

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

NOV 22 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 22-10064

Plaintiff-Appellee,

D.C. No. 2:07-cr-00186-RCJ-LRL-1

v.

LUIS FERMIN HERRERA Sr.,

MEMORANDUM\*

Defendant-Appellant.

Appeal from the United States District Court  
for the District of Nevada  
Robert C. Jones, District Judge, Presiding

Submitted November 15, 2022\*\*

Before: CANBY, CALLAHAN, and BADE, Circuit Judges.

Luis Fermin Herrera Sr. appeals from the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A)(i). We have jurisdiction under 28 U.S.C. § 1291. Reviewing for abuse of discretion, *see United States v. Keller*, 2 F.4th 1278, 1281 (9th Cir. 2021), we affirm.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Herrera contends that the district court abused its discretion by concluding that his medical conditions and need to help his wife care for their daughter did not constitute extraordinary and compelling reasons for relief. We disagree. The court reasonably concluded that Herrera's health concerns were mitigated by his vaccination. Contrary to Herrera's argument, the court did not rely on clearly erroneous facts regarding the effectiveness of COVID-19 vaccines. The court also permissibly treated U.S.S.G. § 1B1.13 as persuasive authority when it determined that Herrera's family situation did not constitute an extraordinary and compelling basis for release. *See United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021). On this record, the court did not abuse its discretion in denying Herrera's motion. *See United States v. Robertson*, 895 F.3d 1206, 1213 (9th Cir. 2018) (stating that a district court abuses its discretion only if its decision is illogical, implausible, or not supported by the record).

**AFFIRMED.**