

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAKE CHARLES DIVISION**

BRANDON LIVAS, RICHARD BUSWELL,  
DEWAYNE CORBETT, JOHNNY SMITH,  
CARLOS LORENZO MARTIN, and  
GAINES ANDREWS, on behalf of  
themselves and those similarly situated,

*Petitioners,*

v.

RODNEY MYERS, warden of Oakdale  
Federal Correctional Institutions; and  
MICHAEL CARVAJAL, Federal Bureau of  
Prisons Director, in their official capacities,

*Respondents.*

**Civil Action No. 2:20-CV-00422**

**Judge Terry A. Doughty**

**Magistrate Judge Kathleen Kay**

**PETITIONERS' EMERGENCY MOTION FOR RELEASE  
OF VULNERABLE AND LOW-RISK PRISONERS FROM OAKDALE**

NOW INTO COURT COME Petitioners in the above-captioned matter, through undersigned counsel, who move this Honorable Court to issue a Temporary Restraining Order (“TRO”) that includes the following relief:

- (1) A temporary restraining order and/or preliminary injunction requiring Defendants to identify all Medically-Vulnerable Subclass Members within forty-eight (48) hours of the Court’s order;
  - a. For any Medically-Vulnerable Subclass Member whose release Defendants would like to challenge, Defendants must also present evidence within the same forty-eight (48) hour period that such individual presents such a serious risk of flight or imminent physical danger to others, even during home confinement and while Louisiana’s stay-at-home order remains in place, that no other conditions can mitigate that risk;
  - b. Following this submission, the Magistrate Judge in this action will determine within forty-eight (48) hours whether Defendants have shown by clear and convincing evidence that Defendants’ evidence of a serious risk of flight or imminent physical danger, even during

home confinement and while Louisiana's stay-at-home order remains in place, substantially outweighs the risk of COVID-19 contraction at Oakdale;

- c. The Court will immediately release all such persons for whom Defendants have not made the required showing;

(2) A temporary restraining order and/or preliminary injunction requiring Defendants to provide all persons released with educational resources on COVID-19 including instructions that they should self-isolate for the CDC-recommended period of time (currently 14 days) following release;

(3) A preliminary injunction, permanent injunction, and/or writ of habeas corpus requiring Defendants to:

- a. Continue to release all current and future Medically-Vulnerable Subclass members absent the showing described above in paragraph (1);
- b. Report weekly on the population of persons in Oakdale who are Medically-Vulnerable as defined in this action;
- c. Release additional Class Members, including those not considered Medically-Vulnerable, as needed to ensure that all remaining persons incarcerated at Oakdale are under conditions consistent with CDC and public health guidance to prevent the spread of COVID-19, including requiring that all persons be able to maintain social distancing; and

(4) A declaration that Oakdale's policies violate the Eighth Amendment right against cruel and unusual punishment with respect to the Class Members.

The outbreak of COVID-19 at Oakdale federal correctional institutions I and II ("Oakdale") has already claimed the lives of six people incarcerated there.<sup>1</sup> At least 50 prisoners and 17 staff members have tested positive.<sup>2</sup> More people are falling sick every day. Yet Respondents' efforts to stem the outbreak have been far too little, far too late, and their newly

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<sup>1</sup> BOP's COVID-19 Inmate Review Update, April 10, 2020, Dkt. No. 8 at 7 ("Inmate Update").

<sup>2</sup> *Id.*

produced “plan” does nothing to achieve the social distancing that experts agree is necessary to prevent further suffering. Accordingly, Petitioners seek an order for the expedited, responsible release of medically-vulnerable incarcerated persons at Oakdale to locations where they can socially distance. Petitioners also seek the appointment of a public-health expert to oversee changes at Oakdale to ensure social distancing and infection prevention and treatment for those remaining. Given the mounting death toll inside, there is no time to waste.

Petitioners readily satisfy the four-factor test for a temporary restraining order. They can likely show that the status quo will continue to unconstitutionally place Class and Subclass members at a substantial risk of serious harm, and there can be no question that the harm would be irreparable—six men have died already. The public interest weighs heavily in favor of a plan that will prevent the guaranteed spread of COVID-19 in that incarcerated population, which could easily spread to the broader community and devastate the region’s medical infrastructure. Indeed, public health experts, including the declarant in this record, agree that prisoners, staff, and the public at large would be harmed *far more* by waiting for Respondents’ slow-moving plan to take shape while Class members are unable to safely socially distance or maintain recommended hygienic practices.

Federal Rule of Civil Procedure 65(c) provides that the Court should levy “security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Petitioners respectfully request that the Court waive the bond requirement, given the obviousness of the risk to Class members’ health, their indigence, and the strong public interest involved.<sup>3</sup> Furthermore, the requirement of a bond is contrary to the proposition that inadequate resources under no circumstances justify a prison’s deprivation of constitutional rights.<sup>4</sup> Consistent with this well-established principle, this Court

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<sup>3</sup> See, e.g., *Molton Co v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995) (approving waiver of bond given strength of case and “the strong public interest” involved); *Campos v. INS*, 70 F. Supp. 2d 1296, 1310 (S.D. Fla. 1998) (because plaintiffs were indigent and sought to vindicate their constitutional rights, consistent with the public interest, the court did not require a bond).

<sup>4</sup> See, e.g., *Smith v. Sullivan*, 553 F.2d 373, 378 (5th Cir. 1977) (inadequate resources can never be a justification for depriving an inmate of his constitutional rights).

should not require Plaintiffs, who are indigent, to post a bond in order to protect their constitutional rights.

For the reasons in the attached memorandum, the Court should immediately issue an order consistent with the above-described relief.

Respectfully submitted this 13th day of April, 2020.

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#### CERTIFICATE OF SERVICE

I hereby certify that on April 13, 2020, a copy of the foregoing was filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent to all counsel of record by operation of the court's electronic filing system.

I further certify that copies of all pleadings and other papers filed in the action to date or to be presented to the Court at the hearing, have been furnished to the Defendants' attorneys, who have already made an appearance in this matter.

/s/ Bruce Hamilton

Bruce Hamilton, La. Bar No. 33170