

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

DECLARATION OF ADAM SASSAMAN

I, ADAM SASSAMAN, make the following declaration in lieu of affidavit pursuant to 28 U.S.C. § 1746 to the best of my knowledge and belief.

1. I am the Safety and Occupational Health Administrator at Federal Correctional Institution ("FCI") Fort Dix. I am over the age of twenty-one and competent to make this Declaration.

2. Safety and Occupational Health is a division in the Bureau of Prisons that, in coordination with the separate Health Services division, implements programs and policies to promote a safe, healthy environment for staff and inmates.

3. I have been an employee of the Bureau of Prisons since August 3, 2008. I began work in the area of Safety and Occupational Health for the Bureau of Prisons in February 2010. I began serving as a Safety and Occupational Health Administrator in January 2015 when I started in the role at Federal Detention Center Philadelphia. I began my current duties as Safety and Occupational Health Administrator at FCI Fort Dix on March 18, 2020 after the prior Administrator was promoted.

4. As Safety and Occupational Health Administrator at FCI Fort Dix, among other things, I serve as the principal manager and subject-matter expert at the facility for the development, implementation and enforcement of programs and policies involving environmental health, safety, fire prevention and suppression, occupational health/safety and environmental matters, workers' compensation, and for conducting the on-going specialized training for both staff and inmates as mandated by the Bureau of Prisons and other federal agencies. My work is guided by various Bureau of Prisons policies, including but not limited to Bureau of Prisons Policy Statement 1600.11 – National Occupational Safety and Health. A true copy of this Policy Statement is attached hereto as Attachment 1.

5. I am familiar with the efforts undertaken at FCI Fort Dix in response to the COVID-19 pandemic, and I am responsible for the response efforts that fall within the authority of Safety and Occupational Health. As they apply to my areas of authority, I am familiar with Bureau of Prisons guidance on its COVID-19 response as well as the portions of the CDC Interim Guidance on Management of COVID-19 in Correctional and Detention Facilities. A true copy of the CDC Guidance is attached hereto as Attachment 2.

6. In order to implement applicable federal policies and guidance regarding combatting the spread of COVID-19 at FCI Fort Dix, the following specific measures have been taken.

7. On February 29, 2020, I am informed that the separate Health Services division at FCI Fort Dix implemented COVID-19 screening for all incoming inmates. I understand this is addressed in a separate declaration.

8. On March 13, 2020, FCI Fort Dix ordered 300 hand soap dispensers for inmate areas. To provide for personal hygiene prior to receipt and installation of soap dispensers, FCI Fort Dix issued inmates, at no cost to them, all-in-one soap to shower and wash hands. During this period, inmates also had access weekly to commissary, where they could purchase additional hygiene products, including hand soap and hand sanitizer.

9. On March 13, 2020, FCI Fort Dix cancelled social visits for inmates.

10. On March 13, 2020, FCI Fort Dix issued staff health screening guidance.

11. On March 16, 2020, FCI Fort Dix commenced screening staff for COVID-19. This screening is conducted by the separate Health Services division and involves temperature checks and a review of any recent symptoms that could be related to COVID-19.

12. On March 17, 2020, FCI Fort Dix ordered a new EPA-registered disinfectant with a 2-minute effectiveness time from contact with the virus. This disinfectant was issued to housing units on March 24, 2020, with (a) instructions to disinfect all frequently-touched surfaces; and (b) guidance to train orderlies on use of the product. The disinfectant in use prior to receipt of this shorter-acting type was also EPA-registered to kill COVID-19 but after a longer contact time. Products

appearing on EPA's list of registered disinfectant products have qualified for use against COVID-19 through the agency's Emerging Viral Pathogen program. This program allows product manufacturers to provide EPA with data, even in advance of an outbreak, that shows their products are effective against harder-to-kill viruses than SARS-CoV-2.

13. On March 18, 2020, I prepared updated COVID-19 cleaning and disinfection procedures for FCI Fort Dix for review and approval by the Executive Staff, including the Warden.

14. On March 20, 2020, these procedures were approved for FCI Fort Dix and sent to all staff with instructions to train inmate orderlies on implementation.

15. On March 20, 2020, I sent cleaning and disinfection guidance to all inmates at FCI Fort Dix through the Trulincs electronic communications system. A true copy of that communication is attached here as Attachment 3.

16. Also on March 20, 2020, the separate Correctional Services division at FCI Fort Dix informed all staff and inmates that the facility was implementing Modified Operations, including identifying smaller groupings of inmates than previously used and adjusted "move time" schedules for these smaller groups to help limit contact between inmates. My division updated its activities accordingly.

17. During the week of March 22, 2020, FCI Fort Dix received hand soap and hand soap dispensers that we installed the same week in all inmate bathrooms.

18. All inmate bathrooms have been supplied continuously with hand soap since the installation of dispensers during the week of March 22, 2020.

19. On March 26, 2020, FCI Fort Dix ordered backpack disinfectant sprayers for use in the facility. Backpack sprayers permit faster and more comprehensive disinfection of living and working areas than by-hand cleaning alone.

20. On March 27, 2020, Occupational Safety and Health identified a reliable source to supply an EPA-registered disinfectant for COVID-19 with a 45-second effectiveness time and immediately requested funding to purchase.

21. On April 2, 2020, I prepared updated COVID-19 cleaning and disinfection procedures for review and approval by executive management, which were approved the next day, April 3, 2020, and sent to all staff with instructions to train inmate orderlies on implementation. A true copy of that communication is attached here as Attachment 4.

22. On April 6, 2020, FCI Fort Dix updated the institutional Housekeeping Plan to incorporate the April 3, 2020 updated procedures.

23. On April 7, 2020, FCI Fort Dix ordered additional backpack sprayers from GSA Advantage to increase use of this disinfecting method. Because of delivery delays, FCI Fort Dix then purchased some sprayers from local sources in April 2020. As of April 28, 2020, FCI Fort Dix had obtained 17 backpack sprayers and awaits delivery on others.

24. On April 8, 2020, FCI Fort Dix placed disinfection instructions and disinfectant for staff use in all BOP escort vehicles.

25. On April 8, 2020, in response to a decision to utilize additional space at the facility to house inmates who test positive for COVID-19, FCI Fort Dix supplied Building 5851 with disinfectant and cleaning supplies.

26. On April 10, 2020, I personally oversaw the use of a backpack sprayer to disinfect Building 5851 as well as the training of orderlies on the use of backpack sprayers.

27. On April 16, 2020, I sent an email memorandum to all staff to remind them to verify and document all cleaning and disinfection efforts, consistent with BOP policy. I likewise informed them that Control Centers would begin to conduct a twice-daily census "during which all Department Heads, Supervisors, or their designees will call into control to verify the attached sanitation procedures are being undertaken in the housing units and all other areas of the Institution." A true copy of that communication is attached here as Attachment 5.

28. On April 21, 2020, FCI Fort Dix installed dilution centers for the EPA-registered, 45-second disinfectant in the FCI Fort Dix Camp and Camp F/S. I advised these facilities to begin using this disinfectant in backpack sprayers immediately with labeled spray bottle use to follow. Other EPA-registered disinfectants remain constantly available for routine cleaning and disinfecting.

29. On April 24, 2020, FCI Fort Dix modified the documentation requirements for cleaning and disinfection so that Department Heads report once daily to the Command Center that disinfection and cleaning in their area is completed as required.

30. On April 24, 2020, FCI Fort Dix installed dilution centers for the EPA-registered, 45-second disinfectant in Safety East and West Units. I advised these facilities to begin using this disinfectant in backpack sprayers immediately with labeled spray bottle use to follow. As noted above, other EPA-registered disinfectants remain constantly available for routine cleaning and disinfecting.

31. As Safety and Occupational Health Administrator, I am reviewing any applicable Bureau of Prisons guidance on the COVID-19 pandemic as it issues from our Central Office and the Northeast Regional Office to ensure that the practices and procedures at FCI Fort Dix meet or exceed such guidance.

32. As Safety and Occupational Health Administrator, I am working daily with my staff to review our practices and procedures to seek improvements and modification where they can increase health and safety for inmates and staff.

I declare, under penalty of perjury, that the foregoing is true to the best of my knowledge and belief.

May 12, 2020



ADAM SASSAMAN
Safety and Occupational Health Administrator
FCI Fort Dix

Attachment 1



U.S. Department of Justice
Federal Bureau of Prisons

PROGRAM STATEMENT

OPI: HSD/SAF

NUMBER: 1600.11

DATE: June 1, 2017

National Occupational Safety and Health Policy

/s/

Approved: Thomas R. Kane

Acting Director, Federal Bureau of Prisons

1. PURPOSE AND SCOPE

This new policy replaces the safety and health requirements (Chapters 1 and 2) in the Program Statement **Occupational Safety, Environmental Compliance, and Fire Protection**. The need for a new policy was prompted by numerous changes to Occupational Safety and Health Administration (OSHA) regulations, American Correctional Association (ACA) standards, , and National Fire Codes (NFC) requirements relating to occupational safety and health since the policy was issued in 2007. The purpose of this policy is to:

- Provide a safe and healthy environment for facility occupants.
- Implement a facility safety program.
- Provide an environment free from recognized hazardous likely to cause death or serious physical harm.
- Provided safety and health training for personnel.
- Ensure prompt abatement of unsafe and unhealthy working conditions.
- Ensure all institutions comply with the most recent codes, standards, and regulations; the following are referenced in this policy:
 - OSHA.
 - National Fire Protection Association (NFPA).
 - ACA.

- Requirements for conditions or operations not adequately addressed by the codes and standards referenced above may use information published by:
 - American Society for Testing and Materials (ASTM).
 - American National Standards Institute (ANSI).
 - American Conference of Governmental Industrial Hygienists (ACGIH).

The scope of this policy is limited to occupational safety and health requirements dealing with:

- Institution Security.
- Occupational Safety.
- Occupational Health.

This policy applies to:

- BOP-owned or -operated detention and correctional facilities.
- UNICOR operations at BOP detention and correctional facilities.

a. Summary of Changes

Policy Rescinded

P1600.09 Occupational Safety, Environmental Compliance, and Fire Protection (10/31/07);
Chapters 1 and 2 (Safety and Health) only.

Numerous changes to occupational safety/health codes, standards, and regulations have been incorporated into this policy.

b. Program Objectives. The objectives of this policy are:

- Evaluate unsafe or unhealthy conditions reported by facility occupants.
- Evaluate accidents and injuries that occur at the facility.
- Develop a plan of corrective action based on the evaluation of hazards and accidents.
- Ensure personal protective equipment is issued and used by all personnel when necessary.
- Conduct safety and health inspections/audits, as specified in this policy.
- Conduct hazard assessments and surveys, as specified in this policy.
- Minimize the possibility of accidents, deaths, and illnesses.
- Encourage facility occupants to report workplace hazards.
- Ensure that safety is a principal element in all BOP operations.

c. Institution Supplement. Each facility must develop an institution supplement on foot protection. Should local facilities make any changes outside the required changes in the national

policy or establish any additional local procedures to implement national policy, the local Union may invoke to negotiate procedures or appropriate arrangements.

d. Written Plans and Programs. Each institution must develop the following written plans/programs:

- Control of flammable, toxic, and caustic materials. See Chapter 3, Section 4.
- Confined space. See Chapter 2, Section 5.
- Control of Hazardous Energy (Lockout/Tagout). See Chapter 2, Section 6
- Fall protection. See Chapter 2, Section 3.
- Hazard communication. See Chapter 3, Section 3.
- Hearing conservation. See Chapter 3, Section 8.
- Hot work. See Chapter 2, Section 14.
- Pest control. See Chapter 3, Section 10.
- Respiratory protection. See Chapter 3, Section 2.

REFERENCES

Program Statements

P1600.12	National Environmental Protection Policy (6/1/2017)
P1600.13	National Fire Protection Policy (6/1/2017)
P1601.05	Workers' Compensation Programs (3/25/16)
P4200.11	Facilities Operations Manual (4/12/16)
P5500.14	Correctional Services Procedures Manual (8/1/16)

BOP Forms

BP-A0139	Notice of Right to File for Compensation for a Work-Related Injury
BP-A0140	Injury Report – Inmate
BP-A0169	Uniform Basic Safety Regulations
BP-A0506	Institution Fire/Safety and Sanitation Inspection
BP-A0658	Inmate Claim for Compensation Resulting from Work Injury

Other Forms

OSHA 300	Log of Work-Related Injuries and Illnesses
OSHA 300a	Summary of Work-Related Injuries and Illnesses
OSHA 301	Injury and Illness Incident Report
SF-91	Motor Vehicle Accident Report
SF-94	Statement of Witness
SF-95	Claim for Damage, Injury, or Death

ACA Standards

- American Correctional Association Standards for Adult Correctional Institutions, 4th Edition: 4-4082, 4-4145, 4-4146, 4-4211, 4-4212, 4-4215, 4-4329, 4-4332, 4-4333, 4-4358, and 4-4413
- American Correctional Association Performance Based Standards for Adult Local Detention Facilities, 4th Edition: 4-ALDF-1A-01M, 4-ALDF-1A-03M, 4-ALDF-1A-04, 4-ALDF-1A-14, 4-ALDF-1A-16, 4-ALDF-1C-08M, 4-ALDF-1C-09M, 4-ALDF-1C-11M, 4-ALDF-4C-18M, and 4-ALDF-4D-26
- American Correctional Association Standards for Administration of Correctional Agencies, 2nd Edition: 2C0-2A-02, 2C0-1D-15, and 2C0-3B-01
- American Correctional Association Standards for Correctional Training Academies: 1CTA-2B-01, 1CTA-2B03, 1CTA-3B-06, 1CTA-3C-05 1CTA-3E-03, 1CTA-3E-04, and 1CTA-3E-05

Records Retention Requirements

For guidance on records and information that apply to this program, see the Records and Information Disposition Schedule (RIDS) on Sallyport.

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ACRONYMS AND ABBREVIATIONS

ACA	American Correctional Association
ACGIH	American Conference of Governmental Industrial Hygienists
AD	Assistant Director
ASTM	American Society for Testing Material
ANSI	American National Standard Institute
BOP	Federal Bureau of Prisons
CDL	Commercial Drivers License
CEO	Chief Executive Officer
CFR	Code of Federal Regulations
DOL	U.S. Department of Labor
DOJ	U.S. Department of Justice
DOT	U.S. Department of Transportation
ESCA	Environmental and Safety Compliance Administrator
FIFRA	Federal Insecticide, Fungicide, and Rodenticide Act
GFCI	Ground Fault Circuit Interrupter
HSD	Health Services Division
HVAC	Heating, Ventilation, and Air Conditioning
IAC	Inmate Accident Compensation
NESCA	National Environmental and Safety Compliance Administrator
NIOSH	National Institute for Occupational Safety and Health
NFPA	National Fire Protection Association
NFC	National Fire Codes
NOV	Notice of Violation
NRC	Nuclear Regulatory Commission
OSHA	Occupational Safety and Health Administration
OPM	Office Personnel Management
PEL	Permissible Exposure Limit
PPE	Personal Protective Equipment
RD	Regional Director
RESCA	Regional Environmental and Safety Compliance Administrator
SCBA	Self-Contained Breathing Apparatus
SHU	Special Housing Unit
SDS	Safety Data Sheet
T4T	Training-for-Trainers
TPQ	Threshold Planning Quantity
TSCA	Toxic Substance Control Act
UL	Underwriters' Laboratories
VT	Vocational Training

Chapter 1. Administration

1. OCCUPATIONAL SAFETY AND HEALTH DUTIES

a. **Assistant Director.** The Assistant Director (AD), Health Services Division (HSD), is designated as the Health and Safety Official for the Federal Bureau of Prisons (BOP).

b. **National Environmental and Safety Compliance Administrator.** The National Environmental and Safety Compliance Administrator (NESCA), reports to the AD, HSD, on issues relating to occupational safety. He/she:

- Oversees the management of the BOP's occupational safety and health program.
- Supervises the Chief, Occupational Safety Compliance.
- Provides technical direction to Regional Environmental and Safety Compliance Administrators (RESCA).
- Interprets the BOP Occupational Safety and Health Policy.
- Provides guidance and technical assistance to Central Office, Regional, and institution staff to resolve OSHA issues that cannot be resolved at the institution or regional levels.

c. **Chief, Occupational and Employee Health.** The Chief, Occupational and Employee Health, reports to the AD, HSD, on issues relating to occupational health. He/she:

- Oversees the management of the Bureau's occupational health program.
- Interprets the Bureau's Occupational Health requirements within this policy.
- Supervises the Occupational and Employee Health Branch.
- Provides technical direction to RESCAs on occupational health issues.
- Provides guidance and technical assistance to Central Office, Regional, and institution staff to resolve occupational health issues that cannot be resolved at the institution or regional levels.

d. **Chief, Occupational Safety Compliance.** The Chief, Occupational Safety Compliance, reports to the NESCA on issues relating to occupational safety. He/she:

- Oversees the daily operation of the Bureau's occupational safety program.
- Interprets the Bureau's Occupational Safety requirements within this policy.
- Serves as the BOP point of contact for OSHA visits to institutions.
- Notifies RESCAs of scheduled OSHA visits.
- Serves as a technical resource in the area of:
 - OSHA-related programs.
 - OSHA citations and complaints.
 - OSHA compliance audits.

- Provides guidance and technical assistance to Central Office, regional, and institution staff to resolve OSHA issues that cannot be resolved at the institution or regional levels.

e. **Regional Environmental and Safety Compliance Administrator.** The Regional Environmental and Safety Compliance Administrator (RESCA), reports to the Regional Director (RD) on issues relating to occupational safety and health. He/she, in conjunction with the National Environmental and Safety Compliance Branch and the Occupational and Employee Health Branch:

- Provides direction and technical assistance to help resolve occupational safety and health issues that cannot be resolved at the institution level.
- Conducts technical assistance visits to institutions.
- Assists institutions with timely OSHA injury and illness reporting requirements.
- Monitors the effectiveness and uniformity of Regional occupational safety and health programs.
- Monitors reports and other occupational safety and health data generated by institution personnel.
- Notifies the NESCA of OSHA citations and complaints and forwards the citation and complaints to the Chief, Occupational Safety Compliance.
- Monitors occupational safety and health reports to identify and track:
 - Safety trends.
 - ACA Accreditation and Reaccreditation issues.
 - Program Review findings.
 - Operational review findings.
 - OSHA citations and complaints.
 - OSHA injury and illness reporting requirements.
 - Training needs.
 - Injury rates.
- Assists in conducting institutional OSHA Compliance Audits.
- Serves as the regional technical resource for emergency response procedures involving natural disasters, chemical, biological, radiological/nuclear, and explosive incidents.
- Monitors Program Review findings relating to occupational safety and health issues.
- Identifies and assists in the implementation of corrective actions to address Program Review findings.
- Assists institutions in the implementation of SCBA fit test and training programs.
- Serves as the Regional technical resource for emergency response procedures involving occupational safety and health emergencies.
- Provides quarterly updates to the NESCA and Chief, Occupational Safety Compliance on:

- ACA visits.
- Government Owned Vehicle accidents.
- Program Reviews.
- Regional occupational safety and health initiatives.
- Safety incidents.
- Status of corrective action on OSHA citations and complaints.
- Updates on serious injuries and hospitalizations.

f. **Certified Industrial Hygienist (Central Office).** The Central Office Certified Industrial Hygienist reports to the Chief, Occupational and Employee Health, on issues relating to occupational health and industrial hygiene. He/she:

- Provides occupational safety and health consultation to Institutional and Regional ESCAs (e.g., indoor air quality, workplace mold, and other workplace and industrial hygiene stressors).
- Reviews Safety Data Sheets and provides Hazard Communication guidance for Job Hazard Assessments for FPI and BOP facilities.
- Develops scopes of work for industrial hygiene contractors and reviews contractor reports for technical accuracy and recommendation effectiveness.
- Recommends effective and appropriate PPE for staff/inmate use.
- Assists in drafting responses to regulatory agencies (i.e., OSHA) regarding workplace health and safety issues.
- Provides guidance on potentially hazardous new chemicals, processes, or operations within the correctional environment for FPI and BOP facilities.
- Assists and provides Chief, Occupational and Employee Health, with technical input for industrial hygiene policies.
- Collects and analyzes injury surveillance data of workplace injuries.
- Must maintain American Board of Industrial Hygiene (ABIH CIH) certification required for duties.

g. **Occupational Safety Compliance Specialist (Central Office).** The Central Office Occupational Safety Compliance Specialist reports to the Chief, Occupational Safety Compliance, on issues relating to occupational safety. He/she serves as a technical resource to Central Office, Regional, and institution staff in the areas of:

- OSHA-related programs.
- OSHA citations and complaints.
- Bureau policy relating to occupational safety and health.
- Occupational safety and health training.
- Accident investigation.

He/she will be called on to participate in:

- After-action reviews.
- Data collection.
- Development and delivery of occupational safety and health training.
- Responses to OSHA citations and complaints.
- Occupational safety work groups.
- OSHA compliance audits.
- ACA accreditation and reaccreditations.
- Project plan and specification review.
- Technical assistance visits.

h. **Environmental and Safety Compliance Administrator (ESCA).** The Environmental and Safety Compliance Administrator (ESCA) advises the institution Chief Executive Officer (CEO) on occupational safety and health issues. He/she works at the department head level with other institution managers to achieve safety goals. When policy and regulations are not specific, he/she must exercise professional judgment to maintain a reasonable level of occupational safety and health protection at the institution. He/she serves as the institution's technical resource for emergency response procedures involving accidents, injuries, deaths, and similar emergencies.

i. **Other Environmental and Safety Compliance Personnel (Institution).** Other Environmental and Safety Compliance Department staff report to the ESCA and assist in the implementation of the institution's occupational safety and health program.

j. **Environmental and Safety Compliance Administrator Trainee.** The Environmental and Safety Compliance Administrator Trainee advises the institution ESCA on occupational safety and health issues. He/she works with the ESCA and other institution managers to achieve safety goals. When policy and regulations are not specific, he/she must exercise professional judgment to maintain a reasonable level of occupational safety and health protection at the institution.

k. **Environmental and Safety Compliance Alternates.** If the institution ESCA is the only full-time Environmental and Safety Compliance Department staff member, the CEO must appoint at least one safety alternate to provide department coverage during the ESCA's absence. The CEO at an institution with two or more full-time Environmental and Safety Compliance Department staff is highly encouraged to appoint one or more safety alternates.

l. **Chief Executive Officers.** The Chief Executive Officer (CEO) must:

- Support institution occupational safety and health program initiatives.
- Monitor the effectiveness of the institution occupational safety and health program.

- Ensure adequate Environmental and Safety Compliance Department staffing to administer the institution occupational safety and health program.
- Ensure compliance with this policy and applicable safety and health regulations/standards.
- Ensure periodic occupational safety and health inspections of the facility are conducted by technically competent personnel.
- Ensure prompt abatement of unsafe and/or unhealthful working conditions.
- Ensure accurate recordkeeping for occupational safety and health issues.
- Ensure that adequate occupational safety and health training is provided to management, supervisory, safety, and collateral duty safety personnel, as well as all other institution personnel.
- Ensure employees are not subject to restraint, interference, coercion, discrimination, or reprisal for exercising their rights under, or participating in, the Bureau's occupational safety and health program and OSHA regulations.
- Ensure all staff are adequately trained in safety and health initiatives.

m. **Supervisors.** All supervisors must:

- Perform their duties in the safest possible manner.
- Ensure safety practices are followed and implement corrective actions.
- Ensure personnel are trained in occupational safety and health.
- Comply with this policy.
- Familiarize themselves with hazards in particular jobs or the physical surroundings of employees.
- Ensure that personnel are aware of the hazards in particular jobs.
- Immediately report all injuries, accidents, or similar emergencies to the Environmental and Safety Compliance Department.
- Ensure that injured personnel receive appropriate medical attention.
- Ensure that accident and injury reports are completed.

n. **Employees.** Employees must:

- Perform their duties in the safest possible manner.
- Comply with this policy.
- Immediately report all incidents, injuries, illnesses, or similar emergencies to their supervisors and the Environmental and Safety Compliance Department.
- Immediately report hazards or unsafe acts to their supervisors and/or to the ESCA.
- Complete necessary forms for injuries or illnesses.

2. **IMMINENT DANGER.** When a member of the Environmental and Safety Compliance Department determines that conditions or practices could reasonably and immediately be

expected to cause death or serious physical harm, he/she must inform affected employees of the danger and shut down the area, work, or process until the danger is eliminated.

Written notification of an imminent danger determination, identifying both the hazardous conditions and actions taken, must be submitted to the CEO, RESCA, NESCA, and local Union President or designee.

The area, work, or process may be reopened/restarted only after the ESCA conducts an inspection and provides written approval. A copy of the written approval must be provided to the CEO, RESCA, NESCA, and local Union President or designee.

The RESCA and NESCA must review all actions taken as a result of an imminent danger determination.

3. ENVIRONMENTAL/FIRE/SAFETY TRAINING RECORDS

All records for Environmental/Fire/Safety training conducted at the institution must be maintained by the department providing the training.

4. OCCUPATIONAL SAFETY AND HEALTH TRAINING REQUIREMENTS

a. **Environmental and Safety Compliance Department Staff.** Environmental and Safety Compliance Department staff must complete the following training:

- Electrical Standards (OSHA 3095).
- Machinery and Machine Guarding Standards (OSHA 2045).
- OSHA Guide to Industrial Hygiene (OSHA 521).
- OSHA Standards for Construction (OSHA 510).
- OSHA Standards for General Industry (OSHA 511).
- Permit-Required Confined Space Entry (OSHA 2264).
- Respiratory Protection (OSHA 2225).

b. **All Staff (Institution).** Institution staff must be trained during Introduction to Correctional Techniques Phase I and Annual Training in the following:

- Asbestos awareness.
- Confined Space Identification.
- Energy Control Program (Lockout/Tagout).
- Hazard Communication Program.
- Hearing Conservation Program.
- Conducting inmate safety training.

- Monthly/weekly departmental inspections.
- Respiratory Protection Program.

c. **Administrators, Managers, and Supervisors (Institution Duty Officers).** All administrators, managers, and supervisors must be trained annually in inspection techniques needed to determine compliance with the following requirements:

- Applicable occupational safety and health regulations and standards.
- This policy.

d. **Inmate Training.** Each inmate must receive familiarization training during Institution Admission and Orientation on occupational safety and health programs. He/she must sign the forms BP-A0169, Uniform Basic Safety Regulations, and BP-A0139, Notice of Right to File for Compensation for a Work-Related Injury. A copy of each form must be placed in the Inmate Central File.

Upon assignment to a job or detail, each inmate must receive initial training by his/her supervisor concerning safe work methods and hazardous materials. Refresher training must be provided annually or whenever there is a work process change. At a minimum, training must include demonstration of safety features and practices. Workers must be trained to recognize hazards involved in the workplace, understand protective devices and clothing, and report deficiencies to their supervisors. Training must be documented and signed by the inmate.

5. INSTITUTION SAFETY COMMITTEE

a. **Institution Safety Committee Membership.** The Institution Safety Committee must include department heads (including the ESCA and Facilities Manager(s)) designated by the CEO, UNICOR representation, and Union representation (per the Master Agreement, Article 27). Other staff should be invited to Safety Committee meetings as needed to discuss issues involving their areas.

The ESCA must chair the committee and designate a recorder to prepare minutes. Minutes must be forwarded to the committee members, including the local Union and to the RESCA.

The committee must meet quarterly. More frequent meetings may be required based on other requirements (e.g., Environment of Care requirements at Medical Centers). At a minimum, the following topics must be reviewed:

- Accidents and injuries.
- Environmental issues as required by the Program Statement **National Environmental Protection Policy**.

- Fire safety issues as required by the Program Statement **National Fire Protection Policy**.
- Hazardous complaint log.
- Inspections.
- Pest Control.
- Operational/Program Review reports.
- Environmental/Fire/Safety Training.

b. **Work Programming Committee.** The ESCA must be a member of the Work Programming Committee.

6. INSPECTIONS

a. **Weekly Inspections.** The Institution Duty Officer must inspect all areas of the institution weekly, using form BP-A0506, Institution Fire/Safety and Sanitation Inspection.

b. **Monthly Inspections.** All areas of the institution must be inspected monthly by Environmental and Safety Compliance staff.

c. **Annual Inspections.** In addition to the monthly inspection requirement, annual inspections of the following must be completed and documented.

(1) **Sanitation Inspection.** The annual sanitation inspection may be conducted by any of the following:

- Environmental and Safety Compliance Department staff from another BOP facility.
- RESCA.
- Central Office Safety Compliance Staff.

If deficiencies are noted on the annual sanitation inspection, documentation by an independent outside source must be maintained to show deficiencies have been corrected.

(2) **Work, Health, and Safety Inspection.** The annual work, health, and safety inspection may be conducted by any of the following:

- ESCA.
- Environmental and Safety Compliance Department staff from another BOP facility.
- RESCA.
- Central Office Safety Compliance Staff.

d. **Inspection Records.** Inspection must be documented by a written report:

- **Weekly/Monthly Inspections.** Written reports of weekly and monthly inspections, including deficiencies, must be sent to the department head and forwarded to the Warden, through the Associate Warden, for review and corrective action if needed. The reports and corrective actions taken must be kept in the Environmental and Safety Compliance Department for three years.
- **Annual Inspections.** Written reports of annual inspections, including deficiencies and corrective actions taken, must be kept in the Environmental and Safety Compliance Department for three years.

7. TECHNICAL ASSISTANCE VISITS

The CEO or Regional Director may request technical assistance visits. Requests for Central Office technical support must be routed through the Regional Director to the Assistant Director, HSD.

8. REPORTING HAZARDS

Personnel are encouraged to report unsafe or unhealthful conditions to their supervisors. Since many safety and health problems can be eliminated as soon as they are identified, the existence of formal channels of communication does not preclude immediate corrective action by a supervisor in response to oral reports of unsafe or unhealthful working conditions.

Any person who believes that an unsafe or unhealthful condition exists in a workplace where he/she is employed has the right to report the unsafe or unhealthful condition to the ESCA, CEO, Regional or Central Office staff, or directly to OSHA, U.S. Department of Labor (DOL).

Each report of an existing or potential unsafe or unhealthful working condition must be recorded in a log maintained in the Environmental and Safety Compliance Department. A copy of each report must be presented to the Institution Safety Committee at the next meeting. Log entries must contain:

- Date.
- Time.
- Code/reference/file number.
- Location of condition.
- Brief description.
- Classification (imminent danger, serious, or other).
- Date and nature of action taken.

The Environmental and Safety Compliance Department must conduct an inspection immediately upon notification of imminent danger conditions, within 8 hours for potentially serious conditions, and 3 working days for other than serious conditions.

A written summary must be provided to the local Union and the employee or inmate upon request. Distribution of the employee report must be per the Master Agreement.

9. OSHA POSTER

The Bureau Occupational Safety and Environmental Health Program poster must be displayed in a conspicuous location frequented by employees and inmates. The poster details the Bureau program and how to file a report.

10. ACCIDENTS

Work-related accidents and injuries must be reviewed and documented by the supervisor and the Environmental and Safety Compliance Department. Documentation of property damage accidents must be retained in the Environmental and Safety Compliance Department for three years.

11. REPORTS

a. **Serious Accidents/Incidents.** The ESCA must notify the CEO; RESCA; Chief, Occupational Safety Compliance; and OSHA of the following:

- All work-related fatalities within 8 hours.
- All work-related inpatient hospitalizations, amputations, and losses of an eye within 24 hours.

Note: Inpatient hospitalizations solely for observation or diagnostic testing do not need to be reported to OSHA. The inpatient hospitalization must be for treatment purposes.

Only fatalities occurring within 30 days of the work-related incident must be reported to OSHA. Further, for an in-patient hospitalization, amputation, or loss of an eye, these incidents must be reported to OSHA only if they occur within 24 hours of the work-related incident.

The report can be made to OSHA by:

- Calling OSHA's toll free number at 1-800-321-OSHA.
- Calling the closest OSHA Area Office during normal business hours.
- Online through the OSHA website.

b. **Motor Vehicle Accidents.** The Environmental and Safety Compliance Department must review accidents involving Government motor vehicles using Standard Forms 91, 94, and 95. A summary report for each motor vehicle accident resulting in an injury must be forwarded to the RESCA and Chief, Occupational Safety Compliance. In addition, a copy of the accident report must be forwarded to the institution Facilities Department.

c. **Outside Visitor Accidents.** Accidents involving outside visitors must be reported to the Institution Duty Officer, Environmental and Safety Compliance Department, Health Services Department, and Operation Lieutenant.

12. EXTERNAL AGENCY VISITS

a. The CEO must ensure that notification is sent to the Chief, Occupational Safety Compliance, and RESCA of:

- OSHA requests to visit/inspect.
- OSHA unannounced visits.
- OSHA citations and complaints.
- Outside visit or inspection related to other occupational safety or health issues.
- Work-related deaths or serious injuries.

b. **Coordination.** Institution management must coordinate all OSHA site visits/inspections through the Chief, Occupational Safety Compliance.

c. **Reporting.** The CEO must ensure a copy of all outside visit reports are sent to the RESCA. The RESCA must forward a copy to the NESCA and Chief, Occupational Safety Compliance, within 48 hours of receipt.

13. INMATE INJURY INVESTIGATION

a. **Work-Related Injuries.** The purpose of an inmate injury investigation is to find the cause of the injury. Work-relatedness for compensation purposes is concluded by determining whether the injury took place at the assigned workplace during assigned hours and was incidental to the employment.

The assigned workplace is any place the inmate is authorized to be performing an assignment, not just the work station. For example, if a worker slipped on the way to the bathroom from a work station, it is considered a work injury. If he/she slipped on the sidewalk outside the building on the way to lunch, it is not a work injury. The Institution Safety Committee must decide each case individually. Listed below are procedures for documenting inmate injuries:

- Complete a BP-A0140 (Part 1, Injury Report) for all inmate work-related injuries.
- Lost-Time Work Injuries require a completed BP-A0140 (Part 2, Lost Time Follow-up Report).
- Lost-time compensation must be paid per the Federal Inmate Compensation Act.
- The detail of assignment at the time of injury is responsible for lost-time compensation, including for those transferred to a Medical Center for additional care.

b. **Transfer of Records.** Copies of injury reports maintained in the Environmental and Safety Compliance Department should not be forwarded unless requested by the receiving institution.

c. **Records Retention.** Inmate injury records must be retained for the duration of the sentence plus three years.

14. INMATE ACCIDENT COMPENSATION (IAC)

Compensation may be awarded via the following two separate programs: **Lost-Time Wages** and **Inmate Accident Compensation** for work-related physical impairment or death.

a. **Lost-Time Wages** may be awarded to inmates (*while still incarcerated*) for work-related injuries resulting in time lost from the work assignments. Lost-time wages are paid for time lost in excess of three consecutively scheduled work days. The day of injury is considered to be the first work day, regardless of the time of the injury.

In order to be eligible for Lost-time wages, the inmate must have been assigned to one of the following when the injury occurred:

- Federal Prison Industries, Inc.
- Paid institutional work assignments involving the operation or maintenance of a Federal correctional facility.
- Approved work assignments for other Federal entities.

Procedures for lost-time wages while the inmate remains incarcerated are in 28 CFR, Part 301.

The detail of assignment at the time of injury is responsible for lost-time compensation, including for those inmates transferred to a Medical Center for additional care.

b. **Inmate Accident Compensation** may be awarded to *former* Federal inmates (*post-incarceration, or upon release to community confinement*) or their dependents for physical impairment or death resulting from injuries sustained while performing work assignments.

In order to be eligible for Inmate Accident Compensation, the inmate must have been assigned to one of the following when the injury occurred:

- Federal Prison Industries, Inc.
- Paid institutional work assignments involving the operation or maintenance of a Federal correctional facility.
- Approved work assignments for other Federal entities.

c. Providing Documentation for Inmate Accident Compensation Process. The Inmate Accident Compensation Program Coordinator processes claims for compensation for impairment or death, and manages all claims processed at the Central Office level for inmates released from a Bureau of Prisons correctional facility upon expiration of sentence, parole, final discharge from incarceration of a pretrial inmate, or transfer to a Residential Reentry Center or other non-Federal facility at the conclusion of the period of confinement in which the injury occurred.

Institutions should ensure that the following steps are completed:

- *Inmate Claim for Compensation Resulting from Work Injury Form.* Within 45 days before an injured inmate's release from prison or transfer to a Residential Reentry Center, the inmate must notify the ESCA regarding his/her intentions to file a claim. He/she must complete the Inmate Claim for Compensation Resulting from Work Injury Form (BP-A0658).
- *Physical Examination of Inmate by Qualified Physician.* The physical examination to determine and assess the impairment must be completed as far in advance of release as possible by a qualified physician. If this is not completed, the IAC Program Coordinator must be advised.

Note: Examination findings may be documented on the reverse of form BP-A0658. Substantiated percentages of permanent or temporary impairment must be included. The completed form must be returned to the ESCA after the examination. BOP physicians not qualified in impairment assessments under American Medical Association guidelines **should not** complete the form regarding impairment findings.

- *Assemble All Inmate Medical Records and Forward to IAC Coordinator:* The most recent BEMR or medical records of the inmate seeking compensation must be gathered and be included in the IAC packet at the time of release.

- *Compile the IAC Packet:* The ESCA must check the completed BP-A0658 and compile the inmate's IAC Packet to send to the Inmate Accident Compensation Program Coordinator in the Central Office upon the inmate's release. The packet should include the following:
 - BP-A0658 (Completed).
 - BP-A0362 (Inmate Injury Assessment and Follow-Up) or BEMR report of injury.
 - Medical Records –
 - Outpatient entries dealing with the claim from date of injury to release. (Spot-check entries before the claimed injury for possible preexisting conditions.)
 - X-Ray and diagnostic procedure reports on the injury.
 - Consultant reports on the injury.
 - Hospital discharge summaries on the injury.
 - Report of Medical History – Use the most recent before the injury.
 - Report of Medical Examination – Use the most recent before the injury.
 - BP-A0140 and lost-time follow-up report.
 - BP-A0169s signed by inmate.
 - BP-A0139.
 - Witness statements (if any).
 - Memoranda of investigations (if any).
 - Last progress report (as it deals with marital status and release plans used in determining amount of compensation).
 - Photographs (if any).

15. CONSTRUCTION AND RENOVATION PROJECTS

The Environmental Safety Compliance Administrator must participate on all construction and renovation project committee meetings and must be notified of all construction and renovation projects.

- a. **Plan Review.** Plans for renovations, alterations, additions, and new construction must be approved by the institution ESCA. The ESCA's review focuses on compliance with occupational safety and health requirements and BOP policy.
- b. **Pre-Construction Meetings.** The ESCA must attend pre-construction and job progress meetings to advise project staff on occupational safety and health issues.
- c. **Monitoring.** The ESCA must monitor construction and renovation projects to ensure compliance with approved design and safety requirements. Communications with the contractor must be made through the Contracting Officer's Technical Representative (COTR).

d. **Unsafe Work Conditions.** If an unsafe work condition is observed, the ESCA must take the following steps:

- Advise the Facilities Manager, Project Representative, and Contracting Officer of the unsafe work condition.
- Keep a log of unsafe incidents and corrective actions. If a resolution cannot be reached, notify the CEO; Chief, Occupational Safety Compliance; RESCA; and appropriate regulatory authorities.
- Conduct follow-up inspections to ensure corrective action occurred and continued compliance exists.
- For imminent danger situations, see requirements in Chapter 1, Section 2 of this policy.

16. DRIVER LICENSING

For purposes of licensing, there are three categories of drivers: Inmate drivers, employee drivers, and employee incidental drivers.

a. **Employee Drivers - Commercial Driver's License (CDL).** Employee drivers who operate a vehicle on public roads or highways (as defined by DOT in Title 49, CFR) requiring CDL's must:

- Have a valid CDL and meet Federal Motor Carrier Safety Administration Commercial Driver's License Standards.
- Carry Bureau identification when operating a vehicle on official business.

b. **Employee Incidental Drivers.** Employee drivers who operate a vehicle on or off institution grounds that does not require a CDL must:

- Have a valid state license for the type of vehicle being operated.
- Carry Bureau identification when operating a vehicle on official business.

Inmate Drivers – On Institution Grounds. Inmate drivers who operate vehicles or equipment on institution grounds must be issued an inmate driver/operator permit. The permit, issued by the garage foreman, must identify the vehicle or equipment the inmate is authorized to operate.

c. **Inmate Drivers – Off Institution Grounds.** Inmate drivers who operate vehicles or equipment off institution grounds must be issued an inmate driver/operator permit. The permit, issued by the garage foreman, must identify the vehicle or equipment the inmate is authorized to operate. The inmate driver permit must contain the following statement in the "Restrictions"

section: “The bearer is a Federal Prisoner of the (**Institution**). In case of emergency call (**Institution Phone**).”

The inmate must have a valid state license for the type of vehicle being operated.

d. **Inmate Drivers – Commercial Driver’s License (CDL).** Inmate drivers required to operate a commercial motor vehicle on public roads or highways (as defined in Title 49, CFR) must have a valid commercial driver’s license (CDL) and meet Federal Motor Carrier Safety Administration Commercial Driver’s License Standards.

17. **SEAT BELT USE**

Personnel on official business must fasten seat belts when a vehicle is in motion. Seat belts must be worn by occupants of vehicles used on official business (except passengers on buses).

18. **DISTRACTED DRIVING**

Drivers must follow all state distracted driver laws. Regardless of state law, personnel must not engage in text messaging when driving a vehicle on official Government business.

Chapter 2. Occupational Safety

1. HAZARD ASSESSMENT

A hazard assessment of all work areas must be conducted by the Environmental and Safety Compliance Department in conjunction with affected department head(s). When hazards cannot be eliminated, administrative and/or engineering controls must be implemented. As a last line of defense, workers must use Personal Protective Equipment (PPE) to limit exposure to hazardous environments.

The hazard assessment must:

- Be documented in writing.
- Identify the work area being assessed.
- Be certified by an Environmental and Safety Compliance Department staff member.
- Contain the name of the certifying individual.
- Contain the date of the hazard assessment.

The hazard assessment must be updated anytime operations or work hazards change.

A copy of the hazard assessment must be provided to affected departments and made available to employees working in that area.

The affected department is responsible for providing training, including the use of PPE, to individuals assigned to an area or task addressed in a hazard assessment.

a. **Personal Protective Equipment (PPE).** PPE such as safety shoes, eye and face protection, hard hats, gloves, respirators, lifelines and harnesses, and hearing protection must be used when required by an applicable OSHA Regulation, or as deemed necessary by the Environmental and Safety Compliance Department. This PPE must be purchased and maintained by the department using the equipment.

b. **Foot Protection.** Safety shoes meeting requirements of the American Society for Testing and Materials (ASTM) are required in foot hazard areas, designated by Institution Supplement, in accordance with the Master Agreement. Toe caps or foot guards may not be worn in lieu of safety shoes.

2. FIRING RANGES

A hazard assessment must be conducted of the firing range (BOP-owned ranges and contracted ranges) to determine any potential safety concerns with range construction or use of the range. (See Chapter 3, Section 8. for additional information on noise exposure at firing ranges.)

The range must be constructed and maintained to help prevent hazards to the staff utilizing the range. The use of railroad ties, stacked lumber, or rubber tires facing the shooter must not be used due to the possibility of lead build-up, ricochet, and back-splatter. Other items within the range area (inlets, drains, pavement, etc.) may also need to be protected to avoid ricochet.

3. WALKING-WORKING SURFACES

OSHA Standard 29 CFR 1910.21-30, Subpart D, addresses requirements for a wide variety of ladders (fixed and portable), scaffolding, walking surfaces, and guard railings used in general industry settings. Requirements contained in 29 CFR 1926 will govern temporary stairs, ladders, and working surfaces on construction/renovation sites.

The institution must develop a written Fall Protection Program to address protection of personnel working on elevated walking-working surfaces. In areas where a standard railing is utilized as a means for fall protection, the use of chain, rope, cable, or other similar material is not acceptable as a substitute for standard railing.

The following basic requirements apply to common work surfaces in this section:

a. **Stairs and Walkways.** Floors and stairways must be maintained in a clean, dry manner and free of nails, splinters, holes, loose boards, corrosion, snow, or ice.

Aisles and passageways, including in housing units, must be kept clear and in good repairs, with no obstruction across or in aisles that could create a hazard.

b. **Ladders.** At a minimum, ladders must comply with the following:

- Ladders must be equipped with functional non-slip safety feet.
- The joints between rails and the steps must be tight and secure.
- Ladder rungs must be kept free of grease, oil, and foreign substances that would cause a slip.
- Wood ladders cannot be painted or stained in a manner that would cover a defect and hinder inspection.
- All wood components must be free of splits or damage.
- The metal spreaders must be of sufficient size and strength and function properly.

- Extension ladder rope must be free of frays and damage.

Fixed ladders must comply with OSHA Standard 29 CFR 1910.23.

Ladders that are not covered by OSHA regulations (i.e., fiberglass, aluminum) must be used in accordance with manufacturer's recommendations.

c. **Scaffolding.** Portable and fixed scaffolding used in general industry must meet the requirements in OSHA standard 29 CFR 1926, subpart L. Training and fall protection programs must be specific to the type of scaffolding being used.

Personnel utilizing scaffolding must be trained on scaffold assembly, inspection, and fall protection.

Unassembled scaffolding in storage must be protected from damage and weather that could deteriorate its integrity.

All planking must be Scaffold Grade as recognized by grading rules for the species of wood used.

Scaffolds must not be loaded in excess of the working load for which they are designed.

All personnel who are involved in erecting, disassembling, moving, operating, repairing, maintaining, or inspecting a scaffold must receive appropriate training to recognize any hazards associated with the use of the scaffolding and associated work.

d. **Loading Docks.** Loading docks four feet or more in height must be guarded by a standard railing on all open sides, except where there is entrance to a ramp, stairway, or fixed ladder.

The NFPA Life Safety Code requires a guardrail on any section of the loading dock that is part of a required exit, when the dock height is 30 inches or more.

If mechanical means to secure trucks or trailers to the loading dock are not available, signs must be posted designating that the use of wheel chocks is required.

e. **Lofts, Mezzanines, Work Platforms.** All lofts, mezzanines, and work platforms designed for storage must have a posted load limit. Storage in excess of the posted load limit is not permitted.

f. **Work Performed on Roofs.** Work performed on roofs may include activities such as facilities maintenance, Correctional Services security inspections, etc.

When work is performed less than 15 feet from the roof edge, a guardrail system, safety net system, travel restraint system, or personal fall arrest system must be in place.

When work is performed at least 15 feet or more from the roof edge, a guardrail system, safety net system, travel restraint system, personal fall arrest system, or a designated area must be in place. Fall protection is not required provided the work is both infrequent and temporary, along with implementing and enforcing a work rule prohibiting employees from going within 15 feet of the roof edge without the use of fall protection.

4. PAINTING OPERATIONS

Individuals using spray guns must wear Personal Protective Equipment in accordance with the institution's hazard assessment.

Portable airless spray gun nozzles must be kept clear of body parts due to the extreme pressure.

When flammable or combustible materials are sprayed, booths and operations must comply with 29 CFR 1910.107 and NFPA 33.

Each spray area must be provided with mechanical ventilation that is capable of confining and removing vapors and mists to a safe location and confining and controlling combustible residues, dusts, and deposits.

Spray areas equipped with overspray collection filters must have visible gauges, audible alarms, or an effective inspection program to ensure that the required air velocity is being maintained.

5. CONFINED SPACE PROGRAM

OSHA Standard 29 CFR 1910.146 addresses requirements for a wide variety of permit and non-permit required confined spaces. Only trained entrants, attendants, and entry supervisors will be allowed to participate in the permit-required confined space activities.

The Facilities Department shall cover the costs of the program.

Institutions must develop a written permit-required confined space program, including:

- Institution confined space survey.
- Confined space identification.
- Permit system.
- Equipment.

- Roles and responsibilities.
- Rescue services.
- Training.

a. **Institution Confined Space Survey.** The ESCA and Facilities Manager must perform an institution survey to identify permit-required and non-permit-required confined spaces. The results of the survey and space classifications must be documented as part of the written confined space program.

b. **Confined Space Identification.** Permit required spaces must be identified with a warning sign or other equally effective method to prevent unauthorized entry.

c. **Permit System.** A permit system to authorize entry into a permit-required confined space must be in place. The ESCA must be notified prior to any confined space entries.

On expiration of the permit, it must be returned to the Environmental and Safety Compliance Department.

All issued permits must be retained for a minimum of three years.

d. **Equipment.** Institutions with permit-required confined spaces must have the following equipment available:

- Testing and monitoring equipment (including calibration equipment) with the ability to monitor oxygen, combustible gases and vapors, and toxic gases and vapors.
- Ventilating equipment capable of maintaining acceptable entry conditions.
- Communication equipment.
- Personal Protective Equipment.
- Lighting equipment.
- Barriers to guard entrances.
- Equipment to rescue or retrieve entrants.

Institution-made equipment is prohibited.

Equipment must be calibrated, tested, and maintained in accordance with manufacturers' or testing standard requirements.

e. **Roles and Responsibilities.** Individuals involved with confined space entry will have specific roles and responsibilities. All individuals must receive training in their specific roles and responsibilities.

Inmates are not permitted to fulfill the role of the entry supervisor and/or attendant in permit-required confined space entry.

f. **Rescue Services.** Institutions must provide a means of rescue for individuals involved with permit-required confined space entry.

(1) **Outside Rescue Services.** Institutions using an outside rescue service must:

- Ensure the rescue services have the ability to respond in a timely manner with appropriate equipment.
- Provide a copy of the written permit-required confined space program to the outside rescue service.
- Provide the rescue team or service an opportunity to inspect and use institution confined spaces for training purposes.
- Notify the outside rescue team or service prior to entry to verify their response availability. This contact must be documented on the permit form.

(2) **In-house Rescue Team.** Institutions using an in-house rescue team must:

- Provide team members with PPE and all equipment needed to conduct a permit-required confined space rescue.
- Train team members to perform assigned rescue duties.
- Ensure one team member trained in CPR and basic first aid is available during entry.
- Ensure team members practice making permit-required confined space rescues at least once every 12 months.

g. **Training.** All affected personnel must receive training as outlined in this section. The training must be documented and contain the following information:

- Name of participant.
- Date of training.
- Name and signature of instructor.

6. CONTROL OF HAZARDOUS ENERGY (LOCKOUT/TAGOUT)

OSHA Standard 29 CFR 1910.147 addresses requirements for an energy control program. Institutions must develop a written Energy Control Program that includes, at a minimum:

- Energy control procedures.
- Periodic inspections.
- Employee training.

- Lockout devices and equipment.
- Inmate Locks.
- Shift Change, Transfer of Authority, Outside Service Personnel (Contractors).

a. **Energy Control Procedures.** Specific energy control procedures must be developed for all equipment with multiple energy sources. Affected departments must assist the ESCA in the identification of equipment/systems requiring energy control procedures.

Energy control procedures must contain the following elements:

- Scope.
- Purpose.
- Authorized personnel.
- Rules.
- Techniques to control hazardous energy, including:
 - Specific statement of the intended use of device.
 - Specific steps for shutting down, isolating, blocking, and securing equipment.
 - Specific steps for the placement, removal, and transfer of devices.
 - Specific requirements for testing effectiveness of energy control measures.

b. **Periodic Inspections.** An annual periodic inspection of each energy control procedure must be conducted by an authorized employee. The authorized employee performing the inspection may be someone who previously has or currently implements the energy control procedure being inspected, as long as he/she is not implementing any part of the energy control procedure while it is being inspected. The periodic inspection must include every employee authorized to utilize the procedure being inspected. The inspection must be certified by documenting the periodic inspection. Documentation must include:

- Machine or equipment being inspected.
- Date of the inspection.
- Employee(s) included in the inspection.
- Person performing the inspection.
- Signature of the person certifying the inspection.

The person certifying the annual inspection must be someone other than the inspector or employees included in the inspection.

c. **Training.** Training must be provided for the following individuals:

(1) **Authorized Personnel.** Authorized personnel must receive training in the following:

- Recognition of hazardous energy sources.
- Magnitude of the energy available in the workplace.
- Methods necessary for energy isolation and control.

(2) **Affected Personnel.** Affected personnel must be instructed in the purpose and use of energy control procedures.

(3) **All Other Personnel.** All other personnel must be instructed in the prohibition of attempting to reenergize equipment that has been locked/tagged out.

Additional training must be conducted for all authorized and affected personnel whenever:

- There is a change in their job assignments.
- There is a change in machines, equipment, or processes that present a new hazard.
- There is a change in the energy control procedure.

Additional training must also be conducted whenever a periodic inspection reveals retraining is necessary.

d. **Lockout Devices and Equipment.** Devices used to secure energy sources must be:

- Standardized, identifiable, and durable.
- Capable of withstanding the environmental and physical demands placed on them.
- Not used for any other purpose.

e. **Inmate Locks.** Authorized inmates must be issued and utilize designated color-coded combination locks with master key access when working on circuits/equipment requiring lockout/tagout.

f. **Shift Changes, Transfer of Authority, Outside Service Personnel (Contractors).** If a machine remains locked out over a period of time or repairs continue by other employees through more than one shift, the oncoming employee affixes his/her lock to the machine before the off going employee removes his/her lock. The off going employee briefs the oncoming employee, then removes his/her lock. Other means of accommodating shift change must be approved through the Central Office Safety Branch.

When outside servicing personnel are engaged in activities covered by this section, the ESCA must review the outside contractor lockout procedures prior to commencing work. The department affected must ensure outside personnel comply with approved energy control

procedures. If outside employers do not have documented lockout or tagout procedure(s), they must ensure their staff comply with the institution's written energy control procedures.

7. TIRE SERVICE

OSHA Standard 29 CFR 1910.177 addresses requirements for servicing multi-piece and single-piece rim wheels used on large vehicles such as trucks, tractors, trailers, buses, and off-road machinery.

The use of a local tire service vendor to repair multi-piece rim wheels is recommended.

This standard does not apply to the servicing of rim wheels used on automobiles, or on pickup trucks and vans using automobile tires or truck tires designated light trucks (LT).

The ESCA must ensure that a facility-specific tire service and inflation procedure is developed to address tire maintenance activities. Tire service charts must be posted in the tire service area.

a. **Training.** Personnel inflating tires and servicing single and multi-piece rims must be trained on:

- Hazards associated with tire service and inflation.
- Institution-specific procedures.
- Use of tire service charts.
- Reading tire pressure placards.
- Restraining devices and barriers for inflating tires on multi-piece rims (bolted and unbolted from vehicles).

b. **Equipment.** Airline assemblies used for inflating tires must consist of:

- Clip-on chuck.
- In-line valve with a pressure gauge or a pre-settable regulator.
- Sufficient hose length between the clip-on chuck and the in-line valve to allow the employee to stand outside the trajectory (path of travel during explosion).

8. POWERED INDUSTRIAL TRUCKS

OSHA Standard 29 CFR 1910.178 addresses requirements for powered industrial truck operation used in general industry settings.

A Powered Industrial Truck (PIT) is a mobile, power-propelled truck used to carry, push, pull, lift, stack, or tier materials. The forklift is the most common PIT; however, utility carts (Cushman, EZ Go, Taylor-Dunn, Gator, etc.) may fall under this designation.

Powered industrial trucks must be operated and maintained in accordance with manufacturers' requirements.

Modifications to or the use of attachments with the powered industrial truck must be performed or approved in writing by the manufacturer.

The operator manual must be maintained in a legible condition and readily accessible within the powered industrial truck operational area. It is recommended additional copies of the operator manual be maintained in the Environmental and Safety Compliance Department.

A survey must be conducted to identify powered industrial trucks being operated within the institution. Upon completion of the survey, each institution must ensure a program is in place for all powered industrial trucks. The program must meet the requirements of 29 CFR 1910.178, and any additional requirements noted in the manufacturer's operator manual.

a. **Training.** Operators of these vehicles must be trained to operate the vehicle in accordance with the manufacturer's recommendations as outlined in the operator manual. Training must be documented and include, at a minimum:

- Name of the operator.
- Date of training.
- Date of the evaluation.
- Name and signature of the person(s) performing the training or evaluation.

An operator's performance must be re-evaluated every three years.

Retraining must be performed when the operator is involved in an accident.

b. **Inspections.** A pre-use inspection of the powered industrial truck must be completed each shift. This inspection must be documented.

Pre-use inspection documentation must be retained for a minimum of 30 days.

Inspections are not required during a shift when the vehicle is not being operated.

Additional visual inspections must be conducted throughout the shift any time the vehicle has been left unattended. These inspections are not required to be documented.

Powered industrial trucks must be removed from service until all discrepancies identified on inspections are corrected.

Powered industrial trucks must be equipped with a:

- Cage over the driver's compartment. (if capable of lifting loads above the height of the driver).
- Seat belt or similar restraints (if required by the manufacturer).
- Backup alarm that sounds when the truck reverses.
- Strobe light (if vehicle is used indoors).
- Horn.

Vehicles with modifications not approved by the manufacturer, defective or damaged safety devices, operational systems, controls, and structural features must be removed from service and "red tagged" until repaired by authorized service personnel.

Battery charging and propane fuel tank storage must be at designated locations approved by the ESCA.

Powered industrial trucks must not be used to tow trailers unless approved by the manufacturer.

9. PERSONNEL LIFTS (AERIAL LIFTS/SCISSOR LIFT/BOOM TRUCK)

Personnel lifts are governed under various OSHA and ANSI standards, depending on the type of personnel lift. Manufacturers' requirements must be followed when operating and maintaining personnel lifts.

a. **Training.** Only properly trained and authorized personnel are permitted to operate personnel lifts. At a minimum, training must consist of the requirements outlined in the manufacturer's operating and maintenance manual.

The operator must be trained on the same model of personnel lift or one having operating characteristics consistent with the one used during work site operation.

Training must consist of a combination of formal instruction, practical training, and evaluation of the operator's performance in the workplace.

Training must include the actual operation of the lift for a sufficient period of time to demonstrate proficiency and knowledge in the actual operation of the lift.

Training must be documented and include, at a minimum:

- Name of operator.
- Date of training.
- Name and signature of the person(s) performing the training or evaluation.
- List of equipment covered by the training.

b. **Inspections.** A pre-use inspection of the personnel lift must be completed each shift. This inspection must be documented.

Pre-use inspection documentation must be retained for a minimum of 30 days.

Inspections are not required during a shift when the personnel lift is not being operated.

Additional visual inspections must be conducted throughout the shift any time the personnel lift has been left unattended. These inspections are not required to be documented.

An annual inspection must be performed by a qualified source, in accordance with ANSI standards. The department accountable for the lift is responsible for funding and scheduling annual inspections.

Personnel lifts must be removed from service until all discrepancies identified on inspections are corrected.

An operator manual must be physically located on each personnel lift at all times. It is recommended additional manuals be maintained in the Environment and Safety Compliance Department.

The department operating personnel lifts is responsible for purchasing PPE and fall protection equipment appropriate for tasks being performed and maintaining appropriate inspection records for the equipment.

10. MACHINE GUARDING

OSHA Standards 29 CFR 1910.211 through 1910.219 addresses requirements for machine guarding. In addition to general requirements for all machines outlined in 29 CFR 1910.212, a wide variety of equipment types and applications must be evaluated to determine machine guarding requirements. The ESCA is responsible for making final determinations regarding machine guarding requirements:

- Equipment that may cause injury during sudden or unexpected startups must have anti-restart devices.
- Guards must be provided at the point of operation to protect operators from injury.
- Power transmission belts, pulleys, gears, shafts, and moving parts must be guarded.
- Power controls must be within the operator's reach without leaving their positions at the point of operation.
- Stationary equipment must be anchored to the floor to prevent "walking" due to vibration.

For abrasive wheel machinery:

- Work rests on bench/floor grinders must be kept adjusted closely to the wheel with a maximum opening of 1/8 inch.
- Tongue guards on bench/floor grinders must be kept adjusted to the diameter of the wheel, with a maximum opening of 1/4 inch.
- Bench and pedestal grinders must be permanently mounted.
- Portable grinders (wheels greater than 2" in diameter) must have safety guards.
- The top half of the wheel on portable grinders must be enclosed.

11. CLEANING WITH COMPRESSED AIR

Air lines used for cleaning must be reduced below 30 psi and have nozzles with venturi-type features for chip guarding. Cleaning with air lines is not permitted in electronics de-manufacturing (or similar) operations, where dust with heavy metals could be dispersed.

12. LAWN EQUIPMENT

Operators of lawn equipment must receive equipment-specific training during Initial Job Orientation (IJO) in accordance with the manufacturer's recommendations as outlined in the operator manual.

Operators of equipment (edgers, line trimmers, leaf blowers, lawn vacuums, chain saws, mowers, and similar equipment) must use PPE as identified in the institution hazard assessment.

Operating controls must be clearly identified. Other than ergonomic adjustment of seats and controls engineered into the equipment design, modification of operator controls and safety devices is prohibited.

Riding equipment must not be operated on inclines exceeding the manufacturer's limit.

13. **WELDING, CUTTING, AND BRAZING**

OSHA Standard 29 CFR 1910.251 through 1910.255 addresses requirements for welding, cutting, and brazing in General Industry environments. Refer to 29 CFR 1926 for construction-related activities.

All welders must receive training regarding proper safety precautions prior to conducting any welding operations.

Appropriate PPE must be provided.

Mechanical ventilation must be provided when cutting and welding operations are conducted in any of the following areas:

- Spaces with less than 10,000 cubic feet per welding machine.
- Rooms/areas with a ceiling less than 16 feet.
- Confined spaces.

The ventilation must be at the minimum rate of 2,000 cubic feet per minute per welding machine, except where local exhaust hoods and booths are used in accordance with the OSHA standard.

Respiratory protection may be used in lieu of mechanical ventilation with the approval of the ESCA.

Other personnel exposed to the same atmosphere as the welders must be protected from the hazards associated with welding operations.

Welding cables and insulation must be undamaged and cable terminals must be guarded from accidental contact.

In arc welding operations, cables with splices within 10 feet of the holder must not be used. The welder must not coil or loop welding electrode cable around parts of his/her body. Cables with damaged insulation or exposed bare conductors must be replaced.

All regulators and hoses must be checked daily for damage or worn parts.

On oxy-fuel welding and cutting equipment, a flashback arrestor must be installed between the regulator and hoses of both tanks.

Where a cylinder is designed to accept a cap, valve protection caps must always be in place, hand-tight, except when cylinders are in use or are connected for use.

Cylinders on welding equipment being stored and not in use must have the regulator disconnected and valve protection caps in place.

14. **HOT WORK PLAN**

The ESCA must ensure that a written hot work plan is developed. The plan must outline a permit process for operations. A written hot work permit must identify the area where hot work will be conducted and all required precautions.

Before hot work is permitted, the area must be inspected by the Environmental Safety Compliance Department.

The area must be made safe by removing combustibles or protecting combustibles from ignition sources.

Noncombustible or flameproof screens or shields must be provided to protect bystanders.

Appropriate PPE must be provided to personnel conducting hot work operations.

Hot work permits are not required for operations conducted in the welding shop area.

Issued hot work permits must be retained for a minimum of three years.

15. **ELECTRICAL**

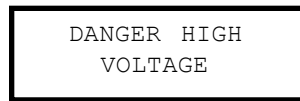
OSHA Standard 29 CFR 1910.301 through 1910.399 addresses Electrical Requirements in General Industry Environments. Refer to 29 CFR 1926 for construction-related activities. In addition, all electrical installations must be in accordance with the latest edition of the National Electric Code.

a. **Non-Qualified Personnel.** Non-qualified staff/non-facilities staff and inmates are prohibited from working on any energized electrical circuits or equipment.

b. **Protective Equipment.** Protective equipment must be provided, maintained, and tested in accordance with the Program Statement **Facilities Operations Manual**.

c. **High Voltage (Over 600 Volts).** Inmates are prohibited from working on circuits/equipment with a rated capacity in excess of 600 volts.

Accessible aboveground power lines must be marked “Danger High Voltage.”



d. **Ground Fault Protection.** Ground fault protection must comply with the National Fire Codes for single-phase receptacles in wet or damp areas. At a minimum, protection must be provided for:

- Receptacles within six feet of sinks, toilets, and showers.
- Receptacles in kitchen areas.

In addition, ground fault protection must be provided for drinking fountains and vending machines.

A Ground Fault Circuit Interrupter (GFCI) must be utilized with corded hand-held power tools and extension cords used during construction or maintenance activities.

The ESCA must evaluate the need for GFCI protection used during floor care activities.

e. **Electrical Maintenance**

- Each electrical box must have a cover, faceplate, or fixture canopy.
- Sufficient access and work space must be provided and maintained around all electrical equipment to permit ready and safe operation and maintenance.
- Electrical panel boards, boxes, cabinets, and switch enclosures must be covered or isolated to prevent accidental contact with energized parts, and to protect electrical switches, relays, and wiring from damage.
- Connections, joints, and fittings on all cable, conduits, and raceways must be tight.
- Continuity of grounding must be maintained.
- Metallic boxes, enclosures, and conduits must be free of rust and corrosion.
- Disconnect switches (including service entrance, feeders, and branch circuits) must be legibly and durably marked at the point of origin to indicate the area/equipment controlled by each switch.

f. **Flexible Cords.** Flexible cords (and extension cords) must not:

- Be used as a substitute for fixed wiring.
- Run through a wall, ceiling, floor, or under a carpet/rug.
- Run through a doorway, window, or similar opening.
- Be attached to a building surface.

- Be concealed behind a wall, ceiling, or floor.

Flexible cords must not be altered.

Flexible cords must be constructed in a manner that does not expose the user to any current-carrying components except the prongs, blades, or pins.

Flexible cords must not be used when grounding blades/pins are broken or missing.

Flexible cords must not be used if frayed or damaged.

Junction boxes designed for use in fixed wiring applications must not be used as part of a flexible/extension cord.

16. EXCAVATIONS/TRENCHING

OSHA Standard 29 CFR 1926.650 through 1926.652 addresses requirements for excavations and trenching.

The Facilities Manager and ESCA must approve all excavations/trenching operations prior to the start of work.

Safe access and egress must be provided in trench excavations greater than four feet deep. Access and egress points must be located within 25 feet of all workers.

An excavation or trench greater than five feet deep must be shored or sloped to the angle of incidence; or another method of protection, such as a trench box designed and constructed in accordance with OSHA standards, must be provided for workers.

17. COMPRESSED GAS STORAGE

Stored gas cylinders must:

- Be secured to prevent tipping.
- Have valves closed.
- Have protection caps in place.

Compressed gas cylinders must be stored away from radiators and other heat sources, in a well-ventilated, dry location, at least 20 feet from highly combustible material.

Compressed gas cylinders must be stored away from elevators, stairs, or exits. Cylinders must be secured to prevent them from being knocked over or damaged.

Oxygen cylinders must be stored at least 20 feet from fuel-gas cylinders or combustible materials such as oil or grease, or be separated by a wall at least five feet high with a fire resistance rating of at least one-half hour.

18. CHLORINATION ROOMS

Chlorination rooms must be secured and equipped with mechanical ventilation that is on continuously or automatically activates when the door opens.

Chlorine cylinders must:

- Be secured to prevent tipping.
- Have valves closed when not in use.
- Have protection caps in place when not in use.

Chlorination rooms must have an electronic leak detection and alarm device that gives an audible and visual alarm.

19. KILNS

Dry clay (slip powder) must not be used due to silica hazards and possible asbestos. The use of premixed clay is allowed.

Sanding of dry ceramic items is prohibited.

Kilns must be enclosed in a 1-hour rated room with self-closing doors. Kilns require an external exhaust for adequate ventilation when in operation.

20. PORTABLE POWER TOOLS AND HAND-HELD EQUIPMENT

OSHA Standard 29 CFR 1910.241 through 1910.244 addresses requirements for portable power tools and other hand-held equipment used in general industry. Refer to 29 CFR 1926 for construction-related activities.

A wide variety of equipment types and applications must be evaluated to determine proper requirements. The ESCA is responsible for making the final determination regarding safety requirements.

Power tools must be equipped with functional guards or shields.

Hand tools must be free of visible signs of damage or severe wear.

Broken tools must be removed from service.

21. CRANES

OSHA Standard 29 CFR 1910.179 through 1910.184 addresses requirements for cranes, derricks, and slings used in general industry environments. Refer to 29 CFR 1926 for construction-related activities.

Cranes must be inspected and tested in accordance with the manufacturer's recommendation.

a. **Inspections.** At a minimum, operators must conduct a visual inspection of the crane at the beginning of the work day.

In addition to the daily visual inspection, hooks and hoist chains/cables must be inspected monthly and documented on a written certification record that includes:

- Date of inspection.
- Signature of person performing the inspection.
- Serial number or other identifier of the hook or chain inspected.

A complete inspection of all components of the crane must be performed at least annually. The inspection must be performed by competent crane inspector.

b. **Testing.** Prior to initial use, new, altered, or extensively repaired cranes must be operationally tested for hoisting, lowering, trolley travel, bridge travel, limit switches, locking, and safety devices. They must be load-tested by or under the direction of a competent inspector, in compliance with 29 CFR 1910.179.

The crane must not be placed in service if the inspection or test shows any condition adversely affecting the safety of the equipment.

Documentation for inspections and testing must be retained for a minimum of three years.

22. TRANSPORTATION

Vehicles used for transporting persons must be fitted with seats or benches that are rigidly fixed to the vehicle.

There must be no more people riding on a vehicle than there are seats.

Drivers must not move the vehicle until all passengers are seated. Passengers cannot ride standing up, with legs dangling over fenders, bumpers, or tailgates, or on loads that may shift or tip.

People may not be transported in the beds of trucks.

Drivers may not allow persons to get on or off a vehicle in motion.

Heavy Equipment. Heavy equipment and farm equipment must be transported only on lowboy trailers specifically made to haul this type of equipment.

Heavy equipment must be chained and blocked on the trailer. Any truck/trailer combination used to move heavy equipment on the highways must be driven by a person with a valid state CDL.

The Federal Highway Administration's (49 CFR Parts 350-399) Motor Carrier Safety Regulations must be followed.

Any movement or loading of heavy equipment by inmates must be under staff supervision.

Keys must be removed from any truck or other motorized equipment left unsupervised.

Only trained personnel are permitted to operate heavy equipment and farm machinery.

All tractors, bulldozers, etc., over 20 H.P. must have seatbelts and rollover protection. Equipment and farm machinery unable to reach a maximum speed of 25 mph when driven on public roads must display a "slow moving vehicle" emblem.

Chapter 3. Occupational Health

1. INJURY RECORDKEEPING

The Environmental and Safety Compliance Department is responsible for maintaining the following documentation for work-related recordable injuries:

- OSHA 300, Log of Work-Related Injuries and Illnesses.
- OSHA 300a, Summary of Work-Related Injuries and Illnesses.
- OSHA 301, Injury and Illness Incident Report.

A recordable injury or illness is defined as any injury or illness resulting in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness.

OSHA's recordable injury definition and recording requirements should not be confused with employee compensation definition and entitlement. See the Program Statement **Workers' Compensation Program**.

a. **OSHA 300, Log of Work-Related Injuries and Illnesses.** OSHA 300, Log of Work-Related Injuries and Illnesses, is used to chronologically record reportable work-related injuries during the calendar year. The agency is required to log injury entries on the OSHA 300 within 7 calendar days of receiving information that a recordable injury or illness has occurred.

It is administratively acceptable to keep separate OSHA 300 logs for staff and inmate workers.

The individual completing the OSHA 300 must provide a complete injury description. Lost work days or work days with a job transfer or restriction must be recorded up to 180 calendar days. The OSHA 300 is a living document; information on the log must be updated during the five-year retention period.

The following injuries and illnesses are considered privacy concern cases; the employee's name may not be placed on the OSHA 300:

- An injury or illness to an intimate body part or the reproductive system.
- An injury or illness resulting from a sexual assault.
- Mental illnesses.
- HIV infection, hepatitis, or tuberculosis.
- Needlestick injuries and cuts from sharp objects that are contaminated with another person's blood or other potentially infectious material.

- Other illnesses, if the employee voluntarily requests that his/her name not be entered on the log.

In such cases, enter “privacy case” followed by a case number in the space normally used for the employee’s name on the OSHA 300 log. A second log should be kept that coordinates the Privacy Case number with an injured employee’s name in such cases.

b. OSHA 300a, Summary of Work-Related Injury and Illnesses. OSHA 300a, Summary of Work-Related Injury and Illnesses, must be completed by the Environmental and Safety Compliance Department at the end of the calendar year. The completed form must be signed by the Warden or CEO and posted on a staff bulletin board and an inmate bulletin board beginning February 1 through April 30 for the preceding calendar year. The posting location must be in a conspicuous place where notices to employees are customarily posted. OSHA 300a forms are not required to be updated after the form is completed and signed.

c. OSHA 301, Injury and Illness Incident Report. An OSHA 301, Injury and Illness Incident Report Form, must be completed for all recordable cases logged on the OSHA 300 form. The Environmental and Safety Compliance Department is responsible for reviewing completed OSHA 301 forms for accuracy and maintaining forms with injury recordkeeping or compensation records.

d. Record Submission to OSHA. Records must be submitted to OSHA in accordance with the provisions of 29 CFR Parts 1960 and 1904.

e. Record Retention. OSHA recordkeeping documentation must be retained for a minimum of five years.

2. RESPIRATORY PROTECTION PROGRAM

OSHA Standard 29 CFR 1910.134 addresses requirements for a Respiratory Protection Program. The ESCA is the program administrator responsible for identifying respiratory hazards, selecting the appropriate NIOSH-certified respirator and filter, and coordinating required elements of an effective program.

a. Written Program. The ESCA must develop a comprehensive written program that addresses institution-specific respiratory hazards. The written program must be updated as necessary to reflect any changes in the workplace that affect respirator use.

The written program must address the following elements:

- Procedures for selecting respirators for use in the workplace.

- Medical evaluation procedures.
- Fit-testing procedures.
- Procedures for proper use of respirators in routine and reasonably foreseeable emergency situations.
- Procedures and schedules for cleaning, disinfecting, storing, inspecting, repairing, discarding, and otherwise maintaining respirators.
- A change schedule for canisters and cartridges.
- Procedures to ensure adequate air quality, quantity, and flow of breathing air for atmosphere-supplying respirators.
- Training requirements.
- SCBA Procedures.
- Procedures for regularly evaluating the effectiveness of the program.

b. **Medical Evaluation Procedures.** Personnel participating in the Respiratory Protection Program must initially complete the OSHA medical questionnaire and be medically cleared by a physician or other licensed health care professional (PLHCP) prior to respirator use.

The PLHCP must be provided information concerning the duration and frequency of respiratory use, the type and weight of the respirator, physical work, exertion, other protective equipment required for the task, and the anticipated work environment temperature and humidity. After reviewing an employee's medical questionnaire and work conditions, and conducting an in-person exam if indicated, the PLHCP makes a medical determination approving or denying the employee's ability to wear a respirator.

The PLHCP must provide only the following information:

- Any limitations on respirator use related to the medical condition of the employee, or relating to the workplace conditions in which the respirator will be used, including whether or not the employee is medically able to use the respirator.
- The need if any for follow-up medical evaluations.
- A statement that the PLHCP has provided the employee with a copy of the PLHCP's written recommendation.

This decision must be documented and provided to the ESCA. The original questionnaire and a copy of the approval decision must be retained in the worker's health record.

Full medical evaluation questionnaires are not necessary every year. The individual being fit-tested must provide written affirmation that there have been no changes in his/her medical status since the last full medical evaluation. If any changes are reported, a full medical evaluation must be completed prior to respirator use.

Note. The privacy rule applies to all forms of individuals' protected health information, whether electronic, written, or oral.

c. **Fit-Testing.** All tight-fitting respirators require a fit test prior to initial use and at least annually thereafter.

In addition, a fit test is required whenever changes occur that could affect respirator fit. Such conditions include, but are not limited to, facial scarring, dental changes, cosmetic surgery, or an obvious change in body weight.

The fit test must not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, mustache, or sideburns that cross the respirator sealing surface.

d. **Facepiece Seal Protection.** If an employee wears corrective glasses or goggles or other PPE, such equipment must be worn in a manner that does not interfere with the seal of the facepiece.

e. **Training.** Personnel participating in the respiratory protection program must be instructed in the respiratory hazards to which they are potentially exposed during routine and emergency situations. Training must be completed at least annually, and may be conducted more often if necessary. Respirator training must include:

- Why the respirator is necessary and how improper fit, usage, or maintenance can compromise its protective effect.
- The limitations and capabilities of the respirator.
- How to use the respirator effectively in emergency situations, including situations in which the respirator malfunctions.
- How to inspect, put on and remove, use, and check the seals of the respirator.
- How to recognize medical signs and symptoms that may limit or prevent the effective use of respirators.

The training must be conducted in a manner that is understandable to the employee.

The training must be provided prior to requiring the employee to use a respirator in the workplace.

f. **Respirator Maintenance.** Respirators must be maintained, cleaned, and disinfected as necessary, and stored in a manner to protect them from physical damage. At a minimum, respirators must be inspected before use and during cleaning. Inspection must include an examination of all components in accordance with the manufacturer's requirements.

g. **SCBA Procedures.** SCBA must be provided to facilitate evacuation of building occupants. SCBA must be stored in multiples of two in locations determined by the ESCA. In addition, SCBA must be:

- NFPA-compliant and NIOSH-certified.
- Equipped with one-hour-rated air cylinders.
- Recharged when air pressure falls below 90% of the rated capacity.
- Used in pairs with a two person back-up team equipped with SCBA available.

h. **Record Retention.** Records for the following must be maintained:

- Medical evaluation documentation must be maintained for the duration of employment plus 30 years. This documentation must be maintained in the personnel medical file.
- Fit-test records must be maintained for respirator users until the next fit test is administered.
- Training records must be maintained for respirator users until the next training session is administered.

3. HAZARD COMMUNICATION

OSHA Standard 29 CFR 1910.1200 addresses the requirement for a Hazard Communication Program. The ESCA is the technical expert responsible for evaluating and approving the use of chemical products.

a. **Written Program.** A written Hazard Communication Program must be developed to communicate chemical information and hazards. The written program must include:

- Safety Data Sheets.
- Labels and other forms of warning.
- Employee information and training.

b. **Safety Data Sheets (SDS).** SDS must be readily accessible to employees when they are in their work area.

c. **Labels and Other Forms of Warning:** When possible, hazardous chemicals must be stored in their original containers with labels intact. If chemicals are dispensed to other containers, those containers must be labeled with substantially the same information as the original container.

d. **Training.** Personnel working with or in the vicinity of hazardous chemical products must be provided appropriate training. At a minimum, the training must include:

- Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area.
- The hazards of the chemicals in the work area.
- Measures employees can take to protect themselves from these hazards.
- The details of the Hazard Communication Program, including an explanation of the labels received on shipped containers and the workplace labeling system, and the SDS, including the order of information and how employees can obtain and use the appropriate hazard information.

Training must be completed at the time of an initial assignment, and whenever a new chemical hazard is introduced into a work area.

4. CHEMICAL CONTROL AND ACCOUNTABILITY

A written plan must be developed to include policy, procedure, and practice to govern the control and use of all flammable, toxic, and caustic materials.

Institution rules on use and storage of hazardous products must be based on their relative hazards. Information on the relative hazards can be obtained by reviewing the SDS and/or other material provided by the chemical manufacturer.

Approval must be obtained from the Environmental and Safety Compliance Department prior to purchase of any new chemical. In addition, the ESCA must approve all chemicals sold through the commissary.

Gasoline/diesel/propane must be controlled and supervised in accordance with the Program Statement **Correctional Services Procedures Manual**.

For all other hazardous products, the ESCA determines the level of supervision. Hazardous products, as determined by the ESCA, must be inventoried and controlled in accordance with the **Correctional Services Procedures Manual**.

Care must be exercised in storing incompatible chemicals so that inadvertent mixing does not occur.

Inmate-type combination locks must not be used to secure toxic, flammable, or caustic materials.

5. TOXIC AND HAZARDOUS SUBSTANCES AND LEAD

29 CFR 1910.1000 of OSHA regulations is the governing authority for determining employees' exposure to any material listed in table Z-1, Z-2, or Z-3 of that section. A determination of noncompliance with permissible exposure limits (PELs) requires measurement and documentation of an overexposure to at least one employee. For air contaminants with PELs, sampling must be conducted by a qualified source.

When testing indicates controls are needed to prevent atmosphere contamination, engineering control measures must be used if possible (e.g., enclosure or confinement of the operation, general and local ventilation, and substitution of less toxic materials).

a. **Lead.** Projects involving lead must comply with Federal, state, and local laws and regulations. Guidelines from 29 CFR 1926, Lead Exposure in Construction, are the minimum standards for operational and maintenance procedures. Before beginning any work involving lead, the ESCA must review the project.

Personnel who have received training and follow proper health and safety requirements may work on projects where lead-contaminated materials are found.

Lead paint may only be used and stored in Bureau facilities if approved by the NESCA.

Indoor firing ranges used by BOP staff (whether owned and operated by the BOP or contracted) must have properly permitted exhaust ventilation engineered to maintain airborne lead particulate concentrations below 30 micrograms per cubic meter (30 ug/m³) as an 8-hour time-weighted average.

b. **Asbestos.** If a substance is suspected to be an asbestos-containing material (ACM), it must be handled as such until proven otherwise by laboratory analysis. Except for UNICOR brake shoe and clutch operations, at no time may known or suspected ACM be removed or disturbed without the approval of the ESCA and the Facilities Manager on an "Asbestos Work Permit."

Other than small-scale emergency repair/cleanup or UNICOR brake or clutch work, projects involving asbestos must be contracted and meet the requirements of 29 CFR 1926. Inmates must not work on projects that involve abatement or repair of asbestos, except UNICOR inmates completing brake or clutch work who have received verifiable training. These inmates may inspect, remove, and repair asbestos brake and clutch assemblies per 29 CFR 1910 Subpart Z.

Qualified staff may perform short-duration, small-scale operations involving no more than one glove bag of asbestos-containing material per 29 CFR 1926. Examples: pipe repair, valve replacement, and patch or repair jobs on asbestos insulation.

c. **Respirators and Protective Clothing.** Work involving known or suspected ACM requires (at a minimum) half-face respirators with filters and disposable coveralls.

Respiratory protection and disposable full-body coveralls must be worn by personnel doing asbestos brake or clutch work until initial personal air monitoring indicates asbestos levels below the OSHA exposure limit.

d. **Automotive Work.** Except for UNICOR brake and clutch operations, institutions must never allow personnel to replace or remove asbestos-lined equipment from a vehicle, including brake pads, brake shoes, and clutch linings.

Contract work must be done on an as-needed basis until asbestos-containing material is removed and documented in the vehicle file. Documentation must indicate “non-asbestos replacement parts” and the installation date.

These procedures also apply to Automotive Vocational Training (VT) programs. Mock training aids using non-asbestos-containing materials may be used instead of hands-on training. “Live” work may only be done on documented non-asbestos-containing materials.

e. **Responsibilities.** The ESCA must ensure that:

- Monthly inspections document needed repairs on known or suspected ACM. Institutions with documentation that they are free of asbestos-containing material can eliminate these inspections.
- Work orders are forwarded to the Facilities Manager, who must ensure:
 - New projects potentially involving asbestos removal are presented to the Work Programming Committee.
 - Proper work procedures are followed by facilities staff working with asbestos.
 - PPE is provided and used (UNICOR funds PPE for its facilities).
 - Waste generated during facilities-related asbestos work is disposed of properly.

The UNICOR Factory Manager must ensure:

- Staff supervising brake and clutch repair operations receive training from an outside source, per 29 CFR 1910 Subpart Z. This qualifies the supervisor to train inmates who perform asbestos brake removal.
- Inmates who work on known or assumed asbestos-containing brakes and clutch linings receive training from a qualified supervisor, per 29 CFR 1910 Subpart Z.

- Proper work procedures are followed by personnel working with known or assumed asbestos-containing brakes and clutch linings.
- Through the services of an industrial hygienist, initial and annual personal air monitoring of workers is provided to confirm the effectiveness of engineering controls and workplace practices.
- Asbestos waste generated during UNICOR-related asbestos work is disposed of properly.
- With the assistance of the Environmental and Safety Compliance Department, a written Asbestos Brake and Clutch Removal Plan details engineering controls, work practices, training methods, and waste disposal procedures.

f. **Removal/Demolition.** Removal/demolition projects involving asbestos-containing materials must adhere to OSHA 29 CFR 1926 and EPA 40 CFR 61 Subpart M (National Emission Standard for Hazardous Air Pollutants), and state and local requirements. Due to the complexity of such projects and their strict regulatory safeguards, in-house asbestos removal or demolition (except for small-scale emergency repair/cleanup) is prohibited.

Contracts for asbestos abatement projects and specifications must be approved by the Regional Facilities Administrator and the RESCA before work begins. While specifications vary from project to project, compliance with applicable regulations is mandatory.

As required by 40 CFR 61 Subpart M, the Regional EPA Asbestos Coordinator or governing state environmental agency must be notified in writing at least 20 days before the start of an asbestos removal or demolition project. A copy of the notification must be kept in the Facilities project file.

6. EYE WASH STATIONS AND SHOWERS

Emergency eye wash/shower stations must be provided at locations in accordance with the institution's hazard assessment. At a minimum, an eye wash station must be provided in areas where powered industrial truck battery maintenance is performed.

Note. Does not apply to areas where power industrial truck batteries are charged only, no maintenance is performed, batteries are not removed from the trucks, and no electrolyte is stored in the area.

7. VENTILATION

a. **Ventilation Survey.** A ventilation survey must be conducted in inmate cells/rooms, officer stations, and dining areas to determine if ventilation is provided in accordance with the following requirements. The ventilation surveys must be conducted and documented by a qualified source at least once per ACA accreditation cycle.

b. All Institutions Other Than High Rise Institutions

(1) **Institutions Built Prior To 1990.** At least 10 cubic feet of fresh or recirculated filtered air per minute per person must be provided for inmate cells/rooms, officer's stations, and dining areas.

(2) **Institutions Built After 1990.** At least 15 cubic feet of outside or recirculated filtered air per minute per person must be provided for inmate cells/rooms, officer's stations, and dining areas.

c. **High Rise Institutions.** The institution ventilation system must supply at least 15 cubic feet per minute of circulated air per occupant, with a minimum of five cubic feet per minute of outside air. Toilet rooms and cells with toilets must have no less than four air changes per hour.

d. **Record Retention.** Records for the current ventilation survey must be retained for a minimum of three years and maintained in the Environmental and Safety Compliance Department.

8. NOISE

a. **Housing Unit Noise Survey.** An inmate housing unit noise survey must be conducted by a qualified source annually, with at least one measurement taking place during nighttime and one during daytime.

The intent of this survey is to ensure that noise produced by mechanical systems (e.g., noisy pipes, fans, ice machines, or mechanical rooms) adjacent to inmate sleeping areas does not exceed 70 dBA.

Noise surveys must be conducted with calibrated equipment on the A scale. Documented calibration results must be included with the noise report. A plan of action must be developed to eliminate high noise above the ACA standard thresholds.

b. **Records Retention.** Records for housing unit noise surveys must be retained for three years and maintained in the Environmental and Safety Compliance Department.

c. **Occupational Noise Exposure/Hearing Conservation Program.** OSHA Standard 29 CFR 1910.95 addresses requirements related to occupational noise exposure in general industry settings. The ESCA is responsible for coordinating required elements of an effective Hearing Conservation Program.

The Health Services Administrator is responsible for maintaining calibrated audiometric testing equipment, conducting baseline and annual audiograms, and maintaining audiometric testing records.

If the institution does not have audiometric testing equipment, the Health Service Administrator must hire an outside contractor to conduct required audiometric testing.

d. **Written Program.** A written Hearing Conservation Program must be developed that includes the following:

- Institution noise survey/employee monitoring.
- Employee notification.
- Observation of monitoring.
- Audiometric testing program/test requirements.
- Hearing protectors/attenuation.
- Training program.
- Recordkeeping.

e. **Institution Noise Survey/Employee Monitoring.** The ESCA must conduct an institution-wide noise survey to identify any noise levels at or above the 85 decibel, 8-hour time weighted average (TWA) OSHA action level. Subsequent noise surveys must be conducted when equipment or operations change.

Note: Individual employee monitoring may be required, depending on the work environment. Individual monitoring can be completed using dosimeters.

f. **Employee Notification.** Personnel enrolled in the Hearing Conservation Program must:

- Receive notification they have been enrolled in a Hearing Conservation Program and informed of monitoring results;
- Receive a baseline audiogram prior to exposure, or within 6 months of noise exposure.

g. **Observation of Monitoring.** Personnel must be allowed to observe any noise measurements conducted.

h. **Audiometric Testing Program/Test Requirements.** Audiometric testing must be conducted by qualified individuals using calibrated audiometric testing equipment.

The results must be reviewed by a qualified technician, provider, audiologist, or other qualified person specified in 29 CFR 1910.95(g)(3). All hearing test documentation, such as audiograms and any subsequent evaluations, must be retained in the individual's medical file.

An initial baseline audiogram must be conducted on persons when first enrolled in the Hearing Conservation Program.

An annual audiogram must be conducted and the results compared against the baseline audiogram to identify a threshold shift, or loss of hearing.

If the annual audiogram shows that an employee has suffered a standard threshold shift (STS), the hearing test should be repeated within 30 days. Repeat STS should prompt clinical evaluation by a physician or audiologist. The worker must be notified in writing within 21 days that a persisting STS has occurred.

If an STS is deemed permanent, the worker's "baseline" audiometric levels must be reset, and future tests compared to these new levels.

i. **Hearing Protectors/Attenuation.** Hearing protection must be selected that will attenuate the 8-hour TWA exposure below 85 decibels. The style of hearing protection should not interfere with the use of other PPE or create a new hazard.

j. **Training Program.** Persons enrolled in the Hearing Conservation Program must receive training initially and annually on:

- The effects of noise on hearing.
- The purpose of hearing protectors; the advantages, disadvantages, and attenuation of various types; and instructions on selection, fitting, use, and care.
- Purpose of audiometric testing, and an explanation of the testing procedures.

k. **Recordkeeping.** Employee audiometric test records must be maintained in the employee's medical file located in the Health Services Department. The record must include:

- Name and job classification of the employee.
- Date of the audiogram.
- Examiner's name.
- Date of the last acoustic or exhaustive calibration of the audiometer.
- Employee's most recent noise exposure assessment.

In addition, the institution must maintain accurate records of the measurements of the background sound pressure levels in audiometric test rooms.

l. **Records Retention.** Records for the following must be maintained:

- Audiometric testing records must be retained for the duration of employment. The records are maintained in the personnel medical file.
- The current institution-wide noise survey conducted for occupational noise exposure must be maintained in the Environmental and Safety Compliance Department.

m. **Firing Ranges.** The institution-wide noise survey must include staff utilizing the firing range or other training facilities during qualification. The survey must include all courses of fire (ART, BPT, SORT, etc.) and must also include firearms instructors to determine noise exposure.

n. **Airlift Operations.** Staff participating in airlift operations must use hearing protection when exposed to high noise levels created by aircraft engines.

9. LIGHTING

a. **Inmate Rooms/Cells.** A lighting survey of inmate rooms/cells must be conducted by a qualified source at least once per ACA accreditation cycle.

Lighting levels in inmate rooms/cells must be at least 20-foot-candles at desk level and in personal grooming areas. If applicable, education, recreation, leisure centers, and multipurpose areas designated as primary or secondary reading/writing areas should be included in lighting surveys.

b. **Institution-Wide Lighting Survey.** The Environmental and Safety Compliance Department must assess light levels throughout the facility to determine if sufficient lighting is available based on the tasks performed. Since lighting levels generally vary throughout the room/area, the lighting survey should reflect the average level over the area where tasks are performed. Lighting sources may also be a combination of task lighting and ceiling lighting.

The following chart can be used as a guide for recommended illumination levels:

Minimum Recommended Illumination

Area	Foot Candles	Area	Foot Candles
General Areas:		Service Areas:	
Offices	30	Stairwells	5
Control Room	30	Elevators	5
Conference Rooms	30	Corridors	5
Training Rooms	30	Restrooms	10
Lobby Areas	20		

Inmate Living Units:		Food Service:	
Desk Level (Writing)	20	Dining Room	15
Grooming Areas	20	Kitchen	50
		Dish Room	20
Education/Recreation:		Facilities Areas:	
Classrooms	30	Maintenance Shops	20
Libraries	20	Electrical/Generator Rooms	
Gymnasium	20	Mechanical Rooms	20
VT Shops	20		20
Trust Fund Areas:		Health Service Areas:	
Warehouse Areas	10	Exam Rooms	50
Commissary	20	Laboratory	50
Laundry	30	Pharmacy	75
UNICOR Areas:			
Production Areas	30		
<i>(Additional task lighting may be needed depending on type of production)</i>			
Warehouse Areas	10		
Maintenance Areas	20		

c. **Records Retention.** Records for current lighting surveys must be maintained in the Environmental and Safety Compliance Department.

10. PEST CONTROL

Each institution must develop a written plan for pest control measures. The written plan must include, at a minimum, the following:

- Pest Inspections.
- Pesticide Application Logs.

a. **Inspections.** Monthly inspections must be conducted throughout the institution to determine the presence of insects, rodents, or vermin. These inspections must be documented and kept in the Environmental and Safety Compliance Department for a minimum of three years.

b. **Pesticide Application Logs.** A log must be maintained to document any pesticide application (whether applied by in-house personnel or contractors). The log must include the following:

- Date of pesticide application.
- Area of pesticide application.
- Type of pesticide used.
- Signature of person applying pesticide.

The logs must be kept in the Environmental and Safety Compliance Department for a minimum of three years.

Restricted-use pest control products governed by Federal regulation must not be used at Bureau facilities unless applied by a licensed contractor.

In-house personnel applying non-restricted-use pesticides need not be licensed as a pest control operator.

Pesticides must be mixed, applied, and disposed in accordance with manufacturer label instructions.

The SDS for all pesticides used (whether applied by in-house personnel or contractors) must be kept on file and be readily accessible to employees in accordance with the Hazard Communication Program.

All pesticide mixing and application equipment must be labeled “Contaminated with Pesticide.”

11. SECURITY X-RAY MACHINES:

Security x-ray machines must be operated per the manufacturer’s guidelines. Each employee who operates an x-ray machine must be trained in accordance with the manufacturer’s specifications. A copy of the operating instructions must be posted by the machine.

X-ray machines must be tested for proper operation in accordance with the manufacturer’s requirements. Documentation must be kept by the Captain.

An area exposure badge must be provided for security x-ray machines. The badge must be exchanged quarterly; used badges must be sent to a laboratory for testing. The department head accountable for x-ray equipment is responsible for providing, collecting, and testing badges. Test results must be made available to staff operating the X-ray machines upon request.

Attachment 2

Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities

This interim guidance is based on what is currently known about the transmission and severity of coronavirus disease 2019 (COVID-19) as of **March 23, 2020**.

The US Centers for Disease Control and Prevention (CDC) will update this guidance as needed and as additional information becomes available. Please check the following CDC website periodically for updated interim guidance: <https://www.cdc.gov/coronavirus/2019-ncov/index.html>.

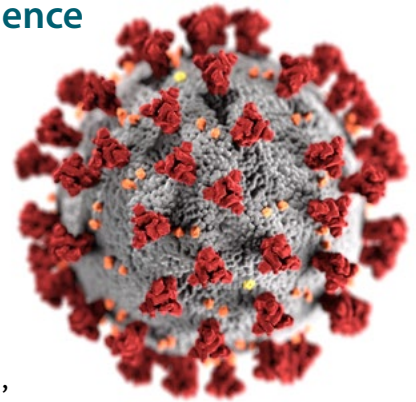
This document provides interim guidance specific for correctional facilities and detention centers during the outbreak of COVID-19, to ensure continuation of essential public services and protection of the health and safety of incarcerated and detained persons, staff, and visitors. Recommendations may need to be revised as more information becomes available.

In this guidance

- Who is the intended audience for this guidance?
- Why is this guidance being issued?
- What topics does this guidance include?
- Definitions of Commonly Used Terms
- Facilities with Limited Onsite Healthcare Services
- COVID-19 Guidance for Correctional Facilities
- Operational Preparedness
- Prevention
- Management
- Infection Control
- Clinical Care of COVID-19 Cases
- Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons
- Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

Who is the intended audience for this guidance?

This document is intended to provide guiding principles for healthcare and non-healthcare administrators of correctional and detention facilities (including but not limited to federal and state prisons, local jails, and detention centers), law enforcement agencies that have custodial authority for detained populations (i.e., US Immigration and Customs Enforcement and US Marshals Service), and their respective health departments, to assist in preparing for potential introduction, spread, and mitigation of COVID-19 in their facilities. In general, the document uses terminology referring to correctional environments but can also be applied to civil and pre-trial detention settings.



This guidance will not necessarily address every possible custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.** Facilities should contact CDC or their state, local, territorial, and/or tribal public health department if they need assistance in applying these principles or addressing topics that are not specifically covered in this guidance.



cdc.gov/coronavirus

Why is this guidance being issued?

Correctional and detention facilities can include custody, housing, education, recreation, healthcare, food service, and workplace components in a single physical setting. The integration of these components presents unique challenges for control of COVID-19 transmission among incarcerated/detained persons, staff, and visitors. Consistent application of specific preparation, prevention, and management measures can help reduce the risk of transmission and severe disease from COVID-19.

- Incarcerated/detained persons live, work, eat, study, and recreate within congregate environments, heightening the potential for COVID-19 to spread once introduced.
- In most cases, incarcerated/detained persons are not permitted to leave the facility.
- There are many opportunities for COVID-19 to be introduced into a correctional or detention facility, including daily staff ingress and egress; transfer of incarcerated/detained persons between facilities and systems, to court appearances, and to outside medical visits; and visits from family, legal representatives, and other community members. Some settings, particularly jails and detention centers, have high turnover, admitting new entrants daily who may have been exposed to COVID-19 in the surrounding community or other regions.
- Persons incarcerated/detained in a particular facility often come from a variety of locations, increasing the potential to introduce COVID-19 from different geographic areas.
- Options for medical isolation of COVID-19 cases are limited and vary depending on the type and size of facility, as well as the current level of available capacity, which is partly based on medical isolation needs for other conditions.
- Adequate levels of custody and healthcare staffing must be maintained to ensure safe operation of the facility, and options to practice social distancing through work alternatives such as working from home or reduced/alternate schedules are limited for many staff roles.
- Correctional and detention facilities can be complex, multi-employer settings that include government and private employers. Each is organizationally distinct and responsible for its own operational, personnel, and occupational health protocols and may be prohibited from issuing guidance or providing services to other employers or their staff within the same setting. Similarly, correctional and detention facilities may house individuals from multiple law enforcement agencies or jurisdictions subject to different policies and procedures.
- Incarcerated/detained persons and staff may have [medical conditions that increase their risk of severe disease from COVID-19](#).
- Because limited outside information is available to many incarcerated/detained persons, unease and misinformation regarding the potential for COVID-19 spread may be high, potentially creating security and morale challenges.
- The ability of incarcerated/detained persons to exercise disease prevention measures (e.g., frequent handwashing) may be limited and is determined by the supplies provided in the facility and by security considerations. Many facilities restrict access to soap and paper towels and prohibit alcohol-based hand sanitizer and many disinfectants.
- Incarcerated persons may hesitate to report symptoms of COVID-19 or seek medical care due to co-pay requirements and fear of isolation.

CDC has issued separate COVID-19 guidance addressing [healthcare infection control](#) and [clinical care of COVID-19 cases](#) as well as [close contacts of cases](#) in community-based settings. Where relevant, community-focused guidance documents are referenced in this document and should be monitored regularly for updates, but they may require adaptation for correctional and detention settings.

This guidance document provides additional recommended best practices specifically for correctional and detention facilities. **At this time, different facility types (e.g., prison vs. jail) and sizes are not differentiated. Administrators and agencies should adapt these guiding principles to the specific needs of their facility.**

What topics does this guidance include?

The guidance below includes detailed recommendations on the following topics related to COVID-19 in correctional and detention settings:

- ✓ Operational and communications preparations for COVID-19
- ✓ Enhanced cleaning/disinfecting and hygiene practices
- ✓ Social distancing strategies to increase space between individuals in the facility
- ✓ How to limit transmission from visitors
- ✓ Infection control, including recommended personal protective equipment (PPE) and potential alternatives during PPE shortages
- ✓ Verbal screening and temperature check protocols for incoming incarcerated/detained individuals, staff, and visitors
- ✓ Medical isolation of confirmed and suspected cases and quarantine of contacts, including considerations for cohorting when individual spaces are limited
- ✓ Healthcare evaluation for suspected cases, including testing for COVID-19
- ✓ Clinical care for confirmed and suspected cases
- ✓ Considerations for persons at higher risk of severe disease from COVID-19

Definitions of Commonly Used Terms

Close contact of a COVID-19 case—In the context of COVID-19, an individual is considered a close contact if they a) have been within approximately 6 feet of a COVID-19 case for a prolonged period of time or b) have had direct contact with infectious secretions from a COVID-19 case (e.g., have been coughed on). Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

Cohorting—Cohorting refers to the practice of isolating multiple laboratory-confirmed COVID-19 cases together as a group, or quarantining close contacts of a particular case together as a group. Ideally, cases should be isolated individually, and close contacts should be quarantined individually. However, some correctional facilities and detention centers do not have enough individual cells to do so and must consider cohorting as an alternative. See [Quarantine](#) and [Medical Isolation](#) sections below for specific details about ways to implement cohorting to minimize the risk of disease spread and adverse health outcomes.

Community transmission of COVID-19—Community transmission of COVID-19 occurs when individuals acquire the disease through contact with someone in their local community, rather than through travel to an affected location. Once community transmission is identified in a particular area, correctional facilities and detention centers are more likely to start seeing cases inside their walls. Facilities should consult with local public health departments if assistance is needed in determining how to define “local community” in the context of COVID-19 spread. However, because all states have reported cases, all facilities should be vigilant for introduction into their populations.

Confirmed vs. Suspected COVID-19 case—A confirmed case has received a positive result from a COVID-19 laboratory test, with or without symptoms. A suspected case shows symptoms of COVID-19 but either has not been tested or is awaiting test results. If test results are positive, a suspected case becomes a confirmed case.

Incarcerated/detained persons—For the purpose of this document, “incarcerated/detained persons” refers to persons held in a prison, jail, detention center, or other custodial setting where these guidelines are generally applicable. The term includes those who have been sentenced (i.e., in prisons) as well as those held for pre-trial (i.e., jails) or civil purposes (i.e., detention centers). Although this guidance does not specifically reference individuals in every type of custodial setting (e.g., juvenile facilities, community confinement facilities), facility administrators can adapt this guidance to apply to their specific circumstances as needed.

Medical Isolation—Medical isolation refers to confining a confirmed or suspected COVID-19 case (ideally to a single cell with solid walls and a solid door that closes), to prevent contact with others and to reduce the risk of transmission. Medical isolation ends when the individual meets pre-established clinical and/or testing criteria for release from isolation, in consultation with clinical providers and public health officials (detailed in guidance [below](#)). In this context, isolation does NOT refer to punitive isolation for behavioral infractions within the custodial setting. Staff are encouraged to use the term “medical isolation” to avoid confusion.

Quarantine—Quarantine refers to the practice of confining individuals who have had close contact with a COVID-19 case to determine whether they develop symptoms of the disease. Quarantine for COVID-19 should last for a period of 14 days. Ideally, each quarantined individual would be quarantined in a single cell with solid walls and a solid door that closes. If symptoms develop during the 14-day period, the individual should be placed under [medical isolation](#) and evaluated for COVID-19. If symptoms do not develop, movement restrictions can be lifted, and the individual can return to their previous residency status within the facility.

Social Distancing—Social distancing is the practice of increasing the space between individuals and decreasing the frequency of contact to reduce the risk of spreading a disease (ideally to maintain at least 6 feet between all individuals, even those who are asymptomatic). Social distancing strategies can be applied on an individual level (e.g., avoiding physical contact), a group level (e.g., canceling group activities where individuals will be in close contact), and an operational level (e.g., rearranging chairs in the dining hall to increase distance between them). Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases such as COVID-19. Additional information about social distancing, including information on its use to reduce the spread of other viral illnesses, is available in this [CDC publication](#).

Staff—In this document, “staff” refers to all public sector employees as well as those working for a private contractor within a correctional facility (e.g., private healthcare or food service). Except where noted, “staff” does not distinguish between healthcare, custody, and other types of staff including private facility operators.

Symptoms—[Symptoms of COVID-19](#) include fever, cough, and shortness of breath. Like other respiratory infections, COVID-19 can vary in severity from mild to severe. When severe, pneumonia, respiratory failure, and death are possible. COVID-19 is a novel disease, therefore the full range of signs and symptoms, the clinical course of the disease, and the individuals and populations most at risk for disease and complications are not yet fully understood. Monitor the [CDC website](#) for updates on these topics.

Facilities with Limited Onsite Healthcare Services

Although many large facilities such as prisons and some jails usually employ onsite healthcare staff and have the capacity to evaluate incarcerated/detained persons for potential illness within a dedicated healthcare space, many smaller facilities do not. Some of these facilities have access to on-call healthcare staff or providers who visit the facility every few days. Others have neither onsite healthcare capacity nor onsite medical isolation/quarantine space and must transfer ill patients to other correctional or detention facilities or local hospitals for evaluation and care.

The majority of the guidance below is designed to be applied to any correctional or detention facility, either as written or with modifications based on a facility's individual structure and resources. However, topics related to healthcare evaluation and clinical care of confirmed and suspected COVID-19 cases and their close contacts may not apply directly to facilities with limited or no onsite healthcare services. It will be especially important for these types of facilities to coordinate closely with their state, local, tribal, and/or territorial health department when they encounter confirmed or suspected cases among incarcerated/detained persons or staff, in order to ensure effective medical isolation and quarantine, necessary medical evaluation and care, and medical transfer if needed. The guidance makes note of strategies tailored to facilities without onsite healthcare where possible.

Note that all staff in any sized facility, regardless of the presence of onsite healthcare services, should observe guidance on [recommended PPE](#) in order to ensure their own safety when interacting with confirmed and suspected COVID-19 cases. Facilities should make contingency plans for the likely event of [PPE shortages](#) during the COVID-19 pandemic.

COVID-19 Guidance for Correctional Facilities

Guidance for correctional and detention facilities is organized into 3 sections: Operational Preparedness, Prevention, and Management of COVID-19. Recommendations across these sections can be applied simultaneously based on the progress of the outbreak in a particular facility and the surrounding community.

- **Operational Preparedness.** This guidance is intended to help facilities prepare for potential COVID-19 transmission in the facility. Strategies focus on operational and communications planning and personnel practices.
- **Prevention.** This guidance is intended to help facilities prevent spread of COVID-19 from outside the facility to inside. Strategies focus on reinforcing hygiene practices, intensifying cleaning and disinfection of the facility, screening (new intakes, visitors, and staff), continued communication with incarcerated/detained persons and staff, and social distancing measures (increasing distance between individuals).
- **Management.** This guidance is intended to help facilities clinically manage confirmed and suspected COVID-19 cases inside the facility and prevent further transmission. Strategies include medical isolation and care of incarcerated/detained persons with symptoms (including considerations for cohorting), quarantine of cases' close contacts, restricting movement in and out of the facility, infection control practices for individuals interacting with cases and quarantined contacts or contaminated items, intensified social distancing, and cleaning and disinfecting areas visited by cases.

Operational Preparedness

Administrators can plan and prepare for COVID-19 by ensuring that all persons in the facility know the [symptoms of COVID-19](#) and how to respond if they develop symptoms. Other essential actions include developing contingency plans for reduced workforces due to absences, coordinating with public health and correctional partners, and communicating clearly with staff and incarcerated/detained persons about these preparations and how they may temporarily alter daily life.

Communication & Coordination

✓ Develop information-sharing systems with partners.

- Identify points of contact in relevant state, local, tribal, and/or territorial public health departments before cases develop. Actively engage with the health department to understand in advance which entity has jurisdiction to implement public health control measures for COVID-19 in a particular correctional or detention facility.
- Create and test communications plans to disseminate critical information to incarcerated/detained persons, staff, contractors, vendors, and visitors as the pandemic progresses.

- Communicate with other correctional facilities in the same geographic area to share information including disease surveillance and absenteeism patterns among staff.
 - Where possible, put plans in place with other jurisdictions to prevent [confirmed and suspected COVID-19 cases and their close contacts](#) from being transferred between jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.
 - Stay informed about updates to CDC guidance via the [CDC COVID-19 website](#) as more information becomes known.
- ✓ **Review existing pandemic flu, all-hazards, and disaster plans, and revise for COVID-19.**
- Ensure that physical locations (dedicated housing areas and bathrooms) have been identified to isolate confirmed COVID-19 cases and individuals displaying COVID-19 symptoms, and to quarantine known close contacts of cases. (Medical isolation and quarantine locations should be separate). The plan should include contingencies for multiple locations if numerous cases and/or contacts are identified and require medical isolation or quarantine simultaneously. See [Medical Isolation](#) and [Quarantine](#) sections below for details regarding individual medical isolation and quarantine locations (preferred) vs. cohorting.
 - [Facilities without onsite healthcare capacity](#) should make a plan for how they will ensure that suspected COVID-19 cases will be isolated, evaluated, tested (if indicated), and provided necessary medical care.
 - Make a list of possible [social distancing strategies](#) that could be implemented as needed at different stages of transmission intensity.
 - Designate officials who will be authorized to make decisions about escalating or de-escalating response efforts as the epidemiologic context changes.
- ✓ **Coordinate with local law enforcement and court officials.**
- Identify lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission.
 - Explore strategies to prevent over-crowding of correctional and detention facilities during a community outbreak.
- ✓ **Post [signage](#) throughout the facility communicating the following:**
- **For all:** symptoms of COVID-19 and hand hygiene instructions
 - **For incarcerated/detained persons:** report symptoms to staff
 - **For staff:** stay at home when sick; if symptoms develop while on duty, leave the facility as soon as possible and follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#) including self-isolating at home, contacting their healthcare provider as soon as possible to determine whether they need to be evaluated and tested, and contacting their supervisor.
 - Ensure that signage is understandable for non-English speaking persons and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.

Personnel Practices

- ✓ **Review the sick leave policies of each employer that operates in the facility.**
- Review policies to ensure that they actively encourage staff to stay home when sick.
 - If these policies do not encourage staff to stay home when sick, discuss with the contract company.
 - Determine which officials will have the authority to send symptomatic staff home.

- ✓ **Identify staff whose duties would allow them to work from home. Where possible, allowing staff to work from home can be an effective social distancing strategy to reduce the risk of COVID-19 transmission.**
 - Discuss work from home options with these staff and determine whether they have the supplies and technological equipment required to do so.
 - Put systems in place to implement work from home programs (e.g., time tracking, etc.).
- ✓ **Plan for staff absences.** Staff should stay home when they are sick, or they may need to stay home to care for a sick household member or care for children in the event of school and childcare dismissals.
 - Allow staff to work from home when possible, within the scope of their duties.
 - Identify critical job functions and plan for alternative coverage by cross-training staff where possible.
 - Determine minimum levels of staff in all categories required for the facility to function safely. If possible, develop a plan to secure additional staff if absenteeism due to COVID-19 threatens to bring staffing to minimum levels.
 - Consider increasing keep on person (KOP) medication orders to cover 30 days in case of healthcare staff shortages.
- ✓ **Consider offering revised duties to staff who are at [higher risk of severe illness with COVID-19](#).** Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions including lung disease, heart disease, and diabetes. See [CDC's website](#) for a complete list, and check regularly for updates as more data become available to inform this issue.
 - Facility administrators should consult with their occupational health providers to determine whether it would be allowable to reassign duties for specific staff members to reduce their likelihood of exposure to COVID-19.
- ✓ **Offer the seasonal influenza vaccine to all incarcerated/detained persons (existing population and new intakes) and staff throughout the influenza season.** Symptoms of COVID-19 are similar to those of influenza. Preventing influenza cases in a facility can speed the detection of COVID-19 cases and reduce pressure on healthcare resources.
- ✓ **Reference the [Occupational Safety and Health Administration website](#) for recommendations regarding worker health.**
- ✓ **Review [CDC's guidance for businesses and employers](#)** to identify any additional strategies the facility can use within its role as an employer.

Operations & Supplies

- ✓ **Ensure that sufficient stocks of hygiene supplies, cleaning supplies, PPE, and medical supplies (consistent with the healthcare capabilities of the facility) are on hand and available, and have a plan in place to restock as needed if COVID-19 transmission occurs within the facility.**
 - Standard medical supplies for daily clinic needs
 - Tissues
 - Liquid soap when possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
 - Hand drying supplies
 - Alcohol-based hand sanitizer containing at least 60% alcohol (where permissible based on security restrictions)
 - Cleaning supplies, including [EPA-registered disinfectants effective against the virus that causes COVID-19](#)

- Recommended PPE (facemasks, N95 respirators, eye protection, disposable medical gloves, and disposable gowns/one-piece coveralls). See [PPE section](#) and [Table 1](#) for more detailed information, including recommendations for extending the life of all PPE categories in the event of shortages, and when face masks are acceptable alternatives to N95s.
- Sterile viral transport media and sterile swabs [to collect nasopharyngeal specimens](#) if COVID-19 testing is indicated
- ✓ **Make contingency plans for the probable event of PPE shortages during the COVID-19 pandemic, particularly for non-healthcare workers.**
 - See CDC guidance [optimizing PPE supplies](#).
- ✓ **Consider relaxing restrictions on allowing alcohol-based hand sanitizer in the secure setting where security concerns allow.** If soap and water are not available, [CDC recommends](#) cleaning hands with an alcohol-based hand sanitizer that contains at least 60% alcohol. Consider allowing staff to carry individual-sized bottles for their personal hand hygiene while on duty.
- ✓ **Provide a no-cost supply of soap to incarcerated/detained persons, sufficient to allow frequent hand washing.** (See [Hygiene](#) section below for additional detail regarding recommended frequency and protocol for hand washing.)
 - Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin and thereby discourage frequent hand washing.
- ✓ **If not already in place, employers operating within the facility should establish a [respiratory protection program](#) as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.**
- ✓ **Ensure that staff and incarcerated/detained persons are trained to correctly don, doff, and dispose of PPE that they will need to use within the scope of their responsibilities.** See [Table 1](#) for recommended PPE for incarcerated/detained persons and staff with varying levels of contact with COVID-19 cases or their close contacts.

Prevention

Cases of COVID-19 have been documented in all 50 US states. Correctional and detention facilities can prevent introduction of COVID-19 from the community and reduce transmission if it is already inside by reinforcing good hygiene practices among incarcerated/detained persons, staff, and visitors (including increasing access to soap and paper towels), intensifying cleaning/disinfection practices, and implementing social distancing strategies.

Because many individuals infected with COVID-19 do not display symptoms, the virus could be present in facilities before cases are identified. Both good hygiene practices and social distancing are critical in preventing further transmission.

Operations

- ✓ **Stay in communication with partners about your facility's current situation.**
 - State, local, territorial, and/or tribal health departments
 - Other correctional facilities
- ✓ **Communicate with the public about any changes to facility operations, including visitation programs.**

- ✓ **Restrict transfers of incarcerated/detained persons to and from other jurisdictions and facilities unless necessary for medical evaluation, medical isolation/quarantine, clinical care, extenuating security concerns, or to prevent overcrowding.**
 - Strongly consider postponing non-urgent outside medical visits.
 - If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the [Screening](#) section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the [protocol for a suspected COVID-19 case](#)— including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see [Table 1](#)) and that the transport vehicle is [cleaned](#) thoroughly after transport.
- ✓ **Implement lawful alternatives to in-person court appearances where permissible.**
- ✓ **Where relevant, consider suspending co-pays for incarcerated/detained persons seeking medical evaluation for respiratory symptoms.**
- ✓ **Limit the number of operational entrances and exits to the facility.**

Cleaning and Disinfecting Practices

- ✓ **Even if COVID-19 cases have not yet been identified inside the facility or in the surrounding community, begin implementing intensified cleaning and disinfecting procedures according to the recommendations below. These measures may prevent spread of COVID-19 if introduced.**
- ✓ **Adhere to [CDC recommendations for cleaning and disinfection during the COVID-19 response](#).** Monitor these recommendations for updates.
 - Several times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones).
 - Staff should clean shared equipment several times per day and on a conclusion of use basis (e.g., radios, service weapons, keys, handcuffs).
 - Use household cleaners and [EPA-registered disinfectants effective against the virus that causes COVID-19](#) as appropriate for the surface, following label instructions. This may require lifting restrictions on undiluted disinfectants.
 - Labels contain instructions for safe and effective use of the cleaning product, including precautions that should be taken when applying the product, such as wearing gloves and making sure there is good ventilation during use.
- ✓ **Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of these areas throughout the day.**
- ✓ **Ensure adequate supplies to support intensified cleaning and disinfection practices, and have a plan in place to restock rapidly if needed.**

Hygiene

- ✓ **Reinforce healthy hygiene practices, and provide and continually restock hygiene supplies throughout the facility, including in bathrooms, food preparation and dining areas, intake areas, visitor entries and exits, visitation rooms and waiting rooms, common areas, medical, and staff-restricted areas (e.g., break rooms).**
- ✓ **Encourage all persons in the facility to take the following actions to protect themselves and others from COVID-19. Post signage throughout the facility, and communicate this information verbally on a regular basis. [Sample signage and other communications materials](#) are available on the CDC website.** Ensure that materials can be understood by non-English speakers and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
 - **Practice good [cough etiquette](#):** Cover your mouth and nose with your elbow (or ideally with a tissue) rather than with your hand when you cough or sneeze, and throw all tissues in the trash immediately after use.
 - **Practice good [hand hygiene](#):** Regularly wash your hands with soap and water for at least 20 seconds, especially after coughing, sneezing, or blowing your nose; after using the bathroom; before eating or preparing food; before taking medication; and after touching garbage.
 - **Avoid touching your eyes, nose, or mouth without cleaning your hands first.**
 - **Avoid sharing eating utensils, dishes, and cups.**
 - **Avoid non-essential physical contact.**
- ✓ **Provide incarcerated/detained persons and staff no-cost access to:**
 - **Soap**—Provide liquid soap where possible. If bar soap must be used, ensure that it does not irritate the skin, as this would discourage frequent hand washing.
 - **Running water, and hand drying machines or disposable paper towels for hand washing**
 - **Tissues** and no-touch trash receptacles for disposal
- ✓ **Provide alcohol-based hand sanitizer with at least 60% alcohol where permissible based on security restrictions.** Consider allowing staff to carry individual-sized bottles to maintain hand hygiene.
- ✓ **Communicate that sharing drugs and drug preparation equipment can spread COVID-19 due to potential contamination of shared items and close contact between individuals.**

Prevention Practices for Incarcerated/Detained Persons

- ✓ **Perform pre-intake screening and temperature checks for all new entrants. Screening should take place in the sallyport, before beginning the intake process,** in order to identify and immediately place individuals with symptoms under medical isolation. See [Screening section](#) below for the wording of screening questions and a recommended procedure to safely perform a temperature check. Staff performing temperature checks should wear recommended PPE (see [PPE section](#) below).
 - **If an individual has symptoms of COVID-19** (fever, cough, shortness of breath):
 - Require the individual to wear a face mask.
 - Ensure that staff who have direct contact with the symptomatic individual wear [recommended PPE](#).
 - Place the individual under [medical isolation](#) (ideally in a room near the screening location, rather than transporting the ill individual through the facility), and refer to healthcare staff for further evaluation. (See [Infection Control](#) and [Clinical Care](#) sections below.)
 - Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective medical isolation and necessary medical care.

○ **If an individual is a [close contact](#) of a known COVID-19 case (but has no COVID-19 symptoms):**

- Quarantine the individual and monitor for symptoms two times per day for 14 days. (See [Quarantine](#) section below.)
- Facilities without onsite healthcare staff should contact their state, local, tribal, and/or territorial health department to coordinate effective quarantine and necessary medical care.

✓ **Implement [social distancing](#) strategies to increase the physical space between incarcerated/detained persons (ideally 6 feet between all individuals, regardless of the presence of symptoms).** Strategies will need to be tailored to the individual space in the facility and the needs of the population and staff. Not all strategies will be feasible in all facilities. Example strategies with varying levels of intensity include:

○ **Common areas:**

- Enforce increased space between individuals in holding cells, as well as in lines and waiting areas such as intake (e.g., remove every other chair in a waiting area)

○ **Recreation:**

- Choose recreation spaces where individuals can spread out
- Stagger time in recreation spaces
- Restrict recreation space usage to a single housing unit per space (where feasible)

○ **Meals:**

- Stagger meals
- Rearrange seating in the dining hall so that there is more space between individuals (e.g., remove every other chair and use only one side of the table)
- Provide meals inside housing units or cells

○ **Group activities:**

- Limit the size of group activities
- Increase space between individuals during group activities
- Suspend group programs where participants are likely to be in closer contact than they are in their housing environment
- Consider alternatives to existing group activities, in outdoor areas or other areas where individuals can spread out

○ **Housing:**

- If space allows, reassign bunks to provide more space between individuals, ideally 6 feet or more in all directions. (Ensure that bunks are [cleaned](#) thoroughly if assigned to a new occupant.)
- Arrange bunks so that individuals sleep head to foot to increase the distance between them
- Rearrange scheduled movements to minimize mixing of individuals from different housing areas

○ **Medical:**

- If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit. If this is not feasible, consider staggering sick call.
- Designate a room near the intake area to evaluate new entrants who are flagged by the intake screening process for COVID-19 symptoms or case contact, before they move to other parts of the facility.

- ✓ **Communicate clearly and frequently with incarcerated/detained persons about changes to their daily routine and how they can contribute to risk reduction.**
- ✓ **Note that if group activities are discontinued, it will be important to identify alternative forms of activity to support the mental health of incarcerated/detained persons.**
- ✓ **Consider suspending work release programs and other programs that involve movement of incarcerated/detained individuals in and out of the facility.**
- ✓ **Provide [up-to-date information about COVID-19](#) to incarcerated/detained persons on a regular basis, including:**
 - [Symptoms of COVID-19](#) and its health risks
 - Reminders to report COVID-19 symptoms to staff at the first sign of illness
- ✓ **Consider having healthcare staff perform rounds on a regular basis to answer questions about COVID-19.**

Prevention Practices for Staff

- ✓ **Remind staff to stay at home if they are sick.** Ensure that staff are aware that they will not be able to enter the facility if they have symptoms of COVID-19, and that they will be expected to leave the facility as soon as possible if they develop symptoms while on duty.
- ✓ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all staff daily on entry.** See [Screening](#) section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
 - In very small facilities with only a few staff, consider self-monitoring or virtual monitoring (e.g., reporting to a central authority via phone).
 - Send staff home who do not clear the screening process, and advise them to follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#).

Provide staff with [up-to-date information about COVID-19](#) and about facility policies on a regular basis, including:

- [Symptoms of COVID-19](#) and its health risks
- Employers' sick leave policy
- **If staff develop a fever, cough, or shortness of breath while at work:** immediately put on a face mask, inform supervisor, leave the facility, and follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#).
- **If staff test positive for COVID-19:** inform workplace and personal contacts immediately, and do not return to work until a decision to discontinue home medical isolation precautions is made. Monitor [CDC guidance on discontinuing home isolation](#) regularly as circumstances evolve rapidly.
- **If a staff member is identified as a close contact of a COVID-19 case (either within the facility or in the community):** self-quarantine at home for 14 days and return to work if symptoms do not develop. If symptoms do develop, follow [CDC-recommended steps for persons who are ill with COVID-19 symptoms](#).
- ✓ **If a staff member has a confirmed COVID-19 infection, the relevant employers should inform other staff about their possible exposure to COVID-19 in the workplace, but should maintain confidentiality as required by the Americans with Disabilities Act.**
 - Employees who are [close contacts](#) of the case should then self-monitor for [symptoms](#) (i.e., fever, cough, or shortness of breath).

- ✓ **When feasible and consistent with security priorities, encourage staff to maintain a distance of 6 feet or more from an individual with respiratory symptoms while interviewing, escorting, or interacting in other ways.**
- ✓ **Ask staff to keep interactions with individuals with respiratory symptoms as brief as possible.**

Prevention Practices for Visitors

- ✓ **If possible, communicate with potential visitors to discourage contact visits in the interest of their own health and the health of their family members and friends inside the facility.**
- ✓ **Perform verbal screening (for COVID-19 symptoms and close contact with cases) and temperature checks for all visitors and volunteers on entry.** See [Screening](#) section below for wording of screening questions and a recommended procedure to safely perform temperature checks.
 - Staff performing temperature checks should wear [recommended PPE](#).
 - Exclude visitors and volunteers who do not clear the screening process or who decline screening.
- ✓ **Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas.**
- ✓ **Provide visitors and volunteers with information to prepare them for screening.**
 - Instruct visitors to postpone their visit if they have symptoms of respiratory illness.
 - If possible, inform potential visitors and volunteers before they travel to the facility that they should expect to be screened for COVID-19 (including a temperature check), and will be unable to enter the facility if they do not clear the screening process or if they decline screening.
 - Display [signage](#) outside visiting areas explaining the COVID-19 screening and temperature check process. Ensure that materials are understandable for non-English speakers and those with low literacy.
- ✓ **Promote non-contact visits:**
 - Encourage incarcerated/detained persons to limit contact visits in the interest of their own health and the health of their visitors.
 - Consider reducing or temporarily eliminating the cost of phone calls for incarcerated/detained persons.
 - Consider increasing incarcerated/detained persons' telephone privileges to promote mental health and reduce exposure from direct contact with community visitors.
- ✓ **Consider suspending or modifying visitation programs, if legally permissible. For example, provide access to virtual visitation options where available.**
 - If moving to virtual visitation, clean electronic surfaces regularly. (See [Cleaning](#) guidance below for instructions on cleaning electronic surfaces.)
 - Inform potential visitors of changes to, or suspension of, visitation programs.
 - Clearly communicate any visitation program changes to incarcerated/detained persons, along with the reasons for them (including protecting their health and their family and community members' health).
 - If suspending contact visits, provide alternate means (e.g., phone or video visitation) for incarcerated/detained individuals to engage with legal representatives, clergy, and other individuals with whom they have legal right to consult.

NOTE: Suspending visitation would be done in the interest of incarcerated/detained persons' physical health and the health of the general public. However, visitation is important to maintain mental health.

If visitation is suspended, facilities should explore alternative ways for incarcerated/detained persons to communicate with their families, friends, and other visitors in a way that is not financially burdensome for them. See above suggestions for promoting non-contact visits.

- ✓ **Restrict non-essential vendors, volunteers, and tours from entering the facility.**

Management

If there has been a suspected COVID-19 case inside the facility (among incarcerated/detained persons, staff, or visitors who have recently been inside), begin implementing Management strategies while test results are pending. Essential Management strategies include placing cases and individuals with symptoms under medical isolation, quarantining their close contacts, and facilitating necessary medical care, while observing relevant infection control and environmental disinfection protocols and wearing recommended PPE.

Operations

- ✓ **Implement alternate work arrangements deemed feasible in the [Operational Preparedness](#) section.**
- ✓ **Suspend all transfers of incarcerated/detained persons to and from other jurisdictions and facilities (including work release where relevant), unless necessary for medical evaluation, medical isolation/quarantine, care, extenuating security concerns, or to prevent overcrowding.**
 - If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the [Screening](#) section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the [protocol for a suspected COVID-19 case](#)—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to appropriately isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE (see [Table 1](#)) and that the transport vehicle is [cleaned](#) thoroughly after transport.
- ✓ **If possible, consider quarantining all new intakes for 14 days before they enter the facility's general population (SEPARATELY from other individuals who are quarantined due to contact with a COVID-19 case).** Subsequently in this document, this practice is referred to as **routine intake quarantine**.
- ✓ **When possible, arrange lawful alternatives to in-person court appearances.**
- ✓ **Incorporate screening for COVID-19 symptoms and a temperature check into release planning.**
 - Screen all releasing individuals for COVID-19 symptoms and perform a temperature check. (See [Screening](#) section below.)
 - If an individual does not clear the screening process, follow the [protocol for a suspected COVID-19 case](#)—including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
 - If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
 - Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

✓ **Coordinate with state, local, tribal, and/or territorial health departments.**

- When a COVID-19 case is suspected, work with public health to determine action. See [Medical Isolation](#) section below.
- When a COVID-19 case is suspected or confirmed, work with public health to identify close contacts who should be placed under quarantine. See [Quarantine](#) section below.
- Facilities with limited onsite medical isolation, quarantine, and/or healthcare services should coordinate closely with state, local, tribal, and/or territorial health departments when they encounter a confirmed or suspected case, in order to ensure effective medical isolation or quarantine, necessary medical evaluation and care, and medical transfer if needed. See [Facilities with Limited Onsite Healthcare Services](#) section.

Hygiene

- ✓ **Continue to ensure that hand hygiene supplies are well-stocked in all areas of the facility.** (See [above](#).)
- ✓ **Continue to emphasize practicing good hand hygiene and cough etiquette.** (See [above](#).)

Cleaning and Disinfecting Practices

- ✓ **Continue adhering to recommended cleaning and disinfection procedures for the facility at large.** (See [above](#).)
- ✓ **Reference specific cleaning and disinfection procedures for areas where a COVID-19 case has spent time ([below](#)).**

Medical Isolation of Confirmed or Suspected COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. [Facilities with Limited Onsite Healthcare Services](#), or without sufficient space to implement effective medical isolation, should coordinate with local public health officials to ensure that COVID-19 cases will be appropriately isolated, evaluated, tested (if indicated), and given care.

- ✓ **As soon as an individual develops symptoms of COVID-19, they should wear a face mask (if it does not restrict breathing) and should be immediately placed under medical isolation in a separate environment from other individuals.**
- ✓ **Keep the individual's movement outside the medical isolation space to an absolute minimum.**
 - Provide medical care to cases inside the medical isolation space. See [Infection Control](#) and [Clinical Care](#) sections for additional details.
 - Serve meals to cases inside the medical isolation space.
 - Exclude the individual from all group activities.
 - Assign the isolated individual a dedicated bathroom when possible.
- ✓ **Ensure that the individual is wearing a face mask at all times when outside of the medical isolation space, and whenever another individual enters.** Provide clean masks as needed. Masks should be changed at least daily, and when visibly soiled or wet.
- ✓ **Facilities should make every possible effort to place suspected and confirmed COVID-19 cases under medical isolation individually. Each isolated individual should be assigned their own housing space and bathroom where possible.** [Cohorting](#) should only be practiced if there are no other available options.

- If cohorting is necessary:
 - **Only individuals who are laboratory confirmed COVID-19 cases should be placed under medical isolation as a cohort. Do not cohort confirmed cases with suspected cases or case contacts.**
 - Unless no other options exist, do not house COVID-19 cases with individuals who have an undiagnosed respiratory infection.
 - Ensure that cohorted cases wear face masks at all times.

✓ **In order of preference, individuals under medical isolation should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls and a solid door that closes fully. Employ [social distancing strategies related to housing in the Prevention section above](#).
- As a cohort, in a large, well-ventilated cell with solid walls but without a solid door. Employ [social distancing strategies related to housing in the Prevention section above](#).
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ [social distancing strategies related to housing in the Prevention section above](#).
- Safely transfer individual(s) to another facility with available medical isolation capacity in one of the above arrangements
(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

If the ideal choice does not exist in a facility, use the next best alternative.

✓ **If the number of confirmed cases exceeds the number of individual medical isolation spaces available in the facility, be especially mindful of [cases who are at higher risk of severe illness from COVID-19](#).** Ideally, they should not be cohorted with other infected individuals. If cohorting is unavoidable, make all possible accommodations to prevent transmission of other infectious diseases to the higher-risk individual. (For example, allocate more space for a higher-risk individual within a shared medical isolation space.)

- Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See [CDC's website](#) for a complete list, and check regularly for updates as more data become available to inform this issue.
- Note that incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages.

✓ **Custody staff should be designated to monitor these individuals exclusively where possible.** These staff should wear recommended PPE as appropriate for their level of contact with the individual under medical isolation (see [PPE](#) section below) and should limit their own movement between different parts of the facility to the extent possible.

✓ **Minimize transfer of COVID-19 cases between spaces within the healthcare unit.**

- ✓ **Provide individuals under medical isolation with tissues and, if permissible, a lined no-touch trash receptacle.** Instruct them to:
 - **Cover** their mouth and nose with a tissue when they cough or sneeze
 - **Dispose** of used tissues immediately in the lined trash receptacle
 - **Wash hands** immediately with soap and water for at least 20 seconds. If soap and water are not available, clean hands with an alcohol-based hand sanitizer that contains at least 60% alcohol (where security concerns permit). Ensure that [hand washing supplies](#) are continually restocked.
- ✓ **Maintain medical isolation until all the following criteria have been met. Monitor the [CDC website](#) for updates to these criteria.**

For individuals who will be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- The individual has tested negative in at least two consecutive respiratory specimens collected at least 24 hours apart

For individuals who will NOT be tested to determine if they are still contagious:

- The individual has been free from fever for at least 72 hours without the use of fever-reducing medications **AND**
- The individual's other symptoms have improved (e.g., cough, shortness of breath) **AND**
- At least 7 days have passed since the first symptoms appeared

For individuals who had a confirmed positive COVID-19 test but never showed symptoms:

- At least 7 days have passed since the date of the individual's first positive COVID-19 test **AND**
- The individual has had no subsequent illness

- ✓ **Restrict cases from leaving the facility while under medical isolation precautions, unless released from custody or if a transfer is necessary for medical care, infection control, lack of medical isolation space, or extenuating security concerns.**

- If an incarcerated/detained individual who is a COVID-19 case is released from custody during their medical isolation period, contact public health to arrange for safe transport and continuation of necessary medical care and medical isolation as part of release planning.

Cleaning Spaces where COVID-19 Cases Spent Time

Thoroughly clean and disinfect all areas where the confirmed or suspected COVID-19 case spent time. Note—these protocols apply to suspected cases as well as confirmed cases, to ensure adequate disinfection in the event that the suspected case does, in fact, have COVID-19. Refer to the [Definitions](#) section for the distinction between confirmed and suspected cases.

- Close off areas used by the infected individual. If possible, open outside doors and windows to increase air circulation in the area. Wait as long as practical, up to 24 hours under the poorest air exchange conditions (consult [CDC Guidelines for Environmental Infection Control in Health-Care Facilities for wait time based on different ventilation conditions](#)), before beginning to clean and disinfect, to minimize potential for exposure to respiratory droplets.
- Clean and disinfect all areas (e.g., cells, bathrooms, and common areas) used by the infected individual, focusing especially on frequently touched surfaces (see list above in [Prevention](#) section).

✓ **Hard (non-porous) surface cleaning and disinfection**

- If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- For disinfection, most common EPA-registered household disinfectants should be effective. Choose cleaning products based on security requirements within the facility.
 - Consult a [list of products that are EPA-approved for use against the virus that causes COVID-19](#). Follow the manufacturer's instructions for all cleaning and disinfection products (e.g., concentration, application method and contact time, etc.).
 - Diluted household bleach solutions can be used if appropriate for the surface. Follow the manufacturer's instructions for application and proper ventilation, and check to ensure the product is not past its expiration date. Never mix household bleach with ammonia or any other cleanser. Unexpired household bleach will be effective against coronaviruses when properly diluted. Prepare a bleach solution by mixing:
 - 5 tablespoons (1/3rd cup) bleach per gallon of water or
 - 4 teaspoons bleach per quart of water

✓ **Soft (porous) surface cleaning and disinfection**

- For soft (porous) surfaces such as carpeted floors and rugs, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces. After cleaning:
 - If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.
 - Otherwise, use products [that are EPA-approved for use against the virus that causes COVID-19](#) and are suitable for porous surfaces.

✓ **Electronics cleaning and disinfection**

- For electronics such as tablets, touch screens, keyboards, and remote controls, remove visible contamination if present.
 - Follow the manufacturer's instructions for all cleaning and disinfection products.
 - Consider use of wipeable covers for electronics.
 - If no manufacturer guidance is available, consider the use of alcohol-based wipes or spray containing at least 70% alcohol to disinfect touch screens. Dry surfaces thoroughly to avoid pooling of liquids.

Additional information on cleaning and disinfection of communal facilities such can be found on [CDC's website](#).

✓ **Ensure that staff and incarcerated/detained persons performing cleaning wear recommended PPE.** (See [PPE](#) section below.)

✓ **Food service items.** Cases under medical isolation should throw disposable food service items in the trash in their medical isolation room. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

✓ **[Laundry from a COVID-19 cases](#) can be washed with other individuals' laundry.**

- Individuals handling laundry from COVID-19 cases should wear disposable gloves, discard after each use, and clean their hands after.
- Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
- Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.

- Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.
- ✓ **Consult [cleaning recommendations above](#) to ensure that transport vehicles are thoroughly cleaned after carrying a confirmed or suspected COVID-19 case.**

Quarantining Close Contacts of COVID-19 Cases

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. [Facilities without onsite healthcare capacity](#), or without sufficient space to implement effective quarantine, should coordinate with local public health officials to ensure that close contacts of COVID-19 cases will be effectively quarantined and medically monitored.

- ✓ **Incarcerated/detained persons who are close contacts of a [confirmed or suspected COVID-19 case](#) (whether the case is another incarcerated/detained person, staff member, or visitor) should be placed under quarantine for 14 days (see CDC guidelines).**
 - If an individual is quarantined due to contact with a suspected case who is subsequently tested for COVID-19 and receives a negative result, the quarantined individual should be released from quarantine restrictions.
- ✓ **In the context of COVID-19, an individual (incarcerated/detained person or staff) is [considered a close contact](#) if they:**
 - Have been within approximately 6 feet of a COVID-19 case for a prolonged period of time OR
 - Have had direct contact with infectious secretions of a COVID-19 case (e.g., have been coughed on)

Close contact can occur while caring for, living with, visiting, or sharing a common space with a COVID-19 case. Data to inform the definition of close contact are limited. Considerations when assessing close contact include the duration of exposure (e.g., longer exposure time likely increases exposure risk) and the clinical symptoms of the person with COVID-19 (e.g., coughing likely increases exposure risk, as does exposure to a severely ill patient).

- ✓ **Keep a quarantined individual's movement outside the quarantine space to an absolute minimum.**
 - Provide medical evaluation and care inside or near the quarantine space when possible.
 - Serve meals inside the quarantine space.
 - Exclude the quarantined individual from all group activities.
 - Assign the quarantined individual a dedicated bathroom when possible.
- ✓ **Facilities should make every possible effort to quarantine close contacts of COVID-19 cases individually. [Cohorting](#) multiple quarantined close contacts of a COVID-19 case could transmit COVID-19 from those who are infected to those who are uninfected. Cohorting should only be practiced if there are no other available options.**
 - If cohorting of close contacts under quarantine is absolutely necessary, symptoms of all individuals should be monitored closely, and individuals with symptoms of COVID-19 should be placed under [medical isolation](#) immediately.
 - If an entire housing unit is under quarantine due to contact with a case from the same housing unit, the entire housing unit may need to be treated as a cohort and quarantine in place.
 - Some facilities may choose to quarantine all new intakes for 14 days before moving them to the facility's general population as a general rule (not because they were exposed to a COVID-19 case). Under this scenario, avoid mixing individuals quarantined due to exposure to a COVID-19 case with individuals undergoing routine intake quarantine.

- If at all possible, do not add more individuals to an existing quarantine cohort after the 14-day quarantine clock has started.

✓ **If the number of quarantined individuals exceeds the number of individual quarantine spaces available in the facility, be especially mindful of those who are at higher risk of severe illness from COVID-19.** Ideally, they should not be cohorted with other quarantined individuals. If cohorting is unavoidable, make all possible accommodations to reduce exposure risk for the higher-risk individuals. (For example, intensify [social distancing strategies](#) for higher-risk individuals.)

✓ **In order of preference, multiple quarantined individuals should be housed:**

- Separately, in single cells with solid walls (i.e., not bars) and solid doors that close fully
- Separately, in single cells with solid walls but without solid doors
- As a cohort, in a large, well-ventilated cell with solid walls, a solid door that closes fully, and at least 6 feet of personal space assigned to each individual in all directions
- As a cohort, in a large, well-ventilated cell with solid walls and at least 6 feet of personal space assigned to each individual in all directions, but without a solid door
- As a cohort, in single cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells creating at least 6 feet of space between individuals. (Although individuals are in single cells in this scenario, the airflow between cells essentially makes it a cohort arrangement in the context of COVID-19.)
- As a cohort, in multi-person cells without solid walls or solid doors (i.e., cells enclosed entirely with bars), preferably with an empty cell between occupied cells. Employ [social distancing strategies related to housing in the Prevention section](#) to maintain at least 6 feet of space between individuals housed in the same cell.
- As a cohort, in individuals' regularly assigned housing unit but with no movement outside the unit (if an entire housing unit has been exposed). [Employ social distancing strategies related to housing in the Prevention section above](#) to maintain at least 6 feet of space between individuals.
- Safely transfer to another facility with capacity to quarantine in one of the above arrangements

(NOTE—Transfer should be avoided due to the potential to introduce infection to another facility; proceed only if no other options are available.)

✓ **Quarantined individuals should wear face masks if feasible based on local supply, as source control, under the following circumstances** (see [PPE](#) section and [Table 1](#)):

- If cohorted, quarantined individuals should wear face masks at all times (to prevent transmission from infected to uninfected individuals).
- If quarantined separately, individuals should wear face masks whenever a non-quarantined individual enters the quarantine space.
- All quarantined individuals should wear a face mask if they must leave the quarantine space for any reason.
- Asymptomatic individuals under [routine intake quarantine](#) (with no known exposure to a COVID-19 case) do not need to wear face masks.

✓ **Staff who have close contact with quarantined individuals should wear recommended PPE if feasible based on local supply, feasibility, and safety within the scope of their duties** (see [PPE](#) section and [Table 1](#)).

- Staff supervising asymptomatic incarcerated/detained persons under [routine intake quarantine](#) (with no known exposure to a COVID-19 case) do not need to wear PPE.

- ✓ **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
 - If an individual develops symptoms, they should be moved to medical isolation immediately and further evaluated. (See [Medical Isolation](#) section above.)
 - See [Screening](#) section for a procedure to perform temperature checks safely on asymptomatic close contacts of COVID-19 cases.
- ✓ **If an individual who is part of a quarantined cohort becomes symptomatic:**
 - **If the individual is tested for COVID-19 and tests positive:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
 - **If the individual is tested for COVID-19 and tests negative:** the 14-day quarantine clock for this individual and the remainder of the cohort does not need to be reset. This individual can return from medical isolation to the quarantined cohort for the remainder of the quarantine period.
 - **If the individual is not tested for COVID-19:** the 14-day quarantine clock for the remainder of the cohort must be reset to 0.
- ✓ **Restrict quarantined individuals from leaving the facility (including transfers to other facilities) during the 14-day quarantine period, unless released from custody or a transfer is necessary for medical care, infection control, lack of quarantine space, or extenuating security concerns.**
- ✓ **Quarantined individuals can be released from quarantine restrictions if they have not developed symptoms during the 14-day quarantine period.**
- ✓ **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.
- ✓ **Laundry from quarantined individuals can be washed with other individuals' laundry.**
 - Individuals handling laundry from quarantined persons should wear disposable gloves, discard after each use, and clean their hands after.
 - Do not shake dirty laundry. This will minimize the possibility of dispersing virus through the air.
 - Launder items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely.
 - Clean and disinfect clothes hampers according to guidance above for surfaces. If permissible, consider using a bag liner that is either disposable or can be laundered.

Management of Incarcerated/Detained Persons with COVID-19 Symptoms

NOTE: Some recommendations below apply primarily to facilities with onsite healthcare capacity. Facilities without onsite healthcare capacity or without sufficient space for medical isolation should coordinate with local public health officials to ensure that suspected COVID-19 cases will be effectively isolated, evaluated, tested (if indicated), and given care.

- ✓ **If possible, designate a room near each housing unit for healthcare staff to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.**
- ✓ **Incarcerated/detained individuals with COVID-19 symptoms should wear a face mask and should be placed under medical isolation immediately. Discontinue the use of a face mask if it inhibits breathing. See [Medical Isolation](#) section above.**

- ✓ **Medical staff should evaluate symptomatic individuals to determine whether COVID-19 testing is indicated.** Refer to CDC guidelines for information on [evaluation](#) and [testing](#). See [Infection Control](#) and [Clinical Care](#) sections below as well.
- ✓ **If testing is indicated (or if medical staff need clarification on when testing is indicated), contact the state, local, tribal, and/or territorial health department. Work with public health or private labs as available to access testing supplies or services.**
 - If the COVID-19 test is positive, continue medical isolation. (See [Medical Isolation](#) section above.)
 - If the COVID-19 test is negative, return the individual to their prior housing assignment unless they require further medical assessment or care.

Management Strategies for Incarcerated/Detained Persons without COVID-19 Symptoms

- ✓ **Provide [clear information](#) to incarcerated/detained persons about the presence of COVID-19 cases within the facility, and the need to increase social distancing and maintain hygiene precautions.**
 - Consider having healthcare staff perform regular rounds to answer questions about COVID-19.
 - Ensure that information is provided in a manner that can be understood by non-English speaking individuals and those with low literacy, and make necessary accommodations for those with cognitive or intellectual disabilities and those who are deaf, blind, or low-vision.
- ✓ **Implement daily temperature checks in housing units where COVID-19 cases have been identified, especially if there is concern that incarcerated/detained individuals are not notifying staff of symptoms.** See [Screening](#) section for a procedure to safely perform a temperature check.
- ✓ **Consider additional options to intensify [social distancing](#) within the facility.**

Management Strategies for Staff

- ✓ **Provide clear information to staff about the presence of COVID-19 cases within the facility, and the need to enforce social distancing and encourage hygiene precautions.**
 - Consider having healthcare staff perform regular rounds to answer questions about COVID-19 from staff.
- ✓ **Staff identified as close contacts of a COVID-19 case should self-quarantine at home for 14 days and may return to work if symptoms do not develop.**
 - See [above](#) for definition of a close contact.
 - Refer to [CDC guidelines](#) for further recommendations regarding home quarantine for staff.

Infection Control

Infection control guidance below is applicable to all types of correctional facilities. Individual facilities should assess their unique needs based on the types of exposure staff and incarcerated/detained persons may have with confirmed or suspected COVID-19 cases.

- ✓ **All individuals who have the potential for direct or indirect exposure to COVID-19 cases or infectious materials (including body substances; contaminated medical supplies, devices, and equipment; contaminated environmental surfaces; or contaminated air) should follow infection control practices outlined in the [CDC Interim Infection Prevention and Control Recommendations for Patients with Suspected or Confirmed Coronavirus Disease 2019 \(COVID-19\) in Healthcare Settings](#). Monitor these guidelines regularly for updates.**

- Implement the above guidance as fully as possible within the correctional/detention context. Some of the specific language may not apply directly to healthcare settings within correctional facilities and detention centers, or to facilities without onsite healthcare capacity, and may need to be adapted to reflect facility operations and custody needs.
- Note that these recommendations apply to staff as well as to incarcerated/detained individuals who may come in contact with contaminated materials during the course of their work placement in the facility (e.g., cleaning).
- ✓ **Staff should exercise caution when in contact with individuals showing symptoms of a respiratory infection.** Contact should be minimized to the extent possible until the infected individual is wearing a face mask. If COVID-19 is suspected, staff should wear recommended PPE (see [PPE](#) section).
- ✓ **Refer to [PPE](#) section to determine recommended PPE for individuals persons in contact with confirmed COVID-19 cases, contacts, and potentially contaminated items.**

Clinical Care of COVID-19 Cases

- ✓ **Facilities should ensure that incarcerated/detained individuals receive medical evaluation and treatment at the first signs of COVID-19 symptoms.**
 - If a facility is not able to provide such evaluation and treatment, a plan should be in place to safely transfer the individual to another facility or local hospital.
 - The initial medical evaluation should determine whether a symptomatic individual is at [higher risk for severe illness from COVID-19](#). Persons at higher risk may include older adults and persons of any age with serious underlying medical conditions such as lung disease, heart disease, and diabetes. See [CDC's website](#) for a complete list, and check regularly for updates as more data become available to inform this issue.
- ✓ **Staff evaluating and providing care for confirmed or suspected COVID-19 cases should follow the [CDC Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease \(COVID-19\)](#) and monitor the guidance website regularly for updates to these recommendations.**
- ✓ **Healthcare staff should evaluate persons with respiratory symptoms or contact with a COVID-19 case in a separate room, with the door closed if possible, while wearing [recommended PPE](#) and ensuring that the suspected case is wearing a face mask.**
 - If possible, designate a room near each housing unit to evaluate individuals with COVID-19 symptoms, rather than having them walk through the facility to be evaluated in the medical unit.
- ✓ **Clinicians are strongly encouraged to test for other causes of respiratory illness (e.g., influenza).**
- ✓ **The facility should have a plan in place to safely transfer persons with severe illness from COVID-19 to a local hospital if they require care beyond what the facility is able to provide.**
- ✓ **When evaluating and treating persons with symptoms of COVID-19 who do not speak English, using a language line or provide a trained interpreter when possible.**

Recommended PPE and PPE Training for Staff and Incarcerated/Detained Persons

- ✓ **Ensure that all staff (healthcare and non-healthcare) and incarcerated/detained persons who will have contact with infectious materials in their work placements have been trained to correctly don, doff, and dispose of PPE relevant to the level of contact they will have with confirmed and suspected COVID-19 cases.**

- Ensure that staff and incarcerated/detained persons who require respiratory protection (e.g., N95s) for their work responsibilities have been medically cleared, trained, and fit-tested in the context of an employer's [respiratory protection program](#).
- For PPE training materials and posters, please visit the [CDC website on Protecting Healthcare Personnel](#).

- ✓ **Ensure that all staff are trained to perform hand hygiene after removing PPE.**
- ✓ **If administrators anticipate that incarcerated/detained persons will request unnecessary PPE, consider providing training on the different types of PPE that are needed for differing degrees of contact with COVID-19 cases and contacts, and the reasons for those differences (see [Table 1](#)). Monitor linked CDC guidelines in Table 1 for updates to recommended PPE.**
- ✓ **Keep recommended PPE near the spaces in the facility where it could be needed, to facilitate quick access in an emergency.**
- ✓ **Recommended PPE for incarcerated/detained individuals and staff in a correctional facility** will vary based on the type of contact they have with COVID-19 cases and their contacts (see [Table 1](#)). Each type of recommended PPE is defined below. **As above, note that PPE shortages are anticipated in every category during the COVID-19 response.**

- **N95 respirator**

See below for guidance on when face masks are acceptable alternatives for N95s. N95 respirators should be prioritized when staff anticipate contact with infectious aerosols from a COVID-19 case.

- **Face mask**

- **Eye protection**—goggles or disposable face shield that fully covers the front and sides of the face

- **A single pair of disposable patient examination gloves**

Gloves should be changed if they become torn or heavily contaminated.

- **Disposable medical isolation gown or single-use/disposable coveralls, when feasible**

- If custody staff are unable to wear a disposable gown or coveralls because it limits access to their duty belt and gear, ensure that duty belt and gear are disinfected after close contact with the individual. Clean and disinfect duty belt and gear prior to reuse using a household cleaning spray or wipe, according to the product label.
- If there are shortages of gowns, they should be prioritized for aerosol-generating procedures, care activities where splashes and sprays are anticipated, and high-contact patient care activities that provide opportunities for transfer of pathogens to the hands and clothing of staff.

- ✓ **Note that shortages of all PPE categories are anticipated during the COVID-19 response, particularly for non-healthcare workers. Guidance for optimizing the supply of each category can be found on CDC's website:**

- [Guidance in the event of a shortage of N95 respirators](#)

- Based on local and regional situational analysis of PPE supplies, **face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand.** During this time, available respirators should be prioritized for staff engaging in activities that would expose them to respiratory aerosols, which pose the highest exposure risk.

- [Guidance in the event of a shortage of face masks](#)

- [Guidance in the event of a shortage of eye protection](#)

- [Guidance in the event of a shortage of gowns/coveralls](#)

Table 1. Recommended Personal Protective Equipment (PPE) for Incarcerated/Detained Persons and Staff in a Correctional Facility during the COVID-19 Response

Classification of Individual Wearing PPE	N95 respirator	Face mask	Eye Protection	Gloves	Gown/Coveralls
Incarcerated/Detained Persons					
Asymptomatic incarcerated/detained persons (under quarantine as close contacts of a COVID-19 case*)	Apply face masks for source control as feasible based on local supply, especially if housed as a cohort				
Incarcerated/detained persons who are confirmed or suspected COVID-19 cases, or showing symptoms of COVID-19	–	✓	–	–	–
Incarcerated/detained persons in a work placement handling laundry or used food service items from a COVID-19 case or case contact	–	–	✓	✓	✓
Incarcerated/detained persons in a work placement cleaning areas where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓
Staff					
Staff having direct contact with asymptomatic incarcerated/detained persons under quarantine as close contacts of a COVID-19 case* (but not performing temperature checks or providing medical care)	–	Face mask, eye protection, and gloves as local supply and scope of duties allow.			–
Staff performing temperature checks on any group of people (staff, visitors, or incarcerated/detained persons), or providing medical care to asymptomatic quarantined persons	–	✓	✓	✓	✓
Staff having direct contact with (including transport) or offering medical care to confirmed or suspected COVID-19 cases (see CDC infection control guidelines)	✓**		✓	✓	✓
Staff present during a procedure on a confirmed or suspected COVID-19 case that may generate respiratory aerosols (see CDC infection control guidelines)	✓	–	✓	✓	✓
Staff handling laundry or used food service items from a COVID-19 case or case contact	–	–	–	✓	✓
Staff cleaning an area where a COVID-19 case has spent time	Additional PPE may be needed based on the product label. See CDC guidelines for more details.			✓	✓

* If a facility chooses to routinely quarantine all new intakes (without symptoms or known exposure to a COVID-19 case) before integrating into the facility's general population, face masks are not necessary.

** A NIOSH-approved N95 is preferred. However, based on local and regional situational analysis of PPE supplies, face masks are an acceptable alternative when the supply chain of respirators cannot meet the demand. During this time, available respirators should be prioritized for procedures that are likely to generate respiratory aerosols, which would pose the highest exposure risk to staff.

Verbal Screening and Temperature Check Protocols for Incarcerated/Detained Persons, Staff, and Visitors

The guidance above recommends verbal screening and temperature checks for incarcerated/detained persons, staff, volunteers, and visitors who enter correctional and detention facilities, as well as incarcerated/detained persons who are transferred to another facility or released from custody. Below, verbal screening questions for COVID-19 symptoms and contact with known cases, and a safe temperature check procedure are detailed.

✓ **Verbal screening for symptoms of COVID-19 and contact with COVID-19 cases should include the following questions:**

- *Today or in the past 24 hours, have you had any of the following symptoms?*
 - *Fever, felt feverish, or had chills?*
 - *Cough?*
 - *Difficulty breathing?*
- *In the past 14 days, have you had contact with a person known to be infected with the novel coronavirus (COVID-19)?*

✓ **The following is a protocol to safely check an individual's temperature:**

- Perform hand hygiene
- Put on a face mask, eye protection (goggles or disposable face shield that fully covers the front and sides of the face), gown/coveralls, and a single pair of disposable gloves
- Check individual's temperature
- **If performing a temperature check on multiple individuals, ensure that a clean pair of gloves is used for each individual and that the thermometer has been thoroughly cleaned in between each check.** If disposable or non-contact thermometers are used and the screener did not have physical contact with an individual, gloves do not need to be changed before the next check. If non-contact thermometers are used, they should be [cleaned routinely as recommended by CDC for infection control](#).
- Remove and discard PPE
- Perform hand hygiene

Attachment 3



U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution

Office of the Environmental and
Safety Compliance Administrator

Fort Dix, New Jersey 08640

DATE: March 20, 2020
TO: Inmate Population
FROM: A. Sassaman, Safety Administrator
SUBJECT: Coronavirus (COVID-19) Cleaning and Disinfection

Due to COVID-19 concerns, everyone needs to double sanitation efforts throughout FCI Fort Dix. This e-mail and the attachment are guidance on the cleaning and disinfection of non-porous surfaces.

Orderlies must clean frequently touched surfaces (for example: tables, doorknobs, light switches, handles, desks, toilets, faucets, sinks) every hour. All orderlies should wash their hand frequently when cleaning and disinfecting surfaces. We will not be deploying more spray bottles to the housing units, but sanitation efforts need to increase in frequency.

Laundry inmates should wear disposable gloves when handling dirty laundry. When the gloves are removed, be sure to wash hands afterwards.

To disinfect, apply Hdqc2 solution with a mop, cloth, sponge, or hand pump trigger sprayer so as to wet all surfaces thoroughly. Allow to remain wet for 10 minutes, then remove excess liquid.

New chemical will be delivered shortly, which has a much shorter disinfection time. We will deploy it as soon as it is received.

Keeping the workplace safe

Encourage your employees to...

Practice good hygiene



- Stop handshaking – use other noncontact methods of greeting
- Clean hands at the door and schedule regular hand washing reminders by email
- Create habits and reminders to avoid touching their faces and cover coughs and sneezes
- Disinfect surfaces like doorknobs, tables, desks, and handrails regularly
- Increase ventilation by opening windows or adjusting air conditioning

Be careful with meetings and travel



- Use videoconferencing for meetings when possible
- When not possible, hold meetings in open, well-ventilated spaces
- Consider adjusting or postponing large meetings or gatherings
- Assess the risks of business travel

Handle food carefully



- Limit food sharing
- Strengthen health screening for cafeteria staff and their close contacts
- Ensure cafeteria staff and their close contacts practice strict hygiene

Stay home if...



- They are feeling sick
- They have a sick family member in their home

What every American and community can do now to decrease the spread of the coronavirus

Keeping the school safe

Encourage your faculty, staff, and students to...

Practice good hygiene



- Stop handshaking – use other noncontact methods of greeting
- Clean hands at the door and at regular intervals
- Create habits and reminders to avoid touching their faces and cover coughs and sneezes
- Disinfect surfaces like doorknobs, tables, desks, and handrails regularly
- Increase ventilation by opening windows or adjusting air conditioning

Consider rearranging large activities and gatherings



- Consider adjusting or postponing gatherings that mix between classes and grades
- Adjust after-school arrangements to avoid mixing between classes and grades
- When possible, hold classes outdoors or in open, well-ventilated spaces

Handle food carefully



- Limit food sharing
- Strengthen health screening for cafeteria staff and their close contacts
- Ensure cafeteria staff and their close contacts practice strict hygiene

Stay home if...



- They are feeling sick
- They have a sick family member in their home

What every American and community can do now to decrease the spread of the coronavirus

Keeping the home safe

Encourage your family members to:

All households



- Clean hands at the door and at regular intervals
- Create habits and reminders to avoid touching their face and cover coughs and sneezes
- Disinfect surfaces like doorknobs, tables, and handrails regularly
- Increase ventilation by opening windows or adjusting air conditioning

Households with vulnerable seniors or those with significant underlying conditions



Significant underlying conditions include heart, lung, kidney disease; diabetes; and conditions that suppress the immune system

- Have the healthy people in the household conduct themselves as if they were a significant risk to the person with underlying conditions. For example, wash hands frequently before interacting with the person, such as by feeding or caring for the person
- If possible, provide a protected space for vulnerable household members
- Ensure all utensils and surfaces are cleaned regularly

Households with sick family members



- Give sick members their own room if possible, and keep the door closed
- Have only one family member care for them
- Consider providing additional protections or more intensive care for household members over 65 years old or with underlying conditions

What every American and community can do now to decrease the spread of the coronavirus

Keeping commercial establishments safe

Encourage your employees and customers to...

Practice good hygiene



- Stop handshaking – use other noncontact methods of greeting
- Clean hands at the door, and schedule regular hand washing reminders by email
- Promote tap and pay to limit handling of cash
- Disinfect surfaces like doorknobs, tables, desks, and handrails regularly
- Increase ventilation by opening windows or adjusting air conditioning

Avoid crowding



- Use booking and scheduling to stagger customer flow
- Use online transactions where possible
- Consider limiting attendance at larger gatherings

For transportation businesses, taxis, and ride shares



- Keep windows open when possible
- Increase ventilation
- Regularly disinfect surfaces

What every American and community can do now to decrease the spread of the coronavirus

Attachment 4

Adam Sassaman - Updated: (Coronavirus COVID-19) Cleaning and Disinfection Recommendations

From: FTD/AW-Operations~
To: FTD/everyone
Date: 4/3/2020 1:05 PM
Subject: Updated: (Coronavirus COVID-19) Cleaning and Disinfection Recommendations

Below is updated guidance on disinfecting frequently touched surfaces, hard surfaces, equipment, electronics, soft surfaces, and linens. Please ensure inmate orderlies tasked with disinfecting units and work areas are trained on these procedures.

Hard (Non-porous) Surfaces

- Frequently touched surfaces should be disinfected hourly. Frequently touched items include: tables, doorknobs, light switches, countertops, handles, desks, phones, keyboards, toilets, faucets, sinks, hand soap dispensers, etc.
- If surfaces are dirty, they should be cleaned using a detergent or soap and water prior to disinfection.
- For disinfection, utilize HDQC2 and allow to remain wet for 10 minutes and TB-Cide Quat and allow to remain wet for 2 minutes.
- HDQC2 is our main cleaning chemical. It requires a 10 minute contact time to kill coronavirus.
- TB-Cide Quat has been provided to housing units (including Camp and SHU), lobby areas, Health Services, R&D, and CORE. We have a limited supply of TB-Cide Quat. If and when we get large stock of this or some other disinfectant in, we will make it available to everyone.
- Inmate orderlies tasked with disinfecting, must be trained in their responsibilities and the contact times of chemicals in order to properly disinfect from COVID-19.

Equipment

Equipment should be cleaned multiple times throughout your shift.

- **KEY RINGS:** Keys should be washed/disinfected several times per shift. The absolute best way to disinfect the keys you use every day, is to wash them with HOT soapy water. Use water as hot as your hands are able to tolerate while washing. Using water that is hot, will heat the metal of the keys during the washing process, allowing them to dry extremely fast. As always, maintain key control while key washing. Wash your keys when and where inmates are not present. Your chain should reach to the sink just fine. **Remember, keys must be on a chain and to a clip to a belt.**
- **RADIO:** Wipe radios down with TB-Cide Quat and allowed damp for 2 minutes or HDQC2 and allowed damp for 10 minutes. Wipe over the entire radio, taking some care over the speaker area. We are looking to wipe the radio down gently, leaving a damp surface but not dripping wet. The radios are resilient and can easily handle being disinfected, but we want to avoid soaking them as a precaution. If you carry a radio equipped with a body alarm function, turn your radio off while wiping it down to avoid an accidental body alarm activation.
- **O.C. MK-4 with or without case:** Same as the radio, wipe it down. Wipe the case and the MK-4 itself. Be careful wiping around the actuator to avoid accidental sprays.
- **RESTRAINTS:** Handcuffs, leg irons, martin chains, black boxes, and restraint keys should all be wiped down with TB Cide Quat and allowed damp for 2 minutes or HDQC2 and allowed damp for 10 minutes. Soap and water can also be used to wash handcuffs and leg irons, providing the water is HOT. The hot water will heat the metal enough to facilitate drying of the ratcheting mechanisms that could be susceptible to rust if left wet for a period of time.
- **HAND HELD METAL DETECTORS:** Wipe them down, same as a radio.
- Safety has also set up equipment disinfecting stations at key line for staff to utilize.

Electronics

Electronics, especially shared electronics, should be cleaned multiple times throughout your shift.

- For electronics such as keyboards, computer mouse, remote controls, and phones, copiers, etc., remove visible contamination if present. Carefully wipe the electronics down with TB Cide Quat and allowed damp for 2 minutes or HDQC2 and allowed damp for 10 minutes. Wipe the electronics down gently, leaving a damp surface but not dripping wet. Avoid soaking electronic equipment.

Soft (Porous) Surfaces

- For soft (porous) surfaces such as carpeted floor, rugs, and drapes, remove visible contamination if present and clean with appropriate cleaners indicated for use on these surfaces.
- After cleaning: If the items can be laundered, launder items in accordance with the manufacturer's instructions using the warmest appropriate water setting for the items and then dry items completely.

Linens, Clothing, and Other Items That Go in the Laundry

- In order to minimize the possibility of dispersing virus through the air, do not shake dirty laundry.
- Wash items as appropriate in accordance with the manufacturer's instructions. If possible, launder items using the warmest appropriate water setting for the items and dry items completely. Dirty laundry that has been in contact with an ill person can be washed with other people's items.
- Clean and disinfect hampers or other carts for transporting laundry according to guidance above for hard or soft surfaces.

When Cleaning

- Wear disposable gloves and gowns for all tasks in the cleaning process, including handling trash.
- Additional personal protective equipment (PPE) might be required based on the cleaning/disinfectant products being used and whether there is a risk of splash.
- Gloves and gowns should be removed carefully to avoid contamination of the wearer and the surrounding area.
- Wash your hands often with soap and water for 20 seconds.
- Always wash immediately after removing gloves and after contact with a person who is sick.
- Hand sanitizer: If soap and water are not available and hands are not visibly dirty, an alcohol-based hand sanitizer that contains at least 60% alcohol may be used. However, if hands are visibly dirty, always wash hands with soap and water.
- Additional key times to wash hands include:
 - o After blowing one's nose, coughing, or sneezing.
 - o After using the restroom.
 - o Before eating or preparing food.
 - o After contact with animals or pets.
 - o Before and after providing routine care for another person who needs assistance.

Attachment 5

Adam Sassaman - IMPORTANT: Documenting Sanitation Efforts

From: Adam Sassaman
To: FTD/Dept Heads; Mathes, John; Olsen, Fredrick
Date: 4/16/2020 10:00 AM
Subject: IMPORTANT: Documenting Sanitation Efforts
CC: Dewees, Frederick; Leaper, Colin; Powell, Robert
Attachments: Document2.docx

All Concerned,

DOJ sent guidance that we need to be documenting our sanitation efforts. Hopefully this is already happening, but supervisors in all areas also need to be verifying adequate disinfection procedures are occurring according to the guidance my office has sent out.

Starting today, the control centers will be announcing a Sanitation Census twice daily, during which all Department Heads, Supervisors, or their designees will call into control to verify the attached sanitation procedures are being undertaken in the housing units and all other areas of the Institution.

Sanitation efforts will include sprayers for all housing units (to be provided shortly) with extras to be chitted out from Safety Department.

Please let me know if you need anything to assist with these efforts. Thank you.

A. Sassaman, Occupational Safety and Health Administrator, CESM
United States Department of Justice
Federal Bureau of Prisons
Federal Correctional Institution Fort Dix
Occupational Safety and Health Department
5756 Hartford Street
Fort Dix, NJ 08640
609-723-1100 extension 6649
a1sassaman@bop.gov

>>> Phillip McIntosh 4/15/2020 3:18 PM >>>
Hi Everyone,

You're doing a great Job!

As you know, we recently requested every institution update your Housekeeping Plans with specific information regarding the methods and frequency of sanitation and disinfection due to the current pandemic.

Please make sure your plan is being followed and routine sanitation/disinfection efforts are being **documented**.

I recommend using your Command Center Log and/ or Control Center Log to document daily sanitation/

disinfection efforts.

This documentation was requested during DOJ/OIG visits this week at some of our institutions; and, in other regions as well.

Please let me know if you have any questions or concerns.

Keep up the excellent work you're doing!
Phil

P. McIntosh,
Northeast Regional
Safety Administrator,

Office Phone: 215-621-7409
Cell Phone: [REDACTED]

This message is intended for official use and may contain SENSITIVE information. If this message contains SENSITIVE information, it should be properly delivered, labeled, stored, and disposed of according to policy.

Attachment 1 - Pandemic Disinfecting Reference Chart

Item	Disinfectant	Frequency
Telephone Booths	Use approved chemical. Allow to remain wet for required amount of time to disinfect. (1 min for Oxivir 1, 2 min for TB-Cide Quat, 10 min for MDQC2)	Disinfect after each use Use Backpack Sprayer every shift
Drink Fountains		
Mop Buckets		
Shared Offices, Equipment, and Electronics	Use approved chemical. Allow to remain wet for required amount of time to disinfect. (1 min for Oxivir 1, 2 min for TB-Cide Quat, 10 min for MDQC2)	Disinfect hourly Use Backpack Sprayer every shift
Door Knobs, Handles, and Push Plates		
Toilets/Sinks/Faucets		
Frequently Touched Non-porous Surfaces (tables, light switches, countertops, handles, desks, phones, keyboards, hand soap dispensers)		
Electronics	Carefully wipe with approved chemical. Allow to remain wet for required amount of time to disinfect.	Disinfect multiple times during shift
Equipment		
Trash Receptacles	Empty three times daily, or as needed. Clean daily.	Disinfect daily Use Backpack Sprayer daily
Floors, Stair, and other Walking Surfaces	Sweep and damp mop daily.	
Furnishings	Use approved chemical. Allow to remain wet for required amount of time to disinfect.	
Windows/Ledges	Use approved chemical. Allow to remain wet for required amount of time to disinfect.	Disinfect daily
Mop Sinks	Rinse and clean after daily	Disinfect daily
Laundry/Linens	Laundry with as water as warm as possible.	Laundry as needed
Wet Mop Heads	Replace daily after use. Store in disposable bag. Laundry with as water as warm as possible.	Laundry daily
Dust Mop Heads		

**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

DECLARATION OF MARK E. COYNE

I, Mark E. Coyne, make the following declaration pursuant to 28 U.S.C. § 1746 to the best of my knowledge and belief.

1. I am a Supervisory Assistant U.S. Attorney for the United States Attorney's Office for the District of New Jersey. I have served as the Chief of my Office's Appeals Division since 2011. I am over the age of twenty-one and competent to make this Declaration.

2. My Office's Civil Division monitors the civil docket of the United States District Court for the District of New Jersey. Through those efforts, the Civil Division has identified 28 inmates who have filed petitions under 28 U.S.C. § 2241 seeking relief from their confinement at FCI Fort Dix because of their fear of COVID-19, including the four "lead" petitioners in this case.

3. In addition, inmates at FCI Fort Dix are seeking relief from their confinement through other means. I have attached to this Declaration an Appendix ("A") containing copies of several court filings concerning some of those inmates' efforts and a pending § 2241 matter.

4. At pages A1–A15 of the Appendix is the filed (and redacted) copy of the Government’s May 6, 2020 letter brief opposing the May 5, 2020 motion of James Gomez for a reduction of sentence under 18 U.S.C. § 3582(c)(1)(A).

5. At pages A16–A28 of the Appendix is the transcript of the May 7, 2020 hearing on that motion before the Honorable I. Leo Glass, Sr. U.S.D.J. At that hearing, Judge Glasser denied the motion.

6. At pages A29–A40 of the Appendix is a filing by Joseph Furando that this Court is treating as a renewed § 2241 motion. In that filing, Furando claims that appealing administratively the recent denial of his request for transfer to home confinement would be futile.

7. At pages 41–58 of the Appendix is the Government’s filed April 30, 2020 letter brief in *Thieme v. United States*, No. 20-1839 (3d Cir.) opposing Christopher Thieme’s motion for bail pending disposition of his appeal from the dismissal as time-barred of his motion under 28 U.S.C. § 2255.

8. At page 59 of the Appendix is the May 4, 2020 order of the Court of Appeals summarily denying Thieme’s motion for bail pending appeal.

9. At pages 60–62 of the Appendix is the Government’s filed April 27, 2020 letter brief in *Aigbekaen v. BOP*, No. 20-1351 (3d Cir.) opposing Raymond Aigbekaen’s motion for bail pending disposition of his appeal from the dismissal on jurisdictional grounds of his § 2241 petition attacking his conviction and sentence.

10. At page 63 of the Appendix is the April 28, 2020 order of the Court of Appeals summarily denying Aigbekaen’s motion for bail pending appeal.

I declare, under penalty of perjury, that the foregoing is true to the best of my knowledge and belief.

May 18, 2020



Mark E. Coyne
Assistant U.S. Attorney
Chief, Appeals Division
United States Attorney's Office
District of New Jersey

APPENDIX



U.S. Department of Justice

*United States Attorney
Eastern District of New York*

DMP:JGH
F. #2017R00371

*271 Cadman Plaza East
Brooklyn, New York 11201*

May 6, 2020

By Email and ECF

The Honorable I. Leo Glasser
United States District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, New York 11201

Re: United States v. James Gomez
Criminal Docket No. 17-169 (ILG)

Dear Judge Glasser:

The government respectfully submits this letter in response to defendant James Gomez's May 5, 2020 motion for a modification of his previously imposed term of imprisonment (the "motion" or "Def. Mot."). For the reasons set forth below, including the defendant's failure to exhaust his administrative remedies and failure to show "extraordinary and compelling reasons" for his release, the motion should be denied. Notably, while the defendant seeks release based on a positive test for COVID-19 on April 17, 2020 and claims he faces "imminent danger," his medical records and his own statements show that he has recovered from his symptoms and appears to be in good health. Indeed, on May 2, 2020, Gomez wrote to an associate that "I feel 100%." Yesterday, on May 5, 2020, Gomez wrote to an associate, "im feeling way better now," and indicated that he was waiting for prison officials to move him out of a medical isolation unit.

I. Background

On April 21, 2017, Gomez pleaded guilty before this Court to conspiracy to distribute and possess with the intent to distribute 500 grams or more of cocaine. Gomez's conviction arose out of his February 2017 arrest, along with his brother Marlon Gomez, after law enforcement apprehended both brothers dealing cocaine. As set forth in both the underlying criminal complaint and the defendant's Presentence Investigation Report ("PSR"), on the date of their arrest, law enforcement agents recovered more than two kilograms of cocaine from Marlon Gomez's residence, along with multiple firearms, ammunition, a bulletproof vest and various drug trafficking paraphernalia. See PSR at 17-19. As the

government emphasized at sentencing, several young children resided in the house during the period in which both Marlon and James Gomez used the residence in furtherance of their drug trafficking conspiracy.

On January 17, 2018, this Court sentenced the defendant to 60 months' incarceration, the mandatory minimum sentence proscribed by statute. The defendant was also sentenced to a term of 3 years' supervised release. The defendant is currently serving his sentence at the Bureau of Prisons ("BOP") FCI Fort Dix facility in New Jersey ("FCI Fort Dix"). According to the BOP, the defendant's anticipated release date is May 20, 2021.

II. Applicable Law

The statute upon which the defendant relies, 18 U.S.C. § 3582(c)(1)(A)(i) is referred to as the "compassionate release" statute and permits a Court to modify an already imposed sentence upon a showing of "extraordinary and compelling reasons." See United States v. Zullo, 09-CR-64, 2019 WL 7562406, at *1 (D. Vt. Sept. 23, 2019). Prior to the enactment of the First Step Act of 2018 (the "FSA"), such a modification required a motion by the BOP. Id. (citing Morales v. United States, 353 F. Supp. 2d 204 (D. Mass. 2005)). The FSA removes the requirement that the BOP file the motion and permits defendants to file motions pursuant to this section. Section 3582(c)(1)(A) contains a requirement that a defendant first request that the BOP make a motion for compassionate release and can only bring a motion him or herself if the BOP does not act within 30 days.

III. Discussion

A. The Court Lacks the Authority To Grant Compassionate Release at This Time

Gomez concedes that he has failed to exhaust his administrative remedies available to him, noting that he first made a request for release to the warden at Fort Dix by letter dated April 13, 2020. Def. Mot. at 2. Because such exhaustion is mandatory, the Court lacks the authority to grant compassionate release at this time.

Under 18 U.S.C. § 3582(c), a district court "may not" modify a term of imprisonment once imposed, except under limited circumstances. Once such circumstance is the so-called compassionate release provision, which provides that a district court "may reduce the term of imprisonment" where it finds "extraordinary and compelling circumstances." Id. § 3582(c)(1)(A)(i). A motion under this provision may be made by either the Bureau of Prisons or a defendant, but in the latter case only "after the defendant has *fully exhausted all administrative rights* to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier." Id. (emphasis added). Thus, where a compassionate release motion is brought by a defendant who has not "fully exhausted all administrative rights," the district court "may not" modify his term of imprisonment.

Section 3582(c)(1)(A)'s exhaustion requirement is therefore mandatory. It is critical, in this context, to note that Section 3582(c)'s exhaustion requirement is statutory, and

thus is not the sort of judicially-crafted exhaustion requirement that “remain[s] amenable to judge-made exceptions.” Ross v. Blake, 136 S. Ct. 1850, 1857 (2016). By significant contrast, *statutory* exhaustion requirements “stand[] on a different footing.” Id. There, “Congress sets the rules—and courts have a role in creating exceptions only if Congress wants them to.” Id. Thus, where a statute contains mandatory exhaustion language, the only permissible exceptions are those contained in the statute. Id.

As described above, Section 3582(c)(1)(A) contains mandatory exhaustion language with no statutory exceptions. The plain language of the statute makes clear that a court “may not” modify a sentence unless, as relevant here, the defendant has first “fully exhausted all administrative rights.” Unlike the Prison Litigation Reform Act, for example, there is no statutory qualifier that a defendant need only exhaust all “available” remedies. Thus, Section 3582(c)(1)(A) is a mandatory exhaustion provision with no applicable exceptions. Cf. Fry v. Napoleon Community Schools, 137 S. Ct. 743, 750 (2017) (statute requiring that certain types of claims “shall be exhausted” is a mandatory exhaustion provision for those types of claims). For this reason, as Judge Cote has explained, this court lacks the authority to grant [the defendant’s] motion at this time. United States v. Monzon, 2020 WL 550220, at *2 (S.D.N.Y. Feb. 4, 2020); see also United States v. Hernandez, 2020 WL 1445851, at *1 (S.D.N.Y. Mar. 25, 2020) (finding that the compassionate release provisions of the FSA did not apply because “Mr. Hernandez does not appear to have sought any [] relief within the Bureau of Prisons, let alone exhausted his administrative remedies”). It would be legal error for the Court to disregard that requirement.

Gomez argues that the Court should grant his motion, notwithstanding his failure to exhaust administrative remedies, because the statutory exhaustion “is non-jurisdictional.” Def. Mot. at 3. In so arguing, the defendant relies on United States v. Scparta, 18 Cr. 578 (AJN), 2020 WL 1910481 (S.D.N.Y. Apr. 20, 2020) for the proposition that judges can create exceptions to the FSA exhaustion requirement. Id. at 3.

Defendant’s reliance on Scparta is misplaced. Scparta relies on Washington v. Barr, 925 F.3d 109 (2d Cir. 2019) which, as discussed below, is inapposite because it involves judge-made exhaustion doctrine. Moreover, in Scparta, the BOP had already agreed to release the defendant, who was sentenced to 18 months’ imprisonment after a conviction for theft of government funds and tax evasion, to home confinement and the defendant was merely contesting the BOP facility’s decision to detain him for an additional 14-day quarantine period prior to his release. Scparta, 2020 WL 1910481, at *8. Gomez omits these distinguishing facts from his motion and ignores that the circumstances of his case are far different.

Washington v. Barr and recent cases waiving the exhaustion requirement in the context of COVID-19 are misplaced. As explained in United States v. Woodson, No. 18-CR-845, 2020 WL 1673253, *3 (S.D.N.Y. Apr. 6, 2020), Washington v. Barr involved a judge-made exhaustion doctrine, not a statutory exhaustion requirement, like the one contained in the FSA. See Barr at 116 (stating that the statute in question “does not mandate exhaustion of administrative remedies” but finding that exhaustion requirement was nevertheless appropriate); id. at 118 (“Although not mandated by Congress, [exhaustion] is consistent with congressional intent.”). In contrast, Section 3582(c)’s exhaustion requirement is statutory, and

thus is not the sort of judicially-crafted exhaustion requirement that “remain[s] amenable to judge-made exceptions.” See Ross, 136 S. Ct. at 1857. Statutory exhaustion requirements “stand[] on a different footing.” Id. There, “Congress sets the rules—and courts have a role in creating exceptions only if Congress wants them to.” Id. Thus, where a statute contains mandatory exhaustion language, as the FSA does, the only permissible exceptions are those contained in the statute. Id. The adverse decisions relied upon by the defendant fail to acknowledge this important distinction.

Furthermore, in arguing for waiver of the exhaustion requirement, Gomez simply ignores the most recent decisions on this issue within the Eastern District of New York. In United States v. Flores, 15-CR-152 (RRM) (E.D.N.Y. Apr. 12, 2020), Chief Judge Mauskopf noted that failure to exhaust administrative remedies was a “threshold matter” that prevented the Court from considering a Section 3582 application. Judge Chen reached the same conclusion in United States v. Napout, 15-CR-252 (PKC) (E.D.N.Y. Apr. 14, 2020) (failure to satisfy the statutory exhaustion requirement “deprived the Court of the authority” to consider his Section 3582 application); United States v. Facey et al., No. 96-CR-912 (ERK) (E.D.N.Y. Apr. 14, 2020) (denying motion for compassionate release because “the issue of exhaustion presents a hurdle I have concluded [the defendant] cannot surmount”).

In sum, rather than affording the warden at FCI Fort Dix the requisite 30-day period contemplated in the statute before relief can be sought in the district court for lack of action by the BOP, see 18 U.S.C. § 3582(c)(1)(A)—Gomez preemptively filed his request for relief with this Court and styled it an “emergency” motion. Because the exhaustion of administrative remedies is mandatory, the Court lacks the authority to grant compassionate release at this time, and the defendant’s motion should be denied.

B. A Modification of Gomez’s Sentence Is Not Warranted Under The Statute

Even if the Court were to waive the defendant’s failure to exhaust his administrative remedies, the United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”) and BOP policy have established clear criteria to aid in a court’s determination of when compassionate release is appropriate pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). See U.S.S.G. § 1B1.13; see also BOP Program Statement 5050.50 (“Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)”) (available at https://www.bop.gov/policy/progstat/5050_050_EN.pdf). Both the Guidelines and the BOP Program Statement primarily limit compassionate relief to cases of serious illness or impairment, advanced age or a need to care for a child, spouse or registered partner. See id.; see also United States v. Traynor, 04-CR-0582 (NGG), 2009 WL 368927, at *1 n.2 (E.D.N.Y. Feb. 13, 2009). As the Court recognized in Traynor, Congress noted that Section 3582(c)(1) “applies . . . to the unusual case in which the defendant’s circumstances are so changed, such as by terminal illness, that it would be inequitable to continue the confinement of the prisoner.” Id. at *1 (citing Senate Report No. 98–225, 98th Cong., 2d Sess., reprinted in 1984 U.S.C.C.A.N. 3182, 3304).

As the proponent of release, the defendant bears the burden of proving that “extraordinary and compelling reasons” exist. See United States v. Butler, 970 F.2d 1017,

1026 (2d Cir. 1992) (“If the defendant seeks decreased punishment, he or she has the burden of showing that the circumstances warrant that decrease.”); United States v. Gotti, 02-CR-743 (CM), 2020 WL 497987, at *5 (S.D.N.Y. Jan. 15, 2020) (defendant “has the burden of showing that ‘extraordinary and compelling reasons’ to reduce his sentence exist”).

Gomez cannot meet his heavy burden. He seeks compassionate release and termination of his remaining prison term based solely on his claim that he is in “imminent danger” after testing positive for COVID-19. Def. Mot. at 2. This is not so, and his claim contradicted by the factual record, including his medical records and his own statements.

a. Gomez Is Not In Imminent Danger

Gomez is thirty-five years old. His medical records obtained from FCI Fort Dix, which are attached here as Exhibit 1,¹ show that [REDACTED]

[REDACTED] was quarantined in an isolated housing unit designated for COVID-19 patients and he immediately began receiving treatment, [REDACTED]

[REDACTED] See Exhibit 1 at 98. Or about April 17, [REDACTED]

¹ The government respectfully requests that the portions of this letter that discuss the defendant’s sensitive health information be redacted from the publicly filed version of the letter. See Offor v. Mercy Med. Ctr., 167 F. Supp. 3d 414, 445 (E.D.N.Y. 2016) (“Courts in this Circuit have repeatedly held that information protected by HIPAA is not subject to a First Amendment or common-law right of access and thus have sealed docket entries and redacted documents that contain such information.”), vacated in part on other grounds, 676 F. App’x 51 (2d Cir. 2017). To this end, and pending the Court’s ruling on the issue, the government will file on the Electronic Court Filing (“ECF”) system a redacted version of this letter. Additionally, the defendant’s health records contained in Exhibit 1 will not be filed via ECF but will be provided to the Court and defense counsel via email.

[REDACTED]

Moreover, Gomez's recent statements to others outside the BOP also indicate that he has recovered from COVID-19 and further belie any claim of "imminent danger" meriting the drastic step of reducing his mandatory sentence to time served. For example, in an email exchange with an associate on April 29, 2020, Gomez responded to the inquiry "how are u feelin?" by stating "im actually feeling waaaayy better than how i was feeling last weekhow are you feeling???"² See Exhibit 2 at 1.

On May 2, 2020, Gomez engaged in the following exchange with an associate. Gomez's associate wrote:

Bro is it the video of the mold in the food and the one where they have a lot of inmates in the yard no social distancing at all?? That shit is crazy bro, how are you feeling? Who's your lawyer? What if i contact him to see if he can legally put in a request to get you out sooner??

Gomez responded:

to be honest with you i cant tell you which one it is all i know its the video about the ft.dix jail camp with the corona shit **im actually way better brother i feel 100%** ... my lawyer is robert ozuna you can call my moms to talk to him 718 913-1213.love you [.]

See Exhibit 2 at 3 (emphasis added).

On May 5, 2020, Gomez engaged the following email/text exchange:

Gomez's Associate: I think i know which one bro but thank god your feeling better bro! Wow that's fucking great news us 80's babies got some strong fucking immune systems lol ight ima call your mom this week and try to see if i can speak to your lawyer to put in some kind of request to get you out of there sooner because your positive and need to get treated better out here Miss you too big bro I'm good man just working and staying home Quarentined making the beat out th is situation, family is good bro healthy and keeping safe

² All quotations set forth herein are provided as they appear in the original text, without change to spelling or punctuation.

Gomez: yeah that video should be up there. **but yeah thank the lord im feeling way better now im just waiting for them to move me upstairs but i dont know when theyre going to do that...**[]

See Exhibit 2 at 5 (emphasis added).

The “upstairs” Gomez referred to in his message appears to refer to his expected transfer out of the COVID-19 isolation unit and to the area for recovered patients.

The government has also obtained Gomez’s recent phone records from FCI Fort Dix. These records further indicate that Gomez is no longer reporting symptoms of COVID-19 and that he is in no “imminent danger.” For example, during a call with a female associate on May 4, 2020, Gomez described his recovery from his prior COVID-19 symptoms and stated “I don’t have any symptoms anymore” and that he expected to be moved out of the segregated unit for COVID-19 patients in the coming days. During the same call, Gomez, who sounds healthy and energetic, engaged in approximately ten minutes of animated conversation during which he laughed often and discussed, *inter alia*, his associate’s dating life and other friends and what he recently watched on television. Later in the call, Gomez stated “everything else is all right, just dying to get the fuck out of here.”³

In sum, the government recognizes the seriousness of COVID-19 and the unprecedented damage the pandemic is currently afflicting across the world, and the fact that Gomez has indeed suffered from the illness. However, Gomez’s medical records and his own statements indicate that he has recovered from COVID-19 and is in no apparent distress or danger, let alone any imminent danger or condition sufficient to meet the standard of compassionate relief under § 3582(c)(1)(A)(i). In other words, there is no support for Gomez’s claim in his May 5, 2020 filing that he is in “imminent danger” meriting release. Def. Mot. at 2.

b. The Attorney General’s Directives Do Not Support Gomez’s Release

Gomez’s reliance on Attorney General William Barr’s March 26, 2020 Memorandum regarding home confinement (Def. Mot. at 2) is also misplaced. In light of the grievous pandemic taking lives across the country and the world, the Attorney General has directed that the BOP prioritize transferring inmates to home confinement in appropriate circumstances when those inmates are vulnerable to COVID-19 under the CDC risk factors—particularly those at institutions where there have been COVID-19 outbreaks—and the BOP

³ The government can provide to the Court and defense counsel via email a copy of this recording upon the Court’s request.

is devoting all available resources to executing on that directive. See, e.g., March 23, 2020 Attorney General Memorandum (the March 23, 2020 AG Memo).⁴

Gomez is not an appropriate candidate for home confinement. Aside from the fact that he cannot establish many of the factors supporting a prioritization of home confinement, including that he has more than a year left on his mandatory sentence for a serious drug trafficking crime, his PATTERN score is “Low” and he lacks any demonstrated, “verifiable re-entry plan” (the March 23, 2020 AG Memo), Gomez is also an entirely inappropriate candidate for home confinement (which the AG Memo promotes for the purpose of reducing the potential for COVID-19 infection in prisons) because he has *already contracted* COVID-19 and has recovered from it after several weeks of treatment and isolation.

Finally, Gomez’s claim that his case manager at FCI Fort Dix indicated to his counsel that Gomez “qualified for early release and ‘was on the list’ of inmates to be considered for home confinement due to the pandemic” is not supported by the BOP. The government has spoken with the case manager identified by defense counsel and she denied ever stating that Gomez “qualified for early release.” Moreover, the BOP has made no such determination; indeed, Gomez preemptively short-circuited any such determination and failed to let the BOP’s administrative process take its course by filing the instant motion with this Court. Gomez’s case manager also noted that in her view, Gomez *would likely not* be eligible for early release given, among other things, his crime of conviction and disciplinary sanctions issued to him in February 2020 and July 2019 for failing to obey orders. The United States Probation Officer assigned to this case (“Probation”) also spoke with the same case manager today, who confirmed to Probation that Gomez is ineligible for release and is in good health.

c. The Section 3553(a) Factors Do Not Support Gomez’s Release

Finally, any relief issued by the Court must still be analyzed using the factors listed in 18 U.S.C. § 3553(a). See 18 U.S.C. § 3582(c)(1)(A). In his motion, Gomez does not even address the § 3553(a) factors, let alone argue that they are outweighed by the risks posed by the COVID-19 pandemic. That is likely because all of the applicable § 3553(a) factors counsel against granting early release.

As recently as January 2018, this Court assessed the defendant’s crime – which included a conspiracy to traffic in kilograms of cocaine and well as his and his brother’s use of a residential home with young children to store drugs and multiple firearms and ammunition – and imposed the mandatory minimum sentence of 60 months’ imprisonment. Modifying the defendant’s sentence to time served now would severely undercut Congress’ intent in requiring a mandatory sentence for inherently dangerous drug trafficking offense the defendant committed, including to deter the defendant and others from engaging in such conduct in the

⁴ Additional information about the BOP’s implementation of the Attorney General’s directives regarding the prioritization of home confinement in appropriate cases is available at: <https://www.bop.gov/coronavirus/>.

future. And, as set forth above, there is simply no reason to do so, let alone a compelling reason.

IV. Conclusion

The defendant's sole claim for releasing him now, with more than a year remaining of the mandatory sentence this Court imposed for a serious drug trafficking crime, is his assertion that he is in "imminent danger." As set forth above, this claim is belied by both the defendant's medical records and his own words. The defendant has not provided any reason, let alone an "extraordinary and compelling" one, that justifies modifying his sentence under the relevant statute. Indeed, based on the record, it appears that the defendant is attempting to use the COVID-19 pandemic as a means to avoid serving the remainder of his sentence. This attempt should be rejected.

Accordingly, the defendant's motion for a modification of his sentence should be denied.

Respectfully submitted,

RICHARD P. DONOGHUE
United States Attorney

By: /s/ Josh Hafetz
Josh Hafetz
Assistant U.S. Attorney
(718) 254-6290

cc: Defense Counsel (by ECF)
Clerk of Court (by ECF)

EXHIBIT 2

TRULINCS 81299053 - GOMEZ, JAMES - Unit: FTD-R-B

FROM: 81299053 GOMEZ, JAMES
TO: "Text App" [REDACTED]@yahoo.com>
SUBJECT: RE: gm how are u how u feelin
DATE: 04/29/2020 04:59 PM

#347 [REDACTED]
hey babygirl im actually feeling waaaayy better than how i was feeling last week....how are you feeling???what did u do
2day / i know it wasnt much lol....mami i would call u 2day but they got us locked in till monday so i cant make any phone calls
or do laundry till then smh just texts hun
-----App, Text on 4/29/2020 12:51 PM wrote:

>

347 [REDACTED]
gm how are u how u feelin u could call me anytime i jus woke up bout to feed the baby
9YXnT

TRULINCS 81299053 - GOMEZ, JAMES - Unit FTD-R-B

FROM: 81299053 GOMEZ, JAMES
TO: "Text App" [REDACTED]@yahoo.com>
SUBJECT: RE: im good jus stuck at home
DATE: 05/01/2020 07:13 PM

#347 [REDACTED]
thats whats up i know he enjoys mommys cooking lol....what shows on t.v have u been watching lately???yes thank you hun
hopefully they could give me some good news so they could release me home earlier than what it should be.im just hoping to
gos some miracle happens....and you missy hopefully u come live at queens when i come home
---App. Text on 5/1/2020 3:06 PM wrote:

>

347 [REDACTED]
im good jus stuck at home jus finish feedin my son .. about to take him a bath soon .. das good .. ok ill be waitin for ur call good
luck wit everything
9ZigT

TRULINCS 81299053 - GOMEZ, JAMES - Unit: FTD-R-B

FROM: 81299053 GOMEZ, JAMES
TO: "Text App" <[REDACTED]@yahoo.com>
SUBJECT: RE: Bro is it the video of
DATE: 05/02/2020 11:23 AM

#718 [REDACTED]
to be honest with you i cant tell you which one it is all i know its the video about the ft.dix jail camp with the corona shit....im
actually way better brother i feel 100%...my lawyer is robert ozuna you can call my moms to talk to him [REDACTED] love you
brother miss you...how are you??hows the family doing??
---App, Text on 5/2/2020 5:06 AM wrote:

>

718 [REDACTED]
Bro is it the video of the mold in the food and the one where they have a lot of inmates in the yard no social distancing at all??
That shit is crazy bro, how are you feeling? Who's your lawyer? What if i contact him to see if he can legally put in a request to
get you out sooner??
9ZE1r

TRULINCS 81299053 - GOMEZ, JAMES - Unit: FTD-R-B

FROM: 81299053 GOMEZ, JAMES
TO: "Text App" [REDACTED]@yahoo.com>
SUBJECT: RE: i havent been watchin
DATE: 05/03/2020 12:30 PM

#347 [REDACTED]
lol adorable he must be loving them cartoons...thank you i appreciate that...iam let you know i just hat this process of waiting
and the worst is that iam getting short on my time and now im getting more anxious smh...oh yeah when i come home i hope u
have one of those great meals for me that you prep up lol:)
—App, Text on 5/2/2020 11:36 PM wrote:

>

347 [REDACTED]
i havent been watchin nothin to be honest ... i be puttin cartoons for my son while i clean cook n stuff good luck wit everythin let
me know what they tell u
9ZNyp

TRULINCS 81299053 - GOMEZ, JAMES - Unit: FTD-R-B

FROM: 81299053 GOMEZ, JAMES
TO: "Text App" <[REDACTED]@yahoo.com>
SUBJECT: RE: I think i know which one
DATE: 05/04/2020 10:20 PM

#718 [REDACTED]
yeah that video should be up there, but yeah thank the lord im feeling way better now im just waiting for them to move me upstairs but i dont know when theyre going to do that smh.. yeah plz get in contact with her i would appreciate that lil bro , love you for that....man im glad z and the kids are doing great lil bro...yes plz stay home i wanna make sure nothing happens to you out there i need you out there lil bro..miss you like a motherfucka too
-----App, Text on 5/4/2020 12:36 AM wrote:

>

7183 [REDACTED]
I think i know which one bro but thank god your feeling better bro! Wow that's fucking great news us 80's babies got some strong fucking immune systems lol ight ima call your mom this week and try to see if i can speak to your lawyer to put in some kind of request to get you out of there sooner because your positive and need to get treated better out here

Miss you too big bro I'm good man just working and staying home Quarentined making the beat out this situation, family is good bro healthy and keeping safe
9ZYQP

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA,	:	17-CR-00169(ILG)
	:	
	:	
-against-	:	United States Courthouse
	:	Brooklyn, New York
	:	
	:	Thursday, May 7, 2020
JAMES GOMEZ,	:	12:15 p.m.
	:	
Defendant.	:	

- - - - - X

TRANSCRIPT OF CRIMINAL CAUSE FOR BAIL HEARING
BEFORE THE HONORABLE I. LEO GLASSER
UNITED STATES SENIOR DISTRICT COURT JUDGE

A P P E A R A N C E S:

For the Government: RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: JOSHUA HAFETZ, ESQ.
Assistant United States Attorney

For the Defendant: LAW OFFICE OF ROBERT OSUNA, P.C.
11 Park Place
New York, New York 10007
BY: ROBERT OSUNA, ESQ.

Court Reporter: Michele D. Lucchese, RPR, CRR
Official Court Reporter
E-mail: MLuccheseENDY@gmail.com

Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

Proceedings

2

1 THE COURTROOM DEPUTY: Criminal Cause for Motion,
2 United States versus James Gomez. Counsel and other
3 participants, please state your appearances for the record.
4 Please keep your voices up and remember to identify yourself
5 each time you speak.

6 MR. HAFETZ: Good afternoon, Your Honor. Josh
7 Hafetz on behalf of the United States.

8 THE COURT: Good afternoon, Mr. Hafetz.

9 MR. OSUNA: Robert Osuna on behalf of Mr. Gomez.
10 Good afternoon, Your Honor.

11 THE COURT: Good afternoon. Are you ready to
12 proceed, Mr. Osuna?

13 MR. OSUNA: Yes, Your Honor.

14 THE COURT: You are waiving the presence of your
15 client here today?

16 MR. OSUNA: Yes, sir.

17 THE COURT: If you are ready to proceed, I will hear
18 you.

19 MR. OSUNA: Thank you.

20 Your Honor, it has come to my attention that during
21 the time my client has been incarcerated he has indeed tested
22 positive for COVID-19. It appears from the medical records
23 that were obtained by the Government, which I thank the
24 Government for being able to do that, he tested positive back
25 in April. In mid April, he tested positive. He is now on his

Proceedings

3

1 third week of quarantine. It appears as of last week he was
2 still presenting with symptoms of his COVID.

3 It doesn't appear that the prison has any kind of
4 clear re-entry plan. Based on those reasons, I am asking for
5 compassionate release, that he be allowed to be removed from
6 prison, be placed in home confinement where he could
7 successfully complete his quarantine.

8 Apparently, what's happening at this facility is
9 they keep bringing in separate individuals who are testing
10 positive from quarantine. So when an additional person comes
11 in, that extends the period of time that these individuals are
12 quarantined. Normally a COVID-related quarantine should last
13 14 days. He is on his third week of being quarantined. It
14 appears this will never finish if they keep bringing in
15 individuals that are testing positive.

16 I know the Government made an issue as to whether he
17 exhausted his remedies as to 30 days, but what will happen is
18 that if we wait the 30 days, we don't know what his condition
19 will be like next week. We keep testing his condition every
20 day, but we don't know what his condition will be. Will it
21 better? Will it be worse? There is just no way of knowing if
22 he remains in that location.

23 He has completed the majority of his sentence.
24 There is an issue as to whether he's eligible for home
25 release. I had spoken to Ms. Wright at the facility who

Proceedings

4

1 indicated to me when I spoke to her that he was on a list for
2 removal to a halfway house. Apparently, she said that's not
3 the case. My conversation with her was that she was so busy
4 dealing with phone calls from attorneys, that she couldn't do
5 her work. We left her alone. That was last month and that
6 was before he tested positive. That was before he tested
7 positive that I spoke to her. But now it is confirmed my
8 client is COVID positive. For his safety, for the safety of
9 the staff, for the correction officers, and the medical
10 personally and the other inmates, he should be removed and put
11 in home confinement where, of course, he will remain
12 quarantine, have access to medical care, and he will be under
13 supervised release regardless. So his period of supervised
14 release will just begin then. I think that's the appropriate
15 remedy.

16 Thank you, Your Honor.

17 THE COURT: Mr. Hafetz.

18 MR. HAFETZ: Judge, in the main, I will rest on my
19 papers, but I do want to address a couple of brief points:
20 One, as we set forth, and I won't spend a lot of time on it, I
21 know Your Honor in the case of Tony Leung -- I think it was
22 two days ago -- issued a ruling on the exhaustion issue. But
23 I will just point out that as a legal matter he is required to
24 exhaust his administrative remedies. And on the factual point
25 on that, I will say I think what Mr. Osuna says bears out a

1 significant portion of the reason why such an exhaustion not
2 only is legally required but actually makes sense in this
3 case. What he kept saying is we don't know what it will be
4 when it gets to 30 days. That's exactly what the process is
5 designed to do.

6 So, in this case, the facts are -- just now moving
7 to the merits of this -- he has recovered. So I am not, as I
8 said in my papers, in any way making light of the fact that he
9 contracted COVID-19. In fact, as is borne out by the medical
10 records, suffered many of the symptoms that we all read about
11 every day. He did. It is a nationwide problem. But Mr.
12 Gomez has recovered.

13 He is on a phone call on May 4th for 15 minutes
14 talking as happy as anyone I have heard. In it, he says he
15 feels fine and literally, in quotation marks, is saying I
16 don't have any more symptoms. That what he said, not
17 suffering from symptoms anymore. He repeats the same in the
18 e-mails that I have provided to the Court.

19 What this really is -- Judge, there is just no
20 basis, no basis, let alone a compelling one, under
21 compassionate release to release him at this point. What this
22 really is is what Your Honor pointed out the other day in that
23 the Leung case is this really a Rule 35 request, the old Rule
24 35 to try to re-evaluate and release Mr. Gomez after this
25 Court already imposed its sentence.

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1 There is just no basis to release him from his
2 mandatory minimum 15-month sentence.

3 I am happy to answer any other questions the Court
4 might have about that. Our position is there just is no
5 basis.

6 I do think, in the end, while I am not faulting
7 counsel for it because I don't think he had access to the
8 medical records that clearly belie any claim that the
9 defendant is in any imminent danger at the time, meaning now,
10 but this is really an end run around the sentence that this
11 Court imposed. In light of what Your Honor knows and everyone
12 in this district knows are an inundation of these claims right
13 now. Many of them serious with people with real underlying
14 conditions who face a danger, but this is simply not one of
15 them.

16 THE COURT: Mr. Osuna, is there anything that you
17 want to say in response? Mr. Osuna, are you still there?

18 MR. OSUNA: Yes, I'm still here.

19 THE COURT: Is there anything you want to say in
20 response?

21 MR. OSUNA: Yes. I would like to say something in
22 response. I do think that the fact that my client has tested
23 positive, I think the reason -- it's not just for his safety,
24 it's for the safety of the other people in the prison as well.
25 This is not just a sentence reduction. He completed -- out of

Proceedings

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1 his mandatory minimum sentence, he has completed the majority
2 of it. So it's not just that he got sentenced recently. It
3 is not just a regular Rule 35. I think taking into
4 consideration the exhaustion, I mean, it would make no sense
5 for me to just re-file it next week because it's not that --
6 you know, we're not close to the exhaustion period. If it
7 were just that, then I would just re-file it next week. But
8 for the safety of the other inmates, the fact that he would
9 continue being quarantined endlessly, because they keep
10 bringing in other individuals that are positive. So his
11 quarantine will never end. He just won't have an opportunity
12 to recover unless he is removed from this location.

13 THE COURT: All right. You are finished, I take it.

14 Mr. Osuna, did I understand you to say initially
15 that you just became aware of the fact that Mr. Gomez has
16 tested positive?

17 MR. OSUNA: No. What had happen is this: When I
18 first learned -- when the pandemic first hit -- my client is
19 very overweight. He's clinically obese under the BMI
20 standards, so --

21 THE COURT: Mr. Osuna, the question I asked was that
22 you knew that Mr. Gomez had tested positive when you submitted
23 the motion on his behalf, yes?

24 MR. OSUNA: Oh, yes, I filed it. Yes. Absolutely.
25 Yes.

Proceedings

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1 THE COURT: Now, I just want to make sure that I
2 understand what it is that you have written in your
3 memorandum. You say that Mr. Gomez tested positive for
4 COVID-19 and you have been unable to speak to him for several
5 weeks. I take it that when you submitted this memorandum, you
6 submitted it not having been able to speak to him for several
7 weeks; is that right?

8 MR. OSUNA: That's correct.

9 THE COURT: I have spoken to his brother and
10 co-defendant Marlon, but I have been unable to speak to him
11 for several weeks. That is what you say. I take it that's
12 correct.

13 MR. OSUNA: That was correct when I filed it. I
14 spoke to him --

15 THE COURT: Excuse me, Mr. Osuna, please. Is it
16 correct that you say that you have been unable to speak to him
17 for several weeks when you submitted this petition for
18 compassionate release? Yes?

19 MR. OSUNA: Yes.

20 THE COURT: And then you say Marlon Gomez indicates
21 that the facility is poorly equipped to quarantine. And have
22 you made some independent inquiry about whether the facility
23 is or is not adequately equipped? Hold that.

24 Then you go on to say Marlon Gomez indicated that
25 James was last seen. I spoke to Mr. Gomez's father who

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1 indicated that he spoke to James last Friday. I did confer
2 several weeks ago with his case manager, who, by the way,
3 looking at Mr. Hafetz's response, the case manager says he
4 never said any such thing as has been attributed to her in
5 your petition.

6 And then you say "Given the imminent danger that my
7 client faces." What is the imminent danger that your client
8 is facing? Then you say, in conclusion, my client is a
9 35-year-old man now stricken with a potentially fatal disease.
10 He is apparently being treated with nothing other than
11 Tylenol.

12 Now, to begin with, your petition is premature.
13 Exhaustion of remedies is in my view required by 3582 of Title
14 18 of the United States Code. And secondly, Mr. Gomez's
15 situation is nowhere near presenting an extraordinary and
16 compelling reason for compassionate release. Mr. Gomez had
17 tested positively, as about 70,000 people, judging by the
18 latest statistic that I have seen on TV, have been tested
19 positive, and Mr. Gomez, perhaps more fortunately than many of
20 the other 70,000, was provided medical attention, was provided
21 with whatever it was that was needed to address his positive
22 response and he has been completely recovered.

23 I take it you have read the e-mails which have been
24 attached to Mr. Hafetz's response where Mr. Gomez says he is
25 now 100 percent, he is feeling fine. You have read all of

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1 that, haven't you?

2 MR. OSUNA: Yes, Judge.

3 THE COURT: Now, Mr. Osuna, I want to call your
4 attention, if you haven't looked at it lately, to Rule 11 of
5 the Federal Rules of Civil Procedure. When you filed this
6 petition, you certified that you have knowledge and belief
7 formed after reasonable inquiry. Formed after reasonable
8 inquiry with whom? You say you haven't spoken to your client
9 in weeks before you submitted this petition.

10 You also certified that the facts have evidentiary
11 support. What evidentiary support do you have for the facts
12 that you have submitted in support of this application?

13 Now, I am pointing this out to you, Mr. Osuna,
14 because the representations in this petition that you made
15 were reckless and were not true and there is every basis for
16 sanctioning you for presenting this petition. But more
17 importantly, what is troublesome about this is what Mr.
18 Hafetz, whether intentionally or knowingly was meant to convey
19 the thought that I am about to convey, filing a petition, such
20 as one you have filed, does a disservice to every lawyer who
21 is filing petitions for compassionate release because it
22 would, in effect, create some question in the mind of a judge
23 as to whether the petitions which are being submitted are
24 being submitted, as this one is, without any factual basis,
25 without any justification for claiming that your client was

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1 about to die, that there is an extraordinary and compelling
2 reason to release him from prison, and it does a disservice
3 and raises questions about these petitions, which are being
4 filed not by the hundreds now but by the thousands.

5 I would suggest that you give some very careful
6 thought, Mr. Osuna, as to what it is that you submit to a
7 court on behalf of a client.

8 You certify that everything that you put in your
9 petition, your pleading is correct and that you have made
10 inquiry of the underlying facts and you haven't.

11 How long have you been practicing, Mr. Osuna?

12 MR. OSUNA: Your Honor, I'm practicing 25 years.

13 THE COURT: I think you should know, Mr. Osuna, that
14 the most significant factor for every lawyer is his
15 credibility, and you put your credibility in question when you
16 submit this petition that you submitted.

17 When you say you haven't discussed anything with
18 your client for weeks before you submitted this petition. Is
19 there some reason you couldn't have obtained the medical
20 records of James Gomez? Is there any reason why you couldn't
21 gotten them and made inquiry about it, what his condition is?

22 MR. OSUNA: Your Honor, generally for us to get
23 medical records we have to send in a HIPAA form and that HIPAA
24 form has to be signed and notarized and then returned back.

25 THE COURT: Well, is that such a terrible hardship?

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1 Is that something that you shouldn't do or can't do? Is that
2 inconsistent with your certification that you have made
3 reasonable inquiry of the underlying facts? You have to fill
4 out a form, but not having done that, you make representations
5 in the petition which are completely belied by the records
6 which you could have obtained.

7 Mr. Osuna, I am making these observations to a
8 considerable extent for your benefit. I am not going to
9 impose sanctions on you, which I really could, but more
10 troublesome is that the petition that you have submitted, they
11 raise questions in the mind of some other judge who gets a
12 petition like this as to whether how many petitions like this
13 are being filed without any real justification.

14 The Bureau of Prisons facility treated your client
15 and relieved him from this positive test of the corona virus
16 to the point where he's feeling 100 percent and he is feeling
17 fine, but you want to release him, to finished his sentence.
18 His sentence was mandatory, but given the facts in this case:
19 The amount of cocaine, drugs, and everything else which was
20 found when his brother's house was searched, as I recall it,
21 might have justified a more difficult sentence than 60 months.

22 The Bureau of Prisons is doing the best it can under
23 the circumstances, which is no-fault of their own. Everybody
24 is dealing with the terrible, terrible situation. You make it
25 worse when you submit a petition such as the one you

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1 submitted. Your motion is denied. I have nothing more to
2 say. Thank you all very much.

3 MR. OSUNA: Thank you very much, Your Honor.

4 MR. HAFETZ: Thank you, Your Honor.

5 (Matter concluded.)

6 * * * * *

7 I certify that the foregoing is a correct transcript from the
8 record of proceedings in the above-entitled matter.

9 /s/ Michele D. Lucchese

May 8, 2020

10 _____
Michele D. Lucchese

DATE

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JOSEPH FURANDO

Petitioner,

v.

WARDEN, DAVID ORTIZ

Respondent.

CIVIL ACTION NO. 20-3739

RECEIVED

MAY - 1 2020

ANSWER TO WARDEN'S RESPONSE to § 2241
AT 8:30 WILLIAM T. WALSH
CLERK

Since the submission of the original petition, recent events and actions by the DOJ and BOP have caused confusion and ambiguity in regards to the administration of the CARES Act and this petitioner is left to suffer longer than necessary further subjecting him to the threat of "imminent harm" from the COVID-19 virus. It is abundantly clear from the many discretionary changes and misreporting from the BOP that the goals of the CARES Act cannot be achieved without court oversight. The DOJ and BOP need help in getting their "CARES" act together!

A. Arbitrary, Confusing and Unfair Criteria and Discretion

Based on the CARES Act of 2020 and the Attorney General's initial guidance "to maximize appropriate transfers to home confinement" under 18 USC §3624(c)(2), the BOP implemented the following criteria for consideration for home confinement (See Furando, Reiser Decl. ¶13):

- a. Primary or Prior Offense is not violent;
- b. Primary or Prior Offense is not a sex offense;
- c. Primary or Prior Offense is not terrorism;
- d. No detainee;
- e. Mental Health Care level is less than IV;
- f. PATTERN is minimum;
- g. Custody score is low or medium;
- h. Served at least 2/3 of sentence; and
- i. No incident reports in past 12 months

On April 15, 2020 that initial guidance changed removing time served of 2/3 sentence and replacing it with 50% and adding; US Citizen and Viable Release

Plan. Id at ¶5. On April 17, 2020, the day after the Warden's Answer to this Petition, the Petitioner's Unit Team was directed to develop a list of eligible inmates based on that criteria. In petitioners Unit, 5752, of the approximately 300 inmates housed there, only three (3) were chosen. Those inmates, the Petitioner, Vincent Falci and Gerrad Donault. On the 17th, the three inmates signed papers in preparation for their release the following week. At some point over that weekend the criteria for release suddenly changed and on Monday the 20th the three inmates were told they were now disqualified for release. As of the writing of this motion, no other inmates have yet been identified as candidates to the best of petitioner's knowledge. This event begs that some serious questions get answered.

The initial screening process is fundamentally flawed and unfair. The reason for the CARES Act was to answer a worldwide "medical" pandemic but none of the prescreening criteria were medically related! Certainly it should require the review of the medical staff but nothing indicates they are consulted (Foster Decl). In addition it certainly can not be a purpose of the act to imbue the Unit Team with the power of God to decide who gets to live - by exiting the disease incubator of Ft. Dix - or die there. No inmate at Ft. Dix was given a death sentence by the court but it seems within the power of Case Managers to administer one. It should be alarming that a non medical, low level BOP employee with possible personal bias against certain inmates due to the nature of their offense or a past negative experiences with them, combined with the confusing and ever changing criteria, can have such power to make a life or death decision affecting inmates. Was the real question being asked of the BOP in developing the CARES Act criteria "Whose life is worth saving and whose is not?" Surely it cannot be as that question is most certainly beyond the discretion Congress intended the BOP to have. Even with oversight, the petitioner fears the process and criteria is being

applied unequally and unfairly. How can the petitioner know if he was excluded because a Unit Team members grandmother was defrauded out of her lifes savings and that Team Member holds some personal animosity against all inmates convicted of crimes of a financial nature? The changing and ambiguous guidelines afford the Team Member the cover needed to execute on his or her bias. Is a cancer suffering downloader of child pornography less worthy of life than a cancer ridden drug dealer who pushed poison in a non violent way that may be responsible for the deaths of untold children and the destruction of significantly more families through addiction? Apparently the drug dealer is more worthy of living than the pornography downloader who is excluded from relief by the current criteria. This proves again that the criteria makes no sense in relation to the purported objective of the CARES Act - a medical objective to save the lives of the most medically vulnerable to the virus. Inmates are dying today from the COVID-19 virus not as a penalty for the crime they committed. The COVID virus kills and does not discriminate by class of crime or inmate yet the ROP criteria does. Using the criteria as the first line of qualification is wrong and should not be dispositive in and of itself. Medical issues should be the prime qualifier for releif and no single criteria on its own should be a disqualifier. The only purpose of the criteria then is to determine which lives are worthy of saving and which are not and in a civilized society, that cannot stand!

B. Medical Issues

The petitioner is susceptible to the virus and clearly described his medical condition in his original application and is a prime candidate medically as a most susceptible victim. for release What has transpired regarding further diagnosis and treatment since then is nothing! The petitioner is suffering phy ically and mentally as his condition further deteriorates. he becomes more susceptible n t

only to COVID-19, but the other diseases commonly found in communal environments. As the Warden at Ft. Dix has personally acknowledged in a bulletin to the inmates, "social distancing is not possible in this environment" and that is a key factor identified by the CDC which is needed to prevent the spread of the virus.

C. Exhaustion of Administrative Remedy

Because of the morbidity rate and short incubation period associated with the virus, death can occur within 14 days of infection. The minimal amount of time needed to pursue an administrative remedy is 140 days. The urgency creates an undue prejudice that would result due to the heightened risk of illness while attempting to again exhaust any administrative appeals, something this petitioner is trying to avoid with his petition and which then makes the exhaustion requirement moot. See United States v. Latrice, 3:19-cr-179 (D. Ct. April 2, 2020). Even the Senior Attorney to Ft. Dix, Christina Clark does not fully understand the administrative process when she states that the first step is a BP-9 to the Warden. (See Clark Decl ¶ 3). That is not the case. The first step is an informal request to the Unit Team [BP-8], a critical step that is not reported in the "Computerized Index of Administrative Appeals" (submitted as a supporting document in Furando at Exhibit 1) making it an unreliable indices of proof that the administrative process has been completed. This is a significant omission in that the Unit Team response, which is not recorded, is often the reason unskilled inmates do not pursue the remedy to completion. When told "you have no case" by the Unit Team and they then refuses a request to issue a BP-9 to the Warden, the unskilled inmate will give up on filing an appeal feeling that it is futile or unavailable. This is a tactic often employed by the Unit Team to dissuade an appeal and can be a basis to waive exhaustion. See Woodford v. Ngo, 548 U.S. 81, 102 (2006); also Ross v. Blake, 136 S.Ct. 1850, 1860 (2016) (interference with an inmates pursuit of relief renders the administrative process unavailable). In this

petitioners case, exhaustion would be futile and unavailable due to the urgent nature and morbidity of the COVID-19 pandemic and because any further delay could result in catastrophic health consequences. Washington v Barr, 925 F.3d 109, 118-120 (2d Cir. 2018) (Exhaustion may be unnecessary when the administrative process would be incapable of granting adequate relief, including situations where "the relief the agency might provide could, because of undue delay, become inadequate.").

D. Staffing and Resources are NOT Adequate -Where's the Proof?

The Petitioner made specific allegations as to the deficiencies of the medical department regarding staffing, equipment and procedures. In The Medical Directors Declaration (See Foster Decl) those issues were addressed in a conclusory fashion with no supporting evidence. It is imperative that Ft. Dix be evaluated independently regarding their preparedness and due to it's close proximity to the Court, it would be appropriate for the Court to make a "surprise" on site visit to see for themselves the situation as it exists at Ft. Dix. The Medical Director reported that as of April 16, that Ft. Dix had five (5) inmates who have tested positive from the virus and that all were physically located outside the low security compound. The reality is that those five who have now turned into 35 as of this date, have been placed in the SHU (Special Housing Unit) which is located in the West side of the Low compound meaning that they have deliberately brought the virus on to the low compound. This is truly concerning because the staff supervising the SHU interact with all inmates regardless of where they are housed.

E. Conclusion

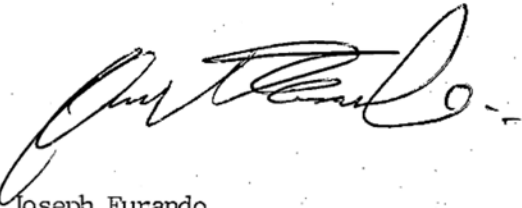
The Petitioner again pleads with this court to intervene on his behalf in anyway the court deems appropriate so that he does not become one of the 43 000 COVID-19 fatalities to date. This Petition is not premature in light of his denial just today, April 27, 2020, of his request for home confinement. This request was

denied due to the most recent change to the criteria the he is "not eligible for home confinement due to not serving at least 50% of your sentence. See Attached

It should be noted for the record that today, April 27, 2020 at approximately 6:30PM my room and my room alone was targeted for a shakedown by Case Manager Mathes who rummaged through my paperwork. This can be verified by my cellie who was present at the shakedown. His affidavit is attached. Mr. Mathes is not my case manager. Case Managers rarely if ever perform shakedowns at all so this is an unusual and highly suspect event considering the timing of this motion.

Thank you for you consideration.

Respectfully Submitted,




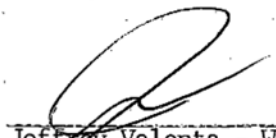
Joseph Furando
65853-050
FCL Ft. Dix
P.O Box 2000
Joint Base MDL, NJ 08640

AFFIDAVIT

I, Robert Landis, Federal Inmate No 71763-066 and cellmate of Joseph Furando, do attest under the penalty of perjury that the event I am about to describe happened factually and my recollection is to the best of my memory. It is now 7:52PM on April 27, 2020. At approximately 6:30PM I was in the room I share with Joe Furando when Case Manager Mathes arrived at our room announcing a shakedown. In my presence, Mr. Mathes gave my personal belongings a cursory look and concentrated his effort on some paperwork lying on Joe's bed. He seemed most interested in that as the rest of the room was virtually untouched. I note this incident in particular because it is very unusual for a Case Manager to conduct a shakedown at all let alone by himself. After a few moments, Mr. Mathes left the room without speaking. No other room was checked.

Respectfully,


Robert Landis
71763-066


Jeffrey Valenta - Witness to Signature
35910-068

NOTICE TO THE INMATE POPULATION

DATE: April 11, 2020
FROM: D. Ortiz, Warden
SUBJECT: Protecting Yourself and Others

In order to maintain the health of staff and inmates, the following is expected from ALL inmates:

- Wash hands with soap and water for at least 20 seconds.
- Avoid touching your eyes, nose, and mouth with unwashed hands.
- Clean and disinfect all surfaces with the approved chemical.
- Cover your cough/sneeze with tissue, immediately throw tissue in the trash and wash your hands.
- **Wear your surgical face masks!** Since Social Distancing is not possible in this environment, masks will help keep you and others from spreading viruses.
- Report symptoms (coughing, sneezing, fever, fatigue, etc.) to Health Services and/or any staff.

We ALL must do our part in protecting ourselves and others from spreading COVID-19!

FURANDO, JOSEPH 65853050

BP-S148.055 INMATE REQUEST TO STAFF CDFRM

SEP 98

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

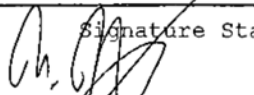
TO: (Name and Title of Staff Member) CASE MANAGER HIGGINS	DATE: 4/1/20
FROM: JOSEPH FURANDO	REGISTER NO.: 65853-050
WORK ASSIGNMENT: PM YARD	UNIT: 5752

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.)

PURSUANT TO THE "EMERGENCY COMMUNITY SERVICE ACT OF 2020" AND "CARCS ACT 2020" I AM REQUESTING IMMEDIATE RELEASE TO HOME CONFINEMENT. I AM STILL MARRIED AND THE RESIDENCE I SHARE WITH MY WIFE AND SON IS: 23 BURNING HOLLOW ROAD, SANDLE RIVER, NJ. I MEET ALL OF THE REQUIREMENTS FOR RELIEF UNDER THESE NEW ACTS BASED ON: MY MEDICAL/HEALTH CONDITION (CHRONIC CARE FOR LIFE LONG ASTHMA AND CORONARY ARTERY DISEASE - ASCENDING AORTIC ANEURYSM), MY EXEMPLARY 5+ YEAR RECORD OF CLEAN CAMPUS AND PROGRAMMING (INCLUDING TEACHING PRO-BONO), AGE (50+), NON-SEX OFFENDER CHARGES AND PATTERN score, (LOW RISK OF RECIDIVISM). WITH MY LIFE AT RISK WHILE INCARCERATION SHOULD I CONTRACT COVID-19, I RESPECTFULLY ASK FOR IMMEDIATE ATTENTION TO THIS CHANGE IN INCARCERATION STATUS TO HOME CONFINEMENT. MY ATTORNEY IS: JOHN MITCHELL, CSQ., BEDFORD, NY (Do not write below this line) 917-887-7420.

DISPOSITION:

You are not eligible for home confinement due to not serving at least 50% of your sentence.

Signature Staff Member 	Date 4/27/2020
---	--------------------------

Record Copy - File; Copy - Inmate
(This form may be replicated via WP)

This form replaces BP-148.070 dated Oct 86
and BP-S148.070 APR 94



Printed on Recycled Paper

DECLARATION

I Joseph Furando, swear under the penalty of perjury that on this date, April 27, 2020, I placed in the prison mailbox system at FCI Ft. Dix NJ, An Answer to Warden's Response. This petition was prepared to the best of my ability and is a truthful representation of the facts as I know them. Furthermore due to my status as an inmate currently locked down at FT Dix due to the Coronavirus, I do not have access to a copy machine and respectfully request that the Clerk serve all parties on my behalf.

DATE: 4/27/20


Joseph Furando Pro Se

RECEIVED

MAY - 1 2020

AT 8:30
WILLIAM T. WALSH
CLERK

Joseph Furando

65853-050

FBI FF DIX

PO BOX 2000

Joint Base MDL NJ 08640

RA

THRU



RECEIVED

MAY - 1 2020

AT 8:30

WILLIAM P. WALSH
CLERK

Clerk of Courts
Mitchell H. Cohen
United States Court
400 Cooper ST, Rm 1550
Camden NJ 08102-1570

0810281570 C004



U.S. Department of Justice

*United States Attorney
District of New Jersey*

Mark E. Coyne
Assistant U.S. Attorney

970 Broad Street, 7th floor
Newark, New Jersey 07102

973-297-2002

April 30, 2020

By ECF

Patricia S. Dodszuweit, Clerk
U.S. Court of Appeals for the Third Circuit
601 Market Street, Room 21400
Philadelphia, PA 19106-1790

Re: *Thieme v. United States*, No. 20-1839

Dear Ms. Dodszuweit:

I write on behalf of the United States to oppose Christopher Thieme's request for bail pending this appeal from the dismissal of his time-barred motion under 28 U.S.C. § 2255 by the United States District Court for the District of New Jersey (Hon. Susan D. Wigenton, U.S.D.J.).

Thieme is serving a 210-month term of imprisonment for attempted kidnapping and soliciting a murder for hire, in violation of 18 U.S.C. §§ 1201(d) and 1958(a). He pled guilty to those offenses, rather than go to trial, in exchange for the Government's agreement not to seek a term of imprisonment exceeding the range for offense level 34. In Thieme's case, that meant 168–210 months. Thieme had good reason to take that deal. He plotted to kidnap and kill a woman who had rejected his romantic advances. He also planned to empty her bank accounts, sell her house, use some of the proceeds to pay the hitman he wanted to hire, and pocket the rest. And Thieme hatched this horrible scheme less than two years after his release from prison for brutally assaulting a woman he lured to his apartment. The attached sentencing letter brief describes all of this. So does the Presentence Investigation Report, which I will file under seal if this Court needs it.

As the District Court explained in the attached opinion, Thieme did not appeal his judgment of conviction, which the District Court entered on December 22, 2016. Nor did he file a timely § 2255 motion. Instead, on June 14, 2019, he filed a motion attacking his convictions and sentence, which the District Court treated as a § 2255 after affording Thieme the requisite notice and an opportunity to amend his pleadings *See generally* *Castro v. United States*, 540 U.S. 375 (2003). The District Court then issued a screening order directing Thieme to explain why his § 2255 motion should not be dismissed as untimely under § 2255(f)(1), his judgment of conviction having become final on January 5, 2018. Thieme filed several documents in response, none of which offered any legitimate basis for deeming any

aspect of his § 2255 motion timely or for excusing his failure to comply with the one-year filing deadline. Accordingly, the District Court dismissed the § 2255 motion and issued an opinion explaining its reasons for doing so.

All of that underscores the frivolous nature of this appeal and the even more frivolous nature of Thieme's request for bail. Bail pending a district court's disposition of a habeas corpus petition is available "only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success" or "extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective." *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (quotation marks omitted). "On the other hand, when bail is sought by a prisoner who has been convicted" in "federal court and the district court has denied the collateral relief sought, the standard for bail is" even "more stringent." *Id.* at 1238. Here, Thieme is demanding bail even though he has yet to receive a certificate of appealability allowing this appeal to proceed. And no reasonable jurist would disagree with the District Court's decision below that Thieme's § 2255 motion was untimely and that there was no basis to excuse his failure to comply with the limitations period. Meanwhile, Thieme has other means for raising his complaints about the conditions of his confinement.

Accordingly, this Court should deny Thieme bail and deny him a certificate of appealability.

Respectfully submitted,

CRAIG CARPENITO
UNITED STATES ATTORNEY



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December 12, 2016

VIA ELECTRONIC MAIL

Honorable Susan D. Wigenton
United States District Judge
United States District Court
50 Walnut Street
Newark, New Jersey 07102

**Re: United States v. Christopher Thieme
Crim. No. 16-294**

Dear Judge Wigenton:

Your Honor will sentence Christopher Thieme on December 19, 2016. In June of this year, Mr. Thieme pled guilty before this Court to one count of attempted kidnapping and one count of murder-for-hire. In short, the defendant devised and tried to execute a terrifying plot to kidnap and murder a young woman who did nothing more than go on two online dates with him. For all of the reasons set forth herein, the Government submits that a sentence at the top of the advisory Guidelines range of 168 to 210 months is the only appropriate sentence in this case. The facts of this case cry out for a sentence sufficient to punish the defendant, to protect the community, and prevent the defendant from committing more violent crimes.

After *United States v. Booker*, 543 U.S. 220 (2005), this sentencing involves a three-step process: (1) “district courts are to calculate a defendant’s sentencing Guidelines range precisely as they would have before pre-*Booker*”; (2) courts must formally rule on any departure motions “and state on the record whether they were granting a departure and, if so, how such a departure affects the initial Guidelines calculation”; and (3) courts “are required to exercise their discretion by considering the relevant 18 U.S.C. § 3553(a) factors in setting their sentences, regardless of whether it varies from the original calculation.” *United States v. Fumo*, 655 F.3d 288, 329 (3d Cir. 2011); accord *United States v. Goff*, 501 F.3d 250, 254 (3d Cir. 2007).

Step 1. The Advisory Guideline Range Is 168 to 210 months

“[C]ourts must continue to calculate a defendant’s Guidelines sentence precisely as they would have before Booker.” *United States v. Grier*, 475 F.3d 556, 608 (3d Cir. 2007) (*en banc*) (internal quotation marks omitted). The Court must expressly rule on “any disputed portion of the presentence report or other controverted matter ... or determine that a ruling is unnecessary either because the matter will not affect sentencing, or because the court will not consider the matter in sentencing.” *United States v. Leahy*, 445 F.3d 634, 663 (3d Cir. 2006), quoting Fed. R. Crim. P. 32(i)(3)(B). “[A]s before Booker, the standard of proof under the guidelines for sentencing facts continues to be preponderance of the evidence.” *United States v. Ali*, 508 F.3d 136, 143-46, 155 (3d Cir. 2007) (internal quotation marks omitted).

In its Presentence Report (“PSR”), the U.S. Probation Office (“Probation”) properly calculated Thieme’s base offense level as 37. PSR ¶ 50. After a three-level reduction for timely acceptance of responsibility, Thieme’s total Guidelines offense level is 34. PSR ¶ 59. Probation has further determined that Thieme falls into Criminal History Category II. PSR ¶ 63.

Probation thus calculated that, with a total offense level of 34 and a Criminal History Category II, Thieme’s resulting advisory guidelines range is 168 to 210 months’ imprisonment. PSR ¶ 94. The Government agrees with this calculation, and the defendant has made no objection to it. Indeed, in his plea agreement, Thieme stipulated that his total Guidelines offense level is 34.

Step 2. Guidelines Departures

After this Court has determined the Guideline range, it “must formally rule on the [departure] motions of both parties and state on the record whether [it is] granting a departure and how that departure affects the Guidelines calculation.” *United States v. Lofink*, 564 F.3d 232, 237-38 (3d Cir. 2009). This Court must rule on “departure motions on their merits,” “answer all of the questions that must be answered at Step Two,” and make clear whether any denial of the departure motion was because the motion was legally barred or “because the Court was exercising its discretion.” *Id.* at 233, 240. A court may not adopt a “practice of not separately considering departure motions” or solely “considering departure arguments while applying the sentencing factors in § 3553(a).” *Id.* A court also should make clear to what extent it is departing rather than varying under § 3553(a). *United States v. Floyd*, 499 F.3d 308, 311 & n.5 (3d Cir. 2007).

If the Court is contemplating a departure “from the applicable sentencing range on a ground not identified for departure either in the presentence report or in a party’s prehearing submission,” it must give the parties “reasonable

notice.” Fed. R. Crim. P. 32(h); see *Irizarry v. United States*, 553 U.S. 708, 713-14 (2008); *United States v. Vampire Nation*, 451 F.3d 189, 197-98 (3d Cir. 2006).

In this case, neither party is seeking a departure and, indeed, the plea agreement entered into by the parties prohibits any such application.

Step 3. Variances

Finally, in Step 3 this Court may “tailor the sentence in light of other statutory concerns reflected in the sentencing factors of § 3553(a).” *United States v. Merced*, 603 F.3d 203, 213 (3d Cir. 2010) (internal quotation marks omitted). The Court must give “rational and meaningful consideration of the factors enumerated in 18 U.S.C. § 3553(a)” and make an “individualized assessment based on the facts presented.” *United States v. Tomko*, 562 F.3d 558, 567-68 (3d Cir. 2009) (en banc) (internal quotation marks omitted).

Under § 3553(a), “[t]he Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. § 3553(a). Those purposes are “(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.” 18 U.S.C. § 3553(a)(2). In determining that sentence, this Court must consider “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1), “the kinds of sentences available,” § 3553(a)(3), the Guidelines and Guideline range, § 3553(a)(4), the Guidelines’ policy statements, § 3553(a)(5), “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” § 3553(a)(6), and “the need to provide restitution to any victims of the offense,” § 3553(a)(7).

A sentencing court may not “presume that a sentence within the applicable Guidelines range is reasonable,” but must consider the § 3553(a) factors. *Nelson v. United States*, 555 U.S. 350, 352 (2009). The Guidelines nonetheless remain “the lodestone of sentencing” and the post-*Booker* sentencing regime sensibly “steer[s] district courts to more within-Guidelines sentences.” *Peugh v. United States*, 133 S. Ct. 2072, 2077 (2013). That is because “[t]he post-*Booker* federal sentencing scheme aims to achieve uniformity by ensuring that sentencing decisions are anchored by the Guidelines and that they remain a meaningful benchmark through the process of appellate review.” *Id.* at 2076.

Here, the plea agreement entered into by the parties bars either party from seeking a variance. In any event, no variance is warranted and, for all of the

reasons set forth below, the § 3553(a) factors all support a sentence at the top of the Guidelines range.

Each of the 3553(a) factors, including Thieme's history and characteristics, the need to punish him, the need to protect the community and to specifically deter him from committing future acts of violence, the need to send a message to the others that this type of heinous crime will not be tolerated – demands a sentence at the top of the Guidelines range. Thieme has proven that he poses a danger to the community. Even the slightest encounter with him can lead to extreme violence.

Christopher Thieme's "history and characteristics" show that he is an extremely dangerous person with a clear history of severe violence. As set forth in the PSR, Thieme has one prior conviction. PSR ¶ 62. In 2004, Thieme was convicted of aggravated assault and possession of a weapon for an unlawful purpose. He received a sentence of seven years' imprisonment with three years' parole. After serving roughly five years of his sentence, he was paroled. He then violated parole *twice*, and was returned to custody both times. The terrifying facts underlying Thieme's prior conviction are set forth in detail in the PSR and the Government will not rehash them all here. Sufficed to say, in that case, Thieme bludgeoned in the head with a pool cue his fellow-student and dormitory neighbor for no reason at all, after luring the young woman back to his room. *Id.* The victim in that case, like the victim here, wrote to the sentencing court and spoke eloquently of the terror and devastation Thieme's attack caused her. In the now chilling last words of her letter, that victim wrote of Thieme: "My greatest fear from all this is that he will be released and attack another girl. Difficult as it is, I will be willing to testify and relive that horrible morning because – beyond all else – I hope it prevents him from hurting me or anyone else again. Christopher Thieme should never be allowed that opportunity."

That victim's fears proved prescient. Less than two years after his release from prison, Thieme was plotting to kidnap and murder the victim in this case. A woman he met on two online dates, and who then made clear to him that she no longer wished to see him. Thieme's reaction was to plan to have her kidnaped and murdered, and then to steal her property. Thieme plotted the crime extensively, even going so far as to draft a fake resignation letter in the victim's name, and a falsified contract that he planned to use to try to sell her home once she was dead. The audio recordings in this case reveal Thieme coldly plotting to kill the victim as coldly and rationally as other people plan a shopping list.

It also bears noting that, as the PSR makes clear, Thieme also has a history of aggressive and sickening online harassment. PSR ¶ 66, 68. This includes his pending charge in Bergen County Superior Court for cyber-stalking a woman and her partner, which involved, among other conduct, sending images of headstones with the victim's name engraved on them.

Simply put, the need to protect the community from Thieme dominates the balancing in this case. Thieme is clearly intelligent; but rather than attempting to use his intelligence to rehabilitate himself or do anything productive after his first conviction, Thieme instead has resorted to cold-blooded violence. Indeed, if Thieme had approached someone else about kidnapping and murdering the victim in this case – someone who did *not* report it to law enforcement – the victim might well be dead.

The Government cannot state the impact of Thieme's crimes – or the terror he poses – any better than the victim in this case already has in her extensive letter to the Court. See PSR ¶ 43. To put it as succinctly as possible, what Thieme has put her through has been horrific, a waking nightmare. It is up to this Court to ensure that Thieme cannot do this again – to this victim, to his prior victims or to any future victims.

A. The Court Should Explain the Reasons for its Sentence.

Finally, “it is not enough for the district court to carefully analyze the sentencing factors. A separate and equally important procedural requirement is *demonstrating that it has done so.*” *Merced*, 603 F.3d at 215-16 (emphasis by Circuit). First, “[t]he record must demonstrate the trial court gave meaningful consideration to the § 3553(a) factors. *United States v. Sevilla*, 541 F.3d 226, 232 (3d Cir. 2008) (internal quotation marks omitted). Second, “the court must acknowledge and respond to any properly presented sentencing argument which has colorable legal merit and a factual basis.” *United States v. Ausburn*, 502 F.3d 313, 329 & n.33 (3d Cir. 2007). “Explicit rulings are plainly to be preferred” even for lesser arguments, “both for the benefit of the parties and for this court on review.” *United States v. Goff*, 501 F.3d 250, 254-256 & n.10 (3d Cir. 2007). Third, the Court must provide “sufficient justifications on the record to support the sentencing conclusions.” *Tomko*, 562 F.3d at 567 (internal quotation marks omitted). “[M]erely reciting the § 3553(a) factors, saying that counsel’s arguments have been considered, and then declaring a sentence, are insufficient[.]” *Manzella*, 475 F.3d at 161 (internal quotation marks omitted).

Conclusion

For all of the above reasons, the Government respectfully submits that to protect the community from Thieme, and to adequately punish him and deter others, and to provide a sentence that is “sufficient but no greater than necessary” to meet the goals of sentencing, this Court should sentence Thieme to 210 months’ imprisonment, to be followed by three years’ supervised release.

Respectfully submitted,

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United States Attorney

BY: /s/ Josh Hafetz
Josh Hafetz
Assistant U.S. Attorney

cc: Patrick McMahon, Esq.
Kimberly M. Artist, U.S. Probation Officer

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

CHRISTOPHER THIEME,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil Action No. 19-15507 (SDW)

MEMORANDUM OPINION

IT APPEARING THAT:

1. On December 22, 2016, this Court entered an amended judgment of conviction sentencing Petitioner, Christopher Thieme to 210 months imprisonment. (Docket No. 16-294 at ECF No. 17). Petitioner did not appeal.

2. Two and a half years later, on or about June 14, 2019, Petitioner filed a motion purporting to seek relief either under § 2255 or the writ of audita querela. (Docket No. 16-294 at ECF No. 18).

3. On June 27, 2019, this Court entered an order finding that Petitioner's criminal motion could only proceed as a motion to vacate sentence under 28 U.S.C. § 2255, and providing Petitioner with the notice required by *Castro v. United States*, 540 U.S. 375 (2003). (Docket No. 16-294 at ECF No. 19). Petitioner thereafter filed a response to that order, electing to have his previous motion recharacterized as a § 2255 motion and to proceed on that motion. (Docket No. 16-294 at ECF No. 20).

4. The Clerk of the Court therefore refiled Petitioner's response and his prior motion as his motion to vacate sentence in this matter. (ECF No. 1). Because Petitioner did not use the form required for such motions filed by pro se petitioners, this Court thereafter administratively

terminated this matter until such time as Petitioner refiled his motion using the required form. (ECF No. 2).

5. On August 21, 2019, Petitioner refiled his motion on the required form. (ECF No. 4).

6. On September 3, 2019, this Court entered an order screening Petitioner's motion to vacate sentence and entered an order directing Petitioner to show cause why his motion should not be dismissed as untimely filed. In that order, this Court found Petitioner's motion untimely absent some basis for tolling, explaining as follows:

Motions to vacate sentence are subject to a one year statute of limitations which runs from the latest of several possible dates: the date on which the petitioner's conviction becomes final, the date on which an impediment to making his motion is removed, the date on which the Supreme Court first recognizes the claims raised where a claim is based on a newly recognized right made retroactive to cases on collateral review, or the date on which the facts supporting the claim first could have been discovered through due diligence. 28 U.S.C. § 2255(f)(1)-(4). "In most cases, the operative date from which the limitation period is measured will be . . . the date on which the judgment of conviction becomes final." *Dodd v. United States*, 545 U.S. 353, 357 (2005) (internal quotations omitted). Where a petitioner fails to file a direct appeal, his conviction is considered final, when the time for the filing of an appeal has run. *See Kapral v. United States*, 166 F. 3d 565, 577 (3d Cir. 1999).

In this matter, Petitioner's amended judgment of conviction was entered on December 22, 2016. Docket No. 16-294 at ECF No. 17). Petitioner did not file an appeal, and his conviction therefore became final fourteen days later on January 5, 2017. *Kapral*, 166 F.3d at 577, Fed. R. App. P. 4(b)(1)(A)(i). Thus, absent some basis for a start date other than the finality of his conviction or some basis for equitable tolling, Petitioner's one year limitations period had elapsed as of January 5, 2018, well over a year before he filed his initial audita querela petition which became the basis for his current motion to vacate sentence in June 2019. (Docket No. 16-294 at ECF No. 18).

In his habeas petition, Petitioner only argues one basis for an alternative start date for the limitations period. Specifically, he argues that the Supreme Court's decision in *Rosales-Mireles v. United States*, --- U.S. ---, 138 S. Ct. 1897 (2018), announced a new

rule of law on which his claims rely which should be made retroactive to collateral relief cases. Pursuant to 28 U.S.C. § 2255(f)(3), the one year limitations period will run from “the date on which the right asserted was initially recognized by the Supreme Court” in those cases where “that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review.” A petitioner seeking to take advantage of this later start date must show that his claim relies on a rule of law “newly recognized” by the Supreme Court, and that that newly recognized right has been made retroactive to cases on collateral review. *Dodd*, 545 U.S. at 358.

The underlying problem with Petitioner’s assertion that his claim relies on *Rosales-Mireles* is that, even if this Court were to assume that the case announced a new rule of law recognizing a new right[,] his argument in no way relies on the issue discussed in *Rosales-Mireles*. In *Rosales-Mireles*, the Supreme Court resolved a circuit split over the interpretation of Federal Rule of Criminal Procedure 52(b). 138 S. Ct. at 1906. Specifically, the Court resolved a split over whether and when a court of appeals should grant relief on a claim of plain guidelines error on direct appeal under the rule. *Id.* at 1906-1911. Thus, that case dealt with the proper use of discretion by a direct appellate court in determining when a remand for a resentencing is warranted based on plain guidelines error. Petitioner does not claim that the Court of Appeals committed any error in applying Rule 52(b) – he cannot make such a claim as he never filed a direct appeal. *Rosales-Mirales* is thus not the basis for his claims, and cannot provide him a later start date of the limitations period. Thus, absent some basis for tolling, Petitioner’s current motion to vacate sentence remains time barred by well over a year.

Although the § 2255 limitations period is subject to equitable tolling where the facts of the matter so warrant, such tolling “is a remedy which should be invoked ‘only sparingly.’” *United States v. Bass*, 268 F. App’x 196, 199 (3d Cir. 2008) (quoting *United States v. Midgley*, 142 F.3d 174, 179 (3d Cir. 1998)). Tolling therefore only applies where a petitioner shows “(1) that he faced ‘extraordinary circumstances that stood in the way of timely filing,’ and (2) that he exercised reasonable diligence.” *Johnson*, 590 F. App’x at 179 (quoting *Pabon v. Mahanoy*, 654 F.3d 385, 399 (3d Cir. 2011)). Excusable neglect is insufficient to establish a basis for equitable tolling. *United States v. Thomas*, 713 F.3d 165, 174 (3d Cir. 2013).

Petitioner does not present any basis for equitable tolling in his motion, and this Court is aware of no such basis from the facts presented. Because Petitioner did not address the equitable tolling issue in his motion, however, this Court will permit Plaintiff one opportunity to show why his motion to vacate sentence should not be dismissed as time barred.

(ECF No. 5 at 2-4).

7. Following an extension, Petitioner thereafter filed a response to the Order (ECF No. 8), as well as a motion seeking a declaratory judgment (ECF No. 10), and several motions seeking to amend and supplement his motion to vacate sentence. (ECF Nos. 13-15). As this Court has considered Petitioner's amendments and supplements in deciding this matter, Petitioner's motions to amend and supplement his motion to vacate sentence (ECF Nos. 13-15) are granted only to the extent that Petitioner requests consideration of his arguments.¹ As this Court will dismiss Petitioner's motion to vacate sentence as time barred for the reasons set forth below, Petitioner's motion seeking a declaratory judgment (ECF No. 10), which essentially sought a declaration that he is entitled to relief, shall also be denied as moot in light of the dismissal of his motion to vacate sentence.

8. In his post-Order to Show Cause briefing, Petitioner presents five claims – three in which he challenges various issues with his sentence and restitution order, a claim in which he argues his counsel was ineffective in failing to raise these arguments, and a new claim in which he asserts that one of the statutes out of which his conviction arises – 18 U.S.C. § 1958, which criminalizes the use of interstate commerce in the commission of murder for hire – is constitutionally void for vagueness. All of these claims were raised long after the one year statute

¹ To the extent that Petitioner seeks to file a preemptive Rule 60(b) motion challenging a decision this Court has not yet issued dismissing his petition as time barred (*see* ECF No. 12) that motion is denied. A Rule 60(b) motion may only be filed to challenge an order or judgment issued by the Court, it may not be used to attack a decision that has not yet been issued.

of limitations had run in this matter, and Petitioner's claims would therefore be time barred unless he can show a basis for equitable tolling, or a statutory basis for a later start date for the one year statute of limitations.

9. Petitioner presents three arguments for why his claims should not be time barred – a repetition of his already rejected argument that *Rosales-Mireles* should provide a later start date; an argument in which he asserts that his new void for vagueness claim should have a later start date as he believes that claim arises out of the Supreme Court's decision in *United States v. Davis*, --- U.S. ---, 139 S. Ct. 2319 (2019), or should otherwise be permitted to proceed as he believes he's actual innocent because of his vagueness challenge; an argument in which he asserts that his ineffective assistance of counsel claim arises out of *Garza v. Idaho*, --- U.S. ---, 139 S. Ct. 738, 746 (2019), and should therefore be timely as such; and a general claim in which he asserts that he should receive equitable tolling because he believes his plea agreement is unconstitutional and otherwise led to a miscarriage of justice.

10. Initially, the Court notes that Petitioner's *Rosales-Mireles* argument remains meritless for the reasons expressed in the Court's Order to Show Cause. *Rosales-Mireles* did not recognize the right that Petitioner seeks to vindicate – it instead merely resolved a circuit split regarding appellate procedure – and thus provides no basis for a later start date for the statute of limitations for Petitioner's claims.

11. Petitioner's reliance on *Garza* is similarly misplaced. To the extent that Petitioner intended to raise a claim that counsel proved ineffective in not filing a direct appeal on his behalf,²

² Although Petitioner asserts in his response to the OTSC that he wished to raise such a claim under *Garza*, he never sought to raise such a claim in his various amendments, and mentions *Garza* only tangentially in his motion to vacate sentence. For the sake of this opinion, however, this Court assumes Petitioner desired to raise such a claim as part of his ineffective assistance of counsel ground for relief.

Garza does not provide a later start date for the statute of limitations. In order to provide a later start date, *Garza* would have had to newly recognize the right at issue, and that right would have had to have been made retroactive to cases on collateral review. *Dodd*, 545 U.S. at 358. As to the first question, the Supreme Court in *Garza* did not recognize a new right – the Court by its own logic was merely applying the rule announced in *Roe v. Flores-Ortega*, 528 U.S. 470 (2000), to those circumstances where there was an applicable appellate waiver. *Garza*, 139 S. Ct. at 745-48 (“reaffirm[ing]” the applicability of *Flores-Ortega* notwithstanding an appellate waiver). Even assuming *arguendo* that *Garza* had announced a new rule of constitutional law, a finding this Court does not make, Petitioner would still not be entitled to a later start date because he cannot meet the final requirement – that *Garza* has been made retroactive to cases on collateral review. *Garza* did not on its face state or imply that it should be applied retroactively, nor has either the Supreme Court or Third Circuit rendered the case retroactive to collateral review cases. Indeed, the few district courts of which this Court is aware to have addressed the question have found to the contrary. See, e.g., *United States v. Price*, No. 08-312, 2020 WL 516357, at *3 n. 1 (W.D. Pa. Jan. 23, 2020) (noting *Garza* has not been made retroactive); *United States v. McGee*, No. 16-95, 2019 WL 4248887, at *2 (E.D. Ky. Sept. 6, 2019) (*Garza* did not announce new rule and has not been made retroactive and does not provide later date for § 2255(f) statute of limitations); *United States v. Gibson*, Nos. 16-746, 19-420, 2019 WL 5213838, at *3 (D. Haw. Oct. 16, 2019) (same); *Macklin v. Dowling*, No. 19-375, 2019 WL 4727070, at * (W.D. Ok. Aug. 30, 2019) (same). As *Garza* neither announced a new rule of law on which Petitioner relies, nor has been made retroactive to cases on collateral review, *Garza* does not provide Petitioner with a later start date for his statute of limitations. *Dodd*, 545 U.S. at 358.

12. Petitioner's reliance on *Davis* is also misplaced. *Davis* did not invent the void for vagueness concept, nor did it apply it to the statute Petitioner wishes to challenge. *See Davis*, 139 S. Ct. at 2325, 2327-33 (collecting cases dating back to the late 19th century applying the void for vagueness doctrine to various statutes and applying that rule only to 18 U.S.C. § 924(c)). Petitioner's void for vagueness claim therefore does not arise out of any newly recognized right created by *Davis*, and *Davis* therefore cannot provide Petitioner with a later start date for the running of his limitations period.

13. Likewise, Petitioner's claim that he is actually innocent is without merit. Although actual innocence can serve as a gateway to pierce the § 2255(f) statute of limitations, *see McQuiggan v. Perkins*, 569 U.S. 383, 391-99 (2013), Petitioner is not actually innocent of using the means of interstate commerce to pursue a murder for hire in violation of 18 U.S.C. § 1958(a). Petitioner bases his claim of innocence on the idea that § 1958(a) is "void for vagueness" because certain prisoners have received multiple charges under the statute arising out of a single plot to commit murder for hire which was enacted through multiple uses of the means of interstate commerce, a practice the First Circuit disclaimed in *United States v. Gordon*, 875 F.3d 26, 31-37 (1st Cir. 2017). Contrary to Petitioner's assertion, however, *Gordon* did not argue that this practice rendered the statute void for vagueness, instead the First Circuit merely ruled that a defendant can receive only one conviction arising out of the statute for each plot to commit murder for hire in which he engaged, regardless of the number of phone calls, mailings, or use of interstate commerce that plot involved. *Id.* at 38. Petitioner's guilty plea suffers from no such issue. Nothing Petitioner has submitted nor which was discussed in *Gordon* in any way indicates that the elements of the crime contained in § 1958(a) are vague. As the statute is clear about what conduct is prohibited – the use of the means of interstate commerce to offer "anything of pecuniary value" to another with

the intent that a murder be committed in violation of state and federal law – and as the statute is not otherwise subject to the arbitrariness concerns that otherwise animate the void for vagueness doctrine, Petitioner has not shown that the statute is unconstitutionally vague, and has thus not in any way shown his “actual innocence.” He is therefore still fully subject to the one year limitations period in this matter.

14. Finally, this Court has considered all of the arguments presented by Petitioner and finds that he has failed to show any basis for equitable tolling as he has neither shown that he was diligent nor that he was prevented from earlier raising his claims due to an extraordinary circumstance. *Johnson*, 590 F. App’x at 179. Petitioner delayed two and a half years before seeking to raise his challenges, and has failed to present any persuasive argument as to why he could not have raised his claims sooner. That Petitioner agreed to a plea agreement that he now dislikes is no extraordinary circumstance, and Petitioner may not evade the § 2255 time bar based on his distaste for his earlier decisions. As this Court perceives no valid basis for equitable tolling and as Petitioner has failed to show any legal basis for a later start date for his statute of limitations in his various filings, Petitioner’s motion to vacate sentence (ECF No. 4) is dismissed with prejudice as time barred.

15. Pursuant to 28 U.S.C. § 2253(c), the petitioner in a § 2255 proceeding may not appeal from the final order in that proceeding unless he makes “a substantial showing of the denial of a constitutional right.” “A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims or that jurists could conclude that the issues presented here are adequate to deserve encouragement to proceed further.” *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). “When the district court denies a habeas [matter] on procedural grounds without reaching the prisoner’s underlying constitutional claim, a

[Certificate of Appealability] should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the [Petitioner’s § 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As jurists of reason would not debate that Petitioner’s motion to vacate is clearly time barred, Petitioner has failed to make a substantial showing of the denial of a constitutional right, and he is therefore denied a certificate of appealability.

16. In conclusion, Petitioner’s motions to amend (ECF Nos. 12-15) are granted only to the extent that this Court has considered Petitioner’s filings in this decision, Petitioner’s first motion to amend (ECF No. 12) is DENIED to the extent Petitioner sought to file a pre-emptive motion pursuant to Rule 60(b), Petitioner’s motion to vacate sentence (ECF No. 4) is DISMISSED WITH PREJUDICE as time barred, Petitioner is DENIED a certificate of appealability, and Petitioner’s motion seeking a declaratory judgment (ECF No. 10) is DENIED as moot in light of the dismissal of his motion to vacate sentence. An appropriate order follows.

Dated: March 24, 2020

s/ Susan D. Wigenton
Hon. Susan D. Wigenton,
United States District Judge

CERTIFICATION OF SERVICE

I hereby certify that today I caused a copy of this letter to be served by first class mail, postage prepaid, in an envelope marked "Special Mail," upon Christopher Thieme at his place of confinement:

Christopher Thieme
Reg. No. 69451-050
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640



Mark E. Coyne
Assistant U.S. Attorney
Chief, Appeals Division

Dated: April 30, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

GCO-006

No. 20-1839

Christopher Thieme,
Appellant

v.

United States of America

(D.N.J. No. 2-19-cv-15507)

Present: AMBRO, CHAGARES and RESTREPO, Circuit Judges

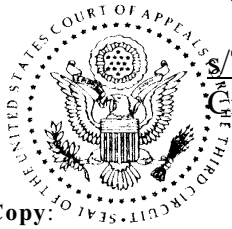
1. Motion by Appellant for Bail.
2. Response filed by Appellee to Motion for Bail.

Respectfully,
Clerk/slc

ORDER

The foregoing motion is DENIED. Thieme has failed to show that “he has a high probability of success” on his 28 U.S.C. § 2255 motion or that “extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992).

By the Court,



/Thomas L. Ambro
Circuit Judge

Dated: May 4, 2020
SLC/cc: Christopher Thieme
Mark E. Coyne, Esq.

Patricia A. Dodszeit
Patricia S. Dodszeit, Clerk



U.S. Department of Justice

*United States Attorney
District of New Jersey*

Mark E. Coyne
Assistant U.S. Attorney

970 Broad Street, 7th floor
Newark, New Jersey 07102

973-297-2002

April 27, 2020

By ECF

Patricia S. Dodszuweit, Clerk
U.S. Court of Appeals for the Third Circuit
601 Market Street, Room 21400
Philadelphia, PA 19106-1790

Re: *Aigbekaen v. BOP*, No. 20-1351

Dear Ms. Dodszuweit:

I write on behalf of the Bureau of Prisons (“BOP”) to oppose Raymond Aigbekaen’s request for bail pending this appeal from the dismissal of his jurisdictionally improper petition under 28 U.S.C. § 2241 by the United States District Court for the District of New Jersey (Hon. Noel L. Hillman, U.S.D.J.).

Aigbekaen is serving a fifteen-year term of imprisonment for his convictions in the United States District Court for the District of Maryland for sex trafficking a minor and other very serious offenses. *United States v. Aigbekaen*, 943 F.3d 713 (4th Cir. 2019). The Fourth Circuit affirmed Aigbekaen’s judgment of conviction and sentence by precedential opinion on November 21, 2019. *Id.* That Court of Appeals denied Aigbekaen’s petition for rehearing en banc on February 24, 2020. *United States v. Aigbekaen*, No. 17-4109, Doc. No. 252 (4th Cir. Feb. 24, 2020). He has until May 25, 2020 to petition the Supreme Court for a writ of certiorari, barring any extensions. S. Ct. R. 13.3; *see Young v. Harper*, 520 U.S. 143, 147 n.1 (1997) (timeliness of petition for certiorari measured from date court of appeals disposed of rehearing petition). That means Aigbekaen’s judgment of conviction is not yet final, and the one-year limitations period for filing a motion under 28 U.S.C. § 2255 has not yet begun to run. *See Clay v. United States*, 537 U.S. 522, 532 (2003).

During his direct appeal, Aigbekaen sought post-judgment relief in the District of Maryland, which the district court properly dismissed without prejudice as a premature § 2255 motion. *United States v. Aigbekaen*, 720 F. App’x 156, 157 (4th Cir. 2018) (per curiam). Aigbekaen also sought bail repeatedly during his direct appeal, which the district court and the Fourth Circuit properly denied. *United States v. Greene et al.*, No. 1:15-cr-462 (D. Md.), ECF Nos. 302–303, 306–308, 320, 326, 335, 337–339, 362. He also moved for modifications of his sentence and to be transferred to a halfway house during his direct appeal, all of which the district court denied. *Id.*, ECF Nos. 311, 321, 328–329, 357–358. In addition, on March 2,

2020, Aigbekaen moved for compassionate release, which the district court also denied. *Id.*, ECF Nos. 372– 373. And he has a pending motion for a new trial on the basis of supposedly newly discovered evidence. *Id.*, ECF Nos. 346–347, 374–375.

All of that underscores the frivolous nature of this appeal and the even more frivolous nature of Aigbekaen’s request for bail. A § 2255 motion cannot be “inadequate or ineffective to test the legality of his detention” in the way that would permit Aigbekaen to resort to § 2241 through 28 U.S.C. § 2255(e) if he has not even exhausted his direct appeal and can file a timely § 2255 motion once he does. *See Aigbekaen*, 720 F. App’x at 157 & n.* (explaining that “the district court did not treat” Aigbekaen’s premature “filing as [his] first § 2255 motion” and, if his “direct appeal is unsuccessful, he need not seek prefiling authorization” before “filing a § 2255 motion”). Furthermore, bail pending a district court’s disposition of a habeas corpus petition is available “only when the petitioner has raised substantial constitutional claims upon which he has a high probability of success” or “extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” *Landano v. Rafferty*, 970 F.2d 1230, 1239 (3d Cir. 1992) (quotation marks omitted). “On the other hand, when bail is sought by a prisoner who has been convicted” in “federal court and the district court has denied the collateral relief sought, the standard for bail is” even “more stringent.” *Id.* at 1238. Besides, the sentencing judge—who, unlike the judges of this Court, is thoroughly acquainted with everything that would bear on bail here—just deemed Aigbekaen unworthy of compassionate release.

For these reasons and those in BOP’s response to this Court’s notice of possible summary action, this Court should summarily affirm the dismissal of Aigbekaen’s § 2241 petition and deny him bail.

Respectfully submitted,

CRAIG CARPENITO
UNITED STATES ATTORNEY



By: Mark E. Coyne
Assistant U.S. Attorney
Chief, Appeals Division

cc: Raymond Aigbekaen, *pro se*
Reg. No. 94655-379
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 0864

CERTIFICATION OF SERVICE

I hereby certify that today I caused a copy of this letter to be served by first class mail, postage prepaid, upon Raymond Aigbekaen at his place of confinement:

Raymond Aigbekaen
Reg. No. 94655-379
FCI Fort Dix
P.O. Box 2000
Joint Base MDL, NJ 08640



Mark E. Coyne
Assistant U.S. Attorney
Chief, Appeals Division

Dated: April 27, 2020

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

GCO-007

No. 20-1351

RAYMOND AIGBEKAEN,
Appellant

v.

BUREAU OF PRISONS;
DAVID ORTIZ (Warden, FCI Fort Dix.)

(D.N.J. No. 1-19-cv-19844)

Present: AMBRO, CHAGARES and RESTREPO, Circuit Judges

1. Appellant's Motion titled "Motion to Amend" Requesting Bail Pending Appeal on Habeas Corpus;
2. Response by Appellee to Appellant's Motion titled "Motion to Amend" Requesting Bail Pending Appeal on Habeas Corpus.

Respectfully,
Clerk/TMK

ORDER

The foregoing Motion is DENIED. Aigbekaen has failed to show exceptional circumstances or that he is likely to succeed on the merits of his appeal on habeas corpus as required for his release pending the disposition of his case under Fed. R. App. P. 23(b); *Landano v. Rafferty*, 970 F.2d 1230, 1238–39 (3d Cir. 1992).

By the Court,

s/Thomas L. Ambro
Circuit Judge

Dated: April 28, 2020

CJG/cc: Mark E. Coyne, Esq.
Norman Gross, Esq.
Raymond Aigbekaen



A True Copy:

Patricia A. Dodszeuweit

Patricia S. Dodszeuweit, Clerk

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 DR. NICOLETTA TURNER FOSTER

I, Nicoletta Turner-Foster, M.D., do hereby declare,
certify and state as follows:

1. I am employed by the United States Department of
Justice, Federal Bureau of Prisons (BOP). I currently work as
the Clinical Director at the Federal Correctional Institution
("FCI") Fort Dix, New Jersey. I have been employed by BOP
since 2001.

2. In my position as the Clinical Director at FCI Fort
Dix, I am responsible for coordinating comprehensive medical,
dental, and mental health services of the highest quality while
maintaining a clean, safe, and secure environment for nearly
4,000 inmates at both our FCI Low security institution as well

as our Federal Prison Camp (FPC) at Fort Dix. The Health Services Department is 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.

3. With respect to COVID-19, specifically, I am involved on a daily basis in the identification, planning, and implementation of all Bureau directives for preventing the spread of COVID-19 at FCI Fort Dix including the Camp. Through this role, I have knowledge of both the Bureau's national directives relating to COVID-19 and the additional steps that FCI Fort Dix, specifically, has taken to combat COVID-19 within the facility. Accordingly, through the course of my official duties, I have personal knowledge regarding the numerous measures, discussed below, that have been implemented both Bureau-wide and at FCI Fort Dix in order to prevent and manage the spread of COVID-19.

I. NATIONAL STEPS TAKEN

4. Prior to discussing the measures taken at FCI Fort Dix, I will first discuss the measures taken throughout the BOP. In January 2020, the Bureau began Phase One of its Action Plan for COVID-19. Phase One activities included, among other things, seeking guidance from the BOP's Health Services Division

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

Action Plan for COVID-19, Phase Two

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

social visits; legal visits; inmate facility transfers; official staff travel; staff training; contractor access; Volunteer visits; and tours.

6. During Phase Two, inmates were subjected to new screening requirements. Specifically, all newly arriving Bureau inmates were screened for COVID-19 symptoms and "exposure risk factors," including, for example, if the inmate had traveled from or through any high-risk COVID-19 locations (as determined by the CDC), or had had close contact with anyone testing positive for COVID-19. Asymptomatic inmates with risk of exposure are placed in quarantine. 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.

7. All staff were also subjected to enhanced health screening in areas of "sustained community transmission," as determined by the CDC, and at medical referral centers. The enhanced screening measures required all staff to self-report any symptoms consistent with COVID-19, as well as any known or suspected COVID-19 exposure, and further required all staff to have their temperature taken upon entry into any Bureau facility. Staff registering a temperature of 100.4 degrees Fahrenheit or higher are barred from the facility on that basis

alone. A staff member with a stuffy or runny nose can be placed on leave by a medical officer.

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

Action Plan for COVID-19, Phase Three

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

10. Additionally, as part of this phase, and in accordance with the Pandemic Influenza contingency plan, all cleaning, sanitation, and medical supplies were inventoried.

Action Plan for COVID-19, Phase Four

11. On March 26, 2020, the Bureau implemented Phase Four of its Action Plan. In Phase Four, the Bureau revised its preventative measures for all institutions. Specifically, the

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

Action Plan for COVID-19, Phase Five

12. On March 31, 2020, the Director of the Bureau ordered the implementation of Phase 5 of its COVID-19 Action Plan, which took effect on April 1, 2020. Specifically, the Director ordered the following steps to be taken:

a. For a 14-day period, inmates in every institution will be secured in their assigned cells/quarters to decrease the spread of the virus.

b. During this time, to the extent practicable, inmates should still have access to programs and services

offered under normal operating procedures, such as mental health treatment and education.

c. In addition, the Bureau is coordinating with the United States Marshals Service (USMS) to significantly decrease incoming movement during this time.

d. After 14 days, this decision will be re-evaluated and a decision made as to whether or not to return to modified operations.

e. 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.

f. Provided inmates access to programs and services offered under normal operating procedures, such as mental health treatment and education.

g. In addition, the Bureau coordinated with the United States Marshals Service (USMS) to significantly decrease incoming movement during this time.

h. All staff and inmates were issued an appropriate face covering and strongly encouraged to wear the face covering when in public areas when social distancing cannot be achieved.

i. Contractor 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. All volunteer visits are suspended absent authorization by the Deputy Director of BOP. Any contractor or volunteer who requires access will be screened for symptoms and risk factors.

j. 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. In order to ensure that familial relationships are maintained throughout this disruption, BOP has increased detainees' telephone allowance to 500 minutes per month. Tours of facilities are also suspended. Legal visits will be permitted 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.

k. Further details and updates of BOP's modified operations are available to the public on the BOP website at a regularly updated resource page:
www.bop.gov/coronavirus/index.jsp.

13. At FCI Fort Dix, during Phase Five, commissary items, laundry, recreation materials, education materials, and psychology services were delivered directly to inmates housing

units. Feeding is done by grab-and-go meals, housing unit by housing unit. Pill line and sick call triage are done simultaneously during the grab-and-go meal time-frame, again, unit-by-unit. At FCI Fort Dix, inmates were otherwise locked in their housing unit for the remainder of the day and are never mingling with inmates from other housing units. As of May 18, 2020, inmates will be permitted a short outdoor recreation time in front of their housing unit, two days per week. Inmates will not mingle with inmates from other housing units during the recreation period.

Action Plan for COVID-19, Phase Six

14. On April 13, 2020, the Director of the Bureau ordered the implementation of Phase 6 of its COVID-19 Action Plan. Specifically, the Director ordered an extension of the nationwide action plan in Phase 5, which applies to medical screening, limited inmate gathering, daily rounds, limited external movement, and fit testing, until May 18, 2020. Phase Six has been implemented at FCI Fort Dix.

II. STEPS TAKEN AT FCI FORT DIX TO ADDRESS COVID-19

15. The FCI Fort Dix Clinical Staff consists of 4 Physicians, 10 Mid-Level Providers, 11 Registered Nurses, 2 Infection Control/Improving Performance Nurses, and 2 Medication Technicians, as well as 4 Pharmacists, 3 Dentists, and 2 Dental Hygienists. The Health Services Department is accredited by The

Joint Commission (JC), the American Correctional Association (ACA) and the Accreditation Association for Ambulatory Health Care (AAAHC).

16. In addition to the steps taken at the national level, FCI Fort Dix itself has also taken a number of additional measures in response to the COVID-19 pandemic, including providing inmate and staff education; conducting inmate and staff screening; putting into place testing, quarantine, and isolation procedures in accordance with Bureau policy and CDC guidelines; ordering enhanced cleaning and medical supplies; and taking a number of other preventative measures.

17. From 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. Since March 2, 2020, the Warden has posted guidance to inmates through the TRULINCS electronic messaging system more than five times. Topics have included CDC guidance on COVID-19 and proper handwashing, how to stop the spread of germs, and proper sanitation. On March 25, 2020, written guidance was posted inside of housing units. Staff have also been educated through informational e-mails.

18. Starting on March 16, 2020, all staff and necessary contractors entering the confines of the institution had to

complete a medical questionnaire and temperature check. This practice is still currently being utilized. Staff with any symptoms or fever are sent home by medical staff.

19. At the onset of the pandemic, staff were also encouraged to be "fit tested" for N-95 masks which are necessary for entry to the isolation unit and escorted outside medical trips to other facilities.

20. Any and all new inmates coming in to FCI Fort Dix are also screened for any fever or symptoms. 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.

21. With respect to healthcare procedures for the Low facility, all inmates have temperature checks and a symptom assessment every other day (East and West Compounds alternate days). In order to minimize the movement of inmates, sick call slips are being distributed in the housing units. The inmate will then be triaged at the daily Pill Line (for inmates necessitating non-self-carry medication). Inmates with COVID symptoms are seen immediately. Others are scheduled for a later appointment. 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.

Pill Line is conducted while inmates are obtaining their grab-and-go meal. Pill line is conducted one unit at a time, again to minimize cross contamination between inmates and housing units.

22. From the outset, in accordance with CDC guidance, quarantine and isolation areas were established for the institution. Based on the outbreak of COVID-19 at the Camp (discussed further below), and the need for a larger isolation area, the decision was made to make housing unit 5851 in the Low security institution, the isolation unit. There was no separated area large enough in the Camp to complete this task. 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. FCI Fort Dix does not plan to consolidate inmates (at either the Low or the Camp) with preexisting medical conditions into a single space. It is safer to spread those inmates out across the institution

23. In April 2020, the institution obtained an FDA approved rapid Abbott testing machine which allows us to test approximately 75 inmates in a 24/hour period (based on the length of the test). Prior to obtaining the Abbott testing machine, the institution utilized send-out testing. The Abbott tests take approximately 20 minutes per inmate, and provide immediate results. To date, no inmate at FCI Fort Dix Low has

tested positive for COVID-19. If an inmate were to exhibit symptoms of the virus or report symptoms of the virus, he immediately would be escorted to the Health Services building and examined by a clinician. If COVID-19 is suspected, he would be tested immediately using the Abbott machine. If the inmate tested positive, he would be immediately isolated in Unit 5851. To date, one LOW inmate has been tested for COVID-19 based on symptoms and after examination by a clinician. He tested negative. FCI Fort Dix currently has no plan to test the entire Low, but it has testing capacity and supplies to address issues if they arise. Because it takes 20 minutes to administer, BOP can conduct approximately 75 tests in a 24-hour period day. Moreover, the institution currently has 432 Abbott test kits available. We are expected to obtain approximately 250 test kits per week for the near future. This would allow us to test an entire housing unit in the Low institution if necessary, although this process would take approximately one week.

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

masks. Inmates are encouraged routinely to maintain sanitation and social distancing. Staff have also been issued a continual supply of surgical masks, and during the last week of April, staff were also provided two cloth masks.

III. PRISON CAMP SPECIFICS

25. The first Camp inmate tested positive for COVID-19 on April 3, 2020. The inmate was immediately isolated upon showing of symptoms, and twice daily temperature checks were initiated at the Camp. Inmates showing symptoms of the virus, or reporting symptoms of the virus were also isolated and tested. 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. In the Camp, all services are provided inside the Unit including Food Service, Medical, Psychology, Education, and Commissary.

26. Based on the discovery of COVID-positive inmates in the Camp, the BOP deployed the Abbott test machine to our institution so that we could rapidly test a larger number of inmates at the institution. Based on the positive inmates at the Camp, and in an effort to decrease the population at the Camp to assist in social distancing efforts, a decision was made to place all COVID-19 positive inmates in 5851. The decision was also made to test all inmates eligible for release under the CARES Act, and then house them in a separate housing unit, 5735.

As of today's date, 35 inmates are housed in Unit 5735.

27. As of today's date, 259 COVID-19 tests have been administered, which includes testing of the entire Camp population. Of those tests, 58 inmates tested positive for COVID-19 from the minimum security Camp. Currently, 22 inmates remain in isolation in Unit 5851 and 27 are on the third floor in recovery, pending return to the Camp. Inmates are moved to the recovery floor after a period of isolation for 10 days and symptom free. 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. One inmate was hospitalized based on COVID-19 symptoms. He was never intubated and has since returned to the institution. He has twice tested negative and is in the recovery unit. No other inmates have been hospitalized with COVID-19 complications, and a number of the inmates are completely asymptomatic.

28. Currently only inmates verified negative to the COVID-19 virus are housed at the Camp, a total of 124 inmates. This number provides sufficient space for the inmates to social distance.

IV. PETITIONER SPECIFICS

29. Inmate Wragg, Reg. No. 67165-019, is a 38-year old inmate with a history of hypertension, hyperlipidemia, seizure disorder and schizoaffective disorder. His medical conditions

are well-controlled with medication; however, his medical conditions do put him in the high risk group if he were to contract COVID-19.

30. Inmate Scronic, Reg. No. 79605-054, is a 49-year old inmate with a history of hypertension, depression, and basal cell carcinoma for which he was treated with radiation and chemotherapy. Based on his history of skin cancer, he is at a higher risk if he contracts COVID-19. Because inmate Scronic is a Camp inmate, he was tested using the Abbott testing machine and he is negative for the COVID-19 virus.

31. Inmate Bogdan, Reg. No. 07918-088, is a 68-year old inmate with a history of high BMI, hypertension, hyperlipidemia, chronic GERD, back pain, and chronic exertion shortness of breath. His medical conditions are well-controlled with medication; however, his medical conditions do put him in the high risk group if he were to contract COVID-19.

32. Inmate Soto-Concepcion, Reg. No. 72850-067, is a 38-year old inmate with a history of Myocardial Infraction (twice), hypertension, and hyperlipidemia. His conditions are stable; however, his conditions do put him in the high risk group were he to contract COVID-19. Because inmate Soto-Concepcion is a Camp inmate, he was tested using the Abbott testing machine and he is negative for the COVID-19 virus.

V. CONCLUSION

33. In sum, the Bureau and FCI Fort Dix has taken the COVID-19 pandemic extremely seriously and have implemented numerous measures to proactively combat the spread of this disease to staff members and the inmate population. The various phases of the Bureau's Action Plan have been designed and implemented in a systemic manner both nationally and at FCI Fort Dix in order to mitigate the spread of COVID-19. In addition to the steps taken at the national level, FCI Fort Dix itself has taken a number of measures to increase social distancing in a prison environment and to prevent the spread of COVID-19 in the Camp and Low institution.

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.

N. A. Turner-Foster, MD, CD
Nicoletta A. Turner Foster, M.D.
Clinical Director
FCI Fort Dix

05/18/2020
Date

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

[PROPOSED] **ORDER**

This matter having come before the Court on the Petitioners' Motion for Preliminary Injunction (ECF No. 9) seeking immediate relief for Petitioners and their proposed class; and the Respondents' Motion to Dismiss seeking to dismiss this action in its entirety (ECF No. 28), and the parties having fully briefed the issues in the two said motions, and the Court having heard argument on the two said motions;

IT IS on this ____ day of _____, 2020;

ORDERED that the motion to dismiss of the Respondents is GRANTED; and it is further

ORDERED that the Eighth Amendment claims in this action brought under 28 U.S.C. § 2241 are DISMISSED for lack of subject matter jurisdiction; and it is further

ORDERED that the claims in this action brought under the Rehabilitation Act are DISMISSED for failure to state a claim; and it is further

ORDERED that the motion for preliminary injunction of the Petitioners is DENIED.

At Camden, New Jersey

RENÉE MARIE BUMB, U.S.D.J.



U.S. Department of Justice

United States Attorney
District of New Jersey
Civil Division

CRAIG CARPENITO
UNITED STATES ATTORNEY

*J. Andrew Ruymann
Assistant United States Attorney
Chief, Civil Division*

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fax: (609) 989-2360

May 18, 2020

Via ECF

Hon. Renée M. Bumb, U.S.D.J.
United States District Court
Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets Room 1050
Camden, NJ 08101

**Re: *Wragg, et al. v. Ortiz, et al.*, Civil Action No. 20-cv-5496
Respondents' Brief**

Dear Judge Bumb:

In accordance with the Court's May 12, 2020 order, enclosed is Respondents' consolidated moving brief and brief in opposition to Petitioners' motion for a preliminary injunction. It is our understanding that the length of each of these briefs is ordinarily limited to 30 pages under Local Rule Civil Rule 7.2 when using proportional 12-point font. However, as discussed with the Court during the May 12 conference, Respondents are making a consolidated submission. To the extent the Court considers this consolidated 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 submit that the complexity and significance of this matter support the filing of an over-length brief, and we and respectfully seek leave to file same. Thank you very much for your continued attention to this case.

Respectfully submitted,

CRAIG CARPENITO
United States Attorney

/s/ J. Andrew Ruymann
J. ANDREW RUYMANN
Chief, Civil Division
Assistant U.S. Attorney

CRAIG CARPENITO
United States Attorney
J. ANDREW RUYMANN
MARK E. COYNE
ELIZABETH A. PASCAL
JOHN F. BASIAK JR.
JOHN T. STINSON
Assistant U.S. Attorneys
402 East State Street, Room 430
Trenton, NJ 08608
Attorneys for Respondents

**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

CERTIFICATE OF SERVICE

I, JOHN F. BASIAK JR., hereby certify that on May 18, 2020, the following documents were filed and served on Petitioners' counsel via the Court's ECF system: Respondents' Notice of Motion; Respondents' 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); Declaration of Dr. Nicoletta Turner-Foster; proposed order; and a letter regarding the length of Respondents' brief.

By: /s/ John F. Basiak Jr.
JOHN F. BASIAK JR.
Assistant U.S. Attorney
Attorney for Respondents