

Damien Kawai

Reg. No. [REDACTED]

United States Penitentiary

P.O. Box 019001

Atwater, CA 95301

IN THE COURT OF APPEALS  
FOR THE AIR FORCE

UNITED STATES OF AMERICA,	)	
Plaintiff,	)	Case No.
	)	
v.	)	
	)	
DAMIEN KAWAI,	)	
Defendant.	)	
_____	)	

WRIT OF MANDAMUS PURSUANT TO  
THE ALL WRITS ACT 28 U.S.C. 1651(a)

COMES NOW Defendant Damien Kawai ("Kawai"), appearing pro se, and files this Motion for a Writ of Mandamus, 28 U.S.C. § 1651(a) for a Reduction in Sentence based on new scientific and mitigating evidence on brain development for adolescent that was not available when Kawai was original sentenced. Kawai submits that this Court can enter an order to reduce his sentence pursuant to the All Writs Act, 28 U.S.C. § 1651(a). The grounds for this motion are: (1) the U.S. Sentencing

Commission's Report on Youthful Offenders in the federal system; (2) Miller's neurological development, decision-making, and reform factors; (3) Kawai's rehabilitation efforts, and a compiled list of similarly situated defendants in federal cases who were convicted of multiple counts of murder, yet received reduction in sentence due in part, to their age at the time of the crimes, and the new scientific neurological evidence.

#### PRELIMINARY STATEMENT

As a preliminary matter, Kawai respectfully requests that this Court be mindful that pro se complaints are to be held "to less stringent standards than formal pleadings drafted by lawyer," and should therefore be liberally construed. See *Estelle v. Gamble*, 429 U.S. 97 (1976); *Haines v. Kerner*, 404 U.S. 519 (1972) (same).

#### I. PROCEDURAL AND FACTUAL BACKGROUND

Defendant Damien Kawai was convicted after a General Court Martial for Premeditated Murder, Larceny of Personal property, and Impede Investigation. He was sentenced to a term of life imprisonment with the possibility of parole. Mr. Kawai filed a timely Notice of Appeal and pursued an appeal. The judgment was thereby affirmed. Currently, Mr. Kawai is housed at United States Penitentiary, and has served approximately 20 years of the imposed sentence. He has only been granted a parole hearing once since his sentence was imposed, which was

held in late 2021.

## II. LEGAL STANDARD

The Supreme Court and all courts established by act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdiction and agreeable to the usage and principles of law. 28 U.S.C. § 1651(a). See also, *Loving v. United States*, 62 M.J. 235, 246 (C.A.A.F. 2005). The five commonly recognized writs are: (1) the writ of habeas corpus; (2) the writ of mandamus; (3) the writ of coram nobis; (4) the writ of prohibition and (5) the writ of certiorari. In order to prevail on a petition for a writ of mandamus, a petitioner must show that (1) there is no other adequate means to obtain relief; (2) the right to issuance of the writ is clear and indisputable; and (3) the issuance of the writ is appropriate under the circumstances. The United States Court of Appeals for the Air Force is empowered to issue extraordinary writ under the All Writs Act, 28 U.S.C. § 1651(a), or to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.

## III. DISCUSSION

### A. The U.S. Sentencing Commission's Report on Youthful Offenders in the Federal System

Effective November 2010, the sentencing commission

enacted Amendment 739 that held, "Age (including youth) may be relevant in determining whether a departure is warranted, if considerations based on age, individually or in combination with other offender characteristics, are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines." See U.S. Sent'G Comm'N, Guidelines Manual: Amendment 739, <https://guidelines.ussc.gov/ac/739> (emphasis added).

However, in 2017, the United States Sentencing Commission produced its first report on "youthful offenders." U.S. Sent'G Comm'N, Youthful Offenders In The Federal System, *supra*, at 2.

See Appendix B (United States Sentencing Commission 2017 Report). The commission explained that brains continue to develop until approximately age twenty-five, and that developmental differences relevant to sentencing generally persists until around that age. *Id.* at 5.

In yet another example, California now grants a "youth offender parole hearing" to one who received a maximum (including life) sentence if that person committed the offense at ages eighteen to twenty-five. See Cal. Pen. Code § 3051. Most notable, ever since the new neurological scientific evidence regarding adolescents brain development came to light, numerous states has changed their laws for defendants who committed murder between the ages 18 to 25, to allow defendants to get reduction in life without parole sentences. As the Supreme Court has held in *Miller*, characteristics "of transient rashness, proclivity for risk, and inability to assess consequences" among youth, "both lessened a child's 'moral culpability' and enhanced the prospect that as the

years go by and neurological development occurs, his 'deficiencies will be reformed.'" 567 U.S. at 472-73. (quoting *Graham v. Florida*, 560 U.S. 48, 68 (2010)); James C. Howell et al., *Bulletin 5: Young Offenders and an Effective Response in the Juvenile and Adult Justice Systems: what Happens, What Should Happen, and What We Need to Know* 18 (2013), <https://www.ncjrs.gov/pdffiles1/nij/grants/242935.pdf> ("Hence adolescents and young adults simply do not have the physiological capacity of adults over age 25 to exercise judgment to control impulses.") (last visited Aug. 18, 2020).

While the Miller categorical ban on mandatory sentences for life without parole for juveniles does not technically apply to defendants in their low to mid-twenties, research demonstrates that such individuals still experience many of the same behavioral, psychological, and neurological development factors that affect the ability to understand risks and consequences and to make informed, mature decisions. Thus, without a categorical ban, numerous district courts have found arrest at a young age, particularly when accompanied by a minor prior criminal history and subsequent rehabilitation, favors sentence reduction in most cases. See *United States v. Scott*, 2020 U.S. Dist. LEXIS 84313, \*9 (D. Md. May 13, 2020) (finding defendant's age of 23 and lack of prior criminal record favors relief); *United States v. Bryant*, 2020 U.S. Dist. LEXIS 75681, \*9-10 (D. Md. Apr 30, 2020) (noting relative youth-24 years old-and minimal prior criminal record favors relief).

Mr. Kawai was 18 years old when he committed the underlying conduct, which according to the scientifically

established and verified research, means the regions of his brain that govern impulse control, planning, and risk avoidance were underdeveloped. Equally important here, is that at the original sentencing proceeding, this neurological age-factor was never considered as a mitigating factor. See e.g., *United States v. Cruz*, 2021 U.S. Dist. LEXIS 68857. See *United States v. Maumau*, 2020 U.S. Dist. LEXIS 28392 (D. Utah Feb. 18, 2020) ("Based on the above, the court concludes that a combination of factors-Mr. Maumau's young age at the time of the sentence, and the incredible length of the mandatory sentence imposed, and the fact that, if sentenced today, he would not be subject to such long term of imprisonment-established an extraordinary and compelling reason to reduce Mr. Maumau's sentence.").

B. New Scientific Data that reveals that Adolescents Brain is not Fully Developed until age 25 Constitutes Extraordinary Reason for the Writ to be Granted for Reduction in Sentence

After Kawai was sentenced, new scientific evidence came to light that demonstrated that adolescents brains are not fully developed until age 25. This is called the Miller's Neurological Development, Decision-Making, and Reform Factors. This recent studies on the development of the human brain concluded that human brain development may not be completed until the age of twenty-five.

This research result was relied on by the U.S. Supreme Court in *Miller v. Alabama*, 132 S. Ct. 2468 (2012), and

thereafter, used to consider reduction in sentence for defendants who committed their crime of murder before age 25.

In this instant case, Kawai was 18 years old when the underlying crime was committed. His brain was no different from a person who was 17 or 18 years old. Thereby, his decision-making process was similar to that of a 17 or 18 year old. After the First Step Act was enacted, numerous courts began to apply the Miller factors to defendants who were between age 18 to 25 years old when they committed their crimes, as mitigating factors for sentencing purposes. For example, in *United States v. Johnson*, No. 05-cr-00167-WHA-5, 2021 U.S. Dist. LEXIS 209833 (N.D. Cal. Oct. 30, 2021), the court held, "[T]his order finds that Mr. Johnson's extraordinary rehabilitation while incarcerated, in combination with broader recognition of how young brains differs from adult brains, constitutes extraordinary and compelling reasons to reconsider his sentence." *Id.*

Kawai is not suggesting that his age and relative youth at the time of the offense should excuse his behavior. Rather, Mr. Kawai is only asking the court to exercise its authority to revisit his sentence and to consider his age at the time of the offense based on newly discovered neurological facts that were not available when he was sentenced. This new scientific evidence is indeed an "extraordinary" ground that would allow the court to better understand Kawai's then impetuous behavior. As argued above, this mitigating factor could not have been considered at Kawai's original sentencing, but can be considered now. Numerous cases cited herein has

demonstrated that federal judges agrees with this position and reduced countless defendants sentences from life imprisonment to terms not exceeding 30 years for murders committed when defendants were relatively young (between 18 to 25 years old).

Thereby, consistent with science, this court can consider Kawai's Miller Neurological Development, Decision-making, and Reform factors as to whether such constitutes an extraordinary reason to reduce his sentence. While the original sentencing order imposed a life sentence with the possibility of parole, the greater recognition of differences in young brains, along with Kawai's exemplary rehabilitation, means that today, this court is in a position to better set a "graduated and proportioned" punishment for Mr. Kawai.

It is without dispute that since *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016), pronounced *Miller v. Alabama* retroactive, numerous courts has granted reduction in sentence in cases involving murder committed when the defendants were between the ages of 18 to 25. See e.g., *United States v. Rosario*, 99-CR-533 (ARR), 2018 U.S. Dist. LEXIS 134657 (S.D.N.Y. 2018).

Rosario shot and killed four unarmed people and wounded a fifth. After the Supreme Court ruled in *Montgomery v. Louisiana* declaring *Miller* retroactively applicable to cases on collateral review, Rosario moved the sentencing court upon motion for habeas relief. In considering the motion, District Court Judge Ross stated, "This is one of the most heinous crimes I have encountered in almost 25 years as a district court judge." Judge Ross further noted that although the



crimes were serious, there are several aspects of Rosario's role in the offense that somewhat mitigate his culpability, particularly in light of his youth-he was 17 years old at the time of the offense. Judge Ross reduced Rosario multiple-life sentences to 28 years.

In *United States v. Jefferson*, No. 97-276 (MJD), 2015 U.S. Dist. LEXIS 13635 (D. Min.), Jefferson was convicted of the murder of five children. He was sixteen years old at the time the murders were committed. He was sentenced to five life sentences, plus 488 months to run concurrently with the life sentences. After the Supreme Court ruled in *Miller v. Alabama*, 132 S. Ct. 2455 (2012), Jefferson moves the court for relief in light of Miller's Neurological Development, Decision-making, and Reform factors. After considering the Miller factors, the court reduced Jefferson's five life sentences to 50 years. The Supreme Court reaffirmed the principle that "incorrigibility is inconsistent with youth." *Miller v. Alabama*, 132 S. Ct. 2455, 2465 (2012). In other words, "[i]mmaturity at the time of the offense is not an inconsequential consideration." *Gall*, 162 L. Ed. 2d at 462.

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. Nevertheless, federal courts have found extraordinary reasons to reduce life sentences for 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 sentences. 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. Because at the time *Kawai* was sentenced, this new scientific neurological evidence was not available, the sentencing court was without the benefit of considering such mitigating factor. It is without dispute that countless sentences are handed down by Military Justices for murder, and such sentences are much lesser than life with the possibility of parole. For example, see *United States v. Edwards*, No. ACM 39696, 2021 CCA lexis 106 (U.S. A.F.C.C.A. March, 10, 2021). *Edwards* was convicted of murder of another Airman by means of stabbing him, in violation of Article 18 U.C.M.J., 10 U.S.C. § 918. *Edwards* was sentenced to a dishonorable discharged and confinement for 35 years; *United States v. Williams*, 55 M.J. 302, 2021 CAAF LEXIS 977 (C.A.A.F. Aug. 20, 2001) (convicted of battery upon a child, false swearing, and contrary to his pleas, murder and assault consummated by a battery--and sentenced to confinement of 27 years); *United States v. JACOBS*, 9 m.j. 794 (convicted of murder and sentenced to 10 years confinement at hard labor); *United States v. Hutchins*, 2013 CAAF LEXIS 642 (Sergeant *Hutchins* was convicted of murder, conspiracy to commit larceny, and obstruction of justice, and sentenced to 11 years); and *United States v. Day*, 2022 CCA LEXIS 5 (convicted of murder, attempted premeditated murder, and solicitation to

commit murder. Day was sentenced to confinement for 10 years). These military cases demonstrated that gross disparities exists among cases with similar circumstances, that can be remedied by this writ.

Kawai's underlying crimes are the most serious of society's atrocities. However, the man he has become today is not the same person he was over two decades ago. In addition, the life sentence Kawai is serving not only exceeds today's generally imposed penalty, but it is longer than sentences imposed today for murder, or even multiple counts of murder. Thus, in the compassionate release context, courts consider national disparities between the movant's sentence and the recent sentences of similarly situated individuals. And, while no two cases are identical, courts have satisfied themselves that reasonably comparable underlying conduct that is punished differently serves as reason to grant relief.

For example, there are numerous military cases with murder in which defendants were sentence to a number of years rather than life with the possibility of parole. Life with the possibility of parole allows defendants to undergo the unfairness and the parole commission's board, unexplained delays to hold parole hearings (as in Kawai's case), and disregard for defendant's sincere efforts at rehabilitation.

\* [explain parole hearing errors/delays etc....].

On the federal court level, judges in the Southern/Eastern District of New York and District of Maryland have reduced life sentences for multiple defendants who were sentenced pursuant to the § 2A1.1 cross-reference for murder and later moved for sentence reductions. For example a

few months ago, in United States v. Babb, No. ELH-04-0190, ECF No. 275, at \*24-25, Judge Hollander in the District of Maryland reducing a defendant's life sentence that was imposed for murder on motion for compassionate release. From at least 2002 to 2004, Mr. Babb was involved in a drug trafficking conspiracy, during the course of which two individuals were murdered. Id. at \*3. At the time of the arrest of one of Mr. Babb's codefendants, two bodies were found in a car trunk, wrapped in bedding, plastic bags and a shower curtain liner item which was determined came from Mr. Babb's residence in North Carolina. Mr. Babb was convicted of all counts except for the two § 924(j) murders. However, at sentencing the court found that "at minimum, Mr. Babb was an aider and abettor to the [] murders" and applied the murder cross-reference under U.S.S.G. § 2A1.1, sentencing Babb to life imprisonment plus 60 months. Id. at \*7-8.

Citing a litany of recent factually similar cases with significantly lower sentences, as well as statistical information showing that the average sentence for murder in fiscal year 2018 both, nationally and in the Fourth Circuit were 291 months and 327 months, respectively, Judge Hollander held that Mr. Babb "readily satisfies the 'extraordinary and compelling' prong of the analysis" and reduced his sentence from life imprisonment plus 60 months to 30 years. id. at \*24-25, \*38-39.

In another case, Judge Hollander also inquired whether a defendant convicted of a drug conspiracy resulting in a shooting would receive as a sentence today. United States v. Stockton, 2021 WL 10603347, at \*14 (D. Md. Mar 17, 2021).

There, Judge Hollander found a recent case, *United States v. Antoine*, No. PWG-19--0140 (D. Md. Jul 8, 2020), in which "the defendant was involved in a drug trafficking organization in Baltimore, and confessed to the intentional shooting and killing of an individual in relation to the drug conspiracy" to be instructive. *Stockton*, 2021 WL 1060347, at \*1.

Judge Hollander observed that, in *Antoine*, although "the defendant was the shooter [,]...the government ha[d] agreed to a term of imprisonment ranging between 20 and 25 years." *Id.* Judge Hollander found the imprisonment range of 20 and 25 years in the plea agreement "a good indicator of the government's perspective" on what is an appropriate sentence for such a crime today. *Id.* at \*14 n.10. And, Judge Hollander granted compassionate release on this ground. See also, *United States v. Gray*, No. CCB-95-0364, ECF No. 201 (D. Md. May 10, 2021), in which Judge Blake reduced Gray's life sentence for murder to time served. Describing Mr. Gray's offense as "chilling," Judge Blake explained that he, "at the behest of a drug dealer planned and committed what amounted to the execution of Jamie Lee Walker." Mr. Gray, together with two other individuals, located and "ambushed" Walker and two other men. At least 29 shots were fired at the three victims, "Walker was killed in the gunfire, and the two men with him were seriously injured." Nevertheless, Judge Blake noted that under the advisory Guidelines system today, and numerous changes in the sentencing landscape, a reduction in sentence was warranted.

In addition to falling in line with recent sentence reductions, a time-served sentence would be in keeping with

sentences imposed in just as serious (or more serious) cases heard in the first instance today. For example, in United States v. Brandon Bazemore, No. CCB-16-0597, Judge Blake sentenced the defendant, who admitted to participating in a murder as part of his membership in a violent drug trafficking organization called "Trained to Go" based in West Baltimore to 25 years of incarceration, which was later reduced to slightly less than 24 years. See Plea Agreement, ECF No. 368 ("Bazemore and other [Trained to Go] members exited the van and fired dozens of rounds at [the victim].").

Co-defendants in that case, who were convicted following a jury trial of knowingly joining the organization responsible for eight murders, received sentences ranging from 25 to 35 years, although they faced a maximum of life. In United States v. Floyd, No. CCB-16-0597, Judge Blake sentenced the defendant, who was convicted following a jury trial of joining a racketeering conspiracy that involved a 2016 murder, to 30 years of incarceration. See Judgment, ECF No. 691.

In United States v. Brizuela, No. JKB-16-0259, Judge Bredar sentenced the defendant to 32 years in prison for his participation in a violent racketeering conspiracy, including three murders, two attempted murders, and a kidnapping. See Plea Agreement, ECF No. 691. Codefendants in that case who each admitted to participating in a brutal first-degree murder in which the bodies of three victims, identified as Victims 13, 14, and 18, were dismembered received sentences ranging from 25 to 30 years.

In another case, Judge Russell sentenced Keenan Lawson to 23 years despite admitting to killing an innocent bystander

and to shooting two other individuals in attempts to murder them. See *United States v. Alewine, et. al.*, No. GLR-16-0453, Plea Agreement, ECF No. 604. In *United States v. Molina-Valldarez, et al.*, No. RWT-09-0471, Judge Titus sentenced defendants Mario Molina-Valladarez and Rafael Omar Villegas Martinez to 24.4 and 23 years, respectively, for personally killing a victim in a gang-related murder or aiding and abetting the same. See Plea Agreements, ECF Nos. 240 & 249. Judge Titus imposed a sentence of 22 years for co-defendant Yasud Flores, even though he participated in the kidnapping and murder of a 15 years-old thought to be a member of a rival gang.

In *United States v. Moreno-Martinez*, No. PX-17-0154, three MS-13 gang members pleaded guilty to a conspiracy to kidnap, but their actual conduct involved premeditated murder of a victim. The leader, Neris Moreno-Martinez, received a sentence of 30 years, and his coconspirators, Jose Melendez-Rivera and Reynaldo Granados-Vasquez, each received sentences of 20 years.

In *United States v. Ramirez*, 98 Cr. 438 (PGG), 2021 U.S. Dist. LEXIS 173414 (S.D.N.Y. Sept. 13, 2021), Judge Gardephe granted compassionate release to Ramirez who committed two separate murder, among kidnapping, assault, armed robberies and narcotics trafficking. After considering the § 3553(a) factors, including the gruesome nature of the crimes, Ramirez's rough childhood years, rehabilitation, underlying medical conditions, and an unwarranted sentencing disparity among codefendants, Judge Gardephe reduced Ramirez's life plus 45 years sentence to time-served. See also *United States v.*

Linton, Crim. No. JKB-98258 (D. Md. Sept. 27), ECF No. 471, Judge Bredar reduced the sentence of a defendant who had received a mandatory life sentence for committing murder in aid of racketeering. Judge Bredar resentence Mr. Linton to 30 years. Most of the cases cited above, are on point with Mr. Kawai's case for several reasons, albeit they are federal cases:

- \* Mr. Kawai and the other defendants were young at the time of their conduct.  
Kawai was 18, Linton was 22, and the others were between 18 and 25 years old. Whereas, the sentencing courts initially could not take youth into account when imposing mandatory life sentences, "that does not justify refusing to do so now." Id. at 7.
- \* Mr. Kawai and the others received life sentences for murder.
- \* In Linton's case, Judge Bredar noted this as an additional extraordinary and compelling reason for compassionate release, and added that judges in this district regularly sentence defendants in drug-related murders to terms of 20 to 30 years. Id. at 9.
- \* Finally, all the defendants have since matured and maintained excellent disciplinary records.



Kawai's disciplinary history is proof of his rehabilitation and lack of public safety concerns. Nothing from Kawai's BOP's record demonstrate any public safety risks.

Federal courts has granted reduction in sentences across the United States for defendants who committed murder in their youthful years (e.g. prior to age 25). For example, in United States v. Vasquez, No. 08-cr-00065 (RJD) (EDNY), Vasquez was convicted of conspiracy to distribute heroin, cocaine, and marijuana, use of firearm [§ 924(c)], and intentional killing under § 924(j). After Vasquez filed his motion for compassionate release, the court reduced his sentence to 22 years.

Kawai's sentence was imposed almost twenty years ago as all the cases cited above, for crimes committed before his 25th birthday--as all the cases cited above. As the court explained in United States v. Johnson, 2020 U.S. Dist. LEXIS 19021 (D. Md. Oct. 14, 2020), "[c]hanges in the sentencing law landscape are relevant to the Court's analysis of whether the Court's sentence appropriately addresses 'the need for a sentence to provide just punishment, promote respect for the law, reflect the seriousness of the offense, deter crime, and protect the public.'" The fact that multiple courts has reduced multiple-count murder sentences from life to terms between 20 to 30 years, Kawai's sentence reflects a sentence that is greater than necessary to satisfy the objectives of sentencing. See United States v. Park, 456 F. Supp. 3d 557, 2020 WL 1970603, at \*5 (S.D.N.Y. 2020) (noting that a sentence

"that was sufficient but no greater than necessary" may now, in light of COVID-119, become "one immeasurably greater than necessary"). Post Booker - Amendment 739 - and Miller v. Alabama, Kawai's life sentence with the possibility of parole has become "one immeasurably greater than necessary."

### C. Post-sentencing Rehabilitation Efforts

Since Kawai's incarceration, he has made effort to rehabilitate himself and to become productive for reentry into society. He has completed numerous Adult Continuing Education (ACE) programs, to mention a few, Small Business Development, Money Smart Model Program, Lean 6 Sigma-Lean Basics, Vocational Building Trades, Commercial Drivers License Theory, Mock Job Fair, Victim Impact Awareness, Inside-out Dad, and Psychology. Kawai has enrolled in the 500 hours Residential Treatment Challenge program and has obtaining satisfactorily-programming reports. See Exhibit <sup>?</sup>/// (Programs Completed). Mr. Kawai has made effort to engage in healthy lifestyle behaviors to address his past criminal thinking and cognitive behavioral problems. For the last 20 year, he had developed coping skills, reentry trade skills, and mental and emotional health tools.

The prison doors closed firmly behind Mr. Kawai in 2001. But he did not allow his imprisonment to deter him from improving his life. Even though life in the federal penitentiary is difficult, Kawai used all the opportunity he is given to become a better version of himself. The evidence

of his self-improvement is clear from the records, and clear to staff and inmates alike. As severe as his crime is, Mr. Kawai is not the same young adolescent that committed the crime over 20 years ago. He has matured significantly and poses no public safety concerns.

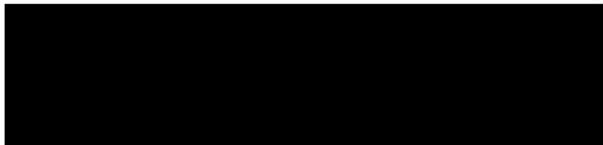
Mr. Kawai has a strong family support should his sentence be reduced, and he's allowed to return to society. he has spent more than half of his life behind bars, and hereby seek a second chance to utilize his skills learned in prison to give back to his community.

According to the overview of federal criminal cases published by the United States Sentencing Commission, for the fiscal year 2019, the average sentence imposed for murder is 255 months. U.S. Sentencing Comm'N, Overview of Federal Criminal Cases, Fiscal Year 2019, at 9 (2020). The twenty-one years Mr. Kawai has spent in prison is significant punishment for his crimes. 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 an appropriate sentence") ("It is plain that children 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)).

#### IV. CONCLUSION

WHEREFORE, for all the foregoing reasons, Defendant Damien Kawai, respectfully ask that this Court enter an Order granting a reduction in his sentence from life with the possibility of parole, to a term of 20-25 years, which is consistent with the military guidelines for the crime he has committed. However, this request is made in light of new scientific evidence on brain development for adolescents that was not available at the time of Kawai's sentencing to be used as mitigating facts.

DATED: 07/14/2022



Damien Kawai

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

SEQUENCE: 01759085

Dept. of Justice / Federal Bureau of Prisons

Team Date: 04-28-2022

Plan is for inmate: KAWAI, DAMIEN G

Facility: ATW ATWATER USP

Proj. Rel. Date: 11-10-2031

Name: KAWAI, DAMIEN G

Proj. Rel. Mthd: TWO THIRDS

Register No.: [REDACTED]

DNA Status: VIP03448 / 05-30-2012

Age: 39

Date of Birth: [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	R3-CONSUMER MATH, HOUSEHOLD	11-29-2021	12-17-2021
ATW CHG	C	R3-CONSUMER MATH,EARNING	11-15-2021	11-29-2021
ATW CHG	C	R2-CONSUMER MATH, CAREER PREP	11-08-2021	11-15-2021
ATW CHG	C	R3-CONSUMER MATH, BUYING CAR	10-18-2021	11-03-2021
ATW CHG	C	R3-CONSUMER MATH, BUDGETING	10-08-2021	10-13-2021
ATW CHG	C	R3-CONSUMER MATH, BANKING	10-04-2021	10-08-2021
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

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

SEQUENCE: 01759085

Dept. of Justice / Federal Bureau of Prisons

Team Date: 04-28-2022

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

SubFac	Action	Description	Start	Stop
ATW	C	CULTURAL STUDIES 1	04-13-2015	08-20-2015
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
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	03-28-2013

**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
CARE1-MH	CARE1-MENTAL HEALTH	06-24-2012

**Current Medical Duty Status Assignments**

Assignment	Description	Start
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[REDACTED]	[REDACTED]	[REDACTED]
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**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
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**\*\* 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	01-15-2022
N-ANTISO Y	NEED - ANTISOCIAL PEERS YES	01-15-2022
N-COGNTV Y	NEED - COGNITIONS YES	01-15-2022
N-DYSLEX N	NEED - DYSLEXIA NO	03-10-2022
N-EDUC N	NEED - EDUCATION NO	01-15-2022
N-FIN PV N	NEED - FINANCE/POVERTY NO	01-15-2022
N-FM/PAR N	NEED - FAMILY/PARENTING NO	01-15-2022
N-M HLTH N	NEED - MENTAL HEALTH NO	01-15-2022
N-MEDICL N	NEED - MEDICAL NO	01-15-2022
N-RLF Y	NEED - REC/LEISURE/FITNESS YES	01-15-2022
N-SUB AB Y	NEED - SUBSTANCE ABUSE YES	01-15-2022
N-TRAUMA Y	NEED - TRAUMA YES	01-15-2022
N-WORK Y	NEED - WORK YES	01-15-2022
R-LW	LOW RISK RECIDIVISM LEVEL	04-28-2022

**Progress since last review**



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

SEQUENCE: 01759085

Dept. of Justice / Federal Bureau of Prisons

Team Date: 04-28-2022

Plan is for inmate: KAWAI, DAMIEN G

(\*HAS OBTAINED HIS GED/HS DIPLOMA\*)

### CHALLENGE PARTICIPANT

Programming Progress: GOOD; You did follow previous recommendations. Since your last program review you have completed multiple classes and are currently enrolled in the USP Atwater Challenge Program.

Behavior/Disciplinary Conduct Progress: GOOD; 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 BY YOUR NEXT SCHEDULED PROGRAM REVIEW.

By Next Team (Short Term Goal): Recommend you obtain an application and submit for your Original (Birth Certificate) 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): 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): Recommend you enroll in Threshold (First Step Act course offering).

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 04/2023.

Long Term Goal: Successfully complete the Threshold Program by 04/2023.

COMPLETE THE 3 DAY ROP (RELEASE ORIENTATION PROGRAM)

### 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

Continue to maintain contact with family through phone calls, email, and visits for continued support. Maintain cell sanitation, clear conduct and maintain positive rapport with staff. Begin to save money. Strive to comply with the rules and regulations during your incarceration.



# Individualized Needs Plan - Program Review (Inmate Copy)

SEQUENCE: 01759085

Dept. of Justice / Federal Bureau of Prisons

Team Date: 04-28-2022

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

Name: KAWAI, DAMIEN G

DNA Status: VIP03448 / 05-30-2012

Register No.: [REDACTED]

Age: 39

Date of Birth: [REDACTED]

Inmate (KAWAI, DAMIEN G. Register No. [REDACTED])

Date

Unit Manager / Chairperson

Case Manager

Date

Date



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

In re Damian G. Kawai	)	Misc. Dkt. No. 2022-08
Airman First Class (E-3)	)	
U.S. Air Force	)	
<i>Petitioner</i>	)	
	)	<b>NOTICE OF DOCKETING</b>
	)	
	)	
	)	
	)	<b>Special Panel</b>

On 25 July 2022, this court received a *pro se* petition for extraordinary relief in the nature of Writ of Mandamus in the above styled case.

Accordingly, it is by the court on this 27th day of July, 2022,

**ORDERED:**

The case has been assigned Misc. Dkt. No. 2022-08 and has been referred to a Special Panel for review. The Special Panel in this matter shall be constituted as follows:

KEY III, JAMES E., Colonel, Senior Appellate Military Judge  
ANNEXSTAD, WILLIAM J., Colonel, Appellate Military Judge  
MEGINLEY, CHARLTON J., Colonel, Appellate Military Judge

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



FOR THE COURT

A handwritten signature in black ink, appearing to read "TSB", is written over the printed name.

TANICA S. BAGMON  
Appellate Court Paralegal