

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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UNITED STATES OF AMERICA,

Plaintiff,

v.

JESUS SARRAGA-SOLANA,

Defendant.

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Crim. No. 4-144-LPS-6

**ORDER**

At Wilmington this **17th** day of **August, 2021**, having reviewed Defendant Jesus Sarraga-Solana's Application for Modification of Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i) (D.I. 502) and exhibit (D.I. 505), the government's responses (D.I. 504, 506) and exhibit (D.I. 507), and Sarraga-Solana's reply (D.I. 509);

**IT IS HEREBY ORDERED** that Sarraga-Solana's motion (D.I. 502) is **DENIED**.

A compassionate release motion by a sentenced defendant requires the defendant "(1) to exhaust administrative remedies, (2) to show extraordinary and compelling circumstances, (3) to show an absence of dangerousness, and (4) to show that the section 3553(a) factors support a reduced sentence." *United States v. Vurgich*, 2020 WL 4335783, at \*3 (D. Del. July 28, 2020) (internal citation omitted).<sup>1</sup>

On July 1, the government submitted a response in which it challenged Sarraga-Solana's

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<sup>1</sup> Judge Andrews, who authored *Vurgich*, has expressed skepticism that prong (3), dangerousness, is applicable in light of other circuit court rulings. See *United States v. Flagg*, Crim. A. No. 19-30-RGA D.I. 59 at 2. Whether absence of dangerousness is a separate requirement does not affect the disposition of the pending motion because the Court is denying it under prong (2).

motion for failure to exhaust. (*See* D.I. 504)<sup>2</sup> The government argued that, although the motion referenced a request made to the warden, the Bureau of Prisons (“BOP”) had no record of that request. (*Id.* at 3) On July 6, however, Sarraga-Solana submitted an exhibit showing that the warden had received his request on May 17, 2021 and had denied it shortly thereafter. (*See* D.I. 505) Two days later, the government filed another response – this time, addressing Sarraga-Solana’s motion on the merits. (D.I. 506) In that response, the government asserts that the facility’s denial had not been recorded in the BOP’s records at the time the government filed its first response, and that it no longer challenges Sarraga-Solana’s motion for failure to exhaust. (*Id.* at 2-3) The Court concludes that, in light of the recently filed exhibit demonstrating that Sarraga-Solana filed the instant motion more than 30 days after he submitted his request to the warden, he has met his burden to show exhaustion.

The government also appears to concede that Sarraga-Solana meets the third and fourth requirements, stating “[g]iven Defendant’s track record in prison, his offense of conviction, and his impending removal, the government does not argue that Defendant currently presents a danger to the community.” (*Id.* at 17) The government further states: “[n]or are there strong arguments under § 3553(a) dissuading the Court from granting the Defendant relief *if* he otherwise presented extraordinary and compelling reasons meriting relief.” (*Id.*) But the Court need not determine whether Sarraga-Solana has met his burden at prongs three or four, as it will deny the motion under prong two.

Sarraga-Solana contends that he “suffers from anxiety and the fear of death” (D.I. 502 at

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<sup>2</sup> Under 18 U.S.C. § 3582(c)(1)(A), a defendant seeking a reduced sentence must first ask the BOP and then either (i) wait 30 days for the BOP to respond or (ii) exhaust all available administrative appeals after receiving an adverse decision. *See United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020).

4) (emphasis omitted) as a result of COVID-19, and that the “high risk of contracting COVID-19 due to the conditions at F.C.I. Oakdale II” compels a reduction of his sentence (*id.* at 7). The Court does not doubt Sarraga-Solana’s account that the pandemic has taken a toll on his mental health, but “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release.” *Raia*, 954 F.3d at 597. It follows that neither can commonly held, generalized fear and anxiety about COVID-19 justify compassionate release. Moreover, anxiety and fear of death do not qualify as risk factors identified by the CDC as increasing the likelihood of getting severely ill from COVID-19. *See People with Certain Medical Conditions*, Ctrs. for Disease Control & Prevention (May 13, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.


Further, Sarraga-Solana’s medical records reveal that he contracted COVID-19 in January 2021 and is now fully vaccinated against it. (D.I. 507 at A4, A8, A18, A37, A51-52) In light of the numerous studies confirming the efficacy of the vaccines (*see* D.I. 506 at 12-15), Sarraga-Solana’s vaccination status weighs against finding that his susceptibility to the disease presents an “extraordinary and compelling” circumstance. *See, e.g., United States v. Singh*, 2021 WL 928740 (M.D. Pa. Mar. 11, 2021) (finding no compelling or extraordinary circumstances even where defendant’s underlying health conditions increased his risk of serious illness or death from COVID-19 because he was fully vaccinated against COVID-19); *United States v. Smith*, 2021 WL 364636, at \*2 (E.D. Mich. Feb. 3, 2021) (“[A]bsent some shift in the scientific consensus, Defendant’s vaccination against COVID-19 precludes the argument that his susceptibility to the disease is ‘extraordinary and compelling’ for purposes of § 3582(c)(1)(A).”).

The news articles cited by Sarraga-Solana, which criticize F.C.I. Oakdale’s handling of

the pandemic, have little impact on the analysis. (*See* D.I. 509 at 6-7) The articles were published in 2020, well before vaccinations were available. Additionally, as the government notes, with the onset of the pandemic, the BOP implemented extensive changes to its operations in accordance with a plan developed with the CDC and the World Health Organization. (D.I. 506 at 3)

Finally, Sarraga-Solana notes that he has a detainer filed against him by U.S. Immigration and Customs Enforcement (“ICE”). (D.I. 502 at 3-4) He alleges that, whether he is released now or after completion of his full sentence, upon his release he will be transferred to ICE custody and deported to the Dominican Republic. (*Id.* at 4) In Sarraga-Solana’s view, he “will no longer pose a threat to the community in this country,” nor in the Dominican Republic, “since it will be a new country to him.” (*Id.* at 8) These considerations may be pertinent to an evaluation of whether a defendant has met his burden at prongs three and/or four, but they do not amount to extraordinary and compelling circumstances (on their own or in combination with the other considerations Sarraga-Solana points to) at prong two.

Accordingly, the Court has denied Sarraga-Solana’s motion.



HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE