APPENDIX

No. 20-3447

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 04, 2020
DEBORAH S. HUNT, Clerk

CRAIG WILSON, on behalf of themselves and all others similarly situated, et al.,

Petitioners-Appellees,

v.

MARK WILLIAMS, in his official capacity as Warden of Elkton Federal Correctional Institution, et al.,

Respondents-Appellants.

ORDER

Before: COLE, Chief Judge; GIBBONS and COOK, Circuit Judges.

Petitioners, four inmates housed in the Elkton Federal Correctional Institution and its low-security satellite prison FSL Elkton (collectively "Elkton"), on behalf of themselves and others housed or to be housed there, filed a petition under 28 U.S.C. § 2241 to obtain enlargement of their custody to limit their exposure to the COVID-19 virus. They sought to represent all current and future inmates, including a subclass of inmates who—through age and/or certain medical conditions—were particularly vulnerable to complications, including death, if they contracted COVID-19. Following a hearing, the district court entered a preliminary injunction directing Respondents Mark Williams, Elkton's warden, and Michael Carvajal, the Director of the Federal Bureau of Prisons ("BOP"), to take certain steps for the subclass that included: (1) evaluating each subclass member's eligibility for transfer out of

Elkton by any means within two weeks; (2) transferring those deemed ineligible for compassionate release to other facilities utilizing certain measures to contain transmission of COVID-19; and (3) prohibiting those transferred from returning to Elkton until certain conditions were met. Respondents appeal, and move to stay the injunction pending resolution of their appeal. Petitioners move to strike the motion to stay, and separately oppose a stay. Respondents reply. Disability Rights of Ohio, a not-for-profit organization advocating for people with disabilities in Ohio, files an amicus brief in support of Petitioners.

First, we address the procedural motion. Petitioners move to strike Respondents' motion to stay, and more particularly, the portion of that motion seeking an administrative stay. To the extent Petitioners sought to strike the request for an administrative stay, our prior denial of this request renders that portion of their motion moot. More generally, however, Petitioners contend Respondents have abused the stay process by requesting relief in this court without first obtaining a ruling from the district court. A party must first move the district court for a stay unless it would be impracticable, the district court denied a motion to stay, or it otherwise already failed to afford the relief requested. Fed. R. App. P. 8(a)(1)(A), (a)(2)(A). We find Respondents complied with Rule 8 and protected their interests by simultaneously seeking relief here, given the short time frame in which they sought relief.

We balance four factors to determine whether, in our discretion, a stay is appropriate: (1) whether the movant "has made a strong showing that he is likely to succeed on the merits"; (2) whether the movant "will be irreparably injured absent a stay"; (3) whether issuance of a stay will "substantially injure" other interested parties; and (4) "where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted). The first two factors are "the most critical." *Id.*

Respondents challenge the preliminary injunction on multiple grounds, alleging that: the district court lacked jurisdiction under § 2241 over the action; if the suit had been properly brought under the Prison Litigation Reform Act ("PLRA"), the injunction would contravene its requirements for the release of prisoners; Petitioners failed to establish a violation of their Eighth Amendment rights; and the case is not suitable for classwide adjudication. We review legal conclusions de novo, factual findings for clear error, and the district court's ultimate decision to issue injunctive relief for abuse of discretion. *Graveline v. Johnson*, 747 F. App'x 408, 412 (6th Cir. 2018).

Section 2241 provides jurisdiction to district courts over habeas petitions when a petitioner "is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(c)(3). The Supreme Court has neither foreclosed a prisoner from using, nor authorized a prisoner to use, habeas relief to challenge his conditions of confinement. *See Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973). We need not reach this question here, however. Petitioners seek release for the subclass not because the conditions of their confinement fail to prevent irreparable constitutional injury at Elkton, but based on the fact of their confinement. Where a petitioner claims no set of conditions would be constitutionally sufficient, we construe the petitioner's claim as challenging the fact of the confinement. *See Adams v. Bradshaw*, 644 F.3d 481, 483 (6th Cir. 2011); *cf. Terrell v. United States*, 564 F.3d 442, 446–48 (6th Cir. 2009). Petitioners' proper invocation of § 2241 also 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. 18 U.S.C. § 3626(g)(2).

Given the procedural posture of the case, we review not the merits of Petitioners' Eighth Amendment claim, but whether the district court abused its discretion in entering the preliminary

injunction. We accept the district court's factual findings unless we find them clearly erroneous. Fed. R. Civ. P. 52(a)(6). The district court found that Elkton's dorm-style structure rendered it unable to implement or enforce social distancing. The COVID-19 virus, now a pandemic, is highly contagious, and can be transmitted by asymptomatic but infected individuals. Older individuals or those who have certain underlying medical conditions are more likely to experience complications requiring significant medical intervention, and are more likely to die. At Elkton, COVID-19 infections are rampant among inmates and staff, and numerous inmates have passed away from complications from the virus. Elkton has higher occurrences of infection than most other federal prisons. Respondents lack adequate tests to determine if inmates have COVID-19. While the district court's findings are based on a limited evidentiary record, its "account of the evidence is plausible in light of the record viewed in its entirety." *United States v. Ables*, 167 F.3d 1021, 1035 (6th Cir. 1999). Thus, at this juncture and given our deferential standard of review on motions to stay, "[t]he district court's choice between two permissible views of the evidence cannot . . . be clearly erroneous." *Id.*

Finally, Respondents challenge the conditional certification of a class action for the subclass. Respondents, however, have neither petitioned for nor received permission to appeal that decision. *See* Fed. R. Civ. P. 23(f). Regardless, we will not generally consider "[i]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation." *United States v. Sandridge*, 385 F.3d 1032, 1035 (6th Cir. 2004) (citation omitted).

Respondents also argue that the enormous burden compliance with the injunction places on the BOP's time and resources constitutes irreparable harm. "Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are

not enough." *Mich. Coal. of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991) (citation omitted). Further, Respondents received fourteen days in which to evaluate each subclass member's eligibility for transfer out of Elkton. Assuming Respondents have been complying with this directive while the motion to stay is pending, their time to comply is about to expire, rendering any remaining harm slight. Based on this, we cannot find that Respondents have established irreparable harm.

The motion to stay is **DENIED**. The motion to strike is **DENIED**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

No. 20-3447

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
May 08, 2020
DEBORAH S. HUNT, Clerk

CRAIG WILSON, on behalf of themselves and all others similarly situated, et al.,

Petitioners-Appellees,

v.

MARK WILLIAMS, In his official capacity as Warden of Elkton Federal Correctional Institution, et al.,

Respondents-Appellants.

ORDER

Before: COLE, Chief Judge; GIBBONS and COOK, Circuit Judges.

Respondents Mark Williams, the warden of the Elkton Federal Correctional Institution and its low-security satellite prison FSL Elkton, and Michael Carvajal, the Director of the Federal Bureau of Prisons, appeal a preliminary injunction requiring them to take certain steps for a medically-vulnerable subclass of inmates at Elkton that include evaluating each subclass member's eligibility for a transfer out of Elkton by any means within two weeks, and transferring those deemed ineligible for compassionate release to other facilities. Respondents move to expedite the briefing, submission, and the merits decision of this court. Petitioners respond, and Respondents reply.

"A party may move to expedite an appeal. The motion must show good cause to expedite." 6 Cir. R. 27(f). A party may move to expedite oral argument. 6 Cir. R. 34(c)(1). "The court may expedite oral argument, even if the time to file briefs has not expired by the date

of the expedited hearing." *Id.* If the court schedules oral argument on an appeal from the grant of a preliminary injunction, "argument will generally be expedited." 6 Cir. R. 34(c)(2). "When the court grants a motion to expedite, the clerk will schedule oral argument at an early date. A judge may direct an earlier hearing." 6 Cir. R. 34(c)(3). Respondents have shown good cause to expedite briefing and submission, given that the district court directed them to act in a short period of time to effectuate the transfer of numerous medically-vulnerable inmates. Upon submission, the merits panel will determine whether it will expedite oral argument or a decision.

The motion to expedite is **GRANTED IN PART**. Respondents are **ORDERED** to file their brief on or before Friday, May 15, 2020. Petitioners are **ORDERED** to file their brief on or before Friday, May 29, 2020. Respondents are **ORDERED** to file their brief on or before Monday, June 1, 2020. The clerk shall expedite submission of the case on the merits.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CRAIG WILSON, *et al.*, Petitioners, vs. MARK WILLIAMS, *et al.*, Respondents.	CASE NO. 4:20-cv-00794 ORDER [Resolving Doc. 1]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On April 13, 2020, Petitioners, inmates at Elkton Federal Correctional Institution, brought this emergency habeas action seeking release from Elkton due to the spread of COVID-19 within the prison.[1] Petitioners claim to represent both a class of all Elkton inmates as well as a subclass of medically vulnerable inmates.[2] Respondents opposed.[3]

On April 17, 2020 the Court held a hearing on the matter. On April 18, 2020, both parties filed additional materials in response to the Court's hearing inquiries.[4]

For the foregoing reasons, the Petitioners' motion for relief is **GRANTED IN PART** and **DENIED IN PART**.

I. COVID-19 at Elkton

State government and the media have well documented the spread of COVID-19 and the efforts to contain the virus and limit its impact. The virus's highly-infectious nature and the risks it poses, especially to medically vulnerable populations, has led to the

[1] Doc. 1.
[2] *Id.*
[3] Doc. 10.
[4] Docs. 18, 19.

implementation of unprecedented measures throughout the country and the world.

While research concerning the virus is ongoing, for some time health officials have known and reported that asymptomatic persons spread the virus.[5] A large percentage of coronavirus-infected citizens are asymptomatic.[6] These asymptomatic persons show no, or limited, symptoms. Yet, they spread the virus.

Due to this threat from infected but asymptomatic individuals, testing, tracing and treatment became the first mitigation responsibilities. As the virus has become more widespread, state government has directed citizens to reduce the spread not only through careful hygiene practices, but also through social distancing and isolation.

For inmates in our country's prisons the virus is no less a threat, but distancing measures are only minimally available.

Defendants Elkton officials have implemented measures to lessen the COVID-19 threat. Elkton segregates new inmates for fourteen days.[7] Elkton officials evaluate existing inmates with virus symptoms to determine whether isolation or testing is appropriate.[8] They check inmate and staff temperatures.[9] Elkton officials segregate inmates for fourteen days before allowing the inmates to leave Elkton.[10]

But despite their efforts, the Elkton officials fight a losing battle. A losing battle for

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[5] CDC, *Coronavirus Disease 2019: Recommendations for Cloth Face Covers*, https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html (last visited Apr. 20, 2020) (citing Yan Bai, Lingsheng Yao, and Tao Wei, *et al., Presumed Asymptomatic Carrier Transmission of COVID-19*, JAMA (Feb. 21, 2020), https://jamanetwork.com/journals/jama/fullarticle/2762028).

[6] Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y. TIMES (Mar. 31, 2020), https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html.

[7] Doc. 10 at 8.

[8] *Id.* at 9.

[9] *Id.* at 9-10.

[10] *Id.* at 27.

staff. A losing battle for inmates.

The parties to the present action dispute some of the factual details of the current conditions within Elkton. Even in light of these disputes, the prison's "dorm-style" design guarantees that inmates remain in close proximity to one another.[11] 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.

According to Respondents, Elkton has had 59 confirmed cases of COVID-19 among inmates.[12] The number of infected staff members, 46, is almost as high.[13] The number has risen even in the days since the initiation of this lawsuit and will continue to do so absent intervention.

Notably, it is unlikely that these figures represent the actual number of cases at the institution, given the paltry number of tests the federal government has made available for the testing of Elkton's inmates.

To date, Elkton has received only 50 COVID-19 swab tests and one Abbott Rapid testing machine with 25 rapid tests.[14] Most swab tests have already been used. Because the Department of Justice has given BOP so few tests, Elkton medical staff has needed to triage test usage.

Respondents represent that "test swabs are back-ordered until July or August," but

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[11] Doc. 10 at 7.

[12] Doc. 19 at 2.

[13] The official numbers on the Bureau of Prison's website conflict with the numbers reported by Respondents. The BOP's website reports 52 confirmed cases among inmates, 46 cases among staff. Contrarily, Respondents report 59 cases among inmates and 34 among staff. *Compare* Federal Bureau of Prisons, *COVID-19 Cases*, https://www.bop.gov/coronavirus/ (last visited April 22, 2020), *with* Docs. 10 at 10, 19 at 2.

[14] Doc. 19 at 1-2.

they "believe that they will receive an additional 25 rapid test[s]" each week.[15] These additional tests are all but useless considering Elkton's 2,400 inmates.

Recent experience at another Ohio correctional facility, Marion Correctional Institution, run by the Ohio Department of Rehabilitation and Corrections, shows how quickly and insidiously the virus spreads among a tightly quartered prison population.

Both Elkton and Marion are low security prisons and house approximately 2,500 inmates.[16]

The State of Ohio has tested its prisoners en masse for COVID-19. At Marion 1,950 inmates tested positive for COVID-19.[17] This number includes large numbers of inmates who were asymptomatic and would otherwise not have been tested.[18]

Everything suggests that if BOP tested as ODRC commendably has, results would show that the virus has become equally widespread within Elkton. However, without testing there is no way to know how many Elkton inmates have the virus.

The Ohio prisons virus response undercuts BOP's ability to argue that testing is either unavailable or is impossible. Why has the Justice Department allocated Elkton an entirely insignificant number of tests while Ohio has been able to pull off mass testing across not only Marion, but at multiple institutions?

While the COVID-19 tests inadequacy is one area of grave concern, testing is only one part of the multi-faceted approach institutions like Elkton must take to reduce the

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[15] *Id.*

[16] Ohio Department of Rehabilitation & Correction, *Marion Correctional Institution*, https://drc.ohio.gov/mci (last visited Apr. 22, 2020).

[17] Ohio Department of Rehabilitation & Correction, *COVID-19 Inmate Testing Updated 4/20/2020*, https://drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-20-2020%20%201304.pdf (last visited Apr. 20, 2020).

[18] *Id.*

virus's spread.

Respondents report that the prison, in accordance with BOP guidance, has changed its operations to try to limit the virus's spread.[19] For instance, the prison has implemented health screening measures for various groups of inmates, staff, and civilians.[20] These are all good efforts.

However, once the virus is inside the prison, as it already is at Elkton, screening measures can only be so effective. And screening will only help to identify individuals with active symptoms, not those asymptomatic individuals who can nevertheless spread the virus undetected.

Respondents have also implemented "modified operations" to somewhat reduce inmate contact with each other. Elkton allows inmate housing units of 150 to pick up pre-packaged meals, receive dispensed medications, and visit the commissary with only a single housing unit moving around the institution at one time.[21] Better practices, but not enough.

Respondents attempt to liken each housing unit to a "family unit." They say that each unit is akin to unincarcerated community members who live with roommates or family.[22] They say that each housing unit is separate from other units, visitors, and sick inmates.[23]

But each single housing unit includes about 150 people.[24] Respondents ignore that

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[19] Doc. 10 at 7-11.
[20] *Id.* at 8-9.
[21] Doc. 10 at 21.
[22] *Id.* at 21-22.
[23] *Id.*
[24] *Id.*

some unit inmates nonetheless circulate throughout the prison as "essential" workers. Because some untested inmates circulate throughout Elkton, the housing units are not truly isolated. And with 150 "family members," there are significant opportunities to increase the risk of spread. Within each housing unit there seems to be little chance of obstructing the spread of the virus.

Respondents say that soap and disinfectant are readily available, a fact that Petitioners dispute.[25] However, these supplies can only be so useful in an environment where the inmates are constantly in close proximity to one another. Likewise, the education about hygiene and social distancing Respondents tout is only effective if the inmates have the supplies and physical space to put such knowledge into practice.[26]

Furthermore, while the deteriorating health conditions at Elkton pose a danger for each of the 2,400 men who are incarcerated at Elkton, the institution's inability to stop the spread of the virus among the inmates in its care poses an even greater risk for inmates whose medical conditions put them at higher risk of death if they contract the virus.[27]

Plus, while this litigation concerns Elkton's conditions for its inmates, the same conditions endanger prison staff, who must continue to go to work despite the virus's spread throughout the facility. And the Elkton spread endangers the staff's families who come into contact with Elkton's undoubtedly exposed staff.

In light of these realities, Petitioners, inmates at Elkton, bring the present action. They sue on behalf of themselves and on behalf a class of all current and future Elkton

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[25] *Compare* Doc. 10 at 27, *with* Doc. 1 at 17.
[26] Doc. 10 at 11-12.
[27] *See generally* Briefs for Disability Rights Ohio *and* Public Health and Human Rights Experts as Amici Curiae Supporting Petitioners, Docs. 8-1 and 14-1.

inmates.[28]

They bring additional claims on behalf of the "Medically-Vulnerable Subclass," defined as:

> [A]ll current and future persons incarcerated at Elkton over the age of 50, as well as all current and future persons incarcerated at Elkton of any age who experience: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS or prolonged use of corticosteroids and other immune weakening medications; severe obesity (defined as a body mass index of 40 or higher); diabetes; chronic kidney disease or undergoing dialysis; or liver disease.[29]

Petitioners seek certification of the classes. In addition, they request:

> a temporary restraining order, preliminary injunction, permanent injunction, and/or writ of habeas corpus requiring Respondents to identify within six (6) hours of the Court's order, and submit to the Court a list of, all Medically-Vulnerable Subclass Members, and release all such persons within twenty-four (24) hours, with such release to include supports to ensure social distancing and other expert-recommended measures to prevent the spread of coronavirus.[30]

Petitioners define release as "discharge of incarcerated persons from the physical confines of Elkton, not necessarily release from custody."[31] Petitioners suggest that "[r]elease options may include, but are not limited to: release to parole or community supervision; transfer furlough (as to another facility, hospital, or halfway house); or non-transfer furlough, which could entail a release person's eventual return to Elkton once the pandemic is over and the viral health threat abated."[32]

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[28] Doc. 1 at 29.
[29] *Id.*
[30] Doc. 1 at 36.
[31] *Id.* at 2 n. 2.
[32] *Id.* at 2.

In other words, Petitioners seek an "enlargement." Enlargement is not release, although some courts refer to it using the terms release or bail.[33] When a court exercises its power to "enlarge" the custody of a defendant pending the outcome of a habeas action, the BOP maintains custody over the defendant, but the place of custody is altered by the court.[34]

After the release of the subclass, Petitioners request "a plan, to be immediately submitted to the Court and overseen by a qualified public health expert" that provides for mitigation efforts in line with CDC guidelines and a housing and/or public support plan for released inmates.[35] They also seek the release of Class Members so that the remaining inmates can follow CDC guidance to maintain six feet of space between them while in the prison.[36]

Respondents respond that Petitioners cannot challenge the conditions inside the prison through a habeas corpus action and that this Court and the BOP do not have the authority to grant early release.[37]

II. Discussion

District courts have inherent authority to grant enlargement to a defendant pending a ruling on the merits of that defendant's habeas petition.[38] The Court finds that the exceptional circumstances at Elkton and the Petitioners' substantial claims, that are likely to

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[33] *See* Declaration of Professor Judith Resnik Regarding Provisional Remedies for Detained Individuals at 8, *Money et al. v. Jeffreys*, No. 1:20-cv-02094 (N.D. Ill. April 4, 2020), ECF No. 24-3.

[34] *Id.*

[35] Doc. 1 at 36-37.

[36] *Id.* at 37.

[37] Doc. 10 at 15-19.

[38] *See, e.g.*, *Mapp v. Reno*, 241 F.3d 221, 226 (2d Cir. 2001); *Dotson v. Clark*, 900 F.2d 77, 79 (6th Cir. 1990).

succeed at the merits stage, necessitate the exercise of that authority and that such relief is proper for members of the subclass defined *infra.*[39]

However, given the nature of the present litigation as class action habeas proceeding, the Court is unable to determine the specific type of enlargement most suitable for each subclass member. In light of this difficulty, the Court will grant a preliminary injunction, in aid of its authority to grant enlargements, ordering Respondents to determine the appropriate means of transferring medically vulnerable subclass members out of Elkton. Pursuant to the below analysis, the Court finds that Petitioners have met the standard for a preliminary injunction.

A. Jurisdiction

Petitioners argue that Elkton's inability, even if it tried, to adequately protect the inmates from the risks posed by coronavirus subjects the prisoners to substantial risk of harm in violation of their Eighth Amendment rights. Petitioners say that their claim is cognizable under 28 U.S.C. § 2241 as a habeas action because they are challenging the execution of their sentences, rather than the validity of the convictions themselves.[40] Petitioners argue that they are not seeking to challenge a specific aspect of their confinement, but the confinement itself.[41]

Respondents argue that habeas relief is not the proper vehicle to challenge conditions of confinement.[42]

Courts have attempted to clarify the types of claims appropriate for habeas relief and

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[39] *Dotson*, 900 F.2d at 79.
[40] Doc. 1 at 34-35.
[41] Doc. 18 at 8-9.
[42] Doc. 10 at 15-16.

distinguish those claims from civil rights claims more appropriately resolved under § 1983. The general result has been that 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 § 1983.[43]

But, these seemingly bright line rules are difficult to apply in practice. The near impossibility in some cases of drawing such distinctions has become even more obvious with COVID-19. Whereas many medical needs claims might appropriately be addressed through § 1983 litigation, claims concerning COVID-19 are not so easily classified as § 1983 claims.

Inmates challenging BOP's COVID-19 response challenge the dangerous conditions within the prison created by the virus. However, the only truly effective remedy to stop the spread is to separate individuals—a measure that in our nation's densely populated prisons is typically impossible without the release of a portion of the population. So, such actions ultimately seek to challenge the fact or duration of confinement as well.[44]

In this case, the Petitioners frame their action as a § 2241 habeas claim.[45] The Sixth Circuit, echoing the distinctions recognized by other courts, has found that "§ 2241 is not

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[43] *See Muhammad v. Close*, 540 U.S. 749, 750 (2004) ("Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus . . . requests for relief turning on circumstances of confinement may be presented in a § 1983 action."); *Heck v. Humphrey*, 512 U.S. 477 (1994); *Preiser v. Rodriguez*, 411 U.S. 475 (1978).

[44] *Mays v. Dart*, No. 20 C 2134, 2020 WL 1812381, at *6 (N.D. Ill. Apr. 9, 2020). Two federal district courts have noted without deciding that claims such as those brought by Petitioners might be cognizable as habeas claims because the relief sought would affect the duration of confinement or because the conditions complained of could not be eliminated without releasing the inmates from detention. *See A.S.M. v. Donahue*, No. 7:20-CV-62, 2020 WL 1847158, at *1 (M.D. Ga. Apr. 10, 2020); *Mays*, 2020 WL 1812381 at *6.

[45] Whereas other petitioners bringing COVID-19-related challenges have pleaded both habeas and § 1983 claims in the alternative, Petitioners do not do so here.

the proper vehicle for a prisoner to challenge conditions of confinement."[46] However, the Sixth Circuit has also held "§ 2241 is appropriate for claims challenging the execution or manner in which the sentence is served."[47]

Petitioners' action evades easy classification. Part of the difficulty rests in Petitioners' differing relief requests for the class and subclass. For the significantly vulnerable subclass the Petitioners seek immediate release, arguing that for the medically vulnerable inmates continued imprisonment at Elkton is unconstitutional given the COVID-19 outbreak.

Notably, these Petitioners do not seek a commutation of their sentences, but rather to serve their sentences in home confinement, parole, or in half-way houses at least until the risk of the virus has abated. This claim is closer to a challenge to the manner in which the sentence is served and is therefore cognizable under 28 U.S.C. § 2241.

For the remainder of the less-obviously-vulnerable class the challenges sound more as a confinement conditions claim. Petitioners seek the oversight of a public health expert to mitigate the risk COVID-19 poses to class members that remain incarcerated at Elkton. Because the not medically vulnerable Elkton inmates seek an alteration to the confinement conditions, the claims are more like § 1983 claims.

Because Petitioners have brought their claims as a habeas petition, the Court may only properly address those claims suitable for habeas relief. The remainder of this order addresses the habeas claims of the vulnerable subclass alone.

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[46] *Luedtke v. Berkebile*, 704 F.3d 465, 465-66 (6th Cir. 2013) (citing two additional Sixth Circuit cases that found the same).

[47] *United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001).

B. Class Certification

Given the emergency nature of this proceeding, a class certification determination has not yet taken place. That does not, however, preclude Petitioners from obtaining class-wide interim relief at this stage. "[T]here is nothing improper about a preliminary injunction preceding a ruling on class certification."[48] This Court may grant preliminary injunctive relief to a conditional class.

As a preliminary matter, the Court finds that the Petitioners' subclass definition is likely too broad. Although the risk of complications from COVID-19 is serious for all inmates, the Court limits the subclass to those identified by the CDC as being at higher risk.[49] This includes all Elkton inmates 65 years or older and those with documented, pre-existing medical conditions, including heart, lung, kidney, and liver conditions, diabetes, conditions causing a person to be immunocompromised (including, but not limited to cancer treatment, transplants, HIV or AIDS, or the use of immune weakening medications), and severe obesity (body mass index of 40 or higher).[50] The subclass definition excludes those whose only risk factor is a history of smoking, given the difficulty of documenting such occurrence and identifying those individuals through BOP records alone.

Under Federal Rule of Civil Procedure 23(a), a class must meet the requirements of numerosity, commonality, typicality, and adequate representation. Additionally, one of Rule 23(b)'s requirements must also be satisfied.

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[48] *Gooch v. Life Investors Ins. Co. of America*, 672 F.3d 402, 433 (6th Cir. 2012).

[49] The Court has "broad discretion to modify class definitions." *Ball v. Kasich*, 307 F. Supp.3d 701, 718 (S.D. Ohio Mar. 30, 2018).

[50] CDC, *Coronavirus Disease 2019: People Who Are At Higher Risk*, https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html (last visited April 20, 2020).

Petitioners have made a sufficient showing at this stage to satisfy the Rule 23(a) factors for the above-defined subclass.

Numerosity: The subclass consists of hundreds of Elkton inmates.[51]

Commonality: "Commonality requires [Petitioners] to demonstrate that the class members have suffered the same injury."[52] "Their claims must depend upon a common contention ... of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke."[53] This inquiry focuses on whether a class action will generate common answers that are likely to drive resolution of the lawsuit.[54]

In this case, all subclass members have been subjected to dangerous conditions in which they run a high risk of exposure to the deadly COVID-19 virus. The inquiry driving the litigation is whether the BOP's failure to create safe conditions for inmates with especially vulnerable health has violated those inmates' rights. Answering this question will determine whether the inmates are entitled to movement from Elkton.

Respondents argue that the subclass lacks commonality given the class's combination of "inmates that have different crimes, sentences, outdates, disciplinary histories, ages, medical histories, proximities to infected inmates, availability of a home landing spot, likelihoods of transmitting the virus to someone at home detention,

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[51] In accordance with the Court's order, dated April 17, 2020, Respondents submitted for *in camera* review, lists of Elkton inmates with certain medical conditions. Although the Court cannot say with certainty the exact number of inmates who comprise the subclass, it is satisfied that the number is in the hundreds.

[52] *Ball*, 307 F. Supp.3d at 719 (quoting *Wal–Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 349-50 (2011)).

[53] *In re Whirlpool Corp. Front-Loading Washer Prod. Liab. Litig.*, 722 F.3d 838, 852-53 (6th Cir. 2013) (citing *Dukes*, 564 U.S. at 350).

[54] *Id.*

likelihoods of violation or recidivism, and dangers to the community."[55]

However, the Petitioners seek varied relief that allows the BOP to make individualized determination as to where each subclass member should be placed. Petitioners do not seek to open the prison gates to allow its inmates to run free. In fact, Petitioners concede that "release" might look different for different inmates. The Petitioners acknowledge that while some inmates might be placed in home confinement others should be furloughed and that in all instances such "release" could be temporary.[56]

The motivating question in the litigation is whether the subclass members' rights are being violated by the deteriorating conditions at Elkton. As such, the subclass can satisfy commonality.

Typicality: "Typicality is met if the class members' claims are 'fairly encompassed by the named plaintiffs' claims.'"[57] Three of the named Petitioners have documented medical issues that are commiserate with those suffered by the subclass. The fourth named Petitioner, Maximino Nieves, could represent that class, but not the subclass, as he attests that he doesn't have a serious medical history.[58] Excepting Nieves, nothing suggests that the remaining three Petitioners' claims are distinct from those of the remainder of the subclass. Typicality is satisfied.[59]

Adequate Representation: The Court is satisfied that counsel is competent to represent the class. Additionally, the interests of the named Petitioners do not conflict with

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[55] Doc. 10 at 36-37.
[56] Doc. 1 at 2 n. 2.
[57] *In re Whirlpool*, 722 F.3d at 852 (citation omitted).
[58] Doc. 1-8 at 2.
[59] Respondents argue that the named Petitioners defy typicality because they are all ineligible for home confinement. This contention ignores the fact that other means of removal from Elkton might be available to the named Petitioners other than home confinement, such as transfer to another facility.

those of the other subclass members.

Having satisfied the Rule 23(a) requirements, the subclass must also demonstrate that it meets one of the Rule 23(b) requirements. Petitioners argue that "Respondents have acted on grounds generally applicable to all proposed Class members, and this action seeks declaratory and injunctive relief."[60] Indeed, 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. Rule 23(b)(2) is therefore satisfied.

For the purposes of the preliminary injunction inquiry, the Court finds that the subclass as defined in this order likely meets the requirements for class certification.

C. Injunctive Relief

"Four factors guide a district court's decision to issue a preliminary injunction: whether the plaintiffs will likely win down the road, whether an injunction would prevent the plaintiffs from being irreparably harmed, whether an injunction would harm others, and how the injunction would impact the public interest."[61] The Court considers each in turn.

1. Likely Success

Petitioners' claims are predicated on a violation of their Eighth Amendment rights which protects them from "cruel and unusual punishments." In order to succeed on an Eighth Amendment claim, Petitioners must satisfy both an objective and subjective component.[62]

"The objective component of the test requires the existence of a 'sufficiently serious'

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[60] Doc. 1 at 31.
[61] *McNeil v. Community Prob. Servs., LLC*, 945 F.3d 991, 994 (6th Cir. 2019).
[62] *Miller v. Calhoun Cty.*, 408 F.3d 803, 812 (6th Cir. 2005).

medical need."[63] Petitioners obviously satisfy this component. At this moment a deadly virus is spreading amongst Elkton's population and staff. For infected inmates, the virus can lead to pneumonia. In the worse pneumonia cases, COVID-19 victims suffer diminishing oxygen absorption, with resulting organ failure leading to death. Victims choke to death. While not every inmate who contracts the virus will die, the subclass members are at a much greater risk of doing so. They have a very serious medical need to be protected from the virus.

The subjective component requires that Respondents have acted with deliberate indifference, "a degree of culpability greater than mere negligence, but less than 'acts or omissions for the very purpose of causing harm or with knowledge that harm will result.'"[64] Petitioners satisfy this standard.

While Respondents offer certain prison-practice changes to show they know COVID-19 risks and have sought to reduce those risks, the Court still finds that, at this preliminary stage of the litigation, the Petitioners have sufficiently met the threshold for showing that Respondents have been deliberately indifferent.

One only need look at Elkton's testing debacle for one example of this deliberate indifference. Additionally, Elkton has altogether failed to separate its inmates at least six feet apart, despite clear CDC guidance for some time that such measures are necessary to stop the spread and save lives.

Having met both prongs of the Eighth Amendment analysis, Petitioners have demonstrated a likelihood of success on the merits.

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[63] *Id.* (citing *Blackmore v. Kalamazoo County*, 390 F.3d 890, 895 (6th Cir. 2004)).
[64] *Id.* at 813 (quoting *Farmer v. Brennan*, 511 U.S. 825, 837 (1994)).

2. Irreparable Harm

Respondents argue that Petitioners have not shown that release will reduce the risk of exposure to COVID-19. But the district court cases Respondents use that have found that release would not lessen the risk to a defendant's health did not deal specifically with Elkton confinement.[65] Of the reported inmate deaths in nation-wide BOP custody, 6 out of 23, more than 1 in 4, has occurred at Elkton, making it a hotspot for the virus and certainly more dangerous than other facilities.[66]

Respondents also argue that the Petitioners' harm is speculative. It is true that some subclass members may not die if they contract the virus. However, it is more than mere speculation that the virus will continue to spread and pose a danger to inmates if BOP does not increase its efforts to stop the spread.[67] Petitioners have therefore shown a risk for irreparable harm.

3. Harm to Others

Respondents argue that the release of inmates from Elkton "would cause substantial damage to others" because there is no assurance that the inmates can care for themselves upon release.[68] They argue the inmates might be left without access to food, shelter, or medical care.[69]

As stated previously, Petitioners do not ask this Court to throw open the gates to the

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[65] *United States v. Taylor*, No. 5:19-CR-192-KKC-MAS, 2020 WL 1501997, at *5 (E.D. Ky. Mar. 26, 2020) (noting that the Court believed that the practices at "any facility" were sufficient to protect from COVID-19); *United States v. Steward*, 2020 WL 1468005, at *1 (S.D.N.Y. Mar. 26, 2020) (denying release from Metropolitan Correctional Center).

[66] Federal Bureau of Prisons, *COVID-19 Cases*, https://www.bop.gov/coronavirus/ (last visited April 22, 2020).

[67] *See* Doc. 14-1 at 5-10 (describing the inadequacy of the Elkton measures and the risk of spread within the prison environment).

[68] Doc. 10 at 3.

[69] *Id.* at 3, 33-34.

prison and leave the inmates that are released to fend for themselves. Instead, Petitioners seek "release" that consists of moving vulnerable inmates to various other types of confinement so that they are no longer at risk of dying from the virus. And as Respondents acknowledge, it is BOP's current policy to quarantine all inmates that are transferred from Elkton for 14 days before transfer.[70] The continued implementation of this policy reduces the risk that an inmate with COVID-19 will carry the virus with him outside of the prison.

Furthermore, there is a continued risk of harm to others, including prison staff, if inmates remain in the prison and the virus continues to thrive among the dense inmate population.

4. Public Interest

Respondents argue that the public faces a grave danger if inmates are to be released *en masse* onto the streets. They say:

> Our over-burdened police and safety services should not be forced to deal with the indiscriminate release of thousands of prisoners on the streets without any verification that those prisoners will follow the laws when they are released, that they will have a safe place to go where they will not be mingling with their former criminal associates, and that they will not return to their former ways as soon as they walk through the prison gates.[71]

First, Respondents 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 justice system has no way, short of life imprisonment, of ensuring former prisoners do not recidivate. The COVID-19 pandemic has not suddenly raised this issue.

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[70] Doc. 10-2 at 7.
[71] Doc. 10 at 41-42.

Third, the danger of recidivism reduces with age, especially after age 40.[72] The subclass inmates are older and by definition, the vulnerable sub-class inmates suffer serious medical conditions.

Second, it bears repeating that the Petitioners are not asking the Court to dump inmates out into the streets. No one's interest would be served in doing so. The Court is confident that the transfer of prisoners from Elkton to other means of confinement could accomplish the goal of protecting Elkton's vulnerable population while also protecting public safety.

Third, six Elkton inmates have already died. Likely, they died after agonizing days under intensive care, most probably with ventilators. The BOP absorbs the high cost of this treatment—costs that are likely multiples of what it would have cost to test each Elkton inmate and guard.

Finally, "it is always in the public interest to prevent the violation of a party's constitutional rights."[73]

D. The Prison Litigation Reform Act

Respondents argue that the Prison Litigation Reform Act ("PLRA"), 18 U.S.C. § 3626, bars this Court from granting the inmates' release.[74] This is not so. The PLRA does not extend to "habeas corpus proceedings challenging the fact or duration of confinement in prison."[75] Because the Court has determined that the subclass's claims are

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[72] *See generally* United States Sentencing Commission, *The Effects of Aging on Recidivism Among Federal Offenders*, (Dec. 2017), https://www.ussc.gov/research/research-reports/effects-aging-recidivism-among-federal-offenders.

[73] *G & V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994).

[74] Doc. 10 at 16.

[75] 18 U.S.C. § 3626(g)(2).

properly before the Court as a habeas action, this prohibition does not apply.[76]

Additionally, Respondents argue that a release order may only be entered by a three-judge court and that the court must find that "crowding is the primary cause of the violation of a Federal right" and "no other relief will remedy the violation."[77] As stated previously the PLRA does not bar this habeas proceeding. However, even if it did, the Court is not ordering the release of the prisoners. Instead, the inmates will remain in BOP custody, but the conditions of their confinement will be enlarged.

III. Conclusion

The Court **GRANTS IN PART** and **DENIES IN PART** Petitioners' motion for relief.

The Court orders the Respondents to identify, within one (1) day all members of the subclass as defined in this Order. Respondents must identify in the list each subclass member's sentencing court and the case number of their underlying criminal conviction.

Following identification, the Court orders Respondents 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 within two (2) weeks.

In undertaking this evaluation, Respondents will prioritize the review by the medical threat level. For example, older inmates with heart, pulmonary, diabetes or immunity risks should receive review priority over subclass members who are younger.

Subclass members who are ineligible for compassionate release, home release, or

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[76] *See Colton v. Ashcroft*, 299 F. Supp. 2d 681, (E.D. Ky. 2004) ("28 U.S.C. §§ 2241, 2254, and 2255 filings have been deemed not covered by the PLRA.").

[77] 18 U.S.C. § 3626(a)(3)(E).

parole or community supervision must be transferred to another BOP facility where appropriate measures, such as testing and single-cell placement, or social distancing, may be accomplished. In transferring subclass members, Respondents must continue to comply with BOP policy of quarantining inmates for 14 days prior to transfer out of Elkton.

Any subclass members transferred out of Elkton may not be returned to the facility until the threat of the virus is abated or until a vaccine is available and Elkton obtains sufficient vaccine supplies to vaccinate its population, whichever occurs first.

IT IS SO ORDERED.

Dated: April 22, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CRAIG WILSON, *et al.*, Petitioners, vs. MARK WILLIAMS, *et al.*, Respondents.	CASE NO. 4:20-cv-00794 ORDER [Resolving Docs. 30, 37, 47, 50]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Respondents, officials at Elkton Federal Correctional Institution, move for a stay pending the outcome of their appeal from the Court's grant of a preliminary injunction in favor of Petitioners.[1] For the following reasons, the Court DENIES Respondents' motion for a stay.

I. Background

On April 13, 2020, Petitioners, inmates at Elkton, brought this emergency habeas action seeking release from Elkton due to the spread of COVID-19 within the prison.[2] Both Elkton's main facility and its satellite camp are low security Bureau of Prisons correctional centers.[3] They house much less dangerous inmates in wide-open dormitory rooms, typically 150 or more inmates to each dormitory.[4] Distancing is impossible.

On April 22, 2020, this Court granted a preliminary injunction to Petitioners. The

[1] Doc. 30.
[2] Doc. 1.
[3] Doc. 10 at 7.
[4] *Id.*

preliminary injunction ordered Respondents to identify subclass members; evaluate each subclass member's eligibility for transfer within two weeks (by May 6), prioritizing the most medically vulnerable inmates; and transfer vulnerable inmates ineligible for home placement, furlough or compassionate release to another BOP facility.[5]

On April 27, Respondents filed an interlocutory appeal.[6] On April 28, Respondents brought the instant motion requesting a stay pending appeal.[7] Despite the Court's Order requiring Respondents' to evaluate and transfer medically vulnerable inmates by May 6, Respondents have failed to comply with the preliminary injunction.

On April 29, 2020, Respondents moved for the Sixth Circuit to stay this Court's order. On April 30, 2020, the Sixth Circuit denied Respondents' request for an administrative stay.[8] On May 4, 2020 the Sixth Circuit also denied Respondents' request for a stay pending appeal, noting that Respondents' time to comply with this Court's order was about to expire, "rendering any remaining harm slight."[9]

On May 5, 2020 this Court ordered the parties to submit briefing regarding the effect of the Sixth Circuit's stay denial on Respondents' pending motion to stay.[10] On May 6, both parties submitted briefs.[11]

II. Discussion

Petitioners argue that the Sixth Circuit's stay denial is the law of the case and that this Court is bound by the Sixth Circuit's findings regarding the discrete stay standard

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[5] Doc. 22.
[6] Doc. 26.
[7] Doc. 30.
[8] Doc. 38.
[9] Doc. 46.
[10] Doc. 45.
[11] Docs. 47, 50.

questions addressed by the Sixth Circuit.[12] Respondents argue that the law of the case doctrine is not an "inexorable command" and that this Court derives its stay authority from a separate source than the Sixth Circuit.[13]

The Court believes that the Petitioners' arguments are more correct. The law of the case doctrine stops a court from reconsidering issues identical to those already considered, whether the issue was explicitly or implicitly decided.[14] Here, though this Court's power to issue the stay is derived from a different procedural rule than that of the Sixth Circuit,[15] the Sixth Circuit necessarily decided the legal issues underpinning a stay determination.

Even if this Court could somehow reverse the Sixth Circuit's stay denial, the Sixth Circuit considered the parties' arguments regarding each factor under the relevant legal standard and it is likely that this Court is bound by those determinations. The Respondent makes no showing that the Sixth Circuit got it wrong.

However, even if the Sixth Circuit's determination is not binding, Respondents are not entitled to a stay.

The Court considers four factors when evaluating whether a stay is warranted: (1) the applicant's likelihood of success on the merits; (2) whether the applicant will be irreparably injured without a stay; (3) whether the others will be injured by the stay; and (4) public interest.[16]

The Court considered similar factors in its preliminary injunction Order and

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[12] Doc. 50 at 2-6.

[13] Doc. 47 at 2-5.

[14] *Hanover Ins. Co. v. American Engineering Co.*, 105 F.3d 306, 312 (6th Cir. 1997).

[15] This Court derives its authority to grant the requested stay from Federal Rule of Civil Procedure 62. The Sixth Circuit's authority relies upon Federal Rule of Appellate Procedure 8.

[16] *Cooey v. Strickland*, 589 F.3d 210, 218 (6th Cir. 2009).

continues to agree with that analysis. However, the Court will briefly outline its finding as to each factor below.

Respondents' Likelihood of Success: The Petitioners' have shown that they are likely to succeed on their underlying claims. Despite Respondents' arguments to the contrary, the Petitioners' claims are properly brought as a habeas action and therefore the Prison Litigation Reform Act does not apply. The Petitioners are likely to succeed on their Eighth Amendment violation. The only recent change is that another inmate has died and more guards and inmates have become infected.

Respondents' Potential Injury: Respondents' argue that without a stay BOP would have to devote 418 man-hours or five full time staff members to complete the preliminary evaluations and then more work will need to be done in order to process inmates.[17] However, as the Sixth Circuit noted, injuries in the form of money, time, and energy are not enough.[18]

Petitioners' Potential Injury: Petitioners' potential injuries absent a stay, which include serious medical complications and possible death, far outweigh Respondents' potential injuries. In fact, it would be hard to overstate how much more serious the potential injuries to Petitioners are compared to those cited by Respondents. The number of infections and deaths has continued to rise since the Court's issuance of the injunction.[19] The BOP website now reports confirmed cases of COVID-19 for 105 inmates and 49

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[17] Doc. 29-1 at 14-15.

[18] Doc. 46 at 4-5 (citing *Mich. Coal. Of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991)).

[19] Federal Bureau of Prisons, COVID-19 Cases, https://www.bop.gov/coronavirus/ (last visited May 7, 2020).

staff.[20] Eight low-security inmates have died.[21]

Public Interest: The public interest continues to be served by the Court's preliminary injunction.

III. Conclusion

For the foregoing reasons, the Court denies Respondents' Emergency Motion for Stay Pending Appeal.

IT IS SO ORDERED.

Dated: May 8, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

[20] *Id.*
[21] *Id.*

05/08/2020		**Order** [non-document] entered by Judge James S. Gwin on 5/8/2020. By close of business on May 11, 2020, the Court orders Respondents to give a specific reason as to why each of the identified subclass members was determined to be ineligible for each form of release. If a subclass member was determined to be ineligible for release, Respondents are ordered to provide an explanation as to why that individual could not be transferred to a cell affording greater possibility for social distancing.By May 8, 2020, the Court orders Petitioners to provide Respondents a draft notice to Elkton inmates in accordance with the specifications delineated during the May 7, 2020 conference. Any outstanding objections to the draft notice are to be filed by the morning of May 11, 2020. By May 8, 2020, the Court orders Respondents to file any response to Petitioners emergency motion to compel. (S,KM) (Entered: 05/08/2020)

Exhibit A

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 a **documented** medical condition 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:_____

Your Current Release Date: _____

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? _____

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
(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: _____

_____

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

OJPC ACLU Ohio

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CRAIG WILSON, *et al.*,	CASE NO. 4:20-cv-00794
Petitioners,	ORDER
vs.	
MARK WILLIAMS, *et al.*,	
Respondents.	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On April 13, 2020, Petitioners, inmates at Elkton Federal Correctional Institution, brought this emergency habeas action seeking release from Elkton due to the spread of COVID-19 within the prison.[1] On April 22, 2020, this Court granted a preliminary injunction in favor of Petitioners.[2]

On May 7, 2020, the Court held a hearing and ordered the parties to agree on a notice to send to Elkton inmates.[3] On May 11, Petitioners filed a motion to circulate the notice with a proposed notice and procedure.[4] The same day, Respondents filed a response objecting to certain portions of the proposed notice and procedure.[5] Petitioners replied.[6]

The Court approves the notice attached to Petitioners' most recent filing with the following edit. The first page of the notice should be edited to read: "2. You have one or

[1] Doc. 1.
[2] Doc. 22.
[3] Doc. 55.
[4] Doc. 59.
[5] Doc. 60.
[6] Doc. 65.

more documented medical conditions listed on the back of this page that puts you at high risk for getting very sick from COVID-19."

Additionally, the Court approves the following procedure for providing notice:

1. Petitioners are to print and ship to Elkton 2,400 printed copies of a questionnaire flyer and medical authorization pre-stuffed into envelopes. Petitioners will deliver all materials to Elkton at or before 5:00 p.m. on Thursday, May 14, 2020 (including stuffed, sealable envelopes, boxes, and shipping information).

2. Instead of posting posters, BOP staff will send a trulinks notice to every inmate at Elkton with the information on the approved notice.

3. Petitioners will provide 25 unsealed file boxes or 25 similar receptacles, with small openings in the top of each, for collection of sealed envelopes. Petitioners will also provide 1-2 larger boxes to combine envelopes from the 25 file boxes.

4. Respondents are to place all file boxes and distribute all envelopes at or before 9:00 a.m. on Friday, May 15, 2020, and collect all file boxes at or after 3:00 p.m. on Saturday, May 16, 2020. Upon collection, Respondents will combine the sealed envelopes from all file boxes into the provided 1-2 larger boxes, dispose of the 25 file boxes, and ship the larger boxes to a provided address by overnight delivery sent by 10 a.m. on Sunday, May 17, 2020.

5. Petitioners will provide copies of the collected documents by end of day, Wednesday, May 20, 2020.

6. Respondents are to provide the electronic medical records of inmates who have completed medical release forms on a rolling basis, with all medical records to be

produced within 5 calendar days of receiving such requests.

IT IS SO ORDERED.

Dated: May 13, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

05/14/2020		**Order** [non-document] entered by Judge James S. Gwin on 5/14/2020. The Court orders Respondents to file a daily report indicating the number of COVID-19 tests performed at Elkton and the results of those tests. The report should indicate the daily numbers and running totals for each category. The Court orders Respondents to respond to Petitioners written discovery request regarding the criteria considered in home confinement determinations by 4 p.m. on May 15, 2020. Petitioners may identify a random sampling of individuals that have been denied compassionate release, home release, and furlough, not to exceed 25 individuals in each category. Respondents are to provide to Plaintiffs the records relating to their denial of the identified relief for each identified individual.(S,KM) (Entered: 05/14/2020)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CRAIG WILSON, *et al.*, Petitioners, vs. MARK WILLIAMS, *et al.*, Respondents.	CASE NO. 4:20-cv-00794 ORDER [Resolving Docs. 51, 58, 78]

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On April 13, 2020, Petitioners, inmates at Elkton, brought this emergency habeas action seeking modification of their sentences. Mostly, the Petitioners seek release from Elkton due to the spread of COVID-19 within the prison.[1]

On April 22, 2020, this Court granted a preliminary injunction in favor of Petitioners, ordering Respondents to identify members of the subclass; evaluate each subclass member's eligibility for transfer within two weeks (by May 6), prioritizing the most medically vulnerable inmates; and requiring transfer inmates ineligible for other forms of release to different BOP facilities with less contagion factors.[2]

On May 6, 2020, Respondents filed a status report regarding their efforts to comply with the Court's preliminary injunction Order.[3] In response, the Petitioners filed an Emergency Motion to Enforce the Preliminary Injunction the same day.[4] Respondents

[1] Doc. 1.
[2] Doc. 22.
[3] Doc. 51.
[4] Doc. 58.

opposed the motion and Petitioners filed a reply.[5]

Despite the preliminary injunction, Respondents have made limited efforts to reduce the COVID-19 risks for subclass members within the prison.

To their credit, Respondents represent they are beginning to implement mass testing. However, after little access to COVID-19 tests for months after the February 2020 outbreak, the tests' progress creeps. Although Respondents represented to the Court that it would be receiving test results from its outside labs within 24-48 hours, Respondents appear to not have received test results for tests that were completed more than 96 hours ago.[6] Also, Respondents report that, for reasons unknown to the Court, and despite the obvious need for rapid implementation of mass testing across the entire institution, they are only conducting tests on Mondays and Tuesdays.[7]

As of May 19, 524 total tests have been performed.[8] Elkton houses 2,357 inmates. To date, the test results show how ineffective Respondents have been at stopping the spread. According to the Respondent, the tests have identified 55 positive inmates and 175 negative inmates to date.[9] Respondent have no results for the rest of the tests.

These numbers appear to only account for the Abbot rapid tests performed since May 14 and Quest Diagnostics mass testing efforts that Elkton has undergone since May 11. Presumably, the results do not include the inmates who had previously tested positive.[10] According to BOP, Elkton's *active* cases as of May 19, 2020 include 135

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[5] Doc. 78.
[6] Doc. 58 at 3.
[7] Doc. 81 at 2.
[8] Doc. 83.
[9] *Id.*
[10] Doc. 81 (reporting that mass testing began on May 11).

inmates and 8 staff members.[11] But Respondents have previously stated that as of May 8, 130 inmates and 50 staff members had tested positive.[12]

However, even according to Respondents' testing status report, approximately 24% of tests from the reported Abbott and Quest tests came back COVID-19 positive.[13] In other words, so far the data demonstrates that almost one in four inmates at Elkton has been infected—an unacceptable number.

This percentage could potentially rise as more results come in. Notably, Respondents represented to the Court that their mass testing plan involved testing the inmates in batches according to their housing unit.[14] If Respondents have indeed kept the housing units as separate as they insist,[15] the percentage of infected inmates in each housing unit might vary and could potentially be even higher.

However, while the increased testing goes in the right direction and will help the parties understand the extent of the spread at Elkton, it can only go so far in helping the institution fight the pandemic. Distancing has been, and continues to be, the institution's best hope for sparing medically-vulnerable inmates from the serious medical consequences, and potential death, associated with COVID-19.

Concerningly, Respondents have made poor progress in transferring subclass members out of Elkton through the various means referenced in the Court's preliminary injunction Order.

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[11] Federal Bureau of Prisons, COVID-19 Cases, https://www.bop.gov/coronavirus/ (last visited May 19, 2020).

[12] Doc. 58-1 at 14.

[13] Doc. 84.

[14] Doc. 58-1 at 13-14.

[15] *Id.* at 14-15.

In considering the adequacy of Respondent's compliance, context is important. Elkton operates as a low security correctional institution with an adjacent low security satellite prison.[16] By its nature, Elkton houses inmates with lower institutional and public risk factors.

Respondents' say that they have evaluated all subclass members for home release, compassionate release, and furlough under the applicable BOP program statements.[17] Respondent identifies 837 inmates as being over 65 years old or as having significant pretexting health conditions making them especially vulnerable to COVID-19.[18]

Of this 837 vulnerable population, Respondents have made only minimal effort to get at-risk inmates out of harm's way. As of May 8, 2020, five subclass members were "pending [home confinement] community placement."[19] Six inmates were identified as *maybe* qualifying for home confinement.[20] No inmates were deemed eligible for furlough transfer.[21] But to date, Respondents have not identified any inmates whose confinement has actually been enlarged as a consequence of the preliminary injunction.

Such results do not comply with this Courts' previous Order.

In order to alleviate the spread of COVID-19 within the prison the Court describes the available avenues of relief and directs the Respondent to comply with further standards enforcing the preliminary injunction.

A. Home Confinement

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[16] *Id.* at 2.
[17] Doc. 58 at 6-10.
[18] Doc. 51 at 3.
[19] *Id.* at 7.
[20] *Id.* at 8-9.
[21] *Id.* at 10.

"The Bureau of Prisons has statutory authority to transfer prisoners to home confinement under 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541."[22] Earlier, the Bureau of Prisons could assign home confinement for the shorter of 10 percent of the imprisonment term or 6 months.[23] Under 34 U.S.C. § 60541, the BOP can release elderly offenders and terminally ill offenders to home detention.

On March 27, 2020, Congress enacted the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act").[24] The CARES Act lifted home confinement's 10 percent of sentence or 6 months requirement if the Attorney General made an emergency conditions finding.[25]

On April 3, 2020, the Attorney General endorsed a memo that made the emergency conditions finding and expanded home confinement eligibility.[26] The 10% of sentence limitation and the six-month limitation went away.

The April 3 memo followed up on Barr's earlier March 26, memo which stated that "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."[27] The Attorney General told the Bureau to "prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in

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[22] *Martinez-Brooks v. Easter*, No. 3:20-cv-00569 (MPS), 2020 WL 2405350, at *10 (D. Conn. May 12, 2020).

[23] 18 U.S.C. § 3624(c)(2).

[24] *Martinez-Brooks*, 2020 WL 2405350 at *10.

[25] CARES Act, Pub. L. No. 116-136, § 12003(b)(2) (2020).

[26] Attorney General William P. Barr, *Memorandum for Director of Bureau of Prisons, Re: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19*, Office of the Attorney General (Apr. 3, 2020) https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf [hereinafter "Apr. 3 Memo"].

[27] Attorney General William P. Barr, *Memorandum for Director of Bureau of Prisons, Re: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic*, Office of the Attorney General (Mar. 26, 2020) https://www.justice.gov/file/1262731/download.

connection with the ongoing COVID-19 pandemic."[28]

Barr's directive gave a non-exhaustive list of discretionary factors to be used for evaluating inmates for confinement. The Attorney General directed the BOP to consider the "age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines."[29] The other factors in the memo included: 1) The security level of the facility currently holding the inmate, with priority given to low security and minimum security facilities; 2) The inmate's prison conduct especially violent or gang-related prison activity; 3) The inmate's PATTERN score; 4) Whether the inmate has a re-entry plan; 5) The inmate's conviction crime and danger to the public.[30] The Attorney General said that some offenses, including sex offenses, should generally make the offender ineligible for home detention.[31]

In using the CARES Act to expand home confinement availability, the Attorney General's April 3, 2020, memo admitted that the Bureau of Prisons was "experiencing significant levels of infection at several of our facilities, including FCI Oakdale, FCI Danbury, and FCI Elkton."[32] The memo acknowledged the BOP's duty to protect inmates and told BOP to "move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of these institutions."[33] The Attorney General told the BOP to "begin implementing this directive immediately" and "as quickly as possible."[34]

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.* (emphasis added).
[32] Apr. 3 Memo.
[33] *Id.*
[34] *Id.*

The Attorney General went on to authorize home confinement transfers "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."[35]

Against a backdrop where approximately one out of every four Elkton inmates have tested positive for COVID-19, the Respondent must move inmates out. By thumbing their nose at their authority to authorize home confinement, Respondents threaten staff and they threaten low security inmates.

The Court orders Respondents to make full use of the home confinement authority beyond the paltry grants of home confinement it has already issued. The Court orders Respondents to (a) eliminate all requirements that the inmate have served some part of his sentence to be eligible for home confinement; (b) disregard any incident reports at the low or moderate severity levels (300 or 400 levels); (c) disregard the violence offense restriction for any inmate whose underlying conviction involved an offense that occurred more than 5 years ago or for which the only basis or denial is a prior violent offense; (d) grant home confinement to inmates who were previously deemed ineligible solely on the basis of a Low PATTERN risk score; and (e) eliminate the requirement that the inmate be a U.S. citizen.

For any inmate on the subclass list that Respondents continue to find does not meet the home confinement requirements, Respondents are ordered to provide a detailed description of the basis for the denial. Such descriptions are to be submitted on a rolling basis. Respondents must produce the information for at least one-third of the subclass

[35] *Id.*

every 48 hours. The first report is due by the May 21, 2020, close of business.

In addition to the detailed denial explanation, the explanations should also include the following:

(a) Date inmate entered BOP custody;

(b) Inmate's criminal history category and criminal history points;

(c) The underlying crime. For drug crimes, the Respondent will state whether the conviction was under 21 U.S.C. § 841(b)(1)(A), (B), or (C);

(d) Any statutory or mandatory minimums;

(e) The educational or training programs completed by the inmate;

(f) Any intra-institution discipline involving the inmate, including the dates and a specific factual description of each;

(g) Inmate's expected release date; and

(h) The percentage of the sentence the inmate has completed.

B. Compassionate Release

Another avenue of relief for the subclass is compassionate release. The compassionate release statute requires inmates to apply to BOP to request a favorable compassionate release recommendation.[36] After 30 days or the exhaustion of administrative remedies, whichever is earlier, inmates may directly petition their sentencing court for compassionate release.[37] Even if the BOP deems an inmate eligible for compassionate release, it falls to the sentencing court to grant the actual reduction of sentence.[38]

According to Respondents, BOP considers the following factors, though they are not exclusive or weighted: "(1) nature and circumstances of the inmate's offense; (2) criminal

[36] 18 U.S.C. § 3582(c)(1).
[37] *Id.*
[38] *Id.*

history; (3) comments from victims; (4) unresolved detainers; (5) supervised release violations; (6) institutional adjustment; (7) disciplinary infractions; (8) personal history derived from the PSR; (9) length of sentence and amount of time served; (10) inmate's current age; (11) inmate's age at the time of offense and sentencing; (12) inmate's release plans (employment, medical, financial); and (13) whether release would minimize the severity of the offense."[39]

Despite the above-listed criteria, Respondents have listed their rationale for denying certain compassionate release petitions as: "does not meet medical criteria" or "COVID 19 only."[40] Within 48 hours of this Order, Respondents are ordered to clarify these descriptions with individual explanations for each inmate. The Court also orders Respondents to explain why a member of the subclass who, by definition, meets the CDC's criteria for having a medical complication high risk do not qualify for compassionate release based on his medical conditions.

The Respondents must provide each subclass member who has requested compassionate release, a written approval of the request,[41] or a written denial of the request, together with the appropriate appeal form.[42] Any compassionate release petitions filed by subclass members must be adjudicated within 7 days on a continuing basis.

Nothing in the Court's prior Order granting the preliminary injunction or this Order should be construed by either party to limit a sentencing court's ability to grant compassionate release or any other form of relief to subclass members.

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[39] Doc. 58 at 8.
[40] Doc. 78, Ex. B.
[41] 28 C.F.R. § 571.62.
[42] 28 C.F.R. §§ 571.63, 542.15.

C. Transfer

In the Court's earlier Order it instructed Respondents to move subclass members out of Elkton through furloughs or transfers. This has not been done. Within 7 days of this Order, for each inmate Respondents continue to deem ineligible for home confinement or compassionate release, Respondents are ordered to show cause in the form of an individualized determination for why that inmate cannot be transferred to another BOP facility where social distancing is possible in compliance with the Court's preliminary injunction Order.

Some 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.

D. Subclass List

Respondents produced the search criteria used to compile the subclass member list and admit that the list was underinclusive by at least nine inmates who are 65 years old.[43] Additionally, Respondents appear not to have searched for or included inmates who are at a higher risk for COVID-19-related medical complications due to obesity. This does not comply with this Court's preliminary injunction order.[44] Respondents are to identify all such inmates who are not already on the list within 48 hours.

The Court requires Respondents to evaluate the nine additional inmates and any others identified for inclusion due to obesity for relief as outlined the Court's preliminary injunction Order immediately. To the extent Respondents deem the additional nine

[43] Doc. 78, Ex. C.
[44] *Id.*

subclass members to be ineligible for enlargement, Respondents are to provide explanations for such findings consistent with this Order and this Court's previous orders to that effect.

IT IS SO ORDERED.

Dated: May 19, 2020

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CRAIG WILSON, ERIC BELLAMY, KENDAL NELSON, and MAXIMINO NIEVES, on behalf of themselves and those similarly situated, *Petitioners*, v. MARK WILLIAMS, warden of Elkton Federal Correctional Institutions; and MICHAEL CARVAJAL, Federal Bureau of Prisons Director, in their official capacities, *Respondents.*	Case No. 4:20-cv-794 Judge _____ **Emergency Petition for Writ of Habeas Corpus, Injunctive, and Declaratory Relief** **Class Action** **IMMEDIATE RELIEF SOUGHT**[1]

INTRODUCTION

1. As a tragic combination of infectious and deadly, COVID-19 poses a once-in-a-lifetime threat on a worldwide scale. Every state and territory in the United States has now been impacted, with nearly half a million cases and over 20,000 deaths reported to the Centers for Disease Control and Prevention (CDC). Even under ordinary conditions, each person who contracts this illness can be expected to infect between 2 and 3 others.

2. Cramped, overcrowded prisons amplify this threat. With thousands of people literally stacked on top of each other and unable to move around without rubbing shoulders, such environments are fundamentally incompatible with medically-indicated social distancing and hygiene protocols. As a result, they present a grave threat not only to prisoners and staff, but also

[1] In addition to service of process, counsel for Petitioners have contacted attorneys for the United States, and will provide a courtesy copy of this Petition and all attachments hereto by email in order to provide actual notice on an expedited basis.

to the broader community by enabling the spread of COVID-19 both inside and outside the prison walls.

3. This danger is playing out with disastrous consequences in Elkton Federal Correctional Institution ("FCI Elkton"), a low-security federal correctional institution with an adjacent low security satellite prison ("FSL Elkton"), collectively described as "Elkton." As of April 12, 2020, at least 3 prisoners have died, and scores of prisoners and staff have reportedly been hospitalized, including more than a dozen who have needed ventilators to stay alive. These numbers will continue to grow exponentially. Despite knowing the risks to prisoners, staff, and the community, Elkton has failed to provide meaningful protection against the spread of the disease. Prisoners are still clustered together in confined spaces with limited access to hygiene and inadequate ventilation.

4. But even were Respondents to take basic measures to allow for cleaning and hygiene, the threat would remain. In fact, there is *no* set of internal protocols or practices that, in light of the current conditions and population levels, Elkton can use that will prevent further disease and death inside the prison. Declaration of Dr. Meghan Novisky ¶ 16 (attached as Exhibit A); Declaration of Dr. Joe Goldenson ¶ 25 (attached as Exhibit B). The only effective option is to begin immediately releasing[2] Elkton residents based on broadly defined categories, such as membership in a high-risk class based on medical conditions, or proximity to release dates.

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[2] The term "release," as used throughout this Petition, refers to discharge of incarcerated persons from the physical confines of Elkton, not necessarily release from custody. Release options may include, but are not limited to: release to parole or community supervision; transfer furlough (as to another facility, hospital, or halfway house); or non-transfer furlough, which could entail a released person's eventual return to Elkton once the pandemic is over and the viral health threat is abated. Any releases would include requirements for testing, care, and social distancing, as informed by a public health expert.

Novisky Decl. ¶ 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"); Goldenson Decl. ¶ 33 ("It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19 … be released from FCI Elkton and FCL Elkton immediately.").

5. The Constitutional prohibition on cruel and unusual punishment requires Respondents to provide safe living quarters, including protection from dangerous infectious diseases. *E.g.*, *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993). Yet Respondents are unable to comply with this Constitutional command without swift and sufficient releases. Because "[t]he situation at FCI Elkton in particular is alarming," and the BOP "cannot adequately protect [the prisoner] from infection, especially in light of his vulnerability and the presence of COVID-19 in FCI Elkton," at least one federal court has already ordered a prisoner to be released from Elkton. *United States v. Rodriguez*, No. 2:03-cr-0271, 2020 WL 1627331 (E.D. Pa., Apr. 1, 2020).

6. Time is of the essence. Delay can mean further death or serious illness. Accordingly, Petitioners—a class and subclass of persons incarcerated at Elkton now and in the future—bring this action and request expedited consideration and immediate release of categories of all Petitioners and Class Members, coupled with appropriate support and conditions upon release, as informed by public health expertise.

I. JURISDICTION AND VENUE

7. Petitioners bring this putative class action pursuant to 28 U.S.C. § 2241 for relief from detention that violates their Eighth Amendment rights under the U.S. Constitution.

8. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1651 (All Writs Act); Article I, § 9, cl. 2 of the U.S.

Constitution (Suspension Clause); 28 U.S.C. § 1331 (federal question jurisdiction); and 28 U.S.C. § 1346 (United States as a defendant).

9. Venue is proper in this judicial district and division pursuant to 28 U.S.C. § 2241(d) because the Petitioners and all other class members are in custody in this judicial district and venue. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to Petitioners' claims occurred in this district.

II. PARTIES

10. Petitioner Craig Wilson, BOP Register Number 13730-025, has suffered from chronic asthma since childhood, and uses a rescue inhaler and medication for breathing problems, placing him in a high risk category for COVID-19. He is incarcerated at FCI Elkton for a nonviolent offense, and now resides in a dorm with 150 bunks, in a cube of 8 by 9 feet that houses 2-3 prisoners. Social distancing is impossible in his environment, and he knows that if he contracts the disease, he may die. He receives a weekly ration of soap but always runs out, and is unable to purchase more because the commissary is closed. He asked for a grievance form in light of the COVID-19 situation but was told there were no forms available. If he were released to home detention, he has a stable home environment and an evidence-based recovery plan in place.

11. Petitioner Eric Bellamy, BOP Register Number 15061-088, is 52 years old, and has a history of heart problems, including one enlarged heart valve and two valves that are regurgitating. He is housed in a cell at FCI Elkton with 2 other men in a 6 by 8 foot area, with 150 people in the unit. He is constantly and unavoidably within 1-2 feet of other prisoners. He was friends with Woodrow Taylor, a fellow prisoner who died from COVID-19. He was convicted of possession of narcotics and of a firearm, and has served 16 months of a 75 month sentence. He has no history of violence, and has a stable home environment if he is released.

12. Petitioner Kendal Nelson, BOP Register Number 64823-060, has asthma, uses a CPAP machine, has had a heart attack, has active coronary artery disease and a stent in an artery, and suffers from stage 4 kidney disease. He has served 3 years of a 9 year sentence for a drug offense and possession of a firearm. He has 170 men living in his pod at FSL Elkton, the low-security satellite camp, in sets of 3 men living in cells designed for single occupancy. Because many people around him are sick, he stays in his cell under the blankets as much as possible out of fear of COVID-19. He has a stable residence available immediately upon release.

13. Petitioner Maximino Nieves, BOP Register Number 27537-050, resides at FSL Elkton with 170 people in his unit in an open dormitory. He is about 2 feet away from other residents when he sleeps, and it is impossible to keep 6 feet away from other prisoners during the day. He has only about 11 months left of his sentence for conspiracy to distribute drugs. He has no history of violence, and has a stable residence available immediately upon release.

14. Respondent Mark Williams is the warden of Elkton and currently has immediate custody over Petitioners and all other putative Class members.

15. Respondent Michael Carvajal is the Director of the United States Bureau of Prisons and is responsible for all people, including Petitioners, housed at Bureau of Prisons facilities, including all structures at Elkton.

III. FACTUAL ALLEGATIONS

A. COVID-19 Poses a Significant Risk of Illness, Injury, or Death

16. The novel coronavirus that causes COVID-19 has led to a global pandemic,[3] and The United States has more confirmed cases of COVID-19 than any other country in the world. As of April 12, 2020, there were more than 1.6 million reported COVID-19 cases throughout the world and more than 20,000 deaths in the United States.[4] Projections indicate that hundreds of thousands of people in the United States may die from COVID-19, accounting for existing interventions.[5]

17. "COVID-19 is twice as contagious as the flu, and 20 times more deadly."[6] The virus is "highly infectious,"[7] and can be spread "easily and sustainably" from person-to-person.[8] The virus can live on plastic and steel surfaces for up to 72 hours,[9] and, powered by a single cough or sneeze, can be propelled in a gas cloud that extends up to 27 feet in length.[10]

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[3] Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), https://cutt.ly/UtEuSLC.
[4] *See* Johns Hopkins University of Medicine, *Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering at Johns Hopkins University*, https://cutt.ly/StEyn2U.
[5] Rick Noack, et al., *White House Task Force Projects 100,000 to 240,000 Deaths in U.S., Even With Mitigation Efforts*, WASH. POST. (April 1, 2020, 12:02 a.m.), https://cutt.ly/5tYT7uo.
[6] Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar. 14, 2020, 2:19PM), https://twitter.com/GovMikeDeWine/status/1238892579262992384?s=20
[7] Goldenson Decl. ¶ 14 (noting that "only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity").
[8] *See* Centers for Disease Control and Prevention, *How COVID-19 Spreads* (accessed Apr. 3, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html.
[9] Neeltje van Doremalen et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, NEW ENG. J. MED., 2 (2020), available at https://doi.org/10.1056/NEJMc2004973 (accessed Apr 2, 2020).
[10] Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19*, JAMA (2020), https://jamanetwork.com/journals/jama/fullarticle/2763852 (accessed Apr 2, 2020).

18. Because the coronavirus spreads even among people who do not show symptoms, staying away from people is the best way to prevent infection.[11] In other words, *everyone*—including officials at Elkton—has to act as if *everyone* has the disease.

19. There is no vaccine against COVID-19, and there is no known medication to prevent or treat infection. Social distancing—deliberately keeping at least six feet of space between persons to avoid spreading the illness[12]—supplemented by a vigilant hygiene regimen, including washing hands frequently and thoroughly with soap and water, is the only known effective measure for protecting against transmission of COVID-19.[13]

20. As a result, the only assured way to curb the pandemic is through dramatically reducing contact for all.[14] Consequently, every American institution—from schools[15] to places of worship,[16] from businesses[17] to legislatures[18]—has been exhorted or ordered to reduce the number of people in close quarters, if not to empty entirely.[19] The State of Ohio has issued an extraordinary

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[11] Novisky Decl. ¶ 6; *see also, e.g.*, Ruiyun Li et al., *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2)*, SCIENCE (2020), available at https://cutt.ly/AtNrCxH.
[12] Johns Hopkins University, *Coronavirus, Social Distancing and Self-Quarantine*, https://cutt.ly/VtYYiDG.
[13] Goldenson Dec. ¶ 15.
[14] Harry Stevens, *Why Outbreaks Like Coronavirus Spread Exponentially, and how to "Flatten the Curve,"* WASH. POST, (Mar. 14, 2020), https://cutt.ly/etYRnkz.
[15] Centers for Disease Control and Prevention, *Interim Guidance for Administrators of US K-12 Schools and Child Care Programs*, https://cutt.ly/ItRPq5n.
[16] Centers for Disease Control and Prevention, *Interim Guidance for Administrators and Leaders of Community-and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, https://cutt.ly/KtRPk1k.
[17] Centers for Disease Control and Prevention, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, https://cutt.ly/stRPvg4.
[18] Nat'l Conf. of State Legislatures, *Coronavirus and State Legislatures in the News*, https://cutt.ly/4tRPQne.a
[19] As of April 3, 2020, fully 311 million Americans were being urged by their City, County, Parish, Territory, and/or State governments to stay at home to reduce the spread of coronavirus.

series of orders suspending elections, closing private businesses, cancelling sporting events, shuttering schools, and ordering people to stay at home.[20] People also have been told to undertake aggressive sanitation measures, such as cleaning and disinfecting all surfaces, using products with particular alcohol contents, and closing off any areas used by a sick person.[21]

21. Once contracted, COVID-19 can cause severe damage to lung tissue, including a permanent loss of respiratory capacity, and it can damage tissues in other vital organs including the heart and liver.[22] Even if a person survives COVID-19, the virus can permanently damage lungs, heart, and other organs.[23]

22. Approximately 1 out of 5 people who are infected with COVID-19 will need to be hospitalized, and many of those will need intensive care.[24] Such intensive care often requires highly specialized equipment like ventilators that are in limited supply, and an entire team of care

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See Sarah Mervosh, Denise Lu, Vanessa Swales, *Which States and Cities Have Told Residents to Stay at Home*, N.Y. TIMES (last updated Apr. 3, 2020), available at https://cutt.ly/CtDMZY0.

[20] *E.g.*, Amy Acton, Amended Director's Stay at Home Order (Apr. 2, 2020), available at https://cutt.ly/VtB5Vam.

[21] Centers for Disease Control and Prevention, *Cleaning and Disinfecting Your Facility*, https://cutt.ly/atYE7F9.

[22] Centers for Disease Control and Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, https://cutt.ly/etRPVRl.

[23] Melissa Healy, *Coronavirus infection may cause lasting damage throughout the body, doctors fear*, LA TIMES (Apr. 10, 2020), available at https://cutt.ly/htNrJ77; *see also* Di Wu et al., *Plasma Metabolomic and Lipidomic Alterations Associated with COVID-19*, MEDRXIV 2020.04.05.20053819 (2020). For high-risk patients who survive, the effect of contracting this virus can be permanent and debilitating, and can include "profound deconditioning, loss of digits, neurologic damage, and loss of respiratory capacity." Declaration of Dr. Jonathan Golob, *Dawson v. Asher*, No. 2:20-cv-00409-JLR-MAT at ¶ 4 (W.D. Wash., Mar. 16, 2020), available at https://cutt.ly/AtNrFOl.

[24] Goldenson Decl. ¶¶ 7, 10; see also Letter from Faculty at Johns Hopkins School of Medicine, School of Nursing, and Bloomberg School of Public Health to Hon. Larry Hogan, Gov. of Maryland (Mar. 25, 2020) available at https://cutt.ly/stERiXk

providers, including 1:1 or 1:2 nurse-to-patient ratios, respiratory therapists, and intensive care physicians.[25]

23. COVID-19 can also mean death. Worldwide, more than 100,000 people have already died from COVID-19, and that number grows each day.[26] Between 0.3 and 3.5% of people infected will ultimately die from the disease.[27] This percentage jumps for people in certain high-risk categories.[28]

24. People over the age of fifty face a greater risk of serious illness or death from COVID-19.[29] In a February 29, 2020 preliminary report, individuals age 50-59 had an overall mortality rate of 1.3%: 60-69-year-olds had an overall 3.6% mortality rate, and those 70-79 years old had an 8% mortality rate.[30] However, people of all ages can get seriously ill or die. In fact, over half of the people hospitalized for COVID-19 have been under 65 years old.[31]

25. People of any age who suffer from the following also have an elevated risk: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a

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[25] Kevin McCoy and Katie Wedell, *'On-the-job emergency training': Hospitals may run low on staff to run ventilators for coronavirus patients*, USA TODAY (Mar. 27, 2020), available at https://bit.ly/2V7rLsS.
[26] World Health Organization, *COVID-19 Dashboard*, https://who.sprinklr.com/
[27] Goldenson Decl. ¶ 7.
[28] Goldenson Decl. ¶ 8.
[29] Goldenson Decl. ¶ 8; Xianxian Zhao, et al., *Incidence, clinical characteristics and prognostic factor of patients with COVID-19: a systematic review and meta-analysis*, MEDRXIV (Mar. 20, 2020), https://cutt.ly/etRAkmt.
[30] *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths* Chart, https://cutt.ly/ytEimUQ (data analysis based on WHO China Joint Mission Report and Chinese CCDC report published in the Chinese Journal of Epidemiology).
[31] Centers for Disease Control and Prevention *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) – United States, February 12-March 16,* 2020 (updated Mar. 26, 2020), https://cutt.ly/ztB53U1; *see also* Robin McKie, *Why do some young people die of coronavirus?*, THE GUARDIAN (Apr. 5, 2020), available at https://bit.ly/2x5dghp.

person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications; severe obesity (defined as a body mass index of 40 or higher); diabetes; chronic kidney disease or undergoing dialysis; or liver disease.[32] Early reports estimate that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.[33] Because COVID-19 affects the respiratory tract, people with moderate to severe asthma are also at a higher risk of getting very sick.[34]

B. The Dangers of COVID-19 are Heightened in Prisons

26. The imperatives of social distancing and hygiene apply with special force to prisons, where the government controls almost entirely a person's ability to avoid others and to maintain adequate sanitation. Yet persons who live or work in prisons face a particularly acute threat of illness, permanent injury, and death, beyond that faced by the general public.[35]

27. As Professor Novisky, PhD, an expert on prisons and prisoner health, notes in her attached declaration, "prisons, by their very nature, are high risk sites for the spread of infectious

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[32] Goldenson Decl. ¶ 8; Centers for Disease Control and Prevention, *Groups at Higher Risk for Severe Illness*, https://bit.ly/3dYDrqI; World Health Organization, *Coronavirus disease (COVID-19) advice for the public: Myth busters*, https://cutt.ly/dtEiCyc ("Older people, and people with pre-existing medical conditions (such as asthma, diabetes, heart disease) appear to be more vulnerable to becoming severely ill with the virus.").

[33] World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, (Feb. 28, 2020), at 12 https://cutt.ly/KtD3ALr (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: "13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer").

[34] Goldenson Decl. ¶ 9.

[35] Novisky Decl. ¶ 8.

disease."[36] Dr. Goldenson, MD, a physician with decades of experience in correctional health, agrees: "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."[37] And as one federal court has already noted, in a case dealing specifically with the ongoing crisis at Elkton: "Prisons are tinderboxes for infectious disease. The question whether the government can protect inmates from COVID-19 is being answered every day, as outbreaks appear in new facilities."[38]

28. People in congregate environments—places where people live, eat, and sleep in close proximity—face increased danger of contracting COVID-19,[39] as already evidenced by the rapid spread of the virus in even *less* crowded environments than prisons, such as cruise ships[40] and nursing homes.[41]

29. Because they are forced to exist in close, shared spaces for eating, sleeping, and bathing, it is impossible for people who are confined in prisons, jails, and detention centers to engage in the necessary social distancing required to mitigate the risk of transmission.[42] High

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[36] Novisky Decl. ¶¶ 15-23.
[37] Goldenson Decl. ¶ 21.
[38] *United States v. Rodriguez*, No. 2:03-cr-0271, 2020 WL 1627331, (E.D. Pa., Apr. 1, 2020).
[39] Novisky Decl. ¶¶ 9-10.
[40] The CDC is currently recommending that travelers defer cruise ship travel worldwide. "Cruise ship passengers are at increased risk of person-to-person spread of infectious diseases, including COVID-19." Centers for Disease Control and Prevention, *COVID-19 and Cruise Ship Travel*, https://cutt.ly/7tEEQvT.
[41] The CDC notes that long-term care facilities and nursing homes pose a particular risk because of "their congregate nature" and the residents served. Centers for Disease Control and Prevention, *Preparing for COVID-19: Long-term Care Facilities, Nursing Homes*, https://cutt.ly/7tEEITH.
[42] Novisky Decl. ¶ 10; Goldenson Decl. ¶ 20 (noting it is "extremely difficult, if not impossible" to implement recommended social distancing and hygiene procedures in detention settings).

numbers of shared contact surfaces, limited access to medical care, and high numbers of people with chronic, often untreated, illnesses living in close proximity with each other exacerbate the dangers in detention settings.[43]

30. In addition to Professor Novisky and Dr. Goldenson, whose declarations are attached to this petition, numerous public health experts have publicly warned that people held in correctional facilities are likely to face serious, even grave, harm due to the outbreak of COVID-19. Such experts include:

- Dr. Gregg Gonsalves, a professor at Yale School of Public Health;[44]
- Dr. Ross MacDonald, Chief Medical Officer for Correctional Health Services;[45]
- Dr. Marc Stern, an affiliate faculty member at the University of Washington School of Public Health and a correctional health care consultant,[46]
- Dr. Oluwadamilola T. Oladeru, a resident physician in the Harvard Radiation Oncology Program at Massachusetts General Hospital, and Adam Beckman, a student at Harvard Medical School,[47]
- Dr. Homer Venters, former chief medical officer of the New York; [48]

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[43] Novisky Decl. ¶ 4 (prisons have "factors that aggravate the spread of COVID-19, including lack of social distancing, concentrations of immunocompromised, vulnerable adults, and lack of access to proper sanitation"); Goldenson Decl. ¶ 24; Letter from Johns Hopkins Faculty at 1, https://cutt.ly/DtB6tkA ("The close quarters of jails and prisons, the inability to employ effective social distancing measures, and the many high-contact surfaces within facilities, make transmission of COVID-19 more likely. Soap and hand sanitizers are not freely available in some facilities.").

[44] Kelan Lyons, *Elderly Prison Population Vulnerable to Potential Coronavirus Outbreak,* CONNECTICUT MIRROR (Mar. 11, 2020), https://cutt.ly/BtRSxCF.

[45] Craig McCarthy and Natalie Musumeci, *Top Rikers Doctor: Coronavirus 'Storm is Coming,'* New York Post (March 19, 2020, 11:29 a.m.), https://cutt.ly/ptRSnVo.

[46] Marc F. Stern, MD, MPH, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets,"* Washington Assoc. of Sheriffs & Police Chiefs (Mar. 5, 2020), https://cutt.ly/EtRSm4R.

[47] Oluwadamilola T. Oladeru, et al., *What COVID-19 Means for America's Incarcerated Population – and How to Ensure It's Not Left Behind*, HEALTH AFFAIRS (Mar. 10, 2020), https://cutt.ly/QtRSYNA.

[48] Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, MOTHER JONES (Mar. 12, 2020), https://cutt.ly/jtRSPnk

- the faculty at Johns Hopkins schools of nursing, medicine, and public health,[49] and
- Dr. Josiah Rich, a Professor of Medicine and Epidemiology at Brown University.[50]

31. For example, as of February 29, 2020, at the peak of the outbreak in Wuhan, China—the city where COVID-19 originated—over half of all new infection cases were incarcerated people.[51] On Rikers Island, the rate of infection among incarcerated people is over eight times the rate of infection in New York City generally, and 45 times higher than the rate in Wuhan.[52] Fourteen prisoners have died of COVID-19 in Bucks County, Pennsylvania.[53] Six incarcerated people have already died of the disease at FCI Oakdale, a similar facility in Louisiana.[54] An Ohio corrections officer has also passed away.[55]

C. Existing Procedures and Protocols at Elkton Expose Class Members, Staff, and the General Public to an Unacceptable Risk of Infection, Suffering, and Death

32. People at Elkton are dying. The situation is particularly dire, even compared to other corrections facilities. Elkton has proven that it is incapable of preventing the spread of

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[49] *JHU Faculty Express Urgent Concern about Covid-19 Spread in Prison*, Johns Hopkins Berman Institute of Bioethics, (Mar. 25, 2020) https://bioethics.jhu.edu/news-events/news/jhu-faculty-express-urgent-concern-about-covid-19-spread-in-prison/

[50] Amanda Holpuch, *Calls Mount to Free Low-risk US Inmates to Curb Coronavirus Impact on Prisons*, THE GUARDIAN (Mar. 13, 2020) https://cutt.ly/itRSDNH.

[51] Zi Yang, Cracks in the System: COVID-19 in Chinese Prisons, THE DIPLOMAT (March 9, 2020), available at https://cutt.ly/ctB6ieT.

[52] These numbers likely underestimate the infection rate on Rikers Island, as they do not include the number of people contracted COVID-19 on Rikers Island but who have already been released. The rates of infection rely on publicly released data collected by the Legal Aid Society. *See* Legal Aid Society, *Analysis of COVID-19 Infection Rate in NYC Jails* (last visited Apr. 5, 2020, 3:00 p.m.), available at https://cutt.ly/RtYTbWd.

[53] Press Release, Bucks County, PA, Larry R. King, *Bucks County COVID-19 Deaths Reach 14; Four Cases Confirmed at Prison* (Apr. 4, 2020), *available at* https://cutt.ly/utD6u5F.

[54] *Sixth inmate death from COVID-19 reported at FCI Oakdale I*, KALB (Apr. 10, 2020, 2:22 pm), https://cutt.ly/htB6ahx

[55] Ohio Dep't of Rehabilitation and Correction, *COVID-19 Information* (updated Apr. 11, 2020), available at https://cutt.ly/ZtB6hMN.

COVID-19—and indeed, any internal steps necessary to protect further infection will be ineffective under the current crowded conditions there.[56]

33. "It is difficult to overstate the devastation that a COVID-19 outbreak could inflict on a correctional facility such as FCI Elkton."[57] As of April 9, 2020, three prisoners have died in Elkton. "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."[58] "Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly."[59]

34. According to the President of the America Federation of Government Employees Local 607, a union that includes most of the staff at Elkton, as of April 8, 2020, 43 prisoners have been hospitalized outside the prison after testing positive for COVID-19 or showing symptoms of the disease, and 13 of them were on ventilators.[60] An additional 8 staff members have confirmed COVID-19 diagnoses, with 2 of them on ventilators.[61] These numbers can be expected to grow dramatically every day, threatening the health and lives of prisoners, staff, and the surrounding community.

35. As one federal court recently noted: "COVID-19 is now inside FCI Elkton. Many of the recommended measures to prevent infection are impossible or unfeasible in prison. The

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[56] Novisky Decl. ¶¶ 15-16.
[57] Goldenson Decl. ¶ 28.
[58] Novisky Decl. ¶ 7.
[59] Goldenson Decl. ¶ 29.
[60] Shane Hoover, *Elkton prison union chief talks coronavirus affect on staff*, TIMES REPORTER (Apr. 9, 2020), available at https://cutt.ly/JtB6Wy6.
[61] Bureau of Prisons, COVID-19, https://www.bop.gov/coronavirus/ (last visited April 13, 2020, 12:10 a.m); Hoover, *supra* note 60.

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 Elkton.[62]

36. Based on her expertise, including her knowledge and study of prisons such as Elkton, Dr. Novisky writes: "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."[63]

37. Both experts note that social distancing is "impossible" at Elkton, putting everyone at risk.[64] Those incarcerated agree: "It's impossible to keep 6 feet of distance from others" at Elkton.[65] As Petitioner Bellamy avers, 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 … I'm bumping up against people" in every aspect of daily life.[66]

38. "Low security Federal Correctional Institutions (FCIs) have … mostly dormitory or cubicle housing."[67] This means people residing at Elkton live in crowded quarters. Their beds

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[62] *United States v. Rodriguez*, No. 2:03-cr-0271, 2020 WL 1627331(E.D. Pa., Apr. 1, 2020).
[63] Novisky Decl. ¶ 16; *see also* Goldenson Decl. ¶ 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.")
[64] Novisky Decl. ¶ 9 ("With continued functioning of shared spaces for bathing, eating, and sleeping, quarantine and social distancing would be impossible to implement at Elkton."); Goldenson Decl. ¶ 32 ("Adequate social distancing would be impossible to maintain.")
[65] Declaration of Kendal Nelson (attached as Exhibit C) ¶ 3; Declaration of Eric McReynolds (attached as Exhibit D) ¶ 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.").
[66] Declaration of Eric Bellamy (attached as Exhibit E) ¶ 4.
[67] Fed. Bureau of Prisons, *About Our Facilities* (last visited Apr. 13, 2020) https://www.bop.gov/about/facilities/federal_prisons.jsp

very close to others, within a few feet.[68] For example, Petitioner Bellamy is "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 entire prison is "overcrowded, and every bed is taken up." There is "way less" than the recommended six-foot distance between beds.[69]

39. Each unit contains only a few sinks and showers, shared by more than a hundred people.[70] Showers and sinks are close together, making it impossible to wash yourself without coming into contact with another.[71] The few televisions, phones, and computers are shared, in constant use, and all very close to one another.[72] This further increases the risk of transmission.[73]

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[68] Declaration of Maximino Nieves (attached as Exhibit F) ¶ 3 ("We're in 2- and 3-man cubicles, one after the other in an open dormitory… In the cubes, the person on the other side sleeps above where you read… We're about 2 feet away from each other where we sleep."); Nelson Decl. ¶ 4 ("All the beds are locked together and physically connected, so it's impossible to maintain distance in the cubes."); Declaration of Howard Jackson (attached as Exhibit G) ¶ 4 ("my bunkmate and I can never be more than 3 feet apart"); McReynolds Decl. ¶ 6 ("The racks are 2-3 to a cell. People are about 2-3 feet apart when they sleep."); Declaration of Craig Wilson (attached as Exhibit H) ¶ 6 ("Our bunks are in very close proximity to each other, definitely less than six feet in all directions.").

[69] Bellamy Decl. ¶ 3.

[70] Bellamy Decl. ¶ 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."); Nieves Decl. ¶ 3 ("There are 170 people in my unit, sharing small bathrooms with 4 urinals, 10 showers, and 5 toilets, which we share."); Nelson Decl. ¶ 3 (noting there are 5 toilets and 5 sinks for 170 men); Wilson Decl. ¶ 6 ("There are 10 sinks, 18 showers, 6 toilets, and 6 urinals for all 150 people."); Declaration of Arsenio Arzola (attached as Exhibit I) ¶¶ 4-5 (12 shared showers for 165 people).

[71] Arzola Decl. ¶ 5 ("The sinks are so close to each other than when we brush our teeth or wash our hands, the splash from the next man's toothpaste hits you"); McReynolds Decl. ¶ 7 ("Bathroom sinks, tables in the day area, computers" are all close together").

[72] Nieves Decl. ¶ 3 "In the TV rooms, the tables are right on top of each other."); Wilson Decl. ¶ 9 ("Both the phones and the computers are less than two feet apart and are all in constant use.); Arzola Decl. ¶ 6 ("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."); McReynolds Decl. ¶ 6 (talking on the phone, "I'm right next to someone, so close that I could kick him in the ankle.")

[73] Goldenson Decl. ¶¶ 21, 31.

40. When residents go to eat, they are forced to be very close to one another. They stand in line for their food close to each other.[74] And after receiving their food, eat close to each other as well: "There's nowhere where we can eat without bumping right up against each other."[75]

41. The prison has "sent out memos telling [the prisoners] to keep your distance and wash your hands," but because of the constant and unavoidable proximity that is inherent to life at Elkton at its current level of crowding, it is impossible for anyone to comply.[76]

42. People at Elkton do not have an adequate supply of hygiene products, so "it is difficult (if not impossible) for prisoners to follow recommended sanitation procedures."[77] "Soap and cleaning supplies are scarce. The commissary has been closed for a week."[78] "There are no dispensers for soap or hand sanitizer anywhere in the unit."[79] With the commissary closed, the rationed small bottle of soap given to each person has to be used for washing hair, body, and hands, so Petitioner Wilson has run out of soap, as "everyone has."[80] There is limited access to other cleaning supplies.[81]

43. Elkton is not able to keep contagious prisoners away from others.[82] Prisoners who show enough symptoms are sent to a quarantine unit, where they are placed in close proximity to

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[74] Bellamy Decl. ¶ 4; Wilson Decl. ¶ 6; Jackson Decl. ¶ 4 ("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."); Arzola Decl. ¶ 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."); McReynolds Decl. ¶ 6 ("We walk [to get food] at our own risk, with no spacing.").
[75] Nelson Decl. ¶ 5.
[76] Jackson Decl. ¶ 7.
[77] Novisky Decl. ¶ 12; *see also* Goldenson Decl. ¶ 20.
[78] Arzola Decl. ¶ 7.
[79] Wilson Decl. ¶ 10.
[80] Wilson Decl. ¶ 10.
[81] Nelson Decl. ¶ 10.
[82] Novisky Decl. ¶ 6.

others who may be sick, increasing the likelihood that they will ultimately become infected if they aren't already.[83] Prisoners who have some symptoms but no fever are kept in the general population.[84] For example, Petitioner Nieves knew another prisoner who "was showing symptoms for a while but they left him in his bunk until finally moving him to medical."[85] That prisoner passed away a short time later.

44. Prisoners enter and exit quarantine in short order.[86] Prisoners who are known to have been directly exposed to prisoners who became ill are kept in close contact with other prisoners.[87] And people outside of quarantine clean the areas where people are sick.[88]

45. Mr. Arzola, a resident of FCI Elkton, recounts his interaction with a sick cellmate:

> 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.[89]

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[83] McReynolds Decl. ¶¶ 3-5.
[84] Jackson Decl. ¶ 3 ("[P]retty much everywhere I go, I'm standing next to someone who has symptoms."); Arzola Decl. ¶ 10 ("Some people with symptoms are being taken immediately to medical, others are left behind."); McReynolds Dec. ¶ 2 (stating that he was coughing for "about a week, and then a fever just came on all of a sudden," but he was not moved into quarantine until he had a fever).
[85] Nieves Decl. ¶ 6.
[86] Nelson Decl. ¶ 8; Arzola Decl. ¶ 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.").
[87] Nieves Decl. ¶ 5 ("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."); Arzola ¶ 10 ("Nothing has been done with me or my other cellmate, even though we were so close to a sick person.").
[88] Wilson Decl. ¶ 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.").
[89] Arzola Decl. ¶ 3.

46. Even if Elkton provided effective isolation for people with symptoms, asymptomatic people can still spread the disease and yet remain in close contact with other prisoners.[90]

47. Elkton also does nothing to protect high-risk prisoners—such as those over the age of 50, or those who, like Petitioners Bellamy, Nelson, and Wilson, have medical histories or conditions that place them at greater risk—from exposure.[91]

48. After speaking with the Warden at Elkton and other BOP officials, U.S. Representative Bill Johnson described a desperate situation within the prison:

> We've got to protect the staff and inmates at Elkton from the COVID-19 outbreak, and right now that facility is like a petri dish, a breeding ground for the virus. Staff members are coming home to their families and communities after their shifts, and inmates are in close proximity to each other with limited means to isolate or quarantine. And, the hospitals in the region run the risk of being overwhelmed if the outbreak isn't stopped in its tracks. These hospitals, some of them very small rural community hospitals, need to be ready in case there is a sudden outbreak in their own local communities; and, they must have the capability and capacity perform their regular duties.[92]

49. The risk of infection is not limited to Elkton's 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."[93] Staff members do not have access to appropriate protective

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[90] Novisky Decl. ¶ 6; see also McReynolds Decl. ¶ 7 (noting that there remain "people who might be carriers" but are showing no symptoms).
[91] Bellamy Decl. ¶ 6; Jackson Decl. ¶ 7.
[92] Rep. Bill Johnson, Statement on FCI Elkton (Apr. 6, 2010), available at https://billjohnson.house.gov/news/documentsingle.aspx?DocumentID=402824
[93] Novisky Dec. ¶ 11.

equipment, or do not wear it.[94] In fact, several staff members at Elkton have already tested positive for COVID-19.

50. The head of the union that represents Elkton prison employees says the situation is worse than reported. Staff are scared and believe "the Bureau of Prisons is doing nothing to help their first-line staff members."[95] Staff "have been told to presume we have all been exposed," and are concerned that their exposure will "risk our families' lives."[96] "We believe more could have been done to help stop the spread of COVID-19 at these facilities."[97]

51. Corrections officers suing a similar federal facility in Oakdale have brought a lawsuit seeking hazard pay pointing to harrowing complaints: one "performed work in close proximity to objects, surfaces, and/or individuals infected with COVID-19."[98] Another "transported an inmate infected with COVID-19" and was given personal protective equipment only "after he had spent a significant amount of time with the inmate."[99]

52. The Elkton staff's fears of contracting COVID-19 in the confined prison space have invariably impacted the prisoners as well. "They're clearly avoiding us."[100] "They don't come into the pods as much or walk around." "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

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[94] Nelson Decl. ¶ 9; Wilson Decl. ¶ 13.
[95] Shane Hoover, *Elkton prison union chief talks coronavirus affect on staff*, TIMES REPORTER (Apr. 9, 2020), https://cutt.ly/JtB6Wy6.
[96] Janet Rogers, *Protest outside Elkton Prison in Lisbon over treatment of sick prisoners, staff,* WFMJ (April 11, 2020; 8:08 p.m.), https://cutt.ly/2tNqkcj
[97] *Id.*
[98] Complaint, *Braswell v. United States of America*, Civil Action No. 20-cv-359C at ¶ 23 (Fed. Cl. Mar. 27, 2020), available at https://www.classaction.org/media/braswell-et-al-v-the-united-states-of-america.pdf.
[99] *Id.*
[100] Nieves Decl. ¶ 8.

didn't come in because he's sick."[101] Even those who are "sympathetic" to the prisoners are unable to help.[102]

53. Further, Elkton is not sealed off from the community outside them. "While jails, prisons, and detention centers are often thought of as closed environments, this is not the case."[103] Indeed, the fact that Elkton is not a closed environment is how the infection made its way inside in the first place.[104] Even after BOP's lockdown, possibly-infected-but-asymptomatic employees are still going home and returning to Elkton.[105]

54. Moreover, "Elkton's medical staffing right now is at only 50 percent of what it should be," and prisoners and staff with serious symptoms must be treated in community hospitals.[106] Yet there are limited hospitals in the region where Elkton is located, and they "run the risk of being overwhelmed if the outbreak [at Elkton] isn't stopped in its tracks."[107] Columbiana County, where FCI Elkton is located, has reported 96 cases of COVID-19 as of April 11.[108] The

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[101] Bellamy Decl. ¶ 9.
[102] Wilson Decl. ¶ 13 (further noting that the staff are "hiding," and "we only see them during count times").
[103] Goldenson Decl. ¶ 22.
[104] Wilson Decl. ¶ 3 (a protocol to keep COVID-19 out of the prison was unsuccessful and was abandoned); Nelson Decl. ¶ 11 (a memo was circulated telling prisoners that a staff member had brought in the virus).
[105] Goldenson Decl. ¶ 23 ("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."); Novisky Decl. ¶ 13 ("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."). *Cf.* Wilson Decl. ¶ 3 (staff stated that they didn't want to cooperate with a plan to keep them on the grounds for 2-week intervals).
[106] Tom Giambroni, *National Guard sent to help Elkton prison*, THE REVIEW (Apr. 12, 2020), https://cutt.ly/atNqRkA.
[107] Rep. Bill Johnson, Statement on FCI Elkton (Apr. 6, 2010), available at https://billjohnson.house.gov/news/documentsingle.aspx?DocumentID=402824
[108] Rich Exner, *Mapping Ohio's 6,250 coronavirus cases, Saturday's update, trend graphics*, CLEVELAND.COM (Updated Apr. 12, 2020), https://cutt.ly/ttNqIyg

county has two hospitals, East Liverpool City Hospital and Salem Regional Health Center, with a combined total of 219 beds and only 20 ICU beds.[109] Neighboring Mahoning County offers an additional 61 ICU beds, but has reported nearly four times the number of cases as Columbiana County.[110] Ohio's supply of ventilators is not publicly known, but both ventilators and beds are likely to be in short supply statewide as the pandemic continues.[111]

55. Thus, the growing concentration of infected prisoners in unsafe conditions within the Elkton is dangerous not only to the prisoners and staff, but also puts all of the surrounding community at acute risk.[112] Release of qualified prisoners to home confinement is necessary to reduce this concentration and the risks it poses to the safety of the community.[113]

56. Ohio Governor DeWine declared "there is no doubt this prison needs help."[114] In response, the Governor sent 26 members of the National Guard to the prison to assist with ill prisoners at Elkton. The National Guard, however, are not medical professionals nor are they providing security. Their role at the prison is limited, and prisoners outside of the medical facility

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[109] Rich Exner, *How many hospital beds are near you? Details by Ohio county*, CLEVELAND.COM (Mar. 23, 2020), https://cutt.ly/otNqAgp.
[110] *Id.*; Exner, *supra* note 108.
[111] *See* Anne Saker and Terry DeMio, *Coronavirus in Ohio: How many hospital beds, ventilators on hand? Probably not enough*, CINCINNATI ENQUIRER (Mar. 20, 2020), available at https://cutt.ly/NtNq001.
[112] Goldenson Decl. ¶¶ 22-23; Novisky Decl. ¶¶ 13-14. *See also* Yousur Al-Hlou, Kassie Bracken, Leslye Davis & Emily Rhyne, *How Coronavirus at Rikers Puts All of N.Y.C. at Risk*, N.Y. TIMES (Apr. 8, 2020), https://www.nytimes.com/video/us/100000007059873/coronavirus-rikers-island.html (at 2:04, "it's not just about who's in the jails right now, it's really about the city"; at 5:25, noting a consensus among prosecutors and public defenders that releases are not happening quickly enough).
[113] Goldenson Decl. ¶¶ 32-33; Novisky Decl. ¶¶ 16-22.
[114] *Coronavirus: Governor orders National Guard to assist at federal prison,* WHIO (April 6, 2020 3:00 PM), https://cutt.ly/EtNqMW6.

have not seen them.[115] Indeed, to the extent that National Guard personnel are entering and exiting the facility routinely, they may provide another vector for COVID-19 to spread to the surrounding community.[116]

57. With these dire situations, Petitioners fear for their lives. "I feel like I've been handed a death sentence," states Petitioner Craig Wilson.[117] Yet prisoners remain housed in dangerous conditions, and their concerns are being ignored.[118]

D. Immediate Relief is Needed to Prevent Further Unnecessary Suffering and Loss of Life

58. The growing numbers of ill and dead at Elkton "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."[119] "The death rate [at Elkton] will increase substantially before it starts to diminish without major interventions."[120]

59. Because of the severity of the threat posed by COVID-19, and its potential to rapidly spread throughout a correctional setting, public health experts recommend the rapid release from custody of people most vulnerable to COVID-19.[121] Dr. Novisky urges Elkton "to release as many older incarcerated adults from the prison as possible"[122] and to make efforts to "release those

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[115] Wilson Decl. ¶ 13; Nelson Decl. ¶ 16.
[116] *See* Goldenson Decl. ¶ 23; Novisky Decl. ¶ 13.
[117] Wilson Decl. ¶ 14.
[118] Wilson Decl. ¶ 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.")
[119] Novisky Decl. ¶ 6.
[120] Goldenson Decl. ¶ 32.
[121] Goldenson Decl. ¶ 33; Novisky Decl. ¶¶ 18-19; *see also, e.g.*, Josiah Rich, Scott Allen, and Mavis Nimoh, *We must release prisoners to lessen the spread of coronavirus*, WASHINGTON POST (Mar. 17, 2020), available at https://wapo.st/2JDVq7Y.
[122] Novisky Decl. ¶ 18

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."[123] Dr. Goldenson agrees: "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, be released from FCI Elkton and FCL Elkton immediately."[124]

60. Release protects the people with the greatest vulnerability to COVID-19 from transmission of the virus, and also allows for greater risk mitigation for people held or working in a prison and the broader community.[125] Release of the most vulnerable people from custody also reduces the burden on the region's health care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.[126]

61. As Dr. Novisky explains: "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." "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."[127] "[F]ailing to do so will have grave consequences and long-term traumatic impacts for many."[128]

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[123] Novisky Decl. ¶ 19
[124] Goldenson Decl. ¶ 33.
[125] Novisky Decl. ¶ 13.
[126] Novisky Decl. ¶ 14.
[127] Novisky Decl. ¶ 17.
[128] Novisky Decl. ¶ 17; *see also* Goldenson Decl. ¶ 32 ("The death rate will increase substantially before it starts to diminish without major interventions.")

62. The outbreaks in corrections facilities around the country underscore the need for immediate and significant reductions in population.[129] Courts and executive branch officials elsewhere in the country have accepted this reality and begun broad-based, categorical releases.[130] Internationally, governments and jail staff have recognized the threat posed by COVID-19 and released high numbers of detained persons.[131] Domestically, jail administrators in Cuyahoga County;[132] San Francisco, California;[133] Jefferson County, Colorado;[134] and the State of New Jersey,[135] among others, have concluded that widespread jail release is a necessary and appropriate public health intervention.

63. At least one federal court has already issued an order releasing a prisoner from Elkton, citing the disturbing health conditions there.[136] The Court found "[t]he situation at FCI Elkton in particular is alarming," and the BOP "cannot adequately protect [the prisoner] from infection, especially in light of his vulnerability and the presence of COVID-19 in FCI Elkton."[137]

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[129] *See supra* ¶ 31.
[130] *See, e.g.*, Memorandum and Order, *Thakker v. Doll*, No. 1:20-CV-0480 (M.D.Pa. Mar. 31, 2020) at Doc. No. 47 (categorically releasing petitioners who "suffer[] from chronic medical conditions and face[] an imminent risk of death or serious injury if exposed to COVID-19).
[131] In Iran, for example, more than 85,000 people were released from jails to curb the spread of coronavirus. *US Jails Begin Releasing Prisoners to Stem COVID-19 Infections*, BBC NEWS (Mar. 19, 2020), https://cutt.ly/9tRDyb3 (noting Iran's release of over 85,000 prisoners in response to the virus).
[132] Scott Noll, *Cuyahoga County Jail Releases Hundreds of Low-Level Offenders to Prepare for Coronavirus Pandemic,* NEWS5 CLEVELAND (Mar. 20, 2020), https://cutt.ly/CtRSHkZ.
[133] Megan Cassidy, *Alameda County Releases 250 Jail Inmates Amid Coronavirus Concerns, SF to Release 26*, SAN FRANCISCO CHRONICLE (Mar. 20, 2020), https://cutt.ly/0tRSVmG.
[134] Jenna Carroll, *Inmates Being Released Early from JeffCo Detention Facility Amid Coronavirus Concerns*, KDVR COLORADO (Mar. 19, 2020), https://cutt.ly/UtRS8LE.
[135] Erin Vogt, *Here's NJ's Plan for Releasing Up to 1,000 Inmates as COVID-19 Spreads,* NEW JERSEY 101.5 (Mar. 23, 2020), https://cutt.ly/QtRS53w.
[136] *United States v. Rodriguez*, No. 2:03-cr-0271, 2020 WL 1627331(E.D. Pa., Apr. 1, 2020
[137] *Id.*

Deciding that release was the only acceptable option, the Court noted that even lengthy prison sentences "did not include incurring a great and unforeseen risk of severe illness or death."[138]

64. The United States Attorney General recognized the "significant level of infection" at Elkton and over a week ago, suggested "immediately" "mov[ing] vulnerable inmates" to home confinement.[139] This memorandum, however, lacks specificity and oversight, has not been significantly implemented, and has not led to the necessary immediate categorical release of appropriate prisoners to home confinement.

65. Although the Attorney General's April 3 Memo directs Respondent Carvajal to implement the review process "immediately" and "immediately maximize appropriate transfers to home confinement," Elkton's response has been slow, piecemeal, and inadequate to mitigate the spread of COVID-19. Critical decisions are left entirely to the discretion of BOP personnel, who have already demonstrated that they lack the expertise and resources to implement Attorney General Barr's directives and otherwise deal with the COVID-19 outbreak at Elkton.[140] Even before President Trump signed the Coronavirus Aid, Relief, and Economic Security ("CARES") Act, Respondent Carvajal had the authority to release vulnerable prisoners in light of the

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[138] *Id.*

[139] Memorandum from Attorney General William Barr to Director of Bureau of Prisons, The Increasing Use of Home Confinement at Institutions Most Affected by COVID-19 (Apr. 3, 2020), available at https://politi.co/2UV3JBi; *see also* CARES Act, P.L. 116-136, § 12003(b)(2) (2020) (expanding home confinement authorization)

[140] Goldenson Decl. 32 ("[L]eaving 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.")

pandemic.[141] He did not. Indeed, even while noting that prisoner concerns are "understandable," Government attorneys continue to oppose release in individual cases for Elkton prisoners.[142]

66. It has now been several days since Attorney General Barr's April 3 Memo "directing" Respondent Carvajal to "move with dispatch in using home confinement" for vulnerable prisoners. Respondents have not moved with dispatch. People will suffer and die while the process plays out. Given this track record, it defies reality that Elkton could now miraculously implement AG Barr's directives on its own, in line with CDC guidelines[143] and with the combination of speed and care for human life that the moment requires.[144]

67. Reports from prisoners confirm that the painstakingly slow, case-by-case approach is inadequate and certainly is not being implemented with dispatch. Petitioner Nieves, for example, resides in FSL Elkton, the even lower-security satellite camp of what is already a low-security prison. He is a nonviolent first-time offender, has only about 6 percent—approximately 11 months—of his sentence remaining, and has a stable residence awaiting him upon release. Around the time of the Attorney General's April 3 Memo, he was among 15 prisoners who were told that they would be released after a short quarantine. Four days later, he and 4 others of that group were

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[141] 18 U.S.C. § 3582.
[142] *See, e.g.*, United States' Opposition to Defendant's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), *United States v. Jeremy Rodriguez*, No. 03-271 (E.D. Pa. Mar. 27, 2020).
[143] Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.
[144] *Id.; see also* Novisky Decl. ¶¶ 18-21.

abruptly put back into the regular population, with no explanation why. It is unclear whether any of the others have been released.[145]

68. A case-by-case review of prisoners is both unnecessary and inadequate to the moment, in which time is of the essence. A prisoner placed by BOP in a low security prison such as Elkton means that BOP has determined the prisoner presents "no public safety factors," for whom there is no "relevant factual information regarding the inmate's current offense, sentence, criminal history or institutional behavior that require[] additional security measures be employed to ensure the safety and protection of the public."[146] Instead, categorical movement of prisoners away from Elkton based on their vulnerability to COVID-19 is the only effective approach.[147]

69. Delay has already likely cost lives and led to needless suffering from COVID-19 at Elkton, but it is not too late to act. "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."[148] Without significant action, the conditions at Elkton "will escalate further," and "many more incarcerated individuals and staff will become infected and will face elevated risks for medical complications and mortality."[149]

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[145] Nieves Decl. ¶¶ 1, 9; *see also* Nelson Decl. ¶ 17 (confirming that a group of people was gathered for release, but many were later put back into the regular population).
[146] BOP Program Statement P5100.08 (9/12/06) available at https://www.bop.gov/policy/progstat/5100_008.pdf.
[147] See Goldenson Decl. ¶ 33; Novisky Decl. ¶ 18.
[148] Novisky Decl. ¶ 23. *See also* Novisky Decl. ¶ 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"); Goldenson Decl. ¶ 32 ("The death rate will increase substantially before it starts to diminish without major interventions").
[149] Novisky Decl. ¶ 6.

70. Because the Respondent have failed to act, immediate judicial intervention is necessary to prevent the continued unconstitutional exposure of prisoners at Elkton to serious illness and death.

71. Accordingly, expedited release—with social distancing, testing, and other expert-guided measures as necessary—is needed not only to prevent irreparable harm to members of the medically-vulnerable subclass, but also to reduce the incarcerated population at Elkton sufficiently to ensure proper social distancing to reduce transmission for all class members, staff, and the wider public.

IV. CLASS ACTION ALLEGATIONS

72. Petitioners bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedures on behalf of themselves and a class of similarly situated individuals.

73. Petitioners each seek to represent a class of all current and future people in post-conviction custody at Elkton ("Class"), including a subclass of persons who, by reason of age or medical condition, are particularly vulnerable to injury or death if they were to contract COVID-19 ("Medically-Vulnerable Subclass").

74. The Medically-Vulnerable Subclass is defined as all current and future persons incarcerated at Elkton over the age of 50, as well as all current and future persons incarcerated at Elkton of any age who experience: chronic lung disease or moderate to severe asthma; serious heart conditions; conditions that can cause a person to be immunocompromised, including cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, or prolonged use of corticosteroids and other immune weakening medications; severe obesity (defined as a body mass index of 40 or higher); diabetes; chronic kidney disease or undergoing dialysis; or liver disease.

75. Each Petitioner can represent the Class because each Petitioner is currently housed at Elkton. Petitioners Bellamy, Nelson, and Wilson can also represent the Medically-Vulnerable Subclass because each Petitioner is over the age of 50 and/or has one of the conditions listed in the definition of the Subclass above.

76. This action has been brought and may properly be maintained as a class action under Federal law. It satisfies the numerosity, commonality, typicality, and adequacy requirements for maintaining a class action under Fed. R. Civ. P. 23(a).

77. Joinder is impracticable because (1) the classes are numerous; (2) the classes include future members, and (3) the class members are incarcerated, rendering their ability to institute individual lawsuits limited, particularly in light of the BOP's current 14-day lockdown and generally reduced legal visitation and court closures in the Northern District of Ohio instituted to address COVID-19 concerns.

78. There are approximately 2,417 people in the proposed Class, and, upon information and belief, hundreds of people in the proposed Medically-Vulnerable Subclass.[150]

79. Common questions of law and fact exist as to all members of the proposed Class and Subclass: all have a right to receive adequate COVID-19 prevention, testing, and treatment.

80. Named Petitioners have the requisite personal interest in the outcome of this action and will fairly and adequately protect the interests of the class. Petitioners have no interests adverse to the interests of the proposed class. Petitioners retained *pro bono* counsel with experience and

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[150] Fed. Bureau of Prisons, FCI Elkton (last visited Apr. 12, 2020), https://www.bop.gov/locations/institutions/elk/.

success in the prosecution of civil rights litigation. Counsel for Petitioners know of no conflicts among proposed class members or between counsel and proposed class members.

81. Respondents have acted on grounds generally applicable to all proposed Class members, and this action seeks declaratory and injunctive relief. Petitioners therefore seek class certification under Rule 23(b)(2).

82. In the alternative, the requirements of Rule 23(b)(1) are satisfied, because prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of contact for the party opposing the proposed classes.

V. ARGUMENT

A. Petitioner's Incarceration Amid the COVID-19 Outbreak in Elkton Violates Their Rights to Constitutional Conditions of Confinement

83. Corrections officials have a constitutional obligation to protect incarcerated people from a substantial risk of serious harm. *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). Indeed, under the Eighth Amendment, prison officials "must provide humane conditions of confinement; … must ensure that inmates receive adequate food, clothing, shelter, and medical care, and must take reasonable measures to guarantee the safety of the inmates[.]" *Id.* at 832 (internal quotation marks omitted). This obligation also requires corrections officials to address prisoners' serious medical needs—including needs far less dire than those at stake here. *See Estelle v. Gamble*, 429 U.S. 97, 104 (1976); *Brown v. Plata*, 563 U.S. 493, 531-32 (2011); *Flanory v. Bonn*, 604 F.3d 249, 255 (6th Cir. 2010) (prison officials violated Eighth Amendment for failure to provide prisoner with toothpaste for 337 days, creating future health risk). Thus, for example, the Sixth Circuit has found Constitutional issues with exposing a prisoner to environmental tobacco smoke when that exposure "causes [plaintiff] sinus problems and dizziness," *Talal v. White*, 403 F.3d 423, 427 (6th

Cir. 2005); *see also Helling v. McKinney*, 509 U.S. 25, 28, 35 (1993) (prisoner stated a valid Eighth Amendment claim against prison officials who required him to share cell with a prisoner who exposed him to high levels of second-hand smoke); *Palacio v. Hofbauer*, 106 F. App'x 1002, 1005 (6th Cir. 2004) (exposure to smoke violates Eighth Amendment when a prisoner has "a medical condition that is exacerbated by" second-hand smoke and the smoke "bothers" other prisoners).

84. This obligation requires corrections officials to protect incarcerated people from infectious diseases like COVID-19; officials may not wait until someone tests positive for the virus and an outbreak begins. *McKinney*, 509 U.S. at 33-34 ("That the Eighth Amendment protects against future harm to inmates is not a novel proposition … 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"); *Stefan v. Olson*, 497 F. App'x 568, 577 (6th Cir. 2012) (the proposition that "the Eighth Amendment protects against future harm to inmates is not a novel proposition."); *see also Farmer*, 511 U.S. at 833 ("[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course."). By then it is too late. That one individual would have almost certainly infected untold numbers of people before displaying symptoms.

85. Prison officials violate this affirmative obligation by showing "deliberate indifference" to the substantial risk of serious harm. *Farmer*, 511 U.S. at 828. "Deliberate indifference has two components to it: objective and subjective." *Villegas v. Metro. Govt. of Nashville*, 709 F.3d 563, 568 (6th Cir. 2013). "[T]he objective component … is met upon a showing that a detainee faced a substantial risk of serious harm and that such a risk is one that society chooses not to tolerate." *Id.* at 569. The subjective component is satisfied when an official has "(1) subjectively perceived facts from which to infer substantial risk to the prisoner, (2) did in

fact draw the inference, and (3) then disregarded that risk." *Santiago v. Ringle*, 734 F.3d 585, 591 (6th Cir.2013) (citations and internal quotation marks omitted). Such indifference may be "infer[red] from circumstantial evidence, including 'the very fact that the risk was obvious,' that a prison official knew of a substantial risk." *Id.* (quoting *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 550 (6th Cir. 2009))

86. With respect to an impending infectious disease like COVID-19, deliberate indifference is satisfied when corrections officials "ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year," even when "the complaining inmate shows no serious current symptoms." *Helling*, 509 U.S. at 33, 36 (holding that a prisoner "states a cause of action … by alleging that [corrections officials] have, with deliberate indifference, exposed him to conditions that pose an unreasonable risk of serious damage to future health"); *see also Hutto v. Finney*, 437 U.S. 678, 682-685 (1978) (recognizing the need for a remedy where prisoners were crowded into cells and some had infectious diseases).

87. Here, COVID-19 is "sure or very likely to cause serious illness," and even waiting until "next week" to attempt internal mitigation efforts may be too long. Respondents are aware of the risk, which is obvious, significant, and severe.

88. As noted above, there are no mitigation efforts that Elkton could undertake that would prevent the risk of contraction—and possible later spread to the non-prison community—to any acceptable degree, other than immediate release of the Medically-Vulnerable Subclass and potentially more, such as those who are approaching the conclusions of their sentences. Respondents are aware that they are unable to control the spread of COVID-19 in Elkton, yet have failed to take effective action to protect prisoners or staff from further infection.

89. Accordingly, Elkton's failure to take medically-required steps to prevent disease and death constitutes deliberate indifference. Their nominal gestures—as by sending directives to the prisoners to engage in social distancing where it is flatly impossible to do so—do not suffice. *See, e.g.*, *Helling*, 509 U.S. at 33, 36; *Scicluna v. Wells*, 345 F.3d 441, 446 (6th Cir. 2003) (denying qualified immunity for official that placed "a prisoner in need of urgent medical attention to a facility that the official knows is unable to provide the required treatment").

B. This Petition is an Appropriate Vehicle to Remedy these Violations

90. Section 2241(c)(3) allows this court to order the release of prisoners like Petitioners who are held "in violation of the Constitution." 28 U.S.C. 2241(c)(3); *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973) ("It is clear, not only from the language of §§ 2241(c)(3) and 2254(a), but also from the common-law history of the writ, that the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody."); *Peyton v. Rowe*, 391 U.S. 54, 67 (1968) (Section 2241(c)(3) can afford immediate release for claims other than those challenging the sentence itself); *cf. Ziglar v. Abbasi*, 137 S. Ct. 1843, 1862-63 (2017) ("Indeed, the habeas remedy, if necessity required its use, would have provided a faster and more direct route to relief than a suit for money damages. A successful habeas petition would have required officials to place respondents in less-restrictive conditions immediately[.]").

91. "[A]n attack upon the execution of a sentence [as opposed to an attack on the validity of the conviction itself] is properly cognizable in a 28 U.S.C. § 2241(a) habeas petition." *United States v. Jalili*, 925 F.2d 889, 893–94 (6th Cir. 1991); *see also Solano-Moreta v. Fed. Bureau of Prisons*, No. 17-1019, 2018 WL 6982510, at *1 (6th Cir. Sept. 24, 2018) (complaint

about being improperly confined at a particular facility "arguably constitutes an attack upon the execution of Solano-Moreta's sentence that is properly brought under § 2241").

VI. CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF

Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment to the U.S. Constitution
Class including Medically-Vulnerable Subclass versus All Respondents
28 U.S.C. §§ 1651, 2241 & United States Constitution, Art. I, § 9

92. Under the Eighth Amendment, persons in carceral custody have a right to be free from cruel and unusual punishment. As part of the right, the government must protect incarcerated persons from a substantial risk of serious harm to their health and safety. *See, e.g., Farmer,* 511 U.S. at 828; *Estelle*, 429 U.S. at 104. Petitioners and Class Members face a substantial risk of serious harm from COVID-19. Respondents are aware of the serious risk COVID-19 poses to members of the Class—and particularly to members of the Medically-Vulnerable Subclass—yet have failed to take meaningful action to reduce the population of Elkton and mitigate the risk of harm to the Class members. Respondents are therefore deliberately indifferent to that risk and violate Class members' constitutional rights.

93. Elkton has neither the capacity nor the ability to comply with public health guidelines to manage the outbreak of COVID-19 currently ravaging the facility and absent relief measures requested herein, cannot provide for the safety of the Class.

94. Respondents' actions and inactions result in the confinement of members of the Class in a prison where Respondents have not followed and seem incapable of following public health guidance regarding social distancing and personal hygiene, and treating or preventing COVID-19 outbreaks and deaths, all of which violates Petitioners' rights to be free from deliberate

indifference to a substantial risk of serious harm—that is, to receive adequate treatment and medical care, and social distancing in the face of COVID-19.

95. By failing to implement controls necessary to contain the COVID-19 outbreak and stop preventable deaths at Elkton, Respondents have violated the Eighth Amendment rights of the Class and especially of the Medically-Vulnerable Subclass.

VII. REQUEST FOR RELIEF

96. Petitioners and Class Members respectfully request that the Court order the following:

a) Certification of this petition as a class action, for the reasons stated herein;

b) Pursuant to 28 U.S.C. § 2243 and issued "forthwith," either:

1. A temporary restraining order, preliminary injunction, permanent injunction, and/or writ of habeas corpus requiring Respondents to identify within six (6) hours of the Court's order, and submit to the Court a list of, all Medically-Vulnerable Subclass Members, and release all such persons within twenty-four (24) hours, with such release to include supports to ensure social distancing and other expert-recommended measures to prevent the spread of coronavirus; or
2. In the alternative, an order that Respondents show cause within, at most, three days why such a writ should not issue.

c) Following immediate release of all Medically-Vulnerable Subclass Members, a plan, to be immediately submitted to the Court and overseen by a qualified public health expert pursuant to Fed. R. Evid. 706, which outlines:

i. Specific mitigation efforts, in line with CDC guidelines, to prevent, to the degree possible, contraction of COVID-19 by every Class Member not immediately released;

ii. A housing and/or public support plan for any released Class or Subclass Members for whom testing confirms exposure to or infection with COVID-19 and who do not readily have a place to self-isolate for the CDC-recommended period of time (currently 14 days).

d) All further action required to release Class Members outside the Medically-Vulnerable Subclass to ensure that all remaining persons are incarcerated in Elkton under conditions consistent with CDC guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain six feet or more of space between them;

e) If immediate release is not granted on the basis of this Petition alone, then expedited review of the Petition, including oral argument, via telephonic or videoconference if necessary;

f) A declaration that Elkton's policies and practices violate the Eighth Amendment right against cruel and unusual punishment with respect to the Class;

g) Award Petitioners costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable laws; and

h) Any further relief this Court deems just, necessary, or appropriate.

Dated: April 13, 2020

Respectfully submitted,

/s/ David J. Carey

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GOVERNMENT EXHIBIT A

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

WILSON, ET AL,	*	
Petitioners	*	
v.	*	CASE NO. 4:20-CV-00794
WILLIAMS, ET AL,	*	JUDGE GWIN
Respondents	*	

DECLARATION OF SARAH A. DEES

I, Sarah A. Dees, do hereby declare, certify and state as follows:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons (BOP). I currently work as the Health Services Administrator at Federal Correctional Institution (FCI) Elkton in Lisbon, Ohio. I have held this position since January 5, 2020. I also serve as the Northeast Regional Paramedic, a position I have held since 2016. I have been employed by BOP since 2013. Throughout this declaration, when I refer to "FCI Elkton" generally, I am referring to both of the FCI Elkton institutions, the Federal Correctional Institution (FCI) and the Federal Satellite Low (FSL).

2. In my position as Health Services Administrator at FCI Elkton, I am responsible for coordinating comprehensive medical, dental, and mental health services of the highest quality while maintaining a clean, safe, and secure environment for nearly 2500 low security inmates and in addition to staff. The Health Services Department is staffed by a comprehensive team of BOP and Public Health Service health care workers, accompanied by professional contract staff committed to providing the highest standards of professionalism and dedication to the inmate population. FCI Elkton offers comprehensive ambulatory care addressing primary care, chronic

care, emergent care and acute care. Additionally, minor office-based procedures, diagnostic testing, specialty consultations and office based dental procedures are provided in house.

3. The FCI Elkton Clinical Staff consist of two Physicians, five Mid-level Providers, five Registered Nurses, one Infection Control/Improving Performance Nurse and two Medication Technicians, as well as one Pharmacists, two Dentists, and a Dental Hygienist. Currently medical coverage is offered 24 hours daily during the COVID-19 Pandemic. The Health Services Department is accredited by the American Correctional Association (ACA) and the Accreditation Association for Ambulatory Health Care (AAAHC).

4. With respect to COVID-19, specifically, I am involved on a daily basis in the identification, planning, and implementation of all Bureau directives for preventing the spread of COVID-19 at FCI Elkton, including FSL Elkton. Through this role, I have knowledge of both the Bureau's national directives relating to COVID-19 and the additional steps that FCI Elkton, specifically, has taken to combat COVID-19 within the facility. Accordingly, through the course of my official duties, I have personal knowledge regarding the numerous measures, discussed below, that have been implemented both Bureau-wide and at FCI Elkton in order to prevent and manage the spread of COVID-19.

I. NATIONAL STEPS TAKEN BY BUREAU TO ADDRESS COVID-191

5. Before discussing the steps being taken at FCI Elkton, specifically, I will first

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1 As illustrated below, the Bureau's national guidance has undergone a number of changes in response to the evolving threat. The Bureau has established a COVID-19 resource section on its public webpage which is available at: https://www.bop.gov/coronavirus/. This webpage includes updates on the Bureau's response to COVID-19 and positive COVID-19 tests among inmates and staff at Bureau institutions nationwide.

discuss the phases of the BOP's national response to the COVID-19 pandemic, which apply generally across all BOP institutions. As set forth below, the Bureau has taken—and is continuing to take—significant measures in response to the COVID-19 pandemic in order to protect the safety and security of all staff and inmates, as well as members of the public.

6. In January 2020, the Bureau became aware of the first identified COVID-19 cases in the United States and quickly took steps to prevent its introduction and spread in Bureau institutions. The Bureau's response, detailed below, has occurred over six distinct "phases" to date. The Bureau will continue to modify and adjust its response as circumstances change, and at the guidance and direction of worldwide health authorities.

A. Action Plan for COVID-19 – Phase One

7. In January 2020, the Bureau began Phase One of its Action Plan for COVID-19. Phase One activities included, among other things, seeking guidance from the BOP's Health Services Division regarding the COVID-19 disease and its symptoms, where in the United States infections were occurring, and the best practices to mitigate its transmission. *See* https://www.bop.gov/resources/news/20200313_covid-19.jsp. In addition, an agency task force was established to begin strategic planning for COVID-19 Bureau-wide. This strategic planning included building on the Bureau's existing procedures for pandemics, such as implementing its pre-approved Pandemic Influenza Plan. From January 2020 through the present, the Bureau has been coordinating its COVID-19 efforts with subject-matter experts both internal and external to the agency, including implementing guidance and directives from the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), the Office of Personnel Management (OPM), the Department of Justice (DOJ), and the Office of the Vice President. *See* https://www.bop.gov/resources/news/20200313_covid-19.jsp.

B. Action Plan for COVID-19 – Phase Two

8. On March 13, 2020, the Bureau implemented Phase Two of its Action Plan. Phase Two put into place a number of restrictions across all Bureau facilities over a 30-day period, to be reevaluated upon the conclusion of that time period. Specifically, the Bureau suspended the following activities for an initial period of 30 days, with certain limited exceptions: social visits; legal visits; inmate facility transfers; official staff travel; staff training; contractor access; Volunteer visits; and tours. *See* https://www.bop.gov/coronavirus/covid19_status.jsp.

9. During Phase Two, inmates were subjected to new screening requirements. Specifically, all newly arriving Bureau inmates were screened for COVID-19 symptoms and "exposure risk factors," including, for example, if the inmate had traveled from or through any high-risk COVID-19 locations (as determined by the CDC), or had had close contact with anyone testing positive for COVID-19. Asymptomatic inmates with exposure risk factors were quarantined, and symptomatic inmates with exposure risk factors were isolated and evaluated for possible COVID-19 testing by local Bureau medical providers.[2]

10. Staff were also subjected to enhanced health screening in areas of "sustained community transmission," as determined by the CDC, and at medical referral centers. On March 22, 2020, FCI Elkton implemented this enhanced screening for staff and contractors at that time. The enhanced screening measures required all staff to self-report any symptoms consistent with COVID-19, as well as any known or suspected COVID-19 exposure, and further required all staff to have their temperature taken upon entry into any Bureau facility.

11. Finally, in addition to the measures listed above, the Bureau implemented national

2 Throughout this declaration, "isolation" refers to a symptomatic inmate being confined to the FCI Visiting Room and FSL G-A Housing Unit. "Quarantine," on the other hand, refers to asymptomatic inmates who are confined to four areas at FCI Elkton: the gym, chapel, SHU, or FSL visiting room.

"modified operations" in order to maximize social distancing within Bureau facilities. These modifications included staggered meal and recreation times in order to limit congregate gatherings. Additionally, the Bureau established a set of quarantine and isolation procedures for known or potential cases of COVID-19.

12. FCI Elkton implemented this "modified operations" directive in a number of ways. For example, and among other things, FCI Elkton: (1) instituted "grab and go" meals for inmates, meaning that inmates were permitted to pick up pre-packaged meals at designated times, but had to return to their housing units in order to eat; scheduled staggered mealtimes, so that only a single housing unit (approximately 150 inmates) are moving within the facility at any particular time; and (2) Health Services pill line (controlled medication dispensing) and (3) commissary are accomplished during these times as well.

C. Action Plan for COVID-19 – Phase Three

13. On March 18, 2020, the Bureau implemented Phase Three of the COVID-19 Action Plan for Bureau locations that perform administrative services (i.e., non-prison locations), which followed DOJ, Office of Management and Budget, and OPM guidance for maximizing telework. In this phase, individuals who had the ability to telework and whose job functions did not require them to be physically present were directed to begin teleworking.

14. Additionally, as part of this phase, and in accordance with the Pandemic Influenza contingency plan, all cleaning, sanitation, and medical supplies were inventoried. *See* https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf.

D. Action Plan for COVID-19 – Phase Four

15. On March 26, 2020, the Bureau implemented Phase Four of its Action Plan. In Phase Four, the Bureau revised its preventative measures for all institutions. Specifically, the agency updated its quarantine and isolation procedures to require all newly admitted inmates to The Bureau, whether in areas of sustained community transmission or not, to be assessed using a screening tool and temperature check (further explained below). This screening tool and temperature check applied to all new intakes, detainees, commitments, prisoners returned on writ from judicial proceedings, and parole violators, regardless of their method of arrival. Thus, all new arrivals to any Bureau institution—even those who were asymptomatic—were placed in quarantine for a minimum of 14 days or until cleared by medical staff. Symptomatic inmates were placed in isolation until they tested negative for COVID-19 or were cleared by medical staff as meeting CDC criteria for release from isolation.

E. Action Plan for COVID-19 – Phase Five

16. On March 31, 2020, the Director of the Bureau ordered the implementation of Phase 5 of its COVID-19 Action Plan, which took effect on April 1, 2020. Specifically, the Director ordered the following steps to be taken:

A. For a 14-day period, inmates in every institution will be secured in their assigned cells/quarters to decrease the spread of the virus.

B. During this time, to the extent practicable, inmates should still have access to programs and services offered under normal operating procedures, such as mental health treatment and education.

C. In addition, the Bureau is coordinating with the United States Marshals Service (USMS) to significantly decrease incoming movement during this time.

D. After 14 days, this decision will be reevaluated and a decision made as to whether or not to return to modified operations.

E. Limited group gathering will be afforded to the extent practical to facilitate commissary, laundry, showers, telephone, and Trust Fund Limited Computer System (TRULINCS[3]) access.

F. Provided inmates access to programs and services offered under normal operating procedures, such as mental health treatment and education.

G. In addition, the Bureau coordinated with the United States Marshals Service (USMS) to significantly decrease incoming movement during this time.

See https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp.

F. Action Plan for COVID-19 – Phase Six

17. On April 13, 2020, the Director of the Bureau ordered the implementation of Phase 6 of its COVID-19 Action Plan. Specifically, the Director ordered an extension of the nationwide action in Phase 5, which applies to medical screening, limited inmate gathering, daily rounds, limited external movement, and fit testing, until May 18, 2020. *See* https://www.bop.gov/resources/news/pdfs/20200414_press_release_action_plan_6.pdf

18. Phase Six has been implemented at FCI Elkton.

II. STEPS TAKEN AT FCI ELKTON TO ADDRESS COVID-19

19. In addition to the steps taken at the national level, FCI Elkton itself has also taken a number of additional measures in response to the COVID-19 pandemic, including providing inmate and staff education; conducting inmate and staff screening; putting into place testing,

[3] TRULINCS is the internal Bureau computer and electronic message platform that inmates use to communicate with staff in the institutions and individuals in the community. Through this platform, inmates receive updates, notices, and can read inmate bulletins posted on the system by Bureau staff.

quarantine, and isolation procedures in accordance with Bureau policy and CDC guidelines; ordering enhanced cleaning and medical supplies; and taking a number of other preventative measures.

A. Inmate and Staff Education relating to COVID-19

20. From the outset of the COVID-19 pandemic, FCI Elkton officials have provided regular updates to inmates and staff regarding the virus and the Bureau's response, and have educated inmates and staff regarding measures that they themselves should take to stay healthy.

21. For example, in late February-Early March, Frequently Asked Questions bulletins were created from CDC and WHO guidelines to educate inmates and staff regarding the symptoms of COVID-19, instructing them to self-monitor for COVID-19 symptoms, and to immediately report such symptoms to sick call. The inmate population and staff members have been told best practices regarding personal hygiene to prevent the spread of COVID-19. The bulletins are posted in numerous locations around FCI Elkton.

22. Staff have also been trained to appropriately "don" and "doff" (off) Personal Protective Equipment (PPE) utilizing CDC guidelines found on the BOPs intranet and trainings with Health Services Staff.

B. Screening for COVID-19 at FCI Elkton

1. Inmates

23. When new inmates arrive, they are met by medical providers from the Health Services Department, who conduct an initial screening in a designated area at FCI Elkton separate from other staff and inmates. The medical providers wear PPE during the screening process.

24. Following this initial screening, new inmates are escorted to a quarantine unit at FCI Elkton. There, they are quarantined for 14 days to ensure that they do not develop any

symptoms consistent with COVID-19. If they do have symptoms consistent with COVID-19 infection, they are placed in a separate isolation unit. The isolation unit is used for all symptomatic inmates and inmates with a positive COVID-19 test. In these quarantine and isolation units, all staff must wear PPE; inmates in quarantine or isolation are required to wear a surgical mask.

25. After the expiration of 14 days, and upon medical clearance, inmates may be released into the general population.

26. This initial screening procedure at FCI Elkton allows for screening to occur in a controlled environment, and further ensures the rest of the inmate population are not exposed to newly-arrived inmates until they are properly screened and cleared by Health Services Department medical providers.

27. In addition to screening incoming inmates, FCI Elkton is also taking a number of measures to screen its current resident inmate population.

28. FCI Elkton screened inmates for elevated temperatures daily from March 20, 2020 through April 12, 2020. This screening was discontinued in favor of inmate self-reporting.

29. Inmates who self-report COVID-19 symptoms are screened for symptoms of COVID-19 (including fever, cough, and shortness of breath), as well as for "exposure risk factors," including whether the inmate has had close contact with anyone diagnosed with COVID-19 in the past 14 days. The screening takes place in a single, controlled area separate and apart from other inmates and prison staff.

30. The Health Services Department reviewed inmate medical records in order to determine which individuals at FCI Elkton were considered "high risk" for COVID-19 pursuant to CDC guidelines. These guidelines can be found at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html. Per CDC guidance, "high-risk"

individuals include those over 65 and those with significant underlying medical conditions, such as chronic lung disease, moderate to severe asthma, liver disease, and diabetes.

31. In order to identify which inmates at FCI Elkton should be considered "high risk," staff searched the Bureau's medical records for (1) all inmates aged 65 and over; and (2) all inmates who have been diagnosed with a condition identified by the CDC as being "high risk." Like all inmates at FCI Elkton these inmates continue to be screened for symptoms related to COVID-19 and temperatures.

32. FCI Elkton is also conducting enhanced screening for all inmates with ongoing work details, such as food service and cleaning orderlies. These functions are considered to be "essential" by FCI Elkton. Each of these inmates is screened for illness both before and after each of their assigned work details. This includes being screened for any symptoms of illness and having their temperature taken. Furthermore, many cleaning orderlies are currently assigned only to the units in which they already reside and thus do not interact with staff or inmates in other units during the course of performing their duties.

33. All inmates are encouraged to self-monitor and to report symptoms of illness to unit staff either orally or via a written request to staff (commonly referred to as a "cop-out" within bureau institution).

34. Any inmate who presents with symptoms consistent with COVID-19 will be evaluated by a medical provider in the Health Services Department. Based upon this evaluation, a determination will be made whether isolation and/or testing is appropriate. As noted above, certain units at FCI Elkton have been designated as the isolation unit for inmates who are symptomatic and/or test positive for COVID-19.

35. FCI Elkton medical providers are prioritizing immediate medical care for anyone

who claims symptoms indicative of a COVID-19 infection.

2. Staff and Visitors

36. Since March 22, 2020, all individuals entering FCI Elkton (including staff, delivery drivers, or any other visitors) must undergo a health screening prior to entry, the screening occurs while the individual is in their vehicle. This includes having their temperature taken and being asked a number of health screening questions based on the bureaus guidance to evaluate their risk of exposure, as well as whether they have been experiencing any symptoms of illness.

37. The individuals conducting this health screening are authorized to deny entry to any individual if he or she has a body temperature of 99 degrees Fahrenheit, or above, or reports other symptoms consistent with COVID-19 (although it was recommended that they consult with FCI Elkton medical providers in advance of the decision to deny entry).

38. FCI Elkton employees have also been educated regarding the importance of staying home if they are feeling ill, and are required to self-report any COVID-19 exposure (known or suspected) as well as any positive COVID-19 test. If a staff member is tested for COVID-19, they are not permitted to return to work until after receiving the results of the test.

D. COVID-19 Testing at FCI Elkton

39. The CDC has identified four "priority levels" for testing individuals with a suspected COVID-19 infection. Priority levels one through three include hospitalized patients and healthcare workers with symptoms (Priority Level 1); symptomatic patients in long-term care facilities, individuals 65 years or older, individuals with underlying conditions, and first responders (Priority Level 2); and symptomatic critical infrastructure workers, individuals who do not meet any of the criteria in Priority Levels 1 or 2, healthcare workers and first responders, and individuals with mild symptoms in communities experiencing high numbers of COVID-19 hospitalizations

(Priority Level 3). The fourth, or non-priority level, is for individuals without symptoms.

40. The CDC has made clear that "[n]ot everyone needs to be tested for COVID-19," and "decisions about testing are at the discretion of state and local health departments and/or individual clinicians." *See* coronavirus.gov "Priorities for Testing Patients with Suspected COVID-19 Infection"

41. At FCI Elkton, there are not enough tests to test every inmate. Consequently, the decision whether to test an inmate for COVID-19 is made by Bureau medical providers based on a number of criteria, including but not limited to: (1) the nature and severity of the symptoms; (2) the inmate's potential exposure to COVID-19; (3) whether the inmate is considered "high-risk," and (4) whether the inmate is on a work detail, such as food service, that requires the inmate to interact with other inmates or staff.

42. As of April 15, 2020, 39 FCI Elkton inmates have tested positive for COVID-19. There are 34 staff members who have tested positive for COVID-19. There have been 5 inmate deaths.

43. FCI Elkton received 55 COVID-19 testing swabs and medical supplies at hand to test inmates for COVID-19. FCI Elkton as of April 15, 2020 has 18 COVID-19 testing swabs remaining. FCI continues to work diligently to obtain as many COVID-19 tests as possible. In addition, FCI Elkton has 25 Abbott rapid screening COVID-19 testing cassettes, and anticipates receiving 25 additional Abbott testing cassettes per week.

E. Additional Measures to Combat COVID-19

44. In addition to the above steps, FCI Elkton has taken a number of additional measures to combat COVID-19.

45. All inmates have access to sinks, water, and soap at all times. All inmates

may receive new soap weekly. Inmates will receive additional soap upon request. For inmates without sufficient funds to purchase soap in the commissary, soap is provided at no cost to the inmate.

46. All common areas in inmate housing units are cleaned daily, and are typically cleaned by inmate orderlies multiple times throughout the day, with a designated disinfectant that kills human coronavirus. FCI Elkton has made this disinfectant available to all inmates so that they may use it to clean their own cells on a regular basis. Common areas outside inmate living areas, including the FCI Elkton, lobby, bathrooms, cafeteria, etc., are also cleaned with the same disinfectant on a daily basis (and often multiple times per day).

47. Each housing unit has been stocked with cleaning supplies for use by inmate orderlies and other inmates to clean both the common areas and their cells on a daily basis.

48. Correctional staff are required to disinfect all common equipment, such as keys and radios, upon obtaining these items from the supply room and again upon their return. Staff also have regular, consistent access to soap and hand sanitizer.

49. Correctional staff have been provided PPE to be used in appropriate locations throughout FCI Elkton such as quarantined areas, isolation units, and screening sites. FCI Elkton has sufficient PPE on hand, including N-95 respirator masks, surgical masks, medical gloves, gowns, and foot coverings to meet its current and anticipated needs, as well as the ability to order additional PPE should the need arise.

50. All inmates and staff were provided protective face masks for daily use.

51. FCI Elkton uses isolation to separate inmates who present with symptoms consistent with COVID-like illness from quarantined asymptomatic or general population inmates. Inmates have surgical masks to wear when interacting with staff or leaving the assigned

cell and their proximity to staff and other inmates is minimized. Medical staff determine if COVID-19 testing is necessary based on applicable guidelines and community standards. If the inmate's condition merits hospitalization, the inmate will be transported to a local hospital.

52. FCI Elkton uses quarantine to separate asymptomatic inmates who have been in contact with symptomatic inmates during the incubation period, which is up to 14 days for COVID-19. Inmates are housed together during this 14-day period with other asymptomatic inmates in a housing unit. Steps are taken to not add or introduce new inmates to a quarantine housing unit after the 14-day quarantine clock has started. At the end of the 14-day period, the inmates may be released from quarantine if no inmates develop COVID-19 symptoms or are diagnosed with COVID-19. If additional inmates present with symptoms during the incubation period, these symptomatic inmates are isolated and the 14-day quarantine period begins anew. Inmates receive twice daily temperature checks and if any symptoms are reported, they are documented. If an inmate becomes symptomatic or has a temperature of greater than or equal to 100.4 F, the inmate is placed in isolation.

53. In addition to the areas designated for quarantine and isolation, FCI Elkton has a "bridge-unit" staffed by the Ohio National Guard. The bridge-unit acts as a step down unit for inmates returning from hospitalization for COVID-19 symptoms. The bridge unit has had a range of patients from 2-15 at any one time.

54. Inmates at FCI Elkton are housed in 150-man housing units. Restrictions are in place to maintain separation between housing units. For example, only one housing unit is released to the cafeteria for "grab and go" meal service. The next unit is not released until the previous unit has returned to their housing quarters.

III. CONCLUSION

55. In sum, the Bureau and FCI Elkton take the COVID-19 pandemic extremely seriously and have implemented numerous measures to proactively combat the spread of this disease to staff members and the inmate population. The various phases of the Bureau's Action Plan have been designed and implemented in a systemic manner both nationally and at FCI Elkton in order to mitigate the spread of COVID-19.

56. In addition to the steps taken at the national level, FCI Elkton itself has taken a number of measures to prevent the introduction and spread of COVID-19 in the complex.

57. The Bureau and FCI Elkton remain flexible in their ability to receive guidance from the CDC and other health organizations and to modify their actions to best respond to this pandemic, according to the quickly shifting needs on the ground.

I declare that the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746 this April 16, 2020.

RESPECTFULLY SUBMITTED,

SARAH A. DEES
Health Services Administrator
FCI Elkton

GOVERNMENT EXHIBIT B

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

WILSON, ET AL,	*	
Petitioners	*	CASE NO. 4:20-CV-00794
v.	*	
WILLIAMS, ET AL,	*	JUDGE GWIN
Respondents	*	

DECLARATION OF KRISTY COLE

I, Kristy Cole, do hereby declare, certify and state as follows:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons (BOP). I currently work as the Case Management Coordinator (CMC) at Federal Correctional Institution (FCI) Elkton in Lisbon, Ohio. I have held this position since September, 2007. I have been employed by BOP since March, 1997.

2. The CMC's Office is dedicated to providing oversight of case management activities within the institution. This office works directly with the unit teams, providing training and disseminating information to insure that the institution is in compliance with Correctional Programs' policies and procedures. The CMC provides coordination and oversight of many programs within the institution, including, but not limited to, Central Inmate Monitoring, Financial Responsibility, Admission and Orientation, Inmate Performance Pay, Victim/Witness Program and Adam Walsh Act compliance. The CMC also oversees the Correctional Systems Department.

3. FCI Elkton is a low security institution designed to house approximately 2,000 inmates at the main facility and approximately 500 inmates at the adjacent Federal Satellite Low (FSL). The main FCI facility and FSL are separate facilities and the inmate populations do not interact.

For purposes of this declaration, when I refer to "FCI Elkton", I am referring to both the main Federal Correctional Institution (FCI) facility and the Federal Satellite Low (FSL), unless otherwise specified.

4. FCI Elkton offers specialized services for sex offenders, specifically the Sex Offender Management Program.

I. COMPASSIONATE RELEASE/ REDUCTION IN SENTENCE PROCEDURES.

5. BOP does not have the authority to provide inmates with "early release." A reduction of an inmate's federal sentence can only be accomplished by an Article III judge, and specifically, the inmate's sentencing judge. However, upon an inmate's request, the Director of BOP may make a motion to an inmate's sentencing court to reduce a term of imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(1)(A). This process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g).* (This BOP program statement and all other program statements and operations memoranda cited herein are available at www.bop.gov via the Resources link). BOP invokes these statutory authorities in "extraordinary or compelling circumstances," which could not have reasonably have been foreseen by the court at the time of sentencing. The First Step Act, codified at 18 U.S.C. § 3582, specifies that an inmate may file a Motion for Reduction of Sentence directly to the sentencing court after exhaustion of administrative remedies, or 30 days from the date the Warden receives such a request from the inmate, whichever is earlier. The determination of release is ultimately the decision of the sentencing court.

6. Upon information and belief, within the past 15 days, approximately 550 FCI Elkton inmates have submitted a request for Compassionate Release to BOP. Of the four named Petitioners in this case, only Mr. Nelson has submitted a request for Compassionate Release to BOP. That request is under consideration. To date, 7 inmates have been denied Compassionate Release by the Warden. Packets for another 36 inmates are currently being reviewed by Health Services to determine if they meet the criteria for Compassionate Release.

II. INMATE FURLOUGHS.

7. BOP also has the authority to temporarily release from custody (or "furlough") an inmate pursuant to 18 U.S.C. § 3622 and BOP Program Statement 5280.09, *Inmate Furloughs*. The inmate must meet certain requirements, and the temporary release from custody is under carefully prescribed conditions. It is not a means to shorten a sentence. Emergency furloughs are only being used for those individuals who have been medically screened, considered to be at risk, and on the advice of medical professionals. The individuals then need to be quarantined for 14 days, if they have viable release residences. No FCI Elkton resident has met this criterion at this time.

III. BOP'S AUTHORITY TO PLACE INMATES ON HOME CONFINEMENT.

8. Although BOP lacks the authority to release an inmate from his sentence, BOP has the authority to transfer a prisoner to home confinement for the remainder of his or her sentence pursuant to provisions and limitations set forth 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541. *See also* BOP Program Statement 7320.01, *Home Confinement* and BOP Operations Memorandum, *Home Confinement under the First Step Act*, both of which are available on www.bop.gov via the Resources link.

A. BOP'S AUTHORITY UNDER 18 U.S.C. § 3624(c)(2).

9. Under 18 U.S.C. § 3624(c)(2), BOP has the exclusive authority to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. BOP, shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under section 3624(c)(2). During the inmate's incarceration, BOP institution staff are responsible for making referrals to Residential Reentry Centers (RRCs) or home confinement typically within 17-19 months of the prisoner's release date.

10. In order to appropriately evaluate an individual for home confinement, the staff assesses the risk of criminal activity in the community and determines whether there is an appropriate home where the individual can be placed. This is a time and resource intensive process. Upon receipt of the staff assessment, BOP reviews the assessment and makes the final determination regarding home confinement. If approved, absent any disciplinary infractions, the inmate would serve the remainder of his or her sentence on home confinement.

B. BOP'S AUTHORITY UNDER 34 U.S.C. § 60541.

11. Under 34 U.S.C. § 60541, BOP may release some or all eligible elderly offenders and eligible terminally ill offenders from BOP facilities to home detention, upon written request from either BOP staff, or an eligible elderly offender or eligible terminally ill offender. The statute defines "eligible elderly offender" to include an inmate who is not less than 60 years of age; who is serving a term of imprisonment that is not life imprisonment based on a conviction for an offense or offenses that do not include any crime of violence; has served two-thirds of the term of imprisonment to which the offender was sentenced; who has not been convicted in the

past of any Federal or State crime of violence, sex offense, or other offense referenced in the statute; who has not been determined by BOP to have a history of violence, or of engaging in conduct constituting a sex offense or other excluded offense; who has not escaped, or attempted to escape from a BOP institution; whose release to home detention will result in a substantial net reduction of costs to the Federal Government; and who has been determined by BOP to be at no substantial risk of engaging in criminal conduct or of endangering any person or the public if released to home detention.

12. "Eligible terminally ill offender" is defined as an offender in the custody of BOP who meets all of the above-stated criteria except the age restriction, and has been determined by a medical doctor approved by BOP (i.e., Clinical Director of the local institution) to be in need of care at a nursing home, intermediate care facility, or assisted living facility, or diagnosed with a terminal illness.

13. In order to appropriately evaluate an elderly or terminally ill individual for home confinement, BOP assesses the risk of criminal activity in the community and determines whether there is an appropriate home where the individual can be placed. As mentioned earlier, this is a time and resource intensive process.

14. If approved, absent any disciplinary infractions, the inmate would serve the remainder of his or her sentence on home confinement.

15. Pursuant to the statute, a violation by an eligible elderly or terminally ill offender of the terms of home detention (including the commission of another Federal, State, or local crime) shall result in the removal of that offender from home detention and the return of that offender to an appropriate BOP institution, as determined by BOP.

16. Inmates that do not meet the criteria for the elderly home confinement can be placed on home confinement under BOP's general authority to do so, 18 U.S.C. § 3624(c)(2).

17. In light of the COVID-19 pandemic, BOP is maximizing its authority to place inmates on home confinement and is expediting the process as much as possible in furtherance of the Attorney General's memorandum dated March 26, 2020, and BOP memoranda dated April 3, 2020, and April 15, 2020. These documents directed BOP to prioritize the use of its statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic, and provided further guidance concerning criteria to be used.

C. THE CARES ACT.

18. The "Coronavirus Aid, Relief, and. Economic Security Act" (CARES) Act, Pub.L. 116–136, authorizes the Attorney General to expand the cohort of inmates who can be considered for home confinement upon his finding of emergency conditions which are materially affecting the function of BOP. On April 3, 2020, the Attorney General made that finding and authorized the Director of BOP to immediately maximize appropriate transfers to home confinement of all appropriate inmates held at FCI Oakdale, FCI Danbury, FCI Elkton, and other similarly situated BOP facilities where COVID-19 is materially affecting operations.

19. Pursuant to the Attorney General's direction, FCI Elkton receives rosters of inmates to be considered for home confinement. That guidance mandates that the following criteria should be met when reviewing and referring inmates for home confinement: 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 for the inmate; the inmate's Mental Health Care Level is less than CARE-MH 4; the inmate's recidivism risk score is Minimum; the inmate has had no incident reports in the past 12

months (regardless of severity level); the inmate is a U.S. citizen; and the inmate has a viable release plan. As a result of FCI Elkton's higher population of inmates convicted of sex offenses, many FCI Elkton inmates are ineligible for home confinement.

20. To date, six inmates have been approved for transfers to home confinement. The inmates receiving transfers must quarantine for fourteen days prior to transfer. Five of the six approved transfers have dates for transfer next week. Two more inmates are currently being vetted by the Residential Reentry Manager. Four inmates are in the process of being sent to the Residential Reentry Manager for consideration. To date, 32 inmates have been denied home confinement as not meeting the stated criteria for a variety of reasons.

21. Concerning the four named Petitioners in this case, two have requested and been considered for home confinement. Mr. Bellamy is ineligible because he has active warrants from New Jersey. Mr. Nieves is ineligible due to a history of serious violence (assault with a baseball bat). Although he has not requested home confinement, Mr. Wilson is not a candidate because his recidivism risk score is too high; he has a Low recidivism risk score and a Minimum risk score is required. Additionally, although he has not requested home confinement, Mr. Nelson is not a candidate because he has a history of violence (unlawful discharge of a firearm) and his recidivism risk score is too high; he has a Medium recidivism risk score and a Minimum risk score is required.

IV. ELKTON FACILITY.

22. FCI Elkton consists of three buildings containing six dorm-style housing units. There are approximately 300 inmates in each housing unit. Each housing unit is divided into an A side and a B side. The A and B sides are separated and the inmates do not intermingle. The

FSL is one building with two dorm-style housing units. Each housing unit is divided into an A side and a B side. There are approximately 250 inmates in each FSL unit.

I declare that the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746 this April 17, 2020.

RESPECTFULLY SUBMITTED,

KRISTY COLE
Case Management Coordinator
FCI Elkton

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

WILSON, ET AL,	*	
	*	
Petitioners	*	CASE NO. 4:20-CV-00794
	*	
v.	*	
	*	
WILLIAMS, ET AL,	*	JUDGE GWIN
	*	
Respondents		

DECLARATION OF KRISTY COLE

I, Kristy Cole, do hereby declare, certify and state as follows:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons (BOP). I currently work as the Case Management Coordinator (CMC) at Federal Correctional Institution (FCI) Elkton in Lisbon, Ohio. I have held this position since September, 2007. I have been employed by BOP since March, 1997.

2. The CMC's Office is dedicated to providing oversight of case management activities within the institution. This office works directly with the unit teams, providing training and disseminating information to insure that the institution is in compliance with Correctional Programs' policies and procedures. The CMC provides coordination and oversight of many programs within the institution, including, but not limited to, Central Inmate Monitoring, Financial Responsibility, Admission and Orientation, Inmate Performance Pay, Victim/Witness Program and Adam Walsh Act compliance. The CMC also oversees the Correctional Systems Department. The CMC Office at FCI Elkton has two staff members: myself and an Assistant Case Management Coordinator.

GOVERNMENT EXHIBIT A

THE BOP'S DESIGNATION AUTHORITY UNDER 18 U.S.C. §3621(b)

3. Attached to this declaration is a true and correct copy of BOP Program Statement 5100.08, Inmate Security Designation and Custody Classification (the "Program Statement").

4. The BOP issued the Program Statement to provide guidance to staff on how to apply Title 18 United States Code (U.S.C.) § 3621(b), which states in pertinent part:

> **The Bureau of Prisons shall designate the place of the prisoner's imprisonment.** The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering–
>
> (1) the resources of the facility contemplated;
> (2) the nature and circumstances of the offense;
> (3) the history and characteristics of the prisoner;
> (4) any statement by the court that imposed the sentence –
> (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
> (B) recommending a type of penal or correctional facility as appropriate; and
> (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

See 18 U.S.C. § 3621(b) (Emphasis added).

OVERVIEW OF THE BOP'S DESIGNATION PROCESS

5. The BOP created the Designation and Sentence Computation Center (DSCC) to centralize all determinations regarding inmate sentence computations and institution placements. The DSCC is located in Grand Prairie, Texas.

6. Decisions regarding initial institution placements are referred to as designations.

7. DSCC is divided into 18 teams of staff, each identified by a name. Seventeen of these teams are organized by sentencing district. Those 17 teams are responsible for all sentence computations and classification of defendants from their sentencing districts. The remaining

team is Hotel Team. It is responsible for designating the facility where those defendants will serve their criminal sentences

8. Once a defendant is sentenced to a federal term of imprisonment, staff of the United States Probation Office (USPO) upload documents to an electronic system known as "eDesignate". For cases involving original sentencing to a term of imprisonment, these documents typically include the Judgement in a Criminal Case and the Presentence Investigation Report (PSR). For cases involving sentencing to a term of imprisonment based upon revocation of a term of supervised release, these documents typically include the order by which the court revoked supervised release and imposed a term of imprisonment, along with the revocation petition, which BOP staff also refer to as the violation report.

9. Once USPO staff have uploaded the relevant documents, the case is transferred on eDesignate to the United States Marshals Service (USMS). Typically, USMS staff then upload a copy of the defendant's USM-129, *Individual Custody/Detention Report*, to eDesignate and then use eDesignate to transfer the case to the BOP and to request that the DSCC either provide a release date for the defendant (in cases where the defendant received a short sentence and there is not sufficient time to transport him to a facility before his release date) or designate the defendant to a facility to serve the term of imprisonment.

10. Once a case has been transferred from the USMS to the BOP, staff of the DSCC team assigned to the defendant's sentencing district will open the case and begin the designation process. When the process has been completed, DSCC staff respond to the USMS request through eDesignate, usually by notifying the USMS where the inmate will serve the term of imprisonment. The USMS then transports the inmate to the designated facility or, if the

defendant has been allowed to voluntarily surrender, the USMS will notify the defendant of the facility at which he must appear on the scheduled date.

FACTORS IN THE DESIGNATION PROCESS

11. When making designations about inmate designations, the BOP follows the guidance contained in the Program Statement which provides:

> This Program Statement provides policy and procedure regarding the Bureau of Prisons inmate classification system. The classification of inmates is necessary to place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the Bureau's mission to protect society.
> The Bureau's classification, designation and redesignation procedures are consistent with the statutory authority contained in 18 U.S.C. § 3621(b). All classification, designation and redesignation decisions are made without favoritism given to an inmate's social or economic status.

PS 5100.08 at page 1.

12. Consistent with the Program Statement, DSCC staff on the team assigned to the defendant's sentencing district consider the following primary factors when making a designation decision: (1) the level of security and supervision the inmate requires; (2) the level of security and staff supervision the institution is able to provide; and (3) the inmate's program needs. *PS 5100.08 at Chapter 1, page 1.*

13. DSCC staff also consider additional factors including, but not limited to:

- The inmate's release residence;
- The level of overcrowding at an institution;
- Any security, location or program recommendation made by the sentencing court;
- Any Central Inmate Monitoring issues (see Program Statement Central Inmate Monitoring Program);

- Any additional security measures to ensure the protection of victims/witnesses and the public in general; and,
- Any other factor(s) which may involve the inmate's confinement; the protection of society; and/or the safe and orderly management of a BOP facility.

PS 5100.08 at Chapter 1, pages 1-2.

14. The designation process involves two parts. First, DSCC staff on the team responsible for the inmate's sentencing district classify the inmate according to a security level (minimum, low, medium or high) and assign the inmate a custody level (community, out, in, or maximum). Second, DSCC staff on Hotel Team designate the inmate to a particular facility commensurate with their security level and custody level and the factors identified below.

15. An inmate's security level represents the level of security the inmate requires. It is based on the Criminal History Points as noted in the Presentence Investigation Report, and, if these points are contested, as ruled upon by the Court in the Statement of Reasons. The BOP has created Public Safety Factors and Management Variables which may adjust the inmate's security level up or down depending on the BOP's professional judgment. *PS 5100.08 at Chapter 5.*

16. An inmate's custody classification represents the amount of staff supervision the inmate requires. It is tied to an inmate's security level. *PS 5100.08 at Chapter 1, page 2 and Chapter 2, page 2.*

THE REDESIGNATION PROCESS

17. Under some circumstances, the BOP may transfer an inmate to a different institution following initial designation. This is referred to as a redesignation. Reasons for requesting redesignation include, but are not limited to disciplinary or closer supervision reasons, institution

classification reasons, institution adjustment reasons, medical/psychological reasons, programming or training reasons, or because an inmate is nearing release. *PS 5100.08 at Chapter 7, pages 1-12.*

18. If institution staff believe an inmate is no longer appropriate for his current institution based on any of the factors identified in Chapter 7 of the Program Statement, they submit a redesignation request to the DSCC. Ordinarily, the DSCC will decide whether to grant or deny the request. DSCC staff will consider redesignation requests using the same factors outlined in paragraphs 24-26. In deciding whether to grant or deny a redesignation request, DSCC staff also carefully review the inmate's institutional adjustment and program performance. *PS 5100.08 at Chapter 1, page 3 and Chapter 7.*

19. If the request is granted, the DSCC will designate the inmate to another facility. If the request is denied, the inmate will remain at the same facility.

THE BOP'S AUTHORITY TO PLACE INMATES ON HOME CONFINEMENT

20. The BOP's statutory authority to transfer prisoners to home confinement rests in 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541. The BOP's policy and procedures regarding home confinement are outlined in BOP Program Statement 7320.01, *Home Confinement* and BOP Operations Memorandum, *Home Confinement under the First Step Act*, both of which are available on www.bop.gov via the Resources tab. Both statutes set forth certain limitations with respect to the BOP's transfer authority. *See* 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541. However, pursuant to the Attorney General's directives in light of the COVID-19 pandemic, dated March 26, 2020, and April 3, 2020, *infra*, and given the surge in positive cases at select sites, the BOP began immediately reviewing all inmates who have COVID-19 risk factors, as

described by the Centers for Disease Control and Prevention (CDC), to determine which inmates are suitable for home confinement. Since the release of the Attorney General's original memorandum dated March 26, 2020, the BOP is prioritizing transfers to home confinement of all suitable inmates as an appropriate response to the COVID-19 pandemic.

The Attorney General's Memorandum for the Director of the Bureau of Prisons, dated March 26, 2020

21. On March 26, 2020, the Attorney General issued a Memorandum for the Director of the Bureau of Prisons (the March 26, 2020, Memorandum) to ensure that, in light of the COVID-19 pandemic, BOP utilizes home confinement, where appropriate, to protect the health and safety of BOP personnel and people in BOP's custody. Pursuant to the March 26, 2020, Memorandum, BOP is prioritizing the use of its statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic. It was noted in the March 26, 2020, Memorandum that 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.

22. In assessing whether home confinement should be granted pursuant to the March 26, 2020, Memorandum, BOP considers the totality of circumstances for each individual inmate, the statutory requirements for home confinement, and the following non-exhaustive list of discretionary factors:

a. The age and vulnerability of the inmate to COVID-19, in accordance with the CDC guidelines;

b. The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities;

c. 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;

d. The inmate's score under PATTERN (the Prisoner Assessment Tool Targeting Estimated Risk and Need),[1] with inmates who have anything above a minimum score not receiving priority treatment;

e. 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;

f. 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 confinement. Other serious offenses weigh heavily against consideration for home confinement.

23. In addition to setting forth these factors, the March 26, 2020 Memorandum stated that 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 risk of COVID-19 at the location in which the inmate seeks home confinement. The BOP will not grant home confinement to inmates when doing so is likely to increase their risk of contracting

[1] For more information on PATTERN, please visit www.bop.gov via Inmates/ First Step Act tab.

COVID-19. The BOP will grant home confinement only when it has determined -- based on the totality of circumstances for each individual inmate -- that transfer to home confinement is likely not to increase the inmate's risk of contracting COVID-19.

24. Moreover, the March 26, 2020 Memorandum noted that for the protection of the public, any inmate to whom BOP grants home confinement is to be placed in a mandatory 14-day quarantine before that inmate is discharged from a BOP facility to home confinement. Inmates transferred to home confinement under this prioritized process are also subject to location monitoring devices and, where a court order is entered, are subject to supervised release.

The CARES Act and the Attorney General's Memorandum for the Director of the Bureau of Prisons, dated April 3, 2020

25. The Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law No. 116-236 (enacted March 27, 2020), authorizes the Attorney General to expand the cohort of inmates who can be considered for home confinement upon his finding of emergency conditions which are materially affecting the function of the BOP. On April 3, 2020, the Attorney General made that finding, and in a Memorandum for the Director of the Bureau of Prisons (April 3, 2020 Memorandum), authorized the Director to immediately maximize appropriate transfers to home confinement of all appropriate inmates held at BOP facilities where the Director determines that COVID-19 is materially affecting operations.

26. The April 3, 2020 Memorandum specifically stated that the BOP must move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of FCI Oakdale, FCI Danbury, and FCI Elkton, and to give priority to those institutions, and others

similarly affected, as the BOP continues to process the remaining inmates who are eligible for home confinement under pre-CARES Act standards.

27. The April 3, 2020 Memorandum directed that the BOP give priority in implementing the new standards to the most vulnerable inmates at the most affected facilities and was explicit that the BOP should begin implementing this directive immediately at the identified facilities and any other facilities at risk of similar problems. The April 3, 2020 Memorandum stated that the review should include a much broader pool of at-risk inmates—not only those who were eligible for transfer prior to the Attorney General exercising his authority under the CARES Act.

28. For inmates deemed suitable candidates for home confinement, the April 3, 2020 Memorandum directed the BOP to immediately process these inmates for transfer and then immediately transfer them following a 14-day quarantine at an appropriate BOP facility. The April 3, 2020 Memorandum further authorized BOP to, in appropriate cases, require that the inmate being transferred undergo his or her 14-day quarantine in the residence to which the inmate is being transferred rather than in the BOP facility from which the inmate is being transferred. The assessment of all inmates remains guided by the factors in the March 26, 2020 Memorandum.

29. The April 3, 2020 Memorandum also recognized that the BOP has limited resources to monitor inmates on home confinement and that the U.S. Probation Office is unable to monitor large number of inmates in the community, and authorized the BOP to transfer inmates to home confinement even if electronic monitoring is not available, so long as it determines in every instance that doing so is appropriate and consistent with the obligation to protect public safety.

30. Lastly, the April 3, 2020 Memorandum stated that it is essential for the BOP to continue making determinations for home confinement in a careful and individualized way that remains faithful to the duty of protecting the public and law enforcement officers.

The BOP's Implementation of the March 26, 2020 and the April 3, 2020 Memoranda

31. The BOP is devoting all available resources to executing the Attorney General's directives, with such resources tailored and prioritized according to the needs of individual institutions across the country. The BOP is assessing the inmate population to determine which inmates would be appropriate for transfer under this priority program. The BOP is then processing those inmates for transfer as expeditiously as possible.

32. The BOP is also frequently updating its public website to provide information and responses to frequently asked questions regarding its response to the COVID-19 pandemic, including providing information regarding its implementation of the Attorney General's directives.

33. The BOP has increased home confinement by 55.2% since March 2020, and is continuing to screen inmates for home confinement. Since the March 26, 2020 Memorandum instructing the BOP to prioritize home confinement as an appropriate response to the COVID-19 pandemic, the BOP has placed an additional 1,576 inmates on home confinement. *See* www.bop.gov (last viewed on April 27, 2020).

34. Inmates do not need to apply to be considered for home confinement. BOP staff are reviewing all inmates to determine which ones meet the criteria established by the Attorney General. While all inmates are being reviewed for suitability for home confinement, any inmate who believes he or she is eligible may request to be reviewed for home confinement and provide a release plan to his or her Case Manager.

35. It should be noted that for public safety reasons, in accordance with the March 26, 2020 Memorandum, and to ensure BOP is deploying its limited resources in the most effective manner, the BOP is currently assessing a number of factors to ensure that an inmate is suitable for home confinement including, but not limited to, reviewing the inmate's institutional discipline history for the last twelve months; ensuring that the inmate has a verifiable release plan; verifying that the inmate's primary or prior offense is not violent, a sex offense, or terrorism related; and confirming the inmate does not have a current detainer.

36. In addition, and in order to prioritize its limited resources, BOP has generally prioritized for home confinement those inmates who have served a certain portion of their sentences, or who have only a relatively short amount of time remaining in those sentences. While these priority factors are subject to deviation in BOP's discretion in certain circumstances and are subject to revision as the situation progresses, BOP is at this time prioritizing for consideration those inmates who either (1) have served 50% or more of their sentences, or (2) have 18 months or less remaining in their sentences and have served 25% or more of their sentences. As BOP processes the inmates eligible for home confinement under these criteria and learns more about the COVID-19 pandemic and its effect on BOP facilities, it is assessing whether and how to otherwise prioritize consideration.

37. If the incarcerated individual does not qualify for home confinement under BOP criteria, an inmate may be reviewed for placement in a Residential Reentry Center and home confinement at a later stage in accordance with applicable laws and BOP policies.

Measures to Protect Inmate and Staff Safety

38. In response to the pandemic, BOP has taken significant measures to protect the health of the inmates in its charge. These steps include, but are not limited to the following:

a. Beginning April 13, 2020, BOP implemented Phase VI of the Action Plan, which currently governs operations. The current modified operations plan requires that all inmates in every BOP institution be secured in their assigned cells/quarters for a period of at least 14 days, in order to stop any spread of the disease. Only limited group gathering is afforded, with attention to social distancing to the extent possible, to facilitate commissary, laundry, showers, telephone, and computer access. Further, BOP has severely limited the movement of inmates and detainees among its facilities. Though there will be exceptions for medical treatment and similar exigencies, this step as well will limit transmissions.

b. All staff and inmates have been and will continue to be issued an appropriate face covering and strongly encouraged to wear the face covering when in public areas when social distancing cannot be achieved.

c. Every newly admitted inmate is screened for COVID-19 exposure risk factors and symptoms. Asymptomatic inmates with risk of exposure are placed in quarantine. Symptomatic inmates are placed in isolation until they test negative for COVID-19 or are cleared by medical staff as meeting CDC criteria for release from isolation. In addition, in areas with sustained community transmission and at medical centers, all staff are screened for symptoms. Staff registering a temperature of 100.4 degrees Fahrenheit or higher are barred from the facility on that basis alone. A staff member with a stuffy or runny nose can be placed on leave by a medical officer.

d. Contractor access to BOP facilities is restricted to only those performing essential services (e.g. medical or mental health care, religious, etc.) or those who perform necessary maintenance on essential systems. All volunteer visits are suspended absent authorization by the Deputy Director of BOP. Any contractor or volunteer who requires access will be screened for symptoms and risk factors.

e. Social and legal visits were stopped as of March 13, 2020, and remain suspended until at least May 18, 2020, to limit the number of people entering the facility and interacting with inmates. In order to ensure that familial relationships are maintained throughout this disruption, BOP has increased detainees' telephone allowance to 500 minutes per month. Tours of facilities are also suspended. Legal visits will be permitted on a case-by-case basis after the attorney has been screened for infection in accordance with the screening protocols in place for prison staff, contractors, and visitors.

f. Further details and updates of BOP's modified operations are available to the public on the BOP website at a regularly updated resource page: www.bop.gov/coronavirus/index.jsp

Compassionate Release / Reduction in Sentence Procedures

44. The BOP lacks the authority to provide inmates with a reduction in sentence through compassionate or "early release." Rather, only an Article III judge—specifically, the inmate's sentencing judge—may authorize such a reduction of an inmate's federal sentence. However, on an inmate's request, the Director of the BOP may make a motion to an inmate's sentencing court to reduce a term of imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. §

3582(c)(1)(A). The BOP uses these statutory authorities in "extraordinary or compelling circumstances" which could not reasonably have been foreseen by the court at the time of sentencing. This process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g).* (This BOP program statement is available at www.bop.gov via the Resources tab).

45. Additionally, the First Step Act specifies that an inmate may file a Motion for Reduction of Sentence directly in the sentencing court after exhaustion of administrative remedies, or 30 days from the date the warden receives such a request from the inmate, whichever is earlier. *See* 18 U.S.C. § 3582(c)(1)(A).

REQUIREMENTS OF THE PRELIMINARY INJUNCTION

46. I understand BOP has been ordered by the Court in *Wilson, et al. v. Williams, et al.*, No. 4:20-cv-00794 (N.D. Ohio Apr. 22, 2020), to create a list of inmates at FCI Elkton identified by the CDC as being at higher risk of complications from COVID-19. I further understand that BOP has been ordered to evaluate each inmate that is identified for transfer out of FCI-Elkton through any means, including but, not limited to, compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough within two weeks. I further understand that BOP has been ordered to transfer any identified inmate who is ineligible for compassionate release, home release, parole, or community supervision to another BOP facility. I further understand that BOP has compiled a list of 837 inmates who are over the age 65 and/or have diagnosed medical conditions that are identified by the CDC as making an individual at higher risk of complications from COVID-19.

47. The CMC Office's preliminary evaluation of each inmate on the list of 837 inmates for transfer would likely take in excess of 418 man-hours—the equivalent of more than five CMC

staff members working full time on compliance with this aspect of the district court's order for two weeks. This dedication of work does not include consideration of requests made by the other roughly 1,700 inmates not included on the list. This also does not include the normal operations of the CMC Office nor does this include the additional duties asked of each staff member across all BOP institutions during this world-wide pandemic.

48. Significant work is needed in order to further evaluate and process each inmate prior to the inmate leaving the institution. Importantly, this includes developing a release plan, and having an officer with the United States Probation Office investigate that plan. Moreover, BOP conducts multiple checks at a variety of levels, for example, N.C.I.C. checks for warrants, victim/witness notifications, and health issues to ensure the continuing safety of the inmate and of the community, before the inmate's release date. Finally, in the case of a request for Compassionate Release, coordination with the U.S. Attorney's Office in the district where the inmate was sentenced is necessary so that a motion could be filed before the sentencing judge for Compassionate Release. Each of these stages with various entities makes it impossible to predict how many man-hours this would require and/or how long this process would take per inmate.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on this 27th day of April 2020.

Kristy Cole
Case Manager Coordinator
Federal Correctional Institution
Elkton, Ohio

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

WILSON, ET AL,	*	
	*	
Petitioners	*	CASE NO. 4:20-CV-00794
	*	
v.	*	
	*	
WILLIAMS, ET AL,	*	JUDGE GWIN
	*	
Respondents	*	

DECLARATION OF CORY CLARK

I, Cory Clark, do hereby declare, certify and state as follows:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons (BOP). I currently work as a Senior Designator for the Designations and Sentence Computation Center (DSCC) in Grand Prairie, Texas. I have held this position since January 2006. I have been employed by BOP since January 1996.

THE BOP'S DESIGNATION AUTHORITY UNDER 18 U.S.C. §3621(b)

2. Attached to this declaration is a true and correct copy of BOP Program Statement 5100.08, Inmate Security Designation and Custody Classification (the "Program Statement").

3. The BOP issued the Program Statement to provide guidance to staff on how to apply Title 18 United States Code (U.S.C.) § 3621(b), which states in pertinent part:

> **The Bureau of Prisons shall designate the place of the prisoner's imprisonment.** The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering–
>
> (1) the resources of the facility contemplated;
> (2) the nature and circumstances of the offense;
> (3) the history and characteristics of the prisoner;

GOVERNMENT EXHIBIT B

> (4) any statement by the court that imposed the sentence –
> (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
> (B) recommending a type of penal or correctional facility as appropriate; and
> (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

See 18 U.S.C. § 3621(b) (Emphasis added).

OVERVIEW OF THE BOP'S DESIGNATION PROCESS

4. The BOP created the DSCC to centralize all determinations regarding inmate sentence computations and institution placements.

5. Decisions regarding initial institution placements are referred to as designations.

6. Once a defendant is sentenced to a federal term of imprisonment, staff of the United States Probation Office (USPO) upload documents to an electronic system known as "eDesignate". For cases involving original sentencing to a term of imprisonment, these documents typically include the Judgement in a Criminal Case and the Presentence Investigation Report (PSR). For cases involving sentencing to a term of imprisonment based upon revocation of a term of supervised release, these documents typically include the order by which the court revoked supervised release and imposed a term of imprisonment, along with the revocation petition, which BOP staff also refer to as the violation report.

7. Once USPO staff have uploaded the relevant documents, the case is transferred on eDesignate to the United States Marshals Service (USMS). Typically, USMS staff then upload a copy of the defendant's USM-129, *Individual Custody/Detention Report*, to eDesignate and then use eDesignate to transfer the case to the BOP and to request that the DSCC either provide a release date for the defendant (in cases where the defendant received a short sentence and there is not sufficient time to transport him to a facility before his release date) or designate the defendant to a facility to serve the term of imprisonment.

8. Once a case has been transferred from the USMS to the BOP, staff of the DSCC team assigned to the defendant's sentencing district will open the case and begin the classification process. Once classified, the case is referred to the Hotel Team who is responsible for completing designations. When the process has been completed, DSCC staff respond to the USMS request through eDesignate, usually by notifying the USMS where the inmate will serve the term of imprisonment. The USMS then transports the inmate to the designated facility or, if the defendant has been allowed to voluntarily surrender, the USMS will notify the defendant of the facility at which he must appear on the scheduled date.

FACTORS IN THE DESIGNATION PROCESS

9. When making designations about inmate designations, the BOP follows the guidance contained in the Program Statement which provides:

> This Program Statement provides policy and procedure regarding the Bureau of Prisons inmate classification system. The classification of inmates is necessary to place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the Bureau's mission to protect society.
> The Bureau's classification, designation and redesignation procedures are consistent with the statutory authority contained in 18 U.S.C. § 3621(b). All classification, designation and redesignation decisions are made without favoritism given to an inmate's social or economic status.

PS 5100.08 at page 1.

10. Consistent with the Program Statement, DSCC designation staff consider the following primary factors when making a designation decision: (1) the level of security and supervision the inmate requires; (2) the level of security and staff supervision the institution is able to provide; and (3) the inmate's program needs. *PS 5100.08 at Chapter 1, page 1.*

11. DSCC designation staff also consider additional factors including, but not limited to:

- The inmate's release residence;

- The level of overcrowding at an institution;
- Any security, location or program recommendation made by the sentencing court;
- Any Central Inmate Monitoring issues (see Program Statement Central Inmate Monitoring Program);
- Any additional security measures to ensure the protection of victims/witnesses and the public in general; and,
- Any other factor(s) which may involve the inmate's confinement; the protection of society; and/or the safe and orderly management of a BOP facility.

PS 5100.08 at Chapter 1, pages 1-2.

12. The designation process involves two parts. First, DSCC staff on the team responsible for the inmate's sentencing district classify the inmate according to a security level (minimum, low, medium or high). Second, DSCC staff on Hotel Team designate the inmate to a particular facility commensurate with their security level and custody level and the factors identified below.

13. An inmate's security level represents the level of security the inmate requires. Security level is determined by several classification items, to include: an inmate's voluntary status, months to release, severity of current offense, criminal history score, history of violence and escape, detainer/pending charges, age, education level, and drug and alcohol abuse. In addition, the BOP has created Public Safety Factors and Management Variables which may adjust the inmate's security level up or down depending on the BOP's professional judgment. *PS 5100.08 at Chapter 5.*

14. An inmate's custody classification represents the amount of staff supervision the inmate requires. It is tied to an inmate's security level. *PS 5100.08 at Chapter 1, page 2 and Chapter 2, page 2.*

THE REDESIGNATION PROCESS

15. Under some circumstances, the BOP may transfer an inmate to a different institution following initial designation. This is referred to as a redesignation. Reasons for requesting redesignation include, but are not limited to disciplinary or closer supervision reasons, institution classification reasons, institution adjustment reasons, medical/psychological reasons, programming or training reasons, or because an inmate is nearing release. *PS 5100.08 at Chapter 7, pages 1-12.*

16. If institution staff believe an inmate is no longer appropriate for his current institution based on any of the factors identified in Chapter 7 of the Program Statement, they submit a redesignation request to the DSCC. Ordinarily, the DSCC will decide whether to grant or deny the request. DSCC staff will consider redesignation requests using the same factors outlined in paragraphs 24-26. In deciding whether to grant or deny a redesignation request, DSCC staff also carefully review the inmate's institutional adjustment and program performance. *PS 5100.08 at Chapter 1, page 3 and Chapter 7.*

17. If the request is granted, the DSCC will designate the inmate to another facility. If the request is denied, the inmate will remain at the same facility.

REQUIREMENTS OF THE PRELIMINARY INJUNCTION

18. I understand BOP has been ordered by the Court in *Wilson, et al. v. Williams, et al.*, No. 4:20-cv-00794 (N.D. Ohio Apr. 22, 2020), to create a list of inmates at FCI Elkton identified by the CDC as being at higher risk of complications from COVID-19. I further understand that

BOP has been ordered to evaluate each inmate that is identified for transfer out of FCI Elkton through any means, including but, not limited to, compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough within two weeks. I further understand that BOP has been ordered to transfer any identified inmate who is ineligible for compassionate release, home release, parole, or community supervision to another BOP facility. I further understand that BOP has compiled a list of 837 inmates who are over the age 65 and/or have diagnosed medical conditions that are identified by the CDC as making an individual at higher risk of complications from COVID-19. Finally, I understand that inmates transferred from FCI Elkton are to be sent to another BOP facility where measures, such as single-cell placement or social distancing, may be accomplished.

19. There are several reasons why compliance with the Judge's Order in this case is impossible.

20. The Judge has ordered that inmates transferred from FCI Elkton be sent to another BOP facility where measures, such as single-cell placement or social distancing, may be accomplished. However, inmates are not designated to particular cells. Rather, when a designation is made, DSCC considers the rated capacity and target populations of the prospective institution to determine whether there is enough space per inmate in the physical confines of the institution. The Warden of each institution determines how that space is to be used (single cell, double cell, etc.) depending on the number of inmates designated there and the available space. Thus, there is no way inmates could be transferred with any assurances that the inmate receive a single cell assignment at the new institution.

21. I believe BOP staff are doing their best during the pandemic to provide those social distancing measures that can be provided for the benefit of inmates and staff. However, there is

no way to determine which institutions are appropriate to transfer inmates based on where social distancing measures could be accomplished. The measures put in place depend on the physical layout of the respective institution. For example, the measures in place at a BOP camp would certainly differ from those taken at one of BOP's maximum security prisons. Thus, there can be no guarantee that a new facility can provide the measures desired by the Judge.

22. Additional factors besides space capacity and availability of social distancing must be considered by DSCC when re-designating inmates. These factors, including but not limited to programing needs such as the Residential Drug Abuse Program (RDAP), location recommendations from the inmate's sentencing judge, care levels, and separatee/gang issues, care must be considered. These factors further limit the number of available options for transfer.

23. Should BOP attempt to comply with the Judge's Order, it is expected that a substantive review of an inmate's situation and needs would take between 30-40 minutes per inmate on average. Of course, simpler cases would require less time. Complicated cases, such as inmates who require special supervision (of which approximately 50 are housed at FCI Elkton), may require more time and levels of review.

24. Finally, even if the DSCC could comply in this instance with the Judge's Order, it would be impossible to replicate this should any other Judges issue the same Order. In short order, BOP/DSCC would be unable to transfer inmates pursuant to one Court's mandate without violating another Court's similar order.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on this 28th day of April 2020.

CORY CLARK Digitally signed by CORY CLARK Date: 2020.04.28 12:18:23 -05'00'

Cory Clark
Senior Designator
Designation and Sentence Computation Center

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

WILSON, ET AL,	*	
	*	
Petitioners	*	CASE NO. 4:20-CV-00794
	*	
v.	*	
	*	
WILLIAMS, ET AL,	*	JUDGE GWIN
	*	
Respondents	*	

DECLARATION OF PETER POTTIOS

I, Peter Pottios, do hereby declare, certify and state as follows:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons (BOP). I currently work as the Prisoner Transportation Coordinator for the Designations and Sentence Computation Center (DSCC). I work in Kansas City, Missouri. I have held this position since July 2016. I have been employed by BOP since May 1991.

2. As the Prisoner Transportation Coordinator, I work as the BOP's liaison to the Justice Prisoner & Alien Transportation System (JPATS). JPATS, managed by the United States Marshals Service, is a system for transporting prisoners and criminal aliens between judicial districts, correctional institutions and foreign countries. JPATS supports the federal judiciary through its scheduling and transportation responsibilities. JPATS transports sentenced prisoners who are in the custody of the BOP to hearings, court appearances and detention facilities.

3. I understand BOP has been ordered by the Court in *Wilson, et al. v. Williams, et al.*, No. 4:20-cv-00794 (N.D. Ohio Apr. 22, 2020), to create a list of inmates at FCI Elkton identified by the CDC as being at higher risk of complications from COVID-19. I further understand that

GOVERNMENT EXHIBIT C

BOP has been ordered to evaluate each inmate that is identified for transfer out of FCI-Elkton through any means, including but, not limited to, compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough within two weeks. I further understand that BOP has been ordered to transfer any identified inmate who is ineligible for compassionate release, home release, parole, or community supervision to another BOP facility. I further understand that BOP has compiled a list of 837 inmates who are over the age 65 and/or have diagnosed medical conditions that are identified by the CDC as making an individual at higher risk of complications from COVID-19. Finally, I understand that inmates transferred from FCI Elkton are to be sent to another BOP facility where measures, such as single-cell placement or social distancing, may be accomplished.

4. Complying with the Judge's Order would be exceptionally difficult if not impossible for a variety of reasons.

5. In the past, there have been occasions when BOP has had to transfer large numbers of inmates at one time due to natural disasters, such as damage caused to facilities from tornados or hurricanes. The most recent example occurred at FCI Estill in Estill, South Carolina earlier this month. In that situation, BOP was forced to transfer about the same number of inmates (832) that are involved in the list in this case. However, those inmates were transferred together and all brought to the same location, USP Lewisburg, which was able to accommodate the security level needed for those inmates.

6. Should BOP be forced to comply with the Judge's Order, I do not believe there is a low security facility that would be able to house the FCI Elkton inmates as a group. Rather, smaller groups of inmates would be transferred together to a variety of BOP's low security institutions

around the nation. The list of low security facilities is further reduced when other factors, such as space capacity, programing needs, separatee requirements, and other issues are considered.

7. One of the Court's concerns is that medically vulnerable inmates maintain social distancing. The ability to maintain this during transportation is almost impossible. If inmates are transported by bus from one institution to another, up to 40 inmates are transported together making social distancing between inmates and BOP staff impossible. Flights, which normally can carry up to 126 inmates, are now capped at 81 in an effort to reduce contact during the pandemic. Still, inmates/staff are around each other in an enclosed environment. Thus, eliminating the chances of the spread of disease is impossible.

8. Another impact with complying with the Judge's Order is the monetary cost associated. JPATS charges BOP for the cost of transporting inmates. JPATS charges BOP $15,790 per flight hour to transport inmates on its planes. In Fiscal Year 2018, it cost an average of $863 per inmate to transport an inmate by air. It cost an average of $190 per inmate to transport an inmate by bus.

9. The mission to transfer the Estill inmates took BOP staff four days and cost in excess of $1,000,000. Transporting inmates to various institutions, as described above, would increase these costs tremendously.

10. The costs described above do not include the number of man-hours it would take to move the inmates, which obviously varies depending on the distance and mode of transportation. However, BOP can spend on average between $600-$2,000 in additional expenses and per diem costs for each group of 40 inmates transported by bus.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on this 28th day of April 2020.

Peter Pottios
Prisoner Transportation Coordinator
Designation and Sentence Computation Center

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.,	)	**RESPONDENTS' STATUS REPORT**
Respondents.	)	

Pursuant to the Court's May 5, 2020 Order, ECF No. 45, Respondents respectfully submit the following status report, informing the Court of BOP's compliance with the Court's April 22, 2020 preliminary injunction that requires Respondents to identify within one day all members of a preliminary "subclass" that the Court defined to include Elkton inmates who are considered to be at high risk according to guidelines of the Centers for Disease Control and Prevention (CDC) and 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 within two weeks.

As ordered by the Court, BOP compiled and publically filed a list of 837 Elkton inmates who are over the age of 65 and/or have diagnosed medical conditions that are identified by the CDC as making an individual at higher risk of complications from COVID-19. (ECF No. 35-1)

Even before the Court issued its preliminary injunction, the BOP was evaluating, and continues to evaluate, all of the approximately 170,000 federal inmates' eligibility for transfer to home confinement, consistent with the directives from Congress and the Attorney General and is also working to consider requests for "compassionate release" pursuant to statutory and regulatory requirements. The BOP has undertaken this review at Elkton and, in the interest of expediting the review, has provided additional staff from other BOP institutions and offices to assist Elkton's Case Management Coordinator's Office with the evaluation of the inmates on the list of "medically vulnerable" inmates as defined by the Court for release through the methods identified by the Court. The BOP's compliance with this Court's order is described more fully below.

I. Home Confinement

The BOP has the authority to transfer an inmate to home confinement for the remainder of his sentence pursuant to the provisions and limitations set forth in 18 U.S.C. § 3624(c)(2) and 34 U.S.C. §60541. See also, BOP Program Statement 7320.01, *Home Confinement and BOP Operations Memorandum, Home Confinement under the First Step Act,* the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub.L. 116-136, Attorney General Memoranda dated March 26, 2020 and April 3, 2020, and BOP Memorandum dated April 15, 2020. As noted above, even before the Court issued its preliminary injunction, the BOP was evaluating the eligibility for home confinement of all inmates throughout the United States. The BOP has continued that evaluation, including at Elkton, and as of May 5, 2020, BOP has evaluated the eligibility for home confinement of all of the inmates from the list of "medically vulnerable" inmates as defined by the Court. As of May 5, 2020, five inmates are pending community placement. Another 72 inmates are being further evaluated for eligibility for home

confinement. The remaining inmates identified on the list are not appropriate for home confinement at this time.

II. Compassionate Release

The BOP does not have the authority to grant "compassionate release," but upon an inmate's request, the Director of BOP may make a motion to an inmate's sentencing court to reduce a term of imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(l)(A). This process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction In Sentence Procedures for Implementation* of 18 U.S.C. §§ 3582 and 4205(g). The First Step Act, codified at 18 U.S.C. § 3582, and the applicable regulations, 28 C.F.R § 571.61, specify that an inmate may file a Motion for Reduction of Sentence directly with the sentencing court after exhaustion of administrative remedies, or 30 days from the date the Warden receives such a request from the inmate, whichever is earlier. The sentencing court makes the ultimate decision whether to grant compassionate release. As of May 5, 2020, 243 inmates on the list of "medically vulnerable" inmates as defined by the Court have submitted a request for compassionate release to the Warden. The BOP has evaluated those requests. Only one inmate of that group met the criteria for compassionate release. The BOP is currently working on a release plan for that inmate. The remaining inmates who submitted requests did not meet the criteria for compassionate release.

The large majority of the remaining inmates on the list have not submitted requests for compassionate release; consequently, BOP lacks information required by regulation to complete the assessment. However, BOP has identified six inmates on the list who, although they have not formally requested compassionate release, BOP is currently considering pending further review.

Among other things, inmates are required to submit a release plan with their request. *See* 28 C.F.R. § 571.61. A release plan is a critical part of BOP's evaluation of a compassionate release request; release plans are highly individualized and developed by the inmate with assistance from BOP social workers and include information regarding where the inmate will reside, how the inmate will support himself, and where the inmate will receive medical treatment and how he will pay for such treatment. Without this information submitted to the Warden along with the inmate's request, the BOP is unable to assess the inmate for eligibility for compassionate release. And absent a request, BOP also cannot know whether a particular inmate even desires to seek compassionate release. If additional Elkton inmates, including inmates on the list of "medically vulnerable" inmates as defined by the Court, submit requests for compassionate release, BOP will review and act on their requests as quickly as feasible.

III. Inmate Furloughs and Supervised Release

The BOP has the authority to temporarily release from custody (i.e. "furlough") an inmate pursuant to 18 U.S.C. § 3622 and BOP Program Statement 5280.09, *Inmate Furloughs*. The issuance of furloughs is within the sole discretion of the BOP, and delegated to the Warden of each institution. Furloughs are being considered in conjunction with other avenues of transfer or release in an effort to expedite the transfer of inmates nearing the end of a sentence. Furloughs are not being used as a stand-alone basis for release from an institution.

The BOP has no legal authority to "release" inmates via parole or community supervision. Supervised release is a form of post-imprisonment supervision, although similar to parole, a term of supervised release does not replace a portion of the sentence of imprisonment, but rather is an order of supervision in addition to any term of imprisonment imposed by the sentencing court. See eg. *United States v. Reese*, 71 F.3d 582, 587 (6th Cir. 1995) ("supervised

release is ... a sentence in itself ...").

IV. Updated COVID-19 Data From Elkton

The BOP's considerable efforts to protect inmates at Elkton and throughout the United States from the COVID-19 pandemic are showing positive results. The following information is accurate as of May 5, 2020.

Testing – On April 16, 2020, Elkton received an Abbott testing machine and 250 testing cassettes. The Abbott machine was removed on April 21, 2020. A second Abbott machine was delivered on April 29, 2020, with an additional 250 test cassettes. Elkton is currently testing all inmates in quarantine who are pre-release. These inmates are generally asymptomatic. Elkton Health Services have coordinated with an outside laboratory to complete mass testing. That is pending approval. With approval, that testing could be immediately available to the institution.

Protective Equipment – Inmates were provided two surgical masks initially, and an additional two cloth masks when they became available.

Quarantine – Currently there are 36 inmates in quarantine at the main facility and six inmates in quarantine at the Satellite Camp.

Hospitalizations – 20 Inmates remain hospitalized or in rehabilitation facilities. No new inmates have required hospitalization since May 2, 2020. 8 inmates in hospitalization are intubated. This number has remained stable.

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

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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.,	)	RESPONDENTS' OPPOSITION TO PETITIONERS' EMERGENCY MOTION FOR ENFORCEMENT OF PRELIMINARY INJUNCTION
Respondents.	)	

INTRODUCTION

Now come Respondents Mark Williams, Warden of Elkton Federal Correctional Institution and Michael Carvajal, Director of Federal Bureau of Prisons, in their official capacities ("Respondents"), and hereby respectfully oppose Petitioners' Emergency Motion for Enforcement of Preliminary Injunction. With no evidentiary support, Petitioners claim BOP has "done little or nothing to stem the tide," while accusing Respondents of "turn[ing] to a mixture of stalling tactics and outright definance." (ECF No. 51 PageID #693-94.) Though sensational, these accusations are simply not true. On the contrary, BOP continues to work relentlessly to protect Elkton's inmates, prison staff, and the public, and to comply with the Court's rulings under these unprecedented and challenging circumstances.

LAW AND ARGUMENT

I. EFFORTS AT ELKTON TO CONTAIN THE COVID-19 OUTBREAK

Despite Petitioners' unfounded claims to the contrary, the Health Services staff at Elkton has "worked tirelessly to ensure that every inmate is safe from the effects of this pandemic."

(Supplemental Declaration of Sarah Dess ("Supp. Dees Decl."), attached hereto as Exhibit A, at ¶ 83.) The staff are working 12 hour shifts so that the inmates have 24-hour on-site medical coverage. (*Id.*) Even before Petitioners brought this lawsuit, staff identified inmates who were at greater risk for COVID-19 complications. (*Id.* at ¶¶ 32, 85.) These inmates were carefully monitored for symptoms related to COVID-19. (*Id.* at ¶ 33.) Despite staff members being at risk and many of them getting sick themselves, "[c]are for the inmates has not declined during this pandemic." (*Id.* at ¶ 85.)

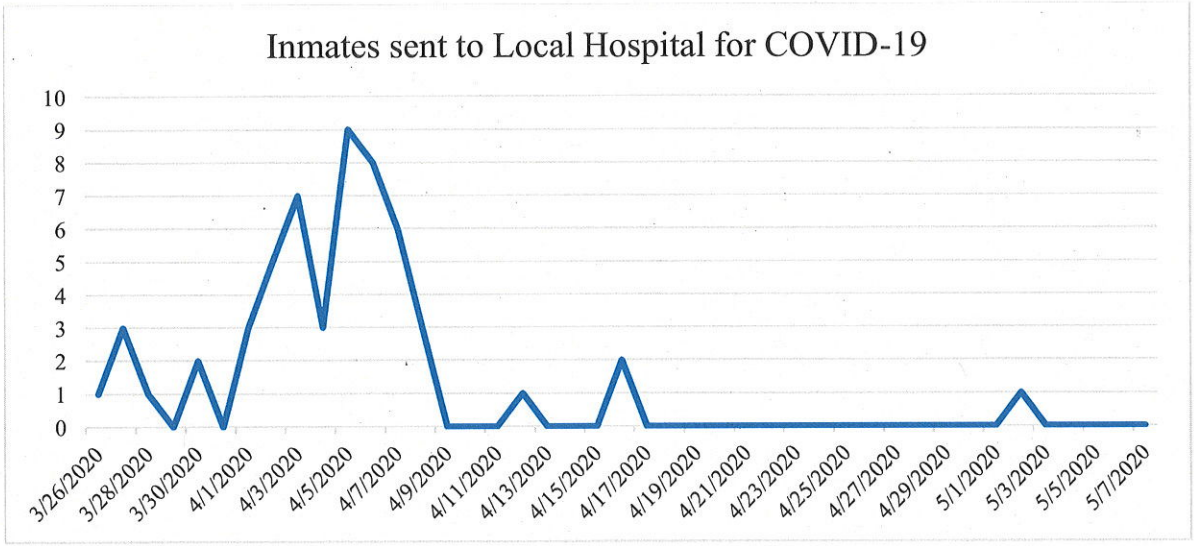
Along with ongoing reviews by DOJ and BOP executive staff, a number of independent "public health officials have monitored the medical situation at FCI Elkton." (*Id.* at ¶ 79.) This included the Ohio Department of Health, the Columbiana County Health Department, and local hospitals. (*Id.* at ¶¶ 80-82.) Comparing Elkton to nursing homes that house people in similar proximity, health officials have found that Elkton has been more successful at stopping the spread of COVID-19. (*Id.* at ¶ 80.) These health officials were impressed with the planning done at Elkton in response to the pandemic. (*Id.* at ¶ 81.)

The effectiveness of these ongoing efforts is evidenced by the fact that several (and perhaps many) subclass members want to be excluded from this action so they can remain at Elkton. For example, one inmate reported that he is "healthy even during this pandemic" and is "safe and secure at [Elkton]…." (J.S. Letter "Emergency Motion to Be Excluded from Any Subclass in this Suit," attached hereto as Exhibit B; see also, J.B. Letter "Emergency Motion to Withdraw," Ex. B (letter motion from an inmate who wants to withdraw from subclass and stay at Elkton).) Another subclass member wrote to the Court to advise that he does not wish to be transferred out of FCI Elkton. (ECF No. 52, PageID # 705.)

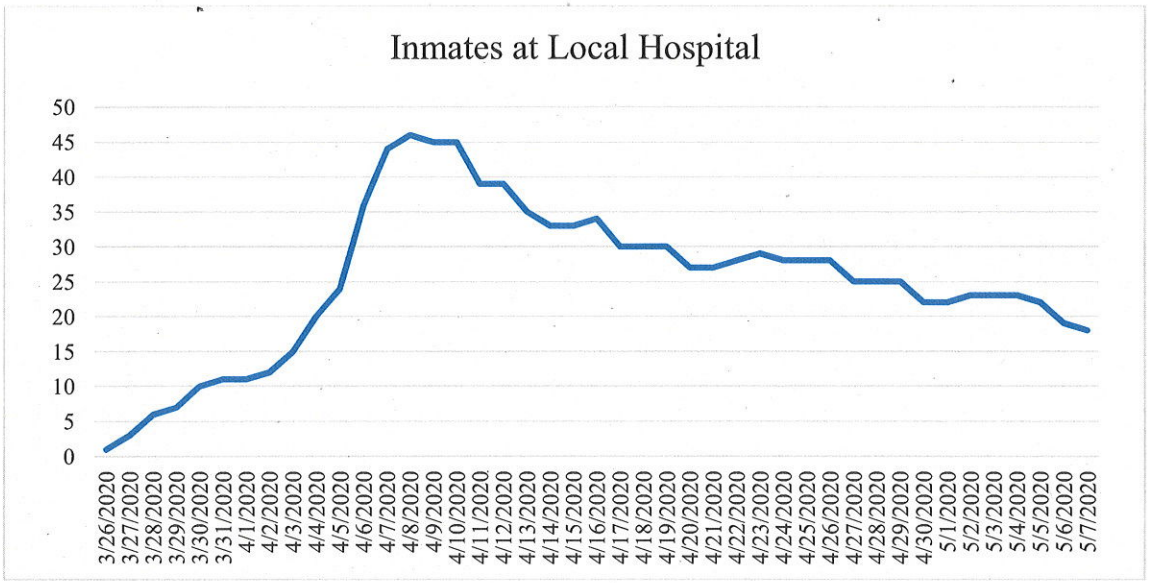
Moreover, Elkton is now in position to begin mass testing of inmates and staff.

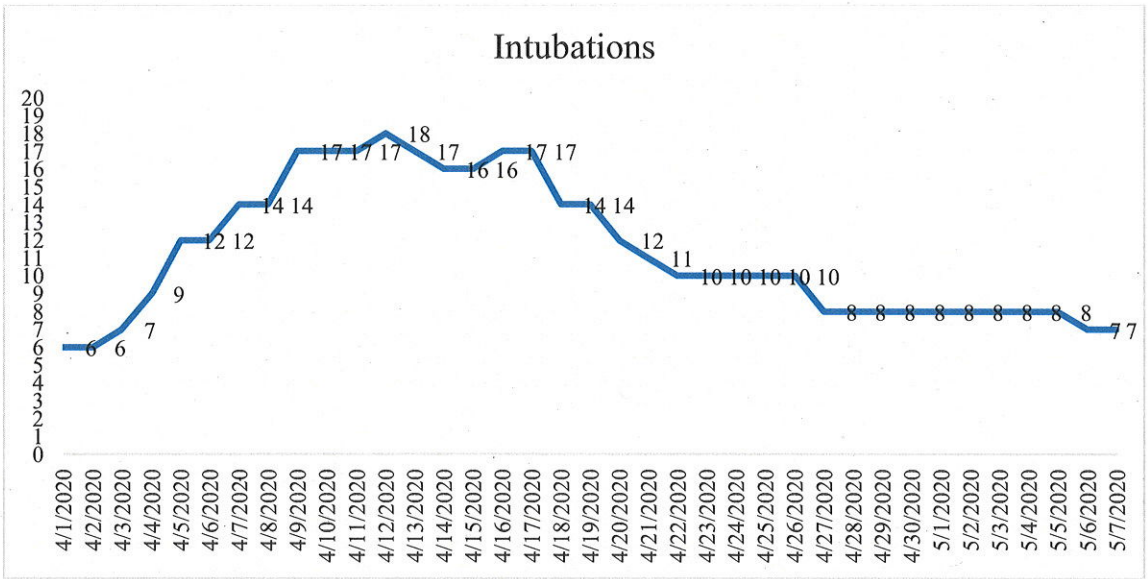
Specifically, Elkton has contracted with Quest Diagnostics to test for COVID-19 with a turn-around time of between 24-48 hours. (Supp. Dees Decl. ¶ 46.) On May 7, 2020, Quest provided Elkton with 400 test swabs and BOP anticipates an additional 150-200 tests each day after that. (*Id.*) While the logistics of mass testing are still being finalized, it should only be limited by how often Quest can pick up the tests. (*Id.*) Elkton also has received an Abbott rapid testing machine, 250 test cassettes, and anticipates an additional 432 test cassettes being delivered within the week. (*Id.* at ¶ 44.)

Importantly, the data shows that these efforts have been effective in containing COVID-19. (Supp. Dees Decl. at ¶ 66, attachment A.) As the chart below illustrates, the number of inmates being hospitalized per day has dropped substantially; only one inmate has been sent to the hospital for COVID-19 since April 17, 2020:

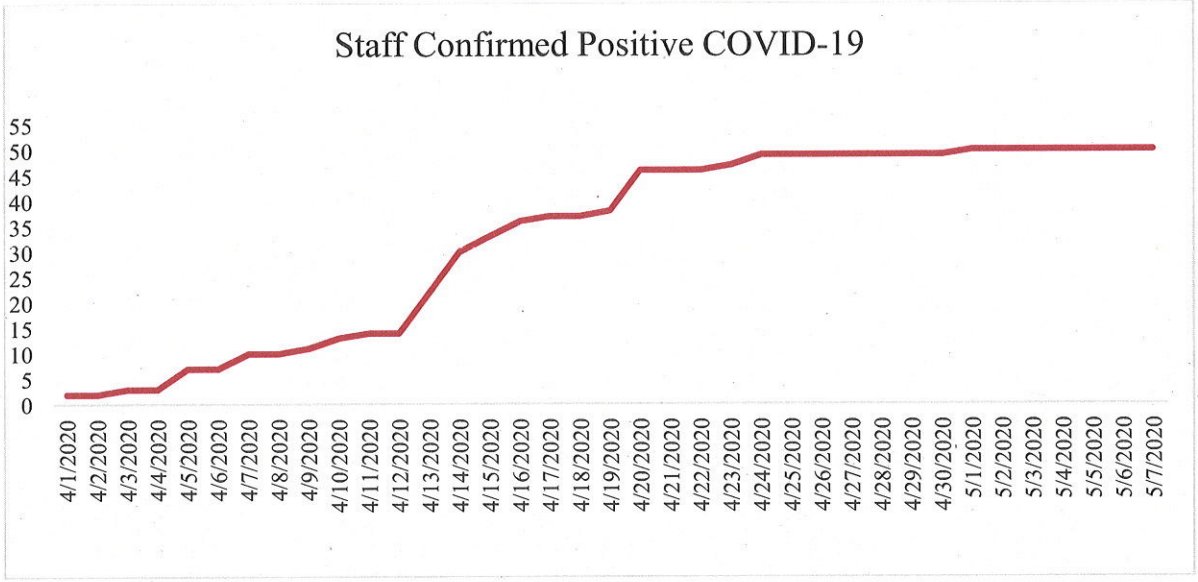


Similarly, the numbers of hospitalized and intubated inmates are both trending down:

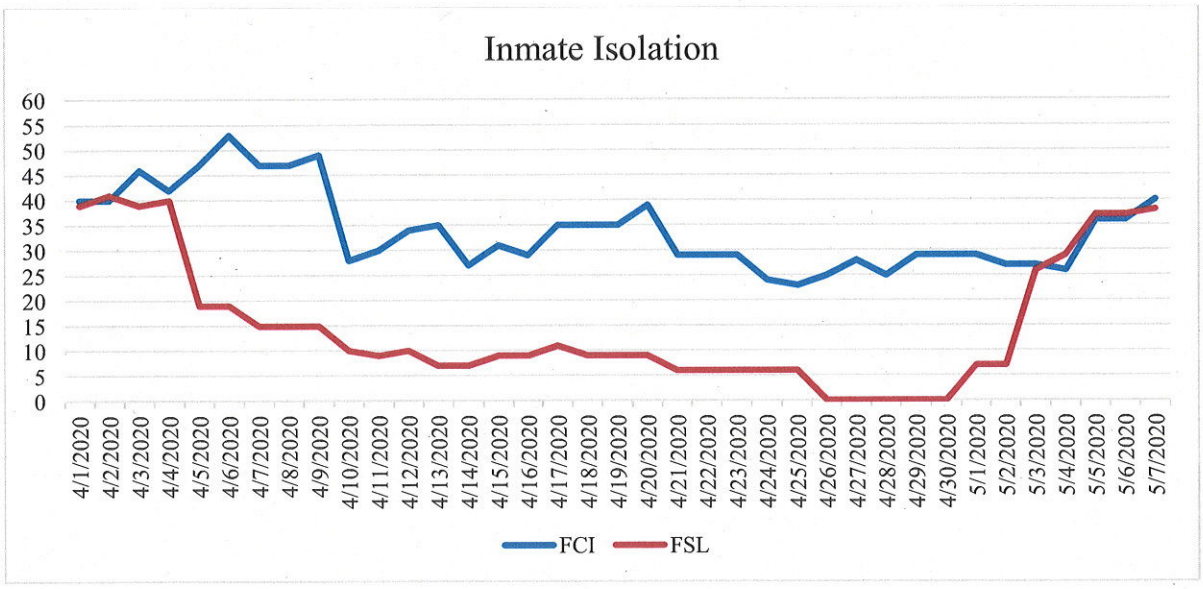




Additionally, the total number of staff members who have tested positive for COVID-19 has remained nearly unchanged for more than two weeks:



Finally, though it has fluctuated, the number of inmates in isolation has never exceeded more than 0.5% of the inmate population:



(*Id.* at ¶ 66, attachment A.)

This is not to minimize the gravit of the COVID-19 pandemic that has affected Elkton and the nation as a whole. The novel coronavirus hs had severe consequences, but the Elkton

staff and the BOP as a whole has worked diligently to minimize those consequences. And the current evidence and data above suggests that they are succeeding.

II. BOP HAS EVALUATED ALL MEDICALLY VULNERABLE INMATES

A. Home Confinement

In compliance with the Court's Order, BOP has evaluated every inmate on the subclass list for eligibility for home confinement. Generally, BOP may place a prisoner in home confinement only for the shorter of 10 percent of the term of imprisonment or 6 months. 18 U.S.C. § 3624(c)(2). Under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), signed into law on March 27, 2020, however, "if the Attorney General finds that emergency conditions will materially affect the functioning of the BOP, 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." Pub. L. No. 116-136, 516 § 12003(b)(2), 134 Stat. 281 (2020). On April 3, 2020, the Attorney General made that finding and authorized the BOP Director to immediately maximize appropriate transfers to home confinement of all appropriate inmates held at Elkton. (Cole Decl. ECF 10-2 PageID # 192 at ¶ 18.)

Contrary to Petitioners' arguments, the factors for eligibility for home confinement are clearly set forth in the regulations and the guidance issued by the Attorney General. Pursuant to BOP Program Statement 7320.01, *Home Confinement*, Sec. 12, an inmate is eligible for home confinement only if the inmate: (1) has no public safety factors; (2) had excellent institutional adjustment; (3) has a stable residence with a supportive family; (4) has confirmed employment (if employable); and (5) has little or no need for the services of a CCC. Further, under the Attorney General's guidance, BOP must consider the totality of the circumstances for each individual inmate, the statutory requirements for home confinement, and a number of discretionary factors.

(*Attorney General Memorandum*, dated March 23, 2020, ECF No. 10-3 PageID # 195.) Some offenses, such as sex offenses, will render an inmate ineligible for home confinement. (*Id.*)

The specific criteria that an inmate should meet to be eligible for home confinement are: (1) primary or prior offense is not violent; (2) primary or prior offense is not a sex offense; (3) primary or prior offense is not terrorism; (4) no detainer; (5) Mental Health Care Level is less than CARE- MH 4; (6) PATTERN risk score is Minimum (R- MIN); (7) no incident reports in the past 12 months (regardless of severity level); (8) U. S . citizen; and (9) a viable release plan. (*Bureau of Prisons' Guidance*, ECF No. 10-3 PageID # 200-201.)

Even before the Court issued its preliminary injunction, BOP had begun evaluating the eligibility for home confinement of all inmates throughout the United States. BOP assigned additional staff to assist in the reviews for the inmates at Elkton. As of May 5, 2020, BOP completed these the eligibility for home confinement of all of the subclass members on the list. Five inmates are pending community placement. The remaining inmates identified on the list are not eligible for home confinement, in part because many are sex offenders who the Attorney General has deemed ineligible for home confinement. Respondents have complied fully with this aspect of the Court's Order.

B. Compassionate Release

Petitioners also accuse Respondents of failing to evaluate subclass members for "Compassionate Release." This is incorrect. As an initial matter, an inmate's federal sentence can only be ordered reduced by the inmate's sentencing judge. The authority to grant "Compassionate Release" derives from 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(1)(A). The First Step Act, codified at 18 U.S.C. § 3582, and the applicable regulations, 28 C.F.R § 571.61, specify that an inmate may file a Motion for Reduction of Sentence directly with the sentencing court after

exhausting administrative remedies, or 30 days from the date the Warden receives such a request from the inmate, whichever is earlier. The sentencing court decides whether to grant such a motion.

The process of applying for Compassionate Release is outlined in the U.S. Dep't of Justice Fed. Bureau of Prisons, *Compassionate Release/Reduction In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*, Program Statement 5050.50 (Jan. 17, 2019), http://www.bop.gov/policy/progstat/5050_050_EN.pdf. Generally, the process begins with a request by the inmate to the Warden accompanied by the necessary information. Upon receiving an application, BOP must consider: (1) nature and circumstances of the inmate's offense; (2) criminal history; (3) comments from victims; (4) unresolved detainers; (5) supervised release violations; (6) institutional adjustment; (7) disciplinary infractions; (8) personal history derived from the PSR; (9) length of sentence and amount of time served; (10) inmate's current age; (11) imate's age at the time of offense and sentencing; (12) inmate's release plans (employment, medical, financial); and (13) whether release would minimize the severity of the offense. *BOP Program Statement 5050.50*, Sec. 7. Under BOP regulations, these factors are neither exclusive nor weighted. *Id.* Rather, BOP considers these factors and any other relevant information to determine whether the inmate's release would pose a danger to the safety of any other person or the community. *Id.*

To date, 243 subclass members have filed requests for compassionate release with the Warden. All 243 applications have been evaluated and decided by BOP. However, it is ultimately up to the sentencing judge to determine whether to grant compassionate release. For the remaining subclass members, while they have not submitted requests and therefore Elkton lacks information to complete an assessment, Elkton nevertheless evaluated their potential eligibility as well. Six subclass members who have not applied for compassionate release may qualify, and BOP is further

reviewing those inmates and asking them for additional necessary information such as a release plan. The remaining subclass members do not appear to be appropriate candidates for Compassionate Release under the applicable factors.

It should be noted, contrary to Petitioners' suggestion that exhaustion may not be required for Compassionate Release (ECF No. 51 at 6 n.5), the majority of courts that have considered whether a district court may waive the exhaustion and 30-day requirements of the First Step Act, 18 U.S.C. § 3582(c)(1)(a) and the BOP's regulatory provision, 28 C.F.R. § 571.61, due to the exigent circumstances presented by COVID-19, have held that the exhaustion requirements are mandatory. *E.g. United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020) (finding exhaustion requirement in § 3582 mandatory); *United States v. Smith*, No. 4:15-cr-19, 2020 WL 2063417, at *3 (N.D. Ohio Apr. 29, 2020) ("the Court will not read an exception into § 3582(c)(1) which does not exist, and Smith's motions are denied for failure to exhaust his administrative remedies"); *United States v. Alam*, No. 15-20351, 2020 WL 1703881, at *2 (E.D. Mich. Apr. 8, 2020) (collecting cases). The only court of appeals that has addressed this issue so far is the Third Circuit which held that an inmate's failure to wait the requisite 30-day period before seeking a compassionate release from the district court "present[ed] a glaring roadblock foreclosing compassionate release[.]" *Raia,* 954 F.3d at 597.

C. Furloughs

The BOP has the authority to temporarily release from custody (i.e. "furlough") an inmate pursuant to 18 U.S.C. § 3622 and BOP Program Statement 5280.09, *Inmate Furloughs*. That statute requires any furlough to be "consistent with the purpose for which the sentence was imposed" and may only be granted for an authorized purpose. 18 U.S.C. § 3622. As relevant here, the regulations permit BOP to grant emergency furloughs to allow an inmate to address a

family crisis or other urgent situation. 28 C.F.R. § 570.32(b)(1). Effective April 16, 2020, BOP issued guidance that the COVID-19 pandemic "is considered an urgent situation that may warrant an emergency furlough...." (ECF No. 10-3 PageID # 200.) However, inmates are generally ineligible for furlough if: (1) convicted of a serious crime against a person; (2) their presence in the community could attract undue public attention, create unusual concern, or diminish the seriousness of the offense; or (3) granted a furlough in the past 90 days. 28 C.F.R. § 570.36(b). Further, BOP guidance provides that furloughs are to be considered for inmates who are within 12 months of projected release or who have received home confinement with a projected release date exceeding one year. (ECF No. 10-3 PageID # 200.) BOP staff have examined the subclass members eleigibility for furlough under these authorities on several occasions.. In short, none satisfy the criteria for furlough eligibility

D. No Other Basis for Release or Transfer Exists that Elkton Has Not Considered

In their Motion, Petitioners accuse Respondents of failing "to identify any other mechanism for release or transfer," but fail to identify any mechanism that Respondents failed to consider. In reality, no other legal mechanism exists for the release or transfer of prisoners other than those that already considered.

III. TRANSFER OF SUBCLASS MEMBERS

Petitioners complain that Respondents failed to describe any action regarding the transfer of prisoners. (Mot. to Enforce, ECF No. 51 PageID # 699.) While not specifically addressed in the status report, as described below, BOP has began the process of investigating and planning for possible transfers of inmates.

A. Procedure for Designation of Place of Imprisonment

Pursuant to 18 U.S.C. § 3621(b), BOP is required to designate the place of a prisoner's

imprisonment. Once an inmate has been transferred to BOP after sentencing, BOP considers the following primary factors when making a designation decision: (1) the level of security and supervision the inmate requires; (2) the level of security and staff supervision the institution is able to provide; and (3) the inmate's program needs. (Declaration of Sukenna W. Stokes ("Stokes Decl."), attached as Exhbit C, at ¶ 13, see also, attachment A, PS 5100.08 at page 1.) BOP alos considers additional factors including, but not limited to:

- The inmate's release residence;
- The level of overcrowding at an institution;
- Any security, location or program recommendation made by the sentencing court;
- Any Central Inmate Monitoring issues (see Program Statement Central Inmate Monitoring Program);
- Any additional security measures to ensure the protection of victims/witnesses and the public in general; and,
- Any other factor(s) which may involve the inmate's confinement; the protection of society; and/or the safe and orderly management of a BOP facility.

(*Id.* at ¶ 14, see also, attachment A, PS 5100.08 at Chapter 1, pages 1-2.)

The designation process involves two parts. (*Id.* at ¶ 15.) First, BOP classifies the inmate according to a security level (minimum, low, medium or high) and assigns the inmate a custody level (community, out, in, or maximum). (*Id.*) Second, BOP designates the inmate to a particular facility commensurate with their security level and custody level and the identified factors. (*Id.* at ¶ 15.)

Under some circumstances, the BOP may transfer an inmate to a different institution following initial designation which is referred to as redesignation. (*Id.* at ¶ 23.) Reasons for requesting redesignation include, but are not limited to disciplinary or closer supervision reasons, institution classification reasons, institution adjustment reasons, medical/psychological reasons, programming or training reasons, or because an inmate is nearing release. (*Id.*, see also,

Attachment A, PS 5100.08 at Chapter 7, pages 1-12.)

B. Efforts to Transfer Subclass Members

In compliance with the Court's April 22, 2020, Order in this matter, the Northeast Regional Correctional Programs Department has been reviewing BOP records concerning available bed space at institutions located throughout the Northeast Region, as well as nationwide. (Stokes Decl. at ¶ 26.) This review has focused on determining whether sufficient and available space exists to transfer and house for an extended period of time those identified inmates deemed inappropriate or otherwise ineligible for release via compassionate release or reduction in sentence, furlough, home confinement, parole, or community supervision. (*Id.*) The review has considered the capability of affording these inmates appropriate measures, such as testing, single-cell placement, and social distancing opportunities, as well as the BOP's suspension of inmate internal movement, programming and security concerns. (*Id.* at ¶ 27.) Because the inmates at Elkton would be transferred from a low security institution, the assessment must account for each institution's physical structure, layout, custody, and security level. (*Id.* at ¶ 28.) To comply with the Court's requirement to place subclass memebers in single-cells, BOP would likely need to transfer inmates to higher security institutions that contain cell-type housing, while simultaneously transferring those higher security inmates to other institutions in order to prevent the two groups from intermingling. (*Id.* at ¶ 29.)

Higher security institutions, including medium Federal Correctional Institutions, and United States Penitentiaries, have cells with typically two beds per cell. (*Id.* at ¶ 30.) As such, a medium or high security institution that reports it has, for example, 500 empty beds, would most likely only be able to accommodate at most 250 inmates in single-cell status, further limiting BOP's options. (*Id.*) Moreover, given the limited available single cell bed space, the majority of

the inmates would likely have to be transferred to institutions outside of 500 driving miles of their primary residences. (*Id.* at ¶ 36.)

In addition to the available bed space issues raised by transferring these inmates to higher security institution, such transfers would raise serious security concerns. (*Id.* at ¶ 37.) BOP reviews many factors to see if a particular institution is appropriate for an inmate, including the inmate's criminal history, programing needs, release residence, level of security and supervision needed, and and, any other factor(s) which may involve the inmate's confinement, the protection of society, and/or the safe and orderly management of a BOP facility. (*Id.*)

Many of the subclass members at Elkton receive various mental health services, including assessment, individual and group counseling, and crisis intervention functions. (*Id.* at ¶ 38.) A non-residential sex offender treatment program is available to inmates housed in the federal satellite low attached to FCI Elkton. (*Id.*) Further, substance abuse services including the Residential Drug Abuse Program (RDAP), nonresidential treatment, and a drug abuse education course are also available at Elkton. (*Id.*) However, these important drug and sex offender treatment programs are not available at many other institutions. (*Id.* at ¶ 39.) Disrupting inmate participation in these programs may cause significant lapses in treatment, which may impact an inmate's recovery, ability to continue with a program, and his eligibility for an early release pursuant to 18 U.S.C. § 3621(e) through completion of RDAP. (*Id.*)

Further, BOP is highly concerned about avoiding the risk of COVID-19 transmission that the CDC has suggested may occur if detained individuals are transferred between facilities during the COVID19 crisis. (See, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,* https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf, last access on May 8, 2020, attached

as Exhibit D.) In fact, the CDC recommends that a correctional institution suspend all transfers unless absolutely necessary if there is a suspected or confirmed case of COVID-19 at the institution. (*Id.* at 13.) It is because of these risks that BOP has a policy against most transfers during the pandemic. (Supp. Dees Decl. at ¶ 10.) This policy is well-founded, as demonstrated by what happened during the recent transfer of 124 inmates to FCI-Gilmer.[1] Inmates were screened prior to being transferred and upon arrival at FCI-Gilmer. (*Id.*) None of the inmates were symptomatic. (*Id.*) Nevertheless, three days after arriving at FCI-Gilmer, one inmate developed symptoms, was sent to a local hospital, and tested positive for COVID-19. (*Id.*) As a result, the prison staff unions and elected leaders have urged BOP not to transfer prisoners during the COVID-19 pandemic. (*Id.*)

In attempting to comply with the court's order, BOP must carefully evaluate the statutorily mandated factors governing the designation of appropriate facilities for particular inmates, availability of alternative spaces that meet the requirements of the court's order, the problems that may arise based on alternative placements, and the best ways to mitigate any risk of spreading COVID-19 through transfers. These evaluations obviously take time, but BOP is moving as quickly as possible.

[1] See, http://wvmetronews.com/2020/05/04/bureau-of-prisons-confirms-positive-test-at-gilmer-prison-came-from-inmate-who-was-transferred-there/ (last visited May 9, 2020).

CONCLUSION

This Court should deny Petitioner's Emergency Motion for Enforcement of Preliminary Injunction. The BOP is working hard to comply with the Court's Order within the limits of the law, controlling regulations and policies, and the best interest, safety and security of its inmates during the COVID Pandemic.

Respectfully submitted,

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

WILSON, ET AL,	*	
	*	
Petitioners	*	CASE NO. 4:20-CV-00794
	*	
v.	*	
	*	
WILLIAMS, ET AL,	*	JUDGE GWIN
	*	
Respondents	*	

DECLARATION OF SARAH A. DEES

I, Sarah A. Dees, do hereby declare, certify and state as follows:

1. I am employed by the United States Department of Justice, Federal Bureau of Prisons (BOP). I currently work as the Health Services Administrator at Federal Correctional Institution (FCI) Elkton in Lisbon, Ohio. I have held this position since January 5, 2020. I also serve as the Northeast Regional Paramedic, a position I have held since 2016. I have been employed by BOP since 2013. Throughout this declaration, when I refer to "FCI Elkton" generally, I am referring to both of the FCI Elkton institutions, the Federal Correctional Institution (FCI) and the Federal Satellite Low (FSL).

2. In my position as Health Services Administrator at FCI Elkton, I am responsible for coordinating comprehensive medical, dental, and mental health services of the highest quality while maintaining a clean, safe, and secure environment for nearly 2500 low security inmates and in addition to staff. The Health Services Department is staffed by a comprehensive team of BOP and Public Health Service health care workers, accompanied by professional contract staff committed to providing the highest standards of professionalism and dedication to the inmate population. FCI Elkton offers comprehensive ambulatory care addressing primary care, chronic

GOVERNMENT EXHIBIT A

care, emergent care and acute care. Additionally, minor office-based procedures, diagnostic testing, specialty consultations and office based dental procedures are provided in house.

3. I have been asked to discuss FCI Elkton's efforts to combat the Coronavirus Disease 2019 (COVID-19) pandemic, the current state of inmate testing and health, and other issues related to those topics.

4. The Federal Correctional Institution ("FCI" or "Main Complex") is a low security facility with a double-fenced perimeter, mostly dormitory or cubicle housing, with strong work and program components. The FCI has six units that are open dorm style, two television rooms, one area for Trulincs (email) stations, and two rooms that can house ten to twelve inmates each. The showers and bathrooms are communal. The main complex and the FSL are separate facilities, and the inmate populations do not interact. The staff-to-inmate ratio in an FCI is higher than in minimum security facilities. As of May 8, 2020, FCI Elkton houses 1, 961 male offenders.

5. The Federal Satellite-Low ("FSL") is a low security facility with a single-fenced perimeter, cubicle housing, and strong work and program components. The FSL is a large dormitory that is divided into sections with double bunks inside cubicles. There are two areas that have communal showers and bathrooms. There are tables in the front of the dormitory for watching television. There is also an area in front of the dormitory that has exercise equipment, law and leisure library, and offices. Food services, psychology services, medical, education and visiting is in a separate building. As of May 8, 2020, the FSL houses 406 male offenders.

6. As I stated in my previous declaration in this matter, I am involved on a daily basis in the identification, planning, and implementation of all BOP directives for preventing the spread of COVID-19 at FCI Elkton, including FSL Elkton. Through this role, I have knowledge of both

the BOP's national directives relating to COVID-19 and the additional steps that FCI Elkton, specifically, has taken to combat COVID-19 within the facility. Accordingly, through the course of my official duties, I have personal knowledge regarding the numerous measures, discussed below, that have been implemented both BOP-wide and at FCI Elkton in order to prevent and manage the spread of COVID-19.

NATIONAL STEPS TAKEN BY BOP TO ADDRESS COVID-19[1]

7. As I stated in my previous declaration in this matter, before discussing the steps being taken at FCI Elkton, specifically, I will first discuss the phases of the BOP's national response to the COVID-19 pandemic, which apply generally across all BOP institutions. As set forth below, the BOP has taken—and is continuing to take—significant measures in response to the COVID-19 pandemic in order to protect the safety and security of all staff and inmates, as well as members of the public.

8. In January 2020, the BOP became aware of the first identified COVID-19 cases in the United States and quickly took steps to prevent its introduction and spread in BOP institutions. The BOP's response, detailed below, has occurred over six distinct "phases" to date. The BOP will continue to modify and adjust its response as circumstances change, and at the guidance and direction of worldwide health authorities.

[1] BOP has established a COVID-19 resource section on its public webpage which is available at: https://www.bop.gov/coronavirus/. This webpage includes updates on the BOP's response to COVID-19 and positive COVID-19 tests among inmates and staff at BOP institutions nationwide.

ACTION PLAN FOR COVID-19 – PHASE ONE

9. In January 2020, the BOP began Phase One of its Action Plan for COVID-19. Phase One activities included, among other things, seeking guidance from the BOP's Health Services Division regarding the COVID-19 disease and its symptoms, where in the United States infections were occurring, and the best practices to mitigate its transmission. *See https*://www.bop.gov/resources/news/20200313_covid-19.jsp. In addition, an agency task force was established to begin strategic planning for COVID-19 BOP-wide. This strategic planning included building on the BOP's existing procedures for pandemics, such as implementing its pre-approved Pandemic Influenza Plan. From January 2020 through the present, the BOP has been coordinating its COVID-19 efforts with subject-matter experts both internal and external to the agency, including implementing guidance and directives from the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), the Office of Personnel Management (OPM), the Department of Justice (DOJ), and the Office of the Vice President. *See* https://www.bop.gov/resources/news/20200313_covid-19.jsp.

ACTION PLAN FOR COVID-19 – PHASE TWO

10. On March 13, 2020, the BOP implemented Phase Two of its Action Plan. Phase Two put into place a number of restrictions across all BOP facilities over a 30-day period, to be reevaluated upon the conclusion of that time period. Specifically, the BOP suspended the following activities for an initial period of 30 days, with certain limited exceptions: social visits; legal visits; inmate facility transfers; official staff travel; staff training; contractor access; Volunteer visits; and tours. *See* https://www.bop.gov/coronavirus/covid19_status.jsp.

11. During Phase Two, inmates were subjected to new screening requirements. Specifically, all newly arriving BOP inmates were screened for COVID-19 symptoms and

"exposure risk factors," including, for example, if the inmate had traveled from or through any high-risk COVID-19 locations (as determined by the CDC), or had had close contact with anyone testing positive for COVID-19. Asymptomatic inmates with exposure risk factors were quarantined, and symptomatic inmates with exposure risk factors were isolated and evaluated for possible COVID-19 testing by local BOP medical providers.[2]

12. Staff were also subjected to enhanced health screening in areas of "sustained community transmission," as determined by the CDC, and at medical referral centers. On March 22, 2020, FCI Elkton implemented this enhanced screening for staff and contractors at that time. The enhanced screening measures required all staff to self-report any symptoms consistent with COVID-19, as well as any known or suspected COVID-19 exposure, and further required all staff to have their temperature taken upon entry into any BOP facility.

13. Finally, in addition to the measures listed above, the BOP implemented national "modified operations" in order to maximize social distancing within BOP facilities. These modifications included staggered meal and recreation times in order to limit congregate gatherings. Additionally, the BOP established a set of quarantine and isolation procedures for known or potential cases of COVID-19.

14. FCI Elkton implemented this "modified operations" directive in a number of ways. For example, and among other things, FCI Elkton: (1) instituted "grab and go" meals for inmates, meaning that inmates were permitted to pick up pre-packaged meals at designated times, but had to return to their housing units in order to eat; scheduled staggered mealtimes, so that only a single housing unit (approximately 150 inmates) are moving within the facility at any

[2] Throughout this declaration, "isolation" refers to a symptomatic inmate being confined to the FCI Visiting Room and FSL G-A Housing Unit. "Quarantine," on the other hand, refers to asymptomatic inmates who are confined to four areas at FCI Elkton: the gym, chapel, Special Housing Unit (SHU), or FSL visiting room.

particular time; and (2) Health Services pill line (controlled medication dispensing) and (3) commissary are accomplished during these times as well.

ACTION PLAN FOR COVID-19 – PHASE THREE

15. On March 18, 2020, the BOP implemented Phase Three of the COVID-19 Action Plan for BOP locations that perform administrative services (i.e., non-prison locations), which followed DOJ, Office of Management and Budget, and OPM guidance for maximizing telework. In this phase, individuals who had the ability to telework and whose job functions did not require them to be physically present were directed to begin teleworking.

16. Additionally, as part of this phase, and in accordance with the Pandemic Influenza contingency plan, all cleaning, sanitation, and medical supplies were inventoried. *See* https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf.

ACTION PLAN FOR COVID-19 – PHASE FOUR

17. On March 26, 2020, the BOP implemented Phase Four of its Action Plan. In Phase Four, the BOP revised its preventative measures for all institutions. Specifically, the agency updated its quarantine and isolation procedures to require all newly admitted inmates to The BOP, whether in areas of sustained community transmission or not, to be assessed using a screening tool and temperature check (further explained below). This screening tool and temperature check applied to all new intakes, detainees, commitments, prisoners returned on writ from judicial proceedings, and parole violators, regardless of their method of arrival. Thus, all new arrivals to any BOP institution—even those who were asymptomatic—were placed in quarantine for a minimum of 14 days or until cleared by medical staff. Symptomatic inmates were placed in isolation until they tested negative for COVID-19 or were cleared by medical staff as meeting CDC criteria for release from isolation.

ACTION PLAN FOR COVID-19 – PHASE FIVE

18. On March 31, 2020, the Director of the BOP ordered the implementation of Phase 5 of its COVID-19 Action Plan, which took effect on April 1, 2020. Specifically, the Director ordered the following steps to be taken:

A. For a 14-day period, inmates in every institution will be secured in their assigned cells/quarters to decrease the spread of the virus.

B. During this time, to the extent practicable, inmates should still have access to programs and services offered under normal operating procedures, such as mental health treatment and education.

C. In addition, the BOP is coordinating with the United States Marshals Service (USMS) to significantly decrease incoming movement during this time.

D. After 14 days, this decision will be reevaluated and a decision made as to whether or not to return to modified operations.

E. Limited group gathering will be afforded to the extent practical to facilitate commissary, laundry, showers, telephone, and Trust Fund Limited Computer System (TRULINCS[3]) access.

F. Provided inmates access to programs and services offered under normal operating procedures, such as mental health treatment and education.

G. In addition, the BOP coordinated with the United States Marshals Service (USMS) to

[3] TRULINCS is the internal BOP computer and electronic message platform that inmates use to communicate with staff in the institutions and individuals in the community. Through this platform, inmates receive updates, notices, and can read inmate bulletins posted on the system by BOP staff.

significantly decrease incoming movement during this time.

See https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp.

ACTION PLAN FOR COVID-19 – PHASE SIX

19. On April 13, 2020, the Director of the BOP ordered the implementation of Phase 6 of its COVID-19 Action Plan. Specifically, the Director ordered an extension of the nationwide action in Phase 5, which applies to medical screening, limited inmate gathering, daily rounds, limited external movement, and fit testing, until May 18, 2020. *See* https://www.bop.gov/resources/news/pdfs/20200414_press_release_action_plan_6.pdf

20. Phase Six has been implemented at FCI Elkton.

STEPS TAKEN AT FCI ELKTON TO ADDRESS COVID-19

21. In addition to the steps taken at the national level, FCI Elkton itself has also taken a number of additional measures in response to the COVID-19 pandemic, including providing inmate and staff education; conducting inmate and staff screening; putting into place testing, quarantine, and isolation procedures in accordance with BOP policy and CDC guidelines; ordering enhanced cleaning and medical supplies; and taking a number of other preventative measures.

INMATE AND STAFF EDUCATION RELATING TO COVID-19

22. From the outset of the COVID-19 pandemic, FCI Elkton officials have provided regular updates to inmates and staff regarding the virus and the BOP's response, and have educated inmates and staff regarding measures that they themselves should take to stay healthy.

23. As I stated in my previous declaration in this matter, in late February-early March,

"Frequently Asked Questions" bulletins were created from CDC and WHO guidelines to educate inmates and staff regarding the symptoms of COVID-19, instructing them to self-monitor for COVID-19 symptoms, and to immediately report such symptoms to sick call. The inmate population and staff members have been told best practices regarding personal hygiene to prevent the spread of COVID-19. The bulletins are posted in numerous locations around FCI Elkton.

24. Staff have also been trained to appropriately "don" and "doff" (off) Personal Protective Equipment (PPE) utilizing CDC guidelines found on the BOPs intranet and trainings with Health Services Staff.

SCREENING FOR COVID-19 AT FCI ELKTON - INMATES

25. When new inmates arrive, they are met by medical providers from the Health Services Department, who conduct an initial screening in a designated area at FCI Elkton separate from other staff and inmates. The medical providers wear PPE during the screening process.

26. Following this initial screening, new inmates are escorted to a quarantine unit at FCI Elkton. There, they are quarantined for 14 days to ensure that they do not develop any symptoms consistent with COVID-19. If they do have symptoms consistent with COVID-19 infection, they are placed in a separate isolation unit. The isolation unit is used for all symptomatic inmates and inmates with a positive COVID-19 test. In these quarantine and isolation units, all staff must wear PPE; inmates in quarantine or isolation are required to wear a surgical mask.

27. After the expiration of 14 days, and upon medical clearance, inmates may be released

into the general population.

28. This initial screening procedure at FCI Elkton allows for screening to occur in a controlled environment, and further ensures the rest of the inmate population are not exposed to newly-arrived inmates until they are properly screened and cleared by Health Services Department medical providers.

29. In addition to screening incoming inmates, FCI Elkton is also taking a number of measures to screen its current resident inmate population.

30. FCI Elkton screened inmates for elevated temperatures daily from March 20, 2020 through April 12, 2020. This screening was discontinued in favor of inmate self-reporting.

31. Inmates who self-report COVID-19 symptoms are screened for symptoms of COVID-19 (including fever, cough, and shortness of breath), as well as for "exposure risk factors," including whether the inmate has had close contact with anyone diagnosed with COVID-19 in the past 14 days. The screening takes place in a single, controlled area separate and apart from other inmates and prison staff.

32. The Health Services Department reviewed inmate medical records in order to determine which individuals at FCI Elkton were considered "high risk" for COVID-19 pursuant to CDC guidelines. These guidelines can be found at: https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html. Per CDC guidance, "high-risk" individuals include those over 65 and those with significant underlying medical conditions, such as chronic lung disease, moderate to severe asthma, liver disease, and diabetes.

33. In order to identify which inmates at FCI Elkton should be considered "high risk," staff searched the BOP's medical records for (1) all inmates aged 65 and over; and (2) all inmates who have been diagnosed with a condition identified by the CDC as being "high risk."

Like all inmates at FCI Elkton these inmates continue to be screened for symptoms related to COVID-19 and temperatures.

34. FCI Elkton is also conducting enhanced screening for all inmates with ongoing work details, such as food service and cleaning orderlies. These functions are considered to be "essential" by FCI Elkton. Each of these inmates is screened for illness both before and after each of their assigned work details. This includes being screened for any symptoms of illness and having their temperature taken. Furthermore, many cleaning orderlies are currently assigned only to the units in which they already reside and thus do not interact with staff or inmates in other units during the course of performing their duties. Inmates who do move between units are required to wear appropriate PPE and reminded to maintain social distancing to avoid spreading the virus between units.

35. All inmates are encouraged to self-monitor and to report symptoms of illness to unit staff either orally or via a written request to staff (commonly referred to as a "cop-out" within BOP institution).

36. Any inmate who presents with symptoms consistent with COVID-19 will be evaluated by a medical provider in the Health Services Department. Based upon this evaluation, a determination will be made whether isolation and/or testing is appropriate. As noted above, certain units at FCI Elkton have been designated as the isolation unit for inmates who are symptomatic and/or test positive for COVID-19.

37. FCI Elkton medical providers are prioritizing immediate medical care for anyone who experiences symptoms indicative of a COVID-19 infection.

STAFF AND VISITORS

38. Since March 22, 2020, all individuals entering FCI Elkton (including staff, delivery drivers, or any other visitors) must undergo a health screening prior to entry, the screening occurs while the individual is in their vehicle. This includes having their temperature taken and being asked a number of health screening questions based on the BOPs guidance to evaluate their risk of exposure, as well as whether they have been experiencing any symptoms of illness.

39. The individuals conducting this health screening are authorized to deny entry to any individual if he or she has a body temperature of 99 degrees Fahrenheit, or above, or reports other symptoms consistent with COVID-19 (although it was recommended that they consult with FCI Elkton medical providers in advance of the decision to deny entry).

40. FCI Elkton employees have also been educated regarding the importance of staying home if they are feeling ill, and are required to self-report any COVID-19 exposure (known or suspected) as well as any positive COVID-19 test. If a staff member is tested for COVID-19, they are not permitted to return to work until after receiving the results of the test.

COVID-19 TESTING AT FCI ELKTON

41. FCI Elkton is conducting testing in accordance with CDC guidelines. The CDC has explained that not everyone needs to be tested for COVID-19, and decisions about testing are at the discretion of state and local health departments. See www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html (last visited on Apr. 30, 2020).

42. As discussed in my previous declaration in this matter, the CDC has identified four "priority levels" for testing individuals with a suspected COVID-19 infection. Priority levels one through three include hospitalized patients and healthcare workers with symptoms (Priority

Level 1); symptomatic patients in long-term care facilities, individuals 65 years or older, individuals with underlying conditions, and first responders (Priority Level 2); and symptomatic critical infrastructure workers, individuals who do not meet any of the criteria in Priority Levels 1 or 2, healthcare workers and first responders, and individuals with mild symptoms in communities experiencing high numbers of COVID-19 hospitalizations (Priority Level 3). The fourth, or non-priority level, is for individuals without symptoms.

43. At FCI Elkton, the decision whether to test an inmate for COVID-19 is made by BOP medical providers based on a number of criteria, including but not limited to: (1) the nature and severity of the symptoms; (2) the inmate's potential exposure to COVID-19; (3) whether the inmate is considered "high-risk," and (4) whether the inmate is on a work detail, such as food service, that requires the inmate to interact with other inmates or staff.

44. In addition to the information I provided previously in this matter, on April 16, 2020, FCI Elkton received an Abbott testing machine and 250 testing cassettes. The Abbott machine was removed on April 21, 2020; however, a second Abbott machine was delivered on April 29, 2020 with an additional 250 test cassettes. I have been informed that an additional 432 tests will be coming to FCI Elkton within the week and possibly another Abbott testing machine.

45. The current testing strategy involves:

A. Testing all inmates in quarantine. Inmates testing negative will be tested again prior to release/transfer date.

B. Then, all FSL inmates will be tested by housing units. Housing units will be cohorted together until all results from the unit are received. They will then be either placed in to isolation or remain cohorted with their units.

C. Then all essential workers from the FCI will be tested.

D. Finally, all inmates from the FCI will be tested by housing units. We are currently working on the logistics of this and testing cycles.

46. FCI Elkton has contracted with an outside laboratory, (Quest Diagnostics), who will provide the turn-around time (24-48 hours) on testing that FCI Elkton needs. In addition to the 432 tests mentioned above, Quest Diagnostics provided FCI Elkton with an additional 400 test swab kits on May 7, 2020, and say they will provide an additional 150-200 tests each day after that. The logistics of this mass testing are being finalized and should only be limited by how often Quest can pick up the tests.

47. As of May 8, 2020, 134 FCI Elkton inmates have tested positive for COVID-19. 130 inmates have tested negative using the Abbott machine. Of the 357 staff members who work at FCI Elkton, 50 staff members who have tested positive for COVID-19, and 9 staff members have tested negative. There have been 9 inmate deaths related to COVID-19.

OPERATIONAL CHANGES TO IMPLEMENT COVID-19 ACTION PLAN

48. FCI Elkton has implemented BOP's national action plan, in compliance with BOP's national directives.

49. The implementation of the BOP's COVID-19 Action Plans at FCI Elkton can best be described as a "slowing down" of institutional operations, designed to limit the size of groups inmates can form and also the ability of these smaller groups to interact with each other at FCI Elkton. This minimizes the opportunity for inmates to come into contact with infected persons, and if they do, minimizes the possibility that any infection will spread beyond the smaller group.

50. In general, the smaller inmate groups at FCI Elkton were formed by dividing inmates by housing unit, and by floor, so they can 'shelter in place' with the fewest number of fellow

inmates. In order to reduce idle time and provide programs and activities, these groups are rotated through the recreation facility by themselves, and disinfection of the recreation facility is performed before the next group is rotated through it. Programs are delivered on the units, to include Education, Psychology, and Religious Services (especially in consideration of the Ramadan observance). Restrictions are in place to maintain separation between housing units. For example, only one housing unit is released to the cafeteria for "grab and go" meal service. The next unit is not released until the previous unit has returned to their housing quarters. When inmates need to report to Health Services for activities which cannot be performed on the unit (medication administration, etc.), they report to the clinic only with other inmates from their group. Once at the clinic, they wait in areas designed to facilitate social distancing.

51. As discussed in my previous declaration in this matter, FCI Elkton uses isolation to separate inmates who present with symptoms consistent with COVID-like illness from quarantined asymptomatic or general population inmates. These areas are distinct from the aforementioned housing unit groups and identified with signs prior to entering the unit. Staff are required to utilize proper PPE prior to entering these units to minimize to potential for cross-contamination between units. Inmates have surgical masks to wear when interacting with staff or leaving the assigned cell and their proximity to staff and other inmates is minimized. Medical staff determine if COVID-19 testing is necessary based on applicable guidelines and community standards. If the inmate's condition merits hospitalization, the inmate will be transported to a local hospital.

52. FCI Elkton uses quarantine to separate asymptomatic inmates who have been in contact with symptomatic inmates during the incubation period, which is up to 14 days for COVID-19. Inmates are housed together during this 14-day period with other asymptomatic

inmates in a housing unit. Steps are taken to not add or introduce new inmates to a quarantine housing unit after the 14-day quarantine clock has started. At the end of the 14-day period, the inmates may be released from quarantine if no inmates develop COVID-19 symptoms or are diagnosed with COVID-19. If additional inmates present with symptoms during the incubation period, these symptomatic inmates are isolated and the 14-day quarantine period begins anew. Inmates receive daily temperature checks and if any symptoms are reported, they are documented. If an inmate becomes symptomatic or has a temperature of greater than or equal to 99 F, the inmate is brought to Health Services for evaluation and possible placement in isolation. The FCI quarantine area is the Chapel. It can hold approximately 40-60 inmates at one time. Some inmates are also placed in SHU to minimize the possibility of exposure/conversion. The FSL quarantine area is located in the Psychology Services office. It can hold approximately 40 people. If someone tests positive prior to being released, they are moved to isolation for 10 days. The quarantine clock starts over for the remainder of the inmates in the unit.

53. In addition to the areas designated for quarantine and isolation, FCI Elkton's infirmary has acted as a step down unit for inmates returning from hospitalization for COVID-19 symptoms. FCI Elkton has also identified post-isolation locations that can be used in the FCI Part of Recreation) and the FSL (Chapel).

54. In order for an inmate to be removed from isolation, the inmate must be fever free for 72 hours (no other symptoms) and 10 days must have passed since the first symptom(s) appeared. This is consistent with CDC guidelines. Generally, inmates who show no symptoms after 10 days are moved from isolation to post-isolation recovery. Once in post-isolation recovery they remain there until their total time equals 21 days, which is speculated to be the time for antibodies to form.

55. Quarantine inmates are tested prior to entering quarantine. Inmates who show no sign of fever or symptoms for a full uninterrupted 14 days will be cleared and removed from quarantine. If the inmate is releasing, they will be re-tested within 24 hours of release. This will ensure two negative readings prior to release to a Residential Reentry Center or home confinement.

56. As of May 8, 2020, there were 35 inmates in isolation in the FCI and 37 inmates in isolation in the FSL.

57. As of May 8, 2020, there were 43 inmates in quarantine in the FCI (including 8 inmates in the FCI SHU), and 6 inmates in quarantine in the FSL.

58. As of May 8, 2020, there was 1 inmate in post-isolation in the FCI and 3 inmates in the FSL.

59. As of May 8, 2020, there were 20 inmates from FCI Elkton in the hospital for COVID related issues, including 7 inmates currently on ventilators. This constitutes a significant decrease from previous levels. Specifically, in mid-April, there were 45 FCI Elkton inmates at the hospital and approximately 18 inmates were intubated.

60. I have included as Attachment A to the declaration a series of charts that show the progression of the pandemic at FCI Elkton. These charts include the number of inmates sent to local hospitals for COVID-19 related issues, the number of FCI Elkton inmates at local hospitals, the number of inmate deaths, the number of intubations, the number of FCI Elkton staff who tested positive, and the number of inmates in isolation.

HYGIENE AND SAFETY PRACTICES AT FCI ELKTON

61. Maintaining institutional and personal hygiene is always a priority in a correctional setting. Since the COVID-19 pandemic however, institutional and personal hygiene has been elevated to the utmost importance, especially since inmates have been largely restricted to their housing units since implementing Phase Five of the COVID-19 Action Plan. Maintaining the highest standards of institutional and personal hygiene during modified operations is not only important for purposes of infection control, but also to minimize the possibility of disturbances or other events which might compromise the security and good order of the institution.

62. The Safety Department at FCI Elkton is responsible for distributing cleaning supplies throughout the institutions. These include but are not limited to cleaning chemicals, spray bottles, cleaning rags and applicators, and the equipment necessary to perform cleaning tasks. The chemicals used for cleaning at FCI Elkton are distributed to all areas of the institution on a regular schedule, and if any particular area requires additional cleaning supplies, staff assigned to that area can make arrangements with Safety to receive more. I am not aware of Safety ever having run out of cleaning supplies since the COVID-19 crisis began at FCI Elkton.

63. Currently, four specific cleaners are being used at FCI Elkton. TriBase 17 Multi-Purpose Cleaner, hdqC2 disinfectant cleaner, and Formula 66 air freshener have been the ordinarily employed cleaning chemicals at FCI Elkton. Since the beginning of the COVID emergency however, a broad spectrum disinfectant ("Virex II/256") has been added to specifically address the coronavirus threat. Virex II/256 is now used throughout the institution.

64. Prior to this pandemic, chemicals used for cleaning at FCI Elkton were distributed throughout the institutions on a regular weekly and monthly schedule. In between the regularly-

scheduled distribution, staff were always able to request additional cleaning supplies if they were needed.

65. Since the current emergency however, FCI Elkton has gone to a daily distribution of cleaning supplies. On weekdays an institution-wide announcement is made for staff to place their cleaning bottles outside the doors of their housing units, and Safety Department staff refill or replace needed supplies. While prior to the pandemic inmate orderlies would report to Safety to retrieve these supplies, in order to maintain the integrity to the group quarantine, staff now perform these functions. Of course, if additional supplies are needed during the day, staff can coordinate the delivery of these items with the Safety Department.

66. Once in the housing units, cleaning supplies are maintained in small caddies or bins kept in staff offices or closets. Inmates can then ask for a bin of cleaning supplies to bring back to their living areas.

67. Large area disinfection is being performed at both the FSL and FCI through use of backpack cleaning chemical sprayers. This work is performed by inmate orderlies or staff, depending on the location (inmates cannot perform this work in an area where they might come into contact with inmates not in their quarantine group). Whether by backpack unit or spray bottles, inmate orderlies (working only within their unit, to maintain the integrity of the group quarantine) are cleaning all high-touch areas such as doorknobs, railings, knobs, and handles multiple times per day.

AVAILABILITY OF SOAP AND OTHER PERSONAL HYGIENE PRODUCTS

68. Inmates at FCI Elkton are provided with basic soap and personal hygiene products (razors, toothbrushes, toothpaste, etc.) by the institution. These toiletries are maintained by staff

whose offices are located in the housing units, so there is never a reason an inmate should not have access to soap at FCI Elkton.

69. FCI Elkton also operates a centralized laundry, and inmates in this facility have their clothes (institution issued as well as personal articles purchased from commissary) washed for them by the laundry department. Inmates are provided with no-cost washers/dryers/laundry soap which they can use to clean clothes and linens.

70. Beyond that, the commissary at FCI Elkton allows inmates to purchase toiletries, medication, food, and other items not issued regularly as part of the institution administration. Similar to the offerings at any convenience store, the commissary at FCI Elkton offers a selection of different soaps, to include familiar national brands such as Irish Spring, Dove, Pure Antibacterial, Noxema, and Neutrogena. Inmates can also buy Ajax dish detergent and laundry detergent from the commissary.

STATUS OF PPE

71. Staff and inmates at FCI Elkton have, and will continue to have, access to appropriate PPE.

72. PPE is available for all staff at FCI Elkton to wear throughout their shift. Staff are required to wear these masks, and failure to do so may be cause for employee discipline under terms of Program Statement 3420.11, Standards of Employee Conduct. Staff are encouraged to use PPE prior to coming to work.

73. There are areas of the institution where staff might require additional PPE to perform their duties. These areas include but are not limited to Health Services, Receiving & Discharge, and isolation housing units. In these areas kits have been assembled which contain the enhanced

PPE to be used in that area (for example, gown, gloves, N-95 particulate respirators, face shields) and are always available. When the number of kits gets low, staff contact Health Services and additional kits are provided. In addition, kits are maintained in other areas of the institution (Control Center, Lieutenant's Office) to ensure availability during all hours of the day.

74. Throughout the institution and while working posts at the outside hospital, Correctional Officers are provided with PPE appropriate for their assigned post.

75. Staff are instructed as to the proper use of PPE through various memoranda detailing the type of PPE required at a given post or for a specific duty. Memoranda have also been circulated to instruct staff as to the proper donning/doffing of PPE, and video instruction is also available on the computer desktop of every FCI Elkton employee.

76. Inmates at FCI Elkton were initially provided with two of the same surgical masks provided to staff. Once FCI Elkton was able to procure cloth masks, two of these masks were issued to every inmate. Upon request, inmates will still be provided with the same surgical masks provided to staff. Inmates are required to wear these masks at all times except when they are eating or sleeping, and failure to do so may make the inmate subject to discipline under Program Statement 5270.09, Inmate Discipline Program.

77. Inmates performing cleaning or orderly duties have always, and will continue, to have access to gloves or other PPE as may be necessary for them to perform their assigned duties.

78. Correctional staff have been provided PPE to be used in appropriate locations throughout FCI Elkton such as quarantined areas, isolation units, and screening sites. FCI Elkton has sufficient PPE on hand, including N-95 respirator masks, surgical masks, medical gloves,

gowns, and foot coverings to meet its current and anticipated needs, as well as the ability to order additional PPE should the need arise.

REVIEWS OF FCI ELKTON

79. Along with tours conducted by DOJ and BOP executive staff, a number of external public health official have monitored the medical situation at FCI Elkton.

80. The FCI Elkton Warden has been in contact with the Ohio Department of Health. The Ohio Department of Health is reporting that they compare FCI Elkton to a nursing home, based on the proximity of people and care provided. These officials have observed that nursing homes have not been as successful as FCI Elkton in stopping the spread of COVID-19. Generally, if this disease gets in to a nursing home it decimates the population.

81. The FCI Elkton Health Services Department has been in contact with the Columbiana County Health Department since early March. They, too, were impressed by the planning that the Health Services Department had/has done in response to the pandemic. Early implementation of sanitation controls, hand hygiene information, and statistics have been essential in stopping the spread.

82. Towards the end of March, 2020, the FCI Elkton Health Services and Executive staff were having daily conference calls with the Ohio Department of Health, the Columbiana County Health Department, local hospitals, senators and congressmen from Ohio.

DEDICATION OF BOP STAFF

83. FCI Elkton Health Services staff members have worked tirelessly to ensure that every inmate is safe from the effects of this pandemic. They have been on 12 hours shifts since March

29, 2020. They have provided 24-hour medical coverage since the beginning of April. Health Services staff have completed temperature checks, testing, medical emergencies, patient management, Sick Call concerns, and medication renewals. My staff has done everything possible to care for these sick inmates, as well as inmates who were sick with non-COVID maladies, for weeks on end. I have watched my staff go without food, water, and bathroom breaks to ensure that only the best patient care is provided and institution operations are covered.

84. All BOP employees, including those at FCI Elkton, understand the importance of caring for all inmates and staff in this crucial time for our nation. However, we are aware that rushing to action without proper planning can lead to horrible or even tragic results for inmates, staff, and the communities we serve. The staff at all BOP institutions, including at FCI Elkton, must review and evaluate the particular situation of each inmate. On April 23, 2020, a FCI Elkton inmate was placed in quarantine in the SHU. He was swabbed for COVID on April 30, 2020, and tested positive. However, he was a full term release from FCI Elkton on May 1, 2020. He was set to live with his grandmother, who, upon finding out that he was positive, refused to let him live there. The Health Services Department was notified earlier this week that this inmate was staying at a homeless shelter.

85. My Department started planning for COVID in late January through early March. I instructed my staff to screen ANY inmate that came to Elkton for COVID starting the week of March 1, before the DOJ or BOP required this. I instructed my staff to start stock-piling supplies and inventorying it the second week of March. I mandated PPE for my providers before being told to do so by DOJ or BOP. I instituted temperature checks in the units for every inmate as a form of triage beginning on March 27, 2020. I instructed my Infectious Disease Nurse to start pulling rosters of the inmates at risk for COVID every time the CDC changed their guidance.

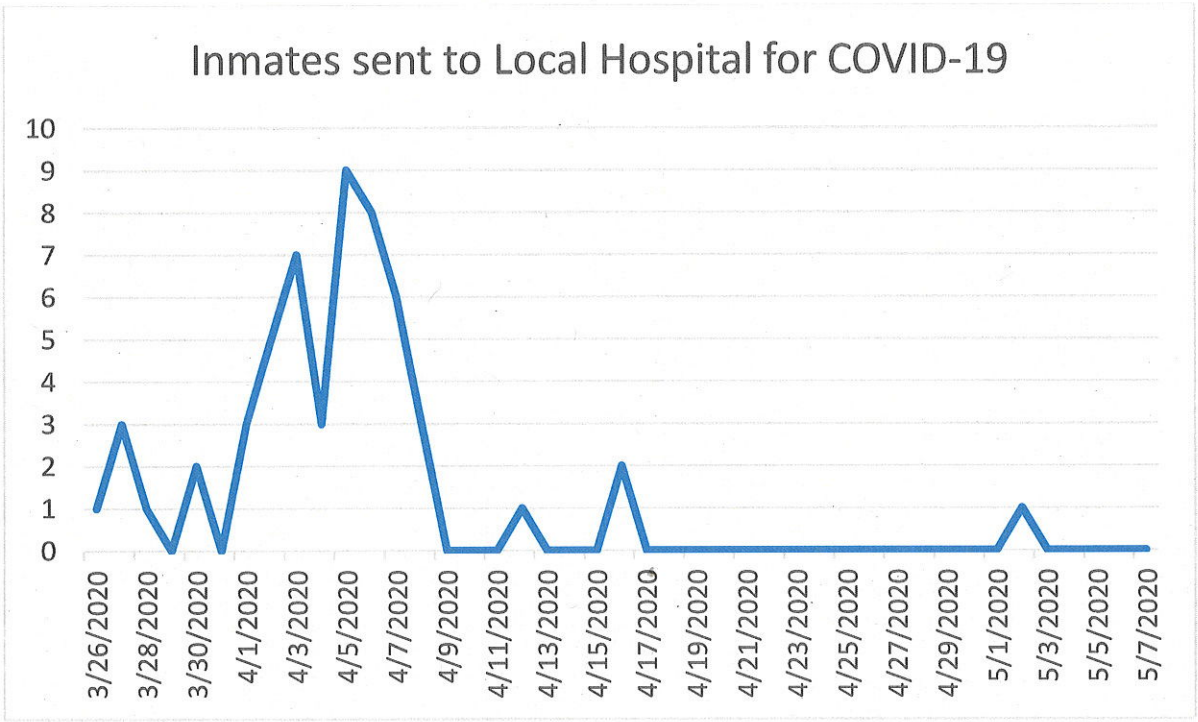
FCI Elkton Health Services have been heroes in their response to this pandemic. The selfless services is humbling to see and participate in. Not once have I been asked, "Why do I have to do this?" or heard someone argue with me about what needs to be done. These providers simply do it. Care for the inmates has not declined during the pandemic.

86. I have successfully advocated to bring awareness to the BOP about the effects the pandemic can have on a system or institution. I have advocated for screenings of both staff and inmates, and for cohorting of the population before it was mandated by the BOP. I have advocated for tighter sanitation controls, for better protection for both the inmates and staff, for more testing for inmates, and for mass testing. I have worked with the National Guard to ensure that appropriate patients were returned to the institution to relieve the burden on the local community and custody staff.

I declare that the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746 this May 8, 2020.

RESPECTFULLY SUBMITTED,

SARAH A. DEES
Health Services Administrator
FCI Elkton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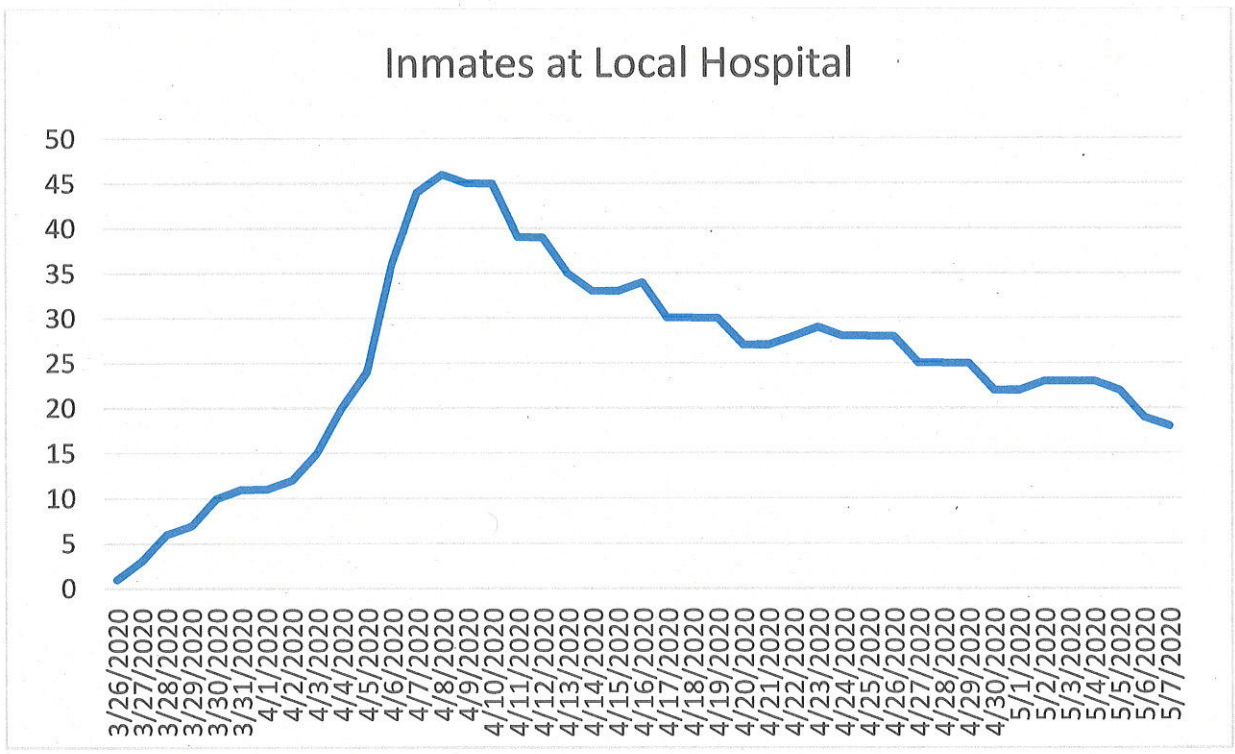
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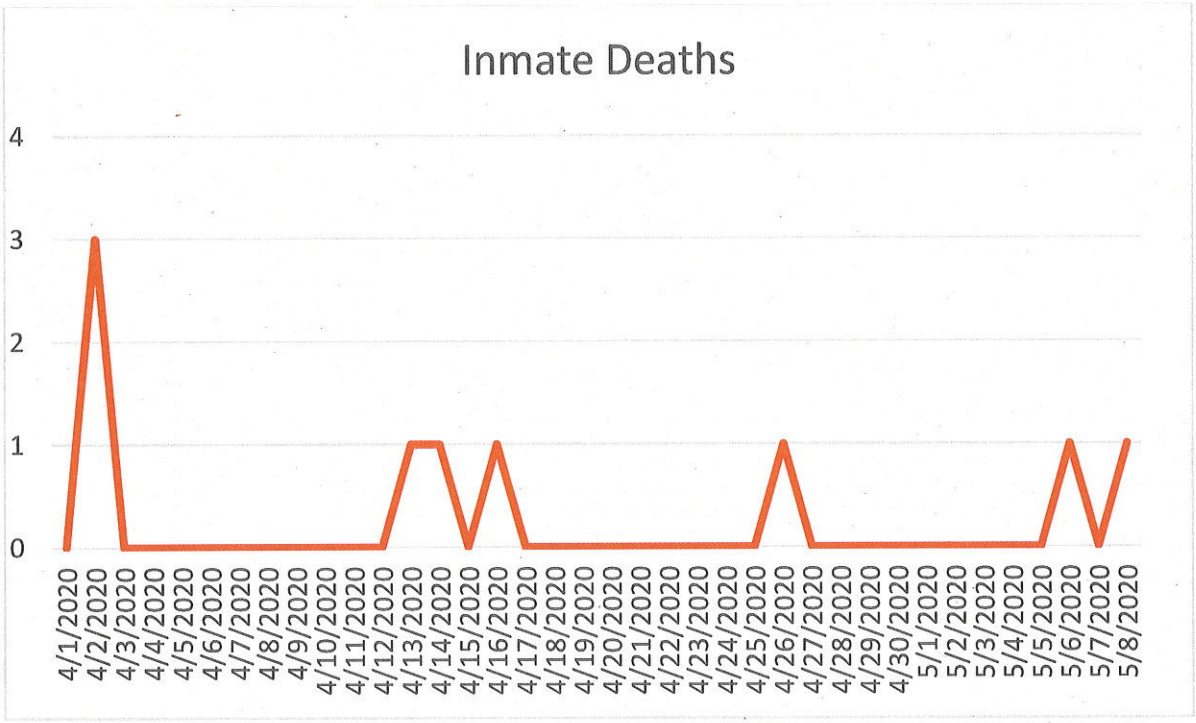
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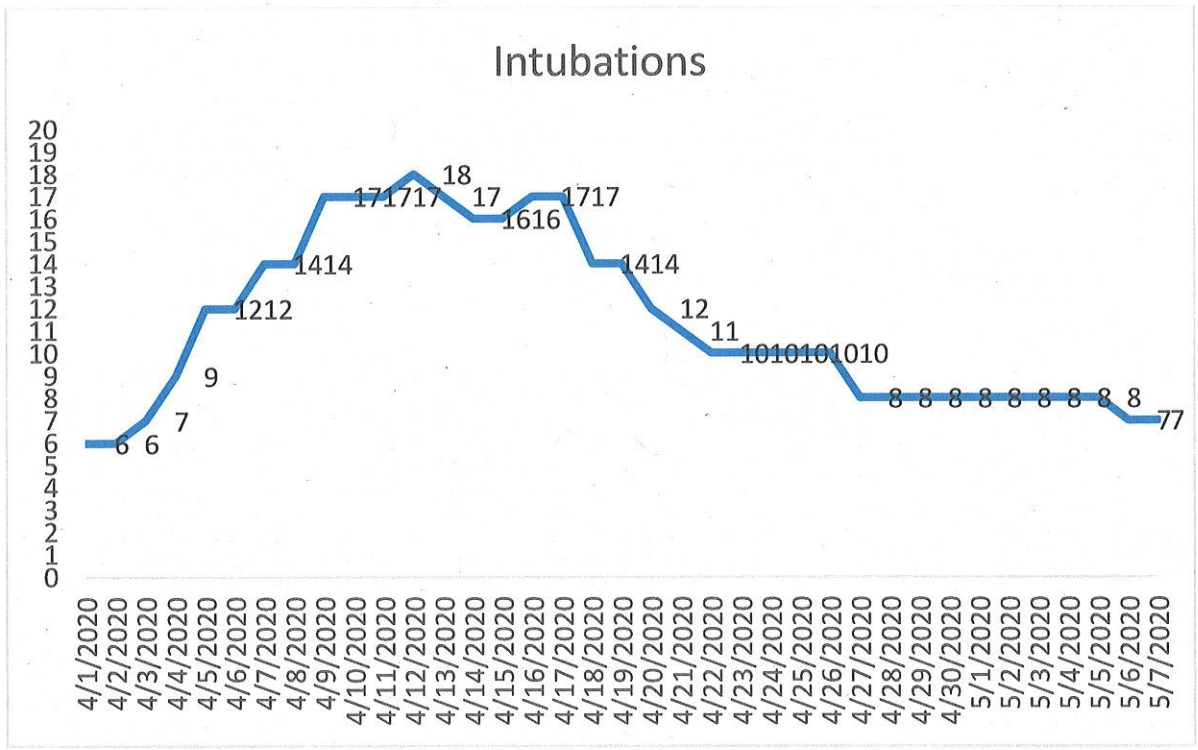
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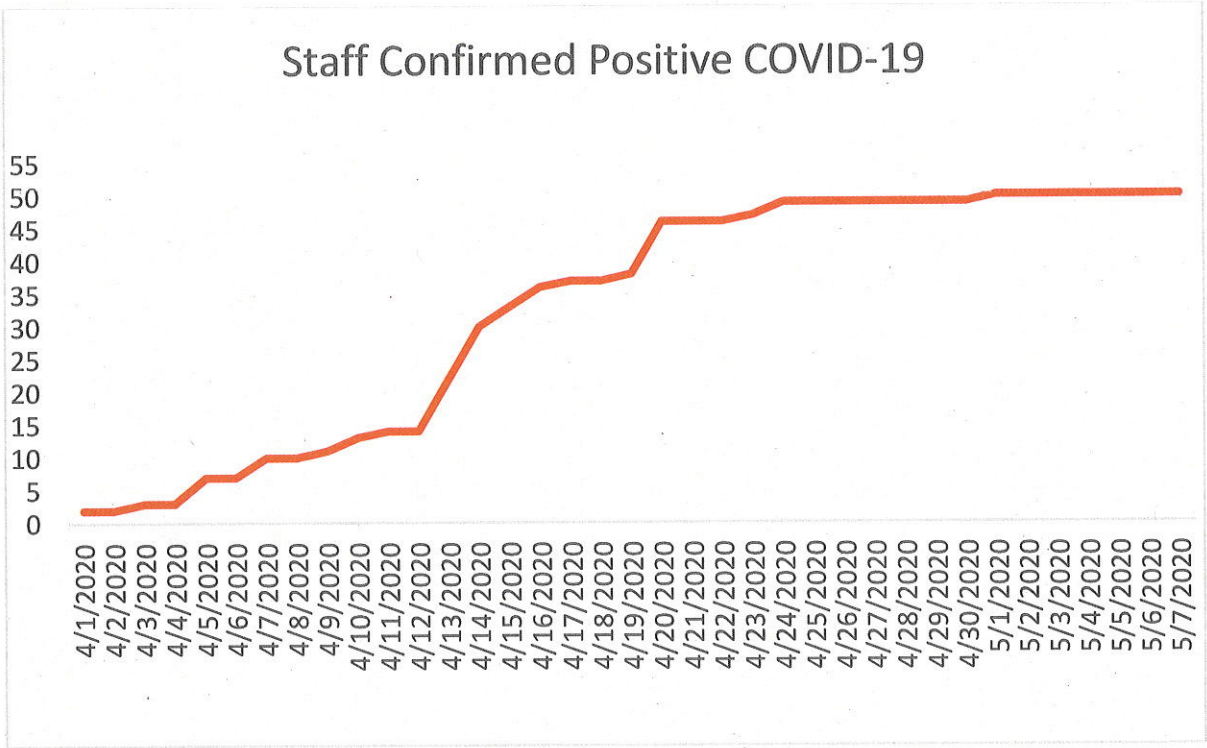
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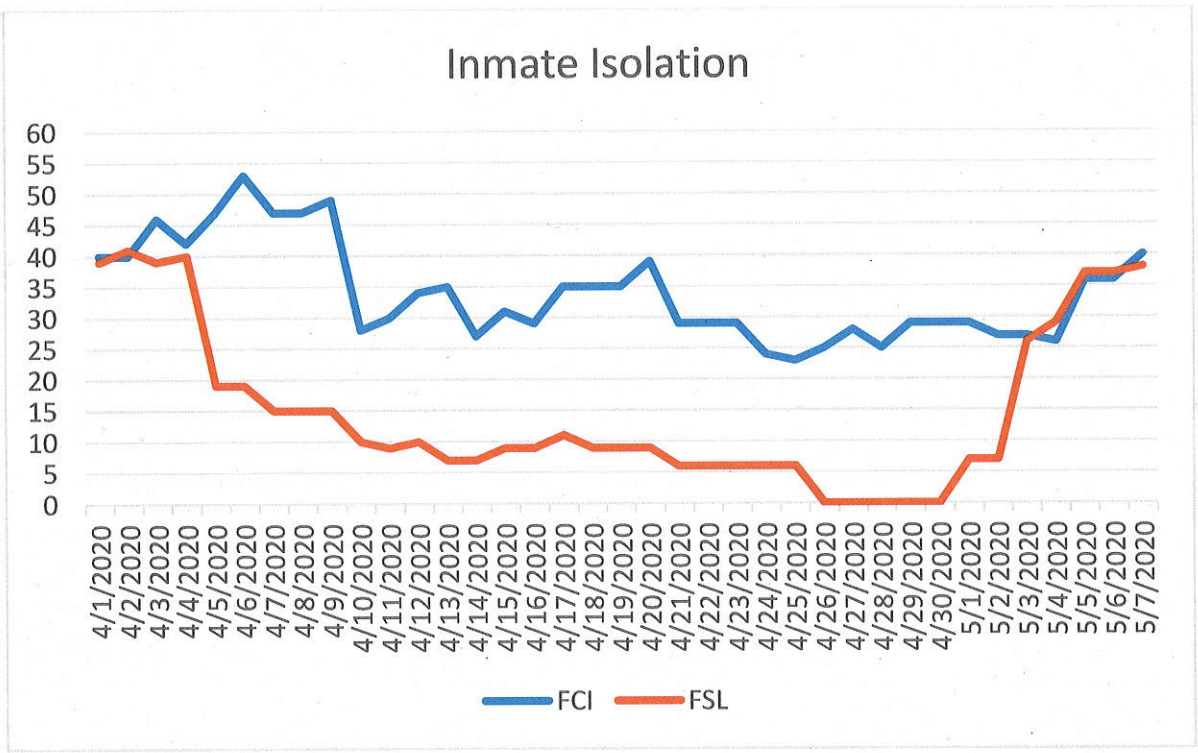
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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO

CRAIG WILSON, et al., Petitioners, v. WARDEN MARK WILLIAMS, et al., Respondents.	Civil No. 4:20-CV-00794

DECLARATION OF SUKENNA W. STOKES

I, Sukenna W. Stokes, do hereby make the following declaration:

1. I, Sukenna W. Stokes, am employed by the Federal Bureau of Prisons (BOP) as a Correctional Programs Administrator at the Northeast Regional Office in Philadelphia, Pennsylvania. I have been employed by the BOP since 1999. I have held my current position since 2019. In 1999, I began my BOP career at the Federal Correctional Institution in Talladega, Alabama as a Correctional Officer. In November 2000, I was selected as a Legal Instruments Examiner, and in August 2005, I was temporarily promoted to a Supervisory Correctional Officer (Lieutenant). In December 2005, was selected as a Special Investigative Support Technician. In November 2006, I was again selected as a Legal Instruments Examiner. In July 2008, I was promoted to the position of Correctional Treatment Specialist (Case Manager). In November 2012, I was promoted to the position of Supervisory Correctional Treatment Specialist (Case Management Coordinator). In February 2017, I was promoted to the position of Supervisory Correctional Treatment Specialist (Case Management Coordinator, Complex) at the

GOVERNMENT EXHIBIT C

Federal Correctional Complex in Forrest City, Arkansas, a position I held until I began my role as the Regional Correctional Programs Administrator in February 2019.

2. The Northeast Regional Correctional Programs Department is comprised of five staff members, who are responsible for providing support and guidance to the 19 institutions located within the Northeast Region. The department develops activities and programs designed to appropriately classify inmates, eliminate inmate idleness, and develop the skills necessary to facilitate the successful reintegration of inmates into their communities upon release. The Correctional Programs staff provides technical assistance on national policy; direction and daily operational oversight of correctional programs; inmate transportation; receiving and discharge, and the processing of inmate mail. The department monitors inmate populations at each institution and assist with facilitating relief when necessary. As the Regional Correctional Programs Administrator, I am responsible for policy implementation, planning, directing and coordinating operations to provide services that meet unit/case management and correctional program requirements to accomplish the institutions' mission.

3. In this position, I have access to official records compiled and maintained by the BOP, including Program Statements, inmate files, and computerized records.

4. Some of the BOP's computerized records are maintained in a database named SENTRY. SENTRY is a real-time information system consisting of various applications for processing inmate information. Data collected and stored in the SENTRY system includes information related to the classification, discipline, and programs of federal inmates.

5. Attachment A to this declaration is a true and correct copy of BOP Program Statement 5100.08, *Inmate Security Designation and Custody Classification.*

6. The BOP issued the *Inmate Security Designation and Custody Classification* Program Statement to provide policy and procedure regarding the BOP's inmate classification system.

The classification of inmates is necessary to place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the Bureau's mission to protect society. The BOP's classification, designation and redesignation procedures are consistent with the statutory authority contained in Title 18 United States Code (U.S.C.) § 3621(b), which states in pertinent part:

> **The Bureau of Prisons shall designate the place of the prisoner's imprisonment.** The Bureau may designate any available penal or correctional facility that meets minimum standards of health and habitability established by the Bureau, whether maintained by the Federal Government or otherwise and whether within or without the judicial district in which the person was convicted, that the Bureau determines to be appropriate and suitable, considering–
>
> (1) the resources of the facility contemplated;
>
> (2) the nature and circumstances of the offense;
>
> (3) the history and characteristics of the prisoner;
>
> (4) any statement by the court that imposed the sentence –
>
> (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or
>
> (B) recommending a type of penal or correctional facility as appropriate; and
>
> (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

See 18 U.S.C. § 3621(b) (Emphasis added).

7. The BOP created the Designation and Sentence Computation Center (DSCC) to centralize all determinations regarding inmate sentence computations and institution placements.

8. Decisions regarding initial institution placements are referred to as designations.

9. Once a defendant is sentenced to a federal term of imprisonment, staff of the United States Probation Office (USPO) upload documents to an electronic system known as "eDesignate". For cases involving original sentencing to a term of imprisonment, these

documents typically include the Judgement in a Criminal Case and the Presentence Investigation Report (PSR). For cases involving sentencing to a term of imprisonment based upon revocation of a term of supervised release, these documents typically include the order by which the court revoked supervised release and imposed a term of imprisonment, along with the revocation petition, which BOP staff also refer to as the violation report.

10. Once USPO staff have uploaded the relevant documents, the case is transferred on eDesignate to the United States Marshals Service (USMS). Typically, USMS staff then upload a copy of the defendant's USM-129, *Individual Custody/Detention Report*, to eDesignate and use eDesignate to transfer the case to the BOP and to request that the DSCC either provide a release date for the defendant (in cases where the defendant received a short sentence and there is not sufficient time to transport him to a facility before his release date) or designate the defendant to a facility to serve the term of imprisonment.

11. Once a case has been transferred from the USMS to the BOP, staff of the DSCC team assigned to the defendant's sentencing district will open the case and begin the designation process. When the process has been completed, DSCC staff respond to the USMS request through eDesignate, usually by notifying the USMS where the inmate will serve the term of imprisonment. The USMS then transports the inmate to the designated facility or, if the defendant has been allowed to voluntarily surrender, the USMS will notify the defendant of the facility at which he must appear on the scheduled date.

12. When making decisions about inmate designations, the BOP follows the guidance contained in the *Inmate Security Designation and Custody Classification* Program Statement which provides:

> This Program Statement provides policy and procedure regarding the Bureau of Prisons inmate classification system. The classification of inmates is necessary to

> place each inmate in the most appropriate security level institution that also meets their program needs and is consistent with the Bureau's mission to protect society.
>
> The Bureau's classification, designation and redesignation procedures are consistent with the statutory authority contained in 18 U.S.C. § 3621(b). All classification, designation and redesignation decisions are made without favoritism given to an inmate's social or economic status.

Attachment A, PS 5100.08 at page 1.

13. Consistent with the Inmate Security Designation and Custody Classification Program Statement, DSCC staff on the team assigned to the defendant's sentencing district consider the following primary factors when making a designation decision: (1) the level of security and supervision the inmate requires; (2) the level of security and staff supervision the institution is able to provide; and (3) the inmate's program needs. *Attachment A, PS 5100.08 at Chapter 1, page 1.*

14. DSCC staff also consider additional factors including, but not limited to:

- The inmate's release residence;
- The level of overcrowding at an institution;
- Any security, location or program recommendation made by the sentencing court;
- Any Central Inmate Monitoring issues (see Program Statement Central Inmate Monitoring Program);
- Any additional security measures to ensure the protection of victims/witnesses and the public in general; and,
- Any other factor(s) which may involve the inmate's confinement; the protection of society; and/or the safe and orderly management of a BOP facility.

Attachment A, PS 5100.08 at Chapter 1, pages 1-2.

15. The designation process involves two parts. First, DSCC staff on the team responsible for the inmate's sentencing district classify the inmate according to a security level (minimum, low, medium or high) and assign the inmate a custody level (community, out, in, or maximum).

Second, DSCC staff on Hotel Team designate the inmate to a particular facility commensurate with their security level and custody level and the factors identified below.

16. Minimum security institutions, also known as Federal Prison Camps (FPCs), have dormitory housing, a relatively low staff-to-inmate ratio, and limited or no perimeter fencing. These institutions are work- and program-oriented. A number of BOP institutions have a small, minimum security camp adjacent to the main facility. These camps, often referred to as Satellite Prison Camps (SCPs), provide inmate labor to the main institution and to off-site work programs.

17. Low security Federal Correctional Institutions (FCIs) have double-fenced perimeters, mostly dormitory or cubicle housing, and strong work and program components. The staff-to-inmate ratio in these institutions is higher than in minimum security facilities.

18. Medium security FCIs (and USPs designated to house medium security inmates) have strengthened perimeters (often double fences with electronic detection systems), mostly cell-type housing, a wide variety of work and treatment programs, an even higher staff-to-inmate ratio than low security FCIs, and even greater internal controls.

19. High security institutions, also known as United States Penitentiaries (USPs), have highly secured perimeters (featuring walls or reinforced fences), multiple- and single-occupant cell housing, the highest staff-to-inmate ratio, and close control of inmate movement.

20. Administrative facilities are institutions with special missions, such as the detention of pretrial offenders; the treatment of inmates with serious or chronic medical problems; or the containment of extremely dangerous, violent, or escape-prone inmates. Administrative facilities include Metropolitan Correctional Centers (MCCs), Metropolitan Detention Centers (MDCs), Federal Detention Centers (FDCs), Federal Medical Centers (FMCs),the Federal Transfer Center (FTC), the Medical Center for Federal Prisoners (MCFP), and the Administrative-Maximum Security Penitentiary

(ADX). Administrative facilities, except the ADX, are capable of holding inmates in all security categories.

21. An inmate's security level represents the level of security the inmate requires. It is based on the Criminal History Points as noted in the Presentence Investigation Report, and, if these points are contested, as ruled upon by the Court in the Statement of Reasons. The BOP has created Public Safety Factors and Management Variables which may adjust the inmate's security level up or down depending on the BOP's professional judgment. *Attachment A, PS 5100.08 at Chapter 5.*

22. An inmate's custody classification represents the amount of staff supervision the inmate requires. It is tied to an inmate's security level. *Attachment A, PS 5100.08 at Chapter 1, page 2 and Chapter 2, page 2.*

23. Under some circumstances, the BOP may transfer an inmate to a different institution following initial designation. This is referred to as a redesignation. Reasons for requesting redesignation include, but are not limited to disciplinary or closer supervision reasons, institution classification reasons, institution adjustment reasons, medical/psychological reasons, programming or training reasons, or because an inmate is nearing release. *Attachment A, PS 5100.08 at Chapter 7, pages 1-12.*

24. If institution staff believe an inmate is no longer appropriate for his current institution based on any of the factors identified in Chapter 7 of the *Inmate Security Designation and Custody Classification* Program Statement, they submit a redesignation request to the DSCC. Ordinarily, the DSCC will decide whether to grant or deny the request. DSCC staff will consider redesignation requests using the same factors outlined in paragraphs 24-26. In deciding whether to grant or deny a redesignation request, DSCC staff also carefully review the inmate's institutional adjustment and program performance. *Attachment A, PS 5100.08 at Chapter 1, page 3 and Chapter 7.*

25. If the redesignation request is granted, the DSCC will designate the inmate to another facility. If the request is denied, the inmate will remain at the same facility.

26. In compliance with the Court's April 22, 2020, Order in this matter, my office has been reviewing BOP records concerning available bed space at institutions located throughout the Northeast Region, as well as nationwide. Specifically, the review is focused on determining whether there is sufficient and available space to transfer and house for an extended period of time those identified inmates who were deemed inappropriate or otherwise ineligible for release consideration via compassionate release or reduction in sentence, furlough, home confinement, parole, or community supervision.

27. This review has taken into consideration the capabilities at different institutions of affording these inmates appropriate measures, such as testing, single-cell placement, and social distancing opportunities, as well as the BOP's suspension of inmate internal movement, programming and security concerns.

28. FCI Elkton is a low security institution with an adjacent Federal Satellite Low located in Columbiana County in Northeastern Ohio. As these inmates potentially subject to transfer under the Court's Order would be transferred from a low security institution, the BOP has had to account for each potential transferee institution's physical structure, layout, custody, and security level.

29. As stated above, low security institutions predominantly consist of dormitory or cubicle housing. As such, the Court's Order to place these inmates in single-cells will likely require transferring these inmates to higher security institutions that contain cell-type housing, where they will intermingle with higher security inmates.

30. Higher security institutions, including medium Federal Correctional Institutions and United States Penitentiaries, have cells with typically two beds per cell. As such, a medium or high security institution that reports to my office that it has, for example, 500 empty beds, would most likely only be able to accommodate no more than 250 inmates in single-cell status, further limiting the range of potential transferee available institutions.

31. The BOP would not house these inmates at a high security level institutions with maximum custody inmates. They would be most likely housed with inmates at medium security level institutions if a management variable is applied. *Attachment A, PS 5100.08 at Chapter 5, pages 1-6.*

32. Ordinarily, an inmate's transfer to a higher security institution is triggered by an increase in custody needs, such as the inmate is an escape risk, has pending charges, or a detainer. The BOP would apply a management variable to account for the inmate's custody needs and allow the inmate to be placed in the most appropriate level institution, even if that institution is inconsistent with the inmate's security level.

33. In order to house these inmates at a medium security level institution, the BOP would have to locate sufficient vacant cells or housing units to permit them to be single cell, and have the ability to practice social distancing. As the BOP's medium security level institutions are at capacity, vacating cells or housing units would entail relocating inmates to other cells within the institution or transferring them to another institution.

34. The modified operations which BOP is presently operating are intended to maximize social distancing as much as practicable. This includes consideration of staggered meal times and staggered recreation times in order to limit congregate gatherings.

35. Another factor my office has to consider is the First Step Act of 2018 (FSA). Section 601 of the FSA requires the BOP to place inmate in facilities as close as practicable to their primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence. Specifically, the FSA amended 18 U.S.C. § 3621(b) to state:

> The Bureau of Prisons shall designate the place of the prisoner's imprisonment, and shall, subject to bed availability, the prisoner's security designation, the prisoner's programmatic needs, the prisoner's mental and medical health needs, any request made by the prisoner related to faith-based needs, recommendations of the sentencing court, and other security concerns of the Bureau of Prisons, place the prisoner in a facility as close as practicable to the prisoner's primary residence, and to the extent practicable, in a facility within 500 driving miles of that residence. The Bureau shall, subject to consideration of the factors described in the preceding sentence and the prisoner's preference for staying at his or her current facility or being transferred, transfer prisoners to facilities that are closer to the prisoner's primary residence even if the prisoner is already in a facility within 500 driving miles of that residence."

36. Given the limited availability of single-cell bed space, the majority of the inmates potentially subject to transfer under the Court's Order would likely have to be transferred to institutions outside of 500 driving miles of their primary residences, which may posed additional problems for their families and friends to visit.

37. In addition to the available bed space issues raised by transferring inmates to higher security institutions, the transfers process itself raises significant security concerns. As previously indicated, the BOP reviews several factors to see if a particular institution is appropriate for an inmate, including the inmate's current offense; past criminal history; cooperation with the government; the level of security and supervision the inmate requires; the inmate's programming needs, i.e., substance abuse, educational/vocational training, individual counseling, group counseling, or medical/mental health treatment, etc.; the level of security and staff supervision the institution is able to provide; the inmate's release residence; the level of overcrowding at an institution; any security, location or program recommendation made by the sentencing court; Central

Inmate Monitoring issues (witness security cases, threats to government officials, broad publicity, disruptive group or gang affiliation, separations, special supervision); any additional security measures to ensure the protection of victims/witnesses and the public in general; and, any other factor(s) which may involve the inmate's confinement, the protection of society, and/or the safe and orderly management of a BOP facility. *Attachment A, PS 5100.08 at Chapter 1, pages 1-2.*

38. As previously indicated, the BOP considers the sentencing court's order for an inmate to participate in drug or sex offender treatment programs. FCI Elkton provides various mental health services to the inmate population including assessment, individual and group counseling, and crisis intervention functions. A non-residential sex offender treatment program is available to inmates housed in the Federal Satellite Low attached to FCI Elkton. And substance abuse services provided at FCI Elkton include the Residential Drug Abuse Program (RDAP), nonresidential treatment, and a drug abuse education course.

39. These drug and sex offender treatment programs are not available at most institutions. The disruption of these treatment programs may cause significant lapses in treatment, which may, among other potential consequences, impact an inmate's ability to continue with a program, and his eligibility for an early release pursuant to 18 U.S.C. § 3621(e) through completion of RDAP.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on this 08TH day of May 2020.

Sukenna W. Stokes

Sukenna W. Stokes
Regional Correctional Programs
Administrator Northeast Regional Office
Philadelphia, Pennsylvania

Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

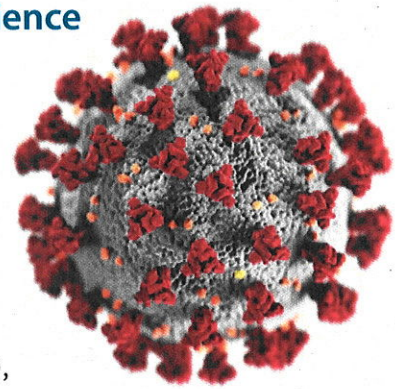
This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: https://www.cdc.gov/coronavirus/2019-ncov/index.html.

This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

In this guidance

Who is the intended audience for this guidance?



This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.

This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.

GOVERNMENT EXHIBIT D

CS 316182-A 03/27/2020

Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have medical conditions that increase their risk of severe disease from COVID-19.
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing healthcare infection control and clinical care of COVID-19 cases as well as close contacts of cases in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- √ Operational and communications preparations for COVID-19
- √ Enhanced cleaning/disinfecting and hygiene practices
- √ Social distancing strategies to increase space between individuals in the facility
- √ How to limit transmission from visitors
- √ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- √ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- √ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- √ Healthcare evaluation for suspected cases, including testing for COVID-19
- √ Clinical care for confirmed and suspected cases
- √ Considerations for persons at higher risk of severe disease from COVID-19

Definitions of Commonly Used Terms

Close contact of a COVID-19 case—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

Cohorting—Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See Quarantine and Medical Isolation sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

Community transmission of COVID-19—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define "local community" in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.

Confirmed vs. Suspected COVID-19 case—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

Incarcerated/detained persons—For the purpose of this document, "incarcerated/detained persons" refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e, detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

Medical Isolation—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance below). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term "medical isolation" to avoid confusion.

Quarantine—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under medical isolation and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

Social Distancing—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this CDC publication.

Staff—In this document, "staff" refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, "staff" does not distinguish between healthcare, custody, and other types of staff including private facility operators.

Symptoms—Symptoms of COVID-19 include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the CDC website for updates on these topics.

Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.

The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on recommended PPE in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of PPE shortages during the COVID-19 pandemic.

COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness**. This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the symptoms of COVID-19 and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

Communication & Coordination

√ **Develop information-sharing systems with partners.**

- Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
- Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.

- Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
- Where possible, put plans in place with other jurisdictions to prevent confirmed and suspected COVID-19 cases and their close contacts from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
- Stay informed about updates to CDC guidance via the CDC COVID-19 website as more information becomes known.

√ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**

- Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See Medical Isolation and Quarantine sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
- Facilities without onsite healthcare capacity should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
- Make a list of possible social distancing strategies that could be implemented as needed at different stages of transmission intensity.
- Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.

√ **Coordinate with local law enforcement and court officials.**

- Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
- Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.

√ **Post signage throughout the facility communicating the following:**

- **For all:** symptoms of COVID-19 and hand hygiene instructions
- **For incarcerated/detained persons:** report symptoms to staff
- **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
- Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

Personnel Practices

√ **Review the sick leave policies of each employer that operates in the facility.**

- Review policies to ensure that they actively encourage staff to stay home when sick.
- If these policies do not encourage staff to stay home when sick, discuss with the contract company.
- Determine which officials will have the authority to send symptomatic staff home.

- √ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
  - o Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
  - o Put systems in place to implement work from home programs (e.g., time tracking, etc.).
- √ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
  - o Allow staff to work from home when possible, within the scope of their duties.
  - o Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
  - o Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
  - o Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.
- √ **Consider offering revised duties to staff who are at** higher risk of severe illness with COVID-19**.** Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
  - o Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.
- √ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.
- √ **Reference the Occupational Safety and Health Administration website for recommendations regarding worker health.**
- √ **Review** CDC's guidance for businesses and employers to identify any additional strategies the facility can use within its role as an employer.

Operations & Supplies

- √ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
  - o Standard medical supplies for daily clinic needs
  - o Tissues
  - o Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
  - o Hand drying supplies
  - o Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
  - o Cleaning supplies, including EPA-registered disinfectants effective against the virus that causes COVID-19

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See PPE section and Table 1 for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
- Sterile viral transport media and sterile swabs to collect nasopharyngeal specimens if COVID-19 testing is indicated

√ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**

- See CDC guidance optimizing PPE supplies.

√ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, CDC recommends cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.

√ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See Hygiene section below for additional detail regarding recommended frequency and protocol for hand washing.)

- Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.

√ **If not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**

√ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See Table 1 for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

Operations

√ **Stay in communication with partners about your facility's current situation.**

- State, local, territorial, and/or tribal health departments
- Other correctional facilities

√ **Communicate with the public about any changes to facility operations, including visitation programs.**

√ **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**

- Strongly consider postponing non-urgent outside medical visits.
- If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.

√ **Implement lawful alternatives to in-person court appearances where permissible.**

√ **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**

√ **Limit the number of operational entrances and exits to the facility.**

Cleaning and Disinfecting Practices

√ **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**

√ **Adhere to** CDC recommendations for cleaning and disinfection during the COVID-19 response. Monitor these recommendations for updates.

- Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
- Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
- Use household cleaners and EPA-registered disinfectants effective against the virus that causes COVID-19 as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
- Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.

√ **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**

√ **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**

Hygiene

√ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**

√ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis.** Sample signage and other communications materials **are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

- **Practice good cough etiquette:** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
- **Practice good** hand hygiene**:** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
- **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
- **Avoid sharing eating utensils, dishes, and cups.**
- **Avoid non-essential physical contact.**

√ **Provide incarcerated/detained persons and staff no-cost access to:**

- **Soap**—Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
- **Running water, and hand drying machines or disposable paper towels for hand washing**
- **Tissues** and no-touch trash receptacles for disposal

√ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.

√ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

Prevention Practices for Incarcerated/Detained Persons

√ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See Screening section below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see PPE section below).

- **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
  - Require the individual to wear a face mask.
  - Ensure that staff who have direct contact with the symptomatic individual wear recommended PPE.
  - Place the individual under medical isolation (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See Infection Control and Clinical Care sections below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

- **If an individual is a close contact of a known COVID-19 case (but has no COVID-19 symptoms):**
  - Quarantine the individual and monitor for symptoms two times per day for 14 days. (See Quarantine section below.)
  - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

√ **Implement social distancing strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

- **Common areas:**
  - Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)
- **Recreation:**
  - Choose recreation spaces where individuals can spread out
  - Stagger time in recreation spaces
  - Restrict recreation space usage to a single housing unit per space (where feasible)
- **Meals:**
  - Stagger meals
  - Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
  - Provide meals inside housing units or cells
- **Group activities:**
  - Limit the size of group activities
  - Increase space between individuals during group activities
  - Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
  - Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out
- **Housing:**
  - If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are cleaned thoroughly if assigned to a new occupant.)
  - Arrange bunks so that individuals sleep head to foot to increase the distance between them
  - Rearrange scheduled movements to minimize mixing of individuals from different housing areas
- **Medical:**
  - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
  - Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

- √ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**
- √ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**
- √ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**
- √ **Provide** up-to-date information about COVID-19 **to incarcerated/detained persons on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Reminders to report COVID-19 symptoms to staff at the first sign of illness
- √ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

Prevention Practices for Staff

- √ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.
- √ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
  - o In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
  - o Send staff home who do not clear the screening process, and advise them to follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **Provide staff with up-to-date information about COVID-19 and about facility policies on a regular basis, including:**
  - o Symptoms of COVID-19 and its health risks
  - o Employers' sick leave policy
  - o **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
  - o **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor CDC guidance on discontinuing home isolation regularly as circumstances evolve rapidly.
  - o **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow CDC-recommended steps for persons who are ill with COVID-19 symptoms.
- √ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**
  - o Employees who are close contacts of the case should then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).

√ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**

√ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

Prevention Practices for Visitors

√ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**

√ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See Screening section below for wording of screening questions and a recommended procedure to safely perform temperature checks.

- Staff performing temperature checks should wear recommended PPE.
- Exclude visitors and volunteers who do not clear the screening process or who decline screening.

√ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**

√ **Provide visitors and volunteers with information to prepare them for screening.**

- Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
- If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
- Display signage outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.

√ **Promote non-contact visits:**

- Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
- Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
- Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.

√ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**

- If moving to virtual visitation, clean electronic surfaces regularly. (See Cleaning guidance below for instructions on cleaning electronic surfaces.)
- Inform potential visitors of changes to, or suspension of, visitation programs.
- Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
- If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.

If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

√ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

Operations

√ **Implement alternate work arrangements deemed feasible in the** Operational Preparedness **section.**

√ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**

- o If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see Table 1) and that the transport vehicle is cleaned thoroughly after transport.

√ **If possible, consider quarantining all new intakes for 14 days before they enter the facility's general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.

√ **When possible, arrange lawful alternatives to in-person court appearances.**

√ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**

- o Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See Screening section below.)
  - If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
  - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
  - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

√ **Coordinate with state, local, tribal, and/or territorial health departments.**

- When a COVID-19 case is suspected, work with public health to determine action. See Medical Isolation section below.
- When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See Quarantine section below.
- Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See Facilities with Limited Onsite Healthcare Services section.

Hygiene

√ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See above.)

√ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See above.)

Cleaning and Disinfecting Practices

√ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See above.)

√ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time (below).**

Medical Isolation of Confirmed or Suspected COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities with Limited Onsite Healthcare Services, or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.

√ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**

√ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**

- Provide medical care to cases inside the medical isolation space. See Infection Control and Clinical Care sections for additional details.
- Serve meals to cases inside the medical isolation space.
- Exclude the individual from all group activities.
- Assign the isolated individual a dedicated bathroom when possible.

√ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.

√ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** Cohorting should only be practiced if there are no other available options.

- If cohorting is necessary:
  - **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
  - Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
  - Ensure that cohorted cases wear face masks at all times.

√ **In order of preference, individuals under medical isolation should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ social distancing strategies related to housing in the Prevention section above.
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section above.
- Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements
  (NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

√ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of cases who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.
- Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

√ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see PPE section below) and should limit their own movement between different parts of the facility to the extent possible.

√ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

√ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:

- o **Cover** their mouth and nose with a tissue when they cough or sneeze
- o **Dispose** of used tissues immediately in the lined trash receptacle
- o **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that hand washing supplies are continually restocked.

√ **Maintain medical isolation until all the following criteria have been met. Monitor the CDC website for updates to these criteria.**

For individuals who will be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

For individuals who will NOT be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

For individuals who had a confirmed positive COVID-19 test but never showed symptoms:

- o At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- o The individual has had no subsequent illness

√ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**

- o If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

Cleaning Spaces where COVID-19 Cases Spent Time

Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the Definitions section for the distinction between confirmed and suspected cases.

- o Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- o Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in Prevention section).

√ **Hard (non-porous) surface cleaning and disinfection**

- o If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- o For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
  - Consult a list of products that are EPA-approved for use against the virus that causes COVID-19. Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
  - Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
    - 5 tablespoons (1/3rd cup) bleach per gallon of water or
    - 4 teaspoons bleach per quart of water

√ **Soft (porous) surface cleaning and disinfection**

- o For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
  - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
  - Otherwise, use products that are EPA-approved for use against the virus that causes COVID-19 and are suitable for porous surfaces.

√ **Electronics cleaning and disinfection**

- o For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
  - Follow the manufacturer's instructions for all cleaning and disinfection products.
  - Consider use of wipeable covers for electronics.
  - If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on CDC's website.

√ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See PPE section below.)

√ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

√ Laundry from a COVID-19 cases **can be washed with other individuals' laundry.**

- o Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
- o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

√ **Consult cleaning recommendations above to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

Quarantining Close Contacts of COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity, or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.

√ **Incarcerated/detained persons who are close contacts of a confirmed or suspected COVID-19 case (whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**

- If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.

√ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is considered a close contact if they:**

- Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
- Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

√ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**

- Provide medical evaluation and care inside or near the quarantine space when possible.
- Serve meals inside the quarantine space.
- Exclude the quarantined individual from all group activities.
- Assign the quarantined individual a dedicated bathroom when possible.

√ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually.** Cohorting multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.

- If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under medical isolation immediately.
- If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
- Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- o If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

√ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify social distancing strategies for higher-risk individuals.)

√ **In order of preference, multiple quarantined individuals should be housed:**

- o Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- o Separately, in single cells with solid walls but without solid doors
- o As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- o As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- o As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- o As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ social distancing strategies related to housing in the Prevention section to maintain at least 6 feet of space between individuals housed in the same cell.
- o As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). Employ social distancing strategies related to housing in the Prevention section above to maintain at least 6 feet of space between individuals.
- o Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

√ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see PPE section and Table 1):

- o If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- o If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- o All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- o Asymptomatic individuals under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear face masks.

√ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see PPE section and Table 1).

- o Staff supervising asymptomatic incarcerated/detained persons under routine intake quarantine (with no known exposure to a COVID-19 case) do not need to wear PPE.

√ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**

- o If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See Medical Isolation section above.)
- o See Screening section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.

√ **If an individual who is part of a quarantined cohort becomes symptomatic:**

- o **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- o **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
- o **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.

√ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**

√ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**

√ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

√ **Laundry from quarantined individuals can be washed with other individuals' laundry.**

- o Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
- o Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- o Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
- o Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

Management of Incarcerated/Detained Persons with COVID-19 Symptoms

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.

√ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**

√ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See Medical Isolation section above.**

√ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on evaluation and testing. See Infection Control and Clinical Care sections below as well.

√ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**

- If the COVID-19 test is positive, continue medical isolation. (See Medical Isolation section above.)
- If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

√ **Provide clear information to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**

- Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
- Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

√ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See Screening section for a procedure to safely perform a temperature check.

√ **Consider additional options to intensify** social distancing within the facility.

Management Strategies for Staff

√ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**

- Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.

√ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**

- See above for definition of a close contact.
- Refer to CDC guidelines for further recommendations regarding home quarantine for staff.

Infection Control

Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.

√ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19) in Healthcare Settings. Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).

√ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see PPE section).

√ **Refer to PPE section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

Clinical Care of COVID-19 Cases

√ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**

- If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
- The initial medical evaluation should determine whether a symptomatic individual is at higher risk for severe illness from COVID-19. Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See CDC's website for a complete list, and check regularly for updates as more data become available to inform this issue.

√ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19) and monitor the guidance website regularly for updates to these recommendations.**

√ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing recommended PPE and ensuring that the suspected case is wearing a face mask.**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.

√ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**

√ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**

√ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

√ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's respiratory protection program.
- For PPE training materials and posters, please visit the CDC website on Protecting Healthcare Personnel.

√ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**

√ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences** (see Table 1). **Monitor linked CDC guidelines in Table 1 for updates to recommended PPE.**

√ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**

√ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility** will vary based on the type of contact they have with COVID-19 cases and their contacts (see Table 1). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.**

- **N95 respirator**

See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.

- **Face mask**
- **Eye protection**—goggles or disposable face shield that fully covers the front and sides of the face
- **A single pair of disposable patient examination gloves**

Gloves should be changed if they become torn or heavily contaminated.

- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**
  - If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
  - If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.

√ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**

- **Guidance in the event of a shortage of N95 respirators**
  - Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand.** During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.
- **Guidance in the event of a shortage of face masks**
- **Guidance in the event of a shortage of eye protection**
- **Guidance in the event of a shortage of gowns/coveralls**

Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/ Coveralls
Incarcerated/Detained Persons					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	–	✓	–	–	–
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓
Staff					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	–	Face mask, eye protection, and gloves as local supply and scope of duties allow.			–
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	–	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see CDC infection control guidelines)	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see CDC infection control guidelines)	✓	–	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓

* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

** A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

√ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**

- *Today or in the past 24 hours, have you had any of the following symptoms?*
  - *Fever, felt feverish, or had chills?*
  - *Cough?*
  - *Difficulty breathing?*
- *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*

√ **The following is a protocol to safely check an individual's temperature:**

- Perform hand hygiene
- Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
- Check individual's temperature
- **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be cleaned routinely as recommended by CDC for infection control.
- Remove and discard PPE
- Perform hand hygiene