SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: EMERGENCY PART

PEOPLE OF THE STATE OF NEW YORK EX REL. Corey Stoughton, Esq., on behalf of MILTON RUFFIN, FREDRICK ROBERSON, MICHAEL FIGEROA, et al., Petitioners, v. CYNTHIA BRANN, Commissioner, New York City Department of Correction; and ANTHONY ANNUCCI, Acting Commissioner, New York State Department of Corrections and Community Supervision, Respondents.	Index No. _260211/2020 **DECISION AND ORDER ON PETITIONERS' WRITS OF HABEAS CORPUS**

On Tuesday, April 7, 2020, petitioners filed this "Mass Writ." 101 separate inmates detained on parole warrants sought release prior to the adjudication of the merits of their alleged parole conditions via this habeas corpus writ. No petitioner makes any challenge to the legal validity of any of the parole warrants, which are lodged with the New York City Department of Corrections ("the City"). Instead, they seek release based on the COVID-19 pandemic. They argue that the City has acted with willful indifference to each of them based on general claims relating to how the City has addressed the COVID-19 epidemic in the City's jails. At the time this writ was filed, it was understood that all petitioners were housed in different jail facilities on Rikers' Island. In the writ papers, no petitioner alleged that his or her prison conditions was itself unsanitary or that they were not being prescribed medication to treat their own medical conditions. However, they each cited either underlying medical conditions and/or their age and argued that these factors placed them at heightened risk for developing serious COVID-19 complications should they become infected while being held in the City's custody.

The City submitted documentation and information detailing all the steps it has taken to specifically address the unique problems inherent in maintaining a jail in the face of this unprecedented pandemic. Those steps are well-documented in the record and will not be repeated here. This Court has heard other writs filed by individual detainees alleging that the City has acted with willful indifference to them as well as other detainees at various jail facilities. This Court has written long opinions in two of those cases, denying those detainees applications, and referenced the many significant protocols the City has implemented to address this serious health issues in its jails. This Court found the City has addressed this serious public health crisis in its jails "with responsible concern, and attentiveness." People ex. rel.Jackson v. Brann, Docket Nos.

CR-005432-20BX, and CR-005433-20BX, April 8, 2020, Supreme Court Bronx County (Fabrizio, J.): see also People ex. rel Robinson v. Brann, Index No. 260217/2020, April 13, 2020, Supreme Court Bronx County (Fabrizio, J.).

Moreover, even if petitioners established such willful indifference to their medical needs on the part of the City, it is this Court's opinion that the remedy requested – release via habeas corpus – is not legally cognizable. Granting any individual's release from custody due to prison conditions would be unprecedented. This remedy finds no support in appellate legal precedent throughout the entire history of American jurisprudence, and petitioners provide such authority. The "willful indifference" test itself arises from cases brought as class actions, or USC § 1983 actions. When courts have found the existence of "willful indifference" to the medical needs of inmates in a jail facility, and therefore determined their due process rights were violated, the remedy has not been to release any named inmate or pre-trial detainee. See Bell v. Wolfish, 441 U.S. 520 (1979); Cooper v. Marin, 49 N.Y.2d 69 (1979); People ex. Rel. Sanderson v. Duncan, 306 A.D.2d 716 (3rd Dept 2003); Bolton v. Goord, 992 F. Supp. 604 (S.D.N.Y. 1998). Moreover, where courts have found that serious prison overcrowding has increased the risks to medically vulnerable prisoners, and in that way constituted a violation of due process, the remedy has not been to release an individual prisoner, but to order that the State reduce the prison population and do so over a period of years. See Brown v. Plata, 563 U.S. 493, 499-502 (2011). In this situation, that remedy can only be ordered under a federal statute that requires the case be heard, and ruled on, by a three-judge appellate panel. Id.

Several judges have released detainees based on due process grounds related to a detainee's enhanced risk of developing a COVID-19- related illness. See People ex. Rel. Stoughton v. Brann, New York County Supreme Court Index No. 451078/2020, April 6, 2020 (Dwyer, J) (ordering the release via habeas corpus of 18 of 32 inmates in a joint writ based on COVID-19 risks). The Court recognizes that this approach may be correct because of the immediacy of the harm to certain detainees and the unprecedented nature of the pandemic. However, it tends to take due process down the path of discretionary, rather than legal, analysis. Nonetheless, this Court accepts the prudence of such an approach and has used it in determining whether to release detainees in other cases. In making these rulings, a judge must assess medically based projections about who is at an "enhanced risk" of Covid-19 complications, something that is debated daily by medical professionals. Under this approach, a court weighs the risk of the individual's returning to Court or custody after being released from jail against the medical risks to the detainee by denying the application for immediate release. See People ex.rel. Ramirez v. Brann, Bronx County Index No. 260155/2020 (Boyle, J.) (finding risk of flight outweighed risk of health to incarnated petitioner with coronary artery disease during COVID-19 pandemic).

The seriousness of this health crisis in terms of this writ was tragically and dramatically demonstrated even before the parties appeared for their virtual court appearance at 9:30 a.m. on April 8, 2020. That morning, the New York Daily News reported that, for the first time, a detainee had died at Rikers' Island as a result of

COVID-19 complications. The Court recognized the name of the detainee, Michael Tyson, because he was one of the petitioners named in this writ, and the Court had reviewed the lengthy papers when it received them the previous evening. According to the petition, Mr. Tyson was 53 years old and suffered from unspecified underlying health conditions which placed him in a high-risk group for developing COVID-19 complications. Mr. Tyson passed away on April 5, 2020, two days before this petition was filed.

This Court heard arguments via SKYPE on April 8, and April 9, 2020. Petitioners' attorneys at the Legal Aid Society, an Assistant Attorney General representing the State, and an attorney from the New York City Health Department appeared on the record. These attorneys provided detailed information about every petitioner. The State opposed each petitioner's application for release. The Court ordered the release of some detainees on April 8, 2020 after their applications were heard, and the release of additional detainees after the second day of court hearings. Some petitions were withdrawn, and others were dismissed as moot after the Court learned during these appearances that some of the detainees whose release it had opposed had already been released by the State. Then, the Court learned that the State had begun negotiating with attorneys to release some petitioners from jail and restore them to parole supervision by placing them in programs and/or supportive housing. All attorneys continued to submit detailed information via email on Friday, April 10, and Saturday, April 11. All told, fourteen applications were withdrawn or dismissed as moot. The Court has ordered the release of fifty-one detainees. The Court is still awaiting word about whether one detainee, Jermaine Brown, has been ordered released and restored to parole supervision by the State.

Now, upon review of all information provided by the attorneys before, during and after the Skype Court hearings, the Court denies the applications to release thirty-four petitioners. The Court has reviewed and considered medical records and letters submitted by physicians with Correctional Health Services (CHS) for many of these petitioners. The Court has reviewed and considered information provided by the State about the circumstances of parolees' supervision and warrant history and the reasons for parolees' current detention and their parole specifications. The Court has also reviewed and considered information provided by the City about other potential holds for some petitioners, and specific protocols enacted and implemented by the City to address the pandemic at Rikers' Island.

One of the detainees whose petition is being denied was infected with COVID-19 while at Rikers' Island. According to the City, this petitioner was taken to the Erik M. Taylor Center ("EMTC") on March 25. 2020. EMTC had been closed prior to the COVID-19 pandemic, The City reopened that facility specifically to isolate and address those detainees who are symptomatic and/or test positive for the COVID-19 virus. This petitioner provided his own medical records, showing he tested positive for COVID-19 on March 31, 2020. He remained at EMTC from March 25, until April 8, 2020. According to the City, on April 8, he was sent from EMTC to another Rikers' "general population" jail. CHS follows the policy and guidelines used by the Center for Disease Controls

("CDC") for when infected individuals no longer require isolation: "[1] At least 3 days (72 hours) have passed since recovery, defined as the resolution of fever without the use of fever-reducing medications, and [2] Improvement of respiratory symptoms (e.g. cough, shortness of breath), and [3] at least 7 days have passed since symptoms first appeared."

In terms of the remaining thirty-three detainees, the Court finds that their risk of flight, not returning to parole supervision, and/or not returning to custody is outweighed by the risk that these petitioners will develop serious complications if they become infected by the COVID-19 virus while in custody.[1]

This constitutes the Decision and Order of the Court.

Hon. Ralph Fabrizio, JSC.

Dated: April 13, 2020
Bronx, New York

[1] The Court has provided the parties with a list of names of all the petitioners it has ordered released, as well as a list of names of petitioners whose applications were denied.