

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DIANTHE MARTINEZ-BROOKS,	:	
REJEANNE COLLIER, JACKIE	:	
MADORE and KENNETH CASSIDY,	:	
Individually, and on behalf of all others	:	
similarly situated,	:	
	:	
Petitioners,	:	
	:	
v.	:	No. 3:20-cv-569 (MPS)
	:	
D. EASTER, Warden of Federal	:	
Correctional Institute at Danbury, and	:	
MICHAEL CARVAJAL, Director of the	:	
Federal Bureau of Prisons, in their official	:	
Capacities	:	
	:	
Respondents.	:	

**PETITIONERS’ SUPPLEMENTAL MEMORANDUM IN SUPPORT
OF MOTION FOR TEMPORARY RESTRAINING ORDER
AND PROPOSED ORDER**

Petitioners submit this memorandum and proposed Order in follow up to the May 6, 2020 hearing in this case. Petitioners have now consulted with counsel for Respondents and submit this Memorandum to advise the Court of the results of those discussions and to submit a proposed order (attached hereto as Exhibit A) based on those discussions and recent developments in *Wilson v. Williams*, No. 4:20-CV-00794 (N.D. Ohio).

I. List of Medically Vulnerable Prisoners

As requested by the Court, counsel for Petitioners consulted with counsel for Respondents about the definition of the Subclass of medically vulnerable prisoners and the process of compiling a list of such Subclass members. Petitioners and the Government have

agreed that the Subclass shall be defined on the basis of conditions specifically identified by the CDC as putting such individuals at higher risk for severe illness from COVID-19.

Consistent with CDC Guidance, Petitioners propose that the medically vulnerable Subclass be defined as follows:

All individuals in custody at FCI Danbury, while the threat of COVID-19 at the facility remains, who are aged 65 or over and/or who have any of the following conditions specifically identified by the United States Centers for Disease Control as putting them at higher risk for severe illness from COVID-19: (a) chronic lung disease including moderate to severe asthma, COPD, emphysema, chronic bronchitis, idiopathic pulmonary fibrosis and/or cystic fibrosis; (b) immunocompromised status, including status as a transplant recipient, on chemotherapy, HIV positive, prolonged use of corticosteroids, using immunosuppressive medication, and/or having an immune deficiency; (c) severe obesity (BMI of 40 or higher); (d) diabetes mellitus Type I or Type II, (e) gestational diabetes mellitus; (f) chronic kidney disease on dialysis; (g) chronic liver diseases, cirrhosis; and/or serious heart conditions, including congestive heart failure, coronary artery disease, congenital heart disease, cardiomyopathy, and/or pulmonary hypertension.

These conditions are covered by the CDC's publication, *People Who Are at Higher Risk for Severe Illness*, attached as Exhibit B.¹

Plaintiff's expert, Dr. Jaimie Meyer, has compiled a list of the CDC conditions and corresponding ICD-9 and ICD-10 codes. *See* Exhibit C. The parties have agreed that, as a first step in compiling the list of Subclass members, the BOP will search for these codes in the medical records of all prisoners at FCI Danbury. The search through medical records will include but will not be limited to the "health problem lists" that appear in the medical records of each prisoner. The parties have further agreed that Petitioners shall have the right thereafter to seek to add individuals to such list of Subclass members based on outside medical records or other evidence of relevant medical conditions meeting the criteria for the Subclass.

¹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

II. Proposed Order as to the Medically Vulnerable Subclass

Petitioners' Proposed Order, attached as Exhibit A, addresses the proposed Subclass definition, the compilation of the list of Subclass members, and a process for transfer of Subclass members to home confinement.

At the hearing on Petitioners' Motion for a Temporary Restraining Order, Petitioners referenced the order entered on April 22, 2020 by the court in *Wilson v. Williams*, No. 4:20-CV-00794, 2020 WL 1940882 (N.D. Ohio Apr. 22, 2020). Subsequent to the hearing in this matter, the Bureau of Prisons filed a status report in *Wilson* which, Petitioners believe, reflects a complete failure by the BOP in that case to identify in good faith medically vulnerable prisoners at Elkton eligible for transfer or to implement meaningful transfers of the medically vulnerable subclass.² Most saliently, although the BOP identified 837 medically vulnerable prisoners at Elkton, as of the date of its report it had initiated community placement for only 5 such medically vulnerable individuals and was pursuing further evaluation of 72 others. The remaining 760 prisoners (almost 91% of the class) were deemed by the BOP "not appropriate for home confinement at this time."³

In light of BOP's failure to implement the order in *Wilson* in a meaningful manner, Petitioners respectfully request that this Court enter a more self-executing Order. Petitioners believe that any such Order should presume eligibility of the members of the proposed medically vulnerable Subclass at FCI Danbury for transfer to home confinement absent a showing by the BOP that such Subclass member presents a serious danger to the safety of the community, to be

² The BOP's status report in *Wilson* is attached hereto as Exhibit D; Petitioners' responsive Emergency Motion for Enforcement of the Preliminary Injunction is attached hereto as Exhibit E.

³ According to its submission, the BOP also determined that only a single one of the 243 medically vulnerable prisoners who had applied for compassionate release met the criteria for such release. The BOP further advised the court that it was not even considering furlough as a stand-alone basis for release from Elkton.

evaluated exclusively based on specific criteria to be set forth in the Court's Order, or has no suitable place for home confinement. *See* Proposed Order ¶¶ 3-4. Further, the Order shall set forth a mechanism to adjudicate disputes concerning Subclass member suitability for home confinement. *Id.* ¶ 8.

III. Proposed Order as to the Class

Petitioners further request that this Court enter Orders directing that Respondents identify members of the Class (who are not members of the medically vulnerable Subclass) who are eligible for home confinement, and that, consistent with the April 3, 2020 Memorandum from Attorney General Barr, in making such eligibility determinations, the percentage of sentence the prisoner has served or the and length of the Class member's remaining sentence shall not be a factor. Petitioners further request an Order directing transfer to home confinement for the members of the Class so identified.

IV. Discovery Orders

Finally, Petitioners request that the Court enter Orders directing Respondents to provide specific information about the testing that has been performed to date on both prisoners and staff at FCI Danbury, and the medical staffing coverage at the prison and further to order an expert inspection of the facility during the week of May 11 or as soon thereafter as practicable as agreed by the parties.

Dated May 7, 2020

Respectfully Submitted,

/s/ David S. Golub

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*Application for Admission Pending

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DIANTHE MARTINEZ-BROOKS,	:	
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MADORE and KENNETH CASSIDY,	:	
Individually, and on behalf of all others	:	
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D. EASTER, Warden of Federal	:	
Correctional Institute at Danbury, and	:	
MICHAEL CARVAJAL, Director of the	:	
Federal Bureau of Prisons, in their official	:	
Capacities	:	
	:	
Respondents.	:	

PROPOSED ORDER

Having considered Petitioners’ Petition for Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 and Request for Emergency Order of Enlargement (ECF 1), Petitioners’ Emergency Motion for Temporary Restraining Order and Preliminary Injunction and accompanying memorandum and supporting exhibits (ECF 14, 15), and the Respondents’ Motion to Dismiss the Petition for Writ of Habeas Corpus and Opposition to Petitioners’ Motion for a Temporary Restraining Order and Preliminary Injunction and accompanying memorandum and supporting exhibits (ECF 24), and having held a hearing on May 6, 2020, Petitioners’ Motion for Temporary Restraining Order and Request for Emergency Order of Enlargement is granted in part as follows:

I. As to the Subclass of Medically Vulnerable Prisoners:

(1) The following Subclass of “medically vulnerable” prisoners is certified for purposes of this order:

All individuals in custody at FCI Danbury, while the threat of COVID-19 at the facility remains, who are aged 65 or over and/or who have any of the following conditions specifically identified by the United States Centers for Disease Control as putting them at higher risk for severe illness from COVID-19: (a) chronic lung disease including moderate to severe asthma, COPD, emphysema, chronic bronchitis, idiopathic pulmonary fibrosis and/or cystic fibrosis; (b) immunocompromised status, including status as a transplant recipient, on chemotherapy, HIV positive, prolonged use of corticosteroids, using immunosuppressive medication, and/or having an immune deficiency; (c) severe obesity (BMI of 40 or higher); (d) diabetes mellitus Type I or Type II, (e) gestational diabetes mellitus; (f) chronic kidney disease on dialysis; (g) chronic liver diseases, cirrhosis; and/or serious heart conditions, including congestive heart failure, coronary artery disease, congenital heart disease, cardiomyopathy, and/or pulmonary hypertension.

(2) Respondents shall identify by no later than May 12, 2020 a list of all members of the Subclass, and shall file that list with the Court by such date, along with a declaration setting forth the process used for identification of the Subclass, including a description of the databases searched. The parties shall meet and confer as needed and file with the Court any disputes regarding proper membership in the Subclass.

(3) All members of the Subclass shall be transferred from FCI Danbury to home confinement no later than May 19, 2020 unless a Subclass member presents a serious danger to the safety of the community or has no suitable home confinement location.

(4) In determining whether a Subclass member cannot be transferred from FCI Danbury to home confinement because such Subclass member presents a serious danger to the safety of the community, Respondents shall consider only the following factors:

- a. The seriousness of the Subclass member’s violent prior criminal history;

b. The seriousness of the Subclass member's violent disciplinary history within the last two years.

(5) By no later than May 15, 2020, Respondents shall provide Petitioners' counsel and file with the Court a list of any members of the Subclass that Respondents object to transferring to home confinement pursuant to paragraph 3 and shall specify the reasons for each objection.

(6) By no later than May 17, 2020, Petitioners shall file with the Court responses to Respondents' objections.

(7) By no later than May 19, 2020, the parties shall meet and confer to try to resolve any disputes and shall provide to the Court a list of those Subclass members as to whom there is no agreement regarding transfer to home confinement.

(8) The Court shall, with input from the parties, establish a process for resolving any disputes.

II. As to the Class of Prisoners at Danbury:

(9) The following Class is certified for purposes of this order: All prisoners at FCI Danbury who are not part of the medically vulnerable Subclass.

(10) By no later than May 24, 2020, Respondents shall identify and file with the Court a list of all prisoners at FCI Danbury who are suitable for home confinement. Respondents shall make this determination based on the criteria contained in Attorney General Barr's April 3 Memorandum for the Director of Bureau of Prisons. The percentage of the sentence served by the prisoner and the length of time remaining on the prisoner's sentence shall not be factors considered in the determination as to suitability for home confinement.

(11) By no later than June 8, 2020, Respondents shall transfer to home confinement all those prisoners at FCI Danbury identified as suitable for home confinement.

III. As to all Petitioners:

(12) Respondents shall provide within 24 hours of this Order a description of the medical staffing coverage for prisoners at FCI Danbury including (a) the number of medical staff working at FCI Danbury; (b) the degrees or certificates held by each staff member; (c) the role that each staff member is playing in caring for prisoners at FCI Danbury; (d) the staffing coverage schedule for medical staff at FCI Danbury for each of the previous three weeks; (e) the staffing coverage schedule planned for the next week; (f) the protocol for monitoring those who have tested positive for COVID-19 and/or who are exhibiting symptoms of COVID-19; and (g) the protocol used for determining when a prisoner needs to go to the hospital.

(13) Respondents shall provide within 24 hours of this Order the following information about each prisoner tested for COVID-19 at FCI Danbury (listing prisoners by unique identifiers but not names): (a) the number of tests performed on the prisoner; (b) the date each test was performed; (c) the type of test used (i.e., Abbot "ID NOW" machine versus PCR); (d) the results of each test; (e) the facility and unit where the prisoner tested was housed at the time of the test; and (g) for those who have tested positive, the current specific location of the prisoner including whether the prisoner remains in isolation.

(14) Respondents shall provide within 24 hours of this Order the following information about COVID-19 testing of staff employed at FCI Danbury: (a) the protocol for testing staff who have been exposed to COVID-19 and/or are exhibiting symptoms of COVID-19; (b) the number of staff members who have been tested for COVID-19; and (c) the availability of COVID-19 testing for staff at FCI Danbury.

(15) Respondents shall permit Petitioners' expert to inspect FCI Danbury during the week of May 11, 2020 or as soon thereafter as is practicable.

(16) The Court shall hold a hearing on Plaintiff's motion for preliminary injunction on

_____.

Dated at _____, Connecticut, this ___ day of May, 2020.

Michael P. Shea
United States District Judge



Coronavirus Disease 2019 (COVID-19)

People Who Are at Higher Risk for Severe Illness

COVID-19 is a new disease and there is limited information regarding risk factors for severe disease. Based on currently available information and clinical expertise, **older adults and people of any age who have serious underlying medical conditions** might be at higher risk for severe illness from COVID-19.

Based on what we know now, those at high-risk for severe illness from COVID-19 are:

- [People 65 years and older](#)
- People who live in a nursing home or long-term care facility

People of all ages with [underlying medical conditions, particularly if not well controlled](#), including:

- People with chronic lung disease or moderate to severe asthma
- People who have serious heart conditions
- People who are immunocompromised
 - Many conditions can cause a 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
- People with severe obesity (body mass index [BMI] of 40 or higher)
- People with diabetes
- People with chronic kidney disease undergoing dialysis
- People with liver disease



Older Adults



People with Asthma



At Risk For Severe Illness



People with HIV



People with Liver Disease

COVID-19: Are You at Higher Risk for Severe Illness?

Resources

- [ASL Video Series: COVID-19: Are You at Higher Risk for Severe Illness?](#)
- [Learn how you can help protect yourself if you are at higher risk of severe illness from COVID-19](#)

CDC-defined high risk conditions	ICD-10 codes	ICD-9 codes converted
Age ≥ 65 years old	not available	
<u><i>Chronic lung disease</i></u>		
Moderate to severe asthma	J45.4 and J45.5	49300, 49310, 49390
COPD	J44.9, J44	49122, 49121, 496, 49120
Emphysema	J43	4920, 4928
Chronic bronchitis	J41, J42	4918, 4919
Idiopathic pulmonary fibrosis	J84.112	516.31
Cystic fibrosis	E84	27702
<u><i>Immunocompromised</i></u>		
Transplant recipient	Z48.290, Z94.81, Z48.2, D84.9, Z94.9	V42, V5844, 996.85
On chemotherapy	Z92.21, Z51.1, T45.1X5A	V87.41
HIV	B20, Z21	42
Prolonged use of corticosteroids	Z79.52	V58.65
Use of immunosuppressive medication	Z92.25	V8746
Immune deficiency	D81, D80, D84.1, D84.9	2792, 27903, 27900, 2793, 2798
Severe obesity (BMI ≥ 40)	E66	27801, 27800, 27803
Type I diabetes mellitus	E10	25081, 25003, 25091, 25001
Type II diabetes mellitus	E11	25020, 25042, 25002, 25080
Gestational diabetes mellitus	O24.4	64881, 64883, 64884
Chronic kidney disease on dialysis	N18.4, N18.5, Z99.2	5854, 5855, 5856, 5859
Chronic liver disease, cirrhosis	K74, K70.3,	5715, 5712
<u><i>Serious heart conditions</i></u>		
Congestive heart failure	I50.2, I50.3, I50.4	4281, 42822, 42830, 42832, 4280, 4289, 42842
Coronary artery disease	I25	414
Congenital heart disease	Q24.9	7469
Cardiomyopathies	I42, I43	4254, 4255, 4259, 42511, 4258
Pulmonary hypertension	I27.0, I27.2	4160, 4168

EXHIBIT D

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

CRAIG WILSON, et al.,)	CASE NO.: 4:20cv794
)	
)	
Petitioners,)	JUDGE JAMES S. GWIN
)	
v.)	
)	
MARK WILLIAMS, Warden of Elkton Federal Correctional Institution, et al.,)	<u>RESPONDENTS' STATUS REPORT</u>
)	
)	
Respondents.)	

Pursuant to the Court’s May 5, 2020 Order, ECF No. 45, Respondents respectfully submit the following status report, informing the Court of BOP’s compliance with the Court’s April 22, 2020 preliminary injunction that requires Respondents to identify within one day all members of a preliminary “subclass” that the Court defined to include Elkton inmates who are considered to be at high risk according to guidelines of the Centers for Disease Control and Prevention (CDC) and to evaluate each subclass member’s eligibility for transfer out of Elkton through any means, including, but not limited to, compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough within two weeks.

As ordered by the Court, BOP compiled and publically filed a list of 837 Elkton inmates who are over the age of 65 and/or have diagnosed medical conditions that are identified by the CDC as making an individual at higher risk of complications from COVID-19. (ECF No. 35-1)

Even before the Court issued its preliminary injunction, the BOP was evaluating, and continues to evaluate, all of the approximately 170,000 federal inmates' eligibility for transfer to home confinement, consistent with the directives from Congress and the Attorney General and is also working to consider requests for "compassionate release" pursuant to statutory and regulatory requirements. The BOP has undertaken this review at Elkton and, in the interest of expediting the review, has provided additional staff from other BOP institutions and offices to assist Elkton's Case Management Coordinator's Office with the evaluation of the inmates on the list of "medically vulnerable" inmates as defined by the Court for release through the methods identified by the Court. The BOP's compliance with this Court's order is described more fully below.

I. Home Confinement

The BOP has the authority to transfer an inmate to home confinement for the remainder of his sentence pursuant to the provisions and limitations set forth in 18 U.S.C. § 3624(c)(2) and 34 U.S.C. §60541. See also, BOP Program Statement 7320.01, *Home Confinement and BOP Operations Memorandum, Home Confinement under the First Step Act*, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub.L. 116-136, Attorney General Memoranda dated March 26, 2020 and April 3, 2020, and BOP Memorandum dated April 15, 2020. As noted above, even before the Court issued its preliminary injunction, the BOP was evaluating the eligibility for home confinement of all inmates throughout the United States. The BOP has continued that evaluation, including at Elkton, and as of May 5, 2020, BOP has evaluated the eligibility for home confinement of all of the inmates from the list of "medically vulnerable" inmates as defined by the Court. As of May 5, 2020, five inmates are pending community placement. Another 72 inmates are being further evaluated for eligibility for home

confinement. The remaining inmates identified on the list are not appropriate for home confinement at this time.

II. Compassionate Release

The BOP does not have the authority to grant “compassionate release,” but upon an inmate's request, the Director of BOP may make a motion to an inmate's sentencing court to reduce a term of imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(1)(A). This process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*. The First Step Act, codified at 18 U.S.C. § 3582, and the applicable regulations, 28 C.F.R § 571.61, specify that an inmate may file a Motion for Reduction of Sentence directly with the sentencing court after exhaustion of administrative remedies, or 30 days from the date the Warden receives such a request from the inmate, whichever is earlier. The sentencing court makes the ultimate decision whether to grant compassionate release. As of May 5, 2020, 243 inmates on the list of “medically vulnerable” inmates as defined by the Court have submitted a request for compassionate release to the Warden. The BOP has evaluated those requests. Only one inmate of that group met the criteria for compassionate release. The BOP is currently working on a release plan for that inmate. The remaining inmates who submitted requests did not meet the criteria for compassionate release.

The large majority of the remaining inmates on the list have not submitted requests for compassionate release; consequently, BOP lacks information required by regulation to complete the assessment. However, BOP has identified six inmates on the list who, although they have not formally requested compassionate release, BOP is currently considering pending further review.

Among other things, inmates are required to submit a release plan with their request. *See* 28 C.F.R. § 571.61. A release plan is a critical part of BOP's evaluation of a compassionate release request; release plans are highly individualized and developed by the inmate with assistance from BOP social workers and include information regarding where the inmate will reside, how the inmate will support himself, and where the inmate will receive medical treatment and how he will pay for such treatment. Without this information submitted to the Warden along with the inmate's request, the BOP is unable to assess the inmate for eligibility for compassionate release. And absent a request, BOP also cannot know whether a particular inmate even desires to seek compassionate release. If additional Elkton inmates, including inmates on the list of "medically vulnerable" inmates as defined by the Court, submit requests for compassionate release, BOP will review and act on their requests as quickly as feasible.

III. Inmate Furloughs and Supervised Release

The BOP has the authority to temporarily release from custody (i.e. "furlough") an inmate pursuant to 18 U.S.C. § 3622 and BOP Program Statement 5280.09, *Inmate Furloughs*. The issuance of furloughs is within the sole discretion of the BOP, and delegated to the Warden of each institution. Furloughs are being considered in conjunction with other avenues of transfer or release in an effort to expedite the transfer of inmates nearing the end of a sentence.

Furloughs are not being used as a stand-alone basis for release from an institution.

The BOP has no legal authority to "release" inmates via parole or community supervision. Supervised release is a form of post-imprisonment supervision, although similar to parole, a term of supervised release does not replace a portion of the sentence of imprisonment, but rather is an order of supervision in addition to any term of imprisonment imposed by the sentencing court. *See eg. United States v. Reese*, 71 F.3d 582, 587 (6th Cir. 1995) ("supervised

release is ... a sentence in itself ...").

IV. Updated COVID-19 Data From Elkton

The BOP's considerable efforts to protect inmates at Elkton and throughout the United States from the COVID-19 pandemic are showing positive results. The following information is accurate as of May 5, 2020.

Testing – On April 16, 2020, Elkton received an Abbott testing machine and 250 testing cassettes. The Abbott machine was removed on April 21, 2020. A second Abbott machine was delivered on April 29, 2020, with an additional 250 test cassettes. Elkton is currently testing all inmates in quarantine who are pre-release. These inmates are generally asymptomatic. Elkton Health Services have coordinated with an outside laboratory to complete mass testing. That is pending approval. With approval, that testing could be immediately available to the institution.

Protective Equipment – Inmates were provided two surgical masks initially, and an additional two cloth masks when they became available.

Quarantine – Currently there are 36 inmates in quarantine at the main facility and six inmates in quarantine at the Satellite Camp.

Hospitalizations – 20 Inmates remain hospitalized or in rehabilitation facilities. No new inmates have required hospitalization since May 2, 2020. 8 inmates in hospitalization are intubated. This number has remained stable.

Respectfully submitted,

JUSTIN E. HERDMAN
United States Attorney

By: /s/ James R. Bennett II
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EXHIBIT E

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,

Case No. 20-cv-0794

Judge James Gwin

Petitioners,

v.

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

Respondents.

**PETITIONERS' EMERGENCY MOTION FOR ENFORCEMENT OF
PRELIMINARY INJUNCTION**

INTRODUCTION AND BACKGROUND

Prisoners are still dying as the COVID-19 pandemic continues to rage through Elkton. Today, a 70 year-old man whose name appears on Respondents' preliminary list of subclass members passed away.¹ His is the eighth death at Elkton, and the fifth since this case was filed. See ECF No. 1 at ¶ 3. Confirmed cases have risen to 99 prisoners and 49 staff.² One week ago, those numbers were 49 and 48.³ The situation remains as dire and urgent as ever, and Respondents' halfhearted response measures have done little or nothing to stem the tide. In the face of a direct

¹ WKYC Staff, *8th inmate dies from coronavirus at federal prison in Elkton*, WKYC (May 6, 2020), <https://www.wkyc.com/article/news/health/coronavirus/8th-inmate-dies-from-coronavirus-at-federal-prison-in-elkton/95-4d3c0f2e-c648-4e8c-b483-496bc053cd5b>.

² Federal Bureau of Prisons, *COVID-19: Coronavirus* (May 6, 2020), <https://www.bop.gov/coronavirus/>.

³ See ECF No. 37 at 1 (citing the BOP website). Upon information and belief, the numbers on the BOP website are currently active cases rather than cumulative, and so not including the dead or recovered.

order from this Court to begin moving medically vulnerable prisoners out of Elkton, Respondents have turned to a mixture of stalling tactics and outright defiance.

This Court ordered Respondents to evaluate and transfer vulnerable prisoners out of this epicenter of COVID-19—quickly. *See* ECF No. 22. As the Court reaffirmed yesterday, that Order required Respondents “to identify members of the subclass; evaluate each subclass member’s eligibility for transfer within two weeks (by May 6), prioritizing the most medically vulnerable inmates; and transfer inmates ineligible for other forms of release to another BOP facility.” ECF No. 45 at 1. Respondents were directed to assess each person’s possibility for “transfer out of Elkton through any means, including but not limited to compassionate release, parole or community supervision, transfer furlough, or non-transfer furlough[.]” ECF No. 22 at 20.

Respondents have already demonstrated, time and again, that they will not take such action on their own. But under this Court’s Order, it is not for Respondents to decide *whether* the subclass should be moved out of Elkton, but only *how*—beginning with the most vulnerable, and keeping in BOP facilities only those who are “ineligible for” release or home confinement. “None of the above” is not an option that Respondents may continue to choose. *See* ECF No. 22 at 9 (injunction issued “ordering Respondents to determine the appropriate means of transferring medically vulnerable subclass members out of Elkton”); *id.* at 20-21 (“Subclass members who are ineligible for [release or home confinement] must be transferred to another BOP facility”).

Respondents’ Status Report is a damning account of noncompliance with the letter and spirit of the Court’s Order. Rather than rebutting the showing of subjective deliberate indifference to the prisoners who are falling ill and dying in Respondents’ care, the Report confirms it on multiple levels. *First*, Respondents have refused outright to evaluate prisoners for furlough as they were ordered to do. *Second*, they have refused to conduct or facilitate compassionate release

measures unless a prisoner directly applies, but have done nothing to advise them to do so. *Cf.* ECF No. 41 at 15 (Respondents’ position that it would be “premature” even to begin measures to fully identify the medically vulnerable subclass). *Third*, they have regarded this Court’s Order as a ceiling, not a floor—they have failed to identify any other mechanism for release or transfer. *Fourth*, Respondents’ Status Report is silent on any measures of any kind to transfer to another facility individuals who are ineligible for home confinement, or even to prepare to do so. Nor is there any inkling that Respondents’ are prioritizing the most pressing cases—or any case.

The paltry results of Respondents’ evaluations speak for themselves. Out of 837 medically vulnerable class members, which must be reduced by those who have *already died while awaiting release*, five are “pending community placement.” ECF No. 49 at 2. Only one has “met the criteria” for compassionate release, and the BOP is “working on” a release plan. *Id.* at 3. Zero have been approved, or apparently considered, for furlough. *Id.* at 4. In passing, Respondents have even rewritten the Court’s instruction to consider “all Elkton inmates 65 years or older” into a list of those “over the age of 65.” *Id.* at 1.⁴

Meanwhile, the stalling continues. Having already delayed production of their preliminary class list until more than a week after the Court’s Order, Respondents argue today that their requests to stay that Order—none of which have been granted by any Court, for any period of time—should somehow justify delays in producing a proposed protective order that would enable emergency discovery. ECF No. 48 at 3-4. Even relevant discovery about the class list itself is described as “unnecessarily divert[ing] BOP resources away from the health and security of the

⁴ Respondents’ admission explains why at least two, and possibly more, 65 year-old prisoners were left off the list, as noted in Petitioners’ Emergency Motion for Expedited Discovery. *See* ECF No. 44 at 2 n. 1.

inmates.” ECF No. 48 at 2. On the contrary, given Respondents’ abject failure to protect their charges’ health to date, rapid discovery is rendered all the more necessary.

Federal courts are “not reduced to issuing injunctions against [government actors] and hoping for compliance. Once issued, an injunction may be enforced.” *Hutto v. Finney*, 437 U.S. 678, 690 (1978). This Court’s Order was not an advisory opinion, and it did not merely suggest that Respondents keep the parties and the Court informed while they continue their present, demonstrably failed course. Social distancing remains impossible at Elkton, and the death toll continues to rise. Respondents’ defiant response to this Court’s Order—coupled with stalling tactics that threaten to run out the clock while the disease runs its course—is manifestly inadequate. Absent the Court’s intervention, more people will die while Respondents continue their incessant delays and deflections.

ARGUMENT

I. Respondents Have Failed To Conduct the Required Evaluations

A. Respondents Refuse To Conduct Any Review for Furloughs

By statute, the Bureau of Prisons may release a prisoner from his place of imprisonment for a limited period, if the release is consistent with “the purpose for which the sentence was imposed” and any pertinent policy statement issued by the Sentencing Commission, if it is “otherwise consistent with the public interest,” and if there is “reasonable cause to believe that a prisoner will honor the trust to be imposed in him[.]” 18 U.S.C. § 3622. Purposes of such release may include, among others, obtaining medical treatment. § 3622(a)(3). Sentenced prisoners housed in BOP facilities are eligible. *See* 28 C.F.R. § 570.31. Among other possibilities, emergency non-transfer furloughs are available to “address a family crisis or other urgent situation.” 28 C.F.R. § 570.32(b)(1).

Respondents have conceded that BOP already has the authority to temporarily release individuals from custody. *See* ECF No. 10-2 at p. 3 ¶ 7. They simply refuse to use it, as it is “only being used for those individuals who have been medically screened, considered to be at risk, and on the advice of medical professionals.” *Id.* (“No FCI Elkton resident has met this criterion.”). The entire medically-vulnerable subclass matches that description, rendering this mechanism an excellent fit under the Court’s instruction to “evaluate each subclass member’s eligibility [for] transfer furlough, or non-transfer furlough[.]” ECF No. 22 at 20.

But faced with that direct order, Respondents have responded with outright defiance—no one, in their unilateral view, will receive furlough “as a stand-alone basis for release from an institution.” ECF No. 49 at 4. No one, by their own account, has been evaluated for a furlough under the Court’s Order, much less granted one. On its face, Respondents’ Status Report appears to recount a brazen repudiation of this Court’s Order as to furloughs.

B. Respondents Have Evaluated Only a Fraction of the Medically Vulnerable Subclass for Compassionate Release and Their Explanations Why Are Unavailing

The Court’s April 22 ruling ordered Respondents to “evaluate each subclass member’s eligibility for transfer out of Elkton through any means, including but not limited to compassionate release,” among other measures. ECF No. 22 at 20. In response, BOP attempts to offload its responsibility to comply onto the prisoners themselves. Arguing that BOP lacks standalone “authority to grant ‘compassionate release,’” Respondents’ Status Report states that they have evaluated only 243 of the prisoners on their own privately generated list of medically vulnerable subclass members because those were the only subclass members who had “submitted a request for compassionate release.” ECF No. 49 at 3. They argue that the lack of a proposed “release plan” is a barrier to considering subclass members who have not yet made a request, as is not knowing “whether a particular inmate even desires to seek compassionate release.” *Id.* at 4. Thus far, they

report that only 1 of those 243 prisoners “met the criteria for compassionate release,” and it appears that even that prisoner has not yet actually been released. *Id.* at 3.

Respondents’ lack of action amounts to abdication of their responsibility to follow the Order. The Court “order[ed] Respondents to evaluate each subclass member’s eligibility for,” among other avenues, “compassionate release.” ECF No. 22 at 20. The Order did not say anything about evaluating only those inmates who took the threshold step of making a request. *See id.* Furthermore, Respondents’ own report demonstrates that they are perfectly capable of evaluating inmates who have not made requests: they note that “BOP has identified six inmates on the list who, although they have not formally requested compassionate release, BOP is currently considering.” Status Report, ECF No. 49 at 3.⁵ Yet Respondents leave unexplained why the 588 other prisoners on BOP’s list of 837 prisoners were not similarly evaluated. More generally, and self-evidently, that Respondents have thus far identified only one qualifying prisoner at a low-security facility like Elkton calls into the question the vigor of their efforts.⁶

⁵ Indeed, some courts are waiving compassionate-release exhaustion requirements altogether in light of the pandemic. *E.g.*, *United States v. Zukerman*, No. 16 CR. 194 (AT), 2020 WL 1659880, at *2 (S.D.N.Y. Apr. 3, 2020) (“[T]he Court holds that Zukerman’s exhaustion of the administrative process can be waived in light of the extraordinary threat posed—in his unique circumstances—by the COVID-19 pandemic.”). Moreover, there is certainly no reason to believe that a prisoner must consent to be evaluated for compassionate release. Even assuming for argument’s sake that some prisoners would object to compassionate release, those prisoners would surely have a chance to voice their objections before being forcibly compassionately released by Respondents.

⁶ Respondents’ ambivalence may also be reflected in their opposition to at least one compassionate-release petition brought in this District by an Elkton prisoner, who supplemented his motion based on COVID-19. *See United States v. Smith*, No. 4:15-CR-19, 2020 WL 2063417, at *2, 4 (N.D. Ohio Apr. 29, 2020) (noting that Government opposed the prisoner’s supplemental motion on exhaustion grounds and denying relief while observing that the prisoner “may be a member of the subclass” involved in this habeas litigation).

C. Respondents Have Failed to Explain Why They Have Not Considered Other Means to Comply with the Court’s Order

The Court directed the Bureau of Prisons to determine eligibility “through any means, including but not limited to ... parole or community supervision...” Order, ECF No. 22 at 20. The Respondents have opted to interpret the order quite narrowly, and then not to comply with even that. To begin, Respondents argue that “BOP has no legal authority to ‘release’ inmates via parole or community supervision,” because “a term of supervised release does not replace a portion of the sentence of imprisonment.” Status Report, ECF 49 at 4. As Respondents well know, the Court was not suggesting that an *additional* punishment should be imposed on the prisoners, but that BOP should use community-based placements, with conditions, as necessary to implement the Court’s order. Further, the Government’s terse defiance fails to explain why it is refusing to use Bureau of Prison’s significant authority to transfer people to alternative forms of confinement, including home detention, while imposing conditions. That BOP is again choosing not to take necessary steps only underscores the necessity of further action by this Court.

II. Respondents Have Failed To Describe Any Action To Transfer Prisoners

As noted above, this Court’s Order requires that those individuals who are “ineligible for compassionate release, home release, or parole or community supervision must be transferred to another BOP facility where appropriate measures ... may be accomplished.” ECF No. 22 at 20–21. Respondents acknowledged as much in seeking a stay from this Court. Stay Mem., ECF No. 30-1 at 2–3, 8, 15. And the Court’s May 5 Order reiterated that Respondents must “evaluate each subclass member’s eligibility for transfer within two weeks (by May 6), prioritizing the most medically vulnerable inmates; and transfer inmates ineligible for other forms of release to another BOP facility.” Order, ECF 45 at 1; *accord* Sixth Circuit Order, App. ECF 23-2 at 1–2.

Despite this unambiguous instruction, Respondents' Status Report says nothing about transferring any prisoners to any other facility, having plans in place to do so, or in fact doing anything at all to begin these urgent transfers—for the most medically vulnerable, or for anyone else. Respondents argued, in pursuing a stay, that transferring inmates is “an extremely burdensome process,” Stay Mem., ECF 30-1 at 15, but that is all the more reason to begin the process, and it certainly does not excuse them from compliance. That there is no indication that they have initiated, let alone effected, even a single transfer flies directly in the face of what Respondents were ordered to do.

III. Respondents' Efforts To Shield This Process from Discovery Renders the Full Extent of Their Noncompliance Unknown

Even those evaluations that Respondents have actually undertaken have resulted in absurdly low numbers of individuals approved for release. *See* Status Report, ECF No. 49. Of the 837 known subclass members—a number that is known to be underinclusive, *e.g.*, *supra* n. 4—Respondents have approved *six people*, or 0.7% of the subclass, for some form of release. That is equal to the number that had already been approved for home confinement transfers before Respondents answered the Petition in this case. *See* ECF No. 10-2 at ¶ 20. Respondents have not, in other words, stepped up their pace in response to this Court's Order.

Instead, they appear to be applying a set of unattainable filtering criteria. The reasoning for each rejection remains known only to Respondents, as they refuse to answer discovery about the conditional class. *See* Opp., ECF No. 48, at 2-3. Across multiple cases, the BOP has taken contradictory and shifting views on what criteria apply for home confinement, for example.⁷

⁷ Neena Satija & Matt Zaposky, *Amid coronavirus pandemic, federal inmates get mixed signals about home-confinement releases*, WASHINGTON POST (April 24, 2020), https://www.washingtonpost.com/investigations/amid-coronavirus-pandemic-federal-inmates-get-mixed-signals-about-home-confinement-releases/2020/04/24/0bbc5458-84de-11ea-a3eb-e9fc93160703_story.html.

Indeed, BOP's approach to home confinement in the COVID-19 crisis has been described as "Kafkaesque" and "an illogical and self-defeating policy that appears to be inconsistent with the directive of the Attorney General, ungrounded in science, and a danger to both [the prisoner] and the public health of the community." *United States v. Scparta*, No. 18-CR-578 (AJN), 2020 WL 1910481, at *1 (S.D.N.Y. Apr. 20, 2020). Furloughs, according to Respondents, are at the Warden's discretion, applying wholly unknown criteria within the statutory boundaries of that discretion. *See* Status Report, ECF No. 49 at 4. The results, however, speak for themselves. Respondents' glacial pace and minuscule scope of releases to date simply underscores the need for expedited discovery and enforcement of this Court's Order. Respondents have proven that left to proceed at their own discretion, they will do little or nothing to expedite releases or transfers.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court take appropriate measures to enforce compliance with its April 22, 2020 Order.

Dated: May 6, 2020

Respectfully submitted,

/s/ David J. Carey

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Counsel for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2020, the foregoing was filed with the Court's CM/ECF system. Notice of this filing will be sent by operation of that system to all counsel of record.

/s/ David J. Carey
David J. Carey (0088787)

Counsel for Petitioners

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

DIANTHE MARTINEZ-BROOKS,	:	
REJEANNE COLLIER, JACKIE	:	
MADORE and KENNETH CASSIDY,	:	
Individually, and on behalf of all others	:	
similarly situated,	:	
	:	
Petitioners,	:	
	:	
v.	:	No. 3:20-cv-569 (MPS)
	:	
D. EASTER, Warden of Federal	:	
Correctional Institute at Danbury, and	:	
MICHAEL CARVAJAL, Director of the	:	
Federal Bureau of Prisons, in their official	:	
Capacities	:	May 11, 2020
	:	
Respondents.	:	

**PETITIONERS’ SECOND SUPPLEMENTAL MEMORANDUM IN SUPPORT
OF MOTION FOR TEMPORARY RESTRAINING ORDER**

Petitioners submit this second supplemental memorandum following the May 6, 2020 hearing to update the Court about conditions at the men’s facility at FCI Danbury and to request further emergency relief.

I. Conditions in D Unit at FCI Danbury

The D Unit at FCI Danbury currently houses approximately 60 men. The men sleep in rows of bunk beds, with the beds approximately four feet apart from each other. *See* Declaration of Kenneth Cassidy (“Cassidy Dec.”) ¶ 31;¹ Second Declaration of Kenneth Cassidy, submitted herewith as Exhibit A (“Cassidy Dec. 2”) ¶¶ 2-4.

¹ Kenneth Cassidy’s first declaration is attached to the Petition (ECF 1) as Exhibit D.

On May 7, 2020, two men who had been sick for some time were removed from D Unit.

A filing submitted on May 8, 2020 by the U.S. Attorney's Office for the Western District of New York in Kenneth Cassidy's pending compassionate release case stated:

[T]he government contacted the defendant's case manager at Danbury FCI. On May 8, 2020, the defendant's case manager stated that on May 7, 2020, two inmates were removed from the defendant's housing unit and placed into quarantine. One inmate, who tested negative for COVID-19, was the inmate who was two bunks away from the defendant, and had reported feeling sick for the past two months. The other inmate, who tested positive for COVID-19, was across the walkway from the defendant and numerous feet away. Again, both individuals were placed into quarantine on May 7, 2020.

See Exhibit B, submitted herewith.

As set forth in the attached declarations, following the removal of the two men from D Unit on May 7, 2020, staff have not—as of May 10—removed the bedding from the beds where the two men had been sleeping and have not otherwise cleaned their living areas. Cassidy Dec. 2 ¶ 6; Declaration of Edward Clinton Jones, submitted herewith as Exhibit C (“Jones Dec.”) ¶ 5; Declaration of Ivan Joseph Soto, submitted herewith as Exhibit D (“Soto Dec”) ¶ 6; Declaration of Mark Youngs, submitted herewith as Exhibit E (“Youngs Dec.”) ¶ 6. Staff have also not provided the prisoners with cleaning supplies and protective equipment to clean these areas themselves. Youngs Dec. ¶ 6; Cassidy Dec. 2 ¶ 6.

There are men in D Unit currently exhibiting symptoms of COVID-19 including coughs, headaches, shortness of breath, chills, body aches, and chest pains. Declaration of Roger Perkins, submitted hereto as Exhibit F (“Perkins Dec.”) ¶ 5; Jones Dec. ¶ 6; Cassidy Dec. ¶ 13; Youngs Dec. ¶ 7. Men are being told that if they do not have a fever they should stop complaining and go lie down. Youngs Dec. ¶ 7; Jones Dec. ¶ 7. The men who have submitted declarations are not aware of anyone in the unit who has been tested for the virus since May 7. Jones Dec. ¶ 8;

Cassidy Dec. ¶ 11; Soto Dec. ¶ 7; Perkins Dec. ¶ 6. Medical staff were not in the unit on May 9 or May 10 to evaluate the symptoms of the men. Cassidy Dec. ¶ 14.

The man who tested positive for COVID-19 on May 7 had been sick for around two weeks and had sought medical help. Cassidy Dec. ¶ 5. He was repeatedly told that he did not have a fever and should go lie down. *Id.* He asked his counselor for help again on May 7 and was initially told to go lie down. *Id.* ¶ 4; Soto Dec. ¶ 5. He was brought to medical only after he banged on the door and began screaming. Cassidy Dec. ¶ 4; Soto Dec. ¶ 5.

The second man had been sick for multiple weeks and had blood in his stool. Cassidy Dec. ¶ 8; Perkins Dec. ¶ 4. He repeatedly asked for medical care. Cassidy Dec. ¶ 8. He tested negative for COVID-19 on May 4, 2020 and was returned to the unit. Soto Dec. ¶ 4. There is a question as to whether the test was conducted properly. *Id.* The man was removed from the unit on May 7. Cassidy Dec. ¶ 8; Jones Dec. ¶ 4. It is unclear whether he later tested positive. Prisoners saw him being escorted to Unit A, where positive men are housed. Cassidy Dec. ¶ 9; Perkins Dec. ¶ 4.

II. Request for Additional Emergency Relief

In light of the current conditions in D Unit at FCI Danbury, Petitioners request the following additional temporary relief, in addition to the relief previously requested by Petitioners. In particular, Petitioners request that the Court issue an order requiring that all prisoners in the D Unit be tested for COVID-19 and be appropriately isolated and quarantined to protect their health. Given the high false negative rate of the machine that FCI Danbury is using

for testing, negative tests should be followed up with PCR testing.² In addition, Petitioners request that the Court require a thorough cleaning of D Unit.

Dated May 11, 2020

Respectfully Submitted,

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² Warden Easter's Declaration noted that testing was being conducted at FCI Danbury with the Abbott "ID NOW" machine, which can deliver results in approximately 15 minutes. *See* ECF 24, Ex. A, Easter Dec. ¶ 87. A recent study showed a false negative rate of approximately 15% with this machine. <https://www.npr.org/sections/health-shots/2020/04/21/838794281/study-raises-questions-about-false-negatives-from-quick-covid-19-test>

Counsel for the Petitioners Dianthe Martinez-Brooks, Rejeanne Collier, Jackie Madore, and Kenneth Cassidy

*Application for Admission Pending

Declaration of Kenneth Cassidy

1. I am currently incarcerated at FCI Danbury. My Bureau of Prisons ("BOP") Register Number is 48169-054.
2. I am 54 years old. I am currently housed in the D unit at FCI Danbury. There are approximately 60 men in my unit right now.
3. On Thursday, May 7, 2020, a man who sleeps in the bunk bed next to me (an arms' length away) tested positive for COVID-19. I know this man's name but will not use it here to maintain his privacy.
4. On the morning of May 7, I walked this man to the case manager's office because he was so sick. The case manager told him to go lay down. I told the man to go bang on the case manager's door and demand help. After he did this, he was escorted to medical.
5. This man had been asking for medical help for two weeks and each time was told that he did not have a fever and should just go lay down. I saw him being turned away on multiple occasions.
6. After this man was removed from the unit on May 7, his bed sheets and blankets were left on his bed, which is right across from my bed. His towels were left in his area too. As of today, these items have not been removed and his area has not been cleaned. When we complained to staff, we were told to clean the area ourselves. However, we were not given cleaning supplies and protective equipment to do this cleaning.
7. A man who came into the unit from the SHU was put in the top bunk right above where the man who tested positive for COVID-19 had been sleeping.
8. A second man was also removed from the unit on May 7. I know this man's name as well but will not use it here to maintain his privacy. I understand from a government filing in my compassionate release case that this second man tested negative for COVID-19. This man slept two bunks away from me and has been sick for around two months. He was passing blood in his stool, which he showed to me and other inmates. He asked for medical care on many occasions.
9. Through the window in my unit, I saw this second man being escorted to the A unit. My understanding is that the A unit is for those inmates who have tested positive for the virus.
10. Staff have not removed the dirty laundry and dirty clothes from this second man's bed and living area, and they have refused to clean the area.
11. I am not aware of anyone in the unit who has been tested for COVID-19 since May 7, other than the two men who were removed that day.

12. I am aware of three other men in my unit who tested positive prior to May 7.
13. Multiple men are currently showing symptoms of COVID-19 and have not been tested. One of the men who is coughing has COPD and is refusing to wear a mask.
14. No medical staff have been in the unit since Friday, May 8.
15. I am concerned about my cardiac condition because I am having numbness in the left side of my face and my left arm is weaker than normal.
16. I suffer from serious chronic medical conditions including asthma, coronary artery disease, hypertension, Prinzmetal angina, cervical disc disease, lumbar disc disease, gastroesophageal reflux disease (GERD), Barrett's esophagus, and diverticulitis resulting in a hernia in the colon wall. I have a soft tissue mass on my upper cervical spine resulting in partial paralysis that requires immediate surgery. I have had three heart attacks and have had pneumonia in my right lung more than 20 times. I cannot digest rice, beans or greens. I am severely allergic to ragweed, shellfish, trees and chlorophyll (including in green vegetables). I am morbidly obese.
17. I was seen by a physician's assistant on April 29 who said an emergency cardiac catheterization and colonoscopy would be ordered. To date, I have not had these procedures. When a procedure is ordered, it will appear in an inmate's Trulincs account under "consultation." The procedures I was told would be ordered do not appear in my account. I was also told on April 29 that I would be reevaluated again in a week to see if my cardiac medication needed to be adjusted. I have not been seen since April 29.
18. Although a BOP doctor at FCI Danbury ordered that I be provided with a special medical diet, this diet is not being provided to me. I cannot digest food containing chlorophyll, which is in much of the food being provided. The doctor told me that the cardiac episodes I am having may be related to the special medical diet not being given. I have been experiencing severe discomfort and sharp pains in my abdominal wall.
19. I declare under the penalty of perjury that the contents of this declaration are true and correct to the best of my knowledge. I will sign a hard copy of this declaration at my earliest opportunity.

/s/
Kenneth Cassidy
May 10, 2020

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-v-

17-CR-116

KENNETH CASSIDY,

Defendant.

**GOVERNMENT'S RESPONSE TO THE DEFENDANT'S
SUPPLEMENTAL AFFIRMATION**

THE UNITED STATES OF AMERICA, by and through its attorney, James P. Kennedy, Jr., United States Attorney for the Western District of New York, and the undersigned Assistant United States Attorney, respectfully files this response to the defendant's supplemental affirmation. *See* Dkt. #66. Specifically, after receipt of the defendant's supplemental affirmation, the government contacted the defendant's case manager at Danbury FCI. On May 8, 2020, the defendant's case manager stated that on May 7, 2020, two inmates were removed from the defendant's housing unit and placed into quarantine. One inmate, who tested *negative* for COVID-19, was the inmate who was two bunks away from the defendant, and had reported feeling sick for the past two months. The other inmate, who tested positive for COVID-19, was across the walkway from the defendant and numerous feet away. Again, both individuals were placed into quarantine on May 7, 2020.

DATED: Buffalo, New York, May 8, 2020.

JAMES P. KENNEDY, JR.
United States Attorney

S/ AARON J. MANGO

BY:

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Declaration of Ivan Joseph Soto

1. I am currently incarcerated at FCI Danbury. My Bureau of Prisons (“BOP”) Register Number is 25237-031.
2. I am 32 years old. I am currently housed in the D unit at FCI Danbury.
3. Two men were taken out of our unit on May 7, 2020.
4. One of the men removed from the unit had been sick for many weeks. He had been asking for help at sick call but told to stop complaining because he didn’t have a fever. He was tested on May 4 and told he was negative for the virus. He told me that when he was tested, a medical staff member who was watching told the person doing the test that the swab had not been pushed up in the nose far enough. He was not retested at that time.
5. The other man removed from the unit had been sick for around two weeks. He went to the case manager on May 7 to ask for help. He was told to go lay down. He then started screaming and they took him to medical. We’ve been told he tested positive.
6. As of today, the bedding has not been removed from the beds of both of these men. Their areas have not been cleaned.
7. I am not aware of anyone in the unit who has been tested for the virus since May 7.
8. I declare under the penalty of perjury that the contents of this declaration are true and correct to the best of my knowledge. I will sign a hard copy of this declaration at my earliest opportunity.

/s/
Ivan Joseph Soto

May 10, 2020

Declaration of Mark A. Youngs

1. I am currently incarcerated at FCI Danbury. My Bureau of Prisons (“BOP”) Register Number is 16256-055.
2. I am 58 years old. I am currently housed in the D unit at FCI Danbury.
3. I suffer from a heart condition, high blood pressure, and asthma.
4. There are around 60 to 70 men in my unit. The men sleep in rows of bunk beds.
5. Staff removed two men who were sick from the unit on May 7. Staff have told us one was negative and one was positive for the coronavirus.
6. The bed areas of the two men have not been cleaned since they were taken out of the unit on May 7. Inmates do not want to clean those sleeping areas because they haven’t been given gloves, cleaning chemicals, or new masks to do the job.
7. Men in the unit are showing symptoms including headaches and sneezes. They are being told by staff that if they don’t have a fever then stop complaining and go lay down.
8. I declare under the penalty of perjury that the contents of this declaration are true and correct to the best of my knowledge. I will sign a hard copy of this declaration at my earliest opportunity.

/s/
Mark A. Youngs

May 10, 2020

