



**EVERYTHING YOU WANTED TO KNOW
ABOUT COMPASSIONATE RELEASE IN
THE AGE OF COVID-19
(BUT DIDN'T KNOW TO ASK)**

**NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS
WEBINAR**

March 26, 2020

VOLUNTEERS NEEDED! COVID-19 COMPASSIONATE RELEASE CLEARINGHOUSE

- FAIMM/NACDL/Washington Lawyers' Committee for Civil Rights/Federal Public and Community Defenders
- Pro Bono Project to File Motions for Elderly and Sick Federal Prisoners
- Numerous Webinar Trainings/Brief and Motions Bank/Sample Motions and Templates/Local Counsel Assistance/Resource Counsel Available
- Have Placed Over 800 cases
- Many More Vulnerable Prisoners Need Help
 - **Go to circularclearinghouse.org/Training/COVID-19 Project**

PRESENTERS AND PANELISTS

<p>Lisa Mathewson Law Offices of Lisa A. Mathewson lam@mathewson-law.com</p>	<p>JaneAnne Murray Professor of Practice at University of Minnesota Law School murrayj@umn.edu</p>
<p>Mira Baylson Member, Cozen O'Connor MBaylson@cozen.com</p>	<p>Mary Price General Counsel, FAMM Mprice@famm.org</p>
<p>Justine Harris Partner, Sher Tremonte JHarris@shertremonte.com</p>	<p>Avery Pollard Associate, Zuckerman Spaeder APollard@zuckerman.com</p>
<p>Shazzie Naseem Partner, Berkowitz Oliver</p>	<p>Marjorie Peerce Partner, Ballard Spahr</p>
<p>Elizabeth Blackwood Counsel, & Director of First Step Act Resource Center, NACDL eblackwood@nacdl.org</p>	

AGENDA

1. Compassionate Release Basics and COVID-19 in the Prisons as an Extraordinary and Compelling Reason
2. CARES Act Home Confinement v. Compassionate Release
3. Compassionate Release Procedural Requirements
4. Medical Grounds for Compassionate Release
5. Non-Medical Grounds for Compassionate Release
6. The Role of Local Counsel
7. Re-entry Issues for Compassionate Release Clients
8. Dealing with Detainers

SECTION I

COMPASSIONATE RELEASE BASICS AND COVID-19 IN PRISONS AS EXTRAORDINARY AND COMPELLING

REPORTED POSITIVE TESTS IN BOP

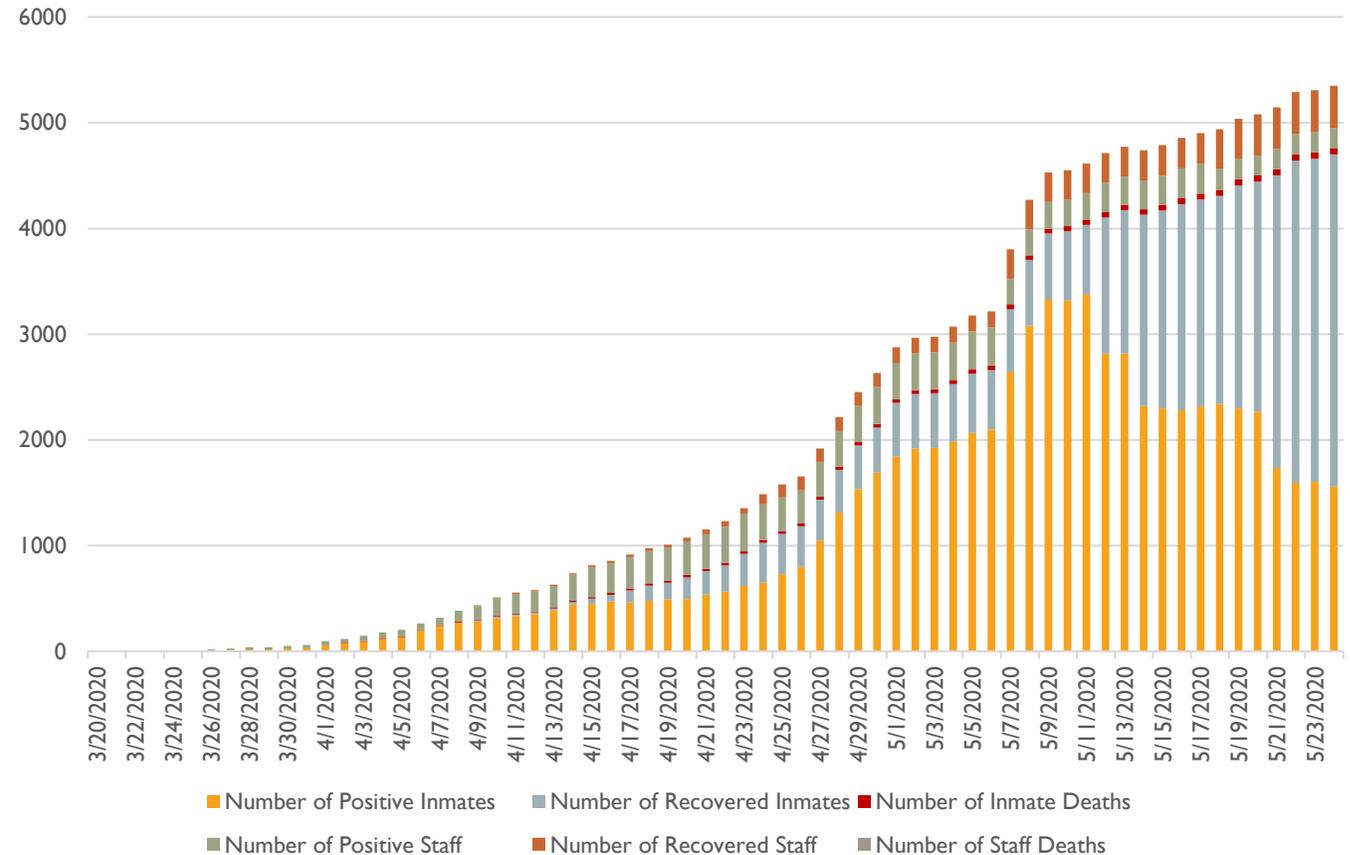
MAY 25, 2020:

INMATES – 4700
STAFF – 589
DEATHS – 59

(COUNTING THOSE
PRESENTLY INFECTED
AND THOSE WHO HAVE
ALREADY RECOVERED)

	BOP has an infection rate X times higher
Compared to the United States	6.411651
Compared to China	529.2683
Compared to Italy	8.666924

BOP-Reported COVID-19 Test Results Nationwide



<https://federaldefendersny.org/> (last accessed 5/25/20)

COMPASSIONATE RELEASE STATUTE 18 U.S.C. § 3582(C)(1)(A)

Modification of an Imposed Term of Imprisonment.—**The court may not modify a term of imprisonment once it has been imposed except that**— ...

- 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** ...
- After considering the **applicable § 3553(a)** sentencing factors.... IF
 - **extraordinary and compelling reasons warrant such a reduction**; ...
 - and that such a reduction is consistent with **applicable policy statements** issued by the Sentencing Commission

USSC POLICY STATEMENT
§ 1B1.13 - REDUCTION IN TERM OF
IMPRISONMENT UNDER § 3582(C)(1)(A)

Upon motion of the Director of the Bureau of Prisons under 18 U.S.C. § 3582(c)(1)(A), the court may reduce a term of imprisonment ... If . .the court determines that—

- (1) (A) extraordinary and compelling reasons warrant the reduction;...
- (2) the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g); and
- (3) the reduction is consistent with this policy statement.

TYPICAL CR MOTION CONTENTS

- Compliance with **Procedural Requirements**...Or Not.
- **Extraordinary and Compelling Reasons**
- Section **3553(a) Analysis**
 - Including defendant is not a danger to the safety of any person or the community under 18 USC § 3142(g)
- **Release Plan**

WHAT IS EXTRAORDINARY AND COMPELLING?

§ 1B1.13 COMMENT. N.1

(A) Medical Condition of the Defendant

Terminal Illness;

Serious Physical or Medical Condition/Serious Functional or Cognitive Impairment/
Deteriorating Physical or Mental Health – That Substantially Diminishes Ability to Provide
Self-Care in Prison and Not Expected to Recover

(B) Age of the Defendant

65+, serious deterioration of physical/mental health b/c of aging and served at least 10
years or 75% of prison term.

(C) Family Circumstances

(D) Other Reasons (Catch-All Provision)

As determined by the Director of the Bureau of Prisons, there exists in the defendant's
case an extraordinary and compelling reason other than, or in combination with, the
reasons described in Subdivisions (A) through (C).

TRADITIONAL “EXTRAORDINARY AND COMPELLING” FACTORS

- “Traditional Factors” USSG § 1B1.13 comment. n.1(A)-(C) **USE THEM IF YOU CAN**
 - If client has medical issue identified by the CDC as increasing his/her risk of becoming seriously ill due to COVID-19, **see if AUSA will agree that is a Serious Physical or Medical Condition That Substantially Diminishes Ability to Provide Self-Care in Prison.** § 1B1.13 comment. n.1(A)(ii)
- Catch-all Provision USSG § 1B1.13 comment. n.1(D)
 - Some courts use to find reasons outside traditional factors even though it specifies that only BOP Director can determine See e.g., *US v. Walker* (N.D. Ohio)
- **Many Courts Are Saying § 1B1.13 is Outdated and Courts Can Look Beyond It**

POLICY STATEMENT PROBLEMS

Sentencing Commission Defunct

Since the First Step Act was passed 12/18, Sentencing Commission has not amended §1B1.13 and no quorum currently exists for the Sentencing Commission

§ 1B1.13 Anachronisms

However, the current phrasing of § 1B1.13 still requires, in two clauses, that the BOP Director should be the one bringing the motion even though the First Step Act now allows a defendant to bring such a motion



EXTRAORDINARY AND COMPELLING CAN GO BEYOND SPECIFICALLY ENUMERATED GROUNDS IN §1B1.13

- As a result, many District Courts have held that, post-First Step Act, §1B1.13 is not binding on the Court—just helpful guidance
 - “I agree with the vast majority of district courts: I can consider whether reasons other than the inmate’s medical condition, age, and family circumstances amount to an extraordinary and compelling reason to reduce that inmate’s sentence.” *US v. Almontes*, 2020 WL 1812713 (D. Conn. Apr. 9, 2020); see also *US v. Dunlap*, (M.D. N.C.); *US v. Fox*, (D. Me.)
- Can argue COVID-19 + _____

EXTRAORDINARY AND COMPELLING CAN GO BEYOND ENUMERATED GROUNDS IN §1B1.13

- **CRITICAL:** Majority of our clients do not fit the criteria in §1B1.13

COVID-19 Scenarios often include

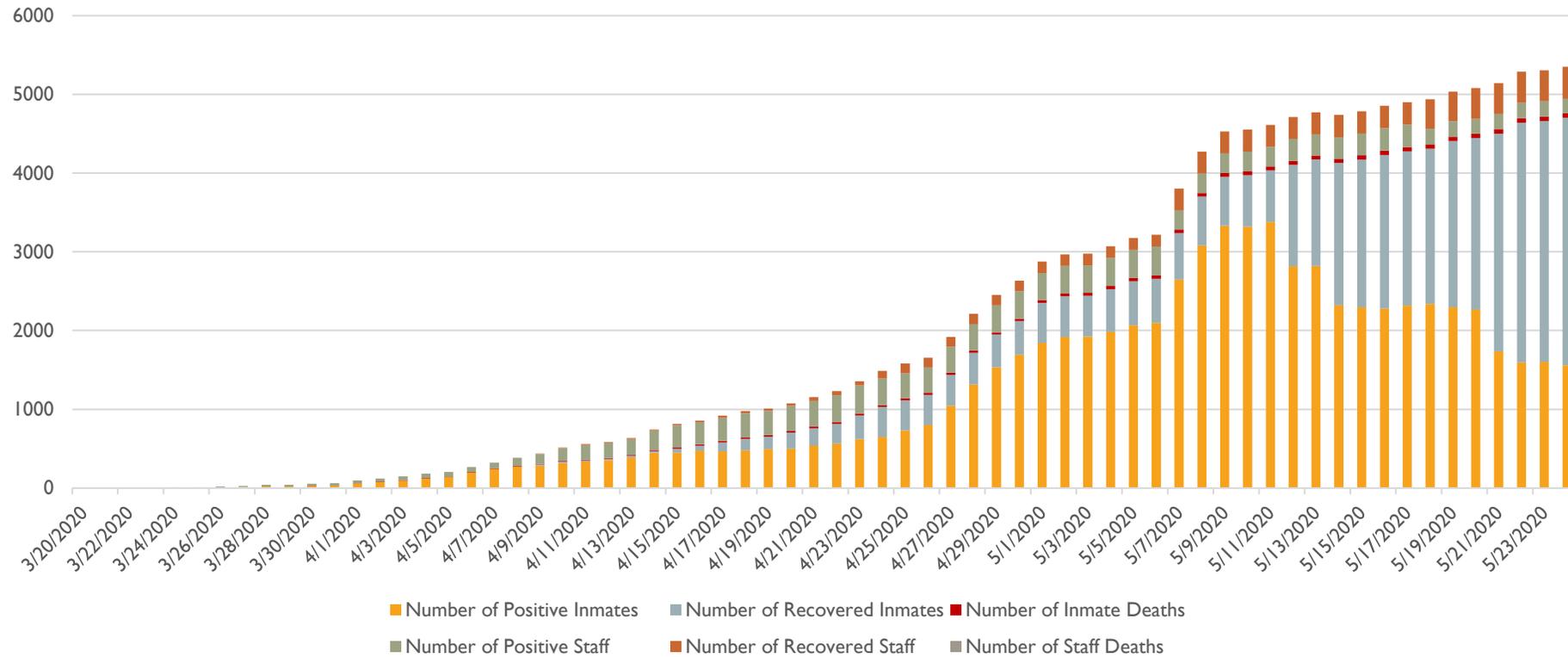
1. Client was always eligible under §1B1.13 (Traditional Factors), and COVID makes them MORE vulnerable
2. Your client was bordering on eligible and can use COVID to get them over the line
3. Your client really doesn't fit §1B1.13 but is vulnerable in light of COVID, and the Court has authority to grant CR.

COVID-19 INFO

- <https://www.cdc.gov/>
- circularclearinghouse.org (volunteers)
- <https://www.bop.gov/coronavirus/>
- <https://federaldefendersny.org/> (excellent charts and graphs)
- <https://www.fd.org/coronavirus-disease-2019-covid-19/compassionate-release>
- Habeas Motions Against Federal Prisons (Elkton, Terminal Island, Lompoc, Oakdale, Ft. Dix, etc.)
- Pacer: Backtrack from CR grants

RESPONSE THAT BOP POSITIVE CASES ARE DECREASING

BOP-Reported COVID-19 Test Results Nationwide



RESPONSE THAT BOP POSITIVE CASES ARE DECREASING

- **They Aren't Testing**
 - 70% of prisoners tested are positive. BOP admits that is not full scope. As of 5/1/20, BOP has tested **only 2700 out of 146,000 prisoners**.
 - <https://abcnews.go.com/US/70-inmates-tested-covid-19-bureau-prisons/story?id=70454527>;
<https://apnews.com/fb43e3ebc447355a4f71e3563dbdca4f>

RESPONSE THAT BOP POSITIVE CASES ARE DECREASING

- **Winter is Coming**

- Second Wave of Infections Expected.
<https://www.nytimes.com/2020/05/08/health/coronavirus-pandemic-curve-scenarios.html>
- Dr. Fauci “has warned that he expects cases to spike in closed environments like nursing homes, prisons and factories.”
<https://www.nytimes.com/2020/05/11/health/coronavirus-second-wave-infections.html>
- Whistleblower Dr. Bright testified before Congress that Americans could be facing “the darkest winter in modern history” <https://www.nytimes.com/2020/05/14/us/politics/whistleblower-coronavirus-trump.html?action=click&module=RelatedLinks&pgtype=Article>



TYPICAL CR MOTION CONTENTS

- Compliance with Procedural Requirements...Or Not.
- Extraordinary and Compelling Circumstances
- **Section 3553(a) Analysis**
 - Including defendant is not a danger to the safety of any person or the community under 18 USC § 3142(g)
- Release Plan

§ 3553(A) SECTION

- **Nature of the offense**
 - Does the offense look different now than decades ago? (E.g. Stacked 924(c)s, marijuana/crack prosecutions)
- **History & Characteristics**—full current picture, including medical condition, post-sentencing rehabilitation efforts, discipline history
- **Need to deter, punish, protect the public**
 - Does client's age/current medical situation affect ability to commit crimes/understanding purposes of punishment?
 - Have they already been punished significant including by having to “suffer” BOP taking care of medical needs?
- **Need to provide...medical care...**in the most effective manner—can that happen in BOP right now?

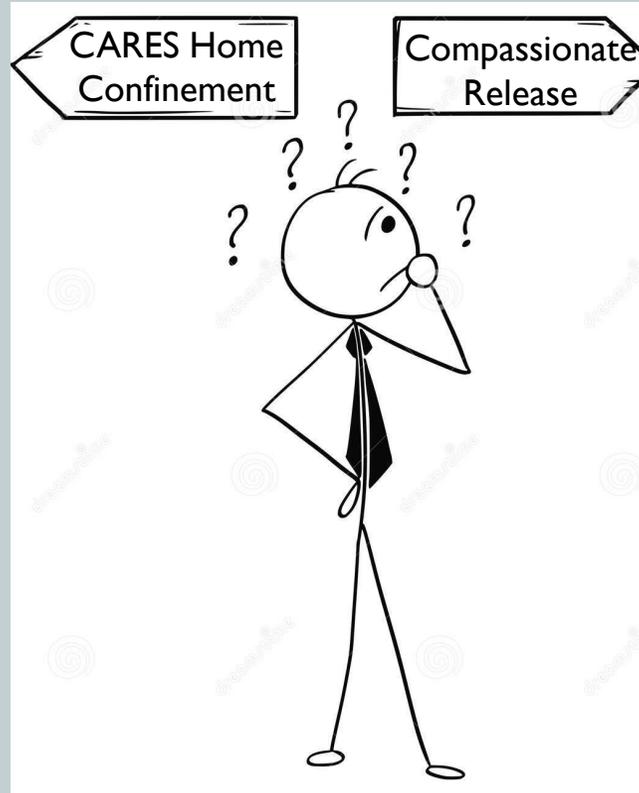
SECTION II

CARES ACT HOME CONFINEMENT V.
COMPASSIONATE RELEASE

CARES ACT HOME CONFINEMENT VS. COMPASSIONATE RELEASE

CARES Act

- Expanded BOP's power to transfer inmates to home confinement under 18 U.S.C. § 3624
- BOP sets criteria (e.g., 50% in, good conduct, minimum Pattern score)
- Courts can recommend transfer, unclear if BOP giving any weight
- Sec. 3622 also authorizes furlough (unaffected by CARES Act). Often easier to get and can convert to CARES Act HC.



Compassionate Release

- Courts' prerogative to reduce sentence (subject to procedural requirements) under § 3582(c)(1)(A)
- If sentence reduced to time-served, client is no longer in BOP custody
 - They are under court supervision
- Court can order home confinement as condition of supervised release

“GREAT NEWS! BOP IS SENDING YOUR CLIENT HOME!”

Need I bother with compassionate release?

- a pattern: when a CR motion may have traction, BOP “grants” a transfer and argues “mootness,” or at least “no need.” See Reply in Support of Limited Remand, *United States v. Raia* (3d Cir.).
- A trap for the unwary:
 - shifting standards for BOP’s discretionary transfer decisions have left clients stranded;
 - “Kafkaesque” 14-day in-custody quarantine that never ends (e.g., *Scparta*, S.D.N.Y.).

SECTION III

COMPASSIONATE RELEASE PROCEDURAL REQUIREMENTS

COMPASSIONATE RELEASE STATUTE 18 U.S.C. § 3582(c)(1)(A)

- Permits a district court to reduce a sentence on defendant's motion:
- “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[.]”

PRISONER'S REQUEST TO THE WARDEN

- Prisoner Can Request
 - OR
- Attorney (or other third party) Can Request on Prisoner's Behalf
 - 28 C.F.R. 571.61; BOP Program Statement 5050.50
- Client request typically made through BOP counselor
- Attorney request best sent to facility email address (available at bop.gov)
 - E.g., HER/ExecAssistant@bop.gov), and cc: the attorney for the facility (pp.53-54 of https://www.bop.gov/resources/pdfs/legal_guide_march_2019.pdf).
 - Request confirmation of receipt

“DEAR WARDEN”: ELEMENTS OF THE REQUEST

- Ask that BOP *file a motion* seeking reduction in sentence, under §3582(a)(1)(C).
 - Not asking BOP to “reduce sentence” or “grant compassionate release”; not requesting a “transfer,” or invoking “CARES Act” or “Barr Memo,” unless “in the alternative”
- Address the “extraordinary and compelling reasons,” including—but ideally not limited to—the COVID-19 pandemic.
- Address release plan (residence, support, medical care).
 - 28 C.F.R. 571.61; BOP Program Statement 5050.50
- **Note:** DOJ has asserted “defects” in “requests” (including changed circumstances) to say clock hasn’t started.

TWO PATHS TO EXHAUSTION:
EXHAUST BOP REMEDIES OR WAIT 30 DAYS



ToonClips.com

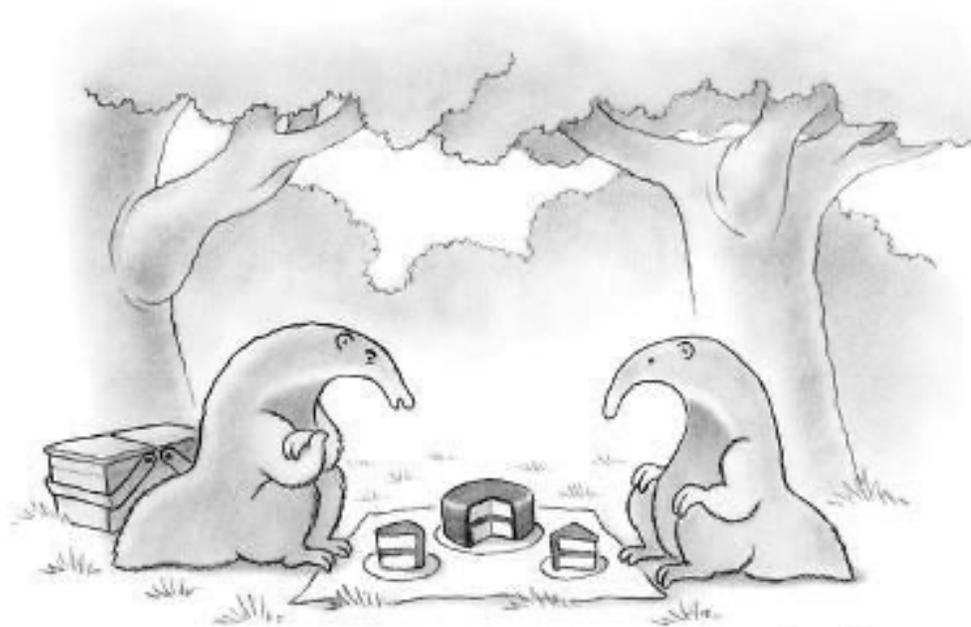
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PATHS TO EXHAUSTION: LAPSE OF 30 DAYS

- 30-day waiting period begins upon “receipt by the warden” of the request—**but constructive receipt counts**
 - Delivery to any prison official (e.g., case manager) counts. *E.g., United States v. Resnick, S.D.N.Y.* (analogizing to Prisoner Mailbox Rule)
- *Note:* statute says **court may grant relief after lapse of 30 days** (*Scparta, S.D.N.Y.*); defendant may (and should!) **file before** lapse of 30 days
 - Some USAOs are contesting this and moving to dismiss. Don’t be deterred (absent a ruling in your circuit).

PATHS TO EXHAUSTION:
ALL WE CAN DO IS WAIT?



““Now, we wait.”

PATHS TO EXHAUSTION:

“Come on, we’re human beings.”

- Judge Villardo to AUSA in *U.S. v. Bess* (W.D.N.Y.)

- But this is an emergency!!!
 - Is the court truly powerless to address it?
- In some cases, the government has agreed to **waive** the 30-day waiting period.
- If government won’t waive, ask the district court to **excuse** the 30-day waiting period.

EXCUSING THE WAIT:

Forget the human beings; what should the lawyers say?

- Legal analysis:
 - 30-day waiting period is **not jurisdictional**. Rather, it is **a non-mandatory claims-processing rule** that courts have discretion to **excuse** when they deem fit.
 - Recommendation: Frame as question of judicial authority. Congressional intent to “let judges judge” a party’s request for relief. DOJ no longer the gatekeeper.
 - See NACDL-FAMM amicus brief in *U.S. v. Raia* (3d Cir.), Defender briefs in *U.S. v. Millage* (9th Cir.)
- And as a practical matter:
 - The premise for the 30-day wait has broken down. No meaningful BOP review of “requests.”
 - See Third Circuit Defender amicus brief in *Raia* (3d Cir.), Defender briefs in *Millage* (9th Cir.)
 - “This is futile!”—great! Some courts will excuse exhaustion for futility.

(EVEN MORE) EXHAUSTING: ADMINISTRATIVE APPEALS

- “alternative” (of sorts) to 30-day wait is exhausting administrative appeals—though typically takes several months.
- Why bother?
 - Some courts have ruled that if a Warden denial happens before Day 30, client must appeal within BOP— and then complete BOP appeal process!
 - **Practice tip:** if client gets denial early, *tell client to file BOP appeal.*
 - **Remember:** do not wait to file § 3582 motion unless court says you must.

SECTION IV

MEDICAL GROUNDS FOR COMPASSIONATE RELEASE

GETTING MEDICAL RECORDS

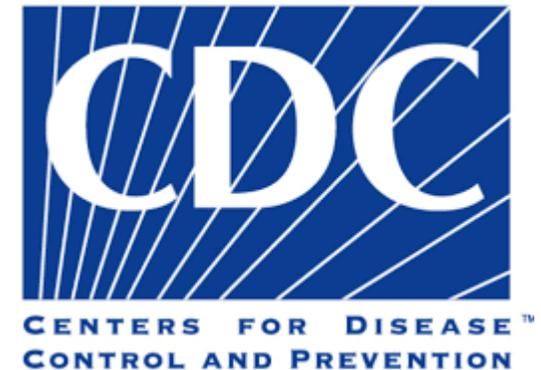


- Will take some time, **so prioritize this process.**
- Purposes:
 - Confirmation of health conditions.
 - Report regarding current health regimen/requirements
 - Basis for a personalized medical declaration

MEDICAL ISSUES APPLICABLE FOR COVID-19 BASED CR

The CDC includes the following as those with “Higher Risk for Severe Illness”

- People 65 and older
- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions.
- People who are immunocompromised by the following conditions:
 - Cancer treatment
 - Smoking
 - Bone marrow/organ transplantation
 - Immune deficiencies
 - HIV/AIDS
 - Prolonged use of corticosteroids and other immune system-weakening meds.
- People with severe obesity
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease



NEW PROTOCOL TO GET MEDICAL RECORDS

- For all Prisoners: Ask Prisoner to fill out and sign the Certification of Identity (COI) Form.
 - https://www.bop.gov/inmates/docs/certification_of_identity.pdf
 - Prisoner information goes on the top and the prisoner signs Certification. Your name must appear below in the section that begins “Optional” as the prisoner is authorizing release to you
 - Ask client to keep the original and send you a signed copy
- **Two Tracks:**
 - Track 1: Prisoners who are **terminally ill or debilitated**
 - Track 2: All others

TRACK ONE (TERMINALLY ILL OR DEBILITATED)

- Write an email to **BOP Regional Counsel** responsible for the institution in which your client is incarcerated
 - Subject Line: **Medical Records (w/ Client name and Register Number)**
 - Body: Explain client is **terminally ill or debilitated**; request records for past **one year**; and state that you have your **client's permission** to seek medical records
 - Attach: **Certification of Identity Form** (executed if you have it, but if not, fill out as much info about client as possible on the top, put your name on bottom and sign it)
 - Attach: **Email from the prisoner** authorizing you to receive medical records (don't wait if you don't have it—explain in email that it is coming and send when you have it.)

TRACK TWO (EVERYONE ELSE)

- File a **FOIA Email Request**
 - Subject Line: **Medical Records (Client name and Registration Number)**
 - Body: Explain client seeking CR; state grounds (including COVID/underlying condition; **request one year of records**; state you have client's permission)
 - Attach: **Certification of Identity Form** (executed if you have it, but if not, fill out as much info about client as possible on the top, put your name on bottom and sign it)
 - Attach: **Email from the prisoner** authorizing you to receive medical records (don't wait if you don't have it—explain in email that it is coming and send when you have it.)

NEXT STEPS TRACK ONE AND TWO

- Wait a “**reasonable period of time.**” Use your judgment based on YOUR client
 - Could be as short as a week if client very ill or in a prison COVID-19 hot-spot, e.g.
- On lapse of “**reasonable period of time**”
 - Forward request for medical records to: BOP-OGC/ExecAssistant~@BOP.gov
 - **Caveat:** Office of General Counsel advises that they will prioritize requests for prisoners who are at or near 30-day mark (so mention this if it applies to your client)
 - This procedure is new, but so far seems to be working.

INFORMAL ROUTES

- Ask your client (if incarcerated) to request his own records and then have them mailed (or faxed/scanned).
- Contact family members to see if medical records prior to incarceration exist if there were preexisting conditions/occurrences.
- Ask the government for the records (or perhaps the Court will order it).



MEDICAL DECLARATION

- Once you have the medical records.....
 - Find a doctor to review and send them the records.
 - Draft the declaration (crib from other successful filings)
 - Ensure the doctor's credentials are spelled out
- And finally.....
 - Consider the impact of the declaration/use of medical records.

SECTION V

NON-MEDICAL GROUNDS FOR COMPASSIONATE RELEASE



CAVEAT ADVOCATUS:

The sentencing court as gatekeeper of the “extraordinary and compelling” standard is **filled with possibility** . . .

And **fraught with risk**.

Make sure you **consult an expert** and **brainstorm with your peers**.

SENTENCING DISPARITY: STACKED 18 U.S.C. § 924(C) COUNTS

- **Pre-First Step Act**
 - Δ facing multiple § 924(c) charges would get 5 years on first count and consecutive 25 years on subsequent counts
- ***United States v. Holloway*, 68 F. Supp. 3d 310, 312 (E.D.N.Y. 2014)**
 - Sentences based on stacked 924(c) charges “would be laughable if only there weren't real people on the receiving end of them”
- **First Step Act, Section 403(a)**
 - **Counts can only be stacked with the higher penalty if the second offense occurs after a final conviction on the first offense.**



STACKED 18 U.S.C. § 924(C) COUNTS & COMPASSIONATE RELEASE

- ***United States v. Brown***, 2020 WL 2091802 (S.D. Iowa, April 29, 2020) (CR granted in part because of Δ's "draconian sentence" driven by stacked § 924(c) convictions) (collecting cases)
- ***United States v. Urkevich***, 2019 WL 6037391 (D. Neb. Nov. 14, 2019) (CR granted to redress "the injustice of facing a term of incarceration forty years longer than Congress now deems warranted for the crimes committed.")
- ***United States v. McPherson***, 2020 WL 1862596 (W.D. Wash. Apr. 14, 2020) ("It is extraordinary that a civilized society can allow this to happen to someone who, by all accounts, has long since learned his lesson.")

SENTENCING DISPARITY: USE OF 21 USC § 851 ENHANCEMENT

- **First Step Act reduces MM penalties** applicable when prosecutor files notice under 21 U.S.C. § 851
- Δ's prior convictions must meet the **new definitions** of "serious drug felony" or "serious violent felony"
- Δ must have **served** a term of imprisonment of more than **12 months** on prior offense and must have been released within 15 years of current federal offense
- For any "serious drug felony" or a "serious violent felony" based on 18 U.S.C. § 3559(c)(2), the offense must have been **punishable by a term of imprisonment of 10 years or more**

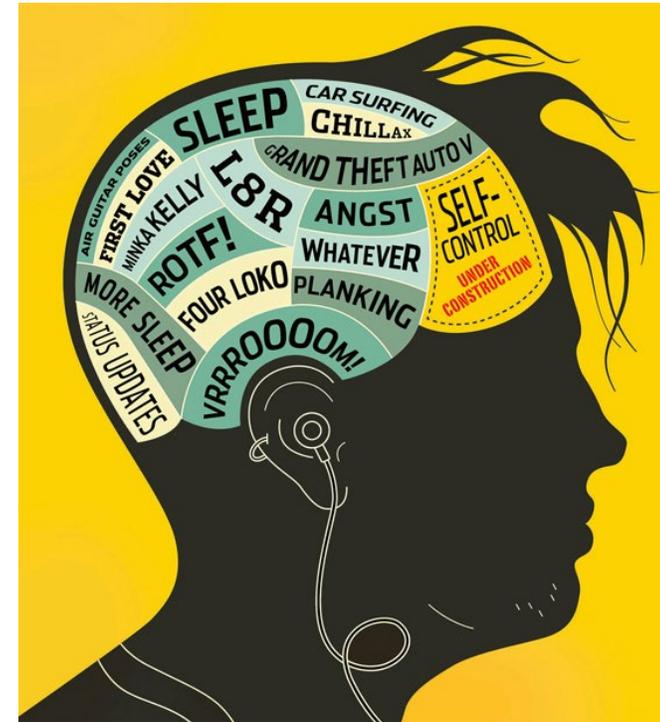


USE OF 21 USC § 851 ENHANCEMENT & COMPASSIONATE RELEASE

- *United States v. Cantu-Rivera*, 2019 WL 2578272 (S.D. Tex. June 24, 2019)
- *United States v. Mondaca*, 2020 WL 1029024 (S.D. Cal. March 3, 2020)
- *United States v. Hope*, Case No. 90-cr-06108 (S.D. Fla. 2020)
- Note also: *United States v. Hansen*, 2020 WL 1703672 (E.D. N.Y. April 8, 2020) (granting CR on medical and age grounds, but citing § 851 enhancement as § 3553 factor)

SENTENCING DISPARITY: SOME OTHER IDEAS

- Was your client sentenced before the Supreme Court's revolutionary *Miller/Roper/Graham* decisions on the **youth brain**?
- Did the sentencing judge consider latest research on criminogenic impact of **childhood trauma** and **domestic abuse**?
- Was your client sentenced before *Booker* (2005) or before *Booker* truly entered the sentencing landscape?
- Check out the **increased sentencing departures/variances** over the years in USSC sourcebooks
- Was there a **post-sentencing change** to your client's **guidelines** that was not retroactive? (e.g. mitigating role)



FAMILY CIRCUMSTANCES & COMPASSIONATE RELEASE

- **§ IBI.13(C)**
 - Authorizes compassionate release to care for incapacitated spouse or if sole caregiver of minor children is incapacitated/dead
- **Post-First Step Act**
 - *United States v. Kesoyan*, 2020 WL 2039028 (E.D. Cal. April 28, 2020) (CR granted to mother of disabled son, aged 24, with deteriorating health)
 - *United States v. Reyes*, 2020 WL 1663129 (N.D. Ill. Apr. 03, 2020) (CR granted so Δ could care for his aunt who had stage four cancer)



REHABILITATION & COMPASSIONATE RELEASE

- **28 U.S.C. § 994(t)**
 - **Rehabilitation** of the defendant **alone** shall not be considered an extraordinary and compelling reason.
- **Recent Cases**
 - *United States v. Brown*, 2020 WL 2091802 (S.D. Iowa, April 29, 2020) (CR granted in part because Δ has been a model inmate)
 - *United States v. Marks*, 2020 WL 1908911, (W.D.N.Y. April 20, 2020) (collecting cases)
 - *United States v. Millan*, 2020 WL 1674058 (S.D.N.Y., April 6, 2020) (granting CR based on defendant's rehabilitation in face of life sentence)



SECTION VI

THE ROLE OF LOCAL COUNSEL IN COMPASSIONATE RELEASE EFFORTS

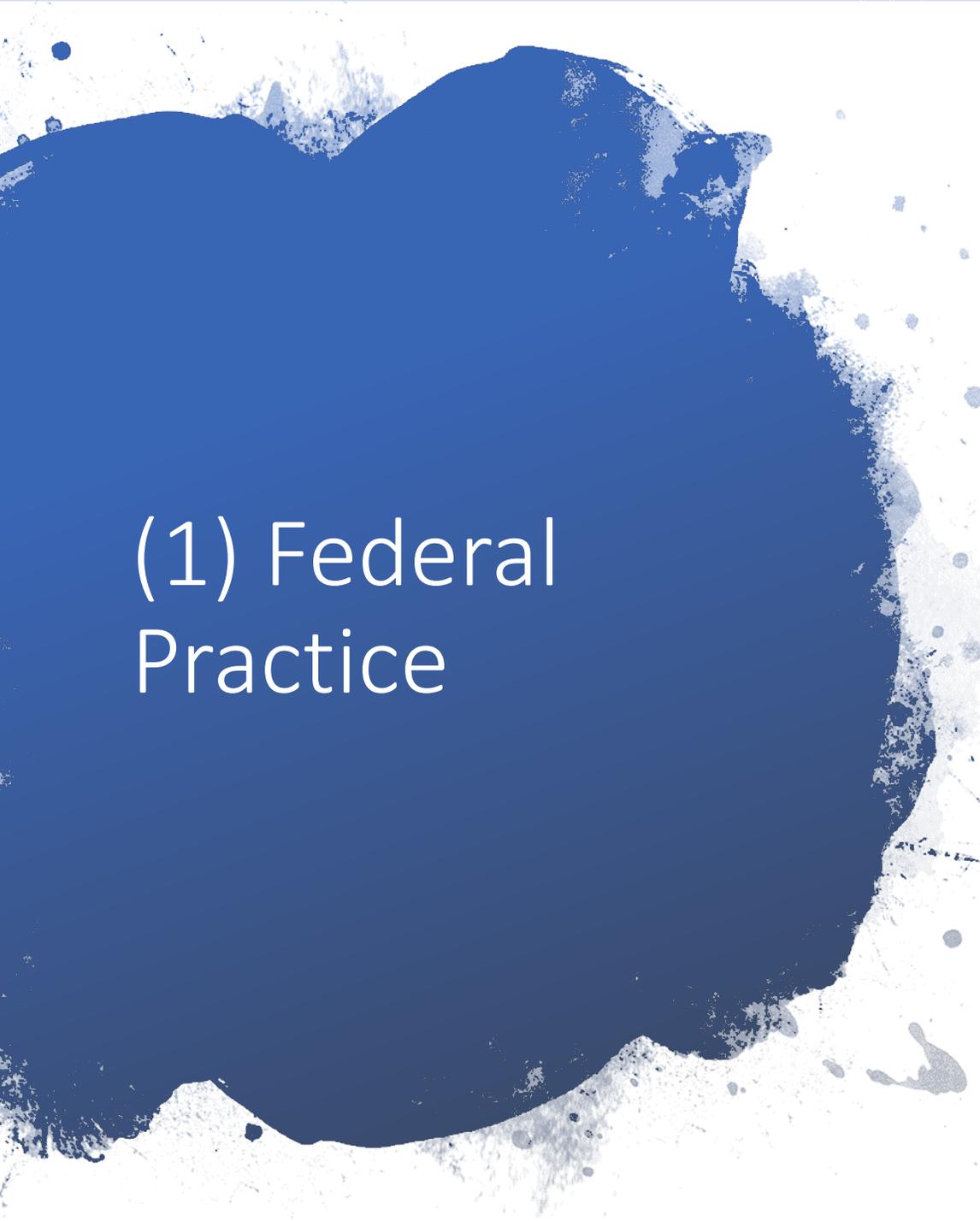
The Role of Local Counsel in Compassionate Release Efforts

Shazzie Naseem
Berkowitz Oliver LLP
Kansas City MO





Five Things to Keep in Mind



(1) Federal Practice

- **Federal v. State Practice**

- The theory of criminal practice is the same, but....
 - Rules are different
 - Timelines are different
 - Decorum is different
 - Prosecuting authority and resources are different
 - **Sentencing Guidelines**
- Any inquiry into retaining local counsel should include a discussion of their primary arena of practice.

(2) Familiarity with the Characters

- Local counsel should have familiarity with the various people involved in the District:
 - Prosecutors
 - Any insight into the way they approach a case?
 - Judges
 - What is their experience with the judge in the District?

(3) Pro Hac Vice Admission

RULE 83.5.4 APPEARANCE FOR A PARTICULAR CASE

(a) Requirements for Pro Hac Vice Admission. An attorney who is not admitted to practice in this court may be admitted for the purposes of a particular case only, if the following conditions are met:

- (1) The attorney must be a member in good standing of the bar of another state or federal court;
- (2) A member in good standing of the bar of this court must move for his or her admission;
- (3) The motion must be in writing;
- (4) The motion must be accompanied by an affidavit on the form prescribed by court rule ([see form](#)); and
- (5) The attorney seeking admission must pay a registration fee of \$50 per case.

An attorney's admission is subject to [28 U.S.C. §§ 515, 517](#), and similar provisions of the United States Code. Attorneys employed by any department or agency of the United States government are not required to pay a pro hac vice registration fee.



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(4) eVoucher Opportunities

- Courts are authorized to appoint a member of the CJA Panel for compassionate release cases.
 - Talk to your FPD/CJA Resource Counsel about appointment
- Appointment in eVoucher is important
 - Provides access for the submission of motions for expert resources
 - Especially important when retaining medical experts



CJA eVoucher
Electronic Voucher Management System

USER LOGIN Kansas District Court Production Release 6.2.1

Existing user? Please log in.

Username:

Password: 

[Forgot Your Login/Reset Password](#)

(5) Pro Bono Service

- These matters take time to litigate – how do you connect with someone willing to help?
 - Connection via NACDL Board service/membership in criminal defense bar
 - Reach out to local FPD about good attorneys in the area
 - Contact the CJA Panel District Representative in the District
- Make sure to log the hours spent on a case even if you are not receiving compensation
 - Some firms recognize pro bono hours as an important part of community service
 - Some firms submit hours spent on a case to their local bar organizations

SECTION VII

REENTRY ISSUES FOR COMPASSIONATE RELEASE CLIENTS

DON'T WAIT UNTIL YOU WIN

- The BOP likes to say “reentry preparation starts on the first day of incarceration”
- We like to say “reentry preparation starts on the first day of representation”
- **Goals:**
 - Ensure your client has appropriate housing, medical care, and a means of financial support if released
 - Give the court confidence to sign the release order knowing your client has a safe place to go with her medical and financial needs addressed.

RELEASE PLAN IS NOT JUST A GOOD IDEA

- BOP P.S. 5050.50 **requires** it:
 - The inmate's [compassionate release] request shall at a minimum contain the following information: (1) The extraordinary or compelling circumstances that the inmate believes warrant consideration. (2) **Proposed release plans**, including where the inmate will reside, how the inmate will support himself/herself, and, if the basis for the request involves the inmate's health, information on where the inmate will receive medical treatment, and how the inmate will pay for such treatment.
- Courts won't release without it:
 - IT IS FURTHER ORDERED that Mr. B' s release from the custody of the Federal Bureau of Prisons is effective as soon as medically appropriate transport and placement can be arranged

YOU NEVER WANT TO SEE THIS

“IT IS FURTHER ORDERED that BOP shall release Defendant immediately after **holding him for a 14-day quarantine period** at FCI Loretto.”

SOURCES OF INFORMATION

- Your client
- Loved ones
- Agencies
- U.S. Probation

AGENCIES

- **Area Agencies on the Aging** “are often POWERHOUSES. They are state specific and serve as a ‘hub’ for everything from navigating Medicare and Medicaid applications, aligning Meals-on-Wheels, and securing low-cost durable medical equipment.” – Stephanie Prost, Ph.D. – Compassionate Release Clearinghouse Reentry and Community Resources Consultant
- Centers for Medicare and Medicaid Services - <https://www.cms.gov/>
- U.S. Dep’t of Veterans Affairs - <https://benefits.va.gov/BENEFITS/Applying.asp>
- Social Security - <https://secure.ssa.gov/iClaim/dib>
- National Hospice and Palliative Care Organization - <https://www.nhpco.org/find-a-care-provider/>

REACH OUT TO PROBATION

- Ordinarily, Warden will ask Probation to conduct a home visit to approve the release residence
- But, if the BOP does not support your client's compassionate release, Probation is unaware your client may be released
- We counsel giving Probation a heads up
 - The PO may be willing to assist with release planning and look at whether the terms of supervised release still make sense in terms of your client's condition
 - You may be able to avoid problem orders like this....

REACH OUT TO PROBATION – OR ELSE

“Defendant is required to contact the probation office in the district where he was released within 48 hours of his release. **The Probation Office has indicated that the release plan proposed by Defendant is not suitable**; therefore, during the 14-day period when Defendant is placed under quarantine, the Probation Office is directed to confer with the defendant and his counsel to develop a suitable release plan.”

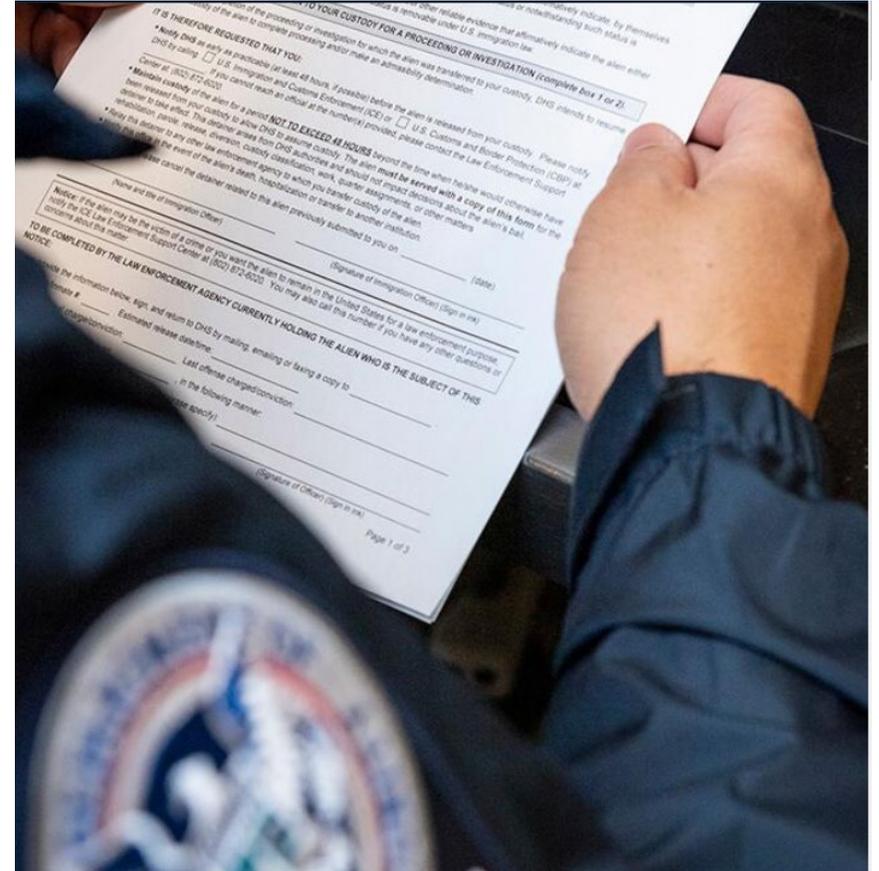
MOTION SHOULD INCLUDE

- 14-day quarantine in USPO-approved release residence and **not** in the BOP
- How your client will be financially supported (SS, SSI, family member income, pension, public assistance, etc.)
- Source(s) of medical insurance (Medicare, Medicaid, VA benefits, Obamacare)
 - evidence that applications have been or will be made, and
 - how any time lag in coverage will be addressed
- Any modifications to terms of supervised release

SECTION VIII

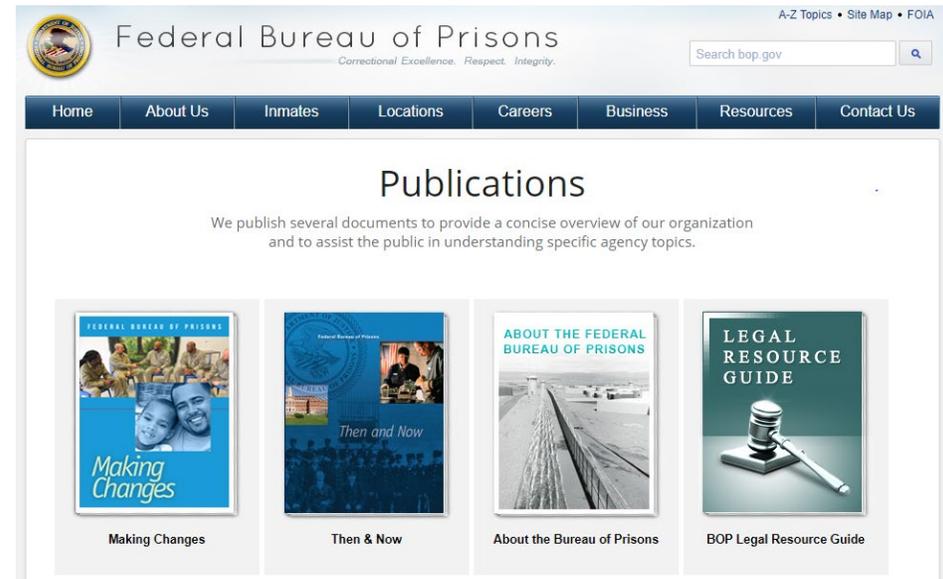
DEALING WITH DETAINERS

ICE DETAINERS



FIND OUT WHETHER CLIENT HAS AN ACTIVE DETAINER

- Ask BOP
 - Client's case manager
 - BOP legal counsel for facility
 - BOP Legal Resource Guide (p. 54)
 - <https://www.bop.gov/resources/publications.jsp>
 - BOP headquarters



**FIND OUT
 WHETHER
 CLIENT HAS
 ACTIVE
 DETAINER:
 Ask BOP**

MXRO**MXRO**

◆ Diana Lee
 Phone: 301-317-3128
 FCI Cumberland, MD
 FCI Morgantown, WV
 FCI Memphis, TN
 USP Hazelton, WV
 FCI Hazelton, WV

FMC Lexington

◆ Carlos Javier Martinez
 Ph.: 859-255-6812x5710
 FMC Lexington, KY
 FCI Ashland, KY
 FCI Manchester, KY
 USP Big Sandy, KY
 USP McCreary, KY

FCI Beckley

◆ Debbie Stevens
 Ph.: 304-252-9758x4105
 FCI Beckley, WV
 FPC Alderson, WV
 USP Lee, VA
 FCI McDowell, WV
 FCI Gilmer, WV

FMC Butner

◆ Mike Bredenberg
 Ph.: 919-575-3900x6078
 FMC Butner, NC
 FCI Butner, NC
 FCI Butner, NC
 LSCI Butner, NC
 FCI Petersburg, VA
 FCI Petersburg, VA
 Contract-Winton, NC

◆ **CLC LEADER****NERO****NERO**

◆ Joyce Horikawa
 Phone: 215-521-7378
 FDC Philadelphia, PA
 FCI Fort Dix, NJ
 FCI Fairton, NJ
 FCI McKean, PA
 FCI Elkton, OH
 FCI Loretto, PA
 Contract-Moshannon
 Valley, Phillipsburg, PA

MCC New York

◆ Adam Johnson
 Phone: 646-836-6455
 MCC New York, NY
 MDC Brooklyn, NY
 FCI Otisville, NY

FCC Allenwood

◆ Jonathan Kerr
 Phone: 570-522-7642
 LSCI Allenwood, PA
 FCI Allenwood, PA
 USP Allenwood, PA
 USP Lewisburg, PA
 FCI Schuylkill, PA
 USP Canaan, PA

FMC Devens

◆ Les Owen
 Phone: 978-796-1043
 FCI Danbury, CT
 FCI Ray Brook, NY
 FMC Devens, MA
 FCI Berlin, NH

NCRO**NCRO**

◆ Mary Noland
 Phone: 913-551-1019
 USP Leavenworth, KS
 MCFP Springfield, MO

FMC Rochester

◆ Kara Anderl
 Phone: 507-424-7445
 FMC Rochester, MN
 FPC Duluth, MN
 FCI Sandstone, MN
 FCI Waseca, MN
 FPC Yankton, SD
 AUSP Thomson, IL

St. Louis, MO

◆ Tracy Knutson
 Phone: 314-539-2383
 MCC Chicago, IL
 FCI Oxford, WI
 FCI Pekin, IL
 USP Marion, IL
 FCI Greenville, IL
 FCI Terre Haute, IN
 USP Terre Haute, IN
 FCI Milan, MI

FCC Florence

◆ Chris Synsvoll
 Phone: 719-784-5216
 FCI Florence, CO
 USP Florence, CO
 ADMAX Florence, CO
 FPC Florence, CO
 FCI Englewood, CO

WXRO**WXRO**

◆ C. Dominic Ayotte
 Phone: 209-956-9731
 FCI Dublin, CA
 USP Atwater, CA
 FCI Herlong, CA
 FCI Mendota, CA
 Contract-Taft, CA

FDC SeaTac

◆ George Cho
 Phone: 206-870-1057
 FDC SeaTac, WA
 FCI Sheridan, OR
 FDC Honolulu, HI

FCI Phoenix

◆ David Huband
 Ph.: 623-465-5115
 FCI Phoenix, AZ
 FCC Tucson, AZ (2)
 FCI Safford, AZ
 MCC San Diego, CA

MDC Los Angeles

◆ Eliezer Ben-Shmuel
 Ph.: 213-485-0439x5428
 MDC Los Angeles, CA
 FCI Terminal Island, CA
 FCC Lompoc, CA (2)
 FCC Victorville, CA (3)

SCRO**SCRO**

◆ Sonya Cole
 Phone: 972-730-8925
 FMC Ft. Worth, TX
 FMC Carswell, TX
 FCI La Tuna, TX
 FCI Big Spring, TX
 FCI Seagoville, TX
 Contract-Big Spring, TX
 Contract-Post, TX
 Contract-Pecos, TX

FDC Houston

◆ Eric Hammonds
 Phone: 713-229-4104
 FDC Houston, TX
 FCI Three Rivers, TX
 FCI Bastrop, TX
 USP Pollock, LA
 FCI Pollock, LA
 FCC Oakdale, LA (2)

FCC Beaumont

◆ Christina Hauck
 Ph.: 409-727-8187x3241
 FCC Beaumont, TX (4)
 FPC Bryan, TX

FTC Oklahoma City

◆ J. D. Crook
 Phone: 405-680-4004
 FTC Oklahoma City, OK
 FCC Forrest City, AR (8)
 FCI Texarkana, TX
 FCI El Reno, OK
 Contract-Hinton, OK

SERO**SERO**

◆ Vince Shaw
 Phone: 678-686-1261
 FCI Talladega, AL
 FCI Jesup, GA
 MDC Guaynabo, PR
 Contract-McRae, GA
 Contract-Folkston, GA

USP Atlanta

◆ J. Latease Bailey
 Phone: 404-635-5400
 USP Atlanta, GA
 FPC Montgomery, AL

FCC Yazoo City

◆ Joshua Robles
 Phone: 662-751-4933
 FCI Yazoo City-Med., MS
 FCI Yazoo City-Low, MS
 USP Yazoo City, MS
 FCI Aliceville, AL
 Contract-Natchez, MS

FCC Coleman

◆ Jeffrey Middendorf
 Phone: 352-689-7382
 FCC Coleman-Med., FL
 FCC Coleman-Low, FL
 FCC Coleman-Admin., FL
 USP I Coleman, FL
 USP II Coleman, FL

FCI Miami

◆ Rick DeAguiar
 Phone: 305-259-2511
 FDC Miami, FL
 FCI Miami, FL
 FCI Tallahassee, FL
 FCI Marianna, FL
 FPC Pensacola, FL

SC/FCI Edgefield

◆ Lara Crane
 Phone: 803-637-1307
 FCI Edgefield, SC
 FCI Estill, SC
 FCI Williamsburg, SC
 FCI Bennettsville, SC

FIND OUT WHETHER CLIENT HAS ACTIVE DETAINER

- Ask ICE
 - Enforcement and Removal Operations Field Offices
 - <https://www.ice.gov/contact/ero>
 - Offices of the Principal Legal Advisor
 - <https://www.ice.gov/contact/legal>



ASK ICE TO LIFT THE DETAINER

- Prepare Advocacy Letter
- Things to Include:
 - Age, medical conditions, ability to travel, risk from COVID-19
 - Release plan
 - Letter verifying release plan
 - Extrinsic proof of address
 - Copy of identification



ZUCKERMAN
SPAEDER

Avery F. Pollard
ASSOCIATE
Zuckerman Spaeder LLP
apollard@zuckerman.com
(202) 778-1808

April 26, 2020

VIA E-MAIL

Officer Eduardo Martinez
Immigration & Customs Enforcement
Enforcement & Removal Operations
Atlanta Field Office
180 Ted Turner Drive SW
Suite 522
Atlanta, Georgia, 30303

Re: Request for Consideration of Enforcement Discretion

Dear Mr. Martinez:

We represent [client name] (No. A0XXXXX), who is currently incarcerated at [facility]. We are seeking emergency compassionate release for [client] in federal court early next week. [client] is a green card holder from [X] whose children live in the United States and are U.S. citizens. We understand that [client] may be subject to an ICE detainer. Due to [client's] age, serious health conditions, and vulnerability to COVID-19, we respectfully ask that ICE exercise its discretion and lift the detainer.

[Client] is [X] years old, in poor health, and cannot move around easily. He has served nearly twenty years in prison after pleading guilty to a one count indictment of conspiracy to distribute cocaine and cocaine base in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A)(ii) and (iii), and 846. During his time in prison, he has developed numerous medical conditions. We have [client]'s medical records for 90 days in 2020, from January 17, 2020, to April 17, 2020, which is

MOTION FOR COMPASSIONATE RELEASE

- Decide whether or not to mention potential ICE detainer

⁷ Bertrand is a permanent resident of the United States; he is not a U.S. citizen. Bertrand may be subject to an active detainer from U.S. Immigration and Customs Enforcement, which is a request by ICE to law enforcement agencies to detain a prisoner for up to an additional 48 hours after release to allow the Department of Homeland Security to assume custody if it chooses to do so. *See* 8 C.F.R. § 287.7. Although existence of a detainer is not a factor in the court's consideration of a compassionate release request under 18 U.S.C. § 3582(c)(1)(A), undersigned counsel is currently in contact with ICE officials regarding lifting this detainer.

Q&A