

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

PEOPLE OF THE STATE OF NEW YORK

Ex Rel. Kerry Elgarten, Esq., on behalf of
Darwin Ramirez, Karel Aguirre, Tandika Wright, Ian
Paltoo, Mitchell Thelusa, Felix Fermin, George
Beauchamp, David Damore, Rafael Guzman, Vardell
Smalls, Michael Berger, William Smith, Edward Sanders,
Kevin Ferrell, Quamaine Winbush, Franklin Martinez,
Harvie Hill, Julian Dejesus, Hakeem Johnson, Geraldo
Martinez, Rahaun Greene, Christian Sulsona, Pierre
Johnson, Terrell Rispers, Farrah Hales, Antonio
Humphrey, Anthony Johnson, Kevin Moore, Charles
Davis, Dwayne Faulkner, Jeffrey Corley, Robert Crawford,
Charles Jones, Dennis Smalls, Willie Lawrence, Dallone
Stallings, Levi Mitchell, Robert Watson, Robert
Thompson, Gregory Gauger, Henriquez Soto, Richard
Safo, Edwin Garcia, Armando Rodriguez, Edward Lyman,
Shawn Burnside, Heriberto Morales, William Johnstone,
Brandon Holmes, Aduan Lopez, Jesse Glenn, Ricardo
Sanchez, Luke Damone, Raughn Sandy, Devin Blake,
Ersel Lee, Akieme Nesbit, Grant Ernest, Rafael Mavashev,
Charles Matthews, Edward Robinson, Jose Santana, Steven
Bloom, Brandon Thomas, Erick Henderson, Michael
Frazier, Idyris Prescott, Claudio Reyes, Carlos Garcia, Luis
Figueroa, Rashid Celestine, Nidia Romero, Tyjeh
Hargrove, Jacob Blakney, Enesin Delarosa, Raquan
McMillan, Nelson Rodriguez, Antonio Lopez, Nana
Barnes, Jesus Fernandez, Shane Morris, Michael Martin,
Abdul Flynn, Ralph Delvalle, Joshua Correa, Roland
Richardson, Brandy Mills, Timothy Washington, William
Webb, Deshawn Smith, Randy Sowell,
Petitioners,

v.

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

Respondents.

Index No. _____

**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS**

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

INTRODUCTION

1. I am of counsel to JANET SABEL, The Legal Aid Society, Parole Revocation Defense Unit, 199 Water Street, New York, New York. Our office represents all petitioners in their parole revocation proceedings.

2. I am fully familiar with the facts and records with respect to the relevant legal issues concerning each petitioner.

3. I make this petition for a writ of habeas corpus on behalf of petitioners because they are presently incarcerated and further delay will cause them material injury, and because the pertinent factual allegations are within my knowledge or information and belief.

4. Petitioners are currently incarcerated by New York Department of Corrections and Community Supervision (“DOCCS”) on a parole warrant in New York City Department of Correction (“NYC DOC”) jails . Petitioners were taken into custody prior to March 1, 2022 on their respective parole warrants. At their criminal court arraignments, \$1 bail was set on petitioners’ criminal matters, as they were remanded on their parole warrants.

5. People on parole, like the petitioners, are released to community supervision subject to compliance with their conditions of release. Parole gives people an opportunity to regain their freedom and rebuild their lives among family and community rather than remain incarcerated. New York, however, has for years cut this opportunity short by automatically detaining people for alleged violations of the conditions of their release pending the adjudication of their charges.

6. On September 17, 2021, Governor Kathy Hochul signed into law the Less is More Community Supervision and Revocation Reform Act (“Less is More”). At the Act’s signing ceremony, Governor Hochul declared that “the Less is More Act advances critical reforms to make

our criminal justice a better and fairer institution.”¹ One of those critical reforms ended New York’s automatic detention policy and ensured that, starting March 1, 2022, every person arrested and detained on a parole warrant receives a recognizance hearing within 24 hours. At the hearing, a court must consider each person for release and can only detain someone pending the adjudication of their alleged parole violations if it determines that the person “currently presents a substantial risk of willfully failing to appear” at future parole proceedings and that no non-monetary conditions “will reasonably assure the releasee’s appearance” at a future proceeding. N.Y. Executive Law 259-i(3)(a)(iv).

7. Petitioners are 91 people who did not receive a recognizance hearing within 24 hours as required by Less Is More. In fact, DOCCS has informed The Legal Aid Society that it does not intend to produce *any* person detained on a parole warrant before March 1, 2022 for a recognizance hearing—a stark contradiction to the Governor’s promise of a fairer criminal justice system.

8. Because DOCCS has not produced petitioners for a recognizance hearing, and because it has not shown that petitioners present such risk of failing to appear or that there are no non-monetary conditions that will reasonably assure their appearance, their detention is illegal and they must be released.

PARTIES

9. I am an attorney with the Parole Revocation Defense Unit of the Legal Aid Society’s Criminal Defense Practice, which is counsel to Petitioners in this matter. Every petitioner is being detained pursuant to a parole warrant issued by DOCCS and is in a NYC DOC

¹ Rush Transcript of Sept. 17, 2021 Less Is More Signing Ceremony, *available at* <https://www.governor.ny.gov/news/video-audio-photos-rush-transcript-governor-hochul-announces-major-actions-improve-justice-and>

jail. All of the petitioners have \$1 bail set on their pending criminal case and are remanded on a parole warrant that was lodged before March 1, 2022 for allegedly violating the conditions of their release to community supervision.

10. Darwin Ramirez, NYSID # 12627620M, is detained on a parole warrant, number 842788, in a jail controlled by NYC DOC.

11. Karel Aguirre, NYSID # 09164254J, is detained on a parole warrant, number 795054, in a jail controlled by NYC DOC.

12. Tandika Wright, NYSID # 00144123P, is detained on a parole warrant, number 842344, in a jail controlled by NYC DOC.

13. Ian Paltoo, NYSID # 00563279M, is detained on a parole warrant, number 823595, in a jail controlled by NYC DOC.

14. Mitchell Thelusa, NYSID # 00563481Z, is detained on a parole warrant, number 842331, in a jail controlled by NYC DOC.

15. Felix Fermin, NYSID # 00680041J, is detained on a parole warrant, number 817725, in a jail controlled by NYC DOC.

16. George Beauchamp, NYSID # 01066084N, is detained on a parole warrant, number 839398, in a jail controlled by NYC DOC.

17. David Damore, NYSID # 01134450K, is detained on a parole warrant, number 840035, in a jail controlled by NYC DOC.

18. Rafael Guzman, NYSID # 01418855H, is detained on a parole warrant, number 842354, in a jail controlled by NYC DOC.

19. Vardell Smalls, NYSID # 01448743P, is detained on a parole warrant, number 840114, in a jail controlled by NYC DOC.

20. Michael Berger, NYSID # 01478348H, is detained on a parole warrant, number 839785, in a jail controlled by NYC DOC.

21. William Smith, NYSID # 01546874Q, is detained on a parole warrant, number 817779, in a jail controlled by NYC DOC.

22. Edward Sanders, NYSID # 01634612Q, is detained on a parole warrant, number 842370, in a jail controlled by NYC DOC.

23. Kevin Ferrell, NYSID # 01637074K, is detained on a parole warrant, number 792250, in a jail controlled by NYC DOC.

24. Quamaine Winbush, NYSID # 01639344K, is detained on a parole warrant, number 842694, in a jail controlled by NYC DOC.

25. Franklin Martinez, NYSID # 02090040Z, is detained on a parole warrant, number 842248, in a jail controlled by NYC DOC.

26. Harvie Hill, NYSID # 02221805Z, is detained on a parole warrant, number 839276, in a jail controlled by NYC DOC.

27. Julian Dejesus, NYSID # 02290589P, is detained on a parole warrant, number 848616, in a jail controlled by NYC DOC.

28. Hakeem Johnson, NYSID # 02393359Z, is detained on a parole warrant, number 838995, in a jail controlled by NYC DOC.

29. Geraldo Martinez, NYSID # 02399534N, is detained on a parole warrant, number 830243, in a jail controlled by NYC DOC.

30. Rahahaun Greene, NYSID # 02478341Y, is detained on a parole warrant, number 842108, in a jail controlled by NYC DOC.

31. Christian Sulsona, NYSID # 02560606P, is detained on a parole warrant, number 817813, in a jail controlled by NYC DOC.

32. Pierre Johnson, NYSID # 03078235Y, is detained on a parole warrant, number 842848, in a jail controlled by NYC DOC.

33. Terrell Rispers, NYSID # 03125588J, is detained on a parole warrant, number 817810, in a jail controlled by NYC DOC.

34. Farrah Hales, NYSID # 03287161R, is detained on a parole warrant, number 839797, in a jail controlled by NYC DOC.

35. Antonio Humphrey, NYSID # 03773483K, is detained on a parole warrant, number 842014, in a jail controlled by NYC DOC.

36. Anthony Johnson, NYSID # 03882312M, is detained on a parole warrant, number 842355, in a jail controlled by NYC DOC.

37. Kevin Moore, NYSID # 03900741H, is detained on a parole warrant, number 795060, in a jail controlled by NYC DOC.

38. Charles Davis, NYSID # 03980145L, is detained on a parole warrant, number 848632, in a jail controlled by NYC DOC.

39. Dwayne Faulkner, NYSID # 04689593P, is detained on a parole warrant, number 842259, in a jail controlled by NYC DOC.

40. Jeffrey Corley, NYSID # 04742339K, is detained on a parole warrant, number 842293, in a jail controlled by NYC DOC.

41. Robert Crawford, NYSID # 04929886L, is detained on a parole warrant, number 848612, in a jail controlled by NYC DOC.

42. Charles Jones, NYSID # 04933014R, is detained on a parole warrant, number 842310, in a jail controlled by NYC DOC.

43. Dennis Smalls, NYSID # 05023129N, is detained on a parole warrant, number 942289, in a jail controlled by NYC DOC.

44. Willie Lawrence, NYSID # 05234632Q, is detained on a parole warrant, number 848649, in a jail controlled by NYC DOC.

45. Dallone Stallings, NYSID # 05410112J, is detained on a parole warrant, number 842295, in a jail controlled by NYC DOC.

46. Levi Mitchell, NYSID # 05496210Q, is detained on a parole warrant, number 817800, in a jail controlled by NYC DOC.

47. Robert Watson, NYSID # 05540706R, is detained on a parole warrant, number 842094, in a jail controlled by NYC DOC.

48. Robert Thompson, NYSID # 05670199R, is detained on a parole warrant, number 842089, in a jail controlled by NYC DOC.

49. Gregory Gauger, NYSID # 05717689Z, is detained on a parole warrant, number 842363, in a jail controlled by NYC DOC.

50. Henriquez Soto, NYSID # 05747889R, is detained on a parole warrant, number 842318, in a jail controlled by NYC DOC.

51. Richard Safo, NYSID # 05856427Z, is detained on a parole warrant, number 817812, in a jail controlled by NYC DOC.

52. Edwin Garcia, NYSID # 06420809Y, is detained on a parole warrant, number 842209, in a jail controlled by NYC DOC.

53. Armando Rodriguez, NYSID # 06452772M, is detained on a parole warrant, number 830077, in a jail controlled by NYC DOC.

54. Edward Lyman, NYSID # 06526714L, is detained on a parole warrant, number 817785, in a jail controlled by NYC DOC.

55. Shawn Burnside, NYSID # 06793711K, is detained on a parole warrant, number 842357, in a jail controlled by NYC DOC.

56. Heriberto Morales, NYSID # 06899978Q, is detained on a parole warrant, number 843114, in a jail controlled by NYC DOC.

57. William Johnstone, NYSID # 07100575Y, is detained on a parole warrant, number 842194, in a jail controlled by NYC DOC.

58. Brandon Holmes, NYSID # 073934474L, is detained on a parole warrant, number 839095, in a jail controlled by NYC DOC.

59. Aduan Lopez, NYSID # 07415161H, is detained on a parole warrant, number 842286, in a jail controlled by NYC DOC.

60. Jesse Glenn, NYSID # 07661000P, is detained on a parole warrant, number 842122, in a jail controlled by NYC DOC.

61. Ricardo Sanchez, NYSID # 08030158J, is detained on a parole warrant, number 842245, in a jail controlled by NYC DOC.

62. Luke Damone, NYSID # 08208706M, is detained on a parole warrant, number 842298, in a jail controlled by NYC DOC.

63. Raughn Sandy, NYSID # 08286025Y, is detained on a parole warrant, number 817803, in a jail controlled by NYC DOC.

64. Devin Blake, NYSID # 08713107R, is detained on a parole warrant, number 848624, in a jail controlled by NYC DOC.

65. Ersel Lee, NYSID # 08753323Q, is detained on a parole warrant, number 840068, in a jail controlled by NYC DOC.

66. Akieme Nesbit, NYSID # 08757054R, is detained on a parole warrant, number 830239, in a jail controlled by NYC DOC.

67. Grant Ernest, NYSID # 09072528J, is detained on a parole warrant, number 842716, in a jail controlled by NYC DOC.

68. Rafael Mavashev, NYSID # 09571478M, is detained on a parole warrant, number 842231, in a jail controlled by NYC DOC.

69. Charles Matthews, NYSID # 09848369M, is detained on a parole warrant, number 843089, in a jail controlled by NYC DOC.

70. Edward Robinson, NYSID # 09874392P, is detained on a parole warrant, number 794941, in a jail controlled by NYC DOC.

71. Jose Santana, NYSID # 09919527K, is detained on a parole warrant, number 842349, in a jail controlled by NYC DOC.

72. Steven Bloom, NYSID # 11236715Y, is detained on a parole warrant, number 843922, in a jail controlled by NYC DOC.

73. Brandon Thomas, NYSID # 11852883Q, is detained on a parole warrant, number 843916, in a jail controlled by NYC DOC.

74. Erick Henderson, NYSID # 11880975K, is detained on a parole warrant, number 848639, in a jail controlled by NYC DOC.

75. Michael Frazier, NYSID # 12099900Y, is detained on a parole warrant, number 840214, in a jail controlled by NYC DOC.

76. Idyris Prescott, NYSID # 12361192P, is detained on a parole warrant, number 848610, in a jail controlled by NYC DOC.

77. Claudio Reyes, NYSID # 12610282R, is detained on a parole warrant, number 848617, in a jail controlled by NYC DOC.

78. Carlos Garcia, NYSID # 12618286N, is detained on a parole warrant, number 842314, in a jail controlled by NYC DOC.

79. Luis Figueroa, NYSID # 12658201P, is detained on a parole warrant, number 840101, in a jail controlled by NYC DOC.

80. Rashid Celestine, NYSID # 12687672Q, is detained on a parole warrant, number 842334, in a jail controlled by NYC DOC.

81. Nidia Romero, NYSID # 12791545Z, is detained on a parole warrant, number 848606, in a jail controlled by NYC DOC.

82. Tyjeh Hargrove, NYSID # 12884974H, is detained on a parole warrant, number 843913, in a jail controlled by NYC DOC.

83. Jacob Blakney, NYSID # 12894213N, is detained on a parole warrant, number 842297, in a jail controlled by NYC DOC.

84. Enesin Delarosa, NYSID #13051060Y, is detained on a parole warrant, number 750627, in a jail controlled by NYC DOC.

85. Raquan McMillan, NYSID # 13724391Q, is detained on a parole warrant, number 842232, in a jail controlled by NYC DOC.

86. Nelson Rodriguez, NYSID # 13778676Z, is detained on a parole warrant, number 842288, in a jail controlled by NYC DOC.

87. Antonio Lopez, NYSID # 14140049Y, is detained on a parole warrant, number 839814, in a jail controlled by NYC DOC.

88. Nana Barnes, NYSID # 00221087R, is detained on a parole warrant, number 843908, in a jail controlled by NYC DOC.

89. Jesus Fernandez, NYSID # 01438780P, is detained on a parole warrant, number 842367, in a jail controlled by NYC DOC.

90. Shane Morris, NYSID # 01970643K, is detained on a parole warrant, number 794945, in a jail controlled by NYC DOC.

91. Michael Martin, NYSID # 01979513H, is detained on a parole warrant, number 806051, in a jail controlled by NYC DOC.

92. Abdul Flynn, NYSID # 05227877N, is detained on a parole warrant, number 843107, in a jail controlled by NYC DOC.

93. Ralph Delvalle, NYSID # 05968777M, is detained on a parole warrant, number 848657, in a jail controlled by NYC DOC.

94. Joshua Correa, NYSID # 06422457J, is detained on a parole warrant, number 840112, in a jail controlled by NYC DOC.

95. Roland Richardson, NYSID # 08099460N, is detained on a parole warrant, number 795061, in a jail controlled by NYC DOC.

96. Brandy Mills, NYSID # 08655597H, is detained on a parole warrant, number 839227, in a jail controlled by NYC DOC.

97. Timothy Washington, NYSID # 09371832P, is detained on a parole warrant, number 817796, in a jail controlled by NYC DOC.

98. William Webb, NYSID # 09401023K is detained on a parole warrant, number 848613, in a jail controlled by NYC DOC.

99. Deshawn Smith, NYSID # 02571227L, is detained on a parole warrant, number 834235, in a jail controlled by NYC DOC.

100. Randy Sowell, NYSID # 02095015H, is detained on a parole warrant, number 795140, in a jail controlled by NYC DOC.

101. Respondent Anthony Annucci is the Acting Commissioner of the New York State Department of Correction and Community Supervision. Respondent is a legal custodian of Petitioners who are detained pursuant to parole warrants.

102. Respondent Louis Molina is the Commissioner of the New York City Department of Correction. Respondent is a legal custodian of Petitioners.

ARGUMENT

103. The Less Is More Act is a landmark law that reforms New York's parole revocation process. Because of Less Is More, various amendments were made to provisions of the Executive Law and the Penal Law to improve procedures for people accused of parole violations. Those amendments are aimed at helping people on parole reintegrate into society and reducing the number of people on parole in jail or prison. They include: (i) providing people who are alleged to have violated a condition of their release with a recognizance hearing where a court determines whether they should be released or detained pending adjudication of the alleged violations; (ii) eliminating incarceration as a permissible sanction for most technical violations of parole; and (iii) allowing people on parole the opportunity to earn time credits for positive behavior that

accelerates their discharge from parole.² The effective date for almost all Less Is More provisions is March 1, 2022.

104. N.Y. Executive law section 259-i (3)(iv) provides, “Notwithstanding the provisions of any other law, upon execution of a warrant issued pursuant to this section for any releasee alleged to have committed a violation of a condition of release in an important respect in the City of New York, the authorized officer shall present the releasee to the Criminal Court of the city of New York or the Supreme Court criminal term in in the county where the violation is alleged to have been committed for a recognizance hearing within 24 hours of execution of the warrant.”

105. Section 259-i(3)(v) provides that, at the recognizance hearing, DOCCS has the burden of demonstrating to the court that the executed warrant was properly issued and served. DOCCS is also responsible for presenting information to the court regarding the alleged violation and the releasee’s community supervision record.

106. In addition, pursuant to section 259-i(3)(vi), at a recognizance hearing, the court must consider “all available evidence of the releasee’s employment, family and community ties including length of residency in the community, history of reporting in a timely fashion to a parole or supervisory officer and other indicators of stability.” The court may order the detention of the releasee pending revocation proceedings “only upon a finding that the releasee currently presents a substantial risk of willfully failing to appear at the preliminary or final revocation hearings and that no non-monetary condition or combination of conditions in the community will reasonably assure the releasee’s appearance at the preliminary or final revocation hearing.” If no such determination is made, “the court shall release the releasee on the least restrictive non-monetary

² See Senate Sponsor Memo (S1144A), available at <https://www.nysenate.gov/legislation/bills/2021/s1144>

conditions that will reasonably assure the releasee's appearance at subsequent revocation hearings, with a presumption of release on recognizance."

107. Further, pursuant to section 259-i (3)(viii), if the violation charge involves conduct that would constitute a new crime, the recognizance hearing may be held at the same time as the C.P.L. section 530 proceeding for any warrants issued by DOCCS prior to the proceeding. If the court imposes bail on the new alleged criminal offense or commits the releasee to the custody of the sheriff, and the releasee secures release by paying bail or under non-monetary conditions or by operation of law, the releasee *may not be detained* based on the DOCCS warrant and must be released. The releasee may not be further detained based on the warrant.

108. Before Less Is More, detention was the automatic result of a warrant, but now detention is only permissible if DOCCS meets its burden at the recognizance hearing. Here, petitioners have been detained for more than 24 hours past the law's effective date, yet they have not been given a recognizance hearing. Thus, there has been no court finding that any of them pose a substantial risk of willfully failing to appear at subsequent proceedings. When their warrants were executed, automatic detention was permissible. But under Less Is More, such automatic detention is no longer permissible; indeed, the presumption is that in most cases, the accused violator will be released on recognizance.

109. As a result, petitioners' current detention is unlawful, and thus they must be released. *See* CPLR 7010(a). Although Less Is More does not explicitly require a recognizance hearing for people who were detained on a warrant prior to its effective date and are in the midst of revocation proceedings, implementation of Less Is More requires that a recognizance hearing be afforded to petitioners.

110. Entitlement to a recognizance hearing is a procedural matter, and new procedural rules apply retroactively. New York’s principles of statutory construction and case law applying them fully support this conclusion. N.Y. Statutes Law section 55 (McKinney’s) states: “Generally procedural statutes constitute an exception to the general rule that statutes will not be retroactively construed, and **such statutes will be applied to pending cases** except where their effect is too create a remedy where none previously existed (emphasis added).”

111. As the Comment to section 55 explains: “What is really meant when it is said that procedural statutes are generally retroactive is that **they apply to pending proceedings**, and even with respect to such proceedings they only affect procedural steps taken after their enactment.” It further explains that: “whether procedural statutes be considered retroactive or prospective, **they do apply to pending actions and proceedings** unless their language indicates a contrary intention.” No such contrary indication has been expressed by the legislature here.

112. Petitioners’ revocation proceedings are all pending. There has been no final finding as to whether they have violated a condition of release; rather, they have been charged with violations, the matters are pending, and thus they are procedurally entitled to a recognizance hearing. *See e.g., Pataki v Kiseda*, 80 A.D.2d 100 (2d Dep’t 1991) (CPLR 3101(g), enacted subsequent to decision of Special Term is given retroactive effect, citing McKinney’s Cons. Laws of NY Statutes Law Section 55).

113. Application and implementation of the recognizance hearing provision of Less Is More does not annul or negate the validity of any prior action by DOCCS, nor does it render any prior conduct illegal. *Cf. People v Adrovic*, 69 Misc. 3d 563, 567-568 (Crim. Ct., NY Co. 2020) (holding that legislative amendments that take effect during the pendency of a case do not serve to invalidate prior proceedings; legislation did not invalidate People’s previous statements of

readiness, but, as of legislation's effective date, the People reverted to a state of unreadiness until filing a certificate of compliance required by CPL 245.50.). Rather, on March 1, 2022, DOCCS had 24 hours to afford petitioners a recognizance hearing and all the due process protections which it entails. At such hearing, the continued detention of petitioners would have been decided by a judge. Despite the clear language of N.Y. Statues Law and case law, DOCCS failed to provide petitioners with the requisite recognizance hearing.

114. Rules of statutory construction for remedial statutes similarly support petitioners here. N.Y. Statues Law Section 54 (McKinney's), titled "Remedial statutes and curative acts" states: "As a general rule remedial statutes constitute an exception to the general rule that statutes are not to be given a retroactive operation since they are to be liberally construed to spread their beneficial results as widely as possible...[I]n the absence of language indicating a contrary legislative intent, a remedial statute is ordinarily applied **to procedural steps in pending actions** and is given retrospective effect in so far as the statute provides a change in the form of a remedy or provides a new remedy for an existing wrong."

115. The remedial intent and purpose of the recognizance hearing provisions of Less Is More legislation is clear: to protect against unwarranted and unnecessary detention of people pending the conclusion of their revocation proceedings. Given that petitioners' liberty interests are at stake, that remedial effect should have already been implemented in this pending proceeding. The Less Is More statute was enacted well over five months ago, thus DOCCS has had ample time and notice to prepare for and overcome any logistical concerns.

116. Indeed, even where the remedial or procedural legislative provision has gone into effect after a proceeding has been completed and is on appeal, courts have found in several cases that the newly enacted provision applies. *See, e.g., Matter of Gleason*, 96 N.Y. 2d 117, 122-123

(2001) (appellate division should have given retroactive effect to remedial amendment); *Matter of Busch v Austin*, 37 A.D.2d 648 (3d Dep't 1971) (remedial provision of Worker's Compensation Law given retroactive effect, citing McKinney's Cons. Laws of N.Y. Statutes Section 54); *People v McKiernan*, 70 Misc. 3d 79 (App. Term, 2d Dep't 2020) (giving retroactive effect to CPL 30.30(6) based on "traditional common law methodology contemplating that cases on direct appeal will generally be decided in accordance with the law as it exists at the time the appellate decision is made."); *People v Gallindo*, 70 Misc. 3d 16 (App Term, 2d Dep't 2020) (giving retroactive effect to CPL 30.30 (1)(e) on appeal).

117. Here, where the parole revocation proceedings are pending and not on appeal when Less Is More went into effect, there is no question that the law's recognizance provision must apply.

118. The implementation of the bail reform law under CPL section 510.30 *et sec.* is directly analogous to the implementation of Less Is More. Bail reform formally went into effect in January 2020. There was no controversy as to whether the new provisions would be applied to those who had already had bail hearings. They were entitled to reconsideration and possible release under the new statutes. Whether they should be released on bail eligible offenses was contested, but whether they benefit from reconsideration under the bail reform law was not. Reconsideration occurred as a matter of course. *See, e.g., People v Portoreal*, 66 Misc 3d 497 (Sup. Ct., Bx Co. 2019) (where original bail hearing was conducted in November, 2019, new hearing was held to reset bail pursuant to amendments in bail reform statutes which would come into effect on January 1, 2020); *People v Steininger*, 66 Misc. 3d 693 (Sup. Ct, NY Co. 2019) (modification of securing orders to comply with reforms to bail statutes which were about to become effective).

119. The remedial intent and purpose of the Less Is More recognizance provisions and the procedural posture of revocation proceedings are extremely similar to, if not identical to, the remedial intent and purpose of bail reform legislation and the procedural posture of the criminal cases pending at the time. The remedial, procedural provisions pertaining to bail reform required new hearings and reconsideration pursuant to those new provisions. In that same way, a recognizance hearing for those detained on a parole warrant who have not had such hearings is similarly required, in the face of a law that is in effect requiring that one may not be detained without such a hearing.

120. Petitioners seek release for the respondent's failure to provide them recognizance hearings—due process procedures required for respondent to lawfully detain them. There is no reason why an individual who is in the middle of revocation proceedings should remain incarcerated under circumstances that the law explicitly makes illegal. DOCCS must release petitioners because their detention, absent a recognizance hearing, is patently unlawful. *See* CPLR 7010(a) (“If the person is illegally detained a final judgment shall be directed discharging him forthwith”). In the alternative, if this Court does not order release, petitioners request that the Court convert this matter to an Article 78 proceeding, order DOCCS to produce petitioners for their recognizance hearings within 24 hours of this Court's order, and order DOCCS to be prepared to present information to the hearing courts regarding petitioners' alleged violations and their community supervision record, as required by Less Is More.

JURISDICTION AND VENUE

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

122. 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.

123. 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.

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

125. Copies of the mandates pertaining to individual Petitioners are not attached hereto because DOCCS never supplies a copy of the parole warrant to the parolee or their attorney.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court issue a writ of habeas corpus and order Petitioners' immediate release on the ground that their continued detention violates the Less Is More Act codified in N.Y. Executive law § 259-i(3).

Dated: March 2, 2022
New York, New York

A handwritten signature in black ink, appearing to read "Key, [unclear]".

JANET SABEL, Esq.
Kerry Elgarten, *Of Counsel*
Laura Eraso, *Of Counsel*
Louis Balocca, *Of Counsel*
The Legal Aid Society
Parole Revocation Defense Unit
199 Water Street, 5th Floor
New York, New York 10038
Telephone: (917) 922-6657

Attorneys for Petitioners

VERIFICATION

Kerry Elgarten, an attorney duly admitted to practice before the courts of this state, does hereby affirm under penalty of perjury that the following statements are true:

1. I am of counsel to JANET SABEL, Esq., The Legal Aid Society, Parole Revocation Defense Unit, the attorney of record herein.
2. I have read the foregoing verified amended petition and know its contents.

3. The contents of the foregoing verified petition are true to my knowledge, except as to matters alleged to be upon information and belief, and as to those matters, I believe them to be true.

4. The sources of the aforesaid information and belief are conversations had with and correspondence received from the petitioners, and documents prepared by employees of the New York State Department of Corrections and Community Supervision.

5. I make this verification on petitioners' behalf because they are presently incarcerated and further delay will cause them material injury, and because the pertinent factual allegations are within my knowledge or information and belief.

DATED: March 2, 2022
New York, New York

A handwritten signature in cursive script, appearing to read "Kerry Elgarten". The signature is written in dark ink on a light background.

Kerry Elgarten, Esq.