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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,
Plaintiff,
v.
GIANG VAN DOAN (4),
Defendant.

Case No. 14cr225-MMA-4

**ORDER DENYING DEFENDANT'S
MOTION FOR COMPASSIONATE
RELEASE**

[Doc. No. 535]

On May 19, 2015, Defendant Giang Van Doan pleaded guilty to Counts 1 and 2 of a Superseding Indictment charging him with conspiracy to distribute methamphetamine and possession with intent to distribute methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) and 846. *See* Doc. No. 207. On February 22, 2016, the Court sentenced Defendant to a total term of imprisonment of one hundred and sixty-eight (168) months followed by a five-year term of supervised release. *See* Doc. No. 342. Defendant is projected to be released from custody on January 11, 2026.¹

¹ *See* Federal Bureau of Prisons Online Inmate Locator, *available at* <https://www.bop.gov/inmateloc> (last visited Sept. 18, 2023).

1 Pending before the Court is Defendant's third request for relief under 18 U.S.C.
2 § 3582(c). In August 2021, Defendant filed a motion to reduce his sentence pursuant to
3 § 3582(c)(1)(A)(i). *See* Doc. No. 491. The Court referred the motion to Federal
4 Defenders for review pursuant to General Order 692-B, *see* Doc. Nos. 492, 494, and
5 directed the government to respond, *see* Doc. Nos. 495, 499. On October 15, 2021, the
6 Court denied Defendant's motion. *See* Doc. No. 503. Thereafter, Defendant filed a
7 motion for reconsideration, *see* Doc. No. 508, which the Court denied, *see* Doc. No. 509.
8 Defendant appealed and the Ninth Circuit affirmed. *See* Doc. Nos. 511, 518.

9 On May 31, 2023, Defendant submitted a second motion for compassionate release
10 pursuant to 18 U.S.C. § 3582(c)(1)(A). *See* Doc. No. 524. The Court referred the motion
11 to Federal Defenders for review, *see* Doc. Nos. 525, 527, and directed the government to
12 respond, *see* Doc. Nos. 528, 529. The Court denied Defendant's motion for failure to
13 demonstrate he exhausted his administrative remedies without prejudice to renewal upon
14 a sufficient demonstration that Defendant has fully exhausted his administrative remedies
15 and otherwise qualifies for such relief. *See* Doc. No. 533.

16 On August 8, 2023, Defendant filed a renewed motion for reduction in sentence
17 pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). *See* Doc. No. 535. The Court referred the
18 motion to Federal Defenders for review. *See* Doc. Nos. 536, 537. The government
19 opposes Defendant's motion, *see* Doc. No. 539, and Defendant has filed a reply, *see* Doc.
20 No. 540.

21 DISCUSSION

22 Defendant puts forth several arguments in support of his motion. He asserts that if
23 sentenced today, he would not be subject to the career offender enhancements, or would
24 otherwise receive a lesser sentence based upon a methamphetamine purity disparity. He
25 also contends that because he is not a citizen of the United States, his sentence is
26 disparate, and that the Attorney General's December 2022 Sentencing Memorandum
27 compels a reduction in his sentence. The government opposes, arguing that Defendant is
28 either incorrect or that these circumstances do not warrant relief.

1 **A. Relevant Law**

2 “A federal court generally ‘may not modify a term of imprisonment once it has
3 been imposed.’” *United States v. Aruda*, 993 F.3d 797, 799–800 (9th Cir. 2021) (quoting
4 *Dillon v. United States*, 560 U.S. 817, 819 (2010)).

5
6 Under 18 U.S.C. § 3582(c)(1)(A), Congress provided an exception,
7 sometimes known as compassionate release, to reduce a sentence for
8 “extraordinary and compelling reasons.” For over thirty years, under the
9 original statute, only the BOP Director could file a § 3582(c)(1)(A) motion
10 for a sentence reduction on a defendant’s behalf. However, as part of the First
11 Step Act of 2018, Congress amended § 3582(c)(1)(A) to also allow a
12 defendant to seek a reduction directly from the court, provided that the
13 defendant first seeks a reduction from the BOP and that request has either
14 been denied or 30 days have passed.

15 *Aruda*, 993 F.3d at 799–800 (quoting 18 U.S.C. § 3582(c)(1)(A)).

16 Section 3582(c)(1)(A), as amended by the First Step Act, currently provides, in
17 pertinent part, that the Court may grant a defendant’s motion for reduction in sentence
18 after considering the factors set forth in section 3553(a) to the extent that they
19 are applicable, if it finds that—

20 (i) extraordinary and compelling reasons warrant such a reduction; . . .

21 and that such a reduction is consistent with applicable policy statements issued
22 by the Sentencing Commission[.]

23 18 U.S.C. § 3582(c)(1)(A) (emphasis added).

24 Congress provided no statutory definition of “extraordinary and compelling
25 reasons.” Many years prior to the FSA’s modification, the United States Sentencing
26 Commission published a policy statement addressing the standards for compassionate
27 release. *See* U.S.S.G. § 1B1.13. However, section 1B1.13 “is not an ‘applicable policy
28 statement[.]’ for 18 U.S.C. § 3582(c)(1)(A) motions filed by a defendant.” *Aruda*, 993
F.3d at 802. Therefore “[t]here is as of now no ‘applicable’ policy statement governing

1 compassionate-release motions filed by defendants under the recently amended
2 § 3582(c)(1)(A), and as a result, district courts are ‘empowered . . . to consider any
3 extraordinary and compelling reason for release that a defendant might raise.’” *Id.* at 801
4 (quoting *United States v. McCoy*, 981 F.3d 271, 284 (4th Cir. 2020).² In fact, district
5 courts must consider all circumstances proffered by a defendant that are neither frivolous
6 nor congressionally barred from consideration. *See United States v. Concepcion*, 142 S.
7 Ct. 2389, 2396 (2022); *see also United States v. Chen*, 48 F.4th 1092, 1095 (9th Cir.
8 2022).

9 **B. Exhaustion**

10 This Court has jurisdiction over a sentencing reduction motion only if: (1) “the
11 defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of
12 Prisons to bring [such] a motion on [their] behalf”; or (2) “the lapse of 30 days from the
13 receipt of such a request by the warden of the defendant’s facility, whichever is earlier.”
14 18 U.S.C. § 3582(c)(1)(A); *see also United States v. Keller*, 2 F.4th 1278, 1281 (9th Cir.
15 2021).

16 It is undisputed that Defendant has exhausted his administrative remedies. *See*
17 Doc. No. 535 at 4; Doc. No. 539 at 7. Defendant submitted a compassionate release
18 request to the Warden of FCI Berlin on July 20, 2023. Doc. No. 535 at 4. The Warden
19 responded on July 21, 2023, and as a practical matter, denied his request. *Id.*

20 Accordingly, the Court finds that Defendant has duly exhausted his administrative
21 remedies and turns to the merits of his motion.

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23
24 ² The United States Sentencing Commission has submitted Adopted Amendments to the Sentencing
25 Guidelines to Congress, which, assuming no congressional action to the contrary, will become effective
26 on November 1, 2023. *See* U.S. Sentencing Commission, Guidelines, Amendments, *available at*
27 <https://www.ussc.gov/guidelines/amendments>. Because these amendments are not yet effective, they do
28 not appear to be binding on the Court. It is not clear if the Court is permitted to consider them in any
capacity at this time, and so the analysis below is not guided by them. However, assuming the
forthcoming amendments may be relevant to the Court’s analysis, it appears clear that Defendant’s
situation does not fit within any of the enumerated circumstances, thus supporting the Court’s
independent determination that Defendant is not entitled to relief.

1 **C. Analysis**

2 The Court begins by noting that it has already rejected Defendant's argument
3 relating to Amendment 798 to the United States Sentencing Guidelines. *See* Doc.
4 No. 503 at 4–7. The Court incorporates its prior Order by reference, *see* Doc. No. 503,
5 and reiterates that this amendment does not weigh in Defendant's favor on the
6 extraordinary and compelling analysis. Even assuming Defendant would not be subject
7 to the career offender enhancement today, the resulting Guidelines range for a total
8 offense level of 34 and a Criminal History Category of IV is 188–235 months in custody.
9 Defendant's sentence of 168 months is less than he claims he would receive with the
10 benefit of Amendment 798. As such, there is simply no sentencing disparity resulting
11 from Amendment 798.

12 Next, Defendant asks the Court to reduce his sentence based upon the distinction
13 between methamphetamine and actual methamphetamine. According to Defendant, if he
14 was sentenced without the 10:1 actual methamphetamine enhancement (and the career
15 offender enhancement), his total offense level would be 29 and his Criminal History
16 Category would be IV, resulting in a Guidelines range 121–151 months.³

17 Defendant pleaded guilty to conspiracy to distribute more than “50 grams of
18 methamphetamine (*actual*)” and possession with intent to distribute “approximately
19 462.9 grams of methamphetamine (*actual*).” Doc. No. 207 (emphasis added).
20 Nonetheless, Defendant seemingly asks the Court to reduce his sentence to reflect a
21 conviction of methamphetamine mixture, or some other drug. The Court is not
22 persuaded. That other courts have since taken a policy-driven position in disagreement
23 with the Sentencing Commission's distinction between pure methamphetamine and
24 methamphetamine mixture is not an extraordinary and compelling reason to reduce
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27 ³ According to Defendant's calculation, without the enhancements his base level offense would have
28 been 30. With a two-level increase under USSG § 2D1.1(b)(5) and three level decrease for acceptance
of responsibility, his total offense level would have been 29. The resulting Guidelines range for this
level with a Criminal History Category of IV is 121–151 months. *See* Doc. No. 535 at 1.

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