

**UNITED STATES OF AMERICA  
DISTRICT OF MASSACHUSETTS**

**UNITED STATES OF AMERICA )  
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)  
V. ) **No. 14-10082-GAO**  
)  
**JOHN SILVIA, JR. )****

**DEFENDANT’S EMERGENCY MOTION FOR COMPASSIONATE RELEASE  
AND/OR TO MODIFY. SENTENCE PURUSANT TO 18 U.S.C. SECTION 3582  
(c)(1)(A)(i)**

Now comes John Silvia, Jr., through counsel, and respectfully requests this Honorable Court that his sentence be modified and/or reduced pursuant to 18 U.S.C. 3582(c)(1)(A)(i) in light of the local and national COVID-19 pandemic crisis. Mr. Silvia presently is incarcerated at the minimum-security satellite camp at FMC Devens in Ayer, Massachusetts.

In support of this motion, the Petitioner states:

1. Mr. Silvia is two months shy of turning 71 years old, and reports he has been on prescribed blood pressures control medication for over 20 years. Mr. Silvia reports he is still currently prescribed Norvasc during the period of his incarceration for hypertension. Norvasc is a calcium channel blocker usually used to treat hypertension and angina. As a result of both his age and medical profile and status, should Mr. Silvia become infected, he faces a substantial risk of suffering a severe form of the coronavirus disease, or even possible death, and his age group has been classified by the Center for Disease Control (CDC) as being in the highest category for complications and death from the disease (CDC).

2. It is respectfully requested that the Court find that the COVID-19 poses to Mr. Silvia's health amounts to an "extraordinary and compelling" circumstance which warrants transferring Mr. Silvia to home confinement, with supervised release and conditions for the duration and remainder of his sentence, and/or reducing his sentence for "compassionate release" reasons thereby reducing the term of his sentence.

3. On April 26, 2018, Mr. Silvia was sentence to a 57 month term of imprisonment. Mr. Silvia has already served more than 40% of his sentence, and as of April 26, 2020, he will have served 24 months (2 years) of his 57 month sentence. Mr. Silvia’s sentence is expected to be further reduced relative to the First Step Act and with good time credits.

4. Mr. Silvia reports he has maintained an unblemished disciplinary record while incarcerated, and has been classified by the BOP as having minimum risk of recidivism. While incarcerated, Mr. Silvia reports that he has maintained an exemplary status; has been disciplinary incident

free; and while working at Fort Dix, his prior camp facility, and while assigned to work as a "productive activity" on the military base, he was recognized and elevated from a "Grade 4" employee to the highest "Grade 1" employee status, as well as being granted the maximum bonuses allowed for his work performance. Also, as per the provisions of the First Step Act, he was transferred "closer to home" after 18 months, to FMC Devens in Massachusetts, and was afforded the right to have his family transfer him to his new camp facility by way of an approved family "furlough".

5. As the Court is aware, COVID-19 is highly contagious and is spreading at a rapid rate. As of April 9, 2020 at noon, the Commonwealth of Massachusetts has reported 16,790 individuals have tested positive for the virus, resulting in at least 433 deaths. The majority of Bay State residents infected with the virus live in Middlesex, Suffolk, Essex, Norfolk, Worcester and Plymouth counties. FMC Devens is located in the heart of one of those counties. According to the World Health Organization, the populations most at risk of suffering a severe form of the disease include "older people, and those with underlying medical problems. "The CDC similarly has explained that individuals over the age of 65 and people of any age who have serious underlying medical conditions, including heart conditions, hypertension, diabetes, obesity are at higher risk for severe illness or even death from COVID-19". See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>

6. Recently released data demonstrates that the risk to inmates like Mr. Silvia is substantial. The CDC reports that approximately 80% of deaths from COVID-19 in the United States occurred with individuals age 65 or older, and that the fatality rate for individuals aged 65 to 84 could be as high as 11 percent. See <https://www.cdc.gov/nchs/nvss/vsrr/COVID19/index.htm>

7. Additionally, within a recently examined sample of COVID-19 patients in Italy, 76.1 percent of those who died from the disease suffered from hypertension or high blood pressure. See <https://www.businessinsider.com/hypertension-diabetes-conditions-that-make-coronavirus-more-deadly-2020-3#in-italy-761-of-patients-who-died-from-covid-19-had-hypertension-or-high-blood-pressure-1>; This example demonstrates the risk to an inmate like Mr. Silvia who has suffers from hypertension. Someone with Mr. Silvia's age and health profile therefore puts him in a very precarious position if he does contract COVID-19.

8. As one public health expert, Gregg Gonsalves an epidemiology professor at Yale School of Public Health noted in the New Yorker, March 24, 2020. 'Coronavirus Comes to New York Prisons: "If you wanted to set up a situation that would promote rapid transmission of a respiratory virus, you would say prison: it's close quarters, unsanitary, with individuals in frequent contact." In such situations, it is "nearly impossible to provide infection control". See' Other experts describe the possibility of "accelerated transmission and poor health outcomes of patients with COVID-19 in prisons and jails" as "extraordinarily high" due not only to the close quarters in which the inmates reside but also the quality and quantity of available medical care, the fact that hundreds of individuals--from staff to new arrestees--enter and leave detention facilities daily.

9. These dangers are not theoretical. During the COVID-19 outbreak in China, prisons became hotbeds of infection despite stringent control measures, and press reports indicate that

the same has now occurring at FMC Oakdale in Louisiana. The Wall Street Journal article of April 7, 2020, entitled "Virus Puts a Prison Under Siege" extensively discusses the result of this pandemic crisis. "The crisis at Oakdale fore-shadows what has started to play out in other jails and prisons across the country... with more than 175,000 in the Federal system... and with nearly 5,000 inmates in the Federal System are over 65, according to the Bureau of Prisons, putting them at greater risk of becoming severely ill with Covid-19..." It should be noted that Oakdale was not even in a previously identified epicenter and FMC Devens in in the heart of the designated epicenter that stretches from New York now to Boston.

10. The CDC has recommended that high-risk individuals avoid crowds, keep space between themselves and others, and stay at home to avoid exposure to the virus. Despite BOP's best efforts, it is impossible for a prisoner in Mr. Silvia's position to practice such "social distancing" to protect himself. In fact, Mr. Silvia reports that he shares a bunk in a room with at least 100 other inmates. T

11. While the Bureau of Prisons at times, and even Federal Prosecutors have argued that prisoners "might be safer" within the prison confines, such an argument now has been shown to defy any logical reasoning. Mr. Silvia would be safer in his home, shared with only one or two other persons, rather than in a confined prison environment with over 100 person residing therein. Also, Mr. Silvia, because of his age and medical profile is an added risk to the prison staff and other inmates because of his vulnerability to contract the coronavirus. In short, measures being taken by BOP, cannot help but be insufficient. The risk factors of now being held in a small camp environment, creates a serious risk and threat to other inmates as well as to BOP staff members, if the Covid-19 virus comes into the facility, which would then create the "petri dish" death-threatening environment that even U.S. Attorney General Barr has recognized.

12. Pursuant to 18 U.S.C. Section 3582(c)(1)(A)(i), this Court 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 portion of the original term of imprisonment), after considering the factors set forth in section 3551(a) to the extent that they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction.

13. On April 6, 2020, Mr. Silvia reports that he delivered a request to the Warden at FMC Devens for "compassionate release" consideration. However, as noted by the Warden and his staff, under these exigent circumstances, adhering to the 30-day exhaustion of remedies requirement would create a dangerous delay in time. As a result of the exigent circumstances that now exists, it is respectfully requested that the 30 day "exhaustion of administrative remedies period" be waived.

14. The age and pre-existing health conditions which exist here, in combination with the COVID-19 pandemic crisis that exists, it is respectfully stated provide extraordinary and compelling reasons to modify Mr. Silvia's sentence to permit his immediate release to home confinement. Recent cases, because of the New York area outbreak support such a determination. See Basank, 2020 WL 1481503 at \*5 (The spread of COVID-19 "is measured in a matter of a single day--not weeks, months, or years."). As the number of COVID-19 cases has grown, courts have increasingly taken action to protect the health of at-risk inmates and

detainees. See *United States v. Campagna*, 2020 WL 1489828 (S.D.N.Y. Mar 27, 2020) (modifying defendant's sentence to replace his outstanding term of imprisonment with an equal period of home incarceration); *United States v. Perez*, No. 19 Cr. 297 (P AE), Amended Order, Dkt. No. 62 (S.D.N.Y. Mar 19, 2020) (temporarily releasing pre-trial defending from custody during the health crisis); *Coronel v. Deckel*, 2020 WL 1481503, at \*7 (same) and *United States v. Zukerman* (S.J. N.Y April 3, 2020) (modifying defendant's sentence to replace the outstanding term of imprisonment with an equal period of home incarceration).

At the time of the court sentence, incarceration posed little risk to his health to Mr. Silvia. However, now, in light of the unprecedented change in circumstances, Mr. Silvia respectfully requests the Court to exercise its powers to modify Mr. Silvia's sentence, at the very least, that he be immediately released to home confinement to serve the remainder of his sentence in supervised detention at home. Additionally, it is respectfully requested that the Court grant Mr. Silvia's request for "Compassionate Release" pursuant to the provisions of 18 U.S.C. Section 3582 (c)(1)(A)(i).

Respectfully submitted,

JOHN SILVIA, JR.

By his attorney,

/s/ Hank Brennan

Hank Brennan

BBO No.: 634036

20 Park Plaza, Suite 400

Boston, MA 02116

(617) 201-5977

hb@hbjustice.com

Dated: April 11, 2020

#### CERTIFICATE OF SERVICE

I, Hank Brennan, hereby certify that this document was this day filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing ("NEF").

/s/ Hank Brennan

Hank Brennan

April 11, 2020

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AFFIDAVIT OF COUNSEL IN SUPPORT OF EMERGENCY MOTION FOR  
COMPASSIONATE RELEASE AND/OR TO MODIFY. SENTENCE PURUSANT TO 18  
U.S.C. SECTION 3582 (c)(1)(A)(i)

The undersigned affiant, counsel for the defendant, states the following:

1. I am the under-signed counsel in the above entitled matter;
2. I was appointed by the CJA to represent the defendant in this matter at the trial court level relative to the above docket;
3. I was appointed to represent the defendant relative to his appeal in the First Circuit Court of Appeals. Case No. 18-1412.
4. On 3/20/20 the First Circuit affirmed judgment.
5. Undersigned counsel has not been appointed to represent the defendant in this matter and does so pro bono. Undersigned counsel believes the prior notice of appearance is still valid and will file a new notice of appearance upon request.
6. On February 11, 2016, the defendant was convicted on Counts 2-9 (and found not guilty on counts 10-11) of the above docketed case. On February 24, 2016, the defendant filed a motion for a new trial and a motion for judgment of Acquittal.
7. As reflected in Docket Number 325, the Court sentenced the defendant to 57 months imprisonment with 2 years of supervised release.
8. Undersigned counsel has spoken to the defendant and the medical history provided in this motion is derived from conversations with the defendant and from section 89-91 of his PSR.
9. I have read the articles cited in the defendant’s motion.

Signed under the pains and penalties of perjury,

/s/ Hank Brennan  
Hank Brennan