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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

YONNEDIL CARROR TORRES,  
*et al.*,  
  
Plaintiff-Petitioners,  
  
vs.  
  
LOUIS MILUSNIC, in his capacity as  
Warden of Lompoc, *et al.*,  
  
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**

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

**I. BACKGROUND**

This action is brought on behalf of inmates at FCI Lompoc and USP Lompoc (collectively, “Lompoc”) challenging the Director of the Bureau of Prisons (“BOP”) and Warden of Lompoc’s response during the COVID-19 pandemic. The Complaint asserts two causes of action: (1) Unconstitutional Conditions of Confinement in Violation of the Eighth Amendment to the U.S. Constitution 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 injunction<sup>1</sup> 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 <sup>1</sup> 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).<sup>2</sup>

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.<sup>3</sup> 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  
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22 <sup>2</sup> 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 <sup>3</sup> *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  
conviction, a sexually-related offense of conviction, or a "High" PATTERN score,  
28 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

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

**IT IS SO ORDERED.**

DATED: October 8, 2020.



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CONSUELO B. MARSHALL  
UNITED STATES DISTRICT JUDGE