

1 PETER L. ARIAN (Bar No. 238029)
2 (E-Mail: Peterarianlaw@gmail.com)
3 407 San Anselmo Avenue, Suite 201
4 San Anselmo, California 94960
5 Telephone: (415) 785-4060
6 Facsimile: (415) 329-1408

7 Attorney for Defendant
8 WALTER LIEW

9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **OAKLAND DIVISION**

12 UNITED STATES OF AMERICA,

Case No. 11-cr-0573-JST

13 Plaintiff,

14 v.

15 WALTER LIEW,

16 Defendant.

**MOTION TO MODIFY SENTENCE
PURSUANT TO 18 U.S.C. §
3582(c)(1)(A)(i) FOR IMMEDIATE
RELEASE TO HOME
CONFINEMENT OR IN THE
ALTERNATIVE: REQUEST FOR
RECCOMENDATION FOR HOME
CONFINEMENT**

17 Defendant, Walter Liew, by and through counsel Peter L. Arian, respectfully
18 moves this Court pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) for an order modifying his
19 sentence to allow him to serve the balance of his sentence in home confinement.
20

21 Respectfully submitted,

22
23
24 DATED: May 29, 2020

By /s/ Peter L. Arian

PETER L. ARIAN
Attorney for WALTER LIEW

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I. INTRODUCTION

On July 7, 2014, this Court sentenced Mr. Liew to a term of imprisonment of 180 months for his conviction after trial to multiple counts of crimes against the United States involving a conspiracy to commit economic espionage and steal trade secrets. Dkt. Items 893, 897, 898 (Judgment, Amended Judgment, and Second Amended Judgment). Subsequent to his conviction and sentence, the Ninth Circuit reversed one of Mr. Liew’s convictions for witness tampering, and remanded the case for re-sentencing. *United States v. Liew*, 856 F.3d 585 (9th Cir. 2017). On November 2, 2018, the Court re-sentenced Mr. Liew to a total of 144 months imprisonment in the Bureau of Prisons.

Mr. Liew is currently serving that sentence at FCI Lompoc, has served all but six months of his sentence, and is scheduled for release on November 26, 2020, according the Bureau of Prisons website. Mr. Liew was scheduled for release on June 2, 2020, into a half-way house for the last six months of his sentence, but has since been hospitalized due to the COVID-19 virus. He is currently serving his sentence in a hospital, on a ventilator, albeit in stable condition.

Mr. Liew has a heightened risk of COVID-19 complications due to his age (62) and his history of underlying medical conditions, including high cholesterol and a fatty liver, a pre-cursor to cirrhosis.

This motion seeks to have Mr. Liew, once released from the hospital, go through a 14 day quarantine and then go home to convalesce with his wife and adult child at their home in Dublin, California, where he can be provided a better standard of care that that offered by the Bureau of Prisons.

1 **II. FACTS**

2 **A. FCI Lompoc’s Failure to Slow the Spread of COVID-19 Outbreak has**
3 **Allowed the Virus to Spread like Wildfire**

4 The Federal Bureau of Prisons (“BOP”) is mismanaging one of the worst public
5 health catastrophes related to COVID-19 anywhere in the country and at the epicenter
6 of the outbreak are FCI Lompoc and USP Lompoc (collectively “Lompoc”), where
7 more than 1,000 incarcerated persons have tested positive for COVID-19. Lompoc is
8 the site of by far the largest COVID-19 outbreak at a BOP facility. As of the morning
9 of May 15, 2020, BOP reports that 1,023 of the 2,680 individuals collectively
10 incarcerated at Lompoc have tested positive for COVID-19.¹ The cases at Lompoc
11 account for more than 65 percent of cases in Santa Barbara County and are so
12 staggering that local officials are asking the State of California to allow them to exclude
13 the numbers from Lompoc in their reopening criteria.²

14 Shockingly, these numbers, high as they seem, are still underreported. Only the
15 963 prisoners at FCI Lompoc have undergone a round of mass testing (which was
16 completed several weeks later than would have been necessary to prevent the virus
17 from spreading as it has within the walls of Lompoc), with 882 reporting positive;
18 meaning nearly 100 percent of inmates in FCI Lompoc now have the virus.³ There is no
19 clearer indication of how ineffective BOP’s COVID-19 prevention policies have been
20 than their own statistics. Compounding the problem at Lompoc is the fact that the BOP
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22
23 ¹ Bureau of Prisons, COVID-19 Update, <https://www.bop.gov/coronavirus/>.

24 ² Delaney Smith, *Santa Barbara County Urges State to Exclude Lompoc Prison Cases from*
25 *Reopening Criteria*, SANTA BARBARA INDEPENDENT, May 11, 2020,
<https://www.independent.com/2020/05/11/santa-barbara-county-urges-state-toexclude-lompoc-prison-cases-from-reopening-criteria/>.

26 ³ Tyler Haden, *Santa Barbara County Urges State to Exclude Lompoc Prison Cases from*
27 *Reopening Criteria*, SANTA BARBARA INDEPENDENT (May 13, 2020)
<https://www.independent.com/2020/05/13/lompoc-prison-explodes-with-activecovid-19-cases/>.

1 closed Taft Correctional Institution on April 30, 2020,⁴ and a number of those prisoners
2 have been transferred to Lompoc, increasing the inmate population and decreasing any
3 hope of necessary social distancing.

4 Inexplicably, today, May 29, 2020, the BOP is reporting that FCI Lompoc USP
5 has only 19 COVID-19 cases among inmates and 8 among staff.⁵ The reason for the
6 discrepancy is unclear. At least one news article indicates that the Santa Barbara
7 County Public Health Department is reporting 80 confirmed cases among inmates and
8 30 among staff at Lompoc.⁶ The high number of infected individuals in Lompoc is
9 creating community concerns that local hospitals will be overrun with patients from
10 Lompoc, both inmates and staff.

11 Mr. Liew's situation is emblematic of the ineffective COVID-19 response at
12 Lompoc. On April 28, 2020, Mr. Liew was transferred to a warehouse converted into a
13 makeshift quarantine unit. He was given a mattress on top of a cot which is exactly six
14 feet from the mattresses next to his own. Mr. Liew has had limited access to a toilet or a
15 shower since he was moved to the warehouse. On May 4, 2020, he was given a
16 COVID-19 test and as of his last correspondence with counsel on May 6, 2020 he was
17 still waiting on the test results.

23 ⁴ LA Times Staff, *Kern County City Gets Hit with Triple Whammy: Lockdowns, Oil Slump and*
24 *Prison Closing*. L.A. Times (May 6, 2020) <https://www.latimes.com/california/story/2020-05-06/kern-county-taft-coronavirus-oil-slump-prison-closing/>.

25 ⁵ Bureau of Prisons, COVID-19 Update, <https://www.bop.gov/coronavirus/>.

26 ⁶ Tyler Haden, *Lompoc Prison, Crawling with COVID-19, Reports First Inmate Death*,
27 *SANTA BARBARA INDEPENDENT* (April 18, 2020) <https://www.independent.com/2020/04/18/lompoc-prison-crawling-with-covid-19-reports-first-inmate-death/>
28 <https://www.independent.com/2020/04/18/lompoc-prison-crawling-with-covid-19-reports-first-inmate-death/>.

1 **B. Mr. Liew is Currently Hospitalized and on a Ventilator**

2 On May 27, 2020, counsel was informed that Mr. Liew had fallen ill and was on
3 a ventilator to assist him with breathing. It is unknown, but given the circumstances,
4 likely, that he is infected with the COVID-19 virus. If Mr. Liew is, in fact, positive for
5 COVID-19, he would join the 929 inmates at FCI Lompoc (out of a population of 963
6 inmates) who also tested positive for COVID-19. He, unlike many others, is showing
7 symptoms. Because the BOP and/or FCI Lompoc catastrophically mishandled their
8 responsibility to the inmates at Lompoc, Mr. Liew’s life is currently in critical danger.

9 Assuming Mr. Liew is currently positive for COVID-19, there are still more
10 questions than answers about what his recovery will look like and whether Mr. Liew
11 will remain vulnerable to COVID-19 should he be forced to remain at Lompoc with
12 other infected people. The World Health Organization has concluded that there is
13 “currently no evidence that people who have recovered from COVID-19 and have
14 antibodies are protected from a second infection.”⁷ The Centers for Disease Control and
15 Prevention (“CDC”) says the same: “The immune response to COVID-19 is not yet
16 understood. Patients with MERS-COV infection are unlikely to be re-infected shortly
17 after they recover, but it is not yet known whether similar immune protection will be
18 observed for patients with COVID-19.”⁸

19 In short, because we have only five months of experience with COVID-19, “little
20 is known yet about the body’s immune response to an infection. . . . ‘That’s something
21 that’s going to take a while to figure out.’” said George Rutherford, the head of
22 infectious disease and global epidemiology at the University of California San
23

24 ⁷ World Health Organization, “*Immunity Passports*” in the context of COVID-19 (Apr. 24,
25 2020), [https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-](https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19)
26 [covid-19](https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19).

27 ⁸ Centers for Disease Control, Coronavirus Disease 2019,
28 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/faq.html>.

1 Francisco.⁹ What can be said with some certainty is that Mr. Liew’s current infection
2 and corresponding symptoms does not mean that his fears about COVID-19 are moot
3 if, and when, he recovers. His age and his underlying health issues make Mr. Liew
4 particularly vulnerable, not only now, but also going forward.

5 **C. Mr. Liew’s Age and Health Conditions Make Him Especially**
6 **Susceptible to COVID-19 Complications**

7 Mr. Liew has several preexisting health conditions that put him at heightened
8 risk of contracting COVID-19 and suffering potentially fatal consequences. Among
9 Mr. Liew’s health conditions, he suffers from hepatic steatosis, also commonly known
10 as fatty liver.¹⁰ Hepatic steatosis is a form of liver disease.¹¹ The CDC notes that those
11 suffering from liver disease are among the groups that require “extra precautions” to
12 prevent contraction of COVID-19.¹²

13 Mr. Liew also suffers from high cholesterol, one of the greatest risk factors for
14 heart disease.^{13 14} The CDC has stated that those suffering from heart disease are at a
15 much higher risk from the consequences of COVID-19.¹⁵ While high cholesterol is
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18 ⁹ Kristen V. Brown, *Coronavirus Survivors Hope for Immunity—The Reality is More*
19 *Complicated*, Bloomberg (Apr. 14, 2020) [https://www.bloomberg.com/news/articles/2020-04-14/do-](https://www.bloomberg.com/news/articles/2020-04-14/do-coronavirus-survivors-have-immunity-from-reinfection-maybe)
[coronavirus-survivors-have-immunity-from-reinfection-maybe](https://www.bloomberg.com/news/articles/2020-04-14/do-coronavirus-survivors-have-immunity-from-reinfection-maybe).

20 ¹⁰Ex. A, Walter Liew’s Application for Compassionate Release dated May 5, 2020.

21 ¹¹ WebMD, Fatty Liver Disease (Hepatic Steatosis), [https://www.webmd.com/hepatitis/fatty-](https://www.webmd.com/hepatitis/fatty-liver-disease)
[liver-disease](https://www.webmd.com/hepatitis/fatty-liver-disease).

22 ¹² Centers for Disease Control and Prevention, What to Know About Liver Disease and
23 COVID-19, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/liver-disease.html>.

24 ¹³ Ex. A, Walter Liew’s Application for Compassionate Release dated May 5, 2020.

25 ¹⁴ Centers for Disease Control and Prevention, High Cholesterol Facts,
26 <https://www.cdc.gov/cholesterol/facts.htm>.

27 ¹⁵ Centers for Disease Control and Prevention, Groups at Higher Risk for Severe Illness,
28 [https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html#serious-heart-conditions)
[risk.html#serious-heart-conditions](https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html#serious-heart-conditions); *see also* Cleveland Clinic, What Heart Patients Need to Know
About COVID-19 [https://health.clevelandclinic.org/what-heart-patients-need-to-know-about-covid-](https://health.clevelandclinic.org/what-heart-patients-need-to-know-about-covid-19/)
[19/](https://health.clevelandclinic.org/what-heart-patients-need-to-know-about-covid-19/) (May 6, 2020).

1 typically manageable with medication, one of the most common medications prescribed
2 by doctors to prevent worsening heart conditions¹⁶, angiotensin converting enzyme
3 inhibitors (ACE inhibitors), have negative impact on patients' respiratory functions.¹⁷
4 The CDC has also noted that pulmonary and respiratory conditions are among the
5 greatest risk factors for older individuals contracting COVID-19 and increase the
6 likelihood of fatal consequences.¹⁸

7 As described herein, Mr. Liew is faced with in a dire situation in which he must
8 manage his health conditions in way that heightens his risk of contracting COVID-19.
9 Much of the harm Mr. Liew faces would be greatly reduced if he were allowed to serve
10 the balance of his sentence in home confinement where he will not be exposed to the
11 almost inconceivable amount of people currently infected with COVID-19 inside the
12 walls of Lompoc.

13 Additionally, Mr. Liew is currently 62 years old. The CDC and nearly every
14 other media outlet and research institution has noted that age is one of the primary risk
15 factors for heightened symptoms brought on by COVID-19.¹⁹ The death rate is much
16 higher for those over 60 who contract COVID-19.²⁰ Even though Mr. Liew is 62, he
17 shares many of the risk factors with the population over 65.

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20 ¹⁶ WebMD, ACE Inhibitors and Heart Disease, <https://www.webmd.com/heart-disease/guide/medicine-ace-inhibitors#1>.

21 ¹⁷ National Library of Medicine, ACE Inhibitor-Induced Bronchial Reactivity in Patients With
22 Respiratory Dysfunction, <https://pubmed.ncbi.nlm.nih.gov/12022909/>.

23 ¹⁸ Centers for Disease Control and Prevention, Assessing Risk Factors for Severe COVID-19
24 Illness (Updated April 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/assessing-risk-factors.html>.

25 ¹⁹ Centers for Disease Control and Prevention, Older Adults, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

26 ²⁰ Centers for Disease Control and Prevention, Older Adults, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>; *see also*
27 Worldometer, Age, Sex, Existing Conditions of COVID-19 Cases and Deaths Chart (May 13, 2020),
<https://cutt.ly/ytEimUQ> (data analysis based on WHO China Joint Mission Report).

1 On May 6, 2020, Mr. Liew sent a letter to the Warden at Lompoc requesting that
2 the BOP make a motion on his behalf to request compassionate release under 18 U.S.C.
3 § 3582(c)(1)(A). In the letter, he highlighted his advanced age and underlying health
4 conditions.²¹ However, Mr. Liew’s counsel is not aware of whether any progress has
5 been made by the BOP on Mr. Liew’s behalf.

6 **III. REQUEST FOR RELIEF UNDER 18 U.S.C. § 3582**

7 Mr. Liew respectfully requests that the Court grant compassionate release relief
8 under 18 U.S.C. § 3582. Mr. Liew’s advanced age (62) and underlying health
9 conditions, combined with the fast spread of COVID-19 within Lompoc satisfies the
10 “extraordinary and compelling reasons” standard under Section 3582(c)(1)(A)(i), as
11 elaborated by the Sentencing Commission in U.S.S.G. § 1B1.13.

12 **A. This Court has Discretion to Modify Mr. Liew’s Sentence Under §** 13 **3582(c)(1)(A)(i) Based on His Medical Condition, the Risks He Faces** 14 **from COVID-19, and the § 3553(a) Factors**

15 This Court has discretion to modify Mr. Liew’s sentence in this case under
16 §3582(c)(1)(A)(i), which states that the Court “may reduce the term of imprisonment,
17 after considering the factors set forth in [18 U.S.C. §] 3553(a) to the extent they are
18 applicable, if it finds that . . . extraordinary and compelling reasons warrant such a
19 reduction . . . and that such a reduction is consistent with applicable policy statements
20 issued by the Sentencing Commission[.]” In 28 U.S.C. § 994(t), Congress delegated to
21 the Sentencing Commission the authority to “describe what should be considered
22 extraordinary and compelling reasons for sentence reduction, including the criteria to
23 be applied and a list of specific examples. Rehabilitation of the defendant alone shall
24 not be considered an extraordinary and compelling reason.” The Federal Sentencing
25 Guidelines provide that extraordinary and compelling reasons for a reduction in the
26

27 ²¹ Ex. A, Walter Liew’s Application for Compassionate Release dated May 5, 2020.
28 MOTION FOR RELEASE TO HOME CONFINEMENT PURSUANT TO 18 USC § 3582

1 term of imprisonment exist where the defendant is not a danger to the safety of any
2 other person or to the community as provided in 18 U.S.C. § 3142(g) (See generally
3 U.S.S.G. § 1B1.13, comment. n.1), and the defendant is suffering from a serious
4 medical or physical condition that substantially diminishes the ability of the defendant
5 to provide self-care within the environment of a correctional facility and from which he
6 is not expected to recover (See U.S.S.G. § 1B1.13, comment. n.1(A)(ii.) The policy
7 statement also provides that, while rehabilitation of the defendant by itself (emphasis
8 added) is not an extraordinary or compelling reason to reduce a defendant’s sentence, it
9 may be considered along with other factors (See generally U.S.S.G. § 1B1.13,
10 comment. n.3.) Additionally, the Director of the Bureau of Prisons may determine
11 whether there exists in the defendant’s case extraordinary and compelling reasons other
12 than, or in combination with, the reasons described in the policy statement that support
13 a reduction in the term of imprisonment (See generally U.S.S.G. § 1B1.13, comment.
14 n.1)

15 The U.S.S.G. § 1B1.13 policy considerations relevant in Mr. Liew’s case
16 include:

- 17 • Mr. Liew suffers from fatty liver and high cholesterol, which conditions are early
18 indicators of liver disease and heart disease, putting him at increased risk of serious
19 complications from COVID-19.
- 20 • Lompoc has the largest number of COVID-19 infections in all of BOP and at FCI
21 Lompoc, where Mr. Liew is incarcerated, nearly 100% of tested inmates have tested
22 positive;
- 23 • Mr. Liew is currently hooked up to a ventilator due to complications from the virus;
- 24 • Social distancing that is aiding in “flattening the curve” amongst the general
25 population, is not possible within the walls of Lompoc;
- 26 • Mr. Liew is 62 years old. While the Federal Sentencing Guidelines direct the
27 Director of the BOP to consider defendant’s age as an extraordinary and compelling

1 reason for early release only after his 70th birthday, this policy was written prior to
2 the onset of one of the worst global pandemics in the last century. Given the high
3 mortality rate from COVID-19 in the population of 60 years old, Mr. Liew's age is
4 an extraordinary and compelling reason for his early release;

- 5 • Mr. Liew is not a danger to the community. The non-violent nature of Mr. Liew's
6 offenses suggest that he does not pose a threat to public safety (*See Scparta, infra*);
7 and
- 8 • Mr Liew's post-sentencing rehabilitation is impressive. He has no write-ups or
9 incidents and has been working regularly as an orderly at Lompoc and even serves
10 as a clerk for the other orderlies. Mr. Liew also practices meditation and leads
11 meditation sessions in the chapel at Lompoc.

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

19 Here, the overriding factor under § 3553(a) that was not present at the time of
20 sentencing is the COVID-19 pandemic and the serious risk it presents. Although the
21 circumstances of the present offense qualified Mr. Liew for the serious sentence this
22 Court originally imposed, the sentencing purpose of just punishment does not warrant a
23 sentence that includes exposure to a life-threatening illness. In fact, the Eighth
24 Amendment's prohibition on cruel and unusual punishment includes unreasonable
25 exposure to dangerous conditions in custody. *Helling v. McKinney*, 509 U.S. 25, 28
26 (1993); *see also Wallis v. Baldwin*, 70 F.3d 1074, 1076 (9th Cir. 1995) (applying
27 *Helling* to exposure to asbestos); *Brown v. Mitchell*, 327 F. Supp. 2d 615, 650 (E.D.

1 Va. July 28, 2004) (applying *Helling* to contagious diseases caused by overcrowding
2 conditions). The Section 3553(a) factors can be met in this case by an order of home
3 confinement as a condition of supervised release.

4 Additionally, Mr. Liew’s conduct while incarcerated, establishes that the
5 purposes of punishment have been met. Under *Pepper*, the Court must also consider
6 “the most up-to-date picture” of the defendant’s history and characteristics, which
7 “sheds light on the likelihood that the defendant will engage in future criminal
8 conduct.” 562 U.S. at 492. Mr. Liew has exhibited model conduct during his years of
9 incarceration in Lompoc without any reported incidents. He has been working as an
10 orderly, assisting the correctional officers at Lompoc with various duties and serving as
11 a clerk for the unit orderlies. Mr. Liew is also an active member of the meditation
12 group and has been leading meditation workshops at the chapel at Lompoc. Mr. Liew
13 has shown by his conduct that he no longer threatens public safety, and that granting
14 him/her compassionate release would not endanger the community.

15 The totality of the circumstances, including Mr. Liew’s post-sentencing
16 rehabilitation demonstrate that reducing Mr. Liew’s sentence to time served after 71
17 months in custody is “sufficient, but not greater than necessary,” to serve the purposes
18 of sentencing under § 3553(a).

19 As Mr. Liew has previously indicated to this Court, there are a number of
20 factors under Section 3553(a), in addition to those above, that warrant the relief sought
21 here. Mr. Liew is a first-time offender with no criminal history. His offenses are all
22 non-violent. He has a devoted wife and is the father of a son who lives at home. Finally,
23 his age places him in the class of prisoners least likely to recidivate. If released, Mr.
24 Liew can reside with his wife Christina and son Michael at their home in Dubin,
25 California. He can self-quarantine there and he can quarantine himself from his wife.
26 The Court can further impose any other appropriate condition. For all of these reasons,
27 combined with the risks Mr. Liew faces of serious complications from COVID-19 at

1 Lompoc, release to home confinement at the home he shares with his wife and son in
2 Dublin is warranted.

3 **B. The Exhaustion Requirement**

4 On December 21, 2018, the President signed the First Step Act into law. Among
5 a number of criminal justice reforms, Congress amended 18 U.S.C. § 3582(c)(1)(A)(i)
6 to provide the sentencing judge jurisdiction to consider a defense motion for reduction
7 of sentence based on extraordinary and compelling reasons whenever “the defendant
8 has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons
9 to bring a motion on the defendant’s behalf,” or after “the lapse of 30 days from the
10 receipt of such a request by the warden of the defendant’s facility, whichever is
11 earlier[.]” First Step Act of 2018, § 603(b), Pub. L. 115-391, 132 Stat. 5194, 5239 (Dec.
12 21, 2018).

13 Mr. Liew anticipates that the government will argue that he is not entitled to
14 relief under Section 3582 because he has failed to exhaust his administrative remedies.
15 However, Mr. Liew submitted a request for relief to FCI Lompoc’s Warden on May 6,
16 2020. He was thereafter hospitalized and placed on a ventilator.

17 **1. Exceptions to the Exhaustion Requirement**

18 Even where exhaustion is required by statute, the requirement is not absolute.
19 *Washington v. Barr*, 925 F.3d 109, 118 (2d Cir. 2019). Failure to exhaust is excusable
20 where 1) it would be futile, because the agency is biased or has already determined the
21 issue, or 2) the administrative process is incapable of granting adequate relief; or 3)
22 where pursuing agency relief would subject Mr. Liew to undue prejudice. *Id.* at 118-19.

23 Here, Mr. Liew has attempted to exhaust his administrative remedies within the
24 Bureau of Prisons but has been stymied by the administration at Lompoc. As discussed
25 above, Mr. Liew wrote to the Warden on May 6, 2020 to request that the BOP file a
26 motion for compassionate release on his behalf, but received no response. Today, May
27 29, 2020, Mr. Liew is now in a hospital due to complications from COVID-19 and is on

1 a ventilator. At this time, he cannot make any of the additionally necessary steps to
2 exhaust his administrative remedies.

3 The 30-plus-day exhaustion requirement would deprive Mr. Liew of adequate
4 relief because when that time expires his symptoms could worsen and he could suffer
5 life threatening complications from COVID and could even die. That consequence is
6 surely undue prejudice. *See United States v. Perez*, No. 17-cr-513-AT (SDNY April 1,
7 2020), Dkt. Item 98 (Order granting compassionate release and waiving the exhaustion
8 requirement in light of the extraordinary threat posed by the COVID-19 pandemic,
9 together with consideration of Mr. Perez’s individual health issues) Mr. Liew has a
10 significant interest – indeed a life or death interest – in this Court’s consideration of his
11 request for immediate release to home confinement given the spread of COVID-19 at
12 Lompoc. *See Matthews v. Eldridge*, 424 U.S. 319, 330 (1976) (“where a claimant’s
13 interest in having a particular issue resolved promptly is so great that deference to the
14 agency’s judgment is inappropriate” the claim may be considered so long as the
15 claimant presented the claim to the agency). Given the speed at which COVID-19 is
16 spreading throughout BOP, especially at Lompoc, the steps Mr. Liew has already taken
17 and Lompoc’s responses, and the worsening condition of Mr. Liew’s health, he submits
18 that the 30-day exhaustion requirements of Section 3582(c)(1)(A) should not apply.

19 The exhaustion requirement was adopted at a time when the COVID-19
20 pandemic did not exist and was not rapidly spreading throughout the country and in the
21 federal prison system in particular. To apply the exhaustion requirement now, in the
22 middle of a global pandemic, would be “both futile and cause [Mr. Liew] irreparable
23 harm.” *See United States v. Scparta*, No. 18-cr-578-AJN (SDNY April 19, 2020)
24 (Opinion & Order) (application of the equitable exceptions to the exhaustion
25 requirement to order an inmate released from FCI Butner based the acknowledgement
26 that the inmate suffered from high blood pressure, high cholesterol and hypertension
27 and therefore had increased risks from COVID-19 while incarcerated. Additionally,

1 District Judge Nathan was persuaded that the non-violent nature of the defendant’s
2 offenses suggested that he “pose[d] any risk to the public.”) *See Scparta, supra* at 9.
3 Similarly, Mr. Liew suffers from health conditions that affect his heart and his liver.
4 Also like the defendant in *Scpara*, the non-violent nature of Mr. Liew’s offenses
5 suggests that he does not pose any risk to the public should his sentence be reduced or
6 permitted to finish his sentence in home confinement.

7 **2. In the Alternative, the Court can Order Briefing and Hold**
8 **Ruling on the Motion in Abeyance Until the 30 Day**
9 **Exhaustion Period has Run**

10 Failing a finding that the exhaustion requirement of Section 3582 is not
11 applicable in the instant case, the Court could also order a response from the
12 government and hold this motion in abeyance until June 5, 2020, when the 30 day
13 requirement of Section 3582(c)(1)(A) will have run.

14 **IV. IN THE ALTERNATIVE: REQUEST FOR RECOMMENDATION FOR**
15 **HOME CONFINEMENT**

16 If the Court is unwilling to grant the relief requested above, Mr. Liew requests a
17 recommendation for home confinement for the remaining 6 months of his sentence
18 rather than having to convalesce in a half-way house where medical care and treatment
19 would be inferior to what he would receive at home.

20 In response to the COVID-19 pandemic, the BOP was granted the authority to
21 lengthen the maximum amount of time for which it is authorized to place a prisoner in
22 home confinement under 18 U.S.C. § 3624(c).²² The Attorney General further directed
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26 ²² Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, § 12003(b)(2), 134
27 Stat. 281, 516 (March 27, 2020).

1 the BOP to prioritize home confinement for eligible inmates for whom home
2 confinement might be more effective in minimizing the risks of COVID-19.²³

3 The Court in this instance has the ability under 18 U.S.C. § 3621, subd. (b) to
4 recommend to the Bureau of Prisons that Mr. Liew serve the remainder of his sentence
5 in home confinement.

6 **V. CONCLUSION**

7 For the foregoing reasons, Mr. Liew respectfully requests that the Court modify
8 his sentence to allow for his release six months early or in the alternative to make an
9 immediate recommendation for Mr. Liew’s home confinement.

10 Respectfully submitted,

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12 DATED: May 29, 2020

By */s/ Peter L. Arian*

13 PETER L. ARIAN
14 Attorney for WALTER LIEW

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27 ²³ Off. of the Att’y Gen. Mem. For Dir. of Bureau of Prisons, Prioritization of Home
28 Confinement as Appropriate in Response to COVID-19 Pandemic (March 26, 2020)
<https://www.justice.gov/coronavirus>.

1 home in Dublin, California, and that they are able to provide him with care during the
2 pandemic. I inquired as to inquired generally if this would be an appropriate living
3 situation for Mr. Liew should he be granted early release. The Liew's assured me that
4 there was nothing that would prevent Mr. Liew from finishing his sentencing at his
5 home.

6 8. I prepared this motion and declare that the factual statement made therein
7 are true and correct to the best of my knowledge. As to those statements made upon
8 information and belief, I believe them to be true.

9 I declare under penalty of perjury under the laws of the United States of America
10 that the foregoing is true and correct.

11 Executed on May 29, 2020, at San Anselmo, California.

12
13 /s/ Peter L. Arian
14 PETER L. ARIAN