



U.S. Department of Justice

*United States Attorney
District of New Jersey*

*Rahul Agarwal and Sean Farrell
Assistant United States Attorneys*

*970 Broad Street, Suite 700
Newark, New Jersey 07102*

(973) 645-2700

May 6, 2020

The Honorable William J. Martini
Senior United States District Judge
District of New Jersey
Martin Luther King, Jr. U.S. Courthouse
50 Walnut Street
Newark, New Jersey 07102

Re: *United States v. Francis Raia*, Crim. No. 18-657 (WJM)

Dear Judge Martini:

On May 4, 2020, the United States Court of Appeals for the Third Circuit, with the Government's consent, remanded this case for the limited purpose of considering the request by defendant Francis Raia ("Raia") for compassionate release pursuant to 18 U.S.C. § 3582(c)(1)(A). The Government appreciates the opportunity to update the Court regarding several important developments since the Court last considered this issue.

On March 25, 2020, Raia submitted a request to the Bureau of Prisons (the "BOP") for a reduction in sentence under § 3582(c)(1)(A). While that request was pending, on April 15, 2020, the BOP informed Raia that, pursuant to the Attorney General's March 26, 2020 memorandum, he had been slated for release to home confinement following the period of quarantine mandated by the directive. Raia has been in quarantine since April 28, 2020 and is scheduled to be released to home confinement on May 20, 2020. On April 29, 2020, the BOP advised Raia that, because of its decision to release him to home confinement, it was denying his request for a reduction in sentence.¹ See Exhibit 1.

¹ As a result of the BOP's denial of his request for a reduction in sentence, Raia's motion no longer is barred by the mandatory 30-day exhaustion requirement. See *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (holding that a limited remand previously would have been futile as "Raia failed to comply with § 3582(c)(1)(A)'s exhaustion requirement.").

Moreover, as of this filing, the BOP has reported the following:

First, 2,023 inmates in BOP custody have cleared quarantine and been released to home confinement pursuant to the Attorney General's March 26, 2020 memorandum, including 27 inmates from the Fairton satellite camp where Raia currently is under quarantine.

Second, no inmates at Fairton have tested positive for COVID-19. Although the BOP's website indicates that two staff members have tested positive, the Government understands that these two individuals contracted COVID-19 while working at another BOP facility and the positive tests only were attributed to Fairton because Fairton is the staff members' full-time duty station.²

Third, neither Raia nor any inmate with whom he is in quarantine at Fairton's satellite camp presently is exhibiting any symptoms of COVID-19.

In light of the foregoing, the Government respectfully submits that, in light of all of these circumstances, including Raia's impending release to home confinement, he has not met his burden to show that there are "extraordinary and compelling" reasons warranting a reduction in his sentence under § 3582(c)(1)(A).

Respectfully Submitted,

CRAIG CARPENITO
United States Attorney

/s/ Sean Farrell
/s/ Rahul Agarwal

BY: SEAN FARRELL
RAHUL AGARWAL
Assistant United States Attorneys

cc: Lee Vartan, Esq. (via email)
Jenny Chung, Esq. (via email)

² See <https://www.bop.gov/coronavirus/>

EXHIBIT 1

RAIA, Francis
Register Number: 72020-050
Inmate Request to Staff

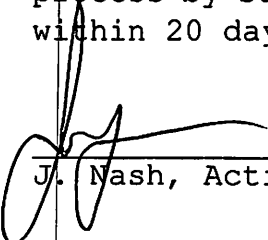
Response

You requested a reduction in sentence (RIS) based on the COVID-19 pandemic and your medical condition. After careful consideration, your request is denied.

Title 18 of the United States Code, section 3582(c)(1)(A), allows a sentencing court, on motion of the Director of the BOP, to reduce a term of imprisonment for extraordinary or compelling reasons. BOP Program Statement No. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), provides guidance on the types of circumstances that present extraordinary or compelling reasons, such as the inmate's terminal medical condition; debilitated medical condition; status as a "new law" elderly inmate, an elderly inmate with medical conditions, or an "other elderly inmate"; the death or incapacitation of the family member caregiver of the inmate's child; or the incapacitation of the inmate's spouse or registered partner.

However, while your RIS request was pending, you were referred for transfer to home confinement. Specifically, you were referred for home confinement effective for placement on May 20, 2020, after the mandatory 14 day quarantine period. As a result, your RIS request no longer presents the same potential extraordinary or compelling circumstances that might warrant an early release from your sentence. Accordingly, your RIS request is denied.

If you are not satisfied with this response to your request, you may commence an appeal of this decision via the administrative remedy process by submitting your concerns on the appropriate form (BP-9) within 20 days of the receipt of this response.



J. Nash, Acting Warden

4/29/20

Date