

**No. 25-7551**

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**IN THE SUPREME COURT OF THE UNITED STATES**

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TODD HAROLD COOPER,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

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On Petition for Writ of Certiorari to the  
United States Court of Appeals for the Tenth Circuit, No. 23-4052

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**Supplemental Brief of Petitioner**

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## Supplemental Brief

Pursuant to Supreme Court Rule 15.8, Petitioner Todd Harold Cooper calls to the Court's attention an inconsistency in the Government's litigating positions that arose after the petition for a writ of certiorari was filed on May 22, 2026 (docketed June 9, 2026).

Mr. Cooper's petition seeks review of the denial of his authorized second 28 U.S.C. § 2255 motion. Below, the Tenth Circuit held that Mr. Cooper failed to show that the sentencing court relied on the unconstitutional residual clause of the Three Strikes Law, 18 U.S.C. § 3559(c)(2)(F)(ii), when it sentenced Mr. Cooper to life imprisonment in 2003. *See United States v. Cooper*, 159 F.4th 768, 772 (10th Cir. 2025). In so concluding, the Tenth Circuit relied on the Government's argument that the sentencing court could have permissibly applied the circumstance-specific approach, as opposed to the categorical approach, to count Mr. Cooper's prior California robbery conviction as a qualifying strike. *See id.* at 775-77. Under the categorical approach, Mr. Cooper lacks three qualifying offenses. But the Government argued that the categorical approach did not apply to the Three Strikes Law at the time of Mr. Cooper's 2003 sentencing because *United States v. Mackovich*, 209 F.3d 1227 (10th Cir. 2000), "expressly rejected . . . that the

categorical approach applies to the Three Strikes Law,” and “[i]t wasn’t until 2018 in [*United States v. Leaverton*, 895 F.3d 1251 (10th Cir. 2018)] that the [Tenth Circuit] adopted the categorical approach for the Three Strikes Law.” Gov. 10th Cir. Supp. Br. at 6, 21 (July 15, 2024).

Mr. Cooper has filed a motion for compassionate release that is not before this Court. *See United States v. Cooper*, No. 1:00-cr-00051-TC, Doc. 318 (D. Utah Mar. 23, 2026). In its June 3, 2026 compassionate-release opposition, the Government argued that “[t]he categorical approach has been around since *Taylor v. United States*, 495 U.S. 575 (1990) . . . . Nothing prevented Mr. Cooper from arguing for the categorical approach at his sentencing, his direct appeal, or his initial § 2255 motion.” Supp. App’x, p 10. Such an argument would have been futile, however, if, as the Government told the Tenth Circuit, *Mackovich* previously foreclosed the categorical approach.

Mr. Cooper respectfully submits that this inconsistency in the Government’s answer to what the law was in 2003 is pertinent to the Court’s consideration of the pending petition.

The Government filed a waiver of its right to respond to Mr. Cooper's petition on June 24, 2026, but Mr. Cooper does not object to the Government filing a response on or before its original deadline of July 9, 2026.

### **Conclusion**

This Court should issue a writ of certiorari.

Dated: June 26, 2026.

Respectfully submitted,

*s/ Adam Mueller*

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## **Supplemental Appendix**

### **Supplemental Appendix,**

Government's Opposition to Defendant's Motion for Compassionate Release, No.  
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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

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|                                                                                                     |                                                                                                                                |
|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| UNITED STATES OF AMERICA,<br><br>Plaintiff,<br><br>vs.<br><br>TODD HAROLD COOPER,<br><br>Defendant. | Case No. 1:00-cr-00051-TC-1<br><br>OPPOSITION TO DEFENDANT’S<br>MOTION FOR COMPASSIONATE<br>RELEASE<br><br>Judge Tena Campbell |
|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|

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Mr. Cooper’s motion is yet another challenge to his sentence based on the same recycled theory that the Tenth Circuit rejected a mere six months ago. His vehicle-of-the-day this time is a compassionate release motion relying on the recent “change in law” amendment to the Sentencing Guidelines under § 1B.13(b)(6). But as the Supreme Court recently held in *Fernandez v. United States*, 608 U.S. ---, No. 24-556, 2026 WL 1485476 (U.S. May 28, 2026), a compassionate release motion is not the proper vehicle to challenge the validity of a sentence. Those claims must be raised in a § 2255 motion—which Mr. Cooper already did. The court should construe Mr. Cooper’s motion as a second or successive § 2255 motion filed without authorization and dismiss for lack of jurisdiction.

### **Background**

A jury convicted Mr. Cooper of armed bank robbery in 2003. *United States v. Cooper*, 159 F.4th 768, 771 (10th Cir. 2025). As this was his third serious violent felony, the court sentenced him to life under § 3559(c)’s three strikes law. *Id.* Mr. Cooper appealed, and the Tenth Circuit affirmed. *Id.* Mr. Cooper also filed an unsuccessful post-conviction § 2255 motion arguing ineffective assistance of counsel and that his sentence violated statutory maximums and his Fifth and Sixth Amendment rights. *Id.*

After the Supreme Court invalidated the residual clauses of other statutes in *Johnson* and *Davis*, the Tenth Circuit authorized Mr. Cooper to file a second or successive § 2255 motion. *Id.* In that motion, Mr. Cooper argued that § 3559’s residual clause is unconstitutionally vague and thus his sentence must be overturned. *Id.* The district court and Tenth Circuit both rejected Mr. Cooper’s argument, concluding that he failed to show that the sentencing court relied on the residual clause. *Id.* at 776. Mr. Cooper’s petition for certiorari is currently pending with the Supreme Court. *See Cooper v. United States*, No. 25A1061.

### **Argument**

#### **I. The court should construe Mr. Cooper’s motion as a § 2255 motion and dismiss for lack of jurisdiction.**

Once a defendant has been convicted and sentenced, that sentence is typically final. Congress has created a few narrow exceptions. Two of which are § 2255 and § 3582.

Section 2255 applies when a prisoner claims “that the sentence was imposed in violation of the Constitution or laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law.” 28 U.S.C. § 2255(a). The statute “imposes tight procedural constraints” on such collateral attacks. *Fernandez*, 2026 WL 1485476 at \*5. A one-year statute of limitations, authorization to file a

second-or-succession motion, and a limit on raising claims that were or could have been litigated on direct review, to name a few. *Id.*

Section 3582, on the other hand, applies when a prisoner claims that “extraordinary and compelling reasons warrant” a sentence reduction. 18 U.S.C. § 3582(c)(1)(A). Unlike § 2255, “§ 3582 imposes a single procedural requirement: A prisoner must first present his request for release to the Bureau of Prisons.” *Fernandez*, 2026 WL 1485476 at \*5.

In *Fernandez*, the Supreme Court drew a distinct division between these two motions. Citing other provisions that potentially cover claims that could overlap with § 2255—like § 1983 and Rule 60(b)—the Court concluded that “[c]hallenging the validity of a conviction through a compassionate release motion circumvents the exacting requirements of § 2255.” *Fernandez*, 2026 WL 1485476 at \*6. And “[w]e will not set § 3582 and § 2255 at cross-purposes when we can construe them in harmony.” *Id.* at \*7.

The Court then noted that “extraordinary and compelling reasons” “is a demanding standard.” *Fernandez*, 2026 WL 1485476 at \*7. Not only must it be “most unusual” and “tending to convince or convert by ... forcefulness of evidence,” but it must do so within the context of “what it seeks to justify.” *Id.* at \*7. So when it comes to § 3582, “[w]e must ask whether it is an especially convincing reason to grant the relief sought: compassionate release from prison.” *Id.* Thus, that provision cannot cover claims that can be raised in a § 2255 motion because a reason cannot be compelling “if Congress has channeled it through the postconviction statutes.” *Id.*

Other statutory features buttress this interpretation. The name “Compassionate Release” “highlights its focus on granting mercy rather than righting legal wrongs.” *Fernandez*, 2026 WL 1485476 at \*7. The requirement to first request relief from the BOP—whose “expertise lies in the daily lives of prisoners,” not legal arguments—shows that the reasons “must be reasons that

the Director is competent to assess.” *Id.* at \*8 *Fernandez*, 2026 WL 1485476 at \*6. And the Sentencing Commission has “*never* said that the invalidity of a conviction qualifies as an extraordinary and compelling reason warranting compassionate release.” *Id.* (cleaned up).

What’s more, the remedy a prisoner seeks through a compassionate release motion—release from prison while keeping the conviction intact—does not fit the justification. “If a conviction is invalid, the fitting remedy is to vacate it, as § 2255 allows.” *Fernandez*, 2026 WL 1485476 at \*9. “That § 3582 does not offer this remedy is evidence that it is not a suitable vehicle for the claim.” *Id.*

*Fernandez* forecloses Mr. Cooper’s motion. He claims that his life sentence is invalid. Because, he argues, his prior conviction for California robbery is not a serious violent felony, he would not qualify for the mandatory life sentence under the Three Strikes Law if sentenced today. This was the basis of his § 2255 motion the Tenth Circuit rejected six months ago. And that § 2255 motion—not a compassionate release motion—was the proper vehicle for such a claim. *See generally Fernandez*, 2026 WL 1485476; *see also United States v. Wesley*, 60 F.4th 1277, 1289 (10th Cir. 2023).

As such, the court should construe Mr. Cooper’s motion as a second or successive § 2255 motion filed without authorization and dismiss it for lack of jurisdiction. *Wesley*, 60 F.4th at 1288. The Tenth Circuit has rejected similar arguments raised in compassionate release motions. In *Elliott*, for instance, the defendant filed a motion for compassionate release arguing that his sentence under § 924(c) is invalid because it was based on the residual clause. *United States v. Elliott*, No. 24-8019, 2024 WL 4100574, at \*2 (10th Cir. Sept. 6, 2024). Relying on *Wesley*, the district court construed the motion as a § 2255 motion and dismissed for lack of jurisdiction. *Id.* The Tenth Circuit affirmed. “*Elliott*’s § 924(c) argument asserts a claim governed by § 2255.” *Id.*

at \*3. He argued that he was wrongfully convicted of § 924(c) because a prior conviction is not a qualifying predicate. *Id.* “Thus, ‘if true,’ then Elliott is serving an unlawful sentence—the type of argument ‘governed by § 2255.’” *Id.* at \*3 (quoting *Wesley*, 60 F.4th at 1288). It was not lost on the court that “Elliott advanced a similar version of this argument in his authorized, second § 2255 motion.” *Id.*; *see also, e.g., United States v. Robertson*, No. 25-8073, 2026 WL 983082, at \*1 (10th Cir. Apr. 13, 2026) (“Robertson’s challenges to his Guidelines range are thus barred by *Wesley*, and the district court did not err in refusing to consider such arguments.”).

This analysis fully applies to Mr. Cooper’s motion. He claims, like Elliott, that one of his prior convictions does not qualify as a predicate offense. And like Elliott, he argued that very point in his recently rejected § 2255 motion. Like Elliott’s compassionate release motion, the court should construe Mr. Cooper’s motion as a § 2255 motion. And because Mr. Cooper lacks authorization from the Tenth Circuit to file yet another second or successive § 2255 motion, *see* 28 U.S.C. § 2255(h), the Court should dismiss it for lack of jurisdiction.

The compassionate release statute is not (and should not be) an end-run around the strict requirements of § 2255. To preserve the distinct barrier between the two, courts should properly construe motions that challenge the validity of a sentence as a § 2255 motion—no matter the label. *See, e.g., MacFarlane v. United States*, No. 2:23-CR-214, 2025 WL 642877, at \*1 n.1 (D. Utah Feb. 27, 2025) (construing compassionate release motion as motion to correct sentence under § 2255).

## **II. A change in law alone cannot be an extraordinary and compelling reason warranting a sentence reduction.**

Because the court lacks jurisdiction over Mr. Cooper’s motion, it need not consider its merits. But even if it did, it should deny the motion. The only extraordinary and compelling reason Mr. Cooper offers is an alleged change in law, relying on § 1B1.13(b)(6). But a change in

law standing alone is not an extraordinary and compelling reason warranting a sentence reduction. *See Rutherford v. United States*, 608 U.S. ---, No. 24–820, 2026 WL 1485535 (May 28, 2026). Courts have an explicit and independent role in interpreting the words “extraordinary and compelling reasons.” *Id.* at \*10. Specifically, a court may reduce a sentence under § 3582(c)(1)(A)(i) only if it “finds” *both* that “extraordinary and compelling reasons warrant such a reduction” *and* that “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A). *Id.* So while the Commission has determined that a court may consider a change in law under the circumstances described above, “the Commission’s interpretation must land within the statutory goalposts, no matter how wide they may be.” *Id.* And it is still the Court’s responsibility to assess for itself whether an extraordinary and compelling reason warrants a sentence reduction. *See United States v. Maumau*, 993 F.3d 821, 832 (10th Cir. 2021) (“[D]istrict courts, in carrying out step one of § 3582(c)(1)(A)’s three-part statutory test, possess the authority to determine for themselves what constitutes ‘extraordinary and compelling reasons.’”).

The court should find that Mr. Cooper’s alleged change in law—employing the categorical approach, which existed well before Mr. Cooper’s sentencing—is not an extraordinary and compelling reason warranting a sentencing reduction.

**a. A sentence reduction under § 3582 must be based on individualized circumstances—not a blanket legal rule.**

The Supreme Court recently held in *Rutherford* that at when it comes to considering Congress’s nonretroactive change to § 924(c), “the Commission’s policy statement is invalid.” *Rutherford*, 2026 WL 1485535 at \*10. Although this case does not involve § 924(c), the Court’s reasoning in *Rutherford* applies to Mr. Cooper’s reliance on a change in law as the lone “extraordinary and compelling” reason for a sentence reduction.

The first indication that a change in law alone is not an extraordinary and compelling reason warranting a sentence reduction is the individualized nature of compassionate release motions. The “heartland of compassionate release” has “long been defined by a prisoner’s personal circumstances.” *Rutherford*, 2026 WL 1485535 at \*7. A fact reflected in the guideline Mr. Cooper relies on. Not only does § 1B1.13(b)(6) require courts to consider the defendant’s individual circumstances, but § 3582(c)(1)(A)(i) itself was specifically designed for granting relief based on individual circumstances rather than the blanket application of a legal rule. That provision has historically been understood to apply to personal circumstances, like age and health—not changes in sentencing law. *Id.* When the First Step Act’s amendments left the substantive requirements for a § 3582(c)(1)(A)(i) reduction untouched, they did so against a historical backdrop that had considered personal—not legal—developments as bases for reducing a sentence. *Cf. Monsalvo v. Bondi*, 145 S. Ct. 1232, 1242 (2025) (recognizing “general presumption” that “new provision” incorporates “longstanding administrative construction”) (cleaned up). Had Congress wanted to open the door to sentence reductions based on disagreements with statutorily mandated sentences, it surely would have said so.

Here too the Bureau’s role counsels against relying on a change in law alone. *See Fernandez*, 2026 WL 1485476, at \*8. Given the Bureau’s institutional expertise in personal circumstances, “it makes little sense to have the Bureau evaluate legal arguments” over changes in law. *See id.*

Although the Tenth Circuit has held that a court may consider changes in law as a factor for compassionate release, the Supreme Court’s decision in *Rutherford* overrules those decisions. *See Rutherford*, 2026 WL 1485535 at \*5 & n.2 (citing *McGee* as a case in the minority that the Court disagreed with). But even then, these cases never held that a change in law standing alone

is a proper factor. They held firm that a reduction must be based on the prisoner’s individualized circumstances—not on a blanket application of the change in law. *See United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. Mar. 29, 2021); *United States v. Maumau*, 993 F.3d 821, 837 (10th Cir. 2021) (“[T]he district court’s decision indicates that its finding of ‘extraordinary and compelling reasons’ was based on its individualized review of all the circumstances of Maumau’s case.”). The *McGee* court, in dealing with changes to the Three Strikes Law, clarified that “the fact a defendant is serving a pre-First Step Act mandatory life sentence imposed under § 841(b)(1)(A) cannot, standing alone, serve as the basis for a sentence reduction under § 3582(c)(1)(A)(i).” *McGee*, 992 F.3d at 1048. Instead, it “can only be the combination of such a sentence *and a defendant’s unique circumstances* that constitute ‘extraordinary and compelling reasons.’” *Id.* (emphasis added). The *Maumau* court, in dealing with changes to § 924(c), likewise “made clear” that it was not just the amendments to § 924(c) that mattered; “a district court may consider the legislative change to the stacking provision *only in the context of an individualized review of a movant’s circumstances.*” *Maumau*, 993 F.3d at 838 (Tymkovich, C.J., concurring) (emphasis added).

Reducing sentences based on intervening changes in the law would also undermine congressional design more generally because, as discussed above, the “remedial vehicle” Congress “specifically designed for federal prisoners’ collateral attacks on their sentences” is a motion brought under 28 U.S.C. § 2255—not a § 3582(c)(1)(A)(i) sentence reduction. *Jones v. Hendrix*, 599 U.S. 465, 473 (2023); *see also Fernandez*, 2026 WL 1485476 at \*7; *United States v. Thacker*, 4 F.4th 569, 574 (7th Cir. 2021) (explaining that § 2255 provides the “principal path” that Congress has “established for federal prisoners to challenge their sentences” after they have become final). Treating a change in the law as an “extraordinary and compelling” reason for a

sentence reduction would allow defendants to “avoid the restrictions of the post-conviction relief statute by resorting to a request for compassionate release instead.” *Crandall*, 25 F.4th at 586. It “would wholly frustrate explicit congressional intent to hold that [defendants] could evade” those restrictions “by the simple expedient of putting a different label on their pleadings.” *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973).

Mr. Cooper has not identified any applicable individualized circumstances. He instead relies on a blanket application of an alleged change of law. In essence, what Mr. Cooper asks for is precisely what Judge Tymkovich declared that the *Maumau* Court was *not* holding: “our holding does not give district courts carte blanche to retroactively apply in every instance [a change in law].” *Maumau*, 993 F.3d at 838 (Tymkovich, C.J., concurring). There is nothing extraordinary and compelling about Mr. Cooper’s sentence. “The imposition of a sentence that was not only permissible but statutorily required at the time is neither an extraordinary nor a compelling reason to now reduce the same sentence.” *Maumau*, 993 F.3d at 838 (Tymkovich, C.J., concurring).

**b. Employing the categorical approach, which existed at the time of Mr. Cooper’s sentencing, is not a change in law.**

In any event, Mr. Cooper hasn’t even identified a change in law. The Three Strikes Law remains the same. And as the Tenth Circuit has held, that is enough to reject Mr. Cooper’s claim. *United States v. Bell*, No. 24-5003, 2024 WL 4404236, at \*2 (10th Cir. Oct. 4, 2024) (“Section 3559(c) has not been recently amended, so the statute does not reflect any ‘change in the law’ to support relief under § 1B1.13(6).”); *cf. United States v. Abdi Jama Aqid*, No. 2:11-CR-34, 2024 WL 4793481, at \*3 (E.D. Va. Nov. 14, 2024) (“The United States rightly contends that Defendant has not met the requirements of § 1B1.13(b)(6). Defendant does not reference any

change in the piracy statute under which he was charged, nor any other qualifying change in law.”).

The most Mr. Cooper can muster is not a change in law, but the employment of a sentencing procedure. Mr. Cooper points to the Tenth Circuit’s use of the categorical approach in *United States v. Leaverton*, 895 F.3d 1251 (10th Cir. 2018). Mot. at 10. But this is not a “change.” The categorical approach has been around since the Supreme Court’s decision in *Taylor v. United States*, 495 U.S. 575 (1990), issued more than a decade before Mr. Cooper’s sentencing. Nothing prevented Mr. Cooper from arguing for the categorical approach at his sentencing, his direct appeal, or his initial § 2255 motion. As the Tenth Circuit recognized in Mr. Cooper’s own appeal of his § 2255 motion, “the law appears somewhat unsettled at that time” of Mr. Cooper’s sentencing. *United States v. Cooper*, 159 F.4th 768, 775 (10th Cir. 2025). *Leaverton* itself noted that the court “ha[d] not expressly considered the question” until then. *Leaverton*, 895 F.3d at 1253. And both parties in *Leaverton* relied on *Taylor* to agree that that categorical approach applied. See *United States v. Leaverton*, Opening Brief 2017 WL 1952117, at \*10 (“In determining whether a prior conviction qualifies for a federal statutory enhancement, courts typically apply categorical analysis.”) (citing *Taylor*); *United States v. Leaverton*, Answering Brief, 2017 WL 3505191, at \*17 (“The categorical approach looks to the elements of the statute of conviction and not the underlying facts of the conviction.”) (citing *Taylor*). This argument was fully available to Mr. Cooper when he was sentenced.

Other courts have held that employing the categorical approach is not a “change in law” sufficient to trigger § 1B1.13(b)(6). When the Seventh Circuit ruled in *United States v. Ruth*, 966 F.3d 642, 650 (7th Cir. 2020), that convictions under Illinois law for cocaine cannot serve as predicate offense because the state defined cocaine more broadly than federal law, several

defendants filed motions for compassionate release, arguing that this “change in law” warranted a sentence reduction. Courts universally rejected their claims. “*Ruth* did not establish new law. It merely employed the categorical approach adopted long ago by the U.S. Supreme Court in *Taylor v. United States*, 495 U.S. 575 (1990).” *United States v. King*, No. 13 CR 50063-1, 2024 WL 1639821, at \*3 (N.D. Ill. Apr. 16, 2024). Because “the basis and authority for *Ruth* were in place since 1990, when the Supreme Court first laid out the categorical approach in *Taylor*,” *Ruth* “does not constitute a ‘change in the law’ under U.S.S.G. § 1B1.13(b)(6).” *Id.* at \*4; *see also United States v. Vaughn*, No. 10-CR-30006, 2025 WL 2992546, at \*3 (C.D. Ill. Oct. 24, 2025); *United States v. Sanchez*, No. 4:10-CR-40022-NJR-1, 2025 WL 240886, at \*3 (S.D. Ill. Jan. 17, 2025).

So too here. *Leaverton* did not establish new law. It merely employed the categorical approach adopted long ago by the U.S. Supreme Court in *Taylor*. Mr. Cooper could have raised an argument over the categorical approach at sentencing. *See, e.g., United States v. Sanchez*, No. 4:10-CR-40022-NJR-1, 2025 WL 240886, at \*3 (S.D. Ill. Jan. 17, 2025) (“*Sanchez* could have made a *Ruth*-style argument regarding the categorical approach at sentencing, on direct appeal, or in a motion under 28 U.S.C. § 2255, but he did not.”). His failure to do so is not an extraordinary and compelling reason warranting a reduction of his statutorily mandated sentence.

### **Conclusion**

“[N]ot all motions invoking § 3582(c)(1)(A) are actually governed by § 3582(c)(1)(A).” *United States v. Wesley*, 78 F.4th 1221, 1222 (10th Cir. 2023) (Tymkovich, J., concurring in the denial of rehearing en banc). This is such a motion. Mr. Cooper challenges the validity of his

sentence. That falls squarely within the province of § 2255, and thus cannot be raised in a § 3582 motion for compassionate release. The court should dismiss for lack of jurisdiction.

DATED this 3rd day of June, 2026.

MELISSA HOLYOAK  
United States Attorney

/s/ Nathan H. Jack  
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CERTIFICATE OF SERVICE

I certify that on June 3, 2026, I electronically filed the foregoing Opposition to Defendant's Motion for Compassionate Release using the court's CM/ECF system, and sent notification of such filing to the following:

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