

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

PEOPLE OF THE STATE OF NEW YORK  
EX REL. Corey Stoughton, Esq.,  
on behalf of

, et al.,

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. \_\_\_\_\_

**WRIT OF HABEAS CORPUS**

**THE PEOPLE OF THE STATE OF NEW YORK**

Upon the relation of Corey Stoughton, Esq.,

TO THE COMMISSIONER, NEW YORK CITY  
DEPARTMENT OF CORRECTION and THE  
COMMISSIONER, NEW YORK STATE DEPARTMENT  
OF CORRECTIONS AND COMMUNITY SUPERVISION:

WE COMMAND YOU, that you have and produce the body of Petitioners named in the Verified Petition attached hereto, by you imprisoned and detained, as it is said, together with your full return to this writ and the time and cause of such imprisonment and detention, by whatsoever name the said Petitioners are called or charged, or show cause why the Petitioners should not be produced, before the Justice presiding at Part \_\_\_\_ of the Supreme Court, Bronx County, at 265 East 161st St, on \_\_\_\_ of March, 2020, to do and receive what shall then and there be considered concerning the said Petitioners and have you then and there this writ.

WITNESS, Honorable \_\_\_\_\_, one of the Justices of  
the Supreme Court of the State of New York, this \_\_\_\_ day of March, 2020.

By the Court Clerk

The above writ allowed this \_\_\_\_\_ day of March, 2020.

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Justice of the Supreme Court  
of the State of New York

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**VERIFIED PETITION FOR  
WRIT OF HABEAS CORPUS**

Corey Stoughton, an attorney duly admitted to practice law in the State of New York,  
hereby affirms the following under penalty of perjury:

**INTRODUCTION**

1. Petitioners are 110 people who, by virtue of their age and/or underlying medical condition, are particularly vulnerable to serious illness or death if infected by COVID-19. This petition seeks their immediate release from jails in New York City on the grounds that continuing to hold them on parole warrants constitutes deliberate indifference to the risk of serious medical harm in violation of the Fourteenth Amendment and state constitutional right to due process.

2. In only a few months, more than 412,500 people worldwide have been diagnosed with COVID-19 and more than 18,482 of those people have died. As of the date of this filing, there are more than 25,665 confirmed cases of coronavirus within the New York City area, up

from just 923 on March 18, 2020. There are now at least 900 COVID-19 related deaths in the New York City area alone.<sup>1</sup>

3. The situation in New York City’s jails is rapidly deteriorating. As of March 23, 2020 – two days before the filing of this matter and the last reported news out of Rikers – there were 39 reported cases of COVID-19 in our jails,<sup>2</sup> compared to only *one* known case as of Friday, March 20, 2020.<sup>3</sup> These numbers are growing rapidly every day. Even at current rates of infection, the virus’s “attack rate” on Rikers Island – that is, the rate at which the population is being infected – is roughly *fifty times higher* than the average in the United States of America.

4. There is no vaccine or cure for COVID-19. No one is immune.

5. COVID-19 is most likely to cause serious illness and death for older adults and those with certain underlying medical conditions. Petitioners all fall into this category of heightened vulnerability.

6. Because risk mitigation is the only known strategy to protect vulnerable groups from COVID-19 and risk mitigation is effectively impossible in jails, including those in New York City, correctional public health experts—including the New York City Board of Correction, the lead doctor of New York’s own correctional health system and several experts around the country—have recommended the release from custody of people most vulnerable to COVID-19.

As these experts have explained, release is the only effective means to protect the people with

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<sup>1</sup> N.Y. TIMES, *Live Updates*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed Mar. 25, 2020).

<sup>2</sup> Robin McDowell & Michael Balsamo, *38 positive for coronavirus in NYC jails, including Rikers*, Associated Press, available at <https://apnews.com/54dbc9d47f62cf0c0240314310cfe909> (last visited Mar. 22, 2020); see also Chelsia Rose Marcius, *Coronavirus prompts reopening of shuttered jail on Rikers Island*, N.Y. DAILY NEWS (Mar. 23, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-correction-department-reopen-jail-20200323-dq2bn3hap5g5bkjagjzsmkdxie-story.html>.

<sup>3</sup> Chelsia Rose Marcius, *Rikers Island inmate has contracted coronavirus: officials*, N.Y. DAILY NEWS (Mar. 18, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefazlqmwrmuevzz3y-story.html>.

the greatest vulnerability to COVID-19 from transmission of the virus and also allows for greater risk mitigation for all people who remain held or working on Rikers Island and other New York City jails.

7. On March 21, 2020, the Board of Correction (“BOC”) issued its second advisory letter, urging judges and prosecutors to act quickly to release people, like Petitioners, who are over fifty years old and who have health conditions that make them high-risk for COVID-19.<sup>4</sup> The BOC also recommended immediate release of individuals who are incarcerated for technical violations of parole and those serving city sentences.<sup>5</sup> As the BOC reported – using statistics that are already out of date and thus significantly understate the numbers of diagnosed illnesses and deaths:

Over the past six days, we have learned that at least twelve DOC employees, five CHS employees, and *twenty-one people in custody have tested positive for the virus*. There are more than 58 individuals currently being monitored in the contagious disease and quarantine units (up from 26 people on March 17). It is likely these people have been in hundreds of housing areas and common areas over recent weeks and have been in close contact with many other people in custody and staff. *Given the nature of jails (e.g. dense housing areas and structural barriers to social distancing, hygiene, and sanitation), the number of patients diagnosed with COVID-19 is certain to rise exponentially*. The best path forward to protecting the community of people housed and working in the jails is to rapidly decrease the number of people housed and working in them.<sup>6</sup>

8. In other parts of the country, government officials have recognized this reality and begun releasing medically vulnerable pre-trial detainees. The Supreme Court of New Jersey mediated a process between the N.J. Office of the Public Defender, the ACLU of New Jersey, the N.J. Office of the Attorney General, and the County Prosecutors Association that resulted in

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<sup>4</sup> Jacqueline Sherman, Interim Chair of NYC Board of Correction, letter, Mar. 21, 2020, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf> (last visited Mar. 22, 2020).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* (emphasis added).

a court order creating a presumption of release *all* inmates serving a county jail sentence or a sentence as a condition of probation, resulting in the release of over 1,000 people. *See* Consent Order, Supreme Court of New Jersey, Docket No. 084320 (Mar. 22, 2020). Other courts have begun granting specific applications for release of pretrial detainees, with many more such applications pending around the country.<sup>7</sup>

9. In New York, however, as of the date of this writing the Mayor of New York reports that only 75 people *from all across the City's jails* have been released.<sup>8</sup> There are more than 5,000 people on Rikers Island alone. Only a few handfuls of people have been released in a negotiated process that remains ongoing between the District Attorney's Office of New York and the Legal Aid Society. To date, the District Attorney's office has declined to consent to the release of Petitioners despite a request to do so.

10. All across New York City, extraordinary and unprecedented measures affecting every aspect of life are being taken in the name of protecting people from this pandemic. New York cannot leave people in jails behind to suffer and die.

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<sup>7</sup> *See infra* paragraph 91.

<sup>8</sup> The Mayor announced this statistic on a press conference on March 23, 2020.

## PARTIES

11. I am the Attorney in Charge of the Special Litigation Unit of the Legal Aid Society's Criminal Defense Practice, which is counsel to Petitioners in this matter. I make this application on behalf of the below-named Petitioners.

12. Every petitioner in this case is particularly vulnerable to the effects of infection from COVID-19, whether because of age or because of serious underlying health conditions. Every petitioner is incarcerated solely on a parole warrant based on technical violations of the conditions of release. No petitioner has pending criminal charges. Petitioners numbered 107-119 were arrested on low-level criminal misdemeanor charges which were resolved with either adjournments in contemplation of dismissal (ACDs), pleas to disorderly conduct violations, or pleas to misdemeanors, and in call cases, the criminal dockets are no longer acting as holds.

13. Petitioner William Jones, warrant number 823612, NYSID 05389769Z, is detained in a jail controlled by the New York City Department of Correction. They are 59 years old and suffer from diabetes. As a result they are at high risk for severe illness or death if they contract COVID-19. Mr. Jones was at liberty for years prior to his current incarceration. While at liberty, he was gainfully employed at an organization that works to combat gang violence. Mr. Jones is currently incarcerated because of a positive urine tests, missing curfew, and missing two office reports.

14. Petitioner Elijah Little, warrant number 826656, NYSID 05056739P, is detained in a jail controlled by the New York City Department of Correction. They are 46 years old and suffer from cardiovascular disease, chronic kidney disease, and pulmonary disease, which is confirmed in a letter from Correctional Health Services, dated March 23, 2020. He is also on a pacemaker. As a result they are at high risk for severe illness or death if they contract COVID-19.

15. Petitioner Antonio Morton, warrant number 827026, NYSID 01814002P, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and therefore are at high risk for severe illness or death if they contract COVID-19. They have also recently suffered a head injury resulting in needing 18 staples in his head. Mr. Morton is currently incarcerated solely for failing drug tests.

16. Petitioner Angela Meyran, warrant number 794337, NYSID 13490678H, is detained in a jail controlled by the New York City Department of Correction. They are 26 years old and are pregnant. As a result they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated March 18, 2020, Ms, Meyran is in the highest category of risk due to her condition.

17. Petitioner George Santos, warrant number 829536, NYSID 06943585L, is detained in a jail controlled by the New York City Department of Correction. They are 49 years old and suffer from asthma and chronic obstructive pulmonary disease. As a result they are at high risk for severe illness or death if they contract COVID-19. Mr. Santos is currently incarcerated solely because of an allegation that he was not in the shelter system and for missing one office report, both of which can be explained. Shelter records indicate that Mr. Santos was actually in the shelter system during his brief time in the community. He was actually taken into custody at the shelter on February 4<sup>th</sup>. As for the office visit, Mr. Santos mistakenly believed that his appointment was on January 30<sup>th</sup>, not the 23<sup>rd</sup>.

18. Petitioner Joseph Amico, warrant number 826859, NYSID 06274259M, is detained in a jail controlled by the New York City Department of Correction. They are 48 years old and suffer from high blood pressure and had a heart valve replaced in the past. As a result they are at high risk for severe illness or death if they contract COVID-19.



19. Petitioner Pedro Cuesta, warrant number 827060, NYSID 02780591Y, is detained in a jail controlled by the New York City Department of Correction. They are 70 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

20. Petitioner Kenneth Blair, warrant number 826930, NYSID 05383164Z, is detained in a jail controlled by the New York City Department of Correction. They are 51 years old and suffer from hypertension. As a result they are at high risk for severe illness or death if they contract COVID-19.

21. Petitioner Gilberto Britton, warrant number 822608, NYSID 058599400P, is detained in a jail controlled by the New York City Department of Correction. They are 51 years old and are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

22. Petitioner William Brooks, warrant number 794430, NYSID 08644999H, is detained in a jail controlled by the New York City Department of Correction. They are 44 years old and suffer from asthma and have previously undergone medical procedures on his lungs. As a result they are at high risk for severe illness or death if they contract COVID-19.

23. Petitioner Jeremiah Brown, warrant 828122, NYSID 08119062N, is detained in a jail controlled by the New York City Department of Correction. They are 42 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

24. Petitioner Kipsom Brown, warrant number 828060, NYSID 12365520R is detained in a jail controlled by the New York City Department of Correction. They are 25 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

25. Petitioner Derek Bunch, warrant number 828223, NYSID 08239464 is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

26. Petitioner Ernest Cadet, warrant number 822575, NYSID 04714063K is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

27. Petitioner Emmanuel Cruz, warrant number 828249, NYSID 09985885P, is detained in a jail controlled by the New York City Department of Correction. They are 50 years old therefore are at high risk for severe illness or death if they contract COVID-19.

28. Petitioner Raymond Cruz, warrant number 821115, NYSID 0545250Z is detained in a jail controlled by the New York City Department of Correction. They are 51 years old and suffer from asthma and diabetes. As a result they are at high risk for severe illness or death if they contract COVID-19.

29. Petitioner John Curry, warrant number 823245, NYSID 02782735P, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

30. Petitioner Roberto Dejesus, warrant number 824386, NYSID 04324572Q is detained in a jail controlled by the New York City Department of Correction. They are 65 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

31. Petitioner Tracy Durden, warrant number 822562, NYSID 04480366M is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

32. Petitioner Jerome Ellis, warrant number 826788, NYSID 03083386K, is detained in a jail controlled by the New York City Department of Correction. They are 27 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

33. Petitioner Charles Evans, warrant number 826321, NYSID 03324153R is detained in a jail controlled by the New York City Department of Correction. They are 67 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

34. Petitioner Geraldine Baker, warrant number 623648, NYSID 03115992R, is detained in a jail controlled by the New York City Department of Correction. They are 69 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

35. Petitioner Edward Ginocchio, warrant number 826485, NYSID 06070431Y, is detained in a jail controlled by the New York City Department of Correction. They are 50 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

36. Petitioner Ivan Gist, warrant number 822411, NYSID 04861361M, is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and have recently undergone thoracic surgery and suffered from pneumonia. As a result they are at high risk for severe illness or death if they contract COVID-19.

37. Petitioner Darius Guillebeaux, warrant number 794245, NYSID 06409323L, is detained in a jail controlled by the New York City Department of Correction. They are 46 years old and suffer from high blood pressure and asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

38. Petitioner Gabriel Gonzalez, warrant number 829519, NYSID 12865202L, is detained in a jail controlled by the New York City Department of Correction. They are 46 years

old and suffer from hepatitis C. As a result they are at high risk for severe illness or death if they contract COVID-19.

39. Petitioner Noel Gonzalez, warrant number 809511, NYSID 08091561K, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

40. Petitioner Elijah Grant, warrant number 826979, NYSID 03938562J, is detained in a jail controlled by the New York City Department of Correction. They are 61 years old and suffer from diabetes and hypertension. As a result they are at high risk for severe illness or death if they contract COVID-19.

41. Petitioner Kevin Grant, warrant number 792548, NYSID 00755590N, is detained in a jail controlled by the New York City Department of Correction. They are 27 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

42. Petitioner Christopher Harris, warrant number 826771, NYSID 05127175Q, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

43. Petitioner Frederick Harris, warrant number 826808, NYSID 03995018M, is detained in a jail controlled by the New York City Department of Correction. They are 60 years old and suffer from cardiovascular disease and hepatitis C as confirmed by Correctional Health Services in a letter dated March 20, 2020. As a result they are at high risk for severe illness or death if they contract COVID-19.

44. Petitioner Strother Dukes, warrant number 762497, NYSID 03517348Q, is detained in a jail controlled by the New York City Department of Correction. They are 54 years

old and suffer from high blood pressure and a heart condition. As a result they are at high risk for severe illness or death if they contract COVID-19.

45. Petitioner Charles Hicks, warrant number 826839, NYSID 01383783P, is detained in a jail controlled by the New York City Department of Correction. They are 70 years old and suffer from coronary arterial disease, hepatitis C and diabetes. As a result they are at high risk for severe illness or death if they contract COVID-19.

46. Petitioner George Hogan, warrant number 793893, NYSID 05067961K, is detained in a jail controlled by the New York City Department of Correction. They are 59 years old and are at high risk for severe illness or death if they contract COVID-19.

47. Petitioner David Holiday, warrant number 794606, NYSID 04429710Q, is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

48. Petitioner Derrick Hoover, warrant number 827113, NYSID 04509756K, is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and suffer from high blood pressure. As a result they are at high risk for severe illness or death if they contract COVID-19.

49. Petitioner Bilal Johnson, warrant number 794165, NYSID 12331587H, is detained in a jail controlled by the New York City Department of Correction. They are 23 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

50. Petitioner Dominick Giarritano warrant number 824360, NYSID 06543418L, is detained in a jail controlled by the New York City Department of Correction. They are 48 years

old and are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

51. Petitioner Delroy Kemp, warrant number 793675, NYSID 04651130P, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

52. Petitioner Sequan Kennedy, warrant number 829528, NYSID 02672301J, is detained in a jail controlled by the New York City Department of Correction. They are 29 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

53. Petitioner Jamar Lawton warrant number 822553, NYSID 01543689L, is detained in a jail controlled by the New York City Department of Correction. They are 35 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

54. Petitioner Antonio Lloyd, warrant number 793863, NYSID 00245644R, is detained in a jail controlled by the New York City Department of Correction. They are 33 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

55. Petitioner Raul Mercado, warrant number 829987, NYSID 08630865L, is detained in a jail controlled by the New York City Department of Correction. They are 40 years old and suffer from hepatitis C. As a result they are at high risk for severe illness or death if they contract COVID-19.

56. Petitioner Kaven Menard, warrant number 826745, NYSID 02163234Q, is detained in a jail controlled by the New York City Department of Correction. They are 27 years

old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

57. Petitioner Samuel Murphy, warrant number 805778, NYSID 05227854Q, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and suffer from chronic obstructive pulmonary disease. As a result they are at high risk for severe illness or death if they contract COVID-19.

58. Petitioner Amancio Milla, warrant number 793775, NYSID 05496477R, is detained in a jail controlled by the New York City Department of Correction. They are 53 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

59. Petitioner George Olsen, warrant number 823779, NYSID 07608428R, is detained in a jail controlled by the New York City Department of Correction. They are 52 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

60. Petitioner Luis Nunez, warrant number 800808, NYSID 07993222Z, is detained in a jail controlled by the New York City Department of Correction. They are 42 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

61. Petitioner Raymond Ortiz, warrant number 753073, NYSID 09495343L, is detained in a jail controlled by the New York City Department of Correction. They are 63 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

62. Petitioner Andres Palma, warrant number 809890, NYSID 06195675Z, is detained in a jail controlled by the New York City Department of Correction. They are 50 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

63. Petitioner Robert Reynolds, warrant number 823176, NYSID 06243077P, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

64. Petitioner Tavon Parker, warrant number 828149, NYSID 03541753M, is detained in a jail controlled by the New York City Department of Correction. They are 26 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

65. Petitioner Wilfredo Rivera, warrant number 794508, NYSID 05699232P, is detained in a jail controlled by the New York City Department of Correction. They are 50 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

66. Petitioner Stanley Robinson, warrant number 813612, NYSID 04009365Z, is detained in a jail controlled by the New York City Department of Correction. They are 34 years old and suffer from diabetes and a cardiovascular condition known as aortic ectasia. As a result they are at high risk for severe illness or death if they contract COVID-19.

67. Petitioner Gerardo Rosario Cruz, warrant number 823050, NYSID 05359438K, is detained in a jail controlled by the New York City Department of Correction. They are 53 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

68. Petitioner Rickey Ruiz aka Elliot Lebron, warrant number 800483, NYSID 06857901J, is detained in a jail controlled by the New York City Department of Correction. They are 46 years old and are currently post surgery on a broken jaw that required wiring shut. As a result they are at high risk for severe illness or death if they contract COVID-19.

69. Petitioner Andre Spellman, warrant number 829986, NYSID 04975685K, is detained in a jail controlled by the New York City Department of Correction. They are 54 years



old and suffer from hepatitis C. As a result they are at high risk for severe illness or death if they contract COVID-19.

70. Petitioner Thomas Sesso, warrant number 784967, NYSID 02959354H, is detained in a jail controlled by the New York City Department of Correction. They are 59 years old and suffer from failing kidneys, seizure disorders and bladder problems. Mr. Sesso is currently being held in NIC. As a result they are at high risk for severe illness or death if they contract COVID-19.

71. Petitioner Dinnell Stanbury, warrant number 826851, NYSID 05287730N, is detained in a jail controlled by the New York City Department of Correction. They are 52 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

72. Petitioner Leon Street, warrant number 823254, NYSID 04463733Y, is detained in a jail controlled by the New York City Department of Correction. They are 59 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

73. Petitioner Luis Suarez, warrant number 827201, NYSID 03239733R, is detained in a jail controlled by the New York City Department of Correction. They are 67 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

74. Petitioner William Thomas, warrant number 822464, NYSID 13942988H, is detained in a jail controlled by the New York City Department of Correction. They are 50 years old and suffer from high blood pressure and diabetes. As a result they are at high risk for severe illness or death if they contract COVID-19.

75. Petitioner David Thompson, warrant number 823701, NYSID 05022301P, is detained in a jail controlled by the New York City Department of Correction. They are 56 years

old and suffer from sleep apnea. They require a CPAP machine. As a result they are at high risk for severe illness or death if they contract COVID-19.

76. Petitioner Michael Thompson, warrant number 826808, NYSID 03844193N, is detained in a jail controlled by the New York City Department of Correction. They are 63 years old and suffer from a heart condition. As a result they are at high risk for severe illness or death if they contract COVID-19.

77. Petitioner Kenny Tavaréz, warrant number 805688, NYSID 00142580Z, is detained in a jail controlled by the New York City Department of Correction. They are 32 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

78. Petitioner Michael Johnell, warrant number 805592, NYSID 09384125L, is detained in a jail controlled by the New York City Department of Correction. They are 28 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

79. Petitioner Daniel Vargas, warrant number 829969, NYSID 02601349Z, is detained in a jail controlled by the New York City Department of Correction. They are 30 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

80. Petitioner Hector Vera, warrant number 823258, NYSID 04555145M, is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and suffer from hepatitis A and C, polyneuropathy and are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

81. Petitioner Derrick Walter, warrant number 400252, NYSID 03817297M, is detained in a jail controlled by the New York City Department of Correction. They are 64 years old therefore are at high risk for severe illness or death if they contract COVID-19.

82. Petitioner George Walker, warrant number 793890, NYSID 01295553K, is detained in a jail controlled by the New York City Department of Correction. They are 73 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

83. Petitioner Anthony Wallace, warrant number 827120, NYSID 05594014Y, is detained in a jail controlled by the New York City Department of Correction. They are 51 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

84. Petitioner Niko Wilner, warrant number 829545, NYSID 05276670J, is detained in a jail controlled by the New York City Department of Correction. They are 51 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

85. Petitioner Jeffrey Williams, warrant number 825808, NYSID 04417648Q, is detained in a jail controlled by the New York City Department of Correction. They are 58 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

86. Petitioner Lester Williams, warrant number 826939, NYSID 07397494Q, is detained in a jail controlled by the New York City Department of Correction. They are 58 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

87. Petitioner Nathaniel Wilson, warrant number 827204, NYSID 09459693J, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

88. Petitioner Lisa Woodham, warrant number 683712, NYSID 05962423R, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and suffer from asthma and seizures, have a history of stroke and are paraplegic. As a result they are at high risk for severe illness or death if they contract COVID-19.

89. Petitioner Samuel Wright, warrant number 805818, NYSID 05028019L, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and suffer from chronic obstructive pulmonary disease and are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

90. Petitioner Shawn Dunn, warrant number 826985, NYSID 04727675R, is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

91. Petitioner Alfredo Curado, warrant number 822527, NYSID 05190728N, is detained in a jail controlled by the New York City Department of Correction. They are 53 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

92. Petitioner Andrew Okieffe, warrant number 823719, NYSID 05123516P, is detained in a jail controlled by the New York City Department of Correction. They are 32 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

93. Petitioner Corey Young, warrant number 602100, NYSID 06880063Y, is detained in a jail controlled by the New York City Department of Correction. They are 46 years old and suffer from asthma and seizures. As a result they are at high risk for severe illness or death if they contract COVID-19.

94. Petitioner Corey Cain, warrant number 796546, NYSID 08368913R, is detained in a jail controlled by the New York City Department of Correction. They are 43 years old and suffer from asthma and bronchitis. As a result they are at high risk for severe illness or death if they contract COVID-19.

95. Petitioner Cheyenne Vazquez, warrant number 826735, NYSID 13427725Q, is detained in a jail controlled by the New York City Department of Correction. They are 31 years old and suffer from chronic asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

96. Petitioner Jvon Johnson, warrant number 800751, NYSID 02890261J, is detained in a jail controlled by the New York City Department of Correction. They are 24 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. Mr. Johnson's violations stem from non-reporting and missed curfews during a time when his partner was experiencing a high-risk pregnancy. As a result, his child was born premature and is still in the NICU. Mr. Johnson's absence is felt very deeply by his family during this stressful time for them.

97. Petitioner Roger Gamage, warrant number 752594, NYSID 06500142N, is detained in a jail controlled by the New York City Department of Correction. They are 52 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

98. Petitioner Angela Meyran, warrant number 794337, NYSID 13490678H, is detained in a jail controlled by the New York City Department of Correction. They are 26 years old and are pregnant. As a result they are at high risk for severe illness or death if they contract COVID-19.

99. Petitioner Michael Mathik, warrant number 805800, NYSID 01774753H, is detained in a jail controlled by the New York City Department of Correction. They are 34 years old and medical records confirm that they suffer from nicotine dependence and morbid obesity. It is generally understood that obesity strains the heart. As a result they are at high risk for severe illness or death if they contract COVID-19.

100. Petitioner William Riley, warrant number 822538, NYSID 08484181P, is detained in a jail controlled by the New York City Department of Correction. They are 39 years old and suffer from heart disease, heart deterioration asthma and bronchitis. As a result they are at high risk for severe illness or death if they contract COVID-19.

101. Petitioner Guido D'Angelo, warrant number 824241, NYSID 05018800M, is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and suffer from cardiovascular disease. As a result they are at high risk for severe illness or death if they contract COVID-19.

102. Petitioner Rickey Gardner, warrant number 826548, NYSID 04219424M, is detained in a jail controlled by the New York City Department of Correction. They are 59 years old therefore are at high risk for severe illness or death if they contract COVID-19.

103. Petitioner Jose Jimenez, warrant number 829973, NYSID 09014793Y, is detained in a jail controlled by the New York City Department of Correction. They are 38 years old and suffer from seizures and asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

104. Petitioner Robert Kirby, warrant number 809423, NYSID 12112588Q, is detained in a jail controlled by the New York City Department of Correction. They are 26 years old and

are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

105. Petitioner Robert Mayes, warrant number 824265, NYSID 05042123K, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

106. Petitioner Benjamin Shepard, warrant number 826614, NYSID 04599886K, is detained in a jail controlled by the New York City Department of Correction. They are 60 years old and suffer from high blood pressure. As a result they are at high risk for severe illness or death if they contract COVID-19.

107. Petitioner Francisco Vasquez, warrant number 831053, NYSID 04896475Y, is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and suffer from Asthma.

108. Petitioner Robert McCoy, warrant number 796508, NYSID 05858748Z, is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

109. Petitioner Joseph Santise, warrant number 793792, NYSID 05100106J, is detained in a jail controlled by the New York City Department of Correction. They are 32 years old and suffer from seizures. As a result they are at high risk for severe illness or death if they contract COVID-19.

110. Petitioner Frank McClarin, warrant number 822540, NYSID 04972621N, is detained in a jail controlled by the New York City Department of Correction. They are 53 years

old and suffer from prostate cancer and hepatitis C. As a result they are at high risk for severe illness or death if they contract COVID-19.

111. Petitioner Miguel Rivalta, warrant number 794259, NYSID 04999922J, is detained in a jail controlled by the New York City Department of Correction. They are 61 years old and suffer from diabetes and high blood pressure. As a result they are at high risk for severe illness or death if they contract COVID-19.

112. Petitioner Antonio Serrano, warrant number 828361, NYSID 05955283P, is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

113. **Petitioner** Kenneth McMaster, warrant number 810413, NYSID 01333389Z, is detained in a jail controlled by the New York City Department of Correction. They are 35 years old and suffer from **MEDICAL CONDITIONS**. As a result they are at high risk for severe illness or death if they contract COVID-19.

114. Petitioner Randall Rutledge, warrant number 828198, NYSID 03575297L, is detained in a jail controlled by the New York City Department of Correction. They are 59 years old and suffer from liver and pancreatic disease, asthma and diabetes. As a result they are at high risk for severe illness or death if they contract COVID-19.

115. Petitioner Eric Carlos Turner, warrant number 745077, NYSID 08550798M, is detained in a jail controlled by the New York City Department of Correction. They are 32 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

116. Petitioner Tashera Vasquez, warrant number 822537, NYSID 02792405Z, is detained in a jail controlled by the New York City Department of Correction. They are 54 years



old and are immunocompromised. As a result they are at high risk for severe illness or death if they contract COVID-19.

117. Petitioner Jarrod Webster, warrant number 828258, NYSID 05426274K, is detained in a jail controlled by the New York City Department of Correction. They are 52 years old and suffer are immunocompromised and uses an oxygen tank.

118. Petitioner Adalberto Onofre, warrant number 793673, NYSID 03099831P, is detained in a jail controlled by the New York City Department of Correction. They are 38 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

119. Petitioner Willie Jackson, warrant number 793790, NYSID 05472547R, is detained in a jail controlled by the New York City Department of Correction. They are 61 years old and suffer from cirrhosis of the liver. They are also attached to a catheter, have a neck brace and use a cane to walk. As a result they are at high risk for severe illness or death if they contract COVID-19.

120. Petitioner Dwayne White, warrant number 823717, NYSID 04922326L, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and therefore are at high risk for severe illness or death if they contract COVID-19.

121. Petitioner Lamar Mack, warrant number 827038, NYSID 06080531H, is detained in a jail controlled by the New York City Department of Correction. They are 49 years old and suffer from hypertension and high blood pressure. As a result they are at high risk for severe illness or death if they contract COVID-19.

122. Petitioner Joel Martin, warrant number 794231, NYSID 04535170Z, is detained in a jail controlled by the New York City Department of Correction. They are 56 years old and

suffer from prostate cancer and seizures. As a result they are at high risk for severe illness or death if they contract COVID-19.

123. Petitioner Donald Kagan, warrant number 826266, NYSID 06998188R, is detained in a jail controlled by the New York City Department of Correction. They are 46 years old and suffer from high blood pressure. As a result they are at high risk for severe illness or death if they contract COVID-19.

124. Respondent Cynthia Brann is the Commissioner of the New York City Department of Correction. Respondent is a legal custodian of Petitioners.

125. Respondent Anthony J. Annucci is the Acting Commissioner of the New York State Department of Correction and Community Supervision (“DOCCS”). Respondent is a legal custodian of Petitioners who are detained pursuant to a parole warrant.

### **JURISDICTION AND VENUE**

126. This court has subject matter jurisdiction over this matter under CPLR § 7001.

127. Petitioners have made no prior application for the relief requested herein.

128. Copies of the mandates pertaining to individual Petitioners are not attached hereto because the Department of Corrections and Community Supervision, which has issued and executed the parole warrants in all these cases, never supplies the petitioners or their attorney with a copy of the warrant.

### **STATEMENT OF FACTS**

#### **The COVID-19 Pandemic Presents a Grave Risk of Harm, Including Serious Illness and Death, to People Over Age 50 and Those With Certain Medical Conditions**

129. COVID-19 is a coronavirus that has reached pandemic status. As of the early morning of Mach 25, 2020, over 412,500 people worldwide have confirmed diagnoses, including

more than 53,852 people in the United States. New York City, with more than 26,665 confirmed cases, has rapidly become the epicenter of the spread of COVID-19 in the United States. Over 18,552 people have died worldwide, including more than 728 people in the United States and more than 200 in New York. Thousands of new cases are being reported each day in New York State.<sup>9</sup>

130. The World Health Organization has declared COVID-19 a pandemic.<sup>10</sup> On March 7, 2020, the governor of the State of New York issued Executive Order Number 202, declaring a disaster emergency for the entire State of New York.<sup>11</sup> Subsequently, the Mayor of New York City declared a State of Emergency for the City.<sup>12</sup> The President of the United States has now officially declared a national emergency.<sup>13</sup>

131. The transmission of COVID-19 is expected to grow exponentially. Nationally, projections by the Center for Disease Control and Prevention (“CDC”) indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the pandemic without effective public health intervention, with as many as 1.5 million deaths in the most severe projections.<sup>14</sup>

132. COVID-19 is a particularly contagious disease. A recent study showed that the virus could survive for up to three hours in the air, four hours on copper, up to twenty-four hours

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<sup>9</sup> N.Y. TIMES, *Live Updates*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed Mar. 25, 2020).

<sup>10</sup> Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>

<sup>11</sup> Jesse McKinley & Edgar Sandoval, *Coronavirus in N.Y.: Cuomo Declares State of Emergency*, N.Y. TIMES, (Mar. 7, 2020), <https://www.nytimes.com/2020/03/07/nyregion/coronavirus-new-york-queens.html>.

<sup>12</sup> *de Blasio Declares State of Emergency in N.Y.C., and Large Gatherings Are Banned*. N.Y. TIMES (Mar. 12, 2020), <https://www.nytimes.com/2020/03/12/nyregion/coronavirus-new-york-update.html>.

<sup>13</sup> Derek Hawkins et al., *Trump Declares Coronavirus Outbreak a National Emergency*, WASH. POST (Mar. 13, 2020, 10:46 AM), <https://www.washingtonpost.com/world/2020/03/13/coronavirus-latest-news/>.

<sup>14</sup> Chas Danner, *CDC's Worst-Case Coronavirus Model: 214 Million Infected, 1.7 Million Dead*, N.Y. MAG. (Mar. 13, 2020), <https://nymag.com/intelligencer/2020/03/cdcs-worst-case-coronavirus-model-210m-infected-1-7m-dead.html>.

on cardboard, and up to two to three days on plastic and stainless steel.<sup>15</sup> Indeed, a new study of an early cluster of COVID-19 cases in Wuhan, China revealed the dangers of indirect transmission resulting from infected people contaminating common surfaces—in the study, it was a communal mall bathroom.<sup>16</sup>

133. New research also shows that controlling the spread of COVID-19 is made even more difficult because of the prominence of asymptomatic transmission—people who are contagious but who exhibit limited or no symptoms, rendering ineffective any screening tools dependent on identifying symptomatic behavior.<sup>17</sup>

134. There is no vaccine for COVID-19. No one is immune.

135. Older adults and those with certain medical conditions face greater chances of serious illness or death from COVID-19.<sup>18</sup>

136. Certain underlying medical conditions increase the risk of serious COVID-19 disease for people of any age – including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised

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<sup>15</sup> *Novel Coronavirus Can Live on Some Surfaces for Up to 3 Days, New Tests Show*. TIME (<https://time.com/5801278/coronavirus-stays-on-surfaces-days-tests/>) (last visited Mar. 19, 2020).

<sup>16</sup> Cai J, Sun W, Huang J, Gamber M, Wu J, He G. Indirect virus transmission in cluster of COVID-19 cases, Wenzhou, China, 2020. *Emerg Infect Dis*. 2020 Jun. (<https://doi.org/10.3201/eid2606.200412>) (last visited Mar. 18, 2020).

<sup>17</sup> *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?* Independent. Available at <https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html> (last visited Mar. 18, 2020).

<sup>18</sup> Medical information in this and the petition paragraphs that follow are drawn from the expert testimony of two medical professionals filed in a recent filed federal case in Washington State, as well the website of the Harvard Medical School. See Expert Declaration of Dr. Marc Stern: <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern>; Expert Declaration of Dr. Robert Greifinger: <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-robert-greifinger>; Expert Declaration of Dr. Jonathan Golob <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-jonathan-golob?redirect=dawson-v-asher-expert-declaration-dr-jonathan-golob>; HARVARD MEDICAL SCHOOL, CORONAVIRUS RESOURCE CENTER, *As coronavirus spreads, many questions and some answers*, <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>, (last visited Mar. 19, 2020).

immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and pregnancy.

137. For people over the age of 50 or with medical conditions that increase the risk of serious COVID-19 infection, symptoms such as fever, coughing and shortness of breath can be especially severe.<sup>19</sup>

138. COVID-19 can cause severe damage to lung tissue, sometimes leading to a permanent loss of respiratory capacity, and can damage other vital organs including the heart and liver. Patients with serious cases of COVID-19 require advanced medical support, including positive pressure ventilation and extracorporeal mechanical oxygenation in intensive care. Patients who do not die from serious cases of COVID-19 may face prolonged recovery periods, including extensive rehabilitation from neurological damage and loss of respiratory capacity.

139. COVID-19 may also target the heart muscle, causing a medical condition known as myocarditis, or inflammation of the heart muscle. Myocarditis can affect the heart muscle and electrical system, reducing the heart's ability to pump. This reduction can lead to rapid or abnormal heart rhythms in the short term, and long-term heart failure that limits exercise tolerance and ability to work.

140. Emerging evidence suggests that COVID-19 can also trigger an over-response of the immune system, further damaging tissues in a cytokine release syndrome that can result in widespread damage to other organs, including permanent injury to the kidneys and neurologic injury.

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<sup>19</sup> *Id.*

141. These complications can manifest at an alarming pace. Patients can show the first symptoms of infection in as little as two days after exposure, and their condition can seriously deteriorate in as little as five days or sooner.

142. Most people in higher risk categories who develop serious disease will need advanced supportive care requiring highly specialized equipment that is in limited supply, and an entire team of care providers, including 1:1 or 1:2 nurse to patient ratios, respiratory therapists, and intensive care physicians. This level of support can quickly exceed local health care resources. Patients in high-risk categories should expect a prolonged recovery, including the need for extensive rehabilitation for profound reconditioning, loss of digits, neurologic damage, and the loss of respiratory capacity.

143. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 than from influenza. According to recent estimates, the fatality rate of people infected with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems. According to preliminary data from China, 20 percent of people in high-risk categories who contracted COVID-19 there died.<sup>20</sup>

144. There is no cure for COVID-19 nor is there any known medication to prevent or treat infection.

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<sup>20</sup> *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), at 12, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer”); Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A Nationwide Analysis*, medRxiv (Feb. 27, 2020), at 5, <https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf> (finding that even after adjusting for age and smoking status, patients with COVID-19 and comorbidities of chronic obstructive pulmonary disease, diabetes, hypertension, and malignancy were 1.79 times more likely to be admitted to an ICU, require invasive ventilation, or die, the number for two comorbidities was 2.59); Fei Zhou et al., *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, *Lancet* (March 11, 2020), tb. 1, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext) (finding that among hospital patients, who tended to be older, of those who had COVID-19 and died, 48% had hypertension, 31% had diabetes, and 24% had coronary heart disease).

145. The only known methods to reduce the risk for vulnerable people of serious illness or death from COVID-19 are to prevent infection in the first place through social distancing and improved hygiene, including washing hands frequently with soap and water.

### **People Imprisoned in New York City Jails Face an Elevated Risk of COVID-19**

#### **Transmission**

146. COVID-19 has now reached Rikers Island and is rapidly spreading. On March 20, 2020, there was only one confirmed case of a detainee with a positive COVID-19 diagnosis.<sup>21</sup> Just one day later, on March 21, 2020, the New York City Board of Correction reported that at least 21 detainees in New York City DOC jails had tested positive for the virus, along with twelve DOC employees, and five Correctional Health Services (CHS) employees.<sup>22</sup> There are now at least 39 inmates diagnosed with the virus, indicating transmission is now passing at an alarming rate and will only continue to spread rapidly.

147. One DOC staff member, a 56-year-old Investigation Division staffer, whose position entailed interviewing detainees in several facilities as part of investigations, died on March 15, 2020.<sup>23</sup> He reportedly had underlying health conditions, just as Petitioners do.<sup>24</sup>

148. Infectious diseases that are communicated by air or touch are more likely to spread in congregate environments such as jails – places where people live, eat, and sleep in close proximity.

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<sup>21</sup> Chelsia Rose Marcius, *Rikers Island inmate has contracted coronavirus: officials*, N.Y. DAILY NEWS (Mar. 18, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzlqmwrmuevzz3y-story.html>.

<sup>22</sup> Jacqueline Sherman, Interim Chair of NYC Board of Correction, letter, Mar. 21, 2020, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf> (last visited Mar. 22, 2020).

<sup>23</sup> Chelsia Rose Marcius, *Coronavirus kills NYC Correction Department official*, N.Y. DAILY NEWS (Mar. 18, 2020) <https://www.nydailynews.com/coronavirus/ny-coronavirus-department-correction-employee-dies-from-coronavirus-20200316-akeai6gop5alledhzi7u3pivm-story.html>.

<sup>24</sup> *Id.*

149. The highest known person-to-person transmission rate for COVID-19 to date took place in a skilled nursing home facility in Kirkland, Washington, and on afflicted cruise ships in Japan and off the coast of California.

150. The conditions of New York City jails pose even a higher risk of the spread of COVID-19 than in non-carceral locations like a nursing home or cruise ship. Jails have a greater risk because of closer quarters, the proportion of vulnerable people detained, and scant medical care resources.

151. Severe outbreaks of contagious illness regularly occur in jails. For example, during the H1N1 epidemic in 2009, many jails and prisons saw a particularly high number of cases.<sup>25</sup> H1N1 is far less contagious than COVID-19. Not surprisingly, Chinese prison officials report that over five-hundred (500) COVID-19 cases in the current outbreak stemmed from the Hubei province prisons.<sup>26</sup> The rate of incarceration in China is far lower than in the United States, suggesting the problem here will be much worse. Experts predict that “[a]ll prisons and jails should anticipate that the coronavirus will enter their facility[.]”<sup>27</sup>

152. Even at current rates of infection, which are rapidly growing, the virus’s “attack rate” on Rikers Island – that is, the rate at which the population is being infected – is roughly *fifty times higher* than the average and five times higher than anywhere else in the entire country.

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<sup>25</sup> Nicole Westman, The Verge, *Prisons and jails are vulnerable to COVID-19 outbreaks*, available at <https://www.theverge.com/2020/3/7/21167807/coronavirus-prison-jail-health-outbreak-covid-19-flu-soap> (Mar. 12 2020). See also David M. Reutter, Swine Flu Widespread in Prisons and Jails, but Deaths are Few, PRISON LEGAL NEWS, (Feb. 15, 2020) at <https://www.prisonlegalnews.org/news/2010/feb/15/swine-flu-widespread-in-prisons-and-jails-butdeaths-are-few/>.

<sup>26</sup> Evelyn Cheng and Huileng Tan, China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons, CNBC, Feb. 20, 2020, available at <https://www.cnbc.com/2020/02/21/coronavirus-china-says-two-prisons-reportednearly-250-cases.html>.

<sup>27</sup> *Id.* (quoting Tyler Winkelman, co-director of the Health, Homelessness, and Criminal Justice Lab at the Hennepin Healthcare Research Institute in Minneapolis).



153. In New York City jails, jail design and operations make it impossible for Petitioners to engage in the necessary social distancing required to mitigate the risk of transmission. Many people live in dormitory-like sleeping arrangements. They have limited freedom of movement and no control over the movements of others with whom they are required to congregate on a daily basis. They are unable to maintain anything close to the recommended distance of 6 feet from others.

154. Petitioners also cannot maintain adequate levels of preventive hygiene. They are required to share or touch objects used by others. Toilets, sinks and showers are shared, without disinfection between each use.

155. Food preparation and service is communal, served by other incarcerated workers drawn from many different housing areas within the jail, with little opportunity for surface disinfection.

156. There have been shortages of basic cleaning supplies to disinfect housing areas in New York City jails, including housing areas where people with respiratory illnesses are currently confined.

157. DOC cleaning protocols for common spaces are often not followed. On Monday, March 23, 2020, a Legal Aid lawyer spoke to her client who reported that six people had been removed from his dormitory over the weekend after testing positive for COVID-19, but his dormitory still had not been cleaned. Later that day, the Legal Aid Society informed DOC in a letter of this and other complaints, but to date have not had a response.

158. Petitioners lack ready access to soap and water for washing hands. If a sink in a housing area is broken, they do not have a choice to walk to an area with a working sink. Soap and paper towels are not provided by the jail. Often, the only means to access soap is by

purchasing it in commissary—which is not an option for many detainees who lack access to funds. There is no recourse if another person takes a vulnerable person’s bar of soap.

159. As recently as the day before this filing, clients of the Legal Aid Society were reporting to their attorneys that they had no access to soap or hand sanitizer despite DOC’s public pledges that it was ensuring such access.

160. Hand sanitizer capable of killing COVID-19 contains alcohol, which has been treated as contraband in jails. Indeed, on March 20, 2020, a representative for Respondent Brann confirmed in a court proceeding that detainees still do not have access to hand sanitizer because of its’ purported dangerousness.

161. New York City jails lack adequate infrastructure to address the spread of infectious disease and the treatment of people most vulnerable to illness.

162. Neither DOC nor Correctional Health Services (“CHS”), the medical services provider in New York City jails, has implemented protocols sufficient to screen, detect or identify incarcerated people or staff who have been infected.

163. On March 10, 2020, DOC officials testified at a Board of Correction meeting that the Communicable Disease Unit (“CDU”) has only 88 respiratory isolation beds available for people who become infected. Officials did not identify how many of these beds are already occupied by other ill people or what actions would be taken by the Department in the event that CDU and hospital ward capacity is exhausted.<sup>28</sup>

164. The procedures outlined in the DOC’s “COVID19 Preparation & Action Plan” issued on March 5, 2020 are not sufficient to mitigate the risk of serious harm. According to this plan, newly admitted detainees will only be separated from other detainees if they exhibit “flu-

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<sup>28</sup> Testimony of Dept. of Corr. Official, N.Y.C. Bd. of Corr. Mtg., Mar. 10, 2020 at 17:40, <https://www1.nyc.gov/site/boc/meetings/mar-10-2020.page>.

like” symptoms upon admission.<sup>29</sup> This initial screening process overlooks the fact that COVID-19 may present with a slower onset of symptoms than the flu — meaning that many who are infected with COVID-19 do not show signs of illness.<sup>30</sup> The dangers of asymptomatic transmission continue within DOC facilities. DOC and CHS have revealed only symptom-reactive policies—that staff will be sent home and incarcerated people will be separated and treated *if they display symptoms*<sup>31</sup>—which are ineffective to stop the rampant asymptomatic transmission of the disease.<sup>32</sup>

165. DOC plans to warehouse all of its “sick” detainees together, in communal living spaces, where they will “sleep head to toe thereby increasing breathable space between inmates,”<sup>33</sup> a measure that will do little to avoid transmission among detainees.

166. Even if all of these problems could be resolved, however, they would not sufficiently address the risk of serious medical harm to Petitioners. As Dr. Homer Venters, former chief medical officer of New York City jails, recently said, “[i]n ordinary times, crowded jails overlook prisoners’ medical problems and struggle to separate them based on their security classification...[i]f jails have to add quarantines and sequestration of high-risk prisoners to the mix...they will find managing a COVID-19 outbreak ‘*simply almost impossible.*’”<sup>34</sup>

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<sup>29</sup> See N.Y.C. Dept. of Corr., *COVID19 Preparation & Action Plan*, <https://www1.nyc.gov/site/doc/media/coronavirus-news.page> (last visited Mar. 19, 2020).

<sup>30</sup> CDC, *Coronavirus Disease 2019 (COVID-19) Symptoms*, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Mar. 19, 2020); see also Yale New Haven Health, *Coronavirus (COVID-19) vs. Influenza (Flu)*, <https://www.ynhhs.org/patient-care/urgent-care/flu-or-coronavirus> (last visited Mar. 19, 2020).

<sup>31</sup> New York City Department of Correction: COVID19 Preparation & Action Plan, available at <https://www1.nyc.gov/site/doc/media/coronavirus-news.page> (last visited Mar. 18, 2020).

<sup>32</sup> *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?* Independent. Available at <https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html>.

<sup>33</sup> *Id.*

<sup>34</sup> Madison Pauly, *To Arrest the Spread of Coronavirus, Arrest Fewer People*, MOTHER JONES (Mar. 12, 2020), [https://www.motherjones.com/crime-justice/2020/03/coronavirus-jails-bail-reform-arrests/?utm\\_source=The+Appeal&utm\\_campaign=0a31827f48-](https://www.motherjones.com/crime-justice/2020/03/coronavirus-jails-bail-reform-arrests/?utm_source=The+Appeal&utm_campaign=0a31827f48-)

167. Likewise, Correctional Health Services (“CHS”), which administers medical care in New York City jails, has acknowledged their limited capacity to manage the risk of the virus and has requested that courts reconsider the necessity of pretrial detention for high risk patients until the current state of emergency is resolved.

**Release Is Required to Address the Risk of Serious Medical Harm**

168. Because risk mitigation is the only known strategy to protect vulnerable groups from COVID-19, correctional public health experts, including the New York City Board of Correction, have recommended the release from custody of people most vulnerable to COVID-19. On March 17, 2020, they called on New York City to “immediately remove from jail all people at higher risk from COVID-19 infection” and to “drastically reduce the number of people in jail right now and limit new admissions to exceptional circumstances.”<sup>35</sup> The Board reasons that “[t]he City’s jails have particular challenges to preventing disease transmission on a normal day and even more so during a public health crisis.”<sup>36</sup> Accordingly, the Board recommends that DOC prioritize the release of “[p]eople who are over 50; [and] [p]eople who have underlying health conditions, including lung disease, heart disease, diabetes, cancer, or a weakened immune system[.]”<sup>37</sup>

169. Ross McDonald, the Chief Medical Officer of CHS, publicly called for the release from Rikers Island of “as many [people] as possible” on Twitter on March 18, 2020:<sup>38</sup>

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[EMAIL CAMPAIGN 2018 08 09 04 14 COPY 01&utm\\_medium=email&utm\\_term=0\\_72df992d84-0a31827f48-58432543.](https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf)

<sup>35</sup> Press Release, N.Y.C. Bd. of Corr., New York City Board of Correction Calls for City to Begin Releasing People from Jail as Part of Public Health Response to COVID-19 (Mar. 17, 2020), <https://www1.nyc.gov/assets/boc/downloads/pdf/News/2020.03.17%20-%20Board%20of%20Correction%20Statement%20re%20Release.pdf> .

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> <https://twitter.com/RossMacDonaldMD/status/1240455796946800641>



**Ross MacDonald**  
@RossMacDonaldMD



A message from the Chief Physician of Rikers Island for the judges and prosecutors of New York: We who care for those you detain noticed how swiftly you closed your courts in response to [#COVID19](#) 1/x

9:51 PM · Mar 18, 2020 · [Twitter for iPhone](#)

5.7K Retweets 16.8K Likes



**Ross MacDonald** @RossMacDonaldMD · 15h



Replying to @RossMacDonaldMD

This was fundamentally an act of social distancing, a sound strategy in public health. But the luxury that allows you to protect yourselves, carries with it an obligation to those you detain. 2/x

3

475

4.1K



**Ross MacDonald** @RossMacDonaldMD · 15h



You must not leave them in harm's way 3/x

2

341

3.6K



**Ross MacDonald** @RossMacDonaldMD · 15h



To be clear, the public servants who care for those in your jails have been planning for this storm for weeks and months. We will muster every tool of public health, science and medicine to try to keep our patients safe. We will apply every novel treatment and scarce test. 4/x

3

349

3.5K



**Ross MacDonald** @RossMacDonaldMD · 15h



We will put ourselves at personal risk and ask little in return. But we cannot change the fundamental nature of jail. We cannot socially distance dozens of elderly men living in a dorm, sharing a bathroom. Think of a cruise ship recklessly boarding more passengers each day. 5/x

4

547

3.8K



**Ross MacDonald** @RossMacDonaldMD · 15h



A storm is coming and I know what I'll be doing when it claims my first patient. What will you be doing? What will you have done? We have told you who is at risk. Please let as many out as you possibly can. end.

37

947

6.1K



170. Similarly, Dr. Rachel Bedard, a geriatrician who works on Rikers Island providing medical care for elderly and ill detainees, explained why effective preventative measures in a jail setting are nearly impossible.

You cannot implement effective social distancing in a room that sleeps forty men. You cannot implement effective social distancing when those forty men are using two or three sinks and one of them may be broken. You cannot implement effective social distancing when the staff interacts with all of them and has to touch all of them in the course of a day. . . . [Detainees] don't have our own cleaning supplies. They can't wipe down their own surfaces. They have to wait for someone to come in and do that for them.<sup>39</sup>

Dr. Bedard stated that Rikers' physicians' public cry for immediate release of large numbers of detainees is unprecedented but necessary because "the moral calculus has changed and our voices needed to be heard on this issue."<sup>40</sup> Dr. Bedard noted that, to be effective, the DOC must release "hundreds of people . . . so that the jail population is decreased enough that you don't just benefit the people who are released but you also benefit those who are left behind—and the staff who take care of them and the officers who take care of them."<sup>41</sup>

171. Likewise, the District Attorneys of New York and Kings County have endorsed a plan to identify and release people who are "elderly" or other "[p]opulations that the CDC has classified as vulnerable (those with asthma, cancer, heart disease, lung disease, and diabetes)."<sup>42</sup>

172. Courts and public officials in other jurisdictions, including in Los Angeles, California and parts of Ohio and Texas, have already responded by taking steps to facilitate the

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<sup>39</sup> Jennifer Gonnerman, A Rikers Island Doctor Speaks Out to Save Her Elderly Patients from the Coronavirus, *New Yorker Magazine*, available at <https://www.newyorker.com/news/news-desk/a-rikers-island-doctor-speaks-out-to-save-her-elderly-patients-from-the-coronavirus> (last visited Mar. 22, 2020).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of those in Custody (Mar. 18, 2020), <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

release of elderly and sick prisoners, and to reduce jail populations by refusing the admission to jails of individuals arrested on certain charges.<sup>43</sup> In Iran, one of the first countries to see the outbreak of COVID-19, 85,000 inmates were temporarily released back to their communities amid virus concerns.<sup>44</sup> The State of New Jersey just announced plans to temporarily release up to 1,000 people held in county jails.<sup>45</sup>

173. Courts across the country have also begun granting specific applications for release of pretrial detainees, with many more such applications pending. *See, e.g., United States v. Raihan*, No. 20-cr-68 (BMC) (JO), Dkt. No. 20 at 10:12–19 (E.D.N.Y. Mar. 12, 2020) (ordering the continued release of a pre-trial detainee on the grounds that “[t]he more people we crowd into that facility [the Manhattan Detention Center], the more we’re increasing the risk to the community”); *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. Mar. 17, 2020) (“With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large.”); *In The Matter Of The Extradition Of Alejandro Toledo Manrique*, 2020 WL 1307109, (N.D. Cal. March 19, 2020) (ordering pre-

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<sup>43</sup>*See, e.g.,* Alene Tchekmedyan et al, *L.A. County releasing some inmates from jail to combat coronavirus*, L.A. Times, (Mar. 16, 2020, 7:25 PM), <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>; Cory Shaffer, *Cuyahoga County official will hold mass plea, bond hearings to reduce jail population over coronavirus concerns*, CLEVELAND.COM (Mar. 12, 2020), <https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>); WKBN Staff, *Local county jails making changes due to coronavirus outbreak*, WKBN (Mar. 12, 2020) (“The Mahoning County [Ohio] Sheriff’s Office is refusing all non-violent misdemeanor arrests at the county jail”), <https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>; *see also* Charles Scudder, *Facing coronavirus concerns, Collin County [Texas] Sheriff asks police not to bring petty criminals to jail*, DALLAS MORNING NEWS (Mar. 12, 2020 5:57 PM), <https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>.

<sup>44</sup> *Hard-hit Iran frees more prisoners amid coronavirus outbreak*, AL JAZEERA (Mar. 17, 2020), <https://www.aljazeera.com/news/2020/03/hard-hit-iran-frees-prisoners-coronavirus-outbreak-200317110516495.html>.

<sup>45</sup> In the Matter of the request to Commute or Suspend County Jail Sentences, [https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22\\_-\\_Consent\\_Order\\_Filed\\_Stamped\\_Copy-1.pdf?utm\\_source=The+Appeal&utm\\_campaign=738080af0c-EMAIL\\_CAMPAIGN\\_2018\\_08\\_09\\_04\\_14\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_72df992d84-738080af0c-58432543](https://www.aclu-nj.org/files/5415/8496/4744/2020.03.22_-_Consent_Order_Filed_Stamped_Copy-1.pdf?utm_source=The+Appeal&utm_campaign=738080af0c-EMAIL_CAMPAIGN_2018_08_09_04_14_COPY_01&utm_medium=email&utm_term=0_72df992d84-738080af0c-58432543)

trial detainee’s release on bond despite finding the person was a flight risk and despite the fact that no cases had yet been confirmed in the San Mateo County jail, since by the time there is a case it will likely be “too late”); *U.S. v. Stephens*, 19cr95, 2020 WL 1295155, (AJN) (S.D.N.Y. Mar. 19, 2020) (ordering release of federal pretrial detainee in part due to “unprecedented and extraordinarily dangerous nature of the COVID-19 pandemic” which may place inmates, in particular, at “heightened risk.”); *United States v. Perez* 19-cr-297 (PAE), Dkt. No. 62 (March 19, 2020) (ordering the release of a detainee held on sex crime charges with “serious progressive lung diseases after finding “compelling reasons exist for temporary release of the defendant from custody during the current public health crisis”).

174. In a recent court filing seeking the release of federal immigration detainees, Dr. Marc Stern, a correctional health expert, has concluded that “[f]or detainees who are at high risk of serious illness or death should they contract the COVID-19 virus, release from detention is a critically important way to meaningfully mitigate that risk.” For that reason, Dr. Stern has recommended the “release of eligible individuals from detention, with priority given to the elderly and those with underlying medical conditions most vulnerable to serious illness or death if infected with COVID-19.”<sup>46</sup>

175. Another correctional health expert in that same court case, Dr. Robert Greifinger, concluded that “even with the best-laid plans to address the spread of COVID-19 in detention facilities, the release of high-risk individuals is a key part of a risk mitigation strategy.” Accordingly, in his opinion, “the public health recommendation is to release high-risk people

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<sup>46</sup>Decl. of Dr. Marc Stern ¶¶ 9, 11, *Dawson v. Asher*, (No. 2:20-CV-409-JLR-MAT) (Mar. 16, 2020), <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern>.



from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.”<sup>47</sup>

176. Release protects the people with the greatest vulnerability to COVID-19 from transmission of the virus and also allows for greater risk mitigation for all people held or working in prisons and jails.

177. Release of the most vulnerable people also reduces the burden on New York’s limited health care infrastructure, as it lessens the likelihood that an overwhelming number of people will become seriously ill from COVID-19 at the same time.

**Failure to Release Petitioners Constitutes Deliberate Indifference to Serious Medical Harm**

178. Continuing to incarcerate people who have been deemed by the CDC to be especially vulnerable to a deadly pandemic, in conditions where taking the only known steps to prevent transmission are virtually impossible, constitutes deliberate indifference to serious medical harm in violation of the United States and New York State constitutions.

179. The Due Process clause of the Fourteenth Amendment proscribes deliberate indifference to the serious medical needs of people held in pre-trial confinement. *Darnell v. Pineiro*, 849 F.3d 17, 29 (2d Cir. 2017). To establish a federal constitutional claim, Petitioners must prove that Respondents (1) acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though (2) they knew, or should have known, that the condition posed an excessive risk to health or safety. *Id.* at 35. The same standard applies those held on parole warrants. *Benjamin v. Malcolm*, 646 F. Supp. 1550, 1556 (S.D.N.Y. 1986) (“[A]lleged parole violators ought not to be treated differently from other detainees, since the charges of parole

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<sup>47</sup> Decl. of Dr. Robert Greifinger ¶ 13, *Dawson v. Asher*, (No. 2:20-CV-409-JLR-MAT) (Mar. 16, 2020), <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-robert-greifinger>

violation standing against them are unproven, and in many instances, involve the same charges as those for which they are substantively detained.”); *Hamilton v. Lyons*, 74 F.3d 99, 106 (5th Cir. 1996) (“[We] apply *Bell*’s standard to detained parolees only to the extent that we recognize that a parolee arrested for a subsequent crime has a due process right to be free from punishment for the subsequent crime until convicted of the subsequent crime.”).

180. There is an even stronger due process right to be free from unconstitutional conditions of confinement under the New York State Constitution. In *Cooper v. Morin*, 49 N.Y.2d 69, 79 (1979), the Court of Appeals concluded that the state due process clause accords even greater protection for pretrial detainees than the federal constitution, holding that “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.” For the government to prevail, it must prove a “compelling governmental necessity” for any restrictions on pretrial detainees’ liberty interests. *People ex rel. Schipski v. Flood*, 88 A.D.2d 197 (2nd Dep’t 1982). This is an “exacting standard.” *Id.* The state’s interests are limited to those arising from the “only legitimate purpose for pretrial detention . . . to assure the presence of the detainee for trial.” *Id.* at 81; *see also Schipski*, 88 A.D.2d at 199-200 (holding county jail’s blanket policy of 22-hour lock-in for a certain category of pretrial detainees violates the state’s due process guarantee); *Powlowski v. Wullich*, 102 A.D.2d 575, 587 (1984) (holding that because a jail’s practice of depriving pretrial detainees of recreation and exercise “violates the federal standard, it, a fortiori, must fail the more stringent standard balancing test prescribed for violations of our state due process clause”).

181. The U.S. Supreme Court and courts throughout New York have recognized that the risk of contracting a communicable disease constitutes an “unsafe, life-threatening condition” that threatens “reasonable safety.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). *See also Jolly v.*

*Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease”); *Narvaez v. City of New York*, No. 16-CV-1980 (GBD), 2017 WL 1535386, at \*9 (S.D.N.Y. Apr. 17, 2017) (denying “motion to dismiss Plaintiff’s claim that the City of New York violated Plaintiff’s rights under the Due Process Clause by repeatedly deciding to continue housing him with inmates with active-TB” during his pretrial detention); *Bolton v. Goord*, 992 F. Supp. 604, 628 (S.D.N.Y. 1998) (acknowledging that prisoner could state claim under § 1983 for confinement in same cell as inmate with serious contagious disease).

182. Respondents are well aware of the extraordinary risk COVID-19 poses to people in New York City jails. As pleaded above, they have alerted to this risk by the Board of Correction, their own correctional health service, and at least two of New York’s elected District Attorneys.

183. On March 13, 2020, the Legal Aid Society sent a letter to Respondent the New York City Department of Correction (“DOC”) noting multiple complaints from incarcerated clients about the lack of basic sanitation raising concerns about the ability to manage the risk of COVID-19 in New York City jails.<sup>48</sup>

184. Since at least March 15, 2020, attorneys in the Legal Aid Society’s Parole Revocation Defense Unit have sent lists of medically vulnerable people held on parole warrants, including several of the Petitioners, to Respondent Department of Correction and Community Supervision (“DOCCS”), asking for their urgent release.

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<sup>48</sup> Letter from Justine Luongo, Attorney-in-Charge, Legal Aid Society Criminal Defense Practice, to Commissioner Cynthia Brann, N.Y.C. Department of Corrections, and Elizabeth Glazer, Mayor’s Office of Criminal Justice (Mar. 13, 2020), <https://legalaidnyc.org/wp-content/uploads/2020/03/LAS-Letter-to-NYC-re-COVID-19-Preparedness-in-City-Jails.pdf>.

185. DOCCS has not responded to these requests other than to send an email confirming receipt.

186. Numerous media outlets have covered these and other calls to action.<sup>49</sup>

187. Whatever steps Respondents have taken to manage the risk of COVID-19 will fail because, as pleaded above, Respondents are not capable of managing that risk in a jail environment.

188. Respondents' intentional failure to release Petitioners while actually aware of the substantial risk of COVID-19 plainly constitutes deliberate indifference.

### **The Remedy of Immediate Release is Necessary and Appropriate Under the Circumstances**

189. The affirmative obligation to protect against infectious disease empowers Courts to provide remedies designed to prevent imminent harm to future health. *Helling*, 509 U.S. at 33 (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”); *Sanchez v. State of New York*, 99 N.Y.2d 247, 254 (2002) (recognizing that it is “duty of the State, as [petitioner’s] custodian, to safeguard and protect him from the harms it should reasonably foresee based on its knowledge derived from operation of a maximum security prison.”). *Jabbar v. Fischer*, 683 F.3d 54, 57 (2d Cir. 2012) (“We have held that prisoners may not be deprived of their basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—and they may not be exposed to conditions that pose an unreasonable risk of serious damage to [their] future health.”) (citation and internal quotation marks omitted).

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<sup>49</sup> See, *e.g.*, Chelsia Rose Marcius, *Coronavirus prompts Legal Aid, Manhattan DA, to call for release of state parolees from city jails*, N.Y. DAILY NEWS (Mar, 17, 2020) <https://www.nydailynews.com/coronavirus/ny-coronavirus-nyc-rikers-island-parole-correction-department-20200317-flg4paly5nesddfbtkone6hki-story.html>; see also *supra* notes **Error! Bookmark not defined.-Error! Bookmark not defined., Error! Bookmark not defined., Error! Bookmark not defined.**

190. Immediate release pursuant to a writ of habeas corpus is available to address constitutional violations arising from circumstances or conditions of confinement. *People ex rel. Brown v. Johnston*, 9 N.Y.2d 482, 485 (1961) (habeas petition may be used to address "restraint in excess of that permitted by...constitutional guarantees); *Kaufman v. Henderson*, 64 A.D.2d 849, 850 (4th Dep't 1978) ("[W]hen appellant claims that he has been deprived of a fundamental constitutional right, habeas corpus is an appropriate remedy to challenge his imprisonment."). A person is "not to be divested of all rights and unalterably abandoned and forgotten by the remainder of society" by virtue of incarceration. *Brown*, 9 N.Y.2d at 485. Hence, the "right to detain a prisoner is entitled to no greater application than its correlative duty to protect him from unlawful and onerous treatment[,] mental or physical." *Id.* Thus, courts have addressed whether the failure to address medical needs has risen to the level of a constitutional violation, requiring immediate release. See, e.g., *People ex rel. Kalikow on Behalf of Rosario v. Scully*, 198 A.D.2d 250, 250–51 (2d Dep't 1993) (habeas petition addressing whether failure to provide adequate medical care constituted cruel and unusual punishment or deliberate indifference).

191. The Court of Appeals has explained that the State has a duty "to protect [incarcerated people] from unlawful and onerous treatment, mental or physical." *Id.* at 485 (citations omitted). Indeed, habeas relief is the *only* remedy available in such circumstances. *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973).

192. While there is limited precedent on this issue, New York's habeas jurisprudence in general has long contemplated the possibility that habeas claims for release based on conditions could be entertained *if* a petitioner could establish that the appropriate remedy was release. See *People ex rel. Sandson v Duncan*, 306 A.D.2d 716, 716–17 (3d Dept. 2003) (upholding denial of the writ because, "[w]hile 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” and reasoning that “[h]abeas corpus will be granted only in cases where success would entitle the petitioner to immediate release”); *People ex rel. Barnes v. Allard*, 807 N.Y.S.2d 688, 689 (3d Dept. 2006) (“As for petitioner’s complaint regarding the correctional facility’s alleged deliberate indifference to his medical needs, . . . it would not entitle him to immediate release, thus making habeas corpus relief unavailable”).

193. Petitioners have not been committed and are not detained by virtue of any judgment, decree, final order or process of mandate issued by a court or judge of the United States in a case where such court or judge has exclusive jurisdiction to order him released.

194. Petitioners are not detained by virtue of any final judgment or decree of a competent tribunal or civil or criminal jurisdiction. Petitioners have no other holds.

195. No prior application for the relief requested herein has been made.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court issue a writ of habeas corpus and order Petitioners’ immediate release, with appropriate precautionary public health measures, on the ground that their continued detention violates the Due Process Clause of the United States and New York State constitutions.

Dated: March 25, 2020  
New York, New York

Respectfully Submitted,



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COREY STOUGHTON  
MARIE NDIAYE  
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*Attorneys for Petitioners*

Corey Stoughton, an attorney admitted to practice law in the State of New York, states that she has read the foregoing petition and that same is true to her own knowledge, except for those portions stated on information and belief, for which citations are provided.

Dated: March 20, 2020  
BROOKLYN, NEW YORK

A handwritten signature in black ink, appearing to read "Corey Stoughton", is centered on the page. The signature is written in a cursive, flowing style.

Corey Stoughton