



§ 3582(c)(1)(a)(i) and reduce Elizabeth's term of imprisonment, just as it previously reduced the term of imprisonment of Elizabeth's alleged co-conspirator Toby MacFarlane.<sup>1</sup> Using Mr. MacFarlane's sentence reduction as precedent, we request that the Court provide Elizabeth with (1) a three-month reduction to account for the 25 consecutive days she spent in lockdown, and (2) an additional one-month reduction to account for the prohibition on family visitation and lack of access to the mental health care program at FCI Dublin. Such relief would move Elizabeth's prison release date from January 7, 2021 to September 28, 2020.<sup>2</sup> We have met and conferred with the government, who opposes the request.

### **FACTS**

Elizabeth reported to FCI Dublin on June 29, 2020. For her first 25 days at the facility, she was held in total lockdown, pursuant to the BOP's COVID-19 quarantine protocol. Elizabeth was confined to a tiny (roughly eight-by-ten foot) cell that was not intended or designed for 24-hour lockdown conditions. Four days into her lockdown period, another prisoner was placed into the cell with her—making the cell even more cramped and depriving Elizabeth of any privacy, which made the living conditions even worse than solitary confinement. She was allowed to leave the cell for roughly ten minutes per day, three days per week to shower. If she needed to use the toilet, she was forced to use the toilet in her cell in full view of her cellmate. She was not allowed any access to the outdoors. She was not allowed to place telephone calls to or electronically communicate with anyone, including her family. She did not have access to a library, and her only

---

<sup>1</sup> On July 17, 2020, we made a written request to the Warden of FCI Dublin, requesting that the BOP file a § 3582(c)(1)(A)(i) motion on Elizabeth's behalf. The Warden has failed to respond to our request. Elizabeth has therefore clearly satisfied the statutory exhaustion requirements, and the Court clearly has jurisdiction over this motion.

<sup>2</sup> After Elizabeth's prison term ends, she will be on supervised release for a period of two years.

access to books or magazines was through orderlies that would sometimes have random reading materials they were willing to loan out.<sup>3</sup> She was required to eat all of her meals inside her cell, with the last meal being served at approximately 3:30 in the afternoon. She did not have access to the commissary, and so had no way to supplement her diet. She was not provided access to any mental health care, notwithstanding that the Court's sentencing order included a requirement that Elizabeth, who has suffered with clinical depression and anxiety for decades, "participate in [a] mental health treatment program" while imprisoned.

After 25 days in complete lockdown that was even worse than solitary confinement, Elizabeth was finally released to general population. But the general population conditions have remained unusually harsh, due to the BOP's laudable efforts to control the COVID-19 risks. The BOP continues to prohibit any visits from family members, a policy that will apparently remain in place until at least October and, more likely in our opinion, until a COVID-19 vaccine is widely available. Elizabeth thus has been deprived of any physical contact with her family members for over two months, and she likely will not see any of them until she finally is released from prison. The BOP has essentially suspended general mental health programs at FCI Dublin, except in exigent circumstances (*e.g.*, a suicidal prisoner), which means that Elizabeth likely will not receive any mental health treatment until she finally is released from prison.

Finally, our understanding is that Elizabeth may have to spend another 14 days in complete lockdown conditions before she is released from FCI Dublin, meaning that her prison stay will have included at least 39 days in lockdown conditions.

---

<sup>3</sup> Elizabeth arrived to the prison with a copy of the Hebrew Bible. We understand that she was denied the ability to bring that Bible into her cell during the 25-day lockdown period.

## ARGUMENT

As amended by the First Step Act, 18 U.S.C. § 3582(c)(1)(A)(i) provides that a district court “in any case . . . may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), . . . if it finds that extraordinary and compelling reasons warrant such a reduction . . . .” This Court therefore has the statutory authority to reduce Elizabeth’s seven-month term of imprisonment to a shorter term, upon a finding of extraordinary and compelling circumstances.

### **I. Elizabeth’s Twenty-Five Days in Complete Lockdown Is an Extraordinary and Compelling Circumstance that Warrants at Least a Three-Month Reduction in Her Term of Imprisonment.**

After arriving to FCI Dublin on June 29, 2020, Elizabeth had to endure 25 consecutive days in complete lockdown conditions. Elizabeth was confined to a tiny cell, which she was allowed to leave only three days per week in order to shower and change clothes. During that 25 days, she was not allowed even a minute of outdoor time. She had no telephone or other electronic communication with her family or her attorneys. She was able to write sporadic letters and only received them through delayed, irregular, and infrequent deliveries. Her inability to receive information from her family was made all the more agonizing because she was unable to receive updates about the condition of a close family member who is suffering from a serious health issue. She had no access to the prison commissary, which meant her daily caloric intake was limited to the paltry meals that she was served and ate inside her cell. She lost significant weight as a result (weight that she could not afford to lose). Particularly given Elizabeth’s pre-existing mental health and physical health conditions, those 25 days caused significant psychological and physical strain on Elizabeth.

In Toby MacFarlane's case, this Court has found that Mr. MacFarlane's two-week period of solitary confinement, pursuant to the BOP's newly established COVID-19 quarantine protocols, was an "extraordinary and compelling circumstance" that warranted a roughly seven-week reduction in his term of imprisonment. In the Court's words "MacFarlane's two-week confinement in solitary quarantine in a higher security facility is the equivalent of two months in the Camp to which he was originally assigned." *United States v. MacFarlane*, 438 F. Supp. 3d 125, 127 (D. Mass. 2020).

Elizabeth's lockdown conditions were arguably more harsh, and nearly *twice as long*, as Mr. MacFarlane's. The Court should therefore afford Elizabeth the same consideration that it afforded Mr. MacFarlane. Using Mr. MacFarlane's precedent as a guide, the Court should conclude that Elizabeth's nearly four-week period in lockdown was equivalent to nearly four-months in general population under ordinary circumstances. The Court should therefore reduce Elizabeth's seven-month prison term by at least three months to account for the lockdown.

**II. The Lack of Family Visitation, Lack of Mental Health Care at FCI Dublin, and Potential for 14 Additional Days of Lockdown Are Extraordinary and Compelling Circumstances That Warrant at Least an Additional One Month Reduction in Elizabeth's Prison Sentence.**

Other than his two-week period of solitary confinement, Toby MacFarlane's time at FCI Tucson was served under normal BOP conditions. That has not been true of Elizabeth's time at FCI Dublin. Elizabeth's entire period of confinement at FCI Dublin has been subject to the BOP's special COVID-19 protocols, including a prohibition on any family visitation and a suspension of the facility's regular mental health care offerings. We do not expect those special protocols to be lifted until 2021 at the earliest.

As the Court is aware, virtually the entirety of Elizabeth's adult life has been dedicated to raising her two daughters. Because of the BOP's special COVID-19 protocols, Elizabeth will have

no physical contact of any kind with her daughters until she is released from FCI Dublin. This is an extraordinary and compelling circumstance that makes each day that Elizabeth spends at FCI Dublin significantly more harsh than it would have been under normal circumstances.<sup>4</sup>

The lack of family visitation has exacerbated Elizabeth's clinical depression. Unfortunately, FCI Dublin essentially has suspended its mental health care program as part of its response to the COVID-19 pandemic. As a result, Elizabeth has received no mental health treatment at FCI Dublin, notwithstanding that the Court's judgment specifically requires Elizabeth to participate in a mental health treatment program while in prison. This too is an extraordinary and compelling circumstance.

Finally, our understanding is that Elizabeth may be required to spend an additional 14 days in complete lockdown before she is released from FCI Dublin, which means that she will have spent 39 days in lockdown.

For these reasons, we respectfully request that Elizabeth receive an additional one-month reduction of her prison term.

### **CONCLUSION**

For the foregoing reasons, we respectfully request that the Court reduce Elizabeth's seven-month term of imprisonment by a total of four months (*i.e.*, a three-month reduction to account for her 25 days in lockdown, and an additional one-month reduction to account for the lack of family visitation, lack of mental health treatment, and potential for another 14 days of lockdown conditions on her way out). If the Court is inclined to grant our request, we would not oppose the Court requiring Elizabeth to spend her first four months of supervised release under a condition of home confinement.

---

<sup>4</sup> Under normal circumstances, Elizabeth would have been allowed to receive visitors essentially every weekend.

DATED: September 3, 2020

Respectfully submitted,

/s/ Aaron M. Katz  
Aaron M. Katz (BBO #662457)  
Ropes & Gray LLP  
800 Boylston Street  
Boston, MA 02199  
(617) 951-7000  
aaron.katz@ropesgray.com

Laura G. Hoey (*pro hac vice*)  
Ropes & Gray LLP  
191 North Wacker Drive, 32<sup>nd</sup> Floor  
Chicago, IL 60606  
(312) 845-1200  
laura.hoey@ropesgray.com

Colleen A. Conry (*pro hac vice*)  
Ropes & Gray LLP  
2099 Pennsylvania Avenue, N.W.  
Washington, DC 20006-6807  
(202) 508-4600  
colleen.conry@ropesgray.com

**Counsel for Elizabeth Henriquez**

**CERTIFICATE OF SERVICE**

I, Aaron M. Katz, hereby certify that the foregoing document was served through the ECF system on all registered participants in this action on September 3, 2020.

/s/ Aaron M. Katz  
Aaron M. Katz