IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA, Plaintiffs, vs. CRISPIN HERRA-HERRA, Defendant.	**8:15CR20** **MEMORANDUM AND ORDER**

This matter is before the Court on the request of the defendant seeking compassionate release. Filing No. 228. The Defendant seeks a reduction of sentence pursuant to 18 U.S.C. § 3582(c)(1)(A) as amended by Section 603 of the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018). In Section 603 of the First Step Act, Congress amended 18 U.S.C. § 3582(c)(1)(A) to permit defendants to move a sentencing court for compassionate release "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." Under the law, it matters not that the COVID-19 pandemic creates a great health risk to many prisoners. Administrative exhaustion under the Act is a jurisdictional prerequisite to this Court making a decision as to compassionate relief. The Court notes that it appears the defendant has attempted to exhaust his administrative remedies with the prison system. *See* Filing No. 228. The Court will appoint the Federal Public Defender's Office to oversee this case. The Court will order the United States Probation office to prepare an investigative report, review the relevant medical records and provide the Court with any additional relevant records not

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included in the filing, and conduct a review of the suggested home detention placement. The Court will likewise order the government to file its response.

THEREFORE, IT IS ORDERED THAT:

1. The Public Defender's office, Dave Stickman, is appointed to represent the defendant and file any appropriate documents or briefs.
2. The United States Attorney's office, Joseph Kelly, shall have 14 days from the date the Probation Office files its investigative order to file a responsive brief; and
3. The United States Probation Office, Doug Steensma, is ordered to review the defendant's motion and Bureau of Prison records and file an investigative report within 30 days.
4. The defendant shall have 7 days after the filing of the Government's brief to file a reply brief if he so chooses.

Dated this 9th day of February, 2023.

BY THE COURT:

s/ Joseph F. Bataillon
Senior United States District Judge