

At a Special term, Part 39 of the Supreme Court of the State of New York, held in and for the County of Nassau, on the 13 of April 2020

P R E S E N T :

HON. TERESA K. CORRIGAN
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AJSC

} BV/CC

THE PEOPLE OF THE STATE OF NEW YORK
ex rel. ERNEST KING dob 9/28/87, &
DONALD, HAYES
dob 6/18/80

6

Petitioners,

**Petition for a Writ
of Habeas Corpus**

- against -

JAMES
of Nassau County,

DZURENDA,

Acting

Sheriff/Undersheriff

Respondent.

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THE PEOPLE OF THE STATE OF NEW YORK, THE SHERIFF OF NASSAU COUNTY,
THE WARDEN OF THE NASSAU COUNTY CORRECTIONAL CENTER, OR ANY OTHER
PERSON HAVING CUSTODY OF THE PETITIONERS:

WE COMMAND YOU, that you have the bodies of PETITIONERS by you imprisoned and
detained, together with the time and cause of such imprisonment and detention, by whatever name
PETITIONERS shall be called or charged before the Supreme Court of the State of New York,
Special Term, Part 39, Mineola, New York on the 15th day of April, 2020 or as soon thereafter
as the matter can be heard to do and receive what then and there shall be considered concerning
PETITIONERS and have you then and there this writ.

} BV/CC

RECEIVED BY
2020 APR 13 PM 2:30
NASSAU COUNTY COUR
SHERIFFS OFFICE

PETITIONERS WAIVE THEIR APPEARANCES ON THE RETURN OF THIS WRIT,
AND SHOULD NOT BE PRODUCED AT THE ABOVE TIME AND PLACE.

Sufficient reason appearing therefore, personal service of this writ having been waived by Captain Golio of the Nassau County Sheriff's Department in lieu of email service, personal service of this writ having been waived by Laurel Kretzing of the Office of the Nassau County Attorney in lieu of email service, and personal service of this writ having been waived by Valerie Singleton of the Office of the New York State Attorney General's Office in lieu of email service, at or before 1 PM o'clock in the ~~noon~~ on the 14th day of APRIL 2020 shall be deemed due and sufficient service.

WITNESS, HON. TERESA K. CORRIGAN one of the Justices of the Supreme Court of the State of New York, the 13 day of April 2020. The within writ is hereby allowed ~~this~~ to be heard 15th day of April 2020. M

Teresa K Corrigan
JUSTICE OF THE SUPREME COURT
OF THE STATE OF NEW YORK

HON. TERESA K. CORRIGAN

STATE OF NEW YORK
COUNTY OF NASSAU: SUPREME COURT

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THE PEOPLE OF THE STATE OF NEW YORK
ex rel. ERNEST KING dob 9/28/87,
DONALD HAYES dob 6//18/80,

VERIFIED PETITION

Petitioners,

- against -

JAMES DZURENDA, Acting Sheriff/Undersheriff
of Nassau County,

Respondent.

-----X.
STATE OF NEW YORK)

) ss.:

COUNTY OF NASSAU)

DAVID ROSENFELD, being duly sworn deposes and says:

1. I am an attorney, admitted to practice before the Courts of the State of New York and am associated with N. Scott Banks, Attorney in Chief, Nassau County Legal Aid Society, counsel assigned to represent the Petitioners herein and am fully familiar with the facts of this case.
2. Petitioners are indigent and presently incarcerated at the Nassau County Correctional Center under the custody of the Acting Sheriff of Nassau County, JAMES DZURENDA.
3. The cause and pretense of their incarceration is parole violation warrants issued and lodged against Petitioners by the Department of Corrections and Community Supervision.
4. ERNEST KING's warrant number is 804336 and DONALD HAYES' warrant number is

804999.

5. A court or judge of the United States does not have exclusive jurisdiction to order Petitioners' release.
6. Inasmuch as the Petitioners are entitled to immediate release in the event this petition is granted, this Court is authorized to hear and decide this writ of habeas corpus pursuant to *Matter of Russo v. N.Y.S. Bd. Of Parole*, 50 N.Y.2d 69, 75 (1980).
7. The basis of venue and jurisdiction is that Petitioners are currently detained at the Nassau County Correctional Center in East Meadow, New York.

FACTS

8. Petitioners are two people who received as a sanction for their parole violation a time assessment with a drug treatment alternative, in which they were promised the opportunity to enter a DOCCS 90-day treatment program, and to be released from custody immediately upon successfully completing it. Although they have been adjudicated in violation of their parole, the violations were not considered serious enough to require them to remain in custody longer than the maximum 90 days it takes to complete any of the treatment programs. In these two cases, petitioners have been denied the right to enter the program because transfers to state custody have been suspended due to the COVID-19 epidemic sweeping through New York State and are instead languishing at the Nassau County Sheriff's Department. This petition seeks their immediate release from the Nassau County Sheriff's Department because of the denial of the promise that was made to them, a denial exacerbated

by the high risk of them becoming infected with COVID-19.

9. As of 4/9/20, in Nassau County alone, there are 20,140 total COVID-19 positives and 633 COVID-19 related deaths.¹ Sadly, by the time you click the link in the preceding footnote, those numbers will have increased.
10. The Nassau County Sheriff's Department is also seeing their numbers increase. On 3/16/20, less than a month ago, there was one positive case of COVID-19 in the Nassau County Sheriff's Department. As of 4/2/20, there were 12 positive cases in the Nassau County Sheriff's Department and nine inmates at the Nassau County Jail in quarantine.² The number of positive cases at the Nassau County Sheriff's Department at that time may have actually been 14 according to another report.³ On 4/6/20, Newsday reported that in the Sheriff's Department, those numbers jumped to 27 employees, not including inmates, who tested positive. And, "Nassau County on Wednesday is expected to begin administering 20,000 tests for COVID-19 and antibodies to county first responders including police, medics and sheriff's correction officers, who have had outbreaks in their ranks."⁴
11. This course of action would not occur unless there is a concern that more people may be infected than they realize, because, as it is well known at this time, some people are

¹ <https://www.nassaucountyny.gov/4974/COVID-19-By-The-Numbers>

² <https://patch.com/new-york/massapequa/coronavirus-nassau-more-1-000-new-cases-overnight>

³ <https://newyork.cbslocal.com/2020/04/01/coronavirus-update-religious-holiday-celebrations-will-be-different-amid-social-distancing-regulations/>

⁴ <https://www.newsday.com/news/health/coronavirus/covid-19-nassau-police-testing-kits-1.43703115>

asymptomatic and some people may not experience symptoms for up to 14 days.

12. There is no vaccine or cure for COVID-19. No one is immune.
13. COVID-19 is most likely to cause serious illness and death in older adults and those with certain underlying medical conditions. But, because COVID-19 is a brand new disease, and thus can infect anyone in the population, younger, healthier people are just as likely to become infected and to spread it to others. And, just because these individuals are less likely to suffer more severe outcomes than older adults and those with underlying medical conditions, does not mean that younger and healthier people are immune from becoming seriously ill, requiring hospitalization, and even dying.
14. Because risk mitigation is the only known strategy to prevent the spread of COVID--19 and risk mitigation is effectively impossible in jails, including those in Nassau County, 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 pressed judges, prosecutors and executive officials to release from custody as many people as possible. As these experts have explained, release is the only effective means to protect the people with 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 at jails.
15. New York has recognized the imperative of releasing incarcerated individuals to stem the spread of COVID-19, regardless of health or age. On March 27, 2020, Governor Cuomo

announced that 1,100 individuals arrested for alleged technical parole violations were to be released from jail. The Nassau County Sheriff's Department only released five parolees from that list. More may come, but this Court would be remiss to wait and see, as petitioners' lives are in danger daily, since the rate of infection in the jail keeps rising.

16. Petitioners did not make the cut for this list because they have completed the revocation process and been found in violation of their parole. Petitioner KING's final hearing was completed on 3/12/20, and Petitioner HAYES' final hearing was completed on 3/4/20.
17. On or about March 13, 2020, in response to the COVID-19 pandemic, and in an effort to prevent the disease from spreading within the state prison system, DOCCS suspended the transfer of all individuals held in local custody who are ready to enter state custody. That decision has left the Petitioners in limbo, unable to obtain their release upon successful completion of a DOCCS-administered treatment program because they are unable to get to state custody to enter the program. Instead, they are sitting in the Nassau County Sheriff's Department indefinitely, waiting to be infected with COVID-19.
18. All across New York, extraordinary and unprecedented measures affecting every aspect of life are being taken in the name of protecting people from this pandemic. New York cannot block access to treatment programs and leave people in jail behind with nowhere to go, only to wait, wondering if and when they will become infected with COVID-19, and what will happen to them if they do.
19. Petitioners have both completed their final parole revocation hearing and been promised the

opportunity to be immediately released upon successful completion of a DOCCS 90-day treatment program. Petitioners should have been able to enter those programs soon after completion of the final hearing. However, because of the COVID-19 pandemic, all transfers from local custody to state custody have been suspended indefinitely. Although petitioners have been adjudicated in violation of their parole, the violations were not considered serious enough to require them to remain in custody longer than the maximum 90 days it takes to complete the treatment program.

20. Petitioner ERNEST KING, warrant number 804336, entered a guilty plea at a final revocation hearing on March 12, 2020, in exchange for “voluntary Willard,” a three-month boot camp-style drug treatment program.
21. Petitioner DONALD HAYES, warrant number 804999, entered a guilty plea at a final revocation hearing on March 4, 2020, in exchange for “voluntary Willard,” a three-month boot camp-style drug treatment program.
22. Petitioners have been denied the right to enter the programs because transfers to state custody have been suspended due to the COVID-19 epidemic sweeping through New York State. Petitioners remain at the Nassau County Sheriff’s Department, subject to the uniquely dangerous conditions presented there by the COVID-19 virus.
23. There is no cure for COVID-19 nor is there any known medication to prevent or treat infection.
24. The only known methods to reduce the risks associated with 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 Jails Face a Drastically Elevated Risk of COVID-19 Transmission

25. 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.
26. The conditions of a jail 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.
27. 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.⁵ H1N1 is far less contagious than COVID-19.
28. On 4/8/20, a writ was heard by Judge Corrigan regarding the demand for release of several petitioners from the Nassau County Sheriff's Department who were being held on parole warrants yet had serious medical conditions. Judge Corrigan released three out of five of the

⁵ 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/>.

named petitioners, but not before addressing a letter she received from Captain Michael Golio of the Naassau County Sheriff's Department. That letter stated,

From: Golio, Michael R
Sent: Wednesday, April 08, 2020 10:17 AM
To: Hon. Teresa K. Corrigan
Subject: RE: COVID Updates - Nassau County Correctional Center

The Nassau County Sheriff's Department/Correctional Center is taking all reasonable steps to prevent the spread of the virus within the facility. In addition to other measures, we are actively screening all new admissions and all new admissions are tested for the COVID-19 virus. We are limiting inmate movement and promoting social distancing among the inmate population and staff in conformance with both CDC and SCOC guidance. We are keeping new admissions out of population for at least 14 days. We are sanitizing and cleaning throughout the facility. We are isolating/quarantining any inmate showing potential symptoms until medically cleared in a designated housing area. All staff are provided with appropriate PPE and any staff member presenting with symptoms is placed on leave and referred for appropriate testing.

As of 04/08/2020 at 0815 hours:

Incarcerated Individuals Quarantined today (COVID+, Symptomatic, Contact Trace, etc.)

22 currently in isolation/quarantine
18 COVID+ in isolation/quarantine
04 pending/suspected in isolation/quarantine

15 total inmates cleared and returned to population

Staff (Security, Medical, Other) Quarantined today (COVID+, Symptomatic, Contact Trace, etc.)

66 currently in isolation/quarantine

38 COVID+ in isolation/quarantine

28 pending/suspected in isolation/quarantine

34 total cleared and returned to duty

29. There is no denying that Captain Golio is doing everything he can to keep his staff and inmates safe. **But a jail is a jail and not a hospital.** The numbers provided by Captain Golio also show a significant increase in infection numbers since the last available reported statistics provided earlier in this writ.
30. The design and operation of jails 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 six feet from others.
31. This morning, on the phone, Petitioner ERNEST KING described to this writer that his dorm is filthy and he must walk around with a tshirt covering his mouth.

32. The efforts described in Captain Golio’s letter have not curtailed the increase in infections at the Nassau County Sheriff’s Department and could not sufficiently address the risk of transmission of COVID-19. 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.*’”⁶

Failure to Release Petitioners Violates Their Due Process Rights

33. Release of petitioners is required because of the failure to transfer them to the treatment programs administered by the Department of Corrections and Community Supervision. As individuals mandated to enter and complete a DOCCS 90-Day Drug Treatment Program pursuant to the final hearing adjudication, Petitioners were entitled to be transferred to the Treatment Facility “forthwith”. The New York Court of Appeals in *Ayers v. Coughlin*, 72 N.Y.2d 346 (1988) has defined “forthwith” as requiring the transfer of adjudicated parole violators to DOCCS’ custody within 10 days of state-readiness.

⁶ 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-EMAIL_CAMPAIGN_2018_08_09_04_14_COPY_01&utm_medium=email&utm_term=0_72df992d84-0a31827f48-58432543.

34. However, transfer is no longer an option. As of March 13, 2020, DOCCS suspended all transfers to state prison indefinitely, for the duration of the crisis occasioned by the COVID-19 epidemic. The crisis is not expected to abate any time soon.⁷ Thus, Petitioners have been robbed, through no fault of their own, of the benefit of their final hearing adjudication.
35. Under these circumstances, this Court should provide a remedy that gives effect to the due process rights of Petitioners. That remedy is immediate release from custody. *See People ex rel. Woelfle v. Poole*, 836 N.Y.S.2d 501 (Sup. Ct. Seneca Co. 2007) (Bender, J.) (holding that failure to transfer an inmate from local custody to the Willard Drug Treatment Program within 40 days of the inmate's final hearing violates due process and entitles the petitioner to immediate release from custody); *State ex rel. Ryniec v. Willard Drug Treatment Campus*, 11 Misc.3d 1088(A), 819 N.Y.S.2d 851 (Sup. Ct. Seneca Co. 2006) (Falvey, J.) (same holding where delay exceeds 20 days from final hearing adjudication); *see also People ex rel. Speight v Warden*, Index No. 25125-16 (Sup. Ct. Bronx Co. 2016) (Robert Torres, J.) *People ex rel. Sierra v. Warden*, Index No. 251672-14, (Sup. Ct. Bronx Co. 2015) (Sackett, J.); *People ex rel. Velasquez v. Warden*, Index No. 251271-08, (Sup. Ct. Bronx Co. 2008) (Paynter, J.) (all three cases ordering the release of the petitioners because of the delay in transferring them to a DOCCS treatment program).
36. Courts that have denied this claim have done so based on the view that an order directing the petitioner's immediate transfer to state custody is sufficient to remedy the problem. *See*

⁷ <https://www.nytimes.com/2020/04/10/us/coronavirus-updates-usa.html>

People ex rel. Gonzalez v. Warden, Index No. 340137-14, (Sup. Ct. Bronx Co. 2015) (Hubert, J.); *People ex rel. Nieves v. Warden*, Index No. 340220-14, (Sup. Ct. Bronx Co. 2015) (Lorenzo, J.); *People ex rel. Lamberty v. Warden*, Index No. 340331-14, (Sup. Ct. Bronx Co. 2014) (Newman, J.). But that is insufficient under the facts here. There are no transfers to state custody occurring and there can be no expectation of transfers for the foreseeable future.

37. For the same reason, it is no answer to say petitioners have not been deprived of anything because they could still go to the treatment program and finish it before the time assessment is completed. Through no fault of their own, they cannot go to the treatment program. And even if they could at some point long down the road when the COVID-19 pandemic is behind us, it would provide no remedy. Every petitioner pleaded guilty to violating their parole because of the promise they would be sent expeditiously to a treatment program, where they would have the opportunity to regain their freedom in relatively short order. That promise cannot be fulfilled. Given the indefinite suspension of transfers to state custody, Petitioners are entitled to the same remedy as in the cases cited above: immediate release from custody.
38. In the Bronx, on 4/9/20, a Justice of the Supreme Court of the State of New York granted an identical writ to this one, with the caption “PEOPLE OF THE STATE OF NEW YORK EX REL. ELON HARPAZ, Esq., on behalf of DAQUAN VANCE, LAVONE MCDONALD, TIFFANY GAINES, KAREEM DEAS, JOSHUA WHITFIELD, et al., Petitioners, v. CYNTHIA BRANN, Commissioner, New York City Department of Correction;

ANTHONY ANNUCCI, Acting Commissioner, New York State Department of Corrections and Community Supervision, Respondents.⁸

The COVID-19 Epidemic Makes It All the More Imperative to Release Petitioners, Who Would Pose No Danger to the Community

39. In ordinary times, an indefinite suspension of transfers to state custody would be grounds enough to grant this writ. But these are not ordinary times. They are times that have no precedent in any of our lives. The COVID-19 pandemic has overturned virtually our entire world, forcing people to retreat into their homes and avoid human contact because that is the only way to slow the spread of this disease.
40. Truly effective social distancing is impossible in a jail setting, even with 22-23 hour lockups, according to a telephone call with Petitioner DONALD HAYES this morning, who stated that even though only seven inmates are let out at a time in his dorm, the showers and phones are still shared. And that is why COVID-19 is spreading so fast at the Nassau County Sheriff's Department, having increased from one positive case on March 16, 2020, to 176 instances of either staff or inmates who are positive or pending/suspected in isolation, according to Captain Golio's letter dated 4/8/20, less than a month later.
41. Petitioners are not only being denied the opportunity to complete the treatment program they

⁸ <https://nypost.com/2020/04/09/another-28-inmates-at-rikers-to-be-freed-due-to-coronavirus-concerns/>

were promised, which would result in their release after, at most, approximately 90 days. Due to the COVID-19 virus, they are forced to remain in what is a uniquely dangerous physical environment at the Nassau County Sheriff's Department.

42. Because risk mitigation is the only known strategy to slow the spread of COVID-19, correctional public health experts, including the New York City Board of Correction, initially recommended the release from custody of people most vulnerable to the disease. 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.”⁹ The Board reasoned 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.”¹⁰ Accordingly, the Board recommended 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[.]”¹¹
43. On March 21, 2020, the Board of Correction (“BOC”) issued its second advisory letter. The Board again urged judges and prosecutors to act quickly to release people who are over fifty

⁹ 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>.

¹⁰ *Id.*

¹¹ *Id.*

years old and who have health conditions that make them high-risk for COVID-19.¹² But the BOC extended its recommendation to younger, healthier individuals, recommending immediate release of those incarcerated for technical violations of parole and those serving city sentences.¹³ As the BOC concluded: “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.”¹⁴

44. Petitioners here are not so lucky to have an oversight Board make a similar recommendation for inmates at the Nassau County Jail.
45. It is not just individuals especially vulnerable to COVID-19 who have begun to be released in New York. On March 27, 2020, Governor Cuomo announced that the State would release 1,100 people statewide who are incarcerated awaiting revocation proceedings for technical parole violations, irrespective of whether they face a serious risk of severe illness or death if infected with COVID-19. Only five have been released from Nassau’s jail under this directive. Their release, by reducing the jail population, will not only help them reduce the likelihood of being infected with COVID-19, it will also help reduce the rate of spread of the virus among the remaining inmates and jail personnel. Social distancing at a jail can never approach social distancing in the community at large. But reducing the jail population

¹² 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).

¹³ *Id.*

¹⁴ *Id.*

can help. And, since jail personnel, both correction officers and medical/other personnel, go home each night to their families and communities, it will also help reduce the rate of spread in our neighborhoods.

46. There is not only a moral obligation on the part of respondents to protect against the spread of COVID-19, there is also a legal obligation. *See 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 for eighth amendment violation under § 1983 for confinement in same cell as inmate with serious contagious disease).
47. If the COVID-19 pandemic did not exist and DOCCS had suspended all transfers to state custody for an indefinite, lengthy period of time for some reason unrelated to health concerns, petitioners would be entitled to immediate release under the case law set forth in paragraph 73 above. *See Ayers v. Coughlin, supra; People ex. rel. Woelfle v. Poole, supra; State ex rel. Ryniec v. Willard Drug Treatment Campus, supra; People ex rel. Speight v Warden, supra; People ex rel. Sierra v. Warden, supra;; People ex rel. Velasquez v. Warden, supra.*

48. But the COVID-19 pandemic is a terrifying reality that is spreading like wildfire throughout the New York jail system. The only effective way to combat the spread of this disease is to release everyone not being held on serious charges. Petitioners are adjudicated parole violators whose violative conduct was deemed minor enough to warrant their release upon completion of a 90 day drug treatment program.
49. Indeed, in both cases, Petitioners took guilty pleas to technical violations.
50. Petitioner DONALD HAYES' criminal case for CPCS was resolved on 3/5/20 with a time served disposition. A day earlier, at his 3/4/20 Parole Final Hearing, HAYES took a guilty plea to "failing to report." Petitioner ERNEST KING had no criminal cases pending at the time, and took a plea to the "use of cocaine" at his 3/12/20 Parole Final Hearing.
51. Petitioners had every expectation of being sent expeditiously to their treatment program and of being released back to the community in the near future. Instead, through no fault of their own, that expectation has been thwarted. Petitioners have been prevented and will continue to be prevented from entering and completing their treatment program. For DOCCS to leave them in limbo, with no end in sight to their incarceration, waiting to be infected with COVID-19, worried that they might become seriously ill or even die, is unconscionable. In the absence of DOCCS voluntarily releasing petitioners, this Court should order their release.
52. 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.

53. 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.
54. No prior application for the relief requested herein has been made.

WHEREFORE, it is respectfully requested that a writ of habeas corpus be issued directing JAMES DZURENDA, Acting Sheriff/Undersheriff of Nassau County, or whoever has custody of PETITIONERS, to permit a hearing and determination by this Court concerning the detention of said Petitioners and to show cause why they shall not be released.

David Rosenfeld (digital signature)
DAVID ROSENFELD, ESQ.

Dated: April 10, 2020
Hempstead, NY

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THE PEOPLE OF THE STATE OF NEW YORK
ex rel. ERNEST KING dob 9/28/87,
DONALD HAYES dob 6//18/80,

Petitioner,

VERIFICATION

- against -

JAMES DZURENDA, Acting Sheriff/Undersheriff
of Nassau County,

Respondent.

-----X
STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

DAVID ROSENFELD, being duly sworn deposes and says:

1. Affiant is an attorney and has read the foregoing petition and knows the contents thereof to be true, except as to matters therein stated to be on information and belief, and as to those matters, deponent verily believes them to be true.

2. This verification is made by the attorney and not by the Petitioners themselves because all of the material allegations contained in the petition are within his personal knowledge.

David Rosenfeld (digital signature)
DAVID ROSENFELD, ESQ.

Sworn to before me this
10th day of April, 2020

/s/TAMMY FEMAN/s/
NOTARY PUBLIC, STATE OF NEW YORK
No. 02FE6005360
Qualified in Nassau County, Commision Expires April 13, 2022

At a Special term, Part ____ of the Supreme Court of the State of New York, held in and for the County of Nassau, on the ____ of APRIL, 2020

P R E S E N T:

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THE PEOPLE OF THE STATE OF NEW YORK
ex rel. ERNEST KING dob 9/28/87,
DONALD HAYES dob 6//18/80,

Petitioners,

- against -

JUDGMENT

JAMES DZURENDA, Acting Sheriff/Undersheriff
of Nassau County,

Respondent.

-----X

On reading and filing the petition of PETITIONERS, and on the Writ of Habeas Corpus allowed on said petition and on April , 2020, PETITIONERS, having appeared by his attorney, N. Scott Banks, by in support of said petition and writ and the District Attorney by and deliberations having been had thereon.

It is on the motion of N. SCOTT BANKS, ESQ., an attorney assigned for the Petitioners, ORDERED, ADJUDGED AND DECREED, that the PETITIONER COLLINS, FERGUSON, BIBEAU, GREEN, AND SACIOLO be released from the Nassau County Correctional Center.

E N T E R

JUDGE OF SUPREME COURT