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Petitioners Marquis Collier, John Doe I, John Doe II, and John Doe III (collectively, “Petitioners”), on behalf of themselves and a class of similarly situated detained people in the custody of the United States Marshals Service for the Southern and Eastern Districts of New York at the Queens Detention Facility (“GEO Queens”) owned and operated by The GEO Group, Inc. (“GEO” or “GEO Group”), by and through their attorneys, Sullivan & Cromwell LLP, allege, based on personal knowledge as to themselves and their own circumstances and on information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. A widespread COVID-19 outbreak has ravaged the inmate population at GEO Queens. Despite ample warning as to the dangers of the virus to inmates’ health and safety, Respondents failed to take steps to prevent the outbreak, to mitigate it once it had taken hold, and to adequately care for those infected. Over 90% of the inmates tested at GEO Queens were positive for COVID-19. Despite this alarming statistic—or perhaps because of it—Respondents have stopped testing altogether, ceased regular temperature checks or monitoring in any manner for the virus, and inexplicably declared that all but one inmate has “recovered” from the virus. In reality, many inmates remain symptomatic and all remain at grave risk. Respondents’ failure to implement hygiene and isolation measures recommended by the Centers for Disease Control and Prevention (“CDC”) to mitigate transmission allows the virus to continue to spread and to threaten the health and safety of inmates detained at GEO Queens.

2. COVID-19 can have debilitating impacts on many organ systems in the human body, with long-lasting effects. Declaration of Jonathan Giftos, M.D. (“Giftos Decl.”) ¶ 15. People over the age of 65 or those who have pre-existing medical conditions such as asthma,

diabetes, high blood pressure, obesity and other conditions enumerated by the CDC¹ (“Vulnerable Persons”) are at higher risk of suffering acute symptoms or death if infected with COVID-19. *See* Giftos Decl. ¶ 13. The prevalence of these pre-existing conditions is higher among incarcerated individuals. *Id.* Local, State and Federal authorities have taken action over the past months to reduce prison populations in order to halt the spread of COVID-19 in correctional facilities in New York City and around the country. The federal judiciary has been instrumental in facilitating release and oversight at Bureau of Prisons (“BOP”) facilities. But GEO Queens inmates have been left behind because they have been assigned to a private facility while they await trial or sentencing.

3. The GEO Group has a dismal track record of mistreating inmates, both at GEO Queens and in other facilities across the country.² The COVID-19 pandemic has proven no different. The potentially fatal outbreak of COVID-19 at GEO Queens stems from the facility’s ongoing failure to adhere to any of the CDC guidelines specifically aimed at stopping the spread of COVID-19 in correctional facilities.

4. First, GEO Queens has not administered tests sufficient to assess the extent of the virus’ reach in the facility, resulting in its continued spread among inmates, many of whom have been designated by GEO as at “high risk” of suffering severe complications or death from COVID-

¹ The CDC has stated that those who are at a higher risk for severe illness or death from COVID-19 include those who: (i) are over 65 years of age, (ii) have chronic lung disease or moderate to severe asthma, (iii) have serious heart conditions, (iv) are immunocompromised, (v) are obese, (vi) have diabetes, (vii) have chronic kidney disease and are undergoing dialysis, or (viii) have liver disease. *People Who Are at Higher Risk for Severe Illness*, Centers for Disease Control and Prevention (Apr. 15, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

² *See, e.g.,* Harry DiPrinzio, *Amid Scrutiny of Jails and Jailers, NYC’s Private Prison Escapes Attention*, City Limits (June 26, 2018), <https://citylimits.org/2018/06/26/amid-scrutiny-of-jails-and-jailers-nycs-private-prison-escapes-attention/>.

19 due to underlying health conditions. Declaration of Deirdre D. von Dornum (“von Dornum Decl.”) ¶ 18. Despite complaints from inmates of flu-like symptoms beginning around late-February or early-March, GEO Queens did not begin testing symptomatic patients until April, and, even then, limited testing to inmates with high fevers. von Dornum Decl. ¶¶ 5, 19–27. GEO Queens stopped testing just two weeks later. von Dornum Decl. ¶ 5. By then, it was too late to contain the virus.

5. Second, GEO Queens’s treatment of inmates with suspected or confirmed cases of COVID-19 is contrary to recommended clinical guidance and only exacerbates the spread of the disease. Inmates at GEO Queens primarily sleep in open dormitory units, head-to-head in bunked beds no more than two or three feet apart. von Dornum Decl. ¶ 5, 37. Up until about April 20, symptomatic or positive inmates were cohorted with the general population and slept next to others at high risk of developing severe illness due to their existing medical conditions. von Dornum Decl. ¶¶ 38–41. Even then, transferring only some COVID-19 positive inmates to a different dorm weeks after inmates and staff first began experiencing symptoms has proved ineffective. *Id.* Because GEO Queens continued cohorting inmates irrespective of their symptoms and to provide no additional protection for inmates designated “high risk” due to their underlying medical conditions, the virus continues its rampage.

6. Third, GEO Queens has failed to implement any additional affirmative hygiene measures to improve sanitation or to help inmates protect themselves. The facility has not been professionally cleaned since the outbreak started. von Dornum Decl. ¶ 44. Inmates are responsible for cleaning the dorms, bathrooms, and common areas, and they have not been provided sufficient cleaning supplies to do so. *Id.* Inmates and staff lack basic personal protective equipment like clean and effective face masks and access to laundry and clean bed linens. von Dornum Decl. ¶¶ 45, 46.

7. Respondents' treatment of inmates during the COVID-19 pandemic violates inmates' Fifth and Eighth Amendment rights to be free from punitive conditions of confinement. Pretrial and presentence detainees like Petitioners must be protected from unsafe conditions created by infectious disease. By detaining inmates in the face of significant threats to their health and safety without taking the necessary steps to prevent harm, Respondents show deliberate indifference to a substantial risk of serious harm in violation of the U.S. Constitution. In light of the ample government-issued guidelines and media attention warning of the dangers of the life-threatening spread of COVID-19, Respondents cannot claim that they were not on notice of the need to take steps, through basic sanitation and isolation measures, to protect inmates.

8. Judicial intervention is required to compel GEO Queens to lessen the risk of serious illness or death of individuals in its care in order to comply with the requirements of the U.S. Constitution. Petitioners seek relief on their own behalf and on behalf of a proposed class comprised of all inmates at GEO Queens. Petitioners and all other inmates who are Vulnerable Persons should be released promptly on bail, and GEO Queens should implement immediate improvements to its testing, tracing, treatment, sanitation, and isolation measures for those who remain.

PARTIES

9. All Petitioners and proposed class members are pretrial and presentence detainees in the custody of the U.S. Marshals Service ("USMS") and are being held at GEO Queens. The identities of some Petitioners have been shielded due to the sensitive nature of their underlying criminal cases and potential concerns for their safety should the fact of their detention at GEO Queens become publicly known. Due to their underlying health conditions, all Petitioners are at high risk of suffering acute symptoms or death from COVID-19 and thus are considered Vulnerable Persons based on the CDC's guidelines.

10. Petitioner Marquis Collier is a 28-year-old man. He suffers from chronic asthma and requires an inhaler. Mr. Collier also suffered a punctured lung approximately ten years ago, which occasionally causes him respiratory difficulty. Since he arrived at GEO Queens on March 20, 2020, Mr. Collier has resided in C Dorm, an open dorm that houses approximately forty-five inmates. In mid-April, Mr. Collier's bunkmate became ill with symptoms of COVID-19 and shortly thereafter tested positive for the virus. No efforts were made to isolate Mr. Collier's bunkmate, either when he began exhibiting symptoms of COVID-19 or when he tested positive. Mr. Collier has had to continue to share his bunk. The inmate who occupies the bunk next to Mr. Collier also tested positive for COVID-19. This inmate also was not isolated. In early April, Mr. Collier began experiencing headaches and a sore throat. Despite his history of respiratory issues and his prolonged exposure to COVID-19-positive inmates, Mr. Collier has still not received a test for COVID-19. Mr. Collier is afraid he will contract the virus and that he will become seriously ill or die in GEO Queens.

11. Petitioner "John Doe I" is a 26-year-old man. He has been detained at GEO Queens since March 18, 2019. Mr. Doe I has a history of respiratory illness and asthma. Because of his asthma, GEO Queens placed Mr. Doe I on its list of inmates whom it considered at "high risk" of suffering serious illness or death from COVID-19. Mr. Doe I began experiencing symptoms of COVID-19 on April 11, 2020 and tested positive for the virus on April 15, 2020. Since he began experiencing symptoms, Mr. Doe I has twice required hospitalization. Mr. Doe I did not receive a COVID-19 test at GEO Queens, but instead was confirmed positive because a test was administered during his first hospitalization. Contrary to instructions from medical staff at the hospital, no efforts were made to isolate Mr. Doe I from other inmates upon his return to GEO Queens while his COVID-19 test results were pending. Mr. Doe I was eventually transferred to a dorm in which some COVID-19-positive inmates were cohorted. Mr. Doe I is still exhibiting

symptoms of COVID-19, yet he has been informed that he will be returned to his regular, mixed dorm.

12. Petitioner “John Doe II” is a 35-year-old man. He has been detained at GEO Queens since March 19, 2018. Mr. Doe II has suffered from asthma since childhood and also has hypertension. He is pre-diabetic and clinically obese. Due to his pulmonary issues, GEO Queens placed Mr. Doe II on its list of inmates at “high risk” from COVID-19. Mr. Doe II resides in a dorm that currently houses both COVID-19-positive and non-COVID-19-positive inmates. Mr. Doe II sleeps in close proximity to at least three inmates who have tested positive for COVID-19. In February 2020, Mr. Doe II began experiencing symptoms consistent with COVID-19, including shortness of breath and a sore throat. Mr. Doe II’s blood pressure is also critically high. To date, GEO Queens has not tested Mr. Doe II for COVID-19 and has not provided him with treatment or medication for his high blood pressure.

13. Petitioner “John Doe III” is a 28-year-old man. He has a history of respiratory illness and asthma. Mr. Doe III has been detained at GEO Queens since August 23, 2017 and currently resides in D Dorm with approximately thirty other inmates. In late March, another inmate in D Dorm began exhibiting symptoms of COVID-19 and tested positive shortly thereafter. GEO Queens did not transfer the inmate out of D Dorm or otherwise isolate the inmate. Mr. Doe III began experiencing symptoms of COVID-19 on April 6, 2020 and tested positive for COVID-19 on April 9, 2020. Mr. Doe III’s acute symptoms began to abate on April 11, 2020, but he still experiences chest pains. No efforts were made to isolate Mr. Doe III from other inmates or cohort Mr. Doe III with other COVID-19-positive inmates while he was experiencing acute symptoms, even after Mr. Doe III tested positive.

14. Respondent Ralph Sozio is the United States Marshal for the Southern District of New York.

15. Respondent Bryan T. Mullee is the Acting United States Marshal for the Eastern District of New York.

16. GEO manages and operates GEO Queens pursuant to a contract with the USMS,³ and all inmates housed at GEO Queens are pretrial and/or presentence detainees in USMS custody. *See United States v. Hernandez*, 2020 WL 1684062, at *2 (S.D.N.Y. Apr. 7, 2020) (Engelmayer, J.) (GEO Queens inmates are “in the custody of the United States Marshals at a private facility”). Respondents Sozio and Mullee are therefore proper respondents in this habeas petition. *See Rodriguez Sanchez v. Decker*, 2019 WL 3840977, at *2 (S.D.N.Y. Aug. 15, 2019) (Nathan, J.) (the federal official “with the most immediate control over the facility is the proper respondent” in habeas cases by prisoners in private facilities) (internal quotation marks omitted).

17. Respondent The GEO Group, Inc. owns and operates GEO Queens pursuant to the terms of its contract with the USMS.⁴

18. Respondent William Zerillo is the Facility Administrator (also commonly referred to as the Warden) of GEO Queens. Respondent Zerillo is responsible for all aspects of the

³ *See* The GEO Group, Inc. Contract, Effective Jan. 1, 2008 through Dec. 31, 2017 at C4, C8, available at: https://www.usmarshals.gov/foia/IGAs_Cap_Agreements/florida/queens-detention-facility.pdf (defining detainee as “any person confined under the auspices and authority of any federal agency” and allowing federal agencies “to house detainees at the facility”). GEO’s contract with USMS was renewed in April 2019, but the contract is not publicly available. *See* The GEO Group, Inc., Annual Report (Form 10-K) (Dec. 31, 2019) at 14, <http://investors.geogroup.com/Cache/IRCache/cdf2d868-2ef2-d95f-6096-954030483167.pdf>; *see also* *GEO Group, Inc.*, SAM.Gov, https://beta.sam.gov/awards/82467486%2BIDV?keywords=%22queens%20detention%20facility%22%20%2B%20geo%20&sort=-relevance&index=&is_active=true&page=1.

⁴ *See Queens Detention Facility*, The GEO Group, Inc.: Our Locations, <https://www.geogroup.com/FacilityDetail/FacilityID/73>; Answer to Amended Complaint and Affirmative Defenses, *Brooks v. Sposato*, No. 12-cv-04740 (E.D.N.Y. filed Mar. 31, 2017), ECF No. 127 at 2 (“The GEO Defendants admit . . . that [the GEO Group] owns and operates the Queens Private Detention Facility . . . pursuant to a contract awarded by the United States Department of Justice, Office of the Federal Detention Trustee”).

operation and function of GEO Queens.⁵ His responsibilities include ensuring the safety of all prisoners at GEO Queens.

19. Petitioners' claims are properly against private Respondents The GEO Group, Inc. and Facility Administrator Zerillo because Petitioners are in the physical custody of Respondents The Geo Group, Inc. and Facility Administrator Zerillo. *See Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 74 (2001) (federal inmates of private facilities "also have full access to remedial mechanisms established by the BOP, including suits in federal court for injunctive relief . . . [since] injunctive relief has long been recognized as the proper means for preventing entities from acting unconstitutionally"); *Salahuddin v. Goord*, 467 F.3d 263, 272 (2d Cir. 2006) (claims by inmate for declaratory and injunctive relief against officials of prison facility in which inmate is presently detained are proper).

JURISDICTION AND VENUE

20. Petitioners bring this action pursuant to 28 U.S.C. § 2241 for relief from custody in violation of the Fifth and Eighth Amendments to the U.S. Constitution. The Court has subject matter jurisdiction over this Petition pursuant to Article I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); the Fifth and Eighth Amendments to the U.S. Constitution; 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1651 (All Writs Act); and 28 U.S.C. § 2241 (habeas corpus). In addition, the Court has jurisdiction to grant declaratory and injunctive relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

⁵ *See* The GEO Group, Inc. Contract, Effective Jan. 1, 2008 through Dec. 31, 2017, at C4 (defining the role of the "Facility Administrator" as the "official . . . who has the ultimate responsibility for managing and operating the contract detention facility"); *see also id.*, at C32 (stating that the "Contractor shall have comprehensive infectious disease prevention and control program in place in accordance with the most recent CDC guidelines").

21. Venue is proper in the Eastern District of New York pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events and omissions giving rise to these claims occurred and continue to occur in this district.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

22. Petitioners are excused from 28 U.S.C. § 2241's prudential exhaustion requirement, which requires "a formal grievance" regarding conditions of confinement or "participat[ion] in the procedural remedy available." *See Brooks v. Terrel*, 2010 WL 9462575, at *3 (E.D.N.Y. Oct. 14, 2010) (Tomlinson, J.). As an initial matter, neither the USMS nor GEO Queens has a formal administrative remedy program of which Petitioners could avail themselves. And, as the government has stated in other cases, the BOP's Administrative Remedy Program is not available to inmates in private facilities, such as GEO Queens, that are not under contract with the BOP. *See, e.g., Hernandez*, 2020 WL 1684062, at *2 (noting the government's position that the BOP "is structurally incapable of assessing [defendant's] circumstances" at GEO Queens and therefore "cannot evaluate [defendant] for compassionate release") (internal quotation marks omitted).

23. In any event, in cases brought under 28 U.S.C. § 2241, exhaustion can be excused where "irreparable injury may occur without immediate judicial relief." *Sanchez v. United States*, 2012 WL 5987858, at *1 (E.D.N.Y. Nov. 29, 2012) (Amon, J.) (quoting *Beharry v. Aschcroft*, 329 F.3d 51, 62 (2d Cir. 2003)). Petitioners and all inmates at GEO Queens risk suffering lasting damage to their health or even death without immediate judicial relief. Indeed, several courts have already determined that the specific condition at issue here—the risk to inmates from COVID-19 in the correctional setting—constitutes irreparable harm and injury. *See Ferreyra v. Decker*, 2020 WL 1989417, at *6 (S.D.N.Y. Apr. 27, 2020) (Torres, J.) (finding irreparable harm on the ground that "[p]etitioners will face a severe, and quite possibly fatal, infection while in civil immigration detention"); *Barbecho v. Decker*, 2020 WL 1876328, at *6 (S.D.N.Y. Apr. 15, 2020) (Nathan, J.)

(concluding that detainees at Bergen County Jail “face a risk of severe, irreparable harm—including death—if they contract COVID-19” and met burden of showing irreparable harm); *Valenzuela Arias v. Decker*, 2020 WL 1847986, at *5 (S.D.N.Y. Apr. 10, 2020) (Torres, J.) (concluding that detention “poses a significant risk that they will contract COVID-19 . . . [which] would almost certainly cause severe—or fatal—damage to their health” and met burden of showing irreparable harm); *Coronel v. Decker*, 2020 WL 1487274, at *3 (S.D.N.Y. Mar. 27, 2020) (Nathan, J.) (“Due to their serious underlying medical conditions, all Petitioners face a risk of severe, irreparable harm if they contract COVID-19.”); *Basank v. Decker*, 2020 WL 1481503, at *4 (S.D.N.Y. Mar. 26, 2020) (Torres, J.) (“The risk that Petitioners will face a severe, and quite possibly fatal, [COVID-19] infection if they remain in immigration detention constitutes irreparable harm.”); *see also Banks v. Booth*, 2020 WL 1914896, at *11 (D.D.C. Apr. 19, 2020) (“The Court concludes that Plaintiffs’ risk of contracting COVID-19 and the resulting complications, including the possibility of death, is the prototypical irreparable harm.”). GEO Queens has had ample opportunity to take appropriate action to mitigate the spread of COVID-19, but has failed to do so. Because there are no other avenues for relief and Petitioners and all GEO Queens inmates are likely to experience irreparable injury, they are excused from exhaustion.

BACKGROUND

I. THE COVID-19 PANDEMIC

24. On March 11, 2020, the World Health Organization classified the COVID-19 outbreak as a global pandemic.⁶ As of May 13, the virus has infected more than 4.3 million people

⁶ See *WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 – 11 March 2020*, World Health Organization (Mar. 11, 2020), <https://bit.ly/2UdhVW6>.

worldwide, killing over 294,997.⁷ Both New York Governor Andrew Cuomo and New York City Mayor Bill de Blasio have declared states of emergency; on March 21, 2020, the Federal Emergency Management Agency issued a Major Disaster Declaration for New York State.⁸ As of May 13, there are 345,828 confirmed cases in New York State, more than 192,000 of which are in New York City.⁹

25. The virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces. Giftos Decl. ¶ 5. According to the CDC, social distancing, isolating known or potentially infected individuals, and vigilant hygiene, including washing hands with soap and water, are the only known effective measures for protecting vulnerable people from COVID-19.¹⁰

26. Evidence shows that the COVID-19 pathogen can impact “nearly every major organ system in the body,” and can leave even young and otherwise healthy patients “debilitated

⁷ See *COVID-19 Dashboard*, Center for Systems and Engineering (CSSE) at Johns Hopkins University, Johns Hopkins University & Medicine: Coronavirus Resource Center, <https://coronavirus.jhu.edu/map.html> (last visited: May 13, 2020).

⁸ See Press Release, New York State, At Novel Coronavirus Briefing, Governor Cuomo Declares State of Emergency to Contain Spread of Virus (Mar. 7, 2020), <https://on.ny.gov/2TKzIoz>; *DeBlasio Declares State of Emergency in NYC, and Large Gatherings*, N.Y. Times (Mar. 12, 2020), <https://nyti.ms/3d8lGVq>; Daniel Politi, *Trump Administration Declares New York a “Major Disaster” as Coronavirus Cases Soar*, Slate (Mar. 21, 2020), <https://bit.ly/3am7AOF>.

⁹ See *New York City Coronavirus Map and Case Count*, N.Y. Times, <https://www.nytimes.com/interactive/2020/nyregion/new-york-city-coronavirus-cases.html>, (last visited: May 13, 2020).

¹⁰ See *Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission*, Centers for Disease Control and Prevention (Mar. 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/community-mitigation-strategy.pdf>.

or dead.”¹¹ Specifically, the COVID-19 virus can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity. Giftos Decl. ¶ 15. COVID-19 may also target the heart muscle, causing myocarditis, or inflammation of the heart muscle, which reduces the heart’s ability to pump.¹² Giftos Decl. ¶ 15. This reduction can lead to long-term heart failure that limits exercise tolerance and the ability to work. Blood clots from COVID-19 can cause severe strokes in young and middle-aged patients that “obliterate large parts of the brain responsible for movement, speech and decision-making in one blow.”¹³ There are indications that an over-response of the immune system in response to COVID-19 may also cause organ damage, including permanent injury to the kidneys and neurological injury.¹⁴ Giftos Decl. ¶ 15. These complications can manifest at an alarming pace: patients can show the first symptoms of infection in as little as two days after exposure, and their condition can deteriorate suddenly at any time.¹⁵

¹¹ See Ariana Eujung Cha, *Young and Middle-Aged People, Barely Sick With COVID-19, Are Dying of Strokes*, Wash. Post (Apr. 25, 2020), <https://www.washingtonpost.com/health/2020/04/24/strokes-coronavirus-young-patients/>.

¹² See Jackie Salo, *How Coronavirus Attacks the Entire Body — Damaging the Brain, Kidneys, and More*, N.Y. Post (May 11, 2020), <https://nypost.com/2020/05/11/how-coronavirus-attacks-the-body-damaging-the-brain-kidneys-and-more/>.

¹³ See Cha, *Young and Middle-Aged People, Barely Sick With COVID-19, Are Dying of Strokes*.

¹⁴ See Lenny Bernstein, et al., *Coronavirus Destroys Lungs. But Doctors Are Finding Its Damage in Kidneys, Hearts and Elsewhere*, Wash. Post (Apr. 15, 2020), https://www.washingtonpost.com/health/coronavirus-destroys-lungs-but-doctors-are-finding-its-damage-in-kidneys-hearts-and-elsewhere/2020/04/14/7ff71ee0-7db1-11ea-a3ee-13e1ae0a3571_story.html.

¹⁵ 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-health-declines-in-covid-19-patients-jar-doctors-nurses-idUSKCN21Q36V>.

27. People of any age who suffer from certain underlying medical conditions, including moderate to severe asthma, chronic bronchitis, emphysema, obesity, diabetes, blood disorders, lung disease, heart disease, chronic liver or kidney disease, and compromised immune systems (such as from HIV or autoimmune diseases), are at an elevated risk for developing severe and life-threatening symptoms from a COVID-19 infection. Giftos Decl. ¶ 13. Many people in higher-risk categories who develop serious illness will need advanced support. Giftos Decl. ¶ 28. This level of supportive care requires highly specialized equipment that is in limited supply, and an entire team of specialized care providers.¹⁶ *Id.* Even young and otherwise healthy individuals who contract COVID-19 may require supportive care, including oxygenation and, in extreme cases, mechanical ventilation. Giftos Decl. ¶ 28. For people in the highest risk populations, the fatality rate of COVID-19 infection is over 13%.¹⁷

28. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurologic damage, loss of digits, and loss of respiratory capacity.¹⁸ Patients with mild cases may take up to two weeks to recover. For

¹⁶ See Karen Weintraub, *Not Just Ventilators: Staff Trained to Run Them Are in Short Supply*, Scientific American (Apr. 8, 2020), <https://www.scientificamerican.com/article/not-just-ventilator-s-staff-trained-to-run-them-are-in-short-supply/>.

¹⁷ See *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization at 12 (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer”).

¹⁸ See Lisa Schencker, *‘It’s One Thing to Survive the Infection, But What’s Next?’ Some COVID-19 Patients Need Rehab to Walk, Talk and Problem Solve*, Chicago Tribune (May 8, 2020), <https://www.chicagotribune.com/coronavirus/ct-coronavirus-covid-patients-rehabilitation-recovery-illinois-20200508-umnznrdfvfc47izvjzcy5nf4u-story.html>; see also Salo, *How Coronavirus Attacks the Entire Body — Damaging the Brain, Kidneys, and More*.

severe cases, recovery may take more than six weeks.¹⁹ There is no consensus concerning how to determine whether an individual recovering from COVID-19 is no longer contagious.²⁰

29. The CDC advises that an individual may continue to “shed the virus” and remain contagious until the individual’s fever is resolved without the use of fever-reducing medications, respiratory symptoms improve, and the individual receives two consecutive negative results from an FDA-approved COVID-19 test.²¹ If tests are not available, the CDC and New York Department of Health recommend maintaining isolation until at least 72 hours have passed since recovery (defined as resolution of fever without the use of fever-reducing medications *and* improvement in respiratory symptoms), and at least ten days have passed since symptoms first appeared.²² Further, according to the WHO, “[t]here is currently no evidence that people who have recovered from COVID-19 and have antibodies are protected from a second infection.”²³

¹⁹ See Lisa Maragakis, M.D., M.P.H., *I’ve Been Diagnosed With the New Coronavirus (COVID-19). What Should I Expect?*, Johns Hopkins Medicine (Apr. 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/ Diagnosed-with-covid-19-what-to-expect>.

²⁰ See Stephanie Nebehay, *WHO is Investigating Reports of Recovered COVID Patients Testing Positive Again*, Reuters (Apr. 11, 2020), <https://www.reuters.com/article/us-health-coronavirus-who/who-is-investigating-reports-of-recovered-covid-patients-testing-positive-again-idUSKCN21T0F1>.

²¹ See *Discontinuation of Isolation for Persons with COVID-19 Not in a Healthcare Setting (Interim Guidance)*, Centers for Disease Control and Prevention (May 3, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/disposition-in-home-patients.html>.

²² See *id.*

²³ 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>.

II. INCARCERATED INDIVIDUALS ARE AT PARTICULARLY HIGH RISK FROM COVID-19

30. The risk of transmission of COVID-19 is increased in detention facilities, like GEO Queens, due to the high numbers of people with chronic, often untreated, illnesses housed in an environment with minimal levels of sanitation, limited access to personal hygiene, limited access to medical care, and no possibility of social distancing. Giftos Decl. ¶ 11. Incarcerated people have higher incidences of underlying chronic health conditions—such as asthma, diabetes, hypertension or HIV—than the general population, and accessing proper medical care to treat those conditions is difficult in detention facilities even under the best of circumstances.²⁴ Accessing adequate medical care is more difficult in times of crisis. Giftos Decl. ¶ 11. Moreover, inmates have limited access to basic hygiene products such as soap and paper towels to protect themselves against disease, and no access to hand sanitizer. *Id.*

31. If that were not enough, inmates are responsible for cleaning and sanitation and often lack the supplies to do so effectively. *Id.* Bathroom facilities, telephones, common areas and recreational equipment used by the entire inmate population are rarely cleaned properly and are not disinfected between uses. In short, prisons and detention facilities house people who are more susceptible to serious illness upon infection, congregated in a setting in which fighting the spread of infection is nearly impossible. This becomes all the more precarious with a virus as contagious and deadly as COVID-19.

²⁴ See Laura M. Maruschak et al., *Medical Problems of State and Federal Prisoners and Jail Inmates, 2011-12*, Dep't of Justice Bureau of Justice Statistics (Feb. 2015), <https://www.bjs.gov/content/pub/pdf/mpsfj1112.pdf>.

32. In response to this dangerous reality, on May 6, 2020, the CDC issued a report examining the challenges of controlling the spread of COVID-19 in correctional and detention facilities.²⁵ The report found that 86% of jurisdictions reporting to the CDC had at least one confirmed case among either inmates or staff, and that as of April 21, there were a total of 4,893 cases and 88 deaths among inmates and 2,778 cases and 15 deaths among staff.²⁶ 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.”²⁷ The CDC recommended seven key strategies to mitigate the effect and 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.²⁸

33. Such measures are particularly critical in New York City prisons and detention facilities, including GEO Queens, which are currently experiencing rates of infection that outpace the infection rate in New York City as a whole. According to data collected by the Legal Aid Society, the infection rate on New York City’s Rikers Island jail is 9.53% compared to 2.15% in New York City and 0.40% nationally as of May 12, 2020.²⁹ The BOP has also reported an

²⁵ See Wallace et al., *COVID-19 in Correctional and Detention Facilities – United States, February–April 2020* (May 6, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6919e1.htm>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *See id.*

²⁹ See *COVID-19 Infection Tracking in NYC Jails*, The Legal Aid Soc’y, <https://legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last visited May 12, 2020).

alarming escalation of COVID-19 cases in New York’s federal facilities.³⁰ As of May 12, 2020, 6 inmates and 37 staff at the Metropolitan Detention Center (“MDC”), and 5 inmates and 40 staff at the Metropolitan Correctional Center (“MCC”) had tested positive for COVID-19.³¹

34. The legal system has recognized the need to respond to the COVID-19 pandemic in jails and prisons. For instance, New York City and State have both reduced their prison populations in response to COVID-19. On March 17, 2020, the New York City Board of Correction, the oversight board for the City’s jail system, called for the City to “immediately remove from jail all people at higher risk from COVID-19 infection,” in order to “limit the spread of COVID-19 infection” among inmates and jail staff, and the City has begun to identify groups of prisoners for upcoming release.³² Since then, more than 1,500 inmates have been released from

³⁰ See *BOP COVID-19 Information Page*, Bureau of Prisons, <https://www.bop.gov/coronavirus/> (last visited May 12, 2020). There is reason to believe that the numbers reported by the BOP understate the actual number of tested-positive cases. Compare Letter from M. Licon-Vitale and D. Edge to Hon. Roslynn R. Mauskopf (Apr. 7, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_20200407_042057.pdf (3 positive inmates at MDC Brooklyn) with COVID-19 Cases Federal Bureau of Prisons, www.bop.gov/coronavirus (2 positive inmates at MDC Brooklyn) (visited April 7, 2020). The BOP did not start reporting the number of positive inmates at any of the 140 privately-run facilities holding federal inmates until late-April. See Dan Kane, *Federal Officials Say They Will Begin Reporting Coronavirus Cases in Private Prisons*, News & Observer (Apr. 22, 2020), <https://www.newsobserver.com/news/local/article242125516.html>.

³¹ See Letter from M. Licon-Vitale & D. Edge to Hon. Roslynn R. Mauskopf (May 12, 2020), https://www.nyed.uscourts.gov/pub/bop/MDC_MCC_20200512_034109.pdf.

³² New York City Board of Correction Calls for City to Begin Releasing People from Jail as Part of Public Health Response to COVID-19 (Mar. 17, 2020), <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf>; see also Julia Marsh & Ben Feuerherd, *NYC Eyeing Release of 200 More Inmates Amid Coronavirus Outbreak*, N.Y. Post (Mar. 23, 2020), <https://bit.ly/2Jbtjwu>.

New York City jails.³³ The New York State Department of Corrections and Community Supervision also reported that nearly 800 people have had their parole violations cancelled and were released.³⁴

35. On the federal level, the Department of Justice (“DOJ”) and the BOP have issued guidance to expedite prisoner release to home confinement. On March 26, 2020, United States Attorney General William Barr ordered the BOP to “prioritize the use of [] various statutory authorities to grant home confinement for inmates seeking transfer in connection with the ongoing COVID-19 pandemic.”³⁵ On April 3, 2020, Attorney General Barr noted that “time is of the essence” and directed the BOP to intensify their efforts to “immediately review” and release “vulnerable inmates” from BOP-run prison complexes, “even if electronic monitoring is not available.”³⁶

36. The federal judiciary is also facilitating release and oversight at BOP facilities. For instance, federal judges in Manhattan have expressed frustration with the sluggish pace and lack of clarity regarding BOP’s release process and have ordered release rather than wait for the BOP to navigate a cumbersome process. *See United States v. Gross*, 2020 WL 1862251, at *1 (S.D.N.Y. Apr. 14, 2020) (Nathan, J.) (granting compassionate release after initially deferring to the BOP

³³ *See New York City Jail Population Reduction in the Time of COVID-19* (Apr. 2020), <http://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/04/MOCJ-COVID-19-Jail-Reduction.pdf>.

³⁴ *See Priscilla DeGregory, Legal Group Wants Cuomo to Release 40 More Prisoners Over Coronavirus Fears*, N.Y. Post (Apr. 27, 2020), <https://nypost.com/2020/04/27/legal-group-wants-cuomo-to-release-40-more-prisoners-over-coronavirus-fears/>.

³⁵ *See Memorandum from the Attorney General to the Director of the Bureau of Prisons re: Prioritization of Home Confinement As Appropriate in Response to COVID-19 Pandemic* (Mar. 26, 2020), <https://www.politico.com/f/?id=00000171-1826-d4a1-ad77-fda671420000>.

³⁶ *See Memorandum from the Attorney General to the Director of the Bureau of Prisons re: increasing Use of Home Confinement at Institutions Most Affected by COVID-19* (Apr. 3, 2020), <https://www.politico.com/f/?id=00000171-4255-d6b1-a3f1-c6d51b810000>.

because “time is of the utmost essence”); *see also United States v. Russo*, 2020 WL 1862294, at *8 (S.D.N.Y. Apr. 14, 2020) (Liman, J.) (noting that the BOP “has frustrated the Court’s expectations that it would be able to speedily complete its review of” defendant’s application for release); *United States v. Stahl*, No. 18 Cr. 694, ECF No. 61 (S.D.N.Y. Apr. 21, 2020) (Abrams, J.) (ordering the BOP to explain why the defendant is “no longer eligible for home confinement or a furlough” in light of “new guidance” issued by DOJ, despite the BOP’s prior approval of defendant’s request for home confinement). On April 15, 2020, Judge Rachel Kovner of the Eastern District of New York ordered an expert inspection of the MDC to assess the facility’s response to the pandemic, and on May 7, 2020, Judge Edgardo Ramos of the Southern District of New York did the same for the MCC. *See Chunn v. Edge*, No. 20 Civ. 1590, ECF No. 45 (E.D.N.Y. Apr. 15, 2020) (Kovner, J.); *Fernandez-Rodriguez v. Licon-Vitale*, No. 20 Civ. 3315, ECF No. 32 (S.D.N.Y. May 7, 2020) (Ramos, J.). And on April 20, Judge Alison Nathan of the Southern District of New York acknowledged the inability to contain transmission of the virus and granted release in light of a federal correctional facility’s “senseless[],” “illogical,” and “self-defeating” quarantine process. *United States v. Scparta*, 2020 WL 1910481, at *3 (S.D.N.Y. Apr. 20, 2020) (Nathan, J.).

37. Similarly, recognizing the insufficiency of the District of Columbia Department of Corrections’ (“DOC”) pandemic response, a federal judge recently granted in part a temporary restraining order on behalf of a putative class of pretrial detainees seeking extensive relief, ordering additional staff training, appropriate implementation of social distancing policies, and the retention of a registered sanitarian to oversee the environmental health and safety programs at two DOC facilities. *See Banks*, 2020 WL 1914896, at *11, *13. The court noted the absence of any evidence that social distancing procedures were “being implemented,” found “especially concerning” the

prisons' reliance on inmates to "self-report symptoms in order to determine who may be infected," and noted that the "quarantine unit" was not "properly secluded." *Id.* at *8–11.

38. Because GEO Queens is a private facility that houses inmates in federal pretrial and presentence detention, it is subject to neither BOP policies nor state-level actions to reduce inmate populations to mitigate the spread of COVID-19. As such, few, if any, of the above efforts have inured to the benefit of the GEO Queens inmate population.

III. GEO AND THE QUEENS DETENTION FACILITY

39. The GEO Group is a publically traded real estate investment trust incorporated under the laws of the state of Florida and with its principal place of business in Boca Raton, Florida.³⁷ GEO is one of the two³⁸ largest and most notorious private prison organizations in the United States, operating sixty-five facilities across sixteen different states.³⁹ GEO has been the subject of numerous legal actions involving allegations of endangering inmates' rights, exercising suspect practices, and violating health and safety standards. For instance, in 2002, a jury found three former GEO (formerly known as Wackenhut Corrections Corporation) employees guilty in federal district court of civil rights conspiracy and obstruction charges based on their brutal assault of an inmate at a New Mexico facility and their subsequent falsification of records and accounts

³⁷ See The GEO Group, Inc., Form 10-K for the Fiscal Year 2019 (Feb. 26, 2020) <http://investors.geogroup.com/Cache/IRCache/cdf2d868-2ef2-d95f-6096-954030483167.pdf>.

³⁸ The other is CoreCivic, formerly known as the Corrections Corporation of America, see *The Corrections Corporation of America, by the Numbers*, Mother Jones (July/Aug. 2016), <https://www.motherjones.com/politics/2016/06/cca-corrections-corporation-america-private-prisons-company-profile/>.

³⁹ See *Our Secure Services Locations*, The GEO Group, Inc., <https://www.geogroup.com/LOCATIONS>.

to federal investigators.⁴⁰ In 2005, a Texas jury found that GEO acted with malice or gross negligence when an inmate at its facility was beaten to death by other inmates in the presence of guards, and the facility either destroyed or lost the video and physical evidence of the assault.⁴¹ In 2010, GEO entered into a \$3 million settlement with a class of plaintiffs who had been detained at six GEO facilities across the country and who alleged that they were subjected to illegal strip searches during their time in detention.⁴² In 2018, the Tenth Circuit affirmed the District Court of Colorado’s certification of a class of detainees at a GEO-operated immigration detention facility who allege that GEO’s “voluntary work program” violated the Trafficking Victims Protection Act’s prohibition against forced labor and resulted in GEO’s unjust enrichment.⁴³ The class members described being “forced” to clean the housing units “for no pay and under threat of solitary confinement as punishment for any refusal to work.”⁴⁴ A GEO facility in Adelanto, California was also the subject of a Department of Homeland Security Management Alert when during a May 2018 site visit, federal inspectors discovered nooses in 15 of the 20 cells they

⁴⁰ See *Three Former Wackenhut Employees Convicted of Civil Rights Violations*, Dep’t of Justice (Apr. 12, 2002), https://www.justice.gov/archive/opa/pr/2002/April/02_crt_219.htm.

⁴¹ See *Wackenhut Corrs. Corp. v. De La Rosa, Sr.*, 305 S.W.3d 594, 600, 656–57 (Tex. App. 2009) *abrogated by* *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143 (Tex. 2015) (holding that “nearly all the indicators of reprehensible conduct exists” in the trial record and “Wackenhut’s conduct was clearly reprehensible and, frankly, constituted a disgusting display of disrespect for the welfare of others and for this State’s civil justice system”).

⁴² See Order Granting Final Approval To Class Action Settlement and Judgment, *Allison v. GEO Grp., Inc.*, No. 08 Civ. 0467 (E.D. Penn. Oct. 13, 2010), ECF No. 72.

⁴³ See *Menocal v. The GEO Grp., Inc.*, 882 F.3d 905, 924 (10th Cir. 2018), *cert. denied*, 139 S. Ct. 143 (2018); see also Victoria Law, *End Forced Labor in Immigrant Detention*, N.Y. Times (Jan. 29, 2019), <https://www.nytimes.com/2019/01/29/opinion/forced-labor-immigrants.html>.

⁴⁴ See *id.* at 911.

inspected.⁴⁵ The report also raised questions about inadequate medical care and “overly restrictive segregation” of immigrants housed at the facility.⁴⁶

40. The GEO Queens facility is located at 182-22 150th Avenue, Jamaica, New York,⁴⁷ in a warehouse that was converted into a detention facility.⁴⁸ GEO has owned and operated the facility since it opened in 1997 under contracts with the federal government: with Immigration and Customs Enforcement (“ICE”) from 1997 until 2005 and with the USMS from 2005 through the present. GEO and the USMS most recently renewed their contract, worth \$187 million, in April 2019.⁴⁹

41. Throughout GEO’s tenure as owner and operator of GEO Queens, it has attracted widespread public criticism of the prison’s conditions. In 2004, 175 detainees commenced a hunger strike in protest of conditions at the facility and threats of deportation made by prison

⁴⁵ See *Management Alert – Issues Requiring Action at the Adelanto ICE Processing Center in Adelanto, California*, Dep’t of Homeland Security (September 27, 2018), <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; see also Miriam Jordan, *Inspectors Find Nooses in Cells at Immigration Detention Facility*, N.Y. Times (Oct. 2, 2018), <https://www.nytimes.com/2018/10/02/us/oig-inspector-general-adelanto-immigrants-nooses.html>.

⁴⁶ *Id.*

⁴⁷ See *Our Secure Services Locations – Queens Detention Facility*, The GEO Group, Inc., <https://www.geogroup.com/FacilityDetail/FacilityID/73>; Answer to Amended Complaint and Affirmative Defenses, *Brooks v. Sposato*, No. 12 Civ. 04740 (E.D.N.Y. filed Mar. 31, 2017), ECF No. 127 at 2; The GEO Group, Inc. Contract, Effective Jan. 1, 2008 through Dec. 31, 2017.

⁴⁸ See Quality Assurance Report, Prisoner Operations Division of the Dep’t of Justice, at 4 (Aug. 4–6, 2015), <https://www.documentcloud.org/documents/6473653-QAR-Queens-Private-Detention-Fac-2015.html>.

⁴⁹ The GEO Group, Inc., Form 10-K for the Fiscal Year 2019 (Feb. 26, 2020).

officials.⁵⁰ In 2011, then-Public Advocate De Blasio implored then-Attorney General Eric Holder to investigate GEO Queens and GEO's contract with the USMS,⁵¹ stating that "GEO Group has a horrible track record," "[s]o much so that other governments have told them they could not operate in their nation,"⁵² and that the government "should not do business with companies that violate basic human rights."⁵³ De Blasio speculated that GEO's refusal to provide answers regarding its history of abuses at GEO Queens "makes me think they have something to hide."⁵⁴

42. GEO has also been subject to numerous lawsuits by GEO Queens inmates, whose complaints depict severely insufficient conditions and reckless treatment by GEO employees and contractors.⁵⁵ In one action by a former detainee against GEO, Zerillo and the USMS, which

⁵⁰ See *Public Advocate de Blasio Demands Investigation into Private Immigration Detention Facilities* (Oct. 6, 2011), <http://archive.advocate.nyc.gov/news/2011-10-06/public-advocate-de-blasio-demands-investigation-private-immigration-detention-facili>.

⁵¹ *Id.*

⁵² See Henry DiPrinzio, *Amid Scrutiny of Jails and Jailers, NYC's Private Prison Escapes Attention*, City Limits (June 26, 2018), <https://citylimits.org/2018/06/26/amid-scrutiny-of-jails-and-jailers-nycs-private-prison-escapes-attention/>.

⁵³ See Ivan Pereira, *De Blasio Urges Probe Of Fed Detention Center*, QNS (Dec. 9, 2011), <https://qns.com/story/2011/12/09/deblasio-urges-probe-of-fed-detention-center/>.

⁵⁴ See *City Council Investigations Allegations of Abuse at Immigration Detention Centers*, CBS N.Y. (Dec. 13, 2011), <https://newyork.cbslocal.com/2011/12/13/city-council-investigates-allegations-of-abuse-at-immigration-detention-centers/>.

⁵⁵ See, e.g., *La Ford v. GEO Grp., Inc.*, 2013 WL 2249253, at *1 (E.D.N.Y. May 22, 2013) (GEO Queens inmate alleging that without provocation, multiple GEO-employed correctional officers abused him verbally and punched him, kicked him, and threw him to the ground); *Watson v. Zerillo*, 2014 WL 2566910, at *1 (E.D.N.Y. June 5, 2014) (GEO Queens inmate alleging that the medical staff at GEO Queens knew of a back injury sustained while playing basketball at the facility and failed to provide him with adequate medical care); *Morales v. Queens Private Detention Facility*, 2016 WL 554824, at *1 (E.D.N.Y. Feb. 9, 2016) (GEO Queens inmate alleging that following surgery to repair an umbilical hernia, that GEO Queens and GEO medical staff failed to provide the prescribed medication, failed to transport him to a hospital emergency room contrary to instructions from the staff physician, and that ten requests for medical attention over the course of four weeks were ignored); Complaint, *Daniels v. DuPoux, The GEO Grp., Inc.*, No. 716430/2017 (N.Y. Sup. Ct. Nov. 28, 2017) (wrongful death suit brought by estate of deceased

resulted in a settlement, the plaintiff alleged that his unstable mental condition “became even worse” upon his transfer to GEO Queens, when he was “placed in solitary confinement for no justifiable reason,” and was both deprived of proper medication and administered contra-indicated medication in violation of applicable guidelines and despite the plaintiff’s obvious symptoms of withdrawal from his regular medication.⁵⁶ In a separate criminal action, a jury in the Eastern District of New York found several former GEO correctional officers guilty of conspiracy to obstruct justice, obstruction of justice, intimidation and corrupt persuasion for acts committed while on duty at GEO Queens. After strip-searching and brutally assaulting an inmate, whose injuries required his hospitalization, the guards falsified reports relating to the attack.⁵⁷ When GEO Queens referred the reports—months later—to the Office of the Inspector General, the guards similarly lied to a federal investigator.⁵⁸

43. In a 2015 Quality Assurance Report by the Prisoner Operations Division within the DOJ, GEO Queens received an overall rating of “deficient,” indicating that “[a]dequate resources, policies, procedures, or processes are either not in place or not sufficient.”⁵⁹ The report specifically found GEO Queens’ performance in Health Care Administration, Provision of Health Care, Key, Tools, and Medical Instruments, Food Storage and Preparation, and Sanitation and Environmental

inmate alleging, in part, negligent or reckless acts, including that defendants failed to resuscitate plaintiff, timely call 911, and negligently diagnosed the deceased with a panic attack).

⁵⁶ See Complaint, *Brooks v. Sposato*, No. 12 Civ. 04740 (E.D.N.Y. filed Sept. 21, 2012), ECF No. 1 at 21–28.

⁵⁷ See *United States v. Gray*, 642 F.3d 371, 373–74 (2d Cir. 2011).

⁵⁸ *Id.*

⁵⁹ See Quality Assurance Report, Prisoner Operations Division of the Dep’t of Justice, at 5 (Aug. 4–6, 2015).

Control were deficient.⁶⁰ The report made several troubling findings, including that the facility did not have a “quality” health care management program; “[a]ll professional staff do not comply with applicable state and federal licensure, certifications, or registration requirements”; and “[a]dministering of medication is being performed by persons not properly trained, and is not administered under proper supervision of the health authority and facility administrator or designee.”⁶¹

44. GEO Queens’ flagrant mismanagement of the COVID-19 pandemic has been the subject of public reporting. One inmate told reporters that he felt “scared for [his] life” because he was “living in a pigsty,” explaining that “[t]he place is completely unsanitary, they’re not cleaning, they’re not changing our linens, and they’re not doing anything to keep the virus from spreading.”⁶² Another inmate stated bluntly that “[w]e’re not practicing social distancing because you cannot do social distancing in this jail because everyone is so on top of each other” and as a result, “[e]veryone’s coughing, sneezing on top of each other.”⁶³ Media reported that the conditions at GEO Queens quickly became dangerous enough that a few dozen inmates were driven to a food strike in an attempt to force GEO Queens to take action.⁶⁴ But instead of taking

⁶⁰ See *id.* at 27–29.

⁶¹ See *id.* at 7–8.

⁶² David Brand, ‘*I Feel Scared for My Life*’—*Inmates Face COVID-19 Inside NYC’s Only Private Jail*, Queens Daily Eagle (Apr. 3, 2020), <https://queenseagle.com/all/covid19-queens-detention-facility-private-jail>.

⁶³ David Brand, *Meeks Asks Feds for Info as COVID-19 Surges Inside Privately Run Queens Jail*, Queens Daily Eagle (Apr. 17, 2020), <https://queenseagle.com/all/meeks-letter-geo-group-covid-19-queens-jail>.

⁶⁴ David Brand, *Illness Spreads With Little Scrutiny in Queens’ Private Jail*, Queens Daily Eagle (Apr. 6, 2020), <https://queenseagle.com/all/queens-private-jail-covid19-inmates-sick>.

appropriate action, Respondent Zerillo reportedly told inmates that they could not get tested for COVID-19 and instead had to “let the virus take its course.”⁶⁵

IV. RESPONDENTS CREATED AND ARE FAILING TO CONTROL THE COVID-19 OUTBREAK AT GEO QUEENS

45. Inmates at GEO Queens live in close quarters in which it is impossible to socially distance or self-isolate, even when inmates have exhibited symptoms of or tested positive for COVID-19. von Dornum Decl. ¶¶ 37, 40. GEO reports that GEO Queens has a capacity of 222 beds,⁶⁶ including an eight-cell Special Housing Unit (“SHU,” designed to hold just one individual per cell).⁶⁷ As of April 20, 2020, GEO Queens is at 80 percent capacity, housing approximately 175 detainees. von Dornum Decl. ¶¶ 34. Inmates at GEO Queens reside in seven main dormitories—each of which contain between twenty and forty-six beds—or the segregated SHU, where inmates are ordinarily housed as punishment for disciplinary violations.⁶⁸ Except for the beds in the SHU, the detainees’ personal space consists of a single bed—typically one bed in a two-person bunk bed—arranged directly adjacent to the beds of other inmates. von Dornum Decl. ¶ 37.

46. Inmates at GEO Queens spend nearly all of their waking hours in close proximity to other inmates, either in the day rooms of their dormitories or in recreational areas common to the entire facility. In the common areas, telephones, computer terminals, and limited recreational

⁶⁵ *Id.*

⁶⁶ *See Our Secure Services Locations – Queens Detention Facility*, The GEO Group, Inc., <https://www.geogroup.com/FacilityDetail/FacilityID/73>.

⁶⁷ Other reports indicate that GEO Queens can house 240 detainees. *See Quality Assurance Report*, Prisoner Operations Division of the Dep’t of Justice, at 4 (Aug. 4–6, 2015); *Prison Rape Elimination Act Audit*, Office of the Inspector General, at 3 (Sept. 14, 2018).

⁶⁸ *See Letter from William Zerillo to Hon. Roslynn R. Mauskopf* (Apr. 21, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200421_050924.pdf

equipment are shared with the entire inmate population. von Dornum Decl. ¶ 45. Inmates eat their meals together in their dorms, either at shared tables or in their sleeping areas, and share small bathroom facilities located in each dormitory. von Dornum Decl. ¶¶ 45, 47. In spite of the constant contact between inmates and shared use of common areas and objects, GEO Queens has not undertaken efforts to ensure that the facility is appropriately sanitized to minimize the spread of COVID-19. von Dornum Decl. ¶¶ 43–45. No part of the facility has been professionally sanitized since the start of the pandemic; rather, inmates remain responsible for all cleaning. ¶ 44. Inmates at GEO Queens are not provided with adequate cleaning supplies or personal protective equipment to be able to clean the facility effectively, safely, and as frequently as is required. von Dornum Decl. ¶¶ 43–45, 49. Due to a lack of proper supplies, inmates have been forced to fill empty bottles of cleaning solution with water as a stopgap measure. von Dornum Decl. ¶ 44. Further, GEO Queens has failed to provide consistent access to laundry service, forcing sick inmates who have experienced symptoms such as fevers and vomiting to live in dirty clothes and sleep in dirty sheets for over a week at a time. von Dornum Decl. ¶ 46.

47. Inmates do not have access to disinfectant wipes, hand sanitizer, or gloves to protect themselves from infection through contact with potentially contaminated surfaces. von Dornum Decl. ¶¶ 43, 45. Though inmates received non-medical grade face masks for the first time during the week of April 7, 2020—over three weeks after Governor Cuomo and Mayor De Blasio declared states of emergency in response to the worsening COVID-19 pandemic—the face masks are ill-fitting and inmates are not provided with new masks on a daily basis. von Dornum Decl. ¶ 5. And

although 25 staff have tested positive for COVID-19,⁶⁹ staff do not consistently wear face masks or gloves when working with inmates. von Dornum Decl. ¶¶ 5, 49

48. GEO Queens does not have the capacity to isolate sick inmates. von Dornum Decl. ¶ 37. GEO Queens's eight single occupancy cells are intended to segregate inmates for punitive purposes and do not provide a clean and safe environment in which inmates suffering from a potentially life-threatening virus can recover. *Id.*

49. GEO Queens' attempt to segregate inmates who tested positive for COVID-19 from the rest of the population was inconsistent, ineffective, and came far too late. Toward the end of April—weeks after inmates began to test positive for COVID-19 and well over a month after inmates first began reporting symptoms—GEO Queens designated F Dorm for purposes of cohorting COVID-19 positive inmates. But since cohorting in F Dorm began, it has not been done consistently. von Dornum Decl. ¶¶ 38–40. Several COVID-19 positive inmates remain in their open dorms and continue to sleep feet away from other inmates.

50. Further, even though GEO Queens has identified over half of the inmate population as being at high-risk of serious illness or death from COVID-19 due to underlying health conditions or other risk factors, these high-risk inmates are not segregated from the rest of the population and are not provided with any additional sanitation or hygiene products or personal protective equipment. von Dornum Decl. ¶¶ 40, 41.

51. As a result of Respondents' failures to take appropriate precautions or put appropriate mitigation measures in place, as of April 21, 38 inmates tested positive for COVID-19 out of the 41 inmates tested—or approximately 93%.⁷⁰

⁶⁹ See Letter from William Zerillo to Hon. Roslynn R. Mauskopf (May 7, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200507_034813.pdf.

⁷⁰ See Letter from William Zerillo to Hon. Roslynn R. Mauskopf (May 7, 2020).

V. GEO QUEENS IS UNEQUIPPED TO TREAT INMATES WHO CONTRACT COVID-19

52. GEO Queens is not medically equipped to handle the COVID-19 outbreak spreading within the prison. GEO Queens' medical team is severely understaffed. It currently has one physician, Dr. Sajjad Mohammad,⁷¹ and only one Registered Nurse on staff, both of whom visit the facility infrequently and even less so since the first inmate became infected with COVID-19. von Dornum Decl. ¶¶ 51, 53. Instead, GEO Queens relies heavily on several licensed practical nurses ("LPNs")—who are not licensed to prescribe medicine or perform most medical procedures—to provide medical care to the entire inmate population. Several of the LPNs have also stopped coming to work since the start of the COVID-19 pandemic. *Id.* Only one LPN currently visits the dorms on a daily basis. *Id.*

53. Many inmates continue to report symptoms of COVID-19, including coughs, fevers, shortness of breath, and lost sense of taste. von Dornum Decl. ¶ 40. In direct conflict with CDC guidance, these inmates have remained in the general population, been denied COVID-19 testing, and been refused medical treatment, including inhalers for some inmates with asthma. von Dornum Decl. ¶ 53. Instead, inmates who are exhibiting symptoms have had their temperatures checked and receive only Azithromycin, Tylenol, and other over-the-counter palliatives. von Dornum Decl. ¶¶ 28, 40. But even these medications are only available at specific times during the day and never at night, when there are no medical staff on the premises. *Id.* If inmates

⁷¹ See Quality Assurance Report, Prisoner Operations Division of the Dep't of Justice, at 13 (Aug. 4–6, 2015) (health services staffing at GEO Queens includes "one medical doctor (MD) who works two four hour shifts per week"); see also The Geo Group, Inc. Contract, Effective Jan. 1 2008 through Dec. 31, 2017, at C5 (defining the role of "Clinical Director" as "[t]he physician on-site to whom the responsibility for the facility's health care serves has been officially designated . . . including arrangements for all levels of health care and ensuring the quality and accessibility of all health services provided to detainees").

experience acute symptoms when medication and medical staff are unavailable, they are instructed to drink hot water and rest in their dormitories, where they will inevitably infect other inmates. von Dornum Decl. ¶ 40.

54. Inmates report that GEO Queens medical staff do not accurately report the results of routine, objective tests such as blood pressure or temperature in inmate medical records. von Dornum Decl. ¶ 54. And, notwithstanding Chief Judge Mauskopf's order to provide "current, consistent, and accurate information" regarding, among other things, "[t]he number of inmates tested and the number of positive tests,"⁷² GEO Queens has failed to do so. On April 16, 2020, Respondent Zerillo reported that 41 inmates had been tested for COVID-19 and 36 inmates tested positive.⁷³ Then, on April 21, 2020, without explanation, Respondent Zerillo reported that the same number of inmates had been tested but that 38 inmates now tested positive.⁷⁴ Respondent Zerillo also reported on April 16 that high-risk inmates had been isolated in single-occupancy cells,⁷⁵ despite the fact that GEO Queens has only eight single-cell SHU units and GEO had previously identified over half of the GEO Queens population as "high-risk." von Dornum Decl. ¶ 24. Since April 21, 2020, Respondent Zerillo has not reported that any additional inmates beyond the 41 inmates originally tested have been tested for COVID-19; thus, it appears that GEO Queens

⁷² See Administrative Order No. 2020-14, Status of Detention Facilities Housing Defendants in Cases Filed in the Eastern District of New York (E.D.N.Y. Apr. 2, 2020) (Mauskopf, C.J.), <https://img.nyed.uscourts.gov/files/general-ordes/Admin%20Order%202020-14.pdf>.

⁷³ See Letter from William Zerillo to Hon. Roslynn R. Mauskopf (Apr. 16, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200416_053144.pdf.

⁷⁴ See Letter from William Zerillo to Hon. Roslynn R. Mauskopf (Apr. 21, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200421_050924.pdf.

⁷⁵ See Letter from William Zerillo to Hon. Roslynn R. Mauskopf (Apr. 16, 2020) ("Individuals who are at a higher risk of illness, have been placed into single cells with solid walls and doors, isolated from the general population.").

stopped testing inmates altogether on or about April 21.⁷⁶ Without any additional testing, however, Respondent Zerillo reported on April 28, 2020 that 38 out of 38 of the inmates who had tested positive for COVID-19 had “recovered.”⁷⁷ Having deemed all inmates recovered, GEO Queens has now stopped conducting temperature checks, blindfolding itself to even this limited indication of infection. von Dornum Decl. ¶¶ 36, 55.

55. Studies have shown that one-third of individuals infected with COVID-19 still carried viral RNA over *twenty days* or longer after the individuals became symptomatic and that there is no relationship between the severity of the symptoms experienced by the individuals and the amount of time that the individuals remained infected.⁷⁸ Giftos Decl. ¶ 23. The fourteen-day quarantine period that has been recommended by medical professionals for those who have been exposed to COVID-19 is based on the virus’ incubation period and designed to approximate the amount of time it could take for an individual to begin exhibiting symptoms; it bears no relationship to the virus’ lifespan.⁷⁹ Giftos Decl. ¶ 23. Thus, without testing, it is impossible for GEO Queens to assess recovery with any accuracy.

⁷⁶ Respondent Zerillo’s reports to Chief Judge Mauskopf dated April 16, 21, 23, 28, and 30 and May 5 and 8 all state : “Number of detainees tested: 41”. See *Coronavirus (COVID-19) Information*, United States District Court Eastern District of New York, <https://www.nyed.uscourts.gov/coronavirus> (last visited May 11, 2020).

⁷⁷ Compare Letter from William Zerillo to Hon. Roslynn R. Mauskopf (Apr. 16, 2020) (not reporting any recoveries) with Letter from William Zerillo to Hon. Roslynn R. Mauskopf (Apr. 28, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200428_052447.pdf (reporting that all 38 inmates who tested positive recovered).

⁷⁸ 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), [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).

⁷⁹ See *Frequently Asked Questions*, Centers for Disease Control and Prevention: Coronavirus Disease 2019 (COVID-19) (May 12, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/faq.html>

56. In fact, one inmate who had tested positive and who GEO deemed “recovered” has already tested positive once again, a fact of which GEO Queens became aware not through their own testing, but when the inmate’s symptoms became serious enough to require hospitalization.⁸⁰

57. Given the conditions at GEO Queens, even inmates who have truly recovered from COVID-19 remain at risk, since it is unclear whether patients who have recovered from COVID-19 develop immunity to reinfection.⁸¹ Giftos Decl. ¶ 24. While those who have recovered from COVID-19 develop antibodies, medical experts do not yet know whether these antibodies provide a recovered patient with immunity.⁸²

58. Unless the population in the facility is reduced to fully implement proper, CDC-recommended social distancing; the conditions are made more sanitary; adequate hygienic and protective supplies are made fully available to the inmate population that remains; comprehensive testing and contact tracing is mandated; and physical symptoms are medically monitored, treated and mitigated, GEO Queens remains in a state that is ripe for the continued spread of COVID-19.

(“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.”).

⁸⁰ 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 and tested positive again.”).

⁸¹ 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>.

⁸² See Marc Lipsitch, *Who Is Immune to the Coronavirus?*, N.Y. Times (Apr. 13, 2020), <https://www.nytimes.com/2020/04/13/opinion/coronavirus-immunity.html>.

HABEAS AND CLASS ALLEGATIONS

I. RESPONDENTS' FAILURE TO PROTECT GEO QUEENS INMATES FROM COVID-19 CONSTITUTES DELIBERATE INDIFFERENCE TO A SUBSTANTIAL RISK OF SERIOUS HARM

59. When the government incarcerates someone, “the Constitution imposes upon it a corresponding duty to assume some responsibility for [their] safety and general well-being.” *DeShaney v. Winnebago Cty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199–200 (1989); *see also Youngberg v. Romeo*, 457 U.S. 307, 315–16, 324 (1982) (detainees have constitutionally protected interests in safety and the state has an “unquestioned duty . . . to provide adequate food, shelter, clothing, and medical care”). Respondents violate the Fifth and Eighth Amendment rights of Petitioners and all inmates at GEO Queens by knowingly continuing to subject them to conditions of confinement that create a serious risk to their health and safety from COVID-19.

60. Petitioners and all other inmates at GEO Queens are either awaiting trial or have pleaded guilty or been convicted of an offense and are awaiting sentencing. The Fifth Amendment guarantees due process protections to presumptively innocent persons detained before trial. *See Bell v. Wolfish*, 441 U.S. 520, 535–36 (1979); *Darnell v. Pineiro*, 849 F.3d 17 n.3, 29 (2d Cir. 2017). The Eighth Amendment, which applies to inmates who have pleaded guilty or have been convicted of an offense, protects incarcerated individuals from conditions that pose “an unreasonable risk of serious damage” to their health. *Helling v. McKinney*, 509 U.S. 25, 35 (1993). Because pretrial detainees are entitled to protections “at least as great as the Eighth Amendment protections available to a convicted prisoner,” *City of Revere v. Mass. Gen. Hosp.*, 463 U.S. 239, 244 (1983), conditions that would violate the Eighth Amendment are more than enough to also violate the Fifth Amendment rights of pretrial detainees, *Hardy v. Dist. of Columbia*, 601 F. Supp. 2d 182, 189 (D.D.C. 2009).

A. The COVID-19 Outbreak at GEO Queens Constitutes a Substantial Risk of Serious Harm to Inmates' Health and Safety

61. Claims under both the Fifth and Eighth Amendments require Petitioners to establish a substantial risk of serious harm to their health and safety. *See Farmer v. Brennan*, 511 U.S. 825, 834 (1994) (“For a claim . . . based on a failure to prevent harm, the inmate must show that he is incarcerated under conditions posing a substantial risk of serious harm.”). Petitioners meet this requirement here because the reach of the Fifth and Eighth Amendments has repeatedly been held to include exposure of inmates to serious communicable diseases. *Helling*, 509 U.S. at 34 (“[I]nmates [are] entitled to relief under the Eighth Amendment when they prove[] threats to personal safety from . . . the mingling of inmates with serious contagious diseases with other prison inmates.”); *see also Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (holding that “deliberate indifference to serious medical needs of prisoners constitutes the unnecessary and wanton infliction of pain proscribed by the Eighth Amendment”) (internal quotation marks and citation omitted); *Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease”) (emphasis added).

62. COVID-19 is a highly contagious and potentially deadly disease. It has already killed over 83,000 people in the United States.⁸³ It spreads rapidly in densely populated, closed settings. Incarcerated people, who have disproportionately high rates of underlying medical conditions, are particularly vulnerable to death or severe complications from the virus. Giftos Decl. ¶¶ 13–16. Unsurprisingly, courts have already specifically recognized that inmates’

⁸³ *See COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at Johns Hopkins University*, Johns Hopkins University & Medicine: Coronavirus Resource Center, <https://coronavirus.jhu.edu/map.html> (last visited: May 13, 2020).

exposure to COVID-19 constitutes a substantial risk of serious harm. *See Basank v. Decker*, 2020 WL 1481503, at *3 (S.D.N.Y. Mar. 26, 2020) (Torres, J.) (citing *United States v. Stephens*, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (Nathan, J.); *United States v. Garlock*, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020)).

63. Courts need not “await a tragic event” to find that Respondents are maintaining unconstitutional conditions of confinement. *Helling*, 509 U.S. at 33 (government officials act with deliberate indifference when they “ignore a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year,” even when “the complaining inmate shows no serious current symptoms”). Showing that the conditions of confinement at GEO Queens “pose an unreasonable risk of serious damage to [inmates’] future health” is sufficient. *See Phelps v. Kapnolas*, 308 F.3d 180, 185 (2d Cir. 2002) (quoting *Helling*, 509 U.S. at 35); *see also Jabbar v. Fischer*, 683 F.3d 54, 57 (2d Cir. 2012) (holding that incarcerated people “may not be exposed to conditions that pose an unreasonable risk of serious damage to [their] future health”) (internal quotation marks and citation omitted).

64. Given the conditions of confinement at GEO Queens described herein, the high infection rate among inmates there, and GEO Queens’ failures to properly isolate, treat, and test inmates infected with COVID-19 so as to limit the spread of the disease, there can be little dispute that a substantial risk of serious harm from COVID-19 is present here.

B. Respondents Acted With Deliberate Indifference Under Both Fifth and Eighth Amendment Standards

65. Fifth and Eighth Amendment claims both require that Respondents acted with deliberate indifference. To establish deliberate indifference under the Fifth Amendment, a petitioner need only show that the respondent “knew, or should have known, that the [challenged] condition posed an excessive risk to health or safety” and does not require petitioner to show that

the respondent had “subjective awareness that the official’s acts (or omissions) have subjected the pretrial detainee to a substantial risk of harm.” *Darnell*, 849 F.3d at 35. An Eighth Amendment claim requires a petitioner to establish deliberate indifference through evidence that the respondent was “aware of the facts from which the inference could be drawn that a substantial risk of serious harm exists,” and that the respondent actually “dr[ew] the inference.” *Farmer*, 511 U.S. at 837. Here Respondents showed—and continue to show—deliberate indifference under either standard.

66. The conditions of confinement at GEO Queens demonstrate Respondents’ deliberate indifference. GEO Queens houses inmates in close proximity to one another in living situations where social distancing is impossible. von Dornum Decl. ¶ 37. It fails to maintain even basic standards of sanitation. When the COVID-19 outbreak reached the facility, GEO Queens appears only to have altered its normal practices slightly and belatedly. It failed to adopt almost all of the measures prescribed by the CDC on March 23, 2020 directed specifically at preventing the spread of COVID-19 within correctional facilities:⁸⁴ It has not implemented stricter sanitation policies that include increased sanitation of common areas or frequently touched surfaces; it has not provided inmates with additional basic hygiene products like soap, tissues or hand sanitizer; it has failed to timely provide and ensure the consistent wear by inmates and guards of personal protective equipment such as gloves and masks; and its efforts to identify, trace, test and isolate possible or confirmed COVID-19 positive inmates have been deficient, at best. GEO Queens’ deliberate indifference to the COVID-19 pandemic is borne out by the fact that as of April 30,

⁸⁴ See *Interim Guidance on Management of Coronavirus Disease (COVID-19) in Correctional and Detention Facilities*, Centers for Disease Control and Prevention (Mar. 23, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

2020, having only tested forty-one inmates, GEO reported a startling 93% test-positive rate—a rate that far exceeds the test-positive rate among the general population.⁸⁵

67. Respondents’ failure to follow accepted medical protocols, particularly in the face of positive cases, amount to deliberate indifference. *See, e.g., Hernandez v. Cty. of Monterey*, 110 F. Supp. 3d 929, 943 (N.D. Cal. 2015) (“[K]nown noncompliance with generally accepted guidelines for inmate health strongly indicates deliberate indifference to a substantial risk of serious harm.”). Indeed, a failure by a prison to implement safety and hygiene procedures in the face of an infectious disease outbreak is a classic example of deliberate indifference violating the Fifth and Eighth Amendments. *See, e.g., Shimon v. Dep’t of Corr. Servs. for N.Y.*, 1996 WL 15688, at *1, 3 (S.D.N.Y. Jan. 17, 1996) (the defendant’s inability to “adequately quarantine or remove inmates and support personnel known to have active tuberculosis” constituted deliberate indifference); *see also Morales Feliciano v. Rossello Gonzalez*, 13 F. Supp. 2d 151, 208–09 (D.P.R. 1998) (the defendant’s “inability . . . to properly isolate cases of active tuberculosis,” the “insufficient medical dormitory beds,” the failure to “fully screen incoming inmates,” and the failure to “provide for a sick call system that ensures access to care and that is capable of effectively handling emergencies” constituted deliberate indifference).

68. Respondents were undoubtedly aware of the risks COVID-19 posed to all individuals in the correctional context. In March, the Second Circuit, unprompted, acknowledged the “grave and enduring” risk posed by COVID-19 in such conditions. *See Fed. Defs. of N.Y. v. Fed. Bureau of Prisons*, 954 F.3d 118, 135 (2d Cir. 2020). More recently, Judge Analisa Torres of the Southern District in New York, in granting a petitioner’s motion for a temporary restraining

⁸⁵ *See* Letter from William Zerillo to Hon. Roslynn R. Mauskopf (Apr. 30, 2020), https://www.nyed.uscourts.gov/pub/bop/QDF_20200430_053615.pdf.

order releasing petitioners from ICE custody because of the threat of COVID-19, noted that “the extraordinary scope and severity of the COVID-19 health crisis is *clear to everyone*” and “[t]he nature of detention facilities makes exposure and spread of the virus particularly harmful.” *Valenzuela Arias v. Decker*, 2020 WL 1847986, at *3, *9 (S.D.N.Y. Apr. 10, 2020) (Torres, J.) (emphasis added); *see also Coronel v. Decker*, 2020 WL 1487274, at *9 (S.D.N.Y. Mar. 27, 2020) (Nathan, J.) (granting the petitioners’ motion for a temporary restraining order releasing petitioners from custody because “the risks posed by COVID-19 are imminent” and “[i]f Petitioners were to remain detained, they would face a significant risk that they would contract COVID-19—the very outcome they seek to avoid”). If this were not enough to put Respondents on notice of the dangers of COVID-19, media coverage of the pandemic, and in particular of the heightened risk of the virus to incarcerated people, has been the subject of unrelenting and extensive media coverage since the first cases were detected in U.S. correctional facilities.⁸⁶

69. In the face of this risk—which is well known to both Respondents and the entire world—Respondents have acted with deliberate indifference by incarcerating Petitioners and all inmates at GEO Queens under conditions posing substantial risk of serious harm, in violation of their Fifth and Eighth Amendment rights.

⁸⁶ See, e.g., Emma Grey Ellis, *COVID-19 Poses a Heightened Threat in Jails and Prisons*, WIRED (Mar. 24, 2020), <https://www.wired.com/story/coronavirus-covid-19-jails-prisons/>; Daniel A. Gross, “*It Spreads Like Wildfire*”: *The Coronavirus Comes to New York’s Prisons*, The New Yorker (Mar. 24, 2020), <https://www.newyorker.com/news/news-desk/it-spreads-like-wildfire-covid-19-comes-to-new-yorks-prisons>; *US Jails Begin Releasing Prisoners to Stem COVID-19 Infections*, BBC News (Mar. 19, 2020), <https://www.bbc.com/news/world-us-canada-51947802>; Brendan Saloner and Sachini Bandara, *To Protect Inmates and the Nation from COVID-19, Release Offenders Who Pose No Threat*, USA Today (Mar. 17, 2020), <https://www.usatoday.com/story/opinion/policing/2020/03/17/protect-nation-covid-19-release-inmates-who-pose-no-threat/5072004002/>.

II. SECTION 2241 IS AN APPROPRIATE VEHICLE TO ADDRESS UNCONSTITUTIONAL CONDITIONS OF CONFINEMENT

70. Section 2241 authorizes courts to grant habeas corpus relief where a person “is in custody in violation of the Constitution . . . of the United States,” 28 U.S.C. § 2241(c)(3), including due to the conditions of confinement. The Second Circuit has “long interpreted § 2241 as applying to challenges to the execution of a federal sentence, including such matters as . . . prison conditions.” *Thompson v. Choinski*, 525 F.3d 205, 209 (2d Cir. 2008) (internal quotation marks omitted). This includes challenges to detention where conditions pose a threat to Petitioners’ medical well-being. *See Roba v. United States*, 604 F.2d 215, 218–19 (2d Cir. 1979).

III. A CLASS SHOULD BE CERTIFIED

71. Actions under Section 2241 may include a “multi-party proceeding similar to the class action authorized by [Rule 23 of the Federal] Rules of Civil Procedure.” *United States ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125 (2d Cir. 1974). Petitioners accordingly bring this action on their own behalf and on behalf of a proposed class of all current and future inmates in custody at GEO Queens during the course of the COVID-19 pandemic (the “Class”).⁸⁷

72. Use of the class action mechanism is superior to other available methods for the fair and efficient adjudication of the claims and will prevent the imposition of undue financial, administrative, and procedural burdens on the parties and on this Court, which individual litigation of these claims would impose.

73. The requirements for certification of the proposed Class are met:

74. Numerosity: The proposed Class includes all inmates at GEO Queens—approximately 175 members. The proposed Class members are too numerous to be joined in one

⁸⁷ Petitioners reserve the right to amend the Class definition if further information reveals the Class should be expanded or otherwise modified.

action, and their joinder is therefore impracticable. Further, absent class certification, the proposed Class members will face insurmountable barriers to obtaining the necessary relief: most have limited ability to obtain legal representation in order to pursue individual litigation and a large portion of the proposed class has limited education and/or suffers from physical or mental impairments.

75. Commonality: Common questions of law and fact exist as to all proposed Class members and predominate over questions that affect only the individual members. These common questions of fact and law include but are not limited to: (1) whether the conditions of confinement at GEO Queens described in this Petition and the accompanying declarations amount to violations of the Fifth and Eighth Amendments; (2) whether Respondents implemented adequate mitigation measures in response to the COVID-19 pandemic; (3) whether Respondents' actions, or lack thereof, during the COVID-19 pandemic exposed members of the proposed Class to a substantial risk of serious harm; (4) whether Respondents knew of and disregarded a substantial risk of serious harm to the safety and health of the members of the proposed Class; (6) whether Respondents acted with deliberate indifference to members of the proposed Class; and (7) what relief should be awarded to redress all such violations.

76. Typicality: Petitioners' claims are typical of those of the proposed Class. Each Petitioner is currently detained at GEO Queens and their claims arise from the same policies, procedures, conditions of confinement, and practices (or lack thereof) that provide the basis for all proposed Class members' claims.

77. Adequacy: Petitioners will fairly and adequately protect the interests of the proposed Class. The Petitioners' interests are consistent with those of the proposed Class members. In addition, counsel for Petitioners are experienced in class action litigation, and know

of no conflicts of interest among Class members or between the attorneys and Class members that would affect this litigation.

CAUSE OF ACTION
(Fifth and Eighth Amendments)

78. Petitioners incorporate by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein.

79. Petitioners bring this claim on their own behalf and on behalf of the proposed Class.

80. The Due Process Clause guarantees pretrial detainees the right to be detained in a safe situation, free from punitive conditions of confinement. *See* U.S. CONST. amend. V. The government and officials acting on its behalf violate that guarantee where a widespread outbreak of a contagious disease subjects detainees to inhumane conditions that pose undue risk to their health and safety, without adequate protection.

81. The Eighth Amendment protects post-conviction or post-guilty plea detainees from the infliction of cruel and unusual punishment. *See* U.S. CONST. amend VIII. The government or officials acting on its behalf violate detainee's Eighth Amendment rights where it knowingly subjects detainees to substantial and unreasonable risk of serious harm to their health and safety due to COVID-19.

82. Respondents have acted with deliberate indifference by subjecting Petitioners and members of the proposed Class to conditions of confinement that pose substantial risk of serious harm to their health and safety. Even though Respondent knew or should have known about the risks of COVID-19, Respondents' inaction has, and continues to, unnecessarily expose Petitioners and proposed Class members to this potentially deadly virus.

83. Respondents' failure to adequately protect Petitioners and proposed Class members from these punitive conditions constitutes an egregious violation of Petitioners' and the proposed

Class members' Fifth and Eighth Amendment rights. As a result of Respondent's unconstitutional actions and inaction, Petitioners and proposed Class members are suffering, and will (unless remedied) continue to suffer, irreparable injury.

84. The prompt release of proposed Class members who are Vulnerable Persons is necessary to mitigate the serious health risks from COVID-19, and the immediate implementation of ameliorative measures to address testing, health monitoring, quarantine and isolation practices, facility sanitation and hygiene necessities is necessary to protect all members of the proposed Class.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that the Court enter a judgment:

1. Certifying the Class comprised of all GEO Queens inmates;
2. Ordering immediate release from GEO Queens confinement, with such conditions as may be necessary or appropriate, of Petitioners and of Class Members who are Vulnerable Persons;
3. Ordering Respondents to mitigate the serious risk of illness, death, and harm from COVID-19 to those who remain confined at GEO Queens, including, but not limited to:
 - a. increased inmate health monitoring, expanded testing of inmates and staff, and implementation of contact tracing;
 - b. medically appropriate quarantine, isolation, and treatment measures for those suffering from, who have tested positive for, who are experiencing one or more symptoms consistent with, who are presumptively positive for, or who have come into contact with an individual determined to have, COVID-19, including, where appropriate, transfer to hospital or referral to medical specialist;
 - c. improved cleaning of the facility, by professional cleaners on a regular basis, and distribution (free of charge) of basic hygiene necessities to all inmates;
4. Appointing a Special Master on an emergency basis to chair a COVID-19 Release and Mitigation Committee to (i) evaluate for release all Vulnerable Persons currently detained at GEO Queens; and (ii) make recommendations for

ameliorative action to mitigate the serious risk of illness, death, and harm from COVID-19 for other persons detained at GEO Queens; and

5. Ordering such other and further relief as this Court deems just, proper and equitable.

Respectfully,

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