

LAWRENCE J. JOSEPH, ESQ.
1250 Connecticut Avenue, NW, Suite 700-1A • Washington, DC 20036
Tel: 202-355-9452 • Fax: 202-318-2254
www.larryjoseph.com

July 12, 2020

VIA E-FILING & MESSENGER

Scott S. Harris,
Clerk of the Court
U.S. Supreme Court
One First Street, NE
Washington, DC 20543

**Re: *Stockman v. United States*, No. 20A2 (U.S.);
Request for Leave to Lodge Materials Pursuant to Rule 32.3**

Dear Mr. Harris:

Pursuant to this Court’s Rule 32.3, the applicant in the above-captioned action respectfully seeks leave to lodge additional materials in support of the application for transfer to home confinement during the pendency of the Court’s consideration of his forthcoming petition for a writ of *certiorari*. As required by Rule 32.3, this letter describes the material proposed for lodging and explains why the Court properly may consider that material.¹

Introduction

The above-captioned application asks the Circuit Justice – or the Court, if referred to the Court – to order the transfer of Stephen E. Stockman (hereinafter, “applicant” or “Mr. Stockman”) from the minimum-security satellite camp at the Beaumont Federal Correctional Complex (“FCC Beaumont”) to home confinement pursuant to the authority granted by 18 U.S.C. § 3624(c) and Section 12003(b)(2) of the Coronavirus Aid, Relief, and Economic Security Act, PUB. L. NO. 116-136, § 12003(b)(2), 134 Stat. 281, ___ (2020),² as well as the Due Process Clause, the Eighth Amendment, and the All Writs Act. 28 U.S.C. § 1651(a). With that background, applicant seeks leave to lodge declarations from the applicant himself if he becomes available or – if he remains unavailable – from his wife and his counsel to the following effect:

- **Applicant approved for release.** In a prison call on July 12, 2020, applicant advised his wife that FCC Beaumont has approved him for home confinement

¹ The Court’s rules do not specify the number of copies to file under Rule 32.3. By analogy to Rule 22.2, applicant accompanies its original with two copies.

² The official pagination is not yet available.

Scott S. Harris,
Clerk of the Court
July 12, 2020
Page 2

and that a new case worker had him sign the relevant paperwork on July 10, 2020. Unfortunately, the case worker also indicated that it would take 2-4 weeks for the processing at the Bureau of Prisons (“BOP”) regional facility in Grand Prairie, Texas.

- **Scope of COVID-19 infection spike at FCC Beaumont.** The number of COVID-19 infections has grown significantly since the filing of the application, and the data are now clearer to applicant’s wife and counsel:
 - BOP reports COVID-19 data for “Beaumont Low” that includes both the minimum-security satellite camp (where applicant is confined) and the low-security facility:³
 - As of today on BOP’s website⁴, the camp has a population of 454 inmates and the low-security facility has a population of 1,446 inmates.
 - COVID-19 infections reported by the BOP website for FCC Beaumont Low have jumped from 80 at the time the application was e-filed on the morning of July 9, 2020, to the following levels:
 - 180 on the evening of July 9;
 - 227 on the morning of July 11; and
 - 331 as this letter is filed on the evening of July 12.
- **Inadequacy of confinement at FCC Beaumont.** In a prison call on July 12, 2020, applicant advised his wife that FCC Beaumont has declined his requests for hand sanitizer, as well as his longstanding request for zinc supplements – which help with immunity. Indeed, on the same call, he recounted the last few meals, notwithstanding his diabetes:

³ Available as a map at <https://www.bop.gov/coronavirus/>, which requires the user to click the desired location on the map (near Houston, Texas, in applicant’s case).

⁴ Available at <https://www.bop.gov/locations/institutions/bml/>.

Scott S. Harris,
Clerk of the Court
July 12, 2020
Page 3

- Frosted flakes and powdered milk, a fruit cup, and a donut stick for breakfast;
- Bologna and white bread for lunch; and
- A couple small pancakes, syrup, and potatoes for dinner.
- **Availability of quality medical care outside FCC Beaumont.** Applicant's wife seeks to clarify her declaration to express her willingness and desire that (1) if a quarantine is necessary, applicant quarantine at their home, which is adequate for the purpose; and (2) if applicant contracts COVID-19 before his transfer to home confinement, that he nonetheless be transferred to convalesce and to recover in home confinement, as supplemented – in coordination with BOP – with hospitalization and medical care as a beneficiary of her medical plan, which applicant and his wife believe will produce better treatment at the crucial early phase than he would at FCC Beaumont.

With that background, the applicant now demonstrates the relevance of the proffered materials.

Relevance of Proffered Materials

Any evidence must be relevant, and the proffered new evidence is relevant for the following reasons:

- **Scope of the COVID-19 infection spike at FCC Beaumont.** The spike in COVID-19 infections at FCC Beaumont emphasizes the urgency of action on the application.
- **Inadequacy of FCC Beaumont to cope with applicant's co-morbidities during a pandemic.** FCC Beaumont's inability to supply applicant with hand sanitizer and zinc supplements during a pandemic and its failure to accommodate his dietary needs demonstrates the inability to house medically compromised inmates during the pandemic.
- **FCC Beaumont has approved his release.** Although BOP's anticipated release of 2-4 weeks is inadequate to shield applicant from potentially lethal exposure to COVID-19 in the interim and would not allow him to aid in the preparation of his petition for a writ of *certiorari* due July 30, the fact that BOP

Scott S. Harris,
Clerk of the Court
July 12, 2020
Page 4

has approved home confinement – but for the processing – demonstrates that the public interest favors his transfer and that the respondents would not suffer any countervailing harm in the balancing of the parties’ equities.

- **The BOP data show “extraordinary circumstances” under Rule 23.3.** Although applicant respectfully submits that he does not seek a “stay” under Rule 23, *see* Appl. at 1-4, the Office of the Clerk – at least initially – viewed the application as a stay application. To the extent that the application was a stay application, the rapidly escalating spread of COVID-19 infections at FCC Beaumont would be relevant to showing that the application meets Rule 23.3’s test for granting a stay under extraordinary circumstances.

With that background, the applicant now argues that this Court may consider the new and clarified information that he proposed to lodge pursuant to Rule 32.3.

Proffered Materials are Judically Noticeable or Otherwise Admissible

As indicated above, the proffered materials fall into two categories: (1) BOP data on the increasingly severe spike in COVID-19 infections at FCC Beaumont; and (2) declarations from the applicant, his wife, and his counsel about the circumstances of the applicant’s confinement. Mr. Stockman is entitled to rely on – and thus to submit – both categories of information.

Regarding the BOP website data on COVID-19 infections at FCC Beaumont, the data are judicially noticeable as public records. *See, e.g., New York Indians v. United States*, 170 U.S. 1, 32 (1898) (appellate courts may take judicial notice of “records, or public documents... or other similar matters of judicial cognizance”); *cf. FED. R. EVID. 201(b)(2), (f)* (judicial notice), 803(6), (8) (public records and reports are not hearsay). At the appellate level, the Fifth Circuit and other courts of appeals routinely take judicial notice of information contained on state and federal government websites, *Trout Point Lodge, Ltd. v. Handshoe*, 729 F.3d 481, 490 n.12 (5th Cir. 2013),⁵ including information on the COVID-19 pandemic. *In re Abbott*, 954 F.3d 772, 779 (5th Cir. 2020).

⁵ *See also Nebraska v. E.P.A.*, 331 F.3d 995, 998 & n.3 (D.C. Cir. 2003); *Gent v. Cuna Mut. Ins. Soc'y*, 611 F.3d 79, 84 n.5 (1st Cir. 2010); *Vanderklok v. United States*, 868 F.3d 189, 205 n.16 (3d Cir. 2017); *United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017); *Denius v. Dunlap*, 330 F.3d 919, 926-27 (7th Cir. 2003); *Daniels-Hall v.*

Scott S. Harris,
Clerk of the Court
July 12, 2020
Page 5

Regarding the supplemental and clarified declarations, the new declarations simply update the declarations filed with the application. The Courts' rules do not limit the information that an applicant or movant may submit in support of an application or motion. *See S. Ct. RULES 21-23.* In the fluid and rapidly changing pandemic at FCC Beaumont, hampered by a lack of the access to the applicant, the new and clarified information is necessary for the Circuit Justice – or the Court, if referred to the Court – to decide the application based on the best-available information.

Conclusion

For the foregoing reasons, the Circuit Justice – or the Court, if referred to the Court – may consider the proffered material. As required by Rule 32.3, the applicant will not submit the proposed material until your office requests the material.

* * * * *

Please contact me at 202-355-9452 or by email at ljoseph@larryjoseph.com with any questions about this matter.

Yours sincerely,

/s/ Lawrence J. Joseph

Lawrence J. Joseph
Counsel for Applicant

cc: Counsel for Respondents (Certificate of Service attached)

Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010); *Garling v. United States EPA*, 849 F.3d 1289, 1297 n.4 (10th Cir. 2017).

CERTIFICATE OF SERVICE

The undersigned certifies that, on this 12th day of July 2020, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, on the following counsel for the respondent:

Hon. Noel J. Francisco
Solicitor General
U.S. Department of Justice
950 Pennsylvania Ave., N.W.
Washington, DC 20530-0001
Email: supremectbriefs@usdoj.gov

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

The undersigned further certifies that, on this 12th day of July 2020, the foregoing document was electronically filed with the Court, and an original and two true and correct copies of the foregoing document were lodged with the Clerk of the Court by messenger for filing.

/s/ Lawrence J. Joseph
Lawrence J. Joseph