

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA

v.

SUNRISE LEE,

Defendant.

Criminal No.: 16-CR-10343-ADB

**DEFENDANT SUNRISE LEE’S MOTION  
TO CONTINUE SELF-SURRENDER DATE\*\*1**

NOW COMES Defendant Sunrise Lee, (“Lee”), through counsel, and respectfully requests that this Honorable Court extend her self-surrender to reduce the risk that she is exposed to the COVID-19 virus while in the custody of the Bureau of Prisons and/or that she unknowingly exposes Bureau of Prisons inmates and staff to COVID-19. Lee’s current self-report date is February 2, 2021. Lee is grateful that the Court has allowed prior continuances of her self-surrender date due to the COVID-10 pandemic. By the instant motion, Lee requests an extension of 60 days, until April 6, 2021. In support of this motion, counsel states the following:

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**<sup>1</sup>\*\*See paragraph 10, *infra.*, at the time of the filing of the instant motion FCI Lexington was the most infected BOP facility in the country.**

***THE RISKS OF LEE CONTRACTING SERIOUS COVID-19 WHILE IN CUSTODY HAVE INCREASED SINCE MARCH***

1. The Court initially ordered Lee to self-surrender on March 4, 2020.
2. As a result of the COVID pandemic, the Court has continued Lee's self-surrender date several times with the Government's assent and most recently to February 2, 2021.
3. Lee is currently appealing her conviction and sentence and has filed her brief in the United States Court of Appeals for the First Circuit.
4. Lee is 40 years old and, according to her PSR at paragraph 168-169, has been hospitalized within the last 3 years for "asthma exacerbation" and "hypomagnesemia", a condition that is potentially linked to renal disease and PTSD. Asthma is a known comorbidity for COVID 19 as is renal disease, although it is not known definitively whether Lee has a confirmed diagnosis of renal disease.
5. Asthma increases Lee's risk of serious complications were she to contract the COVID-19 virus. *See infra* ¶ 9.
6. Lee's asthma effects her ability to breath through a mask.
7. Attached hereto is a letter from Lee's primary care physician attesting to the increased risk to Lee if she were to contract COVID-19. (See Exhibit 1,

attached hereto. (*Filed Under Seal as a medical record, but provided to the Government*).

8. Lee has described her asthma to counsel as: “It becomes severe in the Winter when I have viral and bacterial infections, especially with bronchitis and pneumonia. I have had pneumonia 3 times all during the Winter when it is harder for me to breath. I stopped getting vaccinated in 2018 because it makes me very sick every time.”

9. Lee’s prescriptions for asthma include Albuterol, Fluticasone and Prednisone were provided as attachment to Lee’s last filing ECF#1412.

10. **Ms. Lee has been designated to report to “FMC Lexington” which currently has 439 positive COVID-19 cases, the highest number COVID-19 positive inmate populations of any BOP facility in the country, and has experienced 806 historical cases including 9 deaths. See BOP “Coronavirus,” available at <https://www.bop.gov/coronavirus/> .**

11. At the time of this filing, counsel has been unable to confirm how many cases have occurred at the prison camp where Lee is likely to serve her sentence.

12. However, Lee is expected to be processed and quarantined at the main prison at FMC Lexington where cases and death have been rampant.

13. Inmates have complained openly and publicly about the manner in which FMC Lexington has managed the pandemic in its prison population.

<https://www.wkyt.com/2020/07/01/former-fmc-inmate-speaks-on-covid-19-policies-in-facility/>

14. One inmate suffered with COVID at the prison for two months before he was hospitalized and later died. <https://www.lex18.com/news/coronavirus/73-year-old-inmate-at-federal-medical-center-dies-after-testing-positive-for-covid-19-back-in-may>

15. On May 18, 2020, inmate Stephen Cook sent a letter to the court in Tennessee, asking for compassionate release or to be sent to home confinement from FMC Lexington. He suffered from sickle-cell and required monthly off-site treatment. The government opposed his release. Mr. Cook died on June 3, 2020.

<https://pprsus.com/7-bop-federal-medical-centers/>

16. 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>; Apr. 13, 2010. *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).

***THE HARDSHIP OF LEE'S INCARCERATION TO LEE'S 13 YEAR OLD 8<sup>TH</sup> GRADE SON HAS INCREASED SINCE MARCH, 2020.***

17. The pandemic has been particularly hard on teenagers and Lee has a teenage son. (Lee has previously file an article regarding the difficulties teenagers face during the pandemic).

18. Parenting during the pandemic has proven to be of crucial significance to children and the only source of structure in the pandemic chaos.

19. Parenting during a pandemic requires more structure, greater supervision and increased interaction to replace the school and social structures that are not available. This requires in person and in-home parenting, not prison parenting.

20. By all accounts, Lee is a terrific parent and member of her community. (See letters of support regarding sentencing).

21. Lee has a 13 year old son who has greatly benefitted from her time at home during the pandemic.

22. Lee's son is currently in 8<sup>th</sup> grade and has been attending live classes this Fall with extensive COVID-19 protocols.

23. His school situation could change and anytime as the ongoing pandemic worsens.

24. In addition, Lee currently resides in Grand Rapids, Michigan, a state that has been ravaged by COVID-19.

**QUARANTINING FOR 14 DAYS INCREASES THE SEVERITY OF LEE'S SENTENCE WITHOUT DUE PROCESS IN VIOLATION OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION**

25. Lee has been ordered to serve her sentence at a less restrictive prison camp at FMC Lexington.

26. However, per BOP policy FMC Lexington will require Lee to quarantine for 14 days upon arrival.

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

27. Quarantining, (a.k.a. "isolation"), has been used by the prison system for decades as a method of punishment for prisoners who commit infractions while in custody.

28. As a result of COVID quarantining, Lee will receive the same isolation punishment and a greater punishment than intended by the Court without any due process adjudication of this change in her sentence.

29. According to its website FMC Lexington has eliminated all visitation.

**THERE IS NO RISK ASSOCIATED WITH CONTINUING LEE’S SELF-SURRENDER DATE IN CONTRAST TO THE CURRENT RISK INCARCERATION POSES TO HER AND THE HARDSHIP TO HER SON.**

30. 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. 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 (ND Cal. 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 (SDNY 2020) (granting bail pending habeas petition in light of COVID-19 pandemic).

31. This Court has already found that Lee presents no risk of flight and is not a danger to the community.

32. A 60 day additional extension of Lee's self-report date will allow her to continue social distancing at her home in Michigan without adding to the prison population and incurring the risk that she contracts or spreads COVID-19.

33. Lee adopts and incorporates by reference the relevant arguments made in support of similar continuance requests made by her co-defendants and previously filed with the Court.

34. Lee reserves the right to supplement this motion with information that has been requested, but not yet provided.

WHEREFORE, this Honorable Court is respectfully urged grant the instant motion and extend Lee's reporting date.

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Pete C. Horstmann".

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Attorney for Defendant Sunrise Lee



**LOCAL RULE 7.1 CERTIFICATION**

Pursuant to Local Rule 7.1(a)(2), I hereby certify that I have conferred with counsel for the government and that the government objects to the relief requested in this motion.

/s/ Peter Charles Horstmann

Peter Charles Horstmann

**CERTIFICATE OF SERVICE**

I hereby certify that on January 15, 2021, the foregoing document was be served on all counsel of record through the ECF system.

/s/ Peter Charles Horstmann

Peter Charles Horstmann