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April 21, 2020

Via Email

The Honorable Kimba M. Wood
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street, Room 1910
New York, New York 10007-1312

Re: United States v. Dean Skelos,
S1 15 Cr. 317 (KMW)

Dear Judge Wood:

As Your Honor knows, we represent Dean Skelos. We write in response to the government's letter dated April 20, 2020,¹ and to further urge the Court that the additional information concerning Mr. Skelos' treatment and condition discussed below only heightens the need for him to be granted a compassionate release. On Friday, the government informed the Court that the "BOP has further informed the Government that Skelos will be approved for furlough and home confinement, pending approval of his proposed residence by the United States Probation Department. The Government understands that Skelos has now been cleared by medical

¹ ECF Doc. No. 516.

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staff at the facility for release, and release paperwork is currently being prepared.” ECF Doc. No. 512. The probation department has approved Mr. Skelos’ proposed residence. ECF Doc. No. 516. Now, for reasons known only to the government, the BOP has apparently changed its position on furlough and home confinement.

We think it is important to update the Court on Mr. Skelos’ health and housing situation at the onset. We understand that Mr. Skelos collapsed the morning of April 8, 2020, and was subsequently transported to the prison’s medical facility. Between April 8 and April 17, Mr. Skelos was kept in a solitary cell for 23 hours per day. Over the course of those ten days in “quarantine,” Mr. Skelos was allowed to shower just two times and was not permitted a single change of clothes. He was denied basic necessities including access to his regular, essential medications, the use of his glasses, and *any* contact in any form with his family and attorneys. We learned for the first time of his positive test for COVID-19 from the government’s letter on Friday. We do not believe that this Court ever intended for Mr. Skelos – who has otherwise been a model inmate – to endure such hardship.

Needless to say, the emotional toll of such a period has been extremely difficult for Mr. Skelos and his family. The rollercoaster of going from a battle with COVID-19 and a dehumanizing quarantine to the tease of a potential furlough to seeing that hope extinguished just a few days later stands as yet another example of unjust punishment for Mr. Skelos and his family that this Court could never have imagined when ordering his sentence.

The situation in prisons has only gotten worse over the last two weeks. As Your Honor correctly described, “[j]ails and prisons are powder kegs for infection. People in jails and prisons cannot practice social distancing, control their exposure to large groups, practice increased hygiene, wear protective clothing, obtain specific products for cleaning and laundry, avoid

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frequently touched surfaces, or sanitize their own environment.” ECF Doc. No. 507. As of April 20, 2020, it has been reported that 497 inmates have now tested positive in federal correctional facilities and an additional 319 staff.² FCI Otisville now has seen at least 14 inmates test positive in addition to 9 staff. No less than 22 inmates have died in federal prisons as a result of COVID-19 exposure. As discussed in our past letters, positive tests of symptomatic individuals almost certainly understate the severity of the situation. There are conflicting reports indicating that the satellite camp at FCI Otisville may be closed for the duration of the pandemic.³

The frightening reality confronting Mr. Skelos is that scientists simply do not have a clear understanding about the risks of reinfection with COVID-19 or of how long COVID-19 antibodies may last. As the Executive Director of the World Health Organization’s Emergency Program, Dr. Mike Ryan, described “with regard to recovery and then reinfection, I believe we do not have the answers to that. It is an unknown.”⁴ The World Health Organization’s Lead Scientist on COVID-19, Dr. Maria Van Kerkhove, found that some recovered COVID-19 patients had “no detectable antibody response,” which leaves short term immunity to a second infection an open question.⁵ It is generally true that younger, healthier individuals tend to develop longer lasting and more effective antibodies. Mr. Skelos is an immunocompromised septuagenarian.⁶ Dr. Ryan also

² <https://www.bop.gov/coronavirus/>

³ See, e.g., <https://www.nytimes.com/2020/04/17/nyregion/michael-cohen-release-prison-otisville-virus.html>

⁴ <https://www.cnbc.com/2020/04/13/who-officials-say-its-unclear-whether-recovered-coronavirus-patients-are-immune-to-second-infection.html>

⁵ *Id.*

⁶ Stress, diet, and hygiene are among the other factors that can impact the strength and longevity of antibodies. See, e.g., <https://www.wsj.com/articles/does-covid-19-infection-equal-immunity->

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acknowledged that “there are many reasons why we might see reactivation of infection either with the same infection or another infectious agent” even after a patient recovers from a first COVID exposure and tests negative.⁷ Until the risk of reinfection is understood with scientific certainty, we have to assume that Mr. Skelos’ continued incarceration exposes him to the risk of reinfection and that Mr. Skelos’ age and health issues continue to render him particularly susceptible to the virus. This continued risk, and the associated fear and emotional strain it engenders, creates yet another undue punishment far beyond what we believe Your Honor ever intended in sentencing Mr. Skelos.

We respectfully submit that Mr. Skelos’ application for compassionate release should be granted.

Respectfully submitted,

/s/ G. Robert Gage Jr. _____

G. Robert Gage, Jr.

/s/ Alexandra Shapiro _____

Alexandra Shapiro

Shapiro Arato Bach LLP

cc: All Counsel of Record (via email)
Chief Probation Officer Michael Fitzpatrick (via email)

[11587314824](#). Clearly, Mr. Skelos’ period of quarantine at FCI Otisville does not constitute an ideal environment for the growth of effective antibodies.

⁷ <https://www.cnbc.com/2020/04/13/who-officials-say-its-unclear-whether-recovered-coronavirus-patients-are-immune-to-second-infection.html>