

FILED

12:51 pm Jun 10 2020
Clerk U.S. District Court
Northern District of Ohio
Cleveland

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

Wilson, et al
Plaintiffs,

Case No. 4:20-cv-794

v.

Judge James S. Gwin, assigned

Williams, et al.

Defendants.

**EMERGENCY MOTION TO INTERVENE AS
ADDITIONAL PLAINTIFF/AFFECTED PARTY**

Eric Henderson hereby moves for permissive intervention as an additional Plaintiff/Interested Party under Fed. R. Civ. P. 24(b)(1)(B). Defendant currently is housed at FCI-Elkton, a Bureau of Prisons facility in Ohio. This Court understands FCI-Elkton is one of the "hotspots" for COVID-19 infection. Henderson is an inmate that is immunocompromised. He is at a high risk of contracting and dying from COVID-19 due to his compromised immune system. Henderson is diagnosed with Keratoconus, he had eye surgery, and he has a prolonged use of prescription medicine known as Prednisone. According to the Center For Disease Control ("CDC"), prolonged use of Prednisone, a corticosteroid, causes Henderson to be immunocompromised. (See "People Who Are At Higher Risk For Severe Illness", CDC Corona Virus Disease 2019 (COVID-19) CDC.gov, attached hereto as Henderson's

Exhibit A) Therefore, according to the CDC, Henderson is at a greater risk of catching and dying from COVID-19. *Id.*

On April 22, 2020, this Court ordered FOP to list all FCI-Elkton prisoner's that are higher risk at of catching and dying from COVID 19. *Williams v Williams* Case No. 4:20-cv-794. FCI-Elkton failed to include Henderson, who is immunocompromised with a greater risk, on the list of inmates with greater risk of catching and dying from COVID-19. This blatant omission demonstrates the Federal Bureau of Prison FCI-Elton's disregard for and violation of this Court's injunctive order. Notwithstanding his immunocompromised condition, the FCI-Elkton is doing nothing to give Henderson him the considerations for high risk inmates as ordered by this Court such as furlough, home confinement, early release or transfer to a facility not considered a COVID-19 hot spot.

BACKGROUND

In June 2014, Henderson pled guilty to conspiracy to possess with intent to distribute and to distribute heroin. In March 2015, Judge Guzman imposed a sentence of 200 months

imprisonment plus five years of supervised release. Henderson began serving his sentence in May 2016. His projected release date is in July 2030. Before he reported to prison Henderson was diagnosed with hypertension while weighing 338 pounds. While being incarcerated at FCI-Elkton, Henderson was diagnosed with Keratoconus and had eye surgery. Since the surgery, he has taken a prescription medication called prednisone, which has caused him to become immunocompromised and seeks compassionate release, furlough, house arrest or a shortened sentence on that basis. (See Eric Henderson's Medical Records attached hereto as Henderson's Exhibit B)

The Government acknowledges, Henderson has exhausted his administrative remedies, as he requested compassionate release from the Warden on April 5, 2020 and received a denial letter on April 27, 2020. Two days later, Defendant filed his emergency motion for compassionate release and/or other remedies pursuant to under 18 U.S.C. Section 3582(c)(1)(A)(i) and Section 3553(a). On May 7, 2020, Robert M. Dow, Jr., United States District Judge assigned to emergencies, denied Henderson's Emergency Motion. Judge

Dow determined that Henderson was not entitled to compassionate release or release under 3583(c)(1)(A)(i). *U.S. v. Eric Henderson* 13-cr-405-2 Judge Dow opined that Henderson, who is immunocompromised, should pursue relief pursuant to this Court's Injunctive Order in the case at bar. *U.S. v. Eric Henderson* 13-cr-405-2 Notwithstanding his acknowledgement that Henderson is immunocompromised, and he is housed in a COVID-19 hot spot, Judge Dow offered no relief. Henderson now files his motion to intervene.

ARGUMENT

This Court found that Elkton's dorm-style structure rendered it unable to implement or enforce social distancing. The COVID-19 virus, now a pandemic, is highly contagious. Older individuals or those who have certain underlying medical conditions are more likely to experience complications requiring significant medical intervention and are more likely to die. *Wilson et al v. Williams et al* 4:20 cv 794.

This Court's ruling describes Henderson's medical circumstances as giving rise to compassionate discharge under 18

U.S.C. Section 3582 (c) (1) (A) or other relief such as furlough, home confinement, or transfer. *Wilson et al v. Williams et al*, 4:20 cv 794. Henderson's immune system is compromised and the complications from his medical condition requires intervention from this Court because immunocompromised people are more likely to die from Covid-19. *Wilson et al v. Williams et al* 4:20 cv 794.

The Government's Response argues that the Bureau of Prisons ("BOP") determination to leave Henderson at FCI Elkton requires no Court intervention because BOP knows what is best. This assertion is in direct contravention of the Court's ruling establishing that fact that the BOP is not best to protect vulnerable inmates like Henderson from the scourge of COVID-19. Moreover, FCI Elkton has failed to list Henderson as a high-risk inmate. This shows FCI Elkton's failure to comply with his Court's Order. *Wilson et al v. Williams et al* 4:20 cv 794. In fact, the BOP is the worst place for immunocompromised inmates seeking to avoid the scourge of COVID-19. On information and belief, there is no widespread testing at FCI- Elkton. Only symptomatic inmates and

staff are tested. This means inmates and staff who do not have symptoms and who are carriers of COVID-19 are free to infect the entire prison population. The BOP at FCI Elkton does not know who has COVID-19 unless they are sick and are dying.

Accordingly, FCI Elkton does not know has COVID-19 until it is too late. Henderson cannot be safely housed at FCI Elkton where social distancing is impossible according to this Court, and where there is no widespread testing.

Where there is widespread testing of all inmates and staff at Marion Correctional Institution, two miles away from Elkton, it was determined that 80% of the inmate population was infected with COVID-19. (See “Why Has Marion’s Prison become Number One Corona Hotspot”, [Cleveland.com/Coronavirus/2020](https://www.cleveland.com/coronavirus/2020) attached hereto as Henderson’s Exhibit C)

The BOP has developed and is implementing such procedures including but not limited to the transfer of inmates to home confinement particularly in cases where inmates have health problems that make them susceptible to serious illness from COVID-19. There is a procedure in place, however, the BOP has

not taken Henderson's immune deficiency seriously and this Court's intervention is necessary.

Judge Dow opined, officials in charge of health and safety on the ground in Ohio, where Defendant has been housed for the past five years, are far better situated to evaluate Defendant's health risks than a judge hundreds of miles away (Cite citing *United States v. Allegra*, Case No. 15-cr- 243, Order (Docket Entry 232) (N.D. Ill. Apr. 13, 2020) Judge Dow stated "This Court is not persuaded to second- guess or overrule the decisions made by the Ohio prison officials. But even if the Court were inclined to consider granting relief in these circumstances, it believes that a temporary furlough or transfer to another BOP facility would be more appropriate than a flat-out reduction of Defendant's sentence by approximately 70%. And that relief cannot be awarded under Section 3582, though it could be pursuant to the Ohio judge's injunction order. If Defendant believes that the prison officials erred in excluding him, perhaps Defendant should contact counsel for Petitioners in the Ohio case and raise the possibility that the judge's order was evaded, even if by oversight " *U.S. v. Eric Henderson* 13-cr-405-2 Judge Dow's reasoning is respectfully not without its flaws.

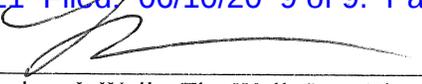
First, this Court's Injunctive Order establishes that the Ohio Prison Officials are not best to make decisions where this Court issued an Injunctive Order. In fact, regarding Henderson a high-risk inmate, the Ohio prison authorities are doing nothing in contravention of this Court's Injunctive Order. Second, Judge Dow seems to realize that Henderson is entitled to some relief such as temporary furlough or transfer due to the scourge of COVID-19, but Judge Dow chose to pass the buck.

Henderson's medical condition should not continue to be ignored until it is too late. Henderson's immunocompromised condition requires that he be granted furlough, early release, home confinement or transfer.

CONCLUSION

Eric Henderson respectfully requests that the Court grant leave for him to permissively intervene as an additional Plaintiff as he is a party affected party Rule 24(b). Pursuant to Rule 24(c) a copy of the proposed Emergency Motion and Reply is attached.

Respectfully submitted,



/s/ La Coulton J. Walls, The Walls Law Firm,
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Illinois 60622 Attorney for movant/intervening
claimant Eric Henderson

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing
was served upon counsel for all parties through the court's CM/ECF
system on May 15, 2020.