

EMERY CELLI BRINCKERHOFF & ABADY LLP

RICHARD D. EMERY  
ANDREW G. CELLI, JR.  
MATTHEW D. BRINCKERHOFF  
JONATHAN S. ABADY  
EARL S. WARD  
ILANN M. MAAZEL  
HAL R. LIEBERMAN  
DANIEL J. KORNSTEIN  
O. ANDREW F. WILSON  
ELIZABETH S. SAYLOR  
KATHERINE ROSENFELD  
DEBRA L. GREENBERGER  
ZOE SALZMAN  
SAM SHAPIRO

ATTORNEYS AT LAW  
600 FIFTH AVENUE AT ROCKEFELLER CENTER  
10<sup>TH</sup> FLOOR  
NEW YORK, NEW YORK 10020

TEL: (212) 763-5000  
FAX: (212) 763-5001  
www.ecbalaw.com

DIANE L. HOUK  
EMMA L. FREEMAN  
DAVID BERMAN  
HARVEY PRAGER  
SCOUT KATOVICH  
NICK BOURLAND  
ANDREW K. JONDAHL  
ANANDA BURRA  
MAX SELVER

April 3, 2020

*Via ECF*

Honorable Rachel P. Kovner  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Re: *Chunn, et al. v. Edge*, No. 20 Civ. 1590

Dear Judge Kovner:

Along with the Cardozo Civil Rights Clinic and Alexander A. Reinert, this office represents Petitioners and the putative class in the above-captioned case. Pursuant to the Court's Order, the parties have been working for the past two days under the supervision of Judge Mann to attempt to resolve this matter.

Pursuant to the Court's Order, we write to advise the Court that discussions amongst the parties concluded at 10:00am today. We have not received further updates from Respondents regarding whether they will take the actions discussed with Judge Mann this morning with respect to the four named Petitioners.

In the event a settlement is not possible, we are submitting the enclosed supplemental declaration to address facts that have developed since the April 1, 2020 conference with Your Honor and issues raised at that conference.

Very truly yours,

/s/  
Katherine Rosenfeld

c. All counsel (via ECF)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

**SUPPLEMENTAL  
DECLARATION OF  
KATHERINE ROSENFELD**

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

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

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

3. The COVID-19 virus continues to spread at exponential rates throughout New York City, and in federal correctional facilities around the country. As reflected in the charts attached hereto as Exhibit A, based on the data reported on a daily basis by the Bureau of Prisons (available at <https://www.bop.gov/coronavirus/>) and as compiled by the Federal Defenders, the number of cases among incarcerated people and corrections staff has risen exponentially over the past two weeks. Over the past three days alone, the number of incarcerated people reported as

testing positive in BOP facilities has nearly tripled, and since March 20, 2020, the number has increased more than 50-fold.

4. As of yesterday, Thursday, April 2, 2020, MDC reported that it had no cases of COVID-19 in the facility, whereas one week ago, there was one positive individual in the incarcerated population. MDC also reported 4 positive staff members.

5. Today, in response to Chief Judge Mauskopf's recent Order, the BOP informed the Court that as of Friday, April 3, 2020, MDC has tested 7 incarcerated people and there have been two positive cases. BOP also reported that 5 staff members have tested positive. Today's BOP-reported data suggests that one new incarcerated person and one new staff member have tested positive for the virus within the last 24 hours. (*See* BOP Letter Report to Chief Judge Mauskopf dated April 3, 2020, attached hereto as Exhibit B).

6. MDC's reports about the scale of COVID-19 infection in the facility are grossly unreliable, because MDC has only tested seven people in the facility in total to date out of a population of 1700 people. Attached as Exhibit C is the Declaration of Dr. Homer Venters dated April 2, 2020. Dr. Venters is a physician, internist and epidemiologist who was previously the Medical Director, Assistant Commissioner, and Chief Medical Officer of the NYC Jail Correctional Health Service.

7. Based on MDC's reported statistics of positive cases as of April 2, 2020, and his knowledge of COVID-19 pathology at other correctional institutions, including facilities in New York City, Dr. Venters opines that he "would expect that many more staff and inmates are currently symptomatic and would have positive tests at this point." ¶ 5. Dr. Venters further opines that in light of MDC's reported statistics: "I would be concerned that the facility is not

following accepted infection control and surveillance measures to address COVID-19 among staff and inmates.” ¶ 6.

8. Based on his experience and expertise in correctional health, Dr. Venters opines that: “Anyone who is symptomatic, whether or not they are a known contact of a confirmed case, should be tested.” ¶ 6(b). MDC is violating this accepted standard; it admitted to the Court on April 1, 2020 that it had only tested three people and that it does not automatically test people who report they are symptomatic. (*See* Transcript, April 1, 2020 (“Tr.”), attached hereto as Ex. D, at 116-17; *see also* Ex. B (reporting 7 incarcerated people tested to date).).

9. Based on his experience and expertise in correctional health, Dr. Venters opines that: “People held in the quarantine housing area should have their signs and symptoms checked daily, including temperature.” ¶ 6(c). MDC is violating this accepted standard; it is only monitoring people who *report* symptoms to facility staff, and is not checking everyone it quarantines on a daily basis.

10. Based on his experience and expertise in correctional health, Dr. Venters opines that: “People identified as high risk should be considered for immediate release based on their risk of serious illness and death from COVID-19 infection.” ¶ 6(d). MDC is violating this accepted standard; although it has a list of 537 high-risk individuals in its possession, it is not making use of that list to proactively review whether any individuals in its custody should be released.

11. Based on his experience and expertise in correctional health, Dr. Venters opines that: “People identified as high risk who remain incarcerated should be subject to the same active surveillance (daily sign and symptom checks) as the quarantine group.” ¶ 6(e). MDC is violating this accepted standard; although it has a list of 537 high-risk individuals in its

possession, it is not making use of that list to protect the health of these individuals in any manner. For example, MDC is not using the list to actively medically monitor vulnerable people. According to counsel for Respondent, the list of high-risk individuals “is for staff awareness so that if there is an issue, they are aware of one of those inmates with heightened vulnerability within the facility. Beyond that there is no action . . . there is no affirmative action that has been taken other than being aware, if needed, where those folks are.” Tr. 115:9-15 (Statement of Mr. Eichenholtz); *see also* Tr. 115:24-116:6 (statement of Ms. Pratesi). In other words, Respondent is taking no additional affirmative steps to protect vulnerable individuals from infection with COVID-19, despite their knowledge that these individuals are at higher risk for complication and death if they contract COVID-19.

12. As Respondent disclosed at oral argument on April 1, 2020, the MDC had tested only three people to date for COVID-19. One out of three of those tests had resulted in a positive finding. Today, two days later, the MDC reports it has tested a total of seven people, and two out of the seven of those tests were positive for COVID-19.

13. Attached as Exhibit E is a Declaration from Robert L. Cohen, M.D., a physician with extensive expertise in correctional health and a member of the New York City Board of Correction. Dr. Cohen is informed that the testing criteria used by the New York City Department of Correction is broader than that in operation at the MDC, namely by testing all symptomatic people and some asymptomatic people who have been exposed to people who are confirmed positive for COVID-19. As Dr. Cohen attests, it is important to have broad testing criteria in correctional settings because people in those settings are unable to self-quarantine.

14. In a facility of 1700 people, in the midst of a global pandemic that can spread rapidly in confined spaces, in the city that is the epicenter of the pandemic, the dearth of testing

suggests the very kind of willful blindness that the Supreme Court equated with subjective deliberate indifference in *Farmer v. Brennan*, 511 U.S. 825, 843 n.8 (“While the obviousness of a risk is not conclusive and a prison official may show that the obvious escaped him, he would not escape liability if the evidence showed that he merely refused to verify underlying facts that he strongly suspected to be true, or declined to confirm inferences of risk that he strongly suspected to exist . . .”); *Zenon v. Downey*, No. 18 Civ. 0458, 2018 WL 6702851, at \*7 (N.D.N.Y. Dec. 20, 2018) (noting that supervisor’s “willful blindness” can demonstrate deliberate indifference).

15. At the April 1st hearing, the Court raised questions about the scope of a Special Master’s role. In light of those questions and subsequent events, Petitioners can provide the following additional suggestions for that role. Petitioners continue to submit that a Special Master with correctional health expertise is urgently required at the MDC given the severity of the COVID-19 pandemic. Appointing someone with correctional health knowledge to consult with the Court and the parties will provide relief in two ways: (a) addressing the immediate needs of the most vulnerable at the MDC by quickly coordinating with all stakeholders— Respondents, Petitioners, and the courts; and (b) helping to ameliorate dangerous conditions in the jail. On the first point, an individualized application process to myriad individual judges will exclude many members of the putative class, to the extent that relief can even be obtained in those proceedings over government objections and administrative barriers. Many high-risk persons at the MDC no longer have counsel or are not well enough to adequately advocate for themselves and navigate the barriers to release. For these individuals, a Special Master could be a conduit to the courts for appropriate cases to be distributed to sentencing judges, prioritize the BOP’s list of the most vulnerable, and systematically propose solutions on a group-wide basis to

achieve faster, more consistent results. On the second point, a Special Master with correctional health expertise can help improve conditions at the MDC for those who will remain confined there; he or she could be conduit of information to the courts that would expert reporting on conditions from an independent, medical-based perspective. The Court can direct the Special Master's responsibilities, reporting schedule, and interaction with stakeholders in a manner that supplements existing frameworks that would otherwise move too slowly to address the immediate needs presented by the pandemic.

16. Respondent's lethargic pace continues to endanger not only Petitioners but others similarly situated in the MDC. On behalf of other high-risk individuals, lawyers have already requested their release, and the BOP has not responded, much less on the fast timeframe required in this public health crisis. To take just one example, a 63-year old veteran is currently confined at the MDC on a 9-month sentence, who has a release date of 7/17/20, for whom compassionate release was requested by his lawyer on March 27, 2020, and for whom no response was ever received. Securing the release of Petitioners will still leave many other such vulnerable people in the MDC, at the mercy of the BOP's torpid and discretionary processes, particularly those who are sentenced and no longer have active counsel in their criminal cases.

Executed on: April 3, 2020  
New York, New York

/s/ Katherine Rosenfeld  
Katherine Rosenfeld

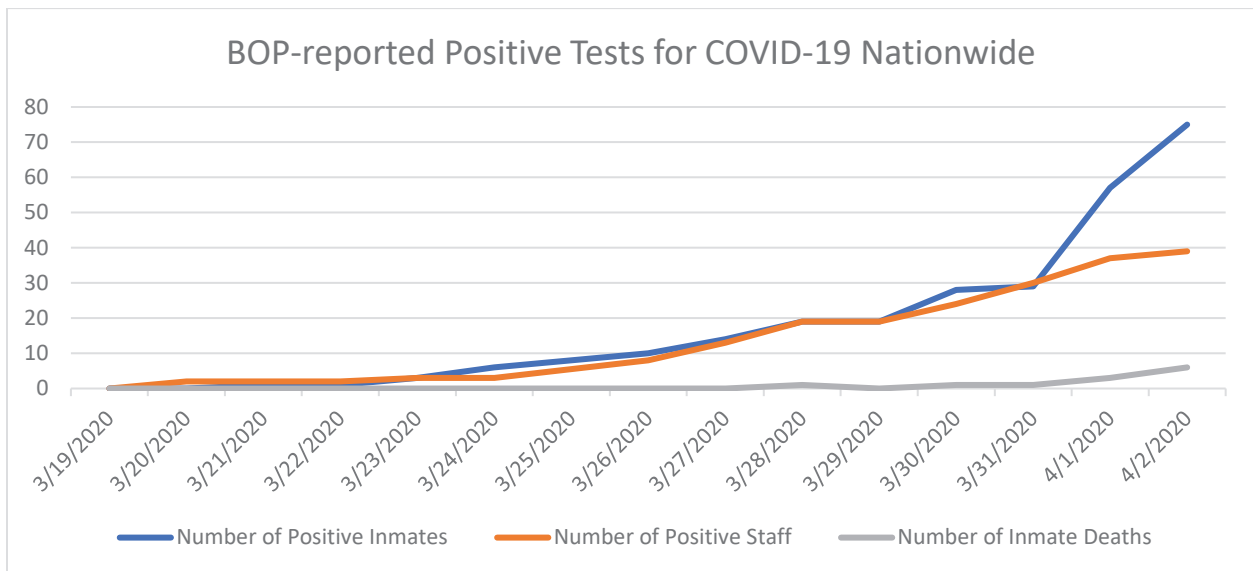
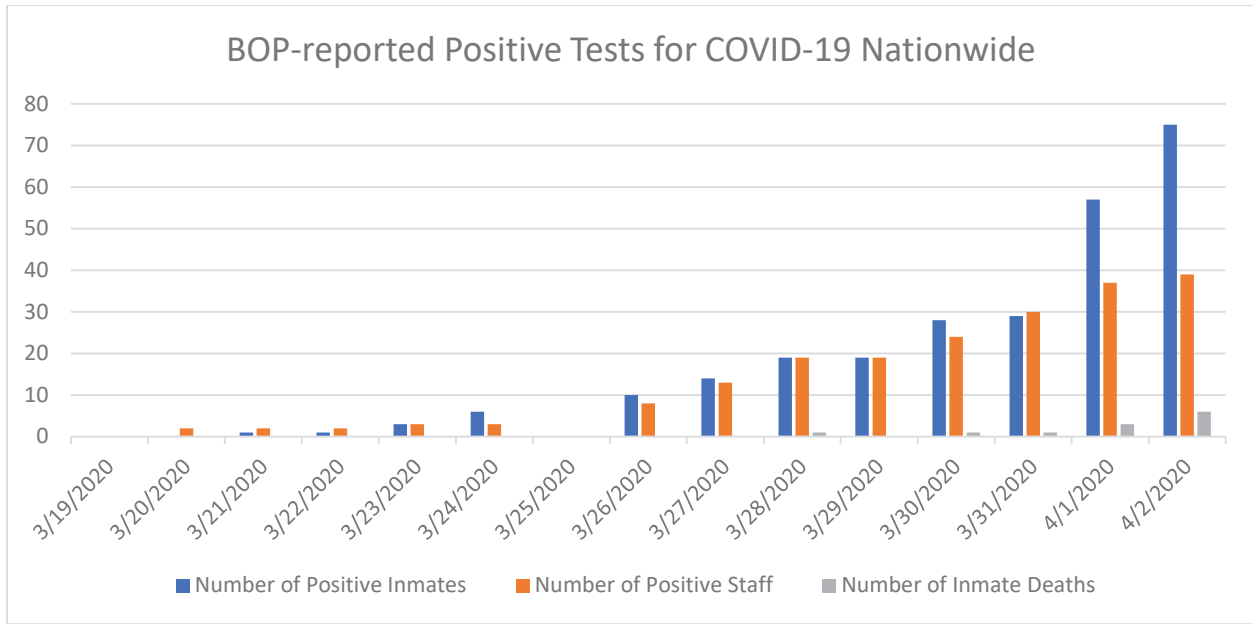
# **Exhibit A**



BOP-reported Positive Tests for COVID-19 Nationwide<sup>1</sup>

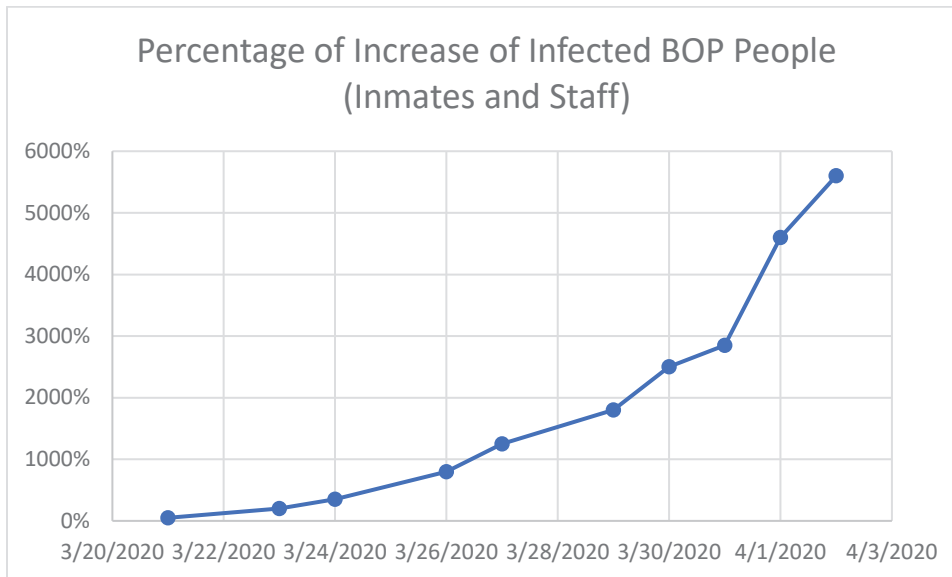
Date	Number of Positive Inmates	Number of Positive Staff	Number of Inmate Deaths
3/19/2020	0	0	0
3/20/2020	0	2	0
3/21/2020	1	2	0
3/22/2020	1	2	0
3/23/2020	3	3	0
3/24/2020	6	3	0
3/26/2020	10	8	0
3/27/2020	14	13	0
3/29/2020	19	19	0
3/28/2020	19	19	1
3/30/2020	28	24	1
3/31/2020	29	30	1
4/1/2020	57	37	3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

<sup>1</sup> Numbers obtained from [www.bop.gov/coronavirus](http://www.bop.gov/coronavirus) on a daily basis. Media has reported that this website may understate the number that have tested positive. This report appears to be accurate, given that, *e.g.*, on April 3, 2020, the website reports no positive inmates at MDC Brooklyn, but BOP staff have confirmed to the Chief Judge of EDNY that as of that date there are 2 positive inmates. Accordingly, this chart likely understates significantly the actual number of inmates who have tested positive. BOP does not provide any information on its website as to how many tests have actually been administered.



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

Date	Percent Increase Since 3/20/2020	Number of Positive Inmates	Number of Positive Staff
3/21/2020	50%	1	2
3/23/2020	200%	3	3
3/24/2020	350%	6	3
3/26/2020	800%	10	8
3/27/2020	1250%	14	13
3/29/2020	1800%	19	19
3/30/2020	2500%	28	24
3/31/2020	2850%	29	30
4/1/2020	4600%	57	37
4/2/2020	5600%	75	39



# **Exhibit B**



**U.S. DEPARTMENT OF JUSTICE**  
**Federal Bureau of Prisons**  
*Metropolitan Correctional Center*

---

*150 Park Row  
New York, New York 10007*

April 3, 2020

The Honorable Roslynn R. Mauskopf  
Chief United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: **Administrative Order**  
**No. 2020-14**

Dear Judge Mauskopf:

The Court has ORDERED that the MDC and MCC respond to concerns about the institutions' response to the COVID-19 pandemic. Specifically, the Court asked about protocols for screening and testing inmates, staff and others entering or leaving each facility; the number of inmates tested and the number of positive tests, the number of staff and/or others testing positive; and all efforts undertaken to mitigate the spread of COVID-19 both generally and in response to any symptomatic inmate(s) and/or positive test(s).

Staff have been tasked with screening each and every staff member who walks in the door at both facilities. Specifically, a temperature is being taken and the staff member is asked to fill out a screening form. If the staff member has a fever or answers yes to any of the questions, a medical professional can deny entry to the institution.

Medical staff are also screening new inmate arrivals to the institution the same way. Specifically, staff who are conducting the screening are to wear appropriate personal protective equipment (PPE) in accordance with guidance promulgated by the Center for Disease Control (CDC). Inmates with a temperature greater than or equal to 100.4 degrees, or overt respiratory symptoms are placed in isolation. New arrivals with a temperature of less than 100.4 degrees are placed in quarantine for fourteen days as a precautionary measure. Inmates leaving either BOP facility are also screened.

Any inmate currently in BOP custody who presents with COVID-19 like symptoms is assessed by the institution health services staff. An inmate exhibiting symptoms consistent with COVID-19 will be placed in isolation. The remainder of the inmates on his or her unit will be quarantined to ensure additional inmates do not develop symptoms. The inmates medical isolation will be evaluated by medical staff at least twice a day, and the inmates on a medically quarantined unit will have their temperature checked twice a day.

Currently, the BOP has enacted a national 14-day action plan to increase social distancing in the facilities. Specifically, inmates in every institution will be secured in their assigned cells. At MDC and MCC, the inmates will be released from their cells 3 days per week in order to shower, use the phones, and utilize the TRULINCs system. This will be done in small groups and social distancing has been encouraged. The national action plan will not, however, affect the provision of legal phone calls. Inmates will still be taken out of their cells for legal phone calls.

Inmate orderlies are cleaning the common areas of all housing units, and inmates have been instructed to continue to wipe down and sanitize their living quarters.

MCC and MDC unit team staff and officers are available to the inmate population to address any and all issues, including medical concerns, property concerns, and/or food related requests. Unit team staff are providing legal calls to attorneys. Any inmate can also request medical care from health services providers when they make rounds on the housing units.

With regard to the numbers as of April 3, 2020 for MDC:

Inmates tested: 7

Inmates positive: 2

Staff Positive: 5

With regard to the numbers as of April 2, 2020 for MCC:

Inmates tested: 5

Inmates positive: 4

Staff Positive: 7

Respectfully submitted,

s/

M. Licon-Vitale  
Warden  
MCC New York

s/

D. Edge  
Warden  
MDC Brooklyn

# **Exhibit C**

I, Homer Venters, hereby declare the following:

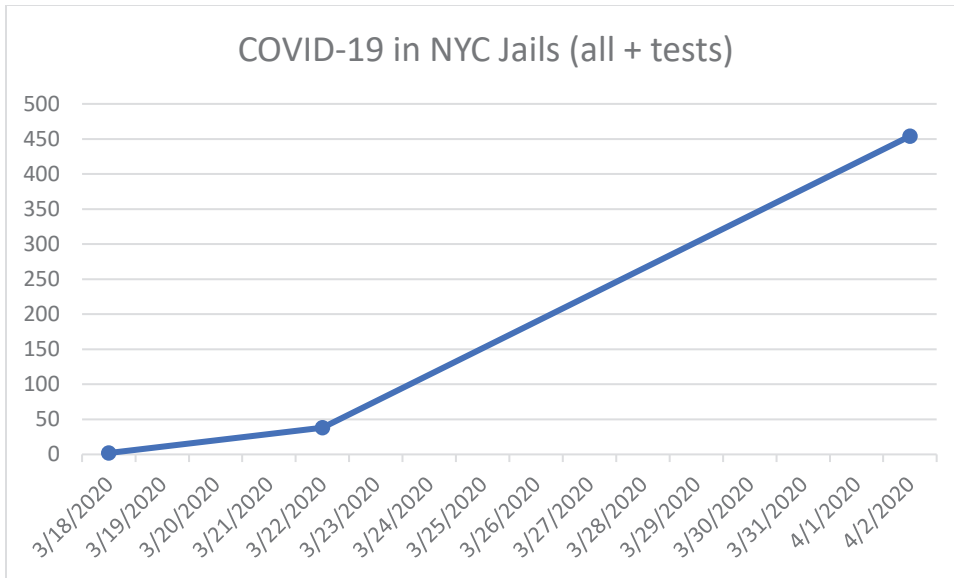
### **Background**

1. I am a physician, internist and epidemiologist with over a decade of experience in providing, improving and leading health services for incarcerated people. My clinical training includes residency training in internal medicine at Albert Einstein/Montefiore Medical Center (2007) and a fellowship in public health research at the New York University School of Medicine (2009). My experience in correctional health includes two years visiting immigration detention centers and conducting analyses of physical and mental health policies and procedures for persons detained by the U.S. Department of Homeland Security. This work included and resulted in collaboration with ICE on numerous individual cases of medical release, formulation of health-related policies as well as testimony before U.S. Congress regarding mortality inside ICE detention facilities.
2. After my fellowship training, I became the Deputy Medical Director of the NYC Jail Correctional Health Service. This position included both direct care to persons held in NYC's 12 jails, as well as oversight of medical policies for their care. This role included oversight of chronic care, sick call, specialty referral and emergency care. I subsequently was promoted to the positions of Medical Director, Assistant Commissioner, and Chief Medical Officer. In the latter two roles, I was responsible for all aspects of health services including physical and mental health, addiction, quality improvement, re-entry and morbidity and mortality reviews as well as all training and oversight of physicians, nursing and pharmacy staff. In these roles I was also responsible for evaluating and making recommendations on the health implications of numerous security policies and practices including use of force and restraints. During this time I managed multiple communicable disease outbreaks including H1N1 in 2009, which impacts almost 1/3 of housing areas inside the adolescent jail, multiple seasonal influenza outbreaks, a recurrent legionella infection and several other smaller outbreaks.
3. In March 2017, I left Correctional Health Services of NYC to become the Director of Programs for Physicians for Human Rights. In this role, I oversaw all programs of Physicians for Human Rights, including training of physicians, judges and law enforcement staff on forensic evaluation and documentation, analysis of mass graves and mass atrocities, documentation of torture and sexual violence, and analysis of attacks against healthcare workers.
4. In December 2018 I became the Senior Health and Justice Fellow for Community Oriented Correctional Health Services (COCHS), a nonprofit organization that promotes evidence-based improvements to correctional practices across the U.S. In January 2020, I became the president of COCHS. I also work as a medical expert in cases involving correctional health and I have a book on the health risks of jail (*Life and Death in Rikers Island*) which was published in early 2019 by Johns Hopkins University Press.

### **COVID-19 in Brooklyn Federal Prison**

5. It is my understanding that one inmate and one or more staff members tested positive for COVID-19 during the week of March 20, 2020. Based on this, and my understanding of COVID-19 pathology and spread in correctional institutions, I would expect that many more staff and inmates are currently symptomatic and would have positive tests at this point. By comparison, after the initial index cases among one correctional officer and one inmate occurred in the NYC jail system, the number of combined cases jumped to 38 and 454 in the two subsequent weeks.





6. If a similar rise in the number of cases has not been observed in the Brooklyn Federal Detention Center, I would be concerned that the facility is not following accepted infection control and surveillance measures to address COVID-19 among staff and inmates. The following measures should be part of the facility plan in place;
- a. All known contacts with the initial case who are asymptomatic should be quarantined either at home for staff, or in a designated housing area for inmates.
  - b. Anyone who is symptomatic, whether or not they are a known contact of a confirmed case, should be tested.
  - c. People held in the quarantine housing area should have their signs and symptoms checked daily, including temperature.
  - d. People identified as high risk should be considered for immediate release based on their risk of serious illness and death from COVID-19 infection.
  - e. People identified as high risk who remain incarcerated should be subject to the same active surveillance (daily sign and symptom checks) as the quarantine group.

Signed

Homer Venters MD, MS

4/2/20

# **Exhibit D**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X	
HASSAN CHUNN, et al.,	: 20-CV-1590(RPK)
Plaintiffs,	:
-against-	: United States Courthouse
	: Brooklyn, New York
	:
WARDEN DEREK EDGE, et al.,	: Wednesday, April 1, 2020
Defendants.	: 11:30 a.m.
	:
- - - - - X	

TRANSCRIPT OF CIVIL CAUSE FOR TEMPORARY RESTRAINING ORDER  
BEFORE THE HONORABLE RACHEL P. KOVNER  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the	EMERY CELLI BRINCKERHOFF & ABADY LLP
Petitioners:	Attorneys for the Petitioners -
	Hassan Chunn, et al.
	600 Fifth Avenue
	10th Floor
	New York, New York 10020
	BY: KATHERINE R. ROSENFELD, ESQ.
	O. ANDREW F. WILSON, ESQ.

	BENJAMIN N. CARDOZO
	SCHOOL OF LAW
	For the Petitioners -
	Hassan Chunn, et al.
	55 Park Avenue
	Room 938
	New York, New York 10003
	BY: ALEXANDER A. REINERT, ESQ., ESQ.
	BETSY R. GINSBURG, ESQ.

A P P E A R A N C E S: (Continued.)

For the  
Respondents:

RICHARD P. DONOGHUE, ESQ.  
UNITED STATES ATTORNEY -  
EASTERN DISTRICT OF NEW YORK  
Attorney for the Respondents -  
Warden Derek Edge, et al.  
271 Cadman Plaza East  
Brooklyn, New York 11201  
BY: JAMES R. CHO, ESQ.  
SETH EICHENHOLTZ, ESQ.  
ALLON LIFSHITZ, ESQ.  
Assistant United States Attorneys

ALSO PRESENT:

Deirdre von Dornum, Federal Defenders of New York, Inc.  
Holly P. Pratesi, Esq., Federal Bureau of Prisons  
Nicole McFarland, Esq., Federal Bureau of Prisons  
Lisa Olson, Justice Department, Federal Programs  
Eddie Kim, Intern, Columbia Law School

Court Reporter: Anthony D. Frisolone, FAPR, RDR, CRR, CRI  
Official Court Reporter  
Telephone: (718) 613-2487  
Facsimile: (718) 613-2694  
E-mail: Anthony\_Frisolone@nyed.uscourts.gov

Proceedings recorded by computerized stenography. Transcript  
produced by Computer-aided Transcription.

*Telephonic Hearing*

3

1 (The following takes place via teleconferencing with  
2 all parties dialing in remotely.)

3 (Parties appear via telephone.)

4 THE COURT: Hi, everybody. This is a telephone  
5 conversation in Chunn v. Edge, Docket No. 20-CV-5090.

6 I can tell there are a bunch of folks on the line  
7 but I'm wondering if the parties can state their appearances.

8 MS. ROSENFELD: Good morning, your Honor this is  
9 Katie Rosenfeld from Emery Celli Brinckerhoff & Abady LLP for  
10 the petitioners.

11 Would you like all of the petitioners' counsel to  
12 give their individual appearances?

13 THE COURT: So I think anybody who is going to be  
14 speaking on the call, it would be helpful to identify  
15 yourselves so that the Court reporter has that information.

16 MR. REINERT: Sure, your Honor. Good morning, this  
17 is Alex Reinert, also counsel for the petitioners.

18 MR. WILSON: Andrew Wilson also counsel for the  
19 petitioners.

20 THE COURT: Great. Is that everybody on  
21 petitioners' side?

22 MS. GINSBURG: Betsy Ginsburg for petitioners.

23 THE COURT: Is that the whole petitioners' team?

24 MS. ROSENFELD: There are other lawyers who are on  
25 the line who are working on the case, your Honor, but I don't

*Telephonic Hearing*

4

1 believe anyone else will be speaking other than the people who  
2 just gave their appearances.

3 THE COURT: Who do we have for the respondent?

4 MR. CHO: Good morning, your Honor. James Cho with  
5 the U.S. Attorney's Office on behalf the respondents.

6 Also on the line on behalf the Government we have  
7 Holly Pratesi with the Bureau of Prisons; Seth Eichenholtz,  
8 Deputy Chief, Civil Division, U.S. Attorney's Office; Allon  
9 Lifshitz, Deputy Chief, Criminal Division, U.S. Attorney's  
10 Office; Lisa Olson, Justice Department, Federal Programs; and  
11 my intern Eddie Kim with Columbia Law School.

12 THE COURT: Super.

13 MR. EICHENHOLTZ: Your Honor, this is Seth  
14 Eichenholtz.

15 I just wanted to let the Court know and the  
16 plaintiffs know we did have, in addition to we have filed a  
17 declaration from Associate Warden King in response to your  
18 Honor's order. We do have a brief we also wanted to file  
19 ahead of time. I'm having some technical issues, so if that  
20 pops up during the conference, obviously, we didn't get it out  
21 before the conference so that is coming. I just wanted to let  
22 everyone know.

23 THE COURT: I'm just going -- to so did you just  
24 file a declaration or --

25 MR. CHO: Yes. We filed a supplemental declaration

*Telephonic Hearing*

5

1 of the associate warden responding to point 3 of your order  
2 from last night dealing with MDC's efforts to implement a --

3 THE COURT: Do you mind also e-mailing that to our  
4 chambers e-mail address because I'm not seeing it on the  
5 docket. I'm also wondering if petitioners have it.

6 MS. ROSENFELD: This is Katie Rosenfeld, your Honor,  
7 we do. I have it in front of me, the declaration.

8 THE COURT: Well, it might be just slow in popping  
9 up object my docket, but --

10 MR. EICHENHOLTZ: Your Honor, I'm sitting at my  
11 laptop now, so I could e-mail it to chambers. If you could  
12 give me the e-mail address.

13 THE COURT: I'm hoping that one of my clerks will  
14 jump in if I'm saying it wrong, but I believe it's  
15 kovner\_chambers@edny.uscourts.gov.

16 MR. CHO: The brief that we're filing or attempting  
17 to file right now addresses points 1 and 2 in the order as  
18 well.

19 THE COURT: So it sounds like it's possible that  
20 we'll talk about some things that are duplicating what's in  
21 the written filings that are being submitted with the  
22 expectation that we'll be covering something that's being  
23 addressed in those but we'll see.

24 Let me just, I guess, cover a couple of things at  
25 the outset. So it would be helpful, I know there are a lot of

*Telephonic Hearing*

6

1 people on this line, if you're not going to be talking, please  
2 mute yourself so that we don't pick up background noise.

3           When you're talking, if you don't mind just  
4 identifying yourself always before you talk because,  
5 otherwise, the Court reporter is going to have a hard time  
6 knowing who is is who. And if you also don't mind just being  
7 careful about overlapping voices on the call. It's much  
8 harder than even in person to take down what's going on if  
9 people overlap. So if you can go in sequence for the Court  
10 reporter.

11           The other housekeeping issue I wanted to mention to  
12 you all is I know that there's been a letter suggesting that  
13 this should be designated a related case to the Federal  
14 Defenders case. So one thing that I have that letter and  
15 Judge Brodie also has that letter. I think we're thinking  
16 about the related case issue. But since this one is a TRO, we  
17 felt we both agreed that I would handle this now while that  
18 request is pending.

19           I think we also say if, I don't know if the  
20 Government is intending to put in a letter, I know that the  
21 letter from petitioner said the Government consents to the  
22 designation. But, certainly, to the extent that the  
23 Government has anything else they want to say about that  
24 issue, it might be helpful to designate this a related case.

25           So, for this call, I wanted to let you know since



*Telephonic Hearing*

7

1 you're putting in this letter or putting in that letter and  
2 have not heard anything back, that's where we stand on that.

3 MR. EICHENHOLTZ: Your Honor, I just wanted say that  
4 a we do -- I think that the Government's position in terms of  
5 relation, especially in terms of whether this is the same, you  
6 know, kind of case topic also in the scope of the Federal  
7 Defenders case is something where we do have a position that I  
8 think we'd want to lay out to the Court as far as that  
9 consideration. We weren't going to object to the request, we  
10 do disagree with the characterization that it's related in the  
11 sense that it's the same subject. We disagree with that. We  
12 let that be known to the petitioners when they asked our  
13 consent and we're happy to put in the letter whenever the  
14 Court would like it but it expands on that position.

15 THE COURT: Okay. Great.

16 Well, then I think probably where we'll end up is  
17 we're waiting to receive that letter because it would be  
18 helpful to hear the Government's views on that question before  
19 addressing the related case issue. I just wanted to flag that  
20 that issue is something we're aware of so that you don't think  
21 that it's fallen through the cracks.

22 So, I guess, turning to the TRO, I'll tell you that  
23 I have a bunch of questions for both parties and then there  
24 are the three points I've flagged for you all last night. I  
25 think I was particularly hoping that both of you would

*Telephonic Hearing*

8

1 address. So I also wanted to make sure that you, you know,  
2 obviously, it's a fast-moving case and I wanted to make sure  
3 that you all had the opportunity to also say whatever you  
4 wanted to say. And it seemed like maybe I'll give you that  
5 chance at the outset and I promise to also give you that  
6 chance at the end.

7 So I read the briefing and there is absolutely no  
8 need to recapitulate stuff that's in the brief just to put it  
9 on my radar. But before I get into the specific questions  
10 that I have which I think, generally, fall into the -- maybe  
11 we can talk some at the outset about the facts and where  
12 there's agreement and disagreement on that and then turn to  
13 some legal questions that I have. But let me, at the outset  
14 just open it up to anything that you all wanted to open with  
15 at the start.

16 MS. ROSENFELD: Thank you, your Honor.

17 Consistent with what you just said, I would like to  
18 give the Court a brief initial statement of the facts, and  
19 then I'll ask my colleague Alex Reinert to specifically  
20 address the three questions that the Court asked if that  
21 works.

22 THE COURT: Sure.

23 MS. ROSENFELD: So, your Honor, as you know, we're  
24 on this TRO, a motion for four specific individuals:  
25 Mr. Chunn, Mr. McBride, Mr. Rabaldi, and Mr. Rodriguez. And

*Telephonic Hearing*

9

1 just to focus ourselves at this stage, at the TR0 stage, the  
2 relief that we're seeking is narrow which is that we are  
3 seeking the release of these four individuals who are named in  
4 the petition and we are seeking appointment of a special  
5 master on an emergency basis to convene a release and  
6 mitigation committee to include a doctor in order to evaluate  
7 everybody else in the putative class for relief and make  
8 recommendations.

9 So while, obviously, there are very broad issues  
10 about all of the class members for whom are seeking relief at  
11 the TR0 stage, those are the two significant, but yet, narrow  
12 things that we are seeking.

13 As the Court I'm sure is very aware, there's  
14 obviously a public health disaster unfolding before all of our  
15 eyes in the city and in correctional settings around the city.  
16 The Bureau of Prisons's papers relies very heavily on the fact  
17 that their mitigation impact is working because there has only  
18 been one diagnosed case at MDC among the incarcerated people  
19 to date.

20 I did want to point out to the Court that in my  
21 declaration, we included statistics that have been gathered  
22 from the Legal Aid Society showing that on Rikers Island there  
23 was also only one case as of March 19th, and today, I checked  
24 this morning, Rikers Island had 180 people. It was 139 people  
25 when we filed on Monday.

*Telephonic Hearing*

10

1           So it's important to know we're very early in the  
2 crisis at MDC and that's obviously a good thing from the  
3 perspective of we can take action now.

4           I also wanted to let the Court know that, you know,  
5 we think that the situation at MDC is very rapidly changing.  
6 We're receiving constant communications from people who are  
7 incarcerated there. We heard this morning that Unit 53, which  
8 has 110 people on it has four to five extremely sick people  
9 who were removed and taken to the SHU in the last 24 hours.  
10 That's been reported to us by three separate incarcerated  
11 people who we've been in contact with. We've also been told  
12 this morning that inmate workers are being sent to deliver  
13 supplies and to clean infected areas without gloves or masks.

14           We're informed that there was no medical staff at  
15 the jail on Monday evening we're informed that people are  
16 being told as of yesterday to eat in their cells as part of  
17 the new more restrictive measures, but that they are being  
18 told that they can return to the tables and socialize at the  
19 tables after they eat. So all of this information is just  
20 coming in to us in the last few hours.

21           I also wanted to tell you that Deidre von Dornum,  
22 who is the attorney in charge of the Eastern District Federal  
23 Defenders office, is also on the line and may speak at a  
24 certain point to answer the Court's questions.

25           The next point I wanted to make is that when we

*Telephonic Hearing*

11

1 looked at the BOP papers, we think there are actually a lot of  
2 facts that are not in dispute. There's no dispute that there  
3 are 537 people on the BOP's list who were designated as high  
4 risks or people who were vulnerable given medical conditions.  
5 There's no dispute that right now MDC is only monitoring  
6 symptomatic people. The CDC reported yesterday that  
7 25 percent of the people with virus are asymptomatic.

8           So the BOP's approach is indisputably, at this point  
9 only responds to people showing symptoms. There is no dispute  
10 that you cannot socially distance in a jail. There is no  
11 dispute that there are multiple positive staff members at the  
12 jail, there's five at least. The papers are entirely silent  
13 as to who may have been exposed to these staff members and  
14 what measures are taken to address that. It is not disputed  
15 that the isolated -- that people are locked in their cells. I  
16 hear somebody's dog.

17           And that that's a critical point, your Honor. When  
18 the BOP is telling you that people are isolated but what that  
19 means is that they are in a cell with another person and they  
20 are leaving the cell for showers, for legal calls, and for  
21 other reasons.

22           It is also important, I think, your Honor, to look  
23 at what the BOP doesn't tell you in its papers. You're not  
24 being told how many people have been tested, how many people  
25 tests are available, how many people are quarantined, how many

*Telephonic Hearing*

12

1 are in isolation, or what medical facilities are available.  
2 And I suggest, your Honor, that the silence on those very  
3 critical facts which are in BOP's possession, not ours, is  
4 very, very concerning alarming.

5           Finally, your Honor, in terms of the status of the  
6 MDC. The MDC is just not equipped to manage a crisis  
7 resulting from a virus. It's not a medical facility and  
8 cannot care for ill people. It's not disputed, I believe, it  
9 has no ventilators. It has no medical units. When people are  
10 sick at the MDC, they either go to the hospital or they stay  
11 in their cells. Also, all of the hospitals in the area that  
12 MDC is situated in are overwhelmed. Many people go to  
13 Kingsbrook Jewish Medical Center which is really at the  
14 epicenter, I think, of the problem with hospital capacity.  
15 MDC can't intubate people, it does not have negative pressure  
16 isolation rooms.

17           And it apparently cannot implement its own best  
18 practices, your Honor. The inmate screening tool that is  
19 submitted with the BOP's submission recommends that  
20 asymptomatic patients who have been exposed to someone who has  
21 been diagnosed in the last 14 days be held in a single cell.  
22 That cannot occur at MDC. Almost everyone at MDC is  
23 double-celled.

24           Finally, your Honor, before my colleague here  
25 responds to your specific questions, I think it's very

*Telephonic Hearing*

13

1 important to note to the Court that we are seeking the release  
2 of our four petitioners today and we are happy to answer any  
3 individual questions about their status and their situation.  
4 But part of the situation from a public health perspective,  
5 and we submitted several medical declarations in support of  
6 this, is that the unconstitutional conditions for the  
7 petitioners are also a threat to general public health, to the  
8 people who work at the MDC, the medical staff at the hospital  
9 and at MDC, and in the communicate at large.

10 And so, with that, if the Court would like  
11 Mr. Reinert to address more specific requests.

12 MR. REINERT: Good morning, your Honor. This is  
13 Alex Reinert for petitioners.

14 And if the Court will bear with me, I think it's  
15 important to get a little bit of background as I transition to  
16 the Court's questions.

17 I think, you know, the respondent's basic position  
18 here as my colleague averted to is they have only one case  
19 among the incarcerated people at the MDC and they're taking  
20 steps to mitigate risk. And it's instructive to look at the  
21 spread of the disease within the Bureau of Prisons over time  
22 as the Government has consistently resisted efforts to release  
23 vulnerable people all over the country because it bears on  
24 your Honor's three questions.

25 And so, the *Hamilton* case cited by the defendants in

*Telephonic Hearing*

14

1 front of Judge Garaufis on March 16, 2020. What did the BOP  
2 say? They said, look, don't worry, there have been no  
3 confirmed cases of COVID-19 in the Bureau of Prisons including  
4 in the MDC, and we're implementing national language to  
5 mitigate the spread within prisons. And they responded today  
6 and they said the same thing in a March 19th filing in the  
7 Western District of Washington.

8 So that was on March 16th, March 19th, don't worry,  
9 we don't have any cases, we're taking measures. So fast  
10 forward to the *Redzepagic* case which also is submitted by  
11 respondent. Now, we're on March 26th and the BOP files two  
12 letters on March 26th because they have to update the Court.  
13 The first letter they say is about the MCC, not about the MDC.

14 Now, they focus on the fact that there are no  
15 COVID-19 cases at the MCC, although they acknowledge there  
16 were three people in BOP facilities throughout the country  
17 including staff who tested positive. Then they have to update  
18 their letter that same day because now they realize there was  
19 a person who tested positive for COVID-19 at MCC. That's on  
20 March 26th, they said in that letter that the person was  
21 returned to the MCC and placed in isolation. I suggest that's  
22 the thing they're doing to prevent the spread.

23 And now, less than a week later, just at the MCC,  
24 there are at least three cases among incarcerated people. And  
25 we have confidence that we've submitted some information to



*Telephonic Hearing*

15

1 justify that confidence that the BOP numbers are under-counts.

2 So now today, or at least as of yesterday, four  
3 people in BOP custody through the country we have 29 people  
4 incarcerated people, according to the BOP, who tested positive  
5 and also at least 30 staff. Back on March 16th, they said  
6 nobody, no incarcerated people, no staff. And we've got now  
7 at least one death in custody and we're very confident that  
8 this was a significant undercount of the actual cases.

9 And so, what we're watching as the BOP asserts to  
10 courts around the country including your Honor is the spread  
11 of the disease throughout the BOP in real-time even as the BOP  
12 is insisting that they're taking mitigating measures. In one  
13 week, the cases increased by more than 800 percent. And  
14 that's based on the reporting by BOP, and at every stage the  
15 Government has said, there is nothing to see here, we're  
16 implementing mitigating measures.

17 Rarely is a court and parties, and I think parties  
18 on both sides, take the position where we can avert disaster  
19 before it strikes. And the Court has instructed us, the  
20 Supreme Court has instructed us, we don't have to wait for a  
21 tragedy to happen for the Eighth Amendment to kick in and I  
22 think it's a fundamental premise on petitioner's request for  
23 relief here.

24 So now I want to transition to the Court's specific  
25 questions because I think to some degree it answers, that

*Telephonic Hearing*

16

1 factual scenario answers, why the relief we seek is so  
2 critical here.

3 In terms of whether or not compassionate release on  
4 bail is an answer, we'd start with the proposition which --  
5 and I hope your Honor will understand our position -- which is  
6 that habeas relief doesn't depend on the presence or absence  
7 of other means of obtaining release. So even if they were an  
8 answer here, that doesn't mean that the petitioners aren't  
9 entitled to habeas. And one of your Honor's colleagues in the  
10 Southern District, Judge Furman, just in a case involving an  
11 individual request for release says we need specific action  
12 because a judge can only grant so much in any one case --

13 THE COURT: The congressional and executive action.

14 MR. REINERT: Well, your Honor, that doesn't mean  
15 there isn't a role for judicial action in terms of we can  
16 establish an entitlement to relief. As for compassionate  
17 release, there is requirements for compassionate release that  
18 the Government has insisted in opposition to a request for  
19 compassionate release.

20 One thing the Government says is you need to wait  
21 30. Days we don't have 30 days to wait for people like  
22 petitioners. And the Government has even said that even if  
23 you wait for 30 days, they've taken the position that the  
24 COVID-19 crisis doesn't qualify for people to get released on  
25 compassionate release. And although defense attorneys are

*Telephonic Hearing*

17

1 taking the opposite position, the Government is saying  
2 compassionate release isn't an option here. Bail is not an  
3 answer for convicted people as before petitioners are  
4 convicted, and for pretrial people it might not be an answer  
5 in some cases, it depends on the circumstances of whether  
6 someone can even afford bail and it also raises timing issues.  
7 And this is exactly why we propose the special master, if  
8 necessary, to deal with individualized circumstances.

9           So this is why we think a systemic approach is  
10 necessary here especially in light of what we've been  
11 observing throughout the BOP which is continued insistence on  
12 mitigating measures that do not appear to be working, and  
13 we've submitted declarations from medical experts explaining  
14 why it's so dangerous to have a disease like this spreading in  
15 a correctional setting and respondent has not provided any  
16 evidence to the contrary. So that's an explanation for why  
17 compassionate release on bail is a sufficient answer area.

18           THE COURT: I don't wasn't to interrupt you at all  
19 on that, but before you move on for a minute I did want to ask  
20 you a couple of things about that so I don't know if now is  
21 the right now.

22           MR. REINERT: Go ahead. I'm all yours.

23           THE COURT: So talking about the named petitioners  
24 who are all sentenced. I take your point about compassionate  
25 release and the 30-day period. Is there any other reason, so

*Telephonic Hearing*

18

1 there is the obstacle that you're pointing out that they can't  
2 immediately go to court, they have to make the request and  
3 then wait 30 days or wait for the denial as I understand it,  
4 so I understand that. Any other obstacle, like, is there a  
5 merits obstacle?

6 MR. REINERT: Your Honor, the Government has  
7 asserted that there is a merits obstacle.

8 (Cross Talk.)

9 MR. REINERT: Federal Defenders stated their  
10 position.

11 THE COURT: From your perspective, these are people  
12 who could file a compassionate release claim raising COVID as  
13 a ground and any other grounds. Folks are doing that, right,  
14 and some of them are getting it, it seems like that. I saw  
15 one today.

16 MR. REINERT: Folks are doing that for sure against  
17 strident opposition from the Government I would say.

18 MS. ROSENFELD: Your Honor, this is Katie Rosenfeld.

19 For one of our petitioners, Mr. McBride, his lawyer  
20 did make a compassionate release request on March 26, 2020,  
21 and on March 31, 2020, the response was from the BOP via  
22 e-mail, We received the following e-mail in relation, "I'm  
23 sorry, "Your request has been forwarded to the appropriate  
24 department." So that was as of yesterday.

25 THE COURT: That was one of the questions I am going

*Telephonic Hearing*

19

1 to ask, and I don't mean to interrupt you, but when you're can  
2 you address -- I know there's this material filed indicating  
3 that the plaintiffs here, or the petitioners here, sought some  
4 kind of relief from the BOP and I was wondering if that making  
5 a compassionate release request or seeking discharge to home  
6 confinement or something else. It sounds like -- Mr. McBride  
7 was a compassionate release request.

8 MS. ROSENFELD: For Mr. McBride, it was  
9 compassionate release. And that e-mail, five days later, that  
10 has been forwarded with the response. For Mr. Chunn and  
11 Mr. Rabaldi, I'm sorry, and Mr. Rodriguez, I believe it was to  
12 home confinement generally.

13 So there's a mix, but I think what's the unifying  
14 factor is that the BOP hasn't responded to any of these  
15 requests; and so, while in the normal course of events, we can  
16 appreciate that five days may be a window to acknowledge  
17 receipt of something like this in the context of the current  
18 literal health crisis putting these particular people who all  
19 have serious health conditions that process is too slow.

20 THE COURT: Okay. And then I guess the other  
21 mechanism, I don't know if you were going to cover it that you  
22 alluded to, is that the BOP can discharge folks to home  
23 confinement. So that's another -- and I think, and tell me if  
24 I'm wrong, that the sort of Attorney General Barr guidance to  
25 the BOP is basically that BOP should be considering that. So

*Telephonic Hearing*

20

1 I'm wondering about that as an alternative avenue if that's  
2 something that sounds like two of the petitioners have sought  
3 from the BOP. And I'm wondering if that you've gotten no  
4 response to that, and I'm wondering if your general point  
5 about that is basically parallel to the compassionate release  
6 point is we don't know how long it's going to take and that  
7 makes it unsatisfactory or inadequate.

8 MR. REINERT: I would say that's is a timing issue,  
9 your Honor, and I do think that the Court could order release  
10 to home confinement through habeas. And it's quite analogous  
11 to what courts have done when they use habeas to order release  
12 from solitary confinement. What the Court is doing is  
13 changing the conditions under which somebody is in detention.

14 And so, again, I come back to our fundamental  
15 premise which is that petitioners are being exposed to  
16 unconstitutional conditions as we sit here to today because  
17 they're being exposed to a substantial risk of harm to their  
18 life and well being. And if that's the case, and we believe  
19 we have established that with facts that as my colleague  
20 pointed out, haven't really been rebutted by respondent, then  
21 there's a remedy here, the remedy that they are seeking is  
22 cognizable under habeas, it transitions to your Honor's second  
23 question but I don't want to transition there if the Court  
24 still has questions on compassionate release.

25 THE COURT: The one other question I had just to

*Telephonic Hearing*

21

1 close the circle in the alternative avenues piece is with  
2 respect to the pretrial detainees seeking bail and it may be  
3 that and I guess I welcome your thoughts on this, too, it may  
4 be that the pretrial detainees are something that we should be  
5 bracketing a little bit because all the relief that you're  
6 seeking is about convicted folks.

7           And so, maybe that's what I should be focused on  
8 right now but I guess I would still appreciate it since you're  
9 seeking at least some relief even today with respect to the  
10 other inmates at the MDC who are pretrial. It seems like  
11 people are bringing these claims under the Bail Statute. I  
12 think they can bring these claims under the Bail Statute. I'm  
13 wondering why that isn't an appropriate mechanism for bringing  
14 these claims for these folks.

15           MR. REINERT: Well, it's not necessary that it's not  
16 an appropriate mechanism, your Honor, and I agree with your  
17 Honor folks have been bringing some of these claims through  
18 bail, seeking bail. It doesn't, again, and I hate to sound  
19 like a broken record, it doesn't, to our mind, give us an  
20 appropriate remedy if we show an entitlement to habeas, but it  
21 also doesn't address the systemic problems that we think --  
22 this is exactly why we propose a special master because there  
23 may be individualized circumstances this bail doesn't have an  
24 answer for. And no matter what, whether someone is -- whether  
25 someone can -- has the resources to seek bail in any

*Telephonic Hearing*

22

1 particular given case, that doesn't answer the question as to  
2 whether they may be entitled to habeas separately. So on one  
3 level --

4 THE COURT: Can I ask you about a couple things that  
5 you just said, and I'm sorry, I don't want to cut you off at  
6 that point.

7 So, I guess, two. First, I want to say -- I take  
8 your point that it may well be that the availability of  
9 alternative mechanisms is not something to be considered here  
10 at a TRO and a habeas claim. I take that point and I want to  
11 come back to it later, but I think just inserting through the  
12 question of what are the other available mechanisms, and are  
13 there problems with them, meaning, are there reasons why they  
14 wouldn't be available to address COVID concerns.

15 Let me ask you about the two things that I think you  
16 just said as possible reasons.

17 One is lack of money. And I guess I'm wondering  
18 about that because folks are often released on personal  
19 recognizance bonds without putting up money. I would think  
20 that's actually more common than the secured bonds on the  
21 federal side. And I then guess the other question is whether  
22 there's some other statutory reason why some inmates, some  
23 pretrial inmates, wouldn't be able to raise a COVID claim  
24 before a Judge. And, I guess, the statutory language that I'm  
25 thinking about here, and I'm wondering what your view is, you



*Telephonic Hearing*

23

1 know, it's in the Judge Nathan opinion that you folks rely on  
2 where she releases somebody on bail. And she points to the  
3 provision that says judges can temporarily release a detainee  
4 if the Court determines such release to be necessary for  
5 preparation of the person's defense or for another compelling  
6 reasons.

7           So it seems to me like a COVID claim could be  
8 presented as a compelling reason for a bail application. And,  
9 you know, obviously a Court might find in a particular case, I  
10 don't find it to be compelling reason in your case and I'm  
11 just wondering if there is a legal obstacle to pretrial  
12 detainees seeking release.

13           MR. REINERT: Your Honor, I certainly have seen  
14 cases throughout the country where people have sought bail and  
15 argued that the COVID crisis is a compelling reason and courts  
16 have treated that differently. Some have balanced it against  
17 the risk to the public. So it balances to the presumption of  
18 a flight risk.

19           So this is to say that part of the reason we  
20 think -- I'm not trying to dodge on this question, I think  
21 there maybe circumstances in which the issue can be raised on  
22 a bail application. But, by definition, because of the  
23 statute, there will be lots of considerations that go into the  
24 bail application. And, in this proceeding, the fundamental  
25 question is: Are they being held in violation of the

*Telephonic Hearing*

24

1 constitution or not?

2 And so, whether they would get bail or not is a  
3 separate issue and it may be that one could argue, and I think  
4 one should be able to argue that a compelling circumstance  
5 under bail is I'm being held in unconstitutional conditions.

6 I've read the cases, some Courts have considered  
7 that and some of the courts balance it more against the other  
8 statutory factors in the statute.

9 So I think it's possible, I guess, to say that for  
10 some individuals it could be raised on bail. Our position,  
11 again, because we see this as a potentially systemic crisis,  
12 or more than a potentially systemic, a systemic crisis, is  
13 that it calls for a systemic solution.

14 One of the things that Judge Furman said today was,  
15 you know, he acknowledged that proceeding here, and he said in  
16 an order in the same case, in the Nkanga case, that there's a  
17 telephonic hearing. And sort of, I think there is some  
18 interest amongst -- and I don't want to speak for other  
19 judges -- in seeing this through if not from a systemic lens  
20 and there's some value to that.

21 So I guess I will say, yes, there is some potential  
22 in some cases for raising it through bail but we don't think  
23 that answers every single case that of our class members. And  
24 we still think even so, there is virtue in thinking this  
25 through from a systemic perspective.

*Telephonic Hearing*

25

1 MS. ROSENFELD: Your Honor, just on the back of the  
2 envelope side. It appears that more than half of the people  
3 on the vulnerable list are not eligible for any bail. About  
4 60 percent we would estimate.

5 THE COURT: Why would that be? Because I would  
6 think -- and my impression is --

7 MS. ROSENFELD: I'm sorry.

8 (Cross Talk.)

9 THE COURT: -- mostly. Go ahead, sorry.

10 MS. ROSENFELD: You know, your Honor, I might ask  
11 Deidre von Dornum on the phone to answer that. My  
12 understanding is there is a number of people who are part of  
13 the Cadre Program who are on the list. There is a number  
14 elderly people. There are people serving very short sentences  
15 there for, like, a remand on a violation. So our  
16 understanding is that it's about a 40/60 division on that  
17 list. That's a very approximate just for your --

18 THE COURT: Meaning, they're sentenced?

19 MS. ROSENFELD: Correct.

20 THE COURT: The division is 40/60 sentenced.

21 MS. ROSENFELD: Very approximately.

22 MS. VON DORNUM: Your Honor, Deidre von Dornum.

23 Just to make one thing clear, I think one thing  
24 that's hard for plaintiffs' counsel here is they don't have  
25 that list. And as you probably know I've been ordered by the

*Telephonic Hearing*

26

1 chief judge not to share the list with anybody other than to  
2 confirm or deny that an individual person is on the list, or  
3 to use it as sort of gross statistics like those that  
4 Ms. Rosenfeld was citing.

5 But from my review of the 537, it is about a 40  
6 percent pretrial, or at least presentence, some of that 40  
7 percent is postconviction/presentence. Then 60 percent  
8 sentenced, and that's because MDC is frequently used as a  
9 transit or transfer facility. So they have their own cadre,  
10 they have the transfer people, and then they have a bunch of  
11 people who are sentenced either awaiting designation or  
12 designated but not yet moved. And the proportion of those on  
13 the at-risk list appears to me to be high because those tend  
14 to be older people and people who have been in the system  
15 longer. So, unfortunately, tend have chronic medical  
16 conditions of the type at issue here.

17 THE COURT: Okay.

18 MR. REINERT: This is Alex Reinert. Should we move  
19 on to why release or --

20 THE COURT: That would be great.

21 MR. REINERT: So I think, again, to some degree, we  
22 start with the fundamental premise which is that release is an  
23 available remedy under §2241 when a petitioner is being held  
24 in unconstitutional conditions.

25 We have, we think, shown through our papers that our

*Telephonic Hearing*

27

1 petitioners can't be protected under certain -- under the  
2 current circumstances and social distancing is impossible;  
3 that they need to have an opportunity to ensure adequate  
4 personal hygiene. And the BOP has failed to ensure that these  
5 conditions obtain.

6 In the MCC, I will refer back to reference to my  
7 discussion of the trajectory of the Government's response as  
8 has been developing. And we've established, I don't think --  
9 you know, I think the Government's position on our entitlement  
10 to relief misses the mark. The Government's fundamental  
11 position is, well, we're just speculating that our clients  
12 will suffer harm. The harm is the substantial risk that  
13 they're facing in the conditions that they are held in as we  
14 speak and that is cognizable under the Eight Amendment holding  
15 that says that specifically. And that distinguishes that the  
16 respondent is not engaged.

17 In fact, they make an argument that the respondent  
18 is making here is that it's a speculative risk, they haven't  
19 suffered any harm yet, they make an argument that both the  
20 state and the United States made as amicus in *Helling* and  
21 rejected exclusively by the Court. The Court says we're not  
22 going to deny would be -- of an injunction. We've plainly  
23 proved an unsafe, life-threatening condition on the grounds  
24 that nothing hasn't happened to them yet.

25 And so, they analogized it in the Second Hand Smoke

*Telephonic Hearing*

28

1 case to exposure to an infectious disease. And, if anything,  
2 the risk here is greater than the environmental tobacco smoke  
3 that was at issue in *Helling*. And I think we established that  
4 our expert affidavits.

5 So if I had to really grapple with that aspect of  
6 the difference in the standard -- grapple with the clear loss  
7 on the Supreme Court and from the Circuit of hiding  
8 irreparable harm both of them, one shows a violation of the  
9 constitution. And also, when one of them shows that there's  
10 been exposure to a substantial risk of harm. And that's  
11 established through our papers.

12 So release is the appropriate remedy under §2241  
13 under these circumstances. And, again, I don't want it to be  
14 missed, this is especially, this release to home confinement,  
15 it is very much analogous to release orders that are obtained  
16 by people in solitary and released to general population.  
17 They're changing the (indistinguishable) no longer a violation  
18 of constitution associated with those conditions and, you  
19 know, we just don't have the liberty or the privilege to wait  
20 and see whether or not they can remedy this by mitigating when  
21 they haven't shown that yet. They're supposed to do it, yet.  
22 And when there are specific conditions in the MDC that make  
23 that mitigation nearly impossible as we established, I think,  
24 in our papers.

25 That's our response on -- I'm happy to take

*Telephonic Hearing*

29

1 questions from the Court on that before we move to the  
2 particular questions which I think we might move back to  
3 Ms. Rosenfeld to that.

4 THE COURT: I think I got to I confirm that I  
5 understand the kind of thousand-degree answer which is, is  
6 release is appropriate here because there is not really an  
7 order to the MDC or to the BOP that would ensure the safety of  
8 the petitioners because social distancing is basically  
9 impossible here. One can't have an order that says, correct  
10 this condition if the only option is for release.

11 Is that the thousand-degree --

12 MR. REINERT: I think it came to the granular level  
13 of details even for looking at a reason for the sort of  
14 provisions that have been put in case still allow for lots of  
15 finagling by people held closely with each other and also with  
16 staff.

17 And again, I just -- and the Court is sort of --  
18 whether it's okay to do this, sort of, I do think the Second  
19 Circuit's decision in *Roba* is instructive. That was a case in  
20 which the Court said we're not going to let you take custody  
21 of this person because if you take custody of this person,  
22 it's going to threaten his life.

23 Citing to *Estelle v. Gamble*. Here, what we're  
24 saying is we have custody of our petitioners and that -- and  
25 circumstances like their custody is threatening their life and

*Telephonic Hearing*

30

1 well being. That's from *Estelle v. Gamble*.

2 So the Court says, the Second Circuit says,  
3 petitioner doesn't have to wait until they physically have  
4 hands on him, then he's going to -- at which point is life is  
5 threatened to transfer he's entitled to challenge it now.  
6 He's entitled to challenge it in the Second Circuit before  
7 he's even in custody. Certainly, our petitioners are -- the  
8 fact that they're in custody now which is exposing them to  
9 this risk. I can answer more questions on --

10 MS. ROSENFELD: Your Honor, I just want to clarify  
11 something. For Mr. Chunn and Mr. Rodriguez, two of our  
12 petitioners, their individual lawyers made requests for relief  
13 via letter. Those were never responded to. Mr. Rodriguez and  
14 Mr. Chunn were also part of separate requests that the Federal  
15 Defenders made for home confinement through the medically  
16 vulnerable people, 11 of them, and that request at least since  
17 yesterday was denied. So my understanding is that for two of  
18 these people that remedy is not -- is already shut off.

19 But with respect to No. 3, your Honor, I just had a  
20 chance to very briefly go through the supplemental King  
21 declaration that was submitted. If your Honor has it in front  
22 of you, I'm looking at the paragraph number, it says  
23 Paragraph 4.

24 THE COURT: Just give me a second because I want to  
25 pull it up.



*Telephonic Hearing*

31

1           Go ahead.

2           MS. ROSENFELD: Paragraph 4, taken these steps.

3 Paragraph 4 it says, Inmates will be secured in their assigned  
4 cells to decrease the potential spread. As I said at the  
5 beginning, your Honor, they're double celled for the vast  
6 majority of people. So that means two people together in a  
7 very small cell.

8           Then it goes on to explain how the circumstances in  
9 which people will be leaving their cells to shower, to have  
10 access to e-mail, to phones, et cetera. So every time one of  
11 the two people in their cells leaves the showers to use the  
12 phone to do any of these things which we agree are important  
13 things, and we're not advocating that people not have those  
14 avenues, they're going to come in contact with other people  
15 and with the virus and then they're going to come back to  
16 their cell.

17           And so, for example, in the federal prison in  
18 Louisiana where the first person in federal custody died, you  
19 know, now there are dozens of cases from my understanding.  
20 There is a rampant outbreak.

21           So the fact that they're going to isolate people in  
22 their cells is not going to mitigate the transmission because  
23 people will continue to come in and out for things like phone  
24 calls, e-mail, showers, et cetera.

25           The other thing, your Honor, is in the declaration

*Telephonic Hearing*

32

1 of Dr. Meyer that we submitted. She talks, this is at Docket  
2 1211. She talks about why effectively putting everybody is in  
3 a disciplinary segregation or sort of lockdown is not an  
4 effective way to do this. She point out that it results in  
5 decreased medical attention and increased risk of death.

6 She also points out that the virus maybe airborne  
7 and transmitted through droplets, and unless you're isolating  
8 people in a specialized negative pressure situation, the virus  
9 can be transmitted think the air. Your Honor may be aware  
10 that as part of the blackout crisis of last winter when MDC  
11 lost power and heat, that there was huge problems with the  
12 ventilation and the HVAC in the facility with huge amounts of  
13 air gushing in and out of people's cells.

14 So the idea that they're going to be locking people  
15 in their cells most of the day but letting them in and out to  
16 share their cell again with people and to do other things.  
17 And then if you notice at Paragraph 8 it says they will limit  
18 gathering to facilitate meal preparation, laundry, and  
19 commissary access. Again, that's no limitation at all.

20 And finally, your Honor, we're very concerned about  
21 all the reports that, you know, we've heard from many people  
22 that they received soap at admission or two weeks ago, but  
23 have not gotten more soap. We hear that all of the kitchen  
24 staff was infected or got sick with COVID and now the officers  
25 are cooking.

*Telephonic Hearing*

33

1           You know, we've heard that the people who are  
2 assigned to clean are being sent to clean infected areas  
3 without gloves and masks. All of this, unfortunately, is  
4 going to continue as more people get sick and more staff gets  
5 sick and there are less staff present.

6           So while we understand that the BOP has issued this  
7 new directive and then it's intended to ameliorate the  
8 situation, it doesn't actually appear to be any way impactful.  
9 It is not supported by any science farce we can tell. There  
10 is no medical justification for keeping people in a cell for  
11 twelve hours a day as a way that mitigates the threat of  
12 disease.

13           THE COURT: Can I ask you about that last point?

14           I mean, I one of the concerns that is raised by the  
15 declarations that you submitted is and I think, you know, may  
16 have also about social distancing. And my just, you know,  
17 consumption of CDC and other guidance as an ordinary person,  
18 my sense is that taking steps to reduce the number of people  
19 you come into contact with is something that is recommended,  
20 and that's recommended even though many people are sheltering  
21 with members of their household; sheltering, not part of  
22 cells, but with others. And even though those folks may go  
23 out either to work or buy groceries or medicine or other  
24 things.

25           Again, I think the point is there's no scientific

*Telephonic Hearing*

34

1 declaration, but I'm wondering when you say there's no basis  
2 for the steps they're seeking it's more like what they're  
3 doing is somewhat analogous to what we are all being advised  
4 to do.

5 MS. ROSENFELD: Your Honor, I think the issue is, is  
6 that in a correctional setting it's a completely -- it's a  
7 huge number of people that you're living with in very close  
8 quarters. And so, the idea of the measures that we might in  
9 the community might be taking to limit our exposure don't  
10 really translate into a correctional setting where you're  
11 living, eating, using the bathroom, doing your laundry,  
12 talking on the phone next to hundreds of other people. And  
13 everyone who is also in close quarters with the staff are  
14 coming in and out of the building from three different states  
15 surrounding it.

16 So the density of the correctional setting, the  
17 input/output of people, the lack of hygiene, all of these  
18 things make it very difficult to compare what measures might  
19 be appropriate in the community and what might be appropriate  
20 in the facility.

21 I think that the idea also, your Honor, that in a  
22 correctional facility where there is no medical care, there's  
23 no medical setting at the MDC, your Honor, and so I think  
24 another issue here is conditions in the community being  
25 comparable, you can leave your house and go to the hospital if

*Telephonic Hearing*

35

1 you need to, you can control that. I think when people are  
2 locked in isolated cell with a very taxed medical staff,  
3 that's not going to be an equivalent access. And, in fact,  
4 we're very worried that if you're in your cell or in the  
5 hospital that's not good for the community, it's not good for  
6 the medical workers, and it's not good for the people who are  
7 incarcerated.

8 THE COURT: Do you want add something to about that.

9 MR. REINERT: I wanted to add one thing.

10 We also submitted, again, expert testimony none of  
11 which has been rebutted by respondent that the risk of  
12 transmission is by definition higher than in the correctional  
13 setting. So all of this my colleague just averted to.  
14 Nothing that the respondents put on the table rebuts any of  
15 that.

16 So partly because it's of control, partly because of  
17 density, partly because for ventilation, right? The part of  
18 one thing that Dr. Meyer says is the air droplets are going to  
19 find you when you're in because of the ventilation system in  
20 the prison setting.

21 So that's, sort of, I think it is a very different  
22 setting and it's an explanation for why what the BOP has done  
23 is not going to be sufficient to protect the conditions.

24 MS. ROSENFELD: Your Honor, the BOP is actually  
25 distributing pamphlets, and you have them in the exhibit, to

*Telephonic Hearing*

36

1 people in custody that say, "Stay home." They're distributing  
2 pamphlets that are aimed at people living in the community,  
3 not people in prison. The advice to give to people who are  
4 incarcerated at this moment to stay home is obviously not  
5 meaningful.

6 THE COURT: What is the advice that you're alluding  
7 to?

8 MS. ROSENFELD: In the exhibit to the King  
9 declaration.

10 THE COURT: Yes.

11 MR. REINERT: Exhibit No. 2.

12 MS. ROSENFELD: Exhibit No. 2. I am finding it,  
13 your Honor. They attached -- hold on -- I'm sorry, I'm in the  
14 response to the declaration in the exhibits themselves. They  
15 attached the pamphlets that they're sharing.

16 THE COURT: I see, okay. Got it. Okay.

17 MS. ROSENFELD: So I think that's a challenge that  
18 you just pointed out that the difference between the advice  
19 you would give and what's being told to people in detention,  
20 they are two different worlds and they don't -- the same  
21 measures are not effective in protecting people.

22 THE COURT: Okay. I think may it be makes sense to  
23 turn it over to respondent. I don't know if you also had  
24 anything you wanted to say by way of opening. And also, if  
25 you wanted to address the three topics I laid out.

*Telephonic Hearing*

37

1 MR. CHO: This is James Cho with the U.S. Attorney's  
2 Office. Thank you, your Honor. There are a few points I  
3 would like to address.

4 We certainly rest on our pleadings as well and I  
5 want to respond to what the parties submitted yesterday and  
6 today.

7 I think the important thing for to Court to  
8 recognized and not lose sight over is the fact that this is a  
9 deliberate indifference case alleging constitutional  
10 violations. And there is nothing indifferent about what the  
11 MDC has been doing since the outbreak of COVID-19. As our  
12 papers have shown, we have taken innumerable steps to address  
13 potential concerns of infection at the MDC. And so, again,  
14 there is nothing indifferent about what the MDC has been doing  
15 and this is a very fluid process.

16 As your Honor recognized even last night after we  
17 had submitted our opposition brief, BOP came out with  
18 additional guidance, Phase 5 of its efforts to control the  
19 spread of the infection within institutions through out the  
20 and also at the MDC.

21 The important thing to recognize, and I think your  
22 Honor noted it in our order from last night as well, there are  
23 alternative remedies available.

24 A TRO is an extraordinary request seeking  
25 extraordinary relief. And from what petitioners have claimed,

*Telephonic Hearing*

38

1 Judge, there is absolutely nothing narrow about the relief  
2 they're seeking. They're seeking the release of these  
3 petitioners along with a host of other inmates.

4 There is absolutely no mention at all in any of that  
5 papers as to the reasons why these petitioners currently  
6 incarcerated; the basis for the sentences; the reasons for the  
7 criminal conviction in the first instance, which all go into  
8 bearing as to whether these inmates should be released under  
9 18 U.S.C. 3582 dealing with compassionate release;  
10 18 U.S.C. 3624 dealing with home confinement.

11 All of those conditions when the Court makes these  
12 decisions touch upon well what is the risk of the safety to  
13 the public and underlying everything that the MDC is doing  
14 they're concerned about the inmate population, but of  
15 paramount concern to the MDC is what is the risk to the  
16 community if these inmates are released into the community and  
17 outside the confines of the MDC. And there is no mention at  
18 all anywhere in petitioners' papers as to whether they would  
19 be a risk or not to the community. And that is the most  
20 important thing that this court needs to consider when  
21 deciding whether to release these inmates to home confinement  
22 or other reasons.

23 So, again, there are alternative remedies available  
24 that are available to these petitioners specifically. And as  
25 to the petitioners have mentioned, some of them have already



*Telephonic Hearing*

39

1 made those requests to their sentencing courts, to their  
2 district court judges. And this TRO is an attempt to end run  
3 those alternatives that these inmates have to receive release  
4 from their sentencing judges.

5 And, in those petitions, when they seek  
6 compassionate release or bail for pretrial detainees, the  
7 courts undergo a rigorous examination of the underlying  
8 conviction, the basis for the incarceration, and safety risk  
9 of the, the risk to the community, if these individuals are  
10 released. None of which has been addressed in the papers  
11 dealing with the TRO.

12 So the Government wants the Court to be mindful that  
13 the at the end of the day that's what's at issue here. And  
14 this court shouldn't be second guessing what other courts have  
15 done in dealing with specific requests for release by other  
16 inmates.

17 So, your Honor, those are some of the main points  
18 that we want to raise, but in terms of --

19 THE COURT: I want you to say whatever you want to  
20 say on alternative avenues, but I do have questions for you  
21 before you turn to anything else.

22 MR. CHO: Sure. That's fine, your Honor.

23 THE COURT: Okay. So I'm trying to get a sense of  
24 what these alternative remedies look like. And I think the  
25 basic point that the plaintiffs are making, or petitioners are

*Telephonic Hearing*

40

1 making, we've been making these requests and we've gotten, for  
2 instance, on the compassionate release inmate, we've got  
3 something back saying, Your request has been forwarded on, and  
4 we haven't gotten anything else back. So we may not hear  
5 from -- not hearing anything about these conditions for a long  
6 time.

7 I'm wondering if you can shed any light on what the  
8 timing of this process is. And I'm talking about the  
9 compassionate release and then the release to home detention,  
10 what is the process that happens, and how long does it take?

11 MR. CHO: Sure. Well, I can say, at the end of the  
12 day, these are requests that are made to the Court on motion.  
13 So to the extent petitioners claim that the Government is in  
14 some way slowing down the process or not responding, the  
15 courts are the ones that make these determinations ultimately  
16 and the plaintiffs can go to the Court to seek the relief  
17 they're seeking here.

18 THE COURT: So just to take it in turn.

19 The compassionate release process, I think you can  
20 only go to the Court once your request has been denied or in  
21 the alternative 30 days have elapsed. So I'm trying to figure  
22 out maybe the answer is generally what's happening in these  
23 cases is 30 days elapses and they can go to the Court in  
24 30 days, but I guess I'm trying to figure out what the timing  
25 of addressing these requests is and how long do you expect

*Telephonic Hearing*

41

1 somebody to wait for their request to be adjudicated.

2 MR. CHO: So in terms of the 30-day time period  
3 there have been instances where the Government has not  
4 objected to that 30-day time period. But, again, I can't say  
5 for sure as to each specific case what the time period would  
6 be in terms of processing the requests.

7 MR. EICHENHOLTZ: Your Honor, this is Seth  
8 Eichenholtz. I also have Holly Pratesi on the line from the  
9 Bureau of Prisons. And I honestly I don't know the answer to  
10 your Honor's question in terms of generally how long these  
11 requests would take for BOP to reach a determination in the  
12 first instance which would trigger the ability to go to court.  
13 I assume that it is not the case that BOP waits 30 days, but I  
14 don't have exact sense of the timing of these requests as I  
15 sit here today.

16 THE COURT: Okay. And then on the home detention  
17 option, can you tell me anything about the timing on that?  
18 And, I guess, the other piece is when you suggested that's  
19 ultimately on the Court something you go to court about, I'm  
20 wondering if that's the case. Could you go to court and say,  
21 I should be released on home detention under the procedure  
22 that allows the BOP to release people on home detention?

23 MR. EICHENHOLTZ: I think Mr. Cho is speaking  
24 specifically to the compassionate release. As to the home  
25 confinement, my understanding is that is an administrative

*Telephonic Hearing*

42

1 process by which within a certain amount of time nearest to  
2 release, BOP can exercise the discretion to release someone to  
3 home confinement.

4 My understanding -- just one correction from  
5 something that was said when petitioner was speaking was that  
6 she said the petitioners here had made that request and that  
7 request had been rejected. That is not accurate.

8 The petitioners had pushed forward the request on  
9 Thursday, I believe it was, and submitted the request both to  
10 our office and to Bureau of Prisons through, I believe, agency  
11 counsel and that our office had voluntarily given our office's  
12 view as to whether these individuals should qualify for the  
13 early release. And as to the two petitioners here, our office  
14 had determined that it would object because of the security  
15 issues and the criminal history, et cetera, to those. We had  
16 also indicated ones where our office was comfortable with  
17 release but there has been no final determination made by the  
18 Bureau of Prisons. They are evaluating these requests both in  
19 light of their existing policy, and they're also reevaluating  
20 their policy in light of the Barr memorandum and the other  
21 circumstances that are going on now, but there has not been a  
22 final determination by BOP on any of the requests.

23 THE COURT: Okay. Can you tell me anything about  
24 the timing on any of these? It does seem like the argument is  
25 these are available alternative remedies is relevant however

*Telephonic Hearing*

43

1 long we could expect it to take for these to be acted on.  
2 These might have been, you know, obviously, in normal  
3 circumstances, there's not the time sensitivity that  
4 plaintiffs are asserting or petitioners are asserting in this  
5 case due to COVID.

6 MR. EICHENHOLTZ: My understanding is the challenge  
7 in terms of timing is, just evolving guidance of policies on  
8 the BOP. I know in my discussions outside the context of  
9 these proceedings with BOP agency counsel, we had hoped to get  
10 responses some time this week but that may have changed. What  
11 I'd like to do on this issue, and also on the initial issue  
12 your Honor had raised to put in perhaps a supplemental letter  
13 addressing this issue after we had an opportunity to confer  
14 with BOP since they can give an answer about time.

15 THE COURT: Sure. When you're saying hoping to get  
16 responses this week, what you're talking about with respect to  
17 these particular individuals who put in requests, or you're  
18 talk about a broader policy?

19 MR. EICHENHOLTZ: My conversation was specifically  
20 about the 11 individuals who Federal Defenders had requested  
21 our office and BOP consider for this policy.

22 THE COURT: Got it. And that includes several of  
23 these folks but not all of these folks?

24 MR. EICHENHOLTZ: It includes two of them.  
25 Petitioner Rodriguez and Petitioner Chunn.

*Telephonic Hearing*

44

1 THE COURT: When was the Federal Defenders's request  
2 made?

3 MR. EICHENHOLTZ: On Thursday in the evening. Last  
4 Thursday in the evening.

5 THE COURT: Okay.

6 MR. EICHENHOLTZ: I think just about 24 hours before  
7 this petition for writ of habeas corpus was filed. I  
8 completely stepped on Mr. Cho's shoes I'm going to let you  
9 take back over.

10 THE COURT: Let me ask one more question on these  
11 alternative mechanisms. So you had said if there's no  
12 objection, obviously, or there have been cases where the  
13 Government hasn't objected to compassionate release in the  
14 30-day period, therefore, it doesn't apply. You can bring  
15 your judicial claim for compassionate release.

16 Can you tell me what relevance, if any, you think  
17 that has? Have you agreed to let these folks bring their  
18 compassionate release claim, and are you asserting that  
19 there's an ability to go to court immediately whenever the  
20 Government agrees that you can, or does the Government need to  
21 agree that compassionate release is appropriate.

22 MR. CHO: Your Honor, what we're arguing is that  
23 there is a mechanism by which these petitioners can seek  
24 compassionate release under Section 3582. And I think, again,  
25 that's based on an individual determination by each specific

*Telephonic Hearing*

45

1 inmate. These are individual determinations that need to be  
2 made regarding their background, their history, the current  
3 their medical condition, risk to the community as well if  
4 they're released. But I guess the point there is I can't  
5 speak to the timing, but if requests are made there are  
6 instances where the Government has agreed to not object to  
7 those requests.

8 THE COURT: Okay. There is one individual here who  
9 has made a compassionate release request; is that right?

10 MR. CHO: I'm not sure. That's something that's  
11 been mentioned, I don't know the details behind that.

12 THE COURT: Okay. Because I was going to ask if you  
13 knew anything about his compassionate release request and its  
14 status, but it sounds like you're not sure of the application,  
15 and so, you're not sure of the timing.

16 MR. CHO: Right. Because, again, these are separate  
17 alternative proceedings that these individuals are engaged in  
18 separate and apart from this TRO proceeding. This is their  
19 second bite at the apple, essentially. They're trying to get  
20 forms of relief to get released using whatever mechanism they  
21 can. So, again, what if one judge rules on that request and  
22 denies a request, but your Honor grants a request here then  
23 you'll have competing decisions on the same issue.

24 THE COURT: So if that covers the alternative  
25 avenues question that I have. I don't know if you wanted to

*Telephonic Hearing*

46

1 address the rest.

2 MR. CHO: Sure. The second issue that you raised in  
3 your Honor's order from last night dealing with orders of  
4 release from custody. It's the Government's position that an  
5 order of release from custody in this instance is not  
6 appropriate. The MDC doesn't believe there are any  
7 unconstitutional conditions of confinement at the MDC.  
8 Release from custody is, again, an extraordinary remedy and  
9 there are a variety of remedies that the Court can impose if  
10 it does recognize there are constitutional conditions of  
11 confinement separate and apart from releasing the inmate.

12 So, again, we don't -- the Government doesn't  
13 believe that the first choice for the Court could be to  
14 release the inmate. To the extent it believes there are  
15 unconstitutional conditions of confinement, that can be  
16 alleviated short of the release of the maintenance.

17 THE COURT: Okay. Then I think the question I  
18 asked, and I don't know if you want to discuss beyond the --  
19 they have submitted to the supplemental declaration is what  
20 are the new steps and what relevance do they have?

21 MR. CHO: Right. Again, it's a very fluid set of  
22 conditions throughout the community in New York, obviously,  
23 nationwide and things are changing every day. And these  
24 guidances are being disseminated almost on a daily basis.  
25 And, again, the guidance came out late last night. MDC is



*Telephonic Hearing*

47

1 reviewed it is and incorporating parts of it as best it can  
2 within its protocols at the MDC.

3           Again, because it's a very fluid process, we're not  
4 being indifferent to the conditions at the MDC. We are taking  
5 whatever steps we can to make sure that the threat of the  
6 infection doesn't spread at the MDC. So, again, we rest on  
7 the supplemental declaration. But, again, things change  
8 constantly and things may evolve again tomorrow based on what  
9 happens here today.

10           THE COURT: Sure. Okay. I think what might be  
11 helpful for me. I think I have questions in two buckets. The  
12 things that will be helpful for me to first get a sense of  
13 where we are in the facts on the ground as to the ability, and  
14 I think there are some continuing assertions I want to talk  
15 through. And then the second is to talk about some of the  
16 legal questions that I have if that makes sense to you all.

17           On the factual piece, I think I've identified what I  
18 think are the main health risks or concerning conditions that  
19 petitioners are raising. And I think want to talk through  
20 what your view is about the facts now with respect to those  
21 conditions.

22           So if you could let me ask first about generally  
23 social distancing and what steps you think are being taken  
24 there to social distance to the extent that something that's  
25 possible in the facility. I think upon reading the, well,

*Telephonic Hearing*

48

1 from my own reading of the papers, I think sort of the main  
2 points that the petitioners are raising about that are, well,  
3 there are shared cells and dorms that people are living  
4 together, and then people are using shared dining facilities  
5 and shared facilities for showering among other things. And  
6 then, in some circumstances, they're in -- they're required to  
7 be in close proximity to each other like lining up for meals.

8           So I know there's this new policy that may affect  
9 some of that. I'm trying to figure out whether these are  
10 basic assertions that petitioners are making about why there's  
11 not petitioners have been about to engage in social  
12 distancing. And if the Government has a response as to  
13 whether these are basically right on the facts or a  
14 disagreement on the law, or what the Government thinks that  
15 you could do if you're an inmate with a, you know, high-risk  
16 condition or older inmate or you have a some condition that  
17 places you at risk and you want to socially distance what's  
18 the maximum you can do?

19           MR. EICHENHOLTZ: So, your Honor, this is Seth  
20 Eichenholtz.

21           I think that there is somewhat of a, I mean,  
22 obviously it is an institutional environment. There is a  
23 shared -- there are shared cells and it, you know, up till  
24 this point, you know, a lot of the mitigation procedures were  
25 designed less at, you know, to, of course, allow to the

*Telephonic Hearing*

49

1 greatest extent possible socially distancing. MDC Brooklyn  
2 has for some time reduced the amount of interaction that was  
3 necessary, but also tried to be careful at keeping the  
4 institutional -- keeping the institution kind of separated  
5 from itself as much as possible, so that if there was a  
6 COVID-19 positives as we know there ultimately was at one  
7 point, and that was actually a holdover inmate who was brought  
8 into the facility. And it was shortly after he was brought  
9 into the facility because of his symptoms that he was tested.  
10 It wasn't someone who was incarcerated at the facility for a  
11 along period of time. That there would be separation so it  
12 wouldn't spread.

13 Now, you know, I feel like I would, unfortunately, I  
14 wish we were in a better position to give the Court more  
15 details about how the current guidance affects the social  
16 distancing; for example, the care that is taken to ensure when  
17 inmates are allowed to use the showers facilities or these  
18 other, you know, activities. Whether they're brought out  
19 individually or with their cellmates, or in a whole group.  
20 Unfortunately, we don't have at this time have that detail.  
21 Obviously, something came out last night and got the  
22 declaration this morning, but they are to the maximum extent  
23 possible, trying to minimize those interactions.

24 And one of the places also where I think the  
25 Government really does challenge the plaintiff's assertion is

*Telephonic Hearing*

50

1 that there was, "No medical care," at MDC Brooklyn. And that  
2 term as thrown out at some point. MDC does have a health  
3 services unit. That health services unit has, I believe, at  
4 the current time, Ms. Pratesi can correct me if I'm wrong,  
5 three doctors on staff.

6 Holly, am I right about that?

7 MS. PRATESI: This is Holly. That's correct.

8 MR. EICHENHOLTZ: And inmates -- no, just three  
9 doctors who -- yeah, sorry.

10 Holly can you answer that?

11 MS. PRATESI: This is Holly again.

12 I may have missed the last portion of the question.  
13 There are three physicians. We also do have additional  
14 registered nurses and nurse practitioners, contractors, things  
15 like that.

16 THE COURT: Okay. There are three total doctors and  
17 there are varying schedules?

18 MR. EICHENHOLTZ: Correct. Okay. Right.

19 And, obviously, to the extent that there is a more  
20 serious medical condition and an inmate need to be taken to  
21 the hospital, an inmate can be taken to the hospital, I feel  
22 like in the presentation of the medical facts it was made to  
23 sound as if it, you know, and an if you need medical care  
24 regarding these sort of conditions that it needs to be taken  
25 to the hospital, that's simply not the case. Such as some

*Telephonic Hearing*

51

1 people who experience COVID-19 have certain symptoms, isolate  
2 at home, keep themselves at home until such time they need a  
3 higher level of care. Here, that would actually be what would  
4 be the equivalent of their urgent care facility in the  
5 MDC Brooklyn. And there are -- and I believe there is  
6 once-a-day sick calls that inmates can go and visit the  
7 medical staff at the health center. So part of one of the  
8 institutional benefits is that readily available health  
9 services unit. So I think that that's also another challenge.

10 Certainly, you know, obviously, in terms of the soap  
11 issue, the soap issue was raised. Again, we have a challenge  
12 specifically responding to these anecdotal rumors that are  
13 brought out, and I'm not dismissing them, I'm certainly not,  
14 and in my capacity as someone who has tried to eliminate  
15 issues over the past few weeks along with Ms. Pratesi and the  
16 staff at MDC, I find them useful to investigate whether  
17 something is a problem or not. But in terms of soap, my  
18 understanding is that, you know, consistent with the  
19 declaration we did yesterday, inmates are given a bar soap and  
20 can request additional soap if needed, and have access to  
21 sanitation all the time.

22 So, you know, I would put that forward as well. And  
23 if the Court has any other questions about conditions  
24 specifically, you know, to the extent I'm able to answer them.

25 THE COURT: The areas that I was going to ask about,

*Telephonic Hearing*

52

1 but let me ask you about a couple others.

2 So I think another concern that the petitioners  
3 raise is about the extent of cleaning that's going on in the  
4 facilities and I think in particular about not cleaning phones  
5 and computers, using -- providing inmates with only diluted  
6 hand soap to clean cells, and having incarcerated persons  
7 cleaning the common areas with inadequate supplies.

8 So I think those are the basic allegations aside  
9 from the soap allegation that you discussed that go to the  
10 cleaning of the facility and I wonder if what --

11 MR. EICHENHOLTZ: I would refer the Court back to  
12 Associate Warden King's declaration where I believe and the,  
13 again, I will invite Holly to interrupt me if I'm wrong about  
14 any of this, but I believe that MDC has started using stronger  
15 cleaning products. But with the inmates who clean, and staff,  
16 I believe inmates are provided the personal protective  
17 equipment for inmates who do clean and that cleaning is done  
18 regular basis.

19 Holly, is there anything that I missed that you  
20 think specifically addresses those points?

21 MS. PRATESI: This is Holly.

22 I believe that was fairly accurate. I would say  
23 with personal protective equipment that's generally given when  
24 they're cleaning where we believe there has been a risk of  
25 exposure to the virus. I do know that after the deep clean

*Telephonic Hearing*

53

1 that was conducted following the one positive case, personal  
2 protective equipment was provided for that.

3 THE COURT: Okay. Can I ask the petitioners?

4 So one of the claims I wanted to make sure I  
5 understood is this argument about lack of medical care or  
6 adequate medical care on site. And I guess I want to draw out  
7 a little bit that concern.

8 So there are doctors on the staff and you observe, I  
9 think, undisputedly there is not a hospital at the facility  
10 and there are not ventilators at the facility and people can't  
11 be intubated at the facility. So somebody had a need for any  
12 of that, they would need to be taken to the hospital. I think  
13 that's undisputed, but I guess I'm wondering why that's even  
14 particularly unusual, and I think that would be the case for  
15 almost everybody in the world that we don't have doctors, you  
16 know, we probably have a little bit less proximity to doctors.  
17 And in the event that we need any of those intensive  
18 interventions that you mentioned that would probably have to  
19 happen at the hospital.

20 So I guess I'm wondering why MDC is different in  
21 that respect.

22 MS. ROSENFELD: Sure. I think a couple points,  
23 first of all, obviously, if you're not incarcerated and you  
24 have an emergency at night or on the weekend, you can --  
25 sorry, let me go back I'm explaining two things.

*Telephonic Hearing*

54

1 First of all, my understanding is that on the  
2 evenings and the weekends there are not doctors at the  
3 facility; and so, for example, we were informed by one  
4 putative class member that they needed to a doctor on Monday a  
5 person night who was cleaning an infected area, who is  
6 asthmatic, and that there was no doctor on site Monday night,  
7 for example.

8 So I don't know if that was the normal thing or an  
9 aberration. I think there's a staffing by doctors on evenings  
10 and weekends is uncertain. Just for context, your Honor, MDC  
11 has had serious problems providing medical care to people in  
12 normal circumstances, that was an issue during the blackout  
13 where people didn't get access to medical care. The doctors,  
14 to my understanding, and again, you can correct me, are not  
15 going to the unit; that is PA staff that is going to the unit.  
16 So there is not an opportunity for people who are in  
17 isolation, for example, in the units to see medical staff.

18 In terms of, like, well you're right if there's no  
19 hospital why is that surprising. There are ask jails, your  
20 Honor, where they would have medical ward or a unit. So if  
21 you were please sick, you could go and within the jail is a  
22 medical setting and that is when I said MDC doesn't have X, Y,  
23 Z that is what I meant. There is no medical unit at MDC where  
24 sick people can be treat. They're either in their cell or at  
25 the hospital. So that is particularly concerning where we



*Telephonic Hearing*

55

1 know the hospitals in Brooklyn are totally overwhelmed already  
2 and in this particular community, you know, there are no  
3 hospital beds. So if people at MDC start to get sick, there's  
4 nowhere other than in their cells that they can be. Again,  
5 your Honor, with another person.

6 In terms of some of the specific things that  
7 Mr. Eichenholtz and Ms. Pratesi said, you know, I don't think  
8 it's fair to characterize what we're reporting to the Court as  
9 a rumor. We make an effort to match the report with what the  
10 people inside the jail are telling us. We can't go there, we  
11 can't get in there. All we can do is relay this information  
12 and try to make sure it's reliable and given to us by  
13 different people so it's not just one person. We're hearing  
14 that people are not getting medical attention that they need.  
15 We're hearing that people who are being forced to clean are  
16 not given give condition adequate PPE. People are asthmatic  
17 and being asked to clean without masks and are using very  
18 harsh chemicals.

19 So there's a disconnect here, I think, between what  
20 you're hearing from the facility about readily available and  
21 adequate medical care and what people are telling us who are  
22 in the facility.

23 Same thing with soap, your Honor. We had multiple  
24 people telling us they had asked for soap and they are told  
25 there is no more soap on the unit. They have gone to the

*Telephonic Hearing*

56

1 commissary and they cannot buy soap.

2           So the same disconnect that was present during the  
3 blackout where the courts were being told everything is fine  
4 and people were in freezing cells without blankets wearing  
5 T-shirts.

6           So I think that just to go back to a couple other  
7 points that the Government has made if it's okay, your Honor.  
8 Our petitioners, two of our petitioners, your Honor, Mr. Chunn  
9 and Mr. McBride, are supposed to be released. Mr. Chunn on  
10 April 18th and Mr. McBride on April 15th. So we're really  
11 talking about a matter of weeks.

12           So the alternative processes that have been  
13 discussed on this call at the pace that the Government pursues  
14 them, even under the circumstances where we appreciate  
15 everybody they're being overwhelmed, that is going to be two  
16 weeks. Mr. Chunn is really an ill person, your Honor, I don't  
17 think that's in dispute. He has very serious medical  
18 conditions: -- he has coronary heart disease, he's had a  
19 heart attack, he's taking multiple medications, he's been  
20 hospitalized twice since he's been at MDC.

21           And so, you know, Mr. McBride similarly has serious  
22 asthma. He apparently has had several asthma attacks. Now,  
23 he's locked in his cell pursuant to this new BOP reg with  
24 another person. And if we sit and wait for several weeks for  
25 these individuals to go through these alternative processes,

*Telephonic Hearing*

57

1 their release dates will be here and they may already have  
2 caught or be seriously sick. So I think the problem with  
3 these alternative procedures when we have a pending petition  
4 which we legitimately can seek relief from the Court is their  
5 slowness.

6 And I would say, your Honor, that in terms of this  
7 exhaustion issue that you raised would require people first to  
8 go to the Court and wait 30 days. The Government is asserting  
9 that people need to wait the 30 days in certain cases that are  
10 before Court. So while somebody on said they are in some  
11 cases not opposing requests on the ground of exhaustion and in  
12 other cases they are.

13 So waiting for these very disparate processes to  
14 play out in a very piecemeal way all over the system, and at a  
15 very slow pace which I appreciate is not anyone's intention  
16 but it is the nature of these kinds of the bureaucracy is not  
17 going to protect people's safety and health. And that's why  
18 as part of the TR0 application we're asking that the Court  
19 appoint a single person to oversee and bring these processes  
20 together and make recommendations to the Court in a very  
21 expedited fashion; right, not a million different things going  
22 on all over the courthouse in such a small manner that people  
23 end up becoming extremely sick and potentially dying.

24 Mr. Chunn, if he catches COVID-19, he will be in a  
25 very serious condition. And so, I think there is a tension

*Telephonic Hearing*

58

1 between the Government's position that, well, you can go into  
2 a compassionate release application, you can go into a home  
3 confinement request the with BOP.

4           The reality is we're not getting response, we're  
5 getting opposition from the Government, in some cases the need  
6 to exhaust. And while that's happening people have already  
7 been exposed within the facility. The staff and the person  
8 who are positive at the facility were all over the facility.  
9 They were in an intake unit with many, many people. All the  
10 people from that intake unit went all over the building. This  
11 has already happened.

12           And, you know, the new rules that went into effect  
13 last night don't even meet the CDC requirements for how people  
14 are supposed to be separated in correctional facilities. If  
15 you have multiple people in a big dorm room together, that's  
16 not consistent with the CDC is saying. If you have multiple  
17 people in small cells, it's not, even under the correctional  
18 standard, adequate.

19           So to sort go back to the original TRO request,  
20 right now there are people who are being exposed, as  
21 Mr. Reinert said, to a very serious risk of harm, but because  
22 of the nature of the setting at MDC, and thankfully, because  
23 of some of the topics that we've been talking about today, are  
24 not being held in constitutional conditions. And, in  
25 particularly, for petitioners, who have very close release

*Telephonic Hearing*

59

1 dates, and I think have made a showing that they have a place  
2 to go and if your Honor wanted to hear the individual facts,  
3 we can give them. But I think this is the idea of the special  
4 master process.

5 THE COURT: So I don't mean to interrupt you. Well,  
6 I guess I am deliberately interrupting you. But I just want  
7 to close the loop on the factual conditions to make sure I  
8 understand what the competing claims are about the facts on  
9 the ground. And then I promised -- I both have some questions  
10 for you about the topics that you are addressing now and also  
11 I absolutely promised that I will not close out this  
12 proceeding before giving you the opportunity to add additional  
13 things that I'm overlooking and respond to other things. But  
14 I want to close the loop on the factual point before we go on  
15 to too many other issues.

16 I think we were talking about this issue of  
17 inadequate medical care and that the Government had explained  
18 what staff is there and some points that the petitioners had  
19 made about this to be. It's not actually clear that there is  
20 a doctor on the e available on evenings or on the weekends.  
21 And also, it's not clear if people who are in isolation have  
22 the opportunity to see a doctor if they have a medical  
23 complaint or a sick call. I'm wondering if the Government can  
24 respond to that.

25 MR. EICHENHOLTZ: Your Honor, I'll respond as to my

*Telephonic Hearing*

60

1 understanding and then I'll probably rely on Ms. Pratesi to  
2 have to expand on it.

3           The one thing I do want to say very quickly as well  
4 as the Government does dispute, you know, since we are talking  
5 about very serious issues with serious consequences. The  
6 Government does dispute a lot of what Ms. Rosenfeld said in  
7 terms of medical care previously provided. The MDC can't  
8 provide care in the best of times. The Government disputes  
9 that. The Government is disputing that allegation, you know,  
10 in other contexts and in this context.

11           In terms of when the medical unit is staffed by  
12 doctors versus other kinds of medical staff, you know, nurse  
13 practitioners, et cetera, I'm not entirely sure; and so, I  
14 think I need Ms. Pratesi to answer that.

15           MS. PRATESI: I'll jump in.

16           I'm also not fully aware of the exact schedules.  
17 But what I will say is that there is always a duty PA on call.  
18 Whether or not there are health services staff at the facility  
19 at any time. It is my general understanding, I believe, that  
20 health services staff of any kind is on site from 6:00 a.m. to  
21 10:00 p.m.

22           And then also I just want to make clear that if  
23 there is ever an emergency situation whether you have a doctor  
24 on staff at the time or not, if it's a medical emergency, an  
25 inmate will be transferred to the hospital.

*Telephonic Hearing*

61

1           And then backtracking a minute, I believe you asked  
2 about inmates in isolation. Health services staff are  
3 conducting rounds throughout the unit in the institution. So  
4 they would be able to make their complaints then. You also  
5 have -- twice a day -- again, healthcare providers going  
6 through the units. And whether it's a doctor or not, if it's  
7 an issue that a provider thinks is relevant to bring to the  
8 attention to a physician, they can also do that for  
9 appropriate follow-up care.

10           THE COURT: Okay. Then one other factual point that  
11 I think that you just raised that I wonder what the  
12 Government's response is about the guidance that exists for  
13 correctional facilities. And I think early in this call that  
14 petitioners referenced BOP recommendations that asymptomatic  
15 patients who are exposed should be held in cells. And I think  
16 a moment ago, the petitioners referenced CDC guidance on  
17 correctional facilities.

18           I'm not sure I actually have any of those documents  
19 or any of their contents. But I'm wondering if both parties  
20 can speak to what that guidance is and whether the facility is  
21 in compliance with it.

22           MR. CHO: Your Honor, James Cho.

23           With respect to the guidance that petitioners  
24 alluded to. Exhibit 2 to the associate warden's declaration  
25 from yesterday. Again, these are the CDC posters that the BOP

*Telephonic Hearing*

62

1 obtained. While these may be more applicable to people in the  
2 public, the overall guidance is the same and applies whether  
3 you are incarcerated or not. So I think that's where the  
4 posters came from. These were from the CDC generally.

5 MR. EICHENHOLTZ: Your Honor, just to answer that.

6 There were also inmate town halls where the  
7 information about how to prevent, you know, proper hand  
8 washing, proper sanitary techniques, among other things. This  
9 is also in the A. W. King declaration what was provided to the  
10 inmates. I think the posters, right, the posters are not  
11 specific to a correctional setting. I'm not familiar with any  
12 CDC guidance as to correctional settings. I understand from  
13 the final -- how to works is CDC, I'm sorry, BOP consults with  
14 CDC guidance, amongst other guidance, in creating this  
15 nationwide guidance through Phase 5 which came out last night.

16 And, Holly, if I'm wrong about that, let me know.  
17 But I think that's how it works is the medical.

18 And then, to the extent there are medical issues,  
19 the medical staff at MDC ensures that everything that is being  
20 done is compliant with CDC and BOP guidance.

21 Is that right, Holly?

22 MS. PRATESI: Yes, that sounds correct. Also, our  
23 institutional staff have any questions they can raise it to  
24 the regional level, central office level, and resources at any  
25 and all levels can reach out to community resources including



*Telephonic Hearing*

63

1 the CDC to make sure we're taking the appropriate action.

2 THE COURT: Is there a BOP recommendation that  
3 asymptomatic patients who have been exposed should be held in  
4 single cells, and is the MDC complying with that  
5 recommendation if it exists?

6 MS. PRATESI: Can you say it one more time?

7 THE COURT: Sure. Is there a BOP recommendation or  
8 BOP guidance saying that asymptomatic patients who have been  
9 exposed should be held in single cells?

10 MS. PRATESI: I would want to follow up because I  
11 don't want to misspeak. But my general understanding is that  
12 if we were very much concerned of a risk of exposure, that  
13 they might actually be single-celled then. Again, I want to  
14 follow up and get absolute confirmation on that.

15 MS. ROSENFELD: Just to be clear, what document.  
16 I'm talking about the inmate screening tool that is at Page 42  
17 of the King original declaration of the exhibits, and it's the  
18 screening tool for people coming in. And at question 3-B, of  
19 the screening tool that they submitted, it indicates that  
20 asymptomatic people under this screening tool are supposed to  
21 be housed in a single cell and those words are in red.

22 THE COURT: Got it. I'm seeing what you're looking  
23 at and this is the exhibit that the Government submitted the  
24 other day.

25 MS. ROSENFELD: Yes.

*Telephonic Hearing*

64

1 MR. EICHENHOLTZ: Your Honor, my understanding, and  
2 I'll let Holly again correct me if I'm wrong.

3 So if an inmate is new to the institution that's the  
4 medical screening form that they use to assess the potential  
5 of risk of the exposure. And if there is, I believe,  
6 initially a concern based on that screening form about initial  
7 risk of exposure, that is the guidance I believe that has put  
8 them in a single cell. I just don't want that to be conflated  
9 with the issue of there is some institutional exposure. And I  
10 think that, you know, that there was someone in the  
11 constitution who tested positive so that everyone goes into  
12 separate cells until that -- until the 14 days or something  
13 like that. That guidance is specifically for people who are  
14 new to the institution.

15 MS. ROSENFELD: I agree, your Honor, with what.  
16 Mr. Eichenholtz just said I think the implication of this  
17 document is that if you have been in contact with someone who  
18 known to have coronavirus, you should be single celled. And  
19 now there are hundreds of people probably in MDC who have been  
20 in contact with infected people. Whether it was the person  
21 who went through the intake unit and was housed with hundreds  
22 of other people and moved to different units, or the staff  
23 works there, or the staff who are coming in and out.

24 So I don't think that it's, yes, this form is about  
25 the intake process but I have to believe that the process for

*Telephonic Hearing*

65

1 exposed people isn't just limited to new people coming into  
2 this facility.

3 THE COURT: Can I ask you a question about your  
4 reading of that form? So I'm looking at it and it seems to  
5 say the guidance on 3-B, I think, is if you answered yes to  
6 the questions in 2, but then the questions in 2 are all about  
7 do you have symptoms? So I'm not sure that this guidance is  
8 saying for people who are new to the facility, if you were  
9 exposed you should automatically be single celled but am I  
10 misreading it.

11 MS. ROSENFELD: It's a little confusing because it  
12 says if you're an asymptomatic patient then you're right, your  
13 Honor. It says if you have these symptoms, and the form is a  
14 little internally contradictory, and I don't want to say that  
15 the whole case rests on this form. I think it's an example of  
16 best practices and I think Mr. Reinert actually was going to  
17 address your Honor's prior question about the CDC guidance.

18 MR. REINERT: Your Honor, if may I address the CDC?

19 I have to say I find it both striking and concerning  
20 that we've got representatives of the Government on the phone  
21 who are unaware that the CDC has issued guidance on detention  
22 in correctional facilities. And the guidance is inconsistent  
23 with what the BOP just issued. And the guidance says that  
24 people should first preferably be held in single cells because  
25 if they're not held in single cells that they have to have six

*Telephonic Hearing*

66

1 feet of space between each other. And I think in answer to --  
2 and it gets back to the answer by the response to the Court's  
3 question about both socially distancing and soap because in  
4 the things that counsel did not say that I think some critical  
5 insights can be gleaned.

6 So one of the things that respondent's counsel said  
7 was, up until this point, mitigation has been about reducing  
8 the amount of congregate activity. And I'm not in a good  
9 position to say how the current guidelines will affect it, but  
10 we can look at the current guidelines, your Honor, they're not  
11 going to cut off congregate activity, that is, going to cut  
12 out congregate activity for many of these, not just because  
13 there should be congregate activity amongst people who are  
14 held at the MDC, but there's still going to be still staff  
15 contact, of course, there has to be staff contact.

16 And never does the respondent's counsel deny that  
17 socially distancing, in a way that 75 percent of the  
18 U.S. population has now been instructed to operate their  
19 lives, can't be done under currently conditions. Even if  
20 they're going to house people together, the CDC recommends  
21 that there be an empty cell between occupied cells creating at  
22 least six feet of space between individuals.

23 So this is the CDC, right, this is the arm of the  
24 federal government telling people, telling correction  
25 facilities how to handle this crisis.

*Telephonic Hearing*

67

1 On soap --

2 THE COURT: I didn't see the guidance that you all  
3 followed and I think --

4 MR. REINERT: I don't know, I can't speak about  
5 that. It's easy to find, the Court can take judicial notice  
6 of it and we're certainly happy to follow up and provide a  
7 copy of it to the Court.

8 What's striking to me is that counsel for the  
9 Government is unaware of it. In the same breath, by telling  
10 this court we're doing what we're supposed to be doing on  
11 soap, again, listen to what's not being said. Yes, soap is  
12 distributed, provided when people in come in and maybe people  
13 get it while they're there if they ask for it. But we  
14 presented evidence for why that's not happening.

15 These are the two critical things, right? If we  
16 think of, again, just backup to 10,000 feet. Again, if we  
17 think of the Eighth Amendment involving standards of decency  
18 think what we all agree we need to do. These are the things  
19 everyone is being told to do -- socially distance and being  
20 able to wash your hands as much as possible during the day.  
21 These are things they can't provide here.

22 So it's in their failure to grapple with those  
23 questions that your Honor asked that I think the weakness of  
24 their opposition to this request lies.

25 MR. CHO: Your Honor, James Cho.

*Telephonic Hearing*

68

1           So taking counsel's argument to the logical end, it  
2 seems to me, it applies to all of the inmates at the MDC.  
3 That's the impression I'm getting. I'm not saying there's no  
4 sort of percentage by where she's agreeable to not reach a  
5 certain number of inmates within the MDC.

6           MR. EICHENHOLTZ: And the one thing that I also  
7 would like to add is because while I appreciate Mr. Reinert's  
8 characterization of the various comments, I don't think it's  
9 accurate. He didn't say, well, maybe they could get more  
10 soap. What we said was they can request more soap if needed.  
11 So to then draw these conclusions that inmates can't wash  
12 their hands because they can't have soap is not a  
13 representation that the Government makes.

14           I also said that I was not personally -- that I had  
15 not personally reviewed the CDC guidance and I've explained  
16 that what happened was the BOP central office and the health  
17 services staff at MDC individually, and the ones who are  
18 making these decisions consults with the relevant CDC  
19 guidance.

20           So to make it appear as if in the past 24 hours,  
21 opposing plaintiffs' motion for an Order to Show Cause that  
22 somehow the Government is unaware of this guidance, or the  
23 guidance is not taken into consideration, again, as your Honor  
24 pointed out, is not in the submission at all. I personally  
25 have not seen it, so I can't speak to it on today's call. But

*Telephonic Hearing*

69

1 the reason is because the guidance, taking into account in the  
2 BOP guidance, and at the institutional level.

3 So just because I may not personally be aware of it  
4 does not follow the BOP does not consider and utilize the  
5 guidance in protecting the safety of inmates at MDC Brooklyn.

6 MS. ROSENFELD: Your Honor, I think the guidance has  
7 become important because of the evening, the idea last night  
8 that people would go into this 14-day full isolation. And so,  
9 I think that the idea is there is a conflict between the BOP's  
10 recommendation last night and the guidance is what has brought  
11 it to the forefront and we're happy to submit it to the Court  
12 immediately.

13 THE COURT: That would be helpful.

14 Let me ask you, and if you don't mind. So I want to  
15 turn to the question of what scope of the claim that's being  
16 pressed here is and what the scope of the relief is that's  
17 being sought?

18 So I guess one thing is what you all think BOP could  
19 do to fix this problem and do we have an Eight Amendment  
20 violation at the MDC, if anything.

21 MR. CHO: Your Honor, if I may? We believe the  
22 Government has taken --

23 THE COURT: I'm directing this question more at  
24 petitioners.

25 MR. CHO: That's fine.

*Telephonic Hearing*

70

1 THE COURT: I am trying to figure out what do --  
2 what the petitioners are going to do and what would fix that  
3 violation?

4 MR. REINERT: So I think I will try to answer this.

5 I think we should break this into two categories,  
6 right? We've got four petitioners in front of the Court who  
7 have put forth a claim that they're at risk under the current  
8 conditions. And our position is the answer to them is to  
9 release them, they have very little time on their sentences.  
10 And that's how we solve the problem for them.

11 Now, the whole reason, again, because we recognize  
12 that this is a complex issue, and that as the facility has  
13 fewer people, what the facility can manage, what the facility  
14 can do to mitigate harms, especially mitigate harms of local  
15 people might change. So that's why this has to have a  
16 systemic approach, the Court has to have a certain systemic  
17 approach and that's why a special master is appropriate to the  
18 circumstances.

19 So what we need to do is figure out how, under  
20 current circumstances, the BOP can mitigate the harm to the  
21 people who remain. Some of these maybe the special master  
22 recommends and maybe the parties could agree should be  
23 released. And as population decreases, then there is more  
24 opportunity for the BOP in the MDC to practice the kind of  
25 mitigation that's necessary to protect people from harm.



*Telephonic Hearing*

71

1           So, to some degree, I understand why the Court is  
2 going for this scope the relief. This is exactly why we think  
3 it's important to have a process by which we can gather more  
4 facts as necessary, figure out who is in the vulnerable  
5 category. Which of those might be most -- might have the best  
6 prospects for release. And then as things change to the  
7 facility, and hopefully change fast, we're able to understand  
8 better and ameliorate the risks better. I think that's where  
9 we stand.

10           THE COURT: Yes. I guess for me, I feel like I need  
11 to analyze this TRO request by asking, is there an  
12 Eighth Amendment violation or is there a substantial  
13 likelihood of that as part of the TRO analysis. Have you made  
14 a showing that you're likely to prevail on that claim?

15           And I'm trying to understand what your argument is  
16 about where the Eighth Amendment violation is. And I guess to  
17 be more specific about it, you know, I think that many of the  
18 claims you're making are claims that are going to be true in  
19 most federal facilities and probably in most jails, period.  
20 Which is to say, you know, I've read the declaration of the  
21 epidemiologist. It's talking about conditions that are common  
22 to jails. It's just, you know, jails involve people in closer  
23 interactions than the outside world, for instance. Jails  
24 involve a population with elevated health risks. Jails are at  
25 risk of experiencing staffing shortages when, you know, in

*Telephonic Hearing*

72

1 light of this crisis.

2 So I guess it may well be that your claim is  
3 basically inmates who are at health risks like these inmates  
4 cannot be held unless they're held in conditions where they  
5 can socially distance, meaning, they can be kept apart from  
6 other folks and not interact with them for things like sharing  
7 showers. That maybe your claim, I just want to understand  
8 whether your claim is the MDC should fix the following things  
9 or MDC has the following specific attributes that make there  
10 be a constitutional problem here, or whether it's the other  
11 claim that I've articulated because I think it's the other  
12 claim.

13 MR. REINERT: So I don't think it's the claim that  
14 just by definition per se there's a constitutional violation  
15 in any incarcerated person's facility. Number one, we're  
16 talking about people who are particularly vulnerable, I've  
17 identified that as our class. And so -- and we're talking  
18 about a specific kind of transmission of a particular ailment,  
19 of a particular disease that at this point poses these strict  
20 health risks precisely because it's novel.

21 And I think also it's true that there's a relational  
22 aspect to this. And this has been observed, this is what  
23 people are seeing at Rikers; this is what people are seeing in  
24 other correctional contexts as there is a population then  
25 within the facilities. We are reducing the risk within the

*Telephonic Hearing*

73

1 facilities.

2           So I don't -- so that's why I think it's now not  
3 just jail is unconstitutional in all cases. We've identified  
4 some specific problems for our petitioners. We've identified  
5 some specific issues with respect to the MDC. So I think  
6 we've identified a pattern within the MDC. So this is all, to  
7 our mind, specific in our case to the MDC.

8           THE COURT: Okay. So what's the MDC's view, or what  
9 is BOP's view to alter the conditions of confinement so that  
10 there were being no Eighth Amendment violations with respect  
11 to the --

12           MR. WILSON: Andrew Wilson, your Honor.

13           I think that the reason that our TRO is focused on  
14 appointing a special master is that the best answer to your  
15 Honor's question would come from a deliberative process where  
16 a healthcare professional and interested parties from the BOP  
17 and the petitioners and potentially an additional special  
18 master, I mean, Loretta Lynch has already been appointed to  
19 deal with access to counsel issues, could have a discussion  
20 amongst themselves and come up with recommendations for the  
21 Court.

22           And so, it's at this emergency stage our proposal is  
23 that the Court appoint a special master and then report back  
24 to the Court to answer that question as soon as possible with  
25 it to inform your Honor's decision to give you just a

*Telephonic Hearing*

74

1 high-level awareness of how we anticipate that process might  
2 unfold, there have been proposals made that there would be a  
3 multi-tiered process. The first step would be to take  
4 immediate measures to alleviate the crisis right now.

5 The MDC has an east building that is largely vacant,  
6 floors could be sanitized per the CDC guidelines, and then  
7 those 537 at-risk inmates could be moved into that facility  
8 and spread out because there's space for them there. Every  
9 inmate could be immediately given soap and access to regular  
10 hot water which you heard there's a dispute about that on that  
11 call, but what we're being told is that that does not  
12 currently exist and the special master could oversee  
13 confirmation of that.

14 Similarly, the provision of gloves and surgical  
15 masks that could be replaced daily for inmates. The provision  
16 of immediate access to medical attention which could be  
17 supplemented due to the attention that people exist right now.

18 THE COURT: Are there things that the MDC if you  
19 recommend -- I just, more specifically, do you think that the  
20 MDC is violating the Eighth Amendment unless inmates can say  
21 that is not correct, whether inmates  
22 can -- (indistinguishable).

23 MR. WILSON: I would defer to Alex to some degree to  
24 answer that question. But I think the simple answer is, yes,  
25 that the status quo violates the Eighth Amendment and that is

*Telephonic Hearing*

75

1 why we need immediate action to remedy that. And absent  
2 immediate action, the petitioners, the four who are before you  
3 for this TR0, and the broader class are being subjected to  
4 unconstitutional conditions.

5 THE COURT: I don't mean to belabor it, but it's  
6 your position there is an Eighth Amendment violation for all  
7 of the following class members taken together -- and a bunch  
8 of concerns about the MDC. But some of those concerns were  
9 addressed like soap or a doctor at a particular time. There  
10 might not have been an Eight Amendment violation, or is your  
11 position what you said a moment ago what is being alleged here  
12 that by itself is an Eighth Amendment violation from the.

13 MR. REINERT: I think it's certainly true that  
14 social distancing and ability to engage in just regular  
15 personal hygiene is critical. But any Eight Amendment claim  
16 is context specific and we have identified, in addition to  
17 those concerns, concerns about how people are screened;  
18 concerns about how people when they are sick; how they are --  
19 whether or not people are exposed to them; concerns about  
20 asymptomatic people.

21 So I think it is possible that these facilities  
22 could make it easier to socially distance and also ameliorate  
23 all these other risks and still be in a position and be in a  
24 position where they're not violating the Eighth Amendment.

25 THE COURT: If that's the case, why isn't the

*Telephonic Hearing*

76

1 appropriate remedy be to direct, it's not there's a structural  
2 problem with the MDC where folks can't practicably be -- at  
3 least high-risk folks can't be incarcerated there without  
4 violating the Eighth Amendment. Why isn't the appropriate  
5 remedy to direct those steps that can be taken at the MDC to  
6 remedy the conditions?

7 MR. REINERT: This gets back to Mr. Wilson's point.  
8 I think that's the idea behind a special master is the special  
9 master can work to identify those with the assistance of an  
10 expert. As to our four petitioners, two of whom have very  
11 little time, all of them have very little time, two of whom  
12 have basically two weeks left. We're trying to mitigate the  
13 conditions now. And as to those are the four who are in front  
14 of the Court, they're seeking to represent to everybody else  
15 that they're the four who are in front of the Court. And as  
16 to those, at this point, they are facing unconstitutional  
17 conditions because of the combination of factors. And so,  
18 holding them in those conditions are exposing them to a risk,  
19 basically, by the hour.

20 THE COURT: Okay. So, I guess, another question I  
21 have about the contours of the claim here is your friend on  
22 the other side alluded to the fact that in a bail hearing or a  
23 compassionate release proceeding, the Court would consider  
24 other statutory factors and they include dangerousness and  
25 risk of flight.

*Telephonic Hearing*

77

1           Is it your contention that those are relevant, or  
2           that those are not relevant in a case where somebody is  
3           bringing an Eighth Amendment claim?

4           MR. REINERT: So I think those could be relevant as  
5           long as they're either, for instance, we identify somebody who  
6           is at risk, but there are concerns about dangerousness or risk  
7           of flight, although risk of flight has not, I mean, we could  
8           say this for pretrial folks. Then the question becomes what  
9           other measures individually could we take for that person to  
10          ensure we would mitigate the Eighth Amendment risk. And  
11          either dealt with risk of flight by putting certain conditions  
12          on release or if we decide we can ameliorate the conditions  
13          within facility taking those steps.

14          I guess, again, we're not asking the Court to -- the  
15          individuals in front of the Court are the four petitioners.  
16          They're not -- it's not about risk of flight for them. So if  
17          the special master is appointed and is considering people who  
18          are in the same category as petitioners in terms of their  
19          health conditions, but also with the pretrial then maybe those  
20          considerations would come into play. But this again is what  
21          calls for a systemic approach, rather than a judge-by-judge  
22          approach because it allows the facility and the special master  
23          and the parties to think about the population and how many  
24          people are in the facility and how as the population increases  
25          greater risks and more can be mitigated within the facility.

*Telephonic Hearing*

78

1 THE COURT: So, I'm sorry, I'm just not getting the  
2 answer to my question, I think, which is about how the  
3 Eighth Amendment analysis works on your view.

4 So is it under the Eighth Amendment could you look  
5 at a particular defendant and say, I find there is no  
6 Eighth Amendment violation because this person poses a grave  
7 danger to the community if he's released and I don't find that  
8 climate would mitigate that danger. Those are kinds of  
9 analyses you would do at bail.

10 I will tell you my reaction to the Eighth Amendment  
11 analysis you're putting forward. Those factors just wouldn't  
12 just be relevant. There might be at the TRO stage a question  
13 of balancing of equities where those might play in. But the  
14 merits of the Eighth Amendment question I think the answer is  
15 there is no -- those factors don't play into an Eighth  
16 Amendment analysis. Do you think I'm right or I'm wrong?

17 MR. REINERT: I think your intuition is right in the  
18 sense that the formal contours of the Eighth Amendment claim  
19 don't consider those factors alone. But in terms of what the  
20 remedy is, I think the Court could consider those factors if  
21 that would make sense.

22 MS. ROSENFELD: Your Honor, with respect to the four  
23 people here and I think our position being right now today  
24 there's an Eight Amendment violation, they're being held in  
25 unconstitutional conditions, each of them have very short



*Telephonic Hearing*

79

1 release dates, there is no contention in the Government's  
2 papers, and I'm happy to go through with your Honor if you're  
3 curious if any of these people pose a risk to the community or  
4 violence or an inappropriate to leave. The two people who are  
5 closed out, Mr. Chunn who is being released on the 18th and  
6 Mr. McBride on the 15th, they're essentially out.

7 Mr. Rabaldi, who is almost 60 years old and has heart disease  
8 and diabetes, and is scheduled for July 19th. He's in on a  
9 wire fraud related matter that is almost, you know --

10 Mr. Rodriguez is supposed to be released in early June; he has  
11 a drug case, first and only federal conviction, we believe,  
12 and he has been in custody for three years and I don't think  
13 there is any concerns with him.

14           Again, your Honor, if the Eighth Amendment is being  
15 violated, I think that what happens in terms of where people  
16 go and under what conditions goes to remedy and we don't  
17 expect the Court would adjudicate all 537 people and that's  
18 why the judge appoint someone to oversee that with the input  
19 from a doctor, from a correctional health expert to say this  
20 person is going to get really sick and do really badly if they  
21 stay in this facility and without that.

22           Your Honor has been incredibly patient and may I  
23 just add one thing on the medical issues before that you were  
24 asking about before. I think another concern that we have,  
25 your Honor, is that it seems that the solution that MDC is

*Telephonic Hearing*

80

1 putting forward in terms of how people are being confined is  
2 now turning to an isolation procedure which is that people  
3 have to stay in their cell all the time except when they come  
4 out to use showers or use phones or those kinds of things. I  
5 think it's very unclear both to people that we have been  
6 speaking with who are class members and had us on the phone,  
7 how do people in isolation obtain medical care? Because the  
8 process for normally obtaining medical care is that you have  
9 to put in a sick call request and then time elapses, and then  
10 you might get brought down to the clinic in several weeks.  
11 How will the medical staff take care of hundreds and hundreds  
12 of people seeking medical care in isolation?

13 THE COURT: I don't mean to interrupt you.

14 Maybe what would make sense is if you all would have  
15 areas that you want to go back to because I realize I'm trying  
16 to move things into a particular area I'm concerned about.  
17 Maybe just make a note of it and I promise that I will give  
18 you time to address all the things at the end, but otherwise  
19 I'm just worried about we're going to jump around so much it's  
20 going to be hard.

21 MS. ROSENFELD: Understood.

22 THE COURT: So where I took the analysis to be is,  
23 tell me if I got it right, as to whether an Eighth Amendment  
24 violation occurs because conditions for a vulnerable person,  
25 the Eight Amendment analysis doesn't turn on considerations

*Telephonic Hearing*

81

1 like or even really allow considerations like dangerousness  
2 and risk of flight in your view but those considerations would  
3 be relevant in deciding the remedy, the release, I guess,  
4 release in a TRO context. And your point is here you think  
5 there are good reasons to release these folks, they have very  
6 little time on their sentence, and you also outline some of  
7 the facts about the offense.

8 I guess, what do you -- I think your friends on the  
9 other side are saying those are factors that the BOP evaluates  
10 and then a Court would evaluate if there were a compassionate  
11 release application that were made. There's a process for  
12 that. It sounds like several folks in this case, BOP is  
13 involved in that process now. But at an initial stage they  
14 expressed concerns about their suitability for release based  
15 on those types of criteria.

16 I guess I'm wondering as sort of an equitable matter  
17 why should I short circuit that and be ordering temporary  
18 relief based on a very limited record where I don't have the  
19 kind of evidence before me if this were even a standard bail  
20 application or compassionate release application.

21 MS. ROSENFELD: Well, your Honor, the reason would  
22 be that we have made a showing that they are all four of them  
23 very medically compromised and that the conditions are  
24 dangerous and we put forward information from the family  
25 members that they have a place to go and we haven't met with

*Telephonic Hearing*

82

1 any opposition delivering papers from the Government on  
2 Friday, the 27th that any of them are, in fact, a danger and  
3 can't be released to their home. And so it's an emergent  
4 situation where every day matters, and your Honor made a lot  
5 of attempts to get an answer to the question of the timeframe  
6 for the processes that are the alternative mechanisms and  
7 there was no answer.

8           So the answer is because it's an emergency and  
9 because people are going to get very sick and potentially  
10 worse, and because we have made a threshold showing that it is  
11 that serious and there is no countervailing showing that it  
12 would be dangerous for any reason or bad to release people who  
13 are on the cusp of release anyway.

14           Your Honor, the lack of a timeframe for these  
15 alternative procedures is really concerning for people who are  
16 very sick and like Mr. Rabaldi at this 59 years hold, for  
17 example. Waiting several weeks, I mean, even we got that our  
18 question was has been forwarded to appropriate department in  
19 Mr. McBride's request, what does that mean in the context of  
20 an emergency?

21           So, you know, I think this is a public health crisis  
22 and jails around the country are releasing people in large  
23 swaths for exactly these reasons. Under normal circumstances,  
24 I understand that each person would go to a court and there  
25 would be a very lengthy deliberative process. And the

*Telephonic Hearing*

83

1 question is whether the Eighth Amendment requires the parties  
2 and the Court to move more quickly to protect people from  
3 these dangerous conditions absent a very compelling reason not  
4 to.

5 THE COURT: And the special master you're  
6 envisioning would be involved in this? What is it you're  
7 envisioning the special master would do?

8 MS. ROSENFELD: Well, we have a list, a BOP list of  
9 537 people minus our four petitioners before the Court  
10 today. I think that the idea would be to very, very quickly,  
11 on an expedited schedule, get people's information in front of  
12 that person and get a correctional health expert to assist  
13 that person and the Federal Defenders and, you know, Pretrial  
14 or Parole or the U.S. Attorney's Office get the stakeholders  
15 very quickly create information for that person to make  
16 recommendations about, okay, here are 50 people who are really  
17 sick and they need to get out on Friday; and here are a  
18 hundred people who are also, you know, really at risk and they  
19 need to get out on Tuesday; and here a hundred people who have  
20 serious sentences and can't get out, but we're going to put  
21 them in the East Building.

22 So I think it's really trying make recommendations  
23 to the Court to take very, very expeditious action. And, you  
24 know, I appreciate that the U.S. attorneys and everybody at  
25 the BOP has procedures they have to follow, but right now, in

*Telephonic Hearing*

84

1 an emergency like this, we need to move much faster. And so,  
2 that person would be tasked with moving apace and reporting to  
3 you or to the Court about these recommendations to get people  
4 out or whatever and help them.

5 THE COURT: So if the rule is a sort of information  
6 gathering about these individuals generally and maybe the  
7 particular focus on these 500-some individuals and making a  
8 recommendation, I guess I'm wondering -- I mean, this is the  
9 sort of thing that attorneys do for their clients typically --  
10 they make an application or a recommendation, the Government  
11 responds, and then the Court acts based on that. I'm  
12 wondering why you have a special master to, I guess, serve as  
13 a person who is an additional step in that. I'm not really  
14 sure why that would speed things up?

15 MS. ROSENFELD: I think the first is that there's  
16 common conditions affecting hundreds and hundreds and hundreds  
17 of people, so it doesn't need to be separately analyzed and  
18 adjudicated in 537 different proceedings, right? So there's a  
19 common problem that's affecting many, many people that most  
20 efficiently could be looked at in one forum with one answer.

21 THE COURT: Is that true when you're talking about  
22 release petitions?

23 MS. ROSENFELD: I think there is really an  
24 efficiency in going at this from one place, your Honor. I  
25 think there are people who have similar conditions, for

*Telephonic Hearing*

85

1 example, who may all be subject to an initial sweep through  
2 the list. I think there are people who have similar statuses  
3 in terms of their criminal cases who might be swept out of the  
4 list. I think there is a lack of efficiency somebody  
5 overlooking this and make recommendations and not have 537  
6 different applications pending before judges who, frankly, are  
7 busy and can't necessarily decide these things on the schedule  
8 that they need to in order for it could be meaningful for the  
9 class members.

10 THE COURT: Is that right? I mean, I've been seeing  
11 these bail applications being addressed in our court I think  
12 quite quickly. Are you experiencing a delay in having these  
13 applications addressed?

14 MS. ROSENFELD: I think if 1,500 -- there have been  
15 no delays, your Honor. I think if 500 applications come in in  
16 the next three days and we could do that. There are people  
17 who are, you know, at the end of their sentence, for example,  
18 who don't even have contact with their lawyers anymore. So  
19 not everybody in there has the ability to martial a lawyer and  
20 get before a Court at this point. And I think there's  
21 opposition from the Government, there's briefing schedules. I  
22 think it's just the normal court procedures that would apply  
23 not in a massive public health emergency don't work here,  
24 right? And the people who are sick, or who are quarantined or  
25 who have illnesses are not always able to use the phone. I

*Telephonic Hearing*

86

1 spoke to Mr. McBride's partner who I spoke with this morning  
2 and told me that he had one phone call at 9:00, another phone  
3 call tomorrow at 9:00. So I think the exigencies of the  
4 situation, your Honor, mean that everybody's running around in  
5 a panicked mode in the middle of a crisis trying to file  
6 different things and get people's attention and make different  
7 agreements with the U.S. Attorney's Office is not going to be  
8 effective. And I don't think that in this case having a  
9 medical expert assist a neutral in evaluating lists that have  
10 been compiled already and gathering facts and having this  
11 happen in a quick but efficient way will be the extra layer.  
12 I think it's the critical link here that's missing right now  
13 in order to get people out who should be out or to protect  
14 people who can't get out who are there.

15 THE COURT: Can I ask about how this works under the  
16 rule which I think is §53, the appointment of special masters  
17 because it seems to me it says should be limited to three  
18 types of situations, and first, I have to give the parties  
19 notice and an opportunity to be heard. And then the master  
20 has to file a particular kind of affidavit. I'm wondering how  
21 you're seeing all of this fit in with what you're proposing.

22 MR. REINERT: I think it is not unusual at all for  
23 courts to appoint special masters when there's factual  
24 complexities in the case when -- and I've got this case from  
25 the Eastern District involving the Vulcan Society class action



*Telephonic Hearing*

87

1 which the Court says, In light of this Court's workload, a  
2 pressing need for relief, the Court will be unable to  
3 expeditiously resolve the complex issues in this case, so it  
4 appoints a special master.

5 We're not asking the special master to resolve  
6 liability issues that what's most the case that the  
7 respondents cited to the Court are about. It's to do, you  
8 know, to be focused on figuring out the facts on the ground  
9 and identifying sort of the transfers to different people who  
10 might, as Ms. Rosenfeld said, might fall under different  
11 categories and try and come up with solutions promptly and I  
12 think it's not uncommon for a special master to be involved in  
13 that kind of mix of fact development and maybe some mediation,  
14 et cetera.

15 THE COURT: Just to track the rule, you're saying  
16 because appointment that would be under §53(2) making a --  
17 also recommending findings of fact or --

18 MR. REINERT: I would say, your Honor, §53(a)(1)(c)  
19 which is sort of the catch-all that courts use a lot for this  
20 kind of --

21 THE COURT: If there is a problem that cannot be  
22 effectively addressed or --

23 MR. REINERT: Yes, exactly. There's a timeliness  
24 issue here, there's an efficiency issue, and we think it would  
25 reduce the burden on the Court. It would give one person with

*Telephonic Hearing*

88

1 a single-minded focus on the issue. Obviously, the Court's  
2 focused on the issue, we recognize that, but there's also a  
3 lot of other things that the Court has done.

4 THE COURT: So can you help me understand what  
5 exactly the relief that's requested. How you conceive of it  
6 with respect to these four individuals. Is it a request for  
7 bail pending the determination of the habeas because I know,  
8 and I'm sure you all looked at Judge Nathan's decision, and  
9 that seems to be what she awards there in a case involving a  
10 similar claim.

11 Is that what you're seeking, or is there something  
12 else?

13 MR. REINERT: Your Honor, again, the Court -- we  
14 haven't framed it as a request for bail. The Court could  
15 frame it as a release to home confinement under conditions,  
16 right? And then it's not even necessarily technically a  
17 release from custody or from the supervision of the BOP.

18 And if there are conditions that make sense that for  
19 that relief, then the Court -- we phrase the order in a way  
20 and I think it gives the Court some flexibility. The most  
21 important thing is to take the individuals out of the  
22 situation there and put them in a situation where the risk can  
23 be ameliorated.

24 THE COURT: Okay. So on the substantive piece, let  
25 me ask you about the deliberate indifference standard which I

*Telephonic Hearing*

89

1 know your friends on the other side alluded to.

2           So, I mean, it seems -- I think the argument is this  
3 is a very difficult and new health risk. It is a challenge  
4 for jails to address this health risk and to figure out how to  
5 do that. BOP is taking steps to address that health risk, you  
6 know, as you see by the fact that there's new guidance that  
7 was issued today under steps taken today. And so, I guess the  
8 question is how that's conscious disregard even if there is a  
9 question about, you know, legitimate question, about whether  
10 BOP should be doing one thing versus another thing. Even if I  
11 thought myself BOP should be doing an additional step of some  
12 kind, I'm wondering how I would get to conscious disregard.

13           MR. REINERT: Sure, your Honor.

14           So I think there's a few things that are key to  
15 that. One is who these petitioners are, right? They're  
16 particularly vulnerable if they are infected by COVID to the  
17 risk of death. The increased risk to them is upwards of 40  
18 fold compared to another person who is just exposed to COVID  
19 who doesn't have some of these conditions. So that is a  
20 substantial risk of harm that is imposed by the COVID-19  
21 infection.

22           And the respondent is on notice of the conditions  
23 that we've identified. And just because they've responded  
24 doesn't mean that they've responded in a way that meets their  
25 obligations to these petitioners. So the -- you know, and

*Telephonic Hearing*

90

1 we've had a lot of back and forth, obviously, on the  
2 sufficiency of the response about whether or not they can  
3 whether or not the petitioners are going to be able to engage  
4 in the social distancing and personal hygiene that's necessary  
5 to mitigate their risks.

6           And our position is at this point they're not, and  
7 so, there's plenty of cases that say just because you've  
8 responded doesn't mean that you haven't been deliberately  
9 indifferent. It's also the shape of injunctive relief or  
10 equitable remedies in a case like this where the harm is  
11 ongoing. And our position is, as long as what the BOP has  
12 done does not actually reduce the harm to a constitutional  
13 level, then the fact that they've responded doesn't actually  
14 cure the Eighth Amendment violation.

15           THE COURT: I do think you have to hit the  
16 deliberate indifference standard for there to be a violation,  
17 I think.

18           MR. REINERT: We have a deliberate indifference  
19 standard. There is a footnote in *Farmer v. Brennan* which says  
20 in the injunctive context being put on notice is sufficient  
21 and we have put them on notice. Our position is that they  
22 have we have given them notice of problem and, in fact, the  
23 Federal Defenders had a given them notice for some time. And  
24 the measures that have been taken doesn't ameliorate the risk.  
25 So the risk still exists and we, you know, as long as they're

*Telephonic Hearing*

91

1 being held then, then our position is they are conscious, the  
2 respondent is conscious they are being held in conditions that  
3 exposes them to the risk, that's deliberate indifference.  
4 It's not about -- we're not required to show somehow that  
5 they're acting in bad faith, right or anything like that. It  
6 is how they've taken steps that that solves a problem.

7 THE COURT: Is that it? I guess I'm wonder if it's  
8 more than that. That seems to be did they, gosh, did they  
9 solve the COVID problem is a high standard. I'm wondering if  
10 the standard is akin to recklessness.

11 MR. REINERT: We're not asking for them to be solve  
12 the COVID problem, that's not what we're asking for these  
13 individuals. We're asking to solve the problem of the risk to  
14 the individuals. So it is -- the state of mind, of course, is  
15 akin to recklessness, right, a conscious disregard of the  
16 risk. So, to some degree, I don't want to be repetitive.

17 THE COURT: Yes. We've identified the risk.

18 MR. REINERT: We've explained why the measures that  
19 have been taken don't address the risk and can't address the  
20 risk for these individuals. So to continue to hold them is to  
21 be in conscious disregard of that risk. That's the structure  
22 of the argument.

23 THE COURT: Can I ask? This is a kind of doctrinal  
24 question that relates to this I'm struggling with a little  
25 bit. I'm not sure that anything turns on it, I think these

*Telephonic Hearing*

92

1 may just be different formulations of the same basic inquiry  
2 but I think that you framed this as a question of deliberate  
3 indifference to unmet medical needs. And I've seen at least  
4 one other case, you know, I think Judge Nathan has framed this  
5 question in the same way. I'm struggling with it and I'm  
6 wondering why this isn't a kind of basic conditions of  
7 confinement test situation which is I think that test is  
8 failure to remedy conditions that pose an unreasonable risk to  
9 health and I think that's what you are basically asserting.

10           There are unmet medical needs questions. I'm not  
11 really sure, like, I looked at *Charles* it's touching about  
12 there being some condition that a person has that's going to  
13 produce death or extreme pain and then doctors fail to treat  
14 it. And that just seems like a hard one for me to mask that  
15 on to this.

16           MR. REINERT: Yes. If that was what I communicated  
17 that's my -- that mistake is on me. We have cited to many  
18 cases that talk about risk, about creating a risk from  
19 conditions. Some of those risks are medical, some of those  
20 are risks to others depends on the nature of our argument.  
21 There is a substantial risk of harm, future harm, that's  
22 caused by these conditions.

23           THE COURT: Okay. And I guess, so looking at these  
24 cases. I mean one of the things that they talk about is  
25 unreasonable risk and I wonder if you could speak specifically

*Telephonic Hearing*

93

1 on that and I guess, you know, there's part of, I think, the  
2 risk that's being asserted here is a risk from delay if one  
3 undergoes a process that BOP would undertake and would  
4 eventually get you get into court and that process would  
5 involve BOP assessing things like the risk to the community  
6 and I think the Attorney General has also determined we want  
7 to quarantine these individuals before release in order to  
8 protect the community.

9 So those are the objectives that are being served by  
10 the delay and I take your point to be -- over the  
11 countervailing health consideration which is there is a risk  
12 for every day that these folks are in the facility. I'm  
13 wondering since we have these two conflicting objectives how  
14 do I figure out it's an unreasonable risk?

15 MR. REINERT: This gets back to sort of what is  
16 considered in the scope of an Eighth Amendment violation. But  
17 the risk is the risk of harm to being held where they are. To  
18 the extent there's a concern about exposure to the community,  
19 they can self-quarantine at home. The question about sort of  
20 should the BOP should be involved or not, if there is -- if  
21 holding them in these conditions exposes them to a substantial  
22 risk of harm, that is an unreasonable risk, right? I think  
23 that's how the courts -- I don't think the courts are adding  
24 some additional analysis by using the term "unreasonable."  
25 The question is, do you have a substantially increased risk of

*Telephonic Hearing*

94

1 serious illness or death that's also going to constitute  
2 irreparable injury and that's going to satisfy the  
3 Eighth Amendment claim. The other factors, again, could  
4 theoretically be balancing and maybe on remedy as my colleague  
5 said we've identified these individuals, there's nothing that  
6 the respondent said about what stakes there are on the other  
7 side other than general statements, two of them have release  
8 dates within the next two weeks. It's hard to imagine that in  
9 order to the ameliorate the condition immediately for them as  
10 is necessary, that need to wait two weeks because if we let  
11 them out two weeks early, somehow that's going to be balancing  
12 equities somehow goes in the public's favor. So I don't think  
13 unreasonableness adds a whole lot to the deliberate  
14 indifference standard.

15 THE COURT: Can I ask a sort of evidence question  
16 about the irreparable harm piece? So I've read, I think, all  
17 the materials that have been submitted and I take the  
18 submission that the epidemiologist makes and consistent with  
19 the other submissions you're making it be, these individuals  
20 are at an elevated risk when they are custody. They're just  
21 much more at risk than others suffering complications.

22 There's an assertion of elevated risk and I get that. And I  
23 guess I'm wonder going is there anything I can look at to  
24 assess the magnitude of the risk with what I'm trying it  
25 figure out is if basically the alternative process is there



*Telephonic Hearing*

95

1 is -- they're going to be there for some additional period of  
2 time. It's hard for me to figure out what the risk associated  
3 with that in particular is.

4 MR. REINERT: I mean, in a paper from the WHO  
5 fatality rates, mortality rates, for people in this category.  
6 And for some, the mortality rate is as high as 15 or  
7 16 percent. Basically, what we're saying is there is a  
8 one-in-six chance to die.

9 THE COURT: Maybe the other statistic that doesn't  
10 exist in the world is what somebody's elevated risk of getting  
11 the coronavirus if they are in a facility like this.

12 MS. ROSENFELD: Your Honor, this is Katie Rosenfeld.

13 The Legal Aid Society's stats on this are actually  
14 helpful because they do have a chart which shows you, and it's  
15 in the declaration that I submitted as part of the initial  
16 papers. The different infection rates for depending on  
17 whether you're in custody or in the community. And I think  
18 from that I'm sorry, your Honor, I'm trying to find it while  
19 I'm speaking. I think it's clear that if you're at a much  
20 higher risk of infection because you're incarcerated than you  
21 are at a higher risk of negative outcomes and health problems.  
22 And so, those things might be helpful to your Honor.

23 THE COURT: Yes. Okay. That's helpful. I'll look  
24 for this.

25 So I have some questions for the respondent if

*Telephonic Hearing*

96

1 that's all right, too, and I if there is anything you want to  
2 add to this.

3 MS. ROSENFELD: No, your Honor.

4 THE COURT: So I've read some of the other decisions  
5 that are addressing conditions of confinement cases like this  
6 including the decision by Judge Nathan and a decision by  
7 Judge Torres. Can you kind of tell me why the steps that the  
8 MDC is taking aren't basically analogous to the steps that  
9 those judges were found were deficient in the ICE facility  
10 they were considering.

11 MR. CHO: Well, I think there's a big distinction  
12 between ICE detention and detention at the MDC. Again, those  
13 in ICE detention are incarcerated under immigration laws as  
14 opposed to the criminal defendants in the MDC. So there's a  
15 big distinction there because in the ICE context, most courts  
16 have held that in terms of risk to the community, these  
17 inmates are released to the community is not as grave  
18 necessarily as those who are convicted for inmates.

19 So there's one distinction between the ICE types of  
20 cases and cases involving MDC type facilities and BOP  
21 facilities. But the important thing also to keep in mind as,  
22 your Honor is aware, many judges in the Eastern District  
23 itself reviewing bail applications, requests for compassionate  
24 release, have reviewed the same evidence that's been submitted  
25 to your Honor in this case dealing with high risk of

*Telephonic Hearing*

97

1 developing the infection, conditions within the MDC, all  
2 within the past week. And many of those judges have denied  
3 those requests for relief under bail petitions, under request  
4 for compassionate release.

5 So I think those are the more applicable cases to be  
6 looking at as opposed to those cases belonging in ICE  
7 detention. These are different types of situations involving  
8 did types of inmates.

9 THE COURT: Do you think the conditions are  
10 different?

11 MR. CHO: Well, the MDC is a high-rise, secure  
12 facility with a wide variety of inmates in there from  
13 low-level inmates to highest maximum security inmates,  
14 terrorism inmates as well. So, again, ICE detention is  
15 different from BOP detention. Yes, there's a difference.

16 THE COURT: I'm asking about the conditions of  
17 confinement and maybe you don't have an answer to that or  
18 don't have those cases on hand which is fine. But it does  
19 seem to me like, for instance, the stuff that you all are  
20 doing as of today makes this case, make the conditions when  
21 people are being held makes it different from the prior cases  
22 but that's the question I'm asking.

23 MR. CHO: I think that is correct. Again, the  
24 conditions at MDC are changing rapidly and they're constantly  
25 evolving. The steps that they are taking to prevent an

*Telephonic Hearing*

98

1 outbreak of the infection. So, again, cases are different  
2 from our cases here.

3 THE COURT: Are there any steps that you all are  
4 taking that are directed at folks who are in high-risk  
5 categories in particular. I guess, the one step you have  
6 available is the compassionate release mechanism. But is  
7 there anything else that you all have available to those  
8 inmates?

9 MR. CHO: Well, the Government, we have been  
10 proactive about this whole process. We created that list of  
11 500 or so of potential high-risk inmates that was overly  
12 inclusive that goes well above and beyond the risk factors  
13 found in the CDC guidance. The age is much lower than the CDC  
14 guidance and other conditions as well. The BOP is obviously  
15 very proactive by identifying high-risk inmates to decide  
16 what's going to be done with them.

17 THE COURT: What are you doing with the list? I  
18 guess part of it has been conveyed to Federal Defenders and  
19 that facilitates applications for bail or compassionate  
20 release. Are you using that list, or do people who fall in  
21 those categories in the list have the ability to get any kind  
22 of special protection?

23 MR. EICHENHOLTZ: This is Seth Eichenholtz.

24 The list was originally developed not to be given to  
25 the Court or to Federal Defenders. It is actually identifies

*Telephonic Hearing*

99

1 individuals. So if there was a positive amongst others, those  
2 individuals can be addressed with the greatest urgency. We  
3 can know where they were. The warden and the medical staff  
4 would know they were at risk. We would be able to take  
5 appropriate steps if they were exposed. The list is updated,  
6 I believe, and Holly can correct me. I believe it's updated  
7 on a daily basis. But that is the purpose of the list, so  
8 that there is awareness of where these individuals are  
9 throughout the facility so that their specific needs and  
10 specific risks canning addressed in the event that it needs to  
11 be addressed.

12 THE COURT: Okay. So part of the argument you're  
13 making in the papers is there's only been one exposure area.  
14 And how can we say that these inmates are subject to a risk of  
15 irreparable harm when there's only one exposure and we're  
16 taking, you know, a number of steps to address the coronavirus  
17 crisis. And I guess I wanted to ask you about the advice  
18 we're all getting about social distancing. It does seem like  
19 we're being generally told to minimize our contacts with other  
20 people. And I'm wondering if to the extent that you can't  
21 really do that in a facility, isn't it just common sense that  
22 there's an increased risk, that there's a risk in particular  
23 of irreparable harm.

24 MR. CHO: Your Honor, to the extent there's an  
25 increased risk. The BOP's is actually trying to minimize,

*Telephonic Hearing*

100

1 obviously, group settings. A whole unit is not being moved  
2 all at the same time. There's procedure to move unit by unit  
3 or cell by cell as opposed to entire units all at once. So  
4 the BOP is taking steps to try to increase socially distancing  
5 for the inmates. Certainly, there is always limitations  
6 because they're incarcerated, but to the extent it can it's  
7 taking steps to do so.

8 THE COURT: Okay. I guess the analysis that your  
9 friends on the other side are offering about irreparable harm  
10 is when there is a constitutional violation that's alleged,  
11 then irreparable harm is alleged. And when a risk to life is  
12 alleged, then irreparable harm is alleged.

13 Do you think that's off base?

14 MR. CHO: I think a lot of the arguments that  
15 they're raising are very speculative. Again, it would be a  
16 different situation. The four petitioners had confirmed  
17 symptoms or had the virus itself. I mean that's a different  
18 situation. But they're only talking about risk here or  
19 potential risk.

20 THE COURT: What about the Secondhand Smoke case?  
21 Again, I don't want to butcher the name. It contemplates the  
22 idea that the risk is something that can qualify as an  
23 actionable harm, it doesn't have to be actual exposure before  
24 you reach that point?

25 MR. CHO: The remedy they're seeking here is for

*Telephonic Hearing*

101

1 these four inmates their complete release from the MDC, right?  
2 Again, there's risk outside the MDC as well. There's risk  
3 everywhere. So I don't know if there is an inflated risk  
4 because they're at the MDC or not in the MDC. The risk is  
5 inherent in the situation we're in now.

6 THE COURT: That was the piece I was asking about  
7 with respect to social distancing. If you can't do at the MDC  
8 the things that we're being hold to do, or at least maybe that  
9 premise is not correct given the recent guidance but it sounds  
10 like there are substantial challenges to social distancing  
11 there. So then I'm not really sure it's speculative to say  
12 there's an increased risk.

13 MR. CHO: Right. But the logical flow to all that  
14 is they're staying everyone at the MDC needs to be released  
15 all of them, all the inmates.

16 MR. EICHENHOLTZ: Your Honor, I just want to also  
17 add that I think that one of the problems with the term, I  
18 think, Mr. Reinert keeps using is "grappling with these  
19 issues" in the sort of expedited proceeding is exactly that.

20 My understanding is that the social distancing is  
21 both about preventing people from getting infected and  
22 preventing the spread of the illness. There are obviously  
23 situations in the world as well where the social distancing,  
24 you know, isn't possible or doesn't happen; for example, if  
25 you have family members who you live with regularly and all

*Telephonic Hearing*

102

1 are asymptomatic, there is a recommendation that you all live  
2 in different parts of the house. So I think that, you know,  
3 you get to start to get into this realm of a certain expertise  
4 which why earlier I pointed out the fact that the BOP and the  
5 medical staff at MDC are the ones who are making these  
6 guidance to balance the concerns and the risk, to mitigate the  
7 risks, while also handling the institutional need for a safe  
8 and secure operation of the needs of the institution.

9 Plaintiffs need to show that, you know, their attempts to do  
10 are, you know, deliberately indifferent.

11 And on this summary proceeding I kept hearing, the  
12 Government didn't oppose this, the Government didn't oppose  
13 that. In part that's true because of the nature of this kind  
14 of proceeding, your Honor pointed out there isn't a complete  
15 evidentiary record. And so, you know, I found also striking,  
16 for example, on the other side that you asked petitioners'  
17 counsel and the answer to that question is, well, we don't  
18 know.

19 So what it sounds like to me is the argument is more  
20 akin to an argument of, you know, we believe that in this case  
21 MDC isn't doing what we feel it should be doing and there may  
22 be very good reasons for that. And there may be that a  
23 suggestion they have is -- what the MDC do but that doesn't  
24 rise to the level of deliberate indifference.

25 THE COURT: So §2241 has the exhaustion standard,



*Telephonic Hearing*

103

1 exhaustion requirement. Are you all conceding that that's not  
2 something to worry about in this case because there's the  
3 carve out for when somebody's alleging, I'm going to butcher  
4 the carve out, but it's basically an imminent injury and  
5 that's what they're alleging here.

6 MR. EICHENHOLTZ: That's correct.

7 THE COURT: One thing, I don't know if either of you  
8 can tell me -- so you all have helpfully pointed me to cases  
9 that address either bail applications or to ICE detention  
10 cases recently and some compassionate release cases. Are  
11 there any other suits out there that are like this? I  
12 guess when I say like this, I mean Eighth Amendment  
13 challenges, coronavirus, federal prisoners, or pretrial  
14 detainees.

15 MR. EICHENHOLTZ: Your Honor, to my understanding,  
16 there is a TRO application that was just filed in the District  
17 of Colorado. I believe the Government may have put in an  
18 opposition to that today. It's the only one that I'm aware  
19 of.

20 THE COURT: And petitioners, anything else you got?

21 MR. REINERT: Your Honor, we cite to the Court a  
22 number of cases in which courts have releases some of I would  
23 say that the cases that responded to cites in there are  
24 distinguishable with cases in which there was no evidence that  
25 anyone at the facility that had COVID and just didn't.

*Telephonic Hearing*

104

1           Some of the arguments made by the respondents were  
2 the cases where -- is making arguments about the procedural  
3 requirements of the First Step Act. So we got a long list of  
4 cite.

5           THE COURT: I've looked at those and the closest --  
6 I would say the closest thing found in those cases are  
7 Eighth Amendment claims in ICE facilities. I didn't see any  
8 claims that involved federal or convicted or pretrial inmates  
9 facing a similar challenge. But I just want to make sure  
10 there is something out there that's closely related to this  
11 case.

12           MR. REINERT: The case --

13           MS. VON DORNUM: Your Honor, I wanted to bring your  
14 attention that Judge Furman about an hour ago referred a  
15 habeas in front of him over to the Eastern District because  
16 it's a person detained at the MDC.

17           THE COURT: Yeah. I saw that one. Is that the  
18 person I believe it was --

19           MS. VON DORNUM: He was represented by Daniel Parker  
20 and I think he had an additional counsel appointed. The  
21 Government refused to waive venue over there, so my  
22 understanding is it's about to be filed here and raises, you  
23 know, similar claims in an individual context.

24           THE COURT: Okay. Got it.

25           MR. REINERT: In that order, Judge Furman cites to a

*Telephonic Hearing*

105

1 letter from the warden saying that, at least as Judge Furman  
2 triggered it, but there was no place for something like  
3 Mr. Acondos for seeking relief.

4 THE COURT: You all have been very patient with me  
5 and very helpful and I promised that after I asked the stuff  
6 that was on my mind, I would give you the opportunity to  
7 respond to anything that I didn't give you a full opportunity  
8 to respond to or anything else you wanted to add.

9 MS. ROSENFELD: Thank you, your Honor, you have been  
10 incredibly patient with us. I will keep it brief.

11 I need three or four final points. The first is  
12 that we have not come to your Honor lightly at all and I think  
13 if you look at the initial application by Ms. von Dornum, it  
14 details attempts by Federal Defenders since early March to  
15 work with the BOP and to work with MDC to try and address the  
16 situation. And I think what the declaration shows,  
17 unfortunately, is very little movement and not action that's  
18 consistent with a crisis. And so, I just want to make it  
19 clear that we have not filed this quickly. There was a lot of  
20 attempts made to work with the facility and they haven't  
21 worked and that is why we're here.

22 With respect to the list that was created,  
23 Judge McMahon ordered the BOP to order respondents to create  
24 that list. That was not created voluntarily or, you know,  
25 independently. That was Judge Judge McMahon said make this

*Telephonic Hearing*

106

1 list and there have been no steps taken by respondents to  
2 protect people on that list, specifically. So they have held  
3 the list of particularly vulnerable people for many weeks now,  
4 and in response to applications and requests for release for  
5 different people on the list, there has been opposition in  
6 some cases, it sounds like there may be corroboration on a few  
7 people. But the Government continues to oppose relief for  
8 people on that list on both substantive and exhaustion-related  
9 grounds.

10 In terms of the statistics, your Honor, and the  
11 issue of how many people have this. We believe that the  
12 number of cases in the MDC is higher than what the BOP is  
13 reporting. Your Honor may have seen that the facility in  
14 Louisiana where there's an outbreak has stopped testing people  
15 because they are working under the assumption now that  
16 everybody there has coronavirus.

17 I think it's very telling that the question of how  
18 many people have been tested at the MDC so far. How many  
19 tests are at MDC. Those two questions, they are nowhere in  
20 the Government's papers. So we have no idea if they think  
21 that one person has coronavirus because they've only tested  
22 five people or if they've tested 500 people and one person has  
23 it. But I think for purposes of this analysis today, your  
24 Honor, we have shown that they have not followed proper  
25 protocols in terms of people coming into the building and

*Telephonic Hearing*

107

1 moving around it who have been exposed to someone who has  
2 coronavirus. And unfortunately, I think that's sufficient to  
3 show, in addition to the five staff members, that it's very  
4 likely that there is coronavirus spreading within the building  
5 as we are all talking. And when it gets tested and when those  
6 get reported on the BOP's website are separate.

7 Finally, your Honor, I know your Honor has been  
8 exploring the issue of alternative mechanisms here and what  
9 else is available. And again, I would just stress one last  
10 time that time is of the essence here. And if the BOP decides  
11 to grant a conditional release or a humanitarian relief, I'm  
12 sorry, a relief for humanitarian compassionate release.  
13 That's going to take several days, however long it takes, days  
14 weeks plus 14 days quarantine that your Honor mentioned. If  
15 they're denied relief, then there's the time that it takes to  
16 reach that denial of us going to the Court for release and we  
17 simply can't wait. We have people that are all 537 or whether  
18 it's subgroup of them who will get very sick if they're  
19 infected in an environment where they can't be properly  
20 protected.

21 And then finally, your Honor, with respect to the  
22 four individuals. I think that, you know, Mr. Reinert made  
23 the point they have release dates that are coming up in weeks  
24 and a few months. It's very hard to mention any reason they  
25 cannot be released to home confinement and a changed

*Telephonic Hearing*

108

1 conditions order from your Honor. And we believe we've met  
2 more than met our burden that continuing to stay in the  
3 facility is dangerous to them and we thank your Honor for your  
4 all and careful attention to the petition.

5 THE COURT: I appreciate your helpful responses and  
6 your helpful filings both sides.

7 MR. EICHENHOLTZ: Your Honor, may I have just a few  
8 closing comments as well?

9 THE COURT: Take as long as want.

10 MR. EICHENHOLTZ: First of all, I want to address  
11 and this is one in the same thing things I find problematic.  
12 Again, I keep calling it a summary proceeding, that's probably  
13 not the correct technical the posture we're on granting  
14 sweeping relief.

15 Ms. Rosenfeld just said the list was created at the  
16 order of Judge McMahon and asserted that as just that it's  
17 fact. That is not correct. As far as I'm aware, that is not  
18 accurate. The list was created because this is the step that  
19 MDC Brooklyn was taking. The list was then ultimately used by  
20 the Court system and the courts used it for other purposes.

21 But BOP before Judge McMahon and Judge Mauskopf  
22 ultimately asked for the lists were already compiling this  
23 information together.

24 THE COURT: Just so I understand. Is there any  
25 dispute about that from petitioners? I take it that you're

*Telephonic Hearing*

109

1 relying on the fact that Judge McMahon asked for the list, but  
2 do you have any basis to contest that they were creating a  
3 list beforehand?

4 MS. VON DORNUM: Your Honor, I was in a Southern  
5 District meeting with Chief Judge McMahon; the warden of the  
6 MCC; Nicole McFarland, who supervises both facilities; Jeff  
7 Ostriker, the Chief of the Civil Division; and Judge Caproni  
8 on March 12th prior to the lockdown and we were inquiring how  
9 many people are vulnerable within the meaning, the criteria of  
10 the CDC. Ms. McFarland and the warden at the MCC said they  
11 have no idea. And we were saying that, you know, we thought  
12 that was a very important question to answer to know what  
13 steps the facility should take.

14 So Chief Judge McMahon at that juncture said to  
15 Ms. McFarland, who supervises both facilities' legal staff and  
16 the warden, I want a list like that from both facilities.  
17 That was then communicated to, I believe, through Magistrate  
18 Judge Pollak but perhaps by Chief Judge Mauskopf directly to  
19 the MDC as well. The MDC soon thereafter created just that  
20 list. We waited an additional week and a half for the MCC to  
21 create theirs, but no one at any point said we're already  
22 doing. That, again, they have could have been, we did not  
23 know. But at the time they inquired, they said they did not  
24 have that data.

25 THE COURT: I probably shouldn't have interrupted

*Telephonic Hearing*

110

1 you.

2 MR. EICHENHOLTZ: Your Honor, I don't mean to,  
3 again, I understand why from Ms. von Dornum's perspective that  
4 appeared to be the way that happened. I understand now where  
5 this is coming from and, you know, that was also a point that  
6 the Government had alluded to in its papers that sometimes  
7 when you're not on you're not seeing the development because  
8 BOP does have certain security concerns they're not always up  
9 front about everything that they're doing, it could lead to  
10 this impression they're not doing something. And often, I  
11 found that sometimes it gets cited as actually not doing when,  
12 in fact, it may not be accurate and it's just something I  
13 wanted to raise when I heard that.

14 I also, you know, wanted to emphasize that this is  
15 about MDC Brooklyn. It's not about MCC, it's not about a  
16 situation in Louisiana where they are no longer testing. And  
17 I also finally wanted to mention that I think that the  
18 Government in its brief, just to point to it, put forth a very  
19 compelling argument as to why a special master is  
20 inappropriate to make these sort of determinations. For  
21 example, the compassionate release, the motion to be brought  
22 was to be brought in the sentencing court which is for some of  
23 the inmates it may be in the Southern District, it may be  
24 other districts.

25 And one of the things that concern me, when I kept



*Telephonic Hearing*

111

1 hearing Ms. Rosenfeld said, oh, the Government doesn't, the  
2 Government didn't set forth an argument that these inmates  
3 would be a danger to the community to release these  
4 individuals or why they would be a danger to the community.  
5 The Government's argument was this wasn't the appropriate  
6 forum in which to have that discussion. The Government, you  
7 know, we cannot make -- we have not made any sort of  
8 concession that the prosecutors or those involved in making  
9 those evaluations that those criminal defendants are neither  
10 our office or the relevant office in the Southern District of  
11 New York does not have concerns.

12 In fact, as we alluded to earlier, our office has  
13 expressed concerns and two of the -- about Mr. Chunn who is  
14 the Eastern District defendant getting out on home  
15 confinement. As you know, the office is divided into civil  
16 and criminal, and so, I don't know the details of those  
17 concerns. But it's not true that the Government does not have  
18 concerns. It is true that the Government did not put that in  
19 its response but, again, that's because we are in this sort of  
20 summary proceeding, expedited proceeding posture here and that  
21 this is one of the things that pieces that I think falls out  
22 of that in this case in addition to a fully developed  
23 evidentiary record.

24 And which would bring me to my final point about the  
25 problem with the special master. And I understand in the

*Telephonic Hearing*

112

1 current situation it sounds tempting to say, all right, let's  
2 just appoint someone to take away the decision-making  
3 authority of BOP and the prosecutor and the other judges.  
4 They could just do it all quickly and they could do it all for  
5 everyone. But, again, what falls out of that is a detailed  
6 analysis that a judge, a prosecutor, might take to a  
7 particular case. And in terms of making decisions that are  
8 either BOP administrative decisions that are supposed to be  
9 made by the Executive Branch or decisions that are supposed to  
10 be fully litigated before a court as we stated in our brief we  
11 believe it would highly inappropriate for a special master to  
12 make those sort of determinations and could have serious  
13 separation of power implications and certainly should not be  
14 done on this kind of expedited proceeding.

15 THE COURT: Great. I have a couple of follow-ups  
16 just based on the things that you all have said. Maybe just  
17 to address that last point first which is about the special  
18 master. And part of this seems like a difficult question and  
19 I think part of the lens I'm viewing this through is a TRO  
20 lens. It seems unusual to appoint a special master through a  
21 TRO. And I guess if I were to articulate the case for  
22 appointing a special master for a TRO through a TRO, I think  
23 it would have to be this idea that the special master would be  
24 very quickly addressing claims on the merits of a very large  
25 class of individuals at MDC. And I guess there I'm wondering

*Telephonic Hearing*

113

1 it seems like it turns on the resolution of a whole bunch of  
2 hard questions that I'm not sure the other piece of the TRO  
3 request requires addressing. But things like, is this an  
4 appropriate class action when there are, I think, individual  
5 issues that would go to release, individual issues that could  
6 go to the medical circumstances.

7 So, I guess, I wonder if you could speak to the  
8 special master in the TRO context which is something appealing  
9 to me about saying this is not a TRO remedy for the reasons  
10 that I just articulated but I wanted to give a chance to  
11 respond to it.

12 MS. ROSENFELD: Alex, do you want to respond?

13 MR. REINERT: Sure. I think I hear what your  
14 Honor's saying and I think it's true that this is an  
15 extraordinary examples. I don't think anybody at all  
16 understands that. And so, it is unusual, I think, in this  
17 context to go to a special master. So, again, I don't want to  
18 lose cite of the fact that we're asking for two separate  
19 pieces of relief. I want to maybe one for petitioners and one  
20 for a special master. The reason is because we have this  
21 class of people who are trying to obtain relief for and a  
22 special master with help facilitate that.

23 But I think there will be a number of other steps  
24 that we'd have to engage in as we work toward a special master  
25 would only be part of it. But at least a special master would

*Telephonic Hearing*

114

1 get started on identifying this sort of broad categories of  
2 people who might be eligible for release or some other kind of  
3 mitigation of the harm.

4           So I don't want to avoid your Honor's intuition  
5 which is that this is unusual in this posture. I don't think  
6 the release is unusual in the sense that it's directed at the  
7 individuals who are in front of the Court with facts  
8 justifying release. But precisely because of the time  
9 problem, and precisely because of the procedures that the  
10 respondent is pointing to, are all procedures, number one, in  
11 which they have opposed use of reliance on the COVID-19  
12 epidemic as a ground for relief in those contexts and  
13 precisely because of the time requirement. An extraordinary  
14 circumstances calls for perhaps an extraordinary remedy such  
15 as this. So I don't know if that answers your Honor's  
16 question.

17           THE COURT: That's helpful. And I wanted to get  
18 your responses.

19           Let me ask the Government just because two things  
20 that I think came up when you all were wrapping up one about  
21 the use of the vulnerable persons list and as you said before,  
22 and I think your friend on the other side articulated, it  
23 sounds like this is a list created so that you know who these  
24 folks are in the event that there's an exposure is there any  
25 other list that you --

*Telephonic Hearing*

115

1 MR. EICHENHOLTZ: Your Honor, I lost the last part  
2 of that.

3 THE COURT: Your friends on other side said  
4 basically you're not using the list to do anything with  
5 respect to these inmates. Is that a fair characterization  
6 that you created it and use it basically in the event that  
7 there is an exposure you would be able to address those  
8 persons at that point?

9 MR. EICHENHOLTZ: Yes. The list is for staff  
10 awareness so that if there is an issue, they are aware of one  
11 of these inmates with heightened vulnerability inside the  
12 facility. Beyond that there is no action and, again, Holly,  
13 my colleague can correct me, but there is no affirmative  
14 action that has been taken other than being aware, if needed,  
15 where these folks are.

16 THE COURT: Are vulnerable inmates otherwise being  
17 treated in the same way as folks within a facility, that is,  
18 you know, separate housing or other accommodations that are  
19 being made. For instance, these inmates who were saying here  
20 we have a serious medical conditions that are put in elevated  
21 risk.

22 MR. EICHENHOLTZ: Yes, I believe so. And Holly, if  
23 you can confirm that for me.

24 MS. PRATESI: Yes. Using the list again to keep an  
25 eye on them, know where they are, and also, this way we can

*Telephonic Hearing*

116

1 use it that if they are complaining of medical issues we  
2 realize in terms of triaging those might be more necessary to  
3 address first to administer certain medication where aware of  
4 them keeping up with those prescriptions, things like that.  
5 So I think awareness is one of our best tools with respect to  
6 those individuals right now.

7 THE COURT: The other point counsel raised that I  
8 wanted to respond to directly. You point out that there's  
9 been one positive test among inmates, but we don't know what  
10 the denominator is. We have a pleading, sorry, what the  
11 actual do not agree? Do you know how many people have been  
12 tested at the facility?

13 MR. EICHENHOLTZ: I believe there have been two  
14 other tests.

15 Holly?

16 MS. PRATESI: There have been two other tests that  
17 have come back negative. I'm not 100 percent sure if there  
18 have been additional tests since that date. I can find out  
19 and get back to the Court if you like.

20 THE COURT: Okay. I guess the follow-on question  
21 would be if that's the case, then how probative is it that  
22 there's only been one positive test? We're taking one out of  
23 three.

24 MR. EICHENHOLTZ: And I don't, I'm just -- it's a  
25 challenging question, your Honor, because it's the same kind

*Telephonic Hearing*

117

1 of, I think, issue that we face in the world handling this  
2 generally which is, you know, it's not probative in the sense  
3 of do you know if you ever tested anyone who would come back  
4 positive.

5 My understanding, and Holly can correct me if I'm  
6 wrong, is every inmate who has these concerning symptoms, who  
7 is symptomatic, who has a fever, they would test. So it's  
8 showing that at least as far as staff is aware that these were  
9 the three individuals who met the criteria to be tested and  
10 was tested.

11 Holly, did I get that right?

12 MS. PRATESI: I believe so more or less. Again,  
13 each case is going to be evaluated on its own merits, the  
14 symptoms presented, the severity, and our staff will, you  
15 know, evaluate whether testifying is appropriate. And  
16 further, obviously, if it's more severe whether they need to  
17 be sent to the hospital regardless for testing just to make  
18 sure their symptoms, whether it's consistent with COVID-19 or  
19 the flu or another illness, can be properly addressed.

20 MS. ROSENFELD: Your Honor, I don't want to  
21 interrupt anybody but at the end of this colloquy I would like  
22 to respond to that information that was just provided.

23 THE COURT: Sure. Go ahead.

24 MS. ROSENFELD: That's extremely alarming, your  
25 Honor, that three people in the facility have been tested

*Telephonic Hearing*

118

1 because what that means is that the number of people who  
2 likely have the coronavirus there is exponentially higher.  
3 They have over a hundred people in isolation. They have two  
4 units of people in isolation, Unit 82 or 83, I believe, and  
5 Unit 42. So hundreds of people are in isolation but none of  
6 them have been tested. I don't really understand the  
7 representation that, I'm sorry, I'm at a loss for words.

8 Two units of people are in isolation because they've  
9 been exposed to people with coronavirus. It sounds like three  
10 people total have been tested. So that means that at least  
11 probably around a hundred people may have coronavirus but  
12 haven't been tested. And then, in addition, your Honor, we  
13 know of many people who are, well, I shouldn't say "many  
14 people," but, you know, Ms. von Dornum and myself and her  
15 staff and people are e-mailing us are reporting that they have  
16 people in their cells who are coughing, people who are, you  
17 know, sick and who have not been tested. So I would really  
18 strongly dispute the assertion that everybody who is  
19 symptomatic is being tested. So I don't think there is any  
20 basis to say that there are many people in the facility who  
21 are sick and who have not been tested.

22 THE COURT: Yes. Maybe I would follow up with  
23 counsel for the Government about that because I heard two  
24 different things. I think, first, and I apologize if I had  
25 butchered anyone's name.



*Telephonic Hearing*

119

1           Mr. Eichenholtz said if they are symptomatic they  
2 are being tested. And I think I heard Ms. Pratesi say  
3 something that was different from that which is doctors are  
4 making decisions about whether to test under all of the  
5 circumstances which is I think pretty different.

6           Let me ask, are you saying that you're testing  
7 everybody who is, you know, has a fever and cough or other  
8 symptoms? What are you testing.

9           MS. PRATESI: This is Holly. If I can answer that  
10 to clarify a bit better.

11           Counsel for the other side is saying their detainees  
12 are reporting that they have these symptoms. Our staff first  
13 has to evaluate, correct, if an inmate says, I have a fever  
14 somebody take the temperature and they don't have a fever,  
15 then we're in a different circumstance. So we first have to  
16 do an evaluation. Are you, in fact, coughing? Are you, in  
17 fact, symptomatic and then from there whether testing is  
18 appropriate.

19           THE COURT: So you do that. So let's say you do the  
20 evaluation and you determine that somebody is showing  
21 symptoms. Are you doing a test or it depends?

22           MS. PRATESI: I don't want to speak for the medical  
23 staff that actually makes that evaluation, but my assumption  
24 would they would that they would then be tested. That is not  
25 ultimately my call, that would be the medical department and

*Telephonic Hearing*

120

1 they should be calling and seeking guidance from the clinical  
2 director, potentially the region, or outside hospitals whether  
3 testing would be appropriate at that point.

4 THE COURT: So if that's where we are then, I  
5 shouldn't rely on the assertion that people who are  
6 symptomatic are being tested, right?

7 MR. EICHENHOLTZ: Yes, your Honor. Yes, I was the  
8 one who said that was, again, my general understanding which I  
9 also share the test is. But it is a clinical determination  
10 so, I guess, you know, I think that's more accurate to say  
11 what Ms. Pratesi just said.

12 MS. ROSENFELD: Your Honor, another problem here is  
13 that as of two and a half week ago it was reported that there  
14 were only nine test kits in the facility. So I think there  
15 are also concerns about whether those test kits, how testing  
16 is being done. But I think, your Honor, just to pull the lens  
17 back. I think that what we're looking at here goes to the  
18 question you raised about, you know, what is the  
19 appropriateness of a special master at this point and these  
20 kinds of issues. This is a TR0 proceeding, we have asked for  
21 the release of our four clients.

22 Mr. Eichenholtz says that the Government doesn't  
23 agree that it doesn't have (indistinguishable) and we would  
24 submit that those people should be released now. They've had  
25 plenty of opportunity to say if there is a danger or a

*Telephonic Hearing*

121

1 problem, they haven't said to and I think we've met the bar.  
2 But in terms of the more general situation there. This is  
3 exactly why, your Honor, we thought that the appointment of  
4 somebody who is a correctional health expert who could  
5 evaluate what is happening in the facility and report to your  
6 Honor about these kinds of facts would be very helpful to  
7 everybody because, of course, petitioners' counsel are not  
8 doctors and neither is Ms. Pratesi. And maybe there's a  
9 protocol where testing is appropriate and it's not and they  
10 have to implement that. But the idea that your court is being  
11 told that only three people have been tested in a facility  
12 where there have been five staff persons who are sick and one  
13 confirmed case and a hundred people in isolation, it seems to  
14 a layperson very concerning.

15           And so, we do think that in this kind of emergency  
16 epidemic, started with Rikers Island with one person, that was  
17 in mid-March and we have 180 today that the Court could act to  
18 appoint somebody to evaluate groups of people who are most at  
19 risk and try and expedite their release and to consult with  
20 the Court about steps to protect people and increase the  
21 health and safety of the facility is appropriate.

22           THE COURT: Counsel, one follow-up about that. So  
23 is there any difference between these four folks for the  
24 purposes of Eighth Amendment analysis than for the entire list  
25 of vulnerable persons and 500-some people, I guess, that list

*Telephonic Hearing*

122

1 is the vulnerable folks. I assume the answer is no.

2 MS. ROSENFELD: I was going to say there is no  
3 difference in the fact that they're all people that the  
4 facility identified as medically vulnerable to COVID and  
5 therefore we believe we face increased risk. The only -- so  
6 there's no legal difference between, I think, the difference  
7 right now in terms of the Court is that we've been able to  
8 make a decision with more detailed information to the Court  
9 for these four people, and you have the declarations from  
10 their family members, and you have some medical records and  
11 you have some indication about their charges and what's been  
12 requested and so the Court could make a determination today  
13 for those four people that it might be in a position to reach,  
14 obviously, for everybody else on the list.

15 THE COURT: But the analysis, I think, would be for  
16 those individuals like a basically a separate, equitable  
17 analysis about, I would think, it's been sort of equities of  
18 release in the TRO context. But I think if you were correct  
19 about an Eighth Amendment violation for these four with the  
20 analysis would be the same for the others.

21 MS. ROSENFELD: Yes, absolutely.

22 THE COURT: Can I just ask one factual follow-up  
23 question for the Government because I think that you --  
24 petitioners' counsel said a couple people there are two units  
25 of people in isolation and that adds up to hundreds of people

*Telephonic Hearing*

123

1 because of potential exposure; is that correct?

2 MS. PRATESI: Not entirely. There was one unit that  
3 had been isolated and those were the inmates that were housed  
4 with the inmate who tested positive the day he went to the  
5 hospital. Those individuals are actually coming off  
6 isolation, I believe today.

7 Another unit that had been quarantined, not  
8 isolated, because two individuals from that unit were tested.  
9 Once those test results came back negative, they were all  
10 released from quarantine status.

11 The intake unit is quarantined right now just  
12 because, well, with the addition of the guidance that the  
13 quarantine be put into place so that the individuals who come  
14 into the facility who may be asymptomatic can remain there for  
15 the 14 days without going into general population to make sure  
16 that they don't develop symptoms and they, in turn, were  
17 isolated so that each time a new person came in it didn't  
18 restart the 14-day clock. So that's not because of potential  
19 exposure.

20 I believe there may be one other unit right now that  
21 is quarantined pending review but I would have to verify that  
22 so. I don't think a hundred inmates or those numbers are  
23 fully accurate as reported by petitioners.

24 MS. ROSENFELD: Our understanding is that Unit 53,  
25 Ms. Pratesi, is also under some kind of isolation or

*Telephonic Hearing*

124

1 quarantine status and that was the unit I was referring to.

2 MS. PRATESI: Again, I'm not going to give specific  
3 numbers but that was the one that I believe -- one unit was  
4 more recently quarantined. But that at this point that would  
5 only be unit and the intake unit. This is not because of a  
6 positive case or exposure that's just because they're coming  
7 in. So, at this time, I believe there's only one unit on  
8 quarantine status pending an evaluation of whether inmates are  
9 or are not symptomatic.

10 THE COURT: Okay. Thank you all for answering so  
11 many questions.

12 Anything else that you want to add?

13 MS. ROSENFELD: No, your Honor.

14 MR. CHO: No, your Honor.

15 MR. LIFSHITZ: Allon Lifshitz.

16 MR. CHO: Allon, go ahead.

17 THE COURT: I wonder if he dropped.

18 MR. LIFSHITZ: Your Honor, can you hear me? Sorry.

19 THE COURT: Yes.

20 MR. LIFSHITZ: This is Allon Lifshitz. I work in  
21 the Criminal Division at the U.S. Attorney's Office.

22 The Court asked a couple of times about what use is  
23 being made of the list of the 500 or so inmates who are deemed  
24 high risk and I think that's been asked for the BOP and I  
25 don't want to be silent about that.

*Telephonic Hearing*

125

1           The U.S. Attorney's Office consults that list  
2 constantly because of bail motions and other applications in  
3 real-time and we're always considering whether someone is on  
4 the list and it's certainly been a factor in our consenting in  
5 a few cases. And we're even considering actively whether to  
6 proactively reach out to defense lawyers in cases where a  
7 motion has not been made, but someone is on the list. Of  
8 course, it's not automatic. Someone on the list may  
9 constitute a danger or a risk of flight but it is something we  
10 look at daily throughout the Office.

11           THE COURT: Okay. Anything else?

12           MR. CHO: Thank you, your Honor.

13           MS. ROSENFELD: Thank you, your Honor.

14           THE COURT: I appreciate all the help with this.  
15 It's a hard situation, obviously. And so, I appreciate  
16 your -- and complicated legal issues -- so I appreciate your  
17 help working through them. I am going to turn this around  
18 fast as I can but it's probably going to be tomorrow.

19           MR. CHO: Thank you.

20           MS. ROSENFELD: Thank you.

21           (WHEREUPON, this matter was adjourned.)

22

23

\* \* \*

24

25

*Telephonic Hearing*

126

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

*Anthony D. Frisolone*

---

Anthony D. Frisolone, FAPR, RDR, CRR, CRI  
Official Court Reporter



<b>1</b>	<b>5</b>	<p><b>acknowledged</b> [1] - 24:15  <b>Acondos</b> [1] - 105:3  <b>act</b> [1] - 121:17  <b>Act</b> [1] - 104:3  <b>acted</b> [1] - 43:1  <b>acting</b> [1] - 91:5  <b>action</b> [13] - 10:3, 16:11, 16:13, 16:15, 63:1, 75:1, 75:2, 83:23, 86:25, 105:17, 113:4, 115:12, 115:14  <b>actionable</b> [1] - 100:23  <b>actively</b> [1] - 125:5  <b>activities</b> [1] - 49:18  <b>activity</b> [4] - 66:8, 66:11, 66:12, 66:13  <b>acts</b> [1] - 84:11  <b>actual</b> [3] - 15:8, 100:23, 116:11  <b>add</b> [9] - 35:8, 35:9, 59:12, 68:7, 79:23, 96:2, 101:17, 105:8, 124:12  <b>adding</b> [1] - 93:23  <b>addition</b> [6] - 4:16, 75:16, 107:3, 111:22, 118:12, 123:12  <b>additional</b> [12] - 37:18, 50:13, 51:20, 59:12, 73:17, 84:13, 89:11, 93:24, 95:1, 104:20, 109:20, 116:18  <b>address</b> [27] - 5:4, 5:12, 8:1, 8:20, 11:14, 13:11, 19:2, 21:21, 22:14, 36:25, 37:3, 37:12, 46:1, 65:17, 65:18, 80:18, 89:4, 89:5, 91:19, 99:16, 103:9, 105:15, 108:10, 112:17, 115:7, 116:3  <b>addressed</b> [10] - 5:23, 39:10, 75:9, 85:11, 85:13, 87:22, 99:2, 99:10, 99:11, 117:19  <b>addresses</b> [2] - 5:17, 52:20  <b>addressing</b> [7] - 7:19, 40:25, 43:13, 59:10, 96:5, 112:24, 113:3  <b>adds</b> [2] - 94:13, 122:25  <b>adequate</b> [5] - 27:3, 53:6, 55:16, 55:21, 58:18  <b>adjourned</b> [1] - 125:21  <b>adjudicate</b> [1] - 79:17  <b>adjudicated</b> [2] - 41:1, 84:18  <b>administer</b> [1] - 116:3  <b>administrative</b> [2] - 41:25, 112:8  <b>admission</b> [1] - 32:22  <b>advice</b> [4] - 36:3, 36:6, 36:18, 99:17  <b>advised</b> [1] - 34:3  <b>advocating</b> [1] - 31:13  <b>affect</b> [2] - 48:8, 66:9  <b>affecting</b> [2] - 84:16, 84:19  <b>affects</b> [1] - 49:15  <b>affidavit</b> [1] - 86:20  <b>affidavits</b> [1] - 28:4  <b>afford</b> [1] - 17:6  <b>age</b> [1] - 98:13  <b>agency</b> [2] - 42:10, 43:9  <b>ago</b> [5] - 32:22, 61:16, 75:11, 104:14, 120:13  <b>agree</b> [8] - 21:16, 31:12, 44:21, 64:15, 67:18, 70:22, 116:11, 120:23  <b>agreeable</b> [1] - 68:4  <b>agreed</b> [3] - 6:17, 44:17, 45:6  <b>agreement</b> [1] - 8:12  <b>agreements</b> [1] - 86:7  <b>agrees</b> [1] - 44:20  <b>ahead</b> [6] - 4:19, 17:22, 25:9, 31:1, 117:23, 124:16</p>
<p>1 [2] - 1:7, 5:17  <b>1,500</b> [1] - 85:14  <b>10,000</b> [1] - 67:16  <b>100</b> [1] - 116:17  <b>10003</b> [1] - 1:21  <b>10020</b> [1] - 1:16  <b>10:00</b> [1] - 60:21  <b>10th</b> [1] - 1:15  <b>11</b> [2] - 30:16, 43:20  <b>110</b> [1] - 10:8  <b>11201</b> [1] - 2:5  <b>11:30</b> [1] - 1:8  <b>1211</b> [1] - 32:2  <b>12th</b> [1] - 109:8  <b>139</b> [1] - 9:24  <b>14</b> [4] - 12:21, 64:12, 107:14, 123:15  <b>14-day</b> [2] - 69:8, 123:18  <b>15</b> [1] - 95:6  <b>15th</b> [2] - 56:10, 79:6  <b>16</b> [2] - 14:1, 95:7  <b>16th</b> [2] - 14:8, 15:5  <b>18</b> [2] - 38:9, 38:10  <b>180</b> [2] - 9:24, 121:17  <b>18th</b> [2] - 56:10, 79:5  <b>19th</b> [4] - 9:23, 14:6, 14:8, 79:8</p>	<b>6</b>	
	<b>7</b>	
	<b>8</b>	
<b>2</b>	<b>9</b>	
<p>2 [6] - 5:17, 36:11, 36:12, 61:24, 65:6  <b>20-CV-1590(RPK)</b> [1] - 1:3  <b>20-CV-5090</b> [1] - 3:5  <b>2020</b> [4] - 1:7, 14:1, 18:20, 18:21  <b>24</b> [3] - 10:9, 44:6, 68:20  <b>25</b> [1] - 11:7  <b>26</b> [1] - 18:20  <b>26th</b> [3] - 14:11, 14:12, 14:20  <b>271</b> [1] - 2:4  <b>27th</b> [1] - 82:2  <b>29</b> [1] - 15:3</p>	<p>8 [1] - 32:17  <b>800</b> [1] - 15:13  <b>82</b> [1] - 118:4  <b>83</b> [1] - 118:4</p>	
<b>3</b>	<b>A</b>	
<p>3 [2] - 5:1, 30:19  <b>3-B</b> [2] - 63:18, 65:5  <b>30</b> [11] - 15:5, 16:21, 16:23, 18:3, 40:21, 40:23, 40:24, 41:13, 57:8, 57:9  <b>30-day</b> [4] - 17:25, 41:2, 41:4, 44:14  <b>31</b> [1] - 18:21  <b>3582</b> [2] - 38:9, 44:24  <b>3624</b> [1] - 38:10</p>	<p><b>a.m</b> [2] - 1:8, 60:20  <b>Abady</b> [1] - 3:9  <b>ABADY</b> [1] - 1:13  <b>aberration</b> [1] - 54:9  <b>ability</b> [6] - 41:12, 44:19, 47:13, 75:14, 85:19, 98:21  <b>able</b> [11] - 22:23, 24:4, 51:24, 61:4, 67:20, 71:7, 85:25, 90:3, 99:4, 115:7, 122:7  <b>above-entitled</b> [1] - 126:4  <b>absence</b> [1] - 16:6  <b>absent</b> [2] - 75:1, 83:3  <b>absolute</b> [1] - 63:14  <b>absolutely</b> [5] - 8:7, 38:1, 38:4, 59:11, 122:21  <b>access</b> [8] - 31:10, 32:19, 35:3, 51:20, 54:13, 73:19, 74:9, 74:16  <b>accommodations</b> [1] - 115:18  <b>according</b> [1] - 15:4  <b>account</b> [1] - 69:1  <b>accurate</b> [7] - 42:7, 52:22, 68:9, 108:18, 110:12, 120:10, 123:23  <b>acknowledge</b> [2] - 14:15, 19:16</p>	
<b>4</b>		
<p>4 [3] - 30:23, 31:2, 31:3  <b>40</b> [3] - 26:5, 26:6, 89:17  <b>40/60</b> [2] - 25:16, 25:20  <b>42</b> [2] - 63:16, 118:5</p>		

**Aid** [2] - 9:22, 95:13  
**aided** [1] - 2:19  
**ailment** [1] - 72:18  
**aimed** [1] - 36:2  
**air** [3] - 32:9, 32:13, 35:18  
**airborne** [1] - 32:6  
**akin** [3] - 91:10, 91:15, 102:20  
**al** [5] - 1:3, 1:7, 1:14, 1:20, 2:4  
**alarming** [2] - 12:4, 117:24  
**Alex** [6] - 3:17, 8:19, 13:13, 26:18, 74:23, 113:12  
**ALEXANDER** [1] - 1:22  
**allegation** [2] - 52:9, 60:9  
**allegations** [1] - 52:8  
**alleged** [5] - 75:11, 100:10, 100:11, 100:12  
**alleging** [3] - 37:9, 103:3, 103:5  
**alleviate** [1] - 74:4  
**alleviated** [1] - 46:16  
**ALLON** [1] - 2:6  
**Allon** [4] - 4:8, 124:15, 124:16, 124:20  
**allow** [3] - 29:14, 48:25, 81:1  
**allowed** [1] - 49:17  
**allows** [2] - 41:22, 77:22  
**alluded** [6] - 19:22, 61:24, 76:22, 89:1, 110:6, 111:12  
**alluding** [1] - 36:6  
**almost** [5] - 12:22, 46:24, 53:15, 79:7, 79:9  
**alone** [1] - 78:19  
**ALSO** [1] - 2:8  
**alter** [1] - 73:9  
**alternative** [19] - 20:1, 21:1, 22:9, 37:23, 38:23, 39:20, 39:24, 40:21, 42:25, 44:11, 45:17, 45:24, 56:12, 56:25, 57:3, 82:6, 82:15, 94:25, 107:8  
**alternatives** [1] - 39:3  
**ameliorate** [6] - 33:7, 71:8, 75:22, 77:12, 90:24, 94:9  
**ameliorated** [1] - 88:23  
**Amendment** [6] - 27:14, 69:19, 75:10, 75:15, 78:24, 80:25  
**amicus** [1] - 27:20  
**amount** [3] - 42:1, 49:2, 66:8  
**amounts** [1] - 32:12  
**analogized** [1] - 27:25  
**analogous** [4] - 20:10, 28:15, 34:3, 96:8  
**analyses** [1] - 78:9  
**analysis** [14] - 71:13, 78:3, 78:11, 78:16, 80:22, 80:25, 93:24, 100:8, 106:23, 112:6, 121:24, 122:15, 122:17, 122:20  
**analyze** [1] - 71:11  
**analyzed** [1] - 84:17  
**ANDREW** [1] - 1:17  
**Andrew** [2] - 3:18, 73:12  
**anecdotal** [1] - 51:12  
**answer** [38] - 10:24, 13:2, 16:4, 16:8, 17:3, 17:4, 17:17, 21:24, 22:1, 25:11, 29:5, 30:9, 40:22, 41:9, 43:14, 50:10, 51:24, 60:14, 62:5, 66:1, 66:2, 70:4, 70:8, 73:14, 73:24, 74:24, 78:2, 78:14, 82:5, 82:7, 82:8, 84:20, 97:17, 102:17, 109:12, 119:9, 122:1  
**answered** [1] - 65:5

**answering** [1] - 124:10  
**answers** [4] - 15:25, 16:1, 24:23, 114:15  
**Anthony** [2] - 2:15, 126:9  
**anticipate** [1] - 74:1  
**anyway** [1] - 82:13  
**apace** [1] - 84:2  
**apart** [3] - 45:18, 46:11, 72:5  
**apologize** [1] - 118:24  
**appealing** [1] - 113:8  
**appear** [4] - 3:3, 17:12, 33:8, 68:20  
**appearances** [3] - 3:7, 3:12, 4:2  
**appeared** [1] - 110:4  
**apple** [1] - 45:19  
**applicable** [2] - 62:1, 97:5  
**application** [12] - 23:8, 23:22, 23:24, 45:14, 57:18, 58:2, 81:11, 81:20, 84:10, 103:16, 105:13  
**applications** [9] - 85:6, 85:11, 85:13, 85:15, 96:23, 98:19, 103:9, 106:4, 125:2  
**applies** [2] - 62:2, 68:2  
**apply** [2] - 44:14, 85:22  
**appoint** [7] - 57:19, 73:23, 79:18, 86:23, 112:2, 112:20, 121:18  
**appointed** [3] - 73:18, 77:17, 104:20  
**appointing** [2] - 73:14, 112:22  
**appointment** [4] - 9:4, 86:16, 87:16, 121:3  
**appoints** [1] - 87:4  
**appreciate** [10] - 19:16, 21:8, 56:14, 57:15, 68:7, 83:24, 108:5, 125:14, 125:15, 125:16  
**approach** [6] - 11:8, 17:9, 70:16, 70:17, 77:21, 77:22  
**appropriate** [24] - 18:23, 21:13, 21:16, 21:20, 28:12, 29:6, 34:19, 44:21, 46:6, 61:9, 63:1, 70:17, 76:1, 76:4, 82:18, 99:5, 111:5, 113:4, 117:15, 119:18, 120:3, 121:9, 121:21  
**appropriateness** [1] - 120:19  
**approximate** [1] - 25:17  
**April** [3] - 1:7, 56:10  
**area** [5] - 12:11, 17:17, 54:5, 80:16, 99:13  
**areas** [5] - 10:13, 33:2, 51:25, 52:7, 80:15  
**argue** [2] - 24:3, 24:4  
**argued** [1] - 23:15  
**arguing** [1] - 44:22  
**argument** [15] - 27:17, 27:19, 42:24, 53:5, 68:1, 71:15, 89:2, 91:22, 92:20, 99:12, 102:19, 102:20, 110:19, 111:2, 111:5  
**arguments** [3] - 100:14, 104:1, 104:2  
**arm** [1] - 66:23  
**articulate** [1] - 112:21  
**articulated** [3] - 72:11, 113:10, 114:22  
**aside** [1] - 52:8  
**aspect** [2] - 28:5, 72:22  
**asserted** [3] - 18:7, 93:2, 108:16  
**asserting** [5] - 43:4, 44:18, 57:8, 92:9  
**assertion** [4] - 49:25, 94:22, 118:18, 120:5  
**assertions** [2] - 47:14, 48:10  
**asserts** [1] - 15:9

**assess** [2] - 64:4, 94:24  
**assessing** [1] - 93:5  
**assigned** [2] - 31:3, 33:2  
**assist** [2] - 83:12, 86:9  
**assistance** [1] - 76:9  
**Assistant** [1] - 2:7  
**Associate** [2] - 4:17, 52:12  
**associate** [2] - 5:1, 61:24  
**associated** [2] - 28:18, 95:2  
**assume** [2] - 41:13, 122:1  
**assumption** [2] - 106:15, 119:23  
**asthma** [2] - 56:22  
**asthmatic** [2] - 54:6, 55:16  
**asymptomatic** [10] - 11:7, 12:20, 61:14, 63:3, 63:8, 63:20, 65:12, 75:20, 102:1, 123:14  
**at-risk** [2] - 26:13, 74:7  
**attached** [2] - 36:13, 36:15  
**attack** [1] - 56:19  
**attacks** [1] - 56:22  
**attempt** [1] - 39:2  
**attempting** [1] - 5:16  
**attempts** [4] - 82:5, 102:9, 105:14, 105:20  
**attention** [8] - 32:5, 55:14, 61:8, 74:16, 74:17, 86:6, 104:14, 108:4  
**attorney** [1] - 10:22  
**ATTORNEY** [1] - 2:2  
**Attorney** [3] - 2:3, 19:24, 93:6  
**Attorney's** [8] - 4:5, 4:8, 4:9, 37:1, 83:14, 86:7, 124:21, 125:1  
**attorneys** [3] - 16:25, 83:24, 84:9  
**Attorneys** [2] - 1:14, 2:7  
**attributes** [1] - 72:9  
**authority** [1] - 112:3  
**automatic** [1] - 125:8  
**automatically** [1] - 65:9  
**availability** [1] - 22:8  
**available** [15] - 11:25, 12:1, 22:12, 22:14, 26:23, 37:23, 38:23, 38:24, 42:25, 51:8, 55:20, 59:20, 98:6, 98:7, 107:9  
**Avenue** [1] - 1:15  
**avenue** [1] - 20:1  
**avenues** [4] - 21:1, 31:14, 39:20, 45:25  
**avert** [1] - 15:18  
**averted** [2] - 13:18, 35:13  
**avoid** [1] - 114:4  
**awaiting** [1] - 26:11  
**awards** [1] - 88:9  
**aware** [12] - 7:20, 9:13, 32:9, 60:16, 69:3, 96:22, 103:18, 108:17, 115:10, 115:14, 116:3, 117:8  
**awareness** [4] - 74:1, 99:8, 115:10, 116:5

**B**

**background** [3] - 6:2, 13:15, 45:2  
**backtracking** [1] - 61:1  
**backup** [1] - 67:16  
**bad** [2] - 82:12, 91:5  
**badly** [1] - 79:20  
**bail** [31] - 16:4, 17:2, 17:6, 17:17, 21:2, 21:18, 21:23, 21:25, 23:2, 23:8, 23:14,

(Bail - charge)

23:22, 23:24, 24:2, 24:5, 24:10, 24:22, 25:3, 39:6, 76:22, 78:9, 81:19, 85:11, 88:7, 88:14, 96:23, 97:3, 98:19, 103:9, 125:2

**Bail** [2] - 21:11, 21:12

**balance** [2] - 24:7, 102:6

**balanced** [1] - 23:16

**balances** [1] - 23:17

**balancing** [3] - 78:13, 94:4, 94:11

**bar** [2] - 51:19, 121:1

**Barr** [2] - 19:24, 42:20

**base** [1] - 100:13

**based** [8] - 15:14, 44:25, 47:8, 64:6, 81:14, 81:18, 84:11, 112:16

**basic** [6] - 13:17, 39:25, 48:10, 52:8, 92:1, 92:6

**basis** [9] - 9:5, 34:1, 38:6, 39:8, 46:24, 52:18, 99:7, 109:2, 118:20

**bathroom** [1] - 34:11

**bear** [1] - 13:14

**bearing** [1] - 38:8

**bears** [1] - 13:23

**become** [1] - 69:7

**becomes** [1] - 77:8

**becoming** [1] - 57:23

**beds** [1] - 55:3

**BEFORE** [1] - 1:11

**beforehand** [1] - 109:3

**beginning** [1] - 31:5

**behalf** [2] - 4:5, 4:6

**behind** [2] - 45:11, 76:8

**belabor** [1] - 75:5

**believes** [1] - 46:14

**belonging** [1] - 97:6

**benefits** [1] - 51:8

**BENJAMIN** [1] - 1:18

**best** [7] - 12:17, 47:1, 60:8, 65:16, 71:5, 73:14, 116:5

**BETSY** [1] - 1:22

**Betsy** [1] - 3:22

**better** [4] - 49:14, 71:8, 119:10

**between** [11] - 36:18, 55:19, 58:1, 66:1, 66:21, 66:22, 69:9, 96:12, 96:19, 121:23, 122:6

**beyond** [3] - 46:18, 98:12, 115:12

**big** [3] - 58:15, 96:11, 96:15

**bit** [6] - 13:15, 21:5, 53:7, 53:16, 91:25, 119:10

**bite** [1] - 45:19

**blackout** [3] - 32:10, 54:12, 56:3

**blankets** [1] - 56:4

**bonds** [2] - 22:19, 22:20

**BOP** [79] - 11:1, 11:18, 11:23, 14:1, 14:11, 14:16, 15:1, 15:3, 15:4, 15:9, 15:11, 15:14, 17:11, 18:21, 19:4, 19:14, 19:22, 19:25, 20:3, 27:4, 29:7, 33:6, 35:22, 35:24, 37:17, 41:11, 41:13, 41:22, 42:2, 42:22, 43:8, 43:9, 43:14, 43:21, 56:23, 58:3, 61:14, 61:25, 62:13, 62:20, 63:2, 63:7, 63:8, 65:23, 68:16, 69:2, 69:4, 69:18, 70:20, 70:24, 73:16, 81:9, 81:12, 83:8, 83:25, 88:17, 89:5, 89:10, 89:11, 90:11, 93:3, 93:5, 93:20, 96:20, 97:15, 98:14, 100:4, 102:4, 105:15, 105:23, 106:12, 107:10, 108:21, 110:8, 112:3, 112:8, 124:24

**BOP's** [8] - 11:3, 11:8, 12:3, 12:19, 69:9, 73:9, 99:25, 107:6

**bracketing** [1] - 21:5

**Branch** [1] - 112:9

**break** [1] - 70:5

**breath** [1] - 67:9

**Brennan** [1] - 90:19

**brief** [8] - 4:18, 5:16, 8:8, 8:18, 37:17, 105:10, 110:18, 112:10

**briefing** [2] - 8:7, 85:21

**briefly** [1] - 30:20

**Brinckerhoff** [1] - 3:9

**BRINCKERHOFF** [1] - 1:13

**bring** [7] - 21:12, 44:14, 44:17, 57:19, 61:7, 104:13, 111:24

**bringing** [4] - 21:11, 21:13, 21:17, 77:3

**broad** [2] - 9:9, 114:1

**broader** [2] - 43:18, 75:3

**Brodie** [1] - 6:15

**broken** [1] - 21:19

**Brooklyn** [9] - 1:5, 2:5, 49:1, 50:1, 51:5, 55:1, 69:5, 108:19, 110:15

**brought** [8] - 49:7, 49:8, 49:18, 51:13, 69:10, 80:10, 110:21, 110:22

**buckets** [1] - 47:11

**Building** [1] - 83:21

**building** [5] - 34:14, 58:10, 74:5, 106:25, 107:4

**bunch** [5] - 3:6, 7:23, 26:10, 75:7, 113:1

**burden** [2] - 87:25, 108:2

**Bureau** [9] - 2:10, 2:11, 4:7, 9:16, 13:21, 14:3, 41:9, 42:10, 42:18

**bureaucracy** [1] - 57:16

**busy** [1] - 85:7

**butcher** [2] - 100:21, 103:3

**butchered** [1] - 118:25

**buy** [2] - 33:23, 56:1

**BY** [3] - 1:16, 1:22, 2:5

**C**

**Cadman** [1] - 2:4

**Cadre** [1] - 25:13

**cadre** [1] - 26:9

**canning** [1] - 99:10

**cannot** [9] - 11:10, 12:8, 12:17, 12:22, 56:1, 72:4, 87:21, 107:25, 111:7

**capacity** [2] - 12:14, 51:14

**Caproni** [1] - 109:7

**CARDOZO** [1] - 1:18

**care** [20] - 12:8, 34:22, 49:16, 50:1, 50:23, 51:3, 51:4, 53:5, 53:6, 54:11, 54:13, 55:21, 59:17, 60:7, 60:8, 61:9, 80:7, 80:8, 80:11, 80:12

**careful** [3] - 6:7, 49:3, 108:4

**carve** [2] - 103:3, 103:4

**case** [62] - 3:25, 6:13, 6:14, 6:16, 6:24, 7:6, 7:7, 7:19, 8:2, 9:18, 9:23, 13:18, 13:25, 14:10, 16:10, 16:12, 20:18, 22:1, 23:9, 23:10, 24:16, 24:23, 28:1, 29:14, 29:19, 37:9, 41:5, 41:13, 41:20, 43:5, 50:25, 53:1, 53:14, 65:15, 73:7, 75:25, 77:2, 79:11, 81:12, 86:8, 86:24, 87:3, 87:6, 88:9, 90:10, 92:4, 96:25, 97:20,

100:20, 102:20, 103:2, 104:11, 104:12, 111:22, 112:7, 112:21, 116:21, 117:13, 121:13, 124:6

**cases** [43] - 14:3, 14:9, 14:15, 14:24, 15:8, 15:13, 17:5, 23:14, 24:6, 24:22, 31:19, 40:23, 44:12, 57:9, 57:11, 57:12, 58:5, 73:3, 85:3, 90:7, 92:18, 92:24, 96:5, 96:20, 97:5, 97:6, 97:18, 97:21, 98:1, 98:2, 103:8, 103:10, 103:22, 103:23, 103:24, 104:2, 104:6, 106:6, 106:12, 125:5, 125:6

**catch** [1] - 87:19

**catch-all** [1] - 87:19

**catches** [1] - 57:24

**categories** [5] - 70:5, 87:11, 98:5, 98:21, 114:1

**category** [3] - 71:5, 77:18, 95:5

**caught** [1] - 57:2

**CAUSE** [1] - 1:10

**caused** [1] - 92:22

**CDC** [23] - 11:6, 33:17, 58:13, 58:16, 61:16, 61:25, 62:4, 62:12, 62:13, 62:14, 62:20, 63:1, 65:17, 65:18, 65:21, 66:20, 66:23, 68:15, 68:18, 74:6, 98:13, 109:10

**cell** [17] - 11:19, 11:20, 12:21, 31:7, 31:16, 32:16, 33:10, 35:2, 35:4, 54:24, 56:23, 63:21, 64:8, 66:21, 80:3, 100:3

**celled** [5] - 12:23, 31:5, 63:13, 64:18, 65:9

**Celli** [1] - 3:9

**CELLI** [1] - 1:13

**cellmates** [1] - 49:19

**cells** [24] - 10:16, 11:15, 12:11, 31:4, 31:9, 31:11, 31:22, 32:13, 32:15, 33:22, 48:3, 48:23, 52:6, 55:4, 56:4, 58:17, 61:15, 63:4, 63:9, 64:12, 65:24, 65:25, 66:21, 118:16

**Center** [1] - 12:13

**center** [1] - 51:7

**central** [2] - 62:24, 68:16

**certain** [11] - 10:24, 27:1, 42:1, 51:1, 57:9, 68:5, 70:16, 77:11, 102:3, 110:8, 116:3

**certainly** [11] - 6:22, 23:13, 30:7, 37:4, 51:10, 51:13, 67:6, 75:13, 100:5, 112:13, 125:4

**CERTIFICATE** [1] - 126:2

**certify** [1] - 126:3

**cetera** [5] - 31:10, 31:24, 42:15, 60:13, 87:14

**challenge** [9] - 30:5, 30:6, 36:17, 43:6, 49:25, 51:9, 51:11, 89:3, 104:9

**challenges** [2] - 101:10, 103:13

**challenging** [1] - 116:25

**chambers** [2] - 5:4, 5:11

**chance** [5] - 8:5, 8:6, 30:20, 95:8, 113:10

**change** [4] - 47:7, 70:15, 71:6, 71:7

**changed** [2] - 43:10, 107:25

**changing** [5] - 10:5, 20:13, 28:17, 46:23, 97:24

**characterization** [3] - 7:10, 68:8, 115:5

**characterize** [1] - 55:8

**charge** [1] - 10:22

charges [1] - 122:11  
**Charles** [1] - 92:11  
**chart** [1] - 95:14  
**checked** [1] - 9:23  
**chemicals** [1] - 55:18  
**chief** [1] - 26:1  
**Chief** [6] - 4:8, 4:9, 109:5, 109:7, 109:14, 109:18  
**CHO** [29] - 2:5, 4:4, 4:25, 5:16, 37:1, 39:22, 40:11, 41:2, 44:22, 45:10, 45:16, 46:2, 46:21, 61:22, 67:25, 69:21, 69:25, 96:11, 97:11, 97:23, 98:9, 99:24, 100:14, 100:25, 101:13, 124:14, 124:16, 125:12, 125:19  
**Cho** [5] - 4:4, 37:1, 41:23, 61:22, 67:25  
**Cho's** [1] - 44:8  
**chronic** [1] - 26:15  
**CHUNN** [1] - 1:3  
**Chunn** [14] - 1:14, 1:20, 3:5, 8:25, 19:10, 30:11, 30:14, 43:25, 56:8, 56:9, 56:16, 57:24, 79:5, 111:13  
**circle** [1] - 21:1  
**Circuit** [1] - 28:7  
**circuit** [1] - 81:17  
**Circuit's** [1] - 29:19  
**circumstance** [2] - 24:4, 119:15  
**circumstances** [19] - 17:5, 17:8, 21:23, 23:21, 27:2, 28:13, 29:25, 31:8, 42:21, 43:3, 48:6, 54:12, 56:14, 70:18, 70:20, 82:23, 113:6, 114:14, 119:5  
**cite** [3] - 103:21, 104:4, 113:18  
**cited** [4] - 13:25, 87:7, 92:17, 110:11  
**cites** [2] - 103:23, 104:25  
**citing** [2] - 26:4, 29:23  
**city** [2] - 9:15  
**civil** [1] - 111:15  
**CIVIL** [1] - 1:10  
**Civil** [2] - 4:8, 109:7  
**claim** [22] - 18:12, 22:10, 22:23, 23:7, 40:13, 44:15, 44:18, 69:15, 70:7, 71:14, 72:2, 72:7, 72:8, 72:11, 72:12, 72:13, 75:15, 76:21, 77:3, 78:18, 88:10, 94:3  
**claimed** [1] - 37:25  
**claims** [12] - 21:11, 21:12, 21:14, 21:17, 53:4, 59:8, 71:18, 104:7, 104:8, 104:23, 112:24  
**clarify** [2] - 30:10, 119:10  
**class** [13] - 9:7, 9:10, 24:23, 54:4, 72:17, 75:3, 75:7, 80:6, 85:9, 86:25, 112:25, 113:4, 113:21  
**clean** [9] - 10:13, 33:2, 52:6, 52:15, 52:17, 52:25, 55:15, 55:17  
**cleaning** [8] - 52:3, 52:4, 52:7, 52:10, 52:15, 52:17, 52:24, 54:5  
**clear** [8] - 25:23, 28:6, 59:19, 59:21, 60:22, 63:15, 95:19, 105:19  
**clerks** [1] - 5:13  
**clients** [3] - 27:11, 84:9, 120:21  
**climate** [1] - 78:8  
**clinic** [1] - 80:10  
**clinical** [2] - 120:1, 120:9  
**clock** [1] - 123:18  
**close** [8] - 21:1, 34:7, 34:13, 48:7, 58:25, 59:7, 59:11, 59:14  
**closed** [1] - 79:5  
**closely** [2] - 29:15, 104:10

**closer** [1] - 71:22  
**closest** [2] - 104:5, 104:6  
**closing** [1] - 108:8  
**cognizable** [2] - 20:22, 27:14  
**colleague** [7] - 8:19, 12:24, 13:18, 20:19, 35:13, 94:4, 115:13  
**colleagues** [1] - 16:9  
**colloquy** [1] - 117:21  
**Colorado** [1] - 103:17  
**Columbia** [2] - 2:13, 4:11  
**combination** [1] - 76:17  
**comfortable** [1] - 42:16  
**coming** [11] - 4:21, 10:20, 34:14, 63:18, 64:23, 65:1, 106:25, 107:23, 110:5, 123:5, 124:6  
**comments** [2] - 68:8, 108:8  
**commissary** [2] - 32:19, 56:1  
**committee** [1] - 9:6  
**common** [6] - 22:20, 52:7, 71:21, 84:16, 84:19, 99:21  
**communicate** [1] - 13:9  
**communicated** [2] - 92:16, 109:17  
**communications** [1] - 10:6  
**community** [23] - 34:9, 34:19, 34:24, 35:5, 36:2, 38:16, 38:19, 39:9, 45:3, 46:22, 55:2, 62:25, 78:7, 79:3, 93:5, 93:8, 93:18, 95:17, 96:16, 96:17, 111:3, 111:4  
**comparable** [1] - 34:25  
**compare** [1] - 34:18  
**compared** [1] - 89:18  
**compassionate** [39] - 16:3, 16:16, 16:17, 16:19, 16:25, 17:2, 17:17, 17:24, 18:12, 18:20, 19:5, 19:7, 19:9, 20:5, 20:24, 38:9, 39:6, 40:2, 40:9, 40:19, 41:24, 44:13, 44:15, 44:18, 44:21, 44:24, 45:9, 45:13, 58:2, 76:23, 81:10, 81:20, 96:23, 97:4, 98:6, 98:19, 103:10, 107:12, 110:21  
**compelling** [7] - 23:5, 23:8, 23:10, 23:15, 24:4, 83:3, 110:19  
**competing** [2] - 45:23, 59:8  
**compiled** [1] - 86:10  
**compiling** [1] - 108:22  
**complaining** [1] - 116:1  
**complaint** [1] - 59:23  
**complaints** [1] - 61:4  
**complete** [2] - 101:1, 102:14  
**completely** [2] - 34:6, 44:8  
**complex** [2] - 70:12, 87:3  
**complexities** [1] - 86:24  
**compliance** [1] - 61:21  
**compliant** [1] - 62:20  
**complicated** [1] - 125:16  
**complications** [1] - 94:21  
**complying** [1] - 63:4  
**compromised** [1] - 81:23  
**Computer** [1] - 2:19  
**Computer-aided** [1] - 2:19  
**computerized** [1] - 2:18  
**computers** [1] - 52:5  
**conceding** [1] - 103:1  
**conceive** [1] - 88:5  
**concern** [7] - 38:15, 52:2, 53:7, 64:6, 79:24, 93:18, 110:25

**concerned** [4] - 32:20, 38:14, 63:12, 80:16  
**concerning** [7] - 12:4, 47:18, 54:25, 65:19, 82:15, 117:6, 121:14  
**concerns** [19] - 22:14, 33:14, 37:13, 75:8, 75:17, 75:18, 75:19, 77:6, 79:13, 81:14, 102:6, 110:8, 111:11, 111:13, 111:17, 111:18, 120:15  
**concession** [1] - 111:8  
**conclusions** [1] - 68:11  
**condition** [10] - 27:23, 29:10, 45:3, 48:16, 50:20, 55:16, 57:25, 92:12, 94:9  
**conditional** [1] - 107:11  
**conditions** [67] - 11:4, 13:6, 19:19, 20:13, 20:16, 24:5, 26:16, 26:24, 27:5, 27:13, 28:18, 28:22, 34:24, 35:23, 38:11, 40:5, 46:7, 46:10, 46:15, 46:22, 47:4, 47:18, 47:21, 50:24, 51:23, 56:18, 58:24, 59:7, 66:19, 70:8, 71:21, 72:4, 73:9, 75:4, 76:6, 76:13, 76:17, 76:18, 77:11, 77:12, 77:19, 78:25, 79:16, 80:24, 81:23, 83:3, 84:16, 84:25, 88:15, 88:18, 89:19, 89:22, 91:2, 92:6, 92:8, 92:19, 92:22, 93:21, 96:5, 97:1, 97:9, 97:16, 97:20, 97:24, 98:14, 108:1, 115:20  
**conducted** [1] - 53:1  
**conducting** [1] - 61:3  
**confer** [1] - 43:13  
**conference** [2] - 4:20, 4:21  
**confidence** [2] - 14:25, 15:1  
**confident** [1] - 15:7  
**confined** [1] - 80:1  
**confinement** [22] - 19:6, 19:12, 19:23, 20:10, 20:12, 28:14, 30:15, 38:10, 38:21, 41:25, 42:3, 46:7, 46:11, 46:15, 58:3, 73:9, 88:15, 92:7, 96:5, 97:17, 107:25, 111:15  
**confines** [1] - 38:17  
**confirm** [3] - 26:2, 29:4, 115:23  
**confirmation** [2] - 63:14, 74:13  
**confirmed** [3] - 14:3, 100:16, 121:13  
**conflated** [1] - 64:8  
**conflict** [1] - 69:9  
**conflicting** [1] - 93:13  
**confusing** [1] - 65:11  
**congregate** [4] - 66:8, 66:11, 66:12, 66:13  
**congressional** [1] - 16:13  
**conscious** [6] - 89:8, 89:12, 91:1, 91:2, 91:15, 91:21  
**consent** [1] - 7:13  
**consenting** [1] - 125:4  
**consents** [1] - 6:21  
**consequences** [1] - 60:5  
**consider** [6] - 38:20, 43:21, 69:4, 76:23, 78:19, 78:20  
**consideration** [3] - 7:9, 68:23, 93:11  
**considerations** [5] - 23:23, 77:20, 80:25, 81:1, 81:2  
**considered** [3] - 22:9, 24:6, 93:16  
**considering** [5] - 19:25, 77:17, 96:10, 125:3, 125:5  
**consistent** [6] - 8:17, 51:18, 58:16, 94:18, 105:18, 117:18  
**consistently** [1] - 13:22

(constant delays)

**constant** [1] - 10:6  
**constantly** [3] - 47:8, 97:24, 125:2  
**constitute** [2] - 94:1, 125:9  
**constitution** [4] - 24:1, 28:9, 28:18, 64:11  
**constitutional** [7] - 37:9, 46:10, 58:24, 72:10, 72:14, 90:12, 100:10  
**consult** [1] - 121:19  
**consults** [3] - 62:13, 68:18, 125:1  
**consumption** [1] - 33:17  
**contact** [8] - 10:11, 31:14, 33:19, 64:17, 64:20, 66:15, 85:18  
**contacts** [1] - 99:19  
**contemplates** [1] - 100:21  
**contention** [2] - 77:1, 79:1  
**contents** [1] - 61:19  
**contest** [1] - 109:2  
**context** [13] - 19:17, 43:8, 54:10, 60:10, 75:16, 81:4, 82:19, 90:20, 96:15, 104:23, 113:8, 113:17, 122:18  
**contexts** [3] - 60:10, 72:24, 114:12  
**continue** [3] - 31:23, 33:4, 91:20  
**Continued** [1] - 2:1  
**continued** [1] - 17:11  
**continues** [1] - 106:7  
**continuing** [2] - 47:14, 108:2  
**contours** [2] - 76:21, 78:18  
**contractors** [1] - 50:14  
**contradictory** [1] - 65:14  
**contrary** [1] - 17:16  
**control** [3] - 35:1, 35:16, 37:18  
**convene** [1] - 9:5  
**conversation** [2] - 3:5, 43:19  
**conveyed** [1] - 98:18  
**convicted** [5] - 17:3, 17:4, 21:6, 96:18, 104:8  
**conviction** [3] - 38:7, 39:8, 79:11  
**cooking** [1] - 32:25  
**copy** [1] - 67:7  
**coronary** [1] - 56:18  
**coronavirus** [11] - 64:18, 95:11, 99:16, 103:13, 106:16, 106:21, 107:2, 107:4, 118:2, 118:9, 118:11  
**corpus** [1] - 44:7  
**correct** [2] - 25:19, 29:9, 50:4, 50:7, 50:18, 54:14, 62:22, 64:2, 74:21, 97:23, 99:6, 101:9, 103:6, 108:13, 108:17, 115:13, 117:5, 119:13, 122:18, 123:1, 126:3  
**correction** [2] - 42:4, 66:24  
**correctional** [18] - 9:15, 17:15, 34:6, 34:10, 34:16, 34:22, 35:12, 58:14, 58:17, 61:13, 61:17, 62:11, 62:12, 65:22, 72:24, 79:19, 83:12, 121:4  
**corroboration** [1] - 106:6  
**cough** [1] - 119:7  
**coughing** [2] - 118:16, 119:16  
**counsel** [19] - 3:11, 3:17, 3:18, 25:24, 42:11, 43:9, 66:4, 66:6, 66:16, 67:8, 73:19, 102:17, 104:20, 116:7, 118:23, 119:11, 121:7, 121:22, 122:24  
**counsel's** [1] - 68:1  
**countervailing** [2] - 82:11, 93:11  
**country** [6] - 13:23, 14:16, 15:3, 15:10, 23:14, 82:22  
**counts** [1] - 15:1

**couple** [9] - 5:24, 17:20, 22:4, 52:1, 53:22, 56:6, 112:15, 122:24, 124:22  
**course** [6] - 19:15, 48:25, 66:15, 91:14, 121:7, 125:8  
**court** [17] - 15:17, 18:2, 38:20, 39:2, 39:14, 41:12, 41:19, 41:20, 44:19, 67:10, 82:24, 85:11, 85:22, 93:4, 110:22, 112:10, 121:10  
**Court** [95] - 2:15, 2:16, 3:15, 4:15, 6:5, 6:9, 7:8, 7:14, 8:18, 8:20, 9:13, 9:20, 10:4, 13:1, 13:10, 13:14, 14:12, 15:19, 15:20, 20:9, 20:12, 20:23, 23:4, 23:9, 27:21, 28:7, 29:1, 29:17, 29:20, 30:2, 37:7, 38:11, 39:12, 40:12, 40:16, 40:20, 40:23, 41:19, 46:9, 46:13, 49:14, 51:23, 52:11, 55:8, 57:4, 57:8, 57:10, 57:18, 57:20, 67:5, 67:7, 69:11, 70:6, 70:16, 71:1, 73:21, 73:23, 73:24, 76:14, 76:15, 76:23, 77:14, 77:15, 78:20, 79:17, 81:10, 83:2, 83:9, 83:23, 84:3, 84:11, 85:20, 87:1, 87:2, 87:7, 87:25, 88:3, 88:13, 88:14, 88:19, 88:20, 98:25, 103:21, 107:16, 108:20, 114:7, 116:19, 121:17, 121:20, 122:7, 122:8, 122:12, 124:22, 126:10  
**Court's** [6] - 10:24, 13:16, 15:24, 66:2, 87:1, 88:1  
**Courthouse** [1] - 1:5  
**courthouse** [1] - 57:22  
**Courts** [1] - 24:6  
**courts** [16] - 15:10, 20:11, 23:15, 24:7, 39:1, 39:7, 39:14, 40:15, 56:3, 86:23, 87:19, 93:23, 96:15, 103:22, 108:20  
**cover** [2] - 5:24, 19:21  
**covering** [1] - 5:22  
**covers** [1] - 45:24  
**COVID** [13] - 18:12, 22:14, 22:23, 23:7, 23:15, 32:24, 43:5, 89:16, 89:18, 91:9, 91:12, 103:25, 122:4  
**COVID-19** [11] - 14:3, 14:15, 14:19, 16:24, 37:11, 49:6, 51:1, 57:24, 89:20, 114:11, 117:18  
**cracks** [1] - 7:21  
**create** [3] - 83:15, 105:23, 109:21  
**created** [8] - 98:10, 105:22, 105:24, 108:15, 108:18, 109:19, 114:23, 115:6  
**creating** [4] - 62:14, 66:21, 92:18, 109:2  
**CRI** [2] - 2:15, 126:9  
**Criminal** [2] - 4:9, 124:21  
**criminal** [6] - 38:7, 42:15, 85:3, 96:14, 111:9, 111:16  
**crisis** [15] - 10:2, 12:6, 16:24, 19:18, 23:15, 24:11, 24:12, 32:10, 66:25, 72:1, 74:4, 82:21, 86:5, 99:17, 105:18  
**criteria** [3] - 81:15, 109:9, 117:9  
**critical** [7] - 11:17, 12:3, 16:2, 66:4, 67:15, 75:15, 86:12  
**Cross** [2] - 18:8, 25:8  
**CRR** [2] - 2:15, 126:9  
**cure** [1] - 90:14  
**curious** [1] - 79:3  
**current** [10] - 19:17, 27:2, 45:2, 49:15, 50:4, 66:9, 66:10, 70:7, 70:20, 112:1  
**cuspid** [1] - 82:13  
**custody** [17] - 15:3, 15:7, 29:20, 29:21,

29:24, 29:25, 30:7, 30:8, 31:18, 36:1, 46:4, 46:5, 46:8, 79:12, 88:17, 94:20, 95:17  
**cut** [3] - 22:5, 66:11

---

**D**

---

**daily** [4] - 46:24, 74:15, 99:7, 125:10  
**danger** [7] - 78:7, 78:8, 82:2, 111:3, 111:4, 120:25, 125:9  
**dangerous** [5] - 17:14, 81:24, 82:12, 83:3, 108:3  
**dangerousness** [3] - 76:24, 77:6, 81:1  
**Daniel** [1] - 104:19  
**data** [1] - 109:24  
**date** [2] - 9:19, 116:18  
**dates** [5] - 57:1, 59:1, 79:1, 94:8, 107:23  
**days** [19] - 12:21, 16:21, 16:23, 18:3, 19:9, 19:16, 40:21, 40:23, 40:24, 41:13, 57:8, 57:9, 64:12, 85:16, 107:13, 107:14, 123:15  
**deal** [2] - 17:8, 73:19  
**dealing** [7] - 5:2, 38:9, 38:10, 39:11, 39:15, 46:3, 96:25  
**dealt** [1] - 77:11  
**death** [5] - 15:7, 32:5, 89:17, 92:13, 94:1  
**decency** [1] - 67:17  
**decide** [3] - 77:12, 85:7, 98:15  
**decides** [1] - 107:10  
**deciding** [2] - 38:21, 81:3  
**decision** [7] - 29:19, 73:25, 88:8, 96:6, 112:2, 122:8  
**decision-making** [1] - 112:2  
**decisions** [8] - 38:12, 45:23, 68:18, 96:4, 112:7, 112:8, 112:9, 119:4  
**declaration** [2] - 4:17, 4:24, 4:25, 5:7, 9:21, 30:21, 31:25, 34:1, 36:9, 36:14, 46:19, 47:7, 49:22, 51:19, 52:12, 61:24, 62:9, 63:17, 71:20, 95:15, 105:16  
**declarations** [4] - 13:5, 17:13, 33:15, 122:9  
**decrease** [1] - 31:4  
**decreased** [1] - 32:5  
**decreases** [1] - 70:23  
**deemed** [1] - 124:23  
**deep** [1] - 52:25  
**defendant** [2] - 78:5, 111:14  
**defendants** [4] - 1:8, 13:25, 96:14, 111:9  
**Defenders** [12] - 2:9, 6:14, 7:7, 10:23, 18:9, 30:15, 43:20, 83:13, 90:23, 98:18, 98:25, 105:14  
**Defenders's** [1] - 44:1  
**defense** [3] - 16:25, 23:5, 125:6  
**defer** [1] - 74:23  
**deficient** [1] - 96:9  
**definition** [3] - 23:22, 35:12, 72:14  
**degree** [7] - 15:25, 26:21, 29:5, 29:11, 71:1, 74:23, 91:16  
**Deidre** [3] - 10:21, 25:11, 25:22  
**Deirdre** [1] - 2:9  
**delay** [3] - 85:12, 93:2, 93:10  
**delays** [1] - 85:15

**deliberate** [8] - 37:9, 88:25, 90:16, 90:18, 91:3, 92:2, 94:13, 102:24  
**deliberately** [3] - 59:6, 90:8, 102:10  
**deliberative** [2] - 73:15, 82:25  
**deliver** [1] - 10:12  
**delivering** [1] - 82:1  
**denial** [2] - 18:3, 107:16  
**denied** [4] - 30:17, 40:20, 97:2, 107:15  
**denies** [1] - 45:22  
**denominator** [1] - 116:10  
**density** [2] - 34:16, 35:17  
**deny** [3] - 26:2, 27:22, 66:16  
**department** [3] - 18:24, 82:18, 119:25  
**Department** [2] - 2:12, 4:10  
**Deputy** [2] - 4:8, 4:9  
**DEREK** [1] - 1:7  
**Derek** [1] - 2:4  
**designate** [1] - 6:24  
**designated** [3] - 6:13, 11:3, 26:12  
**designation** [2] - 6:22, 26:11  
**designed** [1] - 48:25  
**detail** [1] - 49:20  
**detailed** [2] - 112:5, 122:8  
**details** [5] - 29:13, 45:11, 49:15, 105:14, 111:16  
**detained** [1] - 104:16  
**detainee** [1] - 23:3  
**detainees** [6] - 21:2, 21:4, 23:12, 39:6, 103:14, 119:11  
**detention** [14] - 20:13, 36:19, 40:9, 41:16, 41:21, 41:22, 65:21, 96:12, 96:13, 97:7, 97:14, 97:15, 103:9  
**determination** [7] - 41:11, 42:17, 42:22, 44:25, 88:7, 120:9, 122:12  
**determinations** [4] - 40:15, 45:1, 110:20, 112:12  
**determine** [1] - 119:20  
**determined** [2] - 42:14, 93:6  
**determines** [1] - 23:4  
**develop** [1] - 123:16  
**developed** [2] - 98:24, 111:22  
**developing** [2] - 27:8, 97:1  
**development** [2] - 87:13, 110:7  
**diabetes** [1] - 79:8  
**diagnosed** [2] - 9:18, 12:21  
**dialing** [1] - 3:2  
**didn't** [1] - 104:7  
**die** [1] - 95:8  
**died** [1] - 31:18  
**difference** [7] - 28:6, 36:18, 97:15, 121:23, 122:3, 122:6  
**different** [28] - 34:14, 35:21, 36:20, 53:20, 55:13, 57:21, 64:22, 84:18, 85:6, 86:6, 87:9, 87:10, 92:1, 95:16, 97:7, 97:10, 97:15, 97:21, 98:1, 100:16, 100:17, 102:2, 106:5, 118:24, 119:3, 119:5, 119:15  
**differently** [1] - 23:16  
**difficult** [3] - 34:18, 89:3, 112:18  
**diluted** [1] - 52:5  
**dining** [1] - 48:4  
**direct** [2] - 76:1, 76:5  
**directed** [2] - 98:4, 114:6  
**directing** [1] - 69:23  
**directive** [1] - 33:7

**directly** [2] - 109:18, 116:8  
**director** [1] - 120:2  
**disagree** [2] - 7:10, 7:11  
**disagreement** [2] - 8:12, 48:14  
**disaster** [2] - 9:14, 15:18  
**discharge** [2] - 19:5, 19:22  
**disciplinary** [1] - 32:3  
**disconnect** [2] - 55:19, 56:2  
**discretion** [1] - 42:2  
**discuss** [1] - 46:18  
**discussed** [2] - 52:9, 56:13  
**discussion** [3] - 27:7, 73:19, 111:6  
**discussions** [1] - 43:8  
**disease** [8] - 13:21, 15:11, 17:14, 28:1, 33:12, 56:18, 72:19, 79:7  
**dismissing** [1] - 51:13  
**disparate** [1] - 57:13  
**dispute** [11] - 11:2, 11:5, 11:9, 11:11, 56:17, 60:4, 60:6, 74:10, 108:25, 118:18  
**disputed** [2] - 11:14, 12:8  
**disputes** [1] - 60:8  
**disputing** [1] - 60:9  
**disregard** [4] - 89:8, 89:12, 91:15, 91:21  
**disseminated** [1] - 46:24  
**distance** [6] - 11:10, 47:24, 48:17, 67:19, 72:5, 75:22  
**distancing** [17] - 27:2, 29:8, 33:16, 47:23, 48:12, 49:1, 49:16, 66:3, 66:17, 75:14, 90:4, 99:18, 100:4, 101:7, 101:10, 101:20, 101:23  
**distinction** [3] - 96:11, 96:15, 96:19  
**distinguishable** [1] - 103:24  
**distinguishes** [1] - 27:15  
**distributed** [1] - 67:12  
**distributing** [2] - 35:25, 36:1  
**DISTRICT** [4] - 1:1, 1:1, 1:11, 2:3  
**district** [1] - 39:2  
**District** [11] - 10:22, 14:7, 16:10, 86:25, 96:22, 103:16, 104:15, 109:5, 110:23, 111:10, 111:14  
**districts** [1] - 110:24  
**divided** [1] - 111:15  
**division** [2] - 25:16, 25:20  
**Division** [4] - 4:8, 4:9, 109:7, 124:21  
**Docket** [2] - 3:5, 32:1  
**docket** [2] - 5:5, 5:9  
**doctor** [9] - 9:6, 54:4, 54:6, 59:20, 59:22, 60:23, 61:6, 75:9, 79:19  
**doctors** [13] - 50:5, 50:9, 50:16, 53:8, 53:15, 53:16, 54:2, 54:9, 54:13, 60:12, 92:13, 119:3, 121:8  
**doctrinal** [1] - 91:23  
**document** [2] - 63:15, 64:17  
**documents** [1] - 61:18  
**dodge** [1] - 23:20  
**dog** [1] - 11:16  
**done** [11] - 20:11, 35:22, 39:15, 52:17, 62:20, 66:19, 88:3, 90:12, 98:16, 112:14, 120:16  
**DONOGHUE** [1] - 2:2  
**dorm** [1] - 58:15  
**dorms** [1] - 48:3  
**DORNUM** [4] - 25:22, 104:13, 104:19,

109:4  
**Dornum** [6] - 2:9, 10:21, 25:11, 25:22, 105:13, 118:14  
**Dornum's** [1] - 110:3  
**double** [2] - 12:23, 31:5  
**double-celled** [1] - 12:23  
**down** [3] - 6:8, 40:14, 80:10  
**dozens** [1] - 31:19  
**Dr** [2] - 32:1, 35:18  
**draw** [2] - 53:6, 68:11  
**droplets** [2] - 32:7, 35:18  
**dropped** [1] - 124:17  
**drug** [1] - 79:11  
**due** [2] - 43:5, 74:17  
**duplicating** [1] - 5:20  
**during** [4] - 4:20, 54:12, 56:2, 67:20  
**duty** [1] - 60:17  
**dying** [1] - 57:23

**E**

**E-mail** [1] - 2:17  
**e-mail** [8] - 5:4, 5:11, 5:12, 18:22, 19:9, 31:10, 31:24  
**e-mailing** [2] - 5:3, 118:15  
**early** [6] - 10:1, 42:13, 61:13, 79:10, 94:11, 105:14  
**easier** [1] - 75:22  
**East** [2] - 2:4, 83:21  
**east** [1] - 74:5  
**EASTERN** [2] - 1:1, 2:3  
**Eastern** [5] - 10:22, 86:25, 96:22, 104:15, 111:14  
**easy** [1] - 67:5  
**eat** [2] - 10:16, 10:19  
**eating** [1] - 34:11  
**Eddie** [2] - 2:13, 4:11  
**EDGE** [1] - 1:7  
**Edge** [2] - 2:4, 3:5  
**effect** [1] - 58:12  
**effective** [3] - 32:4, 36:21, 86:8  
**effectively** [2] - 32:2, 87:22  
**efficiency** [3] - 84:24, 85:4, 87:24  
**efficient** [1] - 86:11  
**efficiently** [1] - 84:20  
**effort** [1] - 55:9  
**efforts** [3] - 5:2, 13:22, 37:18  
**EICHENHOLTZ** [32] - 2:6, 4:13, 5:10, 7:3, 41:7, 41:23, 43:6, 43:19, 43:24, 44:3, 44:6, 48:19, 50:8, 50:18, 52:11, 59:25, 62:5, 64:1, 68:6, 98:23, 101:16, 103:6, 103:15, 108:7, 108:10, 110:2, 115:1, 115:9, 115:22, 116:13, 116:24, 120:7  
**Eichenholtz** [9] - 4:7, 4:14, 41:8, 48:20, 55:7, 64:16, 98:23, 119:1, 120:22  
**Eight** [6] - 27:14, 69:19, 75:10, 75:15, 78:24, 80:25  
**Eighth Amendment** [30] - 15:21, 67:17, 71:12, 71:16, 73:10, 74:20, 74:25, 75:6, 75:12, 75:24, 76:4, 77:3, 77:10, 78:3, 78:4, 78:6, 78:10, 78:14, 78:15, 78:18, 79:14, 80:23, 83:1, 90:14, 93:16, 94:3, 103:12, 104:7, 121:24,

(either - Farmer)

122:19  
**either** [9] - 12:10, 26:11, 33:23, 54:24, 77:5, 77:11, 103:7, 103:9, 112:8  
**elapsed** [1] - 40:21  
**elapses** [2] - 40:23, 80:9  
**elderly** [1] - 25:14  
**elevated** [5] - 71:24, 94:20, 94:22, 95:10, 115:20  
**eligible** [2] - 25:3, 114:2  
**eliminate** [1] - 51:14  
**emergency** [10] - 9:5, 53:24, 60:23, 60:24, 73:22, 82:8, 82:20, 84:1, 85:23, 121:15  
**emergent** [1] - 82:3  
**Emery** [1] - 3:9  
**EMERY** [1] - 1:13  
**emphasize** [1] - 110:14  
**empty** [1] - 66:21  
**end** [10] - 7:16, 8:6, 39:2, 39:13, 40:11, 57:23, 68:1, 80:18, 85:17, 117:21  
**engage** [4] - 48:11, 75:14, 90:3, 113:24  
**engaged** [2] - 27:16, 45:17  
**ensure** [5] - 27:3, 27:4, 29:7, 49:16, 77:10  
**ensures** [1] - 62:19  
**entire** [2] - 100:3, 121:24  
**entirely** [3] - 11:12, 60:13, 123:2  
**entitled** [5] - 16:9, 22:2, 30:5, 30:6, 126:4  
**entitlement** [3] - 16:16, 21:20, 27:9  
**envelope** [1] - 25:2  
**environment** [2] - 48:22, 107:19  
**environmental** [1] - 28:2  
**envisioning** [2] - 83:6, 83:7  
**epicenter** [1] - 12:14  
**epidemic** [2] - 114:12, 121:16  
**epidemiologist** [2] - 71:21, 94:18  
**equipment** [3] - 52:17, 52:23, 53:2  
**equipped** [1] - 12:6  
**equitable** [3] - 81:16, 90:10, 122:16  
**equities** [3] - 78:13, 94:12, 122:17  
**equivalent** [2] - 35:3, 51:4  
**especially** [4] - 7:5, 17:10, 28:14, 70:14  
**ESQ** [9] - 1:16, 1:17, 1:22, 1:22, 2:2, 2:5, 2:6, 2:6  
**Esq** [2] - 2:10, 2:11  
**essence** [1] - 107:10  
**essentially** [2] - 45:19, 79:6  
**establish** [1] - 16:16  
**established** [5] - 20:19, 27:8, 28:3, 28:11, 28:23  
**Estelle** [2] - 29:23, 30:1  
**estimate** [1] - 25:4  
**et** [10] - 1:3, 1:7, 1:14, 1:20, 2:4, 31:10, 31:24, 42:15, 60:13, 87:14  
**evaluate** [6] - 9:6, 81:10, 117:15, 119:13, 121:5, 121:18  
**evaluated** [1] - 117:13  
**evaluates** [1] - 81:9  
**evaluating** [2] - 42:18, 86:9  
**evaluation** [4] - 119:16, 119:20, 119:23, 124:8  
**evaluations** [1] - 111:9

**evening** [4] - 10:15, 44:3, 44:4, 69:7  
**evenings** [3] - 54:2, 54:9, 59:20  
**event** [4] - 53:17, 99:10, 114:24, 115:6  
**events** [1] - 19:15  
**eventually** [1] - 93:4  
**everywhere** [1] - 101:3  
**evidence** [6] - 17:16, 67:14, 81:19, 94:15, 96:24, 103:24  
**evidentiary** [2] - 102:15, 111:23  
**evolve** [1] - 47:8  
**evolving** [2] - 43:7, 97:25  
**exact** [2] - 41:14, 60:16  
**exactly** [8] - 17:7, 21:22, 71:2, 82:23, 87:23, 88:5, 101:19, 121:3  
**examination** [1] - 39:7  
**example** [12] - 31:17, 49:16, 54:3, 54:7, 54:17, 65:15, 82:17, 85:1, 85:17, 101:24, 102:16, 110:21  
**examples** [1] - 113:15  
**except** [1] - 80:3  
**exclusively** [1] - 27:21  
**executive** [1] - 16:13  
**Executive** [1] - 112:9  
**exercise** [1] - 42:2  
**exhaust** [1] - 58:6  
**exhaustion** [5] - 57:7, 57:11, 102:25, 103:1, 106:8  
**exhaustion-related** [1] - 106:8  
**exhibit** [3] - 35:25, 36:8, 63:23  
**Exhibit** [3] - 36:11, 36:12, 61:24  
**exhibits** [2] - 36:14, 63:17  
**exigencies** [1] - 86:3  
**exist** [3] - 74:12, 74:17, 95:10  
**existing** [1] - 42:19  
**exists** [3] - 61:12, 63:5, 90:25  
**expand** [1] - 60:2  
**expands** [1] - 7:14  
**expect** [3] - 40:25, 43:1, 79:17  
**expectation** [1] - 5:22  
**expedite** [1] - 121:19  
**expedited** [5] - 57:21, 83:11, 101:19, 111:20, 112:14  
**expeditious** [1] - 83:23  
**expeditiously** [1] - 87:3  
**experience** [1] - 51:1  
**experiencing** [2] - 71:25, 85:12  
**expert** [7] - 28:4, 35:10, 76:10, 79:19, 83:12, 86:9, 121:4  
**expertise** [1] - 102:3  
**experts** [1] - 17:13  
**explain** [1] - 31:8  
**explained** [3] - 59:17, 68:15, 91:18  
**explaining** [2] - 17:13, 53:25  
**explanation** [2] - 17:16, 35:22  
**exploring** [1] - 107:8  
**exponentially** [1] - 118:2  
**exposed** [16] - 11:13, 12:20, 20:15, 20:17, 58:7, 58:20, 61:15, 63:3, 63:9, 65:1, 65:9, 75:19, 89:18, 99:5, 107:1, 118:9  
**exposes** [2] - 91:3, 93:21  
**exposing** [2] - 30:8, 76:18  
**exposure** [17] - 28:1, 28:10, 34:9, 52:25, 63:12, 64:5, 64:7, 64:9, 93:18, 99:13, 99:15, 100:23, 114:24, 115:7,

123:1, 123:19, 124:6  
**expressed** [2] - 81:14, 111:13  
**extent** [14] - 6:22, 40:13, 46:14, 47:24, 49:1, 49:22, 50:19, 51:24, 52:3, 62:18, 93:18, 99:20, 99:24, 100:6  
**extra** [1] - 86:11  
**extraordinary** [6] - 37:24, 37:25, 46:8, 113:15, 114:13, 114:14  
**extreme** [1] - 92:13  
**extremely** [3] - 10:8, 57:23, 117:24  
**eye** [1] - 115:25  
**eyes** [1] - 9:15

**F**

**face** [2] - 117:1, 122:5  
**facilitate** [2] - 32:18, 113:22  
**facilitates** [1] - 98:19  
**facilities** [20] - 12:1, 14:16, 48:4, 48:5, 49:17, 52:4, 58:14, 61:13, 61:17, 65:22, 66:25, 71:19, 72:25, 73:1, 75:21, 96:20, 96:21, 104:7, 109:6, 109:16  
**facilities'** [1] - 109:15  
**facility** [57] - 12:7, 26:9, 32:12, 34:20, 34:22, 47:25, 49:8, 49:9, 49:10, 51:4, 52:10, 53:9, 53:10, 53:11, 54:3, 55:20, 55:22, 58:7, 58:8, 60:18, 61:20, 65:2, 65:8, 70:12, 70:13, 71:7, 72:15, 74:7, 77:13, 77:22, 77:24, 77:25, 79:21, 93:12, 95:11, 96:9, 97:12, 99:9, 99:21, 103:25, 105:20, 106:13, 108:3, 109:13, 115:12, 115:17, 116:12, 117:25, 118:20, 120:14, 121:5, 121:11, 121:21, 122:4, 123:14  
**facing** [3] - 27:13, 76:16, 104:9  
**Facsimile** [1] - 2:17  
**fact** [23] - 9:16, 14:14, 27:17, 30:8, 31:21, 35:3, 37:8, 76:22, 82:2, 87:13, 87:17, 89:6, 90:13, 90:22, 102:4, 108:17, 109:1, 110:12, 111:12, 113:18, 119:16, 119:17, 122:3  
**factor** [2] - 19:14, 125:4  
**factors** [10] - 24:8, 76:17, 76:24, 78:11, 78:15, 78:19, 78:20, 81:9, 94:3, 98:12  
**facts** [17] - 8:11, 8:18, 11:2, 12:3, 20:19, 47:13, 47:20, 48:13, 50:22, 59:2, 59:8, 71:4, 81:7, 86:10, 87:8, 114:7, 121:6  
**factual** [7] - 16:1, 47:17, 59:7, 59:14, 61:10, 86:23, 122:22  
**fail** [1] - 92:13  
**failed** [1] - 27:4  
**failure** [2] - 67:22, 92:8  
**fair** [2] - 55:8, 115:5  
**fairly** [1] - 52:22  
**faith** [1] - 91:5  
**fall** [3] - 8:10, 87:10, 98:20  
**fallen** [1] - 7:21  
**falls** [2] - 111:21, 112:5  
**familiar** [1] - 62:11  
**family** [3] - 81:24, 101:25, 122:10  
**FAPR** [2] - 2:15, 126:9  
**far** [4] - 7:8, 106:18, 108:17, 117:8  
**farce** [1] - 33:9  
**Farmer** [1] - 90:19

(fashion - habeas)

**fashion** [1] - 57:21  
**fast** [4] - 8:2, 14:9, 71:7, 125:18  
**fast-moving** [1] - 8:2  
**faster** [1] - 84:1  
**fatality** [1] - 95:5  
**favor** [1] - 94:12  
**Federal** [17] - 2:9, 2:10, 2:11, 2:12, 4:10, 6:13, 7:6, 10:22, 18:9, 30:14, 43:20, 44:1, 83:13, 90:23, 98:18, 98:25, 105:14  
**federal** [8] - 22:21, 31:17, 31:18, 66:24, 71:19, 79:11, 103:13, 104:8  
**feet** [3] - 66:1, 66:22, 67:16  
**felt** [1] - 6:17  
**fever** [4] - 117:7, 119:7, 119:13, 119:14  
**few** [8] - 10:20, 37:2, 51:15, 89:14, 106:6, 107:24, 108:7, 125:5  
**fewer** [1] - 70:13  
**Fifth** [1] - 1:15  
**figure** [10] - 40:21, 40:24, 48:9, 70:1, 70:19, 71:4, 89:4, 93:14, 94:25, 95:2  
**figuring** [1] - 87:8  
**file** [6] - 4:18, 4:24, 5:17, 18:12, 86:5, 86:20  
**filed** [8] - 4:16, 4:25, 9:25, 19:2, 44:7, 103:16, 104:22, 105:19  
**files** [1] - 14:11  
**filing** [2] - 5:16, 14:6  
**filings** [2] - 5:21, 108:6  
**finagling** [1] - 29:15  
**final** [5] - 42:17, 42:22, 62:13, 105:11, 111:24  
**finally** [6] - 12:5, 12:24, 32:20, 107:7, 107:21, 110:17  
**findings** [1] - 87:17  
**fine** [4] - 39:22, 56:3, 69:25, 97:18  
**first** [22] - 14:13, 22:7, 31:18, 38:7, 41:12, 47:12, 47:22, 53:23, 54:1, 57:7, 65:24, 74:3, 79:11, 84:15, 86:18, 105:11, 108:10, 112:17, 116:3, 118:24, 119:12, 119:15  
**First** [1] - 104:3  
**first choice** [1] - 46:13  
**fit** [1] - 86:21  
**five** [7] - 10:8, 11:12, 19:9, 19:16, 106:22, 107:3, 121:12  
**fix** [3] - 69:19, 70:2, 72:8  
**flag** [1] - 7:19  
**flagged** [1] - 7:24  
**flexibility** [1] - 88:20  
**flight** [8] - 23:18, 76:25, 77:7, 77:11, 77:16, 81:2, 125:9  
**Floor** [1] - 1:15  
**floors** [1] - 74:6  
**flow** [1] - 101:13  
**flu** [1] - 117:19  
**fluid** [3] - 37:15, 46:21, 47:3  
**focus** [4] - 9:1, 14:14, 84:7, 88:1  
**focused** [4] - 21:7, 73:13, 87:8, 88:2  
**fold** [1] - 89:18  
**folks** [26] - 3:6, 18:13, 18:16, 19:22, 21:6, 21:14, 21:17, 22:18, 23:1, 33:22, 43:23, 44:17, 72:6, 76:2, 76:3, 77:8, 81:5, 81:12, 93:12, 98:4, 114:24, 115:15, 115:17, 121:23, 122:1  
**follow** [11] - 61:9, 63:10, 63:14, 67:6,

69:4, 83:25, 112:15, 116:20, 118:22, 121:22, 122:22  
**follow-on** [1] - 116:20  
**follow-up** [3] - 61:9, 121:22, 122:22  
**follow-ups** [1] - 112:15  
**followed** [2] - 67:3, 106:24  
**following** [6] - 3:1, 18:22, 53:1, 72:8, 72:9, 75:7  
**footnote** [1] - 90:19  
**FOR** [1] - 1:10  
**forced** [1] - 55:15  
**forefront** [1] - 69:11  
**foregoing** [1] - 126:3  
**form** [6] - 64:4, 64:6, 64:24, 65:4, 65:13, 65:15  
**formal** [1] - 78:18  
**forms** [1] - 45:20  
**formulations** [1] - 92:1  
**forth** [4] - 70:7, 90:1, 110:18, 111:2  
**forum** [2] - 84:20, 111:6  
**forward** [6] - 14:10, 42:8, 51:22, 78:11, 80:1, 81:24  
**forwarded** [4] - 18:23, 19:10, 40:3, 82:18  
**four** [24] - 8:24, 9:3, 10:8, 13:2, 15:2, 70:6, 75:2, 76:10, 76:13, 76:15, 77:15, 78:22, 81:22, 83:9, 88:6, 100:16, 101:1, 105:11, 107:22, 120:21, 121:23, 122:9, 122:13, 122:19  
**frame** [1] - 88:15  
**framed** [3] - 88:14, 92:2, 92:4  
**frankly** [1] - 85:6  
**fraud** [1] - 79:9  
**freezing** [1] - 56:4  
**frequently** [1] - 26:8  
**Friday** [2] - 82:2, 83:17  
**friend** [2] - 76:21, 114:22  
**friends** [4] - 81:8, 89:1, 100:9, 115:3  
**Frisolone** [2] - 2:15, 126:9  
**front** [11] - 5:7, 14:1, 30:21, 70:6, 76:13, 76:15, 77:15, 83:11, 104:15, 110:9, 114:7  
**full** [2] - 69:8, 105:7  
**fully** [4] - 60:16, 111:22, 112:10, 123:23  
**fundamental** [5] - 15:22, 20:14, 23:24, 26:22, 27:10  
**Furman** [5] - 16:10, 24:14, 104:14, 104:25, 105:1  
**future** [1] - 92:21

**G**

**Gamble** [2] - 29:23, 30:1  
**Garaufis** [1] - 14:1  
**gather** [1] - 71:3  
**gathered** [1] - 9:21  
**gathering** [3] - 32:18, 84:6, 86:10  
**general** [9] - 13:7, 20:4, 28:16, 60:19, 63:11, 94:7, 120:8, 121:2, 123:15  
**General** [2] - 19:24, 93:6  
**generally** [10] - 8:10, 19:12, 40:22, 41:10, 47:22, 52:23, 62:4, 84:6, 99:19, 117:2  
**getter** [1] - 102:3

**Ginsburg** [1] - 3:22  
**GINSBURG** [2] - 1:22, 3:22  
**given** [12] - 11:4, 22:1, 42:11, 51:19, 52:23, 55:12, 55:16, 74:9, 90:22, 90:23, 98:24, 101:9  
**gleaned** [1] - 66:5  
**gloves** [3] - 10:13, 33:3, 74:14  
**gosh** [1] - 91:8  
**Government** [59] - 4:6, 6:20, 6:21, 6:23, 13:22, 15:15, 16:18, 16:20, 16:22, 17:1, 18:6, 18:17, 39:12, 40:13, 41:3, 44:13, 44:20, 45:6, 46:12, 48:12, 48:14, 49:25, 56:7, 56:13, 57:8, 58:5, 59:17, 59:23, 60:4, 60:6, 60:8, 60:9, 63:23, 65:20, 67:9, 68:13, 68:22, 69:22, 82:1, 84:10, 85:21, 98:9, 102:12, 103:17, 104:21, 106:7, 110:6, 110:18, 111:1, 111:2, 111:6, 111:17, 111:18, 114:19, 118:23, 120:22, 122:23  
**government** [1] - 66:24  
**Government's** [11] - 7:4, 7:18, 27:7, 27:9, 27:10, 46:4, 58:1, 61:12, 79:1, 106:20, 111:5  
**grant** [2] - 16:12, 107:11  
**granting** [1] - 108:13  
**grants** [1] - 45:22  
**granular** [1] - 29:12  
**grapple** [3] - 28:5, 28:6, 67:22  
**grappling** [1] - 101:18  
**grave** [2] - 78:6, 96:17  
**great** [4] - 3:20, 7:15, 26:20, 112:15  
**greater** [2] - 28:2, 77:25  
**greatest** [2] - 49:1, 99:2  
**groceries** [1] - 33:23  
**gross** [1] - 26:3  
**ground** [6] - 18:13, 47:13, 57:11, 59:9, 87:8, 114:12  
**grounds** [3] - 18:13, 27:23, 106:9  
**group** [2] - 49:19, 100:1  
**groups** [1] - 121:18  
**guess** [45] - 5:24, 7:22, 19:20, 21:3, 21:8, 22:7, 22:17, 22:21, 22:24, 24:9, 24:21, 40:24, 41:18, 45:4, 53:6, 53:13, 53:20, 59:6, 69:18, 71:10, 71:16, 72:2, 76:20, 77:14, 81:3, 81:8, 81:16, 84:8, 84:12, 89:7, 91:7, 92:23, 93:1, 94:23, 98:5, 98:18, 99:17, 100:8, 103:12, 112:21, 112:25, 113:7, 116:20, 120:10, 121:25  
**guessing** [1] - 39:14  
**guidance** [42] - 19:24, 33:17, 37:18, 43:7, 46:25, 49:15, 61:12, 61:16, 61:20, 61:23, 62:2, 62:12, 62:14, 62:15, 62:20, 63:8, 64:7, 64:13, 65:5, 65:7, 65:17, 65:21, 65:22, 65:23, 67:2, 68:15, 68:19, 68:22, 68:23, 69:1, 69:2, 69:5, 69:6, 69:10, 89:6, 98:13, 98:14, 101:9, 102:6, 120:1, 123:12  
**guidances** [1] - 46:24  
**guidelines** [3] - 66:9, 66:10, 74:6  
**gushing** [1] - 32:13

**H**

**habeas** [11] - 16:6, 16:9, 20:10, 20:11,



20:22, 21:20, 22:2, 22:10, 44:7, 88:7, 104:15  
**half** [3] - 25:2, 109:20, 120:13  
**halls** [1] - 62:6  
**Hamilton** [1] - 13:25  
**hand** [3] - 52:6, 62:7, 97:18  
**Hand** [1] - 27:25  
**handle** [2] - 6:17, 66:25  
**handling** [2] - 102:7, 117:1  
**hands** [3] - 30:4, 67:20, 68:12  
**happy** [6] - 7:13, 13:2, 28:25, 67:6, 69:11, 79:2  
**hard** [9] - 6:5, 25:24, 80:20, 92:14, 94:8, 95:2, 107:24, 113:2, 125:15  
**harder** [1] - 6:8  
**harm** [24] - 20:17, 27:12, 27:19, 28:8, 28:10, 58:21, 70:20, 70:25, 89:20, 90:10, 90:12, 92:21, 93:17, 93:22, 94:16, 99:15, 99:23, 100:9, 100:11, 100:12, 100:23, 114:3  
**harms** [2] - 70:14  
**harsh** [1] - 55:18  
**HASSAN** [1] - 1:3  
**Hassan** [2] - 1:14, 1:20  
**hate** [1] - 21:18  
**health** [31] - 9:14, 13:4, 13:7, 19:18, 19:19, 47:18, 50:2, 50:3, 51:7, 51:8, 57:17, 60:18, 60:20, 61:2, 68:16, 71:24, 72:3, 72:20, 77:19, 79:19, 82:21, 83:12, 85:23, 89:3, 89:4, 89:5, 92:9, 93:11, 95:21, 121:4, 121:21  
**healthcare** [2] - 61:5, 73:16  
**hear** [7] - 7:18, 11:16, 32:23, 40:4, 59:2, 113:13, 124:18  
**heard** [9] - 7:2, 10:7, 32:21, 33:1, 74:10, 86:19, 110:13, 118:23, 119:2  
**hearing** [8] - 24:17, 40:5, 55:13, 55:15, 55:20, 76:22, 102:11, 111:1  
**heart** [3] - 56:18, 56:19, 79:7  
**heat** [1] - 32:11  
**heavily** [1] - 9:16  
**heightened** [1] - 115:11  
**held** [22] - 12:21, 23:25, 24:5, 26:23, 27:13, 29:15, 58:24, 61:15, 63:3, 63:9, 65:24, 65:25, 66:14, 72:4, 78:24, 91:1, 91:2, 93:17, 96:16, 97:21, 106:2  
**Helling** [2] - 27:20, 28:3  
**help** [5] - 84:4, 88:4, 113:22, 125:14, 125:17  
**helpful** [15] - 3:14, 5:25, 6:24, 7:18, 47:11, 47:12, 69:13, 95:14, 95:22, 95:23, 105:5, 108:5, 108:6, 114:17, 121:6  
**helpfully** [1] - 103:8  
**hi** [1] - 3:4  
**hiding** [1] - 28:7  
**high** [13] - 11:3, 26:13, 48:15, 74:1, 76:3, 91:9, 95:6, 96:25, 97:11, 98:4, 98:11, 98:15, 124:24  
**high-level** [1] - 74:1  
**high-rise** [1] - 97:11  
**high-risk** [5] - 48:15, 76:3, 98:4, 98:11, 98:15  
**higher** [6] - 35:12, 51:3, 95:20, 95:21, 106:12, 118:2  
**highest** [1] - 97:13

**highly** [1] - 112:11  
**history** [2] - 42:15, 45:2  
**hit** [1] - 90:15  
**hold** [4] - 36:13, 82:16, 91:20, 101:8  
**holding** [3] - 27:14, 76:18, 93:21  
**holdover** [1] - 49:7  
**Holly** [20] - 2:10, 4:7, 41:8, 50:6, 50:7, 50:10, 50:11, 52:13, 52:19, 52:21, 62:16, 62:21, 64:2, 99:6, 115:12, 115:22, 116:15, 117:5, 117:11, 119:9  
**home** [24] - 19:5, 19:12, 19:22, 20:10, 28:14, 30:15, 36:1, 36:4, 38:10, 38:21, 40:9, 41:16, 41:21, 41:22, 41:24, 42:3, 51:2, 58:2, 82:3, 88:15, 93:19, 107:25, 111:14  
**honestly** [1] - 41:9  
**Honor** [129] - 3:8, 3:16, 3:25, 4:4, 4:13, 5:6, 5:10, 7:3, 8:16, 8:23, 11:17, 11:22, 12:2, 12:5, 12:18, 12:24, 13:12, 15:10, 16:5, 16:14, 18:6, 18:18, 20:9, 21:16, 21:17, 23:13, 25:1, 25:10, 25:22, 30:10, 30:19, 30:21, 31:5, 31:25, 32:9, 32:20, 34:5, 34:21, 34:23, 35:24, 36:13, 37:2, 37:16, 37:22, 39:17, 39:22, 41:7, 43:12, 44:22, 45:22, 48:19, 54:10, 54:20, 55:5, 55:23, 56:7, 56:8, 56:16, 57:6, 59:2, 59:25, 61:22, 62:5, 64:1, 64:15, 65:13, 65:18, 66:10, 67:23, 67:25, 68:23, 69:6, 69:21, 73:12, 78:22, 79:2, 79:14, 79:22, 79:25, 81:21, 82:4, 82:14, 84:24, 85:15, 86:4, 87:18, 88:13, 89:13, 95:12, 95:18, 95:22, 96:3, 96:22, 96:25, 99:24, 101:16, 102:14, 103:15, 103:21, 104:13, 105:9, 105:12, 106:10, 106:13, 106:24, 107:7, 107:14, 107:21, 108:1, 108:3, 108:7, 109:4, 110:2, 115:1, 116:25, 117:20, 117:25, 118:12, 120:7, 120:12, 120:16, 121:3, 121:6, 124:13, 124:14, 124:18, 125:12, 125:13  
**Honor's** [12] - 4:18, 13:24, 16:9, 20:22, 41:10, 46:3, 65:17, 73:15, 73:25, 113:14, 114:4, 114:15  
**HONORABLE** [1] - 1:11  
**hope** [1] - 16:5  
**hoped** [1] - 43:9  
**hopefully** [1] - 71:7  
**hoping** [3] - 5:13, 7:25, 43:15  
**hospital** [17] - 12:10, 12:14, 13:8, 34:25, 35:5, 50:21, 50:25, 53:9, 53:12, 53:19, 54:19, 54:25, 55:3, 60:25, 117:17, 123:5  
**hospitalized** [1] - 56:20  
**hospitals** [3] - 12:11, 55:1, 120:2  
**host** [1] - 38:3  
**hot** [1] - 74:10  
**hour** [3] - 76:19, 83:9, 104:14  
**hours** [5] - 10:9, 10:20, 33:11, 44:6, 68:20  
**house** [3] - 34:25, 66:20, 102:2  
**housed** [3] - 63:21, 64:21, 123:3  
**household** [1] - 33:21  
**housekeeping** [1] - 6:11  
**housing** [1] - 115:18  
**huge** [3] - 32:11, 32:12, 34:7  
**humanitarian** [2] - 107:11, 107:12  
**hundred** [6] - 83:18, 83:19, 118:3,

118:11, 121:13, 123:22  
**hundreds** [10] - 34:12, 64:19, 64:21, 80:11, 84:16, 118:5, 122:25  
**HVAC** [1] - 32:12  
**hygiene** [4] - 27:4, 34:17, 75:15, 90:4  
**I**  
**ICE** [9] - 96:9, 96:12, 96:13, 96:15, 96:19, 97:6, 97:14, 103:9, 104:7  
**idea** [13] - 32:14, 34:8, 34:21, 59:3, 69:7, 69:9, 76:8, 83:10, 100:22, 106:20, 109:11, 112:23, 121:10  
**identified** [10] - 47:17, 72:17, 73:3, 73:4, 73:6, 75:16, 89:23, 91:17, 94:5, 122:4  
**identifies** [1] - 98:25  
**identify** [3] - 3:14, 76:9, 77:5  
**identifying** [4] - 6:4, 87:9, 98:15, 114:1  
**ill** [2] - 12:8, 56:16  
**illness** [3] - 94:1, 101:22, 117:19  
**illnesses** [1] - 85:25  
**imagine** [1] - 94:8  
**immediate** [4] - 74:4, 74:16, 75:1, 75:2  
**immediately** [5] - 18:2, 44:19, 69:12, 74:9, 94:9  
**immigration** [1] - 96:13  
**imminent** [1] - 103:4  
**impact** [1] - 9:17  
**impactful** [1] - 33:8  
**implement** [3] - 5:2, 12:17, 121:10  
**implementing** [2] - 14:4, 15:16  
**implication** [1] - 64:16  
**implications** [1] - 112:13  
**important** [13] - 10:1, 11:22, 13:1, 13:15, 31:12, 37:7, 37:21, 38:20, 69:7, 71:3, 88:21, 96:21, 109:12  
**impose** [1] - 46:9  
**imposed** [1] - 89:20  
**impossible** [3] - 27:2, 28:23, 29:9  
**impression** [3] - 25:6, 68:3, 110:10  
**inadequate** [3] - 20:7, 52:7, 59:17  
**inappropriate** [3] - 79:4, 110:20, 112:11  
**Inc** [1] - 2:9  
**incarcerated** [19] - 9:18, 10:7, 10:10, 13:19, 14:24, 15:4, 15:6, 35:7, 36:4, 38:6, 49:10, 52:6, 53:23, 62:3, 72:15, 76:3, 95:20, 96:13, 100:6  
**incarceration** [1] - 39:8  
**include** [2] - 9:6, 76:24  
**included** [1] - 9:21  
**includes** [2] - 43:22, 43:24  
**including** [5] - 14:3, 14:17, 15:10, 62:25, 96:6  
**inclusive** [1] - 98:12  
**inconsistent** [1] - 65:22  
**incorporating** [1] - 47:1  
**increase** [2] - 100:4, 121:20  
**increased** [8] - 15:13, 32:5, 89:17, 93:25, 99:22, 99:25, 101:12, 122:5  
**increases** [1] - 77:24  
**incredibly** [2] - 79:22, 105:10  
**independently** [1] - 105:25  
**indicated** [1] - 42:16

(Indicates later)

**indicates** [1] - 63:19  
**indicating** [1] - 19:2  
**indication** [1] - 122:11  
**indifference** [8] - 37:9, 88:25, 90:16, 90:18, 91:3, 92:3, 94:14, 102:24  
**indifferent** [5] - 37:10, 37:14, 47:4, 90:9, 102:10  
**indisputably** [1] - 11:8  
**indistinguishable** [2] - 28:17, 120:23  
**indistinguishable** [1] - 74:22  
**individual** [12] - 3:12, 13:3, 16:11, 26:2, 30:12, 44:25, 45:1, 45:8, 59:2, 104:23, 113:4, 113:5  
**individualized** [2] - 17:8, 21:23  
**individually** [3] - 49:19, 68:17, 77:9  
**individuals** [34] - 8:24, 9:3, 24:10, 39:9, 42:12, 43:17, 43:20, 45:17, 56:25, 66:22, 77:15, 84:6, 84:7, 88:6, 88:21, 91:13, 91:14, 91:20, 93:7, 94:5, 94:19, 99:1, 99:2, 99:8, 107:22, 111:4, 112:25, 114:7, 116:6, 117:9, 122:16, 123:5, 123:8, 123:13  
**infected** [8] - 10:13, 32:24, 33:2, 54:5, 64:20, 89:16, 101:21, 107:19  
**infection** [8] - 37:13, 37:19, 47:6, 89:21, 95:16, 95:20, 97:1, 98:1  
**infectious** [1] - 28:1  
**inflated** [1] - 101:3  
**inform** [1] - 73:25  
**information** [12] - 3:15, 10:19, 14:25, 55:11, 62:7, 81:24, 83:11, 83:15, 84:5, 108:23, 117:22, 122:8  
**informed** [3] - 10:14, 10:15, 54:3  
**inherent** [1] - 101:5  
**initial** [7] - 8:18, 43:11, 64:6, 81:13, 85:1, 95:15, 105:13  
**injunction** [1] - 27:22  
**injunctive** [2] - 90:9, 90:20  
**injury** [2] - 94:2, 103:4  
**inmate** [20] - 10:12, 12:18, 38:14, 40:2, 45:1, 46:11, 46:14, 48:15, 48:16, 49:7, 50:20, 50:21, 60:25, 62:6, 63:16, 64:3, 74:9, 117:6, 119:13, 123:4  
**inmates** [55] - 21:10, 22:22, 22:23, 38:3, 38:8, 38:16, 38:21, 39:3, 39:16, 49:17, 50:8, 51:6, 51:19, 52:5, 52:15, 52:16, 52:17, 61:2, 62:10, 68:2, 68:5, 68:11, 69:5, 72:3, 74:7, 74:15, 74:20, 74:21, 96:17, 96:18, 97:8, 97:12, 97:13, 97:14, 98:8, 98:11, 98:15, 99:14, 100:5, 101:1, 101:15, 104:8, 110:23, 111:2, 115:5, 115:11, 115:16, 115:19, 116:9, 123:3, 123:22, 124:8, 124:23  
**Inmates** [1] - 31:3  
**innumerable** [1] - 37:12  
**input** [1] - 79:18  
**input/output** [1] - 34:17  
**inquired** [1] - 109:23  
**inquiring** [1] - 109:8  
**inquiry** [1] - 92:1  
**inserting** [1] - 22:11  
**inside** [2] - 55:10, 115:11  
**insights** [1] - 66:5  
**insisted** [1] - 16:18  
**insistence** [1] - 17:11  
**insisting** [1] - 15:12

**instance** [8] - 38:7, 40:2, 41:12, 46:5, 71:23, 77:5, 97:19, 115:19  
**instances** [2] - 41:3, 45:6  
**institution** [5] - 49:4, 61:3, 64:3, 64:14, 102:8  
**institutional** [7] - 48:22, 49:4, 51:8, 62:23, 64:9, 69:2, 102:7  
**institutions** [1] - 37:19  
**instructed** [3] - 15:19, 15:20, 66:18  
**instructive** [2] - 13:20, 29:19  
**intake** [6] - 58:9, 58:10, 64:21, 64:25, 123:11, 124:5  
**intended** [1] - 33:7  
**intending** [1] - 6:20  
**intensive** [1] - 53:17  
**intention** [1] - 57:15  
**interact** [1] - 72:6  
**interaction** [1] - 49:2  
**interactions** [2] - 49:23, 71:23  
**interest** [1] - 24:18  
**interested** [1] - 73:16  
**intern** [1] - 4:11  
**Intern** [1] - 2:13  
**internally** [1] - 65:14  
**interrupt** [6] - 17:18, 19:1, 52:13, 59:5, 80:13, 117:21  
**interrupted** [1] - 109:25  
**interrupting** [1] - 59:6  
**interventions** [1] - 53:18  
**intubate** [1] - 12:15  
**intubated** [1] - 53:11  
**intuition** [2] - 78:17, 114:4  
**investigate** [1] - 51:16  
**invite** [1] - 52:13  
**involve** [3] - 71:22, 71:24, 93:5  
**involved** [6] - 81:13, 83:6, 87:12, 93:20, 104:8, 111:8  
**involving** [6] - 16:10, 67:17, 86:25, 88:9, 96:20, 97:7  
**irreparable** [8] - 28:8, 94:2, 94:16, 99:15, 99:23, 100:9, 100:11, 100:12  
**isolate** [2] - 31:21, 51:1  
**isolated** [6] - 11:15, 11:18, 35:2, 123:3, 123:8, 123:17  
**isolating** [1] - 32:7  
**isolation** [18] - 12:1, 12:16, 14:21, 54:17, 59:21, 61:2, 69:8, 80:2, 80:7, 80:12, 118:3, 118:4, 118:5, 118:8, 121:13, 122:25, 123:6, 123:25  
**issue** [34] - 6:11, 6:16, 6:24, 7:19, 7:20, 20:8, 23:21, 24:3, 26:16, 28:3, 34:5, 34:24, 39:13, 43:11, 43:13, 45:23, 46:2, 51:11, 54:12, 57:7, 59:16, 61:7, 64:9, 70:12, 87:24, 88:1, 88:2, 106:11, 107:8, 115:10, 117:1  
**issued** [4] - 33:6, 65:21, 65:23, 89:7  
**issues** [19] - 4:19, 9:9, 17:6, 42:15, 51:15, 59:15, 60:5, 62:18, 73:5, 73:19, 79:23, 87:3, 87:6, 101:19, 113:5, 116:1, 120:20, 125:16  
**itself** [4] - 49:5, 75:12, 96:23, 100:17

**J**

**jail** [6] - 10:15, 11:10, 11:12, 54:21,

55:10, 73:3  
**jails** [8] - 54:19, 71:19, 71:22, 71:23, 71:24, 82:22, 89:4  
**James** [4] - 4:4, 37:1, 61:22, 67:25  
**JAMES** [1] - 2:5  
**Jeff** [1] - 109:6  
**Jewish** [1] - 12:13  
**judge** [7] - 16:12, 26:1, 45:21, 77:21, 79:18, 112:6  
**JUDGE** [1] - 1:11  
**Judge** [26] - 6:15, 14:1, 16:10, 22:24, 23:1, 24:14, 38:1, 88:8, 92:4, 96:6, 96:7, 104:14, 104:25, 105:1, 105:23, 105:25, 108:16, 108:21, 109:1, 109:5, 109:7, 109:14, 109:18  
**judge-by-judge** [1] - 77:21  
**judges** [9] - 23:3, 24:19, 39:2, 39:4, 85:6, 96:9, 96:22, 97:2, 112:3  
**judicial** [3] - 16:15, 44:15, 67:5  
**July** [1] - 79:8  
**jump** [3] - 5:14, 60:15, 80:19  
**junction** [1] - 109:14  
**June** [1] - 79:10  
**Justice** [2] - 2:12, 4:10  
**justification** [1] - 33:10  
**justify** [1] - 15:1  
**justifying** [1] - 114:8

**K**

**KATHERINE** [1] - 1:16  
**Katie** [4] - 3:9, 5:6, 18:18, 95:12  
**keep** [5] - 51:2, 96:21, 105:10, 108:12, 115:24  
**keeping** [4] - 33:10, 49:3, 49:4, 116:4  
**keeps** [1] - 101:18  
**kept** [3] - 72:5, 102:11, 110:25  
**key** [1] - 89:14  
**kick** [1] - 15:21  
**Kim** [2] - 2:13, 4:11  
**kind** [22] - 7:6, 19:4, 29:5, 49:4, 60:20, 70:24, 72:18, 81:19, 86:20, 87:13, 87:20, 89:12, 91:23, 92:6, 96:7, 98:21, 102:13, 112:14, 114:2, 116:25, 121:15, 123:25  
**kinds** [6] - 57:16, 60:12, 78:8, 80:4, 120:20, 121:6  
**King** [5] - 4:17, 30:20, 36:8, 62:9, 63:17  
**King's** [1] - 52:12  
**Kingsbrook** [1] - 12:13  
**kitchen** [1] - 32:23  
**kits** [2] - 120:14, 120:15  
**knowing** [1] - 6:6  
**known** [2] - 7:12, 64:18  
**KOVNER** [1] - 1:11  
**kovner\_chambers@edny.uscourts.gov** [1] - 5:15

**L**

**lack** [5] - 22:17, 34:17, 53:5, 82:14, 85:4  
**laid** [1] - 36:25

**language** [2] - 14:4, 22:24  
**laptop** [1] - 5:11  
**large** [3] - 13:9, 82:22, 112:24  
**largely** [1] - 74:5  
**last** [21] - 5:2, 7:24, 10:9, 10:20, 12:21, 32:10, 33:13, 37:16, 37:22, 44:3, 46:3, 46:25, 49:21, 50:12, 58:13, 62:15, 69:7, 69:10, 107:9, 112:17, 115:1  
**late** [1] - 46:25  
**laundry** [2] - 32:18, 34:11  
**Law** [2] - 2:13, 4:11  
**law** [1] - 48:14  
**LAW** [1] - 1:19  
**laws** [1] - 96:13  
**lawyer** [2] - 18:19, 85:19  
**lawyers** [4] - 3:24, 30:12, 85:18, 125:6  
**lay** [1] - 7:8  
**layer** [1] - 86:11  
**layperson** [1] - 121:14  
**lead** [1] - 110:9  
**least** [16] - 11:12, 14:24, 15:2, 15:5, 15:7, 21:9, 26:6, 30:16, 66:22, 76:3, 92:3, 101:8, 105:1, 113:25, 117:8, 118:10  
**leave** [2] - 34:25, 79:4  
**leaves** [1] - 31:11  
**leaving** [2] - 11:20, 31:9  
**left** [1] - 76:12  
**Legal** [2] - 9:22, 95:13  
**legal** [7] - 8:13, 11:20, 23:11, 47:16, 109:15, 122:6, 125:16  
**legitimate** [1] - 89:9  
**legitimately** [1] - 57:4  
**lengthy** [1] - 82:25  
**lens** [4] - 24:19, 112:19, 112:20, 120:16  
**less** [5] - 14:23, 33:5, 48:25, 53:16, 117:12  
**letter** [15] - 6:12, 6:14, 6:15, 6:20, 6:21, 7:1, 7:13, 7:17, 14:13, 14:18, 14:20, 30:13, 43:12, 105:1  
**letters** [1] - 14:12  
**letting** [1] - 32:15  
**level** [10] - 22:3, 29:12, 51:3, 62:24, 69:2, 74:1, 90:13, 97:13, 102:24  
**levels** [1] - 62:25  
**liability** [1] - 87:6  
**liberty** [1] - 28:19  
**lies** [1] - 67:24  
**life** [6] - 20:18, 27:23, 29:22, 29:25, 30:4, 100:11  
**life-threatening** [1] - 27:23  
**LIFSHITZ** [4] - 2:6, 124:15, 124:18, 124:20  
**Lifshitz** [3] - 4:9, 124:15, 124:20  
**light** [6] - 17:10, 40:7, 42:19, 42:20, 72:1, 87:1  
**lightly** [1] - 105:12  
**likelihood** [1] - 71:13  
**likely** [3] - 71:14, 107:4, 118:2  
**limit** [2] - 32:17, 34:9  
**limitation** [1] - 32:19  
**limitations** [1] - 100:5  
**limited** [3] - 65:1, 81:18, 86:17  
**line** [6] - 3:6, 3:25, 4:6, 6:1, 10:23, 41:8

**lining** [1] - 48:7  
**link** [1] - 86:12  
**Lisa** [2] - 2:12, 4:10  
**list** [48] - 11:3, 25:3, 25:13, 25:17, 25:25, 26:1, 26:2, 26:13, 83:8, 85:2, 85:4, 98:10, 98:17, 98:20, 98:21, 98:24, 99:5, 99:7, 104:3, 105:22, 105:24, 106:1, 106:2, 106:3, 106:5, 106:8, 108:15, 108:18, 108:19, 109:1, 109:3, 109:16, 109:20, 114:21, 114:23, 114:25, 115:4, 115:9, 115:24, 121:24, 121:25, 122:14, 124:23, 125:1, 125:4, 125:7, 125:8  
**listen** [1] - 67:11  
**lists** [2] - 86:9, 108:22  
**literal** [1] - 19:18  
**litigated** [1] - 112:10  
**live** [2] - 101:25, 102:1  
**lives** [1] - 66:19  
**living** [4] - 34:7, 34:11, 36:2, 48:3  
**LLP** [2] - 1:13, 3:9  
**local** [1] - 70:14  
**lockdown** [2] - 32:3, 109:8  
**locked** [3] - 11:15, 35:2, 56:23  
**locking** [1] - 32:14  
**logical** [2] - 68:1, 101:13  
**look** [10] - 11:22, 13:20, 14:2, 39:24, 66:10, 78:4, 94:23, 95:23, 105:13, 125:10  
**looked** [5] - 11:1, 84:20, 88:8, 92:11, 104:5  
**looking** [7] - 29:13, 30:22, 63:22, 65:4, 92:23, 97:6, 120:17  
**loop** [2] - 59:7, 59:14  
**Loretta** [1] - 73:18  
**lose** [2] - 37:8, 113:18  
**loss** [2] - 28:6, 118:7  
**lost** [2] - 32:11, 115:1  
**Louisiana** [3] - 31:18, 106:14, 110:16  
**low** [1] - 97:13  
**low-level** [1] - 97:13  
**lower** [1] - 98:13  
**Lynch** [1] - 73:18

**M**

**Magistrate** [1] - 109:17  
**magnitude** [1] - 94:24  
**mail** [9] - 2:17, 5:4, 5:11, 5:12, 18:22, 19:9, 31:10, 31:24  
**mailing** [2] - 5:3, 118:15  
**main** [3] - 39:17, 47:18, 48:1  
**maintenance** [1] - 46:16  
**majority** [1] - 31:6  
**manage** [2] - 12:6, 70:13  
**manner** [1] - 57:22  
**March** [14] - 9:23, 14:1, 14:6, 14:8, 14:11, 14:12, 14:20, 15:5, 18:20, 18:21, 105:14, 109:8, 121:17  
**mark** [2] - 27:10, 27:19  
**martial** [1] - 85:19  
**mask** [1] - 92:14  
**masks** [4] - 10:13, 33:3, 55:17, 74:15  
**massive** [1] - 85:23  
**master** [35] - 9:5, 17:7, 21:22, 59:4,

70:17, 70:21, 73:14, 73:18, 73:23, 74:12, 76:8, 76:9, 77:17, 77:22, 83:5, 83:7, 84:12, 86:19, 87:4, 87:5, 87:12, 110:19, 111:25, 112:11, 112:18, 112:20, 112:22, 112:23, 113:8, 113:17, 113:20, 113:22, 113:24, 113:25, 120:19  
**masters** [2] - 86:16, 86:23  
**match** [1] - 55:9  
**material** [1] - 19:2  
**materials** [1] - 94:17  
**matter** [6] - 21:24, 56:11, 79:9, 81:16, 125:21, 126:4  
**matters** [1] - 82:4  
**Mauskopf** [2] - 108:21, 109:18  
**maximum** [3] - 48:18, 49:22, 97:13  
**McBride** [8] - 8:25, 18:19, 19:6, 19:8, 56:9, 56:10, 56:21, 79:6  
**McBride's** [2] - 82:19, 86:1  
**MCC** [10] - 14:13, 14:15, 14:19, 14:21, 14:23, 27:6, 109:6, 109:10, 109:20, 110:15  
**McFarland** [4] - 2:11, 109:6, 109:10, 109:15  
**McMahon** [7] - 105:23, 105:25, 108:16, 108:21, 109:1, 109:5, 109:14  
**MDC** [97] - 9:18, 10:2, 10:5, 11:5, 12:6, 12:10, 12:12, 12:15, 12:22, 13:8, 13:9, 13:19, 14:4, 14:13, 21:10, 26:8, 28:22, 29:7, 32:10, 34:23, 37:11, 37:13, 37:14, 37:20, 38:13, 38:15, 38:17, 46:6, 46:7, 46:25, 47:2, 47:4, 47:6, 49:1, 50:1, 50:2, 51:5, 51:16, 52:14, 53:20, 54:10, 54:22, 54:23, 55:3, 56:20, 58:22, 60:7, 62:19, 63:4, 64:19, 66:14, 68:2, 68:5, 68:17, 69:5, 69:20, 70:24, 72:8, 72:9, 73:5, 73:6, 73:7, 74:5, 74:18, 74:20, 75:8, 76:2, 76:5, 79:25, 96:8, 96:12, 96:14, 96:20, 97:1, 97:11, 97:24, 101:1, 101:2, 101:4, 101:7, 101:14, 102:5, 102:21, 102:23, 104:16, 105:15, 106:12, 106:18, 106:19, 108:19, 109:19, 110:15, 112:25  
**MDC's** [2] - 5:2, 73:8  
**meal** [1] - 32:18  
**meals** [1] - 48:7  
**mean** [23] - 16:8, 16:14, 19:1, 33:14, 48:21, 59:5, 73:18, 75:5, 77:7, 80:13, 82:17, 82:19, 84:8, 85:10, 86:4, 89:2, 89:24, 90:8, 92:24, 95:4, 100:17, 103:12, 110:2  
**meaning** [4] - 22:13, 25:18, 72:5, 109:9  
**meaningful** [2] - 36:5, 85:8  
**means** [5] - 11:19, 16:7, 31:6, 118:1, 118:10  
**meant** [1] - 54:23  
**measures** [13] - 10:17, 11:14, 14:9, 15:12, 15:16, 17:12, 34:8, 34:18, 36:21, 74:4, 77:9, 90:24, 91:18  
**mechanism** [6] - 19:21, 21:13, 21:16, 44:23, 45:20, 98:6  
**mechanisms** [5] - 22:9, 22:12, 44:11, 82:6, 107:8  
**mediation** [1] - 87:13  
**Medical** [1] - 12:13  
**medical** [60] - 10:14, 11:4, 12:1, 12:7,

(medically - office)

12:9, 13:5, 13:8, 17:13, 26:15, 32:5, 33:10, 34:22, 34:23, 35:2, 35:6, 45:3, 50:1, 50:20, 50:22, 50:23, 51:7, 53:5, 53:6, 54:11, 54:13, 54:17, 54:20, 54:22, 54:23, 55:14, 55:21, 56:17, 59:17, 59:22, 60:7, 60:11, 60:12, 60:24, 62:17, 62:18, 62:19, 64:4, 74:16, 79:23, 80:7, 80:8, 80:11, 80:12, 86:9, 92:3, 92:10, 92:19, 99:3, 102:5, 113:6, 115:20, 116:1, 119:22, 119:25, 122:10

**medically** [3] - 30:15, 81:23, 122:4

**medication** [1] - 116:3

**medications** [1] - 56:19

**medicine** [1] - 33:23

**meet** [1] - 58:13

**meeting** [1] - 109:5

**meets** [1] - 89:24

**member** [1] - 54:4

**members** [12] - 9:10, 11:11, 11:13, 24:23, 33:21, 75:7, 80:6, 81:25, 85:9, 101:25, 107:3, 122:10

**memorandum** [1] - 42:20

**mention** [5] - 6:11, 38:4, 38:17, 107:24, 110:17

**mentioned** [4] - 38:25, 45:11, 53:18, 107:14

**merits** [5] - 18:5, 18:7, 78:14, 112:24, 117:13

**met** [5] - 81:25, 108:1, 108:2, 117:9, 121:1

**Meyer** [2] - 32:1, 35:18

**mid** [1] - 121:17

**mid-March** [1] - 121:17

**middle** [1] - 86:5

**might** [29] - 5:8, 6:24, 17:4, 23:9, 25:10, 29:2, 34:8, 34:9, 34:18, 34:19, 43:2, 47:10, 63:13, 70:15, 71:5, 74:1, 75:10, 78:12, 78:13, 80:10, 85:3, 87:10, 95:22, 112:6, 114:2, 116:2, 122:13

**million** [1] - 57:21

**mind** [9] - 5:3, 6:3, 6:6, 21:19, 69:14, 73:7, 91:14, 96:21, 105:6

**minded** [1] - 88:1

**mindful** [1] - 39:12

**minimize** [3] - 49:23, 99:19, 99:25

**minus** [1] - 83:9

**minute** [2] - 17:19, 61:1

**misreading** [1] - 65:10

**missed** [3] - 28:14, 50:12, 52:19

**misses** [1] - 27:10

**missing** [1] - 86:12

**misspeak** [1] - 63:11

**mistake** [1] - 92:17

**mitigate** [11] - 13:20, 14:5, 31:22, 70:14, 70:20, 76:12, 77:10, 78:8, 90:5, 102:6

**mitigated** [1] - 77:25

**mitigates** [1] - 33:11

**mitigating** [4] - 15:12, 15:16, 17:12, 28:20

**mitigation** [7] - 9:6, 9:17, 28:23, 48:24, 66:7, 70:25, 114:3

**mix** [2] - 19:13, 87:13

**mode** [1] - 86:5

**moment** [3] - 36:4, 61:16, 75:11

**Monday** [4] - 9:25, 10:15, 54:4, 54:6

**money** [2] - 22:17, 22:19

**monitoring** [1] - 11:5

**months** [1] - 107:24

**morning** [9] - 3:8, 3:16, 4:4, 9:24, 10:7, 10:12, 13:12, 49:22, 86:1

**mortality** [2] - 95:5, 95:6

**most** [10] - 32:15, 38:19, 71:5, 71:19, 84:19, 87:6, 88:20, 96:15, 121:18

**mostly** [1] - 25:9

**motion** [5] - 8:24, 40:12, 68:21, 110:21, 125:7

**motions** [1] - 125:2

**move** [8] - 17:19, 26:18, 29:1, 29:2, 80:16, 83:2, 84:1, 100:2

**moved** [4] - 26:12, 64:22, 74:7, 100:1

**movement** [1] - 105:17

**moving** [3] - 8:2, 84:2, 107:1

**MS** [64] - 3:8, 3:22, 3:24, 5:6, 8:16, 8:23, 18:18, 19:8, 25:1, 25:7, 25:10, 25:19, 25:21, 25:22, 30:10, 31:2, 34:5, 35:24, 36:8, 36:12, 36:17, 50:7, 50:11, 52:21, 53:22, 60:15, 62:22, 63:6, 63:10, 63:15, 63:25, 64:15, 65:11, 69:6, 78:22, 80:21, 81:21, 83:8, 84:15, 84:23, 85:14, 95:12, 96:3, 104:13, 104:19, 105:9, 109:4, 113:12, 115:24, 116:16, 117:12, 117:20, 117:24, 119:9, 119:22, 120:12, 122:2, 122:21, 123:2, 123:24, 124:2, 124:13, 125:13, 125:20

**multi** [1] - 74:3

**multi-tiered** [1] - 74:3

**multiple** [5] - 11:11, 55:23, 56:19, 58:15, 58:16

**mute** [1] - 6:2

**N**

**name** [2] - 100:21, 118:25

**named** [2] - 9:3, 17:23

**narrow** [3] - 9:2, 9:11, 38:1

**Nathan** [3] - 23:1, 92:4, 96:6

**Nathan's** [1] - 88:8

**national** [1] - 14:4

**nationwide** [2] - 46:23, 62:15

**nature** [4] - 57:16, 58:22, 92:20, 102:13

**nearest** [1] - 42:1

**nearly** [1] - 28:23

**necessarily** [3] - 85:7, 88:16, 96:18

**necessary** [10] - 17:8, 17:10, 21:15, 23:4, 49:3, 70:25, 71:4, 90:4, 94:10, 116:2

**need** [32] - 8:8, 16:11, 16:20, 27:3, 35:1, 44:20, 45:1, 50:20, 50:23, 51:2, 53:11, 53:12, 53:17, 55:14, 57:9, 58:5, 60:14, 67:18, 70:19, 71:10, 75:1, 83:17, 83:19, 84:1, 84:17, 85:8, 87:2, 94:10, 102:7, 102:9, 105:11, 117:16

**needed** [4] - 51:20, 54:4, 68:10, 115:14

**needs** [8] - 38:20, 50:24, 92:3, 92:10, 99:9, 99:10, 101:14, 102:8

**negative** [5] - 12:15, 32:8, 95:21, 116:17, 123:9

**neutral** [1] - 86:9

**O**

**never** [2] - 30:13, 66:16

**new** [13] - 10:17, 33:7, 46:20, 48:8, 56:23, 58:12, 64:3, 64:14, 65:1, 65:8, 89:3, 89:6, 123:17

**NEW** [2] - 1:1, 2:3

**New** [9] - 1:5, 1:16, 1:21, 2:5, 2:9, 46:22, 111:11

**next** [4] - 10:25, 34:12, 85:16, 94:8

**Nicole** [2] - 2:11, 109:6

**night** [14] - 5:2, 7:24, 37:16, 37:22, 46:3, 46:25, 49:21, 53:24, 54:5, 54:6, 58:13, 62:15, 69:7, 69:10

**nine** [1] - 120:14

**Nkanga** [1] - 24:16

**nobody** [1] - 15:6

**noise** [1] - 6:2

**none** [3] - 35:10, 39:10, 118:5

**normal** [6] - 19:15, 43:2, 54:8, 54:12, 82:23, 85:22

**normally** [1] - 80:8

**note** [2] - 13:1, 80:17

**noted** [1] - 37:22

**nothing** [7] - 15:15, 27:24, 35:14, 37:10, 37:14, 38:1, 94:5

**notice** [8] - 32:17, 67:5, 86:19, 89:22, 90:20, 90:21, 90:22, 90:23

**novel** [1] - 72:20

**nowhere** [2] - 55:4, 106:19

**number** [13] - 25:12, 25:13, 30:22, 33:18, 34:7, 68:5, 72:15, 99:16, 103:22, 106:12, 113:23, 114:10, 118:1

**numbers** [3] - 15:1, 123:22, 124:3

**nurse** [2] - 50:14, 60:12

**nurses** [1] - 50:14

**object** [4] - 5:9, 7:9, 42:14, 45:6

**objected** [2] - 41:4, 44:13

**objection** [1] - 44:12

**objectives** [2] - 93:9, 93:13

**obligations** [1] - 89:25

**observe** [1] - 53:8

**observed** [1] - 72:22

**observing** [1] - 17:11

**obstacle** [5] - 18:1, 18:4, 18:5, 18:7, 23:11

**obtain** [3] - 27:5, 80:7, 113:21

**obtained** [2] - 28:15, 62:1

**obtaining** [2] - 16:7, 80:8

**obviously** [23] - 4:20, 8:2, 9:9, 9:14, 10:2, 23:9, 36:4, 43:2, 44:12, 46:22, 48:22, 49:21, 50:19, 51:10, 53:23, 88:1, 90:1, 98:14, 100:1, 101:22, 117:16, 122:14, 125:15

**occupied** [1] - 66:21

**occur** [1] - 12:22

**occurs** [1] - 80:24

**OF** [5] - 1:1, 1:10, 1:19, 2:3, 126:2

**offense** [1] - 81:7

**offering** [1] - 100:9

**office** [12] - 10:23, 42:10, 42:11, 42:13, 42:16, 43:21, 62:24, 68:16, 111:10, 111:12, 111:15

**Office** [9] - 4:5, 4:8, 4:10, 37:2, 83:14,

86:7, 124:21, 125:1, 125:10  
**office's** [1] - 42:11  
**officers** [1] - 32:24  
**Official** [2] - 2:16, 126:10  
**often** [2] - 22:18, 110:10  
**old** [1] - 79:7  
**older** [2] - 26:14, 48:16  
**Olson** [2] - 2:12, 4:10  
**once** [4] - 40:20, 51:6, 100:3, 123:9  
**once-a-day** [1] - 51:6  
**one** [94] - 5:13, 6:14, 6:16, 9:18, 9:23, 13:18, 15:7, 15:12, 16:9, 16:12, 16:20, 18:15, 18:19, 18:25, 20:25, 22:2, 22:17, 24:3, 24:4, 24:14, 25:23, 28:8, 28:9, 29:9, 31:10, 33:14, 35:9, 35:18, 42:4, 44:10, 45:8, 45:21, 49:6, 49:24, 51:7, 53:1, 53:4, 54:3, 55:13, 60:3, 61:10, 63:6, 66:6, 68:6, 69:18, 72:15, 79:23, 84:20, 84:24, 86:2, 87:25, 89:10, 89:15, 92:4, 92:14, 92:24, 93:2, 95:8, 96:19, 98:5, 99:13, 99:15, 101:17, 103:7, 103:18, 104:17, 106:21, 106:22, 107:9, 108:11, 109:21, 110:25, 111:21, 113:19, 114:10, 114:20, 115:10, 116:5, 116:9, 116:22, 120:8, 121:12, 121:16, 121:22, 122:22, 123:2, 123:20, 124:3, 124:7  
**one-in-six** [1] - 95:8  
**ones** [4] - 40:15, 42:16, 68:17, 102:5  
**ongoing** [1] - 90:11  
**open** [2] - 8:14  
**opening** [1] - 36:24  
**operate** [1] - 66:18  
**operation** [1] - 102:8  
**opinion** [1] - 23:1  
**opportunity** [11] - 8:3, 27:3, 43:13, 54:16, 59:12, 59:22, 70:24, 86:19, 105:6, 105:7, 120:25  
**oppose** [3] - 102:12, 106:7  
**opposed** [4] - 96:14, 97:6, 100:3, 114:11  
**opposing** [2] - 57:11, 68:21  
**opposite** [1] - 17:1  
**opposition** [9] - 16:18, 18:17, 37:17, 58:5, 67:24, 82:1, 85:21, 103:18, 106:5  
**option** [3] - 17:2, 29:10, 41:17  
**order** [21] - 4:18, 5:1, 5:17, 9:6, 20:9, 20:11, 24:16, 29:7, 29:9, 37:22, 46:3, 46:5, 85:8, 86:13, 88:19, 93:7, 94:9, 104:25, 105:23, 108:1, 108:16  
**ORDER** [1] - 1:10  
**Order** [1] - 68:21  
**ordered** [2] - 25:25, 105:23  
**ordering** [1] - 81:17  
**orders** [2] - 28:15, 46:3  
**ordinary** [1] - 33:17  
**original** [2] - 58:19, 63:17  
**originally** [1] - 98:24  
**Ostriker** [1] - 109:7  
**otherwise** [3] - 6:5, 80:18, 115:16  
**ourselves** [1] - 9:1  
**outbreak** [4] - 31:20, 37:11, 98:1, 106:14  
**outcomes** [1] - 95:21  
**outline** [1] - 81:6  
**outset** [4] - 5:25, 8:5, 8:11, 8:13

**outside** [5] - 38:17, 43:8, 71:23, 101:2, 120:2  
**overall** [1] - 62:2  
**overlap** [1] - 6:9  
**overlapping** [1] - 6:7  
**overlooking** [2] - 59:13, 85:5  
**overly** [1] - 98:11  
**oversee** [3] - 57:19, 74:12, 79:18  
**overwhelmed** [3] - 12:12, 55:1, 56:15  
**own** [4] - 12:17, 26:9, 48:1, 117:13

**P**

**p.m** [1] - 60:21  
**PA** [2] - 54:15, 60:17  
**pace** [2] - 56:13, 57:15  
**Page** [1] - 63:16  
**pain** [1] - 92:13  
**pamphlets** [3] - 35:25, 36:2, 36:15  
**panicked** [1] - 86:5  
**paper** [1] - 95:4  
**papers** [18] - 9:16, 11:1, 11:12, 11:23, 26:25, 28:11, 28:24, 37:12, 38:5, 38:18, 39:10, 48:1, 79:2, 82:1, 95:16, 99:13, 106:20, 110:6  
**paragraph** [1] - 30:22  
**Paragraph** [4] - 30:23, 31:2, 31:3, 32:17  
**parallel** [1] - 20:5  
**paramount** [1] - 38:15  
**Park Avenue** [1] - 1:20  
**Parker** [1] - 104:19  
**Parole** [1] - 83:14  
**part** [20] - 10:16, 13:4, 23:19, 25:12, 30:14, 32:10, 33:21, 35:17, 51:7, 57:18, 71:13, 93:1, 95:15, 98:18, 99:12, 102:13, 112:18, 112:19, 113:25, 115:1  
**particular** [18] - 19:18, 22:1, 23:9, 29:2, 43:17, 52:4, 55:2, 72:18, 72:19, 75:9, 78:5, 80:16, 84:7, 86:20, 95:3, 98:5, 99:22, 112:7  
**particularly** [7] - 7:25, 53:14, 54:25, 58:25, 72:16, 89:16, 106:3  
**parties** [12] - 3:2, 3:7, 7:23, 15:17, 37:5, 61:19, 70:22, 73:16, 77:23, 83:1, 86:18  
**Parties** [1] - 3:3  
**partly** [3] - 35:16, 35:17  
**partner** [1] - 86:1  
**parts** [2] - 47:1, 102:2  
**past** [3] - 51:15, 68:20, 97:2  
**patient** [4] - 65:12, 79:22, 105:4, 105:10  
**patients** [4] - 12:20, 61:15, 63:3, 63:8  
**pattern** [1] - 73:6  
**pending** [6] - 6:18, 57:3, 85:6, 88:7, 123:21, 124:8  
**people** [221] - 4:1, 6:1, 6:9, 9:18, 9:24, 10:6, 10:8, 10:11, 10:15, 11:3, 11:4, 11:6, 11:7, 11:9, 11:15, 11:18, 11:24, 11:25, 12:8, 12:9, 12:12, 12:15, 13:8, 13:19, 13:23, 14:16, 14:24, 15:3, 15:4, 15:6, 16:21, 16:24, 17:3, 17:4, 18:11, 19:18, 21:11, 23:14, 25:2, 25:12, 25:14, 26:10, 26:11, 26:14, 28:16, 29:15,

30:16, 30:18, 31:6, 31:9, 31:11, 31:13, 31:14, 31:21, 31:23, 32:8, 32:14, 32:16, 32:21, 33:1, 33:4, 33:10, 33:18, 33:20, 34:7, 34:12, 34:17, 35:1, 35:6, 36:1, 36:2, 36:3, 36:19, 36:21, 41:22, 48:3, 48:4, 51:1, 53:10, 54:11, 54:13, 54:16, 54:24, 55:3, 55:10, 55:13, 55:14, 55:15, 55:16, 55:21, 55:24, 56:4, 57:7, 57:9, 57:22, 58:6, 58:9, 58:10, 58:13, 58:15, 58:17, 58:20, 59:21, 62:1, 63:18, 63:20, 64:13, 64:19, 64:20, 64:22, 65:1, 65:8, 65:24, 66:13, 66:20, 66:24, 67:12, 69:8, 70:13, 70:15, 70:21, 70:25, 71:22, 72:16, 72:23, 74:17, 75:17, 75:18, 75:19, 75:20, 77:17, 77:24, 78:23, 79:3, 79:4, 79:15, 79:17, 80:1, 80:2, 80:5, 80:7, 80:12, 82:9, 82:12, 82:15, 82:22, 83:2, 83:9, 83:16, 83:18, 83:19, 84:3, 84:17, 84:19, 84:25, 85:2, 85:16, 85:24, 86:13, 86:14, 87:9, 95:5, 97:21, 98:20, 99:20, 101:21, 106:2, 106:3, 106:5, 106:7, 106:8, 106:11, 106:14, 106:18, 106:22, 106:25, 107:17, 109:9, 113:21, 114:2, 116:11, 117:25, 118:1, 118:3, 118:4, 118:5, 118:8, 118:9, 118:10, 118:11, 118:13, 118:14, 118:15, 118:16, 118:20, 120:5, 120:24, 121:11, 121:13, 121:18, 121:20, 121:25, 122:3, 122:9, 122:13, 122:24, 122:25  
**people's** [4] - 32:13, 57:17, 83:11, 86:6  
**per** [2] - 72:14, 74:6  
**percent** [9] - 11:7, 15:13, 25:4, 26:6, 26:7, 66:17, 95:7, 116:17  
**percentage** [1] - 68:4  
**perhaps** [3] - 43:12, 109:18, 114:14  
**period** [8] - 17:25, 41:2, 41:4, 41:5, 44:14, 49:11, 71:19, 95:1  
**person** [36] - 6:8, 11:19, 14:19, 14:20, 26:2, 29:21, 31:18, 33:17, 54:5, 55:5, 55:13, 56:16, 56:24, 57:19, 58:7, 64:20, 77:9, 78:6, 79:20, 80:24, 82:24, 83:12, 83:13, 83:15, 84:2, 84:13, 87:25, 89:18, 92:12, 104:16, 104:18, 106:21, 106:22, 121:16, 123:17  
**person's** [2] - 23:5, 72:15  
**personal** [7] - 22:18, 27:4, 52:16, 52:23, 53:1, 75:15, 90:4  
**personally** [4] - 68:14, 68:15, 68:24, 69:3  
**persons** [5] - 52:6, 114:21, 115:8, 121:12, 121:25  
**perspective** [5] - 10:3, 13:4, 18:11, 24:25, 110:3  
**petition** [4] - 9:4, 44:7, 57:3, 108:4  
**petitioner** [5] - 6:21, 26:23, 30:3, 42:5, 43:25  
**Petitioner** [1] - 43:25  
**petitioner's** [1] - 15:22  
**Petitioners** [3] - 1:14, 1:19  
**petitioners** [65] - 3:10, 3:17, 3:19, 3:22, 5:5, 7:12, 13:2, 13:7, 13:13, 16:8, 16:22, 17:3, 17:23, 18:19, 19:3, 20:2, 20:15, 27:1, 29:8, 29:24, 30:7, 30:12, 37:25, 38:3, 38:5, 38:24, 38:25, 39:25, 40:13, 42:6, 42:8, 42:13, 43:4, 44:23, 47:19, 48:2, 48:10, 48:11, 52:2, 53:3,

(petitioners proximity)  
 56:8, 58:25, 59:18, 61:14, 61:16, 61:23, 69:24, 70:2, 70:6, 73:4, 73:17, 75:2, 76:10, 77:15, 77:18, 83:9, 89:15, 89:25, 90:3, 100:16, 103:20, 108:25, 113:19, 123:23  
**petitioners'** [7] - 3:11, 3:21, 3:23, 38:18, 102:16, 121:7, 122:24  
**petitions** [3] - 39:5, 84:22, 97:3  
**Phase** [2] - 37:18, 62:15  
**phone** [9] - 25:11, 31:12, 31:23, 34:12, 65:20, 80:6, 85:25, 86:2  
**phones** [3] - 31:10, 52:4, 80:4  
**phrase** [1] - 88:19  
**physically** [1] - 30:3  
**physician** [1] - 61:8  
**physicians** [1] - 50:13  
**pick** [1] - 6:2  
**piece** [7] - 21:1, 41:18, 47:17, 88:24, 94:16, 101:6, 113:2  
**piecemeal** [1] - 57:14  
**pieces** [2] - 111:21, 113:19  
**place** [6] - 3:1, 59:1, 81:25, 84:24, 105:2, 123:13  
**placed** [1] - 14:21  
**places** [2] - 48:17, 49:24  
**plainly** [1] - 27:22  
**plaintiffs'** [1] - 49:25  
**Plaintiffs** [1] - 1:4  
**plaintiffs** [6] - 4:16, 19:3, 39:25, 40:16, 43:4, 102:9  
**plaintiffs'** [2] - 25:24, 68:21  
**play** [4] - 57:14, 77:20, 78:13, 78:15  
**Plaza** [1] - 2:4  
**pleading** [1] - 116:10  
**pleadings** [1] - 37:4  
**plenty** [2] - 90:7, 120:25  
**plus** [1] - 107:14  
**point** [44] - 5:1, 9:20, 10:24, 10:25, 11:8, 11:17, 17:24, 20:4, 20:6, 22:6, 22:8, 22:10, 30:4, 32:4, 33:13, 33:25, 39:25, 45:4, 48:24, 49:7, 50:2, 59:14, 61:10, 66:7, 72:19, 76:7, 76:16, 81:4, 85:20, 90:6, 93:10, 100:24, 107:23, 109:21, 110:5, 110:18, 111:24, 112:17, 115:8, 116:7, 116:8, 120:3, 120:19, 124:4  
**pointed** [6] - 20:20, 36:18, 68:24, 102:4, 102:14, 103:8  
**pointing** [2] - 18:1, 114:10  
**points** [12] - 5:17, 7:24, 23:2, 32:6, 37:2, 39:17, 48:2, 52:20, 53:22, 56:7, 59:18, 105:11  
**policies** [1] - 43:7  
**policy** [5] - 42:19, 42:20, 43:18, 43:21, 48:8  
**Pollak** [1] - 109:18  
**popping** [1] - 5:8  
**pops** [1] - 4:20  
**population** [9] - 28:16, 38:14, 66:18, 70:23, 71:24, 72:24, 77:23, 77:24, 123:15  
**portion** [1] - 50:12  
**pose** [2] - 79:3, 92:8  
**poses** [2] - 72:19, 78:6  
**position** [27] - 7:4, 7:7, 7:14, 13:17, 15:18, 16:5, 16:23, 17:1, 18:10, 24:10,

27:9, 27:11, 46:4, 49:14, 58:1, 66:9, 70:8, 75:6, 75:11, 75:23, 75:24, 78:23, 90:6, 90:11, 90:21, 91:1, 122:13  
**positive** [13] - 11:11, 14:17, 14:19, 15:4, 53:1, 58:8, 64:11, 99:1, 116:9, 116:22, 117:4, 123:4, 124:6  
**positives** [1] - 49:6  
**possession** [1] - 12:3  
**possible** [11] - 5:19, 22:16, 24:9, 47:25, 49:1, 49:5, 49:23, 67:20, 73:24, 75:21, 101:24  
**postconviction/presentence** [1] - 26:7  
**posters** [4] - 61:25, 62:4, 62:10  
**posture** [3] - 108:13, 111:20, 114:5  
**potential** [8] - 24:21, 31:4, 37:13, 64:4, 98:11, 100:19, 123:1, 123:18  
**potentially** [6] - 24:11, 24:12, 57:23, 73:17, 82:9, 120:2  
**power** [2] - 32:11, 112:13  
**PPE** [1] - 55:16  
**practicably** [1] - 76:2  
**practice** [1] - 70:24  
**practices** [2] - 12:18, 65:16  
**practitioners** [2] - 50:14, 60:13  
**Pratesi** [12] - 2:10, 4:7, 41:8, 50:4, 51:15, 55:7, 60:1, 60:14, 119:2, 120:11, 121:8, 123:25  
**PRATESI** [14] - 50:7, 50:11, 52:21, 60:15, 62:22, 63:6, 63:10, 115:24, 116:16, 117:12, 119:9, 119:22, 123:2, 124:2  
**precisely** [4] - 72:20, 114:8, 114:9, 114:13  
**preferably** [1] - 65:24  
**premise** [4] - 15:22, 20:15, 26:22, 101:9  
**preparation** [2] - 23:5, 32:18  
**prescriptions** [1] - 116:4  
**presence** [1] - 16:6  
**present** [2] - 33:5, 56:2  
**PRESENT** [1] - 2:8  
**presentation** [1] - 50:22  
**presented** [3] - 23:8, 67:14, 117:14  
**presentence** [1] - 26:6  
**pressed** [1] - 69:16  
**pressing** [1] - 87:2  
**pressure** [2] - 12:15, 32:8  
**presumption** [1] - 23:17  
**Pretrial** [1] - 83:13  
**pretrial** [12] - 17:4, 21:2, 21:4, 21:10, 22:23, 23:11, 26:6, 39:6, 77:8, 77:19, 103:13, 104:8  
**pretty** [1] - 119:5  
**prevail** [1] - 71:14  
**prevent** [3] - 14:22, 62:7, 97:25  
**preventing** [2] - 101:21, 101:22  
**previously** [1] - 60:7  
**prison** [3] - 31:17, 35:20, 36:3  
**prisoners** [1] - 103:13  
**Prisons** [8] - 2:10, 2:11, 4:7, 13:21, 14:3, 41:9, 42:10, 42:18  
**prisons** [1] - 14:5  
**Prisons's** [1] - 9:16  
**privilege** [1] - 28:19  
**proactive** [2] - 98:10, 98:15

**proactively** [1] - 125:6  
**probative** [2] - 116:21, 117:2  
**problem** [18] - 12:14, 51:17, 57:2, 69:19, 70:10, 72:10, 76:2, 84:19, 87:21, 90:22, 91:6, 91:9, 91:12, 91:13, 111:25, 114:9, 120:12, 121:1  
**problematic** [1] - 108:11  
**problems** [7] - 21:21, 22:13, 32:11, 54:11, 73:4, 95:21, 101:17  
**procedural** [1] - 104:2  
**procedure** [3] - 41:21, 80:2, 100:2  
**procedures** [7] - 48:24, 57:3, 82:15, 83:25, 85:22, 114:9, 114:10  
**proceeding** [13] - 23:24, 24:15, 45:18, 59:12, 76:23, 101:19, 102:11, 102:14, 108:12, 111:20, 112:14, 120:20  
**Proceedings** [1] - 2:18  
**proceedings** [4] - 43:9, 45:17, 84:18, 126:4  
**process** [23] - 19:19, 37:15, 40:8, 40:10, 40:14, 40:19, 42:1, 47:3, 59:4, 64:25, 71:3, 73:15, 74:1, 74:3, 80:8, 81:11, 81:13, 82:25, 93:3, 93:4, 94:25, 98:10  
**processes** [5] - 56:12, 56:25, 57:13, 57:19, 82:6  
**processing** [1] - 41:6  
**produce** [1] - 92:13  
**produced** [1] - 2:19  
**products** [1] - 52:15  
**professional** [1] - 73:16  
**Program** [1] - 25:13  
**Programs** [2] - 2:12, 4:10  
**promise** [2] - 8:5, 80:17  
**promised** [3] - 59:9, 59:11, 105:5  
**promptly** [1] - 87:11  
**proper** [3] - 62:7, 62:8, 106:24  
**properly** [2] - 107:19, 117:19  
**proportion** [1] - 26:12  
**proposal** [1] - 73:22  
**proposals** [1] - 74:2  
**propose** [2] - 17:7, 21:22  
**proposing** [1] - 86:21  
**proposition** [1] - 16:4  
**prosecutor** [2] - 112:3, 112:6  
**prosecutors** [1] - 111:8  
**prospects** [1] - 71:6  
**protect** [8] - 35:23, 57:17, 70:25, 83:2, 86:13, 93:8, 106:2, 121:20  
**protected** [2] - 27:1, 107:20  
**protecting** [2] - 36:21, 69:5  
**protection** [1] - 98:22  
**protective** [3] - 52:16, 52:23, 53:2  
**protocol** [1] - 121:9  
**protocols** [2] - 47:2, 106:25  
**proved** [1] - 27:23  
**provide** [3] - 60:8, 67:6, 67:21  
**provided** [7] - 17:15, 52:16, 53:2, 60:7, 62:9, 67:12, 117:22  
**provider** [1] - 61:7  
**providers** [1] - 61:5  
**providing** [2] - 52:5, 54:11  
**provision** [3] - 23:3, 74:14, 74:15  
**provisions** [1] - 29:14  
**proximity** [2] - 48:7, 53:16

(public report)  
**public** [8] - 9:14, 13:4, 13:7, 23:17, 38:13, 62:2, 82:21, 85:23  
**public's** [1] - 94:12  
**pull** [2] - 30:25, 120:16  
**purpose** [1] - 99:7  
**purposes** [3] - 106:23, 108:20, 121:24  
**pursuant** [1] - 56:23  
**pursues** [1] - 56:13  
**pushed** [1] - 42:8  
**put** [21] - 6:20, 7:13, 8:8, 29:14, 35:14, 43:12, 43:17, 51:22, 64:7, 70:7, 80:9, 81:24, 83:20, 88:22, 90:20, 90:21, 103:17, 110:18, 111:18, 115:20, 123:13  
**putative** [2] - 9:7, 54:4  
**putting** [8] - 7:1, 19:18, 22:19, 32:2, 77:11, 78:11, 80:1

**Q**

**qualify** [3] - 16:24, 42:12, 100:22  
**quarantine** [7] - 93:7, 93:19, 107:14, 123:10, 123:13, 124:1, 124:8  
**quarantined** [6] - 11:25, 85:24, 123:7, 123:11, 123:21, 124:4  
**quarters** [2] - 34:8, 34:13  
**questions** [29] - 7:23, 8:9, 8:13, 8:20, 10:24, 12:25, 13:3, 13:16, 13:24, 15:25, 18:25, 20:24, 29:1, 29:2, 30:9, 39:20, 47:11, 47:16, 51:23, 59:9, 62:23, 65:6, 67:23, 92:10, 95:25, 106:19, 113:2, 124:11  
**quick** [1] - 86:11  
**quickly** [8] - 60:3, 83:2, 83:10, 83:15, 85:12, 105:19, 112:4, 112:24  
**quite** [2] - 20:10, 85:12  
**quo** [1] - 74:25

**R**

**Rabaldi** [4] - 8:25, 19:11, 79:7, 82:16  
**RACHEL** [1] - 1:11  
**radar** [1] - 8:9  
**raise** [5] - 22:23, 39:18, 52:3, 62:23, 110:13  
**raised** [10] - 23:21, 24:10, 33:14, 43:12, 46:2, 51:11, 57:7, 61:11, 116:7, 120:18  
**raises** [2] - 17:6, 104:22  
**raising** [5] - 18:12, 24:22, 47:19, 48:2, 100:15  
**rampant** [1] - 31:20  
**rapidly** [2] - 10:5, 97:24  
**rarely** [1] - 15:17  
**rate** [1] - 95:6  
**rates** [3] - 95:5, 95:16  
**rather** [1] - 77:21  
**RDR** [2] - 2:15, 126:9  
**reach** [7] - 41:11, 62:25, 68:4, 100:24, 107:16, 122:13, 125:6  
**reaction** [1] - 78:10  
**read** [5] - 8:7, 24:6, 71:20, 94:16, 96:4  
**readily** [2] - 51:8, 55:20  
**reading** [3] - 47:25, 48:1, 65:4  
**real** [2] - 15:11, 125:3

**real-time** [2] - 15:11, 125:3  
**reality** [1] - 58:4  
**realize** [3] - 14:18, 80:15, 116:2  
**really** [22] - 12:13, 20:20, 28:5, 29:6, 34:10, 49:25, 56:10, 56:16, 79:20, 81:1, 82:15, 83:16, 83:18, 83:22, 84:13, 84:23, 92:11, 99:21, 101:11, 118:6, 118:17  
**realm** [1] - 102:3  
**reason** [15] - 17:25, 22:22, 23:8, 23:10, 23:15, 23:19, 29:13, 69:1, 70:11, 73:13, 81:21, 82:12, 83:3, 107:24, 113:20  
**reasons** [11] - 11:21, 22:13, 22:16, 23:6, 38:5, 38:6, 38:22, 81:5, 82:23, 102:22, 113:9  
**rebuts** [1] - 35:14  
**rebutted** [2] - 20:20, 35:11  
**recapitulate** [1] - 8:8  
**receipt** [1] - 19:17  
**receive** [2] - 7:17, 39:3  
**received** [2] - 18:22, 32:22  
**receiving** [1] - 10:6  
**recent** [1] - 101:9  
**recently** [2] - 103:10, 124:4  
**recklessness** [2] - 91:10, 91:15  
**recognizance** [1] - 22:19  
**recognize** [4] - 37:21, 46:10, 70:11, 88:2  
**recognized** [2] - 37:8, 37:16  
**recommend** [1] - 74:19  
**recommendation** [7] - 63:2, 63:5, 63:7, 69:10, 84:8, 84:10, 102:1  
**recommendations** [8] - 9:8, 57:20, 61:14, 73:20, 83:16, 83:22, 84:3, 85:5  
**recommended** [2] - 33:19, 33:20  
**recommending** [1] - 87:17  
**recommends** [3] - 12:19, 66:20, 70:22  
**record** [5] - 21:19, 81:18, 102:15, 111:23, 126:4  
**recorded** [1] - 2:18  
**records** [1] - 122:10  
**red** [1] - 63:21  
**reduce** [3] - 33:18, 87:25, 90:12  
**reduced** [1] - 49:2  
**reducing** [2] - 66:7, 72:25  
**Redzepagic** [1] - 14:10  
**reevaluating** [1] - 42:19  
**refer** [2] - 27:6, 52:11  
**reference** [1] - 27:6  
**referenced** [2] - 61:14, 61:16  
**referred** [1] - 104:14  
**referring** [1] - 124:1  
**refused** [1] - 104:21  
**reg** [1] - 56:23  
**regarding** [2] - 45:2, 50:24  
**regardless** [1] - 117:17  
**region** [1] - 120:2  
**regional** [1] - 62:24  
**registered** [1] - 50:14  
**regular** [3] - 52:18, 74:9, 75:14  
**regularly** [1] - 101:25  
**REINERT** [39] - 1:22, 3:16, 13:12, 16:14, 17:22, 18:6, 18:9, 18:16, 20:8, 21:15, 23:13, 26:18, 26:21, 29:12, 35:9, 36:11, 65:18, 67:4, 70:4, 72:13, 75:13,

76:7, 77:4, 78:17, 86:22, 87:18, 87:23, 88:13, 89:13, 90:18, 91:11, 91:18, 92:16, 93:15, 95:4, 103:21, 104:12, 104:25, 113:13  
**Reinert** [9] - 3:17, 8:19, 13:11, 13:13, 26:18, 58:21, 65:16, 101:18, 107:22  
**Reinert's** [1] - 68:7  
**rejected** [2] - 27:21, 42:7  
**related** [8] - 6:13, 6:16, 6:24, 7:10, 7:19, 79:9, 104:10, 106:8  
**relates** [1] - 91:24  
**relation** [2] - 7:5, 18:22  
**relational** [1] - 72:21  
**relay** [1] - 55:11  
**release** [102] - 9:3, 9:5, 13:1, 13:22, 16:3, 16:7, 16:11, 16:17, 16:19, 16:25, 17:2, 17:17, 17:25, 18:12, 18:20, 19:5, 19:7, 19:9, 20:5, 20:9, 20:11, 20:24, 23:3, 23:4, 23:12, 26:19, 26:22, 28:12, 28:14, 28:15, 29:6, 29:10, 38:2, 38:9, 38:21, 39:3, 39:6, 39:15, 40:2, 40:9, 40:19, 41:22, 41:24, 42:2, 42:13, 42:17, 44:13, 44:15, 44:18, 44:21, 44:24, 45:9, 45:13, 46:4, 46:5, 46:8, 46:14, 46:16, 57:1, 58:2, 58:25, 70:9, 71:6, 76:23, 77:12, 79:1, 81:3, 81:4, 81:5, 81:11, 81:14, 81:20, 82:12, 82:13, 84:22, 88:15, 88:17, 93:7, 94:7, 96:24, 97:4, 98:6, 98:20, 101:1, 103:10, 106:4, 107:11, 107:12, 107:16, 107:23, 110:21, 111:3, 113:5, 114:2, 114:6, 114:8, 120:21, 121:19, 122:18  
**released** [20] - 16:24, 22:18, 28:16, 38:8, 38:16, 39:10, 41:21, 45:4, 45:20, 56:9, 70:23, 78:7, 79:5, 79:10, 82:3, 96:17, 101:14, 107:25, 120:24, 123:10  
**releases** [2] - 23:2, 103:22  
**releasing** [2] - 46:11, 82:22  
**relevance** [2] - 44:16, 46:20  
**relevant** [9] - 42:25, 61:7, 68:18, 77:1, 77:2, 77:4, 78:12, 81:3, 111:10  
**reliable** [1] - 55:12  
**reliance** [1] - 114:11  
**relief** [34] - 9:2, 9:7, 9:10, 15:23, 16:1, 16:6, 16:16, 19:4, 21:5, 21:9, 27:10, 30:12, 37:25, 38:1, 40:16, 45:20, 57:4, 69:16, 71:2, 81:18, 87:2, 88:5, 88:19, 90:9, 97:3, 105:3, 106:7, 107:11, 107:12, 107:15, 108:14, 113:19, 113:21, 114:12  
**relies** [1] - 9:16  
**rely** [3] - 23:1, 60:1, 120:5  
**relying** [1] - 109:1  
**remain** [2] - 70:21, 123:14  
**remand** [1] - 25:15  
**remedies** [6] - 37:23, 38:23, 39:24, 42:25, 46:9, 90:10  
**remedy** [20] - 20:21, 21:20, 26:23, 28:12, 28:20, 30:18, 46:8, 75:1, 76:1, 76:5, 76:6, 78:20, 79:16, 81:3, 92:8, 94:4, 100:25, 113:9, 114:14  
**remotely** [1] - 3:2  
**removed** [1] - 10:9  
**repetitive** [1] - 91:16  
**replaced** [1] - 74:15  
**report** [3] - 55:9, 73:23, 121:5

**reported** [5] - 10:10, 11:6, 107:6, 120:13, 123:23  
**REPORTER** [1] - 126:2  
**reporter** [3] - 3:15, 6:5, 6:10  
**Reporter** [3] - 2:15, 2:16, 126:10  
**reporting** [6] - 15:14, 55:8, 84:2, 106:13, 118:15, 119:12  
**reports** [1] - 32:21  
**represent** [1] - 76:14  
**representation** [2] - 68:13, 118:7  
**representatives** [1] - 65:20  
**represented** [1] - 104:19  
**request** [37] - 6:18, 7:9, 15:22, 16:11, 16:18, 18:2, 18:20, 18:23, 19:5, 19:7, 30:16, 37:24, 40:3, 40:20, 41:1, 42:6, 42:7, 42:8, 42:9, 44:1, 45:9, 45:13, 45:21, 45:22, 51:20, 58:3, 58:19, 67:24, 68:10, 71:11, 80:9, 82:19, 88:6, 88:14, 97:3, 113:3  
**requested** [3] - 43:20, 88:5, 122:12  
**requests** [21] - 13:11, 19:15, 30:12, 30:14, 39:1, 39:15, 40:1, 40:12, 40:25, 41:6, 41:11, 41:14, 42:18, 42:22, 43:17, 45:5, 45:7, 57:11, 96:23, 97:3, 106:4  
**require** [1] - 57:7  
**required** [2] - 48:6, 91:4  
**requirement** [2] - 103:1, 114:13  
**requirements** [3] - 16:17, 58:13, 104:3  
**requires** [2] - 83:1, 113:3  
**resisted** [1] - 13:22  
**resolution** [1] - 113:1  
**resolve** [2] - 87:3, 87:5  
**resources** [3] - 21:25, 62:24, 62:25  
**respect** [16] - 21:2, 21:9, 30:19, 43:16, 47:20, 53:21, 61:23, 73:5, 73:10, 78:22, 88:6, 101:7, 105:22, 107:21, 115:5, 116:5  
**respond** [10] - 37:5, 59:13, 59:24, 59:25, 105:7, 105:8, 113:11, 113:12, 116:8, 117:22  
**responded** [8] - 14:5, 19:14, 30:13, 89:23, 89:24, 90:8, 90:13, 103:23  
**respondent** [13] - 4:3, 14:11, 17:15, 20:20, 27:16, 27:17, 35:11, 36:23, 89:22, 91:2, 94:6, 95:25, 114:10  
**respondent's** [3] - 13:17, 66:6, 66:16  
**Respondents** [2] - 2:2, 2:3  
**respondents** [6] - 4:5, 35:14, 87:7, 104:1, 105:23, 106:1  
**responding** [3] - 5:1, 40:14, 51:12  
**responds** [3] - 11:9, 12:25, 84:11  
**response** [14] - 4:17, 18:21, 19:10, 20:4, 27:7, 28:25, 36:14, 48:12, 58:4, 61:12, 66:2, 90:2, 106:4, 111:19  
**responses** [4] - 43:10, 43:16, 108:5, 114:18  
**rest** [3] - 37:4, 46:1, 47:6  
**restart** [1] - 123:18  
**RESTRAINING** [1] - 1:10  
**restrictive** [1] - 10:17  
**rests** [1] - 65:15  
**resulting** [1] - 12:7  
**results** [2] - 32:4, 123:9  
**return** [1] - 10:18  
**returned** [1] - 14:21  
**review** [2] - 26:5, 123:21

**reviewed** [3] - 47:1, 68:15, 96:24  
**reviewing** [1] - 96:23  
**RICHARD** [1] - 2:2  
**rigorous** [1] - 39:7  
**Rikers** [1] - 72:23  
**Rikers Island** [3] - 9:22, 9:24, 121:16  
**rise** [2] - 97:11, 102:24  
**risk** [106] - 13:20, 20:17, 23:17, 23:18, 26:13, 27:12, 27:18, 28:2, 28:10, 30:9, 32:5, 35:11, 38:12, 38:15, 38:19, 39:8, 39:9, 45:3, 48:15, 48:17, 52:24, 58:21, 63:12, 64:5, 64:7, 70:7, 71:25, 72:25, 74:7, 76:3, 76:18, 76:25, 77:6, 77:7, 77:10, 77:11, 77:16, 79:3, 81:2, 83:18, 88:22, 89:3, 89:4, 89:5, 89:17, 89:20, 90:24, 90:25, 91:3, 91:13, 91:16, 91:17, 91:19, 91:20, 91:21, 92:8, 92:18, 92:21, 92:25, 93:2, 93:5, 93:11, 93:14, 93:17, 93:22, 93:25, 94:20, 94:21, 94:22, 94:24, 95:2, 95:10, 95:20, 95:21, 96:16, 96:25, 98:4, 98:11, 98:12, 98:15, 99:4, 99:14, 99:22, 99:25, 100:11, 100:18, 100:19, 100:22, 101:2, 101:3, 101:4, 101:12, 102:6, 115:21, 121:19, 122:5, 124:24, 125:9  
**risks** [13] - 11:4, 47:18, 71:8, 71:24, 72:3, 72:20, 75:23, 77:25, 90:5, 92:19, 92:20, 99:10, 102:7  
**Roba** [1] - 29:19  
**Rodriguez** [6] - 8:25, 19:11, 30:11, 30:13, 43:25, 79:10  
**role** [1] - 16:15  
**Room** [1] - 1:21  
**room** [1] - 58:15  
**rooms** [1] - 12:16  
**ROSENFELD** [46] - 1:16, 3:8, 3:24, 5:6, 8:16, 8:23, 18:18, 19:8, 25:1, 25:7, 25:10, 25:19, 25:21, 30:10, 31:2, 34:5, 35:24, 36:8, 36:12, 36:17, 53:22, 63:15, 63:25, 64:15, 65:11, 69:6, 78:22, 80:21, 81:21, 83:8, 84:15, 84:23, 85:14, 95:12, 96:3, 105:9, 113:12, 117:20, 117:24, 120:12, 122:2, 122:21, 123:24, 124:13, 125:13, 125:20  
**Rosenfeld** [10] - 3:9, 5:6, 18:18, 26:4, 29:3, 60:6, 87:10, 95:12, 108:15, 111:1  
**rounds** [1] - 61:3  
**rule** [3] - 84:5, 86:16, 87:15  
**rules** [2] - 45:21, 58:12  
**rumor** [1] - 55:9  
**rumors** [1] - 51:12  
**run** [1] - 39:2  
**running** [1] - 86:4

**S**

**safe** [1] - 102:7  
**safety** [6] - 29:7, 38:12, 39:8, 57:17, 69:5, 121:21  
**sanitary** [1] - 62:8  
**sanitation** [1] - 51:21  
**sanitized** [1] - 74:6  
**satisfy** [1] - 94:2  
**saw** [2] - 18:14, 104:17  
**scenario** [1] - 16:1

**schedule** [2] - 83:11, 85:7  
**scheduled** [1] - 79:8  
**schedules** [3] - 50:17, 60:16, 85:21  
**School** [2] - 2:13, 4:11  
**SCHOOL** [1] - 1:19  
**science** [1] - 33:9  
**scientific** [1] - 33:25  
**scope** [5] - 7:6, 69:15, 69:16, 71:2, 93:16  
**screened** [1] - 75:17  
**screening** [7] - 12:18, 63:16, 63:18, 63:19, 63:20, 64:4, 64:6  
**se** [1] - 72:14  
**second** [6] - 20:22, 30:24, 39:14, 45:19, 46:2, 47:15  
**Second** [2] - 27:25, 29:18  
**Second Circuit** [2] - 30:2, 30:6  
**Secondhand** [1] - 100:20  
**Section** [1] - 44:24  
**secure** [2] - 97:11, 102:8  
**secured** [2] - 22:20, 31:3  
**security** [3] - 42:14, 97:13, 110:8  
**see** [10] - 5:23, 15:15, 24:11, 28:20, 36:16, 54:17, 59:22, 67:2, 89:6, 104:7  
**seeing** [8] - 5:4, 24:19, 63:22, 72:23, 85:10, 86:21, 110:7  
**seek** [6] - 16:1, 21:25, 39:5, 40:16, 44:23, 57:4  
**seeking** [24] - 9:2, 9:3, 9:4, 9:10, 9:12, 13:1, 19:5, 20:21, 21:2, 21:6, 21:9, 21:18, 23:12, 34:2, 37:24, 38:2, 40:17, 76:14, 80:12, 88:11, 100:25, 105:3, 120:1  
**seem** [3] - 42:24, 97:19, 99:18  
**segregation** [1] - 32:3  
**self** [1] - 93:19  
**self-quarantine** [1] - 93:19  
**sense** [14] - 7:11, 33:18, 36:22, 39:23, 41:14, 47:12, 47:16, 78:18, 78:21, 80:14, 88:18, 99:21, 114:6, 117:2  
**sensitivity** [1] - 43:3  
**sent** [3] - 10:12, 33:2, 117:17  
**sentence** [2] - 81:6, 85:17  
**sentenced** [5] - 17:24, 25:18, 25:20, 26:8, 26:11  
**sentences** [4] - 25:14, 38:6, 70:9, 83:20  
**sentencing** [3] - 39:1, 39:4, 110:22  
**separate** [11] - 10:10, 24:3, 30:14, 45:16, 45:18, 46:11, 64:12, 107:6, 113:18, 115:18, 122:16  
**separated** [2] - 49:4, 58:14  
**separately** [2] - 22:2, 84:17  
**separation** [2] - 49:11, 112:13  
**sequence** [1] - 6:9  
**serious** [14] - 19:19, 50:20, 54:11, 56:17, 56:21, 57:25, 58:21, 60:5, 82:11, 83:20, 94:1, 112:12, 115:20  
**seriously** [1] - 57:2  
**serve** [1] - 84:12  
**served** [1] - 93:9  
**services** [7] - 50:3, 51:9, 60:18, 60:20, 61:2, 68:17  
**serving** [1] - 25:14  
**set** [2] - 46:21, 111:2  
**Seth** [5] - 4:7, 4:13, 41:7, 48:19, 98:23



**SETH** [1] - 2:6  
**setting** [11] - 17:15, 34:6, 34:10, 34:16, 34:23, 35:13, 35:20, 35:22, 54:22, 58:22, 62:11  
**settings** [3] - 9:15, 62:12, 100:1  
**several** [8] - 13:5, 43:22, 56:22, 56:24, 80:10, 81:12, 82:17, 107:13  
**severe** [1] - 117:16  
**severity** [1] - 117:14  
**shape** [1] - 90:9  
**share** [3] - 26:1, 32:16, 120:9  
**shared** [5] - 48:3, 48:4, 48:5, 48:23  
**sharing** [2] - 36:15, 72:6  
**shed** [1] - 40:7  
**sheltering** [2] - 33:20, 33:21  
**shirts** [1] - 56:5  
**shoes** [1] - 44:8  
**short** [4] - 25:14, 46:16, 78:25, 81:17  
**shortages** [1] - 71:25  
**shortly** [1] - 49:8  
**show** [4] - 21:20, 91:4, 102:9, 107:3  
**Show** [1] - 68:21  
**shower** [1] - 31:9  
**showering** [1] - 48:5  
**showers** [6] - 11:20, 31:11, 31:24, 49:17, 72:7, 80:4  
**showing** [9] - 9:22, 11:9, 59:1, 71:14, 81:22, 82:10, 82:11, 117:8, 119:20  
**shown** [4] - 26:25, 28:21, 37:12, 106:24  
**shows** [4] - 28:8, 28:9, 95:14, 105:16  
**SHU** [1] - 10:9  
**shut** [1] - 30:18  
**si** [1] - 72:8  
**sick** [23] - 10:8, 12:10, 32:24, 33:4, 33:5, 51:6, 54:21, 54:24, 55:3, 57:2, 57:23, 59:23, 75:18, 79:20, 80:9, 82:9, 82:16, 83:17, 85:24, 107:18, 118:17, 118:21, 121:12  
**side** [12] - 3:21, 22:21, 25:2, 76:22, 81:9, 89:1, 94:7, 100:9, 102:16, 114:22, 115:3, 119:11  
**sides** [2] - 15:18, 108:6  
**sight** [1] - 37:8  
**significant** [2] - 9:11, 15:8  
**silence** [1] - 12:2  
**silent** [2] - 11:12, 124:25  
**similar** [5] - 84:25, 85:2, 88:10, 104:9, 104:23  
**similarly** [2] - 56:21, 74:14  
**simple** [1] - 74:24  
**simply** [2] - 50:25, 107:17  
**single** [13] - 12:21, 24:23, 57:19, 63:4, 63:9, 63:13, 63:21, 64:8, 64:18, 65:9, 65:24, 65:25, 88:1  
**single-celled** [1] - 63:13  
**single-minded** [1] - 88:1  
**sit** [3] - 20:16, 41:15, 56:24  
**site** [3] - 53:6, 54:6, 60:20  
**sitting** [1] - 5:10  
**situated** [1] - 12:12  
**situation** [19] - 10:5, 13:3, 13:4, 32:8, 33:8, 60:23, 82:4, 86:4, 88:22, 92:7, 100:16, 100:18, 101:5, 105:16, 110:16, 112:1, 121:2, 125:15  
**situations** [3] - 86:18, 97:7, 101:23

**six** [3] - 65:25, 66:22, 95:8  
**slow** [3] - 5:8, 19:19, 57:15  
**slowing** [1] - 40:14  
**slowness** [1] - 57:5  
**small** [3] - 31:7, 57:22, 58:17  
**Smoke** [2] - 27:25, 100:20  
**smoke** [1] - 28:2  
**soap** [22] - 32:22, 32:23, 51:10, 51:11, 51:17, 51:19, 51:20, 52:6, 52:9, 55:23, 55:24, 55:25, 56:1, 66:3, 67:1, 67:11, 68:10, 68:12, 74:9, 75:9  
**social** [14] - 27:2, 29:8, 33:16, 47:23, 47:24, 48:11, 49:15, 75:14, 90:4, 99:18, 101:7, 101:10, 101:20, 101:23  
**socialize** [1] - 10:18  
**socially** [9] - 11:10, 48:17, 49:1, 66:3, 66:17, 67:19, 72:5, 75:22, 100:4  
**Society** [1] - 9:22  
**Society's** [1] - 95:13  
**solitary** [2] - 20:12, 28:16  
**solution** [2] - 24:13, 79:25  
**solutions** [1] - 87:11  
**solve** [4] - 70:10, 91:9, 91:11, 91:13  
**solves** [1] - 91:6  
**someone** [15] - 12:20, 17:6, 21:24, 21:25, 42:2, 49:10, 51:14, 64:10, 64:17, 79:18, 107:1, 112:2, 125:3, 125:7, 125:8  
**sometimes** [2] - 110:6, 110:11  
**somewhat** [2] - 34:3, 48:21  
**soon** [2] - 73:24, 109:19  
**sorry** [15] - 18:23, 19:11, 22:5, 25:7, 25:9, 36:13, 50:9, 53:25, 62:13, 78:1, 95:18, 107:12, 116:10, 118:7, 124:18  
**sort** [27] - 19:24, 24:17, 26:3, 29:13, 29:17, 29:18, 32:3, 35:21, 48:1, 50:24, 58:19, 68:4, 81:16, 84:5, 84:9, 87:9, 87:19, 93:15, 93:19, 94:15, 101:19, 110:20, 111:7, 111:19, 112:12, 114:1, 122:17  
**sought** [4] - 19:3, 20:2, 23:14, 69:17  
**sound** [2] - 21:18, 50:23  
**sounds** [12] - 5:19, 19:6, 20:2, 45:14, 62:22, 81:12, 101:9, 102:19, 106:6, 112:1, 114:23, 118:9  
**Southern** [4] - 16:10, 109:4, 110:23, 111:10  
**space** [3] - 66:1, 66:22, 74:8  
**speaking** [6] - 3:14, 4:1, 41:23, 42:5, 80:6, 95:19  
**special** [37] - 9:4, 17:7, 21:22, 59:3, 70:17, 70:21, 73:14, 73:17, 73:23, 74:12, 76:8, 77:17, 77:22, 83:5, 83:7, 84:12, 86:16, 86:23, 87:4, 87:5, 87:12, 98:22, 110:19, 111:25, 112:11, 112:17, 112:20, 112:22, 112:23, 113:8, 113:17, 113:20, 113:22, 113:24, 113:25, 120:19  
**specialized** [1] - 32:8  
**specific** [22] - 8:9, 8:24, 12:25, 13:11, 15:24, 16:11, 28:22, 39:15, 41:5, 44:25, 55:6, 62:11, 71:17, 72:9, 72:18, 73:4, 73:5, 73:7, 75:16, 99:9, 99:10, 124:2  
**specifically** [12] - 8:19, 27:15, 38:24, 41:24, 43:19, 51:12, 51:24, 52:20, 64:13, 74:19, 92:25, 106:2  
**speculating** [1] - 27:11

**speculative** [3] - 27:18, 100:15, 101:11  
**speed** [1] - 84:14  
**spread** [10] - 13:21, 14:5, 14:22, 15:10, 31:4, 37:19, 47:6, 49:12, 74:8, 101:22  
**spreading** [2] - 17:14, 107:4  
**staff** [46] - 10:14, 11:11, 11:13, 13:8, 14:17, 15:5, 15:6, 29:16, 32:24, 33:4, 33:5, 34:13, 35:2, 50:5, 51:7, 51:16, 52:15, 53:8, 54:15, 54:17, 58:7, 59:18, 60:12, 60:18, 60:20, 60:24, 61:2, 62:19, 62:23, 64:22, 64:23, 66:14, 66:15, 68:17, 80:11, 99:3, 102:5, 107:3, 109:15, 115:9, 117:8, 117:14, 118:15, 119:12, 119:23, 121:12  
**staffed** [1] - 60:11  
**staffing** [2] - 54:9, 71:25  
**stage** [7] - 9:1, 9:11, 15:14, 73:22, 78:12, 81:13  
**stakeholders** [1] - 83:14  
**stakes** [1] - 94:6  
**stand** [2] - 7:2, 71:9  
**standard** [10] - 28:6, 58:18, 81:19, 88:25, 90:16, 90:19, 91:9, 91:10, 94:14, 102:25  
**standards** [1] - 67:17  
**start** [5] - 8:15, 16:4, 26:22, 55:3, 102:3  
**started** [3] - 52:14, 114:1, 121:16  
**state** [3] - 3:7, 27:20, 91:14  
**statement** [1] - 8:18  
**statements** [1] - 94:7  
**states** [1] - 34:14  
**statistic** [1] - 95:9  
**statistics** [3] - 9:21, 26:3, 106:10  
**stats** [1] - 95:13  
**status** [7] - 12:5, 13:3, 45:14, 74:25, 123:10, 124:1, 124:8  
**statuses** [1] - 85:2  
**statute** [2] - 23:23, 24:8  
**Statute** [2] - 21:11, 21:12  
**statutory** [4] - 22:22, 22:24, 24:8, 76:24  
**stay** [5] - 12:10, 36:4, 79:21, 80:3, 108:2  
**Stay** [1] - 36:1  
**staying** [1] - 101:14  
**stenography** [1] - 2:18  
**step** [5] - 74:3, 84:13, 89:11, 98:5, 108:18  
**Step** [1] - 104:3  
**stepped** [1] - 44:8  
**steps** [25] - 13:20, 31:2, 33:18, 34:2, 37:12, 46:20, 47:5, 47:23, 76:5, 77:13, 89:5, 89:7, 91:6, 96:7, 96:8, 97:25, 98:3, 99:5, 99:16, 100:4, 100:7, 106:1, 109:13, 113:23, 121:20  
**still** [8] - 20:24, 21:8, 24:24, 29:14, 66:14, 75:23, 90:25  
**stopped** [1] - 106:14  
**stress** [1] - 107:9  
**strict** [1] - 72:19  
**strident** [1] - 18:17  
**strikes** [1] - 15:19  
**striking** [3] - 65:19, 67:8, 102:15  
**stronger** [1] - 52:14

**strongly** [1] - 118:18  
**structural** [1] - 76:1  
**structure** [1] - 91:21  
**struggling** [2] - 91:24, 92:5  
**stuff** [3] - 8:8, 97:19, 105:5  
**subgroup** [1] - 107:18  
**subject** [3] - 7:11, 85:1, 99:14  
**subjected** [1] - 75:3  
**submission** [3] - 12:19, 68:24, 94:18  
**submissions** [1] - 94:19  
**submit** [2] - 69:11, 120:24  
**submitted** [19] - 5:21, 12:19, 13:5, 14:10, 14:25, 17:13, 30:21, 32:1, 33:15, 35:10, 37:5, 37:17, 42:9, 46:19, 63:19, 63:23, 94:17, 95:15, 96:24  
**substantial** [8] - 20:17, 27:12, 28:10, 71:12, 89:20, 92:21, 93:21, 101:10  
**substantially** [1] - 93:25  
**substantive** [2] - 88:24, 106:8  
**suffer** [1] - 27:12  
**suffered** [1] - 27:19  
**suffering** [1] - 94:21  
**sufficiency** [1] - 90:2  
**sufficient** [4] - 17:17, 35:23, 90:20, 107:2  
**suggest** [2] - 12:2, 14:21  
**suggested** [1] - 41:18  
**suggesting** [1] - 6:12  
**suggestion** [1] - 102:23  
**suitability** [1] - 81:14  
**suits** [1] - 103:11  
**summary** [3] - 102:11, 108:12, 111:20  
**super** [1] - 4:12  
**supervises** [2] - 109:6, 109:15  
**supervision** [1] - 88:17  
**supplemental** [5] - 4:25, 30:20, 43:12, 46:19, 47:7  
**supplemented** [1] - 74:17  
**supplies** [2] - 10:13, 52:7  
**support** [1] - 13:5  
**supported** [1] - 33:9  
**supposed** [8] - 28:21, 56:9, 58:14, 63:20, 67:10, 79:10, 112:8, 112:9  
**Supreme** [2] - 15:20, 28:7  
**surgical** [1] - 74:14  
**surprising** [1] - 54:19  
**surrounding** [1] - 34:15  
**swaths** [1] - 82:23  
**sweep** [1] - 85:1  
**sweeping** [1] - 108:14  
**swept** [1] - 85:3  
**symptomatic** [7] - 11:6, 117:7, 118:19, 119:1, 119:17, 120:6, 124:9  
**symptoms** [13] - 11:9, 49:9, 51:1, 65:7, 65:13, 100:17, 117:6, 117:14, 117:18, 119:8, 119:12, 119:21, 123:16  
**system** [4] - 26:14, 35:19, 57:14, 108:20  
**systemic** [11] - 17:9, 21:21, 24:11, 24:12, 24:13, 24:19, 24:25, 70:16, 77:21

**T**

**T-shirts** [1] - 56:5

**table** [1] - 35:14  
**tables** [2] - 10:18, 10:19  
**talks** [2] - 32:1, 32:2  
**tasked** [1] - 84:2  
**taxed** [1] - 35:2  
**team** [1] - 3:23  
**technical** [2] - 4:19, 108:13  
**technically** [1] - 88:16  
**techniques** [1] - 62:8  
**teleconferencing** [1] - 3:1  
**Telephone** [1] - 2:16  
**telephone** [2] - 3:3, 3:4  
**telephonic** [1] - 24:17  
**temperature** [1] - 119:14  
**temporarily** [1] - 23:3  
**temporary** [1] - 81:17  
**TEMPORARY** [1] - 1:10  
**tempting** [1] - 112:1  
**tend** [2] - 26:13, 26:15  
**tension** [1] - 57:25  
**term** [3] - 50:2, 93:24, 101:17  
**terms** [29] - 7:4, 7:5, 12:5, 16:3, 16:15, 39:18, 41:2, 41:6, 41:10, 43:7, 51:10, 51:17, 54:18, 55:6, 57:6, 60:7, 60:11, 77:18, 78:19, 79:15, 80:1, 85:3, 96:16, 106:10, 106:25, 112:7, 116:2, 121:2, 122:7  
**terrorism** [1] - 97:14  
**test** [11] - 92:7, 116:9, 116:22, 117:7, 119:4, 119:21, 120:9, 120:14, 120:15, 123:9  
**tested** [27] - 11:24, 14:17, 14:19, 15:4, 49:9, 64:11, 106:18, 106:21, 106:22, 107:5, 116:12, 117:3, 117:9, 117:10, 117:25, 118:6, 118:10, 118:12, 118:17, 118:19, 118:21, 119:2, 119:24, 120:6, 121:11, 123:4, 123:8  
**testifying** [1] - 117:15  
**testimony** [1] - 35:10  
**testing** [9] - 106:14, 110:16, 117:17, 119:6, 119:8, 119:17, 120:3, 120:15, 121:9  
**tests** [5] - 11:25, 106:19, 116:14, 116:16, 116:18  
**thankfully** [1] - 58:22  
**theirs** [1] - 109:21  
**themselves** [3] - 36:14, 51:2, 73:20  
**theoretically** [1] - 94:4  
**thereafter** [1] - 109:19  
**therefore** [2] - 44:14, 122:5  
**they've** [9] - 16:23, 89:23, 89:24, 90:13, 91:6, 106:21, 106:22, 118:8, 120:24  
**thinking** [3] - 6:15, 22:25, 24:24  
**thinks** [2] - 48:14, 61:7  
**thoughts** [1] - 21:3  
**thousand** [2] - 29:5, 29:11  
**thousand-degree** [2] - 29:5, 29:11  
**threat** [3] - 13:7, 33:11, 47:5  
**threaten** [1] - 29:22  
**threatened** [1] - 30:5  
**threatening** [2] - 27:23, 29:25  
**three** [21] - 7:24, 8:20, 10:10, 13:24, 14:16, 14:24, 34:14, 36:25, 50:5, 50:8, 50:13, 50:16, 79:12, 85:16, 86:17, 105:11, 116:23, 117:9, 117:25, 118:9,

121:11  
**threshold** [1] - 82:10  
**throughout** [8] - 14:16, 15:11, 17:11, 23:14, 46:22, 61:3, 99:9, 125:10  
**thrown** [1] - 50:2  
**Thursday** [3] - 42:9, 44:3, 44:4  
**tiered** [1] - 74:3  
**timeframe** [2] - 82:5, 82:14  
**timeliness** [1] - 87:23  
**timing** [10] - 17:6, 20:8, 40:8, 40:24, 41:14, 41:17, 42:24, 43:7, 45:5, 45:15  
**tobacco** [1] - 28:2  
**today** [22] - 9:23, 13:2, 14:5, 15:2, 18:15, 20:16, 21:9, 24:14, 37:6, 41:15, 47:9, 58:23, 78:23, 83:10, 89:7, 97:20, 103:18, 106:23, 121:17, 122:12, 123:6  
**today's** [1] - 68:25  
**together** [7] - 31:6, 48:4, 57:20, 58:15, 66:20, 75:7, 108:23  
**tomorrow** [3] - 47:8, 86:3, 125:18  
**took** [1] - 80:22  
**tool** [5] - 12:18, 63:16, 63:18, 63:19, 63:20  
**tools** [1] - 116:5  
**topic** [1] - 7:6  
**topics** [3] - 36:25, 58:23, 59:10  
**Torres** [1] - 96:7  
**total** [2] - 50:16, 118:10  
**totally** [1] - 55:1  
**touch** [1] - 38:12  
**touching** [1] - 92:11  
**toward** [1] - 113:24  
**town** [1] - 62:6  
**track** [1] - 87:15  
**tragedy** [1] - 15:21  
**trajectory** [1] - 27:7  
**transcript** [1] - 126:3  
**TRANSCRIPT** [1] - 1:10  
**Transcript** [1] - 2:18  
**Transcription** [1] - 2:19  
**transfer** [3] - 26:9, 26:10, 30:5  
**transferred** [1] - 60:25  
**transfers** [1] - 87:9  
**transit** [1] - 26:9  
**transition** [3] - 13:15, 15:24, 20:23  
**transitions** [1] - 20:22  
**translate** [1] - 34:10  
**transmission** [3] - 31:22, 35:12, 72:18  
**transmitted** [2] - 32:7, 32:9  
**treat** [2] - 54:24, 92:13  
**treated** [2] - 23:16, 115:17  
**triaging** [1] - 116:2  
**tried** [2] - 49:3, 51:14  
**trigger** [1] - 41:12  
**triggered** [1] - 105:2  
**TRO** [28] - 6:16, 7:22, 8:24, 9:1, 9:11, 22:10, 37:24, 39:2, 39:11, 45:18, 57:18, 58:19, 71:11, 71:13, 73:13, 75:3, 78:12, 81:4, 103:16, 112:19, 112:21, 112:22, 113:2, 113:8, 113:9, 120:20, 122:18  
**true** [8] - 71:18, 72:21, 75:13, 84:21, 102:13, 111:17, 111:18, 113:14  
**try** [6] - 55:12, 70:4, 87:11, 100:4, 105:15, 121:19  
**trying** [17] - 23:20, 39:23, 40:21, 40:24,

(Tuesday - worried)  
45:19, 48:9, 49:23, 70:1, 71:15, 76:12, 80:15, 83:22, 86:5, 94:24, 95:18, 99:25, 113:21  
**Tuesday** [1] - 83:19  
**turn** [8] - 8:12, 36:23, 39:21, 40:18, 69:15, 80:25, 123:16, 125:17  
**turning** [2] - 7:22, 80:2  
**turns** [2] - 91:25, 113:1  
**twelve** [1] - 33:11  
**twice** [2] - 56:20, 61:5  
**two** [40] - 9:11, 14:11, 20:2, 22:7, 22:15, 30:11, 30:17, 31:6, 31:11, 32:22, 36:20, 42:13, 43:24, 47:11, 53:25, 56:8, 56:15, 67:15, 70:5, 76:10, 76:11, 76:12, 79:4, 93:13, 94:7, 94:8, 94:10, 94:11, 106:19, 111:13, 113:18, 114:19, 116:13, 116:16, 118:3, 118:8, 118:23, 120:13, 122:24, 123:8  
**type** [2] - 26:16, 96:20  
**types** [5] - 81:15, 86:18, 96:19, 97:7, 97:8  
**typically** [1] - 84:9

**U**

**U.S** [10] - 4:5, 4:8, 4:9, 37:1, 66:18, 83:14, 83:24, 86:7, 124:21, 125:1  
**U.S.C** [2] - 38:9, 38:10  
**ultimately** [6] - 40:15, 41:19, 49:6, 108:19, 108:22, 119:25  
**unable** [1] - 87:2  
**unaware** [3] - 65:21, 67:9, 68:22  
**uncertain** [1] - 54:10  
**unclear** [1] - 80:5  
**uncommon** [1] - 87:12  
**unconstitutional** [10] - 13:6, 20:16, 24:5, 26:24, 46:7, 46:15, 73:3, 75:4, 76:16, 78:25  
**under** [35] - 15:1, 20:13, 20:22, 21:11, 21:12, 24:5, 26:23, 27:1, 27:14, 28:12, 28:13, 38:8, 41:21, 44:24, 56:14, 58:17, 63:20, 66:19, 70:7, 70:19, 78:4, 79:16, 82:23, 86:15, 87:10, 87:16, 88:15, 89:7, 96:13, 97:3, 106:15, 119:4, 123:25  
**under-counts** [1] - 15:1  
**undercount** [1] - 15:8  
**undergo** [1] - 39:7  
**undergoes** [1] - 93:3  
**underlying** [2] - 38:13, 39:7  
**understood** [2] - 53:5, 80:21  
**undertake** [1] - 93:3  
**undisputed** [1] - 53:13  
**undisputedly** [1] - 53:9  
**unfold** [1] - 74:2  
**unfolding** [1] - 9:14  
**unfortunately** [6] - 26:15, 33:3, 49:13, 49:20, 105:17, 107:2  
**unifying** [1] - 19:13  
**Unit** [4] - 10:7, 118:4, 118:5, 123:24  
**unit** [26] - 50:3, 51:9, 54:15, 54:20, 54:23, 55:25, 58:9, 58:10, 60:11, 61:3, 64:21, 100:1, 100:2, 123:2, 123:7, 123:8, 123:11, 123:20, 124:1, 124:3, 124:5, 124:7  
**United States** [6] - 1:1, 1:5, 1:11, 2:2,

2:7, 27:20  
**units** [8] - 12:9, 54:17, 61:6, 64:22, 100:3, 118:4, 118:8, 122:24  
**unless** [3] - 32:7, 72:4, 74:20  
**unmet** [2] - 92:3, 92:10  
**unreasonable** [5] - 92:8, 92:25, 93:14, 93:22, 93:24  
**unreasonableness** [1] - 94:13  
**unsafe** [1] - 27:23  
**unsatisfactory** [1] - 20:7  
**unusual** [6] - 53:14, 86:22, 112:20, 113:16, 114:5, 114:6  
**up** [27] - 4:20, 5:9, 6:2, 7:16, 8:14, 22:19, 30:25, 48:7, 48:23, 57:23, 61:9, 63:10, 63:14, 66:7, 67:6, 73:20, 84:14, 87:11, 107:23, 110:8, 114:20, 116:4, 118:22, 121:22, 122:22, 122:25  
**update** [2] - 14:12, 14:17  
**updated** [2] - 99:5, 99:6  
**ups** [1] - 112:15  
**upwards** [1] - 89:17  
**urgency** [1] - 99:2  
**urgent** [1] - 51:4  
**useful** [1] - 51:16  
**utilize** [1] - 69:4

**V**

**vacant** [1] - 74:5  
**value** [1] - 24:20  
**variety** [2] - 46:9, 97:12  
**various** [1] - 68:8  
**varying** [1] - 50:17  
**vast** [1] - 31:5  
**ventilation** [3] - 32:12, 35:17, 35:19  
**ventilators** [2] - 12:9, 53:10  
**venue** [1] - 104:21  
**verify** [1] - 123:21  
**versus** [2] - 60:12, 89:10  
**via** [4] - 3:1, 3:3, 18:21, 30:13  
**view** [7] - 22:25, 42:12, 47:20, 73:8, 73:9, 78:3, 81:2  
**viewing** [1] - 112:19  
**views** [1] - 7:18  
**violated** [1] - 79:15  
**violates** [1] - 74:25  
**violating** [3] - 74:20, 75:24, 76:4  
**violation** [20] - 23:25, 25:15, 28:8, 28:17, 69:20, 70:3, 71:12, 71:16, 72:14, 75:6, 75:10, 75:12, 78:6, 78:24, 80:24, 90:14, 90:16, 93:16, 100:10, 122:19  
**violations** [2] - 37:10, 73:10  
**violence** [1] - 79:4  
**virtue** [1] - 24:24  
**virus** [7] - 11:7, 12:7, 31:15, 32:6, 32:8, 52:25, 100:17  
**visit** [1] - 51:6  
**voices** [1] - 6:7  
**voluntarily** [2] - 42:11, 105:24  
**von** [7] - 2:9, 10:21, 25:11, 25:22, 105:13, 110:3, 118:14  
**VON** [4] - 25:22, 104:13, 104:19, 109:4  
**Vulcan Society** [1] - 86:25  
**vulnerability** [1] - 115:11  
**vulnerable** [15] - 11:4, 13:23, 25:3,

30:16, 71:4, 72:16, 80:24, 89:16, 106:3, 109:9, 114:21, 115:16, 121:25, 122:1, 122:4

**W**

**wait** [14] - 15:20, 16:20, 16:21, 16:23, 18:3, 28:19, 30:3, 41:1, 56:24, 57:8, 57:9, 94:10, 107:17  
**waited** [1] - 109:20  
**waiting** [3] - 7:17, 57:13, 82:17  
**waits** [1] - 41:13  
**waive** [1] - 104:21  
**wants** [1] - 39:12  
**ward** [1] - 54:20  
**warden** [6] - 5:1, 99:3, 105:1, 109:5, 109:10, 109:16  
**WARDEN** [1] - 1:7  
**Warden** [3] - 2:4, 4:17, 52:12  
**warden's** [1] - 61:24  
**wash** [2] - 67:20, 68:11  
**washing** [1] - 62:8  
**Washington** [1] - 14:7  
**watching** [1] - 15:9  
**water** [1] - 74:10  
**weakness** [1] - 67:23  
**wearing** [1] - 56:4  
**website** [1] - 107:6  
**Wednesday** [1] - 1:7  
**week** [7] - 14:23, 15:13, 43:10, 43:16, 97:2, 109:20, 120:13  
**weekend** [1] - 53:24  
**weekends** [3] - 54:2, 54:10, 59:20  
**weeks** [14] - 32:22, 51:15, 56:11, 56:16, 56:24, 76:12, 80:10, 82:17, 94:8, 94:10, 94:11, 106:3, 107:14, 107:23  
**welcome** [1] - 21:3  
**Western** [1] - 14:7  
**WHO** [1] - 95:4  
**whole** [8] - 3:23, 49:19, 65:15, 70:11, 94:13, 98:10, 100:1, 113:1  
**wide** [1] - 97:12  
**Wilson** [2] - 3:18, 73:12  
**WILSON** [4] - 1:17, 3:18, 73:12, 74:23  
**Wilson's** [1] - 76:7  
**window** [1] - 19:16  
**winter** [1] - 32:10  
**wire** [1] - 79:9  
**wish** [1] - 49:14  
**wonder** [7] - 52:10, 61:11, 91:7, 92:25, 94:23, 113:7, 124:17  
**wondering** [27] - 3:7, 5:5, 19:4, 20:1, 20:3, 20:4, 21:13, 22:17, 22:25, 23:11, 34:1, 40:7, 41:20, 53:13, 53:20, 59:23, 61:19, 81:16, 84:8, 84:12, 86:20, 89:12, 91:9, 92:6, 93:13, 99:20, 112:25  
**words** [2] - 63:21, 118:7  
**workers** [2] - 10:12, 35:6  
**workload** [1] - 87:1  
**works** [6] - 8:21, 62:13, 62:17, 64:23, 78:3, 86:15  
**world** [5] - 53:15, 71:23, 95:10, 101:23, 117:1  
**worlds** [1] - 36:20  
**worried** [2] - 35:4, 80:19

(worry - §53(a)(1)(e))

**worry** [3] - 14:2, 14:8, 103:2  
**worse** [1] - 82:10  
**wrapping** [1] - 114:20  
**writ** [1] - 44:7  
**written** [1] - 5:21

**Y**

**years** [3] - 79:7, 79:12, 82:16  
**yesterday** [8] - 10:16, 11:6, 15:2, 18:24, 30:17, 37:5, 51:19, 61:25  
**YORK** [2] - 1:1, 2:3  
**York** [9] - 1:5, 1:16, 1:21, 2:5, 2:9, 46:22, 111:11  
**yourself** [2] - 6:2, 6:4  
**yourselves** [1] - 3:15

**§**

**§2241** [3] - 26:23, 28:12, 102:25  
**§53** [1] - 86:16  
**§53(2)** [1] - 87:16  
**§53(a)(1)(c)** [1] - 87:18

# **Exhibit E**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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

individually and on behalf of all others similarly  
situated,

Petitioners,

*-against-*

WARDEN DEREK EDGE,

Respondent.

No. 20 Civ. 01590

**DECLARATION OF ROBERT L.  
COHEN, M.D.**

I, Robert L. Cohen, M.D., declare under penalty of perjury and pursuant to 28  
U.S.C. § 1746:

1. I am a board-certified medical doctor in the field of internal medicine and an expert in the field of Correctional Medicine. I have 35 years of and expert in the field of Correctional Medicine. My Curriculum Vitae is attached to this Report. I have served as a federal and state court-appointed monitor in cases regarding the provision of medical care in prisons and jails in Washington, D.C., Philadelphia, Michigan, New York, Ohio, Connecticut, and Florida. I served as a member of the Board of the National Commission on Correctional Health Care for seventeen years, representing the American Public Health Association. I have served as an appointed member of the New York City Board of Corrections since 2009. The Board of Correction is a nine-member independent board which oversees the New York City Department of Correction and has rule making authority. As Director of the Montefiore Medical Center for Rikers Island Health Services, I supervised and was responsible for the provision of medical and mental health services for more

than 13,000 prisoners in the New York City jails, and oversaw a medical staff of approximately 500 physicians, mid-level practitioners, registered nurses, licensed practical nurses, psychiatrists, psychologists, social workers, pharmacists, laboratory technicians, administrative and clerical staff. I have published extensively on health care in corrections settings.

2. I served as the Vice President for Medical Operations of the New York City Health and Hospitals Corporation, reporting directly to the President with responsibility for clinical services, including nursing, physician care, ambulatory care, and quality assurance for New York City's eleven hospital public health care system. I served as Director of the AIDS Center of St. Vincent's Hospital, located in Greenwich Village, New York.

3. I retired from the clinical practice of Medicine in November 2016. I maintain by NYS License and Internal Medicine Board Certification.

4. All of my opinions expressed herein are opinions to a reasonable degree of medical certainty.

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

6. In my capacity as member of the New York City Board of Correction, I have been in regular contact with the City of New York and the New York City Department of Correction ("DOC") regarding its response to COVID-19 pandemic.

7. Based on information provided to me in my capacity as member of the New York City Board of Correction, it is my understanding that CHS (Correctional Health Services, a division of NYC Health and Hospitals is testing all symptomatic people in DOC custody.

8. Persons with COVID-19 positive test results are cohorted together. Symptomatic persons awaiting the results of their COVID-19 results are also placed in a cohort.

