UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHAEL BERGAMASCHI; and
FREDERICK ROBERSON; on behalf of
themselves and all others similarly situated,

                  Plaintiffs,

                  v.

ANDREW M. CUOMO, Governor of New
York State, in his official capacity; and
TINA M. STANFORD, Chairperson of the
New York State Board of Parole, in her
official capacity;

                  Defendants.

:   ____-CV-_____

**DECLARATION OF MICHELLE SHAMES IN SUPPORT
OF MOTION FOR CLASS CERTIFICATION**

I, Michelle Shames, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that

the following is true and correct:

1. I submit this declaration in support of the plaintiffs' Motion for Class Certification.

2. I am the Data and Research Strategist at the New York Civil Liberties Union (NYCLU),

    and have been managing the organization's quantitative research for the last three and a

    half years.

3. I hold a Master's Degree in Sociology from McGill University, where I received

    extensive statistical training at the doctoral level.

Primary Data Sources

4. All statistics in paragraphs 7 through 14 of this declaration were calculated from the "Daily Inmates in Custody" dataset, which is updated daily by the Department of Corrections (DOC) and is public accessibly via New York City's Open Data Portal.[1]

5. This dataset lists each person in DOC custody in New York City each day by their "Inmate ID," along with the following information: admission date; custody level; mental health designation, race; gender; age; sealed status; security risk group membership; top charge; infraction flag; and inmate status.

   a. In this dataset, the inmate status value "DPV" indicates individuals being detained for a technical parole violation. All individuals classified as DPV do not have information provided regarding "top charge," as their top charge is the technical parole violation.

   b. In this dataset, the inmate status value "DEP" indicates individuals being detained with an open case and a warrant for violation of parole or probation. All individuals classified as DEP also have their "top charge," listed.

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[1] NYC Open Data Portal: Daily Inmates in Custody (April 3, 2020), https://data.cityofnewyork.us/Public-Safety/Daily-Inmates-In-Custody/7479-ugqb.

Analysis

6. On March 1, 2020, the Department of Correction and Community Supervisions supervised 33,981 parolees, excluding those already in the revocation process at the time of the snapshot. Of these, 15,661 (46%) were under supervision in New York City.[2]

7. On April 3, 2020, the daily inmate population for New York City jails included 439 individuals detained for a technical parole violation (10% of the total daily population). Of these 439 individuals, 60% were Black and 30% were Latinx.[3]

8. On April 3, 2020, the Daily Inmate Population included 700 individuals detained with an open case and a warrant for violation of parole or probation (10% of the total daily inmate population). Of these 700 individuals, 65% were Black and 25% were Latinx.

9. Of the 439 individuals detained for a technical parole violation, 73 (17%) had admission dates that were more than 90 days prior to April 3, 2020, 90% of whom were Black or Latinx. Of these 73 people, 23 had admission dates of more than 180 days prior to April 3, 2020.

10. Of the 439 individuals detained for a technical parole violation on April 3, 2020, 92 (21%) were 50 years of age or older.

11. In March 2020, the average daily population of individuals in custody on a technical parole violation charge in New York City jails was 738 people, and had been around the

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[2] New York State Department Of Corrections And Community Supervision (DOCCS) Fact Sheet, (Mar. 1, 2020), https://doccs.ny.gov/system/files/documents/2020/03/doccs-fact-sheet-march-2020.pdf.
[3] The methodology used to calculate "Latinx" was borrowed from the Columbia Justice Lab Report (Exhibit C). The report notes that, "*Latinx/Hispanic ethnicity is not reported in this data set. However, personal communication with analysts at the Mayor's Office of Criminal Justice indicates that the "Other" category in that data is a strong proxy. Thus, jail incarceration statistics reported for Latinx people is based on analysis of individuals categorized in that data as 'Other.'*"

700s for the 12 months prior.[4] The sudden drop to 439 is attributable to the exceptional

emergency release of people due to the current COVID-19 epidemic.

12. Between January 1, 2018 and March 23, 2020 (prior to the COVID-19 one-time release),

the daily inmate population in New York City facilities decreased from 8,812 to 5,294

(40% decrease), and the number of people in custody on technical parole violations

increased from 592 to 643 (9% increase). Furthermore, the New York City jail population

had dropped by 23% between 2014 and 2018, with decreases for nearly every subgroup,

with the exception of people jailed for technical parole violations, which grew by 20%

during this period.[5]

13. As of April 3, 2020, 239 people incarcerated on Rikers Island and 273 Department of

Correction and Correctional Health Service staff have tested positive for COVID-19. An

additional 50 incarcerated people have been hospitalized due to COVID-19 related

symptoms, and over 2,000 incarcerated people are being quarantined due to potential

exposure to the virus.[6]

14. As of April 3, 2020, the rate of COVID-19 positive cases was 54 per 1,000 individuals

incarcerated on Rikers Island. This is more than 7 times higher than the rate of 7 positive

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[4] New York State Div. of Criminal Justice, Jail Population in New York State. Average Daily Census by Month (March 1, 2020), https://www.criminaljustice.ny.gov/crimnet/ojsa/jail_population.pdf.
[5] N.Y. State Bar Ass'n, Report of The New York State Bar Association Task Force On The Parole System, (Nov. 2019), https://www.nysba.org/WorkArea/DownloadAsset.aspx?id=97413.
[6] Board of Correction Daily COVID-19 Update (April 3, 2020), https://www1.nyc.gov/site/boc/covid-19.page.

cases per 1,000 New York City residents, and 64 times higher than the rate for the United States as a whole.

15. In 2018, a total of 8,768 parolees were returned to prison, 7,438 (85%) of whom were incarcerated for violating conditions of parole.[7]

Secondary Data Sources

16. Exhibit A is a true and accurate copy of the United States Dep't. of Justice, Bureau of Justice Statistics report entitled "Probation and Parole In The United States, 2016" (Apr. 2018). Table 7 on page 22 of this report lists the number of parolees returned to incarceration in 2016, by reason for return and by state. Returns to incarceration for a parole revocation with no new sentence were highest in Illinois (6,570), and second highest in New York (6,362).

17. Exhibit B is a true and accurate copy of the New York City Mayor's Office of Criminal Justice brief entitled "Jail: State Parolees" (Feb. 2018). The following statistics are reported on page 4 of the brief:

    a. Average jail stay:

        i. All pretrial detainees: 31.8 days.

        ii. Technical parole violators: 57.1 days.

        iii. Pretrial misdemeanor detainees with no warrant: 11.7 days.

        iv. Parole violators with new misdemeanor arrest: 99.6 days.

        v. Pretrial felony detainees with no warrant: 36.2 days.

        vi. Parole violators with new felony arrest: 169.3 days.

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[7] New York State Dept. Of Corr. And Cmty. Supervision, Community Supervision Legislative Report (2019), Table 17, https://doccs.ny.gov/system/files/documents/2020/02/community-supervision-legislative-report-2019-final.pdf.

b. Of people on parole charged with a technical parole violation, 38% are ultimately released back to the community and 62% are sentenced to prison.

c. Of people on parole charged with a new offense, 40% are released with no finding of parole violation, 29% are sentenced to state prison, and the remainder experienced other outcomes including city sentences.

18. Exhibit C is a true and accurate copy of the Columbia University Justice Lab report entitled "Racial Inequities in New York Parole Supervision" (Mar. 2020). The report notes the following statistics on page 8: "Black people are detained for alleged parole violations in New York City jails at a rate 12 times higher than that for white people, and that Latinx people are detained for alleged parole violations at roughly 4 times the rate of white people […] Among people in New York City jails who are on parole and are also being held for a new charge, a stunning 91% were people of color […]. This disparity is even more pronounced for people charged with low-level crimes. Among those held for alleged misdemeanor offenses who were also on parole, 99% were people of color."

19. Exhibit D is a true and accurate copy of the Independent Commission on New York City Criminal Justice and Incarceration Reform's report "Stopping Parole's Revolving Door" (June 2019). The report states that as of April 30, 2019, 1,517 people incarcerated in New York City jails were there for alleged parole violations, 40% of whom were there for technical violations, and around 30% of whom were charged with violations due to new arrests for misdemeanors and non-violent felonies.

20. Exhibit E is a true and accurate copy of Justice Center, The Council of State Governments: New York Supervision Violation Data Snapshot from their Confined and Costly report (June 2019). The report states that in 2017, 22% of new admissions to

prisons nationally were for parole violations. In 2017, 41% of new admissions to prisons in New York State were for parole violations.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: April 3, 2020
New York, New York

Michelle Shames
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