

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ONEIDA

THE PEOPLE OF THE STATE OF NEW YORK,
ex rel. Stefen R. Short, Esq., on behalf of JOHN FRATESCHI,
DIN 11B0827; ALBERT JACKSON, DIN 18A4662;
THOMAS JACKSON, DIN 20R0016; RICARDO LOPEZ,
DIN 18R1196; and MICHAEL YANCY, DIN 16A4993,

Petitioners,

– against –

WILLIAM FENNESSY, Superintendent, Mid-State
Correctional Facility; PATRICK REARDON, Superintendent,
Marcy Correctional Facility; and ANTHONY J. ANNUCCI,
Acting Commissioner, New York State Department of
Corrections and Community Supervision,

Respondents.

NOTICE OF APPEAL

Index No. EFCA2020-000910

PLEASE TAKE NOTICE that Petitioners hereby appeal, pursuant to Article 70 and Articles 55, 56 and 57 of the Civil Practice Law and Rules, to the Appellate Division of the Supreme Court of the State of New York in the Fourth Judicial Department, from the attached Decision, Order, and Judgment of the Supreme Court, Oneida County, entered May 11, 2020, dismissing the Petition for Writ of Habeas Corpus and from each and every part of said Decision, Order, and Judgment.

Dated: New York, New York
June 8, 2020

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At a Term of the Supreme Court held in and for the
County of Oneida at the Courthouse in Utica, New
York, on the 11th day of May, 2020.

PRESENT: HON. DAVID A. MURAD,
Justice of the Supreme Court

STATE OF NEW YORK
SUPREME COURT COUNTY OF ONEIDA

PEOPLE OF THE STATE OF NEW YORK
ex rel. STEFEN R. SHORT, ESQ., on behalf of
JOHN FRATESCHI, DIN 11B0827; ALBERT
JACKSON, DIN 18A4662; THOMAS JACKSON,
DIN 20R0016; RICARDO LOPEZ, DIN 18R1196;
and MICHAEL YANCY, DIN 16A4993,

Petitioners,

v.

DECISION, ORDER
AND JUDGMENT

WILLIAM FENNESSY, Superintendent, Mid-State
Correctional Facility; PATRICK REARDON,
Superintendent, Marcy Correctional Facility and
ANTHONY ANNUCCI, Acting Commissioner,
New York State Department of Corrections and
Community Supervision,

Index No.: EFCA2020-000910
RJI No.: 32-20-0220

Respondents.

Appearances:

For Petitioner:

Justine Luongo, Esq.
The Legal Aid Society, Criminal Defense Practice
By: Stefen R. Short, Esq., of Counsel

For Respondents:

Letitia James, Esq.
Attorney General, State of New York
By: Thomas P. Carafa, Esq., Assistant Attorney General

PETITION

The petition was filed on behalf of two (2) petitioners, Frateschi and Lopez, incarcerated at Marcy Correctional Facility ("Marcy"); and three (3) petitioners, A. Jackson, T. Jackson, and Yancy, incarcerated at Mid-State Correctional facility ("Mid-State"). The petition alleges that each petitioner is particularly vulnerable to COVID-19 by virtue of age and/or underlying medical conditions, and they have written to the Department of Corrections and Community Supervision (DOCCS) and the Governor "to ask for protection from COVID-19, but received no response." (Petition ¶ 19 & ¶ 41.)

The factual allegations as to each petitioner are as follows:

Frateschi: 72 years old; health history of COPD, severe asthma, recurring walking pneumonia, and bronchitis; requires a CPAP to sleep; requires a wheelchair for mobility; has served 9 out of 12 years of his sentence; will live in Janesville [sic], NY with his family if released.

A. Jackson: 60 years old; health history of heart failure, diabetes, hypertension, and seizure disorder; "completed nearly his minimum term of incarceration and will reappear before the parole board in July of this year[;] ... earliest release date ... in July" (Petition ¶ 29); and a maximum expiration date of October 7, 2021.

T. Jackson: 52 years old; health history of HIV, chronic asthma with frequent asthma attacks for which medical attention has become difficult since the COVID-19 pandemic, cancer, and an open wound from a 2017 tumor removal surgery; an earliest release date of November 3, 2021; and will live in Harlem with his wife if released.

Lopez: 51 years old; health history of asthma that causes shortness of breath throughout the day and requiring an Albuterol inhaler every morning; requires a cane for mobility; scheduled for release on his conditional release date of May 23, 2020; and will live in an unspecified location with his brother and sister-in-law upon release.

Yancy: 61 years old; health history of HIV, HPV, and hypertension; completed over 3 years of a 5-year sentence; eligible for conditional release on May 11, 2020; and working to secure housing in Albany.

Petitioners seek habeas corpus relief for immediate release on the ground that "given their vulnerability to contracting COVID-19 in prison, and suffering serious complications or

death as a result, their continued confinement violates their rights under the Eighth Amendment to the United States Constitution and Article I, Section 5 of the New York State Constitution.” (Petition ¶ 1.) They contend that “[u]nder the dire and exigent circumstances posed by the current pandemic, outright release of Petitioners is the only adequate remedy. The invisible nature of the virus – and its rapid proliferation – makes it virtually impossible for DOCCS to adequately protect Petitioners from infection given their heightened risk and the realities of the prison environment.” (Petition ¶ 3.) They also posit that “the only known strategy to protect vulnerable groups from COVID-19 is effectively impossible in prisons. Petitioners cannot, in prison, engage in the risk mitigation necessary to protect themselves and each other. Release is the only effective means to protect the people with the greatest vulnerability to COVID-19 from transmission of the virus, and allows for greater risk mitigation for all people who remain held or working in New York State prisons.” (Petition ¶ 20.)

The petition alleges that the general nature of prisons requires close human contact in all aspects of life, involving both inmates and staff; the air is poorly ventilated; spaces are often dirty; cleaning supplies and hygiene products frequently are unavailable; inmates often are not able to clean their cells or maintain good hygiene; and they are required to eat in communal settings. There are allegations that personal protective equipment (PPE), such as cloth face coverings, are not provided, and that DOCCS disciplines inmates for wearing makeshift masks. Petitioners argue that their incarceration under the current prison conditions constitutes “deliberate indifference to a risk of serious medical harm”, which forms the requisite basis for their claim of the cited federal and state constitutional violations. There are citations to pleas of state legislative representatives, and public health advocates’ recommendations, to reduce the prison population through release of inmates. The petition cites to case law in support of a position that courts are ordering decarceration in the face of the COVID-19 pandemic. Petitioners argue that New York jurisprudence allows for release if petitioners show it is the only way to abate a constitutional violation.

Personally, petitioners claim a lack of supplies and information to implement adequate hygiene and cleaning; lack of knowledge or observation of increased institutional cleaning measures; lack of PPE; and a lack of access to hand sanitizer despite inmates producing it. Petitioners describe various conditions and circumstances they are required to experience that are wholly inconsistent with social distancing.

The petition alleges that respondents are aware of, but have failed to respond to, the serious risk of medical harm that COVID-19 poses to petitioners. Specifically, it is alleged that The Legal Aid Society sent letters to DOCCS on March 4, 2020; March 18, 2020; March 30, 2020; and April 6, 2020. In sum, these letters allegedly describe the risks faced by inmates; concerns about DOCCS plans to control the spread of the virus and to provide treatment; the lack of sanitary supplies, information and education; failures of staff in supervising cleaning and distancing protocols; inmates' inability to social distance in common areas; and include a demand for release of 105 inmates in various prisons across the state, including a demand for release of petitioners Frateschi, Lopez and Yancy. Additionally, it is alleged that DOCCS has been put on notice by other organizations, advocacy groups and experts about the risks petitioners face while incarcerated, and that the respondents cannot manage that risk in the prison environment.

The petition recognizes the Governor's efforts involving release of medically vulnerable inmates who are within 90 days of their maximum expiration date, and to consider clemencies and commutations, but alleges that these efforts are not adequate. There is repeated reference to the affirmation of Dr. Robert Greifinger, the Chief Medical Officer for DOCCS, from 1989 to 1995, and who alleges having managed the medical care provided to people in DOCCS custody during the health care crises resulting from HIV/AIDS and from drug-resistant tuberculosis. He alleges a career, since 1995, as an independent consultant on prison and jail health care, with clients such as the U.S. Department of Justice, Civil Rights Division and the U.S. Department of Homeland Security, Section for Civil Rights and Civil Liberties, as well as being an author and editor of publications dedicated to public health and communicable diseases. He claims knowledge of DOCCS prisons, including their physical structure, age, and overall health care delivery systems.

Dr. Greifinger's affirmation is submitted as an exhibit to the petition, opining on a myriad of issues, including: the nature and seriousness of COVID-19; its ability to remain on surfaces for days; the lack of a vaccine; the underlying conditions that increase the risk of serious disease from the virus; the potential for permanent loss of respiratory capacity; the potential need for specialized equipment for inmates that become seriously ill; the likelihood such care will have to be provided by local community hospitals, which may become overwhelmed; the fatality rate of COVID-19; the lack of any medication to prevent or cure the disease; the asymptomatic spread

of the virus; and the lack of adequate testing. Dr. Greifinger discusses the only known methods to reduce risk from COVID-19; namely, social distancing, frequent sanitization of shared facilities, and improved personal hygiene; and alleges these are measures petitioners are not able to practice in DOCCS facilities.

Dr. Greifinger's opinion is that all five (5) petitioners suffer from conditions that place them at increased risk of serious illness and death. He recommends their release to a place where they can practice appropriate social distancing, and he recommends 14 days of self-quarantine following release.

Petitioners argue that this Court has an obligation to protect them from infectious disease and is empowered to order release where it is the only suitable remedy to prevent imminent harm where, as here, respondents' refusal to release them constitutes deliberate indifference in violation of the Eighth Amendment. They further argue that removal from unconstitutionally dangerous conditions may be required if there is an excessive risk of exposure. Recognizing that removal from one prison to another, or to a different facility, is a common form of relief, petitioners argue that outright release has been required in cases of unconstitutional levels of crowding.

Petitioners also take the position that, in addition to deliberate indifference, there is an Eighth Amendment violation where there is excessive punishment, and a proportionality standard should be applied under the state constitution. "Here, Petitioners do not contend that their carceral sentences announced by the sentencing court were cruelly excessive within the meaning of Article I, § 5 of the New York State Constitution. Rather, Petitioners contend that they are being exposed to the 'de facto punishment' of exposure to COVID-19, a situation that was 'unforeseeable' at the time that the sentences were imposed. ... Under New York law, this 'de facto punishment' is subject to proportionality analysis. ... Only release can remedy this de facto punishment." (Petition ¶ 131.)

Petitioners contend that if this Court finds that habeas corpus relief is not a proper remedy, the Court should not dismiss the action, but should convert it to an CPLR Article 78 proceeding, in the interest of justice, because petitioners should be afforded relief from their current conditions of confinement. If there is a conversion, petitioners will seek release on temporary medical parole or other form of temporary release and, in the interim, to be provided with adequate hygiene and cleaning supplies and the ability to social distance. They also argue

that, if the Court allows a conversion to Article 78, it should waive the normal requirement to exhaust administrative remedies on the ground of futility.

Alternatively, petitioners advocate that, if the Court finds that habeas corpus relief is not a proper remedy, it should convert this action to individual motions to set aside petitioners' sentences under Criminal Procedure Law (CPL) § 440.20. They posit that the individual motions would then be transferred to the appropriate sentencing courts for adjudication.

MOTION TO DISMISS

Respondents have filed a motion to dismiss on the ground the petition fails to state a cause of action. (CPLR § 3211 [a] [7].) Factually, respondents allege as to each petitioner:

Frateschi: Convicted of Robbery in the First Degree (C Felony) and 2 counts of Burglary in the Second Degree (C Felony); sentenced to 5 concurrent years on the Robbery and first count of Burglary, and 12 concurrent years on the second count of Burglary, with a maximum expiration date of January 29, 2023.

A. Jackson: Convicted of Aggravated Family Offense (E Felony); sentenced to 1 ½ - 3 years, with a maximum expiration date of October 27, 2021.

T. Jackson: Convicted of Robbery in the First Degree (C Felony); sentenced to 3 ½ years, with a maximum expiration date of May 5, 2022.

Lopez: Convicted of Criminal Sale of a Controlled Substance in the Third Degree (C Felony); sentenced to 3 ½ years, with a maximum expiration date of November 25, 2020.

Yancy: Convicted of Burglary in the Second Degree (C Felony); sentenced to 5 years, with a maximum expiration date of January 31, 2021.

Respondents argue that the petition lacks merit on two grounds. First, respondents contend that habeas corpus is not an available relief to petitioners because COVID-19 is not a lawful basis for ordering release. Respondents allege petitioners are lawfully confined; none has reached his sentence expiration; none is entitled to immediate release or habeas relief; and the Court lacks authority to direct release of any of them, which would invade the discretionary authority of the Board of Parole. While respondents concede that there are special circumstances where habeas corpus is appropriate when the conditions of confinement are challenged, they

argue that even if their claims of deliberate indifference were meritorious, none of the petitioners would be entitled to immediate release. Respondents further argue that even if temporary release would be a rational action under the current pandemic circumstances, the Court lacks authority to require it.

Respondents' second ground for its claim that the petition lacks merit is that it cannot be shown that any of the petitioners would be safer upon release, because none has provided admissible proof of location of proposed housing upon release, and because the DOCCS health care system is able to care for their medical needs. Respondents argue that the number of cases of COVID-19 at Marcy, Mid-State, and in Oneida County, are far less prevalent than in the areas where each petitioner lived prior to incarceration, making it most likely that each would be safer to remain incarcerated than to be released on parole. Furthermore, respondents argue, there are as many as half of all local, state and federal inmates reporting chronic conditions that makes these inmates at higher risk of COVID-19 complications. They reason that if all of the DOCCS inmates with chronic conditions were released, there would be chaos in the community.

Respondents find fault with Dr. Greifinger's opinions on the basis that he has not been employed by DOCCS for 25 years; he is not familiar with current DOCCS handling of medical issues in general, or COVID-19 in particular; his lack of recent experience with DOCCS facilities; the incomparability of Rikers and other New York City facilities to the DOCCS facilities at issue in this matter; and the lack of admissible evidence in the petition as to the medical conditions alleged by each petitioner, which petition the doctor relied upon to form his opinions. Respondents argue that the DOCCS COVID-19 statistics belie Dr. Greifinger's opinion that DOCCS facilities pose a heightened risk to public health in the spread of COVID-19.

Respondents allege DOCCS is not indifferent to the safety of the inmates in its care, and has taken steps to minimize risk from COVID-19. The affirmation of DOCCS Deputy Counsel is offered as proof of the agency successfully managing infectious outbreaks of tuberculosis, AIDS, and hepatitis C in its facilities. DOCCS protocol for the COVID-19 pandemic involves an emergency control plan for each facility, including supplies and equipment; medical staff trained in infection control; negative air flow isolation rooms; and Regional Medical Units. The agency alleges implementation of measures that include temporary suspension of intake from county facilities; suspension of internal DOCCS transfers except under exigent circumstances; temporary suspension of visitation; keeping non-security and a portion of the other civilian staff

from reporting to facilities; screening measures for staff that enter facilities; and a variety of educational information on preventative measures provided to staff and inmates. Respondents claim that all the measures taken by DOCCS are in compliance with the recommendations of the Centers for Disease Control and Prevention (CDC) for correctional facilities.

OPPOSITION TO MOTION TO DISMISS

Petitioners argue in opposition to respondents' motion to dismiss on the grounds that: habeas relief is appropriate where, as here, no other remedy besides release could abate the ongoing violations of petitioners' rights under the Federal and State constitutions; petitioners are not required to show that they would be "safer" if released; and petitioners have demonstrated that respondents are deliberately indifferent to the serious risk of harm that COVID-19 poses to them.

On the availability of habeas relief, petitioners contend that respondents have taken a narrow view of habeas relief that is inconsistent with a modern consensus that habeas is the proper vehicle to challenge prison conditions where the proper remedy is release. They argue that this is the case under both federal and state law. Petitioners state that "[e]ven authorized imprisonment becomes an illegal restraint on liberty, actionable under habeas, when it includes unconstitutional conditions of confinement. Here, Petitioners have shown that they are illegally restrained - that is, restrained in excess of lawful standards - because they are being confined in prisons where social distancing to prevent the spread of the novel coronavirus is physically impossible, yet necessary to protect the medically vulnerable Petitioners, and because prison officials have not released enough people from DOCCS custody in order to make social distancing it possible [sic]. Petitioners are therefore proper habeas petitioners by virtue of the State's illegal restraint."

Petitioners argue they have demonstrated that respondents are deliberately indifferent to the serious risk of harm that COVID-19 poses to petitioners and, in any event, the Court must accept the allegations of the petition as true on respondents' motion to dismiss. As to respondents' position that DOCCS has successfully managed other infectious disease outbreaks, petitioners' opposition states that "[c]ounsel themselves have spent decades litigating to enforce DOCCS' constitutional responsibility to provide adequate medical care during infectious disease

outbreaks. Many of these cases have resulted in reported decisions, and each case has resulted in comprehensive settlement agreement [sic] and prospective injunctive relief. ... Contrary to Respondents' assertions, DOCCS has a long history of providing grossly inadequate medical care during infectious disease outbreaks, which have only been remedied as a result of judicial intervention." Petitioners state that the agency's alleged "emergency control plan" has not been publicly released and there is no indication it has been put into action.

APPLICABLE LAW

The United States Supreme Court stated in *Estelle v. Gamble* (429 U.S. 97, 102–06 [1976] [internal citations omitted]):

"The [Eighth] Amendment embodies 'broad and idealistic concepts of dignity, civilized standards, humanity, and decency . . . ,' ..., against which we must evaluate penal measures. Thus, we have held repugnant to the Eighth Amendment punishments which are incompatible with 'the evolving standards of decency that mark the progress of a maturing society.' ... or which 'involve the unnecessary and wanton infliction of pain,' ...

...

We ... conclude that deliberate indifference to serious medical needs of prisoners constitutes the 'unnecessary and wanton infliction of pain,' ... proscribed by the Eighth Amendment...

This conclusion does not mean, however, that every claim by a prisoner that he has not received adequate medical treatment states a violation of the Eighth Amendment...

... in the medical context, an inadvertent failure to provide adequate medical care cannot be said to constitute 'an unnecessary and wanton infliction of pain' or to be 'repugnant to the conscience of mankind.' ... In order to state a cognizable claim, a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs. It is only such indifference that can offend 'evolving standards of decency' in violation of the Eighth Amendment."

The guidance from our New York State courts includes the following, involving a petitioner who sought habeas relief on the basis of an Eighth Amendment claim for the correctional facility's failure to provide him with certain medication for treatment of hepatitis C:

“An application for habeas corpus relief is not the proper procedural vehicle for petitioner under the circumstances presented here ... Habeas corpus will be granted only in cases where success would entitle the petitioner to immediate release ... While success on the instant motion might entitle petitioner to the medication he seeks, it would not excuse him from serving the remainder of his sentence.” (*People ex rel. Sandson v. Duncan*, 306 A.D.2d 716, 716–17 [3rd Dept 2003] [internal citations omitted] *lv denied*, 1 NY3d 501.) And in *People ex rel. Barnes v. Allard* (25 A.D.3d 893, 894 [3rd Dept 2006] *lv denied*, 6 NY3d 714):

“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.”

ANALYSIS AND CONCLUSIONS

The threat of COVID-19 is real and petitioners appear to be high risk individuals due to their respective ages and alleged underlying conditions. Petitioners' concerns about the nature and seriousness of COVID-19; its ability to remain on surfaces for days; the lack of a vaccine; the underlying conditions that increase the risk of serious disease; the potential for permanent loss of respiratory capacity; the potential need for specialized equipment for individuals that become seriously ill; the possibility that care will have to be provided by local community hospitals, which may become overwhelmed; the fatality rate of COVID-19; the lack of any medication to prevent or cure the disease; the asymptomatic spread of the virus; and the lack of adequate testing, also are applicable outside of the prison setting, across the state and the country. Congregate settings, whether prisons, nursing homes, or otherwise, face exceptional challenges to prevent spread of the virus.

“It is well settled that ‘[i]n assessing the adequacy of a [pleading] under CPLR 3211 (a) (7), the court must give the pleading a liberal construction, accept the facts alleged in the complaint to be true and afford the plaintiff the benefit of every possible favorable inference’ ... Whether the plaintiff will ultimately be successful in establishing those allegations ‘is not part of the calculus’ ...” (*Landon v. Kroll Lab. Specialists, Inc.*, 22 NY3d 1, 5-6 [2013] [internal citations omitted].)

The Court also is cognizant of the distinction between cases involving pre-trial or pre-hearing inmates that are awaiting an adjudication on their charges, as opposed to inmates who are serving a sentence based on a lawful conviction and sentencing. Claims by the former category of individuals for constitutional violations are reviewed under a due process analysis. Claims by the latter category of individuals for constitutional violations are reviewed under an Eighth Amendment analysis. These petitioners fall in the latter category; and their petition raises an issue of the conditions of their imprisonment.

No matter the risk, and even were the Court to find on the merits that respondents have acted with deliberate indifference toward petitioners’ serious medical needs, in violation of the Eighth Amendment, the relief to be afforded is not immediate release. (*See Sandson*, supra; *see also Barnes*, supra.) Injunctive relief, or some form of institutional reform, not aimed at release of an individual complainant, has been granted in inhumane prison condition cases. (*See, e.g., Brown v. Plata*, 563 U.S. 493 [California prison overcrowding cases based on claims of insufficient mental health care and medical care, where the remedy was a reduction of prison population from about 200% over capacity to 137.5% over capacity over a period of years]).

The Court must dismiss the petition for a failure to state a cause of action. The relief sought, that of release from custody, is not an available remedy for the alleged inhumane conditions of confinement under a lawful sentence.

To the extent that petitioners suggest this Court convert the habeas corpus application to an Article 78 proceeding, or to individual CPL § 440.20 motions, the Court declines to do so. Petitioners have articulated hypothetical Article 78 relief in the nature of mandamus to compel their release temporarily on medical parole, or some other form of temporary release, and suggest the Court should waive the ordinary requirement to exhaust administrative remedies as futile. While petitioners claim, without proof, to have “written to DOCCS and the Governor to ask for protection from COVID-19, but received no response”, there are no allegations that there

have been any requests or applications submitted to DOCCS, in the first instance, for temporary release of any kind for any of the petitioners.

The CPL, at § 440.20, authorizes a defendant's post-judgment motion to set aside a sentence. Subdivision [1] states, in part: "At any time after the entry of a judgment, the court in which the judgment was entered may, upon motion of the defendant, set aside the sentence upon the ground that it was unauthorized, illegally imposed or otherwise invalid as a matter of law." By the clear language of the statute, the basis for such a motion is an underlying legal defect of the sentence. Petitioners, by their own admission (Petition ¶ 131), are not contending illegality of the sentence pronounced by the sentencing court, and have acknowledged the COVID-19 pandemic was unforeseeable at the time their respective sentences were imposed.

In accordance with the foregoing, it is hereby:

ORDERED, that respondents' motion to dismiss is **GRANTED**; and it is further

ORDERED, ADJUDGED AND DECREED, that the petition is **DISMISSED**.

Dated: May 11, 2020
Utica, New York

ENTERED

David A Murad

Hon. David A. Murad
Justice of the Supreme Court

Digitally signed by David A Murad
DN: c=US, ou=NYS Supreme Court, o=NYS Courts,
cn=David A Murad, e=dmurad@nyscourts.gov
Reason: I am the author of this document
Date: 2020-05-11 13:58:31
Ecof: PhantomPDF Version: 8.7.0

PAPERS CONSIDERED BY THE COURT

NYCEF Doc. No. 1 – Verified Petition for Writ of Habeas Corpus, dated and verified by Stefen R. Short, Esq., on 4/24/20

NYCEF Doc. No. 2 – Exhibit 1 to Petition – COVID-19 Impact on Prisons Articles

NYCEF Doc. No. 3 – Exhibit 2 to Petition – Affirmation of Robert B. Greifinger, MD

NYCEF Doc. No. 4 – Exhibit 3 to Petition – Reducing Prison Population Articles

NYCEF Doc. No. 7 – Order to Show Cause, dated 4/27/20

NYCEF Doc. No. 9 – Notice of Motion to Dismiss, dated May 4, 2020

NYCEF Doc. No. 10 – Affirmation in Opposition to Petition and In Support of Motion to Dismiss of Thomas P. Carafa, Esq., dated May 4, 2020

NYCEF Doc. No. 11 – Affirmation in Support of Charles J. Quackenbush, Esq., dated May 1, 2020.

NYCEF Doc. No. 12 – Exhibit A to Motion to Dismiss – DOCCS Records (Frateschi)

NYCEF Doc. No. 13 – Exhibit B to Motion to Dismiss – DOCCS Records (Albert Jackson)

NYCEF Doc. No. 14 – Exhibit C to Motion to Dismiss – DOCCS Records (Thomas Jackson)

NYCEF Doc. No. 15 – Exhibit D to Motion to Dismiss – DOCCS Records (Lopez)

NYCEF Doc. No. 16 – Exhibit E to Motion to Dismiss – DOCCS Records (Yancy)

NYCEF Doc. No. 17 – Exhibit F to Motion to Dismiss – Court Decision

NYCEF Doc. No. 18 – Exhibit G to Motion to Dismiss – Court Decision

NYCEF Doc. No. 19 – Exhibit H to Motion to Dismiss – Decision and Order

NYCEF Doc. No. 20 – Exhibit I to Motion to Dismiss – DOCCS COVID-19 Statistics

NYCEF Doc. No. 21 – Exhibit J to Motion to Dismiss – DOH COVID-19 Statistics

NYCEF Doc. No. 23 – Petitioners' Memorandum of Law in Opposition to Respondents' Motion to Dismiss the Verified Petition for Habeas Corpus, dated 5/5/20

NYCEF Doc. No. 24 – Affirmation in Support of Stefen R. Short, Esq., dated 5/5/20

NYCEF Doc. No. 25 – Exhibit 1 – *Haynes v Harder*

NYCEF Doc. No. 26 – Exhibit 2 – *People ex rel. Gregor v Reynolds*

NYCEF Doc. No. 27 – Exhibit 3 – *People of State of New York ex rel. Stoughton v Brann*

NYCEF Doc. No. 28 – Exhibit 4 – DOCCS COVID Report