

COUNTY COURT OF THE COUNTY OF WESTCHESTER

THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.*
Stefen R. Short, Esq., on behalf of GIANNA CARRIUOLO,
DIN 19G0082; SANDRA LAWSON, DIN 18G1002;
GEORGE MARTINEZ, DIN 07A4008; BRYAN PITTSLEY,
DIN 12A4129; SINCERAY SOLIS, DIN 19G0273; A.A.,
DIN *****; and B.B., DIN *****,

Petitioners,

– against –

MICHAEL CAPRA, Superintendent, Sing Sing Correctional
Facility; AMY LAMANNA Superintendent, Bedford Hills
Correctional Facility; TANYA MITCHELL-VOYD,
Superintendent, Taconic Correctional Facility; and
ANTHONY J. ANNUCCI, Acting Commissioner, New York
State Department of Corrections and Community Supervision,

Respondents.

**EMERGENCY
AFFIRMATION OF
STEFEN R. SHORT
IN SUPPORT OF
ORDER TO SHOW
CAUSE**

Index No.

I, Stefen R. Short, Esq., an attorney duly admitted to practice law before the courts of the State of New York, hereby affirm under penalty of perjury that:

1. I am a Staff Attorney with the Prisoners' Rights Project of The Legal Aid Society and counsel for Petitioners in this action. I submit this emergency affirmation in support of Petitioners' proposed Order to Show Cause, which commences Petitioners' habeas proceeding and requests, as incidental relief, (i) permission for Petitioners A.A. and B.B. (the "Anonymous Petitioners") to proceed under anonymous pseudonyms; (ii) permission to serve respondents by Overnight Mail; and (iii) other further relief as the Court deems just and proper.

2. Because this litigation is brought directly to redress the critical status of the Petitioners as a result of the COVID-19 health pandemic, this action qualifies as an "Essential Proceeding" under Exhibit A, Section C.6 of Administrative Order AO/78/20, entered by the Chief Administrative Judge of the Courts on March 22, 2020.

BACKGROUND

3. The facts underlying this Order to Show Cause are set forth more fully in the Verified Petition for Writ of Habeas Corpus (the “Petition”), dated May 6, 2020.

4. In demonstrating why habeas relief is appropriate in this action, the Petition describes numerous matters that are highly sensitive and personal for the Anonymous Petitioners.

A. Petitioner A.A.

5. Petitioner A.A. is incarcerated at Bedford Hills Correctional Facility. (Petition ¶ 18.)¹ Petitioner A.A. will turn 57 years old later this month and suffers from Lupus (an autoimmune disease), heart disease, asthma, and hypertension, and is on anti-seizure medications among other medications. (*Id.* ¶ 50.)

6. The Petition describes Petitioner A.A.’s painful history of childhood abuse, intimate partner violence, and struggles with mental illness. (*Id.* ¶ 53-54.) The Petition also details how Petitioner A.A. was subjected to sexual assault by a male correctional officer assigned to her housing unit while in New York State Department of Corrections and Community Supervision (“DOCCS”) custody. (*Id.* ¶ 58.)

7. The Parole Board has granted her parole release and she is scheduled for parole release on July 10, 2020. (*Id.* ¶ 59.)

B. Petitioner B.B.

8. Petitioner B.B. is incarcerated at Taconic Correctional Facility. (*Id.* ¶ 17.) Petitioner B.B. is 61 years old, is HIV+, and is diagnosed with severe asthma. (*Id.* ¶ 60.)

9. Petitioner B.B. is a transgender woman whose repeated access to medical areas places her at an increased risk of exposure to COVID-19. (*Id.* ¶ 61.) Additionally, because of

¹ All references to “Petition ¶ ___” refer to the Verified Petition for Writ of Habeas Corpus filed on May 6, 2020.

Petitioner B.B.'s gender identity, calm disposition, soft-spoken and traditionally feminine presentation, and because she poses absolutely no risk to others, she is one of less than a handful of transgender women to have ever been confined in a women's prison. (*Id.* ¶ 64.)

10. Petitioner B.B. is eligible for her merit board hearing in July 2020, and for parole release in March 2021, less than a year from now. (*Id.* ¶ 65.)

**I. THE COURT SHOULD ALLOW PETITIONERS
A.A. AND B.B. TO PROCEED USING A PSEUDONYM**

11. "Anonymity is warranted where there is 'a substantial privacy right which outweighs the customary and constitutionally-embedded presumption of openness in judicial proceedings.'" (*See Doe v Kidd*, 19 Misc3d 782, 788 [Sup Ct, NY County 2008].) The court has discretion to permit a party to proceed under a pseudonym after considering various guidelines, including whether the requesting party is seeking to "preserve privacy in a matter of a sensitive and highly personal nature," as opposed to merely avoiding annoyance or criticism; and "whether identification poses a risk of retaliatory physical or mental harm . . ." (*See id.* at 788–89; *see also Doe v Good Samaritan Hosp.*, 115 NYS3d 853, 856 [Sup Ct, NY County 2019] [listing factors a court will consider when making an anonymity determination, including "whether identification poses a risk of mental or physical harm, harassment, ridicule or personal embarrassment; whether the case involves information of the utmost intimacy; . . . (and) whether revealing the identity of the party will dissuade the party from bringing the lawsuit"].)

12. New York statutory law is clear that one such justification for granting anonymity is a litigant's HIV status. (*See* N.Y. Pub. Health Law § 2785; *see also Doe v Sutlinger Realty Corp.*, 938 NYS2d 226 [Sup Ct, Kings County 2011], *aff'd*, 947 NYS2d 153 [2d Dept 2012] [granting HIV+ plaintiff anonymous status under Public Health Law § 2785]; *Doe v G.J. Adams Plumbing, Inc.*, 794 NYS2d 636, 638 [Sup Ct, Oneida County 2005] [giving HIV+ plaintiff

anonymous status and taking “extraordinary measures” to craft order in a way which maintained the highest level of protection for plaintiff’s privacy].)

13. Moreover, when a case involves victims of sexual abuse, courts often allow the plaintiff to proceed under a pseudonym. (*See Doe v New York Univ.*, 786 NYS2d 892, 904 [Sup Ct, N.Y. County 2004] [permitting victim of sexual assault to proceed by pseudonym]; *Good Samaritan Hosp.*, 115 NYS3d at 857 [permitting plaintiff, an alleged victim of sexual abuse, to proceed under a pseudonym].) This is because courts are cognizant of the risk of re-victimization and re-traumatization that victims of sexual abuse face. (*See New York Univ.*, 786 NYS2d at 904 [acknowledging former New York Governor’s comment that “[s]exual assault victims have unfortunately had to endure a terrible invasion of their physical privacy” and “[t]hey have a right to expect that this violation will not be compounded by a further invasion of their privacy”].)

14. Here, the private nature of Petitioner A.A.’s underlying medical conditions make clear that she is entitled to anonymous status. The Petition necessarily highlights A.A.’s medical condition, as well as describing Petitioner A.A.’s painful history of childhood abuse, intimate partner violence, and mental illness. (Petition ¶¶ 50-51, 54) Petitioner A.A. has also already faced sexual violence and harassment while incarcerated; if she is identified in the Petition, she could be targeted for further violence and harassment. (*Id.* ¶ 58.)

15. Petitioner B.B. is likewise entitled to anonymity. The Petition describes how Petitioner B.B. is both HIV+ and is a transgender woman serving her sentence in a women’s prison. (*Id.* ¶¶ 60-61, 64.) Put plainly, either of these factors would independently justify anonymous status; the former, because HIV information is broadly protected by New York

statute, the latter, because a litigant's gender identity is highly sensitive and disclosure could subject Petitioner B.B. to transphobic harassment.

16. Lastly, if the Anonymous Petitioners are not granted anonymous status, they could be dissuaded from bringing the lawsuit. In the event the Petition fails, personal identification of the Anonymous Petitioners could impact their parole decisions or release dates. The Anonymous Petitioners should not be forced to choose between protecting their health and constitutional rights, and risking reprisal from prison officials and the parole board.

17. In sum, the Petition contains highly sensitive and personal information concerning the Anonymous Petitioners, disclosure of which could subject them to danger in the event they are not given anonymous status. Any public interest in knowing the Anonymous Petitioners' identities is substantially outweighed by the compelling privacy interests at play here. Accordingly, to obviate any harm to their privacy, it is imperative that the Court grant Anonymous Petitioners anonymity.

II. THE COURT SHOULD PERMIT ALTERNATIVE SERVICE ON RESPONDENTS BY OVERNIGHT MAIL

18. New York permits a court issuing a writ of habeas corpus to "direct[] service in some other manner which it finds reasonably calculated to give notice to such person of the proceeding" "for good cause shown." (CPLR 7005.) Courts are "afforded some flexibility regarding service" and recognize that "relaxation of the rules respecting service of process to enable prison inmates to obtain jurisdiction" may be appropriate. (*People ex rel. Williams v Smith*, 2015 WL 10793930, at *1 [Sup Ct, NY County 2015] [citing *Alevras v. Chairman of New York Bd. of Parole*, 118 AD2d 1020, 1021 [3d Dept 1986]].)

19. Here, alternative service is warranted in light of the extraordinary circumstances of the coronavirus pandemic. On or about March 11, 2020, the World Health Organization

declared the Novel Coronavirus SARS-CoV-2, which causes the COVID-19 disease (the “Coronavirus”), a global pandemic. The U.S. and New York State governments declared a state of emergency on March 13, 2020 and March 7, 2020, respectively. On March 20, 2020, New York State Governor Andrew M. Cuomo issued an unprecedented executive order to suspend non-essential business and travel activity. (*See* Executive Order 202.6 [*available at* [governor.ny.gov/executiveorders](https://www.governor.ny.gov/executiveorders)].) Recognizing the dangers associated with the Coronavirus, the New York Supreme Court is no longer accepting the commencement of new matters except for essential matters, and has extended the use of electronic means for filing and service of documents for all essential matters. (*See* AO-81A-2020.)

20. Requiring personal service violates social distancing rules and runs contrary to the extensive efforts by both New York’s government and the state’s court system to prevent personal contact and stem the tide of this public health crisis. Moreover, in the current pandemic environment, the unlikelihood of successfully serving the Respondents is twofold. First, it is difficult to find process servers who are willing to provide personal service. Were process servers willing to do so, individuals will likely be hesitant to act contrary to Governor Cuomo’s advice and come into contact with a stranger to accept personal service.

21. Further, Courts routinely permit prisoners to serve respondents by mail, even in the absence of a worldwide pandemic. (*See, e.g., Williams*, 2015 WL 10793930, at *1 [noting that court granted petitioner’s request for alternative service and directed petitioner to serve papers by First Class Mail]; *Murray v. Fischer*, 942 NYS2d 677, 678 [3d Dept 2012] [referencing court order which required petitioner to serve papers on respondents by First Class Mail]; *Barnes v. Venettozzi*, 35 NYS3d 674 [3d Dept 2016] [same].) The same result should obtain here.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons, the Court should:

- a) Allow the Anonymous Petitioners to proceed under A.A. and B.B., their respective pseudonyms, during the pendency of this action, and order the caption in this case to read: THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* Stefen R. Short, Esq., on behalf of GIANNA CARRIUOLO, DIN 19G0082; SANDRA LAWSON, DIN 18G1002; GEORGE MARTINEZ, DIN 07A4008; BRYAN PITTSLEY, DIN 12A4129; SINCERAY SOLIS, DIN 19G0273; A.A., DIN *****; and B.B., DIN *****;
- b) Direct the parties, their attorneys, and their agents to refrain from disclosing the Anonymous Petitioners' true identities;
- c) Direct that all papers filed in the above-captioned action, and all judgments, orders, decisions, notices to the Court and any other document relating to the action refer to the Anonymous Petitioners by their respective pseudonyms, and bear the caption: THE PEOPLE OF THE STATE OF NEW YORK, *ex rel.* Stefen R. Short, Esq., on behalf of GIANNA CARRIUOLO, DIN 19G0082; SANDRA LAWSON, DIN 18G1002; GEORGE MARTINEZ, DIN 07A4008; BRYAN PITTSLEY, DIN 12A4129; SINCERAY SOLIS, DIN 19G0273; A.A., DIN *****; and B.B., DIN *****;
- d) Permit Petitioners to serve the Order to Show Cause, the Petition, and all supporting papers on Respondents by Overnight Mail.

On April 16, 2020, Petitioners Lawson, Martinez, Pittsley, Solis, A.A., and B.B. collectively applied for the relief requested herein. Petitioners voluntarily dismissed their application before

the court decided its merits. This application joins an additional petitioner and introduces further evidence. Petitioner Carriuolo has never applied, as an individual or as part of a collective, for the relief requested herein.

Dated: New York, New York
May 6, 2020

A handwritten signature in black ink, appearing to read 'S. R. Short', is written over a horizontal line.

Stefen R. Short