

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 21-CR-461 (RCL)  
Hon. Royce C. Lamberth

DEVLYN THOMPSON,

Defendant.

REPLY IN SUPPORT OF DEFENDANT'S MOTION FOR COMPASSIONATE RELEASE  
PURSUANT TO 18 U.S.C. § 3582(C)(1)(A).

Defendant Devlyn Thompson, through undersigned counsel, replies in support of his Motion for Compassionate Release Pursuant to 18 U.S.C. § 3582(C)(1)(A). Through its response, the Government perpetuates the damaging thinking that Mr. Thompson should simply act like a neurotypical adult and should curate, for himself, an environment within the Bureau of Prisons (BOP) that is beneficial for his mental health. Mr. Thompson attaches hereto evidence, some of which was inadvertently omitted from his original Motion,<sup>1</sup> demonstrating that he *has* tried to address and care for his autism spectrum disorder (ASD) while in custody, but that the BOP has refused to provide even the most basic treatment. And while the Government seeks to excuse the prison's inaction and cast it as a consequence of COVID-19, the Government's generalized and self-promoting discussions about the pandemic do not and cannot excuse the fact that the BOP has facilitated Mr. Thompson's steady cognitive decline while in custody.

The Government's reasoning – along with its position that because Mr. Thompson contends that the prison's total failure to provide accommodation or treatment has exacerbated the decline of his mental health, Mr. Thompson should be precluded from the relief outlined by § 3582(C)(1)(A) – fails as a matter of law. This position also misses the point not only of Mr. Thompson's Motion but also

---

<sup>1</sup> The Government pointed out in its Opposition that some of Defendant's referenced attachments were inadvertently not attached to Mr. Thompson's Motion. Counsel apologizes for the clerical mistake and has attached those documents here. He attaches first Counsel's Email and Attached Letter to Warden (Sept. 16, 2022) as Exhibit A and second a Letter from his mother, Michelle LaVergne, to the Court, attached hereto as Exhibit B.





Case 1:21-cr-00461-RCL Document 59 Filed 04/03/23 Page 3 of 19

because many people suffer from various mental health conditions – is mired with logical fallacies, see *infra*. More disturbing, however, is the Government's use of these statistics to excuse it from bearing any responsibility for an given inmate's deteriorating mental health and from offering even a modicum of treatment within their prison facilities. The purported prevalence of a problem, if anything, underscores, rather than excuses, the need for robust preventative and accommodation services. Because no such services have been made available Mr. Thompson, his condition has devolved so that it necessitates his release. Among the logical fallacies – undermining the government's argument is their apparent assumption that all "diagnosable mental health disorder[s] present an equal impact on a person's life or need for treatment and that to present an equal "circumstance" in the context of § 3582(c)(1). Mr. Thompson's ASD presents a particular, constant, and debilitating effect on his life in prison as a result of his childlike social capabilities, his inability to understand innuendo or sarcasm, and his 4-3 tendency to become easily overwhelmed by sound and other stimuli. See generally ECF 43; see also ECF 45 at 2; Declaration of Michelle LaVergne, ¶ 2 (Mar. 26, 2023) (Ex. C). This condition leaves him in a far more vulnerable and situationally "extraordinary circumstance" than someone, for instance, with Attention-Deficit Hyperactivity Disorder (ADHD), substance use disorder or situational depression, all of which constitute a "diagnosable mental health disorder." See National Institute of Mental Health, Mental Health Information: Mental Health Topics (available at <https://www.nimh.nih.gov/health/topics>) (accessed on Feb. 2, 2023). Even within the diagnostic category of ASD, which is, by definition, a spectrum, Mr. Thompson's particular social capabilities exacerbate his mental condition, so as to require accommodation and treatment or to become, as has happened in the present case, extraordinary. The Government's argument that mental health conditions are pervasive and, in the Government's estimation, of equal impact, does little more than underscore the dire need for treatment and services for those with mental health conditions within Government care.

*Id.* Because Mr. Thompson requires treatment and care outside of the prison system and an environment that does not result to a severe aggravation of his condition and mental condition[,]” Defendant requested that the Warden, in the first instance, order his release pursuant to 18 U.S.C. § 3582(c)(1), on the basis that he has exhausted all available remedies. *Id.* Indeed, between 2000 and 2019, a total of 4,500 people died by suicide in state and federal prisons, with the annual number of suicides increasing 83% over that period. Suicide in Local Jails and State and Federal Prisons, 2000–2019 – Statistical Tables, Bureau of Justice Statistics (Oct. 7, 2021) (available at <https://bjs.ojp.gov/press-release/suicide-local-jails-and-state-and-federal-prisons-2000-2019-statistical-tables>) (last accessed on February 27, 2023). And while Mr. Thompson's case is not one about prison reform, the Government's Response raises serious questions regarding its commitment to and capability of adequately providing for those remanded to its care. i. Mr. Thompson's ASD and current mental health condition are, by themselves, extraordinary, and the BOP's failure to provide treatment has made the worse. Central to the government's position that the defendant's Thompson's condition does not warrant compassionate release is its insistence that Defendant's ASD "is not a new information." ECF 50 at 12. This is true – the Court was aware of Mr. Thompson's diagnosis at the time of sentencing. The 5<sup>th</sup> Court was not aware of Mr. Thompson's decline since that time or that the Government would fail to treat or accommodate Mr. Thompson's condition. As stated in Defendant's Motion: At the time of sentencing, the Court was aware of Mr. Thompson's ASD. It was not, however, aware that the Department of Justice (DOJ) would send Mr. Thompson to a facility thousands of

Warden's failure to respond, the 30 days prescribed by statute lapsed on October 16, 2022. *See* § 3582(c)(1)(A).

While Mr. Thompson has met his exhaustion requirements in this matter, those requirements are neither jurisdictional, *United States v. Johnson*, 464 F. Supp. 3d 22, 28-29 (D.D.C. 2020) (Jackson, J.), nor subject to “hyper-technical” application. *United States v. Johnson*, No. 02-310 (JDB), 2022 U.S. Dist. LEXIS 129168, at \*10-11 (D.D.C. July 21, 2022). Rather, like the grant of compassionate release itself, they are subject to the district court's discretion. *See id.* In this case, the interests of justice require compassionate release pursuant to the Court's discretion.

**b. Untreated ASD is a sufficient extraordinary circumstance to warrant compassionate release.**

Central to the government's response is its insistence that the diagnosis of ASD, and the resultant expressive and social abilities of a small child, does not present a compelling and extraordinary circumstance because “[D]efendant's ASD diagnosis, and the degree of his impairment, is not a new piece of information.” ECF 50 at 12. Pursuant to this reasoning, the government categorizes Defendant's Motion as presenting “general issues and complaints that exist across the

BOP in the time of COVID-19 precautions, [which] cannot alone provide a basis for a sentence reduction.” *Id.* The Government goes on to argue that the defendant’s mental and medical conditions “are not particularly rare or otherwise unusual[.]” *id.* at 13, and, impliedly therefore, that there is no remedy available for the avoidable and consistent decline of his mental state and social capacity while in BOP custody. This position is incorrect as a matter of law, and yet, the Government goes on.

Consistent with this problematic line of reasoning, the Government erroneously argues that one’s deteriorating mental health condition cannot present an extraordinary and compelling circumstance because, according to the Government, nearly 25% of the general population “has a diagnosable mental health disorder” and because BOP “[i]nmates have a higher prevalence of chronic medical and mental health conditions than the general population.” *Id.* at 12-13 (quoting Federal Bureau of Prisons Clinical Guidance, *Care Level Classification for Medical and Mental Health Conditions or Disabilities*, at 1, located at [https://www.bop.gov/resources/pdfs/care\\_level\\_classification\\_guide.pdf](https://www.bop.gov/resources/pdfs/care_level_classification_guide.pdf) (May 2019)). This argument – that an inmate’s particular mental health condition cannot present an extraordinary and compelling circumstance because many people suffer from various mental health conditions – is riddled with logical fallacies, *see infra*. More disturbing, however, is the Government’s use of these statistics to excuse it from bearing any responsibility for an given inmate’s deteriorating mental health and from offering even a modicum of treatment within their prison facilities. The purported prevalence of a problem, if anything, *underscores*, rather than excuses, the need for robust preventative and accommodation services. Because no such services have been made available Mr. Thompson, his condition has devolved so that it necessitates his release.

Among the logical fallacies undermining the government’s argument is their apparent assumption that all “diagnosable mental health disorder[s]” present an equal impact on a person’s life or need for treatment and therefore present an equal “circumstance” in the context of § 3582(c)(1). Mr. Thompson’s ASD presents a particular, constant, and debilitating effect on his life in prison as a result of his childlike social capabilities, his inability to understand innuendo or sarcasm, and his

tendency to become easily overwhelmed by sound and other stimuli. *See generally* ECF 43; *see also* ECF 45 at 2; Declaration of Michelle LaVergne, ¶ 2 (Mar. 26, 2023) (Ex. C). This condition leaves him in a far more vulnerable and situationally “extraordinary circumstance” than someone, for instance, with Attention-Deficit Hyperactivity Disorder (ADHD), substance use disorder or situational depression, all of which constitute a “diagnosable mental health disorder.” *See* National Institute of Mental Health, *Mental Health Information: Mental Health Topics* (available at <https://www.nimh.nih.gov/health/topics>) (accessed on Feb. 2, 2023). Even within the diagnostic category of ASD, which is, by definition, a spectrum, Mr. Thompson’s particular social capabilities exacerbate his mental condition so as to require accommodation and treatment or to become, as has happened in the present case, extraordinary.

The Government’s argument that mental health conditions are pervasive and, in the Government’s estimation, of equal impact, does little more than underscore the dire need for treatment and services for those with mental and medical conditions within Government care. Indeed, between, 2000 and 2019, a total of 4,500 people died by suicide in state and federal prisons, with the annual number of suicides increasing 83% over that period. *Suicide in Local Jails and State and Federal Prisons, 2000–2019 – Statistical Tables*, Bureau of Justice Statistics (Oct. 7, 2021) (available at <https://bjs.ojp.gov/press-release/suicide-local-jails-and-state-and-federal-prisons-2000-2019-statistical-tables>) (last accessed on February 27, 2023). And while Mr. Thompson’s case is not one about prison reform, the Government’s Response raises serious questions regarding its commitment to and capability of adequately providing for those remanded to its care.

**i. Mr. Thompson’s ASD and current mental health condition are, by themselves, extraordinary, and the BOP’s failure to provide treatment has made them worse.**

Central to the government’s position that Mr. Thompson’s condition does not warrant compassionate release is its insistence that Defendant’s ASD “is not a new information.” ECF 50 at 12. This is true – the Court was aware of Mr. Thompson’s diagnosis at the time of sentencing. The



Court was not aware of Mr. Thompson's decline since that time or that the Government would fail to treat or accommodate Mr. Thompson's condition. As stated in Defendant's Motion:

At the time of sentencing, the Court was aware of Mr. Thompson's ASD. It was not, however, aware that the Department of Justice (DOJ) would send Mr. Thompson to a facility thousands of miles away from his sole source of support — his parents — and that, once there, the Bureau of Prisons (BOP) would fail to provide Mr. Thompson any mental healthcare whatsoever, let alone treatment for his condition. Nor was the Court aware that the BOP would frequently, and for long periods, deprive Mr. Thompson of any means to contact his family, so that he was left to attempt to navigate a Mississippi prison facility without any of the support essential to an autistic person.

ECF 45 at 4. It is the prison's failure to act, combined with Mr. Thompson's ASD, that has created the present extraordinary circumstance.

The Court was not aware, at the time it sentenced Mr. Thompson, that he would be subject to conditions such that his mental health would deteriorate to the point that his confinement would no longer serve the purposes of 18 U.S.C. § 3553(a). Rather, the Court ordered the original sentence in this matter after having received assurance from the Government that

there appear to be multiple national BOP programs available to the defendant to address his cognitive issues. *See* Exhibit 1 (First Step Act Approved Programs Guide) located at [https://www.bop.gov/inmates/fsa/docs/fsa\\_program\\_guide\\_2107.pdf](https://www.bop.gov/inmates/fsa/docs/fsa_program_guide_2107.pdf). Mr. Donson's report stated that only one such program mentioned ASD; however, he failed to mention that many BOP programs are specifically designed to assist persons with mental health conditions, cognitive disorders, and persons in need of assistance in better understanding the world around them, like the defendant (even if one-page summary in the booklet does not mention ASD by acronym). These include: Anger Management, Basic Cognitive Skills, the BRAVE program, the CHALLENGE program, Cognitive Processing Therapy; Criminal Thinking, Emotional Self-Regulation, Mental Health Step-Down, RESOLVE program, SKILLS program, and Social Skills Training, which are offered at numerous BOP facilities around the country.

ECF 34 at 3. What has rendered Mr. Thompson's situation increasingly compelling is not merely the fact that he has a diagnosis of ASD, but rather that, as a result of the nature of confinement generally and the Government's failure to provide the accommodation and treatment necessary – and promised – for someone with his diagnosis and social aptitude to cope in prison and to return to civilian life thereafter as a productive citizen, Mr. Thompson's condition has steadily deteriorated. *See* LaVergne

Decl., ¶ 8 (Ex. C). The Government's theoretical assurances to the Court, while perhaps sufficient at the sentencing stage, fail in the face of the experienced absence of any of the promised services or support at FCC Yazoo City.

**ii. Respondent relies on what FCC Yazoo City purports to do rather than what they have done.**

Just as the Government sought to assure the Court at sentencing that the BOP *would* accommodate and treat Mr. Thompson, so too does it rely at this stage on what the prison *purports* to do, via its website, rather than on evidence of what it has actually *done*. This is presumably because the facility has, to date, done *nothing* to prevent the steady decline of Mr. Thompson's condition. Declaration of Devlyn Thompson, ¶¶ 4-8 (Mar. 28, 2023) (Ex. D). Instead, the Government reiterates only the information on which this Court relied when it sentenced Mr. Thompson: that the prison *purports to* and *should* provide a multitude of services to Mr. Thompson and others similarly situated. See ECF 50 at 3-4 ("According to its most recent handbook, the services include access to psychiatric services and other life-planning programs). What the government has failed to do is refute the fact that the prison *has not* provided those services.

The facility handbook, on which the Government relies, states that Yazoo City has six psychologists on staff as well as several other members of a greater psychology team. *Federal Correctional Complex, Yazoo City, Mississippi, Admission and Orientation Handbook* at 45 (available at [https://www.bop.gov/locations/institutions/yaz/YAX\\_aohandbook.pdf](https://www.bop.gov/locations/institutions/yaz/YAX_aohandbook.pdf)) (last accessed Mar. 2, 2023). According to this handbook, these staff members offer individual counseling for inmates. *Id.* at 46. This service, while it would not alleviate all the sensory overload that renders Mr. Thompson's experience untenable, would go a long way toward beginning to treat his condition. The issue, however, is that FCC Yazoo City, is not following their handbook. Mr. Thompson *has not* had access to any psychologist or any individual counseling, despite repeatedly asking for the service. Thompson Decl. (Ex. D); LaVergne Decl. ¶ 6 (Ex. C). Nor for that matter, did the facility ever provide him a copy of this handbook so that he might press to receive the referenced services. *Id.* ¶ 3.

Particularly troubling is the Government's attempt to place the burden of ensuring his own mental capacity and wellness on Mr. Thompson, who has already informed both the Government and the Court of his lack of capacity to navigate complex social systems. In particular, the Government chided Mr. Thompson for "not provid[ing] any evidence indicating that he has taken specific efforts to avail himself of [the psychiatric services and life-planning programs at FCI Yazoo City], or to seek a transfer to another BOP facility," ECF 50 at 3, and for failing to "obtain counseling services through virtual (contactless) meetings with a health care provider of his own accord." *Id.* at 2. That the Government assumes (1) that these "programs" are, in reality, offered, accessible and available, and (2) that either the system or Mr. Thompson, without access to any local or outside support, is such that Mr. Thompson can simply "avail" himself to them or effectively bring in his own psychiatric support, demonstrates the degree to which the Government is out of step with the experience of inmates in its care.

Mr. Thompson has regularly been denied contact with his own mother. LaVergne Letter (Ex. B); Thompson Decl. ¶¶ 9-10 (Ex. D); LaVergne Decl. ¶¶ 4-5, 7 (Ex. C). None of his family has been approved to visit at any of the facilities where Mr. Thompson has been placed, despite his entreaties that they, and their agreement to, repeatedly fill out BOP visitation forms. *Id.* After taking his case manager at her literal word that he could come see her "anytime," Mr. Thompson was threatened with harassment charges if he continued to ask for help. Thompson Decl. ¶ 6 (Ex. D). He has, without warning or stated reason, been placed into solitary confinement and, during that time, prevented from speaking to his mother. LaVergne Letter (Ex. B); Thompson Decl. ¶¶ 9-10 (Ex. D); LaVergne Decl. ¶¶ 4-5, 7 (Ex. C). To state that he should pursue, "avail," or even *create* these services himself ignores the reality of Mr. Thompson's incarceration. The suggestion that he obtain an outside psychologist for regular video sessions – were it not so disconnected from the manner in which Mr. Thompson has been deprived contact with *any* outside support – would be almost laughable. The services have not been available, and the conditions of confinement have led to a circumstance in which Mr. Thompson has had no direction in which to go other than a steady, and potentially irreversible, decline. *See*



*generally* LaVergne Letter (Ex. B); LaVergne Decl. (Ex. C). It is this decline, facilitated and exacerbated by the BOP, that has rendered the situation extraordinary and compelling and necessitating compassionate release.

Even assuming *arguendo*, however, that Mr. Thompson might have access to some counseling, which he does not, those sessions would not be adequate to reverse the impact of a facility that is fundamentally at odds with his social functioning capabilities. *See generally* ECF 43. It is for this reason that the Government's suggestion that he suggest a transfer to another facility is similarly unhelpful. *See* ECF 50 at 3. In addition to the bureaucratic and realistically unsuccessful process of attempting such a transfer, Mr. Thompson's experience to date demonstrates that what a facility *purports* to offer and what is available are fundamentally different. The BOP's front-facing promises are at odds with their conduct within their facilities, and it is Mr. Thompson who bears the cost. The only adequate remedy is compassionate release.

**c. Compassionate Release is the Proper Remedy for Someone with a Declining Mental or Medical Condition.**

The Government contends that, instead of seeking his statutorily permitted compassionate release from a detention that is causing the consistent worsening of his condition, Mr. Thompson should instead sue the prison on a civil rights basis for his conditions of confinement. The Government is wrong, the cases upon which it relies fundamentally distinct from the case at bar. This approach not only represents an enormous waste of judicial resources, but also misunderstands, and therefore misrepresents, the remedies available to Mr. Thompson.

The Government relies on several unpublished district court decisions from throughout the country, none of which involve a motion for compassionate release filed pursuant to 18 U.S.C. § 3582(C)(1)(A) and none of which have any bearing on this Court's reasoning in the present matter. The Government cites first *United States v. Folsie* for the proposition that the "general rule is that a defendant must file a separate civil action to address his conditions of confinement." ECF 50 at 13 (citing No. CR 15-2485 JB, 2016 U.S. Dist. LEXIS 96785, at \*43 (D.N.M. June 15, 2016)). That case and its referenced rule, however, are unhelpful here. The defendant in *Folsie* did not seek

compassionate release, but rather filed a Motion to Address Conditions of Confinement. *Id.* at \*1. Mr. Thompson, in contrast, does not ask the Court to alter his *conditions* of confinement, but rather asks for the compassionate release therefrom.

The Government's reliance on *United States v. Luong* is similarly unhelpful as, in that case, the defendant did not seek compassionate release but rather moved the Court, pending sentencing for "an orthopedic shoe and for visits to the Sacramento County Jail law library." 2009 U.S. Dist. LEXIS 85695, at \*1 (E.D. Cal. Sep. 2, 2009); *see also id.* at \*2 (noting that the defendant regularly filed such motions in his criminal case including others for orthopedic shoes, dental care, a medical examination, and other requests for visits to the law library); ECF 50 at 13. Likewise, the defendant in *United States v. Wells* did not seek compassionate release pursuant to the federal criminal code, but instead filed a motion in his criminal case pursuant to Fed. R. Civ. P. 60(b) to have his conviction reversed for jurisdictional reasons. No. 3:02CR-20-H, 2007 U.S. Dist. LEXIS 76629, at \*2 (W.D. Ky. Oct. 12, 2007). The Court in that case explained that the "Rule 60(b) motion is improper, as Rule 60(b) is a rule of *civil* procedure, not a rule of *criminal* procedure." *Id.* (emphasis in original). *Wells*, like the other cases on which the Government relies, simply has no bearing on a motion brought pursuant to 18 U.S.C. § 3582(C)(1)(A).

In each of the Government's cited cases, the defendant attempted to pursue a *civil remedy* in their criminal case. In this case, Defendant pursues a statutory remedy outlined within the criminal code. Consistent with this motion, Mr. Thompson is not seeking damages and similarly does not pursue injunctive relief that would require the prison to comply even with the mandates of its own handbook. Rather, Mr. Thompson seeks the only remedy sufficient to address the ongoing decline of his condition – release to his home.

That the prison's utter failure to provide any treatment or accommodation for Mr. Thompson has contributed to his current condition does not somehow divest this Court of jurisdiction under 18 U.S.C. § 3582(C)(1)(A). Rather, motions for compassionate release regularly occur after the prison has allowed the deterioration of an inmate's condition so that the condition becomes extraordinary

and compelling. *See, e.g., United States v. Gaffney*, No. 1:95-cr-53 (LMB), 2022 U.S. Dist. LEXIS 54404, at \*11-12 (E.D. Va. Mar. 25, 2022) (granting motion for compassionate release where BOP failed to provide adequate care to inmate with Hepatitis C); *see also United States v. Patino*, No. 1:19-cr-27-MOC-DCK-4, 2021 U.S. Dist. LEXIS 227559, at \*2-3 (W.D.N.C. Nov. 24, 2021) (denying compassionate release where, to the extent Defendant suffered from mental health conditions, the BOP treated those conditions, including with prescription medication). Compassionate release is both procedurally and substantively appropriate where, as here, the defendant “has shown that the facility in which [he] is confined is failing to adequately manage [his] maladies.” *E.g., United States v. Allison*, No. CR16-5207RBL, 2020 U.S. Dist. LEXIS 101790, at \*7 (W.D. Wash. June 10, 2020).

**d. Mr. Thompson has not “admitted” to engaging in criminal conduct: the Government misconstrues Mr. Thompson’s arguments so as to vilify him further.**

Among the more disturbing of the Government’s arguments is its repeated contention that Mr. Thompson should not be released because he “has acknowledged the defendant has committed serious criminal acts while at the facility, and is now using illegal drugs.” ECF 50 at 16; *see also id.* at 2 (“Additionally, the defendant appears to have admitted that he has engaged in criminal conduct while incarcerated at BOP (smoking drugs and keeping cell phone contraband) which suggests that an early release will not further protect the community.”). The Government’s opposition twists the content of Defendant’s motion to further vilify, and potentially further isolate, Mr. Thompson rather than to recognize his inherent vulnerability.

The portion of Mr. Thompson’s Motion on which the Government apparently relies explains the concept of “criminal apprenticeship” and the reasons that Mr. Thompson’s mental condition renders his continued detention at odds with the requirements of section 3553(a). Mr. Thompson advised the Court of this likelihood at sentencing, *see* ECF 43 at 25, and went on to explain the manner in which he has, to date, experienced the phenomenon. He explained that

with the social processing capacity of a four-year old child and expressive capacity of a six-year old, Mr. Thompson has been susceptible to the whims of other inmates, who have pressured Mr. Thompson to smoke



marijuana and to use and hold a counterfeit phone. With no support to ensure his functionality, Mr. Thompson is particularly susceptible to the phenomenon known as “criminal apprenticeship” as he attempts to learn and survive the prison’s social strata and codes. *See* ECF 43 at 25.

ECF 45 at 5. Nowhere did Mr. Thompson admit to “serious criminal acts” or the ongoing use of “illegal drugs” as stated by the Government. Rather, Mr. Thompson explained how other inmates can and do take advantage of his social vulnerability. The Government appears to argue that the pressure exerted upon Mr. Thompson means that he is a criminal who must stay in prison unless and until he can independently withstand such a social code. This argument, like the others the Government presents, misses the point entirely and minimizes the very basis of Mr. Thompson’s condition.

**e. Defendant’s release plan is sufficient.**

Finally, the Government argues that Mr. Thompson’s release plan is “vague” and not “adequate.” Defendant proposes that he be released to the care of his mother at 6008 242nd St. E. in Graham, WA. *See* LaVergne Decl. ¶ 10. Ms. LaVergne has stated that she would provide an environment that is “safe and ... free from sensory overload[.]” *Id.* As the person with the most experience with Mr. Thompson’s particular presentation of ASD, Ms. LaVergne is well suited, as she has assured the Court, to ensure that this environment would be one in which Mr. Thompson’s “needs are met,” having “ready and available for him access to an expert in the field of autism treatment to assist in his transition from the BOP and to attempt to repair the damage already done during incarceration.” *Id.* This plan, which delineates (1) a named caretaker to whom Mr. Thompson would be released, (2) an identified location, and (3) an assurance of access to expert treatment is both specific and more than adequate.

The Government’s sole citation is to *United States v. Allison*, No. CR16-5207RBL, 2020 U.S. Dist. LEXIS 101790 (W.D. Wash. June 10, 2020) for the proposition that an “appropriate release plan is essential to ensure that a defendant actually has a safe place to live and access to health care in these difficult times. Shortening a defendant’s sentence where there is no adequate release plan offers no benefit to the health of the inmate and in the process likely further endangers the community into which the defendant is release[d].” ECF 50 at 16. The court in *Allison*, however, considered a

circumstance inapposite from that of this case. In that case, it was not a lack of specificity in the defendant's release plan that precluded compassionate release, but rather the Court's finding that she would remain, if released, a danger to the community. *Id.* at \*12. The defendant in *Allison* had committed fraud of hundreds of thousands of dollars and went on to retaliate against her victim. *Id.* at \* 12. There is no evidence of such repeated harm in the present case, and the Government's statements regarding recidivism based on "illegal drug use" are misguided, at best.

Section 18 U.S.C. § 3582(C)(1)(A), for its part, imposes no "adequacy" requirement for a defendant's proposed release plan, but rather authorizes the Court to order that release where extraordinary and compelling circumstances warrant a sentence reduction. The circumstances in the present case warrant just such a reduction.

## **II. Conclusion**

For the reasons stated above, as well as those in his Motion, Defendant requests that this Court respond to the extraordinary and compelling circumstances and act to ensure Defendant's mental and physical health by ordering his immediate compassionate release.

Respectfully Submitted,

/s/ Elizabeth Kelley  
Elizabeth Kelley (pro hac vice)  
ELIZABETH KELLEY, ATTORNEY AT LAW  
2425 E. 29th Ave., Ste. 10-B, £ 225  
Spokane, WA 99223  
(509) 991-7058  
[zealousadvocacy@aol.com](mailto:zealousadvocacy@aol.com)

## **CERTIFICATE OF SERVICE**

Elizabeth Kelley, Attorney at Law, hereby certifies that the foregoing was served in accordance with Fed. R. Crim. P. 49, Fed. R. Crim. P. 5, LR 5.5, and the General Order on Electronic Case Filing (ECF) pursuant to the District Court's system pertaining to ECF filers.

/s/ Elizabeth Kelley  
Elizabeth Kelley (pro hac vice)  
ELIZABETH KELLEY, ATTORNEY AT LAW  
2425 E. 29th Ave., Ste. 10-B, £ 225  
Spokane, WA 99223  
(509) 991-7058  
[zealousadvocacy@aol.com](mailto:zealousadvocacy@aol.com)