

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

<p>HASSAN CHUNN; NEHEMIAH McBRIDE;  AYMAN RABADI, by his Next Friend  MIGDALIZ QUINONES; and JUSTIN  RODRIGUEZ, by his Next Friend JACKLYN  ROMANOFF,</p> <p>individually and on behalf of all others similarly  situated,</p> <p style="text-align: center;">Petitioners,</p> <p style="text-align: center;"><i>-against-</i></p> <p>WARDEN DEREK EDGE,</p> <p style="text-align: center;">Respondent.</p>
---

No. 20 Civ. 1590

**[PROPOSED] TEMPORARY RESTRAINING ORDER**

Upon reading the Memorandum of Law in Support of Petitioners’ Motion for a Temporary Restraining Order, dated March 30, 2020, the Declaration of Katherine Rosenfeld, dated March 30, 2020, with attached exhibits, the Supplemental Declaration of Deirdre von Dornum, dated March 30, 2020, and all pleadings and proceedings relevant to this action; and

The Court having ordered that Respondent Warden Derek Edge show cause before this Court in Room \_\_\_\_\_ at 225 Cadman Plaza East, Brooklyn, NY 11201, on \_\_\_\_\_, 2020 at \_\_\_\_\_ .m., why an order should not be issued:

- (a) Ordering immediate release of individuals confined at the Metropolitan Detention Center (“MDC”), with appropriate precautionary public health measures, including Petitioner Chunn (scheduled to be released on 4/18/2020); Petitioner McBride (scheduled to be released on 4/16/2020); Petitioner Rabadi (scheduled to be released on 7/19/2020); Petitioner

Rodriguez (scheduled to be released on 6/9/2020); and all others confined at the MDC who Respondent has identified as medically vulnerable due to underlying health conditions or age (“Vulnerable Persons”)—and therefore at higher risk of developing serious COVID-19 illness;

- (b) Ordering Respondent to mitigate the serious risk of illness, death, and harm from COVID-19 to those who remain confined at the MDC;
- (c) Certifying this Petition as a Class Action;
- (d) Appointing a Special Master on an emergency basis to evaluate Vulnerable Persons for release and make recommendations for ameliorative action for other persons confined at the MDC; and
- (e) Ordering such other and further relief as this Court deems just, proper, and equitable;

it is hereby:

ORDERED that, pending the hearing and determination of Petitioners’ Class Action Petition Seeking Writ of Habeas Corpus Under 28 U.S.C. § 2241:

- (a) Respondent shall immediately release Petitioner Chunn (scheduled to be released on 4/18/2020); Petitioner McBride (scheduled to be released on 4/16/2020); Petitioner Rabadi (scheduled to be released on 7/19/2020); and Petitioner Rodriguez (scheduled to be released on 6/9/2020); and
- (b) \_\_\_\_\_ is appointed as a Special Master on an emergency basis to chair a Coronavirus Release and Mitigation Committee, which shall include a correctional health expert, in order to
  - (i) evaluate all Vulnerable Persons currently incarcerated at the MDC for

release, and (ii) make recommendations for ameliorative action for other persons held at the MDC; and it is

FURTHER ORDERED that no bond is required under Federal Rule of Civil Procedure 65(c); and it is

FURTHER ORDERED that, in light of the COVID-19 pandemic and Respondent's counsel having consented to electronic service, service of this Order and the papers upon which it is based be made on Respondent on or before the \_\_\_\_\_th day of \_\_\_\_\_ 2020 (a) to Richard P. Donoghue, United States Attorney for the Eastern District of New York, 271 Cadman Plaza East, Brooklyn NY 11201, by electronic mail to Richard.Donoghue@usdoj.gov; and (b) to the Deputy Chief of the Civil Division of the United States Attorney's Office for the Eastern District of New York, Seth D. Eichenholtz, by electronic mail to Seth.Eichenholtz@usdoj.gov (Counsel of Record for the Federal Bureau of Prisons in the currently pending *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons et al.*, 1:19-cv-00660-MKB-SMG (E.D.N.Y.)); and that said service be deemed sufficient; and it is

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

No. 20 Civ. 1590

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' MOTION FOR A  
TEMPORARY RESTRAINING ORDER**

Emery Celli Brinckerhoff & Abady LLP  
600 Fifth Avenue, 10<sup>th</sup> Floor  
New York, New York 10020  
(212) 763-5000

Cardozo Civil Rights Clinic  
Benjamin N. Cardozo School of Law  
55 Fifth Avenue, 11th Floor  
New York, NY 1003  
(212) 790-0871

Alexander A. Reinert  
55 Fifth Avenue, Room 1005  
New York, NY 1003  
(212) 790-0403

TABLE OF CONTENTS

PAGE NO.

TABLE OF AUTHORITIES ..... ii-v

INTRODUCTION ..... 1

FACTUAL BACKGROUND.....3

    A.    The COVID-19 Crisis in the United States.....3

    B.    COVID-19 Poses Significant Dangers for Incarcerated People and  
          Correctional Staff.....5

    C.    Respondent Is Disregarding Known Risks by Failing to Take Proper  
          Precautions to Protect Vulnerable People.....9

    D.    MDC is Not Prepared to Treat to Individuals Who Contract  
          COVID-19.....12

    E.    Petitioners Are Particularly Vulnerable .....13

ARGUMENT .....16

    I.    PETITIONERS FACE IRREPARABLE HARM IF THEY REMAIN  
          CONFINED AT THE MDC.....17

    II.   PETITIONERS HAVE A SUBSTANTIAL LIKELIHOOD OF  
          SUCCEEDING ON THE MERITS .....19

    III.  THE COURT HAS THE AUTHORITY TO ORDER PETITIONERS’  
          RELEASE; THE BALANCE OF EQUITIES TIPS IN PETITIONERS’  
          FAVOR; AND RELEASE WOULD SERVE THE PUBLIC INTEREST .....22

CONCLUSION.....24

TABLE OF AUTHORITIES

**Cases**

*Abdi v. Duke*,  
280 F. Supp. 3d 373 (W.D.N.Y. 2017)..... 23

*AIM Int’l Trading LLC v. Valcucine SpA.*,  
188 F. Supp. 2d 384 (S.D.N.Y. 2002)..... 17

*Andino v. Fischer*,  
555 F. Supp. 2d 418 (S.D.N.Y. 2008)..... 16

*Arana v. Barr et al.*,  
19 Civ. 7924 (PGG)(DCF) (S.D.N.Y. Mar. 27, 2020) ..... 7

*Basank et al. v. Decker et al.*,  
20 Civ. 2518 (AT) (S.D.N.Y. Mar. 26, 2020)..... 7

*Basank v. Decker*,  
No. 20 Civ. 2518, 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020) ..... 18, 23

*Bell v. Wolfish*,  
441 U.S. 520 (1979)..... 19

*Brown v. Plata*,  
563 U.S. 493 (2011)..... 19

*Castillo et al. v. Barr*,  
20 Civ. 605 (C.D. Cal. Mar. 27, 2020) ..... 8

*Castillo v. Barr*,  
No. 20 Civ. 605 (Mar. 27, 2020)..... 18

*Charles v. Orange Cty.*,  
925 F.3d 73 (2d Cir. 2019)..... 19

*Conn. Dep’t of Envtl. Prot. v. OSHA*,  
356 F.3d 226 (2d Cir. 2004)..... 18

*Coronel v. Decker*,  
No. 20-CV-2472, 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020)..... 18

*Coronel, et al., v. Decker et al.*,  
20 Civ. 2472 (AJN) (S.D.N.Y. Mar. 27, 2020)..... 7

*Doe v. Kelly*,  
878 F.3d 710 (9th Cir. 2017) ..... 23

*Estelle v. Gamble*,  
429 U.S. 97 (1976)..... 19, 22

*Farmer v. Brennan*,  
511 U.S. 825 (1994)..... 19

*Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*,  
No. 19-1778, \_\_\_ F.3d \_\_\_, 2020 WL 1320886 (2d Cir. Mar. 20, 2020) ..... 20

*Flores et al. v. Barr et al.*,  
85 Civ. 4544 (C.D. Cal. Mar. 28, 2020) ..... 8

*Harris v. Bd. of Supervisors, Los Angeles Cty.*,  
366 F.3d 754 (9th Cir. 2004) ..... 18

*Helling v. McKinney*,  
509 U.S. 25 (1993)..... 17, 19, 20, 21

*Hutto v. Finney*,  
437 U.S. 678 (1978)..... 21

*In Re Extradition of Alejandro Toledo Manrique*,  
19 Mj. 7105 (N.D. Cal. Mar. 19, 2020) ..... 9

*In re Request to Commute or Suspend County Jail Sentences*,  
Dkt. No. 084230 (N.J. Mar. 22, 2020)..... 9

*Innovative Health Sys., Inc. v. City of White Plains*,  
117 F.3d 37 (2d Cir. 1997)..... 17

*Jimenez v. Cronen, et al.*,  
18 Civ. 10225 (D. Mass. Mar. 26, 2020) ..... 9

*Johnson v. Connolly*,  
378 F. App’x 107 (2d Cir. 2010) ..... 18

*Johnson v. Miles*,  
355 F. App’x 444 (2d Cir. 2009) ..... 18

*Jolly v. Coughlin*,  
76 F.3d 468 (2d Cir. 1996)..... 18, 20

*JSG Trading Corp. v. Tray-Wrap, Inc.*,  
917 F.2d 75 (2d Cir. 1990)..... 17

*L.V.M. v. Lloyd*,  
318 F. Supp. 3d 601 (S.D.N.Y. 2018)..... 23

*Litwin v. OceanFreight, Inc.*,  
865 F. Supp. 2d 385 (S.D.N.Y. 2011)..... 16

*New York Civil Liberties Union v. New York City Transit Auth.*,  
684 F.3d 286 (2d Cir. 2012)..... 16

*People ex rel. Stoughton on behalf of Hogan et al. v. Brann*,  
(Sup. Ct. N.Y. Cty. Mar. 27, 2020)..... 8

*People ex rel. Stoughton on behalf of Little et al. v. Brann*,  
Index No. 260154/2020 (Sup. Ct. Bronx Cty. Mar. 25, 2020) ..... 8

*Phelps v. Kapnolas*,  
308 F.3d 180 (2d Cir. 2002)..... 20

*Reuters Ltd. v. United Press Int’l, Inc.*,  
903 F.2d 904 (2d Cir.1990)..... 17

*Roba v. United States*,  
604 F.2d 215 (2d Cir. 1979)..... 22

*Stagliano v. Herkimer Cent. Sch. Dist.*,  
151 F. Supp. 3d 264 (N.D.N.Y. 2015)..... 18

*Thompson v. Choinski*,  
525 F.3d 205 (2d Cir. 2008)..... 22

*U.S.A. v. Barkman*,  
19 Cr. 52 (D. Nev. Mar. 17, 2020)..... 9

*Umana Jovel v. Decker et al.*,  
20 Civ. 308 (GBD)(SN) (S.D.N.Y. Mar. 26, 2020)..... 7

*United States v. Garlock*,  
No. 18 Cr. 00418, 2020 WL 1439980 (N.D. Cal. Mar. 25, 2020)..... 8

*United States v. Little*,  
No. 20 Cr. 57, 2020 WL 1439979 (S.D.N.Y. Mar. 24, 2020) ..... 20

*United States v. Matthaei*,  
19 Civ. 243 (D. Idaho Mar. 16, 2020) ..... 9

*United States v. Stephens*,  
15 Cr. 95 (AJN), 2020 WL 1295155 (S.D.N.Y. Mar. 19, 2020) ..... 7

*Winter v. Natural Res. Def. Council, Inc.*,  
555 U.S. 7 (2008)..... 16

*Xochihua-Jaimes v. Barr*,  
No. 18-71460 (9th Cir. Mar. 24, 2020)..... 8

*Zhang v. Barr et al.*,  
20 Civ. 331 (C.D. Cal. Mar. 27, 2020) ..... 8

## INTRODUCTION

Petitioners Hassan Chunn, Nehemiah McBride, Ayman Rabadi, and Justin Rodriguez (“Petitioners”), on behalf of themselves and others similarly situated, respectfully move this Court under Federal Rule of Civil Procedure 65 for a temporary restraining order (“TRO”):

(a) directing that Petitioners be immediately released from detention at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York and returned to their homes under such conditions as the Court deems appropriate, and

(b) appointing a Special Master on an emergency basis to chair a Coronavirus Release and Mitigation Committee, which shall include a correctional health expert, in order to (i) evaluate all persons currently incarcerated at the MDC who Respondent has identified as vulnerable to developing serious COVID-19 illness (“Vulnerable Persons”) for release, and (ii) make recommendations for ameliorative action for other persons held at the MDC.

Release is necessary to protect Petitioners, who are particularly vulnerable to contracting and suffering dire consequences from COVID-19. Respondent Warden Derek Edge has not taken steps to protect Petitioners from the substantial risk of harm posed by COVID-19, nor could he under the MDC’s current conditions. Every hour that Petitioners are held under these circumstances, they are exposed to the substantial risk of a COVID-19 infection, with a substantial risk of death to follow. Continuing to hold Petitioners under these circumstances patently violates their Eighth Amendment rights.

As one of the Petitioners grimly reported:

Things are very bad here. We don’t have any gloves, masks or any personal protective equipment. Also, we can't social distance from each other. There are approximately 90 people in a small area because this is considered a “camp” status floor... They came up here and told us that there were 2 officers and 1 inmate that are infected. We found out there are many more inmates and probably guards with the virus. One of our friends we maybe think he got the virus. He walks around with a mask and he has a deep cough and we are freaking out and are not doing well mentally. They tell us to wash our hands but they don't have any hand sanitizer and

they tell us to use soap, but we don't have soap because they don't have any. We tried to buy soap from commissary, but commissary is out for 3 weeks. We are in big trouble here. Not just me, but everyone in here is freaking out because we cannot get any information or anyone to listen to us . . . Please help me before I die. I want to be with my family where I am safe.

Declaration of Katherine Rosenfeld (“Rosenfeld Decl.”) ¶ 28.

New York City is the current epicenter of the COVID-19 pandemic, and the measures necessary to mitigate spread of the disease—most notably, social distancing—cannot be implemented in its prisons and jails. Indeed, already there are signs that the disease is spreading even faster in New York City jails than it has spread among the population at liberty;<sup>1</sup> there is every expectation that the MDC is just as vulnerable to rapid spread of the disease. Social distancing is not a realistic possibility in the confines of the MDC, medical equipment and personnel are insufficient to ensure that the disease is contained, and the MDC lacks critical resources necessary to treat Petitioners if they contract the disease.

For Petitioners, this state of affairs is particularly treacherous, making release the only appropriate remedy. Because of their age and/or underlying medical conditions, Petitioners face a substantial risk of serious illness and death if they contract COVID-19. The risk to their health and well-being increases every moment they are held within the close confines of the MDC, with no ability to protect themselves and no assurance that Respondent and his staff are taking adequate steps to mitigate the substantial and ever-present risk of harm. At the state and local levels, corrections officials, medical experts, and our political leaders, among others, have concluded the same. Petitioners’ lives lie in the balance—release is the only means to preserve the status quo.

---

<sup>1</sup> COVID-19 Infection Tracking in NYC Jails, The Legal Aid Society, <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last accessed Mar. 29, 2020).

For the rest of the MDC population—the putative class—a Special Master should be appointed immediately to ensure that appropriate measures are taken to protect everyone who is being detained, particularly the 537 Vulnerable Persons that Respondent has already identified. Like Petitioners, the Vulnerable Persons are at extreme risk of serious illness and death if they contract COVID-19. The Court should therefore direct the Special Master to apply a presumption in favor of releasing all Vulnerable Persons, under terms and conditions the Court deems appropriate, unless Respondent can make a particularized showing to rebut the presumption.

In light of the grave and irreparable harm facing Petitioners and all those detained at MDC, Petitioners' substantial likelihood of success on the merits of this Petition, the clear balance of equities in their favor, and the public interest in mitigating the harm from an inevitable COVID-19 outbreak in the MDC, Petitioners respectfully request that the Court issue a temporary restraining order mandating Petitioners' immediate release to their homes under such other conditions as the Court deems appropriate and immediately appointing a Special Master to chair a Coronavirus Release and Mitigation Committee.

## **FACTUAL BACKGROUND**

### **A. The COVID-19 Crisis in the United States**

The novel coronavirus that causes COVID-19 has led to a global pandemic. As of March 30, 2020, COVID-19 has infected more than 737,000 people worldwide and more than 143,000 people in the United States.<sup>2</sup> New York City has reported more than 33,000 cases,<sup>3</sup> with more than 775 deaths,<sup>4</sup> although the number of infections is drastically understated. The number of

---

<sup>2</sup> <https://coronavirus.jhu.edu/map.html> (last visited Mar. 30, 2020 9:05AM).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

COVID-19 cases in the United States is expected to grow exponentially. Pet. ¶ 18.<sup>5</sup> Projections by the Centers for Disease Control and Prevention (“CDC”) indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the epidemic without effective public health intervention, with as many as 1.5 million deaths in the most severe projections. *Id.*<sup>6</sup>

Certain populations—those over the age of 50 and those with specific underlying medical conditions—are particularly vulnerable to serious illness and death from COVID-19. *Id.* ¶¶ 20-21 (citing *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.) People aged 60-69 have a mortality rate 18 times higher than people under the age of 40; the rate is 40 times higher for people aged 70-79 years old. *Id.* ¶ 20. The mortality rate for people of any age with cardiovascular disease, diabetes, hypertension, chronic respiratory disease, and cancer, is significantly elevated as well. *Id.* ¶ 21. Even if the COVID-19 infection is not fatal, it will often require highly specialized care for people over the age of 50 and will result in longstanding medical complications. *Id.* ¶¶ 22, 27. Serious complications can develop rapidly, as little as five days after the first symptoms first appear. *Id.* ¶ 24. Compared to influenza, COVID-19 is much more deadly, with a fatality rate of 15 percent in the highest risk populations. *Id.* ¶ 26.

---

<sup>5</sup> Citations to “Pet.” refer to the Petition that was filed on March 27, 2020.

<sup>6</sup> See also Chas Danner, *CDC’s Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead*, N.Y. Mag. (Mar. 13, 2020), <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html>.

**B. COVID-19 Poses Significant Dangers for Incarcerated People and Correctional Staff**

New York has been in a state of emergency since March 7, 2020, to more effectively contain the spread of COVID-19, deploying the National Guard among other strategies.<sup>7</sup> In New York, people must remain in their homes to the greatest extent possible, not gather in groups of any size, and remain six feet away from others at all times.<sup>8</sup> The CDC and World Health Organization have agreed that “social distancing” and rigorous hygiene practices, including washing hands with soap and water, are critical to stop the spread of COVID-19. *Id.* ¶ 28.

It is virtually impossible to take these necessary measures in prisons and jails. *Id.* ¶ 31. In correctional settings, the risk of contracting an infectious disease, like COVID-19, is significantly increased due to the high numbers of people with chronic, often untreated, illnesses housed in a setting with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, and no possibility of staying at a distance from others. Pet. Ex. 2 (Declaration of Jonathan Giftos, MD, dated March 27, 2020 (“Giftos Decl.”)) ¶ 11; *see also* Rosenfeld Decl. Ex. 9 (Declaration of Jaimie Meyer, M.D.) ¶ 7. It is thus no surprise that flu outbreaks occur regularly in jails and prisons and that during past epidemics, such as with H1N1 in 2009, many jails and prisons dealt with high numbers of cases. Giftos Decl. ¶ 12. On Saturday, March 28, 2020, the inevitable occurred: a person incarcerated in a federal prison died

---

<sup>7</sup> Eileen AJ Connelly & Laura Italiano, *Cuomo Declares State of Emergency in New York as State Coronavirus Cases Soar to 89*, N.Y. Post (Mar. 7, 2020), <https://nypost.com/2020/03/07/cuomo-declares-state-of-emergency-as-new-york-state-coronavirus-cases-soar-to-76/>; *NJ Announces 1st COVID-19 Death; NY Deploys National Guard to New Rochelle*, NBC New York (Mar. 11, 2020), <https://www.nbcnewyork.com/news/local/nyc-adds-5-new-covid-19-cases-tri-state-total-more-than-triples-in-days/2319688/>.

<sup>8</sup> *Cuomo Bans Gatherings, Nonessential Workers to Stay Home*, N.Y. Times (Mar. 20, 2020), <https://www.nytimes.com/aponline/2020/03/20/us/ap-us-virus-outbreak-new-york-2nd-ld-writethru.html>; Berkely Lovelace, Jr., *Coronavirus: NY, NJ, CT Coordinate Restrictions on Restaurants, Limit Events to Fewer than 50 People*, CNBC (Mar. 16, 2020), <https://www.cnbc.com/2020/03/16/new-york-new-jersey-and-connecticut-agree-to-close-restaurants-limit-events-to-less-than-50-people.html>.

from COVID-19.<sup>9</sup> The Louisiana prison in which he had been held is now seeing an explosion of coronavirus cases that is crippling the facility, with 30 incarcerated people having tested positive and 60 more in quarantine.<sup>10</sup>

For this reason, correctional public health experts have responded to the COVID-19 pandemic by recommending the release from custody of people most vulnerable to COVID-19. Pet. ¶¶ 36; 43-44. Release protects these people, mitigates the risk of infection for all people held and working in a correctional setting, and lessens the burden on the region's health care infrastructure by reducing the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time. *Id.* ¶ 36. On March 23, 2020, a bipartisan group of U.S. Senators urged BOP to release to home confinement certain individuals who were elderly, ill, or incarcerated for non-violent offenses and are near release. *Id.* ¶ 39. Attorney General William Barr has specifically given the BOP instruction to grant home confinement to vulnerable populations held in federal custody. *Id.* ¶ 40.

Recognizing the Emergency, state and local jurisdictions across the country, including New York State, New York City, Los Angeles, and Chicago, have taken steps to protect people in custody from the impending spread of COVID-19 by releasing people in an effort to reduce populations. *Id.* ¶¶ 42-43, 48, 50. As Dr. Robert Cohen, a member of New York City's Board of Correction, said, "The most important thing we can do right now is discharge all of the people who are old and have serious medical issues—those people are likely to die from a coronavirus infection." *Id.* ¶ 43. At the same time, COVID-19 is spreading rapidly within incarcerated

---

<sup>9</sup> Sadie Gurman, *First Federal Inmate Dies of COVID-19, Deepening Fear of Coronavirus Spread in Prisons* (Mar. 29, 2020), <https://www.wsj.com/articles/first-federal-inmate-dies-of-covid-19-deepening-fear-of-coronavirus-spread-in-prisons-11585456750>.

<sup>10</sup> [https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html)

populations in New York City. Giftos Decl. ¶ 14. People who work in the criminal justice system also have tested positive, increasing the likelihood of exposure to and by incarcerated people. Pet. ¶ 47. And United Nations High Commissioner for Human Rights Michelle Bachelet stated that governments must quickly reduce the number of people in detention, encouraging them to examine ways to release those particularly vulnerable to Covid-19.<sup>11</sup>

Reflecting this reality, over the last several days, judges in this circuit and across the country have granted habeas petitions and ordered the release of persons who are incarcerated or being detained. *See Coronel, et al., v. Decker et al.*, 20 Civ. 2472 (AJN) (S.D.N.Y. Mar. 27, 2020) (granting release of four petitioners with medical conditions that render them particularly vulnerable to severe illness or death if infected by COVID-19 from immigration detention); *Arana v. Barr et al.*, 19 Civ. 7924 (PGG)(DCF) (S.D.N.Y. Mar. 27, 2020) (recommending “that, due to extraordinary circumstances brought about by the COVID-19 outbreak, which has apparently reached the jail where Petitioner is being detained, and by which he may be particularly seriously impacted as a result of underlying medical conditions, Petitioner be ordered released from [immigration] custody pending his bond hearing”); *Basank et al. v. Decker et al.*, 20 Civ. 2518 (AT) (S.D.N.Y. Mar. 26, 2020) (granting release of ten petitioners who “suffer[] from chronic medical conditions, and face[] an imminent risk of death or serious injury in immigration detention if exposed to COVID-19” from immigration detention); *United States v. Stephens*, 15 Cr. 95 (AJN), 2020 WL 1295155 (S.D.N.Y. Mar. 19, 2020) (granting motion for reconsideration of defendant’s bail conditions and releasing him from jail to home confinement, recognizing that incarcerated people may be at a heightened risk of contracting COVID-19); *Umana Jovel v. Decker et al.*, 20 Civ. 308 (GBD)(SN) (S.D.N.Y. Mar. 26, 2020) (granting

---

<sup>11</sup> <https://news.un.org/en/story/2020/03/1060252>.

emergency request for release of petitioner from immigration detention in light of the COVID-19 crisis); *People ex rel. Stoughton on behalf of Little et al. v. Brann*, Index No. 260154/2020 (Sup. Ct. Bronx Cty. Mar. 25, 2020) (releasing 106 individuals held at Rikers Island jail on parole violations who are particularly vulnerable to illness or death if infected by COVID-19); *People ex rel. Stoughton on behalf of Hogan et al. v. Brann*, (Sup. Ct. N.Y. Cty. Mar. 27, 2020) (releasing 16 individuals held at Rikers Island jail on pre-trial detention who were particularly vulnerable to illness or death due to COVID-19); *Xochihua-Jaimes v. Barr*, No. 18-71460 (9th Cir. Mar. 24, 2020) (ordering, sua sponte, that petitioner be immediately released from immigration detention “[i]n light of the rapidly escalating public health crisis” related to COVID-19); *Flores et al. v. Barr et al.*, 85 Civ. 4544 (C.D. Cal. Mar. 28, 2020) (granting a Temporary Restraining Order application requiring the Office of Refugee Resettlement and United States Immigrations and Customs Enforcement to immediately put in place measures to reduce the risk of COVID-19 infection for unaccompanied minors in their custody and ordering the defendants to show cause why an order should not issue requiring defendants to immediately release class members); *Zhang v. Barr et al.*, 20 Civ. 331 (C.D. Cal. Mar. 27, 2020) (granting Petitioner an immediate bond hearing in light of the “global pandemic by which delay in determining Petitioner’s release exposes him to unnecessary risk”); *United States v. Garlock*, No. 18 Cr. 00418, 2020 WL 1439980, at \*1 (N.D. Cal. Mar. 25, 2020) (ordering, sua sponte, extension of convicted defendant’s surrender date and noting “[b]y now it almost goes without saying that we should not be adding to the prison population during the COVID-19 pandemic if it can be avoided”); *Castillo et al. v. Barr*, 20 Civ. 605 (C.D. Cal. Mar. 27, 2020) (ordering petitioners be released from immigration detention in light of COVID-19 and noting “the risk of infection in immigration detention facilities – and jails – is particularly high”); *In Re Extradition*

of *Alejandro Toledo Manrique*, 19 Mj. 7105 (N.D. Cal. Mar. 19, 2020) (granting motion for release on bail of 74-year old subject of extradition request due to risks associated with remaining in custody during COVID-19 pandemic); *U.S.A. v. Barkman*, 19 Cr. 52 (D. Nev. Mar. 17, 2020) (suspending requirement that defendant report to prison to serve intermittent confinement due to risks associated with COVID-19); *United States v. Matthaei*, 19 Civ. 243 (D. Idaho Mar. 16, 2020) (granting convicted defendant additional time to self-surrender to prison in light of defendant's health problems, which place him at greater risk of complications of COVID-19); *Jimenez v. Cronen, et al.*, 18 Civ. 10225 (D. Mass. Mar. 26, 2020) (ordering release of petitioner from immigration detention due to COVID-19 concerns); *In re Request to Commute or Suspend County Jail Sentences*, Dkt. No. 084230 (N.J. Mar. 22, 2020) (ordering, based on the dangers posed by COVID-19, release of any person in New Jersey serving a county jail sentence as a condition of probation or as a result of a municipal court conviction).

**C. Respondent Is Disregarding Known Risks by Failing to Take Proper Precautions to Protect Vulnerable People**

Like every other correctional setting, MDC is not well-situated to mitigate the risks of COVID-19 spread. Necessary social distancing is impossible; toilets, sinks, and showers are shared without disinfection between each use; communal food preparation and service leaves little opportunity for surface disinfection; and staff arrive and leave without proper screening for new infection. Pet. ¶ 52. Since March 4, 2020, the Federal Defenders has engaged in extensive efforts to get Respondent to address the risks associated with the spread of COVID-19 at the MDC, to little avail. Pet. Ex. 1 (Declaration of Deirdre D. von Dornum, dated March 27, 2020 (“von Dornum Decl.”)) ¶¶ 3-7, 9-11, 20, 21, 23. The Federal Defenders asked that the MDC take specific measures to reduce the spread of infection, *id.* ¶ 4, but the MDC's response was woefully inadequate.

As of March 11, 2020, the MDC did not anticipate having a testing protocol for COVID-19; it had no policy to address staff who presented with COVID-19 risk factors; it would not permit the use of hand sanitizer by people held at the MDC or by staff who worked there; it maintained that increased cleaning in the facility would be handled by incarcerated people; it had no plan for where the MDC would place people who tested positive for the virus; and it had no plans to move particularly vulnerable people housed at the MDC. *Id.* ¶ 6.

Unfortunately, there is no evidence that Respondent has taken any additional steps since March 11, even as the pandemic has spread. In conversations with the Federal Defenders, people held at the MDC have observed no changes in sanitation practices—only *some* units have received bars of soap—and have not been given relevant education about the symptoms of COVID-19 or how to mitigate its spread. *Id.* ¶ 9. Doctors have not even been present to evaluate people in the housing units. *Id.* ¶ 9(d). Staff are given temperature checks when they enter the MDC, but they are not wearing gloves, masks, or any other protective gear while on duty. *Id.* ¶ 9(e).

Even if Respondent were devoted to responding to the COVID-19 threat, the MDC lacks sufficient resources to protect Petitioners and similarly situated people. Almost one-third of the 1,700 people held at the MDC have been identified by Respondent as falling into categories identified by the CDC as particularly vulnerable to the virus. *Id.* ¶ 11(a). New arrivals to the MDC are screened only for fever and recent travel to designated hotspots, and staff are screened only for fever (they are sent home if their temperature exceeds 100.4 degrees Fahrenheit). *Id.* ¶ 11(e).

Respondent has failed to take protective measures even in the face of known infections at the MDC. A little over one week ago, on March 21, 2020, the Federal Defenders learned that an

individual incarcerated at the MDC had tested positive for COVID-19. *Id.* ¶ 12. This person had been in contact with many others, both staff and incarcerated people, with the latter subsequently transferred throughout the facility. *Id.* According to one person confined at the MDC, others who were housed with the person who tested positive are now showing symptoms. Pet. ¶ 66. No professional or staff cleaners sanitized the intake unit where the person who tested positive had been housed. von Dornum Decl. ¶¶ 12-13. Instead, incarcerated people on the adjacent unit were sent to clean the intake unit with the same cleaning supplies they regularly use and were provided insufficient gloves and masks. *Id.* ¶ 13(f). To “clean” their own cells, people are provided only with diluted hand soap. Pet. ¶ 69.

At least four MDC staff members have tested positive for COVID-19 and others are symptomatic. *Id.* ¶ 72. Nonetheless, Respondent continues to implement hazardous practices, including: forcing women housed at the MDC to wash the clothing of incarcerated people, including clothing from the unit where an incarcerated person tested positive, von Dornum Decl. ¶ 16(a); failing to clean phones and computers, *id.* ¶ 16(c); directing people to line up shoulder to shoulder during meals, where people eat in large groups, *id.* ¶ 16(d); Pet. ¶ 73(i); housing people in small two-person cells or in large dormitory units, all with shared sinks and toilets and in spaces where it is impossible to maintain necessary social distance, von Dornum Decl. ¶ 26; failing to provide any hand sanitizer and providing limited to no soap, depending on the unit, Pet. ¶ 73(e), (g); and relying on incarcerated people to sanitize common areas without providing adequate cleaning supplies, *Id.* ¶ 73(j).

Petitioners have grave concerns about the current scale of infection at the MDC, and whether the BOP’s publicly reported numbers about infections in New York’s federal prisons are accurate. On the evening of March 29, 2020, the BOP’s official website listed two total positive

cases at the MDC, one incarcerated person and one staff. *See* Supplemental Declaration of Deirdre D. von Dornum, dated March 30, 2020 (“Supp. von Dornum Decl.”) ¶ 4. Although the website is supposed to be updated daily at 3 PM, this information is incorrect, based on information gleaned by the Federal Defenders. *Id.* ¶¶ 3, 5 (reporting a total of 4 staff infections). The Federal Defenders learns of additional cases only when they ask specific questions based on information learned from their clients, raising the serious concern that if additional cases exist, neither the Federal Defenders nor the public will learn of them from the BOP. *Id.* ¶ 6. This concern is heightened because the Federal Defenders continue to hear from clients that people held in the MDC are reporting symptoms consistent with COVID-19, but have not yet been tested and have not been isolated from asymptomatic individuals. *Id.* ¶ 7.

Nor has Respondent taken steps to educate incarcerated people about the spread of infection or separated individuals based on their risk of becoming seriously ill from COVID-19. von Dornum Decl. ¶ 35; Pet. ¶ 74. Physicians have not visited housing units, medical staff will visit only if someone reports symptoms, which many people are afraid to do because, absent a transparent protocol for treatment, they are reasonably concerned that if they report feeling symptomatic they will be placed in solitary confinement. von Dornum Decl. ¶ 16(b); Pet. ¶ 77.

**D. MDC is Not Prepared to Treat to Individuals Who Contract COVID-19**

If Petitioners contract COVID-19 at the MDC, they will be at a high risk of developing serious symptoms because the MDC lacks the medical resources to care for symptomatic individuals. Pet. ¶ 78. Now that COVID-19 is inside the facility, the MDC will be unable to stop the spread of the virus throughout the facility given long-documented inadequacies in BOP’s medical care and in light of how these facilities function. Giftos Decl. ¶ 14. MDC has no separate medical unit for sick people, unlike many Federal Correctional Institutions and even Rikers’ Island. von Dornum Decl. ¶ 41. As of March 20, 2020, MDC had only 9 nasal swab

COVID-19 test kits and only one incarcerated person had been tested at the facility. *Id.* ¶ 11(b), (c). MDC currently has no ventilators and cannot intubate patients on-site. *Id.* ¶¶ 39, 40. MDC does not have any specialized equipment or medical providers. *Id.* ¶ 42. There are only three doctors available at MDC to care for all 1,700 people held there. *Id.* Even this highly limited number is likely to decrease as doctors themselves go into quarantine. None of these doctors specialize in infectious diseases. *Id.*

These resources will be inadequate to treat people who contract COVID-19, particularly vulnerable individuals like Petitioners. Most people in the higher risk categories will require more advanced support: positive pressure ventilation, and in extreme cases, extracorporeal mechanical oxygenation. Pet. ¶ 83. Such care requires specialized equipment in limited supply as well as an entire team of specialized care providers. *Id.* MDC does not have that specialized equipment or specialized providers. *Id.* And MDC's staffing shortage will only increase with the epidemic, leaving officers less able to monitor the health of the incarcerated population. Giftos Decl. ¶ 18.

#### **E. Petitioners Are Particularly Vulnerable**

Because of their age and/or medical conditions, Petitioners are particularly vulnerable to serious illness or death if infected by COVID-19.

##### **1. Hassan Chunn**

Hassan Chunn is 46 years old. Declaration of Katherine Rosenfeld, dated March 30, 2020 ("Rosenfeld Decl."), Ex. 1 ¶ 3. He has many serious medical problems, including Coronary Heart Disease, high blood pressure, and diabetes. *Id.* ¶ 3. He has two stents in his heart. *Id.* He takes many different medications, and he has had a difficult time getting medical care while at the MDC. *Id.* ¶ 5. While held at the MDC, he has been hospitalized multiple for heart and breathing problems. *Id.* ¶ 6. According to medical records from Jamaica Hospital, Mr.

Chun was receiving care in 2017 for coronary artery disease, poorly controlled hypertension, and obesity. Rosenfeld Decl. ¶ 15. Mr. Chunn is due to be released on April 18, 2020. Rosenfeld Decl. Ex. 1 ¶ 2. When he is released, he will live with his mother in Brooklyn. *Id.*

On March 26, 2020, Mr. Chunn's criminal defense counsel requested that Respondent grant a reduction in Mr. Chunn's sentence pursuant to title 18 U.S.C. Section 3624, and release Mr. Chunn for the remainder of his short sentence, in light of Mr. Chunn's serious heart condition and other health problems, and his resulting vulnerability to the spread of COVID-19 in the MDC. Rosenfeld Decl. Ex. 2. Mr. Chunn's counsel has not received a response to his letter. Rosenfeld Decl. ¶ 18.

## **2. Nehemiah McBride**

Mr. McBride is 34 years old. Rosenfeld Decl. Ex. 3 ¶ 2. He has had asthma and respiratory problems for many years. *Id.* ¶ 4.<sup>12</sup> He can get very sick when his asthma is activated, and he has used both an inhaler and a nebulizer. *Id.* On several occasions, he has had such severe asthma attacks that he had to go to the emergency room for treatment. *Id.* ¶ 5. Mr. McBride is due to be released on April 15, 2020. *Id.* ¶ 2. When he is released, he will live with his partner at her home in Jamaica. *Id.* ¶ 3.

On March 26, 2020, Mr. McBride's criminal defense counsel requested that Respondent grant a reduction in Mr. McBride's sentence pursuant to title 18 U.S.C. Section 3624, and release Mr. McBride for the remainder of his short sentence to home confinement, in light of Mr. McBride's severe asthma and breathing problems and resulting vulnerability to the spread of

---

<sup>12</sup> The CDC states that people with asthma "may be at higher risk of getting very sick from COVID-19" and directs people with asthma to be sure to know how to use their inhaler. *See* <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/asthma.html>.

COVID-19 in the MDC. Rosenfeld Decl. Ex. 4. Mr. McBride's counsel has not received a response to his letter. Rosenfeld Decl. ¶ 21.

### **3. Ayman Rabadi**

Mr. Rabadi is 59 years old; he will be 60 in May. Rosenfeld Decl. Ex. 5 ¶ 2. He suffers from many health problems, and he had a heart attack about five years ago. *Id.* Mr. Rabadi takes medication for high blood pressure, cholesterol, hypertension, pre-diabetes, and other conditions. *Id.* ¶ 3. He has stents in his heart. *Id.* ¶ 6. He has a tumor in one of his kidneys and suffers from an anal fistula. *Id.* ¶¶ 4-5. Mr. Rabadi suffered from a stroke in jail last year. Rosenfeld Decl. ¶ 26. He reports that he takes over a dozen different medications a day. *Id.*

Mr. Rabadi is scheduled to be released on July 19, 2020. *Id.* ¶ 23. He has four children and two grandchildren. *Id.* He is spending as much time as possible in his cell to avoid contact with others, but he shares a small cell with another person and he must leave his cell to get food. Rosenfeld Decl. ¶ 27.

### **4. Justin Rodriguez**

Mr. Rodriguez is 26 years old. Rosenfeld Decl. Ex. 8 ¶ 2. He has suffered from asthma since he was a baby. *Id.* ¶ 6. When he was young, he had a nebulizer machine that his mother used to give him breathing treatments. *Id.* ¶ 7. Today, he has difficulty breathing when places are dirty, dusty, pollen-filled, or smoky. *Id.* ¶ 9. His breathing problems are exacerbated by extreme coldness or sickness. *Id.* Mr. Rodriguez has gotten several bad colds while at the MDC, and it routinely takes him several weeks to be seen by a medical professional. *Id.* ¶ 10.

Mr. Rodriguez is due to be released on June 9, 2020. *Id.* ¶ 2. He has a four-year-old son and is a very active father. *Id.* ¶ 3. When he is released, he will live with his mother in Staten Island. *Id.* ¶ 5. On March 27, 2020, Mr. Rodriguez's criminal defense counsel requested that Respondent grant a reduction in Mr. Rodriguez's sentence pursuant to title 18 U.S.C. Section

3624 and release him for the remainder of his short sentence to home confinement, in light of Mr. McBride's lifelong asthmatic condition and resulting vulnerability to the spread of COVID-19 in the MDC. Rosenfeld Decl. Ex. 7. Mr. Rodriguez's counsel has not received a response to his letter. Rosenfeld Decl. ¶ 30.

### ARGUMENT

Applications for temporary restraining orders ("TRO") are governed by the same standards as motions for preliminary injunctions. *See Andino v. Fischer*, 555 F. Supp. 2d 418, 419 (S.D.N.Y. 2008). The moving party must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary relief; (3) that the balance of equities tips in favor of the moving party; and (4) that the public interest is served by an injunction. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "The party seeking the injunction carries the burden of persuasion to demonstrate, 'by a clear showing,' that the necessary elements are satisfied." *Litwin v. OceanFreight, Inc.*, 865 F. Supp. 2d 385, 392 (S.D.N.Y. 2011).

Petitioners maintain that a TRO is necessary to preserve the status quo—namely, their current health—but even if the Court determines that Petitioners must meet the higher standard necessary for a mandatory status quo, they do so here. *New York Civil Liberties Union v. New York City Transit Auth.*, 684 F.3d 286, 294 (2d Cir. 2012) ("For mandatory injunctions, which alter rather than maintain the status quo, such as the one at issue here, the movant must show a clear or substantial likelihood of success on the merits." (internal quotation marks and citation omitted)).

**I. PETITIONERS FACE IRREPARABLE HARM IF THEY REMAIN CONFINED AT THE MDC**

The irreparable harm here is immense: Petitioners likely face death or serious illness from COVID-19 if they remain incarcerated at the MDC.

“The Second Circuit has deemed the threshold showing of ‘irreparable harm’ to be of particular significance under Rule 65, regardless of the strength of the movant’s case on the merits.” *AIM Int’l Trading LLC v. Valcucine SpA.*, 188 F. Supp. 2d 384, 387 (S.D.N.Y. 2002) (citing *Reuters Ltd. v. United Press Int’l, Inc.*, 903 F.2d 904, 907 (2d Cir.1990)). Harm is considered to be irreparable if it “cannot be redressed through a monetary award.” *JSG Trading Corp. v. Tray-Wrap, Inc.*, 917 F.2d 75, 79 (2d Cir. 1990).

With confirmed COVID-19 infections among staff and incarcerated people housed at the MDC, it will be nearly impossible to prevent widespread internal transmission. *See supra* at 11-12. Petitioners are much more likely to be infected within the MDC than if they were able to practice social distancing and personal hygiene in home confinement. Once they contract COVID-19, they will be at a substantially increased risk of death or serious illness because of their age and/or underlying medical conditions. *See supra* at 4. The putative class—particularly the 537 Vulnerable Persons Respondent has identified—are at imminent risk from the virus as well.

Being compelled to endure a substantially increased risk of serious illness and death will always constitute irreparable injury. *See, e.g., Helling v. McKinney*, 509 U.S. 25, 33 (1993) (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”); *Innovative Health Sys., Inc. v. City of White Plains*, 117 F.3d 37, 43 (2d Cir. 1997) (finding irreparable injury was satisfied where evidence was presented that closing of treatment program would lead

to plaintiffs' continued abuse of alcohol and drugs, "resulting in death, illness, or disability"); *see also Harris v. Bd. of Supervisors, Los Angeles Cty.*, 366 F.3d 754, 766 (9th Cir. 2004) (finding likelihood of "pain, infection, amputation, medical complications, and death" constituted irreparable harm.); *Stagliano v. Herkimer Cent. Sch. Dist.*, 151 F. Supp. 3d 264, 273 (N.D.N.Y. 2015) ("[T]he obvious potential for such issues as developing chronic health issues or spreading contagious diseases underscores the need for equitable relief . . .").

Moreover, the Second Circuit has repeatedly held that the alleged violation of constitutional rights amounts to irreparable injury. *See, e.g., Johnson v. Connolly*, 378 F. App'x 107, 108 (2d Cir. 2010); *Johnson v. Miles*, 355 F. App'x 444, 446 (2d Cir. 2009); *Conn. Dep't of Env'tl. Prot. v. OSHA*, 356 F.3d 226, 230-31 (2d Cir. 2004); *Jolly v. Coughlin*, 76 F.3d 468, 482 (2d Cir. 1996). As discussed below, Petitioners have established that current MDC conditions violate the Fifth and Eighth Amendments.

Absent immediate relief, Petitioners' lives are at risk. The harm that would flow from allowing them to remain at the MDC is undoubtedly irreparable. Several courts have already found that the very risk Petitioners face here constitutes irreparable injury justifying release from custody. *Basank v. Decker*, No. 20 Civ. 2518, 2020 WL 1481503, at \*4 (S.D.N.Y. Mar. 26, 2020) ("The risk that Petitioners will face a severe, and quite possibly fatal, [COVID-19] infection if they remain in immigration detention constitutes irreparable harm warranting a TRO."); *Coronel v. Decker*, No. 20-CV-2472, 2020 WL 1487274, at \*3 (S.D.N.Y. Mar. 27, 2020) ("Due to their serious underlying medical conditions, all Petitioners face a risk of severe, irreparable harm if they contract COVID-19."); *Castillo v. Barr*, No. 20 Civ. 605, ECF No. 32 at 10 (Mar. 27, 2020) (finding that petitioners should be released from immigration custody because they established irreparable harm stemming from risk of exposure to COVID-19.).

## II. PETITIONERS HAVE A SUBSTANTIAL LIKELIHOOD OF SUCCEEDING ON THE MERITS

Respondent is violating Petitioners' Fifth and Eighth Amendment rights by continuing to incarcerate them in conditions where it is virtually impossible to take steps to prevent transmission of an infectious disease that will prove deadly because of Petitioners' vulnerable conditions.

All people held in the MDC, whether convicted or not, are entitled to be protected from conditions of confinement that create a serious risk to health or safety, including through release from custody when necessary. *See Brown v. Plata*, 563 U.S. 493, 531-32 (2011) (upholding lower court's order releasing people from state prison even though release was based on prospect of future harm caused by prison overcrowding); *see also Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (correctional official violates Eighth Amendment by consciously failing to prevent "a substantial risk of serious harm"); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) ("deliberate indifference" to serious medical needs violate the Eighth Amendment).<sup>13</sup> The risk of exposure to a deadly infectious disease such as COVID-19 constitutes a serious risk to health, particularly for Petitioners and the vulnerable class members described herein. *See Helling*, 509 U.S. at 34 (noting with approval Eighth Amendment claims based on exposure to serious contagious diseases.); *Charles v. Orange Cty.*, 925 F.3d 73, 86 (2d Cir. 2019) (a serious medical need is "a condition of urgency such as one that may produce death, degeneration, or extreme pain."). Under the MDC's current conditions, Respondent has not and cannot protect Petitioners and the class from this risk of serious harm.

---

<sup>13</sup> The named Petitioners are convicted and therefore their treatment is governed by the Eighth Amendment. Class members who are detained for pretrial purposes, however, are protected from deliberate indifference by the Fifth Amendment. Although pretrial class members may be entitled to even greater protection from unsafe conditions than convicted class members, *Bell v. Wolfish*, 441 U.S. 520, 535 n.16 (1979) ("Due process requires that a pretrial detainee not be punished."), for present purposes the distinction is immaterial because Respondent's continued detention of the class plainly violates the Eighth Amendment.

Government officials act with deliberate indifference when they “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” even when “the complaining inmate shows no serious current symptoms.” *Helling*, 509 U.S., at 33. The reach of the Fifth and Eighth Amendments includes “exposure of inmates to a serious, communicable disease.” *Id.*; *see also Jolly*, 76 F.3d at 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease.”). This Court need not “await a tragic event” to find that Respondent is maintaining unconstitutional conditions of confinement. *Helling*, 509 U.S. at 33. Instead, showing that the conditions of confinement “pose an unreasonable risk of serious damage to [Petitioners’] future health” is sufficient. *Phelps v. Kapnolas*, 308 F.3d 180, 185 (2d Cir. 2002) (quoting *Helling*, 509 U.S. at 35) (alteration and internal quotation marks omitted).

Here, Petitioners are likely being exposed to COVID-19 while at the MDC, placing them at risk of death because of their vulnerable medical conditions. Respondent is well aware of this risk, having been alerted to it by the CDC, the Attorney General, and advocates such as the Federal Defenders. Indeed, only last week the Second Circuit, unprompted, acknowledged the “grave and enduring” risk posed by COVID-19 in the correctional context. *See Fed. Defs. of New York, Inc. v. Fed. Bureau of Prisons*, No. 19-1778, \_\_\_ F.3d \_\_\_, 2020 WL 1320886, at \*12 (2d Cir. Mar. 20, 2020); *see also Jovel*, 2020 WL 1467397, at \*1 (finding “extraordinary circumstances” of COVID-19 pandemic justified release of immigration detainee from federal detention); *United States v. Little*, No. 20 Cr. 57, 2020 WL 1439979, at \*4 (S.D.N.Y. Mar. 24, 2020) (“As additional people are arrested who have been out in the community as the coronavirus spreads, if they are not symptomatic, they will be brought into the MCC and MDC,

and held with the existing population, potentially bringing COVID-19 into this population held in large numbers, close quarters, and low sanitary conditions.”).

In the face of this risk, Respondent has not taken sufficient steps to protect Petitioners or the other people who are incarcerated at MDC. Respondent simply is not capable of managing the risk to Petitioners in the MDC’s current environment. Whether judged under the Fifth or Eighth Amendment, Respondent is holding Petitioners in violation of the Constitution by failing to protect them in the face of significant threats to their health and safety.

The Supreme Court’s decision in *Helling* is particularly instructive. In *Helling*, the plaintiff alleged that exposure to second-hand tobacco smoke was an unconstitutional condition of confinement because it put the health of incarcerated people at risk. 509 U.S. at 28. In language pertinent to the case at bar, the Court rejected defendants’ argument that a claim cannot lie based on potential future harm from a health risk:

We have great difficulty agreeing that prison authorities may not be deliberately indifferent to an inmate’s current health problems but may ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year. . . *Nor can we hold that prison officials may be deliberately indifferent to the exposure of inmates to a serious, communicable disease* on the ground that the complaining inmate shows no serious current symptoms.

*Id.* at 33 (emphasis added); *see also Hutto v. Finney*, 437 U.S. 678, 682 (1978) (leaving undisturbed district court’s conclusion that it was unconstitutional to hold people in crowded cells exposed to hepatitis and venereal disease). Finally, the *Helling* Court explained, “It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.” 509 U.S. at 33.

Continuing to detain Petitioners in the midst of the COVID-19 pandemic and failing to take measures to protect the putative class poses a significantly greater risk than the plaintiff in

*McKinney* or in any of the other cases cited *supra* faced. COVID-19 is already inside the MDC. The facility is not equipped to stop the spread of the disease or treat people who become ill. Social distancing is effectively impossible at the MDC, and Respondent has not taken any steps to allow people who are incarcerated at the MDC to practice social distancing. And Petitioners are at an increased risk because of their age and/or underlying medical conditions.

Accordingly, Petitioners have established a substantial likelihood of success on the merits of their claims.

**III. THE COURT HAS THE AUTHORITY TO ORDER PETITIONERS' RELEASE; THE BALANCE OF EQUITIES TIPS IN PETITIONERS' FAVOR; AND RELEASE WOULD SERVE THE PUBLIC INTEREST**

The Court has the power to grant Petitioners' immediate release because they are not being provided safe conditions or adequate care, and the situation cannot be remedied under current circumstances. Section 2241(c)(3) authorizes courts to grant habeas corpus relief where a person is "in custody in violation of the Constitution or laws or treaties of the United States." The Second Circuit has "long interpreted § 2241 as applying to challenges to the execution of a federal sentence, including such matters as . . . prison conditions." *Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008) (internal quotation marks omitted). This includes challenges to detention where conditions pose a threat to Petitioners' medical wellbeing. *See Roba v. United States*, 604 F.2d 215, 218-19 (2d Cir. 1979) (approving the use of Section 2241 to challenge a detainee's transfer where that transfer created a risk of fatal heart failure).

The Second Circuit's decision in *Roba* is instructive. In that case, the petitioner alleged that an imminent transfer from New York to face charges in California would create a substantial risk of death because of his precarious heart condition. The Second Circuit held that there was Section 2241 jurisdiction to challenge his contemplated transfer, where such custody would threaten his life, citing *Estelle v. Gamble*, the Supreme Court's seminal case establishing the

Eighth Amendment's deliberate indifference standard. *Id.* Critically, the court held that habeas jurisdiction was appropriate even though the transfer, and hence custody, was imminent:

“Petitioner need not wait until the marshals physically lay hands on him; he is entitled now to challenge the allegedly unlawful conditions of his imminent custody.” *Id.* at 219.

In this case, the unconstitutional threat to Petitioners' health and life posed by being held in Respondent's custody is ongoing, not simply imminent. Every hour that Petitioners are held in the MDC, they are at a significantly elevated risk of contracting coronavirus, and because of their age and/or medical conditions, their risk of dying from coronavirus is significant. For similar reasons, Judge Analisa Torres recently ordered the release of several individuals from federal immigration detention. *See Basank*, 2020 WL 1481503; *see also supra* at 7-9 (listing cases in which courts have ordered release from detention due to risks posed by incarceration during the COVID-19 pandemic.).

Moreover, both the balance of equities and the public interest favor releasing Petitioners. The government has no interest in maintaining an unconstitutional practice. *Doe v. Kelly*, 878 F.3d 710, 718 (9th Cir. 2017) (the “government suffers no harm from an injunction that merely ends unconstitutional practices and/or ensures that constitutional standards are implemented”) (quotation marks and citations omitted); *see also L.V.M. v. Lloyd*, 318 F. Supp. 3d 601, 620 (S.D.N.Y. 2018); *Abdi v. Duke*, 280 F. Supp. 3d 373, 410 (W.D.N.Y. 2017). And in this case, release would help ameliorate a regional medical crisis that is threatening to overwhelm local hospitals. The interest in having Petitioners serve the remainder of their terms at the MDC, rather than under home confinement, is slight compared to the substantial risk to Petitioners' health.

Releasing Petitioners will not ameliorate the risks for the remainder of the people held at the MDC. Respondent already has identified more than 500 people who, like Petitioners, are

vulnerable to serious illness and death if they contract COVID-19. Those individuals face the same risk of imminent harm as Petitioners and may be entitled to immediate release as well. For this reason, Petitioners respectfully request that this Court appoint a Special Master on an emergency basis to chair a Coronavirus Release and Mitigation Committee to (i) evaluate all Vulnerable Persons currently incarcerated at the MDC for release, and (ii) make recommendations for ameliorative action for other persons held at the MDC.

### **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that the Court grant Petitioners a temporary restraining order immediately releasing them from detention at the MDC to serve the remainder of their sentences in home confinement under such conditions as the Court deems appropriate, and appointing a Special Master to chair a Coronavirus Release and Mitigation Committee.

Dated: March 30, 2020  
New York, New York

EMERY CELLI BRINCKERHOFF  
& ABADY LLP

By: /s/ Katherine R. Rosenfeld  
Katherine R. Rosenfeld  
O. Andrew F. Wilson  
Samuel Shapiro  
Scout Katovich  
600 Fifth Avenue, 10th Floor  
New York, NY 10020  
(212) 763-5000

CARDOZO CIVIL RIGHTS CLINIC  
Betsy Ginsberg  
Cardozo Civil Rights Clinic  
Benjamin N. Cardozo School of Law  
55 Fifth Avenue, 11th Floor  
New York, NY 1003  
(212) 790-0871

Alexander A. Reinert  
55 Fifth Avenue, Room 1005  
New York, NY 1003  
(212) 790-0403

*Attorneys for Petitioners and Putative Class*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

**DECLARATION OF  
KATHERINE ROSENFELD**

I, Katherine Rosenfeld, an attorney duly admitted to practice in the Eastern District of New York, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. I am a partner at Emery Celli Brinckerhoff & Abady, LLP. Along with the Cardozo Civil Rights Clinic and Alexander A. Reinert, we represent the Petitioners and putative class.

2. I submit this declaration in support of Petitioners' request for a Temporary Restraining Order in the above-captioned case.

**Additional Facts Since March 27, 2020 Filing of Petition**

3. The Federal Bureau of Prisons ("BOP") announced on March 29, 2020 that a 49-year-old man with pre-existing medical conditions who was incarcerated in a federal prison in Louisiana died on Saturday, March 28, 2020 from complications from COVID-19, becoming the

first person in federal custody to die from the coronavirus.<sup>1</sup> On the evening of March 29, 2020, the Washington Post reported that an explosion of coronavirus cases is crippling the facility, with 30 incarcerated people having tested positive and 60 more in quarantine.<sup>2</sup>

4. Since filing the Petition on March 27, 2020, several incarcerated people who are confined at the Metropolitan Detention Center (“MDC”) have provided me with additional reports about conditions in the facility.

5. MDC’s Failure to Quarantine Individuals Who Were Exposed to the Individual Diagnosed with COVID-19. According to the BOP website, one person confined at the MDC has tested positive for COVID-19.<sup>3</sup> Individuals confined at the MDC report that there are currently at least two people in the facility’s general population who were on the Intake Unit (Unit 41) at the same time as the person who tested positive for COVID-19. In other words, the two people from Unit 41 who were exposed to the COVID-19 positive individual are not quarantined and they are moving freely about their units. The facility’s monitoring of these two individuals is limited to taking their temperature once a day. This is despite the fact that signs posted around the facility state that the symptoms of COVID-19 may take between 2 and 18 days to appear.

6. The MDC Continues to Allow Movement Within the Facility. On the evening of Saturday, March 28, 2020, an additional person who had previously been held on Unit 41 was moved to Unit 42. Although the facility had previously told people that there would be no further movement out of Unit 41 and into other units, that is not in fact the case.

---

<sup>1</sup> Kevin Johnson, *Coronavirus claims first federal prisoner; 49-year-old drug offender dies in Louisiana*, USA Today (Mar. 29, 2020), <https://www.usatoday.com/story/news/politics/2020/03/29/patrick-jones-coronavirus-claims-first-federal-prisoner-louisiana/2935291001/>.

<sup>2</sup> [https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d\\_story.html](https://www.washingtonpost.com/national/an-explosion-of-coronavirus-cases-cripples-a-federal-prison-in-louisiana/2020/03/29/75a465c0-71d5-11ea-85cb-8670579b863d_story.html)

<sup>3</sup> Coronavirus, Federal Bureau of Prisons, <https://www.bop.gov/coronavirus/> (last accessed on March 29, 2020 at 6:30pm).

7. Some People Confined at the MDC Are Scared to Report Their Symptoms Because the COVID-19 Positive Individual Was Placed in Solitary Confinement in Harsh Conditions. There are a number of people at the MDC who are coughing and showing signs of illness. However, some of these ill individuals are not reporting their symptoms because they are afraid that they will be locked up in solitary confinement. The person who tested positive for COVID-19 is being confined in a cell on Unit 84, and others at the MDC are hearing that he, as well as other people who are symptomatic and being held in isolation, are being denied showers, fed through the door slot, and not receiving clean sheets or underclothes.

8. The MDC Is Not Proactively Screening Most People for Symptoms, But Only Reacting to Those Who Report Illness. The MDC is not taking a proactive approach to identifying potentially sick people, other than a handful of incarcerated people with known past exposure. Instead, for the majority of people, the MDC is only responding to complaints from sick people who come forward. This approach fails to screen people who are asymptomatic, or people with symptoms who do not seek medical attention.

9. The MDC Has Quarantined the Kitchen Staff. A confined person who works in the kitchen (in which the meals for everyone in the facility are prepared) has come down with a fever, coughing, and other COVID-19 symptoms. The incarcerated people who normally work in the kitchen are now replaced by officers. The former kitchen workers are now under a quarantine.

10. The MDC is Not Enforcing Cleaning Protocols. To take one example, there was no cleaning of Unit 42 on Friday, March 27, or on Saturday, March 28, although the facility had said there would be increased cleaning.

11. The MDC's response to the spread of COVID-19 inside the facility is dangerously inadequate and slow. Data from other correctional facilities make it clear that the time to act to stop the pandemic from consuming the population in a jail is before there is even one positive case. While the MDC has missed that opportunity, urgent action in the next few days could still save lives.

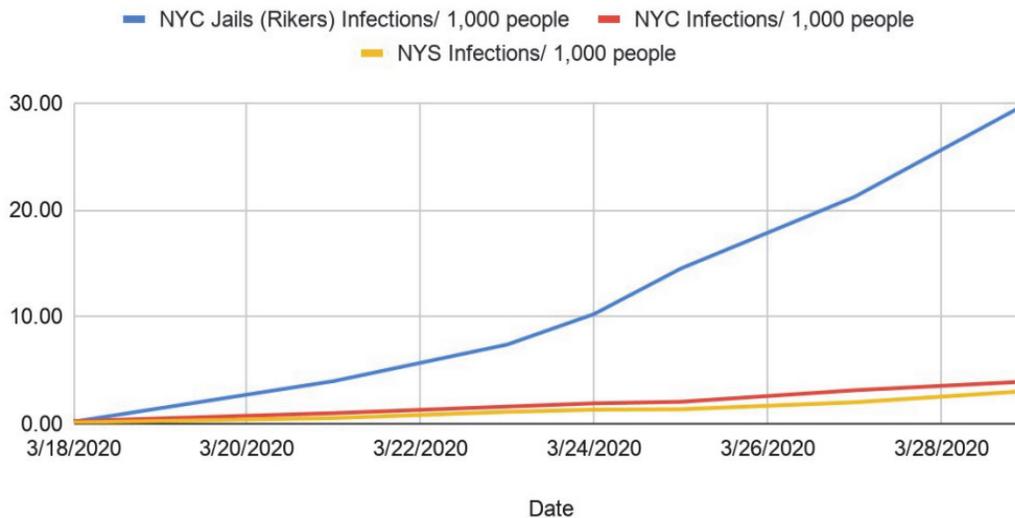
12. The following data and diagram showing infection rates on Rikers Island, as prepared by the Legal Aid Society, is instructive for how the virus may spread at the MDC. According to data analyzed and published on March 29, 2020, the current rate of infection for people confined on Rikers is 3.00%, or 29.29 infections per 1,000 people. This compares to the rate of infection in the community at large in New York City of 0.40%, or 3.9 infections per 1,000 people.

13. The first positive case on Rikers Island was diagnosed on or about March 19, 2020. As of March 29, 2020, there are now 139 positive cases in the jail.<sup>4</sup>

---

<sup>4</sup> COVID-19 Infection Tracking in NYC Jails, The Legal Aid Society, <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last accessed Mar. 29, 2020).

NYC Jails (Rikers) Infections/ 1,000 people, NYC Infections/ 1,000 people and NYS Infections/ 1,000 people



**The Individual Petitioners Are At High Risk For Serious COVID-19-Related Illnesses**

*Hassan Chunn*

14. As alleged in the Petition filed on March 27, 2020, “Mr. Chunn is 46 years old. Mr. Chunn has been incarcerated for approximately three years. He is due to be released on April 18, 2020. Mr. Chunn has been diagnosed with Coronary Heart Disease. As of 2005, he was diagnosed with chronic heart failure. He has two stents in his heart. He is pre-diabetic. He also suffers from high blood pressure, seizures, hypertension and high cholesterol. During his incarceration at MDC, he has been hospitalized on at least two occasions at outside hospitals for extreme high blood pressure. He takes a number of medications including Plavix, Losapril, Norvax, and Lipitor. Mr. Chunn is critically vulnerable to COVID-19 because of his significant health problems.” Petition, ¶ 86.

15. According to medical records from Jamaica Hospital, Mr. Chunn was receiving care in 2017 for coronary artery disease, poorly controlled hypertension, and obesity.

16. Attached as Exhibit 1 is the Declaration of Carmen Nevarez dated March 29, 2020. Ms. Nevarez is the mother of Mr. Chunn and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

17. Mr. Chunn reports that earlier in March 2020, he observed an individual on his unit who was coughing so much that it appeared this person had bronchitis. That person was eventually removed from the unit but no further information was provided about whether he in fact had COVID-19.

18. On March 26, 2020, Mr. Chunn's counsel Kenneth Montgomery requested that Warden Edge grant a reduction in Mr. Chunn's sentence pursuant to title 18 U.S.C. § 3624, and release Mr. Chunn for the remainder of his short sentence, in light of Mr. Chunn's serious heart condition and other health problems, and his resulting vulnerability to the spread of COVID-19 in the MDC. A copy of Mr. Montgomery's letter is attached as Exhibit 2. Mr. Montgomery has received no response to his letter.

*Nehemiah McBride*

19. As alleged in the Petition filed on March 27, 2020, "Mr. McBride is 34 years old. Mr. McBride has been incarcerated since December 17, 2019, and subsequently was sentenced to 4 months' incarceration. He is due to be released on April 15, 2020. Mr. McBride has been diagnosed with asthma, which is severe, and he suffers from respiratory problems. Mr. McBride is currently experiencing breathing problems and wheezing. Mr. McBride is critically vulnerable to COVID-19 because of his significant health problems." Petition, ¶ 87.

20. Attached as Exhibit 3 is the Declaration of Tasha Moore dated March 29, 2020. Ms. Moore is the partner of Mr. McBride and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

21. On March 26, 2020, Mr. McBride's counsel Robert Baum from the Federal Defenders requested that Warden Edge grant a reduction in Mr. McBride's sentence pursuant to title 18 U.S.C. § 3624, and release Mr. McBride for the remainder of his short sentence to home confinement, in light of Mr. McBride's severe asthma and breathing problems and resulting vulnerability to the spread of COVID-19 in the MDC. A copy of Mr. Baum's letter is attached as Exhibit 4. Mr. Baum has received no response to his letter.

*Ayman Rabadi*

22. As alleged in the Petition filed on March 27, 2020, "Mr. Rabadi is 59 years old. Mr. Rabadi has been incarcerated for approximately 1 year, after being sentenced to 24 months for a wire fraud-related conviction of which he has served approximately 14 months. Mr. Rabadi has been diagnosed with a serious heart condition, anxiety and diabetes. Mr. Rabadi suffered a heart attack approximately six years ago, and thereafter he had several stents placed in his heart. He has a tumor on one of his kidneys which is being monitored via ultrasound. He takes medication for high blood pressure, cholesterol, and blood thinners. He also suffers from severe anxiety and depression. Mr. Rabadi is critically vulnerable to COVID-19 because of his significant health problems." Petition, ¶ 88.

23. Mr. Rabadi is scheduled to be released on July 19, 2020. Mr. Rabadi has a life partner of 36 years, four children, and two grandchildren.

24. Attached as Exhibit 5 is the Declaration of Migdaliz Quinones dated March 29, 2020. Ms. Quinones is the partner of Mr. Rabadi and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

25. Mr. Rabadi's chronic, serious medical conditions are documented in various court filings in his criminal case. In a "Medical Attention Form" dated April 19, 2013, S.D.N.Y.

Magistrate Judge Davison ordered that the Warden of any detention facility confining Mr. Rabadi provide him with necessary medical treatment for his heart condition, anxiety and high blood pressure. A copy of the Medical Attention Form is attached as Exhibit 6.

26. Mr. Rabadi suffered a stroke in jail last year. He reports that he takes over a dozen different medications a day, and that he believes that he will die if he becomes infected with COVID-19.

27. I am informed by Mr. Rabadi that he is spending as much time as possible in his cell to avoid contact with others. However, he shares a small cell with another person. He also must leave his cell to get food. Mr. Rabadi states that there are many people in the facility who are coughing and sick, and conditions are bad.

28. On March 29, 2020, Mr. Rabadi described current conditions at the MDC as follows:

Things are very bad here. We don't have any gloves, masks or any personal protective equipment. Also, we can't social distance from each other. There are approximately 90 people in a small area because this is considered a "camp" status floor. We are work cadres and have no space to get fresh air. Our cells are small (6 x 12), there are 2 people per cell and we are locked in our unit during the day. They came up here and told us that there were 2 officers and 1 inmate that are infected. We found out there are many more inmates and probably guards with the virus. One of our friends we maybe think he got the virus. He walks around with a mask and he has a deep cough and we are freaking out and are not doing well mentally. They tell us to wash our hands but they don't have any hand sanitizer and they tell us to use soap, but we don't have soap because they don't have any. We tried to buy soap from commissary, but commissary is out for 3 weeks. We are in big trouble here. Not just me, but everyone in here is freaking out because we cannot get any information or anyone to listen to us. We should ALL go home since we are "camp" status inmates. . . . I only have 35 days left. I am 60 with health problems. Please help me before I die. I want to be with my family where I am safe.

*Justin Rodriguez*

29. As alleged in the Petition filed on March 27, 2020, “Mr. Rodriguez is 26 years old. Mr. Rodriguez is scheduled to be released on June 9, 2020. Mr. Rodriguez suffers from asthma. Mr. Rodriguez is critically vulnerable to COVID-19 because of his significant health problems. Mr. Rodriguez requested an inhaler from BOP staff but as of this filing has not received one.” Petition, ¶ 89.

30. On March 27, 2020, Mr. Rodriguez’s counsel Donald D. Duboulay requested that Warden Edge grant a reduction in Mr. Rodriguez’s sentence pursuant to title 18 U.S.C. § 3624, and release him for the remainder of his short sentence to home confinement, in light of Mr. McBride’s lifelong asthmatic condition and resulting vulnerability to the spread of COVID-19 in the MDC. A copy of Mr. Duboulay’s letter is attached as Exhibit 7. Mr. Duboulay has received no response to his letter.

31. Attached as Exhibit 8 is the Declaration of Jacklyn Romanoff dated March 29, 2020. Ms. Romanoff is the mother of Mr. Rodriguez and has personal knowledge of his medical conditions related to his COVID-19 vulnerabilities.

32. Attached as Exhibit 9 is the Declaration of Dr. Jaimie Meyer, dated March 23, 2020.

33. Due to the restrictions currently in place, each of the family member declarants—Carmen Nevarez, Tasha Moore, Migdaliz Quinones, and Jacklyn Romanoff—signed their declarations remotely and electronically by sending the undersigned an electronic copy of their signature to append to their final declaration.

Executed on: March 30, 2020  
Speculator, New York

\_\_\_\_\_  
/s/  
Katherine Rosenfeld

# Exhibit 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

**DECLARATION OF CARMEN  
NEVAREZ**

Carmen Nevarez declares under penalty of perjury and pursuant to 28 U.S.C. § 1746 that the following is true and correct:

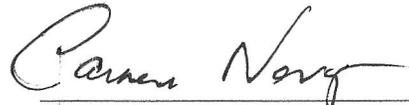
1. I am the mother of Hassan Chunn, one of the Petitioners in this case.
2. Hassan is 46 years old. He is scheduled to be released from the Metropolitan Detention Center on April 18, 2020. When he is released, he will live with me in Brooklyn.
3. Hassan has many serious medical problems for years, including Coronary Heart Disease, high blood pressure, and diabetes. In the past, he has had episodes where he couldn't breathe and had chest pains. He has two stents in his heart.
4. Before he was incarcerated, Hassan received medical care for his conditions from East New York Medisys, which is affiliated with Jamaica Hospital.
5. Hassan currently takes many different medications. He has had a hard time getting medical care at MDC and sometimes has to wait weeks to see a doctor there.

6. In 2016, Hassan was taken to outside hospitals a few times for heart and breathing problems, including to Kingsbrook Medical Center and Lutheran Hospitals in Brooklyn.

7. My son calls me every day from jail. He is very concerned about catching the coronavirus. He told me that he is putting a sock over the phone when he calls me, because there is no way to clean it otherwise. He also told me that his cellmate has a cold. He is trying to stay in his cell. His friends are bringing food to his cell so he doesn't have to leave. He also says that the guards are staying away from people, and no one knows who has what.

8. Visits were canceled for a month so I have not been able to see him.

Executed on: March 30, 2020  
Brooklyn, New York

  
Carmen Nevarez

# Exhibit 2

**LAW OFFICE OF KENNETH J. MONTGOMERY  
P.L.L.C.  
198 ROGERS AVENUE  
BROOKLYN, NEW YORK 11225  
PH (718) 403-9261 FAX (347) 402-7103  
[ken@kjmontgomerylaw.com](mailto:ken@kjmontgomerylaw.com)**

March 26, 2020

Warden Derek Edge  
MDC Brooklyn  
80 29<sup>th</sup> Street  
Brooklyn, NY  
By email to: *Bro/ExecAssistant@bop.gov*

**Re: Request To Release Hassan Chunn, Reg. No. 89513-053, Under 18 U.S.C. § 3624**

Dear Warden Edge,

Please accept this request for release pursuant to 18 U.S.C. § 3624 on behalf of inmate Hassan Chunn, Reg. No. 89513-053. Given the exceptional circumstances of the current coronavirus pandemic, Mr. Chunn is not able to file this request himself.

Mr. Chunn seeks release under 18 U.S.C. § 3624(c), which directs the Bureau of Prisons to release prisoners serving the final weeks or months of their sentences to home or community confinement. Specifically, the statute provides, in relevant part, that:

- (1) The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. . . .
- (2) The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The Bureau of Prisons shall, to the extent practicable, place

prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.

Mr. Chunn satisfies those conditions. He is scheduled to be released on April 18, 2020, and has only a brief amount of time left to serve. Further, if released, he can be securely confined in the community for the duration of his sentence. Specifically, Mr. Chunn can reside with his mother Carmen Navarez, at 893 Belmont Avenue, Brooklyn New York 11208. On March 26, 2020, I spoke with his mother Ms. Navarez and confirmed that Mr. Chunn can reside with her if released.

Release under § 3624(c) is particularly warranted in this case because Mr. Chunn does not present substantial risks to the community requiring imprisonment or confinement in a residential reentry center or other facility.

Finally, release is imperative now in light of the ongoing coronavirus pandemic and Mr. Chunn's substantial health history which includes a serious heart condition (he has two stints in his heart), high blood pressure and high cholesterol and suffers from fever induced seizures. As a result Mr. Chunn is at high risk of contracting the virus and suffering serious, even life-threatening, complications because of his health conditions. According to the Centers for Disease Control this risk is heightened by the circumstances at MDC, where there is already at least one confirmed positive inmate, several other inmates are under quarantine, Mr. Chunn cannot practice regular hand hygiene, and he cannot effectively socially distance himself.

Accordingly, because Mr. Chunn qualifies for early release under § 3624, and the current conditions militate strongly in favor of releasing him immediately, we respectfully request that you release him from the Bureau's custody as soon as possible. Please inform me of your decision on this request as soon as you can. Thank you for your consideration of this request.

Respectfully submitted,

*Kenneth J. Montgomery*

cc: Hon. Brian M. Cogan (via ECF)  
AUSA Moira Kim Penza (via ECF)

# Exhibit 3

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

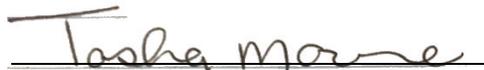
**DECLARATION OF TASHA  
MOORE**

Tasha Moore declares under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. I am the partner of Nehemiah McBride, one of the Petitioners in this case.
2. Nehemiah is 34 years old. He is scheduled to be released from the Metropolitan Detention Center on April 15, 2020.
3. When Nehemiah is released, he will be live with me at my home in Jamaica, New York.
4. Nehemiah has had asthma and respiratory problems for many years. He can get very sick when his asthma is activated. He has used both an inhaler and a nebulizer.
5. On several occasions, Nehemiah has had such severe asthma attacks that he had to go the emergency room for treatment. One time he had an asthma attack in the street and had to be taken to the hospital.
6. Nehemiah and I are both worried that he will catch the coronavirus at MDC and then become extremely sick.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 29, 2020  
Jamaica, New York

  
Tasha Moore

# Exhibit 4

Federal Defenders  
OF NEW YORK, INC.

Southern District  
52 Duane Street-10th Floor, New York, NY 10007  
Tel: (212) 417-8700 Fax: (212) 571-0392

*David E. Patton*  
Executive Director  
and Attorney-in-Chief

Southern District of New York  
*Jennifer L. Brown*  
Attorney-in-Charge

March 26, 2020

Warden Derek Edge  
MDC Brooklyn  
80 29<sup>th</sup> Street  
Brooklyn, NY  
By email to: *Bro/ExecAssistant@bop.gov*

Re: Request for Reduction in Sentence/Compassionate Release

Dear Warden Edge,

Please accept this request for a reduction in sentence pursuant to 18 U.S.C. § 3582 on behalf of inmate Nehemiah Casey McBride, Reg. No. 73500-054. Given the extraordinary and compelling circumstances created by the ongoing coronavirus pandemic, Mr. McBride is not able to file this request himself.

Mr. McBride seeks a reduction in sentence based on his severe asthma and breathing problems, which places him at significantly greater risk of contracting and/or suffering acutely from COVID-19, according to the Centers for Disease Control.<sup>1</sup> Mr. McBride's risk is heightened by the particular circumstances at MDC, which presents an ideal situation for COVID-19 to spread. There is already one confirmed positive inmate, and several other inmates are being monitored for symptoms. Mr. McBride cannot practice regular hand hygiene, and Mr. McBride cannot effectively socially distance himself from other inmates as the CDC cautions every person in the United States to do to stop COVID-19's spread.

If released, Mr. McBride can reside with partner, Tasha Moore, 718-404-3753. The address of residence will be 150-45 120th Avenue, Jamaica, NY 11434. Mr. McBride has Medicaid health insurance.

Mr. McBride has been incarcerated since December 17, 2019, and subsequently was sentenced to 4 months incarceration. He is due to be released in just 21 days, on April 16, 2020.

---

<sup>1</sup> *If You Are at Higher Risk*, Centers for Disease Control and Prevention, <https://tinyurl.com/vtbebz>; see also *Report of the WHO-China Joint Mission on Coronavirus Disease (COVID-19)*, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> at 12.

Pursuant to title 18 U.S.C. Section 3624, Mr. McBride may also be released for the remainder of his sentence to home confinement.

Please inform me of your decision on this request as soon as you can. Thank you for your consideration of this request.

Thank you,  
/s/  
Robert Baum  
Assistant Federal Defender  
Federal Defenders of New York, Inc.  
Robert\_Baum@fd.org

# Exhibit 5

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

**DECLARATION OF MIGDALIZ  
QUINONES**

Migdaliz Quinones declares under penalty of perjury and pursuant to 28 U.S.C.

§ 1746 that the following is true and correct:

1. I am the long-term partner for 36 years of Ayman Rabadi, one of the Petitioners in this case.
2. Ayman will be 60 years old in May. He suffers from many health problems, and he had a heart attack about five years ago.
3. Ayman takes medication for high blood pressure, cholesterol, hypertension, pre-diabetes, and other conditions. He also takes medicine for his anxiety and depression.
4. Ayman has a tumor in one of his kidneys, which his doctors have monitored through ultrasounds.
5. Ayman also suffers from an anal fistula. In the past during his incarceration, he has had to wear diapers due to the fistula.

6. Before Ayman was incarcerated, his cardiac doctor was Dr. Feldman, in Yonkers, who is affiliated with Montefiore. Dr. Feldman was the doctor who placed the stents in his heart in Valhalla Hospital. Ayman also had a primary care doctor in Yonkers, Dr. Mohammed.

7. My husband tells me that there is panic in the facility due to the coronavirus, especially since correction officers have tested positive for the virus in recent days. He is so scared that that he will get coronavirus that he stays in his cell as much as possible.

Executed on: March 29, 2020  
Brooklyn, New York

  
Migdaliz Quinones

# Exhibit 6

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

FILENAME - P:\CRD FORMS\MEDICAL FORM (Rev.5/09)

-----X

United States of America  
Government,  
against-

**MEDICAL ATTENTION FORM**

Before Judge : **Paul E. Davison, U.S.M.J**

Case Number: 13M1031

Ayman Rabadi  
Defendant(s)  
-----X

**TO THE WARDENS OF THE WESTCHESTER COUNTY JAIL, OR ANY OTHER  
DETENTION FACILITY:**

The defendant has been remanded to the custody of the U.S. Marshals; in lieu of bail at the time of his/her presentment before this Court. At that time, the following information which requires medical attention was disclosed. The Court directs the Correctional Facility to provide the defendant with the necessary medical treatment.

- 1) The defendant has a Heart condition.
- 2) He suffers from Anxiety.
- 3) He suffers from High Blood Pressure.

Dated: April 19, 2013  
White Plains, NY

SO ORDERED:



\_\_\_\_\_  
Paul E. Davison  
United States Magistrate Judge

# Exhibit 7

**Donald D. duBoulay**  
Attorney at Law

**305 Broadway, Suite 310**  
New York, NY 10007

Telephone: (212) 966-3970  
Fax: (212) 941-7108  
E-mail: [dondubsg@aol.com](mailto:dondubsg@aol.com)

March 27, 2020

Warden Derek Edge  
MDC Brooklyn  
80 29<sup>th</sup> Street  
Brooklyn, NY  
By email to: *Bro/ExecAssistant@bop.gov*

**Re: Request to Release Justin Rodriguez Reg. No. 77235-054 under 18 U.S.C. § 3624**

Dear Warden Edge,

Please accept this request for release pursuant to 18 U.S.C. § 3624 on behalf of inmate Justin Rodriguez Reg. No. 77235-054. Given the exceptional circumstances of the current coronavirus pandemic, Mr. Rodriguez is not able to file this request himself.

Mr. Rodriguez seeks release under 18 U.S.C. § 3624(c), which directs the Bureau of Prisons to release prisoners serving the final weeks or months of their sentences to home or community confinement. Specifically, the statute provides, in relevant part, that:

(1) The Director of the Bureau of Prisons shall, to the extent practicable, ensure that a prisoner serving a term of imprisonment spends a portion of the final months of that term (not to exceed 12 months), under conditions that will afford that prisoner a reasonable opportunity to adjust to and prepare for the reentry of that prisoner into the community. . . .

(2) The authority under this subsection may be used to place a prisoner in home confinement for the shorter of 10 percent of the term of imprisonment of that prisoner or 6 months. The Bureau of Prisons shall, to the extent practicable, place prisoners with lower risk levels and lower needs on home confinement for the maximum amount of time permitted under this paragraph.

Mr. Rodriguez satisfies those conditions. He is scheduled to be released on June 9, 2020 and has only a brief amount of time left to serve. Further, if released, he can be securely confined in the community for the duration of his sentence. Specifically, Mr. Rodriguez can reside with his mother Jacklyn Romanoff, at 294 Willow Rd. West Staten Island NY 10314 Tel 347 249 5218. On March 26, 2020, I spoke with Ms. Romanoff who confirmed that Mr. Rodriguez can reside with her if released.

Release under § 3624(c) is particularly warranted in this case because Mr. Rodriguez does not present substantial risks to the community requiring imprisonment or confinement in a residential reentry center or other facility. Mr. Rodriguez, does not have a history of violence or criminality meriting incarceration or community custody.

Finally, release is imperative now in light of the ongoing coronavirus pandemic. Mr. Rodriguez is at high risk of contracting the virus and suffering serious, even life-threatening, complications because of a lifelong asthmatic condition. We have been informed by the Federal Defenders of New York that your facility has determined that he is a vulnerable person. I presume that designation is a result of his vulnerable respiratory condition. According to the Centers for Disease Control<sup>1</sup> those persons with a preexisting respiratory condition are especially vulnerable to serious if not life-threatening illness if impacted by Corvid 19. This risk is heightened by the circumstances at MDC, where there is already one confirmed positive inmate, several other inmates are under quarantine, Mr. Rodriguez cannot practice regular hand hygiene, and he cannot effectively socially distance himself in this environment.

Accordingly, because Mr. Rodriguez qualifies for early release under § 3624, and the current conditions militate strongly in favor of releasing him immediately, we respectfully request that you release him from the Bureau's custody as soon as possible. Please inform me of your decision on this request as soon as you can. Thank you for your consideration of this request.

Respectfully submitted,

/s/

Donald duBoulay, Esq  
Attorney for Justin Rodriguez

cc: Hon. Loretta A. Preska, (via ECF)  
Eli Mark, AUS (via ECF)

Legal Department  
Metropolitan Detention Center  
80 29<sup>th</sup> Street  
Brooklyn, New York, 11232

---

<sup>1</sup> *If You Are at Higher Risk*, Centers for Disease Control and Prevention, <https://tinyurl.com/vtbebzq>; see also *Report of the WHO-China Joint Mission on Coronavirus Disease (COVID-19)*, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> at 12.

# Exhibit 8

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

**DECLARATION OF JACKLYN  
ROMANOFF**

Jacklyn Romanoff declares under penalty of perjury and pursuant to 28 U.S.C.

§ 1746:

1. I am the mother of Justin Rodriguez, one of the Petitioners in this case. I work for in the social services field, and have been employed by the same organization for the past twenty years.

2. Justin is 26 years old. He is scheduled to be released from the Metropolitan Detention Center on June 9, 2020.

3. Justin has a four-year old son, Isaiah. Before he was incarcerated, Justin was a very involved father and actively participated in caring for his son.

4. Justin was first incarcerated on March 3, 2016.

5. When Justin is released, he will live with me at my home located in Staten Island.

I own this home and live there with my other children.

6. Justin has suffered from asthma since he was a baby. The first memory I have of Justin having trouble breathing with asthma was when he was around 9 months old. He was treated by Dr. Edita Libramonte, she was my children's pediatrician back in the early 1990s.

7. When he was young, Justin had a nebulizer machine that I had to give him breathing treatments with. Justin continued to have asthma attacks when he was growing up.

8. Asthma is something that never goes away.

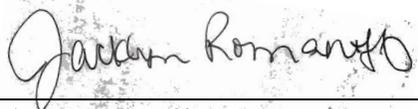
9. Today, Justin has difficulty breathing when places are dirty, dusty, pollen-filled, or smoky. Justin's asthma and breathing problems are worsened by extreme cold or sickness.

10. While he has been at MDC, Justin has gotten several bad colds. He says that it takes several weeks to be seen by medical after you put in a slip for an appointment. He tells me that the temperature in the building is cold.

11. Knowing Justin's history of asthma, I am very concerned and scared that Justin could become seriously ill if he is exposed to the coronavirus in MDC.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 29, 2020  
Staten Island, New York

  
\_\_\_\_\_  
Jacklyn Romanoff

# Exhibit 9

**Declaration of Dr. Jaimie Meyer**

Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

**I. Background and Qualifications**

1. I am Dr. Jaimie Meyer, an Assistant Professor of Medicine at Yale School of Medicine and Assistant Clinical Professor of Nursing at Yale School of Nursing in New Haven, Connecticut. I am board certified in Internal Medicine, Infectious Diseases and Addiction Medicine. I completed my residency in Internal Medicine at NY Presbyterian Hospital at Columbia, New York, in 2008. I completed a fellowship in clinical Infectious Diseases at Yale School of Medicine in 2011 and a fellowship in Interdisciplinary HIV Prevention at the Center for Interdisciplinary Research on AIDS in 2012. I hold a Master of Science in Biostatistics and Epidemiology from Yale School of Public Health.
2. I have worked for over a decade on infectious diseases in the context of jails and prisons. From 2008-2016, I served as the Infectious Disease physician for York Correctional Institution in Niantic, Connecticut, which is the only state jail and prison for women in Connecticut. In that capacity, I was responsible for the management of HIV, Hepatitis C, tuberculosis, and other infectious diseases in the facility. Since then, I have maintained a dedicated HIV clinic in the community for patients returning home from prison and jail. For over a decade, I have been continuously funded by the NIH, industry, and foundations for clinical research on HIV prevention and treatment for people involved in the criminal justice system, including those incarcerated in closed settings (jails and prisons) and in the community under supervision (probation and parole). I have served as an expert consultant on infectious diseases and women's health in jails and prisons for the UN Office on Drugs and Crimes, the Federal Bureau of Prisons, and others. I also served as an expert health witness for the US Commission on Civil Rights Special Briefing on Women in Prison.
3. I have written and published extensively on the topics of infectious diseases among people involved in the criminal justice system including book chapters and articles in leading peer-reviewed journals (including Lancet HIV, JAMA Internal Medicine, American Journal of Public Health, International Journal of Drug Policy) on issues of prevention, diagnosis, and management of HIV, Hepatitis C, and other infectious diseases among people involved in the criminal justice system. In making the following statements, I am not commenting on the particular issues posed this case. Rather, I am making general statements about the realities of persons in detention facilities, jails and prisons.
4. My C.V. includes a full list of my honors, experience, and publications, and it is attached as Exhibit A.
5. I was paid \$1,000 for my time drafting an earlier version of this report filed in another case. I subsequently prepared this version of the report without receiving payment for my services.

6. I have not testified as an expert at trial or by deposition in the past four years.

## II. Heightened Risk of Epidemics in Jails and Prisons

7. The risk posed by infectious diseases in jails and prisons is significantly higher than in the community, both in terms of risk of transmission, exposure, and harm to individuals who become infected. There are several reasons this is the case, as delineated further below.
8. Globally, outbreaks of contagious diseases are all too common in closed detention settings and are more common than in the community at large. Prisons and jails are not isolated from communities. Staff, visitors, contractors, and vendors pass between communities and facilities and can bring infectious diseases into facilities. Moreover, rapid turnover of jail and prison populations means that people often cycle between facilities and communities. People often need to be transported to and from facilities to attend court and move between facilities. Prison health is public health.
9. Reduced prevention opportunities: Congregate settings such as jails and prisons allow for rapid spread of infectious diseases that are transmitted person to person, especially those passed by droplets through coughing and sneezing. When people must share dining halls, bathrooms, showers, and other common areas, the opportunities for transmission are greater. When infectious diseases are transmitted from person to person by droplets, the best initial strategy is to practice social distancing. When jailed or imprisoned, people have much less of an opportunity to protect themselves by social distancing than they would in the community. Spaces within jails and prisons are often also poorly ventilated, which promotes highly efficient spread of diseases through droplets. Placing someone in such a setting therefore dramatically reduces their ability to protect themselves from being exposed to and acquiring infectious diseases.
10. Disciplinary segregation or solitary confinement is not an effective disease containment strategy. Beyond the known detrimental mental health effects of solitary confinement, isolation of people who are ill in solitary confinement results in decreased medical attention and increased risk of death. Isolation of people who are ill using solitary confinement also is an ineffective way to prevent transmission of the virus through droplets to others because, except in specialized negative pressure rooms (rarely in medical units if available at all), air continues to flow outward from rooms to the rest of the facility. Risk of exposure is thus increased to other people in prison and staff.
11. Reduced prevention opportunities: During an infectious disease outbreak, people can protect themselves by washing hands. Jails and prisons do not provide adequate opportunities to exercise necessary hygiene measures, such as frequent handwashing or use of alcohol-based sanitizers when handwashing is unavailable. Jails and prisons are often under-resourced and ill-equipped with sufficient hand soap and alcohol-based sanitizers for people detained in and working in these settings. High-touch surfaces (doorknobs, light switches, etc.) should also be cleaned and disinfected regularly with bleach to prevent virus spread, but this is often not done in jails and prisons because of a

lack of cleaning supplies and lack of people available to perform necessary cleaning procedures.

12. Reduced prevention opportunities: During an infectious disease outbreak, a containment strategy requires people who are ill with symptoms to be isolated and that caregivers have access to personal protective equipment, including gloves, masks, gowns, and eye shields. Jails and prisons are often under-resourced and ill-equipped to provide sufficient personal protective equipment for people who are incarcerated and caregiving staff, increasing the risk for everyone in the facility of a widespread outbreak.
13. Increased susceptibility: People incarcerated in jails and prisons are more susceptible to acquiring and experiencing complications from infectious diseases than the population in the community.<sup>1</sup> This is because people in jails and prisons are more likely than people in the community to have chronic underlying health conditions, including diabetes, heart disease, chronic lung disease, chronic liver disease, and lower immune systems from HIV.
14. Jails and prisons are often poorly equipped to diagnose and manage infectious disease outbreaks. Some jails and prisons lack onsite medical facilities or 24-hour medical care. The medical facilities at jails and prisons are almost never sufficiently equipped to handle large outbreaks of infectious diseases. To prevent transmission of droplet-borne infectious diseases, people who are infected and ill need to be isolated in specialized airborne negative pressure rooms. Most jails and prisons have few negative pressure rooms if any, and these may be already in use by people with other conditions (including tuberculosis or influenza). Resources will become exhausted rapidly and any beds available will soon be at capacity. This makes both containing the illness and caring for those who have become infected much more difficult.
15. Jails and prisons lack access to vital community resources to diagnose and manage infectious diseases. Jails and prisons do not have access to community health resources that can be crucial in identifying and managing widespread outbreaks of infectious diseases. This includes access to testing equipment, laboratories, and medications.
16. Jails and prisons often need to rely on outside facilities (hospitals, emergency departments) to provide intensive medical care given that the level of care they can provide in the facility itself is typically relatively limited. During an epidemic, this will not be possible, as those outside facilities will likely be at or over capacity themselves.
17. Health safety: As an outbreak spreads through jails, prisons, and communities, medical personnel become sick and do not show up to work. Absenteeism means that facilities can become dangerously understaffed with healthcare providers. This increases a number of risks and can dramatically reduce the level of care provided. As health systems inside facilities are taxed, people with chronic underlying physical and mental health conditions and serious medical needs may not be able to receive the care they need for these

---

<sup>1</sup> *Active case finding for communicable diseases in prisons*, 391 *The Lancet* 2186 (2018), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(18\)31251-0/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(18)31251-0/fulltext).

conditions. As supply chains become disrupted during a global pandemic, the availability of medicines and food may be limited.

18. Safety and security: As an outbreak spreads through jails, prisons, and communities, correctional officers and other security personnel become sick and do not show up to work. Absenteeism poses substantial safety and security risk to both the people inside the facilities and the public.
19. These risks have all been borne out during past epidemics of influenza in jails and prisons. For example, in 2012, the CDC reported an outbreak of influenza in 2 facilities in Maine, resulting in two inmate deaths.<sup>2</sup> Subsequent CDC investigation of 995 inmates and 235 staff members across the 2 facilities discovered insufficient supplies of influenza vaccine and antiviral drugs for treatment of people who were ill and prophylaxis for people who were exposed. During the H1N1-strain flu outbreak in 2009 (known as the “swine flu”), jails and prisons experienced a disproportionately high number of cases.<sup>3</sup> Even facilities on “quarantine” continued to accept new intakes, rendering the quarantine incomplete. These scenarios occurred in the “best case” of influenza, a viral infection for which there was an effective and available vaccine and antiviral medications, unlike COVID-19, for which there is currently neither.

### III. Profile of COVID-19 as an Infectious Disease<sup>4</sup>

20. The novel coronavirus, officially known as SARS-CoV-2, causes a disease known as COVID-19. The virus is thought to pass from person to person primarily through respiratory droplets (by coughing or sneezing) but may also survive on inanimate surfaces. People seem to be most able to transmit the virus to others when they are sickest but it is possible that people can transmit the virus before they start to show symptoms or for weeks after their symptoms resolve. In China, where COVID-19 originated, the average infected person passed the virus on to 2-3 other people; transmission occurred at a distance of 3-6 feet. Not only is the virus very efficient at being transmitted through droplets, everyone is at risk of infection because our immune systems have never been exposed to or developed protective responses against this virus. A vaccine is currently in development but will likely not be able for another year to the

---

<sup>2</sup> *Influenza Outbreaks at Two Correctional Facilities — Maine, March 2011*, Centers for Disease Control and Prevention (2012),

<https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6113a3.htm>.

<sup>3</sup> David M. Reutter, *Swine Flu Widespread in Prisons and Jails, but Deaths are Few*, Prison Legal News (Feb. 15, 2010), <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-but-deaths-are-few/>.

<sup>4</sup> This whole section draws from Brooks J. Global Epidemiology and Prevention of COVID19, COVID-19 Symposium, Conference on Retroviruses and Opportunistic Infections (CROI), virtual (March 10, 2020); *Coronavirus (COVID-19)*, Centers for Disease Control, <https://www.cdc.gov/coronavirus/2019-ncov/index.html>; Brent Gibson, *COVID-19 (Coronavirus): What You Need to Know in Corrections*, National Commission on Correctional Health Care (February 28, 2020), <https://www.ncchc.org/blog/covid-19-coronavirus-what-you-need-to-know-in-corrections>.

general public. Antiviral medications are currently in testing but not yet FDA-approved, so only available for compassionate use from the manufacturer. People in prison and jail will likely have even less access to these novel health strategies as they become available.

21. Most people (80%) who become infected with COVID-19 will develop a mild upper respiratory infection but emerging data from China suggests serious illness occurs in up to 16% of cases, including death.<sup>5</sup> Serious illness and death is most common among people with underlying chronic health conditions, like heart disease, lung disease, liver disease, and diabetes, and older age.<sup>6</sup> Death in COVID-19 infection is usually due to pneumonia and sepsis. The emergence of COVID-19 during influenza season means that people are also at risk from serious illness and death due to influenza, especially when they have not received the influenza vaccine or the pneumonia vaccine.
22. The care of people who are infected with COVID-19 depends on how seriously they are ill.<sup>7</sup> People with mild symptoms may not require hospitalization but may continue to be closely monitored at home. People with moderate symptoms may require hospitalization for supportive care, including intravenous fluids and supplemental oxygen. People with severe symptoms may require ventilation and intravenous antibiotics. Public health officials anticipate that hospital settings will likely be overwhelmed and beyond capacity to provide this type of intensive care as COVID-19 becomes more widespread in communities.
23. COVID-19 prevention strategies include containment and mitigation. Containment requires intensive hand washing practices, decontamination and aggressive cleaning of surfaces, and identifying and isolating people who are ill or who have had contact with people who are ill, including the use of personal protective equipment. Jails and prisons are totally under-resourced to meet the demand for any of these strategies. As infectious diseases spread in the community, public health demands mitigation strategies, which involves social distancing and closing other communal spaces (schools, workplaces, etc.) to protect those most vulnerable to disease. Jails and prisons are unable to adequately provide social distancing or meet mitigation recommendations as described above.
24. The time to act is now. Data from other settings demonstrate what happens when jails and prisons are unprepared for COVID-19. News outlets reported that Iran temporarily

---

<sup>5</sup> *Coronavirus Disease 2019 (COVID-19): Situation Summary*, Centers for Disease Control and Prevention (March 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/summary.html>.

<sup>6</sup> *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*. *The Lancet* (published online March 11, 2020), [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext)

<sup>7</sup> *Coronavirus Disease 2019 (COVID-19): Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*, Centers for Disease Control and Prevention (March 7, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

released 70,000 prisoners when COVID-19 started to sweep its facilities.<sup>8</sup> To date, few state or federal prison systems have adequate (or any) pandemic preparedness plans in place.<sup>9</sup> Systems are challenged to respond to COVID-19 guidelines that are modified on a near-daily basis. It may be impossible to adequately respond to the COVID-19 pandemic, while also respecting the rights and dignity of people who are incarcerated.

#### IV. Possible Risks of COVID-19 in Detention Facilities

25. Based on my experience working on public health in jails and prisons, I can make the following general statements about how the COVID-19 outbreak will interact with and exacerbate conditions that may exist in some detention centers.
26. Any delays in access to care that already exist in normal circumstances will only become worse during an outbreak, making it especially difficult for the facilities to contain any infections and to treat those who are infected.
27. Failure to provide individuals with continuation of the treatment they were receiving in the community, or even just interruption of treatment, for chronic underlying health conditions will result in increased risk of morbidity and mortality related to these chronic conditions.
28. Failure to provide individuals adequate medical care for their underlying chronic health conditions results in increased risk of COVID-19 infection and increased risk of infection-related morbidity and mortality if they do become infected.
29. People with underlying chronic mental health conditions need adequate access to treatment for these conditions throughout their period of detention. Failure to provide adequate mental health care, as may happen when health systems in jails and prisons are taxed by COVID-19 outbreaks, may result in poor health outcomes. Moreover, mental health conditions may be exacerbated by the stress of incarceration during the COVID-19 pandemic, including isolation and lack of visitation.
30. Failure to keep accurate and sufficient medical records will make it more difficult for facilities to identify vulnerable individuals in order to both monitor their health and protect them from infection. Inadequate screening and testing procedures in facilities increase the widespread COVID-19 transmission.
31. Language barriers will similarly prevent the effective identification of individuals who are particularly vulnerable or may have symptoms of COVID-19. Similarly, the failure to

---

<sup>8</sup> *Iran temporarily releases 70,000 prisoners as coronavirus cases surge*, Reuters (March 9, 2020), <https://www.reuters.com/article/us-health-coronavirus-iran/iran-temporarily-releases-70000-prisoners-as-coronavirus-cases-surge-idUSKBN20W1E5>.

<sup>9</sup> Luke Barr & Christina Carrega, *State prisons prepare for coronavirus but federal prisons not providing significant guidance, sources say*, ABC News (March 11, 2020), <https://abcnews.go.com/US/state-prisons-prepare-coronavirus-federal-prisons-providing-significant/story?id=69433690>.

provide necessary aids to individuals who have auditory or visual disabilities could also limit the ability to identify and monitor symptoms of COVID-19.

32. Facilities with a track record of neglecting individuals with acute pain and serious health needs under ordinary circumstances are more likely to be ill-equipped to identify, monitor, and treat a COVID-19 epidemic.
33. Similarly, facilities with a track record of failing to adequately manage single individuals in need of emergency care are more likely to be seriously ill-equipped and under-prepared when a number of people will need urgent care simultaneously, as would occur during a COVID-19 epidemic.
34. For individuals in facilities that have experienced these problems in the past, the experience of an epidemic and the lack of care while effectively trapped can itself be traumatizing, compounding the trauma of incarceration.

**V. Conclusion and Recommendations**

35. Reducing the size of the population in jails and prisons can be crucially important to reducing the level of risk both for those within those facilities and for the community at large. As such, from a public health perspective, it is my recommendation that individuals who can safely and appropriately remain in the community not be placed in detention facilities at this time. I also recommend that individuals who are already in these facilities should be evaluated for release.
36. This is more important still for individuals with preexisting conditions (e.g., heart disease, chronic lung disease, chronic liver disease, suppressed immune system, diabetes) or who are over the age of 65.
37. Health in jails and prisons is community health. Protecting the health of individuals who are detained in and work in these facilities is vital to protecting the health of the wider community.

I declare under penalty of perjury that the foregoing is true and correct.

March 23, 2020  
New Haven, Connecticut

  
\_\_\_\_\_  
Dr. Jaimie Meyer

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

HASSAN CHUNN; NEHEMIAH McBRIDE;  
AYMAN RABADI, by his Next Friend  
MIGDALIZ QUINONES; and JUSTIN  
RODRIGUEZ, by his Next Friend JACKLYN  
ROMANOFF,

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

20 Civ.

**SUPPLEMENTAL  
DECLARATION OF  
DEIRDRE D. VON DORNUM**

I, Deirdre D. von Dornum, an attorney duly admitted to practice in the Eastern District of New York, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. I am the Attorney-in-Charge for the Eastern District of New York at the Federal Defenders of New York, Inc. (the “Federal Defenders”).

2. I submit this supplemental declaration upon personal knowledge in connection with the Plaintiffs’ Motion for a Temporary Restraining Order.

**Underreporting of Cases of COVID-19 By The BOP**

3. The BOP’s official website (<https://www.bop.gov/coronavirus>) is supposed to be updated daily at 3:00 p.m. to accurately reflect the number of COVID-19 cases among individuals incarcerated at BOP facilities and BOP staff members nationwide.

4. As of 5:25 p.m. on March 29, 2020, the BOP’s official website lists one positive staff case at MDC Brooklyn and one positive inmate case; it lists two positive staff cases at MCC New York and two positive inmate cases.<sup>1</sup>

5. This information is inaccurate.

a. As of the morning of March 27, 2020, at least four BOP staff at MDC Brooklyn had tested positive. This number was confirmed by Anthony Sanon, President, Local 2005, AFGE/AFL-CIO.

b. As of March 27, 2020, at least three inmates had tested positive at MCC New York. This information was only received after Federal Defenders asked the Legal Department whether there were additional (beyond the first positive case) cases, based on information received from clients. The three positive tests have now been confirmed by Supervisory Attorney Nicole McFarland.

6. We have learned about the positive cases only when we ask specific questions of the institutions based on information from our clients detained inside. This raises a strong concern that if there are additional cases that we do not know to ask about, we will not be

---

<sup>1</sup>See <https://ww.bop.gov/coronavirus> (last visited March 29, 2020, 7:45 p.m.)  
COVID-19 Tested Positive Cases

Inmates	Staff
14	13

**(Inmate) 3/27/2020** - MDC Brooklyn; FCC Oakdale (5); USP Atlanta (2); MCC New York (2); RRC Phoenix; RRC Brooklyn (3). (Note: Symptomatic inmates are isolated in accordance with CDC guidelines.)

**(Staff) 3/27/2020** - Grand Prairie, TX; Leavenworth, KS (no inmate contact); Yazoo, MS (2); Atlanta, GA; Danbury, CT; Butner, NC; Ray Brook, NY; New York, NY (2); Chicago, IL (2); Brooklyn, NY.

*Note: Due to the rapidly evolving nature of this public health crisis, the BOP will update this dashboard daily at 3:00 p.m. based on the most recently available data from across the agency as reported by the BOP's Office of Occupational Health and Safety.*

informed of them by the BOP, particularly given the inaccurate information on the BOP's own website.

7. My concern that there may be additional unreported cases is heightened by inmate reports to our office from both MCC and MDC this weekend:

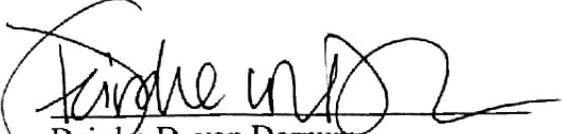
- a. Several inmates report having fever, cough and body aches; they have reported this to correctional staff; they were told no testing is available on weekends. These inmates remain on their units with everyone else.
- b. Other inmates report that individuals on their unit or whom they are celled with are coughing and not receiving medical attention.
- c. A number of inmates who were on the "intake unit" (42) at the same time as the inmate who was reported to have tested positive have been moved onto unit 41 and unit 63. They are not separated from the other inmates on unit 41 or unit 63 in any way. Medical staff is taking their temperatures temporally twice a day. Because a person can be asymptomatic and still positive and able to transmit the virus, the failure to quarantine individuals known to have been exposed to the virus raises the risk of the virus spreading.

8. The lack of transparency and disclosure by MDC also heightens my concerns.

- a. MDC has not disclosed how many inmates are currently symptomatic and are in isolation.
- b. MDC has not disclosed how many inmates have been tested for COVID-19.
- c. MDC has not disclosed on which units the staff who test positive work.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: March 30, 2020  
Brooklyn, New York



Deirdre D. von Dornum