

IN THE
Supreme Court of the United States

MARK WILLIAMS, WARDEN OF ELKTON FEDERAL CORRECTIONAL INSTITUTION, AND
MICHAEL CARVAJAL, DIRECTOR OF THE FEDERAL BUREAU OF PRISONS,

Applicants,

v.

CRAIG WILSON, *et al.*,

Respondents.

**OPPOSITION TO APPLICATION FOR A STAY OF THE INJUNCTION
ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO AND FOR AN ADMINISTRATIVE STAY**

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INTRODUCTION

As the Government has slowly begun to roll out COVID-19 testing at Elkton, a grim picture has emerged that confirms the unique level of risk to prisoners there. In the face of this continuing threat and despite the deaths that have already resulted, the Government proclaims its “extensive efforts,” but ignores the most crucial metric: the growing number of infections. 573 prisoners have tested positive, and at least 461 prisoners are *currently* afflicted with COVID-19. And those numbers necessarily understate the problem, because anyone who contracted COVID-19 after being tested is not accounted for. And as for matters improving: the 461 cases that are currently infected constitute more than quadruple the number of the 112 who have already had the disease and recovered.¹

Thus, at least one in five prisoners housed at Elkton currently has COVID-19, and at least one in four prisoners have been infected at some point. Nine prisoners have already died, including two members of the medically vulnerable class subject to the injunction at issue here. Yet social distancing is literally impossible in Elkton’s 150-person communal units. Under current conditions, the 844² prisoners whom BOP itself has identified as elderly and medically vulnerable are being compelled to live at grave risk of contagion. No one would voluntarily live under such circumstances. By requiring medically vulnerable prisoners to do so, the Government has shown

¹ Federal Bureau of Prisons, COVID-19: Coronavirus (accessed June 2, 2020), <https://www.bop.gov/coronavirus/>.

² The District Court’s May 19 order gives 837 as the number based on a list from the Government that erroneously omitted 9 people. Two people on the list have since died of COVID-19.

deliberate indifference to a life-threatening disease, in violation of established Eighth Amendment standards.

The District Court’s order seeks to remedy that constitutional violation in the only way possible: by transferring the vulnerable out of harm’s way. Far from displacing BOP discretion, it has done so with utmost deference to that discretion, allowing the Government to determine how best to remove any given prisoner from danger, allowing the Government to assess whether prisoners can safely be removed to home confinement, and ordering no prisoner released where BOP finds a risk of recidivism. Its initial April 22 order gave the BOP absolute discretion in effectuating transfers out of Elkton, and it only issued further directives when BOP showed bad faith in its own review process. Even then, the District Court left to the BOP the final determination as to whether a particular individual is given home confinement, compassionate release, furlough, or transfer to another BOP facility that does not pose the risks present at Elkton. And contrary to the Government’s protestations about “public safety,” under no circumstance has the District Court ordered anyone released who poses a risk to public safety. The BOP’s discretion does not extend to violating the Constitution, or slow walking a remedy.

Yet to hear the Government tell it, the District Court has ordered the prison doors thrown open for over 800 prisoners.³ If that sounds implausible, it’s because it

³ Throughout this brief, the Director of the Bureau of Prisons and the Warden of Elkton—respondents below, and applicants here—are referred to as the “Government.” The habeas petitioners are termed “Petitioners.”

is not true.⁴ The District Court has ordered no one “dump[ed] * * * out onto the streets. No one’s interest would be served in doing so.” Gov. App. 26a. Indeed, as the Director of the BOP reminded the public in testimony to the Senate Judiciary Committee yesterday, home confinement “is still, after all, a form of incarceration for persons convicted of crimes.”⁵

In the context of a rarity among rarities—an unprecedented pandemic, and a prison that is both uniquely vulnerable to it and uniquely incapable of protecting the health of its most vulnerable charges⁶—the District Court, drawing on guidance from the Attorney General, the Centers for Disease Control and Prevention, the Sentencing Commission, and other authorities, ordered Elkton administrators on April 22 to begin reviewing every possible means for transferring the most medically vulnerable prisoners out of the facility. The District Court preserved BOP’s discretion as to how to get the job done, asking it to assess each vulnerable individual for the most appropriate means of transfer.

⁴ It is similarly not true that, as the Government stated in its stay application, “the district court has required the removal of more than 800 inmates from Elkton to begin June 5.” Stay App. 7. In fact, the district court set no deadline. We immediately notified the Government of its error and asked it to correct the misstatement. It has now filed a supplemental letter, claiming only that under *its own* quarantine timeline, it may start transferring inmates on June 5. But that is not what it said in its stay application—a fact that it implicitly concedes by submitting its letter.

⁵ *Statement of Michael D. Carvajal, Director, and Dr. Jeffrey Allen, Medical Director, Federal Bureau of Prisons, before the Committee on the Judiciary, United States Senate*, at 7 (presented June 2, 2020) <https://bit.ly/carvajaljune>.

⁶ Director Carvajal underscored this point yesterday as well. *See id.* at 3 (“two-thirds of our positive cases are in just 7 of our 122 institutions nationwide”).

Prison administrators only dug in their heels. Instead of implementing the carefully individualized consideration mandated by the District Court and recommended by the Attorney General, they rested on categorical exclusions to deny home confinement to whole classes of individuals based on (for example) a minor incident report, or a 46-year-old man’s “minor violence” 30 years ago, regardless of any other factors—and even where BOP’s own recidivism metric shows little or no risk. Observing that allowing such intransigence to continue would “threaten staff and * * * low security inmates,” the District Court issued an additional order on May 19, requiring them to stop using certain categorical assumptions, but otherwise again leaving the decisions about how best to remove each vulnerable from harm’s way to the Government’s discretion.

The Government’s urgency in this Court is manufactured, and belied by its own actions. It did not seek to stay the April 22 order in this Court until May 20. Its first motion to stay the May 19 order came ten days after that order issued. It accompanied that motion with a handful of new declarations, to which Petitioners responded with further expert and fact evidence. The District Court, though it reacted swiftly to the motion by ordering Petitioners to respond in one business day, has not yet had an opportunity to weigh the new evidence and rule. The Sixth Circuit denied a stay, while setting argument on the pending appeal for this Friday, June 5, and promising a ruling promptly thereafter, making a stay from this Court especially improvident. And in this Court, the Government inaccurately stated that the District Court “required the removal * * * to begin on June 5,” when the District Court did no

such thing. The District Court expressly declined to impose its own timetable for any transfers. *See* Transcript, *infra*, App. 123a (requiring status updates, but declining to set a specific date, noting that “almost any place is safer than Elkton, but logically, it is a relatively big effort”). And indeed, as the Government notes elsewhere in its brief, it has decided to transfer prisoners not all at once, but in groups, initially one of 128 prisoners, as they complete quarantine. Stay Appl. at 17.

This case does not require the extraordinary measure of this Court’s intervention. It is a fact-bound dispute, specific to a single prison afflicted by one of the nation’s worst COVID-19 prison outbreaks. The District Court consistently reacted with an appropriate balance of speed and thoughtfulness, at each stage leaving to the Government the ultimate decisions about how to remove vulnerable inmates from danger. The Government’s renewed effort to drag this Court into the midst of ongoing and careful factfinding and deliberation below is not warranted. At the end of the day, the Government asks the Court to place its own administrative burdens over the lives and health of those it concedes are medically vulnerable to a deadly disease.

STATEMENT

Elkton now has the second highest number of prisoners with COVID-19 in the entire BOP system. One in five prisoners at Elkton have COVID-19—461 of the 2,295

prisoners.⁷ Another 112 have had the disease and recovered.⁸ Because testing at Elkton is neither timely, nor comprehensive, the actual infection rate is certainly higher. Though Elkton houses less than 2% of federal prisoners, 13% of the COVID-19 deaths in BOP prisons have occurred there.⁹ Elkton prisoners cannot escape this contagion. They are housed in 150-person units, where it is literally impossible to practice the social distancing that the CDC deems essential to avoid being infected.

1. As a low-security facility, prisoners at Elkton “share cells, sleeping areas, supplies, bathing areas, and other living spaces.” Dr. Novisky Decl., *infra*, App. 5a, ¶10. Petitioner Craig Wilson, for example, lives in a housing unit of 150 people. The unit is divided into cubicles designed to accommodate two to three people, each “about 8 feet by 9 feet, with a 5-foot wall in between.” Wilson Decl. ¶6, *infra*, App. 45a. The bunks are close together, “definitely less than six feet in all directions.” *Id.* His unit has “10 sinks, 18 showers, 6 toilets, and 6 urinals” for 150 people. *Id.* Prisoners in the unit are “forced to get in tight lines for all meals and medications.” *Id.* The rest of Elkton is the same. *See, e.g.*, Nelson Decl. ¶2, *infra*, App. 24a (“There are 170 men in my pod, living 3 to a cell in spaces that were made for single

⁷ Federal Bureau of Prisons, COVID-19, <https://bit.ly/bopcovid> (last visited June 2, 2020) (reporting 461 cases); Federal Bureau of Prisons, FCI Elkton, (accessed June 2, 2020) <https://bit.ly/elktonbop> (reporting 2,295 total inmates).

⁸ Federal Bureau of Prisons, COVID-19, <https://bit.ly/bopcovid> (last visited June 2, 2020) (reporting 112 recoveries).

⁹ Federal Bureau of Prisons, COVID-19, <https://bit.ly/bopcovid> (last visited June 2, 2020) (reporting 9 deaths and 135,563 prisoners in “BOP-managed institutions”); Federal Bureau of Prisons, FCI Elkton, (accessed June 2, 2020) <https://bit.ly/elktonbop> (reporting 2,295 total inmates).

occupancy.”); McReynolds Decl. ¶6, *infra*, App. 29a (“Every day, all day, we’re in the dorm clustered in around each other, and it doesn’t change.”); Arzola Decl. ¶4, *infra*, App. 49a (“We’re overcrowded like cattle.”).

Because of Elkton’s design, prisoners are at an elevated risk from COVID-19. The shared spaces make “social distancing * * * impossible to implement,” and it has “limited * * * capacity devoted to administering solitary living conditions.” Dr. Novisky Decl. ¶10, *infra*, App. 5a. Compounding the problem, Elkton’s “staff must be in close contact with prisoners in the course of their regular jobs.” *Id.* ¶11, *infra*, App. 6a (providing examples of staff needing “to enforce security protocols, escort prisoners across cell blocks and units, administer medications, and supervise meal distribution”). The staff travels “in and out of the prison to return to the community following each shift,” and they “can easily carry the infection from the community to the prison and vice versa.” *Id.* ¶13, *infra*, App. 6a.

The BOP’s so-called (at 7) “multiphase action plan” to address the risk of COVID-19 at its facilities did not, and could not, solve this risk at Elkton. Phase 1 involved only planning. Dees Decl. ¶7, *infra*, App. 93a. Phase 2, implemented on March 13, included a grab-and-go meal system. *Id.* ¶12, *infra*, App. 95a. Yet when prisoners receive meals, “[s]ocial distancing is out the window,” as they line up “to get through a 4-6 foot wide door.” Arzola Decl. ¶6, *infra*, App. 50a. This is also their time to visit the commissary or get medicine. Dees Decl. ¶12, Gov. App. 95a. They are “forced to get in tight lines” to do so. Wilson Decl. ¶6, *infra*, App. 45a; Jackson Decl. ¶4, *infra*, App. 40a (“Even at that time, we still can’t be six feet apart.”); Bellamy

Decl. ¶4, *infra*, App. 32a (“[W]e have 5 minutes to get up, get dressed, and get to the building where we get our food boxes. Men are clustered together in line, because there’s no space to spread out.”). Phase 3 involved telework for some staff and an inventory of cleaning supplies. Dees Decl. ¶¶13–14, Gov. App. 95a. In Phase 4, incoming prisoners were quarantined for 14 days. *Id.* ¶15, 96a. In Phase 5, on March 31, BOP secured prisoners in their quarters, *Id.* ¶16, App. 96a–97a, which, at Elkton, means to be kept in communal units, cheek by jowl with other infected prisoners. At “any given moment,” prisoners are next to someone else. Bellamy Decl. ¶4, App. 32a (“I’m bumping up against people wherever I go.”); Nieves Decl. ¶3, *infra*, App. 36a (“In the TV rooms, the tables are right on top of each other.”); McReynolds Decl. ¶6, *infra*, App. 29a (“Every day, all day, we’re in the dorm clustered in around each other, and it doesn’t change.”). Phase 6, on April 13, simply maintained the status quo. Dees Decl. ¶17, Gov. App. 97a.

Access to cleaning and sanitation supplies does not change the structural realities at Elkton, and is limited. Prisoners report that Elkton has not provided “dispensers” for soap or hand sanitizer. Wilson Decl. ¶10, *infra*, App. 46a. They receive one four-ounce bottle of “‘3-in-1’ soap” per week. *Id.* Prisoners in a unit share a “big jug of watered-down antibacterial spray” and “have access to one shared area for hot water.” *Id.* The “sinks are so close to each other that * * * the splash from the next man’s toothpaste hits you, and you’re bumping elbows.” Arzola Decl. ¶5, *infra*, App. 50a. Prisoners were each given two disposable masks to be reused over several weeks. Nieves Decl. ¶6, *infra*, App. 37a.

Prisoners at Elkton understand the best practices to avoid the spread of COVID-19 but simply cannot implement them. Jackson Decl. ¶7, *infra*, App. 41a (“They’ve sent out memos telling us to keep your distance and wash your hands. I’m sure they know that’s not possible.”). Staff and prisoners cannot adhere to the social distancing that CDC and other health authorities recommend. It is, in short, “impossible” to spread out or social distance at Elkton. Dr. Goldenson Decl. ¶32, *infra*, App. 20a.

The BOP had tools to address the structural realities at Elkton, but declined to use them. As Congress and the Attorney General recognized, the only feasible route to reduce the risk COVID-19 presents at facilities like Elkton is to reduce the number of people exposed to that risk. *See* Coronavirus Aid, Relief, And Economic Security Act. Pub. L. No. 116-136, § 12003(b)(2), 134 Stat. 281, 516 (Mar. 27, 2020) (“CARES Act”). The Attorney General himself singled out the “significant level of infection” at Elkton, and directed that BOP officials “immediately maximize appropriate transfers” to home confinement. Barr Apr. Memo at 1, *infra*, App. 54a. No evidence showed BOP had done so; instead, BOP was *rescinding* home confinement grants. Petitioner Maximino Nieves, for example, resides in FSL Elkton, the low-security satellite camp. He has less than 6 percent—approximately 10 months—of his sentence remaining at the time this case was filed, and has a stable residence awaiting him upon release. Nieves Decl. ¶¶1, 9, *infra*, App. 36a–37a. After being told he was eligible for release to home confinement, he was placed *back* in the camp population without explanation. *Id.* ¶9, *infra*, App. 37a–38a. As for compassionate

release, 550 Elkton prisoners had sought release, but BOP had processed only seven applications and denied them all. Cole Decl. at 3, Gov. App. 108a.¹⁰ Nor was there evidence that BOP had transferred any prisoners from Elkton to facilities where social distancing would be possible.

All of this led to a predictable result. By the time Petitioners filed this habeas petition, and after the BOP's plan was complete, "at least 3 prisoners ha[d] died, and scores of prisoners and staff ha[d] reportedly been hospitalized, including more than a dozen who have needed ventilators to stay alive." Petn. ¶3, Gov. App. 54a. Prisoners fear for their lives because "it seems like it's only a matter of time until [they] get this virus." Wilson Decl. ¶ 4, *infra*, App 46a. Being at Elkton during this pandemic "feels like" being "handed a death sentence." *Id.*

2. On the basis of this record, the District Court found that a discrete set of medically vulnerable prisoners faced irreparable harm from COVID-19, and that Petitioners were likely to succeed on their claim that the BOP's failure to protect them from one of the worst concentrations of COVID-19 disease in the nation constituted deliberate indifference in violation of the Eighth Amendment. It therefore exercised its discretion to enter a preliminary injunction on April 22, affording BOP latitude as to how to remove individual prisoners from Elkton, but nonetheless requiring that vulnerable prisoners be moved out of harm's way.

¹⁰ Without a decision from BOP, prisoners must wait 30 days to file a compassionate release motion in the sentencing court. 18 U.S.C. § 3582(c)(1).

Petitioners are four prisoners at Elkton who filed a Section 2241 petition seeking relief from their confinement at Elkton. Gov. App. 56a–57a. They sought to represent themselves and a class of Elkton prisoners. Gov. App. 81a. Three Petitioners, Craig Wilson, Eric Bellamy, and Kendal Nelson have medical histories that CDC identifies as high-risk for COVID-19. *Id.* (discussing Wilson’s chronic asthma, Bellamy’s enlarged heart valve and additional heart problems, and Nelson’s asthma, heart disease, and kidney disease). The fourth, Maximino Nieves, faces a risk from COVID-19 because he cannot distance from others. Gov. App. 57a.

The District Court found that “the only truly effective remedy to stop the spread” is to separate individuals,” which was “impossible without the release of a portion of the population.” Gov. App. 17a. The finding was supported by declarations from seven Elkton prisoners, including Petitioners, attesting to the impossibility of social distancing and the unavailability of basic necessities. And it was supported by expert declarations from Dr. Meghan Novisky, who studies the consequences of carceral contact on health, and Dr. Joe Goldenson, a physician who has worked inside the prison system as a medical director and outside it as a court monitor. They attest that Elkton’s design cannot accommodate social distancing. Dr. Novisky Decl. ¶¶9–10, 16, *infra*, 5a, 7a; Dr. Goldenson Decl. ¶¶31–32, *infra*, App. 19a–20a. And they attest that, as a result, mitigating the COVID-19 risk requires reducing Elkton’s population, quickly. Dr. Novisky Decl. ¶¶18, *infra*, 8a; Dr. Goldenson Decl. ¶¶33–34, *infra*, App. 20a. Those measures need not result in a release from BOP custody, but

do require release from Elkton. Dr. Novisky Decl. ¶17–18, *infra*, App. 7a–8a (discussing home confinement).¹¹

The Government’s admissions at the preliminary injunction hearing supported this finding. They confirmed Petitioners’ evidence about the design of Elkton’s facilities. PI Tr. at 8, *infra*, App. 104a (discussing FCI-Elkton cubicles); *id.* at 9, *infra*, App. 105a (Prisoners at FSL-Elkton are housed “in bunk beds, not cubes within the unit.”); *id.* (discussing common areas). They confirmed that *there is nothing stopping prisoner-to-prisoner spread of COVID-19 within a unit.* *Id.* at 9–10, *infra*, App. 104a–105a. And they confirmed that no prisoners had been moved into home confinement, despite the Attorney General’s directive. *Id.* at 25, *infra*, App. 110a (six prisoners eligible but not released; 32 denied “for a variety of reasons”). By the time of that hearing, six prisoners had died. *Id.* at 28, *infra*, App. 113a

The District Court aligned the preliminary injunction with the Government’s own guidance. Petitioners asked to represent all current and future people in post-conviction custody at Elkton and a subclass of persons 50 or over or with certain

¹¹ This aligns with the Government’s own statements about what must happen at facilities like Elkton. CDC guidance stresses that social distancing is “a cornerstone of reducing transmission of respiratory disease such as COVID-19.” Ctrs. for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional And Detention Facilities at 4 (“*CDC Correctional Guidance*”) (Mar. 23, 2020), <https://bit.ly/cdcdetentioninterim>. The Government relies heavily on this document, though they did not raise it during the preliminary injunction briefing. The guidance cautions against transfers to and from facilities, as the Government notes, but that caution comes with an express carve-out, one that the Government omits: CDC does not recommend restricting transfers where a transfer is “necessary * * * to prevent overcrowding.” *Id.* at 9.

underlying health conditions that was particularly vulnerable if they were to contract COVID. Gov. App. 81a. The District Court instead identified a more limited subclass of medically-vulnerable persons: those age 65 or over, or with specified, documented underlying health conditions. Gov. App. 19a. This matched the CDC’s definition of the groups at highest risk from COVID-19.¹²

The District Court conditionally certified a narrow subclass of medically-vulnerable prisoners, holding that Rule 23’s requirements were met. As to Rule 23(a), it found that the subclass contains hundreds of prisoners (numerosity); the central question in the litigation is whether the risk created by COVID-19 at Elkton exposes vulnerable prisoners to an unconstitutional risk absent transfers (commonality); three named Petitioners have underlying medical conditions or age-related risk factors that define the subclass (typicality); and the subclass has a shared interest in obtaining social distancing that counsel will represent (adequacy). *Id.* at 21a–22a. As to Rule 23(b), the Government’s “failure to protect the inmates * * * applies to the entirety of the subclass generally and injunctive relief is appropriate as to the subclass,” satisfying Rule 23(b)(2). *Id.* at 22a.

For prisoners in this subclass, the District Court concluded that they sought relief available in habeas. It recognized that generally “challenges to the fact or duration of confinement that seek release sound in habeas whereas actions challenging the conditions of confinement raise concerns properly addressed under

¹² See Centers for Disease Control and Prevention, People Who Are at Higher Risk for Severe Illness (accessed May 21, 2020) available at <https://bit.ly/cdcrisks>.

§ 1983.” Gov. App. 17a. How that rule applies in a given case, it noted, is a heavily fact-dependent inquiry. That was true here. For the medically vulnerable subclass, “continued imprisonment at Elkton is unconstitutional given the COVID-19 outbreak,” which rendered their claim “closer to a challenge to the manner in which the sentence is served and [] therefore cognizable under 28 U.S.C. § 2241.” *Id.* at 18a. But as to the remaining prisoners, who sought relief through supervision of prison conditions by a public-health expert, their claims “sound more as a confinement conditions claim” that are not cognizable on habeas. *Id.*

The District Court found that this vulnerable subclass was likely to succeed on the merits of its Eighth Amendment claim. “[A]t this preliminary stage,” the District Court held that Petitioners had “sufficiently met the threshold for showing that [the Government] have been deliberately indifferent.” *Id.* at 23a. There was no dispute the Government was aware of the high COVID-19 infection rate at Elkton, and of the presence of hundreds of medically vulnerable inmates. Yet it had “altogether failed to separate” prisoners in line with the CDC guidance that had been in place for some time. *Id.*

The District Court found that the subclass would suffer irreparable harm absent an injunction. By that time, “6 out of 23, *more than 1 in 4*,” deaths nationwide from COVID-19 in the BOP system had “occurred at Elkton, making it a hotspot for the virus and certainly more dangerous than other facilities.” *Id.* at 24a (emphasis added). And COVID-19 would “continue to spread and pose a danger to inmates if BOP does not increase its efforts to stop the spread.” *Id.*

The court further found that addressing the risk to the subclass from COVID-19 at Elkton did not risk harm to others. A BOP policy requires transferees to be quarantined for 14 days before release. Barr Apr. Memo at 2, *infra*, App. 55a. “The continued implementation of this policy reduces the risk that an” Elkton prisoner “will carry the virus with him outside of the prison.” Gov. App. 25a.

Indeed, the court found that an injunction would *prevent* harm to others because though prisoners are confined to Elkton, the risks of COVID-19 are not. The number of infected staff at Elkton nearly matched that of infected prisoners. *Id.* at 10a. These infections endanger the staff’s families. *Id.* at 6. And they endanger the broader community. *Id.* at 13a. This risks straining hospitals in these communities, “some of them very small rural community hospitals,” that according to U.S. Representative Bill Johnson, could be overrun. Gov. App. 71a; *see also id.* 73a–74a (limited hospital and ICU capacity).

As to the broader public interest, the District Court found that an injunction would serve it too. The medically-vulnerable subclass included only prisoners by virtue of age or by having a serious medical condition, a group that was generally less likely to commit crimes if released. *Id.* at 26a (citing Sentencing Commission report on declining recidivism with age). The District Court emphasized that Petitioners sought to require the transfer of prisoners out of Elkton through any of several mechanisms. *Id.* Petitioners did not ask, and the court did not order, the Government “to throw open the gates to the prison.” *Id.* at 25a. The Government’s claim of an “indiscriminate release of thousands” thus had no grounding in the record. *Id.*

The District Court crafted an injunction that was tailored to its assessment of the equities, one that sought to remedy the constitutional violation while still recognizing BOP's discretion by leaving it to the Government to identify avenues for transferring inmates promptly. It required the Government first "to identify * * * the subclass" by April 23—that is, those who are considered most at risk pursuant to CDC's criteria. *Id.* at 27a. It then required the Government to "evaluate each subclass member's eligibility for transfer out of Elkton through any means, including but not limited to compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough," prioritizing members with higher medical risk levels by May 7. *Id.* If the Government identified a set of subclass members who were justifiably ineligible for any of those forms of "release," it required that they be "transferred to another BOP facility where appropriate measures, such as testing and single-cell placement, or social distancing, may be accomplished." *Id.* at 28a.

3. Three courts declined to stay this preliminary injunction. The Government unsuccessfully sought a stay from the District Court and the Sixth Circuit. More than two weeks later, and a month after the injunction was entered, it unsuccessfully sought an emergency stay from this Court.

The Sixth Circuit was first to deny a stay, on May 4. It began with the merits, agreeing that these claims are properly brought in habeas. The District Court had found that nothing short of reducing the prison population could mitigate the risk of COVID-19. The Sixth Circuit explained that "[w]here a petitioner claims no set of conditions would be constitutionally sufficient, [it] construe[s] the petitioner's claim

as challenging the fact of the confinement.” Gov. App. 3a. This “forecloses any argument that the PLRA applies given its express exclusion of ‘habeas corpus proceedings challenging the fact or duration of confinement in prison’ from its ambit.” *Id.* (quoting 18 U.S.C. § 3626(g)(2)).

The court then concluded the District Court had not “abused its discretion” in weighing the factors that govern preliminary injunctive relief. *Id.* at 3a. It noted that the COVID-19 infection was “rampant among inmates and staff,” that the rate of infection was higher at Elkton than other BOP facilities, and that the Government “lack[s] adequate tests to determine if inmates have COVID-19.” *Id.* at 4a. Based on the “limited evidentiary record” at this preliminary stage, “at this juncture and given [the] deferential standard of review on motions to stay,” the court found that the District Court’s findings were proper. *Id.* As to conditional class certification, the Government had forfeited the issue by advancing only a “perfunctory” claim rather than developing the argument. Gov. App. 4a (internal quotation marks omitted).

As to the equities, the Government had argued only that compliance with the order would take up BOP resources. *Id.* But “money, time and energy necessarily expended in the absence of a stay are not enough” to establish irreparable harm. *Id.* at 4a–5a (internal quotation marks omitted). And the preliminary injunction gave the Government two weeks to evaluate subclass members’ eligibility for release.

“Assuming [they] have been complying,” that time “[wa]s about to expire, rendering any remaining harm slight.” *Id.*¹³

More than two weeks after the Sixth Circuit declined to stay the preliminary injunction, the Government sought a stay from this Court. Stay Appl., No. 19A1041 (filed May 20, 2020). The Government was “seeking a stay only of the District Court’s April 22 preliminary injunction.” Order, No. 19A1041 (filed May 26, 2020). But its application largely criticized a later-issued May 19 order enforcing the preliminary injunction, one it had not sought to stay or appeal. “Particularly in light of that procedural posture,” this Court denied the stay “without prejudice to the Government seeking a new stay if circumstances warrant.” *Id.*

4. That May 19 enforcement order adopted the same cautious approach as the preliminary injunction. The Government had “made limited efforts to reduce the COVID-19 risks for subclass members within the prison”: Nearly a month had passed, and no member of the medically-vulnerable subclass had been released or transferred under the preliminary injunction. Gov. App. 43a.

The Government’s review of prisoners’ eligibility for home confinement, moreover, showed that they had “thumb[ed] their nose at” that authority. *Id.* at 48a. Of 844 members of the medically-vulnerable subclass in a low-security prison, just five were approved, with six more “maybe” qualifying. *Id.* During a hearing, the Government conceded that they were deeming whole categories of prisoners

¹³ A few days later, on May 8, the District Court also denied a stay, explaining that the Sixth Circuit’s order was law of the case and, even if it were not, that the Government had not met their burden to show a stay was warranted. Gov. App. 31a.

categorically ineligible. *See* May 14 Tr. at 4–5, *infra*, App. 127a–128a (“the nature of the offense and the security level that are the two primary disqualifying factors under home confinement”). The Government produced spreadsheets cataloguing the bases for denying each subclass member for home confinement and compassionate release, which confirmed the categorical exclusions. *See* App., *infra*, 61a–99a.

These exclusions were not required by any statute or guidance document. The Attorney General stated, for example, that “serious offenses” may “weigh more heavily” against home confinement, but did not deem them an absolute barrier. Mar. 26 Barr Memo at 2, *infra*, App. 53a. And BOP guidance expressly states that low-level incidents in prison, at the 300- or 400-level—which include such offenses as swearing, petitioning, or being untidy¹⁴—should not disqualify prisoners. Hurwitz Memo at 1, *infra*, App. 158a. It further states that prisoners with a PATTERN score above “minimum” should not receive “priority treatment,” but it does not deem them categorically ineligible for home confinement. *Id.* at 1, *infra*, App. 159a.¹⁵ And that

¹⁴ A 300-series incident includes, for example, “[b]eing unsanitary or untidy,” “[i]nsolence towards a staff member,” “[p]articipating in an unauthorized meeting,” “[p]ossession of money or currency unless specifically authorized,” and “[c]irculating a petition.” 28 C.F.R. § 541.1 A 400-series incident includes, for example, “[f]eigning illness” and “[u]sing obscene language.” *Id.*

¹⁵ PATTERN is a “risk and needs assessment tool” that “is designed to measure risk of recidivism of inmates.” Dept. of Justice, the Justice Department’s risk and needs assessment tool known as the Prisoner Assessment Tool Targeting Estimated Risk and Need (Jan. 15, 2020), <https://bit.ly/patterndojo>. During this litigation, reporting revealed that BOP “had revised the risk categories without informing the public.” Ian MacDougall, *Bill Barr Promised to Release Prisoners Threatened by Coronavirus—Even as the Feds Secretly Made It Harder for Them to Get Out*, ProPublica (May 26, 2020), <https://bit.ly/patternchange>. This revision raised the numerical cutoffs for categories such as minimum and low and thus “made it harder for an inmate to qualify as minimum risk.” *Id.*

guidance contains a failsafe: consideration of home confinement for prisoners whose other characteristics put them “outside of the criteria,” if they have “COVID-19 risk factors.” *Id.* at 2, *infra*, App. 159a. Yet the Government denied members of the subclass home confinement on these bases. Spreadsheet, *infra*, App. 62a, 68a, 72a (Row 52: low-risk prisoner rejected based on robbery 35 years ago; Row 55: same, based on “history of violence” 23 years ago; Rows 486, 489: low risk, “prior violence”; Rows 713, 724: low risk, 2019 300-series incident reports).

As for other mechanisms, the District Court found that the Government identified no subclass members “whose confinement ha[d] actually been enlarged” under the preliminary injunction. Gov. App. 45a. For compassionate release, the Government had not provided “the justification for disqualifying somebody.” May 14 Tr. at 26, *infra*, App. 131a. This meant that the court could not determine whether the denials represented compliance with the injunction.

The record also confirmed that the threat from COVID-19 faced by the subclass remained high. Despite conducting only limited testing, the Government at that time reported 135 active cases among inmates, and 8 active cases among staff. Gov. App. 43a–44a.¹⁶ The actual numbers were necessarily even higher, given the BOP’s failure to test the vast majority of prisoners. *Id.* at 44a. The Government was running tests only two days a week, Monday and Tuesday. *Id.* at 43a. Only 524 tests had been run, meaning nearly 80 percent of the population had not even been tested. *Id.* The

¹⁶ As the court noted, the Government had previously stated that as of May 8, 130 inmates and 50 staff members had tested positive. Gov. App. 44a.

Government had results for only 230 of those tests, with 55 prisoners testing positive—an infection rate of 24%. *Id.* At that rate, a quarter of Elkton’s population could well have had COVID-19. *Id.* at 44a. (That rate has sadly been confirmed by subsequent testing.)

And so the District Court entered an enforcement order to ensure compliance with the preliminary injunction, once again seeking to preserve the Government’s discretion to evaluate how to get each prisoner out of harm’s way, while still effectuating a remedy. As to home confinement, it ordered the Government “to make full use of the home confinement authority.” *Id.* at 48a. It identified the categorical bases for exclusion that led to the near-absolute denial of home confinement to the subclass, and it ordered the Government to re-evaluate subclass members’ eligibility for home confinement without treating them as categorical bars. It recognized the Government may still conclude that a prisoner “does not meet the home confinement requirements.” *Id.* at 48a.¹⁷ And it did not prohibit BOP from, for example, taking

¹⁷ The Government claims (at 8) the order required it to “disregard” certain factors. That is an oversimplification. To be sure, the order does instruct the Government to “disregard” such things as an incident report for untidiness or bad language, *see supra* n. 14. But the order principally bars the Government from relying on individual considerations as categorical bars standing alone, where all other factors point to release. Gov. App. 48a (“eliminate all requirements” of serving a portion of a sentence, “disregard” the violent offense “restriction,” and grant home confinement to those previously rejected “solely” on the basis of a Low, rather than Minimum, PATTERN score). Thus, if someone who otherwise posed no danger of recidivism, has a secure home available, has served most of his sentence, but was deemed categorically ineligible for relief because of a single incident of untidiness or a decades-old violent offense, the Court directed that such categorical bars were inconsistent with the order to get prisoners out of harm’s way as expeditiously as possible. That approach accords with BOP’s guidance, which does not deem any factor a categorical bar. *See supra* p. 19. To the extent the order is ambiguous, the District Court, not this Court on

into account the risk of recidivism reflected in the BOP's PATTERN score. *Id.* (referring to prisoners "previously deemed ineligible *solely* on the basis of a Low PATTERN risk score" (emphasis added)). Nothing in this order required BOP to release an inmate who poses a danger to the community, as indicated by PATTERN score or numerous other factors. The District Court ordered this review to be completed by May 25. Gov. App. at 49a.

The District Court followed a similar path for compassionate release. The Government had denied prisoners within the subclass compassionate release, noting only cryptic reasons such as "does not meet medical criteria" or "COVID 19 only." *Id.* at 50a. The court ordered the Government, by May 21, "to clarify these descriptions with individual explanations for each inmate." *Id.* And it ordered the Government to adjudicate subclass members' applications for compassionate release within 7 days, to permit them to move a court for release in time to avoid catching COVID-19. *See id.*; *see also supra* n. 10 For the rest of the subclass, the court asked for an explanation. By May 26, it ordered the Government to show cause why any prisoner deemed ineligible for other forms of relief "cannot be transferred to another BOP facility where social distancing is possible." *Id.*

The District Court did not in its initial injunction or its May 19 order require the Government to release any particular prisoners, whether to home confinement, to furlough, to compassionate release, or to a transfer. Instead, both orders merely

expedited stay proceedings, was best positioned to clarify its meaning. Yet the Government has not sought any such clarification

require the Government to identify its medically vulnerable inmates, evaluate them for particular forms of enlargement, and if they are ineligible for any other form of release, transfer them to a facility where they do not face the high degree of risk of COVID-19 that Elkton presents. The May 19 enforcement order simply directs the Government to provide more information as to why, despite the April 22 preliminary injunction, no member of the subclass has received relief under that injunction. Put differently, the District Court has simply sought more information so that it can evaluate compliance with its preliminary injunction.

5. On May 28, the Government appealed the May 19 enforcement order, and on May 29, it sought a stay from the District Court and the Sixth Circuit, the Government sought to stay the preliminary injunction and enforcement order. It demanded an answer by June 1st at 3 p.m., at which time it would seek a stay from this Court.

On June 1, the Sixth Circuit denied a stay. The court found that the Government had merely “reiterate[d] their prior arguments.” Gov. App. 273a. The Government had not met its burden to show irreparable harm, as any members of the subclass “quarantined in preparation for transfer would remain so for several more days.” *Id.* at 274a. But the court expedited consideration of the appeal. It had already expedited briefing on the Government’s appeal of the preliminary injunction,¹⁸ which was fully briefed on June 1. *Id.* In denying the stay, the court set

¹⁸ The Government impugns (at 17) the Sixth Circuit for stating that it expedited briefing “on the schedule suggested by the parties.” The schedule was guided by the parties’ proposals. The Government asked for three times longer for an opening brief

argument for Friday, June 5, and stated that it “anticipated a decision will soon follow” the argument. *Id.*

6. The Government has again come to this Court, this time asking it to enter a stay based on a disputed and evolving factual record, one that the District Court has not evaluated.

The Government claims, for example, that its multiphase plan has “borne fruit,” Stay Appl. 7—despite the fact that 461 inmates have tested positive for COVID-19 right now, and 573 have had had or now have the disease. It relies on evidence, newly introduced with the District Court stay motion, of a declining in the rate of prisoners hospitalized at the local hospital. *Id.* at 10. It claims there have been two hospitalizations “in the six weeks since April 19.” Stay Appl. 10. One of those was on May 4, the other just days ago. Gov. App. 238a; Supp., *infra*, App. 132a (notifying the District Court of a hospitalization that day just hours after filing for a stay). Petitioners disputed the significance of that evidence below. “A short-term decline in hospitalizations does not by itself indicate a decline in infections.” Dr. Goldenson 2d Decl. ¶13, *infra*, App. 143a. Rather, an assessment of whether infection is declining “requires longitudinal data and frequent retesting of prisoners who previously tested negative.” *Id.* That testing is not occurring at Elkton; instead, the Government is receiving test results on “an approximate 7-day turnaround.” Status Rpt. at 2, D.Ct. Doc. 88 (May 21, 2020). Prisoners with COVID-19 who are asymptomatic yet

than Petitioners would have had to respond. *See* Mot., No. 20-3447, Cir.Ct. Doc. 28 at 2. Petitioners asked for an equal amount of time. *See id.* The court chose a middle course. *See* Order at 2, Gov. App. 7a.

contagious may thus circulate among their units during the period before the Government realizes they are infected. And Petitioners submitted additional evidence to dispute the claim that the outbreak is under control. Dr. Novisky 2d Decl. ¶9, *infra*, App. 137a (“Without mass testing of staff, Elkton is not even capable of knowing the scope of infection among its staff.”).

The Government further claims (at 39) that the District Court’s enforcement order “created a substantial risk that inmates might be released into home confinement only to offend again.” This claim rests solely on a newly-introduced declaration stating that it would not have granted some prisoners home confinement under its categorical-barrier approach. Gov. App. 236a-237a. This declaration does not describe the prisoners newly designated as eligible for home confinement. Petitioners assembled evidence in the limited time available that rebuts the Government’s implication that these prisoners pose a risk. Whitfield Decl. ¶¶4–5, *infra*, App. 155a–156a; Whitfield Worksheet, *infra*, App. 157a (stating that he “seems to be appropriate for more consideration as his prior violence and escape occurred 30 years earlier); Dr. Novisky 2d Decl. ¶11, *infra*, App. 138a (discussing recidivism risk).

The Government claims the COVID-19 outbreak at Elkton has passed. But BOP reports that 461 prisoners have COVID-19 today, a number that is increasing, and that is a plain undercount given Elkton’s testing protocols. Even this amounts to 20% of Elkton’s population and the second highest number of infected prisoners in a

BOP facility.¹⁹ Seven staff members have COVID-19, the fourth highest number in a BOP facility.²⁰ The subclass remains at great risk.

ARGUMENT

The Government is not entitled to the extraordinary remedy of a stay from this Court. A stay pending appeal is available “only under extraordinary circumstances.” *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1316 (1983) (Blackmun, J., in chambers). Accordingly, this Court “rarely grant[s]” a stay before the lower court has decided the merits. *INS v. Legalization Assistance Project*, 510 U.S. 1301, 1302 (1993) (O’Connor, J., in chambers).

The Government seeks a stay of the preliminary injunction not just pending appeal, but also pending any petition for certiorari to this Court. Stay Appl. 1. It must show not just that it is likely to succeed before the Sixth Circuit, but also—if it does not—that four Justices are likely to grant certiorari, and that a majority of the Court will vote to reverse that judgment. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (pending appeal); *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam) (pending petition for certiorari). It must also show it is likely to suffer irreparable harm absent a stay and that the balance of the equities favor a stay. *See Nken*, 556 U.S. at 434; *Hollingsworth*, 558 U.S. at 190.

The Government has not made that showing here. It has not demonstrated that this fact-intensive case involving a single correctional facility warrants

¹⁹ *See id.*

²⁰ *See id.*

certiorari, where the lower court applied undisputed standards and its resolution implicates no conflict among the circuits. The District Court correctly concluded that because Petitioners seek only removal from Elkton, and only that relief can remedy their constitutional claims, their claims are properly heard in habeas corpus. And the court properly found that Petitioners were likely to succeed on their Eighth Amendment claim, because the Government was “deliberately indifferent” to the grave and known medical risk faced by vulnerable inmates at Elkton, where the only effective way to respond to that risk was to get the vulnerable inmates out of harm’s way. Far from interfering with prison officials’ discretion, the orders below respect that discretion and merely require a remedy for an ongoing and urgent constitutional violation. Finally, the equities count heavily against the Government. It faces no irreparable injury if some inmates are transferred before the appeal is resolved; by contrast, Petitioners face the real risk of serious illness and death every day that they are forced to remain in the COVID-infected dormitories at Elkton.

I. A STAY WOULD BE INAPPROPRIATE AT THIS STAGE.

This fact-intensive case is at a preliminary stage, and an extraordinary emergency stay is not warranted before the imminent resolution of the Government’s appeal, which has been promised shortly after argument scheduled for this Friday, June 5. This is especially so here, where granting a stay could effectively end the litigation. Moreover, the Government’s request comes at a moment when there are intensely fact-based questions that have been presented to the District Court, based on evidentiary submissions by both sides that have yet to be resolved there.

The Government’s newest emergency stay application rests on new arguments and new evidence. Its May 29 motion in the District Court on made a new argument, repeated here, that conditions at Elkton have improved. It claimed that hospitalizations and deaths from COVID-19 are decreasing at Elkton, and that the Government has made progress “containing COVID-19 and mitigating the risks.” D.Ct. Doc. 98 at 14. This submission was accompanied by several declarations and exhibits. Petitioners have disputed this evidence with their own submissions. *See supra p. __*. The District Court has not even had the opportunity to resolve these evidentiary disputes. “It is not the Court’s usual practice to adjudicate either legal or predicate factual questions in the first instance.” *CRST Van Expedited, Inc. v. EEOC*, 136 S. Ct. 1642, 1653 (2016). Yet this stay application asks this Court to do just that. *See Wolf v. Cook Cty., Illinois*, 140 S. Ct. 681, 683–84 (2020) (Sotomayor., J, dissenting from the grant of a stay) (Stay applications “demand extensive time and resources when the Court’s intervention may well be unnecessary—particularly when, as here, a court of appeals is poised to decide the issue for itself.”). This is a Court of review, not of first instance.

Worse still, rather than preserving the status quo, a stay risks prematurely ending this case. A stay would halt the processing of prisoners at Elkton for possible transfer not just through the forthcoming decision from the Sixth Circuit but through the filing and disposition of a petition for a writ of certiorari and any further proceedings in this Court—a process that could last months. At the rate that COVID-19 is raging through Elkton prison, by then there will be nothing left in this case to

litigate. It will be too late to protect the medically vulnerable inmates from contracting COVID-19. They will have fallen ill, and suffered the ensuing consequences. The Government faces no equivalent irreparable harm, as, were it to prevail on appeal or in this Court, it could transfer the prisoners back to Elkton.

II. THIS COURT IS UNLIKELY TO GRANT REVIEW AND REVERSE.

It is doubtful that the Court will grant review of this fact-bound application of traditional standards to the uniquely perilous situation at Elkton. The Government claims that this case implicates two splits among the lower courts. It does not. The Government first asserts that courts are divided over the question whether a prisoner may challenge a condition of confinement via habeas under Section 2241. Stay Appl. 20a. But as the District Court and the Sixth Circuit held, Petitioners here seek to be removed from Elkton, as that is the only remedy available for the Eighth Amendment violation they have identified. In any event, the Government itself has told this Court in other cases that the split it now claims is not a genuine split. And the Government's description of the second alleged split speaks for itself. A "burgeoning disagreement" among a handful of lower courts, mostly district courts, addressing an evolving pandemic is not a split, and different outcomes in applying the same "appropriate standards" for issuing an injunction to address COVID-19 at detention facilities with widely disparate circumstances is precisely the kind of context-specific, fact-bound question that does not warrant this Court's review.

Further, if the Court does grant review, it is unlikely to vacate the injunction. Petitioners’ claims for enlargement are properly brought on habeas. And the preliminary injunction record established the Government’s deliberate indifference to the risks of COVID-19, an Eighth Amendment violation that can be redressed only by enlargement.

A. This Case Does Not Present A Question Worthy Of Review.

1. The Government claims that this case implicates a split among the courts of appeals over whether a prisoner may challenge a condition of confinement in a habeas petition under Section 2241. Stay Appl. 20. But that argument fails. The supposed “split” is not real. And even if there is tension in the language courts have used, this would not be the vehicle to resolve it because Petitioners do not seek to reform their “conditions of confinement”; rather, they seek enlargement, a traditional form of habeas relief that none of the cases the Government cite discussed.

To start, every circuit implicated in the Government’s alleged split recognizes the same rule. *Preiser v. Rodriguez* explained that cases at the “heart of habeas corpus”—where a prisoner is “challenging the fact or duration of his physical confinement itself”—must be brought in habeas. 411 U.S. 475, 498 (1973). *Preiser* left open what *other* cases may be brought in habeas. *See id.* at 499. Every court in the alleged split has adopted the same shorthand for this principle. Challenges to the fact or duration of confinement are for habeas; actions that seek to reform the conditions of confinement are for Section 1983. *See, e.g., Aamer v. Obama*, 742 F.3d 1023, 1030 (D.C. Cir. 2014); *Glaus v. Anderson*, 408 F.3d 382, 388 (7th Cir. 2005); *Boutwell v.*

Keating, 399 F.3d 1203, 1209 (10th Cir. 2005); *Williams v. Hopkins*, 130 F.3d 333, 335 (8th Cir. 1997); *Moorish Sci. Temple of Am., Inc. v. Smith*, 693 F.2d 987, 989 (2d Cir. 1982); *Jamieson v. Robinson*, 641 F.2d 138, 141 (3d Cir. 1981).

The Sixth Circuit applied that rule. It held that, where, as here, “a petitioner claims no set of conditions would be constitutionally sufficient,” it deems “petitioner’s claim as challenging the fact of the confinement.” Gov. App. 3a. The Government identifies no court that has disagreed with this rule.

The Government appears to suggest (at 19) that other courts recognized only two rigid categories: Either a case challenges “the fact or duration of physical confinement,” or it challenges the “conditions of confinement.” But the cases do not support that contention. Compare *Cardona v. Bledsoe*, 681 F.3d 533, 536 (3d Cir. 2012), cert. denied, 568 U.S. 1077 (2012) (calling the distinction “hazy” (internal quotation marks omitted)), with *Aamer v. Obama*, 742 F.3d at 1035 (referring to the line as “illusory”). Indeed, for that reason, the Government itself has previously argued to this Court that the very “split” it now invokes is insufficiently developed to warrant this Court’s review. See Gov’t Br. in Opp. at 7-10, *Robinson v. Sherrod*, 565 U.S. 941 (2011) (“*Robinson* BIO”).

There is no indication that any court that supposedly bars Section 2241 “conditions of confinement” claims would view this petition as such a claim. The Third and Eighth Circuit cases cited by the government do not involve transfer out of a particular prison facility. See *Cardona*, 681 F.3d at 534 (seeking a different placement in the same facility); *Spencer v. Haynes*, 774 F.3d 467, 469 (8th Cir. 2014) (challenging

use of a particular system of physical restraint). The Tenth Circuit, citing a Third Circuit case, reserved whether habeas might be available to request a transfer in a situation beyond a “garden variety prison placement” dispute. *Palma-Salazar v. Davis*, 677 F.3d 1031, 1037-1038 (10th Cir. 2012) (internal quotation marks omitted) (citing *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 243-244 (3d Cir. 2005)); see also Gov’t Br. in Opp. at 14 n.*, *Rodriguez v. Ratledge*, 139 S. Ct. 77 (2018) (noting potential “intracircuit tension” in the Third Circuit’s cases) (“*Ratledge* BIO”). And the Seventh Circuit discussed only whether a prisoner was entitled to seek medication through habeas. *Glaus v. Anderson*, 408 F.3d at 387. As for the Second Circuit, it has offered only dictum, see *Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008), cert. denied, 555 U.S. 1118 (2009)—as the Government itself has argued when opposing certiorari, *Robinson* BIO 8-9, yet has now twice declined to acknowledge.

Even if a split were implicated, this case would not be the vehicle to address it. This Court has declined to address this issue several times over. See, e.g., *Preiser*, 411 U.S. at 499 (leaving open the contours of habeas relief); *Bell v. Wolfish*, 441 U.S. 520, 527 n.6 (1979) (leaving “to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement”); *Boumediene v. Bush*, 553 U.S. 723, 792 (2008) (“we need not discuss the reach of the writ with respect to claims of unlawful conditions of treatment or confinement.”); *Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862–63 (2017) (“Respondents [] challenge large-scale policy decisions concerning the conditions of confinement imposed on hundreds of prisoners * * *. [W]e have left open the question whether they might be able to challenge their confinement

conditions via a petition for a writ of habeas corpus.”). A preliminary injunction addressing a unique and evolving pandemic is not a suitable vehicle to address this question. “The Court has denied certiorari to multiple petitions raising th[is] issue * * and it should follow the same course here.” *Ratledge* BIO 12 (citing *Robinson* and *Stanko v. Quay*, 562 U.S. 844 (2010) (No. 09-10182)).

2. The Government’s second proposed “split” is not a split of any kind. It claims there is a “burgeoning disagreement” in the circuits over the “appropriate standards for issuing an injunction against the administrators of a detention facility based on allegedly unconstitutional conditions created by COVID-19.” Stay Appl. 21. By its own words, there is not yet a split for this Court to resolve. That is hardly surprising, given that COVID-19 is a recent phenomenon in the nation and its prisons, making the claim that a clear split in the circuits has already developed wholly unfounded.

In fact, each case the Government points to applied the traditional injunction and stay factors to the case before it. *See, e.g., Valentine v. Collier*, 956 F.3d 797, 801 (5th Cir. 2020) (“When considering a stay, a court considers four factors * * *.” (internal quotation marks omitted)); *Swain v. Junior*, No. 20-11622-C, 2020 WL 2161317, at *3 (11th Cir. May 5, 2020) (“A court considering whether to issue a stay considers four factors * * *.” (internal quotation marks omitted)).²¹ The Sixth Circuit

²¹ The Ninth Circuit’s one-paragraph order granting a stay pending appeal in part and denying it in part did not discuss this standard, though there is no indication it did not apply the traditional standard, nor does the Government claim otherwise. *See Roman v. Wolf*, No. 20-55436, 2020 WL 2188048, at *1 (9th Cir. May 5, 2020) (declining to lift the preliminary injunction “to the extent” it “requires substantial

did too. Gov. App. 2a (“We balance four factors * * *.”). There is thus no disagreement among the courts about the “appropriate standards” for issuing an injunction or stay. Nor is there any disagreement that the settled deliberate-indifference framework governs this case. Gov. App. 23a; *Valentine*, 956 F.3d at 800; *Swain*, 958 F.3d at 1088. The fact that different courts reached different results applying the same standard to different claims and circumstances is not a split.

Each case the Government points to is different from this one, and from the others. As for the Fifth Circuit, the plaintiffs sought increased safety measures at a prison, and the district court granted them that relief. *See Valentine*, 956 F.3d at 799–800 (stating that the injunction required the defendants to clean the facility, to provide plaintiffs with protective equipment, and to prohibit new prisoners during the pandemic, among others). The Eleventh Circuit faced a similar preliminary injunction. *See Swain*, 2020 WL 2161317, at *2–*3 (stating that the injunction required prison staff to “wear personal protective equipment” and “wash their hands” and that prisoners be provided with “face masks”). Petitioners here—whose claims in contrast are in habeas—do not seek any of that relief. The weighing of the equities in these cases has no bearing on, much less a conflict with, the Sixth Circuit’s decision here.

compliance with [CDC] guidelines * * * for correctional and detention facilities”); *see also Doe #1 v. Trump*, 957 F.3d 1050 (9th Cir. 2020) (“we apply the familiar standard set forth by the Supreme Court in *Nken* * * *.”).

B. A Habeas Petition Is The Proper Vehicle For Petitioners' Claims.

The District Court properly exercised habeas jurisdiction in this case because Petitioners challenged the fact of confinement and the only relief available is a form of release. And for the same reason, the Prison Litigation Reform Act (PLRA), which expressly does not encompass “habeas corpus proceedings challenging the fact or duration of confinement in prison,” is inapplicable. 18 U.S.C. § 3626(g)(2).

The Government points to no holding of this Court or any other that precludes habeas in this case. Instead, it attempts to recharacterize this as a conditions-of-confinement case subject to the PLRA (at PAGES). But Petitioners are not seeking to reform “confinement conditions.” *See Nelson v. Campbell*, 541 U.S. 637, syl. (2004). Petitioners have alleged—and the District Court determined—that *no* alteration to the conditions in Elkton would cure their Eighth Amendment injury, rendering the fact of confinement itself unconstitutional. That is a challenge properly brought in habeas.

1. “Habeas is at its core a remedy for unlawful executive detention.” *Munaf v. Geren*, 553 U.S. 674, 693 (2008); *see also* 28 U.S.C. § 2241; *Hamama v. Adducci*, 912 F.3d 869, 875 (6th Cir. 2018) (“The traditional remedy provided by habeas is ‘removing the injury of unjust and illegal confinement.’” (quoting 3 William Blackstone, *Commentaries on the Laws of England* 137 (1768))). It allows prisoners to challenge “the fact or duration of [their] confinement.” *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005); *accord Preiser v. Rodriguez*, 411 U.S. 475, 498 (1973). Section 2241 extends the Great Writ to any person held “in custody in violation of the Constitution or laws or treaties of the United States.”

Petitioners here seek removal from their confinement at Elkton, and so are “challenging the fact of the[ir] confinement.” CA6 5/4/20 order at 3; *see* 18 U.S.C. § 3626(g)(2) (PLRA exemption for “habeas corpus proceedings challenging the fact or duration of confinement in prison”). They are seeking, in other words, a quantum change in their confinement. *See Gonzalez-Fuentes v. Molina*, 607 F.3d 864, 873–74 (1st Cir. 2010) (difference between electronic supervision and prison is a “quantum change” in the level of custody appropriate for habeas); *Terrell v. United States*, 564 F.3d 442, 447–48 (6th Cir. 2009) (claim seeking in-person parole hearing cognizable under § 2241). Based on Petitioners’ un rebutted evidence, the District Court found that removing the medically-vulnerable subclass from Elkton is “*the only truly effective remedy*” for the deadly threat they face, *see* PI Order at 10, Gov. App. 17a (emphasis added), and granted provisional relief to that effect.

Contrary to the Government’s protestations, habeas is a flexible remedy that easily encompasses the particular interim relief ordered by the District Court. *See* 28 U.S.C. § 2243 (“The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.”); *cf. Hilton v. Braunskill*, 481 U.S. 770, 775 (1987) (“Even in 1894, when this Court’s Rule 34 indicated that enlargement of successful habeas petitioners was mandatory * * * the Court interpreted the predecessor of § 2243 as vesting a federal court with the largest power to control and direct the form of judgment to be entered in cases brought up before it on *habeas corpus*”) (internal citation and quotations omitted). This form of altered custodial status has been described variously as enlargement, release on recognizance, or bail,

but is a long-recognized remedy available to courts exercising habeas jurisdiction, particularly in exceptional circumstances such as the COVID-19 outbreak at Elkton. *See, e.g., Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001) (“federal courts have inherent power to release on bail a habeas petitioner who challenges his detention”); *Gomez v. United States*, 899 F.2d 1124, 1125 (11th Cir. 1990); *United States v. Perkins*, 53 F. App’x 667, 669 (4th Cir. 2002); *Lee v. Jabe*, 989 F.2d 869, 871 (6th Cir. 1993); *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992); *see also* Declaration of Professor Judith Resnik Regarding Provisional Remedies for Detained Individuals at 8, *Money v. Jeffreys*, No. 1:20-cv-02094 (N.D. Ill. Apr. 4, 2020), D.Ct. ECF No. 24-3. *See also Aamer v. Obama*, 742 F.3d at 1030 (“a place of confinement challenge * * * unquestionably sounds in habeas”); *In re Bonner*, 151 U.S. 242, 255–56 (1894); *United States v. Jalili*, 925 F.2d 889, 893 (6th Cir. 1991).

The fact that Petitioners do not challenge the validity of their sentences (23–24) is immaterial. Nothing in § 2241 requires a challenge to the sentence itself, but rather the fact of custody. To argue otherwise is to conflate Section 2241 with 28 U.S.C. §§ 2254, 2255, which enable an attack on a “sentence * * * imposed in violation of the Constitution or laws of the United States.” Habeas may encompass either. *See Preiser v. Rodriguez*, 411 U.S. at 484 (“the essence of habeas corpus is an attack by a person in custody upon the legality of that custody * * * the traditional function of the writ is to secure release from illegal custody”).

2. The Government seizes upon the term “conditions” (at 23)—which Petitioners have used to describe the unconstitutional state of affairs giving rise to

this action—in order to recharacterize this as a lawsuit seeking to alter the “conditions of confinement.” Petitioners are hardly the first to use that term to describe a problem within a prison that nonetheless invokes habeas jurisdiction. *Dixon v. Alexander*, 741 F.2d 121, 125 (6th Cir. 1984) (describing this Court’s decision in *Preiser* as “reassert[ing] * * * the right * * * to use federal habeas corpus to challenge such prison conditions”). But garden-variety prison conditions cases of the category the Government describes do not challenge the constitutionality of the confinement itself—they challenge the conditions and demand their alteration, or damages. *Compare, e.g., Rael v. Williams*, 223 F.3d 1153, 1154 (10th Cir. 2000) (§ 1983 claim was appropriate to seek adequate medical care); *Gomez v. United States*, 899 F.2d 1124, 1126 (11th Cir. 1990) (appropriate relief from prison conditions violation is “to require the discontinuance of any improper practices, or to require correction of any condition causing cruel and unusual punishment”); *McIntosh v. U.S. Parole Comm’n*, 115 F.3d 809, 812 (10th Cir. 1997) (“a civil rights action * * * attacks the conditions of the prisoner’s confinement and requests monetary compensation for such conditions”) (internal citation omitted).

Brown v. Plata is not to the contrary. That case was not originally brought as a habeas action, but to remedy systemic deficiencies in medical and mental-health care—that is, conditions of confinement. *See Brown v. Plata*, 563 U.S. 493, 499 (2011). Full release only arose upon eventual showing that no further conditions change could remedy the constitutional violations. *Id.* at 500 (“After years of litigation, it became apparent that a remedy for the constitutional violations would not be effective

absent a reduction in the prison population.”). In other words, *Plata*, at its core, sought to remedy conditions *within* the facilities; habeas, at its core, seeks to remove people from confinement.²² And by the conclusion of *Plata*, there was no suggestion that habeas would have been improper. *Cf. id.* at 559–60 (Scalia, J., dissenting) (noting that *Plata* offered “the functional equivalent” of habeas relief). Petitioners have stated plainly from the outset of this action that they are challenging the “fact or duration of [their] confinement,” *Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005), precisely because in these extraordinary circumstances, no alteration of conditions available at Elkton would be constitutionally sufficient. *See* Gov. App. 66a-71a, ¶ 35 (“there is no realistic set of internal conditions or practices that FBOP can use that will prevent additional infections”), ¶¶ 36–46 (social distancing is impossible); Gov. App. 81a, ¶ 71 (“expedited release * * * is needed not only to prevent irreparable harm to members of the medically-vulnerable subclass, but also to * * * ensure proper social distancing to reduce transmission for all class members, staff, and the wider public”).

As the Sixth Circuit reasoned, “[w]here a petitioner claims no set of conditions would be constitutionally sufficient, we construe the petitioner’s claim as challenging the fact of the confinement.” Gov. App. 3a; *see also* Gov. App. 15a-18a (limiting injunctive relief to only those claims where Petitioners seek enlargement rather than

²² The District Court observed this distinction. As it noted, the impossibility of a remedy within Elkton for the medically-vulnerable subclass’s constitutional injury is what distinguished their claims from those of other Elkton prisoners, who sought an “alteration to the[ir] confinement conditions” rather than removal from them. PI Order, Gov. App. 18a (declining to finding the latter claims suitable for habeas relief).

“alteration to the confinement conditions”). Put another way, where the confinement itself is unconstitutional, necessitating a form of release, the claim properly sounds in habeas. *See also Bailey v. Wainwright*, 951 F.3d 343, 347 (6th Cir. 2020) (a challenge “based on the method of implementing the sentence” challenges “the extent of an inmate’s custody” and is cognizable in habeas); *Freeman v. United States*, 254 F.2d 352, 353 (D.C. Cir. 1958); *United States v. Clinkenbeard*, 542 F.2d 59, 60 (8th Cir. 1976); *Tucker v. Carlson*, 925 F.2d 330, 331 (9th Cir. 1991).

This Court has repeatedly declined to impose rigid limits on the use of habeas. *E.g.*, *Boumediene v. Bush*, 553 U.S. 723, 792 (2008) (“we need not discuss the reach of the writ with respect to claims of unlawful conditions of treatment or confinement.”); *Bell v. Wolfish*, 441 U.S. 520, 527 n.6 (1979) (leaving “to another day the question of the propriety of using a writ of habeas corpus to obtain review of the conditions of confinement”); Vikram David Amar, *Grounds for Writ—In General*, 17B Fed. Prac. & Proc. Juris. § 4263 (3d ed.) (“[Habeas] may be used to challenge the conditions under which the prisoner is confined, although a civil rights action under 42 U.S.C. § 1983 is also available as a remedy in many of those cases”). To the contrary, as noted above, this Court and the universal consensus among the courts of appeals recognize that habeas is an appropriate vehicle when the relief being sought would alter the fact or duration of confinement. *See, e.g., Wilkinson v. Dotson*, 544 U.S. 74, 78 (2005) (holding that when “victory on [the prisoner’s] claims will lead to speedier release from prison,” the case “attack[ed] the *duration* of their confinement;

hence, such a claim may only be brought through a habeas corpus action.” (quotation in original)).

3. The PLRA does not apply here, rendering the Government’s recounting of its strictures (25-26) irrelevant. 18 U.S.C. § 3626(g)(2) (PLRA limits do not apply to “habeas corpus proceedings challenging the fact or duration of confinement in prison”). This clarification within the PLRA was included precisely to prevent the confusion the Government attempts to introduce here. *See Santana v. United States*, 98 F.3d 752, 755 (3d Cir. 1996) (“[I]n order to distinguish between prison release orders and habeas proceedings, Congress felt compelled to exclude expressly such proceedings” from the PLRA). Once again, this is not a conditions of confinement case under the PLRA, because from the outset, the claim has been that no set of conditions within Elkton would be constitutionally sufficient.

C. The Government Showed Deliberate Indifference to the Lethal Risk Medically Vulnerable Prisoners Face From COVID-19.

The Court of Appeals correctly found that the District Court did not abuse its discretion in concluding that Petitioners are likely to prevail on their Eighth Amendment claim. By forcing medically vulnerable prisoners to live in overcrowded congregate living spaces and refusing to take available steps to counter that risk, the Government is knowingly exposing prisoners at Elkton to a known, heightened risk of infection, suffering and death from COVID-19, when they could relieve them of that risk by removing them from the highly infected facility.

COVID-19 poses a particularly acute danger at Elkton, where approximately one in four prisoners has fallen ill already, and prisoners are forced to live in a single

dormitory room along with approximately 150 other people. *See* Gov. App. 12a. Petitioners cannot possibly maintain adequate distance from each other, as they must sleep, eat, and live, just a few feet from other potentially contagious prisoners. *Id.* The District Court had more than ample facts in front of it to make this determination—as did the prison itself. *See* App., *infra*, 24a, ¶¶ 4–5 (“keeping our distance is impossible,” and “[w]hen it’s time to eat * * * [w]e have to wait in a line where we’re bunch up right behind each other”); 29a, ¶ 6 (“The racks are 2-3 to a cell” in housing areas, and “[w]hen we go to eat * * * [w]e walk there at our own risk with no spacing”); 36a, ¶¶ 3–4 (“In the cubes, the person on the other side sleeps above where you read. In the TV rooms, the tables are right on top of each other. We’re about 2 feet away from each other where we sleep. * * * The phones are on top of each other too”); 45a, ¶ 6 (“We’re piled on top of each other and left to fend for ourselves.”); 49a-50a, ¶¶ 4–6 (We’re overcrowded like cattle,” and “when we go to eat[,] [i]t’s a stampede of people trying to get through a 4-6 foot wide door. Social distancing is out the window.”).

Despite knowing that this arrangement puts everyone at heightened risk of infection, the Government has refused to lower the risk by moving vulnerable individuals to available safer locations. The Eighth Amendment prohibits the unnecessary exposure to a heightened risk of infection, and as both the District Court and the Sixth Circuit recognized, Petitioners are likely to prevail on their argument that this risk is objectively serious, and that the Government subjectively knew of this risk yet refused to take reasonable steps to reduce it.

The objective prong of the Eighth Amendment is met when a prisoner “is incarcerated under conditions posing a substantial risk of serious harm,” *Farmer v. Brennan*, 511 U.S. 825, 834 (1994), including when prisoners are exposed to a substantial risk of infection. *Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“crowd[ing] [prisoners] into cells [where] some of them had infectious maladies such as hepatitis and venereal disease[] was one of the prison conditions for which the Eighth Amendment required a remedy” (citing *Hutto v. Finney*, 437 U.S. 678, 682 (1978))). The threat of COVID-19 in Elkton easily clears this bar. The disease kills slowly and painfully, after weeks of hospitalization, as the patient struggles to breathe. Since this case was filed, it has claimed the lives of 6 additional prisoners at Elkton. Even those who survive it can face significant suffering and permanent organ damage. This resembles the “physical torture or a lingering death [that were] the evils of most immediate concern to the drafters of the Amendment.” *Estelle v. Gamble*, 429 U.S. 97 (1976) (quotation omitted).

The Government “acknowledges that COVID-19 poses significant health risks” (at 27), but argues that it shouldn’t matter because these “risks confront[] not only prisoners but people nationwide.” Stay Appl. 28. That is a non sequitur.

First, the uncontested evidence before the District Court established that Elkton is a uniquely dangerous place during the COVID-19 pandemic. *See App., infra*, 2a-6a, ¶¶ 4–11; *See also App., infra*, 54a-56a (noting the high infection rate at Elkton). Second, having imposed “limitations * * * on [prisoners’] freedom to act on [their] own behalf,” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189,

200 (1989), prison officials may not disregard a potential harm simply because it also exists outside of prison walls. For example, risk of sexual assault, *Farmer*, 511 U.S. at 834, harm from secondhand smoke, *Helling v. McKinney*, 509 U.S. 25, 33 (1993), and serious medical conditions, *Estelle v. Gamble*, 429 U.S. 97 (1976), are not unique to prisons, but the Eighth Amendment still requires prisons to address them. By forcing Petitioners to live in close quarters with 150 other people in a prison beset by uniquely high infection rates, and preventing them from maintaining a safe distance from others, the Government has deprived them of any chance to comply with the directives from the CDC, the State of Ohio, and clear public health guidance.

The Government fares no better on the subjective prong, which requires only a showing of “consciousness of a risk,” and disregarding of that risk. *Farmer*, 511 U.S. at 840. This does *not* require that the prison official “believ[ed] that harm actually would befall an inmate; it is enough that the official acted or failed to act despite his knowledge of a substantial risk of serious harm.” *Id.* at 842; *cf. id.* (“a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious”). *Farmer* clarifies that the relevant state of mind is not malice, but an intentional decision to act despite knowing the risks. Whatever “wanton” might mean in other contexts, this Court has squarely rejected the notion that “purposeful or knowing conduct is ... necessary to satisfy the mens rea requirement of deliberate indifference for claims challenging conditions of confinement.” *Id.* at 836. Instead, the standard is recklessness – knowing of a risk and choosing to “recklessly disregard[] that risk.” *Id.*

The Government concedes it is aware of the risk COVID-19 poses, but claims the steps it has taken absolve it from Eighth Amendment liability. There is conflicting evidence as to whether the Government did, in fact, take the steps that it claims, *see* Declarations, App., *infra*, 21a-51a, but even treating its assertions as true, they are manifestly insufficient, in no small part because those steps were already proven and known not to work. The District Court was right to reject the Government's claimed entitlement to continue to confine medically vulnerable individuals under conditions that plainly will cause—indeed, have already caused—suffering and death. *See Estelle v. Gamble*, 429 U.S. 97 (1976). A prisoner need not show that the Government did literally nothing in order to demonstrate deliberate indifference. *See, e.g., Sherrod v. Lingle*, 223 F.3d 605, 611 (7th Cir. 2000); *Rouster v. Cty. of Saginaw*, 749 F.3d 437 (6th Cir. 2014).

The uncontested evidence before the District Court when it issued the preliminary injunction demonstrated that the Government knew a deadly and highly contagious virus infiltrated Elkton. The Government placed 150 prisoners in a single dormitory room, forcing them to sleep, eat, and live within a few feet of others, many of whom were likely to be contagious. While prisoners who established a high fever were temporarily removed from the population, the Government did practically nothing to allow prisoners to distance themselves from the more than 100 potentially contagious but asymptomatic and/or untested prisoners within their dormitory. No public health guidance suggests that providing mask and soap meaningfully reduces the extreme risk posed by contagious prisoners mingling under these circumstances.

Far from being clearly erroneous, the District Court’s findings about the risk at Elkton accord with the views of other courts. *E.g.*, *United States v. Brooks*, No. 07-CR-20047-JES-DGB, 2020 WL 2509107, at *6 (C.D. Ill. May 15, 2020) (noting “the troubling trend and BOP’s inadequate response to the COVID-19 outbreak at FCI Elkton”); *United States v. Lebrecht*, No. 1:16-CR-00166 EAW, 2020 WL 2519721, at *3 (W.D.N.Y. May 18, 2020) (“Government continues to seem reluctant to acknowledge the seriousness of those conditions”); *United States v. Aikens*, No. 1:19-CR-00067 EAW, 2020 WL 2744192, at *5 (W.D.N.Y. May 26, 2020) (“Elkton FCI appears to be doing a particularly poor job of controlling the spread of the virus.”); *United States v. Bass*, No. 1:10-CR-166, 2020 WL 2831851, at *7 (N.D.N.Y. May 27, 2020) (“dire circumstances at FCI Elkton”); *United States v. Schultz*, No. 17-CR-193S, 2020 WL 2764193, at *7 (W.D.N.Y. May 28, 2020) (“BOP has thus far been unable to effectively manage or guard against the virus at FCI Elkton,”); *United States v. Rodriguez*, No. 2:03-CR-00271-AB-1, 2020 WL 1627331, at *8 (E.D. Pa. Apr. 1, 2020) (“[T]he government’s assurances that the BOP’s ‘extraordinary actions’ can protect inmates ring hollow given that these measures have already failed to prevent transmission of the disease at the facility where Mr. Rodriguez is housed [Elkton].”).

There is no doubt that the Government knew of the danger at Elkton. The Attorney General himself recognized the “significant levels of infection” at Elkton, and recognized that prisoners will be safer elsewhere. App., *infra*, 52a (noting that many prisoners “might be safer serving their sentences in home confinement,” and

that this “might be more effective in protecting their health”); App., *infra*, 54a (noting the outbreak at Elkton).

To respond to the known danger at Elkton, the Attorney General directed Petitioners to “immediately maximize” movement of at-risk prisoners out of Elkton to safer locations. He specifically noted that “home confinement [i]s a tool for combatting the dangers that COVID-19 poses to our vulnerable inmates.” April 3 at 1, *infra*, App. 54a; see also March 26 memo at 1, *infra*, App. 52a (directing BOP to “utilize home confinement, where appropriate, to protect the health and safety of... the people in our custody”); CARES Act, Pub. L. No. 116-136, § 12003(b) (expanding authority to move prisoners to home confinement). The Attorney General commanded Petitioners to act “immediately,” to “move with dispatch,” to act “as quickly as possible,” and reminded them that “it is clear that time is of the essence.” April 3 at 1, 2, *infra*, App. 54a-55a. Despite being reminded of the risks, and despite being ordered by the Attorney General to take “immediate” steps to mitigate that risk by moving prisoners to safer locations, no prisoners had been moved even weeks later. PI Tr., R. 40, PageID# 586 (six identified as eligible but not released transferred to home confinement; 32 denied).

Rather than pursue available options, the Government has consistently resisted the only meaningful relief for medically vulnerable people at Elkton, even when ordered to consider it by the Court. *Compare* Status Report, Gov. App. 145a (“Furloughs are not being used as a stand-alone basis for release” from Elkton) *with* Brewer Memo, *infra*, App. 57a (BOP guidance stating “The current pandemic is

considered an urgent situation that may warrant an emergency furlough”). The Government has also consistently fought dozens of requests for compassionate release for people who are members of the subclass. *E.g.*, *United States v. Bass*, No. 1:10-CR-166, 2020 WL 2831851, at *6 (N.D.N.Y. May 27, 2020) (granting compassionate release to class member over Government’s opposition, which incorrectly stated prisoner was not part of the subclass); *United States v. McIndoo*, No. 1:15-CR-00142 EAW, 2020 WL 2201970, at *9 (W.D.N.Y. May 6, 2020) (“By insisting, in the face of a once-in-a-century pandemic, on opposing motions for compassionate release on technical grounds, the Government has helped create a fundamentally unjust, chaotic system.”) (not identified as a class member).²³. Indeed, based on internal analyses that it has produced in this action, the Government has taken the position that the deadly threat posed by COVID-19 is entirely irrelevant to the consideration of compassionate release; a prisoner who was not entitled to it

²³ *Accord, e.g., Bronson v. Carvaljal*, No. 4:20-CV-914, 2020 WL 2104542 (N.D. Ohio May 1, 2020); *United States v. Montanez*, No. 15-CR-122-FPG, 2020 WL 2183093 (W.D.N.Y. May 5, 2020); *United States v. Peaks*, No. 16-20460, 2020 WL 2214231 (E.D. Mich. May 7, 2020); *United States v. Singleton*, No. CR 5:13-8-KKC, 2020 WL 2319694 (E.D. Ky. May 11, 2020); *United States v. Davis*, No. 19-CR-64-F, 2020 WL 2465264 (D. Wyo. May 13, 2020); *United States v. Murphy*, No. 15-20411, 2020 WL 2507619 (E.D. Mich. May 15, 2020); *United States v. Sanchez*, No. 08-CR-789-1 (RJS), 2020 WL 2571074 (S.D.N.Y. May 21, 2020); *United States v. Cotto*, No. CR 16-36, 2020 WL 2735960 (E.D. La. May 26, 2020); *United States v. Selley*, No. CR 215-001, 2020 WL 2736980, at *1 (S.D. Ga. May 26, 2020). Some courts have denied requests for compassionate release, mistakenly believing “Whether through its own policies or by court order, the Bureau of Prisons is releasing vulnerable inmates and lessening the overall population at Elkton.” *United States v. Butcher*, No. 5:12CR24, 2020 WL 2610738, at *2 (N.D. Ohio May 22, 2020); *see also, e.g., United States v. Mack*, No. 5:16-CR-112, 2020 WL 1987383, at *2 (N.D. Ohio Apr. 27, 2020) (anticipating that “his COVID-19 concerns will soon be addressed” by the preliminary injunction in this case).

before, is not entitled to it now. *But see* Enforcement Order, Gov. App. 50a (noting that the subclass “by definition” meets CDC criteria for high risk, but are nonetheless being deemed ineligible by the Government).

The Government asks the Court to excuse its failure to take available action despite knowing the risk because it faced “constraints” in the form of “external obstacles that initially limited BOP’s ability to acquire large volumes of test kits.” Stay Appl. at 32; *Contra Peralta v. Dillard*, 744 F.3d 1076, 1083 (9th Cir. 2014) (en banc) (“Lack of resources is not a defense to a claim for prospective relief because prison officials may be compelled to expand the pool of existing resources in order to remedy continuing Eighth Amendment violations.”). At no stage in the litigation has the Government developed this argument or pointed to evidence in support, and it fails to do so here. In contrast, other prisons in the state performed mass testing, *see* PI Order, Gov. App. 11a, and Elkton has been singled out for criticism for its “unacceptable” level of testing. Senator Rob Portman, April 27, 2020 letter (“The lack of sufficient COVID-19 testing at FCI Elkton is unacceptable.”); Senator Rob Portman, May 28, 2020, <https://twitter.com/senrobportman/status/1266133222901063687?s=03> (“I continue to monitor the COVID-19 situation at Elkton federal prison in Lisbon, Ohio. I’m concerned that the level of testing has not increased to the levels I was promised by the Bureau of Prisons. The lack of sufficient testing there remains unacceptable. Lives are at stake.”). Likewise, the Government’s bare invocation of “maintaining appropriate levels of confinement” is undermined by

the pronouncements and directions of the Attorney General to “immediately maximize” other options.

The Government also contends that “[n]othing suggests that officials subjectively believed their extensive efforts, which track the CDC’s guidance, were not a reasonable and appropriate response to the threat posed by COVID-19.” Stay Appl. 32. But this newly minted standard appears nowhere in this Court’s cases. The question under deliberate indifference is whether government officials “responded reasonably to the risk,” consistent with their duty to “ensure reasonable safety.” *Farmer*, 511 U.S. at 844. In any event, it beggars belief that officials “subjectively believed” that their response has been appropriate. *See* Gov. App. 44a-45a (“In considering the adequacy of Respondent’s compliance, context is important. * * * Respondents have made only minimal effort to get at-risk inmates out of harm’s way.”); *see also id.* at 43a-44a (noting rising numbers of infected in recent weeks, and that “so far the data demonstrates that almost one in four inmates at Elkton has been infected—an unacceptable number.”). The claim is also flatly contradicted by the Attorney General’s memos, which identified the risk, provided BOP the path to effectively reduce it, and then sat unheeded.

Although this Court’s review is limited to whether the District Court abused its discretion in issuing its orders based on the evidence before it on April 22 and May 19, developments in the meantime underscore the Government’s gratuitous exposure of prisoners to needless risks. *See Farmer v. Brennan*, 511 U.S. 825, 846 (1994) (“[P]rison officials who state during the litigation that they will not take reasonable

measures to abate an intolerable risk of which they are aware” may not “claim to be subjectively blameless for purposes of the Eighth Amendment”). The preliminary injunction was issued several weeks ago, and despite *six* requests for a stay to date, no Court has stayed the injunction. Instead, as the District Court has twice noted, the Government has failed to comply with the preliminary injunction during that time. *See* Order Denying Stay, Gov. App. 30a (“Respondents have failed to comply with the preliminary injunction.”); Enforcement Order, Gov. App. 45a (The Government’s acts “do not comply with this Courts’ previous Order [granting the preliminary injunction].”). Indeed, as the District Court found, government officials have “thumb[ed] their nose at their authority to authorize home confinement,” an option specifically directed by the Attorney General. Gov. App. 48a. The continued refusal to respond to the known risk of infection, or even to comply with the preliminary injunction, underscores the Government’s persistent tolerance of unnecessary risk of harm.

As a parting shot, the Government argues that the District Court’s order grants an improper remedy for an Eighth Amendment violation. But as noted above, this is not a conditions-of-confinement case within the Government’s meaning, and the District Court’s equitable discretion in habeas is broad. *See supra*; 28 U.S.C. § 2243. Here, the Court determined that no remedy would be effective other than removal from Elkton. In any event, the Government is wrong that the District Court ordered it to “place certain [prisoners] in home confinement” (at 33). The District

Court ordered the Government to maximize the use of its discretion, which was no more than the Attorney General had already exhorted the Government to do.

D. Conditional Class Certification Was Proper.

The Government also challenges the District Court's granting relief on a classwide basis. The Court of Appeals declined to consider the argument because the Government did not appeal the class certification and referenced it in its motion to stay only "in a perfunctory manner, unaccompanied by some effort at developed argumentation." Gov. App. 4a (quoting *United States v. Sandridge*, 385 F.3d 1032, 1035 (6th Cir. 2004)); see also *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (noting presumption that courts should only reach issues raised by parties). They mirrored that argument in the Sixth Circuit this time, as well. Having failed to preserve this issue when seeking a stay before the Court of Appeals, the Government should not be permitted to raise it here.

But in any event, the Government's argument is meritless. The conditional class here satisfies both commonality and typicality. The Government's contention that some class members may not desire some available relief is irrelevant.

1. Every member of the subclass has a CDC-listed comorbidity that places him at risk of grave harm if he contracts COVID-19. Every member is forced by the Government to endure unnecessary exposure to that risk, and the entire class will benefit if the preliminary injunction is upheld and that risk is mitigated. Every class member need not have the exact same medical condition. It is the commonality of their facing an unacceptable level of risk that both necessitates relief and makes this

case well suited for class-wide resolution. *See, e.g., Postawko v. Missouri Dep't of Corr.*, 910 F.3d 1030, 1038–39 (8th Cir. 2018) (“Here the physical symptoms eventually suffered by each class member may vary, but the question asked by each class member *is susceptible to common resolution.*”) (emphasis added, collecting cases); *Yates v. Collier*, 868 F.3d 354, 366 (5th Cir. 2017) (finding commonality satisfied and rejecting argument “that the existence of a substantial risk of serious harm cannot be collectively determined because the risk of serious harm from excessive heat varies even among those with conditions rendering them susceptible to heat.”).

The Government’s reliance on *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011) is misplaced. That case involved Title VII claims, where the putative class members wished “to sue about literally millions of employment decisions at once. Without some glue holding the alleged *reasons* for all those decisions together, it will be impossible to say that examination of all the class members’ claims for relief will produce a common answer to the crucial question *why was I disfavored.*” *Id.* at 351. The plaintiffs “held a multitude of different jobs, at different levels of Wal-Mart’s hierarchy, for variable lengths of time, in 3,400 stores, sprinkled across 50 states, with a kaleidoscope of supervisors (male and female), subject to a variety of regional policies that all differed * * * They have little in common but their sex and this lawsuit.” *Id.* at 359-60. By contrast, the subclass members at Elkton are all housed in the same facility, under the same conditions, subjected to the same policies and practices prohibiting their protection from the COVID-19 threat.

Kress v. CCA of Tennessee, LLC, 694 F.3d 890, 893 (7th Cir. 2012), is similarly inapt. There, the evaluation of medical care required for each of the prisoners would vary depending on each class-member’s individual medical circumstances. *Id.* at 893. Here, on the other hand, the class members’ injury is their common vulnerability based on CDC criteria, and the relief requested—removal from Elkton—is the same. No further medical evaluation is required for any class member in order to determine whether he is entitled to relief.

2. Three of the four Petitioners—those who represent the subclass—share the same medical vulnerabilities as the rest of the subclass group. The Government asserts (at 34) that Petitioners cannot demonstrate typicality “because different class members would be entitled to different injunctions or declaratory judgments depending on their circumstances.” This is flatly wrong. Petitioners seek injunctive and declaratory relief that is applicable to the entire Medically-Vulnerable Subclass. Petition at 36–37, Gov. App. 88a-89a; *see also id.* at 28 (“[C]ategorical movement of prisoners away from Elkton based on their vulnerability to COVID-19 is the only effective approach.”).

The Government’s actions and refusals to act “apply generally to the class,” such that the “final injunctive relief” and the “corresponding declaratory relief” are “appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2); *see also* D.Ct. Doc. No. 33-1 at 5–6. Petitioners, in other words, are seeking “a single injunction or declaratory judgment” that “would provide relief to each member of the class.” *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 360 (2011). That is “the nature of the

remedy sought,” and “a remedy obtained by one member will naturally affect the others.” *See id.*; *see also* PI Order at 15, Gov. App. 22a (“Respondents’ failure to protect the inmates from the spreading virus applies to the entirety of the subclass generally and injunctive relief is appropriate as to the subclass.”).

Again, *Dukes* consisted of claims for individualized, differentiated relief. When the plaintiffs attempted to combine “claims for individualized relief with a class wide injunction,” this Court found Rule 23 ill-suited to provide a combination of individual and class-wide relief. The Court noted that the history of Rule 23 reflects a series of decisions involving challenges to racial segregation, “conduct that was remedied by a single classwide order.” *Id.* at 361. As in those decisions, the conduct here can be remedied by a classwide injunction.

It is true that some subclass members, if no other form of release or enlargement is ultimately offered them, may not desire to avail themselves of their remaining option to transfer to a higher-security facility. D.Ct. Doc. 59 at 2 (Motion to Circulate); May 7 Tr. at 13-14, *infra*, App. 118a-119a. But the possibility that not every class member may wish to take advantage of a particular route to reducing the unconstitutional risk he faces at Elkton does not mean that the class members are subject to different injunctions. Not every prisoner on whose behalf a class secures access to better medical treatment, for example, would necessarily wish to pursue every available treatment for a given disease. *See, e.g., Postawko v. Missouri Dep’t of Corr.*, No. 2:16-CV-04219-NKL, 2017 WL 3185155, at *14 (W.D. Mo. July 26, 2017), *aff’d*, 910 F.3d 1030 (8th Cir. 2018). Here, “[s]ome inmates eligible for transfer may

ask to accept the risks of remaining at Elkton for family proximity or other reasons. If Respondents receive such requests, the Respondents will consider those requests.” Enforcement Order, Gov. App. 51a. At least some prisoners who have indicated a desire to “opt-out” have explained that it is due to their distrust that the BOP might punitively transfer them into high-security, but that they still are desirous of obtaining home confinement, if available. *See* Questionnaires, *infra*, App. 146a–154a. Even if some prisoners might be willing to endure the unconstitutional risk to which the Government is exposing them, that does not defeat class certification. *See Horton v. Goose Creek Indep. Sch. Dist.*, 690 F.2d 470, 486 (5th Cir. 1982) (“[I]n any conceivable case, some of the members of the class will wish to assert their rights while others will not wish to do so.”) (internal quotation marks omitted).

And even if permitting prisoners to elect to remain at Elkton were construed as their opting out of this class action (as opposed to merely declining relief), federal courts do possess the flexibility to conduct class actions that permit class members to opt out. *See* Fed. R. Civ. Proc. 23(d). Rule 23(d) “is sufficiently flexible to afford district courts discretion to grant opt-out rights in (b)(1) and (b)(2) class actions.” *Eubanks v. Billington*, 110 F.3d 87, 94 (D.C. Cir. 1997); *accord McReynolds v. Richards-Cantave*, 588 F.3d 790, 800 (2d Cir. 2009) (similar); *Penson v. Terminal Transp. Co.*, 634 F.2d 989, 993 (5th Cir. 1981); *see also, e.g., In re Cincinnati Radiation Litig.*, 187 F.R.D. 549, 555 (S.D. Ohio 1999) (collecting cases).

III. THE EQUITIES STRONGLY WEIGH AGAINST STAYING THE INJUNCTION.

The equities profoundly favor the Petitioners here, not the Government. Yet it is the Government's burden. If a stay is granted, Petitioners face a severe risk of contracting COVID and dying, in a facility where fully one-quarter of inmates have already been infected, and they cannot possibly protect themselves from community contagion. If a stay is not granted, on the other hand, and the Government ultimately prevails on appeal, it will have suffered no irreparable harm, and can restore the status quo. Under these conditions, to grant a stay is to favor potential administrative burden over a severe risk to life and limb.

A. A Stay Will Exacerbate The Threats To Prisoners And The Public.

The harm to Petitioners and to the larger public interest from a stay here would be staggering. One in five prisoners at Elkton has tested positive for COVID-19, and for the medically vulnerable subclass the risks of COVID-19 are literally life threatening. If members of the subclass contract COVID-19 and suffer the complications their age and underlying health conditions put them at risk for, they will be irreparably harmed, not just from the trauma of fighting the disease but also from the lasting effects of the disease—that is, if it does not kill them. These “relative harms” to the subclass as well as to the Elkton staff and community surrounding Elkton and to the public at large weigh heavily against a stay. *Conkright*, 556 U.S. at 1402.

1. The risk of harm to Petitioners is substantial in probability, devastating in character, and unavoidable by any course of action other than swift transfers. They

face infection, severe illness, and a high risk of death after “agonizing days under intensive care.” Gov. App. 26a. Even in the wider population, approximately one out of five COVID-19 patients require hospitalization.²⁴ App., *infra*, 13a, ¶7. Among those who develop more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS), which in turn has a 30% mortality rate overall. *Id.* ¶ 8. The overall mortality rate rises with age, and surpasses 5% for those in the medically-vulnerable group. *Id.* For those who survive, they may face permanent and irreversible organ damage. The entire subclass in this action faces that risk.

When this action was filed in mid-April, three Elkton prisoners had died. Gov. App. 54a. Three more died within the week. *See* Reply, D.Ct. Doc. 18 at 1. The toll reached nine on May 8. The Government’s complaint of administrative inconvenience cannot outweigh the risk of severe illness and death to Petitioners in prison. *Cf. Bucklew v. Precythe*, 139 S.Ct. 1112, 1146 (2019) (“the equities in a death penalty case will almost always favor the prisoner”); *Hollingsworth v. Perry*, 558 U.S. 183, 185 (2010) (death threats constituted irreparable harm). *See* Gov. App. 32a (“it would be hard to overstate how much more serious the potential injuries to Petitioners are compared to those cited by Respondents”).

2. It is always in the public interest to prevent a violation of constitutional rights. *See, e.g., Gannett Co., Inc. v. DePasquale*, 443 U.S. 368, 383 (1979). That purpose can only be effectuated here by denial of a stay.

²⁴ Ctrs. For Disease Control and Prevention, Morbidity and Mortality Weekly Report (Mar. 27, 2020) <https://bit.ly/marmorbidity>).

3. To do otherwise would allow infections to continue unabated, not only among the medically-vulnerable class, but among other prisoners, correctional officers, and staff at Elkton, all of whom are exposed daily to infection. *See* Gov. App. 4a (“COVID-19 infections are rampant among inmates and staff”); 10a (“With the shockingly limited available testing and the inability to distance inmates, COVID-19 is going to continue to spread, not only among the inmate population, but also among the staff”); *id.* (46 staff members infected as of April 22). Reducing the prison population at Elkton is “the best line of defense [for] correctional staff who work at Elkton[.]” App., *infra*, 15a, ¶ 17.

Despite a rapidly growing number of confirmed cases at Elkton, the Government claims victory based on a single fact, namely that hospitalizations have dropped, citing a declaration first submitted on May 29, well after it filed the notice of appeal. Even assuming this factual allegation is deemed true and considered on appeal, it means little in light of this litigation’s only medical expert declaring it to be insignificant. And it means little in light of the undisputed fact that at least one in five Elkton prisoners today is infected with active COVID-19—and countless others are undoubtedly infected but have simply not yet been identified because they contracted the disease since being tested

Defusing the threat at Elkton also serves the public interest because it will mitigate the threat it presents to the surrounding community. Prisons are not closed environments; staff and other individuals coming and going from the prison will serve as vectors for further spread. App., *infra*, 19a-20a, ¶ 32 (“the infection in Elkton would

not stay limited to the facility, but would worsen infection rates in the broader community.”); App., *infra*, 6a, ¶ 13 (“staff can easily carry the infection from the community to the prison and vice versa”). Further spread, both within the prison and in the wider community, also risks overwhelming available medical facilities. Gov. App. 74a–75a. (discussing local and statewide medical capacity).

In sum, the record establishes that the District Courts orders stand between vulnerable prisoners and an unconstitutional risk of contracting COVID-19, protect Elkton’s staff, and protect the community surrounding Elkton too. Staying these orders puts all of these groups at serious risk.

B. Applicants Will Not Be Harmed If A Stay Is Denied.

In contrast to Petitioners, the Government faces no irreparable harm whatsoever. As the party seeking a stay, the Government must show “a likelihood that ‘irreparable harm [will] result from the denial of the stay.’” *Conkright v. Frommert*, 556 U.S. 1401, 1402 (2009) (internal citation omitted). It has not.²⁵

1. The Government suggests that it will be harmed because BOP has unreviewable statutory or constitutional authority to determine the placement of

²⁵ As it has before, the Government incorrectly suggests that, for the purpose of weighing the equities, its interest and the public interest are the same. Stay Appl. 35. This statement misreads *Nken*. There, this Court held that “when the Government is the opposing party,” the harms to a government agency merge with the public interests. *Nken*, 556 U.S. at 435. That is because that posture implicates the public’s interest in “prompt execution” of valid orders, *id.* at 436, and “valid law[s],” *Planned Parenthood of Greater Texas Surgical Health Servs. v. Abbott*, 571 U.S. 1061, 1062 (2013). Here, the Government is *seeking* a stay, not opposing it. It must therefore show both that *it* will suffer an irreparable harm *and* that a stay is in the public’s interest.

prisoners. See Stay Appl. 5, 33-34, 35-38. That late-breaking suggestion, which is nowhere to be found in Government’s stay application just one week ago, has no basis in the law. There is no discretion to contravene the Constitution.

The Government never goes so far as to claim—at least, not directly—that these Eighth Amendment claims are unreviewable. With good reason. This Court demands a “heightened showing” of “clear” congressional “inten[t] to preclude judicial review of constitutional claims” “to avoid the ‘serious constitutional question’ that would arise” otherwise. *Webster v. Doe*, 486 U.S. 592, 603 (1988); *I.N.S. v. St. Cyr*, 533 U.S. 289, 300 (2001). Section 3621(b) purports to preclude review only of an individual “designation of a place of imprisonment” that occurs “under [that] subsection”; it falls well short of that standard.

Petitioners do not dispute that the BOP enjoys latitude in determining where and how federal prisoners are confined. But that discretion “does not mean that constitutional rights are not to be scrupulously observed,” or that federal courts have no role in enforcing those rights. *Bell v. Wolfish*, 441 U.S. 520, 562 (1979). Quite to the contrary, as *Rhodes v. Chapman* explained, federal courts must “discharge their duty to protect constitutional rights” in the face of an Eighth Amendment violation. 452 U.S. 337, 352 (1981) (internal quotation marks omitted). Indeed, in each of the cases Applicants invoke, this Court considered constitutional challenges by prisoners *on the merits*. See *McKune v. Lile*, 536 U.S. 24, 29 (2002) (plurality op.) (considering a state prisoner’s claim that “minimal incentives to participate” in a talk therapy program violated the “Fifth Amendment privilege against self-incrimination”);

Thornburgh v. Abbott, 490 U.S. 401, 403) (1989) (considering regulation of publications entering federal prisons); *Rhodes*, 452 U.S. at 339 (considering crowding); *Bell*, 441 U.S. at 541, 548, 553, 555, 558 (considering measures such as mail regulations and strip searches). These cases reinforce that Petitioners’ constitutional claims are appropriately subject to judicial review.

Nor do the District Court’s orders unduly intruding on the Government’s discretion. “Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.” *Brown v. Plata*, 563 U.S. 493, 511 (2011); *see also Hutto v. Finney*, 437 U.S. 678, 689 n. 9 (1978) (“[S]tate and local authorities have primary responsibility for curing constitutional violations. If, however those authorities fail in their affirmative obligations * * * judicial authority may be invoked. Once invoked, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”) (internal citation and quotations omitted),

The preliminary injunction did little more than echo the Attorney General’s instruction that prison officials use their discretion “immediately” and “with dispatch” to move at-risk prisoners out of Elkton. Gov. App. 27a; Barr Apr. Memo at 1, *infra*, App. 54a (direction to “maximize” use of home confinement at Elkton). Any more circumscribed order would have failed to address the core constitutional injury. The District Court then found that the Government then refused to conduct good-faith evaluations for home confinement, compassionate release, or transfer “[a]gainst a backdrop where approximately one out of every four Elkton inmates have tested

positive for COVID-19,” and where the death toll had tripled since the case was filed.
Gov. App. 48a

The enforcement order was no more than was absolutely necessary in light of the Government’s continued failure to use its discretion to remedy the constitutional violation. *See supra* n. 17 (second order removed categorical exclusions to the extent not required in BOP guidance). By declining even to consider using their full range of capabilities to move people out of Elkton, the Government slowed the process, extending Petitioners’ exposure to unconstitutional risk. Though the Government offered excuses, Gov. App. 268a–270a (claiming difficulties and delays of transfer), the preliminary injunction had identified a range of methods of release precisely to avoid those concerns. Gov. App. 27a–28a; May 7 Tr. at 30, *infra*, App. 123a (noting delay from finding appropriate placements). In other words, the Government “forfeited the advantage of deference” after a “pattern of delays” and “new objections substituted for old ones.” *Battista v. Clarke*, 645 F.3d 449, 455 (1st Cir. 2011); *see* Enforcement Order, Gov. App. 48a (“By thumbing their nose at their authority to authorize home confinement, Respondents threaten staff and they threaten low security inmates.”).

Nor should this Court credit, the Government’s disputed and at this stage untested claims (at 27) that the Government has “mitigated the risk of serious injuries at Elkton.” Even if this Court were to depart from its normal practice and assess these new facts here, the current rate of infection at Elkton belies this claim. *See supra* p. __ (noting that BOP reports that 20% of Elkton prisoners are currently

infected). The District Court explained that because testing is being done in batches within housing units, further spread was likely. Gov. App. 43a–44a. And Petitioners’ evidence shows that the Government’s reliance on hospitalization statistics says nothing about the extent of the spread. Goldenson 2d Decl. ¶ 13, *infra*, App. 143a.

2. The Government also complains of irreparable harm from “release” of prisoners after the May 19 Order. Stay Appl. at 38–39; *but see supra* n. 5 (BOP Director’s testimony that home confinement is “still, after all, a form of incarceration”). It suggests any placements in home confinement will be risky—not based on evidence it provides about the mere 17 prisoners who it has now deemed eligible for home confinement, Gov. App. 259a, but based only on the fact that it revised an earlier decision about those prisoners. The Government cannot meet its burden to establish irreparable harm based on speculation alone. *See Nken*, 556 U.S. at 434–35 (“simply showing some possibility of irreparable injury fails to satisfy the second factor” (cleaned up)); *Winter v. NRDC*, 555 U.S. 7, 21–22 (2008) (movant must “demonstrate that irreparable injury is *likely*” (emphasis original)).

The Government makes no attempt to show that the 17 prisoners identified as eligible after the May 19 Order pose any threat to public safety. But as discussed, the enforcement order left the Government free to use the collection of criteria at its disposal—PATTERN score, risk factors, and others—to ensure the no person who poses a risk will be released to home confinement. It is far from obvious, for example, that a prisoner who has served over sixty percent of his sentence, is awaited by a stable residence and supportive family, has plans and training for a job, has

completed 36 rehabilitative and employment programs, has no recent disciplinary record, and was previously rejected based only on what the Government termed “minor” violence from 30 years ago, poses a public safety risk. *See* Whitfield Decl. and BOP Worksheet, *infra*, App. 155a–157a. Indeed, every prisoner in Elkton is low-security or lower, residing in a facility that the Attorney General specifically identified as suitable for “*immediately maximiz[ing]*” transfers to home confinement. App., *infra*, 54a (emphasis added). The medically-vulnerable subclass is, by definition, disproportionately elderly or infirm. *See* PI Order, Gov. App. 26a (“the danger of recidivism reduces with age, especially after age 40”) (citing United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders* (Dec. 2017)).

Effectively, the Government is asking the Court to shift the burden, asking Petitioners to show a *lack* of irreparable harm. It “might as well be arguing against the release of any inmate, at any time, for any reason, because even in the best of circumstances the country’s criminal system has no way, short of life imprisonment, of ensuring former prisoners do not recidivate.” Gov. App. 25a.

Second, the District Court here did not order full release. Gov. App. 15a (“Petitioners seek an ‘enlargement.’ Enlargement is not release * * * the BOP maintains custody over the defendant, but the place of custody is altered by the court.”); 27a (similar). The purpose and effect of the District Court’s order is for the Government simply to move people out of Elkton, not to “dump [them] out into the streets.” 26a.

3. Any harm to the Government from complying with the preliminary injunction is speculative. First, the Government’s repeated claim (*see, e.g.*, Stay Appl. at 38) that any transfer will risk spreading COVID-19 in violation of CDC guidance is baseless. The District Court’s order recognized BOP’s existing policy of a 14-day pre-transfer quarantine. *Id.* The Government gives no basis to conclude that post-quarantine transfer presents any risk. *Contra* Goldenson 2d Decl. ¶ 12, *infra*, App. 143a (“If this procedure is followed, an individual being moved out of Elkton will pose a minimal risk of infecting others”); Novisky 2d Decl. ¶ 10, *infra*, App. 138a. Further, it claims to have since acquired mass testing capability at Elkton, which could presumably help expedite the process of assessing whether any potential for contagion from a transferee even exists. *See* Gov. App. 150a. And the Government does not and could not contend that the CDC guidelines require BOP to keep medically vulnerable prisoners in conditions that put them at direct risk of COVID-19. Its guidance addresses transfers generally, and simply provides that “unnecessary” travel and routine shuffling of prisoners from place to place should be avoided. Stay Appl. at 37. It does not by any stretch counsel against transfer where, as here, it is the only way to protect a vulnerable individual from infection. On the contrary, it expressly contemplates transfers that are “necessary” for medical purposes or “to prevent overcrowding.”²⁶

²⁶ *See* CDC, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* 4 (Mar. 23, 2020), <https://bit.ly/cdcdetentioninterim>.

Second, the Government’s administrative burden in conducting life-saving transfers—its “extensive output of staff time and resources” (at 37)—is not irreparable harm. *See Sampson v. Murray*, 415 U.S. 61, 90 (1974) (“Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough.”). The Government’s passing complaint (at 36–37) about the District Court “interjecting” itself into prison operations simply describes the role of a court in adjudicating a constitutional violation within a prison, as discussed above. *See Martinez-Brooks*, 2020 WL 2405350, at *15. Indeed, had the BOP been following its own internal directives from the Attorney General, at least some parts of the April 22 order—and most of the subsequent enforcement order—would not have been necessary.

Nor has the Government identified any other particular area of BOP activity that might suffer from the diversion of resources that complying with the District Court’s April 22 order might entail. It does not point to any concerns over lapses in security, loss of ability to perform basic daily activities, or anything of a similar nature—merely that “[s]ignificant work is needed” to comply with the District Court’s order, Gov. App. 129a, ¶ 48; *id.* at 132a–136a at ¶ 19 (explaining why compliance with the April 22 order, which the Government now claims it has done, was “impossible”), and that transferring vulnerable people away from the Elkton outbreak “presents challenges to BOP operational resources.” Matevousian Decl., Gov. App. 247a. It also argues that the continued flood of prisoners into its overcrowded system justifies keeping more at Elkton, Robbins Decl., Gov. App. 268a, but again, home

confinement and other measures are available to it to address this dynamic. It is not and cannot be the law that the resources necessary to comply with a life-saving court order constitute irreparable harm; yet that remains the essence of the Government's position here.

CONCLUSION

The application should be denied.

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Dated: June 3, 2020

APPENDIX

APPENDIX

Declaration of Dr. Meghan Novisky (Apr. 13, 2020) 1a

Declaration of Dr. Joe Goldenson (Apr. 11, 2020) 11a

Declaration of Kendal Nelson (Apr. 12, 2020) 23a

Declaration of Eric McReynolds (Apr. 11, 2020) 28a

Declaration of Eric Bellamy (Apr. 12, 2020) 31a

Declaration of Maximino Nieves (Apr. 11, 2020) 35a

Declaration of Howard Jackson (Apr. 11, 2020) 39a

Declaration of Craig Wilson (Apr. 10, 2020) 43a

Declaration of Arsenio Arzola (Apr. 13, 2020) 48a

Memorandum from Attorney General Barr for Director of Bureau of Prisons
regarding prioritization of home confinement as appropriate in response to
COVID-19 pandemic 52a

Memorandum from Attorney General Barr for Director of Bureau of Prisons
regarding increasing use of home confinement at institutions most affected by
Covid-19 54a

Memorandum from Acting Senior Deputy Assistant Director Brewer for Correctional
Program administrators regarding furlough and home confinement additional
guidelines 57a

Government’s status report (May 20, 2020) 59a

Government’s list of rationales for denial of home confinement 61a

Government’s list of rationales for denial of compassionate release 75a

Transcript of Proceedings, April 17, 2020 100a

Transcript of Proceedings, May 7, 2020 115a

Transcript of Proceedings, May 14, 2020 124a

Supplement to Respondents’ Emergency Motion to Stay 132a

Declaration of Dr. Meghan Novisky, May 30, 2020	134a
Declaration of Dr. Joe Goldenson, May 30, 2020	140a
Class Questionnaires	146a
Declaration of Christopher Whitfield, June 1, 2020	155a
Home Confinement Review Worksheet for Christopher Whitfield	157a
Memorandum from Assistant Director Hugh Hurwitz for Chief Executive Officers regarding home confinement	158a

Exhibit A

Declaration of Dr. Meghan Novisky

Declaration of Meghan Novisky, PhD

1. I am an Assistant Professor in the Department of Criminology, Anthropology, and Sociology at Cleveland State University.
2. My research investigates the consequences of carceral contact on health, factors related to the conditions of confinement, and the collateral consequences of criminal justice policy. I have worked since 2009 with the University of Cincinnati's Corrections Institute (UCCI) as an evidence based programming consultant and trainer. In this role I have worked with correctional staff in 17 U.S. states and trained them on the implementation of research-informed programs and policies to help reduce their recidivism rates. I received my PhD in Sociology from Kent State University, where the focus of my dissertation involved identifying the barriers to health care access that exist in prisons, specifically among older adults.
3. My publications on health and incarcerated people have appeared in numerous peer-reviewed journals, including *Criminology*, *Justice Quarterly*, and *Victims & Offenders*. In 2020, I received the Early Career Investigator Award from the Academic Consortium on Criminal Justice Health (ACCJH), and I serve on the Executive Board of the Academy of Criminal Justice Sciences (Section on Corrections), and as Chair of the Annual Awards Committee of the American Society of Criminology, Division of Corrections and Sentencing.
4. One of the greatest challenges facing prisons regarding the provision of health services is that prisons, by their very nature, are high risk sites for the spread of infectious disease. Close proximity of many people (made worse by overcrowding), shared equipment tied to risky health behaviors such as tattooing, compromised abilities

to maintain general hygiene, substandard health care services, and lack of awareness about infection status combine to aggravate risk factors associated with the spread of infectious disease.¹

5. High levels of stress exposure can also weaken the immune system,² thereby increasing the susceptibility of exposure among incarcerated persons as well as recovery prognosis. Of course, these factors are all greatly exacerbated in the event of a global pandemic such as COVID-19 given that prisons in the U.S. are already under-resourced, understaffed, and chronically overcrowded.

6. On Tuesday, March 24th, the Federal Bureau of Prisons (FBOP) issued a press release stating the Bureau was “taking aggressive steps to protect the safety and security of all staff and inmates, as well as visitors and members of the public.”³ The memo further stated “this response is the Bureau’s top priority.” Yet, the measures outlined in the memo lacked the vision necessary to adequately contain and minimize spread of COVID-19. For example, the memo stated “facilities have been directed to designate available space for isolation and quarantine for inmates who have been exposed to or have symptoms of the virus.” Given that asymptomatic people can still be contagious, it would be impossible for institutions to definitively identify those exposed. Further, isolation of symptomatic prisoners does nothing to address those who are contagious but not symptomatic, nor does it address the threats contagious staff members pose to the incarcerated. As of the time of this filing, there now exist 541 confirmed cases

¹ <https://www.ecdc.europa.eu/sites/default/files/documents/Active-case-finding-communicable-diseases-in-prisons.pdf>

² Fali, T., Vallet, H., and Sauce, D. (2018). “Impact of stress on aged immune system compartments: overview from fundamental to clinical data. *Experimental Gerontology* 105, 19-26.

³ https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf

of COVID-19 across 40 FBOP facilities, including 352 prisoner and 189 staff diagnoses.⁴ Nine prisoners confined to FBOP institutions have died due to COVID-19. These statistics make it clear that current measures being taken by the FBOP are not sufficient in strength nor impact to adequately protect its staff, its prisoners, or the public.

7. On Monday March 30th prisoners at FCI Elkton, a low security male prison, began testing positive for COVID-19. As of April 12, 2020, Elkton has 35 confirmed cases of COVID-19, including 24 prisoner and 11 staff diagnoses.⁵ The FBOP released consecutive memos on 4/2/20,⁶ 4/3/20,⁷ and 4/4/20,⁸ announcing the deaths of Elkton prisoners Woodrow Taylor (53 y/o), Margarito Garcia-Fragoso (65 y/o), and Frank McCoy (76 y/o), respectively. The medically established progression of COVID-19, combined with the pre-existing health conditions of all 3 men, makes it likely these individuals suffered tremendously leading up to their deaths.

8. Based on my expertise on the health related risks associated with incarceration, it is my belief that if serious action is not taken swiftly, prisons under the jurisdiction of the FBOP, including Elkton, will escalate further, serving as hotspots for COVID-19 much like would be the case if people were forced to live on a crowded cruise ship during a pandemic. To be clear, without drastic intervention, many more incarcerated individuals and staff will become infected and will face elevated risks for medical complications and mortality. This is due to the presence of factors that aggravate the spread of COVID-19, including lack of social distancing, concentrations of

⁴ <https://www.bop.gov/coronavirus/>

⁵ <https://www.bop.gov/coronavirus/>

⁶ https://www.bop.gov/resources/news/pdfs/20200402_press_release_elk.pdf

⁷ https://www.bop.gov/resources/news/pdfs/20200403_press_release_elk.pdf

⁸ https://www.bop.gov/resources/news/pdfs/20200404_press_release_elk.pdf

immunocompromised, vulnerable adults, and lack of access to proper sanitation. All of these risk factors are important in assessing Elkton's practical capacity to properly address risks for COVID-19.

9. The volume of prisoners incarcerated at Elkton alone severely limits its capabilities to implement social distancing practices. Elkton maintains a current population of 2,417 male prisoners; 1,999 at the low security FCI/Federal Correctional Institution, and 418 at the FSL/adjacent low security satellite prison.⁹ To keep all 2,417 prisoners (plus their population of staff) a minimum of 6 feet apart at all times is incredibly impractical.

10. It is my understanding that many prisoners in custody at Elkton share cells, sleeping areas, supplies, bathing areas, and other living spaces, compromising Elkton's abilities to follow CDC physical distancing guidelines. Like most low security prisons, it is likely that Elkton has only a limited percentage of its cell capacity devoted to administering solitary living conditions (i.e., one person per cell with no shared living space), as low security prisons are not intended to function like maximum or super-maximum security prisons with high capacities for solitary confinement. With continued functioning of shared spaces for bathing, eating, and sleeping, quarantine and social distancing would be impossible to implement at Elkton.¹⁰ These factors, in combination with the high stress environment of incarceration in general, increase risks of infectious disease exposure in this institution dramatically.¹¹

⁹ <https://www.bop.gov/locations/institutions/elk/>

¹⁰ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

¹¹ Massoglia, M. (2008). Incarceration as exposure: the prison, infectious disease, and other stress-related illnesses. *Journal of Health and Social Behavior*, 49, 56-71.

11. Even if attempts were made to increase physical distance between prisoners at Elkton, this would fail to adequately address the regular contact that exists between Elkton staff and prisoners. Correctional staff must be in close contact with prisoners in the course of their regular jobs to enforce security protocols, escort prisoners across cell blocks and units, administer medications, and supervise meal distribution, for example.

12. Further, it is difficult (if not impossible) for prisoners to follow recommended sanitation procedures. While each Elkton prisoner is likely to have access to a rationed supply of soap, for example, disinfectant cleaning supplies and hand sanitizers would not typically be provided to each incarcerated person, at least not in the quantities necessary, as such supplies are likely to be considered contraband due to their alcohol content.

13. While Elkton has halted prisoner visitations, this will not stop the transmission of the virus between the prisoner population and the community. With institutional staff filtering in and out of Elkton on a daily basis, staff can easily carry the infection from the community to the prison and vice versa. Thus, unless Elkton staff are quarantined and prevented from continuing to cycle in and out of the prison to return to the community following each shift, this risk remains.

14. Further exacerbating the risk of infection to the surrounding community is that medical facilities in prisons are typically inadequate to provide the intensive care needed to handle serious cases of COVID19. Prisoners therefore require transport to community hospitals for care, increasing risks of infection and reducing the capacity of local hospitals to respond to other members of the community. These circumstances also

increase risks for the correctional officers who must not only transport sick, incarcerated individuals to the hospital, but supervise them while they are hospitalized.

15. The FBOP population also includes a significant number of older adults. Over nineteen percent of the prison population (n = 33,817) is over the age of 50, making this group particularly vulnerable to COVID-19 based on age alone.¹² Assuming Elkton's population is representative of the national FBOP demographic data, roughly 1 in 5 prisoners at Elkton would be especially vulnerable to COVID-19 based on age. Furthermore, older incarcerated adults suffer from disproportionately more chronic health conditions than the general population of adults,^{13,14} including respiratory problems, making it likely this group will face medical complications should they continue to become infected. In fact, all 3 deaths at Elkton thus far have been prisoners that meet these categorical criteria: older than 50 years of age with pre-existing chronic health problems.

16. Given the structure, operations, and current conditions at Elkton, there is no realistic set of internal conditions or practices that FBOP can use that will prevent additional infection of prisoners and staff given the current number of prisoners living at Elkton.

17. Significantly reducing the prison population at Elkton as rapidly as possible is the best line of defense to maintain the public health interests of persons incarcerated at Elkton, correctional staff who work at Elkton, and the Ohio community. It

¹² https://www.bop.gov/about/statistics/statistics_inmate_age.jsp

¹³ Loeb, S.J. and AbuDagga, A. (2006). Health-Related Research on Older Inmates: An Integrative Review. *Research in Nursing and Health*, 29, 556-565.

¹⁴ Bedard, R., Metzger, L., & Williams, B. (2016). Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities. *International Review of the Red Cross*, 98, 917-939.

is my recommendation that all prisons under the jurisdiction of the FBOP should do the same. Based on the existing evidence about COVID-19, failing to do so will have grave consequences and long-term traumatic impacts for many.

18. There are several measures that can be taken to safely reduce the prison population at Elkton. Most important among them is to release as many older incarcerated adults from the prison as possible. Doing so will not only help to significantly reduce the prison population, but will remove the individuals most at risk for infection and complications likely to elevate mortality risks. Older adults have significantly reduced risks for recidivism compared with younger adults, so doing this is unlikely to come at the expense of public safety. The most common convicting offenses among people incarcerated in FBOP jurisdiction are in fact drug offenses (n =73,759).¹⁵ Of course, aggravated cases where public safety is a concern need to be considered.

19. Efforts should also be made to release those at the prison with pre-existing chronic health conditions, most importantly those with respiratory conditions, cancer, heart disease, diabetes, kidney disease, HIV, and blood disorders. Because of their pre-existing immunocompromised statuses, failing to do so will leave these individuals not only especially vulnerable to COVID-19, but less likely to recover from it should they become infected.

20. Notably, the FBOP has the option to implement these measures while still maintaining correctional custody. The FBOP could do so by increasing existing efforts to transfer supervision from institutions like Elkton to home confinement in the community.

¹⁵ https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

In fact, they have been encouraged to do so by the Attorney General of the U.S. as of March 26, 2020.¹⁶

21. Specifically, the Attorney General recommended consideration of the following factors for home release: age and vulnerability of the prisoner to COVID-19; the security level of the facility, “with priority given to inmates residing in low and minimum security facilities,” and convicting offense/danger posed to the community. Elkton’s status as a low security prison confirms it is a prime candidate for rapidly downsizing its population in order to best protect the health of the prison population, its staff, and the Ohio community.

22. These actions are both meaningful and necessary. They would enable Elkton to free up needed space, thereby increasing competencies to develop and implement social distancing options not currently available. Doing so would also help to ensure already limited medical supplies and resources at Elkton do not become overwhelmed and that mortality risks are kept as low as possible.

23. Although the FBOP delay has already meant numerous prisoners and staff at Elkton have been infected (some of whom have died), it is not too late to take these steps, which can help prevent the situation from further deteriorating and causing unnecessary suffering to those who remain.

24. I have read the descriptions of the living conditions at Elkton contained in declarations from Elkton prisoners. The descriptions I read are consistent with my understanding of what the conditions of the prison are likely to be at this time based on the resources Elkton has, the structure of the facility itself, the currently limited actions

¹⁶ https://www.bop.gov/resources/news/pdfs/20200405_covid-19_home_confinement.pdf

taken at Elkton to address the risks presented by COVID-19, and the current number of confirmed cases (n = 35) and mortalities (n = 3) attributed to Elkton custody.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read "M. Novisky". The signature is written in a cursive style with a large, sweeping flourish at the end.

Meghan Novisky, PhD

Date: 4/13/2020

Exhibit B

Declaration of Dr. Joe Goldenson

Declaration of Joe Goldenson, MD

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.

2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.

3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.

4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert/monitor at Cook County Jail in Chicago and Los Angeles County Jail, at other jails in Washington, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

The nature of COVID-19

5. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the WHO. Cases first

began appearing sometime between December 1, 2019 and December 31, 2019 in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.

6. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus which caused the 2002-2003 SARS epidemic.

7. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5-35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.

8. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardio-vascular disease, respiratory disease, diabetes, and immune compromise.

9. People with moderate to severe asthma may be at higher risk of getting very sick from COVID-19. COVID-19 can affect your respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease.

10. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS) which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and in parts of China.

11. COVID-19 is widespread. Since it first appeared in Hubei Province, China, in late 2019, outbreaks have subsequently occurred in more than 160 countries and all populated continents, heavily affected countries include Italy, Spain, Iran, South Korea, and the US. The U.S. is now the world's most affected country. As of April 11, 2020, there have been 1,524,161 confirmed human cases globally and 92,941 known deaths. The pandemic has been termed a global health emergency by the WHO. It is not contained and cases are growing exponentially.

12. In the United States alone, the CDC reports 459,165 cases and 16,570 deaths as of April 10, 2020. The Ohio Department of Health reports 5,836 cases and 227 dead as of April 10. All these numbers are likely underestimates because of limited availability of testing.

13. SARS-nCoV-2 is now known to be fully adapted to human-to-human spread. This is almost certainly a new human infection, which also means that there is no preexisting or "herd" immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.

14. The U.S. CDC estimates that the reproduction rate of the virus, the R_0 , is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again is likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20-30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2-14 days, which is why isolation is generally limited to 14 days.

15. There is currently no vaccine for COVID-19, and no cure. The only know ways to prevent the spread of SARS-nCoV-2 involve measures such as thorough handwashing, frequent

decontamination of surfaces, and maintaining six feet of physical distance between individuals (“social distancing”).

The risks of COVID-19 in detention facilities

16. COVID-19 poses a serious risk to prisoners, workers, and anyone else in detention facilities. Detention facilities, including prisons like Elkton, have long been associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.

17. The severe epidemic of Tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase *community* rates of Tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities surrounding a prison.

18. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces is virtually impossible.

19. For example, several deaths were reported in the US in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May 2019.

20. Current recommendations for social distancing, frequent hand washing, and frequent cleansing of surfaces to prevent infection and the spread of the virus are extremely difficult, if not impossible, to implement in the correctional setting. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases. These include physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet,

shower, and eating environments; and limits on hygiene and personal protective equipment such as masks and gloves in some facilities. Shared spaces and equipment (such as telephones) are commonly not adequately disinfected, especially during the current pandemic when more frequent cleaning and disinfecting are required. Limits on soap (copays are common) and recommended hand sanitizers, since they contain alcohol, are also risks for spread. The nationwide shortage of personal protective equipment (PPE), as well as ancillary products (such as cleaning supplies and thermometer probes) further impacts the ability of correctional facilities to implement necessary precautions.¹

21. The risk of exposure to and transmission of infectious diseases, as well as the risk of harm from developing severe complications or death if infected, is significantly higher in jails, prisons, and detention centers than in the community. Close, poorly ventilated, living quarters and often overcrowded conditions in these facilities foster the rapid transmission of infectious diseases, particularly those transmitted by airborne droplets through sneezing, speaking, or coughing. In these congregate settings, large numbers of people are closely confined and forced to share living spaces, bathrooms, eating areas, and other enclosed spaces. They are physically unable to practice social distancing, which the Centers for Disease Control and Prevention (“CDC”) has identified as the “cornerstone of reducing transmission of respiratory diseases such as COVID-19.”² Because of this, incarcerated individuals are less able to protect themselves from being exposed to and becoming infected with infectious diseases, such as COVID-19.

22. While jails, prisons, and detention centers are often thought of as closed environments, this is not the case. Custody, medical, and other support staff and contractors

¹ *Study of COVID-19 in Correctional Facilities*, Harvard University and National Commission on Correctional Health Care, April 9, 2020

² <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

enter and leave the facility throughout the day. New detainees arrive on a frequent basis. Since there is no effective way to screen for newly infected or asymptomatic individuals, they can unknowingly transmit COVID-19 to those housed in the facility. Detainees and inmates are often transferred between housing units, to other facilities, and to and from Court. This further increases the likelihood of transmission of COVID-19.

23. It has long been known that jails, prisons, and detention centers can be hotbeds of disease transmission. Due to the frequent ingress and egress of employees at these facilities, an outbreak within a jail, prison, or detention center can quickly spread to surrounding communities. For example, the tuberculosis epidemic that broke out in New York City in the early 1990s began in jails and was spread to the community by jail employees who became infected and then returned home to their families and communities.

24. In addition to the nature of the prison environment, prison and jail populations are also at additional risk due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to death or severe illnesses after infection from COVID-19 disease.

25. While every effort should be made to reduce exposure in detention facilities through internal mitigation efforts, this may be extremely difficult to achieve and sustain quickly enough. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.

26. Given the experience in China as well as the literature on infectious diseases in jail, additional outbreaks of COVID-19 among the U.S. jail and prison populations are inevitable, as evidenced in Elkton. Releasing as many inmates as possible is important to protect the health of inmates, correctional facility staff, health care workers at jails and other detention

facilities, the community as a whole. Indeed, according to the World Health Organization, “enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages.”³

27. For these reasons, the pandemic has prompted prisoner releases around the world. France has announced it will free 5,000 inmates⁴, and in the United States, California officials are planning to release up to thousands of prisoners.⁵ In Britain, the Ministry of Justice is planning to grant thousands of prisoners early release within weeks in an effort to contain the spread of the virus in cells and facilities where it said social distancing rules are impossible to maintain.⁶ Many cities and counties across the US, including San Francisco, Los Angeles, Chicago, Cleveland and New York, are also releasing prisoners to reduce the risk of COVID-19.⁷

28. It is difficult to overstate the devastation that a COVID-19 outbreak could inflict on a correctional facility such as FCI Elkton. At Rikers Island in New York, between April 1, 2020, and April 15, 2020, the number of COVID-19 positive incarcerated individuals and staff members grew by 104 and 114 people, respectively, upping the jail’s total numbers of confirmed cases to 288 among the incarcerated population, 488 among correction staff, and 78 among

³ World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020), http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

⁴ *Coronavirus: Low-risk prisoners set for early release*, BBC News (Apr. 4, 2020), <https://www.bbc.com/news/uk-52165919>.

⁵ Paige St. John, *California to release 3,500 inmates early as coronavirus spreads inside prisons*, L.A. Times (Mar. 31, 2020), <https://www.latimes.com/california/story/2020-03-31/coronaviruscalifornia-release-3500-inmates-prisons>.

⁶ *Britain plans to free many inmates early as it reports a one-day death toll*, New York Times, 4/3/20.

⁷ Timothy Williams et al., *‘Jails Are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/us/coronavirusprisons-jails.html>.

health care workers.^{8,9} The first known case of COVID-19 at Rikers was confirmed on Wednesday, March 18,¹⁰ illustrating just how quickly this disease can and will overwhelm detention facilities. The Cook County jail in Chicago has emerged as the largest-known source of U.S. coronavirus infections, according to data compiled by The New York Times. At least 387 cases can be linked to the jail, including 272 inmates.

29. According to the Bureau of Prisons, three prisoners have died of COVID-19 at FCI Elkton and its adjacent low security satellite prison. Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly.

30. From news reports, it is also my understanding that 43 detainees have been hospitalized outside the prison with COVID or suspected COVID, as have some staff members. Of those, 15 are on ventilators. Dozens more have symptoms. Even these dozens may represent the tip of the iceberg, since newly-infected people typically do not show symptoms for 2-14 days, and since the infection spreads rapidly to additional people.

31. It is my understanding that Elkton uses open bay / dorm housing units with multiple-occupancy cells, and a limited number of segregation units. It also my understanding that Elkton has roughly 2,400 detainees between the Elkton federal correction institution and the low security satellite prison on any given day; that staff that enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.

32. Based on these understandings, it is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within Elkton.

⁸ Julia Craven, *Coronavirus Cases Are Spreading Rapidly on Rikers Island*, Slate (Apr. 2, 2020), <https://slate.com/news-and-politics/2020/04/rikers-coronavirus-cases-increase.html>.

⁹ Jan Ranson, *Jailed on a Minor Parole Violation, He Caught the Virus and Died*, N.Y. Times (Apr. 10, 2020)

¹⁰ *As Testing Expands, Confirmed Cases of Coronavirus in N.Y.C. Near 2,000* (Mar. 18, 2020), N.Y. Times, <https://www.nytimes.com/2020/03/18/nyregion/coronavirus-new-york-update.html>.

Adequate social distancing would be impossible to maintain. What's more, the infection in Elkton would not stay limited to the facility, but would worsen infection rates in the broader community. The death rate will increase substantially before it starts to diminish without major interventions. This is why leaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place or treating those who eventually died, is insufficient.

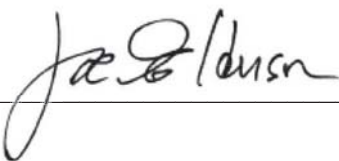
33. It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19, as defined in this lawsuit,¹¹ be released from FCI Elkton and FCL Elkton immediately, taking precautions that they are released to a place where they can maintain medically appropriate isolation for at least 14 days and receive any necessary and available testing healthcare for underlying chronic conditions.

34. It is my public health recommendation that a public health expert be appointed to oversee operations related to preventing further spread of COVID-19 in Elkton, which may include authorizing further staggered release of detainees until it is possible to maintain consistent social distancing and appropriate hygiene within the facility.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

¹¹ "Persons held at Elkton over the age of 50 , as well as all current and future persons held at Elkton of any age who experience (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy."

Executed this 11 day of April 2020 in Alameda County, CA



Joe Goldenson, MD

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Exhibit C

Declaration of Kendal Nelson

DECLARATION OF KENDAL NELSON

I, Kendal Nelson, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”). I am in the low security satellite camp. My Federal Bureau of Prisons Register Number is 64823-060. I was convicted of a drug offense and possession of a firearm, and have served approximately 3 years of a 9-year sentence. I have no violent offenses on my record.
2. I am 46 years old. I suffer from coronary artery disease, and had a heart attack resulting in a stent being placed in my artery a number of years ago. I also have asthma, and use an inhaler regularly, and I use a CPAP machine at night for sleep apnea. I also have stage 4 chronic kidney disease, and a twisted aorta that causes my breathing problems.
3. I’m housed at the low-security satellite camp at FCI Elkton, called “FSL Elkton.” There are 170 men in my pod, living 3 to a cell in spaces that were made for single occupancy. There are 5 toilets and 5 sinks for the whole pod. It’s impossible to keep 6 feet of distance from others here.
4. Everywhere we go, we’re all bunched up together and keeping our distance is impossible. You can’t even walk around, much less maintain distance. That’s true everywhere—near the phones, near the computers, everywhere. All the beds are locked together and physically connected, so it’s impossible to maintain distance in the cubes. Sickness spreads quickly here. We don’t have much time before all of us get it.
5. When it’s time to eat, we pick up our food boxes from the cafeteria. We have to wait in a line where we’re bunched up right behind each other, heel-to-heel, because there isn’t enough space. We get our food and take them it to our pod. We sit together four chairs to

a table and eat. There's nowhere where we can eat without bumping right up against each other.

6. We have TV rooms as common areas, but even there we can't get enough space for social distancing. The TV rooms are small, like the size of an apartment bedroom. There might be 12 people in there at a time watching TV.
7. I'm in the same pod where Woodrow Taylor was, and I knew him. He was one of the prisoners who died from COVID-19. Woodrow had a bad heart and a bad kidney, just like me, and the fact that he died makes me scared. I also saw when another prisoner, Margarito Garcia-Fragoso, was taken out. He later died also.
8. Most of the men in my pod are coughing but don't have fevers. If you have a fever they take you out of the pod into quarantine, but if not, you stay. A bunch of people have been taken out, but then they brought prisoners who were quarantined back into the pod with everyone else.
9. We still don't have any masks, and neither do the correctional officers (COs). I haven't been tested. As far as I know, they're only testing the dead.
10. The commissary is closed. Prisoners are being fed small portions of food, with no ability to get more. We have no way to get cleaning supplies, and the living area is filthy with no surfaces being cleaned. Our water pipes burst, and different colors of water have come out of the pipes. Men are developing rashes that we think are from the water. The poor sanitation is making it unbearable.
11. We were told in a memo that a CO working at the FSL and the FCI is who brought the coronavirus into the prison, back in January.

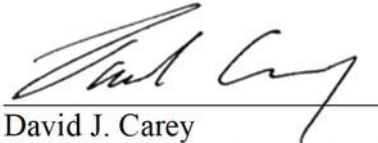
12. There are less guards around than there used to be. They don't come into the pods as much or walk around. A lot of them are sick too.
13. They are not allowing us to go outside and get fresh air, and we're not allowed into the law library. There was a memo sent to prisoners about the virus being present in the prison, but they took no measures to prevent the spread that I could see.
14. I heard about a video that a prisoner took and put out on the Internet to show what's going on here. After the video came out, that prisoner was sent to the hole and seems to be getting punished for it.
15. A lot of the people in my pod seem to be sick. The only thing I can do is stay in my cell under the blankets all the time so I can have some barrier between me and everyone else.
16. I heard that the National Guard is here but they're in the FCI, not the FSL where I am. I was told they are there for Medical.
17. I have heard that a list of nonviolent offenders like me was provided to the prison, with instructions to release them. A group of people was gathered for possible release, but many of them were later put back into the regular population, and I don't know why.
18. I have a secure and stable home environment that I can go to immediately if I am released.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Kendal Nelson (by consent)
Kendal Nelson

I, David J. Carey, certify that I reviewed the information contained in this declaration with Kendal Nelson by telephone on April 10, 2020 and as to ¶ 18, by correspondence on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 12, 2020.

A handwritten signature in black ink, appearing to read "David J. Carey", written over a horizontal line.

David J. Carey
American Civil Liberties Union Foundation of Ohio
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 568-1972
dcarey@acluohio.org

Exhibit D

Declaration of Eric McReynolds

DECLARATION OF ERIC MCREYNOLDS

I, Eric McReynolds, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”) My Federal Bureau of Prisons Register Number is 64593-060. I am 50 years old, and serving a sentence for a nonviolent drug trafficking offense, with a sentence enhancement for possession of a firearm.
2. Several weeks ago, I started coughing. That continued for about a week, and then a fever just came on all of a sudden. I had a fever of about 101. There is a quarantine unit for coronavirus at FCI Elkton, but they didn’t move me into the quarantine unit until I had a fever. I was moved in there on March 29, and stayed until April 7.
3. Everybody was sick in the quarantine area, but I wasn’t tested for coronavirus. I only know of one person who I understand had symptoms of coronavirus and was tested, but I don’t think he got his results even after he was moved back into the regular population.
4. No one in the quarantine area was spaced out. They took people to the hospital if your condition got worse, and of everyone they sent to the hospital, I only saw one person come back.
5. I don’t know if I had it or not. I think I did, but if I didn’t, the quarantine unit put me at risk because of how close everyone was together. I was in there with people who probably had it, so even if I didn’t have it before, I might have it now. If I did have it, I don’t want to infect anyone if I’m contagious.
6. It’s impossible to be spaced out or social distance here. The racks are 2-3 to a cell. People are about 2-3 feet apart when they sleep. Every day, all day, we’re in the dorm clustered in around each other, and it doesn’t change. As I’m talking on the phone right now, I’m right

next to someone, so close that I could kick him in the ankle. When we go to eat, we used to go to the chow hall. Now we pick up the trays and come back. We walk there at our own risk, with no spacing. I don't think anyone knows what to do about this.

7. All day, I'm always right by somebody no matter what I'm doing, and there's no way I can space myself off from other people. Bathroom sinks, tables in the day area, computers, they're all close together. There's nothing I can do to protect myself from people who might be carriers, whether or not they're showing symptoms.

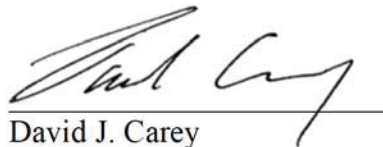
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Eric McReynolds (by consent)

Eric McReynolds

I, David J. Carey, certify that I reviewed the information contained in this declaration with Eric McReynolds by telephone on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 11, 2020.



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Exhibit E

Declaration of Eric Bellamy

DECLARATION OF ERIC BELLAMY

I, Eric Bellamy, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”), in unit “GB.” My Federal Bureau of Prisons Register Number is 15061-088. I was convicted of possession of narcotics and of a firearm, and have served approximately 16 months of a 75 month sentence. I have no violent offenses on my record, and I’ve completed a drug program.
2. I am 52 years old. I have a history of heart problems, including one enlarged heart valve and two valves that are regurgitating. I’ve been told by a doctor that I need a stent within a year. I also suffer from hypertension, and I’m going blind in my left eye, which I’m told is a result of my heart condition. I know that my conditions make me a higher risk for the coronavirus.
3. There is no way to social distance inside FCI Elkton. I’m housed in a cell with two other men, crowded into maybe a 6-foot by 8-foot area with a bunk bed and an extra bed. The whole prison is overcrowded, and every bed is taken up. There is way less than six feet between beds.
4. In any given moment I’m no more than 1-2 feet away from someone else, and there’s no way to keep more of a distance. When we go to get food, we have 5 minutes to get up, get dressed, and get to the building where we get our food boxes. Men are clustered together in line, because there’s no space to spread out. When we come back with our food, we can eat in our cubes, or go to the big or small TV rooms, there’s no distancing whatsoever in any of these places. I can move around and walk around the cubes, but I’m bumping up against people wherever I go.

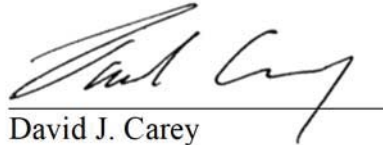
5. I just saw on the news, on WKBN.com Youngstown, that 67 people at Elkton have the coronavirus, 44 are in the hospital, 12 staff have it, and 14 inmates on ventilator.
6. Nothing is being done to separate people who are older or higher-risk, like me. They don't seem to care anything about what's happening down here, because they're focused on the hospital.
7. There are no staff around. I'm told that's because they're overstaffed at the hospital, with people pulling 12-hour shifts there, but they're not doing anything in the regular housing units. They're feeding us, and that's it.
8. The 150 or so people in my unit share 6 toilets and 12 showers, and you're right up against people the whole time. 2 stalls in the bathroom are broken.
9. The COs and other staff have been acting different since this started. There's less of them around and they're all trying to keep their distance, which means nobody is around to help us. The counselor isn't here, and a case manager didn't come in because he's sick.
10. People who have a fever over a certain temperature are being sent to medical or quarantine.
11. I was friends with another prisoner, Woodrow Taylor, who was sick and later died of the disease. After he was taken away to medical, they posted an "enter at your own risk" sign on his room.
12. If I am released, I have a stable home environment in Huntington, West Virginia, where I could go immediately.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Eric Bellamy (by consent)
Eric Bellamy

I, David J. Carey, certify that I reviewed the information contained in this declaration with Eric Bellamy by telephone on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 12, 2020.

A handwritten signature in black ink, appearing to read "David J. Carey", written over a horizontal line.

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Exhibit F

Declaration of Maximino Nieves

DECLARATION OF MAXIMINO NIEVES

I, Maximino Nieves, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at the low-security satellite camp at Federal Correctional Institute, Elkton, called FSL Elkton. My Federal Bureau of Prisons Register Number is 27537-050. I was convicted of conspiracy to distribute drugs, and have only about 11 months left of a 220-month sentence, which was later reduced to 188 months. I have no violent offenses on my record, and no prior offenses of any kind.
2. I'm 46 years old and I don't have a serious medical history. I thank God for that, because it's dangerous enough from the coronavirus even for healthy people.
3. It's totally impossible to maintain 6-foot distancing here. We're in 2- and 3-man cubicles, one after the other in an open dormitory. There are 170 people in my unit, sharing small bathrooms with 4 urinals, 10 showers, and 5 toilets, which we share. In the cubes, the person on the other side sleeps above where you read. In the TV rooms, the tables are right on top of each other. We're about 2 feet away from each other where we sleep.
4. The phones are on top of each other too. Talking on the phone right now, I'm on a phone bank of four phones. There's a little silver divider like old-school public phones, and you're so close you can hear each other's conversations. People come in and out through the entrance right next to me, through a door about 2 feet away.
5. No one has been tested for the coronavirus that I know of. The guys who show symptoms are put into a quarantine unit and as far as I know, they get no further help, unless there's shortness of breath and then they're taken to a hospital. They keep them in the quarantine

unit for about 10 days and then release them. But for those of us like me who have been in contact but are showing no symptoms, they don't do anything at all for us.

6. The prisoners are doing our best to keep surfaces clean with spray bottles of disinfectant, but people are still getting sick because we're all so close together. I know three people who have passed away from the disease, including Woodrow Taylor. I sat next to him ever since he got to this place. He was showing symptoms for a while but they left him in his bunk until finally moving him to medical. After he died, they gave us masks—2 masks in a brown paper bag.
7. I believe we have a few guards who are infected. There are only three guards working in the compound where I am right now, one in each unit and the compound officer. There are fewer guards because they are so busy taking people to the hospital. Every time someone goes, two officers accompany them.
8. The COs are acting very cautious ever since this happened. Normally they do shakedowns, but now they're interacting with us less. They're clearly avoiding us. There's a sense that we're being rejected or abandoned and the COs are not in touch with what's going on here.
9. I was one of 15 guys who was told, a little over a week ago, that I was going to be moved out. The unit manager from the FSL called me and the others up and told us "you guys are not coming back, say your goodbyes." They moved us to the visiting room and set up cots to quarantine us, and our meals were brought in. I was there from Saturday, April 4 through Wednesday, April 8. On Wednesday, a different case manager came in and called five people, including me. He told us to pack back up and go back to the unit, but didn't give us any explanation of why. So we were sent back in. Of that group of 15, 2 have been given

release dates, and 5 of us were sent back to the unit. I don't know what happened to the other 8, but I think they're still in the visiting area.

10. If released, I have a secure and stable home environment that I could go to immediately, including medical insurance.

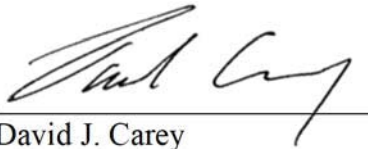
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Maximino Nieves (by consent)

Maximino Nieves

I, David J. Carey, certify that I reviewed the information contained in this declaration with Maximino Nieves by telephone on April 11, 2020 and as to ¶ 10, by correspondence on April 11, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 12, 2020.



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Exhibit G

Declaration of Howard Jackson

DECLARATION OF HOWARD JACKSON

I, Howard Jackson, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”). My Federal Bureau of Prisons Register Number is 54870-039. I was convicted of possession with intent to deliver narcotics, and have served approximately 4 years of a 135-month sentence. I have no violent offenses on my record.
2. I am 44 years old. I have a chronic stomach issue that I’ve been dealing with all my life. Before I self-surrendered, I had a stroke that left me confined to a wheelchair for about 10-12 months. When I was brought into prison, I had no help and no rehab, but I managed to get myself back together. Then about 4 months ago, I had another stroke, a minor one. My fellow prisoners helped me get through it. No one has been regularly checking my blood pressure or anything, they’re just giving me baby aspirin.
3. Since the coronavirus hit, people are passing away. There’s a lot of sickness going on. There’s a quarantine unit where if you have a fever, they house you for a few days. But pretty much everywhere I go, I’m standing next to someone who has symptoms.
4. It’s impossible to social distance in here. Even with the sleeping arrangements, my bunkmate and I can never be more than 3 feet apart. When you walk down a hall, you have to turn to the side to allow each other to pass. Where we watch TV, there’s seating areas right next to each other. At meal times, they call us in unit-by-unit to go over and get our trays. Even at that time, we still can’t be six feet apart, like when we’re lined up. In bathrooms, when you’re up and getting ready in the morning, at mealtimes, sleeping times, all the time, we have to be close together.
5. They just gave us masks last week. Staff and COs got masks around the same time.

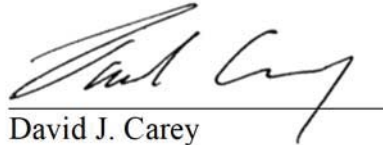
6. Since this started, fewer COs seem to be around and the staff is very secretive. We'd ask them what's going on and they wouldn't tell us. They gave us different numbers about deaths and how many people are sick. From my understanding, all the COs are at the hospital. A lot of them are sick themselves. The COs are mad too, because they're having to come to work and deal with this, and they only just got masks.
7. The prison is not doing anything in particular to protect people with preexisting conditions, like me. They've sent out memos telling us to keep your distance and wash your hands. I'm sure they know that's not possible.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Howard Jackson (by consent)
Howard Jackson

I, David J. Carey, certify that I reviewed the information contained in this declaration with Howard Jackson by telephone on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 11, 2020.

A handwritten signature in black ink, appearing to read "David J. Carey", written over a horizontal line.

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Exhibit H

Declaration of Craig Wilson

DECLARATION OF CRAIG W. WILSON

I, Craig Wilson, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”), a low-security prison operated by the Federal Bureau of Prisons. My Federal Bureau of Prisons Register Number is 13730-025. I have served approximately half of a 120-month sentence for possession of methamphetamine and possession of a firearm. There has never been any violence on my record, but over the years I have suffered from addiction. I have a stable home environment available if I’m able to move to home detention, and I have an evidence-based recovery plan in place.
2. I am 42 years old. I’ve suffered from chronic asthma since childhood, and have had to use inhalers, steroids, and breathing machines at various times in order to breathe properly. I use a rescue inhaler regularly, and I take albuterol for my breathing problems. I know that my condition puts me in a high-risk category for COVID-19, and I’m afraid that if I catch it, I will die.
3. Around March 9, 2020, FCI Elkton established a protocol to keep the facility free of COVID-19. I understood that to involve keeping the staff on the grounds for two-week intervals, and to test them for the coronavirus upon arrival and departure. Mats, bedding, and food were brought in for the staff, but that plan was quickly abandoned. I understood that to be because the staff didn’t want to cooperate with the plan, because I heard some of them saying so.
4. It has been complete chaos since the coronavirus began to spread inside FCI Elkton. The prison has set up a quarantine unit, where they move people who they see showing symptoms, for a period of seven days. Medical is taking temperatures, using the same

thermometer for multiple people and only wiping it off with a sanitary napkin. If the fever goes away, they're moved back to the regular housing unit with no testing done. As far as I know, no one is being tested unless they're in bad enough condition to need to go to the hospital.

5. The number of people who are showing symptoms is staggering. A steady flow of people have ended up in the hospital, with ambulances leaving at all hours. I know three people have passed away. They were sick in bed with a fever, moved to a hospital, and never returned.
6. I know that social distancing is recommended to prevent the spread of the virus, but there is absolutely no way to practice social distancing here. We're piled on top of each other and left to fend for ourselves. My housing unit has open dorms with 150 bunks, divided into cubes with each cube holding 2-3 prisoners. There are 10 sinks, 18 showers, 6 toilets, and 6 urinals for all 150 people. Our bunks are in very close proximity to each other, definitely less than six feet in all directions. The cube is about 8 feet by 9 feet, with a 5-foot wall in between cubes. We are forced to get in tight lines for all meals and medications.
7. We're not allowed to go outside, which makes no sense to me because we might be able to practice social distancing outside. The air-intake units for my dorm, HB dorm, are broken, so we're not even getting fresh air from outside. The air that we receive is circulated from downstairs where the quarantine unit is housed.
8. A friend of mine who works in Medical was made to clean the cubes of those who were sick, and he ultimately got very sick and was put on life support. He was gone for a week and has just been put back into population.

9. There are only 4 phones and 4 computers shared by everyone in my unit. They are not being cleaned in between uses. Both the phones and the computers are less than two feet apart and are all in constant use.
10. There are no dispensers for soap or hand sanitizer anywhere in the unit. Once a week we are issued a 4-ounce bottle of “3-in-1” soap that is to be used for washing your hair and body, shaving, and washing your hands. I’ve run out of soap—everyone has. Without our commissary, we have nothing to wash with. They brought in a big jug of watered-down antibacterial spray for the dorm to share, and that’s all we have. We have access to one shared area for hot water, shared by all 150 people in the unit.
11. Each prisoner was issued two one-time-use masks a couple of weeks ago. They’re supposed to be disposable and we have no way to clean them, but that’s all we got. Using the mask repeatedly is dangerous, so many of us have nothing.
12. The prison commissary has been shut down. We are unable to purchase any additional soap, medicine, or sanitary equipment, and this also prevents us from buying stamps to mail letters to our loved ones.
13. Some staff still aren’t wearing protective gear, even after the deaths we’ve seen. The staff are hiding for the most part, and we only see them during count times. Many are sympathetic to the prisoners but unable to help. I’ve heard that the National Guard is here for medical assistance and staffing shortages, but I haven’t seen any of them. I’m worried that it’s going to come to the point of a riot soon.
14. The situation isn’t getting any better. Nothing is being done to protect me or others and I’m in fear for my life, because it seems like it’s only a matter of time until I get this virus. Many people around me feel the same way. I feel like I’ve been handed a death sentence.

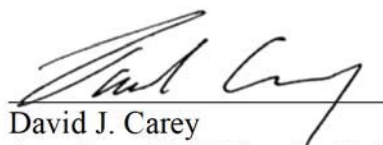
15. On March 30, 2020, I filed a request for home detention with the warden, but have gotten no response. I've asked for a grievance form to file, but I've been told that there are no forms available. All concerns that I and others have raised to staff are being ignored.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Craig Wilson (by consent)
Craig Wilson

I, David J. Carey, certify that I reviewed the information contained in this declaration with Craig Wilson by telephone on April 10, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 10, 2020.



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Exhibit I

Declaration of Arsenio Arzola

DECLARATION OF ARSENIO ARZOLA

I, Arsenio Arzola, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”). My Federal Bureau of Prisons Register Number is 27290-050. I was convicted for conspiracy to distribute drugs and possession and discharge of a firearm, and I have about 11 years remaining on my sentence.
2. I am 49 years old. I don’t know if I have any medical conditions, because I haven’t been given a physical since I’ve been incarcerated at FCI Elkton, which has been about 30 months.
3. My cellmate, a man named Michael Bear, got very sick. He is about 68 years old and when the coronavirus first hit, he went to Medical three times in one week but was returned to the housing unit. I had to serve as his caretaker or first responder and take care of him. He was coughing, sneezing, moaning, and defecating on himself. I had no gear, but I provided him some medication from the commissary and tried to help him get dressed, feed him, and move him around. I’m not an EMT, just a human being who has an elderly dad at home who I pray is getting the help he needs.
4. I’m in a housing unit called AA, in a 10,000 square foot warehouse. It’s wide open, with poor ventilation and filth on the ceiling and in the vents, which I’ve never seen cleaned. About 165 prisoners are in each dorm, in cubes that measure 8 by 10 feet, each containing 3 beds, 3 lockers, clothes, commissary, shoes, and 3 grown men. In this space, there is no way in the world for us to keep the six-foot distance for social distancing. Our beds are so close that we rub feet. We’re overcrowded like cattle. Some people get a 2-person cube, but that’s up to staff. I don’t think this place was even built to house this many people.

5. We have 12 shared showers. They're next to each other, with a wooden wall partly dividing them, but my water hits the next man and his water splashes me. The sinks are so close to each other that when we brush our teeth or wash our hands, the splash from the next man's toothpaste hits you, and you're bumping elbows with him. We all use the same toilets, which are permanently stained with waste and filth. Surfaces are not being cleaned.
6. We have controlled movements, like when we go to eat. It's a stampede of people trying to get through a 4-6 foot wide door. Social distancing is out the window. Phones are about 4 inches apart, and computers are about 8 inches apart, and the lines to get to them are ridiculous, especially during the day.
7. Soap and cleaning supplies are scarce. The commissary has been closed for a week. I've heard people call this institution a giant petri dish, a ticking time bomb, and a breeding ground for the COVID-19 pandemic.
8. It's a fact that the staff is overwhelmed. They seem to be dealing with their own personal or union problems. They don't want to be bothered by prisoners, and tensions are very high. Aggression is in the air, and every question from a prisoner to staff is answered in a very aggressive manner. Prisoners are scared to ask for anything—cleaning chemicals, paper, or anything else. Some of the staff wear masks, and some don't. I hear them say “if you're gonna get it, you're gonna get it.”
9. We were provided masks two weeks into the outbreak, when people were already sick and being pulled out into quarantine hour after hour, day after day. We were exposed to the virus for at least those two weeks before getting masks.
10. Prisoners are not being quarantined for 14 days. They're being sent back to units while still showing symptoms, and housed right back with us in the cubes. Some people with

symptoms are being taken immediately to medical, others are left behind. My sick cellmate, Michael Bear, was taken away and they moved someone else in who was just out of a 7-day quarantine and is still showing symptoms. Nothing has been done with me or my other cellmate, even though we were so close to a sick person.

11. The only way I can think of that we might be able to keep our distance would be to intentionally commit infractions in order to be put in the SHU, or special housing unit, as punishment. Things are not getting any better.

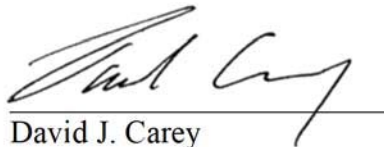
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Arsenio Arzola (by consent)

Arsenio Arzola

I, David J. Carey, certify that I reviewed the information contained in this declaration with Arsenio Arzola by telephone on April 13, 2020 and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 13, 2020.




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Office of the Attorney General
Washington, D. C. 20530

March 26, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU PRISONS

FROM: THE ATTORNEY GENERAL 

SUBJECT: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic

Thank you for your tremendous service to our nation during the present crisis. The current situation is challenging for us all, but I have great confidence in the ability of the Bureau of Prisons (BOP) to perform its critical mission during these difficult times. We have some of the best-run prisons in the world and I am confident in our ability to keep inmates in our prisons as safe as possible from the pandemic currently sweeping across the globe. At the same time, there are some at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement rather than in BOP facilities. I am issuing this Memorandum to ensure that we utilize home confinement, where appropriate, to protect the health and safety of BOP personnel and the people in our custody.

I. TRANSFER OF INMATES TO HOME CONFINEMENT WHERE APPROPRIATE TO DECREASE THE RISKS TO THEIR HEALTH

One of BOP's tools to manage the prison population and keep inmates safe is the ability to grant certain eligible prisoners home confinement in certain circumstances. I am hereby directing you to prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic. Many inmates will be safer in BOP facilities where the population is controlled and there is ready access to doctors and medical care. But for some eligible inmates, home confinement might be more effective in protecting their health.

In assessing which inmates should be granted home confinement pursuant to this Memorandum, you are to consider the totality of circumstances for each individual inmate, the statutory requirements for home confinement, and the following non-exhaustive list of discretionary factors:

- The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines;

Memorandum from the Attorney General

Page 2

Subject: Prioritization of Home Confinement As Appropriate in Response to COVID-19
Pandemic

- The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities;
- The inmate's conduct in prison, with inmates who have engaged in violent or gang-related activity in prison or who have incurred a BOP violation within the last year not receiving priority treatment under this Memorandum;
- The inmate's score under PATTERN, with inmates who have anything above a minimum score not receiving priority treatment under this Memorandum;
- Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;
- The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home detention. Other serious offenses should weigh more heavily against consideration for home detention.

In addition to considering these factors, before granting any inmate discretionary release, the BOP Medical Director, or someone he designates, will, based on CDC guidance, make an assessment of the inmate's risk factors for severe COVID-19 illness, risks of COVID-19 at the inmate's prison facility, as well as the risks of COVID-19 at the location in which the inmate seeks home confinement. We should not grant home confinement to inmates when doing so is likely to increase their risk of contracting COVID-19. You should grant home confinement only when BOP has determined—based on the totality of the circumstances for each individual inmate—that transfer to home confinement is likely not to increase the inmate's risk of contracting COVID-19.

II. PROTECTING THE PUBLIC

While we have an obligation to protect BOP personnel and the people in BOP custody, we also have an obligation to protect the public. That means we cannot take any risk of transferring inmates to home confinement that will contribute to the spread of COVID-19, or put the public at risk in other ways. I am therefore directing you to place any inmate to whom you grant home confinement in a mandatory 14-day quarantine period before that inmate is discharged from a BOP facility to home confinement. Inmates transferred to home confinement under this prioritized process should also be subject to location monitoring services and, where a court order is entered, be subject to supervised release.

We must do the best we can to minimize the risk of COVID-19 to those in our custody, while also minimizing the risk to the public. I thank you for your service to the country and assistance in implementing this Memorandum.



Office of the Attorney General
Washington, D. C. 20530

April 3, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU OF PRISONS

FROM: THE ATTORNEY GENERAL *UPBarr*
SUBJECT: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19

The mission of BOP is to administer the lawful punishments that our justice system imposes. Executing that mission imposes on us a profound obligation to protect the health and safety of all inmates.

Last week, I directed the Bureau of Prisons to prioritize the use of home confinement as a tool for combatting the dangers that COVID-19 poses to our vulnerable inmates, while ensuring we successfully discharge our duty to protect the public. I applaud the substantial steps you have already taken on that front with respect to the vulnerable inmates who qualified for home confinement under the pre-CARES Act standards.

As you know, we are experiencing significant levels of infection at several of our facilities, including FCI Oakdale, FCI Danbury, and FCI Elkton. We have to move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of these institutions. I would like you to give priority to these institutions, and others similarly affected, as you continue to process the remaining inmates who are eligible for home confinement under pre-CARES Act standards. In addition, the CARES Act now authorizes me to expand the cohort of inmates who can be considered for home release upon my finding that emergency conditions are materially affecting the functioning of the Bureau of Prisons. I hereby make that finding and direct that, as detailed below, you give priority in implementing these new standards to the most vulnerable inmates at the most affected facilities, consistent with the guidance below.

- I. **IMMEDIATELY MAXIMIZE APPROPRIATE TRANSFERS TO HOME CONFINEMENT OF ALL APPROPRIATE INMATES HELD AT FCI OAKDALE, FCI DANBURY, FCI ELKTON, AND AT OTHER SIMILARLY SITUATED BOP FACILITIES WHERE COVID-19 IS MATERIALLY AFFECTING OPERATIONS**

Memorandum from the Attorney General

Page 2

Subject: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19

While BOP has taken extensive precautions to prevent COVID-19 from entering its facilities and infecting our inmates, those precautions, like any precautions, have not been perfectly successful at all institutions. I am therefore directing you to immediately review all inmates who have COVID-19 risk factors, as established by the CDC, starting with the inmates incarcerated at FCI Oakdale, FCI Danbury, FCI Elkton, and similarly situated facilities where you determine that COVID-19 is materially affecting operations. You should begin implementing this directive immediately at the facilities I have specifically identified and any other facilities facing similarly serious problems. And now that I have exercised my authority under the CARES Act, your review should include all at-risk inmates—not only those who were previously eligible for transfer.

For all inmates whom you deem suitable candidates for home confinement, you are directed to immediately process them for transfer and then immediately transfer them following a 14-day quarantine at an appropriate BOP facility, or, in appropriate cases subject to your case-by-case discretion, in the residence to which the inmate is being transferred. It is vital that we not inadvertently contribute to the spread of COVID-19 by transferring inmates from our facilities. Your assessment of these inmates should thus be guided by the factors in my March 26 Memorandum, understanding, though, that inmates with a suitable confinement plan will generally be appropriate candidates for home confinement rather than continued detention at institutions in which COVID-19 is materially affecting their operations.

I also recognize that BOP has limited resources to monitor inmates on home confinement and that the U.S. Probation Office is unable to monitor large numbers of inmates in the community. I therefore authorize BOP to transfer inmates to home confinement even if electronic monitoring is not available, so long as BOP determines in every such instance that doing so is appropriate and consistent with our obligation to protect public safety.

Given the speed with which this disease has spread through the general public, it is clear that time is of the essence. Please implement this Memorandum as quickly as possible and keep me closely apprised of your progress.

II. PROTECTING THE PUBLIC

While we have a solemn obligation to protect the people in BOP custody, we also have an obligation to protect the public. That means we cannot simply release prison populations en masse onto the streets. Doing so would pose profound risks to the public from released prisoners engaging in additional criminal activity, potentially including violence or heinous sex offenses.

That risk is particularly acute as we combat the current pandemic. Police forces are facing the same daunting challenges in protecting the public that we face in protecting our inmates. It is impossible to engage in social distancing, hand washing, and other recommend steps in the middle of arresting a violent criminal. It is thus no surprise that many of our police officers have fallen ill with COVID-19, with some even dying in the line of duty from the disease. This pandemic has dramatically increased the already substantial risks facing the men and women who keep us safe, at the same time that it has winnowed their ranks while officers recover from getting sick, or self-quarantine to avoid possibly spreading the disease.

Memorandum from the Attorney General

Page 3

Subject: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19

The last thing our massively over-burdened police forces need right now is the indiscriminate release of thousands of prisoners onto the streets without any verification that those prisoners will follow the laws when they are released, that they have a safe place to go where they will not be mingling with their old criminal associates, and that they will not return to their old ways as soon as they walk through the prison gates. Thus, while I am directing you to maximize the use of home confinement at affected institutions, it is essential that you continue making the careful, individualized determinations BOP makes in the typical case. Each inmate is unique and each requires the same individualized determinations we have always made in this context.

I believe strongly that we should do everything we can to protect the inmates in our care, but that we must do so in a careful and individualized way that remains faithful to our duty to protect the public and the law enforcement officers who protect us all.



**U.S. Department of Justice
Memorandum
Federal Bureau of Prisons**

Correctional Programs Branch

Central Office
320 First Street, N.W.
Washington, DC 20534

MEMORANDUM FOR CORRECTIONAL PROGRAM ADMINISTRATORS

FROM: 
David Brewer, Acting Senior Deputy Assistant
Director

SUBJECT: Furlough and Home Confinement Additional Guidance

The following guidance is provided from information contained in the CARES Act, memoranda from Attorney General Barr, and the Bureau of Prisons. This memorandum rescinds guidance previously provided.

Furlough

The current pandemic is considered an urgent situation that may warrant an emergency furlough under 570.32(b)(1) and 570.33(b). These regulations authorize a non-transfer emergency furlough if the inmate is otherwise deemed appropriate, even if he/she has been submitted for Home Confinement (HC). Effective April 16, 2020, all inmates referred for an emergency furlough due to the Covid-19 pandemic should be submitted and keyed as FURL CRI.

Inmates who have been referred for a release planning furlough based on guidance issued prior to April 16, 2020, do not require a new application. These inmates should be keyed out of the facility as FURL REL. Furlough applications completed on or after April 16, 2020, should follow the updated guidance. Inmates within 12 months of his/her Projected Release Date (PRD), or those who have received Home Confinement placement and have a PRD exceeding one year, should be reviewed for furlough.

Home Confinement

In an effort to alleviate concerns and questions, the following criteria should be met when reviewing and referring inmates for HC:

- Primary or prior offense is not violent

- Primary or prior offense is not a sex offense
- Primary or prior offense is not terrorism
- No detainer
- Mental Health Care Level is less than CARE-MH 4
- PATTERN risk score is Minimum (R-MIN)
- No incident reports in the past 12 months (regardless of severity level)
- U.S. Citizen
- Viable Release Plan

If the inmate meets the criteria above, the following factors should be noted, but are not a reason for denial:

- Age
- Projected Release Date
- Percentage of time served
- Medical Care Level
- Victim Witness Program
- Arrival dated (ARSD)

Any concerns regarding an inmate's suitability for HC placement should be noted in Section 11 of the BP-210, *Institutional Referral for CCC Placement*. It is strongly encouraged to refer inmates currently housed in a facility with active Covid-19 cases.

For inmates requesting relocation, a release plan must be submitted to the USPO prior to HC referral submission. The USPO approval letter must be forwarded to the RRM, once received. Institution staff should contact the Health Service Specialist in the RRM's office with questions regarding HC placement for inmates with medical concerns.

If you have any questions, please contact David Brewer, Acting Senior Deputy Assistant Director, Correctional Programs Division, at (202)353-3638.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CRAIG WILSON, et al.,	)	CASE NO.: 4:20cv794
)	
)	
Petitioners,	)	JUDGE JAMES S. GWIN
)	
v.)	
)	
MARK WILLIAMS, Warden of Elkton Federal Correctional Institution, et al.,	)	<u>RESPONDENTS' STATUS REPORT</u>
)	
)	
Respondents.)	

Pursuant to the Court’s May 14, 2020 non-document Order, Respondents respectfully submit the following status report, providing COVID-19 testing data for Federal Correctional Institution Elkton (“Elkton”), this data includes the main facility and the Federal Satellite Low.

ABBOTT RAPID TESTS

Abbott Tests for May 19, 2020 are as follows:

	DAILY	TOTAL (since May 14, 2020)
TESTS PERFORMED	10 (1 test invalid results)	47
POSITIVE	2	5
NEGATIVE	7	41

MASS TESTING – QUEST DIAGNOSTICS

The following data is for May 19, 2020:

Swabs taken/sent to Quest Diagnostics - 140

	RESULTS	TOTAL (since May 11, 2020)
TESTS PERFORMED	140	664
POSITIVE	1	53
NEGATIVE	0	141

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

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Attorneys for Respondents

Exhibit A

	A	B	C	D	E	F
1	Register	Name	Court of	Docket Number	Offense	Status/Rationale
2	Number		Jurisdiction			
3			FMN		18:286,371 FRAUD, OTHER	Low Risk/Detainer Florida DOC, C/S Sentence, 32.1% ts
4			FDCD		18:2251-2,2260 OBSCENE MATTR	PSF Sex Offender
5			FDCS		DC SEX CARNAL KNOWLEDGE	PSF Sex Offender
6			FNWV		21:846 SEC 841-851 ATTEMPT	24% time served; Low Risk; STG Hells Angels; Assault on a Police Officer; Last IR 2009
7			FWVS		21:841 SCH II NARCOTC, NONFSA	Detainer; Medium Risk; IR 01/16/2020 Use of Drugs, 01/16/2020 Possession 11/2019 Being Absent, 09/2019 Possession
8			FMD		COMMUNICATIONS ACT	Has Active Warrants in NCIC for Grand Theft; Low Risk Level
9			FMIW		18:2113(D) ROBBERY, ASSLT, BANK	Current Violence - Armed Bank Robbery; 03/2020 IR 218; Low Risk; '76 Manslaughter, '90 Bank Robbery; Numerous Major IRS in NYDOC;
10			FIAN		21:848 CONT CRIMINL ENTERPRS	Greatest Severity Offense - Leader Organizer; 43% ts; PRD 2033;
11			FKYW		18:286,371 FRAUD, OTHER	Broad Publicity; DST for RRC 05/06/2020; Fugitive Most Wanted 9 Years; Prior '98 IR for Assault;
12			FINN		18:2117 INTRST COMM ACT VIOL	Current Violence - Possession of a Pipebomb - manufactured and exploded as a tactic to commit robberies; resulted in death
13			FWVS		21:841 & 846 SEC 841-851	Current Violence/Past Violence Firearms Trafficking; Prior possession of destructive device (pipebomb); prior domestic violence
14			FIAN		21:846 SEC 841-851 ATTEMPT	Past violence - assault on LEO (attempted to take F/A); Medium Risk;
15			FWVN		21:841 & 846 SEC 841-851	Medium Risk; 36% ts; 12/2019 - Possessing Cell Phone IR
16			FMIE		21:841 & 846 SEC 841-851	Low Risk; '64 Assault and Battery; PRD 2023; 63% ts
17			FMSN		21:846 SEC 841-851 ATTEMPT	Medium Risk; 09/2019 Use of Drugs or Alcohol; 64% ts
18			FWVN		21:841 & 846 SEC 841-851	PRD 12/2020; W CCC Action; High Risk?; Escape History noted
19			FWIE		21:846 SEC 841-851 ATTEMPT	History of Minor Escape noted; prior violence; Medium Risk; STG Vice Lords Member
20			FFLS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
21			FMN		18:1030 FRAUD COMPUTERS	Current Violence - Felon In Possession of a F/A; Prior aggravated robbery '80; Low Risk; 19% ts; G6 reflects detainer not on psod??
22			FDE		21:846 SEC 841-851 ATTEMPT	Low Risk; Past Violence -93 Robbery; Poor program participation & LS
23			FWVN		21:841 & 846 SEC 841-851	Minor Escape; Prior Violence - Robbery; No FSA assignments 72% ts
24			FND		21:841 SCH II NONNARC, NONFSA	54% ts; no Risk assignmt; 09/2019 Fighting With Another Person
25			FINN		18:922(G) FIREARMS, 3 PRI CNV	High recidivism risk; Prior Violence (1999, 1991, 1984, 1979); IR for Code 112 (January 2020)
26			FVAW		18:924(C) FIREARMS LAWS	Medium Risk; Prior violence (1986); Detainer W/ VA DOC
27			FMOW		21:846 SEC 841-851 ATTEMPT	Outlaw MC Gang; Escape from LVN SCP (1984); Low Recidivism risk; 36%
28			FFLN		18:922(G) FIREARMS, CARR CRIM	Low risk; Sex offender and history of violence (1988)
29			FWVN		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Low recidivism; 42%'
30			FILN		18:286,371 FRAUD, OTHER	Alien; to be reviewed for RIS
31			FIAN		21:846 SEC 841-851 ATTEMPT	Low risk; History of Violence (1996 Domestic Assault); 47%; PRD 2037
32			FFLN		21:846 SEC 841-851 ATTEMPT	Medium risk; IR for Code 312 (November 2019)
33			FMN		18:922(G) FIREARMS, 3 PRI CNV	PRD 2033; IR for Code 307 (January 2020); 31%
34			FILS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
35			FTNM		OBSCENE MATTER TRANSPORT	Sex Offender
36			FPAW		OBSCENE MATTER TRANSPORT	Sex Offender (current and multiple priors)
37			FIAS		21:846 SEC 841-851 ATTEMPT	Low risk; History of Violence (multiple domestic assaults); 53%
38			FINN		21:841 & 846 SEC 841-851	Medium Risk; Prior Violence Criminal Reckless While Armed (1997); 71%
39			FFLN		21:846 SEC 841-851 ATTEMPT	Medium risk; IR for Codes 316, 312 (December 2020); 63%
40			FDE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
41			FFLN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
42			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
43			FFLN		18:2241-2248 SEXUAL ABUSE	Sex Offender
44			FINN		21:841 SCH II NARCOTC, NONFSA	Submitted for Home Confinement Awaiting CCC Action 05-03-2020; 62%
45			FWIW		21:841 & 846 SEC 841-851	History of violence for Assault, Pointed Gun at Victim; 71%
46			FINS		21:841 & 846 SEC 841-851	High risk; Prior Violence Resisting, Robbery, Battery; 84%
47			FDE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
48			FIAS		18:2251-2,2260 OBSCENE MATTR	PPS
49			FND		BURGLARY	Sex offender; Medium recidivism risk; 29%
50			FILS		21:841 SCH II NARCOTC, NONFSA	Sex Offender due to prior conviction; History of violence for Aggravated Battery (1997); IR for Code 201 (June 2019); High recidivism risk
51			FVAW		18:924(C) FIREARMS LAWS	Medium recidivism risk; History of violence for Assault and Battery (1997)
52			FKYE		21:841 SCH II NONNARC, NONFSA	History of Violence for Robbery (1985); Low recidivism risk
53			FWIW		OBSCENE MATTER TRANSPORT	Sex offender; RRC DST on 07-21-2020; IR for Code 312 (July 2019)
54			FMSS		21:846 SEC 841-851 ATTEMPT	Low recidivism risk; History of violence for Involuntary Manslaughter
55			FPAW		21:841 SCH II NARCOTC, NONFSA	Low recidivism risk; History of violence (1997)
56			FPAW		21:841 SCH II NARCOTC, NONFSA	Medium recidivism risk; History of violence (1976 and 1986)
57			FWIE		18:286,371 FRAUD, OTHER	Low recidivism risk; 18%
58			FIAN		21:846 SEC 841-851 ATTEMPT	Medium recidivism risk; History of violence for Assault (1991) and Escape for Absconding (1986)
59			FILS		18:2251-2,2260 OBSCENE MATTR	Sex offender; Low recidivism risk
60			FINS		21:841 & 846 SEC 841-851	Medium recidivism risk
61			FWVS		18:2251-2,2260 OBSCENE MATTR	Sex offender; Low recidivism risk
62			FINN		21:841 & 846 SEC 841-851	High recidivism risk; IR suspended pending AUSA referral for Code 102A
63			FIAN		21:841 SCH II NONNARC, NONFSA	High recidivism risk; IR for Code 331 (March 2020)
64			FILS		OBSCENE MATTER TRANSPORT	Sex offender; High recidivism risk; Current and prior sex offenses
65			FILS		18:2251-2,2260 OBSCENE MATTR	Sex offender; COVID Refer CMA
66			FMIW		21:846 SEC 841-851 ATTEMPT	Low recidivism risk; IR for Code 219 (January 2020)
67			FOHS		21:846 SEC 841-851 ATTEMPT	Low recidivism risk
68			FALS		18:2251-2,2260 OBSCENE MATTR	Sex Offender - to be reviewed for RIS
69			FILS		21:841 SCH II NARCOTC, NONFSA	Medium recidivism risk; History of violence (1998)
70			FILS		18:2251-2,2260 OBSCENE MATTR	Sex offender; Low recidivism risk

	A	B	C	D	E	F
71			FND		21:841 & 846 SEC 841-851	Low recidivism risk; IR for Code 201 (Jul 2019)
72			FINS		18:922(G) FIREARMS,3 PRI CNV	History of violence (1983 and 1995); Medium recidivism risk; IR for Code 212 (April 1, 2020) and 203 (December 2019)
73			FWIE		18:2113(D) ROBBERY,ASSLT,BANK	Low recidivism risk; Current violence of Bank Robbery, Prior violence for Robbery
74			FMD		18:2113 ROBBERY BANK	Low recidivism risk; Current and prior violence for Bank Robbery
75			FWVN		21:843 USE FICT,REV,SUSP NBR	High recidivism risk; Prior violence; IR for Code 112 (November 2019)
76			FINN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
77			FPAW		18:1344 BANK FRAUD	High recidivism risk
78			FILS		18:2251-2,2260 OBSCENE MATTR	Sex offender
79			FINS		18:2251-2,2260 OBSCENE MATTR	Sex offender (current and prior convictions)
80			FKYW		18:2241-2248 SEXUAL ABUSE	Sex offender (current and prior convictions)
81			FWVN		18:922(G) FIREARMS,CARR CRIM	Sex offender due to prior conviction; History of violence for Murder (1997)
82			FMIW		21:841 & 846 SEC 841-851	Prior violence 2008; Medium recidivism risk
83			FRQ		18:2119 ROBBERY OF AUTO	Current violence offense; Low recidivism risk
84			FKYW		18:2251-2,2260 OBSCENE MATTR	Sex offender; History of violence for prior sex offense
85			FFLM		21:846 SEC 841-851 ATTEMPT	Low recidivism risk; IR for Code 397 (October 2019); PRD 09-07-2028
86			FIAN		18:2251-2,2260 OBSCENE MATTR	Sex offender
87			FWVN		21:841 SCH II NONNARC,NOFNSA	Low recidivism risk; RRC DST on 09-16-2020
88			FINS		21:846 SEC 841-851 ATTEMPT	Medium recidivism risk; HX of violence for Battery (1997)
89			FILS		21:846 SEC 841-851 ATTEMPT	Low recidivism risk; Escape history for Absconding (2004)
90			FMIW		18:286,371 FRAUD, OTHER	Sex offender due to prior convictions; Low recidivism risk
91			FINS		18:2251-2,2260 OBSCENE MATTR	Sex offender; PRD 2035
92			FND		18:2241-2248 SEXUAL ABUSE	Sex offender
93			FVAW		18:922(G) FIREARMS,CARR CRIM	Prior Violence 2003; Medium recidivism risk
94			FPAM		18:924(C) FIREARMS LAWS	Low Risk; PRD: 2035
95			FILC		18:1344 BANK FRAUD	Latin King enforcer; PSF Greatest Severity, Current violent offense; Low recidivism risk
96			FINN		18:2251-2,2260 OBSCENE MATTR	Sex offender; Low recidivism risk; History of violence (Battery-1995)
97			FVAW		21:846 SEC 841-851 ATTEMPT	Escape from SCP in 2006; Low recidivism risk
98			FKYW		18:922(G) FIREARMS,3 PRI CNV	Sex offender due to prior convictions; Low recidivism risk
99			FWIE		OBSCENE MATTER TRANSPORT	Sex offender; Low recidivism risk
100			FINS		18:2251-2,2260 OBSCENE MATTR	Sex offender; History of violence for prior sex offense
101			FINS		18:2251-2,2260 OBSCENE MATTR	Sex offender; Low recidivism risk; Current and prior sex offense
102			FWIW		18:2251-2,2260 OBSCENE MATTR	Sex offender
103			FILS		18:2251-2,2260 OBSCENE MATTR	Sex offender; Low recidivism risk; History of violence for prior sex offenses
104			FWIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
105			FIAS		21:841 & 846 SEC 841-851	IR 8/2010, Domestic Battery (2 charges) 2000,
106			FINS		18:922(G) FIREARMS,3 PRI CNV	IR 2-2020
107			FME		18:922(G) FIREARMS,CARR CRIM	IR 3/2020
108			FWIW		LARCENY/THEFT I/S TRANS	Disorderly conduct 2007, Pattern Score High, 48.9%
109			FINS		18:924(C) FIREARMS LAWS	IR 1/2020
110			FNYW		21:841 SCH I NARCOTIC,NOFNSA	Resist arrest 1994, firearm discharge 2001, Pattern - Medium, 100%
111			FILS		21:846 SEC 841-851 ATTEMPT	No I/Rs, High Risk, 41, CAR2, 41%, PRD 3/2021
112			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
113			FKS		18:922(G) FIREARMS,CARR CRIM	Common assault 1978, Battery 2000,Pattern Medium 80%
114			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
115			FKYW		21:841 & 846 SEC 841-851	3rd degree rape 1980, 85%
116			FRI		18:2251-2,2260 OBSCENE MATTR	Sex Offender
117			FRI		18:2251-2,2260 OBSCENE MATTR	Sex Offender
118			FVAW		18:924(C) FIREARMS LAWS	No I/Rs, Current Off: Murder for Hire, Min Risk, 67, CAR2, 51%, 10/2030
119			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
120			FIAN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
121			FVAW		21:846 SEC 841-851 ATTEMPT	No I/Rs, MIN Risk, 08/26/2021; Detainer State of Virginia Consecutive Sent.
122			FLAW		21:846 SEC 841-851 ATTEMPT	Battery 1997 and 1998, Pattern Medium
123			FND		21:846 SEC 841-851 ATTEMPT	No I/Rs, LOW Risk, 30, CAR1, 43%, 2/2/2030
124			FFLN		21:841 & 846 SEC 841-851	No I/Rs, PV-Aggr Batt w/Deadly Weapon, Batt., Att. Murder w/Deadly Weapon, Low Risk, 71, CAR2, 67%, 06/17/2026
125			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
126			FVAW		21:846 SEC 841-851 ATTEMPT	No I/Rs, MED Risk, 30, CAR1, 54%, 11/10/2023
127			FWVN		18:2251-2,2260 OBSCENE MATTR	Sex Offender, to be reviewed for RIS
128			FDCS		DC HOMICIDE MURDER	Detainer - USMS
129			FWIE		21:841 SCH I NARCOTIC,NOFNSA	MED Risk, 53, CAR2, 66%, 1/7/2024; Distributed Heroin Resulting in Death
130			FWVN		18:924(C) FIREARMS LAWS	IR 203 - 2/2020
131			FINN		21:846 SEC 841-851 ATTEMPT	MED Risk, 44, CARE2, 84%, 11/18/2021
132			FWVN		18:286,371 FRAUD, OTHER	MIN Risk, 58, CARE2, 95%, 6/6/2020
133			FMIW		OBSCENE MATTER TRANSPORT	Sex Offender
134			FND		18:2241-2248 SEXUAL ABUSE	Sex Offender
135			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
136			FWIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
137			FWVN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
138			FWVN		21:846 SEC 841-851 ATTEMPT	IR 316 1/2020
139			FWVS		18:922(G) FIREARMS,CARR CRIM	IR 112 3/2020
140			FWVN		21:841 & 846 SEC 841-851	MED Risk, 29, CARE1, 19%, 12/20/2028

	A	B	C	D	E	F
141			FWVN		21:841 SCH II NONNARC,NONFSA	HIGH Risk, 29, CARE 1, 15%, 11/17/26
142			FWVN		18:922(G) FIREARMS,CARR CRIM	IR 219 11/2019
143			FMT		18:2251-2,2260 OBSCENE MATTR	Sex Offender
144			FWVN		21:841 SCH II NONNARC,NONFSA	IR 113 2/2020
145			FINS		21:841 SCH I NARCOTIC,NONFSA	IR 112 1/2020
146			FMN		21:846 SEC 841-851 ATTEMPT	IR 108 1/2020
147			FKYE		21:846 SEC 841-851 ATTEMPT	IR 112 3/2020
148			FWVN		18:922(G) FIREARMS,CARR CRIM	HIGH Risk, 28, CARE 2, 15%, 2/1/2023
149			FALS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
150			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
151			FWVN		21:841 & 846 SEC 841-851	LOW Risk, 43, CARE 1, 48% 7/23/2021; Active Warrants in D.C. full extradition
152			FWVN		21:841 SCH II NONNARC,NONFSA	MED Risk, 37, CARE 2, 15%, 9/7/2026 - 04 Domestic Batter, 08 Assault
153			FWVN		21:841 & 846 SEC 841-851	LOW Risk, 56, 10/1/2022; 97 Assault Bodily Injury; Several Unknown Disposition
154			FTXS		8:1327 ALIEN SMUGGLE/IMPORT	IR 316 11/2019, LOW risk, CARE 2, 33, 74%,11/16/2020
155			FFLS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
156			FILC		OBSCENE MATTER TRANSPORT	Sex Offender
157			FTNE		18:922(G) FIREARMS,3 PRI CNV	HIGH Risk, 58, CARE 2, 49%, 12-29-2020 Sexual Assault 1978
158			FILS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
159			FILS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
160			FNCM		18:2113 ROBBERY BANK	LOW Risk, CARE 2, 56, 54%, 4/24/2021
161			FINN		21:846 SEC 841-851 ATTEMPT	IR 11 2/2020
162			FINN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
163			FKYE		21:841 SCH II NONNARC,NONFSA	LOW Risk, CARE 2, 62, 14%, 4/2031
164			FIAN		18:922(G) FIREARMS,CARR CRIM	IR 113 3/2020
165			FPAM		21:846 SEC 841-851 ATTEMPT	HIGH Risk, CARE 2, 46, 47%, 4/10/2027
166			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
167			FINN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
168			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
169			FIAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
170			FGAM		21:841 SCH II NONNARC,NONFSA	MIN Risk, 43, CAR1, 68%, 03/2022; Submitted for HC
171			FMW		18:922(G) FIREARMS,CARR CRIM	PV-85 Asslt, MED Risk, 54, Car2, 55%, 03/2029; 4 Firearms in current offense
172			FWAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
173			FIAS		OBSCENE MATTER TRANSPORT	Sex Offender
174			FNYW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
175			FMN		18:286,371 FRAUD, OTHER	PV-04 Asslt, LOW Risk, 55, CAR2, 20.7%, 07/2025
176			FWVS		OBSCENE MATTER TRANSPORT	Sex Offender
177			FCAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
178			FKYW		OBSCENE MATTER TRANSPORT	Sex Offender
179			FILC		21:841 & 846 SEC 841-851	PV-94 Armed Violence, LOW Risk, 45, CAR2, 65%, 05/2027 Gangster Disciple,
180			FWVS		21:841 & 846 SEC 841-851	PV-Asslt, Sexual Assault, Homeless, RRC: 5/19/2020
181			FWVS		21:846 SEC 841-851 ATTEMPT	MED Risk, 40, CAR2, 21.4%, 11/2030
182			FMW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
183			FSC		18:2251-2,2260 OBSCENE MATTR	Sex Offender
184			FIAS		21:841 & 846 SEC 841-851	PV-95 Robbery, 04 Asslt LEO, Detn: 2019 10yrs CC IA DOC, LOW, CAR2
185			FWVS		OBSCENE MATTER TRANSPORT	Sex Offender
186			FALS		OBSCENE MATTER TRANSPORT	Sex Offender
187			FNYN		18:922(G) FIREARMS,CARR CRIM	Homeless? PV-06 Child Endangerment, 02 Stalking, 00 Asslt, MED Risk, 40, CAR2, 41%, 11/2023
188			FAK		OBSCENE MATTER TRANSPORT	Sex Offender
189			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
190			FWVS		21:846 SEC 841-851 ATTEMPT	PV-Battery LEO, Batt., Mal. Wound., MED Risk, 40, CAR2, 41%, 11/2023
191			FKYE		21:846 SEC 841-851 ATTEMPT	Sex Offender - Prior
192			FILN		18:922(G) FIREARMS,CARR CRIM	PV-11 Batt., 92 Robb., MIN Risk, 47, CAR2, 56%. 05/2023; DST - DTH RDAP
193			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
194			FIAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
195			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
196			FWVS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
197			FWVS		18:924(C) FIREARMS LAWS	I/R - 112-11/2019, 331-09/2019, 113-7/2019, HIGH Risk
198			FWVS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
199			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender
200			FWVS		21:841 SCH I NARCOTIC,NONFSA	LOW Risk, 43, CAR2, 54%, 3621e date: 1/11/2021 - RDAP Part
201			FINS		21:846 SEC 841-851 ATTEMPT	PV-99 Batt., Med Risk, 42, CAR1, 25%, 04/2033
202			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
203			FWVS		21:841 SCH I NARCOTIC,NONFSA	LOW Risk, 23, CAR2, 32%, 10/2021
204			FIAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
205			FWVS		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
206			FWVS		21:841 SCH I NARCOTIC,NONFSA	PV-15 Obstr. Officer, 05 Mal. Asslt, Wanton Endangerment, 02 Batt., Dom Viol., 00 Agg. Robb, MED Risk, 40, CAR2, 87%
207			FKYE		21:841 & 846 SEC 841-851	LOW Risk, 45, CAR2, 70%, 03/2024
208			FWVS		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
209			FMD		18:924(C) FIREARMS LAWS	I/R - 224-02/2020, Homeless
210			FMW		21:846 SEC 841-851 ATTEMPT	PV-00 Agg. Asslt., LOW Risk, 41, CAR1, 76%, 06/2023; Comp Rel on 5/15/20

	A	B	C	D	E	F
211			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
212			FINS		21:846 SEC 841-851 ATTEMPT	I/R - 113-02/2020 (x2), 108-02/2020 (x2)
213			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
214			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
215			FKYW		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
216			FALM		OBSCENE MATTER TRANSPORT	Sex Offender
217			FNYN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
218			FINS		18:1962 RACKETEER (RICO)	Current Violence-RICO, GAF: the Mob, MED Risk, 25, CAR1
219			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
220			FWIE		18:924(C) FIREARMS LAWS	PV-13 Disord. Con, 06 Obstruct, 05 Subst Batt., 02 Escape, MED Risk, 41, CAR2, 63%, 07/2022
221			FILC		OBSCENE MATTER TRANSPORT	Sex Offender
222			FWIE		OBSCENE MATTER TRANSPORT	Sex Offender
223			FVAE		21:846 SEC 841-851 ATTEMPT	I/R - 108-10/2019, DST: CNK EB1 - 05/12/2020
224			FINS		21:846 SEC 841-851 ATTEMPT	I/R - 310-1/28/2020, PV-08 Criminal reckless, MED Risk, 41, CAR1, 13%, 11/5/2038
225			FINS		21:846 SEC 841-851 ATTEMPT	Residence-Mexico, LOW Risk, 44, CAR2, PSF- Alien, 23%, 06/2029
226			FOKN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
227			FMIW		OBSCENE MATTER TRANSPORT	Sex Offender
228			FKYE		21:846 SEC 841-851 ATTEMPT	LOW Risk, 57, CAR1, 44%, 12/2029
229			FWIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
230			FKYE		21:846 SEC 841-851 ATTEMPT	MIN Risk, 51, CAR2, 40%, 06/2030
231			FIAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
232			FKYE		21:846 SEC 841-851 ATTEMPT	I/R - 113-5/5/2020, 331-2/6/2020, MED Risk, 36, CAR1, 83%, 11/2021
233			FINS		18:924(C) FIREARMS LAWS	I/R - 201-3/17/20, HIGH Risk, 33, CAR1, 52%, 10/2022
234			FKYE		18:2113 ROBBERY BANK	Current Violence - Accessory After the Fact, MIN Risk, 53, CAR2, 83%, 10/2021
235			FINS		COMMUNICATIONS ACT	PV - 07 Batt. w/Felony, 03 Dom. Battery, LOW Risk, 47, CAR2, 51%, 3621e date: 06/12/2021
236			FMIW		OBSCENE MATTER TRANSPORT	Sex Offender
237			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
238			FNCW		18:1956 RACKETEERING	LOW Risk, 36, CAR2, 13%, 03/2024
239			FWIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
240			FMIW		18:2113 ROBBERY BANK	Current Violence - Armed Robbery, PV-Armed Robbery 80,79,65,61, MIN Risk, 77, CAR2, 70%, 06/2022, CV-Deny
241			FSC		18:922(G) FIREARMS,3 PRI CNV	Homeless? PV-1994 Voluntary Manslaughter, MED Risk, 56, CAR2, RRC: CRL 4WR - 7/7/20
242			FINS		21:846 SEC 841-851 ATTEMPT	I/R - 112-3/25/20, MED Risk, 41, CAR2, 14%, 08/2029
243			FKYE		21:846 SEC 841-851 ATTEMPT	I/R - 115-11/19/2019, HIGH Risk, 38, CAR2, 55%, 01/2021
244			FINN		18:2113(D) ROBBERY,ASSLT.BANK	Current Violence - Bank Robbery by Force or Violence, RRC: 05/19/2020
245			FWIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
246			FWIE		18:922(G) FIREARMS,CARR CRIM	MED Risk, 26, CAR2, RRC: CCH SHY 10/27/2020
247			FMIW		21:841 & 846 SEC 841-851	PV - 80 Armed Robbery, 86/95 Resist LEO/BATT, 03 Batt/Dom Viol., MED risk, 57, CAR2, 29%, 05/2038
248			FND		21:846 SEC 841-851 ATTEMPT	Homeless? 02 Crim.Endangerment, Disorderly Conduct, 01 Fam. Aslt, MED risk, 57, CAR2, 55%, 09/2022
249			FMIW		21:846 SEC 841-851 ATTEMPT	PV-76 Aslt&Batt, LOW Risk, 66, CAR2, 64%, 06/2024: Greatest Severity Offense
250			FNYN		FRAUD POSTAL	I/R - 310-03/09/2020, 17 Pending Charges; MIN Risk, 63, CAR2, 95%, 10/29/2020
251			FOHN		21:841 & 846 SEC 841-851	PV - 78 Rob. 88 Dom Viol., MED Risk, 59, CAR2, 56%, 09/2024
252			FINN		21:841 & 846 SEC 841-851	PV - 94 Att Murder, 95 Battery, MED Risk, 49, CAR2, 28%, 02/2028
253			FINS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
254			FMIW		OBSCENE MATTER TRANSPORT	Sex Offender
255			FMIW		21:846 SEC 841-851 ATTEMPT	HIGH Risk, 47, CAR2, 33%, 09/2034
256			FINN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
257			FMIE		21:846 SEC 841-851 ATTEMPT	MIN Risk, 60, CAR2, 3%, 09/2032; Prior Arson; STG Compr Staff, Introd Drugs
258			FNCM		21:841 & 846 SEC 841-851	MED Risk, 50, CAR2, 94%, 12/2021; Instant Offense is Violent/ Gang Related
259			FMT		21:846 SEC 841-851 ATTEMPT	PV - Threatened to Kill with brick 15 Disorderly Conduct, MIN Risk, 42%, 2023,
260			FNYS		18:499/702 IMPERSONATION	I/Rs - 306 (x2) 10/19 & 8/19, MED Risk, 52, CAR2, 83%, 03/2021, W CCC ACT
261			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
262			FINN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
263			FIAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
264			FILC		21:841 & 846 SEC 841-851	I/R - 201-9/30/19, PV-02 Batt, Dis. Cond, 04, Resist LEO, Batt., HIGH Risk, 42, CAR1, 80%, 3621e: 08/2021
265			FWY		18:2251-2,2260 OBSCENE MATTR	Sex Offender
266			FKYE		21:846 SEC 841-851 ATTEMPT	I/Rs - 201-1/23/20, 306(x3)-2020, Homeless, MED Risk, 46, CAR2, 46%, 02/2021
267			FTNM		18:2113(D) ROBBERY,ASSLT.BANK	Current Violence-Consp. Bank Robbery, F/A in Violent Crime, LOW Risk, 65, CAR2, 95%, 04/2021
268			FIAN		21:841 SCH I NARCOTIC,NONFSA	PV - 02 Armed Robb., 90 Robb., LOW Risk, 53, CAR2, 15%, 09/2032
269			FKYE		21:841 SCH II NONNARC,NONFSA	PV - 92 Wanton Endangerment, LOW Risk, 55, CAR2, 46%, 08/2027
270			FINN		18:922(G) FIREARMS,CARR CRIM	Homeless, PV - 00 Armed Robbery (x3), GAF: Black Gangster Disciples, MED Risk, 44, CAR1, 11%, 12/2036
271			FINN		18:924(C) FIREARMS LAWS	Current Violence-Hobbs Act Robbery, F/A, LOW Risk, 31, CAR2, 30%, 08/2024
272			FIAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
273			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
274			FINN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
275			FINN		OBSCENE MATTER TRANSPORT	Sex Offender
276			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender
277			FLAW		SEX OFFENSES	Sex Offender
278			FMIW		18:924(C) FIREARMS LAWS	Compassionate Release - 05/05/2020
279			FKYE		21:846 SEC 841-851 ATTEMPT	PV - 98 Dom. Viol., LOW Risk, 50, CAR2, 52%, 04/2025; Pending Charges in OH
280			FILN		21:846 SEC 841-851 ATTEMPT	LOW Risk, 54, CAR2, 42%, 01/2026; Has Pending Charge in Illinois

	A	B	C	D	E	F
281			FKYE		21:846 SEC 841-851 ATTEMPT	PV - 05 Assault No Injury, LOW Risk, 57, CAR2, 49%, 08/2025
282			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
283			FMIW		18:2241-2248 SEXUAL ABUSE	Sex Offender
284			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
285			FKYE		21:846 SEC 841-851 ATTEMPT	PV - 02 Wanton Endangerment, Involving LEO: LOW Risk, 47, CAR1, 74%,
286			FKYE		21:846 SEC 841-851 ATTEMPT	I/Rs - 108, 331-01/2020, 219-11/19, PV - 10 Asslt, 01 Aggr. Asslt., MED Risk, 47, CAR2, 78%, 08/2021, DST: GIL
287			FNCM		COMMUNICATIONS ACT	I/Rs, 224-02/20, 307, 312-01/20, MIN Risk, 68, CAR2, 55%, 03/2026
288			FIAS		21:846 SEC 841-851 ATTEMPT	PV - 99 Common Law Robbery, MED Risk, 42, CAR2, 20%, 07/2030
289			FKYE		18:922(G) FIREARMS,CARR CRIM	I/Rs - 112 02/20 & 05/29/19, HIGH Risk, 31, CAR1, 51%, 10/2024
290			FKYE		21:846 SEC 841-851 ATTEMPT	LOW Risk, 56, CAR2, 28%, 02/2033
291			FILC		21:846 SEC 841-851 ATTEMPT	I/Rs - 112-10/19, 113-05/19, Homeless, MED Risk, 42, CAR2, 87%, RRC: CCH 5TJ - 9/15/2020
292			FVAW		21:846 SEC 841-851 ATTEMPT	I/Rs - 113-01/20, 331-11/19, Homeless? LOW Risk, 42, CAR2, 62%, 3621e: 06/2023
293			FMIW		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
294			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
295			FILC		21:841 SCH I NARCOTIC.NONFSA	High Risk,STG: BGD, PV-Dom. Violence (90) (66.6%)
296			FMIW		21:846 SEC 841-851 ATTEMPT	PV-Dist the Peace (12) (59.4%)
297			FMIW		21:846 SEC 841-851 ATTEMPT	Approved for HC 5/14/20 (73.7%)
298			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender (54.2%)
299			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (28.9%)
300			FVAW		COMMUNICATIONS ACT	Medium Risk, < 12 mo. CC, PV: Kdnap, Apv RRC 10/29/20 (68.5%)
301			FILN		21:846 SEC 841-851 ATTEMPT	Low Risk, STG: People Nation Assoc., Detur: Murder (95.7%)
302			FNYN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (63.6%)
303			FND		21:846 SEC 841-851 ATTEMPT	Low Risk PV: Dom Asst (01), Dis Con (05) 32.7 %/> 18 mos.
304			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (81.5%)
305			FDCD		18:1962 RACKETEER (RICO)	Medium Risk STG: Escape/Drg Intr, IO incl Murdr x 4 (83.4%)
306			FILC		21:846 SEC 841-851 ATTEMPT	Low Risk, STG: BGD (55.5%)
307			FKYE		21:846 SEC 841-851 ATTEMPT	Low Risk, 36.5% > 18 mos. PV:Crim Misch (96)
308			FKYW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (18.2%)
309			FVAW		21:846 SEC 841-851 ATTEMPT	Medium Risk, PV: A&B (94), V Prot. Ord (14) (75.7%)
310			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (40.9%)
311			FVAW		21:846 SEC 841-851 ATTEMPT	Medium Risk, < 12 mo. CC (104/112), (27.2%)
312			FMIW		18:286,371 FRAUD, OTHER	Released to RRC on 4/30/20 (80.1%)
313			FKYE		21:846 SEC 841-851 ATTEMPT	Low Risk 33.2% > 18 mos.; Criminal History; Possible Pending Charge; 4/4/29
314			FGAS		18:2251-2,2260 OBSCENE MATTR	Sex Offender (76.5%)
315			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender (81.6%)
316			FMIE		FRAUD POSTAL	Possible PC for failing to pay child sup(56.4%)
317			FNYN		21:841 & 846 SEC 841-851	Medium risk (48.8%); 01/25/29 PRD
318			FIAS		21:841 & 846 SEC 841-851	Low Risk, STG: BGD PV: Current Offense Greatest and priorAgg. Assault (93) (
319			FMA		18:1512 OBSTRUCT JUSTICE	Low Risk,IO incl stabbing PV:Arm Rob,PC: Asslt to Murdr (39.7%)
320			FILC		21:841 SCH I NARCOTIC.NONFSA	Low Risk, PV: Agg. Asslt, STG: BGD (49.8%)
321			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (47.7%)
322			FNYN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (70.5%)
323			FNYW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (82.3%)
324			FKYE		18:924(C) FIREARMS LAWS	Sex Offender (69.1%)
325			FMN		18:111 ASSLT/RESIST FED OFFER	Approved for RRC 5/19/20 (87.8%)
326			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (39.3%)
327			FKYE		21:841 SCH I NARCOTIC.NONFSA	33.3% > 18 mos.; Greatest Severity - Victim overdosed and almost died
328			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (32.8%)
329			FTXE		21:846 SEC 841-851 ATTEMPT	Medium Risk (81.8%); Serious History of Violence; Tango Blast Gang
330			FKYE		21:846 SEC 841-851 ATTEMPT	Low Risk, <12 mos CC (112) (49.8%); In SHU for Use of Drugs; Recent IR
331			FNYW		21:846 SEC 841-851 ATTEMPT	Low Risk, PV: Assault (97), <12 mos. CC (305) (42.7%)
332			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender (25.6%)
333			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (39.8%)
334			FTNE		OBSCENE MATTER TRANSPORT	Sex Offender (80.4%)
335			FMN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (41.1%)
336			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender (40.1%)
337			FMIW		18:2241-2248 SEXUAL ABUSE	Sex Offender (17.0%)
338			FCT		21:841 & 846 SEC 841-851	High Risk ; 05/20/28 PRD; Criminal History
339			FKYE		21:846 SEC 841-851 ATTEMPT	23.3% ; 10/31/30 PRD; Age-; Criminal History
340			FVAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (37.4%)
341			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (91.6%)
342			FNCW		21:846 SEC 841-851 ATTEMPT	Medium Risk, PV: Vol Manslaughter (90) (82.0%)
343			FNCM		21:841 & 846 SEC 841-851	Medium Risk, STG: Escape (4 hr RRC),19.7% > 18 mos
344			FMIW		OBSCENE MATTER TRANSPORT	Sex Offender (32.3%)
345			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender (21.1%)
346			FMIW		18:1201 KIDNAPING	Sex Offender (56.9%)
347			FKYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender (39.2%)
348			FKYE		21:846 SEC 841-851 ATTEMPT	Released to RRC on 4/29/20 (84.8%)
349			MAR		MILITARY COURT SEX OFFENSE	Sex Offender (77.6%)
350			FNCM		21:841 & 846 SEC 841-851	Medium Risk, <12 mo CC (108), STG: Bloods, 35.8% > 18 mos

	A	B	C	D	E	F
351			FMA		21:846 SEC 841-851 ATTEMPT	Low Risk (76.9%)
352			FVAW		21:846 SEC 841-851 ATTEMPT	(10.7%) Age-67; Prescribed medications to Patients; Patients died due to o.d.
353			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender (37.2%)
354			FMIW		18:924(C) FIREARMS LAWS	Medium Risk, IO incls Brandish FA, 34.7% > 18 mos
355			FMOW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (51.3%)
356			FNYY		18:2251-2,2260 OBSCENE MATTR	Sex Offender (70.1%)
357			FILN		OTHER/UNCLASSIFIABLE	Low Risk, IO inc Murder for Hire, STG: Vice Lords (85.5%)
358			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender (32.7%)
359			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender (36.3%)
360			FMIW		18:2250 FAIL REG AS SEX OFFN	Sex Offender, Detn (98.5%)
361			FILC		21:841 SCH II NONNARC.NONFSA	Low Risk, PV: Asst w Deadly Wpn (95), 32.3% > 18 mos
362			FKYE		21:841 SCH II NONNARC.NONFSA	Medium Risk, <12 mo CC (331x2) (18.7%)
363			FVAW		21:846 SEC 841-851 ATTEMPT	Low Risk, PV: Dom Aslt (99) Aslt(08), 33.7% > 18 mos
364			FMIW		21:841 SCH II NARCOTC.NONFSA	Medium Risk, (8.7%)
365			FNYY		21:846 SEC 841-851 ATTEMPT	Medium Risk (46.9%) 06/23/28 PRD; Criminal History
366			FMIW		21:846 SEC 841-851 ATTEMPT	PV: Murder (94), Age -66 (13.1%)
367			FMOW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (88.9%)
368			FKYE		OBSCENE MATTER TRANSPORT	Sex Offender (13.8%)
369			FMIW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (6.1%)
370			FKYE		18:1028 FRAUD IDENTITY THEFT	Low Risk, < 12 mo. CC (201), IO incl Threat Comm (67.9%)
371			FKYE		18:924(C) FIREARMS LAWS	High Risk, PV: Robbery/Aslt, > 18 mos remain (24.8%)
372			FILC		18:2251-2,2260 OBSCENE MATTR	Sex Offender (28.6%)
373			FVAW		18:922(G) FIREARMS,CARR CRIM	Sex Offender (15.4%)
374			FNJ		21:846 SEC 841-851 ATTEMPT	Age-69 (78.8%), Minimum Risk
375			FFLN		18:2251-2,2260 OBSCENE MATTR	Sex Offender (87.2%)
376			FCT		18:2251-2,2260 OBSCENE MATTR	Sex Offender (66.9%)
377			FOHN		21:846 SEC 841-851 ATTEMPT	High Risk (62.0%)
378			FCAN		18:924(C) FIREARMS LAWS	Low Risk, STG: Nortenos, PV: AWDW (05) (40.3%)
379			FINS		21:846 SEC 841-851 ATTEMPT	Medium Risk, STG: Aslt on CO, PV: Aslt (05), 39.0% > 18 mos
380			FNCW		18:1344 BANK FRAUD	High Risk, STG: Fraud (30.1%)
381			FNYY		18:2251-2,2260 OBSCENE MATTR	Sex Offender (28.1%)
382			FMOW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (89.8%)
383			FNCE		21:841 & 846 SEC 841-851	High Risk, <12 mo. CC (312x2), (69.3%)
384			FMOW		18:2251-2,2260 OBSCENE MATTR	Sex Offender (89.4%)
385			FMOE		21:846 SEC 841-851 ATTEMPT	High Risk, <12 mo. CC (112x2, 224,115) (75.4%)
386			FLAE		21:846 SEC 841-851 ATTEMPT	Low Risk, <12 mo. CC (108/113), 41.9% > 18 mos.
387			FTNW		OBSCENE MATTER TRANSPORT	Sex Offender (55.1%)
388			FTNM		18:922(G) FIREARMS,3 PRI CNV	Low Risk, PV: Aggravated Aslt (95) (6.9%)
389			FNYN		SEX OFFENSES	Sex Offender (51.6%)
390			FMOW		21:846 SEC 841-851 ATTEMPT	Released to RRC on 4/30/20 (87.3%)
391			FNM		21:841 & 846 SEC 841-851	High Risk, STG: Forgery (85.9%)
392			FNYY		21:846 SEC 841-851 ATTEMPT	Medium Risk, 32.6% > 18 mos. ; Prior Robbery
393			FNCM		21:841 & 846 SEC 841-851	High Risk, PV: AWDW (91), Assault (96,04) (77.5%)
394			FNYY		18:2251-2,2260 OBSCENE MATTR	Sex Offender (67.5%)
395			FMD		21:841 SCH I NARCOTIC.NONFSA	Sex Offender (65.3%)
396			FSC		18:2251-2,2260 OBSCENE MATTR	Sex Offender
397			FNYY		18:2251-2,2260 OBSCENE MATTR	Sex Offender
398			FTXW		21:846 SEC 841-851 ATTEMPT	High Risk
399			FNYY		18:2251-2,2260 OBSCENE MATTR	Sex Offender
400			FNYY		18:2251-2,2260 OBSCENE MATTR	Sex Offender
401			FNCW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
402			FFLS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
403			FMOW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
404			FNYY		18:2251-2,2260 OBSCENE MATTR	Sex Offender
405			FMIE		21:846 SEC 841-851 ATTEMPT	Low Risk; Prior Violence
406			FNYS		NATL DEFENSE SEDITION	Terrorist; Alien; Low Risk
407			FNCM		18:2251-2,2260 OBSCENE MATTR	Sex Offender
408			FNCM		18:922(G) FIREARMS,CARR CRIM	Sex Offender; Low Risk
409			FNYY		21:841 & 846 SEC 841-851	High Risk' Prior Violence
410			FMD		18:2251-2,2260 OBSCENE MATTR	Sex Offender
411			FALN		OBSCENE MATTER TRANSPORT	Sex Mffender
412			FNCM		18:2251-2,2260 OBSCENE MATTR	Sex offender
413			FSC		COMMUNICATIONS ACT	Low Risk; Prior Violence
414			FILN		21:841 SCH I NARCOTIC.NONFSA	Low Risk; 200-Series IR February 2020
415			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
416			FILN		COMMUNICATIONS ACT	Low Risk
417			FOHN		COMMUNICATIONS ACT	High Risk; Prior Violence; Sex Offender
418			FDCS		DC SEX OFFENSE	Sex Offender
419			FMIE		21:841 & 846 SEC 841-851	High Risk; (2) 300-Series IR April/January 2020
420			FOHN		21:846 SEC 841-851 ATTEMPT	Medium Risk; 100-Series IR December 2019

	A	B	C	D	E	F
421			FLAE		21:841 SCH II NONNARC.NONFSA	High Risk; 100-Series IR February 2020
422			FNCM		21:841 & 846 SEC 841-851	Low Risk; Prior Violence
423			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
424			FTXN		21:841 SCH II NONNARC.NONFSA	Low Risk; Alien
425			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
426			FARE		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
427			FMIE		18:924(C) FIREARMS LAWS	
428			FARE		18:1951 RACKETEER, VIOLENCE	Sex Offender
429			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
430			FMD		18:1925(B) RACKETEERING	Low Risk; Violent Crime
431			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
432			FOHN		21:841 SCH II NARCOTC.NONFSA	Low Risk
433			FOHN		OBSCENE MATTER TRANSPORT	Sex Offender
434			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
435			FMOW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
436			FFLM		18:2251-2,2260 OBSCENE MATTR	Sex Offender
437			FPAW		18:922(G) FIREARMS,CARR CRIM	Medium Risk
438			FSC		18:2251-2,2260 OBSCENE MATTR	Sex Offender
439			FOHN		21:841 SCH I NON-NARC.NONFSA	Furloughed to RRC 04-29-2020
440			FOHN		21:843 USE FICT.REV.SUSP NBR	Low Risk; Prior Violence
441			FNCM		18:1028 FRAUD IDENTITY THEFT	High Risk
442			FPAW		21:846 SEC 841-851 ATTEMPT	Low Risk
443			FVAE		18:924(C) FIREARMS LAWS	Medium Risk
444			FPAW		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence
445			FNCM		21:846 SEC 841-851 ATTEMPT	Low Risk
446			FNCW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
447			FNCW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
448			FNCW		18:924(C) FIREARMS LAWS	Medium Risk; 100-Series IR June 2019
449			FLAW		SEX OFFENSES	Sex Offender
450			FNCW		18:1028 FRAUD IDENTITY THEFT	Sex offender
451			FMOE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
452			FDCD		18:2251-2,2260 OBSCENE MATTR	Sex Offender
453			FFLM		21:331 NARCOTICS	Medium Risk
454			FNCM		18:922(G) FIREARMS,CARR CRIM	High Risk
455			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
456			FPAW		OBSCENE MATTER TRANSPORT	Sex Offender
457			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
458			FWAW		18:1201 KIDNAPING	Violent Crime
459			FTXS		21:841 SCH I NON-NARC.NONFSA	Low Risk; Prior Violence
460			FPAW		21:841 SCH I NARCOTIC.NONFSA	Medium Risk
461			FMIW		18:1701-3,7,8,12,13 LRCN PST	Medium Risk
462			FPAW		21:846 SEC 841-851 ATTEMPT	Medium Risk
463			FMOE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
464			FPAW		21:841 & 846 SEC 841-851	Low Risk; Prior Violence; 200-Series IR March 2020
465			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
466			FVAE		21:846 SEC 841-851 ATTEMPT	Low Risk; Prior Violence; 100-series IR February 2020
467			FRQ		18:922(G) FIREARMS,CARR CRIM	Medium Risk
468			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
469			FPAW		21:846 SEC 841-851 ATTEMPT	100-Series IR December 2019
470			FPAW		18:924(C) FIREARMS LAWS	Prior Violence
471			FPAW		18:2113 ROBBERY BANK	Low Risk; Current Violence
472			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
473			FTXS		8:1327 ALIEN SMUGGLE/IMPORT	Low Risk; Current Violence
474			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
475			FPAW		21:841 SCH II NONNARC.NONFSA	
476			FPAW		21:841 & 846 SEC 841-851	Medium Risk
477			FPAW		18:1344 BANK FRAUD	Low Risk; Prior Violence
478			FPAW		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence
479			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
480			FMD		21:841 & 846 SEC 841-851	
481			FPAW		21:846 SEC 841-851 ATTEMPT	Low Risk; Prior Violence
482			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
483			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
484			FPAW		21:841 & 846 SEC 841-851	High Risk; Prior Violence
485			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
486			FPAW		21:846 SEC 841-851 ATTEMPT	Low Risk; Prior Violence
487			FILN		21:846 SEC 841-851 ATTEMPT	RRC DST on 05-06-2020
488			FMIE		21:841 & 846 SEC 841-851	High Risk; Prior Violence and Escape; 100-Series IR November 2019
489			FPAW		21:846 SEC 841-851 ATTEMPT	Low Risk; Prior Violence
490			FILN		18:286,371 FRAUD, OTHER	Low Risk; Current and Prior Violence

	A	B	C	D	E	F
491			FINN		21:841 SCH II NARCOTIC, NONFSA	Low Risk
492			FMOE		21:841 SCH II NONNARC, NONFSA	Low Risk; Prior Sex offense
493			FILN		FRAUD POSTAL	581 Victims; 59 Million in loss; 48% 07/11/30 PRD
494			FCAS		21:841 SCH II NARCOTIC, NONFSA	High Risk
495			FILN		OBSCENE MATTER TRANSPORT	Sex Offender - to be reviewed for RIS
496			FILN		OBSCENE MATTER TRANSPORT	Sex Offender
497			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
498			FMOE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
499			FNJ		18:2251-2,2260 OBSCENE MATTR	Sex Offender
500			FMIE		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence
501			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
502			FLAW		OBSCENE MATTER TRANSPORT	Sex Offender
503			FMIE		21:841 SCH II NARCOTIC	Medium Risk; Prior Violence; Covid+
504			FTNE		OBSCENE MATTER TRANSPORT	Sex Offender
505			FILN		21:846 SEC 841-851 ATTEMPT	Low Risk; 200-series IR (Escape) January 2020
506			FOHN		21:841 & 846 SEC 841-851	Medium Risk; Prior Violence
507			FMIE		18:2113 ROBBERY BANK	HC DST on 05-05-2020
508			FTNE		21:846 SEC 841-851 ATTEMPT	High Risk; PRD March 20136
509			FDSC		DC SEX RAPE	Sex Offender
510			FTNE		21:846 SEC 841-851 ATTEMPT	High Risk; PSF Greatest Severity
511			FMIE		18:922(G) FIREARMS, CARR CRIM	High Risk
512			FILN		21:841 & 846 SEC 841-851	Placed on HC on 04-24-2020
513			FMOE		18:1962 RACKETEER (RICO)	Low Risk; PSF Greatest Severity
514			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
515			FILN		21:846 SEC 841-851 ATTEMPT	High Risk
516			FILN		18:2113 ROBBERY BANK	Current and Prior Violence; Low Risk; 100-Series IR November 2019
517			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
518			FOHS		18:924(C) FIREARMS LAWS	Covid Deny CMA; Current and Prior Violence
519			FRQ		46:1903 MARITIME DRUG	RRC DST on 05-06-2020
520			FCO		18:2251-2,2260 OBSCENE MATTR	Sex Offender
521			FMIE		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence; Sex Offender
522			FMIE		18:922(G) FIREARMS, CARR CRIM	High Risk; Prior Violence
523			FILN		18:1344 BANK FRAUD	Low Risk; 300-Series IR March 2020; Prior Violence
524			FILN		COMMUNICATIONS ACT	Low Risk; Escape from SCP July 2015
525			FOHS		21:841 & 846 SEC 841-851	Medium Risk; Prior Violence
526			FMIE		21:841 SCH I NARCOTIC, NONFSA	High Risk; Prior Violence and Escape; 100-Series IR November 2019
527			FTNE		21:841 SCH I NARCOTIC, NONFSA	100-Series IR March 2020; High Risk; Prior Violence; RRC DST on 07-29-2020
528			FWAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender
529			FNV		18:2250 FAIL REG AS SEX OFFN	Sex Offender
530			FMIE		21:841 & 846 SEC 841-851	Medium Risk; Prior Violence
531			FILN		18:924(C) FIREARMS LAWS	Medium Risk; Prior Violence
532			FTNE		21:846 SEC 841-851 ATTEMPT	High Risk; Prior Violence; 100-Series IR September 2019
533			FILN		21:846 SEC 841-851 ATTEMPT	Covid Deny CMA; Minimum Risk; Greatest Severity Offense
534			FGAN		18:2113 ROBBERY BANK	Medium Risk; Current and Prior Violence
535			FTNE		18:924(C) FIREARMS LAWS	Low Risk; Prior Violence/ incident report for Threatening; IR in past 12 months
536			FMIE		18:922(G) FIREARMS, GUN CNTL	Sex Offender; Covid+
537			FTNE		21:846 SEC 841-851 ATTEMPT	Medium Risk:41%
538			FMIE		21:841 & 846 SEC 841-851	High Risk
539			FILN		21:841 SCH I NARCOTIC, NONFSA	Low Risk; 100-Series IR December and September 2019
540			FMIE		18:1344 BANK FRAUD	High Risk; 300-series IR September 2019
541			FMIE		18:922(G) FIREARMS, CARR CRIM	Medium Risk; PRD December 2020; No RRC
542			FTNE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
543			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
544			FMIE		21:841 SCH I NARCOTIC, NONFSA	Low Risk; 67%; 100-Series IR January 2018
545			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
546			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
547			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
548			FTNE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
549			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
550			FKYE		18:2250 FAIL REG AS SEX OFFN	Sex Offender
551			FTNE		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence; 200-Series IR October 2019
552			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
553			FTNE		21:846 SEC 841-851 ATTEMPT	Medium Risk; DST to LEW SCP; Fighting IR February 2018
554			FNIE		21:846 SEC 841-851 ATTEMPT	Minimum Risk; Care 3 Medical; 25%; DST to BUF
555			FMIE		18:2113 ROBBERY BANK	Low Risk; Current and Prior Violence
556			FMIE		18:2241-2248 SEXUAL ABUSE	Sex Offender
557			FMIE		33:1311 DISCHRG POLLUT	Covid Deny CMA; Intimidated a Witness during instant offense; Prior Assault
558			FMIE		21:841 & 846 SEC 841-851	Low Risk; Prior Violence; Prior Murder
559			FILN		18:922(G) FIREARMS, CARR CRIM	Medium Risk; Prior Violence; 100-Series IR April 2020
560			FMIE		18:924(C) FIREARMS LAWS	Current and Prior Violence; Sex Offender; Low Risk

	A	B	C	D	E	F
561			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
562			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
563			FMIE		18:286,371 FRAUD, OTHER	
564			FNCE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
565			FKYE		21:841 SCH II NARCOTC.NONFSA	
566			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
567			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
568			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
569			FMIE		21:841 SCH I NARCOTC.NONFSA	Low Risk; 25%
570			FMIE		21:846 SEC 841-851 ATTEMPT	Medium Risk; 100-Series IR September 2019
571			FMIE		21:846 SEC 841-851 ATTEMPT	Low Risk; 200-Series IR October 2019
572			FMIE		18:1962 RACKETEER (RICO)	Low Risk; Current Violence
573			FMIE		18:1957 RACKETEERING	Current Violence; 34%
574			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
575			FILN		18:922(A) FIREARMS FED ACT	Low Risk; RRC DST in September 2020; 100-Series IR December 2019
576			FILN		18:1925(A) RACKETEERING	Current Violence; 14%
577			FRQ		18:924(C) FIREARMS LAWS	Low Risk; Prior Violence; 29%
578			FTNE		21:846 SEC 841-851 ATTEMPT	High Risk; 100-Series IR October 2019
579			FTNE		18:922(G) FIREARMS,CARR CRIM	Prior Violence ; Serious Prior Assault; Several Probation Violations
580			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
581			FILN		21:841 SCH II NARCOTC.NONFSA	Low Risk; 43%; Instant offense involved selling 2,400 pounds of Explosives
582			FTNE		21:846 SEC 841-851 ATTEMPT	Covid Deny CMA; Prior Violence
583			FILN		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
584			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
585			FTNE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
586			FOHN		21:846 SEC 841-851 ATTEMPT	Low Risk; 38%
587			FTNE		18:922(G) FIREARMS,CARR CRIM	Covid Deny CMA; Curent Violence
588			FTNE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
589			FILN		18:922(G) FIREARMS,CARR CRIM	High Risk; Prior Violence
590			FILN		COMMUNICATIONS ACT	High Risk; Prior Violence
591			FTNE		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
592			FTNE		21:846 SEC 841-851 ATTEMPT	Medium Risk; 18%
593			FTNE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
594			FILN		18:922(G) FIREARMS,CARR CRIM	High Risk; 14%
595			FMD		21:841 & 846 SEC 841-851	High Risk; Prior Violence
596			FMIE		18:2421-29 I/S TRN IMRL PRPS	Sex Offender
597			FOHN		18:2113 ROBBERY BANK	Covid Deny CMA; Current Violence; 50%; PRD 2036
598			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
599			FPAW		21:841 & 846 SEC 841-851	Medium Risk; Prior Violence
600			FILN		18:924(C) FIREARMS LAWS	Low Risk; 21%
601			FILN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
602			FWAE		18:2250 FAIL REG AS SEX OFFN	Sex Offender
603			FTNE		21:841 SCH II NONNARC.NONFSA	Low Risk; Prior Violence; 29%
604			FTNE		21:841 & 846 SEC 841-851	Low Risk; 100-Series IR January 2020 and September 2019
605			FTNE		21:846 SEC 841-851 ATTEMPT	Low Risk; 11%
606			FMIE		21:841 & 846 SEC 841-851	Low Risk; Prior Violence; 17%
607			FMIE		21:841 SCH I NARCOTC.NONFSA	High Risk; Prior Violence
608			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
609			FMIE		21:841 SCH II NARCOTC.NONFSA	Minimum Risk; 16%
610			FMIE		21:846 SEC 841-851 ATTEMPT	100-Series IR January 2020; 25%
611			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
612			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
613			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
614			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
615			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
616			FMIE		21:846 SEC 841-851 ATTEMPT	Low Risk; PSF Greatest Severity; 36%
617			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
618			FTNE		21:846 SEC 841-851 ATTEMPT	Low Risk; Prior Violence; 300-Series (tobacco) IR February 2020 and December 2019; Detainer
619			FMIE		OBSCENE MATTER TRANSPORT	Sex Offender
620			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
621			FMIE		18:1962 RACKETEER (RICO)	300-Series IR September 2019; IR Pending FBI Code 108
622			FMIE		18:924(C) FIREARMS LAWS	Low Risk; Prior Violence; 34%
623			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
624			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
625			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
626			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
627			FMIE		21:846 SEC 841-851 ATTEMPT	
628			FMIE		18:924(C) FIREARMS LAWS	Current Violence; Sex Offender
629			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
630			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender

	A	B	C	D	E	F
631			FMIE		ASSAULT	High Risk; Current Violence; Sex Offender; RRC Date of May 27, 2020
632			FOHN		18:922(G) FIREARMS,3 PRI CNV	Low Risk; Prior Violence; Sex Offender
633			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
634			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
635			FKYE		21:846 SEC 841-851 ATTEMPT	Low Risk; 12%
636			FNWY		OTHER/UNCLASSIFIABLE	Covid Deny CMA; Current Violence
637			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
638			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
639			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
640			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
641			FFLM		18:2251-2,2260 OBSCENE MATTR	Sex Offender
642			FOHN		18:1962 RACKETEER (RICO)	Covid Deny CMA; 29%
643			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
644			FMIE		21:846 SEC 841-851 ATTEMPT	Low Risk; 52%
645			FMIE		18:924(C) FIREARMS LAWS	Medium Risk
646			FMIE		18:924(C) FIREARMS LAWS	High Risk; Prior Violence; 23%
647			FVAE		21:846 SEC 841-851 ATTEMPT	Medium Risk
648			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
649			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
650			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
651			FMIE		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence
652			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
653			FOHN		21:846 SEC 841-851 ATTEMPT	High Risk; Sex Offender; Prior Violence
654			FMIE		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence; 22%
655			FNCE		COMMUNICATIONS ACT	Low Risk; 100-series IR December 2019
656			FMIE		21:846 SEC 841-851 ATTEMPT	
657			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
658			FMIE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
659			FGAN		18:2421-29 IS TRN IMRL PRPS	Sex Offender
660			FOHN		18:2250 FAIL REG AS SEX OFFN	Sex Offender
661			FOHN		21:841 & 846 SEC 841-851	High Risk; Prior Violence; 41%
662			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
663			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
664			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
665			FOHN		18:2241-2248 SEXUAL ABUSE	Sex Offender
666			FOHN		21:841 & 846 SEC 841-851	RRC DST on 05-08-2020
667			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
668			FOHN		18:922(G) FIREARMS,CARR CRIM	High Risk; PRD May 20, 2020
669			FTXN		21:841 SCH II NONNARC.NONFSA	Detainer; Prior Violence; Sex Offender
670			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
671			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender - to be reviewed for RIS
672			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
673			FOHN		21:841 & 846 SEC 841-851	Low Risk; Escape History;
674			FTXW		21:841 SCH II NONNARC.NONFSA	Medium Risk; Prior Violence
675			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
676			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
677			FOHN		21:846 SEC 841-851 ATTEMPT	Furloughed to RRC 04-23-2020
678			FOHN		21:846 SEC 841-851 ATTEMPT	High Risk; Prior Violence
679			FPAE		OTHER/UNCLASSIFIABLE	Sex Offender
680			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
681			FOHN		COMMUNICATIONS ACT	Low Risk; Covid+; Detainer State of Ohio
682			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
683			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
684			FOHN		18:2113 ROBBERY BANK	Violent Crime; Medium Risk; RRC DST 08-18-2020
685			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
686			FOHN		18:286,371 FRAUD, OTHER	Covid Deny CMA; 21%; Local Fraud Case with 623 Victims
687			FCAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
688			FINS		21:846 SEC 841-851 ATTEMPT	Sex Offender; 100-series IR January 2020
689			FINN		21:841 SCH II NARCOTC.NONFSA	Covid Deny CMA; Prior Violence Domestic Assault
690			FOHN		18:2119 ROBBERY OF AUTO	RRC on 04-29-2020
691			FOHS		21:841 SCH II NARCOTC.NONFSA	Covid Deny CMA; Prior Violence
692			FCAC		OBSCENE MATTER TRANSPORT	Sex Offender
693			FTXW		21:841 SCH II NONNARC.NONFSA	Low Risk; 22%
694			FMD		18:924(C) FIREARMS LAWS	Medium Risk; Prior Violence
695			FOHN		21:846 SEC 841-851 ATTEMPT	Review for Submission
696			FNCE		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Sex Offense; Prior Violence
697			FPAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender
698			FMD		18:2251-2,2260 OBSCENE MATTR	Sex Offender
699			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
700			FOHN		21:846 SEC 841-851 ATTEMPT	Low Risk; 46%; Covid+; Criminal History and 2 Prior Domestic Violence

	A	B	C	D	E	F
701			FMD		21:841 & 846 SEC 841-851	Medium Risk; Prior Violence
702			FMD		18:2251-2,2260 OBSCENE MATTR	Sex Offender
703			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
704			FOHS		21:841 & 846 SEC 841-851	Low Risk; Prior Violence; Detainer; to be reviewed for RIS
705			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
706			FOHN		21:841 SCH I NARCOTIC, NONFSA	Low Risk; Prior Violence
707			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
708			FOHN		21:841 & 846 SEC 841-851	Low Risk
709			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
710			FOHN		21:841 SCH I NARCOTIC, NONFSA	High Risk; Prior Violence; Sex Offender
711			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
712			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
713			FPAE		21:846 SEC 841-851 ATTEMPT	Low Risk; 300-Series IR September 2019
714			FOHN		21:841 & 846 SEC 841-851	Medium Risk; Prior Violence; 100-Series IR October 2019
715			FGAN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
716			FMD		21:841 & 846 SEC 841-851	High Risk
717			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
718			FOR		18:2113(D) ROBBRY, ASSLT, BANK	Violent Crime
719			FOHN		21:841 SCH II NARCOTIC, NONFSA	Medium Risk
720			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
721			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
722			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender
723			FNCE		21:841 SCH II NONNARC, NONFSA	Medium Risk; Sex Offender
724			FOHN		18:1344 BANK FRAUD	Low Risk; 300-Series IR May 2019
725			FTXN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
726			FOHN		21:841 SCH II NON-NARCOTIC	Died 04-26-2020
727			FFLM		18:545 CUSTOMS LAWS SMUGGLNG	
728			FOHN		21:841 & 846 SEC 841-851	High Risk; Detainer
729			FOHN		21:841 & 846 SEC 841-851	Medium Risk; 300-Series (Tobacco) IR December 2019
730			FOHN		21:846 SEC 841-851 ATTEMPT	Medium Risk; Prior Violence
731			FOHN		18:922(G) FIREARMS, CARR CRIM	Low Risk; Prior Violence
732			FNJ		18:922(G) FIREARMS, CARR CRIM	Medium Risk
733			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
734			FOHN		21:846 SEC 841-851 ATTEMPT	Low Risk
735			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
736			FOHN		18:922(G) FIREARMS, 3 PRI CNV	Low Risk; Sex Offender
737			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
738			FOHN		18:924(C) FIREARMS LAWS	Medium Risk; 100-Series IR February 2020
739			FOHN		18:922(G) FIREARMS, CARR CRIM	Low Risk
740			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
741			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender
742			FOHN		COMMUNICATIONS ACT	Low Risk
743			FOHN		18:922(G) FIREARMS, CARR CRIM	High Risk
744			FOHN		18:924(C) FIREARMS LAWS	100-Series IR January 2020
745			FOHN		21:846 SEC 841-851 ATTEMPT	High Risk; Served 22.8%
746			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 14.2%
747			FOHN		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 13.6%
748			FFLM		21:846 SEC 841-851 ATTEMPT	Low Risk; 100-Series IR June 2019; Served 44.6%; Past Violence - Battery
749			FMIE		21:846 SEC 841-851 ATTEMPT	Low Risk; Served 48.2%; Has Detainer with State of Michigan 40 Sentence for Assault
750			FMT		OBSCENE MATTER TRANSPORT	Sex Offender; Served 42%
751			FPAE		18:924(C) FIREARMS LAWS	Low Risk; 100-Series IR February 2020; Served 89.4%
752			FTXS		COMMUNICATIONS ACT	Is being reviewed for a compassionate release; trying to develop a release plan
753			FOHS		SEX ILLEGAL COHABIT	Sex Offender; Served 94.5%
754			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 77.8%
755			FOR		18:1112-3 HOMICIDE MANSLGHTR	Sex Offender; Violent Crime; Served 57.2%
756			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 75%
757			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 37.1%
758			FNM		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 58%
759			FOHS		OBSCENE MATTER TRANSPORT	Sex Offender; Served 97.7%
760			FOHS		21:846 SEC 841-851 ATTEMPT	Medium Risk; Served 39.8%; Past History of violence
761			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 80.5%
762			FFLM		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 25.1%
763			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 64.7%
764			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 96.8%
765			FOHS		21:841(E) DRUGS	Medium Risk; Served 87.6%; Prior Assault with a Dangerous Weapon
766			FPAM		OBSCENE MATTER TRANSPORT	Sex Offender; Served 86.9%
767			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 57.9%
768			FNCE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 79.1%
769			FNYS		21:846 SEC 841-851 ATTEMPT	Low Risk; Served 93.3%
770			FPAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 46.1%

	A	B	C	D	E	F
771			FPAM		21:841 & 846 SEC 841-851	High Risk; Served 61.3%
772			FPAE		18:286,371 FRAUD, OTHER	Low Risk; (4) 300-Series IR October - December 2019
773			FFLM		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 9%
774			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 66.5%
775			FTXW		21:841 SCH II NONNARC.NONFSA	Low Risk; 100-Series IR February 2020; Served 38.6%
776			FPAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 30.6%
777			FNJ		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 28%
778			FVAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 15.6%
779			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 69.7%
780			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 70.1%
781			FOHS		18:1956 RACKETEERING	Low Risk; Served 59.8%; Prior violence
782			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 16.6%
783			FOR		18:2421-29 I/S TRN IMRL PRPS	Sex Offender; served 82.7%
784			FPAM		21:841 & 846 SEC 841-851	High Risk; 100-Series IR October 2019; Served 33.9%
785			FTXS		18:924(C) FIREARMS LAWS	Committed 6 separate Armed Robberies; Served 89.7%
786			FOR		18:2421-29 I/S TRN IMRL PRPS	Sex Offender; Served 20.2%
787			FPAM		21:846 SEC 841-851 ATTEMPT	Sex Offender; Served 68.8%
788			FPAE		OBSCENE MATTER TRANSPORT	Sex Offender; Served 27%
789			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 70.5%
790			FPAM		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 53.4%
791			FOHS		21:846 SEC 841-851 ATTEMPT	Medium Risk; Served 57.8%; Past Violence; Robbery; Kidnapping; Assault
792			FOHS		18:922(G) FIREARMS,CARR CRIM	High Risk; Releases 5/11/20; Served 100%
793			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 30.3%
794			FNCW		21:841 SCH II NONNARC.NONFSA	Medium Risk; Served 52.2%; Prior Simple Assault (org was Sexual Battery)
795			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 42%
796			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 30.2%
797			FNYE		18:1962 RACKETEER (RICO)	Conspiracy to Murder and Assault; Pagans Motorcycle Gang; Served 70.3%
798			FINN		18:1962 RACKETEER (RICO)	Medium Risk; Served 40.6%; Latin King Gang; Supplied Drugs and Weapons to gang
799			FPAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 38.7%
800			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 37.5%
801			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 15.4%
802			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 37.4%
803			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 19.5%
804			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 36.4%
805			FWVS		21:846 SEC 841-851 ATTEMPT	High Risk; Served 34.7%; incident report in past year
806			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 71.3%
807			FOHS		18:922(G) FIREARMS,CARR CRIM	Medium Risk; Prior Attempted Felonious Assault; Served 60.3%
808			FNYS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 39.3%
809			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 17.7%
810			FOHS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 18.1%
811			FOHS		18:1591 SEX TRAFFICK CHILD	Sex Offender; Served 7%
812			FOHS		18:922(G) FIREARMS,CARR CRIM	Low Risk; Prior Manlaughter; Served 19.2%
813			FOHS		18:924(C) FIREARMS LAWS	Low Risk; 53.8% served; Several violent priors; Domestic Violence and Robbery
814			FNYS		21:841 & 846 SEC 841-851	Medium Risk; discipline in past 12 months - cell phone and assault; Served 42.4%
815			FOHS		18:1028 FRAUD IDENTITY THEFT	Low Risk; Prior Domestic Violence; Served 37.2%
816			FOHS		18:1344 BANK FRAUD	High Risk; Served 6.6%; Prior Robbery
817			FNYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 65%
818			FPAW		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 27.2%
819			FVAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 95.3%
820			FVAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 82.1%
821			FNYS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 37.8%
822			FNYS		COMMUNICATIONS ACT	High Risk; Served 16.4%; 2 100 series incident reports in past 12 months
823			FAZ		OBSCENE MATTER TRANSPORT	Sex Offender; Served 75.7%
824			FAZ		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 34.6%
825			FNYS		OBSCENE MATTER TRANSPORT	Sex Offender; Served 89.8%
826			FMIE		21:841 SCH I NON-NARC.NONFSA	Medium Risk; Served 82.7%
827			FVAE		18:924(C) FIREARMS LAWS	Medium Risk; Served 63%
828			FNYE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 28.4%
829			FNYS		21:846 SEC 841-851 ATTEMPT	Medium Risk; Served 68.8%; 3 incident report in past 12 months
830			FNYS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 22%
831			FVAE		21:846 SEC 841-851 ATTEMPT	High Risk; Served 16.8%
832			FNM		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 13.4%
833			FVAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; served 71.6%
834			FSC		21:841 & 846 SEC 841-851	High Risk; 43.6%
835			FVAE		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 9.3%
836			FFLS		18:2251-2,2260 OBSCENE MATTR	Sex Offender; Served 56.1%
837			FPAE		18:286,371 FRAUD, OTHER	(2) 300-Series IR February 2020/September 2019; Served 55%
838			FSC		21:846 SEC 841-851 ATTEMPT	Served 48.5%; Wanted Person Full Extradition to GA
839			FTXN		OBSCENE MATTER TRANSPORT	Sex Offender; Served 76.2%

840 | N = 837

	A	B	C	D	E	F
841		Color Key:				
842		SUBMITTED CASES				
843		PREVIOUSLY PENDING FURTHER REVIEW				
844		I/M Released				
845		REVIEWING FOR RIS				
846		LATER DETERMINED INELIGIBLE				

Exhibit B

	A	B	C	D	E	F	G
1	Register Number	Name	Court of	Docket Number	RIS Request Made	Decision	Denial Reason
2			FMIE		Yes	Denied	Does not meet medical criteria
3			FIAN		No		
4			FRQ		No		
5			FINN		No		
6			FOHN		Yes	Denied	Does not meet medical criteria
7			FDCD		No		
8			FINS		No		
9			FILN		No		
10			FMN		No		
11			FMIW		No		
12			FTXN		No		
13			FMIW		No		
14			FGAM		No		
15			FOHN		No		
16			FPAE		Yes	Denied	Does not meet medical criteria
17			FVAW		No		
18			FMOE		No		
19			FOKN		Yes	Denied	Does not meet medical criteria
20			FILS		No		
21			FMIE		No		
22			FWVN		Yes	Denied	Does not meet medical criteria
23			FMN		Yes	Denied	Does not meet medical criteria
24			FILS		Yes	Denied	Does not meet medical criteria
25			FKYE		No		
26			FALS		No		
27			FMIW		No		
28			FVAE		Yes	Denied	Does not meet medical criteria
29			FTNE		No		
30			FNCM		Yes	Denied	Does not meet medical criteria
31			FMD		No		
32			FNYN		No		
33			FNJ		No		
34			FOHS		No		
35			FNCW		No		
36			FFLN		No		

	A	B	C	D	E	F	G
37			FVAW		No		
38			FINS		No		
39			FNYW		Yes	Denied	Does not meet medical criteria
40			FKYW		Yes	Denied	Does not meet medical criteria
41			FWVN		No		
42			FNYW		No		
43			FWVN		Yes	Denied	Does not meet medical criteria
44			FPAW		No		
45			FOHN		No		
46			FND		No		
47			FINS		No		
48			FOHN		No		
49			FKYE		No		
50			FINS		No		
51			FMIE				
52			FMIE		Yes	Denied	Does not meet medical criteria
53			FMIE				
54			FPAE		No		
55			FNCM		Yes	Denied	Does not meet medical criteria
56			FOHN		Yes	Denied	Does not meet medical criteria
57			FMIE		No		
58			FILS		No		
59			FNYE		No		
60			FMIE		No		
61			FINS		No		
62			FKYW		No		
63			FPAM		No		
64			FTXN		No		
65			FWVS		No		
66			FOHN		No	Being Considered	Pending further review
67			FPAW				
68			FMIE		Yes	Denied	Does not meet medical criteria
69			FWVS				
70			FILC		No		
71			FMIE		Yes	Denied	Does not meet medical criteria
72			FLAW		No		

	A	B	C	D	E	F	G
73			FMIE		No		
74			FOHS		No		
75			MAR		No		
76			FMIE		Yes	Denied	Does not meet medical criteria
77			FVAW		Yes	Denied	COVID-19 only
78			FILC		Yes	Denied	Does not meet medical criteria
79			FMT		Yes	Denied	Does not meet medical criteria
80			FFLS		No		
81			FWVN		No		
82			FILC		No		
83			FPAW		Yes	Denied	COVID-19 only
84			FPAM		Yes	Denied	Does not meet medical criteria
85			FIAS		No		
86			FKYE		No		
87			FILN		No		
88			FMIW		No		
89			FARE		Yes	Denied	Does not meet medical criteria
90			FNCM		No		
91			FILS		No		
92			FIAN		No		
93			FVAW		No		
94			FKYW		No		
95			FDCS		No		
96			FPAW		No		
97			FGAN		No		
98			FOHN		No		
99			FPAW		Yes	Denied	Does not meet medical criteria
100			FNYS		No		
101			FPAW		Yes	Denied	Does not meet medical criteria
102			FOHN		No		
103			FOHN		No		
104			FILN		No		
105			FMIW		Yes	Denied	Does not meet medical criteria
106			FINN		No		
107			FILN		Yes	Denied	Does not meet medical criteria
108			FOHN		Yes	Denied	Does not meet medical criteria

	A	B	C	D	E	F	G
109			FMOE		Yes	Denied	Does not meet medical criteria
110			FALS		Yes	Denied	Does not meet medical criteria
111			FGAN		No		
112			FPAW		Yes	Denied	Does not meet medical criteria
113			FNJ		No		
114			FTNE		No		
115			FILS		Yes	Denied	Does not meet medical criteria
116			FOHN		No		
117			FNWY		Yes	Denied	Does not meet medical criteria
118			FWIE		No		
119			FILS		No		
120			FILN		No		
121			FINN		No		
122			FMIE		No		
123			FPAW		No		
124			FIAS		No		
125			FPAW		No		
126			FILN		No		
127			FMOW		No		
128			FMN		No		
129			FARE		Yes	Denied	Does not meet medical criteria
130			FINS		No		
131			FOHN		No		
132			FND		No		
133			FTXS		Yes	Denied	COVID-19 only
134			FOR		No		
135			FAZ		No		
136			FWVN		No		
137			FPAE		Yes	Denied	Does not meet medical criteria
138			FILS		Yes	Denied	Does not meet medical criteria
139			FNCW		Yes	Denied	Does not meet medical criteria
140			FPAW		Yes	Denied	Does not meet medical criteria
141			FNCM		Yes	Denied	Does not meet medical criteria
142			FNWY		No		
143			FMN		No		
144			FMIE		Yes	Denied	Does not meet medical criteria

	A	B	C	D	E	F	G
145			FOHN		Yes	Denied	Does not meet medical criteria
146			FINN		Yes	Denied	Does not meet medical criteria
147			FOHN		No		
148			FMIW		Yes	Denied	Does not meet medical criteria
149			FFLM		No		
150			FMOE		No		
151			FILN		Yes	Denied	Does not meet medical criteria
152			FIAS		No		
153			FOHS		No		
154			FWVS		No		
155			FINS		No		
156			FMIE		No		
157			FOHN		No		
158			FINS		No		
159			FOHN		No		
160			FILN		No		
161			FNJ		No		
162			FLAE		No		
163			FINN		Yes	Denied	Does not meet medical criteria
164			FVAW		No		
165			FGAN		No		
166			FILC		No		
167			FOHS		No		
168			FOHN		No		
169			FVAW		No		
170			FOHS		Yes	Denied	Does not meet medical criteria
171			FINS		No		
172			FINN		Yes	Denied	Does not meet medical criteria
173			FIAS		Yes	Denied	Does not meet medical criteria
174			FMOW		No		
175			FMIW		No		
176			FWIE		Yes	Denied	Does not meet medical criteria
177			FKYW		No		
178			FMIE		No	Denied	Does not meet medical criteria
179			FRQ		No		
180			FMD		No		

	A	B	C	D	E	F	G
181			FINS		No		
182			FWY		Yes	Denied	Does not meet medical criteria
183			FOHN		No		
184			FOHN		No		
185			FOHS		Yes	Denied	Does not meet medical criteria
186			FTNE		No		
187			FMIE		Yes	Denied	Does not meet medical criteria
188			FMIE		No		
189			FOHS		No		
190			FMIW		Yes	Denied	Does not meet medical criteria
191			FMIE		No		
192			FVAE		Yes	Denied	Does not meet medical criteria
193			FKYE		No		
194			FMOE		No		
195			FMD		No		
196			FMIE		No		
197			FNYN		No		
198			FILC		No		
199			FSC		Yes	Denied	Does not meet medical criteria
200			FMD		No		
201			FOHN		No		
202			FDCS		No		
203			FILC		No		
204			FNYN		No		
205			FVAW		No		
206			FINS		Yes	Denied	Does not meet medical criteria
207			FKYE		No		
208			FOHS		No		
209			FVAE		No		
210			FOHS		No		
211			FINS		No		
212			FOHN		No		
213			FOHN		Yes	Denied	Does not meet medical criteria
214			FMN		No		
215			FNYS		No		
216			FND		No		

	A	B	C	D	E	F	G
217			FKYE		No		
218			FNCM		No		
219			FWVN		No		
220			FIAS		No		
221			FOHN		Yes	Denied	Does not meet medical criteria
222			FOHN		Yes	Denied	Does not meet medical criteria
223			FPAE		Yes	Denied	Does not meet medical criteria
224			FKYE		No		
225			FMN		No		
226			FWAE		No		
227			FILC		No		
228			FTNE		No		
229			FKYE		Yes	Denied	Does not meet medical criteria
230			FDE		Yes	Denied	Does not meet medical criteria
231			FMD		No		
232			FOHN		Yes	Denied	Does not meet medical criteria
233			FWIE		Yes	Denied	Does not meet medical criteria
234			FKYE		Yes	Denied	Does not meet medical criteria
235			FMD		Yes	Denied	Does not meet medical criteria
236			FOHN		No		
237			FNCE		No		
238			FOHN		No		
239			FOHN		No		
240			FNCM		No		
241			FOHN		No		
242			FPAE		Yes	Denied	Does not meet medical criteria
243			FMD		No		
244			FTNE		No		
245			FAZ		Yes	Denied	Does not meet medical criteria
246			FOHN		No		
247			FSC		No		
248			FKYE		No		
249			FNCM		No		
250			FMIE		No		
251			FTXE		Yes	Denied	Does not meet medical criteria
252			FCAS		No		

	A	B	C	D	E	F	G
253			FMN		No		
254			FCAS		Yes	Denied	Does not meet medical criteria
255			FILN		No		
256			FFLM		Yes	Denied	Does not meet medical criteria
257			FWVN		No		
258			FILN		No	Being Considered	Dependant on family responsibility
259			FTXW		No		
260			FNM		No		
261			FOHN		Yes	Denied	Does not meet medical criteria
262			FOHN		No		
263			FMIE		No		
264			FWIE		No		
265			FKYE		No		
266			FTNE		No		
267			FILN		Yes	Denied	Does not meet medical criteria
268			FWAW		Yes	Denied	Does not meet medical criteria
269			FWVS		No		
270			FKYE		No		
271			FMIW		Yes	Denied	COVID-19 only
272			FNWY		No		
273			FTNE		No		
274			FPAE		No		
275			FCAN		Yes	Denied	Does not meet medical criteria
276			FOHN		No		
277			FOHS		Yes	Denied	Does not meet medical criteria
278			FNYS		Yes	Denied	Does not meet medical criteria
279			FMIE		No		
280			FWVS		No		
281			FTNE		Yes	Denied	Does not meet medical criteria
282			FMIE		Yes	Denied	Does not meet medical criteria
283			FPAW		No		
284			FDCD		No		
285			FKYE		No		
286			FKYE		No		
287			FILN		No		
288			FOHN		No		

	A	B	C	D	E	F	G
289			FDCS		No		
290			FPAW		No		
291			FMIW		Yes	Denied	Does not meet medical criteria
292			FALN		No		
293			FILN		No		
294			FILC		No		
295			FTNE		No		
296			FIAS		No		
297			FOHN		Yes	Denied	Does not meet medical criteria
298			FNYW		No		
299			FMIW		No		
300			FILN		Yes	Denied	Does not meet medical criteria
301			FWVN		No		
302			FKYE		No		
303			FKYW		No		
304			FILC		No		
305			FMN		No		
306			FMIE		No		
307			FOHN		No		
308			FNCM		Yes	Denied	Does not meet medical criteria
309			FOHS		No		
310			FTXS		Yes	Being Considered	Working on release plan
311			FOHS		No		
312			FINN		No		
313			FMIE		No		
314			FOHN		No		
315			FTXS		No		
316			FNYE		No		
317			FILN		No		
318			FTNE		No		
319			FINN		No		
320			FKYE		No		
321			FMIE		No		
322			FWIE		No		
323			FMIW		No		
324			FMIW		Yes	Denied	Does not meet medical criteria

	A	B	C	D	E	F	G
325			FSC		No		
326			FPAE		Yes	Denied	Does not meet medical criteria
327			FMIE		Yes	Denied	Does not meet medical criteria
328			FMIE		Yes	Denied	Does not meet medical criteria
329			FCAC		No		
330			FINS		No		
331			FMN		No		
332			FKYE		No		
333			FIAS		No		
334			FWIW		Yes	Denied	Does not meet medical criteria
335			FINS		Yes	Denied	Does not meet medical criteria
336			FMOW		Yes	Denied	Does not meet medical criteria
337			FMIE		No		
338			FTNE		Yes	Denied	Does not meet medical criteria
339			FOHN		No		
340			FNYW		No		
341			FTNM		No		
342			FWVS		No		
343			FMD		No		
344			FSC		No		
345			FNCM		No		
346			FNYN		No		
347			FOHN		No		
348			FALS		No	Being Considered	Pending further review
349			FTNE		Yes	Denied	Does not meet medical criteria
350			FOHN		No		
351			FVAE		No		
352			FIAS		No		
353			FPAM		No		
354			FPAM		No		
355			FINN		No		
356			FKYW		No		
357			FINS		No		
358			FMIE		No		
359			FMSS		No		
360			FKYE		No		

	A	B	C	D	E	F	G
361			FTNE		Yes	Denied	Does not meet medical criteria
362			FPAE		No		
363			FVAE		No		
364			FMA		No		
365			FCAE		No		
366			FOHN		Yes	Denied	Does not meet medical criteria
367			FILC		No		
368			FOHN		No		
369			FMIW		No		
370			FILC		Yes	Denied	Does not meet medical criteria
371			FPAW		No		
372			FMIE		Yes	Denied	Does not meet medical criteria
373			FMIE		No		
374			FPAW		Yes	Denied	Does not meet medical criteria
375			FINS		No		
376			FIAN		No		
377			FINN		No		
378			FKYE		Yes	Denied	COVID-19 only
379			FMIE		Yes	Denied	Does not meet medical criteria
380			FOHN		No		
381			FOHS		No		
382			FILS		Yes	Denied	Does not meet medical criteria
383			FILN		No		
384			FVAW		Yes	Denied	Does not meet medical criteria
385			FLAW		Yes	Denied	Does not meet medical criteria
386			FMIE		No		
387			FLAW		No		
388			FVAE		No		
389			FPAM		No		
390			FKYE		Yes	Denied	Does not meet medical criteria
391			FILC		Yes	Denied	Does not meet medical criteria
392			FTNM		Yes	Denied	COVID-19 only
393			FNCW		No		
394			FPAW		No		
395			FPAW		No		
396			FMIE		No		

	A	B	C	D	E	F	G
397			FMIE		No		
398			FINN		No		
399			FKYE		Yes	Denied	Does not meet medical criteria
400			FCT		No		
401			FOHN		No		
402			FILN		Yes	Denied	Does not meet medical criteria
403			FMIE		No		
404			FWAW		No		
405			FILN		Yes	Denied	Does not meet medical criteria
406			FWIE		Yes	Denied	Does not meet medical criteria
407			FOHN		No		
408			FILS		Yes	Denied	Does not meet medical criteria
409			FLAW		No		
410			FMIE		No		
411			FPAW		Yes	Denied	Does not meet medical criteria
412			FWVS		Yes	Denied	Does not meet medical criteria
413			FOHS		Yes	Denied	COVID-19 only
414			FMOW		No		
415			FWVN		No		
416			FOHS		No		
417			FMIW		No		
418			FMIE		Yes	Denied	Does not meet medical criteria
419			FNYW		No		
420			FMOE		No		
421			FFLS		No		
422			FND		Yes	Denied	Does not meet medical criteria
423			FINS		Yes	Denied	Does not meet medical criteria
424			FWIE		No		
425			FNCW		No		
426			FWVN		No		
427			FMIE		No		
428			FOHN		No		
429			FINS		No		
430			FCO		No		
431			FPAW		No		
432			FFLS		No		

	A	B	C	D	E	F	G
433			FTXW		No		
434			FWVS		No		
435			FNYS		Yes	Denied	Does not meet medical criteria
436			FMIE		No		
437			FOHS		No	Being Considered	Working on release plan
438			FFLN		No		
439			FTNE		No		
440			FOHS		No		
441			FFLN		Yes	Denied	Does not meet medical criteria
442			FMN		Yes	Denied	Does not meet medical criteria
443			FOHS		No		
444			FWVN		Yes	Denied	Does not meet medical criteria
445			FKYE		Yes	Denied	Does not meet medical criteria
446			FNCE		Yes	Denied	Does not meet medical criteria
447			FOR		No		
448			FPAM		No		
449			FNYS		Yes	Denied	Does not meet medical criteria
450			FPAW		No		
451			FINS		Yes	Denied	Does not meet medical criteria
452			FFLM		No		
453			FMIE		No		
454			FMIW		No		
455			FNCW		Yes	Denied	Does not meet medical criteria
456			FILN		No		
457			FWVS		No		
458			FMIW		No		
459			FOHN		No		
460			FOHN		No		
461			FTNE		No		
462			FOHS		No		
463			FWAW		No		
464			FWIE		Yes	Denied	Does not meet medical criteria
465			FMIW		No		
466			FOHN		Yes	Denied	Does not meet medical criteria
467			FOHN		No		
468			FNCW		No		

	A	B	C	D	E	F	G
469			FWIE		No		
470			FPAW		Yes	Denied	Does not meet medical criteria
471			FOHS		No		
472			FND		Yes	Denied	Does not meet medical criteria
473			FIAN		Yes	Denied	Does not meet medical criteria
474			FPAE		No		
475			FINS		No		
476			FOHN		No		
477			FTNE		Yes	Denied	Does not meet medical criteria
478			FTNE		No		
479			FTXN		No		
480			FTXW		Yes	Denied	Does not meet medical criteria
481			FOHN		Yes	Denied	Does not meet medical criteria
482			FTXS		No		
483			FMSN		No		
484			FKYE		No		
485			FIAN		Yes	Denied	Does not meet medical criteria
486			FPAW		No		
487			FNYP		Yes	Denied	Does not meet medical criteria
488			FDE		No		
489			FOHN		No		
490			FMIE		Yes	Denied	Does not meet medical criteria
491			FMIE		Yes	Denied	Does not meet medical criteria
492			FFLN		No		
493			FSC		No		
494			FILN		No		
495			FILN		No		
496			FOHN		No		
497			FMIW		No		
498			FILC		No		
499			FMIE		No		
500			FOHN		Yes	Denied	Does not meet medical criteria
501			FMIW		Yes	Denied	COVID-19 only
502			FOHN		Yes	Denied	Does not meet medical criteria
503			FMIE		No		
504			FKYE		No		

	A	B	C	D	E	F	G
505			FMIW		No		
506			FTXN		No		
507			FILN		No		
508			FOHN		No		
509			FPAW		No		
510			FTNE		No		
511			FMIW		No		
512			FKYE		Yes	Denied	Does not meet medical criteria
513			FOHN		No		
514			FOHS		No		
515			FMIE		No		
516			FVAE		No		
517			FWIW		No		
518			FMIE		Yes	Denied	Does not meet medical criteria
519			FILN		Yes	Denied	Does not meet medical criteria
520			FWVN		No		
521			FMOW		No		
522			FINN		Yes	Denied	Does not meet medical criteria
523			FNYS		No		
524			FWVS		No		
525			FMIE		No		
526			FMIE		No		
527			FINS		No		
528			FIAS		Yes	Denied	COVID-19 only
529			FILN		No		
530			FMIW		No		
531			FMIW		No		
532			FMIE		Yes	Denied	Does not meet medical criteria
533			FOHS		No		
534			FPAW		No		
535			FOHS		Yes	Denied	Does not meet medical criteria
536			FNM		No		
537			FWVS		Yes	Denied	Does not meet medical criteria
538			FOHN		Yes	Denied	Does not meet medical criteria
539			FNYS		No		
540			FOHN		Yes	Denied	Does not meet medical criteria

	A	B	C	D	E	F	G
541			FOHN		No		
542			FWVN		No	Being Considered	Pending further review
543			FNYW		No		
544			FTNM		No		
545			FNYS		Yes	Denied	Does not meet medical criteria
546			FILN		No		
547			FOHS		No		
548			FMOE		No		
549			FMN		No		
550			FOHN		No		
551			FOHN		Yes	Denied	COVID-19 only
552			FRQ		No		
553			FILN		No		
554			FNYW		Yes	Denied	Does not meet medical criteria
555			FPAW		No		
556			FMD		No		
557			FNCE		No		
558			FINN		No		
559			FMIE		No		
560			FILN		Yes	Denied	Does not meet medical criteria
561			FWVS		No		
562			FWVN		Yes	Denied	Does not meet medical criteria
563			FOHN		No		
564			FNIE		No		
565			FNV		No		
566			FMIW		Yes	Denied	Does not meet medical criteria
567			FINS		No		
568			FINN		No		
569			FOHS		No		
570			FVAE		No		
571			FMT		No		
572			FPAW		Yes	Denied	Does not meet medical criteria
573			FMIE		No		
574			FINN		Yes	Denied	Does not meet medical criteria
575			FPAW		No		
576			FKYE		No		

	A	B	C	D	E	F	G
577			FNCM		Yes	Denied	Does not meet medical criteria
578			FOHS		No		
579			FMIW		No		
580			FFLM		Yes	Denied	Does not meet medical criteria
581			FWVS		Yes	Denied	Does not meet medical criteria
582			FMD		No		
583			FFLS		No		
584			FOHS		Yes	Denied	Does not meet medical criteria
585			FMN		Yes	Denied	Does not meet medical criteria
586			FMIE		No		
587			FILN		No	Being Considered	Working on release plan
588			FIAN		No		
589			FMIW		No		
590			FVAW		Yes	Denied	Does not meet medical criteria
591			FMD		No		
592			FNCM		No		
593			FKYW		No		
594			FILN		Yes	Denied	Does not meet medical criteria
595			FINN		Yes	Denied	Does not meet medical criteria
596			FINN		Yes	Denied	Does not meet medical criteria
597			FMIW		No		
598			FMIW		No		
599			FWIE		Yes	Denied	Does not meet medical criteria
600			FOHN		No		
601			FNYW		Yes	Denied	Does not meet medical criteria
602			FINN		Yes	Denied	Does not meet medical criteria
603			FMIW		No		
604			FIAN		Yes	Denied	Does not meet medical criteria
605			FOHS		Yes	Denied	Does not meet medical criteria
606			FPAE		No		
607			FKYE		Yes	Denied	Does not meet medical criteria
608			FPAW		No		
609			FMIE		No		
610			FTNW		No		
611			FOHN		No		
612			FNYW		No		

	A	B	C	D	E	F	G
613			FWAE		No		
614			FCT		No		
615			FVAW		No		
616			FPAW		No		
617			FVAW		Yes	Denied	Does not meet medical criteria
618			FMIE		Yes	Denied	Does not meet medical criteria
619			FWVS		Yes	Denied	Does not meet medical criteria
620			FILN		No		
621			FNCE		Yes	Denied	Does not meet medical criteria
622			FTNE		Yes	Denied	Does not meet medical criteria
623			FILN		Yes	Denied	Does not meet medical criteria
624			FKYE		No		
625			FNYS		No		
626			FMOW		No		
627			FMIE		No		
628			FNCW		No		
629			FTXS		Yes	Denied	Does not meet medical criteria
630			FINS		No		
631			FILN		No		
632			FWVN		No		
633			FOHS		No		
634			FMIE		No		
635			FND		No		
636			FOHS		No		
637			FOHN		No		
638			FVAE		Yes	Denied	Does not meet medical criteria
639			FILC		No		
640			FSC		No		
641			FILC		Yes	Denied	Does not meet medical criteria
642			FWIE		Yes	Denied	COVID-19 only
643			FMIE		No		
644			FME		No		
645			FMIE		No		
646			FNYS		No		
647			FMIE		No		
648			FNYW		No		

	A	B	C	D	E	F	G
649			FOHN		Yes	Denied	Does not meet medical criteria
650			FWIW		No		
651			FOHN		No		
652			FMIE		No		
653			FOHS		Yes	Denied	Does not meet medical criteria
654			FND		Yes	Denied	Does not meet medical criteria
655			FNYW		Yes	Denied	Does not meet medical criteria
656			FVAE		Yes	Denied	Does not meet medical criteria
657			FILN		No		
658			FOHN		No		
659			FFLM		No		
660			FFLN		No		
661			FMIW		No		
662			FMIE		No		
663			FDCD		No		
664			FSC		Yes	Denied	Does not meet medical criteria
665			FMIW		No		
666			FGAS		Yes	Denied	Does not meet medical criteria
667			FOHS		No		
668			FRI		No		
669			FMIE		Yes	Denied	Does not meet medical criteria
670			FNCE		No		
671			FMOW		No		
672			FWVN		Yes	Denied	Does not meet medical criteria
673			FTNE		Yes	Denied	Does not meet medical criteria
674			FOHN		No		
675			FMIE		No		
676			FTNE		Yes	Denied	Does not meet medical criteria
677			FOHN		No		
678			FILC		No		
679			FINS		Yes	Denied	Does not meet medical criteria
680			FWVN		No		
681			FILS		Yes	Denied	Does not meet medical criteria
682			FKYE		No		
683			FOHN		No		
684			FFLN		No		

	A	B	C	D	E	F	G
685			FLAE		No		
686			FILS		No		
687			FILC		Yes	Denied	Does not meet medical criteria
688			FKYE		Yes	Denied	Does not meet medical criteria
689			FINS		No		
690			FKYE		No		
691			FVAW		Yes	Denied	Does not meet medical criteria
692			FMD		No		
693			FNCW		No		
694			FPAW		Yes	Denied	Does not meet medical criteria
695			FMIE		No		
696			FMIE		Yes	Denied	Does not meet medical criteria
697			FMIE		Yes	Denied	Does not meet medical criteria
698			FMIE		No		
699			FMIE		No		
700			FOHN		Yes	Denied	Does not meet medical criteria
701			FMIE		No		
702			FKYE		Yes	Denied	Does not meet medical criteria
703			FMIE		No		
704			FMN		No		
705			FMN		No		
706			FIAS		No		
707			FOHS		No		
708			FOHN		No		
709			FOHS		No		
710			FVAE		No		
711			FWVN		No		
712			FKYE		No		
713			FNCE		No		
714			FMIW		No		
715			FMIE		No		
716			FOHN		No		
717			FMIW		No		
718			FWVS		No		
719			FILC		No		
720			FWVN		No		

	A	B	C	D	E	F	G
721			FWIW		No		
722			FWVN		Yes	Denied	Does not meet medical criteria
723			FOHS		No		
724			FOHN		No		
725			FIAS		No		
726			FNYS		Yes	Denied	Does not meet medical criteria
727			FMIE		No		
728			FFLM		No		
729			FKYE		No		
730			FKYE		No		
731			FFLM		No		
732			FNYN		No		
733			FINS		No		
734			FNCM		Yes	Denied	Does not meet medical criteria
735			FINN		No		
736			FOHS		No		
737			FOHS		Yes	Denied	Does not meet medical criteria
738			FTXW		No		
739			FDCS		No		
740			FWIW		No		
741			FPAW		No		
742			FINN		No		
743			FINN		No		
744			FPAW		No		
745			FMIE		Yes	Denied	Does not meet medical criteria
746			FMIE		No		
747			FOHN		No		
748			FWIE		Yes	Denied	Does not meet medical criteria
749			FMIE		No		
750			FMIE		No		
751			FMIE		Yes	Denied	Does not meet medical criteria
752			FOHS		No		
753			FKYE		No		
754			FMIE		No		
755			FNM		No		
756			FMIW		No		

	A	B	C	D	E	F	G
757			FIAS		No		
758			FTNE		No		
759			FRQ		Yes	Denied	COVID-19 only
760			FMIW		Yes	Denied	Does not meet medical criteria
761			FOHN		No		
762			FOHN		Yes	Denied	Does not meet medical criteria
763			FVAW		Yes	Denied	Does not meet medical criteria
764			FND		No		
765			FTNE		No		
766			FILC		No		
767			FMIE		No		
768			FMIW		No		
769			FILN		No		
770			FMIE		No		
771			FNJ		No		
772			FIAN		Yes	Denied	Does not meet medical criteria
773			FKYE		Yes	Denied	Does not meet medical criteria
774			FMA		No		
775			FILN		No		
776			FOHS		Yes	Denied	Does not meet medical criteria
777			FIAS		No		
778			FILS		No		
779			FINS		No		
780			FVAW		No		
781			FOHS		No		
782			FMIE		Yes	Denied	Does not meet medical criteria
783			FNCM		Yes	Denied	Does not meet medical criteria
784			FOHN		Yes	Denied	Does not meet medical criteria
785			FKYE		No		
786			FMT		No		
787			FMIE		Yes	Denied	Does not meet medical criteria
788			FMN		No		
789			FKYE		No		
790			FOR		No		
791			FTNE		No		
792			FWVS		No		

	A	B	C	D	E	F	G
793			FNYN		Yes	Denied	COVID-19 only
794			FMD		No		
795			FOHS		Yes	Denied	Does not meet medical criteria
796			FMIE		Yes	Denied	Does not meet medical criteria
797			FMIE		No		
798			FILS		No		
799			FINS		No		
800			FMN		Yes	Denied	Does not meet medical criteria
801			FWVS		Yes	Denied	Does not meet medical criteria
802			FKYW		No		
803			FILN		Yes	Denied	Does not meet medical criteria
804			FPAW		Yes	Denied	Does not meet medical criteria
805			FTNE		No		
806			FILN		Yes	Denied	Does not meet medical criteria
807			FOHN		No		
808			FOHS		Yes	Denied	Does not meet medical criteria
809			FOR		No		
810			FINN		No		
811			FOHN		No		
812			FPAW		Yes	Denied	Does not meet medical criteria
813			FILN		Yes	Denied	Does not meet medical criteria
814			FNYS		No		
815			FMN		No		
816			FIAN		No		
817			FPAM		Yes	Denied	Does not meet medical criteria
818			FAK		No		
819			FKS		No		
820			FPAW		No		
821			FTNE		Yes	Denied	Does not meet medical criteria
822			FPAW		No		
823			FMOW		No		
824			FWVS		Yes	Denied	Does not meet medical criteria
825			FNYN		Yes	Denied	Does not meet medical criteria
826			FMIE		No		
827			FRI		Yes	Denied	Does not meet medical criteria
828			FNCW		No		

	A	B	C	D	E	F	G
829			FMIW		No		
830			FALM		No		
831			FFLM		No		
832			FOHN		Yes	Denied	Does not meet medical criteria
833			FOHN		No		
834			FMIE		Yes	Denied	Does not meet medical criteria
835			FILN		No		
836			FINS		No		
837			FFLN		No		
838			FDE		No		

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

CRAIG WILSON, et al.,)	
)	
Plaintiffs,	)	Judge Gwin
	)	Cleveland, Ohio
vs.)	
	)	Civil Action
MARK WILLIAMS, et al.,	)	Number 4:20CV794
)	
Defendants.)	

- - - - -

TRANSCRIPT OF PROCEEDINGS HAD BEFORE
THE HONORABLE JAMES GWIN
JUDGE OF SAID COURT,
ON FRIDAY, APRIL 17, 2020

- - - - -

Official Court Reporter:	Shirle M. Perkins, RDR, CRR
	U.S. District Court
	801 West Superior, #7-189
	Cleveland, OH 44113-1829
	(216) 357-7106

Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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1 THE COURT: So in terms of the Elkton
2 facilities, how much of them are -- when I say Elkton, I'm
3 referring to the -- well, let me go back. How many of the
4 positives were in the camp and how many were in the prison?

15:23:42

5 MR. BENNETT: I don't have a breakdown of
6 those numbers, your Honor. I can get that to the Court. I
7 will put that on my list to provide that information, but I
8 don't know.

15:23:51

9 THE COURT: And in terms of the daily life of
10 the inmates, are most of the inmates housed in dormitory
11 style?

15:24:17

12 MR. BENNETT: Your Honor, it's two -- my
13 apologies, your Honor. So for the FCI facility, which is
14 the main facility with 2000 inmates, inmates are divided
15 among units. Each unit has approximately 300 individuals in
16 the unit. Each of those units are further divided by five.
17 So it's an A side and a B side.

15:24:41

18 There is no mixing at this point between either sides
19 of the unit or other units. And so the individuals in FCI
20 Elkton that are in this group of approximately 150 are in
21 essentially cubicles, which are two-person or three-person
22 cubicles where they have a roommate or another.

15:25:00

23 The cubicles are essentially cinder blocks that are
24 about six feet high that if you stand on your bed, you can
25 look over.

1 And then they have the common area within that. It's
2 not a typical situation where you would see individual
3 cells. But, they're more of a dormitory style.

4 My understanding regarding the federal satellite low
15:25:15 5 is that again, they're in units that are in bunk beds, not
6 cubes within the unit. And I don't remember the exact
7 number per unit. But, they all share kind of a common bunk
8 bed area.

9 Sara, did I miss any of that?

15:25:34 10 MS. DeCARO: No, that's my understanding.

11 THE COURT: So in terms of day to day with --
12 within the unit, is there any restrictions on an inmate
13 being able to travel throughout the unit he's been assigned
14 to?

15:25:59 15 MR. BENNETT: So inmates are essentially in a
16 lock down situation right now where they remain in their
17 side of a unit, so side A or side B, with the --

18 THE COURT: How many -- and remind me, each
19 side has how many individuals?

15:26:16 20 MR. BENNETT: Approximately 150 individuals.
21 Within that side, they are not restricted into coming in
22 contact with each other. There's no lock down cell in any
23 of the units where they're restricted from coming in
24 contact. They are encouraged to maintain distance within
15:26:33 25 the cell, they are given masks to wear, and they have access

1 to soap and water in the cell for frequent hand washing.

2 THE COURT: If one or two or four of the 150
3 inmates has COVID, would there be anything to stop it from
4 spreading to everyone in the 150 individual units?

15:27:07 5 MR. BENNETT: Your Honor, any -- any inmate
6 who is either presumptively or showing symptoms of COVID
7 might be or test positive for COVID-19 is removed from the
8 unit and placed in isolation. And so there -- there is no
9 either presumptive COVID patients, patients showing symptoms
15:27:28 10 of COVID in the units, in the population units or to have
11 tested positive for COVID-19. They are separated and
12 isolated so that's the first step in protecting the inmate.

13 In addition, there is frequent cleaning that is
14 happening within the units. Inmates are given disinfectant
15:27:46 15 themselves to be able to use to clean the areas. Everything
16 is cleaned at least once and sometimes multiple times within
17 the units.

18 And so there are a number of measures being taken to
19 prevent the spread of COVID-19 within each individual unit.
15:28:07 20 In addition to the measures going on in each individual side
21 of the unit, none of the units are intermingling. They only
22 go one at a time to meals. And they do not release the next
23 unit until the first unit has gone through, got their meal,
24 and come back. Also not eating in a common dining room or
15:28:27 25 using any common facilities. They're going back into the

1 units with their meals. They're doing a grab-and-go with
2 their meals. So there are a number of measures. There's
3 more listed in our brief, your Honor, that the BOP has taken
4 to prevent the spread of COVID within each of the units and
15:28:43 5 within the prison as a whole.

6 THE COURT: How frequently are each inmate
7 given a COVID test?

8 MR. BENNETT: The BOP does not have sufficient
9 tests to test every inmate.

15:29:03 10 THE COURT: How many -- how many?

11 MR. BENNETT: They're following --

12 THE COURT: How many tests have you given?

13 MR. BENNETT: My understanding from the -- I
14 don't know the answer to that question, your Honor. I can
15:29:15 15 find out how many have been given in the last week. They're
16 following the CDC Guidelines on --

17 THE COURT: How many total tests then?

18 MR. BENNETT: I believe the total number who
19 have been tested might be 55. Sara, do you know that off
15:29:33 20 the top of your head?

21 MS. DeCARO: I believe they had -- yeah, they
22 had -- they had 55 swabs that they were given or that they
23 obtained from the local health department. They have 18
24 remaining as of two or three days ago.

15:29:49 25 MR. BENNETT: They also have the rapid tests,



1 people at the heightened risk, some of whom, as I mentioned
2 earlier, are as high as a 7-to-10-percent case fatality rate
3 if they contract the illness.

4 So the requested remedy would be release of that sub
15:50:00 5 class to start with. And subsequently --

6 THE COURT: To what? Release to where?

7 MR. CAREY: Release to home confinement or
8 furlough. Once the -- we would ask that the Court issue an
9 order determining that release is called for, and then we
10 would be -- the Petitioners could work with the Respondents
11 on the logistics or mechanics of that release or possibly
12 under the supervision of a court-appointed expert. But, de
13 facto release is a matter of Eighth Amendment principle.
14 And again, using 2241 --

15 THE COURT: Let me open this up and see if
16 anybody else wants to make any comment, and then I'll hear
17 from Mr. Bennett.

18 Anybody else have any argument they wish to make? Let
19 me return to Mr. Bennett.

15:50:59 20 There have been some reference to a policy that Barr
21 had come out with, recommending that prisons themselves
22 under this COVID look to releasing inmates. Is anything
23 like that going on at Elkton?

24 MR. BENNETT: Yes, your Honor. They are, in
15:51:20 25 fact, doing that. And Elkton has. And again, obviously,

1 this is very -- now a very fluid situation. The rules are
2 changing, literally almost on a weekly basis on who is being
3 considered. But, Elkton has six inmates that have been
4 approved for home confinement under this new policy.

15:51:41 5 However, Elkton -- and I think it's -- it protects the
6 public as well as the inmates. Before any inmate is
7 transferred to home confinement, they must be quarantined
8 for 14 days. So these six inmates have transfer dates next
9 week.

15:51:57 10 There are two more inmates that are being vetted by
11 the Residential Reentry Manager and then four more that are
12 in the process. There are 32 inmates that have requested
13 home confinement and have been denied for a variety of
14 reasons. There's a number of factors that the Attorney
15:52:16 15 General has the BOP considering, not the least of which is
16 history of violence, recidivism risk, whether or not they
17 actually have a reentry plan, a place that they can go,
18 they're a danger to the community.

19 So Elkton is definitely working on this, made some
15:52:37 20 strides toward it, has inmates approved but is following the
21 Guidelines that have been set by the Attorney General. It
22 isn't, I think, limited to inmates who have only 10 percent
23 of their term of imprisonments or six months left anymore.

24 Under the Cares Act and the subsequent guidance from
15:52:56 25 the Attorney General, that is -- that expanded, and more and

1 more are being considered for that.

2 In addition to the home confinement transfers, BOP is
3 also processing, I think, 550 compassionate release
4 requests. As your Honor likely knows, those are ultimately
15:53:16 5 either a recommendation for or against made by the BOP, and
6 the Sentencing Court determines whether or not compassionate
7 release is appropriate under the statute. But --

8 THE COURT: You're requesting 5 -- are you
9 requesting 500 from Elkton or is that --

10 MR. BENNETT: My understanding is -- I'm
11 sorry, your Honor. My understanding is that 550 inmates
12 from Elkton have filed for compassionate release with the
13 Warden, and they are in the process of reviewing those.

14 The statute has given them 30 days to do that before
15 the inmate may file in front of the Sentencing Court.
16 Obviously, it's not going to take 30 days to do that process
17 for all of them. But, that process is ongoing now.

18 THE COURT: And how many have been given that
19 release, compassionate release?

15:54:12 20 MR. BENNETT: Ultimately, it will be up to the
21 Sentencing Court. And I don't know and maybe Sara knows
22 whether there's actually a number from BOP to have, let's
23 see, 550 Elkton inmates have submitted it.

24 THE COURT: How many?

15:54:27 25 MR. BENNETT: Currently being reviewed by

1 Health Services to determine if they meet the criteria. So
2 what -- what I know is they actually have 36 in the pipeline
3 to determine whether or not they meet the criteria for
4 compassionate release to make the recommendation. I don't
15:54:42 5 know if since this situation has happened in the past 15
6 days, whether Elkton has made any actual recommendations.
7 Again, there's a number of factors that they're required to
8 consider to be able to make this recommendation and
9 individuals that are involved in that process, including
15:54:59 10 Health Services, I believe the Warden, and I believe the
11 Regional Office.

12 MR. CAREY: Your Honor, if I may respond.

13 THE COURT: Inmates -- is the Government
14 limiting the compassionate release to people that are at the
15:55:15 15 very tail end of their sentences?

16 MR. BENNETT: I don't think that's a
17 requirement for the compassionate release. There is a
18 reduction sentence procedure that they're following, and I
19 don't have the criteria in front of me to be specific, but I
15:55:37 20 don't believe it's related to end of the sentence. But I
21 would not be able to affirmatively say that definitively to
22 the Court. I would like to have an opportunity to review
23 those factors.

24 MR. CAREY: Your Honor, if I can respond.

15:55:57 25 Thank you, your Honor. A few points.

1 First of all, the six moved out in total. I would
2 just point out that's equivalent to the six who have died.
3 Out of 2400 prisoners at Elkton, moving six people out
4 simply is inadequate. The purpose of moving people out is
15:56:15 5 to assist those individuals.

6 And also in the balance of equities, we would look at
7 impact on the public health and on the impact of those who
8 remain in incarceration.

9 The public health impact requires moving sufficient
15:56:32 10 numbers of people out of that facility to enable social
11 distancing to prevent this prison from continuing to be a
12 hot bed of spreading the disease.

13 The mechanism of this is that people, staff members,
14 the National Guard who have been dispatched to the prison
15:56:47 15 will move into the prison where the disease is quickly
16 spreading, and then we'll spread it to the surrounding
17 community. Simply taking a small, handful of people one at
18 a time at an excruciating slow rate and moving them out just
19 does not serve this purpose.

15:57:02 20 That is the impetus behind this action. And the
21 numerous high hurdles that --

22 THE COURT: No. Go ahead.

23 MR. CAREY: The numerous high hurdles that the
24 Government has put in the way means that this process cannot
15:57:18 25 proceed at a pace that will address the imminent danger to

1 the prisoners, to the staff, and to the surrounding
2 community.

3 THE COURT: Let me just go back. You talked
4 about the numbers. What's the general anticipating capacity
15:57:35 5 of Elkton?

6 MR. BENNETT: My understanding, it has a total
7 capacity of 2500 inmates, your Honor. Approximately 2500
8 inmates between the two campuses or facilities.

9 THE COURT: No. What I was trying to ask was
15:57:52 10 how -- what was the population the prison was designed to
11 hold?

12 MR. BENNETT: I believe it's 2500, but I --

13 THE COURT: Okay. Is it over capacity?

14 MR. BENNETT: It is nearly full, your Honor.

15:58:10 15 MR. CAREY: If I can respond, your Honor.

16 With it being nearly full, we see the conditions on a
17 day-to-day basis with each of the prisoners that are
18 outlined in the declarations that were submitted alongside
19 the petition. Even if the prison is not at absolute full
15:58:24 20 capacity, the reality of the situation is that they are
21 sleeping two feet basically from each other, talking on
22 phones eight inches away, having to turn sideways in the
23 hallways to brush past each other. They go to meals with
24 the grab-and-go procedure counsel described. They are
15:58:41 25 having to stand in line, shoulder to shoulder with other

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - - - -

5 CRAIG WILSON, et al.,)
6 Petitioners,) Case No. 4:20CV794
7 vs.)
8 WARDEN MARK WILLIAMS,)
9 In his Official Capacity as)
10 Warden of Elkton Federal)
11 Correctional Institution,)
12 Respondents.)

13 - - - - -

14 TRANSCRIPT OF PROCEEDINGS VIA ZOOM CONFERENCE HAD
15 BEFORE THE HONORABLE JUDGE JAMES S. GWIN, JUDGE OF
16 SAID COURT, ON THURSDAY, MAY 7TH, 2020,
17 COMMENCING AT 3:00 O'CLOCK P.M.

18 - - - - -

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22 Court Reporter: GEORGE J. STAUDUHAR
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1 THE COURT: Yeah. We have also by the
2 way — and we forwarded this to you — there has been a
3 couple of inmates that have asked to be excluded.

4 MR. BENNETT: I saw that, your Honor.

5 THE COURT: It kind of raises the more
6 general point: Shouldn't the parties agree on some kind
7 of distribution somewhat similar to a collective action
8 optin, where inmates are asked if they want to be
9 excluded?

10 It may well be people like these two letters
11 where they are willing to roll the dice, and they have
12 got family in the area, and they don't want to be moved
13 and don't want to be considered.

14 But it seems that that number — the Bureau
15 of Prisons also has this requirement to try to place
16 inmates as close as possible to their home. There may be
17 a fair number of potential class members that may come
18 back and tell us that they don't want to be in the class
19 or the subclass.

20 The way the best I think to learn that is to
21 come up with a notice and some kind of optout form.

22 MR. CAREY: Your Honor, we had come up with
23 an idea related the that for providing notice and asking
24 people to self-identify as a potential member of the
25 class.

1 So what I would suggest is that we combine
2 these two efforts to ask people to self-report whether
3 they believe they should have been included in the class
4 in the first place, and then give them an opportunity
5 simultaneously to opt out.

6 So it would accomplish the dual interest of
7 working towards making sure the class list is not
8 underinclusive but also giving the optout provision that
9 he describes, your Honor.

10 THE COURT: Okay. Have you circulated any
11 forms or proposed forms to Mr. Bennett.

12 MR. CAREY: Yes, your Honor. We put
13 together a postcard size document and also posters to be
14 placed around the prison to provide notice.

15 THE COURT: Well, let me try to make —
16 maybe this makes it more efficient, maybe less efficient,
17 but wouldn't it be better in whatever form to ask people
18 to designate what their age would be, what medical
19 condition they believe would entitle them to inclusion,
20 what medical treatments they had for that condition, what
21 their current release date is and then, as well, whether
22 they have made any application for a release, and if they
23 made that application, whether it the BOP has responded
24 to it for a compassionate release.

25 MR. CAREY: That makes complete sense, and



1 laid out in the declaration.

2 I am not as familiar with the specifics, but
3 I do know that prisons around the country have taken
4 effort to curb COVID-19 within the prisons, and it does
5 include a lot of the prisons being — I don't want to say
6 locked down — but isolated, where prisoners are not
7 transferred from one prison to another, where movement
8 is restricted to the extent necessary to protect
9 the inmates. So it is certainly going on around the
10 country.

11 My guess is that it is different based on
12 the prison, based on the inmate type that is there and
13 also on the COVID-19 situation in that particular prison,
14 whether it is there or not.

15 THE COURT: Okay. Anything else?

16 MR. CAREY: One last item, your Honor:

17 Our global concern that was raised in the
18 motion to enforce last night is that the progress here
19 has been too slow, and time is of the essence; that the
20 Government has engaged in some evaluations behind the
21 scenes, but no tangible steps are being taken to actually
22 move people out.

23 There are multiple problems as we walked
24 through in our motion: The failure to consider
25 furloughs; the failure to consider compassionate releases

1 except upon application that already existed.

2 But even if people do not qualify for any of
3 those release mechanisms, the other category, which
4 appears to be almost the entire subclass so far, appears
5 to have no schedule for transfer to another facility,
6 and simultaneously, your Honor, even though there is no
7 stay in place, the Government is seeking an expedited
8 appeal.

9 We do not wish to see this case resolved by
10 attrition of people continuing to be infected in Elkton
11 and so the end result being almost a default.

12 People need to be transferred out as soon as
13 possible, so we would ask the Court to set a schedule for
14 transfers.

15 THE COURT: Well, we had given some
16 requirement — and right now I am not recalling the
17 specific and maybe Erin can help with that — the
18 Government is going to be obligated to give a specific
19 designation of why the 800 people were turned over or
20 whatever the number and the reason for that. I thought
21 we placed a requirement that that be provided by next
22 Tuesday.

23 MR. CAREY: Yes, your Honor. And that
24 resolves the question —

25 THE COURT: So at that point in time, aren't

1 you in a position where, if you believe they are taking
2 inadequate efforts, can't you file a motion to seek?

3 MR. CAREY: Yes, your Honor, but the concern
4 is that the preexisting order that is in place, the
5 preliminary injunction order instructs that anyone who is
6 not approved —

7 THE COURT: I understand that, but
8 Mr. Bennett raises the question, and I think he has some
9 explanation; that he nonetheless has to find single-cell
10 placements, or you got to find double cells, or you got
11 to find someplace that is safer.

12 And I think almost any place is safer than
13 Elkton, but logically, it is a relatively big effort.

14 MR. CAREY: We acknowledge that, your Honor,
15 but we would just ask that a schedule be set rather than
16 the Government being able to draw this process out.

17 THE COURT: Okay. I am not going to let
18 that happen.

19 So Tuesday you will get the list, and you
20 will get the explanation why individuals were denied, and
21 then, file whatever motion, and if need be, we will set
22 up another hearing on this.

23 In fact, why don't we tentatively set one
24 for Thursday?

25 MR. CAREY: Thank you, your Honor.

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - - - -

5 CRAIG WILSON, et al.,)
6 Petitioners,) Case No. 4:20CV794
7 vs.)
8 WARDEN MARK WILLIAMS,)
9 In his Official Capacity as)
10 Warden of Elkton Federal)
11 Correctional Institution,)
12 Respondents.)

13 - - - - -

14 TRANSCRIPT OF PROCEEDINGS VIA ZOOM CONFERENCE HAD
15 BEFORE THE HONORABLE JUDGE JAMES S. GWIN, JUDGE OF
16 SAID COURT, ON THURSDAY, MAY 14TH, 2020,
17 COMMENCING AT 10:00 O'CLOCK A.M.

18 - - - - -

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22 Court Reporter: GEORGE J. STAUDUHAR
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P R O C E E D I N G S

THE COURT: We wanted to use this as kind of an update in terms of what's going on, and I would offer some apologies.

We were sitting remotely with the Ninth Circuit, and I will offer the attorneys some additional instruction.

So two days with the Ninth Circuit with one additional day does not equal three days. It equals about ten days of work. But we finished that yesterday, so I hope the able to give you more prompt attention on some matters on this case.

My understanding is that — am I correct that the Government distributed a list to the Petitioners last night or yesterday giving kind of a general designation of why particular inmates were —

MR. BENNETT: Yes, your Honor, we have given.

THE COURT: — not selected?

MR. BENNETT: We have given Petitioner's counsel two lists, one which lists the rationale for home confinement for each of the 837 inmates, and then a second list that identifies the compassionate release status for the 837 inmates.

I don't believe that was yesterday. I

1 believe it was earlier in the week, but I don't have the
2 exact date, but it was in accordance with the Court's
3 instructions.

4 THE COURT: From the Petitioner, are you
5 going through those, or what's the status of those?

6 MR. CAREY: Yes, your Honor. We are
7 continuing to review those.

8 We have come to some preliminary
9 assessments, and that is part of why this morning, if
10 your Honor has seen, we filed a motion for leave to
11 submit a reply memorandum in support of the motion for
12 enforcement that will incorporate some of the facts that
13 are gleaned from those spreadsheets.

14 THE COURT: What's the general justification
15 given for denial? I know there is 800, and they are
16 likely different reasons.

17 MR. BENNETT: Yes, your Honor, a lot of them
18 were disqualified due to the nature of their offenses.

19 So for example, under the Attorney General's
20 Guidelines, offenders who have been convicted of sex
21 offenses are not eligible for home confinement. There is
22 a number of other factors such as their security level
23 being too high, prior violence, things like that.

24 But I think it is the nature of the offense
25 and the security level that are the two primary

1 disqualifying factors under home confinement.

2 THE COURT: Under the sex offender, what
3 percentage — what percentage of the inmates would be in
4 that category?

5 MR. BENNETT: Your Honor, I did not do a
6 specific percentage. My rough look at the list say
7 probably about half, but that could be off. That's just
8 a rough look at a list of 837 names, but there is a lot
9 of sex offenders.

10 THE COURT: Is there any statutory
11 justification for same sex offenders are ineligible?

12 MR. BENNETT: Your Honor, it is the guidance
13 that has been put out by the Attorney General that BOP
14 has to follow, that says that individuals convicted of
15 sex offenses are not eligible for home confinement.

16 THE COURT: So there is no statutory basis
17 for it; it is just a policy decision that our Attorney
18 General has made?

19 MR. BENNETT: I don't know whether there is
20 statutory basis or not, but I can look into that, your
21 Honor.

22 THE COURT: Why don't you send that to — by
23 e-mail to both Mr. Carey and to Kayla, my deputy, a copy
24 of the Attorney General's guidance that you believe stops
25 the release of these roughly half of the inmates?



1 behind the curtain? It sounds like it you are saying it
2 was sent up through the compassionate release procedure,
3 but we don't know who ultimately made the decision or who
4 made the recommendation or whether the — for individual
5 inmates whether the warden had made a recommendation
6 against it and what his justification had been, and so I
7 am just curious. There has also been, you know, a
8 question on this level, why have almost none of these
9 people been getting it?

10 MR. BENNETT: Your Honor, regarding what we
11 provided to Petitioners, we have provided them a
12 spreadsheet, which identifies the 837 in the list, the
13 Court's list. We have indicated whether they have
14 requested compassionate release and what the status of
15 that is.

16 Regarding the internal deliberative process
17 and what individuals have said, that hasn't been provided
18 nor do I believe would be appropriate to provide.

19 Regarding the final recommendation to the
20 extent that there has been recommendations, those are
21 provided, I believe, to the AUSA in the District where
22 the inmate was sentenced since it is that Court that
23 decides whether or not to ultimately grant compassionate
24 request. It is not something the BOP can decide; it is
25 something the BOP makes recommendation.

1 THE COURT: Well, I have had those for my
2 own Defendants.

3 MR. BENNETT: Yes, your Honor.

4 THE COURT: And a letter given by the BOP is
5 completely nondescript. It is basically a letter to the
6 sentencing Judge, "do you have any objections?" But it
7 gives no explanation at all about what qualifies somebody
8 for compassionate release.

9 In this circumstance, the bigger problem may
10 be what's the justification for disqualifying somebody?
11 And so are people being uniformly disqualified because
12 the ACLU is seeking their release, or are they being
13 uniformly disqualified to say to everybody don't file
14 lawsuits against BOP facilities?

15 MR. BENNETT: Your Honor, I can assure the
16 Court that neither of those are factors that the BOP is
17 considering in determining whether or not to recommend
18 compassionate release.

19 There are specific guidelines that list what
20 should be considered for compassionate release and
21 factors like there is for home confinement, and those are
22 the ones that are being applied by BOP.

23 THE COURT: Okay. For the ones that have
24 been denied after the Plaintiffs get release — releases
25 from these inmates, what I would do is, I would ask the

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CRAIG WILSON, et al.	)	CASE NO.: 4:20CV794
)	
)	
Petitioners,	)	JUDGE JAMES S. GWIN
)	
v.)	
)	
MARK WILLIAMS, Warden of Elkton)	
Federal Correctional Institution, et al.,	)	<u>SUPPLEMENT TO RESPONDENTS'</u>
	)	<u>EMERGENCY MOTION TO STAY</u>
Respondents.)	
)	

Now come Respondents Mark Williams, Warden of Elkton Federal Correctional Institution and Michael Carvajal, Director of Federal Bureau of Prisons (“Respondents”), and hereby respectfully supplement their Emergency Motion to Stay filed on May 29, 2020. (ECF No. 98 PageID # 1165.) Specifically, after filing said motion, undersigned counsel learned that an inmate was sent to the hospital today for COVID-19 complications.

(Signatures on following page.)

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

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Attorneys for Respondents

Exhibit A

Declaration of Meghan Novisky, PhD

1. I am an Assistant Professor of Criminology in the Department of Criminology, Anthropology, and Sociology at Cleveland State University.

2. My research investigates the consequences of carceral contact on health, factors related to the conditions of confinement, and the collateral consequences of criminal justice policy. I have worked since 2009 with the University of Cincinnati's Corrections Institute (UCCI) as an evidence based programming consultant and trainer. In this role I have worked with correctional staff in 17 U.S. states and trained them on the implementation of research-informed programs and policies to help lower their recidivism rates. I received my PhD in Sociology from Kent State University, with a joint focus on Criminology and Medical Sociology. The focus of my dissertation involved identifying barriers to health care access that exist in prisons, specifically among older adults.

3. My publications on health and incarcerated people have appeared in numerous peer-reviewed journals, including *Criminology*, *Justice Quarterly*, and *Victims & Offenders*. I also serve as a regular reviewer for multiple peer-reviewed journals, including *Criminology*, *Justice Quarterly*, *the Journal of Criminal Justice*, *the Journal of Interpersonal Violence*, and *the International Journal of Offender Therapy and Comparative Criminology*. In 2020, I received the Early Career Investigator Award from the Academic Consortium on Criminal Justice Health (ACCJH), and I serve as Chair of the Annual Awards Committee of the American Society of Criminology (ASC), Division of Corrections and Sentencing. Prior to the pandemic, I served the ASC with several other colleagues by organizing a series of research panels focused on the intersection of criminal justice and health for the annual (2020) meeting.

4. The current situation at Elkton FCI is dire. Based on the Federal Bureau of Prison's current estimates, Elkton FCI has a total of 339 active cases of COVID-19, including infections among 332 prisoners and 7 staff.¹ Elkton maintains a current population of 2,295 prisoners.² This means at least 14 percent of the current prisoner population, roughly 1 in 7 prisoners, are infected with COVID-19. Importantly, this estimate is conservative considering testing results have either not been completed or have not been released publicly for Elkton's entire population. Elkton is also either not completing or not releasing publicly testing results for their entire population of staff.

5. Only one prison under BOP jurisdiction, Forrest City FCI in Arkansas, has more prisoners infected with COVID-19 than Elkton.³ Of all 1,610 federal prisoners currently infected with COVID-19 across the United States, 21 percent of them (n = 332) are concentrated at Elkton FCI.⁴

6. Thus far, nine Elkton prisoners have died of COVID-19. All nine deceased men had pre-existing medical conditions that the CDC lists as risk factors for developing more severe COVID-19 disease. The average age of the men who died was 61, with 8 out of 9 men being over the age of 50. All nine men who died were tested and confirmed positive for COVID-19 only upon arrival at a hospital, meaning no proactive testing at Elkton was available or utilized to identify these men prior to their respective hospitalizations. In sum, *these men had multiple identifiable and predictable vulnerabilities for hospitalization and death*, including their pre-existing health conditions, their ages, and the lack of testing they received prior to their conditions worsening to the point they required transfer to a hospital because of inability to

¹ <https://www.bop.gov/coronavirus/>

² <https://www.bop.gov/locations/institutions/elk/>

³ <https://www.bop.gov/coronavirus/>

⁴ <https://www.bop.gov/coronavirus/>

maintain oxygen saturation. This information is available in each of the nine memos released by the BOP detailing each prisoner's death.^{5 6 7 8 9 10 11 12 13}

7. There is only one intervention that is likely to effectively lower risks of further deaths of Elkton prisoners: identification and transfer of the medically vulnerable to a non-COVID-19 hotspot. Should the BOP fail to identify and transfer the medically vulnerable, it is likely that additional medical complications, hospitalizations, and deaths of prisoners will follow.

8. Elkton does not have the capacity to sufficiently lower risks for COVID-19 without transfer. It remains physically impossible to maintain 6 feet of physical distance within groups of people who share sleeping areas, showers, and toilets. Personal protective equipment and cleaning supplies only have limited effectiveness under those conditions.

9. BOP has also not claimed that it is regularly or consistently testing staff. Rather, "enhanced screening of staff" at BOP locations includes "self-reporting and temperature checks,"¹⁴ both of which are insufficient for detecting asymptomatic or pre-symptomatic positive cases of COVID-19 among staff. Without mass testing of staff, Elkton is not even capable of knowing the scope of infection among its staff, who continue to filter in and out of the facility each day and bring anything they are exposed to in the community back into the prison and vice versa. Considering that correctional staff must be in close contact with prisoners in the course of their regular jobs to enforce security protocols, escort prisoners across cell blocks and units,

⁵ https://www.bop.gov/resources/news/pdfs/20200402_press_release_elk.pdf

⁶ https://www.bop.gov/resources/news/pdfs/20200403_press_release_elk.pdf

⁷ https://www.bop.gov/resources/news/pdfs/20200404_press_release_elk.pdf

⁸ https://www.bop.gov/resources/news/pdfs/20200414_press_release_elkton.pdf

⁹ https://www.bop.gov/resources/news/pdfs/20200414_press_release_elk.pdf

¹⁰ https://www.bop.gov/resources/news/pdfs/20200416_press_release_elk.pdf

¹¹ https://www.bop.gov/resources/news/pdfs/20200426_press_release_elk.pdf

¹² https://www.bop.gov/resources/news/pdfs/20200509_press_release_elk.pdf

¹³ https://www.bop.gov/resources/news/pdfs/20200509_pres_rel_elk.pdf

¹⁴ https://www.bop.gov/coronavirus/covid19_status.jsp

administer medications, and supervise meal distribution, for example, not knowing COVID-19 statuses of Elkton's staff represents a significant oversight as far as the safety risks posed to the institution. Unless Elkton staff are quarantined and prevented from continuing to cycle in and out of the prison to return to the community following each shift, risks for COVID-19 transmission must be assumed to remain without testing to confirm otherwise.

10. Although CDC recommends against unnecessary transfers between prisons, movement can be done safely and is often necessary. The BOP continues to transfer for various reasons, including continued processing of criminal cases, forensic studies, writs, interstate agreements on detainers (IAD), RRC placements, and management of overcrowding.¹⁵

11. As far as risks for recidivism, Elkton maintains a low security custody level, meaning that individuals placed at Elkton are already classified as lower risk individuals. The most common reason for which people are incarcerated within the BOP (46 percent of all convicting offenses) is drug activity¹⁶, which is a non-violent crime. In total, at least 62% of convicting offenses within the BOP are non-violent (Drugs = 45.8%; Extortion, Fraud, Bribery = 5.7%; Property crimes = 5%; Immigration = 5.3%; Banking and Insurance, Counterfeit, and Embezzlement = .2%)¹⁷. Though 10.5% of those under BOP custody are convicted of sex offenses, research shows that these individuals have generally low risks for recidivism, especially when convicted of no-contact sex offenses. For example, a 2012 report to Congress by the U.S. Sentencing Commission¹⁸ found that only 7 percent of individuals convicted of possession or distribution of child pornography went on to be arrested or convicted of a new sex offense after being released from BOP custody, despite people in the study being out of prison

¹⁵ https://www.bop.gov/coronavirus/covid19_status.jsp

¹⁶ https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

¹⁷ https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

¹⁸ https://www.ussc.gov/sites/default/files/pdf/news/congressional-testimony-and-reports/sex-offense-topics/201212-federal-child-pornography-offenses/Full_Report_to_Congress.pdf

for an average of 8 years.¹⁹ Combined with the fact that recidivism declines exponentially with age, these factors make the subclass identified in this case a low public safety threat. This is especially the case considering that BOP will maintain correctional supervision of these individuals, either at another prison or through community supervision.

12. In sum, it is essential for BOP to identify and transfer those prisoners with medical vulnerabilities immediately so as to avoid additional medical complications, hospitalizations, and death. With BOP's available resources and ability to maintain continued custody of the prisoners in question, this can be accomplished without imposing undue safety risks to the community.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.



Meghan Novisky, PhD

Date: 5/30/2020

¹⁹ <https://www.ned.uscourts.gov/internetDocs/jpar/RGK-FSR2014-Recidivism%20By%20Child%20Pornography%20Offenders.pdf>

Exhibit B

Declaration of Joe Goldenson, MD

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.

2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.

3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.

4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert/monitor at Cook County Jail in Chicago and Los Angeles County Jail, at other jails in Washington, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

5. On April 11, 2020, I signed a declaration that I understand was submitted in this case. The statements below supplement my April 11 declaration.

6. The risk of exposure to and transmission of infectious diseases, as well as the risk of harm from developing severe complications or death if infected, is significantly higher in

prisons than in the community. Close, poorly ventilated, living quarters and often overcrowded conditions in these facilities foster the rapid transmission of infectious diseases, particularly those transmitted by airborne droplets through sneezing, speaking, or coughing. In these congregate settings, large numbers of people are closely confined and forced to share living spaces, bathrooms, eating areas, and other enclosed spaces. They are physically unable to practice social distancing, which the Centers for Disease Control and Prevention (“CDC”) has identified as the “cornerstone of reducing transmission of respiratory diseases such as COVID-19.”¹ Because of this, incarcerated individuals are less able to protect themselves from being exposed to and becoming infected with infectious diseases, such as COVID-19.

7. The most commonly used test for the diagnosis of COVID-19 detects viral RNA (RT-PCR). In most individuals with symptomatic COVID-19, the test becomes positive at the time of the onset of symptoms² (2-14 days after infection). It does not identify individuals who are infected but presymptomatic. Furthermore, it obviously does not identify those who will become infected. To determine whether an individual is at risk for spreading COVID19, they must be regularly retested.

8. A testing protocol that only applies to prisoners and does not involve the regular (weekly or bi-weekly) testing of other individuals, such as staff, who enter and exit the facility, will not be effective in identifying contagious individuals or preventing further spread of COVID19 within the facility.

9. It is my understanding that Elkton uses open bay / dorm housing units with multiple-occupancy cells, and a limited number of segregation units. It also my understanding

¹ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

² Sethuraman, et al, *Interpreting Diagnostic Tests for SARS-CoV-2*, JAMA, 5/6/20, <https://jamanetwork.com>

that Elkton has approximately 2,300 detainees between the Elkton federal correction institution and the low security satellite prison on any given day; that staff that enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.

10. It is also my understanding that Elkton officials claim that they are providing masks and soap to prisoners. Further, I understand that Elkton officials claim that any prisoner who complains of symptoms is given a test, and will be placed in isolation only if they test positive.

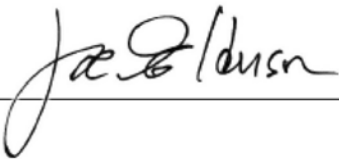
11. However, because prisoners at Elkton continue to live in congregate settings where they cannot stay 6 feet away from others, they remain at high risk of continued infection.

12. I understand that before an individual is moved out of Elkton, they undergo the following procedure: if they test negative, they are placed in quarantine for 14 days, and are tested again 24 hours prior to being moved to another location. If either test is positive, they will be placed in isolation and their movement will be delayed. In addition, I understand that if one prisoner in quarantine tests positive, the 14-day clock resets for the entire cohort of other prisoners quarantined with the person who tested positive. If this procedure is followed, an individual being moved out of Elkton will pose a minimal risk of infecting others.

13. The only way to determine whether a facility's response is effective is to study the rates of new infections over time. This requires longitudinal data and frequent retesting of prisoners who previously tested negative. Without these data, a facility cannot claim that the contagion is under control or that its response has been effective in preventing further spread of the disease. A short-term decline in hospitalizations does not by itself indicate a decline in infections.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 30th day of May 2020 in Alameda County, CA



Joe Goldenson, MD

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Exhibit C

IN RESPONSE TO THE CORONAVIRUS (COVID-19) PANDEMIC, A FEDERAL JUDGE HAS ORDERED THAT CERTAIN MEDICALLY VULNERABLE PRISONERS BE TRANSFERRED OUT OF FCI ELKTON. WE WANT TO KNOW IF YOU ARE PART OF THE GROUP THAT CAN GET TRANSFERRED.

The ACLU of Ohio and the Ohio Justice & Policy Center want to learn who is covered by the Court's order as part of a class action lawsuit. Please fill out this letter only if:

1. You are **65 years old or older** OR
2. You have one or more **documented** medical conditions listed on the back of this page that puts you at high risk for getting very sick from COVID-19.

If you **are** in one of those 2 groups, please:

- Answer the questions on the back AND fill out the attached medical release form
- Put the letter AND the form in the envelope and return it.

If you **are not** in one of those 2 groups, please do not return this letter.

Name: _____

BOP #: _____ Age: 56

Your Current Release Date: 2/2/25

Your Lawyer's Name: N/A

Your Lawyer's Phone or Email: N/A

Check this box only if you do NOT have a lawyer, and you cannot afford to pay for one:

Have you asked the Warden for compassionate release? Yes No

If yes, when did you apply? 4/8/2020

If yes, have you gotten a response? Yes No

What response did you get? does not meet criteria

The ACLU of Ohio and the Ohio Justice & Policy Center are not your attorneys as an individual, though we do seek to represent the class of people seeking transfer, as a whole. If you think you might be eligible for compassionate release, you should contact your lawyer or ask for compassionate release in writing to the Warden.

TURN OVER

Your medically documented, pre-existing condition (*circle all that apply*):

Heart Disease

Liver Disease

Kidney Disease

(including Hepatitis C)

(whether on dialysis or not)

Lung Disease

(including asthma and COPD)

Diabetes

Immunocompromised

(cancer treatment, transplants, HIV/AIDS, or medications that weaken the immune system)

Severe Obesity

(BMI of 40 or higher)

Other/Please Specify: _____

Any details about your condition: _____

What treatment have you had for your condition? _____

Does FCI Elkton have access to medical records for your condition?

Yes

No

If you believe you may have a condition that puts you at risk, it is your responsibility to provide all medical records to the prison so that you can be included. We recommend that you contact your attorney. If you choose to provide information using this letter, we may share it with other attorneys, consultants, or attorneys for the Bureau of Prisons as part of our efforts to pursue relief for the class.

You Can Choose to Stay at Elkton If You Want

The judge's order in the class action lawsuit applies to all prisoners age 65 or older OR with certain medical conditions that put them at higher risk from the coronavirus. These people may be eligible for home confinement, furlough, compassionate release, or transfer out of Elkton to a different prison.

It is possible that the Warden, the Bureau of Prisons, or the court may find that you are not eligible for home confinement, furlough, or release, and that your only choice is to move to a different prison or stay at Elkton. That other prison could be higher security than Elkton, but would be better than Elkton for social distancing. **IF THAT HAPPENS, YOU CAN DECIDE LATER TO STAY AT ELKTON.**

Even though you can decide later, would you like to decide to stay at Elkton now anyway? Checking "Yes" means you would **NOT** obtain any kind of release or transfer as a result of this lawsuit.

Yes

No

Do not wish to transfer



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- Put the letter AND the form in the envelope and return it.

If you **are not** in one of those 2 groups, please do not return this letter.

Name: _____
 BOP #: _____ Age: 60
 Your Current Release Date: 7-18-27
 Your Lawyer's Name: -
 Your Lawyer's Phone or Email: _____

Check this box only if you do NOT have a lawyer, and you cannot afford to pay for one:

Have you asked the Warden for compassionate release? Yes No

If yes, when did you apply? 4-22-20

If yes, have you gotten a response? Yes No

What response did you get? _____

The ACLU of Ohio and the Ohio Justice & Policy Center are not your attorneys as an individual, though we do seek to represent the class of people seeking transfer, as a whole. If you think you might be eligible for compassionate release, you should contact your lawyer or ask for compassionate release in writing to the Warden.

TURN OVER

Your medically documented, pre-existing condition (*circle all that apply*):

Heart Disease

Liver Disease

Kidney Disease

(including Hepatitis C)

(whether on dialysis or not)

Lung Disease

(including asthma and COPD)

Diabetes

Immunocompromised

(cancer treatment, transplants, HIV/AIDS, or medications that weaken the immune system)

Severe Obesity

(BMI of 40 or higher)

Other/Please Specify: _____

Any details about your condition: _____

What treatment have you had for your condition? _____

Does FCI Elkton have access to medical records for your condition?

Yes

No

If you believe you may have a condition that puts you at risk, it is your responsibility to provide all medical records to the prison so that you can be included. We recommend that you contact your attorney. If you choose to provide information using this letter, we may share it with other attorneys, consultants, or attorneys for the Bureau of Prisons as part of our efforts to pursue relief for the class.

You Can Choose to Stay at Elkton If You Want

The judge's order in the class action lawsuit applies to all prisoners age 65 or older OR with certain medical conditions that put them at higher risk from the coronavirus. These people may be eligible for home confinement, furlough, compassionate release, or transfer out of Elkton to a different prison.

It is possible that the Warden, the Bureau of Prisons, or the court may find that you are not eligible for home confinement, furlough, or release, and that your only choice is to move to a different prison or stay at Elkton. That other prison could be higher security than Elkton, but would be better than Elkton for social distancing. **IF THAT HAPPENS, YOU CAN DECIDE LATER TO STAY AT ELKTON.** *→ BS*

Even though you can decide later, would you like to decide to stay at Elkton now anyway? Checking "Yes" means you would NOT obtain any kind of release or transfer as a result of this lawsuit.

Yes

No

Don't want to be punished by going to higher security



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If you **are** in one of those 2 groups, please:

- Answer the questions on the back AND fill out the attached medical release form
- Put the letter AND the form in the envelope and return it.

If you **are not** in one of those 2 groups, please do not return this letter.

Name: _____

BOP #: _____ Age: 72

Your Current Release Date: 8/31/2025

Your Lawyer's Name: _____

Your Lawyer's Phone or Email: _____

Check this box only if you do NOT have a lawyer, and you cannot afford to pay for one:

Have you asked the Warden for compassionate release? Yes No

If yes, when did you apply? APRIL 10, SUPPLEMENTED APRIL 24, 2020

If yes, have you gotten a response? Yes No

What response did you get? _____

The ACLU of Ohio and the Ohio Justice & Policy Center are not your attorneys as an individual, though we do seek to represent the class of people seeking transfer, as a whole. If you think you might be eligible for compassionate release, you should contact your lawyer or ask for compassionate release in writing to the Warden.

TURN OVER

Your medically documented, pre-existing condition (circle all that apply):

Heart Disease

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(including Hepatitis C)

Kidney Disease
(whether on dialysis or not)

Lung Disease
(including asthma and COPD)

Diabetes

Immunocompromised
(cancer treatment, transplants, HIV/AIDS, or medications that weaken the immune system)

Severe Obesity
(BMI of 40 or higher)

Other/Please Specify: [REDACTED]

Any details about your condition: SEE SHEETS ATTACHED 2

What treatment have you had for your condition? SEE SHEETS ATTACHED 2

Does FCI Elkton have access to medical records for your condition?

Yes AND No

FOR SOME RECORDS - YES.
OTHERS TO BE PROVIDED

If you believe you may have a condition that puts you at risk, it is your responsibility to provide all medical records to the prison so that you can be included. We recommend that you contact your attorney. If you choose to provide information using this letter, we may share it with other attorneys, consultants, or attorneys for the Bureau of Prisons as part of our efforts to pursue relief for the class.

You Can Choose to Stay at Elkton If You Want

The judge's order in the class action lawsuit applies to all prisoners age 65 or older OR with certain medical conditions that put them at higher risk from the coronavirus. These people may be eligible for home confinement, furlough, compassionate release, or transfer out of Elkton to a different prison.

It is possible that the Warden, the Bureau of Prisons, or the court may find that you are not eligible for home confinement, furlough, or release, and that your only choice is to move to a different prison or stay at Elkton. That other prison could be higher security than Elkton, but would be better than Elkton for social distancing. **IF THAT HAPPENS, YOU CAN DECIDE LATER TO STAY AT ELKTON.**

Even though you can decide later, would you like to decide to stay at Elkton now anyway? Checking "Yes" means you would NOT obtain any kind of release or transfer as a result of this lawsuit.

Yes No



MEDICAL RECORD
SUPPLEMENT

[REDACTED]

DATE 5/15/2020

I AM INCLUDING INFORMATION ABOUT MY ONGOING MEDICAL ISSUES WHICH MAY BE GERMANE IN ASSESSING MY SUSCEPTIBILITY TO THE CURRENT COVID CRISIS. I HAVE LISTED SOME ISSUES WHICH ALTHOUGH SEEM REMOTE OR NOT RELEVANT, THEY, I BELIEVE, MAY RESULT IN OVERALL DIMINISHED IMMUNE RESPONSE:

[REDACTED]

[REDACTED]

3)

[REDACTED]

SUPPLEMENT (CONT'D.)

[REDACTED]

DATE 5/15/2020

[REDACTED]

5 [REDACTED]

SOME MEDICAL RECORDS HERE AT ELKTON, SOME AT CCA YOUNGSTOWN, O AND SOME BY INMATES PRIVATE HEALTH CARE PHYSICIANS YET TO BE RECEIVED BUT WILL BE PROVIDED WHEN AVAILABLE. UPON RECEIPT. SINCE PHYSICIANS ONLY REQUIRED TO RETAIN CLIENT HISTORIES 7 YEARS AND THE LIMITED TIME TO PRODUCE THESE RECORDS, SOME OF THE ABOVE ISSUES WILL NOT HAVE FULL OR ONLY PARTIAL DOCUMENTATION.

IN THE EVENT THAT THE WARDEN, BOP OR COURT FINDS THAT I AM NOT ELIGIBLE FOR HOME CONFINEMENT, FURLOUGH OR RELEASE, I WISH TO ELECT THAT, UPON DETERMINATION OF THE ELIGIBILITY, I CHOOSE TO STAY AT ELKTON AS OPPOSED TO TRANSFER; AS MY FAMILY, MY HOME (APPROX FOR BOND OCCUPANCY) ARE LESS THAN 1 HR AWAY
THANK YOU FOR YOUR CONSIDERATION.

DECLARATION OF CHRISTOPHER WHITFIELD

I, Christopher Whitfield, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton ("Elkton"), a low-security prison operated by the Federal Bureau of Prisons. My Federal Bureau of Prisons Register Number is 72967-061. Including pre-sentence detention, I have served approximately five years of a ten-year sentence after pleading guilty to Conspiracy to Commit Money Laundering. I am currently housed at Elkton's Federal Satellite Low ("FSL") camp.
2. I am 46 years old. I have type 2 diabetes, with diabetic neuropathy in my feet. I also have high blood pressure and high cholesterol.
3. I am a husband of 21 years, a father, a grandfather, and a grandson. My children are all adults now. One of them left just last week for basic training in the U.S. Air Force. I am extremely proud of him.
4. I arrived at Elkton in December 2016. Since that time, I have done everything in my power to make myself into a better person. I have tried to take every class available to me, and I independently took a course in real-estate appraisal to develop my skills in that field. I am also a trusted worker at Elkton: I currently work on the "outside garage detail," in which we go outside the fence every weekday, and I am scheduled to switch jobs and become a visitation orderly, which will also bring me outside the fence on weekends and national holidays. Visitation detail also means cleaning the FCI and FSL visitation areas, which involves walking back and forth between the facilities.

5. I cannot take back the mistakes I have made in my life, but I want to do everything I can to make up for them. If I am released to home confinement, I have a home in which to live and quarantine myself if need be, and a great supporting family. I also have developed plans to conduct a business providing housing for the elderly, veterans, disabled, and people on probation. I have taken a course in real estate appraisal that I believe will help me get my company going, and I have the finances to do so.

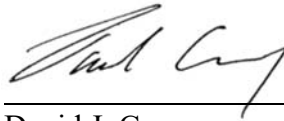
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Christopher Whitfield (by consent)

Christopher Whitfield

I, David J. Carey, certify that I reviewed the information contained in this declaration with Christopher Whitfield via CorrLinks on June 1, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on June 1, 2020.



David J. Carey
American Civil Liberties Union Foundation of Ohio
1108 City Park Avenue, Suite 203
Columbus, OH 43206
(614) 568-1972
dcarey@acluohio.org

COVID-19 Home Confinement Review Worksheet

Inmate Name & Register Number: WHITFIELD, CHRISTOPHE, Reg. No. 72967-061

Age?	46
Is the current or past offense a sex offense, crime of violence, or act of terrorism?	Yes- Minor
PRD	10/6/2023
Percentage of Time Statutory Served?	60.29999999999997
Are there any Pending Charges or Detainers Noted? (REQUIRED VERIFICATION IF DEEMED ELIGIBLE)	NO
Security Level?	MINIMUM
PSF of Alien/Sex Offender, etc.?	NONE,
STG or notable Gang Related Activity?	NO
PATTERN Risk Level?	R-LW
Discipline in the past year?	NO
Any history of Escape?	Yes – Escape 1990
Is there any preliminary information pertinent to the inmate's release (i.e. releasing to a COVID hot spot; no viable release plan, health concerns of individuals at proposed release residence etc)? <u>REQUIRES VERIFICATION BY UNIT TEAM IF DEEMED ELIGIBLE</u>	Releasing to: [REDACTED]
Medical/Mental Health Care Level concerns?	[REDACTED]
Does the inmate have a DST?	NO
Any Other Pertinent Case Related Information?	History of minor violence and escape.
Final Decision:	

Case Narrative:

Inmate WHITFIELD arrived at FCI Elkton on 12/20/2016. He is a 8 point, MINIMUM security inmate serving a 120 month term for Conspiracy to Commit Money Laundering. He has a criminal history score of 4. He has a projected release date 10/6/2023. Since his arrival to FCI Elkton, inmate WHITFIELD has completed 36 Programs. Please see the attached Education Data for further details. In addition, inmate WHITFIELD does not have recent disciplinary infractions. The inmate's Chronological Disciplinary Record is attached for your review.

Based on a review of all criteria, inmate WHITFIELD seems to be appropriate for more consideration as his prior violence and escape occurred 30 years earlier. Additionally, he is currently housed in a MINIMUM security level facility.

CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER



**U.S. Department of Justice
Memorandum
Federal Bureau of Prisons**

Correctional Programs Division

Central Office
320 First Street, N.W.
Washington, DC 20534

May 8, 2020

MEMORANDUM FOR CHIEF EXECUTIVE OFFICERS

FROM: Andre Matevosian, Acting Assistant Director
Correctional Programs Division

HUGH HURWITZ Digitally signed by HUGH HURWITZ
Date: 2020.05.08 15:57:01 -04'00'

Hugh J. Hurwitz, Assistant Director
Reentry Services Division

SUBJECT: Home Confinement

In our continued effort to protect the health and safety of staff and inmates during the COVID-19 pandemic, it is imperative to review at-risk inmates for placement on home confinement. This memorandum provides updated guidance and direction and rescinds the memorandum dated April 22, 2020.

In accordance with the March 26, 2020, Memorandum, and to ensure the BOP is deploying its limited resources in the most effective manner, the following factors must be assessed to ensure inmates are suitable for home confinement:

- Reviewing the inmate's institutional discipline history for the last twelve months (**Inmates who have received a 300 or 400 series incident report in the past 12 months may be referred for placement on Home Confinement, if in the Warden's judgement such placement does not create an undue risk to the community.**)
- Ensuring the inmate has a verifiable release plan;
- Verifying the inmate's primary offense is not violent, a sex offense, or terrorism related;
- Confirming the inmate does not have a current detainer.

- Priority should be given to inmates residing in Low and Minimum security facilities;
- Inmates who have anything above a Minimum score not receiving priority treatment;
- And the age and vulnerability of the inmate to COVID-19, in accordance with the CDC guidelines

Home Confinement is generally prioritized for those inmates who have served a certain portion of their sentence, or who only have a relatively short amount of time remaining on their sentence. While these priority factors are subject to deviation in certain circumstances and are subject to revision as the situation progresses, we are currently prioritizing for consideration those inmates who either:

- have served 50% or more of their sentence,
- or have 18 months or less remaining on their sentence and have served 25% or more of their sentence.

If the Warden determines there is a need to refer an inmate for placement in the community due to COVID-19 risk factors who is outside of the criteria listed above. Then, the Warden should forward the Home Confinement referral to the Correctional Programs Division in Central Office for further review.

All inmates must be reviewed by the SIS Department at the referring facility to determine if the inmate has engaged in violent or gang-related activity in prison. **Inmates who have received a 300 or 400 series incident report in the past 12 months may be referred for placement on Home Confinement.**

Referrals must be made based on appropriateness for home confinement. Consideration should be given to whether the inmate has a verifiable reentry plan, which will prevent recidivism and maximize public safety; including verification, the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19.

All referrals should clearly document the review of the following:

- Specific type of release residence (House/Apt/Group home etc.),
- Who inmate will be living with,
- Any health concerns of individuals in the residence,
- Contact phone numbers of the inmate should he/she be placed on Home Confinement,

- Transportation plan as to how the inmate will be transferred to the Home Confinement location.

All the above information must be documented on the referral for Home Confinement prior to submission to the RRM Office.

Inmates will be screened by Health Services to determine if the inmate requires frequent and on-going medical care within the next 90 days, if frequent and on-going medical care is required then:

- Health Services staff will coordinate with Naphcare and RRMBs Health Services Specialists to determine if the inmates' medical needs can be met in the community at this time. Naphcare will set up follow up care prior to transfer. The inmate must transfer with AT LEAST 90 days of any prescribed medications.
- If inmates' medical needs cannot be met in the community, then the inmate will remain at BOP Facility.
- If inmates do not require frequent and on-going medical care then the referral will be processed.
- All the above information must be clearly documented on the referral for Home Confinement prior to submission to the RRM Office.
- **Medical staff must add COVID specific risk factors to the medical (BEMR) exit summary.**

Pregnant inmates should be considered for viability of placement in a community program to include Mothers and Infants Together (MINT) programs and Home Confinement.

If an inmate is referred for home confinement due to the COVID-19 pandemic, the Case Management Activity (CMA) assignment **CV-COM-REF** should be loaded.

Case Management Coordinators must track all inmates determined to be ineligible for Home Confinement or the Elderly Offender Pilot Program and enter the appropriate denial code in SENTRY. Reports outlining the reason for denial must be reported to BOP-CPD/Unit Management on a weekly basis by Monday at 2pm EST.

If you have any questions, please contact David Brewer, Acting Senior Deputy Assistant Director, Correctional Programs Division.