

**ENTERED**

May 14, 2020

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>UNITED STATES OF AMERICA</b>	§	
	§	
<b>v.</b>	§	<b>CR. NO. H-13-746</b>
	§	
<b>SHARON IGLEHART, M.D.</b>	§	

**ORDER**

Defendant Sharon Iglehart ("Iglehart") is currently in custody of the United States Bureau of Prisons ("BOP") at the Federal Prison Camp-Bryan ("FPC Bryan") in Bryan, Texas. Morgan Lynette Ross ("Ross"), Iglehart's daughter, who makes no showing that she is a lawyer, has moved for "compassionate release" under Title 18 of the United States Code, Section 3582(c)(1)(A)(i), on Iglehart's behalf, citing the emergency conditions created by the COVID-19 pandemic. See Docket Entry No. 207. Having fully considered the applicable law, the record, and the parties' positions, Ross's motion is **DENIED** for the reasons that follow.

**I. Background**

Iglehart is currently serving a 144-month sentence for crimes related to health care fraud. In 2015, a jury found her guilty of all five counts of the Second Superseding Indictment, which alleged

that Iglehart engaged in a conspiracy to commit health care fraud (Count 1SS), one substantive count of health care fraud (Count 2SS), and three counts of making false statements relating to health care matters (Counts 3SS, 4SS, & 5SS). Docket Entry Nos. 66., 109, 115. In its opinion affirming the judgment of conviction, the Fifth Circuit summarized the facts adduced at trial as follows:

Iglehart was a psychiatrist in Houston, Texas, associated with Riverside General Hospital (Riverside). In addition to its inpatient hospital, Riverside offered "partial hospitalization programs" (PHPs) at off-site facilities. Medicare defines PHPs as providing psychotherapeutic and pharmacologic treatment to patients at least four days per week, for a minimum total of 20 hours per week. It was through her billing practices at two Riverside-owned PHPs—Riverside Southeast Mental Health Program in Houston (Southeast) and Riverside Dallas—that Iglehart was later convicted for, *inter alia*, defrauding Medicare and Medicaid.

Medicare reimburses PHPs for their services, subject to several requirements. Among these requirements, PHPs must comply with federal record-keeping standards; in addition, a licensed physician must personally oversee and document the PHP's treatment programs.

Iglehart worked as medical director and sole psychiatrist at Southeast from 2005 until 2009; Riverside Dallas, from 2011 until 2012. In this role, she was responsible for admitting patients, supervising treatment, and billing Medicare. Throughout this entire time period, Iglehart also worked as an attending physician at Riverside's inpatient psychiatric facility.

Over the course of an investigation into Riverside's facilities, the Government discovered evidence of

numerous billing irregularities committed by Iglehart. For example, she frequently used her admitting and referral authority to pass patients between Riverside's inpatient program and the PHPs, despite the patients' not being qualified for PHP treatment under Medicare. Moreover, she often backdated signatures and billed Medicare for face-to-face consultations at Riverside Dallas, despite billing for patients in Houston on the same day. Of particular relevance to the evidentiary issue at hand, Iglehart also billed Medicare for patient treatments in Houston, despite her being at a recordkeeping course in San Diego, California, pursuant to a Texas Medical Board (TMB) order, following an investigation in 2004 into Iglehart's billing practices. As a result of these, and other, billing practices, Riverside fraudulently billed Medicare and Medicaid over \$22.7 million; Medicare and Medicaid reimbursed Riverside approximately \$6.4 million.

United States v. Iglehart, 687 F. App'x 333, 334-35 (5th Cir. 2017).

The Court sentenced Iglehart to a total of 144 months' imprisonment, followed by three years of supervised release, a \$500 special assessment, and restitution in the amount of \$6,363,528.82. Docket Entry No. 153. Iglehart surrendered to the BOP on May 20, 2016 and has served approximately one-third of her sentence to date.

On January 21, 2020, the Court adopted the recommendation of the magistrate judge and denied Iglehart's motion to vacate under 28 U.S.C. § 2255. Iglehart did not appeal that determination.

On April 6, 2020, Iglehart requested compassionate release from the Warden at FPC Bryan. Docket Entry No. 211-1 at 12. On

April 14, 2020, the Warden denied her request and informed her of her appeal deadline. Id. at 17. On April 23, 2020, Ross filed this motion for compassionate release on Iglehart's behalf. Docket Entry No. 207.

Ross alleges that Iglehart, who turned 64 on May 6, 2020, suffers from hypertension, pre-diabetes or diabetes, polycystic breast disease, and petit mal seizures. Ross contends that Iglehart's age and health condition place her at a greater risk for developing a severe case of COVID-19 should she contract the virus.

At the Court's request, the Government submitted a response to Ross's motion and attached a declaration of Captain Cassidy Brown ("Brown"), the Health Services Administrator at FPC Bryan, along with supporting medical records. Docket Entry No. 210 (under seal). Ross filed a response to the Government's response objecting to several assertions in Brown's declaration. Docket Entry No. 211.

The Government contends that Ross's motion should be denied because: (1) Ross lacks standing to assert a claim for

compassionate release on her mother's behalf and is not admitted to practice law in Texas or the United States District Court for the Southern District of Texas; (2) Iglehart has not properly exhausted her remedies; and (3) Iglehart is not entitled to compassionate release on the merits.

The parties dispute certain particulars of Iglehart's medical condition, but the medical records and other papers submitted by Ross and the Government show that Iglehart is currently on medications to help manage her hypertension at FCP Bryan.<sup>1</sup> The medical records also reflect that Iglehart has had several cysts in her breast and has a family history of breast cancer, but that she tested negative for the BRCA (BReast CAncer) gene and has not been diagnosed with breast cancer.<sup>2</sup> Ross also claims that Iglehart suffers from petit mal seizures and pre-diabetes, pointing to a prescription for Topomax from a psychiatrist in May 2016 before her self-surrender.<sup>3</sup> However, Brown states that Iglehart indicated

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<sup>1</sup> Docket Entry No. 210-1 at 5; Docket Entry No. 211-1 at 4.

<sup>2</sup> Docket Entry No. 210-1 at 12-21; Docket Entry No. 211-1 at 1-2, 6, 11.

<sup>3</sup> Docket Entry No. 211-1 at 5. Ross also attaches an information sheet about Cymbalta and its uses as an exhibit to support her claim that Iglehart takes that medication, but the information sheet is undated and there is no actual prescription attached. Id. at 3.

on her intake form that she did not have a history of seizures and that there is no evidence that Iglehart sought treatment for diabetes or experienced any petit mal seizures in the 47 months she has been at FPC Bryan. According to Brown, there have been no reported cases of COVID-19 at FPC Bryan as of April 27, 2020.<sup>4</sup> Ross does not controvert this assertion.

## II. Legal Standard

A judgment of conviction, including a sentence of imprisonment, is a final judgment and “may not modified by a district court except in limited circumstances.” Dillon v. United States, 130 S. Ct. 2683, 2690 (2010). Pertinent here, 18 U.S.C. § 3582(c)(1)(A), as amended by Section 603(b) of the First Step Act of 2018, Pub. L. 115-391, Title VI, § 603(b), 132 Stat. 5194, 5239-41 (Dec. 21, 2018), authorizes a district court to modify a term of imprisonment by granting release for compassionate reasons upon motion of the Director of the Bureau of Prisons “or 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

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<sup>4</sup> See Docket Entry No. 210-1, Ex. A (Decl. of Capt. Brown) at 2; see also <https://www.bop.gov/coronavirus/> (indicating no cases of COVID-19 at FPC Bryan as of May 12, 2020).

of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." 18 U.S.C. §3582(c)(1)(A).

Once a defendant has exhausted her administrative remedies, the sentencing court may then consider the defendant's motion for compassionate release and grant the request if the court finds that:

- i. "extraordinary and compelling reasons warrant a reduction;" or
- ii. the defendant is at least 70 years of age, has served at least 30 years in prison, and "a determination has been made by the Director of the BOP that the defendant is not a danger to the safety of any other person or the community[.]"

18 U.S.C. § 3582(c)(1)(A). Decisions about whether to grant a request for compassionate release under § 3582(c)(1)(A) are reviewed for an abuse of discretion. See United States v. Chambliss, 948 F.3d 691, 693 (5th Cir. 2020). A district court considering a motion for compassionate release must provide a thorough factual record and specific factual reasons for its decision. Id.

In addition, any reduction under 18 U.S.C. § 3582(c)(1)(A) should be consistent with the applicable policy statement articulated by the United States Sentencing Commission. See U.S. SENTENCING GUIDELINES MANUAL § 1B1.13 (U.S. Sentencing Comm'n 2018) (reflecting the applicable policy statement on reductions to a

term of imprisonment under 18 U.S.C. § 3582(c)(1)(A)). The policy statement sets forth the following circumstances that are considered "extraordinary and compelling reasons" for purposes of compassionate release:

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).

U.S. SENTENCING GUIDELINE MANUAL § 1B1.13, cmt. n. 1 (U.S. Sentencing Comm'n 2018).

Even if "extraordinary and compelling reasons" for early release exist, the policy statement found in Guideline § 1B1.13(2) authorizes a reduction in sentence only if a defendant "is not a danger to the safety of any other person or the community, as provided in 18 U.S.C. §3142(g)" and only if such reduction is consistent with the applicable sentencing factors found in 18 U.S.C. § 3553(a). See 18 U.S.C. § 3582(c)(1)(A); U.S.S.G. § 1B1.13. Generally, the defendant bears the burden of establishing that she meets the test for compassionate release. See United States v. Clark, Cr. No. 17-85-SDD-RLB, 2020 WL 1557397, at \*4 (M.D. La. Apr. 1, 2020).

### **III. Discussion**

In light of the current COVID-19 emergency, Ross moves for compassionate release on Iglehart's behalf pursuant to the First Step Act, arguing that extraordinary and compelling reasons exist to justify reducing Iglehart's sentence and releasing her to time served. As set forth below, Ross's motion must be denied because she has no standing to request compassionate release on her mother's behalf and cannot represent her. In addition, even if she could represent Iglehart, she does not show that extraordinary and compelling reasons exist to qualify Iglehart for compassionate release.

**A. Representation by Ross**

Ross does not show that she is an attorney admitted to practice law in the State of Texas or in the United States District Court for the Southern District of Texas, and the pleading papers do not reflect such. Instead, Ross contends that she may represent her mother in this matter because she has power of attorney to act on her mother's behalf, including in litigation matters.

A *pro se* litigant may proceed in federal court as her own counsel. See 28 U.S.C. § 1654. Generally, individuals who do not hold a law license may not represent other parties even on a next friend basis. See Martin v. City of Alexandria, 198 F. App'x 344, 346 (5th Cir. 2006) (citing Iannaccone v. Law, 142 F.3d 553, 558

(2d Cir. 1998) (“[B]ecause *pro se* means to appear for one’s self, a person may not appear on another person’s behalf in the other’s cause”)); Weber v. Garza, 570 F.2d 511, 514 (5th Cir. 1978) (“[I]ndividuals not licensed to practice law by the state may not use the ‘next friend’ device as an artifice for the unauthorized practice of law.”). The Fifth Circuit has affirmed the underlying principle that “in federal court a party can represent himself or be represented by an attorney, but cannot be represented by a nonlawyer.” Gonzales v. Wyatt, 157 F.3d 1016 (5th Cir. 1998).

This principle also applies where the person seeking to represent a party has been given power of attorney to manage the party’s affairs. Under Texas law, a person may represent herself but may not act as an attorney for others, even under a power of attorney, unless she is a member of the state bar. See TEX. GOV’T CODE § 81.102(a) (prohibiting the practice of law in Texas unless the person is a member of the state bar or under other conditions not alleged here); United States v. Musgrove, 109 F.3d 766, 1997 WL 114970, at \*1 (5th Cir. 1997) (table) (noting that “a power of attorney does not authorize a non-attorney to file legal documents on the behalf of others”); Weber, 570 F.2d at 514 (holding that a “power of attorney” does not entitle plaintiff to engage in unauthorized practice of law on behalf of other plaintiffs by preparing legal papers, filing petitions and briefs, and generally

acting as attorney in violation of state and federal provisions); see also Hill v. McKenzie, No. 1:17-CV-0021-BL, 2017 WL 837680, at \*1 (N.D. Tex. Mar. 2, 2017) (“[28 U.S.C. §] 1654 does not permit a non-attorney to represent a litigant in federal court and even a valid power of attorney does not permit it.”) (citing Williams v. United States, 477 F. App’x 9, 11 (3d Cir. 2012) (per curiam)). The Court understands Ross’s concern for her mother and desire to have her released from prison, but Ross is not a lawyer and cannot act in federal court as if she were a lawyer. Accordingly, this motion is subject to dismissal because Ross is not authorized by law to represent Iglehart in this case.<sup>5</sup>

**B. No Extraordinary and Compelling Reasons**

Even if Ross could represent her mother as an attorney in this case, Ross does not establish Iglehart’s entitlement to relief on the merits because she does not show that extraordinary and compelling reasons exist to qualify Iglehart for early release. As noted above, the Sentencing Commission’s policy statement indicates that extraordinary and compelling reasons for early release may exist based on: (a) a defendant’s serious medical

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<sup>5</sup> The Government also asserts that Iglehart has not properly exhausted her administrative remedies. While it is true that Ross filed this motion before 30 days elapsed from the time Iglehart sent her request to the Warden for compassionate release on April 6, 2020, 30 days have now elapsed since Iglehart sent her request.

condition that substantially diminishes the defendant's ability to provide self-care and from which she is not expected to recover; (b) the defendant's age of over 65 combined with a serious deterioration of mental or physical health and her having served 10 years or 75 percent of her sentence; (c) family circumstances whereby a defendant would be the only one available to care for minor children or an incapacitated partner; or (d) other reasons that are extraordinary and compelling as determined by the Bureau of Prisons.<sup>6</sup>

As a 64-year-old female who has only served one-third of her sentence and has no alleged spouse or minor children for whom she would be the sole caregiver, Iglehart does not qualify based on age or family circumstances. Ross contends that Iglehart fits the medical exception in subpart (A) above because she suffers from hypertension, pre-diabetes, petit mal seizures, and polycystic breast disease and that these conditions place Iglehart at a higher risk of contracting a severe case of COVID-19.

Assuming, without deciding,<sup>7</sup> that Iglehart has the medical conditions that Ross claims she does, none of these conditions are alleged to be terminal illnesses. Further, although some of the

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<sup>6</sup> See U.S.S.G. § 1B1.13(1)(A), App. n.1.

<sup>7</sup> The Government disputes whether Iglehart has pre-diabetes or petit mal seizures, contending that there is no evidence that Iglehart has sought care for either of those conditions while in FPC Bryan. See Decl. of Capt. Brown.

conditions could be considered serious, Ross does not establish that Iglehart has a condition “that substantially diminishes [her] ability . . . to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13, App. n. 1(A)(ii).

For example, although the medical records reflect that Iglehart has hypertension, they also reflect that Iglehart has been on medication to manage her hypertension while at FPC Bryan.<sup>8</sup> Further, the record reflects that Iglehart receives ongoing care for her breast condition, with regular mammograms and biopsies and other tests to ensure that the cysts are not cancerous.<sup>9</sup> In her letter to the Warden, Iglehart expresses a fear that she might become immunocompromised if she were ever diagnosed with breast cancer and then placed on chemotherapy.<sup>10</sup> However, there is no indication in the record that Iglehart has a present condition that renders her immunocompromised.

“General concerns about the spread of COVID-19 or the mere fear of contracting an illness in prison are insufficient grounds to establish the extraordinary and compelling reasons necessary to reduce a sentence.” United States v. Wright, No. CR 16-214-04, 2020 WL 1976828, at \*6 (W.D. La. Apr. 24, 2020); accord United

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<sup>8</sup> See Docket Entry No. 210-1 at 5 (listing medications for hypertension).

<sup>9</sup> Id. at 12-21.

<sup>10</sup> Docket Entry No. 211-1 at 12-13.

States v. Eberhart, 2020 WL 1450745, at \*2 (N.D. Cal. Mar. 25, 2020) (“General concerns about possible exposure to COVID-19 do not meet the criteria for extraordinary and compelling reasons for a reduction in sentence set forth in the Sentencing Commission’s policy statement on compassionate release, U.S.S.G. § 1B1.13.”); see also Clark, 2020 WL 1557397, at \*4 (quoting Eberhart). Iglehart’s generalized fear of contracting COVID-19, should she also be diagnosed with breast cancer and need chemotherapy, is based on speculative contingencies and is insufficient to show an extraordinary and compelling reason for compassionate release.

The Government also presents uncontroverted evidence that, at least as of April 27, 2020, there were no reported cases of COVID-19 at FPC Bryan and that prison officials are taking numerous steps to ensure that the virus does not spread there.<sup>11</sup> As noted above, Ross does not identify any present ailment of Iglehart’s that substantially diminishes her ability to provide her own self-care and from which she is not likely to recover. Further, there is no evidence to show that the Bureau of Prisons would be unable to manage an outbreak or to handle Iglehart’s care should such an outbreak emerge in FPC Bryan and should Iglehart actually contract

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<sup>11</sup> See, e.g., BOP Implementing Modification of Operations, available at [https://www.bop.gov/coronavirus/covid19\\_status.jsp](https://www.bop.gov/coronavirus/covid19_status.jsp) (last visited on May 12, 2020); BOP COVID-19 Action Plan: Phase Five, available at [https://www.bop.gov/resources/news/20200331\\_covid19\\_action\\_plan\\_5.jsp](https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp) (last visited on May 12, 2020).

COVID-19 while incarcerated. Therefore, Ross fails to establish any extraordinary or compelling reason for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) based on Iglehart's medical condition or her fear of contracting COVID-19, and this motion must be denied.


**IV. ORDER**

Based on the foregoing, it is hereby

**ORDERED** that the pending emergency motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) (Docket Entry No. 207) is **DENIED**.

The Clerk will enter this Order, providing a correct copy to all parties of record.

SIGNED at Houston, Texas on this 14th day of May, 2020.

  
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EWING WERLEIN, JR.  
UNITED STATES DISTRICT JUDGE