



incarceration in a minimum-security camp. Ms. Blake submits that it would be particularly unfortunate to subject her to these current risks when it is reasonably likely that such unnecessary risks can be substantially avoided by deferring her self-surrender date by 60 days.

### **BACKGROUND**

On November 17, 2020, this Court sentenced Ms. Blake to six weeks' imprisonment for her role in the college admissions scandal and set a self-surrender date of February 15, 2021. ECF No. 1642. Ms. Blake is a 56-year-old, first-time, non-violent offender. Upon request, the Court recommended that the BOP assign Ms. Blake to an institution of the appropriate security level in the state of California. *Id.* Consistent with that recommendation, the BOP designated Ms. Blake to Dublin SCP, which is a minimum security, dormitory-style satellite camp located adjacent to FCI Dublin, in Dublin, California.

Since the time of Ms. Blake's sentencing in November 2020 there have been at least three significant material developments with respect to the COVID-19 pandemic. The first is that COVID case numbers have surged, reaching record highs of 292,204 new cases per day on January 8, 2021 and 4,409 new deaths per day on January 20, 2021. Hospitalizations have likewise nearly doubled in that same period.<sup>1</sup> The second is that multiple new, far more contagious and likely more dangerous variants have emerged and are spreading worldwide, including in the United States.<sup>2</sup> The third (and thus far the only positive) development is the approval of two COVID-19 vaccines which are currently being distributed and administered in accordance with CDC and state guidelines. While the initial rollout of the vaccine has been slower than anticipated, the Biden administration has announced plans to accelerate vaccine distribution with an objective of

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<sup>1</sup> <https://covidtracking.com/data#summary-charts>

<sup>2</sup> <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html>

administering 100 million vaccines by the end of April.<sup>3</sup> FDA approval of the one-dose Johnson & Johnson vaccine, anticipated in the next few weeks, is expected to aid in making this goal a reality.<sup>4</sup>

## **ARGUMENT**

### **I. A REASONABLE DEFERRAL OF MS. BLAKE'S SELF-SURRENDER DATE COULD ALLOW HER THE OPPORTUNITY TO RECEIVE THE VACCINE AND ELIMINATE HER RISK OF CONTRACTING COVID-19 WHILE INCARCERATED.**

Ms. Blake submits that a reasonable deferral of her self-surrender date is warranted because it may allow her an opportunity to obtain a COVID-19 vaccine. Both vaccines approved to date are greater than 94% effective<sup>5</sup> and would protect Ms. Blake from contracting COVID-19, and greatly reduce the likelihood of a critical outcome such as hospitalization or death. Given that nearly one-third of BOP inmates have contracted COVID-19 already, Ms. Blake would be at substantial risk of infection if she were to enter BOP custody without being vaccinated.

This Court is no doubt well-aware of the unique impact that the COVID-19 pandemic has had on the Bureau of Prisons and its inmates and staff. The COVID-19 pandemic poses a "higher risk to incarcerated individuals who are unable to practice public health precautions that are otherwise available to the general public, such as social distancing practices." *United States v. Brown*, No. 14-cr-60161, 2020 WL 5116781, at \*2 (S.D. Fla. Aug. 31, 2020). "There is currently no reliable treatment for COVID-19, so the best approach is to avoid infection," a strategy that is "harder to implement in jails and prisons, which have generally been hit the hardest by COVID-

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<sup>3</sup> National Strategy for the Covid-19 Response and Pandemic Preparedness at p. 37, available at <https://www.whitehouse.gov/wp-content/uploads/2021/01/National-Strategy-for-the-COVID-19-Response-and-Pandemic-Preparedness.pdf>

<sup>4</sup> <https://www.nytimes.com/2021/01/22/us/politics/cdc-coronavirus-vaccines.html>

<sup>5</sup> See <https://investors.modernatx.com/news-releases/news-release-details/moderna-announces-primary-efficacy-analysis-phase-3-cove-study>; <https://www.pfizer.com/news/press-release/press-release-detail/pfizer-and-biontech-conclude-phase-3-study-covid-19-vaccine>.

19.” *Zymak v. Adducci*, No. 20-11786, 2020 WL 5017534, at \*1 (E.D. Mich. Aug. 25, 2020). See also *United States v. Barber*, No. 6:18-cr-00446, 2020 WL 2404679, at \*3 (D. Or. May 12, 2020) (“Prisoners are particularly vulnerable to infection due to the nature of their incarceration,” including because they cannot “adequately follow social distancing and sanitary guidelines recommended to avoid the spread of infection.”). The incoming Biden administration has acknowledged that “[i]ncarcerated individuals and facility staff are at high risk of infection and in many cases severe illness and death due to COVID-19.”<sup>6</sup> To date, more than 45,000 of the approximately 137,000 inmates in the BOP’s custody have contracted COVID-19, with 210 dying as a result.<sup>7</sup>

This Court has previously deferred self-surrender dates for other defendants in this case, ECF Nos. 940 & 946, and has indicated that it would entertain further extensions “[i]f the public health crisis has not abated by the time of the extended report date.” ECF No. 1128 at 3. Other courts in this district and elsewhere have likewise extended self-surrender dates as a result of the high risk of exposure to COVID-19 within the BOP. See, e.g., *United States v. Babich, et al.*, 16-cr-10343-ADB (D. Mass.) at ECF Nos., 1223, 1271, 1365, 1396, 1419 & 1436; *United States v. Decoteau*, No. CV 4:18-40042-TSH, 2020 WL 7042941, at \*2 (D. Mass. Dec. 1, 2020); *United States v. Stavrakis*, No. CR ELH-19-00160, 2020 WL 5747196, at \*2 (D. Md. Sept. 25, 2020); *United States v. Federico*, 2020 WL 4745753, at \*2 (N.D. Cal. Aug. 14, 2020). This includes deferrals which have been allowed specifically in order to afford the opportunity for defendants to receive the COVID vaccine. See *United States v. Noel*, 2021 WL 134606, at \*2 (E.D. Ky. Jan. 13, 2021); *United States of America v. McDonald*, 2021 WL 236074, at \*2 (E.D. Mich. Jan. 25, 2021). See also *United States v. Lindberg*, 2020 WL 6054941, at \*1 (W.D.N.C., 2020) (“This

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<sup>6</sup> National Strategy for the Covid-19 Response and Pandemic Preparedness at p. 46.

<sup>7</sup> <https://www.bop.gov/coronavirus/>

Court indicated at sentencing that if perhaps a vaccine was nearly available then Defendant's report date could possibly be delayed to allow Defendant to make use of the vaccine.”).

Given the substantial risk that Ms. Blake will be exposed to the virus while in BOP custody in combination with the fact that the vaccine may be made available to Ms. Blake in the near future, Ms. Blake respectfully requests that the Court allow the assented-to motion to defer her self-surrender date for a period of 60 days in order to allow her an opportunity to receive the vaccine and reduce exponentially her risk of infection, hospitalization or death while incarcerated. The proverbial “light at the end of the tunnel” is in sight and it would be a cruel twist of fate were Ms. Blake to become severely ill -- or worse -- as a result of beginning her six-weeks of incarceration without the protection of the vaccine when a modest delay of 60 days could eliminate these risks altogether.

**II. A DEFERRAL IS REASONABLE AND WARRANTED WHERE REPORTING TO BOP CUSTODY AS SCHEDULED WOULD LIKELY RESULT IN MS. BLAKE SPENDING THE MAJORITY OF HER SIX-WEEK SENTENCE IN SOLITARY QUARANTINE.**

A separate but related concern also warrants delaying Ms. Blake’s self-surrender date. As a result of the COVID-19 pandemic, were Ms. Blake to self-surrender as scheduled on February 15, 2021, she would be placed into solitary quarantine and otherwise experience restrictions on her freedom far more severe and punitive than what the Court intended when sentencing her to serve her sentence at a minimum-security, dormitory-style satellite camp.<sup>8</sup> Under current

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<sup>8</sup> See, e.g., As COVID-19 Spreads In Prisons, Lockdowns Spark Fear Of More Solitary Confinement, NPR.com (June 15, 2020), available at <https://www.npr.org/2020/06/15/877457603/as-covid-spreads-in-u-s-prisons-lockdowns-spark-fear-of-more-solitary-confinemen> (last visited Jan. 14, 2021) (describing that “[b]efore the coronavirus, according to the report, there were 60,000 people in solitary confinement. Now, in response to the pandemic, 300,000 state and federal prisoners have been confined to their cells. They've been placed in solitary confinement or in lockdown.”); see also As Bureau of Prisons Enters “Phase 9” Of COVID-19 Plan, BOP Staff Wonder If There Is A Real Plan, Forbes.com, available at <https://www.forbes.com/sites/walterpavlo/2020/08/07/as-bureauof-prisons-enters-phase-9-of-covid-19-plan-bop-staff-wonder-if-there-is-a-realplan/?sh=7fff2583326f> (describing practices of placing minimum security in adjacent higher

published BOP protocols, inmates are required to be placed into solitary quarantine for a period of 14 days upon intake and another 14 days upon release from custody.<sup>9</sup> The facility to which Ms. Blake has been designated, Dublin SCP, has reportedly lengthened these periods of solitary beyond 14 days. Regardless of the precise duration of quarantine, this means that Ms. Blake would spend the majority of her six-week sentence in solitary quarantine. Inmates at Dublin SCP are sent to quarantine in the Special Housing Unit ("SHU") at the neighboring low security prison, FCI Dublin. While in quarantine, they are confined in a cell 24 hours per day -- only being permitted to leave their cell three times per week for fifteen minutes to shower and make a phone call. These conditions are a stark contrast to the minimum-security camp environment in which Ms. Blake was supposed to serve out her sentence, and would exact a heavy toll on her mental, physical and emotional well-being.

This Court has already recognized, in reducing the sentence of 'Varsity Blues' parent Toby Macfarlane, that "Macfarlane's two-week confinement in solitary quarantine in a higher security facility is the equivalent of two months in the Camp to which he was originally assigned." *United States v. Macfarlane*, 19-cr-10131-NMG (D. Mass. Apr. 14, 2020), ECF No. 352 at 3. Ms. Blake submits that it is reasonable and warranted that her self-surrender date be deferred in an attempt to avoid precisely this problem, where she would experience conditions of confinement far more draconian than either her crime merited or the Court contemplated in sentencing her.

It is worth noting that the government, which has assented to this Motion, recently opposed co-defendant Massimo Giannulli's motion seeking an early release from BOP based upon time spent in solitary quarantine on the grounds that he instead "could have sought a continuance of his report date." See Government's Opposition to Defendant Massimo Giannulli's Emergency

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security institutions for "23-24 hours every day, limited showers, limited phone calls and cell lockdowns for spans of 30+ days.")

<sup>9</sup> [https://www.bop.gov/coronavirus/covid19\\_status.jsp](https://www.bop.gov/coronavirus/covid19_status.jsp)

Motion to Modify His Sentence Pursuant to 18 U.S.C. § 3582(c)(1), ECF No. 1694 at 5. It is on this basis that Ms. Blake, who wholly accepts the sentence imposed by the Court and intends to serve it in full, respectfully requests that the Court defer her self-surrender date for 60 days.

**CONCLUSION**

For the reasons stated herein, Defendant Diane Blake respectfully requests that the Court defer for sixty (60) days her self-surrender to the BOP from the presently-scheduled date of February 15, 2021 to April 13, 2021.

Respectfully submitted,

/s/ David E. Meier  
David E. Meier (BBO #341710)  
Christian G. Kiely (BBO #684308)  
Todd & Weld LLP  
One Federal Street, 27th Floor  
Boston, MA 02110  
(617) 720-2626  
dmeier@toddweld.com  
ckiely@toddweld.com

/s/ Stephen H. Sutro  
Stephen H. Sutro, Esq.  
Duane Morris, LLP  
Spear Tower  
One Market Plaza, Suite 2200  
San Francisco, CA 94105-1127  
Telephone: (415) 957-3008  
Facsimile: (415) 276-9855  
SHSutro@duanemorris.com

*Counsel for Diane Blake*

Date: February 4, 2021

**LOCAL RULE 7.1(a)(2) CERTIFICATION**

I, David E. Meier, hereby certify that I conferred with counsel for the government in an attempt to resolve or narrow the issues raised in this Motion. The government assents to the Motion.

/s/ David E. Meier  
David E. Meier

**CERTIFICATE OF SERVICE**

I, David E. Meier, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 4, 2021.

/s/ David E. Meier  
David E. Meier