No. 24-____

IN THE

Supreme Court of the United States

EUGENE JOHNSON,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a district court judge may consider due process violations, defects in the trial, and conflicts of interest from the underlying trial when deciding a compassionate release case under 18 U.S.C. § 3582.

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED PROCEEDINGS

U.S. District Court for the Eastern District of Virginia
United States v. Johnson, No. 3:90cr113 (August 24, 2023)

Fourth Circuit Court of Appeals
United States v. Johnson, No. 23-6846 (October 15, 2024)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Eugene Johnson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the Fourth Circuit, Pet. App. 1a, is unpublished. The Fourth Circuit's order denying rehearing *en banc*, Pet. App. B, is unpublished.

JURISDICTION

The Fourth Circuit entered judgment on October 15, 2024, Pet. App. 1a, and denied petitioner's timely petition for rehearing *en banc* on November 13, 2024, Pet. App. 2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 3582(c) of Title 18 provides in relevant part:

> Modification of an Imposed Term of Imprisonment - The court may not modify a term of imprisonment once it has been imposed except that - (1) in any case - (A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that - (i) extraordinary and compelling reasons warrant such a reduction….

INTRODUCTION

Mr. Johnson presented a series of extraordinary and compelling concerns in support of his compassionate release request and the infringement of his constitutional rights. These claims involved due process violations, serious defects in his trial, and conflicts of interest. None of the courts in this process considered these injustices in the consideration of Mr. Johnson's compassionate release motion. He asks that this Court address those concerns.

STATEMENT OF THE CASE

Background

In February of 1991, Mr. Johnson's jury trial in federal court proceeded less than two months after his arraignment. J.A. 112-113. The trial involved 19 counts against Mr. Johnson, spanning six years of alleged criminal conduct, three VICAR murder charges, four racketeering charges, a Continuing Criminal Enterprise charge, a drug conspiracy charge, multiple individual drug distribution and gun charges, and an employment of a minor charge. J.A. 24-42. There were twelve co-defendants at trial with Mr. Johnson. Notwithstanding four motions to continue from defense counsel, each of which pleaded with the district court to continue the case due to the enormous quantity of discovery and the obviously inadequate amount of time available to counsel to prepare for trial, a motion to withdraw as counsel, and a motion to determine Mr. Johnson's competency, the district court denied the motions insisting on keeping the trial schedule on track. J.A. 54-57. No investigation of the charges or significant analysis of the legal theories in play was conducted by defense

counsel, no motions were made for an additional attorney, an investigator or a paralegal by Mr. Johnson's trial counsel, and manifest conflicts of interest arose. The Eastern District of Virginia's Rocket Docket was in full force and nothing was going to slow it down, regardless of the consequences to Mr. Johnson.

Mr. Johnson has served over 32 years in federal prison for his offenses, and has demonstrated exemplary conduct. A letter from the lead investigator in this case, Detective and former City of Richmond Sheriff, C.T. Woody – an icon of Richmond law enforcement and a man who was allegedly targeted by Mr. Johnson for violence – submitted a letter of support for Mr. Johnson, stating that "it is time for Mr. Johnson to come home." J.A. 98. Sheriff Woody was also the government's principal witness in the case, having testified six separate times during the trial.

Soon after this case, federal courts were compelled by law to assign at least two attorneys for each defendant charged with a potential capital case. *See* 18 U.S.C. § 3005 and *United States v. Boone*, 245 F.3d 352 (4th Cir 2001). Only one attorney was appointed for Mr. Johnson. Mr. Wood specifically complained on the record that he was a member of a small firm, and the weight of the discovery and volume of charges was too great for him to bear by himself with such a compressed trial schedule. J.A. 213-214.

Mr. Johnson was charged in 18 of the 23 counts in the indictment. Twelve other defendants were also charged, all of whom proceeded to trial. Mr. Johnson was charged as follows: Count 1 - conspiracy to distribute at least 5 kilograms of cocaine hydrochloride, in violation of 21 U.S.C. § 846; Counts 2-4,7, 8, and 12 - distribution

of cocaine, in violation of 21 U.S.C. § 841(a)(1) and in violation of 18 U.S.C. § 2; Counts 5, 17, and 18 - possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 924(a)(2); Counts 6, 14, and 21 - violent crime in aid of racketeering activity, in violation of 18 U.S.C. § 1959; Counts 9,11, 15, and 19 - interstate travel in aid of a racketeering enterprise, in violation of 18 U.S.C. §§ 1952(a)(3) and 2; Count 20 - employment of a person under 18 years of age, in violation of 18 U.S.C. § 845b; and Count 23 - continuing criminal enterprise, in violation of 21 U.S.C. § 848. The case was heard by a jury between February 11 and 22, 1991. J.A. 113-118. Carlton Brown was also charged with Mr. Johnson under Count 6, one of the murder charges, a charge for which Carlton Brown had been acquitted in state court. Keith Jeffries was charged with Mr. Johnson under Count 14, another murder charge; Keith Jeffries was found not guilty of the two charges he faced – Counts 1 and 14. The only murder count Mr. Johnson faced alone – Count 21 - resulted in a not guilty verdict. He was convicted on all other counts. The Court dismissed Count 3 on a motion by the Government on February 19, 1991. J.A. 116.

Mr. Johnson was sentenced to Life imprisonment on Counts 1, 6, 14, and 23 (Count 1 was later dismissed after review by the Fourth Circuit – *see* J.A. 175), to 40 years on Counts 8, 12 and 20, to 20 years on Counts 2, 4, and 7, to 10 years on Counts 17 and 18, and to 5 years on Counts 5, 9, 11, 15 and 19. J.A. 45-46. It was unclear from the judgment order of the district court which of the counts were to run concurrently or consecutively, with the exception of Counts 2, 4 and 5, which were specifically held to be served concurrently. *Id.* All of the sentences on the various

counts were to run consecutively with Mr. Johnson's state sentence. Supervised release terms of 2 to 6 years were imposed on the various counts of conviction, to be served concurrently. J.A. 48.

Mr. Johnson made his first appearance and was arraigned in federal court for this case on December 5 and 15, 1990, respectively; the case was tried to a jury beginning February 11, 1991, less than two months after arraignment. *See* J.A. 112-113. Four motions for continuances, a motion to determine the client's competency, and a motion to be withdrawn as counsel were requested of the Court and denied. The reasons for the continuance requests were: counsel could not prepare for trial in that short a period of time with the number of the charges presented against the defendant, the complexity of the charges, the number of government witnesses called, the time span of the alleged criminal conduct, all of the discovery counsel needed to review, the investigations required, and the communication problems counsel was experiencing with his client. Discovery was provided piecemeal and was extensive. *See* J.A. 214. Sixty witnesses were called by the government, most focusing on Mr. Johnson's alleged criminal conduct. Mr. Johnson provided counsel with a list of 22 witnesses he wanted vetted and called to testify, including himself. The limited time counsel for Mr. Johnson had for preparation was reflected in his performance; at times, it was as if Mr. Johnson had no counsel at all.

Mr. Johnson's Motion for Compassionate Release

Mr. Johnson raised numerous matters in his motion for compassionate release that demonstrated the compelling and extraordinary nature of his request for relief. These matters included references to the gross injustices he suffered at through his trial process. The district court found that these injustices were not subject to review under *United States v. Ferguson*, 55 F.4th 262 (4th Cir. 2022). Mr. Johnson asks that this Court review the decision to preclude review of constitutional violations, conflicts of interest, and denial of trial rights generally under a request for compassionate release relief.

A letter from the lead detective in his underlying criminal matter, a witness for the government who testified six separate times during the trial, and a victim in the case, C.T. Woody, requested that the district court reduce Mr. Johnson's sentence to time-served. There was considerable evidence submitted to the district court concerning ineffectiveness of counsel, conflicts of interest, and due process violations. J.A. 53-74. And there was also compelling evidence of Mr. Johnson's rehabilitation.

In his motion to the district court, Mr. Johnson provided a robust presentation of his rehabilitation. J.A. 93-96; 99-103. He presented compelling evidence that he had been a model prisoner over the 15 years preceding the filing. Mr. Johnson had advanced his education and served as a mentor to others at the prison. As of 2006, Mr. Johnson had received no institutional infractions of any kind and commendable employment reviews. J.A. 99-100. A series of educational, vocational, self-improvement, and drug treatment courses and programs were completed by Mr.

Johnson during his time at Williamsburg FCI, a Medium security facility, as evidenced by his Progress Report. *Id.* at 99-101. Mr. Johnson completed his GED while incarcerated. J.A. 101.

Mr. Johnson provided letters of support to the district court from people in his life. His sister, Pastor Cynthia Callahan, wrote in her letter about how her brother has changed in his over 30 years in prison, how he has matured, and that he is prepared to become a productive member of his community. J.A. 125-126. Letters from his nieces, Antoinette Price and Shameeka Price, discuss that they want to see their uncle come home to be with family. J.A. 124, 127. His daughter, Jarnee Ferguson, reflected on the impact Mr. Johnson had on many people in the prison through mentorship and counseling, and asked for the court's indulgence to release her father. J.A. 128. Despite being in prison, Mr. Johnson played a role in his daughter's life and tried to do the best he could to love and support her.

Mr. Johnson's brother, Roger Baucom, USAF Lt. Col. (retired), wrote a letter of support expressing that he had seen "a profound positive change," and that Mr. Johnson had also shown remorse for his prior misconduct. J.A. 130. He stated that if his brother is released that he will be "an honest and hardworking producer within society." *Id.* In a letter from a friend of Mr. Johnson in prison, Mr. Allen-Ragin, his friend expressed to the Court that he appeared before the same district court for sentencing, and that Mr. Johnson had helped him as a mentor. J.A. 129. Mr. Johnson also helped Mr. Allen-Ragin get his GED, and provided assistance in dealing with issues with his family.

Mr. Johnson provided very extensive and detailed information regarding issues that arose prior to and during the trial of his case, the representation by counsel, and the many challenges he faced throughout the trial. These challenges included:

- The defendant faced 18 counts of a 23-count indictment
- Mr. Johnson was being tried on three murder charges, an eight-year drug conspiracy charge, a racketeering charge, a Continuing Criminal Enterprise charge, six distribution of controlled substances charges, three firearms charges, and an employment of a juvenile charge
- The trial was held less than 2 months after arraignment
- A substantial quantity of discovery was tendered and significant investigation was required (*See* J.A. 214)
- The trial court required the defendant to proceed to trial when on the first day of trial, counsel for the Mr. Johnson conceded to the court that he thought one of the murder charges against him was going to be dismissed and he had done nothing to prepare for that charge (J.A. 228-231)
- Sixty witnesses were called by the government
- A list of 22 witnesses was provided by the defendant to counsel
- Communication problems between counsel and the defendant required that a competency evaluation be conducted very soon before trial (*See* J.A. 113)
- Four motions to continue were presented to the trial court by defense counsel
- The government agreed that the case should have been continued (J.A. 214)

- Counsel moved the court at trial to be relieved as counsel for Mr. Johnson (J.A. 714)
- The defendant made several requests at trial to represent himself (J.A. 1302)
- The trial court allowed the introduction at trial of a conviction in state court for conspiracy to commit murder (J.A. 401-402)
- A debilitating conflict of interest arose between counsel and Mr. Johnson during the trial (J.A. 1788-1791; 67-70, 93)
- Mr. Johnson's 28 U.S.C. § 2255 habeas corpus motion was never pursued post-trial

Mr. Johnson submitted an administrative request for compassionate release to the warden at Williamsburg FCI in May of 2020. J.A. 105-110, 77. He received the warden's response on July 6, 2020, denying his request. J.A. 104. The district court found that "Defendant satisfied the procedural threshold of § 3582(c), and the Court proceeds with the merits of his Motion." J.A. 179.

The District Court's Order Denying Relief

In its Order denying relief, the district court stated that Mr. Johnson's motion included as extraordinary and compelling circumstances: (1) the very short period of time to prepare for trial; (2) rehabilitation; and (3) Detective Woody's letter to the court. J.A. 176. In this summary, the district court failed to include many of the factors Mr. Johnson relied upon for relief

To begin its analysis, the district court summarized the factual basis for Mr. Johnson's convictions and discussed the trial process. J.A. 172-174. The court then

reviewed the sentence imposed, the Fourth Circuit direct appeal filed, and other motions and procedural matters that preceded the filing of this motion. *Id.* at 174-175.

The district court reviewed the process that led to the filing of this motion, noting that Mr. Johnson requested the assistance of counsel with the filing of a First Step Act motion in December of 2019. J.A. 176. Counsel was appointed and submitted a compassionate release motion for Mr. Johnson in October of 2021. *Id.*

The district court reviewed the applicable law to be applied to this case. Among the standards that the court is required to adhere to, as articulated by the district court, is that the court must "conduct a 'multifaceted' analysis and consider the 'totality of the circumstances,'" citing to *United States v. Hargrove*, 30 F.4th 189, 197-198 (4th Cir. 2022). J.A. 177. The district court referenced the policy statement in U.S.S.G.§ 1B1.13 and the guiding principles of *United States v. McCoy*, 981 F.3d 271 (4th Cir. 2020) as assisting the court with determining the contours of extraordinary and compelling circumstances. The court also discussed the necessity of subjecting the case to review under the 18 U.S.C. § 3553(a) factors. *Id.*

The district court then engaged in a discussion, under *United States v. Ferguson*, 55 F.4th 262 (4th Cir. 2022) - a case that was decided after the filing of the pleadings in this case - of compassionate release not being the proper means of challenging "the validity of a defendant's conviction or sentence." J.A. 179-180.[1]

[1] Additionally, the *Ferguson* argument was not an argument raised by the government is its responsive pleading.

Expanding on the findings of *Ferguson*, the district court stated that "a court may not consider factors that are exclusively under the control of 28 U.S.C. § 2255 when deciding a compassionate release motion." *Id.* at 180. The district court commented that Mr. Johnson's points raised in his motion were "lacking as Defendant seeks to attack, rather than reduce, his underlying sentence," pointing to his counsel's alleged inadequate performance at trial as not cognizable under compassionate release review. *Id.* at 182-183.

The district court turned to a discussion of the change in law under 18 U.S.C. § 3005 noted by Mr. Johnson in his motion, which would have provided him with two attorneys, rather than the one who was appointed to represent him. J.A. 183. The court, however, drew a distinction between changes in law impacting sentencing, and any other changes in law, finding that compassionate release relief only applies to sentencing changes, but failed to acknowledge that compassionate release applies to all extraordinary and compelling circumstances, not just changes in sentencing law. *Id.* at 184-185. The court further pointed out that Mr. Johnson could have requested a second attorney under § 3005 in 1991 (J.A. 185), but failed to consider that the two-attorney provision became mandatory under § 3005 after 1994, and was confirmed by this Court in *United States v. Boone*, 245 F.3d 352 (4th Cir 2001).

Shifting to arguments raised by Mr. Johnson regarding the proceedings at trial, the district court again pointed out that any such failures by the trial court to protect Mr. Johnson's due process rights are not properly raised under 18 U.S.C. § 3582(c). *Id.* at 186.

The district court then restricted its analysis of extraordinary and compelling reasons for relief to Mr. Johnson's rehabilitation – or his "exemplary conduct in prison" – and a letter of support from the lead investigator in the case, Sheriff Woody. J.A. 187. Acknowledging "some rehabilitation" and that "he has made significant progress during his incarceration and takes his rehabilitation seriously," the court emphasized that rehabilitation alone is insufficient for a finding of extraordinary and compelling circumstances. *Id.* at 188.

With regards to Sheriff Woody's letter of support, the district court found that this letter was "fundamentally, an argument about the length of time that Defendant has served." J.A. 188. The court failed to place any significant weight on this letter because this law enforcement officer's job "was not to determine sentencing; that job belongs solely to the Court." *Id.* at 189. Further, the court failed to acknowledge that Sheriff Woody was not just the lead detective in the case; he was also a victim ("Myself and my family were targets of Mr. Johnson"). J.A. 98. Victim impact concerns, however, are important matters for sentencing and should also have significance under a compassionate release motion.

The district court apparently looked only to Mr. Johnson's rehabilitative efforts in weighing the extraordinary and compelling circumstances factors when stating that such "efforts cannot rise to an extraordinary and compelling reason alone. . . . Defendant failed to show any additional extraordinary and compelling reasons. . . ." J.A. at 190. The district court did not consider any of the constitutional issues and defects from the trial in its compassionate release analysis.

After shutting down Mr. Johnson's extraordinary and compelling reasons arguments, the district court turned to a discussion of the 18 U.S.C. § 3553(a) factors. J.A. 190. Focusing exclusively on Mr. Johnson's offense conduct and criminal history, the district court made its findings with absolutely no discussion of the arguments raised by Mr. Johnson in his pleadings and exhibits which he presented under these factors. J.A. 192.

The district court denied relief to Mr. Johnson.

Fourth Circuit's Three-Judge Panel Opinion

The three-judge panel improperly denied relief for Mr. Johnson, failing to specifically address any issues raised. The panel merely found that "the district court did not abuse its discretion in adjudicating Johnson's motion," citing to *United States v. Bethea*, 54 F.4th 826, 831, 834 (4th Cir. 2022), and further found no error under *United States v. Ferguson*, 55 F.4th 262, 270-72 (4th Cir. 2022). That constituted the entirety of the panel's decision.

Mr. Johnson takes issue with these findings.

REASONS FOR GRANTING THE WRIT

The district court failed to properly consider the wide breadth of arguments raised on behalf of Mr. Johnson, relying principally on the *Ferguson* decision to support its findings. The failure to even consider such injustices in its analysis, and restricting that analysis to only sentencing concerns must be reviewed by this Court. Mr. Johnson specifically requested that the district court consider all of these factors

in its analysis of extraordinary and compelling circumstances under 18 U.S.C. § 3582(c). The district court failed to attribute any weight to this critical factors. Therefore, the district court failed to conduct the necessary analysis required for the proper exercise of its discretion.

The district court found that under § 3582(c) review, there is a distinction between changes in law impacting sentencing, and any other changes in the law, finding that compassionate release relief only applies to sentencing changes. J.A. 184 ("changes in law outside of sentencing do not give rise to extraordinary and compelling reasons for a sentence reduction, as here"). Relying on this erroneous construction of law, the district court found that "not all changes in law prove equal. Defendant's argument that a change in law gives rise to an extraordinary and compelling reason for relief ignore that the change in law, if applied here, does not relate to his sentencing." J.A. 185. The Fourth Circuit failed to consider this argument. Mr. Johnson asks for review by this Court on that basis as well.

The district court referred to Sheriff Woody's letter of support "as, fundamentally, an argument about the length of time that Defendant has served. The Court declines to give the letter any other weight because Detective Woody's former role was not to determine sentencing; that job belongs solely to the Court." J.A. 188-189. The district court failed to recognize Sheriff Woody's letter for what it was – not just a letter of support from the lead detective in this case and principal witness for the government- but a victim impact letter. Attributing essentially no weight to the

letter demonstrated a flawed analysis by the district court and an abuse of discretion. *See Kibble*, 992 F.3d at 329. The Fourth Circuit also failed to address this argument.

The district court apparently looked only to Mr. Johnson's rehabilitative efforts in weighing the extraordinary and compelling circumstances factors when stating that such "efforts cannot rise to an extraordinary and compelling reason alone. . . . Defendant failed to show any additional extraordinary and compelling reasons." J.A. 190. In its analysis, the court failed to acknowledge that the change in law under § 3005 could be considered in the extraordinary and compelling reasons analysis. Further the Woody letter of support should have been attributed significant weight, far beyond merely "an argument about the length of time that Defendant has served." J.A. 188. The district court's assessment of the factors under 18 U.S.C. §3582(c) should have placed far greater weight on this truly extraordinary piece of evidence. No reference to this argument was made in the panel's decision.

By enacting section 603(b) of the landmark First Step Act of 2018, Congress amended 18 U.S.C. § 3582(c)(1)(A)(i) to allow, for the first time, defendants to move on their own behalf for a reduction of sentence. Under § 3582(c)(1)(A)(i), a district court may reduce a defendant's term of imprisonment if "extraordinary and compelling reasons warrant such a reduction." Once a motion is filed with the district court, the statute requires that the district court, upon a finding of extraordinary and compelling reasons to warrant a reduction, consider "the factors set forth in section 3553(a) to the extent that they are applicable. . . ." *High*, 997 F.3d at 185.

"A district court abuses its discretion when it acts arbitrarily or irrationally, fails to consider judicially recognized factors constraining its exercise of discretion, relies on erroneous factual or legal premises, or commits an error of law." *United States v. Dillard*, 891 F.3d 151, 158 (4th Cir. 2018) (internal quotation marks omitted). Additionally, while there is no "categorical . . . requirement" that a court explicitly address each of the movant's arguments on the record, the court also errs if, in light of the particular circumstances of the case, its explanation is "[in]adequate to allow for meaningful appellate review." *United States v. High*, 997 F.3d 181, 187, 189 (4th Cir. 2021); *see also Chavez-Meza v. United States*, 138 S.Ct. 1959, 1965 (2018) ("Just how much of an explanation [is] require[d] . . . depends . . . upon the circumstances of the particular case.").

The district court must "set forth enough to satisfy [this] court that it has considered the parties' arguments and has a reasoned basis for exercising its own legal decision-making authority." *High*, 997 F.3d at 190 (alterations, internal quotation marks, and emphasis omitted). In this case, Mr. Johnson has pointed out that the district court's decision improperly failed to consider relevant and significant factors that should necessarily weigh on the extraordinary and compelling reasons analysis.

As the Fourth Circuit found in *McCoy*, *Malone*, and *Ferguson*, "district courts are 'empowered ... to consider *any* extraordinary and compelling reason for release that a defendant might raise.'" *United States v. McCoy*, 981 F.3d 271, 284 (4th Cir. 2020); *United States v. Ferguson*, 55 F.4th 262, 270 (4th Cir. 2022) ("the district court

is 'empowered to consider any extraordinary and compelling reason for release that a defendant might raise.'"); *United States v. Malone*, 57 F.4th 167, 174 (4th Cir. 2023) ("Ultimately, district courts are encouraged to 'consider *any* extraordinary and compelling reason[s] for release that a defendant might raise.' *McCoy*, 981 F.3d at 284 (quoting *Brooker*, 976 F.3d at 230)(emphasis in original)."); *see also United States v. Jenkins*, 22 F.4th 162, 169 (4th Cir. 2021) (relying on same language, citing to *United States v. Brooker*, 976 F.3d 228, 230 (2d Cir. 2020)).

The *McCoy* court further found that district courts must engage in "individualized inquiries" basing their analysis not only on changes in sentencing law, but also on a series of other factors. *McCoy* at 288; *see also United States v. Ruvalcaba*, 26 F.4th 14, 24 (1st Cir. 2022) ("a judgment is appropriate only after an individualized inquiry 'basing relief not only on the [FSA's] change to sentencing law ... but also on [other] factors,'" (citing to *McCoy*). This Court has made clear that the compassionate release "inquiry is 'multifaceted' and must account for the 'totality of the relevant circumstances.'" *United States v. Brown*, 78 F.4th 122, 128 (4th Cir. 2023), citing to *United States v. Bethea*, 54 F.4th 826, 832 (4th Cir. 2022) and *United States v. Hargrove*, 30 F.4th 189, 198 (4th Cir. 2022). Under *Hargrove*, the Fourth Circuit further found that, "[t]he factors applicable to the determination of what circumstances can constitute an extraordinary and compelling reason for release from prison are complex and not easily summarized." *Hargrove*, 30 F.4th at 197.

When a relevant, significant factor is raised under 18 U.S.C. § 3582(c)(1), the district court must assess that factor in light of its impact on the compassionate

release inquiry. *See United States v. Malone*, 57 F.4th 167, 175 (4th Cir. 2023) (although district courts are accorded "broad discretion" in compassionate release cases, that discretion does not include disregarding significant factors weighing on the extraordinary and compelling reasons analysis). The district court in this case found that these two considerations or factors were, essentially, not to be given any weight, and conducted its § 3582(c) analysis with little or no consideration of these factors. Such a process by the district court constituted error requiring that the decision be reversed and remanded to the district court for further consideration. When deciding a compassionate release motion, "[a] district court by definition abuses its discretion when it makes an error of law." *See Koon v. United States*, 518 U.S. 81, 100 (1996); *United States v. Quiros-Morales*, 83 F.4th 79, 85 (1st Cir. 2023).

Looking to the language of the statute, Congress said nothing of limiting compassionate release only to matters involving changes in sentencing laws. 18 U.S.C. § 3582(c)(1) states that:

> The court may not modify a term of imprisonment once it has been imposed except that—(1) in any case—(A) the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment . . . if it finds that—(i) extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission . . . .

Presently, the applicable policy statement reads as follows:

> Extraordinary and Compelling Reasons.—Extraordinary and compelling reasons exist under any of the following circumstances or a combination thereof:
>
> (1) Medical Circumstances of the Defendant.—
> (2) Age of the Defendant.—
> (3) Family Circumstances of the Defendant.—
> (4) Victim of Abuse.—
> (5) Other Reasons.—The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4).
> (6) Unusually Long Sentence.—

U.S.S.G § 1B1.13 (amended November 1, 2023).[2]

Nothing in the statute, the applicable policy statements, or authority from this Court restricts the application of the compassionate release provisions to only sentencing changes that occurred since the judgment of the district court.

A district court's analysis of a compassionate release case, at least in the Fourth Circuit, must follow a process that has been enshrined in a series of decisions rendered by the Fourth Circuit. The district court in this case failed to adhere to that process. The Fourth Circuit has determined that under §3582(c)(1)(A)(i), district courts are asked "to balance the severity of the inmate's personal circumstances, on the one hand, against the needs for incarceration, on the other." *United States v. Malone*, 57 F.4th 167, 176–77 (4th Cir. 2023), citing to *United States v. Hargrove*, 30 F.4th 189, 197 (4th Cir. 2022); *see also United States v. Brown*, 78 F.4th 122, 129 (4th

[2] Although this policy statement was not in effect at the time of the district court's decision on this matter, if this Court were to reverse and remand Mr. Johnson's case, it would be in effect upon remand.

Cir. 2023) ("district courts should always consider a defendant's 'individual circumstances' when assessing compassionate release claims"). Applying the relevant § 3553(a) factors, the district court is further tasked with weighing those factors "against sentence reduction in light of *new* extraordinary and compelling reasons." *Malone*, 57 F.4th 167 at 176–77, citing *Kibble*, 992 F.3d at 334 (Gregory, C.J. concurring) (emphasis added).

Mr. Johnson understands and appreciates that, "a district court that finds a defendant presents extraordinary and compelling reasons for release is not required to grant a sentence reduction." *High*, 997 F.3d at 186. Instead, this Court can affirm a district court's compassionate release decision regardless of a flaw in the eligibility analysis if its subsequent § 3553(a) assessment was sound. *See id.* at 187; *see also United States v. Kibble*, 992 F.3d 326, 330–32 (4th Cir. 2021) (per curiam). The district court's § 3553(a) analysis was anything but sound. *United States v. Bethea*, 54 F.4th 826, 833 (4th Cir. 2022).

In its decision, the district court failed to consider the cumulative effect of the combined extraordinary and compelling factors under § 3582(c), as presented. *See* J.A. 189-190. The district court only considered the factors in isolation. Therefore, the district procedurally erred in failing to proceed with this critical step in its analysis.

In the Fourth Circuit's *Davis* decision, it found that "the district court did not consider the actual details of Davis's rehabilitation in combination with the other circumstances, but rather, simply determined that rehabilitation could not establish an extraordinary and compelling reason for release." *United States v. Davis*, No. 21-

6960, 2022 WL 127900, at *1 (4th Cir. Jan. 13, 2022) (unpublished). The Fourth Circuit reasoned that, absent such a searching inquiry, it could not be properly determined whether "the court appropriately conducted an individualized assessment." *Id.* at *2. According to *Davis*, " because it appears that the court may have believed that some, if not all, of Davis's claims could not establish a reason for release under any circumstances, the district court procedurally erred in determining that Davis had not provided an extraordinary and compelling reason for release." *Id.*

The same concerns are apparent in the district court's decision in this case. The district court only touched on Mr. Johnson's "commendable" rehabilitative efforts when discussing extraordinary and compelling reasons for relief, yet failed to consider those in the context of the Woody letter of support. J.A. 190. Consequently, the court's analysis was flawed and the decision must be reversed.

The only references the Fourth Circuit made to the district court's analysis was:

> After reviewing the record, we conclude that the district court did not abuse its discretion in adjudicating Johnson's motion. *See United States v. Bethea*, 54 F.4th 826, 831, 834 (4th Cir. 2022) (noting standard of review, findings district court must make before granting compassionate release, and guideposts for determining whether district court abused its discretion in considering 18 U.S.C. § 3553(a) factors). Additionally, despite Johnson's arguments to the contrary, we discern no error in the court's reliance on *United States v. Ferguson*, 55 F.4th 262, 270-72 (4th Cir. 2022) (recognizing defendant may not challenge the validity of his conviction or sentence in a compassionate release motion), *cert. denied*, 144 S. Ct. 1007 (2024), to hold that Johnson could not challenge the validity of his underlying conviction and sentence in a compassionate release motion.

Accordingly, we affirm the district court's order.

No analysis was provided by the Fourth Circuit regarding whether a district court can consider only sentencing concerns on compassionate release review. It is critical that this Court provide guidance to all federal courts that much broader discretion may be exercised to assess petitions for compassionate release under 18 U.S.C. § 3582(c).

In its findings regarding Mr. Johnson's motion under § 3582(c), the district court explained that the court must undertake a "multifaceted analysis" and conduct a "totality of the relevant circumstances" review of the arguments when considering whether sufficient extraordinary and compelling circumstances were presented to justify relief. J.A. 177, citing to *United States v. Hargrove*, 30 F.2d 189, 197-198 (4th Cir. 2022); *see also United States v. Brown*, 78 F.4th 122, 128 (4th Cir. 2023). However, the district court failed to conduct such an analysis under extraordinary and compelling reasons review based on all of the information provided. Further, the Fourth Circuit has found that a searching totality of the circumstances review is required pursuant to the 18 U.S.C. § 3553(a) process under First Step Act review.[3] No such §3553(a) review was conducted by the district court or the Fourth Circuit in this case.

[3] Under *United States v. Swain*, 49 F.4th 398, 402 (4th Cir. 2022), *United States v. Troy*, 64 F.4th 177, 186 (4th Cir. 2023), and *United States v. Smith*, 75 F.4th 459, 466 (4th Cir. 2023), although in relation to Section 404 of the First Step Act, this Court found that a totality of the circumstances review was required with regard to the § 3553(a) factors. Such a requirement should be imposed under Section 603.

Mr. Johnson urges this Court to make a finding that the totality of the circumstances review standard allows district courts to include consideration of factors that would otherwise be considered under motions, such as a 28 U.S.C. § 2255 motion, which challenges the validity of convictions or sentences.

When presented with *any* extraordinary and compelling concerns raised by a defendant under a motion for relief under 18 U.S.C. § 3582(c), district courts should be free to factor into their analysis, considerations of defects in the trial process or inadequacies of representation.

In *Ferguson*, this Fourth Circuit found that a compassionate release motion provides a safety valve for release of a federal prisoner "when there is *not* a specific statute that already affords relief but 'extraordinary and compelling reasons' nevertheless justify a reduction." *United States v. Ferguson* , 55 F.4th 262, 271 (4th Cir. 2022) (quoting *McCoy*, 981 F.3d at 287 (emphasis in original)). The Fourth Circuit concluded that "a compassionate release motion cannot be used to challenge the validity of a defendant's conviction or sentence." *Ferguson*, 55 F.4th at 272. This Court should not preclude *any and all* considerations of defects in a defendant's conviction or sentence under a totality of the circumstances review pursuant its extraordinary and compelling analysis, as well as the 18 U.S.C. § 3553(a) review.

Mr. Johnson submits that such a review should be permitted as a matter that the district court may consider in weighing all of the extraordinary and compelling factors. The Fourth Circuit in *McCoy* properly recognized that successful rehabilitation efforts can be considered as "one among other factors" establishing

extraordinary and compelling reasons for release and placed little or no restrictions on the breadth of information district courts could consider under compassionate release review. *McCoy*, 981 F.3d at 286, n.9. This Court should enshrine such a finding for all federal circuits.

Under the framework for compassionate release review set forth by the district court in this case, judges would be required to ignore – to completely disregard – critical and substantial injustices identified through a review of a federal inmate's case. As the true safety valve measure envisioned by Congress, such a result should be avoided in a compassionate release case, especially when the statute did not preclude this requested process of review. *See* 18 U.S.C. § 3582(c)(1) (district courts may modify a term of imprisonment in any case, "upon motion of the defendant . . . if it finds that (i) extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission."). No such limitation has been placed on district courts under the newly revised applicable policy statements under U.S.S.G § 1B1.13 (amended November 1, 2023) ("Other Reasons.—The defendant presents any other circumstance or combination of circumstances that, when considered by themselves or together with any of the reasons described in paragraphs (1) through (4), are similar in gravity to those described in paragraphs (1) through (4)."). This policy statement was enacted with at least an implicit understanding that there was a circuit split on the issue. *See Ferguson*, 55F.4th at 271-272 (comparing the various federal circuit court's treatment of the issue).

The litany of deprivation of rights Mr. Johnson suffered throughout his trial process, as set forth in Mr. Johnson's motion for relief to the district court, was disturbing. *See infra* pp. 9-10. To simply brush those injustices aside, under an allegedly overarching statutory safety valve framework, which allows consideration of ***any*** extraordinary and compelling reasons, only serves to exacerbate the very difficult situations confronted by Mr. Johnson at his trial.

As the Fourth Circuit has found under *United States v. Hargrove*, 30 F.4th 189, 198 (4th Cir. 2022), the "extraordinary and compelling circumstances" inquiry is "multifaceted and must take into account the totality of the relevant circumstances." Is it fair to suggest that the effectiveness of counsel or the due process rights of the defendant are not relevant circumstances when considering the totality of circumstances? No such restrictions were placed on district courts by Congress or by the Sentencing Commission through the new applicable policy statement.

With regard to the § 3553(a) factors, is there any prohibition under the law to preclude the district court from considering conflict of interest or competency of the defendant at trial when crafting a sentence under a totality of the circumstances review process? Certainly not in the sentencing context. That is what Mr. Johnson seeks to do here – allow for the consideration of all issues and circumstances raised under 18 U.S.C. § 3582(c). He asks that district courts be imbued with the authority to consider any such factors when assessing whether the sentence should be reduced.

CONCLUSION

For the reasons given above, the Court should grant the petition for a writ of certiorari, vacate the judgment below, and remand for further consideration.

Respectfully submitted,

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December 10, 2024

APPENDIX

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6846

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

EUGENE JOHNSON,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. David J. Novak, District Judge. (3:90-cr-00113-MHL-RCY-1)

Submitted: October 10, 2024 Decided: October 15, 2024

Before WILKINSON and AGEE, Circuit Judges, and FLOYD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

ON BRIEF: Robert J. Wagner, ROBERT J. WAGNER PLC, Richmond, Virginia, for Appellant. Jessica D. Aber, United States Attorney, Michael C. Moore, Assistant United States Attorney, OFFICE OF THE UNITED STATES ATTORNEY, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Eugene Johnson appeals the district court's order denying his motion for compassionate release under 18 U.S.C. § 3582(c)(1)(A). After reviewing the record, we conclude that the district court did not abuse its discretion in adjudicating Johnson's motion. *See United States v. Bethea*, 54 F.4th 826, 831, 834 (4th Cir. 2022) (noting standard of review, findings district court must make before granting compassionate release, and guideposts for determining whether district court abused its discretion in considering 18 U.S.C. § 3553(a) factors). Additionally, despite Johnson's arguments to the contrary, we discern no error in the court's reliance on *United States v. Ferguson*, 55 F.4th 262, 270-72 (4th Cir. 2022) (recognizing defendant may not challenge the validity of his conviction or sentence in a compassionate release motion), *cert. denied*, 144 S. Ct. 1007 (2024), to hold that Johnson could not challenge the validity of his underlying conviction and sentence in a compassionate release motion.

Accordingly, we affirm the district court's order. *United States v. Johnson*, No. 3:90-cr-00113-MHL-RCY-1 (E.D. Va. Aug. 24, 2023). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: November 13, 2024

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6846
(3:90-cr-00113-MHL-RCY-1)

UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

EUGENE JOHNSON

Defendant - Appellant

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc. The court grants the motion to exceed length limitations.

Entered at the direction of the panel: Judge Wilkinson, Judge Agee, and Senior Judge Floyd.

For the Court

/s/ Nwamaka Anowi, Clerk

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,

v. Criminal No. 3:90cr113 (DJN)

EUGENE JOHNSON,
Defendant.

MEMORANDUM ORDER
(Denying Motion for Compassionate Release)

This matter comes before the Court on Defendant Eugene Johnson's ("Defendant") Motion for Compassionate Release pursuant to 18 U.S.C. § 3582(c)(1)(A). ("Def. Mot." or "Motion" (ECF No. 121).) Defendant asks the Court to reduce his sentence to time-served. (*Id.* at 1.) The Government opposes Defendant's Motion. (ECF No. 133.) Upon due consideration, and for the reasons set forth below, the Court finds that Defendant's Motion does not present an extraordinary and compelling reason supporting the relief that he seeks. Furthermore, even if the Court were to accept Defendant's extraordinary and compelling reasons for relief, the Court would not exercise its discretion to reduce or otherwise alter Defendant's sentence, because the sentencing factors as set forth under 18 U.S.C. § 3553(a) would not support such action due to the violence and severity of Defendant's crimes, as evidenced by his original sentence. In sum, because society's interest in Defendant's continued incarceration overwhelmingly outweighs his personal circumstances, *United States v. Hargrove*, 30 F.4th 189, 197 (4th Cir. 2022), the Court DENIES Defendant's Motion.

I. BACKGROUND

A. Johnson's Underlying Offenses

Beginning in the late 1970s, Defendant and his brothers began selling drugs from their Richmond, Virginia home. (Presentence Investigation Report ("PSR") (ECF No. 86) at 35.) Eventually, the Johnson family formed a "symbiotic relationship" with the Brown family, thus forming the Johnson-Brown organization that operated primarily in the Blackwell section of Richmond. (*Id.* at 32, 37.) The Johnson-Brown organization conspired to distribute large amounts of cocaine, obtained from New York, in the Richmond area. (*Id.* at 34.) Prosecutors and law enforcement estimated that approximately 300 individuals were involved in the organization. (*Id.* at 32.) Defendant assumed a leadership role in the drug operation sometime around 1983 and remained a leader for approximately six years. (*Id.* at 32, 37.) As such, Defendant had a hand in many aspects of the organization, including driving to New York to obtain the cocaine and transporting the drugs back to Richmond. (*Id.* at 47, 49, 57.) Most concerningly, Defendant participated in "any decisions regarding violent acts committed by members of the organization." (*Id.* at 67.) These decisions included ordering organization members to commit murders in furtherance of the drug distribution gang's control of the city. Due to Defendant's actions, the Johnson-Brown organization killed multiple people to sell more drugs. Defendant's conduct as the leader of this group formed the basis for all of his underlying charges.

On December 5, 1990, a Grand Jury in the Eastern District of Virginia returned a twenty-three-count Indictment against Defendant and twelve co-defendants, with Defendant named in nineteen of the counts. (*Id.* at 1–2.) Specifically, Defendant was charged with:

Count 1: Conspiracy to Distribute Cocaine in violation of 21 U.S.C. § 846.

Counts 2, 3, 4, 7, 8 and 12: Distribution of Cocaine, in violation of 21 U.S.C. § 841(a)(1).

Counts 5, 17 and 18: Possession of a Firearm by a Convicted Felon, in violation of 18 U.S.C. § 922(g) and 18 U.S.C. §922(a)(2).

Counts 6, 14 and 21: Violent Crime in Aid of Racketeering (VICAR Murder), in violation of 18 U.S.C. § 1959.

Counts 9, 11, 15 and 19: Interstate Travel in Aid of Racketeering, in violation of 18 U.S.C. § 1953(a)(2)-(3).

Count 20: Employment of Persons Under 18 Years of Age, in violation of 21 U.S.C. § 845(b).

Count 23: Continuing Criminal Enterprise, in violation of 21 U.S.C. § 848.

Notably, Defendant committed a considerable amount of the underlying offenses while on parole for a state malicious wounding charge. (*Id.* at 99.) On December 15, 1990, Defendant pled not guilty to all charges in the Indictment. (*Id.* at 4.) Defendant continued to maintain his innocence throughout the trial and later, even well into his term of incarceration, as evidenced by his assertion that he was "wrongfully charged and convicted of the violent crimes" in his letter to the warden requesting compassionate release. (Def. Mot. at 3.)

A jury trial was held in February 1990. (PSR at 5.) During the trial, Defendant motioned four separate times for a continuance.[1] (Def. Mot. at 2). The court denied all of Defendant's motions for continuance. (*Id.*) Furthermore, on February 14, 1991, Defendant's counsel requested to be relieved. (*Id.* at 4.) The trial judge stated that he would take up the motion at a "later time." (*Id.*) After a recess, Defendant withdrew his motion in support of his counsel's

[1] Defendant's Motion states that his attorney motioned four separate times for a continuance. (ECF No. 121 at 2.) However, the Court only finds three motions for continuances in the Paper Docket. (Original Paper Docket Report ("Paper Docket") (ECF No. 12) at 1–3.) According to the Paper Docket, Defendant motioned for a continuance on the following dates: January 26, 1991, and twice on February 11, 1991. (*Id.*)

motion to be relieved. (*Id.*) While Defendant's counsel remained on the case, there appeared to be difficulties in the attorney-client relationship. (*Id.* at 14–19) (explaining the various outbursts by Defendant and comments made in open court about his counsel's performance).

At the conclusion of a nine-day trial, the jury found Defendant guilty as charged in Counts 1, 2, 4–9, 11, 12, 14, 15, 17–20 and 23 of the Indictment. (Paper Docket at 6.) After the preparation of a Presentence Investigation Report, the trial court sentenced Defendant to:

Count 1, 6, 14 and 23: Term of **Life** imprisonment

Counts 8, 12 and 20: Term of **40 years'** imprisonment

Counts 2, 4 and 7: Term of **20 years'** imprisonment

Counts 17 and 18: Term of **10 years'** imprisonment

Count 5, 9, 11, 15 and 19: Term of **5 years'** imprisonment

(J. at 2–2A, Paper Docket ECF No. 262.)[2] Taken together, the Court sentenced Defendant to a total of 405 years' imprisonment, plus four life sentences.[3]

In 1992, Defendant and seven co-defendants appealed their convictions to the Fourth Circuit. *See United States v. Johnson*, 1992 WL 163918, at *1 (4th Cir. July 16, 1992). Defendant and his co-defendants raised "numerous challenges to the conduct of the trial and

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[2] The sentencing court structured Defendant's sentence in the following manner: "The terms of imprisonment imposed on Counts Six, Seven, Eight, Nine, Eleven, Twelve, Fourteen, Fifteen, Seventeen, Eighteen, Nineteen, Twenty and Twenty-Three of the indictment shall be served concurrently with each other and with the term of imprisonment imposed on Count One of the Indictment." (*Id.*) Then, Defendant's term of imprisonment imposed on "Counts Two, Four and Five of the indictment shall be served concurrently with each other and with the term of imprisonment imposed on Count One of the Indictment." (*Id.*)

[3] As noted below, the Fourth Circuit vacated Defendant's sentence under Count I, resulting in a sentence of 405 years, plus three life sentences. *See United States v. Johnson*, 1992 WL 163918, at *1 (4th Cir. July 16, 1992).

sentencing." *Id.* The Circuit Court affirmed Defendant's conviction but vacated Defendant's sentence on Count 1. *Id.* at *3 (holding that the "district court erred when it imposed a sentence on their conspiracy convictions" because "'Congress did not intend that an individual be punished under both § 846 (conspiracy) and § 848 (continuing criminal enterprise).'") (quoting *United States v. Porter,* 821 F.2d 968, 978 (4th Cir. 1987)). The Circuit denied rehearing en banc. On remand, the Court set aside Defendant's conviction on Count One and vacated the sentence.[4] (Paper Docket at 9.)

On May 6, 1997, Defendant filed Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside or Correct Sentence. (Paper Docket ECF No. 345.) One day later, Defendant moved the Court to dismiss the petition, without prejudice, with leave to resubmit an amended or corrected petition. (Paper Docket ECF No. 346.) The Court granted Defendant's motion to dismiss his § 2255 motion, without prejudice. (Paper Docket ECF No. 347.) However, Defendant never filed an updated motion under § 2255.

On June 26, 2015, Defendant filed a *pro se* Motion for Modification of Sentence pursuant to 18 U.S.C. § 3582(c). (ECF No. 9.) Specifically, Defendant argued that his sentence should be reduced due to an amendment to the United States Sentencing Guidelines. (*Id.*) On December 18, 2015, the Court denied Defendant's request for sentence modification, holding that the amendment to the Sentencing Guidelines would not lower Defendant's guideline range. (ECF No. 19 at 1–2.) Defendant appealed this decision on January 4, 2016. (ECF No. 21.) On June 1, 2016, the Fourth Circuit affirmed, by an unpublished per curiam opinion, the Court's denial. (ECF No. 24.)

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[4] Defendant's sentence remained practically unchanged, because he had other life sentences properly imposed. (ECF Nos. 19, 133 at 2.)

B. Relevant Procedural History

On December 19, 2019, Defendant filed a *pro se* Letter Motion asking the Court to appoint an attorney to represent him in seeking compassionate release via a First Step Act Motion. (ECF No. 55.) The Court granted Defendant's request for counsel and directed the Clerk's office to appoint counsel for Defendant. (ECF No. 56.) After several motions for extension of time, Defendant's appointed counsel moved to be withdrawn from the case, because defense counsel did not believe that Defendant's claim had merit. (ECF No. 83.) Then, Defendant submitted a second *pro se* Letter Motion requesting the appointment of a new attorney, and the Court, again, granted Defendant's request for new counsel. (ECF Nos. 84–85.)

On October 6, 2021, Defendant, through counsel, filed a timely compassionate release motion. (ECF No. 121). Defendant's Motion argues that the extraordinary and compelling circumstances for sentence reduction include, among other things, "the very short period of time" that counsel had to prepare for trial, Defendant's "exemplary conduct in prison" and a letter from C.T. Woody, the lead investigator in Defendant's underlying case, requesting Defendant's release. (*Id.* at 1.)

On February 4, 2022, the Government responded in opposition to Defendant's motion for compassionate release. (ECF No. 133.) The Government argues that even if the Court finds that Defendant "established extraordinary and compelling grounds for relief, the § 3553(a) factors outweigh those grounds." (*Id.* at 27.) Finally, Defendant filed a Reply to the Government's Response in support of his motion on February 17, 2022. (ECF No. 136.)

II. APPLICABLE LAW

Courts award compassionate release in limited circumstances, and the compassionate release statute begins with the default position that the Court "may not modify a term of

imprisonment once it has been imposed." 18 U.S.C. § 3582(c). Originally, the law permitted only the Director of the Bureau of Prisons ("BOP") to move for compassionate release on a defendant's behalf. *United States v. McCoy*, 981 F.3d 271, 274 (4th Cir. 2020). In 2018, however, Congress expanded access to compassionate release by removing the BOP from a "gatekeeping role" and allowing federal prisoners to move a court for compassionate relief on their own behalf. *Id.* A federal inmate may directly motion for compassionate release after requesting a compassionate release from his warden and then (1) wait thirty days from the request to the warden or (2) exhaust his administrative remedies. § 3582(c)(1)(A).

Under § 3582(c)(1)(A), a court may grant a defendant's compassionate release motion once the procedural requirements are met if the reduction is (1) warranted by "extraordinary and compelling reasons," (2) in harmony with the "'applicable policy statements issued by the Sentencing Commission'" and (3) consistent with "any applicable § 3553(a) factors." *United States v. Jenkins*, 22 F.4th 162, 169 (4th Cir. 2021) (quoting *United States v. Kibble*, 992 F.3d 326, 330 (4th Cir. 2021)).

Section 3582(c) does not define what constitutes an extraordinary and compelling reason for compassionate release. However, the Fourth Circuit has held that district courts must conduct a "multifaceted" analysis and consider the "totality of the relevant circumstances." *Hargrove*, 30 F.4th at 197–98 (4th Cir. 2022). For example, the Court may consider the defendant's age at the time of the offense, his prior criminal history, his behavior and rehabilitation while incarcerated, and the amount of time served. *See McCoy*, 981 F.3d at 274 (upholding the district court's decision to reduce a sentence based on the listed factors).

The extraordinary and compelling reasons proffered must be consistent with any Sentencing Commission policy statements. *Jenkins*, 22 F.4th at 189. However, the Fourth

Circuit has held that there is no applicable Sentencing Commission policy statement regarding motions filed directly by defendants because the Sentencing Commission issued the policy statement in § 1B1.13 of the United States Sentencing Guidelines before the expansion of compassionate release that permitted defendants to move for compassionate release on their own behalf. *McCoy*, 981 F.3d at 276. Thus, the Court may make its "own independent determinations of what constitutes" an extraordinary and compelling reason. *Id.* at 284. Importantly, however, the Application Note for § 1B1.13 of the Sentencing Guidelines, while not binding, provides courts with helpful guidance in defining extraordinary and compelling circumstances. *Hargrove*, 30 F.4th at 194 (citing *McCoy*, 981 F.3d at 282 n.7). The Application Note creates three categories of extraordinary and compelling reasons and one "catch-all" category. *McCoy*, 981 F.3d at 276. The three categories deal with a defendant's medical condition, his health and age, and his family circumstances. *Id.* (summarizing the factors outlined in the Application Note for U.S.S.G. § 1B1.13).

Lastly, the third prong of compassionate release analysis requires that a sentence reduction remain compatible with the § 3553(a) sentencing factors. *Jenkins*, 22 F.4th at 169. Therefore, a court may deny an inmate's compassionate relief motion despite the inmate establishing extraordinary and compelling reasons for relief if the § 3553(a) factors weigh against sentence reduction. *United States v. High*, 997 F.3d 181, 185 (4th Cir. 2021) (denying an inmate's compassionate release motion despite the inmate's health concerns rising to an extraordinary and compelling level because the §3553(a) sentencing factors did not support a sentence reduction).

A. Defendant's Motion is Properly Before the Court

Under § 3582(c), a defendant has two routes by which he may come to federal court after requesting that the warden of his facility move for compassionate release on the defendant's behalf: exhaust his administrative remedies through appeal or wait thirty days. *United States v. Muhammad*, 16 F.4th 126, 130–31 (4th Cir. 2021) (citing *United States v. Garrett*, 15 F.4th 335, 338 (5th Cir. 2021) (explaining that "whichever of those events occurs 'earlier' triggers the right to file in the district court")). Defendant submitted a request for compassionate release to his facility's warden dated May 19, 2020. (Def. Mot. Ex. 3, at 3.) The warden denied Defendant's request on July 6, 2020. (*Id.* at 1.) There is nothing in the record that indicates Defendant appealed the warden's decision. However, Defendant waited thirty days after filing his request with the warden to motion the Court for compassionate release on his own behalf.[5] Therefore, Defendant satisfied the procedural threshold of § 3582(c), and the Court proceeds with the merits of his Motion. *Muhammad*, 16 F.4th at 131.

B. Compassionate Release is the Improper Vehicle to Collaterally Attack a Conviction

While packaged as a motion for compassionate release, Defendant's Motion really serves as an improper mechanism to challenge Defendant's underlying convictions. This Defendant cannot do in a compassionate release motion. As such, the Court will DENY Defendant's Motion to the extent that it impermissibly raises collateral attacks on Defendant's conviction or sentence.

It remains well settled that "a compassionate release motion cannot be used to challenge the validity of a defendant's conviction or sentence." *United States v. Ferguson*, 55 F.4th 262,

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[5] Defendant filed this motion for compassionate release on October 6, 2021, which is well beyond the thirty-day threshold. *See* (ECF No. 121.)

272 (4th Cir. 2022) (noting that 28 U.S.C. § 2255 remains "[t]he exclusive remedy" for post-conviction collateral attacks). When properly brought, a compassionate release motion may argue "that a change in the sentencing law that occurred after [the sentencing] . . . merit[s] a reduction in [the sentence] to conform to that change," *id.* at 270-72, or that Defendant's current, personal circumstances present such an extraordinary reason as to justify a reduction in his sentence. But a statute that enumerates limited sentencing reduction avenues cannot be read to authorize unlimited forms of conviction challenges: to the contrary, the explicit list forecloses such attacks. *See* 18 U.S.C. § 3582(c) (listing the only ways that a court may modify a sentence once imposed).

In contrast, Congress has provided that a "federal prisoner who collaterally attacks his sentence ordinarily must proceed by a motion in the sentencing court under § 2255." *Jones v. Hendrix*, 143 S. Ct. 1857, 1863 (2023). A § 2255 motion allows inmates to motion the court to vacate, set aside or correct a judgment that has been imposed "without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner." Second, prisoners may petition the Court for a writ of habeas corpus under 28 U.S.C. § 2241 if § 2255 remains "inadequate or ineffective." *Ferguson*, 55 F.4th at 270 (quoting *United States v. Simpson*, 27 F. App'x 221, 224 (4th Cir. 2001) (Traxler, J. concurring)).

Additionally, Section 2255 is the "'exclusive remedy' for challenging a federal conviction or sentence after the conclusion of the period for direct appeal." *Ferguson*, 55 F.4th at 270 (citing *Simpson*, 27 F. App'x at 224). Thus, a court may not consider factors that are exclusively under the control of 28 U.S.C. § 2255 when deciding a compassionate release motion. *Ferguson*, 55 F.4th at 270. Furthermore, federal inmates are foreclosed from

circumventing the requirements of § 2255 by attaching another label to their motion, such as compassionate release. *United States v. Winestock*, 340 F.3d 200, 203 (4th Cir. 2003). Thus, the Court must distinguish between the label and the substance of a defendant's request for relief to ensure the inmate is not circumventing § 2255's requirements. *Ferguson*, 44 F.4th at 270.

If a defendant submits a compassionate release motion that "in substance . . . attacks his conviction and/or sentence," then the Court must treat the motion as a § 2255 motion. *Id.* Meaning, the Court must set aside any collateral attacks on the underlying conviction and only consider the appropriate compassionate relief factors when analyzing the appropriateness of a sentence reduction under § 3582(c)(1)(A). *See, e.g.*, *id.* at 272 (upholding the district court's decision to disregard the defendant's challenges to the validity of his conviction while considering a motion for compassionate relief).

In summary, Congress laid out two detailed mechanisms for post-conviction relief: one attacking a defendant's conviction, the other for reduction of a defendant's sentence once imposed. Defendant seeks to employ the wrong posttrial avenue and the elaborate statutory roadmaps leave little room, if any, for this. As a § 2255 motion contemplates the very attacks that Defendant brings, a compassionate release motion does not. Here, Defendant filed his current compassionate release motion in October 2021, well-beyond the one-year statute of limitations for bringing a § 2555 motion. 28 U.S.C. § 2255(f) (applying a one-year limitations period, running from, among other dates, the date on which the judgment of conviction becomes final). While Defendant did file a timely § 2255 Motion in 1997, however, he sought dismissal without prejudice of the motion, which the Court granted. (Paper Docket ECF Nos. 346–47.)

Defendant never filed a subsequent Motion and cannot seek to raise those arguments now under the guise of a compassionate release motion.[6]

With these principles in mind, the Court now turns to Defendant's arguments in support of his Motion, finding them lacking as Defendant seeks to attack, rather than reduce, his underlying sentence.

1. Defendant's Ineffectiveness of Counsel Arguments Are Not Appropriate for a Compassionate Release Motion

Defendant argues that his appointed counsel performed unsatisfactorily at trial. For example, Defendant asserts that his lawyer did not "conduct any investigation into the allegations." (Def. Mot. at 13.) Defendant believes that his counsel's performance "undeniably impacted" Defendant's right to a fair trial and assistance of counsel. (*Id.* at 42.) Defendant further contends that his attorney placed his own "self-interest above the interests of his client" after Defendant complained about his attorney's performance during trial. (*Id.* at 44.)

Defendant's arguments fall under the umbrella of an ineffective assistance of counsel claim. *See, e.g.*, *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (citing *Strickland v. Washington*, 466 U.S. 688, 690–91 (1984)) (finding that counsel's unreasonable failure to investigate gives rise to an ineffective assistance of counsel claim); *Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980) (holding that a defendant who shows that "his counsel actively represented conflicting interests" establishes the predicate for an ineffective assistance of counsel claim). When analyzing a claim of ineffective assistance of counsel, courts should ask "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686. Meaning, a defendant must show that

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[6] In essence, Defendant seeks to bring a successive application under § 2255. However, as Defendant's brought his Motion under § 3582, the Court will treat the Motion as such.

"counsel's errors were so serious" as to "require reversal of a conviction." *Id.* at 687. Thus, ineffective assistance of counsel arguments, in essence, constitute collateral attacks on a defendant's conviction, because they require the court to evaluate the validity of the underlying conviction. *In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997).

However, a compassionate release motion is not the appropriate vehicle to raise ineffective counsel arguments, because Congress provided § 2255 as the sole mechanism to collaterally attack a conviction. *Farkas v. Butner*, 972 F.3d 548, 554–55 (4th Cir 2020). Although Defendant characterizes his motion as a compassionate release motion, the Court must consider the substance of the request. *Ferguson*, 55 F.4th at 270. Therefore, the Court may not take into account Defendant's ineffective counsel arguments that seek to undermine the underlying conviction, because the claims are inappropriately raised in this motion. *See id.* at 270, 272 (finding that the district court properly disregarded collateral attacks on the underlying conviction while considering a compassionate release motion).

Since the Court cannot consider ineffective assistance of counsel claims in a compassionate release motion, Defendant's arguments regarding his counsel's performance cannot give rise to an extraordinary and compelling reason for compassionate release.

2. Changes in 18 U.S.C. § 3005 Do Not Directly Impact Defendant

Next, Defendant argues that a 1994 change to 18 U.S.C. § 3005 creates an extraordinary and compelling reason for relief. (Def. Mot. at 39.) During Defendant's trial, the Court appointed Defendant only one attorney. (*Id.* at 3.) Defendant argues that the change to § 3005 would require Defendant to receive two attorneys, since he was charged with three capital offenses.[7] (*Id.* at 39.) Defendant asserts that courts may consider changes in law between the

[7] Counts 6, 14 and 21 of the indictment qualified as capital offenses. (ECF No. 121 at 39.)

time of sentencing and a compassionate release motion as an extraordinary and compelling reason for relief. (*Id.*)

Defendant correctly contends that courts may consider nonretroactive changes in sentencing law as extraordinary and compelling reasons warranting compassionate release. *See Concepcion v. United States,* 142 S. Ct. 2389, 2404 (2022) (holding that courts may consider "intervening changes of law or fact in exercising their discretion to reduce a sentence" pursuant to § 3582(c)(1)(A)); *McCoy*, 981 F.3d at 285 (finding that a change in law constituted an extraordinary and compelling reason to grant compassionate release). In *McCoy*, the Fourth Circuit specifically found that changes in law that create a "gross disparity" between a petitioner's original sentence and the sentence that could be imposed under current law can constitute an extraordinary and compelling reason for granting compassionate release. *McCoy*, 981 F.3d at 285–86. In contrast, changes in law outside of sentencing do not give rise to extraordinary and compelling reasons for a sentence reduction, as here. *See United States v. Bridgewater*, 995 F.3d 591, 598 (7th Cir. 2021) (holding that "the extraordinary circumstances that invoke compassionate release occur *after* sentencing," not during the underlying criminal proceedings).

First, while the Court may consider changes of law as an extraordinary and compelling reason for relief, the 1994 change to § 3005 does not apply to Defendant. Before 1994, a court was not required to appoint two attorneys for an individual indicted for a capital offense. The statute, before 1994, used the phrase "not exceeding two" attorneys, while the current version uses the phrase "assign two such counsel." 18 U.S.C. § 3005 (1986); 18 U.S.C. § 3005 (2023). In *United States v. Boone*, the Fourth Circuit held that the two-attorney requirement applied regardless of whether the government sought the death penalty. 254 F.3d 352, 359 (4th Cir.

2001) (relying on the statute's use of the word "indicted" as the triggering event for the appointment of two attorneys). But, as relevant here, both versions of § 3005 state that a defendant is entitled to a second attorney "*upon his request*." 18 U.S.C. § 3005 (1986) (emphasis added); 18 U.S.C. § 3005 (2023) (using the phrase "upon the defendant's request"). Thus, a defendant "must . . . request the apportionment of a second lawyer for the two-attorney requirement to apply." *United States v. Shepperson,* 739 F.3d 176, 178 (4th Cir. 2014) (quoting *Boone,* 245 F.3d at 359 n.7). Nothing in the record indicates that Defendant or his counsel requested a second attorney, and Defendant makes no argument that a second attorney was requested. Therefore, the two-attorney requirement does not apply regardless of the change in law, *see Shepperson*, 739 F.3d at 178, and, thus, does not give rise to an extraordinary and compelling reason for compassionate release.

However, this all remains beside the point: not all changes in law prove equal. Defendant's arguments that a change in law gives rise to an extraordinary and compelling reason for relief ignore that the change in law, if it applied here, does not relate to his sentencing, merely the validity of his conviction. Again, the Court reminds Defendant that compassionate release motions seek to reduce sentences, not vacate them. *Compare Ferguson*, 55 F.4th at 270 (holding that compassionate release constitutes an inappropriate vehicle to collaterally attack an underlying conviction), *with McCoy*, 981 F.3d at 285–86 (granting the defendant's motion for compassionate release when changes in *sentencing* law caused gross disparities between current and original sentencing possibilities), *and United States v. Brown*, Case No. 21-7752, at *17 (4th Cir. Aug. 16, 2023) (granting a sentence reduction based on a change in law that created "the most grievous case" of *sentencing* disparity). As Defendant still attempts to collaterally attack his conviction's validity through claims regarding his unhappiness with his counsel and the trial

court, the Court finds that these arguments do not demonstrate an extraordinary and compelling reason for compassionate release.

3. Defendant's Argument Regarding Unfair Trial Procedure Is Not Appropriate for a Motion for Compassionate Release

Defendant further argues that his counsel did not have enough time to prepare for trial and that the trial court erred in denying Defendant's four motions for a continuance. (Def. Mot. at 2.) Here again, the Court is unable to consider these claims because they are also inappropriately brought under compassionate release.

In making this argument, Defendant attempts to undermine his underlying convictions. Compassionate release serves as a post-conviction mechanism that allows courts to consider particular factors to resentence an individual. 18 U.S.C. § 3582(c). While Defendant may have benefitted from more time to prepare for trial, a compassionate release motion is not the appropriate mechanism to raise such a claim. *See id.* ("A criminal defendant is foreclosed from the use of another mechanism, such as compassionate release, to sidestep § 2255's requirements."). Thus, the Court must set aside Defendant's arguments regarding the trial court's denial of motions to continue, because these arguments cannot constitute an extraordinary and compelling reason for compassionate release. *See, e.g.*, *id.* at 272 (upholding the district court's decision to disregard the defendant's challenges to the validity of his conviction as extraordinary and compelling reasons for compassionate release).

C. Defendant Does Not Demonstrate that an Extraordinary and Compelling Reason Entitles Him to Compassionate Release

While the Court may not consider the reasons improperly raised in the compassionate release motion, Defendant brings two additional points that he believes are extraordinary and compelling: (1) his "exemplary conduct in prison" and (2) "a letter from the lead investigator in

the case." (Def. Mot. at 1.) As explained below, the Court does not find these reasons extraordinary and compelling.

1. Defendant's Rehabilitation Efforts

First, Defendant argues that his prison Progress Report (Def. Mot. Ex. 2) indicates that he is a "model prisoner." (Def. Mot. at 27.) Specifically, Defendant points to his programming and work record in prison, along with his lack of infractions since 2006. (*Id.*) Defendant argues that his continued participation in educational programming serves as evidence of his rehabilitative accomplishments. (*Id.* at 45.)

Defendant accurately depicts his participation in prison programming. According to Defendant's prison Progress Report, Defendant has participated in programming including "vocational courses, self-improvement classes, educational programs and health courses." (*Id.*); (Def. Mot. Ex. 2, at 1–2.) Furthermore, Defendant's work assignment summary states that he has "consistently earned above-average work evaluations." (*Id.* at 1.) Defendant's commitment to educational programming and his above-average work evaluations indicate that Defendant has made considerable steps towards rehabilitation.

In contrast to Defendant's rehabilitative efforts, Defendant's prison disciplinary record is not clean, with Defendant obtaining four infractions including fighting, assault and possession of an unauthorized item. (*Id.* at 2.) However, the Court finds persuasive that Defendant has maintained a clean record for nearly seventeen years. (*Id.* (Defendant's last disciplinary infraction occurred in 2006.).) Thus, Defendant's educational progress and work performance, coupled with Defendant's clean record since 2006, show that Defendant has undergone some rehabilitation.

As further evidence of his rehabilitation, Defendant provides the Court with a variety of letters from family and a fellow inmate. Defendant's brother wrote that Defendant has had a "deep positive change" during his thirty years of incarceration. (Def. Mot. Ex. 5, at 1.) Both Defendant's daughter and cousin spoke to the positive impact that Defendant has had on their lives despite being incarcerated. (Def. Mot. Exs. 8, 11.) Beyond his family, Defendant has also served as a role model to fellow inmates, even helping one inmate study for the GED. (Def. Mot. Ex. 8, at 1.) All of the letters supplied by the Defendant show that he has made significant progress during incarceration and takes his rehabilitation seriously.[8]

Although the Court recognizes Defendant's rehabilitation progress, rehabilitation alone is categorically not an extraordinary and compelling reason. *United States v. Davis*, 2022 WL 127900, at *1 (4th Cir. Jan. 13, 2022). Rehabilitation can only serve as one factor that courts consider in conjunction with others. *Id.* Thus, the Court must consider other reasons addressed by Defendant to determine if he provides an extraordinary and compelling reason for sentence reduction.

2. Length of Sentence That Defendant Has Served

Defendant additionally points to a letter written by Detective C.T. Woody, the lead investigator in the case. Mr. Woody wrote that he believes that Defendant "has paid his debt to society" and recommends that Defendant be "released from incarceration" to rejoin his family. (Def. Mot. Ex. 1, at 1.) Defendant cites to Mr. Woody's letter as evidence that Defendant is no longer a threat to society. (Def. Mot. at 34.) However, the Court considers Mr. Woody's letter as, fundamentally, an argument about the length of time that Defendant has served. The Court

[8] The Court notes, however, that Defendant has not yet accepted responsibility nor admitted guilt for the violent crimes that he committed. While Defendant has claimed responsibility for the drug-related offenses, the lack of responsibility, and thus remorse, for his acts of violence, diminishes any rehabilitation that has occurred.

declines to give the letter any other weight because Detective Woody's former role was not to determine sentencing; that job belongs solely to the Court. *See Mistretta v. United States*, 488 U.S. 361, 396 (1989) (finding that sentencing judges have discretion "to do what they have done for generations — impose sentences within the broad limits established by Congress").

The amount of prison time served by a defendant can constitute an extraordinary and compelling reason. *See McCoy*, 981 F.3d at 274 (upholding a district court's decision to consider time served as an extraordinary and compelling reason when granting compassionate release). However, serving only a portion of a considerable sentence may weigh against granting compassionate release. *See Kibble*, 992 F.3d at 331 (citing *United States v. Chambliss*, 948 F.3d 691, 694 (5th Cir. 2020) (upholding a district court's decision to deny a compassionate release motion based, in part, on the defendant having served only fourteen years of a thirty-year sentence)).

The Court recognizes that Defendant has served thirty-two years in prison, which is a considerable amount of time. However, Defendant was sentenced to the maximum sentence for each count, which included four life sentences. (J. at 2–2A, Paper Docket ECF No. 262); (PSR at 119) (outlining the statutory sentencing provisions for each count). Thus, the original sentencing court believed that Defendant should spend the rest of his life in prison due to the severity of Defendant's crimes and the danger that he posed to society. Indeed, Defendant engaged in horrific crimes, including VICAR murder, as party of a criminal enterprise that he helped lead. Additionally, incarceration and supervision while on parole failed to dissuade Defendant from violence previously, which evinces the likelihood of Defendant's continued threat to society. As such, the Court does not find it extraordinary nor compelling that Defendant has served only thirty-two years of his multiple life sentences.

Therefore, while Defendant's rehabilitative efforts are commendable, those efforts cannot rise to an extraordinary and compelling reason alone. *Davis*, 2022 WL 127900, at *1. Defendant may conduct himself well as an inmate, but this does not negate his horrendous crimes. As Defendant failed to show any additional extraordinary and compelling reasons, Defendant has failed to meet the first prong of compassionate release and the Court must DENY his Motion. (ECF No. 121.)

D. The 18 U.S.C. § 3553(a) Factors Also Do Not Support Any Modification To Defendant's Sentence

Even if Defendant had established an extraordinary and compelling reason for sentencing relief, the Court would still deny his motion, because the § 3553(a) sentencing factors do not support his request to reduce his sentence to time served. *See McCoy*, 981 F.3d at 275 (stating that § 3582(c)(1)(A) requires district courts to determine "if the § 3553(a) factors merit [compassionate release]"). The § 3553(a) factors include, among others, the nature and circumstances of the underlying offense and the history and characteristics of the defendant, as well as the need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, provide just punishment for the offense, afford adequate deterrence to criminal conduct, protect the public from a defendant's further crimes, and provide a defendant with training, medical care, or other correctional treatment. 18 U.S.C. § 3553(a)(1)–(2). In considering a motion for compassionate release, the Court "need not provide an exhaustive explanation analyzing every § 3553(a) factor." *Jenkins*, 22 F.4th at 170. Thus, as most relevant here, the Court finds that the severity of Defendant's underlying offense, his criminal history and his extensive leadership role in the drug operation underlying his conviction weigh overwhelmingly against the relief that he seeks.

Defendant was the leader of the Johnson-Brown cocaine distribution organization. (PSR at 37.) Investigators believed that at least 300 individuals were involved in the organization's activities over the course of six years. (*Id.* at 32.) While the organization operated with many members, Defendant did not take a back seat to the operation. Rather, Defendant personally traveled to New York to obtain cocaine and transport kilograms worth of drugs back to Richmond. (*Id.* at 47, 49, 57.) And, even more concerning, Defendant was convicted of two charges of violent crime in aid of racketeering activity, which stem from his involvement in two murders in furtherance of the gang. (*Id.* at 42–45, 51–56.)

Indeed, the PSR stated that Defendant was "clearly the leader and most culpable" member of the organization, and that he became particularly involved "in any decisions regarding violent acts committed by the members of the organization." (*Id.* at 67.) Thus, the nature and the circumstances of Defendant's seventeen charges, coupled with Defendant's leadership role, weigh heavily against reducing his sentence. 18 U.S.C. § 3553(a)(1)–(2)(A); *see United States v. Freeman*, 617 F. Supp. 3d 386 (E.D. Va. 2022) (denying compassionate release where the defendant's leadership role in a drug conspiracy weighed against release under the § 3553(a) factors).

Furthermore, Defendant's conduct rendered him a career criminal, because he was over the age of 18 "at the time of the instant offense, the instant offense of conviction [wa]s a felony that [wa]s either a crime of violence or controlled substance offense, and the defendant ha[d] at least two prior felony convictions of either a crime of violence or a controlled substance offense."[9] (PSR at 91.) Defendant even committed portions of the underlying offense while on

[9] Defendant was convicted of Malicious Wounding in Richmond, Virginia, in 1984, and he received a sentence of 10 years. (PSR at 92.) Furthermore, Defendant was convicted of

parole for his 1984 malicious wounding conviction. (*Id.* at 99.) Thus, Defendant continued to return to criminal activity despite serving time in prison before these offenses. Defendant committed VICAR murder while on parole for a state murder sentence, a fact that the sentencing court considered when originally sentencing Defendant and the Court again considers now as weighing heavily against a sentencing change. As such, Defendant's criminal history and history of recidivism undermine any sentencing reduction. 18 U.S.C. § 3553(a)(1); *see High*, 997 F.3d at 189, 191 (upholding a district court's denial of compassionate release when the court heavily weighed the defendant's extensive criminal history and recidivism during its § 3553(a) analysis).

Based upon the foregoing reasons, the Court finds that the § 3553(a) factors overwhelmingly support Defendant's continued incarceration.

III. CONCLUSION

Defendant failed to establish an extraordinary and compelling reason for relief, and the § 3553(a) sentencing arguments further weigh against the remedy that Defendant seeks. Thus, the Court DENIES Defendant's Motion for Compassionate Release. (ECF No 121.)

The Court also DENIES Defendant's requests for an evidentiary hearing and oral argument as the Court finds no basis for such hearing and that it would not aid the Court's decisional process. *Cf. Franks v. Delaware,* 438 U.S. 154, 155–56 (1978) (requiring a "substantial preliminary showing" antecedent to an evidentiary hearing); *United States v. Pridgen*, 64 F.3d 147, 150 (4th Cir. 1995) ("The decision of the district court to conduct an evidentiary hearing is a matter left to the sound discretion of the district court."); *see also United States v. Sepulveda*, 34 F.4th 71, 77 (1st Cir. 2022) ("It is well-settled that criminal defendants

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Conspiracy to Commit Murder in 1990, and he received a prison term of 10 years. (*Id.*) As violent offenses, these prior convictions qualified Defendant as a career criminal.

are 'not automatically entitled to an evidentiary hearing on a pretrial or posttrial motion.'")

(quoting *United States v. McAndrews*, 12 F.3d 273, 279 (1st Cir. 1993)).

Let the Clerk file a copy of this Memorandum Order electronically and notify all counsel of record.

It is so ORDERED.

/s/
David J. Novak
United States District Judge

Richmond, Virginia
Date: August 24, 2023