



Eric Gonzalez
District Attorney

**Testimony of Brooklyn District Attorney Eric Gonzalez
Before the New York City Council Committee on Public Safety**

“Reopening the Criminal Courts”

Thank you Chairperson Adams and members of the Committee on Public Safety for the opportunity to submit this testimony regarding the reopening of criminal courts in New York City. I am deeply grateful that our city’s progress in combatting the COVID-19 health crisis has allowed for the resumption of in-person court operations.

When the city shut down last March, my Office had to ensure that our transition to virtual operations would not risk public safety or fairness. While the speed and scope of the transition to virtual court operations initially presented challenges, our experiences and lessons learned over the past year can inform us on best practices going forward. It is important that we return to live court appearances for certain proceedings, *e.g.*, trials, hearings, arraignments, and orders of protection proceedings in sensitive cases that require victims and witnesses to appear in person. However, I support a hybrid system that would continue to allow virtual appearances for certain interim adjournments in Criminal Court. Under the current system, individuals charged with crimes are frequently required to wait hours in a crowded courtroom—forcing them to miss work or school, secure childcare, and/or travel to the courthouse—for a 5-minute-or-less appearance before a judge. A hybrid system would limit needless disruptions to the lives of those charged with

crimes, while still ensuring procedural justice. Additionally, as New York’s criminal justice system continues to struggle with inadequate resources for discovery compliance, it is imperative that we use the resources we do have as efficiently and effectively as possible.

As of this month, June 2021, there are approximately 10,800 misdemeanor and unindicted felony cases pending in Kings County Criminal Court, and approximately 2,000 indictments in Kings County Supreme Court. Since jury trials resumed in Kings County in April, my Office has been prioritizing cases where the defendant is incarcerated, cases involving violent felony offenses, and older dockets with civilian complainants (which are largely domestic violence and special victims cases). We will also prioritize Driving While Under the Influence cases, which typically make up a significant portion of the cases that go to trial.

Regarding pre-trial detention, my Office’s policy—long before the pandemic, and even before the state’s 2019 bail reform—is to view jail as the “alternative,” not the default, at every stage of a case, including pre-trial. Thus, we consent to release defendants at arraignments unless public safety or risk of flight in serious cases demand that we seek bail or remand. And we divert countless people into services and programs to address the circumstances in their lives that contributed to their criminal offenses. During the COVID-19 health crisis, my Office acted urgently and intentionally to *further* reduce the number of people from Brooklyn who are detained on Rikers, where doing so would not create an undue risk of harm to any person or to the public. During the early days of the pandemic, a small team of senior executives reviewed the cases of individuals incarcerated at Rikers who, because of age or underlying health condition, may be particularly vulnerable to serious illness if they contract COVID-19. In cases involving victims, we reached out to them when we were considering releasing the person charged with hurting them to help the victims with safety planning, including orders of protection, getting locks changed, or

potentially relocating. These services are especially critical in domestic violence cases. As a result of our Office's review, we consented to the release of approximately 300 individuals. The individuals we did not consent to release were charged with very serious violent crimes, including armed robberies, rapes, murder and attempted murder, and very brutal domestic violence assaults. As of June 2021, there are 1,136 Brooklyn defendants in the NYC Department of Correction custody not serving a sentence.

While we were advised that the City Council did not intend to include budgetary matters within the scope of this hearing, respectfully, I do not see how we can divorce the topic from a conversation about reopening the courts, the centerpiece of our criminal justice system. Our offices are in crisis from the defunding of criminal justice reform. The Council is very aware of the resources need to implement discovery reform, and is aware that our offices have not been given those resources. Our efforts to fulfill the mandate of discovery reform, to move our cases to trial, and to enhance public safety have been, and will continue to be, impaired by this until discovery reform is fully funded. I implore you to refocus your efforts to help us reach these goals.

Thank you for your attention and dedication to ensuring that our criminal courts' reopening proceeds as seamlessly as possible, and for giving me the opportunity to submit this testimony.

**New York City Council
Committee on Public Safety
June 21, 2021**

**Written Testimony of The Bronx Defenders
By Ann Mathews**

Good afternoon Chair Adams and Committee Members, my name is Ann Mathews and I am the Managing Director of the Criminal Defense Practice at The Bronx Defenders (“BxD”).¹ Thank you for your attention to these critical matters and for the opportunity to testify before you today.

I. Lessons Learned During the Pandemic Present a Unique Opportunity for Reimagining New York City’s Criminal Courts.

Across the country, and within New York City, the past year has been defined not only by efforts to grapple with the COVID-19 pandemic but also a reckoning with, and renewed commitment to address, the systemic racism so deeply embedded in the current social fabric. This moment in time provides a unique opportunity to reimagine the criminal court system with lessons learned from the pandemic in order to address the deep-rooted oppression built into that court system.

While today’s hearing is entitled “Reopening of the Criminal Courts,” the reality is that New York City’s criminal courts never closed. In the first four months of the pandemic, when the city was arguably hardest hit by COVID-19, criminal courts across New York City conducted nearly 19,000 arraignments, held over 34,000 other criminal proceedings and conducted nearly 600 preliminary hearings in felony matters. New York City’s supreme courts conducted more than

¹ The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called *holistic defense* that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

11,000 criminal proceedings.² The criminal courts have remained open and have continued to hear cases throughout this entire public health crisis. But how those cases have been heard has changed dramatically from pre-pandemic times. No longer are clients appearing in person but instead have been appearing virtually or have been excused altogether from court appearances. It took a deadly global pandemic to demonstrate what many defenders have long been saying: there is no need to force people to appear in person, or even at all, at most appearances in New York's criminal courts.

We stand on the brink of a return to pre-Covid routines throughout the city. Across the city and across the country businesses, organizations, and governments are rethinking how to be efficient in their operations and to learn lessons from the pandemic. COVID-19 disrupted the usual routine of New York City's criminal courts and forced the court system to adapt and experiment with new technology and virtual proceedings, with different forms of communication with the court, and with listening to, and working with, stakeholders. The courts must not embark on a return to business as usual. Rather, now is the time to make good on "reimagining" the future of New York City's courts and using the lessons learned not only from the past year-and-a-half but also the many years prior to truly transform the way in which New York City's criminal courts operate. In effecting that transformation, the experiences, needs, and preferences of those appearing in criminal courts -- the majority of whom are Black and Brown New Yorkers -- must be front and center. We share today several guiding principles that we believe must animate conversations and decision-making around the future of New York City's criminal courts.

II. Rethinking the Future of Criminal Courts Requires Addressing Fundamental Inequities in the Court System.

Multiple recent reports focused on the future of New York's court system highlight the entrenched inequities that have long plagued the court system and bring into stark relief the myriad ways in which New York City's criminal courts in particular have failed Black and Brown litigants. In the Report from the Special Adviser on Equal Justice in the New York State Courts, former Secretary of Homeland Security Jeh Johnson wrote in blunt terms about the consistent message that he and his colleagues received when conducting interviews in preparation for their report:

[I]n one form or another, multiple interviewees from all perspectives still complain about an under-resourced, over-burdened New York State court system, the dehumanizing effect it has on litigants, and the disparate impact of all this on people of color. Housing, Family, Civil and Criminal courts of New York City, in particular, continue to be faced with extremely high volumes of cases, fewer resources to hear those cases and aging facilities. Over and over, we heard about the "dehumanizing" and "demeaning

² <https://history.nycourts.gov/wp-content/uploads/2020/09/July13-CJ-Message.pdf>.

cattle-call culture” in these high-volume courts. At the same time, the overwhelming majority of the civil or criminal litigants in the Housing, Family, Civil and Criminal courts in New York City are people of color. The sad picture that emerges is, in effect, a second-class system of justice for people of color in New York State. This is not new. In 1991, a Minorities Commission appointed by then-Chief Judge Wachtler declared ‘there are two justice systems at work in the courts of New York State, one for Whites, and a very different one for minorities and the poor.’³

The Initial Report on the Goals and Recommendations for New York State’s Online Court System likewise highlighted that the court system’s bloated caseload and limited financial resources, coupled with the “large gap between the legal needs of people and the capacity of the justice system to meet those needs” creates the need for real change.⁴ As the Initial Report recognized: “Great care must be taken to ensure that any recommendations consider the needs of all stakeholders, **particularly those who have been historically underserved by the justice system.** Courts are more than just a physical location — they are a service that allows us all to unlock the justice system. Accordingly, any changes to the court system will need to be made in service to the people.”⁵

If the criminal courts are serious about addressing the court system’s systemic racism, as highlighted in Secretary Johnson’s report, and taking the lessons learned from pandemic, there are concrete steps to be taken: The court system’s complete devaluing of the time and lives of those brought before it and the gross inefficiencies of the criminal court system that lead to paralyzing delay would be addressed and remedied, at least in part, by a criminal court system that steps away from a default requirement of in person appearances. They would be addressed by a court system that instead provides choice and autonomy to those appearing before it as to how they wish to appear, if they wish to appear at all, and that provides meaningful access to technology for those who elect to proceed virtually.⁶

³ Report from the Special Adviser on Equal Justice in the New York State Courts at 2-3 (Oct. 1, 2020), available at <http://www.nycourts.gov/whatsnew/pdf/SpecialAdviserEqualJusticeReport.pdf> (emphasis added) (citing Report of the New York State Judicial Commission on Minorities, Vol. 1, at 1 (1991)).

⁴ Online Courts Working Group of the Commission to Reimagine the Future of New York’s Courts, Initial Report on the Goals and Recommendations for New York State’s Online Court System at 4 (Nov. 9, 2020), available at <file:///C:/Users/annhm/Documents/BXD%20Documents/MD/COVID%2019/OCWG-Report.pdf>.

⁵ *Id.* at 5.

⁶ Defense counsel and advocates -- not the courts -- have thus far provided access to technology for clients. But as noted by the Online Courts Working Group of the Commission to Reimagine the Future of New York’s Courts, “criminal defendants will need to have guaranteed access to technology for whatever virtual proceedings are implemented.” *Id.* at 17.

III. Limiting In-Person Court Appearances and Providing Choice and Autonomy to Litigants Are Critical to Remediating Inequities and Improving Court Efficiencies.

In-person appearances should be limited to certain fundamental appearances -- such as arraignments, hearings, and trials -- in which a person's presence is critical to the proceeding. People should, however, always have the option of appearing in person if they so choose and should otherwise have the option to appear virtually or simply be excused altogether. All appearances for incarcerated people should be in person, absent an individual's express request not to be brought to court. Choice and autonomy are critical.⁷ The courts should focus less on dictating who is appearing in court and in what manner and instead focus on prioritizing cases for trials. Specifically, the courts should prioritize the cases of people in custody and those cases in which real rights, interests, and/or collateral consequences are at stake.

In pre-pandemic times, people charged with criminal offenses would routinely appear in person dozens of times in court before their cases ended. At each appearance, a person could spend hours sitting on hard benches, forbidden from using their phone or reading a newspaper or book, having taken a day off from work or school, arranged childcare, only to be called and have a court appearance that could easily last less than a minute. A person could easily spend far more time waiting in line to get into the courthouse and through security than actually having their case heard in court. Setting a motion schedule. Picking an adjourn date. Discussing discovery compliance issues. Everything could have happened without them appearing at all, and certainly did not require them to be physically present. Many of these issues could be addressed in phone conferences or even over email with the court. But that has never been the process. Rather, in New York City's criminal courts, in which the majority of cases are for lower-level misdemeanors, the process of court has itself often been the punishment. And the decision about whether to continue fighting a case has often been dictated by whether a person could - literally - afford to continue asserting the presumption of innocence and awaiting their day in court. A wait that could mean years of empty court dates. What is more, the penalty for failing to appear in court is not low-level, but instead a warrant that triggers a potential arrest.

The vast majority of appearances in criminal court amount to little more than an attendance check in practice. But the pandemic experience has shown that in person court appearances are not necessary to ensure that people will stay engaged with their cases and in contact with their lawyers. Despite the extraordinary and difficult circumstances wrought by COVID-19 -- people displaced from homes, without access to phone service, battling their own illnesses and caring for others, the list goes on -- clients and defense teams have remained connected. In person appearances are not necessary to achieve that goal.

⁷ Some have raised concerns about the inadequacies of virtual court in some criminal cases, including but not limited to the inability for counsel and clients to confer privately, the difficulties of navigating translation issues in the virtual space. But that is precisely why choice is so critical. People can make an informed decision, together with counsel and based upon their own needs and circumstances, about the preferred manner in which to appear in court.

With speedy trial back in effect for misdemeanors and indicted felonies as of last October, speedy trial now reinstated for unindicted felonies, and hearings and jury trials underway, New York City's criminal courts are not only open, but the mechanisms are also once again back and place for resolving cases and disentangling people from the court system. The work is being done -- and it is being done without people needing to appear in person unless their actual presence is essential to the appearance.

IV. Conclusion

Reducing the number of required in person appearances, providing choice and autonomy to those appearing in criminal courts, and prioritizing cases for people in custody are concrete steps towards focusing the limited resources of the court system where they are most needed. Such steps also advance the promise to reimagine the future of the courts and remedy the current racial and economic inequities so deeply embedded in the current criminal court system.



Association of Legal Aid Attorneys UAW 2325 (AFL-CIO)



To: The Committee on Public Safety

Re: Oversight – Reopening the Criminal Courts – Written Testimony

Date: June 21, 2021

Thank you all for the opportunity to speak on the reopening of the criminal courts. My name is Lisa Ohta, and I am the president of the Association of Legal Aid Attorneys, United Auto Workers Local 2325. ALAA represents over 2,000 public interest attorneys and advocates in the New York City Metro area at 20 non-profit legal services providers. We are the oldest union of attorneys and legal advocates in the country and every day our members fight for justice for poor and low income New Yorkers, including public defenders and staff at the Legal Aid Society, Neighborhood Defender Service of Harlem, the Bronx Defenders, and Queens Defenders.

With the imminent reopening of the criminal courts, I am here to ask for the Committee's support in pressing OCA and other agencies to provide current health and safety information, use a commonsense approach to reopening criminal courts, and find ways to use this opportunity to make significant and lasting changes in how we effectuate justice.

Since the COVID outbreak began, we have learned that this virus is most dangerous in crowded, poorly ventilated buildings with inadequate fresh air and filtration. Basically a description of our NYC courthouses. To date, we have received no detailed information on mechanical upgrades, testing results, or plans with details on occupancy limits in specific locations. Most importantly, we are lacking any substantive information regarding the health and safety conditions of the in-person arraignment parts which are reopening imminently.

Criminal arraignments by their very nature require significant staffing including court personnel, the NYPD, Corrections, prosecutors, interpreters, court reporters and defense attorneys. For years, our members have been working arraignments (in interview booths, holding areas, and even some courtrooms like in Queens particularly) in small, crowded, poorly ventilated spaces, often speaking with multiple people in close proximity for extended periods of time. The conditions in these spaces are notoriously filthy and our members have seen no significant improvements in the courthouses since the beginning of the pandemic.

For everyone involved - members, our clients, court staff, and the public - we must minimize risk as much as possible. ALAA, and many legal services providers, have been asking for basic information about the remediation efforts OCA has undertaken to minimize the risk of transmission of the COVID-19 virus and to make sure courthouses are safe in the future. The CDC recommends a layered approach to reducing exposure to COVID 19 including improvements to building ventilation, physical distancing, wearing face masks, hygiene, and

vaccination. ASHRAE, the leading experts in building systems including indoor air quality, recommend using a minimum of MERV13 filters to ensure safe building readiness, as well as increasing the amount of fresh air in the HVAC system, and providing HEPA filtration systems in areas where necessary.

Last month, OCA provided a report from AKF Consulting listing 23 recommendations for safety in New York state courthouses and a spreadsheet from September 2020 listing the MERV filter ratings in various courts around the City. They have also recently shared a spreadsheet which shows where enhanced air filtration have allegedly been implemented. But to date, neither OCA, DCAS, or any other governmental agency has provided details on whether these recommended measures have been taken, including in areas that will soon be heavily occupied, and this is not acceptable.

We are seeking basic assurances and confirmation that OCA has implemented reasonable preventative measures that will ensure the health and safety of everyone who will be required to enter these spaces soon. This includes the best practices for ventilation like MERV 13 filters, increasing the amount of fresh air into the HVAC system, the use of portable HEPA fan or filtration systems in areas where necessary, ongoing maintenance plans and reports, cleaning protocols, mask compliance, and the incorporation of limiting contact between individuals and physical distancing.

Since OCA, and other agencies like DCAS and DOC have been unwilling to provide this information, and in understanding the imminent return to in-person work, ALAA has requested access to the courthouses in which in person arraignments will soon begin to conduct indoor environmental inspections with our expert Microecologies. Microecologies has 28 years of experience in providing health-based indoor environmental investigations and remediation solutions in the NYC area. Since the summer of 2020, their efforts have focused on helping reduce the risk of COVID 19 transmission in various spaces including commercial offices, not-for-profit organizations, charter schools, and healthcare facilities. This is an easy and reasonable solution to the lack of information that has been provided to the public.

Being transparent and providing information about implementation of the government's own expert recommendations serves everyone's interest in ensuring the best possible health and safety conditions in New York City courthouses. It's simple: Share information about remediation efforts, provide regular maintenance records, detail not just written policies on cleaning, distancing, and masking - but whether these policies are actually being followed.

Our experts with at the UAW and Microecologies agree with AKF's recommendations, but AKF did not conduct in-person inspections of the courthouses. What must happen now is for a neutral third party expert to inspect the courthouses and share those results with all interested parties, including our union and the general public. This will provide our members, clients, court staff and the public the assurance they need to know that NYC courthouses are safe.

On a final note, we must not forget some of the things we've learned in the past year. This pandemic has given us the unique opportunity to reevaluate how we ensure justice is served. Justice is not sitting in the courthouse all day to adjourn a case, causing clients and litigants to miss a day of work or find themselves unable to obtain childcare. We appreciate that the courts have found ways to work through this pandemic and want to be a partner moving forward to continue using new methods that are working and to guarantee access to justice.

We are all committed to justice and equality. By reevaluating how the court “does business” we can make steps towards our shared commitment to racial and social justice. Let us use this as an opportunity to make the changes we need to make to balance the scales of justice towards fairness, and equity and let good grow from something so devastating. I am here today to offer our union’s assistance in this effort, and to demand full transparency and information on whether the recommendations that OCA’s own expert recommended for the courts have been implemented.

I am a shareholder at 333 East 66th Street and I am writing to strongly oppose the mid-block expansion of the Blood Center building on this residential street. There is absolutely no good reason why this commercial high rise needs to be placed at this location when there are several other more appropriate and available locations for this massive tower. There are, however, a multitude of reasons as to why this is not the appropriate place for this construction.

This mid-block rezoning would create a major precedent for the UES and all other Manhattan residential areas. If the Blood Center is allowed to use its status as a health care provider to justify the building of a tower that's more than 4 times the current zoning limit, then all of the other medical-related mid-block buildings could assert the same right to build huge mid-block towers throughout the neighborhood. Furthermore, there is no guarantee that this building will not be repurposed once the zoning is changed.

This area is already dense with traffic. Aside from East 66th Street being a transverse through Central Park, East 67th Street is the ONLY single lane street in the City with a major cross town bus route. Additionally, East 66th Street between 1st and 2nd houses the entrance to the Evelyn Lauder Breast and Imaging Center, one of the largest breast imaging centers in the country, with a constant flow of traffic including patients who need to be transported and cannot wait long periods of time or walk long distances to meet their rides.

Also to consider, our schools, our bike lanes, our sunlight, our park. Again, this is NOT the place for an unnecessary "life sciences" building that has so many other options, especially now after this pandemic when NYC has a surplus of already erected commercial building space going unused. One has to wonder why the Blood Center would want to interrupt their work to build this tower, which will take years, when they could move into an already existing space.

This for-profit project is at the expense of our neighborhood, our children and our community. It is not justified, it is not necessary and it is not acceptable. This was justly opposed 35 years and again 15 years ago. It does not make any more sense today than it did then. Please hear this community now, as we were heard then.

Thank you so much,
Lauren Glenn