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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**
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11 YONNEDIL CARROR TORRES,
12 *et al.*,

13 Plaintiff-Petitioners,

14 vs.

15 LOUIS MILUSNIC, in his capacity as
16 Warden of Lompoc, *et al.*,

17 Defendant-Respondents.

CASE NO. 2:20-cv-04450-CBM-PVCx

**ORDER GRANTING MOTION TO
ENFORCE COMPLIANCE WITH
PRELIMINARY INJUNCTION
AND FOR ORDER TO SHOW
CAUSE**

18 The matter before the Court is Plaintiff-Petitioners Yonnedil Carror Torres,
19 Vincent Reed, Felix Samuel Garcia, Andre Brown, and Shawn L. Fears’
20 (“Petitioners”) Motion to Enforce Compliance with Preliminary Injunction and for
21 Order to Show Cause. (Dkt. No. 93.) The matter is fully briefed.

22 **I. BACKGROUND**

23 This action is brought on behalf of inmates at FCI Lompoc and USP Lompoc
24 (collectively, “Lompoc”) challenging the Director of the Bureau of Prisons (“BOP”)
25 and Warden of Lompoc’s response during the COVID-19 pandemic. The
26 Complaint asserts two causes of action: (1) Unconstitutional Conditions of
27 Confinement in Violation of the Eighth Amendment to the U.S. Constitution
28 pursuant to 28 U.S.C. §§ 2241, 2243; (2) and Unconstitutional Conditions of

1 Confinement in Violation of the Eighth Amendment to the U.S. Constitution
 2 pursuant to U.S. Const, Amend. VIII; 28 U.S.C. § 1331; 5 U.S.C. § 702, “Injunctive
 3 Relief Only.” On July 14, 2020, the Court granted Petitioners’ motion for a
 4 preliminary injunction¹ to require Respondents to make “full and speedy use of their
 5 authority under the CARES Act and evaluate each class member’s eligibility for
 6 home confinement which gives substantial weight to the inmate’s risk factors for
 7 severe illness and death from COVID-19 based on age (over 50) or Underlying
 8 Health Conditions.” (Dkt. No. 45 (the “Preliminary Injunction Order”).) A site
 9 inspection of Lompoc was conducted on September 1 and 2, 2020 by Dr. Venters,
 10 the court-appointed Rule 706 expert. Dr. Venters’ report regarding his site visit was
 11 filed on September 25, 2020. (Dkt. No. 101.)

12 II. DISCUSSION

13 Petitioners move for an order seeking “enforcement” of the Court’s
 14 Preliminary Injunction Order. Petitioners contend Respondents have failed to make
 15 “full and speedy use of their authority under the CARES Act” to evaluate at least
 16 two subcategories of class members for home confinement: (1) those who have
 17 already been approved for home confinement but have not yet been released
 18 (“Approved Class Members”); and (2) those who were denied home confinement
 19 and designated instead to a Residential Re-entry Center (“RRC” or “hallway
 20 house”) even though they have no history of violence, sex offense, or terrorism and
 21 do not have “High” PATTERN scores (“RRC Class Members”).

22 A. Approved Class Members

23 As to Approved Class Members, Petitioners contend Respondents identified
 24 14 Approved Class Members with actual release dates to home confinement but it is
 25 unclear whether the remaining 113 Approved Class Members have been released to
 26

27 ¹ The parties agreed to convert Petitioners’ *Ex Parte* Application for Temporary
 28 Restraining Order to an expedited motion for preliminary injunction. (Dkt. Nos. 41,
 42.)

1 home confinement. (See Dkt. Nos. 78, 82, 87.) Petitioners argue Respondents have
2 not responded to their requests for information regarding which Approved Class
3 Members have actually been released to home confinement, whether they are being
4 required to quarantine in the Special Housing Unit prior to release for a certain
5 period of time even though the inmates have a release plan where they can self-
6 isolate, and why it is taking so long for the inmates to be released to home
7 confinement.

8 Respondents argue the Court cannot order the release of inmates because the
9 PLRA requires a 3-judge panel for release of inmates “in any civil action with
10 respect to prison conditions.” However, the Court previously found that Petitioners
11 properly assert a habeas claim because they are challenging the fact of confinement
12 (not the conditions of confinement), and therefore the PLRA’s prison release order
13 provisions do not apply. (Preliminary Injunction Order at 42 (“Having found
14 Petitioners assert a proper habeas claim pursuant to § 2241 challenging the fact of
15 their confinement, the PLRA’s limitations regarding prison release orders do not
16 apply here.”); Dkt. No. 99, Order re: Respondents’ Motion to Dismiss, at 4 (“Having
17 found Petitioners assert a proper habeas claim pursuant to § 2241 challenging the
18 fact of their confinement, Petitioner’s habeas claim is not foreclosed by the
19 PLRA.”).) Moreover, the Court has not ordered the release of inmates.

20 Respondents also contend the Court’s Preliminary Injunction Order does not
21 require immediate transfer of inmates to home confinement, the transfer of a
22 specific number of inmates, or transfer by a stated time. However, the Court’s
23 Preliminary Injunction Order required Respondents to make “full and speedy use of
24 their authority under the CARES Act and evaluate each class member’s eligibility
25 for home confinement which gives substantial weight to the inmate’s risk factors for
26 severe illness and death from COVID-19 based on age (over 50) or Underlying
27 Health Conditions.” By failing to expeditiously release Approved Class Members to
28 home confinement, Respondents are not making full and speedy use of their CARES

1 Act authority in violation of the Preliminary Injunction. *See Martinez-Brooks v.*
 2 *Easter*, 3:20-CV-569 MPS, Dkt. 70 at 1-2 (D. Conn. May 29, 2020) (respondents
 3 must release approved class members to home confinement to come into compliance
 4 with TRO).²

5 **B. RRC Class Members**

6 As to RRC Class Members, Petitioners contend nearly 100 medically
 7 vulnerable class members, including class members who have no history of
 8 violence, sex offenses, or terrorism, were denied home confinement and instead
 9 deemed suitable for community placement at a halfway house. Petitioners argue if
 10 these RRC Class Members have a viable release plan and are not otherwise a danger
 11 to public safety, Respondents' refusal to grant them home confinement demonstrates
 12 Respondents' failure to make full use of their CARES Act authority and to put
 13 substantial weigh on class members' risk factors for severe illness or death from
 14 COVID-19.³ Petitioners also contend it appears some RRC Class Members who
 15 were already approved for RRC placement were not even evaluated for home
 16 confinement. Respondents contend Petitioners are complaining about the BOP's
 17 decision to transfer inmates to RRCs versus home confinement, which is not within
 18 the scope of the Preliminary Injunction Order because nothing in the Court's order
 19 prohibits Respondents from transferring inmates to RRCs.

20 If Respondents are designating medically vulnerable class members to RRCs
 21

22 ² Respondents also contend there is no evidence that inmates are at a greater risk of
 23 COVID-19 while incarcerated within Lompoc than in the outside world. However,
 24 Dr. Venters' Expert Report raises concerns regarding the safety of Lompoc inmates
 and measures that should be implemented to prevent spread of COVID-19 at
 Lompoc.

25 ³ *See Martinez-Brooks v. Easter*, 3:20-CV-569, Dkt. No. 70 at 6 (D. Conn. May 29,
 26 2020) (ordering for "each medically vulnerable inmate who has been approved for
 27 community placement at an RRC and who does not have a violent offense of
 28 conviction, a sexually-related offense of conviction, or a "High" PATTERN score,
 the Warden shall either (a) release the inmate to home confinement or (b)
 demonstrate that public safety or medical considerations or the absence of any home
 in which to place the inmate would make it unsafe to move the inmate immediately
 to home confinement.").

1 when those inmates are otherwise suitable for home confinement, Defendants are
 2 failing to comply with the Court's Preliminary Injunction Order requiring
 3 Respondents to make full use of their CARES Act authority and give substantial
 4 weight to the inmate's risk factors for serious illness or death from COVID-19. *See*
 5 *Martinez-Brooks v. Easter*, 3:20-CV-569 MPS, Dkt. 70 at 6 (D. Conn. May 29,
 6 2020) (prospect of heightened supervision at RRCs does not outweigh the "medical
 7 considerations that make release to home confinement necessary to make the habeas
 8 remedy effective for those inmates" who were designated to RRCs but do not have a
 9 violent offense, a sexually related offense, or a High PATTERN score).

10 III. CONCLUSION

11 Accordingly, the Court **GRANTS** the Motion as follows:

- 12 1. **No later than October 16, 2020**, Respondents are ORDERED
 13 to file a declaration under seal confirming that all class members
 14 who were identified as having been approved for home
 15 confinement in Dkt. Nos. 78, 82, and 87 have been released to
 16 home confinement, including the date of each inmate's release to
 17 home confinement. The declaration shall identify each approved
 18 class member identified in Dkt. Nos 78, 82, and 87 who has not
 19 been released to home confinement by the date of the filing of
 20 the declaration, and explain the reason for the delay in his release
 21 to home confinement. The declaration shall also include an
 22 explanation of the steps required to place Lompoc inmates on
 23 home confinement after an inmate has been approved for home
 24 confinement, and identify the shortest amount of time in which
 25 placement of an inmate on home confinement can be
 26 accomplished;
- 27 2. **No later than October 16, 2020**, Respondents are ORDERED
 28 to file a declaration under seal identifying Lompoc inmates who
 were denied home confinement and instead designated to a
 Residential Re-entry Center ("RRC" or "halfway house"), who
 have no history of violence, no sex-offense- or terrorism-related
 convictions, and do not have a "High" PATTERN score ("RRC
 Class Members"); and
3. **No later than October 16, 2020**, Respondents are ORDERED

1 to file a declaration under seal identifying each RRC Class
2 Member who was denied home confinement but has a viable
3 release plan, which explains why home confinement was denied
4 and how public safety or other considerations would make it
unsafe to release the inmate to home confinement.

5 **IT IS SO ORDERED.**

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7 DATED: October 8, 2020.



8 CONSUELO B. MARSHALL
9 UNITED STATES DISTRICT JUDGE
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