

The Reinvigoration of Compassionate Release: A Legal Mechanism for Decarceration  
in the Era of COVID-19

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**Abstract**

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The COVID-19 pandemic has devastated the prison population; public health experts asserted that social distancing is the most effective strategy to decrease virus spread, and yet this practice is nearly impossible in prisons. Early release policies, such as compassionate release, serve to depopulate carceral facilities and mitigate the spread of COVID-19. This study sought to understand how the COVID-19 pandemic reinvigorated the compassionate process and to discern the varied arguments used by defense attorneys and judges to support their positions on the compassionate release of federal defendants. Compassionate release court documents filed by the Federal Public Defender of the Western District of Washington between April 1<sup>st</sup>, 2020, and April 1<sup>st</sup>, 2021 (n=63) were qualitatively analyzed using content and thematic analysis. Arguments for release were organized around multiple themes including professional interpretation of compassionate release legislation, extraordinary and compelling reasons for release, and impact of release on public safety. Defense attorneys and judges varied in how they conceptualized compassionate release. There was also variation among judges in how they interpreted the viability of motions. These findings suggest that for compassionate release to be an effective strategy for prison de-population, the anti-release default within the criminal legal system must be addressed.

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My gratitude extends to Livie Jacobs, my fellow thesis-track peer and comrade. We walked, and often stumbled, through this research process together. Livie's discipline and perseverance inspired me to stay focused and her commitment to balance and restoration reminded me that hard work must be accompanied by periods of rest, play, and human connection.

### **The Reinvigoration of Compassionate Release: A Legal Mechanism for Decarceration in the Era of COVID-19**

The incarceration rate in the United States is higher than anywhere else in the world; there are currently 2.3 billion people behind bars (Abraham et al., 2020; Sivashanker et al., 2020). The Reagan Administration of the 1980s and 1990s declared a “war on drugs” which resulted in decades of carceral expansion, with a disproportionate number of Black, Indigenous, and People of Color (BIPOC) entering the prison system and enduring longer prison sentences (Alexander, 2010; O’Leary, 2021; Reisinger, 2019). The incarceration rate in the federal prison system has led to facilities that are consistently 35 to 40 percent over capacity (Mauer, 2018).

One legacy of mass incarceration is an aging prison population (Ferri, 2013). It is common for older prisoners to have at least three chronic medical conditions that require some form of treatment, which makes them highly susceptible to medical comorbidities and infections (Omori & Petersen, 2020). According to the Center for Disease Control and Prevention (CDC), the combination of overcrowded prisons, lack of access to hygienic spaces and supplies, and restricted access to medical attention in prisons creates a perfect incubator for viruses, specifically, COVID-19 (2022).

The COVID-19 pandemic exacerbated the harm caused by mass incarceration (CDC, 2022). The United States has one of the highest COVID-19 infection rates in the world and the federal prison system is a significant source of virus outbreaks (Franco-Paredes et al., 2021; Toblin & Hagan, 2021). The same marginalized communities that are disproportionately harmed by harsh prison sentences are particularly devastated by the COVID-19 pandemic (Sivashanker et al., 2020). The current reported COVID-19 death count in federal and state prisons is just under 3,000 prisoners with over half a million infections (UCLA Law, 2022). While public health officials declared social distancing to be the most effective strategy in decreasing virus

transmission, it is nearly impossible to follow CDC-directed safety guidelines in prisons (CDC, 2022; Henry, 2020). This study sought to understand how the COVID-19 pandemic impacted the compassionate release process.

### **A Call for Early Release to Address Mass Incarceration**

The large-scale impact of mass incarceration has prompted bipartisan support for decarceration, a reduction of the prison population (Reisinger, 2019). Early release policies are aimed at reducing a prisoner's sentence when significant changes to their circumstances warrant a second look at their original sentence (McCurdy, 2019). Compassionate release is one of the few early release policies that was first introduced by the Sentencing Reform Act of 1984 (Reisinger, 2019). This policy had an exclusive focus on reducing the number of elderly and severely ill prisoners behind bars, with the intention of respecting the human dignity of prisoners in critical condition by allowing them to die in the community setting (Holland et al., 2020).

Congress delegated the Bureau of Prisons (BOP) to manage the compassionate release process. Per statute, the director of the BOP was the only authorized entity to file a motion on behalf of a prisoner with the sentencing court (Greenblatt, 2020). This directive removed discretionary power from the courts and instead embedded decision-making power directly within carceral institutions (Franco-Paredes et al., 2021). Under this policy, federal courts were able to warrant sentence reductions if a prisoner presented with any of the four categories of "extraordinary and compelling" reasons for release. Under this provision a defendant must: (1) be 65 years or older; (2) have a chronic or severe medical condition related to the aging process; (3) experience a deteriorating mental or physical health condition that diminishes their ability to function; and (4) have served at least 50% of their sentence (Holland et al., 2020). Very few motions were presented to the sentencing courts because the BOP narrowly interpreted the

eligibility statute—they essentially only considered prisoners who were terminally ill or near death (Ferri, 2013; Holland et al., 2020). Between 2013 and 2018, only 6% of over 5,400 applications for compassionate release were approved; response times to applications were so slow that 250 prisoners died in custody while waiting for a response from the BOP (Berryessa, 2020).

Through a bipartisan congressional effort to address the inaction of the BOP around compassionate release, the First Steps Act (2018) was passed to remove the BOP as the sole gatekeeper of this policy (Cohen, 2020). The act allowed defendants, with support from counsel, to bypass the BOP and file motions directly with the court. The act still required that early release be consistent with the policy statement in the United States Sentencing Guidelines. However, the Sentencing Commission did not amend the policy statement in response to the act. As a result, most courts held that judges were free to use their own discretion when deciding what constitutes an “extraordinary and compelling” reason for release with guidance provided by the older policy statement (United States Sentencing Commission, 2022).<sup>1</sup>

While the First Steps Act warranted a broad interpretation of what constitutes as a viable argument for release, the policy statement itself still reflects the constricting language under the prior policy statement. This tension has created a divide among circuit and district courts around the interpretation of the policy statement (Greenblatt, 2020). Some courts continue to apply the policy statement with fidelity, while others argue it is now a mere guideline (Greenblatt, 2020). Even with the shift of gatekeeping power from the BOP to the district courts under the First Steps Act, compassionate release continued to be underutilized (Holland et al., 2020; O’Leary, 2021). Despite the surge of compassionate release applications at the onset of the pandemic, the

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<sup>1</sup> See U.S.S.G sec. 1B. 13, N. 1 in the Sentencing Commission’s Policy Statement for direct language on Compassionate Release

application of early release policies only allowed for a three percent reduction of the federal prison population (Abraham et al., 2020). According to data from the Bureau of Justice Statistics, the 10% prison population reduction from 2019 to 2020 was due to fewer prison admissions rather than an increase in prison release (Hummer, 2020).

The effectiveness of compassionate release legislation is up against a conservative criminal legal system that fetishizes the finality of sentences (Holland et al., 2020). There is a discrepancy between who is *eligible* for release and the actual *practice* of release (O’Leary, 2021). The revisiting of past sentences challenges the precedent of sentence finality and the dominant conservative view that substantial punishment is necessary for future criminal deterrence (O’Leary, 2021). This punitive logic persists despite universal disagreement on its effectiveness among legal scholars. An abundance of literature demonstrates that first, a highly punitive sentencing regime is ineffective in reducing crime and increasing public safety (Abraham et al., 2020; Henry, 2020; O’Leary, 2021). Second, the current prison system perpetuates social disparities and incarcerates people longer than necessary to meet the deterrence goals of sentencing (Reisinger, 2019). One study found that recidivism rates were not decreased by prison stays longer than 20 months (Kuziemko, 2013). Additionally, recidivism rates decline substantially with age (Holland et al., 2020).

### **COVID-19 Emergency Release Strategies**

The COVID-19 pandemic challenged the status quo of prison sentence finality as public officials were called to reconsider the relationship between the early release of prisoners and public safety. Public health officials and advocates urgently demanded prison officials to utilize early release policies as a necessary COVID-19 mitigation strategy, arguing social distancing would be possible only with fewer people incarcerated. Virus outbreaks in prisons not only pose

a threat to the health of prisoners, but also to prison staff, the medical community, and society at large (Abraham et al., 2020; Sivashanker et al., 2020). Three mechanisms for early release gained traction in the wake of the COVID-19 pandemic: executive clemency, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), and compassionate release through the First Steps Act (Novak & Pascoe, 2022).

As COVID-19 rampantly spread through the prison and jail systems in early 2020, state governors were called to use their executive clemency powers to commute sentences of high-risk prisoners with non-violent offenses (Novak & Pascoe, 2022). Gubernatorial use of this power varied significantly by state, but was generally underutilized (Awan & Quandt, 2022). Many public officials were cautious about releasing defendants with histories of violent felonies (Berryessa, 2020).

Another emergency response policy was a provision in the CARES Act which granted the Federal Bureau of Prisons (BOP) (head of federal prisons) the authority to release eligible prisoners to home confinement (Abraham et al., 2020). Despite a clear directive from the U.S. Attorney General, William Barr, for the BOP to expediently release eligible prisoners, the BOP seldom did (Abraham et al., 2020).

The First Steps Act paved the way for district court judges to broaden their interpretation of “extraordinary and compelling” reasons for release through the lens of the COVID-19 pandemic (O’Carroll, 2021). Compassionate release applications increased dramatically due to the risk of COVID-19 to vulnerable prisoners (Matei, 2020). Advocates for decarceration argue that all prisoners have a right to health and that compassionate release can be used to protect the rights of vulnerable inmates who are otherwise denied protection from COVID-19 through social distancing (Berryessa, 2020; Fairchild et al., 2020). Federal public defenders (referred to

hereafter as ‘defense attorneys’), have become crucial professional players in the compassionate release process (Berryessa, 2020; Sady & Daily, 2019)

### **Study Purpose**

Literature on compassionate release is scarce; there are a few descriptive studies on the implementation of compassionate release prior to the First Steps Act (Berryessa, 2020). More recent scholarship on compassionate release legislation includes analysis of the application of federal laws on compassionate release throughout the nation (Iftene, 2016; Wylie et al., 2018). Moreover, there are government reports issued by the U.S. Sentencing Commission and the U.S. Department of Justice on the effectiveness of compassionate release legislation before and after enactment of the First Steps Act (Office of the Attorney General, 2020; United States Sentencing Commission, 2022). These reports document the number of approved and denied compassionate release motions across the country and describe common arguments for release. There is also an emerging body of grey literature on the importance of compassionate release as a virus mitigation tool and as an avenue to address the racial and health inequities resulting from mass incarceration (Merki & Weinberger, 2020; Blakinger & Neff, 2020; Price, 2020). However, there are no qualitative empirical studies offering an in-depth exploration of the utilization of compassionate release during the COVID-19 pandemic. More specifically, the existing empirical literature does not examine the different interpretations of compassionate release legislation by the professional parties involved in the process. This gap calls for an examination of the impact of the COVID-19 pandemic on interpretation of compassionate release legislation. The aim of this study was to explore how the novel COVID-19 pandemic reinvigorated the compassionate release process and to discern the varied arguments used by defense attorneys and judges to support their positions on the compassionate release of defendants.

## Methods

### Study Design Overview

The source of analysis was paired court documents, referred to as ‘dyads.’ A qualitative analysis of dyads was chosen to expose the most salient arguments used by defense attorneys and considered by federal court judges. The study time period was selected because it captured the acceleration of the COVID-19 pandemic and implementation of widespread safety protocols, including a community lockdown and a lockdown across the nation’s BOP system. This time frame also captured the influx of compassionate release applications in the context of increased infections and deaths of incarcerated persons. The final sample included 63 filed motions. Twenty motions were granted for compassionate release which accounted for 31% of defendants who applied for release between April 1<sup>st</sup>, 2020, and April 1<sup>st</sup>, 2021, the procedures involved in this study were approved by The University Institutional Review Board.

### Court Document Definitions

A dyad consists of a single defendant’s filed compassionate release **motion**, written by the defendant’s assigned defense attorney (n=56) or (rarely) by the defendant themselves (n=7). The accompanying **order** is written by assigned judges. A motion, typically 20-25 pages, includes a description of the defendant’s circumstances and vulnerabilities, framed as mitigating factors that support an argument for release. An order, typically 10-15 pages, is the response to the motion, providing a justified decision on the release of a defendant. The order details salient information presented by formal medical documents, arguments from prosecution, and arguments from counsel. Several orders in this sample had a brief, templated, response, void of detailed reasoning for the decision on release.

### Compassionate Release Documents for Analysis

The current study was developed in collaboration with the Federal Public Defender (FPD) of the Western District of Washington. All court documents used for analysis in this study are available to the public. Any individual can request access to the document dyads unless they are sealed by the court, meaning that the document contents are private due to their sensitivity. While the documents are available to the public, the process for public access to documents is not simple and the public must request court documents one-at-a-time. Therefore, staff at the FPD granted access to the primary researcher to collect and analyze compassionate release dyads. FPD staff compiled a list of 63 unique compassionate release motions and orders filed in the Western District of Washington between April 1st, 2020, and April 1st, 2021.

### **De-identification Process**

Due to the consolidation of many documents in one folder, it is important to redact sensitive information. The primary researcher developed a data security plan with FPD staff to ensure ethical handling of a high volume of personal information. FPD staff compiled all dyads and submitted them to an FPD-managed BOX account with password protection. Researcher access to the BOX account was granted for the purpose of analysis and then relinquished upon completion of the study, on June 9th, 2022. At this time, any links between the data and defendants were destroyed. The primary researcher created a code sheet within the BOX account assigning numbers to each defendant and their corresponding motion and order. The documents were then downloaded to a secure, password protected software system—UW OneDrive. Within this software, all documents were de-identified using a redaction feature in Adobe Acrobat software. The de-identification process served to prohibit the identification and location of any defendant (e.g., BOP facilities or those identified in the release plan), or persons connected to the

defendant referenced in the court documents, such as family members, friends, other defendants, treating professionals, facility staff, or community professionals.

### **Sample Size Justification**

An Information Power Model was used to determine the sample size for this study (Malterud et al., 2016). There are five categories to consider within this model: aim of the study, sample specificity, use of established theory, quality of dialogue, and analysis strategy.

### ***Study Aim***

This study was exploratory and broad in nature, with expected variation amongst qualities and characteristics of viable compassionate release motions and subjective interpretations of the motions by the court. There are many ways to interpret compassionate release case law based on evolving policies and knowledge about the spread of COVID-19. Each defense attorney can interpret compassionate release differently, and each judge carries their own discretion in granting a release. This warranted a higher sample size.

### ***Sample Specificity***

The dyads were dense with information. Each document presented a breadth of information and thorough analysis and context for the presenting compassionate release case. The quality of document content was high which warrants the current sample size of N=63.

### ***Use of Established Theory***

This study had limited theoretical background which called for an exploratory study design. Established patterns related to compassionate release in the context of COVID-19 in the literature are minimal. This warranted a larger sample size.

### ***Materials for Analysis.***

The primary researcher had existing knowledge and background on this topic and engaged in extensive research on the compassionate release process. This experience was facilitated through a class research project and practicum experience. The primary researcher conducted three prior interviews with defense attorneys which informed the research process for this study. The necessary scope of analysis was considered throughout the analysis process with a plan in place to include a broader sample range if saturation was not met. Upon completion of analysis, this model supported the conclusion that saturation was met with the existing sample.

### ***Analysis Strategy***

A thorough analysis of each court document supported the current sample size. Each document underwent multiple rounds of analysis; first with a content analysis and then with a thematic analysis. Through the application of the Information Power Model to the current study, the sample size supported a rigorous qualitative analysis of the compassionate release process.

### **Data Analysis**

Three Excel spreadsheets were used to organize and analyze data. The first spreadsheet was used to list and categorize the arguments for compassionate release and identify the level of emphasis placed on each argument by defense attorneys and judges. The second spreadsheet included an exhaustive list of the defendants' medical conditions cited in motions, which were then ranked based on their prevalence. This study used a combination of content analysis and inductive thematic analysis to identify the arguments for compassionate release, the levels of emphasis placed on each argument in motions and orders, and the nuanced quality of language used to support patterns of arguments for release. The coding process for the first two spreadsheets involved content analysis to identify and count the arguments (Scheufele, 2008). The coding process for the third spreadsheet involved an inductive thematic analysis with

elements of in-vivo coding, to support themes with direct language from the dyad text (Padgett, 2020). Direct quotes representative of themes are presented in the results.

To ensure researcher trustworthiness, the primary researcher engaged in memo writing during each coding session and debriefed with the research team and FPD staff throughout the analysis process (Barusch et al., 2011). The contents of the documents included vulnerable information about defendants, with detailed accounts of criminal conduct and the conditions of confinement. It was important to recognize the challenge of reading this content and to acknowledge the risk of biased analysis. Memo writing and debriefing allowed opportunity for intentional reflection around researcher reflexivity (Mackieson et al., 2019). The primary researcher also consulted with a defense attorney from the FPD office to receive feedback on the accuracy of legal terminology used throughout the study and on the description accuracy of the compassionate release process. FPD staff read drafts of the study results to ensure neutrality when conveying the arguments and language used by defense attorneys and judges in their prospective stances on compassionate release. The credibility of this process was supported by prolonged engagement of the researcher with the FPD team as this study was envisioned after one year of collaboration between the primary researcher and the Federal Public Defender office (Barusch et al., 2011).

## **Results**

### **Defendant Characteristics**

Sixty-three defendants applied for compassionate release in the sample time frame. All but one was identified as male in a motion. The age of defendants who applied for release ranged from 27 to 73 years old. The underlying criminal offenses represented in the sample varied; they included both violent and non-violent offenses. The criminal charges of defendants who applied for compassionate release were most often related to drug trafficking or sex crimes involving

children. The possession or distribution of drugs (n=21) was sometimes accompanied with an unlawful possession of a weapon in furtherance of drug trafficking (n=9). Sex crimes involved the downloading, distribution, or manufacturing of child pornography or aggravated sexual assault of minors (n = 20).

### **Conceptual Model**

Figure 1 is a conceptual model that illustrates how the content of each document was structured and the sequence in which arguments for release were considered by judges. The interpretation of compassionate release legislation—specifically the professionals’ positions on the binding nature of the USSC’s policy statement—framed how arguments for release were described in motions and appraised in the corresponding orders. The first category of arguments was the *alignment of early release with the goals of sentencing*. The arguments under this category offered context for how the proceeding arguments were detailed and evaluated. The second category of arguments was the professional consideration of the defendant’s *compliance with the administrative exhaustion requirement*. Next, judges and defense attorneys considered what constitutes as *extraordinary and compelling reasons for release*. The final category of arguments considered for compassionate release was the *implications of early release on public safety*. The color coding in the conceptual model reflects patterns in the prioritization of arguments for release by professional role.

### **Category 1: Alignment of Early Release with Goals of Sentencing**

Both defense attorneys and judges interpreted arguments for release within a broader stance on how the policy upholds or undermines respect for the law. Defense attorneys were unified in their message that “*compassionate release serves the interest of justice.*” The Sentencing Commission directed courts to “*impose a sentence that is sufficient but not greater*

*than necessary,*” and attorneys commonly cited this passage to further their argument that an unwarranted layer of punishment has been added to the sentence of anyone confined during the pandemic. Furthermore, they argued that adequate punishment does not require the court to “*gamble on whether [the defendant] ends up dying in prison.*” Judges demonstrated concern that an early release would undermine the goals of sentencing and asserted that sentence finality is “*essential to the operation of our criminal justice system.*” One concern shared by judges was that viewing compassionate release too expansively could yield sentencing disparities. It would be unfair for one person to be released early, and another, with a similar sentence, to remain in confinement. Defense attorneys were concerned with sentencing disparities too, but from a different perspective. They commonly argued that changes in federal sentencing laws creates significant sentencing disparities, particularly around drug offenses that previously carried mandatory minimum sentences or three strikes laws. They noted that if their clients were to be sentenced today, they would be serving much less time. While uncommon, several judges validated the defense attorney’s argument that some historic sentences are in fact, unfair.

## **Category 2: Compliance with Administrative Exhaustion Requirement**

The first argument for release was defendant compliance with the administrative exhaustion requirement. This step of the process gives the prison director, or warden, an opportunity to grant a compassionate release before a defendant seeks relief through the court. Defendants are required to submit a written request for compassionate release to the warden of their prison and then wait 30 days before filing a compassionate release motion directly with the federal court. Multiple defense attorneys described the purpose of the exhaustion requirement as “*protecting the authority of the BOP and promoting judicial efficiency.*” Defendants frequently received no response from their warden after petitioning for release. Of the few defendants who

did receive a response from their warden, none of them were approved for release. After completing this requirement, defendants were then able to proceed with filing a motion directly with the court. Federal judges typically denied a motion if the defendant had not either received a response from the warden or waited the full 30 days.

### ***Emergency Motions***

Five defendants filed an “emergency” motion for compassionate release with the court even when the administrative remedy had not been met, arguing that the court has the power to waive this administrative requirement in extenuating circumstances. In the context of COVID-19, defense attorneys urged the court to consider emergency motions because waiting the full 30 days could “*cost a defendant their life.*” Judge response to the administrative remedy varied. Of the five “emergency” motions, three were granted.

### **Category 3: Extraordinary and Compelling Reasons for Release**

Once the judge reviewed the administrative exhaustion requirement, they moved on to assessing the extraordinary and compelling reasons for release. Viable compassionate release motions included a combination of individual defendant qualities and circumstances that interact with their physical health condition to increase the likelihood of severe illness or death from COVID-19. These health-related risk factors included age, gender, race, previous COVID-19 infections, harsh conditions of confinement, and mental health conditions. The presence of a chronic medical condition(s), coupled with COVID-19 risk, was the most common and emphasized argument for release in motions and orders. All but one motion emphasized a defendant’s medical condition as a compelling argument for release. Factors outside of health risk included family circumstances, outdated prison sentences, and length of sentence served.

### ***Health Risks***

Defense attorneys highly emphasized age, race, gender, and mental health conditions as risk factors for COVID-19 complications—they specifically noted the vulnerability of aging African American men. In cases where the defendant was BIPOC, defense attorneys identified race as a risk factor for COVID-19. Judges commonly ignored the argument of race as a risk factor for release. One judge stated that, “*while the court validates that African Americans suffer disproportionately during this crisis, race alone does not elevate the defendant’s risk of suffering complications.*”

Diagnosis of a mental illness was noted by defense attorneys as a risk factor for COVID-19 complications in 23 motions. They cited medical studies emphasizing the impact stress has on weakening the immune system. Two of the orders included acknowledgment of the conditions and none of the orders emphasized mental health conditions as a risk factor.

**Medical Conditions.** Both judges and defense attorneys highly emphasized chronic medical conditions that are irreversible, symptomatic, worsening over time, impacting the defendant’s ability to engage in self-care and inadequately managed with treatment within the prison facility. Defense attorneys typically provided an exhaustive list of the defendant’s medical conditions, regardless of the severity of the condition. Judges commonly noted which medical conditions were verified in BOP medical records and whether the severity of the defendant’s medical condition was corroborated by a medical professional.

The most common medical conditions cited in motions included hypertension (n = 28), obesity (n = 22), a previous COVID-19 infection (n = 18), asthma (n = 13), and diabetes (n = 12). While the defendant of some approved motions had one documented medical condition, most approved motions listed multiple medical conditions. The threshold for a medical condition rising to the level of “*extraordinary and compelling*” varied from judge to judge. For example,

some judges emphasized the risk associated with chronic asthma and diabetes while others argued that “*it is not enough that the defendant suffers from a chronic condition that he is not expected to recover from.*” One judge agreed that a medical condition served as an extraordinary and compelling reason for release *only* if they had a “*disabling disorder*” or if a medical professional projected “*a probable death in the near future.*” Even when a defendant *did* face a probable death in the future, this was not always listed as a viable reason for release. One motion described a 78-year-old man who relied on supplemental oxygen and required ambulatory assist to move around. The defense attorney stated that the defendant was approaching the end of his life, and, if released would be physically unable to re-offend. Despite the defendant’s disabling disorder and end-of-life trajectory, the motion was denied.

Defense attorneys and judges described medical conditions that were listed by the CDC as increasing risk for severe illness or death from COVID-19. The CDC assigns levels of risk associated with each medical condition; some medical conditions were associated with a “possible risk” or a “likely risk.” Most judges highlighted medical conditions that had the greatest level of risk. Due to the novel nature of the pandemic, there was contradictory evidence around the risk associated with various medical conditions, which impacted judges’ stances. Judges often relied on other district courts to set a precedent for which medical conditions were deemed “high risk” in the context of COVID-19.

Previous COVID-19 infections of defendants were argued by defense attorneys as putting the defendant at risk for long-term health complications and a possible second infection. Multiple attorneys cited a case where a prisoner died from COVID-19 after recovering from a previous infection. Judges commonly deemphasized the risk of reinfection, describing the emerging literature around the likelihood of reinfection as “*speculative.*”

Another common argument made by defense attorneys was that the defendant's medical condition(s) have worsened since being incarcerated, stressing when a defendant was not receiving adequate medical care in prison. In one motion, the attorney detailed the circumstances of a defendant who had two fractured ankles:

*[The defendant] was ran over by a police officer. He has not received the recommended rehabilitative care while incarcerated and still requires surgery. He also has high blood pressure that is not being managed well with the current medication dosage. He could seek proper care if released to the community.*

The assigned judge dismissed the situation of the defendant being ran over by a police officer but did respond to the defendant's medical condition as not representing a "*sufficiently extraordinary and compelling reason to warrant a sentence reduction.*" This motion for release was denied. In another case, the defense attorney described a defendant who:

*has a serious illness with an end-of-life trajectory. He has been denied specialist medical attention for his cardiac condition. The BOP was supposed to send him to a cardiologist after the first cardiac incident and they did not send him. Three months later he suffered a second heart attack.*

The judge deemed this defendant as having extraordinary and compelling reasons for release and granted the motion.

Two medical conditions commonly discussed in dyads were hypertension and obesity. While hypertension was consistently described by defense attorneys as a high-risk condition, it was viewed by judges in various ways. One judge spoke to:

*“...contradictory evidence as to whether hypertension elevates one’s risk from COVID-19. Courts have declined to grant release based on a diagnosis of hypertension where no other high-risk medical conditions are present.”*

Consistent with statements released by the CDC, defense attorneys also cited obesity as putting defendants at greater risk for COVID-19 complications. Judges deemphasized conditions that they viewed as reversible with effort from the individual. One judge explained they believed a defendant can *“feasibly recover from this condition [obesity] and eliminate the immediate risk of severe complications from COVID-19.”*

### ***Impact of COVID-19 on Conditions of Confinement***

The conditions of prison living were highly emphasized by defense attorneys with varying levels of response by judges. Defense attorneys illustrated the conditions of confinement to support the argument that the COVID-19 pandemic added an unwarranted and inhumane level of punishment. In nearly every motion, attorneys argued that defendants are unable to keep themselves safe from the virus because the CDC-recommended COVID-19 mitigation strategies— social distancing, mask wearing, and personal hygiene practices— are impossible to effectively implement in prison. One motion spoke to how the inability for incarcerated persons to practice social distancing exposes the harm caused by prison overcrowding.

Motions and orders placed heavy emphasis on the spread of the virus in the facilities where the defendant was detained. Attorneys referenced the number of inmates and staff infected with COVID-19 and often compared the facility and its infection count to that of other prisons in the BOP system. One attorney stated, *“As of today, 70% of the total inmate population has tested positive for the virus.”* Another prison had an outbreak of 1,300 positive cases due to the prison

being at 144% capacity. Two of these motions with descriptions of COVID-19 outbreaks were denied by the assigned judge.

In situations where there were very few or no COVID-19 infections at the defendant's facility, defense attorneys urged the court to be proactive in releasing people as it was only a matter of time until *this* facility had an outbreak. This attorney plea was contextualized by the common position that the BOP was failing to adequately address the public health crisis. Defense attorneys often painted a picture of the dire situation of confinement. During periods of lock-down, in effort to mitigate virus spread, defendants were denied visitation privileges (including access to their defense teams), denied access to outdoor spaces, and were more generally "*denied contact with the outside world.*" The conditions of confinement for prisoners who tested positive for COVID-19 were described as "*unimaginable*" by defense attorneys. Some defendants were moved into old warehouses where they were surrounded by rodents and "*...were left to languish with no medical care at all.*"

Judges had mixed reactions to the BOP's response to the crisis. While some judges agreed with defense attorneys that the BOP's mitigation strategies were insufficient, others applauded the BOP for a swift response to the crisis. Judges expressed concern about the COVID-19 infection status in situations where the *current* infection count was high, but often disregarded the argument for release based on a *probable* COVID-19 outbreak. Several judges argued that prison facilities were no less safe than the general community.

### ***Other Extraordinary and Compelling Reasons for Release***

**Family Circumstances.** There were 10 motions that emphasized family circumstances as an extraordinary and compelling reason for release. Defense attorneys emphasized situations where the defendant was needed to care for critically ill parents in absence of other caretakers

and when the defendant was called upon to care for their own child. None of the accompanying orders described these circumstances as compelling reasons for release.

**Outdated Prison Sentences.** There was one motion that had a primary argument for release that was non-medical related. In this motion, the defense attorney solely focused on the fact that the length of the defendant's sentence did not reflect current sentencing guidelines. This motion was denied.

**Length of Sentence Served.** Judges and defense attorneys stressed the sentence length the defendant had served before filing a motion for compassionate release. Judges expressed concern that the release of a defendant who had not served a significant portion of their original sentence would disrespect the law; it would frustrate two conventional purposes of criminal punishment: deterrence and retribution. Commonly, the defendants whose motions were granted, served most of their sentence; multiple defendants served 15 to 21 years in confinement. A few defendants had only a couple months left of their sentence. One motion was granted even though the defendant served six months of a five-year sentence.

#### **Category 4: Implications of Release on Public Safety**

Once the judge reviewed the administrative remedy and the extraordinary and compelling reasons set forth by the defense team, they considered the defendant's general level of threat to themselves or the community if they were to be released. As explained by a judge:

*Even if a federal prisoner had met his burden of showing eligibility for compassionate release due to his compromised medical condition, the court is not required to release him if he continues to be a danger to the community.*

Judges placed varying levels of confidence in a defendant's capacity to become a law-abiding citizen upon release. Factors that contributed to a judgment on safety and likelihood of

recidivism included the nature and circumstances of the underlying criminal offense, the history and circumstances of the defendant, the rehabilitative behavior of the defendant while incarcerated, and the strength of their release plan.

### *Nature and Circumstances of Underlying Offense*

The nature and circumstances of the defendant's underlying offense was highly emphasized by defense attorneys and judges. Judges tended to describe the facts of the crime, while defense attorneys briefly referred to the reasons for arrest and placed greater emphasis on the defendant's rehabilitative behavior following the criminal incident. Defense attorneys emphasized when the defendant's underlying sentence was nonviolent in nature. For example, in cases involving child pornography, the attorney noted if there was no physical contact involved in the sexual crime. In situations where the defendant had an unlawful possession of a firearm, the defense attorney emphasized when the weapon was not actually fired.

The underlying offense in approved motions varied widely and included violent and non-violent offenses. Common charges included drug possession and distribution, sex crimes involving children, unlawful possession of firearms and armed bank robberies. Defense attorneys and judges contextualized the defendant's underlying crime by also considering if they had a clean or limited criminal history and if their criminal behavior took place long in the past. However, in a few situations, the judge considered the underlying offense in isolation. One judge asserted that:

*“[the defendant] is a child rapist...he views children as objects that exist to satisfy his sexual desire, and his offense history underscores the lengths at which he will go to satisfy his sexual appetite.”*

In cases where the defendant's underlying crime was violent, multiple defense attorneys argued that *"the fact that his present offense involved violence does not disqualify him from relief."*

While there were eight granted motions that involved the possession of a firearm, none of these involved injurious or lethal use of a weapon. Sex crimes accounted for six of the granted motions, one of which involved physical contact with a victim.

### ***History and Circumstances of Defendant***

Defense attorneys commonly emphasized social vulnerabilities surrounding defendants' underlying offenses, such as substance use, resource scarcity, lack of familial and social support, and childhood trauma. Several defense attorneys argued that their clients had untreated mental health and substance use challenges, often stemming from childhood trauma, and some of these defendants were never offered or provided treatment. They argued that when treated, these defendants would be less likely to re-offend. For example, one defense attorney shared that a defendant's criminal behavior was:

*motivated in large part by his addiction to fentanyl. When he engaged in mental health and addiction treatment during pretrial release, he did well.*

Several judges expressed skepticism that defendants with substance use histories could remain law abiding in the community, even if they had completed a treatment program while in confinement.

Defense attorneys argued that childhood trauma and experiences of Post-Traumatic Stress Disorder in adulthood are factors outside the control of the defendant, that can contribute to criminal behavior. For example, in one motion the defense attorney described a connection between past trauma to involvement in crime. They argued that:

*“because of the constant threat of violence, [the defendant] and his mother frequently moved. Due to a speech impediment and constant moving, he was unable to get the services he needed and never learned how to read or write. He was beaten by his mother’s boyfriend and ran away from home at the age of 15. He became homeless and has run in with the law ever since.”*

In response to a motion that described the defendant’s history of witnessing and experiencing domestic violence as a child, the assigned judge emphasized less what happened to the defendant in his past and more the facts of the defendant’s present behavior. The judge emphasized that the defendant had a narcissistic personality disorder with anti-social traits which purportedly increased his risk for re-offending.

In addition to adverse social experiences, defense attorneys also emphasized defendants’ character strengths, including connection and loyalty to family, work ethic, skills that can lead them to employment once released, and motivation to grow and change as people. One defendant was described by his attorney as, *“living a productive life of service before the crime.”* These details were frequently dismissed by judges in the responding orders.

Judges tended to emphasize the presence of lengthy criminal histories as a recidivism risk. In some cases, however, the judge dismissed the risk presented by a lengthy criminal record because the defendant’s criminal histories were nonviolent. In a motion that was granted, the judge said, *“the main danger is [the defendant’s] future possession and distribution of drugs again and the court finds that this danger is minimal.”*

### ***Rehabilitative Behavior During Confinement***

Defense attorneys highly emphasized efforts made by a defendant to take responsibility for their past mistakes and commit to a better future. They often commended defendants for their

rehabilitative behavior during confinement such as participation in self-improvement classes, participation in Alcoholics Anonymous or Narcotics Anonymous, and commitment to working or mentoring other inmates while incarcerated. Defense attorneys highlighted clean infraction histories. One defendant was described by the defense attorney as a “*model inmate*.” The Court often emphasized rehabilitative behavior as well. One judge applauded the defendant for “*taking commendable strides to grow and change*.”

One way to determine the defendant’s rehabilitative status was for them to engage in a formal risk assessment screening. The dyads most often referenced the administering of a risk assessments tool called Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), categorizing defendants as with low, medium, or high risk of reoffending. A low-risk result, however, did not guarantee a granted motion. One judge asserted that any efforts towards rehabilitation did not atone for past harmful behaviors. The judge stated that:

*“[the defendant’s] criminal conduct is still as reprehensive today as it was back then, and he is just as deserving of serious punishment... Nor has the harm caused by him been reduced by the passage of time.”*

Judge confidence in the capacity for defendants to change their patterns of behavior and engage in more pro-social behaviors in the future varied.

### ***Release Plan***

Both defense attorneys and judges highly prioritized release planning. Judges usually favored plans where the defendant could live with a known friend or family member rather than be released directly to a residential reentry center (RRC), otherwise known as a halfway house. Judges considered who the defendant would live with upon release, including their criminal history, employment status, and their capacity to provide emotional and financial support to the

defendant. In one successful motion, the defense attorney quoted a defendant who said, “*All I want to do is get a good job, and when I get off work, be a good grandpa.*” This defendant had a plan to live with his son, daughter-in-law, and three grandchildren.

There were circumstances where a defendant was released to an RRC with a plan to look for longer term housing. One defendant was approved to live at a clean and sober house that accepted people with sex offenses. Another defendant’s release plan was acceptable to the judge as he would live with his sister in a small community far away from the environmental context where the crime was committed.

Most defense attorneys argued that conditions of post-release supervision—including probation, home confinement, and electronic monitoring— would be sufficient in ensuring public safety and deterring future criminal behavior. While some judges agreed with this, most argued that supervised release does not eliminate conditions of re-offense. One judge explained how the COVID-19 pandemic presents barriers for ensuring compliance and safety of released defendants:

*first responders are focused on mitigating covid effects and are less equipped to deal with wrongdoings. Also, supervised release with probation is compromised because their most basic tools—urinalysis tests and home visits—are severely restricted.*

### **Discussion**

This study captures the context behind the urgent issue of compassionate release reinvigoration as it happened in real time. The qualitative analysis method chosen for this study allowed for an in-depth look into the nuanced interpretation of compassionate release legislation. Defense attorneys and judges differed in how they assessed the viability of motions for release. Generally, judges placed greater emphasis on professionally verified medical health risks for

COVID-19, the nature and circumstances of the underlying offense, criminal history, which inform their stance on the defendant's perceived threat to the safety of the community if released. In contrast, defense attorneys emphasized a myriad of health risks that interact to increase harm caused by a COVID-19 infection. They also emphasized challenging environmental circumstances that can lead to criminalized behavior, rehabilitation and resilience of the defendant, and the strength of release plans. This study found that in addition to professional differences in the appraisal of arguments for release, there was also significant variation in how individual judges assessed the viability of motions. Particularly, there was variation in judge interpretation of the "extraordinary and compelling" nature of the COVID-19 pandemic itself. This finding suggests that most judges adhered to the narrow eligibility criteria in the USSC's "old" policy statement which does not account for the impact of the pandemic on the conditions of carceral confinement.

In Spring 2020, during the early stages of the pandemic, the BOP was in the process of developing virus mitigation protocols amid changing and sometimes conflicting recommendations from public health authorities on how to keep individuals and communities safe from the COVID-19 virus. This study found discordant views by judges on arguments around health risks which may reflect the CDC's developing and inconclusive guidance on medical and social vulnerabilities as the pandemic unfolded. In the absence of clear direction from public health authorities, judges may have relied on their own experiences, assumptions, and biases to determine the legitimacy of the presented health risks in motions. For example, in one order, the judge dismissed obesity as a risk factor, arguing that this is a condition that the defendant has control over. Therefore, the defendant could "*reasonably*" decrease their own

heightened risk to the COVID-19 virus. In situations like this, the judge disregarded the environmental context of incarceration that inherently deprives people of health and wellness.

Applications for compassionate release increased dramatically in the wake of the COVID-19 pandemic. Between 2019 and 2021, the number of federal prisoners who applied for release increased from 1,700 to 31,000 (Blakinger & Neff, 2021). A BOP system-wide lockdown in April 2020 likely contributed to this dramatic influx in compassionate release applications (Unlock the Box, 2020). state and federal prisons experienced a 500% increase in solitary confinement where many prisoners were forced to isolate for 24 to 26 hours at a time in cells the size of parking spaces (Unlock the Box, 2020). The unintended consequences of extreme isolation harm the immune system, increase self-harm and suicidality, and exacerbate mental health challenges (Unlock the Box, 2020). An existing qualitative study captured a collective sense of doom among detainees, as many felt like contracting COVID-19 was inevitable (Pyrooz et al., 2020). The motions in the current study sample included excerpts from defendants that similarly exposed the devastating impact the virus outbreaks have on confined persons during the pandemic. Many defendants were described in motions as being treated like maximum security prisoners despite having a low-security classification.

The current study revealed a distinction in how defense attorneys and judges framed arguments for compassionate release. Defense attorneys uniformly emphasized arguments related to the environmental, social, and systemic factors that impact an individual's pathway to incarceration and experiences of confinement during the pandemic. In contrast, judges commonly emphasized arguments related to the individual responsibility of the defendant. For example, in one case, the judge dismissed the defendant's history of childhood trauma and instead framed the subsequent mental health challenges as a risk for re-offense. In this case, what

the defense attorney detailed as a context for an offense was interpreted by the judge as a deterrent for release. Differences in argument interpretation suggest that the values and job duties inherent to each profession impact their respective interpretation of how compassionate release legislation upholds the purposes of punishment for criminal deterrence.

Under the Sixth Amendment of the Constitution, all people convicted of a federal crime have a right to counsel in criminal proceedings, regardless of their ability to pay (U.S. Courts, n.d). Federal public defenders serve as appointed counsel and represent most people prosecuted in federal courts, who are disproportionately BIPOC and poor (U.S. Courts, n.d.; Baćak et al., 2020). Previous research on the professional roles and philosophy of federal public defenders has found that many defense attorneys align with a social justice framework and hold optimism for the restoration of people who committed past crimes (Baćak et al., 2020). The Federal Public Defender of the Western District of Washington has an explicit statement on their website about their commitment to antiracism, to the promotion of institutional change, and to a client-centered and collaborative approach to defense work (Federal Public Defender, n.d.). Defense attorneys consistently argued that the pandemic adds an unjust layer of punishment to anyone confined during the pandemic and that no prisoner deserves a death sentence from COVID-19. Patterns of arguments made by defense attorneys suggest that public defense teams are in a position to challenge the traditional justification for carceral punishment and champion the compassionate release of incarcerated people.

While defense attorneys are solely responsible for representing individual defendants, judges are bound by the constitutional duty to promote the safety of society at large. Judges must weigh multiple risks inherent to granting a motion for release, including the risk to the safety of the community and the risk to victims impacted by crime. For example, this study revealed a

common concern among judges that defendants would repeat their original offense. In some orders, judges emphasized a potential risk for drug relapse that may instigate crime involvement, rather than celebrating rehabilitative accomplishments like completing treatment programs or achieving sobriety during confinement. This caution around granting compassionate release motions may be due an assumed liability among judges; they may assume responsibility for a defendant's potential re-offense upon early release. Research shows that more than two thirds of formerly incarcerated individuals are rearrested within three years of release (Rapping, 2015). The high rate of unsuccessful prison re-entry may explain why judges in the current study required near *certainty* that the defendant would not reoffend once released. Judges and defense attorneys similarly emphasized the quality of defendant release plans. The strength of release plans depended on available community resources to support individuals with criminal records. This finding underscores the importance of federal defense team investment in re-entry service policies and partnerships with community agencies that can help secure sustainable housing, employment, and social supports for people seeking compassionate release.

In addition to ensuring public safety, judges highlighted the need for compassionate release decisions to uphold respect for the law. In one motion, a defense attorney described their client as physically unable to reoffend and approaching the end of his life. Despite the judge's concession that the defendant presented with compelling medical reasons for release and determination that the defendant posed a low risk of recidivism, the motion was denied. This decision suggests that the assigned judge prioritized the integrity of punishment theory over the compromised safety of the defendant.

The distinct approaches to compassionate release between judges and defense attorneys suggest their prospective alignment with different goals of sentencing. Three justifications for

carceral punishment described in the literature include deterrence, retribution, and rehabilitation (Simmer, 2020). Deterrence focuses on enhancing public faith that people who commit crimes are properly avenged. Retribution connotes the importance of instilling adequate public fear of criminal prosecution. The rehabilitative nature of incarceration means that incarcerated persons should have opportunity to change their behavior to prevent future crime, including having access to rehabilitative programming and services while incarcerated. The current study findings suggest that judges frame compassionate release in the context of upholding the sentencing goals of deterrence and retribution, expressing concern that compassionate release would undermine public respect for the law and undermine the severity of serious crimes. In contrast, defense attorneys framed compassionate release around the sentencing goal of rehabilitation; they were concerned that excessive punishment would undermine prisoner rights and infringe on the ability for defendants to rehabilitate and live productive and meaningful lives beyond their criminal offense.

The literature on early release policies demonstrates that the eligibility criteria for compassionate release is broadly defined in the law but rarely extends in practice to people with violent underlying offenses (O’Leary, 2021). A surprising finding in this study was that granted motions for compassionate release included an even mix of violent and nonviolent offenses, including armed bank robberies and child pornography. However, it is important to note that violent crimes are more prevalent in state prisons than in federal prisons (O’Leary, 2021). Most people detained in federal prisons have not engaged in crimes involving physical contact with another individual, such as homicide or assault. The varying degree of physical contact involved in crimes that are labeled in the motions as “violent” indicated that there is a subjective quality to the definition of a “violent” crime. This observation suggests that public perception on the

morality associated with certain offenses impacts how certain crimes are categorized as “violent” and “nonviolent” and subsequently influences the discretion of each individual judge on their decision on motions for release. It is possible that each judge applied their own moral frames to decide on the risk level of each offense.

This study did not assess patterns of approvals across the different court judges. To protect the identifiability of defendants, the names of assigned judges were redacted from dyads which eliminated any identification of patterns on how each judge decided on compassionate release cases. In addition to discovery of arguments for release that were salient for most judges, a more nuanced understanding of what constitutes a viable motion may include the individual judges’ moral frameworks and political ideologies that inform their stance on compassionate release. It is possible that some judges deny motions no matter the quality or number of compelling reasons for release. Alternately, some judges may be proponents for compassionate release and therefore apply lenient standards to the viability of motions.

#### *Implications for Social Work Policy and Practice*

There are 10 social work grand challenges that address pressing social issues through policy, research, and practice initiatives; one of those challenges is to promote Smart Decarceration. Scholars and activists who organize to advance this grand challenge are committed to (1) reducing the prison and jail population; (2) confronting racial, economic, behavioral health disparities among the incarcerated; (3) maximize public safety and community well-being (Grand Challenges of Social Work, n.d.). The social work discipline is called to address mass incarceration and uphold the human worth and dignity of individuals convicted of crimes. As such, we can join forces with public defense teams to promote the Smart Decarceration goal through the advocacy and application of compassionate release legislation.

Recent social dissent around mass incarceration and harmful policing procedures has drawn attention to the interface of social work with the criminal legal system. There is an emerging holistic model of public defense which mobilizes defense attorneys and social workers around mutual values for social justice. This model centers interdisciplinary collaboration to address the unique needs and strengths of each defendant, both in the context of legal involvement and in their lives beyond incarceration, as valued members of families and communities. The increased utilization of compassionate release legislation presents an opportunity for federal defense teams to use social work expertise in developing compelling social history narratives and comprehensive release plans in attempt to ease judicial concern for defendant recidivism.

### **Limitations**

This study has multiple limitations. First, the sample may not be inclusive of all compassionate release motions reviewed by the court in the Western District of Washington as this study aimed to specifically analyze the role of federal public defenders in the compassionate release process. While 80% of defendants are represented by defense attorneys (Rapping, 2015), the sample did not include compassionate release motions filed by private attorneys or court-appointed Criminal Justice Act (CJA) panel attorneys or motions sealed by the court due to the sensitivity of content.

Second, this study did not include the perspectives of all involved professional actors in the compassionate release process. When a defense attorney files a motion for compassionate release, the prosecutor assigned to the case can file a government response to the defendant's motion, which judges consider in decision making on the motion. Judges also considered expert statements provided by medical professionals, psychiatrists, and clinical therapists, which was

noted in the contents of orders. While these perspectives were left out of analysis, this study focused on the two primary professionals involved in the process: defense attorneys, as they are primary advocates for prison release, and judges, whose role is to rule on compassionate release decisions.

Finally, this study only captures the compassionate release process in one of the 94 federal judicial districts in the country. In this context, the sample size is relatively small, but given the depth of qualitative analysis, the study sample was substantive. While the compassionate release motions were filed in one district, the represented defendants were detained in facilities across the country. This allowed for a look into prison conditions and BOP responses to the pandemic in multiple locations across the federal BOP system.

### **Future Research**

The current study lays the groundwork for future inquiry into the processes and application of compassionate release. This is the first qualitative study on compassionate release in a specific jurisdiction and future studies can apply similar methods to other jurisdictions across the country. While this study focused on the early stages of the COVID-19 pandemic, future studies can also explore the viability of compassionate release during later stages of the pandemic, with the emergence of new virus variants, more relaxed social distancing standards, and the availability of vaccinations for the general community and the prison population. To better understand the impact compassionate release legislation can have on decarceration efforts, future studies should explore how the pandemic created momentum for a wave of “second look” compassionate release motions, which post-pandemic may focus exclusively on addressing outdated and harsh prison sentences as a primary argument for release. These findings call for a more thorough look into individual-level, and structural-level biases that may impact the

discretionary application of compassionate release legislation. A future research method may include interviews with professional actors, including judges, prosecutors, and defense attorneys on their personal experiences, political ideologies, and moral leanings that inform compassionate release decisions. Lastly, this study exposed similar values and allegiances between defense attorneys and social workers. Future research should determine the role and efficacy of social workers on public defense teams more generally, but also in the context of facilitating defendants through the compassionate release process.

### **Conclusion**

The COVID-19 pandemic has forced society to rethink how we perform daily activities, including the practice of carceral confinement as a deterrence for criminalized behavior. The unprecedented COVID-19 public health crisis exacerbated the existing harm caused by decades of mass incarceration and caused the reinvigoration of compassionate release. The current study found discrepant views on public safety between defense attorneys and judges. Defense attorneys centered the safety of *prisoners* in each argument for release while judges commonly centered the *public* in their assessment of arguments for compassionate release. The detailed accounts of confinement, specifically during the BOP-wide lockdown, fueled a movement where legal and social justice advocates framed compassionate release as a “right” in the age of COVID-19 (Berryessa, 2020; O’Leary, 2021). Future studies on the later stages of the pandemic and beyond can assess whether or not the reinvigoration of compassionate release in the era of COVID-19 can maintain momentum as an effective policy for prison decarceration. Continued research on compassionate release is imperative to uphold the safety and rights of incarcerated persons, one of society’s most vulnerable and marginalized populations.

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Appendix

Figure 1. Conceptual Model of Compassionate Release Process

