

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

In the Matter of the Application of

PEOPLE OF THE STATE OF NEW YORK, by  
LETTIA JAMES, Attorney General of the State of  
New York,

Petitioner,

for an order pursuant to CPLR § 2308(b) to compel  
compliance with a subpoena ad testificandum issued by  
the Attorney General

-against-

THE GEO GROUP, INC.,

Respondent.

Index No. \_\_\_\_\_

**Verified Petition to Compel Compliance with Subpoena Issued by the  
Attorney General of the State of New York, Letitia James**

The Attorney General of the State of New York, Letitia James (“Petitioner”), by and through her undersigned attorney, alleges the following on knowledge with respect to herself and her own conduct and on information and belief as to all other matters:

**INTRODUCTION**

1. Pursuant to New York Civil Practice Law and Rules sections 403(d) and 2308(b), Petitioner seeks an order: (a) compelling The GEO Group, Inc. (“Respondent” or “GEO”) to respond to lawful subpoenas *duces tecum* issued by the Attorney General’s Office on May 26, 2020 (the “First Subpoena”) and June 15, 2020 (the “Second Subpoena”) and an amended subpoena *ad testificandum* (the “Testimonial Subpoena”) issued June 15, 2020, by producing the documents sought in those subpoenas within twenty days of service upon GEO’s counsel of this Court’s order and appearing to give testimony within seven days thereafter; and (b) awarding a statutory penalty of one-hundred and fifty dollars (\$150).

2. GEO owns and operates the Queens Detention Facility (QDF), a 222-bed detention facility. Affirmation of Lillian M. Marquez (“Marquez Affirm.”) ¶ 5. The United States Marshals Service (USMS) contracts with GEO to hold individuals who are charged with federal offenses and awaiting trial, sentencing, or hearings at QDF. *Id.*

3. In April 2020, an outbreak of COVID-19 exploded amongst detainees at QDF (“Detainees”) and individuals working at QDF (“Staff”). *Id.* ¶¶ 14–18, 22. Within two weeks, GEO reported a dramatic increase from 9 COVID-19 cases to 61 confirmed cases. *Id.* ¶ 22. Compared to the general population of New York City where GEO is located, the infection rate among GEO Detainees and Staff was nearly nine times higher. *Id.*

4. New York City quickly became the first epicenter in the United States for the COVID-19 crisis. Governor Andrew M. Cuomo declared the COVID-19 pandemic to be a public health emergency in New York State on March 7. *Id.* ¶ 10. On March 13, Mayor Bill De Blasio issued a state of emergency in New York City, where there were 95 confirmed cases of COVID-19. *Id.* By March 30, the City reported more than 38,000 infections and 914 virus-related deaths. *Id.*

5. However, COVID-19 disproportionately affects certain populations in New York City, including inmates and staff at detention centers where reported infection rates have been as much as *seven times* higher than the City’s average infection rate. *Id.* ¶ 11. QDF is no exception.

6. Petitioner is investigating Detainee complaints and public reporting indicating that GEO has failed to take adequate measures to protect and provide care for Detainees during the COVID-19 crisis, in possible violation of the United States Constitution and New York labor and tort law. *Id.* ¶¶ 31–32. A review of these documents, which reflect complaints that contradict GEO’s representations that it has taken all necessary precautions to stem COVID-19’s spread, provide sufficient factual basis for further inquiry. *Id.* ¶¶ 14–16, 18, 25–26.

7. Pursuant to its authority under Section 63(12) of the New York Executive Law to

“take proof . . . and to issue subpoenas” in support of her investigation of GEO’s potentially illegal business activities, Petitioner lawfully issued the First, Second, and Testimonial Subpoenas (together, the “Subpoenas”) to GEO. To date, GEO has repeatedly refused compliance with the Subpoenas based on its assertion of an intergovernmental immunity from the Petitioner’s authority which is both premature and contrary to law. *Id.* ¶¶ 33, 36, 37.

8. Accordingly, Petitioner respectfully requests that the Court order Respondent to comply with the Subpoenas and pay a statutory penalty of fifty dollars (\$50) for each of the three subpoenas with which Respondent has failed to comply.

### **PARTIES**

9. Petitioner is the Attorney General of the State of New York, Letitia James.

10. Respondent, The GEO Group, Inc., is a publicly -traded corporation, headquartered in Boca Raton, Florida. Respondent’s operations include the management and/or ownership of 126 secure facilities, processing centers, and community reentry centers across the world, including QDF, which is located at 182-22 150th Avenue, Jamaica, NY 1141.

### **VENUE**

11. Venue properly lies in New York County pursuant to section 503 of the CPLR because Petitioner maintains an office at 28 Liberty Street in New York County.

### **FACTUAL BACKGROUND**

#### **The Attorney General’s Investigation**

12. Petitioner issued the Subpoenas following a preliminary review of public documents, including press reports and court filings, reflecting testing and infection rates at QDF and alleging that GEO failed to take adequate precautions against the spread of COVID-19 and to render timely medical care. *Id.* ¶¶ 31–32.

13. On April 2, 2020, Chief Judge Rosslyn Mauskopf of the United States District Court

for the Eastern District of New York (EDNY) issued an Administrative Order (AO 2020-14), directing the Warden of QDF, William Zerillo, to twice weekly provide a status report to the court concerning the incidence of infection of COVID-19 and measures taken to mitigate the spread of COVID-19. *Id.* ¶ 21.

14. The status reports that Warden Zerillo submitted to the EDNY revealed a 700 percent increase in COVID-19-positive cases among Detainees between April 7 (2 Detainee, and 7 Staff cases) and April 9 (16 Detainee, and 8 Staff cases). *Id.* ¶ 22. Overall, between April 3 and April 21, 2020, 38 out of 41 detainees tested for COVID-19 tested positive, as did 21 staff members. *Id.* By May 21, 2020, one detainee previously determined to have “recovered” from COVID-19 tested positive again for the virus, and nine more staff members tested positive—bringing the total number of positive staff cases to 30. *Id.* ¶ 23.

15. Public reporting throughout April and mid-May 2020 also revealed allegations that GEO exposed Detainees and Staff to an unreasonable risk of contracting COVID-19 by failing to provide sufficient personal protective equipment, sanitize dormitory units and linens, enable and enforce social distancing, or separate sick Detainees from those who exhibited no symptoms. *Id.* ¶¶ 14–18.

16. Some Detainees challenged the constitutionality of their continued confinement in these conditions. *Id.* ¶ 25. For instance, in *Collier v. Sozjo*, a putative class action petition for a writ of *habeas corpus* filed in the United States District Court for the Southern District of New York, an asthmatic Detainee testified that another Detainee who tested positive for COVID-19 remained in a housing unit intermingled with the affiant and other asymptomatic detainees who had not tested positive. *Id.*

17. Counsel with knowledge of conditions inside GEO based on conversations with Detainees and GEO staff have corroborated the substance of Detainee complaints, particularly

that GEO has failed to remove symptomatic or sick Detainees from congregate dormitory units or to protect Detainees who, due to underlying medical conditions, are at high risk for severe complications from COVID-19. *Id.* ¶ 26.

18. Petitioner’s preliminary review of this publicly-available information suggests that GEO may have failed to implement certain mitigation measures to prevent the spread COVID-19 in the facility and ensure adequate health services to those who become infected with the virus, thereby putting Detainees and Staff at unreasonable risk and potentially violating federal and state law. *Id.* ¶¶ 31–32.

### **The Subpoenas and GEO’s Refusal to Comply**

19. Based on the foregoing, on May 26, 2020, Petitioner issued two investigatory subpoenas to GEO, seeking documents and testimony related to potential violations of law in the management and operation of QDF during the COVID-19 pandemic. *Id.* ¶¶ 3, 32, 34.

20. GEO responded by letter on June 2, 2020, asserting primarily that because “the activities of the Federal Government are free from regulation by any state,” and because QDF “is a federal facility carrying out an exclusively federal function,” the doctrine of intergovernmental immunity precludes Petitioner from investigating any part of GEO’s QDF operations. *Id.* ¶ 33.

21. Petitioner responded on June 15, 2020, explaining that Petitioner had authority to investigate “factual issues of jurisdiction and immunity in order to determine whether conduct can be prosecuted.” *Id.* ¶ 34. In light of that authority and QDF’s claim of unfettered immunity, Petitioner issued a second subpoena for documents and amended its initial testimonial subpoena to expand the topics for discussion. *Id.*

22. GEO responded by letter dated June 23, 2020, reasserting an intergovernmental immunity defense as to both documentary subpoenas. *Id.* ¶ 36.

23. Prior to filing the instant petition, on November 30, 2020, Petitioner advised GEO’s

counsel by e-mail that Petitioner intended to seek an order to compel compliance with the Subpoenas and offered an opportunity to GEO to reconsider its petition. *Id.* ¶ 37. On December 9, 2020, GEO's counsel responded that GEO maintained its objection that the Subpoenas are barred by inter-governmental immunity doctrine. *Id.*

24. The deadlines set forth in the Subpoenas have lapsed. GEO has made clear its belief that intergovernmental immunity shields it from compliance with the Subpoenas and that it will not produce the demanded documents or testimony. *Id.* ¶ 38.

25. GEO's position that it is immune from the Subpoenas themselves is contrary to law and premature. The Subpoenas are not only authorized by Executive Law § 63(12)—including its grant of authority to investigate matters of immunity—but are also appropriately limited to information relevant to the subject under investigation and are founded upon credible complaints and public reporting.

#### PRAYER FOR RELIEF

26. For all of the foregoing reasons, and as set forth in the accompanying Memorandum of Law and the Affirmation of Lillian M. Marquez, Petitioner brings this Petition seeking an order: (a) compelling Respondent to respond to the First and Second Subpoenas and the Testimonial Subpoena; and (b) awarding a statutory penalty of one-hundred and fifty dollars (\$150).

27. No previous application has been made to this or any other Court for the relief sought herein.


28. WHEREFORE, Petitioner respectfully seeks an order (a) compelling Respondent to respond to the First and Second Subpoenas and the Testimonial Subpoena by producing documents sought in those subpoenas within twenty days of service upon counsel for Respondent of this Court's order with notice of entry, an appearing to give testimony within seven days thereafter; (b) awarding Petitioner a statutory penalty of one-hundred and fifty dollars; and (c) granting such

other and further relief that the Court deems just and appropriate.

Dated: New York, New York  
December 11, 2020

Respectfully submitted,

LETTIA JAMES  
New York Attorney General

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VERIFICATION

STATE OF NEW YORK )
) ss:
COUNTY OF NEW YORK )

Lillian M. Marquez, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Letitia James, Attorney General of the State of New York, and I am duly authorized to make this verification.

I have read the foregoing petition and know the contents thereof, which are to my knowledge true, except as to matters therein stated to be alleged on information and belief, and as to those matters, I believe them to be true. The grounds for my beliefs as to all matters stated upon information and belief are investigatory materials contained in the files of the Bureau of Civil Rights in the New York State Office of the Attorney General.

The reason this verification is not made by the Petitioner is that the Petitioner is a body politic. The Attorney General is its duly authorized representative.

[Handwritten signature of Lillian M. Marquez]
Lillian M. Marquez

Sworn to before me this
11 day of December, 2020

[Handwritten signature of Roxanne E. Wild]
NOTARY PUBLIC

Pursuant to EO 202.7
12/11/2020 @ 2:03 pm
IS: Driver's license
LM: Kings County
RW: NY County
petition to compel compliance
verification

ROXANNE E. WILD
NOTARY PUBLIC, STATE OF NEW YORK
NO. 02W16378871
QUALIFIED IN NEW YORK COUNTY
MY COMMISSION EXPIRES AUG. 6, 2022