

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

MICHAEL L. BABICH et al.,

Defendants.

Criminal No.: 16-CR-10343-ADB

**DEFENDANTS MICHAEL GURRY AND SUNRISE LEE'S MOTION
TO CONTINUE SELF-SURRENDER DATE**

Defendants Michael Gurry and Sunrise Lee respectfully request that the Court extend their self-surrender dates from September 22, 2020 to January 5, 2021 in order to reduce the risk that Mr. Gurry and Ms. Lee are exposed to the COVID-19 virus while in the custody of the Bureau of Prisons.* In support of this motion, Mr. Gurry and Ms. Lee state as follows:

1. The Court initially ordered Mr. Gurry to self-surrender on February 25, 2020.
2. The Court has continued Mr. Gurry's self-surrender date four times. See Docket No. 1223, 1254, 1335, and 1382. He is currently scheduled to self-surrender on September 22, 2020.
3. Ms. Lee has been given similar extensions by the Court and she is also currently scheduled to report on September 22, 2020.
4. Mr. Gurry is 56 years old and, as reflected in his PSR, suffers from allergy-induced asthma, a respiratory ailment for which he was prescribed Advair and Albuterol inhalers

* Mr. Gurry and Ms. Lee understand that the government has assented to Defendants Kapoor, Rowan, and Simon's forthcoming motion to continue their self-surrender dates to November 30, 2020 and that the government does not assent to any motion requesting a self-surrender after that date.

in the past. PSR ¶ 182. Asthma increases Mr. Gurry's risk of serious complications were he to contract the COVID-19 virus. The CDC currently warns that people with moderate to severe asthma are at risk of acute respiratory disease and are at higher risk of getting very sick if they contract the COVID-19 virus. *See* CDC, "People with Moderate to Severe Asthma," available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html> (last visited Sept. 7, 2020). *See also* United States v. Mahan, Case No. 1:19-cr-233-DCN, Dkt. No. 67 (D. Idaho Apr. 10, 2020) (finding risk of COVID-19 to defendant with chronic, moderate asthma warranted pretrial release although defendant previously found to be a danger to the community).

5. Ms. Lee is 40 years old and has been diagnosed with both asthma and PTSD. PSR ¶¶ 168-69. Asthma increases Ms. Lee's risk of serious complications were she to contract the COVID-19 virus. *See supra* ¶ 6.

6. Mr. Gurry has been designated to report to FPC Jesup, the minimum security camp located at FCI Jesup in Jesup, Georgia. FCI Jesup is currently undergoing an outbreak of COVID-19. According to the BOP's website on September 7, 2020, FCI Jesup has had a total of 278 inmates and staff test positive for COVID-19 and 19 of those staff members continue to have active infections. *See* BOP "Coronavirus," available at <https://www.bop.gov/coronavirus/> (last visited Sept. 7, 2020). Those positives are all recent; the facility had no positive tests before July 4, 2020.

7. Ms. Lee has been designated to report to FMC Lexington which has had one of the highest COVID-19 inmate populations of any BOP facility in the country and has experienced 8 deaths. *See* BOP "Coronavirus," available at <https://www.bop.gov/coronavirus/> (last visited Sept. 7, 2020).

8. Ms. Lee has a 13 year old son who would greatly benefit from her time at home during the holiday school break season. Additionally, given the length of Ms. Lee's sentence, it is likely that if she were to report on January 5, 2021, she will be released prior to the holiday school breaks in November and December of 2021, allowing her to spend both school breaks with her son.[†]

9. An increasing number of courts have found that the heightened risk of spread of COVID-19 in prisons warrants extending self-report dates and granting bail where feasible during the pandemic. "It goes without saying that prisons generally are crowded spaces and therefore are less than conducive to the practice of social distancing. During this rapidly evolving public health emergency, there are many valid concerns about the possibility of contagion in prisons." United States v. Roeder, No. 20-1682, 2020 WL 1545872 (3d Cir. Apr. 1, 2020) (granting bail pending appeal in light of COVID-19 pandemic). See also, e.g., United States v Garlock, No. 18-CR-00418-VC-1, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) (extending self-report date from June 12, 2020 to September 1, 2020 because "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. Nkanga, 18-cr-713, Dkt. No. 120 (S.D.N.Y. Apr. 7, 2020) (granting bail pending habeas petition in light of COVID-19 pandemic).

10. This Court has already found that Mr. Gurry and Ms. Lee presents no risk of flight and are not a danger to the community. See Docket No. 1252 at 3. A brief additional extension of their self-report dates will allow them to continue social distancing at home in Florida and Michigan, respectively, without adding to the prison population and incurring the risk that they contract or spread COVID-19.

[†] Ms. Lee has a second son who is 19 and currently living with her as well.

11. Mr. Gurry and Ms. Lee understand that the government would have assented to this motion if they requested a self-surrender date no later than November 30, 2020. Mr. Gurry and Ms. Lee seek a January 5, 2021 report date in order to avoid surrendering shortly before the Christmas and New Years holidays.

Dated: September 8, 2020

Respectfully submitted,

MICHAEL GURRY

By his attorneys,

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), I hereby certify that counsel for Dr. Kapoor (on behalf of all defendants) conferred with counsel for the government and that the government opposes the relief requested in this motion.

/s/ Megan A. Siddall
Megan A. Siddall

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be served on all counsel of record through the ECF system.

/s/ Megan A. Siddall
Megan A. Siddall