



**Testimony of Kings County District Attorney Eric Gonzalez
Before the Committees on Public Safety and the Justice System
City Council Budget Hearing
May 20, 2020**

Good afternoon. Thank you for the opportunity to address you today regarding the Mayor's Fiscal Year 2021 January and Executive Budget Plans. The main message that I want to convey in my testimony today is that I fear shortsighted cuts to our budget will result in junk justice, something I have spent my entire career trying to move us away from in Brooklyn.

COVID-19 Office Changes

Like all businesses and all agencies in New York City, my Office has been consumed in the past two months by trying to adjust to the new reality brought by the COVID-19 health crisis. Unlike many other agencies and businesses, my office's work does not stop for a pandemic. People continue to commit crimes, continue to be arrested, and continue to generate cases that my office must handle. The fact that arrests are down and courts are handling a fraction of the cases they saw just a few months ago may have created what appears to be a lull in our system, the possibility of breathing room that appears to have temporarily increased our capacity to handle our cases, which, as you will recall, was severely strained at the beginning of this year as a result of changes to our bail and discovery laws. But this lull is actually an illusion.

We have a tremendous backlog – hundreds if not thousands of cases – that will explode once we begin to reopen our courts.

One issue that we are dealing with right now is a backlog of felonies we haven't been able to indict because there are no grand jurors; we have now begun to do preliminary hearings in these cases. We have roughly 50 of these cases, and since last week we have conducted just three preliminary hearings. Technological problems have made these hearings grindingly slow; we simply lack the technology to conduct hearings with a witness and an ADA in the same room while maintaining social distancing, and while connecting virtually with the judge, court staff, the defendant, and defense counsel.

It seems likely that this type of hearing will be part of our practice for some time, and will expand beyond the grand jury to become the new normal in all or nearly all cases. Additional investments – both capital and otherwise – will be necessary to permit us to conduct virtual hearings. Investments in our IT infrastructure (and that of our partners in the criminal justice system) will be required to allow parties to connect efficiently, consistently, and effectively.

The costs of the transition from a staff of 1200 people in our office to fewer than 25, with the rest working from home, have been enormous. To date, my office has reallocated and spent over \$1.2M in FY 20, \$600,000 of that for technological upgrades alone. While some of these are one-time costs that we were able to absorb this fiscal year, many of these technology upgrades come with ongoing maintenance costs. Additionally, as the restrictions are eased, the courts begin to reopen and we begin to transition back to working in the office, the need to redesign our office space to ensure the safety of our staff and visitors will impact our budget

going forward. These are costs we could not have anticipated prior to the pandemic and cannot continue to absorb.

I am well aware that this health crisis has also presented a very real financial crisis for the City. But it is essential that, in this time of belt-tightening, our funding not be reduced to the point where we are unable to do the work that has kept our communities safe while making the Brooklyn DA's Office a national model of what a progressive prosecutor's office can be. I am talking about all the work my Office does to reduce incarceration and criminal convictions, and to reduce the lasting impact of criminal justice system involvement on individuals and communities of color – things like counseling, drug and mental health treatment, job training and referrals, re-entry programs, our nationally renowned Conviction Review Unit. Each of these things could be said to be outside the “core function” of a DA's office – the prosecuting of crime – and thus vulnerable to being cut when times are hard.

I don't see it that way, and I know you don't either. These things are not ancillary to my core mission, they are essential to it. I often say that reducing incarceration and keeping our communities safe are not inconsistent, but, in fact, they go together and reinforce each other. Having fewer of our fellow citizens in jail, and having fewer of them carrying the burden of a criminal conviction, makes us more safe, not less.

But this increase in safety doesn't happen by magic; it only happens if we are able to offer people accused of crimes something that addresses the underlying causes of their criminal behavior. If our current health – and financial – crisis causes us to make short-sighted decisions to eliminate or sharply reduce our ability to do that, we will just be back to being case processors, pushing cases through, dispensing junk justice. This is not why I ran for DA and is not why you have supported the various reform initiatives of my Office since I was elected.

Budget Changes

Let me paint a picture for you about where we are with our budget right now: When the legislature passed criminal justice reform last year, everyone recognized that compliance would cost money. We surveyed the needs of our office and worked hard to come up with a request that we felt genuinely reflected our anticipated needs. The amount we requested was \$22.8M – \$12.4M in Personal Services and \$10.4M in Other Than Personal Services. In the November Plan, my Office received \$7.3M in total funding, less than a third of what we requested. This funding included \$6.1M in PS and \$1.2M in OTPS.

I'll be honest with you: before the Covid-19 crisis, our ADAs were buried under their discovery obligations. We experienced record attrition, as our ADAs burned out and sought less demanding jobs for more money. The health emergency, while temporarily reducing court appearances and caseloads, has added additional burdens to obtaining discovery – police officers have gotten sick, agencies have shut down – so we're actually not able to catch up with our discovery obligations, people keep getting arrested, and as we start to ease back into something like normal life, our ADAs will be buried once again. We must be able to hire the additional staff we were promised to be able to comply with the new discovery requirements and keep up with staff attrition.

As noted above, last fall, our Office received \$6.1M in Personal Services to implement the new criminal justice laws. This funding was provided to hire 175 new employees to help us meet the challenges of our new discovery obligations. Unfortunately, the funding that was provided was calculated to cover only nine months' worth of salary costs. This means that we were able to hire only a fraction of the total number of employees that was authorized by OMB. When the funding was provided, OMB thought we would have nine months to examine if these

positions were necessary. Unfortunately, a global pandemic hit and changed the landscape of this fiscal year. Through March, we had hired 40 of these positions with 35 in the pipeline – far short of the 175 that OMB authorized. We are requesting that OMB provide the additional \$1.5M to the baseline so that we can move forward with these critical hires, both those that were in process as well as the remaining 100 at the start of FY 2021.

In addition to OTPS funding, we received \$8.4M in capital funding for upgrades to technology, including to our network capabilities and IT storage – all critical infrastructure required for us to comply with our new discovery obligations. However, OMB informed us that Capital projects unrelated to COVID are on hold at this moment. In order to keep our staff, victims, and witnesses safe during the COVID crisis, we need to expand our virtual capabilities; these needs require \$126K in funding. We ask that OMB allow these projects to move forward, as we are showing cracks in our technology that render it unsustainable both for COVID response and discovery compliance.

Budget Reduction – PEG Target

During the Executive Budget, OMB came to us with a PEG target of \$3.5M. We were told we could take this reduction in the current year or in the next year fiscal year. We identified accruals in Personnel funding which allowed us to achieve the PEG target. We were then asked to make additional cuts. To meet that request, we gave up \$1.6M in FY 20 allocated for a lease for our new warehouse. In total, my Office made cuts in funding totaling \$5.1M to achieve the PEG target.

I am glad that, due to responsible fiscal management, we were able to make these cuts. However, additional cuts to the budget going forward will be unsustainable.

Conclusion

I once again thank the City Council for your tireless support. Each year, I come before this body to thank you specifically for once again funding for the Domestic and Other Violence Emergences Program (DOVE). I also want to thank DCAS and OMB for continuing to move forward with the Family Justice Center—which plays a critical role in our ability to serve domestic violence victims—and for supporting our expansion of the Center.

I would also like to thank the City Council for the one-time funding to cover the lost grant funding for the Brooklyn Young Adult Court and our Brooklyn Rising Against Violence Everyday Program (BRAVE) for a total of \$458K. I ask that the Council provide this one time funding again in FY 21 through the Adopted Budget. These critical programs previously funded by Federal grants remain in Brooklyn for yet another year due to the Council's commitment.

I ask for the Council's support as we continue to make the case to OMB for the critical funding needs I discussed today. With these needed resources, I am confident that we can continue our efforts to keep our communities safe while strengthening trust in our criminal justice system.