

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

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

VENUS WILLIAMS, ET AL.

Petitioners,

v.

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

Respondents.

Index No. _____

SCID 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, New York County, at 100 Centre Street, on ____ of March, 2020, to do and receive what shall then and there be considered concerning the said Petitioners and have you then and there this writ.

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

By the Court Clerk

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

Justice of the Supreme Court
of the State of New York

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

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

VENUS WILLIAMS, et al.,

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CYNTHIA BRANN, Commissioner, New York City
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**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

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

INTRODUCTION

1. Petitioners are 116 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 bail or parole holds 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, 229,289 people worldwide have been diagnosed with COVID-19 and more than 9,324 of those people have died. As of the date of this filing, on a Thursday, there are more than 1,871 confirmed cases of coronavirus within the New York City area, up from 923 on Wednesday, and at least 11 deaths. These numbers are growing rapidly every day. There is no vaccine or cure for COVID-19. No one is immune.

3. 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.

4. Because risk mitigation is the only known strategy to protect vulnerable groups from COVID-19 and risk mitigation is effectively impossible in jails, including those in New York City, correctional public health experts—including the New York City Board of Correction, the lead doctor of New York’s own correctional health system and several expert witnesses cases around the country—have recommended the release from custody of people most vulnerable to COVID-19. Release is the only effective means to protect the people with the greatest vulnerability to COVID-19 from transmission of the virus and also allows for greater risk mitigation for all people who remain held or working on Rikers Island and other New York City jails.

5. COVID-19 has already reached Rikers Island and is currently spreading, posing an unconscionable and entirely preventable risk of harm to Petitioners. All across New York City, extraordinary and unprecedented measures affecting every aspect of life are being taken in the name of protecting people from this pandemic. New York cannot leave people in jails behind to suffer and die.

PARTIES

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

7. Petitioner Venus Williams is detained in a jail controlled by the New York City Department of Correction. They are 64 years old and suffers from asthma and chronic obstructive pulmonary disease. As a result they are at high risk for severe illness or death if they contract COVID-19.

8. Petitioner Melinda Morales is detained in a jail controlled by the New York City Department of Correction. They are 54 years old and suffer from a heart condition. As a result, they are at high risk for severe illness or death if they contract COVID-19.

9. Petitioner Freddie Johnson is detained in a jail controlled by the New York City Department of Correction. They are 61 years old and diagnosed with asthma and other serious respiratory diseases. As a result, they are at high risk for severe illness or death if they contract COVID-19.

10. Petitioner Tony Roman is detained in a jail controlled by the New York City Department of Correction. They are 76 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

11. Petitioner James King is detained in a jail controlled by the New York City Department of Correction. They are 46 years old and deemed high risk by the Correctional Health Services (“CHS”) because of several severe medical diagnoses. As a result, they are at high risk for severe illness or death if they contract COVID-19.

12. Petitioner Elijah Green is detained in a jail controlled by the New York City Department of Correction. They are 19 years old and suffers from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

13. Petitioner Ricardo Gonzales is detained in a jail controlled by the New York City Department of Correction. They are 45 years old and diagnosed with diabetes. As a result, they are at high risk for severe illness or death if they contract COVID-19.

14. Petitioner Dennis Smalls is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

15. Petitioner Vincent Brown is detained in a jail controlled by the New York City Department of Correction. They are years old 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

16. Petitioner Lambert Kitching is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

17. Petitioner Thomas Hammond is detained in a jail controlled by the New York City Department of Correction. They are 60 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

18. Petitioner Gregory Jason is detained in a jail controlled by the New York City Department of Correction. They are 60 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

19. Petitioner Willie Vasquez 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 high risk for severe illness or death if they contract COVID-19.

20. Petitioner David Russell is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

21. Petitioner Edward Monks is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

22. Petitioner Ramon Lorenzo 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.

23. Petitioner Luis Richards 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.

24. Petitioner Henry Iszard is detained in a jail controlled by the New York City Department of Correction. They are 64 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

25. Petitioner Michael Irby is detained in a jail controlled by the New York City Department of Correction. They are 59 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

26. Petitioner Alson Ray is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

27. Petitioner John Blanding is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

28. Petitioner John Springs is detained in a jail controlled by the New York City Department of Correction. They are 69 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

29. Petitioner Alan Bell is detained in a jail controlled by the New York City Department of Correction. They suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

30. Petitioner Gregory Bynum is detained in a jail controlled by the New York City Department of Correction. They are 60 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

31. Petitioner Thomas Peterson 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 high risk for severe illness or death if they contract COVID-19.

32. Petitioner Hernino Fraticelli is detained in a jail controlled by the New York City Department of Correction. They are 64 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

33. Petitioner Kevin Ingram is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

34. Petitioner Michael Hoyt is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

35. Petitioner Ronald Chestnut is detained in a jail controlled by the New York City Department of Correction. They are 51 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

36. Petitioner Michael Lopez is detained in a jail controlled by the New York City Department of Correction. They are 51 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

37. Petitioner Al Smith is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

38. Petitioner Herverto Martinez is detained in a jail controlled by the New York City Department of Correction. They are 60 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

39. Petitioner Jerome Thompson is detained in a jail controlled by the New York City Department of Correction. They are 57 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

40. Petitioner Wilson Lee is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

41. Petitioner Anthony Brown is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and has asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

42. Petitioner Carlos Victor-Sanchez is detained in a jail controlled by the New York City Department of Correction. They are 52 years old and suffers from asthma and heart disease. As a result, they are at high risk for severe illness or death if they contract COVID-19.

43. Petitioner Christopher Greene is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

44. Petitioner James Eleby is detained in a jail controlled by the New York City Department of Correction. They are 52 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

45. Petitioner Deane Lopez is detained in a jail controlled by the New York City Department of Correction. They are 62 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

46. Petitioner Allen Nimmons is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

47. Petitioner Jeffrey Harrison, is detained in a jail controlled by the New York City Department of Correction. They are 61 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

48. Petitioner Lisa Davis is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

49. Petitioner Joseph Torres is detained in a jail controlled by the New York City Department of Correction. They are 55 years old and suffer from heart disease. As a result, they are at high risk for severe illness or death if they contract COVID-19.

50. Petitioner Hector Castro Diaz is detained in a jail controlled by the New York City Department of Correction. They are 60 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

51. Petitioner Bernard Gardner is detained in a jail controlled by the New York City Department of Correction. They are 51 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

52. Petitioner Gian Verdelli is detained in a jail controlled by the New York City Department of Correction. They are 68 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

53. Petitioner Robert McCoy is detained in a jail controlled by the New York City Department of Correction. They are 57 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

54. Petitioner Ronald Hutt is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

55. Petitioner Terhan Bey is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

56. Petitioner Melvin Harrell is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

57. Petitioner Daniel Figueroa is detained in a jail controlled by the New York City Department of Correction. They are 60 years old and suffers from diabetes. As a result, they are at high risk for severe illness or death if they contract COVID-19.

58. Petitioner Jimmy Jones is detained in a jail controlled by the New York City Department of Correction. They are 66 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

59. Petitioner Davis Willis is detained in a jail controlled by the New York City Department of Correction. They have been diagnosed with severe asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

60. Petitioner Stephon Eans is detained in a jail controlled by the New York City Department of Correction. They are 30 years old and suffers from severe asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

61. Petitioner Providence E. Hernandez is detained in a jail controlled by the New York City Department of Correction. They are 57 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

62. Petitioner George Paredes is detained in a jail controlled by the New York City Department of Correction. They are 51 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

63. Petitioner Gregory Jones is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

64. Petitioner Craig Schumate is detained in a jail controlled by the New York City Department of Correction. They are 51 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

65. Petitioner Anthony Jones is detained in a jail controlled by the New York City Department of Correction. They are 60 years old and suffers from diabetes. As a result, they are at high risk for severe illness or death if they contract COVID-19.

66. Petitioner Eddie Lamar is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

67. Petitioner Eric Richardson is detained in a jail controlled by the New York City Department of Correction. They are 52 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

68. Petitioner Erick Alequin is detained in a jail controlled by the New York City Department of Correction. They suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

69. Petitioner Leslie Farfan is detained in a jail controlled by the New York City Department of Correction. They suffer from hypertension and are displaying respiratory symptoms. As a result they are at high risk for severe illness or death if they contract COVID-19.

70. Petitioner Hollis Hosear is detained in a jail controlled by the New York City Department of Correction. They are 57 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

71. Petitioner William Cusberts is detained in a jail controlled by the New York City Department of Correction. They are 58 years old and are diagnosed with asthma and diabetes. As a result, they are at high risk for severe illness or death if they contract COVID-19.

72. Petitioner Joseph Callahan is detained in a jail controlled by the New York City Department of Correction. They are 47 years old and suffer from diabetes. As a result, they are at high risk for severe illness or death if they contract COVID-19.

73. Petitioner Dominick Williams is detained in a jail controlled by the New York City Department of Correction. They suffer from asthma. As a result, they are at high risk for severe illness or death if they contract COVID-19.

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

75. Petitioner Edward Byrd is detained in a jail controlled by the New York City Department of Correction. They are 57 years old. As a result they are at high risk for severe illness or death if they contract COVID-19.

76. Petitioner Ralph Torres 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 high risk for severe illness or death if they contract COVID-19.

77. Petitioner Kevin Gamble is detained in a jail controlled by the New York City Department of Correction. They are 59 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

78. Petitioner Robert Kellam is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

79. Petitioner Guillermo Estrada is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

80. Petitioner Junior Wilson is detained in a jail controlled by the New York City Department of Correction. They are 60 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

81. Petitioner Derek Roberson is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

82. Petitioner Edward Pemberton is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

83. Petitioner Steven Sanders is detained in a jail controlled by the New York City Department of Correction. They are 51 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

84. Petitioner Elieser Flores 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 high risk for severe illness or death if they contract COVID-19.

85. Petitioner William Goggins is detained in a jail controlled by the New York City Department of Correction. They are 64 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

86. Petitioner Samuel Sosa is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

87. Petitioner Willie Florence is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

88. Petitioner George Shaw is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

89. Petitioner Sekou Salaam is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

90. Petitioner Rigoberto Reyes is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

91. Petitioner William Saunders is detained in a jail controlled by the New York City Department of Correction. They are 52 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

92. Petitioner Efren Olivares is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

93. Petitioner James Bulwer is detained in a jail controlled by the New York City Department of Correction. They are 59 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

94. Petitioner Charles Jackson 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.

95. Petitioner Govinda Pyakurel is detained in a jail controlled by the New York City Department of Correction. They are 60 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

96. Petitioner Michael Reid is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

97. Petitioner Victor Chapman is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

98. Petitioner Kip Wilson is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

99. Petitioner Ricky Luckey is detained in a jail controlled by the New York City Department of Correction. They are 62 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

100. Petitioner Luis Gonzalez is detained in a jail controlled by the New York City Department of Correction. They are 52 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

101. Petitioner John Rivera is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

102. Petitioner Ronnie Barnes is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

103. Petitioner Wayne Davis 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.

104. Petitioner Michael Virdree is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

105. Petitioner James Jersey is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

106. Petitioner Keith Garner, Sr., is detained in a jail controlled by the New York City Department of Correction. They are 61 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

107. Petitioner Ramon A. Antigua is detained in a jail controlled by the New York City Department of Correction. They are 52 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

108. Petitioner Andrew Turner is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

109. Petitioner John Curtis is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

110. Petitioner Anibal Quinones is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

111. Petitioner Noel Manaiza is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

112. Petitioner Elijah Johnson is detained in a jail controlled by the New York City Department of Correction. They are 57 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

113. Petitioner Sonny Seals is detained in a jail controlled by the New York City Department of Correction. They are 55 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

114. Petitioner Scott Harris is detained in a jail controlled by the New York City Department of Correction. They are 57 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

115. Petitioner Thomas Perez is detained in a jail controlled by the New York City Department of Correction. They are 51 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

116. Petitioner Nelson Correa is detained in a jail controlled by the New York City Department of Correction. They are 58 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

117. Petitioner Victor Duke is detained in a jail controlled by the New York City Department of Correction. They are 54 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

118. Petitioner Anthony Cummings is detained in a jail controlled by the New York City Department of Correction. They are 52 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

119. Petitioner Hector Vasquez is detained in a jail controlled by the New York City Department of Correction. They suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

120. Petitioner Eliezer Delacruz is detained in a jail controlled by the New York City Department of Correction. They suffer from asthma. As a result they are at high risk for severe illness or death if they contract COVID-19.

121. Petitioner Leroy Brown 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 high risk for severe illness or death if they contract COVID-19.

122. Petitioner Raphael Vega is detained in a jail controlled by the New York City Department of Correction. They are 56 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

123. Petitioner Victor Flood is detained in a jail controlled by the New York City Department of Correction. They are 52 years old. As a result, they are at high risk for severe illness or death if they contract COVID-19.

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

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

JURISDICTION AND VENUE

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

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

128. Copies of the mandates pertaining to individual Petitioners are not attached hereto 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

129. COVID-19 is a coronavirus that has reached pandemic status. As of the afternoon of March 19, 2020, over 229,289 people worldwide have confirmed diagnoses, including over 10,000 people in the United States and 4,152 in New York. Over 9,324 people have died, including at least 149 in the United States and 21 in New York. On the single day of March 18 alone, more than 1,000 new cases were announced in New York State. As of the date of this writing, on a Thursday, there are more than 1,871 confirmed cases of coronavirus within the New York City area, up from 923 on Wednesday, and at least 11 deaths.¹

130. The World Health Organization has declared COVID-19 a pandemic.² 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.³ Subsequently, the Mayor of New York City declared a State of Emergency for the City.⁴ The President of the United States has now officially declared a national emergency.⁵

131. The transmission of COVID-19 is expected to grow exponentially. Nationally, projections by the Center for Disease Control and Prevention (“CDC”) indicate that over 200 million people in the United States could be infected with COVID-19 over the course of the

Mitch Smith et al., *Coronavirus Map: U.S. Cases Surpass 10,000*, N.Y. TIMES (Mar. 19, 2020, 11:28 AM), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (updating live; numbers expected to rise)..

² 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>

³ 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>.

⁴ *DeBlasio 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>.

⁵ 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/>.

pandemic without effective public health intervention, with as many as 1.5 million deaths in the most severe projections.⁶

132. COVID-19 is a particularly contagious disease. A recent study showed that the virus could survive for up to three hours in the air, four hours on copper, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.⁷ Indeed, a new study of an early cluster of COVID-19 cases in Wuhan, China revealed the dangers of indirect transmission resulting from infected people contaminating common surfaces—in the study, it was a communal mall bathroom.⁸ New research also shows that controlling the spread of COVID-19 is made even more difficult because of the prominence of asymptomatic transmission—people who are contagious but who exhibit limited or no symptoms, rendering ineffective any screening tools dependent on identifying symptomatic behavior.⁹

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

134. Older adults and those with certain medical conditions face greater chances of serious illness or death from COVID-19.¹⁰

⁶ 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>.

⁷ *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).

⁸ 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).

⁹ *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).

¹⁰Medical information in this and the petition paragraphs that follow are drawn from the expert testimony of two medical professionals filed in a recent filed federal case in Washington State, as well the website of the Harvard Medical School. See Expert Declaration of Dr. Marc Stern: <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-marc-stern>; Expert Declaration of Dr. Robert Greifinger: <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-robert-greifinger>; Expert Declaration of Dr. Jonathan Golob <https://www.aclu.org/legal-document/dawson-v-asher-expert-declaration-dr-jonathan-golob?redirect=dawson-v-asher-expert-declaration-dr-jonathan-golob>; HARVARD MEDICAL SCHOOL, CORONAVIRUS RESOURCE CENTER, *As coronavirus spreads, many questions and some answers*, <https://www.health.harvard.edu/diseases-and-conditions/coronavirus-resource-center>, (last visited Mar. 19, 2020).

135. Certain underlying medical conditions increase the risk of serious COVID-19 disease for people of any age – including lung disease, heart disease, chronic liver or kidney disease (including hepatitis and dialysis patients), diabetes, epilepsy, hypertension, compromised immune systems (such as from cancer, HIV, or autoimmune disease), blood disorders (including sickle cell disease), inherited metabolic disorders, stroke, developmental delay, and pregnancy.

136. For people over the age of 50 or with medical conditions that increase the risk of serious COVID-19 infection, symptoms such as fever, coughing and shortness of breath can be especially severe.¹¹

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

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

¹¹ *Id.*

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

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

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

142. The need for care, including intensive care, and the likelihood of death, is much higher from COVID-19 than from influenza. According to recent estimates, the fatality rate of people infected with COVID-19 is about ten times higher than a severe seasonal influenza, even in advanced countries with highly effective health care systems. According to preliminary data from China, 20 percent of people in high-risk categories who contracted COVID-19 there died.¹²

¹² *Report of the WHO-China Joint Mission on Coronavirus Disease 2019 (COVID-19)*, World Health Organization (Feb. 28, 2020), at 12, <https://www.who.int/docs/default-source/coronaviruse/who-china-joint-mission-on-covid-19-final-report.pdf> (finding fatality rates for patients with COVID-19 and co-morbid conditions to be: “13.2% for those with cardiovascular disease, 9.2% for diabetes, 8.4% for hypertension, 8.0% for chronic respiratory disease, and 7.6% for cancer”); Wei-jie Guan et al., *Comorbidity and its impact on 1,590 patients with COVID-19 in China: A Nationwide Analysis*, medRxiv (Feb. 27, 2020), at 5, <https://www.medrxiv.org/content/10.1101/2020.02.25.20027664v1.full.pdf> (finding that even after adjusting for age and smoking status, patients with COVID-19 and comorbidities of chronic obstructive pulmonary disease, diabetes,

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

144. 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 hand frequently with soap and water.

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

145. COVID-19 has already reached Rikers Island. As of mid-day on March 19, 2020, at least one incarcerated person has tested positive for the virus.¹³ Later in the day on March 19, Legal Aid staff learned of reports of additional infections, indicating rapid spread has already progressed.

146. In addition, one corrections officer has tested positive and a DOC investigator working on Rikers Island has died of the virus.¹⁴ The officer worked at the security gate of a Rikers Island facility, a post which requires searching and screening very large numbers of people entering and exiting the facility.¹⁵ The other staff member, a 56-year-old Investigation Division

hypertension, and malignancy were 1.79 times more likely to be admitted to an ICU, require invasive ventilation, or die, the number for two comorbidities was 2.59); Fei Zhou et al., *Clinical course and risk factors for mortality of adult inpatients with COVID-19 in Wuhan, China: a retrospective cohort study*, *Lancet* (March 11, 2020), tb. 1, [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30566-3/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30566-3/fulltext) (finding that among hospital patients, who tended to be older, of those who had COVID-19 and died, 48% had hypertension, 31% had diabetes, and 24% had coronary heart disease).

¹³ Chelsia Rose Marcus, *Rikers Island inmate has contracted coronavirus: officials*, N.Y. DAILY NEWS (Mar. 18, 2020), <https://www.nydailynews.com/coronavirus/ny-coronavirus-rikers-island-inmate-tests-positive-20200318-gf3r7q4cefaxzmqmrmuevzz3y-story.html>.

¹⁴ Sydney Pereira, *[UPDATE] Inmate and Correction Officer on Rikers Island Tests Positive for Coronavirus as Calls To Release Inmates Intensify*, GOTHAMIST (Mar. 18, 2020, 8:15 PM), <https://gothamist.com/news/correction-officer-rikers-island-tests-positive-coronavirus-calls-release-inmates-intensify>.

¹⁵ *Rikers Island inmate has contracted coronavirus, supra*.

staffer, whose position entailed interviewing detainees in several facilities as part of investigations, died on March 15, 2020.¹⁶ He reportedly had underlying health conditions, just as Petitioners do.¹⁷

147. The Legal Aid Society continues to receive daily reports of symptomatic, suspected COVID-19 positive individuals in the borough facilities and throughout Rikers Island.

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

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

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

151. Severe outbreaks of contagious illness regularly occur in jails. For example, during the H1N1 epidemic in 2009, many jails and prisons saw a particularly high number of cases.¹⁸ 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

¹⁶ 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>.

¹⁷ *Id.*

¹⁸ 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/>.

province prisons.¹⁹ The rate of incarceration in China is far lower than in the United States, suggesting the problem here will be much worse. Experts predict that “[a]ll prisons and jails should anticipate that the coronavirus will enter their facility[.]”²⁰

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

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

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

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

156. DOC cleaning protocols for common spaces are often not followed.

¹⁹ 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>.

²⁰ *Id.* (quoting Tyler Winkelman, co-director of the Health, Homelessness, and Criminal Justice Lab at the Hennepin Healthcare Research Institute in Minneapolis).

157. Petitioners lack ready access to soap and water for washing hands. If a sink in a housing area is broken, they do not have a choice to walk to an area with a working sink. Soap and paper towels are not provided by the jail. Often, the only means to access soap is by purchasing it in commissary—which is not an option for many detainees who lack access to funds. There is no recourse if another person takes a vulnerable person’s bar of soap.

158. Hand sanitizer capable of killing COVID-19 contains alcohol, which has been treated as contraband in jails.

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

160. 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.

161. On March 10, 2020, DOC officials testified at a Board of Correction meeting that the Communicable Disease Unit (“CDU”) has only 88 respiratory isolation beds available for people who become infected. Officials did not identify how many of these beds are already occupied by other ill people or what actions would be taken by the Department in the event that CDU and hospital ward capacity is exhausted.²¹

162. The procedures outlined in the DOC’s “COVID19 Preparation & Action Plan” issued on March 5, 2020 are not sufficient to mitigate the risk of serious harm. According to this plan, newly admitted detainees will only be separated from other detainees if they exhibit “flu-like” symptoms upon admission.²² This initial screening process overlooks the fact that COVID-

²¹ 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>.

²² 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).

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.²³ The dangers of asymptomatic transmission continue within DOC facilities. DOC and CHS have revealed only symptom-reactive policies—that staff will be sent home and incarcerated people will be separated and treated *if they display symptoms*²⁴—which are ineffective to stop the rampant asymptomatic transmission of the disease.²⁵

163. DOC plans to warehouse all of its “sick” detainees together, in communal living spaces, where they will “sleep head to toe thereby increasing breathable space between inmates,”²⁶ a measure that will do little to avoid transmission among detainees.

164. Even if all of these problems could be resolved, however, they would not sufficiently address the risk of serious medical harm to Petitioners. As Dr. Homer Venters, former chief medical officer of New York City jails, recently said, “[i]n ordinary times, crowded jails overlook prisoners’ medical problems and struggle to separate them based on their security classification...[i]f jails have to add quarantines and sequestration of high-risk prisoners to the mix...they will find managing a COVID-19 outbreak ‘*simply almost impossible.*’”²⁷

²³ 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).

²⁴ 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).

²⁵ *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>.

²⁶ *Id.*

²⁷ 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.

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

Release Is Required to Address the Risk of Serious Medical Harm

166. Because risk mitigation is the only known strategy to protect vulnerable groups from COVID-19, correctional public health experts, including the New York City Board of Correction, have recommended the release from custody of people most vulnerable to COVID-19. On March 17, 2020, they called on New York City to “immediately remove from jail all people at higher risk from COVID-19 infection” and to “drastically reduce the number of people in jail right now and limit new admissions to exceptional circumstances.”²⁸ The Board reasons that “[t]he City’s jails have particular challenges to preventing disease transmission on a normal day and even more so during a public health crisis.”²⁹ Accordingly, the Board recommends that DOC prioritize the release of “[p]eople who are over 50; [and] [p]eople who have underlying health conditions, including lung disease, heart disease, diabetes, cancer, or a weakened immune system[.]”³⁰

167. Ross McDonald, the Chief Medical Officer of CHS, publicly called for the release from Rikers Island of “as many [people] as possible” on Twitter on March 18, 2020:³¹

²⁸ 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> .

²⁹ *Id.*

³⁰ *Id.*

³¹ <https://twitter.com/RossMacDonaldMD/status/1240455796946800641>



Ross MacDonald
@RossMacDonaldMD



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

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

5.7K Retweets 16.8K Likes



Ross MacDonald @RossMacDonaldMD · 15h



Replying to @RossMacDonaldMD

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

3

475

4.1K



Ross MacDonald @RossMacDonaldMD · 15h



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

2

341

3.6K



Ross MacDonald @RossMacDonaldMD · 15h



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

3

349

3.5K



Ross MacDonald @RossMacDonaldMD · 15h



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

4

547

3.8K



Ross MacDonald @RossMacDonaldMD · 15h



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

37

947

6.1K



168. Likewise, the District Attorneys of New York and Kings County have endorsed a plan to identify and release people who are “elderly” or other “[p]opulations that the CDC has classified as vulnerable (those with asthma, cancer, heart disease, lung disease, and diabetes).”³²

169. 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 certain charges.³³ 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.³⁴

170. In a recent court filing seeking the release of federal immigration detainees, Dr. Marc Stern, a correctional health expert, has concluded that “[f]or detainees who are at high risk of serious illness or death should they contract the COVID-19 virus, release from detention is a critically important way to meaningfully mitigate that risk.” For that reason, Dr. Stern has recommended the “release of eligible individuals from detention, with priority given to the elderly

³² 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>.

³³ See, e.g., Alene Tchekmedyan et al, *L.A. County releasing some inmates from jail to combat coronavirus*, L.A. Times, (Mar. 16, 2020, 7:25 PM), <https://www.latimes.com/california/story/2020-03-16/la-jail-population-arrests-down-amid-coronavirus>; Cory Shaffer, *Cuyahoga County official will hold mass plea, bond hearings to reduce jail population over coronavirus concerns*, CLEVELAND.COM (Mar. 12, 2020), <https://www.cleveland.com/court-justice/2020/03/cuyahoga-county-officials-will-hold-mass-plea-hearings-to-reduce-jail-population-over-coronavirus-concerns.html>); WKBN Staff, *Local county jails making changes due to coronavirus outbreak*, WKBN (Mar. 12, 2020) (“The Mahoning County [Ohio] Sheriff’s Office is refusing all non-violent misdemeanor arrests at the county jail”), <https://www.wkbn.com/news/coronavirus/mahoning-county-jail-refusing-some-inmates-due-to-coronavirus-outbreak/>; see also Charles Scudder, *Facing coronavirus concerns, Collin County [Texas] Sheriff asks police not to bring petty criminals to jail*, DALLAS MORNING NEWS (Mar. 12, 2020 5:57 PM), <https://www.dallasnews.com/news/public-health/2020/03/12/facing-coronavirus-concerns-collin-county-sheriff-asks-police-not-to-bring-petty-criminals-to-jail/>.

³⁴ *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>.

and those with underlying medical conditions most vulnerable to serious illness or death if infected with COVID-19.”³⁵

171. Another correctional health expert in that same court case, Dr. Robert Greifinger, concluded that “even with the best-laid plans to address the spread of COVID-19 in detention facilities, the release of high-risk individuals is a key part of a risk mitigation strategy.” Accordingly, in his opinion, “the public health recommendation is to release high-risk people 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.”³⁶

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

173. 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

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

175. 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.*

³⁵Decl. 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>.

³⁶ 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>

Pineiro, 849 F.3d 17, 29 (2d Cir. 2017). To establish a federal constitutional claim, Petitioners must prove that Respondents (1) acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though (2) they knew, or should have known, that the condition posed an excessive risk to health or safety. *Id.* at 35. The same standard applies to pre-trial detainees held on bail and 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.”).

176. There is an even stronger due process right to be free from unconstitutional conditions of confinement under the New York State Constitution. In *Cooper v. Morin*, 49 N.Y.2d 69, 79 (1979), the Court of Appeals concluded that the state due process clause accords even greater protection for pretrial detainees than the federal constitution, holding that “what is required is a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement.” For the government to prevail, it must prove a “compelling governmental necessity” for any restrictions on pretrial detainees’ liberty interests. *People ex rel. Schipski v. Flood*, 88 A.D.2d 197 (2nd Dep’t 1982). This is an “exacting standard.” *Id.* The state’s interests are limited to those arising from the “only legitimate purpose for pretrial detention . . . to assure the presence of the detainee for trial.” *Id.* at 81; *see also Schipski*, 88 A.D.2d at 199-200 (holding county jail’s blanket policy of 22-hour lock-in for a certain category of pretrial

detainees violates the state's due process guarantee); *Powlowski v. Wullich*, 102 A.D.2d 575, 587 (1984) (holding that because a jail's practice of depriving pretrial detainees of recreation and exercise "violates the federal standard, it, a fortiori, must fail the more stringent standard balancing test prescribed for violations of our state due process clause").

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

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

179. 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.³⁷

180. Throughout the week of March 15-19, 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.

181. Numerous media outlets have covered these and other calls to action.³⁸

182. 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.

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

184. 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

³⁷ 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>.

³⁸ See, e.g., Chelsia Rose Marcius, *Coronavirus prompts Legal Aid, Manhattan DA, to call for release of state parolees from city jails*, N.Y. DAILY NEWS (Mar, 17, 2020) <https://www.nydailynews.com/coronavirus/ny-coronavirus-nyc-rikers-island-parole-correction-department-20200317-flg4paly5nesddfbtkone6hki-story.html>; see also *supra* notes **Error! Bookmark not defined.**-**Error! Bookmark not defined.**, **Error! Bookmark not defined.**, **Error! Bookmark not defined.**.

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)

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

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). Indeed, habeas relief is the *only* remedy available in such circumstances. *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973).

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

Respondents Have Authority to Release Petitioners

188. 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.

189. 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).

190. 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: March 19, 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: March 19, 2020
New York, NEW YORK

A handwritten signature in black ink, appearing to read "Corey Stoughton", written in a cursive style.

Corey Stoughton