UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ALEXANDER GRINIS, MICHAEL GORDON, and ANGEL SOLIZ, on behalf of themselves and those similarly situated, *Petitioners*, v. STEPHEN SPAULDING, Warden of Federal Medical Center Devens, and MICHAEL CARVAJAL, Director of the Federal Bureau of Prisons, in their official capacities, *Respondents*.	No. 20-cv-10738-GAO

MEMORANDUM IN SUPPORT OF
MOTION FOR IMMEDIATE BAIL CONSIDERATION, TEMPORARY RESTRAINING ORDER, AND PRELIMINARY INJUNCTIVE RELIEF

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INTRODUCTION

"The COVID-19 global pandemic threatens all of us,"[1] but "correctional institutions face unique difficulties in keeping their populations safe during this pandemic."[2] And these life-threatening conditions pose a special threat to FMC Devens, which houses many of the oldest and most medically vulnerable prisoners in the entire federal prison system.

Yet the Respondents, Warden Stephen Spaulding and BOP Director Michael Carvajal, have failed to take necessary measures to mitigate that threat, in violation Eighth Amendment rights of Petitioners and proposed Class Members. Immediate judicial action is necessary to reduce the population of FMC Devens to a level that is sufficient to ensure effective social distancing, thereby reducing the spread of COVID-19, preventing serious illness—and, ultimately, saving the lives of prisoners, staff, and people in the surrounding community.

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[1] *Savino v. Souza*, No. 20-cv-10617-WGY, 2020 U.S. Dist. LEXIS 61775, at *7 (D. Mass. Apr. 8, 2020); *see* Declaration of Joe Goldenson, M.D. (Apr. 14, 2020) ("Goldenson Decl.") ¶¶ 6-16, attached as Exhibit 1.

[2] *Savino*, 2020 U.S. Dist. LEXIS 61775, at *7 (quoting *Comm. for Pub. Counsel Servs. v. Chief Justice of the Trial Ct.*, 484 Mass. 431, 436 (2020)); *see* Goldenson Decl. ¶¶ 17-27.

FACTUAL BACKGROUND

Because there is no vaccine, cure, or proven therapeutic treatment for COVID-19, the only public health measures that have proven effective in limiting the spread of potentially deadly infections are strict social distancing and diligent hygiene practices. *See* Goldenson Decl. ¶ 16.[3]

The Centers for Disease Control and Prevention ("CDC") recommends that *everyone* practice "social distancing," even among people with no symptoms, because asymptomatic and pre-symptomatic people can transmit the virus to others.[4] Also known as "physical distancing," "social distancing" means "stay[ing] at least 6 feet from other people" and "stay[ing] out of crowded places."[5]

Social distancing is no less important for prisoners at FMC Devens than it is for personnel in the federal courthouse or members of the public at large. "Although social distancing is challenging to practice in correctional and detention environments, it is a cornerstone of reducing transmission of respiratory diseases

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[3] *See also* CDC, "Coronovirus Disease (COVID-19)," (updated Apr. 7, 2020) ("There are no drugs or other therapeutics approved by the U.S. Food and Drug Administration to prevent or treat COVID-19. Current clinical management includes infection prevention and control measures and supportive care, including supplemental oxygen and mechanical ventilatory support when indicated."), *available at* https://www.cdc.gov/coronavirus/2019-ncov/hcp/therapeutic-options.html (last accessed Apr. 14, 2020).

[4] CDC, "Social Distancing," *available at* https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html (last accessed Apr. 13, 2020).

[5] *Id.*

such as COVID-19."[6] Because "many individuals 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."[7]

In fact, preventing the rampant spread of infection at FMC Devens may be more important than in almost any other institutional setting. By design, FMC Devens houses many of the oldest and most medically vulnerable prisoners in the entire BOP system. These are the people who, if infected, are most likely to require advanced support and intensive care; they also face the greatest risks of serious illness and death.[8]

But effective social distancing is impossible at FMC Devens, both in the Medical Center and the Camp. *See* Declaration of Alexander Grinis (Apr. 13, 2020)

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[6] CDC, "Interim Guidance for Correctional and Detention Facilities." ("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.")), *available at* https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last accessed Apr. 13, 2020).

[7] *Id.*

[8] *See* Sharon Begley, "Who Is Getting Sick, and How Sick? A Breakdown of Coronavirus Risk by Demographic Factors," *STAT NEWS* (Mar. 3, 2020), *available at* https://www.statnews.com/2020/03/03/who-isgetting-sick-and-how-sick-a-breakdown-of-coronavirus-risk-by-demographic-factors/; *see also* Jason Oke & Carl Heneghan, "Global Covid-19 Case Fatality Rates," *Oxford COVID-19 Evidence Service* (Mar. 28, 2020) ("Patients with comorbid conditions had much higher [fatality] rates."), a*vailable at* https://www.cebm.net/covid-19/global-covid-19-case-fatality-rates/.

("Grinis Decl."), ¶ 7, attached as Exhibit 2; Declaration of Michael Gordon (Apr. 13, 2020) ("Gordon Decl."), ¶ 8, attached as Exhibit 3; Declaration of Angel Soliz (Apr. 13, 2020) ("Soliz Decl."), ¶ 7, attached as Exhibit 4; *see generally* Goldenson Decl. ¶¶ 17-19 ("Space and resource limitations—and the resulting inability of inmates and employees to practice social distancing—make it extremely difficult to effectively quell the explosive growth of a highly contagious virus."); *id.* ¶¶ 21-23 ("[P]risoners are physically unable to practice social distancing," consistent with CDC guidelines, and "[b]ecause of this, incarcerated individuals are less able to protect themselves from being exposed to and becoming infected with infectious diseases, such as COVID-19."); *cf. Calderon Jimenez v. Cronen*, No. 18-cv-10225-MLW (D. Mass. Mar. 26, 2020) [DE 507-1 at 4] (recognizing "[s]ocial distancing is difficult or impossible" in prisons).

The limited steps that FMC Devens has reportedly taken, thus far, to prevent, detect, and treat cases of COVID-19 in the Medical Center and Camp fail to comply with even the most minimal recommendations of public health experts, and those steps are "clearly not enough to mitigate the risk of a surge of COVID-19 infections at the facility." Goldenson Decl. ¶ 35. For example, taking the temperatures of prisoners and staff who *already* show symptoms of COVID-19, such as fever, sneezing, or coughing, "will not prevent the infection from infiltrating" FMC Devens, or spreading throughout the facility, because "individuals who are asymptomatic, either during the early stages of infection or throughout their entire

period of infection" can unknowingly transmit the virus to others and shed the virus to surfaces and objects that others touch. *Id.* ¶ 36.

Indeed, Respondents are "flying blind" without adequate testing, so they do not—and cannot know—how many prisoners and staff may already be infected at FMC Devens. As of this filing, the BOP has not implemented any national testing protocol to detect the actual incidence of COVID-19 cases in FMC Devens or other institutions.[9] Although 17 prisoners at FMC Devens had reportedly been tested as of April 7, 2020, all with negative results,[10] that figure represents *less than 2 percent of the facility's total population*, and it almost certainly understates the actual number of infections in the Medical Center and Camp, due to limited testing and dubious disclosures.[11]

Moreover, despite the assurances from Respondent Carvajal and directions from Attorney General William Barr, the BOP is moving far too slowly to address the COVID-19 pandemic. As of April 14, 2020, 444 federal prisoners and 248

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[9] *See* Frank G. Runyeon, "NY Prison's Uneven COVID-19 Testing Puts Inmates At Risk," *Law360* (Apr. 10, 2020), *available at* https://www.law360.com/articles/1262694/ny-prisons-uneven-covid-19-testing-puts-inmates-at-risk.

[10] *See United States v. Turner*, No. 17-cr-132 (E.D. Pa.) (letter from U.S. Attorney's Office to Judge Baylson) [DE #44 at 1].

[11] *See* Walter Pavlo, "Bureau Of Prisons Underreporting COVID-19 Outbreaks In Prison," *Forbes* (Apr. 1, 2020), *available at* https://www.forbes.com/sitetis/walterpavlo/2020/04/01/bureau-of-prisons-underreporting-outbreaks-in-prison/#487c61f27ba3; *see* Gordon Decl. ¶ 8 (noting prisoners in various and staff have "appear[ed] to be sick" and "suffering flu-like symptoms" in recent weeks).

correctional staff, across 44 institutions, have tested positive for COVID-19, representing a jump of more than 100 confirmed cases in just one day.[12] Notably, half of the Medical Centers in the BOP system (Butner, Carswell and Forth Worth) have already reported multiple cases.[13] Yet the BOP continues to fail to take full advantage of its statutory authorities to quickly and significantly reduce the population at FMC Devens to prevent deadly outbreaks *before they occur*.

LEGAL ARGUMENT

Both "the light of reason" and "the expert advice of the CDC" demand that this Court take immediate action "to reduce the population" at FMC Devens in sufficient number, and with sufficient speed, to prevent the spread of deadly infection, especially among older, medically vulnerable prisoners, "so that all those who remain (including staff)" may be better protected." *Savino*, 2020 U.S. Dist. LEXIS 61775, at *26-27.

I. Petitioners and other Class Members should be considered for immediate release on personal recognizance or bail pending a decision in these habeas proceedings.

In these habeas proceedings pursuant to 28 U.S.C. § 2241, this Court has "inherent power to release the petitioner[s]," and other similarly situated federal prisoners at FMC Devens, "pending determination of the merits." *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (*per curiam*). "Such authority may be

[12] *See* BOP, "COVID-19 Cases," *available at* https://www.bop.gov/coronavirus/ (last accessed Apr. 14, 2020). As of April 14, 2020, 388 federal prisoners and 201 correctional staff had tested positive.

[13] *See id.*

exercised in the case of 'a health emergency,' where the petitioner has also demonstrated a likelihood of success on the merits." *Savino*, 2020 U.S. Dist. LEXIS 61775, at *26-27 ("diligently entertaining bail applications while the petition for habeas corpus are pending").

The COVID-19 pandemic is such an emergency, because "some infected people die," and "if [a habeas] petitioner is infected and dies, the case will be moot," and "[t]he habeas remedy will be ineffective." *Calderon Jimenez v. Cronen*, No. 18-cv-10225-MLW (D. Mass. Mar. 26, 2020) (granting immediate interim release of class member in habeas proceeding) [DE 507-1 at 4]. And as described *infra* Section II(B), Petitioners are likely to succeed on the merits of their Eighth Amendment claim.

One court in this district, and courts elsewhere, have granted such preliminary habeas relief to civil immigration detainees who also face risks of infection, illness, and death due to COVID-19. *See, e.g.*, *Avendano-Hernandez v. Decker*, No. 20-cv-1589 (JPO) (S.D.N.Y. Apr. 1, 2020) (ordering immediate release of habeas petitioner); *Calderon Jimenez v. Wolf*, No. 18-cv-10225-MLW (D. Mass. Mar. 26, 2020) (finding "extraordinary circumstances exist that make the grant of bail necessary . . . to make the habeas remedy effective"). Indeed, in *Savino*, the court has repeatedly exercised "its authority to order bail for habeas petitioners under the reigning 'exceptional circumstances' of this nightmarish pandemic." *Savino*, 2020 U.S. Dist. LEXIS 61775, at *27 (quoting *Glynn v. Donnelly*, 470 F.2d 95, 98 (1972)).

Since that case was filed on March 27, the court has released 43 detainees on bail, pending a decision on the merits of their underlying habeas claims.

Similarly, this Court should immediately implement an efficient and effective process for identifying all those prisoners at FMC Devens who may be released on personal recognizance or bail pending a decision on the merits in this habeas proceeding.

II. Immediate judicial action is necessary to protect Petitioners, other Class Members, and the general public from the dangers of the COVID-19 pandemic.

For a temporary restraining order, a petitioner "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "[W]hen the government is the opposing party," the third and fourth factors—whether the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is denied and weighing the public interest—"merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009). For a preliminary injunction, a petitioner must make a substantially similar showing to obtain relief. *See Largess v. Supreme Jud. Ct. for the Com. of Mass.*, 317 F. Supp. 2d 77, 81 (D. Mass. 2004).

The purpose of a TRO is "preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing[.]" *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974). Thus, this Court may issue a temporary

restraining order without waiting for any response from Respondents, or holding an adversary hearing, if it finds that "immediate and irreparable injury . . . will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1). Here, immediate judicial action is warranted, because the "risk of injury"—or worse, death—"is traceable to the government's act of confining" Petitioners and Class Members "in close quarters" at FMC Devens, where they cannot engage in effective social distancing, yet that imminent danger "would of course be redressable by a judicial order of release or other ameliorative relief." *Savino*, 2020 U.S. Dist. LEXIS 61775, at *13.

A. In the absence of immediate relief, Petitioners and other Class Members will suffer irreparable harm—infection, serious illness, and death.

Respondents have responsibility for, and control over, Petitioners and Class Members, yet Respondents have failed to comply with public health recommendations, including CDC guidelines, to protect the prisoners at FMC Devens. Respondents have not only failed to implement effective social distancing, but they have also prevented—and continue to prevent—prisoners from taking steps to protect themselves. As a result, "FMC Devens is a tinder-box that is waiting to explode with a surge of COVID-19 infections" among Petitioners and the proposed Class Members. Goldenson Decl. ¶ 34.

> The facility has a high number of medically vulnerable individuals living in conditions where they are unable to practice any kind of meaningful physical distancing or maintain proper hygiene. The failure to routinely clean bathrooms and surfaces like phones and computers after every use creates a perfect pathway for the transmission of the virus. The facility is not a closed environment, with

> correctional officers and new prisoners arriving daily, and many people circulating amongst the units for jobs and medical treatment. And most important, the current population levels and physical structures do not allow prisoners or correctional officers to follow CDC's recommendation to maintain 6 feet of distance between themselves.

Id.; *see generally id.* ¶ 26 (stating that "outbreaks of COVID-19 in jails, prisons, and detention centers in the U.S. are inevitable" and, therefore, that "[r]eleasing as many individuals as possible is important to protect the health of those incarcerated" as well as "custodial, health care, and other facility staff and the community as a whole").

Petitioners or other Class Members will inevitably suffer infections unless immediate, remedial measures are taken, including reducing the population at FMC Devens such that effective social distancing becomes possible. Many prisoners will get severely ill; some will suffer permanent injury to their lungs or other organs; and others will die, "the single most irreparable harm of all." *Turner v. Epps*, 842 F. Supp. 2d 1023, 1028 (S.D. Miss. 2012). *See* Goldenson Decl. ¶¶ 11-12, 14.

"In this moment of worldwide peril from a highly contagious pathogen, the government cannot credibly argue that [Petitioners and Class Members] face no 'substantial risk' of harm (if not 'certainly impending') from being confined in close quarters in defiance of the sound medical advice that all other segments of society now scrupulously observe." *Savino*, 2020 U.S. Dist. LEXIS 61775, at *13. It makes no difference whether, as of this filing, there are confirmed infections among

prisoners and staff at FMC Devens. Prisoners who are not yet known to be infected, or who are incarcerated in facilities that the BOP has not publicly identified as "materially affected" by the COVID-19 pandemic, cannot be disregarded as "remote bystanders" to worsening public health crisis in the federal prison system, because "[t]hey are that system's next victims." *Brown v. Plata*, 563 U.S. 493, 532 (2011).

B. Petitioners and other Class Members are likely to succeed on the merits of their Eighth Amendment claim.

"Prisoners retain the essence of human dignity inherent in all persons," and "[r]espect for that dignity animates the Eighth Amendment prohibition against cruel and unusual punishment." *Plata*, 563 U.S. at 510 (citing *Atkins v. Virginia*, 536 U.S. 304, 311 (2002) ("The basic concept underlying the Eighth Amendment is nothing less than the dignity of man." (internal quotations omitted))).

"A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 828 (1994). "[W]hen the State by the affirmative exercise of its power so restrains an individual's liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs – *e. g.*, . . . medical care, and reasonable safety – it transgresses the substantive limits on state action set by the Eighth Amendment." *DeShaney v. Winnebago Cnty. Dep't of Social Servs.*, 489 U.S. 189, 199-200 (1989). "Contemporary standards of decency require no less." *Helling v. McKinney*, 509 U.S. 25, 32 (1993) (citing *Estelle v. Gamble*, 429 U.S. 97, 103-05 (1976)). "A prison that deprives prisoners of . . . . adequate medical care is

incompatible with the concept of human dignity and has no place in civilized society." *Plata*, 563 U.S. at 511.

Of particular significance here, incarcerating prisoners in crowded conditions that expose them to infectious disease violates the prohibition on cruel and unusual punishment.

> In *Hutto v. Finney*, 437 U.S. 678, 682 (1978), we noted that inmates in punitive isolation were crowded into cells and that some of them had infectious maladies such as hepatitis and venereal disease. This was one of the prison conditions for which the Eighth Amendment required a remedy, even though it was not alleged that the likely harm would occur immediately and even though the possible infection might not affect all of those exposed. We would think that a prison inmate could also successfully complain about demonstrably unsafe drinking water without waiting for an attack of dysentery. Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease on the ground that the complaining inmate shows no sign of current symptoms.

Helling, 509 U.S. at 33; *see Youngberg v. Romeo*, 457 U.S. 307, 315-16 (1982) (holding it is "cruel and unusual punishment to hold convicted criminals in unsafe conditions"); *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (holding "correctional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease"); *see generally Plata*, 563 U.S. at 519 ("Crowding . . . creates unsafe and unsanitary living conditions that hamper effective delivery of medical and mental health care.").

A prison official acts with "deliberate indifference" to the substantial risk of serious harm, such as from the spread of infectious disease among prisoners, when

he "knows of but disregards an excessive risk" to the health or safety of prisoners. *Farmer*, 511 U.S. at 837. This Court "may conclude" that Respondents know of the substantial risk from the COVID-19 pandemic "from the very fact that the risk [is] obvious." *Id.* at 842. Respondent Carvajal has publicly acknowledged that "[t]he COVID pandemic is creating unique challenges" for the BOP and has already resulted in hundreds of positive cases among prisoners and staff as well as numerous deaths.[14]

Although strict social distancing is the only effective means to prevent the spread of COVID-19, it is impossible at FMC Devens, both in the Medical Center and the Camp. *See* Gordon Decl. ¶ 8 ("It is impossible to stay six feet away from other inmates."); Soliz Decl. ¶ 7 (same); Grinis Decl. ¶ 7 (same). At almost all times, prisoners are "very close together," and they are "not instructed to maintain distance from each other." Gordon Decl. ¶ 9. Staff have "not provided [prisoners] with any specific education about COVID-19 except that wearing masks and washing hands frequently is recommended." Soliz Decl. ¶ 12.

Some Medical Center prisoners are housed in open, dormitory-style units, where they sleep in two-person bunk beds and move around freely. *See* Gordon Decl. ¶¶ 8, 15. Within "open" units, Medical Center prisoners also share common showers and toilets. *See id.* ¶ 8. They also share common phones and computers, which are clustered together and not cleaned between uses. *See id.* ¶ 9. Throughout the day,

[14] Michael Carvajal, Video Transcript of Message to BOP Staff (Apr. 10, 2020), *available at* https://prisonology.com/wp-content/uploads/2020/04/COVID-19-Video-transcript-of-BOP-Director-Michael-Carvajal.pdf (last accessed Apr. 14, 2020).

prisoners move in and out of their units, for programming, recreation, and medical treatment, and during these times, prisoners are required to move in line together, only inches apart, and they often congregate in groups. *See id.* ¶¶ 11-14. For example, prisoners must "march in line to pick up meals from the 'chow hall'" and then return to the unit to eat; they "sit four or five to a table," so "it is not possible to maintain six feet of separation from each other during meals." *Id.* ¶ 14.

Others Medical Center prisoners are housed in units with two-person cells that each contain a bunk bed, toilet, and sink. *See* Soliz Decl. ¶ 7. Within these "closed" units, approximately 120 prisoners share 12 common showers that are "often dirty and littered with used soap, used band-aids, used razors, and other debris." *Id.* ¶ 8-9. They also share 4 common phones and 5 common computers that are "very close together" and "not cleaned between users." *Id.* ¶ 10. Although prisoners in closed units no longer eat in common areas (they now eat in their cells), they must go to the dining hall, pick up their food, and return to the unit to eat. *See id.* ¶ 9. They also "must stand in line next to each other to receive their medications." Soliz Decl. ¶¶ 11.

Conditions are similarly cramped for prisoners in the Camp. *See* Grinis Decl. ¶ 7. There are more than 100 prisoners in the Camp, and they are housed in an open, dormitory-style space, where they sleep in open cubicles, with no doors and walls that do not extend to ceiling. *See id.* Most cubicles are occupied by 4 prisoners in 2 bunk beds; some are occupied by 2 prisoners in a single bunk bed. *See id.* All Camp prisoners share 12 common toilets, sinks, and showers. *See id.* ¶ 8. Prisoners

are tasked with cleaning these facilities twice per day, and they are "often not sanitary." *Id.* Moreover, no free soap is available to Camp prisoners, and hand sanitizer is only available in the kitchen. *See id.* ¶ 9. Camp prisoners also share 4 telephones and 5 computers, which are clustered close together and not cleaned between users. *See id.* ¶ 11. Meals are eaten in the Camp; prisoners stand "very close together" in line to be served food, and they eat at communal tables. *Id.* ¶ 12.

Given these conditions, "persons currently detained at FMC Devens are at significantly greater risk of contracting COVID-19 than if they were permitted to shelter in place in their home communities," and "[i]f infected they are at increased risk of suffering severe complications and outcomes." Goldenson Decl. ¶ 39. Respondents' failure to minimize these known risks by reducing the population at FMC Devens, through compassionate release and/or transfer to home confinement, in order to enable effective social distancing among the remaining prisoners, amounts to deliberate indifference to infection, illness, and death from COVID-19.

"[I]n order to meaningful[ly] decrease the risk of COVID-19 infections at FMC Devens, the facility must reduce the prisoner population sufficiently to ensure social distancing and permit personal hygiene in compliance with CDC guidelines." *Id.* ¶ 40. Nevertheless, Respondents Spaulding and Carvajal have failed to use the BOP's statutory authority to reduce the prisoner population at FMC Devens, and Respondent Spaulding has also denied, or failed to respond to, requests by Petitioners for compassionate release or, in the alternative, transfer to home

confinement. *See* Soliz Decl. ¶ 5 (denied); Gordon Decl. ¶ 20 (no response); Grinis Decl. ¶ 5 (no response).

Since March 26, 2020, when Attorney General Barr issued his first memorandum directing Respondent Carvajal to "utilize home confinement, where appropriate, to protect the health and safety of BOP personnel and the people in our custody," Barr Mem. (Mar. 26, 2020) at 1, attached as Exhibit 5, the BOP has reportedly placed 1,019 prisoners on home confinement.[15] That figure represents *less than 0.5 percent* of the total inmate population in BOP custody. Although no specific statistics are publicly available for FMC Devens, if the BOP has transferred a proportionate number of prisoners from the Medical Center or Camp to home confinement, it would have moved only 5 or 6 prisoners, leaving the remaining prisoners—who still cannot socially distance per CDC guidelines and who are at high risk—vulnerable to infection, serious illness, and death.

These meager efforts pale in comparison to the more urgent steps taken, some weeks ago, by some state officials to significantly reduce the populations of prisons and jails, enable social distancing, and slow the spread of COVID-19.[16]

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[15] *See* BOP, "Frequently Asked Questions regarding potential inmate home confinement in response to the COVID-19 pandemic," *available at* https://www.bop.gov/coronavirus/faq.jsp (last accessed Apr. 13, 2020).

[16] *See, e.g.*, Tracey Tully, "1,000 Inmates Will Be Released from N.J. Jails to Curb Coronavirus Risk," *The New York Times* (Mar. 23, 2020), *available at* https://www.nytimes.com/2020/03/23/nyregion/coronavirus-nj-inmates-release.html; Bernadette Hogan, "Cuomo Orders 1,100 parole violators released from jails over coronavirus concerns," *The New York Post* (Mar. 27, 2020), *available at* https://nypost.com/2020/03/27/cuomo-orders-1100-parole-violators-released-from-jails-over-coronavirus-concerns/; "Kentucky plans to release more than 900

These states have done much more, far faster, for their own prison populations than the BOP has accomplished for its national prison system.

C. The balance of equities favors immediate relief, and the public interest demands it.

The urgent need to comply with the Eighth Amendment by protecting prisoners—especially elderly and medically vulnerable prisoners at FMC Devens—from infection, disease, and death outweighs any interest in continuing to incarcerate them in a BOP facility or any possible harm to Respondents. Indeed, neither Respondent Spaulding nor Respondent Carvajal will suffer any harm if this Court orders them to fulfill their "profound obligation[s] to protect the health and safety" of all prisoners at FMC Devens. Barr Mem. (Apr. 3, 2020) at 1, attached as Exhibit 6 (recognizing that the duty to "administer the lawful punishments that our justice system imposes" on the entire BOP "a profound obligation to protect the health and safety of all inmates"); *see also* Barr Mem. (Mar. 26, 2020) at 1.

Meanwhile, there is a "strong public interest in ensuring that the detainees of correctional facilities are treated in a human fashion." *Mattsen v. Massimiano*, No. 78-cv-2454-F, 1983 U.S. Dist. LEXIS 11891, at *12 (D. Mass. Nov. 8, 1983) (citing *Preiser v. Newkirk*, 422 U.S. 395, 402 (1974)). And "[i]t is always in the public interest to prevent the violation of a party's constitutional rights." *Jackson Women's*

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prisoners because of the COVID-19 outbreak," *WDRB.com* (Apr. 2, 2020), *available at* https://www.wdrb.com/news/kentucky-plans-to-release-more-than-900-prisoners-because-of-the-covid-19-outbreak/article_aef84282-7541-11ea-8a18-efe5a8cf107d.html; "Inslee: 950 nonviolent offenders will get early release to fight spread of coronavirus in state prisons," *Q13 Fox News* (Apr. 13, 2000), *available at* https://q13fox.com/2020/04/13/inslee-950-nonviolent-offenders-will-get-early-release-to-fight-spread-of-coronavirus-in-state-prisons/.

Health Org. v. Currier, 760 F.3d 448, 458 n.9 (5th Cir. 2014) (quoting *Awad v. Ziriax*, 670 F.3d 1111, 1132 (10th Cir. 2012)); *see Miller v. City of Cincinnati*, 622 F.3d 524, 540 (6th Cir. 2010) ("When a constitutional violation is likely . . ., the public interest militates in favor of injunctive relief[.]"); *Preminger v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005) ("[P]ublic interest concerns are implicated when a constitutional right has been violated, because all citizens have a stake in upholding the Constitution.").

Moreover, putting aside the risks to the prisoners themselves, the public interest also demands aggressive efforts to control outbreaks in prisons, such as FMC Devens, because infections within prison walls will inevitably spread outside them.

> Experts warn that an outbreak in correctional institutions has broader implications for the Commonwealth's collective efforts to fight the pandemic. First, the DOC has limited capacity to offer the sort of specialized medical interventions necessary in a severe case of COVID-19. Thus, as seriously ill individuals are transferred from correctional institutions to outside hospitals, any outbreak in a correctional institution will further burden the broader health care system that is already at risk of being overwhelmed. Second, correctional, medical, and other staff enter and leave correctional institutions every day. Should there be a high concentration of cases, those workers risk bringing infections home to their families and broader communities.

CPCS v. Trial Ct., 484 Mass. 431, 437 (2020); *see* Goldenson Decl. ¶ 27 ("It is difficult to overstate the devastation that a COVID-19 outbreak can inflict on the prisoners, correctional staff and *their surrounding communities*.") (emphasis added).

Public health experts recently explained, in the *New England Journal of Medicine*, that immediate and extensive "efforts to decarcerate" are necessary to protect people inside *and outside* of prisons.

> The boundaries between communities and correctional institutions are porous, as are the borders between countries in the age of mass human travel. Despite security at nearly every nation's border, Covid-19 has appeared in practically all countries. We can't expect to find sturdier barriers between correctional institutions and their surrounding communities in any affected country. . . .
>
> To promote public health, we believe that efforts to decarcerate, which are already under way in some jurisdictions, need to be scaled up; and associated reductions of incarcerated populations should be sustained. The interrelation of correctional-system health and public health is a reality not only in the United States but around the world.[17]

In the early 1990s, a tuberculosis epidemic broke out in New York City; it began in local jails and was spread to the general public by correctional staff who became infected and, then, returned home to their families and communities. *See* Goldenson Decl. ¶ 27. The same could occur with COVID-19: "due to the frequent ingress and egress of employees at [BOP] facilities, *an outbreak within [FMC Devens] can quickly spread to surrounding communities*." *Id.* (emphasis added). Indeed, the risk of such community transmission is especially high for FMC Devens

[17] Matthew J. Akiyama, M.D., Anne C. Spaulding, M.D., and Josiah D. Rich, M.D., "Flattening the Curve for Incarcerated Populations — Covid-19 in Jails and Prisons," *New England Journal of Medicine* (Apr. 9, 2020), *available at* https://www.nejm.org/doi/pdf/10.1056/NEJMp2005687?articleTools=true.

which houses a population of medically vulnerable prisoners that require travel outside the institution for medical treatment.

Finally, any countervailing "public safety" concerns—that is, the fear that a significant release of prisoners will cause a crime wave—are unwarranted, overblown, and outweighed by the real, imminent risk of serious illness and death. First, as noted above, the safety of prisoners at FMC Devens is a matter of "public safety." Further, the Medical Center houses many prisoners that, due to their advanced age and/or poor health, pose no dangers to the community, and the Camp houses mostly non-violent offenders who are serving short sentences or otherwise nearing release. Prisoners transferred to home confinement would remain in BOP custody, and those granted compassionate release would remain on supervised release. Others who may be released on bail, pending a merits decision in this habeas proceeding, could be subject to appropriate release conditions, and they will face severe consequences for any failure to appear or other misconduct. Prisoners, like the rest of us, would also be required to comply with state and local "shelter in place" directives, significantly diminishing any asserted threat to public safety. *Cf. Thakker v. Doll*, No. 1:20-cv-480, 2020 U.S. Dist. Lexis. 59459, at *26 (M.D. Pa. Mar. 31, 2020) (holding that balance of equities favors release of immigration detainees during COVID-19 pandemic in part because failure to appear already carries grave consequences and travel is currently restricted).

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that this Court allow their Motion for the Immediate Consideration of Bail, a Temporary Restraining Order, and Preliminary Injunctive Relief.

Respectfully submitted,

ALEXANDER GRINIS, MICHAEL GORDON, ANGEL SOLIZ,
and others similarly situated,

By their attorneys,

/s/ William W. Fick

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CERTIFICATE OF SERVICE

I, William Fick, certify that I have caused the foregoing document to be served by e-mail PDF upon AUSA Ray Farquhar, Civil Chief (D. Mass.), on April 15, 2020.

Because the government declined to waive formal service under Fed. R. Civ. P. 4, on that same day, I traveled in person to a U.S. Post Office to send the document to the following recipients by certified U.S. Mail:

U.S. Attorney's Office
Attn: Civil Process Clerk
One Courthouse Way
Boston, MA 02210

Attorney General of the United States
950 Pennsylvania Ave NW
Washington, DC 20530

Michael Carvajal, Director
Federal Bureau of Prisons
320 First St., NW
Washington, DC 20534

Stephen Spaulding, Warden
FMC Devens
42 Patton Road
Devens, MA 01434

/s/ William Fick

Exhibit 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ALEXANDER GRINIS, MICHAEL GORDON and ANGEL SOLIZ, on behalf of themselves and thos similarily situated,
Petitioners,

Case No. 20-10738-GAO

v.

STEPHEN SPAULDING, Warden of Federal Medical Center Devens, and MICHAEL CARVAJAL, Director of the Federal Bureau of Prisons, in their official capacities
Respondents.

DECLARATION OF DR. JOE GOLDENSON

Pursuant to 28 U.S.C. § 1746, I, Dr. Joe Goldenson, declare as follows:

1. I am a medical physician with 33 years of experience in correctional health care. For 28 years, I worked for Jail Health Services of the San Francisco Department of Public Health. For 22 of those years, I served as the Director and Medical Director. In that role, I provided direct clinical services, managed public health activities in the San Francisco County jail, and administered the correctional health enterprise, including its budget, human resources services, and medical, mental health, dental, and pharmacy services.

2. I served as a member of the Board of Directors of the National Commission on Correctional Health Care for eight years and was past President of the California chapter of the American Correctional Health Services Association. In 2014, I received the Armond Start Award of Excellence from the Society of Correctional Physicians, which recognizes its recipient as a representative of the highest ideals in correctional medicine.

3. For 35 years, I held an academic appointment as an Assistant Clinical Professor at the University of California, San Francisco.

4. I have worked extensively as a correctional health medical expert and court monitor. I have served as a medical expert for the United States District Court for the Northern District of California for 25 years. I am currently retained by that Court as a medical expert in *Plata v. Newsom*, Case No. 3:01-cv-01351 (N.D. Cal.), to evaluate medical care provided to inmate patients in the California Department of Correctional Rehabilitation. I have also served as a medical expert and monitor at Cook County Jail

in Chicago and Los Angeles County Jail, at other jails in Washington, Texas, and Florida, and at prisons in Illinois, Ohio, and Wisconsin.

5. A true and correct copy of my current curriculum vitae is attached as Exhibit A to this declaration.

I. General Conditions of COVID-19

6. COVID-19 is a serious disease that has reached pandemic status. As of April 14, 2020, there are at least 1,848,439 confirmed cases of COVID-19 worldwide, including 553,822 confirmed cases in the United States. At least 117,217 people have died, including 21,972 in the United States.[1] These numbers have been increasing at an alarmingly rapid rate, reflecting the exponential growth of infections. Because these numbers include only laboratory confirmed cases, they likely understate the actual number of cases and deaths. Most medical and public health experts agree that the situation, which is already dire, will continue to worsen over the coming weeks to months.

7. COVID-19 is a highly contagious respiratory illness. The Centers for Disease Control and Prevention ("CDC") estimates that the reproduction rate of the virus, the R0, is 2.4-3.8, meaning that each newly infected person is estimated to infect on average 3 additional persons. Only the great influenza pandemic of 1918 is thought to have higher infectivity.

8. COVID-19 is transmitted between persons in close proximity (within about six feet) by airborne droplets released by infected individuals when they cough, speak, or sneeze. The droplets can survive in the air for up to three hours. It may also be possible for an individual to become infected by touching a surface or object that has the virus on it and then touching his or her own mouth, nose, or possibly eyes. Infected droplets can survive on surfaces for variable lengths of time, ranging from up to four hours on copper, to 24 hours on cardboard, to 2-3 days on plastic or stainless steel.

9. Signs and symptoms of COVID-19 may appear 2 to 14 days after exposure and may include fever, cough, and shortness of breath or difficulty breathing.

10. A significant number of infected individuals do not exhibit symptoms. This poses a significant public health problem, because asymptomatic individuals—either before the onset of symptoms or because no symptoms will ever manifest—can nevertheless transmit the disease to others. According to the CDC, up to 25 percent of people

[1] World Health Organization, Coronavirus disease (COVID-19) Situation Dashboard, https://who.sprinklr.com/ (accessed Apr. 14, 2020).

infected with COVID-19 will remain asymptomatic.[2] These asymptomatic and mildly symptomatic individuals can, and do, transmit the virus, contributing to its rapid spread.

11. For those who exhibit symptoms, they can become severe, and can lead to hospitalization, the need for intensive care, and in some instance, death. The overall case fatality rate has been estimated to range from .3 to 3.5%, which is 5-35 times the fatality associated with influenza infection.

12. The fatality rate increases with age and for those with conditions that make them particularly susceptible to the virus. Because the primary cause of death due to COVID-19 is respiratory failure, patients with pre-existing pulmonary disease who become infected are more at risk for respiratory failure due to their underlying lung disease. Patients with pre-existing cardiac disease are at risk because cardiac output increases during severe infections. If the heart is already compromised, such an increase can exacerbate a patient's underlying heart disease. Furthermore, some patients also may have severe cardiovascular damage as a result of COVID-19 infection. Medications for certain chronic conditions, such as liver or kidney disease, can also reduce the body's ability to fight infection.

13. The CDC has determinated that the following underlying conditions may increase the risk of serious COVID-19 for individuals of any age:

    - Diabetes;
    - blood disorders, such as sickle cell disease or usage of blood thinners;
    - chronic kidney disease;
    - chronic liver disease, such as cirrhosis or chronic hepatitis;
    - compromised immune systems (immunosuppression), including those caused by cancer, transplant recipients for organs or bone marrow, and HIV or AIDS;
    - current or recent pregnancy;
    - endocrine disorders;
    - metabolic disorders;
    - heart disease, such as congenital heart disease, congestive heart failure, and coronary artery disease;
    - lung disease, including asthma or chronic obstructive pulmonary disease or other chronic conditions associated with impaired lung function; and
    - neurological and neurologic and neurodevelopment conditions, including disorders of the brain, spinal cord, peripheral nerve, and muscle such as cerebral palsy, epilepsy (and other seizure disorders), stroke, intellectual disability, moderate to severe developmental delay, muscular dystrophy, or spinal cord injury.

[2] Apoorva Mandavilli, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, N.Y. Times (Mar. 31, 2020), https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html.

14. A study of the fatality rates for patients with COVID-19 and co-morbid conditions has been found to be "13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer."[3] This disease also "can kill healthy adults in addition to elderly people with existing health problems."[4]

15. There is currently no medical treatment for COVID-19, other than supportive measures, and no vaccine.

16. Because there is no vaccine, there are just two ways to prevent the spread of COVID-19: physical social distancing (keeping persons separated by at least six feet) and hygiene (i.e., frequent handwashing with soap or hand sanitizer, wearing of masks, covering mouth and nose when coughing or sneezing, and cleaning and disinfecting flat and hard surfaces). Individuals must be able to practice physical social distancing for hygiene to have a meaningful impact. Reflecting this reality, as of April 7, 2020, at at least 42 states had issued stay-at-home orders.[5]

II. COVID-19 in Detention Facilities

17. The risk of exposure to and transmission of infectious diseases, as well as the risk of harm from developing severe complications or death if infected,[6] is significantly higher in jails, prisons, and detention centers than in the community.

18. While jails, prisons, and detention centers are often thought of as closed environments, this is not the case. Custody, medical, and other support staff and contractors enter and leave the facility throughout the day. New detainees arrive on a frequent basis. Since there is no effective way to screen for newly infected or asymptomatic individuals, they can unknowingly transmit COVID-19 to those housed in the facility.

19. In addition, current recommendations for social distancing, frequent hand washing, and frequent cleansing of surfaces to prevent infection and the spread of the virus are extremely difficult, if not impossible, to implement in the correctional setting. Space and resource limitations—and the resulting inability of inmates and employees to practice social distancing—make it extremely difficult to effectively quell the explosive growth of a highly contagious virus.

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[3] *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), at 12, https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf.

[4] Bill Gates, *Responding to Covid-19 – A Once-in-a-Century Pandemic?*, The New England Journal of Medicine (February 28, 2020), nejm.org/doi/full/10.1056/NEJMp2003762.

[5] Sarah Mervosh, Denise Lu and Vanessa Swales, *See Which States and Cities Have Told Residents to Stay at Home*, N.Y. Times, (Apr. 7, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-stay-at-home-order.html

[6] *Active case finding for communicable diseases in prisons*, 391 The Lancet 2186 (2018), https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext.

20. Sufficient soap and/or hand sanitizer is often not available for prisoners and staff to wash their hands frequently enough. Housing units are commonly poorly ventilated, which facilitates the transmission of airborne illnesses such as COVID-19.

21. Most important, prisoners are housed in close, crowded quarters, often sharing bunkbeds in a single room or in open dormitories. They also share eating areas, toilets, sinks, showers, telephones and other common areas, which are commonly not disinfected adequately, especially during the current pandemic when more frequent cleaning and disinfecting are required. Food preparation and distribution is often centralized for an entire facility. Guards and other facility staff routinely have direct physical contact with prisoners, especially when handcuffing or removing handcuffs from prisoners who are entering or exiting the facility.

22. As a result of these conditions, prisoners are physically unable to practice social distancing, which CDC has identified as a "cornerstone of reducing transmission of respiratory diseases such as COVID-19."[7]

23. Because of this, incarcerated individuals are less able to protect themselves from being exposed to and becoming infected with infectious diseases, such as COVID-19.

24. These physical conditions are especially challenging because it is well-accepted within the medical community that, due to the burden of chronic illnesses and other persistent health challenges of many of those housed in correctional facilities, incarcerated individuals are physiologically 10 years older than their chronological age. Because physiological age is more relevant when evaluating risk of complications from COVID-19, even younger incarcerated individuals could be at heightened risk of severe complications.

25. Correctional facilities largely lack the robust medical care infrastructure, including staff and resources, that would be necessary to deal with a COVID-19 outbreak.

26. Given these conditions, outbreaks of COVID-19 in jails, prisons and detention centers in the U.S. are inevitable. Releasing as many individuals as possible is important to protect the health of those incarcerated, custodial, health care, and other facility staff, and the community as a whole. Indeed, according to the World Health Organization, "enhanced consideration should be given to resorting to non-custodial measures at all stages of the administration of criminal justice, including at the pre-trial, trial and sentencing as well as post-sentencing stages."[8]

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[7] Centers for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html.

[8] World Health Organization, Regional Office for Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention: Interim guidance (Mar. 15, 2020),

27. It is difficult to overstate the devastation that a COVID-19 outbreak can inflict on the prisoners, correctional staff and their surrounding communities. Given the conditions described above, the infection can spread rapidly within the facility. What is more, because jails and prisons lack the capacity to provide ICU treatment, prisoners with severe cases of COVID-19 must be transferred to community hospitals, further straining their already scarce resources. Finally, due to the frequent ingress and egress of employees at these facilities, an outbreak within a jail, prison, or detention center can quickly spread to surrounding communities. For example, the tuberculosis epidemic that broke out in New York City in the early 1990s began in jails and was spread to the community by jail employees who became infected and then returned home to their families and communities.

III. Risk of COVID-19 at FMC Devens

28. In making my assessment of the danger of COVID-19 at FMC Devens, I have reviewed the declarations of Alexander Grinis, Michael Gordon, and Angel Soliz. I have also reviewed the April 8, 2020 letter submitted by the United States Attorney in *United States v. James Turner*, No. 17-132.

29. My understanding is that FMC Devens is an administrative security medical center of nearly 1,000 prisoners with an adjacent minimum security satellite camp of more than 100 prisoners.

30. Based on the Grinis declaration, it is my understanding that prisoners detained in the minimum security "camp" sleep in a communal space with approximately 100 other prisoners in open 7 by 9 feet cubes that they share with 1 to 3 other prisoners in bunk beds. It is my understanding that all of the camp prisoners share 12 toilets, sinks and showers that are cleaned just twice a day. They also share 4 telephones and 5 computers that are not cleaned between uses, and eat their meals at communal tables after standing very close together to get their food. Camp prisoners work in different areas throughout the facility, including buildings outside of the camp.

31. Based on the Gordon declaration, it is my understanding that prisoners detained in the H-B unit sleep in 65 open cubicles that they share with another prisoner in a bunk bed. It is my understanding that the prisoners detained in the H-B unit share 4 toilets, 6 urinals and 6 shower stalls, as well as a single sink to clean cooking and eating utensils. They also share 4 phones and 5 computers that are not cleaned between uses, and eat their meals at tables of 4 or 5 people after standing inches from each other to get their food. Correctional staff move between the different units. Several prisoners in this unit leave the unit several times a week to go the dialysis facility on the compound.

32. Based on the Soliz declaration, it is my understanding that the approximately 120 prisoners detained in the J-B unit sleep in 2 man cells with a sink and toilet. They share

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http://www.euro.who.int/__data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf.

12 showers that are usually dirty, and also share 4 phones and 5 computers that are not cleaned between uses. Prisoners in the J-B unit eat in their unit after they pick up their meals in the dining hall; they also stand in line together to receive their medications.

33. All of the declarants emphasize that new prisoners continue to enter their unit and that it is impossible for them to maintain six feet of distance from other individuals in their unit.

34. In my professional judgment, FMC Devens is a tinder-box that is waiting to explode with a surge of COVID-19 infections. The facility has a high-number of medically vulnerable individuals living in conditions where they are unable to practice any kind of meaningful physical distancing or maintain proper hygiene. The failure to routinely clean bathrooms and surfaces like phones and computers after every use creates a perfect pathway for the transmission of the virus. The facility is not a closed environment, with correctional officers and new prisoners arriving regularly, and many people circulating amongst the units for jobs and medical treatment. And most important, the current population levels and physical structures do not allow prisoners or correctional officers to follow CDC's recommendation to maintain six feet of distance between themselves.

35. I have reviewed the United States Attorney's description in *Turner* of the steps they have taken at FMC Devens in light of the pandemic, and in my professional opinion it is clearly not enough to mitigate the risk of a surge of COVID-19 infections at the facility.

36. Given the high percentage of individuals who are asymptomatic either during the early stages of infection, or throughout their entire period of infection, FMC Devens' limited "screening" procedures of taking individuals' temperatures will not prevent the infection from infiltrating the facility.

37. What is more, while the letter describes some additional hygiene procedures— such as the use of a disinfectant "known to be active against COVID-19" and the distribution of soap and three masks per month to prisoners—physical distancing is the most important element of preventing the transmission of the disease. Even under the "modified lockdown" at FMC Devens, prisoners are completely unable to successfully implement physical distancing at the current population levels and design capacity of the facilities. Until they are able to consistently do so, no other efforts will meaningfully decrease the risk of COVID-19 infection.

IV. Conclusion

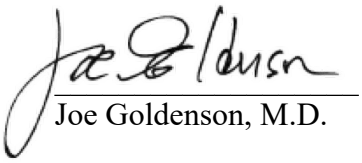
38. For the reasons above, it is my professional opinion that persons currently detained at FMC Devens are at significantly greater risk of contracting COVID-19 than if they were permitted to shelter in place in their home communities. If infected, they are at increased risk of suffering severe complications and outcomes, including death.

39. It is my public health recommendation that in order to meaningful decrease the risk of COVID-19 infections at FMC Devens, the facility must reduce the prisoner population sufficiently to ensure social distancing and permit personal hygiene in compliance with CDC guidelines.

40. It is my professional opinion that it is uneccessary and harmful to automatically quarantine asymptomatic prisoners for two weeks in solitary confinement in the Special Housing Unit ("SHU") prior to release. Even solitary confinement in the facility cannot prevent the spread of infection due to ongoing contact with staff members. What is more, such confinement is unnecessarily traumatic and punitive for the prisoners. Instead, the Bureau of Prisons should work to ensure that prisoners are released to a place where they can maintain medically appropriate isolation for at least 14 days.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 14th day of April 2020.



Joe Goldenson, M.D.

Exhibit A

CURRICULUM VITAE

JOE GOLDENSON, MD

BERKELEY, CA 94703

EDUCATION

Post Graduate Training

February 1992	University of California, San Francisco, CPAT/APEX Mini-Residency in HIV Care
1979-1980	Robert Wood Johnson Fellowship in Family Practice
1976-1979	University of California, San Francisco Residency in Family Practice

Medical School

1973-1975	Mt. Sinai School of Medicine, New York M.D. Degree
1971-1973	University of Michigan, Ann Arbor

Undergraduate Education

1967-1971	University of Michigan, Ann Arbor B.A. in Psychology

PROFESSIONAL EXPERIENCE

Practice Experience

1993-2015	Director/Medical Director Jail Health Services San Francisco Department of Public Health
1991-1993	Medical Director Jail Health Services San Francisco Department of Public Health
1990-1991	Chief of Medical Services, Hall of Justice Jail Health Services San Francisco Department of Public Health
1987-1990	Staff Physician Jail Health Services San Francisco Department of Public Health
1980-1987	Sabbatical
1975-1976	Staff Physician United Farm Workers Health Center, Salinas, CA

Consulting

6/16-8/19	Consultant to Los Angeles Department of Health Services re: provision of health care services in the LA County Jail
4/02-Present	Federal Court Medical Expert, *Plata v. Newsome*, Class Action Lawsuit re: prisoner medical care in California State Prison System
6/14-9/14	Medical expert for the Illinois Department of Corrections and the ACLU of Illinois
6/10-12/13	Federal Court appointed Medical Monitor, U.S.A. v. Cook County, et al., United States District Court for the Northern District of Illinois, No. 10 C 2946, re: medical care in the Cook County Jail
6/08-6/12	Member, *Plata v. Schwarzenegger* Advisory Board to the Honorable Thelton E. Henderson, U.S. District Court Judge
5/08-9/09	Medical Expert for ACLU re Maricopa County Jail, Phoenix, AZ
1/08	Member of the National Commission on Correctional Health Care's Technical Assistance Review Team for the Miami Dade Department of Corrections
9/07-1/10	Federal Court appointed Medical Expert, *Herrera v. Pierce County, et al.,* re: medical care at the Pierce County Jail, Tacoma, WA
8/06-8/12	State Court Appointed Medical Expert, *Farrell v. Allen*, Superior Court of California Consent Decree re medical care in the California Department of Juvenile Justice
6/05	Member of Technical Assistance Review Team for the Dallas County Jail
11/02-4/03	Medical Expert for ACLU re Jefferson County Jail, Port Townsend, Washington
4/02-8/06	Federal Court Medical Expert, *Austin, et. al vs Wilkinson, et al*, Class Action Law Suit re: Prisoner medical care at the Ohio State Penitentiary Supermax Facility
1/02-3/02	Consultant to the Francis J. Curry, National Tuberculosis Center re: *Tuberculosis Control Plan for the Jail Setting: A Template (Jail Template)*,
8/01-4/02	Medical Expert for ACLU re Wisconsin Supermax Correctional Facility, Boscobel, WI
7/01-4/02	Medical Expert for Ohio Attorney General's Office re Ohio State Prison, Youngstown, OH
1/96-1/14	Member and Surveyor, California Medical Association Corrections and Detentions Health Care Committee
5/95-6/08	Medical Expert for the Office of the Special Master, *Madrid vs Alameida*, Federal Class Action Law Suit re: Prisoner medical care at the Pelican Bay State Prison Supermax Facility
3/98-12/98	Member, Los Angeles County Department of Public Health Jail Health Services Task Force

2/98	Medical Expert, Department of Justice Investigation of Clark County Detention Center, Las Vegas, Nevada
6/94	Surveyor, National Commission on Correctional Health Care, INS Detention Center, El Centro, CA

Work Related Committees

1/14 to present	Member, Editorial Advisory Board, *Correctional Health Care Report*
10/11 to 5/19	Member, Board of Directors of the National Commission on Correctional Health Care
5/07-10/12	Liaison to the CDC Advisory Council for the Elimination of Tuberculosis (ACET) from the National Commission on Correctional Health Care
12/04-3/06	Member of the CDC Advisory Council for the Elimination of Tuberculosis (ACET) Ad Hoc Working Group on the *Prevention and Control of Tuberculosis in Correctional and Detention Facilities: Recommendations from CDC* (MMWR 2006; 55(No. RR-9))
6/03-8/03	Member of the Advisory Panel for the Francis J. Curry National Tuberculosis Center and National Commission on Correctional Health Care, 2003: *Corrections Tuberculosis Training and Education Resource Guide*
3/02-1/03	Member of the Advisory Committee to Develop the *Tuberculosis Control Plan for the Jail Setting: A Template (Jail Template)*, Francis J. Curry, National Tuberculosis Center
6/01-1/15	Director's Cabinet San Francisco Department of Public Health
3/01	Consultant to Centers for Disease Control on the Prevention and Control of Infections with Hepatitis Viruses in Correctional Settings (MMWR 2003; 52(No. RR-1))
9/97-6/02	Member, Executive Committee of Medical Practice Group, San Francisco Department of Public Health
3/97-3/02	American Correctional Health Services Association Liaison with American Public Health Association
3/96-6/12	Chairperson, Bay Area Corrections Committee (on tuberculosis)
2/00-12/00	Medical Providers' Subcommittee of the Office-based Opiate Treatment Program, San Francisco Department of public Health
12/98-12/00	Associate Chairperson, Corrections Sub-Committee, California Tuberculosis Elimination Advisory Committee
7/94-7/96	Advisory Committee for the Control And Elimination of Tuberculosis, San Francisco Department of Public Health
6/93-6/95	Managed Care Clinical Implementation Committee, San Francisco Department of Public Health
2/92-2/96	Tuberculosis Control Task Force, San Francisco Department of Public Health
3/90-7/97	San Francisco General Hospital Blood Borne Pathogen Committee

1/93-7/93 Medical Staff Bylaws Committee, San Francisco Department of Public Health

ACADEMIC APPOINTMENT

1980-2015 Assistant Clinical Professor
University of California, San Francisco

PROFESSIONAL AFFILIATIONS

Society of Correctional Physicians, Member of President's Council, Past-Treasurer and Secretary
American Correctional Health Services Association, Past-President of California Chapter
American Public Health Association, Jails and Prison's Subcommittee
Academy of Correctional Health Professionals

PROFESSIONAL PRESENTATIONS

Caring for the Inmate Health Population: A Public Health Imperative, Correctional Health Care Leadership Institutes, July 2015

Correctional Medicine and Community Health, Society of Correctional Physicians Annual Meeting, October, 2014

Identifying Pulmonary TB in Jails: A Roundtable Discussion, National Commission on Correctional Health Care Annual Conference, October 31, 2006

A Community Health Approach to Correctional Health Care, Society of Correctional Physicians, October 29, 2006

Prisoners the Unwanted and Underserved Population, *Why Public Health Should Be in Jail*, San Francisco General Hospital Medical Center, Medical Grand Rounds, 10/12/04

TB in Jail: A Contact Investigation Course, Legal and Administrative Responsibilities, Francis J. Curry National Tuberculosis Center, 10/7/04

Public Health and Correctional Medicine, American Public Health Association Annual Conference, 11/19/2003

Hepatitis in Corrections, CA/NV Chapter, American Correctional Health Services Association Annual Meeting, 1/17/02

Correctional Medicine, San Francisco General Hospital Medical Center, Medical Grand Rounds, 12/16/02

SuperMax Prisons, American Public Health Association Annual Conference, 11/8/01

Chronic Care Programs in Corrections, CA/NV Chapter, American Correctional Health Services Association Annual Meeting, 9/19/02

Tuberculosis in Corrections - Continuity of Care, California Tuberculosis Controllers Association Spring Conference, 5/12/98

HIV Care Incarcerated in Incarcerated Populations, UCSF Clinical Care of the AIDS Patient Conference, 12/5/97

Tuberculosis in Correctional Facilities, Pennsylvania AIDS Education and Training Center, 3/25/93

Tuberculosis Control in Jails, AIDS and Prison Conference, 10/15/93

The Interface of Public Health and Correctional Health Care, American Public Health Association Annual Meeting, 10/26/93

HIV Education for Correctional Health Care Workers, American Public Health Association Annual Meeting, 10/26/93

PUBLICATIONS

Structure and Administration of a Jail Medical Program. Correctional Health Care: Practice, Administration, and Law. Kingston, NJ: Civic Research Institute. 2017.

Structure and Administration of a Jail Medical Program – Part II. Correctional Health Care Report. Volume 16, No. 2, January-February 2015.

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Pain Behind Bars: The Epidemiology of Pain in Older Jail Inmates in a County Jail. Journal of Palliative Medicine. 09/2014; DOI: 10.1089/jpm.2014.0160

Older jail inmates and community acute care use. Am J Public Health. 2014 Sep; 104(9):1728-33.

Correctional Health Care Must be Recognized as an Integral Part of the Public Health Sector, Sexually Transmitted Diseases, February Supplement 2009, Vol. 36, No. 2, p.S3–S4

Use of sentinel surveillance and geographic information systems to monitor trends in HIV prevalence, incidence, and related risk behavior among women undergoing syphilis screening in a jail setting. Journal of Urban Health 10/2008; 86(1):79-92.

Discharge Planning and Continuity of Health Care: Findings From the San Francisco County Jail, American Journal of Public Health, 98:2182–2184, 2008

Public Health Behind Bars, Deputy Editor, Springer, 2007

Diabetes Care in the San Francisco County Jail, American Journal of Public Health, 96:1571-73, 2006

Clinical Practice in Correctional Medicine, 2nd Edition, Associate Editor, Mosby, 2006.

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Screening for Tuberculosis in Jail and Clinic Follow-up after Release, American Journal of Public Health, 88(2):223-226, 1998

A Clinical Trial of a Financial Incentive to Go to the Tuberculosis Clinic for Isoniazid after Release from Jail, International Journal of Tuberculosis Lung Disease, 2(6):506-512,1998

AWARDS

Armond Start Award of Excellence, Society of Correctional Physicians, 2014
Award of Honor, San Francisco Board of Supervisors, 2014
Award of Honor, San Francisco Health Commission, 2014
Certificate of Appreciation, San Francisco Public Defender's Office, 2014
Certificate for Excellence in Teaching, California Department of Health Services, 2002
Employee Recognition Award, San Francisco Health Commission, July 2000
Public Managerial Excellence Award, Certificate of Merit, San Francisco, 1997

LICENSURE AND CERTIFICATION

Medical Board of California, Certificate #A32488
Fellow, Society of Correctional Physicians
Board Certified in Family Practice, 1979-1986 (Currently Board Eligible)

Exhibit 2

Declaration of Alexander Grinis

1. I am currently in custody at FMC Devens "Camp." My Bureau of Prisons ("BOP") Register Number is 01014-138.

2. I am 49 years old.

3. I am serving a sentence of 9 months arising from a conviction for making false statements on a loan application. The BOP calculates my release date to be June 16, 2020.

4. I have been told that I will be released to a halfway house on or about May 21, 2020. I have also been told that I will be required to spend two weeks in solitary confinement in the "SHU" or Special Housing Unit of the Devens prison as a form of quarantine prior to my release to the halfway house.

5. On April 10, 2020, I submitted by U.S. Mail a request to the Warden for compassionate release or in the alternative for release to home confinement under the Barr Memo and the CARES Act. I have not received a response to this request.

6. I have a medical history of hypertension and atypical chest pain. I am concerned that I may get COVID-19 and become very sick.

7. It is not possible to stay six feet away from other inmates. I am housed in the "camp" with approximately 100 other inmates. We all sleep in the same space, divided into "cubes" of approximately 7 by 9 feet. The cubes are open, without doors. The walls of the cubes do not go to the ceiling, they are between 5 to 6 feet tall. Approximately one third of the cubes contain a two-person bunk bed while the remaining cubes contain two two-person bunk beds.

8. There are 12 toilets, 12 sinks, and 12 showers shared among all of the inmates in the camp. These facilities are often not sanitary. They are supposed to be cleaned twice per day by inmates at 7 a.m. and 11 a.m.

9. Soap is available for purchase but not otherwise provided. Hand sanitizer is only available in the kitchen.

10. Camp inmates work during the day in different areas of the camp and outside of the camp in other buildings and areas of the facility. I work in the cafeteria of the camp.

11. There are 4 telephones and 5 computers in the camp, clustered together. They are not cleaned between users.

12. Meals are eaten in the camp. Inmates stand in line for food very close together and eat at communal tables.

13. Inmates are not provided with any specific education or instruction about COVID-19 except that wearing masks and washing hands frequently is recommended.

14. Most, but not all, staff have started wearing masks. Staff rarely wear gloves

15. Starting in April, inmates were provided with three face masks each, to last for a month.

16. New inmates are still coming into the camp. I do not know if they are quarantined first.

17. I declare under the penalty of perjury that the contents of this declaration are true and correct to the best of my knowledge. I will sign a hard copy of this declaration at my earliest opportunity.

/s/ Alexander Grinis

April 13, 2020

Exhibit 3

Declaration of Michael Gordon

1. I am currently incarcerated at FMC Devens. My Bureau of Prisons ("BOP") Register Number is 96426-038.

2. I am serving a sentence of 15 years arising from a conviction for conspiracy to distribute marijuana, conspiracy to launder money, and money laundering. The BOP calculates my release date to be August 18, 2027.

3. I am 51 years old. In 2010 I underwent a liver transplant. My condition is monitored by FMC Devens and the Beth Israel Liver Center. My current post-transplant medications include tacrolimus and prednisone.

4. I believe that because my medications are immunosuppressants, and because I don't have a strong, healthy liver, I am vulnerable to COVID-19 and at high risk of severe complications or death if I am infected.

5. I am also monitored for conditions including essential hypertension, pulmonary embolism, and chronic embolism and thrombosis of vein, all of which, I believe, place me at high risk of severe complications or death if I am infected with COVID-19.

6. I am not aware of any confirmed cases of COVID-19 at Devens but have heard about staff and inmates suffering flu-like symptoms, including some who have been tested and quarantined. I have also observed inmates in my unit and other units who appear to be sick.

7. I am housed in the "H-B" unit, second floor. I was recently moved to this unit, along with other inmates who have medical conditions that place us at high risk of severe COVID-19 infection. There are about 120 inmates in this unit.

8. It is impossible to stay six feet away from other inmates. My unit consists of approximately 65 open cubicle cells with a single bunk bed in each. The entire unit shares 4 toilets, 6 urinals, and 6 shower stalls.

9. The unit also shares 4 phones and 5 computers to send emails. The phones and computers are clustered together and not cleaned between each use. We are allowed to use the telephones and computers at the same time. We are very close together. We are not instructed to maintain distance from each other.

10. The unit shares a single sink to clean cooking and eating utensils. We share two microwaves, one icemaker, and one ice dispenser.

11. Several people in my unit leave and re-enter the unit regularly for dialysis treatments.

12. Inmates in my unit interact with inmates from other units during recreation (2-3 units take "rec" together). I have not, myself, been not participating in "rec" in order to limit my own exposure to others.

13. Inmates in my unit stand inches from each other while in line for moves within the facility, and for meals.

14. We march in line to pick up meals from the "chow hall" and then we march back to the unit to eat. During meals, inmates sit four or five to a table; it is not possible to maintain six feet of separation from others during meals.

15. We spend most of our days in the unit. We all move around freely within the unit.

16. Prison staff interact with inmates from multiple units, and, of course, they regularly enter and leave the facility.

17. Most, but not all, staff have started wearing masks. Staff rarely wear gloves.

18. Starting in April, inmates were provided with three face masks to last for a month.

19. I am aware that this facility is accepting new inmates during the COVID-19 outbreak.

20. On April 10, 2020, I submitted a request to the Warden for compassionate release or in the alternative to be released on home confinement under the Barr memo or in the alternative for emergency furlough. I have not received any response.

21. I have reviewed the information contained in this declaration with my appellate lawyer, Michelle Menken, by telephone. I declare under the pains and penalties of perjury that the contents are true and correct to the best of my knowledge. I will sign a hard copy of this declaration at my earliest opportunity.

/s/ Michael Gordon
Michael Gordon

I, Michelle Menken, Esq., certify that I have reviewed this information with Mr. Gordon by telephone on April 13, 2020, and that he certified that the information contained in this declaration was true and correct to the best of his knowledge.

Michelle Menken

Exhibit 4

Declaration of Angel Soliz

1. I am currently in custody at FMC Devens. My Bureau of Prisons ("BOP") Register Number is 70926-079.

2. I am 59 years old.

3. I am serving a sentence of 240 months arising from a conviction for conspiracy and possession with intent to distribute methamphetamine. The BOP calculates my release date to be September 13, 2033.

4. I suffer from kidney disease and require dialysis. I also had a triple bypass and am diabetic.

5. I submitted a request to Warden Spaulding for compassionate release, which was denied. I then pursued administrative remedies which also were denied.

6. Because of my medical conditions, I am vulnerable to COVID-19 and at high risk of severe complications or death if I am infected.

7. It is not possible to stay six feet away from other inmates. I live in the "J-B" unit with approximately 120 other inmates. The unit is composed of cells housing two inmates each. The cells contain a sink and toilet and have doors that are closed and locked at night and during count times.

8. Inmates in the unit share 12 showers. They showers are often dirty and littered with used soap, used band-aids, used razors, and other debris.

9. Previously, inmates in the unit would eat meals in the dining hall. Recently, however, we have started bringing food back to our cells to eat.

10. There are 4 phones and 5 computers in the unit that are very close together. They are not cleaned between users.

11. When medications are provided inmates must stand in line next to each other to receive their medications.

12. Inmates are not provided with any specific education or instruction about COVID-19 except that wearing masks and washing hands frequently is recommended.

13. Most, but not all, staff have started wearing masks and gloves.

14. Starting in April, inmates were provided with three face masks each, to last for a month.

15. New inmates are still coming into the unit. I do not know if they are quarantined first.

16. I declare under the penalty of perjury that the contents of this declaration are true and correct to the best of my knowledge. I will sign a hard copy of this declaration at my earliest opportunity.

/s/ Angel Soliz

April 13, 2020