

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

CRAIG WILSON, ERIC BELLAMY,
KENDAL NELSON, and MAXIMINO
NIEVES, on behalf of themselves and those
similarly situated,

Petitioners,

v.

MARK WILLIAMS, warden of Elkton
Federal Correctional Institutions; and
MICHAEL CARVAJAL, Federal Bureau of
Prisons Director, in their official capacities,

Respondents.

Case No. 4:20-cv-794

Judge _____

**Emergency Petition for Writ of Habeas
Corpus, Injunctive, and Declaratory Relief**

Class Action

IMMEDIATE RELIEF SOUGHT¹

INTRODUCTION

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

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

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

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

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

4. But even were Respondents to take basic measures to allow for cleaning and hygiene, the threat would remain. In fact, there is *no* set of internal protocols or practices that, in light of the current conditions and population levels, Elkton can use that will prevent further disease and death inside the prison. Declaration of Dr. Meghan Novisky ¶ 16 (attached as Exhibit A); Declaration of Dr. Joe Goldenson ¶ 25 (attached as Exhibit B). The only effective option is to begin immediately releasing² Elkton residents based on broadly defined categories, such as membership in a high-risk class based on medical conditions, or proximity to release dates.

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

Novisky Decl. ¶ 17 (“Significantly reducing the prison population at Elkton as rapidly as possible is the best line of defense to maintain the public health interests of persons incarcerated at Elkton, correctional staff who work at Elkton, and the Ohio community”); Goldenson Decl. ¶ 33 (“It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19 ... be released from FCI Elkton and FCL Elkton immediately.”).

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

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

I. JURISDICTION AND VENUE

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

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

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

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

II. PARTIES

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

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

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

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

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

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

III. FACTUAL ALLEGATIONS

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

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

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

³ Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), <https://cutt.ly/UtEuSLC>.

⁴ See Johns Hopkins University of Medicine, *Coronavirus COVID-19 Global Cases by the Center for Systems Science and Engineering at Johns Hopkins University*, <https://cutt.ly/StEyn2U>.

⁵ Rick Noack, et al., *White House Task Force Projects 100,000 to 240,000 Deaths in U.S., Even With Mitigation Efforts*, WASH. POST. (April 1, 2020, 12:02 a.m.), <https://cutt.ly/5tYT7uo>.

⁶ Governor Mike DeWine (@GovMikeDeWine), Twitter (Mar. 14, 2020, 2:19PM), <https://twitter.com/GovMikeDeWine/status/1238892579262992384?s=20>

⁷ Goldenson Decl. ¶ 14 (noting that “only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity”).

⁸ See Centers for Disease Control and Prevention, *How COVID-19 Spreads* (accessed Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html>.

⁹ Neeltje van Doremalen et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, NEW ENG. J. MED., 2 (2020), available at <https://doi.org/10.1056/NEJMc2004973> (accessed Apr 2, 2020).

¹⁰ Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential Implications for Reducing Transmission of COVID-19*, JAMA (2020), <https://jamanetwork.com/journals/jama/fullarticle/2763852> (accessed Apr 2, 2020).

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

19. There is no vaccine against COVID-19, and there is no known medication to prevent or treat infection. Social distancing—deliberately keeping at least six feet of space between persons to avoid spreading the illness¹²—supplemented by a vigilant hygiene regimen, including washing hands frequently and thoroughly with soap and water, is the only known effective measure for protecting against transmission of COVID-19.¹³

20. As a result, the only assured way to curb the pandemic is through dramatically reducing contact for all.¹⁴ Consequently, every American institution—from schools¹⁵ to places of worship,¹⁶ from businesses¹⁷ to legislatures¹⁸—has been exhorted or ordered to reduce the number of people in close quarters, if not to empty entirely.¹⁹ The State of Ohio has issued an extraordinary

¹¹ Novisky Decl. ¶ 6; *see also, e.g.*, Ruiyun Li et al., *Substantial undocumented infection facilitates the rapid dissemination of novel coronavirus (SARS-CoV2)*, SCIENCE (2020), available at <https://cutt.ly/AtNrCxH>.

¹² Johns Hopkins University, *Coronavirus, Social Distancing and Self-Quarantine*, <https://cutt.ly/VtYYiDG>.

¹³ Goldenson Dec. ¶ 15.

¹⁴ Harry Stevens, *Why Outbreaks Like Coronavirus Spread Exponentially, and how to “Flatten the Curve,”* WASH. POST, (Mar. 14, 2020), <https://cutt.ly/etYRnkz>.

¹⁵ Centers for Disease Control and Prevention, *Interim Guidance for Administrators of US K-12 Schools and Child Care Programs*, <https://cutt.ly/ItRPq5n>.

¹⁶ Centers for Disease Control and Prevention, *Interim Guidance for Administrators and Leaders of Community-and Faith-Based Organizations to Plan, Prepare, and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://cutt.ly/KtRPk1k>.

¹⁷ Centers for Disease Control and Prevention, *Interim Guidance for Businesses and Employers to Plan and Respond to Coronavirus Disease 2019 (COVID-19)*, <https://cutt.ly/stRPvg4>.

¹⁸ Nat’l Conf. of State Legislatures, *Coronavirus and State Legislatures in the News*, <https://cutt.ly/4tRPQne.a>

¹⁹ As of April 3, 2020, fully 311 million Americans were being urged by their City, County, Parish, Territory, and/or State governments to stay at home to reduce the spread of coronavirus.

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

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

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

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

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

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

²² Centers for Disease Control and Prevention, *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease (COVID-19)*, <https://cutt.ly/etRPVr1>.

²³ Melissa Healy, *Coronavirus infection may cause lasting damage throughout the body, doctors fear*, LA TIMES (Apr. 10, 2020), available at <https://cutt.ly/htNrJ77>; see also Di Wu et al., *Plasma Metabolomic and Lipidomic Alterations Associated with COVID-19*, MEDRXIV 2020.04.05.20053819 (2020). For high-risk patients who survive, the effect of contracting this virus can be permanent and debilitating, and can include “profound deconditioning, loss of digits, neurologic damage, and loss of respiratory capacity.” Declaration of Dr. Jonathan Golob, *Dawson v. Asher*, No. 2:20-cv-00409-JLR-MAT at ¶ 4 (W.D. Wash., Mar. 16, 2020), available at <https://cutt.ly/AtNrFO1>.

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

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

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

24. People over the age of fifty face a greater risk of serious illness or death from COVID-19.²⁹ In a February 29, 2020 preliminary report, individuals age 50-59 had an overall mortality rate of 1.3%: 60-69-year-olds had an overall 3.6% mortality rate, and those 70-79 years old had an 8% mortality rate.³⁰ However, people of all ages can get seriously ill or die. In fact, over half of the people hospitalized for COVID-19 have been under 65 years old.³¹

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

²⁵ Kevin McCoy and Katie Wedell, *'On-the-job emergency training': Hospitals may run low on staff to run ventilators for coronavirus patients*, USA TODAY (Mar. 27, 2020), available at <https://bit.ly/2V7rLsS>.

²⁶ World Health Organization, *COVID-19 Dashboard*, <https://who.sprinklr.com/>

²⁷ Goldenson Decl. ¶ 7.

²⁸ Goldenson Decl. ¶ 8.

²⁹ Goldenson Decl. ¶ 8; Xianxian Zhao, et al., *Incidence, clinical characteristics and prognostic factor of patients with COVID-19: a systematic review and meta-analysis*, MEDRXIV (Mar. 20, 2020), <https://cutt.ly/etRAkmt>.

³⁰ *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths* Chart, <https://cutt.ly/ytEimUQ> (data analysis based on WHO China Joint Mission Report and Chinese CCDC report published in the Chinese Journal of Epidemiology).

³¹ Centers for Disease Control and Prevention *Severe Outcomes Among Patients with Coronavirus Disease 2019 (COVID-19) – United States, February 12-March 16, 2020* (updated Mar. 26, 2020), <https://cutt.ly/ztB53U1>; see also Robin McKie, *Why do some young people die of coronavirus?*, THE GUARDIAN (Apr. 5, 2020), available at <https://bit.ly/2x5dghp>.

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

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

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

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

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

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

³⁴ Goldenson Decl. ¶ 9.

³⁵ Novisky Decl. ¶ 8.

disease.”³⁶ Dr. Goldenson, MD, a physician with decades of experience in correctional health, agrees: “The risk of exposure to and transmission of infectious diseases, as well as the risk of harm from developing severe complications or death if infected, is significantly higher in jails, prisons, and detention centers than in the community.”³⁷ And as one federal court has already noted, in a case dealing specifically with the ongoing crisis at Elkton: “Prisons are tinderboxes for infectious disease. The question whether the government can protect inmates from COVID-19 is being answered every day, as outbreaks appear in new facilities.”³⁸

28. People in congregate environments—places where people live, eat, and sleep in close proximity—face increased danger of contracting COVID-19,³⁹ as already evidenced by the rapid spread of the virus in even *less* crowded environments than prisons, such as cruise ships⁴⁰ and nursing homes.⁴¹

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

³⁶ Novisky Decl. ¶¶ 15-23.

³⁷ Goldenson Decl. ¶ 21.

³⁸ *United States v. Rodriguez*, No. 2:03-cr-0271, 2020 WL 1627331, (E.D. Pa., Apr. 1, 2020).

³⁹ Novisky Decl. ¶¶ 9-10.

⁴⁰ The CDC is currently recommending that travelers defer cruise ship travel worldwide. “Cruise ship passengers are at increased risk of person-to-person spread of infectious diseases, including COVID-19.” Centers for Disease Control and Prevention, *COVID-19 and Cruise Ship Travel*, <https://cutt.ly/7tEEQvT>.

⁴¹ The CDC notes that long-term care facilities and nursing homes pose a particular risk because of “their congregate nature” and the residents served. Centers for Disease Control and Prevention, *Preparing for COVID-19: Long-term Care Facilities, Nursing Homes*, <https://cutt.ly/7tEEITH>.

⁴² Novisky Decl. ¶ 10; Goldenson Decl. ¶ 20 (noting it is “extremely difficult, if not impossible” to implement recommended social distancing and hygiene procedures in detention settings).

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

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

19. Such experts include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33. “It is difficult to overstate the devastation that a COVID-19 outbreak could inflict on a correctional facility such as FCI Elkton.”⁵⁷ As of April 9, 2020, three prisoners have died in Elkton. “The medically established progression of COVID-19, combined with the pre-existing health conditions of all 3 men, makes it likely these individuals suffered tremendously leading up to their deaths.”⁵⁸ “Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly.”⁵⁹

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

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

⁵⁶ Novisky Decl. ¶¶ 15-16.

⁵⁷ Goldenson Decl. ¶ 28.

⁵⁸ Novisky Decl. ¶ 7.

⁵⁹ Goldenson Decl. ¶ 29.

⁶⁰ Shane Hoover, *Elkton prison union chief talks coronavirus affect on staff*, TIMES REPORTER (Apr. 9, 2020), available at <https://cutt.ly/JtB6Wy6>.

⁶¹ Bureau of Prisons, COVID-19, <https://www.bop.gov/coronavirus/> (last visited April 13, 2020, 12:10 a.m.); Hoover, *supra* note 60.

government's assurances that the BOP's 'extraordinary actions' can protect inmates ring hollow given that these measures have already failed to prevent transmission of the disease" at Elkton.⁶²

36. Based on her expertise, including her knowledge and study of prisons such as Elkton, Dr. Novisky writes: "Given the structure, operations, and current conditions at Elkton, there is no realistic set of internal conditions or practices that FBOP can use that will prevent additional infection of prisoners and staff given the current number of prisoners living at Elkton."⁶³

37. Both experts note that social distancing is "impossible" at Elkton, putting everyone at risk.⁶⁴ Those incarcerated agree: "It's impossible to keep 6 feet of distance from others" at Elkton.⁶⁵ As Petitioner Bellamy avers, in any given moment "I'm no more than 1-2 feet away from someone else, and there's no way to keep more of a distance ... I'm bumping up against people" in every aspect of daily life.⁶⁶

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

⁶² *United States v. Rodriguez*, No. 2:03-cr-0271, 2020 WL 1627331(E.D. Pa., Apr. 1, 2020).

⁶³ Novisky Decl. ¶ 16; *see also* Goldenson Decl. ¶ 25 ("While every effort should be made to reduce exposure in detention facilities through internal mitigation efforts, this may be extremely difficult to achieve and sustain quickly enough.")

⁶⁴ Novisky Decl. ¶ 9 ("With continued functioning of shared spaces for bathing, eating, and sleeping, quarantine and social distancing would be impossible to implement at Elkton."); Goldenson Decl. ¶ 32 ("Adequate social distancing would be impossible to maintain.")

⁶⁵ Declaration of Kendal Nelson (attached as Exhibit C) ¶ 3; Declaration of Eric McReynolds (attached as Exhibit D) ¶ 7 ("All day, I'm always right by somebody no matter what I'm doing, and there's no way I can space myself off from other people. Bathroom sinks, tables in the day area, computers, they're all close together.")

⁶⁶ Declaration of Eric Bellamy (attached as Exhibit E) ¶ 4.

⁶⁷ Fed. Bureau of Prisons, *About Our Facilities* (last visited Apr. 13, 2020) https://www.bop.gov/about/facilities/federal_prisons.jsp

very close to others, within a few feet.⁶⁸ For example, Petitioner Bellamy is “housed in a cell with two other men, crowded into maybe a 6-foot by 8-foot area with a bunk bed and an extra bed.” The entire prison is “overcrowded, and every bed is taken up.” There is “way less” than the recommended six-foot distance between beds.⁶⁹

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

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

⁶⁹ Bellamy Decl. ¶ 3.

⁷⁰ Bellamy Decl. ¶ 8 (“The 150 or so people in my unit share 6 toilets and 12 showers, and you’re right up against people the whole time.”); Nieves Decl. ¶ 3 (“There are 170 people in my unit, sharing small bathrooms with 4 urinals, 10 showers, and 5 toilets, which we share.”); Nelson Decl. ¶ 3 (noting there are 5 toilets and 5 sinks for 170 men); Wilson Decl. ¶ 6 (“There are 10 sinks, 18 showers, 6 toilets, and 6 urinals for all 150 people.”); Declaration of Arsenio Arzola (attached as Exhibit I) ¶¶ 4-5 (12 shared showers for 165 people).

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

⁷² Nieves Decl. ¶ 3 (“In the TV rooms, the tables are right on top of each other.”); Wilson Decl. ¶ 9 (“Both the phones and the computers are less than two feet apart and are all in constant use.”); Arzola Decl. ¶ 6 (“Phones are about 4 inches apart, and computers are about 8 inches apart, and the lines to get to them are ridiculous, especially during the day.”); McReynolds Decl. ¶ 6 (talking on the phone, “I’m right next to someone, so close that I could kick him in the ankle.”)

⁷³ Goldenson Decl. ¶¶ 21, 31.

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

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

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

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

⁷⁴ Bellamy Decl. ¶ 4; Wilson Decl. ¶ 6; Jackson Decl. ¶ 4 (“At meal times, they call us in unit-by-unit to go over and get our trays. Even at that time, we still can’t be six feet apart, like when we’re lined up.”); Arzola Decl. ¶ 6 (“We have controlled movements, like when we go to eat. It’s a stampede of people trying to get through a 4-6 foot wide door.”); McReynolds Decl. ¶ 6 (“We walk [to get food] at our own risk, with no spacing.”).

⁷⁵ Nelson Decl. ¶ 5.

⁷⁶ Jackson Decl. ¶ 7.

⁷⁷ Novisky Decl. ¶ 12; *see also* Goldenson Decl. ¶ 20.

⁷⁸ Arzola Decl. ¶ 7.

⁷⁹ Wilson Decl. ¶ 10.

⁸⁰ Wilson Decl. ¶ 10.

⁸¹ Nelson Decl. ¶ 10.

⁸² Novisky Decl. ¶ 6.

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

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

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

My cellmate, a man named Michael Bear, got very sick. He is about 68 years old and when the coronavirus first hit, he went to Medical three times in one week but was returned to the housing unit. I had to serve as his caretaker or first responder and take care of him. He was coughing, sneezing, moaning, and defecating on himself. I had no gear, but I provided him some medication from the commissary and tried to help him get dressed, feed him, and move him around. I'm not an EMT, just a human being who has an elderly dad at home who I pray is getting the help he needs.⁸⁹

⁸³ McReynolds Decl. ¶¶ 3-5.

⁸⁴ Jackson Decl. ¶ 3 ("[P]retty much everywhere I go, I'm standing next to someone who has symptoms."); Arzola Decl. ¶ 10 ("Some people with symptoms are being taken immediately to medical, others are left behind."); McReynolds Dec. ¶ 2 (stating that he was coughing for "about a week, and then a fever just came on all of a sudden," but he was not moved into quarantine until he had a fever).

⁸⁵ Nieves Decl. ¶ 6.

⁸⁶ Nelson Decl. ¶ 8; Arzola Decl. ¶ 10 ("Prisoners are not being quarantined for 14 days. They're being sent back to units while still showing symptoms, and housed right back with us in the cubes.").

⁸⁷ Nieves Decl. ¶ 5 ("But for those of us like me who have been in contact but are showing no symptoms, they don't do anything at all for us."); Arzola ¶ 10 ("Nothing has been done with me or my other cellmate, even though we were so close to a sick person.").

⁸⁸ Wilson Decl. ¶ 8 ("A friend of mine who works in Medical was made to clean the cubes of those who were sick, and he ultimately got very sick and was put on life support.").

⁸⁹ Arzola Decl. ¶ 3.

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

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

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

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

49. The risk of infection is not limited to Elkton's prisoners. "Correctional staff must be in close contact with prisoners in the course of their regular jobs to enforce security protocols, escort prisoners across cell blocks and units, administer medications, and supervise meal distribution, for example."⁹³ Staff members do not have access to appropriate protective

⁹⁰ Novisky Decl. ¶ 6; see also McReynolds Decl. ¶ 7 (noting that there remain "people who might be carriers" but are showing no symptoms).

⁹¹ Bellamy Decl. ¶ 6; Jackson Decl. ¶ 7.

⁹² Rep. Bill Johnson, Statement on FCI Elkton (Apr. 6, 2010), available at <https://billjohnson.house.gov/news/documentsingle.aspx?DocumentID=402824>

⁹³ Novisky Dec. ¶ 11.

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

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

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

52. The Elkton staff’s fears of contracting COVID-19 in the confined prison space have invariably impacted the prisoners as well. “They’re clearly avoiding us.”¹⁰⁰ “They don’t come into the pods as much or walk around.” “There’s less of them around and they’re all trying to keep their distance, which means nobody is around to help us. The counselor isn’t here, and a case manager

⁹⁴ Nelson Decl. ¶ 9; Wilson Decl. ¶ 13.

⁹⁵ Shane Hoover, *Elkton prison union chief talks coronavirus affect on staff*, TIMES REPORTER (Apr. 9, 2020), <https://cutt.ly/JtB6Wy6>.

⁹⁶ Janet Rogers, *Protest outside Elkton Prison in Lisbon over treatment of sick prisoners, staff*, WFMJ (April 11, 2020; 8:08 p.m.), <https://cutt.ly/2tNqkcj>

⁹⁷ *Id.*

⁹⁸ Complaint, *Braswell v. United States of America*, Civil Action No. 20-cv-359C at ¶ 23 (Fed. Cl. Mar. 27, 2020), available at <https://www.classaction.org/media/braswell-et-al-v-the-united-states-of-america.pdf>.

⁹⁹ *Id.*

¹⁰⁰ Nieves Decl. ¶ 8.

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

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

54. Moreover, "Elkton's medical staffing right now is at only 50 percent of what it should be," and prisoners and staff with serious symptoms must be treated in community hospitals.¹⁰⁶ Yet there are limited hospitals in the region where Elkton is located, and they "run the risk of being overwhelmed if the outbreak [at Elkton] isn't stopped in its tracks."¹⁰⁷ Columbiana County, where FCI Elkton is located, has reported 96 cases of COVID-19 as of April 11.¹⁰⁸ The

¹⁰¹ Bellamy Decl. ¶ 9.

¹⁰² Wilson Decl. ¶ 13 (further noting that the staff are "hiding," and "we only see them during count times").

¹⁰³ Goldenson Decl. ¶ 22.

¹⁰⁴ Wilson Decl. ¶ 3 (a protocol to keep COVID-19 out of the prison was unsuccessful and was abandoned); Nelson Decl. ¶ 11 (a memo was circulated telling prisoners that a staff member had brought in the virus).

¹⁰⁵ Goldenson Decl. ¶ 23 ("Due to the frequent ingress and egress of employees at these facilities, an outbreak within a jail, prison, or detention center can quickly spread to surrounding communities."); Novisky Decl. ¶ 13 ("With institutional staff filtering in and out of Elkton on a daily basis, staff can easily carry the infection from the community to the prison and vice versa."). Cf. Wilson Decl. ¶ 3 (staff stated that they didn't want to cooperate with a plan to keep them on the grounds for 2-week intervals).

¹⁰⁶ Tom Giambroni, *National Guard sent to help Elkton prison*, THE REVIEW (Apr. 12, 2020), <https://cutt.ly/atNqRkA>.

¹⁰⁷ Rep. Bill Johnson, Statement on FCI Elkton (Apr. 6, 2010), available at <https://billjohnson.house.gov/news/documentsingle.aspx?DocumentID=402824>

¹⁰⁸ Rich Exner, *Mapping Ohio's 6,250 coronavirus cases, Saturday's update, trend graphics*, CLEVELAND.COM (Updated Apr. 12, 2020), <https://cutt.ly/ttNqIyg>

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

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

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

¹⁰⁹ Rich Exner, *How many hospital beds are near you? Details by Ohio county*, CLEVELAND.COM (Mar. 23, 2020), <https://cutt.ly/otNqAgp>.

¹¹⁰ *Id.*; Exner, *supra* note 108.

¹¹¹ See Anne Saker and Terry DeMio, *Coronavirus in Ohio: How many hospital beds, ventilators on hand? Probably not enough*, CINCINNATI ENQUIRER (Mar. 20, 2020), available at <https://cutt.ly/NtNq001>.

¹¹² Goldenson Decl. ¶¶ 22-23; Novisky Decl. ¶¶ 13-14. See also Yousur Al-Hlou, Kassie Bracken, Leslye Davis & Emily Rhyne, *How Coronavirus at Rikers Puts All of N.Y.C. at Risk*, N.Y. TIMES (Apr. 8, 2020), <https://www.nytimes.com/video/us/100000007059873/coronavirus-rikers-island.html> (at 2:04, "it's not just about who's in the jails right now, it's really about the city"; at 5:25, noting a consensus among prosecutors and public defenders that releases are not happening quickly enough).

¹¹³ Goldenson Decl. ¶¶ 32-33; Novisky Decl. ¶¶ 16-22.

¹¹⁴ *Coronavirus: Governor orders National Guard to assist at federal prison*, WHIO (April 6, 2020 3:00 PM), <https://cutt.ly/EtNqMW6>.

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

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

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

58. The growing numbers of ill and dead at Elkton “make it clear that current measures being taken by the FBOP are not sufficient in strength nor impact to adequately protect its staff, its prisoners, or the public.”¹¹⁹ “The death rate [at Elkton] will increase substantially before it starts to diminish without major interventions.”¹²⁰

59. Because of the severity of the threat posed by COVID-19, and its potential to rapidly spread throughout a correctional setting, public health experts recommend the rapid release from custody of people most vulnerable to COVID-19.¹²¹ Dr. Novisky urges Elkton “to release as many older incarcerated adults from the prison as possible”¹²² and to make efforts to “release those

¹¹⁵ Wilson Decl. ¶ 13; Nelson Decl. ¶ 16.

¹¹⁶ See Goldenson Decl. ¶ 23; Novisky Decl. ¶ 13.

¹¹⁷ Wilson Decl. ¶ 14.

¹¹⁸ Wilson Decl. ¶ 15 (“On March 30, 2020, I filed a request for home detention with the warden, but have gotten no response. I’ve asked for a grievance form to file, but I’ve been told that there are no forms available. All concerns that I and others have raised to staff are being ignored.”)

¹¹⁹ Novisky Decl. ¶ 6.

¹²⁰ Goldenson Decl. ¶ 32.

¹²¹ Goldenson Decl. ¶ 33; Novisky Decl. ¶¶ 18-19; see also, e.g., Josiah Rich, Scott Allen, and Mavis Nimoh, *We must release prisoners to lessen the spread of coronavirus*, WASHINGTON POST (Mar. 17, 2020), available at <https://wapo.st/2JDVq7Y>.

¹²² Novisky Decl. ¶ 18

at the prison with pre-existing chronic health conditions, most importantly those with respiratory conditions, cancer, heart disease, diabetes, kidney disease, HIV, and blood disorders.”¹²³ Dr. Goldenson agrees: “It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19, as defined in this lawsuit, be released from FCI Elkton and FCL Elkton immediately.”¹²⁴

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

61. As Dr. Novisky explains: “Given the structure, operations, and current conditions at Elkton, there is no realistic set of internal conditions or practices that FBOP can use that will prevent additional infection of prisoners and staff given the current number of prisoners living at Elkton.” “Significantly reducing the prison population at Elkton as rapidly as possible is the best line of defense to maintain the public health interests of persons incarcerated at Elkton, correctional staff who work at Elkton, and the Ohio community.”¹²⁷ “[F]ailing to do so will have grave consequences and long-term traumatic impacts for many.”¹²⁸

¹²³ Novisky Decl. ¶ 19

¹²⁴ Goldenson Decl. ¶ 33.

¹²⁵ Novisky Decl. ¶ 13.

¹²⁶ Novisky Decl. ¶ 14.

¹²⁷ Novisky Decl. ¶ 17.

¹²⁸ Novisky Decl. ¶ 17; *see also* Goldenson Decl. ¶ 32 (“The death rate will increase substantially before it starts to diminish without major interventions.”)

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

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

¹²⁹ See *supra* ¶ 31.

¹³⁰ See, e.g., Memorandum and Order, *Thakker v. Doll*, No. 1:20-CV-0480 (M.D.Pa. Mar. 31, 2020) at Doc. No. 47 (categorically releasing petitioners who “suffer[] from chronic medical conditions and face[] an imminent risk of death or serious injury if exposed to COVID-19).

¹³¹ In Iran, for example, more than 85,000 people were released from jails to curb the spread of coronavirus. *US Jails Begin Releasing Prisoners to Stem COVID-19 Infections*, BBC NEWS (Mar. 19, 2020), <https://cutt.ly/9tRDyb3> (noting Iran’s release of over 85,000 prisoners in response to the virus).

¹³² Scott Noll, *Cuyahoga County Jail Releases Hundreds of Low-Level Offenders to Prepare for Coronavirus Pandemic*, NEWS5 CLEVELAND (Mar. 20, 2020), <https://cutt.ly/CtRSHkZ>.

¹³³ Megan Cassidy, *Alameda County Releases 250 Jail Inmates Amid Coronavirus Concerns, SF to Release 26*, SAN FRANCISCO CHRONICLE (Mar. 20, 2020), <https://cutt.ly/0tRSVmG>.

¹³⁴ Jenna Carroll, *Inmates Being Released Early from JeffCo Detention Facility Amid Coronavirus Concerns*, KDVR COLORADO (Mar. 19, 2020), <https://cutt.ly/UtRS8LE>.

¹³⁵ Erin Vogt, *Here’s NJ’s Plan for Releasing Up to 1,000 Inmates as COVID-19 Spreads*, NEW JERSEY 101.5 (Mar. 23, 2020), <https://cutt.ly/QtRS53w>.

¹³⁶ *United States v. Rodriguez*, No. 2:03-cr-0271, 2020 WL 1627331 (E.D. Pa., Apr. 1, 2020)

¹³⁷ *Id.*

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

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

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

¹³⁸ *Id.*

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

¹⁴⁰ Goldenson Decl. 32 (“[L]eaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place or treating those who eventually died, is insufficient.”)

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

66. It has now been several days since Attorney General Barr’s April 3 Memo “directing” Respondent Carvajal to “move with dispatch in using home confinement” for vulnerable prisoners. Respondents have not moved with dispatch. People will suffer and die while the process plays out. Given this track record, it defies reality that Elkton could now miraculously implement AG Barr’s directives on its own, in line with CDC guidelines¹⁴³ and with the combination of speed and care for human life that the moment requires.¹⁴⁴

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

¹⁴¹ 18 U.S.C. § 3582.

¹⁴² See, e.g., United States’ Opposition to Defendant’s Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(1)(A)(i), *United States v. Jeremy Rodriguez*, No. 03-271 (E.D. Pa. Mar. 27, 2020).

¹⁴³ Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

¹⁴⁴ *Id.*; see also Novisky Decl. ¶¶ 18-21.

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

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

69. Delay has already likely cost lives and led to needless suffering from COVID-19 at Elkton, but it is not too late to act. “Although the FBOP delay has already meant numerous prisoners and staff at Elkton have been infected (some of whom have died), it is not too late to take these steps, which can help prevent the situation from further deteriorating and causing unnecessary suffering to those who remain.”¹⁴⁸ Without significant action, the conditions at Elkton “will escalate further,” and “many more incarcerated individuals and staff will become infected and will face elevated risks for medical complications and mortality.”¹⁴⁹

¹⁴⁵ Nieves Decl. ¶¶ 1, 9; *see also* Nelson Decl. ¶ 17 (confirming that a group of people was gathered for release, but many were later put back into the regular population).

¹⁴⁶ BOP Program Statement P5100.08 (9/12/06) available at https://www.bop.gov/policy/progstat/5100_008.pdf.

¹⁴⁷ *See* Goldenson Decl. ¶ 33; Novisky Decl. ¶ 18.

¹⁴⁸ Novisky Decl. ¶ 23. *See also* Novisky Decl. ¶ 8 (“Based on my expertise on the health related risks associated with incarceration, it is my belief that if serious action is not taken swiftly, prisons under the jurisdiction of the FBOP, including Elkton, will escalate further”); Goldenson Decl. ¶ 32 (“The death rate will increase substantially before it starts to diminish without major interventions”).

¹⁴⁹ Novisky Decl. ¶ 6.

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

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

IV. CLASS ACTION ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

V. ARGUMENT

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

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

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

84. This obligation requires corrections officials to protect incarcerated people from infectious diseases like COVID-19; officials may not wait until someone tests positive for the virus and an outbreak begins. *McKinney*, 509 U.S. at 33-34 (“That the Eighth Amendment protects against future harm to inmates is not a novel proposition ... It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them”); *Stefan v. Olson*, 497 F. App'x 568, 577 (6th Cir. 2012) (the proposition that “the Eighth Amendment protects against future harm to inmates is not a novel proposition.”); *see also Farmer*, 511 U.S. at 833 (“[H]aving stripped [prisoners] of virtually every means of self-protection and foreclosed their access to outside aid, the government and its officials are not free to let the state of nature take its course.”). By then it is too late. That one individual would have almost certainly infected untold numbers of people before displaying symptoms.

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

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

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

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

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

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

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

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

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

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

VI. CLAIM FOR RELIEF

FIRST CLAIM FOR RELIEF

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

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

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

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

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

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

VII. REQUEST FOR RELIEF

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

- a) Certification of this petition as a class action, for the reasons stated herein;
- b) Pursuant to 28 U.S.C. § 2243 and issued “forthwith,” either:

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

2. In the alternative, an order that Respondents show cause within, at most, three days why such a writ should not issue.

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

- i. Specific mitigation efforts, in line with CDC guidelines, to prevent, to the degree possible, contraction of COVID-19 by every Class Member not immediately released;
 - ii. A housing and/or public support plan for any released Class or Subclass Members for whom testing confirms exposure to or infection with COVID-19 and who do not readily have a place to self-isolate for the CDC-recommended period of time (currently 14 days).
- d) All further action required to release Class Members outside the Medically-Vulnerable Subclass to ensure that all remaining persons are incarcerated in Elkton under conditions consistent with CDC guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain six feet or more of space between them;
- e) If immediate release is not granted on the basis of this Petition alone, then expedited review of the Petition, including oral argument, via telephonic or videoconference if necessary;
- f) A declaration that Elkton's policies and practices violate the Eighth Amendment right against cruel and unusual punishment with respect to the Class;
- g) Award Petitioners costs, expenses, and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and any other applicable laws; and
- h) Any further relief this Court deems just, necessary, or appropriate.

Dated: April 13, 2020

Respectfully submitted,

/s/ David J. Carey

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS
Wilson, Craig; Bellamy, Eric; Nelson, Kendal; and Nieves, Maximino, on behalf of themselves and those similarly situated.
(b) County of Residence of First Listed Plaintiff Columbiana
(c) Attorneys (Firm Name, Address, and Telephone Number) (See attachment)

DEFENDANTS
Elkton Federal Correctional Institution, Warden Mark Williams; and Federal Bureau of Prisons Director Michael Carvajal, in their official capacities.
County of Residence of First Listed Defendant Columbiana
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
Incorporated or Principal Place of Business In This State
Incorporated and Principal Place of Business In Another State
Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. § 2241
Brief description of cause:
Emergency class action petition for writ of habeas corpus, for unconstitutional conditions of confinement.

VII. REQUESTED IN COMPLAINT:
CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Writ of Habeas Corpus CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 04/13/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ David J. Carey

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. [checked] General Civil
2. [] Administrative Review/Social Security
3. [] Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. RELATED OR REFILED CASES. See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action: [] is RELATED to another PENDING civil case [] is a REFILED case [] was PREVIOUSLY REMANDED

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) Resident defendant. If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) Non-Resident defendant. If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY: Columbiana

(3) Other Cases. If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- [] AKRON (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
[] CLEVELAND (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
[checked] YOUNGSTOWN (Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- [] TOLEDO (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

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AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

Wilson, et al.

Plaintiff(s)

v.

Williams, et al.

Defendant(s)

Civil Action No. 4:20-cv-794

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Federal Bureau of Prisons
Michael Carvajal, Director
320 First St., NW
Washington, DC 20534

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David Carey
ACLU of Ohio Foundation
1108 City Park Avenue, Suite 203
Columbus, OH 43206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SANDY OPACICH, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio

Wilson, et al.

Plaintiff(s)

v.

Williams et al.

Defendant(s)

Civil Action No. 4:20-cv-794

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Federal Correctional Institution, Elkton
Mark Williams, Warden
8730 Scroggs Road
Lisbon, OH 44432

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

David Carey
ACLU of Ohio Foundation
1108 City Park Avenue, Suite 203
Columbus, OH 43206

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SANDY OPACICH, CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Exhibit A

Declaration of Dr. Meghan Novisky

Declaration of Meghan Novisky, PhD

1. I am an Assistant Professor in the Department of Criminology, Anthropology, and Sociology at Cleveland State University.
2. My research investigates the consequences of carceral contact on health, factors related to the conditions of confinement, and the collateral consequences of criminal justice policy. I have worked since 2009 with the University of Cincinnati's Corrections Institute (UCCI) as an evidence based programming consultant and trainer. In this role I have worked with correctional staff in 17 U.S. states and trained them on the implementation of research-informed programs and policies to help reduce their recidivism rates. I received my PhD in Sociology from Kent State University, where the focus of my dissertation involved identifying the barriers to health care access that exist in prisons, specifically among older adults.
3. My publications on health and incarcerated people have appeared in numerous peer-reviewed journals, including *Criminology*, *Justice Quarterly*, and *Victims & Offenders*. In 2020, I received the Early Career Investigator Award from the Academic Consortium on Criminal Justice Health (ACCJH), and I serve on the Executive Board of the Academy of Criminal Justice Sciences (Section on Corrections), and as Chair of the Annual Awards Committee of the American Society of Criminology, Division of Corrections and Sentencing.
4. One of the greatest challenges facing prisons regarding the provision of health services is that prisons, by their very nature, are high risk sites for the spread of infectious disease. Close proximity of many people (made worse by overcrowding), shared equipment tied to risky health behaviors such as tattooing, compromised abilities

to maintain general hygiene, substandard health care services, and lack of awareness about infection status combine to aggravate risk factors associated with the spread of infectious disease.¹

5. High levels of stress exposure can also weaken the immune system,² thereby increasing the susceptibility of exposure among incarcerated persons as well as recovery prognosis. Of course, these factors are all greatly exacerbated in the event of a global pandemic such as COVID-19 given that prisons in the U.S. are already under-resourced, understaffed, and chronically overcrowded.

6. On Tuesday, March 24th, the Federal Bureau of Prisons (FBOP) issued a press release stating the Bureau was “taking aggressive steps to protect the safety and security of all staff and inmates, as well as visitors and members of the public.”³ The memo further stated “this response is the Bureau’s top priority.” Yet, the measures outlined in the memo lacked the vision necessary to adequately contain and minimize spread of COVID-19. For example, the memo stated “facilities have been directed to designate available space for isolation and quarantine for inmates who have been exposed to or have symptoms of the virus.” Given that asymptomatic people can still be contagious, it would be impossible for institutions to definitively identify those exposed. Further, isolation of symptomatic prisoners does nothing to address those who are contagious but not symptomatic, nor does it address the threats contagious staff members pose to the incarcerated. As of the time of this filing, there now exist 541 confirmed cases

¹ <https://www.ecdc.europa.eu/sites/default/files/documents/Active-case-finding-communicable-diseases-in-prisons.pdf>

² Fali, T., Vallet, H., and Sauce, D. (2018). “Impact of stress on aged immune system compartments: overview from fundamental to clinical data. *Experimental Gerontology* 105, 19-26.

³ https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf

of COVID-19 across 40 FBOP facilities, including 352 prisoner and 189 staff diagnoses.⁴ Nine prisoners confined to FBOP institutions have died due to COVID-19. These statistics make it clear that current measures being taken by the FBOP are not sufficient in strength nor impact to adequately protect its staff, its prisoners, or the public.

7. On Monday March 30th prisoners at FCI Elkton, a low security male prison, began testing positive for COVID-19. As of April 12, 2020, Elkton has 35 confirmed cases of COVID-19, including 24 prisoner and 11 staff diagnoses.⁵ The FBOP released consecutive memos on 4/2/20,⁶ 4/3/20,⁷ and 4/4/20,⁸ announcing the deaths of Elkton prisoners Woodrow Taylor (53 y/o), Margarito Garcia-Fragoso (65 y/o), and Frank McCoy (76 y/o), respectively. The medically established progression of COVID-19, combined with the pre-existing health conditions of all 3 men, makes it likely these individuals suffered tremendously leading up to their deaths.

8. Based on my expertise on the health related risks associated with incarceration, it is my belief that if serious action is not taken swiftly, prisons under the jurisdiction of the FBOP, including Elkton, will escalate further, serving as hotspots for COVID-19 much like would be the case if people were forced to live on a crowded cruise ship during a pandemic. To be clear, without drastic intervention, many more incarcerated individuals and staff will become infected and will face elevated risks for medical complications and mortality. This is due to the presence of factors that aggravate the spread of COVID-19, including lack of social distancing, concentrations of

⁴ <https://www.bop.gov/coronavirus/>

⁵ <https://www.bop.gov/coronavirus/>

⁶ https://www.bop.gov/resources/news/pdfs/20200402_press_release_elk.pdf

⁷ https://www.bop.gov/resources/news/pdfs/20200403_press_release_elk.pdf

⁸ https://www.bop.gov/resources/news/pdfs/20200404_press_release_elk.pdf

immunocompromised, vulnerable adults, and lack of access to proper sanitation. All of these risk factors are important in assessing Elkton's practical capacity to properly address risks for COVID-19.

9. The volume of prisoners incarcerated at Elkton alone severely limits its capabilities to implement social distancing practices. Elkton maintains a current population of 2,417 male prisoners; 1,999 at the low security FCI/Federal Correctional Institution, and 418 at the FSL/adjacent low security satellite prison.⁹ To keep all 2,417 prisoners (plus their population of staff) a minimum of 6 feet apart at all times is incredibly impractical.

10. It is my understanding that many prisoners in custody at Elkton share cells, sleeping areas, supplies, bathing areas, and other living spaces, compromising Elkton's abilities to follow CDC physical distancing guidelines. Like most low security prisons, it is likely that Elkton has only a limited percentage of its cell capacity devoted to administering solitary living conditions (i.e., one person per cell with no shared living space), as low security prisons are not intended to function like maximum or super-maximum security prisons with high capacities for solitary confinement. With continued functioning of shared spaces for bathing, eating, and sleeping, quarantine and social distancing would be impossible to implement at Elkton.¹⁰ These factors, in combination with the high stress environment of incarceration in general, increase risks of infectious disease exposure in this institution dramatically.¹¹

⁹ <https://www.bop.gov/locations/institutions/elk/>

¹⁰ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

¹¹ Massoglia, M. (2008). Incarceration as exposure: the prison, infectious disease, and other stress-related illnesses. *Journal of Health and Social Behavior*, 49, 56-71.

11. Even if attempts were made to increase physical distance between prisoners at Elkton, this would fail to adequately address the regular contact that exists between Elkton staff and prisoners. Correctional staff must be in close contact with prisoners in the course of their regular jobs to enforce security protocols, escort prisoners across cell blocks and units, administer medications, and supervise meal distribution, for example.

12. Further, it is difficult (if not impossible) for prisoners to follow recommended sanitation procedures. While each Elkton prisoner is likely to have access to a rationed supply of soap, for example, disinfectant cleaning supplies and hand sanitizers would not typically be provided to each incarcerated person, at least not in the quantities necessary, as such supplies are likely to be considered contraband due to their alcohol content.

13. While Elkton has halted prisoner visitations, this will not stop the transmission of the virus between the prisoner population and the community. With institutional staff filtering in and out of Elkton on a daily basis, staff can easily carry the infection from the community to the prison and vice versa. Thus, unless Elkton staff are quarantined and prevented from continuing to cycle in and out of the prison to return to the community following each shift, this risk remains.

14. Further exacerbating the risk of infection to the surrounding community is that medical facilities in prisons are typically inadequate to provide the intensive care needed to handle serious cases of COVID19. Prisoners therefore require transport to community hospitals for care, increasing risks of infection and reducing the capacity of local hospitals to respond to other members of the community. These circumstances also

increase risks for the correctional officers who must not only transport sick, incarcerated individuals to the hospital, but supervise them while they are hospitalized.

15. The FBOP population also includes a significant number of older adults. Over nineteen percent of the prison population (n = 33,817) is over the age of 50, making this group particularly vulnerable to COVID-19 based on age alone.¹² Assuming Elkton's population is representative of the national FBOP demographic data, roughly 1 in 5 prisoners at Elkton would be especially vulnerable to COVID-19 based on age. Furthermore, older incarcerated adults suffer from disproportionately more chronic health conditions than the general population of adults,^{13,14} including respiratory problems, making it likely this group will face medical complications should they continue to become infected. In fact, all 3 deaths at Elkton thus far have been prisoners that meet these categorical criteria: older than 50 years of age with pre-existing chronic health problems.

16. Given the structure, operations, and current conditions at Elkton, there is no realistic set of internal conditions or practices that FBOP can use that will prevent additional infection of prisoners and staff given the current number of prisoners living at Elkton.

17. Significantly reducing the prison population at Elkton as rapidly as possible is the best line of defense to maintain the public health interests of persons incarcerated at Elkton, correctional staff who work at Elkton, and the Ohio community. It

¹² https://www.bop.gov/about/statistics/statistics_inmate_age.jsp

¹³ Loeb, S.J. and AbuDagga, A. (2006). Health-Related Research on Older Inmates: An Integrative Review. *Research in Nursing and Health*, 29, 556-565.

¹⁴ Bedard, R., Metzger, L., & Williams, B. (2016). Ageing prisoners: An introduction to geriatric health-care challenges in correctional facilities. *International Review of the Red Cross*, 98, 917-939.

is my recommendation that all prisons under the jurisdiction of the FBOP should do the same. Based on the existing evidence about COVID-19, failing to do so will have grave consequences and long-term traumatic impacts for many.

18. There are several measures that can be taken to safely reduce the prison population at Elkton. Most important among them is to release as many older incarcerated adults from the prison as possible. Doing so will not only help to significantly reduce the prison population, but will remove the individuals most at risk for infection and complications likely to elevate mortality risks. Older adults have significantly reduced risks for recidivism compared with younger adults, so doing this is unlikely to come at the expense of public safety. The most common convicting offenses among people incarcerated in FBOP jurisdiction are in fact drug offenses (n =73,759).¹⁵ Of course, aggravated cases where public safety is a concern need to be considered.

19. Efforts should also be made to release those at the prison with pre-existing chronic health conditions, most importantly those with respiratory conditions, cancer, heart disease, diabetes, kidney disease, HIV, and blood disorders. Because of their pre-existing immunocompromised statuses, failing to do so will leave these individuals not only especially vulnerable to COVID-19, but less likely to recover from it should they become infected.

20. Notably, the FBOP has the option to implement these measures while still maintaining correctional custody. The FBOP could do so by increasing existing efforts to transfer supervision from institutions like Elkton to home confinement in the community.

¹⁵ https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp

In fact, they have been encouraged to do so by the Attorney General of the U.S. as of March 26, 2020.¹⁶

21. Specifically, the Attorney General recommended consideration of the following factors for home release: age and vulnerability of the prisoner to COVID-19; the security level of the facility, “with priority given to inmates residing in low and minimum security facilities,” and convicting offense/danger posed to the community. Elkton’s status as a low security prison confirms it is a prime candidate for rapidly downsizing its population in order to best protect the health of the prison population, its staff, and the Ohio community.

22. These actions are both meaningful and necessary. They would enable Elkton to free up needed space, thereby increasing competencies to develop and implement social distancing options not currently available. Doing so would also help to ensure already limited medical supplies and resources at Elkton do not become overwhelmed and that mortality risks are kept as low as possible.

23. Although the FBOP delay has already meant numerous prisoners and staff at Elkton have been infected (some of whom have died), it is not too late to take these steps, which can help prevent the situation from further deteriorating and causing unnecessary suffering to those who remain.

24. I have read the descriptions of the living conditions at Elkton contained in declarations from Elkton prisoners. The descriptions I read are consistent with my understanding of what the conditions of the prison are likely to be at this time based on the resources Elkton has, the structure of the facility itself, the currently limited actions

¹⁶ https://www.bop.gov/resources/news/pdfs/20200405_covid-19_home_confinement.pdf

taken at Elkton to address the risks presented by COVID-19, and the current number of confirmed cases (n = 35) and mortalities (n = 3) attributed to Elkton custody.

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

A handwritten signature in black ink, appearing to read "M. Novisky". The signature is written in a cursive style with a large, sweeping flourish at the end.

Meghan Novisky, PhD

Date: 4/13/2020

Exhibit B

Declaration of Dr. Joe Goldenson

Declaration of Joe Goldenson, MD

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.

2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.

3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.

4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert/monitor at Cook County Jail in Chicago and Los Angeles County Jail, at other jails in Washington, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

The nature of COVID-19

5. The SARS-nCoV-2 virus, and the human infection it causes, COVID-19 disease, is a global pandemic and has been termed a global health emergency by the WHO. Cases first

began appearing sometime between December 1, 2019 and December 31, 2019 in Hubei Province, China. Most of these cases were associated with a wet seafood market in Wuhan City.

6. On January 7, 2020, the virus was isolated. The virus was analyzed and discovered to be a coronavirus closely related to the SARS coronavirus which caused the 2002-2003 SARS epidemic.

7. COVID-19 is a serious disease. The overall case fatality rate has been estimated to range from 0.3 to 3.5%, which is 5-35 times the fatality associated with influenza infection. COVID-19 is characterized by a flu-like illness. While more than 80% of cases are self-limited and generally mild, overall some 20% of cases will have more severe disease requiring medical intervention and support.

8. The case fatality rate varies significantly depending on the presence of certain demographic and health factors. The case fatality rate varies significantly with advancing age, rising after age 50, and above 5% (1 in 20 cases) for those with pre-existing medical conditions including cardio-vascular disease, respiratory disease, diabetes, and immune compromise.

9. People with moderate to severe asthma may be at higher risk of getting very sick from COVID-19. COVID-19 can affect your respiratory tract (nose, throat, lungs), cause an asthma attack, and possibly lead to pneumonia and acute respiratory disease.

10. Among patients who have more serious disease, some 30% will progress to Acute Respiratory Distress Syndrome (ARDS) which has a 30% mortality rate overall, higher in those with other health conditions. Some 13% of these patients will require mechanical ventilation, which is why intensive care beds and ventilators have been in insufficient supply in Italy, Iran, and in parts of China.

11. COVID-19 is widespread. Since it first appeared in Hubei Province, China, in late 2019, outbreaks have subsequently occurred in more than 160 countries and all populated continents, heavily affected countries include Italy, Spain, Iran, South Korea, and the US. The U.S. is now the world's most affected country. As of April 11, 2020, there have been 1,524,161 confirmed human cases globally and 92,941 known deaths. The pandemic has been termed a global health emergency by the WHO. It is not contained and cases are growing exponentially.

12. In the United States alone, the CDC reports 459,165 cases and 16,570 deaths as of April 10, 2020. The Ohio Department of Health reports 5,836 cases and 227 dead as of April 10. All these numbers are likely underestimates because of limited availability of testing.

13. SARS-nCoV-2 is now known to be fully adapted to human-to-human spread. This is almost certainly a new human infection, which also means that there is no preexisting or "herd" immunity, allowing for very rapid chains of transmission once the virus is circulating in communities.

14. The U.S. CDC estimates that the reproduction rate of the virus, the R_0 , is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. This is highly infectious and only the great influenza pandemic of 1918 (the Spanish Flu as it was then known) is thought to have higher infectivity. This again is likely a function of all human populations currently being highly susceptible. The attack rate given an exposure is also high, estimated at 20-30% depending on community conditions, but may be as high as 80% in some settings and populations. The incubation period is thought to be 2-14 days, which is why isolation is generally limited to 14 days.

15. There is currently no vaccine for COVID-19, and no cure. The only know ways to prevent the spread of SARS-nCoV-2 involve measures such as thorough handwashing, frequent

decontamination of surfaces, and maintaining six feet of physical distance between individuals (“social distancing”).

The risks of COVID-19 in detention facilities

16. COVID-19 poses a serious risk to prisoners, workers, and anyone else in detention facilities. Detention facilities, including prisons like Elkton, have long been associated with high transmission probabilities for infectious diseases, including tuberculosis, multi-drug resistant tuberculosis, MRSA (methicillin resistant staph aureus), and viral hepatitis.

17. The severe epidemic of Tuberculosis in prisons in Central Asia and Eastern Europe was demonstrated to increase *community* rates of Tuberculosis in multiple states in that region, underscoring the risks prison outbreaks can lead to for the communities surrounding a prison.

18. Infections that are transmitted through droplets, like influenza and SARS-nCoV-2 virus, are particularly difficult to control in detention facilities, as social distancing and proper decontamination of surfaces is virtually impossible.

19. For example, several deaths were reported in the US in immigration detention facilities associated with ARDS following influenza A, including a 16-year old male immigrant child who died of untreated ARDS in custody in May 2019.

20. Current recommendations for social distancing, frequent hand washing, and frequent cleansing of surfaces to prevent infection and the spread of the virus are extremely difficult, if not impossible, to implement in the correctional setting. A number of features of these facilities can heighten risks for exposure, acquisition, transmission, and clinical complications of these infectious diseases. These include physical/mechanical risks such as overcrowding; population density in close confinement; insufficient ventilation; shared toilet,

shower, and eating environments; and limits on hygiene and personal protective equipment such as masks and gloves in some facilities. Shared spaces and equipment (such as telephones) are commonly not adequately disinfected, especially during the current pandemic when more frequent cleaning and disinfecting are required. Limits on soap (copays are common) and recommended hand sanitizers, since they contain alcohol, are also risks for spread. The nationwide shortage of personal protective equipment (PPE), as well as ancillary products (such as cleaning supplies and thermometer probes) further impacts the ability of correctional facilities to implement necessary precautions.¹

21. The risk of exposure to and transmission of infectious diseases, as well as the risk of harm from developing severe complications or death if infected, is significantly higher in jails, prisons, and detention centers than in the community. Close, poorly ventilated, living quarters and often overcrowded conditions in these facilities foster the rapid transmission of infectious diseases, particularly those transmitted by airborne droplets through sneezing, speaking, or coughing. In these congregate settings, large numbers of people are closely confined and forced to share living spaces, bathrooms, eating areas, and other enclosed spaces. They are physically unable to practice social distancing, which the Centers for Disease Control and Prevention (“CDC”) has identified as the “cornerstone of reducing transmission of respiratory diseases such as COVID-19.”² Because of this, incarcerated individuals are less able to protect themselves from being exposed to and becoming infected with infectious diseases, such as COVID-19.

22. While jails, prisons, and detention centers are often thought of as closed environments, this is not the case. Custody, medical, and other support staff and contractors

¹ *Study of COVID-19 in Correctional Facilities*, Harvard University and National Commission on Correctional Health Care, April 9, 2020

² <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>

enter and leave the facility throughout the day. New detainees arrive on a frequent basis. Since there is no effective way to screen for newly infected or asymptomatic individuals, they can unknowingly transmit COVID-19 to those housed in the facility. Detainees and inmates are often transferred between housing units, to other facilities, and to and from Court. This further increases the likelihood of transmission of COVID-19.

23. It has long been known that jails, prisons, and detention centers can be hotbeds of disease transmission. Due to the frequent ingress and egress of employees at these facilities, an outbreak within a jail, prison, or detention center can quickly spread to surrounding communities. For example, the tuberculosis epidemic that broke out in New York City in the early 1990s began in jails and was spread to the community by jail employees who became infected and then returned home to their families and communities.

24. In addition to the nature of the prison environment, prison and jail populations are also at additional risk due to high rates of chronic health conditions, substance use, mental health issues, and, particularly in prisons, aging and chronically ill populations who may be vulnerable to death or severe illnesses after infection from COVID-19 disease.

25. While every effort should be made to reduce exposure in detention facilities through internal mitigation efforts, this may be extremely difficult to achieve and sustain quickly enough. It is therefore an urgent priority in this time of national public health emergency to reduce the number of persons in detention as quickly as possible.

26. Given the experience in China as well as the literature on infectious diseases in jail, additional outbreaks of COVID-19 among the U.S. jail and prison populations are inevitable, as evidenced in Elkton. Releasing as many inmates as possible is important to protect the health of inmates, correctional facility staff, health care workers at jails and other detention

facilities, the community as a whole. Indeed, according to the World Health Organization, “enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages.”³

27. For these reasons, the pandemic has prompted prisoner releases around the world. France has announced it will free 5,000 inmates⁴, and in the United States, California officials are planning to release up to thousands of prisoners.⁵ In Britain, the Ministry of Justice is planning to grant thousands of prisoners early release within weeks in an effort to contain the spread of the virus in cells and facilities where it said social distancing rules are impossible to maintain.⁶ Many cities and counties across the US, including San Francisco, Los Angeles, Chicago, Cleveland and New York, are also releasing prisoners to reduce the risk of COVID-19.⁷

28. It is difficult to overstate the devastation that a COVID-19 outbreak could inflict on a correctional facility such as FCI Elkton. At Rikers Island in New York, between April 1, 2020, and April 15, 2020, the number of COVID-19 positive incarcerated individuals and staff members grew by 104 and 114 people, respectively, upping the jail’s total numbers of confirmed cases to 288 among the incarcerated population, 488 among correction staff, and 78 among

³ World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020), http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

⁴ *Coronavirus: Low-risk prisoners set for early release*, BBC News (Apr. 4, 2020), <https://www.bbc.com/news/uk-52165919>.

⁵ Paige St. John, *California to release 3,500 inmates early as coronavirus spreads inside prisons*, L.A. Times (Mar. 31, 2020), <https://www.latimes.com/california/story/2020-03-31/coronaviruscalifornia-release-3500-inmates-prisons>.

⁶ *Britain plans to free many inmates early as it reports a on-day death toll*, New York Times, 4/3/20.

⁷ Timothy Williams et al., *‘Jails Are Petri Dishes’: Inmates Freed as the Virus Spreads Behind Bars*, N.Y. Times (Mar. 30, 2020), <https://www.nytimes.com/2020/03/30/us/coronavirusprisons-jails.html>.

health care workers.^{8,9} The first known case of COVID-19 at Rikers was confirmed on Wednesday, March 18,¹⁰ illustrating just how quickly this disease can and will overwhelm detention facilities. The Cook County jail in Chicago has emerged as the largest-known source of U.S. coronavirus infections, according to data compiled by The New York Times. At least 387 cases can be linked to the jail, including 272 inmates.

29. According to the Bureau of Prisons, three prisoners have died of COVID-19 at FCI Elkton and its adjacent low security satellite prison. Given the way the disease has progressed elsewhere, we can expect the death toll to mount rapidly.

30. From news reports, it is also my understanding that 43 detainees have been hospitalized outside the prison with COVID or suspected COVID, as have some staff members. Of those, 15 are on ventilators. Dozens more have symptoms. Even these dozens may represent the tip of the iceberg, since newly-infected people typically do not show symptoms for 2-14 days, and since the infection spreads rapidly to additional people.

31. It is my understanding that Elkton uses open bay / dorm housing units with multiple-occupancy cells, and a limited number of segregation units. It also my understanding that Elkton has roughly 2,400 detainees between the Elkton federal correction institution and the low security satellite prison on any given day; that staff that enter and leave the facility regularly; and that detainees share restroom and shower facilities and eat communally prepared food.

32. Based on these understandings, it is my opinion that the exponential infection of rate for COVID-19 we already see in the community would be magnified within Elkton.

⁸ Julia Craven, *Coronavirus Cases Are Spreading Rapidly on Rikers Island*, Slate (Apr. 2, 2020), <https://slate.com/news-and-politics/2020/04/rikers-coronavirus-cases-increase.html>.

⁹ Jan Ranson, *Jailed on a Minor Parole Violation, He Caught the Virus and Died*, N.Y. Times (Apr. 10, 2020)

¹⁰ *As Testing Expands, Confirmed Cases of Coronavirus in N.Y.C. Near 2,000* (Mar. 18, 2020), N.Y. Times, <https://www.nytimes.com/2020/03/18/nyregion/coronavirus-new-york-update.html>.

Adequate social distancing would be impossible to maintain. What's more, the infection in Elkton would not stay limited to the facility, but would worsen infection rates in the broader community. The death rate will increase substantially before it starts to diminish without major interventions. This is why leaving implementation in the hands of local officials alone, who lack the expertise and resources and were incapable of preventing the outbreak in the first place or treating those who eventually died, is insufficient.

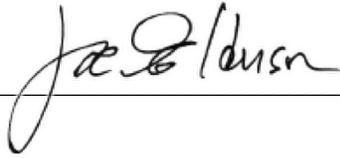
33. It is my public health recommendation that everyone who is medically-vulnerable to severe symptoms and death from COVID-19, as defined in this lawsuit,¹¹ be released from FCI Elkton and FCL Elkton immediately, taking precautions that they are released to a place where they can maintain medically appropriate isolation for at least 14 days and receive any necessary and available testing healthcare for underlying chronic conditions.

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

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

¹¹ "Persons held at Elkton over the age of 50 , as well as all current and future persons held at Elkton of any age who experience (a) lung disease, including asthma, chronic obstructive pulmonary disease (e.g. bronchitis or emphysema), or other chronic conditions associated with impaired lung function; (b) heart disease, such as congenital heart disease, congestive heart failure and coronary artery disease; (c) chronic liver or kidney disease (including hepatitis and dialysis patients); (d) diabetes or other endocrine disorders; (e) epilepsy; (f) hypertension; (g) compromised immune systems (such as from cancer, HIV, receipt of an organ or bone marrow transplant, as a side effect of medication, or other autoimmune disease); (h) blood disorders (including sickle cell disease); (i) inherited metabolic disorders; (j) history of stroke; (k) a developmental disability; and/or (l) a current or recent (last two weeks) pregnancy."

Executed this 11 day of April 2020 in Alameda County, CA



Joe Goldenson, MD

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Exhibit C

Declaration of Kendal Nelson

DECLARATION OF KENDAL NELSON

I, Kendal Nelson, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”). I am in the low security satellite camp. My Federal Bureau of Prisons Register Number is 64823-060. I was convicted of a drug offense and possession of a firearm, and have served approximately 3 years of a 9-year sentence. I have no violent offenses on my record.
2. I am 46 years old. I suffer from coronary artery disease, and had a heart attack resulting in a stent being placed in my artery a number of years ago. I also have asthma, and use an inhaler regularly, and I use a CPAP machine at night for sleep apnea. I also have stage 4 chronic kidney disease, and a twisted aorta that causes my breathing problems.
3. I’m housed at the low-security satellite camp at FCI Elkton, called “FSL Elkton.” There are 170 men in my pod, living 3 to a cell in spaces that were made for single occupancy. There are 5 toilets and 5 sinks for the whole pod. It’s impossible to keep 6 feet of distance from others here.
4. Everywhere we go, we’re all bunched up together and keeping our distance is impossible. You can’t even walk around, much less maintain distance. That’s true everywhere—near the phones, near the computers, everywhere. All the beds are locked together and physically connected, so it’s impossible to maintain distance in the cubes. Sickness spreads quickly here. We don’t have much time before all of us get it.
5. When it’s time to eat, we pick up our food boxes from the cafeteria. We have to wait in a line where we’re bunched up right behind each other, heel-to-heel, because there isn’t enough space. We get our food and take them it to our pod. We sit together four chairs to

a table and eat. There's nowhere where we can eat without bumping right up against each other.

6. We have TV rooms as common areas, but even there we can't get enough space for social distancing. The TV rooms are small, like the size of an apartment bedroom. There might be 12 people in there at a time watching TV.
7. I'm in the same pod where Woodrow Taylor was, and I knew him. He was one of the prisoners who died from COVID-19. Woodrow had a bad heart and a bad kidney, just like me, and the fact that he died makes me scared. I also saw when another prisoner, Margarito Garcia-Fragoso, was taken out. He later died also.
8. Most of the men in my pod are coughing but don't have fevers. If you have a fever they take you out of the pod into quarantine, but if not, you stay. A bunch of people have been taken out, but then they brought prisoners who were quarantined back into the pod with everyone else.
9. We still don't have any masks, and neither do the correctional officers (COs). I haven't been tested. As far as I know, they're only testing the dead.
10. The commissary is closed. Prisoners are being fed small portions of food, with no ability to get more. We have no way to get cleaning supplies, and the living area is filthy with no surfaces being cleaned. Our water pipes burst, and different colors of water have come out of the pipes. Men are developing rashes that we think are from the water. The poor sanitation is making it unbearable.
11. We were told in a memo that a CO working at the FSL and the FCI is who brought the coronavirus into the prison, back in January.

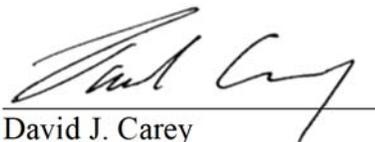
12. There are less guards around than there used to be. They don't come into the pods as much or walk around. A lot of them are sick too.
13. They are not allowing us to go outside and get fresh air, and we're not allowed into the law library. There was a memo sent to prisoners about the virus being present in the prison, but they took no measures to prevent the spread that I could see.
14. I heard about a video that a prisoner took and put out on the Internet to show what's going on here. After the video came out, that prisoner was sent to the hole and seems to be getting punished for it.
15. A lot of the people in my pod seem to be sick. The only thing I can do is stay in my cell under the blankets all the time so I can have some barrier between me and everyone else.
16. I heard that the National Guard is here but they're in the FCI, not the FSL where I am. I was told they are there for Medical.
17. I have heard that a list of nonviolent offenders like me was provided to the prison, with instructions to release them. A group of people was gathered for possible release, but many of them were later put back into the regular population, and I don't know why.
18. I have a secure and stable home environment that I can go to immediately if I am released.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Kendal Nelson (by consent)
Kendal Nelson

I, David J. Carey, certify that I reviewed the information contained in this declaration with Kendal Nelson by telephone on April 10, 2020 and as to ¶ 18, by correspondence on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 12, 2020.

A handwritten signature in black ink, appearing to read "David J. Carey", written over a horizontal line.

David J. Carey
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Exhibit D

Declaration of Eric McReynolds

DECLARATION OF ERIC MCREYNOLDS

I, Eric McReynolds, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”) My Federal Bureau of Prisons Register Number is 64593-060. I am 50 years old, and serving a sentence for a nonviolent drug trafficking offense, with a sentence enhancement for possession of a firearm.
2. Several weeks ago, I started coughing. That continued for about a week, and then a fever just came on all of a sudden. I had a fever of about 101. There is a quarantine unit for coronavirus at FCI Elkton, but they didn’t move me into the quarantine unit until I had a fever. I was moved in there on March 29, and stayed until April 7.
3. Everybody was sick in the quarantine area, but I wasn’t tested for coronavirus. I only know of one person who I understand had symptoms of coronavirus and was tested, but I don’t think he got his results even after he was moved back into the regular population.
4. No one in the quarantine area was spaced out. They took people to the hospital if your condition got worse, and of everyone they sent to the hospital, I only saw one person come back.
5. I don’t know if I had it or not. I think I did, but if I didn’t, the quarantine unit put me at risk because of how close everyone was together. I was in there with people who probably had it, so even if I didn’t have it before, I might have it now. If I did have it, I don’t want to infect anyone if I’m contagious.
6. It’s impossible to be spaced out or social distance here. The racks are 2-3 to a cell. People are about 2-3 feet apart when they sleep. Every day, all day, we’re in the dorm clustered in around each other, and it doesn’t change. As I’m talking on the phone right now, I’m right

next to someone, so close that I could kick him in the ankle. When we go to eat, we used to go to the chow hall. Now we pick up the trays and come back. We walk there at our own risk, with no spacing. I don't think anyone knows what to do about this.

7. All day, I'm always right by somebody no matter what I'm doing, and there's no way I can space myself off from other people. Bathroom sinks, tables in the day area, computers, they're all close together. There's nothing I can do to protect myself from people who might be carriers, whether or not they're showing symptoms.

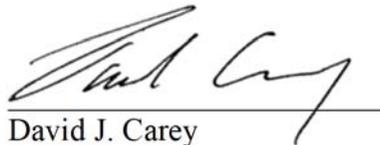
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Eric McReynolds (by consent)

Eric McReynolds

I, David J. Carey, certify that I reviewed the information contained in this declaration with Eric McReynolds by telephone on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 11, 2020.



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Exhibit E

Declaration of Eric Bellamy

DECLARATION OF ERIC BELLAMY

I, Eric Bellamy, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”), in unit “GB.” My Federal Bureau of Prisons Register Number is 15061-088. I was convicted of possession of narcotics and of a firearm, and have served approximately 16 months of a 75 month sentence. I have no violent offenses on my record, and I’ve completed a drug program.
2. I am 52 years old. I have a history of heart problems, including one enlarged heart valve and two valves that are regurgitating. I’ve been told by a doctor that I need a stent within a year. I also suffer from hypertension, and I’m going blind in my left eye, which I’m told is a result of my heart condition. I know that my conditions make me a higher risk for the coronavirus.
3. There is no way to social distance inside FCI Elkton. I’m housed in a cell with two other men, crowded into maybe a 6-foot by 8-foot area with a bunk bed and an extra bed. The whole prison is overcrowded, and every bed is taken up. There is way less than six feet between beds.
4. In any given moment I’m no more than 1-2 feet away from someone else, and there’s no way to keep more of a distance. When we go to get food, we have 5 minutes to get up, get dressed, and get to the building where we get our food boxes. Men are clustered together in line, because there’s no space to spread out. When we come back with our food, we can eat in our cubes, or go to the big or small TV rooms, there’s no distancing whatsoever in any of these places. I can move around and walk around the cubes, but I’m bumping up against people wherever I go.

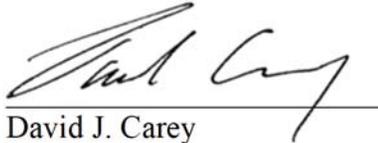
5. I just saw on the news, on WKBN.com Youngstown, that 67 people at Elkton have the coronavirus, 44 are in the hospital, 12 staff have it, and 14 inmates on ventilator.
6. Nothing is being done to separate people who are older or higher-risk, like me. They don't seem to care anything about what's happening down here, because they're focused on the hospital.
7. There are no staff around. I'm told that's because they're overstaffed at the hospital, with people pulling 12-hour shifts there, but they're not doing anything in the regular housing units. They're feeding us, and that's it.
8. The 150 or so people in my unit share 6 toilets and 12 showers, and you're right up against people the whole time. 2 stalls in the bathroom are broken.
9. The COs and other staff have been acting different since this started. There's less of them around and they're all trying to keep their distance, which means nobody is around to help us. The counselor isn't here, and a case manager didn't come in because he's sick.
10. People who have a fever over a certain temperature are being sent to medical or quarantine.
11. I was friends with another prisoner, Woodrow Taylor, who was sick and later died of the disease. After he was taken away to medical, they posted an "enter at your own risk" sign on his room.
12. If I am released, I have a stable home environment in Huntington, West Virginia, where I could go immediately.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Eric Bellamy (by consent)
Eric Bellamy

I, David J. Carey, certify that I reviewed the information contained in this declaration with Eric Bellamy by telephone on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 12, 2020.

A handwritten signature in black ink, appearing to read "David J. Carey", written over a horizontal line.

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Exhibit F

Declaration of Maximino Nieves

DECLARATION OF MAXIMINO NIEVES

I, Maximino Nieves, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at the low-security satellite camp at Federal Correctional Institute, Elkton, called FSL Elkton. My Federal Bureau of Prisons Register Number is 27537-050. I was convicted of conspiracy to distribute drugs, and have only about 11 months left of a 220-month sentence, which was later reduced to 188 months. I have no violent offenses on my record, and no prior offenses of any kind.
2. I'm 46 years old and I don't have a serious medical history. I thank God for that, because it's dangerous enough from the coronavirus even for healthy people.
3. It's totally impossible to maintain 6-foot distancing here. We're in 2- and 3-man cubicles, one after the other in an open dormitory. There are 170 people in my unit, sharing small bathrooms with 4 urinals, 10 showers, and 5 toilets, which we share. In the cubes, the person on the other side sleeps above where you read. In the TV rooms, the tables are right on top of each other. We're about 2 feet away from each other where we sleep.
4. The phones are on top of each other too. Talking on the phone right now, I'm on a phone bank of four phones. There's a little silver divider like old-school public phones, and you're so close you can hear each other's conversations. People come in and out through the entrance right next to me, through a door about 2 feet away.
5. No one has been tested for the coronavirus that I know of. The guys who show symptoms are put into a quarantine unit and as far as I know, they get no further help, unless there's shortness of breath and then they're taken to a hospital. They keep them in the quarantine

unit for about 10 days and then release them. But for those of us like me who have been in contact but are showing no symptoms, they don't do anything at all for us.

6. The prisoners are doing our best to keep surfaces clean with spray bottles of disinfectant, but people are still getting sick because we're all so close together. I know three people who have passed away from the disease, including Woodrow Taylor. I sat next to him ever since he got to this place. He was showing symptoms for a while but they left him in his bunk until finally moving him to medical. After he died, they gave us masks—2 masks in a brown paper bag.
7. I believe we have a few guards who are infected. There are only three guards working in the compound where I am right now, one in each unit and the compound officer. There are fewer guards because they are so busy taking people to the hospital. Every time someone goes, two officers accompany them.
8. The COs are acting very cautious ever since this happened. Normally they do shakedowns, but now they're interacting with us less. They're clearly avoiding us. There's a sense that we're being rejected or abandoned and the COs are not in touch with what's going on here.
9. I was one of 15 guys who was told, a little over a week ago, that I was going to be moved out. The unit manager from the FSL called me and the others up and told us "you guys are not coming back, say your goodbyes." They moved us to the visiting room and set up cots to quarantine us, and our meals were brought in. I was there from Saturday, April 4 through Wednesday, April 8. On Wednesday, a different case manager came in and called five people, including me. He told us to pack back up and go back to the unit, but didn't give us any explanation of why. So we were sent back in. Of that group of 15, 2 have been given

release dates, and 5 of us were sent back to the unit. I don't know what happened to the other 8, but I think they're still in the visiting area.

10. If released, I have a secure and stable home environment that I could go to immediately, including medical insurance.

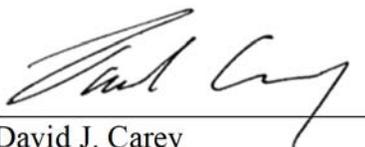
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Maximino Nieves (by consent)

Maximino Nieves

I, David J. Carey, certify that I reviewed the information contained in this declaration with Maximino Nieves by telephone on April 11, 2020 and as to ¶ 10, by correspondence on April 11, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 12, 2020.



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Exhibit G

Declaration of Howard Jackson

DECLARATION OF HOWARD JACKSON

I, Howard Jackson, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”). My Federal Bureau of Prisons Register Number is 54870-039. I was convicted of possession with intent to deliver narcotics, and have served approximately 4 years of a 135-month sentence. I have no violent offenses on my record.
2. I am 44 years old. I have a chronic stomach issue that I’ve been dealing with all my life. Before I self-surrendered, I had a stroke that left me confined to a wheelchair for about 10-12 months. When I was brought into prison, I had no help and no rehab, but I managed to get myself back together. Then about 4 months ago, I had another stroke, a minor one. My fellow prisoners helped me get through it. No one has been regularly checking my blood pressure or anything, they’re just giving me baby aspirin.
3. Since the coronavirus hit, people are passing away. There’s a lot of sickness going on. There’s a quarantine unit where if you have a fever, they house you for a few days. But pretty much everywhere I go, I’m standing next to someone who has symptoms.
4. It’s impossible to social distance in here. Even with the sleeping arrangements, my bunkmate and I can never be more than 3 feet apart. When you walk down a hall, you have to turn to the side to allow each other to pass. Where we watch TV, there’s seating areas right next to each other. At meal times, they call us in unit-by-unit to go over and get our trays. Even at that time, we still can’t be six feet apart, like when we’re lined up. In bathrooms, when you’re up and getting ready in the morning, at mealtimes, sleeping times, all the time, we have to be close together.
5. They just gave us masks last week. Staff and COs got masks around the same time.

6. Since this started, fewer COs seem to be around and the staff is very secretive. We'd ask them what's going on and they wouldn't tell us. They gave us different numbers about deaths and how many people are sick. From my understanding, all the COs are at the hospital. A lot of them are sick themselves. The COs are mad too, because they're having to come to work and deal with this, and they only just got masks.
7. The prison is not doing anything in particular to protect people with preexisting conditions, like me. They've sent out memos telling us to keep your distance and wash your hands. I'm sure they know that's not possible.

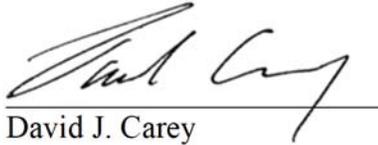
I declare under penalty of perjury that the foregoing is true and correct.

/s/ Howard Jackson (by consent)

Howard Jackson

I, David J. Carey, certify that I reviewed the information contained in this declaration with Howard Jackson by telephone on April 11, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 11, 2020.

A handwritten signature in black ink, appearing to read "David J. Carey", written over a horizontal line.

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Exhibit H

Declaration of Craig Wilson

DECLARATION OF CRAIG W. WILSON

I, Craig Wilson, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”), a low-security prison operated by the Federal Bureau of Prisons. My Federal Bureau of Prisons Register Number is 13730-025. I have served approximately half of a 120-month sentence for possession of methamphetamine and possession of a firearm. There has never been any violence on my record, but over the years I have suffered from addiction. I have a stable home environment available if I’m able to move to home detention, and I have an evidence-based recovery plan in place.
2. I am 42 years old. I’ve suffered from chronic asthma since childhood, and have had to use inhalers, steroids, and breathing machines at various times in order to breathe properly. I use a rescue inhaler regularly, and I take albuterol for my breathing problems. I know that my condition puts me in a high-risk category for COVID-19, and I’m afraid that if I catch it, I will die.
3. Around March 9, 2020, FCI Elkton established a protocol to keep the facility free of COVID-19. I understood that to involve keeping the staff on the grounds for two-week intervals, and to test them for the coronavirus upon arrival and departure. Mats, bedding, and food were brought in for the staff, but that plan was quickly abandoned. I understood that to be because the staff didn’t want to cooperate with the plan, because I heard some of them saying so.
4. It has been complete chaos since the coronavirus began to spread inside FCI Elkton. The prison has set up a quarantine unit, where they move people who they see showing symptoms, for a period of seven days. Medical is taking temperatures, using the same

thermometer for multiple people and only wiping it off with a sanitary napkin. If the fever goes away, they're moved back to the regular housing unit with no testing done. As far as I know, no one is being tested unless they're in bad enough condition to need to go to the hospital.

5. The number of people who are showing symptoms is staggering. A steady flow of people have ended up in the hospital, with ambulances leaving at all hours. I know three people have passed away. They were sick in bed with a fever, moved to a hospital, and never returned.
6. I know that social distancing is recommended to prevent the spread of the virus, but there is absolutely no way to practice social distancing here. We're piled on top of each other and left to fend for ourselves. My housing unit has open dorms with 150 bunks, divided into cubes with each cube holding 2-3 prisoners. There are 10 sinks, 18 showers, 6 toilets, and 6 urinals for all 150 people. Our bunks are in very close proximity to each other, definitely less than six feet in all directions. The cube is about 8 feet by 9 feet, with a 5-foot wall in between cubes. We are forced to get in tight lines for all meals and medications.
7. We're not allowed to go outside, which makes no sense to me because we might be able to practice social distancing outside. The air-intake units for my dorm, HB dorm, are broken, so we're not even getting fresh air from outside. The air that we receive is circulated from downstairs where the quarantine unit is housed.
8. A friend of mine who works in Medical was made to clean the cubes of those who were sick, and he ultimately got very sick and was put on life support. He was gone for a week and has just been put back into population.

9. There are only 4 phones and 4 computers shared by everyone in my unit. They are not being cleaned in between uses. Both the phones and the computers are less than two feet apart and are all in constant use.
10. There are no dispensers for soap or hand sanitizer anywhere in the unit. Once a week we are issued a 4-ounce bottle of “3-in-1” soap that is to be used for washing your hair and body, shaving, and washing your hands. I’ve run out of soap—everyone has. Without our commissary, we have nothing to wash with. They brought in a big jug of watered-down antibacterial spray for the dorm to share, and that’s all we have. We have access to one shared area for hot water, shared by all 150 people in the unit.
11. Each prisoner was issued two one-time-use masks a couple of weeks ago. They’re supposed to be disposable and we have no way to clean them, but that’s all we got. Using the mask repeatedly is dangerous, so many of us have nothing.
12. The prison commissary has been shut down. We are unable to purchase any additional soap, medicine, or sanitary equipment, and this also prevents us from buying stamps to mail letters to our loved ones.
13. Some staff still aren’t wearing protective gear, even after the deaths we’ve seen. The staff are hiding for the most part, and we only see them during count times. Many are sympathetic to the prisoners but unable to help. I’ve heard that the National Guard is here for medical assistance and staffing shortages, but I haven’t seen any of them. I’m worried that it’s going to come to the point of a riot soon.
14. The situation isn’t getting any better. Nothing is being done to protect me or others and I’m in fear for my life, because it seems like it’s only a matter of time until I get this virus. Many people around me feel the same way. I feel like I’ve been handed a death sentence.

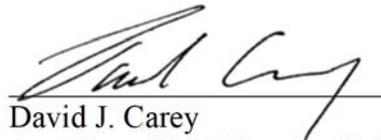
15. On March 30, 2020, I filed a request for home detention with the warden, but have gotten no response. I've asked for a grievance form to file, but I've been told that there are no forms available. All concerns that I and others have raised to staff are being ignored.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Craig Wilson (by consent)
Craig Wilson

I, David J. Carey, certify that I reviewed the information contained in this declaration with Craig Wilson by telephone on April 10, 2020, and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 10, 2020.



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Exhibit I

Declaration of Arsenio Arzola

DECLARATION OF ARSENIO ARZOLA

I, Arsenio Arzola, am over the age of 18 and fully competent to make the following declaration:

1. I am currently incarcerated at Federal Correctional Institute, Elkton (“FCI Elkton”). My Federal Bureau of Prisons Register Number is 27290-050. I was convicted for conspiracy to distribute drugs and possession and discharge of a firearm, and I have about 11 years remaining on my sentence.
2. I am 49 years old. I don’t know if I have any medical conditions, because I haven’t been given a physical since I’ve been incarcerated at FCI Elkton, which has been about 30 months.
3. My cellmate, a man named Michael Bear, got very sick. He is about 68 years old and when the coronavirus first hit, he went to Medical three times in one week but was returned to the housing unit. I had to serve as his caretaker or first responder and take care of him. He was coughing, sneezing, moaning, and defecating on himself. I had no gear, but I provided him some medication from the commissary and tried to help him get dressed, feed him, and move him around. I’m not an EMT, just a human being who has an elderly dad at home who I pray is getting the help he needs.
4. I’m in a housing unit called AA, in a 10,000 square foot warehouse. It’s wide open, with poor ventilation and filth on the ceiling and in the vents, which I’ve never seen cleaned. About 165 prisoners are in each dorm, in cubes that measure 8 by 10 feet, each containing 3 beds, 3 lockers, clothes, commissary, shoes, and 3 grown men. In this space, there is no way in the world for us to keep the six-foot distance for social distancing. Our beds are so close that we rub feet. We’re overcrowded like cattle. Some people get a 2-person cube, but that’s up to staff. I don’t think this place was even built to house this many people.

5. We have 12 shared showers. They're next to each other, with a wooden wall partly dividing them, but my water hits the next man and his water splashes me. The sinks are so close to each other that when we brush our teeth or wash our hands, the splash from the next man's toothpaste hits you, and you're bumping elbows with him. We all use the same toilets, which are permanently stained with waste and filth. Surfaces are not being cleaned.
6. We have controlled movements, like when we go to eat. It's a stampede of people trying to get through a 4-6 foot wide door. Social distancing is out the window. Phones are about 4 inches apart, and computers are about 8 inches apart, and the lines to get to them are ridiculous, especially during the day.
7. Soap and cleaning supplies are scarce. The commissary has been closed for a week. I've heard people call this institution a giant petri dish, a ticking time bomb, and a breeding ground for the COVID-19 pandemic.
8. It's a fact that the staff is overwhelmed. They seem to be dealing with their own personal or union problems. They don't want to be bothered by prisoners, and tensions are very high. Aggression is in the air, and every question from a prisoner to staff is answered in a very aggressive manner. Prisoners are scared to ask for anything—cleaning chemicals, paper, or anything else. Some of the staff wear masks, and some don't. I hear them say “if you're gonna get it, you're gonna get it.”
9. We were provided masks two weeks into the outbreak, when people were already sick and being pulled out into quarantine hour after hour, day after day. We were exposed to the virus for at least those two weeks before getting masks.
10. Prisoners are not being quarantined for 14 days. They're being sent back to units while still showing symptoms, and housed right back with us in the cubes. Some people with

symptoms are being taken immediately to medical, others are left behind. My sick cellmate, Michael Bear, was taken away and they moved someone else in who was just out of a 7-day quarantine and is still showing symptoms. Nothing has been done with me or my other cellmate, even though we were so close to a sick person.

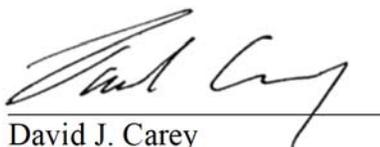
11. The only way I can think of that we might be able to keep our distance would be to intentionally commit infractions in order to be put in the SHU, or special housing unit, as punishment. Things are not getting any better.

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Arsenio Arzola (by consent)
Arsenio Arzola

I, David J. Carey, certify that I reviewed the information contained in this declaration with Arsenio Arzola by telephone on April 13, 2020 and that at that time, he certified that the information contained in this declaration was true and accurate to the best of his knowledge.

Executed on April 13, 2020.



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