

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHARLES WATTS :

Petitioner-Defendant,

- v. - :

UNITED STATES OF AMERICA, :

Criminal Docket No. 92-767 (SJ)

Respondent.

:

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR COMPASSIONATE
RELEASE**

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Petitioner Charles Watts respectfully submits this motion seeking a sentence reduction under 18 U.S.C. § 3582(c)(1)(A)(i), as modified by the First Step Act of 2018 (“First Step Act”), Pub. L. No. 115-91, § 603(b), December 21, 2018, 132 Stat. 5194, 5239, or a recommendation to the Federal Bureau of Prisons (“BOP”) for early release to home confinement under 18 U.S.C. § 3624(c), as modified by the CARES Act, Pub. L. No. 116-136, March 27, 2020, 134 Stat. 281.

INTRODUCTION

In 1993, this Court sentenced Mr. Watts following his conviction on serious counts of armed robbery, and rendered hard judgment on Mr. Watts's conduct and character. The Court imposed a sentence – as then required by statute – of 1,107 months, or over 92 years. This *de facto* life sentence was possible because of the non-discretionary “stacking” provisions of 18 U.S.C. § 924(c)(1), then in effect. Mr. Watts now comes before this Court, almost 30 years hence, seeking the court’s compassion and an order for early release. Two fundamental principles of justice—reflecting a change in the person and in the law – support this request.

First, Mr. Watts is not the man he was when he was sentenced at age 23, which this Court noted reflected “tender young years.” *See* Transcript of Sentence, *United States v. Watts*, No. 92-767, (E.D.N.Y. May 14, 1993) at 19, attached as Exhibit K to the Declaration of Samah Sisay, Esq. (“Sisay Decl.”). As his letter to this Court and accompanying declaration attest, he has since come to grips with the painful family dynamics – driven by feelings of resentment and abandonment by his father and obligations to care for his family – that caused him to act impulsively and carelessly. Having committed himself to substantial personal and spiritual growth, he has traded that person in for one who has accepted a deep religious faith, and who is committed daily and, in the future, to helping and mentoring young men and boys and to caring for his family. In thirty years, and despite the well-known pressures and stresses of prison, he has

incurred nominal disciplinary infractions. He now looks hard at his prior actions without the bitterness and resentment that initially drove his impulsivity; he is regretful, remorseful – and rehabilitated. He has children he has had to watch grow from inside prison and grandchildren he has not yet personally met. He is at risk of serious illness or death if he were to contract the COVID-19 virus. He has a viable and supportive release plan, including family support, housing, and a good job. He respectfully submits that an additional 60 years of prison, on top of the 30 he has already served, are not necessary to any penological or rehabilitative purpose.

Second, the law has changed in substantial part *because* of Congress’ recognition that the prior sentencing regime that drove Mr. Watts’s nearly 100-year sentence was unduly harsh. Specifically, in 2018, Congress, via the First Step Act, eliminated the mandatory “stacking” provisions under § 924(c)(1) for first-time offenders. Had Mr. Watts been sentenced under the new statute – or put another way, if someone else was sentenced today for the same crimes – he would likely have received no more than 25 years; yet Mr. Watts has *already* served almost 30 years in prison. While these provisions of the First Step Act are not retroactive, they do offer individuals who can demonstrate the kind of extraordinary personal circumstances Mr. Watts has in his case, a second chance at a meaningful life. Numerous district courts in this Circuit and beyond have granted motions for compassionate release based on the circumstances presented by Mr. Watts’s sentencing and rehabilitation.

The law thus fully authorizes this Court to act on these compelling principles of justice. We urge this Court to exercise its compassion, recognize the redemptive power of a person who has changed his life, and grant Mr. Watts the relief he requests, free from a continuing and unnecessary lifetime of incarceration.

PROCEDURAL BACKGROUND

Mr. Watts submitted a request for compassionate release to the Warden of USP Lee in Pennington Gap, Virginia in November 2020, which was denied in December 2020. Mr. Watts then filed an additional administrative appeal in February 2021, and he never received a response. During this time, Mr. Watts was transferred to USP Atlanta and FTC Oklahoma before finally settling at USP Allenwood in Pennsylvania in June 2021. Subsequently, in July 2021, Mr. Watts retained current counsel to represent him in this matter. Out of caution, Mr. Watts, through counsel, submitted another compassionate release request to the Warden of USP Allenwood on August 18, 2021 and received no response.

FACTUAL BACKGROUND¹

Mr. Watts is 51 years old and has been incarcerated since he was 22 years old. In these nearly 30 years, he has recognized the harm he caused, reflected on the reasons for his impulsivity, focused on personal, spiritual, and educational growth, and committed to becoming a productive and present member of society – and to his family.

A. Mr. Watts's Personal History

Mr. Watts was born on February 11, 1970 in Brooklyn, New York. Sisay Decl., Exh. J at ¶ 85. He experienced extreme emotional turmoil as a teenager when his parents divorced in 1986. *Id.* Before the divorce, Mr. Watts and his family relied exclusively on his father's income as a field supervisor with a security firm, because his mother had no job outside the home. *Id.* at ¶ 86. After the divorce, Mr. Watts's mother struggled financially and relied on Social Security and

¹ The facts discussed here derive from the Pre-Sentence Investigation Report, *United States v. Watts*, No. 92-767, (E.D.N.Y. April 5, 1993 (attached to the accompanying Declaration of Samah Sisay, Esq. ("Sisay Decl."), as Exhibit J); Mr. Watts's Bureau of Prisons' medical records (attached to Sisay Decl., as Exh. I); Mr. Watts's BOP programming and disciplinary records (attached to Sisay Decl., as Exh. H); Mr. Watts's Letter to the Court (attached to Sisay Decl., as Exh. A); and Mr. Watts's Declaration.

Supplemental Security Income (“SSI”). *See* Declaration of Charles Watts (“Watts Decl.”) at ¶ 7. She also had a disability that required Mr. Watts to care for her; because of her history of diabetes, cardiac problems, and hypertension, Mr. Watts's mother used a wheelchair for mobility. Sisay Decl., Exh. J at ¶ 86. Struggling at home and shouldering the responsibility of caring for his mother, Mr. Watts was not able to complete school and dropped out of high school at 17, in 1987. *Id.* at ¶ 92. After leaving school, Mr. Watts picked up various odd jobs and spent most of his time caring for his disabled mother. *Id.* at ¶¶ 93-96.

As a young man with many responsibilities and no stable income, Mr. Watts felt that he needed to do whatever necessary to care for his family, without thinking about the consequences. *See* Watts Decl. at ¶ 13. He harbored a lot of anger at his father for leaving his mother financially unstable and felt that he had no one to turn to for help. Sisay Decl., Exh. A at 3 (Watts Letter to Judge Johnson). As Mr. Watts explains in his letter to this Court, he recognizes he was going through great pain as a result of his father’s abandonment:

I came from a broken home. My father left when I was very young. I am not trying to make excuses for my actions but I do believe had my dad stayed and raised me I would of [sic] never come to prison not on his watch. My respect for my dad was really big and I really looked up to him but when he left me part of that respect went out the window as well. I truly believe that part of my rebellious behavior at that time was to get back at my dad for leaving.

See Sisay Decl., Exh. A at 2. Further, Mr. Watts had two children before his incarceration. Sisay Decl., Exh. J at ¶ 87. At the time of his sentencing, his children were 3 years old and 4 months old, respectively. *Id.* His girlfriend at the time was also pregnant with his third child, who was born while he was incarcerated. *See* Watts Decl. at ¶ 24. He describes how his crimes were influenced in part by things that made sense at the time, but upon reflection were clearly impulsive and misguided:

I am no longer the confused naive kid I was back in 1992, I am now a strong minded grown man that chose to take a different path, the good path. I made a grave mistake early on in my life by hanging out and messing with the wrong group of people and letting peer-pressure guide me in the wrong direction which cost me 30 years in prison away from my family and loved ones.

See Sisay Decl., Exh. A. at 2.

B. His Criminal Offense and Conviction²

Mr. Watts was arrested and incarcerated in June 1992, when he was 22 years old. Sisay Decl., Exh. J. He had no prior criminal convictions. Sisay Decl., Exh. J at ¶75. In the early 1990s, Mr. Watts and a childhood friend, Shawn Daniels, committed a spree of robberies with the possession of firearms. Sisay Decl., Exh. J at ¶¶ 2, 6. Mr. Watts committed five robberies – four banks and one shoe store robbery; they were all committed within a seven-week period, between July 7, 1990 and August 22, 1990, and as this Court found, were done with the same *modus operandi*.³ Sisay Decl., Exh. J at ¶¶ 4, 7. According to Mr. Watts, during this period of his life he and his family were struggling financially and he thought his actions were an easy way to get money to relieve their burden, especially in light of his feelings of paternal abandonment on a financial and emotional level. See Watts Decl. at ¶ 12. As detailed below, Mr. Watts has reflected meaningfully on his conduct and taken responsibility for his actions, and he feels remorse for the harm he caused others. *Id.* at ¶17 (“I feel sorry about that and wish I could tell those I harmed that I am sorry for what I did.”)

On February 2, 1993, after a jury trial, Mr. Watts was convicted of one count of conspiracy to commit armed bank robbery, in violation of 18 U.S.C. §§ 371 and 2113; four counts of armed

² The roles of the defendants and the details of the offense are described in the Sisay Decl., Exh. J (Pre-Sentence Investigation Report) at ¶¶ 2-12.

³ As his sister Evelyn Watts notes, this impulsive crime spree shocked her because it was sudden and out of character. See Evelyn Watts's Letter, attached to Sisay Decl. Exh. D (“Having never been in any kind of trouble at all, I was really saddened at what happened when he was 19.”)

bank robbery, in violation of 18 U.S.C. § 2113(d); one count of conspiracy to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951; one count of Hobbs Act robbery, in violation of 18 U.S.C. § 1951; and five counts of firearm use during a crime of violence, in violation of 18 U.S.C. § 924(c)(1), the so-called “stacking” provision at issue in this petition.

C. Mr. Watts's Sentencing

On May 14, 1993, and at 23 years old, this Court sentenced Mr. Watts to 1,107 months (92 years and 3 months) in prison. Although this was his first conviction, his possession of a firearm led to enhanced sentences served consecutively, under 18 U.S.C. § 924(c), in addition to serving a sentence for the underlying robberies. As a matter of DOJ policy, federal prosecutors had no discretion not to seek such enhanced, consecutive sentencing after Mr. Watts was convicted on the § 924(c) charges. Further, § 924(c) *required* the court to impose one additional 5-year term plus four 20-year terms for the five distinct § 924(c)(1) counts, each term following consecutively after the 87-month sentence. Absent the old “stacking” provision of § 924(c), counsel’s best estimate is that his baseline sentence for the four counts would have been somewhere between 10 and 12 years.⁴

The stacking provisions thus *added 85 years*, to be served consecutively, to the predicate sentence. Though the Court lacked discretion to depart from the lengthy sentence, it found it justified in part because of its assessment of Mr. Watts's character at the time: “Like so many young men you have demonstrated that you do have the capacity to contribute to our society, but somewhere along the line you decided that living in a society as a law-abiding citizen is not for you.” Sisay Decl., Exhibit K at 9.

⁴ If sentenced today, the current sentencing enhancements for gun possession would produce a total sentence of approximately 25 years.

In 2018, as part of the First Step Act, Congress eliminated the mandatory stacking rule's application to first-time offenders through Section 403. § 403(a) ("Section 924(c)(1)(C) of title 18, United States Code, is amended, in the matter preceding clause (i), by striking "second or subsequent conviction under this subsection" and inserting "violation of this subsection that occurs after a prior conviction under this subsection has become final"). Although Section 403 is formally non-retroactive, as noted, a person charged for the same offenses today would be issued roughly a 12-year sentence. §403(b), suggesting just grounds for a discretionary reconsideration of the original sentence.

As a result of this sentence, Mr. Watts has served 29 years in prison for a first-time offense. He is 51 years old, and faces an additional 63 years in prison, ensuring that, absent judicial intervention, he will die in prison for actions he took as a young adult, and serving a sentence that no court would today impose. Indeed, Mr. Watts is no longer an immature and impulsive youth, but has spent the last 29 years in prison becoming a man who has demonstrated deep regret, taken responsibility for his actions, and grown from his mistakes. He has demonstrated that he now possesses the "capacity to contribute to society" and a deep commitment to "living in a society as a law abiding citizen," that this Court adjudged Mr. Watts lacked many years ago.

D. Mr. Watts's Transformation in Prison

Mr. Watts is currently incarcerated at USP Allenwood in Pennsylvania, where he was transferred upon his request to be closer to his family – specifically his older sister, Evelyn Watts, who has supported him since he was originally incarcerated. Mr. Watts has maintained during his trial and time incarcerated that he is not a violent person and that he did not physically harm anyone, though he now sees the tremendous fear his actions imposed on others. As a young man growing up in a low-income community, Mr. Watts did not feel that he had a lot of support and

was a “confused naïve young kid” who “had a habit of always pointing the finger and blaming everybody else for the situations” in which he found himself. *See* Sisay Decl., Exh. A. During his time in prison, Mr. Watts “realized that a real man would stop blaming everyone else and step up and take responsibility for his own actions” *Id.* He also recognized he caused serious harm to others and society: “Even though in my mind, I knew I would not hurt anyone, I now think about the people in the banks we robbed and realize how scared they must have been. I feel sorry about that and wish I could tell those I harmed that I am sorry for what I did.” Watts Decl. at ¶ 17.

Sadly, Mr. Watts's mother died in 1997 and he was not able to say goodbye to her or attend her funeral service because of his incarceration. Watts Decl. at ¶ 18. He now sees her death as a critical moment in his life when he began to fully understand the magnitude of his situation and began to actively work to change his life. *Id.* According to Mr. Watts, his mother’s death was:

when I really started to take steps to change my life, not just by taking responsibility for my actions, but to do more to help others and become the man my mom knew I could be. After my mom passed away I grew more deeply religious. I always believed in God but I began to take religion more seriously. Being involved with church in the prison helped me walk a straighter path because I surrounded myself with other positive people who also wanted to better themselves. A lot of bad things happen in prison and I didn’t want to be around negative influences anymore like I was on the outside. I chose the positive.

See Watts Decl. ¶¶ 18–19.

As an older incarcerated individual, Mr. Watts serves as a mentor to young people he encounters in prison. As he explains in his letter, “one of the things I’ve found out about myself while in prison is that I really love helping people.” *See* Sisay Decl., Exh. A at 4. He shares his story of making a mistake at a young age and encourages them to be hopeful and take responsibility for changing their lives, a kind of support he hopes to keep providing to his community upon his release. “If I were to receive a second chance at life I would make sure that I made a positive mark

on society. I will aim to give community service to the youth and also to people that might need a little guidance...” *Id.* at 3.

Despite being incarcerated for many years and witnessing “a lot of violence,” Mr. Watts has worked hard to “stay focused and stay on the straight path,” and wants “[t]o hopefully help in some type of way” so that others in his community “will not make the wrong decision in their lives that might cost them precious time in prison away from their loved ones.” *Id.* at 3-4. During his almost three decades in prison, Mr. Watts has taken over thirty education courses, including residential wiring, Occupational Safety and Health Administration (OSHA), and commercial driver’s license (CDL) courses. He also took various parenting courses, which he enjoyed, “because they helped me keep in tune with my family and understand how to better connect with my kids.” Watts Decl. at ¶ 23.

In addition, he has a minimal disciplinary history, which is notable given the ease and frequency in which disciplinary infractions are issued in prisons.⁵ His last disciplinary infraction was over three years ago for an accusation of possessing pain medication that was not prescribed to him by medical staff. Mr. Watts acknowledges that he has in the past accepted medication from friends because he suffers from significant lower back pain from a pre-conviction accident that clinic-distributed ibuprofen cannot always suppress. Sisay Decl., Exh. H; Watts Decl. at ¶ 21. In 2017, Mr. Watts was accused of possessing “a dangerous weapon,” the implication of which he disputes as it was actually a comb with a little black razor used for grooming. Watts Decl. at ¶ 22. There is another “possession of a dangerous weapon” charge in his disciplinary history from 2012, which Mr. Watts explains occurred because his cellmate, who had a knife taped outside his

⁵ See Demetrius Buckely, *In My Prison, Summer is “Ticket Season,”* The Marshall Project, October, 2019, available at <https://bit.ly/31ARUHI>, for a discussion of the ease and frequency with which prison staff issue disciplinary infractions. (“If you move the wrong way—ticket. You look the wrong way—ticket. Breathe—ticket”).

window, refused to take responsibility, causing them both to be sanctioned. *See Id.*; Sisay Decl., Exh. H. In 1993, very early in his incarceration, Mr. Watts was accused of fighting with another person; however, he maintains, and the other person confirmed, that they were simply joking around and no one was harmed. *See Watts Decl.* at ¶ 17.

Mr. Watts has dramatically changed while incarcerated and feels that his mother, who died during his incarceration “is proud of the man [he’s] become.” *See Sisay Decl.*, Exh. A.

I have been able to take responsibility for my actions. I felt relief — like a load of pressure being taken off me — once I took responsibility. Taking responsibility for myself and no longer blaming my dad or others for where I am in life was a big step in my rehabilitation.

Watts Decl. at ¶ 17.

E. Mr. Watts's Comprehensive and Safe Re-Entry Plan

Further demonstrating his maturity and rehabilitation, Mr. Watts and his family-and-friends support network have developed a re-entry plan that is achievable, safe, and sustainable. It rests on three solid pillars: (1) housing and emotional support from his most consistent supporter, his sister Evelyn; (2) commitment to the caring and loving of his now-grown children and his grandchildren; (3) a concrete job offer from a friend and supporter who has a senior position at a major telecommunication company, and who has committed to train, supervise, and compensate Mr. Watts as he builds a career on a foundation of his interest in technology.

First, there is Evelyn Watts, his elder sister. Mr. Watts explains that Evelyn “has been there for me throughout my entire time in prison and is my biggest support system.” *Watts Decl.* at ¶ 27. Evelyn likewise regards Mr. Watts as her “absolute best friend in this world.” *See Sisay Decl.*, Exh. D. According to Evelyn and with her support, “in prison Charles has found solace in the Bible and has become strong in his faith” and believes “this is how he has found the strength and wisdom to pursue education, stay positive, and never give up.” *Id.* Evelyn lives in East Stroudsburg,

Pennsylvania and Mr. Watts will live with her. *Id.* She is fully committed to doing everything in her power to help her brother, supporting him in future search for housing, his employment and getting access to any medical services he should need upon his release. *Id.*

And, living with her would put his newfound maturity to good use and ground him further in his obligations to family and society; given her disability, Evelyn explains, “If he were home with me, he could help me with my mobility, and I could help him establish himself again . . . and readjusting to a life of freedom.” *Id.* His support network extends beyond immediate family. As Charlene McCrae, a mother-like friend to Mr. Watts, says, “I love him like my son and nothing would mean more to me than to see him again, hug him until the tears stop flowing, and then to see that beautiful smile that I miss so much.” Sisay Decl., Exh. F.

The second pillar for his stability and growth are his children and grandchildren, who he is eager to love in person, support, and participate meaningfully in their lives. Mr. Watts is a father to three children and a grandfather to five grandchildren. According to Mr. Watts's son Daevon Baker,

Even from afar, I can honestly say my father is one of my biggest inspirations. It isn't easy to go all the way to the prison to visit him but the few times I have been able to he's always shown me that he is a good guy and shouldn't be judged based on mistakes he made when he was younger by hanging out with the wrong crowd. Now that I have a son it's more important than ever for my father to be here in our lives.

Sisay Decl., Exh. C.

His daughter, Shadasia Watts, writes that, “Even now in my adult life, having my dad home will be what I've been waiting for all my life. It would be like my childhood dream was finally coming true. I'll finally get the chance to build that bond again and he'll have a shot at helping me raise his granddaughters.” Sisay Decl., Exh. B. His nephew, Dashawn Watts, describes Mr. Watts as “wise, loving, and smart.” According to Dashawn, “When we speak on the phone I really enjoy

speaking to him because he always gives me the best advice as far as school, relationships, and communicating go. I believe the reason he gives such great advice is because he has taken the time to learn about life from his time in prison.” Sisay Decl., Exh. E.

This pillar stands not only for stability, but also for love, redemption, and hope.

The third pillar is a stable economic life. A close family friend, Ronald Gibbons, a Project Manager at Quantum Technology Group, LLC, a sophisticated IT and telecommunications service-provider,⁶ has specific plans to offer Mr. Watts employment as a cable technician in Pennsylvania. Sisay Decl. Exh. G. Mr. Gibbons has fully anticipated training and supervision protocols, which will involve both a direct supervisor and Mr. Gibbons himself, a salary that starts at \$18/hour during training and then \$22/hour thereafter, plus overtime. At his new job, Mr. Watts will be “working on pulling and terminating category 5 and category 6 cables for phone and network systems and pulling and terminating fiber optic cables for office buildings and for wireless network systems.” *Id.* Mr. Gibbons states that “Charles is a quick learner and I have every confidence he will do good work at QTG.” *Id.*

Balanced on top of these pillars is the changed person previously described, one who understands the difficult circumstances that drove him to commit dangerous crimes, who has embraced the positive influence of religion, love, and remorse, who has accepted responsibility for his actions, and who is eager to continue his work mentoring young men and boys – this time, outside of prison. Recognizing this Court’s admonition to him in imposing a hard sentence nearly 30 years ago, he explains to this Court:

I am asking this honorable court for mercy and a second chance at life out in society in order to show the court that I am a rehabilitated law abiding citizen of now that will be productive within the community upon my release.

⁶ The corporate website is available at <https://goqtg.com>.

See Sisay Decl., Exh. A.

ARGUMENT

I. UNDER THE FIRST STEP ACT, THIS COURT HAS EXPANSIVE AUTHORITY TO REDUCE A SENTENCE.

Under a provision of the recently enacted First Step Act, a sentencing court, may reduce the term of imprisonment ..., after considering the factors set forth in Section 3553(a) to the extent that they are applicable, if it finds that—
(i) 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). Before the passage of the First Step Act, a court’s authority to grant compassionate release was highly circumscribed. It could happen only upon a motion to the court from the BOP. The BOP thus regularly exercised a gatekeeping role to prevent courts from considering compassionate release requests by simply refusing to bring such a motion. The BOP was also able to deny the court jurisdiction by developing its own set of criteria-- which included such things as terminal illness, extreme debilitation, and extraordinary family circumstances-- and by making a traditional judicial assessment regarding the seriousness of the offense or whether release would pose a public safety threat. These limitations led Human Rights Watch to sharply criticize the U.S. legislative framework before the First Step Act, calling it “conspicuous for its [compassionate release] absence.”⁷

The First Step Act (“FSA” or “Act”) brought about a sea change in the ability of courts to reduce previously imposed sentences. See *United States v. Brooker*, 976 F.3d 228 (2d Cir. 2020). As construed by the Second Circuit, the Act sought to expand the use of sentence reductions in two primary ways. First, the Act empowers defendants to petition district courts directly for a

⁷ Human Rights Watch, *The Answer is No: Too Little Compassionate Release in US Federal Prison*. November, 2012. Available at: <https://bit.ly/3kvZlXp>

reduction, rather than having to wait for the BOP to bring a motion on their behalf. Second and relatedly, the Act shifts greater discretion to courts to determine what constitutes “extraordinary and compelling” reasons for a reduction under the statute. The Second Circuit explained:

[T]he First Step Act freed district courts to consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them in motions for compassionate release. Neither Application Note 1(D), nor anything else in the now-outdated version of Guideline 1B1.13, limits the district court’s discretion.

Brooker, 976 F.3d at 237. Through the FSA, Congress intended to greatly expand the use of the sentencing reduction provision of Section 3582 “in any case” where “extraordinary and compelling reasons warrant such a reduction,” so that “a district court’s discretion in this area – as in all sentencing matters – is broad.” *Id.* The only limits on this discretion are that any reduction be “consistent with the applicable policy statement,” and that “rehabilitation alone shall not be considered an extraordinary and compelling reason.” *Id.*; 28 U.S.C. § 994(t).⁸

The FSA’s changes to §3582(c)(1)(A)—titled “Increasing the Use and Transparency of Compassionate Release”—were designed to help get more individuals with non-violent offenses out of prison. *See United States v. Redd*, 444 F. Supp. 3d 717, 723-4 (E.D. Va. Mar. 16, 2020 (“The First Step [Act] was passed against the backdrop of a documented infrequency with which the BOP filed motions for a sentence reduction on behalf of defendants.”). The once-relevant Sentencing Commission policy statement, U.S.S.G. § 1B1.13, included highly circumscribed list of “extraordinary and compelling reasons,” such as those based on the medical condition of the defendant, his age, and certain family circumstances. *See* U.S.S.G. § 1B1.13, Application Note

⁸ This is consistent with the original intent of the FSA. Nothing in the Act’s statutory text or legislative history indicates that Congress intended sentence reductions to be reserved for “elderly defendants,” “defendants with compelling medical circumstances,” or defendants with particular family circumstances. *United States v. Eric Millan*, No. 91 Cr. 685 (LAP), ECF Dkt. 1060 at 16-17 (S.D.N.Y. Apr. 6, 2020)(quoting S. Rep. No. 98-225, at 56 (1983)).

1(A)–(D). But because the existing policy statement dates from before the passage of the First Step Act and no new policy statement has been adopted since, courts have the authority to consider whatever basis for relief a defendant raises in the absence of an operative policy statement. *See, e.g., United States v. Aruda*, 993 F.3d 797, 798 (9th Cir. 2021) (holding that “the current version of U.S. Sentencing Guidelines Manual (“U.S.S.G.”) § 1B1.13 is not an ‘applicable policy statement [] issued by the Sentencing Commission’ for motions filed by a defendant under the recently amended § 3582(c)(1)(A).” *United States v. Austin*, No. 06 Cr. 991, Dkt. No. 72 at 7 (JSR) (S.D.N.Y., June 23, 2020) (“courts are not, in any case, bound by this Guidelines provision and may grant compassionate release ‘on grounds that are distinct from, but of similar magnitude and importance to, those specifically enumerated in Application Note 1’.”) quoting *United States v. Pinto-Thomaz*, No. 18 Cr. 579, 2020 WL 1845875 (S.D.N.Y. Apr. 13, 2020); *see also Brooker*, 976 F.3d at 230.

Based on this authority, district courts have reduced sentences in a range of circumstances not expressly contemplated by the Sentencing Guidelines, especially where the defendant’s original sentence – particularly those based on the § 924 stacking provision – now seems disproportionately high, where a defendant has demonstrated extraordinary rehabilitation, or where other factors counsel in favor of a reduction. *See, e.g., United States v. Haynes*, 456 F. Supp. 3d 496 (E.D.N.Y. 2020) (reducing a 46-year sentence based on “stacked” § 924(c) sentences to time served based on the severity of the sentence); *United States v. Eric Millan*, No. 91 Cr. 685 (LAP), ECF Dkt. 1060 at 25–29 (S.D.N.Y. Apr. 6, 2020) (reducing sentence of 57-year old defendant from life to time served of 28 years, based on defendant’s exceptional rehabilitation, length of time already served, and demonstrated remorse); *United States v. Redd*, 2020 WL 1248493 at *8, n.18 (collecting cases regarding court’s authority and reducing sentence based on

severity of defendant’s “stacked” §924(c) sentences); *United States v. Maumau*, No.2:08-cr-00758758-TC-11, 2020 WL 806121, at *6 (D. Utah Feb. 18, 2020) (reducing sentence based on severity of sentence and defendant’s young age at the time of the offenses); *United States v. Urkevich*, No. 03 Cr. 37, 2019 WL 6037391, at *3 (D. Neb. Nov. 14, 2019) (reducing sentence based on original sentence’s undue severity given the need for the sentence imposed ... “to reflect the seriousness of the offense”); *United States v. Bucci*, 409 F. Supp. 3d 1, 2 (D. Mass. 2019) (granting release because defendant was the sole available caregiver for his ailing mother).

Under a provision of the recently enacted First Step Act, a sentencing court,

may reduce the term of imprisonment ..., after considering the factors set forth in Section 3553(a) to the extent that they are applicable, if it finds that—

(i) 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). Before the passage of the First Step Act, a court’s authority to grant compassionate release was highly circumscribed. It could happen only upon a motion to the court from the BOP. The BOP thus regularly exercised a gatekeeping role to prevent courts from considering compassionate release requests by simply refusing to bring such a motion. The BOP was also able to deny the court jurisdiction by developing its own set of criteria-- which included such things as terminal illness, extreme debilitation, and extraordinary family circumstances-- and by making a traditional judicial assessment regarding the seriousness of the offense or whether release would pose a public safety threat. These limitations led Human Rights Watch to sharply

criticize the U.S. legislative framework before the First Step Act, calling it “conspicuous for its [compassionate release] absence.”⁹

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disproportionately high, where a defendant has demonstrated extraordinary rehabilitation, or where other factors counsel in favor of a reduction. *See, e.g., United States v. Haynes*, 456 F. Supp. 3d 496 (E.D.N.Y. 2020) (reducing a 46-year sentence based on “stacked” § 924(c) sentences to time served based on the severity of the sentence); *United States v. Eric Millan*, No. 91 Cr. 685 (LAP), ECF Dkt. 1060 at 25–29 (S.D.N.Y. Apr. 6, 2020) (reducing sentence of 57-year old defendant from life to time served of 28 years, based on defendant’s exceptional rehabilitation, length of time already served, and demonstrated remorse); *United States v. Redd*, 2020 WL 1248493 at *8, n.18 (collecting cases regarding court’s authority and reducing sentence based on severity of defendant’s “stacked” §924(c) sentences); *United States v. Maumau*, No.2:08-cr-00758758-TC-11, 2020 WL 806121, at *6 (D. Utah Feb. 18, 2020) (reducing sentence based on severity of sentence and defendant’s young age at the time of the offenses); *United States v. Urkevich*, No. 03 Cr. 37, 2019 WL 6037391, at *3 (D. Neb. Nov. 14, 2019) (reducing sentence based on original sentence’s undue severity given the need for the sentence imposed ... “to reflect the seriousness of the offense”); *United States v. Bucci*, 409 F. Supp. 3d 1, 2 (D. Mass. 2019) (granting release because defendant was the sole available caregiver for his ailing mother).

II. THERE ARE EXTRAORDINARY AND COMPELLING REASONS TO GRANT MR. WATTS COMPASSIONATE RELEASE.

A. The Circumstances of Mr. Watts's Sentencing and the Use of the 18 U.S.C. § 924 Stacking Provision Resulted in a Disproportionate Sentence by Current Standards.

Mr. Watts's sentencing occurred during a high-water mark in the nation’s orientation toward severe forms of criminal sentencing, and §924(c) is recognized as a particularly draconian form of the mandatory minimum sentencing regime. The First Step Act is a Congressional – and societal – recognition that such mechanical and harsh forms of sentencing that take discretion away from sentencing judges are unnecessary, harmful to the individuals and families who endure them,

and costly to society at large. Through the First Step Act, Congress has thus fully authorized this Court to evaluate Mr. Watts's sentence in light of changing social and legal norms.

1. Legislative Intent and History of § 924(c)

§ 924(c) was motivated by a tough-on-crime mentality that became increasingly punitive and broad, lacking a discretionary mechanism to ameliorate the harshness of the mandatory minimum, which was at the heart of its sentencing logic.¹¹ Enacted as part of the Gun Control Act of 1968 (itself part of the Omnibus Crime Control and Safe Streets Act of 1968), the legislation was a response to public fear over street crime and civil unrest. The day after the assassination of Robert F. Kennedy, § 924(c) was proposed as a floor amendment and passed that same day with no congressional hearings or committee reports, and only a speech by the amendment's sponsor about its catchphrase goal, “to persuade the man who is tempted to commit a federal felony to leave his gun at home.” Because of this, there is little legislative history to aid in the interpretation of the original Act.

The minimum sentences imposed by § 924(c) were in addition to the sentence imposed for the underlying crime. The terms varied according to the type of firearm used, the nature of the firearm’s involvement, and whether the conviction involved a single, first-time offense. If the firearm was used or carried the offense was punished more severely. As in Mr. Watts's case, after

¹¹ See Laurette Domingo Mulry, Comment, *Immediate Accessibility or Mere Transport: The Dueling Interpretations of the "Carrying" Element of 18 U.S.C. § 924(c)(1)*, 14 *Touro L. Rev.* 499, 499 (1998) (discussing Congress' desire to impose enhanced penalties to combat the drug problem in the United States); Eva S. Nilsen, *Indecent Standards: The Case of U.S. Versus Weldon Angelos*, 11 *Roger Williams U. L. Rev.* 537, 554 (2006) (“It is fair to say that today's social and political climate is different, and less harsh toward crime and punishment, than that of the previous two decades. Public opinion has softened with the knowledge that extraordinarily long prison sentences for so many people have exacted unwarranted financial and human costs.”); see also *United States v. Godwin*, 758 F. Supp. 281, 282 (E.D. Pa. 1991) (Judge Marvin Katz declining to impose a 20 year consecutive term under § 924(c) because of its overly punitive nature “[i]f the sentence of 157 months in prison and three years supervised release does not solve the problem . . . it is difficult to see how another 15 years [due to an enhanced sentence under § 924(c)(1)(C)] at the taxpayers’ expense would help.”)

the first § 924(c) conviction, subsequent counts for multiple offenses must be served *consecutively*, which is where the colloquial reference of “stacking,” came from. Under the operation of § 924(c) mandatory minimum terms ranged from five-year to life-in-prison sentences; consecutive mandatory minimum terms would sometimes exceed 100 years. In each case, the maximum term is life imprisonment.

Since 1968, Congress has amended § 924(c) several times as a one-way sentencing ratchet, converting it from a one-year minimum into one of the nation's most draconian punishment laws.

Consider the language from its inception:

Whoever uses a firearm to commit any felony . . . shall be sentenced to a term of imprisonment for not less than *one year* nor more than 10 years . . . In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for *ten years* . . .

(emphasis added). Gun Control Act of 1968 Pub. Law 90-618, 82 Stat. 1213 (1968). Compare this with the 1992 version of § 924(c), which Mr. Watts was sentenced under:

Whoever, during and in relation to any crime of violence . . . uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence . . . be sentenced to imprisonment for *five years*. In the case . . . of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for *twenty years* . . .

(emphasis added). 18 U.S.C. § 924(c)(1) (1992).

§ 924(c) also limited a court's discretion in avoiding mandatory minimums by prohibiting probation and concurrent sentencing. In *United States v. Harris*, the Ninth Circuit noted that § 924(c) “removed the carefully circumscribed discretion granted to district courts . . . to consider possible mitigating circumstances” and urged Congress to reconsider its “harsh scheme of mandatory minimums [sic] sentences.” 154 F.3d 1082 (9th Cir. 1998).

2. Growing to a Focus on Rehabilitation

During the time that Mr. Watts was being sentenced, public opinion remained skewed in favor of a tough-on-crime orientation. More recently, however, Congress, the public, and the Judiciary have changed their stance on how to address crime, recognized the public and private harms of mass incarceration, and adopted a stronger focus on rehabilitation.¹²

For example, in 1994, 85 percent of people surveyed in relevant studies thought that the courts were not harsh enough on crime; by 2014, that number had dropped to 58 percent¹³. There is also broad public support for eliminating federal mandatory minimum sentences. According to a 2016 report, “An Analysis of Public Opinion Research on Attitudes Towards Crime and Criminal Justice Policy,”¹⁴ a nationwide survey revealed that 77 percent of people would find it acceptable for judges to have the flexibility to determine sentences based on the facts of each case as opposed to

¹² See generally Judith Greene, *Getting Tough on Crime: The History and Political Context of Sentencing Reform Developments Leading to the Passage of the 1994 Crime Act in Sentencing and Society: International Perspectives* (Cyrus Tata & Neil Hutton eds., 2002); see also Anne R. Traum, *Mass Incarceration at Sentencing*, 64 *Hastings L.J.* 423, 431–32 (2013) (detailing the harmful individual, familial, and community effects of mass incarceration); Holly Foster & John Hagan, *The Mass Incarceration of Parents in America: Issues of Race/Ethnicity, Collateral Damage to Children, and Prisoner Reentry*, 623 *Annals Am. Acad. Pol. & Soc. Sci.* 179, 181 (2009); Bruce Western & Christopher Wildeman, *The Black Family and Mass Incarceration*, 621 *Annals Am. Acad. Pol. & Soc. Sci.* 221, 236, 241 (2009) (noting that about half of fathers and two-thirds of mothers were living with their children when they were sent to prison, and that even those not living with their children may have contributed valuable caregiving and/or financial support before going to prison, which is detrimental to children and families, and that if the children of the prison boom are more involved in crime themselves, they too will risk following their parents into prison.”); see also Todd R. Clear, “The Problem with ‘Addition by Subtraction’: The Prison-Crime Relationship in Low-Income Communities,” in *Invisible Punishment*, 182 (arguing that mass incarceration inflicts harm at the community level “not only because incarceration, experienced at high levels, has the inevitable result of removing valuable assets from the community, but also because the concentration of incarceration affects the community capacity of those who are left behind.”); see also Jason Furman & Douglas Holtz-Eakin, *Why Mass Incarceration Doesn't Pay*, *N.Y. Times* (Apr. 21, 2016), <https://nyti.ms/3okRexZ> (analyzing why mass incarceration is flawed from a financial perspective); see also Emily Nagisa Keehn & J. Wesley Boyd, *How Mass Incarceration Harms U.S. Health, in 5 Charts*, *CONVERSATION* (Jan. 31, 2018), <https://bit.ly/3wmLhUB> (noting the physical and mental health problems incarcerated people face due to features of the prison environment, including overcrowding and lack of access to food with nutritional value, physical exercise, privacy, and conditions of confinement.)

¹³ AP-NORC Center, *Crime and Law Enforcement in America: Racial and Ethnic Differences in Attitudes Towards the Criminal Justice System* (April 2015), available at: <https://bit.ly/3qmGtxr>

¹⁴ National Survey Key Findings—Federal Sentencing & Prisons, *The Public Safety Performance Project of the Pew Charitable Trusts*, 2016, <https://bit.ly/3BQJA2P>

mandatory minimum requirements. Notably, the question did not use the term “nonviolent,” nor did it define what kind of crimes this would apply to, suggesting a strong preference for judicial discretion when it comes to sentencing, regardless of the crime.

Since 2018, when the First Step Act was signed into law and reduced the severity of “stacking” of multiple § 924(c) offenses, the average sentence for crimes of robbery has fallen drastically, making Mr. Watts's 92 year sentence a historical outlier. Statistics compiled by the United States Sentencing Commission, for example, show that for fiscal year 2019, the average national sentence imposed for the crime of robbery is 109 months (9 years plus 1 month); for murder, 255 months (21 years, 4 months); for child pornography, 103 months (8 years, 7 month); and for “Extortion/Racketeering,” 32 months (2 years, 8 months). Compare this with Mr. Watts's sentence of 92 years for robbery. As U.S. District Judge Paul Cassell lamented, first-time offenders like Mr. Watts receive sentences for multiple § 924(c) counts in a single indictment that “far exceed[]” sentences for “aircraft hijacking, second degree murder, espionage, kidnapping, aggravated assault, and rape” and that harsh mandatory minimums can “harm crime victims,” “misdirect [federal] resources,” and “bring the [criminal justice] system into disrepute in the eyes of the public.”¹⁵ This disparity in sentencing, based on a largely outdated retributive belief system, is an extraordinary and compelling reason to reconsider Mr. Watts’s harsh sentence in light of congressionally-authorized measures that recognize the possibility that rehabilitation can come before the conclusion of such unduly harsh sentences.

B. Numerous Courts Around the Country Recognize that Sentence Stacking is “Extraordinary and Compelling” Reason for Relief.

¹⁵ Paul Cassell, U.S. Dist. Judge for the Dist. of Utah, Statement on Behalf of the Judicial Conference of the United States Before the House Judiciary Committee Subcommittee on Crime, Terrorism, and Homeland Security (June 2007), in 19 Fed. Sent'g. Rep. 344, 344 (2007).

Multiple district courts have concluded that the severity of a § 924(c) sentence, combined with the enormous disparity between that original sentence and the sentence a defendant would receive today, can constitute an “extraordinary and compelling” reason for relief under § 3582(c)(1)(A). See *United States v. Bryant*, No. CR 95-202-CCB-3, 2020 WL 2085471, at *3 (D. Md. Apr. 30, 2020) (finding that Bryant's continued incarceration under a sentencing scheme that has since been substantially amended is a permissible “extraordinary and compelling” reason to consider him for compassionate release); *United States v. Redd*, 444 F. Supp. 3d 717, 723-4 (E.D. Va. 2020) (citing the disparity between the defendant’s sentence under stacking and what the sentence would be in present day to be an extraordinary and compelling reason to warrant reduction of Mr. Redd’s sentence); *United States v. Young*, 458 F. Supp. 3d 838, 848 (M.D. Tenn. 2020) (finding that the drastic change effected by the First Step Act's amendment of § 924(c) constitutes an extraordinary and compelling reason for a sentence reduction at least when considered in conjunction with other factors such as age and rehabilitation); *United States v. Maumau*, No. 2:08-cr-00758-TC-11, 2020 WL 806121, at *7 (D. Utah Feb. 18, 2020) (concluding that the change in how § 924(c) sentences are calculated is a compelling and extraordinary reason to provide relief); *United States v. Jones*, 482 F. Supp. 3d 969, 979 (N.D. Cal. 2020) (finding that the defendant was sentenced under the “brutal harshness of stacking” and took into account the severity of Mr. Jones’s sentence and the gross disparity between his sentence and the sentence that Congress now deems appropriate).

In *United States v. Haynes*, 456 F. Supp. 3d 496, 497 (E.D.N.Y. 2020) a defendant convicted of several crimes related to a series of bank robberies was sentenced to 46 years and six months of incarceration, out of which 40 were mandatory “stacked” terms for two § 924(c) counts. Because the defendant, like Mr. Watts, was 23 years old with no criminal history, and because of

the harshness of the stacking provisions at issue, the court granted time served after 27 years of incarceration. *Id.* at 499. *See also United States v. Defendant (Yvette Wade)*, No. 2:99-cr-257, 2020 WL 1864906, *8 (C.D. Cal. Apr. 13, 2020 (granting defendant's motion for compassionate release after 20 served and reducing sentencing of 73 years and 1 month imposed to “TIME SERVED, followed by three years of supervised release”); *United States v. McPherson*, No. 3:94-cr-05708-RJB, 2020 WL 1862596 (W.D. Wa. Apr. 14, 2020), at *5-6 (granting defendant's motion for compassionate release after 25 years served and reducing sentence of 32.6 years imposed to time served).

Former federal Judge John Gleeson successfully argued in *United States v. McCoy* for the compassionate release of defendants much like Mr. Watts. 981 F.3d 271 (4th Cir. 2020).¹⁶ In a series of consolidated appeals of stacked sentences in robberies, defendants in *McCoy* relied on the First Step Act and rested their case for “extraordinary and compelling reasons” primarily on the length of their § 924(c) sentences and the disparity between their original sentences and those that Congress deemed appropriate after the passage of the First Step Act. *Id.* at 274. The district court’s decisions on appeal considered each defendant’s individual circumstances – including their young age at the time of the offenses, their lack of significant prior criminal history. *McCoy v. United States*, 2020 WL 2738225, at *5–6 (E.D. Va. May 26, 2020) (“[p]etitioner was also [a] teenager with no relevant criminal history at the time of his offenses, making the application of

¹⁶ Now in private practice, former-Judge Gleeson has filed a number of compassionate release petitions on behalf of individuals subject to the decades-long sentences required by the 924(c) stacking provisions. “He is trying to correct what he regards as unjust sentences he imposed during his 22 years as a judge in Brooklyn, N.Y.” Corine Ramey, *Former Judge Seeks to Shorten Mandatory Prison Terms He Once Imposed: John Gleeson, now in private practice, is in a legal fight to secure early release for what could be thousands of federal inmates serving decades-long sentences*, Wall St. Journal, Dec. 1, 2020, available at <https://on.wsj.com/304K8VF>

such harsh penalties designed for recidivist offenders even more inappropriate”), and the disparity in sentencing. *Id.* (“[t]oday, Petitioner would likely be subjected to less than half of the mandatory term that was imposed in his original sentence . . . a disparity of over 200 months between Petitioner’s stacked sentence and a similarly situated defendant whose mandatory minimum sentences are not stacked creates a disparity...”). The district court also considered defendants’ exemplary behavior and rehabilitation in prison (“[p]etitioner has displayed an impressive record of rehabilitation . . . He has graduated from multiple post-secondary programs, in addition to his obtainment of employable skills . . . Petitioner is now 36 years old and his actions while incarcerated demonstrate that he has matured since his involvement in these crimes at age 19.”). Based on these factors, the court granted the defendants’ motions, and reduced their sentences to time served. *Id.* When the government appealed this finding, the Court of Appeals affirmed the district court’s ruling, reasoning that the district court correctly took into consideration the unusual length of the sentences and the “gross disparity” between those sentences and the sentences Congress now believes to be appropriate. *McCoy*, 981 F.3d at 285. The parallels to Mr. Watt’s circumstances are striking and justify similar relief.

In fact, if Mr. Watts was sentenced today for the same charges he was convicted of in 1993 as a first-time offender, he would receive a sentence for a fraction of the time he is currently serving. He has already served nearly 30 years of his original 92-year sentence. As Mr. Watts writes, “I do believe if a person breaks the law he or she should pay the price. And I also believe everyone deserves a second chance.” *Sisay Decl.*, Exh. A at 3. The discretion given to this court by the First Step Act is the second chance Mr. Watts’s “extraordinary and compelling” circumstances warrant.

C. The COVID-19 Pandemic and Mr. Watts's Serious Respiratory Illness Also Constitute An Extraordinary Circumstance Justifying Release

The risk of death posed by COVID-19 to the population at large, and in particular to someone like Mr. Watts living in a detention setting with a pre-existing health condition that makes him more susceptible, is a compelling and immediate reason for compassionate release. In particular, Mr. Watts was diagnosed with sarcoidosis (a rare condition that causes small patches of red and swollen tissue, called granulomas, to develop in the organs of the body, typically affecting the lungs and skin)¹⁷ on January 26, 2000. *See* Sisay Decl., Exh. I. According to the Center for Disease Control (“CDC”), this condition places Mr. Watts at high risk of suffering life-threatening consequences should he contract COVID-19.¹⁸ He has not been vaccinated. Since the start of the pandemic over a year ago, the CDC has warned that those with chronic lung diseases, including sarcoidosis, are at a higher risk to contract COVID-19.¹⁹ Those diagnosed with sarcoidosis are predisposed to serious complications, including the risk of requiring admission to the Intensive Care Unit (“ICU”) for respiratory failure and related mortality risks.²⁰ Combined with his age, those severe risks increase exponentially. A person in their 50s is four times more likely to be hospitalized than someone in their 30s and three times more likely than someone in their 40s.²¹ And those exponential age-related increases do not account for the increased risks from

¹⁷ *Sarcoidosis*. National Heart, Lung, and Blood Association. Available at: <https://www.nhlbi.nih.gov/health-topics/sarcoidosis>

¹⁸ *People with Certain Medical Conditions*. CDC. Available at: <https://bit.ly/2Yjsflo>

¹⁹ Sarcoidosis is an inflammatory disease where granulomas form in one or more organs in the body. When too many of these clumps form, the immune system may go into shock and interfere with the function and structure of the affected organs. Without the appropriate treatment, sarcoidosis may cause fibrosis, which is the permanent scarring of organ tissue. Sarcoidosis is chronic in people where the disease remains active for more than 2-5 years; it can be debilitating and life-threatening in those who suffer from this disease. *What is Sarcoidosis?* Foundation for Sarcoidosis Research. Available at: <https://www.stopsarcoidosis.org/what-is-sarcoidosis/>.

²⁰ *COVID-19 Vaccine and Sarcoidosis: a survey of vaccination rate, tolerance and barriers*, Foundation for Sarcoidosis Research, Available at: <https://bit.ly/31ppvEf>

²¹ *Coronavirus Disease 2019: Risk for Severe Illness Increases with Age*, Center for Disease Control and Prevention, <https://bit.ly/3c2KIWx> (showing chart with risk increasing exponentially with age)

pre-existing medical conditions. In short, these “co-morbidities” of age and pre-existing medical conditions make Mr. Watts undeniably at high risk of severe illness or death.

As of November 8, 2021, USP Allenwood is at operation level 3 (which indicates Medical isolation rate $\geq 7\%$ **OR** Facility vaccination rate $<$ to 50% **OR** Community transmission rate ≥ 100 per 100,000 over the last 7 days.²² Further, this facility has reported 253 cases of COVID in inmates and 21 cases in staff.²³ This amounts to 25% of USP Allenwood’s incarcerated population, which has already experienced at least two major outbreaks.²⁴ There has been a complete lack of systematic testing for COVID-19 throughout the BOP, and a widely acknowledged undercount of the actual rates of positivity.²⁵ Given the mutability of the virus, these statistics say very little about the future threat of COVID-19 outbreaks. Indeed, all of the BOP facilities where a significant number of people have died from COVID-19 went from very few cases to serious outbreak in very short order.²⁶ Allenwood itself has recorded at least one death from COVID.

To date, 266 incarcerated people across the country have lost their lives because of COVID-19, and over 40,000 people incarcerated in federal facilities have tested positive for the virus since the start of the pandemic.²⁷ There is an added upswing in the spread of COVID-19 as the Delta variant has become the predominant strain of the virus across the country.²⁸ The variant is more infectious and spreads faster than prior versions of the virus, creating new urgency for Mr. Watts's release.

²² *COVID-19 Coronavirus page*, BOP, available at <https://www.bop.gov/coronavirus/>.

²³ *COVID-19 Coronavirus page*, BOP, available at <https://www.bop.gov/coronavirus/>.

²⁴ John Beague, *COVID-19 case level at Pa. prison has nearly doubled in 3 days*, Penn Live (Nov. 27, 2020), Available at: <https://bit.ly/31r82va>

²⁵ Michael Balsamo, *Over 70% of Tested Inmates in Federal Prisons Have COVID-19*, Associated Press, Apr. 29, 2020, available at: <https://bit.ly/3nWf9Dy> .

²⁶ See FN 26, *infra*.

²⁷ See *News Stories*, BOP, available at: https://www.bop.gov/resources/news_stories.jsp .

²⁸ See *Delta Variant: What We Know About the Science*, CDC, available at: <https://bit.ly/3wk9Bqj>

Mr. Watts's respiratory illness is well-documented and stretches back at least twenty years. Because of how quickly COVID-19 spreads in a prison environment, facilities with zero cases can become deadly hotspots within a matter of days or weeks. For example, on April 3 of last year, the government opposed a release motion for an inmate in FCI–Butner, citing the BOP’s generic COVID-19 policies, such as screening, visitation lockdown, and social distancing. *See United States v. Rumley*, No. 08-cr-5, Dkt. 185, at 4–7 (W.D. Va. Apr. 3, 2020). On March 24th, Butner reported its first case. By April 14th, four incarcerated people had died and 45 were confirmed infected.²⁹ By May 4, six incarcerated people had died and 210 were confirmed infected.³⁰ By May 27, ten incarcerated people had died from COVID-19 and at least 370 inmates had been infected.³¹ And, despite the BOP’s precautions, the virus infected Butner’s medical center, which houses extremely medically vulnerable inmates.³²

FCI-Terminal Island is another example. In early April of 2020, that prison reported seven positive cases among its incarcerated population and two positive staff cases.³³ Two weeks later, those numbers exploded—687 prisoners had tested positive and nine had died.³⁴ Similar outbreaks have occurred at federal prisons in Forrest City, Lexington, Elkton, Oakdale, and Fort Worth.³⁵

²⁹ *COVID-19 Coronavirus page*, Federal Bureau of Prisons, available at: <https://bit.ly/3mMIktq> .

³⁰ *COVID-19 Coronavirus page*, Federal Bureau of Prisons, available at: <https://www.bop.gov/coronavirus/index.jsp>

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *See, e.g.*, Debbie Holmes, *After Six COVID-19 Deaths, Judge Orders Elkton Prison to Transfer At-Risk Inmates*, WOSU Radio (Apr. 22, 2020), available at: <https://bit.ly/3CQnizv> (discussing Elkton); Sadie Gurman, et al., *Coronavirus Puts a Prison Under Siege*, Wall Street Journal, (Apr. 6, 2020), available at: <https://on.wsj.com/3mPlgKH> (discussing Oakdale); Scott Gordon, *COVID-19 Cases Nearly Quadruple Inside Fort Worth Federal Medical Prison*, NBC DFW (Apr. 23, 2020), available at: <https://bit.ly/3qbY3UR> (discussing Fort Worth); Mitchell McCluskey et al., *A North Carolina prison complex has 60 inmates and 23 staff members with coronavirus*, CNN (Apr. 12, 2020), <https://cnn.it/3GS8rHy> . On April 24, an outbreak of COVID-19 cases at the Federal Medical Center in Lexington, Kentucky “led to a sharp increase” in the area’s COVID-19 cases, “when the city had settled

Each of those institutions appeared to have infections under control – until they didn't. Each went from low reports of positive cases to multiple deaths within weeks: a total of 78 dead.

Courts have regularly found COVID-19 a threat to incarcerated people regardless of the numbers of positive cases in a particular BOP facility, even in facilities with no reported cases.³⁶ The sudden outbreaks and the inability to contain them when they happen come as no surprise. As the CDC has noted, “[i]ncarcerated persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.”³⁷ The CDC thus recognizes the herculean challenge of keeping prison facilities insulated from COVID-19:

There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances,

into a period of relatively few new cases.” Daniel Desrochers, *Outbreak of COVID-19 reported at Federal Medical Center in Lexington: 33 inmates positive*, Lexington Herald-Leader (May 1, 2020), available at: <https://bit.ly/3wyhMzu> ; *COVID-19 Coronavirus page*, Federal Bureau of Prisons (May 27, 2020), available at: <https://www.bop.gov/coronavirus/index.jsp>.

³⁶ Although the list of cases is too numerous to catalog, *see, e.g., United States v. Ivars Ozols*, No. 16 Cr. 692 (S.D.N.Y. June 2, 2020) (“the threat of COVID-19 to those in prison constitutes an extraordinary and compelling reason for compassionate release”); *United States v. Alberto Pena*, WL 2301199 (May 8, 2020) (same); *United States v. Adam Field*, No. 18 Cr. 426 (JPO) (S.D.N.Y. May 4, 2020) at 2-4 (same); *United States v. Gregory Cooper*, No. 08 Cr. 356 (KMK) (S.D.N.Y. Apr. 28, 2020) (same); *United States v. Jeffrey Musumeci*, No. 07 Cr. 402 (RMB) (S.D.N.Y. Apr. 28, 2020) (same); *United States v. Feucht*, Case No. 11-cr-60025 (S.D. Fla. May 28, 2020)

(granting compassionate release despite no confirmed cases at FCI Jessup because “[z]ero confirmed cases is not the same thing as zero COVID-19 cases” (citation omitted)); *United States v. Atkinson*, 2020 WL 1904585 (D. Nev. Apr. 17, 2020) at **2-4

(granting compassionate release to defendant Atkinson, notwithstanding that FCP Atwater where he was housed had seen no cases of COVID-19 because the realities of prison life make it impossible for medically vulnerable inmates like Mr. Atkinson to follow CDC guidelines to protect themselves in the face of COVID-19); *United States v. Amarrah*, 2020 WL 2220008 (E.D. Mich. May 7, 2020)

(releasing medically vulnerable inmate from FCI Loretto, despite no reported COVID-19 cases at the facility, because he could not adequately protect himself in line with CDC guideline); *United States v. Asaro*, 2020 WL 1899221 (E.D.N.Y. April 17, 2020)

(“absent more information about how much testing the BOP is conducting, it is possible that undetected cases are present in the facility”); *United States v. Burrill*, 2020 WL 1846788 (N.D. Cal., April 10, 2020), at *4

(“Prison conditions mean incarcerated individuals, as well as society as a whole, are safer the more defendants are released.”).

³⁷ Center for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (Mar. 23, 2020).

and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.

Id. Limited space and overpopulation, inadequate ventilation, and lack of resources all contribute to the spread of infectious disease in jails and prisons. The federal prison system simply is not, in spite of its best efforts, capable of preventing a harrowing outbreak.

In short, by the time an outbreak occurs, it is often too late to do anything about it. The 122 people who died at BOP facilities that insisted they were safe are a stark reminder of this common occurrence. All three branches of government have recognized the importance of expanding the use of home confinement during the COVID-19 pandemic. The U.S. Attorney General specifically recommended the increased use of home confinement: “One of BOP’s tools to manage the prison population and keep inmates safe is the ability to grant certain eligible prisoners home confinement in certain circumstances.”³⁸ As the weather turns cold, the flu season approaches, and the country prepares for a second wave of infection because of the many COVID-19 variants, Mr. Watts could very well pay for an outbreak with his life.

III. IF THE COURT DENIES COMPASSIONATE RELEASE, IT SHOULD ISSUE A JUDICIAL RECOMMENDATION THAT THE BOP RE-DESIGNATE MR. WATTS’S SENTENCE TO BE SERVED ON HOME CONFINEMENT.

In the alternative, if the Court denies Mr. Watts's request for compassionate release, Mr. Watts respectfully requests that the Court recommend to the BOP that he serve the remainder of his sentence under home confinement under 18 U.S.C. § 3624(c), as modified by the CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). The BOP “routinely relies on judicial recommendations that express the district judge’s determination of how a defendant should serve his time.” *United*

³⁸ See Barr Memorandum dated March 26, 2020.

States v. Doshi, 2020 WL 1527186, at *1 (E.D. Mich. Mar. 31, 2020); *see also* 18 U.S.C. § 3621(b)(4) (one of several factors the BOP is to consider is “any statement by the court that imposed the sentence”); *United States v. Knox*, 2020 WL 1487272, at *1 (S.D.N.Y. Mar. 27, 2020). Such a recommendation may be “amend[ed] or supplement[ed] . . . in light of the interplay of changing circumstances and factors considered at sentencing,” including “[t]he threat of COVID-19 within prisons.” *Doshi*, 2020 WL 1527186, at *1.

As explained above, Mr. Watts, upon his release, is welcome to live with his sister, Evelyn Watts, in Pennsylvania, where he would be supported financially and able to comply with appropriate social distancing measures. Accordingly, a recommendation of home confinement would both protect Mr. Watts's life and serve the public interest.

CONCLUSION

A fundamental premise of any system of justice is that humans can change and society does change. And, in a good system of justice it follows that consequences can change as well. Mr. Watts is not the young and impulsive man this court adjudged 30 years ago. He has since processed the harm he caused others and used his time in prison for deep introspection, spiritual growth, and a commitment to helping others – especially his family. Congress, too, reflecting changed social realities, has recognized that the 1990s mandatory sentencing regime it created was often disproportionate, harsh and inflexible; it has authorized courts to consider a sentence anew in light of changes in a person and in the world.

Thirty years is a long time to pay a debt to society. In Mr. Watts's circumstances, sixty more years would not serve a just purpose. Mr. Watts respectfully requests that this Court take up the invitation from Congress and examine his sentence in light of the person he is now who,

unlike before, *has* decided he wishes to live as a law-abiding citizen and is eager to contribute to our society. This Court should do justice and grant Mr. Watts's petition for compassionate release.

Dated: New York, New York
November 9, 2021

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