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December 6, 2021

By E-mail and ECF

The Honorable Sterling Johnson, Jr.
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. Charles Watts
Criminal Docket No. 92-767 (SJ)

Dear Judge Johnson:

On December 31, 2020, the defendant Charles Watts filed a pro se motion for a sentence reduction under Title 18, United States Code, Section 3582(c)(1)(A)(i), as modified by the First Step Act of 2018 ("First Step Act"), Pub. L. No. 115-391, § 603(b), 132 Stat. 5194, 5239, or a recommendation to the Federal Bureau of Prisons ("BOP") for an immediate transfer to home confinement under 18 U.S.C. § 3624(c). (See ECF No. 88.) After the government filed a letter opposing the motion on March 31, 2021 (see Opp'n, ECF No. 95), Watts retained counsel and filed a supplemental brief on November 9, 2021 (see Supplemental Br., ECF No. 103). The government respectfully submits this letter in response to Watts' supplemental brief. For the reasons stated below and in the initial opposition letter, this Court should deny Watts' motion.

I. Background

In his supplemental brief, Watts states that he committed a single "grave mistake" (Watts Letter 2, ECF No. 103-3), and that he "never intended to harm anyone" (Watts Decl. ¶ 13, ECF No. 103-1; see also Supplemental Br. 7 ("Mr. Watts has maintained during his trial and time incarcerated that he is not a violent person . . . .")). The facts belie his assertions. The government summarized Watts' case in its initial opposition letter. (See Opp'n 1-4.) With a co-conspirator, Watts committed multiple armed bank robberies and Hobbs Act robberies, as well as a carjacking, in Brooklyn and Manhattan from October 1989 to September 1990. Watts stole numerous motorcycles and tens of thousands of dollars in cash. Watts robbed a grocery store, a movie theater, motorcycle shops and banks. Watts brandished different semi-automatic firearms with their safeties off in front of his victims. Watts held his guns at their chests and heads. One victim was frozen in terror. Another was holding onto himself because he thought he would be shot. One victim could barely compose herself as she testified at trial more than two years later.

(See Jan. 28, 1993, Trial Tr. 272:9-10 (The Court: "It's agonizing to [the witness]. It's so obvious it's so torturous to her."), ECF No. 69.)

On February 2, 1993, a jury found Watts guilty of one count of conspiring to commit armed bank robbery, in violation of 18 U.S.C. § 371; four counts of committing armed bank robbery, in violation of 18 U.S.C. § 2113(d); one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. § 1951; one count of committing Hobbs Act robbery, also in violation of 18 U.S.C. § 1951; and five counts of using a firearm during a crime of violence, in violation of 18 U.S.C. § 924(c)(1).

At his sentencing hearing, Watts did not accept responsibility but rather asserted that witnesses against him provided "perjured testimony." (Sent'g Tr. 8:9-12, ECF No. 103-13.) For the armed bank robbery, Hobbs Act robbery and conspiracy counts, the Court calculated Watts' sentencing range under the United States Sentencing Guidelines ("Guidelines") to be 70 to 87 months and imposed a sentence at the top of that range. But under the version of § 924(c) in effect at the time, the Court additionally imposed one 5-year term and four 20-year terms for the five distinct § 924(c)(1) counts, each term consecutively following the 87-month sentence. See 18 U.S.C. § 924(c)(1) (1988) ("Whoever, during and in relation to any crime of violence . . . for which he may be prosecuted in a court of the United States, 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 . . . . [N]or shall the term of imprisonment imposed under this subsection run concurrently with any other term of imprisonment . . . ."); United States v. Arline, 835 F.3d 277, 281-83 (2d Cir. 2016) (per curiam) (noting that the enhanced-sentence provision for a "second or subsequent" conviction applies to additional § 924(c)(1) counts charged in a single criminal proceeding, so long as the counts are not multiplicitous). Thus, the Court imposed a total prison term of 92 years and 3 months.

Because § 924(c) required prison terms for multiple counts to run consecutively, federal courts have described the pre-2018 version of "second or subsequent conviction" provision as creating a "'stacking effect' that greatly increased [a § 924(c) defendant]'s potential sentence" in a single criminal proceeding with multiple counts. United States v. Erskine, No. 05-CR-1234 (DC), 2017 WL 10751237, at *1 (S.D.N.Y. Aug. 18, 2017) (Chin, J.); see also United States v. Waite, 12 F.4th 204, 209 (2d Cir. 2021) (defining § 924(c) stacking as "multiple § 924(c) charges in the same indictment . . . yield[ing] enhanced consecutive mandatory minimum sentences under § 924(c)(1)(C) if a defendant was convicted on more than one of the charged § 924(c) counts"). The First Step Act changed the § 924(c) sentencing regime. For any offense whose sentence "ha[d] not been imposed as of" December 21, 2018, section 403(a) of the First Step Act "str[uck] 'second or subsequent conviction under this subsection[,]' . . . [and] insert[ed] 'violation of this subsection that occurs after a prior conviction under this subsection has become final.'" Pub. L. No. 115-391, 132 Stat. at 5221-22. The legislative change ordinarily prevented the application of § 924(c)'s enhanced-sentence provision (in Watts' case, the 20-year provision, as opposed to the 5-year provision) to multiple charges in a single indictment. See United States v. Eldridge, 2 F.4th 27, 40 (2d Cir. 2021), cert. docketed, No. 21-6389 (U.S. filed Nov. 19, 2021). Although the imposition of consecutive terms still occurs with multiple § 924(c) counts in a single case, the total period of incarceration resulting from multiple § 924(c) convictions generally has decreased the First Step Act's elimination of enhanced

stacking. In this motion, Watts focuses on the disparity between pre-First Step Act and post-First Step Act sentences involving multiple § 924(c) counts.

Nonetheless, during the sentencing hearing, the Court made no comments indicating that the consecutive mandatory minimum sentences were unjust or too high for Watts.[1] Indeed, the Court found that he "decided that living in a society as a law[-]abiding citizen was not for" him, and that he was a "villain," "bully" and "disgrace to [his] community." (Sent'g Tr. 9:4-7, 10:4-8.) Watts "sought to be a predator who preyed upon the weak and innocen[t]" and "became very, very strong when [he] had a gun or someone with [him]." (Id. at 9:19-22.) Based on the trial testimony, the Court found his conduct "reprehensible." (Id. at 9:22-24.) The Court decided to sentence Watts so that he "no longer will be a predator," he "will no longer have a gun to back [him] up and make [him] six or seven feet tall," and "people will no longer be afraid" of him. (Id. at 10:9-12.) The Court added that "predators like [Watts] should not remain on the streets where [he] can hurt someone else." (Id. at 10:6-8.)

Watts has served approximately 29 years and 6 months in prison, or approximately 32 percent of his sentence. He is currently incarcerated at United States Penitentiary ("USP") Allenwood in Pennsylvania. When he filed his pro se motion, he was at USP Lee in Virginia and filed a request for the Federal Bureau of Prisons ("BOP") to bring a motion for a sentence reduction on his behalf, as required by 18 U.S.C. § 3582(c)(1)(A). After the government pointed out in its initial opposition letter that Watts failed to exhaust the issue of § 924(c) stacking before the BOP, Watts through counsel filed a new BOP administrative request with the warden at USP Allenwood's umbrella entity Federal Correctional Complex Allenwood on August 18, 2021.[2] In the request, Watts expressly argued that he should be released because of COVID-19 and the "extraordinary length of his sentence and the years he has already served." (Ex. A at 2.) Contrary to what Watts suggests (see Supplemental Br. 3), the request was denied by the warden on August 30, 2021 (see Ex. B).

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[1] Watts suggests in his supplemental brief that this Court "reflected [upon his] 'tender young years'" at the time of his crimes. (Supplemental Br. 1 (quoting Sent'g Tr. 9:19).) In fact, the Court told Watts that "[in] your tender young years, you have sought to be what we see a lot of in our community, you sought to be a predator who preyed upon the weak and innocen[t]," and that "[l]ike so many young men[,] you have demonstrated that you do have a capacity to our society, but somewhere along the line you decided that living in a society as a law abiding citizen was not for you." (Sent'g Tr. 9:4-7, 9:19-21.)

[2] The new request and the BOP's response are enclosed as Exhibits A and B, respectively. Watts failed to file administrative appeals of the denial at USP Allenwood. Nonetheless, just as it did in its initial opposition letter, the government waives the argument that Watts' failure to fully pursue BOP's remedies after a timely denial by his warden prevents him from making the supplemented sentence-reduction motion to this Court. (See Opp'n 6 n.5.) Accordingly, the government's issue-exhaustion argument is moot (see id. at 6-8), and the Court should proceed to the merits of Watts' sentence-reduction motion.

II. Argument

Federal courts ordinarily "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c). But under the First Step Act, federal courts may order a sentence reduction only "after considering the factors set forth in [18 U.S.C. § 3553(a)] to the extent that they are applicable" and only if "extraordinary and compelling reasons warrant such a reduction." Id. § 3582(c)(1)(A); see also United States v. Jones, 17 F.4th 371, 373 (2d Cir. 2021) (per curiam). The defendant bears the burden of showing each element. See United States v. Madoff, 465 F. Supp. 3d 343, 349 (S.D.N.Y. 2020) (Chin, J.); see also United States v. Velazquez, No. 92-CR-1265 (SJ), 2021 WL 1648228, at *1 (E.D.N.Y. Apr. 27, 2021).

The government argued in the initial letter that Watts fails to demonstrate an entitlement to not only the requested sentence reduction but also a judicial recommendation to the BOP that he be transferred to home confinement. (The government incorporates those arguments by reference.) Because Watts does not meaningfully respond to many of the arguments and his arguments otherwise lack merit, this Court should deny the motion.

A. Watts Has Not Shown Extraordinary and Compelling Reasons for Relief

Watts lacks extraordinary and compelling reasons for a sentence reduction. In its initial opposition letter (see Opp'n 8-12), the government urged this Court to exercise its discretion by adopting U.S.S.G. § 1B1.13 as its definition for "extraordinary and compelling reasons" and finding that none of Watts' proffered reasons qualify. Otherwise, the Court should reject Watts' proposed extraordinary and compelling reasons under the broader definition it chooses. [redacted][3] Watts is asserting at most a generalized risk of potential exposure to COVID-19, the risks associated with COVID-19 are not exacerbated by [redacted]. As for his § 924(c) stacking argument, the proper vehicle for making it is a habeas action. Even if stacking were potentially a relevant ground to consider under § 3582(c)(1)(A), it would not alone constitute an extraordinary and compelling reason, and Watts fails to demonstrate additional factors.

In his supplemental brief, Watts responds that:

(1) other federal courts "have reduced sentences in a range of circumstances not contemplated by the Sentencing Guidelines";

[3] In an abundance of caution, the government submits this letter under seal to the extent it describes Watts' medical records and health information. See Offor v. Mercy Med. Ctr., 167 F. Supp. 3d 414, 445 (E.D.N.Y. 2016) ("Courts in this Circuit have repeatedly held that information protected by [the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936] is not subject to a First Amendment or common-law right of access[,] and thus [they] have sealed docket entries and redacted documents that contain such information."), vacated in part on other grounds, 676 F. App'x 51 (2d Cir. 2017).

(2) the sentencing disparity in § 924(c)-stacked sentences is an extraordinary and compelling reason because § 924(c) is "based on a largely outdated retributive belief system," contemporary public polls allegedly show disfavor of mandatory minimum sentences, the First Step Act "recognize[s] the possibility that rehabilitation can come before ethe conclusion of such unduly harsh [pre-First Step Act] sentences," and the Fourth Circuit and certain district-court opinions have cited to the disparity in granting sentence-reduction relief; and

(3) COVID-19 and Watts' [redacted] constitute extraordinary and compelling reasons because [redacted] allegedly aggravates the COVID-19 risks and there have been COVID-19 cases (including serious and lethal cases) at FCC Allenwood and other BOP facilities.

(Supplemental Br. 15-31.)

For four reasons, Watts' supplemental responses are not persuasive. First, the government does not dispute that other federal courts applying United States v. Brooker, 976 F.3d 228 (2d Cir. 2020), and related precedents have decided to adopt a broader definition of "extraordinary and compelling reasons" than that described in U.S.S.G. § 1B1.13. Indeed, this Court has acknowledged that § 1B1.13 is not binding. See United States v. Viola, No. 91-CR-800 (SJ), 2021 WL 4592768, at *3 (E.D.N.Y. Oct. 6, 2021) (citing Brooker, 976 F.3d at 230, 235-36). But this Court in post-Brooker cases nonetheless has chosen to adopt the provision as the definition for "extraordinary and compelling reasons." See, e.g., Velazquez, 2021 WL 1648228, at *1-3. The Court's decision in Velasquez is an appropriate exercise of discretion. (See Opp'n 8-9 (first citing United States v. Elias, 984 F.3d 516, 521 & n.1 (6th Cir. 2021), and then citing United States v. Johnson, No. 16-CR-457 (NGG), 2021 WL 466782, at *2 (E.D.N.Y. Feb. 9, 2021)).) And even if the Court decides to adopted a broader definition, the government and Watts appear to agree that the "extraordinary and compelling reasons" must be "of similar magnitude and importance to[] those specifically enumerated" in § 1B1.13. (Supplemental Br. 15 (citation omitted); see also Opp'n 9.) As the government explained in its initial opposition brief, § 924(c) stacking, [redacted] and COVID-19 are not akin to, among other things, serious deterioration in physical or mental health or the need to serve as a caregiver to children. (See Opp'n 9.)

Second, Watts' § 924(c) argument largely constitutes one of policy, and Congress listened to it to a certain degree in enacting the First Step Act. But as the initial opposition letter explained, Congress made a clear choice not to eliminate § 924(c)'s enhanced stacking effect on pre-First Step Act sentences. (Opp'n 11.) "Though the disparity in [a § 924(c) defendant's] sentence, measured against offenders sentenced after passage of the First Step Act may seem unfair, that disparity was clearly contemplated by Congress," and "it would be difficult to conclude that the mere existence of a disparity in sentence is alone extraordinary." Musa v. United States, 502 F. Supp. 3d 803, 812, 814 (S.D.N.Y. 2020) (Sullivan, J.), cited in Opp'n 11.

Since the government's initial opposition letter, a growing number of Courts of Appeals have found dispositive Congress' choice of making the amendment prospective. Indeed, the majority rule among the Courts of Appeals is that the "extraordinary and compelling reasons" under § 3582(c)(1)(A)(i) "cannot include, whether alone or in combination with other

factors, consideration of the First Step Act's amendment to § 924(c)." United States v. Thacker, 4 F.4th 569, 576 (7th Cir. 2021); accord United States v. Andrews, 12 F.4th 255, 261 (3d Cir. 2021); United States v. Jarvis, 999 F.3d 442, 445 (6th Cir. 2021), cert. docketed, No. 21-568 (U.S. filed Oct. 15, 2021).[4] Under the majority rule, adopting Watts' argument constitutes reversible legal error, and this Court should deny the motion for that reason alone. Accord, e.g., United States v. Scott, 508 F. Supp. 3d 314, 319 (N.D. Ind. 2020); United States v. Davis, No. 14-CR-296 (PAC), 2020 WL 5628041, at *3 (S.D.N.Y. Sept. 21, 2020), reconsideration denied, 2020 WL 5912811 (S.D.N.Y. Oct. 6, 2020).

Admittedly, this Court in dicta for another case included "the presence of 924(c) 'stacking'" in a list of what it described as "fairly uniform" "extraordinary and compelling circumstances." United States v. Viola, No. 91-CR-800 (SJ), 2021 WL 4592768, at *4 (E.D.N.Y. Oct. 6, 2021). This Court cited to a § 924(c) case involving numerous factors beyond the sentence disparity. See id. (citing Decision and Order at 6-7, United States v. Rose, No. 3:04-CR-67 (TJM) (N.D.N.Y. filed July 22, 2021), ECF No. 210, and noting, "inter alia, the defendant's youth at the time of the offenses, the stacking of his firearms counts, and his 'much different mindset' at the time of his motion"). Rose involved a case where the district court "expressed concern" that the sentence was "too long," 837 F. App'x 72, 73 (2d Cir. 2021), and this Court has never made similar statements in this case. The district court also expressly noted that the grant of relief in Rose was a "close call." Decision and Order at 6, United States v. Rose, No. 3:04-CR-67 (TJM) (N.D.N.Y. filed July 22, 2021), ECF No. 210. Moreover, the briefing in Viola and Rose largely predated the Courts of Appeals decisions described above, and no party in either case mentioned the existence of a majority rule. This Court has never squarely held that § 924(c) stacking constitutes an extraordinary and compelling reason by itself, or even in conjunction with other factors. The Court should take this case as an opportunity to consider adopting the textually supported majority rule.

Third, Watts' motion fails under more defendant-friendly legal standards as well. The Tenth Circuit adopted a less categorical rule than the Third, Sixth, Seventh and Eleventh Circuits—a rule recognized in Judge Sullivan's opinion in Musa. See United States v. McGee, 992 F.3d 1035, 1046-48 (10th Cir. 2021). The Tenth Circuit recognized that, because the First Step Act's relevant amendment had prospective effect, Congress "chose not to afford relief to all defendants who" were sentenced to a longer, pre-First Step Act sentence. Id. at 1047. But the Tenth Circuit held that § 3582(c)(1)(A)(i) permitted district courts to consider, "on an individualized, case-by-case basis," a sentence reduction to only "some of those defendants." Id. Accordingly, the Tenth Circuit held that the pre-First Step Act sentence "standing alone" cannot suffice and that "it can only be the combination of such a sentence and a defendant's unique circumstances that constitute 'extraordinary and compelling reasons.'" Id. at 1048 (quoting 18 U.S.C. § 3582(c)(1)(A)(i)); accord United States v. Maumau, 993 F.3d 821, 837 (10th Cir. 2021) (§ 924(c) case); United States v. Bartelho, No. 2:95-CR-29 (DBH), 2021 WL 3272197, at *1-2

[4] The Eleventh Circuit goes further and would not entertain the § 924(c) argument at all, because only the reasons described in U.S.S.G. § 1B1.13 could be deemed "extraordinary and compelling" in that jurisdiction. United States v. Bryant, 996 F.3d 1243, 1262-65 (11th Cir. 2021) (§ 924(c) case), cert. denied, Order List, No. 20-1732 (U.S. filed Dec. 6, 2021).

(D. Me. July 30, 2021); United States v. Lorenzano, No. 03-CR-1256 (JFK), 2021 WL 734984, at *3 (S.D.N.Y. Feb. 24, 2021).

The Tenth Circuit's rule "does not give district courts carte blanche to retroactively apply in every instance the amendments to the stacking provision in 18 U.S.C. § 924(c)." Maumau, 993 F.3d at 838 (Tymkovich, C.J., concurring). As the government's initial opposition letter explained, Watts must at bottom "identify additional, individualized factors justifying his release" in addition to the § 924(c) disparity. (Opp'n 11 (quoting Musa, 502 F. Supp. 3d at 812).) Watts does not dispute that "[m]any district courts require a significant amalgam of additional reasons for relief." (Id. (collecting cases).) Even the outlier Fourth Circuit opinion appearing to find the § 924(c) disparity sufficient by itself noted that the district courts in the consolidated appeal "relied not only on the defendants' § 924(c) sentences but [also] on full consideration of the defendants' individual circumstances." United States v. McCoy, 981 F.3d 271, 286 (4th Cir. 2020). Lower courts interpreting McCoy have emphasized that, "in considering a defendant's motion for sentence reduction based on subsequent changes in the law that create sentencing disparities, the court[s] should conduct an individualized and holistic assessment of the defendant's circumstances to determine whether there are extraordinary and compelling reasons for relief." United States v. Myers, No. 01-CR-188 (CCB), 2021 WL 2401237, at *3 (D. Md. June 11, 2021) (denying relief).

Indeed, most of the district-court opinions cited by Watts (see Supplemental Br. 15-16, 24-26) involved multiple factors. See United States v. Jones, 482 F. Supp. 3d 969, 981-83 (N.D. Cal. 2020) (individualized COVID-19 risks because of hypertension); McCoy v. United States, No. 2:03-CR-197 (RAJ), 2020 WL 2738225, at *3, *6 (E.D. Va. May 26, 2020) (noting "relative youth," an "impressive record of rehabilitation" during prison, a "workable release plan, family support, and mentorship"), aff'd, 981 F.3d 271 (4th Cir. 2020); United States v. Defendant(s), No. 2:99-CR-257 (CAS), 2020 WL 1864906, at *6 (C.D. Cal. Apr. 13, 2020) (noting that defendant spent 20 years in prison "as a recognized example to her peers, and as a model for what rehabilitative programming can achieve"); United States v. Millan, No. 91-CR-685 (LAP), 2020 WL 1674058, at *8 (S.D.N.Y. Apr. 6, 2020) (noting that defendant "has done everything in his power to rehabilitate himself," "has fully accepted responsibility for his crimes," "has conducted himself as a model prisoner," has "demonstrated exceptional character" and has "demonstrated a commitment to working w[i]th at-risk youth and suicide-prevention"); United States v. Young, 458 F. Supp. 3d 838, 848 (M.D. Tenn. 2020) (age of 72 and "declining" physical health resulting from "chronic illnesses and the aging process"); United States v. Maumau, No. 2:08-CR-758 (TC), 2020 WL 806121, at *5 (D. Utah Feb. 18, 2020) (defendant's young age at time of conviction and district court's reservations at sentencing hearing and continued concerns expressed after sentencing), aff'd, 993 F.3d 821 (10th Cir. 2021). In one of Watts' cited cases, a district court in the Fourth Circuit appeared to find an extraordinary and compelling reason based solely on the § 924(c) disparity. See United v. Bryant, No. 95-CR-202 (CCB), 2020 WL 2085471, at *3 (D. Md. Apr. 30, 2020). The same court reconsidered its position in a decision after McCoy. See Myers, 2021 WL 2401237, at *3.

As in the pro se motion, Watts offers the COVID-19 pandemic and his [redacted] and rehabilitation as additional grounds supporting relief. The government included numerous arguments rebutting those grounds in the initial opposition letter. As explained below, Watts' arguments concerning COVID-19 and [redacted] have become only weaker over time.

Watts' claim of rehabilitation also continues to fail. As explained in the initial opposition letter, Watts initially made the bald statement that he had never been violent during prison. (Opp'n 12; see also Watts Decl. ¶ 20 ("I have made sure to stay out of trouble while incarcerated."); id. ¶ 22 ("I have had a nonviolent history while in prison"); Watts Letter 1 ("I have zero violence on staff or inmate my entire 30-years of incarceration.").) In fact, he was sanctioned for fighting on September 11, 1993, and for possessing a dangerous weapon on March 25, 2012, and on December 14, 2017. (ECF No. 103-10 at 3-4, 8.) Despite an opportunity to correct the record in his supplemental briefing, Watts still fails to take any blame for those violent acts. Even though prison staff witnessed the fighting (see id. at 8), he says "we were joking around and no one was harmed" (Watts Decl. ¶ 22). Watts was sanctioned for multiple razor blades in 2017 (see ECF No. 103-10 at 3), but he now admits to only one "little black razor" (Watts Decl. ¶ 22). And Watts blamed his roommate for the recovered knife in 2012. (See id.) The "selective acceptance of responsibility is surely relevant to the Court's exercise under the First Step Act." Musa, 502 F. Supp. 3d at 813.

Furthermore, Watts' recounting of his crimes is blinkered at best. Although he says he "fully recognize[s] the harm [he] caused others" (Watts Decl. ¶ 25), he also asserts that "[n]o one was killed, assaulted or hurt in connection with [his] case" (Watts Letter 1), and that he "knew [he] would not hurt anyone" (Watts Decl. ¶ 17). Watts forgets the trial evidence proving, among other things, that he pointed the gun in the face of a bank security guard and forced him to the floor. (See Opp'n 2.) Watts says he was "hanging out and messing with the wrong set of people and letting peer-pressure guide [him] in the wrong direction." (Watts Letter 2; see also Watts Decl. ¶ 10.) Watts minimizes his planning of stealing motorcycles for resales and his choice of robbery locations, such as a shoe store, a movie theater, and a bank. (See Opp'n 1-2.) Watts claims that "[m]ost of the money [he] got went towards paying bills," "buying food and clothing" and "taking care of [his] famil[y]." (Watts Decl. ¶¶ 12-13.) He omits that he bought himself a new Ford Mustang GT with his criminal proceeds. (See Opp'n 2.)

Watts' repeated deflection and minimization regarding his armed robberies and violent prison acts are characteristic of a man who, at his sentencing hearing, refused to accept criminal responsibility and blamed his jury convictions on perjured testimony. (See Sent'g Tr. 8:9-12.) Watts has not quelled his self-described "habit of always pointing the finger and blaming everybody else for the situations [he] find[s] [him]self in." (Watts Letter 1.)

Relatedly, Watts' criminal conduct—sustained over the course of a year—was egregious and violent enough for this Court to disbelieve his alleged rehabilitation. See, e.g., Speed v. United States, No. 04-CR-336 (PKC), 2021 WL 1085360, at *4 (S.D.N.Y. Mar. 22, 2021) ("[The defendant's] extended trail of violent crimes counsels against a reduction in sentence.") The Court should also consider that a substantial percentage of older firearms offenders like Watts recidivate upon release. See id. (noting about 40% of firearms offenders over the age of 50 recidivate, according to 2019 United States Sentencing Commission ("Sentencing Commission") report). Thus, Watts fails to demonstrate that he has rehabilitated at all—let alone enough to constitute an extraordinary and compelling reason.

Fourth, Watts' arguments regarding COVID-19 and [redacted] rely on omissions and inaccuracies. Watts states that, [redacted]

[redacted] Nor did it when the government filed the initial opposition letter. [redacted] And numerous district-court opinions have denied sentence-reduction relief to defendants claiming [redacted]. [redacted]

Watts says his [redacted] But as the government noted in its initial opposition letter, [redacted] As explained in the initial opposition letter, [redacted]

Watts further suggests that his current prison, USP Allenwood, is ill equipped to manage COVID-19. (See Supplemental Br. 28.) In fact, as of December 1, 2021, only two staff members and no inmates at USP Allenwood have COVID-19—which is less than the 11 cases at USP Lee when the government filed its initial opposition letter. See, e.g., United States v. Delorbe-Luna, No. 18-CR-384 (VEC), 2020 WL 7231060, at *2 (S.D.N.Y. Dec. 7, 2020) ("That there are only three active infections among inmates at North Lake Correctional Facility further counsels against granting his motion.").

Watts also asserts that he [redacted]

[redacted]

Watts also omits any mention of—and thus concedes—the government's argument that COVID-19 does not constitute an extraordinary and compelling reason because [redacted]

Taken together, Watts' proffered reasons for sentencing relief are neither extraordinary nor compelling. This Court should deny the motion.

B. Watts Fails to Demonstrate that the § 3553(a) Factors Merit Relief

The relevant § 3553(a) factors also preclude relief. The government engaged in analyzing numerous factors in its initial opposition letter. (See Opp'n 12-14.) Watts' claim of rehabilitation (the only § 3553(a) argument he made in his pro se brief) fails because of his dissembling, his disciplinary history and his conclusory description of a release plan. Second, the nine-decade sentence appropriately deterred others from emulating his violent behavior across multiple robberies. Third, releasing Watts after he has completed less than a third of his sentence would disserve the interests of providing just punishment, affording deterrence and promoting respect for the law. Fourth, there are no unwarranted disparities between Watts' sentence and those of others because, among other things, Congress made a clear choice in the First Step Act that retroactive sentencing is inappropriate.

"[E]xtraordinary and compelling reasons are necessary—but not sufficient—for a defendant to obtain relief under § 3582(c)(1)(A)." Jones, 17 F.4th at 373; (see also Opp'n 12 (collecting cases)). "[T]he [C]ourt must also consider 'the factors set forth in section 3553(a) to the extent that they are applicable' before it can reduce the defendant's sentence." Jones, 17 F.4th at 373 (quoting 18 U.S.C. § 3582(c)(1)(A)). But Watts' supplemental brief does not engage with any of the government's § 3553(a) arguments. Except when quoting the First Step Act, the brief does not mention § 3553 at all.

As explained above, the Court carefully weighed the § 3553(a) factors at Watts' sentencing. The Court gave the maximum possible sentence in Watts' then-mandatory Guidelines range. The Court expressed no reservation about imposing multiple consecutive mandatory-minimum sentences. The Court described Watts as a "villain" and a "predator." (Sent'g Tr. 9:4-7, 9:19-24, 10:4-8.) The sentence sent an appropriately strong message of deterrence to all repeat armed robbers.

Watts "has not submitted sufficient justification for upsetting the Court's previous balancing of the factors outlined in 18 U.S.C. § 3553(a), particularly in light of the seriousness of the offenses [he] committed." Pimentel v. United States, No. 99-CR-1104 (SJ), 2013 WL 646812, at *3 (E.D.N.Y. Feb. 21, 2013) (§ 3582(c)(2) motion); accord United States v. Howell, No. 04-CR-380 (SJ), 2012 WL 1802077, at *1 (E.D.N.Y. May 16, 2012) (§ 3582(c)(2) motion). And a reduction by two-thirds of Watts' sentence "would not adequately reflect the seriousness of [the defendant's] criminal conduct or the harm caused by that conduct, nor would it sufficiently protect society or afford adequate deterrence to the defendant and others who are engaged in this type of criminal conduct." United States v. Escobar, No. 15-CR-489 (JFB), 2021 WL 4592438, at *3 (E.D.N.Y. Oct. 6, 2021) (Bianco, J.); see also Jones, 17 F.4th at 374 (affirming denial of sentence-reduction motion because the defendant's "early release would undermine respect for the law and undermine the deterrent purpose of the original sentence given his very serious offenses").

Release at this juncture would further disserve "the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct," 18 U.S.C. § 3553(a)(6). Contrary to what Watts suggests (see Supplemental Br. 6 & n.4), defendants like Watts would be sentenced today to nearly five decades in prison for his conduct.

As the Court reasonably determined at Watts' sentencing, any defendant who performed the conduct explained above and in the government's initial opposition letter would deserve the top of the Guidelines range for the substantive armed robberies and the use of semi-automatic weapons. Watts had no criminal record at the time but, among other things, committed bank robbery to steal from one bank $16,380 by August 1990 (see PSR ¶¶ 1, 38), which is $34,426.50 today, see U.S. Bureau of Labor Statistics, CPI Inflation Calculator, https://www.bls.gov/data/inflation_calculator.htm. Accordingly, federal courts would have calculated the combined offense level to be 32, see U.S.S.G. §§ 2B3.1(a), (b)(1), (b)(2)(C), (b)(7)(B), 3D1.4 (four additional points for purposes of grouping analysis); (see also PSR ¶¶ 64-68), and the criminal history to be I—for a range of 121 to 151 months and an ultimate sentence of 151 months for the substantive offenses (see also Supplemental Br. 6 (10 to 12 years)).

Moreover, a grand jury indicted Watts before the currently effective 1998 amendment to the § 924(c) framework, after which "brandishing" a weapon during the violent crime became punishable by a consecutive seven-year term, see 18 U.S.C. § 924(c)(1)(A). Thus, if a defendant like Watts performed the conduct today, he would be subject to the "brandishing" sentencing provision. Watts would be found liable for brandishing a semi-automatic firearm in five different occurrences. Although § 924(c) enhanced stacking through the "second or successive" provision would not occur, Watts would nonetheless be sentenced to five consecutive terms of seven years' imprisonment—or 35 years—following the sentence for his substantive crimes. In total, federal courts nowadays would sentence a defendant like Watts to at least 571 months (or 47 years and 7 months) in prison.

Therefore, if the Court grants the motion, Watts would be released nearly two decades before other defendants committing similar crimes. This case is analogous to United States v. Adams, No. 3:00-CR-697 (PGS), 2020 WL 6063055 (D.N.J. Oct. 14, 2020). The district court denied relief despite the imposition of a § 924(c)-stacked sentence on a defendant

lacking prior criminal history because he on multiple occasions "used a firearm to threaten and intimidate bank employees," "those violent acts created a serious risk of harm to innocent people," and the "need to deter such crimes and protect the public require that [the d]efendant serve the full sentence he would have received after § 924(c) was amended." Id. at *7.

Put another way, this Court should not be "willing to grant the motion at this time, given that the [Court] determined a significant sentence was appropriate and expressed no qualms about the sentence [the Court] imposed, any sentence reduction would not result in a time-served sentence, and there is no present guidance from the Sentencing Commission on how judges . . . should evaluate these change-in-the-law motions." United States v. Hancock, No. 06-CR-206 (CCE), 2021 WL 848708, at *5 (M.D.N.C. Mar. 5, 2021).[5]

C. Watts Does Not Deserve a Recommendation to the BOP

This Court should reject Watts' request for a recommendation that he be transferred to home confinement. In its letter (see Opp'n 14-15), the government explained that, for two reasons, a recommendation would be inconsistent with 18 U.S.C. § 3624(c); section 12003(b)(2) of the Coronavirus Aid, Relief and Economic Security Act ("CARES Act"), Pub. L. No. 116-136, 134 Stat. 281, 516 (2020); and the Attorney General's April 3, 2020, memorandum authorizing transfers under section 12003(b)(2). First, a transfer to home confinement could not occur under the relevant legal authorities until the final months of a defendant's incarceration term, and Watts has completed less than a third of his prison sentence. Second, Watts has failed to demonstrate that COVID-19 is materially affected his prison's operations, or that the BOP has made such a finding.

Watts does not seriously respond to either of the government's arguments. (See Supplemental Br. 31-32.) The district courts in Watts' cited cases made recommendations pursuant to the same statutory authorities listed by the government. See United States v. Doshi, No. 13-CR-20349 (AJT), 2020 WL 1527186, at *1 (E.D. Mich. Mar. 31, 2020) (invoking section 12003(b)(2)); United States v. Knox, No. 15-CR-445 (PAE), 2020 WL 1487272, at *1 (S.D.N.Y. Mar. 27, 2020) (invoking § 3624(c)). Watts fails to explain why he deserves a recommendation that contravenes those relevant authorities. Therefore, the Court should deny Watts' request.

[5] For similar reasons, the Court should reject § 924(c) stacking as an exceptional and compelling reason in Watts' case. See, e.g., United States v. Buck, No. 95-CR-386 (SRB), 2021 WL 1431449, at *5 & n.7 (D. Ariz. Apr. 1, 2021) (rejecting § 924(c) disparity as grounds for sentence-reduction relief in part because defendant ignored the firearm-brandishing provision and "erroneously recalculate[d] the sentence he would receive today for the same offenses"), appeal docketed, No. 21-10110 (9th Cir. filed Apr. 14, 2021).

III. Conclusion

For the foregoing reasons (as well as those in the initial opposition letter), the government respectfully submits that this Court should deny Watts' motion for a sentence reduction and a recommendation to BOP for an immediate transfer to home confinement.

Respectfully submitted,

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