

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

UNITED STATES OF AMERICA

v.

MICHAEL J. GURRY, et al.,

Defendants.

Criminal No.: 16-CR-10343-ADB

**MOTION OF DEFENDANT JOSEPH A. ROWAN TO CONTINUE SELF-SURRENDER
DATE TO FEBRUARY 2, 2021**

Defendant Joseph A. Rowan is scheduled to report to the custody of the Bureau of Prisons (“BOP”) on November 30, 2020. As this Court is well aware, the COVID-19 pandemic continues unabated and is expected to intensify over the next months in the United States. Given the ongoing health risk posed by COVID-19, Mr. Rowan requests a continuance of his self-surrender date to February 2, 2021. The government has agreed to two month-long continuances on prior occasions but opposes this request.

In support of his request, Mr. Rowan states as follows:

1. The Court initially ordered Mr. Rowan to self-surrender approximately six weeks after his sentencing. The Court subsequently extended Defendants’ self-surrender dates to take account of the additional time needed to issue final judgments. *See* Dkt. Nos. 1223; 1271. In April, in light of the COVID-19 pandemic, the government assented to a two-month extension of the self-surrender date for Mr. Rowan, which the Court granted. *See* Dkt. No. 1339.

2. Given the ongoing pandemic, the government assented to, and the Court granted twice more Mr. Rowan's request for a two month-long extensions to his self-surrender date, most recently to November 30, 2020. Dkts. No. 1380, 1382; Dkts. No. 1395; 1397.
3. Since those summer and fall extensions, the pandemic has only worsened in the United States, reaching as many as 130,000 cases daily and growing. *See* Missy Ryan, *Coronavirus pandemic continues its coast-to-coast march*, *The Washington Post* (November 7, 2020), available at https://www.washingtonpost.com/national-security/coronavirus-pandemic-continues-its-coast-to-coast-march/2020/11/07/06cc8d06-210e-11eb-9ec3-3a81e23c4b5e_story.html. It has also become apparent in the past months that COVID-19 is not only dangerous due to the increased risk of death but that a significant proportion of COVID-19 survivors (even those who are younger or had a mild form of COVID-19) inherit lingering maladies including heart, lung, kidney, or brain damage. *See* Jennifer Couzin-Frankel, *From 'brain fog' to heart damage, COVID-19's lingering problems alarm scientists*, *Science Magazine* (July 31, 2020), available at <https://www.sciencemag.org/news/2020/07/brain-fog-heart-damage-covid-19-s-lingering-problems-alarm-scientists>; Sarah Toy *et al.*, *Doctors begin to crack COVID's long-term mysterious effects*, *The Wall Street Journal* (November 1, 2020), available at <https://www.wsj.com/articles/doctors-begin-to-crack-covids-mysterious-long-term-effects-11604252961>. In other words, the conditions that justified a continuation of the self-surrender date a couple of months ago have significantly worsened in the past months without any immediate prospect of abatement. *See United States v. Smith*, No. 17-CR-0650-PWG, 2020 WL 5893737, at *2 (D. Md. Oct. 5, 2020) (“[T]he

approaching colder weather and flu season create the possibility of dire conditions developing.”).

4. Mr. Rowan has been designated to report to FCI Talladega in Alabama. According to BOP’s website, on November 8, 2020, 9% of this facility’s inmate population was COVID-positive (in addition to 13 staff members). *See* BOP “Coronavirus,” available at <https://www.bop.gov/coronavirus/> (last visited November 8, 2020).
5. Courts have recognized that the COVID-19 pandemic poses a higher risk to incarcerated individuals. *United States v. Brown*, No. 14-CR-60161, 2020 WL 5116781, at *2 (S.D. Fla. Aug. 31, 2020) (the pandemic poses a “higher risk to incarcerated individuals who are unable to practice public health precautions that are otherwise available to the general public, such as social distancing practices.”). Avoiding infection -- the best way to protect against a disease for which there is no “reliable treatment” -- is harder to achieve in prisons and jails, which “have generally been hit the hardest by COVID19.” *Zymak v. Adducci*, No. 20-11786, 2020 WL 5017534, at *1 (E.D. Mich. Aug. 25, 2020).
6. This Court has already found that Mr. Rowan is no risk of flight and presents no risk or danger to the community. *See* Dkt. No. 1252 at 3. A modest extension of two months would allow Mr. Rowan to weather the intensification of the pandemic and socially distance at home without exposing himself or others in the penitentiary to the risk of contracting COVID-19.

Dated: November 9 2020

Respectfully submitted,

/s/ Michael Kendall

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LOCAL RULE 7.1 CERTIFICATION

Pursuant to Local Rule 7.1(a)(2), I hereby certify that I have conferred in good faith with counsel for the government.

/s/ Michael D. Kendall
Michael D. Kendall
Counsel for Joseph A. Rowan

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document will be served on counsel for all parties of record through the ECF system.

/s/ Michael D. Kendall
Michael D. Kendall
Counsel for Joseph A. Rowan