

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF INDIANA  
TERRE HAUTE DIVISION**

PATRICK R. SMITH and BRANDON S. HOLM,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 2:20-cv-00630-JMS-DLP
	)	
WILLIAM P. BARR, et al,	)	
	)	
Defendants.	)	

**Declaration of T.J. Watson**

I, T.J. Watson, declare the following:

1. I am currently employed by the Bureau of Prisons (BOP) as the Complex Warden at the Federal Correctional Complex located in Terre Haute, Indiana (FCC Terre Haute), a position I have held since November 11, 2018. I have been employed by the BOP in areas of increasing responsibility since 1995.
2. The statements I make hereinafter are made on the basis of my review of the official files and records of the BOP, my own personal knowledge, or on the basis of information acquired by me through the performance of my official duties.
3. The BOP, under the supervision of the United States Marshals Service, is responsible for implementing federal death sentences. See 18 U.S.C. §3596(a); 28 C.F.R. Part 26.<sup>1</sup>

---

<sup>1</sup> The first executions since 2003 were scheduled to take place almost a year ago. See <https://www.justice.gov/opa/pr/federal-government-resume-capital-punishment-after-nearly-two-decade-lapse>

4. Currently, executions of the following inmates are scheduled to occur on the following dates: Brandon Bernard<sup>2</sup> on December 10, 2020; Alfred Bourgeois<sup>3</sup> on December 11, 2020; Lisa Montgomery on January 12, 2021; Cory Johnson on January 14, 2021; and Dustin Higgs on January 15, 2021.
5. I am aware that Plaintiffs, inmates Patrick Smith and Brandon Holm, allege that conducting executions at FCC Terre Haute will lead to the spread of COVID-19, in violation of their Eighth Amendment rights.
6. FCC Terre Haute is situated on approximately 1145 acres and is comprised of three separate prisons in three separate buildings: the United States Penitentiary (USP), which is a high security prison; the Federal Correctional Institution (FCI), which is a medium security prison; and the Federal Prison Camp (FPC), which is a minimum security prison camp. FCC Terre Haute also includes a Central Utility Plant, a staff training center, the National Bus Center, a garage, and numerous other buildings. The execution facility is entirely separate from the aforementioned buildings. The execution facility is approximately over one hundred feet from the FCI, but physically separated by perimeter fencing and razor wire. Staff at the execution facility cannot approach anyone on FCI grounds due to the perimeter fencing. The execution facility is approximately the equivalent of several city blocks from the FPC which is further south on the property. The USP is even further away from the execution facility as it is south of the FPC.

---

<sup>2</sup> On October 16, 2020, Bernard was provided a notice informing him that a date has been set for the implementation of his death sentence.

<sup>3</sup> Alfred Bourgeois was originally scheduled to be executed on January 13, 2020, but legal impediments prevented the government from proceeding at that time. On November 20, 2020, Bourgeois received a notice informing him of his current execution date.

7. Plaintiffs Smith and Holm are currently designated to reside at the medium-security Federal Correctional Institution (FCI). See Attachments 1 and 2, Inmate Quarters History for Smith and Holm, respectively.
8. The BOP and FCC Terre Haute have implemented rigorous safeguards and precautions in light of the COVID-19 pandemic. The BOP is following the guidance and directives from the World Health Organization (WHO), the Centers for Disease Control (CDC), the Office of Personnel Management (OPM), the Department of Justice, and the Office of the Vice President. Agency-wide modified operations in response to COVID-19 were announced by BOP on March 13, 2020. See [https://www.bop.gov/resources/news/20200313\\_covid-19.jsp](https://www.bop.gov/resources/news/20200313_covid-19.jsp).<sup>4</sup> These modifications have remained in place and currently include the following measures, among others:

- temperature checks and COVID-19 screening are being conducted for staff, contractors, and other visitors, with those who register a temperature of 100.4° Fahrenheit or higher denied access to the grounds;
- as much as possible, staff are being assigned to the same posts and are not rotating;
- the movements of inmates are limited so as to prevent congregating and to maximize social distancing. Essential inmate work details, such as Food Service, continue to operate with appropriate screening (i.e. temperature checks and reporting symptoms). Inmate movement in small numbers is authorized for use of the Commissary, Laundry, Showers, Telephone, to include legal calls, and for access to TRULINCs (email) mental health or medical care;

---

<sup>4</sup> While these modifications were initially scheduled to last for 30 days, they have been extended a number of times. See [https://www.bop.gov/resources/news/pdfs/20200414\\_press\\_release\\_action\\_plan\\_6.pdf](https://www.bop.gov/resources/news/pdfs/20200414_press_release_action_plan_6.pdf); [https://www.bop.gov/resources/news/20200520\\_covid-19\\_phase\\_seven.jsp](https://www.bop.gov/resources/news/20200520_covid-19_phase_seven.jsp); <https://www.bop.gov/foia/docs//COVIDPhase8June30.pdf>; [https://www.bop.gov/foia/docs//COVIDphase9\\_08052020.pdf](https://www.bop.gov/foia/docs//COVIDphase9_08052020.pdf); and [https://www.bop.gov/coronavirus/covid19\\_status.jsp](https://www.bop.gov/coronavirus/covid19_status.jsp)

- Prior to entering the institution, or in Receiving and Discharge, all new intakes to an institution, including voluntary surrenders, BOP-to-BOP transfers, or transfers from outside the BOP system are screened by medical staff for COVID-19. This process includes a symptom screen, a temperature check, and an approved viral PCR test (either an Abbott ID NOW point-of-care [POC] test or a commercial PCR test) performed on a sample obtained from a nasopharyngeal, mid-turbinate, or anterior nares swab. Inmates who arrive symptomatic AND/OR test positive will be placed in MEDICAL ISOLATION. Inmates who arrive asymptomatic AND test negative will be placed in QUARANTINE.

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

9. At FCC Terre Haute, all staff, inmates, and visitors are required to wear masks inside the institution. Masks are provided if a visitor does not have one. Additionally, all visitors can be provided full personal protective equipment (PPE) to include face shields, gowns, and gloves if they desire. Where possible, social distancing is practiced, consistent with Center for Disease Control (CDC) guidelines.
10. Staff have been educated regarding the importance of staying home if they are feeling ill, and are required to self-report any COVID-19 exposure (known or suspected) as well as any positive COVID-19 test. If a staff member tests positive for COVID-19, he or she is required to stay home in compliance with current CDC guidelines. Staff do not move between the separate facilities and buildings unless necessary, for example, if one institution is in need of additional staff due to staff being on leave on a given day, or otherwise requires assistance of additional staff. Some positions also by their nature involve working at multiple institutions, including custody staff, facilities staff, as well as medical, dental, and psychology staff.
11. Inmate movement within the individual institutions is limited to small groups and subject to appropriate screening measures. Inmate movement in small numbers is allowed for commissary, laundry, showers, telephone, TRULINCS (email), recreation, law library, as well as mental health and health care needs. Showers, phones, and surfaces are cleaned

between each use and throughout the day. A full explanation of BOP inmate movement, both within institutions as well as between institutions, along with the logistics of inmate activities is available on the BOP's website. *See*

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

12. FCC Terre Haute has multiple rapid Abbot test machines, and uses them to immediately test symptomatic inmates in order to isolate and quarantine them more quickly. Rapid testing has been used to test symptomatic inmates, and asymptomatic inmates who had close contact with an inmate who tested positive for COVID-19. If an inmate tests positive, then generally the rest of the inmates on that range (row of cells) are tested. If appropriate, entire units are locked down (remain in their cells) and tested. Inmates are all required to wear masks outside of their cells and to maintain social distance outside their cells.
13. BOP and FCC Terre Haute maintain data on the number of positive cases and testing. *See* <https://www.bop.gov/coronavirus/>. As of the signing of this declaration, the website lists 175 FCI inmates and 20 FCI staff<sup>5</sup> as current positive cases. It lists 25 USP inmates and 3 staff as current positive cases. The website also lists 927 inmates at the FCI and Camp, and 935 inmates at the USP as having completed tests.<sup>6</sup> *Id.*
14. Historical data for the number of positive inmate and staff cases can be found at <https://oig.justice.gov/coronavirus>. By selecting “visit dashboards” then the “facility case trends” tab, and using the scroll function to select a specific BOP institution, the user can

---

<sup>5</sup> Data for the Federal Prison camp is included in the data listed on the website for the FCI.

<sup>6</sup> As explained on the website, the number of positive tests at a facility is not equal to the number of cases, as one person may be tested more than once. The number of tests recorded per site reflects the number of persons at the specific facility who have been tested, whether at that site or at a prior facility.

find a graph showing the number of inmates or staff with lab-confirmed and open cases at a particular complex or facility on a particular day. This website cites the aforementioned BOP website as the source of this data. The website also provides a graph reflecting the total number of individuals reported by the county where the BOP facility is located as having a confirmed COVID-19 case.

15. In the days leading up to an execution, the FCC Terre Haute inmate population is locked down, thereby minimizing the interaction between inmates, as well as the interaction between inmates and staff.
16. Although it is difficult to predict with certainty for any particular execution, for the upcoming executions, BOP estimates that approximately 50 to 125 individuals including the BOP's execution team, state and local law enforcement, and various witnesses, and demonstrators will travel to FCC Terre Haute. All individuals arriving at FCC Terre Haute will be temperature checked and screened as described above in paragraph 8.
17. The execution team is comprised of approximately 40 BOP employees, who are employed at locations other than FCC Terre Haute. The execution team does not quarantine upon arriving in Indiana, as they generally arrive only a few days prior to a scheduled execution and must complete various time-sensitive tasks upon their arrival. To the greatest extent possible, the execution team generally does not enter the FCI (where Plaintiffs are housed), USP, or FPC at all while at FCC Terre Haute. The execution team is primarily engaged in duties which occur in and around the execution facility, and generally does not interact with any inmate, other than the inmate housed at the execution facility. A limited number of execution team staff occasionally have a need to enter the FCI, USP, or FPC for reasons related to the execution, but such occurrences are rare and will be minimized. No members of the BOP execution team carry out duties

specific to FCC Terre Haute or are assigned such duties while on the grounds. Some members of the execution team have interaction with FCC Terre Haute personnel incident to their role in the operation of the execution. For example, the execution team may interact when going through security check points, receiving the inmate, receiving witnesses, and meeting with Terre Haute personnel to discuss operations logistics and equipment. However, such interactions are usually brief and infrequent (for example, when receiving the inmate and witnesses), and during all such interactions, BOP staff are required to wear masks and to the extent possible remain socially distanced.


18. In past executions, a number of security and support personnel such as Special Operations Response Teams (SORT) and Disturbance Control Teams (DCT) also travelled to FCC Terre Haute from other BOP institutions. However, such personnel are not scheduled to travel to Terre Haute for upcoming executions.
19. Non-BOP personnel such as media, witnesses, legal counsel, and Ministers of Record will not be permitted to enter the FCI, or to interact with any FCC Terre Haute inmate, other than the condemned inmate. Any visits with the condemned inmate would take place outside the presence of other inmates, either in the Special Confinement Unit (SCU), which is located at the USP, or the execution facility. During such visits, visitors are required to wear masks and to the extent possible remain socially distanced.
20. While the execution witness rooms may not allow for great distancing, full Personal Protective Equipment (PPE) is available to all members of the execution team while at FCC Terre Haute, to include fit-tested N-95 masks, gloves, gowns, and face shields. Other individuals who attend an execution, including attorneys, media, and witnesses, are required to wear masks and will be provided PPE if they request it. At a minimum, all members of the execution team must wear a mask.

21. Additionally, demonstrators have the opportunity to be present at an execution in a designated area on FCC Terre Haute grounds. However, no demonstrators have chosen to come into FCC Terre Haute grounds, instead electing to demonstrate in an area across the street from FCC Terre Haute. If demonstrators were to choose to be present on grounds, they would still be screened and temperature checked, as well as screened for security purposes, by FCC Terre Haute staff off-site, and then transported to the demonstration area by FCC Terre Haute staff. That demonstration area is near the main public road and not near any of the prison buildings.
22. In addition to the individuals coming to FCC Terre Haute for an execution, approximately 70 or more FCC Terre Haute staff have functions related to execution events. These FCC Terre Haute employees are not considered part of the execution team, and instead include staff that work at the USP, FCI, and FPC. For example, FCC staff manage check points and perimeter security, staff the command center, and escort witnesses and demonstrators. FCC staff managing check points will check ID's and temperatures; some staff in the command center will likely meet with some execution team staff in order to coordinate the operation; and staff escorting witnesses and demonstrators will by necessity interact with the witnesses and demonstrators. Therefore, FCC staff will have some interaction with both the public and the BOP personnel attending the execution. However, through all of these interactions, all individuals on FCC Terre Haute grounds will be required to wear masks, and will have been screened prior to entering the institution grounds. Many such interactions are limited in time, for example, when checking ID's and temperatures, and staff will minimize the amount of time they are within six feet of others.



23. After an execution, the BOP execution team members are afforded an opportunity to test for COVID-19. FCC Terre Haute staff are advised and encouraged to obtain a test if they had a known exposure or experience symptoms. They are not permitted to return to work until they are symptom-free. Of course all individuals are free to seek testing in the community. Approximately 5-7 members of the BOP execution team have historically elected to be tested prior to returning to their home communities. COVID tests are conducted on a voluntary basis.
24. I am aware the Court requested an update with regard to a staff member who tested positive for COVID-19 and was disclosed during the course of litigation. *See Hartkemeyer v. Barr*, 2:20-cv-00336-JMS-JLP, dkt. 77-1. Contact tracing was immediately initiated to determine with whom this staff member had come into close contact. The staff member's contacts were determined by the use of video as well as his personal recollection. No additional cases of COVID-19 were discovered as a result. BOP will continue to conduct the same contact tracing procedures if additional staff members test positive in the future.

I declare, under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed this 4 day of December, 2020.

  
\_\_\_\_\_  
T.J. Watson  
Federal Bureau of Prisons

# ATTACHMENT 1

THABO 531.01 \*  
PAGE 001 OF 001 \*INMATE HISTORY  
QUARTERS\* 12-02-2020  
\* 14:49:57REG NO.: 53264-074 NAME: SMITH, PATRICK RYAN  
CATEGORY: QTR FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
THA	C03-061L	HOUSE C/RANGE 03/BED 061L	09-28-2020 1204	CURRENT
THA	Z04-211LAD	HOUSE Z/RANGE 04/BED 211L AD	09-27-2020 2201	09-28-2020 1204
THA	Z03-142LAD	HOUSE Z/RANGE 03/BED 142L AD	09-27-2020 2124	09-27-2020 2201
THA	C03-061L	HOUSE C/RANGE 03/BED 061L	08-17-2020 1053	09-27-2020 2124
THA	Z04-202UAD	HOUSE Z/RANGE 04/BED 202U AD	08-16-2020 2044	08-17-2020 0748
THA	Z03-142LAD	HOUSE Z/RANGE 03/BED 142L AD	08-16-2020 2010	08-16-2020 2044
THA	C03-061L	HOUSE C/RANGE 03/BED 061L	05-11-2020 1413	08-16-2020 2010
THA	R01-001L	HOUSE R/RANGE 01/BED 001L	05-11-2020 1256	05-11-2020 1413
THP	B01-128L	HOUSE B/RANGE 01/BED 128L	04-25-2020 0544	05-11-2020 1213
THA	C03-061L	HOUSE C/RANGE 03/BED 061L	04-25-2020 0404	04-25-2020 0405
THA	C03-061L	HOUSE C/RANGE 03/BED 061L	04-23-2020 1909	04-24-2020 2323
THA	C03-060U	HOUSE C/RANGE 03/BED 060U	04-23-2020 0900	04-23-2020 1909
THA	F03-105U	HOUSE F/RANGE 03/BED 105U	10-07-2019 1831	04-23-2020 0900
THA	R01-001L	HOUSE R/RANGE 01/BED 001L	10-07-2019 1343	10-07-2019 1831
OKL	E03-529U	HOUSE E/RANGE 03/BED 529U	09-16-2019 1827	10-07-2019 0846
OKL	E03-901L	HOUSE E/RANGE 03/BED 901L	09-16-2019 1645	09-16-2019 1827

G0000 TRANSACTION SUCCESSFULLY COMPLETED

## ATTACHMENT 2

THABO 531.01 \*  
PAGE 001 OF 001 \*

INMATE HISTORY  
QUARTERS

\* 12-02-2020  
\* 14:56:20

REG NO.: 19005-030 NAME: HOLM, BRANDON SCOTT  
CATEGORY: QTR FUNCTION: PRT FORMAT:

FCL	ASSIGNMENT	DESCRIPTION	START DATE/TIME	STOP DATE/TIME
THA	C03-061U	HOUSE C/RANGE 03/BED 061U	07-01-2020 1807	CURRENT
THA	C04-083U	HOUSE C/RANGE 04/BED 083U	07-01-2020 1800	07-01-2020 1807
THA	F03-105L	HOUSE F/RANGE 03/BED 105L	02-13-2020 1834	07-01-2020 1800
THA	R01-001L	HOUSE R/RANGE 01/BED 001L	02-13-2020 1543	02-13-2020 1834

G0000 TRANSACTION SUCCESSFULLY COMPLETED