



However, the motion fails at step (2). Garcia has failed to show the presence of extraordinary and compelling circumstances that merit modifying his sentence.

“[T]he mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release.” *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). While extraordinary and compelling circumstances may exist where “underlying health conditions . . . render [one] especially vulnerable to COVID-19,” *United States v. Rodriguez*, 451 F. Supp. 3d 392, 401 (E.D. Pa. 2020), Garcia has not – at least to this point – demonstrated the presence of such health conditions.

The record shows that in 2019 Garcia was found to suffer from a precancerous growth in his right lung. (D.I. 43 Ex. A) Garcia contends that this growth puts him at elevated risk of experiencing severe consequences were he to contract coronavirus. (D.I. 43 at 9) On the present record, however, it is unclear how this growth makes Garcia “especially vulnerable to severe illness should he contract COVID-19.” (*Id.* at 2) The CDC has stated that cancer – not precancer – constitutes a COVID-19 risk factor. *Coronavirus Disease 2019 (COVID-19)*, CDC, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html> (last accessed Nov. 12, 2020). As the government notes, precancer is not cancer. (D.I. 46 at 13-14) It appears (from the very limited record before the Court) that most cases of precancer tend to be benign. (*Id.*)

From what may be discerned from the portions of Garcia’s medical history before the Court (D.I. 43 Ex. A), it appears that he “[d]enies environmental or occupational exposures that could predispose him to pulmonary conditions;” a July 2019 PET scan found “no evidence for abnormal radiotracer uptake;” and his nodule was “non-FDG avid”<sup>1</sup> (*id.* at 1). Garcia also


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<sup>1</sup> The Court understands this to mean that the nodule was not radioactive—indicating it was

“denie[d] any current issues” related to his nodule as of March 2020. (*Id.*) Garcia argues that his “health condition is dire” (D.I. 47 at 2), but the record before the Court does not (as yet) support this contention. *See generally United States v. Ayers*, 2020 WL 2838610, at \*2 (D.D.C. June 1, 2020) (finding precancerous condition did not constitute extraordinary and compelling reasons for compassionate release).

The Court recognizes that it does not have Garcia’s full medical record before it, even as that record existed at the time of the briefing. (*See, e.g.*, D.I. 46 at 6) (government noting “Court’s response deadline did not provide enough time to procure these records”) Moreover, approximately two and one-half months have passed since the pending motion was filed and it is possible that additional tests have been taken or additional evidence has been developed. (*See* D.I. 43 Ex. A) (suggesting potential medical follow-up) Further, the record does not include facts relating to the recent and current COVID situation at the facility where Garcia is incarcerated or the parties’ evaluation of those conditions. Because it may be possible for Garcia to meet his burden on all four prongs of the applicable test, the Court’s denial of his pending motion is without prejudice to renew.

**IT IS FURTHER ORDERED** that the parties shall meet and confer and, no later than **November 17, 2020**, advise the Court whether any redactions are requested to this sealed Order before it is made public (and, if so, on what basis). If no timely response is filed, the Court will unseal its Order in full.

  
HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE

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noncancerous.