

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

RICHARD M. SIMON,
Defendant.

No. 16-cr-10343-ADB

**DEFENDANT RICHARD M. SIMON'S
MOTION TO CONTINUE SURRENDER DATE**

Defendant, Richard M. Simon, respectfully requests that the Court continue his surrender date for another 60 days, from April 6, 2021, to June 6, 2021. The government opposes this motion.

Mr. Simon acknowledges that in granting the defendants' most recent prior request on January 25, 2021, this Court stated that "[f]urther extensions are unlikely." ECF No. 1346. While Mr. Simon recognizes the interests of the government and the Court in the prompt commencement of imposed sentences, he respectfully submits that ongoing pandemic conditions warrant at least one further extension. At a minimum, both for Mr. Simon's own safety and that of other BOP prisoners, it would be prudent to ensure that he is fully vaccinated before entering BOP custody.

In addition, Mr. Simon's terminally ill mother has further declined, and Mr. Simon's availability to provide comfort and care warrant independent consideration as a basis to continue his surrender date.

In further support of this motion, Mr. Simon states:

1. Mr. Simon, aged 50, is not yet eligible for COVID-19 vaccination in California, where he resides.¹ He has pre-registered for vaccination as a non-owner co-occupant and caretaker at the facility where his mother resides,² but has no information about when he will become eligible or is likely to receive the vaccine. Whenever that date may come, the CDC does not consider a person “fully vaccinated” until two weeks *after* the second dose in a 2-dose series or two weeks after a single-dose vaccine.³ Therefore, even if the Court assumes Mr. Simon will receive a vaccine dose soon, it is likely to be well over a month before he is deemed “fully vaccinated.”

2. Mr. Simon has been designated to the satellite camp at USP Atwater in California. Notwithstanding the BOP protocols that have now been in place for many months, that complex continues to experience a significant number of documented COVID-19 infections: currently, 9 prisoners and 8 staff with active COVID-19 infections (plus 361 prisoners and 55 staff who have “recovered”).⁴ BOP reports that 152 staff members and 213 inmates at the facility have received full inoculations.⁵ The total inmate population at USP Atwater is 1,008 (87 in the camp and 921 at the USP).⁶

¹ See <https://covid19.ca.gov/vaccines/#California's-vaccination-plan> (visited Mar. 17, 2021) (eligibility limited to individuals 65 and over, health care workers, long-term care residents, agriculture and food, education and childcare, and emergency services).

² See Ex. A.

³ See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>.

⁴ See <https://www.bop.gov/coronavirus/> (as of 11 a.m. on March 17, 2021) (BOP does not distinguish between the USP and the satellite camp).

⁵ See *id.*

⁶ https://www.bop.gov/mobile/about/population_statistics.jsp#bop_pop_table (visited

3. COVID-19 is extremely serious – and can be fatal – even for the young and relatively healthy. *See Savino v. Souza*, No. 20-10617-WGY, 2020 U.S. Dist. LEXIS 61775, at *21-22 (D. Mass. Apr. 8, 2020) (noting the 8-9% hospitalization rate for patients between the ages of 19 and 64, all with no underlying health conditions, and concluding that “even the young and otherwise healthy detainees face a ‘substantial risk’ of hospitalization”); *id.* at *21 (“it cannot be denied that the virus is gravely dangerous to all of us”).⁷

4. Due to his age alone, Mr. Simon faces a 4x risk of hospitalization and 30x risk of death as compared to someone 18-29 years of age, according to the CDC.⁸

5. There is a clear public health consensus that reducing prison populations is critical piece of pandemic mitigation. “Each person needlessly infected in a correctional setting who develops severe illness will be one too many. . . . [R]eductions of incarcerated populations should be sustained. The interrelation of correctional-system health and public health is a reality not only in the United States but around the world.”⁹

6. These imperative remains even as vaccination efforts expand. According to an article in the *New England Journal of Medicine* published March 3, 2021, “[r]eliance on

⁷ *See* Pam Belluck, “Younger Adults Make Up Big Portion of Coronavirus Hospitalizations in U.S.,” *New York Times* (Mar. 18, 2020); *see also* Erika Edwards, “Not Just Older People: Younger Adults Are Also Getting the Coronavirus,” *NBC News* (Mar. 17, 2020), available at <https://www.nbcnews.com/health/health-news/not-just-older-people-younger-adults-are-also-getting-coronavirus-n1160416>.

⁸ *See* <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>.

⁹ Matthew J. Akiyama, M.D., Anne C. Spaulding, M.D., and Josiah D. Rich, M.D., “Flattening the Curve for Incarcerated Populations — Covid-19 in Jails and Prisons,” *New England Journal of Medicine* (May 28, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMp2005687>.

vaccination alone [] seems unlikely to achieve necessary reductions in Covid-19 transmission in incarcerated populations.”¹⁰

[A]s we become aware of an increasing range of SARS-CoV-2 variants, we face greater urgency to disrupt the ideal environment that current carceral conditions provide for viral mutations that could undermine the efficacy of available vaccines and threaten health far beyond American borders.

Vaccination of incarcerated people is important for changing this dynamic, but it is not enough. We believe that it must be coupled with large-scale decarceration to increase the real-world effectiveness of vaccination, disrupt wide-ranging viral transmission chains, and turn off the epidemiologic pump that puts the health of all at risk from mass incarceration.¹¹

7. Mr. Simon understands that he will have to serve the sentence imposed, and that conditions are likely to permit safe commencement of that sentence relatively soon. However, “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. Garlock*, No. 18-cr-00418-VC, 2020 U.S. Dist. LEXIS 53747, at *1 (N.D. Cal. Mar. 25, 2020) (extending self-surrender date *sua sponte*). “To avoid adding to the chaos and creating unnecessary health risks, offenders who are on release and scheduled to surrender to the Bureau of Prisons in the coming months should, absent truly extraordinary circumstances, have their surrender dates extended until this public health crisis has passed.” *Id.* at *2.

8. In addition, as the Court will recall from Mr. Simon’s sentencing, his mother, Susan, for whom he is the principal caregiver, is suffering from terminal cancer. Over the past

¹⁰ “Vaccination plus Decarceration – Stopping COVID-19 in Jails and Prisons,” *New England Journal of Medicine* (Mar. 3, 2021), available at <https://www.nejm.org/doi/full/10.1056/NEJMp2100609>.

¹¹ *Id.*

year, her condition has deteriorated. A personal letter from Mrs. Simon to the Court¹² requesting that Mr. Simon be permitted to remain with her for her final days and a letter from her treating physician¹³ are attached.

For the foregoing reasons, this Court should grant the requested surrender extension.

Respectfully submitted,

/s/ William W. Fick

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CERTIFICATE OF SERVICE

I 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 March 18, 2021.

/s/ William W. Fick

¹² Ex. B.

¹³ Ex. C.