

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA)
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)
 VS.) CR 19-030 JJM
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)
 LOUIS COLAVECCHIO)

MOTION FOR COMPASSIONATE RELEASE

Louis Colavecchio, the defendant in the above-captioned matter, respectfully moves this Court pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) to reduce his sentence, by five months, to time served. As amended by the First Step Act, the compassionate release statute allows courts to reduce sentences for “extraordinary and compelling” reasons. Mr. Colavecchio’s age, seventy-eight, and medical conditions, which include Chronic Obstructive Pulmonary Disease (COPD), provide an extraordinary and compelling basis for sentence reduction given the current COVID-19 pandemic.

In this case, Mr. Colavecchio pleaded guilty to a single count of intent to defraud and possess counterfeit obligations. He was sentenced to fifteen months incarceration. Mr. Colavecchio is serving that sentence at FMC-Butner in North Carolina; he is presently scheduled for release on October 4, 2020.

Mr. Colavecchio petitioned FCI-Butner for a Reduction in Sentence (RIS) on February 11, 2020:

This writer received a cop out electronically in the RIS mailbox on 2/11/2020 from the patient requesting consideration for the First Step Act under the debilitated medical conditions category. The patient's physician was notified on 2/11/2020 for medical clearance. Awaiting physician's response before the process can continue. (BOP Health Services Record, pg. 161/353)¹.

Social worker Robin Jackson, LCSW, was assigned his case, and noted the following on February 13, 2020:

Medical provider has indicated I/M is appropriate for RIS consideration under the Debilitated Medical criteria. Undersigned spoke with I/M's daughter, Susan Taglianetti

¹ Filed under seal.

(401)XXX-XXXX², regarding this request and possible release plan. She requested to speak with a medical provider as she had questions regarding her father's medical condition and level of care needed. A request was made for daughter to be contacted and provided this information. Social work will contact her today to re-visit proposed release plan. (Record, pg. 158/353).

Mr. Colavecchio is seventy-eight years old and suffers from COPD, dyslipidemia, and hypertension. He was recent diagnosed with dementia as well. (Record, pg. 2/353).

Despite the apparent consensus that Mr. Colavecchio does not belong in federal prison, he remains in custody because he cannot return to his daughter's home.³ Ms. Jackson noted the following later in the day on February 13, 2020:

Social work spoke with I/M's daughter, Susan Taglianetti (401-XXX-XXXX), regarding RIS request. She reported she is unable to care for her father if released. She works a full time job and would be unable to provide 24 hour care for him. She prefers he be transferred to the BOP Dementia Unit so she would be able to visit him. She would also be able to better prepare for his PRD in October if he was transferred closer to her (Connecticut)⁴. (Record, pg. 159/353).

Counsel received Mr. Colavecchio's medical records on March 26, 2020. Since that time, Counsel has been trying to locate alternative housing for Mr. Colavecchio without success. At counsel's suggestion, Ms. Taglianetti reached out to her father's primary care physician, Dr. Rajeev Gupta at Northern RI Internal Medicine in Cumberland. Ms. Taglianetti called the office and asked if Dr. Gupta could assist in placing Mr. Colavecchio in a skilled nursing facility prior to his release from prison. Dr. Gupta's office informed Ms. Taglianetti that they could not, and suggested that Mr. Colavecchio go to the emergency room when he returns to Rhode Island. Presumably, he could be admitted to the hospital and then to a skilled nursing facility if he meets the criteria. Counsel provided Ms. Taglianetti with information on respite care options in Rhode Island as well.

After multiple requests, Counsel was able to speak by telephone with Mr. Colavecchio on May 7, 2020. Mr. Colavecchio was somewhat confused during the call, but remembered counsel's name. He did not know the status of his request for early release, only that someone had put it for it and he was still there. He reported that he is not presently in quarantine, but he is

² Redacted.

³ Mr. Colavecchio was evicted from his apartment in Pawtucket while this case was pending and moved in with his daughter and grandchildren.

⁴ Errata: Ms. Taglianetti resides in Rhode Island, not Connecticut.

in his own room. He does not believe that he has been tested for the virus, but his blood is taken regularly. Mr. Colavecchio told counsel that he is scared that he will catch COVID-19 and die in prison. Mr. Colavecchio repeatedly stated that he didn't want to be a burden to his daughter. He began crying during the call over this.

As more than thirty days have elapsed since he sought relief from FMC-Butner, Mr. Colavecchio has brought his request for relief here to the District Court. Under the statute, the Court must determine if “extraordinary and compelling reasons” exist to warrant Mr. Colavecchio’s release from custody. *See, e.g., United States v. Maumau*, 2020 WL 806121, *4 (D. Utah, February 18, 2020). Plainly, Mr. Colavecchio’s particular circumstance presents reasons warranting relief and his immediate release from custody.

I. This Court has authority to consider Mr. Colavecchio’s motion.

Although the compassionate release statute previously permitted sentence reductions only upon motion of the Director of the Bureau of Prisons (BOP), Congress expanded the statute in the First Step Act of 2018. Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239 (Dec. 21, 2018). As amended, § 3582(c)(1)(A)(i), now permits courts to consider motions filed by the defendant if “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 after “the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier[.]”

The reason for the expansion to include defense-filed motions was the “documented infrequency with which the BOP filed motions for a sentence reduction on behalf of defendants.” *United States v. Redd*, No. 1:97-CR-00006-AJT, 2020 WL 1248493, at *7 (E.D. Va. Mar. 16, 2020). Accordingly, “while the First Step Act did preserve the BOP’s role relative to a sentence reduction in certain limited respects, it eliminated the BOP Director’s role as the exclusive channel through which a sentence reduction could be considered by courts.” *Id.* (emphasis in original).

Here, Mr. Colavecchio has exhausted his administrative remedies because his request has been pending for over 30 days without a resolution; he may now file his motion for a reduction in sentence directly with the District Court. 18 U.S.C. § 3582(c)(1)(A).

II. Mr. Colavecchio’s vulnerability to COVID-19 is an extraordinary and compelling reason for an immediate sentence reduction to time served.

The compassionate release statute does not expressly define or limit what constitutes an

“extraordinary and compelling” reason for a sentence reduction. Black’s Law Dictionary, however, defines “extraordinary” as “[b]eyond what is usual, customary, regular, or common,” BLACK’S LAW DICTIONARY (11th ed. 2019). Its definition of “compelling need,” is one “so great that irreparable harm or injustice would result if [the relief] is not [granted].” *Id.* The present global pandemic is a quintessential extraordinary circumstance beyond what most Americans have experienced in their lifetimes. Based on his health and advanced age, Mr. Colavecchio is among those most at risk of serious illness or death if he is exposed to coronavirus in custody. Thus, the combination of circumstances provides a compelling reason for his immediate release.

A. The Court has authority to find extraordinary and compelling reasons other than those expressly identified in commentary to U.S.S.G. § 1B1.13.

In 28 U.S.C. § 994(t), Congress delegated to the Sentencing Commission authority to “describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.” The policy statement issued in exercise of that authority, U.S.S.G. § 1B1.13, provides examples of “extraordinary and compelling reasons” only in the application notes. The examples generally fall into four categories based on a defendant’s (1) terminal illness, (2) debilitating physical or mental health condition, (3) advanced age and deteriorating health combined with the amount of time served, or (4) compelling family circumstances. U.S.S.G. § 1B1.13 comment. n.1(A)-(C). The commentary also includes a fifth catchall provision for “extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C)” as determined by the Director of the Bureau of Prisons. U.S.S.G. § 1B1.13, comment. n.1(D).

In this case, medical personnel at FMC-Butner have apparently concluded that Mr. Colavecchio suffers from a debilitating physical condition. The Court can and should credit this opinion, but is not limited to the findings articulated by the BOP. The government conceded this point in *United States v. Young*, agreeing, “the dependence on the BOP to determine the existence of an extraordinary and compelling reason, like the requirement for a motion by the BOP Director, is a relic of the prior procedure that is inconsistent with the amendments implemented by the First Step Act.” *United States v. Young*, No. 2:00-CR-00002-1, 2020 WL 1047815, at *6 (M.D. Tenn. Mar. 4, 2020). The court in *Young* followed the majority of district courts in recognizing that § 1B1.13’s defined categories are not exclusive: “In short, federal

judges are no longer constrained by the BOP Director’s determination of what constitutes extraordinary and compelling reasons for a sentence reduction.” *Id.*⁵

Accordingly, this Court has authority to consider whether the worsening global pandemic, combined with the other relevant circumstances in this case, present an extraordinary and compelling basis for a sentence reduction, whether or not it falls within one of the existing categories in § 1B1.13 commentary.

B. COVID-19 is an unprecedented and rapidly expanding global health emergency that presents a serious risk to vulnerable prisoners.

On March 11, 2020, the World Health Organization officially classified the new strain of coronavirus, which causes COVID-19 as a pandemic. *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020*, World Health Organization (Mar. 11, 2020), <https://bit.ly/2W8dwpS>. COVID-19 is a serious disease that makes certain populations of people severely ill and can lead to death. About 20% of COVID-19 patients require hospitalization, about 10 times more than the percentage of patients with the flu. Pien Huang, *How The Novel Coronavirus And The Flu Are Alike ... And Different*, *www.npr.org* (Mar. 20, 2020) at <https://www.npr.org/sections/goatsandsoda/2020/03/20/815408287/how-the-novel-coronavirus-and-the-flu-are-alike-and-different>. It estimated to kill at least 10 people per thousand infected, making it ten times more lethal than the seasonal flu. *Id.*⁶

As of May 7, 2020, COVID-19 has infected 3,813,123 people worldwide, leading to 267,233 deaths. *Coronavirus COVID-19 Global Cases*, CENTER FOR SYSTEMS SCIENCE AND ENGINEERING (CSSE) AT JOHNS HOPKINS UNIVERSITY, <https://coronavirus.jhu.edu/map.html> (last visited May 7, 2020) (updating regularly). On March 26, 2020, the United States became the global leader in COVID infections. Tom Porter, *The US is Well on the Way to Having a*

⁵ See also *United States v. O’Bryan*, No. 96-10076-03-JTM, 2020 WL 869475, at *2 (D. Kan. Feb. 21, 2020); *United States v. Maumau*, No. 2:08-cr-00758-TC-11, 2020 WL 806121, at *2-3 (D. Utah Feb. 18, 2020) (“[A] majority of district courts to consider the question have embraced Mr. Maumau’s position” that limiting the catch-all provision to circumstances identified by the BOP is inconsistent with the law) (citing ten other cases); *Brown*, 411 F. Supp. 3d at 451 (“[I]f the [First Step Act] is to increase the use of compassionate release, the most natural reading of the amended § 3582(c) and § 994(t) is that the district court assumes the same discretion as the BOP Director when it considers a compassionate release motion properly before it. . . . Thus, the Director’s prior interpretation of ‘extraordinary and compelling’ reasons is informative, but not dispositive.” (internal quotation marks and citations omitted)); *United States v. Beck*, No. 1:13-CR-186-6, 2019 WL 2716505, at *6 (M.D.N.C. June 28, 2019) (“While the old policy statement provides helpful guidance, it does not constrain the Court’s independent assessment of whether ‘extraordinary and compelling reasons’ warrant a sentence reduction under § 3582(c)(1)(A)(i).”).

⁶ See also Nick Wilson et al., *Case-Fatality Risk Estimates for COVID-19 Calculated by Using a Lag Time for Fatality*, 26 EID JOURNAL (prepublication June 2020), https://wwwnc.cdc.gov/eid/article/26/6/20-0320_article.

Coronavirus Outbreak Worse than China's or Even Italy's, BUSINESS INSIDER (Mar. 26, 2020), <https://www.businessinsider.com/figures-show-us-soon-coronavirus-worse-china-2020-3>. The number of confirmed COVID-19 cases continues to rise exponentially, but reported numbers underrepresent the true scope of the crisis—“experts believe that the United States still isn’t testing enough people to detect the outbreak’s true spread.”⁷

The severity of the coronavirus pandemic is reflected in the actions of local and national leaders, who have taken drastic measures to prevent the spread of the disease. All 50 states and the national government have declared states of emergency. See *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>. Kamran Rahman & Alice Miranda Ollstein, *How States Are Responding to Coronavirus, in 7 Maps*, POLITICO (Mar. 24, 2020), <https://www.politico.com/news/2020/03/24/coronavirus-state-response-maps-146144>. Additionally, more than half of the states and the District of Columbia have imposed severe “lockdown” rules for their citizens. Porter, *supra*.

Conditions of imprisonment create the ideal environment for the transmission of contagious diseases. Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 CLINICAL INFECTIOUS DISEASES 1047, 1047 (2007), <https://doi.org/10.1086/521910>. “Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.” Centers for Disease Control and Prevention (CDC), *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>. The CDC recognizes the difficulty of preventing the introduction of COVID-19 into prison facilities:

There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions. *Id.*

⁷ Alexis C. Madrigal & Robinson Meyer, *How the Coronavirus Became an American Catastrophe*, THE ATLANTIC (Mar. 21, 2020), <https://www.theatlantic.com/health/archive/2020/03/how-many-americans-are-sick-lost-february/608521/>.

Crowding, inadequate ventilation, and security issues all contribute to the spread of infectious disease in jails and prisons. Martin Kaste, *Prisons and Jails Worry About Becoming Coronavirus ‘Incubators’*, NPR (Mar. 13, 2020), <https://www.npr.org/2020/03/13/815002735/prisons-and-jails-worry-about-becoming-coronavirus-incubators>. Additionally, incarcerated people tend to be in poorer health than the general population. According to a recent Bureau of Justice Statistics study, approximately half of state and federal prisoners and jail inmates have chronic conditions such as cancer, high blood pressure, diabetes, cirrhosis of the liver, heart disease, and asthma.⁸ Medical care of prisoners is limited at the best of times.⁹

Because of these dangers, the public health community is insistent on the critical need to rapidly reduce our prison populations, both for the health of our inmates and the health of the community as a whole. “We need to take the unprecedented step TODAY of providing urgent release to everyone in the jails who is at risk of serious morbidity and mortality from COVID.” Jennifer Gonnerman, *A Rikers Island Doctor Speaks Out to Save Her Elderly Patients from the Coronavirus*, THE NEW YORKER (Mar. 20, 2020) (quoting Rachael Bedard, Rikers Island Geriatrician), <https://www.newyorker.com/news/news-desk/a-rikers-island-doctor-speaks-out-to-save-her-elderly-patients-from-the-coronavirus>.

Similarly, on March 23, 2020, a bipartisan group of fourteen senators wrote to Attorney General Barr and the Director of the Bureau of Prisons to express “serious concern for the health and wellbeing” of those inmates “most vulnerable to infection.”¹⁰ They noted that “[c]onditions of confinement do not afford individuals the opportunity to take proactive steps to protect

⁸ Laura M. Maruschak et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, BUREAU OF JUSTICE STATISTICS, NCJ 248491, 1 (Rev. Oct. 4, 2016), at <https://www.bjs.gov/content/pub/pdf/mpsfpj1112.pdf>.

⁹ See U.S. Dep’t of Justice Office of the Inspector General, *Review of the Federal Bureau of Prisons’ Medical Staffing Challenges* (Mar. 2016), <https://oig.justice.gov/reports/2016/e1602.pdf> (finding that the BOP experienced chronic medical staff shortages and failed to take adequate measures to address them, leading to problems meeting the medical needs of prisoners, requiring the use of outside hospitals, and endangering the safety and security of institutions); U.S. Dep’t of Justice Office of the Inspector General, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* (Rev. Feb. 2016), <https://oig.justice.gov/reports/2015/e1505.pdf> (finding that BOP facilities and services, including medical services, were inadequate to meet the needs of an aging prison population leading to delays in medical treatment for prisoners with acute and chronic heart and neurological conditions, who wait an average of 114 days to see medical specialists); David Patton, *Statement from Federal Defenders of New York*, FEDERAL DEFENDERS OF NEW YORK (Mar. 8, 2020), <https://federaldefendersny.org/about-us/news/statement-from-federal-defenders-of-new-york.html>.

¹⁰ Letter from Senator Charles Grassley et al. (Mar. 23, 2020) (available at <https://www.grassley.senate.gov/sites/default/files/Letter.%20to%20DOJ%20and%20BOP%20on%20COVID-19%20and%20FSA%20provisions%20-%20final%20bipartisan%20text%20with%20signature%20blocks.pdf>).

themselves, and prisons often create the ideal environment for the transmission of contagious disease.” *Id.* The senators called on the BOP to use existing tools like the elderly prisoner home confinement program and compassionate release to discharge vulnerable inmates from prison. *Id.*

C. Mr. Colavecchio runs a high risk of serious illness or death if he contracts COVID-19.

The CDC and other medical authorities have clarified that COVID-19 is especially dangerous for both older people and people with severe chronic medical conditions. *See* CDC, *Older Adults* (Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications/older-adults.html>. Eight out ten deaths reported in the United States have been in older adults. *Id.* Those with certain serious health concerns—including chronic lung disease, moderate to severe asthma, compromised immune systems, severe obesity, diabetes, renal failure, and liver disease—are also especially vulnerable to and at higher risk for serious complications from COVID-19, including death. *See* CDC, *Information for Healthcare Professionals: COVID-19 and Underlying Conditions* (Mar. 22, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/underlying-conditions.html>.

Mr. Colavecchio suffers from COPD. As such, he is among those with the highest risk of death or serious illness from COVID-19. Yet, as an incarcerated person, it is impossible for Mr. Colavecchio to follow the CDC’s recommendations to protect himself from exposure to this highly transmissible disease. This risk of serious illness or death from the unprecedented global pandemic, together with all of the other relevant factors in this case, presents an extraordinary and compelling basis for sentence reduction.

D. Courts responding to the Coronavirus pandemic have recognized the critical importance of reducing incarcerated populations.

The Court response to COVID-19 reflects the extreme exigency of the present circumstances, especially for those individuals most vulnerable to harm from the virus. Numerous courts have not granted compassionate release to prisoners whose age and health conditions place them in a high-risk group for serious illness or death from COVID-19.¹¹

¹¹ *See United States v. McCarthy*, No. 3:17-CR-0230 (JCH), 2020 WL 1698732, at *1 (D. Conn. Apr. 8, 2020) (approving compassionate release where defendant was 65 and had COPD and asthma); *United States v. Hansen*, No. 07-CR-00520(KAM), 2020 WL 1703672, at *9 (E.D.N.Y. Apr. 8, 2020) (granting compassionate release where defendant was over 65 and had numerous ailments); *Gonzalez*, 2020 WL 1536155, at *3 (approving compassionate release where defendant “is in the most susceptible age category (over 60 years of age) and her COPD and emphysema make her particularly vulnerable”); *United States v. Hernandez*, No. 18-CR-834, 2020 WL 1684062, at *3 (S.D.N.Y. Apr. 2, 2020) (finding “extraordinary and compelling reasons” to reduce the defendant’s sentence due to defendant’s asthma and the “heightened medical risk presented to [the defendant] by the COVID-19 pandemic”);

In *United States v. Copeland*, the Court granted a sentence reduction to time served under another portion of the First Step Act to a defendant serving a life sentence for a drug trafficking conspiracy and firearm possession. *United States v. Copeland*, No. 2:05-cr-00135-DCN (D.S.C. Mar. 24, 2020) (ECF No. 662). The court recognized that the defendant’s “tenuous health condition” put him at “even higher risk for severe illness and possible death” from the COVID-19 pandemic. *Id.* at 7. The court considered letters from members of Congress as evidence of its “desire for courts to ‘use all available powers and authorities . . . to reduce the number of federal prisoners in . . . prisons,’” especially for elderly and sick individuals and those within the last 36 months of their sentences who are appropriate for placement in home confinement. *Id.* (quoting Letter of House Judiciary Committee, Mar. 19, 2020).

Similarly, in *Toledo Manrique*, the district court granted bail in an extradition matter, although the individual faced a life sentence in Peru. 2020 WL 1307109, at *1. Noting that Toledo Manrique is 74 years old, the Court concluded, “[t]he risk that this vulnerable person will contract COVID-19 while in jail is a special circumstance that warrants bail.” *Id.* A sampling of the court orders granting release based on the pandemic fails to convey the full volume of building precedent. *See, e.g., United States v. Kennedy*, No. 18-20315, 2020 WL 1493481, at *1 (E.D. Mich. Mar. 27, 2020) (“[T]he danger posed to Defendant in the Saginaw County Jail by the COVID-19 pandemic constitutes an independent compelling reason to temporarily release him from custody.”); *United States v. Michaels*, No. SACR 16-76-JVS, 2020 WL 1482553, at *1 (C.D. Cal. Mar. 26, 2020) (“Michaels has demonstrated that the Covid-19 virus and its effects in California constitute ‘another compelling reason’” justifying temporary release under § 3142(i)); *United States v. Jaffee*, No. 19-cr-00088-RDM (D.D.C. Mar. 26, 2020) (releasing defendant with criminal history in gun & drug case, citing “palpable” risk of spread in jail and “real” risk of “overburdening the jail’s healthcare resources”); *United States v. Harris*,

United States v. Rodriguez, No. 2:03-CR-00271-AB-1, 2020 WL 1627331, at *2 (E.D. Pa. Apr. 1, 2020) (granting compassionate release because for a diabetic inmate, “nothing could be more extraordinary and compelling than this pandemic”); *United States v. Campagna*, No. 16-CR-78-01, 2020 WL 1489829, at *3 (S.D.N.Y. Mar. 27, 2020) (“Defendant’s compromised immune system, taken in concert with the COVID-19 public health crisis, constitutes an extraordinary and compelling reason to modify to Defendant’s sentence on the grounds that he is suffering from a serious medical condition that substantially diminishes his ability to provide self-care within the environment of the RCC.”); *Perez*, 2020 WL 1546422, at *2 (“Perez meets th[e] requirement [of Application Note 1(D)] as well, because he has weeks left on his sentence, is in weakened health, and faces the threat of a potentially fatal virus. The benefits of keeping him in prison for the remainder of his sentence are minimal and the potential consequences of doing so are extraordinarily grave.”).

No. CR 19-356, 2020 WL 1482342, at *1 (D.D.C. Mar. 26, 2020) (“The Court is convinced that incarcerating Defendant while the current COVID-19 crisis continues to expand poses a far greater risk to community safety than the risk posed by Defendant’s release to home confinement on . . . strict conditions.”); *United States v. Perez*, No. 19 CR. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (releasing defendant due to the “heightened risk of dangerous complications should [h]e contract COVID-19”); *United States v. Stephens*, No. 15-cr-95 (AJN), 2020 WL 1295155, __ F. Supp. 3d __, at *2 (S.D.N.Y. Mar. 19, 2020) (releasing defendant, given “the unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic”).

- E. With full consideration of the § 3553(a) factors, including the COVID-19 pandemic, Mr. Colavecchio’s time served constitutes a sentence sufficient, but not greater than necessary, to accomplish the goals of sentencing.

When extraordinary and compelling reasons are established, the Court must consider the relevant sentencing factors in § 3553(a) to determine whether a sentence reduction is warranted. 18 U.S.C. § 3582(c)(1)(A)(i). Under all of the circumstances in this case, the Court should conclude that the time that Mr. Colavecchio has already served (two-thirds of his sentence) is sufficient to satisfy the purposes of sentencing. Under *Pepper v. United States*, 562 U.S. 476, 490-93 (2011), the Court can, and indeed must, consider post-offense developments under § 3553(a).

Here, the overriding factor under § 3553(a) that was not present at the time of sentencing is the COVID-19 pandemic and the serious risk it presents. Although the circumstances of the present offense qualified Mr. Colavecchio for the serious sentence this Court originally imposed, the sentencing purpose of just punishment does not warrant a sentence that includes exposure to a life-threatening illness. In fact, the Eighth Amendment’s prohibition on cruel and unusual punishment includes unreasonable exposure to dangerous conditions in custody. *Helling v. McKinney*, 509 U.S. 25, 28 (1993); *see also Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir. 1995) (applying *Helling* to exposure to asbestos); *Brown v. Mitchell*, 327 F. Supp. 2d 615, 650 (E.D. Va. July 28, 2004) (applying *Helling* to contagious diseases caused by overcrowding conditions). The § 3553(a) factors can be met in this case by an order of home confinement as a condition of supervised release.

The totality of the circumstances demonstrate that reducing Mr. Colavecchio's sentence to time served is "sufficient, but not greater than necessary," to serve the purposes of sentencing under § 3553(a).

Conclusion

For the foregoing reasons, Mr. Colavecchio respectfully requests that the Court grant this motion for a reduction in sentence and re-sentence him to time served.

Respectfully submitted
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By his attorney,

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CERTIFICATION

I hereby certify that a copy of this motion was delivered by electronic notification to Gerard B. Sullivan, Assistant United States Attorney, on May 8, 2020.

/s/ Joanne M. Daley