

1 I, David Brewer, do hereby declare and state the following:

2 1. I am the Administrator of the Correctional Programs Branch of the
3 Correctional Programs Division within the Federal Bureau of Prisons ("BOP). I began
4 my career with the BOP in 2004 and have worked in positions of increasing
5 responsibility since. I have held the position of Administrator of the Correctional
6 Programs Branch since April of 2018. The facts set forth in this declaration are provided
7 based on my personal knowledge of policies, practices or events, or based on my review
8 of BOP records, which includes information maintained in the Bureau's SENTRY
9 database. SENTRY includes many types of records, including sentence and offense-type
10 information, location history, BOP assigned medical and mental health care levels,
11 information concerning past offenses, and disciplinary records. If called upon, I could
12 and would testify as set forth below.

13 2. As the Administrator of the Correctional Programs, I have been involved in
14 the BOP's national implementation of the expanded home confinement authority under
15 the Coronavirus Aid, Relief, and Economic Security Act, PL 116-136, 134 Stat 281
16 (Mar. 27, 2020) ("CARES Act"). As part of my duties, I am one of the members of the
17 committee established by the BOP to review inmates for home confinement who do not
18 meet the criteria for placement on home confinement which is discussed more fully
19 below. In response to the Court's order of July 14, 2020, the committee reviewed all
20 1,207 inmates referred by staff at the Federal Correctional Complex in Lompoc,
21 California for possible placement on home confinement.

22 3. The history of the BOP's authority to place inmates on home confinement is
23 set forth in detail in the declaration of Todd Javernick dated July 20, 2020. ECF No. 51.
24 However, to recap, the BOP has considered inmates for home confinement at the end of
25 their term of imprisonment pursuant to 18 U.S.C. § 3624, since September 6, 1995 and
26 the BOP established policy and procedures for referral and placement of pre-release
27 inmates in home confinement programs. See, Program Statement 7320.01, *Home*
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1 *Confinement* (September 6, 1995).¹ Congress has also authorized and then re-established
 2 and expanded a pilot program to place elderly and terminally ill inmates in home
 3 confinement for which the BOP has issued an Operations Memorandum (O.M.)
 4 implementing these pilot programs. See, O.M. 001-2020, *Home Confinement Under the*
 5 *First Step Act* (effective April 3, 2020 to April 3, 2021).² BOP has and continues to
 6 consider inmates for home confinement under these authorities throughout the COVID-
 7 19 pandemic.

8 4. On March 7, 2020, Congress enacted the CARES Act which expanded the
 9 period of time the BOP can place an inmate in home confinement, but only after the
 10 Attorney General finds “emergency conditions will materially affect the functioning of
 11 the Bureau.” On March 26, 2020, the Attorney General issued a memorandum
 12 encouraging the BOP to use its existing authority to place inmates in home confinement
 13 while protecting the public.³ As part of this guidance, the Attorney General prioritized
 14 inmates with medical conditions that put them at risk of severe disease from COVID-19,
 15 those in low and minimum security facilities, those with a minimum PATTERN
 16 (prisoner assessment tool targeting estimated risk and needs) score, and those with a
 17 reentry plan that would offer a lower risk of contracting COVID-19. It also outlined the
 18 need to protect the public by assessing the inmate’s crime of conviction and possible
 19 dangerousness and recognized some offenses, like sex offenses would render an inmate
 20 ineligible for home detention as well as ensuring inmates placed in home confinement
 21 are subject to location monitoring.

22 5. On April 3, 2020, the Attorney General issued a memorandum making the
 23 “finding that emergency conditions are materially affecting the functioning of the Bureau
 24 of Prisons.”⁴ This memorandum directed the BOP to consider all inmates who have
 25 COVID-19 risk factors for home confinement. The memorandum asked the assessment

26 ¹ https://www.bop.gov/policy/progstat/7320_001_CN-2.pdf

27 ² <https://www.bop.gov/policy/om/001-2020.pdf>

28 ³ https://www.bop.gov/foia/docs/2020_COVID_memos.pdf, pp. 47 – 48.

⁴ *Id.*, pp. 65 – 67.

1 of these inmates continue to “be guided by the factors in the March 26 Memorandum.”
2 Notably, this memorandum authorized “BOP to transfer inmates to home confinement
3 even if electronic monitoring is not available, so long as BOP determines in every such
4 instance that doing so is appropriate and consistent with our obligation to protect public
5 safety.” The memorandum explained “it is essential that you continue making the
6 careful, individualized determinations BOP makes in the typical case.”

7 6. As Mr. Javernick explained, the BOP has issued a number of memorandums
8 and guidance to staff regarding the criteria to be used when evaluating an inmate for
9 potential placement on home confinement. The most recent of these is the May 8, 2020,
10 memorandum from Acting Assistant Director over Correctional Programs Division and
11 the Assistant Director over Reentry Services Division revising the criteria to consider
12 when determining suitability for home confinement.⁵ Among the many other criteria
13 the agency is currently using, this memorandum expressly requires BOP staff to assess “
14 . . . the age and vulnerability of the inmate to COVID-19, in accordance with the CDC
15 guidelines.” Furthermore, the current memorandum provided that a Warden may refer
16 for any inmate that does not meet the current suitability criteria but does have COVID-
17 19 risk factors for severe disease to the Correctional Programs Division in Central
18 Office.

19 7. In compliance with the Court’s order of July 14, 2020, between July 23 and
20 August 7, 2020, staff at the Federal Correctional Complex in Lompoc, California,
21 prepared and sent over 1,207 referral packets to the CPD’s review committee. Each of
22 these inmates was reviewed under the criteria set out in the May 8, 2020, memorandum.
23 Moreover, in conformance with the Court’s order of July 14, 2020, the committee gave
24 “substantial weight to the inmate’s risk factors for severe illness or death from COVID-
25 19 based on age (over 50) or Underlying Health Conditions.” The members of the
26 committee reviewed all of these factors for each inmate and then made an individualized
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28 ⁵ Id., pp. 115 – 117.

1 determination as to whether the inmate was appropriate for placement on home
2 confinement, should be referred to an RRC, or should be denied such placement.

3 8. Moreover, the Department of Justice has instructed the agency to take an
4 additional step in the event it is considering placing an inmate on home confinement who
5 fails to meet any of the criteria established in the Attorney General's memoranda of
6 March 26 and April 3, 2020. For all such inmates, the BOP has been instructed to
7 contact the U.S. Attorney's Office who prosecuted the inmate and afford that office the
8 opportunity to provide additional information, including information from victims,
9 which might be relevant to the decisional process. Pursuant to the Department of Justice
10 instructions, the committee is required to afford the inmate's prosecutor three business
11 days to respond to each of these inquiries before it can make a final determination on the
12 whether to place the individual on home confinement.

13 9. Moreover, given the extremely short time-frame for these reviews, the
14 committee found a great many of the inmates no longer qualified for this type of review.
15 For example, the committee found approximately five inmates who had been granted
16 compassionate release between the date they were referred and the date the committee
17 was conducting their review. In addition, staff at FCC Lompoc referred a number of
18 inmates who either had been transferred to a halfway house ("RRC") before the
19 committee could review them for placement on home confinement. Where appropriate,
20 the committee referred these individuals to the responsible BOP Residential Reentry
21 Manager's office for an evaluation of whether the inmates should be transferred to home
22 confinement.

23 10. As of today, the committee has completed the reviews for all 1,207 inmates
24 referred by staff at FCC Lompoc. Of these, however, there are 116 that have been
25 referred to a USAO but are pending a response. Upon receipt of the USAO's response,
26 the committee's will make a final decision on whether to place the inmate on home
27 confinement.

1 11. CPD's staff is now working on narrative explanations for each denial so it
2 can be sent to staff at FCC Lompoc who can review them and place them in the format
3 of a declaration as required by the Court's Order of July 14, 2020. Unfortunately, this
4 final step is taking CPD's staff a significant amount of time because it is not a part of the
5 agency's ordinary process. Furthermore, as a result of the COVID-19 pandemic, the
6 committee has been meeting via teleconference, further hampering the preparation of a
7 narrative explanation by the committee's staff. Also, the committee made the decision to
8 prioritize completing each of the reviews rather than stopping to draft a narrative
9 explanation after each review was completed. The committee made that decision
10 because creating such a narrative would significantly slow down the review process.
11 The committee decided it would instead prioritize the completion of all of the reviews so
12 those individuals who were approved for placement on either home confinement or at an
13 RRC could then be prioritized for processing. The committee determined that because
14 members of the inmate's Unit Team would need to follow up with individuals and
15 offices outside of FCC Lompoc, such as the inmate's family and the U.S. Probation
16 Office, prioritizing the completion of all of the reviews would ensure inmates approved
17 for such placement could then be processed more quickly. As it was impossible to
18 determine which inmates would receive such approval ahead of time, the committee
19 decided to review all 1,207 inmates as quickly as possible and then prioritize the
20 preparation of packets for all of the inmates who had received such approvals.

21 12. The CPD's staff is currently assembling a narrative for each inmate who
22 was not approved for home confinement explaining the specific basis for each denial.
23 As of 5:30 p.m. Monday, August 17, 2020, staff had completed narratives for one
24 hundred and eighty-seven (187) inmates who were not approved for placement on home
25 confinement. I expect, however, the CPD's staff will complete the remaining narratives
26 by Friday, August 21, 2020. There is, however, a possibility some of the 116 inmates
27 who were referred to a USAO for comment, may be denied or, alternatively, be approved
28 for placement at an RRC rather than on home confinement. For those inmate, the

1 narrative may not be completed until a few days after the receipt of the USAO's
2 comments. Once CPD's staff complete the narratives, they will be sent to FCC Lompoc
3 staff so they can be used to prepare a final declaration for filing with the Court. I
4 expect affording the agency until August 28, 2020, will provide the agency sufficient
5 time to prepare each narrative, format it into a declaration and submit it to be completed
6 and for staff at FCC Lompoc to format them into a declaration.

7 Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury
8 that the foregoing is true and correct to the best of my information, knowledge, and
9 belief. Executed on this 18th day of August 2020, in Washington, D.C.

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12 David Brewer
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