IN THE UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF MISSISSIPPI

EASTERN DIVISION

UNITED STATES OF AMERICA, )

)

Plaintiff, )

)

v. ) Case No. xxxxxxxx

)

xxxxxxxxxxx, )

)

Defendant. )

MOTION FOR COMPASSIONATE RELEASE

TO THE HONORABLE KEITH STARRETT, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, EASTERN DIVISION:

Now comes xxxxxxxx, Register number xxxxxxx, pursuant to 18 U.S.C. Section 3582(c)(1)(A)(i), Section 1B1.13 of the US Sentencing Guidelines, BOP program statement 5050.50 and 28 CFR Section 571.61 and through his counsel seeks this Court to grant him compassionate release from FPC xxxxxx Federal Prison to time served or home confinement.

Upon his conviction on xxxxxxxxx, xxxxxxxx was taken into federal custody.  Thereafter, he was sentenced to serve xxxx months in custody for \_\_\_\_\_\_\_\_\_\_\_\_\_\_.  He is xx years old, his release date is xxxxxxxx, and he has served \_\_\_% of his sentence. Further, he has recently been diagnosed with \_\_\_\_\_\_\_\_\_\_. Thus, in addition to his advanced age and \_\_\_\_\_\_\_\_, his \_\_\_\_\_\_\_\_\_\_ also places him in the most vulnerable group for susceptibility to the coronavirus and serious medical complications from that disease.

Counsel has requested compassionate release from the Warden at FPC \_\_\_\_\_\_\_\_\_\_\_\_. See letter and enclosures attached as Exhibit 1. Although thirty days have not elapsed from this request, this Court can act without waiting for the thirty days to elapse since the BOP will not be able to respond to his request within that time. *Cf. FDIC v. Scott*, 125 F.3d 254, 258 (5th Cir. 1997)[when an exhaustion step is futile, the Court may waive the requirement]. Further, under this Court’s supervisory powers the Court may formulate procedural rules not specifically required by the Constitution to implement a remedy for recognized rights. *United States v. Santana,*  6 F.3d 1, 10 (1st Cir. 1993). The President of the United States has declared a state of emergency because of the threat of the coronavirus to the lives of those in federal prison and is considering releasing persons such as xxxxxxxxxxx. Thus, this Court may act before thirty days from xxxxxxxx’s request of BOP to file this motion has elapsed.[[1]](#footnote-1)

xxxxxxxxx is a person with regard to whom compassionate release is appropriate. Counsel was in the process of obtaining his BOP medical records to craft this motion for compassionate release when the coronavirus broke out. See Response to Request for Medical Records from BOP attached as Exhibit 2. Coronavirus is known to cause serious health complications for the elderly. XXXXXXX is an \_\_\_\_\_\_-year-old man with underlying medical issues. He is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. He also has \_\_\_\_\_\_\_\_\_\_\_\_\_, and it was also recently discovered that xxxxxx has \_\_\_\_\_\_\_\_\_\_. See medical record attached in cumulative Exhibit 1. If he is not released from the facility the virus and his underlying medical issues, put him at risk of contracting the disease and suffering serious health complications. Contracting the coronavirus in prison might be a death sentence for xxxxxxxxx.

Should he be left in the facility, he will remain in a vulnerable situation. A case of Coronavirus has been diagnosed for a person at the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.[[2]](#footnote-2) In another federal facility housing immigration detainees, an ICE employee tested positive on March 19, 2020 with the Coronavirus.[[3]](#footnote-3) The coronavirus is a particular threat to prison populations because of the circumstances of confinement and the inmates’ close proximity to each other. <https://www.businessinsider.com/trump-consider-coronavirus-executive-order-federal-prisons2020-3> In the District of Oregon, federal Chief Judge Mario Hernandez varied downward from a sentence of imprisonment in two cases to a sentence of home confinement, because of the pandemic. The New Jersey Supreme Court Chief Justice entered an order on March 23, 2020; with the agreement of country prosecutors, the Attorney General, and Public Defenders; for the commutation or suspension of sentences to release approximately 1000 low risk persons serving jail sentences. <https://www.njcourts.gov/pressrel/2020/pr032320a.pdf?c=lRD>

The International Association of Chiefs of Police told ABC news that police are scaling back arrests for low-level offenses to limit officer exposure. Sheriff David Mahoney, with the National Sheriffs’ Association is working with local, state, and federal partners “to decrease the number of people who are physically arrested and brought to jail.” <https://abcnews.go.com/US/coronavirus-outbreak-changing-us-criminal-justice-system/story?id=69757440>

For persons in custody in prisons, President Trump is considering issuing an Executive Order to release elderly inmates in federal prisons. <https://www.businessinsider.com/trump-consider-coronavirus-executive-order-federal-prisons2020-3> One of the reasons for this is because the elderly is a high-risk group for contracting coronavirus and also is a high-risk group for serious complications from the virus.

In addition, persons with underlying health conditions, regardless of their age, are in a high-risk group for serious complications from the coronavirus. XXXXXXX has such underlying health conditions: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

This request is also being made according to BOP program statement 5050.50, elderly inmates who meet the following criteria should be released.

1. Age 65 and older.
2. Suffer from chronic or serious medical conditions related to the aging process.
3. Experiencing deteriorating mental or physical health that substantially diminishes their ability to function in a correctional facility.
4. Conventional treatment promises no substantial improvement to their mental or physical condition.
5. Have served at least 50% of their sentence.
6. **Age 65 or Older**

xxxxx is an \_\_\_ year-old man.

1. **Suffer from chronic or serious medical conditions related to the aging process and conventional treatment will not improve his condition**

After his incarceration xxxxxxx experienced \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.  Soon thereafter, he developed a tremor and dizziness.  As a result, he is \_\_\_\_\_\_\_\_\_\_. This limits his mobility and ability to engage in full self-care.  This also makes him vulnerable in custody. In addition, of more recent concern is the \_\_\_\_\_\_\_\_\_\_\_\_. He already has \_\_\_\_\_\_which he treats with \_\_\_\_\_\_\_\_\_. His conditions are age related and will not improve. These conditions also place him at high risk for serious medical complications were he to contract the coronavirus.

**C.xxxxxxxx’s current deteriorating physical health diminishes his ability to function in the facility.**

He is \_\_\_\_\_\_\_\_\_\_\_\_\_ and, thus, his self-care is limited.  His \_\_\_\_\_\_\_\_\_\_\_ require him to self-isolate.  However, this is not a practical reality in the prison setting. Further, the scope of care available to him during incarceration will be more limited than that available in the community. His mobility challenges with present daily difficulties for him and institution staff. And he may be a risk of manipulation by other inmates based on his physical vulnerability.

1. **Served at least 50% of his sentence**

xxxxx was taken into federal custody on \_\_\_\_\_\_\_\_\_\_\_.  Thereafter, he was sentenced to serve xx months in custody for \_\_\_\_\_\_\_\_\_\_\_\_\_\_.  At his sentencing, the trial court found that he was at a very low risk to recidivate and that he did not need a lengthy prison sentence. This Court also found that he was not a risk of flight. To date, he has served \_\_\_\_ days. XXXXXX has served approximately \_\_\_\_\_\_\_ months out of his \_\_\_\_\_\_\_\_\_ month sentence.

The BOP web site states that his current release date is \_\_\_\_\_\_\_\_\_\_\_. Therefore, at this time, he has served \_\_% of his sentence. XXXXX was deemed to have no risk of reoffending at the time he was sentenced and is at no risk of reoffending now.  He is \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_tory, and is of diminishing health. He poses no risk to the safety of the community.

Because xxxx is xx years-old, is suffering from underlying health conditions that place him at greater risk from the Coronavirus, because he suffers from deteriorating medical conditions that will not improve, and because the coronavirus presents a national emergency; we respectfully request that this Court grant his release to time served or a sentence of home confinement.

Respectfully submitted,

1. The First Step Act allows counsel to request release directly from the Court after making the request of the Bureau of Prisons to the Warden of the facility imprisoning xxxxxxxxx. [↑](#footnote-ref-1)
2. Cite proof of virus in your client’s location here \_\_\_\_\_\_\_\_\_\_\_\_ [↑](#footnote-ref-2)
3. <https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus> [↑](#footnote-ref-3)