

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

ELIZABETH HENRIQUEZ,

Defendant.

No. 19-cr-10080-NMG-9

**GOVERNMENT’S OPPOSITION TO DEFENDANT ELIZABETH HENRIQUEZ’S  
EMERGENCY MOTION PURSUANT TO 18 U.S.C. § 3582 (Dkt. 1680)**

The government respectfully opposes defendant Elizabeth Henriquez’s *fourth* successive motion to reduce her sentence on the basis of the COVID-19 pandemic. Henriquez understood the risks of reporting to prison in the midst of a global pandemic, and yet chose to report anyway, despite the fact that the Court indicated it would entertain further motions to defer her self-surrender date if the COVID-19 crisis had not abated. Since that time, Henriquez’s attorneys have used the pandemic in a relentless campaign to have her released, and to escape the punishment this Court concluded was just and appropriate. Her motion should be denied.<sup>1</sup>

**ARGUMENT**

Under 18 U.S.C. § 3582(c), a district court “may not” modify a term of imprisonment once imposed, except under limited circumstances. *See Dillon v. United States*, 560 U.S. 817, 824 (2010). One such circumstance is the so-called compassionate release provision, which provides that a district court “may reduce the term of imprisonment” if it finds “extraordinary and

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<sup>1</sup> Given that Henriquez has filed *three* previous motions under 18 U.S.C. § 3582, the government assumes the Court is familiar with the background of Henriquez’s sentence and the steps the Bureau of Prisons (“BOP”) has taken to respond to the COVID-19 pandemic and does not repeat that information here. *See* Gov’t’s Opp’n to the Mot’ns of Defs. Henriquez and Janavs to Modify Their Sentences (Dkt. 1286) at 1-6; Gov’t Opp’n to Def. Elizabeth Henriquez’s Mot’n to Modify Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A) (Dkt. 1485) at 2-5; Gov’t Opp’n to Def. Elizabeth Henriquez’s Mot’n to Reduce Sentence Under 18 U.S.C. § 3582 (Dkt. 1549) at 1-4.

compelling circumstances warrant such a reduction,” and that “such a reduction is consistent with the applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). The Court must also consider the “factors set forth in section 3553(a) to the extent that they are applicable.” *Id.*

**I. There Are No Extraordinary and Compelling Reasons Warranting a Reduction in Henriquez’s Sentence.**

Henriquez cannot establish “extraordinary and compelling circumstances” that would justify a reduced sentence under § 3582(c)(1)(A)(i). *See United States v. Butler*, 970 F.2d 1017, 1026 (2d Cir. 1992) (“If the defendant seeks decreased punishment, he or she has the burden of showing that the circumstances warrant that decrease”).

Henriquez’s latest motion is based on a general concern about a COVID outbreak at FCI Dublin. However, “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, especially considering BOP’s statutory role, and its extensive efforts to curtail the virus’s spread.” *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (citation omitted); *see also United States v. Reynoso*, No. 17-cr-10350-NMG (Dkt. 77) (Apr. 21, 2020) (denying motion for compassionate release where defendant’s concern about COVID-19 “proffers no more than speculative concern about an outbreak,” and such “generalized and systemic concern regarding the virulent pandemic are insufficient to demonstrate entitlement to early release”).

Contrary to Henriquez’s counsel’s suggestion, the government is not ambivalent about Henriquez’s health. Rather, the government has considered the extraordinary steps BOP has taken to limit the spread of COVID-19 at its facilities, including by keeping FCI Dublin inmates at the low security facility separate from the minimum security camp inmates, including by setting up a separate quarantine unit in the camp facility exclusively for camp inmates undergoing their entry

or exit quarantine.<sup>2</sup> The government also considered that Henriquez's medical condition does *not* render her immunocompromised. *See* Gov't's Opp'n to the Mot'ns of Defs. Henriquez and Janavs to Modify Their Sentences (Dkt. 1286) at 15. Indeed, despite placing *more than 19,200 inmates* on home confinement under the CARES Act since March 26, 2020, the BOP found that Henriquez's age, health, and other factors did *not* qualify her for early release to home confinement. *See* Compassionate Release/Reduction in Sentence Response from Warden Jenkins to Henriquez (Oct. 13, 2020), attached hereto as Exhibit A. Finally, the government considered the importance of the exit quarantine Henriquez is imminently scheduled to begin. BOP implemented the 14-day exit quarantine requirement to protect the public from the risk that transferring inmates to home confinement will contribute to the spread of COVID-19. While Henriquez's counsel suggests he will arrange to transport Henriquez from FCI Dublin to her home in a way that avoids public contact, her motion is silent about how Henriquez would avoid contact with the driver who would pick her up from prison, or the children who reside with her, or anyone with whom those individuals might be in contact. The fact is that the safest course from a public health perspective is for Henriquez to be quarantined prior to her release.

Finally, Henriquez does not suggest she has a "terminal illness," or "a serious physical or medical condition, . . . a serious functional or cognitive impairment, . . . or . . . deteriorating physical or mental health because of the aging process" that qualifies as an extraordinary and compelling reason which "substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover." U.S.S.G. § 1B1.13 app. note 1. Thus, reducing her sentence would not be consistent

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<sup>2</sup> Inmates are further separated in that inmates undergoing an "exit" quarantine are kept separate from inmates undergoing an "entry" quarantine.

with the applicable policy statements issued by the Sentencing Commission. *See* 18 U.S.C. § 3582(c)(1)(A).

## **II. The § 3553(a) Factors Weigh Against Reducing Henriquez’s Sentence.**

When analyzing whether “extraordinary and compelling circumstances warrant . . . a reduction,” the Court must also consider the “factors set forth in section 3553(a) to the extent that they are applicable.” *Id.* § 3582(c)(1)(A). The Court considered these factors at Henriquez’s sentencing, and determined that despite the COVID-19 pandemic, the Court would “not forfeit the obligation of a federal judge to impose a sentence that is warranted” by the defendant’s conduct—that is, “a period of incarceration.” Dkt. 1030 at 36. Any reduction in Henriquez’s sentence—even by two weeks—would be widely publicized, thereby undermining any deterrent effect of her initial sentence.

Further, allowing Henriquez to use the COVID-19 pandemic to her advantage, as she sought to do at her sentencing and in her prior *three* motions for compassionate release, would not promote respect for the law or just punishment. Henriquez was aware of the risks of reporting to prison during the COVID-19 pandemic, and yet she chose to report a day early rather than seek to postpone her self-surrender date.

Henriquez complains that she will have spent more time in prison than any of her co-defendants, but fails to acknowledge that, of the parents who have been sentenced to date, she was one of the most culpable. Henriquez was an active participant in both the test cheating and athletic recruitment aspects of the scheme. She and her husband arranged with Singer to cheat on *five* of her daughters’ college entrance exams—more than any other parent in the case. They also paid a \$400,000 bribe to secure their older daughter’s admission to Georgetown University—one of the highest single bribes in the case. There is no disparity in Henriquez serving the remaining two weeks of her prison sentence.

**CONCLUSION**

For the foregoing reasons, the government respectfully requests that the Court deny Henriquez's motion to reduce her sentence.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

Dated: December 23, 2020

/s/ Kristen A. Kearney  
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