

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-00756-PAB

EDWARD NELLSON, individually, and a Class of similarly-situated persons,

Plaintiff,

v.

WARDEN J. BARNHART, in his individual and official capacities, and
UNITED STATES FEDERAL BUREAU OF PRISONS,

Defendants.

**DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION**

Warden J. Barnhart, in his official capacity, and the Federal Bureau of Prisons (“BOP”), submit the following response in opposition to Plaintiff’s Motion for Preliminary Injunction. The Court should deny the motion for the same reasons set forth in the Court’s April 16, 2020, Order denying Plaintiff’s motion for a temporary restraining order. *See generally* ECF No. 23. Now, as then, Plaintiff has failed to exhaust his administrative remedies and cannot meet his high burden to show that the extraordinary relief of a preliminary injunction is warranted.¹

FACTUAL BACKGROUND

Plaintiff Edward Nellson, an inmate at the United States Penitentiary in Florence,

¹ Much of this response mirrors Defendants’ previous response to Plaintiff’s Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 10. This is because the legal analysis for temporary restraining orders and preliminary injunctions is the same, *see Wiechmann v. Ritter*, 44 F. App’x 346, 347 (10th Cir. 2002), and because the facts are largely unchanged. But as explained below, this response incorporates a small number of recent factual developments.

Colorado (“USP Florence), seeks a preliminary injunction directing USP Florence to take four specific measures in response to the COVID-19 pandemic: (1) begin screening staff and inmates for symptoms of COVID-19; (2) begin testing staff and inmates demonstrating symptoms of COVID-19; (3) quarantine all prisoners testing positive for COVID-19; and (4) exclude all BOP staff testing positive for COVID-19 from contact with inmates. *See* ECF No. 10 at 1-2.

Defendants are already taking the steps that Plaintiff is seeking to impose. Specifically, as set forth below,² USP Florence is employing a number of measures for screening, testing, quarantining, and excluding symptomatic individuals from USP Florence as appropriate.

A. Shelter-in-place order. USP Florence inmates are currently subject to a “shelter-in-place” order that will remain in place through at least May 18, 2020. *See* Ex. 1, Himlie Decl. ¶ 16; Ex. 2, Supp. Himlie Decl. ¶ 7. Under this order, USP Florence inmates are confined to their cells for the majority of each day. *See* Ex. 2 ¶ 8. While the order remains in effect, meals and commissary purchases are delivered directly to inmates’ cells, and inmates are permitted to leave their cells only in small groups on a rotating basis in a manner designed to permit them to maintain physical distancing while in common areas. *Id.* Inmates have been specifically directed to maintain such distancing to the extent practicable. *Id.* Although inmates are permitted to leave their cells for limited period of time each day, they are not required to do so. *Id.* Inmates may

² Throughout this section, Defendants will refer to two declarations: (1) the Declaration of Shari Himlie, which was originally submitted on April 6, 2020, with Defendants’ previous response to Plaintiff’s motion for a temporary restraining order and preliminary injunction (ECF No. 17-1), attached hereto as Exhibit 1; and (2) the Supplemental Declaration of Shari Himlie, which advises the Court as to new facts relevant to Plaintiff’s preliminary injunction motion that post-date her previous declaration, attached as Exhibit 2. As explained in Ms. Himlie’s Supplemental Declaration, the preventative and protective measures that she described in her April 6, 2020, declaration still remain in place at USP Florence today. Ex. 2 ¶¶ 3, 12.

remain in their cells if they choose. *Id.*

B. Screening. USP Florence is screening both newly arriving inmates and resident inmates for COVID-19. Ex. 1 ¶¶ 35-47; Ex. 2 ¶¶ 3, 12.

New inmate screening. Newly arriving inmates are both screened and quarantined. Ex. 1 ¶¶ 35-39. All incoming USP Florence inmates are screened by Health Services providers in a single, controlled area separate from other complex staff and inmates. *Id.* ¶¶ 38-39. Inmates are evaluated for symptoms of illness, as well as for “exposure risk factors” such as recent exposure to known or suspected COVID-19 cases. *Id.* ¶ 35. Whether or not inmates display symptoms or have exposure risk factors, they are automatically quarantined for a period of 14 days to ensure that they do not develop symptoms consistent with COVID-19, and are only released into the general population at the expiration of those 14 days upon medical clearance. *Id.* ¶¶ 36-37. All staff in any such quarantine or isolation units must wear Personal Protective Equipment. *Id.* ¶ 37.

Existing inmate screening. USP Florence is also screening its resident inmate population for symptoms of COVID-19. Ex. 1 ¶¶ 41-47; Ex. 2 ¶¶ 3, 12-14.

First, USP Florence has identified inmates who are “high-risk” for adverse COVID-19 effects as defined by the CDC, including individuals over age 55³ and those diagnosed with certain medical conditions, such as chronic lung disease, moderate to severe asthma, liver disease, and diabetes. Ex. 1 ¶¶ 41-42. Health Services staff have screened each high-risk individual for exposure risk factors, have conducted temperature checks of these individuals, and

³ CDC guidance classifies individuals over age 65, rather than 55, to be “high risk.” *See* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>. Nonetheless, Health Services staff determined to search for individuals over the age of 55 in order to take an even more conservative approach to identifying high-risk individuals.

have provided education to these inmates regarding COVID-19 prevention. *Id.* ¶ 43. Plaintiff Nellson is not considered a “high risk” inmate: he is 41 years old and has not been diagnosed with any condition identified by the CDC as placing individuals at higher risk. *Id.* ¶ 44.

Second, USP Florence is actively monitoring its general inmate population for illness. *Id.* ¶ 46. Medical staff are present in all USP Florence housing units at least twice a day so that inmates may report any medical concerns. *Id.* All inmates have been directed to report symptoms of illness immediately. *Id.* If an inmate requires medical attention, he will be reviewed and triaged for additional care, including being evaluated by a BOP physician. Ex. 2 ¶ 14. Once there is a positive case of COVID-19 at USP Florence, should that occur, all inmates will be screened daily through temperature and symptom checks. Ex. 1 ¶ 47.

Third, USP Florence has also implemented enhanced screening measures for inmates with ongoing work details whose functions have been determined to be “essential” to the institution and whose work takes them outside their own housing unit. Ex. 1 ¶ 45. For inmates who must leave their housing units to perform their work duties (such as inmates who work in food service, commissary, or laundry), this screening process takes place in the Health Services Department of USP Florence, rather than in the housing units. Ex. 2 ¶ 13. Inmates who are subject to those enhanced screening procedures are screened for symptoms of illness and are required to have their temperatures taken both before their shifts begin and once again before returning to their housing units. *Id.* Plaintiff Nelson is assigned as a unit orderly but works within the same housing unit in which he resides and does not leave his housing unit to perform his cleaning duties, and thus is not subject to these same enhanced screening procedures because he does not have exposure to staff or inmates outside his housing unit. *Id.* ¶ 14.

C. Isolation and quarantine procedures. Any inmate at USP Florence presenting with symptoms consistent with COVID-19 is immediately evaluated by a medical provider to determine whether testing and/or isolation is appropriate, and whether other measures (such as quarantine) should be implemented for inmates with whom the symptomatic inmate had contact. Ex. 1 ¶¶ 48-50.; Ex. 2 ¶¶ 3 & 12. FCC Florence has in place designated quarantine and isolation units for this purpose. Ex. 1 ¶¶ 36, 37, 48; Ex. 2 ¶¶ 3 & 12.

D. Testing. USP Florence is conducting testing in accordance with CDC guidelines. Ex. 1 ¶¶ 56-58; Ex. 2 ¶ 3, 12, 25. The decision whether to test an inmate for COVID-19 is made by BOP medical providers based on a number of criteria, including but not limited to: (1) the nature and severity of the symptoms; (2) the inmate's potential exposure to COVID-19; (3) whether the inmate is considered "high-risk," and (4) whether the inmate is on a work detail that requires the inmate to interact with other inmates or staff. Ex. 1 ¶ 58; Ex. 2 ¶ 25. USP Florence has access to COVID-19 test kits if a medical provider determines that testing is necessary. Ex. 2 ¶ 25.

To date, no staff or inmates at the FCC Florence complex (which includes USP Florence and other institutions) have been diagnosed with COVID-19. Ex. 2 ¶ 27.

E. Screening and excluding staff and visitors. USP Florence screens all staff members and visitors who enter the institution. Upon entry, all staff and visitors must have their temperature taken, disclose symptoms of illness, and respond to questions designed to evaluate their risk of exposure. Ex. 1 ¶ 52; Ex. 2 ¶¶ 3, 12. The individuals conducting this screening have authority to deny entry to anyone with a temperature above 100.4 degrees, or who report COVID-19 symptoms or exposure risk factors. Ex. 1 ¶ 53. Staff members who are tested for COVID-19 are not permitted to return to work until receiving a negative test result. *Id.* ¶ 55.

F. Additional measures to combat COVID-19. USP Florence has also taken other measures to prevent the introduction and spread of COVID-19 within the institution.

Physical distancing. As noted above, all inmates at USP Florence are subject to a “Stay in Shelter” order that will continue through at least May 18, 2020. Ex. 1 ¶¶ 16-17; Ex. 2 ¶ 7. Under this order,⁴ inmates are confined to their cells for the majority of the day and, when not in their cells, have been directed to maintain appropriate physical distancing. Ex. 2 ¶¶ 7-8.

USP Florence staff have also taken steps to promote distancing by limiting in-person meetings, capping the number of permitted attendees, and implementing a video-conferencing system. Ex. 1 ¶ 65. In addition, all staff members are restricted to working only in a single designated institution within the FCC Florence complex. *Id.* ¶ 69. For example, staff members designated to USP Florence are not permitted to enter FCI Florence, and vice versa. *Id.*

Hand-washing. All inmates have access to sinks, water, and soap at all times. *Id.* ¶ 62; Ex. 2 ¶ 15. New inmates admitted to any institution at FCC Florence automatically receive soap, and all inmates may receive new soap weekly. Ex. 1 ¶ 62; Ex. 2 ¶ 15. For inmates without sufficient funds to purchase soap in the commissary, soap is provided at no cost. Ex. 1 ¶ 62; Ex. 2 ¶ 15. The BOP’s Regional Director for the North Central Region (which oversees USP Florence) has directed that any inmate who needs additional soap will be given additional soap. ECF No. 21-2 ¶ 5. Plaintiff himself has purchased six bars of soap this month. *Id.* ¶ 6.

Cleaning. All common areas in inmate housing units are cleaned daily, and are typically

⁴ USP Florence had earlier adopted, on March 13, 2020, a “modified operations” plan that provided for staggered meal and recreation times in order to limit congregate gatherings and permit inmates to maintain distance from one another while outside their cells. Ex. 1 ¶¶ 11-12.

cleaned by inmate orderlies multiple times throughout the day. Ex. 1 ¶ 63; *see also* ECF No. 28-1 ¶ 11 (representation by Plaintiff that he and other orderlies clean the common areas in the housing unit once every few hours). The orderlies use a disinfectant that kills human coronavirus. Ex. 1 ¶ 63; Ex. 2 ¶ 15. USP Florence has also made this disinfectant available to inmates to clean their own cells. Ex. 1 ¶¶ 63-64; Ex. 2 ¶ 15. Common areas outside inmate living areas—such as the USP Florence lobby, bathrooms, and cafeteria—are cleaned with the same disinfectant. Ex. 1 ¶ 63; Ex. 2 ¶¶ 3, 12. Staff are also required to disinfect all common equipment, such as keys and radios, upon obtaining these items from the supply room and again upon their return. *Id.* ¶ 66; Ex. 2 ¶¶ 3, 12. Staff also have regular, consistent access to soap and hand sanitizer. *Id.* ¶ 66; Ex. 2 ¶¶ 3, 12.

Personal protective equipment. Correctional staff have been provided personal protective equipment (“PPE”) to be used in appropriate locations throughout FCC Florence such as quarantined areas, isolation units, and screening sites. Ex. 1 ¶ 67; Ex. 2 ¶ 19. In addition, all inmates and staff have been provided protective face masks for daily use. Ex. 1 ¶ 68; Ex. 2 ¶ 19. Staff are required to wear these masks at all times when in the institution’s common areas, when six-foot physical distancing measures cannot be observed. Ex. 2 ¶ 19. Staff are also required to keep a mask with them at all times in the event of an emergency. *Id.* Inmates have also been directed that use of a mask is mandated when they cannot maintain six feet of physical distance from other inmates and staff. *Id.* ¶ 20.

Inmate and staff education. USP Florence officials provide regular education to inmates and staff regarding the virus, the BOP’s response, and the measures that they themselves should take to stay healthy. Ex. 1 ¶¶ 24-31; Ex. 2 ¶¶ 16-23.

LEGAL STANDARD

“A preliminary injunction is ‘an extraordinary remedy that may only be awarded upon a clear showing that the [movant] is entitled to such relief.’” *New Mexico Dep’t of Game & Fish v. United States Dep’t of the Interior*, 854 F.3d 1236, 1245–46 (10th Cir. 2017) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008)). A party seeking a preliminary injunction must establish four elements: “that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter*, 555 U.S. at 20.

In this case, Plaintiff must meet an even higher burden because he seeks preliminary injunctive relief that is “specifically disfavored” in the Tenth Circuit. *Free the Nipple-Fort Collins v. City of Fort Collins, Colo.*, 916 F.3d 792, 797 (10th Cir. 2019). “Disfavored preliminary injunctions don’t merely preserve the parties’ relative positions pending trial. Instead, a disfavored injunction may exhibit any of three characteristics: (1) it mandates action (rather than prohibiting it), (2) it changes the status quo, or (3) it grants all the relief that the moving party could expect from a trial win.” *Id.* Here, Plaintiff acknowledges that the injunction he seeks falls into at least two of the three disfavored categories. ECF No. 10 at 3.

Thus, to obtain this injunction, Plaintiff “faces a heavier burden” on both the “likelihood-of-success-on-the merits and the balance of harms factors.” *Free the Nipple*, 916 F.3d at 797. Specifically, he “must make a ‘*strong showing*’ that these [factors] tilt in [his] favor.” *Id.* (emphasis added). “Any preliminary injunction fitting within one of the disfavored categories must be more closely scrutinized to assure that the exigencies of the case support the granting of a remedy that is extraordinary even in the normal course.” *O Centro Espirita Beneficiente Uniao*

Do Vegetal v. Ashcroft, 389 F.3d 973, 975 (10th Cir. 2004).

ARGUMENT

I. Plaintiff cannot show a likelihood of success on the merits.

Plaintiff has not met his burden to make “a strong showing” that he is substantially likely to succeed on the merits. *See Free the Nipple*, 916 F.3d at 798.

A. Plaintiff failed to exhaust his administrative remedies.

Plaintiff is not likely to succeed on the merits because he has still failed to exhaust his administrative remedies. As the Court has observed, under the Prison Litigation Reform Act (“PLRA”), inmates are required to exhaust their administrative remedies in advance of seeking a preliminary injunction. *See* ECF No. 23 at 6-7 (citing *Farmer v. Brennan*, 511 U.S. 825, 847 (1994)). The Court has already found that there is no evidence Plaintiff attempted to exhaust his remedies before seeking preliminary injunctive relief. *See id.* at 8.

After the Court issued its Order on April 20, 2020, Plaintiff submitted an administrative remedy request at USP Florence, alleging that steps being taken at USP Florence to combat COVID-19 were inadequate. Ex. 3, Second Supp. Trujillo Decl. ¶ 5. In his remedy, he requested that inmates be screened for COVID-19 symptoms daily, including temperature checks; that they be tested for COVID-19; and that they be provided soap and hand sanitizer. *Id.*

The Warden responded to the grievance the following day. *Id.* ¶ 6. In that response, the Warden addressed each of Plaintiff’s concerns, and explained that USP Florence was already taking the majority of the precautionary measures that Plaintiff requested. *See id.* For those requests that USP Florence would *not* grant (such as testing all inmates for COVID-19 regardless of symptoms, and providing inmates with hand sanitizer), the Warden explained why the

institution would not accommodate those specific requests.

That Plaintiff has now submitted an administrative remedy request does not mean that he has exhausted his remedies for purposes of this preliminary injunction motion.

First, Plaintiff has not yet completed the exhaustion process; he must still raise his grievance at both the Regional Office and, if his grievance is denied, at BOP's Central Office. *See* ECF No. 17-2 ¶¶ 5-6 (explaining the four-tiered administrative remedy process).

Second, Plaintiff was required to exhaust his remedies *before* filing the instant action. *See Booth v. Churner*, 532 U.S. 731, 738 (2001) (“The ‘available’ ‘remed[y]’ must be ‘exhausted’ *before a complaint under § 1983 may be entertained.*”) (emphasis added); *Simmat v. U.S. Bureau of Prisons*, 413 F.3d 1225, 1236–37 (10th Cir. 2005) (inmate must exhaust before filing a lawsuit challenging prison conduct); *Ruppert v. Aragon*, 448 F. App'x 862, 863 (10th Cir. 2012) (an inmate cannot avoid dismissal by exhausting a claim while the litigation is pending)

Third, Plaintiff's grievance—even had he completed the remedy process—would not exhaust the full scope of his claims here. Plaintiff's remedy request focused on the discrete measures of screening, testing, and soap. It said nothing about quarantining or isolating inmates, or excluding individuals who test positive for COVID-19 from the institution. *See* Ex. 3 ¶ 5. Although an inmate need not articulate specific legal theories in an administrative grievance, he must at least alert prison officials to the nature of his claim in order to give officials a chance to address the matter internally. *Kikumura v. Osagie*, 461 F.3d 1269, 1283 (10th Cir. 2006), *overruled in part on other grounds as recognized in Robbins v. Oklahoma*, 519 F.3d 1242, 1246 (10th Cir. 2008). Nothing in Plaintiff's remedy request alerted prison officials that he had any concerns or complaints about the USP's measures relating to quarantines, isolation, and

exclusion—all of which are central measures at issue in his motion for a preliminary injunction.

Finally, Plaintiff still cannot show that the remedy process is “unavailable” to him. He cannot show that the prison was unwilling to respond or untimely in doing so: Plaintiff submitted his administrative remedy on April 20, 2020, and received a response from the Warden the following day.⁵

That the Warden denied Plaintiff’s request does not render the remedy process “unavailable.” “[T]he Supreme Court has recognized that as long as ‘the administrative process has authority to take *some action* in response to a complaint, even if not the remedial action an inmate demands,’ administrative remedies are ‘available.’” *Muhammad v. Mayfield*, 933 F.3d 993, 1000 (8th Cir. 2019) (quoting *Booth v. Churner*, 532 U.S. 731, 737-38, 741 (2001)) (emphasis in original). Here, as evidenced by the numerous measures that the BOP has taken to address the COVID-19 pandemic within USP Florence, the institution has the authority to implement screening and testing measures, and to provide soap and other cleaning agents. That the Warden denied some of the *specific* measures that Plaintiff was seeking, such as providing inmates with hand sanitizer,⁶ thus does not show that no remedy for such requests was potentially available through the process.

⁵ Nothing in the BOP’s regulations prevent a warden from responding to a request for redress more quickly than the maximum timeframes set forth therein. *See* 28 C.F.R. ¶ 542.18 (establishing the maximum timeframes for response at each level of the administrative process). As the Court has observed, the BOP may also expedite the remedy process at the institution level if the remedy “is determined to be of an emergency nature which threatens the inmate’s immediate health or welfare.” *Id.*

⁶ The BOP cannot provide inmates with hand sanitizer because it contains alcohol, and thus presents a safety and security risk. Ex. 3 ¶ 6. The BOP can, and does, provide inmates with access to sinks, soap, and cleaning agents to disinfect their cells. Ex. 2 ¶ 15.

B. Plaintiff is not likely to succeed on his Eighth Amendment claim.

Plaintiff is not likely to succeed on the merits of his Eighth Amendment claim for the same reasons set forth the Court’s April 16, 2020, Order denying Plaintiff’s request for a temporary restraining order. *See* ECF No. 23 at 13-14.

To prevail on an Eighth Amendment “conditions of confinement” claim, Plaintiff must show that prison officials (1) deprived him of the minimal measure of life’s necessities, such as inmate health or safety (the objective prong), and (2) did so with “deliberate indifference” (the subjective prong). *Farmer*, 511 U.S. at 834.

Plaintiff can show neither. First, Plaintiff has not demonstrated that Defendants have deprived him “of the minimal civilized measure of life’s necessities.” *Farmer*, 511 U.S. at 834. “A prison official’s duty under the Eighth Amendment is to ensure *reasonable safety*.” *Id.* at 844 (emphasis added). As set forth in above and in the attached declarations, the BOP has taken reasonable steps to make USP Florence as safe an environment as possible under circumstances that expose *everyone*—prisoner and non-prisoner alike—to the risk of falling ill. It has sought and implemented advice from leading health authorities, and has implemented the same risk-reduction practices recommended for the community at large: physical distancing, limited movement, screening mechanisms, providing soap for hand washing, frequently disinfecting common, high-touch areas, and quarantining or isolating individuals as appropriate. *See generally* Exs. 1 & 2. To date, these numerous precautions have been successful, as USP Florence currently has no positive cases of COVID-19. Plaintiff thus has not established that the BOP has deprived him of the “minimal civilized measure of life’s necessities” by denying him “reasonable safety” under the circumstances. *Farmer*, 511 U.S. at 834, 844.

Second, Plaintiff has not shown the subjective prong—that Defendants are acting with *deliberate* indifference, *i.e.*, that they “know of and [are] disregard[ing] an excessive risk to inmate health or safety.” *Self v. Crum*, 439 F.3d 1227, 1231 (10th Cir. 2006) (citing *Farmer*, 511 U.S. at 837). Plaintiff must show that prison officials have a culpable mental state that amounts to criminal recklessness. *Farmer*, 511 U.S. at 837.

Plaintiff has not shown that BOP officials are acting with deliberate indifference. As this Court has observed, Defendants have taken numerous steps to reduce the risk of COVID-19 transmission at USP Florence. *See* ECF No. 23 at 13. The measures outlined in Defendants’ previous response all remain in place today. *See generally* Ex. 1; Ex. 2 ¶¶ 3, 12. Defendants are closely monitoring the health of the inmate and staff populations at USP Florence, and are prepared to combat this virus if it makes its way into the institution. *See id.*

II. Plaintiff fails to show that he will suffer irreparable harm.

Plaintiff’s motion also fails because he does not make an adequate showing of irreparable harm. “To constitute irreparable harm, an injury must be certain, great, actual and not theoretical.” *Schrier v. Univ. Of Colo.*, 427 F.3d 1253, 1267 (10th Cir. 2005). “The party seeking injunctive relief must show that the injury complained of is of such imminence that there is a clear and present need for equitable relief to prevent irreparable harm.” *Id.*

As this Court has recognized, Plaintiff has not shown that he will suffer irreparable harm largely because Defendants are already employing the majority of measures Plaintiff seeks. Defendants are screening inmates for illness, Ex. 1 ¶¶ 32-50; testing symptomatic inmates in accordance with current CDC protocols, *id.* ¶¶ 56-58; and quarantining and excluding symptomatic individuals, *id.* ¶¶ 23, 37, 48-49.

To the extent Plaintiff believes *all* inmates should have their temperatures taken daily before there is a single instance of COVID-19 at USP Florence, and that *all* inmates should be tested for COVID-19 regardless whether they have symptoms, Plaintiff has not shown that Defendants’ decision not to employ these measures subjects him to “certain, great, actual and not theoretical” harm. *Schrier*, 427 F.3d at 1267. As Defendants have explained, they are closely monitoring the inmate population for illness, including having BOP medical providers make twice-daily rounds, directing inmates to report symptoms of illness, and immediately evaluating any inmate who presents with possible symptoms. Ex. 1 ¶¶ 46 & 48. If an inmate at FCC Florence tests positive for COVID-19, Defendants will begin taking inmates’ temperatures on a daily basis. *Id.* ¶ 47. In addition, Defendants’ testing protocols are fully compliant with CDC guidance, which provides that “[n]ot everyone needs to be tested for COVID-19” and that “decisions about testing are at the discretion of state and local health departments and/or individual clinicians.” *Id.* ¶ 57. Plaintiff has not identified facts showing why the decision not to test “everyone,” including asymptomatic inmates, will cause him irreparable harm.⁷

III. The balance of the equities and the public interest support Defendants.

Finally, Plaintiff also has not shown that the balance of the equities and the public interest favor the issuance of an injunction. *See Free the Nipple*, 916 F.3d at 797 (noting that when a party seeks a disfavored injunction, he must make a “strong showing” that these factors “tilt in

⁷ Plaintiff has alleged that inmate workers are not screened for symptoms “before they leave the unit” to perform their work duties. *See* ECF No. 28-1 ¶¶ 12-13. But as explained in Ms. Himlie’s supplemental declaration, inmate workers are not screened inside their housing units; they are screened in the Health Services Department, both before and after their shifts. Ex. 2 ¶ 13. Thus, that Plaintiff does not personally observe this screening from his housing unit fails to show that this screening is not occurring.

[his] favor.”). Because USP Florence has already taken the measures that Plaintiff demands, he has little to no interest in obtaining the requested injunction. Defendants, by contrast, have a significant interest in maintaining the flexibility that this pandemic demands, which allows them to mount a robust pandemic response while taking into account the critical security and administrative factors that are inseparable from the prison environment. *See Turner v. Safley*, 482 U.S. 78, 84 (1987) (“[R]unning a prison is an inordinately difficult undertaking that requires expertise, planning, and the commitment of resources,” and “courts are ill equipped to deal with the increasingly urgent problems of prison administration.”).

CONCLUSION

For the foregoing reasons, Defendants respectfully request that Plaintiff’s Motion for Preliminary Injunction, ECF No. 10, be denied.

Respectfully submitted this 22nd day of April, 2020.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
CERTIFICATE OF SERVICE (CM/ECF)**

I hereby certify that on April 22, 2020, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will provide notice to the following parties:

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s/ Lauren M. Dickey
Lauren M. Dickey
United States Attorney's Office

Exhibit 1

Declaration of Shari Himlie

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-00756-PAB

EDWARD NELLSON, individually, and a Class of similarly-situated persons,

Plaintiff,

v.

WARDEN J. BARNHART, in his individual and official capacities, and
UNITED STATES FEDERAL BUREAU OF PRISONS,

Defendants.

DECLARATION OF SHARI HIMLIE

I, Shari Himlie, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, hereby declare as follows relating to the above-titled matter. All attachments to this declaration are true and accurate copies of Federal Bureau of Prisons records maintained in the ordinary course of business.

1. I am the Complex Health Services Administrator (HSA) with the Federal Bureau of Prisons (Bureau) at the Federal Correctional Complex (FCC) in Florence, Colorado. FCC Florence includes four separate institutions: the Federal Prison Camp (minimum security), the Federal Correctional Institution (FCI) (medium security), the United States Penitentiary – High Security (USP), and the United States Penitentiary – Administrative Maximum (ADX) in Florence, Colorado. As the FCC Florence HSA, I oversee the health services operations for all of these institutions. I am also a Registered Nurse and a Certified Corrections Nurse/Manager.

2. I have been employed by the Bureau, in positions of increasing responsibility, since November 2008. I have been the FCC Florence HSA since March 2018.

3. As part of my official duties as the FCC Florence HSA, in collaboration with the Clinical Director, I manage and direct the activities of a multi-disciplinary team responsible for providing medical, dental, and allied health services (pharmacy, laboratory, and radiology) to the inmate population. I am also the primary supervisor for mid-level providers, emergency medical technicians, and nurses. I also provide administrative oversight to all contract physicians at FCC Florence.

4. With respect to COVID-19, specifically, I am involved on a daily basis in the identification, planning, and implementation of all Bureau directives for preventing the spread of COVID-19 at FCC Florence, including USP Florence. In addition to my normal role as FCC Florence HSA, I also serve as the Logistics Section Chief for the “FCC Florence Command Center” (discussed in further detail below), which is responsible for coordinating FCC Florence’s COVID-19 response. Through this role, I have knowledge of both the Bureau’s national directives relating to COVID-19 and the additional steps that FCC Florence, specifically, has taken to combat COVID-19 within the complex. Accordingly, through the course of my official duties, I have personal knowledge regarding the numerous measures, discussed below, that have been implemented both Bureau-wide and at FCC Florence in order to prevent and manage the spread of COVID-19.

I. NATIONAL STEPS TAKEN BY BUREAU TO ADDRESS COVID-19¹

5. Before discussing the steps being taken at FCC Florence, specifically, I will first discuss the phases of the BOP’s national response to the COVID-19 pandemic, which apply

¹ As illustrated below, the Bureau’s national guidance has undergone a number of changes in response to the evolving threat. The Bureau has established a COVID-19 resource section on its public webpage which is available at: <https://www.bop.gov/coronavirus/>. This webpage includes updates on the Bureau’s response to COVID-19 and positive COVID-19 tests among inmates and staff at Bureau institutions nationwide.

generally across all BOP institutions. As set forth below, the Bureau has taken—and is continuing to take—significant measures in response to the COVID-19 pandemic in order to protect the safety and security of all staff and inmates, as well as members of the public.

6. In January 2020, the Bureau became aware of the first identified COVID-19 cases in the United States and quickly took steps to prevent its introduction and spread in Bureau institutions. The Bureau’s response, detailed below, has occurred over five distinct “phases” to date. The Bureau will continue to modify and adjust its response as circumstances change, and at the guidance and direction of worldwide health authorities.

A. Action Plan for COVID-19 – Phase One

7. In January 2020, the Bureau began Phase One of its Action Plan for COVID-19. Phase One activities included, among other things, seeking guidance from the BOP’s Health Services Division regarding the COVID-19 disease and its symptoms, where in the United States infections were occurring, and the best practices to mitigate its transmission. *See* https://www.bop.gov/resources/news/20200313_covid-19.jsp. In addition, an agency task force was established to begin strategic planning for COVID-19 Bureau-wide. This strategic planning included building on the Bureau’s existing procedures for pandemics, such as implementing its pre-approved Pandemic Influenza Plan. From January 2020 through the present, the Bureau has been coordinating its COVID-19 efforts with subject-matter experts both internal and external to the agency, including implementing guidance and directives from the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), the Office of Personnel Management (OPM), the Department of Justice (DOJ), and the Office of the Vice President. *See* https://www.bop.gov/resources/news/20200313_covid-19.jsp.

B. Action Plan for COVID-19 – Phase Two

8. On March 13, 2020, the Bureau implemented “Phase Two” of its Action Plan. Phase Two put into place a number of restrictions across all Bureau facilities over a 30-day period, to be reevaluated upon the conclusion of that time period. Specifically, the Bureau suspended the following activities for a period of 30 days, with certain limited exceptions²:

- A. Social visits;³
- B. Legal visits;
- C. Inmate facility transfers;
- D. Official staff travel;
- E. Staff training;
- F. Contractor access;
- G. Volunteer visits; and
- H. Tours.

9. In addition, during Phase Two, inmates were subjected to new screening requirements. Specifically, all newly arriving BOP inmates were screened for COVID-19 symptoms and “exposure risk factors,” including, for example, if the inmate had traveled from or through any high-risk COVID-19 locations (as determined by the CDC), or had had close contact with anyone testing positive for COVID-19. Asymptomatic inmates with exposure risk factors were quarantined, and symptomatic inmates with exposure risk factors were isolated and evaluated for possible COVID-19 testing by local Bureau medical providers.⁴

² The exceptions are detailed at https://www.bop.gov/coronavirus/covid19_status.jsp.

³ To help ensure that inmates maintained social ties during this time, the BOP increased inmates’ telephone allotment to 500 minutes per month (from 300 minutes per month).

⁴ Throughout this declaration, “isolation” refers to a symptomatic inmate being confined to a single cell within a designated housing unit or medical unit. “Quarantine,” on the other hand,

10. Staff were also subjected to enhanced health screening in areas of “sustained community transmission,” as determined by the CDC, and at medical referral centers. Colorado was designated a “sustained community transmission” state on March 19, 2020, and FCC Florence implemented this enhanced screening for staff and contractors at that time. The enhanced screening measures required all staff to self-report any symptoms consistent with COVID-19, as well as any known or suspected COVID-19 exposure, and further required all staff to have their temperature taken upon entry into any Bureau facility.

11. Finally, in addition to the measures listed above, the Bureau implemented national “modified operations” in order to maximize social distancing within Bureau facilities. These modifications included staggered meal times and staggered recreation times, for example, in order to limit congregate gatherings. Additionally, the Bureau established a set of quarantine and isolation procedures for known or potential cases of COVID-19.

12. USP Florence implemented this “modified operations” directive in a number of ways. For example, and among other things, USP Florence: (1) instituted “grab and go” breakfasts and dinners for inmates, meaning that inmates were permitted to pick up pre-packaged breakfasts and dinners at designated times, but had to return to their housing units in order to eat; (2) scheduled staggered lunchtimes, so that only a single housing unit could eat inside the cafeteria at any particular time; and (3) limited the number of inmates who could participate in recreation at one time so that each inmate could practice appropriate social distancing during recreation.

refers to asymptomatic inmates who may remain within their assigned housing units, together, but may not interact with staff or inmates outside of these housing units.

C. Action Plan for COVID-19 – Phase Three

13. On March 18, 2020, the Bureau implemented Phase Three of the COVID-19 Action Plan for Bureau locations that perform administrative services (i.e., non-prison locations), which followed DOJ, Office of Management and Budget, and OPM guidance for maximizing telework. In this phase, individuals who had the ability to telework and whose job functions did not require them to be physically present were directed to begin teleworking.

14. Additionally, as part of this phase, and in accordance with the Pandemic Influenza contingency plan, all cleaning, sanitation, and medical supplies were inventoried. *See* https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf.

D. Action Plan for COVID-19 – Phase Four

15. On March 26, 2020, the Bureau implemented Phase Four of its Action Plan. In Phase Four, the Bureau revised its preventative measures for all institutions. Specifically, the agency updated its quarantine and isolation procedures to require all newly admitted inmates to the Bureau, whether in areas of sustained community transmission or not, to be assessed using a screening tool and temperature check (further explained below). This screening tool and temperature check applied to all new intakes, detainees, commitments, prisoners returned on writ from judicial proceedings, and parole violators, regardless of their method of arrival. Thus, all new arrivals to any Bureau institution—even those who were asymptomatic—were placed in quarantine for a minimum of 14 days or until cleared by medical staff. Symptomatic inmates were placed in isolation until they tested negative for COVID-19 or were cleared by medical staff as meeting CDC criteria for release from isolation.

E. Action Plan for COVID-19 – Phase Five

16. On March 31, 2020, the Director of the Bureau ordered the implementation of

Phase 5 of its COVID-19 Action Plan, which took effect on April 1, 2020. Specifically, the Director ordered the following steps to be taken:

- A. For a 14-day period, inmates in every institution will be secured in their assigned cells/quarters to decrease the spread of the virus.⁵
- B. During this time, to the extent practicable, inmates should still have access to programs and services that are offered under normal operating procedures, such as mental health treatment and education.
- C. In addition, the Bureau is coordinating with the United States Marshals Service (USMS) to significantly decrease incoming movement during this time.
- D. After 14 days, this decision will be reevaluated and a decision made as to whether or not to return to modified operations.
- E. Limited group gathering will be afforded to the extent practical to facilitate commissary, laundry, showers, telephone, and Trust Fund Limited Computer System (TRULINCS⁶) access.

See https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp.⁷

17. Phase Five has been implemented at USP Florence and currently remains in effect. This means that, for a 14-day period beginning April 1, 2020 (to be reevaluated at the end of the 14 days), all inmates at USP Florence are confined to their cells for the majority of the day. Meals are delivered directly to inmates' cells, as well as a limited number of commissary items. Inmates are permitted to leave their cells in small groups on a rotating basis at designated times in order to engage in activities such as showers, exercise, phones, and TRULINCS.

⁵ This modification to the Bureau's action plan is based on health concerns, not disruptive inmate behavior.

⁶ TRULINCS is the internal Bureau computer and electronic message platform that inmates use to communicate with staff in the institutions and individuals in the community. Through this platform, inmates receive updates, notices, and can read inmate bulletins posted on the system by Bureau staff.

⁷ Additional information regarding Phase 5 of the Bureau's Action Plan is available on the Bureau's webpage (www.bop.gov).

Inmates may be outside their cells in these small groups for approximately 2.5-3 hours per day, depending on the day of the week. During these time periods, inmates have been directed to maintain appropriate physical distancing. *See, e.g.*, Att. A, FLP Movement Schedule.

F. Incident Command System

18. In addition to the above phases of the BOP's official Action Plan, on March 11, 2020, the Bureau activated its "Incident Command System," commonly referred to as a Command Center, at Central Office in Washington, D.C., in response to the COVID-19 pandemic. The Incident Command System is a standardized, all-hazard incident management tool. The Bureau has used the Incident Command System in the past to address a number of other disruptive incidents, such as fires, human and animal disease outbreaks, and hazardous materials incidents. The Incident Command System is structured in a manner that is intended to match the severity and complexity of the disruption for which it is activated.

19. Through the Incident Command System, the Bureau's National Command Center, in conjunction with local command centers (to be discussed more below), works to mitigate the health and safety risks of the COVID-19 pandemic incident by providing accurate information to all Bureau institutions, holding Bureau institutions accountable for abiding by Bureau directives and guidance, and coordinating the Bureau's national response.

II. STEPS TAKEN AT FCC FLORENCE TO ADDRESS COVID-19

20. In addition to the steps taken at the national level, FCC Florence itself has also taken a number of additional measures in response to the COVID-19 pandemic. Throughout this section, when I refer to "FCC Florence" generally, I am referring to measures being taken at *each* of the FCC Florence institutions, including USP Florence. When I refer to USP Florence specifically, I am speaking only about that institution.

A. FCC Florence Command Center

21. On March 13, 2020, FCC Florence activated its local Command Center at both ADX Florence and USP Florence. The local Command Centers work together and, in conjunction with the National Command Center, monitor, plan, and implement national directives and other procedures at FCC Florence. The FCC Florence Command Center is currently scheduled to remain active until May 13, 2020. That date may be extended, as needed.

22. As noted above, I serve on the FCC Florence Command Center as the Logistics Section Chief. In this role, I order, account for, and distribute critical medical supplies, oversee management of infectious disease control onsite, and coordinate the Complex's enhanced staff and inmate screening. I also provide ongoing education to staff and inmates regarding steps that should be taken to prevent the introduction and spread of COVID-19 into FCC Florence.

23. FCC Florence has taken myriad steps to prevent the introduction and spread of COVID-19 into its facilities, including providing inmate and staff education; conducting inmate and staff screening; putting into place testing, quarantine, and isolation procedures; ordering necessary cleaning, testing, and medical supplies; engaging in enhanced cleaning and disinfecting measures; and taking a number of other preventative measures. I will discuss each in turn, below.

B. Inmate and Staff Education relating to COVID-19

24. From the outset of the COVID-19 pandemic, FCC Florence officials have provided regular updates to inmates and staff regarding the virus and the Bureau's response, and have educated inmates and staff regarding measures that they themselves should take to stay healthy.

25. For example, medical providers have conducted several town hall meetings with FCC Florence inmates advising them of the symptoms of COVID-19, instructing them to self-

monitor for COVID-19 symptoms, and to immediately report such symptoms to sick call. *See, e.g.,* Att. B, Inmate Town Hall Information (Mar. 10, 2020) (advising inmates as to the number of cases identified (through March 6, 2020), how COVID-19 spreads, symptoms of COVID-19, information to aid in slowing the spread of COVID-19, and treatment options for COVID-19). FCC Florence officials have also explained to both inmates and staff members best practices regarding personal hygiene to prevent the spread of COVID-19. Information sheets are posted in numerous locations around FCC Florence, including inmate housing units, the front lobby, on restroom doors, and within all departments. *See* Att. C, CDC COVID-19 Stop the Spread of Germs Factsheet.

26. Inmates have also been notified of this same information via information bulletins posted on TRULINCS in both English and Spanish. Executive staff members (department heads, Associate Wardens, and Wardens) also conduct weekly rounds in the housing units, and are available to answer questions from inmates regarding personal hygiene practices.

27. Recently, on April 1, 2020,⁸ Warden True issued an inmate bulletin to all inmates at FCC Florence regarding the new steps being taken at the institution to implement Phase Five of the Bureau's Action Plan described above. *See* Att. E, Inmate Town Hall Bulletin (Apr. 1, 2020). In the bulletin, Warden True explained: "In response to COVID-19, the [Bureau] has instituted a comprehensive action plan that includes screening, testing, appropriate treatment, prevention, education, and infection control measures." *Id.* at 1. The Warden advised the inmates

⁸ Incidentally, as a result of "numerous inmates [being] observed squaring off with one another during a heated argument" on March 26, 2020, at USP Florence, that institution was placed on lockdown on March 27, 2020. *See* Att. D, Lock Down Update (Mar. 27, 2020). While this decision was related to security measures, as opposed to COVID-19, it effectively placed USP Florence in a "Stay in Shelter" environment until March 30, 2020, even before Phase Five was formally implemented on April 1, 2020.

that, beginning April 1, 2020, FCC Florence would be implementing a “Stay in Shelter” for 14 days.

28. The April 1, 2020, memo also asked inmates to “continue to increase [their] sanitation and hygiene efforts in the housing units and in [their] cells,” and advised inmates that staff have “increased the sanitation efforts throughout the institution.” *Id.* at 1-2.⁹ Likewise, the memo advised inmates that they “are encouraged to avoid touching [their] faces,” “wash [their] hands frequently with soap and water,” and “[p]ractice social distancing whenever practical.” *Id.*

29. Finally, Warden True informed inmates and staff that “[t]here are currently zero inmates that have been identified as having COVID-19 at FCC Florence. The institution modified operations and ‘Stay in Shelter’ is an effort to be proactive.” *Id.*

30. In addition to providing education to inmates, FCC Florence staff have been similarly educated regarding the importance of washing their hands, not touching their face, maintaining appropriate social distancing, and cleaning/disinfecting all equipment, including their uniforms.

31. Medical staff have also been trained regarding how to appropriately don and remove Personal Protective Equipment (PPE). This same training will be provided to Lieutenants this coming week, and potentially to other staff members in the weeks to come.

C. Screening for COVID-19 at FCC Florence

32. Due to the “Stay in Shelter” order implemented on April 1, 2020, inmate movement at FCC Florence is currently highly restricted. However, the following screening measures for both inmates and staff are currently in place, and will remain in effect even after the “Stay in Shelter” order is lifted, until Bureau officials determine that they are no longer

⁹ I will address these cleaning and sanitation efforts in greater detail below.

necessary to prevent and/or manage the introduction or spread of COVID-19 in FCC Florence.

1. Inmates

33. As explained above, FCC Florence has been screening inmates for COVID-19 since early March 2020.

34. *First*, FCC Florence screens all inmates arriving at FCC Florence from other institutions or locations immediately upon their arrival. These screening procedures are as follows.

35. Inmates are screened for symptoms of COVID-19 (including fever, cough, and shortness of breath), as well as for “exposure risk factors,” including whether the inmate has traveled from, or through, any locations identified by the CDC as increasing epidemiologic risk within the past 14 days, or has had close contact with anyone diagnosed with COVID-19 in the past 14 days. *See* Att. F, Coronavirus Disease 2019 (COVID-19) Inmate Screening Tool. 35.

36. Following this initial screening, inmates are escorted to an intake/quarantine unit at FCI Florence (Pueblo Alpha Unit), where they are automatically quarantined for 14 days to ensure that they do not develop any symptoms consistent with COVID-19.

37. After the expiration of 14 days, and upon medical clearance, inmates may be released into general population at their designated institutions. Pueblo Bravo Unit at FCI Florence has been designated as an isolation unit for any inmates that are symptomatic of suspected COVID-19 and/or have tested positive for COVID-19. In these quarantine and isolation units, all staff must wear PPE.

38. These screening procedures apply to all incoming FCC Florence inmates, no matter which of the four institutions they are designated to be housed, and these inmates are initially screened at FCI Florence as opposed to their designated institutions. When inmates

arrive at the institution, they are met by Health Services medical providers, who conduct this initial screening in a designated area at FCI Florence separate from other staff and inmates. Health Services medical providers wear PPE during these interactions.

39. This initial screening procedure at FCI Florence allows for screening to occur in a controlled environment, and further ensures that the rest of the inmate population is not exposed to newly-arrived inmates until they are properly screened and cleared by Health Services Department medical providers.

40. *Second*, in addition to screening incoming inmates, FCC Florence is also taking a number of measures to screen its current resident inmate population.

41. *At risk Individuals*. As the FCC Florence HSA and Logistics Section Chief, I was responsible for reviewing, in conjunction with a small team of medical providers, inmate medical records in order to determine which individuals at FCC Florence are considered “high risk” for COVID-19 pursuant to CDC guidelines. These guidelines can be found at:

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

Per CDC guidance, “high-risk” individuals include those over 65 and those with significant underlying medical conditions, such as chronic lung disease, moderate to severe asthma, liver disease, and diabetes. *See id.*

42. In order to identify which inmates at FCC Florence should be considered “high risk,” my team searched the Bureau’s medical records for (1) all inmates aged 55 and over¹⁰; and (2) all inmates who have been diagnosed with a condition identified by the CDC as being “high risk.”

¹⁰ We chose to search for inmates 55 and over, rather than 65 and older, in an abundance of caution and to be conservative in our approach to assessing risk.

43. Based on this search, we compiled a list of individuals at FCC Florence considered to be “high risk” based on these established CDC criteria. During the week of March 16 through March 20, 2020, we screened each of these high-risk individuals for the same “exposure risk factors” identified above, and conducted temperature checks for all high-risk inmates. We also provided these inmates additional education regarding COVID-19 prevention, and advised them to seek medical care immediately if they began to develop any symptoms.

44. I personally reviewed the medical records of the Plaintiff in this case, Edward Nellson, and asked an FCC Florence physician to independently review these records as well. Based on this review, both the physician and I determined that Mr. Nellson does not fit the criteria for a “high risk” individual under the established CDC criteria. He is 41 years old, and has not been diagnosed with any condition identified by the CDC as placing individuals at a higher risk of serious complications from COVID-19.

45. *Inmates with work details.* FCC Florence is also conducting enhanced screening for all inmates with ongoing work details, such as food service and cleaning orderlies. These functions are considered to be “essential” by FCC Florence. Each of these inmates is screened for illness both before and after each of their assigned work details. This includes being screened for any symptoms of illness and having their temperature taken. Furthermore, many cleaning orderlies are currently assigned only to the units in which they already reside and thus do not interact with staff or inmates in other units during the course of performing their duties.

46. *General population.* All inmates are encouraged to self-monitor and to report symptoms of illness to unit staff either orally or via a written copout. Medical staff are required to be present in each USP Florence housing unit at least twice per day in order to conduct sick call and pill line. The presence of medical staff affords inmates further opportunity to report any

medical concerns. In addition, unit staff and other department representatives (including staff from education, commissary, psychology, and recreation) are required to conduct daily rounds in each USP Florence housing unit in order to ensure that the inmate population remains safe and healthy. If an inmate has an issue that he wants to bring to the staff's attention, he can do so via a written request, commonly known as a cop-out, at any time, or during these rounds with staff.

47. Once there is a positive inmate case of COVID-19 at FCC Florence, should that occur, *all* inmates will be screened daily through temperature and symptom checks.

48. Any inmate who presents with symptoms consistent with COVID-19 will be evaluated by a medical provider in the Health Services Department. Based upon this evaluation, a determination will be made whether isolation and/or testing is appropriate. Bravo Bravo Unit at USP Florence has been designated as the isolation unit for inmates who are symptomatic and/or test positive for COVID-19 at that particular institution.

49. If any inmate is isolated, the inmates housed in the same housing unit with him will be quarantined pending results of a COVID-19 test provided to the inmate, or 14 days, whichever is sooner.

50. Inmates may also be placed in a quarantine or isolation setting if they are exposed to a person with COVID-19, where they will be monitored daily for a period of at least 14 days. Quarantine or isolation will only be discontinued once 14 days elapse without the inmate(s) developing new symptoms.

51. FCC Florence Health Services medical providers are prioritizing immediate medical care for anyone who claims symptoms indicative of a COVID-19 infection.

2. Staff and Visitors

52. Since March 19, 2020, all individuals entering the FCC complex (including staff,

delivery drivers, or any other visitors) must undergo a health screening upon entry. This includes having their temperature taken and being asked a number of questions to evaluate their risk of exposure, as well as whether they have been experiencing any symptoms of illness. *See* Att. G, Coronavirus Disease 2019 (COVID-19) Staff Screening Tool.

53. The individuals conducting this health screening at the front entrance of FCC Florence are authorized to deny entry to any individual if he or she has a body temperature of 100.4 degrees Fahrenheit, or above, or reports other symptoms consistent with COVID-19 (although they may consult with FCC Florence medical providers in advance of the decision to deny entry).

54. This screening applies to *all* staff and visitors, including those who leave the grounds of FCC Florence even for a short duration of time, such as to purchase lunch.

55. FCC Florence employees have also been educated regarding the importance of staying home if they are feeling ill, and are required to self-report any COVID-19 exposure (known or suspected) as well as any positive COVID-19 test. If a staff member is tested for COVID-19, they are not permitted to return to work until after receiving the results of the test.

D. COVID-19 Testing at FCC Florence

56. The CDC has identified four “priority levels” for testing individuals with a suspected COVID-19 infection. *See* Att. H, CDC Priorities for Testing Patients with Suspected COVID-19 Infection. Priority levels one through three include hospitalized patients and healthcare workers with symptoms (Priority Level 1); symptomatic patients in long-term care facilities, individuals 65 years or older, individuals with underlying conditions, and first responders (Priority Level 2); and symptomatic critical infrastructure workers, individuals who do not meet any of the criteria in Priority Levels 1 or 2, healthcare workers and first responders, and individuals with mild symptoms in communities experiencing high numbers of COVID-19

hospitalizations (Priority Level 3). *Id.* The fourth, or non-priority level, is for individuals without symptoms. *Id.*

57. The CDC has made clear that “[n]ot everyone needs to be tested for COVID-19,” and “decisions about testing are at the discretion of state and local health departments and/or individual clinicians.” *See* [cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html) (last visited on Apr. 2, 2020).

58. At FCC Florence, the decision whether to test an inmate for COVID-19 is made by Bureau medical providers based on a number of criteria, including but not limited to: (1) the nature and severity of the symptoms; (2) the inmate’s potential exposure to COVID-19; (3) whether the inmate is considered “high-risk,” and (4) whether the inmate is on a work detail, such as food service, that requires the inmate to interact with other inmates or staff.

59. To date, two FCC Florence inmates have been tested for COVID-19. One of those tests was negative. The other test remains pending.

60. FCC Florence has over 100 COVID-19 test kits currently in stock, with the ability to request more tests from its vendor on an as-needed basis. Because of the nationwide shortage of tests, FCC Florence’s vendor has chosen to allocate tests strategically, and to send its tests to the locations and institutions where tests are most needed. Because FCC Florence does not currently have any known infections, its vendor will not provide additional tests for FCC Florence to stockpile unless and until there is a demonstrated need for it. Should such a need arise in the future, FCC Florence has the ability to request additional tests and to receive them in a matter of days.

E. Additional Measures to Combat COVID-19.

61. In addition to the above steps, FCC Florence has taken a number of additional

measures to combat COVID-19.

62. First, all inmates have access to sinks, water, and soap at all times. New inmates admitted to any institution at FCC Florence automatically receive soap, and all inmates may receive new soap weekly. For inmates without sufficient funds to purchase soap in the commissary, soap is provided at no cost to the inmate. USP Florence inmates are able to wash their clothing and linens at least once weekly.

63. Second, all common areas in inmate housing units are cleaned daily, and are typically cleaned by inmate orderlies multiple times throughout the day, with a designated disinfectant that kills human coronavirus. USP Florence has made this disinfectant available to all inmates so that they may use it to clean their own cells on a regular basis. Common areas outside inmate living areas, including the USP Florence, lobby, bathrooms, cafeteria, etc., are also cleaned with the same disinfectant on a daily basis (and often multiple times per day).

64. Each housing unit has been stocked with cleaning supplies for use by inmate orderlies and other inmates to clean both the common areas and their cells on a daily basis.

65. FCC Florence has limited the number of in-person meetings scheduled onsite for staff. If such meetings take place, they are limited to 10 people and must be conducted in areas permitting individuals to maintain an appropriate distance from one another. FCC Florence has also implemented a video-conferencing system to replace in-person meetings to the extent practicable.

66. Correctional staff are required to disinfect all common equipment, such as keys and radios, upon obtaining these items from the supply room and again upon their return. Staff also have regular, consistent access to soap and hand sanitizer.

67. Correctional staff have been provided PPE to be used in appropriate locations

throughout FCC Florence such as quarantined areas, isolation units, and screening sites. FCC Florence has sufficient PPE on hand, including N-95 respirator masks, surgical masks, and rubber gloves, to meet its current and anticipated needs, as well as the ability to order additional PPE should the need arise.

68. On April 5, 2020, all inmates and staff were provided protective face masks for daily use.

69. Beginning April 6, 2020, all staff members will be restricted to working only in a single designated institution within the FCC Florence complex. For example, staff members designated to USP Florence will not be permitted to enter FCI Florence, and vice versa.

III. CONCLUSION

70. In sum, the Bureau and FCC/USP Florence take the COVID-19 pandemic extremely seriously and have implemented numerous measures to proactively combat the spread of this disease to staff members and the inmate population. The various phases of the Bureau's Action Plan have been designed and implemented in a systemic manner both nationally and at FCC/USP Florence in order to mitigate the spread of COVID-19.

71. In addition to the steps taken at the national level, FCC Florence itself has taken a number of measures to prevent the introduction and spread of COVID-19 in the complex.

72. To date, no inmates or staff members¹¹ at FCC Florence have been diagnosed with COVID-19.

73. The Bureau and FCC/USP Florence remain flexible in their ability to receive

¹¹ FCC Florence does not provide testing for Bureau staff members. They are responsible for seeking their own medical care in the community. However, as explained above, any staff member who has tested positive for COVID-19 and/or is symptomatic of suspected COVID-19 is not allowed on the grounds of FCC Florence.

guidance from the CDC and other health organizations and to modify their actions to best respond to this pandemic, according to the quickly shifting needs on the ground.

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

Executed on this 6th day of April 2020, in Florence, Colorado.

s/ Shari Himlie
Shari Himlie
Health Services Administrator
FCC Florence
Federal Bureau of Prisons

Enclosures

Att. A, FLP Movement Schedule

Att. B, Inmate Town Hall Information (Mar. 10, 2020)

Att. C, CDC COVID-19 Stop the Spread of Germs Factsheet

Att. D, Lock Down Update (Mar. 27, 2020)

Att. E, Inmate Town Hall Bulletin (Apr. 1, 2020)

Att. F, Coronavirus Disease 2019 (COVID-19) Inmate Screening Tool

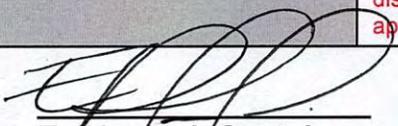
Att. G, Coronavirus Disease 2019 (COVID-19) Staff Screening Tool

Att. H, CDC Priorities for Testing Patients with Suspected COVID-19 Infection

Attachment A

USP Florence Inmate Bulletin

USP FLORENCE MODIFIED OPERATIONS / MOVEMENT SCHEDULE	
5:45 a.m.	Food Service work call
6:00 a.m.	Feeding begins in cells
6:30 a.m.	Cells 101 -112 out for day room activities.
7:00 a.m.	Work call. Essential inmate workers only.
7:30 a.m.	Cells 113 -132 out for day room activities.
8:30 a.m.	Cells 201 -212 out for day room activities.
9:30 a.m.	Cells 213 -232 out for day room.
10:30 a.m.	Unit secured in preparation for noon meal
11:00 a.m.	Feeding begins in cells
11:30 a.m.	Cells 101 -112 out for day room activities.
12:30 p.m.	Cells 113 -132 out for day room activities.
1:30 p.m.	Cells 201 -212 out for day room activities.
2:30 p.m.	Cells 213 -232 out for day room activities.
3:30 p.m.	Institution recall
4:00 p.m.	Stand up count
4:30 p.m.	Feeding begins in cells
5:00 p.m.	Cells 101 -112 out for day room activities.
6:00 p.m.	Cells 113 -132 out for day room activities.
7:00 p.m.	Cells 201 -212 out for day room activities.
8:00 p.m.	Cells 213 -232 out for day room activities.
9:00 p.m.	Stand up count
*****NOTE*****	The movement schedule depicts initial and approximate times. The release of tiers will alternate throughout the week at the discretion of unit staff. Any deviation or circumvention on your part will result in unit restrictions. Prior to any cells being unsecured, it is expected that cell sanitation is followed: i.e. cell windows will be uncovered, beds made, trash removed and disposed of accordingly, etc. Your continued cooperation and flexibility is expected and appreciated.



E. Ricolcol, Captain

April 1, 2020
Date

Attachment B

COVID-19
TOWN HALL INFORMATION FOR INMATES
(as of 3/6/20)

What is coronavirus (COVID-19)?

- Coronaviruses are a large family of viruses common in people and animals. COVID-19 is a novel (new) coronavirus that probably emerged from an animal source and is now spreading person to person. It causes respiratory illness and is being identified in a growing number of locations, including Colorado.

How many cases have been identified?

- Although the situation and numbers are rapidly changing, here are the numbers as of 3/6/20.
 - 101, 598 cases in 70 different locations internationally.
 - 256 cases in the U.S., with 2 cases identified in Colorado.

How does COVID-19 spread?

- This is a respiratory illness, and it is thought to spread mainly between people who are in close contact with one another (within 6 feet) when a person coughs or sneezes. It also may be possible that a person can get it by touching a surface or object that has the virus on it, and then touching their eyes, nose, or mouth.

What are the symptoms of COVID-19?

- Symptoms include fever, cough, and shortness of breath. Some people have no symptoms at all.
- While information so far suggests that most cases have been mild (80%), older adults and people with severe chronic medical conditions like heart, lung or kidney disease seem to be at higher risk for more serious illness.

How can you help in slowing the spread of COVID-19, as well as other illnesses like the flu.

EVERYONE HAS A PART TO PLAY IN SLOWING THE SPREAD. PRACTICE EVERYDAY PREVENTIVE BEHAVIORS!

- Wash your hands with soap and water often, **vigorously scrubbing all surfaces for at least 20 seconds**. The hand sanitizer available in commissary is also effective—make sure to cover all surfaces of your hands, rubbing them together until they feel dry.
- Avoid touching your eyes, nose, or mouth with unwashed hands (most people touch their faces at least 23 times per hour).
- Cover your coughs and sneezes with the crook of your arm or a tissue.
- Routinely clean and disinfect ‘frequently touched’ surfaces in your housing units and cells to include keyboards, phones, desks, door handles, light switches, bathroom fixtures, stair rails, etc.
 - The disinfectant safety issues is effective.

Is there a vaccine? Treatment?

- Currently there is no vaccine. The best way to protect yourself is to do what we should be doing each and every day (see above). Currently there is no treatment, but there is medication to treat some symptoms (Tylenol, Advil, etc.).
For additional information related to COVID-19, contact Health Services.

Attachment C

COVID-19

CORONAVIRUS DISEASE

STOP THE SPREAD OF GERMS

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

Avoid close contact with people who are sick.



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



Avoid touching your eyes, nose, and mouth.



Clean and disinfect frequently touched objects and surfaces.



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



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



For more information: www.cdc.gov/COVID19



Share Facts About COVID-19

Know the facts about coronavirus disease 2019 (COVID-19) and help stop the spread of rumors.

FACT
1

Diseases can make anyone sick regardless of their race or ethnicity.

People of Asian descent, including Chinese Americans, are not more likely to get COVID-19 than any other American. Help stop fear by letting people know that being of Asian descent does not increase the chance of getting or spreading COVID-19.

FACT
2

Some people are at increased risk of getting COVID-19.

People who have been in close contact with a person known to have COVID-19 or people who live in or have recently been in an area with ongoing spread are at an increased risk of exposure.

FACT
3

Someone who has completed quarantine or has been released from isolation does not pose a risk of infection to other people.

For up-to-date information, visit CDC's coronavirus disease 2019 web page.

FACT
4

You can help stop COVID-19 by knowing the signs and symptoms:

- Fever
- Cough
- Shortness of breath

Seek medical advice if you

- Develop symptoms

AND

- Have been in close contact with a person known to have COVID-19 or if you live in or have recently been in an area with ongoing spread of COVID-19.

FACT
5

There are simple things you can do to help keep yourself and others healthy.

- Wash your hands often with soap and water for at least 20 seconds, especially after blowing your nose, coughing, or sneezing; going to the bathroom; and before eating or preparing food.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Stay home when you are sick.
- Cover your cough or sneeze with a tissue, then throw the tissue in the trash.



For more information: www.cdc.gov/COVID19

Wash Your Hands!

Keeping hands clean is one of the best ways to prevent the spread of infectious diseases like influenza and other emerging diseases.



When should you wash your hands?

- **Before** and after caring for someone who is sick.
- **Before** and after treating a cut or wound.
- **After** using the toilet.
- **After** blowing your nose, coughing, or sneezing.
- **After** touching garbage.
- **Before**, during, and after preparing food.
- **Before** eating.

What is the right way to wash your hands?

- Wet your hands with clean running water (warm or cold) and apply soap.
- Rub your hands together to make lather and scrub well; be sure to scrub the backs of your hands, between your fingers, and under your nails.
- Continue rubbing your hands for at least 20 seconds. Need a timer? Hum the "Happy Birthday" song from beginning to end twice.
- Rinse your hands well under running water.
- Dry your hands using a clean towel or air.



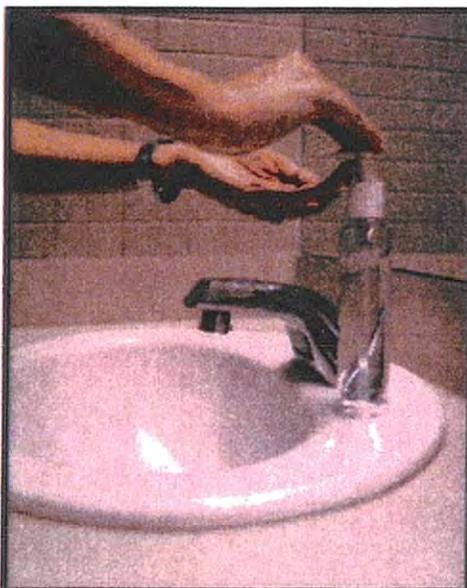
What about Hand Sanitizer?

Washing hands with soap and water is the best way to reduce the number of germs on them. If soap and water are not available, use an alcohol-based hand sanitizer that contains at least 60% alcohol. Alcohol-based hand sanitizers can quickly reduce the number of germs on hands in some situations, but sanitizers do **not** eliminate all types of germs.

Hand sanitizers may not be as effective when hands are visibly dirty.

How should you use hand sanitizer?

- Apply the product to the palm of one hand (read the label to learn the correct amount).
- Rub your hands together.
- Rub the product over all surfaces of your hands and fingers until your hands are dry.



For more information on hand washing please visit the Centers for Disease Control website: Please visit CDC's [Handwashing website](#).

Attachment D

USP Florence Inmate Bulletin

Lock Down Update

Status

USP Florence was placed on lockdown on March 26, 2020, after numerous inmates were observed squaring off with one another during a heated argument. This type of behavior puts both staff and inmates at risk, and will not be tolerated. Additionally, my decision to secure the institution is solely due to the aforementioned reason and is no way related to the coronavirus.

Visiting

Visiting will remain suspended until further notice.

Meals

Over this coming weekend, the inmate population will be provided with three meals a day, two will be hot, which will be lunch and dinner. If and when it is determined to change to another type of meal, we will notify the population.

We will continue to update the inmate population as we progress throughout the lock-down. Your cooperation is expected.



J.A. Barnhart Warden

March 27, 2020
Date

Attachment E

FCC Florence Inmate Bulletin

**Inmate Town Hall
April 1, 2020**

- In response to COVID-19, the Bureau of Prisons (BOP) has instituted a comprehensive action plan that includes screening, testing, appropriate treatment, prevention, education, and infection control measures.
- Many of you are following the Media regarding COVID-19 and the impact throughout the country. As a result of the increase of COVID-19 cases throughout the United States, the BOP will be implementing a "Stay in Shelter" for 14 days in order to stop the spread. This is not punitive; it is a nation-wide effort and response to a public health emergency.
- During this time; you will be given access to medical care, showers, phone, and email access (If eligible) in small groups at designated times, on a limited basis. Meals and limited commissary will be delivered to the housing units. Some inmate workers will be needed, but it will be on a limited basis.
- We ask that you continue to increase your sanitation and hygiene efforts in the housing unit and in your cells. Staff have increased the sanitation efforts throughout the institution.
- There are currently zero inmates that have been identified as having COVID-19 at FCC Florence. The institution modified operations and "Stay in Shelter" is an effort to be proactive.
- You are encouraged to avoid touching your face. You are also encouraged to wash your hands frequently with soap and water, in accordance with Centers for Disease and Control and Prevention (CDC) guidance. Practice social distancing whenever practical.
- The BOP has developed and implemented an action plan for our supply management, inmate movement, and other important aspects. As part of our contingency plan; all cleaning, sanitation, and medical supplies have been

inventoried at all of our BOP facilities. We have an ample supply on hand. The Bureau of Prisons is prepared to address any supply concerns if necessary.

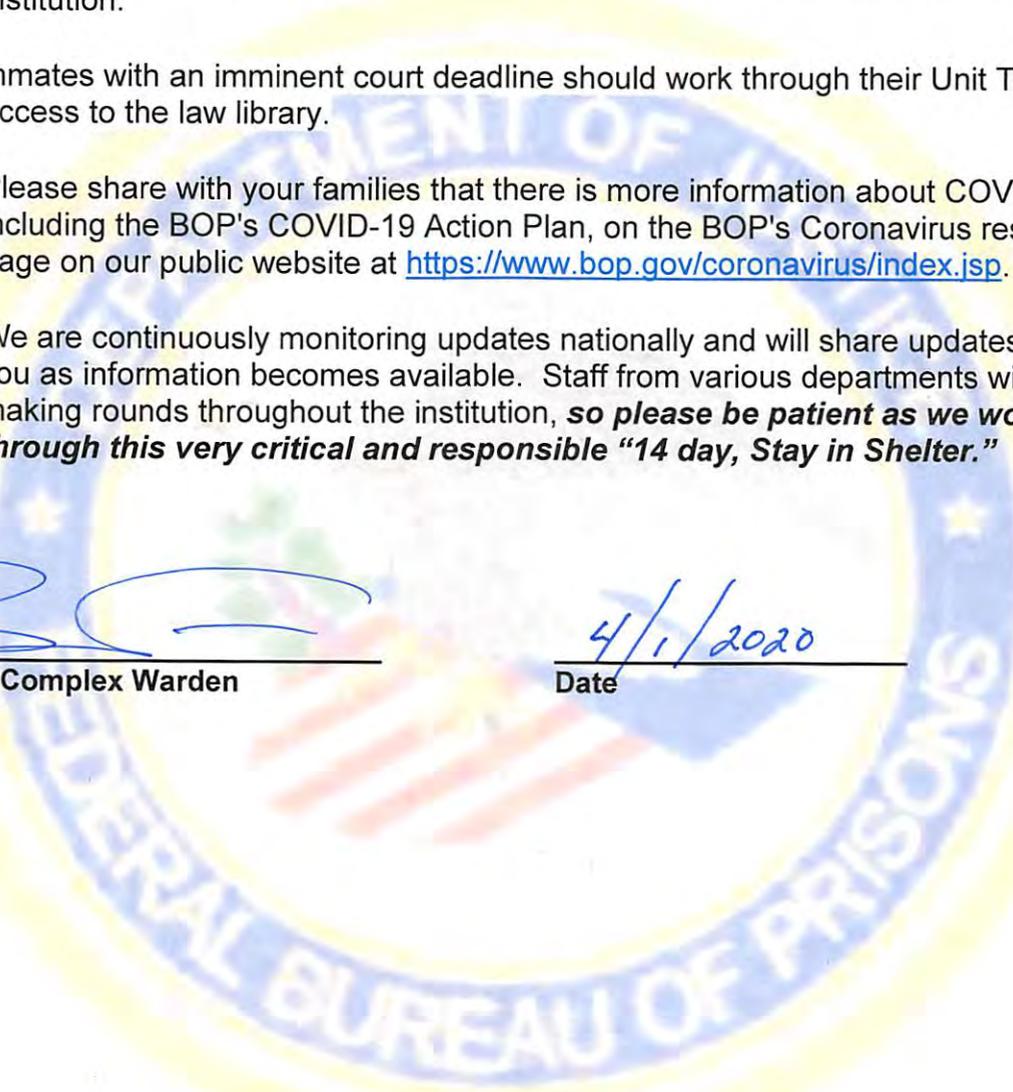
- We appreciate the cooperation and flexibility as we do everything we can to assure the safety and security of our staff, inmates, and the general public. This is the responsible thing to do to stop the spread.
- Detailed information to combat inmate idleness will be forthcoming from each institution.
- Inmates with an imminent court deadline should work through their Unit Team for access to the law library.
- Please share with your families that there is more information about COVID-19, including the BOP's COVID-19 Action Plan, on the BOP's Coronavirus resource page on our public website at <https://www.bop.gov/coronavirus/index.jsp>.
- We are continuously monitoring updates nationally and will share updates with you as information becomes available. Staff from various departments will be making rounds throughout the institution, ***so please be patient as we work through this very critical and responsible "14 day, Stay in Shelter."***



B. True, Complex Warden

4/1/2020

Date



Attachment F

CORONAVIRUS DISEASE 2019 (COVID-19) INMATE SCREENING TOOL

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

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

Institution: _____

Provider Name/Signature: _____ **Date:** _____

Attachment G

CORONAVIRUS DISEASE 2019 (COVID-19) STAFF SCREENING TOOL

DATE: _____

1. Assess the Risk Of Exposure		
<input type="checkbox"/> Yes <input type="checkbox"/> No	Had close contact with anyone diagnosed with the COVID-19 illness within the last 14 days? If YES, <i>Dates of Exposure:</i> _____	
<input type="checkbox"/> Yes <input type="checkbox"/> No	Deployed for COVID-19 response and back from deployment within the last 14 days?	
2. Assess Symptoms		Date of Onset:
A. <input type="checkbox"/> Yes <input type="checkbox"/> No	Fever (temperature \geq 100.4°F) or Chills	
B. <input type="checkbox"/> Yes <input type="checkbox"/> No	Shortness of Breath	
C. <input type="checkbox"/> Yes <input type="checkbox"/> No	Cough: <i>(Check All that Apply)</i> <input type="checkbox"/> Dry <input type="checkbox"/> Congested <input type="checkbox"/> Sputum Production <input type="checkbox"/> New Onset <input type="checkbox"/> Chronic	
D. <input type="checkbox"/> Yes <input type="checkbox"/> No	Nasal Congestion	
E. <input type="checkbox"/> Yes <input type="checkbox"/> No	History of Seasonal Allergies	
3. Travel History (in the past 14 days)		
<u>Geographic Location Visited</u>	<u>Dates of Visit (Beginning Date => Ending Date)</u>	
4. Perform a temperature check _____ °F		
5. Instructions		
<p>If the staff member's temperature is \geq 100.4°F, they will be denied entry to the facility and put on leave. Contact the Occupational Safety & Health Branch for either or both of the following:</p> <p><input type="checkbox"/> If the staff member answers Yes to Any Section 1 questions (exposure risk), with or without symptoms, <input type="checkbox"/> If the staff member answers Yes to Any Section 2 questions A thru C (symptoms)</p> <p>Once Completed, please submit this information to the Occupational Safety & Health Branch of Health Services Division by email: BOP-HSD/EmployeeHealth@bop.gov</p>		

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

Institution: _____ State: _____

Attachment H



Coronavirus COVID-19

PRIORITIES FOR TESTING PATIENTS WITH SUSPECTED COVID-19 INFECTION

COVID-19 Symptoms: Fever, Cough, and Shortness of Breath

PRIORITY 1

Ensures optimal care options for all hospitalized patients, lessen the risk of healthcare-associated infections, and maintain the integrity of the U.S. healthcare system

- Hospitalized patients
- Healthcare facility workers with symptoms

1

2

PRIORITY 2

Ensures those at highest risk of complication of infection are rapidly identified and appropriately triaged

- Patients in long-term care facilities with symptoms
- Patients 65 years of age and older with symptoms
- Patients with underlying conditions with symptoms
- First responders with symptoms

PRIORITY 3

As resources allow, test individuals in the surrounding community of rapidly increasing hospital cases to decrease community spread, and ensure health of essential workers

- Critical infrastructure workers with symptoms
- Individuals who do not meet any of the above categories with symptoms
- Healthcare facility workers and first responders
- Individuals with mild symptoms in communities experiencing high numbers of COVID-19 hospitalizations

3

NON- PRIORITY

NON-PRIORITY

- Individuals without symptoms

Exhibit 2

Supplemental Declaration of Shari Himlie

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-00756-PAB

EDWARD NELLSON, individually, and a Class of similarly-situated persons,

Plaintiff,

v.

WARDEN J. BARNHART, in his individual and official capacities, and
UNITED STATES FEDERAL BUREAU OF PRISONS,

Defendants.

SUPPLEMENTAL DECLARATION OF SHARI HIMLIE

I, Shari Himlie, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, hereby declare as follows relating to the above-titled matter. All attachments to this declaration are true and accurate copies of Federal Bureau of Prisons (Bureau) records maintained in the ordinary course of business.

1. This declaration is a supplement to my April 6, 2020, declaration (Doc. 17-1).
2. As referenced in my prior declaration, inmate Edward Nellson, Federal Register No. 31408-007, is currently incarcerated at the United States Penitentiary (USP) in Florence, Colorado.
3. My prior declaration explained the many steps that the Bureau has taken to address the global pandemic of COVID-19. *Id.* at ¶¶ 5-19. I also discussed the many actions taken locally at the Federal Correctional Complex (FCC) in Florence, Colorado, and USP Florence to prevent the introduction and spread of COVID-19 throughout the complex. *Id.* at ¶¶ 20-69. All of the steps taken at FCC Florence, as outlined in my prior declaration (*id.* at ¶¶ 24-

69), are still in place, except as enhanced by additional safeguards that will be discussed below.

4. The focus of this declaration will be to explain the additional steps that the Bureau, FCC Florence, and USP Florence, have implemented since April 6, 2020.

5. I continue to be employed in my role as the FCC Florence Health Services Administrator and the Logistics Section Chief for the FCC Florence Command Center. I continue to be involved on a daily basis in the identification, planning, coordination, and implementation of all Bureau directives for preventing the spread of COVID-19 at FCC Florence, including USP Florence. Through these dual roles, I have knowledge of both the Bureau's national directives relating to COVID-19 and the additional steps that FCC Florence has specifically taken to combat COVID-19 within FCC Florence. Accordingly, through these official duties, I have personal knowledge regarding the additional measures taken since April 6, 2020, discussed below, that have been implemented both Bureau-wide and at FCC Florence in order to prevent and limit the spread of COVID-19.

I. NATIONAL STEPS TAKEN BY BUREAU TO ADDRESS COVID-19¹

6. As of April 6, 2020, the date of my prior declaration, the Bureau had implemented Phase Five of its COVID-19 Action Plan. *Id.* at ¶¶ 16-17. As I explained, during Phase Five, all inmates in every Bureau institution were confined to their cells for the majority of each day in order to decrease the spread of the virus. *Id.* Phase Five remained in place through April 12, 2020.

7. On April 13, 2020, the Director of the Bureau ordered the implementation of Phase Six of the Bureau's COVID-19 Action Plan. *See* Att. A, Bureau Press Release (Apr. 14,

¹ As previously stated, the Bureau's national guidance has undergone a number of changes in response to the evolving threat of COVID-19. The Bureau has established a COVID-19 resource section on its public webpage which is available at: <https://www.bop.gov/coronavirus/>. This webpage includes updates on the Bureau's response to COVID-19 and positive COVID-19 tests among inmates and staff at Bureau institutions nationwide.

2020); Att. B, Bureau Director Memorandum to Inmate Families and Friends (Apr. 21, 2020) (explaining COVID-19 safeguards at all Bureau institutions during Phase Six). Phase Six extends all measures from Phase Five, including enhanced modified operations for all institutions, until May 18, 2020. *Id.* The extension of the modified operations for all Bureau institutions was continued to minimize inmate movement and further decrease the spread of COVID-19.

8. Phase Six has been implemented at USP Florence and currently remains in effect. This means that, until at least May 18, 2020, all inmates at USP Florence remain confined to their cells for the majority of the day. Meals are delivered directly to inmates' cells, as well as a limited number of commissary items. Staff have been directed to wash their hands frequently and take other precautions, such as wearing gloves, when interacting with inmates. Inmates are permitted to leave their cells in small groups on a rotating basis at designated times in order to engage in activities such as showers, exercise, phones, and TRULINCS. Inmates may be outside their cells in these small groups for approximately 2.5-3 hours per day, depending on the day of the week. During these time periods, inmates have been directed to maintain appropriate physical distancing.² *See* Doc. 17-1 at ¶ 17. Inmates may also remain in their assigned cells during this period of time as they are not compelled to use the law library, use communal showers, or otherwise be in the common areas of the housing unit, if they simply choose to stay in their cells.

II. STEPS TAKEN AT FCC FLORENCE TO ADDRESS COVID-19

9. In addition to the steps taken at the national level, since April 6, 2020, FCC

² As previously mentioned, to help ensure that inmates maintain social ties during this time, the Bureau increased inmates' telephone allotment to 500 minutes per month (from 300 minutes per month). Since April 9, 2020, inmates are no longer charged to make telephone calls during the COVID-19 emergency. *See* Att. C, Director Memorandum to Bureau Inmates (Apr. 8, 2020).

Florence itself has also taken a number of additional measures in response to the COVID-19 pandemic. As before, when I refer to “FCC Florence” generally, I am referring to measures being taken at *each* of the FCC Florence institutions, including USP Florence. When I refer to USP Florence specifically, I am speaking only about that institution.

A. FCC Florence Command Center

10. The FCC Florence Command Center continues to remain active at both ADX Florence and USP Florence, as well as the North Central Regional Command Center and the Central Office Command Center. The local Command Centers work together and, in conjunction with the National Command Center, monitor, plan, and implement national directives and other procedures at FCC Florence. The FCC Florence Command Center is currently scheduled to remain active until at least May 18, 2020. That date may be extended, as needed. The FCC Florence Command Center is staffed from 6:00 a.m. to 6:00 p.m. each day of the week.

11. As noted above and in my previous declaration, I serve on the FCC Florence Command Center as the Logistics Section Chief. In this role, I continue to order, account for, and distribute critical medical supplies, oversee management of infectious disease control onsite, and coordinate the enhanced staff and inmate screening at FCC Florence. I also provide ongoing education to staff and inmates regarding steps that should be taken to prevent the introduction and spread of COVID-19 into FCC Florence.

B. Additional Measures to Combat COVID-19 at FCC Florence

12. Again, the various measures that I explained in my prior declaration remain in place at FCC Florence. *See* Doc. 17-1 at ¶¶ 24-69. FCC Florence and USP Florence continue to take many additional steps to prevent the introduction and spread of COVID-19 into its institutions, including providing inmate and staff education; conducting inmate and staff

screening; putting into place testing, quarantine, and isolation procedures; ordering necessary cleaning, testing, and medical supplies; engaging in enhanced cleaning and disinfecting measures; and taking a number of other preventative measures.

13. For instance, in my prior declaration, I explained the screening process of inmates who are assigned to a work detail outside of their assigned housing unit. *See* Doc. 17-1 at ¶ 45. To explain further, this enhanced screening is conducted inside of the Health Services Department at USP Florence, as opposed to the housing units. During this enhanced screening, each inmate undergoes a temperature check and symptom check by a medical provider. This screening occurs at the beginning and end of each work detail taking place outside the inmate's housing unit.

14. As touched upon in my prior declaration, if an inmate is assigned to a work detail in the same housing unit in which he resides (such as a cleaning orderly), no additional screening occurs because that inmate is not in contact with other inmates outside of his assigned housing unit. Mr. Nellson is currently assigned as a unit orderly in Echo Unit at USP Florence. As such, he does not go through the enhanced screening procedures outlined above because he does not leave the housing unit to perform his assigned work duties. However, he and other inmates who remain in the housing units are still able to communicate any medical concerns to medical providers conducting twice daily rounds/sick call within the housing units. If an inmate requires additional medical attention, he will be reviewed and triaged for additional care, to include being evaluated by a physician, if clinically indicated.

15. Also as explained in my previous declaration, all inmates at USP Florence have access to sinks, water, and soap, to ensure proper hand hygiene. Soap is available through commissary purchases or, if the inmate does not have sufficient money to purchase soap through

commissary, through free soap provided by the institution on a weekly basis. *See* Doc. 21-1 at ¶ 5 (explaining the procedures for inmates to request additional soap). In addition, each housing unit at USP Florence is stocked with cleaning supplies for use by inmate orderlies and other inmates to clean both the common areas and their own cells on a daily basis. These cleaning supplies include a disinfectant that kills human coronavirus.

16. Furthermore, from the outset of the COVID-19 pandemic, and continuing currently, FCC Florence officials have also provided regular updates to inmates and staff regarding the virus and the Bureau's response, and have educated inmates and staff regarding measures that they themselves should take to stay healthy.

17. For example, on April 7, 2020, following the issuance of face coverings/masks to the inmate population at FCC Florence, I issued an inmate bulletin to all FCC Florence inmates. *See* Att. D, Inmate Bulletin – Face Masks (Apr. 7, 2020). In this bulletin, I explained proper mask-wearing procedures and reminded the inmates to frequently wash their hands with soap and water. *Id.*

18. On April 14, 2020, Complex Warden True issued an inmate bulletin to all inmates at FCC Florence regarding the implementation of Phase Six. *See* Att. E, Inmate Bulletin – Phase Six (Apr. 14, 2020).

19. Beginning on April 15, 2020, all FCC Florence staff have been required to wear face coverings/masks at all times when in the common areas of the institution when six-foot social distancing measures are unable to be practiced. All staff are required to keep a mask with them at all times in the event of an emergency response where social distancing measures cannot be maintained. Staff working in isolation or quarantine housing units are still required to wear appropriate personal protective equipment in accordance with Centers for Disease Control and

Prevention (CDC) guidelines.

20. Likewise, on April 15, 2020, Warden Barnhart at USP Florence, issued an inmate bulletin for all USP Florence inmates reiterating the CDC-recommended social distancing standards. *See* Att. F, Inmate Bulletin – Social Distancing (Apr. 15, 2020). Warden Barnhart stated, “During periods where there is direct inmate and staff interactions and the CDC recommended six feet of social distancing cannot be maintained, use of the mask that you were provided is mandated. This applies to all escorts, medical visits, anywhere that you are in close proximity to staff or other inmates.” *Id.*

21. Also on April 15, 2020, throughout the four institutions at FCC Florence, additional color copies of two CDC campaign posters were posted in all housing units and other areas of the institutions that are frequented by staff and inmates. *See* Att. G, CDC Stop the Spread of Germs and Wash Your Hands Factsheets.

22. On April 16, 2020, Warden Barnhart issued another inmate bulletin for all USP Florence inmates, mandating the wearing of face coverings for all inmates “with the rare exceptions of when necessary for identification, when the individual is unable to personally remove the mask, or the individual has chronic conditions associated with difficulty breathing.” *See* Att. H, Inmate Bulletin – Face Masks (Apr. 16, 2020). These cloth face masks for inmates meet the CDC recommendations on face coverings for non-medical providers. *See Cloth Face Coverings: Questions and Answers*, CDC; <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover-faq.html> (last visited on Apr. 22, 2020).

23. Each day, beginning on April 16, 2020, at 6:00 a.m., the following statement is announced from the Main Control Center at each institution: “At this time, staff and inmates are reminded to practice proper hand washing techniques. Ensure that you are using soap and warm

water and wash thoroughly.” This announcement is made daily at 6:00 a.m., 9:00 a.m., noon, 3:00 p.m., 6:00 p.m., and 9:00 p.m.

24. To date, two FCC Florence inmates have been tested for COVID-19. Both of these tests were negative for COVID-19.

25. Currently, FCC Florence has approximately 155 COVID-19 test kits in stock, with the ability to receive more test kits from its vendor in a matter of days. An additional 60 test kits have been ordered and are expected to be delivered this week. As explained in my previous declaration (Doc. 17-1 at ¶¶ 56-60), the determination whether to test an inmate for COVID-19 is made by Bureau medical providers based on a number of criteria. To date, the CDC has not altered its guidance that “[n]ot everyone needs to be tested for COVID-19,” and “decisions about testing are at the discretion of state and local health departments and/or individual clinicians.” *See* [cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html](https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html) (last visited on Apr. 22, 2020).

III. CONCLUSION

26. In sum, the Bureau and FCC/USP Florence continue to take this COVID-19 pandemic extremely seriously and have implemented, and continue to implement, numerous and additional measures to proactively prevent and combat the spread of this disease to staff members and the inmate population. The various phases of the Bureau’s Action Plan, including the current Phase Six, have been designed and implemented in a systematic manner both nationally and at FCC/USP Florence in order to mitigate the spread of COVID-19.

27. To date, no inmates or staff members at FCC Florence have been diagnosed with COVID-19.

28. The Bureau and FCC/USP Florence remain flexible in their ability to receive

guidance from the CDC and other health organizations and to modify their actions to best respond to this global pandemic, according to the national and local needs.

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

Executed on this 22nd day of April 2020, in Florence, Colorado.

s/ Shari Himlie
Shari Himlie
Health Services Administrator
FCC Florence
Federal Bureau of Prisons

Enclosures

- Att. A Bureau Press Release (Apr. 14, 2020)
- Att. B, Bureau Director Memorandum to Inmate Families and Friends (Apr. 21, 2020).
- Att. C Director Memorandum to Bureau Inmates (Apr. 8, 2020)
- Att. D Inmate Bulletin – Face Masks (Apr. 7, 2020)
- Att. E Inmate Bulletin – Phase Six (Apr. 14, 2020)
- Att. F Inmate Bulletin – Social Distancing (Apr. 15, 2020)
- Att. G CDC Stop the Spread of Germs and Wash Your Hands Factsheets
- Att. H Inmate Bulletin – Face Masks (Apr. 16, 2020)

Attachment A



**U.S. Department of Justice
Federal Bureau of Prisons**

FOR IMMEDIATE RELEASE
April 14, 2020

Contact: Office of Public Affairs
202-514-6551

Bureau of Prisons COVID-19 Action Plan: Phase Six

WASHINGTON - On Monday, April 13, 2020, the Director of the Bureau of Prisons (BOP) ordered the implementation of Phase 6 of its COVID-19 Action Plan.

This plan extends all measures from Phase 5, to include enhanced modified operations for all institutions, until May 18, 2020.

The Bureau of Prisons will continue to provide daily updates and information on actions related to COVID-19 at www.bop.gov/coronavirus/index.jsp.

Additional information about the Federal Bureau of Prisons can be found at www.bop.gov.

###

Attachment B



U.S. Department of Justice

Federal Bureau of Prisons

Office of the Director

Washington, D.C. 20534

April 21, 2020

MEMORANDUM FOR INMATE FAMILIES AND FRIENDS

FROM: M.D. Carvajal, Director

SUBJECT: COVID-19 Safeguards

As Director of the Bureau of Prisons (BOP), it is my responsibility to ensure the safety, security and orderly operation of 122 federal prisons, as well as the safety and security of approximately 36,000 staff and more than 170,000 federal inmates, including those housed in privately managed or community-based facilities. I want to take this opportunity to share with you, the families and friends of someone in our custody, a message about what we are doing to safeguard the health of your loved one during the COVID-19 pandemic. I understand the anxiety you are feeling.

First, I want to thank you for your understanding and cooperation as we diligently work to try and prevent the introduction of coronavirus in our facilities and as we try to stop its spread inside those facilities that have been affected. No decision, regardless of how large or small, is taken lightly or done without considerable thought.

For example, we understand the hardship of not being able to see your loved ones, but their safety, and the safety of our staff, is our priority. Stopping social visits has had a major impact on keeping you, and them, safe and we're helping to keep the community safe, too. To help compensate, the amount of monthly phone minutes allowed was increased and, while collect calls will be charged accordingly, free phone and video calls were approved. The BOP recognizes how important it is for families to keep in touch, especially during these uncertain times. You need to know how your loved one is doing and they need to know how the virus is affecting you and their community.

As we continue to revise and update our response to COVID-19 based on the most recent guidance from the World Health Organization and the

Centers for Disease Control (CDC), I must thank every staff member for their dedication to our mission, for their relentless efforts to reduce the spread of the coronavirus both inside and outside our institutions, and for their commitment to keeping each inmate safe and well.

As I write this message, 45 BOP facilities and 14 Residential Reentry Centers have been affected nationwide. Although planning and preparations have been going on since January, and BOP has fully implemented its COVID-19 Action Plan, no amount of preparation could have left our institutions unaffected. The first positive inmate case was reported on March 21, 2020, and the first positive staff case was reported the very next day. Sadly, we have also experienced the death of 22 inmates, all with pre-existing medical conditions listed by the CDC as risk factors for developing the more severe COVID-19 disease.

All individuals entering our facilities, including staff, are screened and temperature checked. This is a critical step to ensure we reduce the risk of introducing and spreading the virus inside our facilities. We also implemented various screening efforts along with quarantine and isolation procedures for the inmate population to slow the spread of the virus. As of April 1, we made the decision that all inmates, in every institution, will be secured in their assigned cells/quarters in order to decrease the spread of the virus. Again, we did not make this decision lightly, and I know it can be difficult for everyone. But just like in communities nationwide who have been required to shelter in place, we feel the safest course to prevent the spread of the virus is to have inmates shelter in place as well. These actions will remain in place until May 18, 2020, at which time they will be reevaluated.

A new measure we have implemented in managing the evolving pandemic for institutions with active COVID-19 transmission includes feeding all inmates in their units. The CDC recently provided guidance specifically for correctional and detention facilities recommending all staff and inmates be issued, and strongly encouraged to wear, an appropriate face covering when in public places and when social distancing cannot be achieved.

We are working hard to apply the authorities granted to us to increase the use of home confinement. We are aggressively screening all inmates who have COVID-19 risk factors for suitability, starting with inmates incarcerated at facilities with the greatest number of COVID-19 cases. The Attorney General authorized the use of home confinement as a priority in response to the COVID-19 pandemic late last month. Since then, the BOP has reviewed thousands of cases and successfully placed over 1300 inmates on home confinement.

All of our decisions are made with one goal in mind - keeping everyone safe and healthy. We recognize this is hard on you and your loved ones.

It is hard on all of us but we will get through it working together. Our world is much different than it was even a month ago.

I will close by personally acknowledging that you and your loved ones cooperation has made a difference during this difficult time, and I thank you. This pandemic is a global emergency and the BOP is taking proactive operational measures to safeguard each person entrusted to our care and custody. I am committed to doing everything I can to achieve our goal of keeping those in our facilities as safe and healthy as possible during this difficult time, and returning to normal operations when it is safe to do so.

Attachment C



U.S. Department of Justice

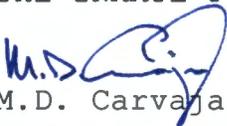
Federal Bureau of Prisons

Office of the Director

Washington, DC 20534

April 8, 2020

MEMORANDUM FOR THE INMATE POPULATION

FROM:  M.D. Carvajal, Director

SUBJECT: COVID-19 Pandemic

I would rather be able to address you directly, however, that is not practical at this time. Instead, I am writing this letter to tell you what we are doing as an agency to safeguard your health during the COVID-19 pandemic. I want to thank each of you for your understanding and cooperation as we diligently work to try and prevent the introduction of coronavirus in our facilities and to stop the spread of it in the facilities that have already been affected. It is critically important that each and every one of us take this seriously - together we will all get through this.

Let me share some information with you and dispel any rumors you may have heard. Despite the planning and preparations that has been ongoing since January 2020, and the implementation of the first three phases of our COVID-19 Action Plan, the BOP had its first positive inmate case on March 21, 2020, and the first positive staff case the very next day. Unfortunately, I am also saddened to report, as of today, we have had eight COVID-19 inmate-related deaths. On March 26, 2020, we implemented Phase 4 requiring all individuals entering our facilities, including staff, be screened and temperature checked. This was a critical step to ensure we reduce the risk of introducing and spreading the virus inside our facilities.

The Executive Staff and I have made decisions that directly impact each of you. No decision, regardless of how large or small, is taken lightly or done without considerable thought. Stopping social visits has a major impact on you and your loved ones. But, by doing so we are keeping you, your family, and the community safe. We

increased your monthly phone minutes to help compensate for the lack of visits and by Thursday, April 9, 2020, telephone calls will be free to you for the duration of this emergency (please note, however, collect calls will still be charged to the receiving phone number). We recognize how important it is for you to keep in touch with your families, especially at this time. They need to know how you are doing and you need to know how the virus is affecting them.

Access to legal counsel remains a paramount requirement but, like social visiting, the BOP is reducing the risk of exposure created by external visitors. As such, while in general, legal visits will be suspended for 30 days, case-by-case accommodation will be accomplished at the local level and confidential legal calls will be allowed in order to ensure inmates maintain access to counsel. Limiting facility-to-facility transfers, and other inmate movement, as well as implementing screening and quarantine and isolation procedures, have been essential to slowing the spread of the virus. The nationwide modified operations implemented to maximize social distancing and limit group gatherings, such as staggering meal times and recreation, have also been helpful. However, the growing number of quarantine and isolation cases in our facilities indicates we need to do more.

Accordingly, on April 1, 2020, another decision was made that directly impacts you. For a 14-day period, inmates in every institution have been secured in their assigned cells/quarters to decrease the spread of the virus. Again, we did not make this decision lightly, and I know this can be frustrating for all of you. But just like in communities nationwide who have been required to shelter in place, we feel the safest course to prevent the spread of the virus and keep you healthy is to have you shelter in place as well. After 14 days, this decision will be reevaluated and a determination will be made as to whether or not to return to modified operations.

All of our efforts are toward one goal -- keeping everyone in our prisons, both staff and inmates, safe. We are still in the early stages of this virus; it is not even near the peak in the United States. With that said, I need your continued patience, understanding, and cooperation. I need you to communicate with staff openly and honestly. We need to know how you are feeling -- both physically by telling staff if you are feeling sick, coughing or running a fever, and mentally, if you are anxious or scared.

I am also asking that you keep yourselves and your areas as clean as possible. On April 4, 2020, the CDC issued updated guidance encouraging all persons to use masks in public, as such, masks have

been issued to you. There are universal precautions that we must all follow - we are sharing many of the same areas. Please remember to always:

- Wash your hands, especially after touching any frequently used item or surface.
- Avoid touching your face.
- Sneeze or cough into a tissue and wash your hands thereafter, or use the inside of your elbow.
- Observe social distancing as much as practical in our environment.

These are not normal times. Our world is much different than it was a month ago. We recognize this is hard on you, but remember it is equally hard on everyone. Staff are experiencing many of the same feelings as you, your family, as well as myself.

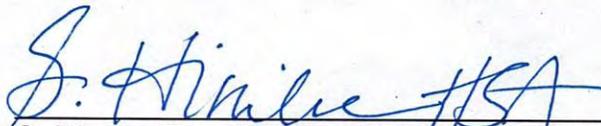
I want to close by personally telling you that your cooperation has made a difference during this difficult time. Please continue to be patient and understanding. Wash your hands frequently, cover your coughs and sneezes, and avoid touching your face. Maintain an appropriate social distance as often as you can. And, equally as important, communicate with the staff about how you are feeling, ask questions, and share your concerns. This pandemic is a global emergency and the BOP is taking proactive operational measures to safeguard each of you that are entrusted to our care and custody. I am committed to doing everything I can to help keep all of you healthy and safe.

Attachment D

FCC Florence Inmate Bulletin

PROPER PROCEDURES FOR SURGICAL MASKS

- Before putting on a mask, clean hands with soap and water.
- Inspect the mask for tears or holes.
- Orient which side is the top side (where the metal strip is).
- Ensure the proper side of the mask faces outwards (the colored side).
- Cover your mouth and nose with the mask and make sure there are no gaps between your face and the mask.
- Pinch the metal strip or stiff edge of the mask so it molds to the shape of your nose.
- Pull down the mask's bottom so it covers your mouth and your chin.
- Avoid touching the **INSIDE/DIRTY SIDE** of the mask while using it; if you do, clean your hands with soap and water.
- After use, take off the mask by removing the elastic loops from behind the ears while keeping the mask away from your clothes or other items, to avoid touching the potentially contaminated surfaces of the mask.
- To store the mask until the next use: Fold the mask in half **INWARD** (the **INSIDE/DIRTY SIDE** of the mask is pressed together).
- Clean hands with soap and water.


S. Himlie, Complex Health Service Administrator

4/07/2020
Date

Attachment E

FCC Florence Inmate Bulletin

Updated Talking Points – Inmate Town Hall April 14, 2020

- In response to COVID-19, the Bureau of Prisons (BOP) will continue with the comprehensive action plan that includes screening, testing, appropriate treatment, prevention, education, and infection control measures.
- Many of you are following the Media regarding COVID-19 and the impact throughout the country. As a result in the increase of COVID-19 cases throughout the United States, the BOP will be maintaining the “Stay in Shelter” until May 18, 2020, at which time it will be reevaluated. This is not punitive but rather a nationwide effort and response to a public health emergency.
- Social and Legal visits, as well as volunteers, will continue to be suspended until May 18, 2020, at which time the suspension will be reevaluated.
- Continued access to medical care, showers, phone and email access in small groups at designated times, on a limited basis will be given. Increased phone minutes and free calling remain. Meals and limited commissary will be delivered to the housing units. Some inmate workers will be needed but it will be on a limited basis.
- We ask that you continue to increase your sanitation and hygiene efforts in the housing unit and in your cells. Staff have increased the sanitation efforts throughout the institution.

- There are currently zero inmates that have been identified as having COVID-19 at FCC Florence. The institution modified operations and "Stay in Shelter" is an effort to be proactive.
- You are encouraged to avoid touching your face, wash your hands frequently with soap and water, in accordance with Centers for Disease and Control and Prevention (CDC) guidance. Practice social distancing whenever practical.
- The BOP has developed and implemented an action plan for our supply management, inmate movement, as well as other important aspects. As part of our contingency plan, all cleaning, sanitation, and medical supplies have been inventoried at all of our BOP facilities. We have an ample amount of supply on hand. The Bureau of Prisons is prepared to address any supply concerns if necessary.
- We appreciate the cooperation and flexibility as we do everything we can to assure the safety and security of our staff, inmates, and the general public. This is the responsible thing to do to stop the spread.
- Inmates with an imminent court deadline should continue to work through their Unit Team for access to the law library.
- Please share with your families that there is more information about COVID-19, to include the BOP's COVID-19 Action Plan, please visit the BOP's Coronavirus resource page on our public website for accurate information at <https://www.bop.gov/coronavirus/index.jsp>.
- We are continually monitoring updates nationally as they become available and will share with you as the information becomes available. Staff from the various departments will be making rounds throughout the institution, so please continue to be patient as we work through this very critical and responsible "Stay in Shelter" period.



B. True, Complex Warden

4/14/2020
Date

Attachment F

USP Florence Inmate Bulletin

Social Distancing

During Periods where there is direct inmate and staff interactions and the CDC recommended six feet of social distancing cannot be maintained, use of the mask that you were provided is mandated. This applies to all escorts, medical visits, anywhere that you are in close proximity to staff or other inmates.

Additionally, during periods of feeding, commissary sales or instances where you are being provided any other item, inmates are encouraged to do their best to keep the CDC recommended six feet distance from staff members. All inmates are expected to remove trash from their cells when able and reasonable. This is for the betterment and safety for all staff and inmates. Your continued cooperation and flexibility is expected and appreciated for the duration of these emergent times.



J.A. Barnhart, Warden

J.A. Barnhart, Warden

Attachment G

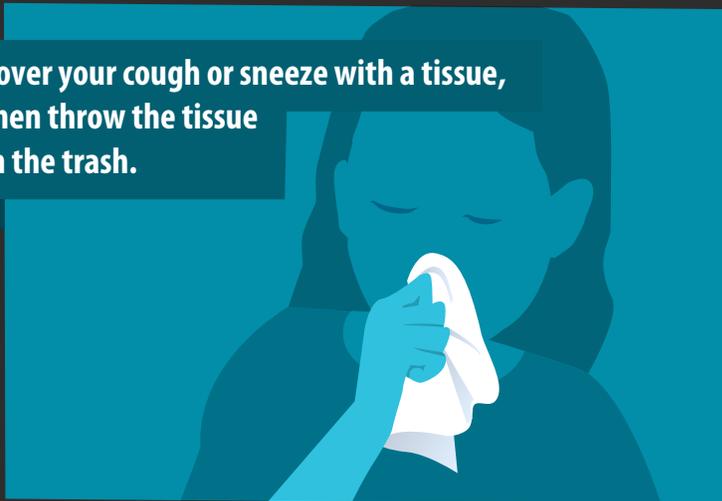
Stop the Spread of Germs

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

Avoid close contact with people who are sick.



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



Avoid touching your eyes, nose, and mouth.



When in public, wear a cloth face covering over your nose and mouth.

Clean and disinfect frequently touched objects and surfaces.



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



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



[cdc.gov/coronavirus](https://www.cdc.gov/coronavirus)



Hands that look clean can still have icky germs!



WASH YOUR HANDS!



U.S. Department of Health and Human Services
Centers for Disease Control and Prevention

Attachment H

USP Florence

Inmate Bulletin

Face Masks

To help reduce the transmission of the COVID-19 Pandemic, the US Department of Health and Human Services, Centers for Disease Control and Prevention has issued recommendations for the use of a face covering the nose and mouth in public places. Especially in areas when social distance cannot be achieved due to the requirements of work or location. This is an important and imperative tool in helping fight the spread of COVID-19. Even more so in these settings where transmission would have a significant impact in our environment.

Therefore, effective immediately, it is **mandatory** that all inmates will wear face coverings provided by the agency, with the rare exceptions of when necessary for identification, when the individual is unable to personally remove the mask, or the individual has chronic conditions associated with difficulty breathing. (Individuals in isolation or quarantine will continue to wear appropriate PPE in accordance with CDC guidelines.)

 4.16.20 20
J.A. Barnhart, Warden

Exhibit 3

Second Supplemental Declaration of Paula Trujillo

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Civil Action No. 20-cv-00756-PAB

EDWARD NELLSON, individually, and a Class of similarly-situated persons,

Plaintiff,

v.

WARDEN J. BARNHART, in his individual and official capacities, and
UNITED STATES FEDERAL BUREAU OF PRISONS,

Defendants.

SECOND SUPPLEMENTAL DECLARATION OF PAULA TRUJILLO

I, Paula Trujillo, pursuant to 28 U.S.C. § 1746, and based upon my personal knowledge and information made known to me from official records reasonably relied upon by me in the course of my employment, hereby make the following declaration relating to the above entitled matter. All records attached to this declaration are true and accurate copies of Bureau records maintained in the ordinary course of business.

1. This declaration is a supplement to my April 6 and 14, 2020, declarations (ECF Nos. 17-2 and 21-1).

2. As referenced in my prior declarations, inmate Edward Nellson, Federal Register No. 31408-007, is currently incarcerated at the United States Penitentiary in Florence, Colorado (USP Florence).

3. In my first declaration, I described in detail how inmates can utilize the Bureau of Prison's Administrative Remedy Program in order to raise and exhaust grievances. *See* ECF No. 17-2 ¶¶ 6-7. In my supplemental declaration, I explained the informal resolution

procedures at USP Florence. *See* ECF No. 21-1 ¶¶ 3-5.

4. On April 17, 2020, Mr. Nellson made a request for an informal resolution form (BP-8) and he was given a BP-8 form that same day. *See* Att. A, Administrative Remedy No. 1014848 at 1. On the BP-8 form, Mr. Nellson claimed that the steps taken to address COVID-19 at USP Florence were insufficient. *Id.* He requested the testing of staff and inmates, regular temperature checks of inmates, that soap and hand sanitizer be available to inmates, and for a doctor to be assigned to USP Florence. *Id.* On the same date, Mr. Nellson received the following response from his Correctional Counselor: “At USP Florence, various measures have been implemented to safeguard inmates from COVID-19. These steps include, but [are] not limited to, screening staff [and] inmates daily, providing soap for inmates to use, and having medical providers conducting rounds each day in your housing unit.” *Id.* Upon delivering Mr. Nellson the completed BP-8 form, Mr. Nellson was also provided a blank Request for Administrative Remedy form (BP-9) on the same date.

5. On April 20, 2020, Mr. Nellson returned his BP-9 form to his Unit Team staff and it was formally filed in SENTRY. *Id.* at 3; *see also* Att. B, SENTRY Administrative Remedy Index at 2. In the BP-9, Mr. Nellson again reiterated his contention that steps taken at USP Florence to prevent COVID-19 were inadequate. *See* Att. A at 3. He requested that inmates be screened daily, including daily temperature checks; that he be provided soap and hand sanitizer; and that inmates be tested for COVID-19. *Id.* He further complained that he had “only gone to commissary 2 times” over the previous 5 weeks, and that “the cheap soap is not in stock.” *Id.*

6. On April 21, 2020, one calendar day after receiving the BP-9, Warden Barnhart responded to Mr. Nellson’s Request for Administrative Remedy. *Id.* at 4-5. Warden

Barnhart addressed each of Mr. Nellson's concerns and requests, including (1) reminding Mr. Nellson that medical providers conduct twice daily sick call rounds in his housing unit; (2) that inmates assigned to work details are screened and have their temperatures taken when they begin and end their work assignments; (3) that once there is a positive inmate case of COVID-19 at FCC Florence, should that occur, all inmates will be screened daily through temperature and symptom checks; (4) that Mr. Nellson's medical history was reviewed by the Health Services Administrator and a Staff Physician, and that he did not fit the criteria for "high risk" individuals under Center for Disease Control and Prevention ("CDC") guidelines; (5) that although hand sanitizer is not provided to inmates because it contains alcohol, which creates a safety and security issue, all inmates at USP Florence have access to sinks, water, and soap at all times; (6) that inmates are permitted to purchase commissary items such as soap once per week, that soap is provided at no cost to indigent inmates, and that Mr. Nellson himself had recently purchased six bars of soap; and (7) that USP Florence was making the determination whether to test individuals for COVID-19 in accordance with CDC guidelines. *See id.* Warden Barnhart also reminded Mr. Nellson that he has the opportunity report any medical concerns to Bureau medical providers on a daily basis, and encouraged Mr. Nellson to practice social distancing and good hygiene, including frequent hand washing with soap and water, and to report any symptoms associated with COVID-19 to medical staff. *Id.* at 5. Mr. Nellson was informed that, if he is not satisfied with this response, he may appeal the Warden's decision to the Regional Director within twenty calendar days. *Id.*

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

Executed on this 22nd day of April 2020, in Florence, Colorado.

s/ Paula Trujillo
Paula Trujillo
Paralegal
ADX Florence, Colorado
Federal Bureau of Prisons

Enclosures

Att. A Administrative Remedy No. 1004848

Att. B SENTRY Administrative Remedy Index

Attachment A

FEDERAL CORRECTIONAL COMPLEX
 FLORENCE, COLORADO
 INFORMAL RESOLUTION FORM

Notice to Inmate: Inmates have the responsibility to use this Program in Good Faith and in an Honest and Straightforward manner.

Inmate Name: Nelson Reg. No. 31408-007
 Unit: FA NO: _____ Date: 4-17-2020

NOTICE TO INMATE: You are advised that normally prior to filing a Request for Administrative Remedy, BP-229(13), you must attempt to informally resolve your complaint through your Correctional Counselor. Please follow the steps listed below:

1. State your complaint (single complaint or a reasonable number of closely related issues):

The steps taken to ensure safety re: COVID-19 are not sufficient, and are creating conditions that are medically dangerous & unsafe, including inmates and staff, and people with preexisting conditions (this is a care level 2, with many care level 3 & 4 inmates, like me). This is a violation of my constitutional rights under the 8th Amendment.

(If more space is needed, you may use up to one letter size (8 1/2 x 11) continuation page. You must also submit one copy of supporting exhibits. (Exhibits will not be returned with the response to BP-229(13) responses.))

2. State what resolution you expect: Testing of inmates & staff, regular temperature checks of inmates, soap & hand sanitizer available to inmates, a doctor at the USP.

Inmate's Signature: Edward Nelson Date: 4-17-20
 Counselor's Signature: _____ Date: 4-17-2020
 Department Involved: U/T Date Assigned: _____ Due Date: _____

Department's Response regarding Complaint: At USP Florence, various measures have been implemented to safeguard inmates from COVID-19. These steps include, but not limited to, screening staff & inmates daily, providing soap for inmates to use, and having medical providers conducting rounds each day in your housing unit.

Department Head Signature: Brenden Gallegos Date: 4/17/2020
 Unit Manager's Review: Brenden Gallegos Date: 4/17/2020
 Informally Resolved: _____ Date: _____

	BP-8 ISSUED	BP-8 RETURNED	BP-9 ISSUED	BP-9 RETURNED	REMEDY CLERK
DATE	4/17/2020	4/17/2020	4/17/2020	4/20/2020	4/20/2020
TIME	1:20pm	1:29pm	3:00pm	7:50am	0800hrs.
COUNSELOR	Morales	Morales	Morales	Morales	[Signature]

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

REQUEST FOR ADMINISTRATIVE REMEDY

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Nelson, Edward, Lee 31408-007 E USP Florence
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST

The steps taken to ensure safety re: COVID-19 are not sufficient, and are creating medically unsafe & dangerous conditions, for inmates & staff. This is even ~~more~~ worse for the numerous inmates with pre-existing conditions, and care level 3 & 4 inmates (like me). Inmates are not being screened or having dailey temperature checks, over the last 5 weeks we have only gone to commissary 2 times, the cheap soap is not in stock, and staff has NO hand sanitizer or soap to give us. We also need to be tested for COVID-19. This is in violation of my constitutional rights under the 8th ammendment. This is an emergency, so I would like a response in 3 days, per policy.

4-20-20
DATE

Edward Nelson
SIGNATURE OF REQUESTER

Part B- RESPONSE

RECEIVED
APR 20 2020
WARDEN
UNITED STATES PENITENTIARY

See Attached
WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE CASE NUMBER: _____

Part C- RECEIPT

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____



**U.S. Department of Justice
Federal Bureau of Prisons**

*Federal Correctional Complex
Florence, Colorado*
 Administrative Maximum Security Institution
 High Security Institution
 Medium Security Institution
 Minimum Security Institution

Institution
 Regional Office
 Central Office
E/A Unit

April 21, 2020

**Receipt of
Administrative Remedy**

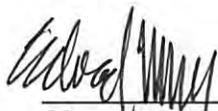
Inmate Name: Nellson, Edward Reg. No. 31408-007

Administrative Remedy No.: 1014848-F1

Received on this 21st day of April, 2020.



Signature, Staff J. Morales, E-A Counselor 04/21/2020
Date



Signature, Inmate E. Nellson, Reg. No. 31408-007 04/21/2020
Date

BP-229 RESPONSE

Case Number: 1014848-F1

Your Request for Administrative Remedy dated April 20, 2020, and received in this office on April 20, 2020, has been reviewed. You allege that the steps taken at the United States Penitentiary (USP) Florence to ensure your safety as it relates to the COVID-19 global pandemic are not sufficient. You allege that these deficiencies are medically dangerous and unsafe for you and in violation of your constitutional rights. As relief, you request testing of inmates and staff, regular temperature checks of inmates, and soap and hand sanitizer for inmates at USP Florence.

A review of the issues raised in your Request for Administrative Remedy has been conducted. The result of this review reveals that you have current litigation involving similar complaints and requests (Nellson v. Barnhart, et al., Case No. 20-cv-00756-PAB (D. Colo.)). In that case, you filed a motion for a temporary restraining order requesting (1) screening of inmates and staff for symptoms of COVID-19; (2) testing of inmates and staff demonstrating symptoms of COVID-19; (3) quarantining of inmates testing positive for COVID-19; and (4) preventing staff testing positive for COVID-19 from having contact with inmates. On April 16, 2020, Judge Brimmer issued an order which denied your motion for a temporary restraining order, finding that USP Florence has "instituted all the relief that plaintiff requests[.]" Doc. 23 at 12.

As it relates to your specific requests in your Request for Administrative Remedy, you first request that regular screening and/or temperature checks of inmates occur at USP Florence. Medical providers, twice daily, conduct sick call rounds in the housing units to ensure that inmates are not experiencing symptoms consistent with COVID-19 exposure. Likewise, inmates assigned to a work detail are screened and have their temperatures taken each time they begin and end their work assignments. If there is a positive inmate case of COVID-19 at FCC Florence, all inmates will be screened daily through temperature and symptom checks. Your medical history and diagnoses have been reviewed by the Health Services Administrator and Staff Physician. You do not fit the criteria for "high risk" individuals pursuant to the Centers for Disease Control and Prevention (CDC) guidelines. You are 41 years old and you have not been diagnosed with any conditions identified by the CDC as placing individuals at a higher risk of serious complications from COVID-19, such as chronic lung disease, moderate to severe asthma, liver disease, and diabetes.

Second, you request soap and hand sanitizer be available for inmate use. All inmates have access to sinks, water, and soap at all times. Inmates at USP Florence are not provided hand sanitizer because it contains alcohol, which creates a safety and security issue, and because soap is provided for all inmates. Once a week, an inmate is able to

purchase commissary, to include soap and other hygiene items. For an inmate without sufficient funds to purchase soap in the commissary, soap is provided at no cost to the inmate. On April 7 and 14, 2020, among other items, you purchased a total of six bars of soap and one bottle of shampoo from the commissary. On April 21, 2020, you purchased \$23.85 worth of food items from the commissary, but did not choose to purchase any hygiene items such as soap. As of April 22, 2020, you have over \$1,100 of available funds in your Trust Fund Account and are able to make additional purchases through the commissary as necessary. Should you require more soap or hygiene products, you may make purchases each week per normal commissary buying procedures.

Third, you request that all inmates be tested for COVID-19. The Health Services Department at USP Florence follows the testing guidelines of the CDC which includes a ranking of four priority levels. Each of the first three priority levels are for various types of individuals that are exhibiting suspected COVID-19 symptoms. The fourth priority level is reserved for asymptomatic individuals. At USP Florence, medical providers have screened and analyzed and continue to screen and analyze an inmate's exposure risk factors to COVID-19 and whether or not an inmate has symptoms consistent with COVID-19 exposure. Upon making that assessment, a decision is made whether further medical interventions, including testing, are clinically indicated. Currently, no inmates have tested positive for COVID-19 at USP Florence.

Finally, you are reminded that a medical provider conducts sick call rounds twice a day in your housing unit. This affords you the opportunity to report any medical concerns on a daily basis. The medical provider can then assess and triage your request, as needed. You are encouraged to notify a medical provider of any symptoms associated with COVID-19 and to practice social distancing and good hygiene, to include frequently washing your hands. Any inmate who reports and/or presents with symptoms consistent with COVID-19 will be evaluated by a medical provider. Based upon this evaluation, a determination will be made whether isolation, testing, and/or other medical treatment is appropriate.

Accordingly, your Request for Administrative Remedy is for informational purposes only. In the event you are not satisfied with this response and wish to appeal, you may do so within 20 calendar days of this response by submitting a BP-230(13) to the Regional Director, Federal Bureau of Prisons, North Central Regional Office, Gateway Complex, Tower II, 8th Floor, 400 State Avenue, Kansas City, Kansas 66101-2492.


J.A. Barnhart, Warden

4.21-2020
Date

Attachment B

FLMAA *ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL * 04-21-2020
PAGE 001 OF 12:51:06
FUNCTION: L-P SCOPE: REG EQ 31408-007 OUTPUT FORMAT: FULL
-----LIMITED TO SUBMISSIONS WHICH MATCH ALL LIMITATIONS KEYED BELOW-----
DT RCV: FROM 04-01-2020 THRU 04-21-2020 DT STS: FROM _____ THRU _____
DT STS: FROM ___ TO ___ DAYS BEFORE "OR" FROM ___ TO ___ DAYS AFTER DT RDU
DT TDU: FROM ___ TO ___ DAYS BEFORE "OR" FROM ___ TO ___ DAYS AFTER DT TRT
STS/REAS: _____
SUBJECTS: _____
EXTENDED: _ REMEDY LEVEL: _ _ RECEIPT: _ _ _ "OR" EXTENSION: _ _ _
RCV OFC : EQ _____
TRACK: DEPT: _____
PERSON: _____
TYPE: _____
EVNT FACL: EQ _____
RCV FACL.: EQ _____
RCV UN/LC: EQ _____
RCV QTR.: EQ _____
ORIG FACL: EQ _____
ORG UN/LC: EQ _____
ORIG QTR.: EQ _____

G0002 MORE PAGES TO FOLLOW . . .

FLMAA *ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL * 04-21-2020
PAGE 002 OF 002 * FULL SCREEN FORMAT * 12:51:06

REGNO: 31408-007 NAME: NELLSON, EDWARD
RSP OF...: FLP UNT/LOC/DST: E QTR.: E02-129L RCV OFC: FLP
REMEDY ID: 1014848-F1 SUB1: 25CM SUB2: DATE RCV: 04-20-2020
UNT RCV.:E QTR RCV.: E02-129L FACL RCV: FLP
UNT ORG.:E QTR ORG.: E02-129L FACL ORG: FLP
EVT FACL.: FLP ACC LEV: FLP 1 RESP DUE: SUN 05-10-2020
ABSTRACT.: ISSUES WITH SANITATION IN RELATION TO COVID-19
STATUS DT: 04-21-2020 STATUS CODE: CLO STATUS REASON: XPL
INCRPTNO.: RCT: N EXT: DATE ENTD: 04-20-2020
REMARKS..:

G0000 1 REMEDY SUBMISSION(S) SELECTED
TRANSACTION SUCCESSFULLY COMPLETED