**SUPREME COURT OF THE STATE OF NEW YORK**
**COUNTY OF NEW YORK**

PEOPLE OF THE STATE OF NEW YORK
EX REL. Corey Stoughton, Esq.
On behalf of JOHN HASANI, JAMES HARDNETT III, BRYON HOUGH, ASKIA LUMUMBA, OMARI MOORE, ALEX MATOS, ROSS MALCOLM, RALPH THOMPSON, ERIC VARGAS, DANA WHITE, MARVIN COPELAND, DESTIN BURGESS, BENJAMIN CARDILLA, FREDDY CORREA, JOSHUA DAVIS, CARLOS DIAZ, FREDERICK OLDYN, JESSICA POOLE, JIMMY RAMOS, HENRY RODRIGUEZ, STEVEN ILDEFONSO, LAMORRIS JOHNSON, LIONEL MOYE, WILLIAM NEAL, DOMINGO REYES, FRANCISCO RIVERA, ISAAC RIVERA, MAYCO ROSARIO, ESSA RUSSELL, BENGINO TORRALES, WENDELL PINCKNEY, ULYSSESS DEJESUS, DAQWAN MCGILL, RASHAWN DAVIS, GIANNA CRUZ, and HUBERT WIGGS,

Petitioners,

v.

CYNTHIA BRANN, Commissioner, New York City Department of Correction; ANTHONY ANNUCCI, Acting Commissioner, New York State Department of Corrections and Community Supervision,

Respondents.

Index No. _____

SCID No. _____

**VERIFIED PETITION IN SUPPORT WRIT OF HABEAS CORPUS**

Corey Stoughton, an attorney duly admitted to practice law in the State of New York, hereby affirms the following under penalty of perjury:

## INTRODUCTION

1. Petitioners are 36 people who, by virtue of their age and/or underlying medical condition, are particularly vulnerable to serious illness or death if infected by COVID-19. This petition seeks their immediate release from jails in New York City on the grounds that continuing

to hold them on bail or parole holds constitutes deliberate indifference to the risk of serious medical harm in violation of the Fourteenth Amendment and state constitutional right to due process.

2. Notwithstanding whatever steps New York City's Department of Correction ("DOC") have taken to attempt to address this crisis, COVID-19 is tearing through the City's jails and the situation continues to deteriorate. According to data released by the New York City Board of Correction ("BOC"), as of April 15, 2020 – the day before this writ was filed – 2,666 currently incarcerated people have been exposed to COVID-19 infection – more than 64% of the total jail population – and 334 currently incarcerated people have a confirmed positive test. Cumulatively, 752 DOC and Correctional Health Service staff have contracted the virus.[1] These numbers are growing so rapidly that they will be outdated by the time you read this paragraph.

3. For weeks, the rate at which the jail population is being infected by COVID-19 has steadily remained 60-80 times higher than the average in the United States of America and eight times higher than the rest of the City or any other place on the planet at any point in this virus's existence.[2] These data definitively establish that no conditions of confinement in New York's jails can adequately manage the serious risk of COVID-19 infection. For medically vulnerable people like Petitioners—who face a much higher risk of death and other serious, long-term health consequences from infection—release is the only step that can satisfy the government's constitutional obligation to protect them from serious risk of medical harm.

4. For this reason, correctional public health experts—including the New York City Board of Correction and leading doctors from within New York's own correctional health

[1] This data comes from the New York City Board of Correction and is available at https://www1.nyc.gov/site/boc/covid-19.page (last visited April 16, 2020).
[2] Comparative data on infection rates, derived from official government sources, is collated at https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/ (last visited April 16, 2020).

system—have continued to press for the release from custody of people over 50 or with medical conditions known as "comorbidities" for the virus, even while the jail population has been substantially reduced and despite understanding and acknowledging what the City has done to respond to this crisis. These calls provide further irrefutable evidence that Respondents' efforts to control and treat the infection necessarily fall short of adequate protection for Petitioners.

**PARTIES**

5. I am the Attorney in Charge of the Special Litigation Unit of the Legal Aid Society's Criminal Defense Practice, which is counsel to Petitioners in this matter. I make this application on behalf of the below-named Petitioners.

6. Petitioner John Hasani (NYSID 13220837J), who is 20 years old, is detained in a jail controlled by the New York City Department of Corrections, due solely to a parole hold (warrant no. 00800827) for technical parole violations. Mr. Hasani has a pending misdemeanor matter in Manhattan Criminal Court, for which $1 bail is set. Medical records reveal that Mr. Hasani is diagnosed with asthma that requires daily inhaled steroid use. Dr. Rachel Bedard of Correctional Health Services (CHS) specifically recommended that the court consider his release because, as a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications and follow up medical care in the community.

7. Petitioner James Hardnett III (NYSID 00913370Y), who is 30 years old, is detained in a jail controlled by the New York City Department of Corrections due to a pretrial remand order. Medical records reveal that he is diagnosed with asthma and is overweight—common comorbidities for COVID-19. Because of his medical condition, Mr. Hardnett is at high risk for severe illness or death if he contracts COVID-19. If released, Mr. Hardnett will live with his mother in the Bronx, who will assure that he remains medication compliant and returns to court.

The Legal Aid Society has confirmed with discharge planners at Correctional Health Services that his insurance and benefits will be activated upon his release. Discharge planners have also made a referral to an AOT team, and have arrange for a FACT team to be assigned upon discharge. Mr. Hardnett will also have access to the Nathaniel Clinic for additional mental health and support services and the Legal Aid Society has arranged for an intake appointment at the Nathaniel Clinic by phone on Tuesday, April 23, 2020.

8. Petitioner Bryon Hough (NYSID 02667984H), who is 39 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $10,000 or $20,000 bond. He reports that he is diagnosed with hepatitis. Because of his medical condition, Mr. Hough is at high risk for severe illness or death if he contracts COVID-19. If released, he will reside with his mother in the Bronx and is on the waitlist to receive FACT Team programming. He has also been referred to the Nathaniel Clinic, where he can receive outpatient mental health services.

9. Petitioner Askia Lumumba (NYSID 03074410Y), who is 71 years old, is detained in a jail controlled by the New York City Department of Corrections due to a pretrial remand order. Medical records reveal that he has liver disease and hepatitis. Dr. Rachel Bedard of Correctional Health Services has recommended that he be considered for release because, as a result of his advanced age and medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19.

10. Petitioner Omari Moore (NYSID 02412250L), who is 34 years old, is detained in a jail controlled by the New York City Department of Corrections on $1 bail and on a pretrial remand order. Medical records reveal that he is diagnosed with asthma. As a result of this diagnosis, he is at high risk for severe illness or death if he contracts COVID-19.

11. Petitioner Alex Matos (NYSID 05877185J), who is 53 years old, is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823137) and because he cannot afford his bail of $15,000 cash and $15,000 bond on a matter pending in Manhattan Supreme Court, Criminal Term. Mr. Matos has been diagnosed with asthma. Dr. Rachel Bedard of Correctional Health Services has specifically recommended that that court consider Mr. Matos's release because, due to this age and health condition, he is at high risk for severe illness or death if he contracts COVID-19.

12. Petitioner Ross Malcolm (NYSID 02960797K), who is 28 years old, is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 824250). Mr. Ross has $1 bail set on a pending matter in Manhattan Criminal Court. Mr. Ross has been diagnosed with asthma. As a result, he is at high risk for severe illness or death if he contracts COVID-19. If released, Mr. Ross will continue to work with the FedCap SMART Program, a program he has worked with since November 2019. Mr. Ross will be able to return to live at his aunt's residence in Brooklyn, where he can safely socially isolate.

13. Petitioner Ralph Thompson (NYSID 02823215K), who is 22 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $300,000 cash or bond. Medical records reveal that he is diagnosed with asthma and he reports a recent asthma attack, while in Respondent's custody. The Legal Aid Society has verified that Mr. Thompson can reside with his partner in the Bronx upon release, where he can safely isolate.

14. Petitioner Eric Vargas (NYSID 03787116P), who is 61 years old, is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 823791). Dr. Rachel Bedard of Correctional Health Services has specifically recommended

that he be considered for release because, due to his advanced age, he is at high risk for severe illness or death if he contracts COVID-19.

15. Petitioner Dana White (NYSID 04785449J), who is 56 years old, is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 794333). Mr. White has $1 bail set on a pending matter in Manhattan Supreme Court, Criminal Term. Mr. White has been diagnosed with asthma. Dr. Rachel Bedard of Correctional Health Services has specifically recommended that Mr. White be considered for release because, due to his age and his asthma diagnosis, he is at high risk for severe illness or death if he contracts COVID-19.

16. Petitioner Marvin Copeland (NYSID 08624357Z), who is 39 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $5,000 cash or $10,000 bond. After suffering from a heart attack approximately two years ago, Mr. Copeland reports that he continues to have cardiovascular issues. Because of his heart condition, Mr. Copeland is at high risk for severe illness or death if he contracts COVID-

17. Petitioner Destin Burgess, (NYSID 13417070R), who is 19 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $10,000 cash, $25,000 bond or $35,000 partially secured surety bond. Mr. Burgess reports that he is diagnosed with asthma. As a result of his asthma, he is at high risk for severe illness or death if he contracts COVID-19. Upon release, Mr. Burgess will return to live with his grandmother in the Bronx, where he can safely socially isolate.

18. Petitioner Benjamin Cardilla, (NYSID 098029573), who is 36 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $5,000 cash, $15,000 bond or $15,000 partially secured surety bond. Medical records reveal

that Mr. Cardilla is diagnosed with Hepatitis C. Dr. Rachel Bedard of Correctional Health Services (CHS) has specifically recommended that the court consider his release because, as a result of his medical diagnosis, he is at high risk for severe illness or death if he contracts COVID-19. If released, Dr. Bedard indicated that "CHS would ensure that he has active health insurance, medications and follow up medical care in the community upon release. He will also be referred to outpatient mental health treatment."

19. Petitioner Freddy Correa (NYSID 09316104P), who is 39 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $20,000 cash, $40,000 bond, or $40,000 partially secured surety bond. Medical records reveal that he is diagnosed with asthma. Dr. Rachel Bedard of Correctional Health Services (CHS) has specifically recommended that the court consider his release because, as a result of his medical diagnosis, he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications and follow up medical care in the community. Mr. Correa also has a stable family home to return upon release, including a private room in which he would be able to safely isolate.

20. Petitioner Joshua Davis (NYSID 14579123Y), who is 21 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $35,000 cash or $70,000 bond. Medical records reveal that Mr. Davis has been diagnosed with asthma. Dr. Rachel Bedard of Correctional Health Services specifically recommended that the court consider his release because, as a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19.

21. Petitioner Carlos Diaz (NYSID 08915685J), who is 40 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail

of $10,000 cash, $10,000 bond or $15,000 partially secured surety bond. Medical records reveal that Mr. Diaz is diagnosed with Multiple sclerosis (MS) and Hepatitis C. These underlying conditions make him immunocompromised. Dr. Rachel Bedard of Correctional Health Services (CHS) specifically recommended that the court consider his release because, as a result medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications and follow up medical care in the community.

22. Petitioner Frederick Oldyn (NYSID 08462128L), who is 44 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $15,000 cash, $20,000 bond or $30,000 partially secured surety bond. Mr. Oldyn asserts that he has been diagnosed with alopecia, which is an autoimmune disorder. Because his immune system is compromised, Mr. Oldyn is at high risk for severe illness or death if he contracts COVID-19. Should he be released, he has a secure place to stay with a close friend in a private residence in New York County.

23. Petitioner Jessica Poole (formerly Jacob Poole) (NYSID 12292370H), who is 27 years old, is detained in a jail controlled by the New York City Department of Corrections, due solely to a parole hold (warrant no. 00823605). Ms. Poole has $1 bail set on each of two pending misdemeanor matters in Manhattan Criminal Court. She has been diagnosed with asthma. As a result, she is at high risk for severe illness or death if she contracts COVID-19.

24. Petitioner Jimmy Ramos (NYSID 08050494M), who is 41 years old, is detained in a jail controlled by the New York City Department of Corrections, due to a parole hold (warrant no. 00828284). Mr. Ramos also cannot afford his bail of $20,000 cash, $100,000 bond or $150,000

partially secured surety bond. He has been diagnosed with asthma and a preexisting heart condition. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

25. Petitioner Henry Rodriguez (NYSID 09355566Z), who is 39 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $100,000 cash, $150,000 bond. Medical records reveal that Mr. Rodriguez is diagnosed with Hepatitis C, which makes him immunocompromised. Dr. Rachel Bedard of Correctional Health Services specifically recommended that the court consider his release because, as a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19.

26. Petitioner Steven Ildefonso (NYSID 07200344N), who is 41 years old, is detained in a jail controlled by the New York City Department of Corrections, due to a parole hold (warrant no. 823238). He has $1 bail set on pending matters in Manhattan Supreme Court, Criminal Term. Medical records reveal that Mr. Ildefonso is diagnosed with seizure disorder, acute upper respiratory infection, and chronic rhinitis. As a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19.

27. Petitioner Lamorris Johnson (NYSID 01938645R), who is 42 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $5,000 cash or $15,000 bond. Medical records reveal that Mr. Johnson is diagnosed with HIV, asthma, and sickle cell anemia. These underlying conditions make him severely immunocompromised. Mr. Johnson reports that he is not receiving all of his necessary medications at Rikers and is being denied sick call. Dr. Rachel Bedard of Correctional Health Services (CHS) specifically recommended that the court consider his release because, as a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications and follow up medical

care in the community. Mr. Lamorris also has a stable home with his brother to return to upon release.

28. Petitioner Lionel Moye (NYSID 09825830P), who is 30 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $75,000 cash or $75,000 bond and due to a parole hold (warrant no. 821071). Mr. Moye has reported a history of severe asthma dating back to childhood, which at times required hospitalized care. For the last month, Mr. Moye reports suffering from vomiting, trouble breathing, chills, and cold sweats intermittently. Because of his history of severe asthma, Mr. Moye is at high risk for severe illness or death if he contracts COVID-19.

29. Petitioner William Neal (NYSID 02881093Y), who is 26 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $15,000 cash, $25,000 bond or $55,000 partially secured surety bond. Medical records reveal that Mr. Neal is diagnosed with asthma. Dr. Rachel Bedard of Correctional Health Services specifically recommended that the court consider his release because, as a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19. Mr. Neal reports that he was denied gloves or masks for use during his assigned maintenance work, which put him in contact with many potentially infected locations and individuals. Has not been tested for COVID-19. If he is released, Mr. Neal has a stable place to stay with his family and will also have access to an isolation site, if deemed necessary by CHS discharge planning.

30. Petitioner Domingo Reyes (NYSID 09271410N), who is 37 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $15,000 cash or $30,000 bond. Medical records reveal that Mr. Reyes is diagnosed with asthma. As a result of his medical diagnoses, he is at high risk for severe illness or death if he

contracts COVID-19. If he is released, Mr. Rodriguez has a stable place in NYC to stay with his family.

31. Petitioner Francisco Rivera (NYSID 05180641P), who is 50 years old, is detained in a jail controlled by the New York City Department of Corrections due to a pretrial remand order. Medical records reveal that he is diagnosed with elevated blood pressure. Dr. Rachel Bedard of CHS specifically recommended that the court consider his release because he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications and follow up medical care in the community.

32. Petitioner Isaac Rivera (NYSID 13683854R), who is 22 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $75,000 cash, $150,000 bond or $150,000 partially secured surety bond. Medical records reveal that Mr. Rivera is diagnosed with asthma. As a result of his medical condition, he is at high risk for severe illness or death if he contracts COVID-19.

33. Petitioner Mayco Rosario (NYSID 07601017N), who is 44 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $25,000 cash, $75,000 bond or $75,000 partially secured surety bond. Medical records reveal that Mr. Rosario is HIV positive and immunocompromised. Dr. Rachel Bedard of Correctional Health Services (CHS) specifically recommended that the court consider his release because, as a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications and follow up medical care in the community. Mr. Rosario also has a stable family home to return to upon release.

34. Petitioner Essa Russell (NYSID 1325her0721Y), who is 22 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $75,000 cash, $150,000 bond or $50,000 partially secured surety bond. Medical records reveal that Mr. Russell is diagnosed with asthma and, therefore, he is at high risk for severe illness or death if he contracts COVID-19. Mr. Russell has a stable family home to which he will return upon release.

35. Petitioner Bengino Torrales (NYSID 06341531P), who is 47 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $10,000 cash or $30,000 bond. Mr. Torrales reports that he suffers from asthma. As a result, he is at high risk for severe illness or death if he contracts COVID-19. If released, he will return to live with his wife and child in Queens, where he has lived for his entire life.

36. Petitioner Wendell Pinckney (NYSID 001688963K), who is 26 years old, is detained in a jail controlled by the New York City Department of Corrections, due to a parole hold (warrant no. 821290) and because he cannot afford his bail of $25,000 cash or $100,000 bond. Medical records reveal that Mr. Pinckney is diagnosed with AIDS and asthma. Mr. Pinckney was born HIV positive, and lost his mother to AIDS when he was just six years old. Dr. Rachel Bedard of Correctional Health Services (CHS) specifically recommended that the court consider his release because, as a result of his medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications, and follow up medical care in the community.

37. Petitioner Ulysses Dejesus (NYSID 05600368Z), who is 53 years old, is detained in a jail controlled by the New York City Department of Corrections, due to a parole hold (warrant no. 821093) and because he cannot afford his total bail of $80,000 cash, and approximately

$130,000 bond on two pending matters. Medical records reveal that Mr. Dejesus is diagnosed with sleep apnea, bronchitis, and that he has been experiencing chest pains. Dr. Rachel Bedard of Correctional Health Services specifically recommended that the court consider his release because he is at high risk for severe illness or death if he contracts COVID-19. Should he be released, CHS will ensure that he has active health insurance, medications and follow up medical care in the community. He also has a stable place in New York County to reside with his sister.

38. Petitioner Daqwan McGill (NYSID 01450159L), who is 27 years old, is detained in a jail controlled by the New York City Department of Corrections, solely because of a parole hold (warrant no. 828137). He has $1 bail set on a misdemeanor matter pending in Manhattan Criminal Court. Medical records reveal that Mr. McGill suffers from asthma that requires the use of a daily inhaler. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

39. Petitioner Rashawn Davis, (NYSID 11748751H), who is 23 years old, is detained in a jail controlled by the New York City Department of Corrections, because he cannot afford his bail of $25,000 cash, $75,000 bond, or $75,000 partially-secured bond on a matter pending in Manhattan Supreme Court, Criminal Term. Medical records reveal that he is diagnosed with chronic asthma. Mr. Davis's mother has provided the Legal Aid Society with information that Mr. Davis's asthma requires treatment with two steroidal inhalers, albuterol and Advair. Mr. Davis recently reports experiencing shortness of breath and that he only has access to one of his two inhalers and, despite requests to go to CHS, he has not been evaluated or treated for these symptoms as of the date of this writing. As a result of his asthma, he is at high risk for severe illness or death if he contracts COVID-19. The Legal Aid Society has affirmed that, if released,

Mr. Davis would return to his stable home, where he will be able to safely self-isolate and benefit from the support of his family.

40. Petitioner Gianna Cruz, (NYSID 01790392Y), who is 36 years old, is detained in a jail controlled by the New York City Department of Corrections, because she cannot afford her bail of $25,000 cash, $25,000 bond, or $25,000 partially-secured bond. Medical records reveal that she is diagnosed with chronic asthma and hepatitis C. Ms. Cruz also reports that she suffers from a heart condition. As a result of these medical diagnoses, she is at high risk for severe illness or death if she contracts COVID-19.

41. Petitioner Hubert Wiggs, (NYSID 03179631J), who is 35 years old, is detained in a jail controlled by the New York City Department of Corrections, due to a parole hold (warrant no. 813579) and because he cannot afford his bail set on a pending matter in Manhattan Supreme Court, in the amount of $100,000 cash, $100,000 bond, or $100,000 partially-secured bond. Medical records reveal that he has been diagnosed with both chronic asthma and chronic obstructive pulmonary disease (COPD). As a result of these medical diagnoses, he is at high risk for severe illness or death if he contracts COVID-19. The Legal Aid Society has verified that, if released, Mr. Wiggs would be able to return to his home in New York County, where he has lived with his wife, Kenya Wiggs, and their four children, for the past four years.

42. Respondent Cynthia Brann is the Commissioner of the New York City Department of Correction. Respondent is a legal custodian of Petitioners.

43. Respondent Anthony J. Annucci is the Acting Commissioner of the New York State Department of Correction and Community Supervision ("DOCCS"). Respondent is a legal custodian of Petitioners who are detained pursuant to a parole warrant.

## STATEMENT OF FACTS

COVID-19 is Highly Infectious and Poses an Extraordinary Risk of Death for Medically Vulnerable People Like Petitioners

44. COVID-19 is a novel coronavirus that has reached pandemic status.[3] In only a few months, more than two million people worldwide have been diagnosed and more than 136,573 have died [4] As of the date of this filing, there are more than 118,302 confirmed cases of coronavirus within the New York City area, up from just 923 on March 18, 2020. More than 8,215 people have died of the virus in the New York City area alone.[5] The New York City metropolitan area remains the global epicenter of the outbreak.

45. The numbers of people diagnosed reflect only a portion of those infected.[6] Very few people have been tested, and many are asymptomatic transmitters—people who are contagious but exhibit limited or no symptoms, rendering ineffective any screening tools dependent on identifying symptomatic behavior.[7] Even those who have tested negative may be carrying and spreading the virus.[8] These asymptomatic transmitters include staff, vendors and incarcerated people currently cycling in and out of New York's jails.

[3] Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794
[4] N.Y. TIMES, *Live Updates*, https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html?action=click&pgtype=Article&state=default&module=styln-coronavirus&variant=show&region=TOP_BANNER&context=storyline_menu (last accessed Apr. 16, 2020).
[5] N.Y. TIMES, *Live Updates* https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html (last visited Apr. 16, 2020).
[6] Melissa Healy, "True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say," L.A. Times (Mar. 10, 2020), https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA.
[7] Giftos Aff. ¶ 11; Roni Caryn Rabin, "They Were Infected with the Coronavirus. They Never Showed Signs," N.Y. Times (Feb. 26, 2020, updated Mar. 6, 2020), https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html; Aria Bendix, "A Person Can Carry And Transmit COVID-19 Without Showing Symptoms, Scientists Confirm,", Bus. Insider (Feb. 24, 2020), https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms; *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?* Independent. Available at https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html (last visited Mar. 18, 2020).
[8] Harlan M. Krumholz, M.D., *If You Have Coronavirus Symptoms, Assume You Have the Virus Even if You Tested Negative*, N.Y. TIMES (Apr. 1 2020) https://www.nytimes.com/2020/04/01/well/live/coronavirus-symptoms-tests-false-negative.html?action=click&auth=login-email&login=email&module=Spotlight&pgtype=Homepage

46. Infected people—who may not know they are infected, and may even have tested negative—can spread the disease not only by direct contact (such as congregating with fellow incarcerated people in a jail or having direct contact between an incarcerated person and a corrections officer) but also through indirect contact (such as touching a surface in a communal bathroom or eating space, or sharing breathing space in an enclosed dormitory lacking access to outside air circulation).[9] A recent study showed that the virus could survive for up to three hours in the air, four hours on copper, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.[10] Indeed, a new study of an early cluster of COVID-19 cases in Wuhan, China revealed the dangers of indirect transmission resulting from infected people contaminating common surfaces—in the study, it was a communal bathroom.[11] For all these reasons, COVID-19 is a much more contagious disease than previously known coronaviruses and other major disease outbreaks.

47. The transmission of COVID-19 is expected to continue to grow exponentially well into the future. Nationally, projections by the Center for Disease Control and Prevention ("CDC") indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the pandemic without effective public health intervention, with as many as 1.5 million deaths in the most severe projections.[12] Even with public health interventions, recent research suggests that it will be impossible "to prevent critical care capacities from being overwhelmed by

[9] Affirmation of Dr. Jonathan Giftos, M.D. (Apr. 14, 2020) (hereinafter, "Giftos Aff.") ¶ 7 (attached hereto as Exhibit A).
[10] *Novel Coronavirus Can Live on Some Surfaces for Up to 3 Days, New Tests Show,* TIME (Mar. 19, 2020) (https://time.com/5801278/coronavirus-stays-on-surfaces-days-tests/.
[11] Cai J, Sun W, Huang J, Gamber M, Wu J, He G. Indirect virus transmission in cluster of COVID-19 cases, Wenzhou, China, 2020. Emerg Infect Dis. 2020 Jun. (https://doi.org/10.3201/eid2606.200412 (last visited Mar. 18, 2020).
[12] Chas Danner, *CDC's Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead*, N.Y. Mag. (Mar. 13, 2020), https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html.

the COVID-19 epidemic."[13] More recent assessments indicate that, in the best case scenario, the virus "could kill between 100,000 and 240,000 Americans."[14]

48. On March 7, 2020, the Governor of the State of New York issued Executive Order Number 202, declaring a disaster emergency for the entire State of New York.[15] Subsequently, the Mayor of New York City declared a State of Emergency for the City.[16] The President of the United States has declared a national emergency.[17] All across New York and the nation, extraordinary steps are being taken in recognition of the unprecedented scale of this crisis, including school closures, bans on public gatherings, stay-home orders for non-essential workers, the scaling back of the entire judicial system and the expenditure of vast sums of public money to keep the economy from complete collapse. People who have control over their bodies are self-isolating to prevent contracting or spreading this deadly disease.

49. Certain populations—those over the age of 50 and those with specific underlying medical conditions—are particularly vulnerable to serious illness and death from COVID-19. The highest risk populations, which include medically vulnerable people like Petitioners, face a fatality rate as high as 15 percent.[18] This means that as many as one in seven infected individuals in this

[13] Kissler S, Tedijanto C, Lipsitch M and Grad Y. Social distancing strategies for curbing the COVID-19 epidemic (Mar. 24, 2020) (https://www.medrxiv.org/content/10.1101/2020.03.22.20041079v1).
[14] N.Y. TIMES, *Live Updates: Models predicting expected spread of the virus in the U.S. paint a grim picture* https://www.nytimes.com/2020/03/31/world/coronavirus-live-news-updates.html?action=click&module=Spotlight&pgtype=Homepage#link-a737c70 (last visited Mar. 31, 2020)
[15] Jesse McKinley & Edgar Sandoval, *Coronavirus in N.Y.: Cuomo Declares State of Emergency,* N.Y. TIMES, (Mar. 7, 2020), https://www.nytimes.com/2020/03/07/nyregion/coronavirus-new-york-queens.html.
[16] *De Blasio Declares State of Emergency in N.Y.C., and Large Gatherings Are Banned.* N.Y. TIMES (Mar. 12, 2020), https://www.nytimes.com/2020/03/12/nyregion/coronavirus-new-york-update.html.
[17] Derek Hawkins et al., *Trump Declares Coronavirus Outbreak a National Emergency*, WASH. POST (Mar. 13, 2020, 10:46 AM), https://www.washingtonpost.com/world/2020/03/13/coronavirus-latest-news/.
[18] *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), at 12, https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf (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"); *Age, Sex, Existing Conditions of COVID-19 Cases and Deaths* Chart, https://www.worldometers.info/coronavirus/coronavirus-age-sex-demographics/ (data analysis based on WHOChina

high-risk group will die from COVID-19. People aged 60-69 have a mortality rate 18 times higher than people under the age of 40; the rate is 40 times higher for people aged 70-79 years old.[19] The mortality rate for people of any age with cardiovascular disease, diabetes, hypertension, chronic respiratory disease, chronic liver or kidney disease (including hepatitis and dialysis patients), compromised immune systems (such as from cancer, HIV or auto-immune disease) and blood disorders (including sickle cell disease) are significantly elevated as well.[20]

50. Even if a COVID-19 infection is not fatal, it will often require highly specialized care for people over the age of 50 or with other medical conditions and will result in longstanding medical complications, including permanent loss of respiratory capacity, damage other vital organs including the heart, kidneys and liver, and extensive neurological damage.[21] Serious complications can develop rapidly, as little as five days after the first symptoms first appear.[22]

51. There is no vaccine for COVID-19. No one is immune. There is no cure for COVID-19 nor is there any known medication to prevent or treat infection. The only known methods to reduce the risk for vulnerable people of serious illness or death from COVID-19 are to prevent infection in the first place through social distancing and improved hygiene, including washing hands frequently with soap and water.

*The COVID-19 Virus is Spreading Uncontrollably in New York City Jails*

Joint Mission Report); Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A Nationwide Analysis*, medRxiv (Feb. 27, 2020), at 5, https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf (finding that even after adjusting for age and smoking status, patients with COVID-19 and comorbidities of chronic obstructive pulmonary disease, diabetes, hypertension, and malignancy were 1.79 times more likely to be admitted to an ICU, require invasive ventilation, or die, the number for two comorbidities was 2.59); Fei Zhou et al., *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, Lancet (March 11, 2020), tb. 1, https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext (finding that among hospital patients, who tended to be older, of those who had COVID-19 and died, 48% had hypertension, 31% had diabetes, and 24% had coronary heart disease).

[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*

52. COVID-19 is rapidly spreading in City jails notwithstanding whatever steps Respondents state they have taken to contain it. On March 20, 2020, there was only one confirmed case of a resident with a positive COVID-19 diagnosis.[23] Just one day later, on March 21, 2020, the New York City Board of Correction reported that at least 21 people in New York City jails had tested positive for the virus, along with twelve DOC employees, and five Correctional Health Services (CHS) employees.[24] According to data released by the New York City Board of Correction ("BOC"), as of April 15, 2020 – the day before this writ was filed – 2,666 currently incarcerated people have been exposed to COVID-19 infection – more than 64% of the total jail population – and 334 currently incarcerated people have a confirmed positive test. Cumulatively, 752 DOC and Correctional Health Service staff have contracted the virus.[25]

53. An expert in correctional medicine with experience working at Rikers noted that "there is a serious risk of [this data] under-identifying the number of actual COVID-19 cases in the DOC facilities, including people in custody, DOC staff and CHS staff. We know that universal testing does not occur in correctional settings, and so the true prevalence of COVID-19 infection cannot be known and is almost certainly higher than what is being reported."[26]

[23] Chelsia Rose Marcius, *Rikers Island inmate has contracted coronavirus: officials*, N.Y. DAILY NEWS (Mar. 18, 2020), https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzlqmwrmuevzz3y-story.html.
[24] Jacqueline Sherman, Interim Chair of NYC Board of Correction, letter, Mar. 21, 2020, *available at* https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf (last visited Mar. 22, 2020).
[25] This data comes from the New York City Board of Correction and is available at https://www1.nyc.gov/site/boc/covid-19.page (last visited April 16, 2020).
[26] Giftos Aff. ¶ 9.

54. Already, there have been three tragic deaths of incarcerated people due to the spread of the virus in the City's jails, and several corrections officers have died.[27]

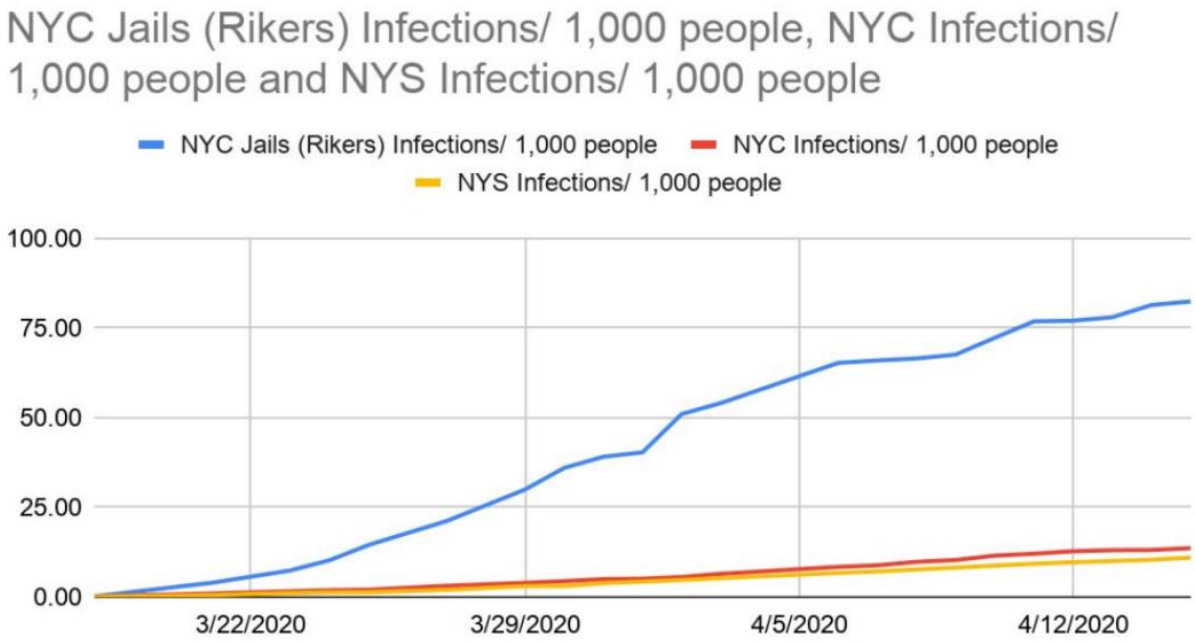
55. The "attack rate" of the virus – that is, the rate at which the relevant population is infected – in New York City jails has consistently remains *eight times higher* than in the City has a whole, or indeed any other global epicenter of the disease, including hotspots such as Wuhan, China and Lombardy, Italy.[28] Simply put, when it comes to COVID-19, there is no more dangerous place to be than the City's jails.

**Coronavirus Infection Rates as of April 15, 2020**

| Locations | Cases | Population | Infection Rate | Infections/ 1,000 people |
|---|---|---|---|---|
| NYC Jails (Rikers)** | 334 | 4,055 | 8.24% | 82.37 |
| New York City | 111,424 | 8,175,133 | 1.36% | 13.63 |
| New York State | 213,779 | 19,440,469 | 1.10% | 11 |
| United States | 643,296 | 331,002,651 | 0.19% | 1.94 |
| Hubei Province (Wuhan) | 67,803 | 59,020,000 | 0.12% | 1.15 |
| China | 82,295 | 1,439,323,776 | 0.01% | 0.06 |
| Lombardy, Italy | 62,153 | 10,040,000 | 0.62% | 6.19 |
| Italy | 165,155 | 60,461,826 | 0.27% | 2.73 |

[27] Chelsia Rose Marcius, *Coronavirus kills NYC Correction Department official,* N.Y. DAILY NEWS (Mar. 18, 2020) https://www.nydailynews.com/coronavirus/ny-coronavirus-department-correction-employee-dies-from-coronavirus-20200316-akeai6gop5alledhzhi7u3pivm-story.html.

[28] Comparative data on infection rates, derived from official government sources, is collated at https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/ (last visited April 16, 2020).




56. Respondents have suggested in various submissions that this data is "questionable," but it is the City's own data, along with official report of infection rates in other jurisdictions.

57. Infectious diseases communicated by air or touch are more likely to spread in congregate environments such as jails – places where people live, eat, and sleep in close proximity. Severe outbreaks of contagious illness regularly occur in jails. For example, during the H1N1 epidemic in 2009, many jails and prisons saw a particularly high number of cases.[29] (As established above, H1N1 is far less contagious than COVID-19.)

58. The World Health Organization ("WHO") has recognized that incarcerated people "are likely to be more vulnerable to the coronavirus disease (COVID-19) outbreak than the general

[29] Nicole Westman, The Verge, *Prisons and jails are vulnerable to COVID-19 outbreaks*, available at https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap (Mar. 12 2020). *See also* David M. Reutter, Swine Flu Widespread in Prisons and Jails, but Deaths are Few, PRISON LEGAL NEWS, (Feb. 15, 2020) at https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-butdeaths-are-few/.

population because of the confined conditions in which they live together."[30] The U.S. Centers for Disease Control and Prevention ("CDC"), in guidance on management of COVID-19 in correctional and detention facilities, has identified that COVID-19 presents a particularly heightened danger in correctional facilities because "incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages."[31]

59. In short, there is no disputing that, whatever steps they claim to be taking, Respondents are not effectively controlling the COVID-19 pandemic in New York's jails, and thus cannot protect Petitioners from a constitutionally unacceptable threat to their long-term health and even their life. On this basis alone, the Court should order that Petitioners be released.

*Medical Experts Have Concluded that Release is the Only Effective Means to Protect Medically Vulnerable People from the Serious Risk of Death from COVID-19 in Correctional Institutions*

60. Because risk mitigation is the only known strategy to protect vulnerable groups from COVID-19, correctional public health experts, including the New York City Board of Correction ("BOC"), have recommended the release from custody of people most vulnerable to COVID-19.

61. On March 17, 2020, the Board of Correction of the City of New York ("BOC") – the independent agency charged with oversight of New York's jails – called on New York City to "immediately remove from jail all people at higher risk from COVID-19 infection" and to "drastically reduce the number of people in jail right now and limit new admissions to exceptional

[30] World Health Organization, *Preparedness, prevention and control of COVID-19 in prisons and other places of detention* (2020), http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-2020 (last visited Mar. 31, 2020).

[31] Center for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Mar. 31, 2020).

circumstances."[32] The Board reasoned that "[t]he City's jails have particular challenges to preventing disease transmission on a normal day and even more so during a public health crisis."[33] Accordingly, the Board recommended that DOC prioritize the release of "[p]eople who are over 50; [and] [p]eople who have underlying health conditions, including lung disease, heart disease, diabetes, cancer, or a weakened immune system[.]"[34]

62. On March 21, 2020, BOC issued a second advisory letter, urging judges and prosecutors to act quickly to release people, like Petitioners, who are over 50 years old and who have health conditions that make them high-risk for COVID-19.[35] They concluded, based on having "closely monitored Rikers Island and the borough jails for over sixty years" that "DOC's and [Correctional Health Services]'s *best efforts will not be enough to prevent viral transmission in the jails*."[36] The agency continued: **"**Given the nature of jails (e.g., dense housing areas and structural barriers to social distancing, hygiene, and sanitation), the number of patients diagnosed with COVID-19 is certain to rise exponentially. The best path forward to protecting the community of people housed and working in the jails is to rapidly decrease the number of people housed and working in them."[37]

[32] Press Release, N.Y.C. Bd. of Corr., 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 .
[33] *Id.*
[34] *Id.*
[35] Jacqueline Sherman, Interim Chair of NYC Board of Correction, letter, Mar. 21, 2020, *available at* https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf (last visited Mar. 22, 2020).
[36] *Id.* (emphasis added).
[37] *Id.* (emphasis added).

63. Dr. Robert Cohen, an expert member of the BOC, stated that "[t]he most important thing we can do right now is discharge all of the people who are old and have serious medical issues—those people are likely to die from a coronavirus infection."[38]

64. Ross McDonald, the Chief Medical Officer of CHS, publicly called for the release from Rikers Island of "as many [people] as possible" on Twitter on March 18, 2020, stating that "we cannot change the fundamental nature of a jail" and that we "cannot socially distance" in a jail, even if there are only "dozens" of men in a dorm-like setting."[39]

65. He renewed this call on Twitter on March 30, 2020, noting that although staff at Rikers were attempted to follow CDC guidelines and "have moved mountains to protect our patients," "infections in our jails are growing quickly despite these efforts" and asking "that in this time of crisis the focus remain on releasing as many vulnerable people as possible."[40]

66. Similarly, Dr. Rachel Bedard, a geriatrician who works on Rikers Island providing medical care for elderly and ill detainees, affirmed in a media interview that effective preventative measures in a jail setting are essentially impossible, even with the best of efforts and intentions:

> [Detainees at Rikers] all living in congregate settings, either dormitories of forty men, beds three and a half feet apart, or cell blocks where everybody is sharing one common space, one common hallway. These spaces are locked. These guys have absolutely no freedom of movement.
>
> When they are moved from one location to another, a person has to take them there. That person has to open the door for them, and they have to be let through it and be walked down the hallway. When they are moved from one facility to another, somebody has to touch them and put cuffs on them. When we bring them their food, workers go from housing area to housing area with trays that have to be distributed. When we give them their medication, that has to be done for them. They can't do it for themselves. And so, if you think about how many excess human contacts that

[38] Jen Ransom and Alan Feuer, *'A Storm is Coming': Fears of an Inmate Epidemic as the Virus Spreads in the Jails*, N.Y. TIMES (MAR. 20, 2020), https://www.nytimes.com/2020/03/20/nyregion/nyc-coronavirus-rikers-island.html.
[39] https://twitter.com/RossMacDonaldMD/status/1240455796946800641
[40] https://twitter.com/RossMacDonaldMD/status/1244822714805891072

> is, even compared to something like a shelter setting, you can imagine why viral spread in this environment is extra dangerous. (…)
>
> We know that there is likely an asymptomatic spread of this disease. So when staff and officers and others are coming in and out, we just cannot make a commitment that we can protect them. It's not a fortress. [41]

67. More recently, on April 10 – and therefore accounting for all the steps DOC claims to have taken to address the COVID-19 crisis – Dr. Bedard reiterated the degree to which prevention of infection is impossible, and underscored how DOC's efforts are simply insufficient, on their face, to address the risk of death confronting these Petitioners:

> There is potential for many detainees and prisoners to die of covid-19. "Social distancing" is impossible in correctional facilities. People sleep on cots four feet apart, share bathrooms, sit in a small common space to watch television and gather for therapy sessions. Every day, staffers move among housing areas and in and out of the jails, potentially exposing dozens to contagion. Despite the health service and the Correction Department's best efforts to identify, test and quarantine potentially infected people, the New York City jail system is set up perfectly for viral spread. People are getting very sick. Mr. Tyson [an inmate who died of COVID] was one of them.[42]

68. The conclusions of New York's own correctional health experts are bolstered by the overwhelming consensus of medical professionals weighing in on this issue in public hearings and litigation across the country, including professionals who have previously worked on Rikers Island, all of whom agree that release is the only meaningful step that can be taken to address the risk to medically vulnerable people like Petitioners.[43]

[41] Jennifer Gonnerman, A Rikers Island Doctor Speaks Out to Save Her Elderly Patients from the Coronavirus, New Yorker Magazine, *available at* https://www.newyorker.com/news/news-desk/a-rikers-island-doctor-speaks-out-to-save-her-elderly-patients-from-the-coronavirus (last visited Mar. 30, 2020).

[42] Dr. Rachel Bedard, *I'm a Doctor on Rikers Island, My Patients Shouldn't Have to Die in Jail*, WASH. POST (Apr. 10, 2020) https://www.washingtonpost.com/outlook/doctor-rikers-compassionate-release/2020/04/10/07fc863a-7a93-11ea-9bee-c5bf9d2e3288_story.html

[43] Decl. of Dr. Robert Greifinger, former head of correctional health at Rikers Island, ¶ 13, *Dawson v. Asher*, (No. 2:20-CV-409-JLR-MAT) (Mar. 16, 2020), https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-robert-greifinger (concluding that "even with the best-laid plans to address the spread of COVID-19 in detention facilities, the release of high-risk individuals is a key part of a risk mitigation strategy and that "the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety,

Failure to Release Petitioners Constitutes Deliberate Indifference to Serious Medical Needs in Violation of the U.S. Constitutional Right to Due Process

69. The Due Process clause of the Fourteenth Amendment proscribes deliberate indifference to the serious medical needs of people held in pre-trial confinement. *Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017).

70. To establish a federal constitutional claim, Petitioners must prove that Respondents (1) acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though (2) they knew, or should have known, that the condition posed an excessive risk to health or safety. *Pineiro*, 849 F.3d at 35. The same standard applies to those held on parole warrants. *Benjamin v. Malcolm*, 646 F. Supp. 1550, 1556 (S.D.N.Y. 1986) ("[A]lleged parole violators ought not to be treated differently from other detainees, since the charges of parole violation standing against them are unproven, and in many instances, involve the same charges as those for which they are substantively detained."); *Hamilton v. Lyons*, 74 F.3d 99, 106 (5th Cir. 1996) ("[We] apply *Bell*'s standard to detained parolees only to the extent that we recognize that a parolee arrested for a subsequent crime has a due process right to be free from punishment for the subsequent crime until convicted of the subsequent crime.").

especially given the lack of a viable vaccine for prevention or effective treatment at this stage."); Letter from Dr. Scott A. Allen, Professor, Univ. of Cal. Riverside Sch. of Med. & Dr. Josiah "Jody" Rich, Professor, Brown Univ. to Bennie Thompson, Chairman, House Comm. on Homeland Sec., et. al. 5 (Mar. 19, 2020) https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf (last visited Mar. 31, 2020) (explaining that explained that "[e]ssential" preventative strategies like social distancing are "an oxymoron" in congregate settings like jails; hand sanitizing and proper ventilation are also largely inaccessible and ineffective" and calling for release of "all detainees in high risk medical groups such as older people and those with chronic diseases."); Decl. of Dr.Marc Stern ¶¶ 9, 11, *Dawson v. Asher*, (No. 2:20-CV-409-JLR-MAT) (Mar. 16, 2020), https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern (concluding that "[f]or detainees who are at high risk of serious illness or death should they contract the COVID-19 virus, release from detention is a critically important way to meaningfully mitigate that risk" and recommending "release of eligible individuals from detention, with priority given to the elderly and those with underlying medical conditions most vulnerable to serious illness or death if infected with COVID-19.").

71. Federal courts have granted petitions for habeas corpus for federal immigration detainees on the grounds that their detention would violate due process. *See, e.g., Ortuño v. Jennings*, 20 Civ. 02064 (MMC) (N.D. Cal. Apr. 8, 2020);[44] *Basank v. Decker*, No. 20 CIV. 2518 (AT), 2020 WL 1481503 (S.D.N.Y. Mar. 26, 2020); *Coronel v. Decker*, No. 20-CV-2472 (AJN), 2020 WL 1487274 (S.D.N.Y. Mar. 27, 2020); *Castillo v. Barr*, No. CV2000605TJHAFMX, 2020 WL 1502864 (C.D. Cal. Mar. 27, 2020).

*Petitioners Have Established Serious Medical Harm*

72. There is no seriously disputing that Petitioners face a risk of long-term injury and death from contracting COVID-19 in City jails. The U.S. Supreme Court has acknowledged that the risk of contracting a communicable disease constitutes an "unsafe, life-threatening condition." *Helling v. McKinney*, 509 U.S. 25, 33 (1993). *See also 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"); *Narvaez v. City of New York*, No. 16-CV-1980 (GBD), 2017 WL 1535386, at *9 (S.D.N.Y. Apr. 17, 2017) (denying "motion to dismiss Plaintiff's claim that the City of New York violated Plaintiff's rights under the Due Process Clause by repeatedly deciding to continue housing him with inmates with active-TB"); *Bolton v. Goord*, 992 F. Supp. 604, 628 (S.D.N.Y. 1998) (acknowledging that prisoner could state claim under § 1983 for confinement in same cell as inmate with serious contagious disease).[45]

[44] Order available at: https://www.aclunc.org/sites/default/files/Petitioners%27_Motion_For_Temporary_Restraining_Order.pdf

[45] It has long been recognized that the affirmative obligation to protect against infectious disease empowers courts to provide remedies designed to prevent imminent harm to future health. *Helling*, 509 U.S. at 33 ("It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them."); *Sanchez v. State of New York*, 99 N.Y.2d 247, 254 (2002) (recognizing that it is "duty of the State, as [petitioner's] custodian, to safeguard and protect him from the harms it should

73. Following this precedent, as well as the overwhelming consensus of correctional medical professionals, federal courts have already recognized that COVID-19 poses a serious medical threat to medically vulnerable detainees with conditions similar to those of some of the Petitioner-Appellants. *See, e.g., Basank*, 2020 WL 1481503 at *3 ("The Court takes judicial notice that, for people of advanced age, with underlying health problems, or both, COVID-19 causes severe medical conditions and has increased lethality."); *United States v. McKenzie*, No. 18 CR. 834 (PAE), 2020 WL 1503669, at *3 (S.D.N.Y. Mar. 30, 2020) (granting release of defendant with asthma, holding that "[a]s several courts have already recognized, the heightened threat posed by COVID-19 to an inmate with a documented respiratory condition in a detention facility with multiple confirmed cases presents a unique combination of circumstances justifying release") (internal quotation and citation omitted); *United States v. Hernandez*, No. 19 CR. 169 (VM), 2020 WL 1503106, at *1 (S.D.N.Y. Mar. 30, 2020) (ordering release of defendant with asthma and high blood pressure based on vulnerability to COVID-19); *United States v. Perez*, No. 19 CR. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (noting 65-year-old defendant with a pulmonary condition was "at a substantially heightened risk of dangerous complications should [he] contract COVID-19"); *United States v. Fellela*, No. 3:19-CR-79 (JAM), 2020 WL 1457877, at *1 (D. Conn. Mar. 20, 2020) (diabetes, age, weight); *United States v. Witter*, No. 19 Cr. 568 (SHS), Dkt. 40 at 2–3 (S.D.N.Y. Mar. 26, 2020) (hypertension); *United States v. Colvin*, No. 3:19CR179 (JBA), 2020 WL 1613943, at *1 (D. Conn. Apr. 2, 2020) (diabetes); *United States v.*

reasonably foresee based on its knowledge derived from operation of a maximum security prison."); *Jabbar v. Fischer*, 683 F.3d 54, 57 (2d Cir. 2012) ("We have held that prisoners may not be deprived of their basic human needs—*e.g.,* food, clothing, shelter, medical care, and reasonable safety—and they may not be exposed to conditions that pose an unreasonable risk of serious damage to [their] future health.") (citation and internal quotation marks omitted). In the past, courts have found claims of future harms cognizable under the Eighth Amendment that involved the risks posed by second-hand smoke, *Helling v. McKinney*, 509 U.S. 25, 33 (1993), contaminated water, *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001), use of chemical toilets, *Masonoff v. DuBois*, 899 F. Supp. 782, 797 (D. Mass. 1995), and paint toxins, *Crawford v. Coughlin*, 43 F. Supp. 2d 319, 325-325 (W.D.N.Y. 1999).

*Rodriguez*, No. 2:03-CR-00271-AB-1, 2020 WL 1627331, at *1 (E.D. Pa. Apr. 1, 2020) (diabetes); *United States v. Garcha*, No. 19CR00663EJD1VKD, 2020 WL 1593942, at *1 (N.D. Cal. Apr. 1, 2020) (HIV); *United States v. Kennedy*, No. 18-20315, 2020 WL 1493481, at *1 (E.D. Mich. Mar. 27, 2020), *reconsideration denied,* No. 18-20315, 2020 WL 1547878 (E.D. Mich. Apr. 1, 2020) (hypertension).[46]

*Petitioners Have Established Deliberate Indifference*

74. Respondents' intentional failure to release Petitioners despite being aware of their medical vulnerabilities and the substantial risk COVID-19 poses to them plainly constitutes deliberate indifference. There is no dispute that Respondents are aware of the extraordinary risk COVID-19 poses to medically vulnerable people in City jails. As noted above, they have been alerted to this risk by the Board of Correction, as well as prominent medical professionals within their own correctional health service, all of whom have called for the release of people over 50 or who have conditions like Petitioners, and some of who have written letters specifically identifying that particular person's vulnerability.

75. Both the Mayor of New York City and the Governor of New York have taken affirmative, if inadequate, steps to release people from New York's jails, further acknowledging the scale of the unfolding catastrophe and the need to release people like Petitioners.

76. Respondents have also received repeated entreaties from defender organizations. On March 13, 2020, the Legal Aid Society sent a letter to Respondent the New York City Department of Correction ("DOC") noting multiple complaints from incarcerated clients about the

[46] Notably, federal courts have released defendants even facing serious criminal charges, citing the extraordinary threat to life posed by the COVID-19 crisis. *See, e.g., United States v. Chandler*, No. 19 Cr. 867 (PAC), 2020 WL 1528120, at *1–3 (S.D.N.Y. Mar. 31, 2020) (granting bail application, pursuant to 18 U.S.C. § 3142(i), of defendant charged with being a felon in possession of a firearm); *United States v. McKenzie*, No. 18 Cr. 834 (PAE), 2020 WL 1503669, at *2–3 (S.D.N.Y. Mar. 30, 2020) (granting bond pending sentencing, pursuant to 18 U.S.C. § 3145(c), to defendant who had pleaded guilty to single count of assault with a deadly weapon).

lack of basic sanitation raising concerns about the ability to manage the risk of COVID-19 in New York City jails.[47] Since at least March 15, 2020, attorneys in the Legal Aid Society's Parole Revocation Defense Unit have sent lists of medically vulnerable people held on parole warrants, including several of the Petitioners, to Respondent Department of Correction and Community Supervision ("DOCCS"), asking for their urgent release. Petitions such as this one, on behalf of similarly situated people and making the same fundamental arguments found herein, have been filed against these same Respondents for weeks.

77. Numerous media outlets have covered these and other calls to action.[48]

78. Courts across the country have noted that medically vulnerable people face serious risk of adverse outcomes, including death, and that controlling the COVID-19 virus is not possible in a correctional setting, providing yet more evidence that Respondents' failure to release Petitioners is deliberate indifference. *See, e.g., Coronel*, 2020 WL 1487274 at *3 (finding that people "in carceral settings are at a significantly higher risk of spreading infectious diseases" in part because "[i]t is not possible to isolate [them] from the outside world (including from staff and vendors who may have been exposed to COVID-19), nor is it possible to isolate them from one another."); *Basank*, 2020 WL 1481503 at *3 (holding that "[t]he nature of detention facilities makes exposure and spread of the virus particularly harmful" and describing the COVID-19 situation in carceral institutions as a "tinderbox scenario.").

[47] Letter from Justine Luongo, Attorney-in-Charge, Legal Aid Society Criminal Defense Practice, to Commissioner Cynthia Brann, N.Y.C. Department of Corrections, and Elizabeth Glazer, Mayor's Office of Criminal Justice (Mar. 13, 2020), https://legalaidnyc.org/wp-content/uploads/2020/03/LAS-Letter-to-NYC-re-COVID-19-Preparedness-in-City-Jails.pdf.

[48] *See, e.g.*, Chelsia Rose Marcius, *Coronavirus prompts Legal Aid, Manhattan DA, to call for release of state parolees from city jails*, N.Y. DAILY NEWS (Mar, 17, 2020) https://www.nydailynews.com/coronavirus/ny-coronavirus-nyc-rikers-island-parole-correction-department-20200317-flg4paly5nesddfbtfkone6hki-story.html.

*The Steps Respondents Claim to Have Taken to Address Petitioners' Serious Medical Needs are Inadequate and Ineffective on Their Face*

79. Notwithstanding the irrefutable data indicating that COVID-19 is spreading uncontrollably in City jails and medical expert conclusions that release is necessary, Respondents have urged courts not to find them deliberately indifferent because they have taken some actions to respond to this crisis. Even if the Court could find these actions sufficient to discharge Respondents' affirmative obligations to Petitioners, which it cannot based on the data showing such steps are not effective, the steps Respondents have taken are, on their face, insufficient.

80. Deliberate indifference is measured not by the quantity of steps Respondent takes but by the question of whether it is reasonable to believe that the steps they have taken satisfies their affirmative obligation to protect the health and lives of people in their custody. *See, e.g., DeGidio v. Pung*, 920 F.2d 525, 531 (8th Cir. 1990) (recognizing that prison "officials did respond, although inadequately, to the tuberculosis outbreak" including a variety of specific steps for screening and treatment, but upholding a district court's finding of deliberate indifference based on repeated failures to adopt more effective remedies to stem the outbreak).

81. While there is no disputing Respondents have taken many belated steps in the wake of the COVID-19 crisis, there is likewise no disputing, based on the data showing an uncontrolled infection and the medical expert testimony concluding that control within the jail environment is impossible, that those steps are not sufficient.

82. **First**, Respondents have argued that they screen staff and incarcerated people for symptoms, quarantine incarcerated people with symptoms, and send symptomatic staff home. DOC's "COVID19 Preparation & Action Plan," as well as evidence Respondents have relied upon from CHS administrator Patricia Yang, clarifies that newly admitted detainees and staff reporting

for duty will be separated from other detainees or sent home if they exhibit "flu-like" symptoms upon admission.[49]

83. Screening and separating people exhibiting symptoms is not an effective means to control COVID-19 transmission because of the danger of asymptomatic transmission.[50] As many as 25% of people infected with COVID-19 may not show any symptoms whatsoever.[51] Respondents have conceded, through the testimony of CHS Administrator Patricia Yang, that people who are known to have been exposed to COVID-19 are "kept in the same housing unit in which they were exposed" unless they actually exhibit symptoms, ensuring the continued spread of the virus to other incarcerated people, including Petitioners. Thus, Respondents' over-reliance on ineffective screening systems only reinforces their deliberate indifference to Petitioners' serious medical needs.

84. **Second**, Respondents state they have enabled social distancing in the jails by reducing the overall jail population and "encouraging" social distancing practices. The CDC states that social distancing requires people—including those who are asymptomatic—to remain at least six feet from each other at all times.[52]

85. Immutable aspects of the design and operations of New York's jails make it impossible for Petitioners to engage in the necessary social distancing required to mitigate the risk of transmission, even in less crowded conditions and notwithstanding any "encouragement" to do

[49] *See* N.Y.C. Dept. of Corr., *COVID19 Preparation & Action Plan*, https://www1.nyc.gov/site/doc/media/coronavirus-news.page (last visited Mar. 19, 2020).
[50] Giftos Aff. ¶¶ 12-14; CDC, *Coronavirus Disease 2019 (COVID-19) Symptoms*, https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html (last visited Mar. 19, 2020); *see also* Yale New Haven Health, *Coronavirus (COVID-19) vs. Influenza (Flu)*, https://www.ynhhs.org/patient-care/urgent-care/flu-or-coronavirus (last visited Mar. 19. 2020).
[51] Giftos Aff. ¶ 12.
[52] *Id.*

so.[53] People in City jails have limited freedom of movement and no control over the movements of corrections officers and other residents with whom they are required to congregate on a daily basis. Food preparation and service is communal, requiring people to touch the same surfaces and share poorly ventilated common space, eating food served by other incarcerated workers drawn from many different housing areas within the jail.

86. Both single-cell and dormitory-like sleeping arrangements present obstacles to social distancing. While Petitioners acknowledge that some dormitories may be operating at lower capacity than earlier this year, it is still not possible to socially distance in a dormitory setting because people share common sinks, toilets, showers, phones, tables and dayroom benches. Even DOC's "enhanced sanitation procedures" cannot adequately sanitize those spaces to prevent transmission.[54] Single-cell residents also must still use shared showers and phones and must move about in narrow hallways to reach such communal spaces.[55] Social distancing is simply not possible in congregate settings like the City jails, and none of Respondents' witnesses conclude otherwise.

[53] Giftos Aff. ¶¶ 15-18. Other experts examining other carceral settings have reached the same conclusions. Although those opinions are not about City jails specifically, their conclusions are based not on the specific characteristics of particular settings, but on the inherent characteristics of a jail, and thus reinforce Dr. Giftos's conclusions. *See, e.g.,* Decl. of Dr. Jaimie Meyer ¶¶ 9-14, *Chunn v. Edge*, (No. 1:20-CV-1803-AKH) (Mar. 16, 2020) https://drive.google.com/file/d/1Pz4KDO0zbdAO0j-YMqpocyAmHnmUV-pH/view. Other courts have likewise noted that social distancing is simply impossible given the reality of congregate living in prisons and jails. *See Committee for Public Counsel Servs. v. Chief Justice of the Trial Ct.*, SJC-12926 (Mass. Apr. 3, 2020) (ordering a presumption of release for pretrial detainees in Massachusetts, and noting that "[m]aintaining adequate physical distance, i.e., maintaining six feet of distance between oneself and others, may be nearly impossible in prisons and jails."); *United States v. Fellela*, No. 3:19-CR-79 (JAM), 2020 WL 1457877, at *1 (D. Conn. Mar. 20, 2020) ("All levels of government nationwide have recently taken drastic measures in light of the COVID-19 pandemic to promote 'social distancing' and to prohibit the congregation of large numbers of people with one another. But, as is true for most jails and prisons, the conditions of confinement at Wyatt are not compatible with these safeguards.").

[54] Giftos Aff. ¶17.

[55] Giftos Aff. ¶ 18.

87. **Third**, Respondents have argued that they are separating medically vulnerable people from the general population. But, despite their medical vulnerabilities, Petitioners have not been separated from other people, including other incarcerated people and corrections officers who move among various housing units, transmitting the virus. Indeed, because of correctional officers' movements throughout the facilities, transmission is inevitable, regardless of Respondents' alleged efforts to separate certain vulnerable detainees. This argument thus has no bearing on the question of whether Respondents have been deliberately indifferent to these Petitioners' serious medical needs.

88. More broadly, Respondents have never explained how they define "medically vulnerable" people for the purposes of separating them. Nor have they established that all people so defined are actually "separated." Respondents' witness on this subject merely states that CHS makes a "housing recommendation" for medically vulnerable people, but that DOC staff is responsible for implementing that recommendation and she cannot state that they follow CHS recommendations.

89. Even if Respondents could establish that Petitioners or any incarcerated people are "separated" based on medical vulnerabilities, Respondents have failed to define what they mean by "separation" or suggest that separation allows for social distancing or for medically vulnerable people to effectively insulate themselves from exposure to COVID-19. To the contrary, Respondents' own witnesses acknowledge that new admissions are continuously added to these quarantined housing units, ensuring continued risk of exposure to the virus. "Separation" and "quarantine" as general concepts becomes irrelevant when, according to the City's own official reports, 64% of the jail population (and rising) has been identified as exposed to COVID-19 and corrections staff, contactors and vendors move freely among those units and other housing units.

Thus, whatever the contours of Respondents' vague policy on "separation," there is no basis for concluding this policy is a meaningful step to address Petitioner's serious medical needs, and none of Respondents' witnesses explain how it will prevent infection.

90. **Fourth,** Respondents argued that they have policies requiring enhanced sanitation and cleaning of various spaces, have undertaken to provide incarcerated people with soap and cleaning supplies, and are generally following CDC guidelines for correctional institutions. As noted above, however, even if these policies were consistently followed – something none of Respondents' witnesses actually allege, nor could they, as none of them have established any foundation for making such a claim – they would not be sufficient to prevent transmission of the virus.[56]

91. Even if enhanced sanitation could prevent the risk of COVID-19 transmission, there is ample evidentiary support for concluding that DOC is not, in fact, fully implementing the CDC guidelines, nor is it fully implementing its own policies. For example, despite the CDC guidance, DOC does not state they are providing, and upon information and belief are not providing**,** face masks to all people displaying symptoms of fever, cough, shortness of breath.[57] DOC has issued a policy requiring corrections officers to wear masks. However, they have produced no evidence from which the Court could conclude that such masks have actually been issued in sufficient quantities. Recent litigation filed by corrections officers based on verified petitions state that corrections officers do not have adequate access to masks.[58] More to the point, Respondents do

[56] Giftos Aff. ¶ 17.
[57] Center for Disease Control and Prevention, *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities* (https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html (last visited Mar. 31, 2020).
[58] On April 2, 2020, the Correction Officers Benevolent Association ("COBA") filed a lawsuit in Supreme Court, Queens County (Index No. 704991/2020), in which the corrections officers' union alleges that "pre-screening and current protocols will not identify and stop the threat [asymptomatic carriers) pose" and that DOC "has not with any regularity sanitized correction officer workplaces" and "there is no such plan" for "scheduling of regular sanitization

not suggest that incarcerated people are required to, or have adequate access to, such masks, even when they are displaying symptoms, despite CDC guidance to the contrary.

92. Beyond these issues, much of Respondents' evidence affirmatively supports Petitioner's claim of deliberate indifference. For example, Respondents have submitted testimony from a CHS administrator, Patricia Yang, noting that CHS now screens people for medical vulnerabilities and has put forward some medically vulnerable people to be considered for release. This merely serves as a concession that Respondents are aware of Petitioners' medical vulnerabilities, and yet still deliberately and indifferently refuse to release them. Petitioners themselves have introduced evidence confirming this, as many of them have letters from CHS supporting their release. Thus, even according to Respondents' own witnesses, releasing these Petitioners is critical to fulfilling Respondents' plan for effectively responding to the COVID-19 pandemic.

93. Further underscoring this point is a letter Respondents have relied upon from the Mayor's Office of Criminal Justice to various district attorneys outlining the City's plan for responding to questions about steps the City has taken to address the crisis. That letter lists as the first and foremost step "Decisions to release," further underscoring how the release of medically vulnerable people like Petitioners is in fact essential to a meaningful response to this crisis.

94. Patricia Yang's testimony also implicitly concedes that Respondents do not have the capacity to adequately test incarcerated people for COVID-19, stating with regard to testing

of work areas" ¶¶ 7, 11, 13. The complaint further alleges that DOC has not provided hand sanitizer, despite claims to the contrary in submissions DOC has made to courts in other writs for habeas corpus brought by the Legal Aid Society. *Id.* ¶ 11. On April 9, another group of corrections officers filed a similar complaint, alleging in a verified petition that the City defendants "continues to freely move [infected and non-infected] inmates without due regard" t to the risks of COVID-19, is not effectively quarantining people, has kept dormitory beds less than 3 feet apart, and has failed to test staff and incarcerated people. *Williams v. City of New York*, Supreme Court, New York County (Index No. 153027/2020).

that "[t]esting strategy is also guided by laboratory capacity and availability of supplies" and notably declining to offer any actual information about who is being tested and how often. In an affirmation filed by Johnette Traill, an Assistant District Attorney in Queens, opposing a writ of habeas corpus for another medically vulnerable inmate, states that as of April 9, only 800 inmates had been tested, despite the fact that more than 2,600 incarcerated people to date have been identified as exposed to the virus. This, too, indicates a failure to fully implement CDC guidance for correctional institutions.

95. As noted above, however, the Court need not resolve any factual disputes relating to the efficacy of DOC's actions, for the simple reason that even if they are perfectly executing the steps their witnesses have outlined, the explosive spread of COVID-19 in New York's jails continues unabated. DOC's strategy for containment is clearly a failure. As Dr. Homer Venters, former chief medical officer of New York City jails, rightly predicted, "[i]n ordinary times, crowded jails overlook prisoners' medical problems and struggle to separate them based on their security classification…[i]f jails have to add quarantines and sequestration of high-risk prisoners to the mix…they will find managing a COVID-19 outbreak '*simply almost impossible*.'"[59]

96. Moreover, as correctional medical expert Dr. Giftos has stated, following all of the CDC recommendations for prevention still cannot protect medically vulnerable people from the risk of death from this virus. "While these are the recommended steps," he writes, "even if all of them are take and executed with perfection, they still cannot effectively control the risk of transmission."[60] *See also United States v. Kennedy*, No. 18-20315, 2020 WL 1493481, at *1 (E.D.

[59] Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, MOTHER JONES (Mar. 12, 2020), https://www.motherjones.com/crime-justice/2020/03/coronavirus-jails-bail-reform-arrests/?utm_source=The+Appeal&utm_campaign=0a31827f48-EMAIL_CAMPAIGN_2018_08_09_04_14_COPY_01&utm_medium=email&utm_term=0_72df992d84-0a31827f48-58432543.

[60] Giftos Aff. ¶ 10.

Mich. Mar. 27, 2020), *reconsideration denied,* No. 18-20315, 2020 WL 1547878 (E.D. Mich. Apr. 1, 2020) ("Even if all CDC's interim recommendations are followed...Court is concerned that such measures will prove insufficient to stem deadly outbreaks" in jails).

97. Release is the only strategy to address the threat of serious medical harm to Petitioners. None of Respondents' evidence disputes this conclusion.

98. Based on a similar record, where correctional officials demonstrated a plan of action to respond to COVID-19, federal courts have nonetheless found those officials deliberately indifferent to the threat COVID-19 for failure to release medically vulnerable detainees. *See, e.g., Basank*, 2020 WL 1481503 at *5 ("At oral argument, Respondents represented that ICE and the detention facilities in which Petitioners are housed are taking certain measures to prevent the spread of virus: screening detainees upon intake for risk factors, isolating detainees who report symptoms, conducting video court appearances with only one detainee in the room at a time, providing soap and hand sanitizer to inmates, and increasing the frequency and intensity of cleaning jail facilities. These measures are patently insufficient to protect Petitioners."); *United States v. Rodriguez*, No. 2:03-CR-00271-AB-1, 2020 WL 1627331, at *8 (E.D. Pa. Apr. 1, 2020) ("Many of the recommended measures to prevent infection are impossible or unfeasible in prison. The government's assurances that the BOP's 'extraordinary actions' can protect inmates ring hollow given that these measures have already failed to prevent transmission of the disease at the facility where Mr. Rodriguez is housed."); *Malam v Adducci*, No. 20-10829, 2020 WL 1672662, at *8 (E.D. Mich. Apr. 5, 2020), *as amended* (Apr. 6, 2020) ("[T]hough the Calhoun County Correctional Facility has indeed implemented measures designed to prevent spread of the disease, these measures are inadequate to sufficiently decrease the substantial likelihood that Petitioner will contract COVID-19. As prison officials are beginning to recognize around the country, even the

most stringent precautionary measures—short of limiting the detained population itself—simply cannot protect detainees from the extremely high risk of contracting this unique and deadly disease."). Similarly, the Honorable Mark Dwyer found, in a similar matter, that respondent DOC has been deliberately indifferent to the grave risk of harm posed to detainees who, like petitioners, are demonstrably medically vulnerable to COVID-19. *See People of State of New York ex rel. Stoughton v. Brann*, Index No. 451078-2020, 2020 N.Y. Slip Op. 20081, 2, 2020 WL 1679209 (NY Sup Ct, Apr. 6, 2020) (Dwyer, J.) (finding that respondent DOC has not taken reasonable "effort to employ an effective ameliorative measure" noting that "[u]nder the best of circumstances, there are far better places to be than Rikers Island. And these are not the best of circumstances."). Justice Dwyer analyzed each petitioner individually to determine whether release was the appropriate remedy for the constitutional violation, and ultimately released approximately twenty of the thirty-two petitioners. Thereafter, the Legal Aid Society moved to re-argue Justice Dwyer's denial of a particular petitioner's writ of habeas corpus, and provided him with Dr. Giftos's affidavit, cited *supra*, as well as updated medical information regarding the individual petitioner. Justice Dwyer reviewed the new information, granted the motion to re-argue, and ordered the petitioner's release, finding that the new records demonstrating petitioner's moderate asthma placed her at a higher risk of severe illness or death from COVID-19, according to the current CDC guidelines. In so ruling, Judge Dwyer noted *via* email correspondence that "despite all the continuing good-faith efforts of the Corrections authorities, they cannot change what Rikers is. It is a facility in which social distancing cannot be maintained, or expected. I continue to view the number of staff illnesses as most alarming, and am disquieted by the uncertainty created by the way in which Corrections is revealing the number of inmate illnesses."

<u>Failure to Release Petitioners Constitutes Deliberate Indifference to Serious Medical Needs in Violation of the New York Constitutional Right to Due Process</u>

99. There is an even stronger due process right to be free from unconstitutional conditions of confinement under the New York State Constitution. In *Cooper v. Morin,* 49 N.Y.2d 69, 79 (1979), the Court of Appeals concluded that the state due process clause accords even greater protection for pretrial detainees than the federal constitution, holding that "what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement." *See also People ex rel. Schipski v. Flood*, 88 A.D.2d 197, 199-200 (2nd Dep't 1982). (holding county jail's blanket policy of 22-hour lock-in for a certain category of pretrial detainees violates the state's due process guarantee); *Powlowski v. Wullich*, 102 A.D.2d 575, 587 (1984) (holding that because a jail's practice of depriving pretrial detainees of recreation and exercise "violates the federal standard, it, a fortiori, must fail the more stringent standard balancing test prescribed for violations of our state due process clause").

100. For the government to prevail in the face of that grave harm, it must prove a "compelling governmental necessity" for restricting these pretrial detainees' liberty interests. *Schipski*, 88 A.D.2d at 197. This is an "exacting standard." *Id.* The state's interests are limited to those arising from the "only legitimate purpose for pretrial detention . . . to assure the presence of the detainee for trial." *Id*. at 81. As in the initial decision to hold a pretrial detainee, public safety plays no role in the assessment of the state's interest.

101. Petitioners further respectfully submit that it is clear the Court has authority to consider a habeas petition whenever the continued incarceration of a petitioner is violation of the New York or U.S. Constitution. In this rare instance, Petitioners have made the case that release in the form of a writ of habeas corpus is appropriate to address unconstitutional conditions of confinement.

A Writ of Habeas Corpus is Procedurally Appropriate

102. Federal courts have interpreted the analogous federal habeas statute to allow for release. *See Ortuño v. Jennings*, 20 Civ. 02064 (MMC) (N.D. Cal. Apr. 8, 2020) (granting a federal habeas petition to release COVID-vulnerable detainees on the basis that it is "fairly well established that federal habeas corpus actions are now available to deal with questions concerning both the duration and the conditions of confinement.") (internal quotations and citation omitted);[61] *Basank v. Decker*, 20 Civ. 2518 (AT), Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020) (in granting a temporary restraining order releasing federal immigration detainees at heightened medical risk of COVID-19, finding that "[a]n application for habeas corpus under 28 U.S.C. § 2241 is the appropriate vehicle for an inmate in federal custody to challenge conditions or actions that pose a threat to his medical wellbeing.) (citing *Roba v. United States*, 604 F.2d 215, 218–19 (2d Cir. 1979)). *Cf. Brown v. Plata*, 563 U.S. 493, 531-32 (2011) (upholding lower court's order releasing people from state prison based on prospect of future harm caused by prison overcrowding).

103. New York courts have broadly interpreted their authority to use habeas corpus powers to address constitutional violations arising from circumstances or conditions of confinement. *People ex rel. Brown v. Johnston*, 9 N.Y.2d 482, 485 (1961) (habeas petition may be used to address "restraint in excess of that permitted by . . . constitutional guarantees"); *Kaufman v. Henderson*, 64 A.D.2d 849, 850 (4th Dep't 1978) ("[W]hen appellant claims that he has been deprived of a fundamental constitutional right, habeas corpus is an appropriate remedy to challenge his imprisonment."). The "right to detain a prisoner is entitled to no greater application than its correlative duty to protect him from unlawful and onerous treatment[,] mental or physical." *Brown*, 9 N.Y.2d at 485 (internal citation omitted). Courts have addressed whether the failure to address medical needs has risen to the level of a constitutional violation, requiring immediate release. *See*,

[61] https://www.aclunc.org/sites/default/files/Petitioners%27_Motion_For_Temporary_Restraining_Order.pdf

e.g., *People ex rel. Kalikow on Behalf of Rosario v. Scully*, 198 A.D.2d 250, 250–51 (2d Dep't 1993) (habeas petition addressing whether failure to provide adequate medical care constituted cruel and unusual punishment or deliberate indifference).

104. Moreover, New York's habeas jurisprudence in general has long contemplated the possibility that habeas claims for release based on conditions could be entertained *if* a petitioner could establish that the appropriate remedy was release. *See People ex rel. Sandson v Duncan*, 306 A.D.2d 716, 716–17 (3d Dept. 2003) (upholding denial of the writ because, "[w]hile success on the instant motion might entitle petitioner to the medication he seeks, it would not excuse him from serving the remainder of his sentence" and reasoning that "[h]abeas corpus will be granted only in cases where success would entitle the petitioner to immediate release"); *People ex rel. Barnes v. Allard,* 807 N.Y.S.2d 688, 689 (3d Dept. 2006) ("As for petitioner's complaint regarding the correctional facility's alleged deliberate indifference to his medical needs, . . . it would not entitle him to immediate release, thus making habeas corpus relief unavailable").

105. The Court of Appeals has explained that the State has a duty "to protect [incarcerated people] from unlawful and onerous treatment, mental or physical." *Id*. at 485 (citations omitted). In this case, because only release can sufficiently protect Petitioners from this deadly virus, a writ of habeas corpus is the only remedy available to fulfill that affirmative obligation. *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973).

106. Against this legal backdrop of a broad understanding of state habeas authority, specific contemplation of the use of such authority in prior appellate case law, analogous on-point federal precedent, and recent precedent set by fellow judges, there can be no questioning the Court's authority to order release of Petitioners if it finds they have met the standard of deliberate

indifference under federal or state constitutional law, which in light of the crisis and their demonstrated medical vulnerabilities, they plainly have.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court grant the motion to reargue or, in the alternative renew, the original Petiion and order Petitioners' immediate release, on the ground that their continued detention violates the Due Process Clause of the United States and New York State constitutions.

Dated: April 17, 2020
New York, New York

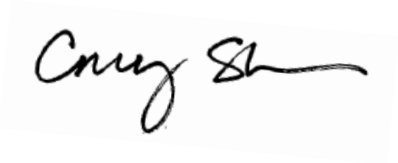
Respectfully Submitted,

COREY STOUGHTON
MARIE NDIAYE
LAUREN GOTTESMAN
ALMA MAGAÑA
MICHELLE MCGRATH
Legal Aid Society
199 Water Street, 6th Floor
New York, NY 10036
646-527-0095
cstoughton@legal-aid.org

*Attorneys for Petitioners*

Corey Stoughton, an attorney admitted to practice law in the State of New York, states that she has read the foregoing petition and that same is true to her own knowledge, except for those portions stated on information and belief, for which citations are provided.

Dated: April 17, 2020
New York, NEW YORK



Corey Stoughton

# EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

I, JONATHAN GIFTOS, M.D., hereby affirm under penalty of perjury:

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. Until January 2020, I was the Clinical Director of Substance Use Treatment for NYC Health & Hospitals, Division of Correctional Health Services ("CHS") 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 vulnerable populations such as the incarcerated and those experiencing homelessness.

4. In the course of my duties as Clinical Director of Substance Use Treatment for NYC Health & Hospitals, Division of Correctional Health Services at Rikers Island, I entered every facility in the New York City Department of Correction ("DOC" or "the Department") jail

system. I have firsthand knowledge of the various housing types—from dorm housing to single-cell units—in the facilities.

5. I have reviewed the affidavits of DOC Deputy Commissioner Patricia Feeney ("Feeney Affidavit") and Mr. Richard Bush ("Bush Affidavit"), dated April 2, 2020 and submitted by the New York City Law Department in litigation by individuals in DOC custody against the City of New York relating to COVID-19.

6. I submit this affidavit to illustrate the particular and severe risk that the COVID-19 pandemic poses to New York City jails and in support of an ongoing reduction in the city jail population notwithstanding the efforts DOC and CHS have undertaken to respond to the pandemic.

**COVID-19 Epidemic in New York City**

7. On March 11, 2020, the World Health Organization declared that the rapidly spreading outbreak of COVID-19, a respiratory illness caused by a novel coronavirus, is a pandemic, and that the virus is both highly contagious and deadly.[1] To date, the virus is known to spread from person to person through respiratory droplets, close personal contact, and from contact with contaminated surfaces and objects.[2] The Centers for Disease Control and Prevention ("CDC") also warns of "community spread," where the virus spreads easily and sustainably within a community where the source of the infection is unknown.[3]

8. Governor Cuomo declared a State of Emergency in New York State on March 7, 2020. Mayor De Blasio declared a State of Emergency in New York City on March 12, 2020.

---

[1] World Health Organization, Media Briefing on March 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] Centers for Disease Control and Prevention, Coronavirus Disease 2019: *How it Spreads*, https://www.cdc.gov/coronavirus/2019-ncov/prepare/transmission.html
[3] *Id*.

9. A COVID-19 outbreak is well underway in New York City jails. The first reported instance of a person in DOC custody testing positive was March 18, 2020.[4] As of April 13, 2020, just 26 days later, there were 998 confirmed cases of the virus in the DOC system: 323 people in custody, 88 CHS staff, and 587 DOC staff.[5] Without more information about testing criteria, there is a serious risk of under-identifying the number of actual COVID-19 cases in the DOC facilities, including people in custody, DOC staff and CHS staff. We know that universal testing does not occur in correctional settings, and so the true prevalence of COVID-19 infection cannot be known and is almost certainly higher than what is being reported.

10. There is currently no vaccine or cure for COVID-19. The primary focus at this stage of the pandemic is on preventing the spread of the virus. To prevent new infections, the Centers for Disease Control and Prevention strongly recommend the following actions: thorough and frequent handwashing, cleaning surfaces with EPA approved disinfectants, keeping at least 6 feet of space between people, and avoiding group settings.[6] Social distancing has also been heavily emphasized to slow the rate of COVID-19 infections so that hospitals have the resources to address infected individuals with urgent medical needs.[7] While these are the recommended steps to minimize transmission, even if all of them are taken and executed with perfection, they still cannot effectively control the risk of transmission.

---

[4] *Rikers Reports its First COVID-Related Prisoner Death*, New York Intelligencer (April 6, 2020), at https://nymag.com/intelligencer/2020/04/rikers-island-reports-its-first-covid-related-prisoner-death.html.
[5] *Daily Covid-19 Update, Monday, April 13, 2020*, New York City Board of Correction, at https://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/2020/April/Board%20of%20Correction%20Daily%20Public%20Report_4_13_2020_final.pdf.
[6] *How to Protect Yourself*, Centers for Disease Control and Prevention, https://www.cdc.gov/coronavirus/2019-ncov/prepare/prevention.html.
[7] *Coronavirus, Social Distancing, and Self-Quarantine*, Johns Hopkins Medicine, https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/coronavirus-social-distancing-and-self-quarantine.

**Recent Evidence Shows the Inadequacy of Symptom-Based Screening Tools in Preventing Transmission of COVID-19**

11. Experts continue to learn more about the transmission of novel coronavirus. Recent evidence has aided scientists and healthcare professionals in understanding why COVID-19 spreads so rapidly and dangerously. While it is well-known that symptomatic people transmit the virus, two additional transmission categories are essential to understanding the alarming rate of infection linked with the novel coronavirus: (1) asymptomatic transmission, or people who are infected and contagious but never display the symptoms associated with COVID-19, and (2) presymptomatic transmission, or people who are contagious *before* they begin to show symptoms.

12. At the end of March, CDC director Dr. Robert Redfield warned that as many as 25% of people infected with COVID-19 may not show symptoms.[8] On April 1, 2020, the CDC published a critically important study finding evidence of presymptomatic transmission.[9] When summarizing the implications of the study for public health practice, the CDC warned that "[t]he potential for presymptomatic transmission underscores **the importance of social distancing, including the avoidance of congregate settings**, to reduce COVID-19 spread" (emphasis added).[10]

13. Based on my review of the Bush Affidavit, CHS currently uses a symptom-based screening model to guide isolation and quarantine practices. Staff are sent home when exhibiting "flu-like symptoms, including mandatory temperature screening."[11] DOC staff are instructed to

[8] Mandavilli, Apoorva. *Infected but Feeling Fine: The Unwitting Coronavirus Spreaders*, The New York Times (March 31, 2020), at https://www.nytimes.com/2020/03/31/health/coronavirus-asymptomatic-transmission.html.
[9] Presymptomatic Transmission of SARS-CoV-2 — Singapore, January 23–March 16, 2020. *MMWR. Morbidity and Mortality Weekly Reports, at* https://www.cdc.gov/mmwr/volumes/69/wr/pdfs/mm6914-H.pdf.
[10] *Id.*, p.412.
[11] Bush Affidavit, p.2, ¶ 6.

refer people in custody to CHS when the person is "exhibiting COVID-19 like symptoms."[12] According to data published by the New York City Board of Correction ("BOC"), people are housed according to testing and symptom statuses: "Confirmed Positives," "Symptomatic," and "Likely Exposed but Asymptomatic."[13]

14. Given what we now know about how the novel coronavirus spreads and how often transmission occurs when an infected person is not displaying any symptoms whatsoever, even robust efforts to screen symptoms and isolate presumed positives are *not enough to prevent transmission*. Any system that relies on such a screening model will not stop the spread of the virus. From what we have learned, a combination of genuine and strict social distancing, handwashing, sanitation, and widespread testing and contact tracing are the measures effective to protect populations from rapid infection.

**COVID-19 and the Physical Characteristics of DOC Facilities**

15. In my former duties as CHS employee, I have spent time in each of the Rikers Island and borough jails. The physical characteristics of those facilities make adequate social distancing, sanitation, and robust quarantine and isolation practices nearly impossible.

16. Most housing areas in DOC facilities are dormitories, with a smaller number of single-cell units with a communal atrium, sinks and showers. Both settings pose significant challenges to the ability of staff and incarcerated people alike to abide by CDC guidelines.

17. Dorm housing areas are particular breeding grounds for COVID-19. Most dormitories in DOC have a capacity between 30 and 60 people, although 50 is the most common maximum capacity. Beds in these units are in one room, and far less than six feet apart. People housed in dorms must share common sinks, toilets, showers, phones, tables and dayroom benches.

[12] *Id*., p.2, ¶ 5.
[13] *Daily Covid-19 Update, Friday, April 10, 2020*, *supra* note 8, p.3.

Adequately sanitizing a space with those characteristics would require constant diligence and a continuous abundance of cleaning supplies. Cleaning once a day, or even a few times a day, would not prevent transmission of the virus. Social distancing, even at significantly reduced capacity, is virtually impossible due to the physical realities of the shared spaces in the dorms and the difficulty of adequately sanitizing a space inhabited by a constantly rotating population of incarcerated people and staff.

18. Single-cell housing areas also pose elevated risk of transmitting the virus. Though single cell units are typically equipped with a toilet and sink, incarcerated people must leave the cell for many reasons: to use a shared shower, or to go to the clinic, or potentially to use a shared phone or perform a job. Meals are still prepared and delivered from other parts of the jail by other incarcerated people. Many of the cell units typically have narrow hallways, forcing people to walk within 6 feet of other cells containing people in custody. Incarcerated people housed in single cells are also subject to exposure from the myriad operational characteristics endemic in the jail setting, described below. All of these factors demonstrate the difficulty of effective social distancing and sanitation even in more isolated single-cell units.

**COVID-19 and Operational Characteristics of DOC Facilities**

19. Beyond the physical realities of DOC facilities, people in custody and staff are at particular risk of COVID-19 infection because of the operational realities of the jail setting. The freedom of movement of incarcerated people is obviously strictly curtailed. People in custody are therefore completely dependent on staff—and other incarcerated people performing job functions within the facility—to fulfill basic human needs, like food preparation and service, the cleaning of housing areas, laundry, access to showers, access to medical care, commissary, and provision of basic hygiene items like soap, toothbrushes, or toothpaste. If people in custody need to leave

their housing areas, they must be physically escorted by officers, sometimes in handcuffs, chains, or other apparatuses. Each one of those operational functions requires movement of and contact between persons in a very large system, presenting an obstacle to sanitation, infection isolation, and social distancing particular to the correctional setting.

20. New people continue to be arrested and admitted to DOC custody every day.[14] The continuous introduction of people who have been living in the community—and indeed, have come into contact with many officers and other arrestees alike simply by virtue of their arrest, arraignment, and transportation to DOC facilities—presents an ongoing and significant risk of exposure to those in custody. The inability to quarantine newly admitted individuals from the existing communities in the jail—staff and incarcerated people—and from each other presents an extraordinary threat to any containment strategy.

21. Staff likewise come from myriad boroughs and even states, entering and exiting the facilities in three separate shifts each day, and potentially working in different housing areas and facilities on a daily basis. Significantly, in a CDC report published March 18, 2020, an epidemiological investigation revealed that coronavirus-infected staff members contributed to the outbreak in a nursing home facility with ineffective infection control and prevention and staff members working in multiple facilities.[15] Given what we now understand about evidence of asymptomatic and presymptomatic transmission, the same risks exist in DOC.

22. It has been widely reported that tensions and anxieties about coronavirus continue to rise,[16] presenting increased likelihood for uses of force, another aggravating factor for contagion.

---

[14] *See Daily Covid-19 Reports, April 1 to April 10, 2020*, New York City Board of Correction, at https://www1.nyc.gov/site/boc/covid-19.page.

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

[16] *See* Ransom, Jan, and Alan Feuer. *"We're Left for Dead": Fears of Virus Catastrophe at Rikers Jail*, The New York Times (March 30, 2020), at https://www.nytimes.com/2020/03/30/nyregion/coronavirus-rikers-nyc-jail.html?action=click&module=RelatedLinks&pgtype=Article.; *Locked Up: No Masks, Sanitizer as Virus Spreads*

Uses of force within the facilities involve either physical contact between staff and incarcerated people, or implementing force from a distance, which often takes the form of oleoresin capsicum ("OC") spray.

23. Both types pose COVID-19 health risks. Physical force negates social distancing, and even worse, often involves upset people speaking or yelling at one another, thus increasing the risk of viral particles becoming airborne. If an officer deploys OC spray, the chemical agent is designed to induce coughing, potentially expelling infected droplets into the air. People targeted by or even in the vicinity of the spray will immediately attempt to rub the irritant away from their eyes, noses, and mouth, after which they are very likely to touch and potentially contaminate a number of surfaces in their surroundings and increasing the risk of exposure.

24. A final characteristic of DOC that must be considered in the instant health crisis is the inevitable operational gaps in a system of this size and the risks that those gaps pose to staff and people in custody. The Feeney affidavit contains descriptions of policies that would certainly play a critical role in reducing the harm from the COVID-19 pandemic: frequent and thorough cleaning and sanitizing regimens, ongoing health education, and adequate provision of soap, sinks, and cleaning supplies. In order to be effective, of course, policies must be implemented with fidelity and require adequate staffing levels to do so. In my time in the facilities, I witnessed many instances in which execution of policies relating to sanitation, provision of basic items, and other requirements fell short. When staffing levels are apparently and understandably plagued by illness and media continue to report disturbing accounts from inside DOC facilities,[17] I remain gravely concerned that people in custody do not have the supplies and environmental controls

---

*Behind Bars*, The Associated Press (March 28, 2020), at https://www.nytimes.com/aponline/2020/03/28/us/ap-virus-outbreak-prisons.html.

[17] *See* Ransom, "*We're Left for Dead*," supra note 16.

necessary to protect them and staff from the pandemic, notwithstanding DOC's effort to create policies to address this problem.

**Continuing to Reduce Population Size in DOC is a Crucial Public Health Measure**

25. According to data published by BOC, the population in DOC has been reduced by 1,367 people since March 16, 2020.[18] This is a critical initial step, but it is not sufficient to address the ongoing public health crisis in the jails. Due to the physical and operational characteristics of DOC, even the current population poses a serious risk to the effective infection management and treatment of COVID-19.

26. Many of my former colleagues at CHS echo these concerns. In a recent opinion piece for the Washington Post dated April 10, 2020, Dr. Rachael Bedard, the director of the geriatrics and complex care service for CHS, wrote: "'[s]ocial distancing' is impossible in correctional facilities. People sleep on cots four feet apart, share bathrooms, sit in a small common space to watch television and gather for therapy sessions. Every day, staffers move among housing areas and in and out of the jails, potentially exposing dozens to contagion. Despite the health service and the Correction Department's best efforts to identify, test and quarantine potentially infected people, the New York City jail system is set up perfectly for viral spread. People are getting very sick."[19] It remains, therefore, an urgent priority to reduce the number of people in detention facilities during this ongoing national public health emergency.

Dated: New York, New York
April 14, 2020

DR. JONATHAN GIFTOS, M.D.

[18] *Daily Covid-19 Reports, April 13, 2020*, New York City Board of Correction, at https://www1.nyc.gov/site/boc/covid-19.page.

[19] Bedard, Rachael, M.D. *I'm a doctor on Rikers Island. My patients shouldn't have to die in jail.*, The New York Times (April 10, 2020), at https://www.washingtonpost.com/outlook/doctor-rikers-compassionate-release/2020/04/10/07fc863a-7a93-11ea-9bee-c5bf9d2e3288_story.html.