

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
EASTERN DIVISION**

United States of America,)	
)	
Plaintiff,)	ORDER GRANTING MOTION TO
)	REDUCE SENTENCE
vs.)	
)	Case No. 3:19-cr-42(1)
Sijie Liu,)	
)	
Defendant.)	

Before the Court is Defendant Sijie Liu’s motion to reduce sentence. Doc. No. 56. The Government opposes the motion (Doc. No. 67), and Liu filed a reply. Doc. No. 70. Liu seeks a reduction in her sentence to time served based on “extraordinary and compelling reasons” under 18 U.S.C. § 3582(c)(1)(A). For the reasons below, the motion is granted.

I. BACKGROUND

The Court is quite familiar with the underlying facts of this case and remembers Liu’s case well. Liu is a Canadian citizen, whose father is a Chinese citizen and mother is a Chinese national with Canadian citizenship. On June 22, 2020, the Court sentenced Liu to 72 months’ imprisonment for attempt to acquire a chemical weapon in violation of 18 U.S.C. §§ 229(a)(1) and (2). Doc. No. 49. The Bureau of Prisons (“BOP”) placed Liu at FCI Waseca. Now 39 years old, Liu has a projected release date in April 2024. Inmate Locator, Fed. Bureau of Prisons, <https://www.bop.gov/inmateloc/> (last visited Nov. 18, 2022).

As grounds for release, Liu cites the need to care for her elderly parents and a failure to grant a treaty transfer as extraordinary and compelling reasons warranting release. Doc. No. 56. Liu submitted a request for compassionate release to the warden at FCI Waseca on January 28, 2022, which the warden denied on February 1, 2022. Doc. No. 56-1.

II. DISCUSSION

Because sentences are final judgments, a court ordinarily “may not modify a term of imprisonment once it has been imposed.” 18 U.S.C. § 3582(c). As one narrow exception to that rule, a court “may reduce the term of imprisonment” when “extraordinary and compelling reasons” exist and the “reduction is consistent with applicable policy statements issued by the Sentencing Commission.”¹ 18 U.S.C. § 3582(c)(1)(A)(i). The 18 U.S.C. § 3553(a) factors also must support the reduction. *Id.* The burden to establish that a sentence reduction is warranted under 18 U.S.C. § 3582(c) rests with the defendant. *See United States v. Jones*, 836 F.3d 896, 899 (8th Cir. 2016).

A. **Administrative Exhaustion**

With the enactment of the First Step Act (“FSA”), Congress permitted courts to grant compassionate release “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.” 18 U.S.C. § 3582(c)(1)(A). Here, Liu met the exhaustion requirements, and the warden denied her request for compassionate release on February 1, 2022. Doc. No. 56-1. Accordingly, the Court will proceed to the merits.

B. **Extraordinary and Compelling Reasons**

The compassionate release statute does not define what constitutes “extraordinary and compelling reasons.” Instead, Congress dictated that the Sentencing Commission, through a policy statement, “shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including . . . a list of specific examples.” 28 U.S.C. § 994(t). To meet its

¹ In lieu of extraordinary and compelling reasons, the statute also permits a sentence reduction where a defendant is at least 70 years old and certain additional conditions are met. *See* 18 U.S.C. § 3582(c)(1)(A)(ii). Liu is 39 years old, so this avenue for relief is foreclosed.

statutory obligation, the Commission promulgated § 1B1.13 in the 2018 Sentencing Guidelines Manual (“USSG”). The policy statement itself largely mirrors the compassionate release statute’s language. See USSG § 1B1.13(1)-(3).

Application Note 1 to the policy statement provides limited guidance as to what constitutes “extraordinary and compelling reasons.” So long as a defendant does not pose “a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g),” the Application Note describes four instances that demonstrate extraordinary and compelling reasons for compassionate release. USSG § 1B1.13(2); id. app. n.1. The first three circumstances set out in subdivisions (A) through (C) pertain to a defendant’s medical condition, age, or family circumstances, respectively. See id. app. n.1(A)-(C). Subdivision (D)—the catch-all provision—authorizes a sentence reduction when: “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).” Id. app. n.1(D) (emphasis added).

Because § 1B1.13 was issued when the Bureau of Prisons (“BOP”) had the sole authority to bring motions for release under § 3582(c)(1)(A), the guideline (and specifically subdivision (D)) by its terms is limited to motions filed by the BOP. However, consistent with United States v. Marcussen, 15 F.4th 855 (8th Cir. 2021), the Court will treat § 1B1.13 as a useful guide in determining how to exercise its discretion, while also recognizing that it has the authority to grant a reduction even in circumstances that do not comport with the terms of that provision.

1. Family Circumstances

Liu first argues that her family circumstances present extraordinary and compelling reasons for release. Liu’s parents are both over 65 years of age and in failing health. Additionally, both

reside in Canada and primarily speak Mandarin Chinese. Liu is the primary caregiver for both parents. The United States argues the care of elderly parents does not fall within the policy statements of USSG § 1B1.13 and its commentary.

Subdivision (C) of the Application Note to § 1B1.13 states:

(C) Family Circumstances

- (i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.
- (ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only caregiver for the spouse or partner.

USSG § 1B1.13, app. n.1(C). While understanding Liu's concerns for her parents and recognizing the unique language-barrier present in this case, federal courts have generally concluded "that providing care to elderly parents, even ailing parents, is not an extraordinary and compelling reason for release." See United States v. Valencia, No. 4:15-CR-3010, 2021 WL 3023729, at *1 (D. Neb. Jul. 16, 2021) (quoting United States v. Hassen, No. 2:07-CR-20099, 2020 WL 6680387, at *3 (D. Kan. Nov. 12, 2020) (collecting cases)). That is because "many, if not all inmates, have aging and sick parents." Id. Accordingly, while sympathetic, Liu's concerns for her elderly parents does not present an extraordinary and compelling reason for a sentence reduction under § 3582(c)(1)(A).

2. Failure to Grant Treaty Transfer

A different result is warranted on Liu's second argument for a sentence reduction under Subdivision (D) (the catch-all provision). Liu posits that the failure of the Department of Justice to grant her a treaty transfer presents an extraordinary and compelling reason for a sentence reduction. More specifically, Liu correctly notes that the parties articulated and understood at

sentencing that the United States would not oppose Liu's request to be transferred to Canadian custody. However, after pursuing the transfer, the request was denied.

The United States indicates that it acted consistently with the plea agreement and did not oppose Liu's request. After sentencing, Liu did seek a treaty transfer from the United States. The United States Attorney's Office for the District of North Dakota received an inquiry from the International Prison Transfer Unit ("IPTU") within the Department of Justice. In response, the United States "took no position" on the request. Doc. No. 67-1.

Liu's plea agreement specifically stated, "The United States agrees that if the Defendant, following sentencing, seeks a prison transfer to Canadian custody, the United States will not oppose that request." Doc. No. 38 ¶ 23. At sentencing, the undersigned asked Liu several questions under oath, including whether any other promises or assurances had been made to her to make her plead guilty. Liu responded:

I believe they are covered in the Plea Agreement. The two main promises that I guess motivated me to accept this Plea Agreement is one, it's a global resolution so that I will not be prosecuted in Canada for the same offense, and the second promise is that neither the United States government nor the Canadian government will object my request to transfer to Canada to serve my sentence."

Doc. No. 55 at 17-18 (emphasis added). Further, the United States also recognized the "extraordinary" nature of the situation involving the treaty transfer in noting, "It's also extraordinary that we agreed to the – to not oppose the transfer to Canadian custody or prison transfer." *Id.* at 23. Also of note is that Liu had Canadian counsel as well, who was involved in the "vast majority" of the negotiations. *Id.* at 26.

From the sentencing transcript it is clear that not opposing the treaty transfer was a significant element to Liu's plea agreement and the global resolution of her case. While the United States argues it followed through with its promise to not oppose the plea agreement, the record

suggests otherwise. As it notes, the United States “took no position” on Liu’s request. Doc. No. 67-1. Curiously though, the request directly asks, “did the United States Attorney’s Office take a position on a future request by this inmate for transfer,” which the United States checked “yes.” Id. But then two boxes down marked the box indicating “This office **TAKES NO POSITION** on this request.” Id. Confusing, indeed. And, more importantly here, taking no position on a request is not the same as agreeing to not oppose a request.

The Court recognizes that the United States Attorney’s Office for the District of North Dakota does not, in isolation, make the final decisions with respect to treaty transfers and international custody transfers. That said, it was evident at sentencing that all the parties, including the undersigned, knew Liu would be applying for a treaty transfer to Canadian custody and the United States would not oppose that request. It was also evident, by Liu’s own words but also the record in this case, that the transfer issue was an essential part of the global resolution.

Liu’s case and plea agreement was, in a word, extraordinary and presents extraordinary and compelling circumstances “other than” those specifically articulated in USSG § 1B1.13. On the unique and specific facts of this case, the Court agrees with Liu and finds that the inconsistent recommendation concerning the treaty transfer and subsequent denial of the transfer presents extraordinary and compelling reasons for a sentence reduction § 3582(c)(1)(A).

C. Additional Requirements

Liu’s release is also consistent with the 18 U.S.C. § 3553(a) sentencing factors. Here, the nature and circumstances of the offense and history and characteristics of the defendant are critical. Liu’s offense was a particular crime committed from passion. Indeed, as noted above, the case is factually unique and rare. And for her part, Liu is highly educated, intelligent, and also incredibly remorseful for her crime. Moreover, after much consideration, the Court also finds that reducing

Liu's sentence to time served properly reflects the seriousness of the crime, affords adequate deterrence, and will not create an unwarranted sentencing disparity. Such a sentence also promotes respect for the law—both in letter and in spirit—as contemplated by both parties in the sentencing hearing on June 22, 2020. Accounting for time served and good conduct time, Liu has less than two years of time remaining on her original sentence. The applicable § 3553(a) factors, taken as a whole, therefore favor release.

III. CONCLUSION

For the reasons set forth above, Liu's motion to reduce sentence (Doc. No. 56) is **GRANTED**. Liu's sentence is reduced to a sentence of time served. The United States Probation and Pretrial Services Office has been informed of the Court's decision and will work with Liu and her counsel to develop an appropriate release plan.

IT IS SO ORDERED.

Dated this 22nd day of November, 2022.

/s/ Peter D. Welte
Peter D. Welte, Chief Judge
United States District Court