of the “extraordinary and compelling reasons” analysis such as changes in the law, may be considered

by defendants.”) (quoting *United States v. High*, 997 F.3d 181, 186 (4th Cir. 2021)); *Jackson*, 27 F.4th at 1090 (“Even so, Section 1B1.13 may ‘inform’ the district court’s analysis.”); *Rucker*, 27 F.4th at 562 (“But Rucker’s argument fails because the district court recognized the non-binding nature of U.S.S.G. § 1B1.13 and permissibly used it as a guide.”).

³⁵ (a) 18 U.S.C. § 3553(a) provides: “The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider-

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed-
 - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
 - (B) to afford adequate deterrence to criminal conduct;
 - (C) to protect the public from further crimes of the defendant; and
 - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for-
 - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines-
 - (i) issued by the Sentencing Commission pursuant to section 994(a)(1) of title 28, United States Code, subject to any amendments made to such guidelines by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (ii) that, except as provided in section 3742(g), are in effect on the date the defendant is sentenced; or
 - (B) in the case of a violation of probation or supervised release, the applicable guidelines or policy statements issued by the Sentencing Commission pursuant to section 994(a)(3) of title 28, United States Code, taking into account any amendments made to such guidelines or policy statements by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28);
- (5) any pertinent policy statement-
 - (A) issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28, United States Code, subject to any amendments made to such policy statement by act of Congress (regardless of whether such amendments have yet to be incorporated by the Sentencing Commission into amendments issued under section 994(p) of title 28); and
 - (B) that, except as provided in section 3742(g), is in effect on the date the defendant is sentenced.
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.”

³⁶ See e.g., *Hargrove*, 30 F.4th at 200 (“Thus, when the same judge was confronted with Hargrove’s motion for compassionate release in July 2020, it knew of Hargrove’s circumstances, both favorable and unfavorable, and it referenced them in its balancing of the § 3553(a) factors. . . . But the court made it clear that, in its assessment of the § 3553(a) factors, Hargrove’s post-sentence rehabilitation efforts did not outweigh ‘the considerations that led the Court to sentence Hargrove to a total of 103 months in prison’ in the first place.”); *United States v. Teixeira-Nieves*, 23 F.4th 48, 57 (1st Cir. 2022) (“The defendant’s compassionate-release motion was decided by the same judge who originally had sentenced him. When imposing a sentence, a judge necessarily acquires an intimate knowledge of the offense of conviction and the history and characteristics of the offender. . . . This reservoir of knowledge does not vanish into thin air when the judge later considers the offender’s motion for compassionate release.”); *United States v. Keitt*, 21 F.4th 67, 72 (2d Cir. 2021) (“At sentencing—just months before deciding his motion for compassionate release—the court stated that it ‘fully recognize[d] and consider[ed] the conditions’. . . . Indeed, it would have been most unusual if the district court’s analysis of the § 3553(a) factors had been markedly different after such a short period of time.”).

as part of the section 3553(a) weighing process, appellate courts typically have not found that district courts have abused their discretion in finding that a prisoner’s criminal record evidences a want of respect for the law or public protection or some other section 3553(a) disqualification.³⁷ Moreover, because the three requirements (Sentencing Commission guidelines, section 3553(a) factors, and extraordinary and compelling reasons), are cumulative, a court may deny a prisoner’s motion on section 3553(a) grounds, even if it concedes or assumes the existence of extraordinary and compelling reasons to grant a motion for release.³⁸ A court may also deny a motion without ever addressing the question of “extraordinary and compelling reasons.”³⁹

³⁷ See e.g., *Hargrove*, 30 F.4th at 198-99 (“The court . . . concluded that granting Hargrove’s motion and authorizing his release would not, as § 3553(a)(2) requires, ‘reflect the seriousness of the offense,’ ‘promote respect for the law,’ afford adequate deterrence’ and ‘protect the public’ The court explained that Hargrove had twice been convicted of drug trafficking It said ‘Hargrove’s return to the same behavior after his first prison stint . . . demonstrated his lack of respect for the law and showed that his first prison sentence did not deter him from continuing to commit drug crimes. The sentences originally imposed provide just punishment for Hargrove’s offenses. Given the facts and circumstances of this case, we cannot say that the district court abused its discretion in denying compassionate release based on the section 3553(a) factors. . . . [T]he offenses were serious: the defendant – an admitted drug-peddler who carried a firearm to protect himself and his inventory – was arrested . . . while in possession of a firearm . . . and a satchel of drugs. What is more, the judge – after considering the defendant’s history and characteristics – determined that the defendant continued to pose a danger to the community, and that finding was not clearly erroneous”); *United States v. Halvon*, 26 F.4th 566, 570-71 (2d Cir. 2022) (“[T]he district court emphasized ‘[Clenista’s] substantial criminal history, the fact that this [was] his second conviction for distributing or conspiring to distribute methamphetamine, and his audacity in committing this offense while still on supervised release’ Thus, the district court did not abuse its discretion when it placed weight on ‘[t]he need to recognize the seriousness of <https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap90-sec1837.pdf> [Clenista’s] offense, to provide a just punishment, to protect the public from further such activity by [Clenista], and [his] characteristics.’”); *United States v. Tinker*, 14 F.4th 1234, 1241 (11th Cir. 2021) (“‘The weight given to any specific § 3553(a) factor is committed to the sound discretion of the district court.’ . . . Here, the district court provided a thorough discussion of several § 3553(a) factors and emphasized Tinker’s extensive criminal history and the need to protect the public, which was within its discretion to do.”).

³⁸ *United States v. Jenkins*, 22 F.4th 162, 170 (4th Cir. 2021); cf. *United States v. Keitt*, 21 F.4th 67, 69 (2d Cir. 2021).

³⁹ *Teixeira-Nieves*, 23 F.4th at 54-55 (“A defendant who demonstrates both that extraordinary and compelling reasons exist for a sentence reduction and that such a reduction is consistent with applicable policy statement must clear yet another hurdle. He must persuade the district court that the section 3553(a) factors weigh in favor of a sentence reduction. . . . [A] district court’s decision to deny compassionate release may be affirmed solely on the basis of its supportable determination that the section 3553(a) factors weigh against the granting of such relief.”) (collecting cases in accord); see also *United States v. Jones*, 17 F.4th 371, 374 (2d Cir. 2021) (“[E]xtraordinary and compelling reasons are necessary—but not sufficient—for a defendant to obtain relief under § 3582(c)(1)(A). As we have just noted, a district court must also consider ‘the factors set forth in section 3553(a)’ before granting relief. For this reason, panels of this Court have . . . assumed the existence of extraordinary and compelling circumstances warranting release but held that a district court’s reasonable evaluation of the Section 3553(a) factors is an alternative and independent basis for denial of compassionate release.”) (internal citations omitted); *United States v. Jenkins*, 22 F.4th 162, 170 (4th Cir. 2021) (“Although the district court concluded that Jenkins’ health conditions amounted to extraordinary and compelling circumstances, the district court nonetheless denied his motion, holding that ‘[t]he factors outlined in 18 U.S.C. § 3553(a) do not favor his release.’”).

Author Information

Charles Doyle
Senior Specialist in American Public Law

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