

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

BRANDON LIVAS, RICHARD BUSWELL,  
DEWAYNE CORBETT, JOHNNY SMITH,  
CARLOS LORENZO MARTIN, and  
GAINES ANDREWS, on behalf of  
themselves and those similarly situated,

*Petitioners,*

v.

RODNEY MYERS, warden of Oakdale  
Federal Correctional Institutions; and  
MICHAEL CARVAJAL, Federal Bureau of  
Prisons Director, in their official capacities,

*Respondents.*

**Civil Action No. 2:20-CV-00422**

**Judge Terry A. Doughty**

**Magistrate Judge Kathleen Kay**

**PETITIONERS' EMERGENCY MOTION FOR RELEASE  
OF VULNERABLE AND LOW-RISK PRISONERS FROM OAKDALE**

NOW INTO COURT COME Petitioners in the above-captioned matter, through undersigned counsel, who move this Honorable Court to issue a Temporary Restraining Order (“TRO”) that includes the following relief:

- (1) A temporary restraining order and/or preliminary injunction requiring Defendants to identify all Medically-Vulnerable Subclass Members within forty-eight (48) hours of the Court’s order;
  - a. For any Medically-Vulnerable Subclass Member whose release Defendants would like to challenge, Defendants must also present evidence within the same forty-eight (48) hour period that such individual presents such a serious risk of flight or imminent physical danger to others, even during home confinement and while Louisiana’s stay-at-home order remains in place, that no other conditions can mitigate that risk;
  - b. Following this submission, the Magistrate Judge in this action will determine within forty-eight (48) hours whether Defendants have shown by clear and convincing evidence that Defendants’ evidence of a serious risk of flight or imminent physical danger, even during

home confinement and while Louisiana's stay-at-home order remains in place, substantially outweighs the risk of COVID-19 contraction at Oakdale;

- c. The Court will immediately release all such persons for whom Defendants have not made the required showing;

(2) A temporary restraining order and/or preliminary injunction requiring Defendants to provide all persons released with educational resources on COVID-19 including instructions that they should self-isolate for the CDC-recommended period of time (currently 14 days) following release;

(3) A preliminary injunction, permanent injunction, and/or writ of habeas corpus requiring Defendants to:

- a. Continue to release all current and future Medically-Vulnerable Subclass members absent the showing described above in paragraph (1);
- b. Report weekly on the population of persons in Oakdale who are Medically-Vulnerable as defined in this action;
- c. Release additional Class Members, including those not considered Medically-Vulnerable, as needed to ensure that all remaining persons incarcerated at Oakdale are under conditions consistent with CDC and public health guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain social distancing; and

(4) A declaration that Oakdale's policies violate the Eighth Amendment right against cruel and unusual punishment with respect to the Class Members.

The outbreak of COVID-19 at Oakdale federal correctional institutions I and II ("Oakdale") has already claimed the lives of six people incarcerated there.<sup>1</sup> At least 50 prisoners and 17 staff members have tested positive.<sup>2</sup> More people are falling sick every day. Yet Respondents' efforts to stem the outbreak have been far too little, far too late, and their newly

---

<sup>1</sup> BOP's COVID-19 Inmate Review Update, April 10, 2020, Dkt. No. 8 at 7 ("Inmate Update").

<sup>2</sup> *Id.*

produced “plan” does nothing to achieve the social distancing that experts agree is necessary to prevent further suffering. Accordingly, Petitioners seek an order for the expedited, responsible release of medically-vulnerable incarcerated persons at Oakdale to locations where they can socially distance. Petitioners also seek the appointment of a public-health expert to oversee changes at Oakdale to ensure social distancing and infection prevention and treatment for those remaining. Given the mounting death toll inside, there is no time to waste.

Petitioners readily satisfy the four-factor test for a temporary restraining order. They can likely show that the status quo will continue to unconstitutionally place Class and Subclass members at a substantial risk of serious harm, and there can be no question that the harm would be irreparable—six men have died already. The public interest weighs heavily in favor of a plan that will prevent the guaranteed spread of COVID-19 in that incarcerated population, which could easily spread to the broader community and devastate the region’s medical infrastructure. Indeed, public health experts, including the declarant in this record, agree that prisoners, staff, and the public at large would be harmed *far more* by waiting for Respondents’ slow-moving plan to take shape while Class members are unable to safely socially distance or maintain recommended hygienic practices.

Federal Rule of Civil Procedure 65(c) provides that the Court should levy “security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Petitioners respectfully request that the Court waive the bond requirement, given the obviousness of the risk to Class members’ health, their indigence, and the strong public interest involved.<sup>3</sup> Furthermore, the requirement of a bond is contrary to the proposition that inadequate resources under no circumstances justify a prison’s deprivation of constitutional rights.<sup>4</sup> Consistent with this well-established principle, this Court

---

<sup>3</sup> See, e.g., *Molton Co v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and “the strong public interest” involved); *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (because plaintiffs were indigent and sought to vindicate their constitutional rights, consistent with the public interest, the court did not require a bond).

<sup>4</sup> See, e.g., *Smith v. Sullivan*, 553 F.2d 373, 378 (5th Cir. 1977) (inadequate resources can never be a justification for depriving an inmate of his constitutional rights).

should not require Plaintiffs, who are indigent, to post a bond in order to protect their constitutional rights.

For the reasons in the attached memorandum, the Court should immediately issue an order consistent with the above-described relief.

Respectfully submitted this 13th day of April, 2020.

/s/ Bruce Hamilton  
Bruce Hamilton, La no. 33170  
Katie Schwartzmann, La no. 30295  
ACLU-F of Louisiana  
P.O. Box 56157  
New Orleans, La 70156  
(504) 522-0628  
kschwartzmann@laaclu.org  
bhamilton@laaclu.org

David Luger\*  
Hannah O. Koesterer\*  
KATTEN MUCHIN ROSENMAN LLP  
525 W. Monroe St.  
Chicago, IL 60661  
david.luger@katten.com  
hannah.koesterer@katten.com

Ryan J. Meyer\*  
KATTEN MUCHIN ROSENMAN LLP  
2121 Pearl St., Ste. 1100  
Dallas, TX 75201  
ryan.meyer@katten.com  
*\*pro hac vice applications forthcoming*

Somil Trivedi\*\*  
Jennifer Wedekind\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
915 15th St., NW  
Washington, DC 20005  
*\*\*admitted pro hac vice*  
*\*pro hac vice applications forthcoming*

Andrea Woods\*  
Brandon Buskey\*  
Meredith Taylor Brown\*  
Gabriel Arkles\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad St.  
New York, NY 10004  
Tel. (212) 549-2500  
awoods@aclu.org  
*\*pro hac vice applications forthcoming*

#### CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

I further certify that copies of all pleadings and other papers filed in the action to date or to be presented to the Court at the hearing, have been furnished to the Defendants' attorneys, who have already made an appearance in this matter.

/s/ Bruce Hamilton

Bruce Hamilton, La. Bar No. 33170

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

BRANDON LIVAS, RICHARD BUSWELL,  
DEWAYNE CORBETT, JOHNNY SMITH,  
CARLOS LORENZO MARTIN, and  
GAINES ANDREWS, on behalf of  
themselves and those similarly situated,

*Petitioners,*

v.

RODNEY MYERS, warden of Oakdale  
Federal Correctional Institutions; and  
MICHAEL CARVAJAL, Federal Bureau of  
Prisons Director, in their official capacities,

*Respondents.*

**Civil Action No. 2:20-CV-00422**

**Judge Terry A. Doughty**

**Magistrate Judge Kathleen Kay**

**MEMORANDUM IN SUPPORT OF PETITIONERS' EMERGENCY MOTION  
FOR RELEASE OF VULNERABLE AND LOW-RISK PRISONERS FROM OAKDALE**

The outbreak of COVID-19 at Oakdale federal correctional institutions I and II (“Oakdale”) has already claimed the lives of six people incarcerated there.<sup>1</sup> At least 50 prisoners and 17 staff members have tested positive.<sup>2</sup> More people are falling sick every day. Yet Respondents’ efforts to stem the outbreak have been far too little, far too late, and their newly produced “plan” does nothing to achieve the social distancing that experts agree is necessary to prevent further suffering. Accordingly, Petitioners seek an order for the expedited, responsible release<sup>3</sup> of medically-vulnerable incarcerated persons at Oakdale to locations where they can

---

<sup>1</sup> BOP’s COVID-19 Inmate Review Update, April 10, 2020, Dkt. No. 8 at 7 (“Inmate Update”).

<sup>2</sup> *Id.*

<sup>3</sup> The term “release,” as used throughout this memorandum, refers to discharge of incarcerated persons from the physical confines of Oakdale, 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 Oakdale 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 the Rule 706 expert that Petitioners have requested.

socially distance. Petitioners also seek the appointment of a public-health expert to oversee changes at Oakdale to ensure social distancing and infection prevention and treatment for those remaining. Given the mounting death toll inside, there is no time to waste.

At the April 7, 2020 telephone conference with this Court, Respondents presented no meaningful plan or timeline to expedite prisoner release.<sup>4</sup> Indeed, Respondents represented on April 7 that they were awaiting further guidance related to the April 3 Memo, indicating that normal procedures would be slowed, if anything. Respondents also conceded that only three prisoners had been identified for release in the nine full days since the Attorney General's earlier March 26, 2020 Memorandum.<sup>5</sup>

Respondents' disclosures since the conference have not cured the problem. First, the number of prisoners identified for potential release has apparently *decreased*.<sup>6</sup> Second, Respondents' April 10, 2020 "update" is not sufficient to reverse the ongoing Eighth Amendment violations at Oakdale. Fewer than 70 Oakdale prisoners have been deemed even "potentially eligible" for home confinement,<sup>7</sup> with no timeline or specifics as to when those determinations would be made or whether any such releases would cure the baseline problem: that social distancing at current population levels is *impossible*, and therefore COVID-19 will continue to spread and potentially kill prisoners, staff, and those in the community.

Petitioners readily satisfy the four-factor test for a temporary restraining order. They can likely show that the status quo will continue to unconstitutionally place Class and Subclass members at a substantial risk of serious harm, and there can be no question that the harm would be irreparable—six men have died already. The public interest weighs heavily in favor of a plan that will prevent the guaranteed spread of COVID-19 in that incarcerated population, which

---

<sup>4</sup> See Minutes of Proceeding, April 7, 2020, Dkt. No. 5 at 2 ("Minute Order") ("The Director of the BOP is currently working on guidance for the facilities to use for these assessments.")

<sup>5</sup> Minute Order, Dkt. No. 5 at 2.

<sup>6</sup> BOP's Notice of Inmates Previously Identified for Removal from FCC Oakdale, April 9, 2020, Dkt. No. 7 (showing that only 1 of 4 named prisoners is currently slated for release, while others have been rejected or are still pending).

<sup>7</sup> Inmate Update, Dkt. No. 8 at 8-9.

could easily spread to the broader community and devastate the region's medical infrastructure. Indeed, public health experts, including the declarant in this record, agree that prisoners, staff, and the public at large would be harmed *far more* by waiting for Respondents' slow-moving plan to take shape while Class members are unable to safely socially distance or maintain recommended hygienic practices.

Numerous correctional facilities nationwide—including other federal prisons—are already clearing and releasing people in significant numbers in response to the imperative of social distancing.<sup>8</sup> Elected officials in Louisiana are demanding action.<sup>9</sup> Yet the Oakdale Respondents are still “reviewing,” with no end date in sight. Therefore, despite Petitioners' stated preference to collaborate privately and quickly, a temporary restraining order is now required to compel the necessary action.

## **FACTUAL BACKGROUND**

### **I. COVID-19 is a Fast-Moving Disease Particularly Harmful to Elderly or Immune-Compromised People**

---

<sup>8</sup> BOP itself claims it has placed an additional 566 prisoners on home confinement since Attorney General Barr's March 26, 2020 memorandum. *See* Federal Bureau of Prisons, *Update on COVID-19 and Home Confinement* (April 5, 2020),

[https://www.bop.gov/resources/news/20200405\\_covid19\\_home\\_confinement.jsp](https://www.bop.gov/resources/news/20200405_covid19_home_confinement.jsp). Outside the federal system, for example, officials in Cleveland have moved more than 700 prisoners out of Cuyahoga County Jail in less than two weeks; more than 250 have been released near Oakland, California; Pennsylvania has authorized release of up to 1,800. New Jersey planned release of as many as 1,000. *See* Kevin Johnson, *Local jails releasing hundreds of prisoners amid coronavirus fears*, USA Today (March 26, 2020), Tracey Tully, *1,000 Inmates Will Be Released From N.J. Jails to Curb Coronavirus Risk*, THE NEW YORK TIMES (March 23, 2020), available at: <https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html> <https://www.usatoday.com/story/news/politics/2020/03/26/jails-free-hundreds-prisoners-stop-coronavirus/5077204002/>; *see also* Michael Gorsenger, *Gov. Wolf issues executive order to release 1,800 inmates to stop COVID-19 spread*, Local News 21 (April 10, 2020), <https://local21news.com/news/local/gov-wolf-issues-executive-order-to-release-18000-inmates-to-stop-covid-19-spread>.

<sup>9</sup> Press Release, Senator John Kennedy (R-LA), *Kennedy, Cassidy, Johnson urge Federal Bureau of Prisons to take immediate action at Oakdale Prison* (April 7, 2020), <https://www.kennedy.senate.gov/public/2020/4/kennedy-cassidy-johnson-urge-federal-bureau-of-prisons-to-take-immediate-action-at-oakdale-prison>.



COVID-19 is a novel virus for which there is no established curative medical treatment, no vaccine, and no cure.<sup>10</sup> Compared with past outbreaks of communicable diseases, the COVID-19 pandemic is of “unprecedented magnitude” because of the “magnitude and speed of transmission of COVID-19.”<sup>11</sup> COVID-19 is transmitted by droplets of infected aerosol, which can survive in the air for up to three hours—and on surfaces such as plastic and stainless steel for up to 2 to 3 days.<sup>12</sup> Indeed, a new study of an early cluster of COVID-19 cases in Wuhan, China revealed the dangers of indirect transmission resulting from infected people contaminating common surfaces—in the study, it was a communal mall bathroom.<sup>13</sup> New research also shows that controlling the spread of COVID-19 is made even more difficult because of the prominence of asymptomatic transmission, i.e., transmission by people who are contagious but who exhibit limited or no symptoms, rendering ineffective any screening tools dependent on identifying symptomatic behavior.<sup>14</sup>

COVID-19 is an acute respiratory syndrome that can cause pneumonia, acute respiratory distress syndrome, respiratory failure, heart failure, sepsis, and other potentially fatal conditions.<sup>15</sup> Treatment for severe cases of COVID-19 includes isolation, oxygen, and mechanical ventilation.<sup>16</sup> COVID-19 is particularly dangerous for elderly or immunocompromised individuals and those who have chronic lung disease, moderate to severe

---

<sup>10</sup> Goldenson Dec., Dkt. No. 1-3 at ¶ 14; *see also Information for Clinicians on Therapeutic Options for Patients with COVID-19*, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/therapeutic-options.html> (“There are no drugs or other therapeutics approved by the [FDA] to prevent or treat COVID-19.”).

<sup>11</sup> *United States v. Martin*, No. 19-cr-140-13, 2020 WL 1274857, at \*2 (D. Md. Mar. 17, 2020).

<sup>12</sup> Goldenson Dec., Dkt. No. 1-3 at ¶ 17; *see also* George Petras *et al.*, *How long does the coronavirus live on surfaces?*, USA Today (March 27, 2020), <https://www.usatoday.com/in-depth/news/2020/03/25/coronavirus-survives-on-metal-plastic-cardboard-common-objects/2866340001/>.

<sup>13</sup> Jing Cai, *et al.*, *Indirect virus transmission in cluster of COVID-19 cases, Wenzhou, China, 2020*, *Emerging Infectious Diseases*, Vol. 26, No. 6, June 2020, <https://doi.org/10.3201/eid2606.200412>.

<sup>14</sup> Chelsea Ritschel, *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19*, *Independent* (March 15, 2020), <https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html>.

<sup>15</sup> Fei Zhou, *et al.*, *Clinical Course and Risk Factors for Mortality of Adult Inpatients with COVID-19 in Wuhan, China: A Retrospective Cohort Study*, 395 *LANCET* 1054 (March 11, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext).

<sup>16</sup> Goldenson Dec., Dkt. No. 1-3 at ¶¶ 9, 14.

asthma, serious heart conditions, severe obesity, or other medical conditions such as diabetes, renal failure, or liver disease, particularly if not well-controlled.<sup>17</sup> According to a study of nearly 1,600 COVID-19 cases, “patients with at least one co-morbidity—including cardiovascular disease, diabetes and chronic kidney diseases—‘had a 79% greater chance of requiring intensive care or a respirator or both, or of dying.’”<sup>18</sup> Nationwide, the mortality rate among persons aged 55-64 is 1-3%; among persons aged 65-84, 3-11%; and among persons 85 or older, 10-27%.<sup>19</sup>

To reduce the risk of contracting COVID-19, the Centers for Disease Control and Prevention (“CDC”) advises all people—and particularly those “at higher risk of severe illness”—to “[s]tay home,” “[w]ash your hands often,” “[a]void close contact,” “keep space between yourself and others (stay 6 feet away, which is about two arm lengths),” “[k]eep away from people who are sick,” and “[c]lean and disinfect frequently touched surfaces.”<sup>20</sup> The President’s Task Force on COVID-19 recommends avoiding gatherings of more than 10 people.<sup>21</sup>

---

<sup>17</sup> Centers for Disease Control and Prevention, *People Who Are at Higher Risk for Severe Illness*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

<sup>18</sup> *Coronel v. Decker*, No. 20-cv-2472, 2020 WL 1487274, at \*3 (S.D.N.Y. Mar. 27, 2020) (slip op.) (quoting Sharon Begley, *Who Is Getting Sick, and How Sick? A Breakdown of Coronavirus Risk by Demographic Factors*, STAT NEWS (Mar. 3, 2020), <https://www.statnews.com/2020/03/03/who-is-getting-sick-and-how-sick-a-breakdown-of-coronavirus-risk-by-demographic-factors/>; see also Jason Oke & Carl Heneghan, *Global Covid-19 Case Fatality Rates*, Oxford COVID-19 Evidence Service (March 28, 2020), <https://www.cebm.net/covid-19/global-covid-19-case-fatality-rates/> (“Patients with comorbid conditions had much higher [fatality] rates.”).

<sup>19</sup> CDC COVID-19 Response Team, *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19)—United States, February 12–March 16, 2020*, 69 MORBIDITY AND MORTALITY WEEKLY REPORT 343 (March 26, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e2.htm>; see also Oke & Heneghan, *supra* n.18 (finding similar mortality rates globally).

<sup>20</sup> Centers for Disease Control and Prevention, *What You Can Do*, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>; see also *Martin*, 2020 WL 1274857, at \*2 (“With no known effective treatment, and vaccines months (or more) away, public health officials have been left to urge the public to practice ‘social distancing,’ frequent (and thorough) hand washing, and avoidance of close contact with others . . . all of which are extremely difficult to implement in a detention facility.”).

<sup>21</sup> Cecelia Smith-Schoenwalder, *Trump Administration Suggests Avoiding Gatherings of More Than 10 People*, USNews.com (March 16, 2020), <https://www.usnews.com/news/national-news/articles/2020-03-16/trumps-coronavirus-task-force-suggests-limiting-gatherings-to-10-people-or-fewer>.

Louisiana is experiencing some of the worst COVID-19 outbreaks in the world. As of April 12, 2020, Louisiana had 20,595 confirmed cases of COVID-19, with at least 840 deaths.<sup>22</sup> A study from the University of Louisiana at Lafayette reported that COVID-19 cases grew at 67.8%, the highest rate in the United States.<sup>23</sup>

## **II. Class and Subclass Members at Oakdale Are at Heightened Risk of Contraction, Transmission of COVID-19**

Oakdale is a complex of two federal correctional institutions; it comprises two, low-security facilities (FCI Oakdale I and FCI Oakdale II, which include a “Camp”) with a total population of approximately 1,800. According to the Bureau of Prisons (“BOP”), 50 incarcerated persons and 17 staff members at Oakdale have tested positive for COVID-19, 19 staff members have been quarantined awaiting test results, and six people have died.<sup>24</sup>

As a rule, “[i]ndividuals in carceral settings are at a significantly higher risk of spreading infectious diseases.”<sup>25</sup> This is because it is typically “not possible to isolate . . . detainees from the outside world (including from staff and vendors who may have been exposed to COVID-19), nor is it possible to isolate them from one another.”<sup>26</sup> Prevention of infection from an infected droplet is “particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces is virtually impossible.”<sup>27</sup> “The probability of transmission of potentially pathogenic organisms is increased by crowding, delays in medical evaluation and

---

<sup>22</sup> See Louisiana Department of Health Coronavirus (COVID-19) Information, updated daily at noon: <http://ldh.la.gov/coronavirus/>.

<sup>23</sup> Adam Daigle, *Coronavirus Cases Grew Faster in Louisiana Than Anywhere Else in the World: UL Study*, THE ACADIANA ADVOCATE (March 24, 2020), [https://www.theadvocate.com/acadiana/news/coronavirus/article\\_94494420-6d4b-11ea-ac42-ff7dd722c084.html](https://www.theadvocate.com/acadiana/news/coronavirus/article_94494420-6d4b-11ea-ac42-ff7dd722c084.html).

<sup>24</sup> Inmate Update, Dkt. No. 8 at 7.

<sup>25</sup> *Coronel*, 2020 WL 1487274, at \*3 (internal quotation omitted).

<sup>26</sup> *Id.*

<sup>27</sup> Goldenson Dec., Dkt. No. 1-3 at ¶ 17.

treatment, rationed access to soap, water, and clean laundry, [and] insufficient infection-control expertise.”<sup>28</sup>

Because they contain high concentrations of people in close proximity, prisons are breeding grounds for the uncontrolled transmission of the virus that causes COVID-19. Louisiana State University and Tulane University health experts concluded the same in a recent letter to Louisiana Governor John Bel Edwards.<sup>29</sup> People are housed “in tightly-packed and poorly-ventilated dormitories; they share toilets, showers, and sinks; they wash their bedsheets and clothes infrequently; and often lack access to basic personal hygiene items,” the 15 professors said.<sup>30</sup> In light of the pandemic, prisons are “tinderboxes, ready to explode and endanger our entire country.”<sup>31</sup>

*a. While Public Health Officials Recommend Social Distancing, Oakdale Prisoners are “Jammed Like Sardines” in Unsanitary Conditions*

The conditions inside Oakdale are in particular need of swift intervention. First and foremost, Oakdale is too crowded to achieve anything close to recommended social distancing. Every declarant confirms that prisoners live, eat, and sleep much closer than six feet apart. Petitioner Dewayne Corbett sleeps in a 10 by 15-foot cell with two other cellmates. When he wakes up, they are “face-to-face,” and he has to “slide by them” to get out the door.<sup>32</sup> And yet there are cells housing up to six people per cell. Phones are roughly two feet apart, as are the sinks, and there is no indication that Oakdale has introduced staggered usage or other protocols to ensure that prisoners can maintain social distancing while using those facilities.

---

<sup>28</sup> *United States v. Stephens*, No. 15-cr-95, --- F. Supp. 3d ----, 2020 WL 1295155, at \*2 (S.D.N.Y. Mar. 19, 2020) (quoting Joseph A. Bick, *Infection Control in Jails and Prisons*, 45 CLINICAL INFECTIOUS DISEASES 1047, 1047 (Oct. 2007), <https://doi.org/10.1086/521910>).

<sup>29</sup> Katherine Andrinopoulos et al., *Public Health Letter to Gov. John Bel Edwards* (March 27, 2020), <https://www.scribd.com/document/453999944/Public-Health-Letter-to-Gov-Edwards>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> Declaration of Dewayne Corbett, Exhibit 6 at ¶ 4.

In FCI Oakdale I, beds are roughly 2.5 feet apart.<sup>33</sup> Around 160 to 180 prisoners share eight toilets, 12 to 14 sinks, and 20 showers.<sup>34</sup> The showers are separated by “thin, plastic partitions so that water from one shower stall splashes the person in the next stall.”<sup>35</sup> In FCI Oakdale II, men sleep in crowded dormitories in which the beds are also roughly two to three feet apart.<sup>36</sup> Petitioner Richard Buswell says, “We are jammed together like sardines.”<sup>37</sup> The hallways are also less than six feet wide.<sup>38</sup> There are no more than eight working showers for the roughly 120 men housed there.<sup>39</sup> There is no indication of staggering or other protocols to ensure distancing while in the bathroom or shower areas.

Worse yet, many prisoners report being in close contact with individuals *known to be infected with COVID-19*.<sup>40</sup> Indeed, Petitioner Smith reports that after the first prisoner tested positive, his cellmates were “dispersed throughout other units,”<sup>41</sup> thereby accelerating the spread, not containing it. Other declarants report that fellow prisoners have symptoms like coughing and diarrhea, but do not receive medical attention until they have a fever or are “pale, sweating,”<sup>42</sup> or “very sick.”<sup>43</sup> Declarant Arthur Wammel estimates that “around 60 men are coughing all night long”<sup>44</sup> while in their bunks.<sup>45</sup> Accordingly, because prisoners are often closer to one another

---

<sup>33</sup> Declaration of Johnny Smith, Exhibit 11 at ¶ 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Declaration of Brandon Livas, Exhibit 7 at ¶ 3; Declaration of Arthur Wammel, Exhibit 13 at ¶ 5; Declaration of Richard Buswell, Exhibit 3 at ¶ 6 (beds are “30 to 36 inches apart”); Declaration of Daniel Collins, Exhibit 5 at ¶ 3; Declaration of Pio Alejandr Campos, Exhibit 4 at ¶ 5.

<sup>37</sup> Buswell Dec., Ex. 3 at ¶ 6; Smith Dec., Ex. 11 at ¶ 7 (“we were crowded like sardines”).

<sup>38</sup> Buswell Dec., Ex. 3 at ¶ 7.

<sup>39</sup> Wammel Dec., Ex. 13 at ¶ 5; Collins Dec., Ex. 5 at ¶ 3.

<sup>40</sup> Declaration of Travis Scott, Exhibit 10 at ¶ 5; Wammel Dec., Ex. 13 at ¶ 4; Livas Dec., Ex. 7 at ¶¶ 4–5; Collins Dec., Ex. 5 at ¶ 4.

<sup>41</sup> Smith Dec., Ex. 11 at ¶ 7.

<sup>42</sup> Buswell Dec., Ex. 3 at ¶ 4.

<sup>43</sup> Declaration of Gaines Andrews, Exhibit 2 at ¶ 5 (“Almost all of the other prisoners I interact with seem to be displaying symptoms.”); Collins Dec., Ex. 5 at ¶ 13.

<sup>44</sup> Wammel Dec., Ex. 13 at ¶ 6; Livas Dec., Ex. 7 at ¶ 6 (“many people are coughing throughout the night”).

<sup>45</sup> Campos Dec., Ex. 4 at ¶ 7.

than six feet,<sup>46</sup> it stands to reason that dozens if not hundreds of Class members are unconsciously inhaling droplets from fellow prisoners who are potentially or actually infected.

Cleaning supplies are rationed and running low.<sup>47</sup> Communal phones and computers are not sanitized after use,<sup>48</sup> despite the fact that coronavirus can live on such surfaces. At Oakdale II, “[f]ive to ten men use the bathroom facility every two minutes, so it is almost impossible to keep it clean.”<sup>49</sup> Prisoners are being moved from quarantine back into crowded areas.<sup>50</sup> Prisoners are being told that they are no longer being tested for COVID-19, under the assumption that everyone already has it.<sup>51</sup> Staff have quit in light of these conditions,<sup>52</sup> or they “lock themselves in the office.”<sup>53</sup> Prisoners have no such recourse.

*b. Respondents’ Asserted Mitigation Efforts are Too Little, Too Late*

*i. The April 10 “Update” Does Not Contain a Credible Social Distancing Plan*

Respondents’ April 10 “Update” is woefully inadequate to decrease the prison’s crowded, congregate conditions and achieve CDC-recommended social distancing. Under the Attorney General’s March 26, 2020 direction, Respondents admit that BOP had identified only three people at Oakdale for potential release.<sup>54</sup> Under its expanded authority under the Attorney General’s April 3, 2020, memorandum, BOP identified 58 people to review.<sup>55</sup> By April 10, 2020, Oakdale staff have only managed to review 34 individuals.<sup>56</sup> Oakdale staff expanded their criteria to include 90 more prisoners for home-confinement eligibility, but only 10 were

---

<sup>46</sup> See, e.g., Livas Dec., Ex. 7 at ¶ 3.

<sup>47</sup> Campos Dec., Ex. 4 at ¶ 6; Declaration of John Sposato, Exhibit 12 at ¶ 8.

<sup>48</sup> Buswell Dec., Ex. 3 at ¶ 11; Andrews Dec., Ex. 2 at ¶ 7; Smith Dec., Ex. 11 at ¶ 4; Livas Dec., Ex. 7 at ¶ 9; Collins Dec., Ex. 5 at ¶ 7.

<sup>49</sup> Buswell Dec., Ex. 3 at ¶ 12.

<sup>50</sup> Wammel Dec., Ex. 13 at ¶ 7.

<sup>51</sup> *Id.*

<sup>52</sup> Andrews Dec., Dkt. 1-5 at ¶ 6; Scott Dec., Ex. 10 at ¶ 9; Campos Dec., Ex. 4 at ¶ 13.

<sup>53</sup> Buswell Dec., Ex. 3 at ¶ 10.

<sup>54</sup> Inmate Update, Dkt. No. 8 at 8.

<sup>55</sup> *Id.* at 9.

<sup>56</sup> *Id.*

determined eligible.<sup>57</sup> Thus, Oakdale appears presently to have identified, *at most*, 44 people for potential release. Even if all 44 were released, which is far from clear, this number is paltry in a population of about 1,800—about 2 percent—and will do nothing to allow those who remain in the facility to achieve social distancing.<sup>58</sup> Accordingly, it will do nothing to stop the outbreak.<sup>59</sup> As Dr. Goldenson concludes, “[t]he government’s April 10, 2020 plan is inadequate to achieve social distancing or protect prisoners from COVID-19 and does not change my public health recommendations.”<sup>60</sup>

Moreover, Respondents provide no timeline for release and additional review, no plan to increase social distancing for those who remain, and no indication that the risk of infection is sufficiently considered. According to Respondents, Oakdale staff rely on at least eight BOP criteria to consider a person for home confinement, none of which is their pre-existing medical condition or vulnerability to COVID-19.<sup>61</sup> Instead, they calculate factors such as a person’s rating under BOP’s algorithm, the Prisoner Assessment Tool Targeting Estimated Risk and Needs, or “PATTERN.”<sup>62</sup> Released last July to implement the First Step Act, it is designed to “measure risk of recidivism of inmates.”<sup>63</sup> The tool obviously does not consider risk of infection or death—it was not designed for the present circumstance of a viral pandemic.<sup>64</sup> Hence, even if Respondents were proceeding with the necessary speed and with social distancing as their

---

<sup>57</sup> *Id.*

<sup>58</sup> April 12, 2020 Declaration of Joe Goldenson, MD, Exhibit 1 at ¶ 31.

<sup>59</sup> Indeed, prisoners have heard that staff have stopped testing people under the assumption that everyone already has COVID-19. Wammel Dec., Ex. 13 at ¶ 7.

<sup>60</sup> Goldenson Dec., Ex. 1 at ¶¶ 29-35.

<sup>61</sup> Inmate Update, Dkt. No. 8 at 8-10.

<sup>62</sup> *Id.* at 8.

<sup>63</sup> Department of Justice Announces Enhancements to the Risk Assessment System (Jan. 15, 2020), <https://www.justice.gov/opa/pr/departments-justice-announces-enhancements-risk-assessment-system-and-updates-first-step-act>.

<sup>64</sup> *See, e.g.*, Letter from Leadership Conference on Civil Rights to Attorney General Bill Barr, RE: The use of the PATTERN risk assessment in prioritizing release in response to the COVID-19 pandemic, April 3, 2020, [http://civilrightsdocs.info/pdf/policy/letters/2020/Final\\_Letter\\_on\\_PATTERN\\_in\\_Response\\_to\\_AG\\_Barr\\_Memo\\_on\\_4\\_26-4\\_3\\_2020.pdf](http://civilrightsdocs.info/pdf/policy/letters/2020/Final_Letter_on_PATTERN_in_Response_to_AG_Barr_Memo_on_4_26-4_3_2020.pdf).

primary imperative—neither of which are true—their tools are not calibrated to those ends, further underscoring the need for court and expert oversight.

*ii. Respondents' Efforts to Mitigate the Unsanitary Conditions at Oakdale are Insufficient and May be Making Things Worse*

Respondents claim they have now taken remedial measures to improve hygiene, such as deploying ubiquitous staff mask usage and “inmate orderlies” on a “24-hour basis to disinfect” its facilities—all of which is directly contradicted by the declarations of people actually incarcerated at Oakdale.<sup>65</sup>

At the April 7 conference, Respondents asserted that they are conducting daily temperature checks at the 4 p.m. hour. Prisoners confirm that Oakdale staff have been performing daily temperature checks since about April 2.<sup>66</sup> However, the CDC recommended daily temperature checks in prisons on March 23, 2020.<sup>67</sup> Further, prisoners are lined up “right next to each other” during the checks, not six feet apart,<sup>68</sup> and staff are not always sanitizing

---

<sup>65</sup> Compare Inmate Update, Dkt. No. 8 at 6 to Smith Dec., Ex. 11 at ¶¶ 4, 11 (“Good sanitation is not practically possible because of the conditions here. The building is so congested that it cannot be effectively disinfected. The chemical used in FCI Oakdale I, Clean On The Go, requires 10 minutes between applications. I have never seen prison staff applying it to common areas between prisoners’ uses of those areas. [...] Correction officers used to wear masks in the prison, but they have largely stopped because they have apparently decided that it is futile.”); Collins Dec., Ex. 5 at ¶ 7 (“Orderlies are not sanitizing the phones. I’m forced to use the phone right after someone else without it being cleaned.”); Livas Dec., Ex. 7 at ¶¶ 9, 11 (“I have never seen prison staff sanitizing or wiping down common areas or surfaces such as telephones. [...] The prison staff wear personal protective equipment inconsistently—some of them wear a mask or gloves, but generally not both and not all the time.”); Sposato Dec., Ex. 12 at ¶ 7 (“The showers are not cleaned after each use.”); Declaration of Hector Perez, Exhibit 8 at ¶ 8 (“We are housed in dormitories that are dirty and crowded.”)

<sup>66</sup> Buswell Dec., Ex. 3 at ¶ 5; compare Corbett Dec., Ex. 6 at ¶ 3 (describing a temperature check at 9 a.m.).

<sup>67</sup> Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, (March 23, 2020) (“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.”) (recommending twice daily temperature checks for those in contact with known COVID-19 cases), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

<sup>68</sup> Wammel Dec., Ex. 13 at ¶ 3.



head thermometers after use.<sup>69</sup> This process exacerbates the spread of droplets potentially containing the disease.<sup>70</sup>

Respondents asserted at the April 7 conference that Oakdale staff are now wearing personal protective equipment. But, according to the Petitioners and other declarants, not all staff wear the equipment all the time.<sup>71</sup> Indeed, some have stopped completely because they believe “it is futile.”<sup>72</sup> Petitioner Corbett asserted that a doctor touched every prisoner with the same gloves without changing them.<sup>73</sup> Droplets could easily have passed from one prisoner to another during that check—even assuming they were kept six feet apart while waiting for the doctor.

Respondents also asserted that prisoners are being given masks on a daily basis.<sup>74</sup> Some prisoners confirm having been provided one mask per day since April 2 (well after community spread), while others say it is sporadic<sup>75</sup> or that they are being asked to reuse them.<sup>76</sup> But, by the same token, all their personal cleaning supplies were confiscated and there are not enough replacement bottles.<sup>77</sup> Prisoners report increased cleaning, but that it only started “this week.”<sup>78</sup>

In the end, while Oakdale staff have started implementing some hygiene mitigation efforts, they only started after numerous infections and deaths; the efforts are only sporadically enforced; and, most importantly, these substandard hygiene efforts have not addressed social distancing. Indeed, some practices like group temperature checks may be increasing the risk of close-quarters transmission. Yet the CDC, Dr. Goldenson, and the consensus of public-health experts have recommended social distancing as the best protection against COVID-19 contraction. Respondents have not made any successful efforts to increase social distancing because, without significantly reducing the prisoner population, social distancing at Oakdale is

---

<sup>69</sup> Scott Dec., Ex. 10 at ¶ 4.

<sup>70</sup> Goldenson Dec., Ex. 1 at ¶ 17.

<sup>71</sup> Andrews Dec., Ex. 2 at ¶ 8; Livas Dec., Ex. 7 at ¶ 11.

<sup>72</sup> Smith Dec., Ex. 11 at ¶ 11.

<sup>73</sup> Corbett Dec., Ex. 6 at ¶ 3.

<sup>74</sup> Inmate Update, Dkt. No. 8 at 6.

<sup>75</sup> Andrews Dec., Ex. 2 at ¶ 9; Collins Dec., Ex. 5 at ¶ 11.

<sup>76</sup> Smith Dec., Ex. 11 at ¶ 15.

<sup>77</sup> Declaration of Carlos Lorenzo Martin, Exhibit 8 at ¶ 5; *see also* Collins Dec., Ex. 5 ¶ 8.

<sup>78</sup> Wammel Dec., Ex. 13 at ¶ 7.

“impossible.”<sup>79</sup> Without addressing this central requirement, Respondents’ April 10 plan is window dressing at best. Indeed, unless and until the population at Oakdale is reduced to such a level that the prisoners who remain can engage in social distancing, there is no set of mitigating actions that will reduce or eliminate the unconstitutional risk of harm to all prisoners in the facility.

### LEGAL STANDARD

To obtain a preliminary injunction or temporary restraining order, Petitioners must demonstrate: “(1) a substantial likelihood of success on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that grant of an injunction will not disserve the public interest.” *Byrum v. Landreth*, 566 F.3d 442, 445 (5th Cir. 2009) (quoting *Speaks v. Kruse*, 445 F.3d 396, 399-400 (5th 2006)); *La. Dep’t of Transp. & Dev. v. U.S. Dep’t of Transp.*, No. 15-2638, 2015 WL 7313876, at \*4 (W.D. La. Nov. 20, 2015) (citing *Byrum*, 566 F.3d at 445). Petitioners must meet each of these requirements, *La. Dep’t of Transp.*, 2015 WL 7313876 at \*4, but are “not required to prove [their] entitlement to summary judgment.” *Byrum*, 566 F.3d at 446 (citing *ICEE Distribs., Inc. v. J&J Snack Foods Corp.*, 325 F.3d 586, 596 n.34 (5th Cir. 2003)). Rather, they “must present a prima facie case but need not show that [they are] certain to win.” *Janvey v. Alguire*, 647 F.3d 585, 595 (5th Cir. 2011) (quoting C. Wright & A. Miller, 11A FEDERAL PRACTICE & PROCEDURE § 2948.3 (2d ed. 1995)). The Court may issue a temporary restraining order without awaiting for the adverse party’s response if it finds that “immediate and irreparable injury . . . will result to the movant before the adverse party can be heard in opposition.” FED. R. CIV. P. 65(b)(1); *Havlik v. United States*, No. 18-cv-0692, 2018 WL 5117282, at \*1 (W.D. La. Oct. 19, 2018).

---

<sup>79</sup> Goldenson Dec., Dkt. 1-3 at ¶ 17; Smith Dec., Ex. 11 at ¶ 3 (“It is impossible for people at Oakdale to stay six feet away from each other.”); Livas Dec., Ex. 7 at ¶ 3.

## ARGUMENT

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). Petitioners have a substantial likelihood of succeeding in their claim that Respondents are failing to provide those constitutionally-mandated protections to the Class. The harm arising from these constitutional violations—severe illness and possibly death—is irreparable, and the remaining balancing factors weigh heavily in favor of the Court granting Petitioners’ motion for a temporary restraining order/preliminary injunction.

### **I. Plaintiffs Have a Substantial Likelihood of Success on the Merits of Their Claim That the Conditions in Which They Are Being Confined are Unconstitutional**

Plaintiffs can present a prima facie case that the current conditions at Oakdale are unconstitutional. Under the Eighth Amendment, prison officials have a constitutional obligation to provide for incarcerated persons’ reasonable safety and to address their serious medical needs. *See, e.g., Farmer*, 511 U.S. at 832-33 (1994) (under the Eighth Amendment, prison officials “must provide humane conditions of confinement,” including adequate medical care, and “must take reasonable measures to guarantee the safety of the inmates”); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (“deliberate indifference to serious medical needs of prisoners” is “proscribed by the Eighth Amendment”); *Hinojosa v. Livingston*, 807 F.3d 657, 666 (5th Cir. 2015) (plaintiff stated an Eighth Amendment claim when defendants subjected him to conditions “posing a substantial risk of serious harm” to his health).

Prison officials violate this affirmative obligation by showing “deliberate indifference” to the substantial risk of serious harm to the prisoners. *Farmer*, 511 U.S. at 828. “A prison official acts with deliberate indifference when he ‘knows of and disregards an excessive risk to inmate health or safety.’” *Hinojosa*, 807 F.3d at 665 (quoting *Farmer*, 511 U.S. at 837). A court “may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Ball v. LeBlanc*, 792 F.3d 584, 594 (5th Cir. 2015) (quoting *Farmer*, 511 U.S. at 842);

*see also Hinojosa*, 807 F.3d at 667 (“open and obvious nature” of dangerous prison conditions supported an inference of deliberate indifference).

With respect to an impending infectious disease like COVID-19, deliberate indifference is satisfied when prison 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 v. McKinney*, 509 U.S. 25, 33-34 (1993) (emphasis added). “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.” *Id.* at 33; *see also Gates v. Cook*, 376 F.3d 323, 333 (5th Cir. 2004) (“It is also important to note that [an] inmate need not show that death or serious illness has [already] occurred.”) (citing *Helling*, 509 U.S. at 32). “[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.” *Farmer*, 511 U.S. at 833.

Here, there can be no doubt that Respondents are aware of and have insufficiently responded to the substantial risk that exposure to COVID-19 poses to all persons incarcerated at Oakdale, and particularly to the Medically Vulnerable Subclass. Respondents’ own “update” contains several admissions to that effect. First, the BOP claims it began preparing for the coronavirus in January 2020,<sup>80</sup> yet it waited at least six weeks to release its national directives to screen prisoners and staff, suspend prisoners’ movements, and modify operations to maximize social distancing.<sup>81</sup> An Oakdale prisoner became the first person to die from COVID-19 in BOP custody on March 28, 2020.<sup>82</sup> By that time, BOP and its agents had known for weeks or months about the rapid-fire spread of COVID-19, the danger it posed to prisons, and especially the

---

<sup>80</sup> Inmate Update, Dkt. No. 8 at 3.

<sup>81</sup> *Id.* at 3-4.

<sup>82</sup> Sarah N. Lynch, *Prisoner Serving Time for Drug Charge Is First U.S. Inmate to Die From COVID-19*, Reuters (March 29, 2020), <https://www.reuters.com/article/us-health-coronavirus-prison-death/prisoner-serving-time-for-drug-charge-is-first-u-s-inmate-to-die-from-covid-19-idUSKBN21G04T>.

danger it posed to medically vulnerable populations. Indeed, a BOP agency task force worked with the CDC and reviewed World Health Organization guidance before announcing Phase II of its “Action Plan” on March 13, 2020.<sup>83</sup> The CDC expanded its guidance for people at extreme risk of serious illness from the coronavirus in early March.<sup>84</sup>

As COVID-19 continued to infiltrate Oakdale in recent days, Respondents have failed to provide even basic safeguards to the Class, despite being aware of directives from the Department of Justice to immediately address the issue. In his April 3 memo, Attorney General Barr noted that he had already “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. . . .”<sup>85</sup> He went on to note the “significant levels of infection” at facilities including FCI Oakdale and affirmed that the government must “move with dispatch in using home confinement, where appropriate, to move vulnerable inmates out of these institutions.”<sup>86</sup> Yet despite these directives, and Defendants’ understanding of the necessity of implementing them, Defendants have employed release criteria that do not consider vulnerability to COVID-19,<sup>87</sup> moved without dispatch or even stated timelines, and failed to release *anyone* to date. Moreover, they have placed the burden on other actors and other systems to effectuate the release of medically-vulnerable prisoners. For example, Defendants point to the use of compassionate release or reduction of sentence motions as an avenue for release.<sup>88</sup> But these avenues have not resulted and will not result in the release of enough people in a short enough period of time to reduce the risk of harm to the Class and Subclass Members.

---

<sup>83</sup> Inmate Update, Dkt. No. 8 at 3.

<sup>84</sup> Korin Miller, *Who’s Most At Risk for Coronavirus? Why Certain People Are Vulnerable to Complications*, Prevention (March 13, 2020), <https://www.prevention.com/health/a31245792/coronavirus-high-risk-groups/>.

<sup>85</sup> 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* (April 3, 2020), *available at* <https://politi.co/2UV3JBi>.

<sup>86</sup> *Id.*

<sup>87</sup> Goldenson Dec. at ¶ 33.

<sup>88</sup> Inmate Update at 7-8.

Despite pervasive warnings, Respondents failed to act, then acted sluggishly and ineffectively. Respondents' utter disregard for social distancing and any meaningful timeline to achieve it, both before the April 10 "update" and within it, prove that the deliberate indifference will continue without this Court's intercession.

This is exactly the type of inadequate action and culpable inaction that the Fifth Circuit has previously found sufficient to constitute deliberate indifference. For instance, in *Gomez v. Warner*, the Fifth Circuit found that a prisoner alleged deliberate indifference by prison officials where the prison's razor-swapping program created the mere "risk" of "possible spread" in the transmission of deadly "infectious diseases such as HIV, AIDS, and hepatitis." *Gomez v. Warner*, 39 F.3d 320 (5th Cir. 1994) (per curiam) (emphasis in original); see also, e.g., *Johnson v. Epps*, 479 F. App'x 583, 589-92 (5th Cir. 2012) (allegations that inmate was exposed to "serious, communicable diseases" and that prison officials were aware of the risk and did nothing to prevent it were sufficient to state a claim for violation of Eighth Amendment rights); *Gates v. Collier*, 501 F.2d 1291, 1300-03 (5th Cir. 1974) (affirming district court's holding that allowing "[s]ome inmates with serious contagious diseases . . . to mingle with the general prison population," alongside maintaining a host of other unsanitary and inhumane conditions, "constitute[d] cruel and unusual punishment") (cited with approval in *Rhodes v. Chapman*, 452 U.S. 337, 352 n. 17 (1981)); *Newman v. Alabama*, 503 F.2d 1320 (5th Cir. 1974), cert. denied, 421 U.S. 948 (1975) (finding that when systematic deficiencies in staffing, facilities or procedures make unnecessary suffering inevitable, a court will not hesitate to use its injunctive powers). Indeed, courts nationwide are recognizing the unprecedented health and public safety threat that COVID-19 presents and are making immediate release decisions accordingly.<sup>89</sup>

---

<sup>89</sup> *United States v. Zuckerman*, 16-cr-194-AT, Dkt. No. 116 (S.D.N.Y. Apr. 3, 2020) (granting immediate compassionate release to a 75-year-old defendant with underlying health conditions, in light of COVID-19); *United States v. Campagna*, 16-cr-78, 2020 WL 1489829 (S.D.N.Y. March 27, 2020) ("Defendant's compromised immune system in concert with the COVID-19 public health crisis constitutes an extraordinary and compelling reason to modify Defendant's sentence"); *United States v. Hernandez*, U.S. Dist. LEXIS 58739 (S.D.N.Y. April 2, 2020) ("In light of the heightened medical risk presented to Mr. Hernandez by the COVID-19 pandemic, there are extraordinary and compelling reasons to reduce Mr. Hernandez's sentence"); *United States v. Perez*, 17-cr-513, Dkt. No. 98 (S.D.N.Y. April 1, 2020)

Here, Petitioners are alleging far more than a *risk* of transmission of a deadly disease—transmission is happening in real time while the Respondents have been deliberately indifferent to Petitioners’ fate. Indeed, by the day this Court held its status conference on April 7, 2020, the virus had spread from FCI Oakdale I to FCI Oakdale II.<sup>90</sup> Between Saturday, March 28, 2020

---

(defendant’s “heightened risk of serious illness or death from COVID-19 due to his pre-existing medical issues” constitutes an “extraordinary and compelling” reason for compassionate release); *United States v. Hunneus*, 19-cr-10117, Dkt. No. 642 (D. Mass. March 17, 2020) (finding “extraordinary and compelling reasons” and granting motion for reduction of sentence “in light of the national state of emergency due to the global COVID-19 pandemic and Hunneus’ unique health circumstances”); *United States v. Wishner*, 2:14-cr-712, Dkt. No. 155 (C.D. Cal. March 27, 2020) (granting compassionate release under 18 U.S.C. 3582(c)(1) based on COVID-19 and underlying medical conditions); *United States v. Copeland*, No. 2:05-cr-135-DCN, Dkt. No. 662 (D.S.C. Mar. 24, 2020) (granting compassionate release to defendant in part due to “Congress’s desire for courts to release individuals the age defendant is, with the ailments that defendant has during this current pandemic”); *United States v. Powell*, No. 1:94-cr-316-ESH (Mar. 28, 2020) (granting unopposed motion for compassionate release in light of COVID-19); *United States v. Rodriguez*, No. 2020 U.S. Dist. LEXIS 58718 (E.D. Pa. Apr. 1, 2020) (defendant’s circumstances—particularly the outbreak of COVID-19 and his underlying medical conditions present “extraordinary and compelling reasons” to reduce sentence); *United States v. Colvin*, 2020 U.S. Dist. LEXIS 57962, at \*9 (D. Conn. Apr. 2, 2020) (defendant demonstrated “extraordinary and compelling reasons justifying her immediate release under Section 3582(c)(1)(A) and U.S.S.G. 1B1.13” because her diabetes substantially increases risk of illness should she contract COVID-19); *United States v. Resnick*, 12-cr-152, 2020 U.S. Dist. LEXIS 59091 (granting compassionate release because defendant is particularly vulnerable to COVID-19 because he is 65 years old with diabetes and end-stage liver disease); *United States v. Jepsen*, 2020 U.S. Dist. LEXIS 57007 (“The court finds that the totality of the circumstances specific to Mr. Jepsen constitute ‘extraordinary and compelling’ reasons to grant compassionate release,” including that he suffers chronic conditions considered to be risk factors for COVID-19); *United States v. Edwards*, 17-cr-3, Dkt. 134 (April 2, 2020) (Granting compassionate release, in considerations of COVID-19 pandemic and defendant’s compromised immune system.”); *United States v. Karl Oreste*, 14-20349-cr-Scola, Dkt. No. 200 (S.D. Fl. April 6, 2020) (granting compassionate release, concluding that there were extraordinary and compelling circumstances presented by COVID-19 pandemic and defendant’s advanced age and poor health); *United State v. Bartolo Hernandez*, 16-20091-CR-Williams, Dkt. No. 561 (S.D. Fl. April 3, 2020) (finding extraordinary and compelling reasons and granting compassionate release motion, over the government’s opposition, where—because of the coronavirus pandemic—the defendant was the only potential caregiver for his elderly mother); *United States v. Foster*, No. 1:14-cr-324-02, DE 191 (M.D. Pa. Apr. 3, 2020) (granting compassionate release to a defendant who—due to an underlying lung condition—was at greater risk of serious illness or death from COVID-19); *United States v. Brannan*, No. 4:15-CR-80-01, DE 286 (S.D. Tx. Apr. 2, 2020) (granting compassionate release where defendant was 66-years-old with diagnoses of high blood pressure and high cholesterol); *United States v. Williams*, No. 3:04-cr-95-MCR-CJK, DE 91 (N.D. Fla. Apr. 1, 2020) (granting compassionate release in light of severe risk posed to defendant by COVID-19); *United States v. Marin*, 15-cr-252, Dkt. No. 1326 (E.D.N.Y. Mar. 30, 2020) (granting release due to age, deteriorating health and elevated risk of dire health consequences due to COVID-19 outbreak); *United States v. Bolston*, 18-cr-382-MLB, DE 20 (N.D. Ga. Mar. 30, 2020) (releasing defendant in part because of danger inherent to continued incarceration during COVID-19).

<sup>90</sup> Nicholas Chrastil, *Following five inmate deaths, coronavirus has spread to a new facility at Louisiana federal prison*, THELENSNOLA.org (April 7, 2020), available at:

and Friday, April 10, 2020, Respondents' deliberate indifference has resulted in the deaths of six Oakdale inmates—Patrick Jones (49); Nicholas Rodriguez (43); James Wilson (57); David Townsend (66); Wallace Holley, Jr. (56); and George Jeffus (76). According to news reports, these men each had the types of pre-existing conditions that would have made them members of the proposed Medically-Vulnerable Subclass in this matter, had they been able to survive Respondents' deliberate indifference long enough to participate in this suit.<sup>91</sup>

## **II. Petitioners Face a Substantial Threat of Irreparable Injury**

Petitioners require immediate relief to prevent irreparable injury. Indeed, six men have died, and dozens of putative Class members are already suffering the irreparable injury of COVID-19 infection. Countless more Class members inevitably will suffer infection unless immediate, remedial measures, including the expedited release of the Medically-Vulnerable Subclass members, are taken to effectively mitigate the virus's spread.

Class members are incarcerated in congregate settings with little-to-no control over their contact with others and the hygiene of their confinement, and thus cannot practically take the preventative measures recommended by the CDC and the President's Task Force on COVID-19.<sup>92</sup> They are entirely at the mercy of Respondents, who have not adopted the necessary procedures to allow Class members to take these measures. In short, Respondents are failing to protect them from the obvious risk of severe harm, and Respondents impose on them conditions in which it is impossible for them to protect themselves.

---

<https://thelensnola.org/2020/04/07/following-five-inmate-deaths-coronavirus-has-spread-to-a-new-facility-at-louisiana-federal-prison/>

<sup>91</sup> Caroline Habetz, *Fifth inmate at Oakdale federal prison dies from COVID-19*, KPLC News (April 3, 2020), <https://www.kplctv.com/2020/04/03/fifth-inmate-oakdale-federal-prison-dies-covid-19/>; Reuters, *Death Toll From COVID-19 at Oakdale Prison in Louisiana Continues to Climb*, N.Y. Times (April 2, 2020), <https://www.nytimes.com/reuters/2020/04/02/us/02reuters-health-coronavirus-prisons.html>; *Fourth inmate at Oakdale Federal Prison dies of COVID-19*, KATC News (April 2, 2020), <https://www.katc.com/news/covering-louisiana/fourth-inmate-at-oakdale-federal-prison-dies-of-covid-19/>; KPLC, *Sixth inmate at Oakdale federal prison dies from coronavirus* (April 10, 2020), <https://www.kplctv.com/2020/04/10/sixth-inmate-oakdale-federal-prison-dies-coronavirus/>

<sup>92</sup> See *supra* nn. 20 & 21.



And even if Respondents could somehow show that transmission was not a virtual certainty, which they cannot, “it is not necessary to demonstrate that harm is inevitable.” *Humana, Inc. v. Jacobson*, 804 F.2d 1390, 1394 (5th Cir. 1986); *Rayford v. Bowen*, 715 F. Supp. 1347, 1351 (W.D. La. 1989) (quoting *Humana*, 804 F.2d at 1394). Rather, all that is required is “a significant threat of injury from the impending action, that the injury is imminent, and that money damages would not fully repair the harm.” *Humana*, 804 F.2d at 1394. Here, the unprecedented “magnitude and speed of transmission” of COVID-19 through a facility that could hardly be more contrary to current public health recommendations and the President’s Task Force recommendations makes the threat of substantial injury “significant” and “imminent.” See *Martin*, 2020 WL 1274857, at \*2.

Nor can there be any question that the threatened harm is irreparable. Likely hundreds of putative Class members have risk factors making death or severe illness likely if they contract COVID-19. “It goes without saying that . . . death is an irreparable injury.” *East v. Blue Cross & Blue Shield of La.*, No. 14-cv-115-BAJ-RLB, 2014 WL 8332136, at \*2 (M.D. La. Feb. 24, 2014); accord, e.g., *Turner v. Epps*, 842 F. Supp. 2d 1023, 1028 (S.D. Miss. 2012) (describing death as “the single most irreparable harm of all”). Even for those who recover—a touch-and-go proposition, given the demonstrated seriousness and spread of COVID-19, particularly for vulnerable populations—the extreme suffering that they may experience during their illness<sup>93</sup> and the possibility of long-term respiratory impairment<sup>94</sup> could not be erased. Such bodily injury

---

<sup>93</sup> See, e.g., Graham Readfearn, *What Happens to People’s Lungs When They Get Coronavirus?*, THE GUARDIAN (Mar. 28, 2020, 2:56 AM), <https://www.theguardian.com/world/2020/mar/28/what-happens-to-peoples-lungs-when-they-get-coronavirus> (noting that “almost all serious consequences of Covid-19 feature pneumonia” and that “there is evidence that pneumonia caused by Covid-19 may be particularly severe.” The lungs “become filled with inflammatory material [and] are unable to get enough oxygen to the bloodstream, reducing the body’s ability to take on oxygen and get rid of carbon dioxide”).

<sup>94</sup> See, e.g., Peter Wark, *How Are the Most Serious COVID-19 Cases Treated, and Does the Coronavirus Cause Lasting Damage?*, THE CONVERSATION.COM (Mar. 29, 2020, 9:29 PM), <http://theconversation.com/how-are-the-most-serious-covid-19-cases-treated-and-does-the-coronavirus-cause-lasting-damage-134398> (“At this stage there is no data on the long-term effects of COVID-19. But we can look at the after-effects of other acute viral respiratory diseases such as influenza, SARS and Middle East respiratory syndrome (MERS). In these diseases, collectively called acute respiratory distress syndromes (ARDS), the fragile small airways and air sacs become damaged by inflammation, can become blocked by fluid and blood, and are replaced by scar tissue as they heal. This can stiffen the lungs – at

clearly amounts to irreparable harm. *See, e.g., Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996) (noting that the “suffer[ing] of physical effects” can “serve as an independent basis for [a] conclusion that the plaintiff would suffer irreparable harm in the absence of preliminary injunctive relief”).

Moreover, COVID-19 outbreaks have brought some of the most well-equipped medical systems in the country to their knees.<sup>95</sup> In New York City, for example, many people with serious non-COVID-19 conditions are finding it difficult, if not impossible, to obtain needed medical care.<sup>96</sup> People have died while waiting in line for overburdened emergency rooms.<sup>97</sup> Medical personnel have been hit particularly hard, leading to numerous deaths and further depleting medical systems’ resources.<sup>98</sup> The outbreak’s toll on Oakdale’s system is apparent: Aside from six prisoner deaths, 18 prisoner hospitalizations, and at least 50 prisoner infections, 17 prison staff members are infected and 19 more are quarantined, awaiting test results,<sup>99</sup> resulting in a staff shortage that has made even reviewing prisoners for release a “challenge.”<sup>100</sup>

---

first from fluid and then from scar tissue – impairing their ability to transfer oxygen and making breathing more laboured.”).

<sup>95</sup> *See, e.g.,* Michael Rothfeld, Somini Sengupta, Joseph Goldstein, and Brian M. Rosenthal, *13 Deaths in a Day: An “Apocalyptic” Coronavirus Surge at an N.Y.C. Hospital*, New York Times (March 25, 2020), <https://www.nytimes.com/2020/03/25/nyregion/nyc-coronavirus-hospitals.html> (“[H]ospitals are under siege. New York City’s hospitals run the gamut from prestigious teaching institutions catering to the elite to public hospitals providing care for some of the poorest communities in the nation. Regardless of whom they serve, few have been spared the impact of the pandemic: A flood of sick and fearful New Yorkers has besieged emergency rooms across the city.”); *see also* Miguel Marquez and Sonia Moghe, *Inside a Brooklyn Hospital that Is Overwhelmed with COVID-19 Patients and Deaths*, CNN (March 30, 2020), <https://www.cnn.com/2020/03/30/us/brooklyn-hospital-coronavirus-patients-deaths/index.html> (“‘A medical war zone,’ [Dr. Arabia] Mollette, an emergency room physician at Brookdale Hospital, told CNN. ‘Every day I come, what I see on a daily basis, is pain, despair, suffering and health care disparities.’”).

<sup>96</sup> *Id.*

<sup>97</sup> *See, e.g.,* Jessica Glenza, Ankita Rao, and Alexandra Villarreal, “It’s What Was Happening in Italy”: the Hospital at the Center of New York’s COVID-19 Crisis, THE GUARDIAN (March 27, 2020), <https://www.theguardian.com/us-news/2020/mar/27/new-york-coronavirus-elmhurst-hospital>.

<sup>98</sup> *See, e.g.,* Dylan Scott, Umair Irfan, and Jen Kirby, *The Next Coronavirus Crisis Will Be a Shortage of Doctors and Nurses*, VOX (March 26, 2020), <https://www.vox.com/2020/3/26/21192191/coronavirus-us-new-york-hospitals-doctors-nurses>.

<sup>99</sup> Inmate Update, Dkt. No. 8 at 7.

<sup>100</sup> *Id.* at 9.

In the three weeks since Oakdale’s first positive COVID-19 case and the 12 days since the Attorney General ordered BOP to prioritize releases from Oakdale, the prison has apparently succeeded in releasing no one except to hospitals and mortuaries. Instead, its plan has merely identified fewer than 70 “potentially eligible” people for release. Even if every one of those people were already released, that plan is woefully insufficient to prevent the spread of disease and protect Class members from harm, primarily because it does not reduce the Oakdale population enough to allow prisoners to socially distance from others.<sup>101</sup>

### **III. The Remaining Factors Weigh Heavily in Favor of a Temporary Restraining Order and Preliminary Injunction**

The third and fourth factors, whether the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted and weighing the public interest “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). Here, they weigh heavily in favor of granting relief.

As an initial matter, the requested injunction would protect Petitioners’ constitutional rights under the Eighth Amendment, and “[i]t is always in the public interest to prevent the violation of a party’s constitutional rights.” *Jackson Women’s Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012)); accord, e.g., *June Medical Servs., LLC v. Caldwell*, No. 14-cv-525-JWD-RLB, 2014 WL 4296679, at \*8 (M.D. La. Aug. 31, 2014). Because “confidence in the humane application of the governing laws of the State must be in the public’s interest,” *Harris v. Johnson*, 323 F. Supp. 2d 797, 810 (S.D. Tex. 2004), there is a clear public interest in preventing Respondents from exposing Class members to cruel and unusual punishment in the form of willful exposure to a serious risk of severe harm. At the April 7 hearing, Respondents repeatedly asserted without proof that defending this suit would draw resources from their efforts to implement the Attorney General’s April 3 Memo. But prison officials cannot avoid responsibility for constitutional violations “simply because a remedy would involve intrusion into the realm of prison

---

<sup>101</sup> Goldenson Dec., Ex. 1 at ¶¶ 31-32.

administration.” *Brown v. Plata*, 563 U.S. 493, 511 (2011) (internal citations and quotations omitted).

And beyond the public interest in protecting the putative Class members themselves, minimizing risk of transmission of COVID-19 is inarguably in the public interest. As already explained, the BOP’s delayed, sluggish, prospective and indefinite release plan is likely to spread COVID-19 from the staff of Oakdale to the broader Oakdale and Allen Parish community. “[A] COVID-19 outbreak at a detention facility could quickly overwhelm” not only the facility’s medical system, but “surrounding community hospitals” as well. *Coronel*, 2020 WL 1487274, at \*7. The resulting effect on “public health and safety” would plainly harm the public interest. *Id.* “What goes on at this federal prison affects inmates, staff, and the broader Oakdale community,” Sen. John Kennedy recently said, demanding action at the prison.<sup>102</sup>

Respondents will assuredly argue that release of Class and Subclass members, even to home confinement or other controlled environment, presents a danger to public safety. However, such generalized claims cannot overcome the very real, very immediate harm to Petitioners and the public of a continued outbreak that is likely to extend beyond the prison walls. Moreover, Oakdale is a low-security facility; the Attorney General has already recommended expanded transfers; and Petitioners’ own suggested relief contemplates self-isolation for at least 14-days to comply with CDC guidance. At the same time, most Louisianans are also sheltering in place and any discharged prisoners would be subject to the same order. Accordingly, any asserted threat to public safety is further diminished under current conditions, and, in any event, is far outweighed by the harms of continued detention in a prison racked by COVID-19, including potential death. *Cf. Thakker v. Doll*, 2020 WL 1671563, at \*9 (M.D. Pa. Mar. 31, 2020) (holding that balance of equities favors release of detainees in light of COVID-19 in part because failure to appear already carries grave consequences and travel is currently restricted).

---

<sup>102</sup> April 7, 2020, press release, *supra* n. 9.

This is an archetypal situation for a temporary restraining order. In the face of the virulent pandemic sweeping through Oakdale and the surrounding community, none of the government's proposed mitigation efforts—even if executed perfectly—would achieve the necessary social distancing<sup>103</sup> or cure Respondents' ongoing constitutional violations. Under these circumstances, it is the fact of the Petitioners' confinement itself that gives rise to the constitutional violation. *See Preiser v. Rodriguez*, 411 U.S. 475, 498 (1973); *Malam v. Adducci*, Case No. 2:20-cv-10829-JEL-APP, Dkt. No. 22, at 12 (E.D. Mich. Apr. 5, 2020) (granting temporary restraining order, in part, in COVID-19 habeas action, noting that the underlying claim was “a challenge to the continued validity of confinement itself”). Immediate, responsible release of enough prisoners to reduce the incarcerated population at Oakdale to a level that allows for adequate social distancing is therefore the only action that will reduce the risk of COVID-19 contraction and protect the constitutional rights of the Class and Subclass members. Respondents have failed to take the required decisive action. Instead, they have placed the burden on other actors and other systems to effectuate the release of medically-vulnerable prisoners. Respondents are not moving with the requisite dispatch and Petitioners do not have the luxury of waiting any longer.

Immediately requiring Respondents to expedite release of Medically-Vulnerable Subclass members will allow the Court to “preserve the status quo”—a healthy prison population—and “prevent irreparable harm”—additional infections and deaths—“just so long as is necessary to hold a hearing, and no longer.” *Snow v. Lambert*, No. 15-cv-567-SDD-RLB, 2015 WL 5071981, at \*1 (M.D. La. Aug. 27, 2015) (citation omitted). Petitioners are prepared to proceed to a preliminary injunction hearing as soon as Respondents and the Court are able. But, in the interim, a temporary restraining order is the only way to ensure that Respondents' plan to lockdown Plaintiffs in a tinderbox of infection is not a *fait accompli* before this Court has the opportunity to pass judgment on it.

---

<sup>103</sup> Goldenson Dec., Dkt. No. 1-3 at ¶ 14.

## CONCLUSION

For the foregoing reasons, the Court should immediately order the following relief:

- (1) A temporary restraining order and/or preliminary injunction requiring Defendants to identify all Medically-Vulnerable Subclass Members within forty-eight (48) hours of the Court's order;
  - a. For any Medically-Vulnerable Subclass Member whose release Defendants would like to challenge, Defendants must also present evidence within the same forty-eight (48) hour period that such individual presents such a serious risk of flight or imminent physical danger to others, even during home confinement and while Louisiana's stay-at-home order remains in place, that no other conditions can mitigate that risk;
  - b. Following this submission, the Magistrate Judge in this action will determine within forty-eight (48) hours whether Defendants have shown by clear and convincing evidence that Defendants' evidence of a serious risk of flight or imminent physical danger, even during home confinement and while Louisiana's stay-at-home order remains in place, substantially outweighs the risk of COVID-19 contraction at Oakdale;
  - c. The Court will immediately release all such persons for whom Defendants have not made the required showing;
- (2) A temporary restraining order and/or preliminary injunction requiring Defendants to provide all persons released with educational resources on COVID-19 including instructions that they should self-isolate for the CDC-recommended period of time (currently 14 days) following release;
- (3) A preliminary injunction, permanent injunction, and/or writ of habeas corpus requiring Defendants to:
  - a. Continue to release all current and future Medically-Vulnerable Subclass members absent the showing described above in paragraph (1);
  - b. Report weekly on the population of persons in Oakdale who are Medically-Vulnerable as defined in this action;

- c. Release additional Class Members, including those not considered Medically-Vulnerable, as needed to ensure that all remaining persons incarcerated at Oakdale are under conditions consistent with CDC and public health guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain social distancing; and
- (4) A declaration that Oakdale's policies violate the Eighth Amendment right against cruel and unusual punishment with respect to the Class Members.

Respectfully submitted this 13th day of April, 2020.

Respectfully submitted by:

/s/ Bruce Hamilton  
Bruce Hamilton, La no. 33170  
Katie Schwartzmann, La no. 30295  
ACLU-F of Louisiana  
P.O. Box 56157  
New Orleans, La 70156  
(504) 522-0628  
kschwartzmann@laaclu.org  
bhamilton@laaclu.org

David Luger\*  
Hannah O. Koesterer\*  
KATTEN MUCHIN ROSENMAN LLP  
525 W. Monroe St.  
Chicago, IL 60661  
david.luger@katten.com  
hannah.koesterer@katten.com

Ryan J. Meyer\*  
KATTEN MUCHIN ROSENMAN LLP  
2121 Pearl St., Ste. 1100  
Dallas, TX 75201  
ryan.meyer@katten.com  
*\*pro hac vice applications forthcoming*

Somil Trivedi\*\*  
Jennifer Wedekind\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
915 15th St., NW  
Washington, DC 20005  
*\*\*admitted pro hac vice*  
*\*pro hac vice applications forthcoming*

Andrea Woods\*  
Brandon Buskey\*  
Meredith Taylor Brown\*  
Gabriel Arkles\*  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
125 Broad St.  
New York, NY 10004  
Tel. (212) 549-2500  
awoods@aclu.org  
*\*pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

I further certify that copies of all pleadings and other papers filed in the action to date or to be presented to the Court at the hearing, have been furnished to the Defendants' attorneys, who have already made an appearance in this matter.

/s/ Bruce Hamilton

Bruce Hamilton, La. Bar No. 33170



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

BRANDON LIVAS, RICHARD BUSWELL,  
DEWAYNE CORBETT, JOHNNY SMITH,  
CARLOS LORENZO MARTIN, and  
GAINES ANDREWS, on behalf of  
themselves and those similarly situated,

*Petitioners,*

v.

RODNEY MYERS, warden of Oakdale  
Federal Correctional Institutions; and  
MICHAEL CARVAJAL, Federal Bureau of  
Prisons Director, in their official capacities,

*Respondents*

**Civil Action No. 2:20-CV-00422**

**Judge Terry A. Doughty**

**Magistrate Judge Kathleen Kay**

**DECLARATION OF SOMIL TRIVEDI**

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

1. My name is Somil Trivedi. I am a Senior Staff Attorney for the American Civil Liberties Union and am counsel for the Petitioners in this case. I make this declaration in support of Petitioners' Emergency Motion for Release of Vulnerable and Low-Risk Prisoners From Oakdale.

2. Attached hereto are true and correct copies of the following materials, identified as numbered exhibits in the Motion:

Ex. 1: Declaration of Joe Goldenson, MD

Ex. 2: Declaration of Gaines Andrews

Ex. 3: Declaration of Richard Buswell

Ex. 4: Declaration of Pio Alejandr Campos

- Ex. 5: Declaration of Daniel Collins
- Ex. 6: Declaration of Dewayne Corbett
- Ex. 7: Declaration of Brandon Livas
- Ex. 8: Declaration of Carlos Lorenzo Martin
- Ex. 9: Declaration of Hector Perez
- Ex. 10: Declaration of Justin Scott
- Ex. 11: Declaration of Johnny Smith
- Ex. 12: Declaration of John Sposato
- Ex. 13: Declaration of Arthur Wammel

Dated: April 13, 2020

/s/ Somil Trivedi  
Somil Trivedi

**Declaration of Joe Goldenson, MD**

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.
2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.
3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.
4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert/monitor at Cook County Jail in Chicago and Los Angeles County Jail, at other jails in Washington State, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

### **The nature of COVID-19**

5. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the WHO. Cases first began appearing between December 1, 2019 and December 31, 2019 in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.
6. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus that caused the 2002-2003 SARS epidemic.
7. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5-35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.
8. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardiovascular disease, respiratory disease, diabetes, and immune compromise.
9. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS), which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and in parts of China.

10. COVID-19 is widespread. Since it first appeared in Hubei Province, China, in late 2019, outbreaks have subsequently occurred in more than 160 countries and all populated continents; heavily affected countries include Italy, Spain, Iran, South Korea, and the U.S. The U.S. is now the world's most affected country. As of April 12, 2020, there have been 1,807,939 confirmed human cases globally and 112,241 known deaths. The pandemic has been termed a global health emergency by the World Health Organization ("WHO"). It is not contained, and cases are growing exponentially.
11. In the United States alone, the Centers for Disease Control and Prevention ("CDC") reports 545,387 cases and 21,482 deaths as of April 12, 2020. CDC reports 20,595 cases and 840 dead in Louisiana as of April 12. All these numbers are likely underestimates because of limited availability of testing.
12. SARS-nCoV-2 is now known to be fully adapted to human-to-human spread. This is almost certainly a new human infection, which also means that there is no pre-existing or "herd" immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.
13. The U.S. CDC estimates that the reproduction rate of the virus, the  $R_0$ , is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again is likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20-30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2-14 days, which is why isolation is generally limited to 14 days.

14. There is currently no vaccine for COVID-19, and no cure. The only known ways to prevent the spread of SARS-nCoV-2 involve measures such as thorough handwashing, frequent decontamination of surfaces, and maintaining six feet of physical distance between individuals (“social distancing”).

#### **The risks of COVID-19 in detention facilities**

15. COVID-19 poses a serious risk to prisoners, workers, and anyone else in detention facilities. Detention facilities, including prisons like Oakdale, have long been associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.
16. The severe epidemic of Tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase *community* rates of Tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities surrounding a prison.
17. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces is virtually impossible.
18. For example, several deaths were reported in the U.S. in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May 2019.
19. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases. These include physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet, shower, and eating environments; and

limits on hygiene and personal protective equipment such as masks and gloves in some facilities. Limits on soap (copays are common) and hand sanitizer, since they can contain alcohol, are also risks for spread.

20. Additionally, the high rate of turnover and population mixing of staff and detainees increase likelihoods of exposure. This has led to prison outbreaks of COVID-19 in multiple detention facilities in China, associated with introduction into facilities by staff. The current outbreak in the detention facility of Riker's Island in New York City is an example—and in the first days of that outbreak, the majority of cases were among prison staff, not inmates.
21. In addition to the nature of the prison environment, prison and jail populations are also at additional risk due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to death or severe illnesses after infection from COVID-19 disease.
22. 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. Further, no mitigation effort can change the inherent nature of detention facilities, which force people to live in close proximity to one another. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible. Indeed, that is the only public health solution available at this time to reduce the spread of COVID-19 and potentially save lives.
23. Given the experience in China as well as the literature on infectious diseases in jail, additional outbreaks of COVID-19 among the U.S. jail and prison populations are highly likely. Releasing as many inmates as possible is important to protect the health of

inmates, correctional facility staff, health care workers at jails and other detention facilities, and the community as a whole. Indeed, according to the WHO, “enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages.”<sup>1</sup>

24. From BOP reports,<sup>2</sup> it is my understanding that 6 prisoners have died at FCI Oakdale. 46 detainees and 17 staff members have COVID-19, and that dozens more have symptoms. Even these dozens may represent the tip of the iceberg, since newly-infected people typically do not show symptoms for 2-14 days, and since the infection spreads rapidly to additional people. News outlets have reported that six detainees have already died from COVID-19 in FCI Oakdale. Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly.
25. It is my understanding that FCI Oakdale has five open bay / dorm housing units, eight housing units with multiple-occupancy cells, and no housing units with single occupancy cells, but a number of segregation units. It also my understanding that FCI Oakdale may have upward of 100 new admissions in a given month and roughly 1,700 detainees in the facility on any given day; that staff that enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.
26. Based on these understandings, it is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within FCI Oakdale.

---

<sup>1</sup> World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020), [http://www.euro.who.int/\\_\\_data/assets/pdf\\_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf](http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf).

<sup>2</sup> <https://www.bop.gov/coronavirus/>



Adequate social distancing would be impossible to maintain. What's more, the infection in FCI Oakdale would not stay limited to the facility, but would worsen infection rates in the broader community. The death rate will increase substantially before it starts to diminish without major interventions. This is why leaving 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.

27. 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,<sup>3</sup> be released from FCI Oakdale immediately, taking precautions that they are released to a place where they can maintain medically appropriate isolation for at least 14 days and receive any necessary and available testing healthcare for underlying chronic conditions.

28. It is my public health recommendation that a public health expert be appointed to oversee operations related to preventing further spread of COVID-19 in FCI Oakdale, which may include authorizing further staggered release of detainees until it is possible to maintain consistent social distancing and appropriate hygiene within the facility.

**The government's April 10, 2020 plan is inadequate to achieve social distancing or protect prisoners from COVID-19 and does not change my public health recommendations**

---

<sup>3</sup> "Persons held at Oakdale over the age of 50 , as well as all current and future persons held at Oakdale of any age who experience (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy."

29. I have reviewed the documents submitted by the Defendants in this matter on April 10, 2020.

30. It appears that officials at Oakdale will review fewer than 70 prisoners for potential release, and it is unclear what number will actually be released or when that release would occur.

31. Even if all individuals currently under review were released, this would not achieve social distancing for those who remain at Oakdale. With a prisoner population of roughly 1,800, plus corrections officers and other staff, removing roughly 2% of the prisoner population cannot physically allow people to keep six feet between one another.

32. The government's plan also has no timeline for release of prisoners. Given that COVID-19 is already present in the facility and spreads at an exponential rate, the lack of a timeline is disturbing.

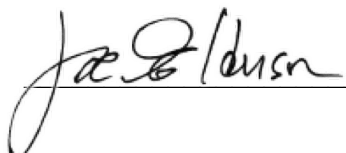
33. While I am not an expert in the factors being used to evaluate prisoners for potential release, I see that none of the factors overtly includes risk of COVID-19 contraction or transmission. Based on my public health expertise, this is the wrong approach to containing the outbreak and protecting the health and safety of prisoners, staff, and the broader community.

34. Accordingly, my public-health opinions and recommendations in paragraphs 26-28 above remain unchanged.

35. Given the five-day period between my original declaration and this one, and the exponential growth rate of COVID-19, I believe the urgency of implementing those recommendations has increased.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 12<sup>th</sup> day of April, 2020 in Alameda County, CA



---

Joe Goldenson, MD

### References

1. Dolan K, Wirtz A, Maazen B., et al. Global Burden of HIV, viral hepatitis, and tuberculosis in prisoners and detainees. *The Lancet*, July 14, 2016.
2. Stuckler D, Basu S, McKee M, King I. Mass incarceration can explain population increases in TB and multi-drug resistant TB in European and Central Asian countries. *Proceedings of the National Academy of Science USA*, 2008. 105:13280-85.
3. Beyrer C, Kamarulzaman A, McKee M; Lancet HIV in Prisoners Group. Prisoners, prisons, and HIV: time for reform. *The Lancet*. 2016 Jul 14. pii: S0140-6736(16)30829-7. doi: 10.1016/S0140-6736(16)30829-7. [Epub ahead of print] No abstract available. PMID: 27427447.
4. Marusshak LM, Sabol W, Potter R, Reid L, Cramer E. Pandemic Influenza and Jail Facilities and Populations. *American Journal of Public Health*. 2009 October; 99(Suppl 2): S339–S344.
5. Nakamoto Group, Prison Rape Elimination Act Audit Report of FCC Oakdale (2017), [https://www.bop.gov/locations/institutions/oak/OAK\\_prea.pdf](https://www.bop.gov/locations/institutions/oak/OAK_prea.pdf).

6. Rubenstein LS, Amon JJ, McLemore M, Eba P, Dolan K, Lines R, Beyrer C. HIV, prisoners, and human rights. *The Lancet*. 2016 Jul 14. pii: S0140-6736(16)30663-8. doi: 10.1016/S0140-6736(16)30663-8
7. Wang J, Ng, CY, Brook R. Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing. March 3, 2020. *JAMA*. Published online March 3, 2020. doi:10.1001/jama.2020.3151.
8. BOP's COVID Inmate Review Update, dated April 10, 2020.
9. BOP's COVID Inmate Review Update Exhibit 1 (Declaration of Juan A. Segovia), dated April 10, 2020.

# EXHIBIT 2

### **Declaration of Gaines Andrews**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 44677379. I previously pleaded guilty to one count of conspiracy to distribute methamphetamine and received a 10-year sentence.

2. I am 39 years old. I am a longtime smoker and I have asthma, which I treat with an albuterol inhaler.

3. I am concerned that I already have coronavirus or COVID-19, or that I will get it very soon.

4. Prison staff have been doing daily temperature checks for the last few days by sending a medical staff member through the unit.

5. Almost all of the other prisoners I interact with seem to be displaying symptoms.

6. I have not been placed in quarantine or isolation. My understanding is that anyone placed in quarantine is put into the segregated housing unit (“SHU”).

7. The prison staff is not sanitizing commonly-used areas, like telephones. For instance, yesterday, I had to use a telephone right after another inmate and it was not sanitized.

8. The prison guards sometimes wear masks and gloves, but it depends on the guard.

9. The prison staff is sometimes giving out masks to the inmates, but it depends on the day. For instance, masks were provided to us on Monday, but none were handed out on Tuesday or Wednesday.

10. If we are lucky, the prison staff may clean bathrooms once a day.

11. We currently have six working showers that about 125-128 prisoners are forced to share.

12. I currently do not have my own soap; instead, we have communal bar soap in the showers that all of us use. When I shower, I have to just pick up whatever soap is left on the ground by the last person to have used the shower.

13. In my unit, we are housed in a dormitory-style set up with rows of bunks. Each night, I go to sleep in a bunk-bed with another inmate sleeping above me and inmates sleeping within three feet of me on each side.

14. We do not have any hand sanitizer whatsoever.

15. I filed a grievance last week with FCI Oakdale II, but I have never heard back from them.

16. If I were transferred to home confinement tomorrow, I can live at my mother's house in Pearland, Texas. My daughter could pick me up at Oakdale and drive me to Pearland. If I was in Pearland, Texas, I would have access to medical care, which is the only service I would need. My inhaler, which I already have, is the only prospective medical care I would need unless I contract COVID-19 before I am moved to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Andrews by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

 \_\_\_\_\_

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodiguez@aclu.org

# EXHIBIT 3



### **Declaration of Richard Buswell**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 15618035. I previously pleaded guilty to one count of conspiracy to commit wire fraud and one count of distribution of synthetic marijuana. I received a 10-year sentence for the wire fraud charge and a consecutive 8-year sentence for the marijuana charge.

2. I am 51 years old and I have a number of serious chronic medical conditions. I have high blood pressure, which I treat with medication. I have asthma, which I treat with an albuterol inhaler. I also have sleep apnea, which requires me to use a Continuous Positive Airway Pressure (CPAP) machine to sleep at night.

3. I have personally been in contact with at least one individual who tested positive for coronavirus. He was not placed in quarantine or put in isolation.

4. I estimate that around 20 of the 70 men in my unit are showing coronavirus symptoms or seem sick. Several inmates have been sick enough to seek medical attention. One inmate in my unit had to wait six hours before he received any medical attention. He was pale, sweating, and looked very ill. Another man has been in bed for nearly a week and has asked for medical attention several times, but he has not been treated. If your temperature is not high, prison staff will not help you.

5. Prison staff has been performing daily temperature checks since April 2 or April 3, 2020.

6. In my unit, we are housed in a dormitory-style set up with rows of bunks. Bunks are approximately 30 to 36 inches apart from each other. There are approximately 70 men sleeping in an area that is around 2,300 square feet. We are jammed together like sardines.

7. It is impossible to keep an appropriate distance when walking by someone in the hallway, because the hallways are less than 6 feet wide. To get into the bathroom, or walk down the hallway, or go to the hall to eat, people are forced to almost physically touch each other as they pass. People wait in line to get meals standing approximately six inches away from each other.

8. Inmates are offered a new mask once a day. At times, only half of the inmates are wearing masks.

9. Most of the correctional officers in my unit are wearing personal protective equipment, but occasionally I see an officer who is not wearing any. They started wearing personal protective equipment around April 2, 2020, after the first person at Oakdale tested positive for coronavirus. They were not wearing any personal protective equipment before that.

10. Prison staff members are terrified. They usually try to stay away from the inmates. They lock themselves in the office and let the inmates fend for themselves.

11. I have not seen any members of prison staff sanitizing commonly touched objects like phones. I try to sanitize the phone before I use it.

12. The bathroom area is very dirty. The prison staff tries to keep it clean, but there are so many men sharing the same bathroom. Five to ten men use the bathroom facility every two minutes, so it is almost impossible to keep it clean. Prison staff cleans the bathrooms and showers once or twice a day.

13. I have access to a bar of soap for my personal use. The prison is distributing bars of soap to inmates for free. People leave used bars of soap all over the counters in the bathroom because they do not want to reuse the communal soap for fear of cross-contamination. I can afford to buy soap from the commissary, but many inmates cannot.

14. Prison staff have access to hand sanitizer, but the inmates do not.

15. I filed several grievances in March and early April 2020. I have not received any responses. Prison staff members seem overloaded.

16. Some members of the prison staff refuse to come to my unit because there are people here infected with coronavirus. Many new staff members have been hired recently.

17. Family friends in Hillsdale, Louisiana have offered me a place to stay if I am released to home confinement. They also offered to come pick me up if I am released. I would be able to self-isolate in their home for 14 days and I would have access to medical care if I needed it. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Buswell by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

  
\_\_\_\_\_

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodriguez@aclu.org

# EXHIBIT 4

### **Declaration of Pio Alejandr Campos**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 09314089. I previously plead guilty to conspiring to distribute heroin. I was sentenced to 140 months. I have seven years left of my sentence, but with my enrollment in a drug program, I most likely have 5.5 years left.

2. I am 46 years old. I have diabetes, sleep apnea, chronic sinus, and high blood-pressure. I receive insulin every day, but the medical staff has not issued me a sleep apnea mask yet. I have been waiting for a year.

3. I have personally been experiencing coughing, body aches, and headaches for the past three weeks. Medical staff told me it was an allergic reaction and gave me an allergy shot.

4. Prison officials perform temperature checks in my unit daily. They started these temperature checks around April 3<sup>rd</sup>.

5. We are housed in a dormitory of 130 men, with half on each side. Our bunk beds are around three feet apart. If you stretch out your hand, you can touch the person next to you. We share eight bathrooms.

6. Prison officials took away our personal spray bottles that we used for cleaning. Now they put just one on each side of the dormitory. The chemical solution in the spray bottle is watered down.

7. I have observed a lot of people coughing during the night. Guards will not test a person unless they have a temperature.

8. Guards are supposed to distribute mask during temperature checks, but you have to ask to get one.

9. Prison officials have been wearing masks and gloves since around April 2<sup>nd</sup>.

10. Hand sanitizer is available to purchase at commissary, but it does not contain alcohol.

11. I have not filed a grievance with FCI Oakdale II, but I have filed an emergency furlough request. No one has responded. My case manager knows nothing about my release status.

12. Less than 20 prisoners have been released since the outbreak and they are only people who had upcoming release dates.

13. Two officers that formerly conducted background checks have recently left because they may have tested positive for the virus. Several of us, including myself, worked closely with them.

14. I can live with my sister in Laredo, Texas if I am released to home confinement. She can pick me up at Oakdale and drive me to Laredo if I am released. I would be able to self-isolate for 14 days and I would have access to medical care if I needed it. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Campos by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

  
\_\_\_\_\_

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodiguez@aclu.org

# EXHIBIT 5

### **Declaration of Daniel Collins**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 12546035. I previously plead guilty to one charge of conspiring to distribute methamphetamine and one charge of possession of a firearm in relation to a drug trafficking offense. I was sentenced to serve 168 months in prison on the former charge, to run consecutively to a 60-month sentence on the latter charge, as well as five years on supervised release. I have 11 months left of my sentence.

2. I am 38 years old. I do not have any medical conditions.

3. We are housed in two cramped dormitories and our bunk beds are about three feet apart from each other. Around 130 men share eight toilets and five showers. We used to have more showers, but they ripped out the showers in the north dormitory and haven't replaced them. They recently stopped all construction.

4. I have personally been in contact with several people who tested positive for coronavirus.

5. I am concerned that I experienced COVID-like symptoms starting on Tuesday, including cold sweats and aches. I have not been put in quarantine or isolation.

6. I am housed with several elderly prisoners and fear they may get sick. Prison staff are not putting them in quarantine or isolation.

7. Orderlies are not sanitizing the phones. I'm forced to use the phone right after someone else without it being cleaned.

8. We are given some cleaning supplies, but the spray bottles are often empty. They are filled with a pink chemical solution that seems diluted. The color is normally a darker shade of red.



9. The prison staff is distributing small bars of white soap for free. We can also purchase soap at the commissary.

10. We can purchase hand sanitizer at the commissary, but the sanitizer does not have alcohol in it.

11. The prison staff is giving out masks inconsistently. They stopped for a few days, but recently started handing them out again.

12. Prison officials began taking prisoners' temperature checks on Monday. Our temperatures are taken every morning.

13. I have observed several prisoners with serious symptoms, including coughing, aches, and pain.

14. I have not filed a grievance with FCI Oakdale II, but I have filed an emergency furlough request. Prison officials are not answering grievances right now.

15. If I were transferred to home confinement tomorrow, I can live at my mother's house at 9960 Freedom's Way, Keithville, LA 70147. My mother can pick me up at Oakdale and drive me to Keithville. I could self-isolate myself there for 14 days and I would have access to medical care. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Collins by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

*April Rodriguez*

---

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodiguez@aclu.org

# EXHIBIT 6

**Declaration of Dewayne Corbett**

1. I am currently incarcerated at the Camp at FCI Oakdale I. My Bureau of Prisons Register Number is 21703171.

2. I am 58 years old and in chronic care. I have a respiratory disorder involving a 4-by-5 millimeter nodule on my lungs for which I am awaiting a CT scan. I am feeling psychological stress from the inability to stay away from people who might make this condition worse.

3. Prison staff started daily temperature checks about a week ago. Staff took my temperature with a forehead applicator at about 9:00 a.m. on April 10, 2020. About a week ago we were also seen by a doctor who used the same gloves to touch multiple prisoners.

4. I sleep in a 10x15-foot cell with two other prisoners. When I wake up, I am face-to-face with them and have to slide by them to get out the door.

5. I have personally been in contact with at least one person who had COVID-19.

6. I have my own bar of soap. Staff just put hand sanitizer in the bathrooms, but it is watered down.

7. I filed a BP-8 grievance related to COVID-19 but was denied. I was told that, because I was not 60 years old and had “violence in past”—even though my charge is not violent—I was denied.

8. I do not know anyone who has been released.

9. If I am released to home confinement, I can live with daughter Natasha, who loves me. She can pick me up at Oakdale if I am released. I would have a room of my own at Natasha’s house and be able to self-isolate in her home for 14 days. I would have access to medical care if I needed it.

I, Somil Trivedi, certify that I reviewed the information contained in this declaration with Mr. Corbett by telephone on April 2 and 10, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.



---

Somil Trivedi  
American Civil Liberties Union  
915 15<sup>th</sup> St., NW, Washington, D.C. 20005  
202.715.080s  
strivedi@aclu.org

# EXHIBIT 7

### **Declaration of Brandon Livas**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 3773604. I am a first-time, nonviolent offender serving a 15-month sentence for fraud that began on Dec. 2, 2019.
2. I am 35 years old and I have two serious medical conditions. I suffer from diabetes and acute pancreatitis, which was diagnosed about a year ago, in March 2019. I take medication regularly for these conditions, and I receive those medications here in the prison.
3. It is impossible for people in Oakdale to stay six feet away from each other. In the Camp, I live in barracks-style dorms with about 70 people per room where bunk beds are about 2.5 feet apart. In other words, I sleep with people to my left, to my right, and directly below me, all within six feet.
4. I am concerned that I have been exposed to the coronavirus, that I may already have the disease (COVID-19) caused by the coronavirus, or that I will get it very soon. I know that I came into contact with another person who has tested positive for COVID-19 by walking past him or nearby him.
5. Two prisoners in the Camp have tested positive for COVID-19.
6. In my unit, I am surrounded by people who exhibit symptoms of sickness. For example, many people are coughing throughout the night.
7. In the Camp, approximately 140 prisoners share eight showers and ten toilets, which are not clean. Diluted chemicals are used to clean them.
8. As part of my job duties at Oakdale, I am expected to clean about six offices.
9. I have never seen prison staff sanitizing or wiping down common areas or surfaces such as telephones.

10. Although misstated in the Complaint, bars of soap are accessible to me—they are in the bathroom for general use. I have purchased my own bar of Suave soap from the commissary for about three dollars. I have no access to hand sanitizer. Laundry is done here once a week.
11. The prison staff wear personal protective equipment inconsistently—some of them wear a mask or gloves, but generally not both and not all the time.
12. About two weeks ago, I filed a grievance with the prison staff stating that I am in fear for my life and safety because of the threat of the coronavirus; I listed my health conditions. I have not received any response to the written grievance I submitted.
13. On the evening of April 1, I was told by one of the prison counselors that the entire prison staff had been exposed to the coronavirus and that the incarcerated population also had been exposed entirely. She informed us that if we get sick, we won't get medical treatment unless circumstances are dire, and that we might die.
14. Prison staff began taking the temperatures of prisoners about a week ago.
15. At the end of last week, the prison staff began to hand out masks to prisoners. We are now receiving new surgical-style masks every day.
16. If I were transferred to home confinement, I would stay with my girlfriend in New Orleans, where I am from. She would come to the prison and pick me up if I were released, and I could isolate myself in her home for 14 days. I would have access to necessary medical care or medications there.



I, Bruce Hamilton, certify that I reviewed the information contained in this declaration with Mr. Livas by telephone on April 9, 2020, and that he certified that the information contained in this declaration is true and correct to the best of his knowledge.

A handwritten signature in blue ink that reads "Bruce Hamilton". The signature is written in a cursive style and is positioned above a horizontal line.

Bruce Hamilton  
American Civil Liberties Union Foundation of Louisiana  
1340 Poydras Street  
New Orleans, LA 70112

# EXHIBIT 8

### **Declaration of Carlos Lorenzo Martin**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 15029043. I am serving a 13-month sentence as a result of a revocation of supervised release. I am scheduled to be released to a halfway house on September 9, 2020.

2. I am 35 years old. I have compromised lungs due to childhood asthma.

3. Prison staff perform temperature checks daily, but we have to stand in line right beside each other.

4. Two inmates were taken from my unit due to high temperatures. I worked near them and have not been put in quarantine or in isolation.

5. I am an orderly and I clean the bathrooms on the south side of the dormitory once a day in the morning. The gloves I am given to clean with tear easily. I use a pink chemical that is watered down and occasionally I'm given Clorox spray. Our personal cleaning supplies were taken away weeks ago.

6. The prison staff have been distributing masks for the past two weeks. Sometimes the guards do not wear gloves when handing out masks.

7. The prison guards are absolutely not wearing masks at all times. Some come in with masks and some don't.

8. I have access to my own personal bar of soap that I purchased at the commissary. As an orderly, I distribute small bars of soap and place them near the bathroom sinks. The communal soap is being used by inmates right after each other. The medical staff told us not to worry about it.

9. Hand sanitizer is available for purchase at the commissary, but it does not contain alcohol.

10. Prisoners are housed in a dormitory and on each side there are about 70 bunk beds lined up in a row. I can reach out and touch my neighbor above me and next to me. About 130 men share six showers and eight toilets. The showers on the north side are not working. Prison staff informed the maintenance workers that finishing construction was not a priority and they were moved to complete showers for police officers at a bank next door.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Martin by telephone on April 10, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

A handwritten signature in cursive script that reads "April Rodriguez". The signature is written in black ink and is positioned above a solid horizontal line that extends to the right.

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodiguez@aclu.org

# EXHIBIT 9

### **Declaration of Hector Perez**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 83897479. I previously plead guilty to a drug possession charge. I was sentenced to five years. I have three and a half years left of my sentence.

2. I am 50 years old. I have diabetes and high blood-pressure. I have a pain in my left lung, and it is difficult to breath. I have asked for medical treatment for my lung but have not received any.

3. Medical staff are not performing temperature checks every day and are not quick to answer medical treatment requests.

4. Prison staff occasionally clean high-touch areas like the phones, but I often use the phone after someone without it being sanitized. I try to clean the phone with my own handkerchief.

5. The prison staff in my unit started wearing masks and gloves about a week ago and are distributing masks on request.

6. I have access to my own personal bar of soap that I purchased at the commissary. The prison staff distributes small bars of soap to clean our hands, but we can't use them to bathe ourselves.

7. Prison staff are not distributing cleaning supplies consistently. We do not have personal spray bottles anymore.

8. We are housed in dormitories that are dirty and crowded. There are 130 men sharing five showers. Our bunk beds are spaced three feet apart from each other. There is not enough space to distance yourself from people who are coughing and exhibiting symptoms.

9. Two inmates have been removed from my unit. One had a high fever and the other had diarrhea.

10. If I were transferred to home confinement tomorrow, I can live at my family's house in Fresno, Texas. My son could pick me up at Oakdale and drive me to Fresno. I would be able to self-isolate for 14 days and I would have access to medical care. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Perez by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

  
\_\_\_\_\_

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodriguez@aclu.org

# EXHIBIT 10



### **Declaration of Justin Scott**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 07752095. I previously plead guilty to conspiring to distribute heroin. I was sentenced to 71 months. I have 58 days left until my halfway house release date. I have never been written up during my four years of imprisonment.

2. I am 36 years old. I was shot in 2008, which left me with one working lung. Only half of my other lung is functioning. I reminded the warden and my case manager of my medical condition last week and still have not received a response.

3. A prison official told me that I'm not a priority for release.

4. Prison staff are performing temperature checks every day, but they are not sanitizing the thermometer before they check the next person. We do not stand six feet apart during temperature checks.

5. I have personally been in contact with people who tested positive for coronavirus. I have not been put in quarantine or isolation.

6. Some spray bottles for cleaning are left by the phones, but they run out quickly. The cleaning solution is diluted and has been cut so many times, that it's basically water. We have to take cleaning upon ourselves, since officers are not regularly doing it.

7. Guards have been distributing masks every other day since around April 2<sup>nd</sup>. They do not wear gloves when doing so.

8. Prisoner officials are not consistently wearing masks.

9. I know of one prison officer who recently quit because he was asked to work in a unit that included infected prisoners.

10. Hand sanitizer is available to purchase at the commissary, but it does not contain alcohol.

11. If I were transferred to home confinement tomorrow, I can live at my parents' house at 169 Oakwood Drive, Denham Springs, Louisiana. My father can pick me up at Oakdale and drive me to Denham Springs. I could self-isolate myself there for 14 days and I would have access to medical care. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Scott by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

 \_\_\_\_\_

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodriguez@aclu.org

# **EXHIBIT 11**

### **Declaration of Johnny Smith**

1. I am currently incarcerated at FCI Oakdale I. My Bureau of Prisons Register Number is 33172034. I am serving a 24.5-year sentence for a sex offense; I have served 9.5 years of that sentence.
2. I was a mortuary affairs specialist in the U.S. Army Reserves. I am 49 years old and I have two serious medical conditions. I suffer from hypertension and a thyroid condition, which was diagnosed about five months ago. I take medication regularly for these conditions, and I receive those medications here in the prison.
3. It is impossible for people in Oakdale to stay six feet away from each other. I live in a six-person dorm in which beds are spaced about 2.5 feet apart. My unit in FCI Oakdale I, known as Vernon 1, currently houses about 180 total men who share eight toilets, 12 urinals, 12-14 sinks, and 20 showers. The showers are separated by thin, plastic partitions so that water from one shower stall splashes the person in the next stall. The roof leaks, and I have seen mold on the walls.
4. Good sanitation is not practically possible because of the conditions here. The building is so congested that it cannot be effectively disinfected. The chemical used in FCI Oakdale I, Clean On The Go, requires 10 minutes between applications. I have never seen prison staff applying it to common areas between prisoners' uses of those areas.
5. After we went into full lockdown, we ran out of disinfectant and none was available for more than a week. We have not had any now for 2-3 days.
6. I believe the infection rate inside the prison is 100 percent, and I am certain that I have already contracted COVID-19. I am now mostly asymptomatic, but for several weeks I lost my sense of taste and smell. I had a persistent cough from which I am recovering. Many prisoners are exhibiting symptoms of sickness.

7. After the first prisoner here tested positive for COVID-19, the entire population of his housing unit was dispersed throughout other units, which doubled the population of my unit. We were crowded like sardines so that we had no choice but to be exposed to the virus. The next day, one of my friends began to exhibit symptoms of the virus, and he was removed for a 14-day quarantine. He was sent back into my housing unit yesterday.
8. I am worried for the health of a cellmate. He is 68 years old and has several health conditions, including COPD, asthma, hypertension, a heart valve, osteoarthritis. He had to be given medical attention last night when correctional officers used pepper-spray. His movement is restricted and he must use a walker known as a Rollator to get around.
9. Although prisoners here have soap, hand sanitizer is not available except for purchase at the commissary.
10. Prison officials began taking prisoners' temperatures about a week and a half ago. Our temperatures are taken every morning.
11. Correctional officers used to wear masks in the prison, but they have largely stopped because they have apparently decided that it is futile.
12. Laundry is done once a week, which is insufficient because we are issued only four boxers, four shirts, and four pairs of socks.
13. About four weeks ago, I approached the infectious disease liaison for FCI Oakdale I and made a handwritten request, also known as a "copout," for antibacterial wipes and gel, as well as personal protective equipment, including a face mask and latex gloves. The liaison said she would "look into it." I received no response.

14. About 10 days ago, I submitted another written request with no response. I then submitted a BP-8, known as an “informal resolution,” to my unit team. I still have not received a response.
15. The prison began handing out masks to prisoners about a week and a half ago. We were told to re-use the masks. We recently received new masks.

I, Bruce Hamilton, certify that I reviewed the information contained in this declaration with Mr. Smith by telephone on April 9, 2020, and that he certified that the information contained in this declaration is true and correct to the best of his knowledge.



Bruce Hamilton

American Civil Liberties Union Foundation of Louisiana  
1340 Poydras Street  
New Orleans, LA 70112

# EXHIBIT 12

### **Declaration of John Sposato**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 13468018. I previously plead guilty to a wire fraud charge. I was sentenced to 84 months of imprisonment. I have one year left of my sentence.

2. I am 69 years old. I have diabetes and a heart condition.

3. Prison staff are supposed to take temperature checks every day, but they are not consistent. We do not stand six feet apart during temperature checks.

4. We were told yesterday that the virus has now spread from FCI Oakdale I to FCI Oakdale II.

5. Guards that work in infected units move back and forth among the units and the hospital. They are spreading the virus to inmates with their movements. This is a ticking time bomb waiting to go off.

6. Prisoners in quarantine are rioting because they are being sent to infected facilities where the outbreak started.

7. There are around 120 men in my dormitory who share six showers. The showers are not cleaned after each use. The bunk beds in the dormitory are spaced about two and half feet apart from each other.

8. Prison staff told us they would resupply the cleaning supplies, but they have yet to do so. They took away our personal spray bottles a couple of weeks ago. The spray bottles are filled with a diluted pink chemical.

9. Hand sanitizer is available to purchase at the commissary, but it is completely worthless because it does not contain alcohol.



10. I have access to my own personal bar of soap that I purchased at the commissary. The liquid antibiotic soap at the hand washing stations has been out for months.

11. The kitchen has been shut down and we are eating out of boxed food trays. We must stand in line for food about 12 inches apart.

12. If I were transferred to home confinement tomorrow, I can live at a family friend's house in Picayune, Mississippi. My family friend could pick me up at Oakdale and drive me to Picayune. I would be able to self-isolate for 14 days and I would have access to medical care. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Sposato by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

 \_\_\_\_\_

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodriguez@aclu.org

# EXHIBIT 13

### **Declaration of Arthur Wammel**

1. I am currently incarcerated at the Camp at FCI Oakdale II. My Bureau of Prisons Register Number is 27498078.

2. I am 47 years old and I have asthma and hypertension.

3. Prison staff are performing daily temperature checks. Inmates are lined up right next to each other, not six feet apart, while we wait for our temperature to be taken.

4. I have personally been in contact with at least one person who tested positive for coronavirus.

5. We are housed in a crowded dormitory and our bunks are lined up in long rows. There are around 125 inmates in one area. There are no cubicles to separate us from each other. All 125 of us share the same showers and ten urinals.

6. Many of the inmates in my unit are coughing frequently. I estimate that around 60 men are coughing all night long.

7. Prison staff has started cleaning more frequently this week. The showers are usually cleaned once or sometimes twice a day. There are no cleaning products in the bathrooms for us to use. The communal phones are not being sanitized by prison staff so inmates try to sanitize the phones themselves. The guards have access to bleach, but inmates are only given spray bottles with some kind of pink chemical inside. Two staff members at Oakdale told me they have stopped testing prisoners under the assumption that anyone who is sick has COVID-19 already. Staff are also attempting to return prisoners from quarantine back into their old cells.

8. Inmates are offered a new mask once a day.

9. Correctional officers started wearing masks and gloves around April 6 or 7, 2020.

10. I purchased a bar of soap for my personal use. The prison is distributing small bars of soap to inmates for free. We do not have access to hand sanitizer.

11. I filed a grievance around April 4 or 5, 2020. I have not received a response.

12. I know of only one or two Oakdale inmates who have been released to home confinement because of COVID-19.

13. I know of two or three correctional officers who retired recently because of the coronavirus outbreak at Oakdale.

14. I can live with my girlfriend in Houston, Texas if I am released to home confinement. She can pick me up at Oakdale if I am released. I would be able to self-isolate in her home for 14 days and I would have access to medical care in Houston if I needed it. I would not require any additional services or programs (such as substance abuse counseling or mental health treatment) if I were released to home confinement.

I, April Rodriguez, certify that I reviewed the information contained in this declaration with Mr. Wammel by telephone on April 9, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

  
\_\_\_\_\_

April Rodriguez  
American Civil Liberties Union  
125 Broad Street, 18<sup>th</sup> Floor, New York, NY 10004  
212.284.7884  
april.rodriguez@aclu.org

I, Somil Trivedi, certify that I reviewed the information contained in the final two sentences of paragraph 7 of this declaration with Mr. Wammel by telephone on April 9, 2020, and he certified that the information contained in those sentences was true and correct to the best of his knowledge.



---

Somil Trivedi  
American Civil Liberties Union  
915 15<sup>th</sup> St., NW, Washington, D.C. 20005  
202.715.080s  
strivedi@aclu.org

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

BRANDON LIVAS, RICHARD BUSWELL,  
DEWAYNE CORBETT, JOHNNY SMITH,  
CARLOS LORENZO MARTIN, and  
GAINES ANDREWS, on behalf of  
themselves and those similarly situated,

*Petitioners,*

v.

RODNEY MYERS, warden of Oakdale  
Federal Correctional Institutions; and  
MICHAEL CARVAJAL, Federal Bureau of  
Prisons Director, in their official capacities,

*Respondents.*

**Civil Action No. 2:20-CV-00422**

**Judge Terry A. Doughty**

**Magistrate Judge Kathleen Kay**

**[PROPOSED] ORDER**

Considering the foregoing Emergency Motion For Release of Vulnerable And Low-Risk Prisoners From Oakdale, it is ordered that the motion is GRANTED.

Signed in Monroe, Louisiana, this \_\_\_\_ day of April, 2020.

---

UNITED STATES DISTRICT JUDGE TERRY A. DOUGHTY