

No. 20-3447

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

CRAIG WILSON, ET AL.,
Petitioners-Appellees,

v.

MARK WILLIAMS, ET AL.,
Respondents-Appellants.

On Appeal from the United States District Court
for the Northern District of Ohio, No. 4:20-cv-00794

**BRIEF OF *AMICUS CURIAE* DISABILITY RIGHTS OHIO IN SUPPORT
OF PETITIONERS-APPELLEES' BRIEF IN OPPOSITION TO
(CORRECTED) EMERGENCY MOTION TO STAY PENDING APPEAL**

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AND FINANCIAL INTEREST

Pursuant to Rules 26.1 and 29(a)(4)(A) of the Federal Rules of Appellate Procedure, *Amicus Curiae* Disability Rights Ohio respectively states that it is a private non-profit organization, it is not a publicly held corporation or other publicly held entity, and it has no parent corporations. No publicly held corporation or other publicly held entity owns ten percent (10%) or more of the *Amicus* organization.

Pursuant to Rule 29(a)(4)(E) of the Federal Rules of Appellate Procedure, *Amicus Curiae* further respectively certifies that no party's counsel authored this brief, in whole or in part, or contributed money that was intended to fund preparing or submitting the brief, and that no person other than *Amicus Curiae*, their members or their counsel, contributed money intended to fund preparing or submitting this brief.

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I. STATEMENT OF INTEREST

Disability Rights Ohio (“DRO”) is a not-for-profit organization designated by the Ohio Governor as the protection and advocacy system under federal law for people with disabilities in Ohio. *See* 42 U.S.C. § 15001, *et seq.*, Ohio Rev. Code § 5123.60. The mission of DRO is to advocate for the human, civil, and legal rights of people with disabilities in Ohio. As the protection and advocacy system for Ohio, DRO investigates abuse, neglect, and rights violations affecting people with disabilities; pursues administrative, legal, and policy remedies to address identified violations; and advocates for individuals in many areas of disability rights, including prisoners’ rights, voting, housing, employment, government benefits and services, and special education.

Prisoners’ rights are an important aspect of DRO’s work, and are reflected in the organization’s priorities. This work includes education and outreach to individuals with disabilities who are incarcerated, investigations of allegations of abuse and neglect within the prison system, as well as direct and systemic advocacy on issues affecting prisoners’ rights. In accordance with Rule 29(a)(2) of the Federal Rules of Appellate Procedure, all parties have consented to the filing of this brief.

II. INTRODUCTION

People with disabilities face unique and frightening challenges during the COVID-19 pandemic. COVID-19 could be a death sentence for many people with disabilities, as they face not only a higher risk of contracting the virus, but also a higher risk for serious, or even fatal, complications resulting from the virus. This public health crisis has caused upheaval in the lives of many people with disabilities who were already vulnerable, and sadly is likely to worsen in the hours, days, and weeks ahead.

Ohio prisons are already experiencing COVID-19 outbreaks. In fact, the Federal Correctional Institution, Elkton (“Elkton”) is amongst the deadliest of federal prison outbreaks in the country.¹ The response to the crisis at Elkton has not been enough to mitigate the imminent dangers facing Elkton’s vulnerable population, which will impact individuals with disabilities at a higher rate. Drastic measures, such as a reduction in the prison population as ordered by the lower court, must be taken expeditiously in order to protect individuals who are at a

¹ BOP reports that 45 facilities and 18 Residential Reentry Management Centers have been affected by COVID-19. Elkton and FCI Oakdale I (Louisiana) report the highest numbers of deaths, with seven inmate deaths at each facility. FCI Butner Medium (North Carolina) reports six inmate deaths, FMC Forth Worth (Texas) reports three inmate deaths, FCI Milan (Michigan) reports two inmate deaths, and FCI Terminal Island (California) reports two inmate deaths. FCI Danbury (Connecticut), FMC Carswell (Texas), FCI Lompoc (California), and Behavioral Systems Southwest, Inc. (Arizona) each report one inmate death. Bureau of Prisons, *COVID-19: Coronavirus* (Apr. 13, 2020) <https://www.bop.gov/coronavirus/> (last visited Apr. 30, 2020).

higher risk for not only contracting COVID-19, but also developing more serious illnesses as a result.

III. STATEMENT OF FACTS

Elkton is one of the deadliest prison outbreaks of COVID-19 in the country. Elkton is a low-security federal correctional institution (“FCI”) with an adjacent low security satellite prison (“FSL”).² The facility is a Level 2 Medical Care facility, housing individuals with chronic medical and mental health conditions that can, typically, be managed through routine, regularly scheduled appointments with clinicians for monitoring.³ According to BOP, approximately 35% of inmates are either over the age of 65 and/or have a disability that qualifies them as “higher risk” pursuant to the CDC guidelines.⁴ At the time Petitioners-Appellees’

² There are approximately 1,971 inmates at the FCI and 406 at the FSL, for a total of about 2,377 inmates. Bureau of Prisons, *FCI Elkton*, <https://www.bop.gov/locations/institutions/elk/> (last visited Apr. 30, 2020).

³ Example conditions found in Level 2 Medical Care facilities include medication-controlled diabetes, epilepsy, or emphysema. Bureau of Prisons, *Care Level Classifications for Medical and Mental Health Conditions or Disabilities* (May 2019), available at https://www.bop.gov/resources/pdfs/care_level_classification_guide.pdf.

⁴ The lower court defined the medically-vulnerable subclass as follows: “all Elkton inmates 65 years or older and those with documented, pre-existing medical conditions, including heart, lung, kidney, and liver conditions, diabetes, conditions causing a person to be immunocompromised (including, but not limited to cancer treatment, transplants, HIV or AIDS, or the use of immune weakening medications), and severe obesity (body mass index of 40 or higher).” R. 22, Order, Page ID# 363. The BOP identified approximately 837 inmates that meet this definition out of the total population of 2,377. R. 31, Petitioners-Appellees’ Emergency Motion to Compel, PageID# 495.

Emergency Petition (R. 1) was filed on April 13, 2020, the Federal Bureau of Prisons (“BOP”) reported Elkton had 24 positive COVID-19 cases amongst inmates and 15 amongst staff, and three inmates had died.⁵ The initial numbers of positive cases were disputed by Elkton prison union president, Joseph Mayle, who insisted that the number of infected inmates was much higher.⁶ As of this filing, BOP reported 49 positive COVID-19 cases amongst inmates and 48 amongst staff, with seven inmates dead.⁷ As of April 23, 2020, Elkton had only 50 swab tests and 25 rapid tests, many if not all of which have already been used.⁸ If widespread

⁵ Bureau of Prisons, *COVID-19: Coronavirus* (Apr. 13, 2020) <https://www.bop.gov/coronavirus/> (last visited Apr. 30, 2020).

⁶ WKBN Staff, *Elkton union disagrees with Bureau of Prisons on COVID-19 numbers* (Apr. 10, 2020), available at <https://www.wkbn.com/news/coronavirus/elkton-union-disagrees-with-bureau-of-prisons-on-covid-19-numbers/>; see also Shane Hoover, *Elkton prison union chief talks coronavirus affect on staff*, TIMES REPORTER (Apr. 9, 2020), available at <https://www.timesreporter.com/news/20200409/elkton-prison-union-chief-talks-coronavirus-affect-on-staff>.

⁷ Bureau of Prisons, *COVID-19: Coronavirus* (Apr. 13, 2020) <https://www.bop.gov/coronavirus/> (last visited Apr. 30, 2020).

⁸ R. 20, Order, PageID# 354. On April 28, 2020, U.S. Senator Rob Portman sent a letter to BOP director Michael Carvajal urging increased testing at Elkton, stating the lack of testing is “unacceptable” and threatening to “the lives of the FCI Elkton inmates as well as Ohioans in the greater northeast Ohio region.” Brandon Brown, *Portman urges increase in COVID-19 testing at FCI Elkton*, WFMJ (Apr. 28, 2020), available at <https://www.wfmj.com/story/42061005/portman-urges-increase-in-covid19-testing-at-fci-elkton>.

testing were implemented, it is likely the number of positive cases would be much more substantial than what is currently being reported by BOP.⁹

According to Petitioner-Appellees, the current health conditions at Elkton coupled with its structure and operations prevent any set of protocols from realistically preventing the spread of COVID-19.¹⁰ Elkton currently houses three individuals in cells designed for single occupancy, which means inmates are living and sleeping in close proximity to people who are sick and whom they believe to be dying.¹¹ Inmates report that people are being kept in the general population even

⁹ Marion Correctional Institution and Pickaway Correctional Institution, where mass testing is occurring, are currently the first and second largest sources of infection in the United States, with 2,182 and 1,641 confirmed cases respectively, suggesting the numbers at Elkton are in fact much higher than currently being reported. New York Times, *Coronavirus in the U.S.: Latest Map and Case Count, In America's nursing homes, outbreaks surge*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited Apr. 30, 2020).

¹⁰ R. 1-3, Petitioners-Appellees' Exhibit A at ¶ 16.

¹¹ R. 1-5, Petitioners-Appellees' Exhibit C at ¶ 4; R. 1-6, Petitioners-Appellees' Exhibit D at ¶ 6; R. 1-8, Petitioners-Appellees' Exhibit F at ¶ 3; R. 1-9, Petitioners-Appellees' Exhibit G at ¶ 4; R. 1-10, Petitioners-Appellees' Exhibit H at ¶ 6; Sam Allard, *At Ohio's Elkton Federal Prison "Fucking Everybody Just Fucking Dying" From COVID-19*, SCENE (Apr. 14, 2020), available at <https://www.clevescene.com/scene-and-heard/archives/2020/04/06/at-ohios-elkton-federal-prison-fucking-everybody-just-fucking-dying> (one inmate reported that he believes he is going to die because he is trapped); Sam Allard, *The Latest out of Elkton Federal Prison, Where Horror Show Continues Apace*, SCENE (Apr. 10, 2020), available at <https://www.clevescene.com/scene-and-heard/archives/2020/04/10/the-latest-out-of-elkton-federal-prison-where-horror-show-continues-apace>.

after they begin to show symptoms.¹² People are also reporting that inmates will return to the general population after being seen at medical, where it is likely they have been exposed to the virus if they had not been already.¹³

Even outside of their cells, inmates are forced into close contact with each other. Hundreds of inmates are sharing a limited number of sinks, toilets, and showers.¹⁴ Inmates also report being surrounded by others when using TVs, phones, and computers.¹⁵ Both experts and inmates believe it is “impossible” to social distance while at Elkton.¹⁶ Furthermore, inmates have inadequate supplies with which to protect themselves from the virus, such as soap, clean water, and hand sanitizer.¹⁷ Not only are inmates unable to social distance while using sinks and showers, they are also unable to freely access the limited number of utilities in order to wash their hands.¹⁸

In addition to the lower court, at least one other federal court has found that the BOP has not taken adequate measures to reduce the population at Elkton in an

¹² R. 1-6 at ¶ 2; R. 1-8 at ¶ 6; R. 1-9 at ¶ 3; R. 1-11, Petitioners-Appellees’ Exhibit I at ¶ 10; Allard, *supra* note 11.

¹³ R. 1-4 at ¶ 8; R. 1-11 at ¶¶ 3, 10.

¹⁴ R. 1-6 at ¶ 7; R. 1-7, Petitioners-Appellees’ Exhibit E at ¶ 8 (150 inmates are sharing six sinks and twelve showers); R. 1-8 at ¶ 3; R. 1-10 at ¶ 6; R. 1-11 at ¶¶ 4-5.

¹⁵ R. 1-6 at ¶ 6; R. 1-7 at ¶ 4; R. 1-8 at ¶ 3; R. 1-9 at ¶ 4; R. 1-10 at ¶¶ 6, 9; R. 1-11 at ¶ 6.

¹⁶ R. 1-3 at ¶ 9; R. 1-4, Petitioners-Appellees’ Exhibit B at ¶ 32; R. 1-5 at ¶ 3; R. 1-6 at ¶ 7.

¹⁷ R. 1-5 at ¶ 10; R. 1-10 at ¶ 10; R. 1-11 at ¶ 7.

¹⁸ *Id.*

effort to protect the inmates. *United States v. Rodriguez*, No. 2:03-CR-00271-AB-1, 2020 WL 1627331, at *9 (E.D. Pa. Apr. 1, 2020) (“The BOP’s containment measures have already proven insufficient to prevent the spread of COVID-19.”). Without more action, inmates at Elkton, particularly those with disabilities, are at higher risk for serious illness or death—likely, a risk not contemplated at sentencing or in proportion to their crimes. *See id.* at *1, 12 (The judge reached the “inescapable conclusion” to grant a motion for sentence reduction amid the COVID-19 pandemic because “[Mr. Rodriguez’s] sentence did not include incurring a great and unforeseen risk of severe illness or death.”).

On April 22, 2020, the lower court filed an Order granting in part the Appellee’s request for a preliminary injunction in an effort to lower the population at Elkton. R. 20, Order, PageID# 371-2. The court ordered Respondents-Appellants to “determine the appropriate means of transferring medically vulnerable subclass members out of Elkton,” within two weeks, specifying options for release including compassionate release, furlough, or community supervision. *Id.* at PageID# 360, 371. The Court further ordered that those members of the subclass that were unable to be released, be transferred to an area or facility where they would be able to physically distance from others. *Id.* at PageID# 371-2. On April 27, 2020, Respondents-Appellants filed a Notice of Appeal to this Court from the

Order of Preliminary Injunction. R. 26, Respondents-Appellants Notice of Appeal.

DRO supports the affirmation of the lower court's Order of Preliminary Injunction.

IV. ARGUMENT

A. People with disabilities, who are disproportionately represented in the prison setting, are more likely to contract COVID-19, and more likely to develop more serious illnesses as a result.

People with disabilities are disproportionately represented in the prison setting. In contrast to the 11% of the general U.S. population who report having a disability, 32% of state and federal prison inmates report having at least one disability.¹⁹ And, more than half of prisoners (54%) with a disability reported a co-occurring chronic condition.²⁰ Additionally, 49% of all prison inmates report having symptoms of a psychiatric disability.²¹ At Elkton, BOP estimates that at least 35% of inmates are either over the age of 65 and/or have a disability that qualify them as potential members of the medically-vulnerable subclass.²²

According to the Centers for Disease Control and Prevention ("CDC"), persons with disabilities are at a higher risk for serious illness resulting from

¹⁹ Bureau of Justice Statistics, *Disabilities Among Prison and Jail Inmates, 2011-2012* (Dec. 2015), available at <http://www.bjs.gov/content/pub/pdf/dpji1112.pdf>.

²⁰ *Id.* at 6.

²¹ Office of Justice Programs, *Mental Health Problems of Prison and Jail Inmates* (Dec. 14, 2006), available at <https://www.bjs.gov/content/pub/pdf/mhppji.pdf>.

²² R. 31, Petitioners-Appellees' Emergency Motion to Compel, PageID# 495 (When the lower court ordered the BOP to identify a list of inmates who may be members of the medically-vulnerable subclass, they identified 837 inmates.)

COVID-19.²³ This includes individuals with impaired lung function, immunocompromising disorders, including individuals taking immunocompromising drugs, high blood pressure, diabetes, and heart disease.²⁴ Although not an exhaustive list, the CDC identifies the following chronic conditions as more common in individuals with disabilities: arthritis, asthma, cancer, chronic fatigue syndrome, diabetes, heart disease, limb loss, MRSA, and musculoskeletal disorders.²⁵ Anyone who has an underlying acute health condition is at increased risk of severe symptoms for both illnesses because “there would be two separate issues for their immune system to fight.”²⁶ Additionally, chronic health challenges and mental illness often co-occur.²⁷

²³ Centers for Disease Control and Protection, *Coronavirus Disease 2019 (COVID-19): People Who Are at Higher Risk for Severe Illness* (Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html?> (last visited Apr. 30, 2020).

²⁴ Seth McBride, *Disability-Specific Recommendations for COVID-19*, NEW MOBILITY MAGAZINE (Apr. 3, 2020), available at <https://www.newmobility.com/2020/03/disability-specific-recommendations-for-covid-19/>.

²⁵ Centers for Disease Control and Protection, *Disability and Health Promotion: Disability and Health Related Conditions* (Sept. 9, 2019), <https://www.cdc.gov/ncbddd/disabilityandhealth/relatedconditions.html> (last visited Apr. 30, 2020).

²⁶ McBride, *supra* note 24.

²⁷ Mental Health America, *Co-Occurring: Mental Health and Chronic Illness* <https://www.mhanational.org/conditions/co-occurring-mental-health-and-chronic-illness> (last visited Apr. 30, 2020).

COVID-19 is having a disparate impact on inmates with disabilities at Elkton.²⁸ Elkton is designated as a “Level 2” care facility, which means the facility is prepared to provide care for inmates with stable conditions such as medication-controlled diabetes, epilepsy, or emphysema. These inmates require evaluation by a clinician monthly to every six months.²⁹ These underlying conditions make these inmates more vulnerable to contracting the disease, as well as developing more serious complications.³⁰ The Petitioners-Appellees’ declarations describe current conditions and persons with disabilities who are being exposed to COVID-19 without adequate protections.³¹ While a healthy individual has a high rate of recovery, the same is not true for a person with a disability.³² Being an inmate with a disability at Elkton right now could be a death sentence. Many of these inmates

²⁸ At least five of the deceased inmates had long term pre-existing conditions. Shane Hoover, *Coronavirus has killed five Elkton prison inmates* (Apr. 15, 2020), available at <https://www.timesreporter.com/news/20200414/coronavirus-has-killed-five-elkton-prison-inmates>.

²⁹ Bureau of Prisons, *Care Level Classifications for Medical and Mental Health Conditions or Disabilities* (May 2019), available at https://www.bop.gov/resources/pdfs/care_level_classification_guide.pdf.

³⁰ Centers for Disease Control and Protection, *supra* note 23.

³¹ R. 1-7 at ¶ 6; R. 1-9 at ¶ 7.

³² World Health Organization, *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, 12, (Feb. 16-24, 2020) available at <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (stating that mortality rates for persons with comorbid conditions was “much higher” than those without; “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” as compared to “1.4% with no comorbidities.”).

are incarcerated for non-violent offenses for which death is not an appropriate or just sentence.

B. It is unlikely Elkton is able to comply with CDC guidelines designed to mitigate the spread of COVID-19 without a reduction in the prison population.

The CDC has been leading the national response to the COVID-19 outbreak in the United States. Pursuant to its mission to protect the health and safety of Americans, the CDC has issued guiding principles for combating COVID-19, including in detention and correctional facilities.

According to the CDC, prisons like Elkton present unique concerns during a global pandemic. The daily ingress and egress of staff offers constant and ample opportunity for the introduction of COVID-19 into a facility. Once inside a facility, COVID-19's potential for spread is heightened because inmates live, work, eat, sleep, bathe, and recreate within cramped and congregate environments. Access to adequate healthcare is already strained inside facilities, where significant portions of the population require chronic care for medical conditions--medical conditions that increase their risk of severe disease from COVID-19. Moreover, facilities like Elkton have extremely limited options for medical isolation, especially for large groups of people. And access to basic hygienic and cleaning supplies are limited, if not outright prohibited.

The CDC makes specific recommendations for correctional facilities that cannot be effectively implemented under current conditions at Elkton.³³ Petitioners-Appellees describe conditions at Elkton that make implementation of the guidelines impossible without drastically reducing the population. For instance, the CDC emphasizes social distancing practices, and suggests, “[i]f space allows, reassign bunks to provide more space between individuals, ideally six feet or more in all directions.”³⁴ Inmates are completely unable to social distance as they are currently housed in single occupancy cells with up to two other individuals.³⁵ Frequent handwashing is crucial for preventing infection, which is why the CDC implores facilities to provide no-cost soap in sufficient supplies to encourage habitual use.³⁶ However, not only is soap scarcely available, but also the water supply is discolored and causing rashes, according to Petitioners-Appellees.³⁷ The CDC guidelines also call for medical isolation. Specifically, as soon as an individual is presenting symptoms of COVID-19, they should wear a mask and “should be immediately placed under medical isolation in a separate environment

³³ Centers for Disease Control and Protection, *Coronavirus Disease 2019: Guidance for Correctional & Detention Facilities* (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited Apr. 30, 2020).

³⁴ *Id.*

³⁵ R. 1-5 at ¶ 5; R. 1-6 at ¶ 6; R. 1-8 at ¶ 3; R. 1-9 at ¶ 4; R. 1-10 at ¶ 6.

³⁶ Centers for Disease Control and Protection, *supra* note 25.

³⁷ R. 1-11 at ¶ 7; R. 1-10 at ¶ 10; R. 1-5 at ¶ 10.

from other individuals.”³⁸ As demonstrated in a now viral internet video captured by an inmate at Elkton on or around April 5, 2020, not all symptomatic individuals are being isolated from their peers, which is aggravating the spread of the virus.³⁹

As evidenced by the growing number of COVID-19 cases and seven deaths inside Elkton, BOP has demonstrated an inability to comply with CDC recommendations to keep individuals safe inside the facility using its current procedures.⁴⁰ Based on this information, the lower court determined that a reduction in population was necessary to avoid the risk of irreparable harm to the vulnerable population at Elkton. R. 22, Order, PageID# 368.

C. Releasing individuals into the community gives persons with disabilities the greatest chance of survival.

For an inmate with a disability at Elkton, with the current population as it stands, the risk of death is much too great. Releasing inmates into the community or transferring them to home confinement in accordance with the Order of

³⁸ Centers for Disease Control and Protection, *supra* note 25.

³⁹ Gift Johnson, *FCI Elkton OHIO STATE INMATE Speaks about coronavirus*, YouTube (Apr. 5, 2020), <https://www.youtube.com/watch?v=mRaRgQCai9c> (last visited April 29, 2020).

⁴⁰ Unfortunately, the fast and extensive rate of COVID-19’s spread is apparent at Ohio Department of Rehabilitation and Corrections facilities. As of April 29, 2020, there were 3,890 positive cases of COVID-19 in Ohio’s prisons, including staff, an increase of over 724% from April 16, 2020. ODRC is currently reporting 29 inmate deaths, 19 of which occurred at Pickaway Correctional Institution. Ohio Department of Rehabilitation and Corrections, *COVID-19 Inmate Testing* (April 29, 2020), available at https://www.drc.ohio.gov/Portals/0/DRC%20COVID-19%20Information%2004-29-2020%201300_1.pdf.

Preliminary Injunction by the lower court, provides persons with disabilities the highest chance of survival. Individuals will have an opportunity to social distance in the community, an opportunity that does not exist at Elkton and that will greatly curb the spread of the virus. People with disabilities will also have greater access to soap, clean water, hand sanitizer, and cleaning supplies including the ability to use these items at will. If an individual subsequently develops symptoms, options for self-quarantine exist in the community setting where they do not exist at Elkton. Ultimately, if removed from Elkton, which is functioning as a COVID-19 incubator, persons with disabilities will have greater control over their exposure to the virus, their responsive measures to potential exposure, and therefore, their ability to protect their lives.

The decrease in population will allow individuals remaining at Elkton to distance from one another, have greater access to limited supplies of soap and sanitation materials, and avoid those who are experiencing symptoms. Reducing the population at Elkton will benefit not only those with disabilities who are released, but will also allow the remaining population at Elkton to better practice the guidelines issued by the CDC.

As recognized by the lower court, the only way to implement the CDC's recommendations is to swiftly reduce Elkton's population to safe levels. BOP must follow the current Order to identify members of the medically vulnerable subclass

who can be released early, released on furlough, or transitioned to home confinement in substantial numbers. Additionally, the low security level of Elkton indicates that all inmates are eligible candidates for home confinement.⁴¹ Measures to decrease the population are imperative in order to not only release individuals with disabilities who are at a higher risk for contracting the virus and developing more serious illnesses as a result, but also to protect high risk individuals who will remain in these facilities because they are not ideal candidates for release. The lower court's Order for Preliminary Injunction, if fully carried out, adequately remedies the concerns of unnecessary harm to incarcerated individuals with disabilities.

V. CONCLUSION

For the foregoing reasons, Amicus Curiae Disability Rights Ohio respectfully requests that this Court affirm the Order of Preliminary Injunction by the lower court.

⁴¹ On April 3, 2020, the Attorney General directed BOP to prioritize home confinement for inmates at low-level facilities, citing “significant levels of infection” at FCI Elkton. Attorney General William Barr, *Memorandum for Director of Bureau of Prisons: Increasing Use of Home Confinement at Institutions Most Affected by COVID-19* (Apr. 3, 2020), available at <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE REGARDING LENGTH OF BRIEF

Pursuant to Rules 29(a)(4)(G) and 32(g)(1) of the Federal Rules of Appellate Procedure (“Fed. R. App. P.”), the undersigned hereby certifies that this document complies with Fed. R. App. P. 29(a)(5) and is no more than one-half of the type-volume limitations for a principal brief set forth in Fed. R. App. P. 32(a)(7)(B).

This document has been prepared in proportionally spaced typeface using Microsoft Word in 14 point Times New Roman font. Exclusive of the exempted portions of the brief set forth Fed. R. App. P. 32(f), the undersigned hereby certifies that this document contains 4,643 words, as determined by a word processing system used to prepare this brief.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2020, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the appellate CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the appellate CM/ECF system.

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