

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

PEOPLE OF THE STATE OF NEW YORK
EX REL. Corey Stoughton, Esq.
On Behalf of
VENUS WILLIAMS, et al.

Petitioner,

-against-

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

Respondents.

AFFIRMATION AND
MEMORANDUM OF LAW IN
OPPOSITION TO PETITIONERS'
MOTION TO FOR LEAVE TO
REARGUE OR RENEW WRIT OF
HABEAS CORPUS

Index No. 451069/2020

SCID No. 30042/2020

I, PATRICIA J. BAILEY, an attorney duly admitted to practice before the
Courts of this State, affirm the following under penalty of perjury that:

1. I am an Assistant District Attorney of counsel to interested parties, the New
York County District Attorney's Office and District Attorney Cyrus R. Vance, Jr.

1. This affirmation is submitted on information and belief, the source of which is
my review of records maintained in the Office, and information obtained from the City of New
York, the New York City Board of Corrections, the New York City Department of Corrections
("DOC") and the Petitioners' papers and exhibits. Where applicable, I incorporate by reference
information provided to me by the Assistant District Attorney assigned to the underlying
criminal matter.

2. Petitioners are inmates in DOC custody. On March 19, 2020, Petitioners filed a
Writ of Habeas Corpus seeking their immediate release from the jails in New York City on the

grounds that continuing to hold them on bail or parole during the current COVID-19 pandemic, due to their age and/or alleged illness, “constitutes deliberate indifference to the risk of serious medical harm in violation of the Fourteenth Amendment and the state constitutional right to due process.” Pet. Writ at ¶ 1. Originally, Petitioners numbered 116.

3. Since March 19, 2020, multiple writs have been filed throughout the City. The Corporation Counsel, as counsel for respondent Department of Corrections (“DOC”), has relied on the affidavit of Richard Bush, the Senior Correctional Institution Administration for Health Affairs at DOC, Exh. 1, along with the affidavit of Patricia Feeney, the Deputy Commissioner of Quality Assistance and Integrity, who oversees, among other things, the Environmental Healthy Unit and the Compliance and Safety Center. Exh. 2. These affidavits detail the ongoing protective and preventative measures to control the spread and effects of COVID-19 within the detention facilities, including, but not limited to, providing inmates with additional cleaning supplies, daily cleaning and sanitizing of housing units, increased quality assurance protocols, as well as protocols for separating and treating any medically vulnerable inmates. DOC also maintains regular contact with the medical staff of Correctional Health Services (“CHS”), monitors at-risk individuals within the jail and evaluates individuals exhibiting symptoms of COVID-19.

4. New York City Health and Hospitals has issued guidelines for when members of the public should be tested for COVID-19. The guidelines state: “In line with New York City Department of Health recommendations, NYC Health + Hospitals is no longer testing patients for COVID-19 who do not require hospitalization. If you are sick with fever, cough, shortness

of breath, or sore throat, you must stay inside and isolate yourself from others. Isolate yourself for at least 7 days from when your symptoms started. You must also be without fever during the last 3 days of your isolation. Please only go to the emergency room if you are severely ill. We are asking every New Yorker, regardless of symptoms, to stay inside your home. Staying home can save the life of another New Yorker.” NYC Health + Hospitals New Coronavirus Testing Guidelines, available at <https://www.nychealthandhospitals.org/coronavirus-testing-guidelines/> (last visited April 7, 2020).

5. The Board of Correction is the independent oversight agency for the city’s jails. On April 1, 2020, the Board’s Interim and Incoming Chairs issued a joint statement explaining the efforts undertaken by various agencies to address COVID-19 in city jails and commending the City and its District Attorneys for taking action to release hundreds of inmates, where “appropriate,” in order to reduce the jail population and “allow for improved separation” of the inmates who remain in custody. *Joint Statement of BOC Chairs*, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/JJA_JS%20public%20report%20statement_mme.pdf (last visited April 8, 2020). The Board is releasing daily COVID-19 updates with information about the presence of the virus in city jails. NYC Board of Corrections Daily COVID-19 Updates, available at <https://www1.nyc.gov/site/boc/covid-19.page> (last visited April 8, 2020).

6. Since early April, a number of New York Supreme Courts have issued written decisions addressing the very claims Petitioners’ Writ and re-argument raise. The courts, in denying a majority of the writs, reviewed DOC’s practices and preventive measures and found

them sufficient to defeat writs seeking the release of inmates claiming susceptibility to COVID-19. *See e.g.*, Exh. 3 [*Napier v Brann*, Ind. No. 133/2020, Bronx Co. Supreme, J. Lieb, April 3 2020]; Exh. 4 [*Torres v. Brann*, Index No. 260168/2020, Bronx Co. Supreme, J. Lieb, April 2, 2020]; Exh. 5 [*Otero v Brann*, Ind. No. 2118/2019, Bronx Co. Supreme, J. Lieb, April 2, 2020]; Exh. 6 [*Martinez v. Brann*, Index No. 260188/2020, Bronx Co. Supreme, J. Fabrizio, April 3, 2020]; Exh. 7 [*Melendez v Brann*, Ind. No. 682/2019, Bronx Co. Supreme, J. Lieb, April 3, 2020]; Exh. 8. [*Hogan v. Brann*, Index No. 451078/2020, New York Co. Supreme, J. Dwyer, April 6, 2020].

7. Between March 17, 2020 and April 1, 2020, a total of 1,278 individuals have been discharged from DOCS custody. Exh. 1 ¶ 7.

8. On April 1, 2020, Elizabeth Glazer, Director of the Mayor's Office of Criminal Justice (MOCJ), provided the City's six District Attorneys with a letter update of the efforts taken by DOC to minimize the spread of COVID-19 in the city's jails, efforts to reduce the jail population, and the benefits from that reduction. The letter specifically advises that "with fewer people in custody, our jails are now better able to provide space for social distancing of the well and care for the sick." Exh. 9.

9. On April 3, 2020, Commissioner Brann issued a chief's order entitled "Distribution of Masks," to the Commanding Officers of DOC Facilities and Divisions. The order implemented procedures that require all staff to wear a face mask and be in possession of latex gloves, and further, that all inmates while in a congregant setting shall be required to wear a mask. Each command has been issued supplies of masks for the assigned staff and inmates

Exh. 10.

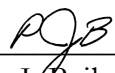
10. Exhibit 11 contains case summaries and criminal histories of the (43) named Petitioners whose case has a bail amount in excess of \$1.00. The summaries reflect the information the assigned Assistant District Attorney provided to the hearing court when it determined the securing order. For ease of reference, Petitioners' motion paragraph numbering system has been adopted. This exhibit does not include those Petitioners whose pending cases have \$1.00 bail and are held on a parole hold or those Petitioners detained solely by a parole hold. Since the filing of Petitioners' motion, bail has been posted for two of the incarcerated petitioners and they have been release from custody. Pet. Br. ¶¶ 45, 67.

11. For the reasons set forth in the accompanying Memorandum of Law, Petitioners application should be denied.

Dated: New York, New York
April 8, 2020

Respectfully submitted,
CYRUS R. VANCE, JR.,
District Attorney, New York County
Respondents
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212-335-9000

BY:



Patricia J. Bailey
Assistant District Attorney
Of Counsel

MEMORANDUM OF LAW

This Memorandum of Law is submitted in opposition to Petitioners' Motion under CPLR § 2221 for leave to reargue the Court's Order denying Petitioners' March 19, 2020 Writ of Habeas Corpus ("Pet. Writ") or, in the alternative, to renew the writ itself. Petitioners' writ sought the immediate release from DOC custody on the grounds that continuing to hold them on bail or parole during the COVID-19 pandemic, due to their age and/or underlying medical condition, "constitutes deliberate indifference to the risk of serious medical harm in violation of the Fourteenth Amendment and the state constitutional right to due process." Pet. Writ at ¶ 1. On the afternoon of March 20, 2020, counsels for the Petitioners, Commissioner Brann, Acting Commissioner Annucci, and the New County District Attorney's Office ("DANY") appeared in Supreme Court Part TAP A for oral argument before Your Honor. Petitioners have not provided the Court with the transcript of those proceedings.

As Your Honor noted during the argument, short of a name, age and the allegation that one or more of the Petitioners has a medical condition, little individual information was provided as to each Petitioner. In issuing the decision from the bench, Your Honor noted that a finding of "deliberate indifference" requires that there be a dangerous condition, of which the incarcerating agency had knowledge and about which the agency failed to take any steps to remedy the conditions. Your Honor determined there was a dangerous condition in the form of COVID-19, and that DOC had knowledge of that danger but, importantly, DOC had taken measures to remedy the situation and immediate release was therefore not available as a remedy. In sum, the Court determined that the response of DOC to the COVID-19 pandemic—which is a dangerous condition confronting our entire city, not just

Petitioners—had not exhibited deliberate indifference to the medical needs of the incarcerated
Petitioners in violation of the U.S. and New York State constitutions.

Petitioners now move to reargue, or in the alternative, to renew their writ on the ground that the COVID-19 virus “has exploded in the jails, transforming Rikers Island into the global epicenter of the pandemic...” Pet. Br. at 1. They claim there is “new data unavailable at the time of the original petition demonstrate that COVID-19 is spreading exponentially in New York Jail and [DOC] is incapable of protecting petitioners while they remain incarcerated.” Pet. Br. at 20. In support of this claim, Petitioners cite to the increasing numbers of individuals, both incarcerated and in the general public, infected with the virus as the pandemic continues to spread throughout communities. Pet. Br. at ¶ 88. Petitioners reference “models” which project that COVID-19 will continue to grow exponentially. Pet. Br. at ¶ 89. Further, they allege it “has also become clearer since the filing of the original Petition that the numbers of people diagnosed reflect only a portion of those infected. Very few people have been tested and many are asymptomatic transmitters.” Pet. Br. at ¶ 90. It is unclear whether this statement is in reference to inmates or the public at large. Petitioners further point out that at the time the writ was heard, there was one known inmate who had tested positive for the virus¹ and as of April 1, 2020, there were “at least 180 inmates diagnosed with virus” and 141 staff members. Pet. Br. at ¶ 91. Petitioners allege, without citation, that the “attack rate” in the City jails “is

¹ As alleged in the writ, Petitioners advised the court that as of “midday on March 19, 2020, at least one incarcerated person has tested positive for the virus. Later in the day on March 19, 2020 Legal Aid staff learned of reports of additional infections, indicating a rapid spread has already progressed.” Pet. Writ ¶145.

eight times higher than any other global epicenter of the disease ... [and] the growth in infection in New York’s jails also dwarfs any other place in the world.” Pet. Br. at ¶ 92.

Petitioners go on to argue “[n]ew evidence about [DOC] efforts to respond to COVID-19 further demonstrate that they are incapable of protecting petitioners while they remain incarcerated.” Pet. Br. at 23. Here, they cite to the World Health Organization (“WHO”) recognition that incarcerated people are “likely” more vulnerable to COVID-19 outbreaks than the general population due to the confined conditions of detention facilities in general, not Rikers in specific. They cite to guidelines for administrators of detention facilities to use in preparation to control COVID-19 outbreaks, which was publicly released by WHO on March 15, 2020, and available when this writ was filed. Petitioners also rely on the Center for Disease Control and Prevention (“CDC”), which also published guidelines, nearly identical to those of WHO, for detention facilities. Pet. Br. ¶ 94. Petitioners also cite as “new evidence,” a series of complaints about the conditions within the jails by unnamed inmates to unnamed attorneys. No supporting affidavits are provided by either the inmates or the attorneys in question. Nor are the specific housing units, dormitories or facilities being complained of identified or otherwise described in the brief. Pet. Br. at ¶¶ 96-103. Finally, Petitioners, cite as “new evidence” a March 21, 2020 “advisory letter” by the City’s Board of Corrections “urging judges and prosecutors to release people, like Petitioners... [and] rapidly decrease the number of people housed and working in” the facilities. Pet. Br. ¶¶ 104-105. This is not new information as Petitioners relied on the same statement, released to the press on March 17, 2020, in their Writ application. Pet. Writ ¶166. The remainder of Petitioners’ “new evidence” consists of a regurgitation of interviews and twitter accounts of

Correctional Health Services doctors who opined that, due to the infectious nature of COVID-19 and the inherent confines of detention facilities, the inmate population should be reduced “by the hundreds” to benefit of those inmates and staff members who remain. Pet. Br. ¶¶106-107. This is information the Court had at the time of the Writ application. Pet. Writ ¶167.

Regardless of Petitioners’ preferred standard of review, the governmental interests far outweigh their claims. The individuals involved have demonstrated a significant willingness to put their interests above society, a point that was not lost on the judges who set bail. Exhibit 11, attached herein, provides the facts underlying the pending charges against those Petitioners for whom bail was set. Also included is the criminal, parole and warrant history for each. Among the serious, violent crimes Petitioners stand accused of are: Attempted Murder in the Second, First-Degree Rape, First, Second and Third Degree Robbery, First and Second Degree Burglary, Persistent Sexual Abuse, and domestic violence offenses. Numerous Petitioners allegedly committed the crime while out on parole, or fled from the scene after committing the crime. Finally, many of these individuals committed the offenses while having previously committed felony offenses. These are the facts and criminal histories that the courts considered when first setting bail on Petitioners. In short, their continued detention following extensive, coordinated efforts by the Mayor’s Office and the District Attorney’s Office to reduce the inmate population as much as possible without compromising the administration of criminal justice and public safety reflects the fact that these individuals are among the highest flight risks in the system. The governmental and societal interests in their continued detention are as compelling as can exist under the current circumstances.

ARGUMENT

For the many reasons explained herein, Petitioners have failed to meet their burden to sustain either a motion for leave to reargue or a motion to renew the writ, and their application should be denied.

1. Standard of Review

Whether Petitioners' motion is viewed as one for reargument or renewal, they have not meet either applicable standard. A motion for leave to reargue "shall be based upon matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion." NY CPLR § 2221(d); *see also People v. Kevin W.*, 22 N.Y.3d 287 (2013); *Hill v. Goord*, 275 A.D.2d 492 (3rd Dept. 2000) ("motion must be considered a motion to reargue inasmuch as it was not based upon newly discovered evidence"); *William P. Pabl Equip. Corp. v. Kassir*, 182 A.D.2d 22 (1st Dept. 1992). In assessing a motion for leave to reargue, "[t]he determinative question [is] whether the specific argument was the same as that previously raised, but overlooked or misapprehended by the reviewing court." *People v. D'Alessandro*, 13 N.Y.3d 216 (2009). Thus, while the decision whether to grant leave to reargue is within the discretion of the trial court, "[r]eargument is not a vehicle permitting a previously unsuccessful party to once again argue the very questions previously decided or to assert new, never, previously offered arguments." *Kent v. 534 E. 11th St.*, 80 A.D.3d 106, 116 (1st Dept. 2010); *see also Cathedral Gardens Condo Assn. v. 110th St. Equities, LLC.*, 2018 N.Y. Misc. LEXIS 4656, at *2 (Sup. Ct., N.Y. Co. Oct. 15, 2018) ("a motion for leave to reargue is not designed to provide an unsuccessful party with successive opportunities to reargue issues previously decided"). Accordingly, where a party "merely restates the previous arguments regarding...issues [that]

have already been decided by the trial court,” a motion for leave to reargue must be denied. *Cathedral Gardens Condo Assn.*, *supra*, at *5.

On the other hand, a motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination.” NY CPLR § 2221(e); *see also Melcher v. Apollo Med. Fund Mgt. L.L.C.*, 105 A.D.3d 15, 23 (1st Dept. 2013); *Nassau County v. Metropolitan Transp. Auth.*, 99 A.D.3d 617, 618 (1st Dept. 2012). More specifically, the additional material facts offered in support of a motion for leave to renew must have “existed at the time the prior motion was made, but were not then known to the party seeking leave to renew, and, therefore, not made known to the court.” *Elson v. Defren*, 283 A.D.2d 109, 113 (1st Dept. 2001), citing *Foley v. Roche*, 68 A.D.2d 558, 568 (1st Dept. 1979). As a result, “[t]he remedy of renewal is not available where a party proceeds on one legal theory and then moves for renewal on a different theory, merely because it was unsuccessful on the original application.” *Venuti v. Novelli*, 179 A.D.2d 477 (1st Dept. 1992).

2. Petitioners Have Not Met the Standard of a Motion to Reargue

To the extent Petitioners seek to reargue the legal or factual claims advanced in their original papers and during the March 20, 2020 oral argument, they do not contend that any of those claims were “*overlooked or misapprehended* by the court in determining the [writ].” NY CPLR § 2221(d) (emphasis added). In fact, their arguments now are the same as they were in the original application—arguments that this court specifically addressed when issuing its decision.

In both the Writ application and the current motion, Petitioners (originally, 116 and now, 79) argue that due to their underlying medical conditions or because of their age, the

protective and preventative measures taken by DOC to address the effects of COVID-19 are insufficient to such a degree that further confinement amounts to a due process violation under both the federal and state constitutions. In short, Petitioners posit that DOC's alleged deliberate indifference to the potential for Petitioners to suffer serious medical consequences should they contract the virus and the lack of a "compelling governmental necessity" in detaining these specific inmates during a global pandemic, demands their immediate release.

This Court did not misapprehend or overlook these legal arguments, which have been the forefront of Petitioners' application from the outset of this litigation. This Court disagreed with Petitioners' arguments and found that they had failed to meet their burden of demonstrating DOC's deliberate indifference to Petitioners' alleged medical conditions and the potential consequences should they contract the virus and thus, denied the writ. While in the court's discretion, a motion to reargue "is not a vehicle permitting a previously unsuccessful party to once again argue the very questions previously decided or to assert new, never, previously offered arguments." *Kent*, 80 A.D.3d at 116.

Rather than argue that the Court misapprehended or overlooked one or more of their claims, Petitioners seek to rehash their prior arguments by citing several recent federal decisions where the courts either delayed sentencing or released a pre-trial detainee, in part, because of concerns about COVID-19. Unlike here though, those applications were not writs or grounded on claims that the Federal Bureau of Prisons was deliberately indifferent to the medical vulnerabilities of pre-trial detainees should they be infected by the virus while in custody. For example, *U.S. v. Stephens*, 2020 WL 12919, 15 CR 95 (AJN) (S.D.N.Y. Mar. 19, 2020), involved a motion for reconsideration of pre-trial detainee's bail conditions due changed

circumstances. The court took a twofold approach, finding first that the strength of the government's case was weakened by new information—a finding that was relevant to the court's determination of the defendant's dangerousness. 2020 WL 12919, at *1. The second basis the court considered was the nature of the COVID-19 virus. The court determined that the defendant met his burden of demonstrating a change of circumstances and that he did not pose a danger to the community, and temporarily released defendant to supervised release, which included 24-hour home incarceration and electronic monitoring. *Id.* at *3. The argument put forth by the defendant in *Stephens*, in so far as it related to the virus, is no different than the countless of bail applications based on COVID-19 concerns, heard before this and many others courts across the City over the last couple of weeks. Indeed, Petitioner Stephan Eans, Pet. Br. ¶ 45, made just such a bail application on April 3, 2020, before Judge Weiner, who upon learning defendant had a supportive housing slot available to him, permitted defendant to post a partially secured bond. Eans was released from DOC custody on April 4, 2020.

Petitioners also seek support from *U.S. v. Garlock*, 2020 WL 1439980 (N.D. California Mar. 25, 2020). But similar to *Stevens*, the court in *Garlock* did not engage in a deliberate indifference or due process violation analysis. Rather, the defendant, who was on pre-trial release, was to surrender for sentencing on June 12, 2020, and the court *sua sponte* extended the surrender date to September 12, 2020 so as to not needlessly add to the prison population during the COVID-19 pandemic.

Petitioners also rely on *Coronel v. Decker*, 2020 WL 1487274, 20 CV 2472 (AJN) (SDNY Mar. 27, 2020) and *Basank v Decker*, 2020 WL 1481503, 20 CV 2518 (AT) (SDNY Mar. 26, 2020) for support. However, in those decisions, the federal courts reviewed *civil*

complaints challenging the detention of individuals in ICE custody on immigration detainers, not criminal charges. Relevant here, crucial to court's decision in *Coronel* was ICE's failure to take “**any** action to address the particular risks COVID-19 poses to high-risk individuals ... And the Department of Homeland Security's own ‘medical subject matter experts’ state that the agency has a ‘track record ... of failing to develop early detection and containment protocols for infectious diseases outbreaks’ and point out problems with detention facilities’ protocols surrounding screening, testing, and isolation.” *Coronel*, 2020 WL 1487274, *4 (emphasis added). Further, even after ICE was notified of the petitioners' specific medical conditions in that case, *e.g.*, partial lung loss, “the Government [could] point to no specific action that it took in direct response to this serious, unmet medical need.” *Id.* at *5. The court then listed the myriad of protocols ICE had not undertaken to address the medical concerns; including: “[i]t has not isolated these high-risk individuals. It has not created special safety or hygiene protocols for them or for staff interacting with them to follow. It has not implemented a protocol to test individuals coming into jails or individuals who are in jails, either for COVID-19 itself or even for a high fever. And of course, it has not considered the release the Petitioners at issue in that case, even though doing so is within the agency's sound discretion.” *Id.* The *Decker* court addressed the same concerns by civil immigration detainees, and as with *Coronel*, granted relief by issuing a temporary restraining order until April 9, 2020, at which time the government must show cause why the TRO should not be converted to a preliminary injunction. *Basank*, 2020 WL 1481503, at *6.

A more fitting federal comparison would be to cases in which federal pre-trial detainees unsuccessfully challenged their detention citing COVID-19. *See e.g., United States v.*

Steward, 2020 WL 1468005, at *1, 20 CR 0052 (DLC) (SDNY Mar. 26, 2020) (“based on the record currently before the Court, it appears that the defendant’s release into the community would endanger the safety of the community. There is also no reason to find that the defendant’s release would lessen the risk to his health presented by COVID-19”). Similarly, in *United States v. Hamilton*, the defendant argued that, due to his advanced age and medical conditions, the ongoing COVID-19 pandemic constitutes a “compelling reason” to permit his temporary release under 18 U.S.C. 3142(i)(4). As the court noted, “this provision has been used sparingly to permit a defendant’s release where, for example, he is suffering from a terminal illness or serious injuries. ... While the court is mindful of Mr. Hamilton’s concerns, it does not believe that the COVID-19 outbreak—at this point in time—constitutes a sufficiently compelling reason to justify release under the circumstances of this case.” 2020 WL 1323036 at *2, 19 CR 5401 (NGG) (E.D.N.Y. Mar. 20, 2020) (internal citations omitted); *see also*, *United States v. Bonafe*, 2020 WL 1467146, at *1, 19 CR 862 (VEC) (SDNY Mar. 26, 2020) (court denied reconsideration of bail request based on the COVID-19 outbreak, where pre-trial detainee claimed it hindered inmates’ access to the law library and the ability to review materials produced during discovery).

3. Petitioners Have Not Met the Standard of a Motion to Renew

Petitioners argue that, as opposed to viewing their motion as a leave to reargue, that court could analyze as an application for leave to renew. As noted above, a motion for leave to renew “shall be based upon new facts not offered on the prior motion that would change the prior determination.” NY CPLR § 2221(e). Petitioners’ motion, however, is based on information known on March 20, 2020, at the time of their original application and

their motion for leave to renew fares no better than its application for leave to reargue.

As an example of “newly discovered evidence,” Petitioners cite to the increasing numbers of known individuals who have been infected with COVID-19 as the pandemic continues to spread throughout various communities, including within the jails, the City, New York State and the country. Petitioners also reference “models” which project that COVID-19 will continue to grow, and will do so in exponential fashion. That this particular virus has the ability to grow exponentially is not new information and was known since it first surfaced in Wuhan, China. Petitioners point to the exponential growth when they sought immediate release on March 20, 2020. The explosive and exponential growth of COVID-19 we are experiencing locally, nationally, and globally was expected; it was also widely publicized when the World Health Organization (“WHO”) first declared COVID-19 a “pandemic” on March 11, 2020.² The same was true when the Mayor of New York City, the Governor of New York State and the President of the United States each declared a state of emergency due to the virus’ rapid rate of infection. *Pets. Writ* at ¶¶ 129-131. The fact that the numbers of infected people in the general public as well as those in detention facilities has increased dramatically over these past three weeks is not unexpected or new. There are daily news media and government reports that informing everyone that COVID-19 remains present and the numbers of infected will continue to rise until the curve is “flattened.” These developments do not constitute “new facts” under CPLR §§ 2221.

² World Health Organization: WHO Director-General’s Opening Remarks at the Media Briefing on COVID-19 11 March 2020. <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited April 3, 2020)

Petitioners allege, without citation, that the “attack rate” in the City jails “is eight times higher than any other global epicenter of the disease ... [and] the growth in infection in New York’s jails also dwarfs any other place in the world.” Pet. Br. at ¶ 92. In support of this claim, Petitioners include two seemingly self-created data charts, again without source attribution, which allegedly show the infection rate at Rikers as compared to the City, State and other countries. The thrust of Petitioners argument is that the Rikers Island jail population is contracting COVID-19 at a rate that far exceeds of the other communities because DOC’s protocols are not “sufficiently mitigating the risk that Petitioners will die of the virus if they remain incarcerated.” Pet. Br. at ¶ 93.

Petitioners’ DOC infection rate assertion is based on a category error because they are comparing dissimilar populations: inmates and the general public. DOC inmates unlike the general public, have access to on-sight medical care, leading to more frequent medical evaluations and testing than the general public, which, under sheltering-in-place rules, may only be seeking medical attention when significant symptoms are manifest. Relevant to this point, New York City Health and Hospitals has issued guidelines for when members of the public should be tested for COVID-19. The guidelines state:

“In line with New York City Department of Health recommendations, NYC Health + Hospitals is **no longer testing patients for COVID-19 who do not require hospitalization**. If you are sick with fever, cough, shortness of breath, or sore throat, you must stay inside and isolate yourself from others. Isolate yourself for at least 7 days from when your symptoms started. You must also be without fever during the last 3 days of your isolation. Please only go to the emergency room if you are severely ill. We are asking every New Yorker,

regardless of symptoms, to stay inside your home. Staying home can save the life of another New Yorker.”

NYC Health + Hospitals New Coronavirus Testing Guidelines, available at <https://www.nychealthandhospitals.org/coronavirus-testing-guidelines/> (last visited April 5, 2020)(emphasis added).

However, DOC’s evaluation and testing protocols are more stringent as compared to those available to the general public. Some of the procedures DOC has put in place include: maintaining regular contact with Correctional Health Services (“CHS”) to monitor at-risk individuals; DOC staff refers those inmates who are exhibiting COVID-19 symptoms for medical evaluation; DOC has reopened the Eric M. Taylor center for newly admitted individuals showing symptoms to expand capacity for housing and separation of people who have tested positive for COVID-19; additional units have been dedicated for the same purpose within the Rose M. Singer Center for female detainees; DOC has also created a dedicated intake in the Manhattan Detention Center for individuals with no symptoms; prior entering all DOC facilities and command, all persons, including staff, are currently screened for flu-like symptoms, including by mandatory temperature screening. Exh. 1; *see also* DOC: COVID-19 Preparation and Action Plan, available at <https://www1.nyc.gov/site/doc/media/coronavirus-news.page> (last visited April 5, 2020). DOC inmates, unlike the general public, are thus closely monitored and have access to on-sight medical care, leading to more frequent medical evaluations and testing than the general public, who, under sheltering-in-place rules, may only be seeking medical attention when significant symptoms require hospitalization.

While statistical comparisons can be help, Petitioners’ attempt to compare rates of infection between a scrutinized inmate population and the public at large is both hypothetical and an unreliable as an indicator of relative risk of harm in those two populations. As to the numbers in the general population, according to the New York City Department of Health, which displays a daily update of the percentage of persons testing positive by zip code, as of April 7, 2020, many areas in the city are presently testing positive at rates between 56% and 78%; far higher than the rate of positive test results received within DOC. New York City Department of Health: COVID-19: Data: Percentage of Patients Testing Positive by Zip Code <https://www1.nyc.gov/site/doh/covid/covid-19-data.page> (last visited April 7, 2020). According to the Department of Health map, no zip code within the City is testing positive at a rate lower than 24%. Rikers Island’s zip code is 11370—which contains a significant portion of Queens in addition to the island itself—and is testing positive at a rate lower than approximately 40 other zip codes on the map.

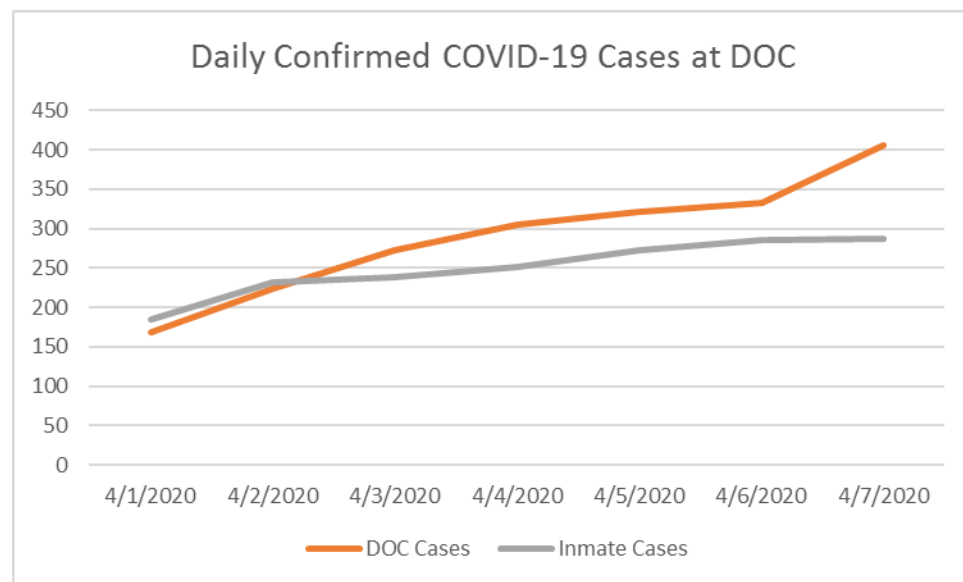
Petitioners allege that “the conditions of New York city jail pose a higher risk of the spread of COVID-19 than in non-carceral location like nursing home or cruise ship. Jails have a greater risk because of closer quarters, the proportion of vulnerable people detained, and scant care resources.” Pet. writ ¶ 150. While, Petitioners try to depict the DOC facilities as the “epicenter” of the disease to the point of being the most dangerous cruise ship on the planet. But the data to date demonstrates a very different picture.

Since April 1, 2020, The Board of Corrections has released to the public the numbers of both inmates and DOC staff that have been confirmed to have COVID-19:

DATE	INMATES:	DOC STAFF:
April 1, 2020	184	169
April 2, 2020	231	223
April 3, 2020	239	273
April 4, 2020	251	305
April 5, 2020	273	321
April 6, 2020	286	333
April 7, 2020	287	406

All Inmate and DOC staff numbers obtained from: NYC Board of Correction and COVID-19 available at <https://www1.nyc.gov/site/boc/covid-19.page> (last visited April 8, 2020)

Moreover, a line chart of the BOD published reports shows not only has the growth rate of DOC staff higher than that of the inmates, significantly, the curve of the inmate positive rate has clearly flattened over the past week.



Petitioners argue they should be immediately released because of the conditions at Rikers, yet, it is the DOC staff who are out with the general public, being

exposed to the outside communities who have more positives tests than inmates. Further, as to Petitioners claim that the jails are more dangerous than being on cruise ship, a recent report of a stricken Antarctic cruise ship, where nearly 60 percent (128 of 217 passengers) tested positive for the virus, belies this argument. CNN Travel: Passengers to be Evacuated from Antarctic Cruise Ship After Almost 60% Test Positive for Coronavirus: available at <https://www.cnn.com/2020/04/07/americas/greg-mortimer-cruise-ship-coronavirus-intl-hnk/index.html> (last visited April 8, 2020). Clearly the efforts DOC has undertaken since the advent of the COVID-19 pandemic are effective at protecting inmates from the spread of the virus.

In reliance on an interview with CHS doctor from March 19th, Petitioners argue that effective prevention measures are “impossible” in a jail. Pets. Br. at 26. On that date, the doctor recommended that “hundreds” of inmates be released to curb the spread of the virus. That is exactly what has happened. Between March 17, 2020 and April 1, 2020, a total of 1,278 individuals have been discharged from DOCS custody as part of an effort to limit the spread of the virus in a manner that does not sacrifice the administration of justice and public safety. Exh. 1 ¶ 7. More inmates have been released since that date. In any event, as of April 1st, there has been an approximately twenty percent of the population in the Department’s custody. This is in addition to the already reduced population in the City’s jails as a result of bail reform that took effect in January 2020, and released nearly all non-violent offenders as well as violent offenders who have no history of absconding from court whose cases were still pending (see generally CPL Article 510, 530). Today, Rikers Island does not face the overcrowding that plagued those jails for years.

Still other concerns raised by the doctor during the March 19th interview are directly answered by policies implemented by DOC. Petitioners cite the doctor's statements about the lack of cleaning supplies, the possibility of a "broken" sink, and the inability for inmates to practice social distancing. Pets. Br. at 22. As noted in the April 1, 2020 letter from the Mayor's Office, with fewer people in custody, DOC is better able to provide space for social distancing of well inmates and care for sick inmates. Exh. 9.³ DOC has made extensive efforts to enable inmates to control their personal hygiene and the cleanliness of their surroundings by, for example, providing each inmate with a personal bar of soap, making cleaning supplies available (including disinfectant, general cleaner, floor cleaner, and gentle scrub) to the inmates, ensuring that all sinks and showers are operable, and providing soap in every bathroom. DOC staff are also cleaning all shower areas multiple times a day; cleaning and sanitizing all contact surfaces and phones every two hours; and cleaning and sanitizing all housing areas, bathrooms, and transport vehicles on a daily basis.

Further, Mr. Bush's affidavit details the efforts so far to minimize the risks to those in DOCS custody. For example, CHS identifies medically vulnerable persons based on their medical background and separates those inmates from the general population. Further, individuals who have been diagnosed with COVID-19 are separated from those who have

³ The Board of Correction made a similar observation in its April 1st joint statement: "The Board also commends the actions taken by the City, the District Attorneys and New York State for taking action to release approximately 900 people from custody over the past two weeks, as a part of an important effort to return as many people as possible and appropriate under the circumstances to their communities, and to reduce the population in the jails to allow for improved separation." *Joint Statement* by BOC Chairs, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/JJA_JS%20public%20report%20statement_mme.pdf (last visited April 8, 2020).

not been diagnosed. Clinicians are also available to communicate with patients and reinforce guidance about how to prevent the spread of COVID-19. The Department continues to monitor at-risk individuals in its care and continues to refer any individuals exhibiting symptoms for evaluations. Exh. 1.

Also attached is the April 2, 2020 affidavit of Patricia Feeney, the Deputy Commissioner of Quality Assistance and Integrity, who oversees, among other things, the Environmental Healthy Unit and the Compliance and Safety Center. Exh. 2. As detailed in that affidavit, DOC has “implemented the containment and control of transmission guidelines recommended by the CDC and DOHMH and has communicated these guidelines to staff and persons in custody.” The affidavit details the ongoing efforts to control COVID-19 in the facilities, including, but not limited to, providing inmates with additional supplies, daily cleaning and sanitizing of housing units, and increased quality assurance protocols. Again, DOC maintains regular contact with CHS and monitors at-risk individuals within the jail and evaluates individuals exhibiting COVID-19 symptoms. These affidavits, read together, establish that DOC has engaged in a concerted effort to minimize the risk of COVID-19 exposure to inmates and staff alike.⁴

⁴ On March 23, 2020, CDC released Guidelines on Management of COVID-19. The document provides guidance to healthcare and non-healthcare administrators working in correctional or detention facilities. The guidance is clear that does not address every possible custodial setting and “may need to be adapted based on individual facilities” physical space, staffing, population, operations, and other resources and conditions.” CDC: *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, available at <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (last visited April 3, 2020). The DOC protocols are consistent with the CDC guidelines.

As the scientists studying COVID-19 learn more about the virus, so too does the public and DOC has responded accordingly. Consistent with the CDC's recent guideline and the concern for community spread by asymptomatic individuals, on April 3, 2020, DOC Commissioner Brann, issued "Distribution of Masks" order to the Commanding Officers of DOC Facilities and Divisions. The order implemented procedures that require all staff to wear a face mask and be in possession of latex gloves, and further, that all persons in custody while in a congregant setting shall be required to wear a mask. Each command has been issued supplies of masks for the assigned staff and persons in custody. Exh. 10.

A growing number of trial courts reviewing DOC's practices and preventive measures have found them sufficient to defeat writs seeking the release of inmates claiming susceptibility to COVID-19. For example, Justice Judith Lieb, in *Torres v. Brann*, Index No. 260168/2020, April 2, 2020, annexed hereto as Exh. 4, and Justice Ralph Fabrizio in *Martinez v. Brann*, Index No. 260188/2020, at 3, annexed hereto as Exh. 6, denied applications for habeas relief, finding that the measures described by DOC officials in the accompanying affidavits failed to support the relators' claims of deliberate indifference to the danger posed by the COVID-19 pandemic. In *Torres*, Justice Lieb stated:

As attested to in the affidavits of the DOC officials, the DOC is taking numerous measures to attempt to prevent the spread of the virus. The Petitioner has not alleged that his particular circumstances, namely, housing in an Infirmary Command, present the same concerns as are present in a standard dormitory setting. Balancing the interests, the Court concludes that habeas relief is not warranted.

Certainly, there is serious risk to the health of those incarcerated during a respiratory pandemic. The COVID-19 disease is dangerous and highly contagious. According to Ms. Feeney,

however, the NYCDOC has implemented CDC guidelines to prevent the transmission of COVID-19. See Affidavit of Patricia Feeney, at ¶¶ 7, 8. While it appears that full implementation (for example, social distancing is ideally six feet; it is in fact only three feet at Rikers) has not been achieved in much of Rikers Island, as stated above, the Petitioner has not set forth facts that relate specifically to the conditions inside the Infirmary Command. On this record, the Court is not prepared to conclude that the NYCDOC is acting with ‘deliberate indifference.’

Exh. 4.

In *Martinez*, Justice Fabrizio denied a writ of habeas corpus on an interim basis pending the submission of additional medical records, finding implicitly that the relator had not shown deliberately indifference to relator’s medical needs on DOC’s part: “[T]he Court is satisfied based on initial information imparted by the City’s attorney that the defendant has been seen by medical personnel while he has been in custody on more than one occasion, and that the City has set up protocols for isolating and treating any seriously ill inmates.” Exh. 6; *see also Melendez v. Brann*, Index No. 682/2019, April 3, 2020, annexed hereto as Exh. 7; *Napier v. Brann*, Index No. 133/2020, April 3, 2020, annexed hereto as Exh. 3; *Otero v. Brann*, Index No. 02118/2019, April 2, 2020, annexed hereto as Exh. 5.

As the Feeney and Bush affidavits make clear, and as several courts have recently found, DOC’s efforts to protect all persons in their custody from COVID-19 are ongoing. What is missing from Petitioner’s motion, however, is any concrete information about the Petitioners’ alleged medical conditions. While several allege that a CHS doctor supports their release, no letter is attached. Moreover, no Petitioner has provided medical documentation of their current diagnosis and whether it is being managed or controlled

while they are incarcerated. This lack of information, which is critical to their claims, demonstrates that Petitioners have not met their burden of showing that DOC is deliberately indifferent to their medical needs. As a result, the factors supporting Petitioners' current bail conditions are not outweighed by any countervailing considerations relating to their health and safety while in custody.

The Bronx County decisions cited above, which were handed down after this Court originally heard Petitioners' writ, further highlight the limited scope of habeas relief, which is "available if *the only meaningful remedy is immediate release* from custody." *Torres, supra*, at 5; *Melendez, supra*, at 6; *Napier, supra*, at 4; *Otero, supra*, at 3 (emphasis added). New York appellate courts have held that a deliberate indifference claim does not require immediate release. *People ex rel. Barnes v Allard*, 25 AD3d 893, 894 (3d Dept. 2006) ("As for petitioner's complaint regarding the correctional facility's alleged deliberate indifference to his medical needs, even if such a claim had merit, it would not entitle him to immediate release, thus making habeas corpus relief unavailable"); *People ex rel. Sandson v. Duncan*, 306 A.D.2d 716, 717 (3d Dept. 2003) ("While success on the instant [habeas application] might entitle petitioner to the medication he seeks, it would not excuse him from serving the remainder of his sentence. The appropriate procedural remedy would have been the filing of a CPLR article 78 proceeding seeking review of respondent's determination denying petitioner's request for medication").⁵ Given that Petitioners' claim is based on the conditions of their confinement, namely that

those conditions place petitioners at greater risk of suffering severe illness if they contract COVID-19, the remedy—assuming there exists a sufficient factual basis for the claim—is not release, because there is nothing unlawful about the simple fact of petitioners’ imprisonment. Rather, the remedy is a change in the conditions of confinement, such as, for example, segregation from the general population, additional social distancing measures, or better access to protective items such as cloth masks and bars of soap. This remedy is achieved not through habeas but through other avenues, such as an Article 78 proceeding.

Although one New York County judge has, since Your Honor originally heard Petitioners’ writ, directed the release of a finite number of DOC inmates on habeas grounds, that decision is based on a misstatement of the deliberate indifference standard and, as a factual matter, pertained only to inmates with very serious medical conditions that placed them “dramatically at risk.” Exh. 8. Because a claim for release must be tailored to the individual inmate, the limited nature of the factual allegations that the court found sufficient to justify release is, in and of itself, dispositive. The court’s decision was further based on alleged conditions within DOC existing as of March 26, 2020. The continued reduction in the DOC population renders the court’s repeated reliance on “crowded” conditions within the jail outdated, and the April 2nd Bush and Feeney affidavits undermine any suggestion that DOC is not managing the effect of the virus in a manner consistent with constitutional requirements. Further, DOC continues to adopt measures based on new information about

(..continued)

⁵ See also *People ex rel. Townsend v. New York State Bd. of Parole*, 97 A.D.2d 386, 387 (1st Dept. 1983) (reversing grant of writ “upon the ground that the remedy of habeas corpus is not available since relator will not be entitled to immediate release”); *People ex rel. Knowles v. Scully*, 101 A.D.2d 895, 895

COVID-19, such as the recent requirement for staff and inmates alike to wear face masks. Further, the court in question, in order to reach its desired result, took out of context the Second Circuit’s iteration of the deliberate indifference standard for a pretrial detainee. Whereas the Second Circuit requires a showing that the government “acted intentionally...or *recklessly failed to act* with reasonable care to mitigate the risk,” *see, e.g., Darnell v. Pineiro*, 849 F.3d 17, 35 (2d Cir. 2017) (emphasis added), the court found that the petitioners in that case needed only show that the DOC did not provide “reasonable care.” Exh. 8 at 3. DOC has provided reasonable care, as shown herein. But, by splicing the “reasonable care” language from the requirement of a reckless state of mind, the court reduced deliberate indifference to mere negligence.

Finally, turning back to the case at hand, Petitioners do not address how their immediate release will reduce the risk of exposure to COVID-19. No Petitioner has provided information regarding their living situation if released, including any screening practices or specific COVID-19 precautions being taken there, including social distancing. Petitioners’ criminal histories indicate that each has put his own interests above those of the general public—as well as their families or loved ones. The likelihood that each Petitioner would comply with the needs of the City in its current crisis state appears to be minimal. Without this information, Petitioners’ claims amount to mere speculation that, upon release, they will be subject to less risk than if living in close quarters with others in jail. Nor has any Petitioner provided any information regarding the medical care and treatment available to

(..continued)

(2d Dept. 1984) (“As the relief requested by petitioner would not result in his immediate release, the remedy of habeas corpus is not available”).

him upon release that will address his specific medical needs and whether he has access to treatment for that condition if released, as compared with the certainty that he will receive treatment at the city's expense while incarcerated. Petitioners may need to seek medical care while at liberty for any reason—for COVID-19 or otherwise—and NYC hospitals are presently overrun with a shortage of beds and equipment due to the crushing number of patients seeking medical attention for COVID-19, and are experiencing instances of infection and death among their own staff members. Under such circumstances, it is speculative to suggest that Petitioners will be safer navigating a severe illness if they were to be released versus if they were to remain in custody.

CONCLUSION

As show above, Petitioners' motion does little more than restate their previous arguments regarding issues that have already been decided by this court, and offer "new" facts that not only existed at the time writ was before Your Honor, but were known and relied on by the Petitioners at that time. Petitioners' application seeking leave to reargue, or in the alternative, leave to renew should be denied in its entirety.

Dated: New York, New York
April 8, 2020

Respectfully submitted,

CYRUS R. VANCE, JR.,
District Attorney, New York County
1 Hogan Place
New York, NY 10013
212-335-9000

Patricia J. Bailey
Assistant District Attorney
Of Counsel

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

PEOPLE OF THE STATE OF NEW YORK

EX REL. Corey Stoughton, Esq.

On Behalf of

VENUS WILLIAMS, et al.

Petitioners,

-against-

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

Respondents.

**AFFIRMATION & MEMORANDUM OF LAW IN OPPOSITION TO
PETITIONERS' MOTION FOR LEAVE TO REARGUE OR RENEW WRIT OF
HABEAS CORPUS**

Index No. 451069/2020

SCID No. 30042/2020

CYRUS R. VANCE, JR.

District Attorney

New York County

One Hogan Place

New York, New York 10013

(212) 335-9000

Patricia J. Bailey

Assistant District Attorney

Of Counsel

EXHIBIT 1

Assistant - Richard Burr

COUNTY OF QUEENS)

1. I am employed by the New York City Department of Correction ("DOC" or "the Department") as the Senior Correctional Institution Administrator for Health Affairs and have held this position since January 6, 2020. As part of my responsibilities, I serve as a liaison between the Department and Correctional Health Services ("CHS"), the entity responsible for the delivery of health services to the incarcerated population in the Department's care. Prior to this position, I was employed by the University of Connecticut Health Center-Correctional Managed Health Care and the Connecticut Department of Correction from August 1999 to December 31, 2019. For about 16½ years out of the 20 years (approximately 2002-2018), I served as a Health Services Administrator at the University of Connecticut Health Center. In that role, I was responsible for overseeing health services of multiple correctional institutions in the State of Connecticut, including jails and prisons. Specifically, I oversaw the delivery of health services to the incarcerated population in the State of Connecticut Department of Correction.
2. This affidavit is based on my personal knowledge, and on information available to me in the course of my official duties. It also updates my prior affidavit, dated March 26, 2020.
3. With the recent pandemic of COVID-19, I am working with CHS to facilitate the delivery of health services on behalf of the Department for incarcerated persons in need of medical care, including identification of appropriate housing placement. To this end, when CHS identifies a medically vulnerable person based on their medical background, that person is housed by DOC in a dedicated housing unit, or is housed either in a type of unit that already provides an increased level of separation from the general population or a unit that provides access to increased clinical attention. My understanding is that individuals who have been diagnosed with COVID-19 are separated from those who have not been diagnosed. Further, I am not aware that medically vulnerable, incarcerated persons are necessarily separated by age.
4. With respect to individuals with mental health issues, these individuals may be housed in a mental observation unit or housing unit dedicated to seriously mentally ill individuals. Both types of housing units are set up to have clinical staff accessible on the units, and clinicians are

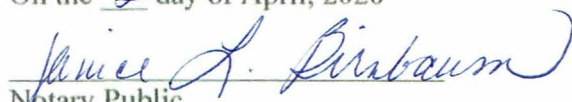
available to communicate with their patients and reinforce guidance about how to prevent the spread of COVID-19, including frequent hand washing, social distancing, covering one's mouth and nose when coughing and sneezing, among other things.

5. The Department maintains regular contact with CHS to monitor at-risk individuals in the Department's care. In addition, DOC staff have been instructed to refer to any individual in custody who is exhibiting COVID-19 like symptoms to CHS for an evaluation.
6. The Department reopened the Eric M. Taylor Center for newly admitted individuals showing symptoms to expand capacity for housing and separation of people who have tested positive for COVID-19. Additional units have been dedicated for the same purpose within the Rose M. Singer Center for female detainees. DOC has also created a dedicated intake in the Manhattan Detention Center for individuals with no symptoms so that they can be monitored and housed appropriately. Prior to entering all DOC facilities and commands, all persons, including staff, are currently screened for flu-like symptoms, including mandatory temperature screening. Any employee who does not meet the criteria for approval is sent home and advised to follow the New York City Department of Health and Mental Hygiene's guidance, including consultation with a medical professional where appropriate.
7. I am informed by the Department's Population Management unit that from March 17—April 1, 2020, approximately 1,278 individuals have been discharged from the Department's custody, which is roughly 20% of the population.
8. The Department takes the spread of COVID-19 extremely seriously and is committed to protecting the health, safety and security of the individuals who work in, live in and visit its facilities. It is taking the steps necessary to prevent the widespread community transmission of COVID-19.

Dated: Westchester
Queens, New York
April 2, 2020


RICHARD D. BUSH

Sworn to and subscribed before me
On the 2 day of April, 2020


Notary Public

JANICE L. BIRNBAUM
Notary Public, State of New York
No. 02BI6384629
Qualified in Richmond County
Commission Expires 12/7/2022

EXHIBIT 2

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

PATRICIA FEENEY, being duly sworn, deposes and says:

1. I am employed by the New York City Department of Correction (“DOC” or “the Department”) as the Deputy Commissioner of Quality Assurance and Integrity and have held this position since January 2018. I have been employed by DOC since January 6, 1992.
2. This affidavit is based on my personal knowledge, and on information available to me in the course of my official duties. It also updates my prior affidavit, dated March 26, 2020.
3. As the Deputy Commissioner of Quality Assurance and Integrity, I am responsible for ensuring that the Department and its staff are adhering to the rules mandated by regulatory agencies and its internal policies. In my capacity as Deputy Commissioner of Quality Assurance and Integrity, I am responsible for the management and oversight of the Department’s Internal Audit Operations; the Environmental Health Unit (“EHU”); the Fire and Safety Unit; the Financial Audits Unit; the Engineering Audits Unit; and the Compliance and Safety Center.
4. Prior to my appointment as Deputy Commissioner, I served as the Assistant Commissioner of EHU for 16 years. Prior to joining the Department, I served as a public health sanitarian for the New York City Department of Health and Mental Hygiene (“DOHMH”).
5. With the recent pandemic of COVID-19, and in accordance with the Centers for Disease Control and Prevention (“CDC”) and DOHMH guidelines, I have been instrumental in ramping up DOC sanitation protocols and comprehensive cleaning measures to combat its spread throughout our facilities. This includes implementing enhanced cleaning and sanitizing procedures in areas with a lot of traffic, which include hallways and bathrooms.
6. As part of its ongoing efforts to contain the spread of COVID-19, DOC has implemented the containment and control of transmission guidelines recommended by the CDC and DOHMH and has communicated these guidelines to staff and persons in custody through in-person meetings, teletypes, posters, intranet, social media, and DOC TV. These recommendations include the following: people should cover their mouth/nose with a tissue when coughing or sneezing or sneeze/cough into their elbow; post signs to promote respiratory/cough hygiene in common areas; refrain from touching your face; hand hygiene – wash hands frequently with soap and water for a

minimum of 20 seconds. If soap and water are not available, the use of alcohol based hand sanitizer shall be employed--only staff may carry hand sanitizer per DOC policy.

7. Social distancing strategies have also been employed which include: increasing distances between persons in custody in dormitories; encouraging social distancing in the housing area, including during meal time; suspending congregate services such as religious services, law library, and commissary. Further, persons in custody are also encouraged to not sit on each other's beds. The capacity of dorm units have been reduced to allow for greater space between persons in these units. Where possible, this includes allowing for an empty bed in between each person in custody. Further reductions in population will continue to support this practice. Religious services are being provided in the housing areas and by telephone. The Department has also suspended in person visitation and attorney visits and external programming and has developed remote alternatives where possible. The Department launched a new televisits program this past weekend which allows family members and loved ones to access visits remotely from their personal devices. Tele-court appearances and Skype-based attorney conferencing is also available. The barbershops are also closed. Staff are instructed to stay home if they feel ill or have been in close contact with someone who is ill.
8. As part of its response to COVID-19, DOC's policy is to provide every individual in custody with their own bar of soap and access to cleaning supplies in the housing area janitor's closet, including, but not limited to: disinfectant, mold and mildew cleaner, general cleaner, floor cleaner, and cleaner without grit. Further, sanitation work details are regularly assigned to sanitize the facilities, including housing areas, bathrooms, showers, and sinks. Preventative sanitation and cleaning measures include: cleaning and sanitizing DOC housing units, dayrooms, and common spaces once per day; cleaning shower areas daily; cleaning and sanitizing transport vehicles daily; any vehicle that is transporting a person who is symptomatic of respiratory illness will be sanitized immediately after transporting that individual. There is also emphasis that the required cleaning and sanitizing procedures are followed utilizing the Environmental Protection Agency's approved disinfectant and to provide it in the dispensers in all janitor closets.
9. Soap is placed in the bathrooms of the housing areas, and hand soap is allowed in each person's individual cell. Soap is also placed in intake pens; any individual may request additional soap from the housing area officer. In addition, DOC implemented a quality assurance process that adequate soap and cleaning supplies are available and provided to individuals in custody which

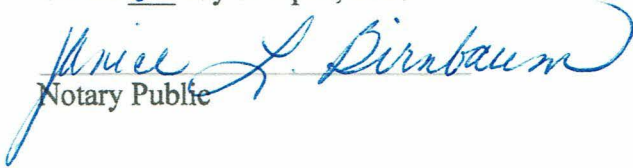
includes: conducting daily inspections followed up with quality assurance measures conducted by EHU so that housing areas, dayrooms, intakes and common spaces have operable soap dispensers, functional sinks and adequate cleaning supplies. In areas where soap or cleaning supplies are not fully stocked, staff are expected to take the necessary steps to obtain the supplies and remedy the situation as soon as possible. EHU is also providing additional sanitation and sanitization trainings to institutional aides and sanitation work details to highlight appropriate cleaning and sanitizing procedures that are being utilized to combat the spread of COVID-19.

10. Additionally, in response to COVID-19, DOC implemented a process for facility tours and inspections by Commanding Officers, Tour Commanders, Captains, and staff, to regularly inspect housing areas to determine whether cleaning and sanitation supplies are provided. During this process, facilities are expected to regularly check housing areas and take the necessary steps to provide adequate cleaning supplies and to check that sinks and showers are operable and I, along with the Bureau Chief of Facility Operations, monitor compliance. DOC is continuing its practice of tracking complaints concerning any necessary sanitation issues, including the availability of working sinks, and instituting remediation measures as necessary. Any individual in custody who is housed in a cell with an inoperable sink, will be relocated to a cell with an operable sink, and a work order will be submitted and addressed for any inoperable showers.
11. DOC maintains regular contact with Correctional Health Services (“CHS”), which is the medical provider for persons in custody, to monitor at-risk individuals in the Department’s care. In addition, DOC has provided guidance to staff on how to spot COVID-19 symptoms. Thus, DOC staff have been instructed to refer any individual in custody who is exhibiting COVID-19 like symptoms to CHS for an evaluation.
12. The Department takes the spread of COVID-19 extremely seriously and is committed to protecting the health, safety and security of the individuals who work in, live in and visit its facilities. It is taking the steps necessary to prevent the widespread community transmission of COVID-19.

Dated: Queens, New York
April 2, 2020


PATRICIA FEENEY

Sworn to and subscribed before me
On the 2 day of April, 2020


Notary Public

JANICE L BIRNBAUM
Notary Public, State of New York
No. 02BI6384629
Qualified in Richmond County
Commission Expires 12/7/2022

EXHIBIT 3

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM: PART 73

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Ex. Rel. PETER COLEMAN, ESQ. _____

On behalf of Terell Napier,

DECISION AND ORDER

Index No. 260172/2020

Ind. No. 133/2020

Petitioner,

-against-

CYNTHIA BRANN, Commissioner of the New York City
Department of Corrections,

And

ANYONE HAVING CUSTODY OF PETITIONER,

Respondents.

-----X

LIEB, J.

Petitioner, a pretrial detainee presently held in the custody of the Respondent, New York City Department of Corrections (“NYCDOC”), seeks the issuance of a writ of habeas corpus, ordering his release from custody. Respondents, through the Bronx County District Attorney’s Office and the New York City Law Department, oppose release. For the reasons that follow, the application for a writ of habeas corpus is denied.

BACKGROUND

On January 4, 2020, Petitioner was arrested and charged with Attempted Murder in the Second Degree in violation of Penal Law (“PL”) §§ 110/125.25. As set forth in the Petition, bail was set in the amount of \$50,000 insurance company bond or \$25,000 cash.¹

In his Petition, Petitioner states that he was recommended for release on his own recognizance by the Criminal Justice Agency (“CJA”), having received a score of 25 points out

¹ By email, counsel for the Petitioner has advised this Court that the bail-setting court also ordered a \$50,000 partially secured (10%) bond alternative.

of a possible 25 points. Petitioner further states that he has no prior warrant history. He states that he lives with his mother and has lived at the same address in the Bronx for the past nine years. He has strong family support. At the time of his arrest, Petitioner states he was working for Atalian Cleaning Company as a maintenance worker.

Petitioner further states that he and his family are financially unable to post the current bail.

Petitioner is infected with HIV, human immunodeficiency virus. Attached to his petition is a letter from a doctor from the Correctional Health Services attesting that the Petitioner is in the highest risk group from COVID-19 given his health status, including an HIV diagnosis.

An Assistant District Attorney advised during oral argument on March 31, 2020, that Petitioner was being held in a single cell room at OBCC. However, by email dated April 1, 2020, counsel for Petitioner stated that he was informed by Petitioner's mother that Petitioner had been moved to GRVC, unit 10A. The Court does not know the housing configuration of GRVC, unit 10A, but assumes for purposes of this Decision that it has dormitory style housing.

The Assistant District Attorney further advised during oral argument that in 2007, Petitioner was convicted of Criminal Possession of a Weapon in the Second Degree in violation of PL § 265.03(3), and sentenced to a term of imprisonment of 3 ½ years in state prison, followed by 2 ½ years of post-release supervision. According to the Assistant District Attorney, Petitioner violated the terms of his post-release supervision. The Assistant District Attorney further advised that after his state felony conviction, he was convicted in federal court of transporting arms. If convicted of the instant charge, Petitioner will be sentenced as a violent predicate felon.

As for the instant matter, the District Attorney's Office alleges that after a verbal dispute, Petitioner stabbed complainant, a former friend, six times from behind. The Assistant District Attorney further informed the Court that the incident was recorded on videotape and that Petitioner ultimately admitted his guilt to the police. Petitioner responded that he stands 5'3" tall, and the complainant stands over 6 feet tall, suggesting a possible self-defense claim.

An attorney with the New York City Law Department was also heard at oral argument. He advised the Court that detainees have 24-hour access to medical care at every housing facility, and stated that studies have shown that early medical intervention greatly reduces the risk of death. He also argued that there has not been a sufficient showing that a person infected with HIV is at a higher risk than others from COVID-19.

It is uncontroverted that the world faces an unprecedented threat from the COVID-19 virus. According to news reports, as of yesterday, over 1500 people have died from COVID-19 in New York City alone. People held in detention facilities are at heightened risk, given such factors as close living quarters, frequent physical contact between people, and constant traffic in and out of the facility.

In response to Petitioner's application, the Assistant District Attorney submitted affidavits from two officials of the NYCDOC. In her affidavit, Patricia Feeney, the NYCDOC Deputy Commissioner of Quality Assurance and Integrity for the NYCDOC states as follows: In response to the COVID-19 outbreak, DOC has "implemented the containment and control of transmission guidelines recommended by the CDC and the DOHMH [New York City Department of Health and Mental Hygiene]." Affidavit at ¶ 8. These include a variety of enumerated steps to increase social distancing and sanitize the facilities. Further, each individual in custody is provided with a bar of soap and access to cleaning supplies.

In his affidavit, Richard Bush, the NYCDOC Senior Correctional Institution Administrator for Health Affairs, who serves as the liaison between the NYCDOC and Correctional Health Services (CHS), states as follows: When CHS identifies medically vulnerable people based on their medical background, DOC separates these individuals from the general population. Further, those individuals diagnosed with COVID-19 are separated from others. DOC staff have been instructed to refer any individual in custody who is exhibiting COVID-19 symptoms to CHS for evaluation. Finally, Mr. Bush states that between March 16, 2020, and March 25, 2020, a total of 630 individuals were discharged from DOC's custody.

DISCUSSION

Habeas corpus review is appropriate where a statutory or constitutional violation causes petitioner's incarceration. CPLR 7001, 7002(a) and (b)(1). A writ of habeas corpus is available if the only meaningful remedy is immediate release. Cf. People ex rel. Kaplan v. Commissioner, 60 N.Y.2d 648 (1983). A pretrial detainee may seek a writ of habeas corpus in order to challenge the risk of physical harm caused by his incarceration. People ex rel. Brown v. Johnston, 9 N.Y.2d 482, 484-85 (1961). The petitioner alleges that his incarceration violates the Due Process Clauses of the United States and New York Constitutions, as well as the statutory and constitutional prohibitions against excessive bail.

In the context of pretrial detention, under the federal constitution, "if a particular condition or restriction is reasonably related to a legitimate nonpunitive governmental objective, it does not, without more, amount to 'punishment' and satisfies constitutional mandates." Bell v. Wolfish, 441 U.S. 520 (1979). Under the New York State Constitution, "what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement." Cooper v. Morin, 49 N.Y.69 (1979). Where

the only purpose of bail in New York State is to ensure the defendant's appearance to court, the state's interests are limited to that purpose - ensuring the defendant's presence at trial.

Powlowski v. Wullich, 102 A.D.2d 575, 585 (4th Dept. 1984).

Engaging in the balancing mandated by Cooper v. Morin, *supra*,² the Court concludes that habeas relief is not mandated in this matter. It is beyond dispute that the Petitioner has an interest in being held in a safe setting, and the outbreak of COVID-19 is presenting a dire situation. While Petitioner maintains that his HIV status places him at higher risk, he has provided no detail about the severity of his infection, in order for the Court to assess whether he in fact is of heightened risk. The Court is aware that he has included a letter from a doctor with the Correctional Health Services, but that letter is too conclusory to provide a reliable basis from which the Court may conclude that the Petitioner is in fact at a higher risk. The State has an interest in ensuring the Petitioner's presence in court, an interest that can only be effectuated through the imposition of bail conditions. The Petitioner is charged with committing a Class B violent felony offense, and if convicted, would be sentenced as a violent predicate felon based on his earlier conviction for firearm possession. As such, if convicted, he faces a lengthy prison sentence. As attested to in the affidavits of the NYCDOC officials, the NYCDOC is taking numerous measures to attempt to prevent the spread of the virus. Balancing the interests, the Court concludes that habeas relief is not warranted on this ground.

Petitioner also makes a related Due Process argument, alleging a "deliberate indifference" to Petitioner's medical needs. A pretrial detainee's due process rights are violated if he or she is "incarcerated under conditions posing a substantial risk of serious harm," and the

² Because the state constitutional standard is stricter than the federal standard, the Court will not address the federal standard in detail. Suffice it to say, the State has a legitimate nonpunitive governmental interest in ensuring a pretrial detainee's presence in court.

“state of mind [of the prison or jail official] is one of ‘deliberate indifference’ to inmate health or safety.” Farmer v. Brennan, 511 U.S. 825, 834 (1994). To establish a claim of “deliberate indifference,” an individual must meet a two-part test that includes an objective and a subjective standard. The objective component examines whether the deprivation of medical care is “sufficiently serious.” Matter of Wooley v. New York State Dept. Of Correctional Services, 15 N.Y.3d 275, 282 (2010). Put another way, the objective standard asks if the “response of prison officials to the inmate’s medical needs [is] objectively reasonable under the circumstances.” Id. The subjective component looks to the charged official’s state of mind. “Deliberate indifference is a mental state equivalent to subjective recklessness, as the term is used in criminal law. This mental state requires that the charged official act or fail to act while actually aware of a substantial risk that serious inmate harm will result.” Id. (quotations omitted); see also Rodriguez v. City of New York, 87 A.D.3d 867, 868-69 (1st Dept. 2011) (The Eighth Amendment, which applies to the States through the Fourteenth Amendment, guarantees prisoners “humane conditions of confinement.”)

Certainly, there is serious risk to the health of those incarcerated during a respiratory pandemic. The COVID-19 disease is dangerous and highly contagious. According to Ms. Feeney, however, the NYCDOC has implemented CDC guidelines to prevent the transmission of COVID-19. See Affidavit of Patricia Feeney, at ¶¶ 7, 8. While it appears that full implementation (for example, social distancing is ideally six feet; it is in fact only three feet at Rikers) has not been achieved, the Court is not prepared to conclude that the NYCDOC is acting with “deliberate indifference.”³

³ The Court notes that the sole relief available in a habeas petition is release. The Court does not intend its ruling, made without benefit of an evidentiary hearing, nor even the most current information concerning NYCDOC’s constantly changing efforts to ensure safe

Petitioner also argues that the bail-setting court abused its discretion in failing to properly consider the relevant bail factors and in failing to set the least restrictive bail.

Presumably because of the restrictions resulting from the pandemic, Petitioner has not provided any information about when his bail conditions were originally set, nor whether there were subsequent applications to change or review those bail conditions. This Court is therefore unclear which decision Petitioner now claims was an abuse of discretion or violated the law.

In any event, this Court sees no abuse of discretion, nor any violation of either statutory or constitutional mandates, in the setting of bail conditions at \$50,000 insurance company bail bond or partially-secured bond or \$25,000 cash. The Court credits that Petitioner has lived in Bronx County for a number of years and received a score of 25 from the Criminal Justice Agency. Nonetheless, Petitioner is charged with a B violent felony, involving a claim of stabbing another individual from behind six times. As a violent predicate felon, he faces a lengthy prison sentence if convicted. Further, although Petitioner maintains that he was working at the time of his arrest, he has a history of felony convictions, including for possession of firearms. Finally, it appears, based on the existence of a videotape showing the Petitioner attacking the victim from behind, coupled with the Petitioner's alleged statements to the police, that the case against him is strong. Upon consideration of the relevant bail factors, CPL § 510.30(1); see generally People v. Portoreal, 66 Misc.3d 497 (Sup. Ct. Bronx Cty. 2019), this Court concludes that the Petitioner presents a risk of flight, and that the bail conditions set by the prior judge or judges constitute the least restrictive alternative to ensure the Petitioner's presence in court when required. Further, there is no violation of the Petitioner's right to equal protection

conditions inside Rikers Island, to preclude a petition under Article 78 or other appropriate vehicle, if Petitioner contends that there are specific additional steps required of NYCDOC to protect his health.

from his inability to post bail in the amount set. Finally, for all of the above reasons, the bail conditions comport with due process.

In sum, the Petition for a Writ of Habeas Corpus is denied.

This co

Dated: April 3, 2020
Bronx, New York

JUDITH LIEB, A.J.S.C.

EXHIBIT 4

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM: PART 73

-----X

THE PEOPLE OF THE STATE OF NEW YORK

Ex. Rel. JULIA DEUTSCH, ESQ. _____

On behalf of Ricardo Torres,

DECISION AND ORDER

Index No. 260168/2020

Ind. No. 02368-2019

Petitioner,

-against-

CYNTHIA BRANN, Commissioner of the New York City
Department of Corrections,

And

ANYONE HAVING CUSTODY OF PETITIONER,

Respondents.

-----X

LIEB, J.

Petitioner, a pretrial detainee presently held in the custody of the Respondent, New York City Department of Corrections (“NYCDOC”), at the North Infirmary Command, seeks the issuance of a writ of habeas corpus, ordering his release from custody. Respondents, through the Bronx County District Attorney’s Office, which submitted a written response, and the New York City Law Department, oppose release.¹ For the reasons that follow, the application for a writ of habeas corpus is denied.

BACKGROUND

On or about June 28, 2019, Petitioner was charged in a Criminal Court complaint with violating Penal Law (“PL”) § 130.80(1)(a), Course of Sexual Conduct Against a Child in the Second Degree, a Class D violent felony and § 260.10, Endangering the Welfare of the Child.

¹The Bronx County District Attorney’s Office has advised the Court and Petitioner’s counsel that it consents to the issuance of an Order authorizing release upon an additional form of bail: namely, credit card bail in the amount of \$50,000. The Court is issuing a separate Order adding credit card bail as an acceptable form of bail in this matter.

Bail was originally set at \$50,000 cash or bond. Prior to January 1, 2020, the People made a renewed application to add a third form of bail. The Court added a third form of bail: specifically, a \$50,000 partially secured bond at 10%. According to the District Attorney's Office, it is alleged that, over a course of approximately eight months, the Petitioner sexually abused his nine-year-old grand daughter, by touching her breasts and vagina, both over and under her clothing. During this time period, according to the prosecution, the defendant lived with the nine-year-old child and her family. The Petitioner was subsequently indicted on these charges.

Also on or about June 28, 2019, the defendant was charged with Failure to Register, in violation of COR § 168-t, and Duty to Register, COR § 168-f(4). The prosecution states that the Petitioner is a Level One sex offender. The requirement to register results from the defendant's 2009 conviction for Rape in the Third Degree for the rape of his biological daughter, the aunt of the nine-year-old who is the alleged victim of the instant felony charges.

The People advise that on March 26, 2020, the Petitioner advanced the case in Part SCA for a bail review. Further, according to the People, Petitioner made identical arguments before the Court as are made herein. An Acting Justice of the Supreme ordered the bail conditions to remain the same, concluding that the bail was appropriate under Criminal Procedure Law § 530. Presumably an oversight, given the difficult work conditions, Petitioner does not mention this proceeding in his Petition, but acknowledged in an email to the Court and counsel that the application was made.

Petitioner states that he was born in the Bronx, raised in Puerto Rico, and returned to the Bronx in his earlier twenties, and has lived in the Bronx ever since, working at construction and maintenance jobs. He and his family have lived in New York City for over 30 years. He acknowledges that he was convicted of the felony noted above, Rape in the Third

Degree (PL § 130.25) in 2010, a crime for which he states that he served state prison time and successfully completed parole in 2013. He also was convicted of the misdemeanor of Endangering the Welfare of a Child (PL § 260.10(1)) in 2014. He states that he has not been convicted of a crime since 2014. The prosecution adds that although the Petitioner successfully completed his parole, he omits a material point: the Petitioner was originally sentenced on his rape conviction to a 10-year term of probation, but his probation was revoked, and he was resentenced to a term of imprisonment of 1 to 3 years after he was convicted of a new crime.

The People further advise that he was convicted of Attempted Criminal Contempt in 2010 and Endangering the Welfare of a Child in 2011.

Petitioner states that he and his family are financially unable to post the current bail.

Petitioner is 50 years old and suffers from sufficiently serious pre-existing health conditions that he has been assigned to the North Infirmary Command since his detention began. He states that has been diagnosed with cardiovascular disease, hypertension, and advanced stage diabetes, which has resulted in nerve damage from diabetic neuropathy. Petitioner has attached a 3-page document listing “problems” and “medications,” without detail, but given his continuous placement in the Infirmary Command, the Court credits that he is in fact at higher risk from COVID-19.

It is uncontroverted that the world faces an unprecedented threat from the COVID-19 virus. According to news reports, as of yesterday, over 1300 people have died from COVID-19 in New York City alone. People held in detention facilities are at heightened risk, given such factors as close living quarters, frequent physical contact between people, and constant traffic in and out of the facility.

In response to the Petitioner’s application, the Respondent submitted affidavits from two officials of the NYCDOC. In her affidavit, Patricia Feeney, the NYCDOC Deputy Commissioner of Quality Assurance and Integrity for the NYCDOC states as follows: In response to the COVID-19 outbreak, DOC has “implemented the containment and control of transmission guidelines recommended by the CDC and the DOHMH [New York City Department of Health and Mental Hygiene].” Affidavit at ¶ 8. These include a variety of enumerated steps to increase social distancing and sanitize the facilities. Further, each individual in custody is provided with a bar of soap and access to cleaning supplies.

In his affidavit, Richard Bush, the NYCDOC Senior Correctional Institution Administrator for Health Affairs, who serves as the liaison between the NYCDOC and Correctional Health Services (CHS), states as follows: When CHS identifies medically vulnerable people based on their medical background, DOC separates these individuals from the general population. Further, those individuals diagnosed with COVID-19 are separated from others. DOC staff have been instructed to refer any individual in custody who is exhibiting COVID-19 symptoms to CHS for evaluation. Finally, Mr. Bush states that between March 16, 2020, and March 25, 2020, a total of 630 individuals were discharged from DOC’s custody.

The District Attorney’s Office has further advised the Court that as of that writing, because of the fortuitous decrease in population due to bail reform, together with the releases made in response to the COVID-19 pandemic, the inmate population of Rikers Island is at its lowest level since World War II. Empty buildings at the Rikers complex are available to facilitate greater social distancing.

DISCUSSION

Habeas corpus review is appropriate where a statutory or constitutional violation

causes petitioner's incarceration. CPLR 7001, 7002(a) and (b)(1). A writ of habeas corpus is available if the only meaningful remedy is immediate release from custody. Cf. People ex rel. Kaplan v. Commissioner, 60 N.Y.2d 648 (1983). A pretrial detainee may seek a writ of habeas corpus in order to challenge the risk of physical harm caused by his incarceration. People ex rel. Brown v. Johnston, 9 N.Y.2d 482, 484-85 (1961). The petitioner alleges that his incarceration violates the Due Process Clauses of the United States and New York Constitutions, as well as the statutory and constitutional prohibitions against excessive bail.

In the context of pretrial detention, under the federal constitution, "if a particular condition or restriction is reasonably related to a legitimate nonpunitive governmental objective, it does not, without more, amount to 'punishment' and satisfies constitutional mandates." Bell v. Wolfish, 441 U.S. 520 (1979). Under the New York State Constitution, "what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement." Cooper v. Morin, 49 N.Y.2d 69 (1979). Where the only purpose of bail in New York State is to ensure the defendant's appearance to court, the state's interests are limited to that purpose - ensuring the defendant's presence at trial. Powlowski v. Wullich, 102 A.D.2d 575, 585 (4th Dept. 1984).

Engaging in balancing mandated by Cooper v. Morin, supra,² the Court concludes that habeas relief is not mandated in this matter. It is beyond dispute that the Petitioner has an interest in being held in a safe setting, and the outbreak of COVID-19 is presenting a dire situation. Further, while presented without detail, Petitioner has appended proof of serious medical conditions, and it is uncontroverted that the Petitioner has been housed in the Infirmary

²Because the state constitutional standard is stricter than the federal standard, the Court will not address the federal standard in detail. Suffice it to say, the State has a legitimate nonpunitive governmental interest in ensuring a pretrial detainee's presence in court.

Command since his detention began. The State has an interest in ensuring the Petitioner's presence in court, an interest that can only be effectuated through the imposition of bail conditions. The Petitioner is charged with committing a Class D violent felony sex offense involving a pre-adolescent, and if convicted, would be sentenced as a predicate felon based on his earlier felony sex conviction. As attested to in the affidavits of the NYCDOC officials, the NYCDOC is taking numerous measures to attempt to prevent the spread of the virus. The Petitioner has not alleged that his particular circumstances, namely, housing in an Infirmary Command, present the same concerns as are present in a standard dormitory setting. Balancing the interests, the Court concludes that habeas relief is not warranted.

The Petitioner also makes a related Due Process argument, alleging a "deliberate indifference" to the Petitioner's medical needs. A pretrial detainee's due process rights are violated if he or she is "incarcerated under conditions posing a substantial risk of serious harm," and the "state of mind [of the prison or jail official] is one of 'deliberate indifference' to inmate health or safety." Farmer v. Brennan, 511 U.S. 825, 834 (1994). To establish a claim of "deliberate indifference," an individual must meet a two-part test that includes an objective and a subjective standard. The objective component examines whether the deprivation of medical care is "sufficiently serious." Wooley, 15 N.Y.3d at 282. Put another way, the objective standard asks if the "response of prison officials to the inmate's medical needs [is] objectively reasonable under the circumstances." Id. The subjective component looks to the charged official's state of mind. "Deliberate indifference is a mental state equivalent to subjective recklessness, as the term is used in criminal law. This mental state requires that the charged official act or fail to act while actually aware of a substantial risk that serious inmate harm will result." Matter of Wooley v. New York State Dept. Of Correctional Services, 15 N.Y.3d 275, 282 (2010) (quotations omitted);

see also Rodriguez v. City of New York, 87 A.D.3d 867, 868-69 (1st Dept. 2011) (The Eighth Amendment, which applies to the States through the Fourteenth Amendment, guarantees prisoners “humane conditions of confinement.”)

Certainly, there is serious risk to the health of those incarcerated during a respiratory pandemic. The COVID-19 disease is dangerous and highly contagious. According to Ms. Feeney, however, the NYCDOC has implemented CDC guidelines to prevent the transmission of COVID-19. See Affidavit of Patricia Feeney, at ¶¶ 7, 8. While it appears that full implementation (for example, social distancing is ideally six feet; it is in fact only three feet at Rikers) has not been achieved in much of Rikers Island, as stated above, the Petitioner has not set forth facts that relate specifically to the conditions inside the Infirmary Command. On this record, the Court is not prepared to conclude that the NYCDOC is acting with “deliberate indifference.”³

The Petitioner also argues that the bail-setting court abused its discretion in failing to properly consider the relevant bail factors and in failing to set the least restrictive bail. Because of the restrictions resulting from the pandemic, the Petitioner was unable to obtain a copy of the transcript of the most recent bail proceeding. Petitioner has not, however, remedied that deficit by providing meaningful detail about the proceeding from counsel’s own notes or memory. Indeed, counsel did not even state in the Petition that a court had reviewed the Petitioner’s bail on March 26, 2020. This Court is therefore unclear which decision Petitioner now claims was an abuse of discretion or violated the law.

³The Court notes that the sole relief available in a habeas petition is release from custody. The Court does not intend its ruling, made without benefit of an evidentiary hearing, nor even the most current information concerning NYCDOC’s constantly changing efforts to ensure safe conditions inside Rikers Island, to preclude a petition under CPLR Article 78 or other appropriate vehicle, if Petitioner contends that there are specific additional steps required of NYCDOC to protect his health.

In any event, this Court sees no abuse of discretion, nor any violation of either statutory or constitutional mandates, in the setting of bail conditions at \$50,000 cash, bail bond, or partially-secured bond. Petitioner is charged with a D violent sex felony, involving a claim of assaulting a nine-year-old girl over a period of approximately eight months. As a predicate felon, he faces a lengthy prison sentence if convicted. He violated his Probation on his earlier felony by committing a new crime. He has shown his inability to abide by court orders by committing the crime of Attempted Criminal Contempt in the Second Degree. Upon consideration of the relevant bail factors, this Court concludes that the Petitioner presents a risk of flight, and that the bail conditions set by the prior judges constitute the least restrictive alternative to ensure the Petitioner's presence in court when required.⁴ Further, there is no violation of the Petitioner's right to equal protection from his inability to post bail in the amount set. Finally, for all of the above reasons, the bail conditions comport with due process.

In sum, the Petition for a Writ of Habeas Corpus is denied.

This co

Dated: April 2, 2020
Bronx, New York

JUDITH LIEB, A.J.S.C.

⁴As noted above, with the consent of the District Attorney, the Court is issuing an Order authorizing the posting of bail by means of a credit card in addition to the other forms of bail previously permitted.

EXHIBIT 5

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM: PART 73

-----X
THE PEOPLE OF THE STATE OF NEW YORK DECISION AND
ORDER Ex. Rel. KARUME JAMES, ESQ. ___ Index No. 260169/2020
On behalf of LESLIE OTERO,

Ind. No. 02118-

2019

Petitioner,

-against-

CYNTHIA BRANN, Commissioner of the New York City
Department of Corrections,

And

ANYONE HAVING CUSTODY OF PETITIONER,

Respondents.

-----X
LIEB, J.

Petitioner, a pretrial detainee presently held in the custody of the Respondent, New York City Department of Corrections ("NYCDOC"), at the Rose M. Singer Center housing facility, seeks the issuance of a writ of habeas corpus, ordering her release from custody. Respondents, through the District Attorney's Office, oppose release. For the reasons that follow, the application for a writ of habeas corpus is denied.

BACKGROUND

Petitioner was arrested on September 30, 2019, and charged with Arson in the Second Degree and related charges. She was arraigned on a felony complaint in Bronx County on October 1, 2019. Bail was set in the amount of \$5000 cash, \$5000 insurance company bond, or \$5000 partially-secured bond.

On January 27, 2020, defense counsel made an oral application for the Petitioner's release, citing the change in the bail statute. The application was denied.

The People advise that the Petitioner again moved for release on

March 26, 2020, before the Supreme Court, Criminal Term, arguing that she is at high risk in the coronavirus pandemic. Presumably an oversight (given the extremely difficult work conditions), Petitioner does not mention this proceeding in her Petition. According to the Court records, an Acting Justice of the Supreme Court heard the application and denied relief.

Petitioner states that she has been diagnosed with Hepatitis C.¹ Petitioner claims that this diagnosis puts her at higher risk of suffering severe symptoms or even death from the coronavirus outbreak. She has provided no detail about the severity of her disease.

According to Petitioner's counsel, Petitioner is housed in a dormitory setting at the Rose M. Singer Center in a room containing 14 to 18 women. Her floor is "quarantined," although it is unclear what precisely that means. Petitioner maintains that she has not seen regular cleaning or extra soap to fight the spread of the virus. The People advise that the Petitioner has the choice to remain in her own vicinity within the large room.

It is uncontroverted that the world faces an unprecedented threat from the COVID-19 virus. According to news reports, as of yesterday, over 1300 people have died from COVID-19 in New York City alone. People held in detention facilities are at heightened risk, given such factors as close living quarters, frequent physical contact between people, and constant traffic in and out of the facility.

In response to the Petitioner's application, the Respondent submitted affidavits from two officials of the NYCDOC. In her affidavit, Patricia Feeney, the NYCDOC Deputy Commissioner of Quality Assurance and Integrity for the NYCDOC states as follows: In response to the COVID-19 outbreak, DOC has "implemented the containment and control of transmission guidelines recommended by the CDC and the DOHMH [New York City Department of Health and Mental Hygiene]." Affidavit at ¶ 8. These include a variety of enumerated steps to increase social distancing and sanitize the facilities. Further, each individual in custody is provided with a bar of soap and access to cleaning supplies.

In his affidavit, Richard Bush, the NYCDOC Senior Correctional Institution Administrator for Health Affairs, who serves as the liaison between the NYCDOC and Correctional Health Services (CHS), states as follows: When CHS identifies medically vulnerable people based on their medical background, DOC separates these individuals from the general population. Further, those individuals diagnosed with COVID-19 are separated from others. DOC staff have been instructed to refer any individual in custody who is exhibiting COVID-19 symptoms to CHS for evaluation. Finally, Mr. Bush states that between March 16, 2020, and March 25, 2020, a total of 630 individuals were discharged from DOC's custody.

At oral argument on this matter, the People advised that the Petitioner has been convicted of multiple felonies in Florida, including a violent felony. If convicted of the instant matter, a B violent offense, she will be sentenced as a violent predicate felon. She also has four misdemeanor convictions and four failures to appear. It is alleged in this matter that she walked to the roof of a multi-family dwelling, and, as observed by construction workers, set fires in two locations.

DISCUSSION

Habeas corpus review is appropriate where a statutory or constitutional violation causes petitioner's incarceration. CPLR 7001, 7002(a) and (b)(1). A writ of habeas corpus is available if the only meaningful remedy is immediate release from custody. Cf. People ex rel. Kaplan v. Commissioner, 60 N.Y.2d 648 (1983). A pretrial detainee may seek a writ of habeas corpus in order to challenge the risk of physical harm caused by his incarceration. People ex rel. Brown v. Johnston, 9 N.Y.2d 482, 484-85 (1961). The petitioner alleges that her incarceration violates the Due Process Clauses of the United States and New York Constitutions, as well as the statutory and constitutional prohibitions against excessive bail.

In the context of pretrial detention, under the federal constitution, "if a particular condition or restriction is reasonably related to a

legitimate nonpunitive governmental objective, it does not, without more, amount to 'punishment' and satisfies constitutional mandates." Bell v. Wolfish, 441 U.S. 520 (1979). Under the New York State Constitution, "what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement." Cooper v. Morin, 49 N.Y69 (1979). Where the only purpose of bail in New York State is to ensure the defendant's appearance to court, the state's interests are limited to that purpose - ensuring the defendant's presence at trial. Powlowski v. Wullich, 102 A.D.2d 575, 585 (4th Dept. 1984).

Engaging in the balancing mandated by Cooper v. Morin, *supra*,² the Court concludes that habeas relief is not mandated in this matter. It is beyond dispute that the Petitioner has an interest in being held in a safe setting, and the outbreak of COVID-19 is presenting a dire situation. Further, while Petitioner asserts that her health issues - diagnosis of hepatitis C – place her in a higher risk category, she has provided no documentary proof of this diagnosis, no detail about the severity of her disease, and, nothing other than a single conclusory letter from a Health Service doctor attesting to heightened risk. The State has an interest in ensuring the Petitioner's presence in court, an interest that can only be effectuated through the imposition of bail conditions. The Petitioner faces B violent felony charges of Arson in the Second Degree, and if convicted, would be sentenced as a violent predicate felon. As such, if convicted of this extremely serious crime, she is facing a very lengthy prison sentence. As attested to in the affidavits of the NYCDOC officials, the NYCDOC is taking numerous measures to attempt to prevent the spread of the virus. Balancing the interests, the Court concludes that habeas relief is not warranted.

The Petitioner also makes a related Due Process argument, alleging a "deliberate indifference" to the Petitioner's medical needs. A pretrial detainee's due process rights are violated if he or she is "incarcerated under conditions posing a substantial risk of serious harm," and the "state of mind [of the prison or jail official] is one of 'deliberate

indifference' to inmate health or safety." Farmer v. Brennan, 511 U.S. 825, 834 (1994). To establish a claim of "deliberate indifference," an individual must meet a two-part test that includes an objective and a subjective standard. The objective component examines whether the deprivation of medical care is "sufficiently serious." Wooley, 15 N.Y.3d at 282. Put another way, the objective standard asks if the "response of prison officials to the inmate's medical needs [is] objectively reasonable under the circumstances." Id. The subjective component looks to the charged official's state of mind. "Deliberate indifference is a mental state equivalent to subjective recklessness, as the term is used in criminal law. This mental state requires that the charged official act or fail to act while actually aware of a substantial risk that serious inmate harm will result." Matter of Wooley v. New York State Dept. Of Correctional Services, 15 N.Y.3d 275, 282 (2010) (quotations omitted); see also Rodriguez v. City of New York, 87 A.D.3d 867, 868-69 (1st Dept. 2011) (The Eighth Amendment, which applies to the States through the Fourteenth Amendment, guarantees prisoners "humane conditions of confinement.")

Certainly, there is serious risk to the health of those incarcerated during a respiratory pandemic. The COVID-19 disease is dangerous and highly contagious. According to Ms. Feeney, however, the NYCDOC has implemented CDC guidelines to prevent the transmission of COVID-19. See Affidavit of Patricia Feeney, at ¶¶ 7, 8. While it appears that full implementation (for example, social distancing is ideally six feet; it is in fact only three feet at Rikers) has not been achieved, the Court is not prepared to conclude that the NYCDOC is acting with "deliberate indifference."³

The Petitioner also argues that the bail-setting court abused its discretion in failing to properly consider the relevant bail factors and in failing to set the least restrictive bail. Because of the restrictions resulting from the pandemic, the Petitioner was unable to obtain a copy of the transcript of the most recent bail proceeding. Petitioner has not, however, attempted to remedy that deficit by providing meaningful detail about the proceeding from counsel's own notes or memory. Indeed, counsel did not even state in the Petition that a court had

reviewed the Petitioner's bail on March 26, 2020. This Court is therefore unclear which decision Petitioner now claims was an abuse of discretion or violated the law.

In any event, this Court sees no abuse of discretion, nor any violation of either statutory or constitutional mandates, in the setting of bail conditions at \$5000 cash, bail bond, or partially-secured bond. Petitioner is charged with a B violent felony. As a predicate felon, she faces a lengthy prison sentence if convicted. She has prior misdemeanor and felony convictions, as well as multiple failures to appear. Finally, she has significant ties to Florida. Upon consideration of the relevant bail factors, CPL § 510.30(1); see generally People v. Portoreal, 66 Misc.3d 497 (Sup. Ct. Bronx Cty. 2019), this Court concludes that the Petitioner presents a risk of flight, and that the bail conditions set by the prior three judges constitute the least restrictive alternative to ensure the Petitioner's presence in court when required. Further, there is no violation of the Petitioner's right to equal protection from her inability to post bail in the amount set. Finally, for all of the above reasons, the bail conditions comport with due process.

In sum, the Petition for a Writ of Habeas Corpus is denied. This constitutes the Decision and Order of the Court.

Dated: April 2, 2020
Bronx, New York

JUDITH LIEB, A.J.S.C.

¹A letter from a doctor at the Division of Correctional Services states that the Petitioner's health status places her in the highest risk group. The letter does not identify the health concern. (Exhibit A to the Petition.)

²Because the state constitutional standard is stricter than the federal standard, the Court will not address the federal standard in detail. Suffice it to say, the State has a legitimate nonpunitive governmental interest in ensuring a pretrial detainee's presence in court.

³The Court notes that the sole relief available in a habeas petition is release. The Court does not intend its ruling, made without benefit of an evidentiary hearing, nor even the most current information concerning NYCDOC's constantly changing efforts to ensure safe conditions inside Rikers Island, to preclude a petition under Article 78 or other appropriate vehicle, if Petitioner contends that there are specific additional steps required of NYCDOC to protect her health.

EXHIBIT 6

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX: Emergency Part

-----X

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. RUTH HAMILTON, Esq, on behalf of RAFAEL
MARTINEZ,

against-

INTERIM DECISION

CYNTHIA BRANN, COMMISSIONER OF
CORRECTIONS FOR THE CITY OF NEW YORK,
And anyone having custody of Rafael Martinez

Index No. 260188/2020,

Respondents.

WRIT OF *HABEAS CORPUS*

-----X

Fabrizio, J.

"I, Andrew Cuomo, Governor of the State of New York, by virtue of the authority vested in me by the Constitution of the Laws of the State of New York, hereby find . . . that a disaster is impending in New York State . . . and I do hereby declare a State disaster emergency for the entire state of New York . . . until September 7, 2020." Executive Order, No. 202, March 7, 2020.

"We have therefore made the assessment that COVID-19 can be classified as a pandemic." Statement of Director-Counsel of the World Health Organization, March 11, 2020.

"In accordance with the Directive of the Chief Judge of the State of New York to limit court operation to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion or other process or proceeding, as provided for by the procedural laws of the state, including, but not limited to, the criminal procedure law . . . is hereby tolled . . . until April 19, 2020." Executive Order 202.8, March 20, 2020.

"Pursuant to authority vested in me, in light of the emergency circumstances caused by the continuing Covid-19 outbreak in New York State and the nation . . . I direct that, effective immediately and until further notice, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters annexed as Ex. A." Chief Judge Janet DiFiore, Administrative Order, AO/78/20 dated March 22, 2020.

"Exhibit A . . . Essential Proceedings . . . (A) Criminal matters: (1) arraignments, (2), bail applications, reviews and writs, (3) temporary orders of protection, (4) resentencing of retained and incarcerated defendants, (5) essential sex offender registration act (SORA) matters." Id.

On March 25, 2020, petitioner was arraigned before a local criminal court judge on a felony complaint charging him, inter alia, with Assault in the Second Degree. Penal Law §120.05. This is a violent felony and a qualifying offense, CPL 510.10(4), and bail was set by the arraignment judge. Petitioner has not posted that bail. He has moved via writ filed on March 31, 2020, for his immediate release from custody. The People filed a written response, and the City, via the Law Department, submitted initial documents. Petitioner's attorney, a

Bronx County Assistant District Attorney, and an attorney for the City from the Law Department, all appeared before me, via video on April 1, 2020. This Court held the decision on the application in abeyance pending the receipt of medical records relating to the petitioner's care while he has been held in jail. However, the writ raised significant non-medically related due process arguments that, if this Court were to find them valid, would entitle petitioner to immediate release. This Court has considered those non-medical arguments and issues this interim decision relating to those grounds only. It denies the application for release on those grounds, as explained below, but continues to hold the final decision in abeyance pending further submissions.

Petitioner initially raises legal and constitutional challenges to his continued confinement that have nothing to do with his health but have everything to do with the monumental Covid-19 health crisis. He does not argue that his bail is excessive, or that the arraignment judge abused her discretion in setting it. He does not seek review of the bail itself. His challenge via this writ is that he is entitled to immediate release on several grounds. First, he argues that because the CPL 180.80 has passed, he is entitled to release by operation of law because Executive Order 202.8 does not apply to 180.80 release deadlines. Second, he argues that a judge of the criminal court denied his access to court when he requested that the case be calendared so he could make his 180.80 release application before a judge of that court, and also to demand a preliminary hearing under CPL 180.10. In a related argument, he claims that, even if Executive Order 202.8 does suspend statutory 180.80 deadlines, his continued confinement violates due process because there has been no judicial finding via the preliminary hearing route of holding him for grand jury action. Fourth, he argues that he is entitled to immediate release due to personal health concerns and the prevalence of Covid-19 in his jail facility. It is a decision on this fourth ground that is held in abeyance.

Petitioner does not argue that the governor lacked any authority under Executive Law §§ 29-a and 29-b to suspend any 180.80 or other procedural deadlines in the Criminal Procedure Law. Simply put, he does. See People v. Bey, 44 AD3d 1065, 1066 (2nd Dept 2017); People v. Fuller, 8 AD3d 204, 205 (1st Dept. 2004); People v. Haneiph, 191 Misc. 3d 738, 742-43 (Crim. Court Kings County 2002). While counsel is correct that Executive Order 202.8 does not mention CPL 180.80 in its text, it also does not mention CPL 30.10 (statute of limitations), or CPL 30.30 (speedy trial), or CPL 255.20 (filing of pre-trial motions), or CPL 460.10 (time to take an appeal), or any other specific statute from the myriad of statutes that have time and action limitations imposed under the Criminal Procedure Law. This Court does not find that the Governor needed to be so specific. The language of this order sweeps up every procedural time limit imposed in the Criminal Procedure Law and packages them in a broad order that is easy for a court to interpret. The words chosen and the time limits suspended are implicated in each and every one of the statutes at issue in this writ. For example, even if grand juries were being empaneled, and the People could meet the deadline imposed to vote an indictment, the People still have to "file with the court a written certification that an indictment has been voted." CPL 180.80 (2)(a). The filing of such a document divests the lower courts of jurisdiction to provide over the matter and essentially "commences" the prosecution in the Supreme Court. In terms of a preliminary hearing, a judge must file an order that results in holding a defendant in custody for grand jury action and "promptly transmit to" the Supreme Court the order itself. CPL 180.70(1). The specific language of Executive Order 202.8 tolls the time for doing all of this.

Petitioner's due process rights have not been violated by the criminal court's refusal to

calendar this case for making a CPL 180.80 release application. Such an application is not part of the “emergency” situations covered in the Chief Judge’s operational order. This order has not denied petitioner due process by preventing him from making an argument for his release from custody. He is being afforded due process because this argument is being considered, and properly so, in the adjudication of this writ. His right to be heard remains; the forum and mechanism has been changed because of the very emergency that has hit the entire state, and its citizens, in unprecedented ways. His access to court has neither been denied, nor significantly delayed. Petitioner states that his 180.80 period would have expired at 9:35 p.m. on March 31, 2020; this writ was calendared and heard in Court hours later, on the morning of April 1, 2020. When petitioner was arraigned, the judge did not set a 180.80 date, and adjourned the case until April 28, 2020.¹ Petitioner was arraigned by an attorney not affiliated with the Bronx Defenders, who now represent him. It is not known if that attorney raised a challenge to the date selected by the criminal court judge. Nonetheless, this Court does not find that an arraignment judge needs to calendar any case for a 180.80 compliance date because the Executive Order suspends that time and that adjournment for that purpose would be a drain on the emergency operations in place for that court.

In terms of his due process argument relating to the lack of a preliminary hearing, it is correct that the petitioner has not been afforded an opportunity to have a judge consider non-hearsay evidence subject to cross-examination and possible testimony under CPL 180.60. However, it is incorrect to say that he is being held in in the absence of any judicial finding of probable cause. That finding was, and had to be made, at the time of the defendant’s arraignment on the felony complaint. CPL Section 140.45; See People v. Hernandez, 98 NY2d 8, 10 (2002). That complaint is not before this Court and counsel makes no challenge to the sufficiency of that felony complaint. What is required to be done at every arraignment is that the judge inspect the accusatory instrument to ensure that there is reasonable cause to continue the case past that stage, whether for conversion of a criminal court complaint to an information via a supporting deposition or other required documents, or to hold a defendant for grand jury action or preliminary hearing. See People v. Machado, 182 Misc 2d 194, 194-95 (Sup Court Bronx County 1999). The grand jury process is constitutionally essential for the case to proceed to trial; the preliminary hearing process provides a procedural mechanism to hold a defendant in custody on a felony complaint prior to trial. The grand jury as well as a judge at a preliminary hearing must make reasonable cause determinations. The reasonable cause determination made by an arraignment judge provides due process protections and prevents a defendant from being held in custody based on insufficient evidence. See County of Riverside v. McLaughlin, 500 US 44, 56-57 (1991). That is the same standard upon which defendants can be held in custody post-indictment. Therefore, the Court finds that the lack of grand jury proceedings or a preliminary hearing at this time does not constitute a due process violation for this petitioner.

A ruling on the petitioner’s argument that he is being deprived of due process by being held in a jail facility where there is a risk to his health is held in abeyance pending the submission of medical records from the New York City Department of Corrections. Petitioner is 30 years old, and states he suffers from asthma. His attorney has not been able to schedule a video visit with her client because it appears that DOCCS does not have this capability at this time. This Court has signed a subpoena for counsel to receive those records. Petitioner alleged that he was not receiving any medical treatment, but the Court is satisfied based on initial information imparted by the City’s attorney that the defendant has been seen by medical

¹ The Court noted during the hearing that this date, of course, takes place long after the expiration date of Executive Order 202.8. The defendant may refile for this relief after that date.

personnel while he has been in custody on more than one occasion, and that the City has set up protocols for isolating and treating any seriously ill inmates. Nonetheless, it is important to know whether this petitioner's personal medical situation requires a legal remedy. This Court will continue to receive and review all the information as it comes in relating to this part of the application and will rule on this part of the writ when those records are received or the Court receives any other information relevant to defendant's medical condition.

However, in terms of the legal arguments for release based on due process, CPL 180.10, 180.60, 180.70, 180.80, Executive Order 202.8, and the Chief Judge's Operational Order, the writ is denied.

ENTER

Dated: April 2, 2020
Bronx, New York


Hon. Ralph Fabrizio, JSC.

EXHIBIT 7

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF BRONX: CRIMINAL TERM: PART 73

-----X

THE PEOPLE OF THE STATE OF NEW YORK DECISION AND ORDER
Ex. Rel. MARIAM HINDS, ESQ., Index No. 260171/2020 On behalf of Tracy
Melendez,

Ind. No. 682-2019

Petitioner, 2288-2019

-against-

CYNTHIA BRANN, Commissioner of the New York City

Department of Corrections,

And

ANYONE HAVING CUSTODY OF PETITIONER,

Respondents.

-----X

LIEB, J.

Petitioner, a 19-year-old pretrial detainee presently held in the custody of the Respondent, New York City Department of Corrections (“NYCDOC”), seeks the issuance of a writ of habeas corpus, ordering his release from custody. Respondents, through the Bronx County District Attorney’s Office, oppose release. For the reasons

that follow, the application for a writ of habeas corpus is denied.

BACKGROUND

Petitioner stands charged in relevant part in two felony indictments. On March 10, 2019, Petitioner was charged in a Criminal Court complaint with Criminal Possession of a Weapon in the Second Degree in violation of Penal Law (“PL”) §§ 265.03 (footnote: 1)

1:

In his Petition, Petitioner states that he is charged with violating PL § 265.03(1)(b). The assigned Assistant District Attorney has written that Petitioner stands charged with a different subsection of this felony, namely PL § 265.03(3). Given the alleged facts as set forth by the ADA, it appears that the subsection is PL § 265.03(3).

and related offenses. Bail was set in the amount of \$7500 insurance company bail bond, \$5000 cash, \$5000 credit card, or \$7500 partially secured bond at 10%. An indictment charging him with Criminal Possession of a Weapon in the Second Degree, Resisting Arrest, and related charges was subsequently returned and filed under Indictment No. 682-2019. Petitioner paid the bail and remained at liberty until August 24, 2019.

On August 24, 2019, Petitioner was charged with Robbery in the First Degree in violation of PL § 160.15(1), Assault in the First Degree in violation of PL § 120.10(4), Resisting Arrest in violation of PL § 205.30, and related charges. He was indicted in this matter under Indictment No. 2288-2019. Bail was set in the amount of \$15,000 insurance company bail bond, \$7500 cash, \$7500 credit card, or \$15,000 partially secured bond at 10%.

On October 10, 2019, the court exonerated and re-set bail on Indictment 682-2019 in the amounts noted above.

A bail review was conducted on both indictments on March 26, 2020. The reviewing court declined to change the bail conditions.

Petitioner maintains that he has an “impeccable” history of returning to court, that he attended six court dates while at liberty under Indictment 682-2019, that he has strong family support, has resided with his grandmother in the Bronx for over ten years, and has been working with counsel’s social worker to voluntarily enroll in the Door, a youth services program. Further, while in detention, he has actively participated with the Youth Adult Services Program, whose program director wrote to the bail reviewing court in support of Petitioner. Finally, he states that he and his family cannot afford a bail in excess of \$500.

Petitioner suffers from asthma, as documented by a letter from the Associate Director of the Correctional Health Services, with an attached “Problems Report” excerpt from his medical records indicating an ongoing problem with an outset date of November 28, 2019, continuing until at least February 25, 2020. (footnote: 2)

2:

The record includes the billing code, “ICD10-J45.909,” which refers to “unspecified asthma, uncomplicated.”

(Exhibit A to the Petition.)

Respondents opposed release in a written filing from the Bronx County District Attorney’s Office, dated March 30, 2020, including an Affirmation of an Assistant District Attorney (“ADA”) and accompanying Memorandum of Law. In her Affirmation, the ADA affirms in relevant part as follows:

As for the March 2019 incident, it is alleged that Petitioner on March 9, 2019, possessed a loaded firearm while traveling in a taxi cab in Bronx County. (footnote:

3)

3:

It is further alleged that upon his arrest, as set forth in the People's CPL § 710.30(1)(a) notice, Petitioner stated in sum and substance to police officers, "Listen, if I wasn't in the car and if I was out in the street, I would have ran and shot you guys. I would have shot you. I'm gonna make you work for your money today. You are not going to celebrate this gun arrest. You are gonna work for your money. You are not gonna have DNA on it. I wiped it off."

The incident resulting in Petitioner's August 2019 arrest arose on July 15, 2019, in which it is alleged that Petitioner and a separately apprehended Adolescent Offender co-defendant (whose case was removed to Family Court), approached a 14-year-old and asked to see his cell phone. When the 14-year-old complied, the co-defendant walked away with the phone. After the 14-year-old asked for his phone back, Petitioner allegedly punched the 14-year-old in the jaw so hard that he broke the victim's jaw. As a result, the victim needed to undergo surgery and have his jaw wired shut for approximately six to eight weeks.

The District Attorney's Office further alleges that Petitioner absconded for a month. (footnote: 4)

4:

The People further state that during this time, as evidenced in a DD5 report attached to the People's papers, on August 15, 2019, a Detective spoke to Petitioner's grandmother, who said that she did not know Petitioner's whereabouts and had not seen him for a week.

Ultimately, an officer recognized him from a "wanted" poster and located an open

“Investigation” card. According to the ADA, officers approached Petitioner, who fled up several flights of stairs to evade arrest. He then purportedly resisted arrest by pushing, kicking, flailing his arms; during the struggle, he knocked a police officer’s body-worn camera and radio off of the police officer’s body.

The ADA further advised the Court that Petitioner has been arrested twice while detained on Rikers Island. He was charged on February 4, 2020, under Bronx Criminal Court Docket No. CR 002634-20BX with Assault in the Third Degree, for purportedly assaulting a Corrections Officer. He was also charged with Obstruction of Governmental Administration in a separate complaint filed the same day involving a separate incident in which it is alleged that Petitioner splashed a Corrections Officer with an unknown liquid. Docket No. CR 002635-20BX. (Bail of \$1 was set on both these complaints.)

The Assistant District Attorney advised during oral argument on March 31, 2020, that Petitioner was being held in a single cell room at OBCC, with a single bed and a toilet for his personal use.

It is uncontroverted that the world faces an unprecedented threat from the COVID-19 virus. According to news reports, as of yesterday, over 1500 people have died from COVID-19 in New York City alone. People held in detention facilities are at heightened risk, given such factors as close living quarters, frequent physical contact between people, and constant traffic in and out of the facility.

In response to Petitioner’s application, the Assistant District Attorney submitted affidavits from two officials of the NYCDOC. In her affidavit, Patricia Feeney, the NYCDOC Deputy Commissioner of Quality Assurance and Integrity for the

NYCDOC states as follows: In response to the COVID-19 outbreak, DOC has “implemented the containment and control of transmission guidelines recommended by the CDC and the DOHMH [New York City Department of Health and Mental Hygiene].” Affidavit at ¶ 8. These include a variety of enumerated steps to increase social distancing and sanitize the facilities. Further, each individual in custody is provided with a bar of soap and access to cleaning supplies.

In his affidavit, Richard Bush, the NYCDOC Senior Correctional Institution Administrator for Health Affairs, who serves as the liaison between the NYCDOC and Correctional Health Services (CHS), states as follows: When CHS identifies medically vulnerable people based on their medical background, DOC separates these individuals from the general population. Further, those individuals diagnosed with COVID-19 are separated from others. DOC staff have been instructed to refer any individual in custody who is exhibiting COVID-19 symptoms to CHS for evaluation. Finally, Mr. Bush states that between March 16, 2020, and March 25, 2020, a total of 630 individuals were discharged from DOC’s custody.

DISCUSSION

Habeas corpus review is appropriate where a statutory or constitutional violation causes petitioner’s incarceration. CPLR 7001, 7002(a) and (b)(1). A writ of habeas corpus is available if the only meaningful remedy is immediate release. Cf. *People ex rel. Kaplan v. Commissioner*, 60 N.Y.2d 648 (1983). A pretrial detainee may seek a writ of habeas corpus in order to challenge the risk of physical harm caused by his incarceration. *People ex rel. Brown v. Johnston*, 9 N.Y.2d 482, 484-85 (1961). The

petitioner alleges that his incarceration violates the Due Process Clauses of the United States and New York Constitutions, as well as the statutory and constitutional prohibitions against excessive bail.

In the context of pretrial detention, under the federal constitution, “if a particular condition or restriction is reasonably related to a legitimate nonpunitive governmental objective, it does not, without more, amount to ‘punishment’ and satisfies constitutional mandates.” *Bell v. Wolfish*, 441 U.S. 520 (1979). Under the New York State Constitution, “what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement.” *Cooper v. Morin*, 49 N.Y.2d 69 (1979). Where the only purpose of bail in New York State is to ensure the defendant’s appearance to court, the state’s interests are limited to that purpose - ensuring the defendant’s presence at trial. *Powlowski v. Wullich*, 102 A.D.2d 575, 585 (4th Dept. 1984).

Engaging in the balancing mandated by *Cooper v. Morin*, *supra*,

(footnote: 5)

5:

Because the state constitutional standard is stricter than the federal standard, the Court will not address the federal standard in detail. Suffice it to say, the State has a legitimate nonpunitive governmental interest in ensuring a pretrial detainee’s presence in court.

the Court concludes that habeas relief is not mandated in this matter. It is beyond dispute that the Petitioner has an interest in being held in a safe setting, and the outbreak of COVID-19 is presenting a dire situation. While Petitioner maintains that his asthma status places him at higher risk, he has provided insufficient detailed documentation about the severity of his condition for the Court to assess whether he in fact is of heightened risk. The Court is aware that the Petition appends a letter from a doctor with

the Correctional Health Services stating that Petitioner falls within a higher risk category, but that letter is too conclusory to provide a reliable basis from which the Court may conclude that the Petitioner is in fact at a higher risk. Further, the attached medical record included a billing code that merely reflects, “unspecified, uncomplicated” asthma. Given the novelty of this virus, there appears to be some question about whether asthma is a risk factor (the parties have submitted conflicting information in this regard); even if one were to credit that asthma in general is a risk factor, as is likely the case given that COVID-19 is a respiratory virus, whether the asthma is mild, moderate or severe, and whether it is intermittent or persistent, would seem to be highly relevant to the determination of how significant the risk is that is presented. This Court does not have sufficient information to conclude that Petitioner is in fact at a higher risk level based on his asthma. (footnote: 6)

6:

The Court acknowledges that after oral argument, counsel submitted further information concerning Petitioner’s history of asthma, including the statement from his mother that because he was born prematurely, he needed to use an oxygen tank for the first year and a half of his life. In addition, she informed counsel that Petitioner needed to receive injections of steroids for his lungs, presumably to promote appropriate growth. Finally, she stated that he developed asthma as a child. The Court’s inability to assess the precise state of Petitioner’s condition without a detailed medical analysis, however, is made clear from the Respondent’s position that Petitioner’s asthma was not so severe as to prevent him from running up several flights of stairs to evade arrest.

. Turning to the governmental interest, the State has an interest in ensuring the Petitioner’s presence in court, an interest that can only be effectuated through the imposition of bail conditions. The Petitioner is charged with committing a Class C violent offense, and, after making bail on the Class C violent offense, committing a Class B violent felony offense. If convicted, Petition would be facing mandatory consecutive prison time (unless the Court found mitigation) on this two indictments, and, given the mandatory minimum sentences, would be facing a lengthy prison sentence. As attested to in the affidavits of the NYCDOC officials, the NYCDOC is taking numerous measures to attempt to prevent the spread of the virus. Balancing the

interests, the Court concludes that habeas relief is not warranted on this ground.

Petitioner also makes a related Due Process argument, alleging a “deliberate indifference” to Petitioner’s medical needs. A pretrial detainee’s due process rights are violated if he or she is “incarcerated under conditions posing a substantial risk of serious harm,” and the “state of mind [of the prison or jail official] is one of ‘deliberate indifference’ to inmate health or safety.” *Farmer v. Brennan* , 511 U.S. 825, 834 (1994). To establish a claim of “deliberate indifference,” an individual must meet a two-part test that includes an objective and a subjective standard. The objective component examines whether the deprivation of medical care is “sufficiently serious.” *Matter of Wooley v. New York State Dept. Of Correctional Services* , 15 N.Y.3d 275, 282 (2010). Put another way, the objective standard asks if the “response of prison officials to the inmate’s medical needs [is] objectively reasonable under the circumstances.” *Id* . The subjective component looks to the charged official’s state of mind. “Deliberate indifference is a mental state equivalent to subjective recklessness, as the term is used in criminal law. This mental state requires that the charged official act or fail to act while actually aware of a substantial risk that serious inmate harm will result.” *Id* . (quotations omitted); see also *Rodriguez v. City of New York* , 87 A.D.3d 867, 868-69 (1 st Dept. 2011) (The Eighth Amendment, which applies to the States through the Fourteenth Amendment, guarantees prisoners “humane conditions of confinement.”)

Certainly, there is serious risk to the health of those incarcerated during a respiratory pandemic. The COVID-19 disease is dangerous and highly contagious.

According to Ms. Feeney, however, the NYCDOC has implemented CDC guidelines to prevent the transmission of COVID-19. See Affidavit of Patricia Feeney, at ¶¶ 7, 8.

While it appears that full implementation (for example, social distancing is ideally six feet; it is in fact only three feet at Rikers) has not been achieved, the Court is not prepared to conclude that the NYCDOC is acting with “deliberate indifference.” (footnote: 7)

7:

The Court notes that the sole relief available in a habeas petition is release. The Court does not intend its ruling, made without benefit of an evidentiary hearing, nor even the most current information concerning NYCDOC’s constantly changing efforts to ensure safe conditions inside Rikers Island, to preclude a petition under Article 78 or other appropriate vehicle, if Petitioner contends that there are specific additional steps required of NYCDOC to protect his health.

Petitioner also argues that the reviewing court abused its discretion in failing to properly consider the relevant bail factors and in failing to set the least restrictive bail.

Because of the restrictions resulting from the pandemic, Petitioner has not been able to obtain a transcript of the proceedings for the Court to examine. While the absence of a transcript makes the Court’s task far more difficult, given the circumstances, it does not preclude this Court from considering Petitioner’s arguments, as argued by the District’s Attorney’s Office. Turning to the merits, this Court sees no abuse of discretion, nor any violation of either statutory or constitutional mandates, in the setting of the bail conditions set forth above. The Court acknowledges that Petitioner is a resident of the Bronx, with strong family ties, although his grandmother informed a detective before Petitioner’s August 2019 arrest that she had not seen him in a week and did not know his whereabouts. Nonetheless, Petitioner stands charged with committing serious crimes:

the Class C violent felony of Criminal Possession of a Weapon, as well as the Class B violent felonies of Robbery in the First Degree and Assault in the First Degree. Both sets of crimes carry mandatory minimum state prison sentences. Further, because it is alleged that Petitioner committed the Class B violent felonies while released on bail on the Class C violent felony, absent mitigation, if convicted, Petitioner faces mandatory consecutive sentences for these crimes. As a result, if convicted, Petitioner faces a lengthy prison sentence. Further, it is alleged that Petitioner was only arrested on the second matter after leading the police on a long chase, and then engaging in a physical struggle to avoid apprehension. Upon consideration of the relevant bail factors, CPL § 510.30(1); see generally *People v. Portoreal*, 66 Misc.3d 497 (Sup. Ct. Bronx Cty. 2019), this Court concludes that the Petitioner presents a risk of flight, and that the bail conditions set by the prior judges constitute the least restrictive alternative to ensure the Petitioner's presence in court when required. Further, there is no violation of the Petitioner's right to equal protection from his inability to post bail in the amount set. Finally, for all of the above reasons, the bail conditions comport with due process.

In sum, the Petition for a Writ of Habeas Corpus is denied. This constitutes the Decision and Order of the Court.

Dated: April 3, 2020

Bronx, New York

JUDITH LIEB, A.J.S.C.

EXHIBIT 8

NEW YORK SUPREME COURT
NEW YORK COUNTY

PEOPLE OF THE STATE OF NEW YORK
EX REL. COREY STOUGHTON, ESQ.,
on behalf of

HOGAN JEFFREY, REGINALD JONES,
MICHAEL COUCHON, SEKOU KANE,
NELSON CORPORAN, JOSEPH BRYANT,
CLAYTON BARRY, DOMINICK WILLIAMS,
UCEFF WADE, CECILIA HOWARD, BRANDI
FELCI, MARJORIE CHAMBERS, ALUDIEN
MARKS, BRIGHTON MONTGOMERY,
NICHOLAS KILGORE, JONATHAN PEREZ,
EVA DOUBLERG, KEITH JOHNSON, JASON
BORRERO, PEDRO VINCENT BARCIA,
ABDULLAH SPENCEREL, SERGIO BRUNO,
DARLY BRITT, MALCOLM DAWSON,
BRIAN KING, ALLEN NANCE,
CHRISTOPHER ANDRETTA, HERBERT
BARRON, JOHN PIVETZ, GLEN SNYDER,
SAMUEL SAEZ, and TOLIB AKILOV,
Petitioners,

v.

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

INDEX NO. 451078/2020
SCID NO. 30049-2020

Petitioners, 32 inmates at the Rikers Island prison, have demanded release on
due process grounds. Each petitioner faces one or more charges in New York

County. Many are also incarcerated pending hearings on alleged parole violations. Their complaint concerns the Covid-19 pandemic. Petitioners contend that they are particularly vulnerable to serious injury and death should they contract the disease. And they assert that prisoners at Rikers are dangerously likely to contract it, to the point that continued confinement there violates their due process rights under the federal and state constitutions.

The only relief sought is release. The court will grant release, sometimes with conditions, to a fair number of petitioners. This opinion explains why. But this opinion will not do two other things. It will not describe the nature of the Covid-19 pandemic, as it is far too familiar to New Yorkers already. And it will deal with the circumstances of individual petitioners only briefly, as examples to explain particular points.

A

The health of prison inmates is the business of governments who incarcerate them. Indeed, it has long been settled that the United States Constitution requires the government to provide effective medical care for inmates. Brown v. Plata, 563 US 493, 508-09 (2011); Farmer v. Brennan, 511 US 825, 832-33 (1994); Estelle v. Gamble, 429 US 97 (1976). These decisions involved convicted prisoners, and were decided under the Eighth Amendment. But the Due Process protections of the 5th and 14th Amendments and of the New York Constitution provide comparable protection to pretrial inmates. See, e.g., Kingsley v. Hendrickson, 576 US ____ (2015); Cooper v. Marin, 49 NY2d 69 (1979). That makes sense, as it could not be thought that pretrial detainees should enjoy less protection than convicted inmates. Contemporary law as to the rights of all prisoners simply “codif[ies] the commonlaw

view that ‘it is but just that the public be required to care for the prisoner, who cannot by reason of the deprivation of his liberty, care for himself.’” Estelle v. Gamble, 429 US at 103-04, supra.

To invoke the federal due process clause successfully, a petitioner may establish that the government's actions impose a serious, medically threatening condition on prisoners. Alternatively, and to the point here, the petitioner may show that the government failed to act "with reasonable care" to mitigate a risk created by a seriously threatening prison condition, even though the responsible authorities knew or should have known that the condition posed an excessive risk to the health or safety of the inmates. Helling v. McKinney, 509 US 25, 331-32 (1993). The cases differ on precisely how to interpret the mens rea requirement, and in particular on whether the prison officials must be aware of the danger. Compare Darnell v Pineiro, 849 F3d 17 (2nd Cir 2017) with Caiozzo v. Koreman, 581 F3d 63 (2nd Cir 2009). But the issue is moot here. There is no doubt that Rikers officials are aware of the Covid-19 threat. The New York due process test is simpler. A court weighs the benefit sought by the government from a condition against the harm that the condition imposes on inmates. Cooper v. Morin, 49 NY2d at 79, supra.

If the government cannot satisfy the due process requirement, the court must accord a remedy – including, where appropriate, release from prison. Brown v. Plata, 563 US at 511, supra. Courts “must not shrink from their obligation to ‘enforce the constitutional rights of all..., including prisoners.’ Courts may not allow constitutional violations to continue simply because a remedy would involve intrusion into the realm of prison administration.” Id. (citation omitted). Notably, Brown itself approved an order requiring the release of numerous convicted

California prisoners unless the state quickly relieved long-standing prison overcrowding that, inter alia, threatened the health of the inmates.

There can be no doubt that the presence of a communicable disease in a prison can constitute a serious, medically threatening condition. The point need not be belabored in this case. Covid-19 is at large at Rikers Island. The current epidemic poses a deadly threat to inmates, and its presence at the prison equates to an "unsafe, life-threatening condition" endangering "reasonable safety." See Helling v. McKinney, 509 US at 33, supra. Given such circumstances and the absence of a viable alternative, a court has no choice but to order release. Brown v. Plata, 563 US at 511, supra.

Respondents do not deny that much. They assert, however, that Corrections officials at Rikers Island have not been "deliberately indifferent" to the danger. To the contrary, they maintain, officials at Rikers have sought diligently to prevent the spread of the Covid-19 disease among the inmates. They assert that they have provided soap and cleaning supplies that allow petitioners and their fellow prisoners to protect themselves from the virus. They also urge the inmates to engage in "social distancing," i.e., to maintain a distance of six feet between themselves and other inmates. Some inmates have been released with the consent of the District Attorney. Thus, respondents assert, they have satisfied the constitutional mandate by taking "reasonable care" to mitigate the risk of the disease. It follows, they continue, that no due process violation has occurred, and no remedy is due petitioners.

B

This court disagrees. A look at the conditions at Rikers Island explains why.

First, communicable diseases could not ask for a better breeding ground than a crowded prison. Rikers facilities are crowded. Prisoners eat in communal dining rooms. Cooking is done by inmates and the food is dished out by inmates. Entertainment is found in common rooms. Many detainees reside in barracks-style dormitories. Many have a neighbor who sleeps less than six feet to the side. The inmates share sinks, showers, and toilets. Much of the space is so cramped that the inmates are physically unable to stay far enough from their fellow prisoners to be safe from the risk of contagion. Moreover, for many prisoners, a natural concomitant of confinement is a desire to associate in groups with one another. They communicate face-to-face, without the luxury of Skype or twitter. And, as elsewhere, even individuals without apparent Covid-19 symptoms can spread disease in all these areas and situations.

Beyond that, inmates in a local urban jail like Rikers are constantly exposed to additional potential sources of contagion. Arrests do not stop for a plague. New inmates arrive daily from around New York City. Every day, members of the prison staff commute to the prison from their homes in the city and its nearby suburbs. Until the epidemic hit this city, on five days a week inmates were taken in crowded and unsanitary buses to crowded and unsanitary courthouse holding pens.

Second, these conditions have produced the results one might expect. Diagnoses of the disease are "spiking" at Rikers -- exponentially. As of March 20 it had reported that one case of the disease had been diagnosed at the prison. On March 21, 21 inmates and 17 members of the staff were reported ill from the virus, and one member of the staff was dead. By March 24, the day the petition

was filed, there were a reported 39 cases. By April 1, 184 prisoners and 179 members of the staff were ill. As this opinion is being issued, the most recent report is that on April 2 there were 231 sick prisoners, in addition to 223 sick staff members. The rate of increase is about 5 times higher than that of New York City in general -- and the rate in New York City, the national "epicenter" of Covid-19, has dramatically exceeded that of the rest of the country.

The New York City Board of Correction, established by the City Charter, is an independent oversight board charged with regulating, monitoring, and inspecting the city's correctional facilities. On March 21 the Board issued an advisory letter to judges and prosecutors calling for the release of prisoners over 50 years old who have conditions placing them at high risk if they contract Covid-19. Many of the petitioners are among those at risk. The Board's plea has since been joined by Ross MacDonald, the Chief Medical Officer of the Correctional Health Services, and Rachel Bernard, a geriatrician at Rikers. For whatever it might be worth, the press reports that inmates feel helpless, with some suggesting that they are facing a "death sentence." And it is critically important to remember that petitioners have been convicted of nothing. They instead face contested charges.

Under the best of circumstances, there are far better places to be than Rikers Island. And these are not the best of circumstances.

C

Before the law is applied to the facts of this case, one final point should be made. The experts agree on the best practices to avoid the Covid-19 virus -- frequent hand-washing, covering coughs and sneezes, social distancing, and so on. They also agree on this critical factor: the individuals who catch the disease face differing

consequences. It was originally thought that the young rarely were in serious danger from the disease. That conclusion is now subject to serious doubt. But the experts agree that certain pre-existing conditions are aggravators.

Age is among them. Different estimates are given -- age 50, 60, 65, 70 -- as to when the calendar presents a special threat of harm from the virus. The current CDC number is 65. The different estimates are natural enough. Unlike the law, nature and its diseases do not respect a bright line crossed on a particular birthday. But it is agreed that infected individuals of a relatively advanced age are likely to suffer more than the young.

Age is not often thought of as a disease. The other conditions classified as aggravators are. Covid-19 attacks the respiratory system. Accordingly, pre-existing respiratory inhibitors like serious asthma or chronic lung disease can complicate a patient's Covid-19 symptoms. Combating the virus is a task for the immune system, and those afflicted with HIV or another condition that weakens the immune system can be at special risk. Covid-19 puts a strain on the heart, and therefore serious heart conditions can expose an individual to extra danger. Diabetics and those afflicted with some other diseases may have issues on more than one of these fronts.

Petitioners do not argue that it violates due process to hold at Rikers a young prisoner who has no aggravating conditions. Instead, each contends that, while infection at Rikers is quite likely for all inmates, for those with aggravators the danger after Covid-19 strikes is much greater than the danger facing their fellows. Each petitioner claims to have one or more aggravating conditions. And each concludes that holding him or her at Rikers, where the prospect of Covid-19 infection is so great, must be deemed a violation of his or her rights.

D

The stage is set for consideration of how due process principles apply here. Respondents assert that they have taken "reasonable care" to mitigate the risk posed by Covid-19, and thus have satisfied the due process mandate. This court disagrees.

This judge does not at all question the good faith of the Rikers officials. Certainly no American prison is equipped to deal with a health crisis of the severity of this one. Rikers has medical facilities, but it is not a hospital -- and this epidemic is a fierce challenge even for our hospitals. A crowded prison, for example, has no ability to quarantine the large number of prisoners exposed to inmates who eventually display symptoms. Indeed, in this case that would essentially mean a quarantine of everyone at the prison, inmates and staff. There certainly are not the necessary kits to administer tests for the disease to all inmates, much less the repeated tests required to assess their condition at subsequent times. And the ability to allow adequate distance to be maintained among detainees and staff is decisively precluded by the nature of prison construction and operation -- as noted, for example, barracks-like sleeping quarters and communal dining. Even hand sanitizer, now a staple tool for preventing spread of the disease, cannot be employed: its alcohol content makes it contraband, a danger to prisoners who might drink it and to guards who, because the alcohol content is high, fear that it can be used as a weapon.

Due process does not excuse prison officials who mean well, but have no effective way to protect inmates from potentially fatal epidemics. Again, prison officials are obliged to take "reasonable care" to mitigate the risk posed by Covid-

19. That is so especially for prisoners who can fairly expect extremely serious consequences if they contract the disease. "Reasonable care" and "mitigation" obligations are not satisfied by tossing a bucket of water on a four-alarm house fire, or by placing a band-Aid on a compound bone fracture. Reasonable care to mitigate must include an effort to employ an *effective* ameliorative measure. As would be expected when the Department of Corrections' own doctors ask for release, the escalating numbers of the infected show that what Rikers has done is not remotely effective. Prisoners with dangerous conditions are dramatically at risk. For some of them, only release can offer protection.

At this point, the court has ruled that 18 petitioners are in this category. (A few other petitioners have been released on consent or on bail). All 18 are afflicted with conditions acknowledged to endanger them: heart disease, serious respiratory conditions, cancer, diabetes, uncontrolled HIV, and so forth. For some of them, the condition or conditions are more dangerous because those prisoners are relatively old. Those 18 petitioners have been ordered released.

For others, the petition has been denied. Some of the inmates are between 50 and 60 years old, and have nothing beyond that to suggest that they are in more danger than the average inmate. This judge does not believe that to be sufficient to justify release. One petitioner also has glaucoma; that ocular condition is not reported to complicate Covid-19. One has HIV, but the condition is well controlled. The petitioner's viral count is easily low enough, and the T-cell count high enough, to take the condition out of the category of an enhanced threat. One petitioner was convincingly shown by his medical history to be a malingerer, in no special danger at all.

These are not normal times. Courthouses are almost completely closed. Staffing is short -- judges, court officers, court reporters, clerks, and IT employees. The ability of Rikers Island officials to arrange internet conferences with inmates is very limited. Medical records are not available. Expert medical witnesses are, to say the least, occupied. But the claims of these petitioners, and hundreds of other inmates who believe they are in immediate danger, deserve to be treated as emergency questions for courts and other officials who can grant release. Perhaps two months from now, when the disease has abated, the courtrooms will reopen, weeks can be spent marshaling evidence, and cross-examinations can be conducted. But there is no time to wait -- the issues will be moot. The court's conclusions about inmate conditions had to be based on the records available to the parties, the lawyers' phone calls to busy experts, work on the internet, and Skype conversations held in the absence of affected petitioners.

Three final notes should be made. First, for a court to order a release of prisoners on account of a due process violation is “a matter of undoubted, grave concern.” Brown v. Plata, 563 US at 501, supra. Still, this judge does not believe that release can be denied even to those charged with violent crimes if they are at substantial risk of death or other serious physical injury. Such inmates have the same due process rights as others. They may be treated differently from others, even in a pretrial context. Some can be shackled. Some can be subjected to unusual intrusions on privacy. Some can be isolated from other inmates. Even under New York law, some charges justify assessments of dangerousness that can lead to higher bail or remand. But these prisoners cannot be punished with the unnecessary exposure to a highly communicable, and for them a potentially deadly,

disease. Thus, one of the inmates ordered released is a man who is over 60, suffers from very serious heart conditions, has a chronic obstructive pulmonary condition as well as asthma, is diabetic -- and is charged with a vicious murder.

Second, and relatedly, what has been ordered for petitioners is temporary release. No charges are being dismissed. The inmates facing criminal charges will still face those charges. The inmates on parole will remain on parole, and the relevant parole violation allegations can be pursued. Moreover, the court has agreed with restrictions on release suggested by the government. For example, for some petitioners home confinement except for visits to mental health services has been directed. The petitioners cannot legitimately complain; at least they will not be confined on Rikers Island.

Finally, the petition sought relief only on the ground that the petitioners are in special danger if they become infected. Nothing in this opinion necessarily applies to how inmates without such conditions should be treated.

ENTER:

Dated: New York, New York

April 6, 2020

Mark Dwyer, J.

EXHIBIT 9



Mayor's Office of Criminal Justice

Elizabeth Glazer, Director
One Centre Street, 10th Floor
New York, NY 10007

April 1, 2020

District Attorney Darcel Clark
District Attorney Eric Gonzalez
District Attorney Melinda Katz
District Attorney Michael McMahon
District Attorney Cyrus Vance
Special Narcotics Prosecutor Bridget Brennan

Dear District Attorneys and Special Narcotics Prosecutor:

Thank you for your letter in which you express concern over the release of people from Rikers in the face of our current public health emergency and question how we are prepared inside the jails and in our communities to address the current crisis. We are navigating completely uncharted and ever-changing waters, demanding that we move rapidly to balance public safety and public health imperatives.

Today public health imperatives have grown paramount. In a short period, we have created space inside for care of the sick and social distancing of the well. Clinical care is provided by a first class public hospital system. And we have strong processes in place for screening, supervision, and support of those released. Creating space inside is a clinical necessity to manage the spread of COVID-19 in our jails. While we are seeing the toll that this virulent virus takes wherever it is, our public health professionals have strongly advised that a congregate jail setting, no matter the level of care, makes care of the sick and well more difficult than the same in the community. We are acting out of a responsibility to follow this guidance while also putting strong measures in place to account for public safety considerations.

Over the last few weeks, you and the City have worked together, along with the courts and the defenders and other justice system decision makers, to rapidly adjust to the ever-evolving information about the effects of COVID-19. I would like to thank you for your dedication and partnership. Among other work, our daily, sometimes hourly, contact with all the decision-makers in the justice system contributed to the successful transition to a justice system that is

operating, although only for essential proceedings, almost entirely remotely and through teleconferencing.

Decisions to release

Health care for people in the City's jails is provided by Correctional Health Services, a division of Health + Hospitals, New York City's public hospital system. It has what is recognized as a world class corps of clinicians caring for those incarcerated. But, despite that level of care, we are well aware that congregate settings, particularly jails, are vulnerable to contagion.

Jurisdictions around the world have raced to release people in jails and prisons in response to the global emergency. We began in early March sharing with you the results of a jail-wide scan of every person in our custody, using filters that can indicate high public safety risk, such as very serious violent criminal charges.

As the crisis rapidly evolved, however, City public health experts scanned the entire jailed population, no matter the reason for incarceration, prioritizing those who meet public health criteria for heightened medical vulnerabilities. We sought your counsel to review those identified so that you could be in a position to better advise the courts and take swift steps to obtain releases where appropriate.

The City's authority to release is confined to the City-sentenced population which at the beginning of this work stood at approximately 10% of the Rikers population. With the COVID-19 crisis ballooning, and as we learned more about the spread of the disease, addressing the public health threat became even more prominent, guiding how the Department of Correction would exercise that discretion over the last week. The imminent risk of fatality from the disease had to be counter-weighted against public safety risks posed by release from jail of those serving relatively short city sentences.

Overall, authority to effect releases is spread among a variety of actors:

- **The courts** have the authority to release and have been doing so in response to writs filed by defenders and on consent from lists provided by each of your offices. This power applies to every category of detainee – pretrial, city sentenced and parole violators.
- **The State** has the power to release or transfer the state prisoners in City custody and to release technical parole violators.
- And **the City**, through its Commissioner of Corrections, can exercise authority when there is a compelling public interest to permit city-sentenced individuals sentenced to less than a year to serve their sentences in the community.

As a result of our work with you, the State and the courts, and the exercise of our own discretion, over 1000 people have been released, including city-sentenced individuals, pretrial detainees and state technical parole violators.

Care inside the jails and for those released

With fewer people in custody, our jails are now better able to provide space for social distancing of the well and care for the sick. This includes:

- Medical staff with the City's Correctional Health Services are screening for COVID-19 as every person enters and leaves a correctional facility, and during clinical encounters.
- DOC has opened up new units in the women's jail facility and a recently closed facility for patients who have symptoms consistent with COVID-19 and need to be separated from others and provided enhanced clinical care.
- Those believed to be exposed who are not symptomatic are placed in special housing units for monitoring and isolation.
- Those with symptoms are receiving care in a special treatment unit.
- Everybody still incarcerated with a pre-existing condition making them particularly vulnerable to COVID-19 are in units with increased separation or a housing unit with increased clinical attention.

Upon release:

- Everyone departing our jails receives a final medical screening.
- Everyone is also given information on COVID-19 and about how to care for themselves and receive treatment on the outside.
- If anyone exhibits serious COVID-19 symptoms, they are transferred to an emergency facility.
- Everyone else is asked to follow the lead of other New Yorkers: stay inside, and, if you start showing symptoms, isolate yourself.
- The City's Office of Emergency Management and Department of Homeless Services are placing those without homes in hotels.

While released, the following supervision, supports, and services are provided for the city-sentenced, parole violators and pretrial detainees:

Supports and services:

- All have access to the re-entry and discharge services offered to anyone coming home from jail from our service providers.
- This includes referrals to housing, medical and mental health supports, benefits assistance, peer navigators and transitional employment assistance.

Supervision:

- Some people serving city-sentences are completing their sentences at home and are monitored through daily phone check-ins by our nationally recognized Supervised Release program. Because they are still under the custody of the Department of

Corrections even while finishing their sentence at home, they can be required to return to custody at any time.

- Parole violators are released by the State and supervised by State parole authorities according to State protocols.
- Pre-trial detainees who had been in on bail are having their conditions changed by courts either to release on their own recognizance or, in some instances, into our Supervised Release program with regular phone check-ins.

Who remains

Today we have a jail population of approximately 4500 people. Of those, 77% are pretrial detainees and the decision to release is in the hands of the courts; 12% are technical parole violators and 2% are state prisoners, with the decision to release or transfer in the hands of the State. Approximately 4% are city sentenced, and we anticipate safely housing them for the duration of their sentences. 5% are held on other warrants or court holds; their release is in the hands of the courts.

Thank you again for your partnership in this difficult time.

Sincerely,

Elizabeth Glazer

cc: Mayor Bill DeBlasio
Commissioner Cynthia Brann

EXHIBIT 10

FROM: CHIEF'S ORDER
TO :
SUBJ:

MSG#: 2020-002299
SENT: 04/03/20 1551 HRS

TELETYPE ORDER NO. HQ -01008-0

DATE APRIL 03, 2020

TO COMMANDING OFFICERS, FACILITIES AND DIVISIONS

FROM CYNTHIA BRANN, COMMISSIONER
HAZEL JENNINGS, CHIEF OF DEPARTMENT

SUBJECT DISTRIBUTION OF MASKS

1. IN RESPONSE TO RECOMMENDATIONS MADE BY THE PRESIDENT AND MAYOR THAT EVERYONE UTILIZE A FACE COVERING AT ALL TIMES WHEN IN THE VICINITY OF OTHERS, DOC SHALL ISSUE MASKS TO ALL STAFF AS WELL AS TO ALL PERSONS IN CUSTODY.

2. IT IS IMPORTANT TO REMEMBER THAT PEOPLE WHO DO NOT SHOW ANY SYMPTOMS MAY STILL SPREAD COVID-19. THE WEARING OF A FACEMASK CAN HELP STOP THE SPREAD AND FLATTEN THE CURVE.

3. THE DEPARTMENT HAS IMPLEMENTED THE FOLLOWING PROCEDURES:

- ALL STAFF REGARDLESS OF POST SHALL BE REQUIRED TO WEAR A FACE MASK;
- ALL STAFF SHALL BE IN POSSESSION OF LATEX GLOVES;
- ALL PERSONS IN CUSTODY WHILE LOCKED OUT IN A CONGREGANT SETTING SHALL BE REQUIRED TO WEAR A MASK.

4. FURTHERMORE, THE DEPARTMENT SHALL ENSURE:

- THERE WILL BE NO UNNECESSARY ASSEMBLY OF STAFF;
- ROLL-CALL ASSEMBLY SHALL IMPLEMENT THE PRACTICE OF SOCIAL DISTANCING OF 6 FEET BETWEEN STAFF.

5. TO THIS END, EACH COMMAND HAS BEEN ISSUED SUPPLIES OF MASKS BASED UPON THE NUMBER OF ASSIGNED STAFF AND PERSONS IN CUSTODY. EACH FACILITY HAS A PROTOCOL IN PLACE FOR THE ASSIGNMENT AND DISTRIBUTION OF THIS EQUIPMENT.

6. THE SITUATION WE ARE CURRENTLY FACING IS UNPRECEDENTED. OUR CORE MISSION HAS BEEN AND WILL ALWAYS BE THE SAFETY OF OUR STAFF AND PERSONS IN CUSTODY. WE WILL GET THROUGH THIS AS A TEAM AND OUR GOAL IS FOR ALL MEMBERS OF SERVICE TO STAY HEALTHY AND CONTINUE TO PROVIDE OUR CRUCIAL SERVICES TO THIS CITY.

7. ALWAYS REMEMBER THAT OUR CARE STAFF ARE HERE FOR YOU. IF THE SYMPTOMS OF STRESS BECOME OVERWHELMING, STAFF MAY CONNECT WITH COUNSELORS AT NYC WELL, A FREE AND CONFIDENTIAL MENTAL HEALTH SUPPORT SERVICE. NYC WELL STAFF ARE AVAILABLE 24 HOURS A DAY, SEVEN DAYS A WEEK, AND CAN PROVIDE BRIEF COUNSELING AND REFERRALS TO CARE. FOR SUPPORT, CALL 888-NYC-WELL (888-692-9355), TEXT "WELL" TO 65173 OR CHAT ONLINE AT NYC.GOV/NYCWELL.

8. COMMANDING OFFICERS AND DIVISION HEADS OF ALL FACILITIES SHALL ENSURE THIS TELETYPE IS READ AT TWENTY-ONE (21) ROLL-CALLS, AND THAT ALL EMPLOYEES, BOTH UNIFORMED AND NON-UNIFORMED ARE APPRISED OF THE CONTENTS OF THIS TELETYPE.

AUTHORITY:
OFFICE OF THE COMMISSIONER
OFFICE OF THE CHIEF OF DEPARTMENT
CB/HJ/CR

EXHIBIT 11

**No. 7. Venus Williams (59) Bail status: \$7,500 cash/bond/credit
Top charge: Attempted Assault in the First degree (PL 110/120.10(1))**

On November 9, 2019, at approximately 6:20 pm., the victim and an eyewitness were at the victim's apartment trying to set up the internet. The defendant and the victim, who were dating, had an argument earlier that day over a picture defendant saw on the victim's phone. That evening in the apartment, the defendant walked out of bathroom, to where the victim and the witness were sitting, with a knife and then slashed victim's face. The victim was able to knock the knife out of defendant's hand. Defendant went into the kitchen to get another knife and slashed the victim in the back of the neck. The victim suffered scarring to face and neck.

When arrested, the defendant stated in substance: this? "Bitch, don't touch me. Get off me. I have asthma."

Defendant is a predicate felon from a 2015 grand larceny conviction. She has four felony convictions in all along with 58 misdemeanor convictions. . The defendant has failed to appear as required in court at least (18) times and has a prior parole revocation.

**No. 9. Freddie Johnson (61) Bail Status: \$50k/\$150K bond/\$450K partially secured
Top Charge Persistent Sexual Abuse PL 130.53**

Defendant is a recidivist subway sexual abuser who was released from custody the month before this incident. On December 11, 2019, while on the 4/5 subway, the defendant approached the victim from behind and repeatedly pressed his groin against her buttocks. The victim turned, looked at the defendant and stepped away. Undeterred, the defendant again stepped to the victim, again positioned himself behind her and again pressed his groin against her buttocks. The defendant also brushed his hand against the victim's buttocks. When the victim moved and sat in an open seat, the defendant stood over her staring at her. He was arrested at the 59th Street Station.

Defendant is a mandatory persistent violent felony offender and a Level 3 sex offender who is on lifetime parole. His most recent conviction was in 2009 for persistent sexual abuse; he served 10 years on that conviction and was released to parole on November 6, 2019. He also has 48 misdemeanor convictions, 25 of which are for Sexual Abuse in the Third Degree. He has a parole revocation.

**No. 10. Tony Roman (74) Bail Status \$30K Bond/\$1k cash and a Parole Hold
Top Charge: 2 incidents: Attempted Robbery in the First Degree PL 110/160.15(3) and Robbery in the Third Degree PL 160.05**

On February 28, 2019 @ 11:00 pm victim enters vestibule when defendant steps up to her as she getting her key. Defendant repeatedly demands her money and states he has a gun. When victim turns toward defendant she sees he has a knife pointed at her stomach. Defendant goes through victim's wallet and takes her cash and leaves.

On March 3, 2019 @ 3:45 pm at Bellevue Men's Shelter, victim sleeping on a cot when he feels someone going through his pockets. He sees defendant over him and defendant demands victim's money. As the victim tries to get up, defendant pushes him down onto the bed and swings at victim, who blocks the punch. Defendant grabs victim's phone from pants pocket, ripping the pocket in the process. Victim follows defendant into hall and security is able to retrieve phone from the defendant.

Defendant is a mandatory persistent violent felony offender. He is a parole absconder and has violated lifetime parole multiple times. Defendant has three (3) violent felony convictions and an additional four (4) felony convictions. Defendant has a repeated pattern that shortly after being paroled he commits serious violent felonies. That pattern has continued throughout the past forty years of criminal conduct culminating with his release to parole in on February 11, 2019, after serving nearly five years on a Robbery in the First Degree conviction from 2013. Defendant committed the above described knife point robbery approximately 2 weeks after his release from state prison.

No. 11. James King (46) \$150K/\$150k
Top Charge: Assault in the First Degree PL 120.10

The victim, a visiting tourist, was standing on the corner with a friend when the defendant, without any provocation, comes up from behind the victim and slashes the victim, with a downward motion, on the right side of his face and walks away. The victim suffers a 6-inch laceration down the right side of his face, which requires 28 sutures to repair. The witness follows the defendant, calling 911 and providing a description. The defendant is stopped by police a few blocks away and identified in a show up. Upon arrest defendant refused to be printed and refused to give his name. Defendant complained of stomach pains, was taken to the hospital and ended up taking off his pre-existing colostomy bag and throwing it at the nurses' station. During the arrest process he attempted to bite one of the officers and repeatedly threw his colostomy bag in an effort to thwart being processed through arraignments.

The defendant is a second violent felony offender, including an Attempted Robbery in the Second Degree from 2012. He has four (4) felony and ten (10) misdemeanor convictions. Defendant is a parole absconder and has warranted at least four (4) time on his prior cases.

No. 13. Thomas Hammond (60) Bail status \$5k/\$5k
Top Charge: Assault in the second Degree PL 120.05 (2)

The defendant and the victim both live on different floors at Veteran's Residence. When the victim noticed that the defendant left his shopping cart in front of the victim's door and had it removed by an employee. Once the defendant noticed his cart was missing, he confronted victim and they had a verbal argument. As the argument escalated, the defendant stepped back, took a yellow wet floor sign from the hallway, raised it with both hands and hit the victim on the right side of the head. A scuffle ensued but the victim had to go down on his knees because

he was bleeding heavily from above his right eye. While victim was on his knees, the defendant kicked him a several times then walked out of the building. Building security called 911 and described the defendant to responding officers who found the defendant walking two blocks away. Victim was taken to St. Luke's hospital where he received at approximately 10 sutures to close the laceration above his right eye.

The defendant is a second felony offender. He has two felony convictions, 24 misdemeanors, six (6) warrants. He also has a parole revocation. In 2018 he pleaded guilty to Assault in the Third degree after hitting a different resident at the Veteran's Residence with a broomstick. In 2014, he pleaded guilty to Criminal sale of a Controlled Substance in the Fourth Degree after he sold methadone to a UC and was sentenced to 6 months' jail/5-year probation split. In 1996 he pleaded guilty to Attempted Burglary in the Second degree in Kings County and was sentenced to 1.5-3 years. Among his remaining misdemeanors, he has another Assault in the Third Degree from 2002, where he smashed a light bulb over an another homeless person's head, and nine (9) Petit Larcenies (almost all for breaking into vehicles and stealing the property inside).

**No. 14. Gregory Jason (60) Bail Status \$25k /\$25k
Top Charge Attempted Robbery in the Second Degree PL 110/160.10**

On October 26, 2019 @ 9:30 am, the defendant followed the victim into ATM vestibule. Once the victim put her card in and punched in the desired transaction, defendant came up behind her and stated GIVE ME \$500 OR I'LL KILL YOU. The victim turns around and D is so close that he's bumping against the victim. Defendant simulates a gun in his pocket. And repeats his demand of GIVE ME \$500 OR I'LL KILL YOU. The victim began to scream and two witnesses hear the victim screaming. One of them pokes his head into the vestibule and asks if everything is ok and sees that defendant has the victim. He observes that D has CW "pinned" against the ATM. The victim tells the witness that defendant is trying to kill her and defendant flees the vestibule. The two witnesses chase defendant down the street and hold him. Defendant punches the witness who caught him and threatens that witness, saying I'LL SHOOT YOU, I KNOW WHERE YOU WORK.

As to defendant's statements: When officers arrive, defendant said in substance: I DIDN'T TOUCH THAT LADY. I ASKED HER TO BUY ME A CUP OF COFFEE. SHE SAID GET THE FUCK OUT OF HERE. I SAID, BITCH, YOU'RE GONNA GET ME A FUCKING COFFEE. SHE STARTS SCREAMING AND YELLING. As to the good Samaritan, defendant stated in substance: WHENEVER I GET OUT OF JAIL, HE'S DONE. HE'D BETTER FUCKING HIDE. And during transport, defendant claimed: I'LL PUT A BULLET IN HIS HEAD AND THEN IN MINE. IT'LL RESOLVE EVERYTHING.

The defendant has four (4) misdemeanor convictions, which include CPCS 7 from 2018 and 2007, a disorderly conduct in satisfaction of Criminal Mischief 4 from 2006, Attempted CPCS 7 from 1997 in satisfaction of the completed crime as well as Resisting

Arrest. The defendant has a North Carolina record from 1998, where he was charged as a Fugitive. He has two (2) prior failures to appear.

No. 15. Willie Vasquez (50) Bail Status; \$150k/\$150k

Top Charge: Criminal Possession of a Weapon in the Second Degree PL 265.03(3)

On August 14, 2019 @ 4:49 pm, defendant was in front passenger seat of a 2007 Red Chrysler Town & Country van which the police pull car over after female driver cut off another car. Defendant and the driver were both unable to produce ID or car paperwork. After female driver steps out of car; defendant jumps into drivers' seat & begins fleeing at high rate of speed. As the police pursue, defendant throws a gun out driver's side window, which is recovered. The gun is loaded with 6 rounds. The defendant continues to flee and strikes another vehicle. Defendant then jumps a sidewalk and strikes a wall near the ConEd Building. He is stopped by an ICE Agent and others. The police recover a second firearm on the street that was in the path of the chase. People are waiting for DNA analysis for further information regarding this second gun. After his arrest defendant repeatedly gives his name as "Noel Santos" and a fake date of birth.

Defendant is a second violent felony offender for two different robbery cases from 2001 – one from Kings County and another from Nassau County. Defendant served concurrent 10 year sentences for these cases, which involved firearms. Defendant has twice had his parole revoked and has failed to appear 7 times. Defendant also has out of state criminal conducts, including a gun-related attempted murder arrest from Hagerstown in the 1990s.

No. 16. David Russel (55) Bail Status: \$1250/\$5k/\$5K

Top Charge: Robbery First Degree 160.15(3)

On February 21, 2020 @ 6:30 am, the defendant entered the Le Bon Cafe in Penn Station, went to the back of the store and took a Twisted Tea from the displays. Two employees see this and inform the manager on duty at the time, who approached the defendant and takes the Twisted Tea from inside the front of his jacket. The defendant pulls a knife out of his right pocket and moves toward the manager, who had to grab the defendant's wrist to stop him. Defendant then fled as employees flagged down MTA Police. The police stopped the defendant and recovered the knife from his pocket. Defendant testified before the grand jury and was nevertheless indicted on the top count.

The defendant is a (mandatory) persistent violent felony offender. The defendant has eight (8) prior felony convictions, four of which were violent, (24) misdemeanor convictions (predominately theft related offenses), and has had his parole revoked six times.

No. 17 Edward Monks (55) Bail status: \$50k/\$25k

Top charge: Burglary in the Third degree PL 140.20/ Sexually Motivated Felony PL 130.91 (1)

On June 11, 2019 @ 10:16 am the victim was on her way into work and as she leaving the subway station the defendant follows her to her office building nearby and catches the door behind the victim. Defendant follows the victim into the building and up the stairs when he reaches up under the victim's skirt, squeezes her buttocks and tugs her skirt. The victim turns around and yells; defendant then runs down the stairs and leaves the building. Co-worker calls 911 and on July 30, 2019 the victim identifies the defendant in a photo array. Video footage shows the defendant following the victim out of subway station, following her on the street and into her office building. The defendant identifies himself in video stills.

The defendant has (14) misdemeanor convictions in New York. As well as four (4) failures to appear. His out of state record includes a manslaughter conviction relating to a DWI hit and run in 1984, where he served 15 years. Since then he has had a number of assault related convictions, many appearing to be domestic violence related -including several New York Assault 3 convictions and a criminal contempt conviction from 2009. In January 2018, defendant was convicted of public lewdness after exposing his penis outside the door of a Pre-K school to one of the children's mothers.

No. 20. John Blanding (56) Bail status \$3k/\$6k

Top Charge Assault in the Second Degree PL 120.05 (12) Elder Abuse

On December 28, 2019 @ 10:20 pm. the defendant attacked victim, a 70-year-old woman, outside of the turnstile at the 4th street subway station. The defendant punched the victim several times in the face, resulting bleeding and swelling to her left eye. The victim was taken to the hospital for an eye injury. Multiple eyewitnesses reported the assault and when police arrived, the defendant was still standing over the victim.

Defendant is a predicate felon, and may be a mandatory persistent felon with tolling; he has seven (7) prior felony convictions, two of which are for violent felonies. Defendant has had his parole revoked 4 times, and is currently on parole after only being released from prison in March 2019. He also has failed to appear on a prior case and has eight (8) misdemeanor convictions.

No. 22. Alan Bell (32) Bail Status: REMAND

Top Charge: Attempted Murder in the Second Degree PL 110/125.25

On June 30, 2019 at 4:20 am, the defendant and his co-defendant, shot the victim through her kitchen window, striking her in the elbow. The shooting was captured on video and two shell casings were recovered. The victim and the defendant are known to one another and earlier the defendant was in a fist fight with the victim's boyfriend. After the shooting,

defendant and co-defendant fled to Pennsylvania and were arrested there on July 31, 2019 and extradited back to New York on August 16, 2019.

The defendant is a second violent felony offender. He is a violent predicate for an Assault in the Second degree conviction from 2017, which stems from an overturned Attempted Murder in the Second Degree conviction, which was reversed on hearsay grounds. In that case police responded to a 911 call for shots fired and upon arrival found two dead bodies inside of an apartment, each suffered point blank range gunshot wounds to the head, and a third person, also shot in the head, survived but has paralysis. The apartment was a stash house and the defendant was there for a narcotics transaction. At the time of this shooting defendant had two open matters in New York County, an unindicted robbery and a misdemeanor assault which have since been dismissed. However, while they were pending the defendant amasses four (4) bench warrants. Defendant has made multiple bail applications, including as recently as March 19, 2020, when he raised claims, as he does here, centered on COVID-19. Judge Carro denied the application. And continued defendant's remand status.

**No. 31. Christopher Greene (58) Bail Status REMAND
Top Charge Burglary in the second Degree Pl 140.25 (2); Three (3) incidents in one month.**

On June 25, 2019 @12:05 am defendant entered a residential building, took a package from the vicinity of the mailboxes, and disappeared around a corner. He re-emerged with what appears to be 2 shoeboxes, put the outer package back, and left. Victim reported 2 pairs of shoes he had ordered were missing, superintendent confirmed D is not a resident.

On July 2, 2019 @8:33 pm defendant entered residential building by forcing the door with a device. He took a number of packages around a corner, took contents of the packages, and left. • Superintendent provided video, confirmed defendant is not building resident.

On July 24, 2019 @ 6:20 am defendant entered lobby with a device that looks the same as the one previously used and took the contents of several packages and left. A civilian witness recognized defendant from wanted flyers and called 911. Patrol unit responds and witness went on a canvass with them, defendant stopped in front of 504 E. 81st St., pushing a cart containing packages addressed to various people at various addresses.

The defendant is a mandatory persistent violent felony offender. He is a violent predicate including for two attempted Burglary in the Second degree convictions. r 2 X Att. Burg 2 convictions (1993 and 2010). In sum, he has seven (7) felony convictions and 14 misdemeanor convictions. He also has a Y.O. Adjudication (1980) for Criminally Negligent Homicide. His parole has been revoked three (3) times and he has failed to appear six (6) times.

No. 34. Lisa Davis (57) Bail Status: \$2,500/\$2,500

Top charge Burglary in the Third degree PL 140.20(1): Two Indictments

Ind. No. 1339/2019 Defendant enters store and steals cosmetics from the shelves and places them inside her bag. Apprehended outside the store and 111 (@ \$1,100 value) store items recovered from her bag.

Ind. No 572/2020 Defendant observed sitting outside victim's apartment when the mother leaves to do laundry. The father hears front door open and finds defendant in the bedroom rummaging through his belongings; she is wearing the father's hat and holding his bag on her arm. Father confronts the defendant, who claims to be the police. Father and son hold defendant until police arrive.

Defendant has five (5) felony and (58) misdemeanor convictions (predominately theft related) and (29) failures to appear, (10) of which have occurred since 2018. Her parole has been revoked (3) times.

No. 36. Hector Castro Diaz (60) Bail status: \$100k/\$300k/\$300k

Top charge: Robbery in the Second Degree PL 160.10(1)

On January 10, 2020 @ 11:40 pm, defendant and his co-defendant Lugo entered the Duane Reade location, walked towards the beverage section, and grabbed two cases of beer. Employee observed defendants, as both are known to the store for stealing property, and observed both defendants bypass store registers and attempt to leave without paying. Employee went to confront both defendants, and defendant Castro Diaz pulled out a sharp object appearing to be a knife and pointed at the employee, telling him to "back the fuck off," both defendants left the store. Employee follows both defendants while calling the police until police arrived and met them. Defendant Castro Diaz was found with scissors, and defendant Lugo was standing next to cases of beer.

Defendant has six (6) misdemeanor convictions for petit larceny, several of which are from the past year, and has failed to appear on two separate cycles. D Castro Diaz also a New Jersey record.

No. 38. Gian Verdelli (68) Bail Status: \$100k

Top charge: Persistent Sexual Abuse PL 130.53

On June 26, 2019, @ 8:45 am, the victim a Manhattan bound train on her way to her daughter's graduation. She was wearing a knee-length dress for the occasion. After boarding and the train moved from the station, she felt a bump from behind against her vagina. At first, she dismissed the bump because the train was crowded. However, she felt the sensation against her vagina continue and she began to feel that the object that was touching her vagina was warm, so she turned her head to see who was behind her. The defendant was behind her, and she said to him, "What the hell are you doing." The defendant took a step back, moved a

duffle bag that was in his right hand in front of his crotch area, cowered away from the complainant, and stated in substance, "It's too crowded on the train." The complainant was helped by another passenger, and the complainant then began taking photographs of the defendant. When the train pulled into the 1st Avenue station, the complainant continued taking photographs of the defendant, and she and the other passenger reported the incident to the station manager, who called the police. The defendant left the station before police arrived. He was later arrested.

The defendant is a second violent felony offender. Defendant has 60 misdemeanors and 2 prior felony convictions. The defendant was last convicted of Persistent Sexual Abuse in 2017, and he was only released on that case on May 1, 2019 (Ind. 3246/2017). In that case, the defendant committed a forcible touching on the B train to Broadway & Lafayette, and he tried to flee but was held by the passengers until police arrived. The defendant received a sentence of 2 years' incarceration and 5 years' post-release supervision on that case. On October 12, 2010, the defendant committed a forcible touching on the 4 train by rubbing and poking a complainant's buttocks with his hands. The defendant was convicted at trial and sentenced to 200 days' incarceration. Additionally, on August 11, 2010, the defendant committed another forcible touching incident in which he rubbed his erect penis on the complainant's buttocks. The defendant pled guilty and served a sentence of 30 days' incarceration. The defendant also has a 2011 conviction for a SOMU violation. The defendant also has numerous misdemeanor convictions for farebeat and trespassing in the subway and 12 failures to appear.

**No. 40. Terhan Bey (55) Bail status: \$15k/\$15k/\$5k cash
Top Charge: Robbery in the First Degree Pl 160.15 (3)**

On February 10, 2020 @ 2:25 am, the defendant went into the Duane Reade and began taking items off the shelf and concealing them in his bag. A store security guard confronted the defendant in the aisle and the defendant took out a screwdriver and threatened to stab her. A store manager also observed and heard this. The defendant continues to take items from the shelves and put them in his bag and exits the store without paying. The store employees call 911 and officers apprehend the defendant around the corner with the stolen merchandise in his bag and a screwdriver in his pocket.

Defendant testified in the grand jury and admitted stealing and possessing the screwdriver but denied displaying the screw driver in the store and denied threatening the employees with it.

The defendant is a second felony offender. He is a predicate from a 2015 Criminal Sale of controlled Substance in the Third Degree. He has an extensive criminal history that includes (107) convictions, (104) misdemeanors and three (3) felonies, and (15) failures to appear. He also has two (2) parole revocations.

No. 42. Daniel Figueroa (60) Bail Status: \$200k/\$200k

Top Charge: Burglary in the First Degree PL 140.25(2) and Sexually Motivated Felony PL 130.91

On October 8, 2019 @ 8:55 pm, the victim was home in the kitchen and dining room of her apartment. She heard a noise upstairs that sounded like a window opening. She ran out of her apartment in fear and went to her neighbor's apartment directly below her. While in her neighbor's apartment, the victim heard footsteps in her apartment above. She called 911 and the police arrived a few minutes later. When police arrived, they went into victim's apartment and where they found the defendant, who was dressed in all black, with a black ski mask and black hat on. He was holding a black, drawstring backpack and had a black bag around his waist. Police recovered a folding knife from the defendant's waistband, two crowbars from his jacket pockets, and cash from his pants pocket. Inside the drawstring backpack they found the victim's jewelry box containing various jewelry, her antique knife, and her reading light. They also found another crowbar, electrical tape, binoculars, lock grease, and approximately four condoms in the backpack. From the bag that was around defendant's waist, police recovered another mask, gloves, sexual lubricant, and approximately four additional condoms. Defendant also had lock picks in his wallet. In total, they recovered eight condoms of all different brands. The items recovered had been in the victim's bedroom. Police observed that the screen had been cut on one of the windows in the upstairs sun room. They saw a footprint in the mud on the ledge outside that window. They also saw what seemed to be a partial footprint on the inside of the window sill of that window. The top pane of the window was open a few inches.

The defendant is a mandatory persistent violent felony offender (with tolling). He has a Burglary in the Second Degree conviction from 1998 for which he was sentenced to 16 to life and was released in 2017. He has another burglary conviction from 1989 for which he was sentenced to 6 to life. He is still on parole for both of those cases. Defendant also has a 1985 attempted burglary in the second degree for which he was sentenced to 3-6 years; a 1981 Attempted burglary for which he was sentenced to 2.5-5 years, and a 1979 burglary for which he was sentenced to 3 years. He has had four (4) parole revocations and several misdemeanor larceny and trespass convictions from the 1970s.

No. 44. David Willis (24) Bail Status: \$5k/\$2k/\$3k

Top Charge: Criminal Possession in the Second Degree PL 265.02(1)

On February 1, 2020 @ 2:20 am, the defendant pulls out a knife on a group of men on the train, stating in substances "I am going to kill you." The group and the victim moved away from the defendant. As the victim tried to leave the train and next stop, the defendant blocks the door, pulls out a knife, points it at the victim and again threatens "I am going to kill you." The victim grabbed defendant's hand and they end up on the ground. The victim takes the knife away and the defendant punches the victim in the face, twice, causing a bloody nose. The victim flags down the police.

Defendant has a prior conviction for Assault in the Third Degree. At the time of this arrest, defendant had four (4) open cases in New York county, including two (2) menacing charges and an open indicted hate crime. Those cases remain open.

No. 45. Stephan Eans (30)

RELEASED April 4, 2020

No. 46. Providence Hernandez (57) Bail Status: \$50k/\$50k

Top charge: Robbery in the First degree PL 160.15 (3)

On October 26, 2019 @ 8:05 pm, defendant entered Duane Reade and was approached by a store manager who intended to assist the defendant. When the manager approached the defendant, the defendant stated in substance: "Stop following me. If you keep following me, I will make your day bad. I will cut your face." The manager backed away to go and call police, but the defendant followed him to another area of the store. The defendant approached two store employees and began waving a knife towards them, stating in substance: "Do not follow me. If anybody here follows me, I will hurt them." The defendant then cut a store display near the cashier using the knife. The manager called 911. Police responded and approached the defendant who was inside of one of the tool aisle. The officers observed the defendant zipping up a duffle bag filled with items. The defendant also had the knife in his hand. He was arrested and various items were recovered from the duffle bag, including gloves, an extension cord, a tool set, a nail clipper set, and other items values at approximately \$140.

The defendant is a second violent felony offender. He has four (4) felony convictions, (24) misdemeanor convictions, (1) probation revocation, (4) parole revocations, and (3) failures to return to court. The defendant's last felony conviction is from 2009 for attempted robbery in the second degree where D served 3 years. He has also been convicted of felony possession of prison contraband, grand larceny, and possession of stolen property.

No. 48. Eric Richardson (52) Bail Status \$5k/\$15k

Top charge Attempted Robbery in the First Degree PL 110/160.15(3)

On July 19, 2019 @6:45 am, the defendant is panhandling at the Shell gas station at 117 Morningside. The defendant approaches the victim, a taxi driver, with a metal pipe in his hand and demands money. The victim refuses and defendant tries to strike CW with the metal pipe. The victim is able to grab the pipe out of D's hand and throws it. Defendant then punches the victim in the face. The victim leaves, changes his clothes and returns to get into his car, the defendant again approaches the victim and strikes him in the head with the metal pipe. The victim tries to cover his head, and the defendant strikes the CW in the elbow with the metal pipe.

He has four (4) felony convictions and (23) misdemeanor convictions. His felony convictions are for Attempted Criminal Possession of a Controlled Substance in the Fifth degree, Robbery in the Second Degree, Criminal Sale of a Controlled Substances in the Fifth degree, and Attempted Criminal Sale of a Controlled Substance in the Fifth Degree. His

misdemeanor convictions are mostly theft and drug related. He has (8) failures to appear and a 2017 resisting arrest, that was reduced from felony assault of a police officer.

No. 49. Leslie Farfan (35) Bail Status: \$5k/\$10k/\$15k
Top Charge: Criminal Contempt in the First Degree PL 215.51

Multiple incidents: Victim has an order of protection against the defendant from Kings County that was issued on March 14, 2011 and remains in effect until March 13, 2023. In the underlying case, the defendant assaulted the victim while she was pregnant with defendant's daughter. In the New York case, defendant violated the order of protection at least four (4) times, one time punching the victim in the face. Defendant was ultimately arrested in Queens County.

Defendant is a discretionary persistent felony offender. He has four (4) prior felony convictions, one of which is a violent felony of Attempted Robbery in the Second Degree. The other three (3) felony convictions are for Criminal Contempt and Aggravated Criminal Contempt. He also has four (4) misdemeanor convictions; (2) failures to appear and (1) parole revocation.

No. 50. Hollies Hosear (57) Bail Status: \$25k/\$15k
Top Charge: Persistent Sexual Abuse PL 130.53

On May 30, 2019 @ 8:10 pm, the victim, an employee at the shelter where the defendant lives, was helping another client with his laundry. The victim felt two swipes on her buttocks followed by a third swipe, this time with more pressure, and turned to see defendant withdrawing his hand from her buttocks. The victim asked, "What are you doing? That's inappropriate." Defendant responded, "I don't care, I like you." The victim immediately reported to DHS and D was arrested.

The defendant is a discretionary persistent felony offender and a violent predicate felon. He is also a registered sex offender. Defendant was convicted on February 3, 1992 of Attempted Rape in the First Degree and Burglary in the Second Degree and was sentenced to 4.5 to 12 years. Defendant was convicted in November 2011 of Attempted Sex Abuse in the First Degree and sentenced to 2-4 years; and he was convicted in 1988 of Sex Abuse in the Third Degree. He has (3) failures to appear and (2) parole revocations.

No. 53. Eleuterio Carmona (62) Bail Status: \$750k
Top Charge Criminal Possession Weapon in the Second Degree PL 265.03(3)

On November 15, 2017 @ 6:40 pm, the defendant and the victim are arguing because she has been trying to end their relationship, and he is refusing to understand they need to leave. During the course of their argument, the victim said she was going to call the police if defendant did not leave, and defendant then threatened that he would get her if she called the police. Victim walks toward the kitchen with her phone to call the police. The defendant

reaches down and takes a black bag from one of the drawers. Victim asks defendant what it is, and he says it is a "pistol" and not to worry, he got it from someone to give to someone else. (Victim originally told police that defendant took the pistol out of the bag and put it in his waistband, continuing to threaten her.) Defendant goes into the bedroom while victim calls 911. Defendant leaves the apartment. Police arrive, speak to the victim and asks where defendant keeps his things; victim gives permission to search the dresser. A black bag with the gun inside and loose ammunition were recovered. Defendant is stopped just before midnight by officers on the lookout for the vehicle he is driving.

The defendant is a mandatory persistent violent felony offender. He has a 1980 Assault in the second Degree conviction in the Bronx and a manslaughter conviction from May 1982, for which he was sentenced to 12.5 to 25 years, in 1983. he was incarcerated on that homicide until 1999, when he was released to parole. One month and one day later, he was arrested for a drug felony, and was incarcerated until 2007. In 2008 he was sentenced to a year on a misdemeanor in, and then convicted of another drug felony in 2010 in the Bronx, for which he was incarcerated until 2012. Since then defendant a petit larceny conviction and a domestic violence violation for threatening the victim as in this case with a knife. His parole has been revoked twice.

No. 59 Steven Sanders (51) Bail Status: \$20k/\$100k/\$100k
Top charge Robbery in the First Degree PL 160.15

On March 11, 2020 @ 3:50 am, the defendant enters a Duane Reade store, removed multiple bags from display shelves and concealed in a bag he was carrying. A store employee approached the defendant who displayed a razor blade and threatened to "cut" the employee. Employee called 911, police responded stopped the defendant, who was identified in a show up. Razor blade and property recovered.

Defendant has six (6) felony convictions, including for Attempted Assault in the Second degree (2016), Assault in the Second Degree (1998) and Attempted Robbery in the Second Degree (1990). In addition, defendant has (18) misdemeanor convictions, including for Assault in the Third Degree and Criminal Contempt in the Second Degree relating to the same victim. He has failed to appear (7) times and had his parole revoked (4) times.

No. 60. Elieser Flores (50) Bail Status: \$5k/\$8k/\$8k
Top Charge: Assault in the Second Degree PL 120.05(3)

On February 3, 2020 @ 10:30 pm., defendant assaults two hospital employees trying to do their work. Victim 1, an EMT was processing paperwork and victim 2, another hospital staff worker was present, when he sees defendant with pants down and tells him to pull them up because kids in the area. Defendant punches victim 2 in the face, and when victim 1, the EMT, tries to deescalate the defendant, defendant strikes him twice in the face. Lacerations and swelling.

Defendant has five (5) felony and (14) misdemeanor convictions. He also has (4) failures to appear and his parole has been revoked (3) times.

No. 61. William Goggins (62) Bail status: \$200k/\$200k

Top Charge: Attempted Murder in the Second Degree PL 110/125.25(1)

On May 18, 2019 @9:50 am, the victim was in a verbal and physical altercation with a woman inside of park. The fight is broken up and victim walks back to her building which is nearby. Eyewitness observes the woman with whom victim had been fighting, get into the back of a green SUV. Video depicts the green SUV back up to the front of victim's building where victim is standing. Video footage depicts the driver of the green SUV extend a hand outside of car and shoot three times towards victim, who is shot in the back and collapses to the ground. The car drives off, 911 is called, and the police arrive. Victim is taken to Harlem Hospital. Police get the license plate of the green SUV, and on May 22, 2019, located the vehicle in the Bronx. The SUV was towed to 32nd pct., and the owner of vehicle goes to 52nd precinct to report vehicle stolen. Owner of vehicle informs POs that defendant was driving the vehicle on May 18, 2019, and the defendant admitted to owner that he shot someone on 140th Street. Defendant also admitted to his boss that he shot someone. Defendant turned himself and admitted to driving the car and said he was defending his girl.

Defendant has four (4) misdemeanor convictions, including fro criminal Possession of a Weapon in the Fourth Degree, DWI and Criminal Possession of Stolen Property in the Third Degree, and has multiple warrants in his criminal history.

No. 62. Willie Florence (64) Bail Status \$35k/\$17.5k

Top Charge: Attempted Assault in the First Degree PL 110/120.10

On June 2, 2019 @9:30 am, the victim, who had been drinking, shoved the defendant in the back during a dispute. Victim raised his fists and defendant pulls out a box cutter and slashes the victim. The victim, unarmed, approached the defendant, who slashes the victim's arm, deeply. They continue to square off with defendant slashing at the victim. The victim's wife tries to restrain him, but he reengages the defendant who slashes the victim again. Incident captures on video. Victim taken to hospital, and received 30 stiches/staples.

Defendant is a discretionary persistent felony offender. He has been convicted of Attempted Assault in the Second Degree, Intimidation of a Victim or Witness; Grand Larceny in the Fourth Degree; and Attempted Robbery in the Second Degree. He has multiple violent misdemeanor convictions including Assault in the Third Degree; criminal Possession in the Fourth Degree and Menacing in the Second Degree in 2012 and 2003.

No. 65. Rigoberto Reyes (58) Bail Status: \$5k
Top Charge Assault in the Second Degree PL 120.05(3)

On June 8, 2019 @ 11:15 am, the victim was working as a cashier in a deli where defendant used to frequently purchase alcohol. Defendant walked in carrying a machete, lifted it up over his head and struck the victim in a downward motion. The victim sustained a large bump and laceration to his shoulder, which required four stitches to close. Defendant walked out of the deli, dropped the machete on the sidewalk gate directly outside and left. Detectives reviewed video footage and traced the defendant to a location they were able to establish the defendant had likely lived at or worked at before; defendant was found in the basement of that building.

Defendant has multiple NYSID numbers but no known criminal record.

No. 66. William Saunders: Bail status: \$2,500/\$10k/\$10k
Top Charge: criminal Contempt PL 215.51 (b)(4)

The defendant makes (8) calls between December 14, 2019, and December 18, 2019, to the complaining witness in violation of a valid order of protection. The defendant had pled guilty to Criminal Contempt in the Second Degree as a family offense on December 12, 2019. The defendant has a significant criminal history involving this same complaining witness including an Assault in the Third Degree Conviction and (3) Criminal Contempt in the Second Degree convictions.

The defendant is a predicate felon; he has (5) felony and (9) misdemeanor convictions; (4) of those are for Criminal Contempt in the Second Degree involving this same complaining witness. He also has (1) probation revocation, (3) parole revocations and (5) failures to appear.

No. 67. Efren Olivares (56)
RELEASED on bail April 6, 202

No. 68. James Bulwar (57) Bail Status: \$100k/\$100k
Top Charge: Sexual Abuse in the First degree PL 130.65(1)

The defendant was married to victim's grandmother. The victim is currently 15 years old and was a 7th grader, and 13 years old at the time when defendant began to regularly touch her buttocks and make sexual comments to her. On the Friday before the last week of school in 7th grade (on or about June 24, 2016), victim was in a performance for the school; she went to grandma's apartment looking for a pair of shoes and defendant answered the door and when they were alone inside the apartment together, defendant forcibly raped the victim, putting his penis in her vagina. Defendant threatened to hurt her grandmother if she told anyone. The victim immediately told family members, but upon seeing their reactions and how upset they were, victim made only a partial disclosure- stating in substance that defendant

touched her. CW decided not to fully disclose at that time because she was scared he would hurt her grandmother. In late August 2017, victim was suffering from nightmares and anxiety and decided to tell her mom what defendant. People's investigation began at that point. Defendant arrested in December 2017.

This is the defendant's first known arrest, he is charged with long term sexual abuse and forcible rape of 13-year-old child. He is undocumented and likely facing deportation in addition to state prison.

**No. 69. Charles Jackson (53) Bail Status: \$50k/\$50k
Top Charge: Robbery in the First Degree PL 160.15 (3)**

On December 24, 2019 @ 8:10 am the defendant steals four (4) cases of beer from a Duane Reade store. He returns to the same store @4:00pm, takes three (3) cases of beer and goes to the counter as if to pay for the beer. At the counter he takes a lighter and puts it in his pocket. When the security guard tells defendant to put the lighter back, defendant takes out a knife, points it at the security guard, tells him to stay away and leaves the store with the beer and the lighter. Defendant arrested after a canvass, the knife was recovered from defendant's pocket and the beer from defendant's luggage.

The defendant is a second felony offender. He has (66) convictions, including (5) felonies. His prior convictions include numerous assaults and larcenies. In addition, he has had (17) failures to appear and at the time of his arrest on this case, he had (2) open bench warrants. His parole has been revoked (5) times.

**No. 70. Govinda Pyakurel (60) Bail Status: \$25k/\$50k
Top charge: Criminal Possession of a Forged Instrument in the second Degree PL 170.25 and Sexual Abuse in the Second degree PL 130.60.**

Defendant and victim are strangers, defendant is homeless and the victim is a 13-year-old autistic child, who ran away from home hours before the incident. On December 7, 2019 @ 6:30 am, the victim was opening doors at the 7-11 for tips. Defendant approached and told victim he would give the victim \$20 for a hug, which victim accepted. Defendant hugged the victim and touched the victim's buttocks over and underneath the victim's pants. Entire incident is captured on 7-Eleven surveillance video. Defendant told the victim that he was going to take victim to his home and walked the victim to the Port Authority Bus Terminal together and sat on the floor inside the main vestibule. Homeless outreach officers observed defendant touching victim's penis over his clothing. Homeless outreach officers contact PAPD and defendant is arrested immediately. Defendant gave one forged permanent resident ID card to an officer and a second forged permanent resident ID card was recovered from his person.

Defendant initially told officers that the victim was his kid and later said that he just met the victim. In a recorded NYPD interrogation, defendant stated, in part and in substance, that he gave the victim \$20 at 7-Eleven and that victim asked defendant for a hug, asked

defendant to walk to Port Authority, and that victim put defendant's hand on victim's private area and made defendant rub his penis.

Defendant has no known prior criminal history.

**No. 71. Victor Chapman (55) Bail Status: \$75k/\$50k
Top Charge Robbery on the first Degree PL 160.15(3)**

On September 14, 2019 @ 1:30 am, the defendant entered Duane Reade carrying a red tote bag. The manager asked the defendant if he needed help, and the defendant said he was just browsing. From the surveillance system, the manager observed the defendant take items from the medicine isle and place them into his bag. The manager approached the defendant and told him to stop disrespecting the store and to leave. The defendant then reached for another item, and the manager reached her hand out to stop him from taking it. The defendant then charged towards the manager and pushed her. The defendant then walked towards the exit. The manager and another employee followed after him. At the exit, the defendant took out a pair of scissors and swung them towards the employee and the manager. The manager called 911. The defendant was apprehended a couple of blocks away and positively identified in a show up. The stolen items and scissors were recovered from the defendant.

The defendant told the officer, in substance, "I didn't rob anyone. I was at the store. The lady came at me and was attacking me, so I pulled out the scissors to protect myself. I happened outside of the store, how could I have robbed anyone? The scissors are in my pocket."

The defendant is a second felony offender. He is a predicate for a 2018 conviction for Robbery in the Third Degree in N.Y. County, for which he was sentenced to a year in jail. In that case, the defendant was shoplifting from Rite Aid and when store employees tried to prevent him from leaving, the defendant pulled out scissors and menaced the employees. In 2002, the defendant was convicted of Attempted Assault in the First Degree; in that case, the defendant after an altercation with the victim, defendant later showed up to the victim's apartment, bashed the knob off the victim's apartment door, broke into the apartment, and stabbed the victim twice with a knife. The defendant also has (28) misdemeanor convictions, predominately for Petit Larceny and Criminal Possession of Stolen Property in the Seventh Degree.

**No. 72. Luis Gonzalez (52) Bail Status: \$150k/\$150k
Top Charge Robbery in the First Degree PL 160.15 (3)**

On March 11, 2019 @ 7:00 pm, defendant enters a store and asks the victim/owner about a backpack, which are in back of store. Defendant looks around whole store, asking questions about price and then goes to the backpacks. As the victim is showing him one he moves further back into back most corner and as the victim approaches to tell him price on

bag, defendant pulls knife from pocket, holds it against victim's neck and repeatedly demands money. Defendant directs victim back towards cash register; victim opens register hands defendant 5 and 10 dollar bills, but not the 20 dollar bills. Defendant grabs them himself and leaves. Defendant is arrested on March 16, 2019, after police officer recognized defendant from video footage and he match the victim's description. Officer observed defendant circling the area, looking into stores, etc., and when officer stops the defendant he runs. Officer chases and arrests. Officer recovered knife from the defendant. Defendant was identified in a photo array.

The defendant is a second violent felony offender and a level 2 sex offender. He was sentenced in 1990 to 25-50 years on conviction for four counts of Robbery in the First Degree, Sodomy; Attempted Rape in the First Degree. Defendant was released in January 2017, and is on parole until 2041. Prior to 1990, defendant had two felony convictions; one for grand larceny for which he was sentenced to probation and, again for grand larceny, which he received a 1.5 - 3 years sentence. He violated parole after released. Defendant failed to appear in both of his first 2 felonies.

No. 73. Ronnie Barnes (56) Bail Status: \$7,500/\$25k/\$50k
Top charge:

On February 17, 2020 @ 3:40 am, defendant Barnes swiped the complainant into the subway system. Once the complainant was through the entry gate, defendant Barnes demanded payment and the complainant refused. Co-defendant then followed the complainant onto the subway platform, followed by defendant Barnes. The co-defendant pushed the complainant and circled behind him. Defendant Barnes produced a blade and demanded money from the complainant and the co-defendant repeatedly told the complainant to give defendant Barnes money. Defendant Barnes reached into the complainant's pocket and attempted to remove money and told the co-defendant to cut the complainant. A train pulled into the station, police officers observed the struggle and approached, causing both defendants to leave the platform. The police caught up with the co-defendant, who claimed that he was acting as a peacemaker. The complainant initially stated to the police that co-defendant was not involved in the attempted robbery, which the complainant later amended. The co-defendant was found in possession of a razor blade upon arrest. He gave a description of defendant Barnes that matched the surveillance video from the subway station. Defendant Barnes was arrested after an arrest in Brooklyn for public lewdness. Defendant Barnes identified himself on a surveillance still from the incident. The complainant was not able to identify defendant Barnes in a photo array.

No. 75. Anibal Quinones (55) Bail Status \$1k/\$2k and a Parole hold
Top charge: Burglary in the Second Degree PL 140.25 (2)

On March 4, 2020 @12:15 am, a witness heard a noise in the lobby of the building. She opened her apartment door and saw defendant in the lobby going through a brown box. She knew the defendant did not live there. When she asked defendant what he was doing, he

said he was throwing out the garbage and began walking away with the box. The witness tried to stop D from leaving, and a struggle ensued in which he tried to get past her while still carrying some of the property. Defendant bit the complainant on the shoulder, leaving bite mark, and also caused bruising to her arm. Two building residents called 911 and held defendant until police arrived minutes. Defendant had various items that appeared to belong to other people, including a blender that had been inside the Amazon package defendant took (addressed to a building resident).

The defendant is a second violent felony offender.; he has three (3) felony and (14) misdemeanor convictions. He has (4) bench warrants and is a violent predicate from a 2017 Attempted Burglary in the Second degree and was sentenced to three (3) years with five (5) years post release supervision. defendant has parole hold for failure to report.

No. 76. Sonny Seal (55) Bail Status: \$100K/\$200K
Top charge: Predatory Sexual Assault PL 130.95

On January 16, 2020 @ 6:30 am. Victim is recently homeless and without a steady place to sleep. Victim sleeps on subways and rented rooms. On the day of the incident, victim goes to a restaurant for dinner after finishing work as a delivery person. There she meets the defendant and other male, Stephen, and end up talking. She tells Stephen she is homeless and he invites the victim to stay with defendant and himself a few storefronts down. The victim goes with both men to the basement of the storefront, which appears to be multiple storage like rooms with makeshift sleeping places. Victim sleeps on a couch and is awoken @6:30 am and Stephen tells the defendant to escort the victim out – a key is needed to leave.

Defendant accompanies victim towards front door and then grabs her arm stating in substance it's too dark and dangerous out there. Stay with me. Victim tries to refuse and defendant brings victim back to room. Defendant and Stephen argue about victim returning, which ends when Stephen leaves. Defendant then produces a razor blade and tells victim take your clothes off or I will cut them off. Defendant proceeds to make numerous threats about victim never being found again if she doesn't acquiesce. Defendant also gestures with the box cutter. Defendant then performs oral sex on victim and forces her to perform oral sex on himself while threatening her. Defendant also slaps victim and demands intercourse. Defendant inserts penis into victim vagina partway and then ejaculates outside. They get dress and victim turns on camera of her phone and makes recording of defendant admitting to conduct including sexual contact, the razor blade, slapping her head, and threatening her. Defendant says his name is Sonny Black and shows the victim a copy of his ID with his name Sony Seals. Victim then goes back to the restaurant and makes prompt outcry to restaurant workers. She calls 911 and is taken to hospital for SAFE exam. Defendant is arrested a few days later and is in possession of the box cutter. Defendant's DNA is found in the exam.

The defendant is a second felony offender; he was convicted of Criminal Possession of a Firearm (E Felony) in 2013 and served 6 months' jail. Defendant also has two misdemeanors. He has (2) YOs for Robbery in the Second degree. Defendant's DNA hit on

a 1992 rape in midtown Manhattan. The files in that case were destroyed during Superstorm Sandy.

No. 78. Thomas Perez (51) Bail Status: \$25k/\$25k and \$15k/\$15k
Top Charges: Ind. No. 3434/19 Robbery in the Second Degree PL 160.10 (2)(b)
Ind. No. 4181/19 Burglary in the Third Degree PL 140.20

On October 16, 2019 @5:50 pm., the defendant met an unapprehended male on West 49th Street, just down the block from a Superdry clothing store, and received from him what appeared to be a firearm. The defendant then entered the Superdry store and immediately began stealing sweaters from a display there. When an employee approached him, the defendant said in substance, "Don't touch me!" and waved the imitation firearm. The employee backed off, and the defendant ran out with the sweaters. After arrest, the defendant identified himself in surveillance stills and admitted to stealing from the store. Initially he said the object he was holding was a lighter; he later said it was a pellet gun.

On September 28, 2019 @ 4:20 pm, the defendant walked into a Duane Reade in the Port Authority Bus Terminal and removed several cans of energy drinks, placed them into a bag, and attempted to leave the store. A store employee stopped the defendant and issued him a trespass notice. Several hours later, the defendant re-entered the Duane Reade and again put energy drinks into a bag. Officer Harkenham observed the defendant taking the items, and stopped the defendant when he left the store. Property recovered. When stopped by Officer Harkenham, the defendant stated to him, "they gave me a trespass notice earlier. Can you please let me go?"

The defendant is a violent predicate felon and a discretionary persistent felony offender. He has five (5) felony and (15) misdemeanor convictions, He was sentenced for Assault in the Second Degree on Oct. 30, 2009 to 3.5 years in prison and 5 years post release supervision. That sentence was concurrent with 3.5 years for a 2007 drug sale near school grounds. He was sentenced to 1-3 years for another 1995 drug sale. More recently, he has accumulated numerous misdemeanor larceny and assault convictions, the most recent of which was just weeks before he committed the current crimes. He has failed to appear on (8) different cases.

No. 82. Eleizer Delacruz (46) Bail Status \$60k/\$225k/ and a parole hold
Top Charges: Multiple Indictments:
Indictment No. 3838/2019 Robbery in the Third Degree PL 160.05
Indictment No. 206/2020 Grand Larceny in the Fourth Degree PL 155.30

On November 17, 20019, @ 11:30 pm, the defendant met the complainant at a bar and pretended like he knew him. The complainant, not knowing the defendant tried to leave the bar and get away. The defendant followed the complainant down the street, then grabbed him by his shoulder bag and said in substance: "I'm going to hurt you." He then reached into the complainant's bag and took his wallet.

On December 28, 2019 @ 2:30 am, a husband and wife were out at a bar. At the bar, wife noticed defendant watching her. She then noticed that her bag was gone and the defendant was gone too. She and her husband left the bar to see if they could find the defendant and they did, about a block away. He started giving some of the wife's items back but not all. He claimed that he had thrown them away but that he'd lead them to where he discarded the property. Defendant then tried to escape as the wife started to call 911. Husband tried to hold the defendant and they began fighting. Husband sustained scratching and bruising to his face, lacerations to his knees, and he was bit.

Defendant also has an un-arraigned NA Indictment (574/2020). Before coronavirus hit, defense counsel, Part 61, the arresting officer, and the prosecutor scheduled to have the defendant taken out, printed, and then arraigned on Indictment No. 574/2020 on March 24, 2020, which has not been rescheduled. He is indicted for Grand Larceny in the Fourth Degree (value over \$1000.00). The date of that offense was February 4, 2020 (while he was on supervised release for Ind. No. 3838/2019 but before he was arraigned on 0206/2020). Defendant went in to a clothing store, grabbed a stack of four leather jackets from a display table, and walked out. He was identified later through video.

The defendant is a Violent Predicate Felon and he fits the criteria for a discretionary persistent felony offender. He has three (3) prior bench warrants, including a warrant issued in 2020. He has five (5) Prior felony convictions, including (2) violent felonies: Robbery in the second degree and Attempted Robbery the Second Degree, and Aggravated Criminal Contempt and Criminal Contempt First Degree, and he has been indicted for Tampering with a Witness in the Third degree (Prevent Testimony by fear of injury). He has also had his parole revoked multiple times—on his last felony conviction, he was initially paroled in 2013 however because of his numerous violations, of which there are at least six, he only completed his Parole in June 2019.

In defendant's last violent felony conviction for Robbery in the Second Degree, 2007 for which he was sentenced to 7 years, he violently snatched a purse off of a woman's shoulder causing her bruising and pain. While he was out on bail on that case he committed two more felony thefts for stealing credit cards from women's purses on two separate dates. Defendant's two felony contempt convictions (2001) were domestic violence cases where, in violation of an order protection, he ripped the chain off of his ex's neck, ripped her clothes, and then urinated on her. His oldest violent felony (1994) involves him and another ripping the purse off of a woman in her building's vestibule. He knocked that victim to the ground while his co-defendant kicked the victim in the head, sending her to the hospital.

No. 84. Rafael Vega (56) Bail Status \$100k/\$100k

Top charge: Criminal Possession of a Weapon in the Second Degree PL 265.03 (1)(b) and (3) and Criminal Possession of a Controlled Substance in the Third Degree PL 220.16 (1) and (12)

On February 22, 2019 @ 6:00 am, a search warrant was executed on defendant's apartment. Defendant, who is in bed, directs officers to his closet where he gives them the code to his safe. Inside of safe, officers recover (1) .380 semi-auto pistol with magazine, (15) matching bullets right next to the gun, shotgun rifle ammo, approx. \$5k cash, 100 glassines packaged with heroin, and hundreds of empty glassines inside the safe. On the dresser, officer recover cardboard box of heroin and a box of dilutant, scale, grinder, and other paraphernalia. Weight on the heroin is over 2.5 ounces, fentanyl is present.

Defendant has spent nearly his entire adult life in prison. He is a mandatory persistent violent felon. From 1983 – 2009 defendant amassed (9) felony convictions; including Attempted Assault in the First degree, Criminal Possession of a Weapon in the Third Degree and multiple felony drug possession and sale He also has (6) misdemeanor convictions and (2) failures to appear. Defendant's parole has been revoked (4) times.

No. 85. Victor Flood (52) Bail Status: \$150k/\$150k/\$300k
Top Charge: Attempted Murder in the Second Degree PL 110/125.25

On April 18, 2018 @ midnight, police officers are conducting a standard patrol of Brooklyn Bridge no. 6 station, which is the end of route for the no. 6 train, which is waiting in the station with doors open. The officers walk down stairs toward platform and see, through the open doors of train, defendant standing behind and over victim, who is sitting on seat by door. Defendant has a strap around victim's neck and is pulling on the strap, using the railing next to the victim's seat for leverage. The victim is limp, not moving, and appears dead to the officers. The officers run into train and, at that point, defendant lets go of the strap. The victim lumps over, limp and unconscious. Defendant is cuffed and one of the officers attempts to revive the victim, which takes 40 seconds to a minute. Victim has red mark like rope burn, around his neck under his chin and a large amount of blood/petechial hemorrhaging to eyes (treated at hospital). The victim had never met the defendant before and had fallen asleep on the train because he had been drinking, woke up to feel someone choking him, and then passed out because he could not breathe. After defendant is taken off the train, he begins to threaten others on the platform, saying, "I'll kill you before you even know what's happening."

Prior to this arrest, defendant was homeless. He is a discretionary persistent felony offender, as well as a violent predicate felon. He has three (3) prior convictions for Attempted Burglary in the Third Degree. Defendant also has a misdemeanor Assault in the Third Degree conviction, as well as convictions for petit larceny, criminal possession of a controlled substance in the seventh degree.