

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION**

BRANDON LIVAS, RICHARD BUSWELL,)	CIVIL ACTION NO. 20-cv-00422
DEWAYNE CORBETT, JOHNNY SMITH,)	
CARLOS LORENZO MARTIN and)	
GAINES ANDREWS, on behalf of)	
themselves and those similarly situated)	
)	
)	JUDGE DOUGHTY
VERSUS)	
)	
RODNEY MYERS, Warden of Oakdale)	MAGISTRATE JUDGE KAY
Federal Correctional Institutions; and)	
MICHAEL CARVAJAL, Federal Bureau)	
of Prisons Director, in their official)	
<u>capacities</u>)	

BOP’S COVID-19 INMATE REVIEW UPDATE

Pursuant to a Conference held between the parties and the Court (Doc. 5), the Bureau of Prisons (“BOP”) provides the following information regarding the framework or guidance under which decisions are being made as to the release, removal, or furlough of prisoners at the Federal Correctional Complex-Oakdale (“FCC Oakdale”):

Background

FCC Oakdale is comprised of three separate men’s prison facilities. *See* Declaration of Juan A. Segovia, Associate Warden, Federal Medical Center, Forth Worth, Texas dated April 10, 2020 (“Segovia Decl.”), attached hereto as Exhibit 1. The complex includes two low security facilities: FCI Oakdale I and FCI Oakdale II, and a minimum security facility: the Satellite Prison Camp (“the Camp”). Segovia

Decl. ¶2. FCI Oakdale I houses approximately 970 inmates in six housing units. *Id.* at ¶4. Three of the housing units have separately secured cells, while the remaining three housing units are dormitory style, with sleeping bunks arranged in cubicles. *Id.* FCI Oakdale II houses approximately 760 inmates, all in the traditional cell units with separately secured cells. *Id.* at ¶9. The Camp houses 123 inmates in a single, dormitory-style unit, similar to the dormitory units in FCI Oakdale I. *Id.* at ¶7.

The BOP is charged with the care, custody, and control of incarcerated individuals and is not empowered to reduce or modify criminal sentences imposed by courts, or to unilaterally release inmates. Congress has left such decisions, to modify or reduce inmates' sentences, to their original sentencing courts. *See* 18 U.S.C. § 3582. The BOP's role in sentence reduction or modification proceedings involves the potential to move the sentencing court for a reduction in sentence on an inmate's behalf in certain circumstances. 18 U.S.C. § 3582(c)(1)(A). BOP has set forth the guidelines under which it will make such a motion in its Program Statement 5050.50, "Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)." (Available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf). Segovia Decl. ¶14.

Although the BOP is not empowered to modify an inmate's sentence, Congress has provided the Attorney General and Bureau of Prisons with wide discretion in determining where to confine inmates. *See* 18 U.S.C. § 3621. Both placement in a RRC (also called a halfway house) and home confinement are forms

of confinement, not actual releases from custody. *See* 18 U.S.C. § 3624(c). Placement in a halfway house and/or home confinement is discretionary. *See* 18 U.S.C. § 3621(c) (“Such conditions may include a community correctional facility” and “[t]he authority under this subsection may be used to place a prisoner in home confinement.”) (emphasis added). While providing a framework of factors to consider inmate placement, Congress also affirmed the breadth of the agency’s discretion in such matters, noting that even sentencing court orders regarding inmate placement in a community correction facility “shall have no binding effect,” and that “a designation of a place of imprisonment under this subsection is not reviewable by any court.” 18 U.S.C. § 3621(b)(5). Segovia Decl. ¶17.

The BOP’s Action Plan

The BOP began preparing for the coronavirus in January 2020 by obtaining guidance from its Health Services Division regarding the disease, existing outbreaks, and best practices to mitigate transmission. *See* Federal Bureau of Prisons COVID-19 Action Plan, https://www.bop.gov/resources/news/20200313_covid-19.jsp. An agency task force also worked with the Centers for Disease Control (“CDC”) and reviewed guidance from the World Health Organization (“WHO”). Phase II of the BOP’s Action Plan was announced on March 13, 2020¹. *Id.* National measures were made effective immediately across the BOP which included:

- Screening of Inmates and Staff;

¹ FCI Oakdale I received its first positive COVID-19 test result on March 21, 2020 and has been on lockdown since that time. Segovia Decl. at ¶4.

- Restriction on Contractor Access;
- Suspension of Social Visits/Tours;
- Suspension of Legal Visits;
- Suspension of Inmate Movements; and
- Modified Operations to maximize social distancing.

On March 31, 2020, the BOP announced that additional measures would be taken in response to the number of quarantine and isolation cases in its facilities.

See COVID-19 Action Plan: Phase Five,

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

April 1, 2020, the BOP instituted a 14-day period of containment for inmates, wherein inmates were secured in their assigned cells/quarters to decrease the spread of the virus, with limited exceptions for programming, health and educational services. *Id.*

The Attorney General's March 26, 2020 Memo

The U.S. Attorney General (“AG”) issued a memorandum to the BOP directing, where appropriate, that the BOP utilize home confinement “to protect the health and safety of BOP personnel and the people in our custody.” Attorney General Memorandum to the BOP dated March 26, 2020, attached hereto as Exhibit 2. Specifically, the AG directed the BOP to “prioritize the use of your various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic.” *Id.* However the AG noted that many inmates would be safer in BOP facilities due to the controlled population and access to medical care. *Id.*

As such, the prioritization of home confinement was conditioned upon careful, individualized determinations made by BOP staff to include certain discretionary factors such as: (1) age and vulnerability to COVID-19; (2) facility security level; (3) prison conduct; (4) minimum PATTERN score; (5) demonstrated and verifiable re-entry plan to prevent recidivism and maximize public safety (lower risk of contracting COVID-19 upon release, than at BOP facility); and (6) crime of conviction and risk posed by the inmate to the community. *Id.* Additionally, the AG directed that a medical assessment be conducted to assess the inmate's COVID-19 risk factors, the associated risks at the inmate's facility, as well as the risks at the location of potential home confinement. *Id.* Moreover, the list of discretionary factors was non-exhaustive. The AG specifically noted that it is incumbent upon the BOP not to take any action that would contribute to the spread of COVID-19, or put the public at risk. *Id.*

The Attorney General's April 3, 2020 Memo

On April 3, 2020, the AG issued a second memorandum to the BOP regarding the use of home confinement. *See* Attorney General Memorandum to the BOP dated April 3, 2020, attached hereto as Exhibit 3. Pursuant to the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), the AG made a finding of emergency conditions which are materially affecting the function of the BOP. *Id.*; *see also*, Segovia Decl. ¶19. This finding allowed the AG to expand the cohort of inmates who can be considered for home confinement. *Id.* Thus, all at-risk inmates could now be considered for home confinement, rather than just inmates who were previously

eligible for transfer (inmates with 10 percent of prison term remaining or 6 months). *Id.* The AG also recognized that indiscriminately releasing inmates, “would pose profound risks to the public from released prisoners engaging in additional criminal activity, potentially including violence or heinous sex offenses.” *Id.*; see also, Segovia Decl. ¶13.

Conditions at FCC Oakdale

FCC Oakdale I has taken numerous steps to mitigate the spread of COVID-19 at each of its facilities. Inmate orderlies have been deployed on a 24-hour basis to disinfect, using appropriate cleaning chemicals, all such facilities after each use. This is in addition to daily surgical mask, soap, and disinfectant cleaning supplies being available to every inmate in the complex. A variety of additional soap and other hygiene items have been and remain available for inmate purchase. Orderlies are also assigned to disinfect all other communal use items, such as telephones and computers, after each use by the inmates. All inmates are also being monitored by medical staff daily, including temperature checks. Segovia Decl. ¶¶ 4, 8, 9.

FCI Oakdale is being used for quarantine and isolation related to COVID-19. Inmates exhibiting symptoms of the virus are placed on the isolation floor and tested for the virus. Inmates exposed to a symptomatic or a positive COVID-19 person are placed on the quarantine floor. Segovia Decl. ¶¶ 5, 6. There is also post-quarantine housing, where those cleared from the quarantine are further separated for an additional time to monitor their condition and ensure their safety. *Id.* at ¶6.

There have been forty-nine COVID-19 positive inmates at FCI Oakdale I, eighteen hospitalizations, and six fatalities. *Id.* at ¶4. The Camp has had one confirmed positive COVID-19 inmate, who was removed to isolation at FCI Oakdale I on April 2, when he began displaying symptoms. *Id.* at ¶7. There was one suspected positive inmate at FCI Oakdale II, however, he was transferred to a local hospital and remains there pending test results. *Id.* at ¶9. Finally, there have been 17 staff members who have tested positive for COVID-19. *Id.* at ¶10. Nineteen other staff members are quarantined away from the complex, awaiting test results. *Id.*

Release or Transfer of Inmates

The BOP continues to consider the use of compassionate release for appropriate inmates who have existing terminal and debilitating medical conditions, or who are elderly and nearing the end of their sentence, as provided for in Program Statement 5050.50. Segovia Decl. ¶15. FCC Oakdale staff have received a number of requests for consideration for a reduction in sentence motion. *Id.* Staff continue processing those requests and attempt to do so quickly in light of the current circumstances. *Id.*

Recent changes in the law also allow an individual inmate to make such a motion for reduction in sentence or compassionate release with their sentencing court for their current conviction, even if the BOP has not decided to make such motion on their behalf. 18 U.S.C. § 3582(c)(1)(A). Inmates at FCC Oakdale, and at other facilities, have recently availed themselves of this option. At least five FCC Oakdale inmates have recently filed such motions and, after their sentencing courts

made the appropriate individualized decisions, have been granted their requested sentence reductions. Segovia Decl. ¶16.

Pursuant to the March 26, 2020 memorandum from the Attorney General, the BOP has prioritized the consideration of home confinement, which has the potential to remove someone from the prison population faster, as a response to the COVID-19 pandemic. Inmates at FCC Oakdale were considered for home confinement under the terms of this memo. Three were thought likely to be approved and were transferred to quarantine in the special housing unit, pending final determination. As noted in the BOP's notice to the Court filed on April 9, 2020, one of these three was later determined to be ineligible due to a history of sex crimes, one is waiting out his quarantine pending transfer, and one is being re-reviewed based on updated guidance discussed below. Segovia Decl. ¶ 18.

Based upon the AG's finding of emergency conditions pursuant to the CARES Act, discussed above, guidance on implementation of home confinement was initially provided by the BOP's Central Office, recommending initial review for placement in home confinement of inmates who meet the following nine criteria: 1) Primary Offense is not violent; 2) Primary Offense is not sex offense; 3) Primary Offense is not terrorism; 4) No detainer; 5) Mental Health Care Level is less than IV; 6) PATTERN (BOP's new risk and needs assessment tool) score is MIN; 7) BRAVO (BOP's existing risk evaluation tool) score is LOW or MIN; 8) Completed at least 50% of their sentence; and 9) No Incident Reports in the past 12 months. Segovia Decl. ¶19.

Based on this initial set of nine criteria, late on April 6, 2020, the BOP's Office of Research and Evaluation identified 4,013 inmates nationwide to be the first cohort reviewed under the extended home confinement timeframe. Of these 4,013 inmates, fifty-eight are currently housed at FCC Oakdale. This review would ordinarily be done by case management staff at FCC Oakdale. However, circumstances made this a challenge, with a leader in this department being out under quarantine, and other staff having to perform ancillary custody functions to ensure basic needs, orderly operations, safety, and security are provided to FCC Oakdale inmates. On April 8, 2020, AW Segovia began marshalling resources pulling from temporary staff with experience in case management, seeking remote assistance from other facilities, and freeing up FCC Oakdale's existing case management staff by transferring their emergent custody responsibilities to other temporary staff. FCC Oakdale focused on the Camp and FCI Oakdale I inmates, because of COVID-19 cases from those facilities. They have since reviewed thirty-four of the fifty-eight originally-listed inmates. Segovia Decl. ¶20.

Acting upon additional guidance from the BOP's Regional Office Staff, on the afternoon of April 9, the reviewing staff have also expanded the criteria, removing the eighth factor, consideration of whether inmates in low or minimum facilities have served 50% of their sentence. Accordingly, staff reviewed an additional 90 inmates for home confinement eligibility. So far, ten additional inmates have been determined to be potentially eligible and they have already been placed in special housing or will be placed there shortly, allowing them to begin the 14-day pre-

transfer quarantine. Of those reviewed, the most common reasons for ineligibility appear to be history of previous violence or sex offenses. Segovia Decl. ¶21.

The primary factors being used to prioritize consideration by BOP staff, including prison disciplinary history, PATTERN score, violence or sex crime history, and classification level, come directly from the Attorney General's March 26th Memorandum. In his April 3rd Memorandum, the Attorney General reiterated that BOP's expanded consideration of inmates for home confinement should continue to be guided by those factors. AW Segovia has checked the BOP's records for each of the named petitioners in this matter to determine whether they are likely to be reviewed for consideration under the Attorney General's expansion of home confinement eligibility. Individual Petitioners Livas, Martin, Andrews, and Corbett have PATTERN risk recidivism scores above minimum, removing them from priority consideration. Petitioner Smith is ineligible due to his current offenses, involving the production and possession of child pornography. Finally, based on the new April 9th expanded criteria, Petitioner Buswell appears to be eligible and will be given priority review for home confinement. Segovia Decl. ¶22.

Once reviews are completed for the initial list of FCC Oakdale inmates designated for priority consideration by the Attorney General's memorandum, it is anticipated that the institution may consider expanding the criteria for review. AW Segovia further anticipates coordinating with medical staff at FCC Oakdale to continue additional reviews for inmates with the highest COVID-19 medical risk,

per CDC guidelines, who might not have met the previous criteria. Segovia Decl. ¶23.

Placement in RRC or home confinement, once approved, still requires a number of factors to be satisfied prior to implementation. For example, the release plan needs to be evaluated by the appropriate United States Probation Office. In order to facilitate faster removal of approved inmates from the prison facility, the BOP has provided its Wardens with additional guidance allowing the use of non-transfer furloughs up to 30 days in length in specific circumstances. As inmates are approved for home confinement through the above-described review process, they may also be considered for such a furlough if they meet the criteria. Segovia Decl. ¶24.

The BOP staff at FCC Oakdale, and across the region, are working very hard to protect all from the effects of the current pandemic. In addition to the specific COVID-19 remediation measures outlined above, the BOP is continually working to reduce populations at affected facilities. Within the discretion provided to the agency by Congress, the BOP staff continue to identify, evaluate, and place appropriately-situated inmates in halfway houses or home confinement, removing them from prison facilities. The BOP also continues to work with sentencing courts on sentence reductions and compassionate release motions, as appropriate. Segovia Decl. ¶25.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of April, 2020, a copy of the above and foregoing *BOP's COVID-19 INMATE REVIEW UPDATE* was electronically filed with the Clerk of the Court using the CM/ECF system. I also certify that I have forwarded this filing via email to all known counsel of record:

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Federal Correctional Institutions; and)	
MICHAEL CARVAJAL, Federal Bureau of)	
Prisons Director, in their official capacities)	
)	

DECLARATION OF JUAN A. SEGOVIA

In accordance with 28 U.S.C. § 1746, I, JUAN A. SEGOVIA, make the following declaration, under penalty of perjury, pertinent to the above styled and numbered cause:

1. I have been employed by the United States Department of Justice, Federal Bureau of Prisons (BOP) since 1991. I am currently an Associate Warden at the Federal Medical Center, in Fort Worth, Texas. From December 2018 through February 2020, I was an Associate Warden at the Federal Correctional Complex in Oakdale, Louisiana (FCC Oakdale). As of April 5, 2020, I have temporarily reported back to FCC Oakdale to assist with the COVID-19 emergency. The statements I make hereinafter are made on the basis of my review of the official files and records of the BOP, my own personal knowledge, or on the basis of information acquired by me through the performance of my official duties.
2. FCC Oakdale is a complex of separate BOP men's prison facilities. The complex includes FCI Oakdale I and FCI Oakdale II, both low security facilities; and the Satellite Prison Camp (the "Camp"), a minimum security facility. The complex is run by a Complex Warden, who has ultimate authority over all of the facilities.
3. The BOP's response to the COVID-19 emergency at FCC Oakdale has been swift and now appears to be proving effective. In the two weeks immediately following FCC Oakdale's first positive COVID-19 test, new potential COVID-19 cases were being identified and isolated daily, often with multiple cases each day. Following the implementation of the control measures described below, the last new isolation cases were identified on April 2, 2020 and April 7, 2020. A decline from multiple daily new cases to two new cases in over a week is a positive sign.

Conditions at FCI Oakdale I

4. FCI Oakdale I has faced the brunt of FCC Oakdale's COVID-19 emergency, with 49 positive COVID-19 inmates, 18 hospitalizations, and 6 fatalities. The facility has been locked down since the first positive COVID-19 test result was received on March 21st. FCI Oakdale I houses approximately 970 inmates in six housing units. Three of these housing units are traditional cell housing units, with separately secured cells. Each of these cells has its own commode and sink. Shower stalls are separate from the cells, small groups of inmates are being released to shower, with orderlies disinfecting the showers between each use. The remaining three housing units are dormitory style, with sleeping bunks arranged in cubicles. These dormitory-style housing units share communal bathroom facilities. In these units, inmate orderlies have been deployed on a 24-hour basis to disinfect, using appropriate cleaning chemicals, all such facilities after each use. This is in addition to daily surgical mask, soap, and disinfectant cleaning supplies being available to every inmate in the complex. The commissary has recently opened for once-weekly purchases, with a \$25.00 spending limit. A variety of additional soap and other hygiene items have been and remain available for inmate purchase. Orderlies are also assigned to disinfect all other communal use items, such as telephones and computers, after each use by the inmates. All inmates are also being monitored by medical staff daily, including temperature checks.

5. One housing unit at FCI Oakdale I is currently being used for both quarantine and isolation related to COVID-19. One floor is being utilized for isolation inmates, and the other for inmates in quarantine. In addition to correctional staff, this unit is being staffed by special medical teams, including medical doctors, mid-level practitioners, and nurses, brought in from other BOP facilities. Inmates who exhibit symptoms of COVID-19 are placed on the isolation floor and tested for the virus. Once placed in isolation, the inmates are housed in single occupancy cells to avoid cross-contamination and will remain in such housing until they are deemed cleared or recovered by medical staff acting pursuant to CDC guidelines. To date, seven Oakdale inmates have recovered from COVID-19 and been cleared to return to the population from isolation or the hospital.

6. Identifiable inmates who were directly exposed to someone symptomatic or a positive COVID-19 patient are being placed in quarantine. For example, the cell or cubicle mates of an isolation inmate would be placed on quarantine status. The quarantine floor has inmates celled with other inmates who shared the same potential exposure, avoiding cross-contamination/exposure to others. Inmates are held in quarantine for a minimum of 14 days, with twice daily medical checks, before they can be cleared from quarantine. BOP has constructed additional tent housing within FCI Oakdale I where those cleared from quarantine may be separately housed for an additional time to monitor their condition and ensure their safety. This tent housing has, among other things, appropriate restroom facilities, solid flooring, air conditioning, telephone, and television access. Email access will be installed shortly. As of April 9, 2020, 27 inmates have moved from quarantine to this post-quarantine unit.

Conditions at the Oakdale Satellite Prison Camp

7. The Oakdale Satellite Prison Camp (SPC), is a minimum security facility operating under the umbrella of FCI Oakdale II. The Camp houses 123 inmates in a single dormitory-style unit similar to that described for FCI Oakdale I, above. The Camp has had one confirmed positive COVID-19 inmate. That inmate was removed to isolation at FCI Oakdale I when he began displaying symptoms on April 2nd, and a positive test result was received April 6th. The Camp was also placed into lock down status. One additional inmate was removed and placed in isolation on April 7, 2020 after exhibiting potential symptoms.

8. Just as in the FCI, inmate orderlies have been deployed on a 24-hour basis to disinfect, using appropriate cleaning chemicals, all common restroom facilities after each use. Camp inmates receive the same daily surgical mask, soap, and disinfectant cleaning supply availability as every inmate in the complex. The camp's lower security setting allows for heightened social distancing practices during day hours. The outdoor track area remains open to inmates, as long as they maintain recommended social distancing. Also, four outdoor television areas remain open, again permitting greater distancing. As with the rest of the complex, orderlies are assigned to disinfect all other communal use items, such as telephones and computers, after each use. All Camp inmates are also being monitored by medical staff daily, including temperature checks.

Conditions at FCI Oakdale II

9. FCI Oakdale II is a low security prison facility, housing approximately 760 inmates, all in traditional cell housing units. There was one suspected case of COVID-19 at FCI Oakdale II, but he was transferred to a local hospital and remains pending test results. FCI Oakdale II has been locked down and is following all of the complex-wide precautions including daily surgical mask, soap, and disinfectant cleaning supply availability to inmates and orderlies disinfecting all communal surface between each use.

Staff Concerns at FCC Oakdale

10. There have been 17 staff members at FCC Oakdale who have positive COVID-19 test results. Approximately 19 others are quarantined away from the complex, awaiting test results. Since March 20th, all staff entering the complex have been screened, to include temperature checks, each time they enter. Staff are also provided with gloves and surgical masks daily. In addition to the disinfectants available to the inmates, staff are also being provided alcohol-based hand sanitizer. Staff working on the isolation floor at FCI Oakdale I are provided and mandated to use the full CDC-recommended complement of personal protective equipment, including gowns and eye protection.

11. Prior to this emergency, staff at FCC Oakdale operated using a complex-wide roster, allowing staff to work at any of the three institutions. This has been changed to avoid cross-contamination and staff are now only working in one institution. For the same reason, the locations of executive staff rounds have been divided up to limit contamination and exposure opportunities.

12. The number of sick and quarantined staff has caused a number of non-custody staff to have to work in traditional custody staff roles. BOP has since dispatched additional custody and medical staff from other institutions and regional offices to assist, with over 40 such staff currently on site.

Release or Transfer of Inmates

13. As Attorney General Barr noted in his April 3, 2020 memorandum, while the Bureau of Prisons has “a solemn obligation to protect the people in BOP custody, we also have an obligation to protect the public.” Releasing inmates *en masse*, without careful individual consideration “would pose profound risks to the public from released prisoners engaging in additional criminal activity, potentially including violence or heinous sex offenses.” Thus, while the Attorney General authorized the consideration of inmates for additional home confinement beyond the previously allowed limits, he did so under the expressed condition that such determinations are made by BOP staff in a careful, individualized, and considerate basis to ensure that those “prisoners will follow the laws when they are released, that they have a safe place to go where they will not be mingling with their old criminal associates, and that they will not return to their old ways as soon as they walk through the prison gates.”

14. **Reductions in Sentence:** As a preliminary matter, the BOP is charged with the care, custody, and control of incarcerated individuals and is not empowered to reduce or modify criminal sentences imposed by courts, or to unilaterally release inmates. Congress has left such decisions, to modify or reduce inmates’ sentences, to their original sentencing courts. *See* 18 U.S.C. § 3582. The BOP’s role in sentence reduction or modification proceedings involves the potential to move the sentencing court for a reduction in sentence on an inmate’s behalf in certain circumstances. 18 U.S.C. § 3582(c)(1)(A). BOP has set forth the guidelines under which it will make such a motion in its Program Statement 5050.50, “Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g).” (Available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf).

15. The BOP continues to consider the use of compassionate release for appropriate inmates who have existing terminal and debilitated medical conditions, or who are elderly and nearing the end of their sentence, as provided for in Program Statement 5050.50. FCC Oakdale staff have received a number of requests for consideration for a reduction in sentence motion since this crisis began. Staff continue processing those requests and are attempting to do so quickly in light of the current circumstances.

16. Recent changes in the law also allow an individual inmate to make such a motion for reduction in sentence or compassionate release with their sentencing court for their current conviction, even if the BOP has not decided to make such motion on their behalf. 18 U.S.C. § 3582(c)(1)(A). Inmates at FCC Oakdale, and at other facilities, have recently availed themselves of this option. At least five FCC Oakdale inmates have recently filed such motions and, after their sentencing courts made the appropriate individualized decisions, have been granted their requested sentence reductions.

17. **Transfers to Residential Re-Entry Centers (RRC) or Home Confinement:** While BOP is not itself empowered to modify an inmate's sentence, Congress has provided the Attorney General and Bureau of Prisons with wide discretion in determining where to confine inmates. *See* 18 U.S.C. § 3621. Both placement in a RRC (also called a halfway house) and home confinement are forms of confinement, not actual releases from custody. *See* 18 U.S.C. § 3624(c). Placement in a halfway house and/or home confinement is discretionary. *See* 18 U.S.C. § 3621(c) ("Such conditions *may* include a community correctional facility" and "[t]he authority under this subsection *may* be used to place a prisoner in home confinement.") (emphasis added). While providing a framework of factors to consider inmate placement, Congress also affirmed the breadth of the agency's discretion in such matters, noting that even sentencing court orders regarding inmate placement in a community correction facility "shall have no binding effect," and that "a designation of a place of imprisonment under this subsection is not reviewable by any court." 18 U.S.C. § 3621(b)(5).

18. While RRC or halfway house placement is considered a beneficial pre-release custody option for appropriate inmates, it requires both significant pre-arrangement and available RRC space before it may allow an inmate to be removed from prison. Pursuant to a March 26, 2020 memorandum from the Attorney General, BOP has prioritized the consideration of home confinement, which has the potential to remove someone from the prison population faster, as a response to the COVID-19 pandemic. Inmates at FCC Oakdale were considered for home confinement under the terms of this memo. Three were thought likely to be approved and were transferred to quarantine in the special housing unit, pending final determination. As the Court is already aware, one of these three were later determined to be ineligible due to a history of sex crimes, one is waiting out his quarantine pending transfer, and one is being re-reviewed based on updated guidance discussed in paragraph 21, below.

19. Previously, BOP was limited in its authority to allow home confinement the "shorter of 10 percent of the term of imprisonment of that prisoner or 6 months." 18 U.S.C. § 3624. The recently passed Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorizes the Attorney General to expand the cohort of inmates who can be considered for home confinement upon his findings of emergency conditions which are materially affecting the function of the BOP. On April 3, 2020, the Attorney General made that finding and authorized the Director of the BOP to immediately maximize appropriate transfers to home confinement of all appropriate inmates held at FCI Oakdale and other BOP facilities where COVID-19 is materially affecting operations. Guidance on implementation of this was previously provided by BOP Central Office, recommending initial review for placement in home confinement of inmates who meet the following nine criteria: 1) Primary Offense is not violent; 2) Primary Offense is not sex offense; 3) Primary Offense is not terrorism; 4) No detainer; 5) Mental Health Care Level is less than IV; 6) PATTERN (BOP's new risk and needs assessment tool) score is MIN; 7) BRAVO (BOP's existing risk evaluation tool) score is LOW or MIN; 8) Completed at least 50% of their sentence; and 9) No Incident Reports in the past 12 months.

20. Based on this initial set of nine criteria, late on April 6, 2020, BOP's Office of Research and Evaluation identified 4,013 inmates nationwide to be the first cohort reviewed under the extended home confinement timeframe. Of these 4,013 inmates, 58 are currently housed at FCC Oakdale. This review would ordinarily be done by case management staff at FCC Oakdale.

However, circumstances made this a challenge, with a leader in this department being out under quarantine, and other staff having to perform ancillary custody functions to ensure basic needs, orderly operations, safety, and security are provided to FCC Oakdale inmates. On April 8, 2020, I began marshalling resources pulling from temporary staff with experience in case management, seeking remote assistance from other facilities, and freeing up FCC Oakdale's existing case management staff by transferring their emergent custody responsibilities to other temporary staff. We focused on the Camp and FCI Oakdale I inmates, because of COVID-19 cases from those facilities. We have since reviewed vast majority of the 58 originally-listed priority inmates. Six of these have been determined to be potentially eligible and they have already been placed in special housing or will be placed there shortly, allowing them to begin the 14-day pre-transfer quarantine. Of those reviewed, the most common reasons for ineligibility appear to be history of previous violence or sex offenses.

21. Acting upon additional guidance from BOP Regional Office Staff, on the afternoon of April 9th, the reviewing staff have also expanded the criteria, removing the eighth factor, consideration of whether inmates in low or minimum facilities have served 50% of their sentence. Accordingly, staff reviewed an additional 90 inmates for home confinement eligibility and dozens more are pending review. So far, 15 additional inmates have been determined to be potentially eligible for home confinement, and are being prepared for pre-transfer quarantine.

22. The primary factors being used to prioritize consideration by BOP staff, including prison disciplinary history, PATTERN score, violence or sex crime history, and classification level, come directly from the Attorney General's March 26th Memorandum. In his April 3rd Memorandum, the Attorney General reiterated that BOP's expanded consideration of inmates for home confinement should continue to be guided by those factors. I have checked BOP records for each of the named petitioners in this matter to determine whether they are likely to be reviewed for consideration under the Attorney General's expansion of home confinement eligibility. Individual Petitioners Livas, Martin, Andrews, and Corbett have PATTERN risk recidivism scores above minimum, removing them from priority consideration. Petitioner Smith is ineligible due to his current offenses, involving the production and possession of child pornography. Finally, based on the new April 9th expanded criteria, Petitioner Buswell appears to be eligible and will be given priority review for home confinement.

23. Staff continue to receive additional guidance on this matter and the number of inmates being given priority consideration is expanding daily. Once we complete review of the list of FCC Oakdale inmates designated for priority consideration by the Attorney General's memorandum and subsequently received guidance, I have been informed that the institution may consider expanding the criteria for review. I anticipate coordinating with medical staff at FCC Oakdale to continue additional reviews for inmates with the highest COVID-19 medical risk, per CDC guidelines, who might not have met the previous criteria.

24. **Non-Transfer Furlough:** Placement in RRC or home confinement, once approved, still requires a number of factors to be satisfied prior to implementation. For example, the release plan needs to be evaluated by the appropriate United States Probation Office. In order to facilitate faster removal of approved inmates from the prison facility, BOP has provided its Wardens with additional guidance allowing the use of non-transfer furloughs up to 30 days in length in specific

circumstances. As inmates are approved for home confinement through the above-described review process, they may also be considered for such a furlough if they meet the criteria. Furloughs are also currently being evaluated for inmates with previously approved RRC placements.

25. Keeping our duties to both the general public and to care for those ordered into our custody in mind, BOP staff currently working at FCC Oakdale, and throughout the region, are working very hard to protect all from the effects of the current pandemic. In addition to the specific COVID-19 remediation measures outlined above, BOP is continually working to reduce population at affected facilities. Within the discretion provided to the agency by Congress, BOP staff continue to identify, evaluate, and place appropriately-situated inmates in halfway house or home confinement, removing them from prison facilities. We also continue to work with sentencing courts on sentence reductions and compassionate release motions, as appropriate.

I declare under that the foregoing is true and correct to the best of my knowledge and belief.
Executed on April 10, 2020, at Oakdale, Louisiana.




JUAN A. SEGOVIA
Associate Warden



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

March 26, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU PRISONS

FROM: THE ATTORNEY GENERAL 
SUBJECT: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic

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

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

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

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

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

Memorandum from the Attorney General

Page 2

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

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

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

II. PROTECTING THE PUBLIC

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

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



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

April 3, 2020

MEMORANDUM FOR DIRECTOR OF BUREAU OF PRISONS

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

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

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

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

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

Memorandum from the Attorney General

Page 2

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

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

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

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

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

II. PROTECTING THE PUBLIC

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

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

Memorandum from the Attorney General

Page 3

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

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

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