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Exhibit 1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES OF AMERICA,

-against-

WILSON PEREZ,

Defendant.

ANALISA TORRES, District Judge:

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 4/1/2020

17 Cr. 513-3 (AT)

ORDER

Wilson Perez, a prisoner serving his sentence at the Metropolitan Detention Center (the “MDC”), moves for a reduction of his term of imprisonment under the federal compassionate release statute, codified at 18 U.S.C. § 3582(c)(1)(A). Def. Letter, ECF No. 92. For the reasons stated below, Perez’s motion is GRANTED.

BACKGROUND

On October 21, 2019, Perez pleaded guilty to kidnapping and conspiracy in violation of 18 U.S.C. § 1201. ECF No. 85. On January 2, 2020, the Court sentenced him to three years of imprisonment and two years of supervised release. ECF No. 89. “Perez has a well-documented history of medical complications which stem from injuries suffered during his incarceration.” Gov’t Letter at 3, ECF No. 95. While housed at the Metropolitan Correctional Center, he was the victim of two vicious beatings, resulting in a broken jaw and shattered bones around his eye socket; both attacks sent him to the hospital and necessitated reconstructive surgeries of his face, with the second surgery requiring metal implants. *See* Sentencing Tr. 9:8–18, ECF No. 74. Although Perez’s physicians directed that he receive follow-up care, such care was repeatedly delayed or difficult to obtain. *See id.* 10:22–12:17. He continues to suffer from pain and persistent vision problems. Because Perez has been detained since his arrest on September 27, 2017, ECF No. 17, his prison sentence is set to terminate on April 17, 2020, Def. Letter at 1.

Perez requests release in advance of that date because he is at risk of contracting, and experiencing serious complications from, COVID-19 if he remains at the MDC. *Id.* at 1–2. He spends most of each day with a cellmate in a small cell “that is barely large enough for a single occupant,” where he is “breathing recirculated air” and “unable to practice proper hygiene.” *Id.* at 1. Additionally, Perez “is in pain and not receiving pain medication.” *Id.* The Federal Bureau of Prisons (the “BOP”) acknowledges that COVID-19 is present within the MDC. *See* COVID-19 Tested Positive Cases, Federal Bureau of Prisons, <https://www.bop.gov/coronavirus/>. The Government does not object to Perez’s release on the merits, conceding that Perez has a “heightened risk of serious illness or death from COVID-19 due to his pre-existing medical issues,” and that “he has less than a month remaining on his sentence.” Gov’t Letter at 3. But the Government questions the Court’s authority to act on Perez’s application, arguing that he has not exhausted the administrative remedies under § 3582(c)(1)(A), which requires that a defendant seeking compassionate release present his application to the BOP and then either (1) administratively appeal an adverse result if the BOP does not agree that his sentence should be modified, or (2) wait for 30 days to pass. Gov’t Letter at 3–4.

On March 26, 2020, Perez submitted to the BOP his application for a sentence modification. ECF No. 96 at 4. To date, the BOP has not acted on that request. The Court holds, however, that Perez’s exhaustion of the administrative process can be waived in light of the extraordinary threat posed—in his unique circumstances—by the COVID-19 pandemic. And the Court agrees with the parties that this threat also constitutes an extraordinary and compelling reason to reduce Perez’s sentence to time served. Accordingly, Perez’s motion is GRANTED.

DISCUSSION

As amended by the First Step Act, 18 U.S.C. § 3582(c)(1)(A) authorizes courts to modify terms of imprisonment as follows:

The court may not modify a term of imprisonment once it has been imposed except that—in any case—the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier, may reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that--

- (i) extraordinary and compelling reasons warrant such a reduction . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.

Accordingly, in order to be entitled to relief under 18 U.S.C. § 3582(c)(1)(A)(i), Perez must both meet the exhaustion requirement and demonstrate that “extraordinary and compelling reasons” warrant a reduction of his sentence. The Court addresses these requirements in turn.

I. Exhaustion

Section 3582(c)(1)(A) imposes “a statutory exhaustion requirement” that “must be strictly enforced.” *United States v. Monzon*, No. 99 Cr. 157, 2020 WL 550220, at *2 (S.D.N.Y. Feb. 4, 2020) (citing *Theodoropoulos v. I.N.S.*, 358 F.3d 162, 172 (2d Cir. 2004) (internal quotation marks and alterations omitted)).¹ The Court may waive that requirement only if one of the recognized exceptions to exhaustion applies.

“Even where exhaustion is seemingly mandated by statute . . . , the requirement is not absolute.” *Washington v. Barr*, 925 F.3d 109, 118 (2d Cir. 2019) (citing *McCarthy v. Madigan*, 503

¹ The Court need not decide whether § 3582(c)’s exhaustion requirement is a jurisdictional requirement or merely a mandatory claim-processing rule. See *Monzon*, 2020 WL 550220, at *2 (describing split between courts on that question).

U.S. 140, 146–47 (1992)).² There are three circumstances where failure to exhaust may be excused. “First, exhaustion may be unnecessary where it would be futile, either because agency decisionmakers are biased or because the agency has already determined the issue.” *Id.* Second, “exhaustion may be unnecessary where the administrative process would be incapable of granting adequate relief.” *Id.* at 119. Third, “exhaustion may be unnecessary where pursuing agency review would subject plaintiffs to undue prejudice.” *Id.*

All three of these exceptions apply here. “[U]ndue delay, if it in fact results in catastrophic health consequences, could make exhaustion futile. Moreover, the relief the agency might provide could, because of undue delay, become inadequate. Finally, and obviously, [Perez] could be unduly prejudiced by such delay.” *Washington*, 925 F.3d at 120–21; *see also Bowen v. City of New York*, 476 U.S. 467, 483 (1986) (holding that irreparable injury justifying the waiver of exhaustion requirements exists where “the ordeal of having to go through the administrative process may trigger a severe medical setback” (internal quotation marks, citation, and alterations omitted)); *Abbey v. Sullivan*, 978 F.2d 37, 46 (2d Cir. 1992) (“[I]f the delay attending exhaustion would subject claimants to deteriorating health, . . . then waiver may be appropriate.”); *New York v. Sullivan*, 906 F.2d 910, 918 (2d Cir. 1990) (holding that waiver was appropriate where “enforcement of the exhaustion requirement would cause the claimants irreparable injury” by risking “deteriorating health, and possibly even . . . death”). Here, even a few weeks’ delay carries the risk of catastrophic health consequences for Perez. The Court concludes that requiring him to exhaust administrative

² The Supreme Court has stressed that for “a statutory exhaustion provision . . . Congress sets the rules—and courts have a role in creating exceptions only if Congress wants them to.” *Ross v. Blake*, 136 S. Ct. 1850, 1857 (2016). Even when faced with statutory exhaustion requirements, however, the Supreme Court has allowed claims to proceed notwithstanding a party’s failure to complete the administrative review process established by the agency “where a claimant’s interest in having a particular issue resolved promptly is so great that deference to the agency’s judgment is inappropriate,” so long as the party presented the claim to the agency. *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976). That reasoning explains the Second Circuit’s holding that even statutory exhaustion requirements are “not absolute.” *Washington*, 925 F.3d at 118. Perez has presented his claim to the BOP, *see* ECF No. 96 at 1, so the situation here is analogous.

remedies, given his unique circumstances and the exigency of a rapidly advancing pandemic, would result in undue prejudice and render exhaustion of the full BOP administrative process both futile and inadequate.

To be sure, “the policies favoring exhaustion are most strongly implicated” by challenges to the application of existing regulations to particular individuals. *Pavano v. Shalala*, 95 F.3d 147, 150 (2d Cir. 1996) (internal quotation marks, citation, and alterations omitted). Ordinarily, requests for a sentence reduction under § 3582(c) would fall squarely into that category. But “courts should be flexible in determining whether exhaustion should be excused,” *id.* at 151, and “[t]he ultimate decision of whether to waive exhaustion . . . should also be guided by the policies underlying the exhaustion requirement.” *Bowen*, 476 U.S. at 484. The provision allowing defendants to bring motions under § 3582(c) was added by the First Step Act, Pub. L. No. 115-391, 132 Stat. 5194 (2018), in order to “increas[e] the use and transparency of compassionate release.” 132 Stat. 5239. Requiring exhaustion generally furthers that purpose, because the BOP is best situated to understand an inmate’s health and circumstances relative to the rest of the prison population and identify “extraordinary and compelling reasons” for release. 18 U.S.C. § 3582(c)(1)(A)(i). In Perez’s case, however, administrative exhaustion would defeat, not further, the policies underlying § 3582(c).

Here, delaying release amounts to denying relief altogether. Perez has less than three weeks remaining on his sentence, and pursuing the administrative process would be a futile endeavor; he is unlikely to receive a final decision from the BOP, and certainly will not see 30 days lapse before his release date. Perez asks that his sentence be modified so that he can be released now, and not on April 17, 2020, because remaining incarcerated for even a few weeks increases the risk that he will contract COVID-19. He has had two surgeries while incarcerated, and continues to suffer severe side effects such as ongoing pain and persistent vision problems. ECF No. 96 at 4. As the Government

concedes, Perez faces a “heightened risk of serious illness or death from COVID-19 due to his pre-existing medical issues.” Gov’t Letter at 3. Requiring exhaustion, therefore, would be directly contrary to the purpose of identifying and releasing individuals whose circumstances are “extraordinary and compelling.”

Accordingly, the Court holds that Perez’s undisputed fragile health, combined with the high risk of contracting COVID-19 in the MDC, justifies waiver of the exhaustion requirement.³

II. Extraordinary and Compelling Reasons for Release

The Court also finds that Perez has set forth “extraordinary and compelling reasons” to reduce his sentence to time served. 18 U.S.C. § 3582(c)(1)(A)(i). The Government does not dispute that Perez has done so. Gov’t Letter at 3. And Perez’s medical condition, combined with the limited time remaining on his prison sentence and the high risk in the MDC posed by COVID-19, clears the high bar set by § 3582(c)(1)(A)(i).

The authority to define “extraordinary and compelling reasons” has been granted to the United States Sentencing Commission, which has defined that term at U.S.S.G. § 1B1.13, comment n.1. *See United States v. Ebberts*, No. 02 Cr. 11443, 2020 WL 91399, at *4–5 (S.D.N.Y. Jan. 8, 2020). Two components of the definition are relevant. First, extraordinary and compelling reasons for modification exist where “[t]he defendant is . . . suffering from a serious physical or medical condition . . . that substantially diminishes the ability to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.” U.S.S.G. § 1B1.13

³ A number of courts have denied applications for sentence modification under § 3582(c)(1)(A) brought on the basis of the risk posed by COVID-19 on the ground that the defendants failed to exhaust administrative remedies. *See, e.g., United States v. Zywojko*, No. 2:19 Cr. 113, 2020 WL 1492900, at *1 (M.D. Fla. Mar. 27, 2020); *United States v. Garza*, No. 18 Cr. 1745, 2020 WL 1485782, at *1 (S.D. Cal. Mar. 27, 2020); *United States v. Eberhart*, No. 13 Cr. 00313, 2020 WL 1450745, at *2 (N.D. Cal. Mar. 25, 2020); *United States v. Hernandez*, No. 19 Cr. 834, 2020 WL 1445851, at *1 (S.D.N.Y. Mar. 25, 2020); *United States v. Gileno*, No. 19 Cr. 161, 2020 WL 1307108, at *3 (D. Conn. Mar. 19, 2020). But in several of those cases, the defendant was not in a facility where COVID-19 was spreading, and in none of them did the defendant present compelling evidence that his medical condition put him at particular risk of experiencing deadly complications from COVID-19. In this case, unlike those, Perez has established that enforcing the exhaustion requirement carries the real risk of inflicting severe and irreparable harm to his health.

comment n.1(A)(ii). Perez’s recent surgeries, and his persistent pain and vision complications, satisfy that requirement. Confined to a small cell where social distancing is impossible, Perez cannot provide self-care because he cannot protect himself from the spread of a dangerous and highly contagious virus. And although he may recover in the future from the surgeries and their complications, there is no defined timeline for that recovery; certainly, he is not expected to recover within the remainder of his sentence.

The Honorable Lorna G. Schofield recently granted an application for sentence reduction under § 3582(c) under similar circumstances. *See United States v. Campagna*, No. 16 Cr. 78-01, 2020 WL 1489829, at *3 (S.D.N.Y. Mar. 27, 2020). Judge Schofield approved the request of a defendant confined to the Brooklyn Residential Reentry Center (the “RCC”) stating that his “compromised immune system, taken in concert with the COVID-19 public health crisis, constitutes an extraordinary and compelling reason to modify [d]efendant’s sentence on the grounds that he is suffering from a serious medical condition that substantially diminishes his ability to provide self-care within the environment of the RCC.” *Id.* at *3 (citing U.S.S.G. § 1B1.13 comment. n.1(A)). The same justifications apply here.

Second, U.S.S.G. § 1B1.13 comment. n.1(D) authorizes release based on “an extraordinary and compelling reason other than, or in combination with, the [other] reasons described.” Perez meets this requirement as well, because he has weeks left on his sentence, is in weakened health, and faces the threat of a potentially fatal virus. The benefits of keeping him in prison for the remainder of his sentence are minimal, and the potential consequences of doing so are extraordinarily grave.

Accordingly, the Court finds that Perez has demonstrated extraordinary and compelling reasons justifying his release.

CONCLUSION

For the reasons stated above, Perez's motion for a reduction of his term of imprisonment pursuant to 18 U.S.C. § 3582(c)(1)(A) is GRANTED. Perez's term of imprisonment is reduced to time served. It is ORDERED that Perez be released immediately to begin his two-year term of supervised release.

The Clerk of Court is directed to terminate the motion at ECF No. 92.

SO ORDERED.

Dated: April 1, 2020
New York, New York



ANALISA TORRES
United States District Judge

Exhibit 2

Subject: FW: Priority 1 Business Function Procedure - Criminal Clerk's Offices - Extended
From: "Dagostine, Ralph" <Ralph.Dagostine@jud.ct.gov>
Date: 23/04/2020, 11:01
To: "Roberge, Gary" <Gary.Roberge@jud.ct.gov>, "Rapillo, Christine (Public Defenders)" <Christine.Rapillo@jud.ct.gov>, "richard.colangelo@ct.gov" <richard.colangelo@ct.gov>

Good Morning,

Please see below regarding extension of priority one business functions.

Thanks.

Ralph

Ralph Dagostine, Esq.
Deputy Director - Criminal Matters
225 Spring Street
Wethersfield, CT 06109
Phone: 860-263-2734; Fax: 860-263-2773
Email: ralph.dagostine@jud.ct.gov<<mailto:ralph.dagostine@jud.ct.gov>>

From: Dagostine, Ralph
Sent: Thursday, April 23, 2020 11:00 AM
To: Bibeau, Timothy <Timothy.Bibeau@jud.ct.gov>; Burke, Robert <Robert.Burke@jud.ct.gov>; D Addeo, Antonio <Antonio.DAddeo@jud.ct.gov>; Driscoll, Jill <Jill.Driscoll@jud.ct.gov>; Fargeorge, Caroline <Caroline.Fargeorge@jud.ct.gov>; Fluet, Tammy <Tammy.Fluet@jud.ct.gov>; Groody, Eric <Eric.Groody@jud.ct.gov>; Groody, Lisa <Lisa.Groody@jud.ct.gov>; Hall, Kerri <Kerri.Hall@jud.ct.gov>; Hoey, William <William.Hoey@jud.ct.gov>; Leigh, Laura <Laura.Leigh@jud.ct.gov>; Parkinson, Cara <Cara.Parkinson@jud.ct.gov>; Pickett, Gina <Gina.Pickett@jud.ct.gov>; Robinson, Jennifer <Jennifer.Robinson@jud.ct.gov>; Shea, Mark; Stowell, Geoffrey <Geoffrey.Stowell@jud.ct.gov>; Valassis, Haralabos <Haralabos.Valassis@jud.ct.gov>; Vanam, Julie <Julie.Vanam@jud.ct.gov>; Yanavich, Brandi <Brandi.Yanavich@jud.ct.gov>; Young, Marcella <Marcella.Young@jud.ct.gov>; Acker, Donald <Donald.Acker@jud.ct.gov>; 'Cameron.MacKenzie@jud.state.ct.us' <Cameron.MacKenzie@jud.state.ct.us>; Clark, Mary <Mary.Clark@jud.ct.gov>; Connelly, Amina Nadja

<AminaNadja.Connelly@jud.ct.gov>; 'Ernest Robear '
<Ernest.Robear@jud.ct.gov>; 'Grelotti, Linda'
<Linda.Grelotti@jud.ct.gov>; 'Jody Miller' <JoAnn.Miller@jud.ct.gov>;
'Jones, Bradford' <Bradford.Jones@jud.ct.gov>; 'Kate Nielson
(CatherineJude.Nielsen@jud.ct.gov)' <CatherineJude.Nielsen@jud.ct.gov>;
Kautzner, Linda <Linda.Kautzner@jud.ct.gov>; Kochiss, Robert
<Robert.Kochiss@jud.ct.gov>; Nielsen, Patricia
<Patricia.Nielsen@jud.ct.gov>; Archer, Ann Margaret <Ann-Margaret.Archer@jud.ct.gov>; Berris, Karen <Karen.Berris@jud.ct.gov>;
DeGoursey, Cynthia <Cynthia.DeGoursey@jud.ct.gov>; Gage, David
<David.Gage@jud.ct.gov>; Haas, Richard <Richard.Haas@jud.ct.gov>;
Kaszuba-Neary, Debora <Debora.Kaszuba-Neary@jud.ct.gov>; Lee, Judith
<Judith.Lee@jud.ct.gov>; McCaffrey, Megan <Megan.McCaffrey@jud.ct.gov>;
Pelegano, Brandon <Brandon.Pelegano@jud.ct.gov>; Quinn, James
<James.Quinn@jud.ct.gov>; Smith, Roy <Roy.Smith@jud.ct.gov>; Spennato,
Giovanni <Giovanni.Spennato@jud.ct.gov>; Willock, Robert
<Robert.Willock@jud.ct.gov>

Cc: Alexander, Joan <Joan.Alexander@jud.ct.gov>; Hess, Krista
<Krista.Hess@jud.ct.gov>; DOrsi, Larry <Lawrence.DOrsi@jud.ct.gov>;
Sandler, Karen <Karen.Sandler@jud.ct.gov>; Padegenis, Toby
<Toby.Padegenis@jud.ct.gov>; Pleasanton, Chris
<Chris.Pleasanton@jud.ct.gov>; 'Doolittle, Paul
(Paul.Doolittle@jud.ct.gov)' <Paul.Doolittle@jud.ct.gov>; Morrissey,
Ursula <Ursula.Morrissey@jud.ct.gov>; Pinho, Tony
<Antonio.Pinho@jud.ct.gov>; Lavery, Will <Will.Lavery@jud.ct.gov>

Subject: Priority 1 Business Function Procedure - Criminal Clerk's
Offices - Extended

Importance: High

Good Morning,

Criminal courts will continue to only hear priority one business functions for the foreseeable future. For Criminal Matters, the priority 1 business functions are arraignments involving incarcerated defendants, and domestic violence arraignments. All other case, with limited exceptions (see attached FAQ email I sent previously) are not to be heard during this time. Please follow the procedure below for cases scheduled from Friday, May 1st through Friday, May 22:

* Non-Lockup cases: Continue these cases out until mid-June through July. Please utilize the bulk continuance screen on CR57 to continue these cases. Each court must continue their dockets, including closed courts. If you foresee issues with this, please contact me as soon as possible.

* Cases involving incarcerated defendants: Continue these cases out to late May and June. Fax revised mittimusses to the appropriate correctional facility. ***For those G.A.s currently being heard in different locations, please wait for direction from the Criminal Matters Unit. We will be continuing these cases centrally***

Police Departments should be notified not to give court dates for the time period of Friday, May 1st through Friday May 22nd for all cases not involving incarcerated arraignments and domestic violence arraignments. In addition to putting notice in their folders at your court locations, the criminal matters unit will send notice to police departments as well. I have attached language you may use to notify police departments.

If you have any questions, please do not hesitate to contact the Criminal Matters Unit.

Thank you all so much for the work you have done implementing this plan.

Thanks.

Ralph

Ralph Dagostine, Esq.
Deputy Director - Criminal Matters
225 Spring Street
Wethersfield, CT 06109
Phone: 860-263-2734; Fax: 860-263-2773
Email: ralph.dagostine@jud.ct.gov<<mailto:ralph.dagostine@jud.ct.gov>>

—Attachments:—

Memo Language for Police Departments - COOP - Extension.docx

11.8 KB

Exhibit 3

Declaration of Aaron Romano

1. My name is Aaron Romano and I am an adult.
2. I have been practicing criminal law in Connecticut since 1998.
3. I represent a client named Marcus Champagne who is serving a sentence of incarceration in Connecticut suffers from asthma and is immunocompromised.
4. Based on the materials I have read from the Centers for Disease Control, Mr. Champagne's autoimmune condition puts him at high risk for serious complications should he become ill with the novel coronavirus.
5. On April 28, 2020, I filed in the Connecticut Superior Court in New Britain for a sentence modification for Mr. Champagne on an expedited basis on account of his condition.
6. On the next day, court staff emailed to convey that Mr. Champagne's motion will not be heard "until courts open up for regular business" because sentence modifications "are not Priority 1 matters."
7. I have attached that email as an exhibit to this declaration.
8. I declare under penalty of perjury that the foregoing is true and correct.

/s/ Aaron J. Romano

Aaron Romano
May 3, 2020

From: "Yanavich, Brandi" <Brandi.Yanavich@jud.ct.gov
Date: April 29, 2020 at 11:10:53 AM EDT
To: "Syed, Safia" <Safia.Syed@jud.ct.gov, Aaron Romano
<aaronromanolaw@gmail.com, "maryrose.palmese@ct.gov" <maryrose.palmese@ct.gov
Cc: "Preleski, Brian" <Brian.Preleski@ct.gov
Subject: *RE: Marcus Champagne - Sentence Modification*

Hi Attorney Romano.

We did receive your motion yesterday by fax.

Per Judge Keegan, this matter will not be heard at this time. Sentence Modifications are not Priority 1 matters and will not be heard until courts open up for regular business.

Brandi

Brandi Yanavich, Esq.

Deputy Chief Clerk - Criminal Division

20 Franklin Square

New Britain, CT 06051

(860) 515-5330

From: Syed, Safia <Safia.Syed@jud.ct.gov
Sent: Tuesday, April 28, 2020 1:50 PM
To: Aaron Romano <aaronromanolaw@gmail.com; maryrose.palmese@ct.gov
Cc: Yanavich, Brandi <Brandi.Yanavich@jud.ct.gov; Preleski, Brian
<Brian.Preleski@ct.gov
Subject: Re: Marcus Champagne - Sentence Modification

The court is closed today. I will not be in the office tomorrow, so am copying Brandi, and Brian Preleski.

From: Aaron Romano <aaronromanolaw@gmail.com <mailto:aaronromanolaw@gmail.com
Sent: Tuesday, April 28, 2020 1:29:43 PM
To: Syed, Safia; maryrose.palmese@ct.gov <mailto:maryrose.palmese@ct.gov

Subject: Marcus Champagne - Sentence Modification

Dear Safia:

I hope you are safe and well. I am writing to confirm receipt of my fax filing for Marcus Champagne's Sentence Modification. I faxed:

1. Cover sheet
2. Request for Expedited Hearing
3. Motion for Sentence Mod
4. JD-VS3
5. Memo in Support
6. Exhibit A

Marcus suffers from an autoimmune disorder and asthma and has been deemed at risk. Therefore we are requesting an expedited hearing via teleconference. Please advise. Thank you

Aaron

--

Aaron J Romano, Esq.

Aaron J. Romano, PC - Trial Attorneys

55 Woodland Avenue

Bloomfield, CT 06002-1811

T: 860-286-9026

F: 860-218-9323

Exhibit 4

Declaration of Elizabeth Dolbeare

I, Elizabeth Dolbeare, hereby declare:

1. I am a paralegal in the Connecticut Innocence Project/Post-Conviction Unit within the Division of Public Defender Services.
2. As part of my duties, I process all habeas petitions that the Division of Public Defender Services receives from the superior court. The process is as follows: First, the clerk's office receives a petition from a petitioner. If the petition meets all the guidelines (correct number of copies, signatures, notarized, and a claim that can be docketed), the petition is given a docket number and then referred to our office for an eligibility determination, if it is a petition where the person is entitled to counsel.
3. Nearly all habeas cases in Connecticut are heard in the Judicial District of Tolland at Rockville. That courthouse has been closed since March 27.
4. To my knowledge, all open habeas cases have been continued indefinitely since that time.
5. The last habeas petition I received from the superior court was on March 12, 2020 (CV20-5000554-S). I have not received anything since then from the Rockville clerk's office.
6. Rockville cases are technically being referred to the Hartford GA courthouse—I understand the mail is forwarded from Rockville to Hartford—but I have not heard or received anything from the Hartford clerk's office.
7. If a habeas petition related to COVID-19 were considered a conditions of confinement claim (for which someone is not entitled to counsel), it would not be forwarded to our office. However, habeas claims for conditions of confinement claims are typically docketed, sequentially, alongside all other habeas claims.

8. As far as I can tell, habeas petitions are not being docketed. According to the Judicial Branch Website, the last petition CV20-5000557-S was docketed and declined on March 12, 2020. Docket number CV20-5000558-S does not yet exist.

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

Elizabeth Dolbeare

Exhibit 5

From: [Stackpole, Kathryn](#)
To: [Elana Bildner](#); [Pickett, Gina](#)
Subject: Re: Habeas filings - questions
Date: Thursday, April 16, 2020 10:31:33 AM

Good morning Elana,

Court operations has mandated that matters that are not priority 1 are on hold. Habeas matters are not considered priority 1 and are currently on hold. However, emergency petitions or motions will be reviewed by a judge and the judge will determine whether a hearing will be held. Habeas petitions should be mailed to GA 19 at 20 Park Street in Rockville. All GA 19 mail is being sent to Hartford. Because of the volume of mail being sent to Hartford, you may wish to make a notation on the envelope that it is an emergency habeas petition.

Hope that helps. Let me know if I can answer any other questions.

Kathryn Stackpole

From: Elana Bildner <ebildner@acluct.org>
Sent: Wednesday, April 15, 2020 3:21:25 PM
To: Pickett, Gina; Stackpole, Kathryn
Subject: Habeas filings - questions

Dear Ms. Pickett and Ms. Stackpole,

I hope this e-mail finds you and your families safe and well. I was given your e-mail addresses by Darcy McGraw.

I was hoping you could tell me how to file a habeas case currently given the closure of Rockville. To your knowledge, are these currently being docketed in Hartford, or somewhere else? Do you know the current timing for a hearing? And is there a particular procedure for filing an emergency habeas?

Many thanks in advance for your help.

Best,

Elana

Exhibit 6

Affidavit of Andrew O'Shea

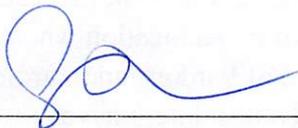
1. I am an attorney licensed in the state of Connecticut.
2. I represent Robert Day, who is incarcerated at MacDougall Correctional Institution, in his petition for a writ of habeas corpus. My firm was appointed to represent Mr. Day after the Connecticut Innocence Project confirmed he was wrongfully convicted.
3. Mr. Day filed a petition for a writ of habeas corpus on July 14, 2017. Trial was scheduled to begin on March 3, 2020. However, the proceedings are currently paused because the Rockville courthouse, which hears nearly all habeas cases, is closed due to the pandemic.
4. Mr. Day fluctuates between Class II and Class III heart failure and has a history of ventricular cardiac arrhythmias, which can be lethal. Mr. Day has survived two heart attacks and one cardiac episode since 2018.
5. On April 6, 2020, Dr. Omprakash Pillai, the principal physician at MacDougall Correctional Institution, drafted a letter to the Board of Pardons and Paroles requesting medical parole for Mr. Day. In it, he urged that Mr. Day be released on medical parole because Mr. Day has a “high risk of mortality if he were to contract COVID-19.”
6. In response, the Board of Pardons and Paroles scheduled a hearing approximately two months out—on May 27, 2020.
7. I have repeatedly tried to contact anyone at the Board of Pardons and Paroles in order to request that this hearing date be expedited. However, no one answers my calls to the main number for the Board.
8. On April 10, 2020, I wrote a letter to Commissioner of Correction Rollin Cook requesting that he move Mr. Day out of MacDougall Correctional Institution into a location where he would be more protected, or that he coordinate with the Board of Pardons and Paroles to release Mr. Day on compassionate parole or medical parole. To this date, I have received no response to that letter.
9. On April 10, 2020, I wrote a lengthy email to State’s Attorney Maureen Platt, and Supervisory Assistant State’s Attorney Eva Lenczewski requesting that they agree to a sentence modification or a motion for habeas bond in order to prevent Mr. Day’s death from COVID-19. On April 13, 2020, State’s Attorney Maureen Platt informed me that the state objected to a sentence modification or habeas bond.
10. On April 13, 2020, I learned from Deborah Del Prete Sullivan, Lead Counsel for the Office of Chief Public Defender, that Richard Sparaco asked defense counsel to contact him regarding medical parole applications. On that same date, she emailed Mr. Sparaco

asking for permission to send me his phone number. Mr. Sparaco has not responded to that email. On that same date, I emailed Mr. Sparaco directly requesting an expedited hearing for Mr. Day.

11. On April 13, 2020, I filed an emergency motion for a habeas bond allowing Mr. Day to temporarily be removed from MacDougall Correctional Institution into a location that could provide the medical care he requires and protect him to the extent possible from contracting SARS-CoV-2.
12. On April 15, 2020, Supervisory Assistant State's Attorney Eva Lenczewski filed an objection to my emergency motion to admit Mr. Day to bail.
13. On April 15, 2020, Attorney Deborah Del Prete Sullivan informed me that Mr. Sparaco told her that he had received my email request to expedite Mr. Day's medical parole hearing. I emailed Mr. Sparaco again asking that he reply to my prior email. To date, I have received no response from Mr. Sparaco to either of my emails.
14. On April 16, 2020, I learned through Dr. Jozlyn Hall, who created a release plan for Mr. Day addressing his various needs, that the Board of Pardons and Paroles had recently expedited Mr. Day's medical parole hearing to April 22, 2020.
15. To date, I have not received a response from the court regarding my emergency motion.

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

Executed on April 16, 2020 in West Hartford, CT.



Andrew O'Shea

General Information

Court	United States District Court for the District of Connecticut; United States District Court for the District of Connecticut
Federal Nature of Suit	Prisoner Petitions - Civil Rights[550]
Docket Number	3:20-cv-00534