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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,
v.
JESUS ANTONIO MONDACA, SR.,
Defendant.

Case No.: 89-CR-0655 DMS

**ORDER GRANTING MOTION TO
REDUCE SENTENCE PURSUANT
TO THE FIRST STEP ACT OF 2018**

Pending before the Court is Defendant Jesus Antonio Mondaca’s motion to reduce sentence pursuant to the First Step Act of 2018 (“FSA”). Plaintiff United States of America did not file an opposition, and Defendant filed a reply. The motion was argued on February 27, 2020, at which time James Fife of Federal Defenders of San Diego, Inc. appeared for Defendant. Michael Lasater appeared for Plaintiff United States of America and affirmed Plaintiff’s non-opposition to the motion. For the following reasons, the motion is granted.

**I.
BACKGROUND**

Defendant Jesus Antonio Mondaca is currently serving a life sentence at the Federal Correctional Institution in Sheridan, Oregon (“FCI Sheridan”). On May 13, 1991, the Honorable Jack E. Tanner sentenced Defendant to “life without parole” for conspiracy to

1 possess cocaine with intent to distribute under 21 U.S.C. §§ 841(a)(1) and 846.¹ (Ex. A to
2 Mot. To Red. Sent. (“Mot.”).) Defendant was arrested on June 13, 1989, following a
3 recorded conversation with an informant about selling 15 kilograms of cocaine. (Ex. C. to
4 Mot., Presentence Report (“PSR”) at 3.) Because Defendant was the subject of an
5 informant sting operation, he was arrested before any drugs changed hands or were
6 otherwise seized. (*Id.*) Defendant pleaded not guilty to the indictment and thereafter was
7 convicted by jury on March 21, 1991. (*Id.* at 1.)

8 The Probation department calculated a guideline range of 360 months to life but
9 noted a minimum mandatory life sentence would be triggered if a sentencing enhancement
10 for two prior drug offenses was applied. (Ex. C. to Mot., PSR at 1, 8.)² The PSR notes
11 Defendant had six criminal history points, stemming from the following convictions: (1) a
12 1980 drug conviction under California Health and Safety Code § 11352, for which
13 Defendant was granted probation and sentenced to 365 days in county jail (two points); (2)
14 a 1982 drug conviction under California Health and Safety Code § 11359, for which
15 Defendant was sentenced to two years in state prison (three points); and (3) a misdemeanor
16 driving under the influence (“DUI”) conviction from 1982 (one point). (PSR at 4–5.) The
17 sentencing enhancement was applied by Judge Tanner. Accordingly, Defendant’s two
18 prior drug felony convictions simultaneously served: (1) to enhance the statutory range
19 under §§ 841(b)(1)(A)(ii) and 851 to a minimum mandatory life sentence, and (2) as
20 predicate offenses for a career offender enhancement pursuant to § 4B1.1 of the United
21 States Sentencing Commission Guidelines Manual (“Guidelines” or “U.S.S.G.”), raising
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25 ¹ Judge Tanner served as a United States District Judge for the Eastern and Western
26 Districts of Washington. He sat by assignment for the Southern District of California,
27 where he sentenced Defendant.

28 ² The PSR states, “an Information and Notice of Enhanced Penalties as a result of prior
felony convictions was filed. If the Court makes a true finding with regard to this issue,
the penalty changes to a minimum mandatory life term.” (Ex. C to Mot., PSR at 8.)

1 the offense level from 34 to 37 and doubling the criminal history category from III to VI.
2 (*Id.* at 6, 8–9.)

3 The PSR also notes that Defendant had been actively engaged in drug trafficking
4 “since at least the mid to late 1970’s[.]” including an incident involving “five tons of
5 marijuana which were delivered in three shiploads to Ventura County.” (*Id.* at 3.) The
6 PSR further notes Defendant was involved in selling “100-pound quantities of marijuana
7 in San Diego that he smuggled into the United States from Mexico in cars and on rafts[.]”
8 (*Id.* at 3–4), and trafficking “multi-kilograms of cocaine and hundreds of pounds of
9 marijuana between 1984 and 1986.” (*Id.* at 4.) Finally, the PSR notes that during the
10 commission of the crime at issue, Defendant “admitted much of his past drug trafficking
11 activities and said [on a recorded conversation] he wanted to kill the first informant[.]”
12 after learning that informant had been working for the government. (*Id.* at 3.)

13 Defendant has been incarcerated continuously since his arrest on June 13, 1989.
14 During his time in prison, Defendant was cited for two infractions: one for possessing
15 intoxicants in 1992, and another for failing to stand for count in 2008. He has remained
16 “incident report free” since 2008—some 12 years. (Ex. F to Mot. at 1.) Defendant
17 continues to work on self-development and personal growth during his time in prison,
18 having completed 57 courses in an array of subjects, including “Microsoft Office
19 Complete,” “Ace Legal Research,” “Advanced Yoga,” and “Disability Awareness.” (Ex.
20 F. to Mot. at 1–2.) He also completed his General Educational Development (“GED”) and
21 acquired his high school equivalency. (*Id.* at 1).

22 In December 2018, Defendant underwent a suicide risk assessment after being
23 physically assaulted by an approximately thirty-year old inmate. (Ex. F to Mot. at 1.) The
24 BOP’s Psychology Services record notes Defendant previously was “able to maintain
25 confidence in his ability to physically protect himself and keep himself safe” during his
26 incarceration, but the assault incident was “particularly overwhelming and depressing” for
27 Defendant because he realized he may no longer “be able to maintain his own safety.” (*Id.*)
28 Thereafter, Defendant was placed on suicide watch. Defendant has also received treatment

1 for age-related conditions, is “enrolled in general chronic care clinic,” and was diagnosed
2 with “benign prostatic hypertrophy,” “mild-to-moderate degenerative disc disease,” and
3 “some decrease in memory.” (Ex. D to Mot.) He now moves the Court for compassionate
4 release under the FSA due to his age, declining physical and mental health, time in custody,
5 and other relevant sentencing factors set out in the Act and United States Sentencing
6 Guidelines.

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II. DISCUSSION

9 On December 21, 2018, the FSA was signed into law by Congress. *See* Pub. L. 115-
10 391, 132 Stat. 5194, 5239 (2018). Among the criminal justice reforms implemented by the
11 Act, Congress amended 18 U.S.C. § 3582(c)(1)(A) to allow a defendant to move the district
12 court for compassionate release after exhausting the Bureau of Prison (“BOP”)’s
13 compassionate release process. “Exhaustion occurs when the BOP denies a defendant’s
14 application or lets thirty days pass without responding to it.” *Brown v. United States*, 411
15 F.Supp.3d 446, 452 (S.D. Iowa 2019) (citing 18 U.S.C. § 3582(c)(1)(A)). Defendant
16 submitted his request for compassionate release to the warden on August 19, 2019. (Mot.
17 at 2.) Because more than 30 days have passed without a response from the warden, the
18 Court has jurisdiction to hear the motion.

19 The FSA allows a court to reduce a defendant’s sentence for “extraordinary and
20 compelling reasons[,]” if the reduction complies with 18 U.S.C. § 3553(a) and “applicable
21 policy statements issued by the Sentencing Commission[.]” 18 U.S.C. § 3582(c)(1)(A)(i).
22 Congress does not define what constitutes “extraordinary and compelling” reasons;
23 instead, it defers consideration of the matter to the Sentencing Commission. *See* 18 U.S.C.
24 § 994(t) (“The Commission, in promulgating general policy statements regarding the
25 sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what
26 should be considered extraordinary and compelling reasons for sentence reduction,
27 including the criteria to be applied and a list of specific examples.”)

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1 Before passage of the FSA, the Sentencing Commission limited “extraordinary and
2 compelling reasons” to four scenarios. *See Brown*, 411 F.Supp.3d at 448-49 (summarizing
3 U.S.S. G. § 1B1.13 cmt. n. 1(A)–(D)). One of those scenarios applies here. Specifically,
4 § 1B1.13 cmt. n. 1(B) provides that “extraordinary and compelling reasons” exist where a
5 defendant “(i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical
6 or mental health because of the aging process; and (iii) has served at least 10 years or 75
7 percent of his or her term of imprisonment, whichever is less.” The Commission’s policy
8 statement also directs district courts when considering a motion for sentence modification
9 to determine whether the defendant is “a danger to the safety of any other person or to the
10 community, as provided in 18 U.S.C. § 3142(g)[.]” *Id.* § 1B1.13(2).

11 Notably, the Commission’s policy statement was not amended after enactment of
12 the FSA. Accordingly, “a growing number of district courts have concluded the
13 Commission lacks an applicable policy statement regarding when a judge can grant
14 compassionate release[.]” (*see Brown*, 411 F. Supp. 3d at 447 (canvassing district court
15 decisions)), because the Commission “never harmonized its policy statement with the
16 FSA.” *Id.* at 449. These courts, therefore, conclude that the district court may “consider
17 anything” when assessing a defendant’s motion for compassionate release and determining
18 whether “extraordinary and compelling reasons” exist. *Id.* at 450-51 (stating district judges
19 are permitted under FSA to “consider the vast variety of circumstances that may constitute
20 ‘extraordinary and compelling.’”). On the other hand, other courts have concluded “a
21 judge may not stray beyond the specific instances listed in § 1B1.13 cmt. n. 1(A)–(C).” *Id.*
22 at 450 (citing *United States v. Lynn*, 2019 WL 3805349, at *4 (S.D. Ala. Aug. 13, 2019)).
23 This Court need not address the issue because, as noted, at least one of the specific
24 scenarios set out in the Commission’s policy statement applies here. *See id.* at 451 (district
25 courts “still must act in harmony with any sentencing policy guidelines that remain
26 applicable and the § 3553(a) factors.”)

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1 **A. Extraordinary and Compelling Reasons for Sentence Reduction**

2 Section 1B1.13 of the Guidelines provides that “extraordinary and compelling
3 reasons exist” under the following circumstance:

4 **Age of the Defendant.** —The defendant (i) is at least 65 years old; (ii) is
5 experiencing a serious deterioration in physical or mental health because of
6 the aging process; and (iii) has served at least 10 years or 75 percent of his or
7 her term of imprisonment, whichever is less.

8 U.S.S.G. § 1B1.13 cmt. n. 1(B).

9 Defendant meets these criteria. He is 77 years old and he has served at least 10 years
10 of his term of imprisonment. He also has a well-documented history of serious
11 deterioration in physical and mental health which is age-related. He is enrolled in a general
12 chronic care clinic, and presents several age-based conditions, including “benign prostatic
13 hypertrophy,” “mild-to-moderate degenerative disc disease,” and “decrease in memory.”
14 (Mot. at 7.) He was placed on suicide watch in December 2018, after being assaulted. (Ex.
15 F to Mot.) As a result, he has “become increasingly vulnerable to victimization within the
16 correctional facility[,]” (Ex. G to Mot. at 36), and has “withdrawn to his cell out of fear of
17 interaction with other inmates[.]” (Mot. at 8.) These facts are not disputed and are
18 sufficient to show Defendant is experiencing serious deterioration in physical and mental
19 health because of the aging process. Defendant has therefore presented extraordinary and
20 compelling reasons in support of his motion.

21 **B. Danger to Others or the Community**

22 Even where extraordinary and compelling reasons exist, the district court must
23 consider whether the defendant is “a danger to the safety of any other person or to the
24 community, as provided in 18 U.S.C. § 3142(g)[.]” U.S.S.G. § 1B1.13(1)(A), (2), cmt. n.
25 1. To make this assessment, the Court is directed to the factors set out in § 3142(g),
26 including, among other things: (1) the nature and circumstances of the offense charged; (2)
27 the history and characteristics of the person, including character, physical and mental
28 condition, family ties, employment, financial resources, past conduct, criminal history, and

1 drug and alcohol abuse; and (3) the nature and seriousness of the danger to any person or
2 the community that release would impose. These factors are addressed in turn.

3 1. Nature and Circumstances of the Offense Charged

4 Defendant's conviction for conspiracy to possess cocaine with intent to distribute is
5 a non-violent drug offense. While Defendant's statement to the government informant
6 about "wanting to kill" another informant is of concern, (PSR at 3), Defendant has no
7 history of committing or otherwise engaging in acts of violence. And although Defendant's
8 crime involves controlled substances and the relevant conduct attributed to Defendant
9 preceding the conviction reveals a deeply entrenched drug trafficker, neither violence nor
10 weapons has ever been noted. Compassionate release has been denied in cases involving
11 particularly violent underlying crimes, (*see, e.g., Applewhite*, 2020 WL 137452, at *2 (D.
12 Or. Jan. 13, 2020) (seven armed robberies), but that is not the case here. The nature and
13 circumstances of the offense charged do not reveal a propensity for violence or danger to
14 others.

15 2. History and Characteristics of the Person

16 The history and characteristics of a defendant include his or her "character, physical
17 and mental condition, family ties, employment, financial resources, community ties, past
18 conduct, criminal history, and drug and alcohol abuse." *See Spears*, 2019 WL 5190877 at
19 *4 (D. Or. Oct. 15, 2019). Here, Defendant has endeavored to reform. While he is a repeat
20 offender, his time in prison is characterized by many years of counseling and coursework
21 designed for self-improvement, general education and vocational training. This is
22 commendable for any inmate, but particularly so for an inmate initially sentenced to a
23 lifetime of imprisonment with no hope for life outside of confinement.

24 Defendant has suffered two infractions while in prison: possession of intoxicants and
25 failing to stand. (Ex. I to Mot.) While possession of intoxicants is troubling and perhaps
26 indicative of a sense of hopelessness at the time, that infraction occurred more than 28
27 years ago and did not repeat. Defendant's failure to stand is explained by a failure to hear,
28 rather than insolence. (*Id.*) Moreover, Defendant has been incident free for over 12 years.

1 *See* (Ex. F to Mot. at 31) (prison records note absence of “disruptive behavior”). He has
2 also taken over 57 vocational and health related classes and acquired his GED.

3 Defendant’s physical and mental condition has declined significantly. As discussed,
4 that decline has placed him in danger of other inmates and triggered a suicide assessment.

5 Defendant has numerous family ties, including family members who will provide
6 for him. He has a daughter in Chula Vista, California, and she has offered her home and a
7 job as a personal assistant. (Ex. G to Mot. at 36.) Defendant’s son Consuelo Mondaca and
8 brother Raul Mondaca, who both live in Tijuana, Mexico, have also offered housing and
9 employment. (*Id.*) Before incarceration, Defendant attended community college and
10 worked as a lather, truck driver, milkman, and salesman. (PSR at 6.) He was skilled and
11 industrious, and these attributes may serve him well.

12 Finally, Defendant’s criminal history is nearly 40 years old and non-violent.
13 Defendant’s two prior felony offenses include a 1980 conviction for sale of cocaine and a
14 1982 conviction for possession of controlled substances for sale. Defendant also has a
15 misdemeanor DUI from 1982. These convictions are serious, but they are relatively few,
16 dated, involve relatively small quantities of contraband, and were sentenced through grants
17 of probation and a “low-term” (two years) prison sentence. Standing alone, there is nothing
18 aggravated about the prior convictions.

19 3. Nature and Seriousness of Danger Posed by Release

20 The final factor is the “nature and seriousness of the danger to any person or the
21 community” that release would pose. 18 U.S.C. § 3142(g)(4). Defendant’s health has
22 declined significantly, as discussed. He also has a decades-long history of non-violence
23 and rehabilitative efforts at the BOP. And while Defendant is not a United States citizen,
24 he appears to have a colorable claim for derivative citizenship based upon his mother’s
25 status. (*See* Mot. at 10, n.4 (noting derivative citizenship was granted to Defendant’s
26 brother)). Pending his citizenship application, Defendant will either be removed to Mexico
27 or paroled into the United States—where family awaits in both locations. The hope of U.S.
28 citizenship can only serve to further motivate Defendant’s seamless integration into

1 society. In addition, Defendant will be supervised by the Probation Department upon his
2 release from custody through a five year term of supervised release, as reflected in the
3 Amended Judgment issued concurrently with this Order.

4 On balance, the foregoing factors weigh heavily in favor of Defendant. The Court
5 finds Defendant is not a danger to the safety of any other person or to the community upon
6 release.

7 **C. Consideration of the § 3553(a) Factors**

8 Finally, Defendant contends his release would serve the purposes of § 3553(a). (Mot
9 at 12.) Section 3553(a) provides that the sentencing court must impose a sentence that is
10 “sufficient, but not greater than necessary, ... (A) to reflect the seriousness of the offense,
11 to promote respect for the law, and to provide just punishment for the offense; (B) to afford
12 adequate deterrence to criminal conduct; (C) to protect the public from further crimes of
13 the defendant; and (D) to provide the defendant with needed educational or vocational
14 training, medical care, or other correctional treatment in the most effective manner[.]” 18
15 U.S.C. § 3553(a)(2)(A)-(D). The sentencing court is also directed to consider, among other
16 factors, “the nature and circumstances of the offense and the history and characteristics of
17 the defendant” and the “need to avoid unwarranted sentence disparities among defendants
18 with similar records who have been found guilty of similar conduct[.]” *Id.* § 3553(a)(1),
19 (6). Some of these factors are encompassed by the § 3142(g) factors above.

20 1. Punishment, Deterrence, Protection of Society, and Rehabilitation

21 Defendant contends a three-decades sentence for conspiracy to traffic cocaine is
22 sufficient to address the seriousness of the offense, promote respect for the law, deter
23 Defendant and others, provide just punishment, and protect the public from further crimes
24 of Defendant. (Mot. at 14) (citing § 3553(a)(2)(A)-(C).) The Court agrees. Defendant’s
25 time in prison—more than 30 years—is certainly sufficient to satisfy these factors. The
26 important goal of rehabilitation has also been adequately addressed through Defendant’s
27 educational and vocational training and personal growth while in custody. *See* 18 U.S.C.
28 § 3553(a)(2)(D).

1 2. Nature and Circumstances of Offense & History and Characteristics of Defendant

2 As discussed, the nature and circumstances of the offense are serious but non-
3 violent. The Court’s findings regarding Defendant’s lack of danger to others or the
4 community upon release also apply here. Defendant’s physical and mental condition, as
5 well as his long period of incarceration and efforts at self-improvement and personal
6 growth, strongly indicate Defendant will not recidivate. Defendant is 77 years old and in
7 the class of prisoners least likely to recidivate. *See* U.S. Sentencing Comm’n, THE EFFECTS
8 OF AGING ON RECIDIVISM AMONG FEDERAL OFFENDERS, 22–27 (Dec. 2017).

9 3. Comparative Sentencing Analysis

10 Finally, the discrepancy between the sentence Defendant received in 1991 and the
11 sentence he would receive if judgment were pronounced today is significant. In 1991,
12 Defendant’s two prior “serious drug” felonies served to enhance the statutory range “under
13 §§ 841(b)(1)(A)(ii) [and] 851 to a mandatory life without parole” and “as predicates for a
14 career offender enhancement under § 4B1.1, raising the offense level from 34 to 37 and
15 doubling the criminal history category from III to VI.” (Mot. at 5) (citing PSR 8–9.) Under
16 current law, a “serious drug felony” is a drug offense for which the offender “served a term
17 of imprisonment of more than 12 months[.]” 21 U.S.C. § 802(57)(A). Defendant served
18 eight months (with good-time credits) for his 1980 conviction, so that conviction would no
19 longer qualify as an enhanceable offense. The only conviction that qualifies for
20 enhancement as a “serious drug felony” is Defendant’s 1982 offense for possession of
21 cocaine for sale—for which Defendant received a two-year prison sentence. That
22 conviction could trigger a 15-year (180 months) minimum mandatory sentence under §
23 841(b)(1)(A)(viii) (“such person shall be sentenced to a term of imprisonment of not less
24 than 15 years and not more than life imprisonment”), but not a minimum mandatory life
25 term. Similarly, his base offense level would be 32. U.S.S.G. § 2D1.1(c)(4). With a base
26 offense level 32 and criminal history category III, Defendant’s guideline range today would
27 be 151 to 188 months—though the minimum mandatory would become the guideline range
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1 for a low end of 180 months. Defendant has been in custody for over 365 months, more
2 than twice the term he would likely receive under current law.

3 A reduction in Defendant's sentence to time served is consistent with the factors set
4 forth in 18 U.S.C. § 3553(a)—specifically, § 3553(a)(2)(A) (“the need for the sentence
5 imposed . . . to reflect the seriousness of the offense, to promote respect for the law, and to
6 provide just punishment for the offense) and § 3553(a)(6) (“the need to avoid unwarranted
7 sentence disparities among defendants with similar records who have been found guilty of
8 similar conduct”), because if Defendant were sentenced today under the enhancement, he
9 would likely receive a sentence of 15 years, the minimum mandatory. Government counsel
10 also noted at the hearing that the enhancement could well *not* be charged in the exercise of
11 prosecutorial discretion, in which case Defendant's sentence likely would be less than 15
12 years and within the guideline range of 151 to 188 months. As such, the disparity in
13 sentences from 1991 (when Defendant was sentenced) to that likely imposed today under
14 current law weighs in favor of compassionate release. *See also United States v. Urkevich*,
15 2019 WL 6037391, at *1–3 (D. Neb. Nov. 14, 2019) (sentence reduction warranted where
16 defendant's 848 months sentence would result in 368 months sentence under present law).

17 In sum, the § 3553(a) factors above are met through a time served sentence. The
18 Government agrees, particularly in light of the sentence disparities under § 3553(a)(6).

19 III.

20 CONCLUSION AND ORDER

21 The Court finds that sentence modification is warranted for extraordinary and
22 compelling reasons under 18 U.S.C. § 3582(c)(1)(A) and U.S.S.G. § 1B1.13 cmt. n. 1(B);
23 upon release, Defendant will not pose a danger to any other person or the community under
24 18 U.S.C. § 3142(g); the 18 U.S.C. § 3553(a) factors support a sentence reduction, and
25 compassionate release is consistent with the Sentencing Commission's policy statements
26 in U.S.S.G. § 1B1.13. Accordingly, it is **HEREBY ORDERED**, as follows:

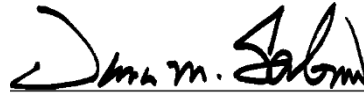
- 27 1. Defendant's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A), as
28 amended by the First Step Act of 2018 (ECF No. 242), is **GRANTED**;

1 2. Defendant's sentence of life imprisonment is reduced to time served, effective upon
2 filing of this Order and as reflected in the Amended Judgment issued concurrently
3 herewith; and

4 3. The BOP shall forthwith release Defendant to the custody of the United States
5 Department of Homeland Security for removal or parole in its discretion.

6 **IT IS SO ORDERED.**

7 Dated: March 3, 2020

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10 Hon. Dana M. Sabraw
11 United States District Judge
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