

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

PEOPLE OF THE STATE OF NEW YORK
EX REL. Corey Stoughton, Esq.,
on behalf of MILTON RUFFIN, FREDRICK ROBERSON,
MICHAEL FIGEROA, et al.,

Petitioners,

v.

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

Respondents.

Index No. _____

WRIT OF HABEAS CORPUS

THE PEOPLE OF THE STATE OF NEW YORK

Upon the relation of Corey Stoughton, Esq.,

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

WE COMMAND YOU, that you have and produce the body of Petitioners named in the Verified Petition attached hereto, by you imprisoned and detained, as it is said, together with your full return to this writ and the time and cause of such imprisonment and detention, by whatsoever name the said Petitioners are called or charged, or show cause why the Petitioners should not be produced, before the Justice presiding at Part ____ of the Supreme Court, Bronx County, at 851 Grand Concourse, on ____ of April, 2020, to do and receive what shall then and there be considered concerning the said Petitioners and have you then and there this writ.

WITNESS, Honorable _____, one of the Justices of
the Supreme Court of the State of New York, this ___ day of April, 2020.

By the Court Clerk

The above writ allowed this _____ day of April, 2020.

Justice of the Supreme Court
of the State of New York

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

INTRODUCTION

1. Petitioners are 100 people who, by virtue of their age and/or underlying medical condition, are particularly vulnerable to serious illness or death if infected by COVID-19. This petition seeks their immediate release from jails in New York City on the grounds that continuing to hold them on parole warrants constitutes deliberate indifference to the risk of serious medical harm in violation of the Fourteenth Amendment and state constitutional right to due process.

2. In only a few months, over one million people worldwide have been diagnosed with COVID-19 and more than 53,259 people have died.¹ As of the date of this filing, there are almost 92,770 confirmed cases of coronavirus in the state and well over 50,000 within the New York City area, up from just 923 on March 18, 2020, two weeks ago. There are now at least 2,653 COVID-19 related deaths in the state, almost 2,000 and New York City area alone.²

3. COVID-19 is tearing through New York City’s jails and the situation continues to deteriorate. According to data released by the New York Department of Correction (“DOC”), as of April 2, 2020 – one day before this appeal was lodged – 231 incarcerated people and more than 223 DOC staff members have tested positive.³ These numbers are growing so rapidly that they will be dramatically outdated by the time you read this paragraph.

4. 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 *65 times higher* than the average 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.

¹ New York Times Live Updates <https://www.nytimes.com/interactive/2020/world/coronavirus-maps.html> (last visited Apr. 2, 2020)

² COVID-19 Daily Case Data Summary, NYC Health, Coronavirus Disease 2019 (Mar. 29, 2020) *available at* <https://www1.nyc.gov/assets/doh/downloads/pdf/imm/covid-19-daily-data-summary.pdf> (last visited Apr. 2, 2020).

³ 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 2, 2020).

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

6. Infectious diseases specialists warn that no conditions of confinement in carceral settings can adequately manage the serious risk of COVID-19 infection for medically vulnerable people like Petitioners. For this reason, correctional public health experts—including the New York City Board of Correction, leading doctors in New York’s own correctional health system, and several experts around the country—have recommended the release from custody of people over 50 or with medical conditions known as “comorbidities” for the virus. As these experts have explained, release is the only effective means to protect such people from transmission of the virus and also allows for greater risk mitigation for all people who remain held at or working on Rikers Island and other New York City jails.

7. New York has begun to acknowledge the scale of this crisis, releasing a few hundred people from its jails through a political process negotiated among the Mayor’s Office, local district attorneys, and the Department of Correction. More have been released through litigation brought by the Legal Aid Society and other defender organizations. The Governor announced more than a week ago an intention to release people held solely on technical parole violations, but to date only a little over 100 people have been released and 547 people remain incarcerated at Rikers solely for this reason. Despite their medical vulnerability and eligibility for the Governor’s purported scheme to release them, Petitioners remain among the incarcerated.

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

PARTIES

9. 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. Every petitioner in this case is particularly vulnerable to the effects of infection from COVID-19, whether because of age or because of serious underlying health conditions. Every petitioner is incarcerated solely on a parole warrant based on technical violations of the conditions of release. No petitioner has pending criminal charges. In all cases where the petitioner had a criminal arrest, those charges have been resolved with either out right dismissal, adjournments in contemplation of dismissal (ACDs), pleas to disorderly conduct violations, or pleas to misdemeanors, and in all cases, the criminal dockets are no longer acting as holds.

10. Petitioner Milton Ruffin, warrant number 827106, NYSID 06747422Y, is detained in a jail controlled by the New York City Department of Correction. They are 46 years old, and records indicate they suffer from asthma, requiring daily medication. As a result they are at an increased risk for severe illness or death if they contract COVID-19. They were supervised in the community for over a year and four month and then missed an office report. They were taken into custody in their approved address.

11. Petitioner Frederick Roberson, warrant number 793972, NYSID 06000172N, is detained in a jail controlled by the New York City Department of Correction. They are 58 years old and suffer from underlying health conditions, including diabetes, pancreatitis, hypertension, and high blood pressure. As a result of their conditions and age, and according to a letter from Correctional Health Services dated March 27,2020, they are at the highest risk for severe illness or death if they contract COVID-19.

12. Petitioner Michael Figueroa, warrant number 826996, NYSID 06400127J, is detained in a jail controlled by the New York City Department of Correction. They are 50 years old and report suffering from underlying health conditions, including diabetes and respiratory issues from a history of smoking. As a result of their conditions and age, they are at increased risk for severe illness or death if they contract COVID-19. They were taken into custody during an office report after allegedly providing a urinalysis positive for a controlled substance.

13. Petitioner David Garcia, warrant number 794240, NYSID 07502349K, is detained in a jail controlled by the New York City Department of Correction. They are 42 years old and records indicate suffer from underlying health conditions, including high blood pressure and cardiovascular issues. As a result of their conditions, they are at increased risk for severe illness or death if they contract COVID-19.

14. Petitioner Shawn Moye, warrant number 809341, NYSID 04638503H, is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and suffer from underlying lung problems. As a result they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional

Health Services dated March 30th, 2020, they are in the highest risk group due to age and underlying health issues.

15. Petitioner Julio Ramos, warrant number 822528, NYSID 07281620Z, is detained in a jail controlled by the New York City Department of Correction. They are 48 years old and suffer from underlying health conditions, including a history of asthma. As a result of their conditions, they are at increased risk for severe illness or death if they contract COVID-19. They are serving supervision for a non-violent felony offense, have no previous sustained violations of supervision. They are charged only with technical violations of parole and were taken into custody in their mother's home.

16. Petitioner Kervin Samuels, warrant number 828082, NYSID 03100524J, is detained in a jail controlled by the New York City Department of Correction. They are 32 years old and suffer from underlying health conditions, including asthma. As a result of their conditions, they are at increased risk for severe illness or death if they contract COVID-19. They are serving supervision for a non-violent felony offense and have no previous sustained violations of supervision. They have been incarcerated since December 27, 2019 after having sustained an arrest that led to no criminal charges.

17. Petitioner Pablo Taveras, warrant number 821552, NYSID 07600512K, is detained in a jail controlled by the New York City Department of Correction. They are 42 years old, and records indicate they suffer from underlying health conditions, including asthma and arthritis. As a result, they are at increased risk for severe illness or death if they contract COVID-19. They have been incarcerated since August 24, 2019, more than seven months, and have no pending criminal cases in New York State.

18. Petitioner Michael Tyson, warrant number 822100, NYSID 04999032L, is detained in a jail controlled by the New York City Department of Correction. They are 53 years old and suffer from underlying health conditions. As a result of their conditions and age, they are at increased risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated April 2nd, 2020, they are in the highest risk group due to age and underlying health issues.

19. Petitioner Octavious Williams, warrant number 595216, NYSID 04872144P, is detained in a jail controlled by the New York City Department of Correction. They are 53 years old and suffer from underlying health conditions, including a history of colon cancer. As a result of their conditions and age, they are at the highest risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated April 1, 2020, they are in the highest risk group due to age and underlying health issues.

20. Petitioner Stanley Williams, warrant number 828038, NYSID 08579659N, is detained in a jail controlled by the New York City Department of Correction. They are 28 years old and records indicate they suffer from underlying health conditions, including a heart murmur. As a result of their conditions, they are at increased risk for severe illness or death if they contract COVID-19.

21. Petitioner Michael Sutera, warrant number 810392, NYSID 02969637Z, is detained in a jail controlled by the New York City Department of Correction. They are 32 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

22. Petitioner Nathaniel Godbold, warrant number 829970, NYSID 05008705J, is detained in a jail controlled by the New York City Department of Correction. They are 53 years old and suffer from hypertension. As a result they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated March 30, 2020, they are in the highest risk group due to age.

23. Petitioner Luis Valentine warrant number 826951, NYSID 05979514K, is detained in a jail controlled by the New York City Department of Correction. They are 51 years old and therefore are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated March 30th, 2020, they are in the highest risk group due to age and underlying health issues.

24. Petitioner Richard Alston warrant number 823256, NYSID 04299025R, is detained in a jail controlled by the New York City Department of Correction. They are 61 years old and suffer from diabetes and high blood pressure. As a result, they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated March 30th, 2020, they are in the highest risk group due to age and underlying health issues.

25. Petitioner Jesus Hernandez, warrant number 817599, NYSID 07457828N, is detained in a jail controlled by the New York City Department of Correction. They are 44 years old and suffer from cardiovascular disease. As a result they are at risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated April 1, 2020, they are in the moderate risk group due to underlying health issues. They were supervised in the community for over 8 months

before they were taken into custody in the office after being instructed to report to the parole office.

26. Petitioner Saul Ramos, NYSID 09153204L, warrant 825806, is currently detained in a facility controlled by the New York City Department of Corrections. They are 43 years old and are presently medicated for congestive heart problems, hypertension as well as asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19. They were taken into custody based on an arrest in Kings County which case was dismissed and is currently being held solely as a technical parole violator.

27. Petitioner Juan Camacho, warrant number 794319, NYSID 13722325N, is detained in a jail controlled by the New York City Department of Correction. They are 39 years old and suffer from underlying health conditions, including asthma. As a result of their conditions, they are at increased risk for severe illness or death if they contract COVID-19. Medical records indicate they are in the highest risk group due to asthma.

28. Petitioner Brandon Carrington, warrant number 793897, 03461927L is detained in a jail controlled by the New York City Department of Correction. They are 29 years old and suffer from underlying health conditions, including asthma. As a result of their conditions, they are at increased risk for severe illness or death if they contract COVID-19. According to Correctional Health Services, they are in the highest risk group due to underlying health issues.

29. Petitioner Alo Ablakatov, warrant number 826990, NYSID 02275031J, is detained in a jail controlled by the New York City Department of Correction. They are 57 years

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

30. Petitioner Travis James, warrant number 826647, NYSID 09347990J, is detained in a jail controlled by the New York City Department of Correction. They are 37 years old and had Bronchitis prior to being detained. As a result they are at high risk for severe illness or death if they contract COVID-19. They were supervised in the community for over 10 months before they were taken into custody for a case that was resolved with a 240.20 on March 11. He was promised a revoke and restore on March 5 by the Administrative Law Judge once his case was resolved. His next parole court date, March 30, came and he was not revoked or restored as promised.

31. Petitioner Luis Figueroa (NYSID 05640402H; warrant no. 827320) is detained in a jail controlled by the New York City Police Department of Corrections. They are 59 years old and, as a result, are at high risk for severe illness death if they contract COVID-19.

32. Petitioner Jonathan Lind (NYSID 01652575R; warrant nos. 827139) is detained in a jail controlled by the New York City Department of Corrections on a parole warrant. They are 34 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

33. Petitioner Paul Colon, warrant number 805539, NYSID 08536382R, is detained in a jail controlled by the New York City Department of Correction. They are 39 years old and records indicate they have a history of hypothyroidism. As a result they are at

high risk for severe illness or death if they contract COVID-19. They were supervised in the community for over 14 months before they were taken into custody.

34. Petitioner Johan Marte Tejada, warrant number 824302, NYSID 02900856Y, is detained in a jail controlled by the New York City Department of Correction. They are 29 years old and suffer from asthma. They have previously been intubated for asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. Medical records indicate they are in the highest risk group due to asthma. They were supervised in the community for over 24 months before they were taken into custody.

35. Petitioner Joseph McMillan, warrant number 823509, NYSID 01032802N, is detained in a jail controlled by the New York City Department of Correction. They are 35 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. They were supervised in the community for over 9 months before they were taken into custody.

36. Petitioner Justin Moore, warrant number 828267, NYSID 04854579P, is detained in a jail controlled by the New York City Department of Correction. They are 33 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. They were supervised in the community for over four months before they were taken into custody.

37. Petitioner Leonard Nunez, warrant number 823230, NYSID 04855888R, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and as a result, they are at high risk for severe illness or death if they contract

COVID-19. According to a letter from Correctional Health Services dated April 1st, 2020, they are in the highest risk group due to age and underlying health issues.

38. Petitioner Jasper Peterson, warrant number 826750, NYSID 08380950Q, is detained in a jail controlled by the New York City Department of Correction. They are 39 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. They were supervised in the community for over 11 months before they were taken into custody.

39. Petitioner Jeremias Santiago, warrant number 823292, NYSID 09520576Z, is detained in a jail controlled by the New York City Department of Correction. They are 46 years old and suffer from cardiovascular disease and underlying lung issues. As a result they are at high risk for severe illness or death if they contract COVID-19. to a letter from Correctional Health Services dated April 1, 2020, they are in the highest risk group due to age and underlying health issues.

40. Petitioner Sarah Webster, warrant number 794505, NYSID 01838140K, is detained in a jail controlled by the New York City Department of Correction. They are 43 years old and records indicate they suffer from epilepsy and Hepatitis C. As a result they are at high risk for severe illness or death if they contract COVID-19.

41. Petitioner John Cassidy, warrant number 827036, NYSID 04619610Q, is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and suffer from high blood pressure. As a result they are at high risk for severe illness or death if they contract COVID-19.

42. Petitioner Nicole Norwood, warrant number 809105, NYSID 07340627Z, is detained in a jail controlled by the New York City Department of Correction. Norwood is 51 years old and as a result her age, she is at high risk for severe illness or death if she contracts COVID-19. She was living in the community for 1 year and 17 days and did not incur any criminal arrests or charges before being taken into custody for failure to report parole violation.

43. Petitioner Kevin Santos, warrant number 794304, NYSID 00019117Y, is detained in a jail controlled by the New York City Department of Correction. Santos is 27 years old and suffers from asthma. As a result of his pre-existing asthma condition, he is at high risk for severe illness or death if he contracts COVID-19. He was supervised in the community for 7 months, he was working at Dumbo House Restaurant and helping to support his recently widowed sister and her four children. Santos voluntarily surrendered himself when he was taken into custody for failing to report.

44. Petitioner Gregory Williams, warrant number 826887, NYSID 08593735J, is detained in a jail controlled by the New York City Department of Correction. Williams is 41 years old and suffers from hypertension. As a result of his pre-existing condition, he is at high risk for severe illness or death if he contracts COVID-19.

45. Petitioner Samuel Walton, warrant number 826579, NYSID 04641617M, is detained in a jail controlled by the New York City Department of Correction. Walton is 55 years old and as a result of his age, he is at high risk for severe illness or death if he contracts COVID-19. He was being supervised in the community for over 21 months

without a violation. The charges in his parole violation relate entirely to a misdemeanor case that was dismissed on March 31, 2020.

46. Petitioner Kenneth King, warrant number 824256, NYSID 05622608L, is detained in a jail controlled by the New York City Department of Correction. King is 52 years old and is immunocompromised due to undergoing chemotherapy and, as a result, he is at high risk for severe illness or death if he contracts COVID-19.

47. Petitioner Jonathan Jackson, warrant number 794233, NYSID 02514490P, is detained in a jail controlled by the New York City Department of Correction. They are 31 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

48. Petitioner Moses Torres, warrant number 826564, NYSID 05428517Q, is detained in a jail controlled by the New York City Department of Correction. Mr. Torres is 52 years old and as a result of his age, he is at high risk for severe illness or death if he contracts COVID-19.

49. Petitioner Kelvin Dalrymple, warrant 794438, NYSID 02961498Q, is detained in a jail controlled by the New York City Department of Correction. They are 28 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

50. Petitioner Devor Hughley, warrant no. 826889, NYSID 00124618L, is detained in a jail controlled by the New York City Department of Corrections on a parole warrant. They are 30 years old and suffer from asthma and, as a result, are at high risk for severe illness or death if they contract COVID-19.

51. Petitioner Brian Ranger, warrant number 826976, NYSID 03428814M, is detained in a jail controlled by the New York City Department of Correction. They suffer from sarcoidosis and asthma. Therefore, they are at high risk for death or severe illness if they contract COVID-19. According to a letter from Correctional Health Services dated March 30, 2020, they are in the highest risk group due to age and underlying health issues.

52. Petitioner Anthony Henry, warrant number 794210, NYSID 02278165K, is detained in a jail controlled by the New York City Department of Correction. They are 36 years old and records indicate suffer from asthma for which they take Albuterol. Therefore, they are at high risk for death or severe illness if they contract COVID-19. While under parole supervision, they were successfully participating in an outpatient treatment program and working for a family owned company.

53. Petitioner Robert Simmons warrant number 800824, NYSID 06294578R, is detained in a jail controlled by the New York City Department of Correction. They are 48 years old and suffer from HIV and Hepatitis C. As a result, they are at high risk for severe illness or death if they contract COVID-19.

54. Petitioner Jaquan Leyly warrant number 794434, NYSID 08671188Z, is detained in a jail controlled by the New York City Department of Correction. They are 38 years old and suffer from chronic asthma and a seizure disorder. As a result, they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated April 2nd, 2020, they are in the highest risk group due to age and underlying health issues. They were supervised in the community for over four

months before they were taken into custody after being instructed to report to the parole office.

55. Petitioner Farrah Hales warrant number 823291, NYSID 03287161R, is detained in a jail controlled by the New York City Department of Correction. They are 31 years old and records indicate suffer from hypercholesterolemia and a seizure disorder. As a result, they are at risk for severe illness or death if they contract COVID-19. They were supervised in the community for over four months before they were taken into custody after being instructed to report to the parole office.

56. Petitioner Jermaine Brown, warrant number 826683, NYSID 00096427J is detained in a jail controlled by the New York City Department of Correction. They are 42 years old and suffer from hepatitis-c. As a result, they are at risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated April 4th, 2020, they are in the highest risk group due to underlying health issues.

57. Petitioner Jerrel Fulcher, warrant number 823289, NYSID 08104112Q is detained in a jail controlled by the New York City Department of Correction. They are 44 years old and suffer from chronic severe asthma. They have been hospitalized multiple times due to this condition, including as recently as November 2019. As a result, they are at risk for severe illness or death if they contract COVID-19.

58. Petitioner Markico James warrant number 831069, NYSID 04580437Q is detained in a jail controlled by the New York City Department of Correction. They are 45 years old and suffer from asthma and high blood pressure. As a result, they are at risk for severe illness or death if they contract COVID-19.

59. Petitioner Lenard Berrian warrant number 826858, NYSID 05725017L is detained in a jail controlled by the New York City Department of Correction. They are 50 years old. As a result, they are at risk for severe illness or death if they contract COVID-19.

60. Petitioner Michael Dunnigan warrant number 794074, NYSID 07704917Q, is detained in a jail controlled by the New York City Department of Correction. They are 41 years old and suffer from long-term tobacco use and congestive sinuses. As a result, they are at risk for severe illness or death if they contract COVID-19. They were supervised in the community for over four months before they were taken into custody after being instructed to report to the parole office.

61. Petitioner Jason Acosta, warrant 823145, NYSID 00339624R, is detained in a jail controlled by the New York City Department of Correction. They are 31 years old and suffer from chronic asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

62. Petitioner Erick Minott, warrant 828185, NYSID 08262064H, is detained in a jail controlled by the New York City Department of Correction. They are 29 years old and suffer from chronic asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

63. Petitioner Timothy Daugherty, warrant 794248, NYSID 01452042Q, is detained in a jail controlled by the New York City Department of Correction. Mr. Daugherty is 49 years old and suffers from diabetes, asthma, heart disease, chronic bronchitis and high blood pressure. He currently has a pacemaker. As a result, Mr. Daugherty is at high risk

for severe illness or death if he contracts COVID-19. According to a letter from Correctional Health Services dated March 18, 2020, they are in the highest risk group due to age and underlying health issues.

64. Petitioner Wilfredo Gonzalez, warrant number 813090, NYSID 03669206Z, is detained in a jail controlled by the New York City Department of Correction. They are 65 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

65. Petitioner Jafar Alkazim, warrant number 826737, NYSID 04309541Y, is detained in a jail controlled by the New York City Department of Correction. They are 57 years old and suffer from asthma with prior hospitalization for asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

66. Petitioner Awais Saleem, warrant number 793999, NYSID 01963327H, is detained in a jail controlled by the New York City Department of Correction. They are 29 years and have a history of tuberculosis. As a result they are at high risk for severe illness or death if they contract COVID-19.

67. Petitioner Tony Canales, warrant number 810428, NYSID 09217506Q, is detained in a jail controlled by the New York City Department of Correction. They are 39 years old and suffer from heart murmurs and high blood pressure. As a result they are at high risk for severe illness or death if they contract COVID-19.

68. Petitioner Lawrence Wiggins, warrant number 800802, NYSID 04946596P, is detained in a jail controlled by the New York City Department of Correction. They are 54

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

69. Petitioner Esau Johnson, warrant number 821525, NYSID 03408025N, is detained in a jail controlled by the New York City Department of Correction. They are 28 years old and suffer from high blood pressure and gastritis. As a result they are at high risk for severe illness or death if they contract COVID-19.

70. Petitioner Geraldo Martinez, warrant number 831032, NYSID 02399534N, is detained in a jail controlled by the New York City Department of Correction. They are 31 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

71. Petitioner Jimmy Alvarado, warrant number 800762, NYSID 05987532R, is detained in a jail controlled by the New York City Department of Correction. They are 49 years old and suffer from asthma, trouble breathing, and a pre-existing lung injury, and therefore are at high risk for severe illness or death if they contract COVID-19. They were revoked and restored by a parole judge on March 23rd but are still in custody.

72. Petitioner Tami Izzo, warrant number 826016, NYSID 06708432M, is detained in a jail controlled by the New York City Department of Correction. They are 49 years old and suffer from pulmonary disease and hepatitis C, and therefore, are at high risk for severe illness or death if they contract COVID-19.

73. Petitioner Dashawn Mitchell, warrant number 828270, NYSID 03021201J, is detained in a jail controlled by the New York City Department of Correction. They are 30

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

74. Petitioner Abdoulaye Traore, warrant number 823211, NYSID 08560803H, is detained in a jail controlled by the New York City Department of Correction. They are 41 years and suffer from asthma and therefore are at high risk for severe illness or death if they contract COVID-19.

75. Petitioner Daniel Clennon, warrant number 794261, NYSID 02862906J, is detained in a jail controlled by the New York City Department of Correction. They are 26 years old and suffer from asthma and therefore are at high risk for severe illness or death if they contract COVID-19.

76. Petitioner George Lopez warrant number 829983, NYSID 07684139Z is detained in a jail controlled by the New York City Department of Correction. They are 43 years old and suffer from severe asthma and respiratory issues from a history of smoking. As a result they are at high risk for severe illness or death if they contract COVID-19. They were taken into custody voluntarily at the parole office, and require accommodation for severe light sensitivity and vision issues.

77. Petitioner Mukadien Moultrie warrant number 827017, NYSID 00614055Y is detained in a jail controlled by the New York City Department of Correction. They are 35 years old and suffer from cerebral venous sinus thrombosis, lung nodule, and tobacco use. As a result they are at high risk for severe illness or death if they contract COVID-19.

78. Petitioner Jesus Cancel, warrant number 829977, NYSID 08400148H is detained in a jail controlled by the New York City Department of Correction. They are 40 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. They are charged with a parole violation only and were taken into custody voluntarily at the parole office November 20, 2019. They were scheduled to have a contested hearing March 31, 2020, but the case was adjourned because the Board of Parole is still not equipped to hold contested hearings.

79. Petitioner Yancy Marquez, warrant number 821907, NYSID 01517392L is detained in a jail controlled by the New York City Department of Correction. They are 34 years old and suffer from life-long asthma, current bronchitis, and tobacco use. As a result they are at high risk for severe illness or death if they contract COVID-19.

80. Petitioner Steve Watson warrant number 824148, NYSID 05615850Z is detained in a jail controlled by the New York City Department of Correction. They are 58 years old and suffer from a seizure disorder and respiratory issues from a history of smoking. As a result they are at high risk for severe illness or death if they contract COVID-19.

81. Petitioner Laron Johnson warrant number 826682, NYSID 01156235Q, is detained in a jail controlled by the New York City Department of Correction. They are 25 years old and suffer from asthma. As a result they are at moderate risk for severe illness or death if they contract COVID-19. Their term of Post Release Supervision expired March 28, 2020 without a contested hearing being completed, but DOCCS has not responded to requests for their release.

82. Petitioner Gasper Romero, warrant number 827129, NYSID 00776758Q, is detained in a jail controlled by the New York City Department of Correction. They are 28 years old and suffer from a heart disease called Hypertrophic Cardiomyopathy. As a result they are at high risk for severe illness or death if they contract COVID-19.

83. Petitioner Robert Hill, warrant number 644037, NYSID 05979316L, is detained in a jail controlled by the New York City Department of Correction. They are 59 years old and suffer from a heart disease, kidney disease, and they have a pacemaker in their heart. As a result they are at high risk for severe illness or death if they contract COVID-19.

84. Petitioner Emilio Bonila, warrant number 823706, NYSID 03428399K, is detained in a jail controlled by the New York City Department of Correction. They are 62 years old and suffer from Chronic Obstructive Pulmonary Disease. As a result they are at high risk for severe illness or death if they contract COVID-19.

85. Petitioner Michelle Brown, warrant number 826993, NYSID 07005788Q is detained in a jail controlled by the New York City Department of Correction. They are 48 years old and suffer from asthma, hypertension, and left pulmonary embolus. As a result they are at high risk for severe illness or death if they contract COVID-19.

86. Petitioner Anthony DeJesus warrant number 823633, NYSID 09240807R is detained in a jail controlled by the New York City Department of Correction. They are 32 years old and records indicate they suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

87. Petitioner Michael Durham warrant number 824364, NYSID 05284028R is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

88. Petitioner Bobby Eli, warrant number 794503, NYSID 06212377P, is detained in a jail controlled by the New York City Department of Correction. They are 48 years old and suffer from diabetes and heart problems. As a result they are at high risk for severe illness or death if they contract COVID-19.

89. Petitioner Erik Brown, warrant number 826139, NYSID 05150643Z, is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and suffer from diabetes, deep vein thrombosis, and hypertension. As a result they are at high risk for severe illness or death if they contract COVID-19.

90. Petitioner Christopher Kimble-Taylor, warrant number 829522, NYSID 07988600R, is detained in a jail controlled by the New York City Department of Correction. They are 28 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

91. Petitioner Semaj McKay, warrant 794256 and NYSID 08026550R is detained in a jail controlled by the New York City Department of Correction. They are 42 years old and suffer from chronic asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

92. Petitioner John Donahue, warrant number 744472, NYSID 03842805K, is detained in a jail controlled by the New York City Department of Correction. They are 62

years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated March 30th, 2020, they are in the highest risk group due to age and underlying health issues.

93. Petitioner Derrick McCullough, warrant number 800826, NYSID 06071355M, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated April 2nd, 2020, they are in the highest risk group due to age and underlying health issues.

94. Petitioner Andre Jordan, warrant number 821983, NYSID 04995811K, is detained in a jail controlled by the New York City Department of Correction. They are 53 years old. As a result they are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated March 26, 2020, they are in the highest risk group due to age.

95. Petitioner Justin Vargas, warrant number 823793, NYSID 05904167M, is detained in a jail controlled by the New York City Department of Correction. They are 27 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

96. Petitioner Anthony Monroe, warrant number 817632, NYSID 00855821R, is detained in a jail controlled by the New York City Department of Correction. They are 31

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

97. Petitioner Keith White, warrant number 827050, NYSID 01655634M, is detained in a jail controlled by the New York City Department of Correction. They are 35 years old and suffer from epilepsy, asthma, and hypertension. As a result they are at high risk for severe illness or death if they contract COVID-19.

98. Petitioner Angel Ortiz, warrant number 823298, NYSID 05394060J, is detained in a jail controlled by the New York City Department of Correction. They are 52 years old and as a result they are at high risk for severe illness or death if they contract COVID-19.

99. Petitioner Chris Thompson, warrant number 810401, NYSID 01998400K, is detained in a jail controlled by the New York City Department of Correction. They are 36 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

100. Petitioner Tobias Ivy Anderson warrant 761586, NYSID 01929004L is detained in a jail controlled by the New York City Department of Correction. They are 35 years old and suffer from HIV, a bone infection, and are currently receiving hormone replacement therapy making them immunosuppressed. As a result, they are at high risk for severe illness or death if they contract COVID-19.

101. Petitioner Edwin Rivera, warrant number 794251, NYSID 09269352P, is detained in a jail controlled by the New York City Department of Correction. They are 37 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

102. Petitioner Douglas Rizzo, warrant number 794267, NYSID 05029308K, is detained in a jail controlled by the New York City Department of Correction. They are 58 years old and suffer from emphysema, glaucoma, Hepatitis C. As a result, they are at high risk for severe illness or death if they contract COVID-19.

103. Petitioner Dalone Stallings, warrant number 824361, NYSID 05410112J, is detained in a jail controlled by the New York City Department of Correction. They are 52 years old and suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

104. Petitioner Darryl Watts, warrant number 817586, NYSID 03916023Q, is detained in a jail controlled by the New York City Department of Correction. They are 61 years old and records indicate they suffer from asthma and hypertension. As a result, they are at high risk for severe illness or death if they contract COVID-19.

105. Petitioner Dennis Smalls, warrant number 813020, NYSID 05023129N, is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and as a result are at high risk for severe illness or death if they contract COVID-19. According to a letter from Correctional Health Services dated March 23, 2020, they are in the highest risk group due to age and underlying health issues.

106. Petitioner Darius Ferguson, warrant number 792459, NYSID 09929523Z, is detained in a jail controlled by the New York City Department of Correction. They are 35 years old and suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

107. Petitioner Kevin Cook, NYSID 05371938M, warrant 822604, is currently detained in a jail controlled by the New York City Department of Corrections. They are 52 years old and suffer from diabetes. As a result, they are at high risk for severe illness or death if they contract COVID-19. Medical records indicate they are in the highest risk group due to diabetes.

108. Petitioner Michael Myrick, warrant number 828359, NYSID 06711591H, is detained in a jail controlled by the New York City Department of Correction. They are 45 years old, and they suffer from diabetes and a heart condition. As a result they are at an increased risk for severe illness or death if they contract COVID-19.

109. Petitioner Jesus Melendez, warrant number 800432, NYSID 08545163M, is detained in a jail controlled by the New York City Department of Correction. They are 40 years old, and they suffer from chronic asthma. As a result they are at an increased risk for severe illness or death if they contract COVID-19.

110. Petitioner Richard Patterson, warrant number 800648, NYSID 00282288L, is detained in a jail controlled by the New York City Department of Correction. They are 33 years old, and they suffer from chronic asthma. As a result they are at an increased risk for severe illness or death if they contract COVID-19.

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

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

JURISDICTION AND VENUE

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

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

115. Copies of the mandates pertaining to individual Petitioners are not attached hereto due to the emergency nature of this proceeding.

STATEMENT OF FACTS

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

116. COVID-19 is a novel coronavirus that has reached pandemic status.⁴ In only a few months, more one million people worldwide have been diagnosed and more than 50,000 of those people have died. As of the date of this filing, there are more than 50,000 confirmed cases of coronavirus within the New York City area, up from just 923 on March 18, 2020. At least 2,653 people have died of the virus in the New York City area alone.⁵ The New York metropolitan area is now the global epicenter of the outbreak.

117. The numbers of people diagnosed reflect only a portion of those infected.⁶ Very few people have been tested, and many are asymptomatic transmitters—people who are contagious but exhibit limited or no symptoms, rendering ineffective any screening tools

⁴ Betsy McKay et al., *Coronavirus Declared Pandemic by World Health Organization*, WALL ST. J. (Mar. 11, 2020, 11:59 PM), <https://www.wsj.com/articles/u-s-coronavirus-cases-top-1-000-11583917794>

⁵ N.Y. TIMES, *Live Updates*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last accessed Mar. 25, 2020).

⁶ 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>.

dependent on identifying symptomatic behavior.⁷ Even those who have tested negative may be carrying and spreading the virus.⁸

118. Thus, infected people—who may not even know they are infected, or may even have tested negative—can spread the disease not only by direct contact (such as congregating in a jail or direct contact between an incarcerated person and a corrections officer) but also through indirect contact (such as touching a surface in a communal bathroom or eating space, or sharing breathing space in an enclosed dormitory lacking access to outside air circulation). This includes staff, vendors and incarcerated people currently cycling in and out of New York’s jails.

119. A recent study showed that the virus could survive for up to three hours in the air, four hours on copper, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.⁹ Indeed, a new study of an early cluster of COVID-19 cases in Wuhan, China revealed the dangers of indirect transmission resulting from infected people contaminating common surfaces—in the study, it was a communal bathroom.¹⁰

⁷ 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>; *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?* Independent. Available at <https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html> (last visited Mar. 18, 2020).

⁸Harlan M. Krumholz, M.D., *If You Have Coronavirus Symptoms, Assume You Have the Virus Even if You Tested Negative*, N.Y. TIMES (Apr. 1 2020) <https://www.nytimes.com/2020/04/01/well/live/coronavirus-symptoms-tests-false-negative.html?action=click&auth=login-email&login=email&module=Spotlight&pgtype=Homepage>

⁹ *Novel Coronavirus Can Live on Some Surfaces for Up to 3 Days, New Tests Show*. TIME (<https://time.com/5801278/coronavirus-stays-on-surfaces-days-tests/>) (last visited Mar. 19, 2020).

¹⁰ Cai J, Sun W, Huang J, Gamber M, Wu J, He G. Indirect virus transmission in cluster of COVID-19 cases, Wenzhou, China, 2020. *Emerg Infect Dis.* 2020 Jun. (<https://doi.org/10.3201/eid2606.200412>) (last visited Mar. 18, 2020).

120. For all these reasons, COVID-19 is a much more contagious disease than previously known coronaviruses and other major recent disease outbreaks.

121. Transmission of COVID-19 is expected to continue 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 public health intervention, with as many as 1.5 million deaths in the most severe projections.¹¹ Even with public health interventions, recent research suggests that it will be impossible “to prevent critical care capacities from being overwhelmed by the COVID-19 epidemic.”¹² More recent assessments indicate that, even with aggressive interventions, the virus “could kill between 100,000 and 240,000 Americans.”¹³

122. On March 7, 2020, the governor of the State of New York issued Executive Order Number 202, declaring a disaster emergency for the entire State of New York.¹⁴ Subsequently, the Mayor of New York City declared a State of Emergency for the City.¹⁵

¹¹ 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>.

¹² Kissler S, Tedijanto C, Lipsitch M and Grad Y. Social distancing strategies for curbing the COVID-19 epidemic (Mar. 24, 2020) (<https://www.medrxiv.org/content/10.1101/2020.03.22.20041079v1>).

¹³ 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).

¹⁴ Jesse McKinley & Edgar Sandoval, *Coronavirus in N.Y.: Cuomo Declares State of Emergency*, N.Y. TIMES, (Mar. 7, 2020), <https://www.nytimes.com/2020/03/07/nyregion/coronavirus-new-york-queens.html>.

¹⁵ *de Blasio Declares State of Emergency in N.Y.C., and Large Gatherings Are Banned*. N.Y. TIMES (Mar. 12, 2020), <https://www.nytimes.com/2020/03/12/nyregion/coronavirus-new-york-update.html>.

The President of the United States has now officially declared a national emergency.¹⁶ All across New York and the nation, extraordinary steps are being taken in recognition of the unprecedented scale of this crisis, including school closures, bans on public gatherings, stay-home orders for non-essential workers, the scaling back of the entire judicial system and the expenditure of vast sums of public money to keep the economy from complete collapse. People who have control over their bodies are self-isolating to prevent contracting or spreading this deadly disease.

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

124. Certain populations—those over the age of 50 and those with specific underlying medical conditions—are particularly vulnerable to serious illness and death from COVID-19. People aged 60-69 have a mortality rate 18 times higher than people under the age of 40; the rate is 40 times higher for people aged 70-79 years old.¹⁷ The mortality rate for people of any age with cardiovascular disease, diabetes, hypertension, chronic respiratory disease, chronic liver or kidney disease (including hepatitis and dialysis patients), compromised immune systems (such as from cancer, HIV or auto-immune disease) and blood disorders (including sickle cell disease) are significantly elevated as well.¹⁸

¹⁶ Derek Hawkins et al., *Trump Declares Coronavirus Outbreak a National Emergency*, WASH. POST (Mar. 13, 2020, 10:46 AM), <https://www.washingtonpost.com/world/2020/03/13/coronavirus-latest-news/>.

¹⁷ *Id.*

¹⁸ *Id.*

125. Compared to influenza, COVID-19 is much more deadly, with a fatality rate of 15-20 percent in the highest risk populations.¹⁹ This means that at least one in seven infected individuals in this high-risk group will die from COVID-19.

126. Even if the COVID-19 infection is not fatal, it will often require highly specialized care for people over the age of 50 and will result in longstanding medical complications, including permanent loss of respiratory capacity, damage other vital organs including the heart, kidneys and liver, and extensive neurological damage.²⁰ Serious complications can develop rapidly, as little as five days after the first symptoms first appear.²¹

127. There is no cure for COVID-19 nor is there any known medication to prevent or treat infection. The only known methods to reduce the risk for vulnerable people of serious illness or death from COVID-19 are to prevent infection in the first place through social distancing and improved hygiene, including washing hands frequently with soap and water.

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

128. COVID-19 has now reached Rikers Island and is rapidly spreading. On March 20, 2020, there was only one confirmed case of a detainee with a positive COVID-19

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

diagnosis.²² 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.²³ There are now at least 231 currently incarcerated inmates diagnosed with the virus, with likely a higher cumulative level of infection, as well as more than 223 staff members, indicating transmission is occurring at an alarming rate and will only continue to spread rapidly.

129. One DOC staff member, a 56-year-old Investigation Division staffer, whose position entailed interviewing detainees in several facilities as part of investigations, died on March 15, 2020.²⁴ He reportedly had underlying health conditions, just as Petitioners do.²⁵

130. 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 previous global epicenter of the disease, including hotspots such as Wuhan, China and Lombardy, Italy. Simply put, when it comes to COVID-19, there is no more dangerous place to be right now on planet Earth than Rikers Island.

²² Chelsia Rose Marcius, *Rikers Island inmate has contracted coronavirus: officials*, N.Y. DAILY NEWS (Mar. 18, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzmqwrmuevzz3y-story.html>.

²³ 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).

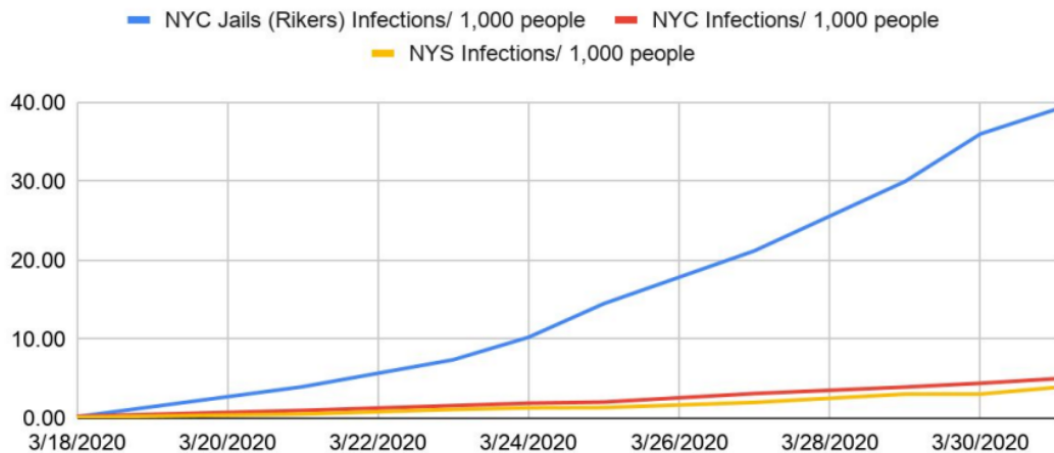
²⁴ Chelsia Rose Marcius, *Coronavirus kills NYC Correction Department official*, N.Y. DAILY NEWS (Mar. 18, 2020) <https://www.nydailynews.com/coronavirus/ny-coronavirus-department-correction-employee-dies-from-coronavirus-20200316-akeai6gop5alledhzhi7u3pivm-story.html>.

²⁵ *Id.*

Coronavirus Infection Rates as of April 2, 2020

Locations	Cases	Population	Infection Rate	Infections/ 1,000 people
NYC Jails (Rikers)**	231	4,529	5.10%	51
New York City	45,707	8,175,133	0.56%	5.59
New York State	92,381	19,440,469	0.48%	4.75
United States	235,747	331,002,651	0.07%	0.71
Hubei Province (Wuhan)	67,802	59,020,000	0.12%	1.15
China	81,589	1,439,323,776	0.01%	0.06
Lombardy, Italy	46,065	10,040,000	0.46%	4.59
Italy	115,242	60,461,826	0.19%	1.91

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



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

in close proximity. Prior to Rikers Island overtaking the rest of the world, the highest known person-to-person transmission rate for COVID-19 to date took place in a nursing home facility in Kirkland, Washington, and on afflicted cruise ships in Japan and off the coast of California.

132. 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.²⁶ As established above, H1N1 is far less contagious than COVID-19. Not surprisingly, Chinese prison officials report that over five-hundred (500) COVID-19 cases in the current outbreak stemmed from the Hubei province prisons.²⁷ The rate of incarceration in China is far lower than in the United States, suggesting the problem here will be much worse. Experts have been predicting for weeks that “[a]ll prisons and jails should anticipate that the coronavirus will enter their facility[.]”²⁸

133. 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.”²⁹

²⁶ 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/>.

²⁷ Evelyn Cheng and Huileng Tan, *China Says More than 500 Cases of the New Coronavirus Stemmed from Prisons*, CNBC, Feb. 20, 2020, available at <https://www.cnbc.com/2020/02/21/coronavirus-china-says-two-prisons-reportednearly-250-cases.html>.

²⁸ *Id.* (quoting Tyler Winkelman, co-director of the Health, Homelessness, and Criminal Justice Lab at the Hennepin Healthcare Research Institute in Minneapolis).

²⁹ 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).

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.”³⁰ 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.³¹

134. 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 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.

135. 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

³⁰ 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).

³¹ *Id.*

“separation” or suggest that separation “from the general population” allows for social distancing.

136. 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.

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

138. 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.

139. In prior 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 no evidence from which one could conclude, that such “enhanced procedures” will be sufficient to control viral spread.³²

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

³² Declaration of Patricia Feeney ¶ 3-4 (Mar. 25, 2020) (attached as Ex. D to Bowe Aff.).

141. 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 do not have access to soap or hand sanitizer.

142. 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.

143. On April 2, 2020, the Correction Officers Benevolent Association (“COBA”) filed a lawsuit in Supreme Court, Queens County (Index No. 704991/2020), in which the corrections officers’ union alleges that “pre-screening and current protocols will not identify and stop the threat [asymptomatic carriers) pose” and that DOC “has not with any regularity sanitized correction officer workplaces” and “there is no such plan” for “scheduling of regular sanitization of work areas” ¶¶ 7, 11, 13. The complaint further alleges that DOC has not provided hand sanitizer, despite claims to the contrary in submissions DOC has made to courts in other writs for habeas corpus brought by the Legal Aid Society. *Id.* ¶ 11.

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

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

146. The procedures outlined in the DOC’s “COVID19 Preparation & Action Plan” issued on March 5, 2020, indicate that people will only be isolated if they exhibit “flu-like” symptoms upon admission.³³ This initial screening process overlooks the fact that COVID-19 may present with a slower onset of symptoms than the flu — meaning that many who are infected with COVID-19 do not show signs of illness.³⁴ DOC and CHS’s symptom-reactive policies—that staff will be sent home and incarcerated people will be separated and treated *if they display symptoms*³⁵— are ineffective to stop the rampant asymptomatic transmission of the disease.³⁶

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

³³ See N.Y.C. Dept. of Corr., *COVID19 Preparaton & Action Plan*, <https://www1.nyc.gov/site/doc/media/coronavirus-news.page> (last visited Mar. 19, 2020).

³⁴ CDC, *Coronavirus Disease 2019 (COVID-19) Symptoms*, <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html> (last visited Mar. 19, 2020); *see also* Yale New Haven Health, *Coronavirus (COVID-19) vs. Influenza (Flu)*, <https://www.ynhhs.org/patient-care/urgent-care/flu-or-coronavirus> (last visited Mar. 19, 2020).

³⁵ New York City Department of Correction: COVID19 Preparation & Action Plan, *available at* <https://www1.nyc.gov/site/doc/media/coronavirus-news.page> (last visited Mar. 18, 2020).

³⁶ *Coronavirus: Are People Who Are Asymptomatic Still Capable of Spreading COVID-19?* Independent. Available at <https://www.independent.co.uk/life-style/health-and-families/coronavirus-symptoms-asymptomatic-covid-19-spread-virus-a9403311.html>.

the event that CDU and hospital ward capacity is exhausted.³⁷ According to an interview with the Rikers geriatrician, Dr. Rachel Bedard, on March 18, DOC at that point did not have a plan in place for where to place infected people once that capacity was exceeded.³⁸

148. Based on the number of reported infections, CDU and hospital ward capacity is already exhausted.

149. Even if these problems could be resolved, however, they would not sufficiently address the risk of serious medical harm to Petitioners. As Dr. Homer Venters, former chief medical officer of New York City jails, recently said, “[i]n ordinary times, crowded jails overlook prisoners’ medical problems and struggle to separate them based on their security classification...[i]f jails have to add quarantines and sequestration of high-risk prisoners to the mix...they will find managing a COVID-19 outbreak ‘*simply almost impossible*.’”³⁹

150. Whatever steps they have taken, the explosive spread of COVID-19 in New York’s jails continues. DOC’s strategy for containment is clearly a failure. Release is the only strategy to address the threat of serious medical harm to Petitioners.

³⁷ Testimony of Dept. of Corr. Official, N.Y.C. Bd. of Corr. Mtg., Mar. 10, 2020 at 17:40, <https://www1.nyc.gov/site/boc/meetings/mar-10-2020.page>.

³⁸ 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. 30, 2020).

³⁹ 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.

Release Is Required to Address the Risk of Serious Medical Harm

151. Because risk mitigation is the only known strategy to protect vulnerable groups from COVID-19, correctional public health experts, including the New York City Board of Correction (“BOC”), have recommended the release from custody of people most vulnerable to COVID-19.

152. On March 17, 2020, the Board of Correction of the City of New York (“BOC”) – the independent agency charged with oversight of New York’s jails – 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.”⁴⁰ 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.”⁴¹ 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[.]”⁴²

153. On March 21, 2020, BOC issued a second advisory letter, urging judges and prosecutors to act quickly to release people, like Petitioners, who are over 50 years

⁴⁰ 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> .

⁴¹ *Id.*

⁴² *Id.*

old and who have health conditions that make them high-risk for COVID-19.⁴³ 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.*”⁴⁴ The agency 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.”⁴⁵

154. Dr. Robert Cohen, an expert member of the BOC, 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.”⁴⁶

⁴³ 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).

⁴⁴ *Id.* (emphasis added).

⁴⁵ *Id.* (emphasis added).

⁴⁶ 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>.

155. Ross McDonald, the Chief Medical Officer of CHS, publicly called for the release from Rikers Island of “as many [people] as possible” on Twitter on March 18,



Ross MacDonald
@RossMacDonaldMD

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

9:51 PM · Mar 18, 2020 · Twitter for iPhone

5.7K Retweets 16.8K Likes



Ross MacDonald @RossMacDonaldMD · 15h

Replying to @RossMacDonaldMD

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

3

475

4.1K



Ross MacDonald @RossMacDonaldMD · 15h

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

2

341

3.6K



Ross MacDonald @RossMacDonaldMD · 15h

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

3

349

3.5K



Ross MacDonald @RossMacDonaldMD · 15h

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

4

547

3.8K



Ross MacDonald @RossMacDonaldMD · 15h

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

37

947

6.1K



2020:⁴⁷

⁴⁷ <https://twitter.com/RossMacDonaldMD/status/1240455796946800641>

156. He renewed this call on Twitter only this week, 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.”⁴⁸

157. Similarly, Dr. Rachel Bedard, a geriatrician who works on Rikers Island providing medical care for elderly and ill detainees, affirmed in a media interview that effective preventative measures in a jail setting are essentially impossible, even with the best of efforts and intentions:

[Detainees at Rikers] all living in congregate settings, either dormitories of forty men, beds three and a half feet apart, or cell blocks where everybody is sharing one common space, one common hallway. These spaces are locked. These guys have absolutely no freedom of movement.

When they are moved from one location to another, a person has to take them there. That person has to open the door for them, and they have to be let through it and be walked down the hallway. When they are moved from one facility to another, somebody has to touch them and put cuffs on them. When we bring them their food, workers go from housing area to housing area with trays that have to be distributed. When we give them their medication, that has to be done for them. They can't do it for themselves. And so, if you think about how many excess human contacts that is, even compared to something like a shelter setting, you can imagine why viral spread in this environment is extra dangerous. (...)

We know that there is likely an asymptomatic spread of this disease. So when staff and officers and others are coming in and out, we just cannot make a commitment that we can protect them. It's not a fortress.⁴⁹

158. Likewise, the District Attorneys of New York and Kings County have endorsed a plan to identify and release people who are “elderly” or other

⁴⁸ <https://twitter.com/RossMacDonaldMD/status/1244822714805891072>

⁴⁹ 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. 30, 2020).

“[p]opulations that the CDC has classified as vulnerable (those with asthma, cancer, heart disease, lung disease, and diabetes).”⁵⁰

159. The conclusions of New York’s own correctional health experts are bolstered by the overwhelming consensus of medical professionals weighing in on this issue in public hearings and litigation across the country.

160. 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.⁵¹ 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.”⁵²

161. Likewise, in a recent court filing, Dr. Marc Stern, a correctional health expert and former Assistant Secretary for Health Care at the Washington State Department of Corrections, concluded that “[f]or detainees who are at high risk of serious illness or death should they contract the COVID-19 virus, release from detention is a

⁵⁰ Joint Statement from Elected Prosecutors on COVID-19 and Addressing the Rights and Needs of those in Custody (Mar. 18, 2020), <https://fairandjustprosecution.org/wp-content/uploads/2020/03/Coronavirus-Sign-On-Letter.pdf>.

⁵¹ 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).

⁵² *Id.*

critically important way to meaningfully mitigate that risk.” For that reason, Dr. Stern recommended the “release of eligible individuals from detention, with priority given to the elderly and those with underlying medical conditions most vulnerable to serious illness or death if infected with COVID-19.”⁵³

162. Another correctional health expert in that same court case, Dr. Robert Greifinger, another former head of correctional health care at Rikers Island, concluded that “even with the best-laid plans to address the spread of COVID-19 in detention facilities, the release of high-risk individuals is a key part of a risk mitigation strategy.” Accordingly, in his opinion, “the public health recommendation is to release high-risk people from detention, given the heightened risks to their health and safety, especially given the lack of a viable vaccine for prevention or effective treatment at this stage.”⁵⁴

163. Recognizing this reality, courts and public officials in other jurisdictions, including in Los Angeles, California and parts of Ohio and Texas, have already responded by taking steps to facilitate the release of elderly and sick prisoners, and to reduce jail populations by refusing the admission to jails of individuals arrested on

⁵³Decl. of Dr. Marc Stern ¶¶ 9, 11, *Dawson v. Asher*, (No. 2:20-CV-409-JLR-MAT) (Mar. 16, 2020), <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern>

⁵⁴ Decl. of Dr. Robert Greifinger ¶ 13, *Dawson v. Asher*, (No. 2:20-CV-409-JLR-MAT) (Mar. 16, 2020), <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-robert-greifinger>

certain charges.⁵⁵ In Iran, one of the first countries to see the outbreak of COVID-19, 85,000 inmates were temporarily released back to their communities amid virus concerns.⁵⁶

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

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

Failure to Release Petitioners Constitutes Deliberate Indifference to Serious Medical Harm

166. Continuing to incarcerate people who have been deemed by the CDC to be especially vulnerable to a deadly pandemic, in conditions where preventing transmission is impossible, constitutes deliberate indifference to serious medical harm in violation of the United States and New York State constitutions.

⁵⁵See, e.g., Alene Tchekmedyan et al, *L.A. County releasing some inmates from jail to combat coronavirus*, L.A. Times, (Mar. 16, 2020, 7:25 PM), <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>; Cory Shaffer, *Cuyahoga County official will hold mass plea, bond hearings to reduce jail population over coronavirus concerns*, CLEVELAND.COM (Mar. 12, 2020), <https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>; WKBN Staff, *Local county jails making changes due to coronavirus outbreak*, WKBN (Mar. 12, 2020) (“The Mahoning County [Ohio] Sheriff’s Office is refusing all non-violent misdemeanor arrests at the county jail”), <https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>; see also Charles Scudder, *Facing coronavirus concerns, Collin County [Texas] Sheriff asks police not to bring petty criminals to jail*, DALLAS MORNING NEWS (Mar. 12, 2020 5:57 PM), <https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>.

⁵⁶ *Hard-hit Iran frees more prisoners amid coronavirus outbreak*, AL JAZEERA (Mar. 17, 2020), <https://www.aljazeera.com/news/2020/03/hard-hit-iran-frees-prisoners-coronavirus-outbreak-200317110516495.html> .

167. 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). Federal courts have already begun granting petitions for habeas corpus and federal bail applications to release or avoid reincarceration 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 brought by a medically vulnerable detainee to date.

168. To establish a federal constitutional claim, Petitioners must prove that Respondents (1) acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though (2) they knew, or should have known, that the condition posed an excessive risk to health or safety. *Id.* at 35. The same standard applies those held on parole warrants. *Benjamin v. Malcolm*, 646 F. Supp. 1550, 1556 (S.D.N.Y. 1986) (“[A]lleged parole violators ought not to be treated differently from other detainees, since the charges of parole violation standing against them are unproven, and in many instances, involve the same charges as those for which they are substantively detained.”); *Hamilton v. Lyons*, 74 F.3d 99, 106 (5th Cir. 1996) (“[We] apply *Bell*’s standard to

detained parolees only to the extent that we recognize that a parolee arrested for a subsequent crime has a due process right to be free from punishment for the subsequent crime until convicted of the subsequent crime.”).

169. The U.S. Supreme Court has acknowledged that the risk of contracting a communicable disease constitutes an “unsafe, life-threatening condition.” *Helling v. McKinney*, 509 U.S. 25, 33 (1993). *See also Jolly v. Coughlin*, 76 F.3d 468, 477 (2d Cir. 1996) (“[C]orrectional officials have an affirmative obligation to protect [forcibly confined] inmates from infectious disease”); *Narvaez v. City of New York*, No. 16-CV-1980 (GBD), 2017 WL 1535386, at *9 (S.D.N.Y. Apr. 17, 2017) (denying “motion to dismiss Plaintiff’s claim that the City of New York violated Plaintiff’s rights under the Due Process Clause by repeatedly deciding to continue housing him with inmates with active-TB”); *Bolton v. Goord*, 992 F. Supp. 604, 628 (S.D.N.Y. 1998) (acknowledging that prisoner could state claim under [§ 1983](#) for confinement in same cell as inmate with serious contagious disease).

170. It has long been recognized that the affirmative obligation to protect against infectious disease empowers Courts to provide remedies designed to prevent imminent harm to future health. *Helling*, 509 U.S. at 33 (“It would be odd to deny an injunction to inmates who plainly proved an unsafe, life-threatening condition in their prison on the ground that nothing yet had happened to them.”); *Sanchez v. State of New York*, 99 N.Y. 2d 247, 254 (2002) (recognizing that it is “duty of the State, as [petitioner’s] custodian, to safeguard and protect him from the harms it should reasonably foresee based on its knowledge derived from operation of a maximum security prison.”). *Jabbar v. Fischer*,

683 F.3d 54, 57 (2d Cir. 2012) (“We have held that prisoners may not be deprived of their basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety—and they may not be exposed to conditions that pose an unreasonable risk of serious damage to [their] future health.”) (citation and internal quotation marks omitted). In the past, courts have found claims of future harms cognizable under the Eighth Amendment that involved the risks posed by second-hand smoke,⁵⁷ contaminated water,⁵⁸ use of chemical toilets,⁵⁹ and paint toxins.⁶⁰

171. Following this precedent, as well as the overwhelming consensus of correctional medical professionals, federal courts have already recognized that COVID-19 poses a serious medical threat, holding that “[t]he nature of detention facilities makes exposure and spread of the virus particularly harmful” and describing the COVID-19 situation in carceral institutions as a “tinderbox scenario.” *Basank v. Decker*, 20 Civ. 2518 (AT), Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020). *See also United States v. Hernandez*, 18 Cr. 834-04 (PAE), Dkt. No. 451 (Apr. 2, 2020) (granting compassionate release to man with asthma serving 24-month term); *United States v. Chandler*, No. 19 Cr. 867 (PAC), 2020 WL 1528120, at *1–3 (S.D.N.Y. Mar. 31, 2020) (granting bail application, pursuant to 18 U.S.C. § 3142(i), of defendant charged with being a felon in possession of a firearm); *United States v. McKenzie*, No. 18 Cr. 834 (PAE), 2020 WL 1503669, at *2–3 (S.D.N.Y.

⁵⁷ *Helling v. McKinney*, 509 U.S. 25, 33 (1993).

⁵⁸ *Carroll v. DeTella*, 255 F.3d 470, 472 (7th Cir. 2001).

⁵⁹ *Masonoff v. DuBois*, 899 F. Supp. 782, 797 (D. Mass. 1995).

⁶⁰ *Crawford v. Coughlin*, 43 F. Supp. 2d 319, 325-325 (W.D.N.Y. 1999).

Mar. 30, 2020) (granting bond pending sentencing, pursuant to 18 U.S.C. § 3145(c), to defendant who had pleaded guilty to single count of assault with a deadly weapon and had previously been released on bond); *United States v. Hernandez*, No. 19 Cr. 169 (VM), 2020 WL 1503106, at *1 (S.D.N.Y. Mar. 30, 2020) (granting bail application, pursuant to § 3142(i), of 64-year-old defendant with asthma and high blood pressure that placed him “at a substantially heightened risk of dangerous complications should he contract COVID-19”); *United States v. Witter*, No. 19 Cr. 568 (SHS), Dkt. 40 at 2–3 (S.D.N.Y. Mar. 26, 2020) (granting bond pending sentencing, pursuant to § 3145(c), to defendant who had pleaded to a narcotics offense); *United States v. Perez*, No. 19 Cr. 297 (PAE), 2020 WL 1329225, at *1 (S.D.N.Y. Mar. 19, 2020) (granting bail application, pursuant to § 3142(i), of 65-year-old defendant with COPD, in light of “unique confluence of serious health issues and other risk factors facing this defendant, . . . which place him at a substantially heightened risk of dangerous complications should [he] contract COVID-19”); *United States v. Stephens*, No. 15 Cr. 95, 2020 WL 1295155, at *2 (S.D.N.Y. Mar. 19, 2020) (granting request for reconsideration of federal bail conditions on the grounds that “inmates may be at a heightened risk of contracting COVID-19 should an outbreak develop.”) (collecting authorities); *United States v. Garlock*, 18 Cr. 418, 2020 WL 1439980, at *1 (N.D. Cal. Mar. 25, 2020) (“Several recent court rulings have explained the health risks—to inmates, guards, and the community at large—created by large prison populations. The chaos has already begun inside federal prisons” (citations omitted)); *Coronel v. Decker*, 20 Civ. 2472 (AJN), Dkt. No. 26 (S.D.N.Y. Mar. 27, 2020) (finding that people “in carceral settings are at a significantly

higher risk of spreading infectious diseases” in part because “[i]t is not possible to isolate [them] from the outside world (including from staff and vendors who may have been exposed to COVID-19), nor is it possible to isolate them from one another.”); *Cf. United States v. Martin*, No. 19-cr-140-13, 2020 WL 1274857, at *2 (D. Md. Mar. 17, 2020) (explaining that exposure to COVID-19 can lead to “serious (potentially fatal, if the detainee is elderly and with underlying medical complications) illness” and noting that incarcerated individuals “may well” have a cognizable substantive due process claim in such a scenario).

172. Courts across the country have also begun granting specific applications for release of pretrial detainees, with many more such applications pending. *See, e.g., United States v. Raihan*, No. 20-cr-68 (BMC) (JO), Dkt. No. 20 at 10:12–19 (E.D.N.Y. Mar. 12, 2020) (ordering the continued release of a pre-trial detainee on the grounds that “[t]he more people we crowd into that facility [the Manhattan Detention Center], the more we’re increasing the risk to the community”); *United States v. Barkman*, 2020 U.S. Dist. LEXIS 45628 (D. Nev. Mar. 17, 2020) (“With confirmed cases that indicate community spread, the time is now to take action to protect vulnerable populations and the community at large.”); *In The Matter Of The Extradition Of Alejandro Toledo Manrique*, 2020 WL 1307109, (N.D. Cal. March 19, 2020) (ordering pre-trial detainee’s release on bond despite finding the person was a flight risk and despite the fact that no cases had yet been confirmed in the San Mateo County jail, since by the time there is a case it will likely be “too late”); *U.S. v. Stephens*, 19 cr. 95, 2020 WL 1295155, (AJN) (S.D.N.Y. Mar. 19, 2020) (ordering release of federal pretrial detainee in part due to “unprecedented

and extraordinarily dangerous nature of the COVID-19 pandemic” which may place inmates, in particular, at “heightened risk.”); *United States v. Perez* 19-cr-297 (PAE), Dkt. No. 62 (March 19, 2020) (ordering the release of a detainee held on sex crime charges with “serious progressive lung diseases after finding “compelling reasons exist for temporary release of the defendant from custody during the current public health crisis”).

173. Respondents do not dispute that they are all well aware of the extraordinary risk COVID-19 poses to medically vulnerable people in New York City jails, including Petitioners. As noted above, they have alerted to this risk by the Board of Correction, as well as prominent medical professionals within their own correctional health service. Both the Mayor of New York City and the Governor of New York have taken affirmative, if inadequate, steps to release people from New York’s jails, further acknowledging the scale of the unfolding catastrophe.

174. On March 13, 2020, the Legal Aid Society sent a letter to Respondent the New York City Department of Correction (“DOC”) noting multiple complaints from incarcerated clients about the lack of basic sanitation raising concerns about the ability to manage the risk of COVID-19 in New York City jails.⁶¹

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

⁶¹ Letter from Justine Luongo, Attorney-in-Charge, Legal Aid Society Criminal Defense Practice, to Commissioner Cynthia Brann, N.Y.C. Department of Corrections, and Elizabeth Glazer, Mayor’s Office of Criminal Justice (Mar. 13, 2020), <https://legalaidnyc.org/wp-content/uploads/2020/03/LAS-Letter-to-NYC-re-COVID-19-Preparedness-in-City-Jails.pdf>.

176. Numerous media outlets have covered these and other calls to action.⁶²

177. Whatever steps Respondents have taken to manage the risk of COVID-19 will fail because, as pleaded above, Respondents are not capable of managing that risk in a jail environment. Indeed, Respondent's facilities went from just one known case to at least twenty-one cases in twenty-four hours.

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

179. Based on a similar record, federal courts have found other actors deliberately indifferent to the threat COVID-19 for failure to release medically vulnerable detainees. *See, e.g., Basank v. Decker*, 20 Civ. 2518 (AT), Dkt. No. 11 (S.D.N.Y. Mar. 26, 2020) ("At oral argument, Respondents represented that ICE and the detention facilities in which Petitioners are housed are taking certain measures to prevent the spread of virus: screening detainees upon intake for risk factors, isolating detainees who report symptoms, conducting video court appearances with only one detainee in the room at a time, providing soap and hand sanitizer to inmates, and increasing the frequency and intensity of cleaning jail facilities. These measures are patently insufficient to protect Petitioners.").

180. There is an even stronger due process right to be free from unconstitutional conditions of confinement under the New York State Constitution. In *Cooper v. Morin*, 49

⁶² *See, e.g.,* Chelsia Rose Marcus, *Coronavirus prompts Legal Aid, Manhattan DA, to call for release of state parolees from city jails*, N.Y. DAILY NEWS (Mar, 17, 2020) <https://www.nydailynews.com/coronavirus/ny-coronavirus-nyc-rikers-island-parole-correction-department-20200317-flg4paly5nesddfbtkone6hki-story.html>; *see also supra*.

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”).

181. 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.

182. Plainly, the Court has authority to consider a habeas petition whenever the continued incarceration of a petitioner is 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.

183. 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).

184. 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).

185. 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”).

186. The Court of Appeals has explained that the State has a duty “to protect [incarcerated people] from unlawful and onerous treatment, mental or physical.” *Id.* at 485 (citations omitted). 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).

187. On March 23, 2020, Supreme Court, New York County (Dwyer, J.) granted in part another similar petition for release, finding that failure to release medically vulnerable person did violation the constitutional right to due process.

188. On March 25, 2020, Supreme Court, Bronx County (Rodriguez, J.) granted in full a mass petition on behalf of 106 medically vulnerable people held in New York jails.

189. On March 20, 2020, Supreme Court, New York Court (Statsinger, J.), denied a similar petition for release on behalf of 116 other pre-trial detainees on Rikers Island. While the Court has not yet issued an opinion in that matter, from the bench the Court indicated that it found those petitioners had not met the standard for deliberate indifference in part because it found that release was not the only option available to cure the risk posed to medically vulnerable people in jail. That decision is being appealed.

190. These Petitioners respectfully submit that in the intervening days, the rapid escalation of the spread of COVID-19 on Rikers Island and the Respondents' failure to take sufficient steps to adequately reduce the size of the jail population and remove vulnerable people warrants a different conclusion with respect to this Petition.

Respondents Have Authority to Release Petitioners

191. 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.

192. Petitioners held on parole warrants may be released by Respondent Annucci without prejudice to later refiling of parole violation charges after the threat of COVID-19 has abated, pursuant to 9 NYCRR §8004.3(e)(i).

193. 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.

PRAYER FOR RELIEF

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

Dated: April 2, 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 3, 2020
New York, NEW YORK

A handwritten signature in black ink, appearing to read "Corey Stoughton", is centered on the page. The signature is written in a cursive style with a long horizontal flourish at the end.

Corey Stoughton