

No. 20-7846

IN THE
Supreme Court of the United States

ANGEL ORTIZ,
Petitioner,
v.

DENNIS BRESLIN, SUPERINTENDENT OF QUEENSBORO
CORR. FACILITY, AND THE NEW YORK STATE DEP'T OF
CORRECTIONS AND COMMUNITY SUPERVISION,
Respondents.

**On Petition for a Writ of Certiorari
to the Court of Appeals of New York**

**BRIEF OF *AMICUS CURIAE*
RESTORATIVE ACTION ALLIANCE
IN SUPPORT OF PETITION FOR
WRIT OF CERTIORARI**

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TABLE OF CONTENTS

| | <u>Page</u> |
|--|-------------|
| INTEREST OF <i>AMICUS CURIAE</i> | 1 |
| SUMMARY OF ARGUMENT..... | 3 |
| ARGUMENT..... | 5 |
| I. New York’s Policy to Indefinitely Confine Indigent Registered Persons in Prisons is Unconstitutional and Has Devastating Effects on Registered Persons and Their Families..... | 5 |
| A. The Unconstitutional Housing Policy Where Indigent New York City Registered Persons Are Being Indefinitely Incarcerated by the State..... | 5 |
| B. The Personal Impact of DOCCS’ Housing Policy on Indigent NYC Residents Subject to the Residency Restriction | 12 |
| CONCLUSION | 23 |

TABLE OF AUTHORITIES

| | <u>Page</u> |
|---|-------------|
| Cases | |
| <i>Callahan v. Carey</i> , 12 N.Y.3d 496 (N.Y. 2009) | 10 |
| <i>Doe v. Pataki</i> , 120 F.3d 1263 (2d Cir. 1997) | 5 |
| <i>Gonzalez v. Annucci</i> , 117 N.E.3d 795 (N.Y. 2018).... | 12 |
| <i>Gonzalez v. Annucci</i> , 122 A.D.3d 1203 (N.Y. 3d Dept. 2014)..... | 12 |
| <i>Hurd v. Fredenburgh</i> , 984 F.3d 1075 (2d Cir. 2021)..... | 4, 11 |
| <i>Kansas v. Hendricks</i> , 521 U.S. 346 (1997) | 14 |
| <i>People ex rel. Green v. Superintendent</i> , 137 A.D.3d 56 (N.Y. 3d Dept. 2016)..... | 16 |
| <i>People ex rel. Johnson v. Superintendent</i> , 2020 N.Y. Slip Op. 6934 (N.Y. 2020)..... | 10, 11 |
| <i>People v. Brooks</i> , 308 A.D.2d 99 (N.Y. 2d Dept. 2003)..... | 5 |
| <i>People v. Diack</i> , 26 N.E.3d 1151 (N.Y. 2015) | 7 |
| <i>Sample v. Diecks</i> , 885 F.2d 1099 (3d Cir. 1989)..... | 11 |
| <i>State ex rel. Harkavy v. Consilvio</i> , 870 N.E.2d 128 (N.Y. 2007)..... | 14 |

Constitutional Provisions

| | |
|-------------------------------|-------|
| U.S. Const. Amend. VIII | 4, 11 |
| U.S. Const. Amend. XIV | 4, 11 |

Statutes

| | |
|---|-------|
| 42 U.S.C. § 13663(a) | 6 |
| N.Y. Correction Law § 2(6)..... | 12 |
| N.Y. Correction Law § 73 | 12 |
| N.Y. Correction Law §§ 168 <i>et seq.</i> | 5 |
| N.Y. Correction Law § 168-a..... | 6 |
| N.Y. Correction Law § 168-b(12)..... | 6 |
| N.Y. Correction Law § 168-l..... | 5, 6 |
| N.Y. Correction Law § 168-q..... | 6 |
| N.Y. Executive Law § 259-c(14)..... | 8 |
| N.Y. Mental Hygiene Law § 9.60 | 18 |
| N.Y. Mental Hygiene Law Art. 10 | 14 |
| N.Y. Penal Law § 70.40 | 7, 10 |
| N.Y. Penal Law § 70.45 | 7 |

| | |
|-------------------------------|---|
| N.Y. Penal Law § 220.00 | 9 |
|-------------------------------|---|

Other Authorities

| | |
|--|------|
| Allison Frankel, “Pushed Out and Locked In: The Catch-22 for New York’s Disabled, Homeless, Sex-Offender Registrants,” 129 <i>The Yale Law Journal Forum</i> 279 (2019) | 16 |
| <i>Callahan Consent Decree</i> (1981), available at https://www.coalitionforthehomeless.org/wp-content/uploads/2014/06/CallahanConsentDecree.pdf (last accessed May 19, 2021) | 10 |
| Cynthia Calkins et al., “Sexual Violence Legislation: A Review of Case Law and Empirical Research,” 20 <i>Psychology, Public Policy, and Law</i> 443 (2014).. | 6, 7 |
| Memorandum & Order (Dearie, J.), <i>Jones v. Stanford</i> , No. 20-cv-1332 (E.D.N.Y. Sept. 9, 2020), ECF No. 37 | 8 |
| Rachel Muller, “An influx of sex offenders in New Paltz causes town to tighten reigns,” <i>The New Paltz Oracle</i> (Dec. 10, 2020); available at https://oracle.newpaltz.edu/new-paltz-handles-sex-offender-influx/ (last accessed May 19, 2021).. | 7 |
| Richard Tewksbury, “Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions,” 42 <i>Harvard Civil Rights-Civil Liberties Law Review</i> 531 (2007).... | 6, 7 |

- Terence P. Ward, “New Paltz passes law limiting sex offenders in local hotels,” *Hudson Valley One* (Nov. 19, 2020); available at <https://hudsonvalleyone.com/2020/11/19/new-paltz-passes-law-limiting-sex-offenders-in-local-hotels/> (last accessed May 19, 2021)..... 7
- The Bronx Defenders, *Know Your Rights: Housing and Arrests or Criminal Convictions*; available at <http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/> (last accessed May 19, 2021) 7
- The Fortune Society, *Nowhere To Go: New York’s Housing Policy for Individuals on the Sex Offender Registry and Recommendations For Change*, 3 (2019); available at <https://fortunesociety.org/wp-content/uploads/2019/05/NowhereToGo.pdf> (last accessed May 19, 2021)..... 10

INTEREST OF *AMICUS CURIAE*¹

Restorative Action Alliance, Inc. (“the Alliance”) is a non-profit organization, incorporated in the state of New York. Through education, litigation, and legislative advocacy, the Alliance helps build safer communities which invest in primary prevention of sexual harm, create meaningful accountability for those who cause harm, and safeguard the civil liberties of all. The Alliance focuses its efforts in the states of New York, New Jersey, and Connecticut, and its membership includes those who are personally impacted by registries and sexual harm, their families and communities, and professionals and advocates working in the criminal legal system.

The Alliance believes that meaningful accountability for sexual harm is imperative to facilitate healing for individuals and communities. A public health approach, rather than a carceral approach, must be taken to address sexual harm. Policies should be based on sound research and evidence, rather than fear, politics, and emotions. An enormous amount of resources and attention are diverted into systems, including public registries, which continuously punish people who have already served their sentence with no public safety benefit, while cases of sexual abuse and rape routinely go uninvestigated or unsolved. Most people on sex

¹ The parties were given ten days’ notice prior to the filing of this brief. Petitioner and Respondents have consented to the filing of this brief. No counsel for any party has authored this brief in whole or in part, and no person or entity, other than amicus and their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

offense registries do not re-offend, and other models of post-incarceration re-entry have been demonstrated to be more effective at keeping people crime-free. Further, research supports the notion that aggressive policies such as community notification and housing banishment laws actually increase rates of re-offending. Resources should be divested from policies that shame, perpetuate violence, surveil, and control; instead, those resources should be reinvested in primary prevention as well as transformative and restorative solutions.

The Alliance submits this brief in support of Mr. Ortiz's petition for certiorari because the issues presented in his case are of paramount importance to the Alliance, its membership, those on the New York Sex Offender Registry and on registries throughout the United States, and their families and communities.

SUMMARY OF ARGUMENT

Since 2014, New York prison officials have been imposing extra-judicial terms of incarceration on persons who have completed their prison sentences for sex offenses. These individuals are singled out by the policy because they are indigent, homeless, and subject to a housing restriction. Despite years of litigation, the state's prison authorities have continued this policy, resulting in years lost to those affected. This Court should grant Mr. Ortiz' petition given the importance of the issues presented. No one who has served their time should be held in prison indefinitely simply because they are indigent and in need of housing.

Pursuant to a consent decree entered as a result of litigation in the 1980s, New York City's shelter system is subject to a unique mandate to find shelter for any person who presents themselves at the system's intake center. This mandate does not exclude registered sex offenders who are subject to a residency restriction prohibiting them from living near a school – the city must also provide shelter to them as well.

Despite this, New York prison officials refuse to let indigent New York City residents who have served sentences for sex offense convictions present themselves for such shelter. Instead, prison officials have created a policy which limits the release of such individuals from incarceration to only 10 per month, forcing the remaining individuals in need of such housing to languish in continued confinement until they are eventually released. The wait for some has been longer than two years.

This policy runs afoul of the U.S. Constitution. “[U]nauthorized detention of just one day past an inmate’s mandatory release date qualifies as a harm of constitutional magnitude under ... the Eighth Amendment.” *Hurd v. Fredenburgh*, 984 F.3d 1075, 1085 (2d Cir. 2021). Moreover, “[f]reedom from unlawful restraint” is “rooted in the principles of ordered liberty” and entitled to protection under substantive due process of the Fourteenth Amendment. *Id.* at 1088.

Included in this brief are some of the stories of those who have been subjected to this extra-judicial incarceration as a result of the prison system’s policy on housing indigent New York City residents subject to a residency restriction. Their lived experiences are powerful, harrowing, and poignant. The additional time they spent in prison has resulted in trauma, delayed their re-entry and re-integration into their communities, and turned their families and friends into collateral victims of the state prison’s unconstitutional policies. Their voices call for an end to this un-just and un-constitutional policy which disproportionately impacts the indigent.

ARGUMENT

I. New York’s Policy to Indefinitely Confine Indigent Registered Persons in Prisons is Unconstitutional and Has Devastating Effects on Registered Persons and Their Families

A. The Unconstitutional Housing Policy Where Indigent New York City Registered Persons Are Being Indefinitely Incarcerated by the State

Those who must register as sex offenders (“registered persons”) are people with families, friends, and children. They have thoughts, hobbies, beliefs, and talents. They have much to contribute to their communities and to our society. Simply put, they are so much more than the crimes for which they must register.

Registered persons often face more hurdles upon their re-entry into the community after serving a prison sentence than those convicted of non-sexual offenses. New York’s Sex Offender Registration Act (“SORA”) sets forth a regulatory scheme which “undeniably has a profound impact on a defendant’s liberty interest due to the registration and community notification provisions.” *People v. Brooks*, 308 A.D.2d 99, 105 (N.Y. 2d Dept. 2003); N.Y. Correction Law §§ 168 *et seq.* A registered person will be assigned a level meant to represent his/her risk of re-offense and the degree of harm he/she presents. *See* N.Y. Correction Law § 168-l(1), (6); *see generally Doe v. Pataki*, 120 F.3d 1263 (2d Cir. 1997). Level 1 is meant to represent a low risk of recidivism and danger to his/her

community. *See* N.Y. Correction Law § 168-l(6)(a). Level 2 and Level 3 is meant to represent a moderate or high risk, respectively. *See* N.Y. Correction Law §§ 168-l(6)(b), (c). A Level 2 or 3 adjudication requires a public listing on the internet which includes *inter alia* their picture, general description, home and work addresses, and details of their conviction. *See* N.Y. Correction Law § 168-q. Registered persons may also receive a designation of sexually violent offender, predicate sex offender, or sexual predator. *See* N.Y. Correction Law § 168-a(7).

The stigma of registration as a sex offender is the modern equivalent to a scarlet “A.” As such, various collateral consequences and disabilities are associated with registration. This includes social stigmatization and isolation, verbal and physical assaults, loss of relationships, and difficulty finding employment. *See* Richard Tewksbury, “Exile at Home: The Unintended Collateral Consequences of Sex Offender Residency Restrictions,” 42 *Harvard Civil Rights-Civil Liberties Law Review* 531 (2007); *see also* Cynthia Calkins et al., “Sexual Violence Legislation: A Review of Case Law and Empirical Research,” 20 *Psychology, Public Policy, and Law* 443, 452 (2014) (“family members report property damage or vigilantism, and increased levels of social isolation, stigmatization, harassment, fear, and shame”) (references omitted).

Housing options are also limited, either by law² or because of discrimination by private landlords. *See*

² *See* 42 U.S.C. § 13663(a); N.Y. Correction Law § 168-b(12); The Bronx Defenders, *Know Your Rights: Housing and Arrests or Criminal Convictions*; available at

Tewksbury at 531. When a registered person has difficulty with finding housing, this “in turn, can destabilize offenders, resulting in increased levels of transience, instability, isolation, shame, harassment, feelings of depression and hopelessness, and lack of social support.” Calkins at 452. Despite such research, housing restrictions for registered persons continue. Moreover, at least two jurisdictions in New York have recently passed laws requiring those who house registered persons to obtain a special license to do so.³ *But see People v. Diack*, 26 N.E.3d 1151, 1158-1159 (N.Y. 2015) (county could not enact ordinance restricting where registered persons could reside under the preemption doctrine, as there already existed “a detailed and comprehensive regulatory scheme involving the State’s ongoing monitoring, management and treatment of registered sex offenders, which includes the housing of registered sex offenders”).

In addition, for those registered persons who are serving a term of parole supervision or post-release supervision (“PRS”) (N.Y. Penal Law §§ 70.40, 70.45),

<http://www.bronxdefenders.org/housing-and-arrests-or-criminal-convictions/> (last accessed May 19, 2021).

³ Rachel Muller, “An influx of sex offenders in New Paltz causes town to tighten reigns,” *The New Paltz Oracle* (Dec. 10, 2020); available at <https://oracle.newpaltz.edu/new-paltz-handles-sex-offender-influx/> (last accessed May 19, 2021); Terence P. Ward, “New Paltz passes law limiting sex offenders in local hotels,” *Hudson Valley One* (Nov. 19, 2020); available at <https://hudsonvalleyone.com/2020/11/19/new-paltz-passes-law-limiting-sex-offenders-in-local-hotels/> (last accessed May 19, 2021).

the terms and conditions of their supervision imposed by the New York State Department of Corrections and Community Supervision (“DOCCS”) are numerous and onerous. They must abide by a curfew and attend sex offense-specific treatment. Often, their access to the internet is prohibited, limited, and/or monitored. They are often prohibited from visiting parks, possessing camera or video equipment, or visiting social media sites, among other restrictions. *But see* Memorandum & Order (Dearie, J.), *Jones v. Stanford*, No. 20-cv-1332 (E.D.N.Y. Sept. 9, 2020), ECF No. 37 (granting plaintiffs’ motion for a preliminary injunction as to enforcement of New York’s Electronic Security Targeting of Online Predators Act and DOCCS’ Directive 9201 on the basis that such prohibitions on social media access by certain categories of registered persons on community supervision violates the First Amendment).

Too, for those on community supervision who are adjudicated Level 3 or if their victim was under the age of 18 at the time the offense was committed, registered persons must abide by New York’s Executive Law § 259-c(14). Enacted as part of the Sexual Assault Reform Act (“SARA”), this provision reads:

... where a person serving a sentence for an [enumerated sex offense] ... and the victim of such offense was under the age of eighteen at the time of such offense or such person has been designated a level three sex offender pursuant to [SORA], is released on parole or conditionally released pursuant to subdivision one or

two of this section, [DOCCS] shall require, as a mandatory condition of such release, that such sentenced offender shall refrain from knowingly entering into or upon any school grounds, as that term is defined [N.Y. Penal Law § 220.00(14)], or any other facility or institution primarily used for the care or treatment of persons under the age of eighteen while one or more of such persons under the age of eighteen are present

DOCCS has interpreted this law to be a residency restriction and prohibits such registered persons from living within 1,000 feet of a school or childcare facility (“SARA residency restriction”) for the entire period they are being supervised. Moreover, a condition of their release from incarceration, whether it be to parole or to PRS, is that the registered person must propose a permanent address that satisfies this residency restriction. DOCCS *will not release* an inmate to his/her community unless he/she proposes a SARA-compliant address, despite DOCCS’ legal mandate to release an inmate when he/she completes their incarceratory sentence.

There is a dearth of SARA-compliant housing in New York City, and for those of limited financial means the options are even fewer.⁴ For those who are

⁴ The Fortune Society, *Nowhere To Go: New York’s Housing Policy for Individuals on the Sex Offender Registry and Recommendations For Change*, 3 (2019); available at <https://fortunesociety.org/wp->

indigent and in need of SARA-compliant housing in New York City, the outlook is even more bleak. Pursuant to a consent decree⁵ entered as a result of litigation in the 1980s, New York City's Department of Homeless Services ("DHS") is subject to a unique mandate to find shelter for any person who presents themselves at the system's intake center. *See generally Callahan v. Carey*, 12 N.Y.3d 496 (N.Y. 2009). Yet in 2014, DOCCS created a policy whereby it does not allow registered persons needing SARA-compliant housing to have access to the city's homeless services. By virtue of this policy, DOCCS keeps indigent individuals needing SARA-compliant homeless services incarcerated past their conditional release (N.Y. Penal Law §§ 70.40(1)(b), (2)) and maximum expiration dates of their imprisonment.

Rather than hold DHS to its mandate to provide shelter to any city resident at any time and releasing an inmate upon the expiration of his/her sentence as required by law, each month DOCCS releases only 10 inmates subject to the SARA residency restriction and in need of DHS services. *People ex rel. Johnson v. Superintendent*, 2020 N.Y. Slip Op. 6934, 19 (N.Y. 2020) (Wilson, J., dissenting). Where there are as many as 250 such inmates currently in DOCCS

content/uploads/2019/05/NowhereToGo.pdf (last accessed May 19, 2021).

⁵ A copy of the consent decree is available on the website for the Coalition for the Homeless, which monitors New York City's compliance with their legal obligations. *See Callahan Consent Decree* (1981), available at <https://www.coalitionforthehomeless.org/wp-content/uploads/2014/06/CallahanConsentDecree.pdf> (last accessed May 19, 2021).

custody (*id.* at 21), it can take more than two years before a person is released, despite having already completing his/her sentence.

DOCCS' policy exists "solely to reduce the administrative burden on New York City's homeless shelter system." *Id.* at 8 (Rivera, J., dissenting). As a result of this policy, DOCCS is imposing extra-judicial terms of continuing, indefinite imprisonment. Clearly, DOCCS' SARA housing policy runs afoul of U.S. Constitution. The Second Circuit recently held that where an inmate is not released after serving his/her sentence, a harm of constitutional magnitude under the Eighth Amendment has occurred. *Hurd v. Fredenburgh*, 984 F.3d 1075, 1084-1087 (2d Cir. 2021). Once an inmate reaches his conditional release date, and certainly his maximum expiration date, "his continued imprisonment was a punishment that was neither authorized by law nor justified by any penological interest asserted by the State." *Id.* at 1086 (citing *Sample v. Diecks*, 885 F.2d 1099, 1108 (3d Cir. 1989)). Moreover, he/she has been deprived of a liberty interest protected by the Fourteenth Amendment's guarantee of substantive due process. *Hurd* at 1087-1089. Upon completing one's sentence, there is a "right of mandatory release from prison, preventing unlawful continued physical restraint." *Id.* at 1088 (citations omitted).

It is clear from *Hurd* that the constitutional rights of registered persons who have completed their sentences are being violated by DOCCS' SARA housing policy. This policy has existed since 2014, yet despite years of litigation DOCCS continues to enforce this policy, resulting in years lost to those affected.

This Court should grant Mr. Ortiz' petition given the importance of the issues presented, as DOCCS continues to violate the constitutional rights of these individuals. No one who has served their time should be held in prison indefinitely simply because they are indigent and in need of housing.

B. The Personal Impact of DOCCS' Housing Policy on Indigent NYC Residents Subject to the Residency Restriction

Locating SARA-compliant housing is a monumental, if not impossible, task for an inmate in a correctional facility, who has no access to the internet and only limited and heavily-monitored contact with the outside world. Take for example **Miguel Gonzalez**,⁶ who lost nearly ten months of his life due to the DOCCS' SARA housing policy. He is a Level 1 registered person whose victim was under 18 at the time of the offense. Miguel was scheduled for conditional release on May 20, 2014, and the maximum expiration of his sentence was September 30, 2014. Yet DOCCS continued to incarcerate him until February 4, 2015, when he was finally released to DHS housing. From September 30, 2014 until February 4, 2015, Miguel was housed in the residential treatment facility ("RTF") dorm at a state prison, which solely houses inmates convicted of sex offenses held past their release dates. *See* N.Y. Correction Law §§ 2(6), 73.

⁶ The facts of Miguel's case are detailed in his declaration, on file with counsel, and in prior decisions. *See Gonzalez v. Annucci*, 117 N.E.3d 795 (N.Y. 2018); *Gonzalez v. Annucci*, 122 A.D.3d 1203 (N.Y. 3d Dept. 2014).

Miguel has a strong network of family and friends supporting him, many who were willing to offer shelter in their own homes to Miguel. However, none of their residences were SARA-compliant. His family assisted him in searching for alternate residences, but they were unable to locate housing that was SARA-compliant and also affordable. This was despite proposing 58 addresses to DOCCS. As many are when leaving prison, Miguel was indigent and needed affordable or subsidized housing, particularly while he looked for a job upon his re-entry. In Miguel's case, his indigency was the sole reason he was being held past his release date.

For those ten months, Miguel wondered if he would ever get out of prison. He had served his time purposefully, completing all his programs and never once getting a disciplinary infraction. Miguel had taken responsibility for his offense, and he had earnestly participated in and learned from DOCCS' sex offense-specific treatment program. During his continued incarceration, he felt he was in limbo and questioned what it would take in order to be released. In particular, he was scared he would be held for his entire three-year term of PRS. Miguel felt he was a target for violence by other inmates, as his housing in the RTF dorm meant the general population knew he had been convicted of a sex offense. He was literally in fear for his life and personal safety on a daily basis.

His friends and family wondered each day when he would return home to them. Miguel says his mother aged as a result of this stress and worry. Looking back, he says he believes the system is broken and no one wants to solve the housing issue. Even after

several years, Miguel continues to feel traumatized by his experience being held past his release date. He states he has lost some faith in the criminal legal system.

Robert⁷ is yet another man who lost five months of his life due to DOCCS' SARA housing policy. He is a Level 3 registered person; while his victim was not under 18 years of age, he is still prohibited from living near schools. Sentenced to 20- to 40-years' incarceration, Robert reached his conditional release date on August 17, 2016. After this date, he was held in custody for more than 26 months to determine if he was in need civil confinement, with a determination made on November 7, 2018 that he was not in need of such confinement or strict supervision. *See* N.Y. Mental Hygiene Law Art. 10 (procedure for authorities to seek civil commitment or intensive supervision, if a person has been convicted of a sex offense and has mental abnormalities which make him/her likely to re-offend); *see generally* *Kansas v. Hendricks*, 521 U.S. 346 (1997); *State ex rel. Harkavy v. Consilvio*, 870 N.E.2d 128 (N.Y. 2007).

Yet still, DOCCS didn't release him upon the determination Robert was not in need of civil commitment or intensive supervision. Despite all those months while the civil commitment proceeding was pending, DOCCS did nothing to prepare for Robert's potential release. DOCCS was well aware that Robert was indigent and in need of DHS housing.

⁷ Robert's full name is known to counsel. He has asked to use only his first name in light of the stigma faced by those convicted of sex offenses and his hope that one day his name will not appear on a public registry. The facts of his case are detailed in his declaration, on file with counsel.

Robert credits his prison counselor with advocating for him, yet even his counselor was unable to provide Robert with additional resources to help him in his search for housing. He had been incarcerated since 1987 and had few left in his social circle to whom he could call on for support. His friend Charles endeavored to assist, but to no avail. An apartment in Poughkeepsie, about 90 minutes north of New York City, seemed to be both affordable and SARA-compliant, yet the DOCCS field office claimed it was too close to a school.

As such, Robert was held in continued incarceration until April 3, 2019, despite the fact that he had been conditionally released nearly three years earlier. While the majority of the time he was held for the civil confinement hearing, the additional five months Robert spent in prison was gratuitous and unwarranted. DOCCS did nothing during the time Robert was held for the civil commitment proceeding to assist him with his eventual release.

As of May 2021, Robert continues to live at a shelter in the Bronx. Nowhere close to being able to afford an apartment's full price, he must continue residing in the shelter for the time being. While continuing to attend programs as part of his community supervision, Robert is working on a novel, having found a talent for creative writing during his incarceration. He states he is focusing his efforts on petitioning the court to lower his risk level, for if he were Level 2 or Level 1 he would not be subject to the SARA residency restriction.

Robert says he has continuing trauma – not just from his three decades serving his sentence, but also the additional two years spent waiting for the civil commitment proceeding and the five months DOCCS incarcerated him while restricting his access to the DHS shelter system. He states that during those additional five months waiting for housing, he felt he was in limbo. Robert’s spirituality guided him through this difficult period. While Robert had faith he would eventually gain his release, he recognizes that other similarly-situated persons are negatively impacted by DOCCS’ SARA housing policy. Rather than leading others toward the light, he feels they may grow toward the darkness as a result of their continued incarceration. He states there is little or no incentive to rehabilitate one’s self if one will just be subject to continued and indefinite incarceration. Robert states, “While I firmly believe God’s work must truly be our own, I don’t think that DOCCS – in their attempts to prevent the worst outcomes – becomes exempt from empowering the best outcomes for all of us.”

DOCCS’ SARA housing policy has also negatively impacted those with special needs. *See e.g.* Allison Frankel, “Pushed Out and Locked In: The Catch-22 for New York’s Disabled, Homeless, Sex-Offender Registrants,” 129 *The Yale Law Journal Forum* 279 (2019). **William Green**⁸ was held more than 10 months past his conditional release date. The victim

⁸ Many of the facts of William’s case are detailed in a prior decision. *People ex rel. Green v. Superintendent*, 137 A.D.3d 56 (N.Y. 3d Dept. 2016). The facts of William’s case are also known to counsel. He was unable to provide a written declaration due to the covid-19 pandemic and his lack of access to an email account.

of William's offense was a minor, and as such he is prohibited from living near schools while on PRS. William was scheduled for conditional release on December 11, 2014, and the maximum expiration date of his sentence was February 17, 2014. But DOCCS continued to confine him at Sullivan Correctional Facility, a maximum-security correctional facility, until October 21, 2015 – more than 10 months after DOCCS was required by law to release him.

William is indigent and required DHS placement. His indigency was further complicated by the fact that he has been diagnosed with a serious mental illness. When an inmate being released to parole or PRS has mental health needs, DOCCS must work with the state's Office of Mental Health ("OMH") to prepare for the appropriate placement of the person in the community. Rather than navigate the needs of an inmate with mental health needs who also required DHS services, DOCCS simply left William in prison. While William has family in New York City who offered their homes to him, their addresses were not SARA-compliant. William had no resources through which he could search for housing that was affordable, SARA-compliant, and supportive of his mental health needs. For many months, DOCCS kept William in isolation in his cell for most hours of the day. At times, his mental health deteriorated as a result of his continued incarceration and isolation. He was unsure at points if his imprisonment was reality or not.

William was finally released to DHS housing on October 21, 2015 with an Assisted Outpatient Treatment ("AOT") order requiring continued mental health treatment. *See* N.Y. Mental Hygiene Law

§ 9.60. As of May 2021, William resides in homeless housing in New York City and is close to completing his seven-year term of PRS. He has continued with treatment while in the community, has attended all of his programs, and is currently taking a course to obtain his driver's license. Upon completing PRS, he is hoping to find a single room occupancy ("SRO") which will accept a housing voucher for which he qualifies.

There are many other individuals who are losing not just months, but *years* of their life as a result of DOCCS' SARA housing policy. **Patrick Austin**⁹ is one such person. Patrick spent more than three decades incarcerated in New York's prison system. Over that time, he found the will and fortitude to change and to better himself. He created a program called "Reconciliation," a restorative justice effort to help victims heal. Their motto was SAVE – Seriously Acknowledging Victim's Emotions. Patrick also became passionate about journalism and writing, sharing with the world the realities of the prison experience.

On June 19, 2019, Patrick was granted parole as a result of his demonstrated commitment to his rehabilitation and the positive steps he had taken in his life. Yet DOCCS did not release him. The victim of Patrick's offense was under 18, and as such the SARA residency restriction applies to him while he is on community supervision. He was transferred to Fishkill Correctional Facility, where he was housed in the RTF dorm and part of the general population. He

⁹ The facts of Patrick's case are detailed in his declaration, on file with counsel.

was offered no programs while in the RTF and, due to a medical condition, was unable to have a job there.

Patrick states that DOCCS provided him absolutely no help in searching for housing. They merely suggested he contact family to help, and due to his length of time incarcerated, there were few living relatives to whom he could reach out. He was kept on a waitlist for DHS housing, although he was told any inmate reaching his conditional release or maximum expiration date would be given preference in DHS housing over him. His earning parole release did not seem to matter to DOCCS.

For nearly two years, Patrick wondered on a daily basis whether he would ever get out. He had a life sentence on the back end, and he feared DOCCS would keep him incarcerated until he satisfied that life sentence. Despite all he has to offer, he felt DOCCS didn't see him for the man he had become and for the man he is today.

However, on March 9, 2021, Patrick was finally released. He was placed in DHS housing, currently residing in a homeless shelter on Ward's Island, New York City. He is currently working for the campaign of a local politician running for city council and may soon be employed in a part-time position in a law firm. Looking back at his continued incarceration, Patrick notes that the housing issue disproportionately impacts people such as himself – those of limited financial means and those from urban areas. In particular, he highlights the RTF dorm residents were disproportionately people of color.

Finally, there is **David**,¹⁰ who came within days of being held pursuant to DOCCS' SARA housing policy. David is a Level 1 registered person whose victim¹¹ was under 18 at the time of the offense. Because he was a model inmate, he had earned "good time" off the maximum expiration of his 1½ year sentence, and he was scheduled for conditional release on March 31, 2021 rather than the maximum expiration date of his sentence on June 18, 2021.

Months prior to his release, David's family began searching for housing opportunities for him. He had no resources while in DOCCS' custody through which he could search for himself. As an inmate in a medium-security facility, he was without access to the internet or realtor listings in New York City. Further, he was limited to calls with only those on a DOCCS-approved call list. David would search binders in the prison's resource room, but they were full of outdated information and contained nothing specific to the SARA residency restriction. DOCCS staff provided no other help or resources for his housing search.

¹⁰ David's full name is known to counsel. He has asked to use only his first name in light of the stigma faced by those convicted of sex offenses, and because as a Level 1 registered person he is not listed on a public registry. The facts of David's case are known to counsel. He was unable to provide a written declaration due to the covid-19 pandemic and his lack of access to an email account.

¹¹ David was arrested after an undercover law enforcement operation involving a non-existent 14-year-old victim. Yet the SARA residency restriction applies even to cases involving imagined victims.

David's mother and father were primarily working on the search for housing, combing listings on websites such as Zillow and Craigslist. His parents were willing to provide financial support while David got on his feet, but their resources are not limitless. New York City has one of the most expensive and competitive housing markets in the nation, if not the world, and for those with financial and locality limitations, the task of finding housing becomes all that much harder. David's parents found most available housing options were either too expensive or were not SARA compliant. Finally, a room in a shared apartment was found in early February 2021, about two months before David's release date. Yet it was just two days before his conditional release date of March 31, 2021 that David's proposed address was approved by DOCCS.

If his family had not located an affordable SARA-compliant residence – a literal needle in a haystack – David would have applied for services through DHS. But David would have spent more than two years waiting for his release from incarceration. Simply put, had it not been for the exhaustive efforts of his family to find SARA housing and their willingness and ability to provide initial financial support, David would still be in custody today.

David says it is “unreal” that he came so close to continued incarceration. In those months leading up to his release, he felt helplessness, anger, and frustration. The situation was nerve-wracking and anxiety-producing, as he could do nothing to help search for SARA-compliant housing. Additionally, without secured housing, he couldn't focus on the

other elements of his re-entry, such as employment and treatment. He stated, “How could I think about having a positive re-entry? I wondered if I was ever going to get out.” At the time, he wondered if he could be held for his entire 10-year term of PRS. David reports the situation “deeply affected” his parents; for his mother, her anxiety was debilitating. Since his release, David has already found employment as a case manager, working to help others with their re-entry plans. He keenly understands the difficulties the formerly incarcerated face, especially those challenges specific for those who must register or who face residency restrictions.

These are just a few of the stories of those who have been victimized by DOCCS’ SARA housing policy. The sum of these lived experiences demonstrates that DOCCS, through its SARA housing policy for indigent New York City residents, is literally depriving people of hundreds of cumulative years of freedom. They are kept guessing as to their release dates for months, if not years, on end. Despite completing their sentences and having the legal right to return to their families and communities, DOCCS has implemented a policy that locks the prison door and imposes extra-judicial continuing and indefinite incarceration – solely because of an inmate’s indigency.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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