SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CRIMINAL TERM

TAP A
PART 22

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THE PEOPLE OF THE STATE OF NEW YORK
EX REL. Corey Stoughton Esq. On behalf of
VENUS WILLIAMS. Et. Al., Petitioners,

DECISION AND ORDER

- against -

Index No. 451069-2020
SCID No. 30042-2020

Cynthia Brann, Commissioner, New York City Department of Correction; Anthony Annucci, Acting Commissioner, New York State Department of Corrections and Community Supervision, Respondents.

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STEVEN M. STATSINGER, J.:

On March 20, 2020, the Court orally denied a petition for a writ of habeas corpus, filed by The Legal Aid Society, seeking the immediate release from custody of some 116 of its clients housed at the Rikers Island correctional facility. On April 1, 2020, Legal Aid moved, pursuant to CPLR § 2221, for leave to renew, this time seeking the immediate release of 79 of those inmates (a subsequent filing has reduced the number to 67). In light of the rapidly evolving facts surrounding the COVID-19 pandemic, as well as the changing legal environment, the Court GRANTS the motion for leave to renew, along with the parallel motion to file two *amicus* briefs. However, after a review of the extensive materials submitted in connection with the motion to renew, the Court adheres to its prior decision and DISMISSES the petition for a writ of habeas corpus.

BACKGROUND

The Original Petition

The original petition, filed on March 20, 2020, sought the release of 116 individuals incarcerated at Rikers Island: some were pretrial detainees and others were being held on parole violation warrants. Several had both pending cases and pending parole violations. The petition alleged that these individuals faced an enhanced risk of serious illness if they contracted COVID-19, in light of their age (according to the petition anyone 50 years of age or older is at an enhanced risk), or an underlying medical condition, or both. The specific claim was that the conditions of confinement within Rikers Island constituted "deliberate indifference" to those inmates' medical needs, in violation of the Eighth and Fourteenth Amendments to the United States Constitution and the Due Process guarantee contained in the New York State Constitution.

On March 20, 2020, the Court heard extensive oral argument on the petition. Three attorneys from The Legal Aid Society were present to represent the petitioners, and attorneys from the New York City Law Department and the New York State Office of the Attorney General represented the respondents. With the consent of all parties, an attorney from the New York County District Attorney's Office was permitted to intervene. At the conclusion of the hearing, the Court denied the petition, finding that the conditions at Rikers Island did not constitute "deliberate indifference" to the inmates'

medical needs. In relevant part, the Court held that while there was certainly a dangerous condition at Rikers Island, and Corrections knew of that condition, the Court was "not prepared to find either that Corrections has done nothing to remedy the situation, or that release is the only way to mitigate the harm."

The Motion to Renew

On April 1, 2020, The Legal Aid Society filed a motion for leave to renew. The gist of Legal Aid's argument is this: "Since this Court's decision denying the petition on March 20, 2020, when there was only one diagnosed case of COVID-19 in New York's jails, the virus has exploded in the jails, transforming Rikers Island into the global epicenter of the pandemic and eviscerating Respondents' claims that its efforts are a sufficient response to the threat to Petitioners' lives." An April 8, 2020 addendum to the motion for leave to renew identified six persons named as petitioners who had by then tested positive for the novel coronavirus.

In opposition to the motion to release prisoners held on parole violation warrants only, the Attorney General's Office furnished criminal history and parole violation information for approximately 39 of the petitioners. Papers in opposition filed by the District Attorney's Office relied on "the ongoing protective and preventative measures to control the spread and effects of COVID-19 within the detention facilities, including, but not limited to, providing inmates with additional cleaning supplies, daily cleaning and

sanitizing of housing units, increased quality assurance protocols, as well as protocols for separating and treating any medically vulnerable inmates. DOC also maintains regular contact with the medical staff of Correctional Health Services ("CHS"), monitors at-risk individuals within the jail and evaluates individuals exhibiting symptoms of COVID-19." The Office of the Special Narcotics Prosecutor, responsible for prosecuting a small number of the named petitioners also opposed the motion, in papers that detailed the "efforts the Department of Corrections has taken to ensure the health and safety of incarcerated individuals." And, lastly, the City's opposition argues that the petition "does not establish that the City Respondents are deliberately indifferent to the risk of serious illness or death."

The motion to renew also includes two *amicus* briefs, one filed on behalf of Physicians for Human Rights, and the other filed on behalf of a group of "public health officials and human rights experts." *Amici* variously cite the conditions of confinement at Rikers Island, the inadequacy of Corrections' remedial efforts, and the overall difficulty of managing an outbreak of COVID-19 in a carceral setting, as demonstrating an urgent need for all jails and prisons, not just Rikers Island, to reduce their inmate populations.

LEGAL DISCUSSION

1. The Motion to Renew

As an initial matter, the Court agrees with petitioners that a motion for leave to renew is appropriate in this case. CPLR 2221 § (e)(2), provides that a motion for leave to renew can be based on "new facts not offered on the prior motion." That standard is certainly met here. The alternative standard, "a change in the law that would change the prior determination," *id.*, is also likely met, as motion cites a number of court decisions that were rendered after the Court denied the original petition. The motion for leave to renew, along with the parallel motion to file two *amicus* briefs, is accordingly granted.

However, on renewal, the Court adheres to its original ruling that the relief requested – the mass release of a large number of inmates without an individualized determination of each inmate's risk of non-appearance – is inappropriate.

2. The Unique Risk of Non-Appearance

It should first be noted that the risk of non-appearance at issue here is, like so much else in this litigation, novel. The question at issue for these inmates is not whether they will return to *court* once the COVID-19 pandemic subsides. It is whether they will return to *jail*, having been temporarily released, once the pandemic subsides, which it eventually will. There are powerful reasons to conclude that the risk of non-appearance is far greater in this unique situation. In an ordinary case, a defendant being released *from court* is

given a date certain to return, in writing, and is typically warned of the adverse consequences of a failure to do so (*see People v. Parker*, 57 N.Y.2d 136 (1982)), circumstances that collectively work to reduce the risk of non-appearance. The mass release *from jail* contemplated by this petition would allow for none of these salutary measures to take place. Since the necessary return date would be unknown at the time of release, that date could therefore not be communicated to the releasee, and there would be no mechanism for warning each releasee of the consequences of a failure to return.

3. The Federal Constitutional Claim

Turning to the merits, the Court adheres to its original conclusion that the conditions at Rikers Island, as difficult as they are, do not amount to "deliberate indifference" to the inmates' medical needs. *See, generally, Farmer v. Brennan*, 511 U.S. 825, 834 (1994). "Deliberate indifference" exists where "a prison official … knows of and disregards an excessive risk to inmate health or safety." *Id.* at 837. The extensive record of remedial efforts being undertaken at Rikers Island, well documented both in connection with this motion and elsewhere, shows that neither the City nor the State is "disregarding" the very real risk to these inmates' health or safety.

Nor is the Court persuaded by the cases cited by the petitioners, which they allege show that "federal courts have already begun granting petitions for habeas corpus … of federal detainees, on the grounds that their detention would violate due process." Both

Basank v. Decker, 2020 WL 1481503 (S.D.N.Y. March 26, 2020), and *Coronel v. Decker*, 2020 WL 1487274 (S.D.N.Y. March 27, 2020), involved aliens held in immigration custody pending civil deportation proceedings who were neither pretrial detainees charged with new offenses nor suspected parole violators. Moreover, those cases only granted temporary restraining orders, but did not rule with finality on the merits of the constitutional claims. *Coronel*, at least, is also quite different from the instant matter on its facts. The record there contained "no evidence" that the administrators of the detention facility in which the petitioners were held "took any specific action to prevent the spread of COVID-19 to high-risk individuals." *Id.* at *5. That is simply not the case here.

And, in fact, contrary to the petitioners' claims, there are some recent federal cases that certainly suggest that the circumstances at Rikers Island do not amount to "deliberate indifference." *Sacal-Micha v. Longoria*, 2020 WL 1518861 at *5 (S.D. Texas March 27, 2020), denied an alien petitioner's request for immediate release from immigration detention, finding little likelihood of success on the merits of a "deliberate indifference" claim because the record established the facility's efforts to address the spread of the novel coronavirus were adequate. *See also Verma v. Doll,* 2020 WL 1814149 (M.D. Pa. April 9, 2020) (facility's "reasonable steps to limit the spread" of the virus are likely sufficient to overcome a "deliberate indifference" claim).

This Court agrees that the record in this case establishes that Rikers Island's efforts to limit the spread of the novel coronavirus are, at a very minimum, "reasonable" or "adequate," and in fact are probably far greater than that.

The gist of petitioners' argument is, essentially, that *no* set of remedial conditions in a setting such as Rikers Island could ever be constitutional in the face of the COVID-19 pandemic. Petitioners point out that the rate of the spread of the virus inside of Rikers Island is considerably higher than the transmission rate within the population as a whole, although one respondent convincingly argues that this statistical phenomenon might be attributable, or at least partly attributable, to certain risk factors that are typically present to greater degree in inmate populations, and not to the institutional setting itself. But, in any event, even accepting the premise that it is impossible to reduce the risk of serious illness faced by Rikers Island inmates to that faced by the population as a whole does not alter the constitutional calculus. The Due Process Clause and the Eighth Amendment do not require that the medical treatment received by inmates be as good as that available to the population as a whole, or that the medical outcomes be equivalent. They require only that prisons not be "deliberately indifferent" to their inmates' medical needs. Indeed, substandard, even negligent, medical care of a prisoner does not amount to a constitutional violation. *E.g.*, *Sereika v. Patel*, 411 F. Supp. 2d 397, 407 (S.D.N.Y. 2006); *Atkins v. County of Orange*, 372 F. Supp. 2d 377 (S.D.N.Y. 2005).

4. The State Due Process Claim

Petitioners argue, alternatively, that the Due Process Clause of the New York State Constitution, Art. 1 sec. 6, provides greater protection to pretrial detainees, and that an application of state due process principals should result in the petitioners' release. The Court disagrees.

Cooper v. Morin, 49 N.Y.2d 69, 79 (1979), holds that, with respect to pretrial detainees, due process requires "a balancing of the harm to the individual resulting from the condition imposed against the benefit sought by the government through its enforcement." The governmental need must be "compelling," and outweigh the harm to the inmate. But this type of balancing does not mandate a different outcome here. To be sure, the "benefit sought by the government" with respect to pretrial detainees at least, is here equivalent to that identified in *Cooper*, which was "to assure the presence of the detainee for trial." *Id.* at 81. The instant situation includes a concurrent, and equally compelling, governmental need: to assure that these detainees, whose incarceration is otherwise lawful, return to custody once the pandemic subsides.

In general, under the *Cooper* balancing, the "detainee's side of the balance" is a more fluid concept. It is most readily expressed as the constitutional right affected by the action complained of. For example, in *Cooper*, the action complained of, a restriction on contact visits, affected "the fundamental right to marriage and family life on the one hand

and to bear and rear children on the other." *Id. See also People ex rel. Schipski v. Flood*, 88 A.D.2d 197 (2d Dept. 1982) (balancing governmental need to protect the security of inmates who request protective custody against those inmates' right to be free from the excessive liberty restriction of a 22-hour per day lockdown); *Powlowski v. Woolich*, 102 A.D.2d 575 (4th Dept. 1984) (balancing the need to maintain institutional security against the inmates' due process right to be permitted exercise and recreational facilities).

Applying the *Cooper* balancing test to the pretrial detainees here, the Court finds that the "petitioners' side of the balance" in this case is the exact same constitutional right that has been discussed in great detail above, the right to be free from "deliberately indifferent" medical care. It should be noted that it is not at all clear that the *Cooper* test even applies to suspected parole violators. And the Court has already concluded that this right will not be violated by these petitioners' continued detention. The other side of the *Cooper* balancing, assuring the petitioners' "presence … for trial" is a compelling governmental interest that would be affected to an extreme degree by the relief requested. As noted above, this petition, if granted, would require the release of a large number of inmates who would then be expected to return to jail, on their own, on an date that would be determined and communicated to them in the future, and without the equivalent of *Parker* warnings. Accordingly, the action complained of in this case, the failure to release these detainees, does not amount to a violation of the Due Process Class of the New York State constitution.

5. Reducing the Prison Population as a Public Health Measure

Amici in this case, to varying degrees, argue that at least some of the particular inmates identified in this petition would experience better health outcomes if released. This is without a doubt true and, in all likelihood, it is true for any inmate during this pandemic. But, and as noted in great detail above, this Court has concluded that the likelihood of a better health outcome outside of a carceral setting does not create a viable constitutional argument for release.

But another main component of *amici's* arguments is that the petition should be granted as a general public health measure in order to reduce the prison population. *See* Brief for Public Health and Human Rights Experts at 1: "Amici Curiae, a group of public health officials and human rights experts who are familiar with the unique dangers associated with infectious diseases in jails and prisons such as Rikers Island, strongly urge this Court to grant petitioners' pretrial release as part of a necessary strategy to reduce the number of inmates in Rikers. Reducing the number of inmates at Rikers will minimize not only the public health risk to petitioners, but also to other inmates, staff, visitors and the public at large," *and* Brief for Physicians for Human Rights at 4: "It is the medical opinion of Amici that the Petitioners must be released for their own safety, the safety of staff and other individuals being held on Rikers Island, and the safety of the general public," and 21-23.

Amici make an excellent point. But it is beyond the scope of the Court's authority to release these petitioners for that reason. The Court's authority in this matter is cabined by CPLR § 7002(a), which covers only claims by persons "illegally imprisoned or otherwise restrained in his liberty within the state" and by CPLR § 7010(a), which authorizes the granting of a writ of habeas corpus and the immediate release of the petitioner only where the petitioner is "illegally detained." This restrictive language does not authorize release for any other purpose, however worthwhile.

The Court notes that the United States Supreme Court, in *Brown v. Plata*, 563 U.S. 493 (2011), affirmed a lower court's order mandating the mass release of prisoners as the remedy for a claim that prisoners' constitutional rights were violated by serious overcrowding. But that case was litigated under the Prison Litigation Reform Act, 18 U.S.C. sec. 3626, which expressly authorizes release as a remedy.

6. The Need for Individualized Determinations

The relief sought in this petition is the "immediate release" of *all* of the petitioners. As presented to the Court, accordingly, there is no ground for an individualized review of each petitioner's individual circumstances. The Court cannot grant the petition as to some and dismiss it as to others. Moreover, and in any event, the petition is not presented with sufficient detail to permit any sort of meaningful individualized review.

When the Court heard the original petition, on March 20, 2020, it asked whether the City itself had implemented any programs that might release at least some of these petitioners after an individualized review. Counsel for petitioners advised the court that there were separate, ongoing efforts to release individual inmates, but that the process was "not going fast enough." Nevertheless, it appears that a fair number of the original petitioners have indeed been released since March 20; the original petition was filed on behalf of 116 inmates and the motion for leave to renew, filed on April 1, was filed on behalf of 79 members of that original class. Moreover, on April 8, counsel for petitioners advised the Court that eleven more inmates had been released and withdrew the petition as to an additional inmate, leaving 67. Thus, about 40 percent of the original petitioners have been released over a period of 19 days, after an individual review of their circumstances. In the Court's view, this is not evidence of a release mechanism that is "not going fast enough."

Of the inmates who remain as petitioners, The Legal Aid Society has provided general information about their age and underlying health conditions, if any, as to all of them. In some instances, but far from all, Legal Aid has provided more detailed medical information. For each petitioner, the petition specifies only whether that individual is a pretrial detainee (and includes the amount of bail), or suspected of a parole violation, or both. But beyond that, the petition does not contain information that would differentiate those who present risk of flight from those who do not. There is no information about

any individual's criminal history, ties to the community or history of nonappearance, if any. Nor is there any meaningful information about the nature of any pending criminal charges or the nature of any alleged parole violation.

Moreover, the petition asks the Court to treat identically persons who would appear to have very different levels of susceptibility to serious illness or death from COVID-19. For example, the petitioners identified in Paragraphs 15 and 83 (names are being omitted here to protect the petitioners' medical privacy) are included only because they are 50 years old. The petitioner identified in Paragraph 13 is included only because he is 60 years old. And the petitioner identified in paragraph 16 is included only because he is 55 years old. And there are numerous others identified in the petition as being at a high risk only because they are 50 years of age or older.

By contrast, the petitioner described in Paragraph 50 is "57 years old and diagnosed with interstitial lung disease and cardiovascular disease. He is in need of two lung transplants and uses a breathing machine. He also has an auto immune disorder." The petitioner described in Paragraph 39 is "56 years old and medical records establish that he is diagnosed with Chronic Obstructive Pulmonary Disease (COPD) and other medical conditions that compromise his immunity." The petitioner described in Paragraph 29 is 55 years old, and has cardiovascular disease, high blood pressure and asthma. The petitioner described in Paragraph 33 is 62 years old and has pancreatic cancer.

These examples highlight the need for an individual review of each inmate's particular circumstances, so that a court can properly assess the level of risk to her health, weigh that against the risk of non-appearance, and decide whether release is warranted in that particular case. But the instant petition does not permit that.

CONCLUSION

For all of the foregoing reasons, petitioners' motion for leave to renew is granted, as are the parallel motions to file two *amicus* briefs. The Court however adheres to its' original decision on the merits, and the petition for a writ of habeas corpus is accordingly dismissed.

This opinion constitutes the Decision and Order of the Court.

Date: April 13, 2020
New York, New York

S.S.
HON. STEVEN M. STATSINGER
JUSTICE OF THE SUPREME COURT