

No. A

# In the Supreme Court of the United States

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STEPHEN E. STOCKMAN,  
*Applicant,*

v.

UNITED STATES OF AMERICA.  
*Respondent.*

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

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## **EMERGENCY APPLICATION FOR HOME CONFINEMENT DURING THE COVID-19 PANDEMIC AND THIS COURT'S RESOLUTION OF A TIMELY FILED PETITION FOR A WRIT OF CERTIORARI TO THE FIFTH CIRCUIT**

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## **CORPORATE DISCLOSURE STATEMENT**

The applicant is a natural person with no parent corporation or stock

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To the Honorable Samuel A. Alito as Circuit Justice for the Fifth Circuit:

Pursuant to this Court’s Rules 22.2,<sup>1</sup> Stephen E. Stockman – defendant-appellant in the underlying action – respectfully applies for an order pursuant to the All Writs Act, 28 U.S.C. § 1651(a), directing the Warden of the Beaumont Federal Correctional Complex (“FCC Beaumont”) and the Bureau of Prisons to transfer Mr. Stockman from incarceration at FCC Beaumont’s minimum-security satellite camp to home confinement for the duration of the Court’s consideration of a timely filed petition for a writ of *certiorari*. Mr. Stockman requests this relief for three distinct reasons: (1) to ensure his safety, given his risk profile for COVID-19; (2) to allow him to assist in the preparation of his petition to this Court, given that FCC Beaumont’s law library has been converted to a quarantine area; and (3) to preserve this Court’s jurisdiction over his forthcoming petition, given that his death would end the Article III case or controversy. By order dated March 2, 2020, the Fifth Circuit denied Mr. Stockman’s timely petition for rehearing *en banc* (App. 27a), which – with the 60-day extension granted by this Court Order dated March 19, 2020 in response to the pandemic – makes the petition for a writ of *certiorari* due July 30, 2020.

**RULE 23.3 POSES NO BAR TO THE RELIEF REQUESTED**

The Office of the Clerk rejected an earlier iteration of this application based on the erroneous reasoning that Mr. Stockman needed to seek relief from the lower courts before applying to the Circuit Justice on this Court’s Rule 22. Mr. Stockman

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<sup>1</sup> Alternatively, this Court could treat this application as a motion pursuant to Rule 21.2(c) and order the applicant to file eight additional copies of the application.

assumes that the Office of the Clerk acted pursuant to Rule 23.3, which provides as follows: “Except in the *most extraordinary circumstances*, an *application for a stay* will not be entertained unless the relief requested was first sought in the appropriate court or courts below or from a judge or judges thereof.” SUP. CT. R. 23.3 (emphasis added). This rule is inapposite for two reasons: (1) Mr. Stockman does not request a stay (i.e., the whole of Rule 23 does not apply); and (2) even if Mr. Stockman did request a stay, Rule 23.3’s extraordinary-circumstances provision is a matter for judicial determination.

While Mr. Stockman admittedly seeks emergency injunctive relief, not all injunctive relief qualifies as a “stay”: The relevant “definitions indicate that ‘stay’ is a subset of the broader term ‘enjoin’; it is a ‘kind of injunction’ directed at a judicial case or proceedings within it.” *Teshome-Gebreegziabher v. Mukasey*, 528 F.3d 330, 333 (4th Cir. 2008), *abrogated in part on other grounds, Nken v. Holder*, 556 U.S. 418, 423 (2009); *id.* (“a suspension of the case or some designated proceedings within it. It is a *kind of injunction* with which a court freezes its proceedings at a particular point.”) (emphasis in original, quoting *Black’s Law Dictionary* 1413 (6th ed. 1990)). Mr. Stockman seeks to alter the terms of his confinement, not to stay his confinement or any of the related judicial proceedings. Each day that Mr. Stockman serves in home confinement is a day of his sentence. He cannot walk to the park. He cannot leave the house without the supervision of the Federal Bureau of Prisons (“BOP”). This Court has long recognized the difference between the fact or length of confinement vis-à-vis the terms of confinement. See *Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973),

*abrogated in part on other grounds*, Prison Litigation Reform Act of 1995, PUB. L. NO. 104-134, title VIII, 110 Stat. 1321, 1321x66 (1996). Mr. Stockman seeks injunctive relief to alter the terms of his confinement pursuant to the All Writs Act, the Eighth Amendment, and the Due Process Clause, while he pursues his appeal to this Court. The Office of the Clerk offered the analogy of seeking bail from this Court, which the Office of the Clerk indicated would proceed under Rule 23. *See* Joseph Decl. ¶ 9 (App. 42a). Mr. Stockman expresses no opinion on which side the line between Rule 22 and Rule 23 an application for bail should fall, but a bailee is not an inmate. Mr. Stockman would remain an inmate. However the justices and the clerks of this Court view bail, it is clear both that Mr. Stockman is not seeking a stay and that Rule 23.3 does not apply.

But even if Rule 23.3 did apply, the justices of this Court must apply Rule 23.3 because its extraordinary-circumstances provision requires a judicial determination of whether Mr. Stockman's case presented an extraordinary circumstance. In the interval between the initial filing of this application – less this explanatory section – the COVID-19 infections at the FCC Beaumont camp where Mr. Stockman is housed spiked from 41 to 80. *Compare* Stockman Decl. ¶ 6 (App. 38a) (dated July 7, 2020) *with* Joseph Decl. ¶ 10 (App. 42a) (dated July 9, 2020). Mr. Stockman respectfully submits that, unless the Circuit Justice acts expeditiously, Mr. Stockman's prison sentence could be converted to a death sentence by bureaucratic inertia in BOP's delay in processing of his still-pending application for home confinement under Section 12003(b)(2) of the Coronavirus Aid, Relief, and Economic Security Act, as

described below, all while his appeal is still pending. In any event, for the reasons described at pp. 15-16, *infra*, the alternate remedy of seeking relief in the lower courts is inadequate. The district court would take too long, and the court of appeals' mandate issued on March 10, 2020 (*i.e.*, relief from the court of appeals would require first moving to recall the mandate). *See* Joseph Decl. ¶ 11 (App. 43a). Although it is not the usual situation, this Court is in the position of issuing the most expeditious relief, and that relief is urgently needed (*i.e.*, “time is of the essence,” App. 32a).

Under the circumstances, the All Writs Act – not the *Some Writs* Act – plainly provides jurisdiction: “The Supreme Court and all courts established by Act of Congress may issue *all writs necessary or appropriate* in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651(a) (emphasis added); *see also* pp. 11, *infra* (discussing this Court’s jurisdiction). And, as relevant here, Rule 23.3 does not bar this Court’s consideration of this application.

## **BACKGROUND**

1. The underlying criminal action concerns Mr. Stockman’s prosecution for fraud and false statements in connection with fundraising for charitable and political purposes, App. 1a-2a, with additional counts derivative of those predicate allegations. App. 2a-3a.

2. Mr. Stockman’s case raises important questions about violations of established First-Amendment limitations on campaign finance law and fraud in the context of charitable fundraising, as explained below. For that reason, there is a fair prospect that this Court would grant a petition for a writ of *certiorari* and reverse the decisions of the lower courts.

3. The COVID-19 pandemic has reportedly killed more than 130,000 Americans, Joseph Decl. ¶ 2 (App. 41a) and prompted emergency actions by all three branches of federal government. *See* U.S. Supreme Court, COVID-19 Announcements (<https://www.supremecourt.gov/announcements/COVID-19.aspx>) (collecting Court's COVID-19 actions); Pres. Donald J. Trump, *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, 85 Fed. Reg. 15,337 (Mar. 18, 2020); Coronavirus Aid, Relief, and Economic Security Act, PUB. L. NO. 116-136, 134 Stat. 281 (2020) ("CARES Act").

4. Although the COVID-19 virus does not appear to pose a significant risk for the young and the healthy, the risk of death increases significantly with patients who are elderly or have underlying health conditions – called “co-morbidities” – such as asthma, diabetes, high blood pressure, compromised immune systems, or heart conditions. *See, e.g.*, Lena H. Sun, *Patients with underlying conditions were 12 times as likely to die of covid-19 as otherwise healthy people, CDC finds*, WASH. POST, June 15, 2020 (available at <https://www.washingtonpost.com/health/2020/06/15/patients-with-underlying-conditions-were-12-times-more-likely-die-covid-19-than-otherwise-healthy-people-cdc-finds/>).

5. As relevant here, Section 12003(b)(2) of the CARES Act provides BOP with extended authority to transfer prisoners to home confinement:

Home confinement authority.— During the covered emergency period, if the Attorney General finds that emergency conditions will materially affect the functioning of the Bureau, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement under

the first sentence of section 3624(c)(2) of title 18, United States Code, as the Director determines appropriate.

PUB. L. No. 116-136, § 12003(b)(2), 134 Stat. at \_\_ (official pagination not available).

Section 3624(c) of Title 18 concerns pre-release confinement, and Section 3624(c)(2) concerns home confinement. *See* 18 U.S.C. § 3624(c). Section 3624(c)(2)'s first sentence limits BOP's home confinement authority to "the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months," 18 U.S.C. § 3624(c)(2), but Section 12003(b)(2) of the CARES Act provides authority to exceed that limit.

6. By memorandum dated March 26, 2020 (App. 29a), the Attorney General directed BOP "to prioritize the use of [its] various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic." In doing so, the Attorney General directed BOP to consider a series of discretionary factors: (1) age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention ("CDC") guidelines; (2) the BOP facility's security level, with priority to low and minimum security facilities; (3) the inmate's conduct in prison and PATTERN score; (3) 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;" and (4) the inmate's crime of conviction, and assessment of the danger posed by the inmate to the community.

7. In a follow-up memorandum (App. 31a), the Attorney General

recognized that the imposition of lawful punishments carries with it “a profound obligation to protect the health and safety of all inmates.” The Attorney General made the emergency finding that triggers the CARES Act’s expansion of home confinement and directed BOP to give priority to three BOP facilities experiencing surges in COVID-19 infections and to “other facilities facing similarly serious problems,” noting that “time is of the essence.” The Attorney General directed BOP to gauge eligibility by the criteria in his memorandum dated March 26, 2020 and “directed [BOP] to immediately process [the inmates eligible on those criteria] for transfer and then immediately transfer them” either to a 14-day quarantine at a BOP facility or “in the residence to which the inmate is being transferred” if that residence is suitable.

8. In a memorandum (App. 36a) implementing the Attorney General’s memoranda and the CARES Act with respect, *inter alia*, to home confinement, David Brewer – BOP’s Acting Senior Deputy Assistant Director – issued further guidance on BOP’s use of home confinement.

(a) In that guidance, Mr. Brewer identified the following criteria for reviewing and referring inmates for home confinement: (1) nonviolent, non-sex, and non-terrorism offenses, (2) no detainer; (3) Mental Health Care Level is less than CARE-MH 4; (4) PATTERN risk score is Minimum (R-MIN), (5) no incident reports in the past 12 months (regardless of severity level); (6) the inmate is a U.S. citizen; and (7) the inmate has a viable release plan.

(b) The guidance also identifies several factors to note, but which are expressly “not a reason for denial” including “Projected Release Date” and “Percentage of time served” (App. 37a).

9. BOP’s Director, Michael Carvajal, testified to the Judicial Committee of the U.S. Senate that BOP initially used the criterion of having served half of the inmate’s sentence as a screening tool to triage the inmates for consideration, given the limited bandwidth of BOP personnel and that the criterion was no longer in use. *Examining Best Practices for Incarceration and Detention During COVID-19: Hearing Before the S. Comm. on the Judiciary* (Jun. 2, 2020), <https://www.judiciary.senate.gov/meetings/examining-best-practices-for-incarceration-and-detention-during-covid-19> (question by Sen. Coons and answer by Dir. Carvajal at 2:06 to 2:08 of the video).<sup>2</sup>

10. Mr. Stockman applied for both a reduction in sentence (“RIS”) and transfer to home confinement due to the COVID-19 pandemic. Acting through the Warden of FCC Beaumont, BOP responded (App. 34a) to deny the RIS and to defer taking final action on Mr. Stockman’s home confinement, indicating only that – as of April 20, 2020 – his application had been processed for “potential approval in home confinement placement.” App. 35a.

11. In the time since BOP deferred action on Mr. Stockman’s home confinement, the COVID-19 situation at FCC Beaumont has worsened dramatically.

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<sup>2</sup> A hearing transcript is not presently available. The CIS number for the hearing is CIS S 52-20200602-207252.

On June 30, 2020, there were 5 COVID-19 cases at the facility, but by July 5, 2020, there were 41 acknowledged cases and likely 9 additional cases. Stockman Decl. ¶ 6 (App. 38a) (dated July 7, 2020). Indeed, as of July 9, 2020, the COVID-19 cases have spiked even further to 80. Joseph Decl. ¶ 10 (App. 42a).

12. Although BOP's deferral of Mr. Stockman's home-confinement request does not state a reason, on June 30 and July 1, 2020, his wife contacted the regional BOP office in Grand Prairie, Texas, for an explanation and a Mr. Derrick told her that FCC Beaumont had not approved Mr. Stockman for home release because Mr. Stockman has not completed half of his sentence. Stockman Decl. ¶ 15 (App. 39a-40a). Insofar as that rationale is not a lawful criterion for denying home confinement to an at-risk inmate like Mr. Stockman, BOP's statement is an admission against interest that BOP relied on an improper rationale to deny or delay home confinement, which is evidence notwithstanding the hearsay rule: "admissions ... are admissible ... under a standard exception to the hearsay rule applicable to the statements of a party." *Lutwak v. United States*, 344 U.S. 604, 617-18 (1953).

13. Mr. Stockman meets all BOP criteria for home confinement under the guidance that implements Section 12003(b)(2) of the CARES Act.

(a) The crimes charged against Mr. Stockman are non-violent crimes not involving sex or terrorism. App. 1a-3a. There is no detainer against Mr. Stockman by any other law-enforcement agency. Stockman Decl. ¶ 4 (App. 38a).

- (b) Mr. Stockman's Mental Health Care Level is less than CARE-MH 4, and his PATTERN risk score is Minimum. Stockman Decl. ¶¶ 7-8 (App. 38a).
- (c) Mr. Stockman has no BOP incident reports in the prior 12 months and none before that, Stockman Decl. ¶ 5 (App. 38a), and he is incarcerated at FCC Beaumont's minimum-security satellite camp.
- (d) Mr. Stockman is a U.S. citizen. Stockman Decl. ¶ 3 (App. 38a).
- (e) Mr. Stockman is 63 years old and suffers from diabetes, high blood pressure, asthma, and a weakened immune system from multiple intestinal surgeries, and is obese (approximately 5', 8-9" tall and 225-230 pounds); he takes several prescription drugs for these conditions, and it is on his wife's medical insurance. Stockman Decl. ¶¶ 9-11 (App. 38a-39a).
- (f) If transferred to home confinement, Mr. Stockman has a viable release plan because he would shelter in place with his wife in a three-bedroom house in an area of Texas (Friendswood) with no COVID-19 problems and where he could be quarantined if necessary in a separate bedroom and bathroom. Stockman Decl. ¶ 12 (App. 39a). While his wife's income would support the two of them, *id.* ¶ 13 (App. 39a), he also could earn income by working from home as an accountant and a consultant. *Id.* ¶ 14 (App. 39a).

14. The undersigned counsel has agreed to represent Mr. Stockman in filing a petition for a writ of *certiorari* by July 30, 2020, although Mr. Stockman still seeks better-known counsel to serve as counsel of record. Joseph Decl. ¶ 3 (App. 41a). While this Court can be sure that Mr. Stockman will petition this Court on July 30, 2020, it

would also benefit Mr. Stockman to have ready access to a telephone and email in order secure counsel and to assist in the preparation of his appeal to this Court.

## **ARGUMENT**

With that background, Mr. Stockman respectfully submits that transfer to home confinement is warranted. That relief is not only within this Court's jurisdiction but also warranted by the equities of Mr. Stockman's situation.

Taking jurisdiction first, Mr. Stockman's forthcoming petition will raise important First Amendment issues, which his intervening death would moot. *United States v. John*, 437 U.S. 634, 635 n.1 (1978); cf. *United States v. Martino*, 681 F.2d 952, 953 n.2 (5th Cir. 1982) (*en banc*). Under the circumstances, the All Writs Act plainly gives this Court jurisdiction *now* to preserve its *future* jurisdiction over Mr. Stockman's forthcoming petition:

The All Writs Act empowers the federal courts to issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. The exercise of this power ... extends to the potential jurisdiction of the appellate court where an appeal is not then pending but may be later perfected. ... [T]he authority of the appellate court is not confined to the issuance of writs in aid of a jurisdiction already acquired by appeal but extends to those cases which are within its appellate jurisdiction although no appeal has been perfected.

*FTC v. Dean Foods Co.*, 384 U.S. 597, 603-04 (1966) (citations and interior quotation marks omitted). While exercise of this Court's jurisdiction is discretionary, this Court plainly has jurisdiction to order a change in Mr. Stockman's confinement solely to ensure that Mr. Stockman – and his Article III case or controversy – survive through this Court's resolution of his petition for a writ of *certiorari*.

To the extent that the avoidance of irreparable harm is required for this Court to exercise its equitable discretion to grant interim relief to Mr. Stockman, the prospect of Mr. Stockman’s being exposed to COVID-19 and – in essence, converting his prison sentence into a death sentence – obviously qualifies as irreparable harm: “It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). Accordingly, Mr. Stockman faces the prospect of irreparable harm if not provided home confinement. Indeed, as the Attorney General recognized in such situations, “time is of the essence.” App. 32a.

To the extent that the Circuit Justice – or the Court, if referred to the Court – considers the likelihood of the Court’s granting review of Mr. Stockman’s case on the merits relevant to the threshold question of preserving the Court’s jurisdiction, Mr. Stockman respectfully submits the following. The First Amendment issues raised by his case are significant ones that this Court needs to resolve in order to rectify the chilling of important political speech that has resulted from the decision below. Mr. Stockman’s prosecution involves the intersection of fraud and campaign-finance law with protected First Amendment advocacy, which raises important issues: (1) *de novo* versus plain-error review for jury instructions, (2) jury confusion in this complex arena (e.g., whether nonprofits under § 501(c)(3) of the Internal Revenue Code can pay fees and salaries to principals, whether nonprofits must operate *exclusively* for charitable purposes versus *primarily* for charitable purposes, and whether nonprofits can raise seed money for projects without committing fraud at the inception if those

efforts ultimately fall short); and (3) the intersection of plain-error review and the overbreadth doctrine for First Amendment cases. In addition, Mr. Stockman’s prosecution extends the rationale of *McConnell v. FEC*, 540 U.S. 93 (2003), which had been limited to a narrow class of “electioneering expenditures” to eradicate the limiting construction imposed on the Federal Election Campaign Act *Buckley v. Valeo*, 424 U.S. 1, 43-44 & n.52 (1976), that non-campaign-related speech (*i.e.*, speech not involving express advocacy regarding a candidate’s election) cannot be regulated consistent with the First Amendment.

To the extent that this Court considers Mr. Stockman’s entitlement to the relief he seeks, Mr. Stockman meets all the criteria for home detention during the pandemic: (1) he is personally at great risk of death in confinement at FCC Beaumont due to the spike in infections at the facility; (2) he has the verifiable re-entry plan of a suburban home in an area not affected by the COVID-19 virus where he can be quarantined and can shelter in place supported by his wife’s income;<sup>3</sup> and (3) he poses no threat to his community for his non-violent alleged crimes. Mr. Stockman thus is entitled to release on two related grounds:

- First, on constitutional grounds under the Eighth Amendment, the United States has “a profound obligation to protect the health and safety of all inmates,” App. 31a; *Helling*, 509 U.S. at 31 (“treatment a prisoner receives in prison and the conditions under which he is confined are subject to scrutiny

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<sup>3</sup> Although not necessary to his re-entry plan, Mr. Stockman also could earn an income from home.

under the Eighth Amendment”), lest Mr. Stockman have his prison sentence converted into a death sentence by bureaucratic mismanagement, while his appeal still is pending.

- Second, and based on the first grounds, Congress, the Attorney General, and BOP have set up procedures to provide home confinement *expeditiously* for at-risk inmates like Mr. Stockman at BOP facilities – like FCC Beaumont – facing surges in COVID-19 infections. The bureaucratic inertia and snafu of the BOP Director’s testifying that length of confinement is no longer a factor while BOP regional staff and FCC Beaumont cite length of confinement as the rationale for denying Mr. Stockman’s transfer to home confinement is, quite simply, arbitrary and capricious. *See 5 U.S.C. § 706(2)(A)*. Moreover, even delay can be unlawful or unreasonable. *See id. § 706(1)*.<sup>4</sup>

Under either the substantive or the procedural ground, Mr. Stockman is entitled to the relief he seeks from the Circuit Justice or this Court.<sup>5</sup>

Mr. Stockman’s home confinement through the filing of his petition for a writ

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<sup>4</sup> While the Administrative Procedure Act, 5 U.S.C. §§ 551-706 (“APA”), may not apply to all BOP actions here, 18 U.S.C. § 3625, that does not bar judicial review under the Constitution. *Webster v. Doe*, 486 U.S. 592, 601 (1988). Instead, the APA is merely illustrative of pre-APA and non-APA equity review, given that Mr. Stockman meets the pre-APA constitutional criteria for direct injury. *Alabama Power Co. v. Ickes*, 302 U.S. 464, 479 (1938).

<sup>5</sup> On information and belief formed after reasonable inquiry, all other prisoners at FCC Beaumont’s minimum-security satellite camp with comparable risk factors for COVID-19 have already been transferred to home confinement or been given other, more favorable treatment. Joseph Decl. ¶ 7 (App. 41a-42a).

of *certiorari* and any reply would also aid his appeal by enabling him to have access to draft documents, a telephone, and a legal materials. FCC Beaumont has converted its law library into a quarantine staging area, Joseph Decl. ¶ 4 (App. 41a), and it has proven impossible to reach Mr. Stockman via his BOP counselor or case worker. *Id.* ¶ 5 (App. 41a). While the undersigned counsel would have preferred to have the applicant enter a declaration in support of this application, he is simply unavailable through BOP. *Id.* ¶ 6 (App. 41a).

Mr. Stockman potentially has the alternate remedy of seeking relief from the appropriate district court – either the convicting court in the Southern District of Texas or the court with jurisdiction over FCC Beaumont in the Eastern District of Texas. Indeed, given that this Court’s jurisdiction under the All Writs Act could end before the COVID-19 pandemic ends, Mr. Stockman reserves the right to seek relief from the appropriate court. The alternate relief from a district court may not be an adequate alternate remedy, given the exigency of the spike in COVID-19 infections at FCC Beaumont and Mr. Stockman’s urgent need for access to legal materials to aid in his petition to this Court, which is due July 30, 2020. For example, an inmate of FCC Beaumont with comparable health risks was recently transferred to home confinement by the sentencing in *United States v. Ferguson*, No. H-12-600-4, 2020 U.S. Dist. LEXIS 117055 (S.D. Tex. July 3, 2020), but he initiated his sealed motion for that treatment under the “extraordinary and compelling reasons” provision of 18 U.S.C. § 3582(c)(1)(A), on June 21, 2020 (*i.e.*, 12 days before the Court granted the motion). Joseph Decl. ¶ 8 (App. 42a). Given the uncertainty over which district court

would have jurisdiction and the urgency of avoiding a fast-spreading COVID-19 infection at FCC Beaumont, however, Mr. Stockman also seeks relief here, without prejudice to his seeking additional relief from a district court.

In summary, Mr. Stockman respectfully submits that he meets all federal criteria for transfer to home confinement and that the only reasons that BOP has not already transferred him to home confinement are overworked BOP staff and confusion between the BOP Director's stated policy – which supports Mr. Stockman's transfer to home confinement – and the dissemination of that policy to the overworked BOP staff both at the regional level and at FCC Beaumont.

#### **REQUESTED RELIEF**

Applicant requests an order directing the Bureau of Prisons and all its officers to transfer Mr. Stockman immediately to home confinement – without any period of pre-transfer quarantine – through the Court's resolution of a timely filed petition for a writ of *certiorari*. Given that the Government has had a copy of this application since 11:00 a.m. on July 7, 2020, *see* Joseph Decl. ¶ 9 (App. 42a), and BOP has dithered over Mr. Stockman's home-confinement petition since marking it for "potential approval in home confinement placement" on April 20, 2020, App. App. 35a, Mr. Stockman requests that the Court give the respondent Government no more than 24 hours to respond to this application, with the goal of securing Mr. Stockman's release as soon as humanly possible.

Insofar as this Court's jurisdiction under the All Writs Act to preserve the Court's future jurisdiction over Mr. Stockman's forthcoming petition for a writ of *certiorari* extends only through the Court's resolution of a timely filed petition –

which might end before the risks posed by the COVID-19 virus end – Mr. Stockman requests that the Court’s order be without prejudice to his seeking an extended term of home confinement from BOP or the appropriate district court pursuant to other relevant statutory and constitutional authorities.

### **CONCLUSION**

For the foregoing reasons, Mr. Stockman respectfully submits that the Circuit Justice or this Court should order Mr. Stockman’s immediate transfer to home confinement for the pendency of the Court’s resolution of a timely filed petition for a writ of *certiorari*.

Dated: July 9, 2020

Respectfully submitted,

/s/ Lawrence J. Joseph

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**CERTIFICATE OF SERVICE**

The undersigned certifies that, on this 9th day of July 2020, a true and correct copy of the foregoing application and its appendix was served by first-class mail, postage prepaid, on the following counsel for the respondent:

Hon. Noel J. Francisco  
Solicitor General  
United States Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001  
Email: SupremeCtBriefs@USDOJ.gov

In addition, the undersigned counsel also sent a PDF courtesy copy of the foregoing application and its appendix to the above-listed counsel at the email addresses indicated above.

The undersigned further certifies that, on this 9th day of July 2020, the foregoing application and its appendix were electronically filed with the Court, and an original and two true and correct copies of the foregoing application and its appendix were lodged with the Clerk of the Court by messenger for filing.

Executed July 9, 2020,

/s/ Lawrence J. Joseph  
\_\_\_\_\_  
Lawrence J. Joseph