

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF SULLIVAN

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. PHILIP DESGRANGES on behalf of
JOHN PACE, EARL COLEMAN, TONI
DILAURO, and JOSHUA WHIDBEE,

Petitioners,

v.

MICHAEL SCHIFF, in his capacity as Sullivan
County Sheriff; and ANTHONY ANNUCCI, in
his capacity as Acting Commissioner of the New
York State Department of Corrections and
Community Supervision,

Respondents.

AFFIDAVIT OF HOMER VENTERS, M.D.

State of New York)
County of Nassau) ss:

Homer Venters, being duly sworn, hereby deposes and says:

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 U.S. Immigration and Customs Enforcement (“ICE”) on numerous individual cases of medical release, the 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 Correctional Health Services of New York City. This position included both direct care to persons held in New York City’s twelve 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, nurses, 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.

3. During this time, I managed multiple communicable disease outbreaks including H1N1 in 2009, which impacted almost one third of housing areas inside the adolescent jail, multiple seasonal influenza outbreaks, a recurrent legionella infection and several other smaller outbreaks.

4. In March 2017, I left Correctional Health Services of New York City 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.

I subsequently worked with the nonprofit Community Oriented Correctional Health Services in promoting evidence-based health services for people with justice involvement. I have also worked as an independent correctional health expert since 2017. In my roles as a correctional health physician I have conducted over 50 facility inspections, three of which have been specifically to assess the adequacy of facilities' response to the coronavirus disease of 2019 ("COVID-19").

5. The following report is submitted as an evaluation of the COVID-19 response currently underway in the Sullivan County Jail in Sullivan County, New York.

6. The purpose of this report is to focus on the adequacy of infection control and other public health measures currently being implemented to prevent serious illness and death among staff and detained people within this facility.

I. Methodology

7. In order to assess the adequacy of the COVID-19 response inside the Sullivan County Jail, I relied on the affidavits of numerous people currently detained at the jail, including Earl Coleman, Toni Dilauro, Robert Lloyd Dunn Jr., Michael Mackawgy, John Pace, and John Whidbee; as well as the sources cited in this affidavit.

8. I have conducted this assessment with the following questions in mind:
- a. Do current practices in the Sullivan County Jail detect the number and severity of COVID-19 cases among staff and detainees and respond in a manner consistent with guidelines of the Centers for Disease Control and Prevention ("CDC") and other established clinical standards of care?
 - b. Do current practices in the Sullivan County Jail adequately slow the spread of COVID-19 through the facility and between people, both staff

and detainees in a manner consistent with CDC guidelines and other clinical standards of care?

- c. Do current practices in the Sullivan County Jail adequately identify and protect high-risk detainees from serious illness and death from COVID-19?

II. Assessment of COVID-19 Response in the Sullivan County Jail

9. COVID-19 is a viral pandemic. This is a novel virus for which there is no established curative medical treatment and no vaccine. COVID-19 is different than all previous infectious disease outbreaks faced in our lifetime because of the speed and extent of its spread worldwide, and how quickly it has overwhelmed healthcare systems. Basic infection measures such as handwashing and wearing masks, along with social distancing, represent the primary evidence-based interventions being utilized to slow the spread of COVID-19. Unlike many other viral outbreaks, it now appears that significant transmission of COVID-19 occurs before infected people become symptomatic, which creates the rationale for heavy focus on social distancing to prevent transmission.

10. The World Health Organization has reported that physical recovery from COVID-19 can extend well beyond the period of active infection, taking six weeks or longer.¹ Many COVID-19 patients with whom I have spoken have reported ongoing symptoms post-COVID-19 infection, including shortness of breath or chest pain. The Sullivan County Jail should ensure that every person who is known or suspected to have experienced COVID-19 has a clinical encounter

¹ *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, WORLD HEALTH ORG. (Feb. 16–24, 2020), <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf>; Amanda D'Ambrosio, *COVID-19 Sequelae Can Linger for Weeks*, MEDPAGE TODAY, (May 13, 2020), <https://www.medpagetoday.com/infectiousdisease/covid19/86482>.

with a physician to assess any new symptoms or disabilities that exist and create a recovery plan to address symptoms and disability. These efforts will likely include pulmonary rehabilitation and physical therapy or exercise, which are part of what patients need to recover from COVID-19.² Because COVID-19 can damage heart, kidney and lung function and cause blood clots throughout the body, there is also risk of serious complications in the days and weeks of recovery.

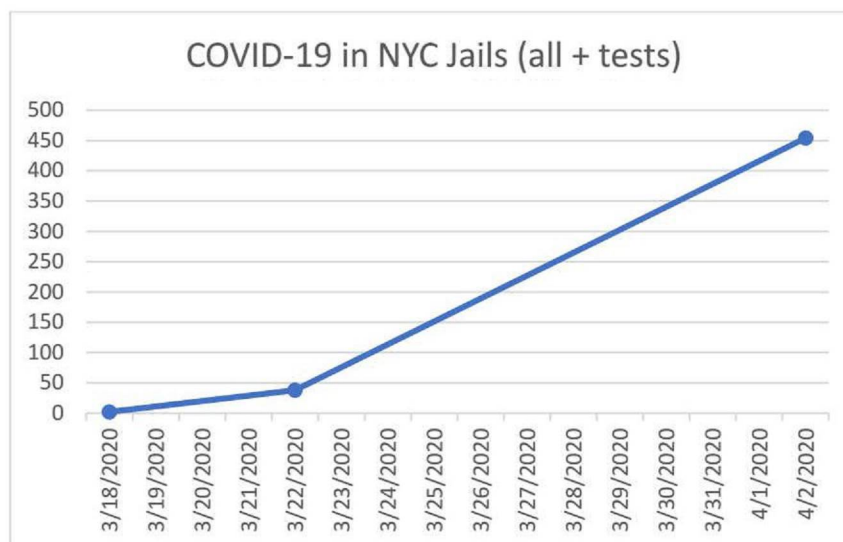
11. When COVID-19 impacts a community, it will also impact the community's detention facilities. Federal and local correctional facilities will not be able to stop the entry of COVID-19 into their facilities: The reality is that the infection is inside many facilities already, even before the facility reports confirmed cases. This is inevitable and is not preventable. Numerous federal and state prison systems and local county jails have already reported hundreds of COVID-19 infections among staff and inmates. For example, the Federal Bureau of Prisons reports that, as of May 28, 2020, there have been 1,747 detainees who tested positive for COVID-19 with 64 deaths.³

12. Once COVID-19 is inside a facility, correctional health and security administrators will be unable to stop the rapid spread of the virus throughout the facility. Because of the congregate nature of detention settings — including the close quarters of living spaces, sallyports, intake pens, medical clinics and other areas where staff and detainees are present, often in close proximity to one another — slowing the spread of the virus requires require considerable efforts.

² *Recovering from COVID-19: A Patient Guide*, COLUMBIA UNIV. IRVING MED. CTR. & WEILL CORNELL MED. CTR.
https://rehabmed.weill.cornell.edu/sites/default/files/post_covid_rehab_-_patient_guide_0.pdf;
What to Know About a Long Recovery Period After Surviving COVID-19, HEALTHLINE,
<https://www.healthline.com/health-news/what-to-do-after-recovering-from-covid-19>

³ *COVID-19 Cases*, FED. BUREAU OF PRISONS (last visited May 28, 2020),
<https://www.bop.gov/coronavirus>.

13. For example, the data from the New York City jail system reveal that in the space of two weeks, the facility went from zero confirmed infections, to 2, then 38, then 574.⁴



14. Newly released CDC guidance for correctional facilities makes clear that detention settings should plan for increased staffing shortages as COVID-19 impacts security and health staff.⁵ The outbreak of this pandemic will dramatically worsen any staffing shortages that already exist.

15. As of May 28, 2020, Sullivan County, New York, has recorded 1,339 cases of COVID-19, with 252 active cases.⁶ A total of 30 COVID-19 deaths had been identified in Sullivan County as of that date. Over the last two weeks, Sullivan County has had the highest positive test

⁴ *Board of Correction Daily Covid-19 Update*, N.Y. BD. OF CORR. (Apr. 3, 2020), https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_3_2020_TO%20PUBLISH.pdf.

⁵ *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional & Detention Facilities*, CTRS. FOR DISEASE CONTROL & PREVENTION (“CDC”) (last visited May 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

⁶ *Facts About the 2019 Novel Coronavirus (COVID-19)*, SULLIVAN CTY. (last visited May 28, 2020), <https://www.sullivan.ny.us/departments/publichealth/coronavirus>.

rate in New York State, as well as the most new cases per capita in the state.⁷

16. The Sullivan County Jail is 110 years old and has a capacity of 207, although most of the capacity has been deemed unusable.⁸ The cells in this facility are open bar stock. 52 cells were added to the original jail in 1957; and a further 36 cells, in a modular unit designed with a 5-year lifespan, were added in 1989. The New York State Commission on Corrections has identified that many of the cells do not meet the minimum space requirement of 60 square feet and that the recreation area does not meet the minimum requirement of 1,500 square feet. The County has built a new 256-bed jail facility, but detainees had not yet been moved into that facility when the COVID-19 pandemic began. The current number of detained people is 73.

17. COVID-19 infection has been reported among at least 30 detainees and four staff at the Sullivan County Jail. The initial two staff infections occurred in mid-April, followed by an additional two staff infections in early May, as well as an initial infection of a detainee on May 11. Additional detainee infections were identified in the following week, including 17 of 20 individuals who had been in close contact with the first detainee to have a confirmed case of COVID-19.⁹ Detainees report that G and E blocks are being utilized for COVID-19-specific housing and that one “medical block,” A block, is utilized for detainees with more serious health problems.

⁷ Andy Newman, *10 Weeks Into New York Area's Lockdown, Who Is Still Getting Sick?*, N.Y. TIMES (May 28, 2020), <https://www.nytimes.com/2020/05/28/nyregion/ny-coronavirus-new-cases.html>.

⁸ *Sullivan County Jail Operations Report of Examination*, OFFICE OF THE N.Y.S. COMPTROLLER (Jun. 2013), https://sullivanny.us/sites/default/files/departments/BOL/Sullivan_County_Jail_Operations_Report_Examination.pdf.

⁹ *Inmates at Sullivan County Jail Test Positive for COVID-19*, MID HUDSON NEWS (May 18, 2020), <https://midhudsonnews.com/2020/05/18/inmates-at-sullivan-county-jail-test-positive-for-covid-19>.

18. Based on the declarations I have reviewed, detained people have reported the following concerns regarding COVID-19 response in the Sullivan County Jail:

- a. Concerns related to lack of infection control and social distancing;
 - i. Correctional staff rotate between multiple housing units, including those units housing both people who have been diagnosed with COVID-19 and those who have not;
 - ii. Some housing areas, such as A block, see heavy traffic of correctional staff who do not work in those units;
 - iii. Cells are full of mold, mildew, and flies, making proper cleaning and disinfection impossible;
 - iv. Open cells allow transmission of any particles or droplets coughed by people in neighboring cells;
 - v. Inconsistent wearing of masks and gloves by staff and detainees.
 - vi. No education of detainees on COVID-19 via printed materials or in-person presentations by health staff, meaning that many detainees discovered about the outbreak at the Sullivan County Jail via television or family members;
 - vii. Social distancing is impossible or virtually impossible in living spaces throughout the jail;
 - viii. Detainees are given rags to clean cells that may be dirty from use in other areas;
 - ix. Masks given to detainees are fragile and do not last;

- x. The jail's method of indicating whether a housing unit contains people infected with COVID-19 appears to be affixing signs to the housing-unit doors that say "clean" or "dirty";
- xi. Numerous detainees have been relocated to E block, a housing unit that has been condemned;
- xii. Detainees are threatened with discipline if they do not enter housing units with known cases of COVID-19;
- xiii. Some staff members confirmed to have COVID-19 returned to work within one week of diagnosis;
- xiv. People suspected to have COVID-19 are not subjected to medical isolation;
- xv. Detainees lack any access to hand sanitizer;
- xvi. Detainees lack consistent access to soap and hot water for handwashing;
- xvii. Fingertip pulse oximeters are not cleaned between uses on detainees;
- xviii. High-touch surfaces, such as telephones, are not cleaned between uses;
- xix. Housing units are inadequately ventilated and, instead, standing fans blow air throughout housing units;
- xx. In-cell toilets frequently overflow, causing human waste to see from one cell into neighboring cells; and
- xxi. Showers leak water when not in use.

- b. Concerns related to lack of appropriate screening and care for persons with signs and symptoms of COVID-19:
- i. Jail staff fail to respond to potential COVID-19 cases in the absence of fever symptoms;
 - ii. Health staff fail to conduct timely assessments of detainees reporting COVID-19, including sometimes failing to conduct assessments at all;
 - iii. Staff fail to conduct regular COVID-19 symptom screenings after detainees arrive at jail;
 - iv. People who report symptoms or signs of COVID-19 directly to health staff do not receive timely assessment.
 - v. Sick call requests are seen by correctional staff who must deliver them to health staff and often fail to do so;
 - vi. Sick call requests frequently go unanswered for days, or receive no response at all;
 - vii. Water was cut off for unknown reasons in at least one unit when a quarantine was established;
 - viii. Staff fail to inform detainees of their positive COVID-19 results or conduct regular assessments of those detainees' clinical statuses;
 - ix. No medical staff are present at the jail overnight from 10 pm to 8 am, resulting in those who report COVID-19 symptoms being told by security staff that they must wait until the morning to receive medical attention; and

- x. Correctional staff review and edit detainees' grievances, sometimes refusing to process grievances.
- c. Concerns related to lack of appropriate protection for people with known risk factors for serious illness or death from COVID-19.
 - i. Lack of social distancing on medication lines;
 - ii. People with known risk factors for serious illness or death from COVID-19 do not receive daily symptoms checks or other increased surveillance for COVID-19 infection;
 - iii. Some people with known risk factors for serious illness or death from COVID-19 are not cohorted into the "medical block," A block;
 - iv. The medical block does not appear to have increased infection control measures;
 - v. The medical block is staffed by corrections officers who rotate throughout different units in the jail, as opposed to being staffed by officers who are consistently staffed to the medical block alone;
 - vi. On May 18, 2020, a form titled "Case Monitoring Tracking Form" was handed out without explanation without any subsequent follow-up, resulting in many detainees reportedly throwing the form away;
 - vii. Detainees with asthma were not prescribed inhalers despite documented need and were not provided access to nebulizer treatment; and
 - viii. Detainees with hypertension were not provided blood pressure checks.

III. Findings

19. Based my review of available information, I have the following assessments. I have used the three original questions stated at the outset of this report for framing.

a. Do current practices in the Sullivan County Jail adequately detect the number and severity of COVID-19 cases among staff and detainees and respond in a manner consistent with CDC guidelines and other established clinical standards of care?

20. Multiple practices appear to be in place in the Sullivan County Jail that contribute to a lack of appreciation of the true extent of COVID-19 infection.

21. The lack of systematic screening for symptoms of COVID-19 among detainees is the most obvious contributor to this problem, but the slow response to sick call requests also likely results in many people with COVID-19 symptoms not coming to the attention of health staff.

22. Jail staff should conduct COVID-19 symptom and temperature checks for all detainees at least daily, in a manner consistent with CDC guidance.¹⁰ In addition, health staff should conduct a daily review of all sick call requests and identify any that are COVID-19 related. Those requests should prompt a clinical assessment within 24 hours but should also be copied into a facility tracking database of COVID-19 symptoms to better understand the extent and progress of the outbreak. Anyone with more than one COVID-19 symptom and/or sign should be offered testing.

23. Because the outbreak has spread so rapidly, and because of the major deficiencies in infection control (see below), the facility may be well-advised to implement testing for *all* staff and detainees.

¹⁰ *Symptoms of Coronavirus*, CDC (last visited May 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>.

24. It is apparent that Sullivan County Jail has significant deficiencies in the care of people who do become identified as having COVID-19 symptoms. For example, Mr. Whidbee reports that he told nursing staff about his COVID-19 symptoms which included fatigue, headache and cough and was told by nursing staff that these symptoms were probably related to his blood pressure. Only after four days, during which time he remained in his original housing unit and continued to experience symptoms, did jail health staff see and test him. This lack of response to a patient reporting COVID-19 symptoms increased the risk to other detainees and staff and also increased the likelihood that Mr. Whidbee's condition could worsen without any assessment or care. Mr. Whidbee also reports that even as the jail moved to identify and test people who were in close contact with the first COVID-19 cases in the facility, those people were not placed into separate quarantine housing areas.

25. People who were ultimately placed into isolation report a lack of daily health encounters, the failure of staff to wear personal protective equipment use by staff, and a lack of response to their reported clinical symptoms.

26. In addition, the lack of overnight health staffing creates significant risk for both detainees ill with COVID-19 and those with other medical emergencies. Patients with COVID-19 can quickly deteriorate, especially in the second week of symptoms.

27. The experiences related by Ms. Dilauro highlight the dangerous conditions at the Sullivan County Jail. She reports that her asthma has worsened significantly since being ill with COVID-19 and that she suffered an asthma attack overnight recently. When she asked for help, correctional staff told her there were no health staff available and nobody came to her cell to check on her health. This circumstance could have been fatal and is especially worrisome given the high number of COVID-19 cases at the jail. Ms. Dilauro also reports that nursing staff

documented her pulse rate as being 118 beats per minute some days after her asthma attack but “treated it like a joke” and did not facilitate medical evaluation. More recently, Ms. Dilauro reports that she experienced two episodes of coughing up blood, on May 2 and 26, 2020, both of which were reported to medical staff and neither of which resulted in assessment of her problem. Each of these episodes, involved a potentially life-threatening emergency — especially in someone with COVID-19, which is well-documented to be associated with blood clots in the leg that can migrate to the lungs with fatal consequences — and thus represents a gross breach of correctional health standards.

28. Ms. Dilauro’s report also highlights another reality of COVID-19 that appears unaddressed in the Sullivan County Jail: Many people experience long and difficult recovery from COVID-19 infection. The path to recovery from COVID-19 may require physical therapy, respiratory therapy and at a minimum, should involve regular clinical assessments of patients after they are deemed no longer to pose a risk of infection to others.

b. Do current practices in the Sullivan County Jail adequately slow the spread of COVID-19 through the facility and between people, both staff and detainees in a manner consistent with CDC guidelines and other clinical standards of care?

29. Information from detained people reveals multiple systematic deficiencies in the infection control measures at the Sullivan County Jail, placing the jail’s practices well outside CDC guidelines.

30. For example, Mr. Coleman reports that the shower area in his housing area was last cleaned two or three weeks earlier, when he cleaned it himself. He and Ms. Dilauro both

report that much of the cleaning was previously done by detainee workers who now have been locked into their cells as part of the facility's response to COVID-19. It appears that no new staff have been allocated to conduct this cleaning at precisely the time enhanced cleaning and hygiene measures are most critical.

31. Other concerns and commonly reported deficiencies include:
- a. The physical plant of the Sullivan County Jail likely promotes the spread of COVID-19 through the open-bar nature of the cells and the close quarters of the cells;
 - b. The squalid conditions of the facility, with malfunctioning toilets, showers and widespread reports of mild, mildew and insect represent a wholly unsanitary setting.
 - c. The practice of rotating security staff between housing areas and having high traffic through housing areas virtually ensures the spread of COVID-19 throughout the facility.
 - d. If staff who are exposed to or contract COVID-19 return to work before 14 days, there is an increased likelihood that they will pass COVID-19 to others, both staff and detainees.
 - e. The lack of access to soap or hand sanitizer and the use of dirty cleaning rags promotes the spread of COVID-19 throughout the facility;
 - f. There appears to be little effort to encourage social distancing or wearing of masks inside housing areas, and detainees report ongoing practices of close contact with others and with staff;

g. Reliance on fans to replace a functioning ventilation system likely increases the spread of COVID-19 inside the facility.

32. These deficiencies indicate that the jail is not only failing to take adequate measures to slow the spread of COVID-19 at the facility, but furthermore that the jail is creating an environment where COVID-19 can flourish.

33. I am concerned that the lack of adherence to CDC infection control guidelines at the Sullivan County Jail is causing a significantly increased risk of COVID_19 infection among staff and detained people.

c. Do current practices in the Sullivan County Jail adequately identify and protect high-risk detainees from serious illness and death from COVID-19?

34. Because COVID-19 is known to cause disproportionately higher rates of serious illness and death among certain groups of people, it is imperative that detention settings like the Sullivan County Jail identify and implement protections for these groups, including people who are older, those with body mass index over 40, smokers, and those with chronic health problems.¹¹

35. While a medical dorm exists at the Sullivan County Jail, basic elements required to protect and observe high-risk patients in the jail are absent.

36. It appears that not all detainees who meet CDC criteria for being high risk of serious illness or death from COVID-19 are in specialized housing units. Moreover, it appears those specialized housing units that do exist are unsanitary: Mr. Pace reports that his cell in the medical unit “is covered in bugs, there is filth on the floor and ceiling.” He also reports sharing cleaning supplies with other units, a basic deficiency in infection control.

¹¹ *People Who Are At Higher Risk for Severe Illness*, CDC (last visited May 28, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

37. High-risk patients, whether in general population units or the medical dorm, do not appear to be checked on at least a daily basis for signs and symptoms of COVID-19.

38. The lack of social distancing in medication lines disproportionately increases risk of COVID-19 infection among high-risk patients. Mr. Pace, who has both lung and heart disease, is housed on a medical unit but he reports a lack of social distancing among detainees and staff on that unit.

39. Several detainees report lack of basic access to treatment for their chronic health problems. The CDC has clearly identified that in addition to the risk from chronic health problems, there is additional risk when these conditions are poorly controlled. Failing to provide inhalers to asthmatic patients or monitor blood pressure in hypertensive patients are exactly the type of practices that create a second risk elevation for serious illness or death from COVID-19.

40. The lack of overnight health staff likely contributes to the poor management of chronic disease, impaired response to acute exacerbations and emergencies, and impairs the ability to adequately medically monitor patients in medical isolation.

41. It is my assessment that the Sullivan County Jail has failed adequately to identify and protect high-risk detainees from serious illness or death from COVID-19.

IV. Conclusion

42. Based on this information, it is my assessment that the Sullivan County Jail is not adequately protecting high-risk patients, and that they face a significantly increased risk of serious illness or death from COVID-19 infection because of the deficiencies I have reported.

43. In order to provide a level of care and response that even approaches basic correctional standards and CDC guidelines, the Sullivan County Jail would need to address the deficiencies I have identified. However, even if the facility makes a commitment to address these deficiencies, I believe the extreme disrepair of the facility makes this impossible in the current setting.

44. Accordingly, it is my opinion that high-risk detainees face a serious risk of life-threatening medical complications or death from COVID-19 for as long as they remain detained at the Sullivan County Jail.

45. My assessment of the COVID-19 response at the Sullivan County Jail is based on the information available to me and I reserve the right to supplement this assessment based on additional information.

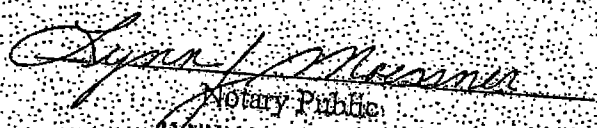
I certify under penalty of perjury that the foregoing is true and correct.

Dated: May 28, 2020



Homer Venters, M.D.

Sworn to before me this 28th day of May, 2020



Notary Public
LYNN J MOESSNER
Notary Public, State of New York
No. 01M04970982
Qualified in Nassau County
Commission Expires 8/20/2022

Pursuant to Executive Order 202.7