

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JAMES WHITTED,
individually, and on behalf of all others
similarly situated,

Petitioner,

v.

Case No. 3:20-cv-569 (MPS)

D. EASTER, Warden of Federal Correctional
Institution at Danbury, in her official capacity

Respondent.

NOTICE TO THE CLASS OF SETTLEMENT AGREEMENT

This Notice is to inform you that there has been a Settlement Agreement resolving a class action habeas lawsuit on behalf of individuals incarcerated in the Federal Correctional Institution in Danbury, Connecticut (“FCI Danbury”) who are medically vulnerable to COVID-19 (the “Medically Vulnerable Class”). This Notice is also to give you an opportunity to comment on and/or object to the Settlement, and provide you with instructions on how, when, and where to mail your written comments and/or objections to it.

You are a Class Member if you are incarcerated at FCI Danbury and:

- You have already been placed on a list of medically vulnerable people during the course of this lawsuit (a “List One” Inmate or a “List Two” Inmate, defined below); OR
- You possess one or more medical conditions which, according to current United States Centers for Disease Control and Prevention (“CDC”) guidance, either (i) places you at increased risk of severe illness from COVID-19; or (ii) might place you at an increased risk of severe illness from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/index.html>.

I. CASE BACKGROUND

On April 27, 2020, several individuals imprisoned at FCI Danbury filed this action against Diane Easter, in her official capacity as the Warden of FCI Danbury, challenging the conditions of confinement at FCI Danbury and the Bureau of Prisons’ (“BOP”) measures in response to the COVID-19 crisis. In the complaint, Petitioners alleged that the BOP had inadequate policies and procedures for managing the risk of COVID-19 infection at FCI Danbury in violation of the Eighth Amendment to the Constitution of the United States, and challenged the BOP’s alleged failure to release medically vulnerable individuals from the facility during the pandemic. Respondent Warden Easter and the BOP have denied the allegations. This is not a money damages case. Rather, the lawsuit sought non-monetary relief in the form of changes to the conditions of confinement at FCI Danbury and the release of individuals who are

medically vulnerable to COVID-19. The Petitioners are represented by the law firm of Silver Golub & Teitell LLP, the Legal Clinic at Quinnipiac University School of Law, the Jerome N. Frank Legal Services Organization at Yale Law School, and the Criminal Justice Advocacy Clinic at the University at Buffalo School of Law (collectively, “Petitioners’ lawyers”).

The District Court overseeing this case issued a Temporary Restraining Order (TRO) on May 12, 2020 that ordered Warden Easter to identify medically vulnerable individuals and set forth standards for determining those individuals’ suitability for home confinement.

On July 27, 2020, the parties reached a Settlement Agreement that resolves this lawsuit, subject to final approval by the Court. The Settlement Agreement applies to those individuals incarcerated at FCI Danbury who are medically vulnerable to COVID-19 (meaning they are or might be at higher risk of severe illness or death from COVID-19 according to CDC guidance). Copies of the Settlement Agreement will be available with the case managers in each unit at the facility, or you may request one by writing to Petitioners’ lawyers (see details below).

In addition, the Government issued a letter filed on the docket (ECF No. 138-1) stating its intention to take certain actions at FCI Danbury to meet the medical needs of inmates during the COVID-19 pandemic to mitigate and control the spread of the virus. This letter is not part of the parties’ Settlement Agreement (ECF No. 134-1) and does not create any enforceable rights.

If you are part of the Medically Vulnerable Class as defined above, you have a right to comment and/or object to the Settlement Agreement.

II. THE SETTLEMENT AGREEMENT

A. Terms of the Settlement Agreement

The main terms of the Agreement are:

Identifying and Reviewing Members of the Medically Vulnerable Class for Home Confinement Who Have Not Previously Been Identified for Home Confinement Review

1. Respondent and BOP agree to recognize individuals as part of the Medically Vulnerable Class as follows: Individuals at FCI Danbury who believe they are medically vulnerable as defined by current CDC guidance can sign an Authorization Form permitting BOP to give their medical records to Petitioners’ lawyers. Petitioners’ lawyers will propose to BOP those individuals they believe are part of the Medically Vulnerable Class if medical records confirm a condition listed by the CDC. If you already signed an Authorization Form in early June giving Petitioners’ lawyers access to your medical records you do not need to sign another form. Individuals who have been at FCI Danbury for less than two years may also submit outside medical records to substantiate a claim that they are medically vulnerable.

2. Medically vulnerable individuals will be entitled to expedited consideration for suitability for home confinement. Once someone is identified as medically vulnerable, a medical clinician will verify that all medical conditions are identified for the home confinement review. The review process will be conducted under policies set forth by the BOP and the Attorney General

and the standards of the Court's May 12 TRO, which include speedy consideration for release to home confinement and substantial weight provided to each individual's COVID-19 risk factors.

3. Members of the Medically Vulnerable Class who are denied home confinement at FCI Danbury will be reviewed for home confinement by the Home Confinement Committee (HCC), a committee within the Central Office of the BOP in Washington D.C. in accordance with the standards set forth in the Court's May 12 TRO.

4. Respondent and BOP agree to complete home confinement review within a reasonable time, and will try to do so within 14 days from the time an individual is recognized as part of the Medically Vulnerable Class.

5. The home confinement review process will be subject to continued oversight from the lawyers and the Court. The lawyers will receive written explanations for the reasons for any denial. If the HCC relies on erroneous factual information or applies the wrong standards in denying home confinement, individuals may be entitled to re-review by the HCC. Individuals denied home confinement based on an unsuitable release plan or pending warrants, charges, or detainers will have the right to apply, on their own initiative, for a home confinement re-review if those issues are resolved. Such inmates shall be re-reviewed first by the institution, and, if denied again by the institution, then by the Home Confinement Committee.

6. The BOP will attempt to release those approved for home confinement within 14 days of the approval decision unless public safety or release plan issues make it unsafe to move the individual to home confinement within that 14-day period.

Previously Identified Medically Vulnerable Individuals

7. *List One Inmates*: On May 15, 2020, Warden Easter identified an initial group of individuals, whom the Settlement Agreement identifies as "List One Inmates." Those individuals have already been reviewed for home confinement. Under the Settlement Agreement, the BOP agrees to re-review 54 of these List One Inmates for home confinement under the TRO standards and terms of the Settlement Agreement. Petitioners' lawyers identified these individuals because Petitioners' lawyers contend there were significant and material errors in the previous review: without conceding error, the BOP has agreed to re-review them. All List One Inmates are listed on Exhibit A of the Settlement Agreement, and the 54 individuals who will be re-reviewed are listed on Exhibit B. The exhibits include the initials of each individual and the first three digits of their BOP register numbers. These lists are attached to the Settlement Agreement and you can view the lists in your case manager's office. You may also contact Petitioners' lawyers to find out if you are on these lists.

8. *List Two Inmates*: Warden Easter identified an additional group of individuals on June 3, 2020, and several more individuals were later added to this list by agreement between the parties. The Settlement Agreement identifies this group of individuals as "List Two Inmates." All List Two Inmates are listed on Exhibit A of the Settlement Agreement. Respondent and BOP have begun reviewing List Two Inmates for home confinement. Respondent agrees to have all List Two Inmates, to the extent she has not done so already, reviewed for home confinement at FCI

Danbury. All List Two Inmates who are not approved for home confinement at FCI Danbury will be reviewed for home confinement by the HCC. These reviews are subject to oversight from the lawyers and the Court for compliance with the TRO and the Settlement Agreement.

B. Releases of Claims

If you are a member of the Medically Vulnerable Class, you will not be able to pursue any individual lawsuit challenging BOP's home confinement decision made during the duration of the agreement (currently until October 31, 2021). Any challenge to BOP's decision to deny you home confinement must be made under the terms and procedures set forth in the Settlement Agreement. In addition, you will not be able to pursue any action seeking non-monetary relief for any acts or omissions regarding the BOP's response to the COVID-19 pandemic prior to July 27, 2020.

However, the Settlement Agreement does not affect your ability to pursue any claims for money damages that you may have against the BOP. The Settlement Agreement also does not prevent any claims (other than those challenging BOP's home confinement decisions) based on conditions at FCI Danbury after July 27, 2020. Finally, the Settlement Agreement does not affect your ability to seek a sentence reduction, typically called a compassionate release motion, pursuant to 18 U.S.C. § 3582.

C. Impact on Individuals Who Are Not Medically Vulnerable

If you are incarcerated at FCI Danbury and do not have a medical condition that places you or might place you at an increased risk of severe illness from COVID-19 as defined by the CDC, you are not a party to the Settlement Agreement. While the Settlement Agreement does not afford any protections to you, it also does not waive any of your rights or prevent you from pursuing any claims you may have against the BOP. If, at some point during the effective period of the Settlement Agreement, you are diagnosed with a condition that makes you medically vulnerable to COVID-19 as defined in the Agreement, you will become a member of the Medically Vulnerable Class and eligible for home confinement review under the terms set forth in the Settlement Agreement. As a class member, you will be subject to the "Release of Claims" described in Section B above.

III. PURPOSES OF THIS NOTICE AND NOTICE OF FAIRNESS HEARING

The Settlement Agreement is under review by the Court, and it will not take effect unless and until it is approved by the Court. This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the litigation or the merits of the claims or defenses asserted. This Notice is sent to advise you of this action and proposed settlement and of your rights with respect to this action.

If you wish to submit any objections to or comments in support of the Settlement Agreement, you should submit an explanation in writing why you do or do not believe that the Settlement Agreement is fair, reasonable, and adequate. The Court will consider any objections or comments you may have regarding the Settlement Agreement, provided they are received by **September 4, 2020**.

All written objections to the pending Settlement Agreement must be mailed to:

United States District Court
450 Main Street
Hartford, CT 06103
Attention: Danbury Settlement

A hearing, which may be conducted by teleconference or video conference, will be held at the discretion of the Court, on **September 18, 2020 at 10:00 a.m.** at which time the Court will consider the fairness of the Settlement Agreement and whether to approve it. Your objection will only be considered if it is in writing, and is received on or before **September 4, 2020**. Your personal presence in court will not be required, and no testimony will be taken. If you want to comment and/or object, it is important that you do so in writing and that you send your written comments or objections sufficiently in advance of the deadline. Any comments/ objections received after **September 4, 2020**, will not be considered.

FOR FURTHER INFORMATION: You should read the entire Settlement Agreement to understand it fully. Copies of the Agreement may be obtained: (1) by requesting a copy of the Settlement Agreement from your Case Manager; (2) online at <http://www.danburylawsuit.com/agreement.pdf>. or (3) by contacting Petitioners' lawyers by email at lawyers@danburylawsuit.com, or by regular mail at:

Silver Golub & Teitell, LLP
Attention: Danbury Lawsuit
184 Atlantic Street
Stamford, CT 06901

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK'S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT.

APPROVED AND SO ORDERED.

Dated at Hartford, CT this 11th day of August, 2020

/s/
Michael P. Shea, U.S.D.J.