

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v.

CASE NO. 2:21-cr-74-TPB-KCD

AMBER REWIS BRUEY

**UNITED STATES' RESPONSE IN OPPOSITION TO
AMBER REWIS BRUEY'S MOTION FOR COMPASSIONATE RELEASE**

Amber Rewis Bruey previously pleaded guilty to sixteen different fraud-related charges after she (and her husband) stole over \$880,000 in COVID-relief funds. Bruey used the stolen money to buy luxury items—and to pay off a prior restitution order (for a different fraud that she committed). At sentencing, the Court calculated Bruey's Guidelines range as 63-78 months' imprisonment. The Court varied downward and sentenced Bruey to 48 months' imprisonment. Bruey has been in custody for about eight of those months.

This matter is now before the Court on Bruey's motion for compassionate release. At a high level, Bruey argues for release based on (1) her medical conditions and the Bureau of Prisons' (BOP's) alleged inadequate care of her, (2) the fact that her children's caregiver is facing medical challenges making caretaking difficult, and (3) her rehabilitation while incarcerated. Because none of Bruey's reasons—taken alone or together—are “extraordinary and compelling” ones justifying her release, the United States asks the Court to deny Bruey's motion.

I. BACKGROUND

Over the course of about a year in 2020 and 2021, Bruey and her co-defendant husband (Anthony Bruey) fraudulently applied for dozens of COVID-relief loans. *See* ECF No. 97 (PSR) at ¶¶ 21-40. Ultimately, they received \$881,659.35 in loan proceeds to which they were not entitled—though their intended loss was more than double that (\$1,921,624.68). *Id.* at ¶ 40.

With their over \$880,000 in stolen proceeds, the Brueys bought “luxury items,” including a home in North Carolina and various (expensive) vehicles—such as cars, ATVs, and dirt bikes. *See* ECF No. 134 at 11, 16-17; PSR ¶ 38. Bruey also paid off a prior restitution order that she owed for a different fraud that she committed—one involving her stealing over \$20,000 from Florida public-assistance programs. *See* PSR ¶¶ 38, 66.

Based on her (more prominent) role in the offense, Bruey pleaded guilty to sixteen different charges—including conspiring to commit wire fraud, committing wire fraud, conspiring to commit money laundering, and committing illegal monetary transactions. *See* ECF Nos. 3, 72. (Bruey’s husband pleaded guilty to just six counts. *See* ECF No. 60.)

At sentencing, based on an offense level of 24 and a criminal-history category of III, the Court calculated Bruey’s Guideline range as 63-78 months’ imprisonment. *See* ECF No. 110 at 1. The Court varied downward and imposed a sentence of

48 months' imprisonment. *See* ECF No. 134 at 18; ECF No. 109 at 2. The Court based its decision to vary downward on Bruey being a good mother to her four children, having a potentially overstated criminal history, and being in an abusive relationship. *See* ECF No. 134 at 15-16. But the Court had to weigh those mitigating factors against the aggravating factors—including the size and scope of the fraud, Bruey's (leading) role in it, and the fact that this was not Bruey's first fraud offense. *Id.* at 16-17.

At the time of sentencing, the Court was keenly aware of what its 48-month sentence would mean for Bruey's family. Bruey had four minor children—with a fifth on the way (she had gotten pregnant on release—after pleading guilty). *See* ECF No. 133 at 58-59; *see also* ECF No. 163-1 at 26 (due date of February 25, 2023); ECF No. 132 (pleaded guilty on March, 16, 2022). And both Bruey and her husband were facing potential prison sentences. The Court noted the family situation was what “bother[ed] [it] the most” about the case. *See* ECF No. 134 at 17. While wanting to “salvage” the situation for Bruey's children, the Court noted that was difficult when Bruey chose to “engag[e] in this stealing and criminal behavior knowing she had four little kids that could end up basically without parents.” *Id.* at 17-18. The Court noted Bruey's conduct was “just irresponsible and disregarding important family responsibilities”; indeed, it recognized that there was simply “no need” for this \$800,000+ fraud— “[m]aybe a couple thousand, maybe 10,000, maybe 20,000, but

800,000? That is called greed. This should be an episode out of that show American Greed, because that, at the end of the day, is what it is, is greed.” *Id.* at 18.

In light of the nature of the crime, the Court could not agree “with the defense request that [Bruey] should not do any time behind bars.” *Id.* The Court instead concluded that a below-Guidelines sentence of 48 months’ imprisonment was sufficient but not greater than necessary for the purposes of sentencing. *Id.* The Court also “work[ed] with” Bruey on her report date—delaying it until after she gave birth to her fifth child. *Id.*

The defense specifically asked the Court to consider staggering Bruey and her husband’s sentences so that only one parent would be in custody at a time. But the Court declined to do so. *Id.* at 19-20.

About six months after her sentencing—on January 21, 2023—Bruey gave birth to her fifth child; this was a few weeks early (the child’s due date was February 25, 2023). *See* ECF No. 163-1 at 26; *see also* ECF No. 132 (sentencing on July 13, 2022).

Bruey officially entered BOP custody about four months after giving birth (on May 12, 2023). *See* ECF No. 156. She thus has been in custody for about eight months, and has a current projected release date of July 23, 2026. *See* BOP Inmate Locator, available at: <https://www.bop.gov/inmateloc/>.

Bruey now brings a compassionate-release motion based on (1) her medical conditions and the BOP’s alleged inadequate medical care, (2) the fact that her

children’s caregiver is facing medical challenges making caretaking difficult, and (3) her rehabilitation. *See* ECF No. 163. But none of Bruey’s reasons—taken alone or together—are “extraordinary and compelling” ones justifying her release. The United States thus asks the Court to deny Bruey’s compassionate-release motion.¹

II. MEMORANDUM OF LAW

A district court has no inherent authority to modify a sentence after it has been imposed; a court “may do so only when authorized by a statute or rule.” *United States v. Puentes*, 803 F.3d 597, 606 (11th Cir. 2015). One statute authorizing a sentence modification is the compassionate-release statute, which allows certain prisoners to receive a reduced sentence based on “extraordinary and compelling reasons.” *See* 18 U.S.C. § 3582(c)(1)(A). Under the statute, a court may reduce a prisoner’s term of imprisonment if the court determines that (1) “extraordinary and compelling reasons warrant such a reduction,” (2) “such a reduction is consistent with applicable policy statements issued by the Sentencing Commission,” and (3) the § 3553(a) sentencing factors weigh in favor of a reduction. *Id.*; *see also United States v. Tinker*, 14 F.4th 1234,

¹ Bruey also briefly mentions Amendment 821. *See* ECF No. 163 at 1, 9, 11. Should the Court wish to consider Bruey’s request for relief pursuant to Amendment 821, the U.S. Attorney’s Office respectfully asks that the Court adhere to the Order Regarding Amendment 821 to the United States Sentencing Guidelines, 3:21-mc-1-TJC. That Order advances an efficient and collaborative procedure to determine a defendant’s eligibility for a sentence reduction under 18 U.S.C. § 3582(c)(2) and Amendment 821.

1237 (11th Cir. 2021).² The defendant bears the burden of establishing entitlement to relief. *United States v. Green*, 764 F.3d 1352, 1356 (11th Cir. 2014) (addressing a motion for a sentence reduction under 18 U.S.C. § 3582(c)(2)).

Because none of Bruey’s circumstances constitute “extraordinary and compelling reasons” justifying her release, and because (even if they were) the § 3553(a) factors would not support a reduction of her sentence, the Court should deny Bruey’s compassionate-release motion.

A. Bruey Cannot Establish “Extraordinary and Compelling” Reasons

The Sentencing Commission’s applicable policy statement defines “extraordinary and compelling reasons” (and is binding on the Court). *See* U.S.S.G. § 1B1.13(b); *United States v. Bryant*, 996 F.3d 1243, 1262 (11th Cir. 2021). According to the Sentencing Commission, “extraordinary and compelling reasons” may exist where—for example—(1) the defendant is suffering from certain medical conditions requiring specialized or long-term care which is not being provided by the BOP (and without which the defendant is at serious risk of health deterioration); (2) the defendant has a child, or parent, or similar immediate family member with a particular need for caretaking; or (3) other circumstances that are “similar in gravity” to those specifically delineated by the Sentencing Commission. *See* U.S.S.G. § 1B1.13(b).

² The statute also carries an exhaustion requirement—requiring a prisoner to first bring her compassionate-release motion to the BOP. *See* 18 U.S.C. § 3582(c)(1)(A). The government will concede that Bruey did so. *See* ECF No. 163-1 at 4-13.

None of Bruey's circumstances—including her medical conditions, her children's caretaking needs, or her rehabilitation—constitute “extraordinary and compelling reasons” justifying her release.

1. Bruey's Medical Ailments Are Not An “Extraordinary and Compelling” Reason Justifying Her Release

Under U.S.S.G. § 1B1.13(b)(1)(C), a defendant may establish “extraordinary and compelling reasons” by showing that she is suffering from a medical condition that requires “specialized” or “long-term” care that is not being provided by the BOP (and without which she is at serious risk of health deterioration or death). Bruey has made no such showing.

To be sure, Bruey suffers from various medical ailments. Bruey provides the Court a lengthy list of medical ailments from which she is allegedly suffering.³ But even assuming for a moment that those ailments are severe enough conditions to require “specialized or long-term care” (a dubious assumption for many of them), Bruey makes no showing that the BOP is not providing the necessary care.

³ These include: cardiomyopathy; reduced left ventricular ejection fraction; hypokinesia of the heart muscle; high blood pressure; tachycardia; hypersensitivity lung disease; chronic asthma; progressive, debilitating arthritis; debilitating scoliosis; degenerative disc disease; cervical dystonia; fibromyalgia; chronic severe migraines; ADHD; allergies; depression; and anxiety. *See* ECF No. 163 at 2. Notably, despite Bruey's assertions to the contrary, many of these conditions are long-standing (and were not caused by COVID or pregnancy complications). *Id.* For example, arthritis, scoliosis, ADHD, and allergies are clearly not caused by COVID or pregnancy complications. And others, although more plausibly from COVID or pregnancy complications, are clearly not in Bruey's case—for example, she experienced migraines since she was a child. *See* PSR ¶ 88. As this demonstrates, the Court must take all of Bruey's allegations with a grain of salt.

As best the government can tell, Bruey’s motion mostly relies on her (1) depression, (2) cardiology issues, (3) back/pain issues, and (4) allergies/asthma issues.⁴ *See* ECF No. 163. Bruey seems to assert that the care she is receiving from the BOP for these conditions is inadequate, and that previously she had a long-term and stable medication regimen that was working. But her claims are belied (in more ways than one) by the record. The record shows that Bruey’s prior medical treatment was not nearly as long-term or stable as she claims, and that her BOP treatment has been similar to the care she has received prior to being in custody—including seeing doctors and specialists, and trying different medication combinations. The table below is illustrative of not-so-stable treatment Bruey received prior to entering custody:

<u>Time Period</u>	<u>Medications</u>
While residing in Florida [2014-2020]	Obtained a medical-marijuana card and “was not taking any other prescribed medications.” PSR ¶ 94; <i>but see id.</i> at ¶ 91 (claiming to have taken Wellbutrin for depression during this time).
Change-of-plea hearing [March 16, 2022]	Had to relinquish her medical-marijuana card in North Carolina; body had a “difficult time adjusting.” PSR ¶ 94. Reported taking: • Zolpidea (for sleep). ECF No. 132 at 10. • Wellbutrin (for depression and anxiety). <i>Id.</i> • Ibuprofen (for scoliosis and arthritis). <i>Id.</i> at 10-11.

⁴ Bruey also mentions needing to get breastmilk to her youngest child. *See* ECF No. 163 at 5-7. The BOP has been working with Bruey on this—and she is now able to pump and store her breastmilk for the child. *See, e.g.*, ECF No. 163-1 at 16-17. Regardless, Bruey’s child is now nearly a year old—and thus may soon begin trying other nutritional sources. *See, e.g.*, ECF No. 163-1 at 34, 55. Further, Bruey’s mother has been able to get other breastmilk milk from a breastmilk bank. *See* ECF No. 163 at 6. Given the improvements in Bruey being able to get her own breastmilk to her child, the availability of other breastmilk for the child, and the age of the child, this does not rise to the level of an “extraordinary and compelling” reason justifying Bruey’s release.

PSR <i>[the weeks following the change-of-plea hearing – March / April / May 2022]</i>	• <i>Allergies:</i> Reported taking Hydroxyzine HCL for itching relief. PSR ¶ 87. • <i>Headaches:</i> Reported using Topiramate and nasal spray Sumatriptan; was waiting on a prescription for a prophylactic medication to <i>prevent</i> headaches (not treat them afterwards). <i>Id.</i> ¶ 88. • <i>Back pain (scoliosis and arthritis):</i> Reported taking Celebrex and Loritab, and “occasionally” taking muscle relaxers Flexiril and Methocarbamol (as needed). <i>Id.</i> ¶ 89. • <i>Depression and anxiety:</i> Reported taking Wellbutrin; suffered “breakthrough symptoms” so added Doxepin and Klonopin (as needed). <i>Id.</i> ¶ 91. ○ (Between the initial and final PSR, Bruey switched from Alprazolam to Klonopin. <i>See id.</i> at p. 84, ¶ 90.) • <i>Sleep:</i> Reported taking Ambien for sleep/headaches/anxiety. <i>Id.</i> ¶ 91. ○ (Between the initial and final PSR, Bruey switched from Amitriptyline to Ambien. <i>See id.</i> at p. 84, ¶ 90.) • <i>Asthma:</i> Reported using a nebulizer, albuterol, and a Spiriva inhaler. <i>Id.</i> ¶ 90.
Compassionate-release assertions about pre-custody life <i>[prior to entering BOP custody on May 12, 2023]</i>	Allegedly taking “23” medications, including: • <i>Depression:</i> An alleged “long-term medication regimen” of Wellbutrin, Topomax, Klonopin, and Buspar. ECF No. 163 at 3. • <i>Allergies:</i> Trelegy inhaler and Singulair medication. <i>Id.</i> at 4. • <i>Back pain:</i> “[S]everal prescription medications” (“ibuprofen and muscle rub do not work”). <i>Id.</i> at 3. • <i>Headaches:</i> “migraine injections.” <i>Id.</i> at 3-4.

As the above table demonstrates, Bruey’s treatment and medications have been a constantly moving target. Take, for example, the depression treatment that she has received: As of the change-of-plea hearing, Bruey reported taking only Wellbutrin. At the time of the initial PSR, she reported taking Wellbutrin and (as needed) Doxepin and Alprazolam for breakthrough anxiety. Weeks later, at the time of the final PSR,

she reported taking Wellbutrin and (as needed) Doxepin and *Klonopin* (not *Alprazolam*). According to her compassionate-release motion, by the time she entered BOP custody about a year later, she was on a “long-term” regimen of Wellbutrin, *Topomax*, Klonopin, and *Buspar* (no Doxepin or Alprazolam). She (now) claims this “long-term” regimen “was working.” But this, too, is belied by the record:

In May 2023—when entering BOP custody—Bruey reported to medical personnel that she “takes Wellbutrin” for depression, but “it hasn’t helped and she is open to trying a change.” *See* Gov. Ex. A (Bruey’s BOP Medical Records) at 56. The BOP tried a change; it prescribed DULoxetine (30 mg) and Divalproex (500 mg). *Id.* at 57, 96. Trying new medications to get Bruey’s depression under control—when she told medical personnel that she was “open to trying a change” because other medications were not helping—is far from inadequate medical care. Indeed, *not changing* the prescriptions that Bruey reported were *not working* would have been.

The next month (June 2023), when Bruey reported continuing depression issues, the BOP increased her dosage of DULoxetine from 30 mg to 60 mg. *Id.* at 81, 95, 96, 98. At that point, her prescriptions for depression medications included DULoxetine (60mg), Divalproex (500 mg), and busPIRone (10 mg). *Id.* at 95-96. By the time that Bruey was seen in July 2023 for prescription refills, she “denie[d] any issues with current medications.” *Id.* at 44. Later, in December, she requested an “increased dose of buspirone,” and the BOP fulfilled her request—upping her

busPIRone dosage from 10 mg to 20 mg. *Id.* at 2, 5-6. Put simply, Bruey has not shown that the BOP has ignored—or not treated—her mental-health issues.⁵ To the contrary, the BOP has been working with Bruey to try to get her on an effective medication regime.

And one more point bears emphasizing with respect to Bruey’s depression: Between giving birth, being separated from her newborn child, and entering prison, it is not shocking that Bruey—upon entering custody—was reporting mental-health issues. *See* Gov. Ex. A at 81. But BOP medical personnel have been trying to ensure Bruey gets better trying different medications and different dosages. And this isn’t just with respect to her depression. Take Bruey’s cardiology problems:

Upon entering BOP custody, Bruey reported that her cardiomyopathy was causing a left ventricular ejection fraction of just 41%. Gov. Ex. A at 58. Her (external) medical provider explained the potentially grim prognosis—noting that “traditionally speaking 1/3 [of people] recover, 1/3 stay [the] same, [and] 1/3 get

⁵ In her motion, Bruey complains of low serotonin levels. *See* ECF No. 163 at 3. But this serotonin test was done on June 14, 2023—just *days* after BOP medical personnel upped the dosage on one of Bruey’s prescriptions. *See* Gov. Ex. A at 95, 185. Thus, these low serotonin levels simply show why an increased prescription dosage may have been appropriate; they do not establish whether the new dosage was or was not working (which would take *weeks* to figure out). Notably, weeks later, Bruey denied any issues with her current medications. *Id.* at 44. By December, records show she was still “doing well” on her medications, but that she requested an “increased dose [of] buspirone.” *Id.* at 2. Upon receiving this request, BOP upped Bruey’s busPIRone dosage. *Id.* at 5-6. Again, there is simply no evidence of BOP ignoring—or not treating—Bruey’s mental-health issues.

worse.” ECF No. 163-1 at 25; *see also id.* at 26 (explaining the same). The provider noted the importance of staying on certain classes of medications until ejection fraction was measured again, *see id.* at 25, but also told the BOP that his specific medication recommendations had been “limited due to her breastfeeding” and he had “recommendations . . . to change [Bruey’s] medication,” *see* Gov. Ex. A at 56, 58.

In September (i.e., after being in BOP custody a few months), Bruey saw a cardiologist who reported that the exam of Bruey was “unremarkable” and her left ventricular ejection fraction had “improved” to 45-50%. *Id.* at 216. Far from not being treated and experiencing declining health, Bruey has been on medication, has been seeing doctors and specialists, and—against the odds that her own prior doctor provided—is improving. *See id.*; *see also* ECF No. 163-1 at 25, 26 (explaining that two-thirds of people stay the same or get worse, while only one-third get better).

As to Bruey’s back issues/pain, she complains that the BOP has been recommending ibuprofen and muscle rub, which she says do not help; she asserts that she has “chronic long-term back and joint muscle issues” that require “several prescription medications” and “possible surgery.” ECF No. 163 at 2, 3. A few things are worth noting here:

First, as to the treatment (ibuprofen) that Bruey now asserts does not work, that was the treatment she was taking as recently as her change-of-plea hearing. *See* ECF No. 132 at 10-11. Further, contrary to her assertions that she is being instructed to

simply take ibuprofen for her pain, her BOP medical records show that she is receiving at least two prescription medications to help with her scoliosis issues. *See* Gov. Ex. A at 5-6 (showing DULoxetine and Meloxicam prescriptions).

Second, as to the surgery that Bruey now says she may need, Bruey was diagnosed with scoliosis when she was 12 but chose to “not undergo[] any surgeries” because they “carr[y] the risk of paralysis.” PSR ¶ 89. Bruey does not explain what has changed to suddenly require the surgery (aside from her wanting to get out of custody). Indeed, her prior provider recommended Bruey wait “until her children are grown” to have the surgery, given the “risk of paralysis.” *See id.* at p. 84, ¶ 88. Notably, Bruey had a scoliosis exam while in custody, and the report from that exam makes no mention of needing surgery. *See* Gov. Ex. A at 227.

And finally, as to Bruey’s allergies/asthma issues, these are long-standing issues. *See, e.g.*, ECF No. 163-1 at 46. BOP has given Bruey inhalers and other medication to attempt to deal with these conditions. *See, e.g.*, Gov. Ex. A at 5. There is simply no evidence of severe untreated allergy or asthma issues in Bruey’s BOP medical records. *See, e.g., id.* at 11-12, 41, 209, 230.

The fact of the matter is, no matter where Bruey finds herself—in BOP custody or not—she would be experiencing medical issues. That is the nature of her ailments. And, no matter where Bruey finds herself, she would be working with medical personnel to try and find the right treatments for her ailments. Indeed, that is what

she did for the months (and years) leading up to her entering BOP custody. Bruey's medications and treatment have been constantly changing and evolving. The changes did not start, or suddenly stop, upon entering BOP custody. Every indication is that—like the doctors before them—the doctors at the BOP are working with Bruey to find the right treatments and medicines for her ailments. There is no indication that the BOP is not providing Bruey the care that she needs, as would be required for Bruey to show “extraordinary and compelling reasons” justifying her release. *See* U.S.S.G. § 1B1.13(b)(1)(C). Accordingly, the government asks that the Court deny Bruey's motion to the extent it relies on her medical ailments.

2. The Bruey Children's Caretaker Needs Are Not An “Extraordinary and Compelling” Reason Justifying Bruey's Release

Under U.S.S.G. § 1B1.13(b)(3)(A), a defendant may establish “extraordinary and compelling reasons” justifying a sentence reduction by showing that the caregiver of her minor children has died or become incapacitated. Once more, Bruey has made no such showing.

Bruey alleges that her five children “have several medical issues” requiring frequent medical appointments, and that her mother (their caretaker) has “several chronic and debilitating medical conditions” which make it hard for her to get the children to their appointments. ECF No. 163 at 1. More specifically, Bruey asserts that her mother suffers from muscular dystrophy, which she alleges has gotten so

severe as to render her mother legally blind. *Id.* at 7. Bruey also notes that the caretaking situation has put a strain on her mother’s finances. *Id.* at 8.

The government is certainly sympathetic to the situation in which Bruey’s children and mother find themselves. But Bruey has not even alleged (let alone shown) that her mother is “incapacitated.” Rather, Bruey simply alleges that it is difficult (and expensive) for her mother to care for the five children. But that is not the standard for “extraordinary and compelling” reasons. And for good reason—as it is true in nearly every case. While a tremendous burden has undoubtedly been placed on Bruey’s children and mother due to Bruey’s crime, that is always the case when parents choose to commit crimes. *See, e.g., United States v. Gonzalez*, Case No. 17-cr-60223-BLOOM, 2021 U.S. Dist. LEXIS 168725, at *13 (S.D. Fla. Sept. 3, 2021) (“[L]oved ones are often adversely impacted by a family member’s incarceration, and must make necessary and inconvenient life adjustments during that individual’s incarceration. These often-unavoidable consequences, however, do not create extraordinary circumstances[.]”).

Even if the Court were to find Bruey’s mother “incapacitated”—which there is no evidence (or even allegation) of—it should exercise its discretion to deny Bruey’s request for relief based on the fact that (1) the Court already considered the caretaking issue at sentencing when fashioning a (below-Guidelines) sentence, and (2) Bruey has not shown that there are no other available caretakers. Taking these in turn:

First, the Court already considered at sentencing the family circumstances at play in this case; indeed, the Court noted that it was what “bother[ed it] the most” about the case. *See* ECF No. 134 at 17. While wanting to “salvage” the situation for Bruey’s children, the Court noted that that was difficult when Bruey chose to “engag[e] in this stealing and criminal behavior knowing she had four little kids that could end up basically without parents.” *Id.* at 17-18. The Court called Bruey’s conduct “just irresponsible.” *Id.* at 18. Given the nature of the crime, the Court explained that Bruey had to do “time behind bars.” *Id.* And it rejected the idea of staggering Bruey and her husband’s sentences so that only one parent would be in custody at a time. *Id.* at 19-20. Nothing has changed to impact the Court’s analysis. The Court knew (at sentencing) that the Bruey kids—and their caretaking relatives—would be left in a tough situation. But it also knew that Bruey’s conduct was worthy of punishment. That is still true today.

Second, although not technically a requirement under § 1B1.13(b)(3)(A), the Court should also consider whether Bruey’s mother is the only available caregiver. *See, e.g., United States v. Streeter*, CASE NO: 3:18-cr-76-TJC-LLL, 2023 U.S. Dist. LEXIS 3629, at *3-4 (M.D. Fla. Jan. 9, 2023) (noting that the availability of another caregiver can inform the Court’s exercise of its discretion and collecting similar cases).

Bruey has not shown that her mother is the only available caregiver. For example, the PSR mentions a sister of Bruey’s (Marissa Higginbotham) who also lives

in North Carolina, has a “close relationship” with Bruey, and clearly cares about Bruey’s children. *See* PSR ¶¶ 76, 77, 86. Bruey provides no explanation for why Ms. Higginbotham could not be a caretaker for her children.

Given that Bruey has not established an incapacitated caretaker for her children, she is not eligible for relief under § 1B1.13(b)(3).⁶ But even if Bruey could show an incapacitated caretaker, the Court should exercise its discretion to deny Bruey’s motion because it already considered the caretaking issue when it fashioned Bruey’s sentence and—additionally—Bruey has not shown that she is the only available caregiver.

3. Bruey’s Rehabilitation Is Not An “Extraordinary and Compelling” Reason Justifying Her Release

Finally, Bruey notes that she has been “diligently programming” since her surrender—working as a GED and ESL teacher-aide at the prison, and taking many different classes. *See* ECF No. 163 at 1. Bruey’s dedication to rehabilitation is

⁶ The government (like Bruey) has focused on Bruey’s *children’s* caretaker needs. But at times Bruey adds that she needs to care for her mother, too. *See, e.g.*, ECF No. 163 at 8, 11. Under § 1B1.13(b)(3)(C), “[t]he incapacitation of a defendant’s parent when the defendant would be the only available caregiver” could constitute “extraordinary and compelling” circumstances. Thus, under both subsections (A) and (C), Bruey would need to make a showing that her mother is “incapacitated” (which she cannot do). Moreover, Bruey being the “only available caretaker” is relevant to both subsections (indeed, it is *required* under subsection (C)). Given the similarities in what Bruey would have to show under either subsection (A) or (C), the government simply addresses Bruey’s caretaking arguments once. Bruey’s compassionate-release motion fails under both subsections (A) and (C), as she has not shown that her mother is “incapacitated” or that she is the “only available caretaker.”

commendable, but it “is not, by itself, an extraordinary and compelling reason” justifying her release. *See* U.S.S.G. § 1B1.13(d).

And taking Bruey’s (eight months of) rehabilitation together with her medical problems (which BOP is treating), and her children’s caretaking needs (which occur in every case where parents are sent to prison), does not render it “extraordinary and compelling.”

Because none of Bruey’s reasons—taken alone or together—are “extraordinary and compelling” ones, the government asks the Court to deny Bruey’s compassionate-release motion.

B. The § 3553(a) Factors Do Not Support a Sentence Reduction

Before granting a sentence reduction, the Court (in addition to finding “extraordinary and compelling reasons”) must find that the § 3553(a) sentencing factors weigh in favor of a reduction. 18 U.S.C. § 3582(c)(1)(A); *see also Tinker*, 14 F.4th at 1237. The Court already did a thorough balancing of the § 3553(a) factors at Bruey’s sentencing, and none of Bruey’s compassionate-release allegations disturb the Court’s prior, careful analysis that a 48-month sentence was warranted.

This was a serious fraud. Bruey stole over \$800,000 and intended to steal more than \$1.9M. Bruey took a lead role in the fraud. And this was not Bruey’s first fraud offense—indeed, she committed this fraud *while on probation* for another fraud. This fraud wasn’t committed to pay for medical expenses or basic necessities; it was a fraud

of pure greed—with the proceeds going to luxury items. Bruey’s 48-month sentence appropriately accounts for these aggravating factors. Her (below-Guidelines) sentence also takes into account the mitigating facts—including Bruey’s family circumstances. The Court knew about the four (soon-to-be-five) children at sentencing and considered their needs, but it also knew that this was a crime worthy of prison time. Nothing has changed to impact the Court’s balancing of the § 3553(a) factors. Accordingly, the Court should deny Bruey’s request for a sentence reduction.

Because Bruey has not established “extraordinary and compelling reasons,” and because—even if she had—the § 3553(a) factors would not support reducing her sentence, the government respectfully asks the Court to deny Bruey’s compassionate-release motion.

Respectfully submitted,

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U.S. v. Amber Rewis Bruey

Case No. 2:21-cr-74-TPB-KCD

CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, a true and correct copy of the foregoing document and the notice of electronic filing were sent by United States Mail to the following non-CM/ECF participant:

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