UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated, Petitioners, -v.- MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center, Respondent.	No. 20 Civ. 3315 **DECLARATION OF DEIRDRE D. VON DORNUM**

I, Deirdre D. von Dornum, an attorney duly admitted to practice in the Southern 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 declaration upon personal knowledge in connection with this Class Action Petition Seeking Writ of Habeas Corpus.

3. I have been inside the Metropolitan Correctional Center in Manhattan ("MCC") on hundreds of occasions over the last several years, including visiting each of the housing units, and am familiar with its physical layout and the living conditions in the facility. Over the last several weeks, I have also spoken to approximately 150 inmates confined at MCC, several staff members that work at the facility, dozens of lawyers who currently have clients housed there, and medical professionals with relevant knowledge regarding COVID-19.

4. The current situation at the MCC is dire. Despite extensive efforts by the Federal Defenders to spur action, the MCC's response to the COVID-19 pandemic has been slow and inadequate, including but not limited to, because:

a. Notwithstanding its authority to do so, the MCC has not addressed the significant overcrowding at the facility, which is currently near twice its intended capacity, by releasing vulnerable inmates to home confinement or on compassionate release. This has increased the risk of a potentially enormous COVID-19 outbreak at the MCC, as other correctional facilities have experienced in recent weeks, including by making it impossible for inmates to practice the social distancing the CDC deems necessary to prevent spread of the virus;

b. Testing has been virtually non-existent—precluding reliable identification of inmates with the disease and contact tracing for those who have it, the adoption of recommended isolation practices for such inmates, and obscuring the true scope of the problem;

c. The MCC has not consistently provided inmates with basic necessities, such as soap, gloves, and masks, that are necessary to follow recommended hygiene practices;

d. The MCC has not undertaken contact tracing of staff who have tested positive for COVID-19, preventing identification of other staff and inmates who should be isolated or quarantined; and

e. The MCC has not addressed its serious shortage of medical staff and equipment necessary to prevent or address a more serious COVID-19 outbreak.

5. Unless immediate action is taken to address these and other conditions, the MCC risks becoming an unmitigated public health disaster.

Efforts of the Federal Defenders to Address Impact of Coronavirus on Our Clients Through Discussions With The MCC

6. Starting on March 4, 2020 and continuing to date, my office has engaged in extensive efforts to address the serious health risk posed by the spread of COVID-19 to individuals confined at the MCC and other federal jails. The Southern and Eastern Districts of New York began planning for COVID-19 in January 2020, including establishing protocols for remote proceedings, arranging for increased sanitization of the courthouses, and meeting to discuss how best to follow CDC protocols.[1] As of March 4, 2020, the Warden of MCC New York, Marti Licon-Vitale, acknowledged at a meeting with the Chief Judge of the Southern District and representatives of the Federal Defenders that she and her executive team had not yet planned the facility's COVID-19 response because the facility was in the midst of a protracted search for contraband and had been on lockdown status since February 27, 2020.

7. My office has consulted at length with representatives of the Federal Bureau of Prisons ("BOP") to address how it is responding to the COVID-19 outbreak and what efforts it is making to protect people detained at MCC. On March 8, 2020, we requested that the BOP take the following measures:

[1] The first confirmed case of COVID-19 in the United States was on January 21, 2020. *See* Roni Caryn Rabin, *First Patient with Wuhan Coronavirus Is Identified in the U.S.*, N.Y. Times (Jan. 21, 2020), available at https://www.nytimes.com/2020/01/21/health/cdc-coronavirus.html. The first death from COVID-19 in the U.S. was reported on February 29, 2020. The first confirmed case of COVID-19 in New York City was on March 1, 2020. *See* Mike Baker et al., *Washington State Declares Emergency Amid Coronavirus Death and Illnesses at Nursing Home*, N.Y. Times (Feb. 29, 2020), available at https://www.nytimes.com/2020/02/29/us/coronavirus-washington-death.html?action=click&module=RelatedLinks&pgtype=Article.

a. Make public the MCC's plans and policies for preventing a COVID-19 outbreak and responding to detained people who contract COVID-19;

b. Put in place a comprehensive testing protocol for inmates and staff;

c. Increase sanitation and hygiene in the facility, including increased cleaning of the housing units and making soap and tissues regularly available to inmates at no cost;

d. Provide for isolating anyone who tests positive for COVID-19 by transferring them to a hospital or other medical facility, not at the jail;

e. Coordinate with the Courts and U.S. Attorneys' Offices in both districts to ensure that only in extraordinary circumstances should any new arrestee be detained at the jails during the epidemic, and that no one be admitted to the jails without testing. (Attached hereto as Exhibit A is a true and complete copy of a string of email correspondence, including the March 8, 2020 Email of David Patton, Executive Director, Federal Defenders of New York to Nicole McFarland, Supervisory Attorney, MCC).

8. For four days after these specific requests were made, repeated efforts were undertaken to engage the MCC in substantive discussion on this issue. The only response the Federal Defenders received was that our requests were under consideration. (*See* Exhibit A). We received no information about screening or testing protocols, or how people who were symptomatic or positive would be cared for.

9. The Civil Division of the U.S. Attorney's Office, Southern District of New York endeavored to emphasize our concerns to the MCC, including our request that MCC immediately put in place 24-hour access to hand hygiene for all staff and inmates, including hot water and soap;

disinfect all common areas and clean the facility thoroughly; ensure that inmates are given access to showers and laundry; and ensure that inmates received medical care and medications for pre-existing conditions. Federal Defenders expressed acute concerns about the facility's ability and willingness to safeguard the well-being of the people in its custody and about the accuracy of information provided by the facility, based on the MCC's handling of three emergency events over the last year:

a. On April 12, 2019, beginning at approximately 6:30 a.m., feces and urine flooded the women's unit at MCC from pipes overhead, and toilets began to overflow into cells. Correctional officers present in the unit instructed the women to clean up the sewage. No effort was made to remove the women from the unit during the clean-up, to provide safety equipment to the women during the clean-up, or to identify women for whom the raw sewage might pose an increased health concern. Immediately before a scheduled inspection on May 23, 2019, women were made to clean the unit, with threats of punishment if they refused. Women were told to scrub the unit with bleach to remove mold, sweep up rodent droppings and remove rat traps from sight, clean all the air vents, and remove all buckets that had been placed under leaks from the ceiling and light fixtures. Facility staff hurriedly painted over ceiling damage from the sewage leaks. Despite the smell of wet paint during the inspection, MCC Management denied there had been any clean-up efforts prior to the inspection.

b. On August 10, 2019, inmate Jeffrey Epstein, who had been on suicide watch just two weeks before, was found dead in his cell in the Solitary Housing Unit ("SHU") at MCC. After a multi-month investigation, Attorney General

William Barr explained that Epstein's death was the result of "a perfect storm of screw-ups" by MCC, including insufficient staffing, unprofessional behavior by staff, and faulty security cameras.[2] Corrections officers in the facility confirmed that the MCC is severely under-staffed and they were being asked to work double-shifts with no notice: "When you put unrealistic workloads on people they're going to cut corners," according to Tyrone Covington, the president of Council of Prisons Local 3148.[3]

c. From February 27, 2020 to March 6, 2020, the MCC was on total lockdown, with no social or legal visitors permitted, and all inmates locked in their cells 24 hours a day except for a shower every 72 hours, while the facility searched for a weapon that a correctional officer had allegedly brought into the facility. During this time, the MCC assured the Court and counsel that the inmates were being given medical care and adequate hygiene, and were locked in their cells solely to facilitate the staff's ability to thoroughly search the facility. Inmates brought to court described very different conditions of confinement: self-carry HIV and other medications being thrown away by correctional staff searching inmates' cells; inmates with acute medical conditions (*e.g.*, chest pains, open wounds, anemia) being given little or no care; menstruating women not being provided a change of underwear or any sanitary pads, and being told to "stuff a

[2] *See* Katie Benner, *Barr Says Epstein's Suicide Resulted From "Perfect Storm Of Screw-ups,"* N.Y. Times (Nov. 22, 2019), available at https://www.nytimes.com/2019/11/22/nyregion/william-barr-jeffrey-epstein-suicide-investigation.html?searchResultPosition=1.

[3] *See* Stephen Rex Brown, *Staff Morale Plummets at Troubled Federal Lockup where Jeffrey Epstein Killed Himself*, N.Y. Daily News (Dec. 8, 2019), available at https://www.nydailynews.com/new-york/ny-mcc-epstein-fallout-20191209-qpyrexzwxjdtxbfbo4pup5lylm-story.html.

tissue up there"; legal papers and personal photographs destroyed; and inmates going without toilet paper for over a week while locked in a two-person cell with an open toilet. Inmates remained locked-down until March 10, 2020. The facility did not fully re-open to legal visitors until March 10, 2020.

The MCC's Responses and Reported Efforts to Protect Detained Persons

10. On March 12, 2020, at the request of Chief Judge McMahon, MCC Supervisory Attorney Nicole McFarland and MCC Warden Licon-Vitale attended a special meeting of the SDNY Criminal Justice Advisory Board focused on COVID-19 issues and discussed the issues raised by Federal Defenders. At that meeting, Warden Licon-Vitale indicated that the MCC was still receiving guidance from national BOP leadership as to how to handle the COVID-19 epidemic. In response to specific questions, the Warden stated that:

a. there was no testing protocol in place at the MCC, except for the temperature readings of those inmates being brought to Court (by order of the Chief Judge) and the facility did not anticipate having a testing protocol;

b. the Warden did not know where test kits were available, or if MCC would have any;

c. staff were being asked to self-report if they had traveled to the (then-) designated hotspot countries or had been exposed to someone known to have COVID-19;

d. the MCC would check the lobby bathroom for visitors to ensure it had soap;

e. because the MCC had been on lockdown until March 10, 2020, the facility had not been cleaned in a number of days (since all facility cleaning is done by orderlies) and was dirty, so cleaning the facility would be the first step,

including bringing in an outside company to sanitize the first floor and having orderlies clean the other floors;

f. social and legal visitors could not bring hand sanitizer, but the MCC might be able to allow interpreters to bring a travel-size bottle of hand sanitizer;

g. the BOP was going to relax the restriction on alcohol-based sanitizer during COVID-19 epidemic, and the Warden had ordered alcohol-based sanitizer for the housing units, but did not know when it would arrive;

h. the MCC had ordered goggles, gloves and masks for staff but did not know when this protective equipment would arrive;

i. the MCC had provided each inmate with a bar of soap;

j. the MCC had begun "cohorting" the medically at-risk inmates on one floor to separate them, and planned to house at-risk inmates with the cadre inmates on the open dormitory units;

k. the MCC did not know how many at-risk inmates it had;

l. the MCC did not yet know where any symptomatic or positive inmates would be isolated, but planned to call the New York City Department of Health if someone was symptomatic, and send anyone who was sick to the hospital and not care for them at the facility;

m. the MCC already had one symptomatic inmate, but the physician's assistant had decided it was not COVID-19;

n. in order to reduce the population at MCC and cohort at-risk inmates or separate symptomatic inmates, the MCC planned to transfer a number of sentenced inmates to FCI Otisville;

o. the MCC did not intend to implement a lockdown on social or legal visitation;

p. the MCC would continue to accept new detainees;

q. the MCC would screen new detainees for symptoms of COVID-19 and would ask them if they had traveled recently outside the United States.

11. On March 13, 2020, just three days after the facility had reopened following the above-described contraband search, the Federal Defenders learned from an associated press report[4] that all BOP facilities would be closed to legal and social visitation for the next 30 days in order to reduce the risk of visitors bringing the virus into the facilities. The Federal Defenders and other defense counsel were subsequently informed by email from Supervisory Attorney McFarland that MCC would be closed to legal visitation for this 30-day period. (Attached hereto as Exhibit B is a true and complete copy of a March 14, 2020 email from Seth D. Eichenholtz, Deputy Chief, Civil Division, United States Attorney's Office, forwarding the email from Supervisory Attorney McFarland.)

12. On March 15, 2020, Federal Defenders again asked Supervisory Attorney McFarland how many high-risk individuals were at MCC and what the facility's plan was for protecting them, as well as what the plan was for testing and caring for any symptomatic inmates. We received no substantive response.

13. On March 16, 2020, Federal Defenders made a formal request to the MCC that David Patton and I be allowed to tour the facility (and MDC Brooklyn) on a twice-weekly basis during the 30-day lockdown to monitor conditions, given the lack of legal and social access as well as prior issues with incomplete or inaccurate information from the MCC regarding conditions at

[4] *See* Michael Balsamo, *Visits Halted in Fed Prisons, Immigration Centers Over Virus*, Associated Press (Mar. 13, 2020), available at https://apnews.com/150b1c38c898a249b97f2828c4367ab5.

the facility. (Attached as Exhibit C is a true and complete copy of a March 16, 2020 letter from David Patton to Nicole McFarland.) On March 17, 2020, the Warden of MCC denied this request as to both facilities. (Attached as Exhibit D is a true and complete copy of a March 17, 2020 letter from Warden M. Licon-Vitale to David Patton.)

14. Despite the lockdown of the facility to prevent the spread of virus from visitors, MCC continued to accept new detainees from the community.

15. On March 20, 2020, at a court-wide teleconference regarding COVID-19 convened by Chief Judge McMahon, MCC Warden Licon-Vitale stated that:

a. 23 (of over 700) inmates at the MCC are considered "at-risk" for COVID-19 because of pre-existing medical conditions (10 of whom are considered at elevated risk because they are insulin dependent);

b. These 23 inmates were identified based on them being at "Care Level 3" within the BOP medical care system (BOP guidance defines Care Level 3 inmates as ones with "complex, and usually chronic, medical or mental health conditions and who require frequent clinical contacts to maintain control or stability of their condition, or to prevent hospitalization or complications");

c. The facility would go back and review inmate medical records to ensure that they have identified all persons who fall within the CDC "at risk" criteria and report back to the Court on that number, including female inmates and inmates housed in the Solitary Housing Unit;

d. the facility had no nasal swab test kits;

e. no general screening of the inmates for symptoms was occurring;

f. if an inmate self-reports symptoms, then they are being screened by being asked questions and taking the inmate's temperature;

g. If symptomatic, the inmate will be "isolated", *i.e.,* kept in his/her cell;

h. Because they have no ability to test for COVID-19 at MCC, they will call the New York City Department of Health for guidance if someone is symptomatic;

i. There are two open dorm units (where the at-risk inmates are being cohorted), which currently house 156 inmates on bunk beds;

j. All correctional officers and contractors are being screened for fever on the way into the facility and sent home if their temperature is high;

k. MCC promises to notify the Court and an inmate's family members if an inmate tests positive;

l. There is no plan to test asymptomatic staff or contractors;

m. The facility has only 30 N-95 masks;

n. The facility has 100 surgical masks;

o. Correctional officers can choose whether or not to wear gloves (the facility has 1,000 pairs of gloves in stock);

p. Contrary to what the Warden had earlier believed, the facility will not be allowed to have alcohol-based hand sanitizer (consistent with national BOP policy);

q. The facility still has the same number of medical staff, but they are asking medical staff to work nights and weekends in order to provide increased coverage;

r. No doctors are visiting the units (unless they are part of the MCC executive team visit to each unit once a week), but physicians' assistants come for the pill line daily to each unit and the Health Services Administrator is visiting one unit each day;

s. The inmates have been informed about hygiene practices to prevent the spread of COVID-19 by posters in the units and a message over CorrLinks; and

t. Two inmates have been tested for COVID-19 at a hospital, both of whom tested negative.

16. On March 21, 2020, Federal Defenders learned from Twitter that the first BOP inmate in the U.S. had tested positive: an inmate at MDC Brooklyn.[5] This was subsequently confirmed on the national BOP website as the first confirmed positive inmate case anywhere in the BOP.[6]

17. Two days later, on March 23, 2020, MCC reported its first positive inmate. That inmate was housed on an open dormitory unit (11 South) on the eleventh floor, where the cadre inmates and those inmates whom the MCC had identified as most "at risk" under the CDC criteria were cohorted.

18. The inmate had been symptomatic for several days on 11 South, where he slept in a bunk bed approximately three feet away from the neighboring bunk beds, shared a single toilet and two sinks with approximately 25 other men, ate at common tables, and shared telephones and

[5] Brad Lander (@bradlander), Twitter (Mar. 21, 2020, 10:02 PM), https://twitter.com/bradlander/status/1241545847994753026.

[6] *Statement from BOP Director on BOP Response to COVID-19 Pandemic*, Federal Bureau of Prisons, (Mar. 26, 2020) available at https://www.bop.gov/resources/news/20200326_statement_from_director.jsp.

email terminals. He was taken to the hospital, where he tested positive for COVID-19. When he came back from the hospital, he was placed in one of the solitary confinement cells at MCC built to house the defendants charged with participating in the 9/11 terrorist attacks. Each of the cells in this tier has a single concrete "bed" in the middle of the room, an open toilet and a sink.

19. MCC quarantined the unit in which the inmate who tested positive had previously been housed. Because it is an open dormitory, this quarantine did not separate the inmates on the unit to prevent them from spreading the virus on the unit or to staff working on the unit, but rather kept them from leaving the unit.

20. Federal Defenders continued to request the number and identity of "at risk" inmates held at the MCC, as requested by the Southern District judges on March 20, 2020, in order to evaluate how many and which inmates might have been exposed to the inmate who tested positive, and who else in the facility was most at risk of contracting or suffering acutely from COVID-19. As of March 24, 2020, the facility indicated it was still undertaking to identify the at-risk inmates.

21. From speaking to correctional staff and inmates housed on the unit in which the inmate who tested positive had been housed, Federal Defenders learned that:

a. The inmate who tested positive was a member of the "cadre" (inmates who work throughout the building) and therefore moved throughout the building prior to testing positive;

b. Other inmates on the same unit had coughs and fevers at the same time or in the days after the first inmate tested positive but did not want to report these symptoms to staff because they did not want to be placed in the "box" (solitary confinement) and

c. No professional or staff cleaners sanitized the dormitory after the inmate tested positive; instead, the inmates themselves were given cleaning supplies--but not masks--to clean the unit.

d. No effort was made to do complete contact tracing of the staff who had come into contact with the positive inmate and then moved through the facility.

22. Federal Defenders asked the MCC how the inmate who tested positive was being cared for, whether he could be cared for somewhere other than in the punitive setting of the SHU, and how other symptomatic inmates were being checked on. The facility stated that doctors were checking on the positive inmate and other symptomatic inmates twice a day, taking temperature readings, and providing Tylenol. Federal Defenders was not informed how many inmates were symptomatic, quarantined or isolated, in addition to the inmate who tested positive.

23. On March 24, 2020, MCC stated that it will continue to accept new inmates. It has continued to do so as recently as April 23, 2020.

24. Soon thereafter, two more inmates in the open dormitory units, one from 11S, and one from the adjoining open dormitory unit, 11N, tested positive, and the first staff members at the MCC tested positive. These positive inmates were also placed in solitary. No effort was made to do complete contact tracing of the staff who came into contact with these positive inmates and staff members and then moved throughout the facility and out into the community.

25. Since then, two additional inmates at MCC tested positive, one from the seventh floor and one from the fifth floor. These inmates were placed in solitary confinement as well. No contact tracing of staff who came into contact with these inmates was undertaken.

26. As of April 23, 2020, 33 staff members and 5 inmates at MCC have tested positive.[7] The MCC has tested 7 inmates in total.[8]

27. As reported in the New York Daily News, there is strong reason to suspect that more widespread testing would confirm that the actual number of MCC inmates with COVID-19 is significantly higher than has been reported.[9]

28. To date, the New York City Department of Correction and the privately run Queens Detention Facility ("QDF") have tested far more inmates than the MCC, on both an absolute and percentage basis. For example, as of April 23, 2020 the QDF had tested nearly six times as many inmates (41) as the MCC (7), despite having less than a third of the MCC's inmate population.[10] Unsurprisingly, this additional testing has revealed that a significant number of QDF inmates have COVID-19: 38, as of April 23, 2020.[11] Similarly, the New York City Department of Correction, which has also engaged in significantly more testing, has identified 373 inmates with confirmed COVID-19 as of April 23, 2020.[12] There is no reason to believe that these facilities, which

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[7] *See* April 23, 2020 Letter from MCC Warden to Chief Judge Mauskopf, available at https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

[8] *Id.*

[9] *See* Noah Goldberg and Stephen Rex Brown, *Coronavirus Pandemic Rages at NYC's Federal Jails – and Numbers Back Lawyers' and Staffers' Claims that Management Has a Poor Grip on the Problem*, N.Y. Daily News (Apr. 20, 2020), available at https://www.nydailynews.com/coronavirus/ny-coronavirus-mdc-mcc-bop-20200420-t25khpqxkfdqfmpvixxvlvxqfm-story.html.

[10] *Compare* April 23, 2020 Letter from QDF Facility Administrator available at https://www.nyed.uscourts.gov/pub/bop/QDF_20200423_043331.pdf, *to* April 23, 2020 Letter from MCC Warden to Chief Judge Mauskopf, available at https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

[11] *Id.*

[12] Board of Correction Daily Covid-19 Update for Wednesday April 23, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_23_2020.pdf.

generally house and are staffed by individuals from the same community as the MCC, would have significantly higher rates of COVID-19 infection than the MCC.

29. Indeed, at least ten untested inmates at the MCC have described in detail to Federal Defenders enduring symptoms that strongly indicate they contracted COVID-19: fever, dry cough, chills, loss of taste and/or smell. These inmates either sought medical attention and were not tested, or did not report their symptoms because they did not want to be placed in solitary confinement, cut off from their lawyers and families.

Conditions at MCC that Create Risk of a Widespread COVID-19 Outbreak

30. The CDC has issued Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities. This Guidance emphasizes the need for (a) adherence to cleaning and disinfection of shared areas and equipment several times daily with soap and hot water; (b) provision of free hygiene products such as soap and tissues, as well as alcohol-based hand sanitizer where permitted; (c) social distancing; (d) constant use of personal protective equipment by staff and inmates; (e) medical isolation of confirmed and suspected cases and quarantine of persons in contact with those confirmed and suspected cases; (f) special protection for at-risk individuals.[13] The MCC is not following this guidance.

31. There are approximately 700 people confined in MCC at this time. The facility was designed to house only 474 inmates. Of those approximately 700 inmates, 205 (or 29%) have been identified by the MCC as vulnerable to COVID-19 based on CDC criteria.

[13] *See Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,* Centers for Disease Control, at 2 (updated March 23, 2020), https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf.

32. Many inmates confined at MCC share small two-person cells originally designed for one person, with a shared toilet and sink. Inmates continue to be double-celled.

33. Approximately 150 inmates are confined in large, dormitory style settings, with many inmates sharing a large sleeping space and beds spaced only 3 to 5 feet apart.

34. Whether in the open dormitories or in the small two-person cells, inmates confined at MCC must frequently share or touch objects used by others. Toilets, sinks, and showers are shared, without disinfection between each use.

35. Phones and computer terminals are all shared by numerous inmates, without disinfection between each use.

36. Food preparation (by inmates) is communal, with little opportunity for surface disinfection.

37. No hand sanitizer is available to inmates.

38. The soap supply has not been steady during the lockdown and many inmates lack access to soap.

39. Tissues are not readily available. Inmates use toilet paper to blow their noses.

40. Inmates are responsible for cleaning the housing unit common areas, and frequently lack adequate cleaning supplies to do so. Inmate orderlies clean the infected, quarantined units wearing surgical masks and then return to their own housing units without first being provided a change of clothes or an opportunity to disinfect themselves.

41. On one unit, correctional staff recently covered an entire tier of cells housing a number of symptomatic inmates with plastic bags.

42. Inmates are only screened if they self-report symptoms to facility staff. Symptomatic inmates are afraid to report to staff that they are feverish or coughing, or have lost

their sense of taste or smell, because they fear being placed in solitary confinement with even less access to staff and limited ability to call their families or lawyers. By placing inmates in need of medical isolation or quarantine in units normally designed for punishment, the MCC has strongly disincentivized inmates from reporting their own or other inmates' symptoms. This, in turn, has increased the risk of the spread of COVID-19 throughout the facility, as well as death from lack of adequate treatment.[14]

43. When locked down, inmates can only convey to staff that they are in medical distress by banging on the cell door, yelling, or ringing the emergency bell in their cells. Numerous inmates have reported that, particularly with the severe staff shortage, these cries for help go unanswered. Some report that their emergency bells seem to have been disabled.

44. Less urgent sick call requests, which are ordinarily made by computer at the MCC, can only be made orally to a staff member or in handwriting on a sick call request. Numerous inmates have reported staff members saying they cannot help them and handwritten sick call requests going unanswered, even when inmates are reporting having trouble breathing or a high fever.

45. Inmates have been given paper or thin cloth masks and told to reuse a single mask for up to two weeks. Only orderlies have access to gloves.

46. The facility has been significantly understaffed for a number of years, and now is experiencing a worsening staff shortage as staff members and their families fall ill from COVID-19.

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[14] *See* David Cloud, JD, MPH, Dallas Augustine, MA, Cyrus Ahalt, MPP, and Brie Williams, MD, MS, "The Ethical Use of Medical Isolation - *Not Solitary Confinement* - to Reduce COVID-19 Transmission in Correctional Settings," *Amend at UCSF,* Apr. 9, 2020, available at https://geriatrics.ucsf.edu/news/dr-brie-williams-highlights-differences-between-medical-isolation-procedures-and-solitary [accessed Apr. 18, 2020].

47. Correctional staff who live in New York, New Jersey, and Pennsylvania are entering and leaving the facility every day and arrive and leave on a shift basis. They are checked for elevated temperatures. They are not asked if they have come into contact with a person who has tested positive within the last 14 days. Staff who are exposed to inmates who have tested positive for COVID-19 have been asked to return to work at the facility after only 48 hours. There is no systematic contact tracing of positive-testing staff members to determine which inmates or other staff they have come into contact with.

48. Staff members have been provided surgical masks and gloves, but not N-95 masks or eye coverings.[15] Not all staff members wear masks and gloves all the time while they are on the housing units.

49. Even when working on quarantined units, the medical isolation unit, or escorting inmates who have tested positive, or are presumed positive, for COVID-19 to the hospital, staff has not been provided with N-95 masks.

50. New inmates continue to arrive at MCC as recently as April 23, 2020. These new inmates are reportedly being held in isolation for 14 days after entering the facility, but still come into contact with staff when they are processed into the facility, when staff is moving them to and within the unit, and when communicating with staff. These staff members then come into contact with other staff and inmates.

[15] "COVID-19 and the lack of readiness by the Federal Bureau of Prisons has made an already very dangerous working environment into hell for our staff -- both physically and mentally," Tyrone Covington, the correctional officers' local union representative, told ABC News. James Hill and Luke Barr, *No COVID-19 Tests Available for Prisoners at Center of New York Outbreak, Court Documents Show*, ABC News (Apr. 4, 2020), available at https://abcnews.go.com/Health/covid-19-tests-prisoners-center-york-outbreak-court/story?id=69969077.

MCC is Not Medically Equipped to Address or Prevent a COVID-19 Outbreak

51. To my knowledge, as of the date of this Declaration, the MCC has no COVID-19 test kits. Six of the seven MCC inmates who have been tested were in such acute distress that they were sent to the hospital, where they were tested; the seventh inmate was tested by order of the Court with a test kit obtained from MDC Brooklyn.

52. Staff members are not being tested by the BOP. They are required to obtain tests in the community. The number of staff positives is increasing rapidly. The MCC reported 7 staff with positive test results on April 3;[16] 17 staff positives on April 14; [17] and 33 staff positives on April 23.[18]

53. There are only two doctors available at MCC to care for over 700 inmates.

54. Doctors are not visiting the housing units on a regular basis.

55. MCC has no ventilators.

56. MCC cannot intubate inmates on-site.

57. MCC is primarily using temperature checks to determine who is symptomatic for COVID-19. However, as has been noted by health experts, temperature checks are insufficient for identifying positive cases.

58. There is no separate medical facility for inmates suffering from COVID-19. Unlike many Federal Correctional Institutions and even Rikers' Island, MCC has no physical space in

[16] Letter of April 3, 2020 from MCC Warden Licon-Vitale to Chief Judge Roslynn Mauskopf, available at https://img.nyed.uscourts.gov/files/reports/bop/20200403_BOP_Report.pdf.

[17] Letter of April 14, 2020 from MCC Warden Licon-Vitale to Chief Judge Roslynn Mauskopf available at https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200414_040934.pdf.

[18] Letter of April 23, 2020 from MCC Warden Licon-Vitale to Chief Judge Roslynn Mauskopf, available at https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

which an ill inmate can convalesce that is separate from other inmates, is warm and clean, and has access to fresh water and regular hand-washing.

The MCC Has Not Used Its Authority to Release Vulnerable Inmates to Home Confinement or on Compassionate Release

59. On March 25, 2020, Federal Defenders received from the BOP a list of those inmates held at MCC whom the BOP had identified as meeting the CDC's criteria for being at elevated risk of contracting or experiencing acute symptoms from COVID-19. The Warden's initial list of 23 at-risk inmates had increased to 205 inmates, once the CDC criteria were applied -- almost 1/3 of the total population held at the MCC. Federal Defenders began looking up counsel for each inmate on the list and notifying counsel that his or her client had been identified by the BOP as being at-risk for COVID-19.

60. Our office began submitting numerous bail applications and compassionate release motions to request that individuals confined at MCC be released to protect them from COVID-19 exposure and lessen the health risks to the jail population as the virus spreads.

61. We have also undertaken numerous requests on behalf of individual inmates to the Warden of the MCC for release to home confinement and/or compassionate release.

62. On March 26, 2020, Federal Defenders wrote to the Warden's Executive Assistant and the MCC Legal Department, identifying 10 inmates on the MCC at-risk list who were already eligible for home confinement (because they are almost done serving their sentences) and urging the MCC to immediately evaluate these 10 vulnerable inmates for release to the community, consistent with their statutory authority to do so and the urging of Attorney General Barr to the BOP to exercise this authority to prioritize inmates deemed vulnerable to COVID-19. On April 3, 2020, Federal Defenders again wrote to the Warden's Executive Assistant and the MCC Legal Department, identifying an additional 3 at-risk inmates eligible for home confinement. On April

10, 2020, Federal Defenders wrote to the Warden's Executive Assistant and the MCC Legal Department identifying 2 more at-risk inmates eligible for home confinement. On April 24, 2020, Federal Defenders wrote to the Warden's Executive Assistant and the MCC Legal Department identifying one additional at-risk inmate eligible for home confinement, bringing the total number of identified at-risk inmates already eligible for home confinement under *existing* statutory authority to 16. No response has been received from the MCC to any of these requests.

63. In addition to its existing statutory authority, the Warden of the MCC now has expanded authority to release at-risk inmates to home confinement under the directives of Attorney General Barr and the provisions of the Coronavirus Aid, Relief and Economic Security Act (the "CARES Act"). The CARES Act permits the Director of the BOP to lengthen the maximum amount of time that a prisoner may be placed in home confinement, if the Attorney General finds that emergency conditions will materially affect the functioning of the BOP. In an April 3, 2020 memorandum to the Director of BOP, Attorney General Barr made that finding.[19] The Attorney General, emphasizing that "time is of the essence," has also issued two directives instructing the BOP to "prioritize the use of home confinement as a tool for combatting the danger COVID-19 poses to our vulnerable inmates."[20] These directives require the BOP to immediately review all inmates with COVID-19 risk factors and authorize the release of inmates at any stage of their sentence if they are particularly medically vulnerable, pose a low security risk, and have a safe residence to be released to.

---

[19] Memorandum For Director of Bureau of Prisons re Increasing Use of Home Confinement at Institutions Most Affected by COVID-19, Office of the Attorney General, Washington, D.C. (Apr. 3, 2020), available at https://www.justice.gov/file/1266661/download.

[20] *Id;* and Memorandum For Director of Prisons re Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic, Office of the Attorney General, Washington, D.C. (Mar. 26, 2020), available at https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement.pdf.

64. Despite these directives, not a single inmate has been released from the MCC to home confinement under this authority, to my knowledge.[21] By comparison, the New York City Department of Correction population in custody has decreased by 1,579 people, or more than 28%, since March 16, 2020.[22]

65. I am familiar with the administrative remedy procedure at the MCC, which requires an inmate to obtain a "cop-out" (BP-8) form from the unit manager, complete and submit it, wait 20 days to receive a response, then obtain a BP-9 form, complete and submit it, wait an additional 20 days to receive a response, then obtain a BP-10 form, complete and submit it, wait 30 days to receive a response, and finally obtain a BP-11 form, complete and submit it, and wait 40 days to receive a response. Given the rapidity with which COVID-19 is spreading in New York City and the vulnerability of so many of the inmates held at MCC, pursuing this lengthy process would be futile at best, particularly since, although it may be suited for resolving more administrative issues such as the calculation of telephone charges or the inability to access a CorrLinks email account, I have never seen it effectively used to obtain release of an inmate.

66. As detailed above, Federal Defenders has taken extensive measures in order to effect the release of vulnerable persons confined at MCC, to mitigate the potential impact of a more widespread COVID-19 outbreak in the facility, and to ensure adequate medical care for those held at the MCC. We have explored and attempted all available avenues to protect our clients.

---

[21] *See also* Bob Hennelly, *Saddle Short-Staffed Federal Prisons With Added Burden From Virus*, The Chief (Apr. 6, 2020) (reporting correctional union officials stating that MCC and MDC had released no one to home confinement), available at https://thechiefleader.com/news/news_of_the_week/saddle-short-staffed-federal-prisons-with-added-burden-from-virus/article_028981d2-7442-11ea-8603-9f08bf34ea4f.html.

[22] Board of Correction Daily Covid-19 Update for Wednesday April. 22, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_22_2020.pdf.

However, Federal Defenders remains deeply concerned that our clients will be exposed, sickened, or potentially face serious illness or death because of MCC's inadequate and slow response to this public health crisis, and its lack of adequate testing, tracing, treatment, proper hand hygiene, and medical care.

67. The urgent relief sought by the petitioners in this action represents the only viable path to mitigating the overwhelming risks faced by those detained at the MCC to their health and, indeed, to their lives.

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

Executed on: April 27, 2020
Brooklyn, New York

Deirdre D. von Dornum

Exhibit A

Reply all | Delete Junk | •••

FW: FW: Coronavirus Planning

David Patton
Tue 3/10, 8:44 AM
FD_BOP_All <FD_BOP_All@kaplanhecker.com>; Deirdre Vondornum

Reply all |

Inbox

Label: Purge Old Mail (20 years) Expires: 3/5/2040 9:44 AM

A response!

From: Holly Pratesi <hpratesi@bop.gov>
Sent: Monday, March 09, 2020 5:42 PM
To: David Patton <David_Patton@fd.org>
Subject: Re: FW: Coronavirus Planning

Good afternoon,

I understand you sent the below email to Associate Warden Cruz. Your email has also been provided to the remainder of the executive staff for consideration.

Thank you,
Holly

-------- Original message --------
From: David Patton <David_Patton@fd.org>
Date: 3/8/20 1:46 PM (GMT-05:00)
To: Andy Cruz <a1cruz@bop.gov>, Nicole McFarland <nmcfarland@bop.gov>
Cc: Deirdre Vondornum <Deirdre_Vondornum@fd.org>, Jennifer Brown <Jennifer_Brown@fd.org>
Subject: Coronavirus Planning

>>> "David Patton" 03/08/2020 13:46 >>>
Nicole and Andy,

I'm asking that you make public the MCC and MDC plans and policies for preventing a coronavirus outbreak and res ponding to detained people who contract coronavirus. Let us know your availability to discuss the issues. We believ e that at a minimum, those plans and policies should include:

1. A comprehensive testing protocol;

2. Much greater precautionary measures with respect to sanitation and hygiene, including frequent cleaning, rea dy availability of soap, and tissues (the opposite of what is occurring at the MCC right now);

3. A provision for quarantining anyone who tests positive for the coronavirus at a hospital, not at the jail;

Reply all | Delete Junk | •••

5. Coordination with the Courts and U.S. Attorneys' Offices to ensure that only in extraordinary circumstances should any new arrestee be detained at the jails, and no one should be admitted without testing.

Thanks,
David

Exhibit B

Reply all | Delete Junk | •••

RE: information from MCC re coronavirus protocols

Eichenholtz, Seth (USANYE) <Seth.Eichenholtz@usdoj.gov>
Sat 3/14, 6:13 AM
Deirdre Vondornum; Holly Pratesi <hpratesi@bop.gov>; a1cruz@bop.gov; Cheryl I

Reply all |

Inbox

Label: Purge Old Mail (20 years) Expires: 3/9/2040 7:13 AM

Document1.pdf
39 KB

Show all 1 attachments (39 KB) Download

Hi all,

To the extent it is helpful, attached please find a copy of the notification e-mail that Nicole sent out about this policy, along with the bulletin that will be sent to inmates. The MDC bulletin is identical, except it will say MDC Brooklyn on top.

---Seth

>>> Nicole McFarland 3/13/2020 2:29 PM >>>
Effective immediately legal visits will be suspended for 30 days, at which time the suspension will be re-evaluated. Case -by-case approval at the local level and confidential legal calls will be allowed in order to ensure access to counsel.

This applies to MDC Brooklyn and MCC NY and across the BOP.

I am attaching a copy of the message going to inmates at both institutions.

Seth D. Eichenholtz
Deputy Chief, Civil Division
United States Attorney's Office
Eastern District of New York
271 Cadman Plaza East, 7th Floor

Brooklyn, New York 11201
Telephone: (718) 254-7036
Fax: (718) 254-7489

From: Deirdre Vondornum <Deirdre_Vondornum@fd.org>
Sent: Friday, March 13, 2020 12:22 PM
To: Eichenholtz, Seth (USANYE) <SEichenholtz@usa.doj.gov>; Holly Pratesi <hpratesi@bop.gov>; a1cruz@bop.gov;

Reply all | Delete Junk | •••

Subject: Re: information from MCC re coronavirus protocols

Seth - thanks. One more immediate request: Can we arrange for the videoconferencing equipment at MDC to be tested today or Monday to see if it will connect with the courthouse and with probation? On the courthouse end I think Doug Palmer would be person to coordinate through and then Rob Capers at Probation.

Deirdre D. von Dornum
Attorney-in-Charge
Federal Defenders of New York
(718) 330-1210

On Fri, Mar 13, 2020 at 10:46 AM -0400, "Eichenholtz, Seth (USANYE)" <Seth.Eichenholtz@usdoj.gov> wrote:

> Thanks for this list Deidre. I've already discussed some of these issues with BOP, will look into the others, and we'll have an update for our call on Tuesday.
>
> Thanks,
> Seth
>
> _____
> Seth D. Eichenholtz
> Deputy Chief, Civil Division
> United States Attorney's Office
> Eastern District of New York
> 271 Cadman Plaza East, 7th Floor
>
> Brooklyn, New York 11201
> Telephone: (718) 254-7036
> Fax: (718) 254-7489
>
> **From:** Deirdre Vondornum <Deirdre_Vondornum@fd.org>
> **Sent:** Friday, March 13, 2020 10:42 AM
> **To:** Eichenholtz, Seth (USANYE) <SEichenholtz@usa.doj.gov>; Holly Pratesi <hpratesi@bop.gov>; a1cruz@bop.gov; Cheryl Pollak <Cheryl_Pollak@nyed.uscourts.gov>; Lifshitz, Allon (USANYE) <ALifshitz@usa.doj.gov>
> **Cc:** Michelle Gelernt <Michelle_Gelernt@fd.org>; David Patton <David_Patton@fd.org>
> **Subject:** information from MCC re coronavirus protocols
>
> Just flagging differences between what Andy and Holly indicated were the current MDC plans as of our meeting, and what the MCC warden and Nicole McFarland indicated to CJ McMahon are the current MCC plans as of yesterday:
>
> - An outside sanitation company has been hired to sanitize the entire first floor of the facility this weekend.
> - Goggles, gloves and masks have been ordered for particular staff. (Unclear when these will arrive)
> - They have ordered two spray sanitizing machines to use in social and legal visiting areas once a day. (Starting next week)
> - They have been authorized by BOP to order alcohol based sanitizer for visitors and inmates. (On backorder)

Reply all | Delete Junk | •••

- They are cohorting all high-risk (older than 55, those with chronic illnesses) on the 11th floor.

Deirdre D. von Dornum
Attorney-in-Charge | EDNY
Federal Defenders of New York
(718) 330-1210
Deirdre_Vondornum@fd.org

Exhibit C

Federal Defenders
OF NEW YORK, INC.

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

David Patton
Executive Director and
Attorney-in-Chief

March 16, 2020

VIA EMAIL

Nicole McFarland
Holly Pretasi
MCC/MDC Legal Counsel

Re: Federal Defender Access to the MCC and MDC

Dear Nicole and Holly:

I write in response to Friday's announcement that the BOP was immediately instituting a 30-day suspension of social and legal visiting at all federal detention facilities, including the MCC in Manhattan and the MDC in Brooklyn, with the possibility of a renewed suspension in 30 days' time. As you know, the Federal Defenders have tried to engage with the BOP about its plans to prevent and contain a COVID-19 outbreak at the MCC and MDC, and expressed specific concerns about treating those facilities entirely as places of "quarantine" and cutting inmates off from their lawyers and loved ones as a result. The BOP's recently announced plans are exactly what we feared. Although we appreciate the severity of the health risks that COVID-19 poses, it appears that the BOP has not considered alternative ways in which it can protect the health of inmates and facility staff while respecting inmates' constitutional rights.

Shutting down visitation not only directly burdens these rights, but also puts inmates at risk of additional harm. During recent lockdown periods, inmates have been denied warm food, fresh drinking water, adequate medical treatment, and the ability to engage in even minimal hygiene. And without regular access to their counsel, inmates lose the primary means of addressing these issues in real time.

The BOP has further frustrated the Federal Defenders' efforts to help their clients through such crises by providing the Defenders' and other stakeholders inaccurate or incomplete information. For instance, less than two weeks ago, after shutting down the MCC in response to a tip that a corrections officer had smuggled a gun into the facility, the BOP moved more than 150 inmates to FCI Otisville. Warden Licon-Vitale informed both the Federal Defenders and Chief Judge McMahon that none of the transferred inmates was a pre-trial detainee, but rather all were designated inmates who were in holding status at the MCC. In fact, the majority of the transferees were pre-trial detainees, and several had impending court appearances that had to be cancelled as a result of their transfer.

In addition, BOP officials informed the Federal Defenders that inmates were receiving necessary medical treatment, provided one hot meal a day, and permitted to shower, in line with BOP policy. Yet, scores of inmates with no relationship to one another reported the exact opposite. Certain inmates did not receive medications, including for anemia, AIDS and diabetes, many reported receiving only cold (and in some cases frozen) food for days on end, and others went almost a week without fresh drinking water, a shower or change of clothing. For twelve days, menstruating women had one pair of underwear and no hygiene products, and were told by corrections officers to "stuff tissue up there."

The Federal Defenders uncovered similar misstatements by BOP leadership in the aftermath of the electrical fire that resulted in the cancellation of visiting at the MDC in February 2019. Then-Warden Herman Quay represented to court officials that inmates had not been confined to their cells, that neither heat nor hot water had been impacted, that inmates continued receiving hot meals, and that there had been no disruption of medical care. Yet when Chief Judge Irizarry issued an administrative order permitting Deirdre von Dornum, Attorney-in-Charge for the Federal Defenders in the Eastern District, to access the facility, the reality that Ms. von Dornum and U.S. Attorney Investigator John Ross discovered was markedly different than what Warden Quay had reported. Cells were pitch black, and a guard informed Ms. von Dornum that some inmates had not been allowed outside of their cells for a week. Other inmates had not received hot food for days, and the facility was painfully cold, causing BOP officers to wear multiple layers while inmates suffered in short-sleeved shirts and light cotton pants. Many inmates reported not receiving prescriptions, and others said that they had requested, but not received, medical attention, including for open wounds, which Ms. von Dornum and Mr. Ross observed first-hand.

We have deep concerns about what the over 2000 inmates at the MCC and MDC are experiencing. We intend to play a constructive role in helping the BOP navigate the challenges that COVID-19 presents, while continuing to demand that the rights of our clients and other inmates at the MCC and MDC are respected. It is our understanding that this is exactly what the BOP expects of us. In fact, the government has represented to at least one Southern District judge that it thinks that it "makes sense to have [the Federal Defenders] continue to be . . . the point people for discussion" about the BOP's plans relating to COVID-19. Tr. at 15, *United States v. Holloway*, No. 20 Cr. 126 (S.D.N.Y. Mar. 12, 2020) (conference before Hon. Laura Taylor Swain).

Nicole McFarland/Holly Pratesi March 16, 2020
Re: Federal Defenders' Access to MCC/MDC

To perform this role effectively, the Federal Defenders request that Deirdre von Dornum and I be permitted to tour the MCC and MDC, and speak with inmates in all units, on a twice-a-week basis, for the duration of the current 30-day shutdown. We are prepared to take the same health precautions as corrections officers who continue to work in the facilities, as well as any additional measures medically necessary to protect the health of inmates and staff, as well as our own health.

I ask that you respond to this request no later than noon on Tuesday, March 17.

Yours truly,

/s
David E. Patton

cc: Jeff Oestericher, Chief, Civil Division (SDNY)
Seth Eichenholtz, Deputy Chief, Civil Division (EDNY)
Adam Johnson, BOP Regional Counsel

Exhibit D

U.S. Department of Justice

Federal Bureau of Prisons

Metropolitan Correctional Center

150 Park Row
New York, NY 10007

March 17, 2020

David Patton
Executive Director
Federal Defenders of New York, Inc.
52 Duane Street – 10th Floor
New York, NY 10007

RE: Federal Defender Access to the MCC and MDC

Dear Mr. Patton:

We are writing in response to your March 16, 2020, letter in which you request that you and Ms. Deirdre von Dornum be permitted to tour MCC New York and MDC Brooklyn.

In accordance with the Federal Bureau of Prisons' March 13, 2020, National Measures, your request to tour the institutions was sent to the Federal Bureau of Prisons' Central Office for review. After review, your request to tour the institutions was denied.

MCC New York and MDC Brooklyn will continue to keep your office apprised of any appropriate developments concerning their COVID-19 response. Your request to tour the institutions may be revisited at a later date.

Sincerely,

M. Licon-Vitale
Warden
MCC New York

D. Edge
Warden
MDC Brooklyn

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated,

Petitioners,

-v.-

MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center,

Respondent.

No. 20 Civ. 3315

AFFIDAVIT OF JONATHAN GIFTOS, M.D.

I, Jonathan Giftos, hereby affirm as follows:

1. I am a doctor duly licensed to practice medicine in the State of New York. I am board certified in internal medicine and addiction medicine.

2. I am currently the Medical Director, Addiction Medicine & Drug User Health at Project Renewal and a Clinical Assistant Professor in the Department of Medicine at Albert Einstein College of Medicine. I was previously the Clinical Director of Substance Use Treatment for NYC Health & Hospitals, Division of Correctional Health Services at Rikers Island. In that capacity, I was responsible for the diversion, harm reduction, treatment and reentry services for incarcerated patients with substance use disorders. I further served as the medical director of the Key Extended Entry Program (KEEP), the nation's oldest and largest jail-based opioid treatment program that provides methadone and buprenorphine to incarcerated patients with opioid use disorders.

3. I have extensive experience working with vulnerable populations such as the incarcerated and those experiencing homelessness.

4. I submit this affidavit in support of the petition for a writ of habeas corpus seeking release of various persons, as well as improvement of conditions at the Metropolitan Correctional Center (the "MCC") sufficient to mitigate the serious risk of illness, death, and harm from COVID-19 for those who remain confined there. This Affidavit is reflective of the latest medical research on COVID-19 and publicly available BOP data concerning the MCC as of April 24, 2020.

I. Coronavirus Epidemic in New York City

5. On March 11, 2020, the World Health Organization declared that the rapidly spreading outbreak of COVID-19, a respiratory illness caused by a novel coronavirus, is a pandemic, announcing that the virus is both highly contagious and deadly.[1] To date, the virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.[2] The virus can linger on surfaces such as tables, faucet handles, and door handles for days.[3] The CDC also warns of "community spread" where the virus spreads easily and sustainably within a community where the source of the infection is unknown.[4]

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[1] *WHO Director-General's Opening Remarks at the Media Briefing on COVID-19*, World Health Organization (Mar. 11, 2020), https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020.

[2] *How COVID-19 Spreads*, CDC (Apr. 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html.

[3] Detailed Disinfection Guide - Interim Recommendations for U.S. Households with Suspected or Confirmed Coronavirus Disease 2019 (COVID-19), CDC (Mar. 28, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html.

[4] *How COVID-19 Spreads*, CDC (Apr. 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html.

6. As of April 24, 2020, the novel coronavirus has infected over 2,631,699 people leading to at least 182,099 deaths worldwide.[5] Since the first reported case in New York on March 1, 2020, the number of infected cases has risen by over 2.5 million. The United States now has the most infections in the world, with at least 883,009 confirmed cases and 45,268 deaths from the virus.[6] There are confirmed coronavirus cases in every state, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

7. Governor Cuomo declared a State of Emergency in New York State on March 7, 2020. Mayor de Blasio declared a State of Emergency in New York City on March 12, 2020. As of April 22, 2020, there are at least 263,460 positive cases in New York State with 145,855 of those cases in New York City, also representing an increase of two orders of magnitude above the numbers observed last month.[7] As of April 23, 2020, there are 10,290 confirmed deaths due to COVID-19, and 5,121 probable deaths attributed to the virus in New York City.[8] Among the confirmed cases in New York City are people who work in the Bureau of Prisons, including the Warden of the MCC,[9] courthouses, law enforcement, legal offices, and the medical field, increasing the likelihood of exposure to and by inmates. Some of the early cases included a

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[5] *Novel Coronavirus Situation Dashboard*, WHO (Apr. 24, 2020), https://who.sprinklr.com/ (updating regularly).

[6] *Coronavirus in the U.S.: Latest Map and Case Count*, The New York Times (Apr. 24, 2020), https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html (updating regularly).

[7] *Id.*

[8] *COVID-19 Data: Cases, Hospitalizations, and Deaths*, NYC Health Department (Apr. 23, 2020), https://www1.nyc.gov/site/doh/covid/covid-19-data.page (updating regularly).

[9] *See* Stephen R. Brown, *Warden of Federal Jail in Lower Manhattan Has Coronavirus: Source*, N.Y. Daily News (Apr. 17, 2020, 3:29 PM), https://www.nydailynews.com/new-york/ny-mcc-warden-coronavirus-20200417-3pxt3phbrffv5goon32vboulvi-story.html

security officer and an agent in the U.S. Attorney's Office, SDNY;[10] a NYC Department of Correction investigator (who has died from the virus);[11] a lawyer with an office in Midtown Manhattan (and his wife and son);[12] a healthcare worker in Manhattan; an attorney and legal intern in local New York State courts; and an attorney at the Brooklyn Supreme Court.[13] Since then, the numbers have skyrocketed, and now include fatalities: one Brooklyn Supreme Court judge died of coronavirus complications within two weeks of presiding over a courtroom full of litigants and members of the public and another, the Administrative Judge of Brooklyn's Supreme Court's Civil Part, was hospitalized for nearly a week.[14] The coronavirus is inside the local jails where federal inmates are held: 38 inmates and 23 staff members have tested positive at the Queens Detention Facility ("GEO Queens"); 6 inmates and 26 staff members have tested positive at MDC Brooklyn; and 5 inmates and 33 staff members have tested positive at the MCC.[15]

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[10] Email Communication from Edward Tyrrell, U.S. Attorney's Office, S.D.N.Y. (Mar. 14, 2020).

[11] Aliza Chasen, *NYC Correction Officer Dies of Coronavirus*, Pix 11 (last updated Mar. 18, 2020, 8:35 AM), https://www.pix11.com/news/coronavirus/nyc-correction-officer-dies-of-coronavirus.

[12] *11 Cases of COVID-19 Confirmed in NY After Family, Friends of Lawyer Test Positive*, NBC New York (last updated Mar. 5, 2020, 8:07 a.m.), https://www.nbcnewyork.com/news/local/nyc-attorney-in-critical-condition-city-works-to-trace-movements-awaits-more-tests/2311723/.

[13] *Coronavirus and the New York State Courts: Tested Positive for Covid19*, New York State Unified Court System (Mar. 16, 2020), http://www.nycourts.gov/covid-positive.shtml (updating regularly).

[14] *Id.*; Noah Goldberg, *A Brooklyn Courthouse Was Still Packed as Coronavirus Spread. Judges, their Staffs and Lawyers Are Paying the Price*, N.Y. Daily News (Apr. 8, 2020, 11:00 PM), https://www.nydailynews.com/coronavirus/ny-coronavirus-brooklyn-supreme-court-civil-covid-19-judges-attorneys-20200409-byebigdbpbcv3he7wf5hxombju-story.html; Noah Goldberg, *'Horrifying Thing to Go Through: Top Brooklyn Judge Hospitalized with Coronavirus, Replaced in Court*, N.Y. Daily News (Apr. 06, 2020, 1:03 PM), https://www.nydailynews.com/coronavirus/ny-coronavirus-brooklyn-judge-hospitalized-coronavirus-administrative-20200406-q7mg3tnnejhcfal3snqb6irwoy-story.html.

[15] *See* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf; Letter from

8. There is currently no vaccine or cure. Public health officials are primarily focused on preventing the spread of the virus. To prevent new infections, the Centers for Disease Control and Prevention strongly recommend the following actions: thorough and frequent handwashing, regularly cleaning surfaces with EPA-approved disinfectants, maintaining at least six feet of space between people, and avoiding all group gatherings.[16] Social distancing has also been encouraged, and in many places mandated, to slow the rate of COVID-19 infections so that hospitals have the resources to address infected individuals with urgent medical needs.[17] The CDC now recommends that everyone wear a mask or cloth face covering whenever they go out in public.[18] On April 15, 2020, New York Governor Andrew Cuomo issued an Executive Order requiring all people in New York to wear a mask or face covering when out in public and in situations where social distancing cannot be maintained.[19] In correctional settings, such sanitation, social distancing, face-covering and self-quarantining measures are extremely difficult especially when inmates are routinely housed, shackled, and escorted with other prisoners.[20]

Queens Detention Facility Administrator William Zerillo to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200423_043331.pdf.

[16] *Protect Yourself*, CDC (Apr. 24, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html.

[17] Lisa Lockerd Maragakis, M.D., M.P.H., *Coronavirus, Social and Physical Distancing, and Self-Quarantine*, Johns Hopkins Medicine (Apr. 11, 2020), https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine.

[18] *See Use of Cloth Face Coverings to Help Slow the Spread of Covid-19*, CDC (Apr. 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html.

[19] *See* Press Release, N.Y.S Governor's Office *Amid Ongoing COVID-19 Pandemic, Governor Cuomo Issues Executive Order Requiring All People in New York to Wear Masks or Face Coverings in Public* (Apr. 15, 2020, 4:00 EDT), https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-issues-executive-order-requiring-all-people-new.

[20] *See* Danielle Ivory, *'We Are Not a Hospital': A Prison Braces for the Coronavirus*, The New York Times (Mar. 17, 2020), https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html.

II. Certain Identifiable Populations Are Far More Vulnerable To COVID-19 Than The Population At Large.

9. The CDC has identified certain groups of people at higher risk of contracting and succumbing to COVID-19: people 65 years and older and people with chronic medical conditions including lung disease, asthma, heart conditions, obesity, diabetes, chronic kidney disease, HIV/AIDS, and immune system disorders.[21]

10. COVID-19 is more dangerous to persons in these high-risk groups than to the general population. Older people who contract COVID-19 are more likely to die than people under the age of 60. In a February 29th WHO-China Joint Mission Report, the preliminary mortality rate analyses showed that individuals age 60-69 had an overall 3.6% mortality rate and those 70-79 years old had an 8% mortality rate.[22] It has been found that older people diagnosed with COVID-19 are more likely to be very sick and require hospitalization because the acute symptoms include respiratory distress, cardiac injury, arrhythmia, septic shock, liver dysfunction, kidney injury and multi-organ failure. Access to a mechanical ventilator is often required, as is access to care providers, respiratory therapists, and intensive care physicians. People with chronic medical conditions are also at significantly greater risk from COVID-19 because their already-weakened systems are less able to fight the virus. These chronic medical conditions include asthma, hypertension, lung disease, cancer, heart failure, cerebrovascular disease, renal disease, liver

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[21] *People Who Are at Higher Risk for Severe Illness*, CDC (Apr. 17, 2020), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html; *see also Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, WHO, 12 (Feb. 16-24, 2020), https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf.

[22] *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths*, Worldometer (Feb. 29, 2020), https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/ (data analysis based on WHO-China Joint Mission Report, *supra* n.18).

disease, diabetes, immunocompromising conditions, and pregnancy. Those with pre-existing medical conditions have a higher probability of death if infected. The WHO-China Joint Mission Report provides that the mortality rate for those with cardiovascular disease was 13.2%, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer.[23] Even for healthy individuals, COVID-19 presents a serious risk and can require advanced medical support. The CDC reports that 22% of individuals requiring ICU admission do not have any underlying health conditions.[24] And, even when not fatal, the COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage tissues in other vital organs, including the heart, liver, and kidney.[25]

III. Correctional Settings Increase The Risk Of Transmission

11. Absent effective risk mitigation measures, correctional settings increase the risk of contracting an infectious disease, like COVID-19, 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 little ability to stay at a distance from others.[26] Correctional facilities house large groups of inmates together, and move inmates in

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[23] *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19),* WHO (Feb. 16-24, 2020), https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf at 12.

[24] *See* Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019 — United States, February 12-March 28, 2020, CDC (Apr. 3, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/mm6913e2.htm.

[25] *See* Matt Stieb, *There's More Bad News on the Long-Term Effects of the Coronavirus*, New York Magazine (Apr. 16, 2020), https://nymag.com/intelligencer/2020/04/more-bad-news-on-the-long-term-effects-of-the-coronavirus.html.

[26] *See* Timothy Williams, Benjamin Weiser, and William K. Rashbaum, *'Jails Are Petri Dishes: Inmates Freed as the Virus Spreads Behind Bars*, The New York Times (last updated Mar. 31, 2020), https://www.nytimes.com/2020/03/30/us/coronavirus-prisons-jails.html.

groups to eat, do recreation, receive medication, and shower. Inmates share telephones, email terminals, and tables for eating. They frequently have insufficient medical care for the population, and, in times of crisis, even those medical staff cease coming to the facility. Hot water, soap and paper towels are frequently in limited supply. Inmates, rather than professional cleaners, are responsible for cleaning the facilities and often are not given appropriate supplies. This means there are more people who are susceptible to getting infected, congregated together, in a context in which fighting the spread of an infection is extremely difficult. Where, as at the MCC, correctional facilities are significantly overcrowded and not taking appropriate preventative measures within their power, the above-identified risks are significantly compounded.

12. A COVID-19 outbreak is well underway in New York City jails. The first reported instance of a person in New York City Department of Corrections ("DOC") custody testing positive was March 18, 2020.[27] As of April 23, 2020, there were 1,400 confirmed cases of the virus in the DOC system: 373 people in custody (with three deaths), 150 Correctional Health Services staff, and 877 DOC staff.[28]

IV. The BOP Is Experiencing A Dangerous Increase In COVID-19 Cases

13. Based on my review of the daily numbers published on the BOP's website, and its multi-phase protocol which went into effect at all BOP facilities on March 13, 2020, COVID-19 is rising at a dangerous rate in the BOP nationwide. The rate of increase is far more rapid than it

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[27] Zak Cheney-Rice, *Rikers Reports its First COVID-Related Prisoner Death*, New York Intelligencer (April 6, 2020), https://nymag.com/intelligencer/2020/04/rikers-island-reports-its-first-covid-related-prisoner-death.html.

[28] Daily Covid-19 Update, Monday, April 23, 2020, New York City Board of Correction, https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_23_2020.pdf

is in the population at large. The first two BOP cases (both staff cases) were reported on March 20, 2020. As of April 15, 2020, BOP reported: 620 positive inmates and 302 now-recovered inmates (922 total cases); 357 positive staff and 53 now-recovered staff (410 staff cases); 24 inmate deaths; 0 staff deaths. In the single day between April 13, 2020 and April 14, 2020, there were over 100 new BOP positive cases reported among inmates and staff.

BOP-Reported Positive Tests for COVID-19 Nationwide[29]

Date	Number of Positive Inmates	Number of Positive Staff	Number of Inmate Deaths
3/19/2020	0	0	0
3/20/2020	0	2	0
3/21/2020	1	2	0
3/22/2020	1	2	0
3/23/2020	3	3	0
3/24/2020	6	3	0
3/25/2020	6	3	0
3/26/2020	10	8	0
3/27/2020	14	13	0
3/28/2020	19	19	1
3/29/2020	19	19	1
3/30/2020	28	24	1
3/31/2020	29	30	1
4/1/2020	57	37	3
4/2/2020	75	39	6
4/3/2020	91	50	7
4/4/2020	120	54	8
4/5/2020	138	59	8

[29] Numbers obtained from www.bop.gov/coronavirus on a daily basis.

4/6/2020	195	63	8
4/7/2020	241	72	8
4/8/2020	272	105	8
4/9/2020	283	125	8
4/10/2020	318	163	9
4/11/2020	335	185	9
4/12/2020	352	189	10
4/13/2020	388	201	13
4/14/2020	446	248	14
4/15/2020	451	280	16
4/16/2020	473	279	18
4/17/2020	465	296	18
4/18/2020	479	305	21
4/19/2020	495	309	22
4/20/2020	497	319	22
4/21/2020	540	323	23
4/22/2020	566	342	24
4/23/2020	620	357	24

This is a dramatic percentage increase within the BOP as compared to the national percentage increase of positive cases:

Percentage of Increase of Infected BOP People (Inmates and Staff) Since 3/20/2020[30]

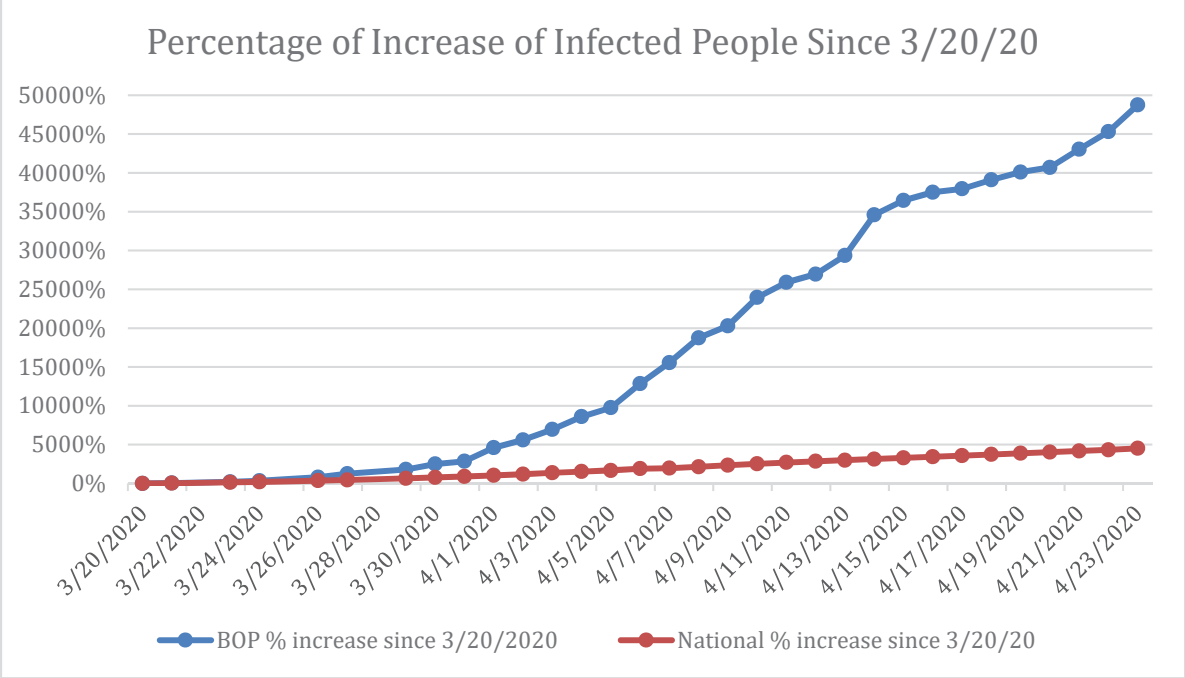
Date	Number of BOP Cases[31]	BOP Percentage Increase Since 3/20/2020	National Percentage Increase Since 3/20/2020	Number of National Cases
3/20/2020	2	0%	0%	18,747
3/21/2020	3	50%	31%	24,583
3/23/2020	6	200%	135%	44,183
3/24/2020	9	350%	190%	54,453
3/26/2020	18	800%	355%	85,356
3/27/2020	27	1250%	451%	103,321
3/29/2020	38	1800%	651%	140,904
3/30/2020	52	2500%	772%	163,539
3/31/2020	59	2850%	892%	186,101
4/1/2020	94	4600%	1036%	213,144
4/2/2020	114	5600%	1176%	239,279
4/3/2020	141	6950%	1379%	277,205
4/4/2020	174	8600%	1526%	304,826
4/5/2020	197	9750%	1665%	330,891
4/6/2020	259	12850%	1897%	374,329
4/7/2020	313	15550%	1963%	386,800
4/8/2020	377	18750%	2140%	419,975
4/9/2020	408	20300%	2349%	459,165
4/10/2020	481	23950%	2527%	492,416
4/11/2020	520	25900%	2704%	525,704
4/12/2020	541	26950%	2860%	554,849
4/13/2020	589	29350%	2989%	579,005

[30] National numbers obtained from www.cdc.gov and https://coronavirus.jhu.edu/map.html.

[31] Includes the number of both BOP inmates and staff who have tested positive for COVID-19.

4/14/2020	694	34600%	3129%	605,390
4/15/2020	731	36450%	3294%	636,350
4/16/2020	752	37500%	3584%	661,712
4/17/2020	761	37950%	3744%	690,714
4/18/2020	784	39100%	3883%	720,630
4/19/2020	804	40100%	4039%	746,625
4/20/2020	816	40700%	4181%	776,093
4/21/2020	863	43050%	4319%	802,583
4/22/2020	908	45300%	4319%	828,441
4/23/2020	977	48750%	4517%	865,585

In graphic terms:



14. These increases continue despite the BOP's ongoing action plans. On March 13, 2020, the BOP announced that it was implementing the COVID-19 Phase Two Action Plan in

order to minimize the risk of COVID-19 transmission into and within its facilities.[32] As of that date, the Action Plan was comprised of the following measures: all incoming inmates were screened, and staff were regularly screened; contractor visits were limited to essential services, while nearly all attorney, social, and volunteer visits were suspended; inmate movements between facilities were limited; and institutions were taking additional steps to modify operations to maximize social distancing.[33]

15. On April 1, 2020, the BOP began implementing its Phase Five Action Plan to decrease the spread of COVID-19, which provides for securing each inmate in every BOP institution to her or her assigned cells/quarters for a period of fourteen days.[34]

16. On April 14, 2020, the BOP announced implementation of its Phase Six Action Plan, which extends the lockdown of inmates through May 18, 2020.[35]

V. Specific Conditions and Protocols at the MCC

17. My understanding of the conditions at the MCC and their likely effect on the inmate population there is based on published reports, and news articles, including MCC's bi-weekly responses to the Administrative Order of Chief Judge Mauskopf (EDNY), my experience working in correctional settings, information provided by Deirdre D. von Dornum, Attorney-in-Charge of

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[32] Federal Bureau of Prisons COVID-19 Action Plan (last updated Mar. 13, 2020, 3:09 PM ET), https://www.bop.gov/resources/news/20200313_covid-19.jsp.

[33] *Id.*

[34] *Bureau of Prisons COVID-19 Action Plan: Phase Five*, U.S. Department of Justice, Federal Bureau of Prisons (Mar. 31, 2020), https://www.bop.goresources/news/pdfs/20200331_press_release_action_plan_5.pdf.

[35] *Bureau of Prisons COVID-19 Action Plan: Phase Six*, U.S. Department of Justice, Federal Bureau of Prisons (Apr. 14, 2020), https://www.bop.gov/resources/news/pdfs/20200414_press_release_action_plan_6.pdf.

the Federal Defenders of New York, in her declaration in this case, and the declarations from petitioners in this case.

18. Based on that information, it is my opinion that confinement at the MCC currently poses substantial and unacceptable risks to already vulnerable inmates of contracting the novel coronavirus and of developing acute symptoms from the virus. Based on that information, I believe that this risk has been exacerbated by the MCC's failure to implement medically appropriate measures, including: conducting any form of contact tracing, implementing adequate testing, or engaging in effective screening; developing sound quarantine and isolation practices; reducing overcrowding or otherwise improving housing conditions; providing basic hygiene necessities to inmates and adequate protective equipment to inmates and staff; and obtaining the medical resources necessary to care for symptomatic inmates.

19. COVID-19 has already entered the MCC. As of April 23, 2020, the facility reported that 5 inmates had tested positive.[36] It is my understanding that two of the 5 inmates who tested positive were housed on a single open dorm unit, which contains a number of at-risk inmates, all of whom sleep on bunk beds in close proximity and share one toilet and two sinks. A third inmate was housed on an adjoining open dorm unit. A fourth inmate was housed on the seventh floor, where men are double-celled. He came into contact with his cellmate, other inmates on the unit, and unit staff before being recognized as symptomatic. A fifth inmate was housed on unit 5 South,[37] where men are double-celled. The staff that interacted with these individuals have since

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[36] *See* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

[37] Two tiers of that unit (5 South) were covered in plastic, in an apparent effort to isolate sick men. Covering surfaces in plastic is ineffective in stopping the spread of the coronavirus; the virus

moved through other areas in the facility. To my knowledge, no effort has been made to systematically trace the contacts of the individuals who tested positive or the staff that interacted with them.

20. In addition to these 5 inmates, 33 MCC staff members have also tested positive. In a CDC report published March 18, 2020, an epidemiological investigation revealed that coronavirus-infected staff members contributed to the outbreak in a nursing home facility with ineffective infection control and prevention and staff members working in multiple facilities.[38] As with the inmates, the MCC has failed to conduct social tracing of the 33 staff members who have already tested positive. As a result, it is unknown how many inmates and other staff have been exposed to COVID-19 by the MCC staff who have tested positive. Given what we now understand about evidence of asymptomatic and presymptomatic transmissions, the same risks appear to exist in the MCC as are present in nursing home settings. Without contact tracing of those people whom the infected inmates and staff members came into contact with, it is difficult if not impossible to prevent the further spread of the virus.

21. The MCC is almost certainly dangerously undercounting the number of inmates it reports as positive. To date, the facility has only tested 7 of approximately 700 inmates.[39] During the period April 3 to April 23, 2020, the number of staff who tested positive increased nearly five-

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particles may attach to the plastic and then spread to individuals who come into contact with the plastic.

[38] *COVID-19 in a Long-term Care Facility—King County Washington, February 27-March 9, 2020*, CDC (Mar. 27, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e1-H.pdf.

[39] *See* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

fold, from 7 to 33,[40] and yet the number of positive tests among inmates remained relatively stagnant, as has the number of tests given. As of April 3, 2020, the MCC had tested 5 inmates, 4 of whom were positive; as of April 23, 2020, the MCC had tested only 7 inmates, 5 of whom were positive.[41] Only two additional inmates were tested in 20 days because the MCC does not have COVID-19 tests.[42] Instead, inmates are only tested if they are taken to a hospital because of the severity of their symptoms.

22. Without more testing, there is a serious risk of under-identifying the number of actual COVID-19 cases in the MCC. Jails in the region with more robust testing report much higher rates of infection: for example, in New York City, there were 373 incarcerated individuals with confirmed COVID-19 as of April 23, 2020.[43] There is no reasonable basis to conclude that the MCC, which is served by staff from a similar geographic community as the New York City correctional system and continues to admit new inmates as recently as April 23, 2020, is immune from this spread. With a deflated denominator—testing only 7 people—there is no way to know the true "attack rate" inside the MCC. The fact that the number of positive staff at the MCC increases daily, while the number of positive inmates (and the number of inmates tested) remains

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[40] *Compare* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 3, 2020), https://img.nyed.uscourts.gov/files/reports/bop/20200403_BOP_Report.pdf and Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

[41] *Compare* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 3, 2020), https://img.nyed.uscourts.gov/files/reports/bop/20200403_BOP_Report.pdf and Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

[42] *See* April 1, 2020 Letter from Warden Marti Licon-Vitale to Hon. Paul A. Engelmayer, *United States v. Bryant Brown*, 20 Cr. 12 (PAE), ECF No. 11-1.

[43] Daily Covid-19 Update, Monday, April 23, 2020, New York City Board of Correction, https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_23_2020.pdf

largely static, further supports this. The staff are tested outside the facility, and, unlike the inmates, do not have to rely on BOP for tests. A useful point of comparison is GEO Queens, the private contract facility which houses exclusively federal prisoners from EDNY and SDNY. Until recently, GEO was not testing most inmates exhibiting symptoms. As of April 3, 2020, GEO reported testing only 4 inmates, 1 of whom was positive.[44] But GEO subsequently decided to do more widespread testing of symptomatic inmates: as of April 23, 2020, GEO Queens reported testing 41 inmates, 38 of whom were positive.[45]

23. Knowing the actual toll of COVID-19 on the MCC inmate population is a necessary precursor to conducting the type of contact tracing or implementing the isolation and quarantine measures recommended by health experts to prevent an outbreak.

24. Based on my review of the MCC's responses to the Administrative Order of Chief Judge Mauskopf of the Eastern District of New York, instead of using widespread testing, the MCC uses a symptom-based screening model to make decisions about whether to provide medical care, quarantine, and isolate.[46] However, recent evidence shows the inadequacy of symptom-based screening tools alone in detecting, and preventing the transmission of, COVID-19.

25. Recent evidence has aided scientists and healthcare professionals in understanding why COVID-19 spreads so rapidly and dangerously. While it is well-known that symptomatic people transmit the virus, two additional transmission categories are essential to understanding the

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[44] *See* Apr. 3, 2020 Letter from GEO Queens to Chief Judge Mauskopf, https://img.nyed.uscourts.gov/files/reports/qdf/20200403%20QDF%20Report.pdf.

[45] *See* Apr. 23, 2020 Letter from GEO Queens to Chief Judge Roslynn Mauskopf, https://www.nyed.uscourts.gov/pub/bop/QDF_20200423_043331.pdf.

[46] *See* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

alarming rate of infection linked with this novel coronavirus: (1) asymptomatic transmission, or people who are infected and contagious but never display the symptoms associated with COVID-19, and (2) presymptomatic transmission, or people who are contagious before they begin to show symptoms.

26. At the end of March, CDC director Dr. Robert Redfield warned that as many as 25 percent of people infected with COVID-19 may not show symptoms.[47] On April 1, 2020, the CDC published a critically important study finding evidence of presymptomatic transmission.[48] When summarizing the implications of the study for public health practice, the CDC warned that "[t]he potential for presymptomatic transmission underscores the importance of social distancing, including the avoidance of congregate settings, to reduce COVID-19 spread."[49]

27. Furthermore, one of the chief tools the MCC is using to monitor symptomatic and exposed inmates is temperature checks.[50] This means that those people who contract COVID-19 but do not have an elevated fever will not be identified as positive—or even symptomatic—even though a person may be infected with the virus and have no fever or a low-grade one.[51]

28. The risk that asymptomatic staff members will spread COVID-19 within the MCC is very high. Staff continue to enter the facility every day from the community with only minimal

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[47] *See* Mandavilli, Apoorva, *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, The New York Times (last updated Apr. 20, 2020), https://www.nytimes.com/2020/03/3 health/coronavirus-asymptomatic-transmission.html.

[48] Wei WE, et al., *Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020*, MMWR Morbidity and Mortality Weekly Report (Apr. 10, 2020), https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6914e1-H.pdf.

[49] *Id.,* at 412.

[50] *See* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

[51] Coronavirus Symptoms FAQ, https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-symptoms-frequently-asked-questions.

screening. Staff enter and exit the facilities in two to three separate shifts each day, and potentially work in different housing areas on a daily basis, including moving from quarantined to non-quarantined units. Given what we now know about how the novel coronavirus spreads and how frequently transmission occurs when an infected person is not displaying any symptoms whatsoever, even robust efforts to screen symptoms and isolate presumed positives are not enough to prevent transmission without also employing widespread testing.

29. The MCC screening is in any event far from robust. While BOP protocols mandate "screening each and every staff member who walks in the door,"[52] this screen is quite limited: "[s]pecifically, a temperature is taken and the staff member is asked to fill out a screening form. If the staff member has a fever or answers yes to any of the questions, a medical professional can deny entry to the institution."[53] The staff screening form, which is publicly available on the BOP website, permits staff to work at the institution even if they report trouble breathing.[54] The Staff Screening Tool does not include any questions about recent exposure to persons who are symptomatic or have tested positive. This is in contrast to the BOP Coronavirus Disease Visitor Screening Form, which explicitly asks whether the visitor has "had close contact with anyone diagnosed with the COVID-19 illness within the last 14 days."[55]

30. As I understand them, the MCC's quarantine and isolation practices are also inadequate. Beginning on March 31, almost all of the units in MCC were deemed "quarantined"

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[52] *See* Letter from MCC Warden Marti Licon-Vitale to Chief Judge Roslynn Mauskopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200423_043300.pdf.

[53] *Id.*

[54] *See* BOP Coronavirus Disease Staff Screening Form, https://www.bop.gov/coronavirus/docs/covid19_staff_screening_tool_v2.8_20200327.pdf.

[55] *See* BOP Visitor/Volunteer/Contractor COVID-19 Screening Tool, https://www.bop.gov/coronavirus/docs/covid19_staff_screening_tool_v2.8_20200327.pdf.

because of exposure of inmates on the units to other symptomatic or positive inmates. However, this quarantine is not isolation, and does not even allow for social distancing: quarantined inmates are not allowed to leave their units, but continue to share dormitory spaces (with more than two dozen additional inmates) and double-cells, and use shared phones, computers, toilets and shower spaces. Accordingly, so-called "quarantined" housing units appear to differ in no appreciable way from non-quarantined units under the Phase Five and Six lockdown rules confining inmates to their cells and units. Additionally, I understand that at least some inmates who have tested positive have been confined in solitary confinement in cells on the third floor or in the Special Housing Unit, including in cells used to detain defendants standing trial for the 9/11 attacks. By requiring inmates to face the prospect of solitary confinement if they volunteer that they are symptomatic, the MCC has increased the risk that they will not self-report. This, in turn, compounds the MCC's difficulty in mitigating the spread of COVID-19 and treating ill patients.

31. Based on the published reports and news articles I have reviewed, along with the information contained in Deirdre von Dornum's declaration, the size of the population and the conditions of confinement at the MCC also increase the risk substantially of the virus spreading further.

32. The current population at the MCC is about 700 inmates.[56] Nearly 30 percent of the population fall into the high risk groups identified by the CDC.[57] The facility was designed to

[56] *See* https://www.bop.gov/locations/institutions/nym/ (updated regularly).

[57] The MCC has provided a list of 205 inmates whom the MCC believes fall into the CDC's high risk categories.

hold fewer than 500 inmates.[58] This overcrowding substantially increases the risk of a COVID-19 outbreak at the facility.

33. Despite already being overcrowded, I understand that new inmates continue to arrive at the MCC each week, including new arrests from the New York area, which is the epicenter of the COVID-19 outbreak in the United States, being admitted as recently as April 23, 2020. By continuing to add to the inmate population the MCC is introducing additional risk.

34. Male inmates in the general population at the MCC are housed either in either small two-man cells (originally designed for single occupancy) with a single shared toilet and sink or in large open dormitory units. The approximately 30 female inmates are housed in two-woman cells with a shared sink and toilet. Both two-person cells and open dormitory housing configurations pose serious risks of COVID-19 transmission.

35. Dorm housing areas are particular breeding grounds for COVID-19. I understand that at the MCC, beds in these units are in one room, and less than six feet apart, with each dormitory housing about 26 men, all of whom share one toilet and one or two sinks as well as common showers, phones, tables and dayroom benches. Adequately sanitizing a space with those characteristics would require constant diligence and a continuous abundance of cleaning supplies that appears to be lacking at the MCC. Cleaning once a day, or even a few times a day, particularly with insufficient supplies, would not prevent transmission of the virus in such conditions.

36. Double-cell housing areas also pose elevated risk of transmitting the virus, particularly during a lockdown. (The MCC has been on lockdown since March 13, and the BOP

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[58] Jeanne Theoharis, *I Tried to Tell the World About Epstein's Jail. No One Wanted to Listen*, The Atlantic (Aug. 16, 2019), https://www.theatlantic.com/ideas/archive/2019/08/real-scandal-mcc/596257/.

announced on April 14, 2020 that this lockdown would continue through May 18, 2020.) I understand that in the double-cell housing areas of the MCC, two inmates are held in a cell less than 80 square feet with a shared toilet and sink. Under such conditions, if one person contracts COVID-19, the other will almost inevitably contract it. And even if one's cellmate is not symptomatic, during the brief periods when groups of inmates are let out of their cells, they all share showers, telephones, and computer terminals, without sanitization in between uses.

37. I also understand that inmates are not being provided the supplies they need to follow sound hygiene practices or keep their environment adequately clean. No hand sanitizer is currently available to inmates at the MCC, and each inmate is given a small amount of soap a week, at most. Access to additional soap is limited to those inmates who have sufficient commissary funds to purchase it, and dependent on the commissary being open; it is routinely closed during lockdowns. Tissues are also not readily available. Instead, inmates use toilet paper to blow their noses and each inmate is provided only one roll of toilet paper per week. Inmates are responsible for sanitizing the housing unit common areas, but have reported frequently lacking adequate cleaning supplies to do so. Finally, there are no wipes or other cleaning supplies readily available to clean the telephones and computer terminals inmates share to communicate with lawyers and family.

38. From what we have learned throughout this crisis, sound hygiene, including frequent handwashing and thorough cleaning, are among the critical measures necessary to protect populations from rapid infection because the novel coronavirus can spread from contact with

contaminated surfaces or objects.[59] Such practices are particularly important in correctional settings, where the risk of contracting an infectious disease is heightened and other preventive measures, like social distancing, are more difficult to follow. Failure to provide inmates the items they need to practice sound hygiene and to engage in thorough cleaning in such a setting, greatly increases the risk of COVID-19 transmission at the facility.

39. Based on reports from inside the facility, MCC staff are not receiving or properly using the personal protective equipment necessary to reduce the risk of COVID-19 transmission. The staff who work on the housing units are not provided N-95 masks. Instead, they have been given only surgical masks for use, even when entering isolation or quarantine units or escorting inmates to the hospital for COVID-19 tests.[60] In addition, not all MCC staff wear masks or gloves while working in the housing units. Because staff move freely about the facility, including entering and exiting it, and regularly interact with substantial numbers of inmates, they are particularly likely to spread COVID-19 if they contract it. As a result, it is particularly important that they be provided with the supplies and tools that will allow them to take all necessary precautions.

40. Inmates at the MCC who do contract COVID-19 are at higher risk for developing acute symptoms than if they were in the community, because the MCC lacks the medical resources to care for symptomatic inmates.

a. There is no separate medical facility for ill inmates. Unlike many Federal Correctional Institutions, the MCC has no physical space in which an ill inmate can

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[59] *See How COVID-19 Spreads*, CDC (Apr. 13, 2020), https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html.

[60] When inmates have tested positive, the inmate orderlies who have been used to clean the infected units, and have not been given N-95 masks.

convalesce that is separate from other inmates. Rikers Island, by comparison, has a medical facility on site, which includes negative pressure rooms to prevent the spread of contagious disease.

b. On weekdays, there are only two doctors regularly available at the MCC to care for all of the approximately 700 inmates. Even this limited number is likely to decrease as doctors themselves go into quarantine.

c. There are no doctors regularly at the MCC on weekends or evenings.

d. While locked in their units, the only way inmates can seek medical attention is by ringing an emergency bell. Inmates report these bells frequently go unanswered or have been disabled.

e. People who contract COVID-19 can deteriorate rapidly, even before a test result can be received. They need constant monitoring. Most people in the higher risk categories will require more advanced support, such as positive pressure ventilation and, in extreme cases, extracorporeal mechanical oxygenation. Such care requires specialized equipment in limited supply, as well as an entire team of specialized care providers. The MCC has neither specialized equipment nor specialized care providers.

41. The MCC is short-staffed. This staffing shortage has only increased as employees need to stay home to care for children whose schools are closed, care for sick or elderly family members, and to care for themselves. With fewer staff, correctional officers are less able to effectively monitor inmates' health.

VI. Implementing Safety Measures and Reducing Population Size at the MCC Is A Critical Public Health Necessity

42. Every effort should be made to reduce chances of inmates' exposure to the novel coronavirus. Measures that the MCC should take immediately include implementing widespread

and routine testing to identify carriers of COVID-19. The facility should also adopt contact tracing to ensure that each inmate or staff member who tests positive, shows symptoms of, or has been exposed to the novel coronavirus, is isolated or quarantined in a medically appropriate manner that does not discourage self-reporting. Additionally, the MCC should implement enhanced facility cleaning, including regularly disinfecting commonly touched surfaces, and should distribute to inmates basic hygiene necessities such as hand soap, tissues and cleaning supplies. The MCC should provide staff members with N-95 masks, worn at all times by them while working at the facility, and inmates with new surgical masks at least daily. The MCC also needs additional medical staff beyond the two doctors the facility currently has in order to be appropriately responsive to its inmates' medical needs.

43. However, even these steps will not be enough. Given the proximity and high number of inmates, correctional staff, and healthcare workers at the MCC, it will be extremely difficult to sufficiently mitigate the risks of COVID-19 through these practices alone. There is an urgent priority to reduce the number of people in the MCC, during this national public health emergency, in order to better protect against contraction and transmission of COVID-19 by both the inmates who are released from the MCC and those who remain. Now that the coronavirus is inside the MCC, the risk to staff and inmates has only increased, and the lives of those who live and work inside the institution may be in peril.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: April 27, 2020
Brooklyn, New York

Dr. Jonathan Giftos

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated, Petitioners, -v.- MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center, Respondent.	No. 20 Civ. 3315 **DECLARATION OF CESAR FERNANDEZ-RODRIGUEZ**

CESAR FERNANDEZ-RODRIGUEZ declares the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. My name is CESAR FERNANDEZ-RODRIGUEZ. I am a pre-trial detainee in the Metropolitan Correctional Center ("MCC"). My trial is currently set for July 8, 2020. My registration number is 90994-054. I have been housed on the 7th floor since arriving here.
2. I am 37 years old. I have severe chronic asthma, which was first diagnosed in 2009. Shortly before I was arrested I was hospitalized in January for 48 hours at Montefiore Hospital in the Bronx with a severe asthma attack, and went to St. Joseph's Medical Center in Yonkers in December for a similar reason. I have been prescribed prednisone, albuterol, ibuprofen, and benzonatate for my asthma, which I took regularly before being detained, but MCC staff have only provided me with an inhaler. I last had an asthma attack on March 12th after the guards used pepper spray on my floor. I was not given any medical care.

3. I share my small cell with another inmate. My cellmate and I share a toilet and a sink.
4. For the last week or so, I have had symptoms of Covid-19. I have had a fever and a cough, and my cellmate has shown similar symptoms. I have told the guards about my condition, but so far, the only care I have received is having my temperature taken by the guards.
5. I have not been told what the MCC's testing procedures are, other than I was told I should tell the guards if I start to feel worse. The only testing I know of is taking a person's temperature. At least four people who were on 7 and got sick were removed to another floor.
6. All inmates on 7 are currently confined to their cells 23 hours a day, including mealtimes. We are only allowed to shower once every three days. Other than being told we are remaining in our cells to limit our exposure to Covid-19, we have not been given any other information about what the guards or prison staff are doing to fight the disease.
7. We have not been given any extra soap or supplies, and MCC is charging inmates for these items.
8. I am afraid because I have no access to medicine, and I don't know if I have the virus or not. I'm very nervous that my symptoms will get worse and trigger my asthma, and I don't know what kind of care I'll be able to get since I don't have my medication.

Executed on: April 27, 2020
New York, New York

As reported by Cesar Fernandez-Rodriguez to Ryan A. Partelow of Covington & Burling LLP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated, Petitioners, -v.- MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center, Respondent.	No. 20 Civ. 3315 **DECLARATION OF ROBER GALVEZ-CHIMBO**

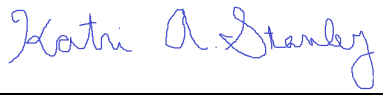
ROBER ALBERTO GALVEZ-CHIMBO declares the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. My name is ROBER ALBERTO GALVEZ-CHIMBO and I have been an inmate at the Metropolitan Correctional Center ("MCC") since July 12, 2019. I am currently awaiting sentencing, and my sentencing date is scheduled for June 5, 2020. My Registration Number is 76320-054.
2. I am 45 years old.
3. When I arrived at the MCC I was placed in 7S. In early March of 2020, I was moved to 7N.
4. On March 25, 2020, I began to feel sick. My symptoms included an extreme bloody nose, fevers, loss of sense of smell and taste, severe coughing, loss of appetite, physical body aches, and nighttime chills. I felt extremely unwell.

5. Through my cellmate (as I do not speak English and require a translator), I repeatedly requested medical attention. My cellmate was also experiencing similar symptoms. No one responded at first. I eventually saw a doctor on April 7, 2020. The doctor listened to my lungs and took my temperature. He gave me a prescription for the antibiotic Levofloxacin, 500mg, and told me to take Tylenol.
6. Despite my symptoms, no one has tested me for COVID-19.
7. I have lost 18 pounds since first becoming sick in prison.
8. I was put in isolation on April 8, 2020, and moved to the third floor. I was moved out of isolation on April 24, 2020, and put back on 7N. I was placed in isolation with my cellmate, and as of April 27, 2020, have been placed back with him on 7N.
9. This Declaration was prepared by Katri Stanley, a law clerk at Covington & Burling, the law firm that is representing me in this case, based on my statements to her. Ms. Stanley read a translated version to me in Spanish, and I agreed it was correct.

Executed on: April 27, 2020
New York, New York

As reported by Rober Alberto Galvez-Chimbo to Katri Stanley of Covington & Burling LLP



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated, Petitioners, -v.- MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center, Respondent.	No. 20 Civ. 3315 **DECLARATION OF SHARON HATCHER**

SHARON HATCHER declares the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. My name is SHARON HATCHER and I have been an inmate at the Metropolitan Correctional Center ("MCC") since July 25, 2018. My Registration Number is 85973-054. I have been housed in the Women's Housing Unit since arriving here.
2. I was sentenced on March 4, 2020. I was told that I will be sent to another prison to serve my sentence but I do not know which one it will be.
3. I am 53 years old and I am in not in good health. I am HIV positive, and I suffer from Chronic Obstructive Pulmonary Disease ("COPD"). I am also clinically obese and have high blood pressure and high cholesterol. I am currently prescribed eight different medications for my health issues.

4. Because of my COPD I get a lot of upper respiratory infections. In the past, I have been hospitalized because I was having problems breathing.
5. I share my small cell with another inmate. My cellmate and I share a toilet and a sink.
6. For almost a month, my housing unit has been under quarantine. We are locked in our cells for as many as 23 hours a day, including at mealtimes, but we still share common spaces like the shower. They do not disinfect the showers between use.
7. We also all use the same phones and computers. The phones and computers are not sanitized in between uses.
8. We are given one thin surgical mask a week to wear.
9. We get one or two very small bars of soap when they have it, but that is not every week. If we want extra soap we have to pay for it and there are limits on how much soap we can buy.
10. We have not been given hand sanitizer or tissues, even recently.
11. I don't know of anyone in my unit having been tested for COVID-19, even people who seem sick.
12. This declaration was prepared by attorney Timothy Sprague based on my statements to him. Mr. Sprague read it to me and I agreed it was correct.

Executed on: April 24, 2020
New York, NY

As reported by Sharon Hatcher to Timothy C. Sprague of Covington & Burling LLP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated, Petitioners, -v.- MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center, Respondent.	No. 20 Civ. 3315 **DECLARATION OF JONATHAN MEDINA**

JONATHAN MEDINA declares the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. My name is JONATHAN MEDINA and I have been an inmate at the Metropolitan Correctional Center ("MCC") since October 1, 2019. My Registration Number is 62407-054.
2. I was sentenced on March 1, 2019, to a nine month sentence for a supervised release violation, and am scheduled for release on June 29, 2020 of this year. I am currently a cadre inmate.
3. I am 32 years old and I have asthma. I have not had access to my inhaler since about February 27, 2020.
4. I used to share a small cell with a roommate, but on about February 27, 2020, I was placed in the Special Housing Unit ("SHU") for about three weeks. No one told me why and I never received an incident report. When I was released from the SHU, I was

moved to 11 South, an open dormitory unit, where I'm living in a dormitory with 25 other cadre and pre-trial inmates.

5. In our dormitory we share one toilet, one sink, and a shower. We also sleep very close to each other in an open room.

6. Our unit went into quarantine around March 21, 2020. Before that day, there was a person in my dormitory who said he was feeling sick. As far as I know he was not given any medical treatment, just Tylenol. When we went into quarantine, he was still in our dormitory and sleeping in the same room as us even though he still seemed sick.

7. During the two weeks we were in quarantine, most of the people in my unit had coronavirus symptoms. People, including in my dormitory, were coughing, had fevers, chills, and achy bones, and lost their sense of smell and taste. The only medical treatment people seemed to be getting was temperature checks and Tylenol. Even though some people in my dormitory had fevers, a Corrections Officer said that they were only isolating people whose temperatures were higher than 104.

8. I had chills, trouble breathing, and achy bones. I did not inform any staff about my symptoms because I was afraid that they would isolate me to the SHU.

9. I believe that four people were removed from my unit during quarantine, and two of them have told me that they tested positive for COVID-19.

10. I have not been tested for COVID-19 and have not received any medical treatment, aside from temperature checks.

11. Since the two-week quarantine, we have stopped receiving temperature checks, even though my unit remains on lockdown. We are released from the unit for only 2 hours every day.

12. Since about April 21, 2020, I've resumed my cadre duties and have been serving breakfast and sanitizing my unit and the kitchen.

13. I do not have access to soap, unless I purchase it. I'm given a cloth mask once a week, and do not receive a different mask for my cadre duties.

14. This declaration was prepared by attorney Ishita Kala based on my statements to her. Ms. Kala read it to me and I agreed it was correct.

Executed on: April 24, 2020
New York, NY

As reported by Jonathan Medina to Ishita Kala of Covington & Burling, LLP

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CESAR FERNANDEZ-RODRIGUEZ, ROBER GALVEZ-CHIMBO, SHARON HATCHER, JONATHAN MEDINA, and JAMES WOODSON, individually and on behalf of all others similarly situated, Petitioners, -v.- MARTI LICON-VITALE, in her official capacity as Warden of the Metropolitan Correctional Center, Respondent.	No. 20 Civ. 3315 **DECLARATION OF JAMES WOODSON**

JAMES WOODSON declares the following under penalty of perjury and pursuant to 28 U.S.C. § 1746:

1. My name is JAMES WOODSON and I have been an inmate at the Metropolitan Correctional Center ("MCC") since February 5th, 2020. My Registration Number is 85862-054.
2. I am 56 years old and I have asthma, chronic lung disease, hypertension, hepatitis-B, hyperthyroidism, and HIV. I also struggle with depression and anxiety.
3. I have not received a nebulizer to help with my asthma since coming to the MCC. The rescue inhalers that I have been given have not been enough on their own. As a result, I have had a serious asthma attack, and often have difficulty breathing. When I report my breathing difficulties, the staff tell me that I need to place a sick call. I have done so multiple times, but I have still not seen a doctor. The staff just give me more inhalers.

4. In early March, I was sent to a facility in Otisville while the staff searched for a loaded gun in the MCC.
5. I returned from Otisville on March 12, 2020, and was immediately placed in a unit on 11 South. This is a dorm unit that holds 26 beds. The unit is cramped and overcrowded.
6. My unit shares two sinks, one urinal, one toilet, and one shower. When we arrived, one sink did not work, and the shower and toilet had leaks. Because of prior flooding, the unit was putrid. Because the toilet continues to leak, the floor is constantly wet and the bathroom smells like urine.
7. The staff have not given me any clothing other than the outfit I was wearing the day we returned from Otisville. I have now worn the same clothes for over 40 days.
8. After we returned from Otisville, the MCC staff did not return many of our personal items, including hygiene products. These items are not always available at the commissary.
9. I have been provided a small hygiene kit, but I have not been given extra soap or cleaning supplies.
10. Disinfectant has not been made available to everyone in the unit.
11. I have not received any gloves or hand sanitizer.
12. About a week ago, I was given one mask.
13. On March 21, 2020, a member of my dorm who slept two beds away from me got sick. He had a high fever, was vomiting, and was sweating intensely. We had to bang on the walls and doors in order to attract the attention of the CO, but the staff did not remove him from our unit until the next morning. I understand that he tested positive for COVID-19.
14. Since then, the MCC staff has removed two other members of my dorm and placed the rest of us on quarantine. We have not been separated from each other.

15. Some other members of my unit that feel sick do not report anything to the staff because they do not want to be put in the SHU.

16. Our access to the staff has been greatly reduced. This includes very limited access to medical staff. We are told the medical staff are not available during evenings and nights. When members of my unit have needed to see medical staff, they were not seen until the morning.

17. The staff do check our temperatures, but are doing so less often now, approximately once a week.

18. My unit has not been cleaned, sanitized, or disinfected since members became sick.

19. This Declaration was prepared by attorney Gavin Bosch based on my statements to him. Mr. Bosch read it to me and I agreed it was correct.

Executed on: April 24, 2020
New York, New York

As reported by James Woodson
to Gavin Bosch of Covington
& Burling LLP