

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

Criminal Action No. 19-cr-18 (ABJ)

ROGER J. STONE, JR.,

Defendant.

ROGER J. STONE, JR.'s UNOPPOSED MOTION TO EXTEND SURRENDER DATE

Roger J. Stone, Jr. respectfully moves the Court for an Order extending his surrender date to the custody of the Bureau of Prisons (“BOP”) from June 30, 2020 to September 3, 2020, in light of his heightened risk of serious medical consequences from exposure to the COVID-19 virus in the close confines of a BOP facility.

Memorandum in Support of Extending Surrender Date

Stone was convicted on November 15, 2019 and, on February 20, 2020, the Court sentenced him principally to a term of imprisonment of forty months. ECF #328. Stone has been released on bail since the time of his arrest, with his bond status continued following sentencing and a voluntary surrender permitted. Minute Entry of February 20, 2020. The BOP has advised Stone that it has designated him to serve his sentence of imprisonment at FCI Jesup and that he is to surrender voluntarily on June 30, 2020.

This motion is based on the exceptional circumstances arising from the serious and possibly deadly risk he would face in the close confines of a Bureau of Prisons facility, based on his age and medical conditions. Presentence Report, dated January 16, 2020, at ¶¶ 103-04 (ECF # 327) (“PSR”). Those medical conditions make the consequences of his exposure to the COVID-19 virus in a prison facility life-threatening. The threat of exposure, given the current status of COVID-19 within BOP facilities and the lack of testing, is compelling.

The severity of the circumstances is highlighted by the fact that the Attorney General issued memoranda directing the BOP to release prisoners at risk from COVID-19 infection. Memorandum from the Attorney General to the Director of the Bureau of Prisons, regarding “Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic,” dated March 26, 2020; Memorandum from the Attorney General to the Director of the Bureau of Prisons, regarding “Increasing Use of Home Confinement at Institutions Most Affected by COVID-19,” dated April 3, 2020.

In addition, judges in this district, informed by experts, have written at length about the life-threatening risks in prison facilities from COVID-19 and from the limitations in dealing with the risks inherent in the prison environment. *See, e.g., C.G.B. v. Wolf*, 2020 U.S. Dist. LEXIS 96482 (D.D.C., June 2, 2020) (discussing COVID-19 risks in immigration detention centers); *United States v. Harris*, 2020 U.S. Dist. LEXIS 53632, *3-*7 (D.D.C., March 27, 2020) (discussing reasons for granting release pending sentencing in light of COVID-19 risks).

In light of similar concerns, in *United States v. Benjamin*, 18-cr-0121 (PLF), the court entered an order, without opposition from the government, extending the defendant’s surrender date from June 5, 2020 until September 3, 2020, based upon the defendant’s “multiple health problems which puts him at serious risk of complications from COVID-19.” *Id.* at ECF #76. *See also United States v. Gana*, 19-cr-0305 (CJN) (D.D.C. June 22, 2020) (unopposed motion to extend surrender date based upon health issues and concomitant risks due to COVID-19).

These cases, and numerous others from around the nation, recognize that it is effectively impossible for the BOP to meet CDC guidelines for the prevention of COVID-19 transmission and that, in the case of defendants with serious medical issues and increased age, who are at greater risk from serious complications of infection, it is prudent to delay incarceration until the

danger is abated. *See, e.g., United States v. Powell*, 2020 U.S. Dist. LEXIS 62077 (N.D. Cal., March 27, 2020) (delaying surrender date in light of COVID-19 virus risk); *United States v. Garlock*, 2020 U.S. Dist. LEXIS 53747 (N.D. Cal. Mar. 25, 2020) (extending surrender date for sentenced defendant until September 2020, and inviting a motion to extend it further in September, because “[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided”); *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev., March 17, 2020) (suspending intermittent confinement condition of probation due to COVID-19 pandemic); *United States v. Matthaei*, 2020 U.S. Dist. LEXIS 55110 (D. Idaho, March 16, 2020) (extending self-surrender date due to the COVID-19 pandemic); *United States v. Sharp*, No. 19-cr-03 (D. Mt., April 14, 2020) (ECF # 45) (extending deadline for self-surrender “in light of the COVID-19 pandemic and rapidly evolving public health situation in federal detention facilities”).

While the BOP website currently does not show any inmates with the COVID-19 virus at FCI Jesup, it reports that there are 25 tests pending. <https://www.bop.gov/coronavirus/>.¹ Given that the BOP does not routinely test inmates,² combined with the relatively high positivity results

¹ The BOP website indicates that it tests only symptomatic individuals. It is, therefore, indicative of a potentially growing problem at FCI Jesup that the number of pending tests has risen in recent days. <https://www.bop.gov/coronavirus/>

² *See United States v. Feucht*, 2020 U.S. Dist. LEXIS 95104, *8 (S.D. Fla., May 27, 2020) (noting how, due to the lack of universal testing of inmates and staff, the number of reported cases may be far lower than the actual number of cases and that, irrespective of current numbers at any given facility, “[c]ourts around the country have recognized that the risk of COVID-19 to people in prison is ‘significantly higher than in the community, both in terms of risk of transmission, exposure and harm to individuals who become infected.’”).

in BOP facilities,³ the pending tests do not bode well.

We recognize that this Court has written that a generalized description of the risk that the COVID-19 virus poses will not suffice. *United States v. Phillips*, 20-cr-36 (ABJ) (D.D.C.) (ECF #33). In Stone's case, his serious health issues are set forth in the Presentence Report. PSR ¶¶ 103-04. In addition, Stone is filing simultaneously with this motion a motion for permission to file under seal a letter from his treating physician that provides further detail regarding Stone's medical conditions and the danger to his health that incarceration would present at this time.

The defense contacted the United States Attorney's Office to ascertain its position on this motion, and was informed that, based on the Department of Justice's and the Executive Office of United States Attorneys' guidance on the handling of voluntary surrender dates during the pandemic at this point in time, it does not oppose a 60-day extension of Stone's surrender date.

³ BOP reports that, as of June 23, 2020, 19,030 inmate tests for COVID-19 have been completed, 2,476 are pending, and 6259 inmates have tested positive for . . . continued . . . COVID-19. <https://www.bop.gov/coronavirus/>. That is a startling percentage of positive results, with more than 1/3 of those tested testing positive. It is also concerning that BOP has tested only 19,030 inmates among a population of 133,384 inmates in BOP prisons and another 13,992 in BOP community facilities. The BOP also reports, tragically, that 85 inmates have died from the COVID-19 virus, along with one staff member. <https://www.bop.gov/coronavirus/>

Conclusion

Accordingly, based on the foregoing, Stone respectfully requests that the Court extend his surrender date from June 30, 2020 until September 3, 2020, subject to the conditions at that time, continuing him on the same conditions of release presently in effect.

Dated: June 23, 2020

Respectfully Submitted,

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