

April 20, 2020

Honorable Lucy H. Koh
United States District Court Judge
U.S. District Court for the Northern District of California
San Jose Courthouse, Courtroom 8 – 4th Floor
280 South 1st Street, San Jose, CA 95113

**RE: United States v. Walid Jamil, Docket No. 15-CR-00264-LHK-4
Emergency Motion
Compassionate Release Due to Extraordinary and Compelling Circumstances**

Dear Judge Koh:

Our firm represents Walid Jamil, who is currently incarcerated at FCI Morgantown. On April 26, 2017, Mr. Jamil was sentenced to a term of 84 months imprisonment for Conspiracy to Traffic in Counterfeit Goods and Conspiracy to Commit Criminal Copyright Infringement and to Introduce Misbranded Food into Interstate Commerce. Mr. Jamil is a non-violent offender. Mr. Jamil has served approximately half of his sentence.

Due to the extraordinary and compelling circumstances created by the ongoing COVID-19 pandemic, Mr. Jamil's age and medical condition, we respectfully move the Court on behalf of Mr. Jamil for a reduction in sentence to time served pursuant to 18 U.S.C. § 3582(c) and 28 C.F.R. § 571.61, or alternatively, an order allowing for a reduction in sentence to time served plus six months home confinement. Mr. Jamil seeks Compassionate Release due to the COVID-19 pandemic, his age and his diabetic condition. If released, Mr. Jamil is committed to being a productive member of society.

Pursuant to 18 U.S.C. § 3582(c), this court may reduce Mr. Jamil's prison sentence upon a finding of extraordinary and compelling circumstances. Mr. Jamil is a sixty-year-old diabetic and his condition requires him to take insulin twice daily. In addition to being a diabetic, Mr. Jamil suffers from hypertension and high cholesterol. Mr. Jamil's medications include: insulin (twice daily), Metformin (1000mg once daily), Aspirin (81mg once daily), Losartan (50mg once daily), Atorvastatin (40mg once daily), and Tamsulosin (0.4mg twice daily).

Mr. Jamil's age and medical conditions make him particularly vulnerable to COVID-19, which spreads through the kind of close contact that is typical in prisons. The Federal Bureau of Prisons has calculated Mr. Jamil's release date as July 2, 2023. By this emergency motion, Mr. Jamil requests modification of his sentence based on his compromised medical condition. Mr. Jamil is at high risk of death or serious complications if he contracts COVID-19, and extraordinary

and compelling circumstances exist, unforeseen at the time of Mr. Walid's sentence, which justify his immediate release pursuant to 18 U.S.C. § 3582(c) and 28 C.F.R. § 571.61.

On April 8, 2020, Mr. Jamil, through counsel, submitted his administrative request for compassionate release to Warden F.J. Bowers, the Warden of FCI Morgantown. A copy of the Warden Petition is attached as **Exhibit 1**. Although the Bureau of Prisons has not ruled on Mr. Jamil's request and 30 days have not passed since its submission, this emergency motion is filed due to the exigent circumstances surrounding the pandemic.

Recently, multiple courts have waived the statutory exhaustion requirement imposed by 18 U.S.C. § 3582. In *Washington v. Barr*, 925 F.3d 109, 118 (2d Cir. 2019), the court held that failure to exhaust may be excused where (1) it would be futile, either because agency decision-makers are biased or because the agency has already determined the issue; (2) exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief; and (3) pursuing agency review would subject plaintiffs to undue prejudice. *Id.* at 118-19.

On April 1, 2020, U.S. District Court Judge Analisa Torres issued a decision in *United States v. Perez*, 17-cr-513-3 (AT) (S.D.N.Y. Apr. 1, 2020), waiving the requirement to exhaust administrative remedies. Judge Torres granted the motion for reduction in sentence and stated "[a]ll three of these exceptions apply here." *Perez*, at 4. A copy of the Order is attached as **Exhibit 2**. On April 2, 2020, U.S. District Court Judge Janet Arterton issued a decision in *United States v. Colvin*, 3:19-cr-179 (JBA) (D. Conn. Apr. 2, 2020), granting defendant's emergency motion for compassionate release based on extraordinary and compelling circumstances relating to COVID-19 and her Type II Diabetes. *Colvin*, at 3. Judge Arterton cited *Perez* and held that Colvin also met all three requirements that allow for a waiver of exhausting the administrative remedies. *Colvin*, at 2. A copy of the Order is attached as **Exhibit 3**. Lastly, on April 10, 2020, U.S. District Court Judge Allyne Ross issued a decision in *United States v. Sawicz*, 08-cr-287 (ARR) (E.D.N.Y. Apr. 10, 2020), granting the defendant's motion for compassionate release citing extraordinary and compelling reasons combined with the defendant's risk of suffering severe complications if he were to contract COVID-19 and therefore, Judge Ross waived the administrative remedy requirement. *Sawicz*, at 2-3. A copy of the Order is attached as **Exhibit 4**.

In this case, all three of the exceptions apply. First, forcing Mr. Jamil to wait a minimum of 30 days prior to petitioning this Court could lead to catastrophic consequences. Second, given how rapid the virus spreads, the undue delay could prevent the Bureau of Prisons from being able to provide adequate relief. Third, any sort of delay could have devastating consequences to Mr. Jamil's health. Given the extraordinary and compelling circumstances and Mr. Jamil's age and medical condition, failure to exhaust should be excused. Not only does Mr. Jamil suffer from hypertension like *Sawicz*, Mr. Jamil also suffers from Type II Diabetes like *Colvin*. The CDC has issued a warning for people who are at a higher risk for severe illness related to COVID-19.¹ The CDC lists heart conditions and diabetes as underlying medical conditions that put individuals at higher risk for severe illness. *Id.* (**emphasis added**).

¹ "People Who Are at Higher Risk for Severe Illness." *Centers for Disease Control and Prevention*, Centers for Disease Control and Prevention, 15 Apr. 2020, www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html.

If this petition for compassionate release is granted, Mr. Jamil will live with his wife, Awatif Jamil, who resides at 2663 Heron Hills Dr, Wolverine Lake, MI 48390. Mr. Jamil will use his savings and the assistance of family to support himself. Mr. Jamil will also obtain health insurance to pay for any medical needs. If released, Mr. Jamil will remain home in order to self-quarantine and best protect himself from exposure to COVID-19.

We respectfully request that you consider compassionate release for Mr. Jamil, pursuant to 18 U.S.C. § 3582(c) and 28 C.F.R. § 571.61, given his serious medical condition, the current status of COVID-19 in the country and the extraordinary and compelling circumstances addressed in this petition. Thank you for your consideration. Please contact our office if you have any questions or need any additional information.

Very truly yours,

PAESANO AKKASHIAN APKARIAN, PC

A handwritten signature in blue ink, appearing to read 'J. Kahn', with a large, stylized initial 'J'.

Jacob A. Kahn

Licensed in California and Michigan

cc: Anthony R. Paesano
AUSA Susan Knight

EXHIBIT 1

April 8, 2020

F.J. Bowers, Warden
FCI Morgantown
446 Greenbag Road, Route 857
Morgantown, WV 26501

RE: Compassionate Release Petition Due to Extraordinary and Compelling Circumstances

Dear Warden Bowers:

Our firm represents Walid Jamil who is currently incarcerated at FCI Morgantown. Mr. Jamil's inmate number is 51110-039. This letter serves as Mr. Jamil's petition for compassionate release pursuant to 18 U.S.C. § 3582(c) and 28 C.F.R. § 571.61. Mr. Jamil seeks Compassionate Release due to the COVID-19 pandemic and his diabetic condition. These extraordinary and compelling circumstances necessitate his immediate release from prison.

On April 26, 2017, Mr. Jamil was sentenced to a term of 84 months imprisonment for Conspiracy to Traffic in Counterfeit Goods and Conspiracy to Commit Criminal Copyright Infringement and to Introduce Misbranded Food into Interstate Commerce. Mr. Jamil is a sixty-year-old diabetic and his condition requires him to take insulin twice daily. This medical condition makes Mr. Jamil particularly vulnerable to COVID-19, which spreads through the kind of close contact that is typical in prisons. We are in the process of obtaining Mr. Jamil's complete medical records from the Federal Bureau of Prisons.

The Federal Bureau of Prisons has calculated Mr. Jamil's release date as July 2, 2023. By this petition, Mr. Jamil requests modification of his sentence based on his compromised medical condition. Mr. Jamil is at high risk of death or serious complications if he contracts COVID-19, extraordinary and compelling circumstances exist, unforeseen at the time of Mr. Walid's sentence, which justify his immediate release pursuant to 18 U.S.C. § 3582(c) and 28 C.F.R. § 571.61.

If this petition for compassionate release is granted, Mr. Jamil will live with his wife, Awatif Jamil, who resides at 2663 Heron Hills Dr, Wolverine Lake, MI 48390. Mr. Jamil will use his savings and the assistance of family to support himself. Mr. Jamil will also obtain health insurance to pay for any medical needs. If released, Mr. Jamil will remain home in order to self-quarantine and best protect himself from exposure to COVID-19.

We respectfully request that you consider compassionate release for Mr. Jamil, pursuant to 18 U.S.C. § 3582(c) and 28 C.F.R. § 571.61, given his serious medical condition, the current status of COVID-19 in the country and the extraordinary and compelling circumstances addressed in this

petition. Thank you for your consideration. Please contact our office if you have any questions or need any additional information.

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Jacob A. Kahn
Licensed in California and Michigan

cc: Anthony R. Paesano

EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA,

-against-

WILSON PEREZ,

Defendant.

ANALISA TORRES, District Judge:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 4/1/2020

17 Cr. 513-3 (AT)

ORDER

Wilson Perez, a prisoner serving his sentence at the Metropolitan Detention Center (the “MDC”), moves for a reduction of his term of imprisonment under the federal compassionate release statute, codified at 18 U.S.C. § 3582(c)(1)(A). Def. Letter, ECF No. 92. For the reasons stated below, Perez’s motion is GRANTED.

BACKGROUND

On October 21, 2019, Perez pleaded guilty to kidnapping and conspiracy in violation of 18 U.S.C. § 1201. ECF No. 85. On January 2, 2020, the Court sentenced him to three years of imprisonment and two years of supervised release. ECF No. 89. “Perez has a well-documented history of medical complications which stem from injuries suffered during his incarceration.” Gov’t Letter at 3, ECF No. 95. While housed at the Metropolitan Correctional Center, he was the victim of two vicious beatings, resulting in a broken jaw and shattered bones around his eye socket; both attacks sent him to the hospital and necessitated reconstructive surgeries of his face, with the second surgery requiring metal implants. *See* Sentencing Tr. 9:8–18, ECF No. 74. Although Perez’s physicians directed that he receive follow-up care, such care was repeatedly delayed or difficult to obtain. *See id.* 10:22–12:17. He continues to suffer from pain and persistent vision problems. Because Perez has been detained since his arrest on September 27, 2017, ECF No. 17, his prison sentence is set to terminate on April 17, 2020, Def. Letter at 1.

Perez requests release in advance of that date because he is at risk of contracting, and experiencing serious complications from, COVID-19 if he remains at the MDC. *Id.* at 1–2. He spends most of each day with a cellmate in a small cell “that is barely large enough for a single occupant,” where he is “breathing recirculated air” and “unable to practice proper hygiene.” *Id.* at 1. Additionally, Perez “is in pain and not receiving pain medication.” *Id.* The Federal Bureau of Prisons (the “BOP”) acknowledges that COVID-19 is present within the MDC. *See* COVID-19 Tested Positive Cases, Federal Bureau of Prisons, <https://www.bop.gov/coronavirus/>. The Government does not object to Perez’s release on the merits, conceding that Perez has a “heightened risk of serious illness or death from COVID-19 due to his pre-existing medical issues,” and that “he has less than a month remaining on his sentence.” Gov’t Letter at 3. But the Government questions the Court’s authority to act on Perez’s application, arguing that he has not exhausted the administrative remedies under § 3582(c)(1)(A), which requires that a defendant seeking compassionate release present his application to the BOP and then either (1) administratively appeal an adverse result if the BOP does not agree that his sentence should be modified, or (2) wait for 30 days to pass. Gov’t Letter at 3–4.

On March 26, 2020, Perez submitted to the BOP his application for a sentence modification. ECF No. 96 at 4. To date, the BOP has not acted on that request. The Court holds, however, that Perez’s exhaustion of the administrative process can be waived in light of the extraordinary threat posed—in his unique circumstances—by the COVID-19 pandemic. And the Court agrees with the parties that this threat also constitutes an extraordinary and compelling reason to reduce Perez’s sentence to time served. Accordingly, Perez’s motion is GRANTED.

DISCUSSION

As amended by the First Step Act, 18 U.S.C. § 3582(c)(1)(A) authorizes courts to modify terms of imprisonment as follows:

The court may not modify a term of imprisonment once it has been imposed except that—in any case—the court, 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 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 (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

- (i) extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Accordingly, in order to be entitled to relief under 18 U.S.C. § 3582(c)(1)(A)(i), Perez must both meet the exhaustion requirement and demonstrate that “extraordinary and compelling reasons” warrant a reduction of his sentence. The Court addresses these requirements in turn.

I. Exhaustion

Section 3582(c)(1)(A) imposes “a statutory exhaustion requirement” that “must be strictly enforced.” *United States v. Monzon*, No. 99 Cr. 157, 2020 WL 550220, at *2 (S.D.N.Y. Feb. 4, 2020) (citing *Theodoropoulos v. I.N.S.*, 358 F.3d 162, 172 (2d Cir. 2004) (internal quotation marks and alterations omitted)).¹ The Court may waive that requirement only if one of the recognized exceptions to exhaustion applies.

“Even where exhaustion is seemingly mandated by statute . . . , the requirement is not absolute.” *Washington v. Barr*, 925 F.3d 109, 118 (2d Cir. 2019) (citing *McCarthy v. Madigan*, 503

¹ The Court need not decide whether § 3582(c)’s exhaustion requirement is a jurisdictional requirement or merely a mandatory claim-processing rule. See *Monzon*, 2020 WL 550220, at *2 (describing split between courts on that question).

U.S. 140, 146–47 (1992)).² There are three circumstances where failure to exhaust may be excused. “First, exhaustion may be unnecessary where it would be futile, either because agency decisionmakers are biased or because the agency has already determined the issue.” *Id.* Second, “exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief.” *Id.* at 119. Third, “exhaustion may be unnecessary where pursuing agency review would subject plaintiffs to undue prejudice.” *Id.*

All three of these exceptions apply here. “[U]ndue delay, if it in fact results in catastrophic health consequences, could make exhaustion futile. Moreover, the relief the agency might provide could, because of undue delay, become inadequate. Finally, and obviously, [Perez] could be unduly prejudiced by such delay.” *Washington*, 925 F.3d at 120–21; *see also Bowen v. City of New York*, 476 U.S. 467, 483 (1986) (holding that irreparable injury justifying the waiver of exhaustion requirements exists where “the ordeal of having to go through the administrative process may trigger a severe medical setback” (internal quotation marks, citation, and alterations omitted)); *Abbey v. Sullivan*, 978 F.2d 37, 46 (2d Cir. 1992) (“[I]f the delay attending exhaustion would subject claimants to deteriorating health, . . . then waiver may be appropriate.”); *New York v. Sullivan*, 906 F.2d 910, 918 (2d Cir. 1990) (holding that waiver was appropriate where “enforcement of the exhaustion requirement would cause the claimants irreparable injury” by risking “deteriorating health, and possibly even . . . death”). Here, even a few weeks’ delay carries the risk of catastrophic health consequences for Perez. The Court concludes that requiring him to exhaust administrative

² The Supreme Court has stressed that for “a statutory exhaustion provision . . . Congress sets the rules—and courts have a role in creating exceptions only if Congress wants them to.” *Ross v. Blake*, 136 S. Ct. 1850, 1857 (2016). Even when faced with statutory exhaustion requirements, however, the Supreme Court has allowed claims to proceed notwithstanding a party’s failure to complete the administrative review process established by the agency “where a claimant’s interest in having a particular issue resolved promptly is so great that deference to the agency’s judgment is inappropriate,” so long as the party presented the claim to the agency. *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976). That reasoning explains the Second Circuit’s holding that even statutory exhaustion requirements are “not absolute.” *Washington*, 925 F.3d at 118. Perez has presented his claim to the BOP, *see* ECF No. 96 at 1, so the situation here is analogous.

remedies, given his unique circumstances and the exigency of a rapidly advancing pandemic, would result in undue prejudice and render exhaustion of the full BOP administrative process both futile and inadequate.

To be sure, “the policies favoring exhaustion are most strongly implicated” by challenges to the application of existing regulations to particular individuals. *Pavano v. Shalala*, 95 F.3d 147, 150 (2d Cir. 1996) (internal quotation marks, citation, and alterations omitted). Ordinarily, requests for a sentence reduction under § 3582(c) would fall squarely into that category. But “courts should be flexible in determining whether exhaustion should be excused,” *id.* at 151, and “[t]he ultimate decision of whether to waive exhaustion . . . should also be guided by the policies underlying the exhaustion requirement.” *Bowen*, 476 U.S. at 484. The provision allowing defendants to bring motions under § 3582(c) was added by the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), in order to “increas[e] the use and transparency of compassionate release.” 132 Stat. 5239. Requiring exhaustion generally furthers that purpose, because the BOP is best situated to understand an inmate’s health and circumstances relative to the rest of the prison population and identify “extraordinary and compelling reasons” for release. 18 U.S.C. § 3582(c)(1)(A)(i). In Perez’s case, however, administrative exhaustion would defeat, not further, the policies underlying § 3582(c).

Here, delaying release amounts to denying relief altogether. Perez has less than three weeks remaining on his sentence, and pursuing the administrative process would be a futile endeavor; he is unlikely to receive a final decision from the BOP, and certainly will not see 30 days lapse before his release date. Perez asks that his sentence be modified so that he can be released now, and not on April 17, 2020, because remaining incarcerated for even a few weeks increases the risk that he will contract COVID-19. He has had two surgeries while incarcerated, and continues to suffer severe side effects such as ongoing pain and persistent vision problems. ECF No. 96 at 4. As the Government

concedes, Perez faces a “heightened risk of serious illness or death from COVID-19 due to his pre-existing medical issues.” Gov’t Letter at 3. Requiring exhaustion, therefore, would be directly contrary to the purpose of identifying and releasing individuals whose circumstances are “extraordinary and compelling.”

Accordingly, the Court holds that Perez’s undisputed fragile health, combined with the high risk of contracting COVID-19 in the MDC, justifies waiver of the exhaustion requirement.³

II. Extraordinary and Compelling Reasons for Release

The Court also finds that Perez has set forth “extraordinary and compelling reasons” to reduce his sentence to time served. 18 U.S.C. § 3582(c)(1)(A)(i). The Government does not dispute that Perez has done so. Gov’t Letter at 3. And Perez’s medical condition, combined with the limited time remaining on his prison sentence and the high risk in the MDC posed by COVID-19, clears the high bar set by § 3582(c)(1)(A)(i).

The authority to define “extraordinary and compelling reasons” has been granted to the United States Sentencing Commission, which has defined that term at U.S.S.G. § 1B1.13, comment n.1. *See United States v. Ebberts*, No. 02 Cr. 11443, 2020 WL 91399, at *4–5 (S.D.N.Y. Jan. 8, 2020). Two components of the definition are relevant. First, extraordinary and compelling reasons for modification exist where “[t]he defendant is . . . suffering from a serious physical or medical condition . . . that substantially diminishes the 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

³ A number of courts have denied applications for sentence modification under § 3582(c)(1)(A) brought on the basis of the risk posed by COVID-19 on the ground that the defendants failed to exhaust administrative remedies. *See, e.g., United States v. Zywojko*, No. 2:19 Cr. 113, 2020 WL 1492900, at *1 (M.D. Fla. Mar. 27, 2020); *United States v. Garza*, No. 18 Cr. 1745, 2020 WL 1485782, at *1 (S.D. Cal. Mar. 27, 2020); *United States v. Eberhart*, No. 13 Cr. 00313, 2020 WL 1450745, at *2 (N.D. Cal. Mar. 25, 2020); *United States v. Hernandez*, No. 19 Cr. 834, 2020 WL 1445851, at *1 (S.D.N.Y. Mar. 25, 2020); *United States v. Gileno*, No. 19 Cr. 161, 2020 WL 1307108, at *3 (D. Conn. Mar. 19, 2020). But in several of those cases, the defendant was not in a facility where COVID-19 was spreading, and in none of them did the defendant present compelling evidence that his medical condition put him at particular risk of experiencing deadly complications from COVID-19. In this case, unlike those, Perez has established that enforcing the exhaustion requirement carries the real risk of inflicting severe and irreparable harm to his health.

comment n.1(A)(ii). Perez’s recent surgeries, and his persistent pain and vision complications, satisfy that requirement. Confined to a small cell where social distancing is impossible, Perez cannot provide self-care because he cannot protect himself from the spread of a dangerous and highly contagious virus. And although he may recover in the future from the surgeries and their complications, there is no defined timeline for that recovery; certainly, he is not expected to recover within the remainder of his sentence.

The Honorable Lorna G. Schofield recently granted an application for sentence reduction under § 3582(c) under similar circumstances. *See United States v. Campagna*, No. 16 Cr. 78-01, 2020 WL 1489829, at *3 (S.D.N.Y. Mar. 27, 2020). Judge Schofield approved the request of a defendant confined to the Brooklyn Residential Reentry Center (the “RCC”) stating that his “compromised immune system, taken in concert with the COVID-19 public health crisis, constitutes an extraordinary and compelling reason to modify [d]efendant’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.” *Id.* at *3 (citing U.S.S.G. § 1B1.13 comment. n.1(A)). The same justifications apply here.

Second, U.S.S.G. § 1B1.13 comment. n.1(D) authorizes release based on “an extraordinary and compelling reason other than, or in combination with, the [other] reasons described.” Perez meets this requirement 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.

Accordingly, the Court finds that Perez has demonstrated extraordinary and compelling reasons justifying his release.

CONCLUSION

For the reasons stated above, Perez's motion for a reduction of his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(1)(A) is GRANTED. Perez's term of imprisonment is reduced to time served. It is ORDERED that Perez be released immediately to begin his two-year term of supervised release.

The Clerk of Court is directed to terminate the motion at ECF No. 92.

SO ORDERED.

Dated: April 1, 2020
New York, New York



ANALISA TORRES
United States District Judge

EXHIBIT 3

United States v. Colvin

Decided Apr 2, 2020

Criminal No. 3:19cr179 (JBA)

04-02-2020

UNITED STATES OF AMERICA v. LATRICE COLVIN

Janet Bond Arterton, U.S.D.J.

RULING GRANTING DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE

Defendant Latrice Colvin moves for compassionate release under [18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)](#). (Emerg. Mot. for Compassionate Release [Doc. # 30].) The Government opposes. (Gov't Opp. [Doc. # 32].) The Court heard oral argument on this motion via teleconference on April 2, 2020. For the reasons that follow, Defendant's motion is granted.

I. Background

Defendant was convicted by guilty plea of one count of mail fraud in violation of [18 U.S.C. § 1341](#). (Am. J. [Doc. # 29].) She was sentenced to a term of imprisonment of 30 days, followed by two years of supervised release, the first seven months of which shall be served in home detention. (*Id.*) Defendant self-surrendered to the BOP at its at FDC Philadelphia facility on March 16, 2020, leaving approximately eleven days of imprisonment remaining in her sentence as of the date of this ruling. (Emerg. Mot. at 2.)

Defendant suffers from Type II Diabetes. (Medical Records [Doc. # 35].) When not incarcerated, Defendant sees "medical professionals at Bridgeport Hospital who have treated her for her diabetes and high blood pressure, have seen her through a difficult pregnancy, and have performed surgery on her back," and thus "know her and can properly care for her." (Emerg. Mot. at 7.)

Although "COVID-19 is a new disease[,] . . . based on currently available information and clinical expertise," the Centers for Disease Control and Prevention list "[p]eople with diabetes" among the groups of "[p]eople who are at higher risk for severe illness" from COVID-19. CENTERS FOR DISEASE CONTROL AND PREVENTION, PEOPLE WHO ARE AT HIGHER RISK FOR *2 SEVERE ILLNESS ("CDC Guidance"), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html> (last visited Apr. 2, 2020).

On March 27, 2020, Defendant "filed an administrative relief request with the Warden [of] FDC Philadelphia seeking compassionate release on the same grounds as" argued in her motion for compassionate release. (Emerg. Mot. at 1 n.1) She has not yet received any response to that request.

II. Discussion

Defendant moves for release under 18 U.S.C. § 3582(c)(1)(A), which provides,

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 (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Thus there are two questions before the Court: first, whether Defendant should be excused from her administrative exhaustion requirement, and second, whether Defendant has demonstrated extraordinary and compelling reasons for a sentence reduction.

A. Exhaustion Requirement

Section 3582(c)(1)(A) plainly imposes an exhaustion requirement which must be satisfied before a defendant may move the court for release. Defendant asks the Court to waive that requirement, arguing that it would be futile for her to seek to exhaust her administrative remedies or wait thirty days. (Emerg. Mot. at 1 n.1.) The Government argues that the Court must not consider Defendant's request because she has not satisfied the exhaustion requirement but fails to convincingly address the merits of Defendant's request for a waiver of that requirement. *3

"Even where exhaustion is seemingly mandated by statute . . . , the requirement is not absolute." *Washington v. Barr*, 925 F.3d 109, 118 (2d Cir. 2019). There are generally three bases for waiver of an exhaustion requirement. See *United States v. Perez*, No. 17cr513-3(AT), ECF No. 98 at 3-4 (S.D.N.Y. Apr. 1, 2020) (discussing exceptions to statutory exhaustion in context of motion for compassionate release during COVID-19 pandemic).

"First, exhaustion may be unnecessary where it would be futile, either because agency decisionmakers are biased or because the agency has already determined the issue." *Washington*, 925 F.3d at 118. "[U]ndue delay, if it in fact results in catastrophic health consequences, could make exhaustion futile." *Id.* at 120. Second, "exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief," including situations where "the relief the agency might provide could, because of undue delay, become inadequate." *Id.* at 119-20. Third, "exhaustion may be unnecessary where pursuing agency review would subject plaintiffs to undue prejudice." *Id.* at 119

The Court concludes that all three exceptions to the exhaustion requirement apply to Defendant's request. First, if Defendant contracts COVID-19 before her appeals are exhausted, that undue delay might cause her to endure precisely the "catastrophic health consequences" she now seeks to avoid. See CDC Guidance. Second, given the brief duration of Defendant's remaining term of imprisonment, the exhaustion requirement likely renders BOP incapable of granting adequate relief, as her sentence will likely already have expired by the time her appeals are exhausted and would certainly already have expired by the time the thirty-day waiting period ends. Third, Defendant would be subjected to undue prejudice—the heightened risk of severe illness—while attempting to exhaust her appeals.

Thus, in light of the urgency of Defendant's request, the likelihood that she cannot exhaust her administrative appeals during her remaining eleven days of imprisonment, and the potential for serious health consequences, the Court waives the exhaustion requirement of Section 3582(c)(1)(A). *See Perez*, No. 17cr513-3(AT), ECF No. 98 at 4 (waiving exhaustion *4 requirement for sentence ending approximately three weeks after defendant's request to BOP); *United States v. Powell*, No. 1:94-cr-316(ESH), ECF No. 98 (D.D.C. Mar. 28, 2020) (finding administrative exhaustion futile, waiving § 3582(c)(1)(A)'s exhaustion requirement, and granting motion for compassionate release in light of COVID-19 pandemic and defendant's underlying health issues).

B. Extraordinary and Compelling Reasons

Section 3582(c)(1)(A) permits a sentence reduction only upon a showing of "extraordinary and compelling reasons," and only if "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." Section 1B1.13 of the Sentencing Guidelines further explains that a sentence reduction under § 3582(c)(1)(A) may be ordered where a court determines, "after considering the factors set forth in 18 U.S.C. § 3553(a)," that

- (1)(A) Extraordinary and compelling reasons warrant the reduction; . . .
- (2) The defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and
- (3) The reduction is consistent with this policy statement.

Application Note 1 to that Guidelines provision enumerates certain circumstances constituting "extraordinary and compelling reasons" that justify a sentence reduction, including certain medical conditions, advanced age, certain family circumstances, or some "other" reason "[a]s determined by the Director of the Bureau of Prisons." The Note specifies that "a serious physical or medical condition . . . 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" constitutes "extraordinary and compelling reasons" which justify compassionate release.

Defendant argues that there are extraordinary and compelling reasons justifying her release because she "is at significant risk of contracting and developing severe complications from an exposure to COVID-19 due to her diabetes and high blood pressure." (Emerg. Mot. *5 at 1.) Thus, Defendant argues, release is warranted to avoid confinement in a "densely populated prison" where it will "inevitably [be] . . . more difficult to engage in the social distancing that will be critical to her health" during the COVID-19 pandemic. (*Id.* at 3.) Defendant asserts that "medical care is limited in federal pretrial detention centers," but if granted compassionate release, she would have "access to medical professionals at Bridgeport Hospital who have treated her for her diabetes and high blood pressure, have seen her through a difficult pregnancy, and have performed surgery on her back," and thus "know her and can properly care for her." (*Id.* at 7.)

The Government argues that Defendant has failed to demonstrate extraordinary and compelling reasons for her release because she "has not described any particular vulnerability to COVID-19 or explained any deficiency in the BOP's response to this public health situation." (Gov't Opp. at 3.) The Government clarified its position during the Court's teleconference with the parties, explaining that because Defendant's diabetes appears to be under control, the risk she faces while incarcerated is insufficient to justify her release. But contrary to the Government's suggestion, Defendant did describe a "particular vulnerability to COVID-19," (*id.*), when she explained that she "is particularly vulnerable to COVID-19 due to her diabetes and high blood pressure," putting her "at greater risk of complications," (Emerg. Mot. at 3). The CDC Guidance confirms Defendant's

position, stating plainly that "[p]ersons with diabetes" face a "higher risk for severe illness" if they contract COVID-19. Moreover, the Bureau of Prisons itself has acknowledged that home confinement may be appropriate for certain "at-risk inmates" in order "to protect the health and safety of . . . people in our custody." (Ex. 1 (BOP Memo) to Emerg. Mot. [Doc. # 30-1] at 1.) Like Defendant, the BOP intends to rely upon "CDC guidance" to "make an assessment of the inmate's risk factors for severe COVID-19 illness." (*Id.* at 2.)

6 Thus the Court concludes that Defendant has demonstrated extraordinary and compelling reasons justifying her immediate release under Section 3582(c)(1)(A) and *6 U.S.S.G. § 1B1.13. She has diabetes, a "serious . . . medical condition," which substantially increases her risk of severe illness if she contracts COVID-19. *See United States v. Rodriguez*, No. 2:03-cr-271, Doc. # 135 at 2 (E.D.P.A. Apr. 1, 2020) (granting compassionate release because for a diabetic inmate, "nothing could be more extraordinary and compelling than this pandemic"). Defendant is "unable to provide self-care within the environment of" FDC Philadelphia in light of the ongoing and growing COVID-19 pandemic because she is unable to practice effective social distancing and hygiene to minimize her risk of exposure, and if she did develop complications, she would be unable to access her team of doctors at Bridgeport Hospital.

In light of the expectation that the COVID-19 pandemic will continue to grow and spread over the next several weeks, the Court concludes that the risks faced by Defendant will be minimized by her immediate release to home, where she will quarantine herself. Continued exposure to the large population of FDC Philadelphia over the coming weeks would impose upon Defendant additional, unnecessary health risks which can be minimized by her early release.

7 Separately, the Court concludes that Defendant is not a danger to the safety of any other person or to the community, and the factors set forth in 18 U.S.C. § 3553(a) weigh in favor of her release. *7

III. Conclusion

For the foregoing reasons, Defendant's Emergency Motion for Compassionate Release [Doc. # 30] is GRANTED. Defendant's previously imposed sentence of 30 days imprisonment is reduced to time served, and she shall be immediately released from BOP custody. Upon her release, Defendant shall be subject to the additional conditions imposed in the Court's Order of Release, ([Doc. # 37]). All other aspects of Defendant's sentence remain unchanged.

IT IS SO ORDERED.

/s/_____

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut this 2nd day of April 2020.

EXHIBIT 4

United States v. Sawicz

Decided Apr 10, 2020

08-cr-287 (ARR)

04-10-2020

UNITED STATES OF AMERICA, v. WILLIAM SAWICZ, Defendant.

ROSS, United States District Judge

Not for print or electronic publication

Opinion & Order

ROSS, United States District Judge:

Before me is the defendant's motion for compassionate release pursuant to [18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)](#) because of the COVID-19 global pandemic and outbreak at the Danbury Federal Correctional Institute ("Def.'s Mot.," ECF No. 62). The defendant asserts that he is especially vulnerable to the threat of contracting a severe case of COVID-19 because he has hypertension, for which he takes prescribed Lisinopril and baby aspirin.¹ Def.'s Mot. 2, 4. Accordingly, the defendant requests that I order his immediate release to home confinement for a period of time to be followed by his already-imposed five-year term of supervised release. Def.'s Mot. 1. The government opposes because the defendant has not exhausted his administrative rights within the Bureau of Prisons. The defendant's *2 motion is granted, as set forth below.

¹ Defense counsel has not been able to access the defendant's medical records within the Bureau of Prisons. *See* Def.'s Mot. 4 n.7. Because the government does not contest that the defendant suffers from hypertension and takes these medications, *see* Government Response to Def.'s Mot. 2, ECF No. 64 ("Gov't Resp."), I rely on defense counsel's representations as to the defendant's medical condition.

On August 23, 2016, I sentenced the defendant to five years' imprisonment, to be followed by five years of supervised release, after the defendant violated the conditions of his term of supervised release by possessing child pornography. *See* Min. Entry, ECF No. 52. The defendant is currently imprisoned at FCI Danbury. The defendant asserts that he has received approval from his unit manager for transfer to a halfway house. Def.'s Mot. 3. The defendant further asserts that Probation has visited and approved his parents' home in Deer Park, New York for his reentry. *Id.*; *see also* Updates to Def.'s Mot. 1, ECF No. 63 ("Updates"). As of March 31, 2020, the Bureau of Prisons ("BOP") Residential Reentry Office was still processing the defendant's application for reentry. *See* Figueroa Email Def.'s Ex. B, ECF No. 62; Def.'s Mot. 3.

Under [18 U.S.C. § 3624\(c\)\(2\)](#), a prisoner may be placed "in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months." [18 U.S.C. § 3624\(c\)\(2\)](#). Accordingly, under normal circumstances, the defendant would be eligible for release to home confinement on August 26, 2020. *See* Gov't Resp. 1; Def.'s Mot. 3. However, the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

expanded the maximum amount of time that a prisoner may spend in home confinement: "if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau [of Prisons], the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement . . ." CARES Act § 12003(b), Pub. L. No. 116-136, 134 Stat. 281 (2020).

3 Attorney General William Barr made the requisite "finding that emergency conditions are *3 materially affecting the functioning of the Bureau of Prisons" on April 3, 2020, thereby triggering the BOP's authority to expand the amount of time that a prisoner may spend in home confinement. Mem. for Director of BOP, Def.'s Ex. A at 1 (Apr. 3, 2020). In particular, the Attorney General acknowledged the "significant levels of infection" at FCI Danbury and instructed the Bureau to "move with dispatch . . . to move vulnerable inmates out of [this] institution[]." *Id.* Accordingly, on April 5, 2020, the defendant, through counsel, submitted a letter to the warden of FCI Danbury formally requesting transfer to home confinement. *See* Email Attaching Request for Transfer Def.'s Ex. C, ECF No. 62; Letter to Warden, ECF No. 61. On April 9, 2020, the defendant filed another letter with the warden, this time formally seeking compassionate release pursuant to the First Step Act, [18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)](#). *See* Updates Ex. A, ECF No. 63. To date, the defendant has not received a response from the warden.

Separately from the statutory provisions regarding home confinement, the First Step Act allows prisoners to move for compassionate release from prison when "extraordinary and compelling reasons" warrant such release. [18 U.S.C. § 3582\(c\)\(1\)\(A\)\(i\)](#). This statutory provision is the one under which the defendant moves before me now. There are four prerequisites to a court's granting compassionate release under the First Step Act. First, the defendant must have exhausted his administrative rights with the BOP. [§ 3582\(c\)\(1\)\(A\)](#). Second, the court must find that "extraordinary and compelling reasons warrant" release. [§ 3582\(c\)\(1\)\(A\)\(i\)](#). Third, the court must consider the factors set forth in [§ 3553\(a\)](#). [§ 3582\(c\)\(1\)\(A\)](#). Fourth, the court must find that release is consistent with the Sentencing Commission's policy statements. [§ 3582\(c\)\(1\)\(A\)\(i\)](#). *4

A prisoner exhausts his administrative rights when the BOP fails to bring a motion for compassionate release on his behalf and he exercises all administrative rights to appeal, 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[.]" [§ 3582\(c\)\(1\)\(A\)](#). In this case, the defendant has not exhausted his administrative rights with the BOP, as he transmitted his requests for release to the warden of FCI Danbury on April 5, 2020 and April 9, 2020—fewer than thirty days ago. *See* Updates Ex. A, ECF No. 63; Def.'s Ex. C, ECF No. 62; Letter to Warden, ECF No. 61.

However, I waive the exhaustion requirement in this case. "Even where [administrative] exhaustion is seemingly mandated by statute or decisional law, the requirement is not absolute." *Washington v. Barr*, [925 F.3d 109, 118](#) (2d Cir. 2019). A court may waive an administrative exhaustion requirement "where [exhaustion] would be futile, . . . where the administrative process would be incapable of granting adequate relief . . . [or] where pursuing agency review would subject [the person seeking relief] to undue prejudice." *Id.* at 118-19 (citing *McCarthy v. Madigan*, [503 U.S. 140, 146-48](#) (1992), *superseded by statute on other grounds as recognized in Booth v. Churner*, [532 U.S. 731, 740](#) (2001)). "[U]ndue delay, if it in fact results in catastrophic health consequences," can justify waiving an administrative exhaustion requirement for any of those three reasons. *Id.* at 120-21.

The COVID-19 outbreak at FCI Danbury, combined with the fact that the defendant is at risk of suffering severe complications if he were to contract COVID-19 because of his hypertension, justifies waiver here. *See* Order at 7-8, *United States v. Zuckerman*, No. 16 *5 Cr. 194 (AT) (S.D.N.Y. Apr. 3, 2020), ECF No. 116; *United States v. Colvin*, No. 3:19cr179 (JBA), [2020 WL 1613943, at *2](#) (D. Conn. Apr. 2, 2020); *United States v. Perez*, No. 17 Cr. 513-3 (AT), [2020 WL 1546422, at *3, *3 n.3](#) (S.D.N.Y. Apr. 1, 2020); Def.'s Ex. A at 1

(acknowledging "significant levels of [COVID-19] infection" at FCI Danbury). The delay that the defendant would experience if he had to wait for thirty days to expire before pursuing a motion for compassionate release in this court would put him at significant risk of suffering catastrophic health consequences. *See, e.g., Perez*, 2020 WL 1546422, at *3. In fact, given the COVID-19 outbreak at FCI Danbury, any delay at all puts the defendant at an increased risk.

Next, I find that extraordinary and compelling reasons warrant the defendant's release from prison. 18 U.S.C. § 3582(c)(1)(A)(i). The Sentencing Commission has issued a Policy Statement that defines "extraordinary and compelling reasons." U.S. Sentencing Guidelines Manual § 1B1.13 (U.S. Sentencing Comm'n 2018) ("USSG"); *see United States v. Ebberts*, No. (S4) 02-CR-1144-3 (VEC), 2020 WL 91399 at *4 (S.D.N.Y. Jan. 8, 2020); *United States v. Bellamy*, No. 15-165(8) (JRT/LIB), 2019 WL 3340699, at *2 (D. Minn. July 25, 2019). While the defendant's hypertension does not place him squarely within any of the Policy Statement's definitions of "extraordinary and compelling reasons," *see* USSG § 1B1.13 cmt. n.1(A)-(D), the defendant asserts that the COVID-19 pandemic, combined with his particular vulnerability to complications from COVID-19 because of his hypertension, constitutes an "extraordinary and compelling reason" for his release. Def.'s Mot. 10-11. The government does not dispute this assertion, and I agree with the defendant that the risk of serious illness or death that he faces in prison constitutes an ⁶ extraordinary and compelling reason militating in favor of his release.²

² District courts have taken various positions regarding the level of deference that they should afford to the Sentencing Commission's Policy Statement in assessing whether extraordinary and compelling reasons for release are present. *See Ebberts*, 2020 WL 91399, at *4 (deeming the Policy Statement "at least partly anachronistic" because it pre-dates the First Step Act but "nonetheless[] helpful in defining a vague standard"); *United States v. Beck*, No. 1:13-CR-186-6, 2019 WL 2716505, at *6 (M.D.N.C. June 28, 2019) (concluding that district court may make "independent assessment" of whether extraordinary and compelling reasons exist); *see also United States v. Young*, No. 2:00-cr-00002-1, 2020 WL 1047815, at *6 (M.D. Tenn. Mar. 4, 2020) ("[T]he district courts themselves have the power to determine what constitute extraordinary and compelling reasons for compassionate release."). -----

The defendant's motion does not specifically speak to the § 3553(a) factors, which I must consider in deciding whether to grant compassionate release. *See* § 3582(c)(1)(A). Under § 3553(a), I must consider what is "sufficient, but not greater than necessary, to comply with the purposes of [sentencing]." § 3553(a). In particular, I must 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 sentencing range provided for in the USSG]
- (5) any pertinent [Sentencing Commission policy statement]
- (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.

7 *7 *Id.* In considering these factors, I "should assess whether [they] outweigh the 'extraordinary and compelling reasons' warranting compassionate release[.]" *Ebbers*, 2020 WL 91399, at *7. While I acknowledge that possession of child pornography is a serious offense and that the defendant has already once violated the conditions of a term of supervised release, these considerations do not justify keeping the defendant in prison amidst an outbreak of a potentially deadly virus to which he is particularly vulnerable. Further militating in favor of the defendant's release is the fact that the defendant is less than five months away from the date on which he would be eligible for release to home confinement under normal circumstances. *See* 18 U.S.C. § 3624(c)(2); Def.'s Mot. 3. In addition, the government has not set forth any argument with respect to the § 3553(a) factors.

Finally, I must consider whether release is consistent with the Sentencing Commission's policy statements. *See* § 3582(c)(1)(A)(i). In particular, I must determine that "[t]he defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g)[.]" USSG § 1B1.13(2). The § 3142(g) factors are largely duplicative of those in § 3553(a). *See* § 3142(g). Upon his release from prison, the defendant will quarantine himself at home with his parents; assuming that he complies with that directive—and I have no reason to believe that he would not—he would pose little, if any, risk to the public. *See* Def.'s Mot. 12-13. Further, neither the violation on which the defendant is currently serving his prison sentence nor the conduct
8 involved in the underlying crime involved violence or physical contact with minors. Thus, I find that the *8 defendant does not pose such a danger to the public so as to outweigh the factors militating in favor of his release.

Thus, I grant the defendant's motion for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). It is hereby ordered that:

1. The motion by defendant WILLIAM SAWICZ, Reg. No.75670-053, for compassionate release is granted;
 2. The defendant's prison sentence be and hereby is reduced to time served;
 3. The warden of FCI DANBURY shall forthwith release from custody the person of defendant WILLIAM SAWICZ;
 4. Defendant WILLIAM SAWICZ shall not spend 14 days in quarantine at FCI DANBURY prior to his release, but shall be released immediately upon the institution's receipt of this Order, and shall instead spend 14 days in quarantine at the place he shall reside;
 5. Defendant WILLIAM SAWICZ shall be on supervised release status, with home confinement for a period of 6 months;
 6. For that 6-month period and for 5 years thereafter, defendant WILLIAM SAWICZ shall abide by all the terms and conditions of supervised release that were previously imposed on him and are memorialized in his judgment of conviction. The defendant has consented to the re-imposition of all terms of supervised release that were previously imposed on him. *See* Def.'s Proposed Order 1, ECF No. 62-1. In addition, I find that Additional Supervised Release Term 4, imposed at his initial sentencing proceeding held on April 23, 2009, *see* J. in Criminal Case at 4, May 8,
- 9 *9
- 2009, ECF No. 29, and Additional Supervised Release Term 3, imposed at his August 23, 2016 sentencing on his violation of supervised release, *see* J. in Criminal Case at 4, Aug. 26, 2016, ECF No. 54, are warranted. In addition to the defendant having consented to the re-imposition of the condition, I find that the defendant's interest in child pornography began with and developed from an initial interest in adult pornography. *See* Krueger Evaluation Def.'s Ex. C at 2, May 10, 2016, ECF No. 51; Krueger Evaluation Def.'s Ex. D at 2, Apr. 14, 2008, ECF No. 51. Thus, an adult pornography ban is designed to address a realistic danger of recidivism and is no greater than reasonably necessary to serve the sentencing factors;
7. Upon his release from FCI DANBURY, defendant WILLIAM SAWICZ shall proceed immediately to 29 Somerset Place, Deer Park, NY (the "Residence") where he shall reside during his term of home confinement and supervised release;
 8. Defendant WILLIAM SAWICZ must notify the Probation Department for the Eastern District of New York upon his arrival at the Residence, and is directed to follow the instructions of the assigned probation officer, as well as the conditions of supervised release imposed at the time of his sentence;
 9. For a period of 6 months from the date of his release from prison, defendant WILLIAM SAWICZ shall be under 24-hour home incarceration to be enforced by location monitoring, using specific technology to be determined by the Probation Department. The defendant may only leave the Residence for necessary medical services with advanced notification, and approval if time permits, from the Probation Department. All other leave from the Residence must be submitted

10 *10

through defense counsel for the court's approval;

10. In addition, for the first 14 days of his term of home confinement, defendant WILLIAM SAWICZ shall remain in quarantine at the Residence, and shall be allowed no contact with any other person other than his parents, who live in the Residence, except for medical personnel in case of emergency;

11. The 48-month period of deferral of prosecution in case number 15-cr-443 will begin to run on the date of the defendant's release from FCI DANBURY in the instant case. Upon the defendant's release from FCI DANBURY in the instant case, the government will file a letter in case number 15-cr-443 informing me that the deferral period has begun. *See* Pretrial Diversion Agreement 1, No. 15-cr-443 ECF No. 49-1; Order Approving Pretrial Diversion Agreement, No. 15-cr-443 ECF No. 52; Def.'s Mot. 3 n.5;

12. Upon entry of this Order, defense counsel shall immediately contact Probation Officer Joanmarie Langone and coordinate with her to facilitate enforcement of the defendant's electronic monitoring and other release conditions; and

13. Although the court assumes that the Federal Defenders will notify the BOP of the issuance of this order, the court directs that the United States Attorney's Office for the Eastern District of New York formally notify the BOP so that this order can be put into effect as quickly as possible.

Dated: April 10, 2020

Brooklyn, New York

/s/ _____

Honorable Allyne R. Ross

United States District Judge
