

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Marquis Collier, John Doe I, John Doe II, and John Doe III, individually and on behalf of all others similarly situated,	20 Civ. 2183
Petitioners,	
v.	
RALPH SOZIO, United States Marshal, Southern District of New York; BRYAN T. MULLEE, Acting United States Marshal, Eastern District of New York; THE GEO GROUP, INC.; WILLIAM ZERILLO, Facility Administrator, Queens Detention Facility,	DECLARATION OF JONATHAN GIFTOS, M.D.
Respondents.	
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I, Jonathan Giftos, hereby declare 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 of 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. I successfully led an effort to remove non-clinical barriers to opioid treatment program

enrollment in 2017, which dramatically expanded treatment access from 25% to over 80%, while also reducing post-release mortality for people with opioid use disorder.

3. I have extensive experience working with at-risk populations, such as the incarcerated and those experiencing homelessness.

4. I submit this Declaration in support of the Class Action Petition Seeking Writ of Habeas Corpus.

The Novel Coronavirus Pandemic in New York City

5. On March 11, 2020, the World Health Organization (“WHO”) 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 The virus is currently known to spread from person-to-person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.² The Centers for Disease Control and Prevention (“CDC”) also warn of “community spread,” where the virus spreads easily and sustainably within a community where the source of the infection is unknown. Experts are still learning about how COVID-19 spreads.³

¹ See *Media Briefing on March 11, 2020*, 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 See *How COVID-19 Spreads*, Centers for Disease Control and Prevention (Apr. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

³ See Press Release, Centers for Disease Control and Prevention, CDC Confirms Possible Instance of Community Spread of COVID-19 in U.S. (Feb. 26, 2020), <https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html>.

6. As of May 12, 2020, novel coronavirus has infected over 4,259,255 people, leading to over 291,843 deaths worldwide.⁴ Since the first reported case in New York on March 1, 2020, the number of infected cases has risen by over 4.2 million. The United States now has the most infections in the world, with 1,369,386 confirmed cases and at least 82,339 deaths from the virus.⁵ There are confirmed coronavirus cases in every state, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.

7. Governor Andrew Cuomo declared a State of Emergency in New York State on March 7, 2020.⁶ Mayor Bill De Blasio declared a State of Emergency in New York City on March 13, 2020.⁷ On March 20, 2020, Governor Cuomo issued an Executive Order entitled “New York State on PAUSE,” requiring businesses to close and banning gatherings.⁸ As of May 12, 2020, there are 338,485 positive cases in New York State with more than 184,319 in New York City.⁹

⁴ See *COVID-19 Dashboard by the Center for System Science and Engineering (CSSE) at Johns Hopkins University*, Johns Hopkins University of Medicine: Coronavirus Resources Center, <https://coronavirus.jhu.edu/map.html> (last visited May 12, 2020, 10:30 PM).

⁵ See *id.*

⁶ See Exec. Ord. No. 202 (Mar. 7, 2020), available at: <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>.

⁷ See Press Release, Office of the New York City Mayor, Mayor Bill de Blasio Issues State of Emergency (Mar. 13, 2020), available at: <https://www1.nyc.gov/office-of-the-mayor/news/138-20/mayor-de-blasio-issues-state-emergency>.

⁸ See Exec. Ord. No. 202.8 (Mar. 20, 2020), available at: <https://www.governor.ny.gov/news/no-2028-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>; see also Press Release, New York State, Governor Cuomo Signs the ‘New York State on PAUSE’ Executive Order (Mar. 20, 2020), <https://www.governor.ny.gov/news/governor-cuomo-signs-new-york-state-pause-executive-order>.

⁹ See *COVID-19 Dashboard by the Center for System Science and Engineering (CSSE) at Johns Hopkins University*, Johns Hopkins University of Medicine: Coronavirus Resources Center, <https://coronavirus.jhu.edu/map.html> (last visited May 12, 2020, 10:30 PM).

To date, there have been 15,101 confirmed deaths from COVID-19 just in New York City, 4,529 of which were in Queens County.¹⁰ Queens County has the one of the highest deaths rates from COVID-19 of all counties in the United States.¹¹ Among the positive cases in New York City are incarcerated people, as well as people who work in detention facilities, courthouses, law enforcement, legal offices, and in the medical field, increasing the likelihood of further exposure to and by incarcerated people.

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 CDC strongly recommends the following actions: thorough and frequent handwashing, cleaning surfaces with Environmental Protection Agency-approved disinfectants, keeping at least six feet of space between people, and avoiding group settings.¹² Social distancing has also been strongly recommended, 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.¹³ The CDC now recommends that everyone wear a mask or cloth face covering when they go out in public.¹⁴ On April 15, 2020, Governor Cuomo issued an Executive Order requiring all people in New York to wear a mask or

¹⁰ *See id.*

¹¹ *See id.*

¹² *See How to Protect Yourself & Others*, Centers for Disease Control and Prevention (Apr. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

¹³ *See 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>.

¹⁴ *See Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission*, Centers for Disease Control and Prevention (Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

cloth face covering when they are out in public and social distancing is not possible.¹⁵ In correctional settings, appropriate sanitation, social distancing, face-covering, and self-quarantining measures are extremely difficult or even impossible, especially when inmates are routinely moved with other prisoners.¹⁶

The Risk of Infection and Accelerated Transmission of COVID-19 Within Jails and Prisons Is Extraordinarily High

9. On May 6, 2020, the CDC issued a report on the challenges of controlling the spread of COVID-19 in correctional and detention facilities: 86% of jurisdictions reporting to the CDC had at least one confirmed COVID-19 case among incarcerated persons or staff members, resulting in, as of April 21, 2020, 4,893 cases and 88 deaths among incarcerated persons and 2,778 cases and 15 deaths among staff members.¹⁷ The CDC concluded that “[p]rompt identification of persons with COVID-19 and consistent application of prevention measures within correctional and detention facilities are critical to protecting incarcerated or detained persons, staff members, and the communities to which they return.”¹⁸

10. Prisons and jails like GEO Queens are not actually isolated from our communities: hundreds of thousands of correctional officers and correctional healthcare workers enter these

¹⁵ See Exec. Ord. No. 202.17 (Apr. 15, 2020), available at: <https://www.governor.ny.gov/news/no-20217-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency>.

¹⁶ See Danielle Ivory, *We Are Not a Hospital*, N.Y. Times (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>.

¹⁷ See Meaghan Wallace, Ph.D., et al., *COVID-19 in Correctional and Detention Facilities—United States, February–April 2020*, Centers for Disease Control and Prevention: Morbidity and Mortality Weekly Report (May 6, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm> (hereinafter “CDC May 6, 2020 Report”).

¹⁸ *Id.*

facilities every day, returning to their families and to our communities at the end of their shifts, bringing back and forth to their families and neighbors and to incarcerated patients any exposures they have had during the day. Access to personal protective equipment (“PPE”) and testing for officers has been limited, and prisons are not quarantining correctional staff who have been in contact with infected individuals.¹⁹

11. 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 no possibility of staying at a distance from others. Correctional facilities house large groups of people together, and move them in groups to eat, do recreation, and go to court. 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, and hand sanitizer is often prohibited.²⁰ Incarcerated people, rather than professional cleaners, are responsible for cleaning the facilities and often not given appropriate

¹⁹ See Joseph Neff & Keri Blakinger, *Federal Prisons Agency ‘Put Staff in Harm’s Way’ of Coronavirus*, The Marshall Project (Apr. 3, 2020), <https://www.themarshallproject.org/2020/04/03/federal-prisons-agency-put-staff-in-harm-s-way-of-coronavirus>; Bernadette Hogan, *NY State Prison Guards Beg Cuomo to Protect Workers from Coronavirus*, N.Y. Post (Mar. 30, 2020), <https://nypost.com/2020/03/30/ny-state-prison-guard-beg-cuomo-to-protect-workers-from-coronavirus/>; Nick Pinto, *Internal Prison Guard Email Contradicts Government’s Claims to Judges About Containing Coronavirus at Federal Detention Center*, The Intercept (Apr. 10, 2020), <https://theintercept.com/2020/04/10/prison-coronavirus-mdc-bop/>.

²⁰ See Justine van der Leun, *The Incarcerated Person Who Knows How Bad It Could Get*, Medium (Mar. 19, 2020), <https://gen.medium.com/what-its-like-to-be-in-prison-during-the-coronavirus-pandemic-1e770d0ca3e5> (“If you don’t have money, you don’t have soap or tissues.”); Keri Blakinger & Beth Schwartzapfel, *How Can Prisons Contain Coronavirus When Purell Is Contraband?*, ABA Journal (Mar. 13, 2020), <https://www.abajournal.com/news/article/when-purell-is-contraband-how-can-prisons-contain-coronavirus>.

supplies. This means there are more people who are susceptible to getting infected congregated together in a context in which fighting the spread of infection is nearly impossible.

12. Inmate populations are regularly hit with outbreaks of the flu, and many jails and prisons were hit hard by the H1N1 influenza epidemic in 2009.²¹

Inmate Populations Also Have the Highest Risk of Acute Illness and Poor Health Outcomes If Infected With COVID-19

13. There are more than 2.3 million people incarcerated in the United States.²² An estimated 39–43% of all prisoners have at least one chronic health condition, some of the most common of which are diabetes, hypertension, and heart problems.²³ According to the CDC and other health experts, each of these conditions—as well as moderate to severe asthma, chronic bronchitis, emphysema, obesity, diabetes, blood disorders, chronic kidney disease, chronic liver disease, heart disease, lung disease, any condition or treatment that weakens the immune system, inherited metabolic disorders and mitochondrial disorders, and certain neurological and neurologic and neurodevelopment conditions—puts them at “high-risk for severe illness from COVID-19.”²⁴

²¹ See Nicole Wetsman, *Prisons and Jails Are Vulnerable to COVID-19 Outbreaks*, The Verge (Mar. 7, 2020), <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap>.

²² See Kimberly Kindy, Emma Brown & Dalton Bennett, ‘Disaster Waiting to Happen’: Thousands of Inmates Released As Jails and Prisons Face Coronavirus Threat, Wash. Post (Mar. 19, 2020), https://www.washingtonpost.com/national/disaster-waiting-to-happen-thousands-of-inmates-released-as-jails-face-coronavirus-threat/2020/03/24/761c2d84-6b8c-11ea-b313-df458622c2cc_story.html.

²³ See Josiah D. Rich et al., *How Health Care Reform Can Transform the Health of Criminal Justice-Involved Individuals*, 33 Health Affairs 462 (2014); Laura M. Maruschak et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, U.S. Dep’t of Justice (Oct. 4, 2016), <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>.

²⁴ See *If You Are At Higher Risk*, Harvard Health Publishing: Harvard Medical School (May 6, 2020), <https://www.health.harvard.edu/diseases-and-conditions/if-you-are-at-higher-risk; People Who Are at a Higher Risk for Severe Illness>, Centers for Disease Control and Prevention

Further, those with pre-existing medical conditions have a higher probability of death if infected. The WHO-China Joint Mission Report found that those with cardiovascular disease had a mortality rate of 13.2; those with diabetes had a mortality rate of 9.2%; those with hypertension had a mortality rate of 8.4%; those with a chronic respiratory disease had a mortality rate of 8.0%; and those with cancer had a mortality rate of 7.6%.²⁵

14. Because individuals over 60 years old are more likely to die of COVID-19 than those under the age of 60,²⁶ the risk of coronavirus to incarcerated seniors is high. This fact is of particular concern for inmate populations, since a prisoner's physiological age averages 10 to 15 years older than their chronological age.²⁷ Therefore, the consensus among those who study correctional health is that inmates are generally considered "geriatric, by the age of 50 to 55 years."²⁸ Moreover, even many young federal prisoners suffer from asthma, rendering them vulnerable to coronavirus.²⁹

(Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

²⁵ See *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* at 12, World Health Organization (Feb. 16–24, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

²⁶ See *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)* at 12, World Health Organization (Feb. 16–24, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>.

²⁷ See Brie Williams et al., *Aging in Correctional Custody: Setting a Policy Agenda for Older Prisoner Health Care*, 102 Am. J. Pub. Health 1475 (2012).

²⁸ See Brie Williams et al., *The Older Prisoner and Complex Chronic Medical Care*, World Health Organization: Prisons and Health (2014), http://www.euro.who.int/__data/assets/pdf_file/0007/249208/Prisons-and-Health,-19-The-older-prisoner-and-complex-chronic-medical-care.pdf?ua=1.

²⁹ See Laura Maruschak, *Medical Problems of Jail Inmates*, Dep't of Justice (Nov. 2006), <https://www.bjs.gov/content/pub/pdf/mpji.pdf>.

15. But it is not only the elderly, or those with preexisting medical conditions, that are at risk of coronavirus in a correctional setting. Even for young, healthy individuals, COVID-19 presents a serious risk to health and can require advanced medical support. As of May 12, 2020, the New York City Department of Health reported that people ranging in ages from 18 to 44 have accounted for 37% of positive tests and 15% of hospitalizations.³⁰ The CDC reports that 22% of individuals requiring admission in the Intensive Care Unit (“ICU”) do not have any underlying health conditions.³¹ And, even when not fatal, the novel coronavirus 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, kidneys, and brain.³²

16. In New York City, one of the areas of early spread in the United States, hundreds of correctional officers and individuals in federal and state custody have already become infected with COVID-19. As of May 12, 2020, 6 inmates and 37 staff at the Brooklyn Metropolitan Detention Center (“MDC”), 5 inmates and 40 staff at the Manhattan Metropolitan Correctional Center (“MCC”), and 38 inmates and 25 staff at the Queens Detention Facility (“GEO Queens”)

³⁰ See *Coronavirus Disease 2019 (COVID-19): Daily Data Summary, NYC COVID-19 Cases*, NYC Health (May 12, 2020), <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-daily-data-summary-04232020-1.pdf>; *Coronavirus Disease 2019 (COVID-19): Daily Data Summary, NYC COVID-19 Hospitalizations Among Confirmed Cases*, NYC Health (May 12, 2020), <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-daily-data-summary-hospitalizations-04232020-1.pdf>.

³¹ See *Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019—United States, February 12–March 28, 2020*, Centers for Disease Control and Prevention (Apr. 3, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6913e2.htm>.

³² See George Citroner, *What We Know About the Long-Term Effects of COVID-19*, Healthline (Apr. 21, 2020), <https://www.healthline.com/health-news/what-we-know-about-the-long-term-effects-of-covid-19>.

tested positive for COVID-19.³³ On April 1, 2020, Dr. Ross MacDonald, the chief physician of New York City's Rikers Island jail facility, announced that the facility's medical team would be unable to stop COVID-19 from entering the facility and called for release as the primary response to the crisis.³⁴ Dr. MacDonald's prediction has become reality. As of May 11, 2020, 438 people incarcerated by the New York City Department of Corrections and Community Supervision ("DOCCS") tested positive for COVID-19, along with 54 parolees and 1,185 staff; so far, 16 people incarcerated by the DOCCS, 4 parolees, and 4 staff have died.³⁵ These statistics are based on public reporting of testing performed by the facilities. The true number of correctional officers and incarcerated individuals who have contracted COVID-19 is likely higher, and in some cases significantly so.

The Specific Conditions at GEO Queens Put Inmates at a High Risk of Contracting and Developing Acute Symptoms of COVID-19

17. Based on my understanding of the specific conditions at GEO Queens as contained in published reports and communicated to me by Deirdre D. von Dornum, Attorney-in-Charge of the Federal Defenders of New York, these conditions pose heightened risks to already vulnerable inmates of contracting the novel coronavirus and of developing acute symptoms from the virus.

³³ Letter from M. Licon-Vitale & D. Edge to Hon. Roslynn R. Mausekopf (May 12, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200512_034109.pdf; Letter from William Zerillo to Hon. Roslynn R. Mausekopf (May 12, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200512_034142.pdf.

³⁴ See Miranda Bryant, *Coronavirus Spread at Rikers Is a 'Public Health Disaster,' Says Jail's Top Doctor*, The Guardian (Apr. 1, 2020), <https://www.theguardian.com/us-news/2020/apr/01/rikers-island-jail-coronavirus-public-health-disaster> ("Ross MacDonald, the jail's chief physician . . . warned that it is 'unlikely' they will be able to stop the growth, predicting that 20% of those infected will need hospital treatment and [will need] 5% ventilators. He also called for the release of 'as many vulnerable people as possible.'").

³⁵ See *Daily Update: May 11, 2020*, New York State: Department of Corrections and Community Supervision, <https://doccs.ny.gov/doccs-covid-19-report>.

18. The size and characteristics of the population and the physical layout of GEO Queens, which has not been modified during this pandemic, increase the risk of infection substantially:

a) GEO Queens has the capacity to hold 222 inmates,³⁶ and approximately 175 people are currently incarcerated at GEO Queens.

b) GEO Queens has identified almost half of its detainees as having a pre-existing condition that puts them at heightened risk of contracting or suffering acutely from COVID-19.

c) Inmates are housed in seven, large, open dormitory units, each of which contains between 20 and 46 beds situated in close proximity to one another.³⁷ The beds are bunked, and each bunk is no more than two to three feet apart, with no barrier separating the bunks. There are only eight single-cell Special Housing Units (“SHU”) in which it is possible to isolate sick or symptomatic people. With the facility at approximately 80% capacity, social distancing in these conditions is impossible.

d) Although GEO Queens reported that, as of April 16, 2020, individuals who are at high-risk of contracting and developing acute symptoms of COVID-19 were being isolated in single-occupancy cells,³⁸ GEO Queens only has eight single-occupancy cells (SHU) and a population of approximately 177 inmates. I understand that GEO Queens has identified over half

³⁶ See *Queens Detention Facility*, GEO Group, Inc.: Our Locations, <https://www.geogroup.com/FacilityDetail/FacilityID/73> (“Capacity: 222.”).

³⁷ See Letter from William Zerillo to Hon. Roslynn R. Mauskopf (Apr. 16, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200416_053144.pdf.

³⁸ See *id.* (“Individuals, who are at a higher risk of illness, have been placed into single occupancy cells with solid walls and doors, isolated from the general population.”).

of the inmates as meeting at least one of the CDC's risk factors for contracting or suffering acute symptoms of COVID-19. Thus, a majority of high-risk inmates are not able to isolate, but rather, are housed in dormitories with dozens of other inmates, where they are not able to take CDC-recommended precautions, such as social distancing, isolating from people who are sick, and cleaning and disinfecting frequently touched surfaces.³⁹

e) Inmates at GEO Queens eat all meals together on tables shared by the entire dormitory unit.

f) Inmates at GEO Queens must share small bathroom facilities located in the dormitories.

g) Inmates share telephones to call their families and lawyers.

19. I believe that the risks of COVID-19 posed by the size and characteristics of the population and the physical layout of GEO have been exacerbated by the fact that GEO Queens has not implemented medically appropriate measures recommended by the CDC. Significantly, the CDC has recommended seven key strategies to stop the spread of COVID-19 within detention facilities: (1) regular symptom screening; (2) isolating people with symptoms; (3) physical distancing; (4) intensified cleaning; (5) infection control training; (6) disinfection of high-touch areas; and (7) cloth face coverings. GEO Queens has failed to implement each of these measures effectively.

a) *Symptom Screening.* In March and early April, GEO Queens' only screening mechanism for COVID-19 was temperature checks and only inmates with a temperature deemed high enough would be tested. This procedure for determining which inmates will be tested

³⁹ See *People Who Need Extra Precautions: What You Can Do*, Centers for Disease Control and Prevention (May 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/what-you-can-do.html>.

for COVID-19 is not sufficient, given that many carriers of SARS-CoV-2 have no fever or a low grade fever⁴⁰ or even present only gastrointestinal symptoms.⁴¹ And as many as 25% of those infected with SARS-CoV-2 exhibit no symptoms at all.⁴² In open dormitory settings, where every inmate has been exposed to someone known to be positive for SARS-CoV-2, temperature checks are not sufficient to determine who has contracted the virus, so that these people can be separated from the rest of the population to stop further spread of the virus among detainees and staff. Beginning in mid-April, GEO Queens ceased even the daily temperature checks, announcing that all inmates had “recovered” from COVID-19. Numerous inmates continue to be symptomatic. At least three inmates have been hospitalized since mid-April, one for over five days.

b) *Isolating Symptomatic Persons.* Inmates who exhibit symptoms and who are tested for SARS-CoV-2 are held in their regular dorms at GEO Queens while awaiting the test results. This is directly at odds with the CDC’s recommendation that individuals waiting for test results self-isolate so as to prevent further spread of the virus.⁴³ While GEO Queens reported during the week of April 20, 2020 that it was moving inmates who had tested positive for SARS-

⁴⁰ See Lisa Lockerd Maragakis, M.D., M.P.H., *Coronavirus Symptoms: Frequently Asked Questions*, Johns Hopkins Medicine, <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-symptoms-frequently-asked-questions>.

⁴¹ See Chaoqun Han, Ph.D. et. al., *Digestive Symptoms in COVID-19 Patients with Mild Disease Severity: Clinical Presentation, Stool Viral RNA Testing, and Outcomes*, *Am. J. Gastroenterology* (Apr. 15, 2020), available at: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7172493/>.

⁴² See Sam Whitehead & Carrie Feibel, *CDC Director on Models for the Months to Come: ‘This Virus Is Going to Be With Us’*, NPR (Mar. 31, 2020), <https://www.npr.org/sections/health-shots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us>.

⁴³ See *Quarantine and Isolation*, Centers for Disease Control and Prevention (May 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine-isolation.html>.

CoV-2 into a designated dorm, GEO Queens did not move all *symptomatic* inmates into a separate dormitory, only those inmates who had tested positive.⁴⁴ Numerous symptomatic but untested detainees were left in the general dormitories. Moreover, prior to April 20, 2020, inmates who were known to have been infected with the virus were housed with the rest of the population, including those at higher risk of infection given their age or preexisting medical conditions. This is directly at odds with the CDC's recommendations for isolation of infected individuals and quarantine of individuals exposed to infected individuals in order to curb the spread of the virus.⁴⁵

c) *Physical Distancing.* It is not possible to physically distance in the current set-up of the open dormitories. GEO Queens has made no effort to erect temporary cubicles around the bunk beds, or to change the bed structures to allow for more distance. Additional tables have not been brought in for dining. GEO Queens has not created a system of small groups for detainees to eat in or to use bathrooms in. Everything is done on a dormitory-wide basis. Even when detainees are brought to see the single doctor, they are brought in groups of six or more and placed in a very small waiting room together to wait, where it is impossible to stay six feet apart.

d) *Intensified Cleaning.* The facility has not been professionally sanitized since the start of the COVID-19 pandemic. Inmates are responsible for cleaning the facility and are often given inadequate supplies to do so.

⁴⁴ See Letter from William Zerillo to Hon. Roslynn Maukopf (Apr. 21, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200421_050924.pdf.

⁴⁵ See *Social Distancing*, Centers for Disease Control and Prevention (May 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>; see also *Quarantine and Isolation*, Centers for Disease Control and Prevention (May 6, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/quarantine-isolation.html>.

e) *Infection Control Training.* Though the CDC advises that the risks of infection transmission can be mitigated by sufficient hand washing,⁴⁶ inmates at GEO Queens receive only a limited supply of soap, are not provided hand sanitizer, and are neither educated by GEO Queens staff regarding the importance of proper handwashing nor encouraged by GEO Queens staff to wash their hands frequently.

f) *Disinfection of High-Touch Areas.* Like the rest of the facility, disinfecting the tables and bathrooms is left to inmates, who often lack adequate cleaning supplies to do so effectively. No inter-use disinfection of telephones is occurring. The lack of adequate cleaning supplies and poor access to basic hygiene necessities increases the likelihood of COVID-19 transmission through contaminated commonly touched surfaces such as tables, telephones, or television remote controls.

g) *Cloth Face Coverings.* The CDC's current guidance is to wear "cloth face coverings in public settings where other social distancing measures are difficult to maintain" and "**especially** in areas of significant community spread."⁴⁷ Further, the New York Department of Health's current guidance is to "wash [cloth face masks] once per day" or "use a new [paper face

⁴⁶ See *How to Protect Yourself & Others*, Centers for Disease Control and Prevention (Apr. 24, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

⁴⁷ See *Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission*, Centers for Disease Control and Prevention (Apr. 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html> (emphasis in original); see also Exec. Ord. No. 202.17 (Apr. 15, 2020), available at: <https://www.governor.ny.gov/news/no-20217-continuing-temporary-suspension-and-modification-laws-relating-disaster-emergency> ("[A]ny individual who is over age two and able to medically tolerate a face-covering shall be required to cover their nose and mouth with a mask or cloth face-covering when in a public place and unable to maintain, or when not maintaining, social distance.").

mask] every day.”⁴⁸ At GEO Queens, while inmates have been provided with surgical masks, they are required to wear the same mask for multiple days at a time. The masks are, for many of the inmates, loose-fitting. No gloves have been provided to inmates. Correctional officers do not consistently wear masks or gloves while working with inmates.

20. These issues are all exacerbated because GEO’s staff come in and out of the facility daily and live primarily in Queens, Brooklyn, and Long Island, all of which have high rates of COVID-19.⁴⁹ Twenty-five staff members have already tested positive as of May 7, 2020.⁵⁰ The CDC has reported that because “staff members move between correctional facilities and their communities daily, they might be an important source of virus introduction into facilities.”⁵¹

21. Significantly, in a March 18, 2020 CDC report, 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 where the staff members worked in multiple facilities.⁵² The Seattle nursing home outbreak demonstrates that individuals with

⁴⁸ See *COVID-19 Face Coverings: Frequently Asked Questions*, NYC Health (Apr. 27, 2020), <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-face-covering-faq.pdf>.

⁴⁹ See Scott Brinton, *Nassau Has 3rd-Highest Number of COVID-19 Cases of Any County in State*, LI Herald (Apr. 4, 2020), <https://www.liherald.com/stories/nassau-has-third-highest-number-of-covid-19-cases-of-any-county-in-state,123759>; *Brooklyn May Now Be Deadliest County in U.S. for COVID-19, Overtaking Queens*, NBC (Apr. 23, 2020), <https://www.nbcnewyork.com/news/coronavirus/brooklyn-may-now-be-deadliest-county-in-u-s-for-covid-19-overtaking-queens/2388142/>.

⁵⁰ Letter from William Zerillo to Hon. Roslynn Mauskopf (May 7, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200507_034813.pdf (“Number of staff testing positive: **25.**”)

⁵¹ CDC May 6, 2020 Report.

⁵² See Temet M. McMichael, et al., *COVID-19 in a Long-Term Care Facility—King County, Washington, February 27–March 9, 2020*, Centers for Disease Control and Prevention, <https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6912e1-H.pdf>.

underlying health conditions and advanced age, in a shared location, are at a high risk of death, especially when resources and staffing become inadequate.⁵³ Prior to the outbreak of the COVID-19 pandemic, GEO Queens was already short-staffed. This staffing shortage has increased since the start of the COVID-19 and will undoubtedly continue to increase as more staff either will need to stay home to attend to their personal health or the health of family members, or will refuse to come to work given the risk to their own health presented by the circumstances inside GEO Queens.

22. With respect to testing, GEO Queens has gone back and forth between limited testing, widespread testing and, now, no testing. Initially, the only detainees at GEO Queens who were tested were those who were tested after being brought to the hospital or who had high temperatures. Then, GEO Queens reported that it had stopped testing because it presumed everyone had been exposed to COVID-19 within the facility.⁵⁴ In early April, GEO Queens began more widespread testing, but stopped on or about April 21, 2020,⁵⁵ despite the fact that of the 41

⁵³ *See id.*

⁵⁴ *See* Letter from William Zerillo to Hon. Roslynn R. Mausekopf (Apr. 21, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200421_050924.pdf (indicating that GEO Queens interpreted guidance from the NYC Department of Health to mean that testing in congregate environments was not required).

⁵⁵ *Compare* Letter from William Zerillo to Hon. Roslynn Mausekopf (Apr. 16, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200416_053144.pdf (“Number of detainees tested: **41.**”) *with* Letter from William Zerillo to Hon. Roslynn R. Mausekopf (Apr. 21, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200421_050924.pdf (“Number of detainees tested: **41.**”) *and* Letter from William Zerillo to Hon. Roslynn R. Mausekopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200423_043331.pdf (“Number of detainees tested: **41.**”) *and* Letter from William Zerillo to Hon. Roslynn R. Mausekopf (Apr. 28, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200428_052447.pdf (“Number of detainees tested: **41.**”) *and* Letter from William Zerillo to Hon. Roslynn R. Mausekopf (Apr. 30, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200430_053615.pdf (“Number of detainees tested: **41.**”) *and* Letter from William Zerillo to Hon. Roslynn R. Mausekopf (May 5, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200505_042632.pdf (“Number of detainees tested: **41.**”) *and* Letter from William Zerillo to Hon. Roslynn R. Mausekopf (May 8, 2020), <https://www.nyed.uscourts.gov/pub/bop/QD>

tests performed as of that date, 38 positive results were observed—a test positivity rate of approximately 93%.⁵⁶ The WHO has explained that a high rate of positive tests is a telltale sign that there are many more positive cases that have not yet been identified.⁵⁷ Now, GEO Queens is no longer performing tests, and the only inmates receiving tests are those who are taken to the hospital. Without comprehensive testing, GEO Queens will be limited in its ability to prevent further spread, particularly given the prevalence of asymptomatic infections.

23. On April 28, 2020, GEO Queens reported that 38 out of the 38 inmates who tested positive for SARS-CoV-2 had “recovered.”⁵⁸ No explanation was provided for how “recovery” had been determined. This 100% recovery was reported only 7 days after GEO Queens reported its last positive test result on April 21, 2020.⁵⁹ GEO Queens has not reported how medical staff are assessing recovery for COVID-19, but the CDC currently recommends that patients who are no longer experiencing symptoms of COVID-19 self-isolate for at least ten days to limit the spread

F_20200507_034813.pdf (“Number of detainees tested: **41.**”) and Letter from William Zerillo to Hon. Roslynn R. Maukopf (May 12, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200512_034142.pdf (“Number of detainees tested: **41.**”).

⁵⁶ See, e.g., Letter from William Zerillo to Hon. Roslynn R. Maukopf (Apr. 21, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200421_050924.pdf (“Number of detainees tested: **41.** Number of detainees tested positive total: **38.**”).

⁵⁷ See Pien Huang, *If Most of Your Coronavirus Tests Come Back Positive, You’re Not Testing Enough*, NPR (Mar. 30, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/30/824127807/if-most-of-your-coronavirus-tests-come-back-positive-youre-not-testing-enough>.

⁵⁸ See Letter from William Zerillo to Hon. Roslynn R. Maukopf (Apr. 23, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200423_043331.pdf.

⁵⁹ See Letter from William Zerillo to Hon. Roslynn R. Maukopf (Apr. 21, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200421_050924.pdf.

of the virus.⁶⁰ The fourteen-day quarantine period recommended by medical professionals for those who have been exposed to COVID-19 is based on the virus' *incubation* period, *not* the virus' lifespan.⁶¹ At least one study has shown that one-third of patients infected with COVID-19 still carried viral RNA over 20 days after the patients became symptomatic.⁶² The CDC recently reported that another study found that patients could still carry viral RNA for up to six weeks.⁶³ Multiple studies have found that there is no correlation between the length or severity of a patient's illness and the amount of time the patient remains contagious after they stop exhibiting symptoms.⁶⁴

24. Based on GEO Queens' claimed 100% recovery rate, GEO Queens ceased its practice of isolating or cohorting any inmates who had tested positive for COVID-19 and began returning some of those inmates to their original dormitories. GEO Queens' decision to end whatever isolation and cohorting practices it had in place—flawed though they may have been—

⁶⁰ See *Symptom-Based Strategy to Discontinue Isolation for Persons with COVID-19*, Centers for Disease Control and Prevention (May 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html>.

⁶¹ See *Frequently Asked Questions*, Centers for Disease Control and Prevention (May 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html> (“For COVID-19, the period of quarantine is 14 days from the last date of exposure because the incubation period for this virus is 2 to 14 days.”).

⁶² See Kelvin Kai-Wang To, et al., *Temporal Profiles of Viral Load in Posterior Oropharyngeal Saliva Samples and Serum Antibody Responses During Infection by SARS-CoV-2: An Observational Cohort Study*, 20 *The Lancet* 565 (Mar. 23, 2020), available at: [https://www.thelancet.com/journals/laninf/article/PIIS1473-3099\(20\)30196-1/fulltext](https://www.thelancet.com/journals/laninf/article/PIIS1473-3099(20)30196-1/fulltext).

⁶³ See *Symptom-Based Strategy to Discontinue Isolation for Persons with COVID-19*, Centers for Disease Control and Prevention (May 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/strategy-discontinue-isolation.html>.

⁶⁴ See To, *Temporal Profiles of Viral Load in Posterior Oropharyngeal Saliva Samples and Serum Antibody Responses During Infection by SARS-CoV-2: An Observational Cohort Study*, 20.

is highly concerning given its undefined standard for assessing inmates' cases of COVID-19 as "resolved." This concern was borne out when, on May 7, 2020, GEO Queens reported to Chief Judge Mauskopf that one inmate who had apparently "recovered" from COVID-19 under GEO Queens' standard had to be hospitalized and once again tested positive for the virus.⁶⁵

25. The World Health Organization has stated that: "[t]here is currently no evidence that people who have recovered from COVID-19 and have antibodies are protected from a second infection."⁶⁶ As such, even if some inmates at GEO Queens who were previously infected with COVID-19 have recovered, without adequate isolation for those who may no longer be symptomatic but remain contagious, extensive testing to confirm recoveries, and adequate social distancing, sanitation, and hygiene practices to protect healthy inmates from infection, the virus could continue to infect and re-infect the inmate—and staff—population for months to come.

GEO Queens Lacks the Medical Resources to Care for Inmates Affected by COVID-19

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

27. GEO Queens' medical team is severely understaffed. There is only one physician, Dr. Sajjad Mohammad, and one Registered Nurse ("RN") on staff, both of whom visit the facility infrequently. Currently, only one health professional—a Licensed Practical Nurse ("LPN")—visits the facility on a daily basis. The LPN makes only cursory rounds to hand out pre-prescribed

⁶⁵ See Letter from William Zerillo to Hon. Roslynn R. Mauskopf (May 7, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200507_034813.pdf ("One detainee who was previously positive and recovered was sent to hospital [sic] and tested positive again.").

⁶⁶ See "Immunity Passports" in the Context of COVID-19, World Health Organization (Apr. 24, 2020), <https://www.who.int/news-room/commentaries/detail/immunity-passports-in-the-context-of-covid-19>.

medication, take temperatures, and monitor high-risk and COVID-positive inmates. Inmates are left alone with no medical monitoring for many hours at a time and there are no medical staff on-site at the facility at night. Moreover, because LPNs are not licensed to prescribe medications or perform most medical procedures, inmates who are experiencing symptoms of COVID-19, but who have not been tested, cannot obtain needed medications or treatment. Given the current conditions at GEO Queens, it is likely that a majority of the inmate population has been exposed to COVID-19, thus, adequate monitoring of, and medical care for, the inmate population at GEO Queens by qualified medical staff is crucial.

28. People who contract COVID-19 can deteriorate rapidly,⁶⁷ even before a test result can be returned. They need frequent monitoring. Many people in the higher-risk categories will require more advanced support if infected: hospitalization, oxygenation, and in some cases, mechanical ventilation. Such care requires specialized equipment in limited supply as well as an entire team of specialized care providers. GEO Queens does not have that specialized equipment or specialized providers. Moreover, the closest hospitals, Jamaica Hospital Medical Center and Elmhurst Memorial Hospital, are among some of the hardest hit by COVID-19 nationwide.⁶⁸

Reducing Population Size at Correctional Facilities Such as GEO Queens Is a Crucial Public Health Measure

29. Every effort should be made to reduce the chances of exposure to the novel coronavirus. Measures that GEO Queens should immediately take include implementing a testing

⁶⁷ See Nick Brown & Deena Beasley, *From Fine to Flailing – Rapid Health Declines in COVID-19 Patients Jar Doctors, Nurses*, Reuters (Apr. 8, 2020), <https://www.reuters.com/article/us-health-coronavirus-usa-deaths/from-fine-to-flailing-rapid-declines-in-covid-19-patients-jar-doctors-nurses-idUSKCN21Q36V>.

⁶⁸ See David Brand, *Jamaica Hospital ‘Flooded’ by COVID-19 Patients, Doctors Say*, Queens Daily Eagle (Mar. 29, 2020), <https://queenseagle.com/all/jamaica-hospital-flooded-covid-19-patients>.

and tracing strategy, enhanced facility cleaning, and protocols to ensure that inmates have daily access to basic hygiene necessities and PPE. GEO Queens also needs additional medical staff beyond the single physician that the facility currently employs in order to be appropriately responsive to its inmates' medical needs.

30. However, even these steps will not be enough. Given the proximity and high number of incarcerated people, correctional staff, and healthcare workers at pre-trial detention facilities, it will be extremely difficult to mitigate the risks of COVID-19 through these practices alone. Reducing population, therefore, is an urgent priority in detention facilities such as GEO Queens during this national public health emergency.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: Brooklyn, New York
May 12, 2020



Jonathan Giftos, M.D.