

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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THE BRONX DEFENDERS, THE LEGAL AID SOCIETY,  
BROOKLYN DEFENDER SERVICES, QUEENS LAW  
ASSOCIATES NOT FOR PROFIT CORPORATION d/b/a  
QUEENS DEFENDERS, NEIGHBORHOOD DEFENDER  
SERVICE OF HARLEM, and  
NEW YORK COUNTY DEFENDER SERVICE,

Civil Action No.  
1:20-cv-5420 (ALC)

Plaintiffs,

-against-

THE OFFICE OF COURT ADMINISTRATION, and  
LAWRENCE K. MARKS, in his official capacity as  
Chief Administrative Judge of the Unified Court System.

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**DECLARATION OF LISA SCHREIBERSDORF**

Pursuant to 28 U.S.C. § 1746, I, LISA SCHREIBERSDORF, declare as follows:

1. I am the Executive Director of Brooklyn Defender Services (“BDS”). I submit this affirmation in support of the Plaintiffs, including BDS, in the above-captioned action against the Office of Court Administration (“OCA”) regarding the In-Person Plan to resume court operations and its impact on BDS, our clients, and our staff.

2. 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 currently represents approximately 6,000 people facing criminal prosecution, who are represented by 140 attorneys and 120 non-attorney staff.

3. BDS represents people who have medical vulnerabilities that place them at higher risk of severe illness or death from COVID-19. As discussed further below, because BDS relied on OCA's representations regarding when in-person appearances would resume, OCA issued its In-Person Plan before BDS completed the process of identifying those individuals.

4. Similarly, the BDS staff includes people who have medical vulnerabilities that place them at higher risk of severe illness or death from COVID-19. Again, because BDS relied on OCA's representations regarding when in-person appearances would resume, OCA issued its In-Person Plan before BDS completed the process of identifying those individuals.

**Negotiations with OCA about Preparing for the Courts to Reopen**

5. Since March, BDS and The Legal Aid Society ("LAS"), the two legal services providers who represent criminal defendants in Brooklyn, have had regular meetings and individual conversations with members of the OCA, including with Honorable Matthew D'Emic, Administrative Judge of the Kings County Supreme Court; Honorable Michael Yavinsky, Supervising Judge of the Criminal Court, Kings County; and various clerks of the court. In addition, we have had weekly meetings with the Mayor's Office of Criminal Justice. Justin Barry, Chief Clerk of the Criminal Court of the City of New York and, on occasion, Judge Tamiko Amaker, have participated in those calls. All of the City defenders participated in the calls, which involved robust conversations about OCA's plans and the defenders' concerns about procedures, and lack thereof, as the pandemic evolved.

6. In addition to weekly calls, I have spoken to Judge D'Emic multiple times since March, primarily about utilizing video conferencing more effectively in Brooklyn Supreme Court. A few weeks ago, we discussed OCA's growing capacity for conferences by phone. I also spoke to Judge Marks a few weeks ago about the need to move forward expeditiously with cases for

people who remain incarcerated. Because of the nature and length of these calls and my experience with both judges, I would expect that one of them would mention to me if they were considering resuming in-person appearances. Neither one did. In fact, quite the opposite. The premise of the calls was that the courts were not re-opening and the topic was how to properly conduct the court's business when there were no in-person appearances currently happening or imminent.

7. In addition, BDS's Deputy Managing Director of the Criminal Practice, Linda Hoff, maintains regular communications with Judge Yavinsky. They repeatedly discussed the need for moving cases forward while maintaining safety by not requiring in-person appearances until it is possible for people to appear without risking their health. In particular, these calls focused on virtual appearances – including for arraignments and preliminary hearings – until it becomes safe for people to appear in person. The calls also touched on disposing of criminal court cases without in-person appearances and eliminating the backlog of Desk Appearance Tickets without requiring attorneys or their clients to appear in person.

8. On June 24, BDS Deputy Director of the Criminal Practice C. Randall Walker participated in tours of Brooklyn Criminal and Supreme Court alongside representatives from LAS and representatives of OCA. During both tours, the epidemiologists retained by LAS asked for additional information or identified possible concerns about the building. I have reviewed the declaration submitted by Justine M. Luongo in this case and BDS's experience on these tours is consistent with her description.

#### **OCA's "Plan" to Return to In-Person Appearances**

9. On the evening of Thursday, July 9, 2020, I was notified that OCA had issued the In-Person Plan, which called for in-person appearances to resume early on the morning of Wednesday July 15, 2020 – only three business days later.

10. The In-Person Plan came as a surprise and disrupted BDS operations. Since March, BDS staff has been coordinating with OCA about how and when in-person appearances would resume. As recently as a few days before the In-Person Plan was issued, we were still being reassured that in-person appearances in criminal court would not proceed until all of the experts—including experts identified and retained by the defenders—had an opportunity to weigh in on health and safety precautions. We were also told repeatedly that the courts would not open “any time soon” and that OCA would not even consider in-person appearances until some time in August. OCA representatives reassured us that that they were making every effort to resolve hundreds of Desk Appearance Tickets (that were returnable after courts stopped operating in March) outside of court through negotiation and virtual appearances. There was no discussion of a plan for in-person appearances on these cases during any of these discussions.

11. BDS itself has undertaken extensive reviews as we plan for a return to our offices, including: 1) retaining public health experts to evaluate our space and advise us on policies; and 2) collaborating with the landlords in each building where we have office space to ensure that protocols are in place to protect all stakeholders entering our offices. I expected the same from OCA, particularly since OCA leadership repeatedly assured the defense community that we would be included in developing and implementing a reopening plan, and would be provided enough notice to take appropriate precautions for our clients and staff.

12. Based on what I heard directly from OCA prior to the July 9 In-Person Plan, the senior leadership at BDS told staff that BDS would not resume in-office operations before Labor Day and that we would see if there was movement towards resuming in-person appearances in August. To assuage concern, we also relayed what we understood from OCA – that in-person

operations in court would not resume until experts, including those retained by the defenders, evaluated and addressed necessary safety protocols.

13. Because we understood from OCA that in-person appearances were still weeks away, BDS allowed a large number of staff members to shelter-in-place outside of the immediate area New York City area. Based on OCA's representations, staff were told that they would be given adequate notice to return to the area once we learned in-person appearances would resume, and that anyone returning from beyond the tri-state area would not be permitted in BDS's physical offices or in court for two weeks. Even beyond BDS policy, many staff, including attorneys, are currently in states from which they will be required to quarantine for two weeks upon return based on the Governor's order. Our policy is broader than the Governor has required because we expect that additional states will be added to the two-week quarantine list as the summer progresses, and we wanted all staff to plan to be in the NYC area with sufficient time to quarantine before they need to resume in-person appearances or other work functions that require them to leave their homes.

14. Based on my representations, which were based on OCA's representations to me, many attorneys advised clients that in-person appearances would not occur before August.

**Flawed Return to In-Person Appearances**

15. OCA's announcement of the In-Person Plan to resume in-person appearances in criminal court beginning July 15 has caused nothing but chaos, particularly for those clients and staff with disabilities, including medical vulnerabilities to COVID-19.

16. After learning about the In-Person Plan, I asked Justin Barry, the Chief Clerk of New York City's Criminal Courts, to provide a list of cases that would be called for in-person appearances in Criminal Court. Despite repeated requests, neither Mr. Barry nor anyone else from

OCA produced a list of people or attorneys who would be expected to appear in person at criminal court before those appearances resumed on July 15.

17. On Monday afternoon, July 13, 2020, we finally began learning that OCA had scheduled cases for in-person appearances in specific cases. Most of these notices concerned appearances scheduled for July 15 or July 16. These notifications came by way of an email to the individual attorney of record. No supervisors, administrator or other staff at BDS received any lists of cases or copies of these notices. Contact information for BDS is readily available to clerks and judges in Brooklyn's criminal courts, and has remained the same for years. Clerks are able to contact BDS staff the same way they always have: by calling the BDS main number, which forwards to a receptionist working from home. In addition, all direct phone numbers for attorneys are currently forwarded to attorneys' cell phones. Moreover, BDS has provided the court with dedicated email addresses, such as "arraignments@bds.org," designed to assist the courts in processing cases. Further, court staff regularly contact BDS staff, including leadership, via email addresses provided to the court on a list of every BDS attorney. Judge Yavinsky and other court personnel have the direct cell phone number of most of our criminal defense staff, and Judge Yavinsky has almost daily conversations with Linda Hoff. Both Justin Barry and Judge Marks have contacted me dozens of times on my cell phone. Despite readily available ways to reach BDS, OCA never provided a list of in-person appearances nor contacted any member of the senior leadership of BDS's criminal defense practice about cases scheduled pursuant to the In-Person Plan.

18. The same trickle of emails continued on July 14 and July 15. In many cases, we received less than 48-hours' notice before scheduled for in-person appearances.

19. These ad hoc notices sent to attorneys on individual cases has undermined BDS's ability to develop a comprehensive, coherent system to identify clients and staff who require accommodations or who cannot appear in person because they are in quarantine, ensure appropriate case coverage and supervision for in-person appearances, and counsel clients with sufficient notice prior to their court date. The scheduling itself exacerbates the health and safety risks. For example, one attorney received notices that two of her cases would be called in-person on consecutive days, rather than on the same day, exposing her to any COVID risk incurred as a result of the appearances twice, not once.

20. As I was finalizing this Declaration on the evening of July 15, Linda Hoff received, for the first time, a list of cases apparently scheduled to be called in criminal court through July 31. The schedule contradicts the times listed on earlier notifications that the individual attorneys of record and their clients received for in-person appearances on their cases.

21. Without any guidance from OCA, BDS has been left without any sense of which cases would proceed in person and which would proceed by video, as they have for months. BDS represents individuals in approximately 6,000 pending criminal cases in Brooklyn. Without further notice from OCA, we have not been able to identify the cases, notify our clients, or prepare for in-person appearances in advance.

**OCA's In-Person Plan Interferes with BDS's Operations**

22. Beginning immediately after the courts ceased in-person appearances in March, BDS began implementing processes and procedures to allow our staff to continue their representation seamlessly via remote appearances and for any eventual return to in-person court appearances.

23. This processes and procedures for virtual appearances included ensuring that criminal defense attorneys, and in some cases supervisors, were able to appear virtually. Our procedures allowed for attorneys to appropriately counsel and prepare clients and conference cases with supervisors.

24. To ensure attorneys were able to access relevant information and because we were not sure how long we would be working from home, we required attorneys to take home all of their pending case files. If an attorney requested permission to work from another location, such as a another state, they were required to arrange for safe and confidential transport and storage of their files at their work location. Each attorney has between 50 and 85 pending cases at any given time.

25. Simultaneously, as we began preparing for the eventual return to in-person appearances, senior leadership from our Criminal Defense Practice met on multiple occasions to develop internal processes. This plan included re-designing office space according to safety protocols, accessing virtual technology, and formulating procedures to conduct safety checks before allowing employees access to the office and the courts. In addition we were in the process of ascertaining which employees would not be able to safely go to court in person upon reopening and creating a plan for designating those who are eligible for accommodations under the ADA. If an attorney's accommodation involves not being required to do in-person court appearances, supervisors will transfer cases or arrange for appropriate case coverage on a case-by-case basis.

26. Ever since OCA issued its In-Person Plan, I have met with senior leadership in BDS's Criminal Defense Practice every day, totaling dozens of employee hours, to develop a plan regarding how to address the sudden and unexpectedly shift in policy. The lack of information or adequate notice from OCA, including an absence of meaningful procedures to obtain



accommodations for disabilities, has impeded BDS's ability to plan, prevented me from implementing adopted procedures and plans, and stifled my ability to communicate meaningfully with my staff. Further, because the In-Person Plan does not include objective criteria by which to determine which cases will be called in person and which will not, attorneys have almost no ability to counsel BDS clients.

27. Other members of BDS's senior leadership, primarily Linda Hoff, and I have also spent hours on calls with Judge Yavinsky and with Justin Barry in an attempt to address the various issues presented by this order. Specifically, we have asked why this policy changed so rapidly, whether and how we can ask for an adjournment, and what procedures are in place to hear our requests for a waiver of our clients' appearance. We have also asked for details of the process for obtaining necessary accommodations for people whose medical vulnerabilities prevent them from appearing in court in person.

28. The senior leadership and criminal defense supervisors have collectively spent dozens of hours since July 9 responding to inquiries from concerned clients and staff who are attempting to prepare for in-person appearances without knowing whether their case will be among those called, and responding to questions about OCA's plan—including safety measures in place—that OCA itself has not disclosed.

29. Prior to July 9, BDS was developing a plan to identify people we represent who were facing criminal prosecution and who—because of medical vulnerabilities—would not be able to appear in person at a courthouse. The In-Person Plan upended that process, and individual attorneys and supervisors are now spending dozens of hours trying to identify that information while still continuing their other obligations, including virtual appearances.

30. At the same time, BDS leadership was working to identify staff members who have medical vulnerabilities or family care responsibilities (including for people who themselves have medical vulnerabilities or disabilities) that would prevent them from appearing in person in court. We also implemented a procedure to ensure that people who were sheltering-in-place outside of the New York City area would have sufficient time to return and quarantine before they were required to appear in person in court. The OCA order interfered with our plans, and BDS leadership from within the Criminal Defense Practice and from other parts of the organization are now scrambling to gather information and make sure we have appropriate representation at in-person appearances. In addition, our Human Resources staff have been inundated with requests from attorneys regarding their status and what options are available if they are unable to appear in person because of COVID-related disabilities. These options may include employment rights under the Families First Coronavirus Response Act, COVID-related leave for people with sick family members, and other forms of leave. Now that in-person appearances have resumed without adequate notice, staff must suddenly determine whether to apply for COVID-related benefits or other leave, and HR must quickly process those request.

31. Our communications with OCA have not helped resolve any confusion. Based on OCA's representations, we understand that BDS attorneys must appear at all scheduled in-person appearances or we will be relieved, even if BDS has a long-standing relationship with the client and even if the client is excused from appearing. BDS has not received guidance on why particular cases were scheduled for in-person appearances or whether courts will grant any accommodations sought by clients or staff. Both Administrative Judge Matthew D'Emic and Supervising Judge Michael Yavinsky advised me or my staff that they were instructed by OCA to select 10 cases each day but were not given specific criteria or types of cases to pick — it was left to their

discretion which cases to require an in person appearance. Based on the BDS cases that have been scheduled for in-person appearances in the Brooklyn Criminal Court, there does not seem to be a particular type of case that is prioritized.

32. The lack of information and late notice from OCA regarding cases scheduled for in-person appearances and the lack of accommodations, or even safety protocols, in place, is thwarting BDS leadership's efforts to determine which clients need accommodations and which attorneys might not be able to appear in person. Due to the rushed implementation of the In-Person Plan, BDS leadership is spending countless hours contacting staff and clients, often pulling managers and supervisors away from other obligations and delaying other necessary work.

33. BDS has also worked to secure Personal Protective Equipment masks and face shields for clients and staff appearing in person. Although we previously developed a plan to distribute PPE, our efforts were upended by the In-Person Plan. The rushed implementation of the In-Person Plan meant that BDS had to scramble to secure sufficient PPE and ensure all clients and staff had access before entering the court.

34. Since OCA issued the In-Person Plan on July 9, multiple supervising attorneys and management in the Criminal Defense Practice have been primarily focused on drafting and/or reviewing briefs and affirmations to support emergency motions and affirmations seeking adjournments of in-person appearances, thereby diverting them from their normal and essential workload.

35. When in-person appearances resumed on July 15, BDS identified one attorney to appear at each shift to mitigate the risk to any individual attorney of contracting COVID-19. Two attorneys appeared over the course of the day for appearances on the sixth floor of the Brooklyn Criminal Court. While in court, one of our attorneys encountered people in court—construction

workers, court officers, and one clerk—not wearing masks. Although there were plexiglass dividers around the lecterns in the courtroom, none extended upwards more than six feet. During the appearances, the BDS attorney was less than two feet away from the Assistant District Attorney. Although court officers took the temperature of the BDS attorneys entering the building, they did not ask any questions.

36. Judge Yavinsky, presiding over the cases on July 15, adjourned them all to the same date in August, despite a request for a different adjournment dates because the assigned attorney was unavailable. Judge Yavinsky denied the request. This is inconsistent with court procedure for the 36 years during which I have practiced criminal law in Brooklyn. The standard practice is to set court dates considering the assigned attorney's availability.

37. All of the cases that were called in person on July 15 could have proceeded through video appearances or could have easily been administratively adjourned. Moreover, because at least one case was scheduled for a date when the attorney of record is unavailable, we expect to have to obtain case coverage, which will absorb management and supervisor time.

38. Diverting the time of so many members of the management and senior staff from their normal, critical responsibilities to respond to OCA's In-Person Plan has placed an enormous burden on the organization.

39. We have also incurred, and expect to continue to incur, financial expenses as a result of OCA's rushed implementation of the In-Person Plan. In addition to the extra PPE described above, we expect to incur additional expenses as a result of the In-Person Plan, including covering private taxis to court and—if necessary—the cost of shipping hard copies of case files that attorneys brought home so that whoever is representing a client during an in-person appearance in court has access to the file.

**Impact of the OCA In-Person Plan on BDS's Representation**

40. The In-Person Plan interferes with BDS's representation in various ways. In particular, it creates an additional, significant issue that attorneys must discuss with clients that are sensitive in nature and consume time during client meetings that would otherwise be entirely focused on the criminal case. Some of these issues involve personal health and family care issues.

41. Further, it is often impossible for attorneys to obtain necessary information to counsel clients on disability-related needs because OCA has not provided adequate notice for these consultations, nor has OCA provided sufficient information about safety precautions to allow attorneys or their clients to determine whether those measures are sufficient to meet the client's safety and health needs. The short time frame under the In-Person Plan does not provide an adequate opportunity for attorneys, who are experts at criminal defense but not necessarily disability rights, to access necessary resources—including legal research and experts—to request and develop accommodation plans for their clients. As a result, we expect to incur additional costs in retaining a disability rights expert to assist on individual cases seeking an accommodation. But for this rushed process, we expected decisions would be made on a case-by-case basis that could likely be resolved without an outside expert.

42. All of the in-person appearances that have been scheduled thus far on BDS cases could have been conducted remotely by video or otherwise adjourned.

43. Senior management at BDS have drafted model affirmations in support of applications for adjournments and attorneys have filed them in individual cases, noting specific disabilities or needs for an accommodation when appropriate. As I finalize this declaration, the court has not answered any of those requests.

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44. I have reviewed the declaration of Justine M. Luongo submitted in this litigation and the information in that declaration is consistent with my experience and the experience of BDS. Even where there are slight nuances or client- or staff-specific situations, the broader experience is nearly identical, particularly with regard to communications with OCA, the tour of the Brooklyn Criminal Court, and the diversion of organizational resources to address the OCA plan.

Dated: July 16, 2020



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LISA SCHREIBERSDORF