

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

Baher Azmy, Esq.
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012
Tel.: (212) 614-6484
Counsel for Charles Watts

TO: Victor Zapana, Esq.
Assistant United States Attorney
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, NY 11201
victor.zapana@usdoj.gov

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PRELIMINARY STATEMENT

The United States of America seeks to ensure that Mr. Charles Watts – who has managed a personal and spiritual transformation over his 30 years in prison and who has developed a meaningful plan to become a loving and productive member of family and society – spends the rest of his life in prison. In support of this unnecessary and callous position, the Government’s brief proceeds as if it were still 1992, by recounting the seriousness of Mr. Watts’s crimes, his lack of remorse at sentencing, and this Court’s harsh judgment of his conduct and character while it also dismissively nitpicks the thorough remorse he has exhibited. Yet, the relevant criteria for considering this motion is not hidebound to the past. As *United States v. Brooker*, 976 F.3d 228, 233 (2d Cir. 2020) clarified, the First Step Act (FSA) has re-oriented the compassionate release framework away from a retroactive and retributive gaze, authorizing courts to exercise broad discretion to ascertain under a range of factors whether “exceptional and compelling” circumstances exist to reduce a prison sentence. Society has changed and so has Mr. Watts; justice calls for this Court to grant him the relief he seeks.

I. THIS COURT IS FULLY AUTHORIZED TO GRANT MR. WATTS’S MOTION

A. Sentencing Disparities From 924(c) Stacking Provisions is Sufficient Grounds

Largely sidelining Second Circuit precedent in favor of out-of-circuit cases, the Government starts from the untenable premise that the FSA changed little of the law of compassionate release, leaving district courts constrained by the old regime’s requirement to tether “extraordinary and compelling” circumstances to those restrictively set forth by the Sentencing Guidelines. In fact, *Brooker* represented a sea change in the law, clearly holding that the Sentencing Guidelines in no way “limit[] the district court’s discretion” – which remains “broad.”¹ Indeed, *Brooker* stressed that the statute’s only constraint is that

¹ *Brooker* underscores Congressional dissatisfaction with the low number of compassionate-grants and cites with approbation an increase from 34 grants pre-FSA, to over 1000 by mid-2020. 976 F.3d at 233. In 2021, under the changes enacted by the FSA, the BOP reports that 3,910 fair sentencing/retroactive sentencing reduction orders have been granted and 4,015 compassionate release/reduction orders approved, showing a marked change from when the program was administered by the BOP. (<https://www.bop.gov/inmates/fsa/> last visited 1/10/2022).

“*rehabilitation . . . alone* shall not be an extraordinary and compelling reason,” 976 F.3d at 238 (first emphasis added), and underscored that Congress’s longstanding concern about overly-long sentences. *Id.*

The Government argues that Congress’s decision to make the FSA’s significantly reduced stacking penalties not retroactive necessarily precludes *ever* considering sentencing disparities as an extraordinary and compelling reason. The argument confuses the principle of retroactivity Congress forewent (which would have *mandated* compassionate release in *all* stacking cases) with discretion that Congress granted (which *authorizes* compassionate release in appropriate cases). *See United States v. Haynes*, 456 F. Supp. 3d 496, 516 (E.D.N.Y. 2020) (explaining that non-retroactivity “simply establishes that a defendant sentenced before the FSA is not *automatically* entitled to resentencing; it does not mean that the court may not or should not consider the effect of a radically changed sentence” and noting “growing consensus” that an overlong sentence is a sufficient independent basis to grant relief); *accord United States v. Sessoms*, 2021 WL 4592522 at *2 (E.D.N.Y. Oct. 6, 2021); *United States v. Robles*, 2021 WL 3524067 *3 (S.D.N.Y. Aug. 10, 2021); *United States v. Reid*, 2021 WL 837321 at *5 (E.D.N.Y. Mar. 5, 2021).

Mr. Watts’s mandatory 92-year stacking sentence is precisely of the kind courts consider unjustly long measured on their own terms and as compared to a sentence they would receive today under the FSA. *Robles* is instructive. Judge Engelmeyer compared the sentence the petitioner would have received had the FSA been operation during the 2012 sentencing and concluded that, because he would not have faced the same mandatory stacking sentences on gun possession, this was an extraordinary and compelling circumstance for relief – the argument Mr. Watts makes before this court.² 2021 WL 3524067 at *3. *See also Reid*, 2021 WL 837321 at *6 (E.D.N.Y. Mar. 5, 2021) (granting relief of sentence

² Suggesting his current sentence is still fair, the Government states Mr. Watts would be sentenced to over 40 years under the FSA, though it does not explain how it got to that conclusion. In any event, as these cases reveal, one does not have to show that a sentence would be in every case lower under the new FSA. That hypothetical sentence which orders a magnitude lesser than 92 years, would still reflect Congress’s broader desire to remediate harsh sentencing and given Mr. Watts’s thirty years of incarceration, it would still justify granting him relief.

reduction to 21 years for series of violent robberies because “Mr. Reid was subject to a mandatory 100-year sentence enhancement—tantamount to a death-in-prison sentence—that would not be imposed under today’s law”); *Haynes*, 456 F. Supp. 3d. at 514 (E.D.N.Y. 2020) (considering “the brutal impact of Hayne’s original sentence under § 924(c) . . . [and] its harshness as compared to the sentences imposed on similar and even more severe criminal conduct today”); *United States v. Ballard*, 2021 WL 3285009 at *4 (S.D.N.Y. Aug. 2, 2021) (describing the case as one of numerous in which the “operation of section 924(c)’s stacking provision made the letter of the law so far depart from justice as to become the instrument of brutality.”).³

In addition, the sentencing disparity between Mr. Watts’s sentence and that of his testifying co-defendant Shawn Daniels – who pleaded guilty and was issued a comparatively negligible sentence for a similar role in the conspiracy further shows the unfairly disproportionate nature of Mr. Watts’s sentence.⁴ Setting aside some natural disparities in sentencing, between those who cooperate and go to trial, courts consider large disparities a factor in granting compassionate release. *See Robles*, 2021 WL 352407 at *5 (sentencing disparity with co-defendant, “given its vast scale” makes sentence “not justifiable”); *Ballard*, 2021 WL 3285009 at *3 (S.D.N.Y. Aug. 2, 2021 (granting relief in part because petitioner received sentence four times longer as co-defendant, in part because of government’s “charge bargaining with the co-defendant”); *Haynes*, 456 F. Supp. 3d at 514 (considering sentence’s “drastic severity as compared to co-defendant[’s] ten-year term. . . and the extent to which that brutal sentence was a penalty for Haynes’s exercise of his constitutional right to trial”).

³ Critically, as numerous courts and the Sentencing Commission has observed, and as Amicus Curiae, NYU Center for Race Law and Equity painfully details, the entire sentencing regime of the early 1990s and the stacking provision in particular, disproportionately harmed Black men. *See Haynes*, 456 F. Supp. 3d at 517. This consideration, no doubt in Congress’s mind when passing the FSA, also should constitute an extraordinary and compelling circumstance to grant relief.

⁴ Mr. Watts understands that Mr. Daniels served 8 years, which would be roughly consistent with evidence in the record that Mr. Daniels would receive a downward departure after pleading guilty to one of the numerous counts charged against Mr. Watts. If the Government was comfortable with Mr. Daniels’ release from prison in his mid-twenties, it should not fear Mr. Watts’ release at age 51.

The Government's insistence on Mr. Watts's *de facto* life sentence for crimes committed in his youth is equal parts ungrounded and callous. First, the severity of Mr. Watts's crimes may be relevant, but is hardly dispositive of the question Congress authorized this Court to consider, which is whether the severity of the sentence (alone or in combination with other factors discussed below) justifies a sentence reduction in light of today's norms. Courts regularly grant relief for even more serious crimes of violence. *See United States v. Johnson*, 98-Cr. 0860 (ARR), ECF 528 at 12 (E.D.N.Y. Dec. 3, 2021) (granting relief despite finding crime, including chasing and killing store owner "was indisputabl[y] . . . heinous"); *United States v. Ramsay*, 538 F. Supp. 3d 407 (S.D.N.Y. May 11, 2021) (granting sentence reduction from mandatory minimum life sentence to 30 years for triple murder in aid of racketeering); *United States v. Suggs*, 2021 WL 2661874 at *1 (D. Conn. June 28, 2021) (granting reduction from mandatory life sentence to 30 years for petitioner who had lengthy and violent criminal record and shot store owner multiple times).

The Government also pontificates that only the current sentence – and not 30 years – will sufficiently serve the Government's deterrent interests, which runs headlong into Congress's superior institutional judgment codified in the FSA that stacking of this magnitude does not serve *bona fide* criminological purposes. The Court should listen to Congress, not the prosecutors' punitive reflex.⁵ Given that the national average length of a federal sentence for murder is only 22 years (*see United States v. Cruz*, 2021 WL 1326851 at *7 (D. Conn. April 9, 2021)), 30 years for a youthful, if reckless and dangerous set of robberies would serve justice.

B. Mr. Watts's Age at Sentencing, His Remorse, and His Rehabilitation and Family Support Plan Provide Strong, Additional Support for Compassionate Release

The Court need not agree – or even decide – that an unduly harsh sentence imposed under the §924(c) stacking provision is *alone* sufficient to grant Mr. Watts's relief. At a minimum, there is a

⁵ The Government also asserts without citation to authority or moral norm, that serving only 1/3 of a sentence is categorically insufficient; the proposition as such elides elementary math principles which demonstrate that 1/3 of a large denominator (e.g., 100 years) can be far more cruel than 2/3 of a small one (e.g., 30 years). Numerous cases Mr. Watts has cited grant release after ratios of 1/3 or even lower.

complete consensus that it is permissible for the changes to the 924(c) stacking provision to be one of several considerations for the purposes of §3582(c)(1)(A) and the balancing of §3553 factors. Courts look to a range of factors to supplement the harsh sentencing inquiry, including (i) age of defendant at sentencing; (ii) evidence of rehabilitation; (iii) evidence that if released the petitioner will not be a danger to society, which courts routinely find despite numerous disciplinary infractions. *See United States v. Vargas*, 502 F. Supp. 3d 820, 827 (S.D.N.Y. 2020); *United States v. Mamau*, 993 F.3d 821, 837 (10th Cir. 2021).

1. Mr. Watts’s Age at Sentencing and Current Decreased Risk of Recidivism

Mr. Watts was 20 years old at the time of his crimes – undertaken without a prior criminal record – an age at which science has conclusively shown that young men in particular have reduced capacity to control emotion and impulse. *Roper v. Simmons*, 543 U.S. 551, 569 (2005) (“[a] lack of maturity and an underdeveloped sense of responsibility are found in youth. . . [t]hese qualities often result in impetuous and ill-considered actions and decisions”). This impulsivity is not limited to teenagers; the early twenties constitute a transitional period between adolescence and mature adulthood.⁶ Brain development studies show that the prefrontal cortex which governs self-restraint, is not fully developed “until the early 20’s or later,” such that “the vast majority of adolescents who engage in criminal or delinquent behavior desist from crime as they mature.” *Ramsay*, 538 F. Supp. 3d at 422.

Accordingly, numerous courts have considered a petitioner’s youth as relevant to a sentence reduction inquiry under 18 U.S.C. § 3582(c)(1)(A). *See United States v. Ramsay*, 538 F. Supp. 3d 407, 417 (S.D.N.Y. May 11, 2021) (reducing sentence from life to 30 years for petitioner who committed a triple murder at age 18); *United States v. Vargas*, 502 F. Supp. 3d 820, 821–22 (S.D.N.Y. 2020) (granting sentence reduction from 40 years to time served for defendant who was 23 years old at the time of his crimes, even though he “could be characterized as having lived a life of crime”); *cf. United States v.*

⁶ Elizabeth S. Scott, Richard J. Bonnie, and Laurence Steinberg, Young Adulthood as a Transitional Legal Category: Science, Social Change, and Justice Policy, 85 *Fordham L. Rev.* 641 (2016).

Viola, 2021 WL 4592768 at *4 (E.D.N.Y. Oct. 6, 2021) (denying relief in part because petitioner “was not a youth at the time of his offenses”).⁷ *Ballard* observed that because petitioner committed his crimes at age 24, “public safety does not require [his] incapacitation for five decades.” 2021 WL 3285009 at *6.

At the same time, studies consistently show that recidivism rates decrease with age, especially for those after 50 years old⁸ and even for those sentenced for gun possession pursuant to § 924(c) stacking provisions.⁹ Further, Mr. Watts’s release plan, with housing, family support, and employment, provides the kind of stability that radically decreases recidivism. *See infra* at 8.

2. Mr. Watts Has Shown Remorse and Rehabilitation

Consistent with its overly punitive reflex, the Government callously nitpicks at Mr. Watts’s declaration of remorse and rehabilitation because from its armchair viewpoint, he has not addressed every feature and facet of his crimes. Yet, remorse for a period of one’s life need not proceed like a legal brief, responding to every point in the record. By any fair measure, Mr. Watts reveals himself as a self-reflective man who has acknowledged his wrongdoing and the harm he has caused, and has set himself on a productive path for the future.

First, with perspective that he could not have at that age, he now recognizes the impulsiveness and recklessness at the time he committed the robberies, which reflects what social science tells us about teenage impulsivity. ECF No. 103-1 ¶ 10 (“Watts Decl.”) (“I didn’t understand the seriousness of it all.”); *Id.* at ¶13 (“Every day I think about it and can’t believe how young, foolish, and selfish I was.”). He recognizes today that it was incredibly naïve and immature to imagine his own belief that he didn’t intend to harm people during the robberies actually meant anything – including to his victims who he now

⁷ *See also United States v. Maumau*, 993 F.3d 821, 824, 828–29 (10th Cir. 2021) (affirming district court’s reduction of sentence from 55 years to time served (approximately 12 years), in part because that defendant committed the armed robberies at only 20 years old); *United States v. McDonel*, 513 F. Supp. 3d 752, 753 (E.D. Mich. 2021) (granting sentence reduction from 100 years to 20 years in part because the defendant was only 19).

⁸ The recidivism rate drops from 54.8% for the younger than 30 group to 26.8% for ages 50–59. U.S. Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders* (2017).

⁹ U.S. Sentencing Commission, *Recidivism of Federal Firearms Offenders Released in 2010* (2021).

knows obviously feared for their lives. Watts Decl. at ¶13 (“It was cruel of me to hold a gun up to anyone and it was foolish of me to not understand how terrifying that would be regardless of my intentions.”). And, he recognizes his recklessness caused harm and he wishes to apologize. Watts Decl. at ¶17 (“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.”).¹⁰

Second, the Government’s focus on the seriousness of his crimes is, as prior cases show, *see supra* at 4, insufficient to defeat Mr. Watt’s present motion. And, consistent with its obsession with Mr. Watts’s 22 year-old persona, the Government characterizes several cherry-picked attestations regarding his reflections on the context contributing to his recklessness, as “minimization and deflection,” likening the 50-year old man to “the man who, at his sentencing hearing, refused to accept criminal responsibility.” Gov’t Opp., ECF No.107 at 8. This is grossly distorted. One of the principal characteristics of remorse is the act of *recognition* that you are responsible for your own, voluntary actions.¹¹ It was important for Mr. Watts to understand that there were outside factors that influenced him (such as peer pressure,¹² a sense of abandonment from his father, and poverty), even if it didn’t excuse it; at this same time, he fully acknowledges that his own choices ultimately led to his incarceration. Watts Decl. ¶ 16 (“I now know that our actions determine the outcomes of our lives.”); *Id.* at ¶17 (“It made me act on impulse and my pain made it hard for me to see the consequences of my choices on other people I

¹⁰ Although counsel respectfully submits Mr. Watts’s attestations of remorse and personal growth are ample, Mr. Watts wishes to supplement the record to address the Government’s characterizations of his remorsefulness. His supplemental letter did not arrive to counsel’s office in time to include in this motion, but he may seek leave to file a supplemental attestation in further support of his motion when it does arrive.

¹¹ The principal characteristics of remorse includes a recognition that you have wronged someone and were responsible for your actions, a desire to atone or to make reparation (e.g., by expressing remorse, apologizing, making restitution to the person harmed, undergoing penance, and/or behaving differently in the future). Michael Proeve & Steven Tudor, *Remorse: Psychological And Jurisprudential Perspectives*, 48 (2010).

¹² Indeed, “[o]ne of the hallmarks of adolescent risk taking is that it is much more likely than that of adults to occur in the presence of peers, as evidenced in studies of reckless driving, substance abuse, and crime.” *United States v. Ramsay*, 538 F. Supp. 3d 407, 420 (S.D.N.Y. 2021) quoting *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

scared or hurt”). Ultimately, he explains, “taking responsibility for my actions and no longer blaming my dad or others for where I am in life was a big step in my rehabilitation.” *Id.* at ¶18. *See United States v. Fisher*, 493 F. Supp. 3d 231, 238 (S.D.N.Y. 2020) (“Both [the defendant’s] crimes and the regret he shows must be viewed from the present day, after 38 years of rehabilitation.”).¹³

Further, as previously detailed, Mr. Watts has taken numerous educational courses, maintained loving and mentoring relationships with his family and younger inmates, and centered himself in a place of spirituality and productivity. Ultimately, the key consideration is whether he “demonstrated a record of maturation and rehabilitation that makes it unlikely he will pose a future risk to public safety and likely he will contribute productively to society.” *United States v. Rengifo*, 2021 WL 5027334 at *13 (S.D.N.Y. Oct. 29, 2021).

3. Mr. Watts Has a Solid and Comprehensive Release Plan

The Government dismisses Petitioner’s three-page-long release plan and the six accompanying declarations in support as “conclusory,” without offering one word of analysis regarding its imagined deficiency. According to the National Institute of Justice, among the most impactful factors on re-entry are health, employment, mentorship, social networks, and housing.¹⁴ First, Mr. Watts should be fully vaccinated by the time the Court would grant relief. *See infra* Section II. Second, as detailed in the Employment Letter by Ronald Gibbons, he has a job and professional support awaiting him, as a cable technician with Quantum Technology Group. ECF No. 103-9. Employment is an essential factor in successful reentry, providing lower rates of recidivism, financial stability, and an opportunity for identity

¹³ The Government’s focus on a handful of non-violent disciplinary infractions over 30 years cannot plausibly suggest Mr. Watts is a danger to society. *See Sessoms*, 2021 WL 4592522 at *3 (concluding that 7 disciplinary infractions, including one within 2 years of petition and a weapons infraction petitioner contested, doesn’t render petitioner a danger); *Reid*, 2021 WL 837321 at *3) (granting sentence reduction despite 7 infractions).

¹⁴ The Harvard University Institute of Politics Criminal Justice Group, *Successful Reentry: A Community-level Analysis* (2019).

building.¹⁵ He will receive supervision, training, and mentorship from co-owner Mr. Gibbons. ECF No. 103-9.

Finally, he has both secured safe housing and a broad and loving social support network of family and friends. Mr. Watts will be living with his “best friend” and sister Evelyn Watts, in Pennsylvania. Evelyn has been a steady source of support for Mr. Watts since their childhood and through his time in prison. *See* Evelyn Watts Letter, ECF No. 103-6. One of the most critical aspects of a social support network includes returning to an individual’s family which ensures financial security and safety.¹⁶ The letters of his two children, Shadasia and Daevon, demonstrate how important it will be for their own happiness and security, and those of his five grandchildren to have him home. ECF Nos. 103-4, 103-5.

II. THE EMERGENCE OF OMICRON IS ADDITIONAL GROUNDS FOR RELEASE

As described in the accompanying Declaration of Rafaela Uribe, Esq., Mr. Watts was initially confused and distrustful about COVID-19 vaccines, but upon assurances from counsel that vaccines are safe and risk-reducing, he intends to become fully vaccinated. While this should make it safe for him to live with family and work outside the home, in the context of a prison facility that has drastically accelerated dangers of breakthrough infections and death,¹⁷ the emergent risk from the exploding Omicron variant (and future variants)¹⁸ – including known risks to vaccinated persons and with underlying comorbidities such as Mr. Watts’s sarcoidosis – also warrants this Court’s consideration.

¹⁵ Mark T. Ber & Beth Huebner, *Reentry and the Ties that Bind: An Examination of Social Ties, Employment, and Recidivism*, 28 *Justice Quarterly* 382 (2011).

¹⁶ The Harvard University Institute of Politics Criminal Justice Group, *supra* note 14.

¹⁷ New York Times, *Incarcerated and Infected: How the Virus Tore Through the U.S. Prison System*, available at: <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html>; Beth Schwartzapfel and Keri Blackinger, *Omicron Has Arrived. Many Prisons and Jails are not Ready*. The Marshall Project, Dec. 22, 2021, available at: <https://www.themarshallproject.org/2021/12/22/omicron-has-arrived-many-prisons-and-jails-are-not-ready>

¹⁸ Center for Disease Control, *Potential Rapid Increase of Omicron Variant Infections in the United States*, available at: <https://www.cdc.gov/coronavirus/2019-ncov/science/forecasting/mathematical-modeling-outbreak.html>

CONCLUSION

After thirty years of incarceration and in accordance with Congress's present judgment, the criminal justice system has served its purpose. "In the last 30 years, I have grown and changed so much. I am grateful for this time to get on the right path." Watts Decl. at ¶31. Through reflection, remorse, and spirituality, Mr. Watts's transformation has made him ready to re-enter society productively and support his loving family. Respectfully, this Court should grant Mr. Watts's motion for compassionate release or a sentence reduction.

Dated: New York, New York
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Baher Azmy, Esq.
Samah Sisay, Esq.
Rafaela Uribe, Esq., *pro hac vice* application
forthcoming
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012
212-614-6427

By: /s/Baher Azmy
Baher Azmy