

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
)
 Plaintiff,)
)
 v.) 12 CR 409¹
) Hon. Ronald A. Guzman
)
 ERIC BLOOM,)
)
)
 Defendant.)
)

**DEFENDANT ERIC BLOOM'S
EMERGENCY MOTION FOR COMPASSIONATE RELEASE**

¹ Also being filed in Case No. 20-cv-01792 pursuant to the Court's Fourth Amended General Order 20-0012 dated May 26, 2020.

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Defendant, **ERIC BLOOM** (hereinafter “**Mr. Bloom**”), by and through his attorneys, **BLEGEN & GARVEY**, respectfully moves the Court, pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) and 18 U.S.C. § 3553(a), for an order granting Compassionate Release. Defendant makes this request for a reduction in sentencing based on the circumstances which satisfy the “extraordinary and compelling reasons” standard under 18 U.S.C. § 3582(c)(1)(A)(i), as elaborated by the Sentencing Commission in U.S.S.G. § 1B1.13: Mr. Bloom is 55 years old and has been suffering from syncope (fainting) and presyncope (dizziness, feeling of imminent fainting). In light of the COVID-19 pandemic and its impact on inmates, Mr. Bloom faces significant and dangerous medical risk if, as he fears, his dizziness and fainting is related to a heart condition. This is particularly so as prior to being incarcerated he was diagnosed with Right Bundle Branch Block – a condition that has been largely ignored by BOP, and may have worsened. Moreover, Mr. Bloom had been told by his facility, FPC Miami, that he was being released to home confinement to his wife’s home in Florida.² A referral was made to the Florida Probation Department, and a visit was conducted by Probation to determine the suitability of his home. Mr. Bloom and his family have now had the rug pulled out from under them, and he has been informed that he will not be released to home confinement. By way of an email from his wife, Mr. Bloom made a request for

² It appears that Unit Manager L. Fahie reviewed Bloom’s Summary Reentry Plan (attached hereto as Exhibit A) with him on April 20, 2020. Bloom’s Summary Reentry Plan states in the Program Plans section that “[t]he inmate arrived on June 22, 2015. He has requested a relocation to the Southern District of Florida. If approved he will be referred for Direct Home Confinement due to the COVID-19 Pandemic.”

compassionate release to the warden of his facility on April 23, 2020. He has received no response to this request.

Mr. Bloom received a sentence of fourteen years imprisonment, and according to the Bureau of Prison's website, is scheduled to be released May 26, 2027.

Defendant respectfully requests that the Court consider the above, as well as the factors articulated below, and grant his motion for compassionate release by reducing his sentence to time served, or in the alternative, that the Court make a judicial recommendation to the BOP that he be permitted to serve the remainder of his sentence on home confinement.

I. Brief Factual Background

Following a jury trial that lasted nearly one month, Mr. Bloom was convicted of eighteen counts of wire fraud and one count of investment advisor fraud, based on his operation of Sentinel Management Group. One count alleging false statements to an employee benefit plan was dismissed mid-trial. Mr. Bloom was sentenced to 168 months of incarceration along with restitution of \$665,968,174. The Seventh Circuit's detailed recitation of the facts can be found at *U.S. v. Bloom*, 846 F.3d 243, 245-251 (7th Cir. 2017)

II. The COVID-19 Crisis in Prisons

A. Prison conditions demonstrate the BOP cannot control Covid-19.

In courts around the country, prosecutors have argued that inmates are safely quarantined in jails and prisons.³ Despite officials' best intent and efforts, prisons are, quite simply, unequipped to control COVID-19.

1. Covid-19 is incredibly infectious.

As this Court is now undoubtedly aware, the virus is wildly infectious. It survives “on surfaces for days.”⁴ But its real danger is described in a single word: aerosol. Unlike many diseases, “the virus can remain viable and infectious in aerosols for hours”—just breathing will spread the virus, no cough or sneeze required.⁵ In a study soon-to-be-published in a Centers for Disease Control journal, researchers confirmed what was already suspected: “SARS-CoV-2 aerosol was detected” in air samples taken in hospital ICUs and general wards up to four meters from infected patients.⁶ And that result is echoed by the National Academy of Sciences. In a letter dated April 1st, Dr. Harvey Fineberg, Chair of the National

³ See, e.g., *United States v. Harthill*, No. 19-cr-217 (E.D. Wa. 2019) (ECF No. 29 at 7:5) (arguing proposed release address is “not shown to be safer . . . than his current housing situation” in the jail).

⁴ Mary Van Beusekom, *U.S. studies offer clues to COVID-19 swift spread, severity*, Cntr. for Infectious Disease Research & Policy (Mar. 18, 2020) (available at: <https://bit.ly/3b9fk70>).

⁵ See *id.*

⁶ Guo Zhen-Dong, et al., *Aerosol and surface distribution of severe acute respiratory syndrome coronavirus 2 in hospital wards, Wuhan, China*, *Emerging Infectious Disease* (July 2020) (available at: <https://bit.ly/2xqvx98>) (peer-reviewed journal published by the Centers for Disease Control). The study found that even in hospitals, the “virus was widely distributed on floors, computer mice, trash cans, and sickbed handrails.” *Id.*

Academy of Medicine’s committee on emerging infectious disease, reported that all available studies were showing “aerosolization of [the] virus from normal breathing.”⁷ He noted how seemingly slight movements can stir up the virus into the air: simply the “doffing of PPE [personal protective equipment], the cleaning of floors, or the movement of staff” may be enough to re-suspend “virus-laden aerosol.”⁸ Only the 1918 Spanish Flu is thought to be more infectious.⁹

Prison officials are powerless to reduce breathing, coughing, sneezing, or movement in the cramped, shared spaces of prisons—the phone blocks, the showers, the legal libraries. Just as it spreads easily in the most controlled environments, hospitals, the virus spreads easily in the least prepared, prisons.

2. The spread in prisons shows prisons cannot control the spread.

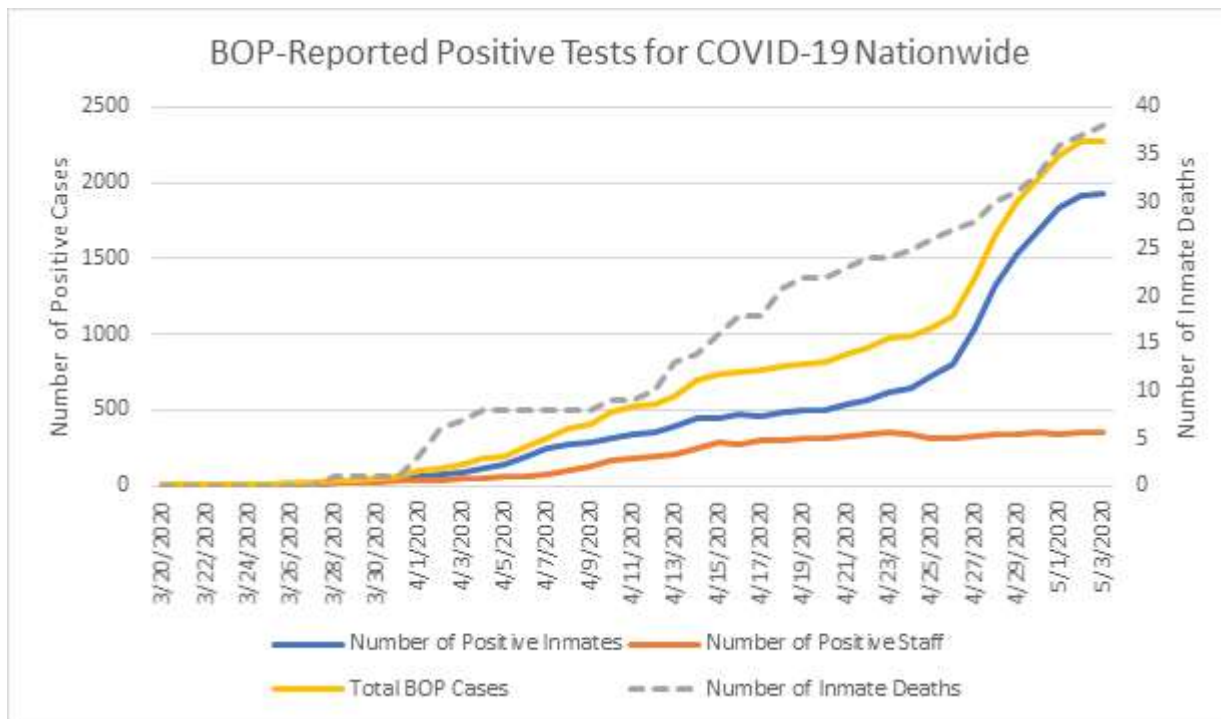
The best evidence that BOP cannot control the spread of coronavirus is that BOP has not controlled the spread of coronavirus. BOP first began issuing medical and screening guidance in January and February, it instituted a nationwide lockdown on March 24th, and yet, BOP’s self-reported numbers establish a rising curve¹⁰:

⁷ Letter from Dr. Harvey Fineberg, Nat’l Acad. of Med., to Kelvin Droegemeier, Ph.D., Office of the President (Apr. 1, 2020) (available at: <https://bit.ly/3b5aUhb>).

⁸ *Id.* at 2.

⁹ Beyrer Decl. ¶ 10 (each carrier is estimated to infect 3 others on average); attached hereto as Exhibit B).

¹⁰ The Federal Defenders of New York, Southern and Eastern, update these statistics daily (available at: <https://federaldefendersny.org/>) (last visited May 25, 2020).



These numbers, as bad as they are, appear to drastically underreport what is actually happening. In at least one facility, BOP has declared all inmates presumptively infected, stopped testing altogether, and is refusing to release infection estimates.¹¹ One BOP employee told news reporters that “the Bureau is playing with these numbers . . . , if they don’t test ‘em and they don’t get confirmed they don’t have to be reported.”¹²

¹¹ Nicholas Chrastil, *Louisiana Federal Prison No Longer Testing Symptomatic Inmates for Coronavirus Due To ‘Sustained Transmission,’* The Lens (Mar. 31, 2020) (available at: <https://bit.ly/34Az7tf>) (“But the spokesperson said that the BOP would not be releasing the number of presumed positive cases, making it impossible to know how many prisoners at the facility have actually contracted the virus.”).

¹² Nicholas Chrastil, *Louisiana Federal Prison No Longer Testing Symptomatic Inmates for Coronavirus Due To ‘Sustained Transmission,’* The Lens (Mar. 31, 2020) (available at: <https://bit.ly/34Az7tf>).

Apart from the questionable numbers, BOP fails to consistently follow its own policies. Staff who should be quarantined after exposure are not.¹³ Prisons are failing to stock basic essentials like soap.¹⁴ The situation is so poor that a union representing 30,000 BOP employees has filed an OSHA complaint because “staff who were screened and ordered home” based on the screening tool shown above were “ordered back to work within 48 hours.”¹⁵

Even in BOP’s most critical facilities, they are powerless to stop the contagion. On April 3, 2020, the Government opposed a release motion for an inmate in FCI Butner, citing screening, visitation lockdown, social distancing, and other BOP pandemic policies.¹⁶ On March 24th, Butner had its first reported case. By April 14th, four inmates were dead. Forty-five confirmed infected. Another 25 staff were infected.¹⁷

¹³ Joseph Neff & Keri Blakinger, *Federal Prisons Agency “Put Staff in Harm’s Way” of Coronavirus*, The Marshall Project (Apr. 3, 2020) (available at: <https://bit.ly/2VkWuTC>).

¹⁴ See Letter from Jerrold Nadler, Chair, House Judiciary Comm., to William Barr, Att. Gen., at 1 (Apr. 10, 2020) (“Reports from inside the Oakdale facility indicate that there is a continuing lack of availability of personal hygiene products and that general sanitation is lacking.”) (citing Sadie Gurman et al., *Coronavirus Puts Prison Under Siege*, Wall Street Journal (Apr. 6, 2020) (available at: <https://on.wsj.com/3a4TD6K>).

¹⁵ See Lia Russell, *Union warns of coronavirus exposure in federal prisons, VA facilities* (Apr. 7, 2020) (available at: <https://bit.ly/3a5r3C9>).

¹⁶ *United States v. Rumley*, 08-cr-5 (W.D. Va., April 3, 2020) (ECF No. 185 at 4–7).

¹⁷ Bur. of Prisons, *Covid-19* (available at: <https://www.bop.gov/coronavirus/>) (last visited: Apr. 14, 2020).

Moreover, that BOP is powerless to prevent the spread of COVID-19 in prisons is further evidenced by the rising number of COVID-19 positive cases in prisons that have up until recently have had zero positive cases. For example, Terra Haute USP did not see its first COVID-19 positive inmate until May 16, 2020, and its COVID-19 positive cases have continued to rise.¹⁸ Therefore, it cannot be said that BOP can prevent COVID-19 from entering prisons, nor can it be said that the BOP officials have control of the situation.

This is no surprise to doctors and epidemiologists. Prisons “have long been known to be associated with high transmission” of infectious diseases like “tuberculosis, multi-drug resistant tuberculosis, MRSA, and viral hepatitis,”¹⁹ says Dr. Chris Beyrer, a medical doctor and epidemiologist at Johns Hopkins currently working on the pandemic response.²⁰ The virus is 5–35 times more deadly than influenza, and one-in-five infected will require medical intervention.²¹ The BOP is simply unable to hospitalize such a large percentage of the inmate population.

¹⁸ Bur. of Prisons, *Covid-19* (available at: <https://www.bop.gov/coronavirus/>) (last visited: Apr. 14, 2020).

¹⁹ Beyrer Decl. ¶ 11.

²⁰ *See also*, Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 *Clinical Infectious Diseases*, 1047, 1047 (2007) (available at: <https://doi.org/10.1086/521910>); Cntrs. for Disease Control & Prevention, *Interim Guidance on Mgmt. of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020) (available at: <https://bit.ly/2VufGhP>) (“There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress.”).

²¹ Beyrer Decl. ¶ 5.

The virus continues to spread, and despite well-intentioned BOP officials, the agency is ill-equipped to confront one of the most infectious and deadly diseases of the last century.

B. Prison Conditions at FCI Miami Prison Camp.

As of this writing, it appears there are no confirmed cases of COVID-19 among either inmates or staff at FCI Miami's main campus or at its satellite camp.²² However, counsel has no information about how much, if any, testing has been done among inmates at the prison. *See United States v. Ginsberg*, No. 14 CR 462, 2020 WL 2494643 at *2 (N.D. Ill. May 14, 2020); *see also United States v. Early*, No. 09 CR 282, 2020 WL 2112371 (N.D. Ill. May 4, 2020). Therefore, "the fact that there are no confirmed cases does not mean that no one in the prison has contracted coronavirus." *Id.* "If and when that happens, the virus is likely to spread more quickly there than in the general population due to, among other things, the difficulty of accomplishing social distancing in a prison environment and the constant influx of people coming and going from outside the prison, including correctional staff." *Id.* Moreover, "although it appears that the vast majority of those who contract coronavirus do not suffer serious illness, one cannot discount the significant risk to [the defendant] if he contracts coronavirus, given his risk factors." *Id.*

Moreover, Mr. Bloom has indicated that for most of the lockdown his dormitory unit did not have access to hot water to shower or to wash their clothes.

²² See <https://www.bop.gov/coronavirus/index.jsp> (last visited May 28, 2020).

Nor did they have access to paper towels. Mr. Bloom has further indicated that for several weeks he did not have access to the laundry room in the afternoon or evenings (in attempts to prevent inmates from smoking in the laundry area). However, Mr. Bloom was one of the few inmates still going to his job every day at UNICOR. Because of this, for approximately two weeks he could not wash his clothes as the laundry facility was only open while Mr. Bloom was at work.

III. Legal Background

A. Compassionate Release Under 18 U.S.C. § 3582(c)(1)(A).

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.

B. The CARES Act and Attorney General Barr's Directive Regarding Home Confinement.

BOP's compassionate release authority under 18 U.S.C. § 3582(c)(1)(A) and the newly enacted home confinement release authority under the CARES Act Section 12003(b)(2) permit the Director of the BOP to lengthen the maximum amount of time that a prisoner may be placed in home confinement if the Attorney General finds that emergency conditions will materially affect the functioning of the BOP. "Previous law dictated that the Director of the BOP had authority to place a prisoner in home confinement for the shorter of 10 percent of a person's term of imprisonment or 6 months, but the CARES Act greatly expand[ed] that authority to allow prisoners to be transferred to home confinement earlier in their sentence."²³ The CARES Act permits the Director of the BOP to lengthen the maximum term of home confinement to whatever he determines appropriate during the pandemic.²⁴ The CARESA Act also permits AG Barr to direct the BOP to use Home Confinement when emergency conditions exist.

On March 26, 2020, Attorney General William Barr issued a directive to the Director of the BOP prioritizing home confinement as appropriate in response to the COVID-19 pandemic to decrease risk to their health. In his directive, Mr. Barr stated: "In assessing which inmates should be granted home confinement pursuant to this Memorandum, you are to consider the totality of circumstances for each

²³ March 26, 2020, Letter to AG Barr and BOP Director Carvajal from FAMM President Kevin Ring (available at: <https://famm.org/wp-content/uploads/Barr-ltr-re-home-confinement-covid.pdf>) (last visited May 25, 2020).

²⁴ *See id.*

individual inmate, the statutory requirements for home confinement, and the following non-exhaustive list of discretionary factors”: (1) the age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines; (2) the security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities; (3) the inmate's conduct in prison; (4) the inmate's score under PATTERN; (5) whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety.²⁵

IV. Bloom has Exhausted his Administrative Remedies

On April 23, 2020, Mr. Bloom submitted, via his wife, a request for compassionate release to the warden of his facility. That request is attached hereto as Exhibit C. Because more than thirty days has now run with no response, Mr. Bloom has satisfied one of the two alternative statutory prerequisites for seeking relief before this Court.²⁶ *United States v. Ginsberg*, No. 14 CR 462, 2020 WL 2494643 at *2 (N.D. Ill. May 14, 2020). Additionally, after Mr. Bloom was told by a jail official that he was on a list to be released to home confinement (only to have

²⁵ See <https://www.justice.gov/file/1262731/download>.

²⁶ Even if FCI Miami approves Mr. Bloom's request for compassionate release prior to this Court's ruling on the issue, Mr. Bloom should not be required to wait for the "several layers of BOP review that remain" to be released. See *Ginsberg*, 2020 WL 249643 at * 2 ("The Court notes that later submissions from the parties, requested by the Court, advise that Ginsberg's request for an early release has been approved by the warden at FCI Miami, but there are evidently several layers of BOP review that remain. Given the circumstances, the Court is unpersuaded that it should wait for this process to play out, and the statute does not require this—rather, it simply require passage of thirty days after the detainee makes a request to the warden.").

that representation taken back), his wife was contacted and interviewed by a Probation Officer from the Southern District of Florida. Ms. Bloom's home was subsequently inspected, and Unit Manager L. Fahie signed Mr. Bloom's Summary Reentry Plan. *See* Exhibit A. However, as of this writing Mr. Bloom has received no official response to his request for compassionate release. He has also not been given any information regarding the original indication that he was on a list to be released.

V. The Factors Listed in AG Barr's Directive to the BOP Entitle Bloom to Compassionate Release.

At the time Mr. Barr issued his April 3, 2020, memo, there were 91 inmate and 50 staff positive cases reported.²⁷ Those numbers have since increased dramatically—at least 4,702 inmates and 589 staff who have tested positive for COVID-19.²⁸ Though those figures, of course, do not accurately reflect the illness and the potential problems associated with deadly virus spread in prison.²⁹ Based on the factors listed in AG Barr's March 26, 2020, directive, Mr. Bloom was entitled

²⁷ Federal Judges Are Relying on Bureau of Prisons COVID-19 Numbers to Make Rulings (available at: <https://www.forbes.com/sites/walterpavlo/2020/05/20/federal-judges-are-relying-on-bureau-of-prisons-covid-19-numbers-to-make-rulings/#6bc1cbf012c7>) (last visited May 25, 2020).

²⁸ Bur. of Prisons, *Covid-19* (available at: <https://www.bop.gov/coronavirus/>) (last visited: May 25, 2020).

²⁹ *See* Federal Judges Are Relying on Bureau of Prisons COVID-19 Numbers to Make Rulings (available at: <https://www.forbes.com/sites/walterpavlo/2020/05/20/federal-judges-are-relying-on-bureau-of-prisons-covid-19-numbers-to-make-rulings/#6bc1cbf012c7>) (last visited May 25, 2020).

to compassionate release at the time his request was submitted to the warden; Mr. Bloom should still be entitled to compassionate release based on these same factors.

A. The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for CDC guidelines.

Mr. Bloom is 55 years old and has been diagnosed with Right Bundle Branch Block—a chronic cardiac condition—which according to the CDC, puts him at enhanced risk of severe illness and/or death should he contract COVID-19.³⁰

B. The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities.

Mr. Bloom is currently incarcerated at FCI Miami's adjacent minimum security satellite camp. Prior to Mr. Bloom's transfer to the minimum security camp, he was housed at FCI Miami, a low security institution. As such, Mr. Bloom should be given priority for home confinement.

C. The inmate's conduct in prison.

Mr. Bloom has been incarcerated since 2015. Since his incarceration, Mr. Bloom's behavior has been impeccable, and Mr. Bloom's BOP disciplinary records indicate he has zero disciplinary history. *See* Exhibit A. Mr. Bloom has also taken great strides to better himself and has made numerous positive contributions the prison. Mr. Bloom's Summary Reentry Plan documents indicate that Mr. Bloom has maintained a job at Camp Industries Warehouse where he receives positive work reports, and has also completed at least 28 educational courses. *See id.*

³⁰ *See* CDC, People Who are at Higher Risk (available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html>).

D. The inmate's score under PATTERN.

While BOP has not provided Mr. Bloom with his most recent PATTERN score, attached hereto as Exhibit D, is Mr. Bloom's self-estimation of his current score. Assuming his calculation is accurate, Mr. Bloom's approximate PATTERN score is -11 (negative 11), which puts Mr. Bloom in the minimum risk category.³¹

E. Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety.

On April 20, 2020, Unit Manager L. Fahie reviewed Mr. Bloom's detailed Summary Reentry Plan with him. *See* Exhibit A. With regard to Mr. Bloom's Release Plan, his Summary Reentry Plan states that "[h]e has requested a relocation to the Southern District of Florida. If approved he will be referred for Direct Home Confinement due to the COVID-19 Pandemic." *Id.* A probation officer from the Southern District of Florida contacted Mr. Bloom's wife for an interview and home evaluation, where the probation officer confirmed that the residence was appropriate for his pending home confinement. Mr. Bloom's wife has explained to counsel that the probation officer indicated that Mr. Bloom's transfer was approved and the requisite paperwork was provided to FCI Miami.

³¹ *See* The First Step Act of 2018: Risk and Needs Assessment System – UPDATE January 2020 (available at: <https://www.bop.gov/inmates/fsa/docs/the-first-step-act-of-2018-risk-and-needs-assessment-system-updated.pdf>).

VI. Consideration of the § 3553(a) Factors Entitle Bloom to Compassionate Release.

The Court begins with the factors set out in 18 U.S.C. § 3553(a). Mr. Bloom is currently serving a 168 month term of imprisonment. He has been incarcerated since his self-surrender on June 22, 2015. Since being incarcerated, Mr. Bloom's behavior has been impeccable. *See* Exhibit A. Mr. Bloom has also maintained a job at Camp Industries Warehouse where he receives positive work reports, and has also completed no less than 28 educational courses. *See id.*

With regard to Mr. Bloom's chronic health issues, Mr. Bloom suffers from a chronic cardiac condition, Right Bundle Branch Block with an anterior vascular block³² ("RBBB"), which according to the CDC, puts him at enhanced risk of severe illness and/or death should he contract COVID-19.³³ RBBB is a form of chronic cardiac arrhythmia. Mr. Bloom also suffers from Paroxysmal Hemicrania, a severe headache condition.³⁴ When Mr. Bloom has a severe headache episode, it causes high blood pressure. To mitigate and control his high blood pressure he had previously been prescribed Verapamil. *See* medical records, attached hereto as Exhibit E.

³² *See* records from Northshore University Healthcare, attached hereto as Exhibit E.

³³ *See* CDC, People Who are at Higher Risk (available at <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html>).

³⁴ While the effects of are painful and have required Bloom's hospitalization in the past, it is unknown, however, if this condition is affected by COVID-19.

Both of Mr. Bloom's medical diagnoses were made prior to his incarceration. In early 2019, well before the coronavirus became an issue, Mr. Bloom began to complain of dizziness, lightheadedness and fainting spells, symptoms consistent with his RBBB. After submitting numerous requests for medical treatment, BOP ignored Mr. Bloom's specific complaints and condition for the past 14 plus months and his general medical condition for the past 5 years.³⁵ The BOP eventually ordered an EKG and was seemingly sufficiently alarmed by the results of the EKG that it then ordered an echocardiogram.³⁶ Both an EKG and echocardiogram are diagnostic tools, however, and not treatments.

As of this writing, and over one year later and despite the fact that Mr. Bloom informed the BOP of his preexisting heart condition³⁷ and despite the fact that his symptoms suggest a deteriorating condition, neither the BOP nor a BOP physician has yet to discuss the results of his echocardiogram with Mr. Bloom. He was simply given the echocardiogram results. No one has advised him of or ordered

³⁵ *See* various "Request to Staff" forms, Exhibit E.

³⁶ The test results from Mr. Bloom's echocardiogram are attached hereto as Exhibit G. Googling the echocardiogram results does not appear to reflect any imminent life-threatening issues. For example, while the finding of "Left Ventricular diastolic function shows grade I (Impaired relaxation)," appears to be a common finding in individuals older than Mr. Bloom, impaired relaxation may also be a sign of underlying dangers. (*See, e.g.,* Why Diastolic Dysfunction Raises Death Risk: Understanding DD and what it means for you (available at: <https://health.clevelandclinic.org/death-risk-for-diastolic-dysfunction/>) (last visited May 28, 2020) Counsel are not doctors, of course, and no one from BOP has even addressed the results with Mr. Bloom. Moreover, his dizziness and fainting spells are ongoing, and the impact of those factors on the echocardiogram results is unknown.

³⁷ *See id.*

any sort of treatment plan,³⁸ and he has still not received the results of his EKG nor has he discussed the results with a doctor.

If BOP could not adequately treat Mr. Bloom before the COVID-19 pandemic, how will it be able to do so once the virus strikes the FCI Miami prison camp?

With regard to his danger to the community, Mr. Bloom is not a danger to anyone in the community and his placement in the community removes him from risk and, by reducing the prison population, reduces the risk to his fellow inmates and BOP staff as well. Mr. Bloom can also self-isolate at home if released for whatever period is deemed appropriate, thus protecting his family and members of the public from potential COVID exposure. During his almost 5 years of incarceration, about 2.5 years at the low security prison and 2.5 years at FCI Miami's prison camp, Mr. Bloom has been an exemplary inmate.

Mr. Bloom has also maintained a strong relationship with his wife and three children, as well as his extended family, and they have remained by his side and source of unwavering support for him. Mr. Bloom frequently talks with his family via telephone, writes letters and emails often, and visits with them in-person, when possible.

For these reasons, counsel submits that the § 3553(a) factors entitle Mr. Bloom to compassionate release.

³⁸ Mr. Bloom's wife has indicated to counsel that Mr. Bloom was referred to a cardiologist; however, Mr. Bloom has not yet been seen by a cardiologist, nor has he received any follow-up information regarding whether an appointment has been scheduled.

VII. Extraordinary and Compelling Reasons Exist to Warranting Bloom's Compassionate Release.

The Court must also consider whether “extraordinary and compelling reasons warrant such a reduction” and is “consistent with applicable policy statements issues by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The relevant policy statement, Section 1B1.13 of the Sentencing Guidelines, explains that a sentence reduction under § 3582(c)(1)(A) may be ordered. The Commentary to Section 1B1.13 also provides certain circumstances constituting “extraordinary and compelling reasons” that warrant a sentence reduction. *Coles*, 2020 WL 1976296 at *6 (citing U.S.S.G. § 1B1.13 cmt. n. 1).

In *United States v. Early*, No. 09-CR-282, 2020 WL 2112371 (N.D. Ill May 4, 2020), the district court found that extraordinary and compelling reasons existed warranting a sentence reduction under § 3582(c)(1)(A):

The first question is whether there are "extraordinary and compelling reasons" warranting a reduction. Mr. Early contends that the coronavirus outbreak poses a great risk to his health and life as long as he remains incarcerated. He is 62 years old. He suffers from several medical conditions, including diabetes and hypertension. And his counsel says that Mr. Early had a heart attack at some point when he was in custody at the Chicago Metropolitan Correctional Center. These conditions place Mr. Early in the category of those who face a higher risk of severe illness if they contract the coronavirus. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extraprecautions/people-at-higher-risk.html> (last visited May 2, 2020). Mr. Early also contends that the conditions at FCI Terre Haute, where he is incarcerated, also put him at greater risk of contracting the virus. At present, there are no confirmed cases of coronavirus among either staff or incarcerated persons at the prison, see <https://www.bop.gov/coronavirus/index.jsp> (last visited May 2, 2020), but the Court has no solid information about how much testing has been done, and it is only fair to say that the fact that there are no confirmed cases does not mean that no one in the prison has contracted the coronavirus. And if and when that happens, it is likely to spread more

quickly than in the general population due to, among other things, the difficulty of accomplishing social distancing in a prison environment and the constant influx of people coming and going from outside the prison, including correctional staff. On the other hand, it appears that the vast majority of those who contract coronavirus do not suffer serious illness, and many remain entirely asymptomatic. That said, the Court cannot discount the risk to Mr. Early if he contracts coronavirus, as reliable information places him in a higher-risk category. This, in the Court's view, qualifies as an extraordinary reason warranting consideration of a reduction of Mr. Early's sentence.

Early, 2020 WL 2112371 at *2.

Just as in *Early*, Mr. Bloom's chronic underlying medical conditions put him in the category of those who face a higher risk of severe illness if they contract the coronavirus. Also, as in *Early*, where the defendant was incarcerated at FCI Terra Haute where there were no known cases of COVID-19 (at least at the time of the ruling), Mr. Bloom is incarcerated at a prison that has no reported COVID-19 positive cases. However, as the district court asserted, "it is only fair to say that the fact that there are no confirmed cases does not mean that no one in the prison has contracted the coronavirus. And if and when that happens, it is likely to spread more quickly than in the general population due to, among other things, the difficulty of accomplishing social distancing in a prison environment and the constant influx of people coming and going from outside the prison, including correctional staff." *Id.* As such, this Court, too, "cannot discount the risk to [Mr. Bloom] if he contracts coronavirus, as reliable information places him in a higher-risk category." This, the district court found, "qualifies as an extraordinary reason warranting consideration of a reduction." *Id.* See also *Ginsberg*, 2020 WL 2494643 at *2 (the district court found that extraordinary reasons existed warranting a

consideration of a reduction of his sentence even though “there are no confirmed cases does not mean that no one in the prison has contracted coronavirus. If and when that happens, the virus is likely to spread more quickly there than in the general population due to, among other things, the difficulty of accomplishing social distancing in a prison environment and the constant influx of people coming and going from outside the prison, including correctional staff...And although it appears that the vast majority of those who contract coronavirus do not suffer serious illness, one cannot discount the significant risk to [the defendant] if he contracts coronavirus, given his risk factors” where the defendant, also incarcerated at FCI Miami, cited the “coronavirus outbreak and his age and medical condition, which he contends place him at a significantly greater risk of severe injury if he contracts the virus.”) Therefore, this Court should also find that extraordinary and compelling reasons exist warranting consideration of a reduction of Mr. Bloom’s sentence.³⁹

VIII. Recent Northern District of Illinois Precedent Supports Granting Bloom’s Motion for Compassionate Release.

A. Bloom’s Medical Issues are Not Well Managed at FCI Miami.

Courts in this district have held that where a defendant’s underlying medical condition is well-managed by BOP, release is likely inappropriate. *See United States v. Saultanali*, 14-CR-00229, Dkt. 414 (“The COVID-19 pandemic undoubtedly

³⁹ The district court in *Early* also concluded that the defendant’s sentence reduction was consistent with applicable policy statements issued by the Sentencing Commission because “[t]he policy statements issued by the Sentencing Commission even before the passage of the First Step Act included an open-ended provision broad enough to cover the circumstances argued by Mr. Early.” *Id.* at *3 (citing U.S.S.G. § 1B1.13, app. note 1(D); *United States v. Reyes*, No. 04 CR 970, 2020 WL 1663129, at *2 (N.D. Ill. Apr. 3, 2020) (Leinenweber, J.)). Counsel submit this Court should, too, find.

presents an extraordinary circumstance. And [defendant's] age and history of heart disease, type 2 diabetes, and chronic bronchitis put him in the category of people at higher risk for serious illness. But [defendant] does not claim that his conditions are not well-managed at FCI Seagoville.”); *United States v. Vazquez*, 20-CV-1792, Dkt. 947 (defendant's motion for release pending sentencing on the basis of COVID-19 was denied where “[w]hatever the circumstances may be at BOP facilities across the nation, the medical records submitted by the government satisfy the court that [the defendant] himself is in no current distress or danger **and is receiving what appears to be effective care** at MCC.”) (emphasis added); *United States v. Brannon*, 20-CV-1792, Dkt. 948 (defendant's request for release was denied where a “[r]eview of his medical records satisfies the court that [the defendant's] **asthma condition is well-controlled and that he is in no need of medical treatment that is not being provided** within the MCC.”) (emphasis added).

Mr. Bloom's underlying cardiac condition has not been well-managed at FCI Miami. In a May 5, 2020, cop-out submitted to the warden at FCI Miami, Mr. Bloom again asked for medical help:

I self-surrendered to the low on June 22, 2015 and was moved to the camp approximately 2 years and 4 months later, in November, 2017. Other than a 5 minute intake with Dr. Alarcon sometime within 2 weeks of my entering prison, I have never seen him in the almost 5 years I have thus far served of my sentence. While at the low, I received one or 2 blood tests and several PPD tests but was otherwise completely ignored by everyone at medical.

After moving to the camp and still not having heard from medical for several more months, I put in a cop-out for a physical exam, something I was told I am supposed to have every year since I am over 50 but something I have never had during the 5 years I've been here, by

attending sick call on May 4, 2018 and filling out the form. To this date, almost 2 years after that first cop-out, I have still never received a physical. I reiterated my request on May 14, 2018, August 13, 2018 and January 31, 2019 and I have not received a reply, let alone an appointment, for any of those requests.

On February 21, 2019, I sent yet another request, this time to the clinical director mailbox, requesting a physical and also complaining of dizziness and fainting spells. February 21, 2019 is over one year and two months ago and this problem remains outstanding.

On May 17, 2019, I sent an email to the camp administrator's mailbox regarding all of this and on May 21, 2019, I had another episode which resulted in my blacking out and falling from the ladder of my bunk so I went to sick call on May 22 and sent a follow up email to the camp administrator. Nobody has replied to any of these emails. I went to sick call again on May 29 and the nurse did an EKG while I was at sick call and told me he would pass the information on to the doctor but I received no response.

I've sent additional emails and cop-outs to medical about the dizziness and fainting spells including a recitation of the entire episode to the clinical director on July 23, 2019.

I sent more emails, none of which were responded to and finally, in December, 2019, I was scheduled for an EKG. A few weeks later, blood was drawn and evidently, the EKG results were alarming as Dr. Alarcon, while still not seeing, speaking or replying to me, ordered an echocardiogram. The echocardiogram was performed sometime in late February, 2020, a full year after my first complaint of symptoms. I have requested the results of the EKG, echocardiogram and blood tests, in fact, I amended my request to medical records to include my entire file but have not received any records as of this writing nor have I heard anything at all from anyone at medical regarding a diagnosis or treatment plan despite further emails to medical requesting same.

I asked my wife to send in portions of my medical records from my outside healthcare provider and I gave those records to Ms. Fahie in early April, 2020 and copied you on that email in my email to you of April 8, 2020. As those records show, I have a condition called RBBB (right branch bundle blockage) which is a form of cardio arrhythmia or, in plain English, a chronic heart condition, and the symptoms I've been complaining of for over a year now are consistent with that problem which means that my condition is likely deteriorating.

Exhibit E, p. 3. *See also* Exhibit E, pp. 3-30.

Not only has Mr. Bloom received inadequate medical care since the COVID-19 pandemic, but his medical issues have been consistently ignored, despite his persistent requests for medical care (even after his May 21, 2019, episode, where he blacked out and fell from the ladder of his bunk).

B. Bloom's Concerns are Not Simply Generalized Concerns of Possible Exposure to COVID-19.

Mr. Bloom's concerns are not generalized concerns of possible exposure to COVID-19. As a district court found in *Early*:

[The defendant] contends that the conditions at FCI Terre Haute, where he is incarcerated, also put him at greater risk of contracting the virus. At present, there are no confirmed cases of coronavirus among either staff or incarcerated persons at the prison, but the Court has no solid information about how much testing has been done, and it is only fair to say that the fact that there are no confirmed cases does not mean that no one in the prison has contracted the coronavirus. And if and when that happens, it is likely to spread more quickly than in the general population due to, among other things, the difficulty of accomplishing social distancing in a prison environment and the constant influx of people coming and going from outside the prison, including correctional staff. On the other hand, it appears that the vast majority of those who contract coronavirus do not suffer serious illness, and many remain entirely asymptomatic. That said, the Court cannot discount the risk to Mr. Early if he contracts coronavirus, as reliable information places him in a higher-risk category.

Early, 2020 WL 2112371 at *2.

Because there are no confirmed cases of coronavirus among either inmates or staff at FCI Miami, it is not fair to simply say that the fact that there are no confirmed cases does not mean that no one in the prison has contracted the coronavirus. Rather, just as the district court in *Early* explained, if and when COVID-19 reaches FCI Miami, it is likely to spread more quickly than in the

general population due to, among other things, the difficulty of accomplishing social distancing in a prison environment and the constant influx of people coming and going from outside the prison, including BOP staff. This, coupled with the fact that Mr. Bloom, specifically, as received insufficient medical care and his repeated request have gone unanswered for *years*, renders his concern highly personal and particular. That is to say, it is highly unlikely, of course, that medical requests from all inmates at FCI Miami and its satellite camp go ignored, or at a minimum, not provided a response or provided medical attention.

IX. District Courts Around the Country Continue to Grant Compassionate Release on the basis of COVID-19.

Courts throughout the country have been granting compassionate release to at-risk inmates due to the COVID-19 pandemic because, as noted in *United States v Esparza*, No. 07-CR-00294-BL W, 2020 WL 1698064, at *2 (D. Idaho, Apr. 7, 2020), "the [BOP's COVID-19 Action Plan] provides no additional protections for high-risk individuals." Moreover, the Esparza court noted that "[e]ven in the best run prisons, officials might find it difficult or impossible to follow the CDC's guidelines for preventing the spread of the virus among inmates and staff: practicing fastidious hygiene and keeping a distance of at least six feet from others." *Id.* (citing Centers for Disease Control and Prevention, What Law Enforcement Personnel Need to Know About Coronavirus Disease 2019, COVID-19).

The FCI Miami camp has been on lockdown since March and as such, all inmates are generally confined to quarters and movement is generally limited.⁴⁰ While that may seem prudent, it is not in practice because at the FCI Miami camp, the open bay dorms with no dividers between double bunks and bunks that are a mere 3 feet apart exacerbate the very problems the *Esparza* court and the CDC warned. Inmates cannot effectively practice social distancing if they are confined to quarters where, between over-crowding and by design, one is within 3 feet of someone else on either side. Likewise, as Mr. Bloom has indicated to counsel, there are approximately 80 inmates share 4 toilets and about 6 showers. In sum, it is impossible to effectively practice social distancing, good hygiene or any of the recommendations of the CDC. The Miami camp is more of a "Petri dish" than AG Barr even realizes.

Moreover, in converting Mr. Bloom's sentence, this Court would not tread new ground. Multiple courts have already highlighted underlying chronic medical conditions as a basis for release. *See, e.g., United States v. Martinez*, No. 1:19-cr-10348-RGS, Dkt. No. 42 (D. Mass. May 11, 2020) (releasing defendant with underlying medical issues); *United States v. Le*, Case No. 1:19-cr-10199, Dkt. No. 99 (D. Mass. May 6, 2020) (releasing defendant in light of COVID-19 even though he

⁴⁰ As previously mentioned, Mr. Bloom has indicated that for most of the lockdown his unit did not have access to hot water to shower or to wash their clothes. Mr. Bloom further indicated that for several weeks he did not have access to the laundry room in the afternoon or evenings (in attempts to prevent inmates from smoking in the laundry area). However, Mr. Bloom was one of the few inmates still going to his job every day at UNICOR. Because of this, for approximately two weeks he could not wash his clothes as the laundry facility was only open while Mr. Bloom was at work.

lacks “physical conditions that put him at high risk” from COVID-19 because “[t]he reduction in the prison population in and of itself” is important to combatting the virus); *United States v. Webb*, Case No. 7:19-cr-45, Dkt. No. 38 (M.D. Ga. May 6, 2020) (releasing defendant post-plea & presentence detained in county jail where it is “unclear” what plans have been implemented to “combat COVID-19”); *United States v. Mason*, Case No. 10-cr-625, Dkt. No. 61 (D. Md. May 4, 2020) (releasing supervisee with “extensive and serious criminal history” from custody because COVID-19 is “so contagious” making it “imperative that D.C. Jail and CTF take all reasonable steps to prevent its spread within the jails”); *United States v. Cordova*, No. 4:19-cr-40025-TSH, Dkt. No. 128 (D. Mass. May 1, 2020) (pretrial release on unsecured bond with condition of EM house arrest, where defendant had no underlying medical conditions, facing 10 year mm, career offender, and had previously agreed to voluntary detention); *United States v. Sturmer*, Case No. 8:18-cr-468, Dkt. No. 298 (D. Md. May 1, 2020) (releasing defendant post-plea & presentence whose conditions of confinement “render[] her helpless to prevent the spread in [her] surroundings of a virus that is now responsible for over sixty thousand deaths in this country”); *United States v. Hernandez*, Case No. 19-cr-158, Dkt. No. 385 (D. Md. Apr. 29, 2020) (releasing defendant with history of committing new crimes while on probation in light of “COVID-19 health risks to the Defendant”); *Cruz-Berrios v. Borrero*, Case No. 3:14-cv-1232-ADC, Dkt. No. 218 (D.P.R. Apr. 28, 2020) (releasing successful habeas petitioner whose case was remanded for a new trial from custody because of his age (64) his “health

complications,” and “the COVID-19 pandemic”); *United States v. Parmer*, No. 18-CR-00267-RS-1, 2020 WL 2213467 (N.D. Cal. Apr. 14, 2020) (granting temporary pretrial release to 55 year old defendant with acute need to prepare for imminent trial); *United States v. Daniels*, No. 19-CR-00709-LHK (NC), 2020 WL 1815342 (N.D. Cal. Apr. 9, 2020) (granting temporary pretrial release to defendant with obesity, previous head wounds, and post-traumatic stress disorder).

X. Conclusion.

For the foregoing reasons, Mr. Bloom respectfully requests that the Court grant his motion for compassionate release by reducing his sentence to time served, or in the alternative, that the Court make a judicial recommendation to the BOP that he be permitted to serve the remainder of his sentence on home confinement is appropriate in this case.

Respectfully submitted:

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