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8
 9 UNITED STATES DISTRICT COURT
 10 SOUTHERN DISTRICT OF CALIFORNIA

11
 12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JESUS ANTONIO MONDACA, SR.,

16 Defendant.

CASE NO.: 89CR0655-DMS

Hon. Dana M. Sabraw

Courtroom: 13A

Date: TBD

Time: TBD

17
 18 **MOTION TO REDUCE SENTENCE
 PURSUANT TO FIRST STEP ACT
 (2018)/18 U.S.C. § 3582(c)(1)(A)(i)**

19 **I. Introduction**

20 The Defendant, Jesus Antonio Mondaca, Sr., through his attorneys pursuant
 21 to General Order 692-A (2019), respectfully moves this Court under the newly
 22 amended 18 U.S.C. § 3582(c)(1)(A)(i) for an order reducing his sentence based on
 23 his poor physical health and difficulty taking care of himself in prison and his age,
 24 health concerns, and the time he has already served, viz., over 365 months. He is
 currently serving a life term at FCI Sheridan.

25 Mr. Mondaca’s circumstances satisfy the “extraordinary and compelling
 26 reasons” standard under § 3582(c)(1)(A)(i), as elaborated by the U.S. Sentencing
 27 Commission in U.S.S.G. § 1B1.13. After considering the applicable factors set out

28 ///

1 in § 3553(a), the Court is respectfully requested to reduce Mr. Mondaca’s sentence
2 from life to **time served** and impose appropriate supervised release.

3 **II. Jurisdiction**

4 On December 21, 2018, the First Step Act of 2018 (“Act”) was signed into
5 law. *See* Pub. L. 115-391, 132 Stat. 5194, 5239 (2018). Among the criminal justice
6 reforms implemented by the Act, Congress amended § 3582(c)(1) to provide the
7 sentencing judge jurisdiction to consider a defense-initiated motion for reduction
8 of sentence based on extraordinary and compelling reasons whenever “the
9 defendant has fully exhausted all administrative rights to appeal a failure of the
10 Bureau of Prisons to bring a motion on the defendant’s behalf,” **or** “the lapse of 30
11 days from the receipt of such a request by the warden of the defendant’s facility,
12 *whichever is earlier.*” § 3582(c)(1)(A) (emphasis added).

13 In this case, Mr. Mondaca submitted his request to the warden asking BOP
14 to file a motion for reduction in **August 19, 2019**. More than 30 days have elapsed
15 since, and he has not received a response to his request. Under the newly amended
16 provisions of § 3582(c)(1)(A), this Court has jurisdiction to entertain the instant
17 motion. In light of Mr. Mondaca’s health condition, age, and circumstances while
18 incarcerated, as described more fully *infra*, there is a demonstrable need for him to
19 proceed on this motion directly with the Court, prior to a belated response from
20 BOP.

21 **III. Authority to Reduce a Sentence Under the Act and § 3582(c)(1)**

22 This Court has discretion to reduce the life without parole term of
23 imprisonment imposed in this case based on § 3582(c)(1). That statute states in
24 pertinent part that the Court may “in any case ... [(A)] reduce the term of
25 imprisonment, after considering the factors set forth in § 3553(a) to the extent they
26 are applicable, if it finds that—[(i)] extraordinary and compelling reasons warrant
27 such a reduction; ... and such a reduction is consistent with applicable policy
28 statements issued by the Sentencing Commission.”

1 Those “applicable policy statements” are codified in § 1B1.13. In 28 U.S.C.
 2 § 994(t), Congress directed the Sentencing Commission to “describe what should
 3 be considered extraordinary and compelling reasons for sentence reduction,
 4 including criteria to be applied and a list of specific examples.” As relevant here,
 5 the examples of “extraordinary and compelling reasons” cited in § 1B1.13 cmt. n.1
 6 pertaining to this case include:

- 7 • Mr. Mondaca is “experiencing deteriorating physical or mental health
 8 because of the aging process that substantially diminishes” his ability
 9 to care for himself “within the environment of a correctional facility”
 10 and which is irreversible [§ 1B1.13 cmt. n. 1(A)(ii)(III)];
- 11 • he is “at least 65 years old ... experiencing a serious deterioration in
 12 physical and mental health because of the aging process and ... has
 13 served at least 10 years” of his custodial sentence [§ 1B1.13 cmt.
 14 n.1(B)]; and
- 15 • he satisfies other conditions for extraordinary and compelling reasons
 16 under BOP policies [§ 1B1.10 cmt. n.1(D)].

17 The Commission’s standards parallel, but differ from, the criteria set out in
 18 the BOP’s program statement concerning compassionate release in P.S. 5050.50
 19 *Compassionate Release/Reduction in Sentence: Procedures for Implementation of*
 20 *18 U.S.C. § 3582 and 4205(g)* (Jan. 17, 2019) (Program Statement). This Statement
 21 provides compassionate release consideration for inmates, like Mr. Mondaca, with
 22 age-related limitations and vulnerabilities. *See id.* at 4-7.

23 Now, under the First Step Act, the BOP’s Program Statement retains
 24 relevance only to the extent that its criteria are broader than the standards set by the
 25 Commission, which are incorporated by statute. *See* § 3582(c)(1) (requiring
 26 “consisten[cy] with applicable policy statements issued by the Sentencing
 27 Commission”); *see also* § 1B1.13 cmt. n. 1(D) (recognizing that the Director of
 28 BOP can designate *additional* “extraordinary and compelling reason[s] other than,

1 or in combination with, the reasons described in” the Application Note). Therefore,
 2 although § 1B1.13 is the primary source of factors under the statute, the union of
 3 the Guideline and Program Statement criteria will provide the Court with the fullest,
 4 analytic scope for evaluating this Motion.¹

5 **IV. Relevant Facts and Procedural History**²

6 On May 31, 1991, Judge Tanner entered a judgment that sentenced
 7 Mr. Mondaca to **life without parole** for one count of violating 21 U.S.C.
 8 §§ 841(a)(1) & 846.³ See Exhibit A attached hereto. The judgment imposes a \$50
 9 special assessment, but there is no entry for a term of supervised release. The
 10 court’s statement of reasons (see Exhibit B) adopted the reasoning of the
 11 presentence report (PSR) as to the Guideline determinations, found no departures,
 12 and imposed no fine.

13 According to the PSR, Mr. Mondaca was found guilty of one count of
 14 conspiracy to distribute five or more kilograms of cocaine. PSR2 (Exhibit C). It
 15 notes as well that an enhancement allegation under 21 U.S.C. §§ 841(b)(1)(A)(ii)
 16 (1970) & 851 was filed. PSR8. Consequently, although Probation calculated a
 17 Guideline range of 360 months to life, it noted that if the Court found the
 18 enhancement, the mandatory minimum would be life. PSR9. It also noted that if
 19 the mandatory life term were imposed, “supervised release is not applicable.” *Id.*
 20 Again, although the extant docket shows only a one-count indictment filed on June
 21

22 ¹ The Court may wish to consult and compare two recent grants of sentence
 23 reductions under the Act: *United States v. Spears*, 2019 WL 5190877 (D.Or. Oct.
 24 15, 2019); *United States v. Walker*, 2019 WL 5268752 (N.D. Ohio Oct. 17, 2019).
 25 See also *United States v. Urkevich*, 2019 WL 6037391 (D.Neb. Nov. 14, 2019)
 26 (finding “extraordinary and compelling reasons” under § 1B1.13 in the disparity
 27 between actual sentence and sentence that would be imposed under current law).

28 ² Because of the age of Mr. Mondaca’s case, neither the court file nor the full docket
 for this case is currently available. The procedural history recorded here is
 reconstructed from a packet of case materials provided by Probation—including
 the judgment, the statement of reasons, and the presentence report—along with
 entries from the extant electronic docket.

³ The judgment indicates sentence was imposed on this date, but the copy bears a
 file stamp date of July 20, 1991.

1 23, 1989, and nothing reflecting the filing of a § 851 information or finding thereon,
2 Judge Tanner’s life without parole sentence seems to reflect a finding on the
3 enhancement. Otherwise, the maximum sentence was life *with parole*. *Id.*

4 As described in the PSR, Mr. Mondaca and his son, Jesus, Jr., were suspected
5 of involvement in a cocaine distribution conspiracy. PSR2-3. In February and
6 March 1989, the Mondacas were the subject of an informant sting operation. On
7 June 13, 1989, after Mr. Mondaca had a recorded conversation with an informant
8 about selling 15 kilograms of cocaine, he was arrested. Probation notes that no
9 actual drugs changed hands or were seized in this case. PSR3.

10 Probation reported that Mr. Mondaca had six criminal history points, five of
11 which stemmed from: (1) a 1980 conviction under Cal. Health & Safety Code
12 § 11352 for which he served 365 days (2-point conviction) and (2) a 1982
13 conviction under Cal. Health & Safety Code § 11359 with a sentence of two years
14 (3-point conviction). PSR4-5. These two drug felony convictions simultaneously
15 served: (a) to enhance the statutory range under §§ 841(b)(1)(A)(ii) & 851 to a
16 mandatory life without parole, and (b) as predicates for a career offender
17 enhancement under § 4B1.1, raising the offense level from 34 to 37 and doubling
18 the criminal history category from III to VI. PSR8-9.

19 However, under current law following the First Step Act, enhancement under
20 § 841(b)(1)(A)(ii) would no longer apply as in 1991. Enhancement now requires
21 the prior be for a “serious drug felony,” defined as one where the defendant “*served*
22 a term of imprisonment of more than 12 months.” 21 U.S.C. § 802(57) (emphasis
23 added). Mr. Mondaca served only eight months (with credit time) for his 2-point,
24 predicate conviction in 1980, and so that conviction would no longer count toward
25 an enhanced sentence under § 841(b)(1)(A)(ii). Instead, his one prior, serious drug
26 felony would authorize a 15-year minimum, not the life without parole originally
27 imposed. Mr. Mondaca has now served **twice the minimum term** that would apply
28 to him if sentenced today. Likewise, under the current Guidelines, his base offense

1 level for the 15 kilograms of cocaine intended for sale would be 32. § 2D1.1(c)(4).

2 The PSR notes that although the minimum term of supervised release under
3 § 841(b)(1)(A)(ii) would be five years, if the Court found the § 851 enhancement,
4 then “the period of supervised release does not apply.” PSR9. Under current law,
5 he would be subject to a ten-year term of supervision. *See* § 841(b)(1)(A).

6 The PSR reported that Mr. Mondaca, 49 years old at the time of sentencing,
7 complained of diabetes, a hiatal hernia, and an esophageal disorder; he engaged in
8 only recreational alcohol use. PSR7. He also reported attending community
9 college and had employment as a lather, truck driver, milkman, and salesman.
10 PSR6.

11 Mr. Mondaca has been in continuous, federal custody since his arrest on June
12 13, 1989. This amounts to over **365 months** of actual incarceration.

13 **V. Argument for Sentence Reduction**

14 **A. Mr. Mondaca Has Established Extraordinary and Compelling**
15 **Reasons Warranting a Reduction**

16 Pursuant to § 1B1.13, extraordinary and compelling reasons for a sentence
17 reduction exist in this case.

18 Under the present statutory regime, the existence of extraordinary and
19 compelling reasons confers on this Court the authority to consider whether the
20 circumstances warrant a sentence reduction. The initial step in determining a
21 motion under § 3582(c)(1)(A)(i) is to look to the standards and criteria for
22 establishing “extraordinary and compelling reasons” in § 1B1.13. The second step
23 is to decide whether, in light of the factors in § 3553(a), a reduction is warranted.

24 Congress directed the Commission to promulgate standards, and the statute
25 specifically instructs courts to ensure a reduction is “consistent with applicable
26 policy statements” of the Commission. § 3582(c)(1)(A). In turn, § 1B1.13 states
27 a reduction can be granted if the “court determines that—(1)(A) extraordinary and
28 compelling reasons warrant the reduction,” “(2) the defendant is not a danger to the

1 safety of any person or to the community” under the usual bail criteria, and “(3) the
2 reduction is consistent with this policy statement.”

3 ***1. Extraordinary and compelling reasons***

4 First, “extraordinary and compelling reasons” are defined in Application
5 Note 1. Under this provision, “any” of the listed circumstances can suffice to make
6 the required showing.

7 a. Incapacity to function in prison

8 Paragraph (A) looks to the functional, medical/physical condition of the
9 applicant. As pertinent here, (A)(ii)(III) equates “extraordinary and compelling
10 reasons” with the applicant’s “experiencing deteriorating physical or mental health
11 because of the aging process ... that substantially diminishes the ability of the
12 defendant to provide self-care within the environment of a correctional facility and
13 from which he or she is not expected to recover.”

14 Mr. Mondaca qualifies under this definition due to his current and
15 progressive, age-related deterioration. Mr. Mondaca was born in 1942 and is now
16 over 77 years old. PSR1. His progressive loss of physical abilities from aging is
17 both significant and, of course, irreversible. *See* Exhibit D (BOP Health Services
18 Encounter of Mar. 20, 2019). BOP Health Services report Mr. Mondaca was
19 “enrolled in general chronic care clinic” and presents with such age-linked
20 conditions as “benign prostatic hypertrophy,” “mild-to-moderate degenerative disc
21 disease,” and “some decrease in memory.” These conditions diminish
22 Mr. Mondaca’s ability to care for himself in the prison environment, since it inhibits
23 his capacity to defend himself from deprivations of younger inmates.

24 It needs no proof to know that prisons are often violent places where
25 vulnerable prisoners are preyed upon by the stronger and younger inmates and as
26 places where racial animus runs rampant. Mr. Mondaca has been the victim of such
27 physical assaults. *See* Exhibit E (BOP Health Services report of Dec. 8, 2018,
28 reporting Mr. Mondaca “was hit by cellmate”). Aware of his inability to defend

1 himself from attack has naturally led to a deterioration in Mr. Mondaca’s mental
2 health. *See* Exhibit F (BOP Psychological Services Request/Review reporting
3 Mr. Mondaca’s being evaluated and watched as a suicide risk due to his finding it
4 “particularly overwhelming and depressing to learn that he may not be able to
5 maintain his own safety” anymore in the prison environment). *See also Koon v.*
6 *United States*, 518 U.S. 81, 111-12 (1996) (recognizing “susceptibility to abuse in
7 prison” as a sentencing factor).

8 Since those reports, Mr. Mondaca has had additional treatment for his age-
9 related conditions. He is awaiting the results of new testing regarding his prostate
10 issues. He has also had CT scans to address his growing memory loss. Socially,
11 Mr. Mondaca has become physically withdrawn to his cell out of fear of interaction
12 with other inmates and to avoid involvement with prison politics.

13 Also, it must be noted that a finding of “extraordinary and compelling
14 reasons” on this basis is not diminished by its relating to the natural conditions of
15 aging that were foreseeable at the original sentencing. *See* § 1B1.13 cmt. n.2 (“the
16 fact that an extraordinary and compelling reason reasonably could have been known
17 or anticipated by the sentencing court does not preclude consideration for a
18 reduction under this policy statement”). Mr. Mondaca’s progressive deterioration
19 from age suffices to meet the standards for relief.

20 b. Age-based impairments

21 Application Note 1(B) sets out a separate, but related, basis for finding
22 “extraordinary and compelling reasons” for a sentence reduction. That comment is
23 particularly focused on specific indicia of age-related impairments:

24 [“Extraordinary and compelling reasons exist if t]he
25 defendant (i) is at least 65 years old; (ii) is experiencing
26 a serious deterioration in physical or mental health
27 because of the aging process; and (iii) has served at least
28 10 years or 75 percent of his or her term of imprisonment,
whichever is less.

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1 Mr. Mondaca satisfies these concrete, age-related criteria: he is 77 years old, has
2 experienced serious physical/mental deficiencies as outlined above, and has served
3 over 30 years of his life sentence. His satisfying these specific showings bolsters
4 the conclusion he meets the standard for relief under the Guideline and statute.

5 c. Other reasons

6 Finally, Application Note 1(D) instructs the Court to look to BOP criteria of
7 eligibility as “other reasons” to grant a reduction. Although, in this case, the BOP
8 has not acted on Mr. Mondaca’s request for a determination at this date, the Court
9 may, under this Note, review the criteria in the Program Statement to see that he
10 qualifies under multiple BOP rubrics for relief. *See* P.S. 5050.50 at 6.

11 For instance, Mr. Mondaca meets BOP’s criteria for “ ‘New Law’ Elderly
12 Inmates.” *See id.* This provision applies to inmates “sentenced for an offense that
13 occurred on or after November 1, 1987 ... who are age 70 or older and have served
14 30 years or more of their imprisonment.” *Id.* (noting these criteria differ from
15 § 3582(c)(1)(A)(ii)).

16 He also meets BOP’s criteria for “Elderly Inmates with Medical Conditions,”
17 namely, being over 65, suffering from chronic conditions “related to the aging
18 process,” mental/physical deterioration “substantially diminish[ing] their ability to
19 function in a correctional facility,” no likely improvement from treatment, and
20 having served 50% of the sentence. *Id.* As additional factors whether recidivism
21 is likely, the Program Statement points to age at offense (48) and whether the
22 conditions existed at the time of offense or sentencing.

23 Finally, Mr. Mondaca qualifies as an “Other Elderly Inmate,” since he is over
24 65 and has served more than 10 years of his sentence. *See id.* In short, Mr. Mondaca
25 fits three different, additional, BOP categories, and so a reduction is firmly
26 supported under Application Note 1(D).

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1 **2. *Danger to others***

2 Since Mr. Mondaca’s case meets multiple “extraordinary and compelling
3 reasons” under Application Note 1, he satisfies the requirements of § 1B1.13(1) &
4 (3). The remaining criterion, dangerousness, looks to the factors in 18 U.S.C.
5 § 3142(g). *See* § 1B1.13(2). The statute—which sets norms typically applied to
6 decide eligibility for *pretrial* release—identifies four benchmarks, not all of them
7 germane in the post-conviction context: (1) nature and circumstances of the charged
8 offense; (2) weight of evidence; (3) defendant’s history (including character,
9 physical/mental condition, family and community ties, substance abuse, criminal
10 history, and procedural behavior); and (4) nature of any danger to community or
11 individual.

12 Factor (2) has no real role for post-trial purposes and factor (3)’s reference
13 to appearances in court are of little value here. But, recalling the overall goal is to
14 decide whether Mr. Mondaca would be a danger to the public or an individual, the
15 Court should consider that his instant conviction and his prior offenses are all non-
16 violent, drug traffickings. As noted, no actual drugs were exchanged or seized in
17 this case, so the actual harm flowing from the offense is abstract. Fifteen kilograms
18 of cocaine is a seriously damaging amount of illicit drugs, but not entirely
19 extraordinary on today’s scale. At the same time, Mr. Mondaca had long-standing
20 ties to the San Diego community, where he lived, worked, and studied since at least
21 1962. PSR6. He has adult children living in the district who are willing to put him
22 up and support him. *See* Exhibit G (BOP request). He has offers of employment
23 here and in Tecate and from his son Consuelo and brother Raul in Tijuana who can
24 support him.⁴ He has no substance abuse issues, but is suffering from physical and
25 mental age-related diminishment. *See* Exhibits D-F. In light of these factors, he is
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27 _____
28 ⁴ It is noteworthy that Mr. Mondaca’s brother Raul was declared a U.S. citizen from
birth. *See Mondaca-Ugalde v. INS*, 842 F.2d 335 (9th Cir. 1988) (unpublished).
Jesus Mondaca plans to pursue his citizenship claim as well after his release.

1 highly unlikely to be a danger to others. Accordingly, the Court should find this
2 criterion in § 1B1.13(2) met as well.

3 **3. BOP inaction should bear no weight in the Court's analysis**

4 The Court should not, however, give weight to the BOP's failure timely to
5 respond to Mr. Mondaca's request for a motion for compassionate release.
6 Ultimately, the statutory responsibility to decide a motion to reduce falls to this
7 Court, not the BOP, regardless of the Bureau's action or inaction. After all,
8 decisions about sentencing "[should] not be left to employees of the same
9 Department of Justice that conducts the prosecution." *Setser v. United States*, 566
10 U.S. 231, 242 (2012); *see also id.* at 240 ("[T]he Bureau is not charged with
11 applying § 3553(a)."). Under § 3582(c)(1)(A) and § 1B1.13, it is the *Court*, not the
12 BOP, that is charged with considering the "extraordinary and compelling reasons,"
13 then evaluating whether the sentencing factors under § 3553(a)—including public
14 safety under the standard in § 3142(g)—warrant a reduction in sentence.

15 In a larger perspective, the First Step Act's amendment to § 3582(c)(1)(A)
16 reflects the congressional goal to diminish the BOP's control over compassionate
17 release by permitting defendants to file sentence-reduction motions directly with
18 the sentencing court. The BOP's administration of the compassionate release
19 program has long been the subject of criticism. The Department of Justice's Office
20 of the Inspector General has repeatedly found that the program results in needless
21 and expensive incarceration and is administered ineffectively. *See* Dep't of Justice,
22 Office of the Inspector General, *The Federal Bureau of Prisons' Compassionate*
23 *Release Program* 11 (Apr. 2013) ("The BOP does not properly manage the
24 compassionate release program, resulting in inmates who may be eligible
25 candidates for release not being considered."); Dep't of Justice, Office of the
26 Inspector General, *The Impact of an Aging Inmate Population on the Federal*
27 *Bureau of Prisons* 51 (May 2015) ("Although the BOP has revised its
28 compassionate release policy to expand consideration for early release to aging

1 inmates, which could help mitigate the effects of a growing aging inmate
2 population, few aging inmates have been released under it.”). Aside from the
3 expense and inefficiency, the human costs of the BOP’s stinting view of
4 compassionate release has been documented by prisoner advocates. Human Rights
5 Watch & Families Against Mandatory Minimums, *The Answer Is No: Too Little*
6 *Compassionate Release in US Federal Prisons* (Nov. 2012).

7 With the enactment of the First Step Act, the focus shifts to *this Court* to
8 decide whether the extraordinary and compelling reasons warrant a sentence
9 reduction in this case without deference to any administrative agency.

10 **B. Upon Consideration of the § 3553(a) Factors, Mr. Mondaca’s**
11 **Time Already Served Is Sufficient But Not Greater Than**
12 **Necessary to Accomplish the Goals of Sentencing**

13 Under all of the circumstances in this case, the Court should conclude that
14 the time that Mr. Mondaca has already served is sufficient to satisfy the purposes
15 of sentencing. Under *Pepper v. United States*, 562 U.S. 476, 490-93 (2011), the
16 Court can, and indeed must, consider post-offense developments under § 3553(a),
17 which provides “the most up-to-date picture” of the defendant’s history and
18 characteristics and “sheds light on the likelihood that [the defendant] will engage
19 in future criminal conduct.” *Id.* at 492. Although Application Note 3 indicates
20 rehabilitation “by itself” is not dispositive of a motion to reduce, Mr. Mondaca’s
21 good performance in prison is surely highly indicative for the Court’s ultimate
22 decision whether the 30 years already served are sufficient, but not greater than
23 necessary, to serve the statutory sentencing goals of § 3553(a).

24 The Court should recall at the outset that the touchstone of a reasonable
25 sentence is whether it complies with the parsimony mandate of § 3553(a) to be no
26 greater than necessary to suffice. *See United States v. Ressam*, 679 F.3d 1069, 1089
27 (9th Cir. 2012) (en banc) (*quoting United States v. Crowe*, 563 F.3d 969 (9th Cir.
28 2009)). This Court now has a unique opportunity to review the original sentence
after a very substantial portion has been served and decide—based on the evidence

1 now before the Court—whether Judge Tanner’s original sentence is still no greater
2 than necessary. Mr. Mondaca maintains that, given his current physical and mental
3 condition, the circumstances of his imprisonment, and the nature of his offense, any
4 longer term of incarceration would be greater than necessary to suffice for the
5 purposes of § 3553(a), and so the Court should resentence him accordingly.

6 ***1. History and circumstances***

7 As for the defendant’s history and characteristics, the Sentencing
8 Commission’s policy statement on physical condition and extraordinary
9 impairments provides reasons for downward departures for “seriously infirm”
10 defendants, including to home detention at initial sentencing “as efficient as, and
11 less costly than, imprisonment.” § 5H1.4; *see also* § 3553(a)(2)(D) (consideration
12 of providing needed medical care in the most effective manner). Mr. Mondaca’s
13 physical and mental condition realistically forecloses a probability of dangerous
14 recidivism. Further, at 77 years old, his age places him in the class of prisoners least
15 likely to recidivate. *See* U.S. Sentencing Comm’n, THE EFFECTS OF AGING ON
16 RECIDIVISM AMONG FEDERAL OFFENDERS 22-27 (Dec. 2017). Having undergone a
17 very long period of incarceration, and having experienced physical and mental
18 deterioration, Mr. Mondaca does not constitute a danger to any other person or to
19 the community.

20 His prison time has been served productively and virtually without incident.
21 He has taken some 57 courses in prison and completed a GED. *See* Exhibit H. In
22 his 30 years in prison, he has had just two infractions: one 27 years ago for
23 possession of an intoxicant and one in 2019 for failing to stand when ordered, but
24 this was due to failing to hear the order from deteriorating hearing. *See* Exhibit I.

25 As for the offense of conviction, though a serious trafficking offense, it was
26 non-violent and largely abstract in light of no actual cocaine being involved.
27 Furthermore, Mr. Mondaca’s criminal history was equally non-violent and now

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1 nearly forty years old. These facts all show that his 30 years already served are
2 sufficient under § 3553(a)(1).

3 **2. Punishment**

4 A three-decade sentence for agreeing to traffic cocaine is likewise sufficient
5 to reflect the seriousness of the offense, promote respect for the law, and provide
6 just punishment. § 3553(a)(2)(A).

7 **3. Deterrence and protection**

8 Given Mr. Mondaca's advanced age and physical condition, he is highly
9 unlikely to recidivate, and so the purposes of deterrence and protection of the public
10 are also sufficiently addressed by his already-served imprisonment. *See*
11 § 3553(a)(2)(B) & (C).

12 **4. Rehabilitation**

13 Deciding to continue imprisonment cannot be based in any part on a belief
14 that it would aid in rehabilitation or treatment. *See Tapia v. United States*, 564 U.S.
15 319, 333-34 (2011); *see also United States v. Grant*, 664 F.3d 276, 279-80 (9th Cir.
16 2011) (*Tapia* error for considering rehabilitation needs in imposing revocation
17 sentence). Consequently, § 3553(a)(2)(D) is a wash in the Court's analysis.

18 **5. Comparative sentencing analysis**

19 As regards § 3553(a)(3)-(6), the Court should consider the fact that, if
20 Mr. Mondaca were sentenced today under the currently prevailing sentencing
21 standards, he would be subject to a 15-year minimum, which he has served twice
22 over. Moreover, his base offense level would now be 32 in an original category III,
23 for a comparable sentence of 155 to 188 months with no other adjustments. But
24 even under the harshest sentence calculation under § 4B1.1, Mr. Mondaca has now
25 served the low-end sentence of 360 months.

26 Accordingly, considering the kinds of sentences available, the current
27 Guidelines, and resulting disparities with current practice, these factors show the
28 30-year sentence is sufficient, and more time would be greater than necessary.

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6. Restitution

As there was no actual drug transaction performed, § 3553(a)(7) does not apply.

In this light, the Court should conclude that the 365-month sentence already served has sufficiently met all the purposes of sentencing under § 3553(a), rendering any additional incarceration greater than necessary. Considering Mr. Mondaca’s extraordinary and compelling reasons for sentence reduction, the Court should reduce his sentence to time served in accordance with § 3553(a).

C. Imposition of Supervised Release Should Recognize the Reasons for the Custodial Reduction

The Court did not originally impose a term of supervised release. However, under 21 U.S.C. § 841(b)(1)(A), Mr. Mondaca is subject to a mandatory minimum of ten years of supervised release, in light of his *one* serious drug felony prior in 1982. PSR5. He therefore requests the Court impose the minimum term.

VI. Conclusion

For the foregoing reasons, Mr. Mondaca respectfully requests that the Court grant a reduction in sentence to **time served** and set a term of supervised release accordingly.

Moreover, in light of the nature of this request and Mr. Mondaca’s condition, the Court is respectfully requested to **expedite the consideration** of this motion to the extent possible.

Respectfully submitted,

Dated: November 20, 2019

s/ James Fife
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