

This past week I was alerted to several cases that have come out this year where a person was granted release due to the “compassionate release” guidelines present in 18 USC 3582(c)(1)(A) as amended by the FIRST STEP Act of 2018. I wanted to call special attention to these statutes and discuss the circumstances that may allow you to use them to your loved one's benefit.

WHAT IS A COMPASSIONATE RELEASE?

Federal law provides that a court can reduce a term of imprisonment in some instances. This is found in Title 18 of the United States Code section 3582(c)(1), commonly known as the “compassionate release” statute. Prior to December 2018, the court could only grant a compassionate release upon motion of the director of the Bureau of Prisons. This gave the Bureau of Prisons the sole decision over whether to grant a release to an inmate. “[A]ccording to new federal data analyzed by [The Marshall Project and The New York Times](#)[, f]rom 2013 to 2017, the Bureau of Prisons approved 6 percent of the 5,400 applications received, while 266 inmates who requested compassionate release died in custody. The bureau’s denials, a review of dozens of cases shows, often override the opinions of those closest to the prisoners, like their doctors and wardens.”

In December 2018, President Trump signed the FIRST STEP Act into law. The [FIRST STEP Act](#) gave inmates the right to petition the courts directly for compassionate release. As a result, the [“compassionate release” statute](#) currently reads:

(A)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 (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—

(i)extraordinary and compelling reasons warrant such a reduction; or

(ii)the defendant is at least 70 years of age, has served at least 30 years in prison, pursuant to a sentence imposed under section 3559(c), for the offense or offenses for which the defendant is currently imprisoned, and a determination has been made by the Director of the Bureau of Prisons that the defendant is not a danger to the safety of any other person or the community, as provided under section 3142(g);

and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission;

Subsection (a)(1) reads that “(i)extraordinary and compelling reasons warrant such a reduction;” That subsection, however, is not further defined or explained. And as will be explained in the cases below, the applicable sentencing commission guideline, [USSG § 1B1.13](#), has not been updated to provide further guidance. This means that in certain districts, inmates may be able to receive relief by directly petitioning the court under § 3582(c)(1)(A). A review of several 2019 cases gives important information about how to do this.

MEDICAL REASONS: *United States vs. Cantu*

In [United States v. Cantu](#), No. 1:05-CR-458-1, 2019 WL 2498923 (S.D. Tex. June 17, 2019), Cantu pled guilty to one count of Racketeering and was originally sentenced to 290 months in prison. He sought release under 18 USC § 3582, asking for a reduction in sentence to time served, indicating that 30 days had elapsed from his reduction in sentence request to the warden and a response. The court examined USSG § 1B1.13 to determine what the Sentencing commission considers “extraordinary and compelling.” While Cantu had not presented evidence about why his reasons were extraordinary and compelling, the court determined that they had the power to make that determination. This was in part because the FIRST STEP Act’s enactment meant that the policy statement (USSG § 1B1.13) no longer applicable to the statute and meant that the policy statement did not provide guidance on the appropriate use of sentence- modification provisions under § 3582. The Court also relied on the Rule of Lenity, which in this situation mandates that “when two rational readings of a statute or possible, the one that treats the defendant less harshly prevails,” citing *McNally v. United States*, 483 U.S. 350, 359-60 (1987).

The court also determined that they had the statute did not define or place any limits on what “extraordinary and compelling reasons” might warrant such a reduction, citing *Crowe v. United States*, 430 F.App’x 484, 485 (6th Cir. 2011). Having determined that they had the authority to grant relief, the court determined that there were extraordinary and compelling reasons present in Mr. Cantu’s case that warranted a reduction in sentence under § 3582(c)(1)(A). This included the government’s statement that the court could issue an order that would cause the BOP to release the defendant (Cantu had also sought release under the Elderly Offender Home Detention Program in the same motion. The government agreed that he was eligible and asked the court to grant an order, “causing the BOP to release Mr. Cantu under that program”, but the court determined that they did not have the authority to grant such relief). The court went on to determine that Mr. Cantu was not a danger to the safety of others and that the §3553 factors supported Mr. Cantu’s request for compassionate release. The court granted that release and amended his sentence to time served.

United States vs. Beck

In [United States vs. Beck, 1:13-CR-186-6](#) (M.D. N.C. June 28, 2019), Beck sought immediate release under the FIRST STEP Act of 2019, stating that “indifference to her treatment constitute[d] extraordinary and compelling reasons.” Beck claimed that lumps in her body were not properly addressed and that her treatment schedule was inappropriate, leading to metastatic breast cancer that had progressed to a point where it was too late to do either radiation or chemotherapy.

The court noted that there is no policy statement applicable to motions for compassionate release filed by defendants under the FIRST STEP Act. The court noted that the Sentencing Commission has not amended or updated the old policy statement since the FIRST STEP Act was enacted and that it was unlikely that they would soon, given that the United States Sentencing Commission does not have sufficient members to vote to amend the guidelines. The court determined that “courts may, on motions by the defendants, consider whether a sentence reduction is warranted for extraordinary and compelling reasons other than those specifically identified in the application notes to the old policy statement.”

The court determined that the improper treatment schedule constituted Extraordinary and Compelling Reasons under 18 U.S.C. § 3582, that the reduction is consistent with the Sentencing Commission’s Guidance, that Beck was not a danger to the community and that the 3553 factors warranted a reduction. The court reduced Beck’s sentence to time served.

EXTREME AND COMPELLING AS APPLIED TO OLD LAW 924(c): *United States vs. Urkevich*

In *United States vs. Urkevich*, 8:03-CR-37, 2019 WL 6037391 ([click for downloadable pdf](#)), District of Nebraska, November 14, 2019), the defendant was sentenced in May 10, 2004 to “235 months on Count I (this was a drug conspiracy count), 60 months on Count II (this was a 924(c) count), 300 months on Count III (this was a 924(c) count), and 300 months on Count V (this was a 924(c) count), plus concurrent terms of five years of supervised release on each count.” This was prior to the enactment of the FIRST STEP Act. As previously discussed, “[t]he First Step Act, among many other things, amended 18 U.S.C. § 924. In Section 403 of the Act, congress amended § 924(c)(1)(C) so a consecutive term of 25 years (300 months) for a second or subsequent conviction for possession of a firearm during a drug trafficking crime is no longer mandated if the crime was committed before a prior conviction under the subsection was final. This amendment would have benefited Urkevich if it had been in effect at the time of his sentencing,” but the court determined that Section 403 of the FIRST STEP Act could not be applied retroactively.

The court also noted that “the First Step Act also amended 18 U.S.C. § 3582” in the manner previously discussed in this article. Urkevich asked the court to reduce his sentence to 368 months or what he would have received if he was sentenced to the same offense today and received 60 months for each 924(c) count. Urkevich submitted his evidence that he sought administrative remedies. The court granted the government the ability to respond. The government opposed all relief stating that Urkevich had not demonstrated “extraordinary and compelling reasons” for the reduction although he has demonstrated post-offense rehabilitation and that he does not pose a current danger to the safety of any other person or to the community. The government also indicated that even if Ukrevich’s sentence was reduced to 368 months, that would not qualify him for release from custody.

The court noted that “The Commentary describes certain circumstances under which “extraordinary and compelling reasons” for a reduction in sentence are deemed to exist, but the Commentary does not suggest the list is exclusive. Application Note 1(D), titled “Other Reasons” is a catch-all provision, noting that the Director may determine “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).” The court also stated that other courts have concluded that the Commission’s failure to amend USSG § 1B1.13 does not preclude a court from acting on motions using the application note 1(D) “catch-all provision” The court used this reasoning to determine that the court’s contemplation of a reduction in Urkevich’s sentences is consistent with the Commission’s policy statements.

The court determined that this motion was not premature and that a reduction in this sentence was warranted by extraordinary and compelling reasons, “specifically the injustice of facing a term of incarceration forty years longer than Congress now deems warranted for the crimes committed.” The court also concluded that Ukrevich demonstrated that he poses no current danger to the safety of any other person or to the community. The court reduced his sentence to counts III and V to 60 months to run concurrently.

CONCLUSION

The FIRST STEP Act’s changes to 3582 potentially open the door for wide latitude for courts to reduce sentences if the court finds that they have the ability to determine if “extraordinary and compelling circumstances” exist to do so. As shown here, this can apply in what could be considered a “normal compassionate release” situation. But there are other situations where it could also apply. If you believe that your loved one has “extraordinary and compelling circumstances,” then please reach out.

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