



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO

WILSON, ET AL,

Petitioners

v.

WILLIAMS, ET AL,

Respondents

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CASE NO. 4:20-CV-00794

JUDGE GWIN

DECLARATION OF KRISTY COLE

I, Kristy Cole, 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 Case Management Coordinator (CMC) at Federal Correctional Institution (FCI) Elkton in Lisbon, Ohio. I have held this position since September, 2007. I have been employed by BOP since March, 1997.

2. The CMC's Office is dedicated to providing oversight of case management activities within the institution. This office works directly with the unit teams, providing training and disseminating information to insure that the institution is in compliance with Correctional Programs' policies and procedures. The CMC provides coordination and oversight of many programs within the institution, including, but not limited to, Central Inmate Monitoring, Financial Responsibility, Admission and Orientation, Inmate Performance Pay, Victim/Witness Program and Adam Walsh Act compliance. The CMC also oversees the Correctional Systems Department.

3. FCI Elkton is a low security institution designed to house approximately 2,000 inmates at the main facility and approximately 500 inmates at the adjacent Federal Satellite Low (FSL). The main FCI facility and FSL are separate facilities and the inmate populations do not interact.

For purposes of this declaration, when I refer to “FCI Elkton”, I am referring to both the main Federal Correctional Institution (FCI) facility and the Federal Satellite Low (FSL), unless otherwise specified.

4. FCI Elkton offers specialized services for sex offenders, specifically the Sex Offender Management Program.

I. COMPASSIONATE RELEASE/ REDUCTION IN SENTENCE PROCEDURES.

5. BOP does not have the authority to provide inmates with “early release.” A reduction of an inmate’s federal sentence can only be accomplished by an Article III judge, and specifically, the inmate’s sentencing judge. However, upon an inmate’s request, the Director of BOP may make a motion to an inmate’s sentencing court to reduce a term of imprisonment under 18 U.S.C. § 4205(g) and 18 U.S.C. § 3582(c)(1)(A). This process is outlined in BOP Program Statement 5050.50, *Compassionate Release/Reduction In Sentence Procedures for Implementation of 18 U.S.C. §§ 3582 and 4205(g)*. (This BOP program statement and all other program statements and operations memoranda cited herein are available at www.bop.gov via the Resources link). BOP invokes these statutory authorities in “extraordinary or compelling circumstances,” which could not have reasonably have been foreseen by the court at the time of sentencing. The First Step Act, codified at 18 U.S.C. § 3582, specifies that an inmate may file a Motion for Reduction of Sentence directly to the sentencing court after exhaustion of administrative remedies, or 30 days from the date the Warden receives such a request from the inmate, whichever is earlier. The determination of release is ultimately the decision of the sentencing court.

6. Upon information and belief, within the past 15 days, approximately 550 FCI Elkton inmates have submitted a request for Compassionate Release to BOP. Of the four named Petitioners in this case, only Mr. Nelson has submitted a request for Compassionate Release to BOP. That request is under consideration. To date, 7 inmates have been denied Compassionate Release by the Warden. Packets for another 36 inmates are currently being reviewed by Health Services to determine if they meet the criteria for Compassionate Release.

II. INMATE FURLOUGHS.

7. BOP also has the authority to temporarily release from custody (or “furlough”) an inmate pursuant to 18 U.S.C. § 3622 and BOP Program Statement 5280.09, *Inmate Furloughs*. The inmate must meet certain requirements, and the temporary release from custody is under carefully prescribed conditions. It is not a means to shorten a sentence. Emergency furloughs are only being used for those individuals who have been medically screened, considered to be at risk, and on the advice of medical professionals. The individuals then need to be quarantined for 14 days, if they have viable release residences. No FCI Elkton resident has met this criterion at this time.

III. BOP’S AUTHORITY TO PLACE INMATES ON HOME CONFINEMENT.

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

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

9. Under 18 U.S.C. § 3624(c)(2), BOP has the exclusive authority to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. BOP, shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under section 3624(c)(2). During the inmate's incarceration, BOP institution staff are responsible for making referrals to Residential Reentry Centers (RRCs) or home confinement typically within 17-19 months of the prisoner's release date.

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

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

11. Under 34 U.S.C. § 60541, BOP may release some or all eligible elderly offenders and eligible terminally ill offenders from BOP facilities to home detention, upon written request from either BOP staff, or an eligible elderly offender or eligible terminally ill offender. The statute defines "eligible elderly offender" to include an inmate who is not less than 60 years of age; who is serving a term of imprisonment that is not life imprisonment based on a conviction for an offense or offenses that do not include any crime of violence; has served two-thirds of the term of imprisonment to which the offender was sentenced; who has not been convicted in the

past of any Federal or State crime of violence, sex offense, or other offense referenced in the statute; who has not been determined by BOP to have a history of violence, or of engaging in conduct constituting a sex offense or other excluded offense; who has not escaped, or attempted to escape from a BOP institution; whose release to home detention will result in a substantial net reduction of costs to the Federal Government; and who has been determined by BOP to be at no substantial risk of engaging in criminal conduct or of endangering any person or the public if released to home detention.

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

13. In order to appropriately evaluate an elderly or terminally ill individual for home confinement, BOP assesses the risk of criminal activity in the community and determines whether there is an appropriate home where the individual can be placed. As mentioned earlier, this is a time and resource intensive process.

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

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

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

17. In light of the COVID-19 pandemic, BOP is maximizing its authority to place inmates on home confinement and is expediting the process as much as possible in furtherance of the Attorney General's memorandum dated March 26, 2020, and BOP memoranda dated April 3, 2020, and April 15, 2020. These documents directed BOP to prioritize the use of its statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic, and provided further guidance concerning criteria to be used.

C. THE CARES ACT.

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

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

months (regardless of severity level); the inmate is a U.S. citizen; and the inmate has a viable release plan. As a result of FCI Elkton's higher population of inmates convicted of sex offenses, many FCI Elkton inmates are ineligible for home confinement.

20. To date, six inmates have been approved for transfers to home confinement. The inmates receiving transfers must quarantine for fourteen days prior to transfer. Five of the six approved transfers have dates for transfer next week. Two more inmates are currently being vetted by the Residential Reentry Manager. Four inmates are in the process of being sent to the Residential Reentry Manager for consideration. To date, 32 inmates have been denied home confinement as not meeting the stated criteria for a variety of reasons.

21. Concerning the four named Petitioners in this case, two have requested and been considered for home confinement. Mr. Bellamy is ineligible because he has active warrants from New Jersey. Mr. Nieves is ineligible due to a history of serious violence (assault with a baseball bat). Although he has not requested home confinement, Mr. Wilson is not a candidate because his recidivism risk score is too high; he has a Low recidivism risk score and a Minimum risk score is required. Additionally, although he has not requested home confinement, Mr. Nelson is not a candidate because he has a history of violence (unlawful discharge of a firearm) and his recidivism risk score is too high; he has a Medium recidivism risk score and a Minimum risk score is required.

IV. ELKTON FACILITY.

22. FCI Elkton consists of three buildings containing six dorm-style housing units. There are approximately 300 inmates in each housing unit. Each housing unit is divided into an A side and a B side. The A and B sides are separated and the inmates do not intermingle. The

FSL is one building with two dorm-style housing units. Each housing unit is divided into an A side and a B side. There are approximately 250 inmates in each FSL unit.

I 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 this April 17, 2020.

RESPECTFULLY SUBMITTED,

A handwritten signature in cursive script that reads "Kristy Cole". The signature is written in black ink and is positioned above the printed name.

KRISTY COLE
Case Management Coordinator
FCI Elkton