

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

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

VENUS WILLIAMS, et al.,

Petitioners,

v.

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

Respondents.

Index No. 451069-2020

SCID No. 30042-2020

**VERIFIED PETITION IN
SUPPORT OF MOTION FOR
LEAVE TO REARGUE OR
RENEW 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. This petition respectfully asks the Court to exercise its discretion under CPLR 2221 to grant leave to reargue and/or renew the above-captioned petition for writs of habeas corpus. Petitioners are people who, by virtue of their age and/or underlying medical condition, are particularly vulnerable to serious illness and death from COVID-19. Since this Court's decision denying the petition on March 20, 2020, when there was only *one* diagnosed case of COVID-19 in New York's jails, the virus has exploded in the jails, transforming Rikers Island into the global epicenter of the pandemic and eviscerating Respondents' claims that its efforts are a sufficient response to the threat to Petitioners' lives.

2. COVID-19 is tearing through New York City's jails and the situation continues to deteriorate. According to data released yesterday by the New York Department of Correction

(“DOC”), as of March 31 2020 – the day before this filing was lodged – 180 incarcerated people and more than 141 DOC staff members have tested positive for COVID-19.¹ These numbers are growing so rapidly that they are likely to be dramatically outdated by the time this Court reads this paragraph. At current rates of infection, the virus’s “attack rate” in New York jails – that is, the rate at which the population is being infected – is *73 times higher* than the average attack rate in the United States of America and *eight times higher* than any other place on the planet at any point in this virus’s existence. This data, as well as updated information indicating the insufficiency of Respondents’ efforts to control the virus, definitively establish that no conditions of confinement in New York’s jails can adequately manage the serious risk of COVID-19 infection for medically vulnerable people, like Petitioners.

3. In addition to these new facts about the virus’s spread and Respondents’ inability to contain it, new evidence from infectious diseases specialists confirms that release is the only means to keep Petitioners safe from this deadly threat. Since the Court originally denied this Petition, correctional public health experts—including the New York City Board of Correction and leading doctors from within New York’s own correctional health system—have continued to press for the release from custody of people over age 50 or with medical conditions known as “comorbidities” for the virus. These calls provide further irrefutable evidence that Respondents’ efforts fall short of adequate protection for Petitioners.

4. Finally, since the original Petition, new legal precedent has emerged from across the country supporting the conclusion that it is a violation of constitutional due process to continue to confine medically vulnerable pre-trial detainees in carceral settings where COVID-19 is spreading.

¹ The Legal Aid Society is documenting DOC’s statistics about the rate of COVID-19 infections on a publicly available website, <https://www.legalaidnyc.org/covid-19-infection-tracking-in-nyc-jails/> (last visited April 1, 2020).

5. While the original Petition was brought on behalf of 116 people, this motion to reconsider is on behalf of 79 of those original Petitioners, individually named below, who remain incarcerated solely on pre-trial bail decisions and/or parole holds. These remaining Petitioners continue to seek their immediate release from jails in New York City on the grounds that continuing to subject them to pretrial incarceration amidst the uncontrolled COVID-19 pandemic constitutes deliberate indifference to the risk of serious medical harm in violation of the Fourteenth Amendment and state constitutional right to due process.

PARTIES

6. 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.

7. Petitioner Venus Williams (NYSID 04119778N) is detained in a jail controlled by the New York City Department of Correction because she cannot afford her bail of \$75,000 cash or bond. She is 59 years old and suffers from asthma, chronic obstructive pulmonary disease (COPD), high blood pressure (HTN), and epilepsy. As a result, she is at high risk for severe illness or death if she contracts COVID-19.

8. Petitioner Melinda Morales (NYSID 05025893Z) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (parole warrant no. 827029). She has \$1 bail set on a pending matter in Manhattan Supreme Court, Criminal Term. She is 54 years old and suffers from various health issues including syncope and a heart murmur, which began after a stroke. On March 30, 2020, Ms. Morales tested positive for COVID-19 and reports having a fever and chills.

9. Petitioner Freddie Johnson (NYSID 04899722M) is detained in a jail controlled by the New York City Department of Correction because of a parole hold (parole warrant no. 828050)

and because he cannot afford his bail of \$150,000 cash, \$300,000 bond, or \$450,000 partially secured bond on a pending matter in Manhattan Supreme Court, Criminal Term. Medical records confirm that he is 61 years old and has been diagnosed with asthma and cardiovascular issues. Dr. Rachel Bedard of Correctional Health Services wrote a letter on his behalf indicating that he is in the highest risk group for COVID-19 because, due to his age and health condition, he is at high risk for severe illness or death if he contracts COVID-19.

10. Petitioner Tony Roman (NYSID 04009365Z) is detained in a jail controlled by the New York City Department of Correction because of a parole hold (warrant no. 813612) and because he cannot afford his bail on a matter pending in Manhattan Supreme Court, Criminal Term. He is 76 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

11. Petitioner James King (NYSID 06996202Z) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$150,000 cash or bond. He is 46 years old and deemed “highest risk” by the Correctional Health Services (“CHS”) because of several severe medical diagnoses including Crohn's Disease (auto-immune disorder); ileostomy status (meaning he wears a colostomy bag that is connected to his intestines through his abdominal wall); history of Hepatitis C and embolisms/thrombosis (blood clots in the arteries and blood vessels, respectively). As a result, he is at high risk for severe illness or death if he contracts COVID-19.

12. Petitioner Ricardo Gonzales (NYSID 08488060N) is detained in a jail controlled by the New York City Department of Correction due to a pretrial remand order on a non-violent felony matter pending in Manhattan Supreme Court, Criminal Term. He is 45 years old and diagnosed with Type I Diabetes. He is housed at the North Infirmery Command (NIC) due to his

medical condition. Because of his health condition, he is at high risk for severe illness or death if he contracts COVID-19.

13. Petitioner Thomas Hammond (NYSID 04012164H) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$5,000 bond or cash on a matter pending in Manhattan Supreme Court, Criminal Term. He is 60 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

14. Petitioner Gregory Jason (NYSID 04309097L) is detained in a jail controlled by the New York City Department of Correction because he cannot pay his bail of \$15,000 bond or cash on a matter pending in Manhattan Supreme Court, Criminal Term. Mr. Jason is 60 years old and medical records confirm that he suffers from diabetes, high blood pressure, and has a stent in his heart. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

15. Petitioner Willie Vasquez (NYSID 05718040Z) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$150,000 on a matter pending in Manhattan Supreme Court, Criminal Term. He is 50 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

16. Petitioner David Russell (NYSID 04593109M) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$749 on a matter pending in Manhattan Supreme Court, Criminal Term. He is 55 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

17. Petitioner Edward Monks (NSYID 02939226K) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$25,000 cash or \$50,000 bond on a non-violent matter pending in Manhattan Supreme Court, Criminal Term. Mr.

Monks is 56 years old and medical records confirm that he is diagnosed with hypertension and epilepsy. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

18. Petitioner Ramon Lorenzo (NYSID 05593137Z) is detained in a jail controlled by the New York City Department of Correction solely because of a parole hold (warrant no. 826685). He has \$1 bail set on a matter pending in Manhattan Criminal Court. He is 53 years old and, as a result, is at high risk for severe illness or death if he contracts COVID-19.

19. Petitioner Luis Richards (aka Luis Vasquez) (NSYID 05223473H) is detained in a jail controlled by the New York City Department of Correction solely due to a parole hold (warrant no. 823006). He has \$1 bail set on a misdemeanor matter pending in Manhattan Criminal Court. Medical records confirm that he is 53 years old and is diagnosed with hypertension. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

20. Petitioner John Blanding (NYSID 06442919Q) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 828094). He is 56 years old and suffers from hypertension and diabetes. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

21. Petitioner John Springs (NYSID 04755000R) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 824079). He has \$1 bail set on a misdemeanor matter pending in Manhattan Criminal Court. He is 65 years old and, as a result, is at high risk for severe illness or death if he contracts COVID-19.

22. Petitioner Alan Bell (NSYID 023305604J) is detained in a jail controlled by the New York City Department of Correction due to a pretrial remand order. Mr. Bell is 32 years old. Medical records demonstrate that he suffers from asthma for which he requires a prescribed inhaler. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

23. Petitioner Gregory Bynum (NYSID 04073222J) is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 823731). He has \$1 bail set on a pending misdemeanor matter in Manhattan Criminal Court. He is 59 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

24. Petitioner Thomas Peterson (NYSID 02075214N) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823049). Mr. Peterson has \$1 bail set on a pending matter in Manhattan Criminal Court. He is 50 years old. As a result, he is at high risk for severe illness or death if they contract COVID-19.

25. Petitioner Kevin Ingram (NYSID 05094344M) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 820749). He is 54 years old and is diagnosed with hypertension. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

26. Petitioner Herverto Martinez (NYSID 04106310L) is detained in a jail controlled by the New York City Department of Correction due to a pretrial remand order. He is 60 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

27. Petitioner Jerome Thompson (NSYID 04425729Y) is detained in a jail controlled by the New York City Department of Correction solely due to a parole hold (warrant no. 794225). Mr. Thompson has \$1 bail set on pending misdemeanor matters in Manhattan Criminal Court. He is 57 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

28. Petitioner Wilson Lee (NYSID 04637674H) is detained in a jail controlled by the New York City Department of Correction due to a parole hold. Mr. Lee has \$1 bail set on pending matters in Manhattan Supreme and Criminal Court. He is 56 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

29. Petitioner Anthony Brown (NYSID 05082866N) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 00800815). He is 55 years old. Medical records demonstrate that he is diagnosed with cardiovascular disease. He also reports suffering from high blood pressure and asthma. Dr. Rachel Bedard of Correctional Health Services has deemed him to be in the highest risk group because, due to his age and health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

30. Petitioner Carlos Victor-Sanchez (NYSID 05733456J) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 805820). Mr. Victor-Sanchez has \$1 bail set on pending matters in Manhattan Criminal Court. He is 52 years old and suffers from asthma and heart disease. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

31. Petitioner Christopher Greene (NYSID 04460574Q) is detained in a jail controlled by the New York City Department of Correction based on a pretrial remand order and a parole hold. He is 58 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

32. Petitioner James Eleby (NYSID 06055509Z) is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 823712). He has \$1 bail set on two pending misdemeanor matters in Manhattan Criminal Court. He is 52 years old and is diagnosed with chronic hepatitis B. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

33. Petitioner Dean Lopez (NYSID 02739931L) is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 800761). Mr. Lopez has \$1 bail set on a matter pending in Manhattan Supreme Court, Criminal Term. Medical

records demonstrate that he is 62 years old and diagnosed with pancreatic cancer. Dr. Rachel Bedard wrote a letter on his behalf indicating that, even if he does not contract COVID-19, his “life expectancy is limited.” As a result, he is at severely high risk for illness or death if he contracts COVID-19.

34. Petitioner Lisa (aka Sheila) Davis (NSYID 04562913N) is detained in a jail controlled by the New York City Department of Correction due to a pretrial remand order. Medical records demonstrate that she is 58 years old and is diagnosed with high blood pressure, asthma, neuropathy, and pre-diabetes. Dr. Ruth Hai of Correctional Health Services has written a letter indicating that Ms. Davis is in the highest risk group for COVID-19 in that, due to her age and medical diagnoses, she is at high risk for severe illness or death if she contracts COVID-19.

35. Petitioner Joseph Torres (NYSID 04875150P) is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 826618). Mr. Torres has \$1 bail on a pending matter in Manhattan Supreme Court, Criminal Term. He is 55 years old, is diagnosed with Hepatitis C and has heart murmurs. Dr. Rachel Bedard of Correctional Health Services has written a letter indicating that Mr. Torres is in the highest risk group for COVID-19, in that, as a result of his age and underlying health conditions, he is at high risk for severe illness or death if he contracts COVID-19.

36. Petitioner Hector Castro Diaz (NYSID 03538163J) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$100,000 cash or \$300,000 bond. Mr. Castro-Diaz is 60 years old and suffers from asthma. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

37. Petitioner Bernard Gardner (NYSID 05567906M) is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 824077).

Mr. Gardner has \$1 bail set on a matter pending in Manhattan Supreme Court, Criminal Term. He is 51 years old and suffers from high blood pressure as well as bronchitis and sinus issues. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

38. Petitioner Gian Verdelli (NYSID 03838923L) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$50,000 cash or bond on a matter pending in Manhattan Supreme Court, Criminal Term. He is 68 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

39. Petitioner Ronald Hutt (NYSID 11946678H) is detained in a jail controlled by the New York City Department of Correction solely because of a parole hold (warrant no. 823147). He has \$1 bail set on a matter pending in Manhattan Criminal Court. He is 56 years old and medical records establish that he is diagnosed with Chronic Obstructive Pulmonary Disease (COPD) and other medical conditions that compromise his immunity. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

40. Petitioner Terhan Bey (NYSID 05228396J) is detained in a jail controlled by the New York City Department of Correction because he cannot afford to pay his bail of \$5,000, or \$15,000 bond. Mr. Bey is 55 years old and on March 28, 2020, tested positive for COVID-19. He is currently at high risk for severe illness or death.

41. Petitioner Melvin Harrell (NYSID 05690567Y) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 817603). He has \$1 bail set on a matter pending in Manhattan Supreme Court, Criminal Term. He is 54 years old. Dr. Rachel Bedard of Correctional Health Services submitted a letter on his behalf indicating that he is in the highest risk category due to his age and underlying health conditions. As a result of these factors, he is at high risk for severe illness or death if he contracts COVID-19.

42. Petitioner Daniel Figueroa (NYSID 04066238K) is detained in a jail controlled by the New York City Department of Correction because of a parole hold (warrant no. 821796) and because he is unable to afford his bail of \$200,000 cash or bond. Medical records reveal that he is 60 years old and suffers from diabetes and asthma. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

43. Petitioner Jimmy Jones (04108010Y) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 826644). He has \$1 bail on a misdemeanor matter pending in Manhattan Criminal Court. He is 66 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

44. Petitioner David Willis (NYSID 14551460H) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail on non-violent felony matters pending in Manhattan Supreme Court, Criminal Term. Medical records establish that he is 24 years old and has been diagnosed with severe asthma, which has, in the recent past, required hospitalization. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

45. Petitioner Stephon Eans (NYSID 14645053H) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$5,000 on a matter pending in Manhattan Supreme Court, Criminal Term. He is 30 years old and suffers from severe asthma. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

46. Petitioner Providence E. Hernandez (NYSID 06945260K) is detained in a jail controlled by the New York City Department of Correction because they cannot afford their bail set in the amount of \$50,000 cash or bond. They are 57 years old and diagnosed with Hepatitis C. As a result, they are at high risk for severe illness or death if they contract COVID-19.

47. Petitioner George Paredes (NSYID 07571529Y) is detained in a jail controlled by the New York City Department of Correction pretrial remand order on a matter pending in Kings County, and \$1 bail on a matter pending in Manhattan Supreme Court, Criminal Term. He is 51 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

48. Petitioner Eric Richardson (NYSID 07136714Z) is detained in a jail controlled by the New York City Department of Correction solely because he cannot afford his bail of \$5,000 cash or \$15,000 bond on a matter pending in Manhattan Supreme Court, Criminal Term. He is 52 years old. Dr. Rachel Bedard has written a letter on his behalf indicating that he is at high risk for severe illness or death if he contracts COVID-19.

49. Petitioner Leslie Farfan (NYSID 01671156H) is detained in a jail controlled by the New York City Department of Correction because they cannot afford their bail of \$5,000 cash or \$10,000 bond on a matter pending in Manhattan Supreme Court, Criminal Term. Medical records confirm that he is diagnosed with hypertension and is displaying respiratory symptoms (cough and rhinitis). As a result, he is at high risk for severe illness or death if he contracts COVID-19.

50. Petitioner Hollis Hosear (NYSID 05833483Q) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$15,000 cash or \$25,000 bond. Medical records establish that he is 57 years old and diagnosed with interstitial lung disease and cardiovascular disease. He is in need of two lung transplants and uses a breathing machine. He also has an auto immune disorder, which has led to degenerative muscle disorder, requiring the use of a cane. As a result of these health issues, Mr. Hosear is at high risk for severe illness or death if he contracts COVID-19.

51. Petitioner William Cusberts (NYSID 06261674H) is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 822461).

He has \$1 bail set on a matter pending in Manhattan Criminal Court. He is 58 years old is diagnosed with asthma and diabetes, and other conditions that compromise his ability to fight COVID-19, according to a letter written by Dr. Rachel Bedard, indicating that Mr. Cusberts is in the “highest risk group.” Mr. Cusberts is at high risk for severe illness or death if he contracts COVID-19.

52. Petitioner Joseph Callahan (NYSID 06951860Q) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 826946). He is 47 years old and is diagnosed with diabetes. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

53. Petitioner Eleuterio Carmona (NYSID 04021135M) is detained in a jail controlled by the New York City Department of Correction. They are 62 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

54. Petitioner Edward Byrd (NYSID 05502847K) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 827039). He has \$1 bail set on a matter pending in Manhattan Supreme Court, Criminal Term. They are 57 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

55. Petitioner Kevin Gamble (NYSID 05031966Q) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823134). He has \$1 bail set on a non-violent matter pending in Manhattan Supreme Court, Criminal Term. Medical records confirm that he is 59 years old and is diagnosed with diabetes and high blood pressure. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

56. Petitioner Junior Wilson (NYSID 04589682L) is detained in a jail controlled by the New York City Department of Correction. Medical records establish that he is 60 years old and

suffers from cardiovascular disease, characterized as heart failure. As a result, they are at high risk for severe illness or death if they contract COVID-19.

57. Petitioner Derek Roberson (NYSID 5476297M) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823030). He has \$1 bail on pending matters in Manhattan Criminal Court. Dr. Rachel Bedard of Correctional Health Services wrote a letter on Mr. Roberson's behalf indicating that, due to his age, 58 years old, he is in the highest risk group. Because of his age, Mr. Roberson is at high risk for severe illness or death if he contracts COVID-19.

58. Petitioner Edward Pemberton (NYSID 05249078M) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823608). They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

59. Petitioner Steven Sanders (NYSID 05362409M) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$20,000 cash or 100,000 bond. He is 51 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

60. Petitioner Elieser Flores (NYSID 05603479M) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$5,000 cash or bond on a matter pending in Manhattan Criminal Court. They are 50 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

61. Petitioner William Goggins (NYSID 03658597Q) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$200,000 cash

or bail. He is 64 years old and, as a result, is at high risk for severe illness or death if he contracts COVID-19.

62. Petitioner Willie Florence (NYSID 05604807H) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$17,500 cash or \$35,000 bond on a matter pending in Manhattan Supreme Court, Criminal Term. Medical records, including a letter from Dr. Rachel Bedard of Correctional Health Services, confirm that he is 54 years old and suffers from cardiovascular disease. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

63. Petitioner George Shaw (NYSID 07056458Z) is detained in a jail controlled by the New York City Department of Correction based on a parole hold (warrant no. 828031). He is 55 years old and, as a result, he is at high risk for severe illness or death if he contracts COVID-19.

64. Petitioner Sekou Salaam (NYSID 00885221N) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 828289). He has \$1 bail on a misdemeanor matter pending in Manhattan Criminal Court. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

65. Petitioner Rigoberto Reyes (NYSID 14691750P) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$5,000 on a matter pending in Manhattan Supreme Court, Criminal Term. He is 58 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

66. Petitioner William Saunders (NYSID 07616996Z) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$2500 cash, or \$10,000 bond. He is 52 years old. On March 27, 2020, Mr. Saunders tested positive for COVID-19.

67. Petitioner Efren Olivares (NYSID 14956351L) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$5,000 cash, \$10,000 bond on a matter pending in Manhattan Criminal Court. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

68. Petitioner James Bulwer (NSYID 14142503Y) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$100,000 cash or bond. He is 59 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

69. Petitioner Charles Jackson (NYSID 05180641P) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$50,000 cash or bond. He is 53 years old. As a result, he is at high risk for severe illness or death if they contract COVID-19.

70. Petitioner Govinda Pyakurel (NYSID 14878002K) is detained in a jail controlled by the New York City Department of Correction because they cannot afford their bail of \$25,000.00 cash or \$50,000.00 bond. They are 60 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

71. Petitioner Victor Chapman (NYSID 01504233L) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$50,000 cash or \$75,000 bond. Records demonstrate that he is 55 years old and is diagnosed with AIDS, Hepatitis C, and hypertension. As a result, he is at extremely high risk for severe illness or death if he contracts COVID-19.

72. Petitioner Luis Gonzalez (NYSID 06065308Q) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$150,000 cash

or bond. He is 52 years old and a former chronic smoker. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

73. Petitioner Ronnie Barnes (NYSID 04555302H) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$7,500 bail or \$25,000 bond on a matter pending in Manhattan Supreme Court, Criminal Term. He is 56 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

74. Petitioner John Curtis (NYSID 04784906H) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823625). He has \$1 bail set on two pending misdemeanor matters in Manhattan Criminal Court. He is 56 years old. Dr. Rachel Bedard of Correctional Health Services has submitted a letter on his behalf indicating that, because of his age and underlying health conditions, he is in the highest risk group for COVID-19. Mr. Curtis is thus at high risk for severe illness or death if he contracts COVID-19.

75. Petitioner Anibal Quinones (NYSID 05194103P) is detained in a jail controlled by the New York City Department of Correction due to a parole hold and because of bail set on a pending matter in Manhattan Supreme Court, Criminal Term. They are 55 years old and diagnosed as pre-diabetic, with high blood pressure. CHS records indicate that they are in the highest risk group for COVID due to age and underlying health conditions. They are thus at high risk for severe illness or death if they contract COVID-19.

76. Petitioner Sonny Seals (NYSID 04839070N) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$100,000 cash or \$200,000 bond. He is 55 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

77. Petitioner Scott Harris (NYSID 04528646H) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823273). He has \$1 bail set on a pending matter in Manhattan Criminal Court. They are 57 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

78. Petitioner Thomas Perez (NYSID 07776350P) is detained in a jail controlled by the New York City Department of Correction due to a parole hold and bail set on pending matters in Manhattan Supreme Court, Criminal Term. They are 51 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

79. Petitioner Nelson Correa (NYSID 04243016L) is detained in a jail controlled by the New York City Department of Correction due solely to a parole hold (warrant no. 827108). He has \$1 bail set on a matter pending in Manhattan Criminal Court. He is 58 years old. As a result of his age and an underlying health condition, he is at high risk for severe illness or death if he contracts COVID-19.

80. Petitioner Victor Duke (NYSID 05063873Z) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 817601). He has \$1 bail on a misdemeanor matter pending in Manhattan Criminal Court. Medical records confirm that he is 54 years old and is diagnosed with asthma and other conditions that compromise his immunity, including recent TB history, high blood pressure, and other diagnoses. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

81. Petitioner Anthony Cummings (NYSID 06104805Q) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823293). He has \$1 bail set on a pending misdemeanor matter in Manhattan Criminal Court. Dr. Rachel Bedard

has written a letter on Mr. Cummings behalf indicating that, due to his age, 52, and his underlying health conditions, he at high risk for severe illness or death if he contracts COVID-19.

82. Petitioner Eliezer Delacruz (NYSID 07472575R) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$60,000 cash or \$225,000 bond total on matters pending in Manhattan Supreme Court, Criminal Term. Medical records confirm that he is 46 years old and suffers from asthma that requires the use of an inhaler. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

83. Petitioner Leroy Brown (NYSID 02460568P) is detained in a jail controlled by the New York City Department of Correction due to a parole hold (warrant no. 823894). He has \$1 bail set on a matter pending in Manhattan Supreme Court, Criminal Term. He is 50 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

84. Petitioner Raphael Vega (NYSID 05047927M) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail on a matter pending in Manhattan Supreme Court, Criminal Term. He is 56 years old. As a result, he is at high risk for severe illness or death if he contracts COVID-19.

85. Petitioner Victor Flood (NYSID 07889923Q) is detained in a jail controlled by the New York City Department of Correction because he cannot afford his bail of \$150,000 cash or bail, set on a matter pending in Manhattan Supreme Court, Criminal Term. On March 23, 2020, Dr. Rachel Bedard wrote a letter on his behalf indicating that, because of his age, 52, and his medical conditions (including cardiovascular disease, pulmonary disease, and diverticulitis), he is in the highest risk group for COVID-19. On March 29, 2020, Mr. Flood tested positive for COVID-19. As a result, he is currently at high risk for severe illness or death.

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

87. 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.

**STATEMENT OF FACTS SUPPORTING MOTION TO REARGUE OR, IN THE
ALTERNATIVE, RENEW**

New Data Unavailable at the Time of the Original Petition Demonstrate that COVID-19 Is Spreading Exponentially in New York Jails and Respondents’ Are Incapable of Protecting Petitioners While They Remain Incarcerated

88. At the time the original Petition was filed, on March 19, 2020, over 229,289 people worldwide had confirmed diagnoses, including over 10,000 people in the United States and 4,152 in New York, and 1,871 in the New York City area. Today, more than 868,100 people worldwide are sick and 43,010 have died. More than 188,247 people are infected in the U.S. – an increase by a factor of ten since the original Petition – and almost 4,000 have died. In New York State, 73,030 cases have been diagnosed– more than 40,000 in New York City alone, representing an increase of *forty times* the statistics when the original Petition was filed – with more than 1500 deaths statewide and over 1,000 deaths in New York City.²

89. Models released since the filing of the original Petition show that transmission of COVID-19 is expected to grow exponentially well into the future. 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

² N.Y. TIMES, *Live Updates*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed Apr. 1, 2020).

public health intervention, with as many as 1.5 million deaths in the most severe projections.³ More recent assessments indicate that, even with aggressive interventions, the virus “could kill between 100,000 and 240,000 Americans.”⁴

90. It has also become clearer since the filing of the original Petition that the numbers of people diagnosed reflect only a portion of those infected.⁵ Very few people have been tested, and many are asymptomatic transmitters.⁶ Thousands of people are carrying a potentially fatal disease that is easily spread—and few are aware of it. This includes people – staff, vendors and incarcerated people – currently cycling in and out of New York’s jails.

91. The escalation of the pandemic in New York’s jails since the original Petition has been even more astounding. On March 20, 2020, the day the Court denied the original Petition, there was only one confirmed case of a detainee with a positive COVID-19 diagnosis.⁷ 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.⁸ There are now at least 180

³ 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>.

⁴ N.Y. TIMES, *Live Updates: Models predicting expected spread of the virus in the U.S. paint a grim picture* <https://www.nytimes.com/2020/03/31/world/coronavirus-live-news-updates.html?action=click&module=Spotlight&pgtype=Homepage#link-a737c70> (last visited Mar. 31, 2020).

⁵ Melissa Healy, “True Number of US Coronavirus Cases is Far Above Official Tally, Scientists Say,” L.A. Times (Mar. 10, 2020), <https://www.msn.com/en-us/health/medical/true-number-of-us-coronavirus-cases-is-far-above-official-tally-scientists-say/ar-BB110qoA>.

⁶ Roni Caryn Rabin, “They Were Infected with the Coronavirus. They Never Showed Signs,” N.Y. Times (Feb. 26, 2020, updated Mar. 6, 2020), <https://www.nytimes.com/2020/02/26/health/coronavirus-asymptomatic.html>; Aria Bendix, “A Person Can Carry And Transmit COVID-19 Without Showing Symptoms, Scientists Confirm,” Bus. Insider (Feb. 24, 2020), <https://www.sciencealert.com/researchers-confirmed-patients-can-transmit-the-coronavirus-without-showing-symptoms>.

⁷ Chelsia Rose Marcus, *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-gf3r7q4cefaxzlmwrmuevzz3y-story.html>.

⁸ 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).

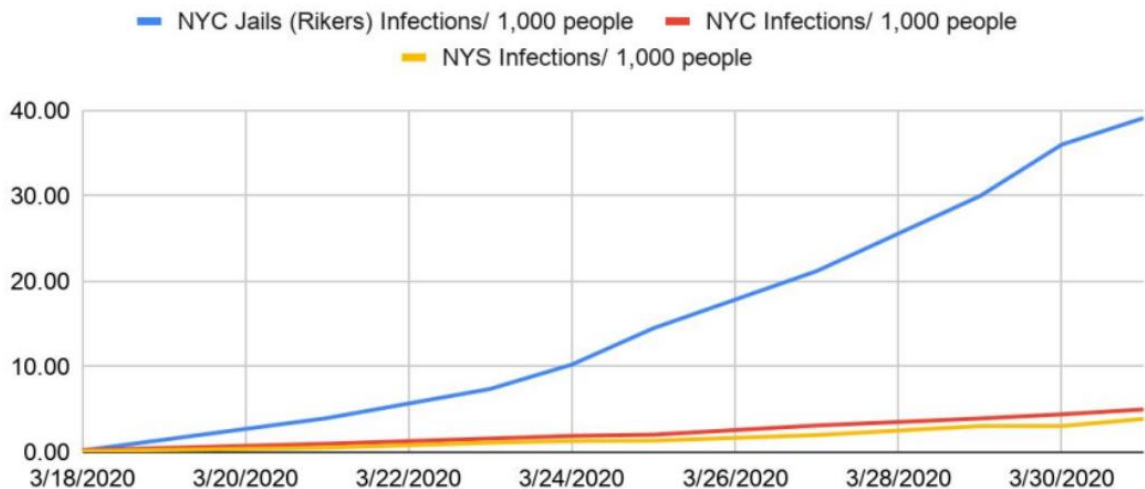
inmates diagnosed with the virus, as well as more than 141 staff members, indicating transmission is now passing at an alarming rate and will only continue to spread rapidly.

92. The “attack rate” of the virus – that is, the rate at which the relevant population is infected – in New York City jails is *eight times higher* than any other global epicenter of the disease, including hotspots such as Wuhan, China and Lombardy, Italy. The rate of growth in infection in New York’s jails also dwarfs any other place in the world. Simply put, when it comes to COVID-19, there is no more dangerous place to be right now on the planet than Rikers Island.

Coronavirus Infection Rates as of March 31, 2020

Locations	Cases	Population	Infection Rate	Infections/ 1,000 people
NYC Jails (Rikers)**	180	4,604	3.91%	39.1
New York City	40,900	8,175,133	0.50%	5
New York State	75,795	19,440,469	0.39%	3.9
United States	176,518	331,002,651	0.05%	0.53
Hubei Province (Wuhan)	67,801	59,020,000	0.12%	1.15
China	81,518	1,439,323,776	0.01%	0.06
Lombardy, Italy	42,161	10,040,000	0.42%	4.2
Italy	105,792	60,461,826	0.18%	1.75

NYC Jails (Rikers) Infections/ 1,000 people, NYC Infections/ 1,000 people and NYS Infections/ 1,000 people



93. The rate of infection in New York jails belies any claim that Respondents' procedures for managing infection are sufficiently mitigating the risk that Petitioners will die of this virus if they remain incarcerated.

New Evidence About Respondents' Efforts to Respond to COVID-19 Further Demonstrate That They Are Incapable of Protecting Petitioners While They Remain Incarcerated

94. The World Health Organization ("WHO") has recognized that incarcerated people "are likely to be more vulnerable to the coronavirus disease (COVID-19) outbreak than the general population because of the confined conditions in which they live together."⁹ The U.S. Centers for Disease Control and Prevention ("CDC"), in guidance on management of COVID-19 in correctional and detention facilities, has identified that COVID-19 presents a particularly heightened danger in correctional facilities because "incarcerated/detained populations have higher prevalence of infectious and chronic diseases and are in poorer health than the general population, even at younger ages."¹⁰ The CDC stated that social distancing requires people—including those who are asymptomatic—to remain at least six feet from each other at all times.¹¹

95. Immutable aspects of the design and operations of New York's jails make it impossible for Petitioners to engage in the necessary social distancing required to mitigate the risk of transmission. They have limited freedom of movement, unable to maintain anything close to the recommended distance of 6 feet from others, and no control over the movements of corrections

⁹ World Health Organization, Preparedness, prevention and control of COVID-19 in prisons and other places of detention (2020), <http://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/publications/2020/preparedness,-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-2020> (last visited Mar. 31, 2020).

¹⁰ Center for Disease Control and Prevention, Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities (<https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>) (last visited Mar. 31, 2020).

¹¹ *Id.*

officers and other residents with whom they are required to congregate on a daily basis. Many people in New York's jails live in dormitory-like sleeping arrangements.

96. In other litigation seeking similar relief, Respondent DOC has submitted a declaration from Richard Bush, a senior administrator for health affairs, stating that, "when [Correctional Health Services] identifies medically vulnerable persons based on their medical background, DOC separates these individuals from the general population who are less vulnerable as directed by CHS." But DOC does not define what it means by "separation" or suggest that separation "from the general population" allows for social distancing.

97. To the contrary, based on information Legal Aid has received from its clients and from other defender organizations monitoring information from their clients, DOC is simply moving groups of people *en masse* into different housing units, without any change in the patterns of daily living that make social distancing impossible.

98. Moreover, upon information and belief, DOC has not identified and separated any of the Petitioners in this manner, despite their medical vulnerability.

99. Petitioners also cannot maintain adequate levels of preventive hygiene, even under conditions where hygiene is being taken more seriously. They share communal space in buildings without access to outside air circulation. They are required to share or touch objects used by others. Toilets, sinks, and showers are shared. Food preparation and service is communal, served by other incarcerated workers drawn from many different housing areas within the jail.

100. In other litigation, Respondent DOC has submitted a declaration from Patricia Feeney, the Deputy Commissioner of Quality Assurance, stating that DOC is "implementing enhanced cleaning and sanitizing procedures." But Ms. Feeney does not opine, nor does she

provide evidence from which one could conclude, that such “enhanced procedures” will be sufficient to control viral spread.¹²

101. The rate of infection on Rikers Island belies any claim that these enhanced procedures are sufficiently mitigating the risk of infection.

102. Moreover, the Legal Aid Society continues to receive complaints from its incarcerated clients and others who call its Prisoner Rights Service hotline indicating there are ongoing shortages of basic cleaning supplies to disinfect housing areas, including housing areas where people with respiratory illnesses are currently confined, and many incarcerated people still no not have access to soap or hand sanitizer.

103. For example, 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.

New Evidence from Correctional Medical Experts Further Supports the Conclusion that Only Release Can Adequately Protect Petitioners from the Risk of Death

104. On March 21, 2020 – the day after the Court’s decision in this case – the New York Board of Correction issued an advisory letter urging judges and prosecutors to act quickly to release people, like Petitioners, who are over 50 years old and who have health conditions that make them high-risk for COVID-19.¹³ They concluded, based on having “closely monitored Rikers Island and the borough jails for over sixty years” that “DOC’s and [Correctional Health Services]’s *best efforts will not be enough to prevent viral transmission in the jails.*”¹⁴ The agency

¹² Declaration of Patricia Feeney ¶ 3-4 (Mar. 25, 2020) (attached as Ex. D to Bowe Aff.).

¹³ 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).

¹⁴ *Id.* (emphasis added).

continued: “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.”¹⁵

105. Dr. Robert Cohen, an expert member of the BOC, further stated that “[t]he most important thing we can do right now is discharge *all of the people* who are old and have serious medical issues—those people are likely to die from a coronavirus infection.”¹⁶

106. Dr. Ross McDonald, the Chief Medical Officer of CHS, publicly called only this week, for the release of people including Petitioners, noting that although staff at Rikers were rigorously following CDC guidelines and “have moved mountains to protect our patients,” “infections in our jails are growing quickly despite these efforts” and asking “that in this time of crisis the focus remain on releasing as many vulnerable people as possible.”¹⁷

107. 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.¹⁸

¹⁵ *Id.* (emphasis added).

¹⁶ Jen Ransom and Alan Feuer, ‘*A Storm is Coming*’: Fears of an Inmate Epidemic as the Virus Spreads in the Jails, N.Y. TIMES (MAR. 20, 2020), <https://www.nytimes.com/2020/03/20/nyregion/nyc-coronavirus-rikers-island.html> (emphasis added).

¹⁷ <https://twitter.com/RossMacDonaldMD/status/1244822714805891072>

¹⁸ 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).

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.”¹⁹ 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.”²⁰

108. In a letter to the U.S. House Committee on Homeland Security, Dr. Scott A. Allen, Professor at the University of California Riverside School of Medicine and Dr. Josiah “Jody” Rich, Professor at Brown University explained that “[e]ssential” preventative strategies like social distancing are “an oxymoron” in congregate settings like jails; hand sanitizing and proper ventilation are also largely inaccessible and ineffective.²¹ As a result, these experts in correctional health care called on the federal government to release “all detainees in high risk medical groups such as older people and those with chronic diseases.”²²

109. This new evidence adds to the evidence available to the Court in the original Petition at paragraphs 129 through 173.

Additional Legal Precedent Since the Court’s Decision Supports the Conclusion that Failure to Release Petitioners Violates Due Process

110. As argued in paragraphs 174 through 187 of the original Petition, 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).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Letter from Dr. Scott A. Allen, Professor, Univ. of Cal. Riverside Sch. of Med. & Dr. Josiah “Jody” Rich, Professor, Brown Univ. to Bennie Thompson, Chairman, House Comm. on Homeland Sec., et. al. 5 (Mar. 19, 2020) <https://whistleblower.org/wp-content/uploads/2020/03/Drs.-Allen-and-Rich-3.20.2020-Letter-to-Congress.pdf> (last visited Mar. 31, 2020).

²² *Id.*

Since the Court’s original decision, federal courts have already begun granting petitions for habeas corpus and federal bail applications to release or avoid re-incarceration of federal detainees, on the grounds that their detention would violate due process. *Basank v. Decker*, 20 Civ. 2518 (AT), Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020); *United States v. Stephens*, No. 15 Cr. 95, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020); *United States v. Garlock*, 18 Cr. 418, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020); *Coronel v. Decker*, 20 Civ. 2472 (AJN), Dkt. No. 26 (S.D.N.Y. Mar. 27, 2020). This list continues to steadily grow. Petitioners-Appellants are not aware of any federal court decision rejecting a claim of deliberate indifference relating to COVID-19 brought by a medically vulnerable detainee to date.

111. Moreover, to the extent that the Court focused on federal legal standards in its first analysis of this issue, 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.” See also *People ex rel. Schipski v. Flood*, 88 A.D.2d 197, 199-200 (2nd Dep’t 1982). (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”).

112. For the government to prevail in the face of that grave harm, it must prove a “compelling governmental necessity” for restricting these pretrial detainees’ liberty interests.

Schipski, 88 A.D.2d at 197. 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. As in the initial decision to hold a pretrial detainee, public safety plays no role in the assessment of the state’s interest.

113. Petitioners further respectfully submit that it is clear the Court has authority to consider a habeas petition whenever the continued incarceration of a petitioner is in violation of the New York or U.S. Constitution. In this rare instance, Petitioners have made the case that release in the form of a writ of habeas corpus is appropriate to address unconstitutional conditions of confinement.

114. Federal courts have interpreted the analogous federal habeas statute to allow for release. *See Basank v. Decker*, 20 Civ. 2518 (AT), Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020) (in granting a temporary restraining order releasing federal immigration detainees at heightened medical risk of COVID-19, finding that “[a]n application for habeas corpus under 28 U.S.C. § 2241 is the appropriate vehicle for an inmate in federal custody to challenge conditions or actions that pose a threat to his medical wellbeing.”) (citing *Roba v. United States*, 604 F.2d 215, 218–19 (2d Cir. 1979)). *Cf. Brown v. Plata*, 563 U.S. 493, 531-32 (2011) (upholding lower court’s order releasing people from state prison based on prospect of future harm caused by prison overcrowding).

115. New York courts have broadly interpreted their authority to use habeas corpus powers 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.”). 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.” *Brown*, 9 N.Y.2d at 485 (internal citation omitted). 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).

116. Moreover, 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”).

117. The Court of Appeals has explained that the State has a duty “to protect [incarcerated people] from unlawful and onerous treatment, mental or physical.” *Brown*, 9 N.Y.2d at 485 (internal citation omitted). In this case, because only release can sufficiently protect Petitioners from this deadly virus, a writ of habeas corpus is the only remedy available to fulfill that affirmative obligation. *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973).

118. Against this legal backdrop of a broad understanding of state habeas authority, specific contemplation of the use of such authority in prior appellate case law, analogous on-point federal precedent, and recent precedent set by fellow judges, there can be no questioning the Court's authority to order release of Petitioners if it finds they have met the standard of deliberate indifference under federal or state constitutional law, which, in light of the crisis and their demonstrated medical vulnerabilities, they plainly have.

119. In support of their ultimate prayer for relief, Petitioners hereby incorporate all the allegations made in their original Petition of March 19, 2020.

PRAYER FOR RELIEF

WHEREFORE, Petitioners request that this Court grant the motion to reargue or, in the alternative renew, the original Petition and order Petitioners' immediate release, on the ground that their continued detention violates the Due Process Clause of the United States and New York State constitutions.

Dated: April 1, 2020
New York, New York

Respectfully Submitted,



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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: April 1, 2020
New York, NEW YORK



Corey Stoughton