

**UNITED STATES AIR FORCE
COURT OF CRIMINAL APPEALS**

In Re Damian G. Kawai)	Misc. Dkt. No. 2022-02
Airman First Class (E-3))	
U.S. Air Force)	
<i>Petitioner</i>)	
)	NOTICE OF DOCKETING
)	
)	
)	
)	Panel 1

A petition for extraordinary relief in the form of a “Motion for Compassionate Release and Reduction in Sentence” in the above styled case was received by this court on 2 March 2022.

Accordingly, it is by the court on this 11th day of March, 2022,

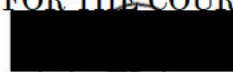
ORDERED:

The case has been assigned Misc. Dkt. No. 2022-02 and has been referred to Panel 1 for review.

No briefs in response to this petition will be filed unless ordered by the court.



FOR THE COURT



TANICA S. BAGMON
Appellate Court Paralegal

Damien Kawai

Reg. No. [REDACTED]

United States Penitentiary Atwater
[REDACTED]
[REDACTED]

United States of America,
Plaintiff,

Vs.

Damien Kawai,
Defendant.

Motion For Compassionate
Release and Reduction in
Sentence Pursuant to
18 U.S.C. 3582(c)(2)(A)(i)

Defendant proceeding in pro se capacity, respectfully moves this Court pursuant to 18 U.S.C. 3582(c)(2)(A)(i) to grant him Compassionate release and reduce his sentence of life imprisonment to a term not greater than necessary to achieve the objective of Sentence.

This applicable Compassionate release statute allows the Court to reduce a previously-imposed sentence for "extraordinary and compelling" reasons. Mr. Kawai submits that the First Step Act amendment of the Compassionate release provision free this Court to review the full slate of extraordinary and compelling circumstances he

Presented in this Motion and Memorandum in Support. These includes:
Changes of law that would have had a significant effect if Mr. Kawai were to be charged and sentenced today; and New scientific data that reveals youths brain is not fully developed until age 22-25, a fact that mitigates culpability.

Furthermore, Public health experts recognize that the underlying Coronavirus pandemic is especially dangerous within the confines of correctional Institutions, and the Bureau of Prisons has failed to prevent the spread of Covid-19 in its facilities. District courts has acknowledged that, "the Covid-19 pandemic presents an extraordinary and unprecedented threat to incarcerated individuals." Mr. Kawai submits that the Covid-19 outbreak in the Prison constitutes extraordinary and compelling reasons that warrants compassionate release. The court should grant relief based on Mr. Kawai's susceptibility to the fatal effects of Covid-19, the rampant spread of the disease throughout the BOP and in the facility where he is currently housed (USP Atwater), and an warranted sentencing disparities that he'll outline in his Memorandum in support of his motion.

This motion is based on the record and files in this case, the attached Memorandum in support, and the attached appendices

Dated: Atwater, California 29 Jan 22

Damien Kawai

Department of the Air Force
Headquarters Fifth Air Force (PACAF)

United States of America,
Plaintiff / Respondent

v.

General Court-Martial order No. 13
order dated 15 May 2006 (35366)

DAMIER KAWAI,
Petitioner / Defendant.

Memorandum of Law in Support of
Motion for Compassionate Release

1. Procedural and Factual Background

Defendant Damien Kawai was convicted after a General Court-Martial for Premeditated Murder, Larceny of Personal Property, and Impede Investigation. At sentencing the court imposed a term of Life imprisonment with the possibility of parole. Mr. Kawai filed a timely notice of appeal and the judgement was affirmed.

11. The First Step Act and its Landscape changes to
section 3582(c)(1)(A)(i).

In December 2018, President Trump signed the First Step Act into law. P.L. 115-391. The Act was momentous "culmination of a 21-partisan effort to improve criminal justice outcomes, as well as to reduce the size of the federal prison population while also creating mechanisms to maintain public safety." Cong. Research Serv., R45558, The First Step Act of 2018: An Overview (2018)

Compassionate release codified in its amended form at 18 U.S.C. 3582(c), provides means for inmates with "extraordinary and compelling circumstances" to be released from prison early.

A. Mr. Kawai has satisfied the Administrative Requirements.

Section 603 of the First Step Act changed the process by which 3582(c)(1)(A) compassionate release occurs; instead of depending upon the BOP Director to determine an extraordinary circumstance and then make for release, a court can now resentence "upon motion of defendant," if the defendant has fully exhausted all administrative remedies "or the lapse of 30 days from the receipt of such a request by the Warden of the defendant's facility, whichever is earlier." 18 U.S.C. 3582(c)(1)(A).

Mr. Kawai filed a request for a reduction of sentence under the Compassionate release statute with the Warden of USP Alwooder, California on April 15, 2021. The Warden denied the request on May 25, 2021. Forty days after it was submitted. Thus, the lapse of 30 days demonstrated that Mr. Kawai has satisfied the exhaustion requirement. See Attachment A (pp. 9 a warden denial)

III. Mr. Kawai has Established Extraordinary and Compelling reasons that warrants relief.

This Court has the power to consider compassionate release for Mr. Kawai if it finds that extraordinary and compelling circumstances exists that warrant relief. Mr. Kawai submits that the following issues constitutes extraordinary and compelling circumstances: (1) the prison where he resides has a severe Covid-19 outbreak, (2) Mr. Kawai's youthfulness at the time of the instant offenses, and New scientific data regarding the underdevelopment of adolescents brain until age 25.

A. The outbreak of Covid-19 in the BOP, the conditions at USP Atwater and the defendant's vulnerability to Covid-19 presents extraordinary and compelling reasons to reduce his sentence.

On March 11, 2020 the World Health Organization ("WHO") officially classified the spread of Covid-19, the disease caused by the novel coronavirus as a pandemic. Since then, Covid-19 continued to spread at an alarming rate. Currently over 550,000 people have been killed by the virus in the United States, and that number includes some of the most vulnerable--prisoners. Public health experts have warned that incarcerated individuals "are at a special risk if infected" and are "less able to participate in proactive measures to keep themselves safe". Indeed, the conditions in BOP facilities provide a uniquely hospitable environment for Covid-19 to spread. The BOP's ability, or lack thereof to contain the spread of this highly transmissible disease is further detailed by the increase of total BOP cases from just two on March 20, 2020, to over 43,000 inmates as of today. One hundred and eighty (180) inmates or more have died as a result of contracting Covid-19. Further, an additional 4683 BOP staff members have also contracted Covid-19.

While incarcerated at USP Atwater, Mr. Kawai is unable to protect himself by following CDC's strict recommendations, including the most important recommendation to practice social distancing. Inmates live, work, eat, study and participate in activities in a congregate environment. There are many opportunities for Covid-19 to enter and spread rapidly throughout the prison as has been demonstrated by the continuously escalating number of infections and deaths in BOP facilities. It is impossible to use the general utilities such as phone, email, shower stalls, or laundry rooms, and practice social distancing at the same time.

There are two phone booths on each housing unit with the phones clustered next to each other. Email stations consists of five computers with each one has 11 inmates and all are

Shower stalls also poses greater risks because masks are not worn while inmates take their shower. The danger lies in the fact that heated water creates condensation that circulates the entire shower stalls. If an infected inmate sneeze or cough while taking a shower, it is more than likely that all other inmates using the shower stall at that time could become infected.

The pandemic has also made Mr. Kawai's incarceration more punitive than would otherwise have been without the Covid-19 pandemic and fear-factor. This is because the federal prisons as "prime candidates" for the spread of the virus, have had to impose onerous lockdowns and restrictions that have made the incarceration of prisoners far harsher than normal. See *United States v. Al Kassar*, 2020 U.S. Dist. Lexis 150558, 2020 W.L. 4813199, 41 K1 (SDNY Aug. 19 2020). With the severe conditions imposed by the concomitant lockdowns and restrictions that are necessary to ensure inmates safety, means that "the severity of Mr Kawai's sentence as a result of Covid-19 outbreak exceeds what the court anticipated at the time of sentencing." While insufficient in it's own, this factor also weighs in favor of a finding of extraordinary and Compelling reasons that warrants relief.

IV. New Scientific Data that reveals youth brain is not fully developed until age 25 Constitutes Extraordinary reasons for consideration of Compassionate Release.

In *Cruz v. United States*, 2018 U.S. Dist. Lexis 52924, Civ. No. 11-CV-187 (JCH) (Conn. March 29, 2018) the defendant committed two murders when he was 18 years and 20 weeks old. Cruz was convicted by a jury and sentenced to, inter alia, four concurrent terms of mandatory life without parole for two VCAR murders, RICO violation, and conspiracy to violate RICO.

Following the decision in *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), that ruled *Miller v. Alabama*, 133 L. Ed. 2d 407 (2012) retroactively applicable to cases on collateral review, the Second Circuit granted Cruz permission to file a second or successive 2255 motion. The District Court (Justice J. Hall), held an evidentiary hearing to determine the applicability of *Miller* to Cruz who was above the 18 years old threshold when the two VCAR murders were committed. At the hearing the court relied on expert witness Dr. Laurence Steinberg, testimony about the status of scientific research on adolescents brain development and Cruz testified about the trajectory of his life.

In its undertaking to address Cruz's argument that *Miller* applies to him as an 18 year old, the court accepted the new scientific research results of "adolescent brain underdevelopment" for 18 to 22 year old. See Appendix B (Summary of Dr. Steinberg's testimony). The court relied on both national consensus and scientific consensus regarding the underdevelopment of juveniles and adolescents brain, coupled with *Miller's* ruling that held: "We therefore hold that mandatory life without parole for those under the age of 18 at the time of their crimes violates the Eighth Amendment's prohibition on 'cruel and unusual punishments'" *Miller*, 567 U.S. at 465. In summing up its decision favorable to Cruz, the District Court held:

"The court does not infer by negative implication that the *Miller* Court also held that mandatory life without parole is necessary constitutional as long as it is applied to those over the age of 18. The *Miller* opinion contains no statement to that effect."

In *Miller*, it was unnecessary for the court to address the constitutionality of mandatory life imprisonment for those over the age of 18 because both defendants in *Miller* were 14 years old. *Miller*, 567 U.S. at 465. Courts have found extraordinary and compelling circumstances to exist when presented with applications by defendants who were

sentenced at a very young age, had spent substantial time in prison, had demonstrated rehabilitation during that time, and had identified certain defects and inequities in their sentence. See *United States v. Millian*, 2020 U.S. Dist. LEXIS 59955, 2020 WL 1674058, at *8 (S.D.N.Y. Apr 6, 2020). In *United States v. Briones*, 929 F.3d 1057 (9th Cir. 2019), the Ninth Circuit held, consistently with *Miller*, that "even when terribly serious and depraved crimes are at issue, courts take into account how children are different..." *Briones*, *supra*, at 1062. However, because at the time of Mr. Kawai's sentence he was faced with a mandatory life imprisonment term, the court's hand were tied in regards to consideration of any downward departure as it relate to Mr. Kawai's youthfulness. Also since the new scientific evidence on the underdevelopment of youths brain were unavailable. Thus, a significant mitigating fact was never considered before the sentence was imposed.

A case of relevance regarding youthfulness is *United States v. Rosario*, No. 99-CR-533, 12 CV-3432 (E.D.N.Y. 2019) (Justice Ross). In *Rosario*, the defendant, then seventeen-odd years old, killed four people during a blotched-robbery and disabled a fifth person. He was convicted and sentenced to mandatory life imprisonment. After the U.S. Supreme Court pronounced retroactivity to *Miller v. Alabama* *Rosario* filed a habeas corpus motion seeking relief from his mandatory life sentence. At the resentencing hearing Justice Ross noted that the case was the most serious case ever came before his bench. Nonetheless, Justice Ross acknowledged *Rosario*'s youthfulness at the time of the crime, and his rehabilitative efforts while in prison.

In assessing *Rosario*'s circumstances, Justice Ross held, "First, juveniles are more prone to take risks and less attuned to the potential consequences of their actions. Second, juveniles are more susceptible to negative influences and outside pressures, including peer pressure.

And, third the characteristics of juveniles is not as well formed as that of adults; indeed, the vast majority of adolescent offenders eventually age out of criminality. Miller, 567 U.S. at 472; Graham, 510 U.S. at 68. These conclusions are rooted not only in common sense, but also in neuroscience and social science.

And as explained by Dr. Laurence Steinberg, a professor of psychology at Temple University and an expert in adolescent cognitive development, recent research has established that the areas of the human brain dealing with "judgement and decision making" continue to mature well into our 20s. Miller, 567 U.S. at 472, n.5. Thus, due to neurobiological immaturity, even older adolescent "continue to demonstrate difficulties in exercising self-restraint, controlling impulses, considering future consequences, and making decisions independently from their peers." Decl. of Laurence Steinberg ¶ 12, Ex. E to Defendant's Rosario's Sentencing Memo, ECF No. 76-7 ("Steinberg Decl.") The Court thereafter resentenced Rosario to 27 years in prison:-- noting that, even 27 years was more than necessary to achieve the purpose of sentencing.

These factors, erode the justification for imposing life without opportunity for parole sentences, even when juveniles commit terrible crimes. Id. at 472. The characteristics of youth lessen moral culpability and thereby reduce the rationale for retribution. Id. The same characteristics that render juveniles less culpable than adults also make them less likely to be dissuaded by potential punishment, thereby minimizing the potential deterrent effect of a life sentence. Id. And permanent incapacitation is less likely to be required to protect society because juvenile offenders are more likely to shed the problematic attributes of youth as a result of ongoing neurological development. Id. at 472-73, 3.

Accordingly, if this court finds that "extraordinary and compelling" circumstances exist, it should consider Mr. Kawai's youthfulness at the time of the crimes and perform an analysis to a forward-looking assessment of Mr. Kawai's capacity for change, rather than only a backward-focused review of his criminal history.

V. Courts are granting discretionary relief in cases with murder due to Rehabilitation and Unwarranted Disparity

Numerous federal courts have reduced sentences of life without parole doled out for heinous and repeated criminal conduct, including multiple killings, where extraordinary and compelling circumstances have been found to justify release. See e.g., *United States v. Tidwell*, 2020 U.S. Dist. LEXIS 139434, 2020 WL 4504448, at *1 (E.D. Pa. Aug 5, 2020) (reducing life without parole to the time served after twenty-seven years for man convicted of two counts of murder among other conspiracy, drug, and weapons offenses); *United States v. Wildcat*, 2020 U.S. Dist. LEXIS 246297 (D. Idaho Dec. 31 2020) (reducing thirty year sentence to time served after a approximately 262 months for man convicted of two counts of second-degree murder).

Mr. Kawai's underlying offenses are undeniably serious. There is nothing he can say, but humble his heart in regrets and remorse for the affects of his conduct. However, this court can take into consideration, that Mr. Kawai was a very troubled, and immature adolescent who was prone to mental and emotional challenges. He is grievously saddened about his poor choices, and has taken full responsibility for his wrongdoing. Mr. Kawai request that the court consider his efforts at rehabilitation, incl his youthfulness when the underlying crimes were committed.

He has completed adult continuing education program which includes small business development, Moneysmart model program, Lean 6 SIGMA-LEAN Basics, VI. Building Trades, Comm. Drivers license theory, Mock Job fair, Victim Awareness, Insiderout Dad and psychology. See Appendix C (Program completed)

Mr. Kawai has engaged in healthy lifestyles programs in an effort to maintain his physical, emotional, and mental health, and has developed cognitive behavioral and coping skills over his 20 years incarcerated.

The prison door closed firmly behind Mr. Kawai in 2001. But he did not allow his imprisonment to deter him from improving his life. After the sentence was imposed, he struggled for a while in the peer-pressured environment filled with violence, fear, and discrimination, Nonetheless he made the effort to engage in self-improvement gearing toward rehabilitation and reentry. Mr. Kawai has spent more time in prison than the time he spent in society. The time he has served thus far has consumed a large part of his life. Twenty years is by any measure, represents a very substantial punishment that reflects the seriousness of his offenses, the need for general or specific deterrence, and public safety.

A sentence reduction would be sufficient and not greater than necessary to reflect the seriousness of the crimes. It is also a period of time that promotes respect for the law and provides just punishment for his offense. This conclusion is supported by the decision in *United States v. Gluzman*, No. 96 Cr. 323, 2020 U.S. Dist. LEXIS 13749 (SDNY July 23, 2020). Gluzman was convicted for murder in violation of 3 U.S.C. 1952(a)(3) and 18 U.S.C. 2261 after she and an accomplice killed her husband and dismembered his body in 63 pieces. Gluzman was sentenced to a term of life imprisonment. Gluzman filed a motion for compassionate release raising the Covid-19 outbreak and her efforts at rehabilitation. In the face of the government's objection, the court granted compassionate release, stating that Gluzman's 24 years

served in prison is sufficient to achieve the purposes outlined under 18 U.S.C. 3553(a)(1)-(2), and that a longer sentence would be "greater than necessary." In sum, the Court held:

Such a lengthy period of time reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense, it also affords adequate deterrence to criminal conduct, and that the length of Gluzman's sentence served to protect the public from further crimes and has provided Ms. Gluzman with significant opportunities for education and character growth opportunities that she has seized.

In *United States v. Rios*, 2020 U.S. Dist. LEXIS 239974 (D. Conn. Dec. 8, 2020), the district court reduced Rios's life sentence for murder to time served. Rios had served 26 years in prison at the time of his compassionate release motion. While in *United States v. Rodriguez*, 2020 U.S. Dist. LEXIS 181004 (S.D.N.Y. Sept. 30, 2020), the defendant was convicted for torturing and killing a government informant. Rodriguez filed a motion requesting compassionate release, which was granted and the sentence reduced to 30-years after considering the section 3553(a) factors.

Another case involving murder that was granted compassionate release is *United States v. Bass*, No. 97-80235-1, 2021 U.S. Dist. LEXIS 1719 (E.D. MI. Jan. 22, 2021). Bass was convicted at a death-penalty eligible trial for drug trafficking, and murder during and relation to a drug trafficking crime. The court sentenced Bass to two life imprisonment terms. Recently, Bass filed a Motion for Compassionate Release, and at that time he was incarcerated for 22 years. In granting the motion, the court considered Bass' extraordinary and compelling circumstances such as, the Covid-19 outbreak, his upbringing, youthfulness at the time of the crimes, and 3553(a) factors. The court concluded that Bass has already served a significant amount of time and reduced the sentence to

Bass is relevant and persuasive here. First, he was convicted after a death-penalty eligible trial, and did not accept responsibility nor received the three point reduction for acceptance of responsibility as Mr. Kawai. Second, Bass has served 22 years in prison. While Mr. Kawai has served 20 years. Third, Bass had committed his crimes at the same youthful age as Mr. Kawai's age when the crimes in this instant case were committed. It would seem inconceivable to hold that Bass' sentence of 22 years for two murder conviction was sufficient to meet the objectives of sentencing, but not Mr. Kawai's. See also, *United States v. Bryson*, 229 F.3d 425, 426 (2d cir. 2000) (held, "A court's duty is always to sentence the defendant as he stands before the court on the day of sentencing [and resentencing]").

"Harsh punishment can have a deterrent effect, but deterrence alone cannot justify disproportionate punishment. The inquiry focuses on whether a person deserves such punishment, not simply on whether punishment would serve a utilitarian goal." *Rummel*, 445 U.S. at 228 (Powell, J., dissenting). Mr. Kawai's 20 years he has already served is sufficient to afford adequate deterrence to criminal conduct.

Mr. Kawai's rehabilitation record is evidence that he is not a public safety risk. Mr. Kawai has also developed cognitive behavioral skills, and trade that will help him upon reentry. He had entered the system immature, mentally unstable, and with no sense of direction. Since the commission of his crimes, he has been living in a state of self-condemnation, a feeling of being a failure who have let down his family. Pain, regrets, shame and mental confusion had become Mr. Kawai's daily battles. The vicissitude of prison life began on rocky terrain for Mr. Kawai. Internally, he was crushed by his past choices and their effects, and burdened down with self-condemnation. Externally, he had to face all that came with prison life: peer pressure, cultural discrimination

and racism, Worst Mr. Kawai had to deal with these issues with a skewed way of seeing the world, and life in general.

It took quite some time before Mr Kawai was able to change his way of thinking, and develop cognitive behavioral skills and communication skills. He establishes goals and pursues them. Mr. Kawai learned a great deal from older matured prisoners who were willing to mentor him.

In *Kimbrough v. United States*, 552 U.S. 85, 91 (2007), the Supreme Court emphasizes that unwarranted disparities between offenders and the concern that such disparities would result in imposing sentences "greater than necessary" to achieve the objectives of sentencing -- was an important factor for sentencing courts to consider.

According to the Overview of Federal Criminal Cases published by the United States Sentencing Commission for the fiscal year of 2019, the average sentence imposed for murder is 255 months. U.S. Sentencing Commission, Overview of Federal Criminal Cases, Fiscal Year 2019, at 9 (2020). Though Mr. Kawai has been sentenced to heinous crimes, he has spent more than half of his life in prison. This is significant punishment for his violent crimes, depriving him of "family life" and opportunities to be productive in society 20 odd years after he has matured from an immature and misguided youth. See *United States v. Marshall*, 736 F.3d 492, 503 (6th Cir 2013) (noting that "a defendant's youth, with its varying characteristics of immaturity, vulnerability, and less-than-fully developed character, is always a factor in determining and appropriate sentence. It is plain that children are constitutionally different from adults not because they are under 18 years of age, but because they have not attained the level of maturity that characterizes adults' mentation") (Lawson, J., concurring) (quoting *Miller v. Alabama*, 576 U.S. 460, 471 (2012)).

In a speech to Italian prison guards, prison chaplains, and officials from the Ministry of Justice, Pope Francis states: "If you close hope in a prison cell, there is no hope for society. While protecting its citizens, every society must also seek ways to rehabilitate those who have committed crimes and find ways to help them to make positive contributions to society."

For all the foregoing reason, Mr Kawai respectfully request that the new scientific evidence be considered about his youthfulness when the crime was committed, and taken in conjunction with the other issues raised herein, to grant a second look at his case and a reduction in his sentenced, whereas, he could be released or paroled earlier.

Respectfully submitted on 29 Jan 21

By: Damien Kawai

Damien Kawai

Administrative Remedy Number: [REDACTED]

Part B - Response

This is in response to your Administrative Remedy received in this office April 15, 2021, wherein you are requesting the Bureau of Prisons make a motion for a sentence reduction for you pursuant to the extraordinary or compelling circumstances element codified in 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g). Specifically, in your request you note you believe you are a "good candidate for compassionate release" based on the COVID-19 pandemic, your age at the time the crime was committed, that you have served a lengthy term of imprisonment, efforts you've made at rehabilitation and your belief you are not a public safety risk.

The Bureau of Prisons (BOP) did review your request for a Reduction in Sentence based on the Section 7 Factors enumerated in Program Statement 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g). A review of the nature and circumstances of your offense include Attempted Unpremeditated Murder and Larceny of Personal Property. Your program participation is considered good and average living skills. You have incident reports with the most recent occurring in February 2019. A review of your personal history in your Presentence Investigative Report revealed you are unmarried and have no children. You were committed to the custody of the BOP on May 9, 2012. You were sentenced to Life. You are ineligible for the First Step Acts credit. Releasing you prior to the completion of your sentence would greatly minimize the severity of the offense. The Bureau has considered the above factors and determined that your release would pose a danger to the safety of others or the community.

Additionally, the BOP is taking extraordinary measures to contain the spread of COVID-19 and treat any affected inmates. We recognize you, like all of us, have legitimate concerns and fears about the spread and effects of the virus. However, your concern about being potentially exposed to, or possibly contracting COVID-19 does not currently warrant an early release from your sentence.

Accordingly, your request is denied.

If you are dissatisfied with this response, you may appeal to the Regional Director, Western Regional Office, Federal Bureau of Prisons, 7338 Shoreline Drive, Stockton, CA 95219. Your appeal must be received in the Regional Director's Office within 20 days of the date of this response.

[REDACTED] _____
Date 5/25/2021

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

Name: Kawai, Damien G [REDACTED] 5A Usp Alhambra
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST

I am requesting of the Warden to file a Motion pursuant to 18 U.S.C. §§ 3582(c)(1)(A), 4205(g) and the First Step Act on my behalf for Compassionate Release, Reduction in Sentence and/or Early Parole in light of § 4205(g). I believe I am a good candidate for the following Reasons: 1) COVID-19 outbreak in the prison, that courts have deemed "extraordinary and compelling" circumstances; (2) My age (youthfulness) at the time the crime was committed; (3) the lengthy term of imprisonment I have already served; (4) efforts at Rehabilitation, and (5) I am not a public safety risk. All the extraordinary and compelling circumstances listed herein were not reasonably foreseen by the court at sentencing. See Attached for Release Plan.

12 Apr 2021
DATE

[REDACTED SIGNATURE]

SIGNATURE OF REQUESTER

Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: [REDACTED]

CASE NUMBER: _____

Part C- RECEIPT

Turn to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)



**Individualized Needs Plan - Program Review (Inmate Copy)**

SEQUENCE: 01759085

Dept. of Justice / Federal Bureau of Prisons

Team Date: 11-04-2021

Plan is for inmate: KAWAI, DAMIEN G

Facility: ATW ATWATER USP
 Name: KAWAI, DAMIEN G
 Register No.: [REDACTED]
 Age: [REDACTED]
 Date of Birth: [REDACTED]

Proj. Rel. Date: 11-10-2031
 Proj. Rel. Mthd: TWO THIRDS
 DNA Status: [REDACTED]

Detainers

Detaining Agency	Remarks
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NO DETAINER

Current Work Assignments

Fac	Assignment	Description	Start
ATW	CODE PART	CODE PROGRAM	06-07-2021

Current Education Information

Fac	Assignment	Description	Start
ATW	ESL HAS	ENGLISH PROFICIENT	07-25-2012
ATW	GED HAS	COMPLETED GED OR HS DIPLOMA	07-25-2012

Education Courses

SubFac	Action	Description	Start	Stop	
ATW	CHG	C	R6-CBT FOR GAMBLING	05-17-2021	05-25-2021
ATW		C	R3-CONSUMER MATH PAYING TAXES	04-01-2021	04-30-2021
ATW		C	R6-BE YOUR BEST SHU	03-01-2021	03-30-2021
ATW		C	R3-CONSUMER MATH, HOUSEHOLD	03-01-2021	03-30-2021
ATW		C	R2-MOCK JOB FAIR USP	03-27-2020	03-27-2020
ATW		C	R6-BEADING 3 USP	12-21-2019	03-07-2020
ATW		C	R6-CROCHET 3 USP	12-20-2019	03-06-2020
ATW		C	R6-CROCHET 2 CLASS USP	09-28-2019	12-14-2019
ATW		C	R6-BEADING 2 USP	09-28-2019	09-28-2019
ATW		C	R6-DRAWING 2 USP	09-27-2019	12-13-2019
ATW		C	R6-BLACK HOLES EXPLAINED	07-01-2019	09-30-2019
ATW		C	R6-TGC MEDICAL MYTHS	07-01-2019	09-16-2019
ATW		C	R6-TGC HOW WE LEARN	07-01-2019	09-16-2019
ATW		C	R6-TGC YOUR DECEPTIVE MIND	07-01-2019	09-16-2019
ATW		C	R6-TGC CHAOS THEORY	07-01-2019	09-18-2019
ATW		C	R2-VT BUILDING TRADES	07-08-2019	08-29-2019
ATW		C	R2-COMM DRIVERS LICENSE THEORY	05-01-2019	06-29-2019
ATW		C	R6-TGC ORIGINS OF LIFE USP	04-01-2019	06-29-2019
ATW		C	R6-TGC STRATEGIC THINKING	04-01-2019	06-08-2019
ATW		C	BEGINNERS CROCHET CLASS USP	12-30-2018	03-23-2019
ATW		C	R2-INTRODUCTION RPP USP	01-26-2019	02-09-2019
ATW		C	R6-TGC BRAIN FITNESS	10-06-2018	12-28-2018
ATW		C	R6-TGC PSYCHOLOGY	07-14-2018	09-30-2018
ATW		C	R6-IP-INSIDEOUT DAD	07-09-2018	07-13-2018
ATW		C	R6-TGC INFLUENCE	10-02-2017	03-31-2018
ATW		C	R2-LEAN 6 SIGMA-LEAN BASICS	10-20-2016	10-21-2016
ATW		C	R1-ANATOMY 1, USP	08-29-2016	10-17-2016
ATW		C	R3-MONEYSMART MODEL PROGRAM	05-11-2016	08-12-2016
ATW		C	R4-RAC INTERVIEW	05-06-2016	07-18-2016
ATW		C	R1-DIABETES PREVENTION USP	04-27-2016	06-22-2016
ATW		C	R2-SMALL BUSINESS DEVELOPMENT	11-03-2015	01-09-2016
ATW		C	CULTURAL STUDIES 1	04-13-2015	06-20-2015
ATW		C	THE GREAT COURSES - INVESTMENT	04-11-2015	06-20-2015
ATW		C	THE GREAT COURSES - INFLUENCE	04-11-2015	06-20-2015
ATW		C	VICTIM AWARENESS PGM	07-17-2013	08-14-2013
ATW		C	ACE ASTRONOMY	03-02-2013	05-19-2013
ATW		C	CULTURAL STUDIES 1	03-05-2013	05-20-2013

**Individualized Needs Plan - Program Review (Inmate Copy)**

SEQUENCE: 01759085

Dept. of Justice / Federal Bureau of Prisons

Team Date: 11-04-2021

Plan is for inmate: KAWAI, DAMIEN G [REDACTED]

SubFac	Action	Description	Start	Stop
ATW	C	ACE PAINLESS ALGEBRA	03-18-2013	04-07-2013
ATW	C	ACE PAINLESS MATH WORD	03-31-2013	04-07-2013
ATW	C	ACE SMALL BUSINESS DEV	03-10-2013	03-26-2013

Discipline History (Last 6 months)

Hearing Date	Prohibited Acts
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** NO INCIDENT REPORTS FOUND IN LAST 6 MONTHS **

Current Care Assignments

Assignment	Description	Start
CARE1	HEALTHY OR SIMPLE CHRONIC CARE	06-12-2012
[REDACTED]	[REDACTED]	06-24-2012

Current Medical Duty Status Assignments

Assignment	Description	Start
[REDACTED]	[REDACTED]	12-28-2020
NO PAPER	NO PAPER MEDICAL RECORD	06-20-2012
REG DUTY	NO MEDICAL RESTR-REGULAR DUTY	06-14-2012
YES F/S	CLEARED FOR FOOD SERVICE	06-14-2012

Current Drug Assignments

Assignment	Description	Start
ED COMP	DRUG EDUCATION COMPLETE	08-21-2013
NR COMP	NRES DRUG TMT/COMPLETE	03-14-2014

FRP Payment Plan

Most Recent Payment Plan

** NO FRP DETAILS **

FRP Deposits

Trust Fund Deposits - Past 6 months: \$ N/A

Payments commensurate ? N/A

New Payment Plan: ** No data **

Current FSA Assignments

Assignment	Description	Start
FTC INELIG	FTC-INELIGIBLE-REVIEWED	12-06-2019
N-ANGER Y	NEED - ANGER/HOSTILITY YES	09-15-2021
N-ANTISO Y	NEED - ANTISOCIAL PEERS YES	10-22-2021
N-COGNTV Y	NEED - COGNITIONS YES	10-25-2021
N-DYSLEX R	NEED - DYSLEXIA REFUSE	05-28-2021
N-EDUC N	NEED - EDUCATION NO	05-28-2021
N-FIN PV N	NEED - FINANCE/POVERTY NO	05-28-2021
N-FM/PAR N	NEED - FAMILY/PARENTING NO	09-15-2021
N-M HLTH N	NEED - MENTAL HEALTH NO	05-28-2021
N-MEDICL N	NEED - MEDICAL NO	05-28-2021
N-RLF Y	NEED - REC/LEISURE/FITNESS YES	05-28-2021
N-SUB AB Y	NEED - SUBSTANCE ABUSE YES	05-28-2021
N-TRAUMA Y	NEED - TRAUMA YES	10-22-2021
N-WORK Y	NEED - WORK YES	05-28-2021
R-HI	HIGH RISK RECIDIVISM LEVEL	11-04-2021

Progress since last review

(*HAS OBTAINED HIS GED/HS DIPLOMA*)

CHALLENGE PROGRAM PARTICIPANT

Programming Progress: Average; Due to Covid-19 classes were not available.

You did follow previous recommendations. Since your last program review you have completed multiple classes and enrolled in the USP Atwater Challenge Program.



Individualized Needs Plan - Program Review (Inmate Copy)

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Plan is for inmate: KAWAI, DAMIEN G [REDACTED]

Behavior/Disciplinary Conduct Progress: Average; You have been clear conduct since your last DHO hearing on 02-26-2019. Obtaining incident reports will NEGATIVELY affect the AMOUNT OF HALFWAY HOUSE RECOMMENDATION and recommendation for transfer (if eligible).

Next Program Review Goals

SUBMIT A COP-OUT TO ROP FACILITATOR TO ENROLL IN AND COMPLETE THE 3 DAY ROP (RELEASE ORIENTATION PROGRAM), DESIGNED TO SHARE INFORMATION AND RESOURCES WITH INMATES AS THEY PREPARE TO RELEASE OR IF THEIR SENTENCE IS REDUCED AND THEY HAVE A RELEASE DATE THAT IS SOON), SUBMIT A REQUEST TO REENTRY AFFAIRS COORDINATOR [REDACTED] BY YOUR NEXT SCHEDULED PROGRAM REVIEW.

You have a Social Security Card in your central file.

By Next Team (Short Term Goal): Recommend you obtain an application and submit for your Original (Birth Certificate) Card by your next scheduled program review.

Short Term Goal: Successfully progress towards the completion of the Challenge Program by your next team.

BY NEXT TEAM (SHORT TERM GOAL): (IF ELIGIBLE FOR FUTURE HALFWAY HOUSE) RECOMMEND YOU MAINTAIN CLEAR CONDUCT, HAVE COMPLETED YOUR GED/OR OBTAINED HIS HIGH SCHOOL DIPLOMA, COMPLETED RECOMMENDED RELEASE CLASSES SUCH AS ALL SIX CATEGORIES OF RELEASE PREPARATION PROGRAM (RPP) COURSES (HEALTH AND NUTRITION) (EMPLOYMENT) (PERSONAL FINANCE) (INFORMATION/COMMUNITY RESOURCES) (RELEASE REQUIREMENTS AND PROCEDURES) (PERSONAL GROWTH AND DEVELOPMENT), MOCK JOB FAIR, OBTAIN A SOCIAL SECURITY CARD AND BIRTH CERTIFICATE, COMPLETES THE 3 DAY ROP (RELEASE ORIENTATION PROGRAM), DESIGNED TO SHARE INFORMATION AND RESOURCES WITH INMATES AS THEY PREPARE TO RELEASE, AND SAVE A SUBSTANTIAL AMOUNT OF MONEY TOWARDS HIS PRE-RELEASE ACCOUNT (FOR YOUR TRANSITION TO THE HALFWAY HOUSE.) OBTAINING INCIDENT REPORTS WILL AFFECT THE AMOUNT HALFWAY HOUSE PLACEMENT YOU ARE RECOMMENDED FOR. SUBMIT A COP-OUT TO EDUCATION STAFF TO ENROLL IN THE RPP COURSES AND MOCK JOB FAIR. SUBMIT A COP-OUT TO ROP FACILITATOR, REENTRY AFFAIRS COORDINATOR [REDACTED] BY YOUR NEXT SCHEDULED PROGRAM REVIEW.

By Next Team (Short Term Goal): The unit team is recommending that you strive to maintain clear conduct until your next scheduled program review.

By Next Team (Short Term Goal): Recommend you enroll in Anger Management (First Step Act course offering) to assist in management of your anger.

By Next Team (Short Term Goal): You are encouraged to maintain a healthy lifestyle through proper nutrition and regular exercise. Start utilizing your time and participate in programs. Walk/jog the track on the recreation yard 3X a week. Enroll in the USP Atwater nutrition program for healthy living and maintain a health/ exercise/ wellness program (5X) a week. Enroll in the Stronger Abs & Back course by your next program review. Send a copout to the Recreation Supervisor, in Recreation requesting to be placed on the waiting list.

Long Term Goals

Long Term Goal: Successfully complete the Challenge Program by 10/2022.

RRC/HC Placement

No.

Management decision - Life Sentence..

Consideration has been given for Five Factor Review (Second Chance Act):

- Facility Resources
- Offense
- Prisoner
- Court Statement
- Sentencing Commission

Comments

FTC INELIG

COMPLETE THE 3 DAY ROP (RELEASE ORIENTATION PROGRAM)

Long Term Goal:

I recommend you to complete all Release Preparation Program (RPP) courses by release:

Health and Nutrition, Employment, Personal Finance, Community Resources, Personal Growth Development. Also complete the Mock Job Fair, and ROP by 10/2022.



Individualized Needs Plan - Program Review (Inmate Copy)

SEQUENCE: 01759085

Dept. of Justice / Federal Bureau of Prisons

Team Date: 11-04-2021

Plan is for inmate: KAWAI, DAMIEN G [REDACTED]

Name: KAWAI, DAMIEN G
Register No.: [REDACTED]
Age: [REDACTED]
Date of Birth: [REDACTED]

DNA Status: [REDACTED]

Inmate (KAWAI, DAMIEN G. Register No.: 99422-555)

Date

Unit Manager / Chairperson

Case Manager

Date

Date