

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 22 2022

FOR THE NINTH CIRCUIT

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

UNITED STATES OF AMERICA,

No. 21-50281

Plaintiff-Appellee,

D.C. No. 5:13-cr-00123-VAP-1

v.

MEMORANDUM*

MATTHEW RUBEN HERNANDEZ,

Defendant-Appellant.

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted September 14, 2022**

Before: O'SCANNLAIN, RAWLINSON, and OWENS, Circuit Judges.

Matthew Ruben Hernandez 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.

* 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).

Hernandez contends that the district court abused its discretion by concluding that his medical conditions, particularly his worsening diabetes, did not constitute an extraordinary and compelling reason for release. We disagree. The court acknowledged Hernandez’s serious medical conditions, but reasonably concluded that his vaccination and recovery from a prior COVID-19 infection that involved moderate symptoms, as well as the Bureau of Prisons’ (“BOP”) efforts to control the spread of COVID-19 in his prison, weighed against release. The court did not err by commenting that Hernandez’s claims of inadequate medical care could be brought in a civil rights action. *See Badea v. Cox*, 931 F.2d 573, 574 (9th Cir. 1991). Finally, the district court applied the correct legal standard under § 3582(c)(1)(A), and its treatment of U.S.S.G. § 1B1.13 as nonbinding, “useful guidance” was consistent with *United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021).

AFFIRMED.