IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	**:**	
v.	**:**	**CRIMINAL NOS. 15-398 and 18-465**
TROY WRAGG	**:**	

GOVERNMENT'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION FOR RELEASE PURSUANT TO 18 U.S.C. § 3582(c)(1)(A)(i)

Defendant Troy Wragg is a con artist and serial fraudster. He uses the misfortune of others for his own personal gain. His *modus operandi* is to take a kernel of truth and then lie and exaggerate the characteristics of that kernel to make the listener believe that he is holding a whole husk. He pleaded guilty to defrauding hundreds of families out of $54 million in what was reported to be the largest green energy fraud in U.S. history. While on pretrial release for that offense, he committed a second fraud scheme. As a result of the magnitude of those offenses and the financial devastation wreaked upon these families, the court sentenced Wragg to 22 years in prison.

Wragg now seeks compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i) in response to the COVID-19 situation. For the following reasons, his motion should be denied. The defendant has served only a small portion of his sentence, the defendant committed at least one additional fraud offense while on pretrial release, and the defendant's medical conditions are well controlled with treatment in BOP custody. The

defendant does have some medical issues, but he has continuously exaggerated the extent of those conditions, lied about their characteristics, and deliberated exacerbated his situation by failing to take his prescribed medications. His motion is part and parcel of a continued course of action to use the misfortune of others in the COVID-19 situation for his own personal benefit and attempt to escape justice for his egregious criminal conduct.

I. Background

A. Criminal Conduct

Wragg committed a massive investment fraud scheme through the Mantria corporation and stole more than $54 million from hundreds of families across the United States. Published media reports have called it the largest green energy fraud in United States history. This fraud devastated the lives of hundreds of victims. Most of the victims were retirement-aged or close to retirement. Many lost their entire retirement accounts and were forced to continue working long after they planned to retire. Many victims lost their entire life's savings. Some victims even lost their homes. The financial losses to the victims, while substantial, do not tell the whole story. Many of the victims were emotionally invested in Mantria as well as financially. The victims believed that Mantria was going to create a cleaner and greener world by turning trash into green energy and reducing society's reliance on fossil fuels. When Mantria collapsed and the Ponzi scheme was exposed, the victims felt personally betrayed.

The Court saw a handful of the devastated victims who testified during the trial of co-defendant Wayde McKelvy. The Court also read the victim impact statements of numerous other victims who did not or could not testify. The emotional and financial

turmoil following the collapse is incalculable. Some victims were too traumatized to even speak to the investigators about the fraud's impact. It ended several marriages. One victim even committed suicide after Mantria collapsed. While these actions were certainly not intended by Wragg, they gave the Court a sense of trauma this fraud scheme inflicted upon the victims and the egregiousness of his offense conduct.

Compounding this criminality, while on pretrial release for the Mantria fraud scheme, Wragg committed a second fraud by helping to steal more funds in the LUVR investment fraud scheme. Showing his complete disregard for the criminal justice process, the victim sent the first wire transfer on the exact same day that Wragg pleaded guilty to the Mantria fraud scheme. There is also a third fraud scheme relating to another business run by Wragg called "iappbetter," which the victim reported to the state authorities. Wragg's conduct established a consistent and continual pattern of fraud stretching back to 2005.

B. Medical History

The defendant is currently 38 years old. As the Court is aware, Wragg met with the government on several occasions prior to sentencing. During those meetings, Wragg often complained about his medical situation. Government counsel instructed Wragg to seek medical treatment for these putative conditions and to provide all of his medical records to his attorney in preparation for sentencing. Government counsel noted that Wragg's Pretrial Services Officer could assist him in finding medical treatment and paying for certain medical services. Government counsel advised Wragg that his medical situation was a relevant factor for the Court to consider in imposing a fair sentence. To

date, the government has not seen medical records to substantiate the bulk of the medical ailments from which Wragg allegedly suffered. Many of Wragg's family and friends told the investigators that Wragg faked the extent of his medical conditions.

In compiling the Presentence Report in 2019, the Probation Officer also attempted in vain to document Wragg's alleged medical ailments. The Probation Officer found that Wragg suffered from epilepsy and hypertension which were well-controlled by taking medication. PSR ¶¶ 134-36. Wragg denied suffering from any other medical conditions. In terms of his mental health, the Probation Officer found that Wragg had been diagnosed with anxiety and depression, conditions which were also well-controlled by taking medication. PSR ¶¶ 137-38. The Probation Officer concluded that "the defendant's physical condition does not appear to be an issue for sentencing, institutional classification, or community supervision." PSR ¶ 136.

At sentencing, Wragg, through counsel, submitted some additional medical documentation. Wragg provided a mental health assessment from Dr. Jeffrey Summerton. Dr. Summerton found that Wragg suffered from three conditions: (1) Major Depressive Disorder, (2) Generalized Anxiety Disorder, and (3) Alcohol Use Disorder. Dr. Summerton questioned whether Wragg truly suffered from epilepsy and suggested that Wragg's seizures may have been the result of drug and alcohol withdrawal. Dr. Summerton noted that Wragg's conditions have been exacerbated over the years by Wragg's refusal to seek medical treatment and refusal to take prescribed medications. In light of Wragg's repeated attempted to provide false information to his medical providers, Dr. Summerton questioned whether Wragg suffered from Factitious Disorder –

a condition characterized by exaggeration and fabrication of medical problems. Dr. Summerton opined that in-patient treatment at a BOP facility might be beneficial for Wragg because his mental health issues could be appropriately monitored and managed in a "controlled environment" to ensure that Wragg took his medications as prescribed.

Wragg's attorney also submitted some medical records from the Federal Detention Center in Philadelphia where he had been incarcerated prior to sentencing. The doctors at the FDC who had been treating Wragg diagnosed him with Schizoaffective Disorder – Depressive Type, with moderate Alcohol Use Disorder. The records further indicate that the medical staff at the FDC was working to find the right combination of medications to treat his medical issues.

In response to the instant motion, the government obtained Wragg's BOP medical records, which are attached as Government Exhibit 1. The medical records are in stark contrast to the dire claims about his medical situation which the defendant makes in the instant motion and supplement. The medical records show that Wragg's overall health is good and his medical conditions are well controlled in prison, except when Wragg fails to take his medications as prescribed. The records further reflect that the BOP medical staff have worked hard to find the right combination of medications to treat his conditions despite Wragg's repeated attempts to sabotage their efforts. A few examples:

- On September 16, 2019, Wragg was given an evaluation by the BOP health unit. Wragg noted that he had experienced a seizure the week before after he missed some doses of his anti-seizure medication.

- On September 23, 2019, Wragg was seen by a BOP doctor after having been placed on suicide watch. Wragg reported that he experienced auditory hallucinations telling him that he "should die." Wragg stated that the medications prescribed by the BOP were ineffective and expressed a desire to return to his prior medications. The treating physician agreed to taper his current medications and replace them with medications previously found to be effective.
- On September 24, 2019, a BOP doctor ordered Wragg to undergo blood tests to help treat his medical conditions. Wragg refused even though he was advised that failure to comply could lead to a worsening of his condition or even death.
- On October 1, 2019, Wragg was seen by a BOP doctor after having been released from a suicide prevention cell. Wragg noted that he was experiencing fewer hallucinations and that his new anti-psychotic medication was helpful.
- On October 15, 2019, Wragg was seen by a BOP doctor. Wragg admitted that he had stopped taking his medications. The doctor warned Wragg about the dangers of not taking his medications. Wragg agreed to resume taking his anti-psychotic medication but none of his other medications.
- On October 24, 2019, Wragg was ordered to report to the health unit because of his "continued noncompliance with pill line administration of his medication." The treating physician had previously met with Wragg

about the risks of continued failure to take his psychiatric medications. Wragg indicated that he was not interested in taking the medications, therefore, the prescription was canceled.

- On January 23, 2020, Wragg reported to the health unit and stated that he had a seizure the previous night and had another seizure three days prior. The nurse practitioner agreed to increase his dosage of his anti-seizure medication to the level prescribed prior to his incarceration.
- On March 18, 2020, the BOP provided Wragg with a preventive health evaluation. Other than being overweight, Wragg appeared to be in good health.
- On May 4, 2020, Wragg went to the Health Services unit complaining that his anti-seizure medication had not stopped him from having seizures. The attending physician assistant agreed to modify his prescription to a combination of drugs which had worked for Wragg in the past.
- On May 8, 2020, Wragg went to a BOP doctor complaining that he had experienced 16 seizures in the past three weeks. Wragg noted that "someone always helped him so an emergency was never called and he did not present to medical to report these seizures." The doctor noted that Wragg had not been compliant in taking his prescribed medications. The doctor agreed to modify his medications for his seizure disorder and refer him to a psychiatrist. The doctor found that Wragg was otherwise in good health.

- On May 12, 2020, Wragg was seen by another doctor regarding his mental health conditions. Wragg expressed concern whether the medications he had been taking were effective. His treating physician agreed to change his medication to a drug which had worked well in the past. Overall, Wragg's physical and mental health were good.

C. Request for Compassionate Release

In his motion, the defendant requests relief under the First Step Act to have his sentence reduced to time served or to be placed on home confinement. The defendant argued that he is obese and suffers from epilepsy and hypertension, placing him at greater risk of developing complications should be exposed to COVID-19. He noted that it is impossible to practice any social distancing while incarcerated. The defendant argued that he has been experiencing more epileptic seizures than usual because the BOP had failed to give him his medications as prescribed – contrary to the medical records which establish that it was the defendant who refused to take his medications. The defendant submitted a letter from Dr. Brittni Jones, D.O., a psychiatrist and the Medical Director of Behavioral Health at Christiana Care Union Hospital, who opined that the defendant would be "at a heightened risk of death secondary to his medical conditions" should he develop COVID-19.[1] Finally, the defendant noted that he is not a violent offender and that he could remain on home confinement with his wife in Maryland.

[1] Although Dr. Jones signed her letter "Dr. Brittany Jones" – she introduced herself as "Dr. Brittni Jones." An internet search revealed the latter is the correct spelling and that she inexplicably misspelled own name on her signature. Therefore, the government will refer to her as "Dr. Brittni Jones."

On May 22, 2020, the defendant filed a supplement to his motion and averred that his medical situation had continued to deteriorate. The defendant alleged that he had experienced 26 seizures in the previous week. The defendant claimed that there were times when he could not walk or sit up straight for long periods of time. He noted that the new seizure medication was not working properly and causing significant side effects. He stated that the BOP medical officials had recommended that he be seen at a hospital but the defendant refused to go because he would be placed in the quarantine unit upon his return. However, BOP medical records reflect that the defendant did not seek medical treatment between May 12, 2020 (his last medical visit described above) and May 22, 2020.

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

As this Court is well aware, COVID-19 is an extremely dangerous illness that has caused many deaths in the United States in a short period of time and that has 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 May 18, 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, 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.

BOP is endeavoring to regularly issue face masks to all staff and inmates, and strongly encouraged them 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, 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 at this time, 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, in an effort to relieve the strain on BOP facilities and assist inmates who are most vulnerable to the disease and pose the least threat to the community, 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. *See* Attach. 2 (Mem. for Director of Bureau of Prisons). As of this filing, BOP has transferred 3,884 inmates to home confinement, which is an increase of 136%.[2]

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.

All of the measures have yielded a measure of success at Fort Dix, where Wragg is held. He was named as the lead plaintiff in a habeas action brought against the facility. In *Wragg v. Ortiz*, 2020 WL 2745247 (D.N.J. May 27, 2020), the court dismissed the case for lack of jurisdiction. The court explained that all inmates who have tested positive in the complex were located in a minimum security camp, which currently holds 197 inmates. Wragg, in contrast, and thousands of others, are held in the low-security FCI, which has not reported any positive case of COVID-19. There also has not been a death

[2] This Court does not have authority to grant a transfer to home confinement, or review BOP's administrative decision regarding that issue. *See* 18 U.S.C. § 3621(b) (BOP's designation decision is not subject to judicial review). *See also, e.g., United States v. Cruz*, 2020 WL 1904476, at *4 (M.D. Pa. Apr. 17, 2020); *United States v. Mabe*, 2020 U.S. Dist. LEXIS 66269, at *1 (E.D. Tenn. Apr. 15, 2020) ("the CARES Act places decision making authority solely within the discretion of the Attorney General and the Director of the Bureau of Prisons. . . . This Court therefore does not have power to grant relief under Section 12003 of the CARES Act."); *United States v. White*, 2020 WL 1906845, at *2 (E.D. Va. Apr. 17, 2020); *United States v. Skaff*, 2020 WL 1666469 (S.D.W. Va. Apr. 3, 2020).

of an inmate in the entire complex. The court further explained the protocols in place at FCI Fort Dix, including the thorough cleaning of the facility and how "[a]ll inmates are regularly screened for symptoms of infection and all activities are managed so as to minimize congregate activity and promote distancing." *Id*. at *3-6; *see also, e.g.*, *id*. at *9 (noting how "FCI Fort Dix continues to use guidelines and advice from multiple sources, including but not limited to, the BOP's Health Services Division – Central Office, the Centers for Disease Control, the State of New Jersey's Health Department, and the Burlington County Health Department").

In light of its findings, the district court concluded that it "does not find this case to be that 'extraordinary case' where it should expand habeas jurisdiction." *Id*. at *19. Furthermore, the court determined that "[e]ven assuming [it] has habeas jurisdiction, . . . in the alternative, [p]etitioners have not met their burden to obtain preliminary injunctive relief." *Id*. at *20. Indeed, "neither the allegations as pled nor the evidence presented to the [c]ourt . . . demonstrates that the Respondents have been deliberately indifferent to the inmates' risks of contracting COVID-19." *Id*. at *22 (explaining preventative measures being taken by BOP).

II. Discussion

The compassionate release statute, 18 U.S.C. § 3582(c)(1)(A), as amended by the First Step Act on December 21, 2018, provides in pertinent part:

> (c) Modification of an Imposed Term of Imprisonment.—The court may not modify a term of imprisonment once it has been imposed except that—
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> (1) in any case—

> (A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant 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 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that—
>
> (i) extraordinary and compelling reasons warrant such a reduction . . .
>
> and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . .

Further, 28 U.S.C. § 994(t) provides: "The Commission, in promulgating general policy statements regarding the sentencing modification provisions in section 3582(c)(1)(A) of title 18, shall describe what should be considered extraordinary and compelling reasons for sentence reduction, including the criteria to be applied and a list of specific examples. Rehabilitation of the defendant alone shall not be considered an extraordinary and compelling reason." Accordingly, the relevant policy statement of the Commission is binding on the Court. *See Dillon v. United States,* 560 U.S. 817, 827 (2010) (where 18 U.S.C. § 3582(c)(2) permits a sentencing reduction based on a retroactive guideline amendment, "if such a reduction is consistent with applicable policy statements issued by the Sentencing Commission," the Commission's pertinent policy statements are binding on the court).[3]

[3] Prior to the passage of the First Step Act, while the Commission policy statement was binding on the Court's consideration of a motion under § 3582(c)(1)(A), such a motion could only be presented by BOP. The First Step Act added authority for an inmate himself to file a motion seeking relief, after exhausting administrative remedies, or after the passage of 30 days after presenting a request to the warden, whichever is

The Sentencing Guidelines policy statement appears at § 1B1.13, and provides that the Court may grant release if "extraordinary and compelling circumstances" exist, "after considering the factors set forth in 18 U.S.C. § 3553(a), to the extent that they are applicable," and the Court determines that "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)."

Critically, in application note 1 to the policy statement, the Commission identifies the "extraordinary and compelling reasons" that may justify compassionate release. The note provides as follows:

> 1. Extraordinary and Compelling Reasons.—Provided the defendant meets the requirements of subdivision (2) [regarding absence of danger to the community], extraordinary and compelling reasons exist under any of the circumstances set forth below:
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> (A) Medical Condition of the Defendant.—
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> (i) The defendant is suffering from a terminal illness (i.e., a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (i.e., a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.
>
> (ii) The defendant is—
>
> (I) suffering from a serious physical or medical condition,

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earlier.

Under the law, the inmate does not have a right to a hearing. Rule 43(b)(4) of the Federal Rules of Criminal Procedure states that a defendant need not be present where "[t]he proceeding involves the correction or reduction of sentence under Rule 35 or 18 U.S.C. § 3582(c)." *See Dillon,* 560 U.S. at 827-28 (observing that, under Rule 43(b)(4), a defendant need not be present at a proceeding under Section 3582(c)(2) regarding the imposition of a sentencing modification).

(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.

(B) Age of the Defendant.—The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family Circumstances.—

(i) The death or incapacitation of the caregiver of the defendant's minor child or minor children.

(ii) The incapacitation of the defendant's spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons.—As determined by the Director of the Bureau of Prisons, there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

In general, the defendant has the burden to show circumstances meeting the test for compassionate release. *United States v. Heromin,* 2019 WL 2411311, at *2 (M.D. Fla. June 7, 2019); *United States v. Stowe*, 2019 WL 4673725, at *2 (S.D. Tex. Sept. 25, 2019). As the terminology in the statute makes clear, compassionate release is "rare" and "extraordinary." *United States v. Willis*, 2019 WL 2403192, at *3 (D.N.M. June 7, 2019) (citations omitted).

In this case, Troy Wragg is not eligible for compassionate release, because he does not present an "extraordinary and compelling reason" as stated in the statute and defined in the governing guideline policy statement. As will be explained, the defendant does not present any of the health or family circumstances identified in the guideline, and instead presents a concern only based on the risk of acquiring COVID-19 in the prison environment. But the mere existence of the COVID-19 pandemic, which poses a general threat to every non-immune person in the country, does not alone provide a basis for a sentence reduction. The guideline policy statement describes specific serious medical conditions afflicting an individual inmate, not generalized threats to the entire population. The Third Circuit held: "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 and professional efforts to curtail the virus's spread." *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). *See also United States v. Roeder*, -- F. App'x --, 2020 WL 1545872, *3 (3d Cir. Apr. 1, 2020) (per curiam) (not precedential) ("the existence of a widespread health risk is not, without more, a sufficient reason for every individual subject to a properly imposed federal sentence of imprisonment to avoid or substantially delay reporting for that sentence."), *id.* at n.16 ("Similarly, the existence of some health risk to every federal prisoner as the result of this global pandemic does not, without more, provide the sole basis for granting release to each and every prisoner within our Circuit.").

Accordingly, courts have denied relief to Fort Dix inmates who, like Wragg, are not at greater risk for an adverse outcome from COVID-19. In contrast, Fort Dix inmates

like Wragg who do not present risk factors have been denied release. *See, e.g.*, *United States v. Hull*, 2020 WL 2475639, at *2 (D. Conn. May 13, 2020) (regular as opposed to pulmonary hypertension is not a CDC risk factor; also, BOP is endeavoring to protect Fort Dix inmates, and "the mere existence of COVID-19 cases [at a prison] does not reflect that the BOP is incapable of managing the pandemic within its facilities."); *United States v. Collins*, 2020 WL 2301217 (C.D. Ill. May 8, 2020) (notwithstanding situation at Fort Dix, release is denied as defendant has over 15 years remaining on sentence for child exploitation offenses, he has nowhere to live upon release, and BOP is endeavoring to protect inmates).[4]

The government has recognized that if an inmate suffers from a chronic medical condition, from which he is not expected to recover, that has been identified by the CDC as a risk factor for a more severe outcome from COVID-19, that inmate presents an "extraordinary and compelling reason" allowing consideration for compassionate release. Such an inmate, in the terminology of application note 1(A)(ii)(I), is "suffering from a 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

[4] *See also, e.g.*, *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).

which he or she is not expected to recover," as he is less able to protect himself against the most adverse effects of the disease. However, Wragg does not present such a risk factor. He cites his epilepsy, hypertension, obesity, and mental health issues, but none are identified by the CDC as a risk factor.[5]

In support of his motion, Wragg provided a letter from "Dr. Brittany Jones, Medical director of behavioral health at Christiana care Union Hospital" (sic). The letter includes other typographical errors, starting with the doctor's name. Dr. Jones has not seen the defendant since 2018 when his bail was revoked and is not aware of his current medical situation. The letter simply stated in conclusory fashion that "I do believe that Mr. Wragg would be at a heightened risk of death secondary to his medical conditions" from COVID-19. This statement, presented without any scientific basis and without examining Wragg, is not supported by the CDC's latest guidance.

The defendant's main problem has been his failure to take his medications as prescribed. He has persistently refused to take his medications as prescribed and otherwise cooperate with the BOP medical staff. He has refused to take blood tests. He has refused to go to the hospital. The complications which have arisen have been created

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[5] Ordinary hypertension is not a risk factor; pulmonary hypertension, which is a serious cardiac condition, is a risk factor, but Wragg does not present it.

Obesity is a risk factor where the patient has a BMI of 40 or above. On May 4, 2020, according to BOP records, he was 68 inches tall and weighed 205.8 pounds. That is a BMI of 31.3.

The CDC risk factors are described at https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html.

by the defendant's failure to follow the treatment plan. The defendant is trying to engineer his own release from prison by exacerbating his own medical problems.

Further, Wragg would not be entitled to relief even if he presented an "extraordinary and compelling reason" under the guideline (which he does not). This Court would then have to consider all pertinent circumstances, including the 3553(a) factors, and possible danger to the community. At present, his medical conditions can be appropriately managed at the facility, assuming the defendant complied with the prescribed treatment plan. The BOP is also engaged in strenuous efforts to protect inmates against the spread of COVID-19, and would also act to treat any inmate who does contract COVID-19.

Moreover, there is no assurance from the defendant that he would not commit another fraud scheme upon his release. The defendant was on pretrial release when he committed the LUVR fraud scheme. The defendant's proposal is to be placed back into the community under the same circumstances which led to the instant conviction.

The defendant has served less than 2 years of a 22 year sentence for two separate fraud schemes, one of which he conducted while on pretrial release for the first. The defendant fails to demonstrate how release reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense. *See* 18 U.S.C. § 3553(a)(2)(A). A consideration of the factors above shows that release at this point is inappropriate based on the offense of conviction, the defendant's managed medical conditions, and the amount of time remaining on the defendant's sentence.

To date, courts have generally granted compassionate release based on the threat of COVID-19 where the inmate suffers from significant ailments, is serving a short sentence or has served most of a lengthier one, does not present a danger to the community, and/or is held at a facility where a notable outbreak has occurred. *See, e.g.*, *United States v. Gileno*, 2020 WL 1916773, at *5 (D. Conn. Apr. 20, 2020) (62-year-old has asthma and other ailments, serving one-year sentence); *United States v. Curtis*, 2020 WL 1935543 (D.D.C. Apr. 22, 2020) (defendant suffers from MS, has lost 85% of his vision, and cannot conduct activities of daily living; further, his life sentence would be far shorter under current law).

Court have generally denied release in circumstances comparable to those presented here. *See, e.g., United States v. Pawlowski*, 2020 WL 2526523 (E.D. Pa. May 18, 2020) (Sanchez, C.J.) (even though inmate had several underlying health conditions that place him at higher risk of serious illness from COVID-19 and thus presents an extraordinary and compelling circumstance, reduction in sentence inappropriate as the defendant has served only 10% of a 15-year sentence for serious corruption offense); *United States v. Davies*, 2020 WL 2307650 (E.D.N.Y. May 8, 2020) (reduction of 8-year armed bank robbery sentence, after 33 months, "would not come close to reflecting the seriousness of the offense, or providing just punishment for the offense. Moreover, rather than promoting respect for the law and its deterrent effect, it would undermine it."); *United States v. Kerrigan*, 2020 WL 2488269, at *4 (S.D.N.Y. May 14, 2020) (in bank burglary case, given the fact "that Kerrigan played an important and deliberate role in a series of serious crimes that resulted in property damage to two banks and the theft of

tens of millions of dollars' worth of valuables and priceless keepsakes from hundreds of victims, the Court finds that converting Kerrigan's 7.5-year term of incarceration into one of home confinement, when he has served little more than two years of his original sentence, would disserve the above important sentencing factors."); *United States v. Daugerdas*, 2020 WL 2097653 (S.D.N.Y. May 1, 2020) (the defendant suffers from type 2 diabetes, obesity, hypertension, and high cholesterol, but he has served only 37% of a 180-month sentence for the largest tax shelter fraud in U.S. history; release is denied).

In sum, upon consideration of all pertinent factors, the defendant's motion should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this pleading has been served on the Filing User identified below through the Electronic Case Filing (ECF) system:

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