

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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

Petitioners,

-v.-

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

Respondent.

No. 20 Civ. 3315

**[PROPOSED] ORDER TO SHOW  
CAUSE AND TEMPORARY  
RESTRAINING ORDER**

Upon the Class Action Petition Seeking Writs of Habeas Corpus under 28 U.S.C. § 2241 dated April 28, 2020, the Declarations of Deirdre D. von Dornum, Dr. Jonathan Giftos, Cesar Fernandez-Rodriguez, and Rober Galvez-Chimbo, all dated April 27, 2020, the Declarations of Sharon Hatcher, Jonathan Medina, and James Woodson, all dated April 24, 2020, the accompanying exhibits attached thereto, the accompanying memorandum of law, and all pleadings and proceedings relevant to this action, it is hereby:

**ORDERED** that Respondent Warden Marti Licon-Vitale show cause before this Court, pursuant to 28 U.S.C. § 2243 and Federal Rule of Civil Procedure 65(a), at Room \_\_\_\_ at 500 Pearl Street, New York, N.Y. 10007, or, in light of the COVID-19 pandemic, by teleconference at ( ) \_\_\_\_ - \_\_\_\_, at \_\_\_\_\_.m., on the \_\_\_\_ day of \_\_\_\_\_, 2020, why an order should not be issued pursuant to 28 U.S.C. § 2241 and Federal Rule of Civil Procedure 65(a): (1) granting a preliminary injunction directing Respondent to take appropriate actions in order to ensure the health and safety of Petitioners and the proposed Class members with respect to COVID-19, as

further set forth in the memorandum of law accompanying Petitioners' application, and (2) granting such other and further preliminary injunctive relief as this Court may deem just and proper; and it is further

**ORDERED** that, sufficient reason having been shown, pending the hearing of Petitioners' application for a preliminary injunction, and pursuant to Federal Rule of Civil Procedure 65(b), Respondent Licon-Vitale and all of her officers, agents, servants, employees, and assigns are temporarily restrained and enjoined from maintaining conditions at the Metropolitan Correctional Center in New York, New York ("MCC") that endanger the health and safety of Petitioners and the proposed Class members with respect to COVID-19, and are further directed to implement the measures set forth in Appendix A to this Order; and it is further

**ORDERED** that, in light of the COVID-19 pandemic, service of this Order and the papers upon which it is based be made on Respondent on or before the \_\_\_\_\_ day of April, 2020 at \_\_\_\_\_ .m. to The Honorable Geoffrey S. Berman, United States Attorney for the Southern District of New York, 1 St. Andrew's Plaza, New York N.Y. 10007 by electronic mail to geoffrey.berman@usdoj.gov and that said service be deemed good and sufficient service; and it is further

**ORDERED** that any response to Petitioners' application for a preliminary injunction shall be filed and served by Respondent on or before the \_\_\_\_\_ day of April, 2020 at \_\_\_\_\_ .m. and that service by electronic mail to Arlo Devlin-Brown at adevlin-brown@cov.com be deemed good and sufficient service; and it is further

**ORDERED** that any reply papers in further support of Petitioners' application for a preliminary injunction shall be filed and served by Petitioners on or before the \_\_\_\_\_ day of

April, 2020 at \_\_\_\_\_.m. and that service on Mr. Berman as set forth above shall be deemed good and sufficient service.

**SO ORDERED.**

Dated: New York, New York  
April \_\_\_\_, 2020, at \_\_\_\_\_.m.

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UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF NEW YORK

## APPENDIX A

### I. Inmate Testing, Contact Tracing, and Quarantine and Isolation Measures

- A. Obtain, within 3 days of this Order, a sufficient supply of COVID-19 **test kits** to test all symptomatic MCC inmates and staff, and those within the MCC with whom they have or may have been in contact since March 1, 2020.
- B. Implement, within 3 days of this Order, **contact tracing** for each MCC inmate and staff who has tested positive for, or in the future test positive for, COVID-19.
- C. Ensure, within 3 days of this Order, that all MCC inmates who test positive for, or display one or more symptoms of, COVID-19 are **quarantined or isolated** in a medically appropriate manner and in settings not ordinarily used for punishment, such as the Special Housing Unit.

### II. Distribution of Basic Hygiene Necessities and Facility Cleaning

- A. Provide all MCC inmates, free of charge, within 3 days of this Order, adequate **supplies**, including hand soap, paper towels, toilet paper, facial tissue, and disinfectant products effective against COVID-19, including disinfecting wipes that can be used on the shared telephones, computer terminals, and shower handles.
- B. Provide all MCC **inmates**, free of charge, within 3 days of this Order, with **masks** effective for preventing transmission of COVID-19. Each inmate shall receive a minimum of five masks each week.
- C. Provide, within 3 days of this Order, all MCC **staff** who have had, or in the future have, contact with MCC inmates with new or sanitized N-95 or other medically appropriate **masks**, and require that all MCC staff wear personal protective equipment at all times during their shift.
- D. Hire a qualified professional cleaning service to **clean and disinfect** the MCC, at least once a week, beginning within 3 days of this Order, with disinfectant products effective against COVID-19.

### III. Inmate Population

- A. Cease acceptance of any **new detainees** to the MCC until such time that appropriate preventive measures can be taken in order to ensure the health and safety of Petitioners and the proposed Class members with respect to COVID-19, including all actions required by this Order.
- B. Evaluate each MCC inmate's **eligibility for release**, with a written report issued to the Court and Petitioners' counsel: (i) within 24 hours of this Order, for all inmates who currently qualify for home confinement under any statutory or regulatory

provision or the written directives of United States Attorney General William Barr; (ii) within 4 days of this Order, for the 205 MCC inmates whom the MCC has previously identified as vulnerable to COVID-19 under CDC criteria, and (iii) within 7 days of this Order, for all remaining inmates.

- C. Immediately **release** from MCC confinement, with such conditions as may be appropriate, Petitioners and other Class members: (i) who currently qualify for home confinement under any statutory or regulatory provision or the written directives of United States Attorney General William Barr; and (ii) for whom release (either temporary or permanent) is otherwise reasonable under the extraordinary circumstances of the COVID-19 pandemic.
- D. For MCC inmates not to be released under (C) above and who are vulnerable to COVID-19 based on CDC criteria, **transfer**, as promptly as circumstances allow, such inmates from the MCC to another facility where appropriate preventive measures can be taken and adequate health care can be provided, until such time as the MCC can improve conditions sufficiently to take such measures and provide such care itself.

#### **IV. Public Reporting**

- A. File a detailed **report** to the Court, within 3 days of this Order and weekly thereafter, describing all efforts made by Respondent and all of her officers, agents, servants, employees, and assigns, in response to this Order and any further orders of the Court.