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Shamika Crawford,	)
	)
<i>Petitioner-Appellant,</i>	)
	)
-against-	)
	)
Honorable Shahabuddeen Ally, Judge,	)
Criminal Court of the City of New York,	)
Bronx County; and Darcel D. Clark, District	)
Attorney of Bronx County,	)
	)
<i>Respondents-Respondents.</i>	)
	-----X

PLEASE TAKE NOTICE, that upon the affirmation of S. Lucas Marquez sworn to on April 6, 2021, and all exhibits attached thereto including a copy of the proposed brief of *amici curiae*, the undersigned will move this Court at 27 Madison Avenue, New York, New York, on April 19, 2021 at 10:00am, or as soon thereafter as is practicable for an order granting leave to the Brooklyn Defender Services, The Legal Aid Society, and Neighborhood Defender Service of Harlem to file with this Court a brief of *amici curiae* in support of Petitioner-Appellant, Shamika Crawford, in the above-styled action.

Respectfully submitted,

# h3-

S. LUCAS MARQUEZ  
JESSICA NITSCHÉ  
MATTHEW ROBISON  
JEFFREY BLANK  
Brooklyn Defender Services  
177 Livingston Street, 7th Floor

Brooklyn, New York 11201  
(718) 254-0700  
slmarquez@bds.org

JUSTINE LUONGO  
COREY STOUGHTON  
The Legal Aid Society  
199 Water Street  
New York, NY 10038  
(212) 577-3300  
JMLuongo@legal-aid.org

MEGHNA PHILIP  
AVINASH SAMARTH  
Neighborhood Defender Service of  
Harlem  
317 Lenox Avenue, 10th Floor  
New York, NY 10027  
(212) 876-5500  
mphilip@ndsny.org

To: Clerk of the Court  
Appellate Division: First Department  
27 Madison Avenue  
New York, New York 10010

DAVID L. KORNBLAU  
SHIRA POLIAK  
SARAH ELSHERYIE  
COVINGTON & BURLING LLP  
The New York Times Building  
620 Eighth Avenue  
New York, New York 10018  
(212) 841-1084  
dkornblau@cov.com

ELI C. NORTHRUP  
EDWARD SOTO  
THE BRONX DEFENDERS  
360 East 161st Street  
Bronx, New York 10451  
(347) 842-1163  
elin@bronxdefenders.org  
esoto@bronxdefenders.org

*Attorneys for Petitioner-Appellant Shamika Crawford*

LETITIA JAMES  
Attorney General State of New York  
STEVEN C. WU  
Deputy Solicitor General, Of Counsel  
BLAIR J. GREENWALD  
Assistant Solicitor General, Of Counsel  
28 Liberty Street  
New York, New York 10005  
(212) 416-6102  
blair.greenwald@ag.ny.gov

*Attorneys for Respondent-Respondent Hon. Shahabuddeen Ally*

DARCEL D. CLARK  
District Attorney  
PETER D. CODDINGTON  
PAUL A. ANDERSEN  
Assistant District Attorneys, Of Counsel  
198 East 161st Street  
Bronx, New York 10451  
AndersenP@bronxda.nyc.gov

*Attorneys for Respondent-Respondent Darcel D. Clark*

**SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT**

-----X  
Shamika Crawford, )  
 )  
 )  
 ) *Petitioner-Appellant,* )  
 ) No. 260054/2020  
 ) -against- ) (New York County)  
 )  
 )  
 ) Honorable Shahabuddeen Ally, Judge, ) No. 2020-04520  
 ) Criminal Court of the City of New York, ) (First Department)  
 ) Bronx County; and Darcel D. Clark, District )  
 ) Attorney of Bronx County, )  
 )  
 )  
 ) *Respondents-Respondents.* )  
-----X

**AFFIRMATION OF S. LUCAS MARQUEZ IN SUPPORT OF MOTION BY BROOKLYN  
DEFENDER SERVICES, THE LEGAL AID SOCIETY, AND NEIGHBORHOOD  
DEFENDER SERVICE OF HARLEM TO FILE *AMICI CURIAE* BRIEF**

S. Lucas Marquez, an attorney admitted to practice before the courts of New York, affirms the following to be true under penalty of perjury.

1. I am an attorney at Brooklyn Defender Services (“BDS”). On behalf of BDS, The Legal Aid Society (“Legal Aid”), and Neighborhood Defender Service of Harlem (“NDS”), I submit this affirmation in support of the motion for leave to file the attached brief as *amici curiae* in support of Petitioner-Appellant Shamika Crawford.

2. BDS, Legal Aid, and NDS seek to participate as *amici curiae* in this case, because as public defender organizations who collectively represent hundreds of thousands of low-income people each year charged in New York City’s criminal courts, *amici* have substantial knowledge and experience regarding pre-trial orders of protection, and the often-devastating impact they have on the lives of the people *amici* represent.

3. *Amicus curiae* BDS is a full-service public defender organization that provides multi-disciplinary and client-centered criminal defense, family defense, immigration, and civil

legal services for nearly 30,000 people in Brooklyn every year. In addition to zealous legal defense, BDS provides a wide range of additional services to meet people's unique needs, including social work support, help with housing, benefits, education and employment, and advocacy targeting systems and laws that implicate their rights. BDS's Criminal Defense Practice of approximately 140 criminal defense attorneys and 120 social workers, investigators, paralegals, and other non-attorney staff currently represents over 20,000 people facing criminal prosecution in the criminal courts in Brooklyn.

4. *Amicus curiae* Legal Aid is the oldest and largest provider of legal services to low-income families and individuals in the United States. Founded in 1876, Legal Aid serves as the citywide public defender of low-income people prosecuted in the New York court system in all five New York City boroughs, representing hundreds of thousands of individuals every year.

5. *Amicus curiae* NDS is a community-based public defender office. Since 1990, NDS has sought to improve the quality and depth of criminal, family, and civil defense for those in Harlem and Northern Manhattan who cannot afford an attorney. NDS accomplishes this by providing holistic, cross-practice representation to our clients.

6. As community defenders, *amici* have witnessed time and again the significant hardships rendered on the people we represent and their families by temporary orders of protection issued in violation of their due process and statutory rights. Individuals routinely suffer significant and irrevocable harm after criminal courts automatically issue orders of protection at the prosecution's request without holding the prosecution to its burden to show necessity or provide defendants any prompt and meaningful opportunity to challenge the order. These orders are invasive, destabilizing, and punishing. They render the people we represent homeless upon release from arraignments, regardless of the time of day or night. They tear families apart—parents from

children, spouses from each other, and children from their siblings. They result in negative immigration consequences. And in the midst of the COVID-19 pandemic, they increase the risks of infection by forcing people out of their usual homes and into shelters or other shared spaces with strangers, friends, or extended family. The effects of these “temporary” orders—often renewed reflexively at each court date over several months—are far from temporary: they create long-lasting and reverberating impacts on every aspect of our clients’ lives, even when, as often happens, the underlying criminal case is dismissed. *Amici* have a substantial interest in protecting and advocating for the rights of the individuals we represent.

7. In this brief, *amici curiae* provide perspectives and examples from their experience as public defenders in New York’s criminal courts to demonstrate that the due process violation that Ms. Crawford suffered is not an anomaly, but rather a regimented practice perpetuated against New Yorkers. The result—as in Ms. Crawford’s case—is manifest injustice and devastation for many. Therefore, in this brief, *amici* encourage this Court to recognize the destructive impact of these orders on communities across New York City, and to provide a meaningful and prompt opportunity for an evidentiary hearing that comports with due process where the prosecution bears the burden of proof, the defendant has an opportunity to present evidence, and the court undertakes an individualized assessment of the evidentiary support for the order of protection.

8. For these reasons, proposed *amici curiae* respectfully request leave of Court to file the attached *amici* brief. Petitioner-Appellant has consented to the filing of the brief. Respondent-Respondent Ally has consented to and Respondent-Respondent Clark does not oppose the filing of the brief.

Dated: April 6, 2021  
Brooklyn, New York



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S. LUCAS MARQUEZ

Brooklyn Defender Services  
177 Livingston Street, 7th Floor  
Brooklyn, New York 11201  
(718) 254-0700  
slmarquez@bds.org

## **Exhibit A**



Bronx County Clerk's Index No. 260054/20

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# New York Supreme Court

## APPELLATE DIVISION—FIRST DEPARTMENT

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In the Matter of the Application of

SHAMIKA CRAWFORD,

*Petitioner-Appellant,*

—against—

CASE NO.

**2020-04520**

HONORABLE SHAHABUDDEEN ALLY, Justice of the Criminal Court,

—and—

DARCEL D. CLARK, District Attorney of Bronx County,

*Respondents-Respondents.*

For an Order Pursuant to Article 78 of  
the Civil Practice Law and Rules.

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### BRIEF OF BROOKLYN DEFENDER SERVICES, THE LEGAL AID SOCIETY, AND NEIGHBORHOOD DEFENDER SERVICE OF HARLEM AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT

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S. LUCAS MARQUEZ  
JESSICA NITSCHÉ  
MATTHEW ROBISON  
JEFFREY BLANK  
Brooklyn Defender Services  
177 Livingston Street, 7th Floor  
Brooklyn, New York 11201  
(718) 254-0700  
slmarquez@bds.org

MEGHNA PHILIP  
AVINASH SAMARTH  
Neighborhood Defender Service of Harlem  
317 Lenox Avenue, 10th Floor  
New York, NY 10027  
(212) 876-5500  
mphilip@ndsny.org

JUSTINE LUONGO  
COREY STOUGHTON  
The Legal Aid Society  
199 Water Street  
New York, NY 10038  
(212) 577-3300  
jmluongo@legal-aid.org

*Counsel for Amici Curiae*

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As public defenders providing legal services in New York City’s criminal courts, *amici curiae* Brooklyn Defender Services (“BDS”), The Legal Aid Society (“Legal Aid”), and Neighborhood Defender Service of Harlem (“NDS”) (collectively “*amici curiae*”) respectfully offer this brief in support of Petitioner-Appellant Shamika Crawford’s appeal of the Supreme Court’s dismissal of her Article 78 petition.<sup>1</sup>

### **STATEMENT OF INTEREST OF *AMICI CURIAE***

*Amici curiae* provide multi-disciplinary legal services, along with social work and advocacy support, to low-income New Yorkers. As public defenders who collectively represent hundreds of thousands of low-income people each year charged in New York City’s criminal courts, *amici* have substantial knowledge and experience regarding pre-trial orders of protection, and the often-devastating impact they have on the lives of the people *amici* represent.

*Amicus curiae* BDS is a full-service public defender organization that provides multi-disciplinary and client-centered criminal defense, family defense, immigration, and civil legal services for nearly 30,000 people in Brooklyn every

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<sup>1</sup> *Amici* submit this brief pursuant to 22 NYCRR Part 1250.4(f), pending leave of Court. *Amici* confirm that no party’s counsel authored this *amici curiae* brief in whole or in part, and no party, party’s counsel, or other person—other than *amici*, its members, or its counsel—contributed money intended to fund preparing or submitting the brief.

year. In addition to zealous legal defense, BDS provides a wide range of additional services to meet people's unique needs, including social work support, help with housing, benefits, education and employment, and advocacy targeting systems and laws that implicate their rights. BDS's Criminal Defense Practice of approximately 140 criminal defense attorneys and 120 social workers, investigators, paralegals, and other non-attorney staff currently represents over 20,000 people facing criminal prosecution in the criminal courts in Brooklyn.

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As community defenders, *amici* have witnessed time and again the significant hardships temporary full orders of protection create for the people we represent and their families. *Amici* have a substantial interest in protecting and advocating for their

rights of the individuals we represent. In this brief, *amici curiae* provide perspectives and examples from our experience as public defenders in New York City’s criminal courts to demonstrate that the due process violation that Ms. Crawford suffered is not an anomaly, but rather a regimented practice perpetuated against New Yorkers. The result—as it was in Ms. Crawford’s case—is manifest injustice and devastation for many. We urge this Court to recognize the destructive impact of these orders on the lives of low-income communities across New York City, and to provide a meaningful and prompt opportunity for an evidentiary hearing that comports with due process where the prosecution bears the burden of proof, the defendant has an opportunity to present evidence, and the court undertakes an individualized assessment of the evidentiary support for the order of protection.

### **PRELIMINARY STATEMENT**

Each year, tens of thousands of New Yorkers suffer significant and irrevocable harm after New York City criminal courts automatically issue pretrial “temporary” full orders of protection. These orders, issued at the prosecution’s request without the court requiring any showing of necessity or providing defendants any prompt and meaningful opportunity to be heard, are invasive, destabilizing, and punishing. They often render people homeless upon release from arraignments, leaving them to secure emergency housing in the middle of the night. They tear families apart—parents from children, spouses from one another, and children from

siblings. They result in negative immigration consequences. And in the midst of the COVID-19 pandemic, they increase the risks of infection by forcing people out of their homes and into shelters or other shared spaces with strangers, friends, or extended family. The effects of these “temporary” orders—often renewed reflexively at each court date over several months—are far from temporary: they create long-lasting and reverberating impacts on every aspect of people’s lives, even when, as often happens, the underlying criminal case is dismissed. The practice deprives people of liberty and property without ensuring due process.

Prosecutors regularly request full orders of protection at the outset of criminal cases involving civilian complainants, although each case is unique and the collateral consequences of an order differ. To support their request, prosecutors habitually recite the allegations and charges without any independent factual foundation and without regard to the immediate consequences of an order. Courts nearly universally defer to the prosecution and impose these orders immediately, without requiring any evidentiary support beyond the bare-bones allegations in the complaint, and without inquiring about the collateral consequences or even whether the protected party wants an order of protection. Even where defense counsel advises the court of the consequences or challenges the necessity of an order, courts still routinely defer to the prosecution; the power of prosecutors on this specific issue is rarely questioned. Even where witnesses or an impacted party is available, criminal courts often



foreclose their ability to make a record against the order of protection. Individuals and their families routinely suffer devastating and unnecessary harm as a result of these orders without any meaningful recourse to challenge their necessity.

As in Ms. Crawford's case and the examples below, the criminal charges that underlie the prosecution's request for an order of protection frequently are ultimately dismissed. Yet these unproven allegations regularly serve as the sole basis to disrupt lives, destabilize families, and cause irrevocable harm in various, intersecting ways: from losing housing and employment, to separating families and interfering with parenting, derailing immigration relief, and risking security and health. Despite these onerous consequences, defense counsel's requests for a prompt hearing to challenge the prosecution's application are routinely denied, even where counsel repeatedly seeks to present evidence.

Beyond the devastating impact of courts' one-size-fits all approach, the problematic practice reaffirms harsh and troubling racial and economic justice realities in New York City's criminal courts. Indeed, like many other failings of the criminal legal system,<sup>2</sup> the automatic issuance of full orders of protection based on bare allegations and without a showing of necessity disproportionately impacts New

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<sup>2</sup> Johnson, Jeh Charles, *Report from the Special Advisor on Equal Justice in the New York State Court*, Oct. 1, 2020, at 36, 61-62, <http://nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf>.

York's Black and brown communities and targets people based on their socioeconomic status, sexual orientation or gender identity, health conditions, or disabilities.

Overwhelmingly, the people that *amici* serve are people of color whose communities are at the center of a disparate enforcement system due to heavy police presence,<sup>3</sup> a presumption of guilt or malevolence that far too often replaces due process, and intrusive policing and child welfare supervision.<sup>4</sup> Further, an order of protection is more likely to exclude persons of color from their homes and families than a white person, given the higher rates of communal living among Black, Latinx, and Asian families.<sup>5</sup> When orders are issued against cohabitating intimate partners

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<sup>3</sup> Officers' informal discretion leads to bias in enforcement, causing Black and Latinx people to be arrested and charged disproportionately to their white counterparts. For example, Black and Latina women, and LGBTQ individuals, are more likely to be arrested either in conjunction with, or due to a complaint by, the aggressor. Survived and Punished, *Research Across the Walls*, Jan. 2019, at 6, <https://survivedandpunished.org/research-across-the-walls-guide/>.

<sup>4</sup> See New School, *Child Welfare Investigations and New York City Neighborhoods*, June 2019, <https://static1.squarespace.com/static/53ee4f0be4b015b9c3690d84/t/5d12746c3cdaa000017dfc2a/1561490541660/DataBrief.pdf>; NYS OCFS, *Disproportionate Minority Representation in Child Welfare and Juvenile Justice Systems*, Dec. 2015, at 7, [https://ocfs.ny.gov/main/bcm/DMR\\_Section%20Seven%20of%20Grant%20RFP\\_2015.pdf](https://ocfs.ny.gov/main/bcm/DMR_Section%20Seven%20of%20Grant%20RFP_2015.pdf).

<sup>5</sup> Pew Research Center, *A record 64 million Americans live in multigenerational households*, April 5, 2018, <https://www.pewresearch.org/fact-tank/2018/04/05/a-record-64-million-americans-live-in-multigenerational-households/>.

or family members, this added instability makes it extremely difficult to coordinate childcare, work schedules, and other family responsibilities like healthcare or necessary appointments.

The practice of rote requests for and issuance of orders of protection without due process is embedded in systemic bias: the significant harms that will befall the defendants and their families are frequently disregarded, as are the wishes of complainants who are largely also people of color. The result is that communities of color are disparately impacted, with Black and Latinx families suffering the brunt of the harm, which is yet another reason why criminal courts must adhere to the principles of due process.

As shown below, the practice of imposing full orders of protection without a prompt hearing denies defendants a meaningful chance to avoid the significant, long-lasting, and often irreversible harm that results. The devastating impact of this practice is clear, and so too should be the remedy: to provide individuals a meaningful and prompt hearing that comports with due process where the prosecution bears the burden and the court undertakes an individualized assessment of the evidentiary support for the order of protection.

## **ARGUMENT**

The due process rights of defendants in New York's criminal court systems are routinely violated through the issuance of pre-trial orders of protection based on

improper judicial deference to prosecutors' requests, without a prompt and meaningful opportunity to ensure courts assess the evidentiary foundation for orders. As shown below, the failure of criminal courts to provide adequate due process not only creates an unacceptable *risk* of an erroneous deprivation, but—as in Ms. Crawford's case—an *actual* deprivation of individuals' property and liberty interests for prolonged periods of time. The stories below are not outliers or even particularly egregious examples; rather they are the norm.

**A. Forcing Individuals Out of Their Homes and Rendering Them Homeless**

Pre-trial orders of protection often mean that individuals are unable to return to their home, shelter, building, or neighborhood for the duration of their criminal case and, sometimes result in losing homes altogether. Individuals frequently leave arraignment without anywhere to sleep that night: at best, they may be armed with a single-ride MetroCard and typically little else. The impact of being barred from home can be permanent and far reaching, including being forced to move out entirely, putting their health and lives in danger, and losing specialized public housing, rent stabilized units, and rental assistance. Depriving a person's valuable property right in a lease or tenancy interest by issuing a criminal court order of protection triggers due process requirements. *People v. Forman*, 145 Misc. 2d 115, 121, 124-130 (Crim. Ct. 1989). Too often, however, neither prosecutors nor courts

consider defendants' housing when requesting and issuing full orders of protection during the pendency of criminal cases, and even when the collateral consequences of the order are substantial, individuals do not have a meaningful and prompt opportunity to challenge these deprivations.

Mr. R.G.

Mr. R.G., a nearly 60-year-old disabled individual, was effectively evicted and rendered homeless when a full order of protection, based on charges that were ultimately dismissed, was issued without an opportunity for defense counsel to challenge its necessity. The collateral consequences of the full order were devastating: not only was R.G. rendered homeless during a pandemic, but it also endangered his Social Security Disability Insurance ("SSDI") benefits and rental assistance. Despite repeated attempts to challenge the order of protection—including requests for a hearing, moving for an order to show cause, and filing a writ in Supreme Court—the criminal court denied R.G. a meaningful opportunity to be heard on limiting the order of protection.

R.G. was initially arrested and arraigned on felony assault charges based on allegations stemming from a conflict with his girlfriend. R.G. was the lawful tenant, owner, and longtime resident of a low-cost specialized housing unit for disabled community members. At R.G.'s arraignment, the criminal court issued a full order of protection ordering R.G. to stay away from his own apartment, based on nothing

more than the prosecution's naked assertion that the complainant lived in that apartment. Defense counsel objected and requested a limited order of protection, but the court issued a full order without allowing R.G.'s attorney to present evidence on its significant impact or its necessity, and R.G. was rendered homeless.

Five days later, all felony charges were dismissed at the prosecution's request. Nonetheless, the prosecution sought to extend the full order of protection. By then, a defense investigator had spoken to the complainant who fully recanted earlier allegations that a weapon was used against her. In light of the complainant recanting and the significant harm R.G. was suffering, defense counsel renewed his objection to the necessity of the full order and requested a limited order of protection that would allow R.G. to return home. Over defense counsel's objection and without an evidentiary hearing, the criminal court re-issued the full order of protection, this time for several months and subject to housing court. The prosecution was not required to show that a full order was necessary for the complainant's protection, nor that she was entitled to the apartment or paid any portion of the associated bills. Instead, while acknowledging that R.G. did not have much of a criminal record, the court fixated on a conviction over 30 years old.

The criminal court's caveat that the order was subject to housing court provided R.G. no avenue for relief because, due to the pandemic, housing court was only hearing select matters. Even if R.G. could have pursued relief in housing court,

the process would have taken six months to a year under typical circumstances. Furthermore, making the order of protection subject to housing court failed to provide R.G. any meaningful opportunity to be heard regarding the necessity and propriety of the order of protection, or to require the prosecution to provide support for its application: safeguards required by due process as R.G. had been evicted from his home.

A week later, in light of new evidence that further supported R.G.'s request for modification, R.G. moved in criminal court for an order to show cause why the order of protection should not be modified to a limited order or, in the alternative, for a hearing to determine if the full order should continue in light of that new evidence. R.G.'s motion was summarily denied via email, and R.G. was never heard on the motion or provided an opportunity to present evidence.

Having exhausted options in criminal court, R.G.'s counsel filed a writ of habeas corpus in Supreme Court seeking a modification of the full order of protection or, alternatively, for a hearing to challenge the full order. In support of his writ, R.G. attached, *inter alia*, utility bills in his name for the apartment, an affidavit from the investigator regarding the complainant's recantation, the minutes from the court appearance where the felony charges were dismissed, and the email denial of his motion for an order to show cause. The Supreme Court denied the writ

without addressing the evidentiary support or the significant negative impact of the full order on R.G.'s livelihood or his liberty and property interests.

After more than four months of being rendered homeless by the full order of protection, the remaining charges against R.G. were summarily dismissed on speedy trial grounds. For that entire time, R.G. was homeless, carrying what few possessions he had with him in a garbage bag. R.G.'s housing was dependent on his disability status; if he registered with the shelter system he would likely lose the apartment. He called his defense counsel every day to let counsel know where he would be sleeping each night: in case something unthinkable happened, R.G. wanted someone to have his last known location. Despite New York State's moratorium on evictions enacted in light of the dangers of homelessness during the COVID-19 pandemic, the full order of protection acted as a *de facto* eviction without any recourse.

Mr. M.J.

Mr. M.J. was a skilled laborer in his 50s for whom pre-trial orders of protection twice rendered him homeless for months. The orders were based on false allegations made by the same complaining witness—an individual who was squatting in M.J.'s apartment and refusing to pay rent. Although both cases were ultimately dismissed, M.J.'s livelihood and his family were deeply impacted by his displacement.



The first case against M.J. began in the fall of 2018. The complainant rented a room in M.J.'s apartment, agreeing to pay monthly rent. By that fall, he had not paid rent for many months. One day, because the lock on the front door broke, M.J. changed the lock, without any intention to exclude the complainant from the home. However, the complainant took this opportunity to call the police and claim that he had been unlawfully evicted from the apartment, even though he continued to live there without interruption. M.J. was arrested only for Unlawful Eviction—there were no allegations of any violence. At arraignments, the prosecution nevertheless requested a full order of protection. Defense counsel objected, but the court issued the full order without any further inquiry into its necessity or the merits of the prosecution's case.

The court also did not consider the significant consequences the order would have on M.J. and his family. A full order of protection, preventing M.J. from going to the complainant's home, meant M.J. could not return to his own apartment. As a result, M.J. was forced to move out of his apartment and into his car. He slept in his car for three months, from fall into the winter, while the complainant continued to live in the apartment. M.J. is a skilled laborer who works on intricate carpentry and stonework projects and has a variety of expensive and specialized tools, which he moved to his car during the case since he could no longer keep them at home. For fear the tools would be stolen, he kept some of them at his attorneys' office during

the case. Furthermore, M.J.'s teenage son, who was living in a different state with M.J.'s ex-wife, was going through a mental health crisis at that time. The plan had been for his son to come to New York and live with M.J. However, because M.J. lost his home, his son could no longer stay with him during that difficult time.

Throughout the case, defense counsel repeatedly objected to the full order of protection, but was given no opportunity for an evidentiary hearing about the need for an order or the merits of the allegations against M.J. Ultimately, the case was dismissed.

When M.J. returned to his apartment, he installed security cameras in the hallway and asked his cousin to move into the apartment because he feared the complainant would again make false allegations, or even threaten or attack him, to get M.J. out of the apartment. His fears were realized. Soon after M.J. returned, the complainant attacked him. M.J. called 911 and M.J.'s cousin witnessed the attack. When the police arrived, the complainant feigned an injury to his arm. The prosecution filed complaints against both M.J. and the complainant, and at arraignments, requested a full order of protection against each party. The court again, without any evidentiary hearing, granted both orders over a strenuous objection from defense counsel.

M.J. once again was rendered homeless by an order of protection issued on baseless accusations, spending an additional month in the middle of the winter

sleeping in his car. Defense counsel was given no opportunity to challenge the order, despite repeated objections. Ultimately, defense counsel provided the prosecution with an exculpatory eyewitness statement from M.J.'s cousin and the prosecution dismissed the case against M.J. in the interests of justice.

Mr. L.P.

Mr. L.P., a 45-year-old proud leaseholder of a New York City apartment, sought to defray expenses, by subletting his second bedroom to a young man. The sublessee continuously smoked in the apartment despite L.P.'s protestations. After an argument, L.P. was accused of punching the sublessee and arrested on misdemeanor assault charges. The court denied defense counsel's request for a limited order of protection at arraignment and issued a full order, barring L.P. from returning home.

The sublease was due to terminate in a month, so L.P.'s counsel contacted the prosecution and proposed that L.P. agree to immediately return the complainant's security deposit in exchange for the complainant leaving the apartment a month early. The complainant, however, refused to leave the apartment and by staying avoided paying rent throughout the duration of the case. Despite the baseless allegations, L.P. was homeless for three months while paying the entire rent so he would not lose his apartment. Although the complainant stayed two months past the

expiration of the sublease, L.P. was powerless to stop him. The criminal complaint was never converted, and the charges against L.P. were dismissed and sealed.

Mr. A.G.

Mr. A.G., a 75-year-old grandfather and immigrant to the United States, lived in a room for two years without problems, but was rendered homeless after an order of protection based on false allegations was issued against him.

A little over two years into his stay, the sublessor of his room asked him to vacate. A.G. refused to leave: that room was his home. The complainant then went to housing court, attempting to evict him, and lost. Less than one month after her loss in housing court, the sublessor called the police and falsely alleged that A.G. had threatened her. A.G. was arrested and charged in a misdemeanor complaint with menacing.

At arraignment, the prosecution requested a full order of protection based solely upon the allegations in the complaint. Defense counsel objected, arguing for a limited order of protection. A.G. had never been arrested in his 75-year-long life, and the complainant had a clear and demonstrable incentive to falsely call the police and secure an order of protection that would effectively grant her the eviction that housing court had denied. The criminal court issued a full order of protection. At arraignments the defense counsel raised that the complainant had an incentive to

falsify the allegations after losing an eviction proceeding in housing court, but A.G. was not provided an evidentiary hearing.

As a result, A.G. was forced to leave his home. He was released, in a snowstorm, with an access order to go with a police officer to pick up his belongings from the place he had lived for two years. He was homeless, living out of his truck, for two weeks, before moving in with a friend. Three months later, the prosecution moved to dismiss the case. By that time, despite the baseless allegations, A.G. had permanently lost his home.

## **B. Separating Families**

Full orders of protection are frequently issued without regard for family unity, the well-being of impacted children and partners, or the parental rights of the people we represent. The rote and generalized issuance of orders of protection means courts are not weighing these fundamental interests as due process requires.

People have a fundamental right to family integrity: to associate with their partners, parent their children, and make important decisions in their children's lives. *See, e.g., Duchesne v. Sugarman*, 566 F.2d 817, 824-25 (2d Cir. 1977) (“This right to the preservation of family integrity encompasses the reciprocal rights of both parent and children.”). Furthermore, it is well documented that the separation of a child from their parent can cause both negative short-term impacts—such as disrupting their education and being placed in the care of strangers—as well as

significant long-term trauma. Children separated from parents remain on high alert, endure prolonged and severe toxic stress on their bodies, and suffer interruptions in brain development in reason, learning, and emotional development.<sup>6</sup> The delay of reunification due to the inability to challenge the order only compounds and exacerbates these traumas.

While full orders of protection jeopardize fundamental familial rights, criminal courts seldom consider these important interests when determining whether a full order is necessary. Absent a hearing to determine the propriety of the order of protection, individuals and their families experience significant and enduring harms.

Ms. F.Z.

In the fall of 2020, Ms. F.Z. and her partner got into an argument, and F.Z. called the police. When the police arrived, both parties expressed that they did not want to go forward with any case. Nevertheless, they were both arrested. At arraignments, the prosecution requested full orders of protection against each of them without any evidentiary hearing, and over defense counsel's objection. The court did so even though F.Z. and her partner lived in a joint apartment, cared jointly for their child, and had no history of domestic incident reports.

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<sup>6</sup> Laura Santhanam, *How the toxic stress of family separation can harm a child*, PBS, June 18, 2018, <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>.

As the order of protection barred the parents from communicating to coordinate childcare obligations, F.Z. was thrust into temporary full custody and the role of sole provider for their child during the pendency of the case during a pandemic. Her partner was prevented from seeing or parenting his child. So that F.Z. and her child could remain in the shared apartment, defense counsels had to negotiate between themselves.

The court did not provide any opportunity to challenge the evidentiary basis for the order of protection. Both defendants repeatedly requested dismissal, and to modify the orders of protection, but the prosecutor maintained that he needed to do more “investigation” before consenting to limit the orders. Ultimately, after two months, the prosecution dismissed both cases as they could not be proven beyond a reasonable doubt.

Mr. B.P.

Mr. B.P., a 40-year-old father, was embroiled in an ongoing divorce proceeding with his wife. Based on allegations that were ultimately dismissed, a pre-trial full order of protection separated B.P. from his child for months. Weeks into the custody dispute, B.P.’s wife alleged to police that he threatened her in the presence of their two-year old-child. He was arrested and charged with menacing. The prosecution filed a misdemeanor complaint, signed by a police officer and based on hearsay allegations from B.P.’s wife.

At arraignments, as is routine, the prosecution requested a full order of protection covering both the complainant and B.P.'s son. Although defense counsel objected, the criminal court granted the full order. From the first day of his case, B.P. maintained his innocence. Nonetheless, there was no substantive forum to test the hearsay allegations within the complaint and on which the order of protection was issued. As a result of the order, B.P. was barred from seeing his son while the case was pending. Because of the pandemic, family court was not available to modify orders of protection that separated families, like B.P. and his son.

One month later, the prosecution made a *Brady* disclosure: the complainant admitted that B.P. had never threatened her with a gun, after all. Worse, evidence came to light that the complainant herself was committing crimes against B.P.'s family, including harassing B.P.'s mother to the point that she was too scared to leave the house and go to work. All the while, the misdemeanor complaint against B.P. remained uncorroborated by any supporting depositions and, yet, a full order of protection remained in place. Eight months later, the prosecution dismissed the case. The prosecution never filed a supporting deposition from the complainant, and despite the significant ramifications of the orders of protection, the complainant's allegations—on which the order was based—were never tested. Nonetheless, for the many months that the case was pending, an order of protection kept B.P. separated from his child, based solely on those allegations.



Mr. G.V.

Mr. G.V., a 30-year-old father with no record, lived in an apartment with his mother, brother, and girlfriend of two years. Despite charges being ultimately dismissed, an order of protection prevented him from seeing his infant daughter for months. Over the course of a year, he and his girlfriend argued more and more often. During one argument, his girlfriend pushed him while he was holding his four-month-old daughter. Two of G.V.'s siblings witnessed the event. Nonetheless, after those witnesses left the apartment, the girlfriend called the police and falsely alleged that G.V. hit her during this argument. The police arrived and, based on his girlfriend's allegations, arrested G.V.

G.V. was arraigned in criminal court on misdemeanor assault charges. The prosecution, as a matter of course and based solely on the allegations in the misdemeanor complaint, requested a full order of protection. Defense counsel objected, arguing for a limited order of protection, but was denied. As a result, G.V. was no longer allowed to see his daughter, and his sister took custody of her. The complainant's allegations were never tested, and G.V. had no opportunity to present the court with witnesses who would have testified that the complainant's allegations were false. Because of the order of protection, the complainant herself was barred from G.V.'s family home and moved into a homeless shelter. Seven months later, the prosecution dismissed the case.

### C. Exacerbating Medical and Mental Health Issues

The lack of any case-by-case analysis by the courts is particularly clear in cases where *amici* represent individuals with mental health or medical concerns, and where no evaluation of the consequences or alternatives occurs.

#### Ms. C.F.

Ms. C.F., a 59-year-old with early onset Alzheimer's that prevented her from going anywhere on her own, was accused of hitting her husband of 27 years with a flashlight and charged with third degree assault. Although she initially defied all odds and received a limited order of protection, two days later, she was charged with felony contempt for throwing a remote control at her spouse. She spent 72 hours at the hospital instead of in jail. Her husband wanted her to come home, but a full order of protection barred her from their home. Because she had nowhere else to go, she spent over two months in a psychiatric ward—despite there being no clinical reason and being very much against her husband's wishes.

C.F. never should have been arrested in the first place—dementia is a medical issue, not a criminal one. Her doctor was shocked by her arrest and wrote a letter explaining that C.F. had “global cognitive deficits” and “behavioral outbursts” resulting from her medical condition. In C.F.'s case, getting additional support for her medical condition, like the home health services that were ultimately put in place, was the real solution for the family, not a one-size-fits-all order of protection.

#### **D. Disrupting Academic Achievement**

Pre-trial orders of protection issued between students who attend the same school may fail to consider the impact of barring a student from continuing their education. School stability is incredibly important for a child's educational and behavioral success, and their emotional well-being. Transferring schools increases the risk of poor academic achievement, behavioral issues, falling behind one's grade-level, and dropping out of high school.<sup>7</sup> Transferring also causes a greater risk of students having social problems, psychological difficulties, low self-esteem, and disengaging at school and in their relationships with teachers and peers, as well as increased recidivism and re-arrest.<sup>8</sup>

#### **Z.A.**

Z.A. was arrested for an altercation with other students from his high school. The criminal court issued a full order of protection, which prevented him from attending school since the complaining witness was a fellow student. The enrollment office gave Z.A. incorrect information about the type of transfer he was eligible for—a common problem when students have orders of protection against

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<sup>7</sup> Herbers, Janette E et al. "School mobility and developmental outcomes in young adulthood." *Development and psychopathology* vol. 25,2 (2013): 501-15. doi:10.1017/S0954579412001204, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4139923/>.

<sup>8</sup> *Id.*

them—and denied his transfer request. This meant, to abide by the criminal order, he had to stop going to school. It was only after an education advocate became involved and successfully obtained a transfer that Z.A. could resume his education. By this point, Z.A. had missed over a semester of school and had to delay his college enrollment. The order also had immigration consequences for him, since his immigration status was tied to enrolling in college. Ultimately, the charges resulted in an adjournment in contemplation of dismissal.

**E. Increasing Risk of Deportation and Foreclosing Immigration Relief**

Pre-trial orders of protection issued in criminal court can also have significant immigration consequences. Orders of protection are automatically shared with immigration authorities upon issuance, potentially triggering immigration enforcement. Both active and expired orders may result in a negative determination on immigration applications for relief from deportation and may undermine viable applications that depend on spouses or children who are the subject of those orders. Orders may also prevent spouses from attending an immigration interview together, resulting in denial of relief. Regardless of the disposition of an underlying criminal case, pre-trial orders are frequently viewed by immigration judges as independent evidence of dangerousness, causing people to be denied bond and remain in civil immigration detention. As such, pre-trial orders of protection can have long-lasting and devastating effects, including deportation and family separation.

Mr. K.M.

K.M. fled to the United States escaping violence and lived in New York with his wife of many years; he worked full time and supported his family. K.M. was arrested and, though this was his first arrest and his wife, the complainant, was not cooperating with the prosecution, the criminal court issued a pre-trial order of protection prohibiting contact between them. Although, the criminal case was ultimately dismissed and sealed, the order of protection followed him into immigration court even after it had been vacated.

Because of this single arrest, K.M. was targeted by immigration authorities and detained. At his bond hearing—three months into his detention and where judges assess both flight and public safety risk—K.M. emphasized that his criminal history was limited to a single arrest that resulted in a dismissal. He also submitted a signed affidavit from his wife describing their loving relationship of over 20 years, and that she wished to be reunited with him. The immigration judge made repeated inquiries regarding the vacated order of protection and relied on the criminal court's issuance of the vacated order to substantiate the allegations even though the case had been dismissed.

The mere existence of a now-vacated pre-trial order of protection weighed as a negative factor in the court's analysis of whether K.M. posed a danger to the community and merited released from detention. K.M. was detained for months,

after the order had been vacated and the criminal case dismissed, before the immigration judge ultimately released him on bond.

**F. Disempowering Complaining Witnesses**

Pre-trial orders of protection are routinely requested by prosecutors and issued by judges, even when complaining witnesses oppose an order or do not cooperate with the prosecution, raising substantial questions about whether these orders are actually issued to protect the complainant. Family separation caused by orders of protection regularly harm the defendant's children and the defendant, along with the complaining witness, and yet the complainant's wishes are often disregarded. Instead, full orders of protection are frequently issued without any showing of necessity for the complainant's protection. *See People v. Foster*, 87 A.D.3d 299 (2d Dep't 2011) (finding that the purpose of an order of protection is to assist victims and witnesses, not to punish defendants). The failure of prosecutors and the courts to weigh these consequences and the lack of a meaningful opportunity for the defense to be heard on these orders, demonstrate that the practice of issuing full orders of protection is rote and automatic, not an individualized assessment as due process requires.

**Ms. C.P.**

As a result of an order of protection issued in a case that was ultimately dismissed, Ms. C.P. and her two children were displaced from their home for

months, even after the complaining witness, her boyfriend, signed a waiver of prosecution. C.P. lived with her two children in an apartment she leased and where she alone paid the rent. Her boyfriend frequently stayed over but was not on the lease. One day, they argued and the police were called. C.P. was accused of striking her boyfriend with a broomstick and arrested for the first time. A full order of protection was issued at arraignments, which immediately prevented C.P. from returning home as the complainant was still there.

The complainant, meanwhile, would not cooperate in her prosecution and wanted the charges dropped. In fact, he signed a waiver of prosecution, affirming his wish that the case be dismissed. Frequently, however, domestic violence cases are not dismissed even where the complainant is uncooperative and/or signs a waiver of prosecution. Instead, cases like C.P.'s bandy about the courthouse until the speedy trial statute demands their dismissal. Unusually, at C.P.'s next court date, the prosecution consented to modify the order to a limited order of protection and informed the court that the complainant signed a waiver of prosecution. Nonetheless, the court *still* refused to modify the full order. Hence, for three months until the charges were finally dismissed, C.P. continued to pay rent while she and her two children stayed with her mother, and the complainant stayed in C.P.'s apartment.

Mr. E.M.

Mr. E.M. and his wife had been together for over 15 years and had two children together. Neither had any criminal history, and there was no history of abuse between them. Nonetheless, they were separated for months based on allegations the complainant refused to support. The criminal case resulted from E.M. kicking a door during an argument, causing it to strike his wife's leg. The top charge was attempted assault, a B misdemeanor. The court issued and repeatedly continued a full order of protection, causing E.M. to be barred from his home despite his wife repeatedly expressing to both defense counsel and the prosecution that she wanted the order of protection lifted and the charges dropped as the complaint was factually wrong. She never signed a supporting deposition. Nonetheless, the court refused to modify the order of protection without the prosecution's consent, which the prosecution conditioned on E.M. entering a guilty plea. Five months after the arrest, even when the prosecution offered an adjournment in contemplation of dismissal with a limited order of protection, the court continued to refuse to hold a *Forman* hearing to weigh the impact of the order on E.M.'s rights against any danger, and refused to modify the full order if E.M. did not accept the disposition.

Mr. E.R.

Mr. E.R. had never been arrested before. His wife, the complainant, asked for a limited order of protection from the outset so that he could continue to help care for their three toddler-aged children. Nonetheless, the prosecution requested, and



the court issued, a full order of protection in disregard of the complainant's wishes or the significant burden the order would cause her. As a result, E.R. could no longer walk the children to school or provide the complainant with money for rent and other essentials. Due to E.R.'s wife's health problems and a lack of other family nearby, it was very difficult for her to care for the children without E.R. And because of the pandemic, family court was not available to seek modification of the order so that E.R. could parent his children and support his family. E.R.'s wife called the prosecutor's office and the defense counsel every day to ask for a modification of the full order; however, the prosecution refused to agree to modify. After 90 days, the charges that had separated the family were dismissed.

Mr. G.S.

Similarly, Mr. G.S. was arrested when the mother of his child, and the complainant, was about to give birth. The complainant was not cooperative with the prosecution and did not want the order of protection. She had no one but G.S. to help during the end of her pregnancy, to drive her to the hospital, or help with the baby. Despite significant harms to the complaining witness, G.S., and their newborn, the court refused to grant a *Forman* hearing to consider these harms and the prosecution refused to agree to modify the order of protection on the misdemeanor case. Ultimately the charges on which the order of protection was

based were dismissed, but not in time for G.S. to help the mother of his child at the end of her pregnancy or during childbirth.

### CONCLUSION

For the foregoing reasons, *amici* respectfully request that this Court reverse the Supreme Court's order dismissing Petitioner-Appellant's petition and issue a judgment declaring that Petitioner was entitled to a prompt evidentiary hearing on the District Attorney's requests for full temporary orders of protection.

Dated: April 6, 2021

Respectfully submitted,



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S. Lucas Marquez  
Jessica Nitsche  
Matthew Robison  
Jeffrey Blank  
Brooklyn Defender Services  
177 Livingston Street, 7th Floor  
Brooklyn, New York 11201  
(718) 254-0700  
slmarquez@bds.org

Justine Luongo  
Corey Stoughton  
The Legal Aid Society  
199 Water Street  
New York, NY 10038  
(212) 577-3300  
jmluongo@legal-aid.org

Meghna Philip  
Avinash Samarth  
Neighborhood Defender  
Service of Harlem  
317 Lenox Avenue, 10th Floor  
New York, NY 10027  
(212) 876-5500  
mphlip@ndsny.org

*Attorneys for Amici Curiae*

## **PRINTING SPECIFICATION STATEMENT**

This computer-generated brief was prepared using a proportionally spaced typeface. It complies with the typeface and type style requirements because it has been prepared using Microsoft Word in Times New Roman 14-point font with double line spacing.

The total number of words in the brief, inclusive of point headings and footnotes and exclusive of signature blocks and pages containing the table of contents, table of authorities, proof of service, printing specification statement, or any authorized addendum is 6967.

## **Exhibit B**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX

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SHAMIKA CRAWFORD,

Petitioner,

- against -

HONORABLE SHAHABUDDEEN ALLY,  
Judge of the Criminal Court, and

DARCEL D. CLARK,  
District Attorney of Bronx County

Respondents.

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: Index No. 260054/2020  
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: Hon. Kenneth L. Thompson, Jr.  
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: IA Part 20  
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: **NOTICE OF APPEAL**  
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PLEASE TAKE NOTICE that, pursuant to C.P.L.R. § 5701(a), Petitioner hereby appeals to the Appellate Division, First Department, from a Decision, Order and Judgment of the Honorable Kenneth L. Thompson, Supreme Court, Bronx County, dated September 9, 2020, dismissing Petitioner's Article 78 proceeding as moot (the "Judgment"). The Judgment was duly entered and filed in the Office of this Court on September 16, 2020. A notice of entry was served by Respondent Honorable Shahabuddeen Ally by first-class mail on October 2, 2020.

Dated: New York, New York  
October 30, 2020

Respectfully submitted,



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David L. Kornblau, Esq.  
Shira Poliak, Esq.  
COVINGTON & BURLING LLP  
The New York Times Building  
620 Eighth Avenue  
New York, NY 10018-1405  
(212) 841-1000  
dkornblau@cov.com  
spoliak@cov.com

Eli C. Northrup, Esq.  
Edward Soto, Esq.  
THE BRONX DEFENDERS  
360 East 161st Street  
Bronx, New York 10451  
(347) 842-1163  
esoto@bronxdefenders.org  
elin@bronxdefenders.org

*Attorneys for Petitioner*

## **Exhibit C**



SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF BRONX IA 20 X

SHAMIKA CRAWFORD,

Petitioner,

-against-

HONORABLE SHAHABUDEEN ALLY, Justice of  
the Criminal Court,

-and-

DAERCEL D. CLARK, Bronx District Attorney,

Respondents.

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The following papers numbered 1 to 8 read on this **petition**

No	On Calendar of July 28, 2020	PAPERS NUMBER
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	_____	1, 3
Answering Affidavit and Exhibits-----	_____	4, 6
Replying Affidavit and Exhibits-----	_____	7, 8
Affidavit-----	_____	
Pleadings -- Exhibit-----	_____	
Memorandum of Law-----	_____	2, 5
Stipulation -- Referee's Report --Minutes-----	_____	
Filed papers-----	_____	

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Upon the foregoing papers and due deliberation thereof, the Decision/Order on this motion is as follows:

Petitioner seeks a writ of mandamus directing the Bronx Criminal Court to hold an evidentiary hearing concerning the appropriateness and scope of the temporary order of protection in the underlying criminal action, People v. Crawford, Docket No. 2019BX029058. This application is based upon a due process claim under the New York State Constitution.

On November 3, 2019, Petitioner, Shamika Crawford, (Crawford), was arrested and charged with assault in the third degree, petit larceny, criminal obstruction of breathing and harassment in the second degree. The complainant

Index No: 260054/2020

**DECISION ORDER AND JUDGMENT**

**Present:**

**HON. KENNETH L. THOMPSON, JR.**

was Keivian Meyers, (Meyers), who complained that Crawford, a brother of hers and an unidentified man kicked his face and took his gold chain. The police were called and Crawford was arrested. Crawford and Meyers have two children in common, and Meyers lived with Crawford in her NYCHA apartment along with the two children and a brother of Crawford.

Crawford was arrested and arraigned on November 3, 2019 and she was released on her own recognizance under the terms of a full temporary order of protection, (TOP). Under CPL 530.12(1), a court in a criminal action, “may issue a temporary order of protection ...as a condition of any order of recognizance.” The full TOP required Crawford not to return to her apartment where Meyers was staying and where the alleged attack took place. The People indicated that since the charges were violent offenses, the People asked for a full TOP. Crawford’s argument for a limited TOP that would permit her to return home was adjourned to five days later, November 8, 2019.

On the return date, November 8, 2019, respondent, Judge Shahabuddeen Ally, presided. The People asked for continuation of a full TOP because the defendant attacked Myers in a home that Crawford and Meyer shared and there were about 17 prior domestic incident reports.<sup>1</sup> Crawford’s attorney asked for a due process hearing based on Crawford’s property and family interest. Judge Ally

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<sup>1</sup> Transcript of hearing before J. Ally, November 8, 2019, p. 2.



responded that this is a hearing and that unless Crawford had some other argument that “the parties will remain safe with a limited order,” the TOP will remain full.<sup>2 3</sup> Judge Ally set an agreed to schedule for a motion seeking modification of the full TOP. The case was adjourned to December 20, 2019. “[T]he form said hearing should take is left to the discretion of the judge conducting it. Clearly, although a full evidentiary hearing is permissible and of course desirable from the petitioner's point of view, is it not mandatory.” (*Lopez v. Fischer*, No. 17025/09, 2009 WL 4737590 [N.Y. Sup. Ct. Dec. 02, 2009]).

On the December 20, 2019 return date, Crawford’s order to show cause was fully submitted. Judge Ally denied the application to modify the full order of protection on grounds that “there was no change of circumstances, there was nothing new in your movement [sic] papers.. on its merits, I don’t believe it warrants the limited order or modification of the order.”<sup>4</sup>

On January 30, 2020, the parties appeared before Judge Audrey Stone. The order of protection expired on January 30, 2020 and the People made an application to extend the TOP. Judge Stone indicated that it was not her practice to conduct a hearing on extensions or modifications of a TOP, “but certainly will allow everyone to have an opportunity to be heard.” Judge Stone reviewed

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<sup>2</sup> Transcript of hearing before J. Ally, November 8, 2019, p. 6.

<sup>3</sup> A factor a Court considers in modifying a full TOP to permit entry to the home is “whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition.” (*People v. Carrington*, 12 Misc. 3d 1189(A), 824 N.Y.S.2d 764 [Crim. Ct. 2006])

<sup>4</sup> Transcript of hearing before J. Ally, December 20, 2019, p. 3.

photographs of the injured complainant.<sup>5</sup> Judge Stone also observed that a significant amount of time had passed with “no particular reason to believe this defendant is not following the order of protection.”<sup>6</sup> Judge Stone reviewed the domestic incident reports that were included in this Article 78 proceeding of which Judge Stone stated “I don’t believe they were presented last time it was before Judge Ally.”<sup>7</sup> Defendant’s attorney informed Judge Stone that the ADA argued before Judge Ally that there should be a full order of protection on grounds of there being prior domestic incident reports between Crawford and Meyers without indicating that all of the domestic incident reports were made by Crawford against Meyers. Crawford’s attorney indicated that he did not have the domestic incident reports when before Judge Ally.<sup>8</sup>

Judge Stone observed that there was no argument that the defendant threatened Myers or had any issues with drug or alcohol abuse or any access to weapons. In contrast, Judge Stone observed that Myers had threatened Crawford and that he had an alcohol intoxication issue.

Accordingly, Judge Stone renewed the TOP on a limited basis that permitted Crawford to return to her apartment and reside with her children, but required her “to refrain from any act that would create any unreasonable risk to the health,

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<sup>5</sup> Transcript of hearing before J. Stone, January 30, 2020, pp. 8-9.

<sup>6</sup> Transcript of hearing before J. Stone January 30, 2020 p. 29.

<sup>7</sup> Transcript of hearing before J. Stone, January 30, 2020 p. 29.

<sup>8</sup> Transcript of hearing before J. Stone, January 30, 2020 p. 30.



safety, and welfare of any family member in particular, that she not engaged in any family offenses against the complainant.”<sup>9</sup> There was colloquy regarding whether the limited TOP mooted this article 78 proceeding.<sup>10</sup>

The underlying criminal proceedings afforded Crawford multiple opportunities to be heard regarding her applications to modify the TOP. As could be anticipated, different arguments and evidence proffered at different appearances could produce different results. There were clearly additional argument and evidence that was before Judge Stone that was not before Judge Ally.

On a March 5, 2020 appearance in criminal court the People moved to dismiss on grounds that the People cannot meet their burden of proof at trial. Judge Beth Beller dismissed all pending charges against Crawford.

It is undisputed that the application for a writ of mandamus directing an evidentiary hearing in the underlying proceeding is moot.<sup>11</sup> However, petitioner maintains that the facts of the underlying criminal proceeding warrant application of the exception to the mootness doctrine. The exception to the mootness doctrine includes three factors, “(1) a likelihood of repetition, either between the parties or among other members of the public; (2) a phenomenon typically evading review; and (3) a showing of significant or important questions not previously passed on,

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<sup>9</sup> Transcript of hearing before J. Stone, January 30, 2020 p. 38-39.

<sup>10</sup> Transcript of hearing before J. Stone, January 30, 2020 pp. 39- 40.

<sup>11</sup> Reply in Support of Verified Petition, p. 6.

i.e., substantial and novel issues.” *Hearst Corp. v. Clyne*, 50 N.Y.2d 707, 714–15 [1980]).

With respect to the likelihood of repetition, there is no possibility of a repetition with the same parties as the criminal proceeding was dismissed, but similar circumstances may arise in another proceeding by someone else in the general public. With respect to evading review, under the facts of Crawford’s criminal proceeding, the modification of the full TOP and the dismissal of the criminal proceeding has mooted her article 78 proceeding. However, similarly situated defendants’ proceedings do not necessarily evade review as is seen in *Lopez v. Fischer*, (No. 17025/09, 2009 WL 4737590 [N.Y. Sup. Ct. Dec. 02, 2009]).

With respect to whether the issues are substantial and novel, the plethora of cases regarding the due process requirements in the context of a TOP in a criminal matter is evidence it is not a novel issue.

Accordingly, this special proceeding is dismissed as moot.

The foregoing constitutes the decision, order and judgment of the Court.

The Clerk of the Court is directed to enter judgment accordingly.

Dated: 9/9/2020

  
KENNETH L. THOMPSON JR. J.S.C.