UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 17-CR-160

RONALD H. VAN DEN HEUVEL,

Defendant.

RESPONSE TO DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE

The United States of America, by and through its attorneys, Matthew D. Krueger, United States Attorney, and Adam Ptashkin, Assistant United States Attorney, hereby responds to the defendant's Second Pro Se Motion for Compassionate Release from Custody. Dkt. 158. For the reasons below, the government opposes the current motion.

INTRODUCTION

The defendant, Ronald H. Van Den Heuvel ("Van Den Heuvel"), is serving a lengthy sentence of 90 months after having pled guilty to multiple fraud schemes, in two different cases, with losses totaling some $9.8 million. As this Court observed through those sentencings, Van Den Heuvel built a long track record of manipulating, exploiting, and defrauding others to fuel his high-end life. His victims ranged from relatively unsophisticated and vulnerable individuals, like his live-in nanny, to sophisticated foreign investors, banks, and a state agency. His offenses stemmed from a predatory nature, such that he would continue to pose a risk to others if released. He has been detained for less than 23 months—since July 6, 2018, when the Court found that he was continuing to engage in fraud even while on pretrial supervision. Dkt. 49. Moreover, his facility

does not, as of this writing, report any cases of COVID-19 amongst inmates or staff. Thus, although Van Den Heuvel is in a high-risk demographic, releasing him now would be unjust, undermine deterrence, and offend his numerous victims.

BACKGROUND

I. Van Den Heuvel's Offenses and Sentences

Van Den Heuvel is serving a 90 month sentence for convictions in two cases. First, in 2017 in Case Number 16-CR-64, he pled guilty and was sentenced to 36 months imprisonment for a scheme to defraud Horicon Bank after lining up a series of straw borrowers—including his live-in nanny—resulting in a loss of over $300,000. 16-CR-64 Dkt. 152, 181. Second, in 2018, he pled guilty and was sentenced to 90 months imprisonment for an investment fraud scheme that resulted in a loss of approximately $9.5 million to the scheme's victims. Dkt 104, 126, 127. In that scheme, Van Den Heuvel made myriad false claims about his "Green Box" business plan to induce investments and loans from individuals, international investors from Canada and China, and the State of Wisconsin, before spending those funds on other purposes, including luxury vacations, country club membership, two Cadillac Escalades, and private school tuition.

At sentencing in this case, the Court noted the importance of deterrence to send the message that "crime doesn't pay." Dkt. 114, at 89. The Court noted the "evidence is overwhelming" that Van Den Heuvel "lied to . . . betray people and defraud them," and then lied to his children by claiming the prosecution was unjust. Dkt. 114, at 94. The Court observed that Van Den Heuvel was a "smart person," who used his "personal touch" and "religious devotion" as "tool[s]" to exploit others, like his family friend, Marco Araujo. Dkt. 114, at 97. The Court noted, too, that his exploitation of foreign investors harmed our country's reputation, making this a "very significant and serious crime." Dkt. 114, at 98. The Court concluded that it "would send a terrible message if

I did not impose a sentence that was substantial." Dkt. 114, at 100. In selecting a sentence of 90 months, the Court noted that "a good argument could be made for" an even higher sentence. Dkt. 114, at 101.

The defendant has only been detained since July 6, 2018. Dkt. 49. The Court denied the defendant's previous Motion for Compassionate Release because he had not exhausted his administrative remedies within BOP. Dkt. 157. His subsequent request to BOP for release has been rejected, as is reflected in the Exhibit to the defendant's Motion. Dkt. 158-1 at 8.

The Bureau of Prisons ("BOP") projects that Van Den Heuvel will be released on May 26, 2025. He is currently housed at the Federal Prison Camp in Duluth, Wisconsin. As noted, as of this writing, the facility reports no cases of COVID-19 among its inmate population or staff. See Federal Bureau of Prisons, COVID-19 Coronavirus, https://www.bop.gov/coronavirus/. (last visited May 18, 2020).

In the instant motion, Van Den Heuvel asks this Court to reduce his sentence of imprisonment under 18 U.S.C. § 3582(c)(1)(A) and order his immediate release. He relies on the threat posed by the COVID-19 pandemic, combined with his age and medical conditions, which includes type one diabetes and a compromised immune system.

II. BOP's Response to the COVID-19 Pandemic

As this Court is well aware, COVID-19 is a dangerous illness that has caused deaths in the United States and resulted in massive disruption to our society and economy. In response to the pandemic, BOP has taken significant measures to protect the health of the inmates in its charge. BOP has explained that "maintaining safety and security of [BOP] institutions is [BOP's] highest priority." BOP, Updates to BOP COVID-19 Action Plan: Inmate Movement (Mar. 19, 2020), available at https://www.bop.gov/resources/news/20200319_covid19_update.jsp.

Indeed, BOP has had a Pandemic Influenza Plan in place since 2012. BOP Health Services Division, Pandemic Influenza Plan-Module 1: Surveillance and Infection Control (Oct. 2012), available at https://www.bop.gov/resources/pdfs/pan_flu_module_1.pdf. That protocol is lengthy and detailed, establishing a six-phase framework requiring BOP facilities to begin preparations when there is first a "[s]uspected human outbreak overseas." *Id*. at i. The plan addresses social distancing, hygienic and cleaning protocols, and the quarantining and treatment of symptomatic inmates.

Consistent with that plan, BOP began planning for potential coronavirus transmissions in January. At that time, the agency established a working group to develop policies in consultation with subject matter experts in the Centers for Disease Control, including by reviewing guidance from the World Health Organization.

On March 13, 2020, BOP began to modify its operations, in accordance with its Coronavirus (COVID-19) Action Plan ("Action Plan"), to minimize the risk of COVID-19 transmission into and inside its facilities. Since that time, as events require, BOP has repeatedly revised the Action Plan to address the crisis.

Beginning April 1, 2020, BOP implemented Phase Five of the Action Plan, which currently governs operations. The current modified operations plan requires that all inmates in every BOP institution be secured in their assigned cells/quarters for a period of at least 14 days, in order to stop any spread of the disease. Only limited group gathering is afforded, with attention to social distancing to the extent possible, to facilitate commissary, laundry, showers, telephone, and computer access. Further, BOP has severely limited the movement of inmates and detainees among its facilities. Though there will be exceptions for medical treatment and similar exigencies, this

step as well will limit transmissions of the disease. Likewise, all official staff travel has been cancelled, as has most staff training.

All staff and inmates have been and will continue to be issued face masks and strongly encouraged to wear an appropriate face covering when in public areas when social distancing cannot be achieved.

Every newly admitted inmate is screened for COVID-19 exposure risk factors and symptoms. Asymptomatic inmates with risk of exposure are placed in quarantine for a minimum of 14 days or until cleared by medical staff. Symptomatic inmates are placed in isolation until they test negative for COVID-19 or are cleared by medical staff as meeting CDC criteria for release from isolation. In addition, in areas with sustained community transmission, such as Philadelphia, all facility staff are screened for symptoms. Staff registering a temperature of 100.4 degrees Fahrenheit or higher are barred from the facility on that basis alone. A staff member with a stuffy or runny nose can be placed on leave by a medical officer.

Contractor access to BOP facilities is restricted to only those performing essential services (e.g. medical or mental health care, religious, etc.) or those who perform necessary maintenance on essential systems. All volunteer visits are suspended absent authorization by the Deputy Director of BOP. Any contractor or volunteer who requires access will be screened for symptoms and risk factors.

Social and legal visits were stopped as of March 13, and remain suspended until at least May 18, 2020, to limit the number of people entering the facility and interacting with inmates. In order to ensure that familial relationships are maintained throughout this disruption, BOP has increased detainees' telephone allowance to 500 minutes per month. Tours of facilities are also

suspended. Legal visits will be permitted on a case-by-case basis after the attorney has been screened for infection in accordance with the screening protocols for prison staff.

Further details and updates of BOP's modified operations are available to the public on the BOP website at a regularly updated resource page: www.bop.gov/coronavirus/index.jsp.

In addition, to relieve the strain on BOP facilities, BOP is exercising greater authority to designate inmates for home confinement. On March 26, 2020, the Attorney General directed the Director of the Bureau of Prisons, upon considering the totality of the circumstances concerning each inmate, to prioritize the use of statutory authority to place prisoners in home confinement. That authority includes the ability to place an inmate in home confinement during the last six months or 10% of a sentence, whichever is shorter, *see* 18 U.S.C. § 3624(c)(2), and to move to home confinement those elderly and terminally ill inmates specified in 34 U.S.C. § 60541(g). Congress has also acted to enhance BOP's flexibility to respond to the pandemic. Under the Coronavirus Aid, Relief, and Economic Security Act, enacted on March 27, 2020, BOP may "lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement" if the Attorney General finds that emergency conditions will materially affect the functioning of BOP. Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281, 516 (to be codified at 18 U.S.C. § 3621 note). On April 3, 2020, the Attorney General gave the Director of BOP the authority to exercise this discretion, beginning at the facilities that thus far have seen the greatest incidence of coronavirus transmission. As of this filing, BOP has transferred more than one thousand inmates to home confinement. *See* Federal Bureau of Prisons, *COVID-19 Home Confinement Information*, *at* https://www.bop.gov/coronavirus/.

Taken together, all of these measures are designed to mitigate sharply the risks of COVID-19 transmission in a BOP institution. BOP has pledged to continue monitoring the pandemic and

to adjust its practices as necessary to maintain the safety of prison staff and inmates while also fulfilling its mandate of incarcerating all persons sentenced or detained based on judicial orders.

III. Compassionate Release Motions

On May 11, 2020, the defendant filed his motion with this Court seeking compassionate release under 18 U.S.C. § 3582(c)(1)(A). Under Section 3582(c)(1)(A), this Court may, in certain circumstances, grant a defendant's motion to reduce his or her term of imprisonment. A court may reduce the defendant's term of imprisonment "after considering the factors set forth in [18 U.S.C. § 3553(a)]" if the Court finds, as relevant here, that (i) "extraordinary and compelling reasons warrant such a reduction" and (ii) "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." § 3582(c)(1)(A)(i). As the movant, the defendant bears the burden to establish that he is eligible for a sentence reduction. *United States v. Jones*, 836 F.3d 896, 899 (8th Cir. 2016); *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014).

The Sentencing Commission has issued a policy statement addressing reduction of sentences under § 3582(c)(1)(A). As relevant here, the policy statement provides that a court may reduce the term of imprisonment after considering the § 3553(a) factors if the Court finds that (i) "extraordinary and compelling reasons warrant the reduction;" (ii) "the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g);" and (iii) "the reduction is consistent with this policy statement." USSG § 1B1.13.[1]

[1] The policy statement refers only to motions filed by the BOP Director. That is because the policy statement was last amended on November 1, 2018, and until the enactment of the First Step Act on December 21, 2018, defendants were not entitled to file motions under § 3582(c). *See* First Step Act of 2018, Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239; *cf.* 18 U.S.C. § 3582(c) (2012). In light of the statutory command that any sentence reduction be "consistent with applicable policy statements issued by the Sentencing Commission," § 3582(c)(1)(A)(ii), and the lack of any plausible reason to treat motions filed by defendants differently from motions filed by BOP, the policy statement applies to motions filed by defendants as well.

The policy statement includes an application note that specifies the types of medical conditions that qualify as "extraordinary and compelling reasons." First, that standard is met if the defendant is "suffering from a terminal illness," such as "metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, [or] advanced dementia." USSG § 1B1.13, cmt. n.1(A)(i). Second, the standard is met if the defendant is:

> (I) suffering from a serious physical or medical condition,
>
> (II) suffering from a serious functional or cognitive impairment, or
>
> (III) experiencing deteriorating physical or mental health because of the aging process,
>
> that 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.

USSG § 1B1.13, cmt. n.1(A)(ii). The application note also sets out other conditions and characteristics that qualify as "extraordinary and compelling reasons" related to the defendant's age and family circumstances. USSG § 1B1.13, cmt. n.1(B)-(C). Finally, the note recognizes the possibility that BOP could identify other grounds that amount to "extraordinary and compelling reasons." USSG § 1B1.13, cmt. n.1(D).

ARGUMENT

The Court Should Deny The Motion Because Van Den Heuvel Has Failed to Present Any "Extraordinary and Compelling Reasons" Warranting a Sentence Reduction and Because the § 3553 Factors Counsel Against Early Release.

First, Van Den Heuvel has not identified "extraordinary and compelling reasons" for that reduction within the meaning of § 3582(c)(1)(A) and the Sentencing Commission's policy statement. Second, the statutory sentencing factors weigh against his early release.

A. Defendant Has Not Identified "Extraordinary and Compelling Reasons" for a Sentence Reduction.

Defendant's request for a sentence reduction should be denied because he has not demonstrated "extraordinary and compelling reasons" warranting release. As explained above, under the relevant provision of § 3582(c), a court can grant a sentence reduction only if it determines that "extraordinary and compelling reasons" justify the reduction and that "such a reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A)(i). The Sentencing Commission's policy statement defines "extraordinary and compelling reasons" to include, as relevant here, certain specified categories of medical conditions. USSG § 1B1.13, cmt. n.1(A). While the defendant is over 65 and has diabetes, it is critical that there currently are no reported cases of COVID-19 infections at FPC Duluth where the defendant is located.

To state a cognizable basis for a sentence reduction based on a medical condition, a defendant first must establish that his condition falls within one of the categories listed in the policy statement. Those categories include, as particularly relevant here, (i) any terminal illness, and (ii) any "serious physical or medical condition . . . that 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." USSG 1B1.13, cmt. n.1(A). If a defendant's medical condition does not fall within one of the categories specified in the application note (and no other part of the application note applies), his or her motion must be denied.

If an inmate has a chronic medical condition that has been identified by the CDC as elevating the inmate's risk of becoming seriously ill from COVID-19,[2] that condition may satisfy the standard of "extraordinary and compelling reasons." Under these circumstances, a chronic condition (*i.e.*, one "from which [the defendant] is not expected to recover") reasonably may be found to be "serious" and to "substantially diminish[] the ability of the defendant to provide self-care within the environment of a correctional facility," even if that condition would not have constituted an "extraordinary and compelling reason" absent the risk of COVID-19. USSG § 1B1.13, cmt. n.1(A)(ii)(I). Among the chronic medical conditions identified by the CDC as elevating the inmate risk during the pandemic are diabetes, serious heart conditions, and being over 65 years old.

The United States does not dispute that the defendant is 66 and has medical conditions that make him vulnerable to life threatening complications if he were to become infected with the COVID-19 virus. The United States takes these medical conditions seriously. However, the defendant is not currently infected with COVID-19 at this time according to his motion, and the defendant is housed in a federal prison camp that currently has no known infections. As the Third Circuit has held, "the mere existence of COVID-19 in society and the possibility that it may spread

[2] *See* Centers for Disease Control, *At Risk for Severe Illness*, *available at* https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html (last modified May 18, 2020).

to a particular prison alone cannot independently justify compassionate release." *Raia*, 2020 WL 1647922 at *2.[3]

B. The § 3553(a) Factors Strongly Weigh Against Defendant's Release.

In addition, Van Den Heuvel's request for a sentence reduction should be denied because he has failed to demonstrate that he merits release under the § 3553(a) factors. Under the applicable policy statement, this Court must deny a sentence reduction unless it determines the defendant "is not a danger to the safety of any other person or to the community." U.S.S.G. § 1B1.13(2). This Court also must consider the § 3553(a) factors, as "applicable," as part of its analysis. *See* § 3582(c)(1)(A); *United States v. Chambliss*, 948 F.3d 691, 694 (5th Cir. 2020).

While the defendant's criminal history is devoid of violence, the defendant engaged in two fraud schemes that involved sophisticated plans and lies to the defendant's friends in the Green Bay area that trusted him, the Wisconsin Economic Development Corporation, a bank, a private equity firm in Canada, and Chinese investors that sought to participate in the EB-5 program. Combined the losses from the two fraud schemes were approximately $9.8 million. Notably, the defendant attempted to engage in fraudulent financial transactions even after he pleaded guilty to the bank fraud scheme, which resulted in the defendant's detention before the investment fraud scheme case was resolved. 16-CR-64 Dkt 234, 235. In addition, on or about October 11, 2018, just

[3] *See also, e.g.*, *United States v. Coles*, 2020 WL 1899562 (E.D. Mich. Apr. 17, 2020) (denied for 28-year-old inmate at institution with outbreak); *United States v. Okpala*, 2020 WL 1864889 (E.D.N.Y. Apr. 14, 2020); *United States v. Weeks*, 2020 WL 1862634 (S.D.N.Y. Apr. 14, 2020); *United States v. Haney*, 2020 WL 1821988 (S.D.N.Y. Apr. 13, 2020) (denied for 61-year-old with no other conditions); *United States v. Pinto-Thomaz*, 2020 WL 1845875 (S.D.N.Y. Apr. 13, 2020) (two insider trading defendants with less than a year to serve have no risk factors); *United States v. Korn*, 2020 WL 1808213, at *6 (W.D.N.Y. Apr. 9, 2020) ("in this Court's view, the mere *possibility* of contracting a communicable disease such as COVID-19, without any showing that the Bureau of Prisons will not or cannot guard against or treat such a disease, does not constitute an extraordinary or compelling reason for a sentence reduction under the statutory scheme."); *United States v. Carver*, 2020 WL 1892340 (E.D. Wash. Apr. 8, 2020).

before entering his guilty plea on October 12, 2018, the defendant made two telephone calls from jail to a Green Bay Press-Gazette reporter. The United States obtained recordings of the calls from the Brown County Jail.

In the calls, the defendant made numerous false statements that indicate he intended to continue to engage in fraud, even after pleading guilty in the second prosecution. Below are several of the statements Van Den Heuvel made during the calls:

- "One [Green Box] is built and operating in China. The second one is going to be built. We're building one in Ghana. There is two in the United States starting up." In truth, no Green Box was operating in China nor anywhere else on the planet to the United States' knowledge.

- "This is going to change the whole world. I've got Ph.D. letters stating it's going to add twenty years of life to every human. There's going to be no germs. 90% of our germs come from and viruses come from food contaminated waste streams. . . . Never again. Never again. And we got it. And it works." The United States has seen no scientific evidence that Green Box would add twenty years of life to every human.

The defendant continues to present a serious danger to the people of Wisconsin because of the intelligence, charisma, and capacity for deceit that were the basis of his fraud schemes. The defendant spent the proceeds of the schemes to support an extremely luxurious lifestyle, and there is no reason to think this financial appetite has decreased after less than a full two years in prison.

The Section 3553(a) factors—including the need for just punishment and deterrence—also weigh in favor of requiring Van Den Heuvel to serve the entirety of his sentence. Releasing him after he has served less than 23 months of his 90-month sentence would be unjust, would undermine deterrence, and would dishonor the victims of his financial fraud.

CONCLUSION

For all of the reasons above, this Court should deny the defendant's motion for compassionate release.

Dated this 18th day of May, 2020.

Respectfully submitted,

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