

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HASSAN CHUNN; NEHEMIAH McBRIDE;
AYMAN RABADI by his Next Friend Migdaliz
Quinones; and JUSTIN RODRIGUEZ by his Next
Friend Jacklyn Romanoff, individually and on
behalf of all others similarly situated,

Petitioners,

-against-

WARDEN DEREK EDGE,

Respondent.

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Civil Action No.
20-CV-1590 (Kovner, J.)

**RESPONDENT'S MEMORANDUM OF LAW IN OPPOSITION TO PETITIONERS'
MOTION FOR A TEMPORARY RESTRAINING ORDER**

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March 31, 2020

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PRELIMINARY STATEMENT

Respondent Derek Edge, Warden of the Metropolitan Detention Center in Brooklyn, New York (“MDC”), respectfully submits this Memorandum of Law in Opposition to Petitioners’ Motion for a Temporary Restraining Order (ECF No. 12). As shown herein, Petitioner’s Motion should be denied. Petitioners’ fear of contracting Coronavirus Disease-19 (“COVID-19”) does not entitle them to release from the MDC. The Federal Bureau of Prisons (“BOP”) and MDC have taken strong measures to reduce the risk of COVID-19 for inmates and have reduced inmate populations, increased sanitation and screening, limited visitors, increased testing and improved isolation protocols.

Against this backdrop, Petitioners have produced no evidence that COVID-19 is spreading in the MDC. To the contrary, COVID-19 has not been spreading in the MDC, with only one inmate having tested positive to date, while in contrast, it has been spreading rapidly among the general public.

Petitioners have given this Court no basis to substitute their self-selection for the discretion vested in BOP by statute and regulation. Petitioners’ arguments to the contrary rely in substantial part on either unfounded, unattributed hearsay anecdotes about the facility and the mistaken assumption that just because MDC does not make public every action they are taking, it follows they are not taking any action. The Court should reject Petitioners’ mistaken assumptions.

Further, as discussed in greater detail below, Petitioners’ request for the certification of a class and appointment of a Special Master to review the status of all inmates is unfounded and unsupported. Granting such sweeping relief would short-circuit already existing judicial and administrative processes designed to provide such review for inmates.

The Court should also deny Petitioners' Motion for a Temporary Restraining Order ("TRO") because they have failed to establish a likelihood of success on the merits of their claims. To succeed, Petitioners must show that the MDC is deliberately indifferent to their medical needs as a result of the COVID-19 pandemic. But to the contrary, the MDC has actively responded to the pandemic and taken steps to prevent its spread. In addition, the MDC has taken steps to treat any infections and will isolate infected inmates, if and when there is a need. While Petitioners may disagree with the steps the MDC has taken, its efforts do not "shock the contemporary conscience" as required for the petitioners to succeed on their constitutional claims. *See Charles v. Orange County*, 925 F.3d 73, 85 (2d Cir. 2019). Importantly, the MDC's efforts to date have been effective, holding the spread of any contagion to a rate that is lower than that which exists in the general public. Thus, Petitioners cannot succeed on the merits, and the TRO should be denied. Respondent submits the instant Memorandum along with the Declaration of Associate Warden Milinda King ("King Decl.").

FACTUAL BACKGROUND

A. Steps Taken at the MDC To Address COVID-19

The MDC located in Brooklyn is an administrative security metropolitan detention center that houses approximately 1700 inmates, who are mostly pre-trial detainees. The MDC's health services unit comprises a multidisciplinary workforce that consists of U.S. Public Health Service Commissioned Corps officers, federal civil servants, and contract health professionals.

Since the World Health Organization ("WHO") declared COVID-19 a global pandemic on March 11, 2020, BOP medical professionals have been tracking the outbreak, regularly updating MDC's infection prevention and control protocols, and issuing guidance to field staff on screening and management of potential exposure among inmates.

In addition, all outside visitors are prohibited from entering the MDC. Inmates have access to an e-mail system, regular telephone calls, and dedicated and unmonitored telephone calls that can connect them with the Federal Defenders of New York. In addition, MDC staff work to arrange legal calls and a limited number of video conferences.

The MDC has increased sanitation frequency. Frequent cleaning of all common area high-contact surfaces is being conducted throughout the day. The facility provides education on COVID-19 to staff and inmates (including postings throughout the facility), and provides inmates daily access to sick call.

To date, the MDC has reported only one confirmed COVID-19 case among its 1700 inmates. In testing for COVID-19, the BOP is following guidance issued by the Centers for Disease Control (“CDC”) to safeguard those in its custody and care.

On March 26, 2020, the Attorney General of the United States, issued a memorandum directing the BOP to consider “at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement rather than in BOP facilities.” *See* Ex. E (ECF No. 1-4) attached to the declaration of Deirdre D. von Dornum. The Attorney General issued the memorandum to “ensure that [the BOP] utilize[s] home confinement, where appropriate, to protect the health and safety of BOP personnel and the people in our custody.”

The Attorney General’s Memorandum states in part:

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

See Memorandum to the Director of the Federal Bureau of Prisons: Prioritization of Home Confinement as Appropriate in Response to COVID-19 Pandemic (March 26, 2020) (referred to as “Attorney General’s Memorandum”). *See id.*

The BOP is willing to consider sentenced and designated inmates in its custody for Residential Reentry Center (“RRC”) or home confinement placement, provided they are eligible and do not pose a danger to the community. As relevant specific information is provided on any inmate, BOP may exercise its discretion to release the inmate, provided he or she is not a danger to the community. The BOP takes no position on whether pre-trial inmates in its custody may be released on bail or bond, as that decision lies in the discretion of the United States Attorney’s Office and the Courts.

B. Ongoing Efforts To Address Issues Posed By COVID-19

The MDC, the United States Attorney’s Office, Federal Defenders, and the United States District Court for the Eastern District of New York are engaged in continuing dialogue on a wide range of issues associated with COVID-19. As part of MDC’s effort to ensure the safety of its staff, the inmates, and the public, two representatives from MDC Brooklyn attended an Eastern District of New York Facilities Security Committee to address questions related to its preparations for COVID-19. The MDC representatives presented to the Committee a detailed discussion of the MDC’s preparations for the pandemic. Since that meeting, MDC has continued to evaluate the ongoing challenges and taken steps to maximize the safety of the inmates, staff and the public.

As part of the ongoing effort to ensure the safety of the inmates at the MDC, Warden Edge directed that staff create a list of inmates who are most at risk for potential complications for COVID-19. The original version of this list was intended to be over-inclusive, and contained

the names of inmates who were over 55 years of age, and who had certain medical conditions that might increase their risk. On or about March 23, 2020, as part of ongoing communications between the Federal Defenders of New York, the United States Attorney's Office, MDC, and the courts to address the challenges posted by COVID-19, the BOP, in good faith, provided the Court with this list, which consisted of approximately 537 inmates that the BOP had identified as potentially at-risk for contracting COVID-19 (referred to as "BOP list"). The Court also facilitated providing the BOP list solely to ensure that the Federal Defenders were aware of whether any of their clients fell into these high-risk categories; the list was not provided for, nor intended to be, fodder for civil litigation. The four petitioners in this case were included on this BOP list. The BOP list did not distinguish between pre-trial and sentenced inmates.

OBJECTIONS TO PETITIONERS' DECLARATIONS

Respondents object to the declarations submitted in support of Petitioners' Motion for TRO. Petitioners' attorneys have submitted their own declarations based on hearsay and lack personal knowledge relating to conditions at MDC. The Court should afford little or no weight to these unreliable declarations. Although courts may, in their discretion, give some weight to hearsay and otherwise inadmissible evidence when considering whether to issue emergency relief, *see, e.g., Republic of the Philippines v. Marcos*, 862 F.2d 1355, 1363 (9th Cir. 1988); *Flynt Distrib. Co., Inc. v. Harvey*, 734 F.2d 1389, 1394 (9th Cir. 1984), the above declarations warrant little or no weight because they lack foundational support and other indicia of reliability. Indeed, many of the hearsay statements contained in the declarations are attributed to unnamed individuals and simply are not accurate. Given the limited time that Respondent Edge has to oppose the motion for a temporary restraining order, he cannot specifically respond to and refute each of these inaccurate claims in this filing.

STANDARD OF REVIEW REGARDING A TEMPORARY RESTRAINING ORDER

“[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (citation omitted). “First, the party must demonstrate that it will suffer irreparable harm in the absence of the requested relief.” *Latino Officers Ass’n v. Safir*, 170 F.3d 167, 171 (2d Cir. 1999). Generally, even if the moving party establishes irreparable harm, a court may not grant the requested injunctive relief unless the moving party also establishes either (a) that it is likely to succeed on the merits or (b) that there are sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships that tips decidedly in favor of the moving party. *See Charette v. Town of Oyster Bay*, 159 F.3d 749, 754 (2d Cir. 1998). Additionally, where, as here, “the moving party seeks a preliminary injunction that will affect government action taken in the public interest pursuant to a statutory or regulatory scheme,” the injunction should be granted “only if the moving party meets the more rigorous likelihood-of-success standard.” *Wright v. Giuliani*, 230 F.3d 543, 547 (2d Cir. 2000) (citation omitted); *see also Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 424 (2d Cir. 2004) (because “government action taken in furtherance of a regulatory or statutory scheme [is] presumed to be in the public interest[,] in such situations, a plaintiff must meet a more rigorous likelihood-of-success standard” to obtain preliminary injunctive relief (internal citation omitted)).

An even higher standard of proof applies in this case because the temporary restraining order that the Petitioners seek would alter, rather than maintain, the *status quo*. *See Wright*, 230

F.3d at 547.¹ In this context, the movant must show not only a likelihood of success on the merits, but a “clear” or “substantial” one. *Id*; *Citigroup Global Mkts., Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 n.4 (2d Cir. 2010).

Lastly, a party seeking injunctive relief must also show “that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Veramark Techs., Inc. v. Bouk*, 10 F. Supp. 3d 395, 400 (W.D.N.Y. 2014).

The decision whether to grant or deny a TRO or a preliminary injunction falls within the sound discretion of the district court. *See CJ Prod. LLC v. Snuggly Plushez LLC*, 809 F. Supp. 2d 127, 140 (E.D.N.Y. 2011). However, because a preliminary injunction is “an extraordinary remedy” that may only be awarded “upon a clear showing that the plaintiff is entitled to such relief,” it “is never awarded as of right.” *Winter*, 555 U.S. at 22, 24.

ARGUMENT

Petitioners have failed to meet their heavy burden of establishing that they are entitled to a temporary restraining order.

Petitioners assert that, because of their age and/or medical conditions, they have elevated risk of serious, adverse outcomes if they contract COVID-19. Some of the conditions alleged, especially if treated and/or controlled, do not render them at high risk for COVID-19 pursuant to the Centers for Disease Control (CDC). *See* <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/people-at-higher-risk.html> (last visited March 31, 2020) (listing risk factors as age 65 or older; living in nursing homes or long-term care facilities; chronic lung disease;

¹ Petitioners argue that they are maintaining the *status quo* “of their health.” This argument is unavailing – the TRO they seek most decidedly changes the *status quo* of their incarceration status, which is the focus of their requested relief. Under the relevant law, they seek a mandatory TRO.

moderate to severe asthma; serious heart conditions; immunocompromised; severe obesity; potentially diabetes, renal failure, or liver disease, particularly if not well controlled; and potentially pregnancy).

In any event, Petitioners' assertion that detention *per se* poses an increased risk of health complications or death from COVID-19 is purely speculative. To date, there has been only one reported case of COVID-19 among inmates at the MDC. In contrast, COVID-19 is spreading rapidly in the communities into which Petitioners seek to be released. Even assuming a concentrated inmate population, crowding in and of itself does not cause COVID-19 infection if no one in the group has contracted COVID-19. Petitioners' claims of future injury are hypothetical, and they are not entitled to release from detention based on a conjectural injury that they have not suffered, and are not immediately threatened with. An injunction is "unavailable absent a showing of irreparable injury, a requirement that cannot be met where there is no showing of any real or immediate threat that the plaintiff will be wronged . . . — a likelihood of substantial and immediate irreparable injury." *Los Angeles v. Lyons*, 461 U.S. 95, 111 (1983) (internal quotation omitted).

Moreover, even if the number of reported cases of COVID-19 increased at the MDC, Petitioners cannot show that the MDC is unprepared to respond to that contingency. The BOP has expended extensive resources and efforts to address the very issues that Petitioners have identified, and is prepared to address the challenges posed by COVID-19, as follows:

1. MDC Brooklyn screens all new inmates, as well as any inmate returning to the facility -- *e.g.*, from a hospital trip or court. These screenings include questions relating to symptoms consistent with COVID-19, and risk of exposure, including recent travel.
2. Incoming detainees are initially screened in Receiving and Discharge (R&D), not in the intake housing unit or general population. They are then brought to an intake unit where they are isolated for 14 days to ensure the inmates do not

- develop symptoms. After the expiration of 14 days, and upon medical clearance, inmates may be released into general population.
3. Inmates being transported to Court are also screened in accordance with standing administrative orders issued by the Chief Judges of the Eastern and Southern Districts of New York. These orders require that all inmates' temperature is taken, and if he or she registers a body temperature of 100.4 degrees or higher, the inmate will not be produced.
 4. Any inmate, whether a new commit or not, who presents with symptoms consistent with COVID-19 will be evaluated by MDC Brooklyn's health services department. Based upon the evaluation, a determination will be made whether isolation² and testing is appropriate.
 5. If any inmate is isolated, those inmates housed in the same housing unit with him or her will be quarantined pending results of the test, or 14 days, whichever is sooner.
 6. Detainees may also be placed in a quarantine/isolation setting if exposed to a person with COVID-19, where they will be monitored daily for an incubation period of at least 14 days. Quarantine or isolation is only discontinued once 14 days elapse with no inmates developing new symptoms.
 7. All new inmates admitted to the facility receive soap. Soap is also delivered to unit team on a biweekly basis. An inmate may request additional soap from unit team if he or she needs to, or purchase soap from commissary. All inmates have access to sinks and soap at all times.
 8. Guidance from the BOP's Central Office Health Services Division indicates that any type of soap (whether anti-bacterial or deodorant) is effective as long as proper handwashing procedures are followed. Additionally, hand washing with soap and water is superior to using hand sanitizer. Hand sanitizer is a last resort when soap and water are not available, which they are.
 9. MDC administrative staff have explained best practices regarding personal hygiene to prevent the spread of COVID-19 to both detainees and staff. Staff have been notified via email and in a recall.³ Information sheets are also posted in numerous locations around the facility, including inmate housing units, the front lobby, and all departments. Staff are also notified of important updates by the BOP alert system, known as the ops planner.
 10. Inmates have been notified via town halls, and information bulletins have been posted on TRULINCS in both English and Spanish. Executive staff members have conducted town halls on March 13, 2020, March 20, 2020, March 21, 2020, March 24, 2020, and March 27, 2020. As guidance changes, MDC Brooklyn will provide updates to the inmate population and staff members.
 11. Additional sanitation procedures have been put in place. Additional and stronger cleaning supplies have been issued and used by inmates and staff alike.

² Isolation means that an inmate is confined to his or her cell, except to place a legal call or to shower. Personal protective equipment ("PPE") are being utilized in either of those circumstances. Quarantine, on the other hand, refers to inmates remaining on their housing unit, cohorted together. They are not required to remain in his or her cell, and may interact and utilize the common area. However, they will not be moved from the housing unit to other areas of the institution.

³ A recall is another name for a facility-wide meeting that staff are encouraged to attend.

12. Inmate orderlies have been provided cleaning materials, and cleaning supplies are available on the housing unit for use by inmates to clean their personal living spaces (cells).
13. Once MDC Brooklyn learned of one inmate testing positive for COVID-19, MDC Brooklyn conducted a deep clean of the facility. Inmate orderlies were provided personal protective equipment in order to clean during this period.
14. Pill line and insulin line are conducted twice a day in housing units. Medical staff perform sick call every day on the housing units.
15. There has been a significant decrease in routine group meetings among inmates and staff.
16. Custody staff has been given an increased stock of PPE. Also, for those staff members who have not received fit-testing for N-95 respirator masks, additional testing is being performed, if requested by staff.
17. Access to legal counsel remains of paramount importance at MDC Brooklyn. MDC Brooklyn is mitigating the risk of exposure by increasing the amount and provision of legal calls and now offering video teleconferences (VTC) with attorneys on a limited basis.
18. MDC medical staff is prioritizing immediate medical care for anyone who claims symptoms indicative of COVID-19 infection.
19. MDC employees have been urged to stay home if they are ill, and individuals conducting health screening at the front entrance can deny an employee entry if he or she reports a fever or symptoms consistent with COVID-19.
20. To date, there has only been one inmate who has tested positive for COVID-19. There have been five (5) confirmed cases of staff members who have tested positive for COVID-19.
21. MDC has identified inmates who fall into categories designated by the CDC as higher risk for COVID-19. This list is updated periodically, especially as guidance by the CDC regarding who is at greater risk is updated.
22. Posters in both English and Spanish issued by the CDC relating to COVID-19 that have been posted throughout the MDC.
23. On March 13, 2020, BOP's Central Office issued nationwide guidance regarding modified operations to prevent and mitigate the spread of COVID-19. The guidance has undergone frequent updates since they were first issued. Latest updates available at: https://www.bop.gov/coronavirus/covid19_status.jsp.

See generally King Decl.

In light of the efforts the BOP has made to contain and protect inmates from COVID-19, and in light of only one case being reported, Petitioners cannot show as they must that there is a “likelihood of substantial and immediate irreparable injury.” *Lyons*, 461 U.S. at 111.

Other courts, in addressing requests for relief in light of the COVID-19 pandemic, have held that “[t]he ‘possibility’ of harm is insufficient to warrant the extraordinary relief of a TRO.”

Dawson v. Asher, No. C20-0409JLR-MAT, 2020 WL 1304557, at *3 (W.D. Wash. Mar. 19, 2020) (quoting *Winter*, 555 U.S. at 22); *Francisco v. Decker*, Case 2:20-CV-02176-CCC at 3-4 (D.N.J. March 25, 2020) (“Although he expresses his fear of the coronavirus which is presently afflicting the United States, two cases of which have occurred at the jail in which he is housed, Petitioner himself does not allege that he has contracted or been directly exposed to the virus, and his fears of contracting it at this point are speculative.”).

In *United States v. Hamilton*, No. 19-CR-54-01, 2020 WL 1323036 (E.D.N.Y. Mar. 20, 2020), Judge Garaufis denied defendant Darin Hamilton’s request for temporary release under 18 U.S.C. § 3142(i)(4). Hamilton alleged the same reasons, as Petitioners here, in support of his request for release from the MDC. Hamilton argues that, in light of his advanced age and medical conditions, the ongoing COVID-19 pandemic constitutes “another compelling reason” to permit his temporary release under 18 U.S.C. 3142(i)(4). The Court noted that this provision has been used sparingly to permit a defendant’s release where, for example, he is suffering from a terminal illness or serious injuries. *See, e.g., United States v. Scarpa*, 815 F. Supp. 88 (E.D.N.Y. 1993) (permitting release of defendant suffering from terminal AIDS that could no longer be managed by correctional authorities); *see also United States v. Stephens*, 2020 WL 1295155 (S.D.N.Y. Mar. 19, 2020) (permitting release of defendant due to COVID-19 pandemic). Judge Garaufis held that while mindful of Hamilton’s concerns, the Court did not believe that the COVID-19 outbreak constituted a sufficiently compelling reason to justify release under the circumstances of this case given the risks that Hamilton’s release would pose. The Court held that possibility of an outbreak at MDC is not a “compelling circumstance” justifying his release. Judge Garaufis further recognized that the Bureau of Prisons was taking system-wide precautions to mitigate the possibility of infection within its facilities. *See also*

United States v. Gileno, 3:19-cr-161-(VAB)-1, 2020 WL 1307108 (D. Conn. Mar. 19, 2020) (denying Gileno's request to substitute the remainder of his imprisonment with home confinement notwithstanding the COVID-19 pandemic); *see also United States v. Redzepagic*, 17-cr-228 (DRH) (AKT), Dkt. No. 118 (E.D.N.Y. Mar. 30, 2020) (denying defendant's bail request over COVID-19 concerns).

Likewise, here, Petitioners have not demonstrated that they have suffered substantial and immediate irreparable injury. Accordingly, their Petition and TRO should be denied.

A. Petitioners' Alleged Injury Is Not Redressable By Release

Petitioners' alleged injury -- that they are subject to a heightened risk of death or serious illness if they contract COVID-19 -- will not be redressed by ordering their release. Petitioners' requested relief will not ameliorate or diminish their claimed heightened risk of injury or death resulting from COVID-19, nor can a court order requiring release prevent Petitioners from contracting COVID-19. Additionally, there is scant evidence in the record about the housing conditions into which Petitioners seek to be released, such as whether they also involve people living in close quarters, and living with individuals who present a risk of exposure. This is especially true where, as stated in detail above, MDC is taking concrete steps to reduce the risk of those in its custody to exposure to COVID-19.

B. Petitioners Do Not Satisfy The Requirements For Preliminary Relief

1. Petitioners Are Unlikely To Succeed On The Merits.

Likelihood of success on the merits is a threshold issue: "[W]hen a plaintiff has failed to show the likelihood of success on the merits, [the court] need not consider the remaining three *Winters* elements." *Garcia*, 786 F.3d at 740 (internal quotation omitted). Petitioners' constitutional claim boils down to an argument that the MDC is constitutionally required to

reduce its inmate population, and Petitioners are the ones who are entitled to be released.

Petitioners in effect invite the Court to ignore the discretion vested in the BOP to release inmates in appropriate circumstances, and instead decide that Petitioners are entitled to release.

Petitioners have no such entitlement.

Petitioners' Motion for a TRO should be denied because they have failed to establish a sufficient likelihood of success on the merits of their claims. Petitioners claim that they face conditions of crowding and scant medical care resources. These claims lack merit. Accordingly, they cannot make the required "clear" or "substantial" showing of success on the merits and this Petition and Motion should be denied.

Petitioners in effect request that this Court overrule a statutory and regulatory scheme, governing early release procedures for inmates. Additionally, Petitioners ask that this Court second-guess the experts at the BOP during an ongoing and uncertain public health crisis, and immediately release a number of inmates into the general public. But Petitioners have failed to show that the government's efforts to prevent the Petitioners' infections with COVID-19, and its provision of medical care to Petitioners should they become ill, amounts to deliberate indifference to their medical needs. On the contrary, the MDC has instituted numerous provisions and safeguards to protect inmates at the MDC from infection, and from negative health consequences should that infection spread within the MDC. Of note, Petitioners have not even shown that infection at the MDC is likely in light of the MDC's many precautions, let alone that they would be able to seek and obtain treatment elsewhere.

The Second Circuit has delineated the requirements of a conditions-of-confinement claim brought by inmates alleging inadequate medical care. In *Charles v. Orange County*, 925 F.3d 73 (2d Cir. 2019), the Circuit held that "[i]n order to establish a violation of a right to substantive

due process, a plaintiff must demonstrate not only government action but also that the government action was so egregious, so outrageous, that it may fairly be said to shock the contemporary conscience.” *Id.* at 85 (citation and quotation marks omitted). In particular, an inmate raising a constitutional challenge to the medical care provided in detention must establish “(1) that [the inmate] had a serious medical need . . . , and (2) that the Defendants acted with deliberate indifference to such needs.” *Id.* at 86. The Second Circuit further explained that, to establish deliberate indifference in the context of an inmate’s medical needs, the inmate had to prove that the defendant failed to provide treatment while having actual or constructive knowledge that doing so would pose a substantial risk to the detainee’s health:

[A] detainee asserting a Fourteenth Amendment claim for deliberate indifference to his medical needs can allege either that the defendants knew that failing to provide the complained of medical treatment would pose a substantial risk to his health or that the defendants should have known that failing to provide the omitted medical treatment would pose a substantial risk to the detainee’s health.

Id. at 87.

Petitioners cannot establish deliberate indifference here. Further, Petitioners’ assertions are overly generalized and do not relate to the MDC specifically, or the measures implemented there. Indeed, Petitioners fail to recognize many of the implemented policies and procedures discussed above. The government has taken steps to provide all MDC inmates with adequate medical care, both with respect to the prevention of infection with COVID-19 as well as the treatment should they become infected with COVID-19.

Far from being indifferent, the government has taken significant steps to minimize the risk of infection at the MDC. Even if Petitioners disagree with the government’s efforts to prevent the spread and treatment of COVID-19, the relevant standard here is deliberate indifference. The government’s ongoing efforts to respond to the COVID-19 crisis soundly

rebut any showing of deliberate indifference in this instance, and preclude Petitioners from succeeding on the merits of their claims.

Courts around the country have denied similar TRO requests, finding that the petitioners had failed to show a likelihood of success on the merits. *See Dawson*, 2020 WL 1304557, at *5 (no evidence that anyone at the detention facility had COVID-19, and Plaintiffs did not address the measures Defendants were taking to prevent such a spread from occurring); *Sacal-Micha v. Longoria*, 20-CV-37, at *8 (S.D.T.X. Mar. 27, 2020) (record showed ICE implemented preventative measures to reduce the risk of contracting COVID-19).

Courts around the country have recently received challenges to detention on the grounds of COVID-19 in the criminal bail context and have recognized the government's public health efforts, particularly the efforts of the Bureau of Prisons, to address the COVID-19 crisis. *See United States v. Martin*, No. PWG-19-140-13, 2020 WL 1274857, at *4 (D. Md. Mar. 17, 2020); *United States v. Jefferson*, No. CCB-19-487, 2020 WL 1332011, at *1 (D. Md. Mar. 23, 2020); *United States v. Hamilton*, No. 19-CR-54-01 (NGG), 2020 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020); *United States v. Gileno*, No. 3:19-cr-161-(VAB)-1, 2020 WL 1307108, at *4 (D. Conn. Mar. 19, 2020); *United States of America, v. Tommie Rollins*, No. 11-CR-251S, 2020 WL 1482323 (W.D.N.Y. Mar. 27, 2020) (denying motion for release from custody pending sentencing and explaining that “[a]s serious as it is, the outbreak of COVID-19 simply does not override the statutory detention provisions above.”).

Even assuming *arguendo* that Petitioners could show that they were likely to prevail on their claim that the conditions of their detention violate the Fifth and Eighth Amendments, they cannot establish that they are entitled to immediate release “as opposed to injunctive relief that would leave [them] detained while ameliorating any alleged violative conditions within the

facility.” *Dawson*, 2020 WL 1304557, at *2.⁴ Moreover, as the Supreme Court has recognized, it is not appropriate for a court to give a final judgment on the merits at the preliminary stage. *Univ. of Texas*, 451 U.S. at 395. The BOP has implemented procedures and protocols to protect the inmates in its care and custody, including at the MDC.

Petitioners essentially argue that the Court should find that MDC cannot continue to exercise its statutory and regulatory discretion as to which inmates should be released. Petitioners also assert that MDC’s efforts are “inadequate” to address COVID-19, where MDC is acting to protect the safety of the inmates. Petitioners should not, on less than 24 hours-notice to defendant, be granted such sweeping and unprecedented relief when existing administrative and statutory proceedings can grant them the relief they seek, if appropriate.

As discussed earlier, Petitioners’ motion for a TRO essentially short-circuits ongoing conversations between various parties to address these issues, and the established administrative and statutory proceedings to address these issues. Petitioners’ requested relief to short-circuit the criminal justice process by appointing—in this civil matter—a Special Master who would, in Petitioners’ view, have the authority to determine which criminal defendants may be released from BOP custody and which criminal defendants may not. Such an unprecedented action would undermine the authority of district judges and magistrate judges throughout this district, as these judges would no longer be able to make custody determinations about criminal cases on their own dockets.

Incredibly, despite asking the Court to usurp these processes through the appointment of a Special Master, Plaintiffs fail to even address the Fed. R. Civ. P. 53 requirements for the appointment of a Special Master. Contrary to Fed. R. Civ. P. 53(a)(1)(C), Petitioners make no

⁴ Petitioners have not sought any changed conditions in the MDC, let alone met their burden to show that they would be entitled to mandatory injunctive relief in that regard.

attempt to explain why criminal defendants cannot “effectively and timely” address their claims by the “available district judge or magistrate judge of the district.” *Id.* Indeed, incarcerated criminal defendants have already raised their COVID-19 concerns in other cases in this district. *See United States v. Hamilton*, No. 19-CR-54-01, 2020 WL 1323036, at *2 (E.D.N.Y. Mar. 20, 2020) (Garaufis, J.); *United States v. Redzepagic*, 17-cr-228 (DRH) (AKT), Dkt. No. 118 (E.D.N.Y. Mar. 30, 2020).

But even if Petitioners had sought to argue that a Special Master is needed here pursuant to Fed. R. Civ. P. 53, the Constitution and the separation of powers doctrine prohibits this Court from ordering this non-consensual appointment. In short, a Special Master does not, and indeed, cannot, possess the attributes that Article III of the Constitution demand here.

“The role of the Special Master is not meant to supplant the role of the court.” *Board of Governors of the Federal Reserve System v. Pharaon*, 140 F.R.D. 642, 649 (S.D.N.Y.1991). In *Cadwell Indus., Inc. v. New York Hosp.-Cornell Med. Ctr.*, the Southern District of New York noted that the express language of Fed. R. Civ. P. 53 provides that “a reference to a master shall be the exception and not the rule.” *Cadwell Indus., Inc. v. New York Hosp.-Cornell Med. Ctr.*, 88 Civ. 7307 (LMM), 1993 WL 60604, at *2 (S.D.N.Y. Feb. 26, 1993). A reference to a master “is intended to aid courts in the performance of their judicial duties” and thus, reference should be “discouraged where the matter sought to be referred may be dispositive of basic issues involved in the litigation.” *Id.* (quoting *United States v. Hooker Chemicals & Plastics Corp.*, 123 F.R.D. 62, 63 (W.D.N.Y. 1988)).

A Special Master would be ill-equipped to usurp the authority of BOP officials, prosecutors, district and magistrate judges to make the unparalleled and case-specific custody determinations that Plaintiffs seek here. *See In re Bituminous Coal Operators’ Ass’n, Inc.*, 949

F.2d 1165, 1168 (D.C. Cir. 1991) (granting a writ of mandamus against a district judge because the judge “has no discretion to impose on parties against their will ‘a surrogate judge,’ a substitute from the private bar charged with responsibility for adjudication of the case.”); *Stauble v. Warrob, Inc.*, 977 F.2d 690, 695 (1st Cir. 1992) (“Because Rule 53 cannot retreat from what Article III requires, a master cannot supplant the district judge.”); *see also* Moore’s Federal Practice 3D, §53.03[3] (“Article III of the Constitution effectively places limits on a district court’s authority to appoint a special master under Rule 53”); *Cf. Madrigal Audio Labs., Inc. v. Cello, Ltd.*, 799 F.2d 814, 818 (2d Cir.1986) (noting that the district judge’s explanation that he did not “understand anything about ... patent or trademark” law and was “not about to educate [him]self” was not sufficient reason to justify appointment of a master to hear and determine the entire case). Indeed, it is long established that “Article III bars a district court ‘of its own motion, or upon the request of one party’ from ‘abdication its duty to determine by its own judgment the controversy presented, and devolve that duty upon any of its officers.’” *Stauble*, 977 F.2d at 695 (quoting *Kimberly v. Arms*, 129 U.S. 512, 524 (1889)).

Finally, as Respondent does not consent to the entry of the TRO nor the appointment of a Special Master, the Court should not take the unusual step of appointing one absent such consent. In *Wasley Prod., Inc. v. Bulakites*, the District of Connecticut explained that although there is wide discretion afforded to courts in appointing a special master, “it is impermissible to refer fundamental issues of liability to a special master over the objection of one or more parties.” *Wasley Prod., Inc. v. Bulakites*, 3:03cv383(MRK)(WIG), 3:03CV1790(MRK)(WIG), 2006 WL 3834240, at *11 (D. Conn. May 31, 2006).

For all these reasons, Petitioners have not shown that they are likely to succeed on the merits.

2. Petitioners Have Not Shown Irreparable Harm

Petitioners cannot show irreparable harm such that an injunction or TRO should issue.

To the contrary, as discussed above, the MDC has taken significant steps to ensure the health and safety of inmates, and the minimization of risk of exposure to all detainees at the MDC. The MDC also has instituted necessary precautions and procedures to ensure that any inmates who become ill will be well-cared for.

Petitioners have failed to establish irreparable harm on their constitutional claims. “To satisfy the irreparable harm requirement, [petitioners] must demonstrate that absent [relief] they will suffer an injury that is neither remote nor speculative, but actual and imminent, and one that cannot be remedied if a court waits until the end of trial to resolve the harm.” *Freedom Holdings, Inc. v. Spitzer*, 408 F.3d 112, 114 (2d Cir. 2005) (quotation marks omitted).

Merely showing a “possibility” of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Moreover, mandatory injunctions are not granted unless extreme or very serious damage will result. *See Marlyn Nutraceuticals, Inc.*, 571 F.3d at 879 (internal citation omitted). “Issuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court’s] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief.” *Winter*, 555 U.S. at 22.

As discussed above, Petitioners fail to take into account the myriad protections which have been put in place to not only prevent spread of infection within the MDC, but to reduce the risk that COVID-19 enters the MDC in the first place. Moreover, Petitioners fail to address in any meaningful way how, if released, they will be safer from the risk of infection or have access to adequate care if infected. Thus, Petitioners are far from showing irreparable harm.

Petitioners assert that only release from detention at the MDC into the community will spare them the heightened risk of adverse consequences from COVID-19. As in *Dawson*, “[t]here is no evidence of an outbreak at the detention center or that Defendants’ precautionary measures are inadequate to contain such an outbreak or properly provide medical care should it occur.” 2020 WL 1304557, at *3.

Further, Petitioners have other, alternative methods for relief other than seeking a temporary restraining order, for securing early release. *See, e.g.*, 18 U.S.C. § 3582 (compassionate release); 18 U.S.C. § 3624(c) (prerelease custody/home confinement).

Petitioners have not shown irreparable harm.

3. The Balance Of Interests And Public Interest Favors Respondent

The balance of the equities weighs in the government’s favor and in favor of maintaining Petitioners’ detention at the MDC, for their own safety and that of the public.

As Courts have recognized, the government has a legitimate and compelling interest in protecting public safety. *See, e.g., Johnson v. Barr*, No. 19-CV-693-LJV, 2019 WL 6112338, at *7 (W.D.N.Y. Nov. 14, 2019) (“The government’s interest in preventing crime by arrestees is both legitimate and compelling.”) (quoting *United States v. Salerno*, 481 U.S. 739, 749 (1987)); *Singh v. Barr*, No. 19-CV-1208-LJV, 2019 WL 6609312, at *5 (W.D.N.Y. Dec. 3, 2019) (finding that “the government’s interests in . . . protecting against a danger to the community may be served” by immigration detention). Petitioners’ argument is highly generalized, and would have an unwieldy result if followed to its logical conclusion. As one court addressing a similar claim recognized:

In essence, Sacal contends that a high likelihood exists that many detainees in the Port Isabel Detention Center will contract COVID-19, and that for those who are elderly or suffer from underlying medical conditions that render them prone to the more serious aspects of the virus, the risk of death is significant. Sacal offers no evidence to support

these propositions other than conclusions extrapolated from general information. And accepting Sacal's reasoning would logically require the release of all individuals currently detained who are elderly or suffer from certain underlying medical conditions. The law does not require such a generalized result.

Sacal-Micha, 20-CV-37, at pg. 9.

As an initial matter, the public's interest is not served by short circuiting the existing administrative and judicial processes that are designed to carefully weigh freeing the individuals at issue from custody against the risk to public safety in doing so. The risk of danger to the public in granting a TRO requiring the immediate release of the four petitioners, who have been convicted and sentenced for their crimes, outweighs the alleged need for expediency here. BOP policy requires determinations to be made as to which inmates are entitled to home confinement (*see, e.g.*, Attorney General's Memorandum), or the other judicial avenues available to both pre-trial and convicted detainees. Further, the government's interest in public safety extends to protecting the public from the risk of the spread of COVID-19. Indeed, in the Attorney General's Memorandum on which Petitioners rely in their argument that they should be entitled to home confinement, the Attorney General makes clear that such release should be done in a manner that balances the safety considerations for all involved. The Memorandum states: "While we have an obligation to protect BOP personnel and the people in BOP custody, we also have an obligation to protect the public. That means we cannot take any risk of transferring inmates to home confinement that will contribute to the spread of COVID-19, or put the public at risk in other ways. I am therefore directing you to place any inmate to whom you grant home confinement in a mandatory 14-day quarantine period before that inmate is discharged from a BOP facility to home confinement. Inmates transferred to home confinement under this prioritized process should also be subject to location monitoring services and, where a court order is entered, be subject to supervised release." Attorney General's Memorandum at 2. These

weighty considerations cannot be adequately addressed by the Court's grant of a temporary restraining order that permits the Petitioners' immediate release.

Petitioners have not shown that the balance of hardships and public interest tips in their favor.

CONCLUSION

For all of the foregoing reasons, Petitioners have not satisfied their heavy burden of establishing entitlement to mandatory injunctive relief, and their Motion for a Temporary Restraining Order should be denied.

Dated: Brooklyn, New York
March 31, 2020

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United States Attorney
Counsel for Respondent
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By: s/ James R. Cho
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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

HASSAN CHUNN; NEHEMIAH McBRIDE;
AYMAN RABADI by his Next Friend Migdaliz
Quinones; and JUSTIN RODRIGUEZ by his Next
Friend Jacklyn Romanoff, individually and on
behalf of all others similarly situated,

Civil Action No.
20-CV-1590 (Kovner, J.)

Petitioners,

-against-

WARDEN DEREK EDGE,

Respondent.

-----X

DECLARATION OF ASSOCIATE WARDEN MILINDA KING

I, Associate Warden Milinda King, declare as follows:

1. I currently hold the position of Associate Warden for Operations at the Metropolitan Detention Center in Brooklyn (“MDC Brooklyn”).
2. MDC Brooklyn is an administrative facility that houses both pre-trial detainees, holdover inmates, and designated (cadre) inmates, who serve their federal sentence at the institution.
3. As of March 31, 2020, MDC Brooklyn houses 1,749 inmates, including 38 female inmates, and 101 designated (cadre) inmates.
4. MDC Brooklyn is open and willing to consider inmates who are appropriate for release to Residential Reentry Centers (“RRC”) or home confinement. *See* Program Statement, 7310.04 (attached as Exhibit 1). This review is initially conducted by a unit

team to determine whether the inmate is eligible. Appropriate candidates are referred to the Residential Reentry Manager for a final determination.

Steps Taken at the MDC to Address COVID-19

5. MDC Brooklyn screens all new inmates, as well as any inmate returning to the facility -- *e.g.*, from a hospital trip or court. These screenings include questions relating to symptoms consistent with COVID-19, and risk of exposure, including recent travel.

6. Incoming detainees are initially screened in Receiving and Discharge ("R&D"), not in the intake housing unit or general population. They are then brought to an intake unit where they are isolated for 14 days to ensure the inmates do not develop symptoms. After the expiration of 14 days, and upon medical clearance, inmates may be released into general population.

7. Inmates being transported to Court are also screened in accordance with standing administrative orders issued by the Chief Judges of the Eastern and Southern Districts of New York. These orders require that all inmates' temperature be taken, and if he or she registers a body temperature of 100.4 degrees or higher, the inmate will not be produced.

8. Any inmate, whether a new commit or not, who presents with symptoms consistent with COVID-19 will be evaluated by the MDC Brooklyn's Health Services department. Based upon the evaluation, a determination will be made whether isolation¹ and testing is appropriate.

¹ Isolation means that an inmate is confined to his or her cell, except to place a legal call or to shower. Personal protective equipment ("PPE") will be utilized in either of those circumstances. Quarantine, on the other hand, refers to inmates remaining on their housing unit, cohorted together. They are not required to remain in his or her cell, and may interact and utilize the common area. However, they will not be moved from the housing unit to other areas of the institution.

9. If any inmate is isolated, those inmates housed in the same housing unit with him or her will be quarantined pending results of the test, or 14 days, whichever is sooner.

10. Detainees may also be placed in a quarantine/isolation setting if exposed to a person with COVID-19, where they will be monitored daily for an incubation period of at least 14 days. Quarantine or isolation is only discontinued once 14 days elapse with no inmates developing new symptoms.

11. All new inmates admitted to the facility receive soap. Soap is also delivered to unit team on a biweekly basis. An inmate may request additional soap from unit team if he or she needs to, or purchase soap from commissary. All inmates have access to sinks and soap at all times.

12. Guidance from the BOP's Central Office Health Services Division indicates that any type of soap (whether anti-bacterial or deodorant) is effective as long as proper handwashing procedures are followed. Additionally, hand washing with soap and water is superior to using hand sanitizer. Hand sanitizer is a last resort when soap and water are not available, which they are.

13. MDC administrative staff have explained best practices regarding personal hygiene to prevent the spread of COVID-19 to both detainees and staff. Staff have been notified via email and in a recall (or all staff conference calls). Information sheets are also posted in numerous locations around the facility, including inmate housing units, the front lobby, and all departments. Staff are also notified of important updates by the BOP alert system. Examples of these information sheets are attached to this declaration as Exhibit 2.

14. Inmates have been notified via town halls, and information bulletins have been posted on TRULINCS in both English and Spanish. Executive staff members have conducted

town halls on March 13, 2020, March 20, 2020, March 21, 2020, March 24, 2020, and March 27, 2020. As guidance changes, MDC Brooklyn will continue to provide updates to the inmate population and staff members.

15. Additional sanitation procedures have been put in place. Additional and stronger cleaning supplies have been issued and used by inmates and staff alike.

16. Inmate orderlies have been provided cleaning materials, and cleaning supplies are available on the housing unit for use by inmates to clean their personal living spaces (cells).

17. Once MDC Brooklyn learned of one inmate testing positive for COVID-19 MDC Brooklyn conducted a deep clean of the facility. Inmate orderlies were provided PPE in order to clean during this period.

18. Pill line and insulin line are conducted twice a day in housing units. Medical staff perform sick call every day on the housing units.

19. There has been a significant decrease in routine group meetings among inmates and staff.

20. Custody staff has been given an increased stock of PPE to be utilized in appropriate locations, *e.g.*, quarantined areas, isolation units, and screening sites. Also, for those staff members who have not received fit-testing for N-95 respirator masks, additional testing is being performed if requested by staff. Finally, surgical masks are available as well.

21. Access to legal counsel remains of paramount importance at MDC Brooklyn. MDC Brooklyn is mitigating the risk of exposure by increasing the amount and provision of legal calls and now offering video teleconferences (VTC) with attorneys on a limited basis.

22. MDC medical staff is prioritizing immediate medical care for anyone who claims symptoms indicative of COVID-19 infection.

23. MDC employees have been urged to stay home if they are ill, and individuals conducting health screening at the front entrance can deny an employee entry if he or she reports a fever or symptoms consistent with COVID-19.

24. To date, there has only been one inmate who has tested positive for COVID-19. There have been five confirmed cases of staff members who have tested positive for COVID-19.

25. MDC has identified inmates who fall into categories designated by the CDC as higher risk for COVID-19. This list is updated periodically, especially as guidance by the CDC regarding who is at greater risk is updated.

26. On March 13, 2020, BOP's Central Office issued nationwide guidance regarding modified operations to prevent and mitigate the spread of COVID-19. The guidance has undergone updates since they were first issued. Latest updates available at:

https://www.bop.gov/coronavirus/covid19_status.jsp. Excerpts are attached as Exhibit 3.

History of COVID-19 at MDC

27. On or about March 16, a holdover inmate was brought to MDC Brooklyn. This inmate was transported to the hospital on March 19, 2020. He was tested at the hospital, and returned to MDC Brooklyn on March 20, 2020 to be isolated and monitored. The inmates on his housing unit on March 19, 2020, were isolated as well.

28. On March 21, 2020, it was reported that the inmate tested positive for COVID 19.

29. The inmate who originally tested positive is no longer symptomatic, has been isolated for 10 days, and consistent with CDC and BOP guidance, has been released to general population.

30. The situation is contained, but also continuously monitored for future developments, and further guidance and action as appropriate.

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

Executed on this 31st day March, 2020.

By:

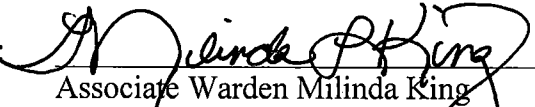

Associate Warden Milinda King
Metropolitan Detention Center, Brooklyn

Exhibit 1



Change Notice

DIRECTIVE AFFECTED: 7310.04
CHANGE NOTICE NUMBER: 7310.04
DATE: 12/16/98

1. PURPOSE AND SCOPE. To reissue the Program Statement on **Community Corrections Center (CCC) Utilization and Transfer Procedures**.

2. SUMMARY OF CHANGES. This reissuance incorporates text consistent with the recently issued Program Statement on Categorization of Offenses. In addition, text and procedural improvements recommended by field and Regional Office staff have also been incorporated. These changes are summarized below:

- Incorporates recommendations made by the Mothers and Infants Together (MINT) workgroup;
- Allows inmates who are otherwise eligible for camp placement to be transferred to a camp prior to transfer to a CCC; and,
- Eliminates the possibility of "stacking" time in a halfway house by combining Bureau referral placement with public law or supervised release placement.

3. ACTION. File this Change Notice in front of the Program Statement on **Community Corrections Center (CCC) Utilization and Transfer Procedure**.

/s/
Kathleen Hawk Sawyer
Director



Program Statement

OPI: CPD
NUMBER: 7310.04
DATE: 12/16/98
SUBJECT: Community Corrections
Center (CCC)
Utilization and
Transfer Procedure

1. PURPOSE AND SCOPE. To provide guidelines to staff regarding the effective use of Community Corrections Centers (CCCs). This Program Statement defines placement criteria for offenders, requires that staff members start the placement process in a timely manner, and defines the circumstances when inmates may refuse Community Corrections (CC) programs. It also establishes an operational philosophy for CCC referrals that, whenever possible, eligible inmates are to be released to the community through a CCC unless there is some impediment as outlined herein.

CCCs provide an excellent transitional environment for inmates nearing the end of their sentences. The level of structure and supervision assures accountability and program opportunities in employment counseling and placement, substance abuse, and daily life skills.

One reason for referring an inmate to a CCC is to increase public protection by aiding the transition of the offender into the community. Participating in community-based transitional services may reduce the likelihood of an inmate with limited resources from recidivating, whereas an inmate who is released directly from the institution to the community may return to a criminal lifestyle. While clearly dangerous inmates should be separated from the community until completing their sentences, other eligible inmates should generally be referred to CCCs to maximize the chances of successful reintegration into society.

Finally, the scope of this Program Statement has been extended to include CCC consideration/placement of District of Columbia Department of Corrections inmates.

PS 7310.04

12/16/98

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2. PROGRAM OBJECTIVES. The expected results of this program are:

a. All eligible inmates will have opportunities to participate in CCC programs to assist with their reintegration into the community, in accordance with their release needs.

b. All inmates will have opportunities to communicate directly with staff who make significant CCC referral recommendations.

c. Referral packets for CCC placement will be timely and complete.

d. Before any inmate is transferred to a CCC, the CCC staff will have the required notice and other documentation.

e. The public will be protected from undue risk.

3. DIRECTIVES AFFECTED

a. Directive Rescinded

PS 7310.03 Community Corrections Center (CCC)
Utilization and Transfer Procedures (3/25/96)

b. Directives Referenced

PS 1434.06 Jurisdiction on Escape Related Issues -
Memorandum of Understanding USMS/FBI/BOP
(7/25/94)
PS 1490.04 Victim and Witness Notification (2/3/98)
PS 5100.06 Security Designation and Custody
Classification Manual (6/7/96)
PS 5110.12 Notifications of Release to State and Local
Law Enforcement Officials (1/21/98)
PS 5180.04 Central Inmate Monitoring System (8/16/96)
PS 5250.01 Public Works and Community Service Projects
(1/19/93)
PS 5264.06 Telephone Regulations for Inmates (12/22/95)
PS 5280.08 Furloughs (2/4/98)
PS 5322.10 Classification and Program Review of Inmates
(9/4/96)
PS 5325.05 Release Preparation Program, Institution
(7/18/96)
PS 5330.10 Drug Abuse Programs Manual, Inmate (5/25/95)
PS 5380.05 Financial Responsibility Program, Inmate
(12/22/95)

PS 7310.04

12/16/98

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PS 5550.05 Escape from Extended Limits of Confinement
 (3/27/96)
PS 5553.05 Escapes/Deaths Notification (9/17/97)
PS 5800.07 Inmate Systems Management Manual (12/24/91)
PS 5800.11 Central File, Privacy Folder, and Parole Mini
 File (9/7/97)
PS 5873.05 Release Gratuities, Transportation, and
 Clothing (9/4/96)
PS 5882.03 Fines and Costs (2/4/98)
PS 6000.05 Health Services Manual (9/15/96)
PS 6070.05 Birth Control, Pregnancy, Child Placement,
 and Abortion (8/9/96)
PS 7300.09 Community Corrections Manual (1/12/98)
PS 7320.01 Home Confinement (9/6/95)
PS 7331.03 Pretrial Inmates (11/22/94)
PS 7430.01 Community Transitional Drug Treatment
 Services, Inmate (1/20/95)

18 U.S.C. § 3621(b)

18 U.S.C. § 3624(c)

4. STANDARDS REFERENCED

a. American Correctional Association 3rd Edition Standards for Adult Correctional Institutions: 3-4265, 3-4343, 3-4343-1, 3-4387, 3-4388, 3-4388-2, 3-4389, 3-4391, 3-4393, 3-4393-1

b. American Correctional Association 3rd Edition Standards for Adult Local Detention Facilities: 3-ALDF-3E-04, 3-ALDF-4E-19, 3-ALDF-4E-19-1, 3-ALDF-4F-04, 3-ALDF-4F-05, 3-ALDF-4F-07, 3-ALDF-4G-01, 3-ALDF-4G-06, 3-ALDF-4G-07

c. American Correctional Association 2nd Edition Standards for Administration of Correctional Agencies: 2-CO-4G-01, 2-CO-4G-02

d. American Correctional Association Standards for Adult Correctional Boot Camp Programs: 1-ABC-3D-04, 1-ABC-4E-20, 1-ABC-4F-08, 1-ABC-4F-10, 1-ABC-4G-01, 1-ABC-4G-02, 1-ABC-4G-03, 1-ABC-4G-06

5. STATUTORY AUTHORITY. 18 U.S.C. § 3624(c), provides:

"The Bureau of Prisons shall, to the extent practicable, assure that a prisoner serving a term of imprisonment spends a reasonable part, not to exceed six months, of the last ten per centum of the term to be served under conditions that will afford the prisoner a reasonable opportunity to adjust

to and prepare for the prisoner's reentry into the community. The authority provided by this subsection may be used to place a prisoner in home confinement. The United States Probation Office shall, to the extent practicable, offer assistance to a prisoner during such pre-release custody."

18 U.S.C. § 3621(b) provides:

"The Bureau of Prisons shall designate the place of the prisoner's imprisonment. The Bureau may designate any available penal or correctional facility . . . the Bureau determines to be appropriate and suitable." A CCC meets the definition of a "penal or correctional facility."

Therefore, the Bureau is not restricted by § 3624(c) in designating a CCC for an inmate and may place an inmate in a CCC for more than the "last ten per centum of the term," or more than six months, if appropriate.

Section 3624(c), however, does restrict the Bureau in placing inmates on home confinement to the last six months or 10% of the sentence, whichever is less.

6. PRETRIAL/HOLDOVER AND/OR DETAINEE INMATES. This Program Statement does not apply to pretrial, holdover, or detainee inmates.

7. COMMUNITY-BASED PROGRAMS

a. Community Corrections Centers (CCC). CCCs, commonly referred to as "halfway houses," provide suitable residence, structured programs, job placement, and counseling, while the inmates' activities are closely monitored. All CCCs offer drug testing and counseling for alcohol and drug-related problems. During their stay, inmates are required to pay a subsistence charge to help defray the cost of their confinement; this charge is 25% of their gross income, not to exceed the average daily cost of their CCC placements. Failure to make subsistence payments may result in disciplinary action.

These contract facilities, located throughout the United States, provide two program components: the Community Corrections Component and the Prerelease Component:

(1) The Community Corrections Component is designed as the most restrictive option. Except for employment and other structured program activities, an inmate in this component is

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restricted to the CCC. An inmate shall ordinarily be placed in the Community Corrections Component upon arrival at the CCC.

This orientation period normally lasts for two weeks or until the inmate has demonstrated to CCC staff the responsibility necessary to function in the community. Based on their professional judgment, CCC staff shall determine when an inmate is prepared to advance to the Prerelease Component.

(2) The Prerelease Component is designed to assist inmates making the transition from an institution setting to the community. These inmates have more access to the community and family members through weekend and evening passes.

b. Community Corrections Programs. In addition to a CCC's traditional services, the Bureau also has the following community-based programs. Referral procedures may be described in independent Bureau directives issuances. The Community Corrections Manager (CCM) reviews the inmate's characteristics and the recommendations noted in the referral package to determine if one of the following programs (if available) may be more appropriate than traditional CCC placement.

(1) Comprehensive Sanctions Center (CSC). The CSC concept, initiated by the Bureau, with the extensive cooperation and teamwork of U.S. Probation and CCC contractors, was developed to provide courts with a wider range of sentencing options and to facilitate the development and implementation of community program plans tailored to the individual needs of prerelease inmates.

The CSC is designed to meet the needs of higher risk prerelease inmates and consists of six different levels of supervision, ranging from 24-hour confinement to Home Confinement.

It also may have an intensive treatment component consisting of substance abuse education and treatment, life skills training, mental health counseling, education, employment assistance, and mentoring. The inmate's progress is systematically reviewed by a Program Review Team (PRT), consisting of representatives from the Bureau, U.S. Probation, and the CCC.

(2) Mothers and Infants Together (MINT). MINT is an alternative residential program that promotes bonding and parenting skills for low risk female inmates who are pregnant. The inmate is placed in the program two months prior to delivery and remains there for three months after delivery.

(3) Home Confinement. Home Confinement is a generic term used to cover all circumstances in which an inmate is required to remain at home during non-working hours of the day. Electronic

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monitoring equipment is sometimes used to monitor compliance with the program's conditions. These programs provide an opportunity for inmates to assume increasing levels of responsibility, while, at the same time, providing sufficient restrictions to promote community safety and convey the sanctioning value of the sentence.

Home Confinement provides an option for inmates who do not need the structure of a residential facility. Except for inmates who are initially sentenced to and graduate from the Intensive Confinement Center Program, statutory provisions limit the length of Home Confinement to the last 10% of the sentence, or six months, whichever is less. Inmates are required to pay subsistence of 25% of their gross income to defray the costs of Home Confinement and electronic monitoring.

The Bureau is involved in two Home Confinement programs: Home Confinement operates from the Bureau's own network of CCCs and the U.S. Probation Division program.

(a) CCC Contractors. The first form of Home Confinement is CCC contractor-operated programs. In these programs, CCC staff monitor the inmate. Currently, only a few of these programs use electronic monitoring equipment. Supervision is provided by daily telephone contacts and periodic personal contacts in the home and workplace.

(b) U.S. Probation Office. The second form of Home Confinement involves placing federal inmates in programs operated by the U.S. Probation Office. These programs use electronic monitoring equipment with U.S. Probation Officers (USPO) providing supervision.

(4) Transitional Services Program (TSP). The community-based transition phase of the Bureau's Residential Drug Treatment Program is designed to complement the accomplishments and continue the institutional program's treatment plan. It reinforces the inmate's personal responsibility to lead a drug-free lifestyle through personal accountability for choices, confrontation of negative thinking patterns, and instruction in basic social skills. Inmates who successfully complete the Residential Drug Treatment Program's institutional phase should normally be considered for the maximum 180 day period of CCC placement, if they are otherwise eligible.

(5) Intensive Confinement Center (ICC). A lengthy period of Community Corrections Center confinement follows the completion of the ICC program's institutional phase. The CCC time is divided among the restrictive Community Corrections Component, the Prerelease Component, and Home Confinement. Specific referral procedures are outlined in the ICC Program Statement.

8. RELEASE PLAN. Staff shall begin release planning at an inmate's first team meeting, normally the initial classification, and shall continue throughout the inmate's confinement. The following guidelines apply:

a. Planning early in an inmate's period of confinement is necessary to ensure release preparation needs are identified and appropriate release preparation programs are recommended.

b. Preliminary decisions regarding eligibility for CC Programs are to be made well in advance of the last year of confinement.

c. A final and specific release preparation plan, including a decision as to CCC referral, is normally established at a team meeting no later than 11 to 13 months before an inmate's projected release date.

9. CCC CRITERIA AND REFERRAL GUIDELINES

a. Regular Referrals. Staff shall make recommendations for CCC placements based on assessments of inmate needs for services, public safety, and the necessity of the Bureau to manage its inmate population responsibly. CCCs are a program element and are not to be used as a reward for good institutional behavior, although an inmate's institutional adjustment may be a factor in making a referral determination.

A number of factors must be weighed to determine the length of CCC placement for inmates, including their individual needs and existing community resources. Ordinarily, inmates with shorter sentences do not require maximum CCC placement due to reduced transition needs. Additionally, inmates who are required to spend a portion of time in a CCC as a condition of release (i.e. supervised release or court order) do not require an extended Bureau CCC placement. For example, if the Unit Team determines the inmate needs a six month CCC placement, but the inmate is required to stay in a CCC for 90 days as a condition of release, then the institution shall ordinarily refer the inmate for a 60-90 day CCC placement.

Referrals to CCM offices should include a recommendation regarding the length of stay (range), such as recommending 60 to 90 days or 90 to 120 days, etc. This range of at least 30 days allows the CCM to match population needs with budgetary and CCC bed space resources, a process which requires this flexibility.

However, there will be cases when the institution, for various management reasons, wants the CCM to place the inmate not earlier than a specific date. Then, the CCC referral form should specify a recommended placement date rather than a range and further state that the CCM should not adjust that date. The CCM shall adhere to the recommended date, with any adjustment only being downward if budget and/or bed space constraints are a factor.

The following CCC referral guidelines apply:

(1) An inmate may be referred up to 180 days, with placement beyond 180 days highly unusual, and only possible with extraordinary justification. In such circumstances, the Warden shall contact the Regional Director for approval and the Chief USPO in the inmate's sentencing district to determine whether the sentencing judge objects to such placement.

(2) The ultimate goal is to maximize each eligible inmate's chances for successful release and a law-abiding life.

(3) When an inmate has a history of escape or failure in one or more CC Programs, careful review and consideration should be given regarding the suitability of participation and the length of placement.

(4) Inmates with minor medical conditions or disabilities may also be considered for community placement. Inmates are required to assume financial responsibility for their health care while assigned to community programs. Such inmates must provide sufficient evidence to institution staff of their ability to pay for health care while at a CCC prior to the referral being made. When an inmate is unable or unwilling to bear the cost of necessary health care, the inmate shall be denied placement.

(5) Inmates who have been approved for CCC referral and are otherwise appropriate for camp placement shall be transferred to a camp for intermediate placement. The inmate should have completed the Institution Release Preparation Program at the parent institution. The parent institution shall complete the CCC referral packet and the camp should be closer to the inmate's release residence. This process should be completed to allow the

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inmate a minimum of a 60 day placement at the camp prior to the acceptance date at the CCC.

b. MINT Referrals. Female inmates are eligible to enter the program at the CCC generally during their last two months of pregnancy. After birth, the mother is allowed three additional months to bond with the child. The mother shall then be returned to an institution to complete her sentence. If she is eligible for prerelease services, she may remain at that facility only if she is going to be supervised in that judicial district.

The CEO may approve early or extended placements with a recommendation by the treating obstetrician and Clinical Director's concurrence. A placement extending beyond 180 days requires the Regional Director's approval. Direct court commitments shall have a secondary designation noted on the Inmate Load and Security/Designation form (BP-337). This shall be used to determine the institution responsible for the inmate's medical expenses while she is confined in the MINT Program.

Authority to pay immediate post-natal care of the child born to an inmate while in custody is derived from administrative discretion when the Bureau finds itself responsible for the cost by default (no other resources can be compelled to pay). It is reasonable that the Bureau provides for the child's medical expenses for the first three days after routine vaginal birth or up to seven days for a Cesarean section.

Prior to the birth, the mother must make arrangements for a custodian to take care of the child. At this time, the CEO shall ensure the person or agency taking custody of the child is also asked to be responsible for medical care costs beyond three days after birth. (Note: This may be extended by the Regional Director for an additional seven days for extenuating circumstances on a case-by-case basis.) The person(s) receiving custody of the child should sign a Statement of Responsibility for medical care costs, clearly indicating that the signing party accepts financial responsibility. Unit Management staff are responsible for obtaining this statement, and forwarding copies to the Health Services Administrator (HSA) for placement in the HSA's outside hospitalization file and to the Controller (see the Sample Statement of Responsibility (Attachment D)).

Health Services staff shall confirm an inmate's pregnancy and evaluate her medical condition. Health Services staff shall indicate whether CCC placement is medically appropriate and document this on the Medical Evaluation for Transfer of Inmates to CCC Type Facility (BP-351) which shall be forwarded to the Unit Team.

When the Unit Team has concerns regarding the appropriateness of a CCC placement (such as criminal history, severity of current

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offense), procedures will be followed according to Section 10.i.(2), Limitations on Eligibility for All CCC Referrals.

The following CCC referral guidelines apply in addition to the guidelines provided for regular referrals:

(1) The inmate must be pregnant upon commitment with an expected delivery date prior to release.

(2) The inmate or guardian must assume financial responsibility for the child's care, medical and support, while residing at the CCC. Should the inmate or the guardian be unable or unwilling to bear the child's financial cost, the inmate may be transferred back to her parent institution.

(3) An inmate who becomes pregnant while on furlough, or has more than five years remaining to serve on her sentence(s), or plans to place her baby up for adoption shall not be referred for MINT placement.

Referrals to CCMS should state a specific date of placement. This date should be approximately two months prior to the inmate's expected delivery date.

The CCC's Terminal Report should fully describe the inmate's experience in, and reaction to, the MINT Program. It should also summarize counseling received in the program and include follow-up medical or program recommendations for the institution to facilitate the inmate's transition.

Inmates in need of foster care placement assistance shall be referred to the institution social worker, or if the institution does not have a social worker, staff shall contact a social worker in the community for foster care placement assistance.

10. LIMITATIONS ON ELIGIBILITY FOR ALL CCC REFERRALS. Inmates in the following categories shall not ordinarily participate in CCC programs:

a. Inmates who are assigned a "Sex Offender" Public Safety Factor.

b. Inmates who are assigned a "Deportable Alien" Public Safety Factor.

c. Inmates who require inpatient medical, psychological, or psychiatric treatment.

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d. Inmates who refuse to participate in the Inmate Financial Responsibility Program.

e. Inmates who refuse to participate, withdraw, are expelled, or otherwise fail to meet attendance and examination requirements in a required Drug Abuse Education Course.

f. Inmates with unresolved pending charges, or detainers, which will likely lead to arrest, conviction, or confinement.

g. Ordinarily, inmates serving sentences of six months or less.

h. Inmates who refuse to participate in the Institution Release Preparation Program.

i. Inmates who pose a significant threat to the community. These are inmates whose current offense or behavioral history suggests a substantial or continuing threat to the community.

Examples are inmates with repeated, serious institution rule violations, a history of repetitive violence, escape, or association with violent or terrorist organizations.

To determine whether an inmate poses a significant threat, a number of factors must be considered. The key consideration is public safety when assessing the inmate's proclivity for violence or escape against their placement needs.

A waiver of the Public Safety Factor is not required for inmates transferred via unescorted transfer to CCC placements.

Ordinarily, inmates with a single incident of violence should not automatically be excluded from CCC placement. As noted earlier, clearly dangerous inmates should be excluded from CCC placement.

(1) When there exists a basis for significant doubt regarding whether the inmate currently poses a threat to the community, the Warden should consider contacting the Chief USPO in the release district (see the Sample letter (Attachment A)) to seek guidance on the referral's appropriateness. A copy of this letter shall be maintained in the Inmate Central File.

(2) When an inmate is excluded under this subsection, a memorandum, signed by the Warden, shall be prepared and placed in the Inmate Central File to explain the rationale for exclusion from CC Programs.

j. Inmates whose admission and release status is pretrial, holdover, or detainee.

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11. REFUSALS. When an eligible inmate refuses CCC placement, staff shall investigate the inmate's reasons. Staff may honor an inmate's refusal of CCC placement.

Suitable reasons to decline placement might include previous CCC failure, potential conflict with other residents, and location or remoteness from release residence. When the inmate does not present a suitable reason, and the unit team believes that a placement would serve a correctional need, the unit team shall make every effort to encourage participation.

When an inmate refuses placement, a memorandum, signed by the Associate Warden (Programs) and the inmate, shall be placed in the Inmate Central File. The memorandum should document the inmate's rationale for refusal and all unit team effort to encourage participation.

12. CCC REFERRAL PROCEDURES. Normally 11 to 13 months before each inmate's probable release date, the unit team shall decide whether to refer an inmate to a Community Corrections program.

Medical staff shall notify the inmate's Case Manager promptly when a pregnancy is verified. Upon notification, the unit team shall decide if a MINT referral to a Community Corrections program will be made.

a. Referral to CCM. Staff shall use the Institution Referral form (BP-210) (Attachment B) when referring an inmate for transfer to a CCC. Information included in the Additional Information (11) and Specific Release Preparation Needs (12) sections must be as specific as possible regarding the inmate's needs.

Attachment B contains instructions for completing the Institution Referral form and related materials. Signed copies of the "Community Based Program Agreement" must be included with all CCC referrals. The Warden is the final decision-making authority for all CCC referrals the unit team recommends.

If the Warden approves the CCC referral, the unit team shall forward two copies of the Institutional Referral form and appropriate attachments to the CCM. Staff shall enter the DST SENTRY assignment of "W CCC ACT." Copies of appropriate documents are prepared so that one may be forwarded to the CCC while the CCM retains the other for reference.

A separate packet with appropriate copies shall be forwarded to the Transitional Services Manager (TSM) in the **receiving region where the inmate is being released** for graduates of Residential Drug Abuse Programs. Staff are referred to the Drug Abuse Programs Manual for responsibilities and/or documentation requirements. If the CCC referral packet is mailed prior to

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completion of the Treatment Summary and Referral form (BP-549), the Drug Abuse Treatment Coordinator shall forward the completed BP-549 form to the Transitional Services Manager in the region of the inmate's release and provide a copy to the unit team.

The referral packet shall be forwarded to the CCM at least 60 days prior to the maximum recommended range or date. However, additional time may be required for processing inmates with special community-based program needs (i.e. mental health, drug transition, disabilities, and inmates with higher security needs).

For MINT referrals, the referral packet shall ordinarily be forwarded to the CCM at least 60 days prior to the recommended date. If the inmate is committed to Bureau custody or arrives at the designated facility at any stage during the second trimester of pregnancy, the referral shall be forwarded to the CCM as quickly as possible.

If an inmate is scheduled for release via parole, and CCC placement is for 45 days or less, a copy of correspondence directed to the U.S. Parole Commission (USPC) outlining the release plan and requesting parole certificates, as well as copies of the USPO's letter recommending release plan approval, must be included in the referral package.

b. Mandatory CCC Residence. When an inmate must reside in a CCC as a condition of parole, mandatory release, or supervised release supervision after release from confinement, the institution shall refer the case to the appropriate CCM, who shall refer the case for placement under these procedures:

Institutions shall notify the USPC of cases that cannot be placed (see specific information in Attachment B). Inmates in this category should not be referred for transitional purposes and have this time "stacked" on to the Court or USPC's ordered period of CCC placement.

Inmates releasing from an institution via 3621E CMPL or 4046C CMPL, or who have mandatory CCC residence as a condition of parole, mandatory release, or supervised release supervision, should be referred for release preparation transfer to a CCC, and the CCM should work with U.S. Probation to waive the CCC requirement during the period of supervision. The CCM shall attempt to affect the 180 day release preparation placement for inmates releasing via 3621E CMPL or 4046C CMPL. The CCM shall keep the appropriate U.S. Probation Office apprised of the inmate's progress toward reaching the goals of Community Corrections programming. Should the USPO still require CCC placement as a condition of supervision, the CCM will ordinarily honor the request.

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c. Referral to CCC. CCMs shall immediately forward referrals to appropriate CCCs. CCC staff shall notify CCMs in writing of acceptance or rejection. When referrals are accepted, CCCs will send acceptance letters, subsistence collection agreements, and CCC rules and regulations to inmates in care of their Unit Managers. Institution staff shall ensure acknowledgment forms are returned to CCCs. CCMs shall monitor referrals for timely response from contractors.

d. CCC Rejection. CCC staff must provide specific reasons, in writing, to CCMs when they reject referrals. In such cases, CCMs shall determine if further discussion with the CCC staff is appropriate or, if not, referral to an alternate resource is possible. When all placement options have been exhausted, the CCM shall inform the referring institution Warden, with copies to the Unit Manager, that the inmate cannot be transferred to a CCC and the reason for rejection.

e. Transfer Date. When CCMs are notified of an inmate's acceptance by a CCC, a transfer date to the CCC is to be established, and the CCM shall enter the SENTRY destination assignment transaction. The effective date shall be the approved future transfer date.

Destination assignments, "DST," have been established in SENTRY for contract CCCs and work release programs. These assignments use the CCM facility code followed by the contract location code. CCMs may add their contract location destination assignments for inmates in any Bureau facility. When an inmate arrives at the CCC and is admitted to the location (in SENTRY), the destination assignment is automatically removed.

These assignments shall appear on the CCM and institution SENTRY daily log. Institution staff may display rosters of inmates approved for CCC transfer, and CCMs may display lists of pending arrivals by contract location.

The location description (name of the CCC) shall appear on the inmate's profile. If, for any reason, an inmate cannot be

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transferred to a CCC on the scheduled date, institution staff shall notify the CCM immediately.

13. PREPARATION FOR TRANSFER

a. Trust Fund Account. No later than **three weeks** prior to the approved transfer date, unit staff are to determine the amount in the inmate's trust fund account that may be given to the inmate at the time of transfer. A check or draft for the balance (with the inmate as payee) shall be sent to the CCC immediately.

In accordance with the Program Statement on Telephone Regulations for Inmates, inmates transferring to CCCs shall be qualified as "exception" cases during the three-week period prior to the approved transfer date for purposes of placing collect telephone calls.

Institution staff should use discretion in giving inmates large amounts of cash, and if there is reason to question an inmate's ability to handle money responsibly, the amount may be reduced.

For inmates who have no funds or resources, unit staff shall determine the extent to which a gratuity is indicated and shall initiate paperwork, if appropriate (see the Program Statement on Release Gratuities, Transportation, and Clothing).

If the institution is holding savings bonds for an inmate, or if an inmate has a savings account at a local bank, the unit staff is to ensure these financial resources are available at the release destination when the inmate arrives.

b. Documentation to CCC. No later than **two weeks** prior to an inmate's approved transfer date, institution staff shall forward the following documents to the CCC:

(1) Authorized Unescorted Commitments and Transfers (BP-385), with current photograph;

(2) Original of the Transfer Order;

(3) Copy of Furlough Application and Approval Record, with specific travel method and itinerary;

(4) Receipt for CCC rules and regulations, if applicable (this may include the CCC's subsistence agreement form); and,

c. Clothing. No later than **one week** prior to an inmate's approved transfer, staff shall make arrangements for release clothing. Suitable release clothing shall be provided as described in the Program Statement on Release Gratuities, Transportation, and Clothing. For non-MINT referrals, at a minimum, release clothing is to include adequate clothing to

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complete a job search and perform work. Additionally, an outer garment, seasonably suitable for weather conditions at the inmate's release destination, shall be provided.

d. Medication. No later than **one week** prior to an inmate's approved transfer, Health Services staff shall review the inmate's medical record to determine if the inmate is on continuous medication. When an inmate is transferred to a CCC, a 30-day supply of chronic medication shall be provided pursuant to a new prescription. If an inmate is prescribed a controlled substance, assistance from the CCM may be required to determine if the CCC can accommodate the inmate's special medication needs. Staff should refer to the Health Services Manual for further clarification. CCC staff are to safeguard, store, and dispense controlled substances in accordance with the terms of their Bureau contracts.

e. Identification. It is essential that each inmate have some acceptable form of identification while at a CCC. Therefore, during Institution Release Preparation Programs, unit staff shall assist inmates to acquire social security cards (mandatory) and, if possible, drivers license, and copies of their birth certificates. Additional photo identification may be required if the inmate is using air transportation. These items may be given to an inmate on the transfer date, or mailed to CCCs **prior to** transfer with the materials described in subsection b. above.

f. Community Custody Status. An inmate must be assigned "COMMUNITY" custody status prior to transfer to a CCC. Unit staff shall state the inmate's current custody status if other than "COMMUNITY" on the Transfer Order in the Custody Classification section. Next to the current custody, unit staff shall type "Community custody effective on (whatever date the Warden deems appropriate)."

g. Parole Commission Review of Disciplinary Action. An inmate who has had a discipline hearing resulting in a Discipline Hearing Officer finding, after USPC action to establish a presumptive or effective parole date, may not be transferred to a CCC until the Commission has considered the disciplinary report and final action has been taken.

h. Sentence Calculation. The Inmate Systems Manager (ISM) of the sending institution shall ensure that an inmate's old law sentence computation is "complete" with all appropriate good time entered before the inmate departs the institution.

i. Final Review of 3621(e) Eligibility. The decision to grant an inmate early release is a significant one for the Bureau; therefore, it is essential that unit staff carefully review relevant statutory and regulatory criteria before an inmate's final release under 18 U.S.C. § 3261(e). Specifically, the Unit

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Manager or designee must ensure completion of "Final Review of 3621(e) Eligibility" (Attachment K from the Drug Abuse Programs Manual), before unescorted transfer to a CCC or release to a detainer (Drug Abuse Programs Manual, Inmate). Attachment K must be completed and routed to the Warden. Ordinarily, Attachment K should be routed to the Warden along with other CCC release paperwork (i.e., transfer order, furlough application, etc.); however, a copy of Attachment K is not forwarded to the CCC.

The Drug Abuse Program (DAP) Coordinator and CMC must review and sign Attachment K prior to the Warden's review. The DAP Coordinator's review is to ensure that items 5, 7, and 8 are accurate. Once Attachment K is signed and dated, the Unit Manager must ensure that a copy is filed in the disclosable portion of Section 5 (release processing) in the Inmate Central File. The original Attachment K shall be forwarded to the ISM for filing in the Judgment and Commitment (J&C) file.

No inmate shall be released from an institution to a CCC (or detainer) until the ISM receives the Attachment K with appropriate signatures.

j. Education. To assist an inmate in securing employment, the inmate should have a resume', a copy of his or her education transcript, GED certificate, and any other education/vocational training certificates completed during his or her confinement.

k. Exemption from Time Requirements. When transfer dates have not been established in time for staff to implement the above procedures within the time requirements, they shall be accomplished as soon thereafter as possible.

14. TRANSFER AND ARRIVAL NOTIFICATION

a. Transportation Costs. Staff are referred to the Program Statement on Furloughs for procedures regarding transportation costs for inmates scheduled for transfer to a CCC.

b. Notification of Travel Schedule. On the date of transfer, the sending institution's ISM shall notify the CCM via BOPNet GroupWise of the inmate's departure and travel schedule. A copy of this notification shall be placed in the inmate's J&C file. If GroupWise is inoperable, the notification shall be made by telephone and documented in the J&C file.

c. Arrival Notification. CCC staff shall notify CCMs immediately when an inmate arrives as a transfer from an institution. Immediately means:

- (1) Upon arrival, if during regular CCM working hours; or
- (2) At the first opportunity during regular CCM working

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hours if arrival is during evenings, weekends, or holidays.

d. Electronic Notification. By close of the business day following an inmate's scheduled arrival, the CCM shall "admit" the inmate in SENTRY, if the CCC has confirmed the inmate's arrival. When GroupWise is inoperable, notification of arrival shall be made by telephone to the sending institution's ISM, and the inmate "admitted" in SENTRY at the earliest opportunity.

e. Escape. If an inmate has not arrived at the CCC within a reasonable period after the scheduled arrival time (no later than 24 hours), the CCM shall report the inmate as an escapee. Then, the ISM at the sending institution must be notified immediately by telephone or GroupWise.

The ISM at the sending institution is responsible for updating SENTRY to indicate the change in release status from "furlough transfer" to "escape" as of the date the inmate fails to report. The ISM at the sending institution also shall make the inmate's sentence computation inoperative as of the date following the escape. Staff at the sending institution shall write an incident report and conduct a UDC/DHO hearing in absentia. The sending institution shall make all notifications required by the Program Statement on Escapes/Deaths Notification. The ISM at the sending institution shall also notify the FBI of the inmate escape. The ISM at the sending institution must also fax a copy of the Notice of Escaped Federal Prisoner (BP-393) to the FBI, U.S. Marshals Service, local law enforcement officials, and law enforcement at the inmate's home of record. The Inmate Central File is to be retained at the sending institution.

The CCM shall notify the U.S. Marshals Service in the CCC district. The CCM shall also notify the Regional Director, the Central Office, and the sending institution via GroupWise of the escape.

f. Arrival Confirmation. The ISM at the sending institution shall use SENTRY to confirm an inmate's arrival at a CCC. When an inmate's arrival is confirmed, the ISM shall forward the following documents to the CCM by certified mail:

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(1) Applicable release forms and certificates that have been completed insofar as is possible by unit staff and reviewed by ISM;

(2) Victim/Witness Notification form (BP-323), if applicable;

(3) Completed and current committed fine forms and all related documentation such as the PSI, if applicable;

(4) Copies of conditions of supervised release, if applicable; and

(5) Appropriate forms and other documentation concerning final good conduct time awards for an inmate sentenced under the CCCA.

15. INMATE CENTRAL FILE. The Inmate Central File shall be retained at the institution consistent with provisions established in the Program Statement on Inmate Central File, Privacy Folder, and Parole Mini-files.

/s/

Kathleen Hawk Sawyer
Director

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Attachment A

Sample letter for Wardens to send to Chief USPOs

John Jones, Chief USPO
Judicial District
Street Address
City, State Zip Code

Re: Doe, John
Reg. No.: 12345-678

Dear Mr. Jones:

The above-noted inmate will complete his/her sentence on _____ and is being considered for referral to a Community Corrections Center (CCC) on or about _____ for prerelease services. Because of certain factors in this offender's case, we are closely reviewing his/her appropriateness for CCC placement. Therefore, I am soliciting your view in this matter recognizing that your office will soon be responsible for supervising this offender in the community.

Please indicate below whether or not you favor release through a CCC for this offender. Feel free to attach additional comments. If you favor release through a CCC, I ask that you consider providing some assistance in initiating the supervision process while the offender resides in the CCC. Please return this letter as soon as possible so that release planning can be finalized.

Thank you for your assistance in this matter of mutual concern.

Sincerely,

Warden

_____ Yes, I favor referral to a CCC for
prerelease services.

_____ No, I do not favor referral to a CCC.

Comments: _____

Chief USPO
District

Date

Please refer to the latest issuance of BOPDOCS for a copy of BP-S210.073,
INSTITUTIONAL REFERRAL FOR CCC PLACEMENT.

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**INSTRUCTIONS FOR COMPLETION OF INSTITUTIONAL REFERRAL FOR CCC
PLACEMENT**

All federal institutions shall use the standard form "Institutional Referral for CCC Placement", BP-210, when referring inmates for community corrections placement in any type of community program.

The following instructions will be followed when completing the form:

GENERAL INFORMATION:

- ♦ Use the current EMS Community Corrections Directory (BOP COMM CORR DIR) or BOPDOCS Community Corrections Directory to determine the appropriate CCM.
- ♦ All referrals shall be signed by the Warden.
- ♦ Provide the inmate's full committed name and register number. The inmate's unit should also be included.
- ♦ Identification of Unit Manager and GroupWise mailbox codes will expedite notification.
- ♦ Institution name and mailing address allows CCC staff to send materials directly to the unit manager.

SPECIFIC INFORMATION:

1. Indicate the inmate's city of residence upon release. A complete address should be included in current progress report. Indicate the federal district of supervision.

2. The ISM shall insure the anticipated release date provided on the referral includes all eligible good time earnings. The date should be an accurate estimate of the date the inmate is to be released from custody. If release is by parole, only the parole date needs to be indicated. At the time of this review, the ISM will insure there are no detainers that would prevent CCC transfer.

3. Staff specifying a recommended placement date shall further indicate that the CCM should not adjust that date. (Include this information in Item 12.) CCMs shall adhere to the recommended date, with any adjustment only being downward due to budget or bedspace constraints as a factor.

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For MINT referrals, staff should provide a specific date of placement, which is normally two months prior to the requested delivery date. Planned periods of longer than six months require the Regional Director's approval and the Chief U.S. Probation

Officer in the inmate's sentencing district to determine whether the judge concurs with the placement. (Include this information in Item 12.)

4. Indicate the date the report was submitted and attach a copy of any transmittal memo to the USPC.

5. An inmate who has been scheduled for a statutory interim hearing may not be transferred to a CCC until after the hearing or unless the inmate waives the hearing. If neither is the case, the CCM will hold the referral in abeyance until the matter is resolved. This information should be included in item 11.

6. Offenders sentenced under the Sentencing Reform Act or the Anti-Drug Abuse Act may have a term of supervised release following confinement. Offenders convicted of drug offenses may have a Special Parole Term.

7. Indicate if the inmate has "aftercare" requirements (must be imposed as a supervision condition by the U.S. Parole Commission, or the sentencing court). This helps the CCM select the most appropriate facility.

8. If the inmate is a Central Inmate Monitoring case, the Warden has clearance authority on all CIM cases with the exception of WITSEC cases. The Inmate Monitoring Section, Central Office will provide CIM clearance for WITSEC cases.

9. If the area of referral is not the sentencing district, staff will forward release planning materials to the probation office in the proposed district of supervision. Institution staff should refer to the Operations Memorandum on Release Planning, Inmate - Memorandum of Understanding (MOU) Between the BOP and the Administrative Office of the U.S. Courts for further instructions. At the time of the unit team's recommendation for CCC placement, the case manager should submit release plans to the USPO if other than the sentencing district. A relocation acceptance letter should be included in the CCC referral packet. Additionally, for inmates releasing in their sentencing district, a copy of the proposed supervised release plan with the final progress report shall be forwarded to the probation office in the sentencing district for verification of residence and employment.

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10. The Program Statement on Fines and Costs describes institution responsibilities for CCC transfers for inmates who have fines. If the inmate has a committed fine, include this information in item 11.

11. It is extremely important to include any information that might have a bearing on the facility's decision to accept the inmate for placement. Information on outstanding detainers or pending charges must be included. Indicate if there is a substance abuse history. Also, indicate if the inmate has successfully completed the institutional phase of the comprehensive drug treatment program. If more space is needed, attach an additional page.

12. Information on special needs of the individual and/or unusual circumstances is very important for staff in deciding on acceptance and setting up an individual program plan once the inmate is accepted. If staff wish to recommend a specific facility or program, they may include that information here. The CCM, in managing the CCC population, will consider the referenced special needs when establishing an acceptance date. Therefore, detailed and specific comments in this section are very helpful. If more space is needed, attach an additional page. Prenatal care needs should be addressed also.

Inmates who are released from institutions with a condition of parole, mandatory release, or supervised release that requires they reside in a CCC must be referred for CCC placement prior to their release. CCMs will notify institutions of acceptance or rejection.

13. For MINT referrals, indicate the expected date of delivery. and the projected date of the inmate's return to the parent institution.

•INFORMATION TO BE INCLUDED IN THE CCC REFERRAL PACKET TO CCM:

A checklist is provided on the referral form to insure that all necessary material is included. CCMs who receive referrals without the required information or documents are instructed to hold the referral in abeyance until they are able to obtain the information from the institution.

Referral Form

All items shall be completed. Do not indicate "See progress report".

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Current Progress Report

A current progress report (less than 180 days old at time of referral), including any significant new information that is available since the report was written, must be included with the referral. Especially important is specific information regarding proposed residence and employment (including telephone numbers), availability of other community resources, and any other information regarding release plans.

Presentence Investigation/Violation Report

Two copies of all relevant presentence investigation/violation report(s).

Community Based Program Agreement

This form allows facility staff to discuss the referral with family, potential employers, and other community resources and notifies the inmate of any special conditions of CCC residence such as financial responsibility and urinalysis. This form also acknowledges the inmate's agreement to comply with the rules and regulations of the Home Confinement program and stipulates that participation in home confinement may be an alternative to placement in a Community Corrections Center. Additionally, for MINT referrals, it notifies the inmate or the guardian/foster care provider of their responsibility for medical care and subsistence of the child while in a community based program.

BP-339 CIM Case Information Summary

This document is required for all CIM assignments except for "pure" separation cases.

USPO Acceptance Letter

If an inmate is releasing to a district other than the sentencing district, a relocation acceptance letter from the appropriate USPO must be included in the referral packet.

Copy of Latest Parole Commission Notice of Action

Provide the most current copy which includes specific action, such as the presumptive parole date, effective parole date, continue to expiration, etc.

BP-351 Medical Evaluation for Transfer of Inmates to CCC Type Facility

Must be completed prior to the referral in order to advise the facility of potential problems or special medical needs.

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Judgment and Commitment Order

Serves as documentation of authority to maintain custody and identifies special commitment conditions. If necessary, this document can be provided to the U.S. Marshals Service for purposes of apprehension or maintaining custody.

Statement of Responsibility (MINT Referrals)

For MINT referrals, this serves to notify the CCM, CCC, and institution staff of who will assume custody and total financial responsibility for the child.

•INFORMATION TO BE FORWARDED TO THE TRANSITIONAL SERVICES

MANAGER:

Information should be forwarded to the TSM in the region where the inmate is releasing. Staff are to refer to the Drug Abuse

Programs Manual, Inmate for additional information for responsibilities/documentation.

Treatment Summary and Referral Form - Drug Abuse Treatment Programs

This form provides assessment findings, treatment progress and other pertinent information for inmates who are graduates of Residential Drug Abuse Programs.

Agreement to Participate in Community Transition Programming

By signing this form, the inmate acknowledges that he/she understands and agrees to comply with program rules and regulations of the Bureau's community-based drug programs.

Progress Report

Refer to summary provided in "Current Progress Report" for INFORMATION TO BE INCLUDED IN THE CCC REFERRAL PACKET TO CCM.

Referral Form

Refer to summary provided in "Referral Form" for INFORMATION TO BE INCLUDED IN THE CCC REFERRAL PACKET TO CCM.

OTHER INFORMATION

Any information or documents believed to be necessary to assist in the pre-release planning process. A current psychological report should be included if it is anticipated the inmate will have mental health needs.

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Correspondence from/to family, friends, prospective employers, probation officers, etc., that may provide specific information about release plans and resources. A copy of the referral form is sent to the CUSPO in the sentencing district and the district of supervision. Other pertinent documents will have already been sent by the institution to these offices.

Procedures

For inmates being referred to contract facilities, the CCM will forward the referral to the appropriate facility, with instructions for the facility director to reply to the CCM with a copy to the referring institution. In addition to the transfer date, the facilities letter of acceptance will usually include documents for the inmate to sign and return prior to transfer. Such documents should be returned to the CCC by institution staff with the BP-385(51), transfer order and furlough papers.

The CCM maintains a copy of the referral for reference, should any questions arise from the facility, USPO, inmate's family or the institution.

Using institution records, unit staff will complete as much information as they can on release paperwork. Only the "unknowns" which must be determined while the inmate is in the CCC will be left blank. Inmates do not sign release papers (acknowledging they understand supervision conditions) and institution staff do not sign "certifying release" prior to an inmate's transfer. These certifications are done by CCC staff at the time of an inmate's release.

The institution is responsible for typing all information on release certificates. The line "now confined in the" shall specify the name of the CCC from which the inmate is to be released.

The inmate should sign the space at the bottom of the release certificate indicating an understanding of the conditions of release before departure from the CCC. The CCC Director is to sign the bottom portion of the form as the Chief Executive Officer verifying the inmate's release.

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Attachment C

Please refer to the latest issuance of BOPDOCS for a copy of BP-S434.073
COMMUNITY BASED PROGRAM AGREEMENT.

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Attachment D

Sample Statement of Responsibility for MINT Referral

Name
Address
City, State Zipcode

RE: DOE, Jane
12345-678

Dear _____:

Jane Doe, an inmate currently confined at the Federal Correctional Institution, _____ (city), _____ (state), has been accepted into the Mothers and Infants Together (MINT) Program and is tentatively scheduled to furlough transfer to _____ (name of facility), _____ (address), on _____. She has an anticipated delivery date of _____.

Ms. Doe advises that you, the father of the baby, will assume custody of the child, to include financial responsibility for medical care costs upon her release from the MINT Program. She indicated that your telephone number is _____.

Accordingly, by signing this letter, you agree to assume custody of the child, including financial responsibility for medical care costs once Ms. Doe is released from the MINT Program.

Please return this letter to the inmate's case manager, _____. If there are any questions or concerns, please do not hesitate to contact me at _____ (full phone number).

Sincerely,

XXXXX
Unit Manager

Signature of person assuming care and financial
responsibility for Ms. Doe's baby / relationship
to inmate

Date

cc: CCM
CCC
HSA
Controller
Central File

Exhibit 2

STOP THE SPREAD OF GERMS

Help prevent the spread of respiratory diseases like COVID-19.

Avoid close contact with people who are sick.



Cover your cough or sneeze with a tissue, then throw the tissue in the trash.



Avoid touching your eyes, nose, and mouth.



Clean and disinfect frequently touched objects and surfaces.



Stay home when you are sick, except to get medical care.



Wash your hands often with soap and water for at least 20 seconds.



DETENGA LA PROPAGACIÓN DE LOS MICROBIOS

Ayude a prevenir la propagación de enfermedades respiratorias como el COVID-19

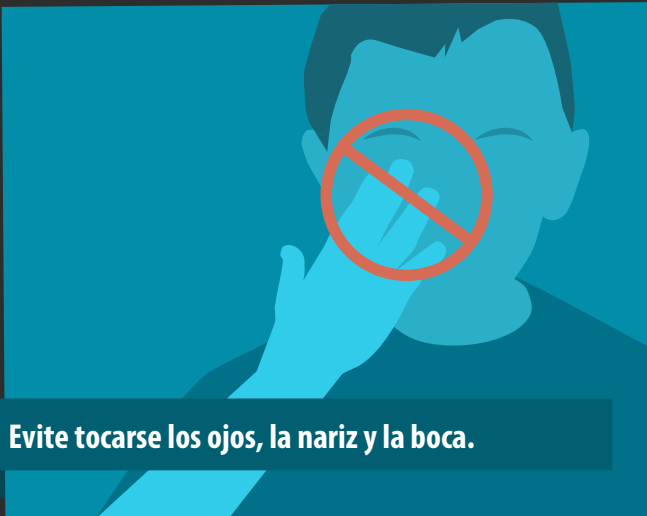
Evite el contacto cercano con las personas enfermas.



Cúbrase la nariz y la boca con un pañuelo desechable al toser o estornudar y luego bótelos a la basura.



Evite tocarse los ojos, la nariz y la boca.



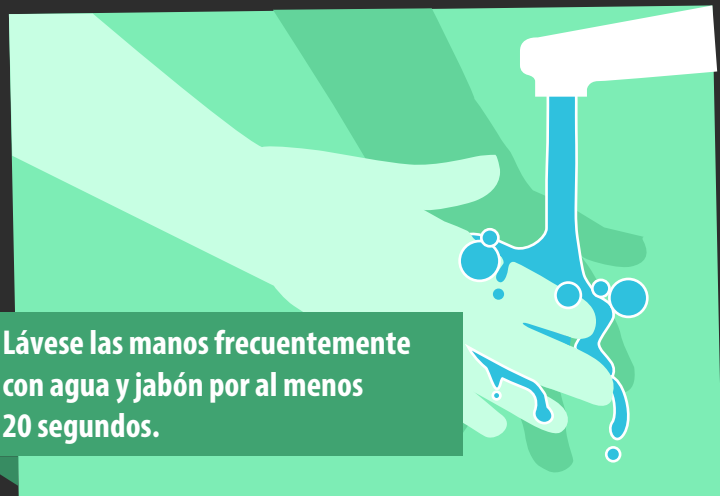
Limpie y desinfecte los objetos y las superficies que se tocan frecuentemente.



Quédese en casa si está enfermo, excepto para buscar atención médica.



Lávese las manos frecuentemente con agua y jabón por al menos 20 segundos.



cdc.gov/COVID19-es

What to do if you are sick with coronavirus disease 2019 (COVID-19)

If you are sick with COVID-19 or suspect you are infected with the virus that causes COVID-19, follow the steps below to help prevent the disease from spreading to people in your home and community.

Stay home except to get medical care

You should restrict activities outside your home, except for getting medical care. Do not go to work, school, or public areas. Avoid using public transportation, ride-sharing, or taxis.

Separate yourself from other people and animals in your home

People: As much as possible, you should stay in a specific room and away from other people in your home. Also, you should use a separate bathroom, if available.

Animals: Do not handle pets or other animals while sick. See [COVID-19 and Animals](#) for more information.

Call ahead before visiting your doctor

If you have a medical appointment, call the healthcare provider and tell them that you have or may have COVID-19. This will help the healthcare provider's office take steps to keep other people from getting infected or exposed.

Wear a facemask

You should wear a facemask when you are around other people (e.g., sharing a room or vehicle) or pets and before you enter a healthcare provider's office. If you are not able to wear a facemask (for example, because it causes trouble breathing), then people who live with you should not stay in the same room with you, or they should wear a facemask if they enter your room.

Cover your coughs and sneezes

Cover your mouth and nose with a tissue when you cough or sneeze. Throw used tissues in a lined trash can; immediately wash your hands with soap and water for at least 20 seconds or clean your hands with an alcohol-based hand sanitizer that contains at least 60 to 95% alcohol, covering all surfaces of your hands and rubbing them together until they feel dry. Soap and water should be used preferentially if hands are visibly dirty.

Avoid sharing personal household items

You should not share dishes, drinking glasses, cups, eating utensils, towels, or bedding with other people or pets in your home. After using these items, they should be washed thoroughly with soap and water.

Clean your hands often

Wash your hands often with soap and water for at least 20 seconds. If soap and water are not available, clean your hands with an alcohol-based hand sanitizer that contains at least 60% alcohol, covering all surfaces of your hands and rubbing them together until they feel dry. Soap and water should be used preferentially if hands are visibly dirty. Avoid touching your eyes, nose, and mouth with unwashed hands.

Clean all "high-touch" surfaces every day

High touch surfaces include counters, tabletops, doorknobs, bathroom fixtures, toilets, phones, keyboards, tablets, and bedside tables. Also, clean any surfaces that may have blood, stool, or body fluids on them. Use a household cleaning spray or wipe, according to the label instructions. Labels contain instructions for safe and effective use of the cleaning product including precautions you should take when applying the product, such as wearing gloves and making sure you have good ventilation during use of the product.

Monitor your symptoms

Seek prompt medical attention if your illness is worsening (e.g., difficulty breathing). **Before** seeking care, call your healthcare provider and tell them that you have, or are being evaluated for, COVID-19. Put on a facemask before you enter the facility. These steps will help the healthcare provider's office to keep other people in the office or waiting room from getting infected or exposed.

Ask your healthcare provider to call the local or state health department. Persons who are placed under active monitoring or facilitated self-monitoring should follow instructions provided by their local health department or occupational health professionals, as appropriate.

If you have a medical emergency and need to call 911, notify the dispatch personnel that you have, or are being evaluated for COVID-19. If possible, put on a facemask before emergency medical services arrive.

Discontinuing home isolation

Patients with confirmed COVID-19 should remain under home isolation precautions until the risk of secondary transmission to others is thought to be low. The decision to discontinue home isolation precautions should be made on a case-by-case basis, in consultation with healthcare providers and state and local health departments.



For more information: www.cdc.gov/COVID19

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Lo que necesita saber sobre la enfermedad del coronavirus 2019 (COVID-19)

¿Qué es la enfermedad del coronavirus 2019 (COVID-19)?

La enfermedad del coronavirus 2019 (COVID-19) es una afección respiratoria que se puede propagar de persona a persona. El virus que causa el COVID-19 es un nuevo coronavirus que se identificó por primera vez durante la investigación de un brote en Wuhan, China.

¿Pueden las personas en los EE. UU. contraer el COVID-19?

Sí. El COVID-19 se está propagando de persona a persona en partes de los Estados Unidos. El riesgo de infección con COVID-19 es mayor en las personas que son contactos cercanos de alguien que se sepa que tiene el COVID-19, por ejemplo, trabajadores del sector de la salud o miembros del hogar. Otras personas con un riesgo mayor de infección son las que viven o han estado recientemente en un área con propagación en curso del COVID-19.

¿Ha habido casos de COVID-19 en los EE. UU.?

Sí. El primer caso de COVID-19 en los Estados Unidos se notificó el 21 de enero del 2020. La cantidad actual de casos de COVID-19 en los Estados Unidos está disponible en la página web de los CDC en <https://www.cdc.gov/coronavirus/2019-ncov/cases-in-us.html>.

¿Cómo se propaga el COVID-19?

Es probable que el virus que causa el COVID-19 haya surgido de una fuente animal, pero ahora se está propagando de persona a persona. Se cree que el virus se propaga principalmente entre las personas que están en contacto cercano unas con otras (dentro de 6 pies de distancia), a través de las gotitas respiratorias que se producen cuando una persona infectada tose o estornuda. También podría ser posible que una persona contraiga el COVID-19 al tocar una superficie u objeto que tenga el virus y luego se toque la boca, la nariz o posiblemente los ojos, aunque no se cree que esta sea la principal forma en que se propaga el virus. Infórmese sobre lo que se sabe acerca de la propagación de los coronavirus de reciente aparición en <https://www.cdc.gov/coronavirus/2019-ncov/about/transmission-sp.html>.

¿Cuáles son los síntomas del COVID-19?

Los pacientes con COVID-19 han tenido enfermedad respiratoria de leve a grave con los siguientes síntomas:

- fiebre
- tos
- dificultad para respirar

¿Cuáles son las complicaciones graves provocadas por este virus?

Algunos pacientes presentan neumonía en ambos pulmones, insuficiencia de múltiples órganos y algunos han muerto.

¿Qué puedo hacer para ayudar a protegerme?

Las personas se pueden proteger de las enfermedades respiratorias tomando medidas preventivas cotidianas.

- Evite el contacto cercano con personas enfermas.
- Evite tocarse los ojos, la nariz y la boca con las manos sin lavar.
- Lávese frecuentemente las manos con agua y jabón por al menos 20 segundos. Use un desinfectante de manos que contenga al menos un 60 % de alcohol si no hay agua y jabón disponibles.

Si está enfermo, para prevenir la propagación de la enfermedad respiratoria a los demás, debería hacer lo siguiente:

- Quedarse en casa si está enfermo.
- Cubrirse la nariz y la boca con un pañuelo desechable al toser o estornudar y luego botarlo a la basura.
- Limpiar y desinfectar los objetos y las superficies que se tocan frecuentemente.

¿Qué debo hacer si he regresado recientemente de un viaje a un área con propagación en curso del COVID-19?

Si ha llegado de viaje proveniente de un área afectada, podrían indicarle que no salga de casa por hasta 2 semanas. Si presenta síntomas durante ese periodo (fiebre, tos, dificultad para respirar), consulte a un médico. Llame al consultorio de su proveedor de atención médica antes de ir y dígame sobre su viaje y sus síntomas. Ellos le darán instrucciones sobre cómo conseguir atención médica sin exponer a los demás a su enfermedad. Mientras esté enfermo, evite el contacto con otras personas, no salga y postergue cualquier viaje para reducir la posibilidad de propagar la enfermedad a los demás.

¿Hay alguna vacuna?

En la actualidad no existe una vacuna que proteja contra el COVID-19. La mejor manera de prevenir infecciones es tomar medidas preventivas cotidianas, como evitar el contacto cercano con personas enfermas y lavarse las manos con frecuencia.

¿Existe un tratamiento?

No hay un tratamiento antiviral específico para el COVID-19. Las personas con el COVID-19 pueden buscar atención médica para ayudar a aliviar los síntomas.



Exhibit 3

On March 13, 2020, BOP's Central Office issued nationwide guidance regarding modified operations to prevent and mitigate the spread of COVID-19. Available at: https://www.bop.gov/coronavirus/covid19_status.jsp

SOCIAL VISITS: Social visits are suspended. Inmate telephone system minutes will be increased to 500 minutes per calendar month Bureau-wide.

INMATE MOVEMENT (Updated): As we previously described generally, inmate internal movement is suspended with limited exceptions. This suspension, however, does not mean the BOP has ceased all inmate movements because the federal judicial system as well as state courts continue to process criminal cases.

These movement exceptions may include, but are not limited to, transfers related to forensic studies, writs, Interstate Agreements on Detainers (IAD), medical or mental health reasons (including local medical trips), and RRC placements. **To be clear, the BOP may need to move inmates to better manage the detention bedspace as well as assure that administrative facilities do not become overcrowded beyond available resources.**

All inmates are being authorized for movements from **all facilities** under the following conditions:

- Inmates must have been in BOP custody for greater than 14 days;
- Perform an exit screening for COVID-19 symptoms (fever, cough, shortness of breath and temperature).
 - If the inmate has no symptoms and a temperature less than 100.4 degrees F, the inmate will be transferred;
 - If the inmate has COVID-19 symptoms, or temperature greater than 100.4 degrees F, they will not be transferred and will instead be immediately placed in isolation.
- Regional Directors will notify the BOP Emergency Operations Center prior to movement in order to track and monitor movement.

The BOP emphasizes that all inmates regardless of where they are being housed are screened for COVID-19 prior to movement. Both the BOP and USMS are using screening protocols for both inmates and staff.

LEGAL VISITS: Legal visits will be suspended for 30 days, at which time the suspension will be re-evaluated. Case-by-case approval at the local level and confidential legal calls will be allowed in order to ensure access to counsel. If approved for an in-person visit, the attorney will need to undergo screening using the same procedures as staff.

Access to legal counsel remains a paramount requirement and will be accommodated to the maximum extent practicable. Although legal visits are generally suspended for 30-days, case-by-case accommodation will be made at the local level. If approved for an in-person visit, the attorney will need to undergo advanced health screening, to include a temperature check.

OFFICIAL STAFF TRAVEL: Official staff travel, with the exception of relocation travel, is suspended.

TRAINING: All staff training is suspended (to include conferences and meetings), with the exception of basic training for new staff.

CONTRACTORS: Contractors performing essential services or necessary maintenance on essential systems will undergo advanced health screening, to include a temperature check. All other contractor access is suspended. Contractors who require access will be screened using the same procedures as staff prior to entry.

Essential services include, for example, medical services, mental health services, religious services and critical infrastructure repairs.

A copy of [the Visitor/Volunteer/Contractor COVID-19 Screening Tool](#) will be required for all visitors, volunteers, and contractors. A copy will be provided by staff members at the lobby for all institutions.

VOLUNTEERS: Volunteer visits are suspended, unless approved by the Deputy Director of the BOP. Alternate means of communication will be considered for inmates who request to speak with a religious advisor. Volunteers who are approved for access will be screened using the same procedures as staff prior to entry.

A copy of [the Visitor/Volunteer/Contractor COVID-19 Screening Tool](#) will be required for all visitors, volunteers, and contractors. A copy will be provided by staff members at the lobby for all institutions.

SCREENING OF STAFF: Enhanced health screening of staff will be implemented in areas with "sustained community transmission" and at medical referral centers. Sustained community transmission is determined by the CDC and will be indicated on the map on this [resource page](#) where state community transmission indicates "Yes". Such screening includes self-reporting and temperature checks for the next 30 days, at which time the process will be reevaluated.

SCREENING OF INMATES: The BOP will continue to screen inmates for COVID-19 following previously-indicated practices:

- All newly-arriving BOP inmates are screened for COVID-19 exposure risk factors and symptoms.
- Asymptomatic inmates with exposure risk factors are quarantined.
- Symptomatic inmates with exposure risk factors will be isolated and tested for COVID-19 per local health authority protocols.

TOURS: Tours are suspended. Any exceptions must be approved by the Deputy Director. If approved, participants will be screened using the same procedures as staff prior to entry.

MODIFIED OPERATIONS: BOP is implementing modified operations to maximize social distancing in our facilities, as much as practicable. Such actions will include consideration of staggered meal times and staggered recreation times, for example, in order to limit congregate gatherings.

PRIVATE DETENTION CONTRACTORS: This COVID-19 guidance is being shared with private prisons and RRCs for dissemination to staff and inmates in these facilities, so that similar protocols can be implemented.

* * *

Further BOP guidance at: https://www.bop.gov/coronavirus/overview.jsp#bop_emergency_response

BOP's COVID-19 Response

In February 2020, the BOP's Public Health Service (PHS) staff were placed in operational dress uniforms to be ready to respond to COVID-19 incidents by the Assistant Secretary for Health (OASH) of the Department of Health and Human Services (HHS). As a result, the BOP began planning for its COVID-19 response and instituted a comprehensive management approach for oversight of the situation. Oversight includes all BOP Regional Offices, all BOP Central Office Divisions (which oversee program level functions), and the National Institute of Corrections (NIC) that coordinates with state and local prisons and jails. The BOP implemented its approved Pandemic Influenza Plan.

The BOP's planning is structured using the Incident Command System (ICS) framework. The BOP is utilizing the guidance and directives from the World Health Organization (WHO), the Centers for Disease Control (CDC), the Office of Personnel Management (OPM), DOJ and the Office of the Vice President. The BOP's Incident Action Plan includes but is not limited to the COOP plans, supplies, inmate movement, visitation, staff training, and official staff travel. The ICS Command Center conducts daily briefings and provides updates to senior management. BOP institutions, as a matter of policy and procedure, have pandemic plans for preparedness in the event of any infectious disease outbreak.

Guidance memos have been issued from Central Office, including guidance sent by the BOP Medical Director to all field clinical personnel on January 31, 2020 and on February 29, 2020. The guidance described screening best practices, provided inmate and staff screening tools, and CDC best practices/flyers as to preventing the spread of the disease. The screening tool for staff has been published on the BOP's internal and public websites. On March 6, 2020, additional guidance was sent to BOP field sites to assess and review the BOP's Personal Protective Equipment (PPE) inventory. A national acquisition plan is being executed to obtain bulk purchases, stockpile supplies and coordinate distribution. The inventory of infectious disease

PPE supplies has already been completed at all BOP locations and the use of alternative supply chain options is being explored. Guidance from the BOP's Health Services Division and the Human Resource Management Division was issued to all BOP staff on March 9, 2020 regarding COVID-related screening for staff and how leave should be assigned (BOP leave protocols follow OPM guidance).

CORONAVIRUS DISEASE 2019 (COVID-19) INMATE SCREENING TOOL

1. Assess the Risk Of Exposure		
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Traveled from, or through, any of the locations identified by the CDC as increasing epidemiologic risk within the last 14 days? Link to CDC Criteria
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Had close contact with anyone diagnosed with the COVID-19 illness within the last 14 days?
If the answer to ALL the above risk of exposure questions is NO, then STOP here and proceed with normal intake. If the answer to ANY of the above risk of exposure questions is YES, then immediately assess symptoms.		
2. Assess Symptoms		Date of Onset:
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Fever (Fever may not be present in some patients, such as elderly, immunosuppressed, or taking certain medications. Fever may be subjective or objective).
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Cough
<input type="checkbox"/> Yes	<input type="checkbox"/> No	Shortness of Breath (SOB)
3. Implement Infection Prevention Control Measures if YES to the above questions in (2).		
3a. The Symptomatic Patient		
If the patient has any symptoms, implement Standard, Contact, and Airborne Precautions with Eye Protection		
<input type="checkbox"/> Report case promptly to facility leadership, infection prevention and control (IPC), public health and Regional and Central Office QIIPC Consultants. <input type="checkbox"/> Place a surgical mask on the patient and minimize proximity to staff and inmates <input type="checkbox"/> All staff escorting, evaluating, or in close contact (6 ft.) with the patient should perform hand hygiene, put on gloves, gown, fit-tested respirator (N-95), goggles or face shield and gloves before room entry or inmate contact. Inmate will wear a surgical mask. Doffing: gloves, gown, exit room, doff face shield then N-95 and wash hands. <input type="checkbox"/> Escort patient to a <i>certified</i> Airborne Infection Isolation (All) room. <input type="checkbox"/> If no All room is available, isolate in room with door closed and <i>preferably</i> air is exhausted outside. <input type="checkbox"/> Prepare for transport to a designated referral healthcare facility in coordination with the local public health authority (do not call for transport service without prior notification and escort in place to move inmate). <input type="checkbox"/> Minimize and keep a log of all persons interacting with (6ft.) or caring for, the inmate. <input type="checkbox"/> Once the All room is empty for two hours, it can be cleaned and disinfected with an EPA registered disinfectant (Emerging viral pathogens claim), by a person in proper PPE. <input type="checkbox"/> Waste disposal: Double bag trash as hazardous waste. Linens: Double bag in linen hazard bag for washing in central laundry		
3b. The Asymptomatic Patient		
If the patient has no symptoms house in a single cell, and implement Standard, Contact and Droplet Precautions with Eye Protection		
<input type="checkbox"/> Report case to facility leadership, QIIPC, public health and Regional and Central Office QIIPC Consultants. <input type="checkbox"/> House patient in a single cell. The preferred location is within Health Services. If unable to house patient in a single cell contact Regional and Central Office Infection Prevention and Control Consultants. <input type="checkbox"/> Limit # of persons interacting with inmate. Utilize social distancing (6 ft.). <input type="checkbox"/> Document a daily symptom assessment and temperature (Inmate can self-monitor with disposable thermometer or use non-contact thermometer. Utilize disposable food trays. Have inmate clean and disinfect room daily with disposable towels, if possible. Trash will be double bagged out of room. <input type="checkbox"/> Staff entering room will perform hand hygiene, wear a gown, surgical mask, goggles or face shield and gloves. Inmate will wear a surgical mask. Remove PPE, except face shield and mask at exit. Outside room, remove mask and wash hands. <input type="checkbox"/> Continue modified housing and observation procedures until 14 days after the last possible exposure date. <input type="checkbox"/> If at any time the patient becomes symptomatic, implement the steps in 3a – The Symptomatic Patient.		

Inmate Name (Last, First): _____ Registration # _____

Institution: _____

Provider Name/Signature: _____ Date: _____



U. S. Department of Justice

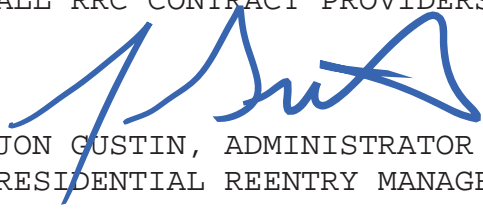
Federal Bureau of Prisons

Reentry Services Division

Washington, D.C 20534

MARCH 24, 2020

TO: ALL RRC CONTRACT PROVIDERS

FROM: 
JON GUSTIN, ADMINISTRATOR
RESIDENTIAL REENTRY MANAGEMENT BRANCH

SUBJECT: Coronavirus (COVID-19) Precautions/Modified Operations for Residential Reentry Centers.

On March 13, 2020 the Bureau of Prisons (Bureau) issued a memorandum providing guidance to all Residential Reentry and Community Treatment Contract Providers as a result of COVID-19.

This informational sheet is to provide additional guidance and recommendations to Residential Reentry Centers (RRC) to ensure consistency and to protect staff, inmates, and the public. As a reminder, all temporary changes to individual contractor's pandemic plans which modify operations should be sent to your Residential Reentry Manager prior to implementation.

- **Breathalyzer/Drug Testing:** Routine Breathalyzer/Drug Testing may be temporarily suspended. Suspect Breathalyzer and Drug testing should still be administered when RRC staff observe an inmate with any signs of impairment indicating alcohol/drug use.
- **Staff Site Checks:** Staff site checks for employment and/or home site verifications may be temporarily suspended in lieu of enhanced accountability through other measures to include Electronic Monitoring, Telephonic Monitoring, Skype or other methods in a manner which provides accountability in lieu of physical site checks. Every effort must be made to conduct initial site checks for employment or Home Confinement locations for locations that have not been previously visited prior to approving employment or home confinement. RRC staff are also encouraged to conduct family orientations via phone and/or video to provide proper orientation.

- Key Staff: Key staff may be temporarily utilized to fill gaps in security and daily operations in instances staff quarantines or other unanticipated shortages.
- Case Management: Allow for telephonic case management meetings with offenders rather than face to face. Case notes should continue to be updated and thoroughly document the interaction with the resident to include the residents' response to the case management meeting. Absence of inmate for signature on the case notes should be documented.
- Subsistence: Effective immediately, all subsistence will waived until further notice, any uncollected amounts at this time should be waived.
- Home Confinement (HC): HC offenders on GPS monitoring may have their required return visits to the facility decreased or suspended. Increased accountability measures as identified above should be adhered to.

Information regarding the Bureau's response to COVID-19 may be found on the Bureau's public website, www.bop.gov. The Bureau appreciates your hard work and continued partnership and will continue to update this guidance as the situation continues to develop.

The Bureau understands individual circumstances may arise outside of the general guidance and recommendations. Questions should be directed to your designated Residential Reentry Manager or Dana DiGiacomo, Assistant Administrator, RRMB, at [REDACTED] or [REDACTED]. They will collaborate with individual RRCs to develop suggestions for local accommodations.

CORONAVIRUS DISEASE 2019 (COVID-19) STAFF SCREENING TOOL**DATE:** _____

1. Temperature:	_____ °F	Method: Mouth	Ear	Forehead
<input type="checkbox"/> If Temperature (Mouth) $\geq 100.4^{\circ}\text{F}$, or Temperature (Ear) $\geq 101^{\circ}\text{F}$, or Temperature (Forehead) $\geq 100^{\circ}\text{F}$ Then Deny Access , Place on Leave (Not Safety & Weather Leave) for 3 days + STOP HERE & Proceed to Section 3				
2. Signs (Employee Complete)				
<input type="checkbox"/> Yes <input type="checkbox"/> No	New On-Set Cough # of Days _____			
<input type="checkbox"/> Yes <input type="checkbox"/> No	New Onset Trouble Speaking because of Needing to take a Breath			
<input type="checkbox"/> Yes <input type="checkbox"/> No	Stuffy/Runny Nose			
<p>➤ Contact the Medical Officer on Call for the Institution to provide Disposition</p> <p>✓ Disposition by Medical Officer Assessment:</p> <div style="margin-left: 40px;"> <input type="checkbox"/> Leave <input type="checkbox"/> Work </div>				
3. Notification of Local Human Resources Department				
<input type="checkbox"/> If Individual is placed on leave for Section 1 or 2, Then share document with HR Office for T&A purpose <p>➤ <u>HR</u></p> <input type="checkbox"/> Please have HSD place this document in the Employee's Medical Folder (Blue Folder) if leave is indicated				

Staff Name (Last, First): _____ Year of Birth (Year): _____

Institution: _____ State: _____

VISITOR/VOLUNTEER/CONTRACTOR COVID-19 SCREENING TOOL

1. Have you.....	
<input type="checkbox"/> Yes <input type="checkbox"/> No	a. Traveled from or through, any of the following locations identified by the CDC as increasing epidemiologic risk for COVID-19 within the last 14 days? China, Iran, South Korea, Italy, Japan
<input type="checkbox"/> Yes <input type="checkbox"/> No	b. Had close contact with anyone diagnosed with the COVID-19 illness within the last 14 days?
2. Do you currently have a	
<input type="checkbox"/> Yes <input type="checkbox"/> No	a. Fever or Chills
<input type="checkbox"/> Yes <input type="checkbox"/> No	b. Cough
<input type="checkbox"/> Yes <input type="checkbox"/> No	c. Shortness of Breath
3. Perform a temperature check _____°F Method: oral / forehead (temporal) / tympanic	
*Staff see instruction sheet for screening form.	

Purpose of Visit (Circle one):

Attorney-legal / Contractor / Volunteer

Social (visiting an inmate) – Inmate name/reg. number _____

Other - _____

Visitor Name (Last, First): _____**Date:** _____**Institution:** _____

VISITOR/VOLUNTEER/CONTRACTOR COVID-19 SCREENING TOOL

Instructions for staff:

The BOP staff member will provide the COVID-19 Screening Tool to all persons entering the lobby (visitors, volunteers, contractors, legal visits, etc.), ask each person to complete questions 1. a-b and 2. a-c. A qualified health care staff member will complete the temperature check.

If answers to all the questions are No, and there are no obvious signs of respiratory infection, e.g. frequent coughing, and temperature is $< 100.4^{\circ}\text{F}$, follow usual procedures.

Social visitors: If answers to any of the questions are YES, *or* if the person has a temperature $\geq 100.4^{\circ}\text{F}$ (oral), *or* if the person has obvious signs of a respiratory illness, ask social visitors to wait in a separate area (6 feet from others or outside), and contact the Operations Lieutenant and/or Institution Duty Officer (IDO), for further direction to the visitor(s). The IDO or Operations Lieutenant should deny visitation and not allow entry into the institution.

Attorney/Contractor/Volunteer: If answers to any of the questions are YES, *or* if the person has a temperature $\geq 100.4^{\circ}\text{F}$ (oral), *or* if the person has obvious signs of a respiratory illness, they should not be allowed entry to the institution.

In the case of an attorney / legal visitor who answers yes to any of the questions, decisions may be made on a case-by-case basis with approval at the local level and confidential legal calls will be allowed.