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IN THE UNITED STATES DISTRICT COURT

8

FOR THE EASTERN DISTRICT OF CALIFORNIA

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10

UNITED STATES OF AMERICA,

) Case No. 1:98-cr-05149-NONE

11

Plaintiff,

)

) **REPLY IN SUPPORT OF MOTION TO**

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v.

)

) **REDUCE SENTENCE PURSUANT TO 18**

) **U.S.C. § 3582(c)(1)(A)(i)**

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MARTIN CHAVEZ-ZARATE,

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Defendant-Movant.

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I. Introduction

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Defendant-Movant Martin Chavez-Zarate respectfully submits this reply in response to the government’s opposition to his motion to reduce his sentence for extraordinary and compelling reasons (also called “compassionate release”). As set for the below, this Court has jurisdiction to grant his motion. In light of the amount of his sentence he’s served, his perfect disciplinary record, his age, and his health conditions which put him at heightened risk for a life-threatening case of COVID-19, his motion should be granted immediately.

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II. Contrary to the Government’s opposition, this Court has jurisdiction to grant Mr. Chavez-Zarate’s motion.

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The government claims that, according to officials at FCI Mendota, Mr. Chavez-Zarate did not submit a “proper request to staff for a [Reduction in Sentence].” Gov’t Opp., p. 5. Thus,

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1 the government argues, he has not exhausted his administrative remedies and this Court should
2 deny his motion. Gov't Opp. pp. 4-5.

3 Mr. Chavez-Zarate contends that the February 2019 request he made to the warden at FCI
4 Mendota, where he was incarcerated at the time, constitutes the required request to the warden.
5 Because the warden did not formally grant or deny the request, Mr. Chavez-Zarate did not have
6 to further exhaust administrative remedies. *United States v. Gray*, 416 F. Supp. 3d 784, 787–88
7 (S.D. Ind. 2019) (where warden did not deny request for compassionate release until over 30
8 days after request was made, the defendant may move for compassionate release in district court
9 under 18 U.S.C. § 3582(c)(1)(A) without further exhausting administrative remedies).

10 The parties' dispute centers on whether Mr. Chavez-Zarate's February 11, 2019, request
11 to the warden at FCI Mendota constitutes a request by Mr. Chavez-Zarate for the warden to
12 "bring a motion on the defendant's behalf" with the sentencing judge to modify Mr. Chavez-
13 Zarate's sentence for "extraordinary and compelling reasons." 18 U.S.C. § 3582(c)(1)(A). If it
14 is, then the warden's failure to act on it within 30 days allows this Court to consider Mr. Chavez-
15 Zarate's motion for compassionate release. *Id.*

16 Mr. Chavez-Zarate's February 11, 2019, request to the warden can be found at Docket
17 No. 328, pp. 9-13. Mr. Chavez-Zarate used a Federal Bureau of Prisons form addressed to the
18 warden. No. 328, p. 9. In it he states:

19 I am submitting this request to the Warden – here at Federal Correctional
20 Institution (Mendota) – requesting assistance in being submitted/considered for a
21 "Compassionate Release." I am of the appropriate age to be considered, and my
22 existing medical status, as well as the fact that I have served two-thirds of my
23 sentence, places me in a situation to be considered. I have attached hereto a
24 Memorandum chronicling my medical status and other reasons why I am
25 requesting to be considered for a "Compassionate Release."

26 No. 328, p. 9.

27 In his Memorandum, at No. 328, pp. 10-13, Mr. Chavez-Zarate described his medical
28 issues, his age, his family's needs, and his release plan. He closed his memorandum by stating,
"I am very hopeful that you will consider assisting me with my effort/request for a
'Compassionate Release.'" No. 328, p. 11.

1 Mr. Chavez-Zarate's request to the warden is clearly a request "to bring a motion on the
2 defendant's behalf" for a reduction in sentence (18 U.S.C. § 3582(c)(1)(A)). He asks the warden
3 to help him gain compassionate release because of his age, health conditions, and the amount of
4 time he had already served. The Federal Bureau of Prisons has not created a more specific form
5 for prisoners to use to make a request. Instead, the BOP's guidance is contained in its January
6 17, 2019 Program Statement No. 5050.50, "Compassionate Release/Reduction in Sentence:
7 Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)." The program statement
8 explains that to initiate a request that the warden file a compassionate release motion, a prisoner
9 shall make a request to the warden, normally "in writing," that includes the "extraordinary or
10 compelling circumstances that the inmate believes warrant consideration," and the prisoner's
11 proposed release plans. BOP Program Statement No. 5050.50, § 571.61.¹ Mr. Chavez-Zarate's
12 February 11, 2019 request to the warden fulfills these requirements. The warden's failure to
13 respond to it within 30 days of its submission relieves Mr. Chavez-Zarate of any need to further
14 exhaust administrative remedies before this Court has jurisdiction to rule on his motion for a
15 reduction of his sentence. *Id.*

16 **III. The novel coronavirus outbreak, combined with Mr. Chavez-Zarate's age**
17 **and chronic health conditions, support a grant of compassionate release.**

18 Mr. Chavez-Zarate should be granted compassionate release *immediately* because he is
19 among the group of people the Centers for Disease Control and Prevention ("CDC") has
20 categorized as most-at-risk for contracting COVID-19, a dangerous illness spreading rapidly
21 across the world and through Texas, where Mr. Chavez-Zarate is now imprisoned.

22 **A. Mr. Chavez-Zarate runs a high risk of death if he contracts**
23 **COVID-19.**

24 The CDC has issued guidance identifying individuals at higher risk of contracting
25 COVID-19. These individuals include adults over 65 years old and people with chronic medical
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27 _____
28 ¹ Available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf (last accessed 3/20/2020).

1 conditions such as lung disease, heart disease, and diabetes.² The CDC instructs persons in those
2 groups to take immediate preventive actions, including avoiding crowded areas and staying
3 home as much as possible.³

4 As discussed in his motion, Mr. Chavez-Zarate is a 66-year-old man who has now served
5 nearly 260 months in prison with perfect disciplinary record. Depending on whether good time
6 credits are factored in, he has served approximately 65% or 75% of his federal prison sentence.
7 Among the multiple chronic medical conditions he suffers are high blood pressure and heart
8 disease. In June of 2018, he was diagnosed with coronary atherosclerosis, a coronary artery
9 disease caused by the buildup of plaque inside the artery walls, which causes the inside of the
10 arteries to become narrower and slows down the flow of blood. Given his given his age and
11 medical conditions, he is precisely the type of individual at a high risk of mortality if he contracts
12 COVID-19.

13 **B. The rapid spread of the novel coronavirus.**

14 As of March 23, 2020, the new strain of coronavirus, which causes COVID-19, has
15 infected over 407,000 people, leading to at least 18,227 deaths worldwide.⁴ On March 11, 2020,
16 the World Health Organization officially classified COVID-19 as a pandemic.⁵ On March 23,
17 2020, the WHO observed that over the preceding 24 hours, 85% of new cases worldwide were
18 from Europe and the United States, and of those 40% were from the United States, making it a
19 distinct possibility that the United States will become the new epicenter of COVID-19.⁶ Texas
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21 ² <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/high-risk-complications.html> (last
22 accessed 3/20/2020).

23 ³ *Id.*

24 ⁴ John Hopkins University of Medicine Coronavirus Resource Center,
25 <https://coronavirus.jhu.edu/map.html> (last accessed 3/24/2020)

26 ⁵ WHO Characterizes COVID-19 as a Pandemic, World Health Organization (March 11, 2020)
27 at <https://bit.ly/2W8dwpS>.

28 ⁶ Emma Farge and Stephanie Nebehay, *United States could become coronavirus epicenter: WHO*
(March 24, 2020) at <https://www.reuters.com/article/us-health-coronavirus-who-usa/united-states-could-become-coronavirus-epicenter-who-idUSKBN21B1FT>.

1 Governor Greg Abbott declared a State of Disaster in Texas due to COVID-19 on March 13,
2 2020.⁷ In recognition of the coronavirus's spread in Texas, on March 19, 2020, Governor
3 Abbott issued four orders designed to slow the spread of the virus in Texas:

4 Order No. 1 - In accordance with the Guidelines from the President and
5 the CDC, every person in Texas shall avoid social gatherings in groups of more
6 than 10 people.

7 Order No. 2 - In accordance with the Guidelines from the President and
8 the CDC, people shall avoid eating or drinking at bars, restaurants, and food
9 courts, or visiting gyms or massage parlors; provided, however, that the use of
10 drive-thru, pickup, or delivery options is allowed and highly encouraged
11 throughout the limited duration of this executive order.

12 Order No. 3 - In accordance with the Guidelines from the President and
13 the CDC, people shall not visit nursing homes or retirement or long-term care
14 facilities unless to provide critical assistance.

15 Order No. 4 - In accordance with the Guidelines from the President and
16 the CDC, schools shall temporarily close.⁸

17 As of March 24, 2020, there are 410 confirmed positive cases of COVID-19, and nine
18 deaths, in Texas.⁹ Within BOP facilities nationally, as of March 24, 2020, three prisoners and
19 three staff members have tested positive for COVID-19.¹⁰

20 **C. Conditions of Confinement and the Spread of Coronavirus**

21 Conditions of imprisonment create the ideal environment for the transmission of
22 contagious disease.¹¹ Inmates cycle in and out of detention facilities from all over the world and
23 the country, and people who work in the facilities, including correctional officers and care and
24 service providers, leave and return daily without screening. Incarcerated people have poorer
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26 ⁷ <https://gov.texas.gov/news/post/governor-abbott-declares-state-of-disaster-in-texas-due-to-covid-19> (last accessed 3/20/2020).

27 ⁸ <https://gov.texas.gov/news/post/governor-abbott-issues-executive-orders-to-mitigate-spread-of-covid-19-in-texas> (last accessed 3/20/2020).

28 ⁹ <https://www.dshs.state.tx.us/news/updates.shtm#coronavirus> (last accessed 3/24/2020).

¹⁰ <https://www.bop.gov/coronavirus/index.jsp> (last accessed 3/24/2020).

¹¹ Joseph A. Bick (2007). *Infection Control in Jails and Prisons*. *Clinical Infectious Diseases* 45(8):1047-1055, at <https://doi.org/10.1086/521910> (last accessed 3/20/2020).

1 health than the general population, and even at the best of times, medical care is limited.¹²

2 Public health experts have recognized that incarcerated individuals “are at special risk of
3 infection, given their living situations,” and “may also be less able to participate in proactive
4 measures to keep themselves safe;” because “infection control is challenging in these settings.”¹³
5 Outbreaks of the flu regularly occur in jails, and during the H1N1 epidemic in 2009, many jails
6 and prisons dealt with high numbers of cases.¹⁴

7 In China, officials have confirmed the coronavirus spread at a rapid pace in Chinese
8 prisons, counting 500 cases.¹⁵ Secretary of State Mike Pompeo has called for Iran to release
9 Americans detained there because of the “deeply troubling” “[r]eports that COVID-19 has spread
10 to Iranian prisons,” noting that “[t]heir detention amid increasingly deteriorating conditions
11 defies basic human decency.”¹⁶ The Iranian judicial system has temporarily freed about 70,000
12 prisoners to combat the spread of the coronavirus in its jails.¹⁷ In the United States, steps are
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14 ¹² Laura M. Maruschaket al. (2015). Medical Problems of State and Federal Prisoners and Jail
15 Inmates, 2011-12. NCJ 248491. Washington, D.C.: U.S. Department of Justice, Bureau of
16 Justice Statistics, at <https://www.bjs.gov/content/pub/pdf/mpsfpj1112.pdf> (last accessed
3/20/2020).

17 ¹³ Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President
18 Mike Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts
19 in the United States," (Mar. 2, 2020), at <https://bit.ly/2W9V6oS>.

20 ¹⁴ *Prisons and Jails are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020) at
21 <https://bit.ly/2TNcNZY>.

22 ¹⁵ Rhea Mahbubani, *Chinese Jails Have Become Hotbeds of Coronavirus As More Than 500*
23 *Cases Have Erupted, Prompting the Ouster of Several Officials*, Business Insider (Feb. 21, 2020)
at <https://bit.ly/2vSzSRT>.

24 ¹⁶ Jennifer Hansler and Kylie Atwood, *Pompeo calls for humanitarian release of wrongfully*
25 *detained Americans in Iran amid coronavirus outbreak*, CNN (Mar. 10, 2020) at
26 <https://cnn.it/2W4OpV7>.

27 ¹⁷ Babak Dehghanpisheh and Stephanie Nebhay, *Iran temporarily releases 70,000 prisoners as*
28 *coronavirus cases surge*, Reuters (Mar. 9, 2020) at [https://www.reuters.com/article/us-health-
coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-
idUSKBN20W1E5](https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5).

1 already being taken in some jurisdictions to facilitate the release of elderly and sick prisoners and
2 to reduce jail populations.¹⁸ On March 23, 2020, a bipartisan group of 14 senators, led by
3 Illinois Democrat Dick Durbin and Iowa Republican Chuck Grassley joined in a letter to the
4 Department of Justice and Federal Bureau of Prisons that explicitly recognized that

5 [c]onditions of confinement do not allow individuals to take proactive steps to
6 protect themselves, and prisons often create the ideal environment for the
7 transmission of contagious disease. It is important that consistent with the law
8 and considering public safety and health concerns, that the most vulnerable
9 inmates are released or transferred to home confinement .¹⁹

10 The letter urges the BOP to use its powers under the First Step Act, including the power
11 to move for compassionate release, to release from prison those prisoners most vulnerable to
12 COVID-19.²⁰ As discussed in the letter, reducing prison crowding serves to protect the health of
13 not only federal prisoners, but the staff at detention facilities.²¹

14 ¹⁸ To give just a few examples, on March 22, 2020, New Jersey Chief Justice Stuart Rabner
15 signed an order that will release up to 1,000 county jail inmates throughout the state at least
16 temporarily during the coronavirus health emergency. Mairead McCardle, *New Jersey to*
17 *Release Hundreds of Inmates to Slow Coronavirus Spread*, National Review (Mar. 23, 2020), at
18 [https://www.nationalreview.com/news/new-jersey-to-release-hundreds-of-inmates-to-slow-](https://www.nationalreview.com/news/new-jersey-to-release-hundreds-of-inmates-to-slow-coronavirus-spread/)
19 [coronavirus-spread/](https://www.nationalreview.com/news/new-jersey-to-release-hundreds-of-inmates-to-slow-coronavirus-spread/). In the third week of March, 2020, the Alameda County Sheriff's Office
20 released more than 300 inmates to mitigate the looming threat of coronavirus in jails. Robert
21 Salonga, Angela Ruggiero, and Nate Gartrell, *Bay Area courts, authorities ramp up release of*
22 *inmates to stem COVID-19 risks in jails*, San Jose Mercury News (Mar. 19, 2020) at
23 [https://www.mercurynews.com/2020/03/19/bay-area-courts-authorities-ramp-up-release-of-](https://www.mercurynews.com/2020/03/19/bay-area-courts-authorities-ramp-up-release-of-inmates-to-stem-covid-19-risks-in-jails/)
24 [inmates-to-stem-covid-19-risks-in-jails/](https://www.mercurynews.com/2020/03/19/bay-area-courts-authorities-ramp-up-release-of-inmates-to-stem-covid-19-risks-in-jails/). In New York, state and local officials have approved
25 the release of nearly 100 detainees and prisoners as both corrections officers and prisoners have
26 now tested positive for coronavirus. Priscilla DeGregory and Vincent Baron, *Officials approve*
27 *release of more than 50 Rikers inmates over coronavirus fears*, New York Post (Mar. 21, 2020)
28 at [https://nypost.com/2020/03/21/officials-approve-release-of-more-than-50-rikers-inmates-over-](https://nypost.com/2020/03/21/officials-approve-release-of-more-than-50-rikers-inmates-over-coronavirus-fears/)
[coronavirus-fears/](https://nypost.com/2020/03/21/officials-approve-release-of-more-than-50-rikers-inmates-over-coronavirus-fears/).

¹⁹ Available at
<https://www.durbin.senate.gov/imo/media/doc/Letter.%20to%20DOJ%20and%20BOP%20on%20COVID-19%20and%20FSA%20provisions%20-%20final%20bipartisan%20text%20with%20signature%20blocks.pdf> (last accessed 3/24/2020).

²⁰ *Id.*

²¹ *Id.*

1 **D. Mr. Chavez-Zarate is detained at an enormous detention facility**
2 **with a poor history of medical care, greatly exacerbating the**
3 **likelihood he will contract COVID-19.**

4 The BOP recently moved Mr. Chavez-Zarate to CI Reeves, a contracted correctional
5 institution operated by the Geo Group, in Pecos, Texas. This facility, which incarcerates
6 prisoners through a variety of contracts, has held as many as 3,700 prisoners and has been
7 described as “the largest private prison in the world.”²² In 2013 it earned the dubious distinction
8 of being one of America’s “10 Worst Prisons” by Mother Jones magazine, in part because of the
9 “medical neglect” suffered by its prisoners. James Ridgeway and Jean Casella, *America’s 10*
10 *Worst Prisons: Reeves County*, Mother Jones (May 10, 2013).²³ As described by Ridgeway and
11 Casella, the prison has a disturbing history of prisoner deaths resulting from woefully inadequate
12 medical treatment. In 2015, the U.S. Department of Justice Office of the Inspector General
13 audited the Geo contract to operate the Reeves County Detention Center I/II.²⁴ The audit
14 explained that the BOP contracted with Reeves County to operate the facility, and it
15 subcontracted management of the facility to the Geo Group. Audit, p. i. The audit found, among
16 other things, that the Reeves facility

17 also had significant issues staffing its health services unit. In December 2010, the
18 BOP added to all contracts with privately managed correctional facilities a
19 requirement that the contractor staff its health services unit so that staffing levels
20 equaled or exceeded 85 percent of the contract requirement. However, from
21 December 2010 through December 2013, a period spanning 37 months, ***RCDC***
22 ***I/II failed to meet the 85 percent threshold in 34 of the 37 months.***

23 Audit, p. iii. In other words, for the nearly the entirety of the three years of the audit, the Geo
24 Group did not even provided 85% of the health services the contract required. There is no reason

25 ²² Peter Gorman, *Private Prisons, Public Pain*, Fort Worth Weekly (Mar. 10, 2010) at
26 <https://www.fweekly.com/2010/03/10/private-prisons-public-pain/> (last accessed 3/20/2020).

27 ²³ Available at [https://www.motherjones.com/politics/2013/05/americas-10-worst-prisons-](https://www.motherjones.com/politics/2013/05/americas-10-worst-prisons-reeves-county-detention-complex/)
28 [reeves-county-detention-complex/](https://www.motherjones.com/politics/2013/05/americas-10-worst-prisons-reeves-county-detention-complex/) (last accessed March 20, 2020).

29 ²⁴ Audit of the Federal Bureau of Prisons Contract No. DJB1PC007 Awarded to Reeves County,
30 Texas, to Operate the Reeves County Detention Center I/II Pecos, Texas (April, 2015), available
31 at <https://oig.justice.gov/reports/2015/a1515.pdf> (last accessed 3/20/2020).

1 to believe staffing and health practices have improved at Reeves. Indeed, the contract to provide
2 medical care at the Reeves detention facility from 2006 through 2016 was awarded in connection
3 with a bribery scheme between a former Texas senator and a former Reeves County judge.²⁵

4 Even if Reeves were the best run prison facility in the nation, as discussed above prison
5 living conditions provide an accelerant to an infectious virus such as the coronavirus. Texas, like
6 much of the nation, does not have enough hospital beds and equipment to handle a large scale
7 spike in COVID-19 cases.²⁶ For the sake of Mr. Chavez-Zarate, and the sake of all those who
8 may soon need critically scarce hospital beds, Mr. Chavez-Zarate's motion for compassionate
9 release should be granted now before he becomes ill and hospitals in Texas become
10 overwhelmed.

11 **IV. This Court should grant Mr. Chavez-Zarate's motion for compassionate**
12 **release by reducing his sentence to time served.**

13 As discussed in Mr. Chavez-Zarate's motion, there are two separate "extraordinary
14 circumstances" that make compassionate release appropriate in this case. First, Mr. Chavez-
15 Zarate has an "extraordinary and compelling reason for release" under U.S.S.G. § 1B1.13,
16 comment. n.1(B), because he is over 65, experiencing deteriorating health, and has served at
17 least 10 years of his term of imprisonment. Mr. Chavez-Zarate also meets the "extraordinary and
18 compelling" circumstance set forth at U.S.S.G. § 1B1.13, comment. n.1(A)(ii)(I): "serious
19 physical or medical condition . . . that substantially diminishes the ability of the defendant to
20 provide self-care within the environment of a correctional facility and from which he or she is
21 not expected to recover." Individuals do not tend to recover from medical conditions such as

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24 ²⁵ Patrick Danner, Carlos Uresti's sentencing in West Texas bribery case set for today, San
25 Antonio Express-News (Feb. 11, 2019) at
[https://www.expressnews.com/business/local/article/Carlos-Uresti-s-sentencing-in-West-Texas-
13608548.php](https://www.expressnews.com/business/local/article/Carlos-Uresti-s-sentencing-in-West-Texas-13608548.php).

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27 ²⁶ Edgar Walters and Anna Novak, *Texas hospitals don't have enough beds for coronavirus*
28 *patients if too many people get sick at once*, The Texas Tribune (Mar. 17, 2020) at
[https://www.texastribune.org/2020/03/17/texas-coronavirus-cases-could-stretch-hospital-
capacity-thin/](https://www.texastribune.org/2020/03/17/texas-coronavirus-cases-could-stretch-hospital-capacity-thin/).

1 high blood pressure, a thickened gall bladder, heart disease, hemorrhoids, and an enlarged
2 prostate. *Id.* at p. 5. These conditions cause pain, deplete energy, and are difficult to cope with
3 in normal life, much less in the confined setting of a penitentiary.

4 **V. Conclusion**

5 For the foregoing reasons, as well as the reasons in Mr. Chavez-Zarate's motion, Mr.
6 Chavez-Zarate respectfully requests that this Court immediately grant his motion for a reduction
7 in sentence and re-sentence him to time served.

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9 Dated: March 24, 2020

10 Respectfully submitted,

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13 */s/ Carolyn M. Wiggin*
14 Attorney for Defendant
15 MARTIN CHAVEZ-ZARATE

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