No. 19A1041

IN THE SUPREME COURT OF THE UNITED STATES

MARK WILLIAMS, WARDEN, ET AL., APPLICANTS

v.

CRAIG WILSON, ET AL.

REPLY IN SUPPORT OF APPLICATION FOR A STAY

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Since the outset of the national emergency created by the COVID-19 pandemic, the Federal Bureau of Prisons (BOP) has worked tirelessly to protect inmates and staff from the threat posed by the novel coronavirus, while also preserving the safety of the public as a whole. To accomplish those goals, BOP has brought all of its resources to bear to implement a systemic pandemic response that it developed with a team of internal and external subject-matter experts, and in accordance with the guidance of the Centers for Disease Control and Prevention (CDC) and other expert health authorities. But now, at FCI Elkton, in the midst of the pandemic and BOP efforts to respond, BOP has been forced to turn its efforts to removing more than 800 inmates from that facility through an elaborate set of procedural steps imposed by the district court, all ultimately resulting in the transfer of subclass members to other placements. The resulting disruption at Elkton and in broader prison administration demonstrates that the court has

become improperly and deeply "'enmeshed in the minutiae of prison operations'" at Elkton without any legal justification for that involvement. Farmer v. Brennan, 511 U.S. 825, 846-847 (1994) (citation omitted).

Respondents assert that BOP has violated the Eighth Amendment by housing prisoners in low-security dormitory-style units at Elkton because those structures "limit the ability of [respondents] to maintain adequate distance from each other." Resp. Opp. to Appl. for Stay (Opp.) 38. And they contend that the only way to remedy the constitutional violation for subclass members is to remove them from Elkton. Opp. 34 (alleging that, because "no set of conditions at Elkton would be constitutionally sufficient," the only viable relief is "expedited release" from Elkton) (citation omitted). If that theory were accepted, it would mean that every prisoner who, like the members of the subclass in this case, is in a dormitory-style detention facility in which there are confirmed cases of COVID-19 has a constitutional right to be removed from that facility (or at least to have some of his fellow inmates removed). That plainly is not the law.

Nor is that the only legal deficiency in respondents' suit. They protest that their claim is properly brought in habeas because it is a challenge to the "fact or duration" of their confinement, but they conspicuously ignore that their own habeas petition brought only a single claim for "unconstitutional conditions of confinement." Stay Appl. App. (Stay App.) 17a-18a, 87a (capitalization and emphasis omitted). They also contend that (Opp. 32), regardless of the nature of their claim, their suit

must be cognizable in habeas because "the only relief available is a form of release," but the "release" they request (a potentially temporary transfer to an alternative placement) looks nothing like traditional habeas relief.

Moreover, because respondents cannot reasonably characterize their challenge as anything but an action "with respect to prison conditions," 18 U.S.C. 3626(g)(2), they cannot avoid the application of the Prison Litigation Reform Act of 1995 (PLRA), Pub. L. No. 104-134, § 101, Tit. VIII, 110 Stat. 1321-66. That is fatal to their claims because the preliminary injunction indisputably violates the PLRA's restrictions on "prisoner release orders," which the stay opposition does not even mention.

Respondents allege that, regardless of the legal shortcomings, there is no need for this Court to grant a stay because the government "will not be harmed if a stay is denied." Opp. 45 (capitalization and emphasis omitted). That contention is meritless. The government is currently being forced to divert its focus and turn its resources to complying with a series of increasingly onerous and exacting orders that are contrary to CDC guidance, and which the district court lacked authority or expertise to issue. Those orders require BOP to transfer inmates from Elkton to other placements or ultimately to other facilities that are inconsistent with BOP's placement designations for them. Those measures usurp BOP's expertise and statutorily conferred authority to designate an inmate's place of confinement, and they inflict harms on both inmates and the public. See pp. 17-19, infra.

As the Fifth Circuit recently explained in addressing the harms in an analogous suit against a state detention facility, misconceived district court orders designed to mitigate the effects of the pandemic do the opposite by imposing "intrusive" burdens "'in terms of time, expense, and administrative red tape,'" and by "interfer[ing] with [officials'] rapidly changing and flexible system-wide approach" to the COVID-19 emergency. Valentine v. Collier, 956 F.3d 797, 803 (2020) (per curiam) (citation omitted).

Finally, respondents complain (Opp. 4, 25) that the government did not seek relief as soon as the district court issued its initial order, and that the government should not have sought relief from this Court without seeking a stay in the lower courts of the May 19 enforcement order. Neither contention is sound.

The government is currently facing numerous suits challenging conditions of confinement in federal prisons across the Nation. It has prevailed in many, and -- in the rare instance where temporary relief was granted -- it has consistently attempted to address the harms to its operations without needing to pursue relief from this Court.[1] In this case, too, the government did

[1] See, e.g., Jones v. Bergami, No. EP-20-cv-132, 2020 WL 2575566 (W.D. Tex. May 21, 2020) (dismissing suit brought by inmates at BOP's La Tuna Federal Correctional Institution); Baez v. Moniz, No. 20-cv-10753, 2020 WL 2527865 (D. Mass. May 18, 2020) (denying motion to dismiss, as well as inmates' request for preliminary injunctive relief, for habeas petition brought by inmates at the Plymouth County Correctional Facility); Martinez-Brooks v. Easter, No. 3:20-cv-569, 2020 WL 2405350 (D. Conn. May 12, 2020) (granting a temporary restraining order to inmates at Danbury Federal Correctional Institution, requiring BOP to

not immediately seek a stay from this Court after the April 22 order because it first attempted to obtain relief from the district court itself and from the Sixth Circuit, by requesting a stay, by seeking expedited briefing on appeal, by informing the district court of the numerous impediments to enforcement of its injunction, and finally by waiting to determine what the district court's response would be to respondents' motion to enforce the injunction, in light of those impediments and changing circumstances. When the court then entered its May 19 order enforcing the injunction -- by imposing ever more demanding conditions requiring reassessment of every class member under the court's standards for home confinement, and individualized justifications for every denial of a reevaluation for compassionate release and inability to transfer -- the government sought a stay of the injunction in this Court the next day.

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accelerate its evaluation of inmates' eligibility for home confinement); Grinis v. Spaulding, No. 20-cv-10738, 2020 WL 2300313 (D. Mass. May 8, 2020) (denying preliminary injunctive relief for habeas petition brought by inmates at the BOP's Federal Medical Center Devens); Livas v. Myers, No. 2:20-cv-422, 2020 WL 1939583 (W.D. La. Apr. 22, 2020) (dismissing habeas petition brought by inmates at BOP's Oakdale Federal Correctional Institution); Furando v. Ortiz, No. 20-cv-3739, 2020 WL 1922357 (D.N.J. Apr. 21, 2020) (dismissing habeas petition challenging conditions at BOP's Fort Dix correctional facility); Nellson v. Barnhart, No. 20-cv-756, 2020 WL 1890670 (D. Colo. Apr. 16, 2020) (denying a temporary restraining order to inmates at United States Penitentiary in Florence, Colorado); Chunn v. Edge, No. 20-cv-1590, 2020 WL 1872523 (E.D.N.Y. Apr. 15, 2020) (denying temporary restraining order in challenge to conditions at BOP's Metropolitan Detention Center).

Contrary to respondents' protestations, the government was not required to first seek a stay of the May 19 enforcement order in the lower courts. To be sure, that order does vividly underscore and intensify the degree of judicial intrusion into prison operations and the resulting disruptions and harms resulting from the injunction. But the government seeks a stay of the April 22 injunction, and its legal and factual arguments in the stay application centered on that order. Staying it will indeed necessarily deprive the court's additional order enforcing the injunction of its operative effect, but that does not mean that the government was required to separately seek relief with respect to that order. See Nken v. Holder, 556 U.S. 418, 428-429 (2009) (noting that a stay "suspend[s] the source of authority to act" by "'suspend[ing] judicial alteration of the status quo'") (citation omitted).

I. THERE IS A REASONABLE PROBABILITY THIS COURT WOULD GRANT CERTIORARI AND VACATE THE INJUNCTION

Respondents assert that this Court would be unlikely to grant certiorari because the suit does not implicate any conflict in the circuits. Opp. 26. That is incorrect. As the stay application explained, the suit implicates two disagreements in the circuits. Stay Appl. 20-23. But even if it did not, this Court would still likely grant certiorari because a district court order that requires the government to remove more than 800 prisoners from a facility and transfer many to various other facilities unsuitable for their placement -- all in the midst of a pandemic -- undoubtedly raises issues of fundamental importance that merit

this Court's review. And the Court is likely to vacate that order because it conflicts with the precedents of this Court, the statutory requirements of the PLRA, and the requirements of the Eighth Amendment.

A. 1. There is a well-established division in the circuits regarding whether prisoners may bring conditions of confinement challenges through habeas. Stay Appl. 20-21. Respondents assert that the split is not implicated because this suit is properly deemed a challenge to the "fact * * * of [their] confinement," a form of claim that all circuits agree may proceed through habeas. Opp. 27. But respondents themselves characterized their claim as a challenge to their "unconstitutional conditions of confinement" in their habeas petition, Stay App. 87a, and that is precisely what it is: They allege that they are subject to unconstitutional conditions at Elkton because they cannot maintain social distancing. See, e.g., Opp. 34, 38.

Respondents nonetheless protest that their suit must be a "fact or duration" challenge because they seek a "form of release," which is a traditional kind of habeas relief. Opp. 32. But elsewhere in their own brief, respondents acknowledge that they are not seeking release, and that they are merely seeking to "enlarge[]" the "conditions of their confinement." Opp. 46 (quoting Stay App. 27a). In fact, their petition requests "release" but defines that only as discharge "from the physical confines of Elkton," including through transfers to another facility and mechanisms that would allow for their return to Elkton once the threat of the virus abates. Stay App. 54a n.2. That is

not a form of relief cognizable in habeas; this court has explained that habeas relief inevitably involves "terminat[ing] custody, accelerat[ing] the future date of release from custody, [or] reduc[ing] the level of custody," Skinner v. Switzer, 562 U.S. 521, 534 (2011) (quoting Wilkinson v. Dotson, 544 U.S. 74, 86 (2005) (Scalia, J., concurring)). The Great Writ vindicates a prisoner's right to freedom from custody, not his request for one prison rather than another.

Respondents also assert that the government "overstates" the split regarding whether challenges to conditions of confinement are cognizable in habeas because only the D.C. Circuit has held that they are. Opp. 29. But, even if true, that makes it all the more likely the Court would grant certiorari. In this case, the court allowed a conditions-of-confinement suit to proceed in habeas, despite the great weight of precedent to the contrary.

2. Respondents contend (Opp. 30-31) that there is no conflict with respect to the viability of Eighth Amendment claims against detention facilities in the face of the COVID-19 pandemic because the government has pointed exclusively to decisions in the stay posture. That, however, is because the COVID-19 pandemic is an extremely recent phenomenon. The fact that multiple courts have already addressed it, even through stay opinions, is therefore further evidence of the importance of the questions presented. And the stay orders of the Fifth and Eleventh Circuits rejected judicial intrusions into prison administration in connection with COVID-19 that did not remotely resemble the injunction in this case, which requires the transfer of more than 800 inmates under

minutely fashioned procedural requirements to be applied to every inmate in the class. As respondents concede, in both the Fifth and Eleventh Circuit cases, the district courts had imposed requirements like "clean[ing] the facility," or providing prisoners with "face masks." Opp. 31-32 (citing Valentine v. Collier, 956 F.3d 797, 799-800 (2020) (per curiam), and Swain v. Junior, No. 20-11622, 2020 WL 2161317, at *2-*3 (11th Cir. May 5, 2020) (per curiam)). BOP already meets those requirements at Elkton, see Stay App. 103a ¶¶ 46-50, but the district court nonetheless determined that BOP had violated the Eighth Amendment such that more than 800 prisoners must be removed from Elkton. The Sixth Circuit's refusal to stay that remedy is in sharp contrast to the relief issued by its sister circuits. See also Roman v. Wolf, No. 20-55436, 2020 WL 2188048 (9th Cir. May 5, 2020) (unpublished).

B. Respondents further assert that they are likely to succeed on the merits, but that is plainly mistaken.

1. As noted, respondents' suit is properly characterized (sometimes by respondents themselves, Stay App. 87a) as a challenge to the conditions of their confinement. Those challenges are not cognizable in habeas, and the suit should have been dismissed for that reason alone. See Muhammad v. Close, 540 U.S. 749, 754-755 (2004) (per curiam) (A prisoner who is not "seeking a judgment at odds with his conviction or with the State's calculation of time to be served" is not raising a claim "on which habeas relief could [be] granted on any recognized theory."); see also Nelson v. Campbell, 541 U.S. 637, 643 (2004) (describing different

categories of actions that may be brought through 1983 claims as opposed to habeas).

In any event, even if such habeas challenges were permitted, they would be governed by the PLRA because they fit squarely within that statute's definition of a "civil action with respect to prison conditions." See Stay App. 24 (quoting 18 U.S.C. 3626(g)(2)). Respondents' primary argument to the contrary is premised chiefly on the observation that the statute exempts habeas challenges to "the fact or duration of confinement in prison." Opp. 36 (quoting 18 U.S.C. 3626(g)(2)). But this suit does not match that description, see pp. 7-8, supra, and because the PLRA applies, the court's injunctive relief is improper. Indeed, respondents do not even address the fact that the district court's injunction qualifies as a "prisoner release order," and therefore violates the extensive requirements -- such as the need for a three-judge court -- that the PLRA imposes as prerequisites to such relief.

Respondents do briefly assert (Opp. 36) that the injunction could satisfy the requirements that the PLRA imposes for lesser injunctions, such as narrow tailoring. They do not, however, suggest that the court actually made the findings the PLRA requires, a failure that the Act mandates should lead to the "immediate termination" of the order. 18 U.S.C. 3626(b)(2). And their narrow tailoring argument rests primarily on the observation that the district court gave them less than the full relief they requested because it declined to grant relief to a larger class of all Elkton inmates. But that scarcely turns a dramatic order

requiring BOP to remove more than 800 inmates into an appropriately limited form of injunctive relief.

2. Further, there is no legal basis for issuing relief of any kind in this suit. Respondents fail to address (Opp. 37-43) the fundamental defects in their Eighth Amendment claim. They cannot satisfy the objective requirement for a valid claim, much less the subjective one. See Stay Appl. 29-35.

First, respondents cannot show that, objectively, the risk posed by COVID-19 after BOP's mitigation efforts has denied them "the minimal civilized measure of life's necessities," Farmer v. Brennan, 511 U.S. at 834 (citation omitted), or that "today's society" would judge the circumstances "so grave that it [would] violate[] contemporary standards of decency to expose anyone unwillingly to [it]," Helling v. McKinney, 509 U.S. 25, 36 (1993) (emphasis omitted).

The core of respondents' Eighth Amendment claim is that Elkton's "very design as a low-security facility" creates an unconstitutional condition of confinement because Elkton's structure "cannot accommodate recommended social distancing" and the 150-man housing units have thus "deprived [respondents] of any chance to comply with the directives of the CDC." Opp. 11, 40. But the CDC's guidance for prisons states that while social distancing strategies should "ideally" increase distancing to six feet by, for instance, having inmates sleep "head to foot" in "bunks," the guidance makes clear that "[n]ot all strategies will be feasible" and "will need to be tailored to the individual space in the facility and the needs of the population and staff." Stay App.

211a. Respondent's position, if correct, would impose a constitutional six-feet-at-all-times rule that would require the release of inmates from low-security facilities even where prison officials have taken extensive efforts to mitigate the risk of spread, and even while most law-abiding citizens in today's society cannot guarantee themselves such protections at all times. Nothing supports such a rule, which is inconsistent with the decisions of courts of appeals properly analyzing similar Eighth Amendment claims. See Stay Appl. 21-22.

To bolster their claims, respondents focus on the initial spike of COVID-19 hospitalizations and nine resulting deaths, but they ignore BOP's continuing and increasing efforts to suppress the virus at Elkton and their critiques are unfounded. Even before district court's April 22 injunction, and in light of BOP's extensive mitigation efforts that follow CDC's expert guidance for detention facilities, new hospitalizations were brought to nearly zero (with only one post-injunction admission); and the few inmates who have since died were inmates who became ill before April 6. Stay Appl. 30-31 & n.3; see Stay App. 187a-189a. It is the district court's succession of orders requiring the substantial diversion of BOP's limited resources that jeopardizes BOP's ability to focus on ongoing efforts to combat the virus. See pp. 15-17, infra.

Second, respondents fail to show that Elkton officials have the subjective intent to expose them to "punishment" within the meaning of the Eighth Amendment. Stay Appl. 32-35. Respondents assert (Opp. 40-41) that officials' actions have been "manifestly insufficient" and the existence of (unspecified) "obvious, easy

alternatives" show that officials are acting with deliberate difference. But respondents cannot have it both ways: If the very fact of Elkton's low-security design prevents what respondents claim is constitutionally required, there are no obvious and easy alternatives. Moreover, whether prison officials' actions are "'wanton' depends upon the constraints facing the official," Wilson, 501 U.S. at 303 (emphasis omitted), yet respondents fail to account for the practical constraints facing prison administrators managing the Nation's prison system during a public-health emergency, and ignore the actual and extensive steps that they have taken to protect inmates from the risk of infection within those constraints. Those actions belie any colorable claim of subjective recklessness constituting wanton behavior. Stay Appl. 33-34. Respondents and the district court's simple disagreement about the sufficiency of actions taken by BOP officials in accordance with CDC guidance fails to establish negligence, much less the type of deliberative indifference necessary to conclude that those officials are subjectively imposing "punishment" prohibited by the Eighth Amendment.

C. Respondents also cannot prevail on the merits because their claims should never have been certified for class relief. Respondents' primary response to this argument is that it was waived, but -- contrary to that assertion -- the government addressed this argument in its Sixth Circuit stay briefing. See Gov't C.A. Stay Mot. 18; Gov't C.A. Stay Reply 8. And it is plainly meritorious. As explained in the stay application, respondents cannot establish typicality or commonality, as

required by Rule 23(a). Stay Appl. 38-39. Moreover, the district court certified this as a Rule 23(b)(2) class. But a Rule 23(b)(2) class action for injunctive relief is appropriate only if "final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2) (emphasis added). As such, "[t]he key to the (b)(2) class is 'the indivisible nature of the injunctive or declaratory remedy,'" which by definition precludes "claims for individualized relief" and applies only if challenged "'conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them.'" Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 360 (2011) (citation omitted).

Here, however, the district court has enforced its injunction by requiring individualized evaluations to be reported for its review, Stay App. 48a, a requirement which itself speaks to the fundamental defect in its purported grant of classwide injunctive relief to a putative class under Rule 23(b)(2). The court has further recognized that some members of the class may ask to "remain[] at Elkton for family proximity or other reasons," Stay App. 51a, and thus required respondents to survey inmates to determine whether they wish to opt out from the class relief, an option that some have already selected. See id. at 37a (proposed class notice); id. at 38a-39a (order approving notice). That too is further evidence that this suit is incompatible with Rule 23(b)(2).

II. THE DISTRICT COURT'S ORDER IS ALREADY INFLICTING SEVERE HARMS

Respondents boldly assert that the district court's order does not inflict any harms on the government or the public. But the order has already forced BOP to divert extensive resources from its systemic efforts to fight COVID-19, and that burden is only growing worse. More fundamentally, the order intrudes on BOP's exclusive authority to determine the most appropriate placement for all inmates, and in the process it inflicts harm on the public and Elkton inmates alike.

A. The district court's series of orders has imposed a severe burden on BOP that has interfered with its efforts to combat COVID-19. The court's April 22 order imposed a sweeping preliminary injunction that required BOP to identify members of a subclass within 24 hours, to evaluate every one of the more than 800 subclass members for at least four different kinds of relief, and then to remove all subclass members from Elkton until the threat of the virus has ended. Stay App. 27a-28a. Since then, the court has issued multiple additional orders requiring BOP to provide explanations of its process and the basis for its denials. Id. at 34a, 41a.[2] And on May 19, the district court ordered BOP to

[2] The district court's intrusive orders have not been limited to mandates regarding the evaluations and transfers. On May 8, the court ordered BOP to begin providing daily status reports detailing the number of COVID-19 tests performed that day, the results, and the cumulative testing data. Stay App. 41a. Just yesterday, the court ordered an additional report -- to be submitted by close of business the same day -- explaining why BOP had "not yet received or reported test results for tests that were

reevaluate every class member for home confinement -- and to provide a detailed, individualized explanation for any denials -- all at a rate of approximately 300 inmates per 48 hours. Id. at 48a-49a. Merely complying with the first of these 48-hour deadlines required BOP to divert staff from its Central Office; Mid-Atlantic, Northeast, and Western Regional Offices; and another federal correctional institution. Meeting the next two deadlines is anticipated to take similar efforts.

Attempting to arrange transfers for those ineligible for these forms of release has diverted yet more staff time. As BOP has explained, transferring an inmate to a new facility (or "redesignation") generally involves a careful process of analyzing a variety of factors such as where he will be close to his home, where he will be able to obtain the treatment programs he needs, and where he may be kept without jeopardizing the safety of himself or others. Stay App. 194a, 196a-197a. This analysis is greatly complicated in this case by the volume of inmates who must be transferred; the district court's requirement that any new facility must have single cells or increased social distancing; and the demands of the ongoing pandemic, in which any form of travel (and inmate transfers in particular) is discouraged by the CDC. Moreover, because of the scarcity of facilities that meet the district court's requirements, BOP will likely be required to relocate some of the inmates that are currently in those

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completed more than 48 hours ago." 5/21/20 Order (entered on docket sheet).

facilities, requiring yet another set of complicated redesignation analyses, and yet more movement between facilities in the midst of a pandemic. Id. at 198a ¶ 33.

Ensuring that class members are appropriately quarantined before any transfers imposes additional burdens as well. In order to find space to quarantine class members before they leave Elkton, BOP has been forced to convert Elkton's chapel and gymnasium for this purpose. D. Ct. Doc. 89, at 5 (May 21, 2020). The first set of class members began quarantining today, but because there is space for only approximately 180 class members to quarantine at one time, these make-shift quarantine facilities will likely be occupied for many more weeks, unless this Court intervenes.

B. Compliance with the district court's orders does not, however, merely harm inmates, staff, and the public by imposing substantial burdens on and diverting the focus of prison administrators who must implement BOP's systemic COVID-19 response. It also harms the public and inmates alike by interfering with BOP's statutorily committed discretion to determine the appropriate placement for all federal inmates under all the circumstances, including during a pandemic and in light of CDC guidance.

1. The district court's orders ignore the authority and expertise of BOP with respect to housing decisions, threatening public safety in the process. In its May 19 order, the court rewrote the BOP's established criteria and the Attorney General's guidance regarding when it is safe and appropriate to place an inmate in home confinement, requiring BOP to -- among other things

-- "disregard" certain violent offenses and disciplinary infractions, in an attempt to ensure that more inmates are eligible for this form of relief. Stay App. 48a. But, as the Attorney General's recent memorandum expanding home confinement explained, the pandemic makes it particularly important for BOP to "continue making the careful, individualized [eligibility] determinations BOP makes in a typical case" because BOP's typical analysis ensures that those in home confinement "will follow the laws * * * and that they will not return to their old ways." D. Ct. Doc. 10-3, at 5 (reproducing memorandum dated April 3, 2020). Indeed, ensuring that BOP does not place individuals in home confinement if they will be a risk to the community or the other adults (and often children) in the homes in which they might be placed is particularly important during the pandemic because the virus has led to "over-burdened police forces." Ibid.

Respondents insist (Opp. 25) that the district court's order did not revise any guidance from the Attorney General because the Attorney General memoranda have merely outlined discretionary factors that BOP should continue to use in making determinations, while the district court merely ordered BOP "to do what the Attorney General had said it should." It is not the court's role to oversee BOP's implementation of an Attorney General's policy memorandum, and indeed Congress has foreclosed review of placement decisions. 18 U.S.C. 3621(b) (BOP's "designation of a place of imprisonment under this subsection is not reviewable by any court.").

In any event, respondents are mistaken in describing both the Attorney General's memoranda and what the district court ordered. The Attorney General's guidance expressly states that BOP is "to consider" a list of discretionary factors including "[t]he inmate's crime of conviction, and assessment of the danger posed by the inmate to the community." D. Ct. Doc. 10-3, at 1-2 (reproducing memorandum dated March 26, 2020). And the March 26 memorandum further indicates that "[s]ome offenses" will "render an inmate ineligible for home detention." Id. at 2. The district court, however, stated -- among other things -- that BOP must altogether "disregard" some offenses, including prior violent offenses if they are the only reason the inmate had previously been deemed ineligible. Stay App. 48a. This vividly demonstrates that the district court has become increasingly engaged in matters of day-to-day prison management that are committed to expert prison administrators.

2. There are other consequences as well of the district court's usurping of BOP's authority to determine where they should be placed. Those inmates who must be moved to another facility would likely be housed in more restrictive, medium security institutions because low-security facilities like Elkton generally share the dorm-style housing the district court found inadequate for social distancing. Stay App. 197a-198a ¶¶ 29-31. The new facilities may also be much further from their homes, id. at 199a ¶ 36, and they are unlikely to have the same treatment programs and mental health services that Elkton offers. For example, Elkton offers specialized sex-offender and drug-treatment programs that

are not available at most institutions, id. at 200a ¶¶ 38-39. The disruption of these treatment programs may affect not only an inmate's well-being, but also his "eligibility for an early release pursuant to 18 U.S.C. § 3621(e)." Id. at ¶ 39.

In short, the district court's April 22 order will impose profound harms on BOP, the public, and some of the very inmates it is intended to assist. The balance of equities therefore clearly tilts in favor of the government.

CONCLUSION

This Court should stay the district court's preliminary injunction pending the completion of further proceedings in the court of appeals and, if necessary, this Court.

Respectfully submitted.

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