

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

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**MICHAEL ROMANO,**

Plaintiff,

No. 23-02919

v.

**WARDEN,**

**ORDER TO SHOW CAUSE**

Defendant.

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**THIS MATTER** having come before the Court by way of a petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 by Michael Romano (“Petitioner”) challenging the Bureau of Prison’s (“BOP”) revocation of his home confinement under the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”). (ECF No. 1); and

**WHEREAS,** Jason Raguckas and Rick Stover, two BOP officials, submitted declarations on behalf of Respondent stating that Petitioner’s home confinement under the CARES Act was revoked due to his failure to meet a purported “50% served” threshold, and due to victim statements received after his release;<sup>1</sup> and

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<sup>1</sup> Raguckas Decl., ECF No. 7-1 at ¶ 15 (“On June 22, 2022, Petitioner transferred to home confinement as a CARES Act home confinement placement . . . Shortly thereafter, it was discovered that the transfer was in error as he had not met the requirement to have served 50% of the sentence imposed.”); Raguckas Decl., ECF No. 20-1 at ¶ 8 (“It was also my understanding that the Home Confinement Committee returned Petitioner to the institution because he had not yet served 50% of the sentence imposed, which was one of the established criteria by the BOP . . . Petitioner was ultimately denied CARES Act placement by the Committee due to the number of victims of his crime (1,378 victims) and their voiced concerns . . .”); Stover Decl., ECF No. 20-2 at ¶ 3 (“It is my understanding that victims and the prosecuting United States Attorney’s Office were voicing extreme concern with his placement; therefore, we were tasked with determining whether him remaining on home confinement was appropriate.”).

**WHEREAS**, Respondent's Counsel, Samantha D'Aversa, continued to reaffirm these positions in open court during status conferences on August 17, 2023 and April 23, 2024;<sup>2</sup> and

**WHEREAS**, these factual assertions were later acknowledged to be false or materially misleading as the 50% benchmark was not a requirement and the cited victim concerns were not new at the time of revocation. *See* Opinion, ECF No. 69 at Section I; and

**WHEREAS**, the declarations submitted by Ruckagas and Stover were submitted under penalty of perjury pursuant to 28 U.S.C. § 1746; and

**WHEREAS**, Rule 11 imposes an affirmative and continuing duty on counsel to ensure that each and every paper submitted to the Court contains allegations that are made with reasonable belief, formed after reasonable inquiry, and are well-grounded in fact. *Ellis v. Beemiller, Inc.*, 287 F.R.D. 326, 347 (W.D. Pa. 2012); and

**WHEREAS**, Respondent filed multiple briefs and declarations repeating unsupported factual assertions, even after having access to the underlying email correspondence and administrative records that contradicted those claims; and

**WHEREAS**, "sanctions are proper when, inter alia, a party insist[s] upon a position after it is no longer tenable." *Balthazar v. Atlantic City Med. Ctr.*, 137 F. App'x. 482, 490 (3d Cir. 2005); *see also* FED. R. CIV. P. 11, Advisory Committee Notes to 1993 Amendment (the rule

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<sup>2</sup> Tr., ECF No. 9 at 11:7–12 ("[T]he return to FCI Fairton, the basis was not meeting the time-served requirement. There may have been . . . rumblings about victim concerns which we identified in our briefing. But that was the basis for the second resubmission denial."); Tr., ECF No. 31 at 29:5–21 ("Our answer to the initial petition identified that 50 percent requirement error . . . The clerical error that resulted in his being ultimately placed, initially . . . In June of 2022 and July, continued concerns expressed by the prosecuting U.S. Attorney's Office and now concerns from the victims that had trickled in, and Mr. Romano has over a thousand victims, so as those came in and those concerns were expressed, Mr. Romano's placement case was referred to the Home Confinement Committee . . . that committee gave Mr. Romano's case a second round of review and, yes, the 50 percent requirement was considered.").

“emphasizes the duty of candor by subjecting litigants to potential sanctions for insisting upon a position after it is no longer tenable” and “a litigant’s obligations with respect to the contents of these papers are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they cease to have any merit”); therefore

**IT IS** on this 25th day of April, 2025,


**ORDERED** that the Clerk of Court shall reopen the case; and it is further

**ORDERED** that Respondent shall submit a memorandum not exceeding ten (10) pages by May 8, 2025, addressing why sanctions should not be imposed and whether remedial measures, such as striking portions of the record, awarding attorneys’ fees, or referral to the Chief Judge of this District under Local Civil Rule 104.1(e)(2) for such disciplinary proceedings as may be appropriate are warranted; and it is further

**ORDERED** that declarants Jason Raguckas and Rick Stover shall each submit sworn statements by May 8, 2025, explaining the sources of information on which they relied for the factual assertions made in their declarations and the steps they took to ensure the accuracy of those statements prior to submitting them to the Court under penalty of perjury; and it is further

**ORDERED** that the Court will retain jurisdiction of this matter for purposes of this Order to Show Cause hearing; and it is finally

**ORDERED** that Respondent shall appear in person before the Honorable Christine P. O’Hearn, United States District Judge, on May 28, 2025, at 2:00pm, in Courtroom 5A to show cause as to why sanctions should not be imposed.

  
CHRISTINE P. O’HEARN  
United States District Judge