



**THE CITY OF NEW YORK**  
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July 25, 2016

**BY ECF**

Honorable Denise Cote  
United States District Judge  
Southern District of New York  
500 Pearl Street, Room 1610  
New York, New York 10007

Re: Victor Encarnacion and The Bronx Defenders v. City of New York, 16 CV  
156

Honorable Judge Cote:

I am an attorney in the office of Zachary W. Carter, Corporation Counsel of the City of New York, counsel for defendant the City of New York in the above-referenced action. In accordance with Magistrate Francis's instructions at the July 6, 2016 settlement conference, the parties are submitting this status letter to the Court to apprise it of the progress made in the settlement discussions. The parties are also submitting this letter to jointly request a stay of all papers, discovery and Court appearances in the above-captioned action until February 28<sup>th</sup> so that the parties may continue to work to resolve this action.

At the July 6, 2016 settlement conference, counsel for the defendant explained that the Bronx District Attorney's Office ("Bronx DA") is working diligently to implement revised procedures for the issuance of District Attorney Releases ("DA Releases"). The revisions include three key components: issuance of DA Releases or Deferral Letters as part of the finished files procedures, implementation of a tracking mechanism for demands for DA Releases and the creation of a Property Release Unit.

As part of the new finished file procedure, upon the closing of a case, an Assistant District Attorney ("ADA") at the Bronx DA will

either prepare a DA Release for the Arrest Evidence vouchered at the time of the property claimant's arrest or a Deferral Letter in the event that the property cannot be released due to any of the reasons set forth in the Rules of the City of New York ("RCNY"). The DA Release or Deferral Letter will then be scanned, and an electronic copy will be accessible at the Bronx DA Property Release window to facilitate a prompt decision regarding the return of a claimant's property.

The Bronx DA will also be implementing an electronic system of tracking all written and in-person demands for DA Releases made pursuant to RCNY § 12-34. This process will include the implementation of a new Demand Form which will be provided to claimants at the Property Clerk window.<sup>1</sup> All written demands made in person will be date-stamped when submitted by a claimant so as to provide proof of the date a demand was made. There will also be a system in which demands received by mail will also be date stamped and logged into the Bronx DA system. A list of these demands will appear on internal reports that are available to supervisors and Bureau Chiefs.

Additionally, the Bronx DA will create a Property Release Unit which will be staffed by a designated ADA. Among other responsibilities, this ADA will be available during ordinary business hours to speak to property release claimants or their authorized representatives and/or appointed counsel, and to provide a prompt response in circumstances where a claimant has made a demand but the DA Release or Deferral Letter was not issued within the fifteen day period. For misdemeanor cases and most felony cases (included felony drug cases), this ADA will be empowered to make the determination to issue the DA Release or Deferral Letter in the event that the ADA is unable to locate the assigned ADA or Bureau Chief when a claimant comes to retrieve the DA Release. This new ADA role is scheduled to commence at end of August 2016. Contact information for the Property Release Unit will be made available in English and Spanish at both the window of the Bronx Division of the NYPD Property Clerk and the DA's Property Release Window.

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<sup>1</sup> Defendant's counsel will provide plaintiffs' counsel with a copy of the proposed Demand Form prior to the implementation for plaintiffs' review. Plaintiffs may provide comments to the form, which will be non-binding. It is understood that the form may be subject to further changes or modifications without further consultation with plaintiffs' counsel.

These systems described above are currently in the process of being implemented and it is the Bronx DA's intention that they will be in place by the end of August. However, these revised practices will still be subject to review and may be adjusted as necessary. The parties are jointly requesting a stay of all papers, discovery and Court appearances so that these practices can be implemented and their effectiveness be monitored for a six-month period. The Bronx DA has agreed that by November 29, 2016, approximately three months into the implementation of these practices, defendant's counsel will provide plaintiffs' counsel with reports and statistics regarding the revised practices. To the extent feasible, such statistics will include information relevant to: the number of DA Release demands received and responded to during the three month period; the dates the DA Releases demands were made and responded to either with the issuance of a DA Release or Deferral Letter; and the number of claimants that requested the assistance of the ADA staffing the Property Release Unit and the resolution of such requests. Plaintiffs' counsel has agreed to promptly notify defendant's counsel should they identify any problems arising under the revised procedures.

Finally, plaintiffs' counsel has agreed to provide defendant's counsel with signed release forms pursuant to NYCPL § 160.50 for the named plaintiff's, after receipt of which, the Bronx DA has agreed to review the named plaintiffs' files and prepare a DA Release or Deferral Letter, as appropriate, for each of the named plaintiffs in this action.

A copy of a proposed Stipulation staying this action is attached for the Court's consideration. Thank you for your consideration of this request.

Respectfully submitted,

  
Aviva Y. Horowitz (AH 3654)

cc: THE BRONX DEFENDERS  
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