

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
v.)
)
GENE SVIRSKIY,)
)
Defendant.)

Court No.: 14-cr-10363-RGS-3

**GOVERNMENT’S OPPOSITION TO DEFENDANT GENE SVIRSKIY’S
MOTION FOR MODIFICATION OF SENTENCE AND COMPASSIONATE RELEASE
PURSUANT TO 18 U.S.C. § 3582**

The United States of America hereby opposes defendant Gene Svirskiy’s Motion for Modification of Sentence and Compassionate Release Pursuant to 18 U.S.C. § 3582 (“the Motion.”).

Because Svirskiy has appealed his convictions to the First Circuit and that appeal is pending, this Court lacks jurisdiction to grant the requested relief and enter a final order reducing Svirskiy’s sentence. Nevertheless, pursuant to Fed. R. Crim. P. 37, the Court can—and in this case should—deny the requested relief because Svirskiy has failed to show that there exist “extraordinary and compelling reasons” to modify his sentence as required pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). More specifically, Svirskiy has no conditions or personal characteristics that make him more susceptible to COVID-19 than the general population. To the contrary, he is in his late 30s and, by his own admission, in good health. In the total absence of any particular showing of susceptibility to COVID-19, the Court should deny the defendant’s request, as he fails to meet his burden to demonstrate that he falls into the narrow band of inmates for whom “extraordinary and compelling reasons” warrant immediate and permanent release. 18 U.S.C. § 3582(c)(1)(A).

Perhaps recognizing the weakness of his claim for relief under Section 3582, Svirskiy argues that “extraordinary and compelling” circumstances exist because he satisfies criteria set forth in memoranda from Attorney General Barr that are inapplicable here. Rather than guiding the Court’s consideration of this Motion under Section 3582, the criteria set forth in Attorney General Barr’s memoranda on which Svirskiy relies apply to a different determination (release to home confinement rather than a reduction in sentence) made pursuant to a different statutory standard (18 U.S.C. § 3624(c)(2) rather than 18 U.S.C. § 3582) by a different decisionmaker (the Bureau of Prisons, rather than the Court). In short, Svirskiy invites the Court to apply the improper standard to the evaluation of his Motion. Svirskiy’s arguments provide no basis to grant the requested relief.

BACKGROUND

Defendant Gene Svirskiy’s Convictions

After an eight-week jury trial, Gene Svirskiy was convicted of 14 counts, including Racketeering and Racketeering Conspiracy, 10 counts of Mail Fraud, and 2 counts of violating the Food, Drug, and Cosmetic Act (“FDCA”). From presiding over the four trials in this case, and having overseen this litigation for over five years, the Court is well-versed in the events and conduct giving rise to Svirskiy’s convictions. In brief, Svirskiy’s convictions are based on evidence that he participated in a scheme with co-defendants Barry Cadden, Glenn Chin, and others at New England Compounding Center to fraudulently produce and sell substandard drugs. These drugs were unsterile, not properly tested, sub-potent, manufactured using expired ingredients, manufactured in supposed-clean rooms that were actually contaminated with mold and bacteria, and made by an unregistered pharmacy technician whom Svirskiy supervised. Svirskiy not only participated in this fraudulent enterprise, he directed key parts of it—including

furthering the conspiracy by directing Scott Connolly, an unregistered pharmacy technician, not to use his own name on any paperwork, and instructing him to leave the clean room when regulators or customers were in the facility (among other things). This scheme was dangerous – fraudulently making drugs that were being administered and injected into patients’ bodies and used to stop patients’ hearts and keep them alive during cardiac surgery. And it was this scheme that eventually led to the fungal meningitis outbreak.

The Sentence Imposed by This Court

In its Pre-Sentence Report, the United States Board of Probation (“USPO”) calculated Svirskiy’s total offense level to be 28, which, together with his criminal history category of I, resulted in a guideline sentence range (“GSR”) of 78 to 97 months imprisonment. In its sentencing memorandum, the government contended that the USPO (1) improperly calculated the fraud loss amount pursuant to U.S.S.G. §§ 1B1.3 and 2B1.1, (2) failed to apply a two-level sentencing enhancement pursuant to U.S.S.G. § 2B1.1(b)(15) because Svirskiy’s crimes involved a “conscious or reckless risk of death or serious bodily injury;” and (3) failed to apply a four-level enhancement pursuant to U.S.S.G. § 3A1.1(b) because Svirskiy’s crimes involved a large number of vulnerable victims.¹ The government calculated Svirskiy’s total offense level to be 44 and his GSR to be life imprisonment. Nonetheless, taking into account the sentences previously imposed upon the more culpable defendants Cadden and Chin, and the relevant factors set forth under 18 U.S.C. § 3553(a), the government recommended a sentence of 78-months, the low-end of the USPO-calculated guideline range.

¹ In calculating the GSR, the USPO applied this Court’s conclusions regarding the application of these enhancements to the mail fraud convictions in *Cadden* and *Chin*; this issue is currently before the First Circuit in those cases.

At the sentencing hearing, the Court calculated Svirskiy's GSR to be 46 to 57 months (Dkt. 2110, Svirskiy Sentencing Hr'ing Tr. (May 29, 2019) at 45) and, after considering the statutory factors set forth in 18 U.S.C. § 3553(a), departed downward from this range and sentenced Svirskiy to 30 months imprisonment and one-year of supervised release. Dkt. 2048.

Svirskiy appealed his convictions in the First Circuit, and that appeal is currently pending (the government filed its answering brief on May 13, 2020). He has now served approximately 10 months of this 30-month sentence at the Federal Prison Camp at FMC Devens.

On April 7, 2020, Svirskiy submitted a request for Compassionate Release to FMC Devens. *See* Motion, Ex. B. Following consideration, the Warden denied the request on April 30, 2020. *Id.* at Ex. C.

The Bureau of Prison's Response to COVID-19 and Conditions at FMC Devens

The BOP has made and continues to make significant efforts to respond to the threat posed by COVID-19. To that end, BOP developed and implemented a national action plan to protect staff and inmates from exposure to the virus. In general, that plan involves, *inter alia*: enhanced screening for inmates and staff; suspension of social and legal visits and contractor access, inmate transfers, and official travel; quarantine and isolation procedures; and instituting a "modified operations" plan that adjusted daily operations so as to maximize physical distancing while in common areas.²

Beyond the efforts of BOP in general, FMC Devens in particular has taken—and continues to take—extraordinary steps to prevent infection.

² A description of the BOP's six phase COVID-19 Action Plan that was developed and implemented nationally can be found at https://www.bop.gov/resources/news/pdfs/20200324_bop_press_release_covid19_update.pdf and https://www.bop.gov/resources/news/20200331_covid19_action_plan_5.jsp.

FMC Devens is an Administrative security level institution designed to house approximately 1,200 inmates at the main facility and approximately 128 inmates at the adjacent Federal Prison Camp (“the Camp”), where Svirskiy is located. *See* Declaration of Amber Bourke (“Bourke Decl.”) ¶ 24 previously filed in *Grinis v. Spaulding*, 20-cv-10738-GAO, (D. Mass. 2020) (Dkt. 36-1) and attached here as Exhibit A. The Camp houses inmates with much lower incidence of the CDC risk factors for increased mortality with COVID-1, compared to the elderly and more medically complicated inmates at the Federal Medical Center facility. Declaration of Megan Shaw, M.D. (“Shaw Decl.”) ¶ 61, previously filed in *Grinis v. Spaulding*, No. 20-CV-10738-GAO (D. Mass. 2020) (Dkt. 32-1), and attached here as Exhibit B. The main Federal Medical Center facility and the Camp are separate facilities, and the inmate populations do not interact with one another. Bourke Decl. ¶ 24. As a result, Svirskiy interacts with a small fraction of the inmates and staff. The Health Services Department at FMC Devens is staffed by a comprehensive team of BOP and Public Health Service health care workers. Shaw Decl. ¶ 2-4. The facility offers “comprehensive ambulatory care addressing primary care, chronic care, emergent and acute care.” *Id.*

FMC Devens has implemented BOP’s Action Plan, in compliance with BOP’s national directives, and has also taken numerous other measures to fight the introduction and spread of COVID-19 within its facilities, such as: providing inmate and staff education; conducting inmate and staff screening; putting into place testing, quarantine, and isolation procedures in accordance with BOP policy and CDC guidelines; ordering enhanced cleaning and medical supplies; instituting a “grab and go” meal system and staggered meal times; and adjusting programming to ensure that inmates from different housing units do not mix. Shaw Decl. ¶¶ 12, 19-59.

At the Camp in particular, FMC Devens has taken additional steps, including:

Inmate Screening. All inmates are screened daily for symptoms of COVID-19 and fever and, if positive, placed in isolation at the Federal Medical Center facility. Shaw Decl. ¶ 60. The Camp has established an Isolation Exam Room in order to immediately isolate any symptomatic inmate away from the rest of the Camp inmates. *Id.* The Camp staff are being screened prior to work with the same enhanced procedures. *Id.* ¶ 63.

Social Distancing. The Camp as a whole is sheltering in place and Health Services is providing medical care at the Camp. *Id.* ¶ 62. In addition, any Camp inmates needing to go to the FMC Health Services Division or Dental are being assigned a staggered scheduling time so that they are not exposed to any other inmates. *Id.* All work assignments have been changed so that no inmates are going into the community. *Id.* ¶ 60. Camp staff and inmates must wear facemasks at all times. *Id.* ¶ 63.

Identifying Inmates for Expanded Home Confinement. Like the BOP more generally, FMC Devens is in the process of transitioning appropriate inmates to home confinement, consistent with its internal policies and procedures. Health Services staff developed a tool to identify high-risk inmates per the CDC website definition and are screening these inmates for referral to expanded home confinement. Shaw Decl. ¶ 57. This analysis includes education and collaboration between the inmate and his medical provider on whether his risks for COVID-19 are greater at home or at the institution. *Id.* In addition, Health Services is diligently completing the medical summaries necessary to process the Reduction in Sentence/Compassionate Release requests that have been requested and are complying with all deadlines for this important process. *Id.*

In a recent decision denying the motion for compassionate release of a FMC Devens inmate in light of COVID-19, Judge Young noted “the extraordinary efforts undertaken at Devens to

address COVID 19 concerns, above and beyond those prevalent in the federal prison system generally.” *U.S. v. Kellem*, 19-cr-10277-WGY, Doc. No. 33 (May 6, 2020). As of the date of this filing, there have been *zero* positive cases of inmates or staff at the Camp in which Svirskiy is housed. There have been two staff members and ten inmates at the main facility in FMC Devens who have tested positive for COVID-19. See <https://www.bop.gov/coronavirus> (last viewed May 18, 2020).

ARGUMENT

The Court’s Jurisdiction

Where, as here, a defendant notices an appeal of the district court’s judgment, that notice of appeal ordinarily divests the district court of jurisdiction. *United States v. Rodriguez-Rosado*, 909 F.3d 472, 477 (1st Cir. 2018); *United States v. Distasio*, 820 F.2d 20, 23 (1st Cir. 1987) (“A docketed notice of appeal suspends the sentencing court’s power” to act). Accordingly, until the court of appeals issues its mandate, the district court lacks the authority to enter a final order granting the requested relief.

Pursuant to Federal Rule of Criminal Procedure 37, however, this Court may (1) defer considering the motion; (2) deny the motion; or (3) state either that it would grant the motion if the court of appeals remands for that purpose or that the motion raises a substantial issue.

Because, for the reasons set forth below, Svirskiy has failed to show the required “extraordinary and compelling reasons” that would justify modification of his sentence pursuant to 18 U.S.C. § 3582, the Court should exercise its authority under Rule 37 to deny Svirskiy’s Motion.

Svirskiy Has Failed to Show that There are “Extraordinary and Compelling Reasons” Warranting Release to Home Confinement

Under Section 3582, the Court “may reduce the 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 . . . and that such a reduction is consistent with applicable policy statements issued by the Sentencing Commission.” 18 U.S.C. § 3582(c)(1)(A).

The relevant Sentencing Commission policy statement is U.S.S.G. § 1B1.13. Section 1B1.13 provides that the Court may reduce the term of imprisonment if “extraordinary and compelling reasons warrant the reduction,” (§ 1B1.13(1)(A)); “the defendant is not a danger to the safety of any other person or to the community, as provided in 18 U.S.C. § 3142(g),” (§ 1B1.13(2)); and “the reduction is consistent with this policy statement” (§ 1B1.13(3)). Application Note 1 describes the circumstances under which “extraordinary and compelling reasons” exist:

(A) Medical Condition of the Defendant. —

(i) The defendant is suffering from a terminal illness (*i.e.*, a serious and advanced illness with an end of life trajectory). A specific prognosis of life expectancy (*i.e.*, a probability of death within a specific time period) is not required. Examples include metastatic solid-tumor cancer, amyotrophic lateral sclerosis (ALS), end-stage organ disease, and advanced dementia.

(ii) The defendant is—

- (I) suffering from a serious physical or medical condition,
- (II) suffering from a serious functional or cognitive impairment, or
- (III) experiencing deteriorating physical or mental health because of the aging process, that substantially diminishes the ability of the defendant to provide self-care within the environment of a correctional facility and from which he or she is not expected to recover.

(B) Age of the Defendant. —

The defendant (i) is at least 65 years old; (ii) is experiencing a serious deterioration in physical or mental health because of the aging process; and (iii) has served at least 10 years or 75 percent of his or her term of imprisonment, whichever is less.

(C) Family circumstances. —

(i) The death or incapacitation of the caregiver of the defendant’s minor child or minor children.

(ii) The incapacitation of the defendant’s spouse or registered partner when the defendant would be the only available caregiver for the spouse or registered partner.

(D) Other Reasons. —

As determined by the Director of the Bureau of Prisons, there exists in the defendant’s case an extraordinary and compelling reason other than, or in combination with, the reasons described in subdivisions (A) through (C).

USSG § 1B1.13, comment. (n.1).

As the proponent of release, the defendant bears the burden of proving that “extraordinary and compelling reasons” exist. *See United States v. Butler*, 970 F.2d 1017, 1026 (2d Cir. 1992) (“If the defendant seeks decreased punishment, he or she has the burden of showing that the circumstances warrant that decrease.”); *United States v. Gotti*, 2020 WL 497987, at *5 (S.D.N.Y. Jan. 15, 2020) (defendant “has the burden of showing that ‘extraordinary and compelling reasons’ to reduce his sentence exist”).

Here, Svirskiy has not shown that any of the above criteria exists. He suffers no terminal illness and is not of advanced age. He identifies no health factor that makes him more susceptible to COVID-19 than the general population.³ Indeed, he identifies himself as in good health. Motion

³ The Center for Disease Control (“CDC”) has identified specific conditions that may place a person at higher risk for severe illness from COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>. Specifically, according to the CDC, those at high-risk for severe illness from COVID-19 include: (i) people 65 years and older; (ii) people who live in a nursing home or long-term care facility; (iii) people of all ages with underlying medical conditions, particularly if not well controlled, including: (a) people with chronic lung

at 2. The only personal characteristic Svirskiy claims makes him more susceptible to COVID-19 than the general population is that he is male—a trait he shares with 93% of the federal prison population.⁴ His gender should not be a basis for compassionate release.

Rather than argue that any specific personal characteristics justify his release, Svirskiy instead argues that “[t]he extraordinary circumstances within the BOP and the threats posed by COVID-19 to Svirskiy’s health ... , as explained above, constitute extraordinary and compelling circumstances warranting release to home confinement.” Motion at 11. But such generalized concerns regarding COVID-19, absent circumstances particular to the defendant, do not establish “extraordinary and compelling reasons.” *See, e.g., United States v. Raia*, 954 F.3d 594, 597 (3rd Cir. 2020) (finding “the mere existence of COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP’s statutory role, and its extensive and professional efforts to curtail the virus’s spread.”); *United States v. Stanard*, 2020 WL 2219478, at *4 (W.D. Wash. May 7, 2020) (release is not justified by “the mere elevated risk of contracting a pandemic virus in prison, even if such a higher risk exists.”); *United States v. Espinal*, 2020 WL 2092484, at *3 (E.D.N.Y. May 1, 2020) (“Absent evidence that the COVID-19 pandemic poses a heightened risk [to the defendant] in particular, rather than to the imprisoned population in general, and considering [the defendant’s] young age and good health, I cannot conclude that the ‘extraordinary and compelling reasons’ element is satisfied.”); *United States v. Eberhart*, 2020 WL 1450745, at *2 (N.D. Cal. Mar. 25,

disease or moderate to severe asthma; (b) people who have serious heart conditions; (c) people who are immunocompromised; (d) people with severe obesity; (e) people with diabetes; (f) people with chronic kidney disease undergoing dialysis; and (g) people with liver disease. Svirskiy is not in any of these categories.

⁴ https://www.bop.gov/about/statistics/statistics_inmate_gender.jsp.

2020) (“General concerns about possible exposure to COVID-19 do not meet the criteria for extraordinary and compelling reasons for a reduction in sentence set forth in the Sentencing Commission’s policy statement on compassionate release, U.S.S.G. § 1B1.13.”).⁵

Consideration of the Section 3553(a) Factors, Likewise, Militates Against Release

When considering a motion for release pursuant to Section 3582, the Court not only must determine whether “extraordinary and compelling reasons” exist to justify release (which they do not), but also consider the factors set forth in Section 3553(a).

First and foremost among these factors, the Court should not overlook the seriousness of Svirskiy’s offenses. He participated in and directed fraudulent drug production practices at NECC, flouted regulations, and took steps to avoid regulatory scrutiny and disguise the fraud – all of which posed a grave danger to the general public. Svirskiy should be held accountable for this conduct and serve the remainder of his sentence—which is appropriate to “reflect the seriousness of the offense.” 18 U.S.C. § 3553(a)(2)(A).

In addition, the Court calculated Svirskiy’s sentencing guidelines range to be 46 to 57 months incarceration (significantly lower than the calculations of both the government and the USPO). The Court then departed downward from this range and sentenced Svirskiy to 30 months incarceration—meaning that he has *already benefited* from the Court’s evaluation of the Section 3553(a) factors. Immediate release would thus exacerbate any disparity between the sentence of incarceration actually served by Svirskiy and sentences served by others for similarly serious offenses—particularly for those serving guidelines-range sentences.

⁵ In his Supplemental Notice, Svirskiy avers to the BOP’s release of the 71-year old defendant Paul Manafort and an indicative ruling by Judge Wolf regarding the release of a 70-year old defendant. These are inapt comparisons given that these defendants are in their 70’s, making them high-risk individuals – for at least that reason, if not others – under the CDC’s guidance.

Finally, Svirskiy's 30-month sentence is necessary to provide adequate deterrence from the belief that fraudulent and dangerous conduct by pharmacists will lead to little more than a regulatory response and administrative sanctions.⁶ Early release would undermine this deterrent effect.

The Court Should Reject Svirskiy's Invitation to Rely on the Attorney General's Criteria for Transfer to Home Confinement under 18 U.S.C. § 3624—Which is Inapplicable to this Motion.

Perhaps implicitly recognizing that he cannot point to extraordinary and compelling reasons that warrant his release under Section 3582(c), Svirskiy instead argues that he satisfies the criteria set forth by Attorney General Barr in memoranda directing the BOP to “prioritize the use of [its] various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic.” See Attorney General Memoranda dated March 26, 2020 (Exhibit C) and April 3, 2020 (Exhibit D), attached hereto. These criteria, however, are not a test for determining whether “extraordinary and compelling reasons” exist under Section 3582(c). Rather, they provide guidance for the BOP to exercise its discretion regarding release to home confinement under 18 U.S.C. § 3624. In short, the criteria set forth in Attorney General Barr's memoranda apply to a different decision, made by a different decisionmaker, pursuant to authority of a different statute. The Court should reject the defendant's invitation to improperly apply this criteria to a determination under Section 3582(c).

⁶ Svirskiy notes in his Motion that he has an unspecified “pending job offer at a business in the community.” Motion at 14. After his indictment but prior to his trial, Svirskiy was working at a compounding pharmacy where he was involved in compounding super-potent drugs that were dispensed to patients, and he failed to report this incident to the Massachusetts Board of Registration in Pharmacy. Because of this, even before his trial, convictions, and incarceration, the MABOP placed Svirskiy's pharmacy license in a probationary period. On information and belief, if released from custody, Svirskiy could still practice pharmacy while the status of his license is under review by MABOP.

Section 3624(c)(2) grants authority to the BOP to transfer a prisoner to home confinement for the remainder of his or her sentence subject to certain provisions and limitations. Following the onset of the COVID-19 pandemic, the Attorney General directed the BOP, when exercising this authority, to consider the totality of the circumstances of each inmate, the statutory requirements for home confinement, and a series of factors including (i) the age and vulnerability of the inmate, (ii) the security level of the facility holding the inmate, (iii) the inmate's conduct while incarcerated, the (iv) inmate's score under the Prisoner Assessment Tool Targeting Estimated Risk and Needs, (v) whether the inmate has a demonstrated and verifiable reentry plan that will prevent recidivism and ensure public safety (including verification that the conditions under which the inmate would be confined upon release would present a lower risk of contracting COVID-19 than the inmate would face at their current facility), and (vi) the inmate's crime of conviction. *See* Ex. C. In addition to these factors, before granting an inmate release on home confinement, the Attorney General directed the BOP Medical Director, or his designee, "to make an assessment of the inmate's risk factors for severe COVID-19 illness, risks of COVID-19 at the inmate's prison facility, as well as the risks of COVID-19 at the location in which the inmate seeks home confinement." Attorney General Memoranda dated March 26, 2020. *Id.* at 2. FMC Devens is following this guidance. Shaw Decl. ¶ 57.

While the BOP generally may place a prisoner in home confinement only for the shorter of 10 percent of the term of imprisonment or 6 months, 18 U.S.C. § 3624(c)(2), under the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), "if the Attorney General finds that emergency conditions will materially affect the functioning of the BOP, the Director of the Bureau may lengthen the maximum amount of time for which the Director is authorized to place a prisoner in home confinement." Pub. L. No. 116-136, 516 § 12003(b)(2), 134 Stat. 281

(2020). On April 3, 2020, the Attorney General made that finding and authorized the Director of BOP immediately to maximize appropriate transfers to home confinement of all appropriate inmates where COVID-19 is materially affecting operations. Ex. D at 1. In light of the COVID-19 pandemic, BOP is maximizing its authority to place inmates on home confinement and is expediting the process as much as possible in furtherance of the Attorney General’s memoranda dated March 26, 2020, and April 3, 2020. Bourke Decl. ¶ 19.

These actions—including the Attorney General’s memoranda and the criteria set forth therein—however, grant Svirskiy no right or basis to have his sentenced converted to home confinement. The application of this criteria and the discretion to release a prisoner to home confinement under Section 3624(c)(2) “lies solely with the Attorney General.” *United States v. Godwin*, 2020 WL 2319699, at *1 (W.D.N.C. May 11, 2020). The Court should reject Svirskiy’s invitation to apply the improper legal criteria to his Motion.

* * * *

The government is certainly mindful of the risks associated with the COVID-19 pandemic generally, and in particular as it relates to inmates. Nonetheless, Svirskiy is in about as low risk a situation as would be possible under the circumstances, and still has two thirds of his term of incarceration to serve. As this Court has recognized, “unless society is to make the decision that all prisoners are to be released because of the pandemic” determinations must be made concerning who is eligible for release. *United States v. Pereira*, No. 19-cr-10446-RGS, Dkt. 72 (D. Mass. May 10, 2020). *See also United States v. Wright*, 2020 WL 1976828, at *5 (W.D. La. Apr. 24, 2020) (“The Court cannot release every prisoner at risk of contracting COVID-19 because the Court would then be obligated to release every prisoner.”). Here, considering all the relevant circumstances—including Svirskiy’s serious crimes, his young age, his lack of underlying health

issues, the lack of any positive cases at the Camp at FMC Devens, and the BOP's (and FMC Devens' in particular) substantial efforts to prevent COVID infection among its inmates, the government urges that Svirskiy has not demonstrated "extraordinary and compelling reasons" justifying a reduction of his sentence under 18 U.S.C. § 3582(c)(1)(A)(i).

CONCLUSION

For all of the reasons articulated herein, the government respectfully requests the Court deny the defendant's Motion.

Respectfully submitted,

ANDREW LELLING
UNITED STATES ATTORNEY

By: /s/ Amanda P.M. Strachan
AMANDA P.M. STRACHAN
BBO # 641108
CHRISTOPHER R. LOONEY
BBO # 676187
Assistant U.S. Attorneys
One Courthouse Way, Suite 9200
Boston, Massachusetts 02210
(617) 748-3100
amanda.strachan@usdoj.gov
christopher.looney@usdoj.gov

Dated: May 18, 2020

CERTIFICATE OF SERVICE

I, Amanda P.M. Strachan, hereby certify that the foregoing was filed through the Electronic Court Filing System and will be sent electronically to registered participants as identified on the Notice of Electronic Filing.

/s/ Amanda P.M. Strachan
AMANDA P.M. STRACHAN
Assistant U.S. Attorney

Dated: May 18, 2020