



December 20, 2021

Via E-mail and US Mail

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:

The Center on Race, Inequality, and the Law at New York University School of Law (“Center”) writes in support of the Motion for Compassionate Release filed by Mr. Charles Watts on November 10, 2021 (Doc. 103). The Center was created to confront the laws, policies, and practices that lead to the oppression and marginalization of people of color. Among the Center’s top priorities is wholesale reform of the criminal legal system in this country, which has, since its inception, been infected by racial bias and plagued by inequality. The Center fulfills its mission through public education, research, advocacy, and litigation aimed at cleansing the criminal legal system of policies and practices that perpetuate racial injustice and inequitable outcomes. No part of this letter purports to represent the views of New York University School of Law or New York University.

law.race.inequality@nyu.edu
212.992.8111

139 MacDougal Street
4th Floor
New York, NY 10012

[@racenyu](http://law.nyu.edu/racenyu)

INTRODUCTION

When Charles Watts was sentenced to 92 years in prison back in 1993, the world was a very different place. In New York City, in particular, incidents of crime dominated the headlines and fear gripped much of the public. It was the era of the so-called “super predator,” when young Black boys were being written off as irredeemable.¹ The City was only a few years removed from the trauma of the Central Park jogger case, which embodied the worst fears of many white New Yorkers, and which led to the prosecution and conviction of five innocent Black teenagers.² Politicians pinned their hopes on being perceived as “tough on crime.” Indeed, just one year later, in 1994, Congress passed the now-infamous Violent Crime Control and Law Enforcement Act, which was championed by President Bill Clinton and supported by politicians and advocates across the ideological spectrum. We now know that piece of legislation, in combination with the Anti-Drug Abuse Act of 1986, accelerated America’s tragic descent into our current mass incarceration crisis.³ That crisis was especially acute in the federal criminal system, where the overly harsh sentencing regime that emerged from the social and political context of the late 1980s and early 1990s left federal courts across the country, including this one, with little choice but to send people to prison for decades, even where true justice in an individual case may have called for a more lenient approach.

The passage of time has helped politicians, system actors, and criminal justice stakeholders see the error of their ways. President Clinton himself has since acknowledged the

¹ John DiIulio, *The Coming of the Super-Predators*, Wkly. Standard (Nov. 27, 1995, 12:00 A.M.), <https://www.washingtonexaminer.com/weekly-standard/the-coming-of-the-super-predators>.

² Vincent Southerland, *Youth Matters: The Need to Treat Children Like Children*, 27 J. C.R. & Econ. Dev. 765, 772 (2013).

³ Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, Brennan Ctr. for Just. (Sept. 9, 2019), <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.

overly punitive nature of the federal law and the harm it has caused to people and communities of color specifically.⁴ Today, we understand how harmful those sentences have been to people, their families, and their communities. Society, with the benefit of hindsight, has spoken clearly. And in response, Congress has given this Court the profound authority to “ensur[e] that justice [can] be tempered by mercy” when the circumstances warrant it.⁵

Thus, we write in support of Mr. Watts’ Motion for Compassionate Release, filed with this Court on November 9, 2021. Mr. Watts’ case illustrates perfectly the excessive sentencing regimes of the early 1990s. When he was 22, Mr. Watts was convicted of several armed robberies in Brooklyn. He was sentenced pursuant to the mandatory consecutive “stacking” penalties of 18 U.S.C. Section 924(c). Now 51, he has served nearly 30 years but faces another lifetime in prison. Absent this Court’s intervention, that is where he will die. This is despite the fact that Mr. Watts deeply regrets his actions, remains close to his family, has completed numerous educational courses, and has developed a comprehensive release plan that includes a job offer to facilitate his reintegration to society.

This letter discusses the ill-advised and unnecessarily harsh sentencing regime that ruled the day when Mr. Watts was convicted in 1993; how those policies were driven by a punitive panic among politicians, law enforcement, and members of the public; and the extent to which the resulting sentencing laws caused real and continuing harm to individuals, families, and social fabrics, particularly within communities of color, including those throughout New York City. Unfortunately, Mr. Watts was sentenced during a time when draconian prison sentences were the

⁴ Peter Baker, *Bill Clinton Concedes His Crime Law Jailed Too Many for Too Long*, N.Y. Times (July 15, 2015), <https://www.nytimes.com/2015/07/16/us/politics/bill-clinton-concedes-his-crime-law-jailed-too-many-for-too-long.html>.

⁵ Human Rights Watch, *The Answer is No: Too Little Compassionate Release in US Federal Prison* (Nov. 2012). Available at: <https://www.hrw.org/report/2012/11/30/answer-no/too-little-compassionate-release-us-federal-prisons>.

norm. But it is a new day, and Congress has given courts the authority to revisit their sentencing decisions with the flexibility and compassion that was absent in the early '90s. The Court now has the opportunity to consider Mr. Watts' unique circumstances and to release him back to his family and community, as justice demands.

THE RISE OF MASS INCARCERATION

Theoretically, incarceration serves four purposes: incapacitation – keeping prisoners at a safe distance from the general public; retribution – punishing people for the crime(s) they have committed; deterrence – serving to warn others of the consequences of disregarding the law; and rehabilitation – affording people time to improve themselves so that they can make a valuable contribution to society upon release.⁶ In the decades leading up to the 1970s, the federal system and every U.S. state maintained an “indeterminate sentencing” system premised on ideas about the need to individualize sentences in each case and on rehabilitation as the primary aim of incarceration.⁷ The late 1970s, however, saw the beginning of a change in penal philosophy in this country, and the dominant approach to corrections shifted from rehabilitation to punishment. With the rejection of indeterminate sentencing came statutory determinate sentencing systems and presumptive sentencing guidelines.⁸ This societal shift focused less on allowing wrongdoers the opportunity to change and more on the other three traditional purposes of incarceration, which led in turn to dramatically longer prison sentences. These punitive efforts metastasized in the late 1980s and early 1990s as a response to the failed War on Drugs. Rising crime rates encouraged a “tough on crime” approach to public safety, leading to – among other things –

⁶ K. Wolk, *Corrections Strategy: History Of Significant Issues In The Change From The Rehabilitative Era To The Punitive Era*, 2 J. Bus. Mgmt. Dynamics 49, 49 (2008).

⁷ National Research Council, *The Growth of Incarceration in the United States: Exploring Causes and Consequences*. Committee on Causes and Consequences of High Rates of Incarceration (J. Travis, B. Western & S. Redburn, eds. 2014).

⁸ *Id.* at 74.

policy choices such as the creation and enforcement of “three-strikes” laws; the expanded use of mandatory minimum sentences; the implementation of “truth in sentencing” measures; and the increased use of stacking provisions that allowed prosecutors to aggregate criminal charges (and their resulting sentences). In combination, these tools produced excessive mandatory minimum sentences for some defendants, including Mr. Watts.⁹

Mandatory minimum sentencing laws required minimum prison terms for people convicted of particular crimes. As this Court is well aware, the goal of these laws when they were developed was to promote uniformity.¹⁰ But, as this Court also knows, the adoption of mandatory minimums has not led to a fairer system. In fact, it has had quite the opposite effect. By tying the hands of judges, including this Court, mandatory minimums effectively stripped a substantial amount of sentencing power from courts and gave prosecutors the authority to charge defendants with crimes that would “trigger” a mandatory minimum or other sentencing enhancements to which the court was bound.¹¹ While mandatory minimums have been in place in some states since the 1950s, their use increased after the 1984 Sentencing Reform Act, which added significant mandatory minimums for many federal crimes and abolished federal parole.¹² States followed, and soon mandatory minimums became a standard response to drug epidemics and crime spikes nationwide.¹³ Ultimately, what started as a well-intentioned attempt to achieve uniformity became a new source of disparity and injustice, particularly within communities of color.¹⁴

⁹ Andrew Cohen, *The American ‘Punisher’s Brain,’* Brennan Ctr. for Just. (May 17, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/american-punishers-brain>.

¹⁰ James Cullen, *Sentencing Laws and How They Contribute to Mass Incarceration,* Brennan Ctr. for Just. (Oct. 5, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/sentencing-laws-and-how-they-contribute-mass-incarceration>.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

But it was prosecutors' increased reliance on stacking provisions that best exemplified the fear and hysteria surrounding the 1990s sentencing regime. Section 924(c) established lengthy mandatory minimum sentences for defendants charged with possessing a gun in furtherance of a violent crime, required that the sentences be served consecutively with any sentence for the underlying charges, and--perhaps most crucially for Mr. Watts--established a 20-year mandatory minimum sentence for each "second and subsequent" conviction.¹⁵ Notably, when Mr. Watts was sentenced, the "second and subsequent" conviction enhancement had to be applied to individuals charged with multiple counts in a single case and required that the sentences be served consecutively.¹⁶ This "stacking" provision allowed federal prosecutors to seek and obtain convictions that in many cases were akin to life sentences, even for individuals like Mr. Watts who had no prior criminal history.¹⁷

All of these developments, together with a significant increase in the number of arrests made by law enforcement across the country, vastly expanded the number of people sent to federal and state prisons and significantly increased the amount of time people spent in prison. The number of offenders in U.S. prisons and jails increased from 315,974 in 1980 to 2 million in 2020, a 500% increase over the last 40 years.¹⁸ And the burden of these practices fell disproportionately on communities of color. The imprisonment rate for African Americans is 6 to

¹⁵ CONG. RSCH. SERV., R41412, FEDERAL MANDATORY MINIMUM SENTENCING: THE 18 U.S.C. 924(C) TACK-ON IN CASES INVOLVING DRUGS OR VIOLENCE 1-2 (2015).

¹⁶ See *United States v. Bernier*, 954 F.2d 818 (2d Cir. 1992), and *Deal v. United States*, 508 U.S. 129 (1993), *superseded by statute*, FIRST STEP Act of 2018, Section 403, Pub. L. 115-391, 132 Stat. 5194 (2018) (codified at 18 U.S.C. § 924(c)(1)(C)); see also U.S. SENT'G COMM'N, MANDATORY MINIMUM PENALTIES FOR FIREARM OFFENSES IN THE FEDERAL CRIMINAL JUSTICE SYSTEM 8 (2018).

¹⁷ See, e.g., Mercy Me 924C, <http://www.mercyme924c.com/profiles-of-injustice.html> (last visited Nov. 12, 2021) (highlighting profiles of individuals convicted under 924(c) including sentences of 725 years, 117 years, and 213 years, among many others); Ian Owens & Harlan Protass, *Felon: I Robbed Banks. But I Should Get a Second Chance*, Detroit Free Press (May 4, 2018, 7:00 AM), <https://www.freep.com/story/opinion/contributors/2018/05/04/sentencing-laws-felon/525119002/> (discussing story of first-time offender sentenced to 105 years in prison under 924(c)'s stacking provision).

¹⁸ See *Criminal Justice Facts*, The Sentencing Project, <https://www.sentencingproject.org/criminal-justice-facts/>.

8 times higher than the imprisonment rate for whites,¹⁹ while imprisonment rates for Latinos are 1.5 to 2 times higher than for whites.²⁰ Similar disparities can be found in every dimension of the punishment landscape, from arrest patterns to pretrial detention to the imposition of fines and fees. Yet research continues to yield little compelling evidence justifying excessively punitive sentences. In fact, a growing body of evidence has undermined long-perceived links between public safety and the length of prison sentences.²¹ In its multiple manifestations, damaging impact, political durability, and unbridled reach into all aspects of American life, this modern expression of society's marginalization of the poor and people of color through criminalization and punishment has become a stubborn social fact.²²

EFFECTS OF MASS INCARCERATION

Policymakers have begun to come to grips with the grave harm caused by the prior sentencing regime. The tough-on-crime approach that dominated the 1980s and 1990s, including the dramatic changes to federal and state sentencing laws, has devastated those who are incarcerated, their families and their communities. Nearly two million people continue to be incarcerated in the United States,²³ accounting for almost one percent of U.S. adults,²⁴ and far

¹⁹ Jeremy Travis & Bruce Western, *The Era of Punitive Excess*, Brennan Ctr. for Just. (Apr. 13, 2021), <https://www.brennancenter.org/our-work/analysis-opinion/era-punitive-excess>.

²⁰ *Id.*

²¹ David J. Harding, *Do Prisons Make Us Safer?*, Sci. American (June 21, 2019), <https://www.scientificamerican.com/article/do-prisons-make-us-safer/>.

²² See Travis and Western *supra* note 7.

²³ See Jacob Kang-Brown, Chase Mantagnet & Jasmine Heiss, *People in Jail and Prison in Spring 2021*, Vera Inst. Just. (June 2021), <https://www.vera.org/downloads/publications/people-in-jail-and-prison-in-spring-2021.pdf>. The most recent data from the U.S. Department of Justice identified more than 2 million people incarcerated in the United States. *Correctional Populations in the United States, 2019*, U.S. Dept. Just. (July 2021), 5 tbl.1, 6 tbl.4, <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cpus19st.pdf>. While .8% of adult U.S. residents are incarcerated in prisons and local jails, an additional 1.7% of adult U.S. residents are supervised in other ways by the adult correctional system. *Id.* The United States has the highest incarceration rate in the world, with Rwanda, Turkmenistan, El Salvador, and Cuba rounding out the five countries with the highest rates of incarceration. See *Highest to Lowest - Prison Population Rate*, World Prison Brief (last checked Nov. 8, 2021), https://www.prisonstudies.org/highest-to-lowest/prison_population_rate?field_region_taxonomy_tid=All.

²⁴ See U.S. Dept. Just., *supra* note 20, at 6 tbl.4.

surpassing the incarceration rates of other countries. The extraordinary number of people imprisoned for unnecessarily long sentences in the 1990s, in particular, has led to a prison system that is currently overcrowded with elderly and infirm people. Consequently, the 1990s sentencing regime has produced an aging prison population, with people 50 years old or older--like Mr. Watts--representing the fastest-growing demographic in prisons across the country.²⁵

The COVID-19 pandemic has exacerbated the trauma of incarceration for people in prison and subjected them to serious risk of future illness or death. In part because of the pre-existing deficiencies in the provision of health care to incarcerated people and the high concentration of chronic health conditions within prisons,²⁶ the COVID-19 infection rate was more than three times higher for incarcerated people than for the rest of the U.S. population,²⁷ and the COVID death rate is close to three times higher among those in prison.²⁸ As of this writing, approximately 2,650 incarcerated people have died from COVID-19.²⁹ This is not surprising, given the deadly nature of the virus, its ease of spread in crowded indoor spaces, and the growing number of older adults in prison, like Mr. Watts, who are more likely to be

²⁵ See KiDeuk Kim & Bryce Peterson, *Aging Behind Bars: Trends and Implications of Graying Prisoners in the Federal Prison System*, Urban Institute (Aug. 2014), 3.

²⁶ See *Covid-19's Impact on People in Prison*, Equal Just. Initiative (Apr. 16, 2021), <https://eji.org/news/covid-19s-impact-on-people-in-prison> (citing Tahla Burki, *Prisons are "in No Way Equipped" to Deal with COVID-19*, 395 *Lancet* 1411 (2020)) ("Generally, people in prison--where a lot of time is spent sitting around and food is typically poor quality--tend to be in worse health than those outside prison Lack of access to quality medical care means that older people in prison suffer more often from chronic health conditions . . . that increase the risk of serious complications from the coronavirus."); see also *infra* notes 33–34 and accompanying text.

²⁷ See Eddie Burkhalter et al., *Infected: How the Virus Tore Through the U.S. Prison System*, N.Y. Times (Apr. 10, 2021), <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html>. In Michigan, the case rate was nine times as high in prison as it was in the general public. *Id.*

²⁸ Neal Marquez et al., *COVID-19 Incidence and Mortality Rate in Federal and State Prisons Compared with the US Population, April 5, 2020, to April 3, 2021*, 326 *JAMA* 1865, 1867 (2021) (finding a 2.7 prison-to-U.S. mortality ratio).

²⁹ See Covid Prison Project, <https://covidprisonproject.com> (last checked Nov. 8, 2021).

hospitalized or die from COVID-19.³⁰ A recent study has even found that the high rate of spread through prisons was a key driver of the COVID-19 pandemic throughout the United States.³¹

Prolonged incarceration also results in profound harms to the families and communities of those behind bars. Approximately half of incarcerated people were the primary earners in their families before they were incarcerated. As such, for many of the people they leave behind, incarceration leads directly to a loss of significant family income.³² Having an incarcerated family member also increases the risk of depression, hypertension, obesity, and diabetes.³³ And not surprisingly, studies have shown that parental incarceration is correlated with depression and anxiety in children.³⁴ In a country where punishment is disproportionately visited upon communities of color,³⁵ these types of harms have a disparate impact on Black and Brown families and neighborhoods.

These consequences tend to have a compounding effect that results in a familiar cycle: the extraordinarily high rate of incarceration in a particular community reduces its social capital, stunts its economic growth, and diminishes its electoral power, leading to less social and familial stability, more poverty, and more neighborhood deterioration.³⁶ Those conditions, in turn, tend to lead to higher crime rates in impacted communities, thereby resulting in greater police presence, more arrests, and ultimately, more incarceration. And so, the cycle continues.

³⁰ See *COVID-19 Risks and Vaccine Information for Older Adults*, Centers for Disease Control and Prevention (Aug. 2, 2021), <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>.

³¹ See Eric Reinhart & Daniel L. Chen, *Association of Jail Decarceration and Anticontagion Policies with COVID-19 Case Growth Rates in US Counties*, JAMA Network Open 5–6 (Sept. 2, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2783680> (finding that reducing jail populations by 80% would have reduced daily COVID-19 growth rates by 2% across the United States).

³² *Who Pays? The True Cost of Incarceration on Families*, Ella Baker Center for Human Rights (Sept. 2015) 17.

³³ See *Every Second: The Impact of the Incarceration Crisis on America's Families*, FWD.us (Dec. 2018), 37 nn.52–55.

³⁴ *Id.* at 37 nn.60–62.

³⁵ See *supra* notes 16–19 and accompanying text.

³⁶ See generally Todd R. Clear, *Imprisoning Communities: How Mass Incarceration Makes Disadvantaged Neighborhoods Worse* (2008).

As we approach the passage of 30 years from the imposition of these harsh sentences, many of the people who were sentenced as young adults--predictably--have grown and changed significantly. Research has shown that by the age of 50, people have aged beyond the years in which they are most likely to commit a crime.³⁷ The very low risk of recidivism of the elderly is paired with an extraordinary financial cost for society at large, on top of the devastating social costs outlined above. Primarily due to the increased medical needs of aging people, incarcerating someone aged 50 and older is between two and five times more expensive than incarcerating someone 49 and younger.³⁸ The worldview that led to the overly harsh sentencing regime to which Mr. Watts was subjected, along with the significant harms that flow from the draconian sentences encouraged by that regime, demand that courts act to correct a grave injustice. That is especially so for people like Mr. Watts, who have spent a substantial period in prison, demonstrated their commitment to personal growth, and prepared for their reentry. Fortunately, the law now provides a vehicle for courts to do so.

JUSTICE'S WINDOW: THE FIRST STEP ACT

In passing the First Step Act, Congress recognized that society has changed its views on punishment and that the law, if it is to be reflective and responsive to our evolving definition of justice, must also change with the times.

³⁷ *At America's Expense: The Mass Incarceration of the Elderly*, Am. Civ. Liberties U. 21 (June 2012). The decrease crime rates from adulthood to old age has held constant over time, with an almost zero percent arrest rate of those aged sixty-five and over. *Id.* Those who are rearrested are often brought in for parole violations, which do not require conviction for a new crime. *Id.* at 22.

³⁸ *Id.* at 57 (reporting it costs \$34,135 per year to house a person under fifty, but it costs \$68,270 per year to house a person fifty or older); *Aging in Prison: Reducing Elder Incarceration and Promoting Public Safety*, Center for Justice at Columbia U. (Nov. 2015), xiii (reporting expenditures of up to \$130,000 for aging incarcerated people because of the added cost of security coverage in medical units on top of medical needs specific to aging).

The goal of the sentencing court is to “impose a ‘sentence sufficient, but not greater than necessary,’ to comply with the purposes of sentencing.”³⁹ In spite of falling crime rates for much of the last three decades, the U.S. prison population remains staggeringly high.⁴⁰ In reducing the severity of Section 924(c)’s “stacking” provision,⁴¹ Congress affirmed what new theoretical and empirical advances have been showing for years--that the lengthy sentences imposed under that section were not serving their penological purpose, as they were neither an effective deterrent⁴² nor proportional to the crimes for which they were imposed.⁴³

Societal views that animated the punitiveness of the 1980s and 1990s have also changed. During that time, media coverage of inner-city youth, especially Black teenagers, was dominated by the theme of violent crime.⁴⁴ This media narrative was supported and reinforced by academics who conflated Black youth with crime and advocated for tough legislative solutions.⁴⁵ But new research has discredited social science theories suggesting that young people--particularly Black

³⁹ See Shon Hopwood, *Second Looks & Second Chances*, 41 CARDOZO L. REV. 101, 112 (citing 18 U.S.C. § 3553(a) (2016)).

⁴⁰ See generally Nazgol Ghandnoosh, *U.S. Prison Population Trends: Massive Buildup and Modest Decline*, SENT’G PROJECT (Sept. 17, 2019), <https://www.sentencingproject.org/publications/u-s-prison-population-trends-massive-buildup-and-modest-decline/>; John Gramlich, What the data says (and doesn’t say) about crime in the United States, PEW RSCH. CTR. (Nov. 20, 2020), <https://www.pewresearch.org/fact-tank/2020/11/20/facts-about-crime-in-the-u-s>; see also Sarah French Russell, *Second Looks at Sentences under the First Step Act*, 32 FED. SENT’G REP. 76, 77 (2019).

⁴¹ See FIRST STEP Act of 2018, Pub. L. No. 115-391, § 403(b), 132 Stat. 5194 (2018) (codified at 18 U.S.C. § 924(c)(1)(C)).

⁴² See, e.g., Paul H. Robinson, *Distributive Principles Of Criminal Law: Who Should Be Punished How Much?* 31–97 (2008); U.S. SENT’G COMM’N, *supra* note 16, at 18 (demonstrating how 924(c) convictions have not served their deterrent purpose).

⁴³ See French Russell, *supra* note 40, at 77.

⁴⁴ See, e.g. Lori Dorfman & Vincent Schiraldi, Berkeley Media Stud. Grp, *Off Balance: Youth Race & Crime In The News*, 17-24 (2001), http://www.bmsg.org/sites/default/files/bmsg_other_publication_off_balance.pdf; Elizabeth R. Jackson-Cruz, *Social Constructionism and Cultivation Theory in Development of the Juvenile “Super-Predator”* 12–13, 25–27 (2019) (M.A. theses, University of South Florida), <https://scholarcommons.usf.edu/cgi/viewcontent.cgi?article=9011&context=etd>; Southerland, *supra* note 2, at 770–71.

⁴⁵ DiIulio, *supra* note 1.

and brown teenagers--are irredeemable, and has shown that individuals who are young at the time of their offense have a great capacity for rehabilitation and change.⁴⁶

Moreover, the sentencing reform undertaken by the First Step Act has begun to alleviate the racial disparities produced by sentencing practices like the use of mandatory minimums and enhanced sentences.⁴⁷ Notably, early data suggests that the First Step Act is already reducing racial disparities in the federal prison system, particularly as it relates to the disproportionate rate of incarceration of Black men.⁴⁸

Mr. Watts' 1,107-month sentence would be highly unlikely today. Mr. Watts' sentence was prolonged by 80 years because multiple counts of 924(c) in the same case were treated as "second and subsequent" convictions.⁴⁹ Today, the use of 25-year mandatory minimums (equivalent to the 20-year mandatory minimum in place when Mr. Watts was sentenced) for each "second and subsequent" conviction under section 924(c) has dropped from 93.7% of all cases with multiple counts in 2018 to only 2.3% of cases with multiple counts in 2020, the first year following the enactment of the First Step Act.⁵⁰ This reduced dependence on "stacked" sentences has led to a considerable decrease in average sentences for individuals convicted of offenses

⁴⁶ See French Russell, *supra* note 40, at 78 nn.46–47.

⁴⁷ See generally Hopwood, *supra* note 39, at 111 nn.52–53 (collecting sources describing race-based sentencing disparities in federal sentencing); FEDERAL MANDATORY MINIMUM SENTENCING: THE 18 U.S.C. 924(C) TACK-ON IN CASES INVOLVING DRUGS OR VIOLENCE, *supra* note 15, at 22 (discussing how the "stacking" provision has had "demographic" impacts); James Forman Jr., *Racial Critiques of Mass Incarceration: Beyond the New Jim Crow*, 87 N.Y.U. L. REV., 101, 102 n.5 (2012) ("Today, Black men are imprisoned at 6.5 times the rate of white men."); U.S. SENT'G COMM'N, THE FIRST STEP ACT OF 2018: ONE YEAR OF IMPLEMENTATION 39 (2020) (highlighting how Black individuals account for over half of those convicted of at least one count under section 924(c) and over 70 percent of those convicted on multiple counts).

⁴⁸ See U.S. SENT'G COMM'N, COMPASSIONATE RELEASE DATA REPORT tbl.5 (July 2021); U.S. SENT'G COMM'N, QUICK FACTS ON FEDERAL OFFENDERS IN PRISON 1 (March 2021) (demonstrating that while Black individuals are 34.9% of prisoners in federal custody, they comprise 45.2% of those receiving compassionate release).

⁴⁹ U.S. SENT'G COMM'N, *supra* note 16, at 8.

⁵⁰ See U.S. SENT'G COMM'N, *supra* note 47, at 38.

similar to those of Mr. Watts.⁵¹ Stated differently, if an individual committed a crime identical to that of Mr. Watts today, they would surely receive a substantially reduced sentence.

In light of these developments, the First Step Act’s modification of 18 U.S.C. § 3582(c)(1)(A)(i) reemphasizes the authority of courts to allow the corrective light of justice to intervene under “extraordinary and compelling” circumstances.⁵² Mr. Watts’ case fits the bill.

The practice of taking a second look at an individual’s sentence is enshrined in the Constitution’s pardon clause and pre-dates the Founding.⁵³ The First Step Act provides federal judges with an opportunity to take a fresh look at their own sentencing decisions and those of their colleagues in a way they could not do before.⁵⁴

The current version of section 3582(c)(1)(A)(i) “reflects a profound sense of humility that ought to operate when punishments are imposed that will reach nearly a generation into the future, or longer still’ and is ‘meant to ensure that these sanctions remain intelligible and justifiable at a point in time far distant from their original imposition.’”⁵⁵ In entrusting judges to ensure that justice is done by granting them the authority to modify sentences under “extraordinary and compelling circumstances,” Congress recognized that judges are best suited to identify those individuals, “who, through hard work and self-reflection, become rehabilitated and, if given a second chance, could become contributing and law-abiding citizens.”⁵⁶ And yet that searching inquiry goes even further. As Judge Stefan Underhill recently explained in deciding to reduce a sentence: “Since [the year of your sentencing] a lot has changed. You have changed. I have changed. The Guidelines have changed. The public’s sense of what is a fair

⁵¹ *Id.*

⁵² *United States v. Brooker*, 976 F.3d 228, 237 (2d Cir. 2020).

⁵³ See Hopwood, *supra* note 39, at 107.

⁵⁴ *Id.* at 77.

⁵⁵ *Id.*

⁵⁶ *Id.* at 114.

sentence . . . has changed.”⁵⁷ Since 1993, Mr. Watts has undergone a remarkable transformation that has prepared him to reenter society as a productive and contributing citizen. The harsh laws that once sealed Mr. Watts’ fate have changed. And our societal views of what constitutes a just punishment have changed. As such, we now ask this Court to make good on the demands imposed by a transformed world and the transformed individual before it. In a just world, Charles Watts will no longer remain in custody.

CONCLUSION

For all these reasons, Mr. Watts’ Motion for Compassionate Release should be granted.

Respectfully Submitted,

/s/ Jason D. Williamson

Jason D. Williamson (NY Bar #4645529)
Executive Director
Center on Race, Inequality, and the Law

⁵⁷ See French Russell, *supra* note 40, at 79 (citing *United States v. Medina*, No. 3:05-CR-58 (SRU), Aug. 12, 2019 Tr. at 37).

CERTIFICATE OF SERVICE

I, the undersigned, declare and certify that, on December 20, 2021, I served the foregoing letter of support via email and U.S. mail upon:

Victor Zapana
Assistant United States Attorney
Eastern District of New York
271-A Cadman Plaza East
Brooklyn, NY 11201
(718) 254-7180 (O)
(929) 545-2823 (C) sincerely
victor.zapana@usdoj.gov

Respectfully,

/s/ Jason D. Williamson
NY Bar #4645529