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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

TROY WRAGG, *et al.*,

Petitioners,

v.

DAVID E. ORTIZ, *et al.*,

Respondents.

Hon. Renée Marie Bumb, U.S.D.J.

Civil Action No. 20-cv-5496

NOTICE OF MOTION TO DISMISS

Return Date Set by Order of the Court,
ECF No. 17

To: ACLU OF NEW JERSEY
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PLEASE TAKE NOTICE that on Friday, May 22, 2020, pursuant to the schedule ordered by the Court, David E. Ortiz, in his capacity as Warden of FCI Fort Dix, and Michael Carvajal, in his capacity as Director of the Bureau of Prisons (together, the “Respondents” or the “Government”) shall move before the Honorable Renée Marie Bumb, United States District Judge, sitting in Camden, New Jersey, for entry of an Order dismissing in its entirety “Complaint – Class Action for

Declaratory and Injunctive Relief and Petition for Writ of Habeas Corpus” of Petitioners in this action.

PLEASE TAKE FURTHER NOTICE that in support of this motion, Respondents will rely upon the following: Brief in Support of a Motion to Dismiss and in Opposition to Petitioners’ Motion for a Preliminary Injunction; Declaration of Christina Clark (with exhibits); Declaration of Mark E. Coyne (with exhibits); Declaration of James Reiser (with exhibits); Declaration of Adam Sassaman (with exhibits); and Declaration of Dr. Nicoletta Turner-Foster. A proposed Order is also submitted, as well as a letter regarding the length of Respondents’ brief.

As stated above, the briefing schedule for this motion is pursuant to the Court’s May 12, 2020 Order.

By: /s/ J. Andrew Ruymann
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Dated: May 18, 2020

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Hon. Renée Marie Bumb, U.S.D.J.

Civil Action No. 20-cv-5496

**RESPONDENTS' BRIEF IN SUPPORT OF A MOTION TO DISMISS
AND IN OPPOSITION TO PETITIONERS' MOTION FOR A
PRELIMINARY INJUNCTION**

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PRELIMINARY STATEMENT

In response to the COVID-19 pandemic, the Federal Bureau of Prisons (“BOP”) has made extraordinary efforts to safeguard its inmates. Those efforts have not prevented the virus that causes COVID-19 from entering certain facilities. Nor have those efforts spared all of BOP’s inmates from contracting COVID-19. But those efforts have largely worked—including at the Federal Correctional Institution at Fort Dix, New Jersey (“FCI Fort Dix”). Only 58 of the nearly 3,000 inmates at FCI Fort Dix have tested positive for the virus—all from the satellite work camp—and most of them have already recovered. Only *one* inmate required hospitalization, and he has since tested negative twice and is in recovery. Meanwhile, *none* of the nearly 2,700 inmates assigned to FCI Fort Dix’s low security facility has tested positive for the virus.

But BOP’s reasonable measures to combat COVID-19 are not good enough for Petitioners. They demand relief on a scale never granted by any district court in this Circuit. They advance claims never sanctioned by the Supreme Court or the Third Circuit as cognizable under 28 U.S.C. § 2241. And they do that despite determinations by other courts that at least some of the inmates at FCI Fort Dix deserve no relief from their prison sentences. The Petitioners’ hybrid petition under 28 U.S.C. § 2241 and complaint under 28 U.S.C. § 1331 should be dismissed, and their demand for preliminary injunctive relief should be denied.

Petitioners purport to represent a diverse class consisting of all current and future inmates at FCI Fort Dix “over the age of 50 or who experience medical conditions that make them vulnerable to COVID-19.” Petitioners claim that no measures at FCI Fort Dix can mitigate effectively the spread of COVID-19, so their continued imprisonment at the facility supposedly violates their Eighth Amendment rights and those of every inmate in the putative class. Petitioners also advance a claim under the Rehabilitation Act on behalf of a sub-class of disabled

inmates. And they make the stunning request for mandatory injunctive relief in the form of immediate release or bail pending habeas corpus, which they style an “enlargement of custody.”

If Petitioners got all they wanted, hundreds of inmates would enter the community without a plan to address safety and security. Fortunately, Petitioners cannot obtain any of the relief they seek through § 2241, much less all of it. And their Rehabilitation Act “cause of action” fails to state a claim upon which relief can be granted.

First, the Court lacks jurisdiction over the § 2241 petition because Petitioners’ claims amount to challenges to their conditions of confinement. Those kinds of challenges are not cognizable in a petition for a writ of habeas corpus. Petitioners ask this Court to expand the scope of habeas jurisdiction in the prisoner context to a place never authorized by the Supreme Court or Third Circuit. That is improper, and this Court should dismiss the petition under Federal Rule of Civil Procedure 12(b)(1).

In this Circuit, habeas relief is available only where the alleged deprivation of rights affects the length or duration of imprisonment. Although a federal prisoner can use § 2241 to challenge the execution of his federal sentence, *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 244 (3d Cir. 2005), the portal for such challenges does not permit jurisdiction over Petitioners’ claims. As the Third Circuit made clear in *Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012), that portal opens only where the BOP’s execution of the sentence somehow conflicts with a command or recommendation in the sentencing judgment or where granting relief would necessarily reduce the time the petitioner spends in some form of BOP custody.

By seeking to “enlarge” their custody, Petitioners concede they are only trying to change their place of confinement. But they try to sidestep *Cardona* by insisting that they are challenging the “fact” of their confinement not the conditions

of that confinement. Their semantical distinction makes no jurisdictional difference. But for conditions related to COVID-19, Petitioners' claims would not exist. Nor has the Third Circuit ever recognized any "exceptional circumstance" that would allow Petitioners to challenge their conditions of confinement. And there is no need to recognize such a circumstance here. Petitioners have at their disposal other statutory and regulatory avenues to seek (and possibly obtain) the relief they demand here.

Second, this Court should dismiss Petitioners' claims under the Rehabilitation Act for failure to state a claim. *See* Fed. R. Civ. P. 12(b)(6). Petitioners do not allege that BOP denied them any benefit solely by reason of their alleged disabilities, or that BOP held any discriminatory animus towards them. Nor do Petitioners allege that they requested a reasonable accommodation for their alleged disabilities or engaged in the required "interactive process."

Alternatively, if this Court were to hold that it has jurisdiction over the § 2241 petition and that Petitioners have well-pleaded claims, and therefore refuse to dismiss the hybrid petition/complaint outright, this Court should deny Petitioners' motion for a preliminary injunction. They cannot demonstrate either a reasonable probability of success on the merits or irreparable harm, let alone both, and the balance of the equities favors continued their detention, not mass release.

No matter how much Petitioners pretend otherwise, the Prison Litigation Reform Act applies to all of their claims, and they did not satisfy that Act's mandatory exhaustion requirement before filing suit. Even worse, their proposed injunctive relief—immediate release or "enlargement of custody" through § 2241—violates the PLRA. Only a three-judge court can enter the "prisoner release order" that Petitioners request, because their claims are not cognizable under § 2241. Meanwhile FCI Fort Dix's protective measures in response to COVID-19 establish

that the Government has neither disregarded an excessive risk to inmate health or safety nor acted with deliberate indifference in violation of the Eighth Amendment.

Nor can Petitioners satisfy any of the requirements for class certification under Federal Rule of Civil Procedure 23(a). Simply put, there is no way to decide which inmates should stay, and which inmates should go, without diving into an inmate-specific inquiry. That is why Standing Order 2020-10 requires civil immigration petitions related to COVID-19 to be filed individually, not as collective actions. Here, the proposed class members (including Petitioners) have different preexisting medical conditions, different security classifications, and different placements within FCI Fort Dix.

Moreover, Petitioners cannot meet any of the other requirements for a preliminary injunction. They have not established irreparable harm that they uniquely would suffer if they obtain no relief. To the contrary, COVID-19 poses risks to everyone, not just the inmates at FCI Fort Dix. What's more, the balance of the equities and the public interest favor the Government. It is "difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons." *Woodford v. Ngo*, 548 U.S. 81, 94 (2006). And courts should not undermine "BOP's statutory role" and its "extensive and professional efforts to curtail the virus's spread." *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. 2020). Accordingly, this Court should join the many others that have denied injunctions seeking release because of COVID-19 or stayed injunctions on appeal.

STATEMENT OF FACTS

A. Background: Security at FCI Fort Dix and Inmate Placement

FCI Fort Dix is a "low security federal correctional institution with an adjacent minimum security satellite camp." See "FCI Fort Dix," Bureau of Prisons

website.¹ It is the largest federal prison in America in terms of capacity, capable of housing up to 5,000 inmates. Declaration of James Reiser (“Reiser Decl.”) ¶ 3. Currently, FCI Fort Dix houses under 2,900 inmates in total. *Id.*

FCI Fort Dix’s satellite camp (the “Camp”) has a relatively low staff-to-inmate ratio and is “work- and program-oriented.” *Id.* ¶ 6. The Camp has dormitory-style housing and currently has approximately 123 inmates. *Id.* All of the inmates currently at the Camp have tested negative for COVID-19. *Id.*; Declaration of Nicoletta Turner-Foster, M.D. (“Turner-Foster Decl.”) ¶ 28.

The majority of FCI Fort Dix’s inmates reside in its low-security facility (referred to as the “Low”). Reiser Decl. ¶ 5. Like the Camp, the Low is program-oriented, but has more perimeter fencing and a higher staff-to-inmate ratio. *Id.* The Low is divided into two compounds (“East” and “West”), which are divided into 370-person “units.” *Id.* ¶¶ 3, 4. Each unit also has military-style dormitories, which were originally built for United States service members, but were converted into a prison in the early 1990s. *Id.* ¶ 4. The housing units have three floors, consisting of 12-man rooms and a small number of 2-man rooms. *Id.* ¶ 4. No inmates in the general population of the Low have tested positive for COVID-19. Turner-Foster Decl. ¶ 23.

To determine where to place an inmate within FCI Fort Dix (or at another institution or home confinement), BOP engages in a number of fact-specific and individualized assessments of an inmate, one of which is called a “security designation and custody classification.” BOP Program Statement No. P5100.08, *Inmate Security Designation & Custody Classification* at 1.² In general, a custody classification is based on two factors: (1) “[t]he level of security and supervision the

¹ <https://www.bop.gov/locations/institutions/ftd/> (last visited May 18, 2020).

² https://www.bop.gov/policy/progstat/5100_008.pdf (last visited May 18, 2020).

inmate requires”; and (2) “[t]he inmate’s program needs, i.e., substance abuse, educational/vocational training, individual counseling, group counseling, or medical/mental health treatment, etc.” *Id.* Ch. 1 at 1. For example, an inmate who receives a custody-classification score of 0-11 (a minimum security level) may be placed at the FCI Fort Dix Camp. *See id.* Ch. 1 at 2. By contrast, an inmate with a custody classification of 12-15 (a low security level) may be placed in the Low. *See id.* Additionally, BOP is entrusted with the discretion to use “management variables” to place an inmate in a higher-security institution than reflected in the inmate’s point total. *See id.* Ch. 5 at 1; Ch. 2 at 3. Management variables are used to “ensure the inmate’s placement in the most appropriate level institution.” *Id.* Ch. 2 at 3.³ Suffice to say, in order to address the safety and security needs of BOP and the community, and in order to place an inmate with the proper program needs as he transitions back into society, BOP’s inmates must be considered on an individualized basis.

B. BOP’s “Action Plan” to Combat the Spread of COVID-19

Since January 2020, in order to combat the spread of COVID-19 at its institutions, BOP has been coordinating with subject-matter experts at multiple organizations and agencies, including the World Health Organization and the Centers for Disease Control (“CDC”).⁴ As a result of these ongoing efforts, BOP

³ In order to calculate an inmate’s classification score, BOP considers a wide array of information from multiple sources: the sentencing court; U.S. Marshals Service; U.S. Attorney’s Office; and the U.S. Probation Office. *See id.* Ch. 1 at 2. BOP also evaluates the severity of an inmate’s current offense, an inmate’s history of violence, criminal history, education level, and whether there is any evidence of drug or alcohol abuse. *See id.* Ch. 6 at 2-9. In assessing an inmate’s “history of violence,” a more violent offense that is closer in time will result in more history-of-violence points than a less serious offense that occurred a long time ago. *See id.* Ch. 4 at 9.

⁴ *See Federal Bureau of Prisons COVID-19 Action Plan*, <https://www.bop.gov/>

implemented a multi-phased operational plan called the “Action Plan.” *Id.* The Action Plan seeks to “mitigate the spread of COVID-19” among inmates and staff, continue effective operations of the federal prison system, and ensure that staff remain healthy and available for duty. *Id.*

BOP is currently in “Phase 6” of its Action Plan, which is an extension of the nationwide action plan in Phase 5. Turner-Foster Decl. ¶ 14. All inmates in every BOP institution must be secured in their assigned cells/quarters for a period of at least 14 days, in order to stop any spread of COVID-19. *Id.* ¶ 12(a). “Only limited group gathering will be afforded, with attention to social distancing to the extent possible, to facilitate commissary, laundry, showers, telephone, and Trust Fund Limited Computer System (TRULINCS) access.” *Id.* ¶ 12(e). “All staff and inmates have been and will continue to be issued an appropriate face covering and strongly encouraged to wear the face covering when in public areas when social distancing cannot be achieved.” *Id.* ¶ 12(h).

Furthermore “[e]very newly admitted inmate is screened for COVID-19 exposure risk factors and symptoms.” *Id.* ¶¶ 6, 20. “Asymptomatic inmates with risk of exposure are placed in quarantine.” *Id.* “Symptomatic inmates are placed in isolation until they test negative for COVID-19 or are cleared by medical staff as meeting CDC criteria for release from isolation.” *Id.* In addition, all staff were subjected to enhanced health screening in areas of “sustained community transmission,” as determined by the CDC, and at medical referral centers. *Id.* ¶ 7. “Staff registering a temperature of 100.4 degrees Fahrenheit or higher are barred from the facility on that basis alone.” *Id.* “A staff member with a stuffy or runny nose can be placed on leave by a medical officer.” *Id.*

[resources/news/20200313_covid-19.jsp](#) (last visited May 18, 2020).

In addition, “[c]ontractor access to BOP facilities is restricted to only those performing essential services (e.g., medical or mental health care, religious, etc.) or those who perform necessary maintenance on essential systems.” *Id.* ¶ 12(i). “All volunteer visits are suspended absent authorization by the Deputy Director of BOP.” *Id.* “Any contractor or volunteer who requires access will be screened for symptoms and risk factors.” *Id.*

“Social and legal visits were stopped as of March 13, 2020, and remain suspended until at least May 18, 2020, to limit the number of people entering the facility and interacting with inmates.” *Id.* ¶ 12(j). “In order to ensure that familial relationships are maintained throughout this disruption, BOP has increased detainees’ telephone allowance from 300 minutes to per month to 500 minutes per month. *Id.* BOP has suspended tours of facilities; it will permit legal visits on a case-by-case basis after the attorney has been screened for infection in accordance with the screening protocols in place for prison staff, contractors, and visitors. *Id.*

C. FCI Fort Dix’s Implementation of the Action Plan

In order to implement the Action Plan at the local level, FCI Fort Dix has at its disposal a Health Services Department “staffed by a comprehensive team of BOP and Public Health Service health care workers, accompanied by professional contract staff committed to providing the highest standards of professionalism and dedication to the inmate population.” Turner-Foster Decl. ¶ 2. The FCI Fort Dix Clinical Staff consists of four physicians, ten Mid-level Providers, eleven Registered Nurses, two Infection Control/Improving Performance Nurses, and two Medication Technicians, as well as four pharmacists, three dentists, and two dental hygienists. *Id.* ¶ 15. The Health Services Department is accredited by The Joint Commission, the American Correctional Association, and the Accreditation Association for Ambulatory Health Care. *Id.*

In terms of communication, “[f]rom the outset of the COVID-19 pandemic, FCI Fort Dix 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.” *Id.* ¶ 17. “Since March 2, 2020, the Warden has posted guidance to inmates through the TRULINCS electronic messaging system more than five times.” *Id.* “Topics have included CDC guidance on COVID-19 and proper handwashing, how to stop the spread of germs, and proper sanitation.” *Id.* In addition, BOP personnel posted written guidance in housing units and through e-mails. *Id.*

Beginning on March 16, 2020, all staff and contractors entering FCI Fort Dix have completed a medical questionnaire and temperature check. *Id.* ¶ 18. Staff and contractors with any symptoms of COVID-19 or fever are sent home by medical staff. *Id.* “[S]taff were also encouraged to be “fit tested” for N-95 masks, which are necessary for entry to the isolation unit and for escorting inmates on medical trips to other facilities.” *Id.* ¶ 19.

“From the outset, in accordance with CDC guidance, quarantine and isolation areas were established,” and “the decision was made to make housing unit 5851 in the Low security institution, the isolation unit.” ¶ 22. “Any and all new inmates coming in to FCI Fort Dix are also screened for any fever or symptoms.” *Id.* ¶ 20. “They are placed in an automatic 14 day quarantine in a specifically designated housing unit (only for these inmates) prior to release to their assigned housing unit.” *Id.* “The second floor of Unit 5851 are positive inmates and the third floor are inmates in recovery, soon to be released back to general population.” *Id.* ¶ 22. “Inmates are moved to the recovery floor after a period of isolation for 10 days and symptom free.” *Id.* ¶ 27. “Staff entering this housing unit are limited to essential staff and must wear full protective PPE including N-95 mask, face shield, a gown and gloves.” *Id.* One inmate was hospitalized based on COVID-19 symptoms but he

was not intubated and has since returned to the institution.⁵ *Id.* “No other inmates have been hospitalized with COVID-19 complications, and a number of the inmates are completely asymptomatic.” *Id.*

In April 2020, FCI Fort Dix obtained an Abbott testing machine that allows the facility to test approximately 75 inmates in a 24-hour period (based on the length of the test). *Id.* ¶ 23. As of this filing, FCI Fort Dix has more than 400 test kits on hand and expects to receive 250 more test kits per week going forward. *Id.* “The Abbott tests take approximately 20 minutes per inmate, and provide immediate results.” *Id.* “To date, no inmate at FCI Fort Dix Low has tested positive for COVID-19.” *Id.* If an inmate were to manifest or complain about symptoms associated with COVID-19, “he immediately would be escorted to the Health Services building and examined by a clinician.” *Id.* “If COVID-19 is suspected, he would be tested immediately using the Abbot machine.” *Id.* “If the inmate tested positive, he would be immediately isolated in Unit 5851.” *Id.*

As of April 5, 2020, all inmates and staff received surgical masks. *Id.* ¶ 24. “On April 16, 2020, staff and inmate masks became mandatory.” *Id.* “Staff and inmates were issued a weekly supply of surgical masks.” *Id.* “During the week of April 29, 2020, inmates and staff were supplied three reusable cloth masks.” *Id.* “Inmate masks are washed twice weekly by Laundry staff.” *Id.* “Staff were issued guidance by way of e-mail on how to use and wash the masks.” *Id.* “Staff have also

⁵ During the telephone conference with the Court on May 12, 2020, the Government represented that no FCI Fort Dix inmates had been hospitalized for COVID-19 symptoms. That representation was based on information provided to the Government’s attorneys by the BOP. Today the Government’s attorneys learned that that information was incorrect. The Declaration of Dr. Turner-Foster provides the corrected information, stating that one inmate was hospitalized in April 2020 for COVID-19 and that he has since twice tested negative for COVID-19 and is in the recovery unit. *See* Turner-Foster Decl. ¶ 27.

been issued a continual supply of surgical masks, and during the last week of April, staff were also provided two cloth masks.” *Id.*

With respect personal hygiene, on March 22, 2020, FCI Fort Dix installed 300 hand soap dispensers for inmate areas. Declaration of Adam Sassaman (“Sassaman Decl.”) ¶¶ 8, 17. Since installation, dispensers “have been supplied continuously with hand soap[.]” *Id.* ¶ 18. For the period prior to installation of soap dispensers, “FCI Fort Dix issued inmates, at no cost to them, all-in-one soap to shower and wash hands[.]” and “inmates also had access weekly to commissary, where they could purchase additional hygiene products, including hand soap and hand sanitizer.” *Id.*

FCI Fort Dix has used disinfectants registered with the EPA to kill COVID-19 since the advent of the pandemic and, more recently, has obtained faster-acting products. *Id.* ¶¶ 12, 20. In addition to spray bottles and other traditional disinfection techniques, FCI Fort Dix obtained multiple backpack sprayers for disinfectant, which “permit faster and more comprehensive disinfection of living and working areas than by-hand cleaning alone.” *Id.* ¶¶ 19, 23.

On March 20, 2020, FCI Fort Dix issued updated cleaning and disinfection guidance to all staff and inmates, directing (among other things) that frequently touched surfaces must be cleaned every hour. *Id.* ¶ 14-15, and Att. 3. On April 3, 2020, FCI Fort Dix further updated such cleaning and disinfection guidance. *Id.* ¶ 21 and Atts. 4-5. In addition to ensuring that soap is made available continually to inmates, *id.* ¶ 18, staff and orderlies regularly and comprehensively clean all facilities at FCI Fort Dix, including: (1) hourly disinfection of frequently touched surfaces; (2) regular (in some cases hourly) cleaning of all electronics and equipment, including all inmate restraints; (3) following new protocols for laundry and the cleaning of soft, porous items; (4) using backpack sprayers during each orderly shift (thus, multiple times daily) to disinfect, *inter alia*, telephone booths,

trash receptacles, drinking fountains, bathrooms and bathroom fixtures, offices, doors, furnishings, and all walking surfaces including stairs; and (5) disinfecting all cleaning tools including mops. *Id.*, Atts. 4-5. Protocols include guidance for staff and orderlies to maintain personal hygiene on the job. *Id.* They also require Department Heads to make a daily report that all cleaning requirements have been met for the day in their area. *Id.* ¶ 29. Cleaning and disinfection protocols at FCI Fort Dix are designed to meet or exceed guidance from BOP and the CDC. *Id.* ¶¶ 5, 31.

D. Current Conditions in Different Areas of FCI Fort Dix and Health and Screening Protocols for Inmates in Those Areas

As noted above, FCI Fort Dix has implemented COVID-19 protocols to both (1) educate inmates on the pandemic and preventative measures and (2) combat spread, screen inmates and staff, and isolate those infected with the virus. Turner-Foster Decl. ¶¶ 16-17. No inmates in the Low have tested positive for COVID-19. *Id.* ¶ 23. In response to positive COVID-19 tests among inmates in the Camp, FCI Fort Dix tested the entire inmate population of that portion of the installation. *Id.* ¶¶ 25-27. FCI Fort Dix has implemented different protocols for the Low, the Camp, and Building 5851 (where COVID-positive inmates are housed), under the broader rubric that all inmates are regularly screened for symptoms of infection and all activities are managed so as to minimize congregate activity and promote distancing. *See id.* ¶ 14.

1. COVID-19 Circumstances at the Low

All inmates at the Low have temperature checks and a symptom assessment every other day (alternating by East and West compound). *Id.* ¶ 21. “In order to minimize the movement of inmates, sick call slips are being distributed in the housing units.” *Id.* “Inmates with COVID symptoms are seen immediately.” *Id.* “The appointments are still handled in the Health Services building; however, the

appointments are scheduled by housing unit and are limited to approximately 20 inmates so that they can socially distance in the Health Services building.” *Id.* Finally, to segregate inmates as much as possible, the “pill line” for medication is conducted one unit at a time at the same time inmates are obtaining their “grab and go” meal. *Id.*

There is currently no plan to test the entire Low, but FCI Fort Dix has testing capacity and supplies to address issues if they arise. *Id.* ¶ 23. Because it takes 20 minutes to administer, BOP can conduct approximately 75 tests in a 24-hour period, and FCI Fort Dix currently has more than 400 kits on hand now with weekly deliveries on the way. *Id.* There is also no plan to consolidate inmates (at either the Low or the Camp) with preexisting medical conditions into a single space. *Id.* ¶ 22. Medical professionals at BOP currently believe that it is safer to spread those inmates out across the institution. *See id.*

2. COVID-19 Circumstances at the Camp

The first Camp inmate tested positive for COVID-19 on April 3, 2020. *Id.* ¶ 25. “The inmate was immediately isolated upon showing of symptoms, and twice daily temperature checks were initiated at the Camp.” *Id.* Inmates showing or reporting symptoms of the virus were also isolated and tested. *Id.* “The Camp was also made a Quarantine Unit, meaning any staff member entering the Unit had to don PPE including surgical mask, gown, face shield, goggles and gloves.” *Id.* “In the Camp, all services are provided inside the Unit including Food Service, Medical, Psychology, Education, and Commissary.” *Id.* Only inmates who have tested negative for the COVID-19 virus remain at the Camp, currently, 124 inmates. *Id.* ¶ 28. That number “provides sufficient space for the inmates to social distance.” *Id.*

As of May 18, 2020 FCI Fort Dix has administered 274 tests using the Abbott testing machine, which includes testing of the entire Camp population. Turner-

Foster Decl. ¶ 27. Of those tests, 58 Camp inmates tested positive for COVID-19. *Id.* Twenty-two of them remain in isolation in Unit 5851, and 27 are on the third floor in recovery, pending return to the Camp. *Id.* “Inmates are moved to the recovery floor after a period of isolation for 10 days and symptom free.” *Id.* “Staff entering this housing unit are limited to essential staff and must wear full protective PPE including N-95 mask, face shield, a gown and gloves.” *Id.* “One inmate was hospitalized based on COVID-19 symptoms.” *Id.* “He was never intubated and has since returned to the institution.” *Id.* “No other inmates have been hospitalized with COVID-19 complications, and a number of the inmates are completely asymptomatic.” *Id.*⁶

E. BOP’s “Careful, Individualized Determinations” for Home Confinement

In conjunction with the efforts within FCI Fort Dix to combat the spread of COVID-19 through the Action Plan, BOP is exercising its discretion and increased authority under the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act to place inmates in “prerelease custody” under 18 U.S.C. 3624(c)(2), which includes “home confinement.” See BOP Program Statement No. 7320.01, *Home Confinement*.⁷

BOP describes home confinement as “a time of testing and an opportunity for inmates to assume increasing levels of personal responsibility while providing sufficient restriction to promote community safety and continue the sanction of the sentence.” *Id.* at 1. Direct transition from FCI Fort Dix to home confinement is

⁶ The Government recognizes that this is a rapidly evolving situation, and the situation may change on a daily basis. Respondents will provide the Court with updated information, as appropriate.

⁷ https://www.bop.gov/policy/progstat/7320_001_CN-1.pdf (last visited May 18, 2020).

generally appropriate “only in the most extraordinary circumstances” based on the following factors:

has no public safety factors, had excellent institutional adjustment, has a stable residence with a supportive family, has confirmed employment (if employable), and has little or no need for the services of a [Community Corrections Center].

Id. at 3, 7.

Under the CARES Act, the Attorney General issued guidance on April 26, 2020 “prioritizing” home confinement for “at-risk inmates who are non-violent and pose minimal likelihood of recidivism and who might be safer serving their sentences in home confinement rather than in BOP facilities.”⁸ In making this determination, BOP is to “consider the totality of circumstances for each individual inmate” based on the following non-exhaustive factors:

- The age and vulnerability of the inmate to COVID-19, in accordance with the Centers for Disease Control and Prevention (CDC) guidelines;
- The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities;
- The inmate’s conduct in prison, with inmates who have engaged in violent or gang related activity in prison or who have incurred a BOP violation within the last year not receiving priority treatment under this Memorandum;
- The inmate’s score under PATTERN, with inmates who have anything above a minimum score not receiving priority treatment under this Memorandum;
- Whether the inmate has a demonstrated and verifiable re-entry plan that will prevent recidivism and maximize public safety, including verification that the conditions under which

⁸ https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf (last visited May 18, 2020).

the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face in his or her BOP facility;

- The inmate's crime of conviction, and assessment of the danger posed by the inmate to the community. Some offenses, such as sex offenses, will render an inmate ineligible for home detention. Other serious offenses should weigh more heavily against consideration for home detention.

Id. at 1-2.

While considering these factors, the Attorney General emphasized that BOP “cannot take any risk of transferring inmates to home confinement that will contribute to the spread of COVID-19, or put the public at risk in other ways.” *Id.* at 2. Accordingly, any inmate granted home confinement under this guidance was required to be “in a mandatory 14-day quarantine period” before being “discharged from a BOP facility.” *Id.* “Inmates transferred to home confinement under this prioritized process should also be subject to location monitoring services and, where a court order is entered, be subject to supervised release.” *Id.*

On April 3, 2020, the Attorney General updated his home confinement guidance to BOP and issued additional directives in light of the passage of the CARES Act.⁹ The CARES Act authorized the Attorney General “to expand the cohort of inmates who can be considered for home release upon [his] finding that emergency conditions are materially affecting the functioning of [BOP].” *Id.* The Attorney General also identified specific BOP facilities “experiencing significant levels of infection,” which did **not** include FCI Fort Dix. *See id.* at 1-2 (identifying FCI Oakdale, FCI Danbury, and FCI Elkton).

The CARES Act, as implemented by the Attorney General, expanded the authority for BOP to review “all at-risk inmates—not only those who were

⁹ <https://www.justice.gov/file/1266661/download> (last visited May 18, 2020).

previously eligible for transfer.” *Id.* at 2. But this expanded authority did not militate BOP’s obligation to protect public safety. *See id.* “That means [BOP] cannot simply release prison populations en masse onto the streets.” *Id.* “Doing so would pose profound risks to the public from released prisoners engaging in additional criminal activity, potentially including violence or heinous sex offenses.” *Id.* As the Attorney General explained, the “last thing” the public needs right now is the “indiscriminate release” of inmates without “careful, individualized determinations”:

The last thing our massively over-burdened police forces need right now is the indiscriminate release of thousands of prisoners onto the streets without any verification that those prisoners will follow the laws when they are released, that they have a safe place to go where they will not be mingling with their old criminal associates, and that they will not return to their old ways as soon as they walk through the prison gates. Thus, while I am directing you to maximize the use of home confinement at affected institutions, it is essential that you continue making the careful, individualized determinations BOP makes in the typical case. Each inmate is unique and each requires the same individualized determinations we have always made in this context.

Id. at 3.

BOP has generally prioritized for home confinement those inmates who have served a certain portion of their sentences, or who have only a relatively short amount of time remaining in those sentences. “Priority is given to inmates that have served at least 50% of their sentence imposed.” Reiser Decl. ¶ 24. “Initially, the BOP identified inmates that met the above criteria and served at least 50% of the sentence imposed.” *Id.* “However, in order to make more inmates eligible for home confinement, the BOP changed the criteria to 50% of the statutory sentence (i.e. the sentence length factoring in good conduct time).” *Id.*

Congress’s decision to grant the Attorney General and BOP this additional CARES Act authority reflects a long-standing practice of deferring to BOP

regarding the transfer and placement of inmates. By law, BOP “shall designate the place of the prisoner’s imprisonment” based on an individualized and fact-intensive analysis of the following factors:

(1) the resources of the facility contemplated; (2) the nature and circumstances of the offense; (3) the history and characteristics of the prisoner; (4) any statement by the court that imposed the sentence -- (A) concerning the purposes for which the sentence to imprisonment was determined to be warranted; or (B) recommending a type of penal or correctional facility as appropriate; and (5) any pertinent policy statement issued by the Sentencing Commission pursuant to section 994(a)(2) of title 28.

18 U.S.C. § 3621(b). “Any order, recommendation, or request by a sentencing court that a convicted person serve a term of imprisonment in a community corrections facility shall have no binding effect on the authority of the Bureau under this section to determine or change the place of imprisonment of that person.” *Id.* Furthermore, “a designation of a place of imprisonment under this subsection is not reviewable by any court.” *Id.*¹⁰

After reviewing its inmates for eligibility under the CARES Act, FCI Fort Dix referred 56 inmates for transfers to home confinement. Reiser Decl. ¶¶ 24-25. Twenty-four of those inmates have already transferred to home confinement, and 15 are scheduled to transfer to home confinement through the end of May. *Id.* ¶ 25. Moreover, BOP is undertaking similar efforts in all of its facilities to determine which inmates meet the criteria established by the Attorney General, resulting in the transfers of 2,799 inmates to home confinement. *See* <https://www/bop.gov/>

¹⁰ Federal courts routinely dismiss requests for alternative placement on the grounds that they lack authority to review BOP’s placement decisions. *United States v. West*, Crim. No. 18-48, 2020 WL 1082638, at *2 (D.N.J. Mar. 6, 2020) (concluding that “courts are explicitly prohibited from intervening in the [BOP] determination on that topic”); *United States v. Smith*, Crim. No. 15-006, 2019 WL 4016211, at *2 (W.D. Va. Aug. 26, 2019) (discussing various statutes and concluding that “they do not vest placement authority in this Court”).

coronavirus/ (last visited May 18, 2020). Additionally, any inmate who believes he or she is eligible may request to be referred to home confinement and provide a release plan to his or her Case Manager. *Id.* ¶¶ 16, 24.

The chart below lists 39 inmates that BOP has either transferred or expects to transfer to home confinement by May's end using its CARES Act authority. Respondents have redacted the inmates' names and register numbers, but provide the redacted information to the Court and the parties, if requested.

Name (redacted)	Reg. No.	Release Date
Inmate 1	##### #53	4/15/2020
Inmate 2	##### #66	4/15/2020
Inmate 3	##### #54	4/21/2020
Inmate 4	##### #53	4/28/2020
Inmate 5	##### #83	4/28/2020
Inmate 6	##### #80	4/30/2020
Inmate 7	##### #54	4/30/2020
Inmate 8	##### #54	5/5/2020
Inmate 9	##### #50	5/5/2020
Inmate 10	##### #50	5/5/2020
Inmate 11	##### #54	5/5/2020
Inmate 12	##### #83	5/5/2020
Inmate 13	##### #50	5/6/2020
Inmate 14	##### #66	5/7/2020
Inmate 15	##### #66	5/7/2020
Inmate 16	##### #48	5/7/2020
Inmate 17	##### #66	5/7/2020
Inmate 18	##### #53	5/7/2020
Inmate 19	##### #54	5/12/2020
Inmate 20	##### #50	5/12/2020
Inmate 21	##### #37	5/12/2020
Inmate 22	##### #88	5/14/2020
Inmate 23	##### #54	5/14/2020
Inmate 24	##### #36	5/14/2020
Inmate 25	##### #54	5/19/2020
Inmate 26	##### #54	5/19/2020
Inmate 27	##### #54	5/19/2020
Inmate 28	##### #50	5/20/2020
Inmate 29	##### #66	5/21/2020

Name (redacted)	Reg. No.	Release Date
Inmate 30	##### #53	5/21/2020
Inmate 31	##### #66	5/21/2020
Inmate 32	##### #55	5/21/2020
Inmate 33	##### #67	5/26/2020
Inmate 34	##### #50	5/26/2020
Inmate 35	##### #54	5/26/2020
Inmate 36	##### #53	5/27/2020
Inmate 37	##### #50	5/27/2020
Inmate 38	##### #66	5/28/2020
Inmate 39	##### #18	5/28/2020
Total		39

BOP had hoped to include Petitioner Bogdan on this list and release him to home confinement on May 14, 2020. *See* Reiser Decl. ¶ 26 and Ex. 6. But on May 13, 2020, the United States Probation Department notified FCI Fort Dix that his wife refused to allow him to release to her home. *Id.* and Ex. 7 (Probation Dep’t Denial Memo). BOP gave him the opportunity to provide another release residence, but he proved unable to provide another location. *Id.* So Probation denied his placement, and his home confinement date was removed. *Id.*

Home confinement is not the same thing as “compassionate release” (which is also called “early release” or “Reduction in Sentence”). In contrast to BOP’s wide discretion regarding home confinement, BOP does not have authority to provide inmates with a reduction in sentence through compassionate or “early release.” Only an Article III judge—in the District of conviction—may authorize such a reduction of an inmate’s federal sentence. *See* 18 U.S.C. § 3582(c)(1)(A).

Under § 3582(c)(1)(A), BOP may make a motion to an inmate’s sentencing court to reduce a term of imprisonment. BOP uses that statutory authority in “extraordinary or compelling circumstances that could not reasonably have been foreseen by the court at the time of sentencing.” *See* BOP Program Statement 5050.50, *Compassionate Release/Reduction In Sentence Procedures for*

*Implementation of 18 U.S.C. §§ 3582 and 4205(g).*¹¹ In addition, after the First Step Act, an inmate may file a motion to reduce his sentence directly in the sentencing court after exhaustion of administrative remedies, or 30 days from the date the warden receives the inmate's request from the inmate, whichever is earlier. *See* 18 U.S.C. § 3582(c)(1)(A). The sentencing courts have released ten inmates from FCI Fort Dix since April 7, 2020 under these statutory procedures:

Inmate Name	Reg. No.	Release Date
BUTLER	67355-050	4/7/2020
CROSBY	88239-012	4/7/2020
QUIAMBAO	85923-053	4/13/2020
PLATTEN	73323-004	4/20/2020
LOGAN	91880-054	4/29/2020
MOSKOWITZ	75786-053	5/5/2020
BRYANT	21125-014	5/8/2020
PENA	72708-054	5/8/2020
COPELAND	24627-037	5/12/2020
AL-JUMAIL	47136-039	5/12/2020
Total		10

F. Petitioners' Request for Class-Wide "Release" of Inmates

On April 24, 2020, Petitioners filed this petition for a writ of habeas corpus purporting to represent a class consisting of all current and future FCI Fort Dix inmates "over the age of 50 or who experience medical conditions that make them vulnerable to COVID-19." Pet. ¶ 135. Petitioners allege that their constitutional rights are being violated because they might contract COVID-19 while incarcerated. *See id.* ¶¶ 120-126. For these alleged violations, Petitioners seek mandatory injunctive relief in the form immediate release or bail pending habeas corpus, which they trivialize as an "enlargement of custody." *Id.* at 55; *see also id.* ¶ 6 (seeking

¹¹ https://www.bop.gov/policy/progstat/5050_050_EN.pdf (last visited May 11, 2020).

“enlargement of custody, and ultimately, if [Petitioners] cannot be held in constitutional custody, ***for release***”) (emphasis added); *id.* ¶¶ 7-11 (suggesting Petitioner receive “home confinement” or be “***released***”) (emphasis added).

Petitioners also allege that a sub-class of disabled inmates deserve relief under the Rehabilitation Act of 1973 (the “Rehab Act”). *Id.* ¶ 136. Under this statute, Petitioners assert that they are entitled to the following “reasonable accommodations” in “a facility with reduced population that might allow for adequate social distancing”:

separate living spaces rather than high-capacity shared rooms and dorms with people in close proximity; free distribution of adequate cleaning supplies, including soap; free distribution of adequate personal protective equipment, including masks and gloves; staggered access to bathrooms, meals, and other shared resources; assignments of correctional staff that mitigates the possibility staff will transmit COVID-19, even asymptotically, from one building to another; and adequate access to tests and information about risk.

Id. ¶ 162.

Petitioners do not set forth a specific plan for how to deal with the safe and orderly release of hundreds (or perhaps even thousands) of inmates—some of whom could be drug traffickers, child predators, and gang members. Instead, Petitioners first seek a blanket ruling that continued detention of any members of the class is unconstitutional because, from Petitioners’ perspective, “no set of conditions would be constitutionally sufficient.” *See* Petitioners’ Mov. Br. at 26, ECF No. 9-1. If the Court were to make such a ruling, Petitioners next suggest that the Court (in lieu of BOP) evaluate each class member individually to determine the appropriate conditions (if any) for release or home confinement. *See* Pet. at 55-56 (relief requested). Alternatively, Petitioners imply that a special master could assume the Court’s administrative duties to oversee the class members at FCI Fort Dix. *See* Pet. ¶ 45 n.43 (explaining procedures for release, including special masters).

G. Petitioners' Compassionate-Release Requests

Petitioner Troy Wragg is a 38-year-old inmate serving a 22-year collective sentence for engaging in fraud offenses that prompted not just one, but two federal prosecutions. As the mastermind of Mantria Corporation, Wragg ran “a massive Ponzi scheme that raised over \$54 million and defrauded hundreds of investors.” *SEC v. Mantria Corp.*, No. 09-2676, 2012 WL 3778286, at *1 (D. Colo. Aug. 30, 2012). Mantria claimed to earn millions of dollars from selling real estate and “green energy” products. *See United States v. Wragg*, Case No. 15-cr-00398-JHS (E.D. Pa.) (“*Wragg I*”), ECF No. 1 ¶ 1 (indictment). On March 2, 2017, Wragg pleaded guilty to all ten counts in the indictment. *See id.*, ECF No. 297 (judgment).

While on pretrial release, Wragg was enjoined from participating in the offer or sale of any security. *See United States v. Wragg*, Case No. 18-cr-465-JHS (E.D. Pa.) (“*Wragg II*”), ECF No. 1 ¶ 1 (criminal information). Nonetheless, from January 2017 to December 2017, Wragg created an online dating website and solicited investments in that business. *Id.* ¶¶ 4-7. As a result, on October 24, 2018, the Government charged him with wire fraud. *Id.* ¶ 8. On December 7, 2018, Wragg pleaded guilty to this charge, too. *See Wragg II*, ECF No. 24 (judgment).

On August 21, 2019, the district court sentenced Wragg in both cases to a collective term of imprisonment of 264 months. *See Wragg I*, ECF No. 297; *Wragg II*, ECF No. 24. Wragg began serving his sentence on September 4, 2019, and assuming he receives all good time credit available to him, his projected release date is August 7, 2037. *See Reiser Decl.* ¶ 27 and Ex. 8 at 001. So far, Wragg has served approximately one year and five months of his prison sentence, or 6.7%. *See id.* ¶ 27 and Ex. 8 at 004.

Despite having served so little of his sentence, Wragg filed a request for compassionate release with Warden Ortiz. *See Reiser Decl.* ¶ 9 and Ex. 1. In that request, Wragg noted he receives medical care in FCI Fort Dix’s chronic care clinic

for epilepsy, an unspecified mental health condition, and high blood pressure. *Id.* But unlike his claims here, Wragg did not claim in his compassionate release request that he has a “chronic autoimmune neuromuscular disease” or had suffered a heart attack. *Compare* Reiser Decl. ¶ 9 and Ex. 1 *with* Pet. ¶ 7. Wragg did not invoke any of the criteria in BOP Program Statement 5050.50, but instead rested his request on the risk of contracting COVID. *See* Reiser Decl. ¶ 9.

On April 17, 2020, the BOP denied Wragg’s request because he did not meet the necessary criteria for compassionate release under BOP policy. *See id.* On May 8, 2020, and then again on May 13, 2020 through counsel other than his counsel here, Wragg moved his sentencing court for a reduction of sentence under 18 U.S.C. § 3582(c)(1)(A). *See Wragg I*, ECF No. 298-300. Meanwhile, BOP has concluded that Wragg is not a candidate for extended home confinement at this time because his recidivism risk score is too high. *See id.* ¶ 27 and Ex. 9 (Wragg Inmate Profile).

Petitioner Michael Scronic is a 49-year-old inmate who, like Wragg, bilked millions of dollars from unsuspecting victims. In April 2010, Scronic set up an investment pool (the Scronic Macro Fund) that he ran from his home. *See United States v. Scronic*, No. 18-cr-0043-CS (S.D.N.Y.), ECF No. 1 ¶ 1(b) (indictment). Scronic misappropriated money from that fund to support his lavish lifestyle. *See id.* ¶ 5. On March 15, 2018, he pleaded guilty to one count of securities fraud. *See id.*, ECF No. 28. On September 27, 2018, Scronic was sentenced to 96 months’ imprisonment. *Id.*, ECF No. 48 (judgment). He began serving his sentence on November 26, 2018, and assuming he receives all good conduct time available to him, his projected release date is September 18, 2025. *See* Reiser Decl. ¶ 29 and Ex. 12 at 001 (Scronic Public Information Inmate Data). So far, Scronic has served approximately one year and five months of his prison sentence, or 18%. *See id.* ¶ 29 and Ex. 12 at 003.

According to the petition, Scronic has “a history of abnormal heart symptoms, severe childhood asthma, and skin cancer,” as well as “one or more disabilities recognized by the Rehabilitation Act.” Pet. ¶ 8. He is currently housed at the Camp at FCI Fort Dix where all inmates have tested negative, including him. *See* Turner-Foster Decl. ¶ 30; Reiser Decl. ¶ 6. “If his custody were enlarged to include home confinement or if he were released,” Scronic claims he would “live with his sister and her two children in New York.” Pet. ¶ 8.

Without pursuing any administrative remedies, on April 7, 2020, Scronic filed a motion for compassionate release with the sentencing court. *Scronic*, No. 18-cr-0043-CS (S.D.N.Y.), ECF No. 71 (motion for compassionate release). On April 20, 2020, the Court denied the motion without prejudice because Scronic had not exhausted his administrative remedies. The court further stated:

[W]hile the Court acknowledges that incarcerated persons like persons on naval vessels or in nursing homes, are at elevated risk, Mr. Scronic has not suggested that he suffers from any condition that places him at greater risk than any other prisoner, and given how little of his sentence he has served, he does not appear to be a promising candidate for compassionate release. But his motion for compassionate release is denied without prejudice to renewal if he makes an application to the BOP and the BOP does not act upon it within thirty days of its receipt.

Id., ECF No. 73 (text order).

While that motion was pending, on April 16, 2020, Scronic submitted a request to the Warden of FCI Fort Dix for compassionate release. *See* Reiser Decl. ¶ 10 and Ex. 3 (release request). That request is still pending and only today has 30 days lapsed since the Warden received the request. That means Scronic can now return to his sentencing court and seek a reduction of sentence under 18 U.S.C. § 3582(c)(1)(A). *See Raia*, 954 F.3d at 596-97.

Petitioner Leonard Bogdan is a 68-year-old inmate who operated multiple fraudulent financial investment companies that targeted and swindled elderly

investors. *See United States v. Bogdan*, No. 05-cr-14090-JEM (S.D. Fla.), ECF No. 3 (indictment). On March 9, 2007, a jury returned a guilty verdict against Bogdan on all 16 counts of his indictment. *See id.*, ECF No. 348. On May 18, 2007, Bogdan was sentenced to an aggregate 360-month term of incarceration.

In the petition, Bogdan claims he “has a heart condition, hypertension, high cholesterol, skin cancer, a potentially cancerous thyroid nodule that causes rapid heartbeat, and severe scoliosis that has displaced his kidneys and presses on his lungs causing chronic shortness of breath,” as well as “one or more disabilities recognized by the Rehabilitation Act.” Pet. ¶ 9.¹² He adds that he “is housed in an honor unit in the Fort Dix main facility’s west compound.” *Id.* “If his custody were enlarged to include home confinement or if he were released,” Bogdan asserted he would “live with his wife in West Virginia.” *Id.*

In July 2019, Bogdan sought compassionate release. Reiser Decl. ¶ 12 and Ex. 5. On August 15, 2019, the BOP denied the request because Bogdan had served less than 50% of his sentence. *Id.* He has not submitted a new request for compassionate release to the BOP in light of COVID-19. *Id.* Instead, on April 20, 2020, Bogdan filed a motion for a reduction of sentence in the sentencing court. *See Bogdan*, No. 05-cr-14090-JEM, ECF No. 596 (motion to amend/reduction in sentence).¹³ The sentencing court denied the motion, finding that it lacked jurisdiction to order home confinement and noting that the Second Chance Act gave that authority exclusively to the BOP. *See id.*, ECF No. 599 at 2-3. The court also

¹² Bogdan’s medical conditions are well-controlled with medication. *See Turner-Foster Decl.* ¶ 31.

¹³ Bogdan originally moved for a reduction of sentence pursuant to the United States Sentencing Commission Amendment 782. *See* ECF No. 593, *United States v. Bogdan*, Case No. 05-cr-14090-JEM. Then Bogdan moved to amend that motion to add a request for a reduction of sentence under 18 U.S.C. § 3582(C)(1)(A). *See id.*, ECF No. 596.

found no indication that Bogdan' had exhausted his mandatory administrative remedies. *Id.* And the court said it did "not intend to become a one-person parole board and intrude upon the BOP's jurisdiction." *Id.* at 3.

Proving the court's faith in BOP was not misplaced, BOP determined that Bogdan qualified for home confinement through the CARES Act. *See* Reiser Decl. ¶ 26 and Ex. 6. However, as noted above, on May 13, 2020, the United States Probation Department notified FCI Fort Dix that Bogdan's wife refused to allow him in their home. *Id.* and Ex. 7 (Probation Dep't Denial Memo). Bogdan was notified and given the opportunity to provide another release residence, but he was unable to provide another location. *Id.* As such, Probation denied his placement in their district, and his home confinement date was removed. *Id.*

Petitioner Eliezer Soto-Concepcion is a 38-year-old inmate who belonged to a large drug-trafficking operation. *See United States v. Soto-Concepcion*, No. 15-cr-00181-JEJ (M.D. Pa.), ECF No. 1 (indictment). On August 26, 2015, he and several others were charged in a twelve-count indictment. *See id.* The charges stemmed from controlled buys of heroin, cocaine base and cocaine hydrochloride from coconspirators and execution of search warrants yielding more drugs, drug paraphernalia, and 19 firearms. *See id.*, ECF No. 630 at 1-2 (sentencing memo).

Soto-Concepcion pleaded guilty to count one of the indictment, and on November 17, 2017, he was sentenced to a 144-month term of incarceration. *See id.*, ECF No. 650 at 1 (judgment). The sentencing court held him responsible for at least 10.219 kilograms of heroin, i.e., at least 408,000 doses of potentially fatal heroin. *See id.* at 7. Assuming Soto-Concepcion receives all available good time credit, his projected release date is September 5, 2025. *See* Reiser Decl. ¶ 28 and Ex. 10 at 001 (Soto-Concepcion Public Information Inmate Data). So far, Soto-Concepcion has served approximately 4 years and 11 months of his sentence, which is approximately 41%. *See id.* ¶ 28 and Ex. 10 at 003.

In the petition, Soto-Concepcion says he “has high blood pressure, a history of heart attacks, and a nervous system condition that makes his hands shake,” as well as “one or more disabilities recognized by the Rehabilitation Act.” Pet. ¶ 10. He adds that “[i]f his custody were enlarged to include home confinement or if he were released,” he would “live with his grandmother in Puerto Rico.” Pet. ¶ 10. He is housed in the Camp and has tested negative for COVID-19. Turner-Foster Decl. ¶ 32. Furthermore, his medical conditions are stable. *See* Turner-Foster Decl. ¶ 32.

H. BOP’s Administrative Exhaustion Procedures

Petitioners allege that they have “exhausted the administrative remedies available to them.” *Id.* ¶ 20. Alternatively, if they “are deemed not to have exhausted,” Petitioners assert that they “are all excused from 28 U.S.C. § 2241’s exhaustion requirement.” *Id.* According to Petitioners, that exhaustion requirement “does not apply” to them because they have alleged “irreparable injury without immediate judicial relief” and claim that “the administrative remedy would be futile.” *Id.*

BOP’s administrative remedies have several tiers allowing “an inmate to seek formal review of an issue relating to any aspect of his/her own confinement.” 28 C.F.R. § 542.10. An inmate must first “present an issue of concern informally to staff, and staff shall attempt to informally resolve the issue before an inmate submits a Request for Administrative Remedy.” 28 C.F.R. § 542.13(a). Second, if the inmate is not satisfied, he may file a “formal written administrative Remedy Request, on the appropriate form (BP-9),” within “20 calendar days following the date on which the basis for the Request occurred.” § 542.14(a). Third, if the inmate “is not satisfied with the Warden’s response,” which must issue within 20 days, the inmate may “submit an Appeal on the appropriate form (BP-10) to the appropriate Regional Director within 20 calendar days of the date the Warden signed the

response.” §§ 542.15(a), 542.18. Finally, “[a]n inmate who is not satisfied with the Regional Director’s response may submit an Appeal on the appropriate form (BP-11) to the General Counsel within 30 calendar days of the date the Regional Director signed the response.” § 542.15(a). The General Counsel has 40 days to respond. 28 C.F.R. § 542.18. If an issue raised by the inmate concerns “an emergency” that “threatens the inmate’s immediate health or welfare, the Warden shall respond not later than the third calendar day after filing.” 28 C.F.R. § 542.18.

Wragg allegedly “made three applications for Compassionate Release and/or Home Confinement to Respondent Ortiz.” Pet. ¶ 17. “On April 24, he received a letter from Respondent Ortiz denying them.” *Id.* Bogdan also “applied for Compassionate Release from Respondent Ortiz and was denied”; he “appealed the denial administratively to the BOP Regional Office and received an ultimate denial from Washington, D.C.” *Id.* ¶ 18. And on April 20, 2020, Bogan supposedly learned from “his case manager that he was denied release on Home Confinement.” *Id.* Meanwhile, Scronic’s and Soto-Concepcion’s requests for compassionate release supposedly have received no response from the Warden. *Id.* ¶ 19.

Nevertheless, according to BOP’s administrative records, Petitioners Wragg, Scronic and Soto-Concepcion have never filed an administrative grievance while incarcerated at FCI Fort Dix, let alone a grievance/administrative remedy request raising issues about their conditions of confinement at FCI Fort Dix due to COVID-19 concerns. *See* Declaration of Christina Clark (“Clark Decl.”) ¶ 5 and Exs. 1-3. Petitioner Bogdan filed a number of grievances between 2016 and November 2019 challenging the denial of his request for Compassionate Release, but he has not filed a grievance since the COVID-19 pandemic began in 2020. *See id.* ¶ 5 and Ex. 4.

I. Other Inmates at FCI Fort Dix.

As noted, FCI Fort Dix currently houses roughly 3,000 inmates. At last count, 24 inmates in addition to the four Petitioners here have filed § 2241 petitions demanding transfer to home confinement because of their fear of COVID-19. *See* Declaration of Mark E. Coyne (“Coyne Decl.”) ¶ 2. Some of those petitions have been administratively terminated; others have been dismissed for failure to exhaust; still others remain pending. *See, e.g., Valenta v. Ortiz*, No. 20-cv-3688 (NLH), 2020 WL 2124944 (D.N.J. May 5, 2020).

Meanwhile, other FCI Fort Dix inmates have requested reductions in sentence. *See id.*, ¶¶ 4, 9. Many of those requests, too, rely in part on fear of COVID-19. *See id.* As noted at page 18 above, 10 of those requests have been granted so far. *E.g., United States v. Pena*, No. 15-cr-551 (AJN), 2020 WL 2301199 (S.D.N.Y. May 8, 2020). Others have been denied. *E.g., United States v. Davies*, No. 17-cr-57 (ERK), 2020 WL 2307650 (E.D.N.Y. May 8, 2020); *United States v. Battle*, No. 05-cr-377 (VM), 2020 WL 2306482 (S.D.N.Y. May 8, 2020); *United States v. Collins*, No. 14-cr-30038 (SEM), 2020 WL 2301217 (C.D. Ill. May 8, 2020); *United States v. Johnson*, 02-cr-1435 (LAP), 2020 WL 2142926 (May 5, 2020).

Even a cursory review of those inmates’ petitions and requests shows why an individualized review—preferably by the sentencing court—is necessary. For example, in denying Ronald Collins compassionate release for his asthma, high blood pressure and history of coronary artery disease, the court explained:

Defendant has over fifteen years left on his [300-month prison] sentence for receipt of child pornography. Defendant not only possessed videos and photographs depicting child pornography, he personally exploited a minor female by persuading her to produce sexually explicit photographs and videos. Defendant was also previously convicted of the Aggravated Criminal Sexual Abuse of a different minor female.

Collins, 2020 WL 2301217, at *2. Nor had Collins “proposed an adequate release

plain”; to the contrary, he “would not have any place to reside were he to be immediately released from custody.” *Id.*

Similarly, in denying Quaimme Davies compassionate release for his “moderate asthma,” the court explained:

Davies’s request for compassionate release would effectively result in a sentence of a little more than three years and three months. This, for an “abhorrent” and violent crime which terrorized four Chase Bank employees—all of whom were required at gunpoint to comply with the demands of Davies and Altino, and one of whom was held hostage when the police arrived. Such a sentence would make a mockery of the considerations enumerated in 18 U.S.C. 3553(a). It would not come close to reflecting the seriousness of the offense, or providing just punishment for the offense. Moreover, rather than promoting respect for the law and its deterrent effect, it would undermine it. Finally, the nature of the offense, not to speak of Davies’s prior conviction for possession of a loaded 9mm pistol, does not provide confidence that his release would protect the public from further harms.

Davies, 2020 WL 2307650, at *2.

Meanwhile, James Gomez is one of the inmates who tested positive for COVID-19. Coyne Decl. at A1. On May 5, 2020, Gomez moved for a reduction of sentence because of that positive test. *Id.* But he left out that he had recovered from his symptoms and appeared to be in good health. *Id.* On May 2, 2020, Gomez wrote “I feel 100%.” *Id.* at A1, A6, A13. On May 5, 2020, Gomez wrote “im feeling way better now” and was waiting to move from isolation on the second floor of Unit 5851 to the recovery area on the third floor. *Id.* at A7, A15. During a May 4, 2020 call, Gomez said “I don’t have any symptoms anymore” and laughed often. *Id.* at A7. The court, in denying compassionate release, reprimanded defense counsel:

filing a petition, such as one you have filed, does a disservice to every lawyer who is filing petitions for compassionate release because it would, in effect, create some question in the mind of a judge as to whether the petitions which are being submitted are being submitted, as this one is, without any factual basis, without any justification for claiming that your client was about to die, that there is an extraordinary

and compelling reason to release him from prison, and it does a disservice and raises questions about these petitions, which are being filed not by the hundreds now but by the thousands.

Id. at A25-A26.

On the other hand, this Court denied Joseph Furando's first fear-of-COVID-19-based § 2241 petition for failure to exhaust. *Furando v. Ortiz*, No. 20-cv-3739 (RMB), 2020 WL 1922357 (D.N.J. Apr. 21, 2020). This Court later treated as supplemental pleading by Furando as a new § 2241 petition. Coyne Decl. ¶ 6 and A29-A40. But Furando left out *why* his sentencing court saw fit to impose a 240-month term of imprisonment for his supposedly non-violent fraud, false statement and money laundering offenses. *See United States v. Furando*, 655 F. App'x 507 (7th Cir. 2016) (affirming that sentence). While on pretrial release, Furando sexually assaulted and raped an employee, tried to frame a witness for prostitution, manufactured evidence, and suborned perjury. *Id.* And while waiting to be sentenced, Furando tried to get his cellmate to murder two witnesses and help him traffic drugs. *Id.*

Other inmates at FCI Fort Dix have invoked their fear of COVID-19 to demand release on bail pending the disposition of their appeals. For example, Christopher Thieme is serving a 17½-year term of imprisonment for attempted kidnapping and soliciting a murder for hire. Coyne Decl. ¶ 7 and A41. He is trying to appeal the dismissal of his motion under 28 U.S.C. § 2255. *Id.* And Raymond Aigbekaen is serving a 15-year term of imprisonment for sex trafficking a minor and other offenses. Coyne Decl. ¶ 9 and A60; *see United States v. Aigbekaen*, 943 F.3d 713 (4th Cir. 2019). He is appealing the denial of his § 2241 motion challenging the validity of his conviction and sentence. *Id.* Both inmates sought bail pending the disposition of their appeals, relying in part on their fear of contracting COVID-19 if

they remain at FCI Fort Dix. Coyne Decl. ¶¶ 7, 9. The Court of Appeals denied both motions summarily. *Id.*, ¶¶ 8, 10 and A59, A63.

STANDARD OF REVIEW

A. Rule 12(b)(1) Standard

A motion to dismiss for lack of subject-matter jurisdiction under Rule 12(b)(1) “attacks the right of a plaintiff to be heard in Federal Court.” *Doughty v. United States Postal Serv.*, 359 F. Supp. 2d 361, 364 (D.N.J. 2005) (quoting *Cohen v. Kurtzman*, 45 F. Supp. 2d 423, 428 (D.N.J. 1999)).¹⁴ The court may dismiss for lack of subject-matter jurisdiction at “any time,” regardless of whether an answer has been filed. *See* Fed. R. Civ. P. 12(h)(3) (“If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”); *Berardi v. Swanson Mem’l Lodge No. 48*, 920 F.2d 198, 200 (3d Cir. 1990) (“[T]he Supreme Court made clear that a facially sufficient complaint may be dismissed before an answer is served if it can be shown by affidavits that subject matter jurisdiction is lacking.”) (citing *KVOS, Inc. v. Associated Press*, 299 U.S. 269 (1936)) (Alito, J.).

“A motion to dismiss for lack of subject matter jurisdiction may present either a facial or factual challenge to the complaint.” *Brill v. Velez*, Civil Action No. 13-cv-05643, 2014 U.S. Dist. LEXIS 87668, at *2 (D.N.J. June 27, 2014). In considering a factual challenge, as Respondents bring here, the Court is not bound by the petitioner’s allegations and “may consider evidence outside the pleadings.” *United States ex rel. Customs Fraud Investigations, LLC v. Victaulic Co.*, 839 F.3d 242, 251

¹⁴ Habeas corpus petitions filed under 28 U.S.C. § 2241 are governed by the Rules Governing Section 2254 Cases in the United States District Courts. *See Derrick v. United States Dep’t of Justice*, No. 12-cv-1842, 2012 U.S. Dist. LEXIS 187985, at *13-14 (M.D. Pa. Sept. 17, 2012), *R&R adopted*, 2013 U.S. Dist. LEXIS 65234 (M.D. Pa. May 8, 2013). The Federal Rules of Civil Procedure are “applicable to habeas petitions to the extent they are not inconsistent with the Habeas Rules.” *Robinson v. Johnson*, 313 F.3d 128, 134 (3d Cir. 2002).

(3d Cir. 2016). Furthermore, “[t]he presumption of truth does not extend to” a factual attack on jurisdiction, “and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Courts v. United States*, Civil Action No. 15-7303 (MLC), 2016 U.S. Dist. LEXIS 115268, at *7 (D.N.J. Aug. 29, 2016) (quoting *Mortensen v. First Fed. Sav. & Loan Ass’n*, 549 F.2d 884, 891 (3d Cir. 1977)).

B. Rule 12(b)(6) Standard

A motion seeking dismissal under Federal Rule of Civil Procedure 12(b)(6) tests the legal sufficiency of the complaint. *Kost v. Kozakiewicz*, 1 F.3d 176, 183 (3d Cir. 1993). A complaint must contain “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* at 663 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 556 (2007)). The Court need not consider “legal conclusions” contained within a complaint, and “a pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 678.

C. Review of Motions for Preliminary Injunction

Federal Rule of Civil Procedure 65 governs the issuance of a preliminary injunction. Injunctive relief can only be granted if Petitioners can satisfy the following factors: “(1) whether the movant has shown a reasonable probability of success on the merits; (2) whether the movant will be irreparably injured by denial of the relief; (3) whether granting preliminary relief will result in even greater harm to the nonmoving party; and (4) whether granting preliminary relief will be in the public interest.” *N.J. Retail Merchants Ass’n v. Sidamon-Eristoff*, 669 F.3d 374, 385-

86 (3d Cir. 2012) (internal quotations omitted). Preliminary injunctive relief is an “extraordinary remedy, which should be granted only in limited circumstances.” *Novartis Consumer Health, Inc. v. & Johnson–Merck Consumer Pharm. Co.*, 290 F.3d 578, 586 (3d Cir. 2002).

For the following reasons, this Court should dismiss the § 2241 petition, both for lack of jurisdiction and for failure to state a legally viable claim. Alternatively, this Court should deny the motion for a preliminary injunction and strike Petitioners’ class allegations.¹⁵

LEGAL ARGUMENT

I. The Court Lacks Jurisdiction over the Petition

It is irrelevant whether Petitioners characterize their claims as a challenge to the “fact of their confinement” or the “conditions of their confinement.” At bottom, the petition seeks to use 28 U.S.C. § 2241 to circumvent (and in some respects, re-litigate) criminal law, the CARES Act, the PLRA, and BOP regulations based on the specter of COVID-19. The petition is also contrary to the principle of finality of judgments, an essential element of the criminal justice system. No district court in this Circuit has ever granted habeas relief to a federal inmates for such a purpose, particularly given the statutory and regulatory avenues of possible relief available to Petitioners. Thus, the petition should be dismissed for lack of jurisdiction.

¹⁵ Moving briefs and opposition briefs in proportional 12-point font are limited to 30 pages under Local Rule Civil Rule 7.2. However, as discussed with the Court during the May 12, 2020 conference, Respondents are both moving to dismiss and opposing Petitioners’ motion for a preliminary injunction, in a consolidated submission, and will be filing a reply in support of the motion to dismiss on May 21, 2020. *See* ECF No. 17. Respondents proposed this consolidated briefing for the sake of efficiency for the parties and the Court. Nevertheless, if the Court considers this brief to be a single moving brief under Local Civil Rule 7.2 or a brief in support of a cross-motion under Local Civil Rule 7.1(h), Respondents respectfully request leave to file an over-length brief.

“A judgment of conviction that includes a sentence of imprisonment constitutes a final judgment and may not be modified by a district court except in limited circumstances.” *Dillon v. United States*, 560 U.S. 817, 825 (2010) (alternations and internal quotations omitted). As the Supreme Court has recognized, finality of criminal judgments is “essential to the operation of our criminal justice system.” *Teague v. Lane*, 489 U.S. 288, 309 (1989) (plurality opinion).

Once a district court has pronounced sentence and the sentence becomes final, the court has no inherent authority to reconsider or alter that sentence. Rather, a court may only modify a sentence pursuant to statutory authorization. *See United States v. Addonizio*, 442 U.S. 178, 189 n.16 (1979) (except by rule or statute, “[t]he beginning of the service of the sentence in a criminal case ends the power of the court even in the same term to change it”); *United States v. Washington*, 549 F.3d 905, 916-17 (3d Cir. 2008) (“We also reject the argument that were we to hold that district courts lack the inherent power or jurisdiction to vacate sentences in a situation like this one, then the court would be without a remedy.”).

Consistent with this principle of finality, 18 U.S.C. § 3582(c) provides that a court “may not modify a term of imprisonment once it has been imposed,” except in three circumstances. First, under § 3582(c)(1)(A), a sentencing court can reduce a prison term upon a motion by the Director of BOP or the defendant under certain circumstance. Second, under § 3582(c)(1)(B), a sentencing court can reduce a prison term “to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.” And third, under § 3582(c)(2), a sentencing court can reduce a prison sentence that was “based on” a retroactively lowered Sentencing Guidelines range.

Traditionally, “[f]ederal habeas corpus relief is available only ‘where the deprivation of rights is such that it necessarily impacts the fact or length of

detention.” *Bonadonna v. United States*, 446 F. App’x 407, 409 (3d Cir. 2011) (quoting *Leamer v. Fauver*, 288 F.3d 532, 540 (3d Cir. 2002)). Accordingly, district courts in this Circuit routinely dismiss habeas petitions challenging conditions of confinement for lack of jurisdiction. *See, e.g., Stanko v. Obama*, 393 F. App’x 849, 851 (3d Cir. 2010) (holding that district court properly dismissed prisoner’s claims of cruel and unusual punishment and constitutional violations resulting from the seizure of his papers because those claims “clearly fall outside the realm of challenges brought in habeas”); *Leslie v. Attorney Gen. of United States*, 363 F. App’x 955, 958 (3d Cir. 2010) (“To the extent that Leslie attempts to challenge the conditions of his confinement, we agree with the District Court that this habeas corpus petition was not the proper vehicle to raise his claims.”); *Johnson v. Warden Canaan USP*, 699 F. App’x 125, 126 (3d Cir. 2017) (“The Court correctly reasoned that Johnson was challenging the conditions of his confinement rather than the execution of his sentence, and thus that habeas corpus was not an available remedy.”). That is not to say that the Supreme Court has expressly ruled out the possibility of challenging conditions of confinement via a habeas petition under 28 U.S.C. § 2241. *See Preiser v. Rodriguez*, 411 U.S. 475, 499 (1973) (“When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal.”). But the Supreme Court has not yet allowed it. *See Muhammad v. Close*, 540 U.S. 749, 751 n.1 (2004) (observing that the Court has never followed the speculative dicta in *Preiser* described above).

The Third Circuit has held that § 2241 is an appropriate mechanism for a federal prisoner to challenge the execution of his federal sentence. In *Woodall v. Federal Bureau of Prisons*, 432 F.3d 235, 244 (3d Cir. 2005), the Third Circuit found a prisoner’s challenge to a BOP regulation curtailing the portion of his sentence that could be spent in community confinement to be cognizable under habeas as a

challenge to the execution of his sentence. In doing so, the Third Circuit defined execution as meaning “to ‘put into effect’ or ‘carry out.’” *Id.* at 243 (quoting *Webster’s Third New Int’l Dictionary* 794 (1993)). Subsequently, the Third Circuit distinguished *Woodall* and cabined the use of § 2241 to challenge the execution of a sentence as a more narrow jurisdictional grant. *See Cardona v. Bledsoe*, 681 F.3d 533 (3d Cir. 2012).

In *Cardona*, a federal inmate petitioned for habeas relief under § 2241, alleging that the BOP unlawfully referred him to the Special Management Unit as punishment for filing lawsuits. The district court dismissed the petition for lack of jurisdiction under § 2241. The Third Circuit affirmed and clarified that, while § 2241 extends jurisdiction to claims concerning the execution of a federal inmate’s sentence, *Woodall*’s holding turned on the particular fact that the challenged BOP conduct in that case “conflicted with express statements in the applicable sentencing judgments.” *Cardona*, 681 F.3d at 536. The Third Circuit declared: “In order to challenge the execution of his sentence under § 2241, Cardona would need to allege that BOP’s conduct was somehow inconsistent with a command or recommendation in the sentencing judgment.” *Id.* at 537.

Conversely, a “challenge to a garden-variety transfer is not cognizable in habeas.” *Johnson v. Zickefoose*, Civ. No. 12-2544 RMB, 2012 WL 5880344, at *7 (D.N.J. Nov. 20, 2012); (citing *Ganim v. Federal Bureau of Prisons*, 235 F. App’x 882, 2007 WL 1539942 (3d Cir. 2007)). Nor does a district court have jurisdiction to question a “transfer to increased security level” *Id.* (citing *Zapata v. United States*, 264 F. App’x 242 (3d Cir. 2008)). Nor can a district court consider habeas relief “seeking release from disciplinary segregation to general population.” *Id.* (citing *Bronson v. Demming*, 56 F. App’x 551, 553–54 (3d Cir. 2002)).

After all, “the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to

secure release from illegal custody.” *Preiser*, 411 U.S. at 484. “[W]here an inmate seeks injunctive relief challenging the fact of his conviction or the duration of his sentence,” that claim “fall [s] within the core of federal habeas corpus.” *Nelson v. Campbell*, 541 U.S. 637, 643 (2004); *see Preiser*, 411 U.S. at 489. “By contrast, constitutional claims that merely challenge the conditions of a prisoner’s confinement, whether the inmate seeks monetary or injunctive relief, fall outside of that core.” *Nelson*, 541 U.S. at 643. Federal prisoners wishing to pursue such claims must use other means, not habeas.¹⁶ *See Cardona*, 681 F.3d at 537 n.9.

To be clear, the Supreme Court has never ruled out the possibility of a federal inmate challenging his conditions of confinement via a habeas petition. *See Preiser*, 411 U.S. at 499 (“When a prisoner is put under additional and unconstitutional restraints during his lawful custody, it is arguable that habeas corpus will lie to remove the restraints making the custody illegal.”). But neither the Supreme Court nor the Third Circuit has ever recognized or “delineated the circumstances that might qualify” for such an “exceptional” circumstance. *See Reese v. Warden Philadelphia FDC*, 904 F.3d 244, 246 n.2 (3d Cir. 2018) (discussing conditions of confinement for pretrial detainee); *see also Medina v. Choate*, 875 F.3d 1025, 1029 (10th Cir. 2017) (“If a federal prisoner is ever entitled to relief under § 2241 based on something that happened before trial, **the circumstances are so rare that they have apparently not yet arisen.**”) (emphasis added); *see, e.g., Brown v. Marler*, No. 20-1914, 2020 U.S. Dist. LEXIS 72328, at *8 (E.D. Pa. Apr. 24, 2020) (permitting “limited” jurisdictional discovery to determine “whether,” for the first

¹⁶ The “appropriate remedy for such constitutional violations, if proven, would be a judicially mandated change in conditions and/or an award of damages, but not release from confinement.” *Davis v. Pa. Dep’t of Corr.*, No. 15-587, 2015 U.S. Dist. LEXIS 137712, at *8 (W.D. Pa. Sept. 11, 2015) (citing *Murphy v. Brooks*, 132 F.3d 43 (10th Cir. 1997) (table)), *R&R adopted*, 2015 U.S. Dist. LEXIS 136918 (Oct. 7, 2015); *see also Crawford v. Bell*, 599 F.2d 890, 891-92 (9th Cir. 1979).

time ever, “extraordinary circumstances” exist to “justify pretrial exercise of § 2241 jurisdiction”).

Furthermore, the theoretical possibility that an “exceptional circumstance” exists post-conviction inmate is even more remote when there is an “orderly” process in place for an inmate to obtain the requested relief. *See Johnson v. Hoy*, 227 U.S. 227 U.S. 245, 247 (1913) (“[T]he orderly course of a trial must be pursued and the usual remedies exhausted, even where the petitioner attacks on habeas corpus the constitutionality of the statute under which he was indicted[.]”) (cited by *Reese*); *Moore v. DeYoung*, 515 F.2d 437, 447 (3d Cir. 1975) (discussing in dicta the possibility that “delay, harassment, bad faith or other intentional activity” could preclude an orderly process) (cited by *Reese*).

In this case, Petitioners do not identify how BOP violated the terms of any of their court judgments in carrying out the execution of their sentence. Nor do any of the Petitioners allege that BOP violated any statute or regulation regarding the fact or duration of their sentence. Quite the contrary, BOP is considering (and granting) home confinement requests on an increasingly frequent basis to inmates suitable for such relief based on fact-specific and individualized determinations required by the regulations. Inmates are also at liberty at any time to file a compassionate-release request under 18 U.S.C. § 3582(c)(1)(A) after they satisfy that provision’s exhaustion requirement. Thus, under *Cardona*, this Court lacks jurisdiction.

Indeed, the specific procedural circumstances of the named Petitioners proves that the established process for their requested relief is functioning properly. As noted above, Bogdan was expected to be released to home confinement on May 14, 2020. *See Reiser Decl.* ¶ 26 and Ex. 5. However, on May 13, 2020, the United States Probation Department in his release district notified FCI Fort Dix that Bogdan’s wife refused to allow him to release to her home. *Id.* and Ex. 6 (Probation Dep’t Denial Memo). Similarly, Wragg filed a request for compassionate release with

Warden Ortiz, which was only denied because Wragg did not meet the necessary criteria for compassionate release. *Id.* ¶ 9 and Ex. 1. BOP has also concluded that Wragg is not a worthy candidate for home confinement because his recidivism risk score is too high. *See id.* ¶ 27 and Ex. 8. There is no jurisdictional basis to upend this legitimate, statutorily-created process or permit Petitioners to make an end-run around it. *Cf. Raia*, 954 F.3d at 597 (“Given BOP’s shared desire for a safe and healthy prison environment, we conclude that strict compliance with § 3582(c)(1)(A)’s exhaustion requirement takes on added—and critical—importance.”).

Moreover, Petitioners cannot demonstrate an exceptional circumstance because BOP is not delaying, harassing, or engaging in bad faith in order to prevent Petitioners from exercising the orderly process of seeking home confinement or compassionate release. As noted in the chart above, BOP is considering (and granting) home confinement requests on an increasingly frequent basis to inmates suitable for such relief based on fact-specific and individualized determinations. Rather, it is Petitioners who are seeking to re-litigate the orderly process by invoking habeas jurisdiction. There is nothing “exceptional” about that. And to entertain their request would, in at least some cases, require this Court to second-guess the considered judgment of coordinate courts denying some of the very relief sought here.

The limited availability of habeas jurisdiction reflects Congress’s deference to BOP in the administration of correctional institutions, as well as the reality that courts are “ill equipped to deal with the difficult and delicate problems of prison management.” *Thornburgh v. Abbott*, 490 U.S. 401, 407-08 (1989) (internal quotations omitted). The operation of an institution such as FCI Fort Dix “involves a wide range of social and economic considerations, which is an inordinately difficult undertaking that requires expertise, planning, and the commitment of

resources, all of which are peculiarly within the province of the legislative and executive branches of government.” *Turner v. Safley*, 482 U.S. 78, 84-85 (1987). Simply put, the federal courts are “out of the business of running jails.” *Benjamin v. Jacobson*, 172 F.3d 144, 182 (2d Cir. 1999) (discussing the PLRA) (en banc) (Calabresi, J., concurring); *see also Inmates of Suffolk County Jail v. Rouse*, 129 F.3d 649, 655 (1st Cir. 1997) (noting that Congress enacted the PLRA “to oust the federal judiciary from day-to-day prison management”).

In an attempt to sidestep the jurisdictional bar to their claims under *Cardona*, Petitioners allege that they are challenging “the fact of their confinement,” not the conditions of their confinement. Petitioners’ Mov. Br. at 2, ECF No. 9-1. In other words, Petitioners claim that there are “***no set of conditions***” that “would be constitutionally sufficient” to continue Petitioners’ detention. *Id.* at 26 (internal quotations omitted) (emphasis added). However, as the court in *Alvarez v. Larose* noted in rejecting an identical argument, that is pure semantics. “Plaintiffs’ claims would not exist ***but for*** their current conditions of confinement” No. 20-782 (S.D. Cal. May 9, 2020), ECF No. 46 at 6 (emphasis in original).

Consistent with Third Circuit law, at least one district court has dismissed for lack of jurisdiction a COVID-19-related petition similar to the one brought in this case. *See Livas v. Myers*, No. 20-422, 2020 U.S. Dist. LEXIS 71323, *19-22 (W.D. La. Apr. 22, 2020) (declining to exercise jurisdiction over habeas petition challenging conditions related to COVID-19 or serve as a “serve as a de facto ‘super warden’”); *see also Grinis v. Spaulding*, No. 20-10738, 2020 U.S. Dist. LEXIS 81464, *5 (D. Mass. May 8, 2020) (“There is a substantial question whether the relief the petitioners seek,” which is release because of COVID-19, is properly sought by means of a habeas petition under § 2241.”).

Petitioners also cannot manufacture habeas jurisdiction in this case by pointing to cases involving civil immigration detainees. *See* Petitioners' Mov. Br. at 22-23 (citing immigration cases). Those cases are not controlling (or even persuasive) because those civil immigration detainees did not have the same statutory or regulatory avenues for relief. In this case, Petitioners can request home confinement through the CARES Act or make a compassionate-release request and then make a motion seeking that relief under § 3582(c)(1)(A) after satisfying that provision's exhaustion requirement. These additional avenues of relief for Petitioners are dispositive on the issue of jurisdiction here.

Civil immigration cases are also premised on a different constitutional standard. Convicted criminals such as Petitioners have Eighth Amendment protections. By contrast, civil immigration detainees are protected by the Fifth Amendment and are "entitled to more considerate treatment than convicted prisoners." *Jeferson V.G. v. Decker*, No. 20-3644, 2020 U.S. Dist. LEXIS 65905, at *15 n.5 (D.N.J. Apr. 15, 2020) (citing *Fuentes v. Wagner*, 206 F.3d 335, 344 (3d Cir. 2000)). The heightened constitutional rights afforded to civil immigration detainees persuades some courts to consider additional avenues for relief, which are not relevant here.

A district court in this Circuit recently characterized this dispositive constitutional distinction between civil immigration detainees and convicted criminals as follows:

[T]o apply [the reasoning of an opinion granting release from civil immigration detention under § 2241] to prisons and jails across the board in all criminal cases is a much different matter. Different interests must be balanced when a criminal defendant has been detained only after a finding that no condition or combination of conditions will assure the presence of the defendant and the safety of the community. The balancing is likewise different when a criminal defendant is serving a sentence.

United States v. Henderson, 2020 WL 1891888, at *4 (M.D. Pa. Apr. 16, 2020). Thus, Petitioners' reliance on civil immigration cases is misplaced.

In many respects, Petitioners' claims hinge on *Wilson v. Williams*, No. 20-794, 2020 U.S. Dist. LEXIS 70674 (N.D. Ohio Apr. 22, 2020). But that case bears no factual resemblance to this case. And the district court's exercise of habeas jurisdiction in that case has been criticized and cannot be reconciled with controlling precedent in this Circuit.¹⁷ In *Wilson*, COVID-19 infections were described as "rampant among inmates and staff, and numerous inmates have passed away from complications from the virus." *Wilson v. Williams*, No. 20-3447, 2020 U.S. App. LEXIS 14291, at *5 (6th Cir. May 4, 2020). There was also limited availability of testing. *Wilson*, 2020 U.S. Dist. LEXIS 70674, at *5. In sharp contrast to that situation, all of the inmates currently at FCI Fort Dix Camp have tested negative for COVID-19, and there are currently no inmates at the Low outside of quarantine that have tested positive for COVID-19. Moreover, to date, only one inmate at FCI Fort Dix has been hospitalized for COVID-19, and there have been no inmate deaths from COVID-19. Turner-Foster Decl. ¶ 27. FCI Fort Dix also has far more test kits (approximate 432 test with 250 more a week going forward) than the 50 test kits available at the facility in *Wilson*. Compare Turner-Foster Decl. ¶ 23 with *Wilson*, 2020 U.S. Dist. LEXIS 70674, *5. Thus, the *Wilson* case is not instructive.

Similarly, in *Martinez-Brooks v. Easter*, No. 20-569, 2020 U.S. Dist. LEXIS 83300 (D. Conn. May 12, 2020), the district court confronted a much different factual scenario than this case. There, the extent to which the warden had

¹⁷ See *Livas*, 2020 U.S. Dist. LEXIS 71323, *22 n.10. The *Wilson* court also conceded that it was having difficulty applying the "bright line rules" of habeas jurisdiction given the expedited nature and facts of the case. See *Wilson*, 2020 U.S. Dist. LEXIS 70674, at *13.

“implemented adequate measures to control the COVID-19 outbreak at FCI Danbury and protect inmates [wa]s hotly disputed.” *Id.* at *12. Contrasting those facts, Petitioners in this case conceded during the parties’ May 12, 2020 conference that the facts are not largely disputed. Rather, the parties allegedly differ in their sense of urgency regarding these facts. Even more pertinent, as noted above, FCI Fort Dix has implemented the Action Plan and is using an entire team of medical professionals to diagnose, treat, and mitigate the spread of COVID-19. BOP has also established a quarantine unit at FCI Fort Dix, engaged in comprehensive testing and symptom checks, implemented constant, facility-wide cleaning, distributed personal protective equipment, and disseminated information on how to protect both inmates and staff from infection. *See* Turner-Foster Decl. ¶¶ 15-32; Sassaman Decl., *passim*. Thus, *Martinez-Brooks* does not assist Petitioners in this case.

Finally, because the Court lacks jurisdiction over the petition, there is no basis to grant “bail pending habeas.” A grant of bail pending review of a habeas petition is “an exceptional form of relief in a habeas corpus proceeding[.]” *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992). It is available “only when” either (1) “the petitioner has raised substantial constitutional claims upon which he has a high probability of success” or (2) “extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” *Id.* Neither circumstance applies here.

To qualify the first way, the inmate must come forward with “a clear case for habeas relief on the law and facts[.]” *Lucas v. Hadden*, 790 F.2d 365, 367 (3d Cir. 1986). As for the second, the exceptional circumstances must be immediate, concrete, and non-speculative, such as a petitioner being “gravely ill” and receiving “bail on the condition that he enter a hospital to seek necessary medical care.” *Lucas v. Hadden*, 790 F.2d 365, 367 (3d Cir. 1986). Moreover, courts will not find exceptional or extraordinary circumstances where other avenues for relief remain

available. *Id.* at 367-68 (“the pendency of Lucas’s [postconviction] petition in a Pennsylvania court is an additional ground for finding that he has not established the existence of circumstances warranting his admission to bail”).

Here, there is no legal basis for the Court to exercise jurisdiction over the petition, and Petitioners have other avenues of possible relief available to them. Thus, Petitioners cannot satisfy either basis for bail pending a final determination of their habeas petition, which this Court should dismiss entirely in any event under Rule 12(b)(1) of the Federal Rules of Civil Procedure.

II. Petitioners’ Rehabilitation Act Claims Should be Dismissed

Petitioners allege that they and all members of a sub-class of individuals suffer from disabilities, and that their rights are being violated under the Rehabilitation Act of 1973, 29 U.S.C. § 794. Petitioners do not state a claim upon which relief can be granted under this statute, and Petitions failed to exhaust their administrative remedies for these claims. Thus, under Fed. R. Civ. P. 12(b)(6), Petitioners’ Rehabilitation Act claims should be dismissed.

“To succeed under the Rehabilitation Act, a plaintiff must show: (1) that he has a disability; (2) that he is otherwise qualified for the benefit that has been denied; (3) that he has been denied the benefit solely by reason of his disability; and (4) that the benefit is part of a program or activity receiving Federal financial assistance.” *Baxter v. Pennsylvania Dep’t of Corr.*, 661 F. App’x 754, 757 (3d Cir. 2016); *see also Dahl v. Johnston*, 598 F. App’x 818, 819–20 (3d Cir. 2015) (citing 42 U.S.C. § 12132 in an inmate case involving an ADA claim).¹⁸

¹⁸ Claims under the Rehabilitation Act and the Americans With Disabilities Act (“ADA”) are generally reviewed in the same manner and subject to the same standards. *See Yeskey v. Pa. Dep’t of Correc.*, 118 F.3d 168, 170 (3d Cir.) (“all the leading cases take up the statutes together”), *aff’d Pennsylvania Dep’t of Corr. v. Yeskey*, 524 U.S. 206 (1998).

In this case, there are no allegations to support the denial of a benefit, which is the second element necessary to state a claim under the Rehabilitation Act. Petitioners do not allege that BOP denied Petitioners any benefit solely by reason of their alleged disabilities. *Compare Furgess v. Pennsylvania Dep't of Corr.*, 933 F.3d 285, 292 (3d Cir. 2019) (finding disability discrimination where a prison declined to provide a handicapped-accessible shower in the disciplinary unit where officials placed plaintiff); *see also Docherty v. Cape May Cty.*, Civ. No. 15-8785 (RMB), 2017 WL 2819963, at *12 (D.N.J. June 29, 2017) (“Plaintiffs have not alleged that corrections officers permit other inmates to access medical treatment without delay. These facts do not support the conclusion that, solely by reason of their disability, Defendants discriminate against insulin-dependent inmates. Furthermore, no cause of action exists under the ADA to challenge the medical treatment a prisoner received.”).

To the extent Petitioners are alleging they were denied reasonable accommodations for their alleged disabilities, those allegations also fail on their face. Reasonable accommodations depend on “the individual circumstances of each case, and require[] a fact-specific, individualized analysis of the disabled individual’s circumstances and the accommodations that might allow him to” access the specific programs or services in question. *K.N. v. Gloucester City Bd. of Educ.*, 379 F. Supp. 3d 334, 350 (D.N.J. 2019) (internal quotations omitted). Both the disabled person and the public entity are expected to engage in an interactive process to develop the specific accommodation necessary, and feasible, for the particular situation. *See, e.g., Baxter v. Pennsylvania Dep't of Corr.*, 661 F. App'x 754, 757 (3d Cir. 2016) (finding no disability discrimination where the prison proposed an accommodation and plaintiff “said no to this offer and filed this civil action instead” of engaging in the interactive process).

Moreover, a public agency may “resist modifications that entail a ‘fundamenta[l] alter[ation]’ of the States’ services and programs.” *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 603 (1999) (quoting 28 C.F.R. § 35.130(b)(7)). The intent of the Rehabilitation Act, as a remedial civil rights statute, is to create equality of opportunity for disabled persons, not to mandate preferential treatment. *See Filar v. Bd. of Educ. of City of Chicago*, 526 F.3d 1054, 1067 (7th Cir. 2008) (concluding that plaintiff’s “request would have amounted to preferential treatment, which the ADA does not require”); *Kortyna v. Lafayette Coll.*, 47 F. Supp. 3d 225, 242–43 (E.D. Pa. 2014) (“The ADA mandates reasonable accommodation of people with disabilities in order to put them on an even playing field with the non-disabled; it does not authorize a preference for disabled people generally.”) (quoting *Felix v. N.Y.C. Transit Auth.*, 324 F.3d 102, 107 (2d Cir. 2003)).

In this case, Petitioners do not allege that they engaged in an interactive process with BOP. And even if Petitioners had engaged in such a process, which they did not, the accommodation Petitioners seek is not reasonable. For example, the modified living quarters proposed by Petitioners on a class-wide basis could potentially compromise BOP’s ability to manage COVID-19 with its limited resources or alter the safety and security of FCI Fort Dix or the community. The Rehabilitation Act does not permit individual Petitioners to effect broad-based, fundamental changes to BOP’s policies and practices.

Petitioners also do not allege any facts showing that BOP had any discriminatory animus because of their alleged disabilities, which is the third element necessary to plead a Rehabilitation Act claim. *See* Pet ¶ 161 (concluding that BOP is “intentionally” denying Petitioners “reasonable accommodations . . . necessary to protect them from COVID-19.”). Petitioners’ assertion of intent is entirely conclusory. The Court need not consider “legal conclusions” contained

within a complaint, and “a pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do.” *Iqbal*, 556 U.S. at 678.

Petitioners’ conclusory allegations of discriminatory animus are also implausible under *Iqbal* and *Twombly*. On their face, BOP’s actions are motivated by an intent to combat the spread of COVID-19, while at the same time fulfilling its duty to protect inmates and the public. Plaintiffs plead no facts to support their conclusion that the Government is intentionally discriminating against them based on their disabilities in violation of the Rehabilitation Act as part of implementing its Action Plan. *See, e.g., Brown v. Pennsylvania Dep’t of Corr.*, 290 F. App’x 463, 467 (3d Cir. 2008) (“Brown has not alleged facts sufficient to show that the prison denied him access to mental health treatment ‘by reason of’ his alleged disabilities”); *Jenkins v. Glover*, Civ. No. 09-2145-FSH, 2009 WL 2391278, at *5-6 (D.N.J. July 31, 2009) (“Plaintiff has not alleged facts indicating that he was excluded from the work program based on his disability”).

The relief sought by Petitioners under the Rehabilitation Act is in many respects duplicative of the allegations Petitioners argue give rise to BOP’s violations of their constitutional rights. Petitioners’ constitutional claims rest on allegedly deficient precautions taken by BOP in the Action Plan to avoid the spread of COVID-19. Similarly, Petitioners’ claims under the Rehabilitation Act seek to remedy many of those same alleged deficiencies:

[S]eparate living spaces rather than high-capacity shared rooms and dorms with people in close proximity; free distribution of adequate cleaning supplies, including soap; free distribution of adequate personal protective equipment, including masks and gloves; staggered access to bathrooms, meals, and other shared resources; assignments of correctional staff that mitigates the possibility staff will transmit COVID-19, even asymptotically, from one building to another; and adequate access to tests and information about risk.

Id. ¶ 162. Petitioners should not be permitted to avoid the jurisdictional bar to their

constitutional claims by repackaging these same claims as violations of the Rehabilitation Act. Federal courts frequently conclude that civil rights actions and actions for declaratory relief must be dismissed and brought separately from petitions for habeas corpus. *See Johnson*, 2012 WL 5880344, at *8 and n.5 (habeas petitioner brought multiple civil rights complaints, including a putative claim under the Rehabilitation Act); *Foster v. Albino*, Civ. No. 09-1486-JBS, 2009 WL 1874073, at *1 (D.N.J. June 24, 2009) (“The Second Amended Petition (which is a § 1983 civil complaint) cannot be entertained in this habeas action: Petitioner should raise these claims in a separate civil matter, upon either pre-paying his filing fee or duly obtaining the required *in forma pauperis* status.”).

Finally, Petitioners did not exhaust their administrative remedies regarding any alleged violations of the Rehabilitation Act. Federal inmates are required to follow a two-part administrative process to exhaust remedies before proceeding on a Rehabilitation Act claim in federal court. *See* 28 C.F.R. § 39.170(d)(1)(ii); *see also Elliott v. Wilson*, Civ. No. 15-01908, 2017 WL 1185213, at *14 (D. Minn. Jan. 17, 2017), *R&R adopted*, Civ. No. 15-1908, 2017 WL 1180422 (D. Minn. Mar. 29, 2017); *Bryant v. United States Bureau of Prisons*, Civ. No. 11-0254, 2011 WL 13261983, at *4 (C.D. Cal. July 11, 2011). First, inmates have to follow the procedures set forth at 28 C.F.R. part 254. Once that is exhausted, if the inmate did not obtain satisfactory relief, the inmate must file an administrative complaint with the Director for Equal Employment Opportunity at the Department of Justice. *See* 28 C.F.R. § 39.170(d)(4). In this case, however, Petitioners do not allege that they satisfied this administrative exhaustion requirement by filing a claim with the appropriate BOP and Department of Justice officials, and the BOP has no records of any such claim. *See* Clark Decl. ¶ 5 and Exs. 1-3.

Thus, this Court should dismiss Petitioners’ Rehabilitation Act claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

III. Alternatively, Petitioners' Motion for a Preliminary Injunction Should be Denied

Petitioners cannot satisfy the elements to meet the extraordinary standard for injunctive relief for the multiple reasons set forth below. *N.J. Retail*, 669 F.3d at 385-86.

A. Petitioners Cannot Demonstrate a Reasonable Probability of Success on the Merits or Irreparable Harm

Petitioner's continued detention does not violate the Eighth Amendment to the Constitution. There is no evidence that the Government is acting with a reckless disregard for Petitioners' safety or deliberate indifference to his medical needs. To demonstrate deliberate indifference regarding medical care, an inmate must show: (1) that alleged deficiencies in medical care are objectively "sufficiently serious"; and (2) that government actors "have a sufficiently culpable state of mind." *Thomas v. Tice*, 948 F.3d 133, 138 (3d Cir. 2020).

In the context of exposing inmates to risk of disease, a claim must be dismissed if it does not pose a threat that is so severe that it would be "contrary to current standards of decency for anyone to be so exposed." *Helling v. McKinney*, 509 U.S. 25, 35 (1993). A plaintiff must also show that BOP "knows of and disregards an excessive risk to inmate health or safety; the official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). Stated differently, "neither negligence nor strict liability is the appropriate inquiry in prison-conditions cases." *Steading v. Thompson*, 941 F.2d 498, 499-500 (7th Cir. 1991) (Easterbrook, J.).

In this case, there is no evidence that Respondents are acting with deliberate indifference. Petitioners do not allege that they are receiving inadequate medical care, and Petitioners cannot demonstrate that BOP is exposing them to a threat of

disease so severe that it is contrary to current standards of decency. Since January 2020, in order to combat the spread of COVID-19 at its institutions, BOP has been coordinating with subject-matter experts at multiple organizations and agencies, including the CDC.¹⁹ As a result of these ongoing efforts, BOP implemented a multi-phased operational Action Plan seeking to “mitigate the spread of COVID-19” among inmates and staff, continue effective operations of the federal prison system, and ensure that staff remain healthy and available for duty. *Id.*

Regarding implementation of the Action Plan, personnel at FCI Fort Dix are using an entire team of medical professionals to diagnose, treat, and mitigate the spread of COVID-19. BOP has also established a quarantine unit at FCI Fort Dix, engaged in comprehensive testing and symptom checks, purchased specialized cleaning products, distributed personal protective equipment, and disseminated information on how to protect both inmates and staff from infection. *See Turner-Foster Decl.* ¶¶ 15-32; *Sassaman Decl.* ¶¶ 7-17. Under these circumstances, there is no legal basis to conclude BOP is violating current standards of decency. As the Third Circuit stated in the context of a compassion release request, “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.” *Raia*, 2020 WL 1647922, at *2.

Accordingly, at least two district courts recently found that inmates could not demonstrate a reasonability of success in proving a constitutional violation as a result of COVID-19. Rather, BOP “made significant changes in operations in response to COVID-19.” *Grinis*, 2020 U.S. Dist. LEXIS 81464, *3-4 (“There is a

¹⁹ *See Federal Bureau of Prisons COVID-19 Action Plan*, https://www.bop.gov/resources/news/20200313_covid-19.jsp (last visited May 10, 2020).

substantial question whether the relief the petitioners seek,” which is release because of COVID-19, is properly sought by means of a habeas petition under § 2241.”); *Nellson*, 2020 U.S. Dist. LEXIS 66971, at *17 (“Assuming that the objective component is met, and that prison officials know of the risk of COVID-19, plaintiff has not demonstrated that defendants have disregarded that risk.”).

Finally, recent opinions granting the release of immigration detainees are distinguishable. As noted above, those immigration cases are based on a different constitutional standard—the Fifth Amendment and not the Eighth Amendment, which is a different standard. *Henderson*, 2020 WL 1891888, at *4 (“Different interests must be balanced when a criminal defendant has been detained only after a finding that no condition or combination of conditions will assure the presence of the defendant and the safety of the community. The balancing is likewise different when a criminal defendant is serving a sentence.”). Thus, those cases ordering the release of detainees are distinguishable, and Petitioners’ cannot demonstrate a reasonable probability of success on the merits of their Eighth Amendment claims.

B. Moreover, Extraordinary Injunctive Relief Is Unwarranted Where Petitioners Failed to Exhaust Administratively

An injunction is unwarranted (and the habeas petition should be dismissed) because Petitioners failed to fully exhaust their administrative remedies before filing their petition in federal court. The Prison Litigation Reform Act requires an inmate filing a prison-conditions lawsuit to have exhausted all available administrative remedies. *See* 42 U.S.C. § 1997e(a) (“No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.”).

This mandatory exhaustion requirement applies to all suits regarding prison life, including inmates raising concerns over COVID-19. *See Nellson v. Barnhart*,

No. 20-756, 2020 U.S. Dist. LEXIS 66971, at *13 (D. Colo. Apr. 16, 2020) (“The Court finds that plaintiff has failed to exhaust his administrative remedies before seeking judicial relief” regarding COVID-19.) (citing *Ross v. Blake*, 136 S. Ct. 1850, 1856-57 (2016)); *see also Valentine v. Collier*, No. 20-20207, 2020 U.S. App. LEXIS 12941, at *15 (5th Cir. Apr. 22, 2020) (per curium) (staying injunction because petitioners failed to exhaust administrative remedies).

There is no exception to this PLRA exhaustion requirement for special circumstances. *See Ross*, 136 S. Ct. at 1856-57 (2016) (“mandatory language means a court may not excuse a failure to exhaust, even to take such circumstances into account”). In fact, the only “exception” to the exhaustion requirement is when the administrative remedy process is “unavailable.” *Id.* at 1858. In *Ross*, the Supreme Court outlined just three situations in which a prisoner can show that the administrative remedy process is “unavailable”:

(1) “when (despite what regulations or guidance materials may promise) it operates as a simple dead end -- with officers unable or consistently unwilling to provide any relief to aggrieved inmates,” such as in the hypothetical situation in which “a prison handbook directs inmates to submit their grievances to a particular administrative office—but in practice that office disclaims the capacity to consider those petitions”; (2) when “some mechanism exists to provide relief, but no ordinary prisoner can discern or navigate it”; and (3) “when prison administrators thwart inmates from taking advantage of a grievance process through machination, misrepresentation, or intimidation.”

Id. at 1859-60.

In this case, none of those three “exception” scenarios are relevant. First, the process is not a “dead end.” As noted from the chart above, numerous inmates are being granted relief, just not Petitioners. Second, at least some of the Petitioners are highly sophisticated and can “discern” and have navigated the process for seeking relief. Third, there are no allegations in the petition that BOP has “thwarted” Petitioners from taking advantage of the grievance process. The

established statutory and regulatory process for home confinement and compassionate-release requests is working. Petitioners just disagree with the answers they are getting to their requests, and they want another bite at the apple.²⁰

C. Petitioners' Request for Immediate Release is Barred by the PLRA, Overly Broad, and Procedurally Improper

Under the PLRA, a “prisoner release order” may only “be entered . . . by a three-judge court,” and then only if certain conditions have been met. 18 U.S.C. § 3626(a)(3). Congress broadly defined a prisoner release order as “any order, including a temporary restraining order or preliminary injunctive relief, that has the purpose or effect of reducing or limiting the prison population, or that directs the release from or nonadmission of prisoners to a prison.” 18 U.S.C. § 3626(g)(4); *see Bowers v. City of Philadelphia*, No. 06-3229, 2006 WL 2601604, at *7 (E.D. Pa. Sept. 8, 2006) (construing “prisoner release order” broadly to encompass an order addressing prison overcrowding).

Among other requirements, “***no court shall enter a prisoner release order unless*** -- (i) a court has previously entered an order for less intrusive relief that has failed to remedy the deprivation of the Federal right sought to be remedied through the prisoner release order; and (ii) the defendant has had a reasonable

²⁰ To the extent Petitioners ultimately cite to any cases that excused this mandatory PLRA exhaustion requirement, they are likely to predate the Supreme Court’s analysis in *Ross* in 2016. Furthermore, even if the PLRA’s exhaustion requirement did not apply to the petition, which it does, and even if the Court considered the petition cognizable in habeas under 28 U.S.C. § 2241, which it should not, “a federal prisoner ordinarily may not bring a petition for writ of habeas corpus under 28 U.S.C. § 2241, challenging the execution of his sentence, until he has exhausted all available administrative remedies.” *Anderson v. Schultz*, No. 10-3933 (RBK), 2011 U.S. Dist. LEXIS 51379, at *6 (D.N.J. May 12, 2011) (citing *Callwood v. Enos*, 230 F.3d 627, 634 (3d Cir. 2000)).

amount of time to comply with the previous court orders.” 18 U.S.C. § 3626(a)(3) (emphasis added). Stated another way, the PLRA “restrict[s] the equity jurisdiction of federal courts,” *Gilmore v. People*, 220 F.3d 987, 999 (9th Cir. 2000), and, “[b]y its terms . . . restricts the circumstances in which a court may enter an order ‘that has the purpose or effect of reducing or limiting the prison population,’” *Brown v. Plata*, 563 U.S. 493, 511 (2011) (quoting 18 U.S.C. § 3626(g)(4)). The PLRA’s “requirements ensure that the ‘last remedy’ of a population limit is not imposed ‘as a first step.’” *Id.* at 514 (quoting *Inmates of Occoquan v. Barry*, 844 F.2d 828, 843 (D.C. Cir. 1988)) (internal quotation marks omitted). “The release of prisoners in large numbers . . . is a matter of undoubted, grave concern.” *Id.* at 501.

Even if Petitioners satisfied these procedural requirements, which they do not, “[t]he PLRA mandates that ‘[p]reliminary injunctive relief must be narrowly drawn, extend no further than necessary to correct the harm the court finds requires preliminary relief, and be the least intrusive means necessary to correct that harm.’” *Valentine v. Collier*, No. 20-20207, 2020 U.S. App. LEXIS 12941, at *18 (5th Cir. Apr. 22, 2020) (quoting 18 U.S.C. § 3626(a)(2)). The PLRA also requires that “courts shall give substantial weight to any adverse impact on public safety or the operation of a criminal justice system caused by the preliminary relief” *Id.* at *18-19 (quoting 18 U.S.C. § 3626(a)(2)).

The recent district court case *Money v. Pritzker*, -- F. Supp. 3d --, No. 20-cv-2093, 2020 WL 1820660 (N.D. Ill. Apr. 10, 2020) is instructive here. The court concluded that the relief sought—even if reframed as a “process” for an “expedited, individualized review and relocation” of inmates, rather than as the ordering of mass release—was indeed a “prisoner release order” subject to the PLRA. *Id.* at *13-14. The court therefore held that the PLRA prevented it from entering the relief requested. *Id.* The same is true here, and the PLRA prohibits this Court from

ordering the release of Petitioners from FCI Fort Dix, whether by ordering directly, through a process of its own, or through a special master's process.

In addition to these procedural bars under the PLRA, Petitioners' requested relief is contrary to well-established principles of equity. "The function of a court is limited to determining whether a constitutional violation has occurred, and to fashioning a remedy that does no more and no less than correct that particular constitutional violation." *Hoptowit v. Ray*, 682 F.2d 1237, 1246 (9th Cir. 1982) (citing *Rhodes v. Chapman*, 452 U.S. 337, 352 (1981); see also *Swann v. Charlotte-Mecklenburg Bd. of Educ.*, 402 U.S. 1, 16 (1971)). "[I]t is axiomatic that the remedial power of a district court is coterminous with the scope of the constitutional violation found to exist." *Newman v. Alabama*, 503 F.2d 1320, 1332-33 (5th Cir. 1974).

Lastly, Petitioners' requested relief should be denied because it constitutes a mandatory injunction, which disrupts the status quo regarding Petitioners' confinement. See *N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) ("Because mandatory injunctions disrupt the status quo, a party seeking one must meet a heightened legal standard by showing a clear or substantial likelihood of success on the merits.") (quotations and citations omitted). Petitioners in this case cannot overcome this high threshold for a mandatory injunction considering the public interests at stake.

D. The Court Should Strike Petitioners' Class Allegations

Petitioners are purporting to represent (and seek immediate release for) a class consisting of all current and future inmates "over the age of 50 or who experience medical conditions that make them vulnerable to COVID-19." Pet. ¶ 135. But the proposed class fails on its face to satisfy the requirements of Rule 23(a) of the Federal Rules of Civil Procedure. Thus, there can be no preliminary injunctive relief for such a class, and the class allegations should be struck from the petition.

See, e.g., Zarichny v. Complete Payment Recovery Servs., Inc., 80 F. Supp. 3d 610, 624 (E.D. Pa. 2015) (The Court may “strike class action allegations if class treatment on the face of the complaint leaves little doubt they are not viable.”) (citing *Landsman & Funk PC v. Skinder-Strauss Assocs.*, 640 F.3d 72, 93 n.30 (3d Cir. 2011)).

Under Rule 23(a), one or more members of a class may sue on behalf of all members only if: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a). Here, Petitioners cannot satisfy any of these elements for class certification.

Habeas petitions are ordinarily handled on an individual basis, and “the permutations here are endless.” *Money*, 2020 WL 1820660, at *15 (denying class treatment for COVID-19 habeas petition). Petitioners in the proposed class have different preexisting medical conditions, different security classifications, and different placements (the Camp and the Low) within FCI Fort Dix. There are also inmates who have recovered from COVID-19, inmates who are currently quarantined, and inmates who have never displayed symptoms or contracted the illness. There would be no feasible way for the Court to decide the constitutionality of these inmates’ conditions of confinement without evaluating all of those different conditions. “Simply put, there is no way to decide which inmates should stay, and which inmates should go, without diving into an inmate-specific inquiry.” *Id.*

The reasoning of the court in *Money* is identical to basis for this District’s Standing Order 2020-10 pertaining to COVID-19 civil immigration petitions. In that standing order, Chief Judge Wolfson ordered that petitions “filed with multiple petitioners” shall be severed by the Clerk and opened into “individual actions with

one named petitioner.” In issuing this standing order, Chief Judge Wolfson found that each petition raised “unique[]” issues because of different “underlying medical conditions.” Likewise, the members of Petitioners’ proposed class have unique issues and different underlying medical conditions. Thus, this Court should be guided by Standing Order 2020-10 and find that Petitioners’ proposed class is inappropriate and contrary to Rule 23(a).

E. The Balance of the Equities and the Public Interest Favor the Government

Petitioners’ request for a preliminary injunction should also be denied because the balance of the equities and the public interest favor the Government. “[T]he Supreme Court has repeatedly warned that “it is ‘difficult to imagine an activity in which a State has a stronger interest, or one that is more intricately bound up with state laws, regulations, and procedures, than the administration of its prisons.’” *Valentine*, 2020 U.S. App. LEXIS 12941, at *15 (quoting *Woodford v. Ngo*, 548 U.S. 81, 94, 126 S.Ct. 2378, 165 L.Ed.2d 368 (2006)).

Accordingly, numerous courts have either denied injunctions seeking immediate release because of COVID-19 or stayed injunctions on appeal. *See id.* (staying injunction releasing inmates based on COVID-19); *see also Alvarez*, No. 20-782, ECF No. 46 at 10 (“Here, the Court could not issue injunctive relief without unfairly intruding on Defendants’ operation of the prison system and defying Congress’s clear policy determinations regarding challenges to prison conditions and prisoner release orders.”); *Nellson*, 2020 U.S. Dist. LEXIS 66971, at *17 (denying injunction because COVID-19 protocols were implemented by BOP).

In denying an injunction, these courts do not question “whether COVID-19 presents a danger to the inmates[.]” *Swain v. Junior*, -- F.3d --, 2020 WL 2161317, at *5 (11th Cir. May 5, 2020). But the more relevant question is “whether the plaintiffs have shown that they will suffer irreparable injuries that they would not

otherwise suffer in the absence of an injunction.” *Id.* (citations omitted). Given BOP’s enormous good-faith efforts at FCI Fort Dix, “[n]othing in the record indicates that the defendants will abandon the current safety measures absent a preliminary injunction, especially since [BOP] implemented many of those measures before the plaintiffs even filed the complaint.” *Id.* Thus, the balance of the equities and the public interest favor Respondents, and Petitioners’ request for a preliminary injunction should be denied.

CONCLUSION

For the foregoing reasons, the Court should dismiss Petitioners’ petition for a writ of habeas corpus, in its entirety, for lack of jurisdiction. Additionally, the Court should dismiss Petitioners’ claims under the Rehabilitation Act for failure to state a claim. Alternatively, the Court should deny Petitioners’ motion for a preliminary injunction and, in doing so, strike the class allegations.²¹

Respectfully submitted,
CRAIG CARPENITO
United States Attorney

By: /s/ J. Andrew Ruymann
J. ANDREW RUYMANN
Chief, Civil Division
MARK E. COYNE
Chief, Appeals Division
ELIZABETH A. PASCAL
Deputy Chief, Civil Division
JOHN F. BASIAK JR.
JOHN T. STINSON
Assistant U.S. Attorneys
Attorneys for Respondents

Dated: May 18, 2020

²¹ If the Court denies Respondents’ motion to dismiss, Respondents respectfully request 14 days in which to file an answer to the petition.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TROY WRAGG, MICHAEL SCRNIC,
LEONARD BOGDAN, and ELIEZER
SOTO CONCEPCION, individually
and on behalf of others
similarly situated,

Petitioners,

v.

DAVID E. ORTIZ, Warden of the
Federal Correctional
Institution, Fort Dix and
MICHAEL CARVAJAL, Director of
the Federal Bureau of Prisons,

Respondents.

Civil Action No. 20-05496(RMB)

DECLARATION OF JAMES REISER

I, James Reiser, declare the following under 28 U.S.C.
§ 1746, and state that under penalty of perjury the following
is true and correct to the best of my knowledge and belief:

I. PERSONAL BACKGROUND

1. I am currently employed by the Federal Bureau of
Prisons ("BOP") of the United States Department of Justice, as
a Case Management Coordinator, at the Federal Correctional
Institution ("FCI"), Fort Dix, New Jersey.

2. The CMC's Office is dedicated to providing oversight
of case management activities within the institution. This
office works directly with the unit teams, providing training

and disseminating information to ensure that the institution complies with Correctional Programs' policies and procedures. The CMC provides coordination and oversight of many programs within the institution, including, but not limited to, Central Inmate Monitoring, Financial Responsibility, Admission and Orientation, Inmate Performance Pay, Victim/Witness Program, and Adam Walsh Act compliance. The CMC also oversees the Correctional Systems Department. I have been employed by the BOP since January 1998. I have held my current position of CMC for approximately one year, but have worked in Correctional Programs for approximately 18 years.

II. STRUCTURE OF FCI FORT DIX

3. FCI Fort Dix is the largest federal prison in America in terms of capacity, capable of housing up to 5,000 inmates. The institution is comprised of a Low security facility and a Minimum security satellite camp. The Low security facility is made up of two separate Compounds, "East" and "West," which are completely separated by razor wire fencing and roadways. The Camp is also completely separate from the Low compounds. Currently, FCI Fort Dix houses under 2,900 inmates in total.

4. FCI Fort Dix is a former military installation that was converted into a prison in the early 1990s. The inmate living quarters or "housing units" in the Low facility, are former military barracks. The housing units have three floors,

consisting of 12-man rooms and a small number of 2-man rooms. Each unit has multiple communal showers and television rooms. A housing unit can hold approximately 370 inmates. Currently, the housing units house approximately 260 inmates. Inmate Wragg is currently assigned to a 12-man room that houses only 8 inmates. Prior to his transfer to home confinement, discussed below, Inmate Bogdan was housed in a 2-man room with only one other inmate.

5. The majority of FCI Fort Dix's inmates reside in the Low facility. Like the Camp, the Low is program-oriented, but it has more perimeter fencing and a higher staff-to-inmate ratio. Currently, the population of general population inmates in the Low institution is 2,539, down from approximately 4,000 inmates a year ago. The Low has a total capacity of over 4,700 inmates. Although not COVID-related, this decrease in population has allowed us to socially distance more than we would have approximately one year ago.

6. The Camp is a large structure that has two "wings" with open bay bunks for inmate living quarters in dormitory-style housing. Each side can hold approximately 200 inmates. The Camp has a relatively low staff-to-inmate ratio and is work- and program-oriented. The Camp is self-sufficient in that all departments are located within the Camp including Food Service, Medical, Education, and Laundry. Currently, the population in

the minimum security Camp is 123 inmates, with 293 open beds. This is allowing for much better social distancing at the Camp. Inmates Scronic and Soto-Concepcion are designated to the Camp. As will be further detailed in the declaration of the Clinical Director, the 123 Camp inmates have all tested negative for the COVID-19 virus.

III. COMPASSIONATE RELEASE/ REDUCTION IN SENTENCE PROCEDURES

7. BOP does not have the authority to provide inmates with "early release." A reduction of an inmate's federal sentence can only be accomplished by an Article III judge, and specifically, the inmate's sentencing judge. However, upon an inmate's request, the Director of BOP may make a motion to an inmate's sentencing court to reduce a term of imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(1)(A). This process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*. (This BOP program statement and all other program statements and operations memoranda cited herein are available at www.bop.gov via the Resources link). BOP invokes these statutory authorities in "extraordinary or compelling circumstances," which could not have reasonably have been foreseen by the court at the time of sentencing. The First Step Act, codified at 18 U.S.C. § 3582, specifies that an inmate may file a Motion for

Reduction of Sentence directly to the sentencing court after exhaustion of administrative remedies, or 30 days from the date the Warden receives such a request from the inmate, whichever is earlier. The determination of release is ultimately the decision of the sentencing court.

8. Upon information and belief, as has been submitted to me from the FCI Fort Dix Reduction in Sentence Coordinator, approximately 413 Reduction in Sentence requests have been submitted by FCI Fort Dix inmates, since the beginning of the COVID-19 pandemic.

9. Concerning the four named Petitioners in this case, three have submitted Reduction in Sentence Requests in light of COVID-19. Troy Wragg, Reg. No. 67165-019, submitted a RIS request and was denied on or about April 17, 2020. See Attachment 1, Wragg RIS Request and denial. The sole basis for his request was seeking a release based upon potential COVID infection. It did not meet the necessary criteria for a RIS under BOP policy. On or about May 3, 2020, Wragg filed a new request as an inmate with a Debilitated Medical Condition. See Attachment 2, Wragg RIS request May 2020. The response is still pending.

10. Michael Scronic, Reg. No. 79605-054, submitted a request on or about April 16, 2020 as an inmate with a Debilitated

Medical Condition. See Attachment 3, Scronic RIS request. This request is still pending.

11. Eliezer Soto-Concepcion, Reg. No. 72850-067, submitted a request on or about April 13, 2020 as an inmate with a Debilitated Medical Condition. See Attachment 4, Soto-Concepcion RIS request. This request is still pending.

12. Leonard Bogdan, Reg. No. 07918-088, filed a request in August 2019 as an Elderly Inmate with Medical Conditions. The request was denied on August 15, 2019, because he had not served 50% of his sentence. See Attachment 5, Bogdan RIS request and denial. He has not submitted a new request based on COVID-19.

IV. BOP'S AUTHORITY TO PLACE INMATES ON HOME CONFINEMENT

13. Although BOP lacks the authority to release an inmate from his sentence, BOP has the authority to transfer a prisoner to home confinement for the remainder of his or her sentence pursuant to provisions and limitations set forth 18 U.S.C. § 3624(c)(2) and 34 U.S.C. § 60541. See also BOP Program Statement 7320.01, *Home Confinement and BOP Operations Memorandum, Home Confinement under the First Step Act*, both of which are available on www.bop.gov via the Resources link.

A. BOP'S AUTHORITY UNDER 18 U.S.C. § 3624(c)(2).

14. Under 18 U.S.C. § 3624(c)(2), BOP has the exclusive authority to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6

months. BOP, shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under section 3624(c)(2). During the inmate's incarceration, BOP institution staff are responsible for making referrals to Residential Reentry Centers (RRCs) or home confinement typically within 17-19 months of the prisoner's release date.

15. In order to appropriately evaluate an individual for home confinement, the staff assesses the risk of criminal activity in the community and determines whether there is an appropriate home where the individual can be placed. This is a time and resource intensive process. Upon receipt of the staff assessment, BOP reviews the assessment and makes the final determination regarding home confinement. If approved, absent any disciplinary infractions, the inmate would serve the remainder of his or her sentence on home confinement.

B. BOP'S AUTHORITY UNDER 34 U.S.C. § 60541.

16. Under 34 U.S.C. § 60541, BOP may release some or all eligible elderly offenders and eligible terminally ill offenders from BOP facilities to home detention, upon written request from either BOP staff, or an eligible elderly offender or eligible terminally ill offender. The statute defines "eligible elderly offender" to include an inmate who is not less than 60 years of age; who is serving a term of

imprisonment that is not life imprisonment based on a conviction for an offense or offenses that do not include any crime of violence; has served two-thirds of the term of imprisonment to which the offender was sentenced; who has not been convicted in the past of any Federal or State crime of violence, sex offense, or other offense referenced in the statute; who has not been determined by BOP to have a history of violence, or of engaging in conduct constituting a sex offense or other excluded offense; who has not escaped, or attempted to escape from a BOP institution; whose release to home detention will result in a substantial net reduction of costs to the Federal Government; and who has been determined by BOP to be at no substantial risk of engaging in criminal conduct or of endangering any person or the public if released to home detention.

17. "Eligible terminally ill offender" is defined as an offender in the custody of BOP who meets all of the above-stated criteria except the age restriction, and has been determined by a medical doctor approved by BOP (i.e., Clinical Director of the local institution) to be in need of care at a nursing home, intermediate care facility, or assisted living facility, or diagnosed with a terminal illness.

18. In order to appropriately evaluate an elderly or terminally ill individual for home confinement, BOP assesses

the risk of criminal activity in the community and determines whether there is an appropriate home where the individual can be placed. As mentioned earlier, this is a time and resource intensive process.

19. If approved, absent any disciplinary infractions, the inmate would serve the remainder of his or her sentence on home confinement.

20. Pursuant to the statute, a violation by an eligible elderly or terminally ill offender of the terms of home detention (including the commission of another Federal, State, or local crime) shall result in the removal of that offender from home detention and the return of that offender to an appropriate BOP institution, as determined by BOP.

21. Inmates that do not meet the criteria for the elderly home confinement can be placed on home confinement under BOP's general authority to do so, 18 U.S.C. § 3624(c)(2).

22. In light of the COVID-19 pandemic, BOP is maximizing its authority to place inmates on home confinement and is expediting the process as much as possible in furtherance of the Attorney General's memoranda dated March 26, 2020 and April 3, 2020. These documents directed BOP to prioritize the use of its statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19

pandemic, and provided further guidance concerning criteria to be used.

C. THE CARES ACT.

23. The Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), Pub. L. 116-136, authorizes the Attorney General to expand the cohort of inmates who can be considered for home confinement upon his finding of emergency conditions which are materially affecting the function of BOP. On April 3, 2020, the Attorney General made that finding and authorized the Director of BOP to immediately maximize appropriate transfers to home confinement of all appropriate inmates held at FCI Oakdale, FCI Danbury, FCI Elkton, and other similarly situated BOP facilities where COVID-19 is materially affecting operations.

24. Pursuant to the Attorney General's direction, FCI Fort Dix received rosters of inmates to be considered for home confinement. That guidance mandates that the following criteria should be met when reviewing and referring inmates for home confinement: primary or prior offense is not violent; primary or prior offense is not a sex offense; primary or prior offense is not terrorism; no detainer for the inmate; the inmate's Mental Health Care Level is less than CARE-MH 4; the inmate's recidivism risk score is Minimum; the inmate has had no incident reports in the past 12 months (regardless of

severity level); the inmate is a U.S. citizen; the inmate has a BRAVO score (custody classification) of Low or Minimum; and the inmate has a viable release plan. As part of this review, not only does Unit Team review each inmate, a review is conducted by the Special Investigative Services Department (SIS) and the Medical Department. SIS determines if the inmate has engaged in violent or gang-related activity in prison. Medical conducts multiple reviews. Initially, Medical must determine the age and vulnerability of the inmate related to COVID-19 risk factors in accordance with CDC and prevention guidelines. Additionally, Medical reviews the conditions under which the inmate would be confined upon release to determine whether those conditions would present a lower risk of contracting COVID-19 than the inmate would face at the BOP facility, and also determines whether frequent and on-going medical care is required within the next 90 days. Priority is given to inmates that have served at least 50% of their sentence imposed. Initially, the BOP identified inmates that met the above criteria and served at least 50% of the sentence imposed. However, in order to make more inmates eligible for home confinement, the BOP changed the criteria to 50% of the statutory sentence (i.e. the sentence length factoring in good conduct time). Further, as of May 8, 2020, the BOP has expanded the criteria as it relates to disciplinary history, and inmates

with 300 or 400 level offenses in their history within the last 12 months can now be considered for home confinement.

25. FCI Fort Dix has completed eligibility review of its inmates under the CARES Act, and 56 inmates have been referred for transfers to home confinement. Twenty-one of those inmates have already been transferred to home confinement, and 19 are scheduled to transfer to home confinement through the month of May. While all FCI Fort Dix inmates identified by the BOP as eligible for transfer to home confinement have been reviewed, any inmate who believes he or she is eligible may request to be referred to home confinement and provide a release plan to his or her Case Manager. The inmates receiving transfers must quarantine for fourteen days prior to transfer. For inmates transferring from the Camp (a location where positive COVID-19 cases were designated), they are placed in housing unit 5735 after testing negative for the COVID-19 virus so that they can quarantine safely and maximize social distancing. Having completed its reviews of the inmate populations at FCIs Oakdale, Danbury, and Elkton as its primary focus, BOP is now reviewing all inmates in its remaining facilities to determine which ones meet the criteria established by the Attorney General.

26. Concerning the four named Petitioners in this case, I will now detail the status and review of each for extended home confinement. First, Leonard Bogdan, Reg. No. 07918-088, serving

a sentence out of the Southern District of Florida, became eligible for CARES Act home confinement placement when the BOP expanded the 50% of sentence served criteria. He was scheduled to transfer to home confinement on May 14, 2020, under the CARES Act. See Attachment 6, Bogdan Inmate Profile. On May 13, 2020, the Probation Department in his release district of West Virginia notified the institution that inmate Bogdan's wife refused to allow him to release to her home. Bogdan was notified and given the opportunity to provide another release residence, but he was unable to provide another location. As such, Probation denied his placement in their district, and his home confinement date was removed. See Attachment 7, Probation Department Denial Memo.

27. Troy Wragg, Reg. No. 67165-019, is currently serving a 144-month sentence out of the Eastern District of Pennsylvania with a Projected Release Date from BOP custody on August 7, 2037. He has served approximately 1 year and 5 months, which equates to only 6.7% of his term of imprisonment. See Attachment 8, Wragg Public Information. Further, Wragg is not a candidate for extended home confinement because his recidivism risk score is too high. See Attachment 9, Wragg Inmate Profile. He has a "Low" recidivism risk score, however a "Minimum" risk score is required. (This is a risk and needs assessment tool. Every inmate has a recidivism classification score. Pursuant to the

reviews currently be conducted for expanded home confinement review, the lowest recidivism score of "Minimum" is required.

28. Eliezer Soto-Concepcion, Reg. No. 72850-067, is currently serving a 144-month sentence out of the Western District of Pennsylvania with a Projected Release Date from BOP custody on September 5, 2025. He has served approximately 4 years and 11 months, which equates to only 41% of his term of imprisonment. See Attachment 10, Soto-Concepcion Public Information. Additionally, Soto-Concepcion is not a candidate for extended home confinement because his recidivism risk score is a "Low." See Attachment 11, Soto-Concepcion Inmate Profile.

29. Michael Scronic, Reg. No. 79605-054, is currently serving a 96-month sentence out of the Southern District of New York with a Projected Release Date of September 18, 2025. He has served approximately 1 year and 5 months, which equates to 18% of his term of imprisonment. See Attachment 12, Scronic Public Information Data. As such, he is not a priority for early placement in home confinement.

30. Attached hereto, please find true and correct copies of the following documents:

Attachment 1 - Inmate Wragg Compassionate Release request and denial;

Attachment 2 - Inmate Wragg Compassionate Release request May 2020;

Attachment 3 - Inmate Scronic Compassionate Release request;

Attachment 4 - Inmate Soto-Concepcion Compassionate Release request;

Attachment 5 - Inmate Bogdan Compassionate Release request and denial, August 2019;

Attachment 6 - Inmate Bogdan Inmate Profile;

Attachment 7 - Probation Office Denial Memo for inmate Bogdan;

Attachment 8 - Inmate Wragg Public Information Data;


Attachment 9 - Inmate Wragg Inmate Profile;

Attachment 10 - Inmate Soto-Concepcion Public Information Data;

Attachment 11 - Inmate Soto-Concepcion Inmate Profile;

Attachment 12 - Inmate Scronic Public Information Data.

I declare that any and all records attached to this declaration are true and accurate copies maintained in the ordinary course of business by the Federal Bureau of Prisons. I further declare that the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746.



JAMES REISER
Case Management Coordinator
FCI Fort Dix

5/18/2020
Date

ATTACHMENT 1

Dear Warden Ortiz,

My name is Troy Benjamin Wragg and my register number is 67165-019. I am currently under your Wardenship at FCI Fort Dix West in Building 5812 115 5L. I am writing today to request Compassionate Release.

Given the worldwide pandemic that has halted operations around the globe and has killed thousands of people in the U.S. and even more abroad, I am hereby requesting to be released on the grounds of the Compassionate Release provisions of the First Step Act of 2018. The Coronavirus/COVID-19 has torn apart tens of thousands of lives in the United States alone, especially throughout New York and New Jersey, where Fort Dix is located.

I am in the BOP system as "Chronic Care" for three different conditions. Those conditions are: Epilepsy, Mental Health, and High Blood Pressure. Given I have a history of heart disease and hospitalizations for all three of these items, that is how I have been listed since my incarceration in the BOP starting November 9, 2018. All three of these issues are affected by the Coronavirus, given the fact that most cases of epilepsy, including mine, increase when the immune system is weaker and stress levels are elevated. Not only do I have severe grand-mal seizures, I have broken bones during a seizure as my records will show at FDC Philadelphia, where I had a seizure so serious that I broke my wrist while in BOP custody due to not receiving a proper dosage of the medicine I needed. My blood pressure is constantly elevated and my mental health has suffered greatly, as you could imagine given this global pandemic.

Furthermore, I am much weaker than usual right now. I have gone five plus days without my primary seizure medicine called Keppra. I put in my order for my refill on TruLincs last Tuesday, March 17th, 2020. My order was not ready last Friday, March 20th, 2020 when I went. I sent a cop-out at this time to AW Operations given the severity of my condition. It was Dr. Housman who helped me get the issue resolved yesterday and I was able to pick up my medicine this morning. While I have my medicine now - this does not change the fact that I am very weak due to constant seizures over the last five days and that I am even more susceptible to getting ill, such as from the Coronavirus.

I have been a model inmate since arriving at Fort Dix. I have no shots. I teach two classes for Mr. Naylor (Business Management and Business Marketing) and I recently completed NRDAP with a 100%. In total, I have 10 items under my belt for programming and teaching in my short 17 months in the BOP. I have a home and job to go home to, as well. I have an incredible wife, Mrs. Megan Hallett, who is a teacher and has great healthcare that will help take care of all of my medical needs when I am home from top-flight doctors in our area in Maryland. My psychiatrist, my cardiologist, and my neurologists at home in Perryville, Maryland know my conditions very well and can assist me much better out there, then I can be taken care of in here. I am an excess cost to the system and I am a first time, non-violent offender who is here for a white-collar crime. I look forward to entering society with your help so that I can get the proper medical care I need at no burden to the United States government. I need your help to

do this. I humbly ask you to grant my request for Compassionate Release under the provisions of the First Step Act.

I look forward to hearing your decision.
I appreciate your consideration of this matter.

Sincerely,

Troy Benjamin Wragg
67165-019
FCI Fort Dix (West)
5812; 115; 5L

Wragg, Troy Benjamin

Register Number: 67165-019

Unit 5812 (Q)


INMATE REQUEST TO STAFF RESPONSE

You requested a reduction in sentence (RIS) based on concerns about COVID-19. After careful consideration, your request is denied.

Title 18 of the United States Code, section 3582(c)(1)(A), allows a sentencing court, on motion of the Director of the BOP, to reduce a term of imprisonment for extraordinary or compelling reasons. BOP Program Statement No. 5050.50, Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g), provides guidance on the types of circumstances that present extraordinary or compelling reasons, such as the inmate's terminal medical condition; debilitated medical condition; status as a "new law" elderly inmate, an elderly inmate with medical conditions, or an "other elderly inmate"; the death or incapacitation of the family member caregiver of the inmate's child; or the incapacitation of the inmate's spouse or registered partner. Your request has been evaluated consistent with this general guidance.

The BOP is taking extraordinary measures to contain the spread of COVID-19 and treat any affected inmates. We recognize that you, like all of us, have legitimate concerns and fears about the spread and effects of the virus. However, your concern about being potentially exposed to, or possibly contracting, COVID-19 does not currently warrant an early release from your sentence. Accordingly, your RIS request is denied at this time.

If you are not satisfied with this response to your request, you may commence an appeal of this decision via the administrative remedy process by submitting your concerns on the appropriate form (BP-9) within 20 days of the receipt of this response.



David E. Ortiz
Warden

4/17/20
Date

ATTACHMENT 2

Saturday, April 11, 2020

Dear Warden Ortiz,

My name is Troy Benjamin Wragg and my register number is 67165-019. I am currently under your Wardenship at FCI Fort Dix West in Building 5812; 115; 5L. With COVID-19 spreading at an even more alarming rate now and with the implementation of the CARES Act per Attorney General William P. Barr and our nation's legislators, I am humbly asking for your consideration for Compassionate Release to home confinement. I am categorized in the BOP system as a "Chronic Care" inmate in three areas, am serving my sentence for a non-violent, first-time offense, have taught multiple classes throughout the BOP system, and have a Low PATTERN score. Due to my severe health conditions, if I contract the Coronavirus, I will not survive it. I ask that you please take the time to read and understand my story, as well as my health risks, so that it can aid in determining your decision.

This worldwide pandemic has halted operations around the globe and has killed thousands of people in the U.S. and abroad, which is why I am hereby requesting to be compassionately released to home confinement on the grounds of the Compassionate Release provisions of the First Step Act of 2018 and now the new release of the CARES Act of April 2020. As stated in the CARES Act, effective April of 2020, "the ACLU asked the Department of Justice to direct the U.S. Marshals Service to release from custody any individuals who are at risk of serious illness related to COVID-19, such as those who have chronic health conditions."

The Coronavirus/COVID-19 has infected almost 430,000 lives in the United States. Additionally, this virus has taken the lives of almost 15,000 Americans and has infected 47,437 people in New Jersey alone, the state in which FCI Fort Dix is located. Considering we now have two confirmed inmates and two confirmed staff members who have tested positive at our facility per the BOP.GOV website for COVID-19, I am extremely fearful that the chance of contracting this virus is very high for me, and if so, death is inevitable due to my severe health conditions that are only worsening with each passing day. This virus is only continuing to spread at an exponentially alarming rate. Per the Center for Disease Control and Prevention, it shows no signs of stopping anytime soon. Contracting this virus would be a death sentence for me, and I did not receive a death sentence for my first-time, non-violent offense.

In the BOP system, I am listed as a person with severe epilepsy, hypertension/high blood pressure, and have acute mental health conditions as you can see from my extensive BOP health file. All three of these issues are affected by the Coronavirus, given the fact that most cases of epilepsy, including mine, increase when the immune system is weakened and stress levels are elevated. Since my last letter to you, I have struggled once again to receive my Keppra medication, which helps to slow the grand-mal seizures that I have due to epilepsy. On April 1, 2020, I was told that I was given a 3-month supply of all my current medications. However, I barely received a month's-worth of Keppra (I take 90 tablets a month/3 a day and only received 60 tablets total when I should have received 270 for my 3-month supply). As of April 11, 2020, I am still fighting to receive the medication that I

need to prevent seizures. At this rate, I am being forced to pick and choose when I take my medication for this life-threatening condition, just to make it last for the month. It has gotten to the point where my bunkmate wakes up to me having seizures in the middle of the night and watches to make sure that I don't hit my head or die. This severe condition alone proves that my health is at risk and that the mandatory needs of Chronic Care inmates, like myself, are not being met due to the pressing matter which is the rise of COVID-19 throughout our facilities nationwide. My body has weakened severely from my seizures to the point where I barely feel like I can make it to the medical wing and back in time to resolve this issue before doors are locked. With each passing day, I am truly getting weaker.

Between the fear of having a grand-mal seizure that could kill me, and the fear of contracting COVID-19, my blood pressure has elevated extremely, regardless of the medication that I routinely take for it. Thirdly, my mental health has suffered greatly due to the rising of this virus in our nation, our BOP facilities throughout the country, and in our facility specifically. As my body weakens every day, I pray and urge you to understand why granting me a Compassionate Release to home confinement would aid in saving my life. Per the CARES Act, "once a person has been convicted of a federal offense and sentenced to a term of imprisonment, a federal court can reduce the sentence under 18 U.S.C. Section 3582(c)(1)(A) and impose a term of probation or supervised release, with or without conditions, equal to the amount of time remaining on the prisoner's sentence if the court finds that 'extraordinary and compelling reasons warrant such a reduction.'" I am asking you to look at my severe health conditions as an extraordinary and compelling reason to grant my Compassionate Release to home confinement amidst this global pandemic. It truly can and will save my life.

Since being incarcerated, I have taught four classes thus far: two classes at FDC Philadelphia and two at FCI Fort Dix. While the spread of COVID-19 throughout our prison system has sadly temporarily halted the continuing of classes at our facility, I still am very passionate about teaching and helping other inmates further their education and develop goals that will provide them with a positive plan for their futures. I have continued to spend every waking day in the BOP system making sure that I not only am conducting myself in the best way possible, but that I am being the greatest, upstanding citizen that I can be. It is my sole intention to dedicate my life to proving myself and creating a positive and stable plan for my future, and Fort Dix has already helped me in doing so.

On August 20, 2019, I was sentenced to 22 years in federal prison for a non-violent, white-color financial crime that occurred back in 2009. I am also a first-time offender. I have been a model inmate since arriving at Fort Dix. I have no shots. I have been teaching two classes for Ms. Naylor (Business Management and Business Marketing) and I recently completed NRDAP with a 100%. In total, I have 10 items under my belt for programming and teaching in my 17 months in the BOP. I have a safe and stable environment and job to go home to, as well. I have an incredible wife, Mrs. Megan Hallett, who is a teacher (whose school is currently closed so that all teachers and students can remain quarantined) and has great healthcare that will help take care of all of my medical needs when I am home from top-flight doctors in our area in Maryland. My psychiatrist, my cardiologist, and my

neurologists at home in Perryville, Maryland know my conditions very well and can assist me much better out there. However, I truly need your help in granting me a Compassionate Release to home confinement because of the health risks I have and how they can be hazardous for someone like me who's in the BOP's care.

While in the BOP system and under their care, I am an excess cost to the system. With my health conditions, it can be determined by the BOP that me being, "released to home detention would result in a substantial reduction in cost to the federal government" (CARES Act 2020). Per the CARES Act, if, "a determination has been made by BOP that the prisoner is not a danger to the safety of any other person or the community," they can be considered for Compassionate Release to home confinement. My accomplishments thus far in the BOP system, my Low PATTERN score, and my stable home environment and plan prove that I am not a danger to the safety of any other person or the community.

I truly look forward to entering society with your help so that I can get the proper medical care I need at no burden to the United States government. However, I really need your help in doing this. I've reviewed U.S. Attorney General William P. Barr's memorandum regarding the releasing and transferring of inmates to home confinement under certain categories, and I truly believe I fall into the following: "The security level of the facility currently holding the inmate, with priority given to inmates residing in low and minimum security facilities," "The inmates conduct in prison," "The inmate's score under PATTERN," and "Whether the inmate has a demonstrated a verifiable re-entry plan that will prevent recidivism and maximize public safety." My PATTERN score, as told to me by Ms. White (my 5812 Case Manager) is Low, which is an exceptional level for the PATTERN score analysis as outlined in The First Step Act of 2018 supplementary memorandum material I reviewed in room 248 in the Education Building at FCI Fort Dix West. Additionally, I only have 6 points, which are low enough to qualify me for a camp. With that being said, I humbly ask you to grant my request for Compassionate Release to home confinement under the provisions of the First Step Act and the CARES Act.

I appreciate you taking the time to understand and listen to my story and sincerely hope you will consider me during this tragic time that our world is facing. Thank you so much and I look forward to hearing your decision on this matter.

Sincerely,

Troy Benjamin Wragg
67165-019
FCI Fort Dix (West)
5812; 115; 5L

ATTACHMENT 3



Attn: Prison Camp Warden / Case Managers
5756 HARTFORD &
POINTVILLE RD
JOINT BASE MDL, NJ 08640

April 15, 2020

To Whom It May Concern:

As the legal Power of Attorney for my brother, Michael W. Scronic (#79605054), I am writing to formally request his immediate Compassionate Release from the Prison Camp at FCI/Fort Dix. As of this evening, thirteen (13) inmates have been removed due to coronavirus. We know that the especially close quarters of bunkroom-style sleeping arrangements make the Prison Camp, especially, a breeding ground for this deadly and highly-contagious virus.

Michael suffered childhood asthma and serious allergies that required him to spend the first two years of his life in a highly-antiseptic setting. As an adult, Michael has suffered two bouts of cancer, each one requiring surgery at Memorial Sloane Kettering Hospital in NYC. As such, he is a high-risk candidate for a serious case of coronavirus, especially under the close-quarters living conditions of the Camp. There is a very high chance that he will fall seriously ill from the coronavirus if he is forced to stay confined indoors with another 243 men, 13 of whom are confirmed sick, with many more likely contaminated. We know this virus spreads exponentially, so within a week it could easily infect every inmate there.

Given my brother's underlying medical conditions, we know that when he contracts the virus, it will be very serious.

This is a man who was convicted of securities fraud. He is also a diagnosed gambling addict, whose non-violent crime was directly tied to that addiction. He does not deserve the Death Sentence that it would be for him to remain incarcerated during this pandemic.

Michael also has an extremely low recidivism index. He has been an exemplary prisoner, has taught math and computer programming classes to his fellow inmates, and ran an individual marathon (203 laps around the track) to help get donations of books for the Prison Camp's

library. He plays sports, minds his business, and is a contributing member of the Camp Community. Michael also has a young son, MJ, who has already suffered so much through this ordeal. Please don't let his father die in prison; he is just eight years old.

Please consider my brother, Michael, for Compassionate Release. I am his sister, and upon his release he will come to live with me and my two children. I own my home in Brooklyn and work as an administrator for the NYC Department of Education; I have a stable job and a good income and am able and willing to give him housing and food for as long as he needs. Additionally, given the current necessity for "remote learning" I am quite sure Michael will be able to find a job as a remote math tutor to kids whose parents are struggling to support their learning. With the money he could earn, he will be able to pay child support for his son and begin paying retributions to the victims of his crime.

I beg you to have mercy on Michael and grant him immediate Compassionate Release; it very likely will save his life.

Thank you in advance for your kind consideration of this request.

Sincerely,

Tracey L. Scronic

Danielle Mullins - Fwd: Request to the Prison Camp Warden for the Release of Michael W. Scronic (#79605054) to Home Confinement

From: FTD/Exec Assistant~

To: Mullins, Danielle

Date: 4/16/2020 1:07 PM

Subject: Fwd: Request to the Prison Camp Warden for the Release of Michael W. Scronic (#79605054) to Home Confinement

>>> Tracey Scronic [REDACTED] /16/2020 1:36 AM >>>
To Whom It May Concern:

As the legal Power of Attorney for my brother, Michael W. Scronic (#79605054), I am writing to formally request his immediate release from the Prison Camp at FCI/Fort Dix to Home Confinement. As of this evening, thirteen (13) inmates have been removed due to coronavirus. We know that the especially close quarters of bunkroom-style sleeping arrangements make the Prison Camp, especially, a breeding ground for this deadly and highly-contagious virus.

Michael suffered childhood asthma and serious allergies that required him to spend the first two years of his life in a highly-antiseptic setting. As an adult, Michael has suffered two bouts of cancer, each one requiring surgery at Memorial Sloane Kettering Hospital in NYC. As such, he is a high-risk candidate for a serious case of coronavirus, especially under the close-quarters living conditions of the Camp. There is a very high chance that he will fall seriously ill from the coronavirus if he is forced to stay confined indoors with another 243 men, 13 of whom are confirmed sick, with many more likely contaminated. We know this virus spreads exponentially, so within a week it could easily infect every inmate there.

Given my brother's underlying medical conditions, we know that when he contracts the virus, it will be very serious.

This is a man who was convicted of securities fraud. He is also a diagnosed gambling addict, whose non-violent crime was directly tied to that addiction. He does not deserve the Death Sentence that it would be for him to remain incarcerated during this pandemic.

Michael also has an extremely low recidivism index. He has been an exemplary prisoner, has taught math and computer programming classes to his fellow inmates, and ran an individual marathon (203 laps around the track) to help get donations of books for the Prison Camp's library. He plays sports, minds his business, and is a contributing member of the Camp Community. Michael also has a young son, MJ, who has already suffered so much through this ordeal. Please don't let his father die in prison; he is just eight years old.

Please consider my brother, Michael, for immediate Release to Home Confinement. I am his sister, and upon his release he will come to live with me and my two children. I own my home

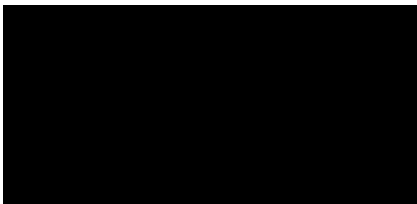
in Brooklyn and work as an administrator for the NYC Department of Education; I have a stable job and a good income and am able and willing to give him housing and food for as long as he needs. I can ensure that he does not need to leave the confines of the house at all, if required.

I beg you to have mercy on Michael and grant him Immediate Release to Home Confinement; it very likely will save his life.

Thank you in advance for your kind consideration of this request.

Sincerely,

Tracey L. Scronic



ATTACHMENT 4

Eliezer Soto Concepcion
#72850-067
FCI Ft. Dix Camp
P.O. Box 2000
Joint Base MDL, NJ 08640

April 13, 2020

Mr. Michael Carvajal
Director
Federal Bureau of Prisons
320 First Street N.W.
Washington, DC 20534

David E. Ortiz
FCI Fort Dix Warden
P.O. Box 38
Joint Base MDL, NJ 08640

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Quinton Law
Office of US Senator Cory A. Booker
One Port Center, 2 Riverside Drive, Suite 505
Camden, NJ 08101

RE:18 U.S.C.S. §3582 COMPASSIONATE RELEASE AND OR REDUCTION IN SENTENCE DUE TO
EXTRAORDINARY AND COMPELLING CIRCUMSTANCES(COVID-19 Crisis Vulnerable/ AT-RISK/
Non-Violent Prisoner Petition for Immediate Release to Home Confinement)

To: BOP Director Michael Carvajal, Warden David Ortiz, and Attorney General Barr,
Office of Senator Cory A. Booker

NOW COMES the Above inmate and petitions the BOP Director, the Warden and the Attorney General, for immediate release to home confinement, pursuant to the guidelines announced by Attorney General Barr on 3/25/2020, for the Immediate Release of Vulnerable/At-RISK/Non-Violent Federal Prisoners due to the COVID-19 Virus Crisis. In support thereof, inmate states as follows:

Inmate is 38 years old on April 8, 2020.

On June 3, 2015, inmate started his 144 month sentence for Conspiracy to Distribute and Possess Heroin. He has no history of sex offenses. He is Community/Out Custody Camper.

Inmate has served approximately 58 months, or 44% of his net sentence.

The inmate would be eligible for Home confinement on apprx. 11/2025.

Inmate suffers from the following conditions which, in addition to his age, make him More Vulnerable/ AT-Risk to serious consequences and Death from COVID-19 Virus:

Inmate is a Male which makes him 200% more likely to be infected and die from COVID-19 then women

INMATE IS AN HISPANIC AMERICAN WHICH MAKES HIM 300% MORE LIKELY TO BE INFECTED AND DIE FROM COVID-19.

Inmate has High Blood Pressure *** The #1 MOST LIKELY GROUP TO GET INFECTED AND DIE FROM COVID-19***

Inmate has Extensive Heart Problems

Inmate is extremely Overweight

Inmate has Gastritis and Extensive Nerve problems

Inmate has Maternal and Paternal Chronic Health Issues

Inmate also has extensive Breathing issues because here at Ft. Dix Facility there is serious problems with Mold, Dust an germs.

Inmate is taking (4) medications -Atrovastatin, Hydro Chlorothiazide, Amlodipine and Aspirin which drastically lowers his Immunity.

Inmate, when released , will live at [REDACTED] PA

[REDACTED] Inmate will live there with his (2) sons- [REDACTED]

The inmate has no disciplinary violations while at Ft. Dix and has been a Model Prisoner and has completed over 158 hours of Re-entry classes in education, and continues with his 166 hours of monthly work programming in the Ft Dix Garage.

The Inmate meets all the COVID-19 Crisis Vulnerable/AT-Risk Program guidelines outlined by the Attorney General by Memorandum to the BOP on March 26, 2020, then on April 3, 2020 Attorney General Barr directed the BOP to Immediately Review for Release to Home Confinement All At-Risk Inmates as per the Cares Act.

Additionally, on March 19, 2020, March 25, 2020, on March 26, 2020, and March 30, 2020 The Leaders of the Senate and House Judiciary- Senators Charles Grassley, Richard Durbin, Cory Booker, Kamala Harris and Congressman Hakeem Jefferies, Jerrold Nadler and Karen Bass have urged the Attorney General and the BOP to "Release, Release" At-Risk/Non-Violent offenders and have put forward the "EMERGENCY COMMUNITY SUPERVISION ACT OF 2020" to Immediately place eligible inmates- 50 years and older, Pregnant, Diabetes, congestive heart failure or coronary disease, chronic lung disease or asthma, Immune system deficiencies such as HIV-CANCER-Sickle Cell Anemia and Individuals who have 12 months or less to serve on their sentence into Community Supervision and Home Confinement.

Wherefore, for the foregoing reasons, the above inmate requests Immediate Release to Home Confinement.

Respectfully submitted,

Eliezer Soto Concepcion
Eliezer Soto Concepcion #72850-067

Date: 4/14/20

CERTIFICATE OF SERVICE

I, Eliezer Soto Concepcion, hereby certify that a copy of the foregoing petition has been served upon my case manager, Counselor for Ft. Dix Camp, the Warden David Ortiz, and upon Attorney General William Barr, BOP Director Michael Carvajal, and The Office of US Senator Cory A. Booker by depositing a copy of the same in the Prisoner-US Mail Box, first class, postage prepaid, addressed as follows:

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

David E. Ortiz
FCI Fort Dix Warden
P.O. Box 38
Joint Base MDL, NJ 08640

Mr. Michael Carvajal
Director
Federal Bureau of Prisons
320 First Street N.W.
Washington, DC 20534

Quinton Law
Office of US Senator Cory A. Booker
One Port Center, 2 Riverside Drive, Suite 505
Camden, NJ 08101

Eliezer Soto Concepcion
Eliezer Soto Concepcion

Date: 4/14/20

ATTACHMENT 5

Leonard P. Bogdan Jr.
Reg. No.: 07918-088
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

July 22, 2019

Warden David Ortiz
Federal Correctional Institution
P.O. Box 38
Joint Base MDL, NJ 08640-5433

Re: Petition for Compassionate Release/Reduction in Sentence
Leonard P. Bogdan Jr. # 07918-088
Date of Birth: [REDACTED]

Dear Warden,

Under 18 U.S.C. §3582(c)(1)(A), a sentencing court, on motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Control Act of 1984.

The Bureau uses 18 U.S.C. § 3582(c)(1)(A) in particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing.

18 U.S.C. 3582 was amended by the First Step Act of 2018, Program Statement 5050.50 went into effect on January 17, 2019.

Petitioner, Leonard P. Bogdan Jr., is an infirmed elderly first-time non-violent offender that qualifies for compassionate release pursuant to Program Statement 5050.50. Specifically, Petitioner falls under the category listed as "Elderly Inmates: with Medical Conditions." The following reasons provide support thereof.

Background

The United States Sentencing Commission has conducted an in-depth review of this topic (compassionate release), including consideration of the Bureau of Prisons data documenting lengthy review of compassionate release applications and low approval rates, as well as two reports issued by the Department of Justice Office of the Inspector General that are critical of the Bureau of Prison's (BOP) implementation of its compassionate release program. See U.S. Department of Justice, Office of the Inspector General, the Federal Bureau of Prisons Compassionate Release Program, I-2C13-006 (April 2013); U.S. Department of Justice, Office of the Inspector General, the impact of the aging inmate population on the Federal Bureau of Prisons, E-15-05 (May 2015). In February 2016, the Commission held a private hearing on compassionate release and received testimony from witnesses and experts about the need to broaden the criteria for

eligibility, to add guidance to the medical criteria, and to remove other administrative hurdles that limit the availability of compassionate release to otherwise eligible defendants.

REQUESTS BY ELDERLY INMATES WITH MEDICAL CONDITIONS

Inmates who fit the following criteria:

*** Age 65 and older**

Petitioner's birthdate is [REDACTED] [REDACTED] making him 68 years old.

*** Suffer from chronic or serious medical conditions related to the aging process**

Please refer to "medical conditions of petitioner."

*** Experienced deteriorating mental or physical health that substantially diminishes Petitioner's ability to function in a correctional facility.**

The staff at Fort Dix Federal Correctional Institution (FCI) have been negligent in providing appropriate medical attention and demonstrated an inability or lack of willingness to provide a safe, humane, effective and an appropriately secure environment for aging inmates.

As far as negligence in medical care, the nodule on the Thyroid was diagnosed in the first quarter of 2017. Doctor Sood, Petitioner's primary health provider, has repeatedly voiced concern that it could be cancerous. To that end, an

Endocrinology consultation is necessary and time sensitive. However, a biopsy has not been conducted, and the appointments he requested on February 13, 2018 and December 21, 2018 have not occurred.

Petitioner suffers from a severe case of thoracic and lumbar scoliosis. Francis J. Pizzi, MD, observed "This is the worst case of scoliosis I've seen, and I've been practicing medicine for a long time." He suggested that the BOP supply Petitioner with a therapeutic mattress and an ergonomic chair. As of this date, Petitioner continues to use original common compound mattress issued to him during the summer of 2013. This negligence amounts to cruel and unusual punishment.

The severe scoliosis has caused the right leg to be longer than the left leg. That impairs walking. During a podiatry exam on August 8, 2018, the Doctor suggested that Petitioner wear medical shoes with a lift to balance his gait. As of this date, the shoes have not been issued. This negligence amounts to cruel and unusual punishment.

MEDICAL CONDITION OF PETITIONER

1. Thyroid: Potential cancerous nodule, disorder responsible for rapid heartbeat.
2. Heart Disease: Bundle branch block, Bi-fascicular.
3. Scoliosis: Significant spinal curvature with convexity off to the right.
4. Actinic Keratoris: Re-occurring form of skin cancer.

5. Gastrointestinal: Hiatal hernia - surgery complicated due to severe scoliosis.
6. Hypertension: Family history.
7. Hyperlipidemia: Family history.
8. Vitamin Deficiency: Vitamin D, loss of bone density.
9. Body Mass Index: Actute, high.

* Conventional Treatment promises no substantial improvement to their mental or physical condition

The long-term outlook for scoliosis is not promising. Doctors who have treated Petitioner are concerned harm to internal organs as the rib cage shifts within the spinal curvature. The kidneys have moved out of place and there is a danger that lungs will have reduced capacity. There is no conventional treatment for scoliosis, so there is no substantial improvement anticipated in petitioner's physical condition.

* Have served at least 50% of sentence

Petitioner has served at least 50% of his sentence. According to the BOP Sentencing Monitor Data Report, Petitioner's beginning computation date is May 16, 2007, plus 112 days of prior credit time. Petitioner has served over 12 years of imprisonment.

* The age at which the inmate committed the current offence

According to Presentence Investigation Report (PSR) the current offense occurred in 1997 when the Petitioner was forty-

six (46) years old.

* Whether the inmate suffered from these medical conditions at the time of sentencing

The Petitioner became aware of his scoliosis in 1966 when he was fifteen years old. The condition did not become severe until 2011. Petitioner was aware of his condition of hypertension and hyperlipidemia as these ailments affected his parents and are in his family history. His Thyroid Disorder, Heart Disease, Actinic Keratosis, Gastrointestinal Hiatal Hernia and Vitamin D Deficiency resulting in loss of bone density were diagnosed after Petitioner was incarcerated.

* Whether the inmate suffered from the medical conditions at the time of sentencing and whether the PSR mentions these conditions.

The time aspect of this question is answered above, and the PSR does not mention any of these medical conditions.

Care Level

Petitioner is Care Level 2: Inmates who are stable outpatients, with chronic illnesses requiring clinical contact every three months.

MEDICAL JOURNAL

(June 1, 2017 through February 15, 2019)

Date:

6-14-17 OUTSIDE MEDICAL VISIT
Echo Stress Test; Neil Rothstein, MD: "Contraction of
cavity size"
Stress Echocardiogram: Severe thoracic lumbar scoliosis.

7-7-17 Thyroid Ultrasound

8-22-17 Met with surgeon about hiatal hernia.

9-1-17 OUTSIDE MEDICAL VISIT, Robert Woods Johnson, bone
density scan.

11-8-17 OUTSIDE MEDICAL VISIT, Deborah Hospital.
Endocrinology consultation.

12-5-17 Blood Draw.

1-2-18 Follow-up evaluation, Dr. Sood, warning that thyroid
nodule could be cancerous.

1-3-18 OUTSIDE MEDICAL VISIT, Robert Wood Johnson.
Bone Density scan.

2-8-18 Radiological procedure, CT scan ABD.

2-13-18 OUTSIDE MEDICAL VISIT, Deborah Hospital.
Endocrinology consultation.

2-15-18 Pulmonology exam evaluation

2-16-18 Thyroid ultrasound.

2-22-18 Blood draw

2-26-18 OUTSIDE MEDICAL VISIT, Robert Woods Johnson.
Pulmonology test.

4-17-18 Blood draw, 8 vials, urinalysis.

5-15-18 Blood draw, 7 vials.

6-26-18 General Surgery Follow-up evaluation
Result: Surgery Placed under consideration.

8-8-18 Podiatry Exam. Doctor recommended medical shoes to
balance walking gait.

8-15-18 Dental Check-up

11-13-18 Blood draw.

12-19-18 Meeting with Doctor Sood. Review medications. Dr. Sood expressed concern about lack of endocrinology medical care. Repeat his concerns that thyroid nodule may have cancer. Need endocrinology follow-up exam, doctor must order biopsy. Petitioner requested podiatry follow-up and eye exam.

MEDICATIONS
(As of 2-5-19)

Acetaminophen	325	mg
Aspirin	81	mg
Atorvastatin	40	mg
Omeprazole	20	mg
Metoprolol Tartrate	50	mg
Lisonopril	10	mg
Hydrochlorothiazide	12.5	mg
Fluorouracil	5%	
Calcium Carbonate	600	mg
Duloxetine HCL Delayed Rel.	30	mg
Alendronate	70	mg

PENDING OUTSIDE MEDICAL VISITS

Requested:

11-08-17 Outside RAD
04-18-18 Endocrinology Exam
12-12-18 Endocrinology Exam

Release Plans

Upon release, Petitioner intends to join his wife in retirement. He plans to be reunited with his family and reside in Valley Head, West Virginia. Petitioner will draw from Social Security and receive medical benefits from Medicare.

Petitioner has no criminal history, no unresolved detainers and cooperating with the probation department during pre-trial detention. He does not anticipate any problems during his three year supervised release obligation.

CONCLUSION

Petitioner qualifies for consideration under the revised amendment of policy statement 5050.50. The amendment revises the Bureau's guidance on what should be considered "extraordinary and compelling" circumstances which could not have reasonably have been foreseen by the court at the time of sentencing. The specific category that applies to the Petitioner is "Elderly Inmates with Medical Conditions."

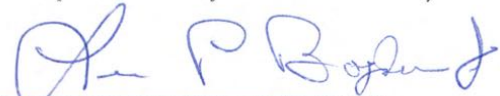
"Elderly Inmates with Medical Conditions" applies if the defendant is at least 65 years old. The Petitioner's birthday is [REDACTED] [REDACTED] making him 68 years old. Petitioner is suffering from "significant scoliosis with convexity off to the right."

Chronic long-standing scoliosis is a serious deterioration in physical health because of the aging process. A serious deterioration in physical health because of the aging process is a stipulation in the elderly inmate category.

In May, 2015, the Department of Justice's Office of the Inspector General (OIG) released a report on the BOP's implementation of the compassionate release program provision related to elderly inmates. The report found aging inmates make up a disproportionate share of the inmate population, are more costly to incarcerate (primarily due to medical needs), engage in less misconduct while in prison, and have a lower rate of re-arrest once released than their younger counterparts.

Petitioner, Leonard P. Bogdan Jr., is a first time, nonviolent offender. his current custody classification score is below zero. His chronic medical issues are considered "extraordinary and compelling reasons under Policy Statement 5050.50. The Petitioner is a suitable candidate for compassionate release.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "L P Bogdan Jr.", is written over a horizontal line.

Leonard P. Bogdan Jr.
Reg. No. 07918-088
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640

BOGDAN, Leonard P. Jr.
Register No. 07918-088
Unit: 5841


INMATE REQUEST TO STAFF RESPONSE

This is in response to your request to a Staff Member dated July 22, 2019, in which you request a Reduction in Sentence (RIS) in accordance with Program Statement 5050.50. Specifically, you request a Compassionate Release as an "Elderly Inmate with Medical Conditions."

In accordance with Program Statement 5050.50, Compassionate Release/Reduction in Sentence, Procedures for Implementation, 18 U.S.C. 3582(c)(1)(A) and 4205(g), an inmate may initiate a request for consideration only when there are particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing. In order to meet the criteria for "Elderly Inmates with Medical Conditions," an inmate must be 65 years of age, suffer from chronic or serious medical conditions related to the aging process, experience deteriorating physical or mental health that substantially diminishes their ability to function in a correctional setting, conventional treatment promises no substantial improvement, and the inmate must have served at least 50% of the sentence imposed.

Records indicate you have served 41.8% of your sentence. Therefore, you do not meet the time served requirements to be considered for a Compassionate Release as an "Elderly Offender with Medical Conditions." Accordingly, your request for a compassionate release is denied.

If you are dissatisfied with this response, you may appeal the decision through the Administrative Remedy process. Your appeal must be received in the Northeast Regional Office, U.S. Customs House, 2nd and Chestnut Street, Philadelphia, PA 19106, within 20 calendar days of the date of this response.



David E. Ortiz
Warden

8/15/19

Date

ATTACHMENT 6

FTDUG 535.03 * INMATE PROFILE * 05-13-2020
 PAGE 001 07:42:32

07918-088 REG
 REGNO: 07918-088 FUNCTION: PRT DOB/AGE.: / 68
 NAME.: BOGDAN, LEONARD P JR R/S/ETH.: W/M/O WALSH: NO
 RSP.: FTD-FORT DIX FCI MILEAGE.: 307 MILES
 PHONE: 609-723-1100 FAX: 609-724-7557
 PROJ REL METHOD: GOOD CONDUCT TIME RELEASE FBI NO.:
 PROJ REL DATE.: 08-17-2032 INS NO.:
 PAR ELIG DATE.: N/A SSN.:
 PAR HEAR DATE.: PSYCH: NO DETAINER: NO CMC.: NO
 OFFN/CHG RMKS: CONSP COMMIT MAIL FRAUD;MONEY LAUNDER
 OFFN/CHG RMKS: 05-14090-CR-MARTINEZ: 360 MTHS, 3 YRS SRT

FACIL	CATEGORY	- - - - -	CURRENT ASSIGNMENT	- - - - -	EFF DATE	TIME
FTD	ADM-REL	A-DES	DESIGNATED, AT ASSIGNED FACIL		03-15-2019	1253
FTD	CARE LEVEL	CARE1	HEALTHY OR SIMPLE CHRONIC CARE		07-16-2007	0630
FTD	CARE LEVEL	CARE1-MH	CARE1-MENTAL HEALTH		06-30-2010	1047
FTD	COR COUNSL	5841 A-Z	L. KWARTIN X-6605		03-15-2019	1253
FTD	CASE MGT	CV-COM REF	COVID COMMUNITY REFERRAL		05-06-2020	1025
FTD	CASE MGT	DEPEND N	DEPENDENTS UNDER 21 - NO		05-03-2018	0810
FTD	CASE MGT	PHOTO ID Y	PHOTO ID - YES		05-03-2018	0810
FTD	CASE MGT	RPP NEEDS	RELEASE PREP PGM NEEDS		10-30-2007	0628
FTD	CASE MGT	VET P/S N	PARENT/SPOUSE VETERAN - NO		05-03-2018	0810
FTD	CASE MGT	VETERAN N	VETERAN - NO		05-03-2018	0810
FTD	CASE MGT	VWP AUTO	VICTIM/WITNESS PGM AUTO UPDATE		06-27-2008	0701
FTD	CASE MGT	V94 COA913	V94 CURR OTHER ON/AFTER 91394		10-30-2007	0642
FTD	CASE MGT	WA NO HIST	NO WALSH ACT OFFENSE HISTORY		10-31-2007	0750
FTD	COMM CORR	INST TRANS	INSTITUTION TRANSFER		05-14-2020	1659
FTD	CASEWORKER	5841 A-K	K. BULLOCK X-6607		01-27-2020	0658
FTD	CUSTODY	IN	IN CUSTODY		05-24-2007	1047
FTD	DRUG PGMS	DRG I NONE	NO DRUG INTERVIEW REQUIRED		10-31-2007	0739
FTD	DESIG/SENT	LIMA	TEAM LIMA		06-07-2007	0814
FTD	DESTINATION	CBR 3VV HC	HOME CONFINEMENT FOR 3VV		05-14-2020	1659
FTD	EDUCATION	W 7 HABITS	7 HABITS - WEST		01-27-2020	0001
FTD	EDUC INFO	ESL HAS	ENGLISH PROFICIENT		11-01-2007	0001
FTD	EDUC INFO	GED HAS	COMPLETED GED OR HS DIPLOMA		11-01-2007	0001
FTD	FIN RESP	PART	FINANC RESP-PARTICIPATES		06-19-2013	1112
FTD	FIRST STEP	FTC ELIG	FTC-ELIGIBLE - REVIEWED		11-27-2019	1247
FTD	FIRST STEP	R-MIN	MINIMUM RISK RECIDIVISM LEVEL		11-27-2019	1247
FTD	LEVEL	LOW	SECURITY CLASSIFICATION LOW		05-13-2013	0736
FTD	MED DY ST	LOWER BUNK	LOWER BUNK REQUIRED		11-07-2007	1441
FTD	MED DY ST	PAPER	LEGACY PAPER MEDICAL RECORD		12-04-2018	0946
FTD	MED DY ST	REG DUTY	NO MEDICAL RESTR--REGULAR DUTY		05-23-2013	1328
FTD	MED DY ST	YES F/S	CLEARED FOR FOOD SERVICE		05-23-2013	1329
FTD	PGM REVIEW	OCT	OCTOBER PROGRAM REVIEW		10-13-2020	0652
FTD	QUARTERS	W02-042L	HOUSE W/RANGE 02/BED 042L		03-15-2019	1253
FTD	RELIGION	JEWISH	JEWISH		02-01-2012	1152
FTD	UNIT	UNIT 6	R. BRINSON X-6685		03-15-2019	1253
FTD	WAITNG LST	ANGER MGT	ANGER MGT CLASS		09-26-2019	0821
FTD	WAITNG LST	CRIM THKIN	CRIMINAL THINKING ERRORS		09-26-2019	0821
FTD	WAITNG LST	EMOTIONAL	EMOTIONAL SELF REGULATION		09-26-2019	0822
FTD	WAITNG LST	J-ADMINSER	JOURNEYMEN-ADMIN SERV APPRNTCS		09-05-2017	1002

G0017 WARNING : NOTIFICATIONS ARE REQUIRED PER P.S. 1490.06
 G0002 MORE PAGES TO FOLLOW . . .

FTDUG 535.03 * INMATE PROFILE * 05-13-2020
 PAGE 002 OF 002 07:42:32
 07918-088 REG
 REGNO: 07918-088 FUNCTION: PRT DOB/AGE.: 07-15-1951 / 68
 NAME.: BOGDAN, LEONARD P JR R/S/ETH.: W/M/O WALSH: NO
 RSP.: FTD-FORT DIX FCI MILEAGE.: 307 MILES
 PHONE: 609-723-1100 FAX: 609-724-7557
 FACL CATEGORY - - - - - CURRENT ASSIGNMENT - - - - - EFF DATE TIME
 FTD WAITNG LST PRIOR PRIOR UNICOR EXPERIENCE 09-04-2013 1243
 FTD WRK DETAIL TUTOR W EDUCATION TUTOR - FCI WEST 03-15-2019 1253
 FTD WASPB PAR PIOP PARENTING INSIDE OUT PART 02-03-2020 0001

G0017 WARNING : NOTIFICATIONS ARE REQUIRED PER P.S. 1490.06
 G0000 TRANSACTION SUCCESSFULLY COMPLETED

ATTACHMENT 7

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF WEST VIRGINIA
PROBATION OFFICE

May 13, 2020

JON WRIGHT
CHIEF PROBATION OFFICER
217 W. KING ST., RM 310
MARTINSBURG, WV 25401
304-267-0778

320 W. PIKE ST., SUITE 110
CLARKSBURG 26301
304-624-5504

PO BOX 127
ELKINS 26241
304-636-7277

PO BOX 248
WHEELING 26003
304-232-8474

PLEASE REPLY TO:

Elkins

VIA EMAIL

Kevin M. Bullock, Sr.
Case Manager
Correctional Treatment Specialist
Bureau of Prisons
FCI Fort Dix

RE: BOGDAN, Leonard P., JR.
Register Number: 07918-088

Dear Case Manager Bullock:

This office has received correspondence from you indicating that the above-listed offender has requested for relocation to the Northern District of West Virginia.

The undersigned officer has reviewed the relocation request, made contact with the parties involved, and was advised by the offender's wife that she would not permit the offender to reside with her. As such, the offender has no identifiable ties to the Northern District of West Virginia and his relocation request is denied.

Should your office have any questions or concerns, please feel free to contact the undersigned at 304-218-0667.

Sincerely,

Matthew Bennett

Matthew Bennett
U. S. Probation Officer

ATTACHMENT 8

FTDUG	*	PUBLIC INFORMATION	*	05-04-2020
PAGE 001	*	INMATE DATA	*	14:32:00
		AS OF 05-04-2020		

REGNO...: 67165-019 NAME: WRAGG, TROY BENJAMIN

RESP OF: FTD

PHONE...: 609-723-1100

FAX: 609-724-7557

RACE/SEX...: WHITE / MALE

AGE: 38

PROJ REL MT: GOOD CONDUCT TIME RELEASE

PAR ELIG DT: N/A

PROJ REL DT: 08-07-2037

PAR HEAR DT:

G0002 MORE PAGES TO FOLLOW . . .

FTDUG * PUBLIC INFORMATION * 05-04-2020
 PAGE 002 * INMATE DATA * 14:32:00
 AS OF 05-04-2020

REGNO...: 67165-019 NAME: WRAGG, TROY BENJAMIN

RESP OF: FTD

PHONE...: 609-723-1100 FAX: 609-724-7557

HOME DETENTION ELIGIBILITY DATE: 02-07-2037

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
 THE INMATE IS PROJECTED FOR RELEASE: 08-07-2037 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: PENNSYLVANIA, EASTERN DISTRICT
 DOCKET NUMBER.....: DPAE2:15CR000398-001
 JUDGE.....: SLOMSKY
 DATE SENTENCED/PROBATION IMPOSED: 08-20-2019
 DATE COMMITTED.....: 09-04-2019
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
 PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$1,000.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$54,531,488.57

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 153 18:286,371 FRAUD, OTHER
 OFF/CHG: 18:371 CONSPIRACY TO COMMIT WIRE FRAUD(CT1) 18:1343;18:2 WIRE
 FRAUD AND AIDING AND ABETTING (CT2-8) 18:371 CONSPIRACY TO
 ENGAGE IN SECURITIES FRAUD(CT9)15:78J(B); 17 C.F.R. 240.10-B-5
 18:2 SECURITIES FRAUD AND AIDING AND ABETTING(CT10)

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
 SENTENCE IMPOSED/TIME TO SERVE.: 144 MONTHS
 TERM OF SUPERVISION.....: 5 YEARS
 DATE OF OFFENSE.....: 04-30-2010

-----CURRENT JUDGMENT/WARRANT NO: 020 -----

COURT OF JURISDICTION.....: PENNSYLVANIA, EASTERN DISTRICT
 DOCKET NUMBER.....: DPAE2:18CR000465-001
 JUDGE.....: SLOMSKY
 DATE SENTENCED/PROBATION IMPOSED: 08-20-2019
 DATE COMMITTED.....: 09-04-2019
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
 PROBATION IMPOSED.....: NO

G0002 MORE PAGES TO FOLLOW . . .

FTDUG * PUBLIC INFORMATION * 05-04-2020
 PAGE 003 * INMATE DATA * 14:32:00
 AS OF 05-04-2020

REGNO...: 67165-019 NAME: WRAGG, TROY BENJAMIN

RESP OF: FTD

PHONE...: 609-723-1100 FAX: 609-724-7557

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION....: PROPERTY: NO SERVICES: NO AMOUNT: \$104,750.00

-----CURRENT OBLIGATION NO: 010 -----
 OFFENSE CODE....: 820 COMMUNICATIONS ACT
 OFF/CHG: 18:1343 WIRE FRAUD

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
 SENTENCE IMPOSED/TIME TO SERVE..: 120 MONTHS
 TERM OF SUPERVISION.....: 3 YEARS
 RELATIONSHIP OF THIS OBLIGATION
 TO OTHERS FOR THE OFFENDER....: CS W 010/010
 DATE OF OFFENSE.....: 12-30-2017

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 10-24-2019 AT DSC AUTOMATICALLY
 COMPUTATION CERTIFIED ON 10-24-2019 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
 CURRENT COMPUTATION 010: 010 010, 020 010

DATE COMPUTATION BEGAN.....: 08-20-2019
 AGGREGATED SENTENCE PROCEDURE...: AGGREGATE GROUP 800 PLRA
 TOTAL TERM IN EFFECT.....: 264 MONTHS
 TOTAL TERM IN EFFECT CONVERTED...: 22 YEARS
 AGGREGATED TERM OF SUPERVISION...: 5 YEARS
 EARLIEST DATE OF OFFENSE.....: 04-30-2010

JAIL CREDIT.....:	FROM DATE	THRU DATE
	09-03-2015	09-03-2015
	11-09-2018	08-19-2019

G0002 MORE PAGES TO FOLLOW . . .

FTDUG *
PAGE 004 OF 004 *

PUBLIC INFORMATION
INMATE DATA
AS OF 05-04-2020

* 05-04-2020
* 14:32:00

REGNO...: 67165-019 NAME: WRAGG, TROY BENJAMIN

RESP OF: FTD

PHONE...: 609-723-1100 FAX: 609-724-7557

TOTAL PRIOR CREDIT TIME.....: 285

TOTAL INOPERATIVE TIME.....: 0

TOTAL GCT EARNED AND PROJECTED...: 1188

TOTAL GCT EARNED.....: 54

STATUTORY RELEASE DATE PROJECTED: 08-07-2037

EXPIRATION FULL TERM DATE.....: 11-07-2040

TIME SERVED.....: 1 YEARS 5 MONTHS 25 DAYS

PERCENTAGE OF FULL TERM SERVED...: 6.7

PERCENT OF STATUTORY TERM SERVED: 7.9

PROJECTED SATISFACTION DATE.....: 08-07-2037

PROJECTED SATISFACTION METHOD....: GCT REL

G0000 TRANSACTION SUCCESSFULLY COMPLETED

ATTACHMENT 9

FTDUG 535.03 * INMATE PROFILE * 05-04-2020
 PAGE 001 OF 001 14:31:17

67165-019 REG
 REGNO: 67165-019 FUNCTION: PRT DOB/AGE.: / 38
 NAME.: WRAGG, TROY BENJAMIN R/S/ETH.: W/M/O WALSH: NO
 RSP.: FTD-FORT DIX FCI MILEAGE.: 70 MILES
 PHONE: 609-723-1100 FAX: 609-724-7557
 PROJ REL METHOD: GOOD CONDUCT TIME RELEASE FBI NO.:
 PROJ REL DATE.: 08-07-2037 INS NO.:
 PAR ELIG DATE.: N/A SSN.:
 PAR HEAR DATE.: PSYCH: NO DETAINER: NO CMC.: YES
 OFFN/CHG RMKS: DPAA2:15CR000398-001 CNSP TO CMMT WIRE/SECURITIES FRAUD, A&A
 OFFN/CHG RMKS: DPAA2:18CR000465-001 WIRE FRAUD SENT:264MOS & 5YRS SRT

FACI	CATEGORY	- - - - -	CURRENT ASSIGNMENT	- - - - -	EFF DATE	TIME
FTD	ADM-REL	A-DES	DESIGNATED, AT ASSIGNED FACIL		09-04-2019	0933
FTD	CALLOUTS	HOSP MLP4	MLP 4		05-04-2020	0800
FTD	CARE LEVEL	CARE2	STABLE, CHRONIC CARE		11-13-2018	0722
FTD	CARE LEVEL	CARE2-MH	CARE2-MENTAL HEALTH		03-15-2019	1121
FTD	COR COUNSL	5812 L-Z	E. WATSON, X-6619		09-04-2019	0933
FTD	CASE MGT	BIR CERT N	BIRTH CERTIFICATE - NO		09-11-2019	1513
FTD	CASE MGT	DEPEND N	DEPENDENTS UNDER 21 - NO		09-11-2019	1513
FTD	CASE MGT	PHOTO ID Y	PHOTO ID - YES		09-11-2019	1513
FTD	CASE MGT	RPP NEEDS	RELEASE PREP PGM NEEDS		11-08-2019	1343
FTD	CASE MGT	SSN CARD N	SOCIAL SECURITY CARD - NO		09-11-2019	1513
FTD	CASE MGT	VET P/S N	PARENT/SPOUSE VETERAN - NO		09-11-2019	1513
FTD	CASE MGT	VETERAN N	VETERAN - NO		09-11-2019	1513
FTD	CASE MGT	VWP AUTO	VICTIM/WITNESS PGM AUTO UPDATE		08-23-2019	0645
FTD	CASE MGT	V94 COA913	V94 CURR OTHER ON/AFTER 91394		09-14-2019	1353
FTD	CASE MGT	WA NO HIST	NO WALSH ACT OFFENSE HISTORY		08-26-2019	1155
FTD	CASEWORKER	5812 L-Z	S. WHITE, X-6624		09-04-2019	0933
FTD	CUSTODY	IN	IN CUSTODY		11-09-2018	1602
FTD	DRUG PGMS	DAP REFER	DRUG ABUSE PROGRAM REFER		09-09-2019	0921
FTD	DRUG PGMS	ED COMP	DRUG EDUCATION COMPLETE		12-12-2019	1210
FTD	DESIG/SENT	ECHO	TEAM ECHO		08-26-2019	1155
FTD	EDUC INFO	ESL HAS	ENGLISH PROFICIENT		09-21-2019	1010
FTD	EDUC INFO	GED HAS	COMPLETED GED OR HS DIPLOMA		09-21-2019	1010
FTD	FIN RESP	PART	FINANC RESP-PARTICIPATES		09-06-2019	1227
FTD	FIRST STEP	FTC ELIG	FTC-ELIGIBLE - REVIEWED		12-06-2019	0827
FTD	FIRST STEP	R-LW	LOW RISK RECIDIVISM LEVEL		12-06-2019	0833
FTD	LEVEL	LOW	SECURITY CLASSIFICATION LOW		08-26-2019	1203
FTD	MED DY ST	NO PAPER	NO PAPER MEDICAL RECORD		09-05-2019	1009
FTD	MED DY ST	REG DUTY	NO MEDICAL RESTR--REGULAR DUTY		11-26-2018	1349
FTD	MED DY ST	YES F/S	CLEARED FOR FOOD SERVICE		11-26-2018	1349
FTD	PGM REVIEW	AUG	AUGUST PROGRAM REVIEW		08-18-2020	0854
FTD	QUARTERS	Q01-155L	HOUSE Q/RANGE 01/BED 155L		09-27-2019	1225
FTD	RELIGION	PROTESTANT	PROTESTANT		11-13-2018	0945
FTD	STATUS	CALL PSYCH	IF INMATE PLACED IN SHU		03-06-2020	1310
FTD	UNIT	UNIT 5	K BYRD, E-6618		09-04-2019	0933
FTD	WRK DETAIL	A&O CMP W	A&O COMPLT-PND WRK ASSIGN WEST		09-05-2019	0738

G0017 WARNING : NOTIFICATIONS ARE REQUIRED PER P.S. 1490.06
 G0000 TRANSACTION SUCCESSFULLY COMPLETED

ATTACHMENT 10

FTDUG	*	PUBLIC INFORMATION	*	05-04-2020
PAGE 001	*	INMATE DATA	*	14:40:10
		AS OF 05-04-2020		

REGNO...: 72850-067 NAME: SOTO-CONCEPCION, ELIEZER

RESP OF: FTD

PHONE...: 609-723-1100

FAX: 609-724-7557

RACE/SEX...: WHITE / MALE

AGE: 38

PROJ REL MT: GOOD CONDUCT TIME RELEASE

PAR ELIG DT: N/A

PROJ REL DT: 09-05-2025

PAR HEAR DT:

G0002 MORE PAGES TO FOLLOW . . .

FTDUG * PUBLIC INFORMATION * 05-04-2020
 PAGE 002 * INMATE DATA * 14:40:10
 AS OF 05-04-2020

REGNO...: 72850-067 NAME: SOTO-CONCEPCION, ELIEZER

RESP OF: FTD

PHONE...: 609-723-1100 FAX: 609-724-7557

HOME DETENTION ELIGIBILITY DATE: 03-05-2025

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
 THE INMATE IS PROJECTED FOR RELEASE: 09-05-2025 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: PENNSYLVANIA, MIDDLE DISTRICT
 DOCKET NUMBER.....: 1:15CR00181-005
 JUDGE.....: JONES
 DATE SENTENCED/PROBATION IMPOSED: 11-21-2017
 DATE COMMITTED.....: 12-12-2017
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
 PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$00.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 409 21:841 & 846 SEC 841-851
 OFF/CHG: 21:846 CONSPIRACY TO DISTRIBUTE AND POSSESS WITH INTENT TO
 DISTRIBUTE AT LEAST 1 KILOGRAM OF HEROIN, AT LEAST 280 GRAMS
 COCAINE BASE (CRACK) AND COCAINE HYDROCHLORIDE (CT-1).

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
 SENTENCE IMPOSED/TIME TO SERVE.: 144 MONTHS
 TERM OF SUPERVISION.....: 5 YEARS
 DATE OF OFFENSE.....: 05-14-2017

G0002 MORE PAGES TO FOLLOW . . .

FTDUG *
 PAGE 003 OF 003 *

PUBLIC INFORMATION
 INMATE DATA
 AS OF 05-04-2020

* 05-04-2020
 * 14:40:10

REGNO...: 72850-067 NAME: SOTO-CONCEPCION, ELIEZER

RESP OF: FTD

PHONE...: 609-723-1100 FAX: 609-724-7557

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 04-09-2020 AT DSC AUTOMATICALLY
 COMPUTATION CERTIFIED ON 12-08-2017 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
 CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 11-21-2017
 TOTAL TERM IN EFFECT.....: 144 MONTHS
 TOTAL TERM IN EFFECT CONVERTED...: 12 YEARS
 EARLIEST DATE OF OFFENSE.....: 05-14-2017

JAIL CREDIT.....:	FROM DATE	THRU DATE
	06-03-2015	11-20-2017

TOTAL PRIOR CREDIT TIME.....:	902		
TOTAL INOPERATIVE TIME.....:	0		
TOTAL GCT EARNED AND PROJECTED...:	635		
TOTAL GCT EARNED.....:	203		
STATUTORY RELEASE DATE PROJECTED:	09-05-2025		
EXPIRATION FULL TERM DATE.....:	06-02-2027		
TIME SERVED.....:	4 YEARS	11 MONTHS	3 DAYS
PERCENTAGE OF FULL TERM SERVED...:	41.0		
PERCENT OF STATUTORY TERM SERVED:	47.9		

PROJECTED SATISFACTION DATE.....: 09-05-2025
 PROJECTED SATISFACTION METHOD....: GCT REL

G0000 TRANSACTION SUCCESSFULLY COMPLETED

ATTACHMENT 11

FTDUG 535.03 * INMATE PROFILE * 05-04-2020
 PAGE 001 OF 001 14:41:00
 72850-067 REG
 REGNO: 72850-067 FUNCTION: PRT DOB/AGE.: / 38
 NAME.: SOTO-CONCEPCION, ELIEZER R/S/ETH.: W/M/H WALSH: NO
 RSP.: FTD-FORT DIX FCI MILEAGE.: 98 MILES
 PHONE: 609-723-1100 FAX: 609-724-7557
 PROJ REL METHOD: GOOD CONDUCT TIME RELEASE FBI NO.:
 PROJ REL DATE.: 09-05-2025 INS NO.: N/A
 PAR ELIG DATE.: N/A SSN.:
 PAR HEAR DATE.: PSYCH: NO DETAINER: NO CMC.: YES
 OFFN/CHG RMKS: 1:15CR00181-005 CONSP TO DIST & PWITD 1K OF HEROIN,280G COC
 OFFN/CHG RMKS: BASE(CRK) & COC HYDROCHLORIDE;144MOS/5YRS SRT

FACIL	CATEGORY	- - - - -	CURRENT ASSIGNMENT	- - - - -	EFF DATE	TIME
FTD	ADM-REL	A-DES	DESIGNATED, AT ASSIGNED FACIL		07-08-2019	1219
FTD	CARE LEVEL	CARE1	HEALTHY OR SIMPLE CHRONIC CARE		01-17-2018	0848
FTD	CARE LEVEL	CARE1-MH	CARE1-MENTAL HEALTH		04-27-2018	1503
FTD	COR COUNSL	6695 L-Z	S.SILVER, X-4535		07-08-2019	1219
FTD	CASE MGT	BIR CERT Y	BIRTH CERTIFICATE - YES		12-01-2019	1426
FTD	CASE MGT	DEPEND Y	DEPENDENTS UNDER 21 - YES		07-11-2018	1406
FTD	CASE MGT	PHOTO ID Y	PHOTO ID - YES		12-01-2019	1426
FTD	CASE MGT	RPP PART	RELEASE PREP PGM PARTICIPATES		12-22-2017	1203
FTD	CASE MGT	SSN CARD N	SOCIAL SECURITY CARD - NO		07-11-2018	1406
FTD	CASE MGT	VET P/S N	PARENT/SPOUSE VETERAN - NO		07-11-2018	1406
FTD	CASE MGT	VETERAN N	VETERAN - NO		07-11-2018	1406
FTD	CASE MGT	V94 CDA913	V94 CURR DRG TRAF ON/AFT 91394		12-18-2017	1005
FTD	CASE MGT	WA NO HIST	NO WALSH ACT OFFENSE HISTORY		12-01-2017	1524
FTD	CASEWORKER	6695 L-Z	M.MCCOLLUM, X-4562		07-08-2019	1219
FTD	CUSTODY	OUT	OUT CUSTODY		12-04-2017	0957
FTD	DRUG PGMS	ED NONE	DRUG EDUCATION NONE		12-18-2017	1005
FTD	DESIG/SENT	ECHO	TEAM ECHO		11-30-2017	1302
FTD	DESIG/SENT	FPAM NO	FPAM-DID NOT COMPLY W/JUD REC		12-04-2017	0959
FTD	EDUC INFO	ESL HAS	ENGLISH PROFICIENT		04-17-2019	0939
FTD	EDUC INFO	GED HAS	COMPLETED GED OR HS DIPLOMA		12-19-2017	1411
FTD	FIN RESP	COMPLT	FINANC RESP-COMPLETED		07-23-2018	1051
FTD	FIRST STEP	FTC ELIG	FTC-ELIGIBLE - REVIEWED		12-01-2019	1437
FTD	FIRST STEP	R-LW	LOW RISK RECIDIVISM LEVEL		12-01-2019	1436
FTD	LEVEL	MINIMUM	SECURITY CLASSIFICAT'N MINIMUM		12-01-2017	1532
FTD	MED DY ST	C19-QUAR	COVID-19 QUARANTINED		04-03-2020	0729
FTD	MED DY ST	NO PAPER	NO PAPER MEDICAL RECORD		12-13-2017	0847
FTD	MED DY ST	REG DUTY	NO MEDICAL RESTR--REGULAR DUTY		01-17-2018	0848
FTD	MED DY ST	YES F/S	CLEARED FOR FOOD SERVICE		01-17-2018	0848
FTD	PGM REVIEW	JUN	JUNE PROGRAM REVIEW		06-10-2020	0811
FTD	QUARTERS	V02-158L	HOUSE V/RANGE 02/BED 158L		04-25-2020	1515
FTD	RELIGION	NO PREFER	NO PREFERENCE		12-18-2017	1004
FTD	UNIT	CAMP	R. BRINSON, X-4532		07-08-2019	1219
FTD	WAITNG LST	FS PHYS	PHYSICAL COMPLETED FOR FS		01-17-2018	0848
FTD	WRK DETAIL	GARAGE	GARAGE		07-08-2019	1219

G0000 TRANSACTION SUCCESSFULLY COMPLETED

ATTACHMENT 12

FTDUG	*	PUBLIC INFORMATION	*	05-04-2020
PAGE 001	*	INMATE DATA	*	14:32:35
		AS OF 05-04-2020		

REGNO...: 79605-054 NAME: SCRONIC, MICHAEL

RESP OF: FTD

PHONE...: 609-723-1100

FAX: 609-724-7557

RACE/SEX...: WHITE / MALE

AGE: 48

PROJ REL MT: GOOD CONDUCT TIME RELEASE

PAR ELIG DT: N/A

PROJ REL DT: 09-18-2025

PAR HEAR DT:

G0002 MORE PAGES TO FOLLOW . . .

FTDUG * PUBLIC INFORMATION * 05-04-2020
 PAGE 002 * INMATE DATA * 14:32:35
 AS OF 05-04-2020

REGNO...: 79605-054 NAME: SCRNIC, MICHAEL

RESP OF: FTD

PHONE...: 609-723-1100 FAX: 609-724-7557

HOME DETENTION ELIGIBILITY DATE: 03-18-2025

THE FOLLOWING SENTENCE DATA IS FOR THE INMATE'S CURRENT COMMITMENT.
 THE INMATE IS PROJECTED FOR RELEASE: 09-18-2025 VIA GCT REL

-----CURRENT JUDGMENT/WARRANT NO: 010 -----

COURT OF JURISDICTION.....: NEW YORK, SOUTHERN DISTRICT
 DOCKET NUMBER.....: 7:18-CR-00043 (CS)
 JUDGE.....: SEIBEL
 DATE SENTENCED/PROBATION IMPOSED: 09-27-2018
 DATE COMMITTED.....: 11-26-2018
 HOW COMMITTED.....: US DISTRICT COURT COMMITMENT
 PROBATION IMPOSED.....: NO

	FELONY ASSESS	MISDMNR ASSESS	FINES	COSTS
NON-COMMITTED..:	\$100.00	\$00.00	\$00.00	\$00.00

RESTITUTION...: PROPERTY: NO SERVICES: NO AMOUNT: \$22,026,427.00

-----CURRENT OBLIGATION NO: 010 -----

OFFENSE CODE....: 153 18:286,371 FRAUD, OTHER
 OFF/CHG: 15:78J(B) & 78FF, 17 CFR 240.10B-5 SECURITIES FRAUD, A CLASS C
 FELONY

SENTENCE PROCEDURE.....: 3559 PLRA SENTENCE
 SENTENCE IMPOSED/TIME TO SERVE..: 96 MONTHS
 TERM OF SUPERVISION.....: 3 YEARS
 DATE OF OFFENSE.....: 10-05-2017

G0002 MORE PAGES TO FOLLOW . . .

FTDUG *
 PAGE 003 OF 003 *

PUBLIC INFORMATION
 INMATE DATA
 AS OF 05-04-2020

* 05-04-2020
 * 14:32:35

REGNO...: 79605-054 NAME: SCRNIC, MICHAEL

RESP OF: FTD

PHONE...: 609-723-1100 FAX: 609-724-7557

-----CURRENT COMPUTATION NO: 010 -----

COMPUTATION 010 WAS LAST UPDATED ON 03-11-2020 AT DSC AUTOMATICALLY
 COMPUTATION CERTIFIED ON 12-12-2018 BY DESIG/SENTENCE COMPUTATION CTR

THE FOLLOWING JUDGMENTS, WARRANTS AND OBLIGATIONS ARE INCLUDED IN
 CURRENT COMPUTATION 010: 010 010

DATE COMPUTATION BEGAN.....: 11-26-2018
 TOTAL TERM IN EFFECT.....: 96 MONTHS
 TOTAL TERM IN EFFECT CONVERTED...: 8 YEARS
 EARLIEST DATE OF OFFENSE.....: 10-05-2017

JAIL CREDIT.....:	FROM DATE	THRU DATE
	10-05-2017	10-05-2017

TOTAL PRIOR CREDIT TIME.....: 1
 TOTAL INOPERATIVE TIME.....: 0
 TOTAL GCT EARNED AND PROJECTED...: 432
 TOTAL GCT EARNED.....: 54
 STATUTORY RELEASE DATE PROJECTED: 09-18-2025
 EXPIRATION FULL TERM DATE.....: 11-24-2026
 TIME SERVED.....: 1 YEARS 5 MONTHS 10 DAYS
 PERCENTAGE OF FULL TERM SERVED...: 18.0
 PERCENT OF STATUTORY TERM SERVED: 21.1

PROJECTED SATISFACTION DATE.....: 09-18-2025
 PROJECTED SATISFACTION METHOD....: GCT REL

G0000 TRANSACTION SUCCESSFULLY COMPLETED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

TROY WRAGG, MICHAEL SCRONIC,
LEONARD BOGDAN, and ELIEZER
SOTO CONCEPCION, individually
and on behalf of others
similarly situated;

Petitioners,

v.

DAVID E. ORTIZ, Warden of the
Federal Correctional
Institution, Fort Dix and
MICHAEL CARVAJAL, Director of
the Federal Bureau of

Respondent.

Civil Action No. 20-05496(RMB)

DECLARATION OF CHRISTINA CLARK

I, CHRISTINA CLARK, do hereby declare and state as follows:

1. I am a Senior Attorney with the Federal Bureau of Prisons (the "Bureau"), Federal Correctional Institution, Fort Dix, New Jersey ("FCI Fort Dix"). I have worked for the Bureau of Prisons since October 2007, and have been assigned to FCI Fort Dix since February 2009. I make this Declaration in connection with the Bureau's response to the Temporary Restraining Order filed by Petitioners Troy Wragg, Reg. No. 67165-019; Michael Scronic, Reg. No. 79605-054; Leonard Bogdan, Reg. No. 07918-088; and Eliezer Soto-Concepcion, Reg. No. 72850-067.

2. I am aware the Petitioners are challenging the institution's actions with respect to the COVID-19 pandemic and seek release from confinement.

3. The Bureau of Prisons has established an administrative remedy procedure through which an inmate can seek formal review of any complaint regarding any aspect of his imprisonment. See 28 C.F.R. § 542 et seq. In order to exhaust administrative remedies, an inmate must first present his complaint to the Warden of the institution where he is confined. He may then further appeal an adverse decision to the Regional Director within 20 calendar days of the date the Warden signed the response. An inmate who is not satisfied with the Regional Director's response may submit an appeal to the Central Office, General Counsel, within 30 calendar days of the date the Regional Director signed the response. No administrative remedy appeal is considered to have been finally exhausted until it has been denied by the Bureau of Prisons' Central Office.

4. In the ordinary course of business, computerized indexes of all administrative appeals filed by inmates are maintained so that rapid verification may be made as to whether an inmate has exhausted administrative appeals on a particular

issue. On or about May 7, 2020, I accessed the computerized indexes of all administrative remedies filed by the four Petitioners.

5. Records reveal three of the Petitioners (Wragg, Scronic and Soto-Concepcion) have never filed an Administrative Remedy while incarcerated with the BOP. See Exhibits 1-3. Inmate Bogdan, Reg. No. 07918-088, has filed a number of Remedies between 2016 and November 2019 challenging Compassionate Release request denials. See Exhibit 4. He has not filed an Administrative Remedy since the COVID-19 pandemic began in 2020.

6. Attached hereto, please find true and correct copies of the following documents:

Attachment 1 - Administrative Remedy Generalized Retrieval, Wragg Reg. No. 67165-019;

Attachment 2 - Administrative Remedy Generalized Retrieval, Inmate Scronic Reg. No. 79605-054;

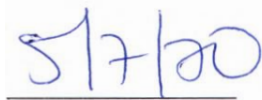
Attachment 3 - Administrative Remedy Generalized Retrieval, Inmate Soto-Concepcion Reg. No. 72850-067;

Attachment 4 - Administrative Remedy Generalized Retrieval, Inmate Bogdan Reg. No. 07918-088.

I declare that any and all records attached to this declaration are true and accurate copies maintained in the ordinary course of business by the Federal Bureau of Prisons. I further declare that the foregoing is true and correct to the best of my knowledge and belief, and is given under penalty of perjury pursuant to 28 U.S.C. § 1746.



CHRISTINA CLARK, ESQ.
Senior Attorney
FCI Fort Dix



Date

EXHIBIT 1

```

FTDUG          *ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL *          05-07-2020
PAGE 001 OF 001                                         08:28:12

FUNCTION: LAST SCOPE: REG EQ 67165-019 OUTPUT FORMAT: FULL
-----LIMITED TO SUBMISSIONS WHICH MATCH ALL LIMITATIONS KEYED BELOW-----
DT RCV: FROM        THRU        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                                          

```

G5152 NO REMEDY DATA EXISTS FOR THIS INMATE

EXHIBIT 2

ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL

Page 10 of 10
eID: 1057

08:28:26

FUNCTION: LST SCOPE: REG EQ 79605-054

OUTPUT FORMAT: ☒ FULL

-----LIMITED TO SUBMISSIONS WHICH MATCH ALL LIMITATIONS KEYED BELOW-----

DT RCV: FROM THRU DT STS: FROM THRU DT STS: FROM TO DAYS BEFORE "OR" FROM TO DAYS AFTER DT RDUDT TOU: FROM TO DAYS BEFORE "OR" FROM TO DAYS AFTER DT TRT[illegible]

SUBJECTS: _____

EXTENDED: ☐ REMEDY LEVEL: ☐ RECEIPT: ☐☐☐ "OR" EXTENSION: ☐☐☐

RCV OFC : EQ [] [] [] [] [] []

TRACK: DEPT: [] [] [] [] [] []

PERSON: E E E E E E

[illegible]

EVNT FACL: EQ [] [] [] [] [] []

RCV FACILITY: EQ [] [] [] [] [] []

RCV UN/LC: EQ [] [] [] [] [] []

RCV QTR.: EQ [] [] [] [] [] [] []

ORIG FAC: EQ ☐ ☐ ☐ ☐ ☐ ☐

ORG UN/LC: EQ

ORIG QTR.: EQ _____

NO REMEDY DATA EXISTS FOR THIS INMATE

EXHIBIT 3

FTDUG *ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL * 05-07-2020
 PAGE 001 OF 001 08:28:39

FUNCTION: LST SCOPE: REG EQ 72850-067 OUTPUT FORMAT: FULL

-----LIMITED TO SUBMISSIONS WHICH MATCH ALL LIMITATIONS KEYED BELOW-----

DT RCV: FROM THRU 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
 ORIG UN/LC: EQ
 ORIG QTR.: EQ

G5152 NO REMEDY DATA EXISTS FOR THIS INMATE

EXHIBIT 4

FTDUG	*ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL *				05-07-2020
PAGE 002	* SANITIZED FORMAT *				08:28:53
REMEDY-ID	SUBJ1/SUBJ2	-----ABSTRACT-----			
	RCV-OFC	RCV-FACL	DATE-RCV	STATUS	STATUS-DATE
851869-R1	13GM/ NER	COMPASSIONATE RELEASE REQUEST FTD	02-11-2016	REJ	02-16-2016
856495-F1	13GM/ FTD	APPEAL DENIAL OF COMPASSIONATE RELEASE FTD	03-25-2016	CLD	04-14-2016
856495-R1	13GM/ NER	APPEAL DENIAL OF COMPASSIONATE RELEASE FTD	04-22-2016	CLD	05-16-2016
856495-A1	13GM/ BOP	APPEAL DENIAL OF COMPASSIONATE RELEASE FTD	06-09-2016	CLD	09-21-2016
910496-F1	13LM/ FTD	APPEAL DENIAL OF COMPASSIONATE RELEASE FTD	07-31-2017	CLD	08-17-2017
989046-R1	13LM/ NER	REQ FOR COMPASSIONATE RELEASE FTD	08-23-2019	REJ	08-28-2019
G0002	MORE PAGES TO FOLLOW . . .				

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FTDUG          *ADMINISTRATIVE REMEDY GENERALIZED RETRIEVAL *          05-07-2020
PAGE 003 OF 003 *          SANITIZED FORMAT          *          08:28:53
REMEDY-ID      SUBJ1/SUBJ2 -----ABSTRACT-----
              RCV-OFC      RCV-FACL      DATE-RCV      STATUS      STATUS-DATE

990215-F1      13GM/      REQ RECONSIDERATION OF COMPASSIONATE RELEASE- W/ FSA
              FTD          FTD          09-09-2019      CLD          09-19-2019

990215-R1      13GM/      REQ RECONSIDERATION OF COMPASSIONATE RELEASE- W/ FSA
              NER          FTD          09-27-2019      CLD          10-25-2019

990215-A1      13GM/      REQ RECONSIDERATION OF COMPASSIONATE RELEASE- W/ FSA
              BOP          FTD          11-21-2019      CLD          01-28-2020

```

9 REMEDY SUBMISSION(S) SELECTED
 G0000 TRANSACTION SUCCESSFULLY COMPLETED