



New York County District Attorney's Office
Written Testimony by District Attorney Cyrus R. Vance, Jr. for City Council Committees on
Criminal Justice and Justice System
Oversight Hearing on "COVID-19 in City Jails and Juvenile Detention Centers"
May 19, 2020

Chairs Powers and Lancman, and members of the Committees on Criminal Justice and the Justice System, thank you for the opportunity to submit testimony for the City Council's oversight hearing on COVID-19 in City jails and juvenile detention centers. I share your concerns about the health and well-being of justice-involved individuals and correctional staff amid the coronavirus pandemic. I would like to take the opportunity to describe the proactive efforts the Manhattan District Attorney's Office has made to review people in DOC custody on Manhattan cases, and the process we engage in to evaluate requests for release from the City, defense providers, and individuals, in the form of bail applications and writs of habeas corpus. From March 19th to May 12th, there was nearly a 45% reduction in the number of people being held in jail on a Manhattan case.

First, my Office undertook a comprehensive review of every person being held in DOC custody on a Manhattan case to assess whether, given the circumstances created by COVID-19, it was appropriate to proactively exercise our discretion to recommend release. We recommended release for individuals who presented no clear threat to public safety, were incarcerated on technical parole violations, were serving short sentences, or were at particular risk of contracting the virus, as well as for individuals we believed should be released for other virus-related reasons. This was an exhaustive undertaking, but one that we embraced as an office, because we felt a sense of urgency and obligation to safeguard the population in City jails and correctional staff from this unprecedented health risk. The coronavirus spreads easily and quickly, especially in densely populated areas where it is difficult to implement safety measures, like social distancing. We knew that we had an imperative to work as quickly as possible to reduce the number of people on the inside—sensibly and with public safety still in mind—so that we could increase each facility's ability to implement safety measures to reduce the likelihood of the virus' spread both inside and outside the walls of our jails.

Beyond looking at the individuals who were incarcerated prior to the virus hitting, I believe that COVID-19 demands that prosecutors think differently about pre-trial detention requests at the outset. What we are experiencing is extraordinary, and extraordinary times call for us all to be flexible, while still guided by our foundational principles of promoting safety and justice. To that end, on March 17th, I joined many other prosecutors around the country in calling for prosecutors' offices to rethink who they recommend to be held in county facilities during the COVID-19 crisis.

I also communicated these beliefs regarding proactive efforts to the entire staff of my Office in an email on March 23rd, stating: "We have been asked by the city to help reduce the population of Rikers Island during the coronavirus epidemic to limit the spread of the illness and minimize the chance of fatalities. Independently, I have come to the conclusion that we need to reduce the Rikers

population through thoughtful evaluation of categories of individuals [...] in response to the unprecedented health risks of this pandemic, I believe we should use our discretion to recommend release of certain individuals from Rikers who do not present a clear threat to public safety,” based on the categories listed above in this testimony. I also echoed my beliefs that COVID-19 demands that we re-think who we recommend be held in county jail pre-trial and that we be flexible during this state of emergency.

In addition to our proactive review, between March 17th and April 9th, my Office received 14 separate “Detainee Review” requests from the City, some necessitating the review of hundreds of individuals at once. On a single day, March 17th, we received five separate requests pertaining to 547 individuals. We responded as best as we could and as quickly as possible. Simultaneously, we began receiving mass writs of habeas corpus from the defense bar. The first writ pertained to 116 individuals. We have also handled approximately 375 individual bail applications since March 17th. The requests for release largely allege that medical conditions, jail conditions, and non-seriousness of the underlying offenses merit release.

To facilitate the most effective review of these applications, each assistant district attorney evaluated each case they were handling with an individual detained in jail, taking into account the facts of the underlying case, the individual’s criminal history, history of warrants and non-appearance, as well as any other factors relevant to detention. This information allowed our executive staff to quickly assess the factors of each case as they related to a release application. As to the medical information submitted by defense counsel, we have a former medical examiner on staff who was able to help us contextualize those claims in the applications. The allegations relating to the conditions in the jails were more difficult to assess, as the District Attorney’s Office does not have first-hand knowledge of the situation in the jails. We have, however, been able to rely on the affidavits of several DOC officials charged with implementing the COVID-19 containment and treatment protocols, who have first-hand knowledge of those protocols and the conditions in DOC facilities. According to those affidavits, measures have been taken to protect medically vulnerable individuals, at-risk individuals are monitored, individuals who test positive for the virus are separated from the rest of the population, and enhanced cleaning and screening procedures have been implemented. In responding to these applications, we balanced the facts attendant to each case and the information we were able to glean about the reality inside the jails.

Altogether, between the cases on which we consented to and recommended release and the additional cases where release requests were granted, there has been a significant decrease in the number of individuals held in jail on a Manhattan case. On May 12th, there were 1,146 such people (excluding those being held on a \$1 bail or other hold), down from 2,071 on March 19th, nearly a 45% reduction.

Notably, this reduction provides the jails with greater capability to implement safety measures for the individuals who remain incarcerated. As reported by DOC, the curve on the inside has indeed flattened. Moreover, because of the criteria we used in making our determinations regarding release—including considering whether the individual posed a risk to the public—the vast majority of the individuals who do remain incarcerated are held on the most serious charges and present risk of danger to our community if released.

Finally, I would like to conclude this testimony with an observation. I think the processes that all of the stakeholders—including DOC, the City, district attorneys, and defender organizations—have all undertaken over the past two months, and will continue to engage in, thrive best with a coordinated and collaborative effort. As a former defense attorney myself, I understand that we all have separate

interests that we seek to promote, but, at bottom, we have a unifying interest in fostering the best possible version of New York City.

I have had the benefit of talking with city prosecutors around the country over the past few weeks and of hearing the way that other cities approach coordinating these types of efforts. For example, earlier this month, a national group I co-chair called Prosecutors Against Gun Violence (PAGV) held a virtual summit entitled “Prosecutors Respond to COVID-19.” Hundreds of prosecuting attorneys from around the country came together for a half-day conference to discuss the unprecedented challenges facing the justice system during the coronavirus outbreak. My Office participated on a panel about “Jail Releases During a Pandemic: A Case Study of Three Jurisdictions” alongside prosecutors from Pima County (Tucson) and Wayne County (Detroit). Pima County’s average daily jail population went from approximately 1,960 in February 2020 to around 1,350 in late April, a 31% reduction, and Wayne County’s jail population went from 1,388 people in early March 2020 to 820 people by May 5th, a 41% reduction. Both counties discussed how these releases were the result of a central organizing body or systematic collaborating entity that allows various stakeholders to openly communicate and make decisions; allowing them to be more organized and unified at the outset, and I think they were greatly advantaged by that.

There are lessons we can learn from other areas of the country on working collaboratively and the design of jails to reduce the transmission of infections. I understand that the Council is considering a bill today that would increase reporting requirements in a correctional facility during a public health crisis, and I believe that transparency in this space constitutes a valuable tool in promoting this kind of collaborative environment. I urge the City to use this moment in time to foster a greater collaboration, and to take the lessons from this moment and apply them to the borough-based jail planning.

Thank you for the opportunity to testify today, and thank you for the continued attention to issues of great importance in the criminal justice space.

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