

1 NICOLA T. HANNA  
 United States Attorney  
 2 BRANDON D. FOX  
 Assistant United States Attorney  
 3 Chief, Criminal Division  
 SUSAN S. HAR (Cal. Bar No. 301924)  
 4 Assistant United States Attorney  
 General Crimes Section  
 5 1200 United States Courthouse  
 312 North Spring Street  
 6 Los Angeles, California 90012  
 Telephone: (213) 894-3289  
 7 Facsimile: (213) 894-0141  
 E-mail: susan.har@usdoj.gov  
 8

Attorneys for Respondents  
 9 JUAN HERRERA and KIM BEAKEY

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 DANIEL SWEENEY,  
 13  
 14 Petitioner,

15 v.

16 JUAN HERRERA,  
 in his capacity as the  
 Residential Relocation  
 17 Manager of the Federal  
 Bureau of Prisons for the  
 18 District of Los Angeles;  
 KIM BEAKEY,  
 19 in her capacity as Regional  
 Reentry Administrator, for  
 20 the Federal Bureau of  
 Prisons,

21 Respondents.  
 22

No. CV 20-04247-CJC(JEM)  
 No. CR 15-00103-JAK

RESPONDENTS' MOTION TO DISMISS  
PETITION FOR WRIT OF HABEAS CORPUS  
PURSUANT TO 28 U.S.C § 2241 AND  
EMERGENCY PETITION; DECLARATION OF  
SUSAN HAR

23  
 24 Respondents Juan Herrera, Residential Relocation Manager of the  
 25 Federal Bureau of Prisons for the District of Los Angeles, and Kim  
 26 Beakey, Regional Reentry Administrator for the Federal Bureau of  
 27 Prisons, by and through their counsel of record, the United States  
 28 Attorney for the Central District of California and Assistant United

1 States Attorney Susan S. Har, hereby file this motion to dismiss  
2 petitioner Daniel Sweeney's petition for writ of habeas corpus  
3 pursuant to 28 U.S.C. § 2241 and emergency petition.

4 This response is based upon the attached memorandum of points  
5 and authorities; the supporting declaration; the files and records in  
6 this case; the files and records in the underlying criminal case,  
7 United States v. Daniel Eamon Sweeney, Case No. CR 15-00103-JAK (C.D.  
8 Cal.); and such further evidence and argument as the Court may  
9 permit.

10 Dated: May 27, 2020

Respectfully submitted,

11 NICOLA T. HANNA  
12 United States Attorney

13 BRANDON D. FOX  
14 Assistant United States Attorney  
Chief, Criminal Division

15 \_\_\_\_\_ /s/  
16 SUSAN S. HAR  
Assistant United States Attorney

17 Attorneys for Plaintiff  
18 UNITED STATES OF AMERICA

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

1		
2	<u>DESCRIPTION</u>	<u>PAGE</u>
3	I. INTRODUCTION.....	1
4	II. STATEMENT OF FACTS.....	2
5	A. Petitioner’s Crimes and Sentence.....	2
6	B. Incarceration and Projected Release Date.....	4
7	C. Petitioner’s Current Filings and Failure to Exhaust	
8	Administrative Remedies under 18 U.S.C.	
	§ 3582(c)(1)(A).....	4
9	D. COVID-19-Specific Safety Precautions at Orion RRC.....	6
10	III. SECTION 2241 IS NOT THE PROPER VEHICLE FOR PETITIONER’S	
11	REQUEST.....	8
12	IV. PETITIONER’S REQUEST FOR COMPASSIONATE RELEASE SHOULD BE	
	DISMISSED.....	9
13	A. Legal Framework for Compassionate Release.....	9
14	B. Petitioner’s Compassionate Release Request Must Be	
15	Filed in the Sentencing Court in the Underlying	
	Criminal Case.....	11
16	C. Petitioner Failed to Exhaust Administrative Remedies.....	12
17	D. Petitioner Has Failed to Demonstrate “Extraordinary	
18	and Compelling” Reasons to Allow Release in His Case.....	13
19	V. CONCLUSION.....	15

20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

<u>DESCRIPTION</u>	<u>PAGE(S)</u>
<b><u>CASES</u></b>	
Alexis v. Ortiz, No. CV 19-1085 (RBK) 2019 WL 2367034 (D.N.J. June 5, 2019).....	11
Bolden v. Ponce, No. 2:20-CV-03870-JFW-MAA 2020 WL 2097751 (C.D. Cal. May 1, 2020).....	8, 9, 12
Crawford v. Bell, 599 F.2d 890 (9th Cir. 1979).....	8
Dillon v. United States, 560 U.S. 817 (2010).....	9
Gambino v. Hudgins, No. 5:20-CV-43 2020 WL 1698824 (N.D.W. Va. Apr. 8, 2020).....	11
Heard v. Quintana, 184 F. Supp. 3d 515 (E.D. Ky. 2016).....	12
Mohrbacher v. Ponce, No. CV 18-00513-DMG-GJS 2019 WL 161727 (C.D. Cal. Jan. 10, 2019).....	11
Preiser v. Rodriguez, 411 U.S. 475 (1973).....	8
Robinson v. Wilson, No. 1:17-CV-02630 2017 WL 5586981 (S.D.W. Va. Sept. 26, 2017).....	12
Shaw v. Bank of America Corp., 946 F.3d 533 (9th Cir. 2019).....	10, 12, 13
Tucker v. Carlson, 925 F.2d 330 (9th Cir. 1991).....	8
United States v. Brown, 817 F.3d 486 (6th Cir. 2016).....	11
United States v. Daniel Sweeney, No. 8:15-CR-00103-JAK (C.D. Cal.).....	2, 3, 4
United States v. Eberhart, No. 13-cr-00313-PJH-1 2020 WL 1450745 (N.D. Cal. Mar. 25, 2020).....	14

**TABLE OF AUTHORITIES (CONTINUED)**

1

2 DESCRIPTION PAGE

3 United States v. Greenhut,

4       No. 18-CR-48-CAS,

          2020 WL 509385 (C.D. Cal. Jan. 31, 2020).....10

5 United States v. Neman,

6       No. 14-521-JAK,

          ECF No. 863 (C.D. Cal. Mar. 30, 2020).....13

7 United States v. Ono,

8       72 F.3d 101 (9th Cir. 1995).....11

9 United States v. Shah,

10       No. 10-70-CJC,

          ECF No. 329 (C.D. Cal. Mar. 30, 2020).....10, 13

11 United States v. Sloane,

12       No. 19-CR-10117-IT-11,

          ECF No. 647 (D. Mass. Mar. 19, 2020).....13

13 **STATUTES**

14 18 U.S.C. § 3582(c).....*passim*

15 **OTHER AUTHORITIES**

16 Coronavirus Aid, Relief, and Economic Security Act (“CARES

17       Act”),

          Pub. L. No. 116-136,

          134 Stat. 281 (March 27, 2020).....4

18 Federal Bureau of Prisons Program Statement No. 5050.50,

19       Compassionate Release/Reduction in Sentence: Procedures for

20       Implementation of 18 U.S.C. §§ 3582 and 4205(g) (January

          17, 2019), available at

[https://www.bop.gov/policy/progstat/5050\\_050\\_EN.pdf](https://www.bop.gov/policy/progstat/5050_050_EN.pdf).....5

21 U.S.S.G. § 1B1.13.....*passim*

22

23

24

25

26

27

28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Pro se petitioner Daniel Sweeney ("petitioner") seeks "an  
4 immediate reduction in sentence to time served" and release  
5 "from ALL remaining BOP custody" due to the COVID-19 pandemic.  
6 Petitioner is 47 years old, reports no health problems, and is  
7 presently housed--not in prison--but at the Orion Residential Reentry  
8 Center ("Orion RRC") in Van Nuys, California, where he is scheduled  
9 to complete the remaining four months of his 24-month federal  
10 sentence.

11 Citing to 28 U.S.C. § 2241 (the habeas statute) and 18 U.S.C.  
12 § 3582(c)(1)(A) (the compassionate release statute), petitioner  
13 largely relies on generalized concerns about COVID-19 and its impact  
14 on prisons in support of his request for immediate release. He also  
15 argues that "[a] potential COVID-19 outbreak poses a substantial risk  
16 of serious harm to every person housed in Orion House," given the  
17 facility's alleged failure to adhere to social distancing protocols.

18 The so-called habeas petition and emergency petition, both of  
19 which request the same relief and are functionally identical, should  
20 be dismissed. (See Dkt. Nos. 1, 2.) First, this Court cannot grant  
21 the requested relief in the form of a writ of habeas corpus under 28  
22 U.S.C. § 2241 because petitioner does not challenge his criminal  
23 conviction or sentence. Rather, the Petition is actually a disguised  
24 motion for compassionate release based on the purported risk of  
25 contracting COVID-19 while housed at Orion RRC. Second, this Court  
26 cannot entertain petitioner's compassionate release request under 18  
27 U.S.C. § 3582(c)(1)(A) because it must be filed in the underlying  
28 criminal case with the sentencing court (here, Judge John A.

1 Kronstadt). This Court also lacks statutory authority to grant  
2 relief because petitioner has not exhausted his administrative  
3 remedies as required under the statute. Finally, even if the Court  
4 could reach the Petition's merits, petitioner is not eligible for  
5 compassionate release. His bare speculation about an uncontained  
6 COVID-19 outbreak at Orion RRC (where there are currently no reported  
7 cases), when petitioner lacks any specific health conditions or risk  
8 factors, does not justify an immediate and permanent reduction in his  
9 well-deserved criminal sentence.

10 **II. STATEMENT OF FACTS**

11 **A. Petitioner's Crimes and Sentence**

12 Petitioner is currently serving a 24-month sentence imposed by  
13 Judge Kronstadt for committing assault with force likely to produce  
14 great bodily injury, in violation of the Court-imposed three-year  
15 term of supervised release. Following petitioner's conviction for  
16 making a false statement in a passport application, Judge Kronstadt  
17 sentenced petitioner to six months' imprisonment, to be followed by a  
18 three-year term of supervised release. United States v. Daniel  
19 Sweeney, No. 8:15-CR-00103-JAK, Change of Plea, ECF No. 67 (C.D. Cal.  
20 June 23, 2016); Judgment, ECF No. 78 (C.D. Cal. Sept. 30, 2016).  
21 Under the terms of supervised release, petitioner was ordered not to  
22 commit another federal, state, or local crime. Id., Judgment, ECF  
23 No. 78.

24 Supervised release commenced in March 2017. Less than halfway  
25 into his three-year term of supervised release, petitioner committed  
26 another crime: assault with force likely to produce great bodily  
27 injury, in violation of Section 245(a)(4) of the California Penal  
28 Code, and was convicted of the same on September 18, 2018 in

1 California Superior Court, Orange County, case number 18CF1818.  
2 United States v. Daniel Sweeney, No. 8:15-cr-00103-JAK, Petition on  
3 Probation and Supervised Release (Amendment), ECF No. 94 (C.D. Cal.  
4 Dec. 12, 2018).

5 Petitioner's 2018 state conviction for this violent crime was  
6 just his latest in a long history of criminal conduct, much of which  
7 involved violent crime. Among others, petitioner was convicted of  
8 the following: in 2009 for stalking (with a prior felony) and battery  
9 against his then-girlfriend (sentenced to three years' imprisonment);  
10 in 2010 for grand theft and receiving stolen property (sentenced to  
11 two years' imprisonment); in 2011 for assault with a deadly weapon,  
12 unlawful taking of a vehicle, and other related crimes (sentenced to  
13 32 months' imprisonment); and in 2014 for theft and second-degree  
14 burglary (sentenced to five years' imprisonment). United States v.  
15 Daniel Sweeney, No. 8:15-CR-00103-JAK, Presentence Investigation  
16 Report. When Judge Kronstadt sentenced petitioner on the underlying  
17 false statement crime in September 2016, petitioner had a criminal  
18 history score of 25--nearly double the threshold necessary to  
19 establish the highest criminal history category of VI. Id.

20 For petitioner's latest crime (assault with force likely to  
21 produce great bodily injury) and breach of the Court's trust, Judge  
22 Kronstadt revoked petitioner's term of supervised release and imposed  
23 a 24-month term of imprisonment to run consecutive with any state  
24 sentence and with no supervision to follow. United States v. Daniel  
25 Sweeney, No. 8:15-CR-00103-JAK, Judgment and Commitment Order, ECF  
26 No. 99 (C.D. Cal. Dec. 20, 2018).

27  
28



1           **B.     Incarceration and Projected Release Date**

2           Petitioner currently is serving the remaining four months of his  
3 24-month sentence at the Orion RRC. His projected release date is  
4 September 2, 2020. (Har Decl. ¶ 3, Ex. A.) Petitioner may apply now  
5 to be considered for home confinement, to commence on June 22, 2020.  
6 (Id.) To be considered, he (like all inmates) must submit a release  
7 plan that details, among other things, where he intends to reside for  
8 the duration of home confinement. Petitioner currently is ineligible  
9 for home confinement because he is homeless and has failed to present  
10 any release plan.<sup>1</sup> (Id. ¶ 4.)

11           **C.     Petitioner's Current Filings and Failure to Exhaust**  
12                   **Administrative Remedies under 18 U.S.C. § 3582(c)(1)(A)**

13           On May 11, 2020, under Case No. CV 20-04247-CJC(JEM), petitioner  
14 filed a petition for writ of habeas corpus, ECF No. 1, and an  
15 emergency petition for relief for injunctive and declaratory relief  
16 for release, ECF No. 2 ("Petition"). The petition for writ of habeas  
17 corpus refers the Court to the "attached complaint and Motion"--that  
18  
19

---

20           <sup>1</sup> For the same reason, petitioner is not eligible for home  
21 confinement under the CARES Act. See Coronavirus Aid, Relief, and  
22 Economic Security Act ("CARES Act"), Pub. L. No. 116-136,  
23 § 12003(b)(2), 134 Stat. 281, 516 (March 27, 2020). Not only does  
24 petitioner lack any specific vulnerability to COVID-19, but BOP's  
25 release of inmates to home confinement must take into account, among  
26 other factors, whether a home is available where the inmate could be  
27 confined, whether the inmate could receive appropriate food and  
28 medical care there, the comparative risk to the inmate in home  
confinement in the identified location versus remaining in the place  
of confinement (here, Orion RRC), the inmate's risk to the public  
through recidivism, and the availability of supervision during home  
confinement or risk to the public if supervision is lacking. See  
Attorney General, Memorandum for Director of Bureau of Prisons Re:  
Prioritization of Home Confinement as Appropriate in Response to  
COVID-19 Pandemic (March 26, 2020), available at  
<https://www.justice.gov/file/1262731/download>.

1 is, the emergency petition--for the grounds for relief.<sup>2</sup> Petitioner  
2 seeks an order "to immediately release Sweeney from ALL remaining BOP  
3 custody pursuant to 28 U.S.C. § 2241 or 18 U.S.C. § 3582(c)(1)(A) and  
4 reduce his sentence accordingly to time-served with no modification  
5 in the term of supervised release[.]" (Petition at 8-9 (emphasis in  
6 original).)

7 Petitioner did not submit a compassionate-release request to the  
8 Bureau of Prisons ("BOP") before he filed this Petition. (Har Decl.  
9 ¶ 4.) Under 18 U.S.C. § 3582(c)(1)(A), the BOP has initial and  
10 exclusive authority to assess inmates' applications for compassionate  
11 release. The BOP, which has decades of experience diligently  
12 assessing such applications, has detailed regulations setting forth  
13 relevant procedures and considerations.<sup>3</sup> As a result of petitioner's  
14 failure to submit an administrative request, there is no record of  
15 the BOP's assessment of the relevant factors when it reviews a  
16 request for a reduction in sentence. Instead, petitioner now claims  
17 that he is entitled to release based on little more than general  
18 concerns regarding COVID-19 and its potentially outsized impact on  
19 the prison population, which is inapposite to reentry centers like  
20 Orion RRC. Petitioner also alleges that Orion RRC does not adhere to  
21 social distancing guidelines and has failed to maintain sanitary  
22 conditions. Petitioner does not identify any specific health  
23 concerns or risk factors and does not otherwise claim to be

---

25 <sup>2</sup> Because petitioner's two filings--the petition for writ of  
26 habeas corpus and the emergency petition--are identical in substance,  
references to the "Petition" are to both filings.

27 <sup>3</sup> See BOP Program Statement No. 5050.50, Compassionate  
28 Release/Reduction in Sentence: Procedures for Implementation of 18  
U.S.C. §§ 3582 and 4205(g) (January 17, 2019), available at  
[https://www.bop.gov/policy/progstat/5050\\_050\\_EN.pdf](https://www.bop.gov/policy/progstat/5050_050_EN.pdf).

1 particularly vulnerable to COVID-19. Indeed, petitioner acknowledges  
2 that any uncontained COVID-19 outbreak at Orion RRC is speculative  
3 and concedes he is situated no differently from anyone else in Orion  
4 RRC: “[a] potential COVID-19 outbreak poses a substantial risk of  
5 serious harm to every person housed in Orion House.” (Petition at  
6 11.)

7 In sum, petitioner’s logic would endorse a blanket and permanent  
8 release of convicted criminals into the community, without regard for  
9 the factors justifying their sentences, any individualized assessment  
10 of their risk factors, or consideration of a specific release plan to  
11 protect both the health and safety of the community and the inmate.

12 **D. COVID-19-Specific Safety Precautions at Orion RRC**

13 The BOP contracts with Behavioral Systems Southwest (“BSS”) to  
14 operate the 70 beds at Orion RRC in addition to other residential  
15 reentry centers throughout California and Arizona.<sup>4</sup> To date, there  
16 have been no inmates or staff diagnosed with COVID-19 in petitioner’s  
17 facility. (Har Decl. ¶ 5.) The sole positive case across the BSS  
18 facilities in California is at the Vinewood RRC in Los Angeles.  
19 (Id.)

20 Orion RRC maintains robust screening, social distancing,  
21 sanitation, and education practices:

22 **Screening.** Newly arriving inmates are not allowed into the  
23 facility until their temperature is taken and they are screened for  
24 COVID-19 symptoms. Residents are required to wear masks in the  
25 community and within the facility; upon returning to the facility,  
26 residents are screened for symptoms and their temperatures are taken.

27

28

---

<sup>4</sup> [https://behavioralsystemssouthwest.com/?post\\_type=location](https://behavioralsystemssouthwest.com/?post_type=location)

1 Staff temperatures are taken before every shift and any symptoms must  
2 be reported. (Id. ¶ 7.)

3 **Social Distancing.** Bunks within the dorms are spaced six feet  
4 apart, and residents are instructed to sleep head to feet. Each meal  
5 has four shifts to limit the number of residents in the dining room  
6 area at any given time. Additionally, seating within the dining room  
7 area has been marked six feet apart. After each meal shift, the  
8 chairs and tables are cleaned before the next shift begins. In other  
9 common areas, like the lobby, television room, and recreational room,  
10 seats are marked to indicate available seating six feet apart. Staff  
11 monitor resident activity to ensure social distancing and to enforce  
12 the mask requirement. (Id. ¶ 8.)

13 **Cleaning Supplies and Sanitation.** Cleaning supplies and  
14 additional personal protective equipment are available to residents  
15 in an unlocked closet in the lobby. Hand sanitizer is located  
16 throughout the facility. Orion RRC adheres to an increased cleaning  
17 schedule. All door handles are cleaned three times per shift, and  
18 residents must maintain their area of the dorm and assigned common  
19 areas with the provided cleaning supplies and personal protective  
20 equipment. (Id. ¶ 9.)

21 **Education Regarding COVID-19.** During intake, incoming residents  
22 are educated about COVID-19 and provided with proper masks and  
23 gloves. Signage directing residents to wear masks are posted through  
24 the facility and with CDC's hand-washing requirements are posted in  
25 the bathrooms. Case managers provide additional education during  
26 individual resident meetings. Most recently, on April 30, Orion RRC  
27 held a meeting with all residents to review the COVID-19-specific  
28 modifications and requirements. (Id. ¶ 10.)

1 This Court should not reach the merits of the Petition. As  
2 explained below, section 2241 is the improper vehicle for  
3 petitioner's request, which is actually a thinly veiled compassionate  
4 release motion. And this Court lacks authority to review  
5 petitioner's compassionate release because such a motion must be  
6 filed in the underlying criminal case with the sentencing judge and  
7 only after petitioner has exhausted his available administrative  
8 process.

9 **III. SECTION 2241 IS NOT THE PROPER VEHICLE FOR PETITIONER'S REQUEST**

10 The Petition must be dismissed because section 2241 is not the  
11 proper vehicle for petitioner's claims. In general, habeas  
12 proceedings provide a forum in which to challenge the "legality or  
13 duration" of a prisoner's confinement. Crawford v. Bell, 599 F.2d  
14 890, 891 (9th Cir. 1979); see also Preiser v. Rodriguez, 411 U.S.  
15 475, 484 (1973) ("[T]he essence of habeas corpus is an attack by a  
16 person in custody upon the legality of that custody."); Tucker v.  
17 Carlson, 925 F.2d 330, 331 (9th Cir. 1991) (concluding that  
18 challenges to "the manner in which [a] sentence was executed," or to  
19 "the fact or duration of . . . confinement," are properly brought in  
20 habeas petitions pursuant to section 2241).

21 Where, as here, petitioner does not challenge his conviction or  
22 sentence, but instead seeks release based on his living conditions,  
23 his claims "sound in civil rights, not in habeas." Bolden v. Ponce,  
24 No. 2:20-CV-03870-JFW-MAA, 2020 WL 2097751, at \*1 (C.D. Cal. May 1,  
25 2020) (citing cases). "District courts have no authority to reduce a  
26 federal inmate's sentence under 18 U.S.C. § 3582(c)(1)(A) pursuant to  
27 federal habeas proceeding under 28 U.S.C. § 2241." Id. (citation  
28 omitted). While labelled a section 2241 petition, the Petition seeks

1 only one remedy: compassionate release under 18 U.S.C.  
2 § 3582(c)(1)(A)(i). Because petitioner “admittedly does not  
3 challenge his conviction or sentence, section 2241 is not the proper  
4 vehicle for petitioner’s claims.” Id., at \*2.

5 **IV. PETITIONER’S REQUEST FOR COMPASSIONATE RELEASE SHOULD BE**  
6 **DISMISSED**

7 Properly construed as a motion for compassionate release  
8 pursuant to § 3582(c)(1), the Petition fails because this Court,  
9 which did not sentence petitioner, lacks authority to entertain it.  
10 In addition to filing his compassionate release motion in the wrong  
11 court, petitioner also has failed to exhaust his administrative  
12 remedies, which additionally deprives this Court (and the sentencing  
13 court) of jurisdiction over any request for compassionate release.  
14 Even if this Court could reach the petition’s merits, petitioner’s  
15 claims must fail: he is not eligible for compassionate release, and  
16 the COVID-19 crisis does not justify a permanent, irrevocable  
17 reduction in his sentence.

18 **A. Legal Framework for Compassionate Release**

19 A compassionate-release motion is a request for a permanent  
20 reduction in a defendant’s federal sentence. A district court  
21 generally “may not modify a term of imprisonment once it has been  
22 imposed.” 18 U.S.C. § 3582(c); see Dillon v. United States, 560 U.S.  
23 817, 824–25 (2010). Compassionate release is one of the few  
24 exceptions to this rule, allowing a court to “reduce the term of  
25 imprisonment . . . [.]” 18 U.S.C. § 3582(c)(1).

26 Because this relief is both drastic and permanent, it is subject  
27 to two strict statutory conditions: petitioner must (1) fully exhaust  
28 all administrative remedies, and (2) establish “extraordinary and

1 compelling reasons", within the meaning of the statute, to warrant a  
2 reduction in his sentence. 18 U.S.C. § 3582(c)(1)(A). Petitioner  
3 bears the burden to prove both these conditions. See United States  
4 v. Greenhut, No. 18-CR-48-CAS, 2020 WL 509385, at \*1 (C.D. Cal. Jan.  
5 31, 2020) (defendant bears the burden of establishing entitlement to  
6 sentencing reduction).

7 First, a district court can evaluate a defendant's request for  
8 compassionate release only "after the defendant has fully exhausted  
9 all administrative rights" before the BOP. Specifically:

10 after the defendant has fully exhausted all administrative  
11 rights to appeal a failure of the Bureau of Prisons to  
12 bring a motion on the defendant's behalf or the lapse of 30  
13 days from the receipt of such a request by the warden of  
14 the defendant's facility, whichever is earlier[.]

15 18 U.S.C. § 3582(c)(1)(A). This requirement is mandatory and  
16 jurisdictional. See generally Shaw v. Bank of America Corp., 946  
17 F.3d 533, 541 (9th Cir. 2019) ("statutorily-provided exhaustion  
18 requirements deprive the court of jurisdiction"); United States v.  
19 Shah, No. 10-70-CJC, ECF No. 329, at 3 (C.D. Cal. Mar. 30, 2020)  
20 ("Because Defendant failed to exhaust his administrative remedies,  
21 his request for compassionate release based on COVID-19 concerns  
22 fails."; citing cases).

23 Second, to be eligible for compassionate release, a defendant  
24 must demonstrate the existence of "extraordinary and compelling  
25 reasons[.]" 18 U.S.C. § 3582(c)(1)(A). The statute explicitly  
26 requires that any reduction be "consistent with applicable policy  
27 statements issued by the Sentencing Commission"--in this case,  
28 U.S.S.G. § 1B1.13. Id. U.S.S.G. § 1B1.13, in turn, defines the  
"extraordinary and compelling reasons" that make a defendant eligible  
for compassionate release. Those criteria look to factors such as

1 the medical condition of a defendant; age of a defendant (at least 65  
2 years old); family circumstances; or some other extraordinary and  
3 compelling reason. U.S.S.G. § 1B1.13, comment. (n.1).

4 **B. Petitioner's Compassionate Release Request Must Be Filed in**  
5 **the Sentencing Court in the Underlying Criminal Case**

6 A compassionate release motion under § 3582(c)(1)(A) must be  
7 filed in the sentencing court because it "is undoubtedly a step in  
8 the criminal case." United States v. Ono, 72 F.3d 101, 102 (9th Cir.  
9 1995); see also United States v. Brown, 817 F.3d 486, 488-89 (6th  
10 Cir. 2016) ("Because its purpose is to ask the sentencing court to  
11 reduce a sentence . . . , a § 3582(c) motion is part of the  
12 defendant's criminal proceeding." (collecting cases)). So while the  
13 First Step Act "provides that a sentencing court now may modify a  
14 sentence" on petitioner's motion, it does not provide any basis for  
15 another court that did not sentence petitioner to grant compassionate  
16 release. Mohrbacher v. Ponce, No. CV 18-00513-DMG-GJS, 2019 WL  
17 161727, at \*1 (C.D. Cal. Jan. 10, 2019) (emphasis added). Many  
18 courts have held the same. See, e.g., Gambino v. Hudgins, No. 5:20-  
19 CV-43, 2020 WL 1698824, at \*1 (N.D.W. Va. Apr. 8, 2020) ("It is clear  
20 that petitioner is unable to proceed in pursuit of his request for  
21 compassionate release in this Court, as courts in this Circuit and  
22 elsewhere have consistently found that such a request must instead be  
23 brought in the sentencing court." (collecting cases)); Alexis v.  
24 Ortiz, No. CV 19-1085 (RBK), 2019 WL 2367034, at \*2 (D.N.J. June 5,  
25 2019) (explaining that the court "ha[d] no authority under the First  
26 Step Act to consider a compassionate release claim in a § 2241  
27 petition" because section 3582(c)(1)(A) "provides that a sentencing  
28 court may modify a sentence upon receiving a motion from the BOP or



1 the defendant" (emphasis added)); Robinson v. Wilson, No. 1:17-CV-  
2 02630, 2017 WL 5586981, at \*5 (S.D.W. Va. Sept. 26, 2017) ("[A] §  
3 3582 motion must be filed in the movant's underlying criminal action  
4 and be addressed by the sentencing court."); Heard v. Quintana, 184  
5 F. Supp. 3d 515, 521-22 (E.D. Ky. 2016) (same).

6 The 24-month sentence that petitioner seeks to modify was  
7 imposed by Judge Kronstadt. Because "[o]nly the original sentencing  
8 court can entertain" petitioner's motion for compassionate release,  
9 Bolden, 2020 WL 2097751, at \*2, this Court should dismiss the  
10 Petition. As explained below, should petitioner satisfy the  
11 administrative exhaustion requirement, he may then file his request  
12 to modify his sentence as a compassionate release motion in his  
13 underlying criminal action, Case No. CR 15-00103-JAK, before Judge  
14 Kronstadt.

15 **C. Petitioner Failed to Exhaust Administrative Remedies**

16 This Court additionally lacks authority to act on petitioner's  
17 compassionate release request because he has not exhausted his  
18 administrative remedies.

19 Under 18 U.S.C. § 3582(c)(1)(A), the Court "may not modify a  
20 term of imprisonment once it has been imposed except" upon a  
21 defendant's motion "after the defendant has fully exhausted all  
22 administrative rights to appeal a failure of the Bureau of Prisons to  
23 bring a motion on the defendant's behalf or the lapse of 30 days from  
24 the receipt of such a request by the warden of the defendant's  
25 facility, whichever is earlier[.]" If this statutory condition has  
26 not been satisfied, the Court lacks authority to adjudicate  
27 petitioner's claims. See Shaw, 946 F.3d at 541. The failure to  
28 exhaust cannot be excused. Statutorily provided exhaustion

1 requirements, like the one set forth in § 3582(c)(1)(A), "deprive the  
2 court of jurisdiction and, thus, preclude any exercise of discretion  
3 by the Court." Id. at 533 (citation omitted). Numerous courts--  
4 including this Court--have rejected similar claims based on COVID-19  
5 based on the failure to exhaust administrative remedies. See, e.g.,  
6 Shah, No. 10-70-CJC, ECF No. 329, at 3 (C.D. Cal. Mar. 30, 2020)  
7 ("Because defendant failed to exhaust his administrative remedies,  
8 his request for compassionate release based on COVID-19 concerns  
9 fails."); United States v. Sloane, No. 19-CR-10117-IT-11, ECF No.  
10 647, at 2 (D. Mass. Mar. 19, 2020) (explaining that, absent such  
11 exhaustion, the court "does not have authority to grant the requested  
12 relief"; noting no request made to the USP Lompoc Warden); United  
13 States v. Neman, No. 14-521-JAK, ECF No. 863, at 4-6 (C.D. Cal. Mar.  
14 30, 2020) (denying COVID-19-based compassionate release motion for  
15 lack of exhaustion).

16 Petitioner has not shown that he has filed any administrative  
17 request with BOP or BSSI. (Har Decl. ¶ 4.) Only upon exhausting the  
18 available administrative process, and in the original court of  
19 conviction, can petitioner properly file a motion for compassionate  
20 release seeking a reduction in his sentence. Because petitioner has  
21 not made any request for compassionate release with BOP, this Court  
22 lacks authority to grant relief.

23 **D. Petitioner Has Failed to Demonstrate "Extraordinary and**  
24 **Compelling" Reasons to Allow Release in His Case**

25 Even if the Court had authority as the sentencing court to  
26 consider the merits of petitioner's unexhausted claims, petitioner  
27 has failed to identify an "extraordinary and compelling reason[]  
28

1 warrant[ing]" a reduction in his sentence. 18 U.S.C.  
2 § 3582(c)(1)(A).

3 U.S.S.G. § 1B1.13 defines the "extraordinary and compelling  
4 reasons" that make a defendant eligible for compassionate release.  
5 They include (1) a "terminal illness"; (2) a serious medical  
6 condition that "that substantially diminishes the ability of the  
7 defendant to provide self-care within the environment of a  
8 correctional facility and from which he or she is not expected to  
9 recover"; (3) a defendant who is at least 65 years old, is  
10 experiencing a serious deterioration in physical or mental health  
11 because of the aging process, and "has served at least 10 years or 75  
12 percent of his or her term of imprisonment, whichever is less"; or  
13 (4) the death or incapacitation of "the caregiver of defendant's  
14 minor child" or of "defendant's spouse or registered partner when the  
15 defendant would be the only available caregiver for the spouse or  
16 registered partner." U.S.S.G. § 1B1.13 comment (n.1). Importantly,  
17 "[g]eneral concerns about possible exposure to COVID-19 do not meet  
18 the criteria for extraordinary and compelling reasons for a reduction  
19 in sentence set forth in the Sentencing Commission's policy  
20 statement[.]" United States v. Eberhart, No. 13-cr-00313-PJH-1, 2020  
21 WL 1450745, \*2 (N.D. Cal. Mar. 25, 2020).

22 None of the qualifying reasons that might make petitioner  
23 eligible for relief are present here. Petitioner offers no case-  
24 specific facts establishing his eligibility for compassionate release  
25 under U.S.S.G. § 1B1.13. He does not identify a single, specific  
26 health condition, much less allege that he is terminally ill or  
27 subject to a serious and unrecoverable condition that makes him  
28 unable to "provide self-care" at Orion RRC. See U.S.S.G. § 1B1.13,

1 comment (n.1(A)(i)-(ii)). Petitioner, who is 47, does not meet the  
2 age condition. Nor does petitioner's single reference to his "ex-  
3 wife, a five-year old son, [and] an ailing parent"--whom he wishes to  
4 "see in person"--qualify as the type of family circumstance that  
5 might merit a permanent reduction in his sentence. (Petition at 15.)

6 Rather, petitioner primarily relies on the general risk of  
7 COVID-19: arguments that are wide-ranging and apply to every resident  
8 and inmate presently in custody. There is nothing to suggest that  
9 petitioner would be safer if released into the community than  
10 remaining at the Orion RRC--a facility that currently has no positive  
11 cases of COVID-19. This is especially true given petitioner's  
12 homeless status. Petitioner has failed to propose any release plan  
13 indicating where he will reside; how he will support himself; how he  
14 will receive medical treatment and how he will pay for such  
15 treatment--all things that BOP considers when evaluating a release  
16 plan before recommending compassionate release. Moreover, there is  
17 no evidence that the Orion RRC would be unable to manage petitioner's  
18 health even if he were to contract COVID-19.

19 In sum, the speculative possibility that petitioner might  
20 contract COVID-19 simply does not present an extraordinary and  
21 compelling reason to release petitioner early from his sentence.

22 **V. CONCLUSION**

23 For the foregoing reasons, petitioner's habeas petition and  
24 emergency petition for relief seeking an immediate reduction in his  
25 sentence to time-served should be dismissed.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

DECLARATION OF SUSAN HAR

I, Susan Har, declare as follows:

1. I am an Assistant United States Attorney in the Central District of California and am assigned to this case.

2. Based upon communications with Bureau of Prisons ("BOP") Senior Attorney May Shin, who spoke with respondent Juan Herrera, the Residential Reentry Manager for the Long Beach Residential Reentry Management Office, I learned the following:

3. Attached as **Exhibit A** is a true and correct copy of petitioner Daniel Sweeney's ("petitioner") BOP Inmate Profile as of May 18, 2020. Exhibit A indicates that petitioner's projected release date is September 2, 2020 and that he is eligible to be considered for home confinement, to commence on June 22, 2020.

4. As of May 19, 2020, petitioner has not applied for home confinement and has failed to present any release plan. Petitioner is believed to be homeless and therefore would not qualify for home confinement. Petitioner has not submitted any request for compassionate release with the BOP or the Orion Residential Reentry Center ("Orion RRC").

5. As of May 26, 2020, there have been no inmates or staff diagnosed with COVID-19 at Orion RRC. Across the facilities managed by Behavioral Systems Southwest, Inc. in California, there is one positive case of COVID-19 at the Vinewood RRC in Los Angeles.

6. Orion RRC maintains robust screening, social distancing, sanitation, and education practices to mitigate residents' risk of contracting COVID-19.

7. **Screening.** Newly arriving residents are not allowed into the facility until their temperature has been taken and they are

1 screened for COVID-19 symptoms. Residents are required to wear masks  
2 in the community and within the facility. Upon returning to the  
3 facility, they are screened for symptoms and their temperature is  
4 taken. Staff must take their temperature before every shift and  
5 report any symptoms.

6 8. **Social Distancing.** Bunks within the dorms are spaced six  
7 feet apart and residents are instructed to sleep head to feet. There  
8 are four meal shifts to limit the number of residents in the dining  
9 room area. Residents must sit six feet apart within the dining room,  
10 and seating is marked as such. After each meal shift, the chairs and  
11 tables are cleaned before the next meal shift begins. Other common  
12 areas, like the lobby, television room, and recreational room, have  
13 been marked to indicate available seating six feet apart. Staff  
14 members monitor resident activity to ensure social distancing and to  
15 enforce the mask requirement.

16 9. **Cleaning Supplies and Sanitation.** Cleaning supplies and  
17 additional personal protective equipment are available to residents  
18 in an unlocked closet in the lobby. Hand sanitizer is located  
19 throughout the facility. Orion RRC adheres to an increased cleaning  
20 schedule. All door handles must be cleaned three times per shift,  
21 and residents must maintain their own dorm area and assigned common  
22 areas with the provided cleaning supplies and personal protective  
23 equipment.

24 10. **Education Regarding COVID-19.** During intake, incoming  
25 residents are educated about COVID-19 and provided with masks and  
26 gloves. Directives to wear masks are posted throughout the facility,

27 //

28

1 and signage with CDC's hand-washing requirements are posted in the  
2 bathrooms. Case managers provide additional education during  
3 individual resident meetings. Most recently, on April 30, 2020,  
4 Orion RRC held a meeting with all residents to review the COVID-19-  
5 specific modifications and requirements.

6 I declare under penalty of perjury under the laws of the United  
7 States of America that the foregoing is true and correct and that  
8 this declaration is executed at Los Angeles, California, on May 27,  
9 2020.

10 

11 \_\_\_\_\_  
SUSAN HAR

12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EXHIBIT A**



LOSDN 535.03 \*

INMATE PROFILE

\* 05-18-2020

PAGE 001 OF 001

07:46:28

69628-112

REG

REGNO: 69628-112

FUNCTION: PRT DOB/AGE.: [REDACTED] 1973 / 46

NAME.: SWEENEY, DANIEL

R/S/ETH.: [REDACTED] WALSH: NO

RSP.: CLB-LONG BEACH CCM

MILEAGE.: 152 MILES

PHONE: [REDACTED]

PROJ REL METHOD: GOOD CONDUCT TIME RELEASE

FBI NO.: [REDACTED]

PROJ REL DATE.: 09-02-2020

INS NO.: [REDACTED]

PAR ELIG DATE.: N/A

SSN.....: [REDACTED] 5081

PAR HEAR DATE.:

PSYCH: NO

DETAINER: NO

CMC...: NO

OFFN/CHG RMKS: SACR15-00103-JAK. SRV(NCC)ORIG. FALSE STMT. 24MOS/NO SRT.

OFFN/CHG RMKS: ST SENT CMPL.

FACL	CATEGORY	- - - - -	CURRENT ASSIGNMENT	- - - - -	EFF DATE	TIME
CLB	ADM-REL	A-DES	DESIGNATED, AT ASSIGNED FACIL		03-10-2020	1943
CLB	CARE LEVEL	CARE1	HEALTHY OR SIMPLE CHRONIC CARE		11-06-2015	1323
CLB	CARE LEVEL	CARE1-MH	CARE1-MENTAL HEALTH		12-28-2018	1259
CLB	CASE MGT	BIR CERT N	BIRTH CERTIFICATE - NO		06-05-2019	1040
CLB	CASE MGT	DEPEND Y	DEPENDENTS UNDER 21 - YES		03-29-2019	1011
CLB	CASE MGT	PHOTO ID N	PHOTO ID - NO		03-29-2019	1011
CLB	CASE MGT	RPP NEEDS	RELEASE PREP PGM NEEDS		03-29-2019	1556
CLB	CASE MGT	RPP UNT C	RELEASE PREP UNIT PGM COMPLETE		03-04-2020	0806
CLB	CASE MGT	SSN CARD Y	SOCIAL SECURITY CARD - YES		06-05-2019	1040
CLB	CASE MGT	VET P/S N	PARENT/SPOUSE VETERAN - NO		03-29-2019	1011
CLB	CASE MGT	VETERAN N	VETERAN - NO		03-29-2019	1011
CLB	CASE MGT	V94 COA913	V94 CURR OTHER ON/AFTER 91394		03-26-2019	1146
CLB	CASE MGT	V94 PV	V94 PAST VIOLENCE		03-26-2019	1146
CLB	CASE MGT	WA NO CONV	WALSH ACT HIST-NO CONVICTION		03-23-2019	1450
CLB	CASE MGT	WA NOT CER	WALSH ACT-NOT CERTIFIED		03-27-2019	0532
CLB	COMM CORR	INST TRANS	INSTITUTION TRANSFER		03-11-2020	0731
CLB	CUSTODY	COM	COMMUNITY CUSTODY		03-10-2020	0001
CLB	DRUG PGMS	DAP NO INT	DRUG ABUSE PROGRAM NO INTEREST		04-17-2019	0954
CLB	DRUG PGMS	ED WAIT HX	DRUG EDUCATION WAIT-RQ HIST		03-29-2019	1513
CLB	DRUG PGMS	MH CMTX NR	MENTAL HEALTH TX NOT REFERRED		03-09-2020	1204
CLB	DRUG PGMS	NR COMP	NRES DRUG TMT/COMPLETE		03-05-2020	1600
CLB	DRUG PGMS	WA CMTX UQ	WALSH COMMUNITY TREATMENT UNQ		03-09-2020	1205
CLB	DESIG/SENT	NOVEMBER	TEAM NOVEMBER		12-28-2018	1244
CLB	EDUC INFO	ESL HAS	ENGLISH PROFICIENT		03-14-2019	0943
CLB	EDUC INFO	GED HAS	COMPLETED GED OR HS DIPLOMA		04-01-2019	0636
CLB	FIN RESP	PART	FINANC RESP-PARTICIPATES		03-07-2019	0824
CLB	FIRST STEP	FTC ELIG	FTC-ELIGIBLE - REVIEWED		12-12-2019	1731
CLB	FIRST STEP	R-HI	HIGH RISK RECIDIVISM LEVEL		12-12-2019	1731
CLB	LEVEL	MEDIUM	SECURITY CLASSIFICATION MEDIUM		12-31-2018	0926
CLB	LOCATION	9F0	ORION RRC		03-10-2020	1943
CLB	MED DY ST	REG DUTY	NO MEDICAL RESTR--REGULAR DUTY		03-19-2019	1455
CLB	MED DY ST	YES F/S	CLEARED FOR FOOD SERVICE		03-19-2019	1455
CLB	RELIGION	NO PREFER	NO PREFERENCE		11-03-2015	1214
CLB	WAITNG LST	HC ELIG	TARGET FOR HOME CONFINEMENT		06-22-2020	1943
CLB	WAITNG LST	REL NTFY	REL NOTIFICATION REQ-PL103-322		08-19-2020	1943

G0000 TRANSACTION SUCCESSFULLY COMPLETED