



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

March 11, 2022

MEMORANDUM FOR ALL FEDERAL PROSECUTORS

FROM: THE DEPUTY ATTORNEY GENERAL *Eric Muraco*

SUBJECT: Department Policy on Compassionate Release Waivers in Plea Agreements

Since enactment of the First Step Act in 2018, the “compassionate release” statute codified at 18 U.S.C. 3582(c)(1)(A) has permitted defendants to file motions on their own behalf seeking compassionate release in district courts. Such motions can be an important mechanism for relief where a defendant establishes, for example, a serious medical condition or a pressing family caretaking need.

In response to Congress’ amendment of Section 3582(c)(1)(A) and the filing of compassionate release motions by defendants, particularly during the COVID-19 pandemic, U.S. Attorney’s Offices in different districts have adopted different approaches to compassionate release in plea agreements. The majority of U.S. Attorneys’ Offices do not seek waivers of a defendant’s right to file a motion under Section 3582(c)(1)(A) in plea agreements, but some offices have done so. Courts that have confronted the issue have held that a defendant may generally waive the right to file such a motion.

Nonetheless, in order to ensure a consistent practice across the Department, as well as an approach that accords with the statute, the relevant guidelines promulgated by the Sentencing Commission, and the interests of justice, the Department now issues the following guidance: As a general matter, plea agreements should not require broad waivers of the right to file a compassionate release motion under Section 3582(c)(1)(A). Specifically, prosecutors should not, as a part of a plea agreement, require defendants to waive: (1) the general right to file a compassionate release motion; (2) the right to file a second or successive such motion; or (3) the right to appeal the denial of a compassionate release. If a defendant has already entered a plea and his or her plea agreement included a waiver provision of the type just described, prosecutors should decline to enforce the waiver.

Notwithstanding the above, there are select instances in which it may be permissible for a U.S. Attorney's Office to include or seek to enforce a much narrower form of waiver. These exceptions are for: (1) district-wide waivers negotiated with local defenders' offices, provided that the negotiated waiver does not categorically preclude the defendant from filing a first or successive compassionate release motion; (2) waivers that limit the permissible bases for a motion to those set forth in Section 1B1.13 of the Sentencing Guidelines, until that provision is amended by the Sentencing Commission; and (3) in exceptionally rare cases such as certain terrorism and homicide cases, waivers negotiated with defense counsel, subject to the non-delegable approval by the U.S. Attorney. If offices have questions about these exceptions, they should consult with the Criminal Division.