NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

LEROY BROOKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the district court abused its discretion in denying Petitioner's motion for compassionate release/reduction in sentence.

PARTIES TO THE PROCEEDINGS

The Petitioner is:

Leroy Brooks

The Respondent is:

United States of America

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On August 30, 2022, the United States Court of Appeals for the Third Circuit granted the Respondent's Motion for Summary Affirmance of the District Court's denial of Petitioner's Motion for a Reduction in Sentence under 18 U.S.C. § 3582(c)(1)(A). (App. 1; App. 2-9)

STATEMENT OF JURISDICTION

Leroy Brooks seeks review of the August 30, 2022 Order of the United States Court of Appeals for the Third Circuit. Jurisdiction of this Court to review the judgment of the Third Circuit is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

A district court "may not modify a term of imprisonment once it has been imposed." 18 U.S.C. § 3582(c). One exception to this fundamental rule is the authority to grant a sentence reduction, colloquially called "compassionate release," under the statute that permits a district court to "reduce [a] term of imprisonment . . . after considering the factors set forth in section 3553(a) to the extent they are applicable, if it finds that extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). Under the First Step Act, a prisoner may seek a sentence reduction for "extraordinary and

compelling reasons" in court, so long as he first asks the Bureau of Prisons (BOP).[1]

STATEMENT OF THE CASE

On July 2, 2014, a grand jury returned a four count indictment against Mr. Brooks and his co-defendant, Eladio Santana, charging them with conspiracy to commit Hobbs Act robbery (Count One), conspiracy to distribute 5 kilograms or more of cocaine (Count Two), and illegal possession of a firearm by a convicted felon (Counts Three (Santana) and Four (Brooks)). Another co-defendant, Alexander Morales, was prosecuted separately by a two count information charging him with conspiracy to commit Hobbs Act robbery and conspiracy to distribute 5 kilograms or more of cocaine.

Both of the codefendants, Mr. Morales and Mr. Santana, elected to plead guilty. Morales pled guilty to the two-count information and was sentenced to 84 months imprisonment. Morales completed his sentence and he was released from prison on July 19, 2019. Santana pled guilty to Counts One and Two of the original indictment – conspiracy to commit Hobbs Act robbery and conspiracy to distribute 5 kilograms or more of cocaine. Santana was also sentenced to 84

[1] The parties agreed that Brooks had exhausted his administrative remedies.

months imprisonment. Santana completed his sentence and was also released from prison on July 19, 2019.

Mr. Brooks exercised his constitutional right to a jury trial. As a result, the Government filed a Superseding Indictment on June 3, 2015, charging him with conspiracy to commit Hobbs Act robbery (Count One), conspiracy to distribute 5 kilograms or more of cocaine (Count Two), illegal possession of a firearm by a convicted felon (Count Three), and adding one additional count, carrying a firearm during and in relation to Counts One and Two, in violation of 18 U.S.C. § 924(c) (Count Four). Count Four carried a mandatory minimum consecutive sentence of 5 years imprisonment. Mr. Brooks was convicted on all four counts. He was sentenced on March 24, 2017 to 270 months imprisonment (210 months on Counts One and Two and 120 months on Count Three, all terms to run concurrently, plus 60 months on Count Four to run consecutively to each of Counts One, Two, and Three). Mr. Brooks has a projected release date of August 21, 2032.

Mr. Brooks applied for compassionate release with the BOP on August 11, 2020. After the Warden of his correctional facility denied the application, on September 29, 2020, Mr. Brooks filed a *pro se* motion for compassionate release/reduction of sentence with the District Court under 18 U.S.C. § 3582(c)(1)(A) and home confinement under 18 U.S.C. § 3624(c)(2). He

subsequently filed additional documents pertaining to this motion. On April 20, 2021, the Government's Response in Opposition to the relief sought was filed. On May 21, 2021, Counsel filed a motion to supplement Mr. Brooks *pro se* filings, as well as to reply to the Government's Response in Opposition.

Mr.Brooks' application was primarily based upon his health conditions which constituted "extraordinary and compelling reasons" for early release because of the heightened risk of severe illness form COVID-19. Mr. Brooks, a 47 year old Black man, was suffering from stage 3 chronic kidney disease, hypertension, a heart condition (non-ischemic cardiomyopathy), a history of back surgery for a bulging disc, and hyperlipidemia. Mr Brooks also raised the additional grounds that he was caught in a sting operation in which the ATF exercised selective enforcement, that his sentence was unfairly enhanced because of his decision to go to trial, and that his Hobbs Act conspiracy conviction no longer qualified as a crime of violence under § 924(c). *United States v. Taylor*, 142 S.Ct. 2015, 2019 (2022).

The Government conceded that Mr. Brooks' "chronic kidney disease, cardiomyopathy, and possibly his hypertension, present risk factors for severe COVID-19 illness, should he contract the virus." The Government argued, however, that Mr. Brooks' health conditions no longer presented an

"extraordinary and compelling" reason for a reduction in sentence because he declined vaccination. With regard to the additional grounds, the Government contended that these arguments were best left to a motion under 28 U.S.C. § 2255. The Government also argued that "[u]nder the applicable policy statement, [the District Court] must deny a sentence reduction unless it determines the defendant 'is not a danger to the safety of any other person or to the community.'"

The District Court denied Mr. Brooks' motion on July 14, 2021 and a timely Notice of Appeal was filed on Mr. Brooks behalf. The Government then filed with the United States Court of Appeals for the Third Circuit a motion to summarily affirm the District Court's order.

On August 30, 2022, the United States Court of Appeals for the Third Circuit granted the Government's Motion for Summary Affirmance. App. 1.

REASONS FOR GRANTING THE WRIT

In this case, in support of it's motion for summary affirmance, the Government contended that the District Court's decision presented no substantial question on appeal, and therefore, argued that the Third Circuit Court of Appeals Court should summarily affirm the denial of Mr. Brooks' motion for sentence reduction. Appellant opposed the Government's motion for Summary Affirmance. On August 30, 2022, the Third Circuit granted the Government's motion. In so doing, it is respectfully submitted that the Court of Appeals erred.

The compassionate release statute empowers courts to reduce a defendant's sentence whenever "extraordinary and compelling reasons warrant such a reduction." 18 U.S.C. § 3582(c)(1)(A)(i). Once a court finds that "extraordinary and compelling reasons" are present, a court must still consider whether the factors set forth in 18 U.S.C. § 3553(a), to the extent they are applicable, weigh in favor of a defendant's release. 18 U.S.C. § 3582(c)(1)(A); see also *United States v. Pawlowski,* 967 F.3d 327, 329-330 (3d Cir. 2020).

A. The District Court Erred In Holding That Mr. Brooks Failed To Meet His Burden Of Proving "Extraordinary And Compelling Reasons" For Compassionate Release

Under the First Step Act, a prisoner may seek a sentence reduction for "extraordinary and compelling reasons" in court, so long as he first asks the BOP. 18 U.S.C. § 3582(c)(1)(A); *see also United States v. Raia*, 954 F.3d 594, 595 (3d Cir. 2020). With regard to the case at bar, as previously noted herein, the parties agreed that Mr. Brooks had exhausted his administrative remedies.

In any event, when Congress passed § 3582 in 1984, as part of the Comprehensive Crime Control Act, it intended to give judges wide latitude to reduce sentences for *any* extraordinary or compelling reason. S. Rep. No. 98-225, at 55-56 (1983).

One thing Congress did not do as part of the Crime Control Act was to define what constituted "extraordinary and compelling circumstances." It instead delegated this responsibility to the Sentencing Commission. *See* 28 U.S.C. § 994(t). "Ignoring Congress's edict for twenty-two years, the Commission issued its first policy statement regarding compassionate release only in 2006. *See* U.S.S.G. § 1B1.13 (U.S. Sent'g Comm'n 2006)." *United States v. Jones,* 980 F.3d 1098, 1104 (6th Cir. 2020). While the Commission amended the commentary to § 1B1.13 several times, "the main text has never defined — and still does not define – 'extraordinary and compelling reasons.'" *Id.*

In 2018, the First Step Act gave prisoners direct access to § 3582(c)(1)(A) motions. Before than, only the BOP Director could move for a sentence reduction under that provision. The language of § 1B1.13, the policy statement defining "extraordinary and compelling," reflects the pre-2018 scheme by beginning with "[u]pon motion of the [BOP Director]." Because the Sentencing Commission has not had a quorum of voting members since passage of the First Step Act, it has not updated the policy statement to include reference to prisoner-initiated motions. *See United States v. McGee*, 992 F.3d 1035, 1049 (10th Cir. 2021). Accordingly, the Third Circuit has decided that this renders § 1B1.13 non-binding as to prisoner-initiated motions. *United States v. Andrews*, 12 F.4th 255, 259 (3d Cir. 2020).

The commentary to §1B1.13 states that "extraordinary and compelling reasons" include medical conditions, age, family circumstances, and "other reasons." U.S.S.G. § 1B1.13, app. n.1(A)-(D). Application Note 1(A)(ii) to Guidelines Section 1B1.13 states extraordinary and compelling reasons include when:

> The defendant is —
>
> (I) suffering from serious physical medical condition;
> (II) suffering from serious functional or cognitive impairment; or

(III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

U.S.S.G. § 1B1.13 app. n. 1(A)(ii).

Furthermore, Application Note 1(D) created a catch-all provision, for when the Director of the BOP determined "there exists in the defendant's case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (CC)."

However, as noted above, the District Court was not bound by the Sentencing Commission's limited definition of "extraordinary and compelling reasons."

Instead, the First Step Act allows courts to independently to determine what reasons, for purposes of compassionate release, are "extraordinary and compelling" under §1B1.13, cmt. n. 1(D). *United States v. Brooker*, 976 F.3d 228, 236 (2d Cir. 2020); *McGee,* 992 F.3d at 1046. Therefore, the "First Step Act freed district courts to consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them in motions for compassionate release." *Brooker, 976* F.3d at 237. A "district court's discretion in

this area - as in all sentencing matters - is broad," and can include numerous factors. *Id.* at 237-38.

In the instant matter, Mr. Brooks' health conditions constituted an extraordinary and compelling reason for granting a sentence reduction under § 3582. Specifically, at the time of the application, Mr. Brooks was a 47-year-old Black man suffering from stage 3 chronic kidney disease, hypertension, a heart condition (non-ischemic cardiomyopathy), a history of back surgery for a bulging disc, and hyperlipidemia. The government conceded that Mr. Brooks' chronic kidney disease, cardiomyopathy, and possibly his hypertension, present risk factors for severe COVID-19 illness, should Mr. Brooks contract COVID-19. The government contended, however, that Mr. Brooks' health conditions no longer presented an "extraordinary and compelling" reason for a reduction in sentence because he declined vaccination.

In denying Mr. Brooks' motion, the District Court agreed with the Government's position noting that "[w]hile the Court is sympathetic to defendant's concerns related to the COVID-19 virus, Defendant has not demonstrated sufficient support for his extraordinary and compelling reasons for compassionate release. As the medical records reflect, he is receiving medical treatment. Moreover, he did refuse the vaccine and, as such, can hardly complain

that he fears contracting the virus." In so doing, however, it is submitted that the District Court erred.

As noted by counsel for Mr. Brooks, the BOP medical records provided no information other than Mr. Brooks refused the vaccine. There is no informed consent paperwork accompanying the notation. There is no information about what Mr. Brooks was told or why he refused the vaccine. Mr. Brooks' experience appears to track that experienced by other BOP inmates. An independent expert who interviewed inmates at FCC Lompoc reported that vaccination offers occurred in large, congregate settings, *e.g.,* housing area, dining hall, and involved no individualized consultation. Report of Dr. Venter, *Torres v. Milusnic*, 2:20-cv-4450-CBM, at 7-8 (C.D. Cal. Sept. 25, 2020). According to Dr. Venter:

> None of the people who refused the vaccine reported being subsequently contacted by health staff to discuss their reasons for refusal and none of them reported that their refusal or vaccine questions had been addressed in their subsequent health encounters. Many people reported that when they tried to ask questions about the safety of the vaccine, or posed questions about their own health or medication issues in relation to the vaccine, they were told to either take the vaccine or sign a refusal form. Many of the people who reported refusing the vaccine told me they were willing to take it but simply had questions about their own health status.

Id. at 8.

Additionally, Mr. Brooks should not have been penalized for refusing the vaccine, nor should it be assumed that Mr. Brooks refused the vaccine for strategic reasons. Indeed, many front-line workers, including BOP correctional staff, who have far more access to information, are electing to refuse the vaccine. BOP Director Michael Carvajal confirmed reports that nearly half of BOP staff have refused the vaccine. Similarly, approximately 20 percent of frontline medical workers have refused the COVID-19 vaccine, while another 12 percent have not yet decided whether to be vaccinated.

The fact that Mr. Brooks, like numerous BOP staff and health care workers across the country, declined to take a dose of the vaccine that was only approved on an emergency basis – and might not even be effective against dangerous new variants – should not have negated the extraordinary and compelling reasons for a sentence reduction, especially given the exceptionally harsh conditions of confinement Mr. Brooks has experienced during the pandemic. Indeed, scientists recognize vaccination alone will not stop COVID-19 in jails and prisons. Vaccination plus decarceration is required. *See* Benjamin A. Barsky, J.D., M.B.E., et at, *Vaccination plus Decarceration - Stopping Covid-19 in Jails and Prisons,* 384 N Engl J Med 1583 (April 29, 2021) ("To protect the safety of incarcerated

people, guards, and the general public, health experts have long called for large-scale decarceration.").[2]

Moreover, the United States government has a long and ugly tradition of medical experimentation on both prisoners and Black Americans. "Black patients may refuse to enroll in research studies and clinical trials. Histories of exploitation, marginalization, and disempowerment are embedded in some personal decisions of non-participation" for patients of color. Nuriddin et. al., *Reckoning with histories of medical racism and violence in the USA,* 396 Lancet 10256 at 949 (Oct. 3, 2020).[3] And this is not relegated to mere history. Medical racism is alive and well today: "Every day, Black Americans have their pain denied, their conditions misdiagnosed, and necessary treatment withheld by physicians." Bajaj et. al., *Beyond Tuskegee — Vaccine Distrust and Everyday Racism,* New England J. of Medicine (Jan. 20, 2021).[4] Even in the broader community, "every Black person knows their personal challenges in navigating health care institutions, perhaps even more so during this pandemic. Daily subtle

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[2] *See* https://www.nejm.org/doi/full/10.1056/NEJMp2100609

[3] *See* https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)32032-8/fulltext.

[4] *See* https://www.nejm.org/doi/fitll/10.1056/NEJMpv2035827.

mental assaults are more salient in explaining a lack of trust in medical institutions and, by extension, in Covid vaccines."

Mr. Brooks is not the only Black American with such concerns. According to researchers, about 35% of Black adults say they definitely or probably would not get vaccinated with the COVID-19 vaccines. Hamel et. al., *COVID-19 Vaccine Monitor: December 2020,* KFF (Dec. 15, 2020).[5]

Mr. Brooks should not be penalized for the same choices made by healthcare workers and BOP staff across the country. There is no vaccine mandate in the BOP or the country at large and Mr. Brooks is not required to be vaccinated as a condition of his sentence or release. Thus, extraordinary and compelling reasons still exist for his release.

Likewise, Mr. Brooks' unusually long sentence for a stash house robbery constitutes an extraordinary and compelling reason which warranted a sentence reduction. Mr. Brooks contended that his conviction was orchestrated by the government and reflects a sentencing disparity wherein he has been punished more severely than his more culpable co-defendants and, indeed, more than most stash house defendants generally.

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[5] *See* https://www.kff.org/coronavirus-covid-19/report/kff-covid-19-vaccine-monitor-december-2020/.

Mr. Brooks was sentenced as a result of the government's fake stash house program; federal agents invented and orchestrated this stash house conspiracy from start to finish. Undercover agents invented a lightly guarded stash house owned by a fictional Mexican drug cartel and containing a large quantity of cocaine ready for the taking. The agents recruited co-defendant Alexander Morales and provided him with every essential detail about the fictional Mexican drug cartel that owned the stash house, the drugs it contained, and how it was guarded. In several meetings over the course of six weeks, the agents divulged additional information and made elaborate plans with Morales and, later, co-defendant Santana.

Morales recruited Mr. Brooks once the plans were already well under way. Mr. Brooks was first introduced to the agents on June 14, 2013, just four days before the stash house robbery was scheduled to occur. Mr. Brooks arrived at the pre-arranged meeting location on June 18, 2013 and was arrested along with Morales and Santana. The conspirators would never even have assembled, and no crime would have existed, but for the government. This alone, presents extraordinary and compelling circumstances because the fake stash house program (1) is a heavily criticized, constitutionally problematic law-enforcement tactic, (2) actively harms public safety, and (3) disproportionately affects racial minorities.

First, fake stash house stings have been heavily criticized because they are highly susceptible to abuse. "[T]he potential for abuse and mischief that is endemic to fictitious stash-house stings should not be ignored." *United States v. Washington,* 869 F.3d 193, 224 (3d Cir. 2017) (McKee, C.J., concurring in part and dissenting in part). *See also United States v. Hare,* 820 F.3d 93, 103-04 (4th Ch. 2016) (fictitious stash house schemes "appear[] highly susceptible to abuse."). These stings have been described as "tawdry" and "disreputable." *See e.g., United States v. Lewis,* 641 F.3d 773, 777 (7th Cir. 2011) ("We use the word 'tawdry' because the tired sting operation seems to be directed at unsophisticated, and perhaps desperate, defendants who easily snap at the bait put out for them by [agents]."); *United States v. Kindle,* 698 F.3d 401, 414 (7th Cir. 2012) (Posner, J., dissenting), *reh' g en banc granted, opinion vacated* (Jan. 16, 2013), *on reh' g en banc sub nom. United States v. Mayfield,* 771 F.3d 417 (7th Cir. 2014) (noting that fictitious stash house stings "are a disreputable tactic," and allow law enforcement to manipulate the inducements and temptations to "jack up" sentences); *United States v. Flowers,* 712 Fed.Appx. 492, 511 (6th Cu. 2017) (Stranch, J., concurring) ("I find the concept of these 'stash house sting' operations at odds with the pride we take in presenting American criminal justice as a system that treats defendants fairly and equally under the law.")

Likely responding to the widespread recognition of these problems, the government has since abandoned the tactic and agreed to plead out remaining defendants. Yet, Mr. Brooks remains in prison, subjected to a long sentence imposed before public attention caused the government to abandon these prosecutorial tactics.

Second, the government's fake stash house program did nothing to protect the public. *See e.g., Mayfield,* 771 F.3d at 436 ("When government agents 'tempt[] [a] person to commit a crime that he would not otherwise have committed, punishing him will not reduce the crime rate; it will merely deflect law enforcement into the sterile channel of causing criminal activity and then prosecuting the same activity.'" (quoting *United States v. Manzella,* 791 F.2d 1263, 1269 (7th Cir. 1986)) (alterations in original)).

Third, not only did fake stash house stings have a detrimental effect on public safety, they also disproportionately affected racial minorities. Indeed, Columbia Law School Professor Jeffrey Fagan, Ph.D., conducted an empirical analysis of the race disparities in *United States v. Alfred Washington*, 12-632 (N.D.Ill.); *United States v. Antonio Williams*, 12-887 (N.D.Ill.); and, *United States v. John T. Hummons,* 12-887 (N.D.Ill.), and concluded that "the ATF is discriminating on the basis of race in selecting stash house defendants." *See*

Report of Jeffrey Fagan, *United States v. Alfred Washington,* N.D. Il. Crim. No. 12-CR-632, ECF No. 510-2. Specifically, Dr. Fagan found that from 2011-2013, the ATF "engaged in nearly exclusive recruitment of non-White persons." *Id.*

Additionally, news organization USA TODAY conducted an independent investigation in July 2014 and found that, out of its sample of 635 defendants arrested in stash house stings during the last 10 years, 579, or 91%, were minorities.

Here, Mr. Brooks was not actively involved in the planning of the fake stash house robbery. He did not meet the undercover agents until 4 days before the stash house robbery was scheduled to occur. Although Santana told the agents that Mr. Brooks knew all the details of the operation, Mr. Brooks' numerous questions about basic details on the day of the planned robbery belied that contention. Morales and Santana had been meeting with the agents for over a month before Mr. Brooks met the agents, yet he received a sentence more than three times as long as either Morales or Santana. Mr. Brooks is not slated for release until August 2032.

Courts have recognized that sentencing disparities of this type may warrant compassionate release, even in the face of mandatory minimum sentences. For example, in *United States v. Haynes,* 456 F.Supp.3d 496, 499 (E.D.N.Y. 2020), the

defendant refused a plea deal and was consequently charged with several counts that carried mandatory minimum sentences — unlike his co-defendant, who had a more extensive criminal history and planned the robberies at issue. The court granted compassionate release to correct the "grave injustice" posed by the disparity foisted upon the defendant "all because [the defendant] chose a trial over a plea." *Id.* at 517.

Likewise, in *United States v. Conley,* 2021 WL 825669, at *4 (N.D. Illinois March 4, 2021), the district court relied on the "inherent unfairness and injustice of Conley's sentences, especially in relation to his co-defendants" as a reason for granting compassionate release. The court concluded that a reduction in sentence to time served (9 years) was appropriate based on the fake stash house conviction and the sentencing disparities among the participants. *Id.* at *5 ("Conley should not be punished with a grossly disproportionate sentence, which was the result of a 'trial tax,' just because he maintained his innocence throughout the proceedings and asserted that the false stash house stings were inappropriate."). The same rationale applies here.

Mr. Brooks also asserted that the Hobbs Act conspiracy conviction no longer qualified as a crime of violence under § 924(c). *See United States v. Davis*, 139 S.Ct. 2319 (2019). Mr. Brooks specifically pointed to the recent

changes to § 924(c). *See also United States v. Taylor*, 142 S.Ct. 2015 (2022). Yet, the District Court did not address this contention, whatsoever, in denying Mr. Brooks' motion. (A2-A9) While the Government does point out that this issue was raised by Mr. Brooks in his *pro se* filings, the Government asserts that this was "not renewed by counsel." However, counsel for Mr. Brooks explicitly noted that her submission "supplements Mr. Brooks's previous *pro se* filings and replies to the Government's Response in Opposition to relief."

Appellant maintains that this change to § 924(c), coupled with the other unique circumstances of his case as aforementioned, created extraordinary and compelling reasons warranting a sentence reduction. *See United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. 2021).

Appellant further contends that certainly, this was a factor that the District Court should have taken into account in weighing the § 3553(a) factors. *United States v. Andrews*, 12 F.4th 255, 261-262 (3d Cir. 2021); *see also United States v. McGee*, 992 F.3d 1035, 1048 (10th Cir. 2021). (See below.)

Taken together, it is submitted that Mr. Brooks' health conditions, unusually long sentence, the change to § 924(c), and the harsh conditions experienced while incarcerated during a pandemic constituted extraordinary and compelling

circumstances warranting a sentence reduction. It is further submitted that the District Court abused it's discretion in concluding otherwise.

B. The District Court Erred In Holding That The Relevant §3553(a) Factors Weigh Against Mr. Brooks' Release

Notwithstanding the District Court's finding that Mr. Brooks failed to present extraordinary and compelling reasons for compassionate release, the Court nonetheless weighed the factors set forth in U.S.C. § 3553(a). (A2-A9)

Under the compassionate release statute, when a defendant establishes the existence of extraordinary and compelling circumstances justifying relief, courts must consider the relevant sentencing factors of 18 U.S.C. § 3553(a) to determine whether a sentencing reduction or modification is warranted. 18 U.S.C. § 3582(c)(1)(A)(i). Mr. Brooks respectfully submits that the § 3553(a) sentencing factors support a reduction in sentence, and therefore, the District Court erred.

Under § 3553(a)(1), the nature and circumstances of the offense, Mr. Brooks fully described above, the "tawdry" and "disreputable" nature of the sting operation that resulted his 270 month sentence. Additionally, as noted above, Mr. Brooks contended that his Hobbs Act conspiracy conviction no longer qualified as a crime of violence under § 924(c). While Mr. Brooks acknowledged some punishment was required for his offense, he contends that a sentence of time

served - approximately 8 years without good time credit - is sufficient but not greater than necessary to fulfill the goals of sentencing. This is especially true in light of Mr. Brooks' extraordinary rehabilitative efforts, his serious health conditions, and the harsh conditions of confinement during the pandemic.

Mr. Brooks' history and characteristics, under § 3553(a)(1), also weigh in favor of a sentence reduction. Mr. Brooks' health conditions clearly make prison more dangerous for him during the pandemic. Despite his health challenges and the restrictive nature of the pandemic lock-down measures, Mr. Brooks' post-offense rehabilitation has been extraordinary. Before the pandemic, Mr. Brooks accrued an impressive array of programming credits, including GED classes, self-help programs, parenting and drug awareness classes. He has also been instrumental in mentoring other inmates. Mr. Brooks has also taught in a curriculum geared towards violence prevention and has served as a mentor in the Challenge program, which is a 500-hour program comprised of courses in criminal thinking, drug abuse awareness, cognitive thinking, and psychological and mental awareness.

Additionally, under § 3553(a)(2), Mr. Brooks' eight years in prison is certainly enough to reflect any notion of just punishment or severity of the offense. And, "the 'need for just punishment' has dramatically shifted since sentencing.

The lock-down measures prisons across the country ... have undergone to mitigate the spread of the pandemic have made confinement much more punitive than was contemplated at sentencing." *United States v. Indarte,* Crim. No. 17-5554 (W.D. Wash. Oct. 14, 2020), Order Granting Defendant's Motion for Compassionate Release, Docket Entry 84, at 10. *See also United States v. Armstrong,* 2020 WL 4366015, at *4 (S.D. Cal. July 20, 2020) (granting sentence reduction in part because "defendants committing similar offenses now, in the time of COVID-19, are receiving vastly lower sentencing recommendations, *because their time in custody is harsher.")* (emphasis added). Moreover, all social visits within the BOP were suspended for nearly a year and all BOP programs stopped, except for those required by law.[6]

Additionally, the reduction being sought by Mr. Brooks is not likely to increase the risk of recidivism or endanger the public. He has been incarcerated for the last 8 years. Research studies consistently confirm that it is the certainty, rather than the severity, of punishment that serves as a deterrent. Valerie Wright, Sentencing Project, *Deterrence in Criminal Justice: Evaluating Certainty v. Severity of Punishment* 8 (2010). *See also* Steven N. Durlauf & Daniel S. Negin, *Imprisonment and Crime: Can Both be Reduced?,* 10 Criminology & Pub. Pol'y

[6] http://www.bop.gov/coronavirus/covid19_status.jsp

13, 37 (2011). Thus, the goals of reflecting the seriousness of the offense, affording adequate deterrence, and protecting the public will remain satisfied even in light of a reduction.

Furthermore, Mr. Brooks' likelihood of recidivism diminishes with each passing month. As researchers at the National Institute of Justice have found, criminal behavior changes dramatically as a person ages. *Five Things About Deterrrence* at 2. The data shows a steep decline at about age 35. Mr. Brooks is 47 years old. His decreased risk of recidivism minimizes the need for continued incarceration and clearly supports the imposition of reduced sentence. *See also United States v. Howard*, 773 F.3d 519, 533 (4th Cir. 2014) ("studies demonstrate that the risk of recidivism is inversely related to an inmate's age"). Thus, a reduction in sentence does not implicate public safety concerns.

In this case, a reduction of Mr. Brooks' sentence to time served, as he had requested, would not diminish the seriousness of the offense, nor would it place the public in any danger. The extraordinary and compelling circumstances presented by the uncontrolled spread of COVID-19, combined with Mr. Brooks' health conditions and unusually long sentence, warrant relief.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: November 1, 2022