

*To be argued by
DENISE FABIANO
(15 Minutes)*

Court of Appeals

STATE OF NEW YORK

APL 2019-147

THE PEOPLE OF THE STATE OF NEW YORK
EX REL. FRED JOHNSON, DIN # 09A1104,
NYSID # 04899722M,

Petitioner-Appellant,

- against -

SUPERINTENDENT, ADIRONDACK
CORRECTIONAL FACILITY, and
NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,

Respondents.

**REPLY BRIEF AND ADDENDUM FOR
PETITIONER-
APPELLANT**

JANET SABEL
DENISE FABIANO, *Of Counsel*
Attorneys for Petitioner-Appellant
The Legal Aid Society
Criminal Appeals Bureau
199 Water Street
New York, N.Y. 10038
Tel: (212) 577-3917
Fax: (646) 616-4917
dfabiano@legal-aid.org

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SUPERINTENDENT, Adirondack Correctional Facility,
NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION,

Respondents.

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INTRODUCTION

Petitioner-Appellant, Fred Johnson, submits this brief in reply to respondents' brief ("Resp. Br."). In regard to arguments raised by respondents not addressed herein, petitioner-appellant relies on the arguments in his main brief. ("App. Br.").

ARGUMENT

POINT I

DESPITE RESPONDENTS' ARGUMENT TO THE CONTRARY, THE ISSUE IS LIKELY TO EVADE REVIEW AND SHOULD NOT BE DISMISSED AS MOOT.

Respondents' argument that the issue is not one that is likely to evade review may be dispensed with in short order. Respondents contend that,

because the issue raised by Mr. Johnson in this case was reviewed by the lower courts, the issue has not evaded review (Resp. Br. at 14). Review by the intermediate appellate courts is not dispositive. Respondents ignore the reality that the issue will evade review in this Court, based on the length of time it takes for the appeals process to unfold. Indeed, it has taken three years for Mr. Johnson's case to get to this Court and, even though he was held in prison over two years past his open parole date, he was released before this Court was able to review the case. Ironically, DOCCS finally released Mr. Johnson to a SARA-compliant shelter just a few short weeks after he secured an appeal as of right in this Court (App. Br. at 9). The protracted appeals process makes this issue not only capable of evading review in this Court, but likely to evade review.

Even more unseemly is respondents' argument that because Mr. Johnson is serving a sentence of two years to life in prison and they are entitled to hold him in prison indefinitely, the issue will not evade review (Resp. Br. at 16). Respondents should be foreclosed from using the very illegality of indefinite detention that petitioner now challenges to defeat review of that claim under the mootness doctrine. Moreover, DOCCS could render moot every claim by choosing to release a petitioner to a SARA-complaint shelter—off of a waitlist they control and over which there is no outside oversight—

every time this Court grants review. This Court should not put a party in a position to engage in that kind of manipulation of issue review.

POINT II

THE IMPRISONMENT OF PETITIONER-APPELLANT—A LEVEL THREE SEX OFFENDER WHOSE VICTIM WAS AN ADULT AND WHO WAS HELD OVER TWO YEARS PAST HIS PAROLE RELEASE DATE—BASED ON THE CLAIM THAT HE COULD NOT BE RELEASED CONSISTENT WITH THE APPLICATION OF EXECUTIVE LAW §259-C (14)’S RESIDENCY REQUIREMENTS AND COULD BE INCARCERATED INDEFINITELY, VIOLATED HIS FEDERAL AND STATE SUBSTANTIVE DUE PROCESS RIGHTS. U.S. CONST., AMENDS. V, XIV; N.Y. CONST., ART. I, §6.

The State has claimed, throughout the pendency of this case, that they are entitled to hold Mr. Johnson in prison for the duration of his sentence of two years to life in prison, even though he has been granted parole and even though he would be afforded SARA-compliant housing in a NYC shelter were DOCCS to deliver him to DHS shelter intake.¹ The Constitution requires

¹ New York City is a right-to-shelter city. In People ex rel Bonilla v. Superintendent, No. 2020/51174 (Sup. Ct. Dutchess Co., June 28, 2020) (see Addendum), the court fully credited the testimony of the Associate Commissioner for the Department of Homeless Services (“DHS”) in charge of shelter operations that DHS would immediately provide a SARA-compliant bed to any person brought to the New York City intake shelter, as required under the consent decree in Callahan v. Carey, Final Judgment by Consent, Index No 42582/79 (Sup. Ct., N.Y. Cnty. Aug. 26, 1981), which has guaranteed the right to

more.

DOCCS' Continued Indefinite Detention of Petitioner-Appellant,
Under the Circumstances Here, Violated Substantive Due Process

Respondents adopt an all-or-nothing approach by taking the position that “so long as petitioner remained subject to a lawful sentence of [life] imprisonment, he had no fundamental right to parole release under any circumstances.” (Resp. Br. at 24)(emphasis added). Although respondents recognize that there is a “liberty interest in freedom from confinement that ‘derives from the Due Process Clause itself’”(Resp. Br. at 21), respondents contend that inmates have “‘no constitutional or inherent right’ to be ‘released before the expiration of a valid sentence.’” (Resp. Br. at 19, citing Greenholtz v. Inmates of Neb. Penal & Corr. Complex, 442 U.S 1, 7 (1979)). To be sure, as respondents point out, the imposition of a sentence following a valid conviction does constitutionally deprive a defendant of his or her liberty. Id.; see also Foucha v. Louisiana, 504 U.S. 71 (1992)(“A State, pursuant to its police power, may of course imprison convicted criminals for the purposes of deterrence and retribution.”). But that deprivation is not limitless. Greenholtz involved a claim by inmates that they had been

shelter housing since it was signed in 1981. In Mr. Bonilla’s case, the court (Acker, J.) granted the writ of habeas corpus and ordered Mr. Bonilla’s immediate release to a SARA-compliant DHS shelter (A.6-A.7). The Bonilla case is discussed more fully below, see infra pages 21-22.

unconstitutionally denied parole. As a result, in Greenholtz the Court found that inmates being considered for a discretionary parole grant did not have the same constitutional liberty interest as one who had already been granted parole, like the petitioner in Morrissey v. Brewer, 408 U.S. 471 (1972).² Greenholtz, 442 U.S. at 9-10 (“there is a human difference between losing what one has and not getting what one wants”). Mr. Johnson, like petitioner in Morrissey, has already been granted parole and stands in a much different position constitutionally than the petitioner in Greenholtz.

Fred Johnson has a liberty interest that falls on the continuum of liberty interests and, even if not on par with someone who has never been convicted, it is encompassed by the fundamental liberty interest in freedom from confinement under the Due Process Clause. Morrissey v. Brewer, 408 U.S. 471, 490 (1972)(stating that the liberty of a parolee, in the context of a revocation hearing, “includes many of the core values of unqualified liberty and its termination inflicts a ‘grievous loss’ on the parole By whatever name, the liberty is valuable and must be seen as within the protection of the Fourteenth Amendment”).³ Moreover, although respondents claim that the

² The Greenholtz Court, did recognize, however, that a protected liberty interest in the “expectancy of release” was created under the discretionary parole statute in that case that required procedural due process. 42 U.S. at 12.

³ Although Morrissey focuses on the necessity of procedural due process, the court’s analyses of the liberty interests involved informs the analysis of Mr. Johnson’s substantive

liberty interests protected by the Due Process Clause itself do not apply to a person who remains subject to a valid sentence of imprisonment, Morrissey makes clear that that is not the case. Morrissey, 408 U.S. at 482 (finding that a parolee—who, although conditionally released, is still within the parameters of a valid sentence of imprisonment—has a liberty interest arising from the Due Process Clause itself). Even though Morrissey was still within the parameters of a lawfully imposed sentence, he had a due process liberty interest in serving the sentence in the community rather than in prison, having been granted parole. Likewise, Mr. Johnson, having been granted parole, has a due process liberty interest in serving his validly imposed sentence in the community that cannot be abrogated without satisfying the applicable due process standard.

Although respondents recognize that inmates may have a “fundamental right to be free from restraints that are not ‘within the sentence imposed,’” citing Sandin v. Conner, 515 U.S. 472, 498 (1993), they

due process claims. The procedural due process required in Morrissey flows from the identified liberty interests, and substantive due process must protect those same interests. See, e.g., Washington v. Harper, 494 U.S. 210 (1990) (“It is axiomatic that procedural protections must be examined in terms of the substantive rights at stake. But identifying the contours of the substantive right remains a task distinct from deciding what procedural protections are necessary to protect that right. ‘The substantive issue involves a definition of the[e] protected constitutional interest, as well as identification of the conditions under which competing state interests might outweigh it. The procedural issue concerns the minimum procedures required by the Constitution for determining that the individual’s liberty interest actually is outweighed in a particular instance.’”).

nevertheless maintain, without citing any authority, that no such right extends to be free from continued confinement itself. (Resp. Br. at 21-22). This cannot be the case. At the outset, if anything, Mr. Johnson's rights and liberty interests, as a parole grantee, exceed that of an incarcerated prisoner who has not been granted parole. If inmates may have fundamental liberty interests that are entitled to protection within the context of restraints imposed on them within the incarceratory portion of their sentence as respondents recognize, then Mr. Johnson, who had been granted parole, yet remained incarcerated, surely must be entitled to even greater protection. Indeed, once Mr. Johnson was granted parole, the State's claimed right to hold him in prison indefinitely under the facts of this case impermissibly intruded upon--in fact, obliterated--his fundamental liberty interest.

Respondents recognize, as they must, that states may create liberty interests that are also protected by the Due Process Clause; Sandin, 515 U.S. at 472; accord Wolff v. McDonnell, 418 U.S. 539, 557 (1974)(finding that although the Process Clause itself did not create a liberty interest in credit for good behavior, a state statute "created a liberty interest in a 'shortened prison sentence' which resulted from good time credits"); and as recognized by Victory v. Pataki, 814 F.3d 47 (2d Cir. 2016), New York State has created just such a liberty interest applicable in this case (Resp. Br. at 18). In Victory, the

Second Circuit found that Victory was deprived of procedural due process by a failure to have a neutral decision-maker at his parole rescission hearing. In so doing, the court held that Victory, as a parole grantee, had a protectible liberty interest, arising from a legitimate expectation of release grounded in New York's regulatory scheme, which entitled him to procedural due process in the parole rescission hearing. Victory, 814 F.3d at 60. Here, too, Mr. Johnson has a legitimate expectation of release—i.e., to be returned to the position of one who is free from physical restraint-- as a parole grantee under New York State's regulatory scheme.⁴

Sandin recognizes certain state-created liberty interests that relate to “freedom from restraints” involving prison rules or regulations that “impose atypical and significant hardship on an inmate” still serving the incarceratory portion of his or her sentence. Sandin, 515 U.S. at 484. Beyond that, however, Sandin makes clear that where a statutorily-created “restraint” on a prisoner exceeds “the sentence in such an unexpected manner [it will also]

⁴ Although respondents contend that this expectation is “conditioned on compliance with New York’s regulatory scheme,” namely, that he secure SARA-compliant housing, in finding that a “New York parole grantee possess a liberty interest protected by the Due Process Clause” under New York’s regulatory scheme, the Victory court noted that “[t]o the extent that the approval of a satisfactory program imposes an additional condition on a parole grantee’s release, it renders his expectation of release no more contingent than that of the parole grantees in Green, 822 F.2d at 287-88, whose release date was ‘conditioned upon continued satisfactory conduct by the prisoner.’” Victory v. Pataki, 814 F.3d at 62 and n.12.

give rise to protection by the Due Process Clause of its own force.” Id. at 479, fn.4. In these situations, the Sandin Court noted that “the Due Process Clause itself confers a liberty interest”, citing Vitek v. Jones, 445 U.S. 480 (1980)(prisoner had a right to be free from involuntarily transfer to a state mental hospital under the Due Process Clause itself); and Washington v. Harper, 494 U.S. 210, 221-22 (1990)(an inmate had a liberty interest in being protected from the involuntary administration of psychotropic drugs). Significantly, the Sandin Court raised the specter that, if the challenged statute or prison regulation at issue definitively affected the decision to grant or deny parole, then it might be considered as affecting “the duration of [an inmate’s] sentence” so as to give rise to protection under the Due Process Clause itself. Sandin, 515 U.S. at 487 (“Nor does [petitioner’s] situation present a case where the State’s action will inevitably affect the duration of his sentence. Nothing in Hawaii’s code requires the parole board to deny parole in the face of a misconduct record or to grant parole in its absence, even though misconduct is by regulation a relevant consideration”); citing Meachum v. Fano, 427 U.S. 215, 229 n.8 (1976) (“declining to afford relief on the basis that petitioner’s transfer record might affect his future confinement and possibility of parole”).

Here, the continued, indefinite (and, here, possibly lifetime)

confinement of a parole grantee, under the circumstances in this case, exceeds the sentence in such an unexpected manner as to give rise to protection, not only under Victory v. Pataki, supra, but under the Due Process Clause of its own force. Sandin, supra. Mr. Johnson was sentenced to two years to life in prison. He was not sentenced to life in prison without parole. The Constitution cannot provide inmates a “fundamental right to be free from restraints that are not ‘within the sentence imposed’” (Resp. Br. at 21-22, citing Sandin), yet allow for a paroled inmate to be restrained in the ultimate sense by continued, indefinite incarceration subject to a condition that DOCCS controls and has denied Mr. Johnson, who is indigent, the ability to meet on his own. See infra pages 21-22. Such action affects “the duration of [Mr. Johnson’s] sentence,” as specifically contemplated by Sandin, so as to give rise to protection under the Due Process Clause itself. Sandin, 515 U.S. at 487

Moreover, in this regard, “[i]n the substantive due process analysis, it is the State’s affirmative act of restraining the individual’s freedom to act on his own behalf—through incarceration, institutionalization, or other similar restraint of personal liberty—that is the ‘deprivation of liberty’ triggering the protections of the Due Process Clause” DeShaney v. Winnebago County Dept. of Social Servs., 489 U.S. 189, 200 (1989). Here, the State’s arbitrary

act in continuing to incarcerate Mr. Johnson—and thereby not only depriving him of his liberty but also restraining his ability to act on his own behalf in order to meet the conditions imposed under the circumstances presented in this case, despite a grant of parole, violates due process. See infra pages 21-22; Reno v. Flores, 507 U.S. 292, 315 (1993)(O’Connor, concurring).

The “Due Process Clause of the Fourteenth Amendment was intended to prevent government ‘from abusing [its] power, or employing it as an instrument of oppression.” DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. at 196. It bears repeating that Fred Johnson was not sentenced to life in prison without parole: he was sentenced to two years to life in prison. Respondents cannot, literally or in effect, unilaterally and arbitrarily change that. Nevertheless, they insist on the right to hold him in prison for life, even though he has been granted parole, unless he meets a condition that they are unreasonably preventing him from complying with, in the only way that he can. This does not meet any definition of substantive due process. As the Third Department noted, Mr. Johnson’s “limited social and financial resources make a homeless shelter his only realistic housing option.” (R. 186).

Significantly, Mr. Johnson is not asking to be released to a non-SARA compliant address. (Resp. Br. at 9, noting that “Petitioner asked to be released

to the New York City Department of Homeless Services” and DOCCS added “his name to the waiting list of inmates seeking SARA-compliant housing”). He is asking to be allowed to comply with the SARA statute in all respects. He is asking not to be thwarted in that endeavor as he seeks release to a NYC SARA-compliant shelter—either by being released pursuant to his parole grant to present himself to the intake shelter as homeless people in NYC are entitled to do, or by having DOCCS deliver him to the intake shelter, see infra pages 21-22; (App. Br. at 27-28). Under these circumstances, DOCCS’ claimed right to hold him in prison indefinitely until they decide to release him to a shelter pursuant to their own internal waitlist (which they have arranged to prioritize those in residential treatment facilities serving PRS) (Resp. Br. at 16, 39-40; R.184), cannot pass muster under any level of scrutiny.

Tellingly, respondents wholly ignore Mr. Johnson’s contention that, as will be discussed more fully below, because NYC is a right-to-shelter city he would be afforded a SARA-compliant bed if he were released and permitted to present himself at the intake shelter or if, in the alternative, DOCCS were to present him at the intake shelter. (App. Br. at 27-28; Resp. Br. at 37-40). To avoid violating Mr. Johnson’s substantive due process rights, respondents should allow him to exercise his right to SARA-compliant shelter. What

rationale can they have for refusing to allow a parole grantee to comply with the SARA statute in a way that is permitted by law, available, and enforceable by an independent court-sanctioned right? DOCCS is not the legislature—indeed, it has assumed a role here not anticipated or condoned by anyone.

In sum, although the liberty interest to be free from confinement may be extinguished with a valid conviction, for punitive purposes, see, e.g., Foucha v. Louisiana, 504 U.S. 71 (1992) (“A State, pursuant to its police power, may of course imprison convicted criminals for the purposes of deterrence and retribution.”), Mr. Johnson has been granted parole. Not only has New York State’s regulatory scheme, Victory v. Pataki, supra, resurrected Mr. Johnson’s fundamental right to be free from confinement as a parole grantee, but it arises on its own force under the Due Process Clause itself under the circumstances of this case. Morrissey, supra; Sandin, supra. Because the fundamental liberty interest to be free from indefinite confinement is at stake—that is, for Mr. Johnson, as a parole grantee, to serve his life sentence in the community versus serving his life sentence in prison—strict scrutiny applies. And, under the facts of this case, as explained more fully below and in our main brief, the State’s actions in claiming the right to incarcerate Mr. Johnson for life after being granted parole are not narrowly

tailored to achieve its stated interest in protecting children (App. Br. at 16-24; 26-31).

At the Very Least, Given the Strong Liberty Interest of a Parole Grantee, Intermediate Scrutiny Should Apply.

Should this Court find Mr. Johnson's liberty interest falls short of warranting strict scrutiny because of the "complexities and governmental concerns" around the application of SARA in this case, it is, at the very least, worthy of a "searching review". Anonymous v. Rochester, 13 N.Y.3d 35, 48 (2009). In Anonymous v. Rochester, *supra*, this Court held that a juvenile nighttime curfew violated the substantive due process right to freedom of movement, employing intermediate scrutiny. This Court employed intermediate scrutiny because, although the right to freedom of movement is fundamental for an adult and would be subject to strict scrutiny, a minor does not "possess the same constitutional rights possessed by their adult counterparts" and are "always in some form of custody." 13 N.Y.3d at 46.

Respondents attempt to distinguish Anonymous v. City of Rochester, 13 N.Y.3d 35 (2009), with the observation that, in that case, "the children's liberty interest [in freedom of movement] would have been a fundamental right but for their age." (Resp. Br. at 24). Here, too, the right to be free from confinement -- indeed, the right to freedom of movement--is a fundamental

right but for a lawful sentence of incarceration. Anonymous is instructive because it reinforces the notion, also recognized under federal law, that there is a continuum of rights when analyzing substantive due process.⁵ Anonymous, 13 N.Y.3d at 47 (“although children have rights protected by the Constitution, they can be subject to greater regulation and control by the state than can adults”).

Indeed, there are two ends of the spectrum with respect to the protections afforded under the Equal Protection and Due Process clauses. On the one hand, legislation that does not implicate a fundamental right (or discriminate on the basis of an inherently suspect classification), must bear a rational relationship to a legitimate governmental purpose. On the other hand, legislation that disadvantages a “suspect class” or impinges on the exercise of a fundamental right is subject to strict scrutiny review. Eisenbud v. Suffolk County, 841 F.2d 42, 45 (2d Cir. 1988). However, “[b]etween these two extremes, the Court has applied intermediate levels of scrutiny.” Id. In this regard, the Supreme Court has employed other formulations of intermediate levels of review, including:

⁵ To the extent that respondents attempt to question whether Anonymous v. Rochester is still good law, citing Myers v. Schneiderman, 30 N.Y.3d 1 (2017), merely because in Myers this Court found strict scrutiny did not apply and then engaged in rational basis review, it falls flat. (Resp. Br. at 23-24). What respondents fail to mention is that the parties in Myers did not argue that intermediate scrutiny should apply and the question was not before the Court. Myers v. Schneiderman, supra (briefs available on Westlaw).

[W]hether the statute furthers a ‘substantial’ governmental interest, e.g., Plyler v. Doe, 457 U.S. at 224; whether the law is ‘substantially related’ to an ‘important’ governmental interest, e.g., Craig v. Boren, 429 U.S. 190 (1976); and whether the law is ‘substantially related’ to a ‘legitimate’ governmental interest, Mills v. Habluetzel, 456 U.S. 91 (1982).

Eisenbud, 841 F.2d at 45. Indeed, the Supreme Court has explicitly acknowledged the need for intermediate scrutiny in evaluating state action that is “inconsistent with elemental constitutional premises” and has, therefore, “recognized certain forms of legislative classification, while not facially invidious, nonetheless give rise to recurring constitutional difficulties” which require “the assurance that the classification reflects a reasoned judgement . . . by inquiring whether it may fairly be viewed as furthering a substantial interest of the State.” Plyler v. Doe, 457 U.S. 202, 217, 223 (1982)(evaluating the right of illegal aliens, even though not a suspect class, to education, which is not a fundamental right, under intermediate scrutiny).

Thus, consistent with federal law, as indicated above, New York courts have applied intermediate scrutiny to a variety of scenarios implicating important rights. Anonymous v. Rochester, *supra*; For the People Theatres of N.Y., Inc. v. City of New York, 29 N.Y.3d 340, 358 (2017); accord Hernandez v. State of New York, 173 A.D.3d 105, 115 fn.3 (3d Dept.

2019)(striking down a statute that violated farm laborers’ right to equal protection under strict scrutiny but noting that “were we to conclude that the constitutional right to organize and collectively bargain is not fundamental, we would nonetheless find that it is an important constitutional right deserving of heightened scrutiny” and citing Anonymous v. Rochester).

DOCCS’ Actions As Applied to Mr. Johnson Do Not Meet Any Level of Constitutional Scrutiny

Although respondents contend that “the Legislature acting rationally in not exempting any [Level 3 offenders] from the SARA requirement,” (Resp. Br. at 29), Mr. Johnson is not asking to be exempt from the SARA requirements. Nevertheless, it should be noted that, for the reasons stated in our main brief, the risk that Mr. Johnson poses to children and the efficacy of the SARA law in addressing that risk, does not meet any level of scrutiny. See App. Br. at 16-25.

As respondents recognize, Mr. Johnson’s offenses do not involve children (Resp. Br. at 34).⁶ Nevertheless, respondents cite People v. Knox,

⁶ Respondents’ contention that offenders may “cross over from one type of victim to another, including from adults to children,” citing Doe v. Miller 405 F.3d 700, 722 (8th Cir. 2005) (Resp. Br. at 34), misstates the case. Expert testimony in Doe, while acknowledging there “was no way to predict whether a sex offender would ‘cross over’ in selecting victims from adults to children,” indicated that offenders were likely “to stay in [the same] age range.” Id. Notably, the expert “did not believe residential proximity made ‘that big of a difference.’” Id. Moreover, the single study cited by respondents for the proposition that an offender who abused an adult might switch to an adolescent victim (Resp. Br. at 34), not only noted that it was an “exploratory study . . . based on a small sample of Canadian federal inmates, which may not be representative of all sex offenders” id. at 116, but it

12 N.Y.3d 60 (2009), for the proposition that the SARA residency requirement is “rationally related to the legitimate purpose of protecting children from sex crimes.” (Resp. Br. at 26). Knox, however, cuts against respondents. In Knox, this Court said that a SORA designation may be applied to offenders who, although their conduct involved no actual, intended or threatened sexual misconduct, were convicted of unlawful imprisonment or kidnapping of a child. This Court found that there was a constitutionally protected liberty interest, although not fundamental, in the substantive due process context in not being required to register under a misleading label, i.e., as a sex offender. Knox, 12 N.Y.3d at 66-67. Applying rational basis review, however, this Court found that the interest in protecting children from sex crimes justified applying the label of “sex offender” to those convicted of certain crimes involving children, even if there was no obvious sexual component to their crimes.

Here, in contrast, Mr. Johnson’s liberty interest as a parole grantee to be free from indefinite confinement vastly exceeds a defendant’s right to be free from a “misleading label” and must merit more than the rational basis review in Knox. In this case, the liberty impacted--the truest form of liberty,

noted the general acceptance that sex offenders “tend to specialize in their sexual offending, confining themselves to one victim type” and “offenders targeting children and those targeting adults remained in the same category, [it was only] those offending against adolescents [who] were likely to switch either to adults or children” Id. at 98-99.

i.e., to be free from indefinite physical confinement—vastly exceeds the liberty interest recognized in Knox and demands more exacting scrutiny.⁷

Moreover, critically, as applied here, SARA cannot be used to justify holding Mr. Johnson—a parole grantee with no child victim—in prison indefinitely when Mr. Johnson is willing and able to comply with the SARA requirements and is only being prevented from doing so by DOCCS’ unilateral actions (Resp. Br. at 9, noting that “Petitioner asked to be released to the New York City Department of Homeless Services”). In the substantive due process analysis, there must be a balance between the due process liberty interest asserted (here, Mr. Johnson’s right, as an indigent parole grantee, to be free from indefinite incarceration), against the State’s interest in achieving the goals of SARA which, as explained below, would not be undermined by Mr. Johnson’s release.

In this regard, respondents maintain that DOCCS has satisfied its general duty under C.L. §201(5) to assist inmates with finding SARA-

⁷ It bears noting that there are variations in the degrees of risk recidivism and the potential harm inflicted within the category Level 3 offenders. In this regard, the SORA statute makes plain that a risk level designation is to assess both “the risk of a repeat offense by a sex offender and the threat posed to public safety.” C.L. §168-1(5). The Guidelines specifically note the vast difference in the threat to public safety between a child molester and one who “rubs himself against women in a crowded subway.” Guidelines, at 2, 7. As the Guidelines recognize, the conduct involved here poses far less danger to the community than other types of violent or non-violent sexual conduct.

compliant housing. In the context of the housing options actually available to Mr. Johnson, respondents have not satisfied their duty. Not statutorily and certainly not as part and parcel of its obligation to not arbitrarily deny Mr. Johnson, a parole grantee, his substantive due process right to be free from indefinite confinement (App. Br. at 26, asserting that respondent has neither met its obligation under “C.L. Sec. 201(5) nor due process”). DOCCS summarily declares that it has given Mr. Johnson resources, without identifying what those resources are, to identify residences on his own and has investigated those residences—namely, his brother’s South Carolina address and the New York City shelter system (Resp. Br. at 38-39).

Tellingly, however, respondents wholly ignore Mr. Johnson’s indisputable contention that, because NYC is a right-to-shelter city, aside from any wait list agreement between DOCCS and DHS, he would be afforded a SARA-compliant bed if he were released and permitted to present himself at the intake shelter or if, in the alternative, DOCCS were to present him at the intake shelter (App. Br. at 27). DOCCS refusal to afford Mr. Johnson either option not only falls short of its mandate to assist under C.L. § 201(5), but it also violates his substantive due process rights under the circumstances here. This is particularly true when, knowing that this option is available, respondents still contend that they are entitled to hold Mr.

Johnson, who is indigent, in prison for the rest of his life unless he can identify other SARA-compliant housing. As noted, Mr. Johnson has identified readily available SARA-compliant housing. It is the NYC shelter system (Resp. Br. at 38-39)(noting that Mr. Johnson had proposed “two residences for investigation and approval: his brother’s home in South Carolina and the NYCDHS shelter system”).

Respondents choose to ignore Mr. Johnson’s claim that he could secure a SARA-compliant bed in the NYC shelter system because they have no answer to it. In People ex rel Bonilla v. Superintendent, No. 2020/51174 (Sup. Ct. Dutchess Co., June 28, 2020)(decision and hearing transcript attached herein, see Addendum), the Associate Commissioner for the Department of Homeless Services in charge of shelter operations, Yvonne Tinsley-Ballard, gave fully-credited testimony that DHS immediately would provide a SARA-compliant bed to any person brought to the New York City intake shelter.⁸ She stated that, pursuant to the Callahan Consent Decree—a consent decree entered in a litigated matter against DHS that was resolved in 1981, see Callahan v. Carey, Final Judgment by Consent, Index No. 42582/79 (Sup. Ct., N.Y. Cnty. Aug. 26, 1981), New York City is a right-to-

⁸ In Mr. Bonilla’s case, the court (Acker, J.) granted Mr. Bonilla’s writ and ordered Mr. Bonilla’s immediate release to a SARA-compliant DHS shelter (A.1-A.9). DOCCS elected not to appeal the ruling.

shelter city and DHS must provide appropriate housing to anyone who presents at an intake shelter (A.17). Ms. Tinsley-Ballard further confirmed unconditionally that DHS can, and must, provide a SARA-compliant bed to any individual who presents themselves at a DHS intake shelter (A.21-22, A.54). These placements occur in addition to the ten beds that DHS automatically sets aside for inmates who are brought by DOCCS each month off of DOCCS' internal SARA waitlist (A.34-35).

The Bonilla court credited Ms. Tinsley-Ballard's uncontroverted testimony in all respects (A.1-9). The court ruled that the Callahan Consent decree "mandates that DHS find SARA compliant housing for those who present at the shelter seeking such housing" (A.4). The court went on to find that "Ms. Tinsley-Ballard testified that if a person who required SARA compliant housing presented to a DHS shelter, DHS cannot deny them and must find them a SARA-complaint bed. Notably, [] DHS will find SARA compliant beds for these individuals even if there were no vacancies."⁹ (A.3);

⁹ In this regard, Ms. Tinsley Ballard testified, in such a case, they simply would move someone who did not require a SARA-compliant bed, into a different shelter, thereby freeing up a SARA-compliant bed (A.34, A.55-57). Ms. Tinsley-Ballard explained that the SARA-compliant shelters also housed people who were not sex offenders or in need of SARA-compliant housing (A.44). For example, on the day preceding the hearing, Ms. Tinsley-Ballard explained that there were 143 vacancies in the shelter system in general (A.57). Ms. Tinsley-Ballard unequivocally confirmed that they would "accommodate any [individuals requiring SARA-compliant beds] who walked through that front door" (A.56-57).

see also Gonzalez v. Annucci, 32 N.Y.3d 461, 489 (2018)(Wilson, J., dissenting)(“had DOCCS released Mr. Gonzalez to any homeless shelter in New York City, the City would have been required to find him a bed, because the City guarantees (indeed must guarantee) housing for every homeless person who requests it”).

Thus, it is DOCCS that is preventing Mr. Johnson from accessing his legal right to SARA-compliant housing and is confining him in violation of the Constitution. DOCCS has the ability to meet the stated goals of the SARA law in a manner that balances the State’s interest in SARA restrictions against Mr. Johnson’s constitutional rights and his liberty interest.¹⁰ Yet, they have chosen, rather, to extinguish Mr. Johnson’s liberty interest under their claimed unfettered right to incarcerate him indefinitely –possibly for the duration of his life sentence. In so doing, DOCCS unilaterally has determined that they have the unconditional right to administer the SARA law in a way that eviscerates human liberty. Notably, DOCCS claimed right to impose

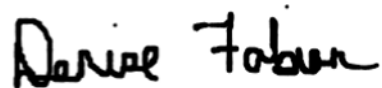
¹⁰ As explained in our opening brief, even short of releasing Mr. Johnson to a SARA-compliant shelter, there are myriad other ways to balance the competing interests involved in this case, including electronic home monitoring and temporary release to a non-SARA compliant shelter or address. See, e.g., Arroyo v. Annucci, 61 Misc.3d 930, 940 (Sup. Ct. Albany Co. 2018); App. Br. at 28-31; see also Khan v. Annucci, 2020 WL 5540315 (2d Dept. 2020)(noting that parole had granted the parolee, who had a child victim, “significant leeway in visiting his family at [their] apartment even though it was not SARA compliant”).

indefinite confinement is inexorably tied to Mr. Johnson's poverty—his inability to locate and afford a place to live that is more than 1,000 feet from a school. This Court can and should find that the Constitution requires DOCCS to strike a different balance, one that honors the right to liberty, while at the same time achieving the goals of SARA.

CONCLUSION

FOR THE REASONS STATED ABOVE AND IN APPELLANT'S MAIN BRIEF, THE DECISION OF THE APPELLATE DIVISION SHOULD BE REVERSED.

Respectfully submitted,

A handwritten signature in black ink that reads "Denise Fabiano". The signature is written in a cursive, slightly slanted style.

JANET E. SABEL
Attorney for Petitioner-
Appellant

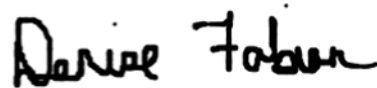
DENISE FABIANO
Of Counsel
September 25, 2020

AFFIRMATION OF COMPLIANCE
PURSUANT TO 22 NYCRR § 500.13(c)(1)

Denise Fabiano, an attorney in the Office of The Legal Aid Society, hereby affirms that according to the word count feature of the word processing program used to prepare this brief, a serifed proportionally spaced typeface was used, as follows:

Name of typeface: Times New Roman
Point size: 14 text; 12 footnotes
Line spacing: Double

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, table of authorities, proof of service, certificate of compliance, or any authorized addendum containing statutes, rules, regulations, etc., is 4,710.



Denise Fabiano, Esq.

To be argued by
DENISE FABIANO
(15 minutes)

COURT OF APPEALS
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK EX REL.
FRED JOHNSON, DIN # 09A1104, NYSID # 04899722M,

APL-2019-00147

Petitioner-Appellant,

-against -

**SUPERINTENDENT, ADIRONDACK CORRECTIONAL FACILITY, AND NEW
YORK STATE DEPT. OF CORRECTIONS AND COMMUNITY
SUPERVISION,**

Respondents.

ADDENDUM

JANET E. SABEL

Attorney for Petitioner-Appellant
THE LEGAL AID SOCIETY
Criminal Appeals Bureau
199 Water Street, 5th Floor.
New York, N.Y. 10038
(212) 577-3917
dfabiano@legal-aid.org

DENISE FABIANO
Of Counsel
September, 2020

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS : CIVIL TERM

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The People of the State of New York,
ex rel. Luis Bonilla, DIN# 16A2855,
NYSID# 08547635Y,

Petitioner, WRIT OF
HABEAS CORPUS

-against- INDEX NO.
2020/51174

Superintendent, Fishkill Correctional
Facility; New York State Department of
Corrections and Community Supervision,
Respondents.

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Dutchess County Courthouse
10 Market Street
Poughkeepsie, New York 12601
June 25, 2020

BEFORE: HONORABLE CHRISTIE J. ACKER
Justice of the Supreme Court

APPEARANCES:

THE LEGAL AID SOCIETY
CRIMINAL APPEALS BUREAU
Attorneys for Petitioner
199 Water Street
New York, New York 10038
BY: PAULINE SYRNIK, ESQ.
and
ANDREA YACKA-BIBLE, ESQ.

LETITIA JAMES
ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorneys for Respondents
One Civic Center Plaza, Suite 401
Poughkeepsie, New York 12601
BY: HEATHER RUBINSTEIN, ESQ.

Jennifer DeCelestino
Senior Court Reporter

1 THE COURT: This shall constitute the
2 decision and order of this Court.

3 Petitioner Luis Bonilla commenced this habeas
4 corpus proceeding seeking to be immediately released
5 from Fishkill Correctional Facility, where he is
6 currently being housed in what has been designated a
7 residential treatment facility or "RTF". In April of
8 2016, Petitioner was convicted and sentenced to a
9 four-year determinative term as well as five years of
10 post-release supervision. Because Petitioner had
11 been designated a Level 2 sex offender and his crime
12 was committed against a minor, he is subject to the
13 residency requirements of Executive Law 259-c(14),
14 otherwise known as the Sexual Assault Reform Act or
15 SARA. As a result of this, upon release, Petitioner
16 must reside at an address that is more than 1,000
17 feet from school grounds.

18 The writ alleges that because Petitioner is
19 indigent and cannot afford SARA compliant housing, he
20 is completely reliant upon the New York City shelter
21 system. He maintains that instead of releasing him
22 to a New York City shelter operated by the Department
23 of Homelessness Services, also known as DHS in this
24 decision, when he reached his maximum expiration
25 date, Respondent DOCCS transferred Petitioner to

1 Fishkill's RTF. It is uncontested that Petitioner
2 reached the maximum expiration date for his
3 determinate sentence on August 10th, 2019, over 10
4 months ago and he remains at Fishkill RTF.

5 By decision dated June 9th, 2020, I scheduled
6 a hearing to determine whether Petitioner can be
7 immediately released to a New York City DHS shelter.
8 The hearing commenced on June 24th, 2020 and
9 continued to today, June 25th, 2020. Petitioner
10 presented two witnesses, Yvonne Tinsley-Ballard and
11 Deborah Diamant. Ms. Tinsley-Ballard is an associate
12 commissioner for New York City DHS and she oversees
13 shelter operations. She testified about the 1981
14 Callahan Consent Decree which she described as
15 mandating DHS to provide shelter to anyone who
16 requests it. Although the Callahan Consent Decree
17 predates SARA, she testified that the decree requires
18 DHS to find shelter for SARA restricted individuals
19 as well. In fact, Ms. Tinsley-Ballard testified that
20 if a person who required SARA compliant housing
21 presented to a DHS shelter, DHS cannot deny them and
22 must find them a SARA compliant bed. Notably, she
23 clearly stated that DHS will find SARA compliant beds
24 for these individuals even if there were no
25 vacancies. Her testimony also established that there

1 is an agreement between DHS and DOCCS, where DHS
2 reserves 10 SARA compliant beds per month for inmates
3 being released by DOCCS.

4 Petitioner also called Deborah Diamant, who
5 is a Director of Government Relations and Legal
6 Affairs for the Coalition of the Homeless. The
7 coalition is a not for profit that is, as relevant
8 herein, the Court appointed monitor of single adult
9 homeless shelters in New York City based upon the
10 Callahan Consent Decree. Her testimony was largely
11 cumulative of Ms. Tinsley-Ballard's, and she also
12 confirmed that the Callahan Consent Decree mandates
13 that DHS find SARA compliant housing for those who
14 present at the shelter seeking such housing. She had
15 further testified as to the vacancies and available
16 beds indicating that only one period in the last two
17 weeks where there were no vacant beds.

18 Respondent called one witness, Stacey Dorsey,
19 the Reentry Manager for DOCCS for Manhattan and
20 Staten Island as well as the DOCCS/DHS liaison.
21 Among other duties, Mr. Dorsey is responsible for
22 placing every DOCCS releasee with SARA restrictions
23 who seeks housing with DHS. She also testified about
24 the agreement between DOCCS and DHS where 10 SARA
25 restricted persons are chosen by DOCCS per month and

1 sent to DHS. According to Ms. Dorsey, these
2 individuals are chosen from the RTF and held past
3 lists maintained by DOCCS. Those individuals on said
4 list who have been held the longest past their
5 maximum expiration date or CR, which I believe is
6 conditional release date, are the ones chosen each
7 month to be brought to DHS, and to be clear, I know
8 that the CR date is for the held past list, the
9 maximum expiration is for the RTF list. There was no
10 evidence presented whether the agreements between DHS
11 and DOCCS is a written one, when such agreement
12 began, or whether the terms of the agreement have
13 changed since its inception. There was no testimony
14 that DOCCS is prohibited from bringing more than 10
15 individuals per month to DHS.

16 After hearing the testimony, the Court finds
17 that all witnesses were credible, mutual and very
18 competent. I have no doubt that DOCCS and DHS are
19 doing their best to comply with the law. However, I
20 also note that I am only deciding this writ by
21 Mr. Bonilla. This is not a class action, and if it
22 were, my decision may well be different. Further, I
23 am determining that DHS is not a necessary party as I
24 am not ordering DHS to do anything. Petitioner has
25 established that if he was brought to DHS, DHS will

1 find him SARA compliant housing. Respondents have
2 not provided this Court with any evidence to the
3 contrary, nor have they established that DHS shelter
4 housing would be noncompliant with Petitioner's
5 post-release restrictions. Respondent's arguments
6 are focused more on the convenience of DOCCS and DHS
7 and their concern about Petitioner leap-frogging
8 ahead of others, which is irrelevant in this habeas
9 corpus proceeding for Mr. Bonilla. As Respondent
10 routinely brings SARA restricted releasees to DHS, it
11 is obvious that DHS maintains SARA housing which has
12 been found acceptable by Respondent. As for any
13 concern that Petitioner may not provide correct
14 information regarding his SARA status at intake to
15 DHS, Respondent can process Petitioner and
16 communicate with DHS in the same manner as it does
17 with the 10 releasees that are brought to DHS each
18 month. In sum, all of the concerns raised by
19 Respondents are either irrelevant to this particular
20 writ or the Court can address those concerns by way
21 of this order. Indeed, the terms of this order are
22 intended to track the procedures already in place for
23 releasees from DOCCS to DHS.

24 Accordingly, Petitioner has established that
25 SARA compliant housing is available to him.

1 Petitioner has demonstrated by a preponderance of the
2 evidence that he is entitled to immediate release to
3 a DHS shelter and his Petition is granted to this
4 extent. Respondent shall process Petitioner in
5 accordance with the agreement that they have in place
6 with DHS so that the Petitioner may be discharged on
7 or before July 1st, 2020. Respondent shall discharge
8 Petitioner, transport him and provide DHS with all
9 information about Petitioner as it would normally
10 proceed pursuant to its agreement. Petitioner must
11 submit an order on notice in conformity with this
12 decision.

13 As I indicated, this shall constitute the
14 decision and order of this Court.

15 Before we close, is there anything further?

16 MS. SYRNIK: Your Honor, I would just like to
17 note if it would be possible to e-mail us an
18 e-certified copy of the decision to us and to
19 Respondents and to DOCCS so that they are able to as
20 quickly as possible process the paperwork for his
21 release?

22 THE COURT: You can -- the intention is that
23 this Court's decision was done on the record. So,
24 when you submit the order, you can state for the
25 decision stated on the record, and you can order a

1 copy of the transcript from the Court Reporter.

2 MS. SYRNIK: Thank you so much, your Honor.

3 THE COURT: Okay. Is there anything else
4 before we close?

5 You're muted, Heather.

6 MS. RUBINSTEIN: Thank you for the
7 Respondents, your Honor. Thank you.

8 THE COURT: I want to thank the attorneys
9 very much. I appreciate that it is not easy to do
10 this kind of hearing remotely. I want to express my
11 deep gratitude to Jennifer, the Court Reporter, and
12 thank you for making my job easy in terms of
13 proceeding on this hearing.

14 So, I hope everybody has a nice weekend. I
15 would like you to submit an order on notice to
16 Mr. Rubinstein, and you can upload it, and if there
17 are any comments, of course, Mr. Rubinstein, please
18 let us know right away regarding any objections to
19 the proposed order.

20 I can so order the transcript, and whoever
21 pays for it, you can work that out, or whoever is
22 ordering it is paying for it. Okay?

23 MS. SYRNIK: Thank you, your Honor.

24 * * *

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Dated: _____

So Ordered:

Hon. Christi J. Acker
Justice Supreme Court

C E R T I F I C A T E

I, JENNIFER DECELESTINO, Senior Court Reporter, in and for the State of New York, County of Dutchess, do hereby certify that the foregoing proceedings, taken at the time and place mentioned above, is a true and accurate transcription of my stenographic notes to the best of my ability.

Jennifer Decelestino

JENNIFER DECELESTINO

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS : CIVIL TERM

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The People of the State of New York,
ex rel. Luis Bonilla, DIN# 16A2855,
NYSID# 08547635Y,

Petitioner, WRIT OF
HABEAS CORPUS

-against- INDEX NO.
2020/51174

Superintendent, Fishkill Correctional
Facility; New York State Department of
Corrections and Community Supervision,
Respondents.

----- X

Dutchess County Courthouse
10 Market Street
Poughkeepsie, New York 12601
June 24, 2020

BEFORE: HONORABLE CHRISTIE J. ACKER
Justice of the Supreme Court

APPEARANCES:

THE LEGAL AID SOCIETY
CRIMINAL APPEALS BUREAU
Attorneys for Petitioner
199 Water Street
New York, New York 10038
BY: PAULINE SYRNIK, ESQ.
and
ANDREA YACKA-BIBLE, ESQ.

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ATTORNEY GENERAL OF THE STATE OF NEW YORK
Attorneys for Respondents
One Civic Center Plaza, Suite 401
Poughkeepsie, New York 12601
BY: HEATHER RUBINSTEIN, ESQ.

Jennifer DeCelestino
Senior Court Reporter

1 THE COURT: Good afternoon. This will start
2 the proceeding of Luis Bonilla against Leroy Fields.

3 May I have the attorneys' appearances for the
4 record?

5 MS. SYRNIK: Yes, your Honor, Pauline Syrnik,
6 the Legal Aid Society, counselor for petitioner.

7 MS. YACKA-BIBLE: Andrea Yacka-Bible of the
8 Legal Aid Society, co-counsel for petitioner.

9 THE COURT: And for the AG.

10 MS. RUBINSTEIN: Heather Rubinstein,
11 Assistant Attorney General, Poughkeepsie regional
12 office for the state respondents, your Honor.

13 THE COURT: Thank you.

14 Ms. Syrnik, I can hear you, but if there is
15 some way you can turn up your volume a little bit.

16 MS. SYRNIK: Sorry. Is that better?

17 THE COURT: That is a little better. Can you
18 turn it up a little more?

19 MS. SYRNIK: Let me see if I just move the
20 laptop off this stand.

21 Is that better by any chance, your Honor?

22 THE COURT: Yes, much better.

23 MS. SYRNIK: I apologize. It was on a stand,
24 so maybe it was blocking the sound.

25 THE COURT: That's okay.

1 So, this is an application by the petitioner
2 for a writ of habeas corpus. The issue today is
3 whether or not the petitioner is entitled to
4 immediate release, and rather than me characterizing
5 the party's position, I'm going to ask that you very
6 briefly set forth what you believe the issue is
7 today, and I'm going to turn to the petitioner first,
8 Ms. Syrnik.

9 MS. SYRNIK: Yes, your Honor. It is our
10 position that Mr. Bonilla has a legal right to
11 shelter in New York City, that he will be able to act
12 as if DOCCS takes him to a shelter, and that will be
13 the argument that we are maintaining today, that he
14 is entitled to immediate releases due to that legal
15 right to shelter.

16 THE COURT: Okay. Ms. Rubinstein.

17 MS. RUBINSTEIN: Our position, your Honor, is
18 that DHS is a necessary party in this matter, and
19 that the Department of Corrections and Community
20 Service cannot force DHS as an independent entity to
21 accept our sex offenders into their program based on
22 our needs versus their needs and their availability.

23 THE COURT: Okay. Am I correct in stating
24 that the petitioner here is subject to a SARA hold
25 and an RTF, and I can state this, one of my concerns

1 is whether or not he will be released to SARA
2 compliant housing in accordance with the law. So, I
3 want to tell everybody as I told you when I first
4 conferenced this case with you, this -- I'm going to
5 take a practical approach to this case, and I need to
6 know practically that if I'm going to grant this
7 application that he will be going to SARA compliant
8 housing. Okay?

9 MS. SYRNIK: Yes, your Honor.

10 THE COURT: We agree that the petitioner has
11 the burden of proof, and do we agree the burden of
12 proof is preponderance of the evidence?

13 MS. SYRNIK: Yes, your Honor.

14 MS. RUBINSTEIN: Yes, your Honor.

15 THE COURT: Okay. So, with that in mind, I'm
16 going to ask that, Ms. Syrnik, you call your first
17 witness.

18 MS. SYRNIK: Your Honor, I call Yvonne
19 Tinsley-Ballard who is from the Department of
20 Homeless Services, which is also known as DHS, to the
21 stand.

22 THE COURT: So, Ms. Ballard, if you could
23 turn your video on. You do that by going to the blue
24 circle at the bottom of the screen that looks like a
25 video camera and hit that, and then it will say begin

1 video conference, and then you hit that.

2 THE WITNESS: Can you see me now?

3 THE COURT: Not yet. Can you see us?

4 THE WITNESS: Can you hear me? Obviously you
5 can hear me.

6 THE COURT: Okay. So, Ms. Ballard --

7 THE WITNESS: Yes.

8 THE COURT: -- it's okay that it freezes. I
9 just want to make sure that we can hear you clearly.
10 Are you in a room with Wi-Fi? It doesn't seem like
11 the connection is that good.

12 THE WITNESS: I'm in a room with Wi-Fi, yes.

13 THE COURT: Okay. I can't really see you.
14 Is there a way that you can move away from that light
15 that is right behind you? Sorry.

16 THE WITNESS: That's all right. That's all
17 right. Let me see. How's this?

18 THE COURT: Yes, much better.

19 Does everybody agree that it is better?

20 Good morning, Ms. Ballard. I'm going to ask
21 that you raise your right hand.

22 (YVONNE TINSLEY-BALLARD was sworn by the
23 Court.)

24 THE COURT: Thank you. Could you please give
25 us your name, spelling your name, please.

Direct - Y. TINSLEY-BALLARD - Ms. Syrnik

1 THE WITNESS: Yvonne, Y-V-O-N-N-E, Tinsley,
2 T-I-N-S-L-E-Y, Ballard, B as in boy A-L-L-A-R-D.

3 THE COURT: Thank you very much. And what is
4 your title?

5 THE WITNESS: Associate commissioner for the
6 Department of Homeless Services.

7 THE COURT: Okay. Ms. Syrnik.

8 MS. SYRNIK: Thank you, your Honor.

9 DIRECT EXAMINATION BY MS. SYRNIK:

10 Q. Ms. Yvonne Tinsley-Ballard, what is your current
11 role at DHS?

12 A. I'm an associate commissioner with the Department
13 of Homeless Services over shelter operations for single
14 adults and adult families.

15 Q. And how long have you been in this role?

16 A. A little over a year, about 15 months.

17 Q. And what do your current duties entail?

18 A. So, I oversee roughly about 150 shelters of
19 single adult male and females and adult families, couples.

20 Q. And how long have you worked at the Department of
21 Homeless Services or the agency that is now known as DHS?

22 A. For 35 years.

23 Q. And what were your prior roles and
24 responsibilities?

25 A. Prior to becoming a commissioner, I was the

1 assistant commissioner, and I was responsible for intake
2 and assessment for the single adult and adult -- single
3 adult side.

4 Q. And are you familiar with the process of intake
5 for DHS shelter placement for single adult males?

6 A. Yes.

7 Q. Have you ever conducted shelter intake?

8 A. Yes.

9 Q. Are you familiar with the 1981 Callahan Consent
10 Decree in New York City?

11 A. Yes.

12 MS. SYRNIK: Your Honor, I would like to
13 introduce the Callahan Consent Decree previously
14 marked as Petitioner's Exhibit A and submitted via
15 e-mail to the Court, respondents and to the
16 petitioner's witness this morning.

17 THE COURT: Ms. Rubinstein.

18 MS. RUBINSTEIN: Respondent has no objection.
19 It is a public record. I would however note for the
20 record that Department of Corrections and Community
21 Services and the named respondent are not parties to
22 that agreement.

23 THE COURT: Okay. Thank you.

24 So, Exhibit A will be marked into evidence.

25 (Whereupon, Petitioner's Exhibit A was

1 received in Evidence.)

2 Q. Are you familiar with the contents of Exhibit A,
3 the Callahan Consent Decree, Ms. Ballard?

4 A. I am.

5 Q. What does the Callahan Consent Decree mandate in
6 terms of right to shelter on DHS?

7 A. For DHS the Callahan Consent Decree mandates that
8 anybody that comes into the shelter requesting, single
9 adult males and females, that we are legally mandated to
10 provide a bed for them.

11 Q. Can you explain your understanding of the
12 Callahan Consent Decree and the right to shelter as
13 applies to single adult males in New York City?

14 A. So, basically overall if anyone comes through the
15 front door and says, well, I need a bed, we would be
16 mandated to give them a bed, a Callahan compliant bed.

17 Q. So, is it correct to say if a single adult male
18 presented himself at an intake shelter, you would provide
19 him a bed; correct?

20 A. Correct.

21 Q. Does DHS provide individuals placements in beds
22 that are appropriate according to an individual's needs?

23 A. As long as that person does not have a disability
24 that would prevent them from performing their own ADL's,
25 correct.

1 Q. And could you just for the Court, could you just
2 say what an ADL is?

3 A. It's the independent living skill. So, a person
4 that comes into shelter would have to be able to bathe, be
5 able to care for themselves, take their own medicine, walk
6 around without assistance or anything like that.

7 Q. Great. Thank you.

8 And are you familiar with the requirements of the
9 Sexual Assault Reform Act also known as SARA?

10 A. Correct, yes.

11 Q. What is your understanding regarding the
12 requirements necessary for residents to comply with SARA
13 Law?

14 A. So, someone who is what we would call SARA
15 restricted, they are required to be placed in a setting
16 that is not less than 1,000 feet away from schools or day
17 cares.

18 Q. Thank you.

19 MS. SYRNIK: Your Honor, I would like to
20 introduce the Adult Shelter For Daily Statistic
21 Reports compiled by DHS from June 10th to present day
22 previously marked as Petitioner's Exhibit B and
23 submitted via e-mail and submitted to respondents
24 this morning.

25 THE COURT: Okay. I heard you, but I just

1 want you to slow down going forward.

2 Ms. Rubinstein.

3 MS. RUBINSTEIN: I would object at this
4 point, your Honor, for lack of foundation.

5 MS. SYRNIK: If your Honor allows, I will set
6 foundation for this record.

7 THE COURT: Yes, please.

8 Q. Ms. Tinsley-Ballard, are you familiar with
9 Exhibit B?

10 A. Yes.

11 Q. What do you recognize it to be?

12 A. So, that is our statistical report that we
13 generate daily. It lists all the shelters. It lists all
14 of the capacities and the vacancies that we have on a
15 daily basis.

16 Q. And were these documents made in the regular
17 course of business?

18 A. Correct.

19 Q. Now, does DHS make these documents in the regular
20 course of business?

21 A. Yes.

22 Q. Are the entries in the documents made at or near
23 the time of events recorded in them?

24 A. Yes.

25 MS. SYRNIK: I move Petitioner's Exhibit B

1 into evidence, your Honor, if allowed.

2 THE COURT: Ms. Rubinstein.

3 MS. RUBINSTEIN: If I may, your Honor, voir
4 dire just for relevance?

5 THE COURT: Yes.

6 MS. RUBINSTEIN: Ms. Tinsley-Ballard, is
7 there anything in that document that reflects how
8 many beds are available for single men who need SARA
9 compliant housing?

10 THE WITNESS: It doesn't specifically address
11 like SARA compliant beds. We know there is a list of
12 shelters that we know are SARA compliant that are on
13 the stats.

14 MS. RUBINSTEIN: Your Honor, without that
15 information, the document is not relevant to this
16 hearing.

17 THE COURT: I think that goes to weight
18 rather than admissibility, so I will admit Exhibit B
19 into evidence. It may be marked into evidence.

20 (Whereupon, Petitioner's Exhibit B was
21 received in Evidence.)

22 MS. SYRNIK: Thank you, your Honor.

23 Q. Do the Adult Shelter Daily Statistic Reports,
24 also known as Exhibit B, show the capacity of each DHS
25 shelter and how many vacancies are present?

1 A. Yes.

2 Q. If these reports contained in Exhibit B were
3 filtered to show only SARA compliant location, would it
4 have the data to show how many SARA compliant beds were
5 available and how many vacancies were present on a given
6 day?

7 A. Correct.

8 Q. Going back to the right to shelter, are
9 individuals subject to SARA restrictions excluded from
10 this right to shelter in New York City?

11 A. No, they are not.

12 Q. What would happen to an individual subject to
13 SARA who presented himself at an intake shelter?

14 A. We would take him in as we would any other
15 individual that enters request to shelter and process him
16 accordingly.

17 Q. Would DHS provide that SARA restricted individual
18 with a SARA compliant bed?

19 A. Yes.

20 Q. Could you go into a little more detail what the
21 process is like for providing that SARA restricted
22 individual a SARA compliant bed on DHS's end?

23 A. So, basically the process is, you know, an
24 individual comes in. They are identified as someone who
25 is SARA restricted.

1 Well, let me back up. Individuals come into
2 shelter and they ask for shelter, so they are sent through
3 the intake. An intake basically does like the basic
4 demographic information. You know, we'll try to divert
5 you out of the system to see if you have any place else to
6 go. If not, then you will go a step further and you'll
7 see a worker who will basically go into more depth as far
8 as interviewing you. They will find out, you know,
9 whether there is mental health, substance, if you have
10 parole, if you have SARA restrictions, and then based on
11 those answers, we would refer you to an assessment site.

12 So, with an assessment site, we have four, but
13 only two of them are SARA compliant, so someone who comes
14 in that needs a SARA compliant facility would be referred
15 either to one of the two shelters, either Schwartz or BRC
16 McGuinness.

17 Q. And would that SARA restricted individual be then
18 given a SARA compliant bed in one of those assessment
19 shelters?

20 A. Yes.

21 Q. So, if Mr. Bonilla was presented to the intake
22 shelter or he came to a DHS intake shelter, would he be
23 given a SARA compliant bed by DHS?

24 A. Yes he, would.

25 MS. SYRNIK: Thank you, your Honor. That is

1 all of the questions I have for now for Ms. Ballard.

2 THE COURT: Thank you.

3 Cross examination.

4 MS. RUBINSTEIN: Thank you, your Honor.

5 CROSS EXAMINATION BY MS. RUBINSTEIN:

6 Q. Ms. Ballard, I know you said that you had 150
7 shelters within your range of supervision. How many are
8 there in total, DHS shelters in total in the system?

9 A. Roughly now, we have done some density
10 relocations, so I want to say upwards it is maybe about
11 170, 180 beds -- shelters now.

12 Q. And of those 180 shelters, there are only the two
13 that you referred to earlier that you are aware of that
14 are SARA compliant?

15 A. No, there are -- actually for the single adult
16 male, there are roughly about 10.

17 Q. And do you know the names of the other 10
18 shelters that can also house individual SARA compliant
19 persons?

20 A. Yes, yes.

21 Q. And what are the names of the other eight
22 facilities?

23 A. Anna's Place, Willow, Clark Thomas, HELP Creston.

24 THE COURT: One more time. I'm sorry. We
25 lost you there for a minute.

1 THE WITNESS: HELP Creston.

2 THE COURT: Okay.

3 A. There's HELP SEC.

4 THE COURT: I didn't get that either. HELP,
5 what is the second word?

6 THE WITNESS: S-E-C, SEC.

7 THE COURT: Thank you.

8 A. There's HELP Meyers and there's Borden. Now,
9 Borden -- I just want to throw a caveat. Borden is a
10 shelter that is -- while it is SARA restricted, you have
11 to be a veteran.

12 That's it.

13 Q. So, if I understand that correctly, Borden has an
14 additional requirement, even though it would accept a SARA
15 compliant individual, that person must also be a veteran
16 in order to be placed in that facility; is that correct?

17 A. Correct.

18 Q. How many beds are currently unoccupied and
19 available at those SARA compliant shelters?

20 A. Right now?

21 Q. Correct.

22 A. I would have to look at stats to see that.

23 Q. If you look at what Petitioner's counselor has
24 given you as Exhibit B, can you tell how many were
25 available at the time that those statistics were printed?

1 THE COURT: And excuse me. I just for the
2 record, can we be clear when Exhibit B -- what date
3 that involves? So, that involves beds as of what
4 date?

5 THE WITNESS: So, she said for June 9th.

6 MS. SYRNIK: Sorry, your Honor. If I could
7 just clarify since I set the record, if that's okay,
8 what they are. It's from June 10th to present day.
9 So, we have present date, so it would be the records
10 which would show for yesterday, but they were given
11 today from DHS. It ranges from June 10th to today,
12 June 24th.

13 MS. RUBINSTEIN: Your Honor, the witness has
14 the exhibit, so I don't think it is necessary for
15 Petitioner's counsel to --

16 THE COURT: I agree. So, if you three are
17 questioning, you can just establish, Ms. Rubinstein,
18 as of what date.

19 MS. RUBINSTEIN: Thank you, your Honor.

20 Q. Ms. Tinsley, my understanding is that
21 Petitioner's counsel provided you with what has been
22 marked as Exhibit B. It's some sort of statistical
23 printout?

24 A. Correct.

25 Q. And what is your understanding of what dates that

1 statistical printout reflects?

2 A. It's more than one stat. So, we generate these
3 stats on a daily basis. So, the stats that she's given me
4 encompasses different days, so a series of days.

5 Q. Thank you.

6 Can you tell from the document what dates it
7 encompasses?

8 A. Hold on. So, the stats are from June 10th all
9 the way to -- hold on, until the night of June 23rd. Or
10 wait. I'm sorry. June 24th. Sorry. June 24th.

11 Q. Okay. It is approximately a two-week period?

12 A. Yes.

13 Q. And can you tell from Exhibit B during that
14 two-week period on any -- can you delineate individual
15 dates during that two-week period or do those statistics
16 encompass the entire two-week period?

17 A. It encompasses the two weeks.

18 Q. Okay. So, if I asked you how many SARA compliant
19 beds were available in DHS for an individual male on say
20 June 18th, you wouldn't be able to answer that question
21 based on Exhibit B?

22 A. I would be able to answer them not as an entire
23 number. I would be able to look up each shelter that I
24 just named for you and tell you if there were vacancies
25 for that day.

1 Q. On -- specifically on June 18th?

2 A. Yes.

3 Q. Okay. So, for example, on June 18th how many
4 SARA compliant beds would have been available in the DHS
5 system?

6 A. Okay. Hold on. The night of June 18th; right?

7 Q. Correct.

8 A. Hold on one minute. Hold on. Let me do this
9 this way.

10 I'm sorry. This is taking an extremely long
11 time.

12 THE COURT: Take your time.

13 THE WITNESS: All right.

14 A. All right. So, here we go. So, Schwartz had --
15 now, I'm sorry. Keep in mind Schwartz and McGuinness are
16 assessment sites, right. So, okay, HELP Meyers had none.
17 Right, HELP Meyers had zero. Anna's Place had none.
18 Willow had one. Yeah, Willow had one. I did Anna,
19 Willow. Okay. And then Keener had none. I'm sorry. I
20 should have included Keener. I apologize. I left them
21 off. That is SARA compliant, Keener. Clark Thomas had
22 zero. HELP had -- HELP SEC had four, and I did Keener,
23 HELP SEC, Meyers. I'm looking for Willow. I told you
24 Willow had one. Okay. So, Willow had one. HELP SEC had
25 four. Clark Thomas had none. Creston had -- oh, I need

1 Creston. Creston had zero. So, Creston has zero. So, we
2 have five, six -- five, five beds for that night.

3 Q. Now, you had explained that --

4 A. And now, hold on. That's five, and then for
5 Schwartz, which is an assessment site, and McGuinness we
6 had zero.

7 Q. Now, what is the relevance of it being an
8 assessment site?

9 A. So, what happens is when individuals initially
10 come into request services, if they are brand new into the
11 shelter system or they have been out more than a year,
12 they have to go through an intake, and then they have to
13 go through assessment. So, assessment is basically a 21-
14 day shelter that you stay in where, like I said, they will
15 go into more depth as far as what you're -- they will
16 assess mental health, they will assess substance, they
17 will assess employability all in an effort to provide you
18 or refer you into a shelter that would best meet your
19 needs. So, Schwartz and McGuinness, because they are
20 assessments, you are there for 21 days, and then they will
21 refer you into -- if they could not divert you at that
22 point, they would send you into a program shelter.

23 Q. That assessment, is that verified by anyone? I
24 know you were discussing earlier that you take demographic
25 information, including information like things like if the

1 person is on parole or requires SARA compliant housing.
2 Is that information verified by anybody or is that solely
3 based on what the person presenting to you -- the
4 information that the person presenting to you provides to
5 you?

6 A. Some of it is what the person provides to us, but
7 we have what we call an out-case management system which
8 is called Cares. We have linkages up to parole, different
9 other agencies, and so once that individual comes in and
10 we enter them into the system, it will populate certain
11 things. So, if a person is on parole, we would be able to
12 verify that basically because Cares will automatically
13 match up with parole, and it will show who that person's
14 parole officer is, how long they are on parole, that kind
15 of stuff.

16 Q. Would it indicate to you what the conditions of
17 their parole release include?

18 A. No.

19 Q. And would it reflect if somebody needs SARA
20 compliant housing?

21 A. No, it wouldn't.

22 Q. You also were referencing the fact that the
23 numbers that you are discussing are to the night of. So,
24 does Exhibit B in front of you reflect how many beds would
25 be available this evening within your shelter system?

1 A. No, because it doesn't have -- let me see. It
2 has the stats from the 23rd. The stats that were given
3 today -- hold on. So, the stats, the last sets, stats
4 that are dated for today reference the night, last night,
5 what was in the system last night. So, those vacancies,
6 our vacancies in our shelter system can be very fluid.
7 So, as of 2:00, well, even though it says last night, it's
8 as of 2:00 this morning, that's when the last counts go
9 in. So, based on that 2:00 count, these are the final
10 numbers for yesterday. Whatever vacancies show can be
11 very fluid. People can move out of the system during the
12 day, and that would, you know, generate more additional
13 vacancies. People can come in which would decrease the
14 number of vacancies.

15 Q. And is there any way for you to be able to
16 predict the number of beds that would be available on any
17 given day?

18 A. No. I mean -- not specifically, no.

19 Q. So, there wouldn't be anyway for you to be able
20 to predict how many SARA compliant beds would be available
21 on any particular day?

22 A. No.

23 Q. And I think if I understood your testimony from
24 earlier, the example of June 18th, there were five
25 available beds that were SARA compliant within the entire

1 DHS system on June 18th?

2 A. Correct.

3 Q. And four of those were this HELP Second or HELP
4 SEC facility?

5 A. HELP SEC, yes.

6 Q. Now, would a person who came that was seeking
7 SARA compliant housing, would they have to go through an
8 assessment at Schwartz or McGuinness in order to obtain
9 one of those beds at HELP SEC --

10 A. Yes.

11 Q. -- or could they just arrive at HELP SEC?

12 A. No, they would have to go through assessment.

13 Q. And approximately how long does that assessment
14 take?

15 A. Assessment can take up to 21 days. Sometimes
16 it's longer than that. It really depends on what the
17 assessment final outcome as far as what would be the most
18 appropriate shelter for you and the availability of beds
19 in that type of shelter.

20 Q. Okay. So, if I understand correctly, you first
21 have to do some length of time at Schwartz or McGuinness
22 after initial intake prior to being placed in another
23 facility?

24 A. Correct.

25 Q. So, somebody who arrived at Schwartz or

1 McGuinness on June 18th wouldn't necessarily have been
2 able to be placed in one of those four beds because they
3 would have had to have gone through your intake and
4 assessment at either Schwartz or McGuinness prior to being
5 placed at HELP SEC?

6 A. Yes.

7 Q. And there's no predetermined amount of days at
8 Schwartz or McGuinness prior to that placement at HELP SEC
9 if I am understanding correctly? It could be 21 days?

10 A. It could be up to 21 days, yes. It could be one
11 or two days or it could be 21 days.

12 Q. And my understanding from the example was that
13 there was zero beds available at Schwartz or McGuinness on
14 June 18th, is that my --

15 A. Correct.

16 Q. Okay.

17 A. Correct.

18 Q. Now, as of last night, since what my
19 understanding is that your Exhibit B has placement up
20 until last night, can you tell from that document last
21 night how many beds were available at Schwartz or
22 McGuinness for a person who is seeking SARA compliant
23 housing?

24 A. Oh, that's 22nd.

25 Q. Take your time.

1 A. Okay. So, last night --

2 Q. So, that would be the evening of June 23rd if I
3 have my date -- my days are blending into each other.

4 A. So, last night -- wait a second. That's the
5 hotel. Last night McGuinness had three beds and Schwartz
6 had zero.

7 Q. And prior to the two a.m. assessment, you would
8 not have known that three beds were available. So, there
9 is no way for you to predict say on June 21st that you
10 would have three beds available at McGuinness for a person
11 who was seeking SARA compliant housing?

12 A. No.

13 Q. Is there some time during the day that is a
14 cutoff point at which you will not accept new persons into
15 the system or can --

16 A. No.

17 Q. So, they can come at any time?

18 A. Any time. We run 24 hours a day, seven days a
19 week.

20 Q. So, if -- for example, if you happen to have your
21 statistics for right now, even if it indicated there was a
22 bed at McGuinness, that doesn't necessarily mean that in
23 an hour that placement for a SARA compliant person would
24 still be available? There is nothing stopping somebody
25 from appearing in the next hour seeking SARA compliant

1 housing that takes that one available bed?

2 A. That's correct, but we would still -- we would
3 have to find -- if someone came in that required a SARA
4 restricted bed, we would have to find a bed.

5 Q. And where would you find -- where would you sort
6 of find this mystical bed?

7 A. So, it's not really mystical. Schwartz and
8 McGuinness, like I said, are assessments. All right. So,
9 one of the things that we do is if we have somebody that
10 walks in unexpectedly and they are required to have a SARA
11 restricted bed, then we can't deny them and not give them
12 a bed. So, one of the things we could do, we would call
13 up McGuinness or Schwartz and we would say, okay, how many
14 people -- do you have anybody that has finished their
15 assessment and they are just waiting for a bed, okay, and
16 based on what they tell us, we would move those people
17 into other vacancies throughout the system freeing up a
18 bed.

19 Q. Now, there's one word in that answer that I want
20 to focus on. You started with the word unexpectedly, if
21 somebody appeared unexpectedly. Are there persons that
22 come into your system who you expect, that you can predict
23 that will be entering your system?

24 A. Yes.

25 Q. And who are those persons?

1 A. So, we do have an agreement with DOCCS that we
2 take in up to 10 SARA restricted individuals into our
3 system a month.

4 Q. So, those are persons that you are able to
5 preplan for because you are predicting them; correct?

6 A. Correct.

7 Q. And you know specifically which days and at what
8 time to expect them?

9 A. Roughly. We know specifically the days. Eight
10 of them will come in on a Wednesday -- even though it is
11 10 a month, eight will come in on a Wednesday, and then we
12 set aside two beds for those SARA restricted that require
13 a mental health bed.

14 Q. And how is it that you can know in advance that
15 those beds will be available for those expected persons
16 coming from the department -- State Department of
17 Corrections and Community Supervision that require SARA
18 compliant housing?

19 A. So, DHS has an agreement with DOCCS. It's
20 been -- you know, this agreement has been around for a
21 while, in which they will notify -- they know that they
22 will send 10 per month. They have a 10 per month of SARA
23 restricted individuals that with regard to shelter. They
24 tell us ahead of time, and throughout that time period, we
25 will place beds in reserve. So, when I say reserve, it

1 means that so if I know that 10 are coming in on
2 Wednesday, today is Wednesday, the 24th, then I have from
3 like June 1st or 2nd to set aside beds. So, as vacancies
4 exist, you know, or they pop up, somebody moves out of the
5 system, there is a vacancy say at Schwartz, I will put
6 that bed on hold. That means that Schwartz will not be
7 able to utilize that bed because we know that someone is
8 coming in on the 24th and the bed will be reserved for
9 that person.

10 Q. So, is it possible that when your statistics
11 reflect that there are beds available for SARA compliant
12 housing that those beds are actually being held for
13 somebody you are expecting from the Department of
14 Corrections and Community Supervision?

15 A. It could be from DOCCS, it could be from a
16 hospital. You would see, you know, beds in reserve. You
17 wouldn't see it as a vacancy.

18 Q. Okay. So, the four beds that you referred to for
19 June 18th for HELP SEC, those were an actual vacancy and
20 not beds being held for Department of Corrections and
21 Community Supervision?

22 A. Correct, those were actually vacancies.

23 Q. Now, the agreement that you referenced between
24 DHS and the Department of Corrections and Community
25 Supervision, were you a party to that agreement?

1 A. Not the initial agreement, no.

2 Q. And do you know if it's in writing or if it's
3 just some sort of a verbal agreement so that DOCCS doesn't
4 completely inundate you with persons who are in need of
5 SARA compliant housing?

6 A. I'm not certain if it is actually in writing like
7 as a procedure or protocol. I know that we have -- you
8 know, I have written notes.

9 Q. Do you meet routinely with staff at New York
10 State Department of Corrections and Community Supervision
11 to sort of discuss these ongoing issues regarding SARA
12 compliant housing for the homeless in your area?

13 A. Not on a regular basis, no.

14 Q. Okay. Are you familiar with Stacey Dorsey?

15 A. Yes.

16 Q. And how are you familiar with her?

17 A. Stacey is the -- my counterpart on the DOCCS
18 side. She is our liaison as far as SARA releases from
19 DOCCS.

20 Q. And would you describe her as being helpful?

21 A. Yes, she is.

22 Q. And would you say that you have a good working
23 relationship in that both of you are seeking the same
24 outcome, which is to find placement for persons who are
25 being released from DOCCS' custody who need SARA compliant

1 housing?

2 A. Correct.

3 Q. And so, the two of you sort of work almost as
4 colleagues basically to get to this end result that
5 everybody is seeking?

6 A. Yes.

7 Q. And have you ever found that either Ms. Dorsey or
8 anybody else that you have met with in State DOCCS is
9 trying to prevent somebody who is being released who needs
10 SARA compliant housing from finding housing in your DHS
11 system?

12 A. No.

13 Q. When -- do you ever affirmatively advise the New
14 York State Department of Corrections and Community
15 Supervision that you have beds available for SARA -- for
16 persons who need SARA compliant housing?

17 A. I'm sorry?

18 Q. Do you ever affirmatively -- so, you said that
19 you had -- I believe you said you had three empty beds
20 yesterday at McGuinness --

21 A. Right.

22 Q. -- and that those three beds could have accepted
23 SARA compliant persons, persons needing SARA compliant
24 housing.

25 A. Okay.

1 Q. Did anybody -- would anybody have called the
2 State Department of Corrections and Community Supervision
3 and said we have three beds available at McGuinness, it is
4 SARA compliant, you can send us three additional persons
5 in need of SARA compliant housing?

6 A. No.

7 Q. And have you ever done that?

8 A. No.

9 Q. Are you familiar with Social Services Law Section
10 20, Sub 8 which requires DHS to consider whether there is
11 a concentration of registered sex offenders at one
12 particular shelter or in a particular community?

13 A. I'm sorry. Repeat that.

14 Q. The Social Services Law Section 20, Sub 8
15 requires DHS to consider, and I'm quoting here from the
16 regulation, "whether there is a concentration of
17 registered sex offenders," and then not quoting but just
18 referencing, at that shelter or in the community in
19 general.

20 A. I'm aware about the community, not so much as far
21 as the shelters.

22 Q. Okay. So, when you were accepting persons into
23 those SARA compliant shelters, are you considering that
24 there are -- that Social Services Law Sections 28 and 18
25 NYCRR 352.36, Sub B, Sub 1, Sub i, and there's also 18

1 NYCRR 352.36, Sub A, Sub 4 and Sub ii. So, and I
2 apologize, Ms. Tinsley-Ballard. So, you're generally
3 familiar with the fact that -- sorry.

4 MS. RUBINSTEIN: Strike that, your Honor.

5 Q. Do you consider how many persons who are
6 requiring sex offender placement are placed in each one of
7 your facilities?

8 A. No.

9 Q. Okay. And so, you don't -- you don't try to
10 comply with the Social Services Law or the New York State
11 Rights when you are contemplating placing these SARA
12 compliant persons within your facilities?

13 A. No.

14 Q. Does New York City or DHS have policies
15 restricting the concentration of sex offenders at each
16 particular facility?

17 A. Not that I'm aware of.

18 Q. Would there be somebody else within DHS or New
19 York City that would -- that you know of that would be
20 familiar with that?

21 A. I would imagine our legal, someone in our legal
22 department.

23 Q. So, you have never been advised to contemplate
24 that when determining whether or not to give housing to
25 somebody who is requiring SARA compliant bedding?

1 A. We have a number of -- a finite number of beds,
2 of shelters that we can place sex offenders in, SARA
3 restricted sex offenders in, and so that's how we use
4 those.

5 Q. And in each of those, are there any limitations
6 as to how many sex offenders you will accept into each of
7 those particular facilities that can accept SARA compliant
8 -- for persons who need SARA compliant housing?

9 A. Not that I'm aware of, no.

10 Q. Do you know if that verbal agreement between
11 DOCCS and DHS contemplates DHS's requirement that they not
12 overly burden a particular community with persons who are
13 requiring sex offender housing or sex offender compliant
14 housing?

15 A. No.

16 Q. So, it's possible that that agreement between DHS
17 and DOCCS prevents there from being a violation of those
18 -- the Social Services Law and the New York State Law
19 regs?

20 MS. SYRNIK: Objection.

21 A. I'm sorry. Repeat that.

22 THE COURT: Overruled.

23 Q. That agreement between DHS and the Department of
24 Corrections and Community Services that you were
25 discussing earlier wherein DOCCS will bring you eight to

1 10 persons per month that needs SARA compliant housing,
2 are you aware whether or not that agreement was instituted
3 in part because it contemplated the Social Services Law
4 and the regulations that I referenced that asked that the
5 concentration of sex offenders be contemplated when
6 housing persons who are in need of SARA compliant housing?

7 A. All right. Are you trying to say, so I'm clear
8 on what you are asking, because that's a lot, are you
9 trying to say that we came up with the number of 10 in
10 respect to we didn't want to overconcentrate to a specific
11 area, shelter or community?

12 Q. Not necessarily that the agreement came to that
13 particular number, but that when that agreement was
14 developed and instituted that the people that developed
15 and instituted it were contemplating the fact that there
16 were these regs and statutes that DHS had to comply with
17 that asked that you contemplate not overwhelming a
18 particular community. Is it fair to say? If you don't
19 have any knowledge as to that, that's a completely
20 understandable explanation.

21 A. I was going to say I can't answer it, because I
22 wasn't part of the initial agreement.

23 Q. All right. So, it's fair to say that it could
24 have potentially have been part of that discussion, you
25 just don't know?

1 A. Correct, I can't answer it, because I wasn't part
2 of that agreement.

3 Q. Do you know currently how many sex offenders
4 subject to those SARA compliant housing requirements are
5 currently within the DHS shelter system?

6 A. No, I don't.

7 Q. Would there be anyway for you to determine that?

8 A. Probably. I can probably have someone tracking
9 the numbers.

10 Q. Would it be as easy to produce as say Exhibit B
11 was?

12 A. Probably not, no, because we do -- stats are done
13 daily. I'm not so sure that -- so, with the SARA
14 restricted, like I said, our beds are fluid, so you might
15 have today where a shelter -- let's say Keener that has
16 say maybe 100 SARA restricted, you would have to know if
17 all 100 of those SARA restricted parolees are actually in
18 that site at that -- on any given night. Some may leave
19 and go to a hospital or some may be rearrested, so we
20 don't give daily stats like that for SARA restriction.

21 MS. RUBINSTEIN: Before I pose the next
22 question, I just want to make sure that the Judge is
23 still with us.

24 THE COURT: Yes, I'm right here.

25 MS. RUBINSTEIN: Okay. You're not visible.

1 I just wanted to make sure.

2 THE COURT: Oh, really. I can see myself.

3 MS. RUBINSTEIN: There we go. This is all
4 very strange to me. You were invisible.

5 Q. So, the facilities we were discussing who accept
6 the persons who need SARA compliant housing also accept
7 persons who do not need SARA compliant housing; correct?

8 A. Correct.

9 Q. Would you -- and so, you cannot predict on any
10 given day how many persons who are just seeking shelter
11 who don't need SARA compliant housing will arrive on your
12 doorstep seeking housing?

13 A. We can't predict. There are -- well, there are
14 some ways that we can kind of based on our stats, based on
15 studies and, you know, analysis of what walks through our
16 front door on different days of the week or something like
17 that. We can kind of predict like on average how many
18 people, but to predict an actual number of the number of
19 people who are going to come into our system on any given
20 day, no.

21 Q. So, what you are saying, you know that there are
22 trends, but you don't know the specifics?

23 A. There are trends, correct.

24 Q. But there is no way to predict the specific
25 numbers per day?

1 A. No.

2 Q. But the agreement with DOCCS gives you some
3 availability to plan in advance for at least eight to ten
4 people who are going to be seeking SARA compliant housing?

5 A. Correct.

6 Q. So, is it also fair to say that you wouldn't know
7 how many Level 2 and Level 3 sex offenders currently
8 reside at each of your SARA compliant shelters that allow
9 single adult men?

10 A. Not a specific number, no.

11 Q. And in order to assess that, what kind of
12 documents would you have to review to establish that
13 number?

14 A. We would have to reach out to each site and get
15 the information from each shelter.

16 Q. And is that something that you would ordinarily
17 do?

18 A. No.

19 Q. And do you know if somebody did that, and those
20 trends that you were discussing, do you know if anybody
21 actually contemplated those trends prior to making that
22 agreement with the Department of Corrections and Community
23 Supervision or if those trends were contemplated when they
24 made that agreement?

25 A. I wouldn't know. I wasn't part of that

1 decision-making on the agreement.

2 Q. The agreement that you have been implementing
3 with DOCCS that you had these 10 persons that you expect
4 each month, would you say that that makes your work a
5 little bit easier that there's some predictability about
6 that?

7 A. Yes, I would say that.

8 Q. And is it fair to say that you can guarantee
9 those beds because you know in advance that there are
10 persons -- when those persons are coming that need them?

11 A. Yes.

12 Q. And is it fair to say you can't do that if you
13 didn't know in advance?

14 A. Correct, we wouldn't be able to plan.

15 Q. Are there any types of wait lists established
16 within DHS, a waiting list?

17 A. In shelters, yes.

18 Q. And does each shelter maintain its own waiting
19 list?

20 A. Yes, they do.

21 Q. And is there any sort of generalized central
22 waiting list that's maintained by DHS or is it each
23 individual shelter that maintains their waiting list?

24 A. So, it's each individual, but it's in our case
25 management system, in our Care system. So, not everybody

1 has a wait list, but there's a function in Care, so if
2 somebody comes to any shelter and let's say there are no
3 beds available, that person or staff will put that person
4 on a wait list in Cares. So, it tells them like what time
5 the person got there, and then there's an outcome of
6 course, if the person got a bed, if the person was
7 transported to another shelter, you know, something like
8 that.

9 Q. So, does -- is the wait list -- are there a
10 number of persons on that wait list at any given time?

11 A. For what type of shelter, though?

12 Q. For the shelters that will accept persons who are
13 in need of SARA compliant housing. Let's limit our scope
14 to those.

15 A. Some of them have wait lists, yes.

16 Q. Okay.

17 A. It's a daily wait list, so to speak.

18 Q. Okay. Is there any way to establish what the
19 outcome of each of those persons that are on that daily
20 wait list?

21 A. Yes, we would have to go into the specific
22 shelter and look at, you know, whatever date and see if
23 there were people on the wait list, and that wait list
24 staff is supposed to generate an outcome, so -- and that
25 outcome could be the client received a bed there, the

1 client was transported to another bed, so...

2 Q. So, is there a wait list for the Schwartz and
3 McGuinness shelters that do the assessments?

4 A. On what particular day?

5 Q. On any particular day would there potentially be
6 a wait list for the Schwartz or McGuinness shelters?

7 A. They wouldn't have technically what they call a
8 wait list, because they are assessment sites. So, what
9 you would have is a pending arrival list. So, people who
10 we send from intake to the assessment sites, staff has to
11 -- how can I say, staff has to assign them to that
12 particular shelter, and they open up the case there and
13 they -- you would see like a pending arrival list, and as
14 each individual arrives at that particular shelter, then
15 the staff at say Schwartz or McGuinness would check them
16 in to show that they actually arrived and they were given
17 a bed.

18 Q. Okay. So, now, I'm going to acknowledge I'm a
19 little confused because that answer made it sound like
20 intake and assessment were at two separate locations.

21 A. They are.

22 Q. Okay. So, where would intake occur?

23 A. Intake is at -- for single adult males is at 400
24 East 30th Street.

25 Q. For single adult males, where would intake occur?

1 A. At 400 East 30th Street, 30th Street Shelter.

2 Q. And that was not on your list of places that can
3 take persons who need SARA compliant housing; correct?

4 A. Right. 30th Street is not SARA compliant.

5 Q. So, that's intake?

6 A. Correct.

7 Q. And then if the person who has come for intake
8 that requires SARA compliant housing, would you know at
9 intake or would you not have been provided with that
10 information until the assessment process?

11 A. We would know at intake.

12 Q. And that's based just on what the person tells
13 you because the verification happens at assessment?

14 A. No.

15 Q. Okay. I misunderstood. I apologize.

16 A. So, once again, so when a client comes into
17 intake, they -- staff generate -- which is at 30th Street,
18 staff generates their case in Cares. So, Cares is linked
19 to certain agencies, in this case DOCCS, and there's a
20 link, and so when we click on that link, the client
21 reports, we can see that the client is on parole and we
22 can see who the parole officer is and when that parole
23 will end. The client then also self-reports that I need a
24 SARA compliant shelter. Then there are those that come in
25 with DOCCS who DOCCS has notified us ahead of time that

1 these people are coming in. We already know that they are
2 SARA restricted, and so that will go into the case record,
3 and then we know to refer them to one of the two
4 assessment sites.

5 Q. Is it fair to say that the fact that you know
6 when the Department of Corrections and Community Services
7 is bringing you the persons that require SARA compliance
8 makes it --

9 MS. RUBINSTEIN: Strike that.

10 Q. Does it happen often that a person will come off
11 of the streets into intake seeking SARA compliant housing
12 or is that avoided primarily because of this agreement
13 that you have with DOCCS?

14 A. The agreement helps decrease the number that
15 comes in directly from prison. You know, it's very rare
16 that we get someone who requires SARA restricted that will
17 walk through our front door. I'm not going to say that it
18 doesn't happen. You know, there are nuances and
19 exceptions, but it doesn't happen often.

20 Q. Now, the Cares program that allows you that
21 access, and I just want to clarify for the record, so it
22 gives you the information of the person's parole officer;
23 correct?

24 A. Um-hum, correct.

25 Q. And it tells you how much more time the person

1 has on parole?

2 A. Correct, it tells you the end date of their
3 parole.

4 Q. Does it specifically indicate whether or not they
5 are sex offenders?

6 A. No.

7 Q. Okay. And so, if it doesn't tell you if they are
8 sex offenders, it wouldn't tell you what level of sex
9 offense necessarily; correct?

10 A. Correct.

11 THE WITNESS: I'm sorry.

12 MS. RUBINSTEIN: That's okay. We are all
13 working under very unusual circumstances at the
14 moment. I keep waiting for my dogs to start barking.

15 Q. So, the only way that you can establish somebody
16 needs SARA compliant housing is if they self-report or if
17 the Department of Correctional Services notifies you of
18 that; correct?

19 A. Correct.

20 Q. So, if a person came to you to intake and did not
21 self-report as a sex offender, you could potentially place
22 them incorrectly, potentially? I'm not saying that this
23 has ever happened. I'm not insinuating anybody has done
24 anything wrong, but it is possible without them self-
25 reporting Cares would not sort of notify the person who is

1 trying their best in intake to place somebody properly
2 that they should be placing them in a SARA compliant bed?

3 A. Correct.

4 MS. SYRNIK: Objection to relevance.

5 Mr. Bonilla is in DOCCS custody.

6 THE COURT: Excuse me?

7 MS. SYRNIK: Objection to the relevance of
8 that question.

9 THE COURT: Well, I think the question
10 involves if they were actually delivered by DOCCS as
11 a result of this agreement, that's how I understood
12 it, which I think we all agree, just to be clear,
13 that if I order release of Mr. Bonilla to the shelter
14 system, this isn't going to be pursuant to that
15 agreement. Do we all understand each other on that?

16 Okay. So, is that the way that you meant
17 your question, Ms. Rubinstein?

18 MS. RUBINSTEIN: I'm just trying to
19 establish, your Honor, that -- and this will make
20 more sense when we get to the other half of this,
21 which is DHS is explaining how many placements they
22 have available and how they can or cannot verify
23 persons who have -- who are sex offenders who need
24 SARA compliant housing, and that the way that the
25 current situation works, all of that is not -- none

1 of that becomes an issue, because they are literally
2 being delivered by the Department of Corrections and
3 Community Supervision, so the parole officer already
4 knows to expect them and to be supervising them and
5 they are in SARA compliant housing and -- as opposed
6 to --

7 Q. And I'll ask Ms. Tinsley-Ballard, do you have any
8 understanding as to how many persons are currently
9 confined within the Department of Corrections and
10 Community Supervision who could be released if they had
11 SARA compliant housing available to them?

12 A. No, I do not.

13 Q. Have there ever been in your 15-month tenure, has
14 there ever been a month where fewer than those 10 persons
15 were delivered to you from DOCCS that needed SARA
16 compliant housing?

17 A. No.

18 Q. And has there ever been any request from the
19 Department of Corrections or Community Supervision outside
20 of those 10 persons to take additional people who need
21 SARA compliant housing into the DHS system?

22 A. Yes.

23 Q. And how often does that occur?

24 A. Not too frequently.

25 MS. RUBINSTEIN: I would like to take a short

1 recess, your Honor. I just need to blow my nose.

2 THE COURT: Oh, of course.

3 MS. RUBINSTEIN: I apologize.

4 (Whereupon, a recess was taken.)

5 Q. As far as the persons that you are notified by
6 the Department of Corrections and Community Supervision
7 are coming to your DHS system, are you given their names
8 and any information prior to their intake?

9 A. So, I don't get them directly to me. We have a
10 staff person that works with Stacey from our end. Stacey
11 sends the -- yeah, they do send the names.

12 Q. So, DHS is notified who to expect?

13 A. Yes.

14 Q. In addition to how many to expect and when to
15 expect them?

16 A. Correct.

17 MS. RUBINSTEIN: Okay. I have nothing
18 further, your Honor.

19 THE COURT: Okay. Redirect.

20 MS. SYRNIK: Thank you, your Honor.

21 REDIRECT EXAMINATION BY MS. SYRNIK:

22 Q. Ms. Tinsley-Ballard, would a SARA restricted
23 individual who came into DHS be given a SARA compliant bed
24 even if the assessment is full?

25 A. Yes.

1 Q. So, the bottom line is if DOCCS brought
2 Mr. Bonilla to DHS, could DHS deny him a SARA compliant
3 bed?

4 A. No.

5 MS. SYRNIK: That is all, your Honor, and I
6 apologize again for the sound.

7 THE COURT: Okay. Ms. Rubinstein.

8 Ms. Rubinstein, I can't hear you. We can't
9 hear you. I don't know what happened to your sound.

10 MS. RUBINSTEIN: Sorry. I put you on mute so
11 I wasn't causing problems earlier.

12 RE-CROSS EXAMINATION BY MS. RUBINSTEIN:

13 Q. When all of the SARA compliant housing is full,
14 so there are no beds available --

15 MS. RUBINSTEIN: Sorry. Strike that.

16 Q. Are there any days where your statistics reflect
17 that there are no SARA compliant beds available in DHS
18 system?

19 A. There will be days, yes, that it would reflect
20 that.

21 Q. Okay. And on those days if somebody who needed
22 SARA compliant housing came, what would you do with that
23 person?

24 A. So, he would still go into a SARA compliant bed
25 because he needs that. What we would do, like I said

1 before, if he had to go into assessment, we would look at
2 the assessment sites and see who's ready to be moved, can
3 we expedite. We would have to move someone say out of an
4 assessment site, either Schwartz or McGuinness, to open up
5 a bed for that person.

6 Q. And that's if one person arrived who was seeking
7 SARA compliant housing during the course of business;
8 correct?

9 A. Correct.

10 Q. Have you ever contemplated if you got more than
11 one person seeking SARA compliant housing that arrived
12 outside of the ordinary course of business?

13 MS. SYRNIK: Objection, relevance.

14 THE COURT: Overruled.

15 A. We would basically do the same thing. You know,
16 if they have to have a SARA restricted bed, then we would
17 have to give them a SARA restricted bed, so we would find
18 a way. Like I said, we would move someone out of either
19 Schwartz or McGuinness and then free up a bed for them.

20 Q. So, how many people could you accept unexpected
21 who are seeking SARA compliant housing say today? Say you
22 had SARA compliant persons who were requiring SARA
23 compliant housing arrive at DHS seeking housing, how many
24 could you accommodate?

25 A. We would have to accommodate any that walked

1 through that front door, so it would be based on -- like
2 today I don't have -- hold on. I have -- let me just tell
3 you. As of last night, we had vacancies, right, so
4 depending on how many vacancies that we have in that
5 system. So, in the system we basically have as of last
6 night -- bear with me, and just keep in mind that this is
7 fluid, our vacancies are fluid. So, right now as of last
8 night it shows that we had 143 vacancies in our system, in
9 the men's system.

10 Q. And could you tell us of those 143 how many can
11 accept SARA compliant persons?

12 A. No, I can't tell you that, but -- I can't tell
13 you exactly how many SARA compliants we would be able to
14 accept.

15 Hello.

16 Q. I'm sorry.

17 A. Oh.

18 Q. And you don't know how many --

19 MS. RUBINSTEIN: And I think I asked this
20 earlier. I apologize, your Honor.

21 Q. You don't know how many persons DOCCS is seeking
22 to place, correct, that needs SARA compliant housing?

23 A. Overall in their system, no.

24 Q. Correct. You wouldn't know that?

25 A. No, I wouldn't know.

1 MS. RUBINSTEIN: I have nothing further, your
2 Honor.

3 THE COURT: Okay. Thank you.
4 Ms. Tinsley-Ballard, thank you very much for your
5 time. I can tell you're very busy. I appreciate you
6 taking the time out today to come and testify. Thank
7 you.

8 THE WITNESS: Thank you.

9 THE COURT: So, I'm going to have
10 Ms. Tinsley-Ballard X out of Skype. Is there any
11 objection to that?

12 MS. SYRNIK: No.

13 THE COURT: Ms. Rubinstein?

14 MS. RUBINSTEIN: No. Thank you,
15 Ms. Tinsley-Ballard. We appreciate your appearance
16 today.

17 THE WITNESS: Thank you.

18 THE COURT: You can cross out. Do you know
19 how to do it?

20 THE WITNESS: I'm going to figure this out.
21 Thank you. Enjoy your day.

22 THE COURT: Okay. Thank you.

23 (Witness is excused.)

24 THE COURT: Ms. Syrnik, do you have another
25 witness?

1 MS. SYRNIK: Yes, your Honor, I do. I would
2 like to call Deborah Diamant for the Coalition of the
3 Homeless.

4 THE COURT: Ms. Diamant, would you raise your
5 right hand.

6 (DEBORAH DIAMANT was sworn by the Court.)

7 THE COURT: Thank you. If you could please
8 give us your name, spelling your first and last name.

9 THE WITNESS: Sure. My first name is
10 Deborah, D-E-B-O-R-A-H, and my last name is Diamant,
11 D-I-A-M-A as in apple, N as in Nancy, T as in Tom.

12 THE COURT: And if you could give us your
13 title and your work address.

14 THE WITNESS: I'm the director of government
15 relations and legal affairs at the Coalition For the
16 Homeless which is located at 129 Fulton Street, New
17 York, New York, 10038.

18 THE COURT: Thank you very much.

19 Ms. Syrnik.

20 MS. SYRNIK: Thank you, your Honor.

21 DIRECT EXAMINATION BY MS. SYRNIK:

22 Q. How long have you worked at the Coalition For the
23 Homeless?

24 A. I started my position at the Coalition For the
25 Homeless in February 2019.

1 Q. And have you worked in your current role as
2 director of government relations and legal affairs since
3 February 2019?

4 A. Correct.

5 Q. What kind of work does the Coalition For the
6 Homeless do?

7 A. The Coalition For the Homeless is a 501c3
8 nonprofit organization. We are the court appointed
9 monitor of the single adult shelter system in the City of
10 New York. In 2016 we were asked by the City to mirror our
11 monitoring of the single adult system to the family
12 system, which includes both adult families without minor
13 children and families also with minor children. So, as
14 the court appointed shelter monitor, we are ensuring that
15 the City is complying with the terms of the Callahan
16 Consent Decree signed in 1981, so we have many years of
17 experience as the shelter monitor of the single adult
18 system.

19 Q. Thank you.

20 A. And the coalition itself in addition to serving
21 as the monitor of the single adult shelter system and the
22 family shelter system also has some direct services
23 programs, and part of our role as the monitor of the
24 shelter system both involves in-person monitoring as well
25 as monitoring the daily shelter census, policies and

1 procedures, but also operating essentially a walk-in
2 clinic so that individuals who are homeless can come in
3 and speak with one of our case managers about any problems
4 that they are experiencing within the Department of
5 Homeless Services. Because of the pandemic, we are
6 offering those services via hotline.

7 Q. Thank you.

8 And can you describe a little more what it means
9 to be a shelter monitor?

10 A. Sure. So, as a shelter monitor, we both have
11 24/7 unfettered access to the single adult shelter system.
12 So, we will go into shelters, monitor the physical
13 conditions of the shelters in person, perform outreach to
14 individuals who are staying in shelters and as well as to
15 field concerns, complaints from individuals both in person
16 as well as to our hotline. Again, as the court appointed
17 monitor, we also have access to records of the Department
18 of Homeless Services that enables us to monitor the
19 system. So, you know, in addition to the shelter daily
20 statistics that we receive each morning reflecting the
21 shelter census for the night before, we routinely receive
22 draft procedures that the Department of Homeless Services
23 is looking to implement. We have an opportunity to
24 comment on them and look for ways in which we can both
25 improve the system and ensure that individuals that are

1 seeking beds from the Department of Homeless Services are
2 receiving beds that fit their needs and comply with the
3 Callahan Consent Decree.

4 Q. So, would it be correct to say that the coalition
5 monitors the system through physically inspecting them,
6 monitoring data that DHS gives you and receives in reports
7 from individuals?

8 A. That's correct.

9 MS. RUBINSTEIN: Objection, your Honor,
10 direct examination, not cross examination.

11 THE COURT: Okay. Going forward I would just
12 ask that you not ask leading questions.

13 MS. SYRNIK: No problem, your Honor. I
14 apologize.

15 (Skype interrupted.)

16 THE COURT: Let's go back. I believe that
17 the question related to crisis intervention. I think
18 that's the only question that was asked after the
19 objection.

20 MS. SYRNIK: Would your Honor like me to
21 restate it?

22 THE COURT: Yeah, you have to ask the whole
23 question.

24 Q. Can you talk more about the process about for
25 when an individual comes to the coalition through the

1 Crisis Intervention Services Clinic?

2 A. Sure. So, an individual may walk into our
3 office, make a phone call to us, let us know that they are
4 not in receipt of the services that the city is obligated
5 to provide to them pursuant to the Callahan Consent
6 Decree. When we learn that there is a violation of the
7 Callahan Consent Decree related to whether or not a bed
8 may be appropriate for somebody who may have mobility
9 issues, individuals may have not received proper services
10 relating to meals and laundry, our team of social workers,
11 shelter monitors, et cetera reach out to the Department of
12 Homeless Services staff often via e-mail, sometimes
13 multiple e-mails, following up via telephone and request
14 that the appropriate bed be provided, the meals be
15 provided or so forth alerting the Department of Homeless
16 Services that they're essentially in violation of the
17 consent decree.

18 Q. And when you talk about figuring out a solution
19 with DHS, could you describe the nature of that
20 relationship and how frequently you are in contact with
21 each other?

22 A. So, the Coalition For the Homeless and the
23 Department of Homeless Services are in contact with one
24 another on a daily basis. You know, already I've
25 mentioned that we do receive the -- a copy of the

1 overnight census. So, every morning I wake up, I already
2 have an e-mail from the Department of Homeless Services,
3 but in addition to daily contact that myself and my
4 colleagues have with the Department of Homeless Services
5 both endeavoring to find solutions for clients who are
6 clients of the Department of Homeless Services, I also
7 participate in a weekly telephone call with the Department
8 of Homeless Services' legal team.

9 THE COURT: Can you just slow down, please?

10 THE WITNESS: Sorry. I'll repeat that.

11 A. So, in addition to daily e-mail contact that my
12 colleagues and I have with the Department of Homeless
13 Services in which we are often endeavoring to find
14 solutions to problems faced by our clients, I participate
15 in a weekly telephone call with the Department of Homeless
16 Services' legal team. We also have a monthly meeting with
17 the Department of Homeless Services' program staff, so
18 that includes the program analyst, program administrators,
19 assistant commissioners, deputy commissioners that oversee
20 the single adult shelter system. We also have a somewhat
21 bimonthly/quarterly meeting with the top management of the
22 Department of Homeless Services, and at those meetings
23 administrator Joslyn Carter will participate.

24 Q. And are you familiar with the shelter intake
25 process?

1 A. Sorry. You froze. Can you repeat the question?

2 (Skype interrupted.)

3 Q. Yes. Are you familiar with the shelter intake
4 process?

5 A. I am.

6 Q. And are you familiar with the 1981 Callahan
7 Consent Decree?

8 A. I am.

9 Q. Could you describe what the Callahan Consent
10 Decree mandates from DHS when applied to single adult
11 males that come to the intake center?

12 A. Sure. The Callahan Consent Decree requires that
13 the City of New York provide a bed that is appropriate to
14 the needs of an individual who presents themselves to the
15 Department of Homeless Services requesting a bed in the
16 system. The Department of Homeless Services does not have
17 an application process for single adults. A single adult
18 who needs a bed for the night presents themselves at
19 intake and is required to be given a bed. It is the
20 city's obligation to ensure that they have that bed and
21 that they do not have to wait for an application to be
22 processed, a decision to be made. They are guaranteed a
23 right to a bed in the shelter system.

24 Q. And are SARA restricted individuals excluded from
25 this right?

1 A. No.

2 Q. Can you describe the process of public housing if
3 a SARA restricted individual came to DHS from your
4 understanding?

5 A. If somebody who has SARA restrictions went to DHS
6 intake, they would be provided a bed just as any other
7 individual that walked in that needed a bed that was
8 appropriate to their needs. So, in order to be in
9 compliance with the Callahan Consent Decree, one, person
10 needs to be provided a bed, two, the bed needs to fit
11 their unique needs.

12 Q. And do you know how many SARA compliant shelters
13 DHS has to house single adult males in New York City?

14 A. There are nine shelters that are SARA compliant
15 for single adult men.

16 Q. And do you know the combined capacity of these
17 shelters?

18 A. So, I do know having reviewed last night's
19 shelter census that the actual capacity for the nine
20 shelters was 985 beds. What I mean by actual capacity is
21 that those are the beds that somebody could sleep in at
22 night. It does not include beds that are in reserve or
23 offline. Reserving, held for some reason offline, my
24 understanding typically because there may be some
25 construction going on or conditions that somebody actually

1 can't sleep in that particular bed that night.

2 Q. And would you be able to tell us how many
3 vacancies were in those SARA compliant shelters during
4 this specific period of time?

5 A. Yes.

6 Q. Could you please tell us, if you remember, how
7 many vacancies since June 9th on weekdays when DOCCS could
8 take Mr. Bonilla to a shelter has DHS had in SARA
9 compliant shelters?

10 A. May I refresh my recollection with a document
11 that I have next to me?

12 THE COURT: No objection, Ms. Rubinstein?

13 MS. RUBINSTEIN: I just need to have the
14 document identified.

15 THE COURT: Okay. I would -- I'm a little
16 confused by the question. Does the witness
17 understand the question?

18 THE WITNESS: I do understand it, asking me
19 what the SARA restricted vacancies were in the system
20 for week nights since June 9th. I can either proceed
21 through the exhibits, I believe they have been marked
22 and accepted into evidence, the daily overnight
23 shelter census, or I can refer to a summary that I
24 have those documents.

25 THE COURT: I prefer that you use Exhibit B,

Direct - D. DIAMANT - Ms. Syrnik

1 because that is what everybody can look at.

2 THE WITNESS: Sure.

3 THE COURT: Is the question on an average, on
4 a daily basis or are you asking on June 9th? I'm not
5 really sure what you are asking.

6 MS. SYRNIK: I apologize, your Honor. So, if
7 Ms. Diamant would be allowed to refresh her memory
8 with the summary, then I could give her -- or she
9 would hopefully be able to tell you each night how
10 many there were, but if it's just -- if she's only
11 able to rely on Exhibit B, then I will narrow the
12 timeframe so we are aware of the Court's time.

13 THE COURT: Well, Ms. Rubinstein, what's your
14 position?

15 MS. RUBINSTEIN: I would object to reliance
16 on anything other than that what's already been
17 admitted into evidence as Exhibit B, your Honor.

18 THE COURT: I know she can refresh her
19 recollection with virtually anything, but it makes it
20 difficult for Ms. Rubinstein to actually see.

21 MS. SYRNIK: Your Honor, would it be more
22 acceptable if I shared my screen and had the document
23 open so everyone could see it?

24 THE COURT: Ms. Rubinstein?

25 MS. RUBINSTEIN: Your Honor, there is a

1 difference between refreshing one's recollection and
2 relying on a document for information, so if what you
3 need is to look at the document in order to answer
4 the question, you're relying on the document to
5 answer the question. It's not a refreshment of
6 recollection.

7 MS. SYRNIK: Your Honor, these are documents
8 that have been compiled previously. She has not
9 relied on them. She is just able to look at it to
10 make sure that the numbers that she remembers are
11 correct and in align with the numbers that are
12 present.

13 THE COURT: So, as I started this hearing by
14 saying I'm a very practical person, and I understand
15 why it took Ms. Tinsley-Ballard some time to go
16 through the documents. If these stats have already
17 been compiled and will make it go faster, I think
18 that's better, but I would like to give
19 Ms. Rubinstein -- if the witness were live, she would
20 have the opportunity to look at what the witness was
21 looking at, so that's my problem. Do you have
22 access, Ms. Syrnik, to that document Ms. Diamant is
23 looking at?

24 MS. SYRNIK: Yes, I can either e-mail it to
25 you in one moment -- I'm just going to sign onto my

1 e-mail, or I can share my screen. I'm assuming
2 e-mail is better so it's not on the screen, but I can
3 e-mail it to you in one minute so everyone has it.

4 THE COURT: Ms. Rubinstein, do you have any
5 objection to proceeding in that fashion just for the
6 sake of time? It is 20 to four.

7 MS. RUBINSTEIN: If I have the document in
8 advance, your Honor, then that's fine. I just -- I
9 don't know what she's looking at or what document she
10 is referencing, and there's no way for me to contest
11 the legitimacy of that document if I don't know what
12 it is, and there's been no foundation laid for what
13 it is that she is relying upon.

14 THE COURT: No, I understand, and we all know
15 how recollection is refreshed. This witness has not
16 yet indicated that she doesn't remember, but it would
17 be helpful to her. I'm assuming that she does not
18 remember and she needs to look at the document, and
19 then you are supposed to ask her if it refreshes her
20 recollection, and then she is supposed to put the
21 document down and answer the question. I would just
22 like to get there, and as long as there is no
23 objection, I would ask Ms. Syrnik that you as we are
24 going forward e-mail the document to Ms. Rubinstein,
25 and I understand you have no objection with this

1 procedure; is that correct, Ms. Rubinstein?

2 MS. RUBINSTEIN: So long as I have an
3 opportunity to question the witness with regard to
4 that document after I've been able to review it.

5 THE COURT: Absolutely. In fact, when we
6 finish direct, I'm going to take a break for 10
7 minutes to give the Court Reporter a break, and then
8 we'll move on to cross examination.

9 So, if you would e-mail her that document,
10 please.

11 MS. SYRNIK: Yes, your Honor, I just e-mailed
12 it to everyone, so to Ms. Brady, to Ms. Rubinstein
13 and whoever was on that chain that I had previously
14 e-mailed to.

15 So, Ms. Rubinstein, you should have the
16 document now. Please let me know if you do not.

17 THE COURT: Okay. And would you proceed with
18 your questioning then?

19 MS. SYRNIK: Yes. Thank you, your Honor.

20 Q. Ms. Diamant, would you be able to tell me how
21 many SARA compliant shelter vacancies were present on
22 weekdays as of June 9th, which is when this hearing was
23 ordered?

24 A. Yes, on June 9th there were eight SARA compliant
25 vacancies.

1 Q. And how many vacancies were there on June 10th?

2 A. On June 10th there were 120 vacancies.

3 Q. And could you just please explain to the Court
4 why it is 120 vacancies?

5 A. So, there is clearly a large jump in the number
6 of vacancies from the night of June 9th to the night of
7 June 10th. We do often as the monitor of the single adult
8 shelter system see some mischaracterization of beds, so
9 it's not terribly unusual to see some beds listed as being
10 available that were actually offline or in reserve, and we
11 assume that this large jump is one of those errors in how
12 they categorize the beds, because the nights since
13 June 10th there have been many fewer available vacancies.

14 Q. So, could you please tell us on June 11th how
15 many vacancies there were?

16 A. On June 11th there were three vacancies that were
17 SARA compliant.

18 Q. And how many vacancies were on June 12th that
19 were SARA compliant?

20 A. On June 12th there were two vacancies that were
21 SARA compliant.

22 Q. And then on June 15th, how many vacancies that
23 are SARA compliant?

24 A. There were no vacancies on June 15th that were
25 SARA compliant.

1 Q. And on June 16th, how many vacancies that were
2 SARA compliant?

3 A. On June 16th there was one vacancy that was SARA
4 compliant.

5 Q. And on June 17th, how many vacancies were there?

6 A. There was also one vacancy that was SARA
7 compliant on June 17th.

8 Q. And on June 18th, how many were SARA compliant?

9 A. On June 18th there were five vacancies that were
10 SARA compliant.

11 Q. And on June 19th, how many vacancies were there
12 that were SARA compliant?

13 A. On June 19th there were nine vacancies that were
14 SARA compliant.

15 Q. And on June 22nd, how many vacancies were SARA
16 compliant?

17 A. On June 22nd there were six SARA compliant
18 vacancies.

19 Q. And on June 23rd, which was yesterday, how many
20 SARA compliant vacancies were there?

21 A. There were nine vacancies that were SARA
22 compliant that were available last night.

23 Q. So, as a summary, do you -- how many days were
24 there SARA compliant vacancies available?

25 A. During the period -- during the weeknights of

1 June 9th through last night, every one of those weekday
2 nights there were vacancies except for Monday, June 15th.
3 There were no SARA compliant vacancies in the system that
4 night for single adult men.

5 Q. And would a SARA compliant individual still be
6 given a SARA compliant bed on June 15th even if there were
7 no availabilities listed?

8 A. Yes, the city has an obligation to provide any
9 single adult man that goes to intake with a bed that is --
10 fits their needs and compliant with the Callahan Consent
11 Decree.

12 Q. And are you aware of any instances either where a
13 SARA compliant restricted individual was not given a bed
14 if they showed up at an intake center?

15 A. I am not aware of an individual not receiving
16 such a bed.

17 Q. And would it be appropriate for an individual to
18 contact the coalition to report a violation if they were
19 not given a SARA compliant bed by DHS?

20 A. Sure. You know, whenever a client is not able to
21 resolve an issue themselves, they will often times contact
22 the coalition in any of the ways that they are able to
23 contact us, let us know what is going on, and we will
24 endeavor to ensure that their rights under the Callahan
25 Consent Decree are not being violated and make sure that

1 they get into a bed that is appropriate for their needs.

2 Q. And so, if a SARA restricted individual is not
3 given a bed, it is your belief it is in violation of the
4 Callahan Consent Decree?

5 A. Yes.

6 MS. RUBINSTEIN: Objection, your Honor.

7 THE COURT: Sustained.

8 Q. What do you believe would happen if DOCCS brought
9 Mr. Bonilla to a shelter and he requested a SARA compliant
10 bed?

11 MS. RUBINSTEIN: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. If Mr. Bonilla's right to shelter was perceived
14 to be violated by him through DHS, could he report it to
15 the coalition and would they take appropriate action?

16 MS. RUBINSTEIN: Objection, your Honor.

17 THE COURT: Sustained.

18 MS. SYRNIK: Thank you, your Honor. That's
19 all the questions that I have for now.

20 THE COURT: Thank you.

21 It is currently 3:47. Jen, how about 10
22 minutes for a break? I just want to give the Court
23 Reporter a break. This is hard work.

24 So, if everybody can mute our mics and we
25 will see each other again in 10 minutes. Okay?

1 Thank you.

2 (Recess was taken.)

3 THE COURT: Okay. So, we're back on the
4 record. Direct of Ms. Diamant has concluded, and now
5 we're onto cross examination.

6 Ms. Rubinstein, it looks like you're muted,
7 so if you can turn off your mute and if you can
8 proceed.

9 MS. RUBINSTEIN: Thank you, Judge, for
10 reminding me.

11 CROSS EXAMINATION BY MS. RUBINSTEIN:

12 Q. Ms. Diamat, just to clarify, you're a monitor;
13 correct?

14 A. The Coalition For the Homeless is the court
15 appointed shelter monitor for the single adult shelter
16 system. In 2016 we became the city appointed monitor for
17 the families with children and adult family shelter
18 system.

19 Q. And you used words when answering your questions
20 earlier like request and notify. Would that imply that
21 you cannot force DHS to do something in particular and
22 that you would have to go back to the court to compel DHS
23 to do something?

24 A. If DHS did not try -- if DHS was in violation of
25 the Callahan Consent Decree and they did not resolve that

1 issue outside of court through our informal advocacy,
2 then, yes, we would return to court under Callahan. The
3 Supreme Court has continuing jurisdiction of that case.

4 Q. And you're saying in violation. That would be
5 your opinion, correct, that's not a judicially determined
6 violation? That's just your subjective opinion of them
7 being in violation?

8 A. I would challenge that, because the Callahan
9 Consent Decree is clear on many details of beds, what's
10 appropriate, and so it's not subjective opinion. There
11 are clear violations of Callahan if you've reviewed the
12 consent decree.

13 Q. So, your testimony is that you as the monitor can
14 determine whether or not that consent decree has been
15 violated and you don't need the court's intervention?

16 A. Sure, we can say if there's a violation. I
17 understand what you are getting at, that the court would
18 ultimately make a decision whether or not the consent
19 decree has been violated in an order.

20 Q. Okay. So, you can see that it's only the court
21 that can actually determine if the consent decree has been
22 violated?

23 A. We monitor the consent decree, and sure, the
24 court can determine whether or not the consent decree has
25 been violated.

1 Q. And you work for a separate private
2 not-for-profit, correct, not for DHS or the City of New
3 York?

4 A. We're an independent 501c3, independent
5 organization.

6 Q. And so, for you to effect any definitive change
7 at DHS, you would need to go back to the court to enforce
8 the consent decree; correct?

9 A. No, not correct.

10 Q. You have the independent ability to force DHS to
11 do something that you want them to do?

12 A. We routinely negotiate with DHS around policies
13 and procedures and informally resolve problems that we see
14 so that we don't go back to court. It's in their best
15 interest to resolve things with us outside of court.

16 Q. I understand that, but what you are saying, you
17 are negotiating, so they are willingly coming to you and
18 changing their behavior? You can't make them change their
19 behavior without the court's intervention?

20 A. Sure.

21 Q. And is it also my understanding from your
22 testimony that you become aware of issues when they are
23 brought to you; correct?

24 A. That's one way that we become aware of them.

25 Q. So, you may not necessarily always be aware --

1 your answer with regard to individuals who require SARA
2 compliant housing being denied housing, you said you
3 weren't aware; correct?

4 A. I believe that the question that was asked of me
5 was I aware of anyone who had a SARA compliant restriction
6 whether or not they had been denied a bed. I personally
7 have not received, fielded a complaint from somebody who
8 said that they did not receive a SARA compliant bed, but
9 those type of complaints can certainly come into the
10 coalition.

11 Q. You're just not aware of it? You personally are
12 not aware of that kind of complaint?

13 A. Correct.

14 Q. But there's the possibility that either that
15 happened or that complaint existed and you're just not
16 personally aware of it?

17 A. I'm not aware of it. I've spoken with my
18 colleagues, and in recent months we do not recall --

19 MS. RUBINSTEIN: Your Honor, that's
20 completely nonresponsive.

21 THE COURT: The answer is she's not aware of
22 it. Next question.

23 MS. RUBINSTEIN: Thank you, your Honor.

24 Q. Do you know how many beds in total DHS has that
25 are SARA compliant?

1 A. As of last night that are available --

2 Q. Every single bed that is a SARA compliant bed,
3 not just available, just that exists within the DHS
4 system.

5 A. Yes.

6 Q. How many SARA compliant beds exist within the DHS
7 system?

8 A. I believe last night it was 1,001, but if I can
9 take a look at a document, I can confirm that, but actual
10 capacity last night SARA compliant beds was 985.

11 Q. And all of your information is reported to you by
12 DHS; correct?

13 A. Correct.

14 Q. And in fact, you said when you were going through
15 the numbers that you were utilizing earlier that one of
16 the numbers was clearly a mischaracterization; correct?

17 A. Yes, based upon our experience of seeing the
18 occasional, you know, high number or low number, we were
19 expecting it to be at a different level, yes, we would
20 consider that to be a mischaracterization.

21 Q. And those were numbers provided to you by DHS?

22 A. Correct.

23 Q. And you have no way of independently verifying
24 those numbers? You rely on the information that DHS
25 provides to you?

1 A. Correct.

2 Q. And clearly that information isn't always
3 reliable?

4 A. Sometimes there are numbers that we are -- think
5 may be an error, yes.

6 Q. Have you seen 120 some odd beds ever being
7 available on any other night?

8 A. I, myself, have not seen such a high number, no.

9 Q. And the document that you were utilizing earlier
10 to answer your questions, is that something that you
11 compiled yourself based on numbers given to you by DHS?

12 A. Again, as I have testified earlier, we receive a
13 copy of the daily adult shelters statistics, and we've
14 been tracking it for years. We maintain an Excel
15 spreadsheet where we put the data in those individual
16 PDF's that we receive each morning.

17 Q. So, again, that is based on the information that
18 DHS has provided to you?

19 A. Correct.

20 Q. Okay. When the Callahan Consent Decree was
21 instituted, it's fair to say that they did not contemplate
22 the legislation that came after it regarding SARA
23 compliant housing?

24 A. I would assume that they were not anticipating
25 SARA compliant housing in 1981 when the consent decree was

1 signed.

2 Q. Has anyone, including your organization, brought
3 up to the court a violation or brought legal action trying
4 to enforce the Callahan Consent Decree as it relates to
5 persons who are trying to find SARA compliant housing?

6 A. Not that I recall.

7 Q. And would your organization be the one that would
8 do that?

9 A. If there was a -- if we saw a violation of the
10 Callahan Consent Decree and we were not able to resolve
11 that with DHS through informal advocacy and we saw that
12 DHS continued to violate the Callahan Consent Decree, then
13 we would go to court to enforce the consent decree.

14 Q. And that hasn't happened to your knowledge with
15 regard to SARA compliant housing?

16 A. Correct.

17 Q. If a person who has already been placed in a SARA
18 compliant bed within DHS goes back into custody and is
19 then released and still needs a SARA compliant bed, is
20 that bed held for them by DHS?

21 A. I think it would depend upon how long they were
22 out of the system, but the way that DHS works though is if
23 you've had a bed and you've left the system, if it's been
24 within the past 12 months, you would be able to return to
25 your program shelter. So, truly whether or not it has

1 held, I cannot say, but there is a process in place that
2 you can go back to, quote, unquote, claim your bed.

3 Q. Okay. So, if a person who needs SARA compliant
4 placement which necessitates their being on post-release
5 supervision has their parole violated and they become
6 incarcerated again, the assumption is that they can go
7 back to that program within a year and they would somehow
8 work with them in order to reintegrate them back from once
9 they came, is that sort of a fair --

10 A. Yes.

11 Q. Your not aware of how many persons within the
12 general area that DHS covers is in need of SARA compliant
13 housing; correct? You wouldn't know how many individuals
14 there are either in New York City Department of
15 Correctional Services or in the State Department of
16 Correctional Services who are in need of SARA compliant
17 housing within the DHS system?

18 A. No. I don't know that total number, no.

19 Q. So, you wouldn't be able to say if it is in
20 excess of the 1,001 beds that DHS has that are SARA
21 compliant?

22 A. I wouldn't be able.

23 MS. RUBINSTEIN: I have nothing further, your
24 Honor.

25 THE COURT: Thank you.

Redirect - D. DIAMANT - Ms. Syrnik

1 Redirect.

2 MS. SYRNIK: Thank you, your Honor.

3 REDIRECT EXAMINATION BY MS. SYRNIK:

4 Q. What kind of action, if any, does the coalition
5 take in its role as a court appointed monitor of the
6 Callahan Consent Decree if an individual reported that his
7 right to shelter was denied due to him not receiving a
8 SARA compliant bed?

9 MS. RUBINSTEIN: Objection, your Honor,
10 speculative.

11 THE COURT: Overruled.

12 A. So, if somebody came to us and said that they had
13 not received a bed, they needed to have a bed that was
14 SARA compliant, we would contact the Department of
15 Homeless Services starting with the program analyst and
16 administrator that oversee the system and let them know
17 that this particular individual has not received a bed
18 that fits their needs pursuant to the Callahan Consent
19 Decree and request that an appropriate bed be located for
20 that particular night, transportation be provided if
21 needed and that that individual be able to have a bed that
22 night.

23 Q. And from your previous experience when there is a
24 violation identified by the coalition, how often does DHS
25 work with the coalition to rectify that violation without

1 actually going to court?

2 A. Yeah, DHS routinely does correct, you know, these
3 mistakes in terms of bed placement and will often work
4 with us to find the appropriate bed for our shared
5 clients.

6 MS. SYRNIK: Thank you, your Honor. That's
7 all I have for redirect.

8 THE COURT: Thank you.

9 Recross.

10 MS. RUBINSTEIN: Just very quickly.

11 RE CROSS EXAMINATION BY MS. RUBINSTEIN:

12 Q. So, have you ever actually had to contact -- had
13 to contact DHS with regard to a SARA compliant placement
14 within DHS?

15 A. I have not spoken with my colleagues. They have
16 not -- I imagine we haven't, because people receive SARA
17 compliant beds when they ask for it.

18 Q. And if you had that complaint and you reached out
19 to DHS and said find them a bed and DHS refused, you would
20 have to go back to the court to make them give that person
21 a bed; correct? Your not-for-profit agency couldn't do it
22 on their own?

23 A. We would need to go to court to enforce the
24 consent decree in that situation.

25 MS. RUBINSTEIN: I have nothing further, your

1 Honor.

2 THE COURT: Okay. Ms. Diamant, thank you so
3 much for your time.

4 THE WITNESS: Sure.

5 THE COURT: I really appreciate it, and
6 please feel free -- you're welcome to stay and
7 listen, but please feel free to X out, and we'll call
8 our next witness.

9 MS. RUBINSTEIN: Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you.

12 (Witness is excused.)

13 THE COURT: Ms. Syrnik.

14 MS. SYRNIK: I have no further witnesses,
15 your Honor.

16 THE COURT: Okay. Thank you.

17 Ms. Rubinstein.

18 MS. RUBINSTEIN: We have Stacey Dorsey from
19 New York State Department of Corrections and
20 Community Supervision available, your Honor.

21 THE COURT: Okay. So, Ms. Dorsey, I would
22 ask that everyone pins Ms. Dorsey so we can see her,
23 and if you can turn your video on.

24 So, the only thing I'm going to ask is, for
25 some reason there is a light that looks like heaven

1 coming right down behind you.

2 THE WITNESS: It probably is heaven. Hold on
3 one second.

4 THE COURT: Okay.

5 THE WITNESS: Is that better?

6 THE COURT: Yes, but we can't see you. Why
7 don't you take a seat?

8 Okay. I can see you perfectly. Is everybody
9 else okay with that?

10 MS. RUBINSTEIN: Yes, your Honor.

11 THE COURT: So, Ms. Dorsey, would you please
12 raise your right hand.

13 (STACEY L. DORSEY was sworn by the Court.)

14 THE COURT: Thank you very much. Can you
15 please give us your name, spelling your first and
16 last name.

17 THE WITNESS: Stacey, S-T-A-C-E-Y, middle
18 initial L, last name Dorsey, D-O-R-S-E-Y.

19 THE COURT: Can you please give us your title
20 and your business address?

21 THE WITNESS: I'm the reentry manager for New
22 York State Department of Corrections.

23 THE COURT: But if you don't mind, can you
24 adjust your volume or get a little closer so we can
25 hear you, and I'm going to have you speak a lot more

1 slowly?

2 THE WITNESS: Can you hear me now?

3 THE COURT: That's great. If you can keep
4 doing that, but speak slowly.

5 THE WITNESS: Okay. So, I'm the reentry
6 manager for the New York State Department of
7 Corrections and Community Supervision. I cover
8 Manhattan and Staten Island, and also I'm the DOCCS/
9 DHS liaison for New York City.

10 MS. RUBINSTEIN: And that's D-O-C-C-S for
11 DOCCS?

12 THE WITNESS: Correct.

13 THE COURT: So, Ms. Dorsey, if you don't
14 mind, we're in Poughkeepsie. We speak a lot slower
15 up here.

16 THE WITNESS: No problem.

17 THE COURT: Actually Jen is a very, very good
18 Court Reporter, but it's hard enough to do her job in
19 person, but if you think you're speaking slowly,
20 speak even slower when we're on video. Okay?

21 THE WITNESS: Okay.

22 THE COURT: Beautiful. Thank you.

23 Ms. Rubinstein.

24 MS. RUBINSTEIN: Thank you, your Honor.

25 DIRECT EXAMINATION BY MS. RUBINSTEIN:

1 Q. Ms. Dorsey, first thank you for joining us this
2 afternoon.

3 What are your job responsibilities as it relates
4 to your title of reentry coordinator?

5 A. So, what I do is, I do everything. I oversee
6 everything that is entry related, transitional housing,
7 anger management, substance abuse, employment. I run the
8 gamut.

9 Q. And the reference to reentry is a person who is
10 -- what is the reference to reentry? What types of people
11 are you finding these services for?

12 A. All parolees.

13 Q. And these are parolees that are coming out of
14 state and/or county facilities?

15 A. Well, parolees, if they are coming -- most of
16 them are coming out of state. If they have been
17 incarcerated or violated and sent to a county facility, we
18 also provide services for them once they return back to
19 DOCCS.

20 Q. And what are your job responsibilities with
21 relation to your title of liaison with DHS?

22 A. So, I am responsible for placing every person
23 that has SARA compliant conditions that is released to New
24 York City from state corrections or from county back into
25 DHS. I notify DHS in regards to this person is going to

1 be released on such and such a date. I provide them with
2 his name, social security number, date of birth, and I
3 speak with Johanna Gutierrez. She is the director of
4 shelter operations for DHS, and she is the one that
5 arranges with the deputy control unit to provide a bed for
6 this person that may be coming out or persons.

7 Q. Are you familiar with Ms. Tinsley-Ballard?

8 A. Yes, I am.

9 Q. And how are you familiar with her?

10 A. I've worked with Ms. Tinsley-Ballard as well,
11 especially in cases that seem a little difficult to
12 resolve where I may have SARA compliant cases coming up
13 that has medical issues or whatever the case may be. So,
14 she works closely with me in resolving those issues. That
15 is something that goes above Johanna's head that she can't
16 really speak to.

17 Q. Is it your goal as in the title of liaison to
18 find SARA compliant housing for persons who are eligible
19 to be released from the New York State Department of
20 Corrections and Community Supervision?

21 (Skype interruption.)

22 THE COURT: Would you mind re-asking the
23 question, Ms. Rubinstein?

24 MS. RUBINSTEIN: I don't remember what it was
25 quite honestly, so if we can have it read back, I

1 would greatly appreciate it.

2 (Whereupon, the Reporter read back the
3 requested material.)

4 A. My answer is yes.

5 Q. And is that your primary goal as a liaison with
6 DHS?

7 A. Yes.

8 Q. And what are your main difficulties in
9 successfully completing that goal?

10 A. In terms of DHS?

11 Q. Correct.

12 A. There have been times where there have not been
13 beds available if it was emergency cases, not so much the
14 cases that are coming out of state prison, because those
15 beds are already reserved, but if it is an emergency case,
16 sometimes like in the dead of winter, they may not have a
17 SARA compliant bed available and I may have to wait a day
18 or two or put them in assessment if there's enough room,
19 but that's above Ms. Gutierrez.

20 Q. That's not a rhetorical or fictional, that has
21 actually happened within your job where you've tried to
22 place somebody and the bed has not been available and DHS
23 has said do not bring them?

24 A. Well, they have said, you know, we don't have any
25 beds at this time, maybe tomorrow.

1 Q. And under those circumstances what do you do with
2 the person who's looking for a bed?

3 A. So, if the person is already housed somewhere but
4 has to leave, I try to have the parole officer negotiate
5 wherever he is housed at, so a lot of them stay the night
6 until I can get an actual bed from DHS, or I'll speak to
7 DHS and say, listen, I'm going to actually send this guy
8 because I have no place else for him to go.

9 Q. Did you hear Ms. Diamant testify earlier?

10 A. Yes, I did.

11 Q. Were you familiar with the organization for which
12 she works?

13 A. I've heard of the organization. I've never
14 actually ever worked with them. I didn't know what they
15 did, no.

16 Q. So, you never brought a complaint to them?

17 A. No, I have not.

18 Q. And do you know, have you ever directed anybody
19 to make a complaint to them?

20 A. No, I have not.

21 Q. You heard reference to the Callahan Consent
22 Decree while Ms. Diamant was testifying?

23 A. Yes, I did.

24 Q. Are you familiar with that consent decree?

25 A. Not at all.

1 Q. Do you know --

2 A. Let me just say I've heard that DHS is not
3 supposed to turn anyone away, but I've never actually
4 engaged in that conversation with anyone about it.

5 Q. And is it your understanding whether or not the
6 Department of Corrections and Community Supervision is a
7 party to that consent decree?

8 A. Not to my knowledge.

9 Q. Has anybody ever indicated to you that the New
10 York State Department of Corrections and Community
11 Supervision is obligated to do anything or not do
12 something pursuant to that Callahan Consent Decree?

13 A. No, ma'am.

14 Q. If -- on those occasions where you have had
15 persons looking for SARA compliant housing and you have
16 reached out to DHS and they have told you there were no
17 beds available, is there any way for the Department of
18 Corrections and Community Supervision or you as the
19 representative for the Department of Corrections and
20 Community Supervision to make DHS take that person into
21 their system?

22 A. No.

23 Q. Can you explain to the Court --

24 MS. RUBINSTEIN: Sorry. Strike that.

25 Q. Are you aware of how many persons are currently

1 eligible for release to SARA compliant housing to the
2 area --

3 A. Approximately --

4 Q. Wait.

5 -- to the area which DHS covers, because I know
6 there are persons outside of the New York City area, and
7 some of those are looking for SARA compliant housing, but
8 we're talking just specifically with regard to the New
9 York City area and the area that DHS covers, do you know
10 how many persons there are?

11 A. Okay. Approximately I would venture to say
12 between two and 300. I know on -- we have two lists that
13 we work from. The RTF list and the held past release
14 list. I'm not sure of the number on the RTF list. I
15 believe it is 140 something or 160 something on the held
16 past release list, but that is just an estimate.

17 Q. And those numbers that you gave, that range, is
18 that a pretty standard number?

19 A. It varies. It goes up, it goes down. Depends.
20 I mean, sometimes people are able to locate houses in
21 terms of their families with a SARA compliant address
22 based on the number of people that we get every month,
23 because there are always people being added to it as they
24 reach their maximum expiration date or their CR date,
25 conditional release date. Sorry.

1 Q. Do you know if there's a process that DOCCS goes
2 through with their -- the persons that are eligible for
3 release to SARA compliant housing prior to them being
4 released? Is there any sort of investigation or inquiry
5 that goes into their placement for housing?

6 A. So, what happens is the reentry services unit,
7 which there is one in each borough, okay, we are
8 responsible for seeking out SARA compliant housing, not
9 necessarily shelter, for those individuals that are
10 incarcerated that are on the RTF list or the held past
11 release list. Unfortunately, in New York City there is a
12 vast number of schools which makes it very difficult, and
13 I know for myself in particular in Manhattan and Staten
14 Island, it's been extremely difficult, especially with the
15 property value these days, to locate SARA compliant
16 housing, so we rely upon the shelter, DHS, a great deal.

17 Q. Are there persons that the Department of
18 Corrections and Community Supervision are trying to place
19 into the DHS system who do not require SARA compliant
20 housing?

21 A. Yes, there are people that don't have SARA
22 conditions that require DHS housing.

23 Q. And do you deal with those or do you solely deal
24 with those who have the SARA compliant requirement?

25 A. Well, I deal with all of them if there's an

1 issue. Okay. Maybe sometimes mental health or there may
2 be a situation in the shelter where a person needs to be
3 transferred or something like that. Those things are
4 brought to my attention, but my primary interaction with
5 DHS is dealing with the SARA compliant cases that we have.

6 Q. Are the SARA compliant housing issues then that
7 are persons who you are placing within DHS a subset of the
8 persons that the entire Department of Correctional
9 Services is placing within DHS?

10 A. The SARA guides, yes, they are a subset.

11 Q. So, there are actually more people that are being
12 placed in DHS above and beyond those that require the SARA
13 compliant housing?

14 A. Much more.

15 Q. And do you know who is responsible for placing --
16 for finding housing for those persons that are not -- do
17 not require SARA compliant housing?

18 A. Well, we try to do. What we try to do, we try to
19 locate housing for everyone that is in need of housing.
20 Because we have such a large number, that is virtually
21 impossible. If a case is brought to our attention, we try
22 to locate some type of housing, if possible have them
23 return to their family members, friends, you know,
24 whatever contacts they have in the community, but with the
25 SARA cases, that again is very, very difficult.

1 Q. If as a reentry specialist -- I'm sorry.
2 Specialist or coordinator?

3 A. Manager.

4 Q. Manager?

5 A. Manager.

6 Q. As a reentry manager, is your job similar to
7 other persons who have that reentry title?

8 A. Not as far as DHS is concerned. I am the sole
9 DHS liaison for New York City.

10 Q. Are there other persons within the Department of
11 Corrections and Community Supervision that hold the title
12 reentry something, reentry specialist, reentry
13 coordinator, reentry manager?

14 A. Yes, each region has one.

15 Q. I'm sorry. Each region has one?

16 A. Each region has one, yes.

17 Q. Do you know what their responsibilities are?

18 A. Their responsibilities are to locate housing,
19 locate employment, work medical cases that are hard to
20 place, try to get them into nursing homes or whatever type
21 of facilities that they require, work with the programs to
22 ensure that they are providing them services that they
23 need to reintegrate back into the community, so we all do
24 the same thing basically.

25 Q. So, as part of that process, would you -- who

1 would be obligated to determine whether or not an
2 individual who is subject to release has -- that the
3 housing is SARA compliant specifically?

4 A. Would you --

5 Q. Who is tasked with determining whether or not a
6 person who needs SARA compliant housing, that the housing
7 that they are proposing is, in fact, SARA compliant?

8 A. So, the parole officer is responsible for that.
9 The parole officer has to go out if they need SARA
10 compliant and do a serious check, which means they have to
11 determine that there is not a school within 1,000 feet.
12 They also have to make sure that the household that they
13 are proposing is appropriate for them to live there as far
14 as criminal history, domestic violence. It is different
15 situations.

16 Q. Are there any other steps that somebody from
17 DOCCS would take prior to releasing an eligible inmate who
18 requires SARA compliant housing other than those that you
19 just testified to?

20 A. Not that I'm familiar with, no.

21 Q. And if a person who is eligible for release who
22 needs SARA compliant housing does not -- does not propose
23 --

24 MS. RUBINSTEIN: Strike that.

25 Q. Are the persons who are eligible for release, are

1 they obligated to provide their reentry person or their
2 parole officer with proposed residences?

3 A. Yes, that is part of the way that the situation
4 -- the parole addresses come back. The parole officer,
5 what they do, while they are incarcerated, they work with
6 the offender rehabilitation coordinator that is assigned
7 to them, and they may tell them, okay, I can go to this
8 address or I can go to that address, and what will happen
9 is the RFC will notify the field, specifically the parole
10 officer, and the parole officer will investigate the
11 address to determine if it is appropriate or not.

12 Q. Can you say that the persons who you are seeking
13 housing within the DHS system have not been able to find
14 alternative SARA compliant housing?

15 A. That is correct.

16 Q. So, it's basically a choice of last resort?

17 A. Right.

18 Q. Do you have any control over how many SARA
19 compliant release eligible persons DHS accepts into their
20 system?

21 A. I select the 10 people each month for release to
22 DHS. In terms of the emergency cases, as they come up,
23 that's when I speak to DHS that I have an additional
24 person or whatever the case may be.

25 Q. How do you determine which 10 people go into the

1 DHS system?

2 A. So, on the RTF list, Residential Treatment
3 Facility List, they have an entry date in the RTF. When
4 they reach their maximum expiration date, they are then
5 placed into the RTF. So, when I look at the list, whoever
6 has been on the list the longest, is the first person
7 that's arrested, provided that they are barring any other
8 issues that would eliminate from DHS consideration such as
9 medical, being able to navigate the shelter system without
10 any type of assistance.

11 Q. Is there anything preventing you from --

12 MS. RUBINSTEIN: Strike that.

13 Q. Can you explain to the Court the process by which
14 you get those 10 persons from corrections into the DHS
15 system each month?

16 A. Okay. So, the first thing I do is I peruse the
17 list, the RTF list, and I select the six people that have
18 been there the longest. That's from that list. Then I go
19 to the held past release list and I select the two people
20 that have been held past their release date longest. Then
21 I go back to the RTF list and I select two mental health
22 cases that have been there the longest for DHS.

23 Q. Who is on the held past list?

24 A. So, the held past release list is those parolees,
25 those inmates, excuse me, that have a maximum -- may not

1 have a maximum expiration date. It may be life. So, the
2 sentence might be 15 to life or 20 to life, so they are
3 never going to be eligible for the RTF list, because on
4 the RTF list, you have to first have a maximum expiration
5 date, second, have post-release supervision. So, once a
6 person reaches their ME date on the RTF list, then because
7 they have post-release supervision, I can select from the
8 list.

9 On the held past release list, that list was
10 created because of the fact that there were inmates that
11 were -- had no chance of being released to DHS because
12 their end date was so far off, like 2034 or something to
13 that effect. So, what happens is those people, we use
14 their CR date to determine when they are released, and
15 those that have the closest CR date or the CR date that
16 was the furthest away, I don't know how to explain that
17 part, but they have a CR date, and in the order that the
18 CR date is, that's the order that I release.

19 Q. So, the held past release date list, are those
20 persons also persons in need of SARA compliant housing?

21 A. Yes, they are.

22 Q. But they were not sentenced and subject to
23 post-release supervision as part of their sentencing
24 commitment?

25 A. I'm not -- you know what, they may have

1 post-release supervision, but their ME date is the
2 determining factor. So, if their ME date is very far off,
3 if they have life on the end, then they have very little
4 opportunity of being released to DHS, and they still have
5 very little opportunity as only two people off of that
6 list every month.

7 Q. And if you looked at your list today, how many of
8 the RTF persons and persons who are on the held past
9 release date, if you looked at those lists today, how many
10 people would be on them?

11 A. On both lists?

12 Q. Correct.

13 A. I'd say probably 300 and something, estimate.
14 That's an estimate, though.

15 Q. And is that approximately how many are on the
16 list at all times?

17 A. Yes.

18 Q. I mean, I understand it fluctuates somewhat, but
19 is that approximately how many?

20 A. Yes.

21 Q. And so, those 300 persons or approximately 300
22 persons are people who are currently incarcerated within
23 the DOCCS system who are eligible for release but have not
24 been released because they have failed to acquire SARA
25 compliant housing?

1 A. Correct.

2 Q. And your job is to do your best to find them SARA
3 compliant housing so that they will no longer be subject
4 to the Department of Corrections versus the Community
5 Supervision?

6 A. Correct.

7 THE COURT: Just to be clear. I'm going to
8 go for about five more minutes. It is about 20 to
9 five. So, we'll go to about a quarter of, then we'll
10 address what time we'll continue tomorrow.

11 MS. RUBINSTEIN: Okay.

12 Q. Will DOCCS release somebody who requires SARA
13 compliant housing to the community without first getting
14 guaranteed SARA compliant housing for that person?

15 A. No, they will not.

16 Q. Has DOCCS ever refused to place somebody who is
17 -- who is subject to the SARA compliant housing into the
18 DHS shelter system when there are beds available?

19 A. No, they have not.

20 Q. We had -- I think you heard the testimony earlier
21 from the -- from Ms. Tinsley-Ballard with regard to there
22 being anywhere from a bed to five beds available for --
23 that were SARA compliant. Would DOCCS be notified of
24 those one to five beds that are available on any given day
25 that are SARA compliant?

1 A. No, I would not.

2 Q. Would DOCCS make inquiry each day to DHS to
3 determine whether or not at any time there's a SARA
4 compliant bed available?

5 A. No, I do not.

6 Q. Is it your understanding that even if you made
7 that inquiry at say 9:00 when you start your day that by
8 noon those beds would not necessarily be available at that
9 point?

10 A. I'm not sure on that, but I couldn't have a
11 release. Even if I called DHS like say tomorrow morning
12 and they said we have six, I don't have anybody that I
13 would be able to release, because it's a process to
14 release from prison. It's a discharge. We don't release
15 them the same day that you have a bed.

16 Q. And can you explain that discharge process? So,
17 what's necessary? How long does it take and what is the
18 process before we can release somebody?

19 A. I believe it's two to three days that they have
20 to receive notification, class of movement. They have to
21 get their paperwork in order, the discharge paperwork, any
22 funds that they are due, any documents that they may have
23 in the facility has to be gathered up and given to them.
24 Okay. That's the process as far as I know. I don't work
25 in the facility. That's the only part I can speak to.

1 Q. Would it make sense in a practical way to take
2 the -- say the next 10 people on your wait list, put them
3 on a bus and drive them down to DHS on any given day to
4 see if there's housing available for them?

5 A. No.

6 Q. And why is that not something that is --
7 something you could do?

8 A. First of all, DHS would not accept them. They
9 would have a heart attack. I mean, they would not be
10 happy. The other piece to it is just to pick up 10 people
11 and just take them to DHS, there has not been any
12 investigation. It doesn't allow us time to prepare for
13 their release. It doesn't allow the facility time to
14 prepare for their release. It's not feasible. It's a
15 process in place, and you have an order in which the
16 people are released, so if you take the next 10 people
17 that are due to be released and say go to DHS, no, because
18 they may or may not have beds available, SARA compliant
19 beds specifically.

20 MS. RUBINSTEIN: I don't know if we've hit
21 our five-minute mark, your Honor.

22 THE COURT: I was just going to ask you. It
23 seems to make sense to break here. May I just ask
24 you, it's not -- you don't get in big trouble if you
25 get the answer wrong, Heather, how long do you think

1 you are going to be on continued direct with your
2 witness?

3 MS. RUBINSTEIN: I think maybe another five
4 minutes, your Honor.

5 THE COURT: And, Ms. Syrnik, how long do you
6 think you'll be on cross examination?

7 MS. SYRNIK: Your Honor, I think it's at
8 least maybe 15 minutes.

9 THE COURT: Fifteen; okay.

10 All right. Is everybody available at 2:00
11 tomorrow to continue this.

12 THE WITNESS: I am.

13 MS. RUBINSTEIN: Unfortunately I am not.
14 Well, I'm not sure at two. I have I believe it is
15 two other writs returnable with court appearances on
16 Skype in front of Judge Schick. My understanding,
17 they are 10 and one. Presumably I would be done by
18 two if those are still the times. I would have to
19 check.

20 THE COURT: But also I have a priority as a
21 continuing trial on this issue.

22 MS. RUBINSTEIN: I'm just checking my intake
23 calendar for e-mails from the court. I apologize,
24 your Honor. They've changed the times on me multiple
25 times now.

1 THE COURT: That's okay.

2 MS. RUBINSTEIN: Rather than holding
3 everybody up, I will say yes to 2:00, and I'll notify
4 everybody via e-mail if for some reason my schedule
5 has been altered, if that works for the Court.

6 THE COURT: Yeah, I would like to get started
7 tomorrow. I am assuming both counsel wish to make
8 closing statements?

9 MS. SYRNIK: You are correct, your Honor.

10 THE COURT: Yes, Ms. Rubinstein, as well?

11 MS. RUBINSTEIN: It will be very briefly,
12 yes, your Honor.

13 THE COURT: So, to that point, Ms. Syrnik,
14 how long will yours be?

15 MS. SYRNIK: I would guess under 10 minutes.

16 THE COURT: Okay. I would like to start at
17 2:00, because then I think we can finish. It will
18 give -- we'll finish with Ms. Dorsey. It will give
19 you the opportunity to make closing statements.

20 I am guessing you don't have any further
21 witnesses, Ms. Rubinstein?

22 MS. RUBINSTEIN: I do not, your Honor.

23 THE COURT: Okay. And does the Petitioner
24 intend to put any kind of a rebuttal case?

25 MS. SYRNIK: No, your Honor, I don't believe

1 so.

2 THE COURT: Okay. So, I think if we started
3 at two we should be able to get everything done
4 tomorrow so I can then take a little break and try to
5 do my decision on the record tomorrow, okay, at least
6 that's the plan.

7 MS. RUBINSTEIN: Okay.

8 THE COURT: So, what I would ask, I'm going
9 to have my secretary send everybody the link.

10 Ms. Dorsey, I know you worked with
11 Ms. Seelbach it turns out figuring out the program I
12 think, so you should be okay for tomorrow, but
13 everybody will get an e-mail again.

14 Please to the Petitioner counsel, please let
15 your witnesses know they will probably get the e-mail
16 again, but they obviously don't need to jump on. I
17 believe it is easier to add people than take people
18 off, so we will send you another invitation for a
19 Skype conference at 2:00 tomorrow.

20 THE WITNESS: Okay.

21 THE COURT: Everybody please have a good
22 night and please stay safe and healthy.

23 MS. RUBINSTEIN: Thank you, your Honor.

24 MS. SYRNIK: Thank you, your Honor.

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This is to certify that the foregoing is an accurate transcription of my stenographic notes as transcribed by me.

Jennifer Decelestino

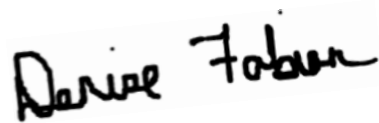
JENNIFER DECELESTINO

STATE OF NEW YORK)
) ss.
COUNTY OF NEW YORK)

DENISE FABIANO, an attorney duly admitted to the practice of law in this State, does hereby affirm and show under penalty of perjury:

That on September 25, 2020, I personally served three copies of petitioner-appellant's reply brief and addendum on appeal to the Court of Appeals on behalf of FRED JOHNSON, APL-2019-00147, upon HON. LETITIA JAMES, Attorney General, State of New York, attn: Brian Ginsberg, Esq., attorney for respondent, at the Albany Office, the Capitol, Albany, New York 12224-0341, the address designated by her for that purpose, by depositing by express mail three true copies of same in a postpaid, properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

Dated: New York, New York
September 25, 2020



DENISE FABIANO