STATE OF NEW YORK
SUPREME COURT : COUNTY OF DUTCHESS
-----------------------------------------------------------------X
THE PEOPLE OF THE STATE OF NEW YORK
EX REL. [redacted], Esq. on behalf of
**CLIENT**

Realtor,

v.

WRIT OF
HABEAS CORPUS

[redacted], Acting Commissioner,
New York State Department of Corrections and
Community Supervision; [redacted], Sheriff,
Dutchess County Sheriff's Office;

Respondents.
-----------------------------------------------------------------X

To: [redacted], Sheriff of Dutchess County, Greeting:

WE COMMAND YOU, that you have and produce the body of CLIENT, by you imprisoned and detained, as it is said, together with your full return to this writ and time and cause of such imprisonment and detention, by whatsoever name the said person shall be called or charged before the Hon. ________________________________, Judge, Dutchess County Supreme Court, at a Term of the Dutchess County Court to be held at the Dutchess County Courthouse at 10 Market Street in the City of Poughkeepsie on March _________, 2023, at __________ o'clock or as soon thereafter as counsel may be heard, to do and receive what then and there be considered concerning the said CLIENT and have you then and there this writ, and it is further

ORDERED, that person service upon the New York State Attorney General shall be made on or before 5:00pm on March ______, 2023, upon respondent [redacted] or his agent on or before 5:00pm on March ______, 2023 and shall be deemed sufficient service.

Yours, etc.

[redacted], Esq.
Dutchess County Public Defender
[redacted].
45 Market Street
Poughkeepsie, New York 12601
(845) 486-2280
[redacted]

SO ORDERED,

_______________________________________________________
HON.

STATE OF NEW YORK
SUPREME COURT : COUNTY OF DUTCHESS
--------------------------------------------------------------X
THE PEOPLE OF THE STATE OF NEW YORK
EX REL. LAUREN JAEB, Esq. on behalf of
**CLIENT**

Realtor,

v.

████████, Acting Commissioner,
New York State Department of Corrections and
Community Supervision; ████████, Sheriff,
Dutchess County Sheriff's Office;

Respondents.
--------------------------------------------------------------X

PETITON FOR A
WRIT OF
HABEAS CORPUS

1. I, ████████ am an attorney admitted to practice in the State of New York and I am the attorney of record for CLIENT, the Petitioner herein. I make this Petition on Mr. Client's behalf pursuant to CPLR § 7002(a) and 7002(b)(1).
2. Petitioner is unlawfully detained and restrained of his liberty at the Dutchess County Jail (hereinafter "DCJ").
3. Petitioner is detained on New York Department of Corrections and Community Supervision ("DOCCS") Warrant No. 123456. See Exhibit A, Violation of Release Report ("VORR").
4. The cause or pretense of his incarceration is a remand order on a parole violation with Warrant No. ████████ and lodged against the Petitioner by the respondent Department of Corrections and Community Supervision (DOCCS), though Petitioner asserts the warrant was impermissibly executed.

5. Additionally, Mr. Client is not subject to incarceration at all on this matter and, therefore, his incarceration has been unlawful since its inception.

## PROCEDURAL AND FACTUAL HISTORY

6. Petitioner is alleged to have been released to parole supervision from New York State custody on October 19, 2021. See Exhibit A, Violation of Release Report ("VORR").

7. Petitioner asserts that he was released on May 19, 2021. See Exhibit B, Certificate of Release to Community Supervision.

8. Respondent DOCCS executed parole violation Warrant No. [redacted] against Petitioner on [redacted].

9. Petitioner was charged with violation Rule #1 of the Conditions of Release by failing to make an office report. He was also charged with violation Rule #13 of the Conditions of Release in that he failed to be at his approved residence during curfew hours, failed to attend programming in the community, and refused to be placed on GPS monitoring. See Exhibit A, Violation of Release Report ("VORR").

10. This is the Petitioner's first term of supervision. He has no prior violations on this period of supervision. See Exhibit A, Violation of Release Report ("VORR").

11. A recognizance hearing was held on February 23, 2023 and the petitioner was remanded to the custody of the Dutchess County Sheriff without bail to be held at DCJ pending his preliminary and final hearings.

12. On February 27, 2023, a preliminary hearing was held, and preponderance of the evidence was found on Charge 3, Rule 1 for failing to make an office report. The Petitioner's final hearing was set for [redacted]

## ARGUMENT

### POINT I:

### THE WARRANT MUST BE DISMISSED BECAUSE THERE WAS NO AUTHORITY FOR ITS ISSUANCE BECAUSE WARRANTS ARE AUTHORIZED IN PLACE OF A NOTICE OF VIOLATION ONLY WHERE THERE ARE NON-TECHNICAL CHARGES

13. The basis for the relief requested herein is the Petitioner's Constitutional and statutory rights have been violated. Petitioner should not have been subject to incarceration based on the charges contained in the Violation of Release Report predicated on a parole violation charge as a second-time technical parole violator pursuant to Executive Law § 259-i(3)(f)(xii)(1). At the outset, a warrant for incarceration should never have been issued in a case where no incarceration is permissible under the statute's maximum sanction. *Id*. Nevertheless, Petitioner remands remanded to the custody of the Dutchess County Sheriff for seven (7) days when he should not have been held at all. Accordingly, Petitioner's current incarceration is unlawful, and immediate release is required. See U.S. Const., 8th Amend.; N.Y. Const., Art. 1, § 5; N.Y. Exec. § 259-i(3)(f)(xii)(1). He should be released, and the warrant should be dismissed. See *People ex rel Debbie Hayes v. Annucci*, Index No. 22, 196-22 (Sup. Ct., Wyoming Co. June 8, 2022) (Mohun, J.); *See also People ex rel Naples v. Annucci*, SMZ No. 70892-22 (Sup. Ct., Nassau Co. May 11, 2022) (Fink, J.) (transcript of habeas corpus proceeding attached; petition granted on these grounds. See p. 11); *People ex rel Naples v. Annucci*, SMZ No. 6854-22 (Sup. Ct., Nassau Co., May 16, 2022) (Fink, J.) (transcript attached; petition granted on same grounds. *See* pp. 8-9); *People*

*ex rel Naples v. Annucci*, SMZ No. 70891-22 (Sup. Ct., Nassau Co., May 16, 2022) (Fink, J.) (petition granted on same grounds. See p. 9).

14. Revocation procedures for all technical violations must begin with a notice of violation – not a warrant. A warrant is issued only where a non-technical violation is charged: "If the parole officer having charge of a person under community supervision shall have probable cause to believe that such person has committed a non-technical violation, such parole officer shall report such fact to a member of the board, or to any officer of the department designated by the board, and thereupon a notice of violation may be issued or a warrant may be issued for the retaking of such person and for his temporary detention in accordance with the rules of the board." N.Y. Exec. § 259-i(3)(a)

15. A warrant cannot be issued in the first instance for technical charges; they are authorized instead of a notice of violation *only* where the charges are non-technical. N.Y. Exec. §§ 259-i(3)(a) and (c)(iii) outline the procedures for issuing a warrant on a revocation of presumptive release, parole, conditional release, or post-release supervision. If DOCCS "shall have probable cause to believe that…" a releasee has committed a technical violation, "…a written notice of violation may be issued according to the terms of subparagraph (iii) of paragraph (c) of this subdivision, and shall be promptly served upon such person." Further, the statute continues, "[t]he alleged violator shall, at the time a notice of violation is issued… be given written notice of the time, place, and purpose of the preliminary hearing…". A warrant may be issued if a releasee does not appear at the scheduled preliminary hearing as written on the notice of violation *and* does not voluntarily surrender within forty-eight hours. However, the statute clearly states in § 259-i(3)(a)(i) that, "[i]f the person has intentionally failed to appear as directed in response to a notice of

violation and has intentionally failed to appear voluntarily within forty-eight hours after such time ***and the person would not be subject to incarceration pursuant to paragraph (f) of this subdivision should the violation be sustained at a final revocation hearing, no warrant shall issue*** and the violation shall be deemed sustained." N.Y. Exec. § 259-i(3)(a) [Emphasis added]

16. In this case, Petitioner was not subject to incarceration pursuant to paragraph (f) of this subdivision as he is charged with non-absconding technical charges and, if sustained, this would only be his first violation. Reincarceration is impermissible for the Petitioner's Rule 13 violations. N.Y. Exec. § 259-i(3)(f)(xii)(2). Additionally, while reincarceration is permissible for some releasee's with a Rule 1 violation, the Petitioner does not have a previously sustained technical violation, sanctioned pursuant to N.Y. Exec. § 259-i(3)(f)(xii)(3) and therefore reincarceration would be an impermissible sanction against the Petitioner should a Rule 1 violation be sustained.
17. Therefore, since the Petitioner is not subject to any period of incarceration for any sustained charges at a final hearing, this warrant was impermissibly issued and should be dismissed.
18. The failure of DOCCS to follow the clear meaning and intent of the law by incarcerating an individual for alleged violations that are un-incarcerable and failing to follow the due process procedure set up in the Executive Law requires dismissal of the warrant and Petitioner's release. *People ex rel. Savarese v. New York State Bd. of Parole*, 106 Misc. 2d 916 (Sup. Ct., Queens Co. 1980).

**POINT II:**

**THE PETITIONER'S CONTINUED DETENTION VIOLATES FEDERAL AND STATE CONSTITUTIONAL PROTECTIONS AGAINST CRUEL AND UNUSUAL PUNISHMENT AND THEREFORE HIS RELEASE IS REQUIRED.**

19. Here, petitioner is charged with his first technical parole violation and, therefore, the longest permissible period of incarceration is 0 days.
20. Time assessments, the parole revocation equivalent of a sentence for  sustained violations, start running from the date the warrant is executed if the releasee remains in custody. Exec. § 259-i(3)(f)(xiii) states that any time a releasee spends in a correctional institution pursuant to CPL Article 530 "shall be credited toward any period of incarcerated".
21. Petitioner has been incarcerated on an alleged parole violation since February 23, 2023. As of March 1, 2023, Petitioner has served seven (7) days incarceration. Petitioner's detention is already in violation of NY Exec. § 259-i, as well as both the Federal and New York State's Constitutional prohibitions against "cruel and unusual punishment" (U.S. Const., 8th Amend.; N.Y. Const., Art. I., § 6). Petitioner's immediate release is required.
22. N.Y. Exec. § 259-i(3)(f)(xii)(1) is clear: "no reincarceration is authorized for the first and second sustained technical violation while 7 days is permitted for the third, 15 days for the fourth, and 30 days for the fifth and subsequent violations." "Where the language of a statute is clear and unambiguous, courts must give effect to its plain meaning." *State of New York v. Patricia II*, 6 N.Y.3d 160, 162 (2006) (internal quotations and citations omitted; emphasis added).
23. This Court must give effect to the clear and plaining meaning of NY Exec. § 259-i(3)(f)(xii)(1). If sustained, this would be the Petitioner's first technical violation for which

no incarceration is authorized. Plainly, Petitioner's reincarceration on February 23, 2023 is unauthorized and any further reincarceration must not be imposed. Therefore, giving the words of the statute their plain effect, immediate release is required. This is so even though DOCCS would otherwise be afforded 30 days to provide a final hearing for detained individuals after a preliminary hearing or waiver thereof.

24. The sponsor memo[1] made clear that the legislature sought to "reduce the number of people held in jail and prison in New York," "avoid any future return to DOCCS custody," and "limit […] the circumstances under which people subject to community supervision could be re-incarcerated for violations of the terms of community supervision."

25. Any other interpretation or application of N.Y. Exec. §259-i(3)(f)(xii(1) would be antithetical to the statute's plainly stated language, and contrary to the provision's clearly intended effect. "The courts have repeatedly rejected statutory constructions that are unconscionable or antithetical to legislative objectives." *N.Y. State Ass'n of Crim. Def. Lawyers v. Kaye*, 96 N.Y.2d 512, 519 (2001).

26. Clearly, the intended effect of N.Y. Exec. § 259-i(3)(f)(xii)(1) is to authorize courts to impose a maximum of zero days reincarceration for a first-time technical violation. Continuation of Petitioner's remand to custody past the maximum allowable carceral term of zero days goes against the statute's plain language and would thereby strip it of its intended effect. *See McKinney's Cons. of Laws of NY*, Book 1, Statutes § 143, at 289-290 (legislation "should receive an interpretation which would not lead to unreasonable consequences."). With each and every day of incarceration beyond the maximum of zero

---

[1]State Sponsor Memo (S1144A), available at https://www nysenate.gov/legislation/bills/2021/s1144

(0) days, the Petitioner is being unreasonably, excessively, and illegally punished. Immediate release is required.

27. Since the Petitioner's continued remand is in direction violation of the maximum sanction authorized by N.Y. Exec. § 259-i(3)(f)(xii)(1), it is also in violation of the Federal and New York State Constitutional prohibitions against cruel and unusual punishment, standing firm that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted." (U.S. Const., 8th Amend.; N.Y. Const., Art. I, § 5).

28. "The infliction of punishment, particularly where its severity serves no valid penological purpose is cruel and inhuman." *People v. Askew*, 66 A.D.2d 710, 711 (1978). As previously discussed, subjecting the Petitioner to any further incarceration serves no valid penological purpose. As of February 23, 2023, the Petitioner has already served the maximum allowable punishment of zero (0) days for a first-time technical violator pursuant to Exec § 259-i(3)(f)(xii)(1). There is thus no "valid penological purpose" to continue to punish Petitioner where such punishment is without any legal authority and exceeds the maximum permissible punishment.

29. Detaining Petitioner beyond the maximum permissible 0 days that could be imposed for the charge violation also violates substantive due process. *See Hurd v. Fredenburgh*, 984 F.3d 1075 (2d Cir. 2021). Substantive due process "bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them." *Zinermon v. Burch*, 494 U.S. 113, 125 (1990). When certain fundamental rights and liberty interests are involved, substantive due process affords heightened protection. Government actions that deprive persons of their liberty are subject to strict scrutiny, requiring the state

to show that the infringement is narrowly tailored to serve a compelling state interest. *See Washington v. Glucksberg*, 521 U.S. 702, 720 (1997).

30. While a prisoner's interest in the conditions of confinement is necessarily limited, the Supreme Court has never wavered in its acknowledgement that prisons have a fundamental liberty interest in not having the length of their sentences increased. See *Sandin v. Connor*, 515 U.S. 472, 485-86 (1995).

31. Petitioner has a liberty interest in freedom from detention once his detention exceeds the time statutorily authorized as a sanction for the alleged violation. See *Hurd v. Fredenburgh*, supra at 1075. "[S]ubstantive due process rights safeguard persons against the government's exercise of power without any reasonable justification in the service of a legitimate governmental objective." *Southerland v. City of New York*, 680 F.3d 127, 151 (2d Cir. 2012). "[F]reedom from bodily restraint has always been at the core of the liberty protected by the due process clause from arbitrary governmental action… commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Foucha v. Louisana*, 504 U.S. 71, 80 (1992); *Hurd*, supra, at 1088.

32. Petitioner has remained in jail while the State lacks any authority to detain him. See Hurd, supra at 1088. Just as no state, federal, or local authority may detain a person past the expiration of the sentence imposed upon them, DOCCS cannot keep petitioner beyond the period of time authorized by the legislature for a specified violation of community supervision. See *Sample v. Diecks*, 885 F.2d 1099 (3d Cir. 1989); *Calhoun v. NYS Div of Parole*, 999 F.2d 647; *Sudler v. City of New York*, 689 F.3d 159, 169 (2d Cir. 2012). This is even more egregious when, as here, the detention is based only on an alleged violation and there has been no finding that the violation was actually committed.

33. Since Petitioner's conditional liberty is at stake, the infringement must be narrowly tailored. Here, it is not. Rather, Petitioner is incarcerated and his liberty is entirely denied even though there is no longer any authorization for continued incarceration and it is wholly unnecessary. DOCCS has no interest in keeping a person detained, during the adjudication phase of administrative hearings, for a period that exceeds the permissible length of the punishment that could be imposed should the violation be sustained.

34. Accordingly, having already served his maximum carceral term, Petitioner must be immediately released.

**CLAIM**

35. WHEREFORE, Petitioner requests that this Court issue a writ of habeas corpus ordering Petitioner's immediate release and vacating the impermissibly issued DOCCS Warrant No. 123456 on the ground that his continued detention violates the Due Process Clause of the United States and New York State Constitutions.

Respectfully Submitted,

Dated: Poughkeepsie, New York
March 1, 2023

______________________________

[redacted]
Assistant Public Defender

**VERIFICATION**

, being duly sworn, deposes and says that she is the realtor named in the foregoing petition; that she has read such petition and knows the contents thereof; that the same is true to the knowledge and petition of realtor, except as to those matters stated to be alleged on information and belief, and as to those matters, she believes the same to be true.

____________________________________
.

Dated:
Poughkeepsie, New York