

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA	:	
	:	
v.	:	
	:	Case No.: 16-cr-180 (ESH)
BRYNEE BAYLOR	:	
Defendant.	:	
	:	

**SECOND EMERGENCY MOTION FOR RELEASE FROM CUSTODY
PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)(i)**

Brynee Baylor, by and through undersigned counsel, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), respectfully moves a second time, based on the “extraordinary and compelling reasons” presented by her incurable chronic kidney disease (CKD) and high blood pressure, for compassionate release. Ms. Baylor’s medical records and the independent medical assessment of those records, discussed *infra* and provided to this Court with this motion, not only establish that the Bureau of Prisons (“BOP”) has failed to provide her the necessary treatment for her medical conditions but also that the BOP is simply unequipped and unprepared to provide her the necessary medical care her conditions demand. Moreover, as her records and the medical assessment provided herein also clearly establish that her medical conditions make her especially susceptible to the COVID19 virus and are life-threatening should she contract the virus. Accordingly, this Court should determine that her conditions are extraordinary and compelling reasons, under the statute, and modify her term of imprisonment and impose a special condition that she serve the balance of her sentence on supervised release.

1. On March 23, 2020, Ms. Baylor filed an emergency motion for release from custody, arguing that the Bureau of Prisons (“BOP”) has not provided her with adequate medical

care for her underlying medical conditions, loss of kidney function and chronic high blood pressure. *See* ECF No. 172.

2. On March 27, 2020, this Court denied Ms. Baylor's motion holding that she had not exhausted her administrative remedies under 18 U.S.C. § 3582(c)(1)(A), and that not having done so the Court was without power to modify her sentence. ECF No. 175.

3. The Court further observed that Ms. Baylor had not provided recent medical records to verify her underlying medical conditions. *Id.*

4. With respect to exhausting her administrative remedies, on March 16, 2020, Ms. Baylor wrote to the Warden at FPC Alderson and officially requested that the Warden file a compassionate release motion on her behalf. On April 8, 2020, the Warden issued a letter to Ms. Baylor denying her request for compassionate release. *See* Exhibit A.¹ Accordingly, she has satisfactorily pursued and exhausted her available administrative remedies, as required by 18 U.S.C. § 3582(c)(1)(A).

5. On April 24, 2020, counsel obtained Ms. Baylor's medical records from her FPC Alderson which cover her medical condition and treatment from January 17, 2020, when Ms. Baylor entered Alderson, through April 24. *See* Exhibit B. While this Court found in denying Ms. Baylor's first motion for immediate release that the medical records filed with her motion were outdated (ECF No. 175), those earlier records diagnosed her with focal segmental glomerulosclerosis (FSGS) a chronic kidney disease (CKD), which the Alderson medical records confirm. It is widely recognized that FSGS is a progressive, incurable condition, with ultimate

¹ Exhibits A through D, referenced in this motion, contain Ms. Baylor's medical records and/or discuss her medical records and medical history. In order to protect Ms. Baylor's privacy, a Motion for Leave to File Exhibits A through D under seal has been filed simultaneously with this motion.

treatment options eventually being either continual dialysis or kidney transplant. *See*

<https://www.mayoclinic.org/diseases-conditions/fsgs/symptoms-causes/syc-20354693>.

6. Counsel has also obtained medical records detailing Ms. Baylor's March 6, 2020, visit with a local nephrologist, Dr. Divya Rajan, Beckley Cardiology, Beckley, West Virginia, which again confirm Ms. Baylor's kidney disease. *See Exhibit C*.

7. Counsel then asked Washington, D.C. internist, Jessica Osborn, MD, to review Ms. Baylor's records and Dr. Rajan's diagnosis. In doing so, Dr. Osborn consulted with Washington, D.C. nephrologist, Dr. Gilbert Eisner, MD.² Dr. Osborn disagrees with Dr. Rajan's diagnosis that Ms. Baylor's chronic kidney disease is mild. Importantly, she highlights that Ms. Baylor's kidney function has dropped by approximately 10% in two (2) months. Dr. Osborn further notes that Ms. Baylor has high creatinine levels and abnormally high amounts of protein in the urine, which with her earlier kidney biopsy and ultrasound records, establish Ms. Baylor's loss of kidney function as stage 3, which runs from a moderately to severely decreased kidney function.

8. Dr. Osborn also points to Ms. Baylor's chronically elevated blood pressure readings, which combined with her kidney condition pose a serious risk to Ms. Baylor, even without considering the implications for her should she contract COVID-19. As Dr. Osborn further explains, "following the guidelines for managing her level of high blood pressure with CKD, the increased protein and elevated blood pressure would necessitate weekly appointments until blood pressure is controlled. More intensive blood pressure control has its greatest impact if initiated BEFORE creatinine exceeds 1.2 (in women)." In conclusion, Dr. Osborn finds:

We are very concerned about the rapid decline in Ms. Baylor's kidney function, an approximate 10% drop in only two months, inaccessibility to

² *See Exhibit D for Dr. Osborn's report and her curriculum vitae.*

requisite care, and the failure to control her high blood pressure for several months. Ms. Baylor is more susceptible and at greater risk of stroke and kidney failure which is heightened by the lack of reasonable and proper medical care during this COVID -19 pandemic. Therefore, it is my medical opinion that Ms. Baylor be provided immediate access to appropriate and ongoing medical care and treatment, which based upon the treatment she has received to date is not available in the BOP, without which she may lose her kidneys, have a stroke, or not make it out of the prison alive.

9. The National Kidney Foundation and National Heart Association have conclusively determined that kidney conditions and blood pressure problems to be underlying medical conditions that put an individual at higher risk for severe illness if one were to contract COVID-19.³

BACKGROUND

Congress first enacted 18 U.S.C. § 3582(c)(1) as part of the Comprehensive Crime Control Act of 1984 to serve as a “safety valve” for judges to assess whether a sentence reduction was warranted by factors that previously would have been addressed through the abolished parole system. S. Rep. No. 98-225, at 121 (1983). “This legislative history demonstrates that Congress, in passing the Comprehensive Crime Control Act of 1984, intended to give district courts an equitable power to employ on an individualized basis to correct sentences when ‘extraordinary and compelling reasons’ indicate that the sentence initially imposed on an individual no longer served legislative objectives.” *United States v. Millan*, No. 91-CR-685 (LAP), 2020 WL 1674058, at * 5 (S.D.N.Y. Apr. 6, 2020).

The compassionate release statute empowered courts to reduce a defendant’s sentence whenever “extraordinary and compelling reasons warrant such a reduction.” 18 U.S.C. §

³ See (1) <https://www.kidney.org/coronavirus/kidney-disease-covid-19#does-kidney-disease-put-me-higher-risk>; (2) <https://www.heart.org/en/coronavirus/coronavirus-covid-19-resources/keeping-a-lid-on-blood-pressure-during-the-coronavirus-crisis>

3582(c)(1)(A)(i). Congress delegated to the U.S. Sentencing Commission the responsibility of defining what were “extraordinary and compelling reasons.” *See* 28 U.S.C. § 994(t) (“The Commission . . . shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples.”). However, it was not until 2007, more than two decades after the statute was enacted, that the Commission responded. It issued a guideline stating that “extraordinary and compelling reasons” include medical conditions, age, family circumstances, and “other reasons.” U.S.S.G. § 1B1.13, app. n.1(A)-(D).

Relevant to Ms. Baylor’s request for compassionate release, Application Note 1(A)(ii) to Guidelines Section 1B1.13 states extraordinary and compelling reasons include, when

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.

U.S.S.G. § 1B1.13 app. n. 1(A)(ii).

As originally enacted, the statute left sole discretion for filing compassionate release motions with the Director of the BOP, who adopted a program statement governing compassionate release that in many ways narrowed the criteria established by the Commission. *See* BOP Program Statement 5050.49. During the span of more than three decades, the BOP rarely filed motions on behalf of inmates who met the eligibility criteria. The Office of the Inspector General for the Department of Justice concluded in 2013 that “[t]he BOP does not properly manage the compassionate release program, resulting in inmates who may be eligible candidates for release not being considered.” Dep’t of Justice, Office of the Inspector General,

The Federal Bureau of Prisons' Compassionate Release Program (April 2013), at 11, available at <https://oig.justice.gov/reports/2013/e1306.pdf>; *see also* Dep't of Justice, Office of the Inspector General, *The Impact of an Aging Inmate Population on the Federal Bureau of Prisons* (May 2015), at 51, available at <https://oig.justice.gov/reports/2015/e1505.pdf#page=1> (“Although the BOP has revised its compassionate release policy to expand consideration for early release to aging inmates, which could help mitigate the effects of a growing aging inmate population, few aging inmates have been released under it.”); U.S.S.G. § 1B1.13, app. n.4 (admonishing BOP for its past failure to pursue relief on behalf of eligible inmates). Heeding this criticism, Congress acted.

The title of Section 603(b) of the First Step Act—“Increasing the Use and Transparency of Compassionate Release”—leaves no doubt as to Congress’ intent in modifying 18 U.S.C. § 3582(c)(1)(A). Through the First Step Act, enacted December 21, 2018, Congress sought to resuscitate compassionate release by, *inter alia*, allowing defendants to directly petition courts for relief, rather than leaving that power solely in the hands of the BOP. *See* 18 U.S.C. § 3582(c)(1)(A). “[U]nder the amended statute, a court may conduct such a review also ‘upon motion of the defendant,’ if the defendant has exhausted all administrative remedies to appeal the BOP’s failure to bring a motion, or if 30 days has lapsed ‘from the receipt of such a request by the warden of the defendant’s facility,’ whichever is earlier.” *United States v. Decator*, No. CCB-95-0202, 2020 WL 1676219 (D. Md. Apr. 6, 2020) (quoting 18 U.S.C. § 3582(c)(1)(A)(i); Pub. L. 115-391, Title VI, § 603(b), Dec. 21, 2018, 132 Stat. 5239), *appealed by the gov’t*. In other words, “a prisoner must exhaust the administrative appeal process, or wait 30 days, before his claim may be considered” by the court. *United States v. Underwood*, No. TDC-18-0201, 2020 WL 1820092, at *2 (D. Md. Apr. 10, 2020) (citing cases).

ARGUMENT

District Court judges around the country have found that a defendant's vulnerability to COVID-19 constitutes "extraordinary and compelling reasons" for relief. As noted, Ms. Baylor's underlying medical conditions make her especially vulnerable to COVID-19, constituting "extraordinary and compelling reasons" for relief. Ms. Baylor's release does not pose a danger to the community, and a balancing of the factors under 18 U.S.C. § 3553(a) with the risks to the client posed by COVID-19 warrants relief.

A. This Court Has Authority to Determine that Ms. Baylor's Vulnerability to COVID-19 Constitutes an "Extraordinary and Compelling Reason" for a Sentence Reduction.

In granting motions filed under Section 404 of the First Step Act and reducing the defendants' sentences to time served, Maryland United States District Court Judges Bennett, Blake, and Bredar have noted the threat COVID-19 poses to those incarcerated in BOP facilities. *See, e.g., United States v. Dennis*, No. RDB-08-012, ECF No. 228 (D. Md. May 1, 2020) ("[T]his Court cannot ignore the grave health risks posed by the COVID-19 Pandemic to those serving prison sentences."); *United States v. Glover*, No. JKB-08-0382, ECF No. 279 (D. Md. Apr. 13, 2020) (same); *United States v. Collins*, No. CCB-10-0336, ECF No. 1038 (D. Md. Mar. 30, 2020) (same).

Similarly, judges in federal district courts throughout the United States have recognized that, at least for certain defendants, COVID-19 presents "extraordinary and compelling reasons" warranting a reduction in sentence under the compassionate release statute. A non-exhaustive list includes:

- *United States v. Hansen*, No. 17-cr-50062, 2020 WL 2219068 (N.D. Ill. May 7, 2020) ("[T]he Court cannot discount the risk to Hansen if he contracts coronavirus, as reliable information places him in a higher-risk category. Specifically, the presentence report documents that he suffers from diabetes, hypertension, high cholesterol, kidney disease,

and chronic obstructive pulmonary disease, all of which are confirmed risk factors for serious illness if one contracts coronavirus.”)

- *United States v. Amarrah*, No. 17-20464, 2020 WL 2220008 (E.D. Mich. May 7, 2020) (shortening 60-month sentence after only 21 months because Amarrah’s “Type II diabetes, hypertensive heart disease, cardiac arrhythmia, obstructive sleep apnea, and asthma” put him a substantial risk should he contract COVID-19 even though facility had no reported cases);
- *United States v. Howard*, No. 4:15-cr-00018-BR, 2020 WL 2200855 (E.D.N.C. May 6, 2020) (finding 52-year-old with “chronic obstructive pulmonary disease (‘COPD’), Type II diabetes, obesity, Stage 3 kidney disease, edema, open wounds on his legs, and a diaphragmatic hernia” demonstrated extraordinary and compelling circumstances due to COVID-19 even though his conditions neither constituted terminal illness nor prevented him from engaging in most of his daily activities without assistance);
- *Casey v. United States*, No. 4:18-cr-4, 2020 WL 2297184, at *3 (E.D. Va. May 6, 2020)(“The Court finds that Petitioner has set forth extraordinary and compelling reasons to modify his sentence because of the great risk that COVID-19 poses to a person of his age with underlying health conditions.”);
- *United States v. Quintero*, No. 08-cr-6007L, 2020 WL 2175171 (W.D.N.Y. May 6, 2020) (granting compassionate release to man who “suffers from diabetes, a compromised immune system, obesity, and hypertension,” “which make him more susceptible than another to contract the virus.”);
- *United States v. Reid*, No. 17-cr-00175-CRB-2, 2020 WL 2128855 (N.D. Cal. May 5, 2020) (granting compassionate release based on risks COVID-19 presents to individual with hypertension, high cholesterol, and Valley Fever, which causes lung infection and can result in acute pneumonia);
- *United States v. Pabon*, No. 17-165-1, 2020 WL 2112265, at *1 (D Mass. May 4, 2020) (holding that for the 54-year-old defendant who suffers from “diabetes, hypertension, hemophilia, atopic dermatitis, gastroesophageal reflux disease, peptic ulcer, and diverticulitis” “nothing could be more extraordinary and compelling than this pandemic”);
- *United States v. Echevarria*, No. 3:17-cr-44 (MPS), 2020 WL 2113604 (D Conn. May 4, 2020) (finding 49-year-old with pre-existing respiratory condition—a history of bronchial asthma—combined with the increased risk of COVID-19 in prisons had demonstrated extraordinary and compelling reasons for relief);
- *United States v. Early*, No. 09 CR 282, 2020 WL 2112371, at *2 (N.D. Ill. May 4, 2020) (“the Court cannot discount the risk to Mr. Early if he contracts coronavirus, as reliable information places him in a higher-risk category [62, diabetes and hypertension]. This, in

the Court’s view, qualifies as an extraordinary reason warranting consideration of a reduction of Mr. Early’s sentence.”);

- *United States v. Ardila*, No. 3:03-cr-264 (SRU), 2020 WL 2097736, at *2 (D Conn. May 1, 2020) (finding 71-year-old’s medical conditions (diabetes, cardiovascular disease, hypertension, asthma, and obesity) and “current conditions of confinement constitute extraordinary and compelling reasons to reduce his sentence”);
- *United States v. Soto*, No. 1:18-cr-10086-IT, 2020 WL 2104787 (D. Mass. May 1, 2020) (finding inmate with hypertension at facility with COVID-19 cases located in New York had shown extraordinary and compelling reasons for relief);
- *United States v. Norris*, No. 7:19-cr-36-BO-2, 2020 WL 2110640 (E.D.N.C. Apr. 30, 2020) (finding defendant had demonstrated extraordinary and compelling circumstances for relief because he “suffers from various severe ailments,” including a life-threatening disease, kidney failure requiring dialysis three times a week, and recurrent bouts of pneumonia, “that cumulatively make his continued confinement especially dangerous in light of COVID-19.”)
- *United States v. Robinson*, No. 18-cr-00597-RS-1, __ F. Supp.3d __, 2020 WL 1982872 (N.D. Calif. Apr. 27, 2020) (granting compassionate release to prisoner at FCI Lompoc who suffers from severe psoriasis for which he takes immunosuppressant medication);
- *United States v. Coles*, No. 00-cr-20051, 2020 WL 1976296 (C.D. Ill. Apr. 24, 2020)(granting compassionate release to inmate who had served 19 years of 24-year sentence based on his vulnerability to COVID-19 because of hypertension, prostate issues, bladder issues, and a dental infection and because he is prediabetic);
- *United States v. Gorai*, No. 2:18-CR-220-JCM (CWH), 2020 WL 1975372 (D. Nev. Apr. 24, 2020) (granting compassionate release in light of COVID-19 to inmate who suffers from asthma);
- *United States v. Joling*, No. 11-cr-60131-AA, 2020 WL 1903280 (D. Ore. Apr. 17, 2020) (granting compassionate release to inmate at Butner in light of COVID-19 and his underlying conditions, including “hypertension, atherosclerosis, a history of transient ischemic attacks, dyslipidemia, obesity, history of left lower extremity fracture” and diagnosis of “prostatic adenocarcinoma”);
- *United States v. Samy*, Case No. 16-20610-1, 2020 WL 1888842 (E.D. Mich. Apr. 16, 2020) (granting compassionate release because “Samy squarely fits the definition of an individual who has a higher risk of dying or falling severely ill from COVID-19” because of her age and underlying medical conditions, including a serious heart condition, diabetes and asthma);
- *United States v. Smith*, No. 12 Cr. 133 (JFK), 2020 WL 1849748 (S.D.N.Y. Apr. 13, 2020) (granting immediate release for individual with asthma, high cholesterol, blood

clots, a thyroid condition, and suspected multiple myeloma in light of presence of COVID-19 at place of imprisonment);

- *United States v. Tran*, No. 08-0197-DOC, ECF No. 402 (C.D. Calif. Apr. 10, 2020) (finding defendant’s asthma given the outbreak at FCI Oakdale “presents an extraordinary and compelling reason for compassionate release”);
- *United States v. Burrill*, No. 17-cr-0491-RS-1, ECF No. 308 (N.D. Calif. Apr. 10, 2020) (granting compassionate release because defendant, 75, “suffers from asthma, high blood pressure, high cholesterol, diabetes, diverticulosis, blood clots, hearing loss, glaucoma, cataracts, and lower back nerve pain,” placing him at a “heightened risk of becoming severely ill from COVID-19”);
- *United States v. Rodriguez*, No. 2:03-cr-00271-AB-1, 2020 WL 1627331, at *7 (E.D. Pa. Apr. 10, 2020) (“Mr. Rodriguez’s circumstances—particularly the outbreak of COVID-19 and his underlying medical conditions that place him at a high risk should he contract the disease—present ‘extraordinary and compelling reasons’ to reduce his sentence.”);
- *United States v. Miller*, No. 16-cr-20222-1, 2020 WL 1814084, at *4 (E.D. Mich. Apr. 9, 2020) (“Miller squarely fits the definition of an individual who has a higher risk of falling severely ill from COVID-19. . . . Therefore, the Court finds that extraordinary and compelling reasons exist for his immediate compassionate release.”);
- *United States v. Zukerman*, No. 16 Cr. 194 (AT), 2020 WL 1659880, at *5 (S.D.N.Y. Apr. 3, 2020) (“The Court also finds that Zukerman has set forth ‘extraordinary and compelling reasons’ to modify his sentence, 18 U.S.C. § 3582(c)(1)(A)(i), because of the great risk that COVID-19 poses to an elderly person with underlying health problems.”);
- *United States v. Colvin*, No. 3:19-cr-179 (JBA), 2020 WL 1613943, at *4 (D. Conn. Apr. 2, 2020) (citing COVID-19 and defendant’s medical conditions and “conclud[ing] that Defendant has demonstrated extraordinary and compelling reasons justifying her immediate release”);
- *United States v. Edwards*, No. 6:17-cr-00003, 2020 WL 1650406, at *5 (W.D. Va. Apr. 2, 2020) (concluding defendant “has demonstrated an extraordinary and compelling reason for his compassionate release” in light of COVID-19 and preexisting health conditions);
- *United States v. Perez*, No. 17-cr-0513-AT, ECF No. 98 (S.D.N.Y. Apr. 1, 2020) (finding defendant’s pre-existing medical condition combined with the risk of contracting COVID-19 at MDC Brooklyn constitutes “extraordinary and compelling reasons” to reduce his sentence to time served);
- *United States v. Gonzalez*, No. 2:18-CR-0232-TOR-15, 2020 WL 1536155, at *3 (E.D. Wash. Mar. 31, 2020) (granting compassionate release because COVID-19 and defendant’s medical conditions constitute “extraordinary and compelling reasons”);

- *United States v. Muniz*, No. 4:09-CR-0199-1, 2020 WL 1540325, at *2 (S.D. Tex. Mar. 30, 2020) (“Because Defendant is at high-risk for severe illness from COVID-19 and because inmates in detention facilities are particularly vulnerable to infection, the Court finds that Defendant has demonstrated an extraordinary and compelling reason for compassionate release.”);
- *United States v. Trent*, No. 16-cr-00178-CRB-1, 2020 WL 1812242, at *2 (N.D. Cal. Apr. 9, 2020) (finding “extraordinary and compelling reasons” based on combination of “COVID-19 pandemic” and defendant’s “medical conditions”);
- *United States v. Hansen*, No. 07-CR-00520(KAM), 2020 WL 1703672, at *8-9 (E.D.N.Y. Apr. 8, 2020) (granting compassionate release in light of “the unique risks posed by the COVID-19 pandemic to prisoners like Mr. Hansen, who is elderly and infirm”).

More directly, in this jurisdiction, on April 20, 2020, Chief Judge Howell, upholding Magistrate Judge Robinson’s early Order to release the defendant in *United States v. Dhavale*, Case No. 19-mj-92 (BAH), ordered the defendant released temporarily pursuant to 18 U.S.C. § 3142(i)(4). Specifically, Chief Judge Howell found that the COVID-19 pandemic amounted to a “compelling reason” under the statute for such release. Importantly, and specifically related to Ms. Baylor’s situation – and consistent with Attorney General Barr’s emergency declaration, Judge Howell rejected the government’s argument that the Court should stand by until such time as an inmate becomes infected before addressing the inmate’s medical conditions.

In each of these cases, district court judges recognized that the court possessed the power to determine what constitutes an “extraordinary and compelling” ground for compassionate release, and granted relief promptly, recognizing that stemming the extraordinary threat posed by COVID-19 is far more important than adherence to what has become a highly inadequate administrative processes that could, in the end, cost an individual his or her life.

In sum, there is no question that Section 603(b) of the First Step Act fundamentally changed the role of courts in the compassionate release process, vesting them with the authority

to determine what constitutes extraordinary and compelling reasons for release. This pandemic, as applied to Ms. Baylor, is an extraordinary and compelling circumstance.

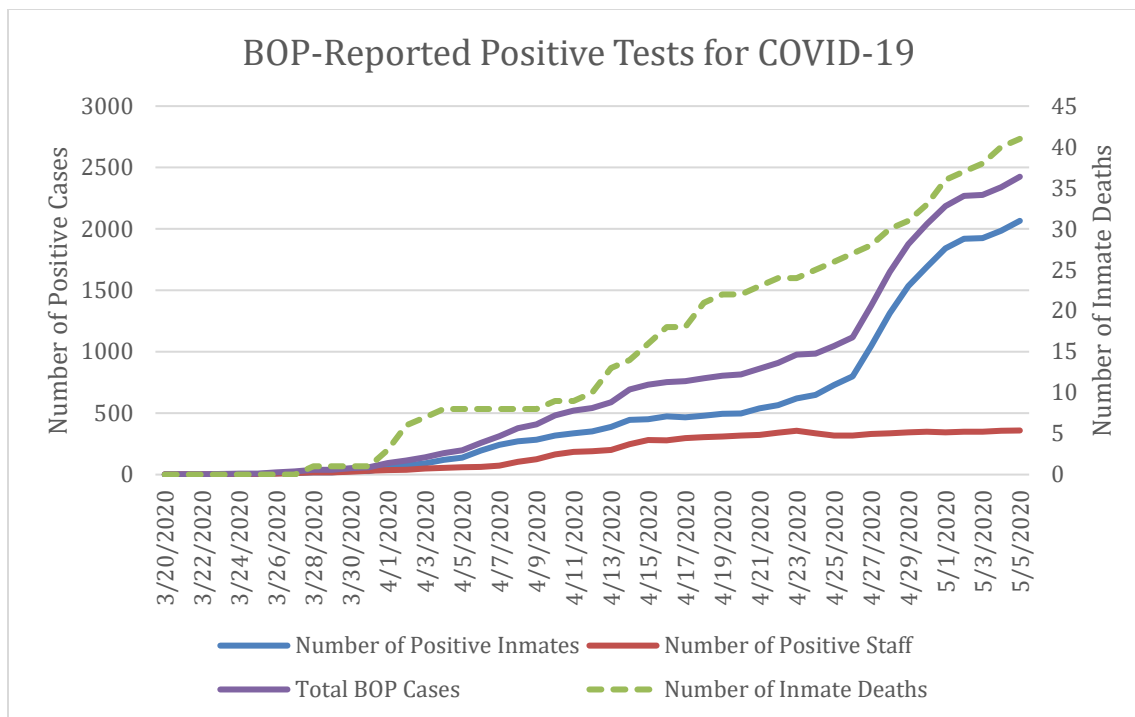
B. Ms. Baylor’s Situation Presents an “Extraordinary and Compelling” Reason Warranting a Reduced Sentence.

The Centers for Disease Control have identified several factors that put individuals at higher risk for severe illness, including hypertension and chronic kidney disease.

<https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

Nephcure Kidney International has issued similar warnings and guidance to individuals suffering from kidney disease. *See* <https://nephcure.org/2020/03/special-update-on-coronavirus-covid-19-for-kidney-disease-patients/>. A recent study published in the Journal of the American Medical Association (JAMA) found that among 5700 patients in New York City who were hospitalized with COVID-19, the most common underlying medical condition was hypertension (56.6 percent). *See* Safiya Richardson et al., *Presenting Characteristics, Comorbidities, and Outcomes Among 5700 Patients Hospitalized with COVID-19 in the New York City Area*, JAMA, available at <https://jamanetwork.com/journals/jama/fullarticle/2765184>.

Additionally, Ms. Baylor’s particular vulnerability to COVID-19 constitutes an extraordinary and compelling reason for relief given the spread of the virus within the Bureau of Prisons. While the Bureau of Prisons has made efforts to reduce the spread of the virus throughout the federal prison system, the rate of infection is far higher within the Bureau of Prisons than within the community at large, and continues to spread at an alarming rate, as the below graph demonstrates.



Amid this rapidly-unfolding crisis, the universally-recommended antidote is simple: reduce the prison population by releasing those whose continued incarceration is not necessary to protect the public so that correctional institutions can better protect those who need to stay incarcerated.⁴ Ms. Baylor is exactly the type of individual deserving of compassionate release: She is at risk of severe illness and, as will be discussed in the next section, her release does not pose a danger to the community and balancing the 3553(a) factors warrants the requested relief.

⁴ For example, on March 27, 2020, more than 400 former DOJ leaders, attorneys, and federal judges sent an open letter to the President, asking that he take immediate action to reduce the population in correctional facilities to prevent the catastrophic spread of COVID-19, in particular by commuting the sentences of elderly and medically vulnerable inmates who have already served a majority of their sentence. See <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Letter-to-Trump-from-DOJ-and-Judges-FINAL.pdf>. The same day, dozens of public health experts made a similar request, asking the President to commute the sentences of elderly inmates, noting they are at the highest risk of dying from the disease and pose the smallest risks to public safety. See <https://thejusticecollaborative.com/wp-content/uploads/2020/03/Public-Health-Expert-Letter-to-Trump.pdf>.

C. The Relevant Sentencing Factors Under 18 U.S.C. § 3553(a) Warrant Modifying Ms. Baylor’s Sentence to Allow Her to Serve the Remainder of Her Term on Supervised Release.

Under the compassionate release statute, when a defendant establishes the existence of extraordinary and compelling circumstances justifying relief, courts must consider the relevant sentencing factors of 18 U.S.C. § 3553(a) to determine whether a sentencing reduction or modification is warranted. 18 U.S.C. § 3582(c)(1)(A)(i). In this case, Ms. Baylor’s underlying health conditions and the unique danger she faces of contracting COVID-19 and becoming severely ill, when combined with the other Section 3553(a) sentencing factors, clearly warrant relief.

With respect to § 3553(a) factors, as this Court stated in its Order denying her emergency motion, Ms. Baylor “would not be a danger to her community if released since she is a non-violent offender.” ECF 175. While Ms. Baylor’s offense conduct was certainly serious, it involved neither weapons nor allegations of violence. Furthermore, as United States District Judge Chuang noted in his recent compassionate release decision, being incarcerated during this outbreak “sufficiently increased the severity of the sentence beyond what was originally anticipated.” *Mel*, 2020 WL 2041674, at *3.

Additionally, Ms. Baylor has been a model inmate during her incarceration. The United States Probation Office has previously conducted a home visit to her permanent residence should she be released to supervised release. *See* PSR ¶ 31 [ECF No. 142]. She has a full-time job awaiting her should she be released.

Finally, in this case, like those cited above, a modification of Ms. Baylor’s sentence to supervised release would not diminish the seriousness of her offense nor, with a self-quarantine period of fourteen (14) days following her release, place the public in any danger. Accordingly, the extraordinary and compelling circumstances presented by the uncontrolled spread of

COVID-19—compounded by the heightened risks faced by Ms. Baylor, whose ability to engage in basic self-protective measures is restricted—warrant relief, which would still be “sufficient, but not greater than necessary” to satisfy the goals of sentencing under 18 U.S.C. § 3553(a).

WHEREFORE, for the reasons stated above, this Court should now intervene to protect the health and safety of Ms. Baylor by reducing her custodial sentence to time served with a period of supervised release with whatever conditions this Court deems necessary, for a period not to exceed the unserved portion of her sentence. *See* 18 U.S.C. § 3582(c)(1)(A).

Respectfully submitted,

_____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Defendant’s Second Emergency Motion has been served, via CM/ECF, upon the parties in this matter on this 19th day of May, 2020.

_____/s/_____
David Benowitz