IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA

UNITED STATES OF AMERICA, Plaintiff, v. ANGELA DAWN JONES, Defendant.	* * * * * * * * * * *	4:06-cr-00278 ORDER GRANTING COMPASSIONATE RELEASE

Before the Court is Defendant Angela Dawn Jones's Pro Se Motion for Compassionate Release. ECF No. 308. The Federal Public Defender entered an appearance and filed a supplemental Motion for Compassionate Release on Defendant's behalf. ECF No. 313. The Government filed its Response on March 22. ECF No. 316. Counsel for Defendant replied on March 24. ECF No. 317. The matter is fully submitted.

I. BACKGROUND

Defendant has led a difficult life. From a young age, Defendant witnessed her parents openly using drugs in front of her daily. ECF No. 186 ¶ 96. Her mother was also an alcoholic. *Id.* ¶ 82. It is no wonder then that Defendant turned to drugs when she was still a child. *Id.* ¶ 97; ECF No. 295 at 22. She suffered the loss of her father in a tragic accident when she was only nine years old. ECF No. 186 ¶ 82. She has also suffered the premature loss of two of her siblings. *Id.*

Defendant was physically abused as a child by her mother. ECF No. 295 at 22. Consequently, she ran away from home often while growing up. ECF No. 186 ¶ 83. She was homeless at the time of her arrest. *Id.* ¶ 87. She has been diagnosed with serious mental health conditions. *Id.* ¶ 91. Her criminal history, while extensive, consists almost entirely of driving

and drug-related offenses and is consistent with the criminal history of addicts. *Id.* ¶¶ 49–64.

In 2007, Defendant was charged with conspiracy to distribute 500 grams or more of a mixture and substance containing methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846, and possession with intent to distribute methamphetamine, in violation of § 841(a)(1) and (b)(1)(B). ECF No. 6. The Government filed notice of its intent to seek enhanced penalties against Defendant under 21 U.S.C. § 851 based on two prior state convictions for felony drug offenses. ECF No. 95. The two prior convictions on which the Government relied were methamphetamine convictions from 1999 and 2003, for which Defendant initially received sentences of probation, although her probation was revoked as to the first sentence and she ended up serving five years. ECF No. 186 ¶¶ 55, 62. As a result, at the age of thirty-seven, Defendant faced a mandatory sentence of life imprisonment if convicted of the conspiracy charge. *See* ECF No. 101 ¶ 4.

Defendant initially pled guilty to the conspiracy charge; however, based upon concerns regarding her mental health, the Court allowed her to withdraw her plea. ECF No. 138; *see* ECF Nos. 100, 101. Thereafter, Defendant entered into a binding plea agreement with the Government under Federal Rule of Criminal Procedure 11(c)(1)(C), which provided that Defendant would plead guilty to possession with intent to distribute methamphetamine and receive a sentence of thirty years' imprisonment followed by eight years of supervised release. ECF No. 190 ¶¶ 4, 7. The applicable Guidelines range at the time was 151 to 188 months, and the mandatory minimum was ten years. *Id.* ¶ 5. Thus, without the enhancement for her prior convictions, Defendant would have received a much shorter sentence. The Court said as much at Defendant's sentencing and stated its belief that the stipulated sentence was "way, way too long" and later stated it could not "honestly think it is the appropriate sentence." ECF No. 295 at 25,

26. Nevertheless, the Court accepted Defendant's guilty plea, observing that if it rejected the plea, Defendant would receive a mandatory life sentence instead. *Id.* at 25.

In September 2009, the Court sentenced Defendant to thirty years' imprisonment to be followed by eight years of supervised release, pursuant to the Rule 11(c)(1)(C) plea agreement. ECF No. 191. In July 2019, the Court reduced Defendant's term of imprisonment to twenty years after concluding that "Defendant's sentence was based on a subsequently reduced Guidelines range." ECF No. 301 at 5. Defendant has a scheduled release date of January 2, 2024. ECF No. 313 at 4, 6.

Defendant is now fifty years old. ECF No. 313-1 at 2. While in custody, she has completed numerous courses, including the 500-hour Residential Drug Abuse Program (RDAP). ECF No. 308 at 14. Defendant did so well in RDAP that she was named a mentor and peer-led several classes. *Id.* at 2. She has also worked consistently and "receives outstanding performance evaluations monthly." ECF No. 313-3 at 1. The BOP acknowledges Defendant "is a hard worker that needs very little supervision" and "is not seen as a management problem." *Id.* BOP records assign Defendant a low-risk recidivism level and a minimum security classification. ECF No. 308 at 16; ECF No. 313-2 at 6. In the more than thirteen years Defendant has been incarcerated, she has never had any disciplinary violations. ECF No. 308 at 14–15.

Defendant has a plan for her future. She would like to be released to live with her aunt and uncle in her hometown of Red Oak, Iowa where she has a strong support network of immediate and extended family. ECF No. 308 at 3; ECF No. 186 ¶ 82. She intends to get her driver's license reinstated and has plans to be gainfully employed. ECF No. 308 at 3. She would also like to enroll in drug counseling courses so that she can help others overcome their addictions. *Id.*

Defendant seeks compassionate release under 18 U.S.C. § 3582(c)(1)(A) citing her preexisting health conditions, her rehabilitation efforts while incarcerated, changes in the sentencing laws, and an unwarranted sentencing disparity between her and her codefendants. Defendant requested compassionate release from the BOP, and her request was denied. On December 14, 2020, Defendant appealed her request to the warden, who denied Defendant's request on December 22. ECF No. 308 at 17.

II. ANALYSIS

The First Step Act amended numerous provisions of the U.S. Code to promote rehabilitation of prisoners and unwind decades of mass incarceration. Cong. Research Serv., R45558, *The First Step Act of 2018: An Overview* 1 (2019). Congress designed the provision at issue here, § 3582(c)(1)(A), for "Increasing the Use and Transparency of Compassionate Release." First Step Act of 2018, Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239 (2018). This provision allows defendants, for the first time, to petition district courts directly for compassionate release. § 3582(c)(1)(A). Under the old regime, defendants could petition only the BOP Director, who could then make a motion, at his or her discretion, to the district court. *See* U.S. Sentencing Guidelines Manual § 1B1.13 cmt. n.4 (U.S. Sentencing Comm'n 2018) [hereinafter U.S.S.G.]. The Director rarely did so. *Public Hearing on Compassionate Release and the Conditions of Supervision Before the U.S. Sentencing Comm'n*, 66 (2016) (statement of Michael E. Horowitz, Inspector General, Dep't of Justice); *see also United States v. McCoy*, 981 F.3d 271, 276 (4th Cir. 2020) ("The BOP used that power so 'sparingly' that the Department of Justice's Inspector General found in a 2013 report that an average of only [twenty-four] imprisoned persons were released each year by BOP motion.").

A. Exhaustion

Section 3582(c)(1)(A)'s gatekeeping provision created two ways for a defendant to bring a compassionate release motion to a district court. The defendant may file a motion after she "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 [thirty] days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." § 3582(c)(1)(A).

Defendant satisfied the second option, because thirty days have passed since the warden received Defendant's compassionate release request. *See* ECF No. 308 at 17. The Government does not dispute that thirty days have lapsed since Defendant submitted her request to the warden at FCI Waseca.[1] *See* ECF No. 316. Thus, the Court may address the merits of Defendant's Motion.

B. Merits

Compassionate release provides a path for defendants with "extraordinary and compelling reasons" to leave prison early. § 3582(c)(1)(A)(i). Such a sentence reduction must comply with the 18 U.S.C. § 3553(a) factors and "applicable policy statements issued by the Sentencing Commission." § 3582(c)(1)(A). "Many district courts, including this one, have concluded the Commission lacks an applicable policy statement regarding when a court can grant compassionate release." *United States v. Brown*, 457 F. Supp. 3d 691, 699 (S.D. Iowa 2020), *appeal dismissed following government request*, No. 20-2053 (8th Cir. June 16, 2020). These courts conclude "the Court can determine whether any extraordinary and compelling reasons other than those delineated in U.S.S.G. § 1B1.13 cmt. n.1(A)–(C) warrant granting

[1] The Government also does not dispute Defendant has satisfied § 3582(c)(1)(A)'s gatekeeping requirement. *See* ECF No. 316; *see also United States v. Alam*, 960 F.3d 831, 834 (6th Cir. 2020) (holding § 3582(c)(1)(A)'s gatekeeping requirement is a non-jurisdictional claim-processing rule that the Government can waive or forfeit).

relief." *United States v. Cantu*, 423 F.Supp.3d 345, 352 (S.D. Tex. 2019).

In *United States v. Brooker*, the Second Circuit agreed, holding:

> [T]he First Step Act freed district courts to consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them in motions for compassionate release. Neither Application Note 1(D), nor anything else in the now-outdated version of § 1B1.13, limits the district court's discretion.

976 F.3d 228, 237 (2d Cir. 2020). Other circuits have reached similar conclusions.[2] *See McCoy*, 981 F.3d at 281; *United States v. Gunn*, 980 F.3d 1178, 1180–81 (7th Cir. 2020); *United States v. Jones*, 980 F.3d 1098, 1108–12 (6th Cir. 2020).

Thus, the Court will consider all relevant factors in assessing Defendant's Motion. *See Brooker*, 976 F.3d at 236 ("Because § 1B1.13 is not 'applicable' to compassionate release motions brought by defendants, Application Note 1(D) cannot constrain district courts' discretion to consider whether any reasons are extraordinary and compelling.").

1. Defendant's Health and COVID-19

This Court, like many around the country, has granted requests for compassionate release as a result of the raging global pandemic caused by COVID-19. Defendant has several preexisting health conditions that put her at serious risk of severe illness or death if she were to contract the virus that causes COVID-19. *See* ECF No. 308 at 4. For this reason, she was referred for home confinement. ECF No. 313-3 at 3. Ultimately, however, the referral was denied because her PATTERN risk score was low rather than minimum. ECF No. 308 at 17. Defendant has received both doses of a two-dose COVID-19 vaccine. ECF No. 316 ¶ 6. Thus, it is likely that any risk posed to Defendant by COVID-19 is greatly reduced, and the Court concludes Defendant's health is not an extraordinary and compelling reason for release.

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[2] The Eighth Circuit has declined to address the issue. *See United States v. Loggins*, 966 F.3d 891, 892 (8th Cir. 2020).

2. Rehabilitation

The First Step Act states "[r]ehabilitation of the defendant *alone* shall not be considered" sufficiently "extraordinary and compelling" to justify compassionate release. 28 U.S.C. § 994(t) (emphasis added). Yet "[a] statute should be construed so that effect is given to all its provisions." *Corley v. United States*, 556 U.S. 303, 314 (2009) (alteration in original) (quoting *Hibbs v. Winn*, 542 U.S. 88, 101 (2004)). This means that for the word "alone" to do any work—as it must—the statute allows courts to consider rehabilitation as part of a compassionate release motion. Thus, several courts, including this one, have determined a defendant's rehabilitation to be part of the extraordinary and compelling reasons favoring release. *E.g.*, *Brown*, 457 F. Supp. 3d at 701.

Defendant's rehabilitation while incarcerated is nothing short of extraordinary and compelling. In her thirteen years in custody, she has not received any disciplinary violations. She has completed extensive programming including the rigorous RDAP program, during which she served as a mentor and taught many courses to her peers. In short, the Court believes Defendant's efforts to rehabilitate herself are exemplary and weigh in favor of her release.

3. Changes in Sentencing Laws

Several courts, including this one, have concluded that drastic sentencing disparities created by sentencing law reforms can be an extraordinary and compelling reason supporting release. *E.g.*, *Brown*, 457 F. Supp. 3d, at 702. Since Defendant was sentenced in 2009, Congress has made drastic changes to the applicable law.[3] The First Step Act, among other things, amended 21 U.S.C. § 802 to provide that a defendant is not eligible for enhanced

[3] In its 2019 Order reducing Defendant's sentence, the Court only considered the application of Amendment 782 to the U.S. Sentencing Guidelines in light of the Supreme Court's decision in *Hughes v. United States*, 138 S. Ct. 1765 (2018). The Court did not consider the changes in the law discussed herein.

statutory penalties under § 841(b)(1)(A) or (b)(1)(B) unless a prior drug conviction constitutes a "serious drug felony" for which the defendant has served more than twelve months. § 401, 132 Stat. at 5220–21; *see* § 841(b)(1)(A); 21 U.S.C. § 802(57). A "serious drug felony" is defined as either a federal drug offense with a maximum term of imprisonment of ten years or more or a state drug offense "involving manufacturing, distributing, or possessing with intent to manufacture or distribute" with a maximum imprisonment term of ten years or more. 18 U.S.C. § 924(e)(2)(A).

The drastic changes in sentencing laws since Defendant was sentenced in 2009 are compelling. Neither of Defendant's prior convictions that the Government relied on to support its § 851 enhancement would now qualify as a "serious drug felony." Defendant's 1999 state conviction was for possession of methamphetamine and did not "involv[e] manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance." § 924(e)(2)(A)(ii); § 802(57); ECF No. 186 ¶ 55. As to her 2003 conviction, Defendant did not serve more than twelve months. ECF No. 186 ¶ 62; *see* § 802(57). Thus, rather than facing a life sentence, Defendant would now only face a mandatory minimum of ten years. Without the very real threat of life imprisonment, the Court would not have accepted the Government's plea agreement binding Defendant to a thirty-year sentence. The applicable Guidelines range now is 130 to 162 months. Defendant has served a sentence within that range. This factor weighs in favor of her release.

4. Unfair Sentence

In order to understand how unfair and unjust Defendant's sentence was and is requires an understanding of what was occurring at the time she pled guilty and was sentenced. Following the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220 (2005), which held that

the federal sentencing Guidelines are advisory and not mandatory, the U.S. Attorney's Office in this District began regularly appealing below-Guidelines sentences imposed by this Court. The Office was very successful in doing so as the Eighth Circuit reversed downward variances granted by this Court in nine of those cases, one of which was *United States v. Gall*, 374 F. Supp. 2d 758 (S.D. Iowa 2005), *rev'd*, 446 F.3d 884 (8th Cir. 2006), *rev'd*, 552 U.S. 38 (2007). In *Gall v. United States*, the Supreme Court affirmed this Court's exercise of discretion in imposing a sentence substantially below the Guidelines. 552 U.S. at 59–60. By giving district courts more discretion in sentencing, the *Booker* and *Gall* decisions in effect weakened the Government's ability to dictate sentences.

To evade these changes in the law, federal prosecutors began to engage in the plea practices condemned by Judge Gleeson in *United States v. Kupa*, 976 F. Supp. 2d 417 (E.D.N.Y. 2013). There, Judge Gleeson recognized that "[t]o coerce guilty pleas, . . . prosecutors routinely threaten ultra-harsh, enhanced mandatory sentences that *no one*—not even the prosecutors themselves—thinks are appropriate." *Kupa*, 976 F. Supp. 2d at 420. However, the U.S. Attorney's Office in this District took it a step further. In the *Gall* aftermath, the Government in this District routinely filed § 851 enhancements in nonviolent drug cases to force a defendant to plead guilty *and* offered harsh, binding plea deals as the only alternative. The Government did so in a calculated and successful effort to effectively remove this Court's sentencing discretion and prevent this Court from imposing fair sentences based on the specific circumstances of the case and the history and characteristics of the individual defendant. Defendant's was one such case.

Here, despite the fact that Defendant had received relatively light sentences for her prior drug offenses and was clearly not a hardened, professional drug trafficker, the Government

nonetheless filed § 851 notices mandating a sentence of life imprisonment upon conviction. The Government proposed a Rule 11(c)(1)(C) agreement that allowed Defendant to escape the life sentence required by the Government's own discretionary filing of a § 851 notice—but only in exchange for a thirty-year sentence. The Court, believing Defendant would be convicted and receive a life sentence if she proceeded to trial, chose to accept the plea agreement as the "lesser of two evils" and reluctantly imposed the far-too-harsh sentence of 360 months.

The Court has repeatedly noted that justice plays a role in considering a defendant's motion for compassionate release. The fact that Defendant was coerced into taking a thirty-year plea deal for a low-level drug crime is "extraordinary" in itself. § 3582(c)(1)(A)(i). The unfairness of her sentence is utterly compelling. This factor also weighs in favor of her release.

5. Section 3553(a) Factors

Under § 3582(c)(1)(A), this Court must "consider all relevant § 3553(a) factors before rendering a compassionate release decision." *Jones*, 980 F.3d at 1114 (citing *Gall v. United States*, 552 U.S. 38, 49–50 (2007)). The Court's lodestar is to ensure the sentence is "sufficient, but not greater than necessary." § 3553(a). "District judges maintain an 'obligation to provide reasons' in . . . sentencing-modification decisions . . . ." *Jones*, 980 F.3d at 1112 (quoting *Chavez-Meza v. United States*, ___ U.S. ___, ___, 138 S. Ct. 1959, 1963 (2018)).

Defendant's offense of conviction was nonviolent. And although drug offenses are certainly serious, the time Defendant has served incarcerated satisfies any need for the sentence imposed. § 3553(a)(2)(A)–(D). Thirteen years' imprisonment for an offense that today would have a minimum sentence of ten years and a Guidelines range of 130 to 162 months "reflect[s] the seriousness of the offense . . . and . . . provide[s] just punishment." § 3553(a)(2)(A). Defendant's conduct during the last thirteen years and low recidivism risk and security

classification prove she has been deterred from criminal conduct and is not a danger to the public. § 3553(a)(2)(B), (C). Additionally, continued incarceration will not provide Defendant with the medical, educational, or vocational treatment she requires "in the most effective manner." *See* § 3553(a)(2)(D). She has made the most of her time in prison, and it is time for her to be released and granted the opportunity to give back to her family and her community.

Furthermore, a reduction in Defendant's sentence would diminish the significant disparity between her sentence and the sentences of her codefendants and the defendants in the related case. § 3553(a)(6). Defendant's Presentence Investigation Report noted Defendant was equally or less culpable than her codefendants, ECF No. 186 ¶¶ 32–33, yet all of her codefendants and the defendants in the related case were released many years ago.[4]

As the Court has repeatedly noted as of late, a decision does not cease to be an "exercise of reason simply because it is also an exercise of compassion." *United States v. Likens*, 464 F.3d 823, 827 (8th Cir. 2006) (Bright, J., dissenting), *cited with approval in Gall*, 552 U.S. at 52 n.7. The Court grants Defendant's Motion for Compassionate Release because it is supported by extraordinary and compelling reasons as well as the § 3553(a) factors.

C. Release Plan

Defendant's term of imprisonment is reduced to time served. Her term of supervised release remains at eight years and is subject to the terms in the latest judgment. *See* ECF No. 191.

Defendant is released to live with her aunt and uncle at the address in Red Oak identified in her Motion. Per the Centers for Disease Control and Preventions Guidelines for individuals who have been fully vaccinated, Defendant shall self-quarantine at home for fourteen days upon

[4] Unfortunately, one defendant in the related case died in prison in 2009. ECF No. 313-1 at 4.

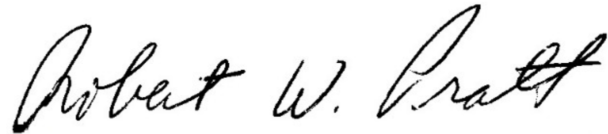
being released. She shall comply with national, state, and local orders regarding COVID-19.

III. CONCLUSION

For the reasons stated herein, Defendant's Motion for Compassionate Release (ECF No. 308) and Counsel's supplemental Motion for Compassionate Release (ECF No. 313) are GRANTED.

IT IS SO ORDERED.

Dated this 25th day of March, 2021.



ROBERT W. PRATT, Judge
U.S. DISTRICT COURT