

NEWMAN & GREENBERG LLP  
ATTORNEYS  
950 THIRD AVENUE  
NEW YORK, NEW YORK 10022  
TEL. (212) 308-7900  
FAX (212) 826-3273

RICHARD A. GREENBERG  
STEVEN Y. YUROWITZ

GUSTAVE H. NEWMAN (1927-2017)

—  
WILLIAM J. DOBIE

June 17, 2020

**BY ECF**

Hon. Valerie E. Caproni  
United States District Court  
Daniel Patrick Moynihan United States Courthouse  
500 Pearl Street  
New York, New York 10007-1312

Re: *United States v. Michael Schlisser*  
17-cr-86 (VEC)  
**(Motion for Compassionate Release)**

Dear Judge Caproni:

This firm is counsel to Michael Schlisser, the defendant in the above-captioned action. I am writing on behalf of Mr. Schlisser, to respectfully request, pursuant to 18 U.S.C. §3582(c)(1)(A)(i), that Mr. Schlisser's sentence be modified to home detention in light of the COVID-19 pandemic and the significant life-threatening risk that Mr. Schlisser faces as a result of his continued incarceration.

Mr. Schlisser is presently incarcerated at the minimum-security satellite camp at FCI Otisville. Mr. Schlisser has exhausted his administrative, having requested on April 7, 2020 that the BOP make a motion on his behalf. The BOP appears to have denied that request *sub silentio*, although counsel was informed today that he would receive a written response this week.

Moreover, while Mr. Schlisser was initially slated to be released on either furlough or home confinement they subsequently withdrew that recommendation. That action came notwithstanding the fact that all of Mr. Schlisser's doctors both within the BOP and outside have indicated that Mr. Schlisser is in a high-risk category should he contract the virus. Indeed, Mr. Schlisser was last week seen by a BOP physician (Dr. Alphonso Linley) who in my understanding continues to recommend that Mr. Schlisser be released given his medical condition. That recommendation comes, even though the BOP failed to turn over to Dr. Linley the two letters from his outside

NEWMAN & GREENBERG LLP

Hon. Valerie E. Caproni  
June 17, 2020  
Page 2

physician. Ignoring the recommendation of all three doctors, the facility has taken the position that he is “not eligible for home confinement.”

Most troubling and the renewed urgency for this application, Otisville has again experienced a second-wave of COVID-19. Despite the fact that the BOP website only lists 1 inmate and 1 staff member with a current virus infection, based on conversations with my client today, I understand that there are 15 active cases, 5 additional inconclusive cases and it appears that most if not all of the inmates at the camp have been moved to the medium facility for quarantine. This is the second time that Mr. Schlisser has been placed on quarantine, i.e., essentially round-the-clock solitary confinement being released only for showering and legal calls. Mr. Schlisser was previously moved to quarantine in anticipation of his release on home confinement only to have had that release retracted while he remained in quarantine for 25 days.

As a result of the threat to Mr. Schlisser’s health and safety, and the BOP’s refusal to grant him relief, we are compelled to seek relief from the Court. The government has informed me that it cannot take a position with respect to this application until after it has had a chance to review it.

As Your Honor may recall, Mr. Schlisser suffered an aortic dissection requiring emergency open-heart surgery during the pendency of his case. Mr. Schlisser is also 60 years old. As a result of both his heart condition and his age, should Mr. Schlisser become infected with the coronavirus, he faces a substantial risk of suffering a severe form of the disease or even death. We ask that you find that the risk COVID-19 poses to Mr. Schlisser’s health amounts to an “extraordinary and compelling” circumstance that warrants substituting the remaining portion of Mr. Schlisser’s imprisonment term with home confinement.

On September 12, 2017, Mr. Schlisser pled guilty to one count of wire fraud, in violation of 18 U.S.C. §1343. The Court imposed a sentence of 84 months’ incarceration to be followed by a 3-year term of supervised release. Mr. Schlisser self-surrendered to FCI Otisville on January 31, 2018. In my understanding, Mr. Schlisser has maintained an unblemished disciplinary record while incarcerated, and he has been classified by the BOP as having minimum risk of recidivism.

As Your Honor is undoubtedly aware, COVID-19 is highly contagious and has been spreading at a rapid rate. In New York state alone, more than 385,142 individuals have tested positive for the virus, resulting in at least 24,629 deaths. Orange County -- where FCI Otisville is located -- has registered over 10,658 cases.<sup>1</sup> According to the World Health Organization, the populations most at risk of suffering a severe form of the disease include “[o]lder people, and those with underlying medical problems like cardiovascular disease [and] diabetes.”<sup>2</sup> Studies have also shown that the risk of fatalities is “substantially higher” for those in “in older age groups,” i.e.,

---

<sup>1</sup> <https://ocnygis.maps.arcgis.com/apps/opsdashboard/index.html#/21de1fb5ce0c480f95dc0cf2b8b83b71>.

<sup>2</sup> Coronavirus, World Health Organization, [https://www.who.int/health-topics/coronavirus#tab=tab\\_1](https://www.who.int/health-topics/coronavirus#tab=tab_1).

NEWMAN &amp; GREENBERG LLP

Hon. Valerie E. Caproni  
June 17, 2020  
Page 3

those aged 60 years or older.<sup>3</sup> Similarly, studies have indicated that the presence of cardiovascular disease presents a substantially increased fatality rate. According to a study published by doctors at The University of Texas Health Science Center in Houston, “[p]atients with CVD [Cardiovascular Disease] composed 4.2% of confirmed cases yet made up 22.7% of all fatal cases, with a case fatality rate of 10.5%.”<sup>4</sup> Indeed, data from Italy demonstrates that more than two-thirds of those succumbing to the virus suffered from hypertension.<sup>5</sup>

In regard to Mr. Schlisser specifically, attached are copies of two letters received from Mr. Schlisser’s doctors. The first from Dr. Michael Muschel, Mr. Schlisser’s cardiologist and an associate professor at Columbia University who treated him during his cardiac episode. According to Dr. Muschel, Mr. Schlisser’s aortic dissection likely resulted from either obesity or hypertension both of which present heightened risk factors for Covid-19 patients. Exhibit A. The second from Dr. Zelenko another doctor that treated Mr. Schlisser who concurs that given Mr. Schlisser’s medical history “Mr. Schlisser is in a significantly higher risk category than most individuals his age.” Exhibit B.

In counsel’s understanding, Dr. Linley, Mr. Schlisser’s physician in Otisville concurs with these assessments. According to Dr. Linley, Mr. Schlisser continues to suffer from hypertension, high cholesterol and when combined with his prior aneurysm/dissection makes him an increased risk of suffering an adverse effect should he contract Covid-19.

Moreover, as Judges in this District have recognized, “[t]he risk of contracting COVID-19 in tightly-confined spaces, especially jails, is now exceedingly obvious.” *Basank v. Decker*, 2020 WL 1481503, at \*5 (S.D.N.Y. Mar. 26, 2020). One public health expert has explained: “If you wanted to set up a situation that would promote rapid transmission of a respiratory virus, you would say prison: it’s close quarters, unsanitary, individuals in frequent contact.” In such situations, it is “nearly impossible to provide infection control.”<sup>6</sup> *See also United States v. Little*, 2020 WL 1439979, at \*2 (S.D.N.Y. Mar. 24, 2020) (“According to public health experts, incarcerated individuals ‘are at special risk of infection, given their living situations,’ and ‘may also be less able to participate in proactive measures to keep themselves safe;’ ‘infection control is challenging in these settings.’”). These dangers are not theoretical. During the COVID-19

---

<sup>3</sup> The Lancet, Infectious Diseases, “Estimates of the severity of coronavirus disease 2019: a model-based analysis” (March 30, 2020). A copy of the article can be found at [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30243-7/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30243-7/fulltext).

<sup>4</sup> JAMA Cardiology, “Potential Effects of Coronaviruses on the Cardiovascular System A Review” (Mar. 27, 2020); a copy of the report is found at <https://jamanetwork.com/journals/jamacardiology/fullarticle/2763846>.

<sup>5</sup> [https://www.epicentro.iss.it/en/coronavirus/bollettino/Report-COVID-2019\\_29\\_april\\_2020.pdf](https://www.epicentro.iss.it/en/coronavirus/bollettino/Report-COVID-2019_29_april_2020.pdf)

<sup>6</sup> Daniel A. Gross, “‘It Spreads Like Wildfire’: The Coronavirus Comes to New York’s Prisons,” *The New Yorker*, Mar. 24, 2020.

NEWMAN & GREENBERG LLP

Hon. Valerie E. Caproni  
June 17, 2020  
Page 4

outbreak in China, prisons became hotbeds of infection despite stringent control measures, and press reports indicate that the same is now occurring at other federal prison facilities.<sup>7</sup>

Members of Congress have likewise recognized the heightened risk to inmates such as Mr. Schlisser. As Senator Cory Booker observed in introduced S.3579 "The Emergency Community Supervision Act of 2020":

For thousands of people behind bars, contracting COVID-19 is tantamount to a death sentence. Those in prison and jail tend to have much higher rates of underlying health issues than the general public, and the conditions of confinement make social distancing virtually impossible. We have an obligation to do everything we can to prevent the spread of this deadly disease, and that means moving certain incarcerated people to community supervision when they don't pose a violent threat to our communities and are facing high risk of serious illness or death from COVID-19.

The proposed legislation would apply to those over 50-years-old or suffering from underlying health issues such as conditions like congestive heart failure or coronary artery disease.<sup>8</sup>

The CDC has recommended that high-risk individuals avoid crowds, keep space between themselves and others, and stay at home to avoid exposure to the virus.<sup>9</sup> Despite BOP's best efforts, it is impossible for inmates like Mr. Schlisser to practice such "social distancing" to protect themselves. As one court recognized, in the Otisville camp, "120 inmates eat elbow-to-elbow at the same time, share one large bathroom with a handful of stalls and a handful of showers, and sleep together in bunks beds only a few feet apart that are divided principally between two dormitories (as opposed to individual cells). The two dormitories are separated only by the shared bathroom. There is no place to self-isolate." *United States v. Zukerman*, 2020 WL 1659880 (SDNY Apr. 3, 2020). Nor is it an answer to keep Mr. Schlisser in solitary confinement indefinitely, as it appears is the BOP's current solution. *See, e.g., United States v. Regas*, 2020 WL 2926457 (D. Nev. June 3, 2020)(Miranda, C.J.) (granting compassionate relief to 77-year-old defendant noting that solitary confinement "does not eliminate the risks Defendant faces when he enters shared spaces, such as showers and phone blocks" and that even if it did

---

<sup>7</sup> Zi Yang, "Cracks in the System: COVID-19 in Chinese Prisons," *The Diplomat*, Mar. 9, 2020, <https://thediplomat.com/2020/03/cracks-in-the-system-covid-19-in-chinese-prisons/>; Kimberly Kindy, "An Explosion of Coronavirus Cases Cripples a Federal Prison in Louisiana," *Washington Post*, Mar. 29, 2020, [https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html).

<sup>8</sup> <https://www.booker.senate.gov/news/press/booker-harris-jeffries-introduce-bill-aimed-at-vulnerable-individuals-behind-bars>.

<sup>9</sup> Get Ready for COVID-19, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>.

NEWMAN & GREENBERG LLP

Hon. Valerie E. Caproni  
June 17, 2020  
Page 5

“placing Defendant in solitary confinement for the indefinite future to protect him from contracting COVID-19 is a severe and extreme measure under these circumstances”).

In short, measures being taken by BOP cannot help but be insufficient. *See Basank*, 2020 WL 1481503, at \*5. Pursuant to 18 U.S.C. §3582(c)(1)(A)(i), this Court may “reduce the term of imprisonment (and may impose a term of probation or supervised release with or without conditions that does not exceed the unserved portion of the original term of imprisonment), after considering the factors set forth in section 3553(a) to the extent that they are applicable, if it finds that . . . extraordinary and compelling reasons warrant such a reduction.” We respectfully submit that the threat of COVID-19 infection to Mr. Schlisser as a result of his pre-existing health conditions and age is an extraordinary and compelling reason to modify his sentence to permit his immediate release to home confinement. *See Basank*, 2020 WL 1481503 at \*5 (The spread of COVID-19 “is measured in a matter of a single day -- not weeks, months, or years.”).

Moreover, the facts demonstrate that the Otisville facility has not been immune from the disease. Since Friday, March 27, 2020, when Otisville staff first informed the residents that an inmate at the camp had tested positive for COVID-19 there have been at least 10 staff members have tested positive for the virus. Moreover, there have been dozens of inmates that have contracted the virus with more than a dozen active cases at present.

The requested relief would not be unprecedented. As the number of COVID-19 cases has grown, courts and the Otisville facility have increasingly taken action to protect the health of at-risk inmates and detainees by directing their release. *See Zukerman, supra* (granting Otisville inmate compassionate release by substituting defendant’s remaining term of imprisonment for an equivalent term of home confinement); *United States v. Campagna*, 2020 WL 1489828 (S.D.N.Y. Mar. 27, 2020) (modifying defendant’s sentence to replace his outstanding term of imprisonment with an equal period of home incarceration); *Coronel v. Decker*, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020) (ordering plaintiffs’ immediate release from ICE custody); *Basank v. Decker*, 2020 WL 1481503, at \*7 (same); *see also United States v. Skelos*, 15-cr-317 (KMW); Doc.#525 (noting that BOP agreed to release Dean Skelos, an inmate at FCI Otisville, on furlough in light of the risks presented by the Covid-19 pandemic).

In addition, Dr. Muschel notes that there is uncertainty how exactly the COVID-19 pandemic will play out over the coming months. There will certainly be multiple waves of the disease, until a mass-produced vaccination or other effective treatment is found. The second wave that Otisville is currently experiencing confirms that fact.

Mr. Schlisser makes this application knowing that the crimes he committed were serious. He understands that a substantial term of incarceration was appropriate. At the time the Court sentenced Mr. Schlisser, however, incarceration certainly did not present the risk to his health posed by the current pandemic. In *Zukerman*, this Court observed that the defendant’s “misconduct was egregious,” his conduct “was driven not by need, but by unmitigated greed” and he “entangled himself in a web of lies and deceit” going “extraordinary lengths in order to cheat”

NEWMAN & GREENBERG LLP

Hon. Valerie E. Caproni  
June 17, 2020  
Page 6

by engaging in “frauds [that] were deliberate and calculated.” 2020 WL 1659880 at \*6. Nevertheless, the court granted relief noting that although the

severity of Zukerman’s conduct remains unchanged. What has changed, however, is the environment where Zukerman is serving his sentence. When the Court sentenced Zukerman, the Court did not intend for that sentence to “include incurring a great and unforeseen risk of severe illness or death” brought on by a global pandemic.

*Id.* The same can be said of Mr. Schlisser. Mr. Schlisser’s conduct was egregious but Your Honor undoubtedly did not intend Mr. Schlisser to serve a sentence subject to the severe risk of severe illness and death.

Accordingly, Mr. Schlisser respectfully requests that the instant application be granted.

Respectfully submitted,



Steven Y. Yurowitz

SYU/hms  
Encls.