

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION**

UNITED STATES OF AMERICA	)	
	)	
v.	)	CR422-065
	)	
DARA BUCK	)	
	)	

**GOVERNMENT’S SURRESPONSE IN OPPOSITION TO
DEFENDANT’S CONSTRUED REPLY**

Although docketed as a motion for sentence reduction, the government construes defendant Dara Buck’s latest filing as a reply brief in support of her pending 18 U.S.C. § 3582(c)(1)(A) motion.¹ (Doc. 55.)

First, the government notes that Buck did not file a notice of her intention to reply, as required by S.D.G.A. Local Rule 7.6. For this reason, the Court may strike her filing.

In any event, the government continues to assert her motion should be denied for the reasons stated in its original response, as well as in its response to Buck’s first § 3582(c)(1)(A) motion.² (Docs. 49, 54.) Nothing in her latest filing alters the

¹ Buck’s second § 3582(c)(1)(A) motion was filed August 18, 2023. (Doc. 53.)

² Buck’s aunt recently submitted a letter to the Court; however, the contents of the letter have not been verified. (Doc. 57.) *See United States v. Granda*, 852 F. App’x 442, 446 (11th Cir. 2021) (“What’s more, it was *Granda*’s burden to show that his circumstances warranted a reduction.”). Even so, although the aunt’s letter describes various hardships, it does not establish she is “incapacitated,” as required by § 1B1.13, application note 1(C)(i). And even if Buck were to demonstrate an “extraordinary and compelling” reason, the § 3553(a) factors still do not support her early release. *See United States v. Giron*, 15 F.4th 1343, 1347 (11th Cir. 2021); *United*

government's position that she has failed to establish an "extraordinary and compelling reason" under U.S.S.G. § 1B1.13 or that the 18 U.S.C. § 3553(a) factors do not support her early release.

In fact, in her most recent filing, Buck states that she "was forced to sign a plea deal" and was not allowed to "see a copy of [her] PSR," which she now contends contain "lies." (Doc. 55 at 1.) And although Buck characterizes her crimes as "victimless" (Doc. 55 at 1), this is not true. Her crimes—which she committed while serving in the U.S. Army—victimized both the taxpayers and the legitimate business-owners who needed government assistance to keep their small businesses afloat during the time of an international pandemic.³ (PSR ¶¶ 7-12.) These statements show Buck failing to take full responsibility for her criminal conduct, which also supports the denial of her motion. *See, e.g., United States v. Albertie*, No. 3:08-cr-360, 2021 WL 1924187, at *4 (M.D. Fla. May 13, 2021) (denying motion under § 3553(a) factors because, in part, "[d]efendant fails to demonstrate any acceptance of responsibility for the offense").

Finally, Buck's request for home confinement should also be denied. (Doc. 55 at 1.) Under 18 U.S.C. § 3623(c)(2) and 34 U.S.C. § 60541, it is BOP's responsibility to compute a prisoner's sentence, including home confinement designation—not the

States v. Tinker, 14 F.4th 1234, 1237-38 (11th Cir. 2021).

³In its judgment, the Court ordered Buck to pay over \$3.6 million in restitution to the U.S. Small Business Administration and the U.S. Department of Education. (Doc. 44 at 6; PSR ¶ 62.) This hardly counts as victimless.

courts’. *See Gonzalez v. United States*, 959 F.2d 211, 212 (11th Cir. 1992), *abrogated on other grounds by Santiago-Lugo v. Warden*, 785 F.3d 467 (11th Cir. 2015); *Clay v. Henderson*, 524 F.2d 921, 924 (5th Cir. 1975) (“[T]he Board of Prisons, through the Attorney General, possesses the absolute authority, absent a showing of abuse of discretion, to designate the place of a prisoner’s confinement and to administer transfer matters.”); *see also Washington v. Warden Canaan USP*, 858 F. App’x 35, 36 (3d Cir. 2021) (“[W]e agree with the District Court that whether to transfer an inmate to home confinement is a decision within the exclusive discretion of the BOP.”). These statutes “do not authorize a federal court to order the BOP to release a prisoner . . .” *See United States v. Calderon*, 801 F. App’x 730, 731-32 (11th Cir. 2020) (explaining that under § 60541(g)(1)(A) the Attorney General “may” release eligible elderly offenders, and district court was without jurisdiction to grant relief); *United States v. Pribyl*, No. 20-11848, 2022 WL 424874, at *2 (11th Cir. Feb. 11, 2022) (“But [the CARES Act] does not provide the *judiciary* any additional authority to grant home confinement to a prisoner.”).

The Court thus does not have the ability to place Buck on home confinement—that is left to BOP’s discretion. *See United States v. Pearson*, No. 21-10750, 2021 WL 4987940, at *1 n.1 (11th Cir. Oct. 27, 2021) (“[T]he district court lacked the authority to grant [defendant] relief under these provisions because they place home-confinement decisions exclusively within the discretion of the Attorney General and the Bureau of Prisons.”). BOP is in the best position to determine whether, and when, home confinement placement is reasonable.

For these reasons, the United States continues to request that defendant's § 3582(c)(1)(A) motion (Doc. 53) be denied.

Respectfully submitted,

JILL E. STEINBERG
UNITED STATES ATTORNEY

/s/ Justin G. Davids

Justin G. Davids
Assistant United States Attorney
Missouri Bar No. 57661
justin.davids@usdoj.gov

P.O. Box 8970
Savannah, Georgia 31412
(912) 652-4422

CERTIFICATE OF SERVICE

On September 27, 2023, I filed this response through this Court's ECF system and served all parties through the Notice of Electronic Filing. In addition, my office mailed a paper copy to:

Dara Buck, Reg. No. 10895-510
FPC Alderson
Federal Prison Camp
Inmate Legal Mail
Glen Ray Rd. Box A
Alderson, West Virginia 24910

JILL E. STEINBERG
UNITED STATES ATTORNEY

/s/ Justin G. Davids

Justin G. Davids
Assistant United States Attorney
Missouri Bar No. 57661
justin.davids@usdoj.gov

Post Office Box 8970
Savannah, Georgia 31412
(912) 652-4422