

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

In the Matter of a Proceeding under Article 78 of the CPLR
for a Writ of Mandamus,

TO BE SUBMITTED

NAUMAN HUSSAIN,

Petitioner,

– against –

HONORABLE PETER LYNCH, in his official
capacity as a Schoharie County Judge,

Respondent.

**In the Matter of a Proceeding under Article 78 of the CPLR
for a Writ of Mandamus**

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**Memorandum of Law
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**PETITIONER NAUMAN HUSSAIN’S MEMORANDUM
OF LAW IN SUPPORT OF HIS PETITION
FOR A WRIT OF MANDAMUS AND STAY**

PRELIMINARY STATEMENT

As set forth in the annexed Verified Petition, Petitioner Nauman Hussain respectfully seeks:

1. a Writ of Mandamus compelling Respondent, Honorable Peter Lynch (“Judge Lynch”) of the Schoharie County Court, to:
 - (a) reinstate Petitioner’s guilty plea which Judge Lynch improperly impelled Petitioner, through undue coercion and lack of sufficient opportunity to confer with counsel, to move to vacate unknowingly, involuntarily, and unintelligently; and
 - (b) grant specific performance of a plea agreement (“Agreement”) which Judge Lynch erroneously rejected (i) without any new information, (ii) in spite of Judge Lynch’s predecessor, Honorable George R. Bartlett, III (“Judge Bartlett”), not only approving the Agreement but participating in reaching its terms, and (iii) despite Petitioner, already performing in reliance of the Agreement to his detriment by, among other things, completing 572½ hours of community service over the course of an entire year; and

2. an Order staying the underlying criminal proceeding until the instant Petition is decided.

In brief, Judge Bartlett, who accepted Petitioner's guilty plea pursuant to the Agreement, promised Petitioner, "Both the District Attorney and Defense have proposed this disposition [of probation] to the Court and subject to defendant's compliance with interim probation, the Court intends to accept it." Exhibit B, at p.127, lines 7-10. However, following Judge Bartlett's retirement, Judge Lynch unexpectedly failed to abide by that Agreement at Petitioner's sentencing, despite his Honor: (1) possessing no new information not previously considered by the Court and (2) having acknowledged that Petitioner was "in compliance with the conditions" of his interim probation [Exhibit H, at p.4, lines 18-19] – which included Petitioner's performance of 572½ hours of community service, constituting just one form of Petitioner's detrimental reliance upon the Agreement. Instead, although the parties first began memorializing the agreed upon disposition of probation with Judge Bartlett's participation 2½ years earlier, Judge Lynch threatened Petitioner that he would be sentenced to the maximum term of imprisonment if he did not move to vacate his plea within approximately the next 15 minutes.

For the reasons that follow, Petitioner respectfully submits that this Court should grant the requested relief. Indeed, countenancing Judge Lynch's unauthorized conduct not only causes undue harm to one individual but to the criminal justice system as a whole which relies upon the integrity of plea negotiations to function.

STATEMENT OF FACTS

As and for his statement of facts, Petitioner Nauman Hussain adopts and incorporates by reference the averments made by his counsel, Chad Seigel, Esq., in the annexed Verified Petition, dated November 17, 2022 (“Petition”), and his own affidavit, dated November 14, 2022 (“Petitioner’s Affidavit”; Exhibit C), all as if more fully set forth herein.

As set forth therein, on April 10, 2019, Petitioner was arraigned on a 40-count Indictment, charging him with 20 counts each of second-degree manslaughter and criminally negligent homicide, in violation of Penal Law §§ 125.15(1) and 125.10, respectively. Petition, at p.2, ¶ 6. Each set of counts related to one of 20 people who died in connection with a fatal limousine accident resulting from catastrophic brake failure that occurred on October 6, 2018. *Id.*

During their Grand Jury investigation, the People discovered that Petitioner regularly brought the limousine to Mavis Discount Tire (“Mavis”) for mechanical service during the relevant time period, which included Petitioner specifically requesting that Mavis check the limousine’s brake system. *Id.* at p.3, ¶ 8. Not only did Mavis convey on a customer invoice that it checked the limousine’s brake system and performed maintenance upon it but Mavis also reported on that same invoice that the limousine passed a safety inspection. *Id.* Despite those representations, however, as the People also uncovered and disclosed as *Brady* material following Petitioner’s Indictment, Mavis never performed the invoiced brake service or the safety inspection. *Id.* at p.3, ¶ 9. Instead, Mavis fraudulently billed Petitioner as if it had done so. *Id.*

After the preceding information came to light, the parties, with the proactive involvement of Judge Bartlett, finalized a detailed seven-page written plea agreement [Exhibit A] that underwent multiple revisions over the course of 18 months and called for Petitioner to, among other things, (1)

plead guilty to all 20 counts of Criminally Negligent Homicide in full satisfaction of the Indictment, (2) waive his right to appeal, (3) be placed on interim probation during which he would perform substantial community service, and (4) be sentenced to five years probation with credit for his time on interim probation. *Id.* at pp.3-4, ¶ 11.

On September 2, 2021, the parties appeared before Judge Bartlett for Petitioner's plea proceeding, during which the Court confirmed to Petitioner that the plea he was entering that day was "the result of an agreement worked out between [his] attorney, the district attorney *and the Court.*" Exhibit B, at p.11, lines 6-8 (emphasis added). Consistent with that representation, during previous off-the-record discussions involving a potential resolution of the case, Judge Bartlett advised the parties that his Honor would accept a plea resulting in a probationary sentence, but as a prerequisite to doing so, (1) required a "joint submission" that would justify probation in the eyes of the public, and (2) wanted Petitioner to perform community service during an interim probationary period rather than post-sentencing, so that his Honor could monitor Petitioner's progress and further justify the sentence in the court of public opinion. Petition, at p.4, ¶¶ 13, 14. Moreover, during those same off-the-record discussions, Judge Bartlett, in order to avoid causing potential distress to the decedents' family members prior to the Court's acceptance of Petitioner's plea, urged Petitioner's counsel not to move to have Petitioner's GPS electronic monitor removed in advance of the plea proceeding, even though that bail condition had since been rendered invalid by the new bail legislation in 2020. *Id.* at p.6, ¶ 19. Accordingly, Petitioner agreed to these conditions. Petition, at p.4, ¶ 14; pp.6-7, ¶ 19.

In addition, during the plea proceeding, Judge Bartlett read into the record a 22-page statement the Court drafted [Exhibit D; Petition, at p.19, ¶25], in order to carefully articulate the

compelling and mitigating reasons justifying the agreed upon disposition, which included, among other things, conditions advanced by the Court as part of the Agreement, such as the fact Petitioner (1) would perform a minimum of 125 hours of community service per quarter during interim probation [Exhibit B, at p.3, lines 9-11], and (2) will have already, by the time of his plea, had his liberty meaningfully restricted by travel prohibitions and electronic monitoring for over two years.

Id. at p.124, lines 8-12. Moreover, during the plea proceeding, the Court also expressed:

[B]y pleading guilty, the defendant no longer has a Fifth Amendment right to remain silent. Thus, he can be compelled to testify in any civil action. Both the District Attorney and Defense have proposed this disposition to the Court and subject to defendant's compliance with interim probation, the Court intends to accept it.

Id. at p.127, lines 4-10.

Following the entry of his guilty plea, in reliance upon the written plea agreement and the Court's statements during the plea proceeding, Petitioner not only waived his Fifth Amendment privilege so as to testify in a civil action relating to the case [Exhibit F; Petition, at p.21, ¶30] but also complied with his interim probation by performing an extraordinary amount of community service. *Id.* at p.20, ¶26. Specifically, between September 21, 2021 and August 17, 2022, Petitioner performed 572½ hours of community service, much of which comprised substantial manual labor. Exhibit E; Petition, at p.20, ¶¶ 26, 27; Petitioner's Affidavit (Exhibit C), at pp.2-3, ¶ 5. As a result of that enormous commitment, tantamount to rendering free labor for an average of nearly seven hours per day over the equivalent of more than four months of regular employment [Petition, at p.20, ¶28], Petitioner was unable to devote the time necessary to develop his own business, which caused him to suffer professional hardship. *Id.* at p.21, ¶ 29; Petitioner's Affidavit (Exhibit C), at p.3, ¶ 6.

Consistent with the foregoing, the Schoharie County Probation Department issued an interim

probation report dated August 17, 2022, which confirmed that Petitioner was “in compliance with having 125 hours of community service per quarter.” Exhibit I, at p.1; Petition, at p.22, ¶ 34. In addition, the document also noted that Petitioner “report[ed] to the Probation Department monthly as directed” and “maintained overall compliance with his Order and Conditions of Interim Probation.” Exhibit I at p.2; Petition, at p.22, ¶ 34.

In recognition of Petitioner’s interim probation report, during an appearance on August 24, 2022, the People advised Judge Lynch, who had taken over the matter in the wake of Judge Bartlett’s retirement, that:

[t]he People will acknowledge the interim probation report filed by the Schoharie County Probation Department. Mr. Hussain is not only in compliance but has exceeded the requirements that were placed on him.

Exhibit H, at p.3, line 24 – p.4, line 3; Petition, at p.22, ¶ 32.

Similarly, during the same appearance, Judge Lynch observed:

I did also receive the interim report. It does appear that you [referring to Petitioner] have been in compliance with the conditions. So consequently, I am scheduling sentencing for August 31, 2022 at 10:00 a.m.

Exhibit H, at p.4, lines 17-21; Petition, at p.22, ¶ 33.

By the time of Petitioner’s sentencing on August 31, 2022, (1) the Court had worked out the Agreement with the parties, (2) the Court promised Petitioner it intended to sentence him to probation if he complied with his interim probation, (3) Petitioner complied with his interim probation and the Agreement itself, and (4) Petitioner relied upon the Court’s representations and Agreement to his substantial detriment, including (a) waiving his Fifth Amendment privilege and testifying at a related civil deposition, (b) being subjected to restricted liberty while wearing a GPS

monitoring device, and (c) performing 572½ hours of laborious community service, which caused him professional harm.

Nonetheless, at Petitioner's sentencing, Judge Lynch failed to abide by the Agreement and the Court's prior representations. Indeed, although Judge Bartlett in a thoughtful and detailed statement, articulated all the reasons the agreed upon disposition of probation was "just and fair," [Exhibit B, at p.128, lines 11-12], Judge Lynch jettisoned the Agreement, proclaiming, "I am the Sentencing Court and it is my determination that governs this sentencing." Exhibit J, at p.27, lines 1-2.

In making that pronouncement, Judge Lynch wholly failed to acknowledge Petitioner's detrimental reliance on the Court's representations and the Agreement itself. Petition, at pp.37-38, ¶ 66. Instead, Judge Lynch – contrary to the Court's previous statements – professed his Honor's view that Petitioner was guilty of manslaughter and not criminally negligent homicide based on alleged information already considered and deemed inconsequential within the Agreement and by the Court – namely, that an out-of-service sticker having nothing to do whatsoever with the proximate cause of the limousine accident (*i.e.*, catastrophic brake failure) had been removed prior thereto. *Id.* at p.26, ¶¶ 42-43; p.38, ¶ 67.

Worse still, when Petitioner's counsel sought to explain why such already considered information did not legally support a finding of manslaughter (*i.e.*, that removal of the sticker did not create a foreseeable risk of death from catastrophic brake failure, as is required to establish manslaughter pursuant to *People v. Roth*, 80 N.Y.2d 239, 243–44 (1992)), Judge Lynch interjected, merely stated that his Honor was "completely unimpressed," [Exhibit J, at p.29, lines 9-17] and directed the stenographer to stop transcribing the words of Petitioner's counsel in order to prevent

him from making a full record. Petition, at p.29, ¶ 50. Notably, despite Judge Lynch's conclusory statement about being "completely unimpressed" with the facts and law demonstrating the fallacy of his Honor's stated basis for rejecting the Agreement, Judge Lynch never once articulated his Honor's reasoning for that sentiment. *Id.* at p.27, ¶ 46. Indeed, the record is devoid of any such reason justifying his Honor's failure to abide by the Agreement. *Id.*

To aggravate matters, after expressing that the Court would not honor the Agreement, Judge Lynch admonished Petitioner and his counsel that they had only about 15 minutes to decide whether they wished to withdraw his guilty plea or his Honor would sentence Petitioner to the maximum sentence allowable under the law for the offenses to which he pled – 1½ to 4 years in prison. *Id.* at pp.28-29. ¶50. To highlight just how little time the Court allowed for the making of such an important decision, the Agreement had been in the works for at least 18 months even before Petitioner pled guilty a year earlier, meaning it had been contemplated for nearly 2½ years prior to the Court's approximate 15-minute window. *Id.* at p.28, ¶ 50. As a result, Petitioner's counsel sought additional necessary time to confer with Petitioner before rendering a decision. *Id.* at p.29. ¶ 50. However, Judge Lynch refused, advised Petitioner's counsel that he could use a room at the rear of the courtroom to discuss the matter with Petitioner, and abruptly held that the proceedings were in recess. *Id.* at p.31, ¶ 50; Exhibit J, at p.30, lines 3-12.

Accordingly, Petitioner's counsel sought to confer with Petitioner about the sudden and unexpected rejection of the Agreement and how Petitioner wished to proceed. Petition, at p.31, ¶ 51. Yet, counsel had difficulty doing so given that Petitioner was emotionally distressed, as were his brother and fiancée who were also present. *Id.* In fact, Petitioner had trouble concentrating, as he sought to console his crying fiancée, to whom he became engaged during his interim probationary

period, while believing, based on the Agreement, that they would not be kept apart due to his incarceration. *Id.*; Petitioner’s Affidavit (Exhibit C), at p.4, ¶¶ 9-10

When the approximate 15-minute period allotted by the Court expired, Petitioner’s counsel needed more time to confer with his client and sought such additional time from Judge Lynch. Petition, at p.32, ¶ 53. However, his Honor refused, demanding a decision. *Id.* Because Petitioner’s counsel had not received confirmation from Petitioner that he was ready to be imprisoned that day for the maximum sentence allowable, Petitioner’s counsel conveyed to Judge Lynch that “[i]n light of the Court’s position, we’re *impelled* today to seek to vacate Mr. Hussain’s plea.” *Id.* at p.32, ¶ 54 – p.33, ¶ 55; Exhibit J, at p.30, line 24 – p.31, line 8.

Notwithstanding the fact Petitioner’s counsel requested additional time and, in the absence thereof, stated that the defense was “impelled” to provide a clearly rushed response, the Court, without any additional inquiry to ascertain whether Petitioner’s decision was made knowingly, voluntarily and intelligently by Petitioner, simply vacated Petitioner’s plea, scheduled Petitioner’s trial to begin in just over three months (despite the fact no active litigation had occurred for well over a year), and directed that Petitioner once again have a GPS monitoring device installed on him, in contravention of CPL § 510.40(4)(a). Petition, at p.33, ¶ 56 – p.34, ¶ 59; Exhibit J, at p.31, lines 14-17; p.34, lines 12-22.

Then, two days later, Judge Lynch emailed the parties to alert them that his Honor, among other things, advanced the start of trial by more than month and scheduled pretrial hearings to begin in less than two weeks. Exhibit K; Petition, at p.34, ¶ 60. Only after the People submitted a letter to Judge Lynch, dated September 7, 2022 [Exhibit L], explaining that they lacked the resources to comply with the Court’s directives given, among other concerns, the voluminous nature of discovery

and the need to retain experts, did the Court, during an appearance on September 14, 2022, adjourn the start of trial and pretrial hearings until the Spring of 2023. Petition, at p.35, ¶ 62.

Significantly, during the appearance on September 14, 2022, Judge Lynch stated that any statement made by Petitioner at the time of his plea, at a public speaking event as part of his community service, or in any civil proceeding following his plea could not be admitted as direct evidence or used for impeachment purposes at trial. Petition at p.37, ¶ 66; Exhibit M, at p.7, line 17 – p.8, line 4. Judge Lynch undoubtedly issued that directive seeking to eliminate the detriment Petitioner sustained while foregoing his Fifth Amendment privilege due to his reliance on the Agreement. Petition, at p.37, ¶ 66. However, what Judge Lynch did not even seek to eliminate – nor could he do so – were the following detriments Petitioner has suffered as a result of his Honor’s failure to abide by the Agreement:

1. Petitioner’s statements made after waiving his Fifth Amendment privilege during a videotaped deposition on February 11, 2022 may still be used against him in pending civil litigation relating to the limousine accident, in which he is named as a defendant;
2. Petitioner was unnecessarily subject to restricted liberty through electronic monitoring, in contravention of CPL § 510.40, for an extended period of time prior to the entry of his plea at the urging of the Court so as to not risk fanning the passions of the decedents’ family members in advance of the plea proceeding; and
3. Petitioner – while on interim probation prior to his sentencing, as requested by the Court as a prerequisite to accepting the Agreement – performed 572½ hours of community service, including substantial manual labor, over the course of 84 separate days between September 21, 2022 and August 17, 2022, amounting to free labor for an average of nearly seven hours per day for the equivalent of more than four months of regular employment (*i.e.*, five days per week), which resulted in professional harm to his fledgling business.

Petition, at pp.37-38, ¶ 66.

Moreover, when casting aside the Agreement, Judge Lynch made highly inflammatory statements regarding his Honor's opinion of Petitioner's guilt as to manslaughter, which were widely reported in the press. *Id.* at p.38, ¶ 67. Indeed, Judge Lynch – after the Court previously found the agreed upon disposition to be “just and fair” [Exhibit B, at p.128, lines 11-12] – expressed his Honor's view that the Agreement was “completely disingenuous and unacceptable to the Court” because of irrelevant evidence which, to his Honor, supported a finding of manslaughter instead of criminally negligent homicide. Petition, at p.38, ¶ 67; Exhibit J, at p.25, line 17 – p.28, line 8. Notably, in light of the extraordinary media interest in the matter¹, before making his Honor's statements, Judge Lynch permitted video cameras in the courtroom subject to a “pooling agreement” that would allow for “shared coverage” between news outlets. Petition, at pp.38-39, ¶ 68. Accordingly, ensuing coverage of the proceeding and, in particular, Judge Lynch's opinion that Petitioner was guilty of manslaughter, blanketed the news for days. *Id.* at p.39, ¶ 69.

For example, an article appearing in the Democrat & Chronicle on September 1, 2022, entitled “Judge nixes no-prison deal in 2018 limo crash that killed 20,” reported:

To the judge, Hussain's actions showed he knew the risk of putting the limousine on the road the day of the crash, and a guilty plea to only criminally negligent homicide does not reflect that. Second-degree manslaughter charges are filed when a defendant is accused of being aware of the risk of death and disregarding it. Lynch called the deal “completely disingenuous and unacceptable to this court.”

Exhibit R, at p.2; Petition, at p.39, ¶ 69.

Although the Court directed that Petitioner's statements could not be used against him at a

¹As observed by Dan Levy, a reporter from a local television station, during his request for press coverage of the sentencing proceedings, “In more than 30 years of journalism, very few cases have garnered more interest, more publicity than this one.” Exhibit J, at p.3, lines 6-8; Petition, at p.38, ¶ 68.

criminal trial, Judge Lynch cannot eliminate the detriment inuring to Petitioner from the widely publicized statements which his Honor, when rejecting the Agreement, made concerning Petitioner being guilty of more than criminal negligence. Petition, at p.39, ¶ 70.

Based upon the indelible nature of the detriments Petitioner has sustained due to his reliance on the Agreement, vacatur of his plea has not restored him to the position he occupied before entering it. Consequently, for reasons further detailed below, mandamus is legally required to compel Judge Lynch to reinstate Petitioner's guilty plea and grant specific performance of the Agreement by sentencing Petitioner to probation thereunder with credit for the interim probationary period already served.

In addition, a stay of the underlying criminal action is necessary until this Petition is decided.

ARGUMENT

POINT I

MANDAMUS IS LEGALLY REQUIRED TO COMPEL JUDGE LYNCH TO REINSTATE PETITIONER'S GUILTY PLEA AND GRANT SPECIFIC PERFORMANCE OF THE PLEA AGREEMENT

A. The Applicable Law

It is axiomatic that mandamus lies to compel a public official's performance of an act where "the petitioner possesses a clear legal right to the relief sought" and the public official "has a corresponding nondiscretionary duty to grant the relief requested." *Matter of Highland Care Center Inc. v De Buono*, 267 A.D.2d 668, 670 (3d Dept. 1999) (quoting *Matter of Van Aken v. Town of Roxbury*, 211 A.D.2d 863, 864 (3d Dept. 1995)). A discretionary act "involve[s] the exercise of reasoned judgment which could typically produce different acceptable results." *Tango v. Tulevech*, 61 N.Y.2d 34, 41 (1983). In contrast, a nondiscretionary act "envisions direct adherence to a governing rule or standard with a compulsory result." *Id.* In short, mandamus is available "to enforce a clear legal right where the public official has failed to perform a duty enjoined by law." *New York Civ Liberties Union v. State of New York*, 4 N.Y.3d 175, 184 (2005).

While it is true that a court generally retains discretion to sentence a defendant as it deems fit, that is true *only* when that defendant has not detrimentally changed his position in reliance upon a promised sentence pursuant to a plea agreement. As explained in *People v. Brown*, 207 A.D.2d 408, 409 (2d Dept. 1994) (emphasis added):

It is well settled that *where ... a defendant had not detrimentally changed his position in reliance upon a sentence promise which forms part of his plea agreement*, "[t]he court * * * retains discretion in fixing an appropriate sentence up until the time of sentencing" (*People v. Schultz*, 73 N.Y.2d 757, 758, 536 N.Y.S.2d 46, 532 N.E.2d

1274).

As the Court of Appeals articulated in *People v. Schultz*:

In *People v McConnell* (49 NY2d 340, 347) the court stated that “[a] defendant who has not * * * changed his position will generally be entitled to no more than the vacation of his plea if the court concludes that it cannot adhere to the promise given, for the simple reason that vacating the plea restores him to the same position he was in before the plea was taken”. The court, *therefore*, retains discretion in fixing an appropriate sentence up until the time of the sentencing (*see, People v Farrar*, 52 NY2d 302, 305-306).

73 N.Y.2d 757, 758 (1988) (emphasis added); *see also, People v Walker*, 187 A.D.2d 909 (3d Dept. 1992) (“County Court’s apparent unconditional acceptance of the negotiated sentence notwithstanding, *in the absence of a showing that defendant detrimentally relied upon the original sentencing agreement*, County Court retained the discretion to fix an appropriate sentence up to the time of sentencing.”) (emphasis added).

Consistent with the preceding rationale, the Court of Appeals has held, as a matter of law, that a defendant who cannot be restored to the position he occupied prior to pleading guilty, because of his detrimental reliance upon a promise, must be granted specific performance of his plea bargain. Indeed, in *People v McConnell*, 49 N.Y.2d 340 (1980), the defendant, as part of a plea agreement, not only waived his right to trial but also his privilege against self-incrimination, and testified about the case. As a consequence, the Court of Appeals held that the case could not be “restored to status quo ante” and the defendant was thus “entitled to specific performance of the plea bargain.” 49 N.Y.2d at 347, 349. In so holding, the *McConnell* Court reasoned that specific performance was required “as a matter of essential fairness” and recognized “that a promise made by a State official authorized to do so and acted upon by a defendant in a criminal matter to his detriment is not lightly

to be disregarded.” *Id.* at 349.

In a similar vein, the Court of Appeals in *People v. Danny G.*, 61 N.Y.2d 169, 176 (1984) again held that a defendant, who performed services pursuant to a plea agreement, was entitled to specific performance thereof based on his “irrevocable change in position.” Specifically, the Court of Appeals reasoned that the defendant, who testified on behalf of the prosecution, was required to “receive the benefit of his bargain,” because once he had “been placed in [] a ‘no return’ position, relegating him to the remedy of vacatur of his plea [could not] restore him to the *status quo ante.*” *Id.*

Moreover, in accord with the preceding decisions, appellate courts have held that defendants were entitled to specific performance of a plea agreement where vacatur of their pleas would not restore them to the positions they occupied previously. *See, e.g., People v. Gimaldi*, 200 A.D.2d 687, 689 (2d Dept. 1994) (defendant, to whom a judge denied a recommended sentence after he rendered assistance to law enforcement pursuant to a plea agreement, was entitled to “receive the specific performance which the [People] recommended he receive.”); *People v. Rosa*, 181 A.D.3d 1211 (4th Dept. 2020) (“defendant was entitled to specific performance of the plea agreement because he placed himself in a ‘no-return’ position by carrying out his obligations under the agreement here, and there was no significant additional information bearing upon the appropriateness of the plea bargain.”) (internal citation and quotations omitted); *People v. Harris*, 239 A.D.2d 944 (4th Dept. 1997) (“Defendant was entitled to specific performance because he irrevocably changed his position in reliance upon the plea agreement”).

Significantly, in *People v. Matyjewicz*, 80 A.D.3d 779 (2d Dept. 2011), a case strikingly similar to this one, the Court held that a defendant, who performed 210 hours of community service

pursuant to a plea agreement, was entitled to specific performance of the agreement:

Pursuant to a negotiated disposition, the defendant entered a plea of guilty to the class E felony of criminal mischief in the third degree (Penal Law § 145.05[2]) and the class A misdemeanor of criminal mischief in the fourth degree (Penal Law § 145.00[1]), with the understanding that, if he satisfactorily completed 210 hours of community service, the felony plea would be vacated and he would be sentenced to a three-year term of probation for the misdemeanor conviction. The record reflects, and it is undisputed, that the community service obligation was the only condition imposed upon the defendant. The defendant satisfactorily completed the community service and thereafter appeared in court on two dates set for sentencing proceedings. Thereafter, on the third adjourn date, the defendant was not present in court and he appeared the following day. The Supreme Court declined to sentence him to a term of probation pursuant to the negotiated plea and imposed a sentence of incarceration.

As the People correctly concede, under the circumstances, the defendant cannot be restored to his pre-plea status by allowing him to withdraw his plea of guilty, and as a matter of essential fairness, he is entitled to the benefit of the plea agreement (*see People v. Danny G.*, 61 N.Y.2d 169, 175–176, 473 N.Y.S.2d 131, 461 N.E.2d 268; *People v. McConnell*, 49 N.Y.2d 340, 349, 425 N.Y.S.2d 794, 402 N.E.2d 133; *People v. Grimaldi*, 200 A.D.2d 687, 689, 607 N.Y.S.2d 57; *cf. People v. Rubendall*, 4 A.D.3d 13, 19, 772 N.Y.S.2d 346). Accordingly, the judgment must be modified to vacate the defendant's conviction of criminal mischief in the third degree and the sentence imposed thereon, and we remit the matter to the Supreme Court, Kings County, for resentencing on the conviction of criminal mischief in the fourth degree pursuant to the terms of the negotiated plea. In light of the sentencing judge's conduct, including sentencing the defendant based upon the violation of a condition not previously imposed upon the defendant as part of his plea agreement and making intemperate remarks, the resentencing should be held before a different Justice (*see People v. Garcia*, 69 A.D.3d 1229, 895 N.Y.S.2d 546; *People v. Lodge*, 54 A.D.3d 875, 863 N.Y.S.2d 816).²

²Judge Lynch demonstrated similar conduct, as his Honor, separate and apart from failing to abide by the written plea agreement, (1) unjustifiably interrupted Petitioner's counsel repeatedly so as to prevent him from speaking, (2) improperly instructed the stenographer from transcribing the words of Petitioner's counsel in order to stop him from making a full record, (3) branded Petitioner guilty of

Lastly, it bears emphasis that the Third Department, in *People v. Jones*, 99 A.D.2d 1 (3d Dept. 1984), has held that a defendant is also entitled to specific performance of a plea agreement, irrespective of detrimental reliance, when there are no new facts or circumstances revealed after the plea was taken. Indeed, the *Jones* Court pronounced that where no new information is brought to the attention of the sentencing court, “it must adhere to its bargain”:

In the landmark case of *People v. Selikoff*, 35 N.Y.2d 227, 360 N.Y.S.2d 623, 318 N.E.2d 784, *cert. den.* 419 U.S. 1122, 95 S.Ct. 806, 42 L.Ed.2d 822, the Court of Appeals outlined the differing sets of circumstances in which a sentencing court, unwilling to keep a plea bargain, must nevertheless fulfill it, and when it suffices merely to permit withdrawal of the plea. *Selikoff* holds that the plea withdrawal option is enough when, after the plea, the court receives information upon which it legitimately could base a change in sentence:

Upon subsequently discovering that defendant was a major piece rather than a pawn in the fraudulent scheme, the court acted quite correctly in refusing to impose the promised sentence but allowing defendant to withdraw his guilty plea (*id.* at 240, 360 N.Y.S.2d 623, 318 N.E.2d 784).

Where, however, no such new information is brought to the attention of the sentencing court, it must adhere to its bargain:

manslaughter without due cause and in contravention of the law in front of media outlets and the video cameras his Honor permitted in the courtroom, (4) informed Petitioner that he was in compliance with interim probation and that the Court would proceed with sentencing the following week, without once raising any concerns about the written plea agreement, apparently just to make a surprise showing before the media; (5) unreasonably gave Petitioner merely about 15 minutes to confer with counsel in order to make the important decision as to whether he wished to go to prison that day for 1½ to 4 years after being told previously he would be receiving probation and performing 572½ hours of community service, (6) wrongly restricted Petitioner’s liberty by means of GPS electronic monitoring in violation of CPL § 510.40(4)(a), (7) attempted to unfairly schedule the start of such a complex trial within just two months of unexpectedly vacating Petitioner’s plea, and (8) proclaimed that his Honor would continue to preside over the case in calendar year 2023 despite seemingly lacking a judicial appointment authorizing his Honor to do so. Petition, at p.36, ¶ 63. Nonetheless, sentencing before a different judge would not be necessary if this Court issues an order specifically compelling Judge Lynch to sentence Petitioner pursuant to the terms of the written plea agreement; *i.e.*, five years of probation with credit for his time served on interim probation.

Of course, courts may continue, on the pleading record, to indicate the sentence they expect to impose. The promise must be fulfilled provided there is nothing contained in the presentence report or in later learned facts rendering improvident the sentence promised (*see People v. Griffith*, 43 A.D.2d 20, 23, 25 [394 N.Y.S.2d 94]) (*People v. Selikoff, supra*, 35 N.Y.2d p. 240, 360 N.Y.S.2d 623, 318 N.E.2d 784 [emphasis added]).

99 A.D.2d at 3 (emphasis added).

The preceding principles of law are founded upon the need to safeguard the plea bargaining process, an essential bedrock of the criminal justice system. As aptly stated by the Court of Appeals in *People v. Avery*, 85 N.Y.2d 503, 506 (1995):

Plea bargaining is a practice vital to the efficient administration of the criminal justice system (*see, People v Seaberg*, 74 NY2d 1, 7), and “an integral part of the plea bargaining process is the negotiated sentence” (*see, People v Farrar*, 52 NY2d 302, 306). Plea and sentence negotiation further important policy considerations, conserving law enforcement, judicial and penal resources, and permitting the parties to avoid the uncertainties inherent in the lengthy process of charge, trial, sentence and appeals, thereby “starting the offender on the road to possible rehabilitation” as soon as practicable (*see, People v Selikoff*, 35 NY2d 227, 233).

In accord with the foregoing, the Court of Appeals in *People v. Selikoff*, 25 N.Y.2d 227, 233 (1974), mincing no words, has stated that “the negotiated plea literally staves off collapse of the law enforcement system, not just as to the courts but also to local detention facilities.” And, importantly, “openness and certainty in plea negotiations are vital to the continued validity of that process.” *People v. Danny G*, 61 N.Y.2d at 173.

B. Petitioner is Entitled to Specific Performance of the Plea Agreement

In this highly publicized matter, Judge Lynch has improperly done undue damage not just

to Petitioner but to the criminal justice system as a whole. Not only did the Court, in a very detailed and thoughtful exposition, previously accept Petitioner's written plea agreement as "just and fair," [Exhibit B, at p.128, lines 11-12] but it participated in working out the terms of the agreement with the parties. Petitioner then relied upon those terms to his extensive detriment, by (1) waiving his Fifth Amendment privilege and testifying in a related civil case, (2) subjecting himself unnecessarily to restricted liberty through electronic monitoring, and (3) performing 572½ hours of community service, including substantial manual labor, over the course of a year, which caused him to suffer professional harm.

Notwithstanding the foregoing, Judge Lynch failed to abide by the Agreement without receiving any new information not already considered and deemed inconsequential by the Court. For that matter, Judge Lynch reconsidered such stale information in a manner that blatantly contravened controlling precedent. And when Petitioner's counsel sought to direct his Honor to the facts and law relating to such precedent, Judge Lynch merely stated in the most conclusory manner that his Honor was "completely unimpressed" without articulating any reason for that position.

In other words, Judge Lynch failed to abide by the plea agreement, (1) without any new information, (2) without sufficient reason placed on the record, *see People v. Brown*, 207 A.D.2d 409-410 (requiring adherence to plea agreement where Court "never stated an adequate and specific basis for declining to impose the promised sentence"), and (3) without restoring Petitioner to the position he occupied prior to pleading guilty given his detrimental reliance.

Under these circumstances, in accordance with clear authority, Petitioner is legally entitled to specific performance of the plea agreement "as a matter of essential fairness." *People v. McConnell*, 49 N.Y.2d at 349. Moreover, with regard to the issue of fairness, it bears emphasis that

Judge Lynch, while improperly failing to abide by the Agreement, made highly inflammatory comments about Petitioner being guilty of manslaughter which were widely reported to his prospective jury pool, thereby providing an additional reason Petitioner should receive the benefit of his plea bargain.

Importantly, Judge Lynch's failure to abide by the plea agreement was not a discretionary act. As noted above, a discretionary act "involve[s] the exercise of reasoned judgment which could typically produce different acceptable results." *Tango v. Tulevech*, 61 N.Y.2d at 41. In contrast, the circumstances existing here – no new information presented at sentencing, lack of an adequate reason appearing on the record to reject the Agreement, and Petitioner's detrimental reliance preventing him from being restored to *status quo ante* – permit for one, and *only one*, acceptable result, namely the rubberstamping of the Agreement. After all, as the Court of Appeals has held, a defendant who simply cannot be restored to his pre-plea position is legally "entitled" to specific performance of his plea agreement. *People v. McConnell*, 49 N.Y.2d at 349.³

Importantly, the preceding conclusion is not altered by Judge Lynch's declaration, "I am the Sentencing Court and it is my determination that governs this sentencing." Exhibit J, at p.27, lines 1-2. Indeed, the integrity of the judicial system relies upon continuity and trust. As such, "the Court" – an institution – cannot be permitted to dishonor its promises merely because one public

³The fact that Petitioner moved to vacate his plea does not pose an impediment to the relief now sought, given that his decision to do so was made unknowingly, involuntarily, and unintelligently. "It is well settled that in the absence of fraud, a court has no inherent power to set aside a plea of guilty without the defendant's consent." *People v. Rubendall*, 4 A.D.3d 13, 17 (2d Dept. 2004) (citing *Matter of Lockett v. Juviler*, 65 N.Y.2d 182, 186-87) (1985). And, as detailed above, Petitioner did not knowingly, intelligently, and voluntarily consent to vacate his plea. That fact is made manifest by his counsel alerting the Court that Petitioner was "impelled" to withdraw his plea in light of the Court's undue pressure for him to make a hasty decision without sufficient time to confer with counsel. Petition, at p.32, ¶ 54 – p.33, ¶ 55; Exhibit J, at p.30, line 24 – p.31, line 8.

official substitutes another with different wishes and inclinations.

Because Judge Lynch “failed to perform a duty enjoined by law,” mandamus is necessary to enforce Petitioner’s clear legal right to specific performance of the Agreement. *New York Civ Liberties Union v. State of New York*, 4 N.Y.3d at 184.⁴

POINT II

THE CRIMINAL PROSECUTION AGAINST PETITIONER SHOULD BE STAYED PENDING A DETERMINATION OF THE INSTANT PETITION

A. Introduction

Petitioner seeks a stay of the underlying criminal prosecution while this Article 78 proceeding is pending. In order to be entitled to a stay by way of preliminary injunction, the party seeking such relief must demonstrate: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities in the moving party’s favor. *See* CPLR §§ 6301, 6311; *Doe v. Axelrod*, 73 N.Y.2d 748 (1988).

Notably, in the context of a special proceeding, CPLR § 7805 authorizes this Court to “stay further proceedings, or the enforcement of any determination under review.”⁵ Moreover, this Court

⁴If this Court does not grant such relief now, Petitioner, as well as many others, will be compelled to go through an enormously burdensome trial that will tax significant resources of both parties and the judicial system. If Petitioner is ultimately acquitted, the issue now before this Court will become moot. On the other hand, if Petitioner is convicted after trial, he will ultimately return to this Court for the relief now sought, though he will have then potentially risked forfeiting his claim to specific performance. *Cf.*, *People v. Seck*, 105 A.D.3d 502 (1st Dept. 2013) (“When defendant entered a second guilty plea and accepted the new sentence provided under the plea agreement, defendant waived his claim that he was entitled to specific performance of his initial plea agreement.”). In other words, now is the appropriate time for this Court to grant the relief sought.

⁵“Whether it [is] an order incident to [an] article 78 proceeding or a preliminary injunction under CPLR 6301, makes little difference and the question is academic because a showing of irreparable damage must be shown for either a stay or a preliminary injunction (CPLR 6301 and 7805 and *Matter of Albany Med. Center Hosp. v. Breslin*, 47 Misc.2d 40, 261 N.Y.S.2d 957).” *Stewart v. Parker*, 41 A.D.2d

has “inherent authority” to grant the requested stay. *Schwartz v. New York City Hous. Auth.*, 219 A.D.2d 47, 48–49 (2d Dept. 1996).

Additionally, a Temporary Restraining Order may be granted pending a hearing for a preliminary injunction if it appears that immediate and irreparable injury will result unless the respondent is restrained prior to the hearing. *See* CPLR § 6301 (“A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had.”).

As detailed in Point I, *supra*, Petitioner seeks to compel specific performance of his plea agreement. And, as demonstrated below, Petitioner meets the requirements for preliminary injunctive relief while this Court makes a determination as to the merits of his petition for mandamus.

B. Likelihood of Success

As set forth above, Petitioner can demonstrate a likelihood of success on the merits, in that Judge Lynch failed to abide by the plea agreement (1) without any new information, (2) without sufficient reason placed on the record, and (3) without restoring Petitioner to the position he occupied prior to pleading guilty given his ensuing detrimental reliance. *See* Point I, *supra*.

Accordingly, Petitioner is entitled to specific performance of the Agreement as a matter of law. *See People v. Schulz*, 73 N.Y.2d 757 (1988); *People v. Danny G.*, 61 N.Y.2d 169 (1984); *People v. McConnell*, 49 N.Y.2d 340 (1980); *People v. Walker*, 187 A.D.2d 909 (3d Dept. 1992); *People v. Jones*, 99 A.D.2d 1 (3d Dept. 1984); *People v. Matyjewicz*, 80 A.D.3d 779 (2d Dept.

785, 786 (3d Dept 1973).

2011); *People v. Brown*, 207 A.D.2d 408 (2d Dept. 1994); *People v. Gimaldi*, 200 A.D.2d 687 (2d Dept. 1994); *People v. Rosa*, 181 A.D.3d 1211 (4th Dept. 2020); *People v Harris*, 239 A.D.2d 944 (4th Dept. 1997).

C. Irreparable Harm

Petitioner can also show irreparable harm in the event the prosecution against him is not stayed pending a determination of this Petition. Indeed, in the absence of a stay, Petitioner, as well as many others, will be compelled to go through enormously burdensome trial and pre-trial litigation that will tax significant resources of both parties and the judicial system. Moreover, if this Petition is not decided before a trial concludes, Petitioner will be at risk of losing his right to specific performance of the plea agreement while he potentially languishes in prison. *C.f.*, *People v. Seck*, 105 A.D.3d 502 (1st Dept. 2013) (“When defendant entered a second guilty plea and accepted the new sentence provided under the plea agreement, defendant waived his claim that he was entitled to specific performance of his initial plea agreement.”).

Simply stated, withholding provisional relief may strip Petitioner of his right to the ultimate relief sought in the instant petition. Thus, pending determination of such petition, the criminal prosecution against Petitioner should be stayed. *See Schneider v. Aulisi*, 307 N.Y. 376, 383–84 (1954) (“In view of the imminence of trial, the motion for inspection [of grand jury minutes] would have been valueless without a stay.”) (internal quotations omitted).

D. Balance of Equities

Finally, the balance of equities favors Petitioner, particularly since the Court must weigh the interests of the general public, as well as the interests of the parties to the litigation. *See DePina v. Educational Testing Service*, 31 A.D.2d 744, 297 N.Y.S.2d 472 (2d Dept 1969). In this instance,

it is the public that will benefit in this highly publicized matter if the integrity of the criminal justice system is preserved.

As set forth above, the Court of Appeals in *People v. Avery*, 85 N.Y.2d 503, 506 (1995), observed:

Plea bargaining is a practice vital to the efficient administration of the criminal justice system (*see, People v. Seaberg*, 74 NY2d 1, 7), and “an integral part of the plea bargaining process is the negotiated sentence” (*see, People v. Farrar*, 52 NY2d 302, 306). Plea and sentence negotiation further important policy considerations, conserving law enforcement, judicial and penal resources, and permitting the parties to avoid the uncertainties inherent in the lengthy process of charge, trial, sentence and appeals, thereby “starting the offender on the road to possible rehabilitation” as soon as practicable (*see, People v. Selikoff*, 35 NY2d 227, 233).

In other words, “the negotiated plea literally staves off collapse of the law enforcement system, not just as to the courts but also to local detention facilities.” *People v. Selikoff*, 25 N.Y.2d 227, 233 (1974). And, with that in mind, “openness and certainty in plea negotiations are vital to the continued validity of that process.” *People v. Danny G*, 61 N.Y.2d at 173.

Thus, ensuring such openness and certainty through this Article 78 proceeding, and granting a stay during the pendency of it, will advance the interests of both Petitioner and the general public.

Moreover, Respondent Judge Lynch cannot claim that the equities favor his Honor, because Judge Lynch (1) was legally required to abide by the plea agreement, and (2) will not be prejudiced by a stay of the criminal action.

Accordingly, Petitioner respectfully submits that an interim stay is fully warranted under these circumstances. Lastly, as noted in paragraph 73 of the Verified Petition, Petitioner, through his counsel, gave notice of his intention to seek the provision relief requested herein.

CONCLUSION

For the reasons set forth herein, Petitioner Nauman Hussain respectfully requests that this Court: (1) issue an Order in the nature of mandamus to compel Respondent Judge Peter Lynch to reinstate Petitioner's guilty plea and grant specific performance of the written plea agreement; (2) stay the underlying criminal action against Petitioner until this Petition is decided; and (3) grant such other and further relief as this Court deems just and proper.

Dated: November 17, 2022

THE KINDLON LAW FIRM, PLLC

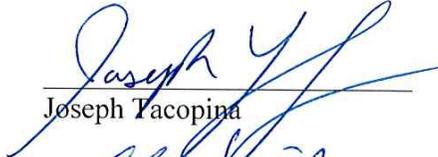
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SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

-----X
In the Matter of a Proceeding under Article 78 of the CPLR
for a Writ of Mandamus,

NAUMAN HUSSAIN,

Index No.

Petitioner,

– against –

**ORDER TO SHOW
CAUSE WITH STAY
AND TEMPORARY
RESTRAINING ORDER**

HONORABLE PETER LYNCH, in his official
capacity as a Schoharie County Judge,

Respondent.

-----X

Upon the annexed Verified Petition of Joseph Tacopina, Esq., Chad Seigel, Esq., and Lee Kindlon, Esq., dated November 17, 2022, with exhibits, including the affidavit of Petitioner Nauman Hussain, sworn to on November 14, 2022 (Exhibit C to the Verified Petition), and the accompanying Memorandum of Law:

LET Respondent Honorable Peter Lynch appear and show cause before this Court at the Courthouse located at Empire State Plaza State Street, Albany, New York 12223, on ~~November~~ ^{DEC. 5}, 2022, at _____ o'clock or as soon thereafter as the parties and counsel may be heard, why an order should not be entered directing that Respondent reinstate Petitioner's guilty plea which was previously entered pursuant to a written plea agreement in Schoharie County on September 2, 2021, in *People v. Nauman Hussain*, docket no. 2019-33 (the "criminal prosecution"), and sentence Petitioner to five years of probation with credit for time served on interim probation pursuant to the terms of said written plea agreement, and why the criminal prosecution of petitioner should not be

stayed pending determination of this proceeding, and why such other and further relief this Court deems just and proper should not be granted. Sufficient reason appearing therefor, it is hereby

~~ORDERED that, pending determination of the motion brought on by this Order to Show Cause, said criminal prosecution of petitioner is STAYED in its entirety, and it is further~~

ORDERED that service of a copy of this order to show cause and the papers upon which it was made, being made upon Respondent by ~~personal delivery and~~ overnight mail to the chambers thereof, and by ~~personal delivery and~~ overnight mail to the Attorney General's office and the Schoharie County District Attorney's Office, on or before the 23 day of November, 2022, shall be deemed good and sufficient service; and it is further

ORDERED that the motion brought on by this order to show cause shall not be orally argued unless counsel are notified to the contrary by the Clerk of the Court.

Dated: ALBANY New York
November 21, 2022


Hon. JOHN C. EGAN, JR.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

-----X
In the Matter of a Proceeding under Article 78 of the CPLR
for a Writ of Mandamus,

NAUMAN HUSSAIN,

Index No.

Petitioner,

VERIFICATION

– against –

HONORABLE PETER LYNCH, in his official
capacity as a Schoharie County Judge,

Respondent.

-----X

STATE OF NEW YORK)
 :SS:
COUNTY OF NEW YORK)

I, the undersigned, an attorney admitted to practice in the Courts of the State of New York, being duly sworn, deposes and says:

1. I am a member of the law firm Tacopina Seigel & DeOreo, attorneys for Petitioner Nauman Hussain in this matter.

2. I have read the foregoing Verified Petition and know the contents thereof; they are true to my knowledge, except as to those matters for which I rely upon Petitioner's annexed affidavit, sworn to on November 14, 2022, which is attached as Exhibit C to the Verified Petition, and as to those matters, I believe them to be true.

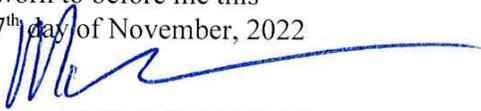
3. The source of my information and the grounds of my belief are personal observations and interactions, and examination of exhibits, relative to the matters referred to in the annexed Verified Petition.

4. The reason this verification is made by me instead of by Petitioner Nauman Hussain is that Petitioner does not reside within the county where I presently maintain my office and I personally am aware of the vast majority of the contents of the Verified Petition.

Dated: New York, New York
November 17, 2022


Chad D. Seigel

Sworn to before me this
17th day of November, 2022



Notary Public

MATTHEW G. DEOREO
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02DE6046082
Qualified in New York County
Commission Expires October 06, 2026

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

-----X
In the Matter of a Proceeding under Article 78 of the CPLR
for a Writ of Mandamus,

NAUMAN HUSSAIN,

Index No.

Petitioner,

VERIFIED PETITION

– against –

HONORABLE PETER LYNCH, in his official
capacity as a Schoharie County Judge,

Respondent.

-----X

TO THE SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION, THIRD
JUDICIAL DEPARTMENT:

Petitioner, Nauman Hussain, by his attorneys, Joseph Tacopina, Esq., Chad Seigel, Esq., and Lee Kindlon, Esq., as and for a Verified Petition (“Petition”) pursuant to Article 78 of the New York Civil Practice Law and Rules (“CPLR”), respectfully alleges as follows:

1. This is a special proceeding brought pursuant to CPLR Article 78 for relief in the nature of mandamus to compel Respondent, Honorable Peter Lynch (“Judge Lynch”) of the Schoharie County Court, to: (1) grant specific performance of a plea agreement (“Agreement”) that his Honor, in clear violation of the law, summarily rejected without any new information despite (a) Judge Lynch’s predecessor, Honorable George R. Bartlett, III (“Judge Bartlett”), not only approving the Agreement but expressing on the record that the Court participated in reaching its terms before Petitioner entered his guilty plea, and (b) Petitioner, relying upon the Agreement, already performing thereunder to his detriment by, among other things, completing 572½ hours of community service over the course of an entire year.

2. Additionally, Petitioner seeks a stay of the underlying criminal action against him until this Petition is decided.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this proceeding under CPLR § 506(b)(1), which provides that an Article 78 proceeding against “a judge of a county court ... shall be commenced in the appellate division in the judicial department where the action, in the course of which the matter sought to be enforced or restrained originated, is triable.” CPLR § 506(b)(1).

THE PARTIES

4. Petitioner Nauman Hussain is an individual and a citizen and resident of New York, County of Albany.

5. At all relevant times, Respondent Judge Lynch has been an acting Judge of the Schoharie County Court.

STATEMENT OF FACTS

A. Criminal Charges Against Petitioner

6. On April 10, 2019, Petitioner was arraigned on a 40-count Indictment, charging him with 20 counts each of second-degree manslaughter and criminally negligent homicide, in violation of Penal Law §§ 125.15(1) and 125.10, respectively. Each set of counts related to one of 20 people who died in connection with a fatal limousine accident resulting from catastrophic brake failure that occurred on October 6, 2018, including the driver, all 17 passengers, and two pedestrians.

7. The People’s theory of prosecution was that Petitioner, the accused operator of the company owning the subject limousine (“limousine”), was reckless or criminally negligent in allegedly disregarding or failing to perceive a substantial and unjustifiable risk that the limousine

accident would occur from catastrophic brake failure, so as to constitute a gross deviation from the standard of care that a reasonable person would observe under the circumstances.

8. During their Grand Jury investigation, however, the People discovered that Petitioner regularly brought the limousine to Mavis Discount Tire (“Mavis”) for mechanical service during the relevant time period, which included Petitioner specifically requesting that Mavis check the limousine’s brake system. Not only did Mavis convey on a customer invoice that it checked the limousine’s brake system and performed maintenance upon it but Mavis also reported on that same invoice that the limousine passed a safety inspection.

9. Notwithstanding the foregoing, as the People also uncovered and disclosed as *Brady* material following Petitioner’s Indictment, Mavis never performed the invoiced brake service or the safety inspection. Instead, Mavis fraudulently billed Petitioner as if it had done so.

B. Plea Negotiations

10. In light of the preceding uncontested facts, both the defense and the People, while recognizing that neither party could assuredly predict the outcome of a prospective jury trial, sought an assured resolution to guarantee finality in this highly emotional case. As a result, the defense and the People engaged in extensive and lengthy off-the-record negotiations, amongst themselves and together with Judge Bartlett, in order to ensure a disposition that would satisfy the concerns of both the parties and the Court.

11. Notably, such negotiations resulted in an agreement that Petitioner would: (a) plead guilty under Counts 21 through 40 of the Indictment, each charging Criminally Negligent Homicide, in violation of Section 125.10 of the Penal Law, in full satisfaction of the Indictment; (b) waive his right to appeal; (c) be placed on interim probation during which he would perform substantial

community service; and (d) be sentenced to five years probation with credit for his time served on interim probation.

12. The preceding terms were memorialized in a detailed seven-page written plea agreement, a true and accurate copy of which is annexed hereto as Exhibit A. Notably, although the plea agreement was ultimately finalized in September of 2021, the parties, with the involvement of the Court, first began preparing it more than a year and a-half earlier in March of 2020. While the pandemic delayed the proceedings, a significant amount of time and resources were expended formulating the written plea agreement, as it underwent multiple revisions based on commentary from the respective parties and Judge Bartlett.

13. In fact, the nature, content and indeed existence of the written plea agreement were the product of Judge Bartlett's contributions. In particular, his Honor advised the parties during off-the-record discussions that the Court would accept the plea, but required a "joint submission" that would justify the sentence in the eyes of the public. To that end, Judge Bartlett asked the defense and the People to highlight the risks of a trial to both parties and include a statement of reasons for the agreed upon disposition.

14. In addition, Judge Bartlett expressed that his Honor wanted Petitioner, rather than performing community service as a condition of his post-sentencing probation, to render it during an interim probationary period prior to sentencing, so that his Honor could monitor Petitioner's progress and further justify the sentence in the court of public opinion. Consequently, the written plea agreement contained such a condition.

15. In accord with the foregoing, the written plea agreement contained, among other justifications, the following support for the agreed upon disposition:

[T]he Defendant has submitted throughout these proceedings that there exists ... proof that: (i) Mavis is a nationally renowned mechanic with approximately 500 fully equipped service centers in 13 states, (ii) Mavis manager Virgil Park told Mr. Hussain during a recorded exchange on May 11, 2018, “I’m the only place that works on twenty passenger limousines,” (iii) the Defendant had a reasonable basis to believe that Mavis was capable of properly servicing the 2001 Ford Excursion and (iv) the DOT Specialist, after previously inspecting the 2001 Ford Excursion and issuing a violation for deficient brakes on March 21, 2018, performed a follow-up inspection on the 2001 Ford Excursion on September 4, 2018 (only 32 days before the October 6, 2018 accident) and no longer observed any deficiency with respect to the brakes. Accordingly, the Defendant, prior to reaching the disposition contained herein, has taken the position that: (i) his decision to have the vehicle serviced exclusively by Mavis does not constitute a gross deviation from the standard of care that a reasonable person would observe in the situation, and (ii) the proximate cause (*i.e.*, legal cause) of the 2001 Ford Excursion’s catastrophic brake failure was Mavis’s failure to properly service the vehicle.

Exhibit A, at pp.4-5, ¶ 10(j).

16. Furthermore, the written plea agreement made note of a Highway Accident Report, which was issued by The National Transportation Safety Board (“NTSB”) and documented apparent failures relating to the inspection of the limousine by third-parties:

Based on the questionable quality of the Mavis Discount Tire inspection and the fact that two inspection stations ignored NYSDMV policy and inspected the stretch limousine when they should not have done so, the NTSB concludes that the NYSDMV did not provide effective oversight of state inspection stations, allowing Mavis Discount Tire and Wilton Truck Center to perform inadequate inspections of the crash limousine that failed to detect serious safety deficiencies before the crash.

Exhibit A, at p.5, ¶ 10(k).

17. As additional support for the agreed upon disposition of probation, the written plea agreement also observed:

The parties jointly submit that a disposition of probation for a period of five years is authorized and appropriate based on the considerations set forth in Penal Law §§ 60.01(2)(a)(i) and 65.00. First, institutional confinement is not necessary for the protection of the public, as the factual basis for the disposition would be an inadvertent omission (*i.e.*, criminal negligence) rather than a conscious affirmative act (*i.e.*, recklessness), the Defendant has a limited prior criminal history, and the Defendant has exhibited a respect for, and ability to follow, the law during the pendency of these proceedings, as evidenced by his full compliance with bail conditions, which have included the imposition of restricted travel, his regular in-person reporting with the Schoharie County Department of Probation's pretrial services (on a weekly basis until the start of the pandemic and continued bi-weekly basis thereafter), and electronic monitoring since April 11, 2019. Second, the Defendant would benefit from special conditions administered through Probation supervision. Third, the disposition would serve the ends of justice for compelling reasons, including the mitigating facts and circumstances set forth above, the desire for an expeditious and final resolution of these proceedings (*i.e.*, thereby avoiding the emotional toll of a trial and potential appeals), and the fact that the Defendant's liberty will have already been, by the time of the Defendant's plea, meaningfully restricted by travel prohibitions and electronic monitoring for over two years.

Exhibit A, at p. 5, ¶ 15.

18. Before accepting Petitioner's plea in open court, Judge Bartlett reviewed the written plea agreement and expressed his approval of it to the parties.

19. Moreover, prior to his plea, Petitioner was released on a \$450,000 bond and subjected to electronic monitoring through a GPS ankle bracelet. Although the new bail legislation in 2020 subsequently rendered Petitioner's electronic monitoring invalid pursuant to CPL § 510.40, Judge Bartlett urged the defense not to move to have that bail condition eliminated until the entry of Petitioner's guilty plea, as it would risk fanning the passions of the decedents' family members in advance of the plea proceeding. Because Judge Bartlett's reasoning was designed to facilitate the

Court's acceptance of the Agreement, the defense complied, and Petitioner continued to wear the GPS ankle bracelet until the time of his plea.

C. The Plea Proceeding

20. On September 2, 2021, the parties appeared before Judge Bartlett for Petitioner's plea proceeding. A true and accurate copy of the transcript of that proceeding is annexed hereto as Exhibit B.

21. Consistent with its extensive involvement in the plea negotiation process, Judge Bartlett, prior to the entry of his plea, advised Petitioner:

Now, the plea you're entering today is the result of an agreement worked out between your attorney, the district attorney **and the Court.**

Exhibit B, at p.11, lines 6-8 (emphasis added).

22. Petitioner then, pursuant to the terms of the Agreement, pled guilty to Counts 21 through 40 of the Indictment, charging him with Criminally Negligent Homicide, based upon an expressed promise by the People and the Court that, if he complied with the terms of his interim probation, he would be sentenced to probation. The foregoing is confirmed within paragraphs 3 and 4 of Petitioner's Affidavit, sworn to on November 14, 2022 ("Petitioner's Affidavit"), a true and accurate copy of which is annexed hereto as Exhibit C.

23. Additionally, during the plea proceeding, the Court thoroughly explained its reasoning for accepting the disposition:

THE COURT: I previously read all the statements. As I said, I read them, read them again, and I've heard all the statements here today. Uniformly, the statements attest to the goodness, kindness and humanity of the victims. Plus, the letters all describe the everyday anguish, sorrow, and sense of loss suffered by family members and friends.

As a Judge, I'm required to put emotion aside. I'm having difficulty. I am also human and offer you all my deepest sympathy. Your loss is unfathomable.

In an instant, 20 people lost their lives, leaving behind grieving families, friends and an entire community. We are all here today hoping for justice. However, whatever's done here today cannot do what everyone wants; to go back to October 6, 2018, minutes before 1:55 p.m., and stop this accident from happening and, thus, prevent the deaths and resultant loss and pain of families, friends and, indeed, the whole community.

Nothing done here today in this court can change the horrible, tragic facts that 20 loved individuals are dead. No matter what is done today, the Criminal Justice System cannot undo the tragedy that occurred on October 6, 2018. All it can do is try to ensure a fair and just resolution of this criminal case and, hopefully, in the process, attempt to highlight failures that allowed this horrible incident to occur and hope that these failures can be seriously looked at and, if possible, be remedied so that nothing like this ever happens again.

I understand that many people, with good reason, feel the proposed sentence here is way too light; 20 people are dead. How could the Justice System even contemplate a sentence that does not impose decades of incarceration? This certainly is not an unreasonable opinion.

I take to heart the expressions of one of the victim statements, I quote: "I hope the Court's sense of justice will somehow do right by my family. I hope the Court's sense of duty and humanity will prevail."

While I have this opportunity, I want to take a few minutes to try to explain the reason the District Attorney is urging the Court to accept the proposed disposition and point out some of the failures of others that likely played a part in this tragic accident.

In this regard, I urge everyone to read the Plea Agreement and the September 29th, 2020 Highway Accident Report by the National Transportation Safety Board. None of what I say today are findings of this Court. My statements are taken from what has been presented to the Court by the District Attorney and the Defense, together with the very thorough report of the National Transportation Safety Board.

I present these contentions to try to explain what was presented. By felony complaint dated October 10th, 2018, four days after the tragic crash, defendant was charged with Criminally Negligent Homicide with respect to each death. On April 5th, 2019, defendant was indicted for 20 counts of Manslaughter in the Second Degree and 20 counts of Criminally Negligent Homicide.

After the Indictment was filed, the District Attorney continued her investigation and the National Transportation Safety Board conducted a detailed and thorough investigation and study. The District Attorney's further investigation led the District Attorney to reconsider the propriety of the Manslaughter charge, an element which requires the defendant recklessly or consciously disregarded a risk.

This led the District Attorney to the belief that the appropriate charge was Criminally Negligent Homicide based upon the defendant's failure to perceive a risk. Criminally Negligent Homicide is a Class E felony for which a possible maximum indeterminate term of imprisonment of one and one third to four years may be imposed.

Because all of the offenses were allegedly committed through the same omission, even though there are 20 deaths, the law requires each sentence to run concurrently, that is, at the same time. Accordingly, the maximum term of imprisonment in this case would be a total of one and a third to four years.

The limousine in question was owned by Prestige Limousine, a company operated by the defendant. The cause of the accident was brake failure of the 2001 Ford Excursion stretch limousine. Due to poor maintenance of the 2001 Ford Excursion, the right rear brake was not working and the left rear brake had reduced functioning.

While descending the hill on Route 30, the limited functionality of the rear brakes caused the limo to rely on the front brakes. The front brakes generated extreme heat which could not be dissipated. This extreme heat caused the brake fluid to boil, which generated air bubbles in the fluid. The air in the brake system caused the front brakes to fail.

Thus, although the driver applied the brakes while descending the hill traveling south on New York State Route 30, the brake system failed to slow the limousine down and the tragic crash ensued.

One of the statements submitted to the Court and expressed here today says, "I think the person who failed to teach you", referring to the defendant, "right from wrong should also be charged in the slaughter of that day."

Defendant's father left his son in control of a passenger transportation business he should have known was not at the time complying with pertinent safety rules, regulations and laws. The father apparently had left the country and has not returned.

After defendant's arrest, numerous issues regarding other persons' potential culpability were identified by the District Attorney and the National Transportation Safety Board. I'm going to outline some of the arguments of defendant's culpability.

Despite numerous warnings and Notices of Violation issued by the New York State Department of Transportation, Prestige Limo and Chauffeur Service violated the law by transporting passengers without having proper operating authority.

Prestige was operating a limo in poor mechanical condition that had recently been placed out of service for safety deficiencies. Prestige lacked an effective maintenance program.

The limousine was required to undergo a semiannual bus inspection as it was classified as a bus. Defendant did not have the vehicle properly inspected but, instead, chose Mavis to do a standard New York State vehicle inspection.

Despite knowing that the crash limo driver was not properly licensed, defendant assigned him to drive the limo in violation of a New York State Department of Transportation out of service order.

I turn to Mavis. Mavis Discount Tire and Wilton Truck Center inspected and certified the crash limo, which was an altered vehicle. However, as the limo was an altered vehicle, Mavis was prohibited under New York State Department of Transportation's policy from inspecting the vehicle.

Two: Records from Mavis discovered by the District Attorney following the defendant's arrest revealed that the defendant brought the subject vehicle to Mavis for mechanical service.

On September 17th, 2019, the District Attorney interviewed the manager at Mavis who informed the District Attorney's Office of a billing practice where certain services were substituted on invoices for ones actually performed, thereby resulting in inaccurate information on invoices.

The manager also stated that while the May 11, 2018 invoice reflects that a brake system flush was performed, in order to remove the brake fluid from the 2011 Ford Excursion's brake system and replace it with new clean brake fluid, thereby removing air, moisture, sludge and other contaminants that impair braking ability, in fact, the brakes were only bled so as to purge the braking system of air bubbles.

The evidence shows that Mr. Hussain paid Mavis for certain brake services, but such services were not described or reflected accurately on the Mavis invoices.

The District Attorney concedes that the evidence shows that the Mavis invoice of May 11th, 2018 did not accurately reflect services performed.

The National Transportation Safety Board also identified issues concerning New York State's culpability.

One: The New York State Department of Motor Vehicles failed to verify information in its registration program which allowed the limousine to be incorrectly classified and registered. Defendant was, thus, able to circumvent the more thorough state safety and inspection requirements that may have prevented the crash.

New York State failed to ensure that Mavis adhered to policy that prohibited them from inspecting an altered vehicle. The limo was, thus, allowed to undergo annual inspections rather than the more rigorous semiannual New York State Department of Transportation's bus safety inspections.

Three: New York State did not provide effective oversight of Mavis stations which performed inadequate inspections of the crash limo that failed to detect serious safety deficiencies before the crash.

Four: New York State Department of Transportation's ineffective enforcement and lack of repair verification allowed defendant to continue to transport passengers despite, one, not having operating

authority and, two, failing to repair out-of-service violations that compromised the crash vehicle's safety.

Five: The Department of Transportation's enforcement that allowed the limo to continue operating after being cited for serious out-of-service violations was inadequate.

There were issues identified regarding the driver. The driver was not properly licensed to operate the subject vehicle. The driver also provided false information in obtaining his medical certification to operate a commercial vehicle and tested positive for marijuana, THC, in his autopsy.

Two: There are issues as to why the limo was even on Route 30 heading downhill to the New York State Route 30 and 30A intersection. This was not the way to Ommegang Brewery from Amsterdam.

The National Transportation Safety Board indicated that substantial guidance exists for commercial drivers on what actions to take to properly traverse a grade such as this involving loss of brakes. The evidence did not establish whether or not the driver applied the parking brake or put the vehicle in a lower gear as is recommended.

Vehicle alteration. The 2001 Ford Excursion SUV was altered into a stretch limousine by 21st Century Coachworks. The alteration entailed cutting the SUV's factory frame, increasing its wheelbase and overall length so that the vehicle met the definitions of a bus.

The alterer failed to register as required. The alterer was required to affix a certification label to the vehicle stating the weight limit at the time the brake system was certified. At the time of the crash, the loaded weight was approximately 13,565 pounds while the allowed weight was 8,600 pounds. The limo was a Ford product and the conversion did not comply with Ford's guidance.

The above are deficiencies alleged by the District Attorney and/or by the National Transportation Safety Board. If any of these people or entities complied with the laws and reasonable duty of care, this horrible accident may not have occurred.

Now, I want to turn to the law in question, the law that the Court is sworn to uphold. As mentioned previously, the maximum sentence

for Criminally Negligent Homicide is one and a third to four years, and all sentences must, by law, run concurrent or at the same time with each other. Thus, the maximum sentence would be one and a third to four years.

This is not an intentional crime and the District Attorney does not at any point allege that the defendant committed any intentional crime. A person is guilty of Criminally Negligent Homicide when, with criminal negligence, he causes the death of another person.

A person acts with criminal negligence with unjustifiable risk that such result will occur and when that person fails to perceive that risk in a situation where the offender has a legal duty of awareness.

More than an obscure or merely probable connection between the defendant's conduct and the victims' deaths is required to support a homicide conviction. Rather, an act qualifies as a sufficiently direct cause where the ultimate harm should have been reasonably foreseen.

The parties and experts agree as to the cause of the accident, although citing the delay in gaining access to the crash vehicle due to the District Attorney's reluctance to allow them access, the National Transportation Safety Board states that it cannot specifically say why the brake system failed.

The District Attorney, the defense and the National Transportation Safety Board, however, all agree that the rear brakes were poorly maintained and several components in the rear braking system had not appreciably been working prior to the crash.

Given the poor condition of the rear brakes, the burden of braking was placed on the front brakes. This extra burden increased the front brake temperature. With the limousine's heavy load of 18 passengers, the long descent as it approached the intersection of New York State Route 30 and 30A, and the increase in brake temperature, the front brakes, the only operational brakes, failed or lost their effectiveness.

The vehicle was solely serviced by Mavis.

The District Attorney submits that defendant failed to perceive a substantial and unjustifiable risk of death relating to catastrophic brake failure arising from the defendant's decision to have the brakes

inspected by Mavis rather than subjecting the vehicle to the required Department of Transportation's semiannual bus inspection.

The District Attorney further submits that the defendant failed to properly maintain the braking system and ignored out-of-service directives which created a substantial and unjustifiable risk of death relating to catastrophic brake failure.

In response to the District Attorney's position, the defense submits there is evidence to the contrary. Mavis was the sole service provider for this vehicle and is a nationally known mechanic with approximately 500 fully equipped service centers in 13 states.

Mavis' manager told defendant in a recorded exchange on May 11th, 2018 that "I'm the only place that works on 20-passenger limos."

The defendant argues that he had a reasonable belief that Mavis was capable of servicing the vehicle.

And on May 18, 2018, the defendant asked Mavis to check the brakes; thereafter, Mavis performed brake work and the vehicle passed inspection.

A Department of Transportation specialist, after previously inspecting the limousine and issuing a violation for deficient brakes on March 21st, 2018, performed a follow-up inspection after May of 2018, brake work on September 4th, 2018, only 32 days before the October 6th, 2018 crash, and no longer reported any deficiency with respect to the brakes.

Following the September 4th, 2018 inspection, the Department of Transportation's specialist placed an out-of-service sticker on the 2001 Ford Excursion for three violations relating to a dangling ABS line, not a cause of the accident, a missing federal sticker, and emergency exits.

While the District Attorney submits that the defendant removed that sticker, both parties agree that the 2001 Ford Excursion was not placed out of service for defective brakes at that time and that none of these violations was the proximate cause of the vehicle's catastrophic brake failure.

Accordingly, the defense, prior to reaching the disposition contained

herein, has taken the position that, one, defendant's decision to have the vehicle serviced exclusively by Mavis does not constitute a gross deviation from the standard of care that a reasonable person would observe in the situation; and, two, the proximate cause, that is, legal cause, of the 2001 Ford Excursion's catastrophic brake failure was Mavis' failure to properly service the vehicle and was not foreseeable consequences since the brakes had recently been serviced.

The National Transportation Safety Board issued a Highway Accident Report dated September 29th, 2020, which documents apparent failures relating to the inspection of the 2001 Ford Excursion by third parties.

And I will make my statements today available to the public. If you want to contact the Court, we will mail you a copy or e-mail you a copy. And I do have some endnotes to give you.

In light of the circumstances set forth above, the District Attorney and the defense submit to the Court that neither party can predict the outcome of a prospective jury trial. Yet, both parties seek an assured resolution to guarantee finality in this highly emotional case for the benefit of all touched by the tragedy at the center of it.

The parties also acknowledge the circumstances surrounding the COVID-19 pandemic that has caused an ongoing delay of trial and release of many nonviolent criminals from incarceration.

Furthermore, the parties acknowledge Mr. Hussain's compliance with the GPS ankle bracelet since April 11th, 2019, and his compliance with the Schoharie County Department of Probation's pretrial services.

Additionally, the parties recognize that in the absence of this agreed-upon plea, Mr. Hussain would maintain his Fifth Amendment privilege against self-incrimination throughout these proceedings unless and until a final judgment of conviction is entered, if at all, following a trial.

In contrast, in accord with this Plea Agreement, Mr. Hussain shall forfeit such privilege, thereby subjecting him to civil testimony under oath concerning his conduct and interactions with, among others, Mavis.

Moreover, the defendant's judgment of conviction and related plea allocution may be used in civil litigation in order to advance the interests of any or all family members of the decedents involved therein. The parties understand that the recovery of civil damages may lessen the hardship endured by those aggrieved in this matter.

The District Attorney and Defense jointly submit to the Court that a disposition of probation for a period of five years is appropriate based on the considerations I have tried to set forth and as set forth in the Penal Law.

First, institutional confinement is not necessary for the protection of the public, as the factual basis for the disposition would be an inadvertent omission, i.e., criminal negligence, rather than a conscious affirmative act, i.e., recklessness.

One of the terms of his probation is that he not ever be involved or at least during the term of his probation jurisdiction in any business that would be involved with public transportation. I know one person mentioned his passport. Probation would require him to remain in the jurisdiction unless they give approval.

The defendant has a limited prior criminal history; and the defendant has exhibited an ability to follow the law during the pendency of these proceedings as evidenced by his full compliance with bail conditions, which have included the imposition of restricted travel, his regular in-person reporting with the Schoharie County Department of Probation's pretrial services and electronic monitoring.

Second: The defendant would benefit from special conditions administered through probation supervision.

Third: The disposition would serve the ends of justice for compelling reasons, including the mitigating facts and circumstances as set forth above, the desire for an expeditious and final resolution of these proceedings, thereby avoiding the emotional toll of a trial and potential appeals; and the fact that the defendant's liberty will have already been, by the time of the defendant's plea, meaningfully restricted by travel prohibitions and electronic monitoring for over two years.

The proposed disposition here is two years of interim probation followed by three years of regular probation. The two years of

interim probation will give defendant the opportunity to prove himself before receiving sentence and will also allow this Court to maintain jurisdiction over the defendant; thus, allowing this Court to monitor his compliance with the terms of his probation and make sure he completes the thousand hours of community service which he must perform at a minimum of 125 hours per quarter.

The defendant will also at the time of sentencing be required to pay restitution to Schoharie County for the rescue services and emergency services. Should defendant at any time violate his probation, his probation can be revoked and he could be sentenced to any sentence allowed by law.

This sentence is recommended to the Court by both the Defense and the District Attorney. I fully realize that people will think this sentence to be way too light, and I certainly well appreciate this. But I want to assure all interested persons, and the public at large, that this recommended sentence was the result of much careful thought and, as noted above, is recommended by the District Attorney.

As I tried to detail, further investigation of this case by the District Attorney after defendant was arrested and charged led to the discovery of information [that] weakened the District Attorney's case. Primarily, that is the issue surrounding Mavis' managers' statements and the defendant taking the vehicle to Mavis in May of 2018 and allegedly asking Mavis to check the brakes.

Also, if, in fact, Mavis did not actually change the brake fluid but, rather, merely bled the system, this could have potentially left contamination in the fluid which could have allowed the fluid to boil at a lower temperature than it would have with new fluid.

Moreover, and importantly, the vehicle passed a New York State inspection by Mavis in May 2018 and, at a roadside inspection in September of 2018 by New York State, the vehicle was placed out of service by New York State inspector but not for the brake issues that led to the tragic crash.

Thus, as detailed, both the District Attorney and Defense have expressed uncertainty and both sides wish to bring certainty to this case and finality for the sake of the families. Although there is no jail time being imposed, the defendant is pleading guilty to 20 felonies.

Defendant has been monitored by a GPS bracelet since his arraignment in April 2019. He's also complied with all requirements of the Schoharie County pretrial release program. Defendant has a very limited criminal history. He will be required to perform a thousand hours of community service over the next two years, community service approved by this Court.

One of the victims' families thought maybe he should be forced to attend some autopsies. I don't think that's a bad idea. He will also be on probation for five years. And as I said, if he violates his probation at any point, he could be resentenced to any sentence allowed by law; in his case, one and a third to four years incarceration.

Importantly, by pleading guilty, the defendant will have admitted his criminal negligence under oath. Such will allow this to be used in a civil action.

Moreover, by pleading guilty, the defendant no longer has a Fifth Amendment right to remain silent. Thus, he can be compelled to testify in any civil action. **Both the District Attorney and Defense have proposed this disposition to the Court and subject to defendant's compliance with interim probation, the Court intends to accept it.**

It is not something I do lightly. I have given it many hours of thought. It just does not seem right that 20 people are dead and the defendant receives a sentence of probation and community service. But there are factual issues regarding defendant's guilt and this guilty plea brings closure to the families, at least with respect to this case.

Of importance also is that it is not alleged that the defendant did any intentional crime and, if convicted of all 20 crimes alleged, would not face a maximum sentence of decades of incarceration but a maximum sentence of one and a third to four years incarceration.

In addition, this tragic accident has brought to light several issues regarding weaknesses in the regulation and enforcement of regulations regarding limousines. New York has already instituted corrective statutes. It is horrible that these changes only came about because of this tragedy.

Sadly, the Justice System cannot order us to go back in time to undo

the tragic events of October 6, 2018 and bring back the loved ones you all lost. **This Court can only do its best to apply the law as it exists to the facts presented to it, treat everyone with respect and, above all, leave everyone with the knowledge that the proposed disposition was carefully considered and is just and fair.**

I truly appreciate everyone's patience in allowing me this time to explain the thinking behind the proceedings today. I sincerely hope it provides some helpful information.

So at this time, I do have the terms of interim probation and I have agreement by the defendant sentenced to interim probation being extended and I have the Son of Sam disclosure. I didn't bring extra copies for the Son of Sam, but I'll have my secretary mail those out tomorrow.

Exhibit B, at p.108, line 7 – p.128, line 22 (emphasis added).

24. At the conclusion of the plea proceeding, the Court addressing Petitioner directly, advised him “to use [his] community service” so as to justify the benefit of the Agreement. Exhibit B, at p.129, lines 11-12.

25. On September 3, 2021, Judge Bartlett's secretary, at his Honor's behest, emailed the parties a copy of the 22-page statement that the Court drafted, and which the Court recited in open-court the preceding day in order to carefully articulate the compelling and mitigating reasons justifying the agreed upon disposition which the Court accepted. A true and accurate copy of the statement, entitled “Statement by Hon. George R. Bartlett, III Explaining Reason for Accepting Plea Agreement Made in Court on September 2, 2021,” is annexed hereto at Exhibit D.

D. Petitioner's Detrimental Reliance on the Plea Agreement

26. In the wake of his plea proceeding, Petitioner took the Court's words and assurances to heart, including its promise that it intended to sentence him to probation under the terms of the Agreement if he complied with interim probation. *See* Petitioner's Affidavit (Exhibit C), at p.2, ¶

4. Accordingly, following the entry of his guilty plea, Petitioner performed in excess of the “minimum of 125 hours per quarter” mandated by the Court as part of the Agreement. Exhibit B, at p.124, line 22. Indeed, between September 21, 2022 and August 17, 2022, Petitioner performed 572½ hours of community service over the course of 84 separate days, frequently working eight and a-half hours per day. The foregoing is evidenced by Community Service Work Time Sheets issued by the Schoharie County Community Service Program, which were signed by county representatives who supervised Petitioner’s community service. True and accurate copies of those time sheets are annexed hereto as Exhibit E.

27. During the course of his extensive community service, Petitioner provided free services to three separate entities. *See* Petitioner’s Affidavit (Exhibit C), at pp.2-3, ¶ 5. First, he performed manual labor at the Regional Food Bank of Northeastern New York, located in Latham, New York, where he examined and collated produce, weighed and labeled inventory, and physically moved boxes, including placing them on pallets. *Id.* Second, Petitioner worked at Hope 7 Food Pantry in Troy, New York, where he gathered food, prepared boxes containing such food, and distributed them to indigent people. *Id.* Third, he worked at a community center in Albany, New York, which provided free gym access to the public. *Id.* In particular, Petitioner performed intensive physical labor, as he swept and cleaned gym machinery, which included removing and restacking heavy weights. *Id.* In addition, he assisted a personal trainer who provided services to both children and adults, checked people in at the front desk, handed out gym equipment, and assisted in opening and/or closing the facility. *Id.*

28. Notably, Petitioner performed such free labor for an average of nearly seven hours per day for the equivalent of more than four months of regular employment (*i.e.*, five days per week).

29. Petitioner's commitment to community service, stemming from his reliance upon the Agreement, caused him professional hardship. *Id.* at p.3, ¶ 6. Specifically, in November of 2021, Petitioner began operating a start-up marketing company. *Id.* However, due to the time necessary to satisfy his community service obligations, Petitioner could not invest comparable time towards developing his business, which has suffered as a result. *Id.*

30. In addition, as observed by Judge Bartlett, "in accord with [the] Plea Agreement, Mr. Hussain shall forfeit such [Fifth Amendment] privilege, thereby subjecting him to civil testimony under oath concerning his conduct and interactions with, among others, Mavis." Exhibit B, at p.122, lines 14-18. Consistent with such relinquishment as described by the Court, on February 11, 2022, Petitioner subjected himself to a videotaped deposition in a civil litigation relating to the subject limousine accident, thereby voluntarily exposing himself to civil liability. A true and accurate copy of the transcript of that deposition is annexed hereto as Exhibit F.

E. The Sentencing Proceeding

31. On August 16, 2022, Judge Lynch emailed Petitioner's counsel to advise that his Honor had been assigned to take over Judge Bartlett's criminal caseload due to Judge Bartlett's retirement. In that same email, Judge Lynch expressed that the Court would proceed with sentencing Petitioner on August 31, 2022, if it did not extend Petitioner's first year of completed interim probation by an additional year. Further, Judge Lynch stated the Court would make that determination following an appearance on August 24, 2022. A true and accurate copy of Judge Lynch's email is annexed hereto as Exhibit G.

32. During the appearance on August 24, 2022, Judge Lynch inquired of the People whether the Court should extend Petitioner's first year of interim probation by an additional year.

A true and accurate copy of the transcript of that proceeding is annexed hereto as Exhibit H. In response to the Court's inquiry, the People stated:

The People will acknowledge **the interim probation report filed by the Schoharie County Probation Department. Mr. Hussain is not only in compliance but has exceeded the requirements that were placed on him.** So the People do not have good cause to extend it and would concede this matter is to be sentenced, I believe the Court had indicated on the 31st of August. The People are prepared, if the Court and counsel are prepared, to proceed with sentencing.

Exhibit H, at p.3, line 24 – p.4, line 8 (emphasis added).

33. After the defense similarly expressed its willingness to proceed with sentencing, the Court stated:

Okay. So the interim probation period is not extended by consent of the parties.... **I did also receive the interim report. It does appear that you [referring to Petitioner] have been in compliance with the conditions.** So consequently, I am scheduling sentencing for August 31, 2022 at 10:00 a.m.

Exhibit H, at p.4, lines 15-21 (emphasis added).

34. A true and accurate copy of the interim probation report referenced by the People and the Court is annexed hereto as Exhibit I. As detailed therein, not only was Petitioner “in compliance with having 125 hours of community service per quarter” but he “report[ed] to the Probation Department monthly as directed” and “maintained overall compliance with his Order and Conditions of Interim Probation.” Exhibit I, at pp.1-2.

35. As per Judge Lynch's directive, the parties appeared for sentencing on August 31, 2022. A true and accurate copy of the transcript of that proceeding is annexed hereto as Exhibit J.

36. During the sentencing proceeding, in response to the Court's inquiry as to whether they wished to be heard, the People stated:

Your Honor, I just ask that the Court accept the plea agreement that we outlined a year ago. It is my understanding that there are no legal good cause for any extension of the interim probation and, thus, **we request that the Court sentence the defendant pursuant to the agreement.**

Exhibit J, at p.22, lines 11-16 (emphasis added).

37. Following the People's remarks, Petitioner's counsel joined in their request, stating:

[A]ll of the compelling and mitigating circumstances justifying the sentence [have] been set forth in the plea agreement, and that's open for the public to view. And for those reasons, Your Honor, we simply join in the People's request and ask the Court to impose the sentence of five years probation with credit for the one year of interim probation that's been served so far without incident...."

Exhibit J, at p.23, lines 13-21.

38. Although both parties requested that the Court sentence Petitioner to probation pursuant to the Agreement accepted by Judge Bartlett, Judge Lynch expressed that the Court would not abide by such Agreement. In so doing, Judge Lynch erroneously relied upon preexisting information already expressly considered and dismissed as insignificant by the Court when Judge Bartlett "worked out" the Agreement with the parties [Exhibit B, at p.11, lines 6-8] and accepted Petitioner's guilty plea a year earlier on September 2, 2021, pursuant to such Agreement.

39. Specifically, Judge Lynch stated:

Okay, all right. So I have reviewed the plea minutes, the plea agreement. I also carefully reviewed the Order of Judge Bartlett dated June 17, 2019, which included an extensive application for a buccal swab, which I will be talking about in a moment. I also have reviewed the presentence investigation report.

And I note that the Probation Department effectively did not make a recommendation. The Probation Department noted that there should be accountability and simply recommended that the defendant be sentenced at the discretion of the Court. The point made is the

Probation Department did not affirmatively recommend five years probation.

I would like to talk about the nature of the plea agreement, which I have carefully reviewed. The underlying theses for the plea agreement comes in a statement at paragraph 10-b on page 3, and I'll read it. "The weight of the evidence supports Criminally Negligent Homicide based on the defendant's failure to perceive a risk (in contrast to his conscious disregard thereof)."

I note for the record that the first 20 counts of the indictment were Manslaughter in the Second Degree under Penal Law Section 125.15(1). Recklessly causing the death is the essence of that charge. Under Penal Law Section 15.05(3), it's the definition of reckless which, in essence, is when an individual is aware of and consciously disregards a substantial and unjustifiable risk that such result will occur.

The Criminally Negligent Homicide counts, which were Counts Twenty-One through Forty, the definition of criminal negligence, Penal Law Section 15.05(4), in essence, is when an individual "fails to perceive a substantial and unjustifiable risk".

The essence of the plea agreement that was signed by the parties and incorporated into the plea proceeding last year is fundamentally flawed. It is not based on truth. And frankly, I found it interesting that one of the most compelling pieces of evidence that would likely occur in a trial is buried in a footnote at page 4.

I talked about the buccal swab application and Judge Bartlett's decision in 2019 where Judge Bartlett went through extensive factual findings in his decision. And the issue at that time was whether or not the Court would authorize a buccal swab of a sticker to determine whether or not DNA evidence could be determined.

And in that application, there's extensive information about Investigator Smith from the Department of Transportation who inspected the vehicle and placed an out-of-service sticker on that vehicle on September 4, 2018. And interestingly enough, the Court found that on October 5, 2018, the day before this incident, that investigator called the defendant to go over the necessary things that had to be done to get that vehicle back in order.

It is my understanding that it was ultimately determined that the sticker was discovered in the search of the defendant's vehicle and that as a result of DNA testing, that the defendant's DNA was on that sticker. The reasonable inference to draw from that is that it was consciously removed. If one consciously removes a sticker from a vehicle that was placed on the vehicle by the authorities that it was out of service, that action is consistent with being aware of and consciously disregarding the risk.

So in this Court's view -- and bear in mind, I am the Sentencing Court and it is my determination that governs this sentencing -- **the inherent inconsistency of proffering a plea agreement under a premise and a thesis of failure to perceive the risk when the record demonstrates that there was an actual removal of the out-of-service sticker renders this plea agreement that was negotiated by the parties, not by me, completely disingenuous and unacceptable to this Court.** I will tell you this: I am not going to abide by the plea agreement.

Exhibit J, at p.24, line 7 – p.27, line 10 (emphasis added).

40. As the transcript of the sentencing proceeding makes clear, Judge Lynch's only stated reason for failing to abide by the Agreement was his Honor's belief that Petitioner removed an out-of-service sticker placed on the limousine, which rendered him guilty of manslaughter instead of criminally negligent homicide.

41. Despite Judge Lynch's reasoning, however, Judge Bartlett already considered this very issue at the time the Court accepted Petitioner's plea and found that it posed no impediment to approving the Agreement. Indeed, during Petitioner's plea proceeding, the Court explicitly recognized what led "the District Attorney to the belief that the appropriate charge was Criminally Negligent Homicide based upon the defendant's failure to perceive a risk" [Exhibit B, at p.110, line 24 – p.111, line 2] and found "that the proposed disposition was carefully considered and is **just and fair.**" *Id.* at p.128, lines 10-12 (emphasis added).

42. Notably, with regard to the out-of-service sticker, Judge Bartlett acknowledged the following during Petitioner's plea proceeding:

Following the September 4th, 2018 inspection, the Department of Transportation's specialist placed an out-of-service sticker on the 2001 Ford Excursion for three violations relating to a dangling ABS line, not a cause of the accident, a missing federal sticker, and emergency exits.

While the District Attorney submits that the defendant removed that sticker, both parties agree that the 2001 Ford Excursion was not placed out of service for defective brakes at that time and that **none of these violations was the proximate cause of the vehicle's catastrophic brake failure.**

Exhibit B, at p.120, lines 13-24 (emphasis added).

43. In other words, at the time of Petitioner's plea, the Court recognized the parties' agreement that removal of the out-of-service sticker was not the proximate cause of the limousine accident, such that it could not serve as a basis for a finding of manslaughter. In fact, the circumstances related to this issue were referenced only in a footnote of the written plea agreement because they were ancillary in nature. That footnote appeared at the end of a sentence which, more importantly, cited to evidence that a Department of Transportation Specialist performed an inspection on the limousine on September 4, 2018 (only 32 days before the October 6, 2018 accident) and did not observe any deficiency with respect to the brakes. Exhibit A, at p.4, ¶ 10(j), n.1.

44. During the sentencing proceeding, following Judge Lynch's stated reliance upon removal of the out-of-service sticker, Petitioner's counsel sought to explain why that circumstance was not a relevant consideration, but was abruptly cut-off by his Honor:

Mr. Seigel: Two things, Your Honor. First, I understand the

Court's decision and its reasoning with respect to the circumstances related to the sticker. But I think what's significant to note, and I don't think there's any dispute by the parties with regards to [it or] with law enforcement that investigated it, is that that sticker had nothing to do whatsoever –

The Court: I read the footnote of the plea agreement, counsel. I am completely unimpressed.

Exhibit J, at p.29, lines 9-17.

45. What Petitioner's counsel sought to explain before the Court prevented him from doing so was that the circumstances concerning the sticker (1) had nothing to do whatsoever with the proximate cause of the accident (*i.e.*, catastrophic brake failure), such that there existed no basis to perceive a risk thereof, (2) were already explicitly considered by the Court at the time it worked out the Agreement with the parties and approved the Agreement, such that the Court was not being presented with any new information in connection with sentencing, and (3) did not provide a legal basis for the Court's failure to abide by the Agreement.

46. While Judge Lynch stopped Petitioner's counsel from conveying the foregoing in order to state that his Honor was "completely unimpressed" by the footnote in the Agreement which referenced these circumstances, Judge Lynch never once, on-the-record or otherwise, articulated his Honor's reasoning for that sentiment.

47. Indeed, although Judge Lynch previously stated that removal of the sticker evidenced Petitioner "consciously disregarding the risk," his Honor never articulated the risk to which the Court was referring. Exhibit J, at p.26, lines 20-24. The Court's failure to provide its reasoning in that regard – and unwillingness to permit Petitioner's counsel to expound on the matter in a crowded courtroom in which news cameras were present – undoubtedly stemmed from the following two

factors: First, as previously acknowledged during Petitioner's plea proceeding, removal of the sticker did not create any risk of catastrophic brake failure (*i.e.*, the proximate cause of the accident) let alone a foreseeable one. Second, as the Court of Appeals explained in *People v. Roth*, 80 N.Y.2d 239, 243–44 (1992), a defendant can only be convicted of manslaughter if a death was foreseeable in the "manner" it occurred – in this case, as a result of catastrophic brake failure.

48. While failing to offer any reason for his Honor's disregard of the preceding two factors, Judge Lynch offered the following conclusory statement to justify his rejection of the Agreement: "I am the Sentencing Court and it is my determination that governs this sentencing." Exhibit J, at p.27, lines 1-2.

49. In short, not only did Judge Lynch receive no new information to justify the Court's failure to abide by the Agreement, but his Honor's revisiting of old information in order to justify jettisoning that Agreement was fundamentally flawed, particularly where (1) Judge Bartlett already considered and deemed such information inconsequential when approving the Agreement, and (2) Petitioner relied upon the Agreement to his detriment by (a) continuing to subject himself to electronic monitoring, (b) forfeiting his Fifth Amendment privilege and testifying in a civil deposition relating to the limousine accident, and (c) performing 572½ hours of community service comprising substantial manual labor.

50. After expressing that the Court would not abide by the Agreement, which had been in the making for at least 18 months even before Petitioner pled guilty a year earlier (*i.e.*, an Agreement that had been contemplated for nearly 2½ years), Judge Lynch admonished Petitioner and his counsel that they had about 15 minutes to decide whether they wished to withdraw his guilty plea or his Honor would sentence Petitioner to the maximum sentence allowable under the law for the

offenses to which he pled – 1½ to 4 years in prison. When Petitioner’s counsel sought additional necessary time to confer with Petitioner about such an important decision, the Court interrupted him and prevented him from speaking. For that matter, while the minutes of the proceeding do not reflect the following, the Court also directed the stenographer to stop transcribing the words of Petitioner’s counsel. The exchange which was captured follows:

The Court: I’m going to give the defense an opportunity to think about the next step that they would like to take in this proceeding. If I go forward with sentencing today, it would be my intent to sentence the defendant to an indeterminate term of prison with a maximum term of one year and -- excuse me, four years, and a minimum term of one and a third years.

In view of the fact that that sentence that I would impose if this sentencing goes forward today is inconsistent with the plea agreement between the parties, which was recognized by the Court at the time of the plea, I would first have to give the defense an opportunity to move to vacate the plea.

Under *People versus Farrar, F-a-r-r-a-r*, at 52 N.Y.2d 302, the Court of Appeals has made it abundantly clear that it would be inherently unfair to an individual to proffer a proposed sentence at the time of the plea and basically change the term at the time of the sentence.

However, if the defense does not want to go forward with the plea today and if they choose to move to vacate the plea, I will grant that motion and restore this case to the trial calendar and schedule a trial date accordingly.

So for purposes of the defense, they have to make a choice and counsel has to be given an opportunity to discuss this choice with their client. And it really comes down to this: Do they or do they not move to vacate the plea?

If the defense elects not to move to vacate the plea, then I will go forward with sentencing today in the manner that I have set forth. If the defense chooses to move to vacate the plea, I will grant that application and schedule this case for trial.

I'm going to give the defense -- right now, it's about seven minutes to 12:00. I'm going to give the defense until 12:15. We'll take a break. They can use the room in the back of the courtroom. There's a conference room back there. At 12:15, I'll re-call the case and I will hear from the defense as to what you would like to do.

So right now, we are --

Mr. Seigel: Your Honor. I'll wait for the opportunity to speak. I don't mean to interrupt. I did want to say something before we break momentarily, but whenever I have an opportunity.

The Court: And what would you like to say?

Mr. Seigel: Two things, Your Honor. First, I understand the Court's decision and its reasoning with respect to the circumstances related to the sticker. But I think what's significant to note, and I don't think there's any dispute by the parties with regards to [it or] law enforcement that investigated it, is that that sticker had nothing to do whatsoever --

The Court: I read the footnote of the plea agreement, counsel. I am completely unimpressed.

Mr. Seigel: So the fact of the matter is, Your Honor, that in order for the defendant, I know the Court's aware of this, to be guilty of recklessness --

The Court: All right, counsel. I understand the difference between the two.

Mr. Seigel: Okay.

The Court: The Court is in recess until 12:15. And at that time, you have one thing to decide. Are you going to make a motion to vacate the plea; yes or no?

Mr. Seigel: Your Honor --

The Court: That concludes -- we are taking a break. You may use the back chambers to discuss the matter with your client.

Mr. Seigel: Your Honor --

The Court: Do you understand me?

Mr. Seigel: Okay.

The Court: Okay. Court's in recess.

(Whereupon, at 11:56 a.m., a break was taken.)

Exhibit J, at p.27, line 12 – p.30, line 12.

51. After the preceding exchange, Petitioner and his counsel conferred within a room located at the rear of the courtroom, in the presence of Petitioner's brother and fiancée. Although Petitioner's counsel sought to explain what had just unexpectedly transpired, counsel had difficulty doing so given that Petitioner and his loved ones were emotionally distressed. Indeed, Petitioner had trouble concentrating [Petitioner's Affidavit (Exhibit C), at p.4, ¶ 9] (a fact visible to Petitioner's counsel), as Petitioner sought to console his fiancée who was crying. Notably, Petitioner became engaged to her during his interim probationary period, believing, based on the Agreement, that they would not be separated due to incarceration. *Id.* at p.4, ¶10.

52. While Petitioner's counsel was endeavoring to confer with Petitioner about how to proceed, unbeknownst to both Petitioner and counsel at the time, Judge Lynch had taken the bench and, at precisely 12:15 pm, expressed agitation that none of the attorneys had yet returned. As the

transcript reflects:

(Whereupon, at 12:15 p.m., the following proceedings were resumed:)

The Court: The record should reflect that we have resumed. It is 12:15. And for some inexplicable reason, none of the attorneys are in the courtroom. So I guess we will have to wait.

(Pause in proceedings.)

The Court: Officer, would you knock on the door and tell them to come out?

Deputy: Judge is on the Bench.

Exhibit J, at p.30, lines 14-23.

53. Upon receiving notice that Judge Lynch was on the bench, Petitioner and his counsel returned to the well of the courtroom. Because Petitioner's counsel had not yet had sufficient time to discuss with Petitioner how he wished to proceed, and because Petitioner required additional time to process what had occurred – *i.e.*, the sudden and unexpected rejection of the Agreement upon which he relied to his detriment – in order to be able to make a voluntary and informed decision [Petitioner's Affidavit (Exhibit C), at p.4, ¶¶ 9-10], Petitioner's counsel attempted to request more than the approximate 15 minutes allotted by Judge Lynch for that purpose. However, once again, his Honor abruptly stopped Petitioner's counsel from speaking and instead demanded a decision from the defense.

54. Given these extraordinary circumstances, and the fact that Petitioner's counsel had not received confirmation from Petitioner that he was ready to be imprisoned that day for the maximum sentence allowable, Petitioner's counsel informed the Court that the defense was forced

to vacate Petitioner's plea.

55. The foregoing exchange occurred during the following colloquy:

The Court: Okay. So the record should reflect we are back in session. All counsel are present. Mr. Seigel.

Mr. Seigel: Thank you, Your Honor. So it is my intention to ask for additional time to make a decision --

The Court: I want your decision.

Mr. Seigel: Thank you. In light of the Court's position, we're **impelled** today to seek to vacate Mr. Hussain's plea.

Exhibit J, at p.30, line 24 – p.31, line 8 (emphasis).

56. Notwithstanding the fact Petitioner's counsel requested additional time and, in the absence thereof, stated that the defense was "impelled" to make its clearly rushed decision, the Court, without any additional inquiry to ascertain whether such decision was made knowingly, voluntarily and intelligently by Petitioner, simply vacated Petitioner's plea. Exhibit J, at p.31, line 14.

57. Then, despite the fact no active litigation in the case had occurred since before Petitioner pled guilty and was placed on interim probation a year earlier, Judge Lynch scheduled *sua sponte* Petitioner's trial to begin only 96 days later, on December 5, 2022 [Exhibit J, at p.31, lines 15-17], and continued his release on monetary bail while directing that a GPS monitoring device be reinstalled upon him. *Id.* at p.34, lines 12-19.

58. Judge Lynch directed that Petitioner once again have his liberty restricted by GPS monitoring despite the fact that: (1) Petitioner had been at liberty without electronic monitoring during the entire year he was on interim probation and compliant with the terms thereof, and (2) the

Court did not find, as required by CPL § 510.40(4)(a), “after notice, an opportunity to be heard and an individualized determination explained on the record or in writing, that . . . no other realistic non-monetary condition or set of non-monetary conditions will suffice to reasonably assure a principal’s return to court.”

59. Instead, Judge Lynch, without any explanation, simply directed Petitioner to report to the Probation Department that same day to have a GPS monitoring device installed on him and then immediately and abruptly concluded the proceedings:

Okay. I’m going to continue his release on bail, whatever that amount was, under the supervision of probation. He’s to report there today and he is to have a GPS monitor installed on his person.

Okay. So you have an existing release under supervision of probation order, but I am directing that he report there, I am directing a GPS monitoring device be installed.

That concludes today’s proceedings. We will resume on September 14th at 10:00 a.m. Court stands in recess.

Exhibit J, at p.34, lines 12-22.

F. Events Following the Sentencing Proceeding

60. On September 2, 2022, two days after the sentencing proceeding, Judge Lynch emailed the parties to alert them that his Honor, among other things, (1) advanced *sua sponte* the start of trial from December 5, 2022 to October 31, 2022 (59 days away), (2) would conduct *Sandoval* and *Molineux* hearings on September 14, 2022, and (3) required the People to file a Certificate of Compliance by September 14, 2022. A true and accurate copy of Judge Lynch’s email of September 2, 2022 is annexed hereto as Exhibit K.

61. In response to Judge Lynch’s email, the People submitted a letter to his Honor, dated

September 7, 2022, explaining that they lacked the resources to comply with the Court's directives given, among other concerns, the voluminous nature of discovery and the need to retain experts. A true and accurate copy of the People's letter, which is annexed hereto as Exhibit L, states:

Our legal assistant who scanned and tracked the information and documents regarding this matter has retired. There are tens of thousands of documents that must be reviewed and organized again. The Special Assistant District Attorney, who previously assisted me, resigned his position to obtain different employment. I am currently preparing for a homicide trial which commences on September 19, 2022. I am preparing the certificates of compliance for three defendants in another homicide matter. I am answering a motion to vacate the plea of a 5th homicide case, and I am currently reviewing a 6th homicide investigation, in addition to carrying out my budget responsibilities (due this week) and other administrative duties, while also attempting to meet other pending cases' deadlines. Thus, I am going to need additional time on the Hussain matter to review the thousands and thousands of documents to prepare a certificate of compliance, gather evidence for our Molineux issues which is extremely important in this matter and cannot be rushed. The second batch of discovery to the defense was over 10,000 documents. All discovery must be reviewed, witnesses must be located and addresses must be updated. I am in the process of reaching out to our experts to negotiate contracts and obtain the necessary financing to retain the witnesses as this matter was not included in our budget due to the plea agreement. Disciplinary records for the numerous police officers who assisted on this matter must also be updated. Gathering any additional Brady material will take additional time as the witness list alone is extensive.

These tasks will require at least three months of uninterrupted time. It certainly cannot be completed in just six days.

Exhibit L, at pp.1-2.

62. Following the People's letter of September 7, 2022, the parties appeared before Judge Lynch on September 14, 2022, at which time the Court adjourned the start of trial until May 1, 2023, adjourned the *Sandoval* and *Molineux* hearings until April 10, 2023, and scheduled the next

appearance for December 21, 2022, in order to address the status of Certificates of Compliance. Annexed hereto as Exhibit M is a true and accurate copy of the transcript of the proceedings held on September 14, 2022.

63. During the appearance on September 14, 2022, Judge Lynch, while adjourning Petitioner's trial to May of 2023, stated that his Honor would be "retaining jurisdiction of this case." Exhibit M, at p.5, lines 18-20. However, the Chief Administrative Judge of the Court, by an administrative order dated July 19, 2022, a true and accurate copy of which is annexed hereto as Exhibit N, appointed Judge Lynch to Schoharie County Court, in place of Judge Bartlett following his Honor's retirement, for only the calendar year 2022. In fact, in response to an inquiry by Petitioner's counsel, Senior Management Analyst for the Third District Administrative Office confirmed by email on October 25, 2022, a true and accurate copy of which is annexed hereto as Exhibit O, that, as of that date, no formal order had been issued appointing Judge Lynch to retain jurisdiction of Petitioner's case in the calendar year 2023. Thus, it would appear that Judge Lynch's declaration that his Honor would continue to preside over Petitioner's trial and related proceedings after December 31, 2022 was made without judicial authority.

64. After the appearance on September 14, 2022, the Schoharie County Department of Probation, by letter dated October 21, 2022, notified the Court and the parties that (1) it "installed the GPS unit on 8/31/2022," (2) "Nauman Hussain has been compliant with his GPS contract and pretrial conditions to date," and (3) "[i]n accordance with CPL 510.40 (4)(d) which states that a 'pretrial principal ordered onto electronic monitoring shall only have the device on for a maximum period of 60 days' the probation department will need to remove the GPS bracelet from Mr. Hussain on 10/31/2022 [u]nless the order is renewed after it is explained in writing or on the record the

reason for the renewal and continued GPS monitoring.” A true and accurate copy of the letter is annexed hereto as Exhibit P.

65. After receiving the Probation Department’s October 21, 2022 letter, Judge Lynch directed the parties to appear in court on October 26, 2022. During that appearance, a true and accurate copy of the transcript of which is annexed hereto as Exhibit Q, Judge Lynch ordered that Petitioner remain subject to electronic monitoring. In an effort to satisfy CPL § 510.40(4)(a)’s requirement that the Court explain why “no other realistic non-monetary condition or set of non-monetary conditions [other than electronic monitoring] will suffice to reasonably assure a principal’s return to court,” Judge Lynch cited to Petitioner’s failure to appear in traffic court nearly a decade earlier. Exhibit Q, at p.17, lines 11-15. Moreover, turning the bail statute on its head, Judge Lynch asked Petitioner’s counsel what burden Petitioner would sustain from being compelled to wear a GPS monitoring device. Exhibit Q, at p.9, line 6. The parties have not appeared before Judge Lynch since October 26, 2022.

G. Petitioner Has Not Been Restored to the Position He Occupied Prior to the Plea

66. Significantly, during the appearance on September 14, 2022, Judge Lynch stated on the record that any statement made by Petitioner at the time of his plea, to the Probation Department in the context of pretrial supervision, at a public speaking event as part of his community service, or in any civil proceeding while his guilty plea was in effect could not be admitted as direct evidence or used for impeachment purposes at trial. Exhibit M, at p.7, line 17 – p.8, line 4. Judge Lynch undoubtedly issued that directive seeking to eliminate the detriment Petitioner sustained while foregoing his Fifth Amendment privilege due to his reliance on the Agreement. However, what Judge Lynch did not even seek to eliminate – nor could his Honor do so – were the following

detriments Petitioner has suffered as a result of his Honor's failure to abide by the Agreement:

- a. Petitioner's statements made during a videotaped deposition on February 11, 2022 may still be used against him in pending civil litigation relating to the limousine accident, in which he is named as a defendant;
- b. Petitioner was unnecessarily subject to restricted liberty through electronic monitoring, in contravention of CPL § 510.40, for an extended period of time prior to the entry of his plea at the urging of the Court so as to not risk fanning the passions of the decedents' family members in advance of the plea proceeding; and
- c. Petitioner – while on interim probation prior to his sentencing, as requested by the Court as a prerequisite to accepting the Agreement – performed 572½ hours of community service, including substantial manual labor, over the course of 84 separate days between September 21, 2021 and August 17, 2022, amounting to free labor for an approximate average of seven hours per day for the equivalent of more than four months of regular employment (*i.e.*, five days per week), which resulted in professional harm to his fledgling business.

67. Moreover, Judge Lynch made highly inflammatory statements regarding his Honor's personal, albeit fundamentally flawed, opinion of Petitioner's guilt as to manslaughter during the sentencing proceeding, which were widely reported in the press. Indeed, Judge Lynch – after the Court previously found the agreed upon disposition to be “just and fair” [Exhibit B, at p.128, lines 11-12] – expressed his Honor's view that the Agreement was “completely disingenuous and unacceptable to the Court” because of irrelevant evidence which, to his Honor, supported a finding of manslaughter instead of criminally negligent homicide. Exhibit J, at p.25, line 17 – p.28, line 8.

68. As observed by Dan Levy, a reporter from a local television station, during his request for press coverage of the proceedings on August 31, 2022, “In more than 30 years of journalism, very few cases have garnered more interest, more publicity than this one.” Exhibit J, at p.3, lines 6-8. Notably, his Honor granted the media's request to not only use still photography but to “film the

proceedings with both video and audio” [Exhibit J, at p.6, lines 21-24] subject to “a pooling agreement” that would allow for “shared coverage” between all the media outlets reporting on the matter. *Id.* at p.4, lines 23-24.

69. The ensuing coverage of the sentencing proceeding and, in particular, Judge Lynch’s opinion that Petitioner was guilty of manslaughter, blanketed the news for days. For example, an article appearing in the Democrat & Chronicle on September 1, 2022, entitled “Judge nixes no-prison deal in 2018 limo crash that killed 20,” a true and accurate copy of which is annexed hereto as Exhibit R, reported:

To the judge, Hussain’s actions showed he knew the risk of putting the limousine on the road the day of the crash, and a guilty plea to only criminally negligent homicide does not reflect that. Second-degree manslaughter charges are filed when a defendant is accused of being aware of the risk of death and disregarding it. Lynch called the deal “completely disingenuous and unacceptable to this court.”

Exhibit R, at p.2.

70. Although the Court directed that Petitioner’s statements could not be used against him at a criminal trial, Judge Lynch cannot eliminate the detriment inuring to Petitioner from the widely publicized statements that Petitioner was guilty of more than criminal negligence which his Honor made when failing to abide by the Agreement.

71. Based upon the indelible nature of the detriments Petitioner has sustained due to his reliance on the Agreement, vacatur of his plea has not restored him to the position he occupied before entering it.

H. Procedural Considerations

72. This Petition is brought by Order to Show Cause, rather than by Notice of Petition,

because Petitioner is legally entitled to specific performance of the Agreement rather than being compelled to stand trial and engage in pre-trial litigation. Only a prompt determination by this Court can prevent Petitioner from having to engage in unwarranted and costly ongoing criminal litigation, as well as prevent irreparable harm to Petitioner and adverse consequences to the public. Accordingly, Petitioner seeks the intervention of this Court by Order to Show Cause.

73. Prior to submitting this application, counsel emailed Respondent and the Attorney General's Office on behalf of Respondent Judge Lynch, on November 17, 2022, and advised the Attorney General that Petitioner's counsel intended to seek this relief by Order to Show Cause, as well as interim relief in the form of a Temporary Restraining Order, on November 18, 2022.

74. Petitioner has no other remedy at law.

75. No prior application has been made for the relief requested.

I. Summary

76. As set forth above, Judge Lynch (1) summarily rejected the Agreement without any new information, (2) failed to sufficiently articulate the reason for such rejection (*i.e.*, how Petitioner possibly could have perceived a risk of catastrophic brake failure due to removal of an irrelevant sticker), (3) did not, and indeed cannot, restore Petitioner to the position he occupied prior to pleading guilty based on his substantial detrimental reliance, and (4) coerced Petitioner to involuntarily, unknowingly, and unintelligently seek vacatur of his plea and then improperly vacated such plea. Given these extraordinary circumstances, mandamus is legally required to compel Judge Lynch to reinstate Petitioner's plea and grant specific performance of the Agreement by sentencing Petitioner to probation thereunder with credit for the interim probationary period already served. Additionally, a stay is warranted pending the determination of this Petition.

CONCLUSION

WHEREFORE, Petitioner Nauman Hussain respectfully requests that this Court: (1) issue an Order in the nature of mandamus to compel Respondent Judge Peter Lynch to reinstate Petitioner's guilty plea and grant specific performance of the written plea agreement; and (2) stay the underlying criminal action against Petitioner until this Petition is decided.

Dated: November 17, 2022

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THE PEOPLE OF THE STATE OF NEW YORK

-vs-

Indictment No. 2019-33

NAUMAN HUSSAIN,

Defendant.

PLEA AGREEMENT

1. Subject to the approval of the Court, the People and the Defendant (the "parties") have reached an agreement for the disposition of this case.
2. Nauman Hussain will plead guilty under Counts 21 through 40 of the Indictment, each charging Criminally Negligent Homicide, in violation of Section 125.10 of the Penal Law, in full satisfaction of the Indictment. Mr. Hussain consents to the Court's acceptance of victim impact statements at the time of his plea proceeding, with the understanding that, pursuant to the Court's discretion, such statements may be made by any member of the family of a victim, or the legal guardian or representative of the legal guardian of the victim where such guardian or representative has personal knowledge of and a relationship with the victim. In addition, Mr. Hussain shall waive his right to appeal to the full extent he is able in accordance with the terms as more fully set out in paragraph 17 hereof, including but not limited to any issue relating to the Court's acceptance of victim impact statements.
3. Upon the entry of his guilty plea, Mr. Hussain shall be placed on two years interim probation, during which, as a special condition thereof and as part of a treatment plan, he shall perform a total of 1,000 hours of community service, within whichever county he may reside. Such community service must be approved by the Court and shall be completed in increments of 125 hours every three months. Mr. Hussain's community service may include participation in speaking events concerning the importance of compliance with commercial vehicle regulations.
4. Upon the successful completion of his two years interim probation, Mr. Hussain shall be sentenced to a term of five years probation, with credit received for the two years thus served on interim probation (resulting in a remaining period of three years probation to be served post-sentencing). Mr. Hussain shall pay full restitution to Schoharie County. Mr. Hussain shall pay a fine at the Court's discretion, and pay the mandatory surcharge unless restitution is paid in full prior to sentencing. Mr. Hussain shall submit his DNA and pay a DNA surcharge.

The following special conditions shall apply to Mr. Hussain's interim and post-sentencing

terms of probation:

- a. Mr. Hussain shall be prohibited from, directly or indirectly, owning, operating or working for any commercial transportation business.
- b. Mr. Hussain's probation shall not terminate early.
5. Pursuant to Criminal Procedure Law § 370.25, upon judgment of conviction for the above-referenced felonies, Mr. Hussain shall immediately surrender any or all firearms, rifles, shotguns owned or possessed by him.
6. Criminally Negligent Homicide is a Son of Sam specified crime. The Court will provide the defendant with written notice of reporting requirements, procedures and potential penalty for failure to comply with the Son of Sam Law pursuant to Criminal Procedure Law § 410.10(3).
7. Criminally Negligent Homicide is a Class E felony for which a possible maximum indeterminate term of imprisonment of 1½ to 4 years may be imposed, pursuant to Penal Law § 70.00. The term on each such count in this case is required by law to run concurrently, pursuant to Penal Law § 70.25(2), as each offense is alleged to have been committed through the same omission. Consequently, Mr. Hussain's maximum sentencing exposure for Criminally Negligent Homicide remains the same irrespective of the number of counts of conviction. The possible maximum term of imprisonment that may be imposed upon a conviction of all twenty counts of Criminally Negligent Homicide in this case is 1½ to 4 years.
8. The possible least sentence that may be imposed upon a conviction of all twenty counts of Criminally Negligent Homicide in this case is an unconditional discharge, pursuant to Penal Law §§ 60.01(3)(d) and 65.20(1). When a sentence of an unconditional discharge is imposed, a defendant does not receive imprisonment or probation pursuant to Penal Law § 65.20(2).
9. The legal and factual justifications for the disposition of five years probation agreed upon herein are set forth below.
10. The parties jointly submit:
 - a. The Defendant cannot be guilty of *both* Criminally Negligent Homicide and Manslaughter as a matter of law because Criminally Negligent Homicide requires the element of "criminal negligence," meaning that a person "*fails to perceive* a substantial and unjustifiable risk" of death (Penal Law § 15.05(4) (emphasis added), while Manslaughter requires the contradictory element of "recklessness," meaning that a person "*is aware of and consciously disregards* a substantial and unjustifiable risk" of death. (Penal Law § 15.05(3)) (emphasis added).

- b. The weight of the evidence supports Criminally Negligent Homicide, based on a defendant's failure to perceive a risk (in contrast to his conscious disregard thereof). Criminally Negligent Homicide is the appropriate offense for purposes of a disposition in light of facts developed during the parties' ongoing investigation in this case.
- c. The mechanical cause of the tragic crash on October 6, 2018, from which this case arises, was catastrophic brake failure to a 2001 Ford Excursion Stretch Limousine (the "2001 Ford Excursion"), operated by the Defendant. The insufficient maintenance of the 2001 Ford Excursion left the right rear brake not working, the left rear brake with reduced braking function and the front brakes with reduced braking function. The limousine had a burst of the rear crossover brake tubing (resulting in a loss of brake fluid), which caused the vehicle to rely solely upon front braking system components that were unable to disburse the extreme heat and caused the brake fluid to boil. The air in the closed brake system caused the brakes to stop working.
- d. The designed brake system of the 2001 Ford Excursion would have been adequate and capable of properly slowing/stopping the vehicle had the brake system components undergone requisite routine and systematic inspection and maintenance.
- e. Records from Mavis Discount Tire ("Mavis"), discovered by the People during its ongoing investigation following Mr. Hussain's arrest, revealed that Mr. Hussain brought the 2001 Ford Excursion to Mavis for mechanical service on the following dates: September 10, 2016 (right rear brakes); May 17, 2017 (piece of brake line replaced); June 9, 2017 (alternator); September 28, 2017 (oil change and tire pressure); January 25, 2018 (exhaust work); May 11, 2018 (brake work); June 8, 2018 (AC compressor/invoice brake flush); and June 25, 2018. The 2001 Ford Excursion Limousine had brake repairs on September 10, 2016; and May 17, 2017. The aforementioned records included a customer invoice that Mavis provided to Mr. Hussain on May 11, 2018, which memorialized Mr. Hussain's specific request of Mavis to "CHECK BRAKES," and included, among other things, the following description of parts and additional services provided:

FACTORY REBUILT CALIPER
LABOR – BRAKE CALIPER
BRAKE HOSE/LINE
LABOR – BRAKE HOSE
REAR BRAKE PADS
PROFESSIONAL BRAKE SERVICE LIFETIME WARRANTY ON PADS
LABOR BRAKE PADS
BRAKE MASTER CYLINDER
LABOR – BRAKE MASTER CYLINDER
BRAKE SYSTEM FLUSH
NYS SAFETY/EMISSION INSPECTION

- f. On September 17, 2019, the People interviewed Virgil Park, Mavis's store manager, who informed the People of his billing practice at Mavis in which certain services were substituted on invoices for the ones actually performed, thereby resulting in inaccurate information on invoices. Mr. Park also stated that while the May 11, 2018 invoice referenced above reflects that a "brake system flush" was performed (in order to remove the brake fluid from the 2001 Ford Excursion's brake system and replace it with new and clean brake fluid, thereby removing air, moisture, sludge and other contaminants that impair braking ability), in fact, the brakes were bled (so as to purge the braking system of air bubbles). The evidence shows that Mr. Hussain paid Mavis for certain brake services, but such services were not described or reflected accurately on the Mavis invoices.
- g. Notwithstanding the foregoing, the 2001 Ford Excursion was required to undergo a semi-annual bus inspection by a Department of Transportation ("DOT") inspector. The evidence shows that the Defendant did not subject the 2001 Ford Excursion to a DOT semi-annual bus inspection and instead used Mavis to inspect the vehicle.
- h. The evidence shows that had the 2001 Ford Excursion undergone the aforementioned semi-annual DOT bus inspection (*i.e.*, an inspection not performed by Mavis), the brake deficiencies resulting in the catastrophic brake failure would have been uncovered.
- i. The People submit that Mr. Hussain failed to perceive a substantial and unjustifiable risk of death relating to catastrophic brake failure arising from his decision to have the 2001 Ford Excursion's brakes inspected by Mavis rather than during the course of a DOT semi-annual bus inspection. The People submit that the DOT roadside inspection on September 4, 2018 was not a semi-annual DOT bus inspection that would have tested the brakes' stopping ability. The People further submit that the failure to properly maintain the brake system after being told additional brake work was required, created a substantial and unjustifiable risk of death relating to the catastrophic brake failure. The People submit that these risks were of such nature and degree that the failure to perceive these risks constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation, as required for a finding of criminal negligence (Penal Law § 15.05(4)).
- j. In response to the People's position set forth in paragraph 10(i), the Defendant has submitted throughout these proceedings that there exists evidence to the contrary, which includes proof that: (i) Mavis is a nationally renowned mechanic with approximately 500 fully equipped service centers in 13 states, (ii) Mavis manager Virgil Park told Mr. Hussain during a recorded exchange on May 11, 2018, "I'm the only place that works on twenty passenger limousines," (iii) the Defendant had a reasonable basis to believe that Mavis was capable of properly servicing the 2001 Ford Excursion and (iv) the DOT Specialist, after previously inspecting the 2001 Ford Excursion and issuing a violation for deficient brakes on March 21, 2018, performed

a follow-up inspection on the 2001 Ford Excursion on September 4, 2018 (only 32 days before the October 6, 2018 accident) and no longer observed any deficiency with respect to the brakes.¹ Accordingly, the Defendant, prior to reaching the disposition contained herein, has taken the position that: (i) his decision to have the vehicle serviced exclusively by Mavis does not constitute a gross deviation from the standard of care that a reasonable person would observe in the situation, and (ii) the proximate cause (*i.e.*, legal cause) of the 2001 Ford Excursion's catastrophic brake failure was Mavis's failure to properly service the vehicle.

- k. The National Transportation Safety Board issued a Highway Accident Report, dated September 29, 2020 ("NTSB Accident Report"), which documents apparent failures relating to the inspection of the 2001 Ford Excursion by third-parties. Specifically, page 63 of the NTSB Accident Report states:

Based on the questionable quality of the Mavis Discount Tire inspection and the fact that two inspection stations ignored NYSDMV policy and inspected the stretch limousine when they should not have done so, the NTSB concludes that the NYSDMV did not provide effective oversight of state inspection stations, allowing Mavis Discount Tire and Wilton Truck Center to perform inadequate inspections of the crash limousine that failed to detect serious safety deficiencies before the crash.

11. In light of the circumstances set forth above, the People and the Defendant recognize that neither party can assuredly predict the outcome of a prospective jury trial. Yet, both parties seek an assured resolution to guarantee finality in this highly emotional case, for the benefit of all touched by the tragedy at the center of it. The parties are also cognizant of the circumstances surrounding the Covid-19 pandemic that has caused an ongoing delay of trial and the release of many nonviolent criminals from incarceration. Furthermore, the parties acknowledge Mr. Hussain's compliance with the GPS ankle bracelet since April 11, 2019, and his compliance with the Schoharie County Department of Probation's pretrial services.
12. Additionally, the parties recognize that in the absence of this agreed upon plea, Mr. Hussain would maintain his Fifth Amendment privilege against self-incrimination throughout these proceedings unless and until a final judgment of conviction is entered, if at all, following a

¹Following the September 4, 2018 inspection, the DOT Specialist placed an out-of service sticker on the 2001 Ford Excursion for three violations, relating to a dangling ABS line, a missing federal sticker, and emergency exits. While the People submit that the Defendant removed that sticker, both parties agree that the 2001 Ford Excursion was not placed out of service for defective brakes and that none of these violations was the proximate cause of the vehicle's catastrophic brake failure.

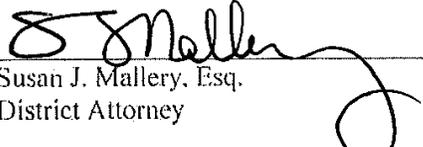
trial. In contrast, in accord with this plea agreement, Mr. Hussain shall forfeit such privilege, thereby subjecting him to civil testimony under oath concerning his conduct and interactions with, among others, Mavis. Moreover, Mr. Hussain's judgment of conviction and related plea allocution may be used in a civil litigation in order to advance the interests of any or all family members of the decedents involved therein. The parties understand that the recovery of civil damages may lessen the hardships endured by those aggrieved in this matter.

13. Based on the foregoing, the parties have reached the aforementioned agreement for the disposition of this case, subject to the approval of the Court.
14. Probation for a period of three, four or five years is authorized under Penal Law §§ 60.01(2)(a)(i) and 65.00 if (i) institutional confinement for the term authorized by law is or may not be necessary for the protection of the public, (ii) the Defendant is in need of guidance, training or other assistance which, in his case, can be administered through Probation supervision, and (iii) such disposition is not inconsistent with the ends of justice. Under Penal Law § 65.15, multiple periods of probation shall run concurrently.
15. The parties jointly submit that a disposition of probation for a period of five years is authorized and appropriate based on the considerations set forth in Penal Law §§ 60.01(2)(a)(i) and 65.00. First, institutional confinement is not necessary for the protection of the public, as the factual basis for the disposition would be an inadvertent omission (*i.e.*, criminal negligence) rather than a conscious affirmative act (*i.e.*, recklessness), the Defendant has a limited prior criminal history, and the Defendant has exhibited a respect for, and ability to follow, the law during the pendency of these proceedings, as evidenced by his full compliance with bail conditions, which have included the imposition of restricted travel, his regular in-person reporting with the Schoharie County Department of Probation's pretrial services (on a weekly basis until the start of the pandemic and continued bi-weekly basis thereafter), and electronic monitoring since April 11, 2019. Second, the Defendant would benefit from special conditions administered through Probation supervision. Third, the disposition would serve the ends of justice for compelling reasons, including the mitigating facts and circumstances set forth above, the desire for an expeditious and final resolution of these proceedings (*i.e.*, thereby avoiding the emotional toll of a trial and potential appeals), and the fact that the Defendant's liberty will have already been, by the time of the Defendant's plea, meaningfully restricted by travel prohibitions and electronic monitoring for over two years.²

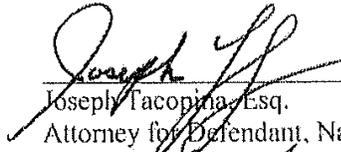
²A sentence of five years probation is further appropriate given that Penal Law §§ 60.01(3)(d) and 65.20(1) authorize the Court to sentence the Defendant to an unconditional discharge based on the agreed upon disposition, if the Court is of the opinion that no proper purpose would be served by imposing any condition upon the Defendant's release. The parties submit that a sentence of five years probation would serve a proper purpose, in accord with Penal Law §§ 60.01(2)(a)(i) and 65.00, for the reasons detailed herein.

16. The People agree that the Schoharie County District Attorney's Office will not pursue any further criminal actions against the Defendant in connection with the 2001 Ford Excursion's accident on October 6, 2018.
17. The Defendant agrees that he will not appeal or otherwise challenge collaterally his conviction and/or sentence in this case if effected in accordance with the disposition contained herein.

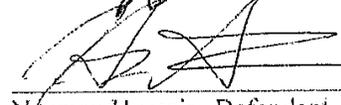
Dated: September 1, 2021



Susan J. Mallery, Esq.
District Attorney



Joseph Tacopina, Esq.
Attorney for Defendant, Nauman Hussain



Nauman Hussain, Defendant

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STATE OF NEW YORK
COUNTY COURT COUNTY OF SCHOHARIE

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

NAUMAN HUSSAIN,
Defendant.

BEFORE: HONORABLE GEORGE R. BARTLETT, III
County Court Judge

APPEARANCES:

For the People: SUSAN J. MALLERY, ESQ. District Attorney
Schoharie County

For Defendant: LAW OFFICES OF TACOPINA & SEIGEL
BY: JOSEPH TACOPINA, ESQ.
CHAD SEIGEL, ESQ.

-and-
THE KINDLON LAW FIRM, PLLC
BY: LEE C. KINDLON, ESQ.

NAUMAN HUSSAIN, Defendant, In Person.

TRANSCRIPT OF PROCEEDINGS in the above matter
taken in Schoharie Central School, Main Street,
Schoharie, New York, on Thursday, September 2, 2021.

REPORTED BY: THERESA L. ARDIA, CSR, CRR, RPR, RMR
Senior Court Reporter

THERESA L. ARDIA, CSR, CRR, RPR, RMR
SENIOR COURT REPORTER
518-453-6999

1 THE COURT: Please be seated. Before
2 starting the proceedings, I just wanted to thank the
3 Schoharie County School for opening up this facility to
4 allow us to do this. Our court would only accommodate a
5 little less than 30 people with social distancing, so
6 this is incredibly nice of them to do.

7 So we'll start with Ms. Mallery and get
8 everybody's appearance for the record.

9 MS. MALLERY: Yes. Thank you, Your Honor.
10 Susan Mallery, Schoharie County District Attorney.

11 MR. TACOPINA: Your Honor, good morning. For
12 Mr. Hussain, Joseph Tacopina along with Chad Seigel and
13 Lee Kindlon.

14 MR. SEIGEL: Good afternoon, Your Honor.

15 MR. KINDLON: Good afternoon, Your Honor.

16 THE COURT: There has been a written plea
17 agreement with the Court. Would the District Attorney
18 put the proposed agreement on the record?

19 MS. MALLERY: Yes, Your Honor. Thank you.
20 The People propose the defendant, Nauman Hussain, plead
21 guilty to Counts Twenty-One through Forty of the
22 indictment, each charging Criminally Negligent Homicide
23 in violation of Penal Law Section 125.10 in full
24 satisfaction of the indictment.

25 Mr. Hussain shall waive his right to appeal

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1 to the full extent allowed by law. Upon entry of his
2 guilty plea to Counts Twenty-One through Forty, Mr.
3 Hussain shall be placed on interim probation. He will
4 have one year probation which will be extended on consent
5 for another year, during which, as a special condition
6 thereof and as part of a treatment plan, Mr. Hussain
7 shall perform a total of one thousand hours of community
8 service, within whichever county he may reside.

9 Such community service must be approved by
10 the Court and shall be completed in increments of 125
11 hours every three months. Mr. Hussain's community
12 service may include participation in speaking events
13 concerning the importance of compliance with commercial
14 vehicle regulations.

15 Upon the successful completion of two years
16 interim probation, Mr. Hussain shall be sentenced to a
17 term of five years probation, with credit received for
18 the two years of probation, resulting in the remaining
19 period of three years probation to be served
20 post-sentencing.

21 Mr. Hussain shall pay full restitution to
22 Schoharie County, shall pay a fine at the Court's
23 discretion and pay the mandatory New York State surcharge
24 and crime victims assistance fee of \$325 unless
25 restitution is paid in full prior to sentencing. Mr.

1 Hussain shall submit his DNA and pay the DNA surcharge of
2 \$50.

3 The following special conditions shall apply
4 to Mr. Hussain's interim and post-sentencing terms of
5 probation: Mr. Hussain shall be prohibited from,
6 directly or indirectly, owning, operating, or working for
7 any commercial transportation business; and Mr. Hussain's
8 probation shall not terminate early.

9 In addition to waiving his rights to appeal
10 to the fullest extent allowed by law, the defendant
11 agrees to waive any and all rights to object to any
12 issues relating to the Court's acceptance of the victim
13 impact statements being received and read prior to
14 sentencing.

15 Pursuant to the Criminal Procedure Law
16 370.25, upon judgment of conviction for the
17 above-referenced felonies, Mr. Hussain shall immediately
18 surrender any and all firearms, rifles, shotguns owned or
19 possessed by him.

20 Criminally Negligent Homicide is a Son of Sam
21 specified crime. The Court will provide the defendant
22 with written notice of reporting requirements, procedures
23 and potential penalty for failure to comply with the Son
24 of Sam Law pursuant to Criminal Procedure Law Section
25 410.10, subsection 3.

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1 Thank you, Your Honor.

2 THE COURT: Which attorney is going to be
3 speaking for the defense today?

4 MR. TACOPINA: I will, Your Honor.

5 THE COURT: I think it's probably easier if
6 people could stay seated with the microphones.

7 MR. TACOPINA: Thank you.

8 THE COURT: So Mr. Tacopina, is that your
9 understanding of the proposed disposition?

10 MR. TACOPINA: Yes, it is, Your Honor, our
11 understanding.

12 THE COURT: And you withdraw any and all
13 motions that may be pending and undecided?

14 MR. TACOPINA: Yes, we do, Your Honor.

15 THE COURT: Now, Mr. Hussain, you have the
16 right to talk to your attorney at any time during these
17 proceedings. I'm going to be asking you quite a few
18 questions. If there's something you don't understand,
19 feel free to stop me, talk to your attorney. I'm not
20 going to get upset with you if you stop me and talk to
21 your attorney. Obviously, it's important you understand
22 everything. Okay, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Hussain, has anyone at all,
25 your attorney, the district attorney, or even myself,

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1 tried in any way at all to force you, threaten you or
2 threaten your family or pressure you to plead guilty to
3 anything against your own free will?

4 THE DEFENDANT: No.

5 THE COURT: And are you entering into this
6 plea freely and voluntarily?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, as you sit here today, are
9 you under the influence of any drugs or alcohol?

10 THE DEFENDANT: No.

11 THE COURT: Do you know of any physical,
12 mental or emotional illness which would prevent you from
13 understanding these proceedings?

14 THE DEFENDANT: No.

15 THE COURT: And how old are you, sir?

16 THE DEFENDANT: Thirty-one.

17 THE COURT: And did you graduate from high
18 school?

19 THE DEFENDANT: I have my GED.

20 THE COURT: Okay. And you read and write the
21 English language okay?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And you understand the charges
24 against you?

25 THE DEFENDANT: Yes, sir.

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1 THE COURT: And have you discussed the
2 particular facts and circumstances involved in your case
3 with your attorney?

4 THE DEFENDANT: Yes.

5 THE COURT: And Mr. Tacopina, is that
6 correct?

7 MR. TACOPINA: Yes, we have, Your Honor. He
8 is aware of the proceedings and what's going on today.

9 THE COURT: Mr. Hussain, have you discussed
10 with your attorney your legal and constitutional rights
11 and any possible defenses you might have?

12 THE DEFENDANT: Yes.

13 THE COURT: And Mr. Tacopina, did these
14 discussions take place?

15 MR. TACOPINA: They, in fact, did take place.

16 THE COURT: And Mr. Hussain, are you
17 satisfied with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: Now, do you understand that
20 you're entitled to continue your plea of not guilty to
21 the charges in the indictment and that you have a right
22 to a speedy trial by jury with the aid of an attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: And do you understand that you
25 will give up those rights if you plead guilty today?

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1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand that by
3 pleading guilty, you are giving up your right to have
4 your attorney cross-examine any witnesses who may testify
5 against you?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand that you
8 are giving up your right to either testify or not testify
9 at your trial?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you understand that by
12 pleading guilty, you are giving up the right to call
13 witnesses to testify for you at your trial?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, under our law, you're
16 presumed innocent. You do not have to prove your
17 innocence. In fact, you do not have to prove anything at
18 all. Do you understand that by pleading guilty today,
19 you are giving up your right to make the People prove
20 your guilt beyond a reasonable doubt?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, if you have a trial, you can
23 only be convicted of these charges if a jury of your
24 peers unanimously agrees that you are guilty beyond a
25 reasonable doubt. Do you understand that you give up

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1 this right by pleading guilty here today?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand that by
4 pleading guilty, you give up the right to challenge the
5 police conduct in your case?

6 THE DEFENDANT: Yes.

7 THE COURT: And do you understand that by
8 pleading guilty today, you give up your right to
9 challenge the validity of any of your statements or of
10 any other evidence obtained against you?

11 THE DEFENDANT: Yes.

12 THE COURT: And do you understand that by
13 pleading guilty today, you are giving up the right to
14 present any defenses you may have at a trial?

15 THE DEFENDANT: Yes.

16 THE COURT: And do you fully realize that
17 your plea of guilty today has the same effect as if you
18 had a trial and were convicted?

19 THE DEFENDANT: Yes.

20 THE COURT: And by pleading guilty today, is
21 it your desire to bring this case to an end because you
22 and you alone feel that is the best possible thing for
23 you to do under all the circumstances?

24 THE DEFENDANT: Yes.

25 THE COURT: And do you understand that if you

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1 have a prior conviction for a felony, you might be given
2 a more severe sentence than a person who has no prior
3 conviction for a felony?

4 THE DEFENDANT: Yes.

5 THE COURT: And you understand you are
6 pleading guilty to a felony and if you're found guilty of
7 a second felony within 10 years, you may be sentenced to
8 state prison as a second felony offender for a maximum
9 and minimum period of time?

10 THE DEFENDANT: Yes.

11 THE COURT: And are you a United States
12 citizen, sir?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. With that answer, this
15 might seem like an unusual question but I'm required to
16 ask it. Do you understand that if you're not a citizen
17 of the United States, your plea of guilty and my
18 acceptance of your plea may result in deportation,
19 exclusion of admission to the United States or denial of
20 naturalization under federal law?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, as part of this negotiated
23 plea, incarceration is not part of it, but I'm required
24 to advise you that if you are incarcerated, prior to
25 accepting your plea of guilty to count or counts of the

1 indictment, that charge a felony offense, I must advise
2 you that conviction will result in the loss of the right
3 to vote while you are serving a sentence in a
4 correctional facility and that right to vote will be
5 restored upon your release.

6 Now, the plea you're entering today is the
7 result of an agreement worked out between your attorney,
8 the district attorney and the Court. One of the terms of
9 this agreement is you will not exercise your right to
10 appeal your conviction. Is that correct?

11 THE DEFENDANT: Yes.

12 THE COURT: And do you understand that you
13 have an absolute right to appeal your conviction to a
14 higher court?

15 THE DEFENDANT: Yes.

16 THE COURT: And have you discussed your right
17 to appeal with your attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: And you understand that if you're
20 convicted and wish to appeal, you have the right to have
21 an attorney assigned to pursue your appeal if you're
22 financially unable to retain an attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: And you understand that by
25 entering into this plea bargain agreement, you are giving

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1 up your right to appeal to the fullest extent your waiver
2 is legally and constitutionally permitted?

3 THE DEFENDANT: Yes.

4 THE COURT: Now, a defendant ordinarily
5 retains the right to appeal even after pleading guilty.
6 Thus, a waiver of the right to appeal is separate and
7 distinct from the waiver of a trial and other rights by a
8 plea of guilty.

9 In this case, however, as a condition of the
10 plea agreement, you are asked to waive your rights to
11 appeal. Initially, what is an appeal? An appeal is a
12 proceeding before a higher court, an Appellate Court. If
13 a defendant cannot afford the cost of an appeal or of a
14 lawyer, the state will bear those costs.

15 On an appeal, a defendant may normally,
16 through his or her attorney, argue that an error took
17 place in this court which requires a modification or
18 reversal of the conviction. A reversal would require
19 either new proceedings in this court or a dismissal. Do
20 you understand, sir?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, by waiving your right to
23 appeal, you do not give up your right to take an appeal
24 by filing a Notice of Appeal with this Court and the
25 district attorney within 30 days of the sentence. But if

1 you take an appeal, you are, by this waiver, giving up
2 the right to have the Appellate Court consider most
3 claims of error and to consider whether the sentence I
4 impose, whatever it may be, is excessive and should be
5 modified. As a result, a conviction by this plea and
6 sentence will normally be final.

7 Do you understand, sir?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, among the limited number of
10 claims that will survive the waiver of the right to
11 appeal are the voluntariness of this plea, the validity
12 and voluntariness of this waiver, and the legality of the
13 sentence and the jurisdiction of the Court. Do you
14 understand?

15 THE DEFENDANT: Yes.

16 THE COURT: And have you spoken to your
17 attorney about waiving your rights to appeal?

18 THE DEFENDANT: Yes.

19 THE COURT: And are you willing to do so in
20 return for the plea and sentence agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: And do you waive your right to
23 appeal voluntarily of your own free will and choice?

24 THE DEFENDANT: Yes.

25 THE COURT: I've prepared a combined

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1 acknowledgment, waiver of rights by guilty plea, waiver
2 of appeal and notice of terms of sentence commitment. If
3 your attorneys can go over this form and, if acceptable,
4 if you would sign that.

5 (Pause in the proceedings.)

6 MR. TACOPINA: Okay, Your Honor, we executed
7 three copies.

8 THE COURT: You can keep one duplicate
9 original for your records. And if the deputy can give me
10 one and give one to the district attorney.

11 DEPUTY: (Handing to Ms. Mallery)

12 MS. MALLERY: Thank you.

13 THE COURT: I also have two other waivers; a
14 waiver to allow the victims' families to talk today and
15 give their statements, and a waiver to have these
16 proceedings located here, which I know you've consented
17 to in discussions with the Court and counsel.

18 DEPUTY: (Handing to counsel)

19 (Pause in the proceedings.)

20 MR. TACOPINA: Okay, Your Honor, we're
21 returning two copies of the waiver to move location of
22 proceeding and waiver for victim impact statements.

23 THE COURT: Okay, thank you.

24 DEPUTY: (Handing to Ms. Mallery)

25 MS. MALLERY: Thank you.

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1 THE COURT: And with respect to the waiver of
2 appeal, the Court will find that the defendant has made a
3 voluntary, intelligent waiver of the right to appeal and
4 I will approve that.

5 MS. MALLERY: Excuse me, Your Honor. May I
6 ask that the date --

7 THE COURT: I was just going to say --

8 MS. MALLERY: Thank you.

9 THE COURT: -- the date is not on there. Any
10 objection, Mr. Tacopina, if I insert the date?

11 MR. TACOPINA: No, none at all, Your Honor.
12 None at all.

13 THE COURT: I note I had a signature line for
14 each attorney but just one attorney signed. I assume
15 that's acceptable to you, Ms. Mallery?

16 MS. MALLERY: Yes, Your Honor.

17 THE COURT: Now, I want to tell you now, Mr.
18 Hussain, what I told your attorneys previously in
19 conferences, and that is if you pled guilty today to 20
20 counts of Criminally Negligent Homicide, Counts
21 Twenty-One through Forty of the Indictment, Class E
22 felonies, agreed to waive your rights to appeal, that
23 this Court would agree to consider a sentence of five
24 years probation. You'd be placed on two years interim
25 probation. As a special condition of the interim

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1 probation, you must perform a thousand hours of community
2 service as approved by the Court. You must complete at
3 least 125 hours every three months. This may include
4 speaking at events on, certainly, the importance of
5 compliance with commercial vehicle regulations.

6 After two years of interim probation, the
7 Court, so long as you've complied with your interim
8 probation, would agree to a sentence of three years
9 additional probation. So that would be a total of five
10 years probation.

11 You'd pay full restitution to Schoharie
12 County. You'd pay a fine at the Court's discretion,
13 mandatory surcharges and crime victims assistance fee.
14 You'd be required to provide a DNA sample, pay the DNA
15 databank surcharge. You'd be required to surrender any
16 and all firearms, rifles, shotguns owned or possessed by
17 you.

18 You'd be prohibited from profiting off this
19 crime under the Son of Sam Law of New York State. At all
20 times while on probation, you'd be prohibited from
21 directly or indirectly owning, operating or working for
22 any commercial transportation business. And you're
23 agreeing that your probation would not terminate early.

24 And Mr. Tacopina, is what I have just said a
25 correct statement of your understanding?

1 MR. TACOPINA: Yes, it is, Your Honor.

2 THE COURT: And have you communicated this to
3 the defendant?

4 MR. TACOPINA: I have, Your Honor, yes.

5 THE COURT: Mr. Hussain, is this a correct
6 statement of your understanding, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: And are you pleading guilty with
9 those conditions?

10 THE DEFENDANT: Yes.

11 THE COURT: And other than what I have said
12 to you today, have any other agreements, commitments or
13 promises been made to you or to your family by anyone,
14 including this Court, to induce you to plead guilty here
15 today?

16 THE DEFENDANT: No.

17 THE COURT: And Ms. Mallery, is this the full
18 extent of any promises or commitments made to your
19 knowledge?

20 MS. MALLERY: It is, Your Honor.

21 THE COURT: Mr. Tacopina, is this the full
22 extent of any promises or commitments made to your
23 knowledge?

24 MR. TACOPINA: It is, Your Honor, yes.

25 THE COURT: Mr. Hussain, I want to advise you

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1 that even at this moment, you have the right to continue
2 your not guilty plea and to assert all legal and
3 constitutional rights and have a trial. If you do so,
4 anything you say or did before me today could not and
5 would not be used against you during the trial. Do you
6 understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And have you had sufficient time
9 to think about what you're doing?

10 THE DEFENDANT: Yes.

11 THE COURT: And do you want to talk to your
12 attorneys or anyone else about anything connected with
13 these proceedings or what I have said to you today?

14 MR. TACOPINA: Your Honor, can you repeat
15 that question?

16 THE COURT: Oh, sure. Do you want to talk to
17 your attorneys or anyone else about anything connected
18 with these proceedings or what I have said to you today?

19 THE DEFENDANT: No, thank you.

20 THE COURT: So what I'm going to do now, Mr.
21 Hussain, is I'll just put you under oath and ask you
22 questions about the facts underlying the charges. Okay?
23 Could you stand up? Raise your right hand.

24 Do you swear the testimony you are about to
25 give in this proceeding will be the truth, the whole

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1 truth and nothing but the truth?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You can have a seat. So I'll
4 just go through these counts starting with Count
5 Twenty-One.

6 And Mr. Hussain, on or about October 6th,
7 2018, in the County of Schoharie, State of New York, did
8 you, with criminal negligence, cause the death of
9 Savannah Devonne Bursese?

10 THE DEFENDANT: Yes.

11 THE COURT: And I'll turn your attention to
12 Count Twenty-Two. On or about October 6th, 2018, in the
13 County of Schoharie, State of New York, did you, with
14 criminal negligence, cause the death of Rachael K.
15 Cavosie?

16 MR. TACOPINA: Your Honor, just one second,
17 please.

18 (Pause in the proceedings.)

19 THE COURT: Do you need a copy of the
20 indictment?

21 MR. TACOPINA: No, no.

22 THE COURT: Okay.

23 THE DEFENDANT: Yes.

24 THE COURT: And I'll turn your attention to
25 Count Twenty-Three. On or about October 6th, 2018, in

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1 the County of Schoharie, State of New York, did you, with
2 criminal negligence, cause the death of Matthew Williams
3 Coons?

4 THE DEFENDANT: Yes.

5 THE COURT: And I'll turn your attention to
6 Count Twenty-Four. On or about October 6th, 2018, in the
7 County of Schoharie, State of New York, did you, with
8 criminal negligence, cause the death of Patrick K.
9 Cushing?

10 THE DEFENDANT: Yes.

11 THE COURT: And turn your attention to Count
12 Twenty-Five. On or about October 6th, 2018, in the
13 County of Schoharie, State of New York, did you, with
14 criminal negligence, cause the death of Mary E. Dyson?

15 THE DEFENDANT: Yes.

16 THE COURT: And I'll turn to Count
17 Twenty-Six. On or about October 6th, 2018, in the County
18 of Schoharie, State of New York, did you, with criminal
19 negligence, cause the death of Robert J. Dyson?

20 THE DEFENDANT: Yes.

21 THE COURT: And we'll turn our attention to
22 Count Twenty-Seven. On or about October 6th, 2018, in
23 the County of Schoharie, State of New York, did you, with
24 criminal negligence, cause the death of Amanda D. Halse?

25 THE DEFENDANT: Yes.

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1 THE COURT: And I'll turn your attention to
2 Count Twenty-Eight. On or about October 6, 2018, in the
3 County of Schoharie, State of New York, did you, with
4 criminal negligence, cause the death of Brian Gregory --

5 THE DEFENDANT: Yes.

6 THE COURT: -- Hough?

7 THE DEFENDANT: Yes.

8 THE COURT: And Count Twenty-Nine. On or
9 about October 6th, 2018, in the County of Schoharie,
10 State of New York, did you, with criminal negligence,
11 cause the death of Abigail M. Jackson?

12 THE DEFENDANT: Yes.

13 THE COURT: And we'll turn to Count Thirty.
14 On or about October 6th, 2018, in the County of
15 Schoharie, State of New York, did you, with criminal
16 negligence, cause the death of Adam Jackson?

17 THE DEFENDANT: Yes.

18 THE COURT: And we'll turn our attention to
19 Count Thirty-One. Mr. Hussain, on or about October 6th,
20 2018, in the County of Schoharie, State of New York, did
21 you, with criminal negligence, cause the death of
22 Allison A. King?

23 THE DEFENDANT: Yes.

24 THE COURT: And I'll turn your attention to
25 Count Thirty-Two. On or about October 6th, 2018, in the

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1 County of Schoharie, State of New York, did you, with
2 criminal negligence, cause the death of Scott T.
3 Lisinicchia?

4 THE DEFENDANT: Yes.

5 THE COURT: I'll turn your attention to Count
6 Thirty-Three. On or about October 6th, 2018, in the
7 County of Schoharie, State of New York, did you, with
8 criminal negligence, cause the death of Erin R. McGowan?

9 THE DEFENDANT: Yes.

10 THE COURT: And I'll turn your attention to
11 Count Thirty-Four. On or about October 6th, 2018, in the
12 County of Schoharie, State of New York, did you, with
13 criminal negligence, cause the death of Shane McGowan?

14 THE DEFENDANT: Yes.

15 THE COURT: And I'll turn your attention to
16 Count Thirty-Five. On or about October 6, 2018, in the
17 County of Schoharie, State of New York, did you, with
18 criminal negligence, cause the death of Amanda Rose
19 Rivenburg?

20 THE DEFENDANT: Yes.

21 THE COURT: I'll turn your attention to Count
22 Thirty-Six. On or about October 6, 2018, in the County
23 of Schoharie, State of New York, did you, with criminal
24 negligence, cause the death of James Joseph Schnurr?

25 THE DEFENDANT: Yes.

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1 THE COURT: I'll turn your attention to Count
2 Thirty-Seven --

3 FEMALE VOICE: He killed 20 people. Don't
4 touch me. I'm sorry, Your Honor.

5 THE COURT: It's okay.

6 FEMALE VOICE: He killed 20 people. He gets
7 probation? Fuck this.

8 THE COURT: And I'll turn your attention to
9 Count Thirty-Seven. Mr. Hussain, on or about October 6,
10 2018, in the County of Schoharie, State of New York, did
11 you, with criminal negligence, cause the death of Amy L.
12 Steenburg?

13 THE DEFENDANT: Yes.

14 THE COURT: And I'll turn your attention to
15 Count Thirty-Eight. On or about October 6, 2018, in the
16 County of Schoharie, State of New York, did you, with
17 criminal negligence, cause the death of Axel J.
18 Steenburg?

19 THE DEFENDANT: Yes.

20 THE COURT: And I'll turn your attention to
21 Count Thirty-Nine. On or about October 6, 2018, in the
22 County of Schoharie, State of New York, did you, with
23 criminal negligence, cause the death of Richard M.
24 Steenburg, Jr.?

25 THE DEFENDANT: Yes.

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1 THE COURT: And turning attention to Count
2 Forty. On or about October 6th, 2018, in the County of
3 Schoharie, State of New York, did you, with criminal
4 negligence, cause the death of Michael Christopher Ukaj?

5 THE DEFENDANT: Yes.

6 THE COURT: Ms. Mallery, anything else you
7 want me to ask?

8 MS. MALLERY: No, Your Honor. Thank you.

9 THE COURT: Mr. Hussain, have you answered
10 all my questions truthfully?

11 THE DEFENDANT: Yes.

12 THE COURT: And at this time, Mr. Tacopina,
13 does your client wish to change his plea to the charges
14 contained in Counts Twenty-One through Forty and enter
15 pleas of guilty?

16 MR. TACOPINA: Yes, Your Honor. At this
17 time, Mr. Hussain wishes to withdraw his previously
18 entered pleas of not guilty to those counts and enter a
19 plea of guilty to the Counts Twenty-One through Forty in
20 the Indictment.

21 THE COURT: So Mr. Hussain, I'll ask you at
22 this time, with respect to Count Twenty-One, which
23 accuses you of the crime of Criminally Negligent Homicide
24 in violation of Section 125.10 of the New York State
25 Penal Law, how do you plead?

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1 THE DEFENDANT: Guilty.

2 THE COURT: And with respect to County
3 Twenty-Two, which accuses you of the crime of Criminally
4 Negligent Homicide, how do you plead?

5 THE DEFENDANT: Guilty.

6 THE COURT: And with respect to Count
7 Twenty-Three, which accuses you of the crime of
8 Criminally Negligent Homicide, how do you plead?

9 THE DEFENDANT: Guilty.

10 THE COURT: And with respect to Count
11 Twenty-Four, which accuses you of the crime of Criminally
12 Negligent Homicide, how do you plead?

13 THE DEFENDANT: Guilty.

14 THE COURT: And with respect to Count
15 Twenty-Five, which charges you with the crime of
16 Criminally Negligent Homicide, how do you plead, sir?

17 THE DEFENDANT: Guilty.

18 THE COURT: And with respect to Count
19 Twenty-Six, which accuses you of the crime of Criminally
20 Negligent Homicide, how do you plead?

21 THE DEFENDANT: Guilty.

22 THE COURT: And with respect to Count
23 Twenty-Seven, which accuses you of the crime of
24 Criminally Negligent Homicide, how do you plead?

25 THE DEFENDANT: Guilty.

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1 THE COURT: And with respect to Count
2 Twenty-Eight, which accuses you of the crime of
3 Criminally Negligent Homicide, how do you plead?

4 THE DEFENDANT: Guilty.

5 THE COURT: With respect to Count
6 Twenty-Nine, which accuses you of the crime of Criminally
7 Negligent Homicide, how do you plead?

8 THE DEFENDANT: Guilty.

9 THE COURT: And with respect to Count Thirty,
10 which accuses you of the crime of Criminally Negligent
11 Homicide, how do you plead?

12 THE DEFENDANT: Guilty.

13 THE COURT: And with respect to Count
14 Thirty-One, which accuses you of the crime of Criminally
15 Negligent Homicide, how do you plead?

16 THE DEFENDANT: Guilty.

17 THE COURT: And with respect to Count
18 Thirty-Two, which accuses you of the crime of Criminally
19 Negligent Homicide, how do you plead?

20 THE DEFENDANT: Guilty.

21 THE COURT: With respect to Count
22 Thirty-Three, which accuses you of the crime of
23 Criminally Negligent Homicide, how do you plead?

24 THE DEFENDANT: Guilty.

25 THE COURT: With respect to Count

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1 Thirty-Four, which accuses you of the crime of Criminally
2 Negligent Homicide, how do you plead?

3 THE DEFENDANT: Guilty.

4 THE COURT: And with respect to Count
5 Thirty-Five, which accuses you of the crime of Criminally
6 Negligent Homicide, how do you plead?

7 THE DEFENDANT: Guilty.

8 THE COURT: And with respect to Count
9 Thirty-Six, which accuses you of the crime of Criminally
10 Negligent Homicide, how do you plead?

11 THE DEFENDANT: Guilty.

12 THE COURT: And with respect to Count
13 Thirty-Seven, which accuses you of the crime of
14 Criminally Negligent Homicide, how do you plead?

15 THE DEFENDANT: Guilty.

16 THE COURT: And with respect to Count
17 Thirty-Eight, which accuses you of the crime of
18 Criminally Negligent Homicide, how do you plead?

19 THE DEFENDANT: Guilty.

20 THE COURT: And with respect to Count
21 Thirty-Nine, which accuses you of the crime of Criminally
22 Negligent Homicide, which is a Class E felony, which all
23 these offenses are, how do you plead?

24 THE DEFENDANT: Guilty.

25 THE COURT: With respect to Count Forty,

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1 which accuses you of the crime of Criminally Negligent
2 Homicide, how do you plead?

3 THE DEFENDANT: Guilty.

4 THE COURT: And Ms. Mallery, do the People
5 consent to defendant's entry of this guilty plea?

6 MS. MALLERY: We do, Your Honor. Thank you.

7 THE COURT: Would you like to state for the
8 record your reason or do you want to rely on the plea
9 agreement?

10 MS. MALLERY: Your Honor, at this time, we'll
11 rely on the plea agreement submitted to the Court.

12 THE COURT: Okay. Well, next, what we'll do
13 is take the victim impact statements. I think we're
14 going to take just a brief break for the court reporter
15 to get up and stretch. It's a long time for her to go.
16 So we'll take a 10-minute recess.

17 Please don't leave the secure area unless you
18 really have to go outside, because if you go outside,
19 you're going to have to get searched again. And you can
20 get up, walk around, use the bathrooms if you wish. If
21 you want to go out, we may start up before you can get
22 back in. Okay, so we'll take a 10-minute recess.

23 (Whereupon, a short break was taken.)

24 THE COURT: At this time, the Court will
25 receive statements from victims that wish to speak. The

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1 Court has received many letters and I've read each
2 letter, reread each letter and read them again. They'll
3 all become part of the court record. Some people
4 obviously don't want to speak, but those letters will be
5 part of the court record also. So if you want to
6 proceed.

7 MS. PIERONE: Thank you, Your Honor. I'd
8 like to call John Schnurr for the family of James Schnurr
9 and Brian Hough.

10 MR. SCHNURR: Your Honor, thank you for this
11 opportunity for me to describe the impact on my family of
12 the carnage that occurred on October 6, 2018. I can't
13 say this was an accident. An accident implies that what
14 happened could not have been avoided. This is so far
15 from the truth. The 20 victims were slaughtered that
16 day.

17 My brother Jim and Brian, Jim's son-in-law,
18 were the two pedestrians waiting for the rest of his
19 family to come out of the restaurant when the runaway
20 limousine crushed them before it crashed into the ravine.

21 My brother and his family had stopped at the
22 restaurant for lunch before joining the rest of our
23 family at the hotel just up the road to get dressed for
24 our niece's wedding later that day.

25 I had called my brother on his cellphone to

1 see how much longer it would be til they made it to the
2 hotel. He didn't answer. I left a message and after
3 that, I jumped in the shower. While I was in the shower,
4 I started to hear the sirens of police and fire trucks.
5 When I got dressed, I went down the hallway to where my
6 sisters and other family members were. That's when there
7 was a phone call from my brother's son saying Jim and
8 Brian were gone.

9 I couldn't believe they were gone. I had to
10 go to the restaurant to see for myself. I just thought
11 that if I got there, the doctors could take some of my
12 blood or body and give it to him, he would be okay.

13 I drove down the road as far as I could; the
14 road was blocked off. I got out and started running. I
15 was stopped about a hundred yards from the restaurant by
16 a state trooper. I told him who I was and that my family
17 was down there. He walked me to the site.

18 When I got to the site and saw the limousine
19 down in the ravine, blankets covering bodies, I saw my
20 brothers' daughters and sons, my brother's grandson was
21 crying hysterically. I think somehow he knew that his
22 biggest hero was gone.

23 My other nieces and nephews, along with my
24 daughter, were sitting on the grass all hysterically
25 crying. One of my brother's sons had gone down the

1 ravine to check on the other victims. They were all
2 gone. There was no help to be given. I'm sorry, I'm
3 sorry, I'm sorry.

4 In the following hours, our family was
5 struggling with the question of what to do about the
6 wedding. Should we go, not go, cry, not cry? Well, the
7 answer to that was very simple. The answer was: What
8 would Jim want us to do?

9 So we got dressed and went to the wedding.
10 All of us who were not witnesses to the actual accident
11 went to the wedding. Our niece never knew what happened
12 until the following morning when her husband told her.

13 During the wedding reception, the deejay
14 asked if anyone had a particular song they would like to
15 hear. Leader of the Pack, Jim's favorite karaoke song,
16 was what our family wanted to sing to. They played it
17 and we sang.

18 The memory of the carnage of that day will
19 take some time to forget. I don't think we'll ever
20 really forget completely. Instead of the slaughter that
21 day, we're going to remember the personalities and
22 kindness of the victims. The horror will be replaced by
23 funny stories and the interaction we had with the victims
24 in the past.

25 The horror will be replaced as the victims'

1 children grow and we watch those little ones take on the
2 traits, personalities and smiles of their parents.

3 Now, you, Defendant, can you ever imagine how
4 you would react in a situation like that? Here is the
5 son who just witnessed the slaughter of his father and
6 brother-in-law putting his feelings aside and going to
7 help others. That's an awesome person. Only a person
8 who's been taught the difference between right and wrong
9 could do that.

10 Have you any idea why he did that? No, you
11 don't. You're incapable of understanding that. Only a
12 person who's been taught the difference between right and
13 wrong can unselfishly do something like that. You know
14 what would be more amazing than what his father did the
15 last nanosecond of his life? He pushed his daughter to
16 safety keeping her from being victim number 21 on that
17 day.

18 Do you think you're capable of ever doing
19 something like that? Let me tell you why you're
20 incapable. You were never taught the difference between
21 right and wrong. You were never taught to care for
22 others. You were never taught how to put the needs of
23 others before your own. You were never taught how to
24 take care of your clients. You couldn't even take care
25 of your driver.

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1 You were only taught how to steal from your
2 clients. You were never taught that maintaining your
3 vehicles to assure safe travel by your clients was
4 important. You were taught by someone with no morals or
5 integrity. What legacy are you leaving to your children?
6 They don't stand a chance, poor kids.

7 I read all the reports how you were fined for
8 violations over and over again, getting penalized small
9 amounts and how you took the stickers off your car and
10 kept driving. I read how you reregistered the vehicle
11 three times with different seating capacities, each
12 reregistration reducing the motor vehicle inspection
13 requirements. I read the report where it talks about how
14 there was a vise grip clamped over the rear brake line.

15 The National Transportation Safety Board's
16 report says the accident happened because of catastrophic
17 brake failure. Catastrophic brake failure. What causes
18 that? Lack of maintenance causes that, and not to
19 mention zero moral character and a lack of backbone.

20 The 17 victims paid you money to take them to
21 their celebration and home again safely. They did the
22 right thing. Too bad they hired a spineless slug like
23 yourself.

24 If you and your attorneys came to an
25 agreement with the Court, that's just wonderful. I think

1 Honor.

2 THE COURT: Thank you.

3 (Applause.)

4 MS. PIERONE: Linda King, mother, for the
5 family of Allison King, Mary Dyson, Amy Steenburg and
6 Abigail Jackson.

7 MS. KING: Mr. Hussain, can you please look
8 at me?

9 October 6, 2018 was a beautiful fall morning.
10 All four of my daughters were in town that day to watch
11 our oldest, Abigail, coach her daughter's soccer game and
12 then, with their three husbands, celebrate our youngest
13 daughter Amy's 30th birthday with their closest friends
14 on a limo trip to a local brewery.

15 They rented a limo from you, Mr. Hussain,
16 because we taught them not to drink and drive and that's
17 what they thought rendering your services would do; allow
18 them to celebrate safely and return home a few hours
19 later to their family.

20 By 2:00 p.m. that day, there was a terrible
21 accident at the Apple Barrel. It was all over Facebook
22 and I started to text our girls, their husbands and
23 friends. No one answered.

24 For four hours, we knew nothing and prayed it
25 was not our family. At 6:00 o'clock, we knew the worst

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1 thing a parent can ever hear happened. We were told
2 everyone in the limo had died. A tragic accident. How
3 did it happen and what caused it we did not know then.

4 We spent the next week telling our three
5 grandchildren that mommy and daddy would not be coming
6 home and, no, they could not FaceTime them in Heaven, and
7 trying to determine who would be raising them and
8 arranging funerals.

9 Over the course of the next few weeks,
10 details of the accident, history of the driver you hired
11 and the condition of the limo came out. We watched the
12 Grand Jury indict you on all 40 counts and we saw the
13 high profile lawyer you hired.

14 My thoughts at the time were you had this
15 kind of money for a lawyer and, yet, your limo was a
16 deathtrap because you didn't keep up the maintenance.
17 Exactly what kind of businessman are you? What kind of
18 person are you? Knowing what you knew about the
19 condition of that limo and allowing anyone, let alone 17
20 innocent and trusting people, to ride in it is
21 unfathomable to me.

22 After the NTSB report came out, we knew what
23 kind of a corner-cutting cheapskate you are; one who
24 ignored state regulations on safety; one who was told to
25 take that brakeless and ultimately deathtrap of a limo

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1 off of the road.

2 As the months went on, we were hoping for a
3 trial, a trial of your peers where I was hoping you would
4 spend the rest of your miserable life in jail. But that
5 didn't happen.

6 You spent the next three years of your
7 seemingly uninterrupted life carrying on as a free man
8 with only a GPS bracelet on. My family and I have not
9 been free since October 6, 2018.

10 Then, to hear that you had the audacity to
11 complain about the uncomfortableness of wearing that
12 bracelet. There are no words. I would gladly wear four
13 of those bracelets for the rest of my life to bring my
14 daughters back.

15 It is my hope and prayer that you will be
16 punished fairly. And if the Judge doesn't punish you for
17 the crimes you have committed, I'm confident that God
18 will. Thank you.

19 (Applause.)

20 MS. PIERONE: Bethany Nacco, for the family
21 of Allison King, Mary Dyson, Amy Steenburg and Abigail
22 Jackson.

23 MS. NACCO: I would also request the same
24 respect as my mother-in-law.

25 I write public correspondences for a living.

1 Never would I have imagined that I would be writing the
2 obituaries for my four sisters-in-law. Never would I
3 have imagined that I'd also be giving a victim impact
4 statement on their behalf.

5 October 6, 2018 is a date forever burned into
6 my heart and soul. I woke up to spend the day with my
7 babies and then an evening with my best friends who were
8 also my sisters celebrating our baby sister's upcoming
9 big 30th birthday.

10 We were ready to celebrate all the
11 accomplishments that Amy had made within her 30 years of
12 life. But little did we know that we would never
13 celebrate her 30 years of life. She would never even
14 make it to 30 years old. They would never even make it
15 to the brewery to celebrate at all. Those years were
16 selfishly ripped away.

17 That morning, my phone text messages were
18 going off like crazy, per usual. We were all in a group
19 message that we were constantly texting in every day.
20 That morning, the messages were about who was wearing
21 what, who needed to borrow this and that for makeup and
22 where exactly I needed to be after they were done with
23 your limo.

24 I remember hearing the LifeNet helicopters
25 fly over my house as I'm playing with my daughter on the

1 floor and I had no idea that that helicopter was on its
2 way to try and rescue someone from the deathtrap on
3 wheels that had just crashed into an embankment. I can
4 no longer hear the helicopters in my own home without
5 going into a panic attack. I can no longer breathe when
6 I hear the humming of the rescue team. There is a great
7 pain that consumes my chest and stops me in my tracks
8 when I hear one going over.

9 Linda, my most strong mother-in-law, texted
10 me a screenshot of Schoharie County News on Facebook
11 about a wedding party limo that had crashed into the
12 Apple Barrel. As horrible as this sounds, I wished more
13 than anything that it was a wedding party and not my
14 family.

15 My intuition was telling me more, though, and
16 I immediately began texting my family begging that they
17 text us to let us know that all is well. I began to call
18 the Sheriff's Office and Apple Barrel just looking for
19 any kind of information, especially when no one was
20 responding.

21 It wasn't til Linda called me crying, begging
22 me to come over, as the accident was all of them and they
23 were all gone.

24 To the defendant, if you're wondering what
25 it's like to hold a grieving mother as she just learned

1 that her four beautiful, humble and caring daughters were
2 killed, or if you're wondering what it's like to hold
3 your desperately broken spouse as he crumbles with defeat
4 after his baby sisters were brutally killed, or if you're
5 wondering what it's like to tell your own babies that
6 their beloved aunts and uncles are no longer with us to
7 play or hug, or if you're wondering what it's like to try
8 and explain to your niece why we can't FaceTime mommy and
9 daddy in Heaven while also trying to explain to her that
10 her mommy and daddy didn't want to leave and she did
11 nothing wrong, and they didn't leave by choice, they were
12 forced, I'll tell you what it's like, it's living hell.
13 It's emptiness so deep that you will never have to
14 experience. It's pure torture.

15 My sisters-in-law were good people, the best
16 of the best. They cared for others out of the goodness
17 of their hearts. They valued and cherished all of their
18 friends and family. They had children that they were
19 raising and unconditionally loved. You stole them from
20 us and you robbed their children of ever having a life
21 with their parents.

22 I have endured great depression and anxiety
23 from all of this. Grief is something that I will forever
24 live with. It is the worst pain to feel within your
25 soul. I can no longer travel or leave my house for

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1 extended periods of time for fear that I may never
2 return. I live in this constant mentality that if
3 anything could happen, even with the slightest
4 possibility of it happening, that it's going to happen.
5 How would my children handle their life without me just
6 like my nieces and nephews have to? How will my family
7 live on, too, if I were to ever be ripped away from them?

8 Our holidays and celebrations have a gaping
9 hole in them now. We are all waiting for the door to
10 open and our family to walk in and be with us. At
11 dinnertime, we still have more than enough food to feed
12 anyone that walks in. There is less laughter throughout
13 our houses and there's more sadness than any family
14 should ever have to feel.

15 I miss my sisters. I miss my group chat
16 going off daily. And at times, I still hear the faint
17 sound of the special ringer I had it set on. But I know
18 it's just my heart wanting to hear it. That group chat
19 will never happen again because they're gone. Your greed
20 took them from us.

21 I miss having someone to walk with me or run
22 to the grocery store with. I miss the days when one of
23 them would just walk in my front door because they could
24 and often did. There wasn't a weekend that our plans
25 didn't involve one another. And now the only plans we'll

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1 ever have with them again is visiting their gravestone.
2 There are days and nights that I feel completely alone,
3 an emptiness. I don't have my support. I don't have my
4 comfort. I don't have the love I desperately need that
5 only they can give me. I miss being their support. I
6 miss their calls when they needed advice or wanted to
7 cheer about an accomplishment. My children miss them
8 desperately. And I've had to plan events and holidays
9 without them. They would love to have been a part of it
10 all and they should be.

11 To the Judge: My father was a Sheriff and an
12 Air Force Vet which has made me have so much respect for
13 the Courts and trust and hope in the Courts and the
14 Justice System. I trust that they will give my family
15 justice and serve the defendant with the charges and
16 sentencing he deserves for his part in the taking of 20
17 innocent people.

18 He will never live a day with the pain that
19 we will forever live with. He will be able to hug and
20 kiss his family that's here to support him today, and he
21 will be able to walk out being able to hug and kiss them.
22 We will not ever, their children won't ever.

23 I pray that the Courts and Justice System
24 serve the people with the protection that they need from
25 this man ever operating and conducting business that will

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1 kill again. Time behind bars would protect others and
2 give us some peace and maybe allow you time to
3 re-evaluate yourself.

4 For the defendant, just as every morning I
5 wake and every night I go to sleep, I see the faces of my
6 beautiful sisters, Abby, Mary, Allie and Amy, and I hope
7 you do, too. I hope that the pain that my heart and soul
8 endures daily stings your heart as well. May you live
9 with what you have done and I hope at the end of your
10 time, there is no mercy.

11 You haven't shown an ounce of empathy.
12 Empathy is not telling us that you're guilty; it's
13 showing that you are human and you feel awful for what
14 you have done.

15 I love you forever, Abby, Mary, Allie and
16 Amy, and may you forever shine as bright as you did here.
17 Thank you.

18 (Applause.)

19 MS. PIERONE: Sheila McGarvey for the family
20 of Shane McGowan.

21 MS. MCGARVEY: My name is Sheila McGarvey.
22 I'm the mother of Shane Thomas McGowan and the
23 mother-in-law of Erin Vertucci McGowan. I would like the
24 Court to know the 17 young people killed in the Schoharie
25 limo crash on October 8th, 2016 (sic) were all the best

1 this world had to give. Many of them met either in
2 school or through work. They were not the kind of people
3 who operated on the fringes of the law or had a total
4 disregard for the law but, rather, lived their lives to
5 the fullest as law-abiding citizens of our great country
6 and enjoyed all the freedoms it had to offer.

7 They lived lives that mattered, lives of
8 love. As I was taught by my parents, Kevin and Bridget
9 McGarvey, who emigrated from Northern Ireland to escape
10 oppression and discrimination, Shane was taught by me and
11 by his father, Dr. Randy McGowan, to live by the Golden
12 Rule: Do unto others as you would have them do unto you.

13 Though none of us are perfect, I know Shane
14 did his best to live by this rule, whether in school,
15 family life and his professional life. Shane was so
16 loved by his family as he was the first grandchild in the
17 McGarvey family and the only grandchild of Isabela
18 McGowan who lived nearby.

19 My parents were so excited awaiting Shane's
20 birth that on the day he was born, they went to mass that
21 Sunday, went shopping and made their way to Greenwich
22 Hospital in Connecticut hours before he was born, but
23 Shane was clearly worth the wait.

24 As a loving and caring family, we all
25 chronicled Shane's life and his many accomplishments.

1 One day, I'm giving birth to Shane; the next hearing him
2 say his first words, walking, talking in sentences,
3 saying cheese for the camera, being a proud big brother
4 to Colin, bringing him to his first dinosaur exhibit,
5 wiping suntan lotion out of his eyes, getting ready for
6 his first day at school, playing ball, graduating from
7 college, and working at a job he excelled at.

8 And the next thing I know, he's standing at
9 the altar with a beautiful smile on his face awaiting the
10 love of his life, Erin, walking down the aisle on June
11 8th, 2018. That is when I knew we did an excellent job
12 in raising him.

13 In July 2018, my family, the McGarvey family,
14 made our annual family week vacation to Cape May, New
15 Jersey. Shane and Erin were talking and joking about
16 names they would give their children. Again, he made me
17 smile because he said he really liked the name Brogan if
18 they had a son as it was my grandmother's maiden name.

19 In the days prior to October 6th, Shane had
20 asked me, and reminded me several times, if I would pick
21 him and Erin up and drop them off at Amy and Axel's house
22 around 12:45 on October 6th and then pick them back up
23 later in the afternoon or evening. Shane didn't want to
24 drive after partying for the day and didn't want to have
25 to spend the money on an Uber.

1 I didn't want to upset Shane by saying anything about not
2 smelling like cigarettes, but I regrettably did not tell
3 him how proud I was that he was trying to make a positive
4 change in his life.

5 Shane proceeded to ask me why it takes girls
6 so long to get ready. He said Erin was getting ready for
7 the last three hours and still wasn't ready. I reminded
8 him to be patient and that girls need extra time for
9 hair, makeup and clothes and that he was the reason Erin
10 wanted to look so beautiful.

11 I asked Shane if he did anything to help Erin
12 get ready, including walking her dog, Remy, but he just
13 smiled. When Erin got in the car, she said, "Sheila,
14 you'll be so happy to hear it's been a week since we both
15 stopped smoking."

16 Erin wanted to stop at the convenience store
17 to get something to eat. When she got out, I noticed how
18 her skin glowed and how shiny her hair was in the sun.
19 When she got back in the car, I told her how pretty she
20 looked and she just smiled.

21 The plan was for Shane to call for a ride
22 home when he and Erin got back to Amsterdam and if not
23 too late, they would have dinner with us, Terry, Shane's
24 stepfather, and Aaron, his stepbrother. On Sunday, we
25 were planning on watching the wedding video which we had

1 not yet seen. I called Shane twice that evening and my
2 last text between 7:00 and 8:00 p.m. was "What's the
3 plan, Shane?" Not knowing they were killed an hour after
4 I last saw them.

5 Erin's friend, Melissa, called me crying
6 telling Shane and Erin had been in a bad limo accident in
7 Schoharie and it wasn't good. I remember saying, well,
8 they weren't in a limo. Shane told me a bus had been
9 scheduled to take the group to Cooperstown, not
10 Schoharie. I was thinking even if there was an accident,
11 how bad could it be?

12 Minutes later, hearing the news on the TV and
13 not hearing from Shane, I called the state troopers.
14 Within 15 minutes, they were at my door. Terry looked at
15 me and said, "This isn't good." That's when my nightmare
16 began.

17 The loss of Shane and Erin and all the
18 victims of this preventable tragedy continue to be felt
19 by so many and leaves the world a darker place. Every
20 day, I try to wrap my head around this impossible
21 situation and come to terms that Shane and Erin are gone.
22 I will never see him again, hear his voice, or a
23 voicemail saying, "Hi, mom, it's me Shane" as if I didn't
24 know the voice of my own child.

25 I screamed and cried a hundred times a day

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1 calling out his name as if he could answer me. The pain,
2 grief, despair and depression that comes and stays is
3 overwhelming at times. I grieve for what we had and all
4 the important things they have missed and will continue
5 to miss.

6 They never got to buy that house, celebrate
7 their first Christmas together as a married couple,
8 anniversary or any other firsts or experience the joy of
9 bringing a child into this world.

10 When Lynn, Erin's mom, and I were imprinting
11 Shane and Erin's shoes at the memorial, we cried knowing
12 we should have been celebrating a baby shower or the
13 birth of our first grandchild. Grief is all the love I
14 want to give Shane and Erin, but this love has no place
15 to go. Initially, the absolute worst time of the day was
16 in the car driving home. I hate every day without him.
17 I curse the nighttime, not knowing if it will be another
18 sleepless night filled with memories, loss and the pain
19 and horror they must have felt knowing they were flying
20 through the air and about to be killed.

21 While driving with Shane about a year
22 earlier, he told me I was speeding past FM College. I
23 said school wasn't in session, but Shane reminded me the
24 speed limit was still in effect regardless. This forever
25 reminds me of this preventable, senseless tragedy. I can

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1 hear Shane yelling and calling out to the driver to stop
2 or pull over. This keeps me awake and angry most nights.

3 I demanded to see my son's body at the
4 funeral home. Prior to his body being cremated, he was
5 placed in a makeshift coffin. Seeing my child wearing a
6 hospital gown with his head wrapped due to severe
7 lacerations across his scalp and forehead, touching his
8 cold, lifeless body and knowing an autopsy had been
9 performed on him, I realized this brutal, senseless
10 tragedy was the result of a selfish act by one man and
11 one man only and he must be held accountable for his
12 actions.

13 As an act of free will, this man knowingly
14 and willingly put that limo on the road on October 6,
15 2018 resulting in 20 deaths. And out of respect for the
16 other families, you may want to close your ears because
17 I'm about to read what the selfish man did to my child.

18 Shane was killed as a result of multiple
19 traumatic blunt force injuries. He had a severe skull
20 fracture, severe bilateral rib and thoracic spine
21 fractures and along with transection of the thoracic
22 aorta, severe lacerations to the heart, lungs, liver and
23 his spleen. And by the way, his toxicology was negative
24 for cannabis or narcotics.

25 We were asked what we would like the outcome

1 of this sentencing to be. Twenty years for each of the
2 twenty lives lost due to this careless act. But we know
3 that will not happen.

4 As for community service, having this man
5 pick up garbage or any other so called community service
6 would be a travesty of justice. He should work with the
7 medical examiner in a morgue and witness a minimum of 20
8 autopsies on innocent victims of car crashes.

9 I was taught to ask God to forgive me for my
10 trespasses and I should forgive those who trespass
11 against me. I don't forgive a selfish man for his total
12 disregard for the law and the lives of others. I'm good
13 with that and certainly can live with it.

14 It is somewhat ironic and yet so sad that if
15 a fraction of the money spent on hired help, including
16 this defense team to keep him out of jail, was instead
17 spent on ensuring the limo was safe and operational, we
18 would not be here today.

19 Although Shane was a grown man of 30 years,
20 he was my baby boy, my first brown-eyed handsome boy. As
21 we, the families of the 20 people killed by this man,
22 light a candle in the darkness and yet choose to live our
23 lives in the present, I offer a prayer in silence not for
24 the 20 innocent lives killed as a result of this tragedy
25 but for us, the survivors, the friends and families of

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1 those 20 victims.

2 Because prayer can't be said in this court of
3 justice, I will pray in silence an abbreviated penal
4 colony rosary which is one Our Father, three Hail Marys
5 and one Glory Be to God.

6 (Moment of Silence.)

7 MS. MCGARVEY: Thank you, Your Honor.

8 MS. PIERONE: Lynne Semiprivivo for the
9 family of Erin McGowan.

10 MS. SEMIPRIVIVO: Your Honor, my name is
11 Lynne Semiprivivo. I am the mother of Erin McGowan. I
12 had a very hard time writing this. It's not very long.
13 I can't share my pain with everyone like others have.

14 Erin was 34 years old. She was tragically
15 taken from our family. The day she died, I was spending
16 the weekend with my best friend in Maryland. I wasn't
17 even here.

18 My 85-year-old mother had to break the news
19 over the phone at night hours later. I didn't even know.
20 I had to try to get a ride home because I couldn't drive
21 my own car home.

22 This is the most painful experience I will
23 ever have in my lifetime. Not only have I lost my most
24 precious daughter, I also lost my son-in-law, Shane.
25 They had just gotten married. They were just starting

1 their life together. And I had a very hard time writing
2 this. I didn't write this til the day it was due for
3 review. I can't even finish some of the things that I
4 wrote because it's just too painful for me. It's just
5 too difficult to put into words what this loss has done
6 to me and all who knew and loved her.

7 Time does not make it less painful. I find
8 myself unable to look at pictures of her without crying
9 or memories without breaking down. Erin was my firstborn
10 child. She was a joy, a gift from God. She was a
11 beloved daughter, granddaughter, sister, niece, and
12 friend and, now, an absent aunt to a beautiful child that
13 was born in her absence, who was named for her and born
14 on her birthday.

15 The loss of her has devastated my family.
16 She was only married for two days short of four months.
17 We didn't even look at her wedding video and pictures
18 yet. All she wanted was to finish her degree, get
19 married, have a baby and have her loving family around.
20 Even with all this loss and pain, I don't hate the
21 defendant. But I do want justice. I didn't want a slap
22 on the wrist; I wanted some consequences. I can't make
23 him feel my pain, but I hope that he will never be
24 allowed to be in a position to do this to another family.
25 Thank you, Your Honor.

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1 THE COURT: Thank you.

2 (Applause.)

3 MS. PIERONE: Justin Cushing for the family
4 of Patrick Cushing.

5 MR. CUSHING: My name is Justin Cushing. I
6 lost friends in Amy, Allie, Mary, Abby and Amanda, a
7 cousin in Erin, a best friend in Adam and my brother,
8 Patrick.

9 I can vouch for many of the qualities you
10 will and have heard from their closest family and
11 friends, but I'd like to take this opportunity to tell
12 you what I, and we, Patrick's family, friends and
13 community, all lost in my brother's passing.

14 Not long before the tragic events, my
15 fiancée, now wife, Serena, asked "When are you going to
16 ask Pat to be your best man at our wedding?"

17 I responded, "He knows, he knows. I just
18 haven't asked him yet."

19 I'm fortunate to have had the opportunity to
20 ask him and see his face light up when he said "I knew, I
21 knew". Unfortunately, his wedding presence could only
22 exist in pictures and memories.

23 My "if it happens, it happens" attitude
24 juxtaposed Pat's excitement for life, love and
25 experience. I know I'm speaking for the whole family

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1 when I say we were excited to see Pat write each new
2 chapter in his life, the new job, the new hobby, the new
3 girlfriend and the new home. His book, Pat's life,
4 deserved a better ending, a more complete ending. It
5 deserved more time, a longer opportunity to impact the
6 world.

7 Pat was an athlete, number 98. His sports
8 took him all over the community, the state, the country,
9 and even the world. Pat played softball with me together
10 in tournaments, developing reputations for our skills.
11 In the summer of 2018, a friend asked me how does it feel
12 that your brother is better at softball than you are?
13 His story was just beginning to be written, but now that
14 chapter has ended.

15 Pat played dodgeball representing Team USA at
16 Madison Square Garden, 2018, while creating a close bond
17 local teammates and friends around the world. Another
18 beginning with so much promise. That chapter has ended.
19 Pat traveled the region with friends to see music shows.
20 He would reunite with high school friends to catch
21 favorite acts, staying late after those shows to meet
22 their musical heroes. That chapter has ended.

23 Pat was that supportive listener we all
24 relied on when times were down. Everything from late
25 night chats with his sister about life to pep talks to

1 strangers who looked overwhelmed in their environment.
2 Pat presented a positive energy and openness to share it.
3 That chapter has ended. Pat's caring extended beyond his
4 family and friends. He could impact those everyday
5 strangers most of us might take for granted.

6 After his death, we received not just
7 heartfelt sympathies but stories of his kindness in
8 action. I'd like to share a few words from a restaurant
9 worker who served him lunch. "I'm a lot older, of
10 course. He was so kind. We had a lot in common and he
11 always asked about my son. What an amazing soul. He
12 made my minimum wage job feel like a million dollars."

13 When I speak of the community Pat impacted,
14 this is how large it is. When a loved one dies much too
15 young, you realize that a large part of your love,
16 whether it's sports, travel, photography, learning, for
17 just looking forward to tomorrow are because of the loved
18 one's existence. We lose their future and a large part
19 of ours.

20 As the defendant moves on to the next chapter
21 in his life, realize 20 lives will not have a new chapter
22 to write; no more chances to right wrongs; no more
23 opportunities to reach their goals; and no more
24 opportunities to help their families and friends reach
25 theirs.

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1 Our stories are forever changed, littered in
2 sadness, memories and the thoughts of what could have
3 been. I hope that by sharing our memories, we can
4 positively impact those here to hear them just like Pat
5 would. It is all we can do for the chapters that will
6 now go unwritten.

7 I wanted to finish with some words Pat wrote
8 in his younger years. He wrote: "I do hold my head high
9 and wait patiently with hair combed and shoes tied. When
10 will it be my turn?"

11 Well, Pat was just starting to experience his
12 turn and I wish nothing more than if he could be here to
13 experience this. Thank you. Thank you, Your Honor.

14 (Applause.)

15 MS. PIERONE: Olivia Fuller for the family of
16 Amanda Halse.

17 MS. FULLER: My name is Olivia Fuller.
18 Amanda Halse was my best friend and I'm here to speak on
19 behalf of her mother, Martina Halse and the Halse family.

20 We come before you with an impossible task;
21 to convey the impact this tragedy has had on the family
22 of Amanda Halse and all those who knew and loved her.
23 When we lost Amanda, we did not only lose the vivacious
24 26-year-old Amanda who was alive the morning of October
25 6, 2018. We lost the incredible woman Amanda would

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1 become and the future she was working so hard to achieve.
2 As each year passes, we mourn the loss of an Amanda who
3 would become 27, 28, 29, and 30 this coming April.
4 Amanda will always be Martina and Ed's little girl, but
5 now she is frozen in time, robbed of so many good years
6 we should have had left together.

7 Amanda and the 16 other passengers and
8 friends that died that day had made the responsible
9 decision to take a limo to their destination at Brewery
10 Ommegang, a decision that should have kept each of them
11 safe and able to enjoy themselves together.

12 If Prestige Limousine and Nauman Hussain had
13 done the bare minimum to keep their passengers safe, I
14 know in my heart that Amanda would be here with us here
15 today.

16 Amanda was fiercely independent and often
17 said that she didn't need to get married or settle down
18 to be happy. But all that changed when she met Patrick
19 Cushing. The love that grew between Amanda and Patrick
20 opened a new room in Amanda's heart and we all fell in
21 love with Patrick, too. He was kind, funny and we
22 couldn't have imagined a better person for Amanda to
23 spend the rest of her life with.

24 She felt the same and had started to talk
25 about marriage and her future with Patrick in the coming

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1 crash in Schoharie was spreading around us. I reached
2 out to her sister, Karina, to ask if they heard from her.
3 My mind could not go there yet. She had to be on her
4 way. We called Amanda and Patrick and continued to get
5 voicemails. Once the officers arrived at the door, our
6 world collapsed in around us.

7 The loss of Amanda follows us every day.
8 It's a reality we can never escape or wake up from. Some
9 days, her memory brings us joy and we can smile at the
10 signs we see from her. But there are many dark days. No
11 parent should ever have to carry the ashes of their child
12 around their neck.

13 A year after the crash, Amanda would have
14 become an aunt to her brother's precious daughter named
15 Amanda in her memory. While we see a spark of her aunt
16 in her, it's cruel and unfair that she can't pick her
17 niece up and hold her and that she can't be here with us
18 for each new milestone.

19 There will always be a void where Amanda
20 should be, an empty seat at the Thanksgiving table, a
21 room full of her art where she used to sleep, and a
22 bottomless hole in each of our hearts.

23 Your Honor, when you make the important
24 decision before you today, I hope you will think about
25 Amanda's family and loved ones, and each person connected

1 in this painful web of grief caused by the utter
2 negligence and greed of a businessowner who cared more
3 about profit than the safety and well-being of those
4 trusting his service to keep them safe. Thank you.

5 (Applause.)

6 MS. PIERONE: Beth Muldoon, mother of Adam
7 Jackson.

8 MS. MULDOON: Hi. As Erin said, I'm Adam's
9 mom, Abby's mother-in-law, and my husband and I are
10 raising their two little girls.

11 October 6th, 2018 started out as a normal
12 Saturday. Our granddaughters were spending the day with
13 us. However, we would soon realize that this would be
14 one of the most painful and heart-wrenching days of our
15 lives.

16 Archer, who was only four years old at the
17 time, had a soccer game. Abby, her mommy, was her coach.
18 They were already at the field when I picked up Elle, who
19 was 17 months at the time, from Adam. He was not going
20 to the game that day as he was doing some last-minute
21 unpacking in a brand-new house they had just moved into,
22 a house that they bought just a few weeks before. We
23 planned to keep the girls overnight so Adam and Abby
24 could celebrate Abby's sister's 30th birthday.

25 When we arrived to pick up Elle, we had a

1 quick conversation with Allie, no hugs, no I love yous,
2 never thinking it would be our last opportunity to say
3 those words. We let them know our plans for the day and
4 for the night with the girls and he, in turn, told us
5 that they would be leaving shortly after Abby got home
6 from the game. After the game, we spoke to Abby for a
7 bit. She walked with us to the car, and we said our
8 goodbyes, again, never expecting this would be our last
9 time to talk to Abby.

10 We went on with our day which consisted of
11 taking the girls to the apple orchard. Throughout the
12 day, I was texting cute pictures of the girls to both
13 Adam and Abby. It was about an hour into our trip that I
14 realized it was odd I hadn't heard back from either of
15 them. That was unusual for them to not respond right
16 away, but I passed it off as them having a good time and
17 would just catch up later.

18 We arrived home around 4:00 o'clock. I still
19 was a little apprehensive and worry started to set in
20 being I still hadn't heard back. It was around 4:30 or
21 so when I saw a scroll at the bottom of the TV about a
22 wedding party crash. Even though I knew they were not a
23 wedding party, a motherly instinct kicked in. My heart
24 sank. I began calling everyone to see exactly where they
25 were going and if they heard from them.

1 My daughter was my first call. She was
2 incredibly close with them and she always knew their
3 every move. Plus, she was supposed to be in that limo
4 and canceled at the last minute due to work conflicts.
5 She confirmed they were going to Ommegang Brewery and for
6 a split second, I felt relief as I knew that would take
7 them out of the area of the crash.

8 But after several calls to their cellphones
9 and New York State troopers and other friends and family,
10 I began to realize the odds were they were in that
11 vehicle. At this point, I asked my sister to come up and
12 please take the girls for a bit as I was starting to
13 panic and I didn't want them to hear me on the phone.

14 During the next two hours, I continued to
15 call the brewery, praying they were all there, having so
16 much time, and just not checking their phones. I must
17 have called at least 15 times and never once did they
18 answer the phone. This escalated my stress.

19 I spoke to a couple New York State troopers
20 who promised they would call me back if they heard
21 anything. In fact, one I spoke with said he would do
22 some checking and promised to call me right back. I kept
23 the phone attached to me. No one ever called.

24 Around 7:00 o'clock that night, perhaps, a
25 little earlier, I received a call from Abby's mom that a

1 detective was on his way to their house. Clearly, I now
2 knew what I had been dreading all day was about to be
3 confirmed; no one survived the crash.

4 I remember bile coming up into my throat and
5 was later told I fell to the floor. Impossible to
6 believe that my son, my baby boy, was killed in a limo
7 while trying to be safe. I don't remember much more at
8 that point other than, oh, my God, these poor innocent
9 babies have lost both their mommy and their daddy.

10 I thought that night had to be the worst
11 possible day in my life, and it most probably was, but
12 there are so many horribly painful days that have
13 followed. Unfortunately, they all blend together. These
14 girls who I mentioned were only four and seventeen months
15 old, still babies, too innocent and too perfect to have
16 to suffer such a loss.

17 Adam and Abby, two loving and fun parents
18 that doted on their girls were stolen of a lifetime of
19 pride, love, joy and happiness with their baby girls.
20 The girls were robbed of a lifetime of being with their
21 mommy and daddy, a lifetime of playing and sharing all
22 that kids deserve to share with their mommy and daddy,
23 learning and experiencing all that life has to offer with
24 young and active parents.

25 No Halloween, Thanksgiving, Christmas,

1 birthdays, open houses at school, first day of school,
2 last day of school, celebrating report cards. Abby was a
3 teacher; that would have been a big deal. No concerts,
4 doctors' appointments, teacher conferences, dance
5 recitals, soccer and softball practice and games, and so
6 many more milestones. Nothing will ever be as it was
7 meant to be again. There will be no more new memories of
8 mommy and daddy as they grow. Their life with their
9 mommy and daddy ended that day.

10 The days that followed have been painful.
11 While I try to grapple with the loss of my son and
12 daughter-in-law, I needed to push that aside to be there
13 for my two granddaughters. We basically went into hiding
14 for a bit. We needed to protect the girls from the media
15 and people wanting a story. The brand-new house was just
16 up the street from us. They bought this house after many
17 houses we went with them to look at. A perfect location.
18 Walking distance from us, my sister and my niece. Their
19 preferred location.

20 We were with them the day they closed and did
21 the walkthrough with them. Life was good. While this
22 was so wonderful to have them so close, it now became so
23 sad and painful. We could no longer take our normal
24 route when we went out. We needed to take a much longer
25 route to avoid being crushed seeing that now empty house.

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1 It was too hard for Archer. Remember, she was four. She
2 would beg to go up to the house, her new house. She was
3 convinced we would find them there and that I was keeping
4 her from them. She would get angry at me and shout and
5 say she wanted to go to Hardwood, which is the street
6 they lived on, because she knew her mommy and daddy were
7 there.

8 She was in grief counseling. A four-year-old
9 having to deal with such grownup things. I overhear
10 Archer telling her baby sister, Elle, as they're looking
11 at photos, "See this picture, this is our mommy and
12 daddy." Elle, who was way too little at 17 months to
13 even know who mommy and daddy are to this point; Archer
14 who, over time, her memories will fade as well. Seeing
15 the pain on Archer's face while in school or at a
16 playground seeing other kids with their parents, or
17 having to deal with the sadness when other kids ask
18 "Where are your mommy and daddy?" A tight hug from us
19 can't ease or erase that pain.

20 I think the hardest of all for me is the fact
21 that they tried to do the right thing. They tried to be
22 careful. They respected their lives so much and
23 appreciated their role as a mommy and daddy that they
24 hired someone to drive them. They wanted to do the right
25 thing, to be sensible and responsible adults.

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1 Archer and Elle lost their mommy and daddy,
2 their godfather, Patrick Cushing, who was a playmate with
3 them. He spent many nights at their house playing until
4 bedtime. He was just a kid himself. He was also one of
5 Adam's best friends. They lost Godmothers and Aunts Mary
6 Dyson, Allison King, Amy Steenburg and Uncles Rob Dyson
7 and Axel Steenburg that day, something that never should
8 have happened.

9 How do you explain to two little girls that
10 their mommy and daddy did nothing wrong, did the right
11 thing, didn't want to leave them, that they loved them
12 very much but they won't be back, they're gone forever,
13 all because some man took it upon himself to send a
14 malfunctioning vehicle to pick them up to make a buck. I
15 some days wonder if that buck was worth it.

16 How will these girls deal with future
17 achievements and milestones without a mommy and daddy to
18 share? Graduations, boyfriends, college, weddings,
19 buying a house, having their own babies. All things that
20 they deserve to cherish with parents, that's been stolen
21 from them.

22 We haven't gotten an apology which would not
23 bring their parents back, but I sure would like to see
24 some grief, some ownership and accountability for what
25 has been stolen from all of us that day forever.

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1 I have not slept more than four or five hours
2 per night since that dreadful day. My daughter suffers
3 from survivor guilt. She lost her best friends. Our
4 family gatherings are now empty and forced. Gone is the
5 ease and the humor our family once shared. I long for
6 Adam's silly texts and his quick wit, his ability to
7 always put a smile on my face. I was proud of the man
8 and the daddy he was. He told a friend, "I feel
9 important being a dad." Everyone would tell you he and
10 Abby were perfect together, two peas in a pod. That is
11 no longer.

12 While we go through the motions each day to
13 make it through, my heart aches each and every day that
14 goes by. Gone is my sense of humor and my easygoing
15 nature. Instead, I am filled with grief, fear, tears,
16 anger, and resentment. So many sleepless nights. It
17 tears me apart to know how tragically they were killed.
18 They died in a horrible way. Did Adam see his wife die?
19 Did Abby see her husband die?

20 Was there a point when, as the limo reached
21 max speed, where he knew he was going to die? Was he in
22 pain? Was he scared?

23 I'm happy to see tears in your eyes.

24 Did he call out to one of us? Did he scream
25 out knowing he might never see his babies again? These

1 thoughts haunt me daily. They prevent me from sleeping.
2 I know our family can and never will be the same. The
3 deaths are forever. Our hearts ache tirelessly.

4 Our days are now filled with trying to give
5 these two precious girls a life that makes them happy,
6 loved and fulfilled. There are many days we struggle to
7 be our best, but even then, it's never good enough. We
8 are not their mommy and daddy.

9 We parent based on what Adam and Abby would
10 do, how would they handle things. We try to keep their
11 values and their wants in mind at every turn. Our
12 family, our friends and mostly these precious children
13 have lost so much. Clearly, this crash could have been
14 prevented.

15 The person who stands before this Court could
16 have prevented this. All he had to do was take care of
17 this vehicle. Instead, he cut corners again and again.
18 He did not follow any of the rules, regulations or
19 guidelines. Peoples' lives were at stake and were lost.
20 He was chasing the almighty dollar. His punishment
21 should be so much more than what is being considered
22 here. Our punishment certainly has been.

23 I would respectfully like to ask that the
24 Court make sure that his passport be taken and not
25 returned. Thank you.

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1 (Applause.)

2 MS. PIERONE: Janet Steenburg, mother of
3 Richard and Axel Steenburg.

4 UNIDENTIFIED PERSON: I will be speaking on
5 behalf of Janet Steenburg. I am the mother of Rich and
6 Axel Steenburg and mother-in-law of Amy Steenburg, all
7 who perished in the Schoharie limo crash. To say October
8 6, 2018 was a nightmare would be an understatement.

9 MS. STEENBURG: It was the most excruciating
10 pain that one can ever feel. To lose a parent or
11 grandparent is bad enough but an understandable pain due
12 to their age or sickness, but to lose a child is a whole
13 other kind of pain. You don't raise children for
14 somebody to take them for greed because you need to line
15 your pockets with money. You took 17 kids. You killed
16 20 people with your careless act and nobody cares and
17 it's all just this big fucking game, and I'm sorry for my
18 language but I can't hold back.

19 I used to worry about my boys being alone
20 when my time came, but I knew if something happens to me,
21 at least they had each other. Now, they don't. I've got
22 one left. And he's so lost right now. He's been kicked
23 out of the police academy twice, because he can't deal
24 with life. And every time he comes up with any scenario
25 that has to do with an accident, he can't handle it. And

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1 he's on some sabbatical out there on the Appalachian
2 Trail by himself trying to find himself. I have a
3 daughter-in-law who has made so many stupid mistakes over
4 missing her husband that her life is falling apart. I
5 watched my granddaughter sit in her room and refuse to
6 leave. She doesn't want her mother to go anywhere.

7 Every time Kimmy (phonetic) walks out of the
8 house, she calls her 47 times an hour to make sure she's
9 coming back. She was ten when you took her father. Ten.

10 I watched the boys's father who couldn't deal
11 with the stress of losing his children that he actually
12 had two strokes and, now, he's losing all memory. He has
13 no idea that he has children. He has no idea who he even
14 is half the time. The days he does remember, it's
15 October 6, 2018 all over again and he lives it over and
16 over and over again.

17 Every time it's on the news, it's a slap in
18 his face. I watch him fall apart, because it never
19 changes for him. He never gets over it and it never
20 ends, and it never ends for any of us.

21 Mr. Hussain, I hope to God you feel what 20
22 families felt. I hope you feel it for a long time. I
23 hope you live forever and you feel the pain you caused 20
24 families. I hope you live it every day of your life; we
25 certainly do. Nothing's going to change that.

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1 It's not DOT or DMV or even the State Police;
2 you're the one who put those kids in the car, you did.
3 You switched the plates on the vehicle. You put those
4 kids in that car. You sent them to their death, plain
5 and simple. And I'm sorry, but I'm done. Thank you.

6 THE COURT: Thank you.

7 (Applause.)

8 MS. PIERONE: Anthony Huff for the family of
9 Rachael Cavosie.

10 MR. HUFF: In our family, Rachael's and my
11 generation was a close group of cousins. We grew up
12 alongside one another without realizing how lucky we
13 were. We always expected to see everyone, meaning all
14 the cousins at family gatherings. If someone was
15 missing, we'd find out where they were. Once we found
16 out where they were, we'd find out when we could expect
17 them to show up where we were. After all, we needed to
18 field a team for kickball or pick-up soccer and Rachael
19 was the goalie.

20 In addition to the family gatherings, we'd
21 see each other in the hallways, in the gymnasium or out
22 in the bleachers from kindergarten all the way up through
23 high school.

24 Unabashed glee. As little kids, we'd be
25 unabashedly gleeful to see one another. As we got older,

1 and cooler, we tended to play our feelings closer to the
2 vest when we'd bump into each other in public, although
3 under the surface, that cheer was still there. Rachael
4 was the only one who didn't ever play it cool even as we
5 matured. She always let you know she was happy to see
6 you and she tended to do it loudly, unabashedly and
7 gleefully.

8 Maeghan, Drew, Aidan, Evan, Alyssa, Jordan,
9 Daniel, Casey, Justin, Jenna, Nicholas and I are getting
10 older. We're still happy to see one another when we do,
11 but we will never forget who's missing. Rachael Cavosie.
12 The one who made her presence known by making others feel
13 seen and heard. She made others feel like they were
14 right where they belonged, even if they felt shy or
15 timid, especially if they felt shy or timid. And as
16 we've gotten busier with our own lives, my cousins and I
17 still know each other's quirks and individual senses of
18 humor like the backs of our hands. That can't be taken
19 away.

20 What's been wrongly taken away is the person
21 who carried that gleefulness from our childhood with her
22 into our adulthoods. She had the best stories from our
23 shared past, because she loved us the most. She knew
24 what she had with her group of cousins. She knew what we
25 all had. She knew it better than we did.

1 I don't know when I'll drive down a steep
2 grade without thinking of my cousin Rachael. Any time I
3 drive by a fender bender, hear screeching tires or even
4 see a car chase in a movie, I think of Rachael.
5 Sometimes I think of the harshest violence I can fathom,
6 and I guess it's a way to try to understand what took her
7 life. I picture in vivid detail what she saw and
8 experienced throughout the entire event until she passed
9 away. And then I think of how it didn't need to happen,
10 how it should not have happened.

11 I can't help these thoughts, but that is not
12 what makes me sad. What makes me sad is that it seems
13 unfair that I can't really feel what she was made to feel
14 that day. It's usually a loop of anxiety, dread and
15 despondency when these thoughts occur. It's worse
16 leading up to the fall. Then, I'm going to think of it
17 throughout most of the season. It lingers through the
18 holidays when we'd surely be seeing each other at a
19 family party or bumping into each other at a bar or
20 concert. Surely, a big smile and a hug is what I would
21 get from her. And she'd probably express loudly to me
22 that she loved me no matter who was standing nearby.

23 Whatever combination of selfishness,
24 negligence, greed and gross misconduct, to what degree
25 and by which parties, the Court finds led to the life of

1 my cousin being abruptly taken away in such a violent
2 fashion will not bring her back into my life.

3 In aggregate, I hope the Court's sense of
4 justice will somehow do right by my family, the families
5 of the other victims and by my cousin, Rachael. If
6 justice has become too complex a thing to define, I hope
7 the Court's sense of duty and humanity will prevail.
8 Thank you for the opportunity to speak.

9 (Applause.)

10 MS. PIERONE: Mary Ashton, mother of Michael
11 Ukaj.

12 MS. ASHTON: Your Honor, my name is Mary
13 Ashton. I lost my son, Michael Christopher Ukaj, in the
14 horrible Schoharie, New York limousine crash on October
15 6, 2018. Michael had just turned 34 the day of the
16 crash. It was his birthday. 34 years old when his life
17 was snatched from him.

18 Michael served in the United States Marine
19 Corps to defend our country, to defend you, Mr. Hussain,
20 to come back to the United States to be killed in a
21 limousine crash that never should have happened.

22 Michael is my eldest son. I called him my
23 heart. I loved him very, very much. The loss of this
24 can never ever be put into words. I am so very angry
25 that Michael's life was stolen from him. I was unable to

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1 see Michael for six years due to health issues on my end.
2 I was so ill people couldn't even come to visit me,
3 including Michael.

4 The last time I saw my son Michael was
5 Christmas of 2012. I was just starting to get better in
6 2018 when my husband and I were talking about taking a
7 trip to New York to see Michael. Now, I'll never see him
8 alive again.

9 The very last time I saw my baby was on a
10 cold steel table at a funeral parlor. Now, all I can do
11 is stare at his urn and my son's picture. Michael
12 suffered incredible massive internal injuries due to the
13 limo crash on October 6, 2018. I had my primary doctor
14 read the autopsy report for me so she can report back to
15 me what she had found.

16 Before my doctor began to tell me of
17 Michael's injuries, she specifically told me to never
18 ever read that report because it would be too difficult
19 to read it. She said although she didn't know my son but
20 knew me, she had a hard time reading the autopsy report.
21 The injuries my son suffered were horrific. She told me
22 the basics as to the injuries my son suffered.

23 My baby was thrown around in that limousine
24 like a rag doll. I spoke with my doctor on June 2020 and
25 asked again about Michael's injuries so I can write this

1 letter and she refused to repeat anything. All she said
2 was to write Michael suffered massive internal injuries.
3 My primary doctor would not tell me if my son suffered
4 before dying. She would not answer me when I asked if he
5 died immediately. That causes me to believe what my
6 son's autopsy report showed; that he may have laid in
7 that limousine for up to two minutes feeling his life
8 leaving his beautiful body. Damn it, I'm so angry. I'm
9 so angry. Your Honor, I'm so sorry.

10 THE COURT: It's okay.

11 MS. ASHTON: My doctor said I should never
12 read the autopsy report. She said if I read it, it will
13 destroy me. Michael was such a loving son that when I
14 had an operation, he took leave from the Marine Corps so
15 he could come home to help take care of me. Michael also
16 went to live with his grandmother in her last years to
17 help care for her. He was a helper. His loss will
18 forever impact everyone who knew him.

19 My husband's and my life have changed
20 forever. We have all been living through a hell on Earth
21 for the past two and a half years. Living without
22 Michael here has left a hole in my heart that no one will
23 ever be able to understand. The loss is incredibly
24 significant.

25 I feel as if my heart has been torn out of my

1 chest. My soul feels empty. I have lost, literally,
2 literally a part of me. The loss of my son, Michael
3 Ukaj, has been the worst thing I've ever experienced in
4 my life. I feel as if I want to curl up in a ball in a
5 corner of a room and just cry and scream. I loved that
6 boy with my whole heart. I will miss him until my dying
7 day.

8 My husband and my relationship is strained
9 due to losing our son. The grief has caused us to not be
10 as close emotionally or physically as we once were.
11 Grief has certainly impacted our relationship in an
12 extremely negative manner. Since Michael's death, I
13 suffer incredible PTSD. I am still in grief counseling,
14 two and a half years in.

15 The anger that I am experiencing is so
16 intense that my grief counselor recommended that I get an
17 anger management workbook to try to work through the
18 anger I feel from losing my son. I feel anger boiling
19 within me all the time. My son should be alive and
20 walking this earth. I am very, very angry.

21 I have had to start taking an antidepressant
22 to help control the anger. I also startle extremely
23 easily now. I jump at the slightest infraction. If I
24 watch TV or watch a movie or watch the news, something
25 that I see or hear triggers the sadness and grief and

1 brings me back to that day. If I leave the house and see
2 a vehicle, or see anything that reminds me of October 6,
3 2018, I am brought back to that day. My heart gets heavy
4 and literally hurts, and it feels as if a stone has
5 fallen into my stomach. The ache is unbearable. My life
6 has forever been changed. I cry and grieve every day for
7 my son. He should still be alive and well, living out
8 the remainder of his life and, now, he never will.

9 At the time this letter was written, over two
10 years after the crash, my youngest son, David Ashton,
11 aged 27, is terrified of driving a car. He says there
12 are times when he's fearful of even being a passenger in
13 a car at times. His life has been stunted to losing his
14 brother, because he can't bring himself to drive. David
15 is having difficulty finding work due to being afraid to
16 get into a vehicle. David is also in counseling.

17 My family unit has been split due to grief.
18 My daughter, Violetta Ramsey, is now estranged from our
19 family. My middle son, Jeremy Ashton, lost a brother
20 that was very, very close to him. When I asked Jeremy if
21 he was going to write a victim impact statement, he
22 became very emotional and he said he couldn't, because he
23 couldn't relive the trauma that he has been experiencing.

24 He told me he had to keep moving forward to
25 try and get through life. He and Michael were very, very

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1 very close. Our family has been devastated and torn
2 apart due to losing our son. Because I truly believe
3 this crash happened due to negligence, I would like to
4 see any and all entities that were involved in causing
5 the limo to crash to be held accountable to the highest
6 standard the law will allow.

7 My son, as well as 19 other people, are dead.
8 Why? Because an unsafe vehicle, along with an
9 unqualified driver, was put on the road for the sake of
10 making a buck. I want my son back, but I can't have him.
11 Why should other people be allowed to have a life when my
12 son's was snatched from him?

13 Your Honor, I ask that you please prosecute.
14 I would like to see Mr. Hussain in jail to think about
15 how his actions have affected and destroyed so many
16 families and lives.

17 I also believe this case was too big to be
18 held in Schoharie, New York. I believe it should have
19 been moved to Albany where cases of this magnitude are
20 dealt with more often. I don't believe the DA has had
21 enough experience to try this case properly.

22 I am going to miss out on the possibility of
23 a daughter-in-law with Michael, grandchildren. I'm not
24 going to see Michael come for holidays anymore. He's not
25 going to be at the door waiting for me to surprise me for

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1 a visit, because he always wanted to surprise me. Thank
2 you.

3 (Applause.)

4 MR. ASHTON: My name is Kyle Ashton. Michael
5 was my stepson, although we never used the term stepson
6 or step in our family. We were a family. I'd like to
7 apologize to everybody right now. I don't have a
8 cohesive story in place. I have high-functioning autism
9 that I deal with. And for that reason, I have made
10 bullets here of things that will relate to our son,
11 Michael.

12 I was also told we're only allowed to talk
13 about Michael himself, that we're not actually supposed
14 to address the Court and the defendant. Seeing as that's
15 not the case, the first thing I'd like to talk about is
16 failure. The failure of our inspectors on the roadway to
17 continually let a vehicle that never was probably ever at
18 any point in time ever safe to be driven or ride in.

19 The second thing I'd like to say is the
20 failure of both of us having to wait three days to
21 actually find out that our son was killed. And we had to
22 call. We didn't have anybody telling us. We had to call
23 and find out for ourselves.

24 And it looks like failure is going to happen
25 again today with what's been scheduled. I know it's not

1 in the books yet, but I just want you to understand
2 there's been a lot of failure. I can't tell you how many
3 times I've driven down the highway and had some policeman
4 pull me over while I was going five miles under the speed
5 limit, give me a ticket anyway then just to see this
6 whole thing happen. I'll continue with my notes now.

7 These are some of my feelings about the death
8 of my son, Michael Christopher Ukaj. I've lost two and a
9 half years of my life that I will never get back in all
10 of these proceedings and waiting and trying to see what
11 the next thing is that's going to happen, afraid that
12 we're going to be put underneath a barrel some place and
13 left with our thoughts and our feelings and our grief.

14 A lot of times, I feel like I'm lost and I
15 don't know what I want to do. I feel like I'm stuck in a
16 holding pattern, kind of like we have our grandson who
17 will never see his uncle but in that holding pattern,
18 it's like I don't know what to do next. What am I
19 supposed to do with my life? I feel like I'm lost.

20 I'm also afraid that I'm not going to be able
21 to get out of this pattern. I'm afraid I won't be able
22 to get my life started again. There's a lot of things
23 that God, I believe, has for me to do yet in this world,
24 a lot of good things, a lot of good things like Michael
25 did. Search and rescue. Loved on his friends. He was a

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1 good person. He was a terrific person, outstanding.
2 While he was in Iraq serving our country, he became ill
3 and he had some kind of weird parasite tear up his
4 digestive system. He went and re-enlisted anyway only to
5 be found non-deployable and ended up on a medical
6 discharge from the Marine Corps, something that he loved,
7 he loved the Marine Corps, he still would.

8 I've lost interest in many things that I used
9 to like to do; just don't seem to have any spark for life
10 anymore. I'm trying really hard to get around it, but
11 it's just a very painful time.

12 Our son was taken away at a very inopportune
13 time. We were trying to rebuild our family after a
14 seven-year sickness. During that time, I tried to call
15 Michael every month or so just to remain in contact with
16 him. And I've got to thank God today that he gave me the
17 wisdom that every time that I went to hang the phone up
18 with Michael, that I would tell him, "Michael, remember,
19 your dad loves you." So I know that was in the back of
20 his mind always. And all those things weren't always the
21 best and weren't always perfect. That was the common
22 denominator that kept us where we were.

23 When I talk about my family, it's always
24 awkward to stop to say Michael's no longer here with us
25 now. Oh, well, how many children do you have? I have

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1 four but only three of them are here. A very difficult
2 time. Just normal conversation. I sometimes don't know
3 how to respond when I run into Michael's friends. Those
4 who weren't there that day and died, meet or talk with
5 some of them, it's like we only talk about one thing. We
6 can't talk about skeet shooting. We can't talk about
7 gardening or raising livestock or animals or skiing.

8 I liked teaching Michael about remodeling as
9 he was learning about construction. He was very
10 inquisitive about different things that were going on. I
11 remember talking time with him one day when the whole
12 family was together and Mary's mom was still alive and I
13 remember he wanted to rebuild the back porch. So I
14 showed him how to disassemble the building that was there
15 and rebuild it and showed him the proper stages and
16 everything that was going on.

17 And since we've been down at his house now,
18 looking around, I see his prints or his -- I can see him
19 in the things that are on the building. The two of us
20 talked about putting metal roofing on because it lasts,
21 and just talking about electrical and different things.
22 It was fun to be able to communicate with him. Those
23 things are all gone.

24 Shooting was a hobby Michael and I enjoyed
25 doing together. Sadly, I will never be able to shoot

1 with him again. We used to sit around and talk while we
2 were cleaning the guns after shooting. We used to have
3 good conversations. This is something I will gravely
4 miss.

5 I remember when we first started shooting, he
6 was just 16 years old and he said, "Dad, I want my friend
7 Mark to take me out, show me how to shoot a gun." And
8 I'm like, "Buddy, we are going to take you out, we're
9 going to show you the right way." And I'll never forget,
10 after I graduated high school, I was given a shotgun from
11 my parents and I took care of that for all of those
12 years. And shortly after Michael and I started shooting
13 together, I gave Michael that shotgun and it brought back
14 a memory of the first day that we went shooting together.

15 We were walking out to the skeet range at
16 Pine Tree right before the Johnstown and while we were
17 walking out there, he was holding the shotgun and he
18 accidentally dropped it on the ground. I've been caring
19 for this thing like it was something so special for all
20 of my life and he looked down and there was a little bit
21 of a blister on the top of it where it hit the concrete.
22 And he looked up at me with this terror and said, "Geez,
23 dad, I'm awful sorry."

24 I said, "Michael, don't worry about it,
25 buddy. We're going to sit, we're going to think about

1 that for the rest of our lives and remember the terrific
2 time we had when we made that little blister on top of
3 that."

4 It was one of my fondest memories of Michael.
5 I may not have birthed him, but I surely loved him as
6 though I had. Sadly, our youngest son who's 27 is afraid
7 to drive partly due to the limo accident. My
8 five-year-old grandson will never be able to meet his
9 Uncle Michael, which means he's missing out on a big part
10 of his legacy.

11 The rest of the comments that I had on my
12 sheet I prefer not to speak at this time. I thank you
13 all for your time today.

14 (Applause.)

15 MS. PIERONE: Donna Rivenburg, mother of
16 Amanda Rivenburg.

17 MS. RIVENBURG: My name is Donna Rivenburg.
18 I'm Amanda's mother. I heard about the crash at midnight
19 the night of the accident by a phone call from a friend,
20 a best friend of Amanda's. All I heard was "We think
21 Amanda was in a limo accident." I was staying at a
22 friend's house for the night and I screamed and jumped
23 out of bed.

24 By the time I had got to the couch, my friend
25 was sitting next to me Googling trying to find

1 information by listening to what I was saying. I didn't
2 know what to do. My mind was racing in a thousand
3 different directions. He was getting me law enforcement
4 numbers to call and no one had any information yet.

5 I had to then make that phone call to her
6 father. At that point, it was only starting to begin the
7 nightmare that would be the rest of my life. My world
8 was shattered, destroyed. The best thing I ever did in
9 my life may have just been taken away in the blink of an
10 eye after only 29 short years. I couldn't wrap my brain
11 around it, my only child gone.

12 I'll never watch her get married and have
13 children of her own. I'll never be a grandmother. I had
14 to notify my sister and still not knowing if she was even
15 in the limo. Again, still no information and it was now
16 9:00 a.m. Sunday morning. What was I going to tell them?

17 It was the longest 17 and a half hours of my
18 life when two state troopers appeared at the door to tell
19 me my daughter was in the limo that took the lives of 20
20 people. Now, it was true. My world was shattered, my
21 faith was shattered. My life would never be the same.
22 My baby girl was gone.

23 I would never see her beautiful bright smile,
24 sparkling eyes, or hear her laugh as she said "mom" with
25 an interesting story to follow.

1 In the beginning, I didn't eat or sleep which
2 resulted in a large weight loss. I couldn't concentrate
3 on anything. I was in a very dark place. I still don't
4 eat or sleep like a normal person, because my life is no
5 longer normal and never will be.

6 This tragedy affected not only me, her father
7 and our family but the thousand people that came to her
8 wake to say goodbye to her. I had been living with
9 Amanda for three years when she was killed, so she could
10 help me with my expenses due to my limited income. This
11 has put an additional strain on my mental health.

12 This individual needs to receive the maximum
13 penalty allowed for his part in this crash that has
14 destroyed the lives of not only the 20 people killed but
15 the families and friends that this has affected. No
16 one's life will ever be the same. Thank you.

17 (Applause.)

18 MS. PIERONE: Sam Bursese, father of Savannah
19 D. Bursese.

20 MR. BURSESE: My name is Sam Bursese, father
21 of Savannah Bursese, the youngest victim at 24 years old.
22 On Friday, October 5th, 2018, the night before, I talked
23 with Savannah on the phone and I asked her to come to
24 dinner at our house on Saturday, the following evening,
25 October 6th. But she told me that she was going to a

1 saying 20 people killed and that there were no survivors.
2 I had convinced myself that this would be impossible that
3 20 people could have died in one single car accident. I
4 had no idea Savannah was even in the limo.

5 So my wife and I traveled to Albany Medical
6 Center as we were told that this is where one of the
7 survivors and the remaining victims were transported.
8 There was talk, of course, it was only rumor, of a female
9 had survived. And at that moment, I selfishly hoped it
10 was Savannah. And to this day, having now met most of
11 the victims' families, I so regret that thought.

12 With the help of the New York State Police
13 and the specific tattoo on Savannah, we were able to
14 identify her. I never liked any of my daughters getting
15 tattooed; however, at that moment, I was thankful. My
16 physical and psychological trauma are private matters;
17 however, I will say that at my age of 67 years old, my
18 wife, Jeri, in 2008 having been completely run over by a
19 tractor trailer and nearly losing her life, my diagnosis
20 of cancer in 2017 and the loss of Savannah in 2018, I
21 struggle.

22 It really doesn't get any worse than losing
23 your child. I have two awesome daughters and my daily
24 pain is hoping they are well as I now know that it can
25 happen to me.

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1 Savannah was a typical child growing up, the
2 youngest of three girls, finished a four-year degree from
3 Hartwick College, took her LSATS, Law School
4 Administration Test, and was ready to enter law school.
5 She was athletic, strong personality, unwavering
6 integrity and always had a plan. She would have been a
7 great contributor to our society.

8 We would not be here today if Nauman Hussain
9 would have done what was right instead of only caring
10 about his own selfish needs. He was the start of a chain
11 of events that led to the deaths of 20 individuals.
12 There are others responsible; however, his actions, and
13 lack of, set this horrific tragedy in motion.

14 I am certain that he did not wake up the
15 morning of October 6th, 2018 and intend to kill 20
16 people; that, I'm sure of. However, he did wake up
17 several other mornings prior to that date and consciously
18 made decisions that would in time put the lives of the
19 public in grave danger.

20 I know there's been a lot of talk about the
21 felony that he was charged with, the class E felony,
22 discussing about whether it was a violent or nonviolent
23 crime. I can assure you if anyone doesn't think what
24 happened inside that limo as it traveled down that hill
25 at over a hundred miles an hour and impacted a vehicle

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1 and then an embankment was not violent, you are very,
2 very wrong.

3 I ask the Court that Nauman Hussain be
4 imprisoned for the maximum time allowed under the charge
5 he is found guilty of.

6 And lastly, Nauman Hussain killed 20
7 wonderful and beautiful women, men, wives, husbands,
8 mothers, fathers, sisters, brothers, girlfriends and
9 boyfriends in a senseless act of greed and selfishness.
10 Thank you.

11 (Applause.)

12 MS. PIERONE: Kim Bursese, mother of Savannah
13 Bursese.

14 MS. BURSESE: Good afternoon, Your Honor.
15 Mr. Hussain, I would appreciate it if you would look at
16 me while I'm talking to you.

17 My name is Kim Marie Bursese and Savannah
18 Bursese was my daughter. I am a nurse of 40 years, a
19 veteran of almost 32. My job is to care for sick,
20 injured, dying and deceased. I have seen and cared for
21 some horrific things, but the death of my daughter,
22 Savannah, especially the how and why she died is more
23 pain than I have ever endured in my life. It has changed
24 my life and me forever.

25 When Savannah died, a part of me died that

1 day, too. I taught my children to be responsible and to
2 not drink and drive was a big one. She did not drink and
3 drive that day. She did the right thing and it cost her
4 her life, and it cost me my daughter. Try living with
5 that knowledge every day for the rest of your life.

6 That day for me was a nightmare from hell
7 which I cannot seem to wake up from. I live with this
8 horrific nightmare every single day and night of my life.
9 Some days are worse than others. My girls have always
10 been my life. With Savannah's passing, I lost a part of
11 my heart and a part of my soul.

12 When I received the news of the death of my
13 daughter, Savannah, I begged God to take me and spare her
14 her life. Thereafter, when it was confirmed it was her,
15 I was admitted to the ER for tachycardia and chest pain.
16 I am now on cardiac meds. I no longer sleep or eat well.
17 I no longer have the motivation and joy for life that I
18 previously had.

19 I quit my job as a nurse at our local jail,
20 because I had so much anger inside of me and I didn't
21 want it to affect my professionalism as a nurse. I have
22 attended grief counseling. I realize the pain and
23 emptiness will never go away and some day, I will have to
24 learn to live with it.

25 Two of my daughters experienced depression

1 and were very withdrawn immediately after. My youngest
2 daughter, Amirah, continues to hold the pain and loss
3 inside. Every now and then, I get a glimpse of that pain
4 and that loss that she tries so hard to hide. Savannah's
5 father as well holds all his pain and anguish inside.
6 Her stepmother, her grandparents, her aunts, her uncles,
7 her friends and everybody that she came into contact that
8 she worked with or knew feel it. All of this anguish has
9 taken a very hard toll on my family and me.

10 Savannah was a beautiful, vibrant, young
11 woman. She was intelligent, witty and fun. She loved
12 and lived life to its fullest. There wasn't anyone upon
13 meeting her that did not love her. Savannah had just
14 completed her bachelor's degree at Hartwick College in
15 business and undergrad law and her plans were to move to
16 Texas the following spring and pursue her dream as a
17 lawyer, and she would take her bar exam.

18 Her dream was to become a lawyer and purchase
19 a house. She wanted to get married and have children. I
20 will never get to see my daughter graduate. I will never
21 get to see those grandbabies, hold them, love them, as I
22 loved her. Her joy has been stolen from her and from our
23 family.

24 Holidays are no longer the same. There's an
25 emptiness in our hearts and there's an empty chair at our

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1 table. We will no longer have Savannah's beautiful smile
2 that lit up the room as she entered, to hear her
3 laughter, to feel her love. I am no longer able to enjoy
4 the company of my daughter which was almost on a daily
5 basis.

6 Savannah also had a great love for animals.
7 Since her passing, Amirah, my youngest daughter, and I
8 have slowly, with great love, care and respect, been
9 trying to re-home them to their forever homes.

10 Savannah's death was preventable. It was
11 something that should have never happened. And due to
12 greed and total disregard for life, my youngest
13 daughter's life is over.

14 You stole Savannah's life and her dreams from
15 her, myself, her boyfriend, Matt, and all her friends.
16 Although I would never wish you dead, I do wish you to
17 suffer a life of pure hell like I do and the other family
18 members do, all of them that lost their loved ones.

19 I know it's the wrong way to feel, I
20 understand that. But if it were truly an accident and
21 not a very preventable tragedy, I would definitely feel
22 different. You did the very wrong thing. You broke the
23 law. You murdered people by lack of due diligence based
24 on pure greed. You're no different than a mass murderer.
25 You have total disrespect for peoples' lives. Your only

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1 goal was to make money even if it meant the loss of life.
2 If you did one at a time, it would be like a serial
3 killer, but this was mass murder. So our justice system,
4 please -- I'm sorry, I lost my thought.

5 Does our justice system not punish murderers?
6 Does our justice system make plea deals with murderers?
7 Savannah did not get a chance for a plea deal for her
8 life. She did not get a second chance. My daughter,
9 Savannah, is dead. She's dead and never will we see her
10 again, hold her again.

11 I do not want New York State's kindler,
12 gentler laws to come into play here, I want him to serve
13 prison with no parole, life in prison. I want justice.
14 I want justice for Savannah. I want justice for every
15 person that lost his or her life that day. I want to see
16 you feel the loneliness, emptiness, and pain daily.

17 I am begging you, Your Honor, to give
18 everything you can to include prison time if it is able
19 to. I pray for justice. Please do not let Savannah's
20 life and the others be in vain. Let justice be served.
21 Thank you for your time and consideration. That's all,
22 sir.

23 THE COURT: Thank you.

24 (Applause.)

25 MS. PIERONE: Jill Richardson-Perez for

1 Matthew Coons.

2 MS. RICHARDSON-PEREZ: Good afternoon, Your
3 Honor. I'm the mother of Matthew William Coons, one of
4 the unfortunate, young and promising people that was
5 taken from us in the limousine accident in Schoharie on
6 October 6, 2018.

7 The worst day of my life, of my family's life
8 and as well as that of many of my friends here today, the
9 day I lost my 27-year-old son. I was once the mother of
10 four and now the mother of only three. I've been told
11 that I can share with you the impact that this
12 neglectful, senseless act had on me and my family.

13 Impact. A word that brings to mind a large
14 picture of pressure, damage, a negative cause with an
15 even larger negative effect.

16 I could never express in words to you the
17 impact that the loss of my son, Matthew, has had on me
18 and my family, but I will try. I will attempt to express
19 the deep, deep pain in my heart, the physical stabbing
20 and daily ache of emptiness that I have been feeling
21 since October 6, 2018 has caused.

22 I will try to explain to you how it feels to
23 have a piece of you, a part of who you are, your child
24 whom you have loved your whole life and who is only just
25 beginning to make his way in this world, and his life

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1 with his beautiful girlfriend, be suddenly and violently
2 taken from you. To have both of them taken from your
3 life. Young love and promise brutally ended.

4 When I helplessly replay that night and the
5 terrible phone call from my frantic daughter, Ashleigh,
6 crying and asking me "Mommy, where is Matty", and then
7 insisting "Mommy, find Matty". In all the crying and
8 chaos of the call, I was able to decipher that she had
9 received a call at work from a friend, a police officer,
10 that there had been a terrible accident and there was a
11 chance that it may involve a limo that Matt and his
12 friends were in; that a limousine had crashed and it was
13 very bad. Helicopters were air lifting passengers out of
14 the site.

15 She told me Matthew and Savannah had plans
16 that day to go to the Ommegang Brewery with his friends
17 to celebrate one of the girls's birthdays and Ashleigh
18 helped Savannah get ready, that Savannah wanted to look
19 special and "Mommy, she looked so beautiful." She kept
20 saying, "Mommy, find them, please."

21 My heart instantly stopped. You see, Your
22 Honor, I've been down this road once or twice before. It
23 would be a phone call from Matt. He'd been in an
24 accident and it would go something like "Hi, mom. It's
25 Matt. Um, can you come pick me up? I'm okay but we were

1 in an accident. I'm in the hospital or I'm at this
2 address. I'm so sorry, mom. I love you."

3 These phone calls are not good, but this was
4 different. And I began calling Matt over and over and
5 over. Then, life experience had taught me, get clothes,
6 blanket, water, Tylenol, Motrin, something to eat. I
7 don't know what the situation is or what it may be. He's
8 going to need these things. Oh, Savannah, too. Find her
9 clothes, she's tiny, she's so small. I never thought
10 that there was a possibility that I would not be bringing
11 them back home.

12 I started calling the authorities to find out
13 where the accident was. I was told to give them my
14 number; they would call me back. My daughter kept
15 getting different information on where it was, but we
16 were not going to wait. How could we wait? So we set
17 down out on the road.

18 We got on the Thruway, ended up going all
19 different directions based on what calls we were
20 receiving. Finally, I asked my husband to drive to the
21 Fultonville Sheriff's Department because after we had put
22 in calls and no return calls had come back after over an
23 hour on the road, we were hearing nothing official.

24 At the Sheriff's Office, I asked a female
25 officer about the accident. She hesitated. I finally

1 just began to cry, I broke down. The gravity and the
2 reality of the situation began to settle in on me and I
3 told her who I was and that I was looking for my son and
4 his girlfriend. I was now very desperate.

5 I answered all her questions. And after
6 speaking with the supervisor, she returned, gave us a
7 piece of paper with an address to a fire house where we
8 immediately drove.

9 It was very solemn there. Red Cross
10 volunteers spoke with us, asked us questions. They gave
11 us water and assured us that someone would come speak
12 with us shortly. An accident was confirmed. Then, my
13 youngest son, Jacob, who was away at college began to
14 call and Ashleigh, too, was still calling.

15 There was a huge lump in my throat. I was
16 the mom, I was supposed to have all the answers and
17 something was wrong. I knew nothing other than no one
18 was saying anything and I was very scared.

19 I will never forget my husband coming over to
20 take me outside to get some fresh air. I remember him
21 holding me close, hugging me so close I could barely
22 breathe, as he whispered in my ear, "Jill, there were no
23 survivors."

24 I recall falling slowly to the ground as he
25 tried to hold me and crying out loud "No, my Matty, not

1 my Matty", just sobbing uncontrollably and not being able
2 to stand. The very sad faces of the volunteers around
3 us, understanding the violent event and the looks on
4 their faces now. I just couldn't believe this was true,
5 that my beautiful son was gone, my big, strong, loving,
6 muscular son. No, this can't be true.

7 The drive home, numbness, the calls, telling
8 his sister who he lived with that he and Savannah are not
9 coming home. His younger brother who called him from
10 college regularly and he looked up to as a father figure.
11 His older brother, Brad, a bond like none other. His
12 father, his grandmother.

13 Your Honor, as if all this stuff were not bad
14 enough, the very next morning, I knew I needed to talk to
15 Savannah's parents. My heart was doubly broken. We
16 loved Savannah. Her stepmother, Jerilyn, and I were
17 friends so I called her to see how they were doing and to
18 see how Savannah's mother Kim was doing. When I called,
19 I knew immediately from Jerilyn's cheery hello that they
20 were unaware.

21 This was so hard, the hardest. What's the
22 appropriate way to tell someone this when you're not
23 prepared to tell them their daughter died? I called to
24 express my condolences, not to tell them this terrible
25 news. I was not doing well with my son being gone or

1 with Savannah being gone and, now, this chipper voice
2 answers the phone and I know they are unaware. I cannot
3 explain the cold and shaky feeling that went through me
4 as I stumbled with the words in trying to tell them.

5 I remember the never-ending waiting to
6 receive the word of the positive identity of my son,
7 Matthew. We had learned of the accident and the
8 probability of his death only by the knowledge of other
9 friends' deaths in the limousine on Saturday night. On
10 Sunday, Savannah was positively ID'd, but we still did
11 not receive any information in regards to Matthew even
12 after giving painful descriptions of his tattoos.

13 Finally, we received confirmation on Monday.
14 This nightmare continues still over and over in my head.
15 My heart then follows and breaks again for him and this
16 terrible situation. The tears these families have cried
17 at the hand of Nauman Hussain's neglect have not stopped
18 and will never end.

19 Counseling and medication have been a part of
20 our healing, Your Honor, and we could continue this
21 regimen forever, but it will never heal us. We've
22 stopped the counseling and let the reality slowly seep
23 in. Sleepiness nights, holidays without him. He loved
24 the holidays; both he and Savannah did. Everything in
25 life is so different now. Disappointment in knowing that

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1 someone could be so careless and neglectful still boggles
2 my mind.

3 My two sons have developed an inexpressible
4 anger, a bitter and ugly anger over the unnecessary
5 violent death and sudden loss of their brother, a brother
6 whom they spent so much time with and loved, a family
7 bond and memories ended too young.

8 My daughter has lived a life of immobilizing
9 deep pain. Matthew and Savannah lived with Ashleigh and
10 her two daughters. She has been unable to continue her
11 schooling and has had much difficulty focusing on work
12 and changing jobs often. She shared her home and daily
13 life with Matthew and Savannah as well as the
14 responsibility of raising two amazing and bright little
15 girls, girls who adored their Uncle Matt, who played with
16 them and made them happy.

17 These sisters needed him and Savannah and at
18 times depended on them as much as their own mommy to ride
19 to and from school, preparing meals, helping with
20 homework and love and support. A family helping each
21 other in a time of difficult finances. A family full of
22 love and laughter. A grandmother who proudly loved her
23 beautiful grandson, Matthew, and he who, in return,
24 showed such respect and love for her. Her tears and
25 sadness over such a tragic loss of her grandson so young

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1 with a full life ahead of him are heartbreaking.

2 A child should not pass away before a parent
3 and especially not a grandparent. The pain and silence
4 hurt of a stepfather who took pride in the joy of
5 teaching this young man the trade of his business in the
6 hopes that, perhaps, some day, Matthew would be
7 interested in taking the family business over. A man who
8 shared moments with Matthew discussing thoughts on life
9 as adults and expressing and sharing opinions. They
10 fully enjoyed each other's company and becoming family
11 was an honor for each.

12 Your Honor, what would you do? If it were
13 your brother or your son, how would you feel and what
14 would you think? What would the impact be on you? What
15 would your brother do in these circumstances if it were
16 you? I think of these things often.

17 What would you consider justice? If it were
18 Nauman Hussain and his brother, what would he do? I
19 don't ask these questions expecting an answer from you.
20 I just ask them so you can think about your answer.

21 Your Honor, my son Matthew was full of
22 energy, full of optimism, full of plans for he and
23 Savannah, a lifetime of plans and happiness ahead of him,
24 things I will never see. And I hold Nauman Hussain
25 responsible for this. My son was so sweet. I will

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1 always remember how he promised me a grandson, a grandson
2 I don't have. I have four granddaughters and I am
3 blessed with another on the way. I'd like to hope that
4 it would have happened, but we will never know. He was
5 responsible for caring on the Coons's name.

6 I miss my son every day. I miss his
7 wonderful big smile and his amazing heart. I miss his
8 laugh. I am blessed to have so many memories and I thank
9 God for my relationship with Matthew. He was a wonderful
10 happy child and a good and loving son.

11 If you ever wondered how one might calibrate
12 someone's character, I believe one way may be by the
13 attendance at their funeral. And at the time of
14 Matthew's death, it was such a big blur, I'm sure it was
15 for all the families, we managed to get it all together
16 and held his funeral at the school where he attended and
17 played sports.

18 Your Honor, we stopped count after over one
19 thousand friends and family and wonderful people came to
20 pay their respects to my son. I was blown away. I was
21 speechless. I was amazed at that. So many people came
22 and told me beautiful stories of my son and the selfless
23 things he did for them, story after story, over and over,
24 stories I had never known but was not surprised to hear,
25 stories that made my heart swell with pride and yet hurt

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1 more so at my loss. I know my son. I knew he was a good
2 man, but I was prouder than I could ever have imagined.
3 A mother would always want to be so proud of such a man
4 knowing she raised him. This world needs more people
5 like Matthew Coons and like Savannah Bursese.

6 There's nothing that can bring back my son or
7 sweet Savannah or my friends, Erin and her husband,
8 Shane. Nothing will ever change that day for me or my
9 family or these other families, and I wish there were.
10 Our lives will never be the same. And my youngest son
11 will never return to college and my daughter's still
12 unable to get on her own two feet. My granddaughters
13 still cry that they miss their uncle. And my oldest son
14 will never see his best friend again, the person who
15 understood him the most.

16 I pray for you, Nauman Hussain. I pray for
17 the lesson that I hope you learn and will continually
18 learn. I will never understand how you could ever let
19 this happen. It's obvious that you had to know the risks
20 and what catastrophic results can occur in ignoring many
21 failing issues and broken regulations that you were
22 responsible for.

23 Now, the nightmare is yours. Your nightmare,
24 however, will never be as horrific or real as ours are,
25 as mine, the family and friends of the 20 people that you

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1 allowed to be killed that day. Even at the cost of your
2 own employee's life, your nightmare is not our nightmare;
3 it is different.

4 Your justice does not justify the ignorance.
5 You will be able to be free in time, free to do things
6 our children will not ever be able to do. You can marry,
7 you can have children, you can enjoy love and life, you
8 can grow old, you can live. Freedom should not be so
9 easily given when a felony has been committed to this
10 degree. And I am sad to think that this is all that our
11 children's lives were worth, according to the law.

12 Lastly, my heart will never be whole or feel
13 happiness ever again, because part of my heart is forever
14 gone from this earth. It's gone with Matthew who was
15 carelessly and recklessly taken away at the hands of
16 Nauman Hussain. His innocent soul, these beautiful young
17 promising people taken from us. With them, they've taken
18 a piece of each of our hearts needlessly robbing this
19 world of so many gifts and talents and such joy from our
20 lives.

21 God is gracious and may he forgive Nauman
22 Hussain. That is something as a Christian I am trying to
23 work on. The prophet Mohammed said: "If you cheat us,
24 you are not from us." We have been cheated. My heart
25 will never be happy or whole again. My son is forever

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1 gone. He did not deserve this. I did not deserve this.
2 And we did not deserve this.

3 Thank you, Your Honor, for giving us the
4 time, all of us, to express what impact we've had. And
5 Nauman Hussain, thank you for listening to our words.

6 (Applause.)

7 THE COURT: I previously read all the
8 statements. As I said, I read them, read them again, and
9 I've heard all the statements here today. Uniformly, the
10 statements attest to the goodness, kindness and humanity
11 of the victims. Plus, the letters all describe the
12 everyday anguish, sorrow, and sense of loss suffered by
13 family members and friends.

14 As a Judge, I'm required to put emotion
15 aside. I'm having difficulty. I am also human and offer
16 you all my deepest sympathy. Your loss is unfathomable.

17 In an instant, 20 people lost their lives,
18 leaving behind grieving families, friends and an entire
19 community. We are all here today hoping for justice.
20 However, whatever's done here today cannot do what
21 everyone wants; to go back to October 6, 2018, minutes
22 before 1:55 p.m., and stop this accident from happening
23 and, thus, prevent the deaths and resultant loss and pain
24 of families, friends and, indeed, the whole community.

25 Nothing done here today in this court can

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1 change the horrible, tragic facts that 20 loved
2 individuals are dead. No matter what is done today, the
3 Criminal Justice System cannot undo the tragedy that
4 occurred on October 6, 2018. All it can do is try to
5 ensure a fair and just resolution of this criminal case
6 and, hopefully, in the process, attempt to highlight
7 failures that allowed this horrible incident to occur and
8 hope that these failures can be seriously looked at and,
9 if possible, be remedied so that nothing like this ever
10 happens again.

11 I understand that many people, with good
12 reason, feel the proposed sentence here is way too light;
13 20 people are dead. How could the Justice System even
14 contemplate a sentence that does not impose decades of
15 incarceration? This certainly is not an unreasonable
16 opinion.

17 I take to heart the expressions of one of the
18 victim statements, I quote: "I hope the Court's sense of
19 justice will somehow do right by my family. I hope the
20 Court's sense of duty and humanity will prevail."

21 While I have this opportunity, I want to take
22 a few minutes to try to explain the reason the District
23 Attorney is urging the Court to accept the proposed
24 disposition and point out some of the failures of others
25 that likely played a part in this tragic accident.

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1 In this regard, I urge everyone to read the
2 Plea Agreement and the September 29th, 2020 Highway
3 Accident Report by the National Transportation Safety
4 Board. None of what I say today are findings of this
5 Court. My statements are taken from what has been
6 presented to the Court by the District Attorney and the
7 Defense, together with the very thorough report of the
8 National Transportation Safety Board.

9 I present these contentions to try to explain
10 what was presented. By felony complaint dated October
11 10th, 2018, four days after the tragic crash, defendant
12 was charged with Criminally Negligent Homicide with
13 respect to each death. On April 5th, 2019, defendant was
14 indicted for 20 counts of Manslaughter in the Second
15 Degree and 20 counts of Criminally Negligent Homicide.

16 After the Indictment was filed, the District
17 Attorney continued her investigation and the National
18 Transportation Safety Board conducted a detailed and
19 thorough investigation and study. The District
20 Attorney's further investigation led the District
21 Attorney to reconsider the propriety of the Manslaughter
22 charge, an element which requires the defendant
23 recklessly or consciously disregarded a risk.

24 This led the District Attorney to the belief
25 that the appropriate charge was Criminally Negligent

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1 Homicide based upon the defendant's failure to perceive a
2 risk. Criminally Negligent Homicide is a Class E felony
3 for which a possible maximum indeterminate term of
4 imprisonment of one and one third to four years may be
5 imposed.

6 Because all of the offenses were allegedly
7 committed through the same omission, even though there
8 are 20 deaths, the law requires each sentence to run
9 concurrently, that is, at the same time. Accordingly,
10 the maximum term of imprisonment in this case would be a
11 total of one and a third to four years.

12 The limousine in question was owned by
13 Prestige Limousine, a company operated by the defendant.
14 The cause of the accident was brake failure of the 2001
15 Ford Excursion stretch limousine. Due to poor
16 maintenance of the 2001 Ford Excursion, the right rear
17 brake was not working and the left rear brake had reduced
18 functioning.

19 While descending the hill on Route 30, the
20 limited functionality of the rear brakes caused the limo
21 to rely on the front brakes. The front brakes generated
22 extreme heat which could not be dissipated. This extreme
23 heat caused the brake fluid to boil, which generated air
24 bubbles in the fluid. The air in the brake system caused
25 the front brakes to fail.

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1 Thus, although the driver applied the brakes
2 while descending the hill traveling south on New York
3 State Route 30, the brake system failed to slow the
4 limousine down and the tragic crash ensued.

5 One of the statements submitted to the Court
6 and expressed here today says, "I think the person who
7 failed to teach you", referring to the defendant, "right
8 from wrong should also be charged in the slaughter of
9 that day."

10 Defendant's father left his son in control of
11 a passenger transportation business he should have known
12 was not at the time complying with pertinent safety
13 rules, regulations and laws. The father apparently had
14 left the country and has not returned.

15 After defendant's arrest, numerous issues
16 regarding other persons' potential culpability were
17 identified by the District Attorney and the National
18 Transportation Safety Board. I'm going to outline some
19 of the arguments of defendant's culpability.

20 Despite numerous warnings and Notices of
21 Violation issued by the New York State Department of
22 Transportation, Prestige Limo and Chauffeur Service
23 violated the law by transporting passengers without
24 having proper operating authority.

25 Prestige was operating a limo in poor

1 the District Attorney's Office of a billing practice
2 where certain services were substituted on invoices for
3 ones actually performed, thereby resulting in inaccurate
4 information on invoices.

5 The manager also stated that while the May
6 11, 2018 invoice reflects that a brake system flush was
7 performed, in order to remove the brake fluid from the
8 2011 Ford Excursion's brake system and replace it with
9 new clean brake fluid, thereby removing air, moisture,
10 sludge and other contaminants that impair braking
11 ability, in fact, the brakes were only bled so as to
12 purge the braking system of air bubbles.

13 The evidence shows that Mr. Hussain paid
14 Mavis for certain brake services, but such services were
15 not described or reflected accurately on the Mavis
16 invoices.

17 The District Attorney concedes that the
18 evidence shows that the Mavis invoice of May 11th, 2018
19 did not accurately reflect services performed.

20 The National Transportation Safety Board also
21 identified issues concerning New York State's
22 culpability.

23 One: The New York State Department of Motor
24 Vehicles failed to verify information in its registration
25 program which allowed the limousine to be incorrectly

1 classified and registered. Defendant was, thus, able to
2 circumvent the more thorough state safety and inspection
3 requirements that may have prevented the crash.

4 New York State failed to ensure that Mavis
5 adhered to policy that prohibited them from inspecting an
6 altered vehicle.

7 The limo was, thus, allowed to undergo annual
8 inspections rather than the more rigorous semiannual New
9 York State Department of Transportation's bus safety
10 inspections.

11 Three: New York State did not provide
12 effective oversight of Mavis stations which performed
13 inadequate inspections of the crash limo that failed to
14 detect serious safety deficiencies before the crash.

15 Four: New York State Department of
16 Transportation's ineffective enforcement and lack of
17 repair verification allowed defendant to continue to
18 transport passengers despite, one, not having operating
19 authority and, two, failing to repair out-of-service
20 violations that compromised the crash vehicle's safety.

21 Five: The Department of Transportation's
22 enforcement that allowed the limo to continue operating
23 after being cited for serious out-of-service violations
24 was inadequate.

25 There were issues identified regarding the

1 driver. The driver was not properly licensed to operate
2 the subject vehicle. The driver also provided false
3 information in obtaining his medical certification to
4 operate a commercial vehicle and tested positive for
5 marijuana, THC, in his autopsy.

6 Two: There are issues as to why the limo was
7 even on Route 30 heading downhill to the New York State
8 Route 30 and 30A intersection. This was not the way to
9 Ommegang Brewery from Amsterdam.

10 The National Transportation Safety Board
11 indicated that substantial guidance exists for commercial
12 drivers on what actions to take to properly traverse a
13 grade such as this involving loss of brakes. The
14 evidence did not establish whether or not the driver
15 applied the parking brake or put the vehicle in a lower
16 gear as is recommended.

17 Vehicle alteration. The 2001 Ford Excursion
18 SUV was altered into a stretch limousine by 21st Century
19 Coachworks. The alteration entailed cutting the SUV's
20 factory frame, increasing its wheelbase and overall
21 length so that the vehicle met the definitions of a bus.

22 The alterer failed to register as required.
23 The alterer was required to affix a certification label
24 to the vehicle stating the weight limit at the time the
25 brake system was certified. At the time of the crash,

1 unjustifiable risk that such result will occur and when
2 that person fails to perceive that risk in a situation
3 where the offender has a legal duty of awareness.

4 More than an obscure or merely probable
5 connection between the defendant's conduct and the
6 victims' deaths is required to support a homicide
7 conviction. Rather, an act qualifies as a sufficiently
8 direct cause where the ultimate harm should have been
9 reasonably foreseen.

10 The parties and experts agree as to the cause
11 of the accident, although citing the delay in gaining
12 access to the crash vehicle due to the District
13 Attorney's reluctance to allow them access, the National
14 Transportation Safety Board states that it cannot
15 specifically say why the brake system failed.

16 The District Attorney, the defense and the
17 National Transportation Safety Board, however, all agree
18 that the rear brakes were poorly maintained and several
19 components in the rear braking system had not appreciably
20 been working prior to the crash.

21 Given the poor condition of the rear brakes,
22 the burden of braking was placed on the front brakes.
23 This extra burden increased the front brake temperature.
24 With the limousine's heavy load of 18 passengers, the
25 long descent as it approached the intersection of New

1 York State Route 30 and 30A, and the increase in brake
2 temperature, the front brakes, the only operational
3 brakes, failed or lost their effectiveness.

4 The vehicle was solely serviced by Mavis.

5 The District Attorney submits that defendant
6 failed to perceive a substantial and unjustifiable risk
7 of death relating to catastrophic brake failure arising
8 from the defendant's decision to have the brakes
9 inspected by Mavis rather than subjecting the vehicle to
10 the required Department of Transportation's semiannual
11 bus inspection.

12 The District Attorney further submits that
13 the defendant failed to properly maintain the braking
14 system and ignored out-of-service directives which
15 created a substantial and unjustifiable risk of death
16 relating to catastrophic brake failure.

17 In response to the District Attorney's
18 position, the defense submits there is evidence to the
19 contrary. Mavis was the sole service provider for this
20 vehicle and is a nationally known mechanic with
21 approximately 500 fully equipped service centers in 13
22 states.

23 Mavis' manager told defendant in a recorded
24 exchange on May 11th, 2018 that "I'm the only place that
25 works on 20-passenger limos."

1 The defendant argues that he had a reasonable
2 belief that Mavis was capable of servicing the vehicle.

3 And on May 18, 2018, the defendant asked
4 Mavis to check the brakes; thereafter, Mavis performed
5 brake work and the vehicle passed inspection.

6 A Department of Transportation specialist,
7 after previously inspecting the limousine and issuing a
8 violation for deficient brakes on March 21st, 2018,
9 performed a follow-up inspection after May of 2018, brake
10 work on September 4th, 2018, only 32 days before the
11 October 6th, 2018 crash, and no longer reported any
12 deficiency with respect to the brakes.

13 Following the September 4th, 2018 inspection,
14 the Department of Transportation's specialist placed an
15 out-of-service sticker on the 2001 Ford Excursion for
16 three violations relating to a dangling ABS line, not a
17 cause of the accident, a missing federal sticker, and
18 emergency exits.

19 While the District Attorney submits that the
20 defendant removed that sticker, both parties agree that
21 the 2001 Ford Excursion was not placed out of service for
22 defective brakes at that time and that none of these
23 violations was the proximate cause of the vehicle's
24 catastrophic brake failure.

25 Accordingly, the defense, prior to reaching

1 the disposition contained herein, has taken the position
2 that, one, defendant's decision to have the vehicle
3 serviced exclusively by Mavis does not constitute a gross
4 deviation from the standard of care that a reasonable
5 person would observe in the situation; and, two, the
6 proximate cause, that is, legal cause, of the 2001 Ford
7 Excursion's catastrophic brake failure was Mavis' failure
8 to properly service the vehicle and was not foreseeable
9 consequences since the brakes had recently been serviced.

10 The National Transportation Safety Board
11 issued a Highway Accident Report dated September 29th,
12 2020, which documents apparent failures relating to the
13 inspection of the 2001 Ford Excursion by third parties.

14 And I will make my statements today available
15 to the public. If you want to contact the Court, we will
16 mail you a copy or e-mail you a copy. And I do have some
17 endnotes to give you.

18 In light of the circumstances set forth
19 above, the District Attorney and the defense submit to
20 the Court that neither party can predict the outcome of a
21 prospective jury trial. Yet, both parties seek an
22 assured resolution to guarantee finality in this highly
23 emotional case for the benefit of all touched by the
24 tragedy at the center of it.

25 The parties also acknowledge the

1 circumstances surrounding the COVID-19 pandemic that has
2 caused an ongoing delay of trial and release of many
3 nonviolent criminals from incarceration.

4 Furthermore, the parties acknowledge Mr.
5 Hussain's compliance with the GPS ankle bracelet since
6 April 11th, 2019, and his compliance with the Schoharie
7 County Department of Probation's pretrial services.

8 Additionally, the parties recognize that in
9 the absence of this agreed-upon plea, Mr. Hussain would
10 maintain his Fifth Amendment privilege against
11 self-incrimination throughout these proceedings unless
12 and until a final judgment of conviction is entered, if
13 at all, following a trial.

14 In contrast, in accord with this Plea
15 Agreement, Mr. Hussain shall forfeit such privilege,
16 thereby subjecting him to civil testimony under oath
17 concerning his conduct and interactions with, among
18 others, Mavis.

19 Moreover, the defendant's judgment of
20 conviction and related plea allocution may be used in
21 civil litigation in order to advance the interests of any
22 or all family members of the decedents involved therein.
23 The parties understand that the recovery of civil damages
24 may lessen the hardship endured by those aggrieved in
25 this matter.

1 The District Attorney and Defense jointly
2 submit to the Court that a disposition of probation for a
3 period of five years is appropriate based on the
4 considerations I have tried to set forth and as set forth
5 in the Penal Law.

6 First, institutional confinement is not
7 necessary for the protection of the public, as the
8 factual basis for the disposition would be an inadvertent
9 omission, i.e., criminal negligence, rather than a
10 conscious affirmative act, i.e., recklessness.

11 One of the terms of his probation is that he
12 not ever be involved or at least during the term of his
13 probation jurisdiction in any business that would be
14 involved with public transportation. I know one person
15 mentioned his passport. Probation would require him to
16 remain in the jurisdiction unless they give approval.

17 The defendant has a limited prior criminal
18 history; and the defendant has exhibited an ability to
19 follow the law during the pendency of these proceedings
20 as evidenced by his full compliance with bail conditions,
21 which have included the imposition of restricted travel,
22 his regular in-person reporting with the Schoharie County
23 Department of Probation's pretrial services and
24 electronic monitoring.

25 Second: The defendant would benefit from

1 special conditions administered through probation
2 supervision.

3 Third: The disposition would serve the ends
4 of justice for compelling reasons, including the
5 mitigating facts and circumstances as set forth above,
6 the desire for an expeditious and final resolution of
7 these proceedings, thereby avoiding the emotional toll of
8 a trial and potential appeals; and the fact that the
9 defendant's liberty will have already been, by the time
10 of the defendant's plea, meaningfully restricted by
11 travel prohibitions and electronic monitoring for over
12 two years.

13 The proposed disposition here is two years of
14 interim probation followed by three years of regular
15 probation. The two years of interim probation will give
16 defendant the opportunity to prove himself before
17 receiving sentence and will also allow this Court to
18 maintain jurisdiction over the defendant; thus, allowing
19 this Court to monitor his compliance with the terms of
20 his probation and make sure he completes the thousand
21 hours of community service which he must perform at a
22 minimum of 125 hours per quarter.

23 The defendant will also at the time of
24 sentencing be required to pay restitution to Schoharie
25 County for the rescue services and emergency services.

1 a roadside inspection in September of 2018 by New York
2 State, the vehicle was placed out of service by New York
3 State inspector but not for the brake issues that led to
4 the tragic crash.

5 Thus, as detailed, both the District Attorney
6 and Defense have expressed uncertainty and both sides
7 wish to bring certainty to this case and finality for the
8 sake of the families. Although there is no jail time
9 being imposed, the defendant is pleading guilty to 20
10 felonies.

11 Defendant has been monitored by a GPS
12 bracelet since his arraignment in April 2019. He's also
13 complied with all requirements of the Schoharie County
14 pretrial release program. Defendant has a very limited
15 criminal history. He will be required to perform a
16 thousand hours of community service over the next two
17 years, community service approved by this Court.

18 One of the victims' families thought maybe he
19 should be forced to attend some autopsies. I don't think
20 that's a bad idea. He will also be on probation for five
21 years. And as I said, if he violates his probation at
22 any point, he could be resentenced to any sentence
23 allowed by law; in his case, one and a third to four
24 years incarceration.

25 Importantly, by pleading guilty, the

1 defendant will have admitted his criminal negligence
2 under oath. Such will allow this to be used in a civil
3 action.

4 Moreover, by pleading guilty, the defendant
5 no longer has a Fifth Amendment right to remain silent.
6 Thus, he can be compelled to testify in any civil action.
7 Both the District Attorney and Defense have proposed this
8 disposition to the Court and subject to defendant's
9 compliance with interim probation, the Court intends to
10 accept it.

11 It is not something I do lightly. I have
12 given it many hours of thought. It just does not seem
13 right that 20 people are dead and the defendant receives
14 a sentence of probation and community service. But there
15 are factual issues regarding defendant's guilt and this
16 guilty plea brings closure to the families, at least with
17 respect to this case.

18 Of importance also is that it is not alleged
19 that the defendant did any intentional crime and, if
20 convicted of all 20 crimes alleged, would not face a
21 maximum sentence of decades of incarceration but a
22 maximum sentence of one and a third to four years
23 incarceration.

24 In addition, this tragic accident has brought
25 to light several issues regarding weaknesses in the

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1 regulation and enforcement of regulations regarding
2 limousines. New York has already instituted corrective
3 statutes. It is horrible that these changes only came
4 about because of this tragedy.

5 Sadly, the Justice System cannot order us to
6 go back in time to undo the tragic events of October 6,
7 2018 and bring back the loved ones you all lost. This
8 Court can only do its best to apply the law as it exists
9 to the facts presented to it, treat everyone with respect
10 and, above all, leave everyone with the knowledge that
11 the proposed disposition was carefully considered and is
12 just and fair.

13 I truly appreciate everyone's patience in
14 allowing me this time to explain the thinking behind the
15 proceedings today. I sincerely hope it provides some
16 helpful information.

17 So at this time, I do have the terms of
18 interim probation and I have agreement by the defendant
19 sentenced to interim probation being extended and I have
20 the Son of Sam disclosure. I didn't bring extra copies
21 for the Son of Sam, but I'll have my secretary mail those
22 out tomorrow.

23 FEMALE VOICE: I hope you rot in hell,
24 asshole.

25 (Pause in the proceedings.)

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1 THE COURT: Mr. Hussain, you listened to a
2 lot of statements. Hopefully, you take some of what was
3 said to heart and really see the effects in person, think
4 if it was your family and, you know, go forward with the
5 rest of your life.

6 You're getting any benefit of the doubt from
7 the District Attorney. And hopefully, you can go forward
8 and justify that and maybe make up something to these
9 families so that -- you know, I don't know what you can
10 do to alleviate their pain. There's probably nothing.
11 But if they see you've done something good, you know, use
12 your community service and maybe go well and beyond but,
13 you know, please don't forget these people.

14 MR. TACOPINA: Your Honor, just on Mr.
15 Hussain's behalf, obviously, this is a little bit unique,
16 this proceeding, because we're at the plea stage.
17 Normally, he wouldn't say anything. Rest assured, Mr.
18 Hussain has a lot to say and will say plenty at his
19 sentencing.

20 But I will tell you this: On behalf of Mr.
21 Hussain, all of us here, we've been profoundly affected
22 by the pain that was displayed here today profoundly.
23 Personally, I'm overwhelmed by the grace of these victims
24 and their family members and by their courage to come up
25 here and do what they did today. I don't know how I

1 would be able to do. I know Mr. Hussain was moved and
2 listened to every single word that was said and will take
3 every single word, no matter how painful or harsh those
4 words were, to heart and will absolutely learn from this
5 and will do something to better himself. Whatever can be
6 done for these people will be done.

7 I just want to express our gratitude for
8 their courage and their grace and the whole process was
9 absolutely horrific, but I appreciate the Court's
10 demeanor throughout. And again, the impact here has been
11 made by these people, I assure you.

12 THE COURT: No, I agree. You all have shown
13 amazing grace. And as I said, it's unfathomable what
14 you've gone through. All of you had thoughtful touching
15 statements. And I'm a father, too. So I (inaudible).

16 That'll conclude the proceeding. Thank you,
17 everybody.

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C E R T I F I C A T I O N

I, **THERESA L. ARDIA**, Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

THERESA L. ARDIA, CSR, CRR, RPR, RMR

Dated: October 31, 2021.

THERESA L. ARDIA, CSR, CRR, RPR, RMR
SENIOR COURT REPORTER
518-453-6999

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: THIRD DEPARTMENT

-----X
In the Matter of a Proceeding under Article 78 of the CPLR
for a Writ of Mandamus,

NAUMAN HUSSAIN,

Index No.

Petitioner,

– against –

**Petitioner’s Affidavit in
Support of Petition for a
Writ of Mandamus and
Stay**

HONORABLE PETER LYNCH, in his official
capacity as a Schoharie County Judge,

Respondent.

-----X

STATE OF NEW YORK)
)ss:
COUNTY OF ALBANY)

NAUMAN HUSSAIN, being duly sworn deposes and says:

1. I am the Petitioner in the above-captioned action and submit this Affidavit in support of the instant Petition for an Order (a) compelling Respondent, Honorable Peter Lynch (“Judge Lynch”) of the Schoharie County Court, to reinstate my previously entered plea of guilty and sentence me to probation pursuant to the terms of my plea agreement, and (b) staying my criminal prosecution until the instant Petition is decided.

2. On September 2, 2021, I pled guilty pursuant to a written plea agreement.

3. During the plea proceeding, prior to entering my plea, the Court advised me, “Now, the plea you’re entering today is the result of an agreement worked out between your attorney, the district attorney and the Court.” The Court further informed me that, pursuant to that agreement, if I pled guilty to all 20 counts of criminally negligent homicide in my Indictment and completed at least 125 hours of community service every three months as a

condition of interim probation, the Court intended to sentence me to five years of probation with credit for my time served on interim probation. Specifically, the Court stated to me, “Both the District Attorney and Defense have proposed this disposition to the Court and subject to [my] compliance with interim probation, the Court intends to accept it.”

4. I relied upon my written plea agreement and took the Court’s words and assurances to heart, including its promise that it intended to sentence me to probation under the terms of the Agreement if I complied with interim probation. Accordingly, based upon the terms of my plea agreement and the Court’s assurances, I pled guilty to Counts 21 through 40 of the Indictment. Additionally, following the entry of my guilty plea, to ensure that I complied with my interim probation, I performed in excess of the minimum of 125 hours per quarter mandated by the Court as part of my Agreement. In particular, between September 21, 2021 and August 17, 2022, I performed 572½ hours of community service over the course of 84 separate days, frequently working eight and a-half hours per day. True and accurate copies of Community Service Work Time Sheets issued by the Schoharie County Community Service Program, which were signed by county representatives who supervised my community service, are annexed to the Verified Petition as Exhibit E.

5. During the course of my community service, I provided free services to three separate entities. First, I performed manual labor at the Regional Food Bank of Northeastern New York, located in Latham, New York, where I examined and collated produce, weighed and labeled inventory, and physically moved boxes, including placing them on pallets. Second, I worked at Hope 7 Food Pantry in Troy, New York, where I gathered food, prepared boxes containing such food, and distributed them to indigent people. Third, I worked at a community center in Albany, New York, which provided free gym access to the public. In particular, I

performed intensive physical labor, as I swept and cleaned gym machinery, which included removing and restacking heavy weights. In addition, I assisted a personal trainer who provided services to both children and adults, checked people in at the front desk, handed out gym equipment, and assisted in opening and/or closing the facility.

6. My commitment to community service, stemming from my reliance upon the plea agreement, caused me professional hardship. Specifically, in November of 2021, I began operating a start-up marketing company. However, due to the time necessary to satisfy my community service obligations, I could not invest comparable time towards developing my business, which has suffered as a result.

7. In addition, as the Court explained during my plea proceeding, in accord with my plea agreement, I would forfeit my Fifth Amendment privilege, thereby subjecting me to civil testimony under oath concerning my conduct and interactions with, among others, Mavis Discount Tire. Consistent with such relinquishment as described by the Court, on February 11, 2022, I subjected myself to a videotaped deposition in a civil litigation relating to the subject limousine accident, thereby voluntarily exposing myself to civil liability. But for my plea agreement, I would have asserted my Fifth Amendment privilege at that civil deposition.

8. Based on my compliance with my plea agreement and interim probation, I fully expected that the Court, as it informed me previously, would sentence me on August 31, 2022 to five years probation with credit for my time served on interim probation, pursuant to the terms of my plea agreement. Consequently, I was shocked and distraught when Judge Lynch stated the Court would not abide by the plea agreement and would instead sentence me to 1_ to 4 years in prison if I did not let the Court know within approximately 15 minutes that I was withdrawing

my guilty plea.

9. Although I spoke to my counsel during the limited time which the Court gave me to make my decision, I was emotionally distraught and had difficulty concentrating as a result of what just occurred in the courtroom. By way of background, 2½ years earlier, I was informed that the plea agreement was being drafted with the understanding that both the prosecution and the Court would accept a probationary disposition of my case subject to my compliance with certain conditions. As a result, for the 2½ years preceding my sentencing, I contemplated that I would be receiving probation. Being given about 15 minutes after all that time to have to suddenly consider an alternative sentence was not enough of an opportunity for me to make a fully informed decision with a clear head.

10. Adding to my distress was the fact that, while on interim probation, I became engaged, believing that my fiancée and I would not be separated due to my imprisonment given the Court's prior representations, the terms of the plea agreement, and my compliance with both that agreement and my interim probation. Both my fiancée and my brother were present when I spoke to my counsel about how to proceed. However, because my fiancée was crying, I sought to console her, which made speaking with my counsel even more difficult. Before I could make, and communicate to my counsel, a definitive and clear decision, I was informed that Judge Lynch wanted my counsel and me to return to the well of the courtroom.

11. I did not want to vacate my plea on August 31, 2022. What I wanted was for the Court to sentence me to the agreed upon disposition of probation with time served for my interim probation. Although the Court vacated my plea, I am not in the position I occupied before pleading guilty. I agreed to wear a GPS monitor up until the time of my plea even though I understood it was unwarranted based on the passing of new bail legislation in 2020.

Specifically, I was informed that the Court wanted such condition to remain in effect until my plea proceeding, so as to not upset the decedents' family members. I also waived my Fifth Amendment privilege and testified at a deposition in a related civil case, such that my statements can now be used against me civilly. And I also performed 572½ hours of substantial community service. Vacating my plea cannot undo all of these detriments.

12. Accordingly, what I seek is for my previously entered guilty plea to be reinstated and the Court to sentence me, pursuant to its prior representations and the plea agreement, to five years probation with credit for time served on interim probation.

13. Additionally, I seek a stay of the criminal prosecution against me until the instant petition is decided.

WHEREFORE, deponent respectfully requests that this Court grant this Petition, as well as such other and further relief as may be just, proper and equitable.



NAUMAN HUSSAIN

Subscribed and sworn to before me
on this , day of November, 2022



Notary Public

LEE C. KINDLON
Notary Public, State of New York
No. 0206064706
Qualified in Albany County
Commission Expires Dec. 16, 2026

STATE OF NEW YORK
COUNTY OF SCHOHARIE COUNTY COURT

People of the State of New York,

- against -

Indictment No: 2019-33

NAUMAN HUSSAIN,

Defendant.

**Statement by Hon. George R. Bartlett, III
Explaining Reason for Accepting Plea Agreement
Made in Court on September 2, 2021**

Copies Provided to:

Hon. Susan J. Mallery, District Attorney
Lee C. Kindlon, Esq. , Defense Attorney
Joseph Tacopina, Esq., Defense Attorney
Chad D. Seigel, Esq., Defense Attorney

Statement

I have heard the statements here today and have carefully read all the victims' impact statements. Uniformly, the statements attest to the goodness, kindness, and humanity of the victims. Also, the letters all describe the every day anguish, sorrow and sense of loss suffered by family members and friends.

As a Judge, I am required to put emotion aside, but I also am human and offer you all my deepest sympathy. Your loss is unfathomable.

In an instant 20 people lost their lives, leaving behind grieving family, friends and an entire community.

We are all here today hoping for justice. However, whatever is done here today cannot do what everyone wants, to go back to October 6, 2018 minutes before 1:55 p.m. and stop the accident from happening and, thus, prevent the deaths and resultant loss and pain of family, friends, and, indeed, of the whole community. Nothing done here today in this Court can change the horrible, tragic facts that 20 loved individuals are dead.

No matter what is done today, the criminal justice system cannot undo the tragedy that occurred on October 6, 2018. All it can do is try to insure a fair and just resolution of this criminal case and, hopefully, in the process attempt to highlight failures that allowed this horrible incident to occur in the hope that these

failures can be seriously looked at and, if possible, be remedied so that nothing like this ever happens again.

I understand that many people, with good reason, feel the proposed sentence here is way too light - twenty people are dead - how could the justice system even contemplate a sentence that does not impose decades of incarceration. This certainly is not an unreasonable opinion. I take to heart the expressions of one of the victim statements - "I hope the Court's sense of justice will somehow do right by my family. I hope the Court's sense of duty and humanity will prevail." While I have the opportunity, I want to take a few minutes to try to explain the reason the District Attorney is urging the Court to accept the proposed disposition and point out some of the failures of others that likely played a part in this tragic accident. In this regard, I urge everyone to read the Plea Agreement and the September 29, 2020 Highway Accident Report by the National Transportation Safety Board. None of what I say today are findings of this Court. My statements are taken from what has been presented to the Court by the District Attorney and the Defense together with the very thorough report of the National Transportation Safety Board. I present these contentions to try to explain what was presented.

By felony complaint dated October 10, 2018, 4 days after the tragic crash, defendant was charged with Criminally Negligent Homicide with respect to each

death. On April 5, 2019 defendant was indicted for 20 Counts Manslaughter in the Second Degree and 20 Counts of Criminally Negligent Homicide.

After the Indictment was filed, the District Attorney continued her investigation and the National Transportation Safety Board conducted a detailed and thorough investigation and study. The District Attorney's further investigation led the District Attorney to reconsider the propriety of the Manslaughter charge, an element which requires that defendant recklessly or consciously disregarded a risk. This led the District Attorney to the belief that the appropriate charge is Criminally Negligent Homicide, based upon the defendant's failure to perceive a risk.

Criminally Negligent Homicide is a Class E Felony for which a possible maximum indeterminate term of imprisonment of 1 1/3 to 4 years may be imposed. Because all of the offenses were allegedly committed through the same omission, even though there are 20 deaths, the law requires each sentence to run concurrently, that is, at the same time. Accordingly, the maximum term of imprisonment in this case would be 1 1/3 to 4 years.

Cause of Accident

The limousine in question was owned by Prestige Limousine, a company operated by defendant. The cause of the accident was brake failure of the 2001

Ford Excursion stretch limousine. Due to poor maintenance of the 2001 Ford Excursion the right rear brake was not working and the left rear brake had reduced functioning. While descending the hill on Route 30, the limited functionality of the rear brakes caused the limo to rely on the front brakes. The front brakes generated extreme heat which could not be dissipated. This extreme heat caused the brake fluid to boil, which generated air bubbles in the fluid. The air in the brake system caused the front brakes to fail.

Thus, although the driver applied the brakes while descending the hill traveling South on New York State Route 30, the brake system failed to slow the limo, and the tragic crash ensued.

Deficiencies

One of the statements submitted to the Court states that “I . . . think that the person who failed to teach you [the defendant] right from wrong should also be charged in the slaughter of that day.” (John Schnurr)

Defendant’s father left his son in control of a passenger transportation business he should have known was not, at the time, complying with pertinent safety rules, regulations, and laws. The father apparently had left the Country and has not returned.

After defendant's arrest, numerous issues regarding other persons potential culpability were identified by the District Attorney and the National Transportation Safety Board.

Arguments of Defendant's Culpability

1. Despite numerous warnings and Notices of Violation issued by the New York State Department of Transportation, Prestige Limo and Chauffeur Service violated the law by transporting passengers without having proper operating authority.
2. Prestige was operating a limo in poor mechanical condition that had recently been placed out of service for safety deficiencies.
3. Prestige lacked an effective maintenance program.
4. The limo was required to undergo a semi-annual bus inspection as it was classified as a bus. Defendant did not have the vehicle properly inspected but, instead used Mavis to do a standard New York State Vehicle Inspection.
5. Despite knowing that the crash limo driver was not properly licensed, defendant assigned him to drive the limo in violation of a New York State Department of Transportation out of service order.

Mavis

1. Mavis Discount Tire and Wilton Truck Center inspected and certified the crash limo, which was an altered vehicle. However, as the limo was an altered

vehicle, Mavis was prohibited under New York State Department of Transportation's policy from inspecting the vehicle.

2. Records from Mavis discovered by the District Attorney following the defendant's arrest revealed that the defendant brought the subject vehicle to Mavis for mechanical service. *See Endnote* ¹

3. On September 17, 2019, the District Attorney interviewed the manager at Mavis, who informed the District Attorney of a billing practice where certain services were substituted on invoices for ones actually performed, thereby resulting in inaccurate information on invoices. The manager also stated that while the May 11, 2018 invoice reflects that a "brake system flush" was performed (in order to remove the brake fluid from the 2011 Ford Excursion's brake system and replace it with new clean brake fluid, thereby removing air, moisture, sludge and other contaminants that impair braking ability), in fact, the brakes were only bled (so as to purge the braking system of air bubbles). The evidence shows that Mr. Hussain paid Mavis for certain brake services, but such services were not described or reflected accurately on the Mavis invoices.

The District Attorney concedes that the evidence shows that the Mavis invoice of May 11, 2018 did not accurately reflect services performed.

Arguments of New York State Culpability

1. The New York State Department of Motor Vehicles failed to verify information in its registration program which allowed the limo to be incorrectly classified and registered. Defendant was, thus, able to circumvent the more thorough state safety and inspection requirements that may have prevented the crash.
2. New York State failed to ensure that Mavis adhered to policy that prohibited them from inspecting altered vehicles.

The limo was, thus, allowed to undergo annual inspections rather than the more rigorous semi-annual New York State Department of Transportation's bus safety inspections.

3. New York State did not provide effective oversight of Mavis stations which performed inadequate inspections of the crash limo that failed to detect serious safety deficiencies before the crash.
4. New York State Department of Transportation's ineffective enforcement and lack of repair verification allowed defendant to continue to transport passengers despite (1) not having operating authority, and (2) failing to repair out-of-service violations that compromised crash vehicle's safety.

5. Department of Transportation's enforcement that allowed the limo to continue operating after being cited for serious out-of-service violations was inadequate.

Driver

1. The driver was not properly licensed to operate the subject vehicle. The driver also provided false information in obtaining his medical certification to operate a commercial vehicle and tested positive for marijuana (THC) in autopsy.

2. There are issues as to why the limo was even on Route 30 heading downhill to the New York State Route 30 and 30A intersection. This was not the way to Ommegang Brewery from Amsterdam.

The National Transportation Safety Board indicated that substantial guidance exists for commercial drivers on what actions to take to properly traverse a grade such as this, involving loss of brakes. The evidence did not establish whether or not the driver applied parking brake or put the vehicle in a lower gear as is recommended.

Vehicle Altered

The 2001 Ford Excursion SUV was altered into a stretch limousine by 21st Century Coachworks. The alteration entailed cutting the SUV's factory frame, increasing its wheelbase and overall length so that the vehicle met the definitions

of a bus. The alterer failed to register as required. The alterer was required to affix a certification label to the vehicle stating the weight limit at the time the brake system was certified. At the time of the crash, the loaded weight was approximately 13,565 pounds while the allowed weight was 8,600 pounds. The limo was a Ford product and the conversion did not comply with Ford's guidance.

The above are deficiencies alleged by the District Attorney and/or the National Transportation Safety Board. If any of these people or entities complied with laws and reasonable duty of care, this horrible accident may not have occurred.

Summary

Now I want to turn to the law in question, the law that the Court is sworn to uphold. As mentioned previously, the maximum sentence for Criminally Negligent Homicide is 1 1/3 to 4 years and all sentences must, by law, run concurrent, or at the same time with each other. Thus, the maximum cumulative sentence would be 1 1/3 to 4 years.

This is not an intentional crime and the District Attorney does not, at any point, allege that defendant committed any intentional crime. A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person. A person acts with "criminal negligence" with respect to a

result when that person engages in conduct which creates or contributes to a “substantial and unjustifiable risk” that such result will occur and when that person fails to perceive that risk in a situation where the offender has a legal duty of awareness.

More than an obscure or merely probable connection between the defendant’s conduct and the victims’ death is required to support a homicide conviction; rather, an act qualifies as a sufficiently direct cause where the ultimate harm should have been reasonably foreseen.

Here, the parties and experts agree as to the cause of the accident, although citing the delay in gaining access to the crash vehicle due to the District Attorney’s reluctance to allow them access, the National Transportation Safety Board states that it cannot specifically say why the brake system failed.

The District Attorney, the defense, and the National Transportation Safety Board, however, all agree that the rear brakes were poorly maintained and several components in the rear braking system had not appreciably been working prior to the crash. Given the poor condition of the rear brakes, the burden of braking was placed on the front brakes. This extra burden increased the front brake temperature. With the limousine’s heavy load of 18 passengers, the long descent as it approached the intersection of New York State Routes 30 and 30A, and the

increase in brake temperature, the front brakes - the only operational brakes - failed or lost effectiveness.

The vehicle was solely serviced by Mavis.

The District Attorney submits that defendant failed to perceive a substantial and unjustifiable risk of death relating to catastrophic brake failure arising from his decision to have the brakes inspected by Mavis rather than subjecting the vehicle to the required Department of Transportation's semi-annual bus inspection. The District Attorney further submits that defendant failed to properly maintain the braking system and ignored out-of-service directives which created a substantial and unjustifiable risk of death relating to catastrophic brake failure.

In response to the District Attorney's position, defendant submits there is evidence to the contrary.

1. Mavis was the sole service provider for this vehicle and is a nationally known mechanic with approximately 500 fully equipped service centers in 13 states
- 2, Mavis' manager told defendant in a recorded exchange on May 11, 2018 that "I'm the only place that works on 20 passenger limos."
3. Defendant had a reasonable belief that Mavis was capable of servicing the vehicle.

4. On May 18, 2018, the defendant asked Mavis to check the brakes, thereafter Mavis performed brake work and the vehicle passed inspection.

A Department of Transportation specialist, after previously inspecting the limo and issuing a violation for deficient brakes on March 21, 2018, performed a follow-up inspection after May of 2018, brake work on September 4, 2018 (only 32 days before the October 6, 2018 crash), and no longer reported any deficiency with respect to the brakes.

Following the September 4, 2018 inspection, the Department of Transportation's specialist placed an out-of-service sticker on the 2001 Ford Excursion for three violations relating to a dangling ABS line (not a cause of accident), a missing federal sticker, and emergency exits. While the District Attorney submits that the defendant removed that sticker, both parties agree that the 2001 Ford Excursion was not placed out of service for defective brakes at that time and that none of these violations was the proximate cause of the vehicle's catastrophic brake failure.

Accordingly, the District Attorney and Defense, prior to reaching the disposition contained herein, has taken the position that: (i) defendant's decision to have the vehicle serviced exclusively by Mavis does not constitute a gross deviation from the standard for care that a reasonable person would observe in the

situation, and (ii) the proximate cause (i.e., legal cause) of the 2001 Ford Excursion's catastrophic brake failure was Mavis' failure to properly service the vehicle and was not foreseeable consequences since the brakes had recently been serviced.

The National Transportation Safety Board issued a Highway Accident Report, dated September 29, 2020 ("National Transportation Safety Board Accident Report"), which documents apparent failures relating to the inspection of the 2001 Ford Excursion by third-parties. *See Endnote* ²

In light of the circumstances set forth above, the District Attorney and the defense submit to the Court that neither party can predict the outcome of a prospective jury trial. Yet, both parties seek an assured resolution to guarantee finality in this highly emotional case, for the benefit of all touched by the tragedy at the center of it. The parties also acknowledge the circumstances surrounding the Covid-19 pandemic that has caused an ongoing delay of trial and release of many nonviolent criminals from incarceration. Furthermore, the parties acknowledge Mr. Hussain's compliance with the GPS ankle bracelet since April 11, 2019, and his compliance with the Schoharie County Department of Probation's pretrial services.

Additionally, the parties recognize that in the absence of this agreed upon plea, Mr. Hussain would maintain his Fifth Amendment privilege against self-incrimination throughout these proceedings unless and until a final judgment of conviction is entered if at all, following a trial. In contrast, in accord with this plea agreement, Mr. Hussain shall forfeit such privilege, thereby subjecting him to civil testimony under oath concerning his conduct and interactions with, among others, Mavis. Moreover, Mr. Hussain's judgment of conviction and related plea allocution may be used in civil litigation in order to advance the interests of any or all family members of the decedents involved therein. The parties understand that the recovery of civil damages may lessen the hardships endured by those aggrieved in this matter.

The District Attorney and Defense jointly submit to the Court that a disposition of probation for a period of five years is appropriate based on the considerations I have tried to set forth and as set forth in Penal Law. First, institutional confinement is not necessary for the protection of the public, as the factual basis for the disposition would be an inadvertent omission (i.e., criminal negligence) rather than a conscious affirmative act (i.e., recklessness); the defendant has a limited prior criminal history; and the defendant has exhibited an ability to follow the law during the pendency of these proceedings as evidenced by

his full compliance with bail conditions, which have included the imposition of restricted travel, his regular in-person reporting with the Schoharie County Department of Probation's pretrial services, and electronic monitoring since April 11, 2019. Second, the defendant would benefit from special conditions administered through probation supervision. Third, the disposition would serve the ends of justice for compelling reasons, including the mitigating facts and circumstances set forth above, the desire for an expeditious and final resolution of these proceedings (i.e., thereby avoiding the emotional toll of a trial and potential appeals), and the fact that the defendant's liberty will have already been, by the time of the defendant's plea, meaningfully restricted by travel prohibitions and electronic monitoring for over two years. *See Endnote*³

The proposed disposition here is two years of interim probation followed by three years of regular probation. The two years of interim probation will give defendant the opportunity to prove himself and also allow this Court to retain jurisdiction over the defendant and, thus, monitor his compliance with the terms of his probation and make sure he completes 1000 hours of Community Service approved by this Court. Defendant is also required to pay restitution to Schoharie County. Should defendant at any time violate his probation his probation can be revoked and he could be sentenced to any sentence allowed by law.

This sentence is recommended to the Court by both the defendant and the District Attorney. I fully realize that people will think this sentence to be way too light and I well appreciate this, but I want to assure all interested persons, and the public at large, that this recommended sentence was the result of much careful thought and, as noted above, is recommended by the District Attorney.

As I tried to detail, further investigation of the case by the District Attorney after defendant was arrested and charged, led to the discovery of information that weakened the District Attorney's case. Primarily, that is the issue surrounding Mavis' managers' statements and defendant taking the vehicle to Mavis in May of 2018 and allegedly asking Mavis to check the brakes. Also if, in fact, Mavis did not actually change the brake fluid, but rather merely bled the system, this could have potentially left contamination in the fluid which could have allowed the fluid to boil at a lower temperature than it would have with new fluid. Moreover the vehicle passed a New York State inspection by Mavis in May 2018 and, at a roadside inspection in September of 2018 by New York State, the vehicle was placed out of service by New York State inspector, but not for the brake issues that led to the tragic crash.

Thus, as detailed, both the District Attorney and Defense have expressed uncertainty and both sides wish to bring certainty to this case and finality for the

sake of the families. Although there is no jail time to be imposed, the defendant is pleading guilty to 20 felonies. Defendant has been monitored by a GPS bracelet since his arraignment in April 2019. He has also complied with all requirements of the Schoharie County pretrial release program. Defendant has a very limited criminal history. He will be required to perform 1000 hours of community service over the next two years - community service approved by this Court. He will also be on probation for 5 years and, if he violates his probation at any point, he could be re-sentenced to any sentence allowed by law, in his case 1 1/3 to 4 years incarceration. Importantly by pleading guilty, the defendant will have admitted his criminal negligence under oath. Such will allow this to be used in any civil action. Moreover by pleading guilty, the defendant no longer has a fifth amendment right to remain silent. Thus, he can be compelled to testify in any civil actions.

Both the DA and Defense have proposed this disposition to the Court and subject to defendant's compliance with interim probation, the Court intends to accept it.

It is not something I do lightly - I have given it many hours of thought. It just does not seem right that 20 people are dead and the defendant receives a sentence of probation and community service, but there are factual issues regarding defendant's guilt and this guilty plea brings closure to the families - at

least with respect to this criminal case. Of importance also is that it is not alleged that defendant did any intentional crime and, if convicted of the 20 crimes alleged, would face an aggregate maximum sentence of 1 1/3 to 4 years incarceration. In addition, this tragic accident has brought to light several issues regarding weaknesses in the regulation and enforcement of regulations regarding limousines. New York has already instituted corrective statutes. It is horrible that these changes only came about because of this crash.

Sadly the Justice System cannot order us to go back in time to undo the tragic events of October 6, 2018 and bring back the loved ones lost. The Court can only do its best to apply the law as it exists to the facts presented to it, treat everyone with respect, and above all - leave everyone with the knowledge that the proposed disposition was carefully considered and is just and fair.

I truly appreciate everyone's patience in allowing me this time to explain the thinking behind the proceedings today. I hope it provides some helpful information.

Endnotes

1.
Records from Mavis Discount Tire (“Mavis”), discovered by the District Attorney during its ongoing investigation following Mr. Hussain’s arrest, revealed that Mr. Hussain brought the 2001 Ford Excursion to Mavis for mechanical service on the following dates: September 10, 2016 (right rear brakes); May 17, 2017 (piece of brake line replaced); June 9, 2017 (alternator); September 28, 2017 (oil change and tire pressure; January 25, 2018 (exhaust work); May 11, 2018 (brake work); June 8, 2018 (AC compressor/invoice brake flush); and June 25, 2018. The 2001 Ford Excursion Limousine had brake repairs on September 10, 2016; and May 17, 2017. The aforementioned records included a customer invoice that Mavis provided to Mr. Hussain on May 11, 2018, which memorialized Mr. Hussain’s specific request of Mavis to “CHECK BRAKES,” and included, among other things, the following description of parts and additional services provided.

FACTOR REBUILT CALIPER
LABOR-BRAKE CALIPER
BRAKE HOSE/LINE
LABOR - BRAKE HOSE
REAR BRAKE PADS
PROFESSIONAL BRAKE SERVICE LIFETIME WARRANTY ON
PADS

LABOR BRAKE PADS
BRAKE MASTER CYLINDER
LABOR - BRAKE MASTER CYLINDER
BRAKE SYSTEM FLUSH
NEW YORK STATE SAFETY/EMISSION INSPECTION

2.

2.3.2.2 New York State Department of Motor Vehicles' oversight of state

inspection stations. In 2016 and 2018, Prestige Limousine took the crash limousine to two different official New York State Department of Motor Vehicles'-certified inspection stations for annual safety inspections. These stations, operated by contractor [Mavis], were authorized to perform inspections on passenger vehicles, but New York State Department of Motor Vehicles' policy strictly prohibited stations from inspecting modified or altered vehicles, including stretch limousines. Instead, the inspection stations were required to refuse to conduct an inspection and, instead, to direct operators of altered vehicles to the New York State Department of Transportation so that they could be enrolled in the bus inspection program and undergo the required semiannual bus safety inspections. Failing to follow this procedure, both inspection stations improperly inspected the limousine and issued it a passenger vehicle decal showing that the vehicle had passed the inspection.

Not only did the inspection stations inspect the Prestige Limousine when they should have refused to do so, but also, they did not follow all the procedures outlined in the Regulations of the Commissioner of Motor Vehicles, “Part 79, Motor Vehicle Inspections,” in conducting the inspections. Moreover, it appears that during the May 11, 2018, inspection of the limousine by Mavis Discount Tire, the limousine was not thoroughly inspected. Mavis Discount Tire passed the limousine even though it most likely had disqualifying conditions that should have been evident to safety inspectors. The conditions included the corroded and crimped steel brake line and a brake line hanging near the left front wheel. Based on the questionable quality of the Mavis Discount Tire inspection and the fact that two inspection stations ignored New York State Department of Motor Vehicles’ policy and inspected the stretch limousine when they should not have done so, the National Transportation Safety Board concludes that the New York State Department of Motor Vehicles did not provide effective oversight of State inspection stations, allowing Mavis Discount Tire and Wilton Truck Center to perform inadequate inspections of the crash limousine that failed to detect serious safety deficiencies before the crash.

3.

A sentence of five years probation is further appropriate given that Penal Law §§60.01(3)(d) and 65.20(1) authorizes the Court to sentence the defendant to an unconditional discharge based on the agreed upon disposition, if the Court is of the opinion that no proper purpose would be served by imposing any condition upon the defendant's release. The parties submit that a sentence of five years probation would serve a proper purpose, in accord with Penal Law §§60.01(2)(a)(I) and 65.00, for the reasons detailed herein.

**SCHOHARIE COUNTY
COMMUNITY SERVICE PROGRAM**
PO Box 157, 157 Steadman Way, Howes Cave, New York 12092
(518)295-2274 FAX: (518) 295-2275

COMMUNITY SERVICE WORK TIME SHEET

NAME: Nowman Hussain DATE DUE: _____ HRS. ORDERED: _____
 SITE: Regional Food Bank SCHED DAYS/HRS. 1000
 SUPERVISOR: Ellie Zehnder PHONE: 518-786-3691 x268

Work Date	Time In	Time Out	# of Hours	Volunteer Signature	Supervisor Signature
6/23/22	5:00 pm	8:00 pm	3	<i>[Signature]</i>	<i>[Signature]</i>
6/25/22	9:00 am	12:00	3	<i>[Signature]</i>	<i>[Signature]</i>
6/28/22	5:00 pm	8:00 pm	3	<i>[Signature]</i>	<i>[Signature]</i>
7/12/22	5:00 pm	8:00 pm	3	<i>[Signature]</i>	<i>[Signature]</i>
7/18/22	5:00	8:00 pm	3	<i>[Signature]</i>	<i>[Signature]</i>
7/19/22	5:00	8:00 pm	3	<i>[Signature]</i>	<i>[Signature]</i>
7/21/22	5:00	6:30 pm	1.5	<i>[Signature]</i>	<i>[Signature]</i>
7/26/22	5:00	6:30 pm	1.5	<i>[Signature]</i>	<i>[Signature]</i>
8/9/22	5:00 pm	8:00 pm	3	<i>[Signature]</i>	<i>[Signature]</i>
8/17/22	5:00 pm	8:00 pm	3	<i>[Signature]</i>	<i>[Signature]</i>
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NO EXCEPTIONS: Any marked changes to hours will void the hours for that day. Cross out any errors and go to the next line. DO NOT sign off until hours are correct. A Supervisor's signature is mandatory on the day the work is performed. This is your only record of hours. Loss of this sheet will result in NO CREDIT. This sheet must stay at the worksite and upon completion you must return it immediately to the Comm. Service Probation Assistant. Time is to be calculated on the quarter, 1/2 & full hours only. You must stay and work until the following quarter hour for the full time to count.

SCHOHARIE COUNTY COMMUNITY SERVICE PROGRAM

PO Box 157, 157 Steadman Way, Howes Cave, New York 12092
(518)295-2274 FAX: (518) 295-2275

COMMUNITY SERVICE WORK TIME SHEET

NAME: Nauman Hussain DATE DUE: _____ HRS. ORDERED: 1000
 SITE: Regional Food Bank of Northeastern NY SCHED DAYS/HRS. _____
 SUPERVISOR: Alan McLeod PHONE: 518 786 3691

Work Date	Time In	Time Out	# of Hours	Volunteer Signature	Supervisor Signature
3/29/22	10:00am	3:00pm	5	<i>[Signature]</i>	<i>[Signature]</i>
3/31/22	5:00	8:00	3	<i>[Signature]</i>	<i>[Signature]</i>
4/6/22	10:00	3:00	5	<i>[Signature]</i>	<i>[Signature]</i>
5/11/22	10:00	12:00	2	<i>[Signature]</i>	<i>[Signature]</i>
5/27/22	10:00	12:00	2	<i>[Signature]</i>	<i>[Signature]</i>
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NO EXCEPTIONS: Any marked changes to hours will void the hours for that day. Cross out any errors and go to the next line. DO NOT sign off until hours are correct. A Supervisor's signature is mandatory on the day the work is performed. This is your only record of hours. Loss of this sheet will result in NO CREDIT. This sheet must stay at the worksite and upon completion you must return it immediately to the Comm. Service Probation Assistant. Time is to be calculated on the quarter, 1/2 & full hours only. You must stay and work until the following quarter hour for the full time to count.

SCHOHARIE COUNTY COMMUNITY SERVICE PROGRAM

PO Box 157, 157 Steadman Way, Howes Cave, New York 12092
(518)295-2274 FAX: (518) 295-2275

COMMUNITY SERVICE WORK TIME SHEET

NAME: Nauman Hussain DATE DUE: _____ HRS. ORDERED: 1000
 SITE: Lincoln Park Community Center SCHED DAYS/HRS. _____
 SUPERVISOR: Senick Jones PHONE: 518 300 0401

Work Date	Time In	Time Out	# of Hours	Volunteer Signature	Supervisor Signature
4/4/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
4/5/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
4/7/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
4/8/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
4/18/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
4/19/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
4/20/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
4/21/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
5/9/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
5/10/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
5/11/22	12:30	5:30	5.0	<i>[Signature]</i>	Senick Jones
5/16/22	12:30	7:00	6.5	<i>[Signature]</i>	Senick Jones
5/17/22	12:30	9:00	8.5	<i>[Signature]</i>	Senick Jones
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NO EXCEPTIONS: Any marked changes to hours will void the hours for that day. Cross out any errors and go to the next line. DO NOT sign off until hours are correct. A Supervisor's signature is mandatory on the day the work is performed. This is your only record of hours. Loss of this sheet will result in NO CREDIT. This sheet must stay at the worksite and upon completion you must return it immediately to the Comm. Service Probation Assistant. Time is to be calculated on the quarter, 1/2 & full hours only. You must stay and work until the following quarter hour for the full time to count.

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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IN RE OF SCHOHARIE LIMOUSINE CRASH
OF OCTOBER 6, 2018,

Index No.
904159/20

-----X

DATE: February 11, 2022

TIME: 10:17 A.M.

VIDEOTAPED EXAMINATION BEFORE TRIAL
of the Defendant, NAUMAN HUSSAIN, taken by
the Plaintiffs, pursuant to Order, held via
Zoom videoconference, before Laura Anzelone,
a Notary Public of the State of New York.

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<p>1 2 A P P E A R A N C E S : 3 4 LAMARCHE SAFRANKO LAW PLLC Attorneys for The Estate of Amanda Halse 5 210 Washington Ave - Suite 102 Albany, New York 12203 6 BY: GEORGE E. LaMARCHE, III, ESQ. AIMEE GREER, ESQ. 7 8 9 TABNER, RYAN & KENIRY, LLP Attorneys for The Estate of Amy Steenburg 10 18 Corporate Woods Boulevard - Suite 8 Albany, New York 12211 11 BY: WILLIAM RYAN, ESQ. 12 13 E. STEWART JONES HACKER MURPHY, LLP Attorneys for The Estate of Robert Dyson and Mary Dyson 14 28 Second Street Troy, New York 12180 15 BY: DAVID I. IVERSEN, ESQ. 16 17 18 MARTIN, HARDING & MAZZOTTI LLP Attorneys for The Estate of Savannah D. Bursese 111 Washington Avenue, Suite 750 19 Albany, New York 12210 (NOT PRESENT) 20 21 22 ABDELLA & SISE, LLP Attorneys for The Estate of Axel Steenburg 8 West Fulton Street 23 Gloversville, New York 12078 BY: ROBERT E. ABDELLA, ESQ. 24 25</p>	<p>1 2 A P P E A R A N C E S : (Continued) 3 4 BURKE, SCOLAMIERO & HURD, LLP Attorneys for the Defendant 5 THE ESTATE OF SCOTT LINSINICCHIA 7 Washington Square 6 Albany, New York 12212 BY: JUDITH B. AUMAND, ESQ. 7 8 9 THE CALABRESE LAW FIRM, PLLC Attorneys for the Defendant 10 HASY PROPERTIES, LLC 90 State Street - Suite 700 Albany, New York 12207 11 BY: GENNARO D. CALABRESE, ESQ. 12 13 NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL Attorneys for the Defendants 14 JOHN DOES 1-10 The Capital 15 Albany, New York 12224 BY: THOMAS REILLY, ESQ. 16 AARON MARCUS, ESQ. 17 18 19 20 21 22 23 24 25</p>
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<p>1 2 A P P E A R A N C E S : (Continued) 3 4 WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP Attorneys for the Defendants 5 SHAHED HUSSAIN, Individually and d/b/a PRESTIGE LIMOUSINE AND CHAUFFEUR SERVICES and NAUMAN A. HUSSAIN 200 Great Oaks Boulevard - Suite 228 6 Albany, New York 12203 BY: MARC KAIM, ESQ. 7 8 9 10 BRACEWELL, LLP Attorneys for the Defendant MALIK RIAZ HUSSAIN 11 1251 Avenue of the Americas - 49th Floor New York, New York 10020 12 BY: PAUL SHECHTMAN, ESQ. DAVID SHARGEL, ESQ. 13 REBECCA FOXWELL, ESQ. 14 15 YANKWITT, LLP Attorneys for the Defendants 16 MAVIS DISCOUNT TIRE, INC., MAVIS TIRE SUPPLY, LLC, MAVIS TIRE HOLDINGS, LLC, 17 MAVIS TIRE NY, LLC, MAVIS TIRE EXPRESS SERVICES CORP., MAVIS TIRE EXPRESS 18 SERVICES TOPCO, LP, 140 Grand Street - Suite 705 19 White Plains, New York 10601 BY: BENJAMIN ALLEE, ESQ. 20 MICHAEL REED, ESQ. 21 22 23 O'CONNOR O'CONNOR BRESEE & FIRST, P.C. Attorneys for the Defendant THE APPLE BARREL COUNTRY STORE 24 20 Corporate Woods Boulevard - 4th Floor Albany, New York 12211 25 BY: DENNIS A. FIRST, ESQ.</p>	<p>1 2 221. UNIFORM RULES FOR THE CONDUCT OF DEPOSITIONS 3 221.1 Objections at Depositions (a) Objections in general. No objections 4 shall be made at a deposition except those which, pursuant to subdivision (b), (c) or 5 (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not 6 interposed, and except in compliance with subdivision (e) of such rule. All 7 objections made at a deposition shall be noted by the officer before whom the 8 deposition is taken, and the answer shall be given and the deposition shall proceed 9 subject to the objections and to the right of a person to apply for appropriate relief 10 pursuant to Article 31 of the CPLR. (b) Speaking objections restricted. Every 11 objection raised during a deposition shall be stated succinctly and framed so as not 12 to suggest an answer to the deponent and, at the request of the questioning attorney, 13 shall include a clear statement as to any defect in form or other basis of error or 14 irregularity. Except to the extent permitted by CPLR Rule 3115 or by this 15 rule, during the course of the examination persons in attendance shall not make 16 statements or comments that interfere with the questioning. 17 221.2 Refusal to answer when objection is made. A deponent shall answer all 18 questions at a deposition, except (i) to preserve a privilege or right of 19 confidentiality, (ii) to enforce a limitation set forth in an order of the 20 court, or (iii) when the question is plainly improper and would, if answered, 21 cause significant prejudice to any person. An attorney shall not direct a deponent not 22 to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to 23 answer or direction not to answer shall be accompanied by a succinct and clear 24 statement of the basis therefor. If the deponent does not answer a question, the 25 examining party shall have the right to</p>

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1
2 221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

3
4 221.3 Communication with the deponent
An attorney shall not interrupt the
deposition for the purpose of communicating
with the deponent unless all parties
consent or the communication is made for
the purpose of determining whether the
question should not be answered on the
grounds set forth in section 221.2 of these
rules and, in such event, the reason for
the communication shall be stated for the
record succinctly and clearly.

9
10 IT IS FURTHER STIPULATED AND AGREED
that the transcript may be signed before
11 any Notary Public with the same force and
effect as if signed before a clerk or a
12 Judge of the court.

13
14 IT IS FURTHER STIPULATED AND AGREED
that the examination before trial may be
utilized for all purposes as provided by
15 the CPLR.

16
17 IT IS FURTHER STIPULATED AND AGREED
that all rights provided to all parties by
the CPLR cannot be deemed waived and the
18 appropriate sections of the CPLR shall be
controlling with respect hereto.

19
20 IT IS FURTHER STIPULATED AND AGREED
by and between the attorneys for the
21 respective parties hereto that a copy of
this examination shall be furnished,
22 without charge, to the attorneys
representing the witness testifying herein.

23
24
25

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1 N. HUSSAIN
2 (Plaintiff's Exhibits 1 through
3 9 were marked for identification as
4 of this date.)
5 THE VIDEOGRAPHER: Good
6 morning. Here begins the video
7 recorded virtual remote deposition of
8 Nauman A. Hussain appearing from his
9 location in Albany, New York.
10 This deposition is taken by the
11 plaintiffs, In Re Scoharie Limousine
12 Crash of October 6, 2018, Albany
13 County consolidated Index Number
14 904159/20 in the Supreme Court of the
15 State of New York, County of Albany.
16 Today is Friday, February 11,
17 2022, and the time is approximately
18 10:17 a.m. Eastern Standard Time.
19 My name is Howard Brodsky, and
20 I am the legal video specialist in
21 association with Veritext Legal
22 Solutions with offices located in New
23 York, New York.
24 The court reporter is Laura
25 Anzelone in association with

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1 N. HUSSAIN
2 Veritext.
3 Counsel have stipulated and
4 agreed that the court reporter shall
5 enter all appearances in this
6 proceeding into the stenographic
7 record, and the parties have further
8 stipulated and agreed that the court
9 reporter may take the deponent's oath
10 remotely.
11 Will the court reporter please
12 swear in the witness.
13 N A U M A N H U S S A I N , called as a
14 witness, having been first duly sworn by a
15 Notary Public of the State of New York, was
16 examined and testified as follows:
17 EXAMINATION BY
18 MR. LaMARCHE:
19 Q. Please state your name and
20 address for the record.
21 MR. KAIM: Objection.
22 He is not giving his address.
23 MR. LaMARCHE: Albany is fine.
24 A. Nauman Hussain. Albany, New
25 York 11205.

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1 N. HUSSAIN
2 THE VIDEOGRAPHER: Please
3 proceed, Mr. LaMarche.
4 Q. Good morning, Mr. Hussain. My
5 name is George LaMarche. I am the attorney
6 for Edward J. Halse who is the
7 administrator of the estate of Amanda D.
8 Halse.
9 I am going to be asking you
10 some questions today. Given the nature of
11 how this deposition is being conducted, if
12 for some reason you cannot hear me or for
13 some reason the video glitches or there is
14 a problem understanding me, please let me
15 know, and I will repeat or rephrase my
16 question so you can hear it before you
17 answer it. Is that fair?
18 A. Yes, sir.
19 Q. Okay.
20 Please answer verbally all the
21 question that I ask you so the stenographer
22 can take down everything that is said. Try
23 to avoid nods of the head, uh-huh, um-hum,
24 that kind of thing because that can be
25 difficult for the stenographer to take

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1 N. HUSSAIN
2 down. Okay?
3 A. Yes, sir.
4 Q. Let me finish my question
5 before you give your answer so we can also
6 have a clean transcript. If you need to
7 take a break at any time, please let us
8 know.
9 This is a limited
10 jurisdictional discovery deposition, so I
11 am not going to be asking you any questions
12 regarding liability and damages regarding
13 the October 6 accident. It is just
14 regarding certain jurisdictional issues
15 today. We are going to be no more than two
16 hours.
17 Before we proceed any further,
18 are you alone at your location where you
19 are testifying or are you at your
20 attorney's office?
21 A. Yes. I am alone, sir.
22 Q. Are you under the influence of
23 any drugs or alcohol at this time?
24 A. No, sir.
25 Q. Is there any medication that

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1 N. HUSSAIN
2 you were prescribed that you failed to take
3 that would have any impact on your ability
4 to testify today?
5 A. No, sir.
6 Q. Do you feel you are capable of
7 answering my questions truthfully and
8 completely today?
9 A. Yes, sir.
10 Q. Have you (inaudible) anything
11 for your testimony here today?
12 MR. KAIM: George, you broke
13 up. I couldn't hear you.
14 THE WITNESS: Yeah. Can you
15 repeat the question?
16 MR. LaMARCHE: Sure.
17 THE WITNESS: I apologize, sir.
18 You broke out again.
19 Q. Have you reviewed anything in
20 preparation for your testimony here today?
21 A. Um, I apologize. One more
22 time, sir.
23 MR. SHECHTMAN: Let me see if I
24 can do it better.
25 Have you reviewed anything

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1 N. HUSSAIN
2 prior to your testimony today?
3 THE WITNESS: No, sir.
4 Q. Would you state your full name,
5 please.
6 A. Nauman Hussain.
7 Q. Sir, are you known by any other
8 names?
9 A. Yes. I'm sorry. Nauman Arslan
10 Hussain. My middle name is Arslan.
11 Q. Would you spell that for the
12 court reporter?
13 A. A-r-s-l-a-n.
14 Q. Other than Nauman or Arslan,
15 are there any other names that you are
16 known by?
17 A. Sean.
18 Q. Other than those names, are
19 there any other names that you are known
20 by?
21 A. No, sir.
22 Q. I am going to share with you an
23 exhibit which has been marked as Exhibit 6.
24 A. I apologize, sir.
25 Could I go back to your

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1 N. HUSSAIN
2 question prior? I want to add Shani to
3 that as well for the record.
4 Q. Could you spell that, please.
5 A. S-h-a-n-i.
6 Q. Okay.
7 Any other names that you can
8 think of that you are known by?
9 A. No. No, sir. I just wanted to
10 add that one.
11 Q. Okay.
12 I am I am going to share an
13 exhibit with you now.
14 THE WITNESS: I apologize, sir.
15 You keep cutting out.
16 MR. LaMARCHE: I don't know why
17 that's happening.
18 Q. Can you see an exhibit that I
19 am sharing with you on the screen at the
20 moment?
21 A. No, sir. No, sir.
22 Q. Can you see it now?
23 A. Yes, sir.
24 It was my license. I don't
25 know what happened to it.

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1 N. HUSSAIN
 2 MR. LaMARCHE: Give me one
 3 second. I think it is loading. I
 4 don't often use the Veritext system.
 5 Q. There we go. Can you see it
 6 now?
 7 A. Yes, sir.
 8 Q. Is your date of birth January
 9 9, 1990?
 10 A. Yes, sir.
 11 Q. This license was issued to you
 12 on January 11, 2018; is that right?
 13 A. Yes, sir.
 14 Q. Okay.
 15 It lists your address as
 16 776 Saratoga Road. Was that your address
 17 at the time on January 11, 2018?
 18 MR. KAIM: Objection.
 19 We are not here to discuss his
 20 address, but I will let him answer
 21 that question.
 22 Q. On January 11, 2018, was that
 23 your address?
 24 A. My mailing address. Yes, sir.
 25 Q. Okay.

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1 N. HUSSAIN
 2 Were you residing there at that
 3 time?
 4 A. No, sir.
 5 Q. Is there any period of time
 6 prior to January 11, 2018 that you resided
 7 at that address?
 8 A. I'm sorry. One more time, sir.
 9 Q. Was there any period of time
 10 prior to January 11, 2018 that you resided
 11 at that address?
 12 A. Yes, sir.
 13 Q. When was --
 14 THE WITNESS: I'm sorry. You
 15 cut out again.
 16 MR. KAIM: George, you're
 17 really breaking up.
 18 MR. LaMARCHE: I don't know
 19 why.
 20 THE VIDEOGRAPHER: May we go
 21 off the record momentarily to resolve
 22 the technical issues? We will go
 23 through the steps.
 24 MR. LEMARCHE: Is it only
 25 Mr. Hussain that can't hear me or is

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1 N. HUSSAIN
 2 it like that for everyone.
 3 MR. SHECHTMAN: You break up a
 4 bit for me too.
 5 MS. GREER: It may be your ear
 6 buds, George.
 7 MR. LEMARCHE: I'll turn the
 8 ear buds off, and I will try to do it
 9 through the regular microphone. Just
 10 give me one second.
 11 MR. KAIM: Just for the record,
 12 I am going to ask that after the
 13 deposition, you provide the court
 14 reporter with any exhibits you mark
 15 and they make them part of the
 16 transcript.
 17 MR. LaMARCHE: Can you hear me
 18 now?
 19 THE WITNESS: Yes, sir.
 20 MR. LaMARCHE: Does that sound
 21 better?
 22 MR. SHECHTMAN: Much.
 23 MR. KAIM: Yes.
 24 Q. Was there any period of time
 25 prior to January 11, 2018 that you resided

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1 N. HUSSAIN
 2 at 776 Saratoga Road?
 3 A. Yes, sir.
 4 Q. When did you reside there?
 5 THE WITNESS: I apologize. You
 6 cut out again.
 7 Q. When did you reside there?
 8 MR. KAIM: Objection.
 9 You can answer.
 10 THE WITNESS: I'm sorry. One
 11 more time, sir. I apologize.
 12 Q. When did you reside there?
 13 A. 2005 to 2016 I would say.
 14 Q. Who did you reside there with?
 15 THE WITNESS: I apologize, sir.
 16 One more time. You cut out again.
 17 Q. Who did you reside there with?
 18 MR. KAIM: He is asking you who
 19 did you reside there with, if anyone.
 20 A. My brother Sharyar Hussain, my
 21 father Shahed Hussain, and until 2013, my
 22 mother Yasmeeen Begum. Y-a-s-m-e-e-n. The
 23 last name is B-e-g-u-m.
 24 Q. During the time that you
 25 resided there, who owned that property?

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1 N. HUSSAIN
 2 THE WITNESS: I'm sorry. One
 3 more time.
 4 MR. LaMARCHE: I'm sorry this
 5 is happening. It is unclear to me
 6 why this is happening, but give it a
 7 second after I start. Maybe there is
 8 a delay or something.
 9 Q. Who owned the property during
 10 the time that you resided there?
 11 THE WITNESS: I apologize, sir.
 12 One more time.
 13 MR. LaMARCHE: If this is going
 14 to be a problem for the entire
 15 deposition, maybe I can move to
 16 another computer.
 17 THE REPORTER: Can we go off
 18 the record, please.
 19 THE VIDEOGRAPHER: The time is
 20 10:29. We are off the record.
 21 (Whereupon, an off-the-record
 22 discussion was held.)
 23 THE VIDEOGRAPHER: The time is
 24 10:33. We are on the record.
 25 Q. Mr. Hussain, can you hear me

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1 N. HUSSAIN
 2 now more clearly?
 3 A. Yes, sir.
 4 Q. When you resided at the
 5 776 Saratoga Road property between 2005 and
 6 2016, who owned that property?
 7 MR. KAIM: Objection.
 8 You can answer.
 9 THE WITNESS: I'm sorry, sir.
 10 Marc, did you say I can answer?
 11 MR. KAIM: Yes. You can
 12 answer.
 13 A. So, my father owned it, and
 14 then it went to, um, my uncle.
 15 Q. When did your father own the
 16 property?
 17 A. 2005 until -- I'm not sure of
 18 the exact date they had the transaction.
 19 Q. At some point you said your
 20 uncle took over ownership of the property.
 21 A. It just went into his name.
 22 That's all he did.
 23 Q. Which uncle are you referring
 24 to?
 25 A. Malik Riaz Hussain.

Page 20

1 N. HUSSAIN
 2 Q. When he -- during what period
 3 of time, to the extent that you know, was
 4 he the owner when you resided there?
 5 During what years, if you know?
 6 A. I apologize, sir. I don't want
 7 to guess. I think it is on record on when
 8 the title was, um, transferred to his name.
 9 Q. But at least for some period of
 10 time while you were residing --
 11 MR. KAIM: Don't guess.
 12 Q. For some period of time you
 13 were residing there, your uncle Malik Riaz
 14 did own the property?
 15 A. It was just in his name. Yes.
 16 For title services, it was under his name.
 17 That's what I knew. Yes.
 18 Q. Do you know if while you were
 19 residing there you ever paid rent to your
 20 uncle to live there?
 21 THE WITNESS: Could you repeat
 22 that question one more time?
 23 Q. Did you ever pay rent to your
 24 uncle to reside there?
 25 A. No, sir.

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1 N. HUSSAIN
 2 Q. Exhibit 6 that is still on your
 3 screen, can you still see that?
 4 MR. KAIM: No.
 5 A. No, sir.
 6 Q. Do you see it now?
 7 A. Yes, sir.
 8 Q. Is that your signature on your
 9 license there on Exhibit 6?
 10 A. Yes, sir.
 11 Q. I want to talk to you a little
 12 bit about the limousine business that you
 13 run or you previously ran.
 14 When was Prestige Limousine and
 15 Chauffeur Services initially started?
 16 MR. KAIM: Objection.
 17 You can answer.
 18 A. I don't know the exact date on
 19 when that was. It was under my father's
 20 name, so that I don't know. You will have
 21 to get that information from Saratoga
 22 County. I think they have that for the
 23 d/b/a, doing business as.
 24 Q. Was this a business that you
 25 ever had an ownership in or was this just

Page 22

1 N. HUSSAIN
2 your father's business?
3 A. Just my father's business, sir.
4 Q. Do you know the approximate
5 year that the business was started?
6 A. No, sir.
7 Q. Were there other businesses,
8 limousine businesses that you were involved
9 in other than Prestige Limo?
10 MR. KAIM: Objection.
11 You can answer.
12 A. Yes, sir.
13 Q. Did you play any role in the
14 Prestige Limo business?
15 MR. KAIM: Objection.
16 You can answer.
17 A. Yes, sir.
18 Q. What role did you play in that
19 business?
20 A. I handled the, um, the
21 day-to-day operations, sir.
22 Q. Was that business located at
23 776 Saratoga Road?
24 A. Yes, but we did move to a
25 different location on Weibel.

Page 23

1 N. HUSSAIN
2 Q. How long was Prestige Limo
3 located at 776 Saratoga Road?
4 MR. KAIM: Objection.
5 You can answer.
6 A. Um, I know we moved the office
7 in 2016 I think I recall. I don't recall
8 how long it was there.
9 Q. So, it was there at least in
10 2016 and some time before 2016, but you are
11 not sure how long?
12 A. Yes, sir.
13 Q. Are you familiar with the
14 company Saratoga Luxury Limousine?
15 A. Yes, sir.
16 Q. Was that a limousine business
17 that also operated out of 776 Saratoga Road
18 at some point?
19 A. Yes, sir, but it was just a
20 marketing business.
21 Q. Explain what you mean by that.
22 A. So, Saratoga Luxury, we didn't
23 own any vehicles. We had -- like, it was a
24 call-in service. It was just a website,
25 and it was almost like a brokerage service

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1 N. HUSSAIN
2 I would say, like, to offer rides to
3 companies, um, either to Prestige or to
4 other companies in the area. So, it was a
5 call-in service, sir.
6 Q. Were there employees that
7 worked for that call-in service?
8 A. No, sir. Just -- it was my own
9 service, sir.
10 Q. Was that business being run out
11 of 776 Saratoga Road?
12 MR. KAIM: Objection.
13 He can answer.
14 A. Yes, sir, until we moved to --
15 it was just a phone service, so there was
16 no physical location. But, in 2016, I did
17 rent a space in 68 Weibel that was, um,
18 like a, you know, a physical location at
19 that point.
20 Q. Are you familiar with a company
21 Hasy Limousine, H-a-s-y Limousine?
22 A. Yes, sir. That's my service as
23 well.
24 Q. What kind of company is that?
25 A. So, it was the same service as

Page 25

1 N. HUSSAIN
2 Saratoga Luxury. It was a call-in service.
3 Again, we didn't own any vehicles. You
4 know, it was a middle man just to get calls
5 in for customers that were looking for
6 bookings for rides, and then we would
7 broker it to companies that own vehicles.
8 Q. Was that a business that was
9 using the 776 Saratoga Road address?
10 MR. KAIM: Objection.
11 You can answer.
12 A. Yes, sir. It was until, again,
13 we moved to the Weibel Avenue.
14 Q. For the time that those
15 businesses were at 776 Saratoga Road, do
16 you know if it was months or years?
17 A. I apologize, sir, I don't
18 recall the exact time.
19 Q. Do you have a general timeframe
20 of how long those businesses were operating
21 out of 776 Saratoga Road?
22 A. I don't want to guess, so, I
23 could say, you know, maybe a year max or
24 two months at that point. You know.
25 Q. Okay.

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1 N. HUSSAIN
2 Did there come a point in time
3 where you were using the 776 Saratoga Road
4 address to store any vehicles for any of
5 the limousine companies that you were
6 operating?
7 MR. KAIM: Objection.
8 You can answer.
9 A. Yes, sir.
10 Q. For how long did you use the
11 776 Saratoga Road address to store
12 vehicles?
13 A. I think since my father
14 purchased his first vehicle until 2016 we
15 had to move it to a location. The town had
16 an issue with them being parked in the rear
17 parking lot of the motel.
18 Q. Do you know when the first
19 vehicle, the first limousine vehicle was
20 purchased?
21 A. I do not, sir.
22 Q. Do you know approximately in
23 terms of months or years how long any
24 limousine vehicles were stored at that
25 address?

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1 N. HUSSAIN
2 MR. KAIM: Objection.
3 You can answer.
4 A. I do not, sir.
5 Q. Did you, yourself ever have any
6 conversations with your uncle Malik Riaz
7 about the limousine business that was being
8 run out of 776 Saratoga Road?
9 A. No, sir.
10 Q. Do you know if your father ever
11 had any conversations with your uncle Malik
12 Riaz about the 776 Saratoga Road being used
13 to run a limousine company?
14 MR. KAIM: Objection.
15 You can answer.
16 THE WITNESS: Can you repeat
17 that one more time, sir?
18 Q. Do you know if your father had
19 any conversations with your uncle that the
20 776 Saratoga Road address was being used to
21 operate a limousine company?
22 A. No, sir.
23 Q. You don't know if your father
24 had any conversations with him about that?
25 A. No, sir. I don't.

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1 N. HUSSAIN
2 Q. Were you ever in your father's
3 presence when he was on the phone with your
4 uncle having any discussions about the
5 limousine company that was being operated
6 at that address?
7 A. No, sir.
8 Q. In 2016, prior to vacating that
9 property, your uncle Malik Riaz was the
10 owner of that 776 Saratoga Road location,
11 correct?
12 MR. KAIM: Objection.
13 You can answer.
14 A. Yes, sir. The title was in his
15 name I think at that point still.
16 Q. Is there any reason why you did
17 not say anything to your uncle about the
18 operation of a limousine company at his
19 business?
20 MR. KAIM: Objection.
21 You can answer.
22 MR. SHECHTMAN: I object to the
23 "at his business." I don't think he
24 had any business there.
25 MR. LEMARCHE: I'll withdraw

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1 N. HUSSAIN
2 the question.
3 Q. Was there a motel at that
4 address, the 776 Saratoga Road?
5 A. Yes, sir.
6 Q. Was that an active business in
7 or around 2016?
8 A. Yes, sir.
9 Q. You already testified that your
10 uncle Malik owned the property, correct?
11 MR. KAIM: Objection.
12 What period of time are we
13 talking about?
14 MR. LEMARCHE: Again, we are
15 talking about now in 2016.
16 Q. In 2016, you testified your
17 uncle owned the property, correct?
18 MR. KAIM: I think he testified
19 that he had some title ownership of
20 it, but you can ask him the question.
21 THE WITNESS: Could you ask me
22 one more time, sir?
23 Q. Your uncle was the owner of the
24 property in 2016, correct?
25 THE WITNESS: I'm sorry, sir.

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1 N. HUSSAIN
 2 With the phone ringing, I couldn't
 3 hear. One more time, sir.
 4 Q. Your uncle was the owner of the
 5 property in 2016, correct?
 6 A. He owned the title. Yes, sir.
 7 Q. Is there a reason why you are
 8 characterizing it that way? When you say
 9 he owned the title, what do you mean by
 10 that?
 11 A. So, he has never visited the
 12 property before. He gave it to me and my
 13 brother at some point. I don't recall the
 14 date he was trying to get the title
 15 transferred, but, um, he has no financial,
 16 um, you know -- how do I explain it? He
 17 never got any financial money back from the
 18 property. I think he had some deal worked
 19 out with my father. I don't know the
 20 details of it, sir.
 21 Q. Do you have any understanding
 22 as to when the property became the
 23 ownership of your uncle Malik Riaz?
 24 MR. KAIM: Objection.
 25 You can answer.

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1 N. HUSSAIN
 2 A. No. No, sir.
 3 Q. Did you ever learn that in 2010
 4 your uncle Malik Riaz purchased the motel
 5 from your mother?
 6 THE WITNESS: Could you say
 7 that one more time, sir?
 8 Q. Did you ever learn that in 2010
 9 your uncle Malik purchased the motel from
 10 your mother?
 11 A. Yes. I knew there was a title
 12 transfer from my mother's name to my uncle.
 13 Q. Do you know any of the details
 14 of that purchase?
 15 MR. KAIM: Objection.
 16 You can answer.
 17 A. Only that we had owed some
 18 money to the previous owners, and I think
 19 my father and my mother had the deal with,
 20 um, I don't know the exact amount. I was
 21 honestly too young. I was still in high
 22 school at that point -- of the transaction
 23 of how much was actually given to the
 24 previous owners for my uncle just to have
 25 the title until he deeded it, you know,

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1 N. HUSSAIN
 2 would give it to me and my brother or back
 3 to my family.
 4 Q. Do you know if there were any
 5 discussions about what kind of business, if
 6 any, was being run at the property when
 7 your uncle purchased the home, the
 8 property?
 9 MR. KAIM: Objection.
 10 He can answer.
 11 A. I'm sorry. What do you mean by
 12 business?
 13 Q. There is a motel at that
 14 location, correct?
 15 A. Yes, sir.
 16 Q. How long has there been a motel
 17 running at that location, if you know?
 18 A. I know since we have owned it.
 19 So, since 2005 when my parents purchased
 20 it, but, before that, it was there as well.
 21 It has been there for since maybe 1980s or
 22 maybe longer. I am not really sure.
 23 Q. Was that a motel that was
 24 running as a motel through 2016 let's say?
 25 A. Yes, sir.

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1 N. HUSSAIN
 2 Q. When your uncle purchased it
 3 from your mom in 2010 or thereabouts, do
 4 you know if he was aware that it was
 5 running as a motel?
 6 MR. KAIM: Objection.
 7 He can answer.
 8 A. Yes, sir.
 9 Q. He did know that it was being
 10 run as a motel?
 11 A. Yes, sir.
 12 Q. Do you know if there were any
 13 discussions with your uncle about what, if
 14 any, benefit or profits he would be
 15 receiving from the running of the motel
 16 after he purchased it?
 17 MR. KAIM: Objection.
 18 He can answer.
 19 THE WITNESS: Can you repeat
 20 that one more time, sir?
 21 Q. Do you know if there were any
 22 discussions with your uncle about what, if
 23 any, profits he may be receiving from the
 24 motel after he purchased it in 2010?
 25 MR. KAIM: Same objection.

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1 N. HUSSAIN
2 A. No, sir.
3 Q. Did you become aware at any
4 time that any money from the motel was
5 being sent to your uncle after he purchased
6 it?
7 A. No, sir.
8 Q. Do you know if there were any
9 discussions with your uncle around 2010
10 about other businesses other than the motel
11 being run out of that 776 Saratoga Road
12 address?
13 MR. KAIM: Objection.
14 You can answer.
15 A. No, sir.
16 Q. Were you ever present when your
17 father had any discussions with your uncle
18 about the motel business at 776 Saratoga
19 Road?
20 MR. KAIM: Objection.
21 You can answer.
22 A. No, sir.
23 Q. Were you ever present when your
24 father or anyone else had any discussions
25 with your uncle about any other businesses

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1 N. HUSSAIN
2 that may be run out of the 776 Saratoga
3 Road address?
4 MR. KAIM: Objection.
5 He can answer.
6 A. No, sir.
7 Q. Did you, yourself personally
8 have any discussions with your uncle at any
9 time between 2010 and October 6, 2018 about
10 a limousine company being run out of that
11 address?
12 A. No, sir.
13 Q. Did your uncle have any
14 involvement in the motel property after he
15 purchased it in 2010?
16 MR. KAIM: Objection.
17 He can answer.
18 THE WITNESS: Could you say
19 that one more time, sir?
20 Q. Did your uncle have any
21 involvement in the motel business after he
22 purchased it in 2010?
23 MR. KAIM: Same objection.
24 A. No, sir.
25 Q. Who ran the motel business

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1 N. HUSSAIN
2 after your uncle purchased the property in
3 2010?
4 MR. KAIM: Objection.
5 Can you repeat that question?
6 Q. Who ran the motel business
7 after your uncle purchased the property in
8 2010?
9 MR. KAIM: Objection.
10 You can answer.
11 A. My parents did to a certain
12 point.
13 Q. What do you mean by that, to a
14 certain point?
15 A. So, at some point in 2018, I
16 was handling some day-to-day operations
17 there.
18 Q. Of the motel?
19 A. Yes, sir.
20 Q. Let me show you what has been
21 marked as Exhibit 1.
22 Can you see that on your screen
23 now?
24 A. Yes, sir.
25 MR. KAIM: George, can you

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1 N. HUSSAIN
2 identify how many pages it is?
3 MR. LaMARCHE: It is a two-page
4 document.
5 Q. Can you see both pages,
6 Mr. Hussain?
7 A. Yes, sir. I can see the first
8 page. If you scroll down so I can see the
9 second one?
10 MR. KAIM: George, after the
11 deposition, please forward it to the
12 court reporter, and we will attach it
13 to the transcript, please.
14 MR. LEMARCHE: Yes.
15 Absolutely.
16 Q. Did you ever become aware of a
17 commercial lease that existed between your
18 father and your uncle Malik Riaz?
19 A. No, sir.
20 Q. Have you ever seen this
21 document before?
22 A. No, sir.
23 Q. This is not a signed document.
24 Do you know if a signed
25 commercial lease exists between your uncle

10 (Pages 34 - 37)

<p style="text-align: right;">Page 38</p> <p>1 N. HUSSAIN 2 and your father? 3 A. No, sir. 4 Q. You have never seen any signed 5 lease between your uncle and your father? 6 A. No, sir. 7 Q. Do you know if any money was 8 being paid to your uncle at any time while 9 he was the owner of the property? 10 MR. KAIM: Objection. 11 You can answer. 12 A. No, sir. 13 Q. Did you, yourself ever write 14 any checks from the motel business that you 15 sent to your uncle Malik Riaz? 16 A. No, sir. 17 Q. Did you ever see any checks 18 that your father or your mother prepared 19 and sent to your uncle Malik Riaz? 20 A. No, sir. 21 Q. This exhibit, page 2, 22 subsection 4 b states "Tenant shall not 23 assign or sublet said premises or allow any 24 other person to occupy the leased premises 25 without landlord's prior written consent."</p>	<p style="text-align: right;">Page 40</p> <p>1 N. HUSSAIN 2 A. He is a friend to my uncle. I 3 met him only once. 4 Q. Do you remember when it was 5 that you met him? 6 A. It was when they were trying to 7 get the property out of my uncle's name to 8 my brother's name and myself. 9 Q. Was that in 2017? 10 A. Yes, sir. I am pretty sure it 11 was. 12 Q. What role was he playing in 13 trying to get the property out of your 14 uncle's name into your name? 15 MR. KAIM: Objection. 16 You can answer. 17 A. Um, I mean, I think he was the 18 power of attorney, sir, to sign off as my 19 uncle for the transfer. 20 Q. So, in 2017, you understood 21 that Mr. Niazi was the power of attorney, 22 but you had never seen any documents 23 regarding his role as power of attorney. 24 Is that fair to say? 25 A. Yes, sir. Possibly at the</p>
<p style="text-align: right;">Page 39</p> <p>1 N. HUSSAIN 2 Do you see that, sir? 3 A. Yes, sir. 4 Q. Do you know if there was any 5 written documentation exchanged between 6 your father and your uncle about the 7 property being used for purposes other than 8 a motel business? 9 MR. KAIM: Objection. 10 You can answer. 11 A. No, sir. 12 Q. You don't know? 13 A. No, sir. 14 Q. I am showing you what has been 15 marked as Exhibit 2. 16 Do you see that? 17 A. Yes, sir. 18 Q. It is a one-page document. 19 Have you ever seen this 20 document before? 21 A. No, sir. 22 Q. Do you know who Mohammed Naeem 23 Niazi is? 24 A. Yes, sir. 25 Q. Who is that?</p>	<p style="text-align: right;">Page 41</p> <p>1 N. HUSSAIN 2 lawyer's office they might have showed this 3 to us, but I don't recall seeing it. 4 Q. This document says, "On my 5 behalf, negotiate and sign the lease was 6 Shahid Malik as per my instructions after 7 the above purchase is completed." 8 This is dated in 2010. 9 Did you ever become aware of 10 Mr. Niazi having any discussions with your 11 father about a lease between him and your 12 father? 13 MR. KAIM: Objection. 14 You can answer. 15 A. No, sir. 16 Q. Was 2017 or thereabouts the 17 only time you had any conversations with 18 Mr. Niazi? 19 A. Yes, sir. 20 Q. When you spoke with Mr. Niazi 21 in 2017, did you have any discussions with 22 him about using the property at 776 23 Saratoga Road for a limousine business? 24 MR. KAIM: Objection. 25 He can answer.</p>

11 (Pages 38 - 41)

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1 N. HUSSAIN
2 A. No, sir. We had moved the
3 service already to the other office.
4 Q. Your brother's name is Shahir
5 (Phonetic)?
6 A. Yes, sir.
7 Q. For the stenographer, that's
8 S-h-a-h-e-r; is that correct?
9 A. No, sir. It is S-h-a-h-y-e-r.
10 Same last name, H-u-s-s-a-i-n.
11 Q. Did your brother ever reside at
12 776 Saratoga Road?
13 A. Yes, sir.
14 MR. KAIM: Note my objection to
15 the last question.
16 Q. Do you know for how long he
17 resided at that address?
18 A. The same period that I did,
19 sir. From 2005 to 2016.
20 Q. Was he involved in the
21 limousine business while he was residing
22 there at any time?
23 MR. KAIM: Objection.
24 You may answer.
25 A. No, sir.

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1 N. HUSSAIN
2 Q. He did not work for the
3 limousine business --
4 MR. KAIM: Objection.
5 He can answer.
6 Q. -- at any time?
7 A. No, sir. Not that I know of.
8 Q. Is he your older brother or
9 your younger brother?
10 A. He is older, sir.
11 Q. Do you know of any
12 conversations that your brother may have
13 had with your uncle during the time that he
14 was residing at the motel about the
15 limousine company that was being run out of
16 that location?
17 MR. KAIM: Objection.
18 You can answer.
19 A. No, sir.
20 Q. You said that in or around
21 2017, your uncle decided to transfer the
22 property over to you and your brother,
23 correct?
24 A. Yes, sir.
25 Q. Prior to that transfer, did you

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1 N. HUSSAIN
2 have any discussions with your uncle about
3 it?
4 MR. KAIM: Objection.
5 You can answer.
6 A. No, sir.
7 Q. How was it that this transfer
8 came about in or around 2017?
9 A. Could you explain the question?
10 What do you mean by how did it?
11 Q. Well, in 2017, the property at
12 776 Saratoga Road was owned by your uncle
13 Malik Riaz, correct?
14 A. Yes, sir.
15 Q. And then at some point, the
16 property was going to be transferred from
17 your uncle to you and your brother, right?
18 A. Yes, sir.
19 Q. How was it that the transfer
20 came about? Did you have any discussions
21 with your uncle about that transfer?
22 A. No, sir.
23 Q. How was it that the transfer
24 came about?
25 MR. KAIM: Objection.

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1 N. HUSSAIN
2 He can answer.
3 A. So, my father had informed us
4 that he was transferring the property back
5 to our family's name.
6 Q. That your uncle was
7 transferring the property back to your
8 family's name?
9 A. Yes. To my brother and me.
10 Q. When was that conversation that
11 you had with your father?
12 A. At some point in 2017. I don't
13 recall the exact date.
14 Q. Do you remember where that
15 conversation happened?
16 A. It was over the phone.
17 Q. Where was your father at the
18 time that he was having this conversation
19 with you?
20 MR. KAIM: Objection.
21 You can answer if you know.
22 A. He was overseas somewhere.
23 Honestly, I can't recall which country he
24 was in at that point.
25 Q. Do you know if he was with your

12 (Pages 42 - 45)

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1 N. HUSSAIN
2 uncle at the time that he had this
3 conversation with you?
4 A. I do not, sir.
5 Q. Did he indicate to you that he
6 had a conversation with your uncle about
7 transferring the property to you and your
8 brother's name?
9 MR. KAIM: Objection.
10 You can answer.
11 A. I don't know if he had a
12 conversation. All I know is that he just
13 said the property was going to my brother's
14 name and my name.
15 Q. Did you ask your father any
16 other questions about how or why this
17 transaction was going to be occurring?
18 A. No, sir.
19 Q. Did you have any discussions
20 with your brother about the property being
21 transferred to your name?
22 MR. KAIM: Objection.
23 He can answer.
24 A. No. We just -- we were on a
25 conference call. We just -- he found out

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1 N. HUSSAIN
2 as soon as I found out.
3 Q. So, your brother was on the
4 call at the same time?
5 A. Yes, sir.
6 Q. Was anybody else on the call
7 other than you and your father and your
8 brother?
9 A. No, sir.
10 Q. During the course of that
11 conversation, did you learn if you were
12 going to have to pay anything for that
13 property?
14 A. No, sir.
15 Q. Did you understand that it was
16 just going to be gifted to you?
17 MR. KAIM: Objection.
18 You can answer if you
19 understand.
20 A. Yes, sir. I didn't know the
21 full details of it. All I knew was the
22 property was getting transferred.
23 Q. During that conversation, did
24 you discuss with your father the operation
25 of the limousine business out of that

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1 N. HUSSAIN
2 property?
3 MR. KAIM: Can you repeat that
4 question?
5 MR. LEMARCHE: Sure.
6 Q. During the phone conference
7 when you are talking about transferring the
8 property over to your name, did you have
9 any discussions with your father about
10 operating the limousine company out of that
11 location?
12 MR. KAIM: Objection.
13 He can answer.
14 A. No, sir. The property was
15 already moved. The limousine business was
16 already moved to the 68 Weibel Avenue
17 address at that point.
18 Q. Once -- withdrawn.
19 THE WITNESS: I'm sorry?
20 MR. LEMARCHE: I withdrew the
21 question.
22 THE WITNESS: Oh. Understood.
23 MR. LaMARCHE: I was going to
24 ask you a question. I just withdrew
25 the question.

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1 N. HUSSAIN
2 Q. I am showing you what has been
3 marked as Exhibit 3.
4 Can you see this up on your
5 screen?
6 A. Yes, sir.
7 Q. It is an eleven-page document.
8 Have you seen this document
9 before?
10 A. Yes, sir.
11 Q. What is this document?
12 A. I think this was the transfer.
13 Q. Was the transfer made of the
14 property from your uncle to you and your
15 brother in May of 2017?
16 A. Yes, sir.
17 Q. The transfer of the title was
18 not recorded in the county clerk's office
19 at that time. Is that your understanding?
20 MR. KAIM: Objection.
21 What do you mean at that time,
22 on May --
23 Q. At the time of the transfer in
24 May of 2017, was it your understanding that
25 the title was not filed in the county

13 (Pages 46 - 49)

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1 N. HUSSAIN
2 clerk's office?
3 MR. KAIM: Objection.
4 He can answer if you are asking
5 whether it was filed on May 30, 2017
6 on the exact date it was signed.
7 MR. LEMARCHE: I will rephrase
8 it. I am happy to rephrase the
9 question.
10 Q. Do you know if the title was
11 filed with the county clerk's office on May
12 30, 2017?
13 A. I'm not sure. The lawyers were
14 handling -- Mr. Wagner was handling the
15 filing, so I am not sure the exact date of
16 when he was filing it.
17 Q. As you sit here today, do you
18 know when it was ultimately filed?
19 MR. KAIM: Objection.
20 You can answer if you can.
21 A. No, sir. I don't have the
22 exact date.
23 Q. You did not pay anything to
24 your uncle for the property, correct?
25 MR. KAIM: Objection.

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1 N. HUSSAIN
2 You can answer.
3 A. I think it was gifted or --
4 honestly, I couldn't recall how they did
5 it. All I know is it was transferred.
6 Q. You didn't have to give any
7 money out of your own pocket for transfer
8 of this property, correct?
9 A. I don't think so.
10 Q. After you became the owner of
11 the property, did you ever take a mortgage
12 out on the property?
13 MR. KAIM: Objection.
14 You can answer.
15 A. No, sir.
16 Q. Was there ever any discussion
17 between you and your uncle that upon
18 transferring the property from his name to
19 your name that you would use the property
20 to borrow money to finance the limousine
21 business?
22 MR. KAIM: Objection.
23 You can answer.
24 A. No, sir.
25 Q. Do you know if there was ever

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1 N. HUSSAIN
2 an attempt to sell the 776 Saratoga Road
3 address at any time prior to 2017?
4 MR. KAIM: Objection.
5 You can answer.
6 A. I think we had it listed for --
7 my parents had it listed at some point.
8 They were just testing the market I think
9 it was.
10 Q. Do you know when that was?
11 A. No, sir.
12 Q. I am showing you what has been
13 marked as Exhibit 7.
14 Do you see that document?
15 A. Yes, sir.
16 Q. It is a ten-page document.
17 Have you seen this document
18 before?
19 A. No, sir.
20 Q. It looks like it is dated July
21 22, 2014.
22 Do you see that?
23 A. Yes, sir.
24 Q. Is that your signature?
25 A. Yes, sir.

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1 N. HUSSAIN
2 Q. Did you ever attempt to sell
3 the property in and around July of 2014?
4 A. I don't think so, sir. I know
5 we had it listed for sale. I don't -- I
6 don't --
7 Q. Is there any reason why you
8 would be listed as the seller as of July
9 22, 2014?
10 A. No, sir.
11 Q. Is this your handwriting on
12 Exhibit 7?
13 A. I don't think so.
14 Q. You don't think it is your
15 handwriting, but that is your signature on
16 page 4 of Exhibit 7?
17 A. Yes, sir.
18 Q. Do you recall having any
19 conversations with your uncle Malik Riaz
20 back in July of 2014 regarding any efforts
21 you were making to sell the property?
22 MR. KAIM: Objection.
23 He can answer.
24 A. No, sir.
25 Q. Do you know if there was any

14 (Pages 50 - 53)

Page 54

1 N. HUSSAIN
2 limousine company being run out of that
3 address back in July of 2014?
4 MR. KAIM: Objection.
5 He can answer.
6 A. Yes, sir. They were parked in
7 the back at that point.
8 Q. Did you have any permission to
9 make any efforts to sell the property from
10 your uncle Malik Riaz back in July of 2014?
11 MR. KAIM: Objection.
12 What do you mean by permission?
13 Q. Mr. Hussain, do you understand
14 the question?
15 A. Yes, sir. I do understand it.
16 Q. Did you have any permission
17 back in July of 2014 to sell the property
18 that was owned by your uncle Malik Riaz?
19 MR. KAIM: Objection.
20 He can answer.
21 A. No, sir.
22 Q. As you sit here now, do you
23 have any memory at all as to why your
24 signature would be listed here as the
25 seller of this property in July of 2014?

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1 N. HUSSAIN
2 A. I am trying to think. Could
3 you scroll up, sir, one more time?
4 Q. Sure. All the way up or --
5 this is page 3 I am showing you now.
6 A. Okay. Stop right there for a
7 second, sir.
8 I have done so much paperwork.
9 I am just looking at it. I don't recall
10 this sheet. It looks like a -- yeah,
11 that's not my handwriting, sir. I do
12 remember, um, seeing -- I don't think this
13 is -- no. That's not it.
14 MR. KAIM: Don't guess at
15 anything.
16 THE WITNESS: Yeah. I don't
17 want to guess at anything, sir. No,
18 sir. I don't think that's -- No,
19 sir.
20 Q. Do you remember any
21 conversations at all with your uncle back
22 in July -- in or around July of 2014 about
23 you or anyone selling, attempting to sell
24 776 Saratoga Road property?
25 A. No, sir.

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1 N. HUSSAIN
2 Sir, is this from an agent?
3 MR. KAIM: You can't ask him
4 any questions.
5 THE WITNESS: Got it. Okay.
6 Understood.
7 MR. KAIM: Just wait for a
8 question.
9 THE WITNESS: Understood.
10 Q. Are you aware of any
11 conversations that your father had with
12 your uncle back in 2014 about selling the
13 776 Saratoga Road property?
14 MR. KAIM: Objection.
15 You can answer.
16 A. No, sir.
17 Q. Between 2010 and 2017 when the
18 property was transferred to you, did you
19 ever receive any financing for any reason
20 from your uncle Malik Riaz?
21 MR. KAIM: Objection.
22 You can answer.
23 THE WITNESS: Can you repeat
24 that one more time, sir?
25 Q. Between 2010 and 2017, did you

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1 N. HUSSAIN
2 ever receive any financing for any reason
3 from your uncle Malik Riaz?
4 MR. KAIM: Objection.
5 He can answer.
6 A. No, sir.
7 Q. Do you know if your uncle Malik
8 Riaz, after he purchased the property in
9 2010, ever provided any financing to your
10 father during that time?
11 MR. KAIM: Objection.
12 You can answer.
13 A. No, sir.
14 Q. You don't know if he did?
15 A. No, sir. I don't.
16 Q. Did you ever have any
17 discussions with your uncle Malik Riaz
18 about the limousine business that you were
19 running?
20 MR. KAIM: Objection.
21 You can answer again.
22 A. No, sir.
23 Q. Do you know if your father had
24 any discussions with Malik Riaz about the
25 limousine business that he owned?

15 (Pages 54 - 57)

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1 N. HUSSAIN
2 MR. KAIM: Objection.
3 He can answer.
4 A. No, sir.
5 Q. You don't know if he ever did?
6 A. No, sir.
7 Q. Did you ever become aware of an
8 amount of money that was given to your
9 father from your uncle Malik Riaz? The
10 amount was approximately 60,000 rupees in
11 2018?
12 MR. KAIM: Objection.
13 You can answer.
14 A. No, sir.
15 Q. Did your father ever discuss
16 with you that he was given any money from
17 your uncle Malik Riaz at any time between
18 2010 and 2018?
19 MR. KAIM: Objection.
20 You can answer.
21 A. No, sir.
22 Q. Were you aware of whether your
23 uncle Malik Riaz ever provided any
24 financing to your brother Shahyer between
25 2010 and 2018?

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1 N. HUSSAIN
2 MR. KAIM: Objection.
3 You can answer.
4 A. No, sir.
5 Q. Other than financing, what
6 about gifts? Was there any money that was
7 gifted to you, your father or your brother
8 that you are aware of between 2010 and
9 2018?
10 MR. KAIM: Objection.
11 I mean, are you talking about
12 for the holidays, a Christmas card or
13 something?
14 Objection.
15 He can answer.
16 A. No, sir.
17 MR. LEMARCHE: I am being broad
18 intentionally at this point.
19 Q. So, that you are aware of,
20 neither you, your brother or your father
21 received any amount of money from your
22 uncle Malik Riaz between 2010 and 2018; is
23 that correct?
24 MR. KAIM: Objection.
25 He can answer.

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1 N. HUSSAIN
2 THE WITNESS: Can you repeat
3 that one more time, sir?
4 MR. LaMARCHE: Sure.
5 Q. Did either you, your brother or
6 your father, that you are aware of ever
7 receive any money from your uncle Malik
8 Riaz husband between 2010 and 2018?
9 MR. KAIM: Objection.
10 He can answer.
11 A. No, sir.
12 Q. Was there ever any discussions
13 that you are aware of involving your uncle
14 Malik Riaz Hussain where he agreed to play
15 any role in the limousine businesses that
16 were being run out of the Saratoga Road
17 address?
18 A. No, sir.
19 Q. Did your uncle Malik Riaz have
20 own ownership interest in Prestige
21 Limousine?
22 A. No, sir.
23 Q. Did he have any ownership
24 interest in Hasy Limousine?
25 A. No, sir.

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1 N. HUSSAIN
2 Q. Did he have any ownership
3 interest in Saratoga Luxury Limousine?
4 A. No, sir.
5 Q. Is your uncle Malik Riaz known
6 by any other names that you know of?
7 MR. KAIM: Objection.
8 You can answer.
9 THE WITNESS: I'm sorry. Can
10 you repeat that one more time?
11 Q. Is your uncle Malik Riaz
12 Hussain known by any other names that you
13 are aware of?
14 A. No, sir.
15 Q. Is your uncle Malik Riaz the
16 brother of your father?
17 A. Yes, sir.
18 Q. Do you know when the last time
19 was that he was in New York?
20 MR. SHECHTMAN: Who is he in
21 that question?
22 Q. Do you know the last time Malik
23 Riaz was in New York?
24 MR. KAIM: Objection.
25 You can answer.

16 (Pages 58 - 61)

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1 N. HUSSAIN
2 A. No, sir.
3 Q. Have you ever met with your
4 uncle Malik Riaz when he was in New York?
5 MR. KAIM: Objection.
6 He can answer.
7 A. No, sir.
8 Q. Do you know if your uncle has
9 any business address in New York?
10 A. No, sir.
11 Q. Do you know what your uncle
12 Malik Riaz does for work?
13 MR. KAIM: Objection.
14 He can answer.
15 A. Yes, sir.
16 Q. What does he do for work?
17 A. He is a builder. He is a --
18 Q. Does he own a company?
19 A. Yes, sir.
20 Q. Do you know the name of the
21 company?
22 MR. KAIM: Objection.
23 You can answer.
24 A. Yes, sir.
25 Q. What's the name of the company?

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1 N. HUSSAIN
2 A. Bahria Town.
3 Q. Can you spell that?
4 A. B-a-h-r-i-a.
5 Q. Did you say Bahria Town?
6 A. Bahria Town. Yes.
7 Q. Do you know if that company has
8 an office in New York City?
9 A. No, sir.
10 Q. Do you know if your father's
11 limousine company, the limousine company
12 that you were working in, ever provided any
13 services to any employees of your uncle's
14 company?
15 A. No, sir.
16 Q. Did you ever visit any office
17 in New York City that was purported to be
18 an office address for your uncle's company?
19 A. No, sir.
20 Q. Are you aware of any other
21 businesses that your uncle is involved in?
22 MR. KAIM: Objection.
23 He can answer.
24 A. No, sir.
25 Q. Do you communicate directly

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1 N. HUSSAIN
2 with your uncle Malik Riaz?
3 A. No, sir.
4 Q. Have you ever spoken to him?
5 A. Yes, sir.
6 Q. When was the last time you
7 spoke to him?
8 A. Um, ten plus years ago.
9 Q. Some time in 2012 or earlier?
10 A. Um, yeah. I think it was -- I
11 was at a wedding. We were at a wedding. I
12 just said hi, and that was it.
13 Q. Did you ever speak to him for
14 any reason between 2012 and 2018?
15 A. No, sir.
16 Q. Do you know how often your
17 father was communicating with your uncle
18 Malik Riaz, let's say from 2010 to 2018?
19 A. No, sir.
20 Q. Do you know if it was on a
21 monthly basis or a weekly basis or
22 something else? Any estimate?
23 A. No, sir.
24 Q. Were you ever present when your
25 father was having any discussions with your

Page 65

1 N. HUSSAIN
2 uncle Malik Riaz Hussain between 2010 and
3 2018?
4 A. Um, yes, sir.
5 Q. Do you know on how many
6 occasions?
7 A. One time, sir.
8 Q. One time?
9 A. Yes, sir.
10 Q. Do you recall what the sum and
11 substance of that conversation was?
12 A. Um, just said hello at a
13 wedding. That was it, sir.
14 Q. Do you communicate with your
15 uncle Malik Riaz by e-mail or text
16 messages?
17 A. No, sir.
18 Q. Have you ever communicated with
19 him that way?
20 A. No, sir.
21 Q. Have you ever asked your uncle
22 to borrow money for any reason?
23 MR. KAIM: Objection.
24 He can answer.
25 A. No, sir.

Page 66

1 N. HUSSAIN
2 Q. Do you know if your uncle has
3 ever been provided any documents or records
4 from the limousine business that your
5 father owned and that you were involved in
6 running?
7 MR. KAIM: Objection.
8 Are you talking about as part
9 of the litigation through Paul
10 Shechtman?
11 Q. Other than any documents that
12 your uncle may have received as part of
13 this lawsuit, prior to October 6, 2018, was
14 your uncle Malik Riaz provided with any
15 documents or records regarding the
16 limousine business or businesses?
17 A. No, sir.
18 Q. I am showing you what has been
19 marked as Exhibit 4.
20 Can you see that on your
21 screen?
22 A. Yes, sir.
23 Q. Have you seen this photograph
24 before?
25 A. Yes, sir.

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1 N. HUSSAIN
2 Q. What is that a picture of?
3 A. Me and my brother.
4 Q. Do you know where that
5 photograph was taken?
6 A. Yes, sir.
7 Q. Where was it taken?
8 A. In Dubai.
9 Q. It looks like you are inside
10 some garage or something; is that correct?
11 A. Yes, sir.
12 Q. Do you know who owned that
13 garage?
14 A. It was my cousin's, sir.
15 Q. Which cousins?
16 MR. KAIM: Objection.
17 You can answer.
18 THE WITNESS: Could you repeat
19 that one more time, sir.
20 Q. Who were the cousins that own
21 the property?
22 A. My cousin Ali.
23 Q. Can you spell that for the
24 record, please?
25 A. A-l-i.

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1 N. HUSSAIN
2 Q. Whose vehicles are you standing
3 in front of there?
4 A. Those were my cousin's.
5 Q. Who is the father of your
6 cousin Ali?
7 A. Riaz Malik.
8 Q. Say that again?
9 A. Riaz Malik Hussain.
10 Q. Those were your -- you were at
11 your cousin's house, and the father of Ali
12 is Malik Riaz, correct?
13 A. Yes.
14 Q. When was it that you were at
15 your cousin Ali's house?
16 A. I don't recall the date of that
17 picture, sir.
18 Q. Who took the picture? Do you
19 know?
20 A. One of the workers at the
21 house.
22 Q. Do you know whose handle this
23 msh7865 is?
24 A. Yes.
25 Q. Is that your father's?

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1 N. HUSSAIN
2 A. Yes, sir.
3 Q. Did your father post this on a
4 social media site if you know?
5 MR. KAIM: Objection.
6 You can answer.
7 A. I guess he must have, sir.
8 MR. KAIM: Don't guess.
9 THE WITNESS: I apologize.
10 Q. How long did you -- well,
11 withdrawn.
12 Do you remember the month or
13 the year that you were there visiting your
14 cousin Ali?
15 A. No, sir. Nobody was at the
16 house, sir.
17 Q. You went to his house, but he
18 wasn't there?
19 A. Yes, sir.
20 Q. How did you get access to his
21 garage?
22 MR. KAIM: Objection.
23 What's the relevance of that,
24 of how he got access to his garage?
25 Q. Did you have to speak to

Page 70

1 N. HUSSAIN
 2 someone in order to get in to take pictures
 3 at his house?
 4 THE WITNESS: Sorry. Can you
 5 repeat that one more time?
 6 Q. Did you have to speak to
 7 anybody to get access to his garage so you
 8 can take pictures at his house?
 9 A. One of his workers. They let
 10 us in.
 11 Q. While you were there, did you
 12 see your cousin Ali at all while you were
 13 on that trip?
 14 A. No, sir.
 15 MR. KAIM: Objection.
 16 You can answer.
 17 Q. Did you see your uncle Malik
 18 Riaz when you were there during that trip?
 19 A. No, sir.
 20 Q. Between 2010 and 2017, did
 21 Mr. Niazi ever reach out to you on your
 22 uncle's behalf?
 23 MR. KAIM: Objection.
 24 He can answer.
 25 THE WITNESS: Could you repeat

Page 71

1 N. HUSSAIN
 2 that one more time, sir?
 3 MR. LaMARCHE: Sure.
 4 Q. Between 2010 and 2017, did
 5 Mr. Niazi ever reach out to you on your
 6 uncle's behalf?
 7 A. I don't recall, sir.
 8 Q. Do you recall any occasion
 9 where you met with Mr. Niazi for any reason
 10 between 2010 and 2017?
 11 A. Um, at the lawyer's office.
 12 That was the first time.
 13 Q. That was just for the transfer
 14 of the property in 2017, correct?
 15 A. Yes, sir.
 16 Q. Other than that occasion where
 17 you met with him, was there any other
 18 occasion when you met with him at any time
 19 between 2010 and 2017?
 20 A. No. I don't think so.
 21 Q. How about speaking to him, were
 22 there any other occasions where you spoke
 23 to him in 2010 and 2017?
 24 A. Um, yes. On the phone. Yes,
 25 sir. I don't recall when, but just to let

Page 72

1 N. HUSSAIN
 2 me know that he was coming in, and that's
 3 it.
 4 Q. Did that have to do with the
 5 transfer of the property in 2017?
 6 A. Yes, sir.
 7 Q. There was no other occasion
 8 when you met with him or spoke to him other
 9 than around the issue of the transfer in
 10 2017. Is that fair to say?
 11 A. Yes, sir.
 12 Q. Did the limousine business have
 13 one or more bank accounts that were used to
 14 transact business for the limousine
 15 business?
 16 MR. KAIM: Objection.
 17 You can answer.
 18 A. Yes, sir.
 19 Q. Do you know how many?
 20 A. No, sir.
 21 Q. Were all of the banks in the
 22 United States?
 23 A. Yes, sir.
 24 Q. Were there any banks that were
 25 in Pakistan that were used for the

Page 73

1 N. HUSSAIN
 2 limousine business?
 3 A. Not that I know of, sir.
 4 Q. Do you know if your uncle was
 5 ever provided any bank documents? When I
 6 say bank documents, I mean bank documents
 7 related to the limousine business.
 8 MR. KAIM: Objection.
 9 You can answer.
 10 A. No, sir.
 11 Q. You don't know if he was ever
 12 provided any bank documents or he wasn't
 13 provided any bank documents?
 14 A. I'm not sure if he was or was
 15 not. I don't think so, sir.
 16 Q. Do you know if your uncle Malik
 17 Riaz was ever named as an account holder
 18 for any of the limousine business accounts?
 19 A. No, sir.
 20 Q. Was he ever named as an account
 21 holder on any of the business accounts?
 22 MR. KAIM: Objection.
 23 You can answer.
 24 A. No, sir.
 25 Q. Did your uncle ever have access

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1 N. HUSSAIN
 2 to any limousine bank account between 2010
 3 and October 6, 2018?
 4 MR. KAIM: Objection.
 5 He can answer.
 6 A. Not that I know of, sir.
 7 Q. Did you ever send your uncle
 8 Malik Riaz any money that was received from
 9 the limousine businesses?
 10 A. No, sir.
 11 Q. Do you know if your uncle was
 12 aware of the fact that limousines were
 13 being stored at the Saratoga Road address?
 14 MR. KAIM: Objection.
 15 You can answer.
 16 MR. SHECHTMAN: During what
 17 period?
 18 MR. LaMARCHE: From the time
 19 the limousine company was started in
 20 around 2014 until October 6, 2018.
 21 MR. SHECHTMAN: My
 22 understanding is they weren't being
 23 stored there in the latter year.
 24 MR. LEMARCHE: I will change
 25 the question.

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1 N. HUSSAIN
 2 Q. Was your uncle Malik Riaz ever
 3 aware that limousines were being stored at
 4 the Saratoga Road address at any time?
 5 MR. KAIM: Objection.
 6 You can answer.
 7 A. No, sir.
 8 Q. Did your uncle Malik Riaz ever
 9 provide any money to purchase any
 10 limousines for any of the limousine
 11 companies?
 12 A. No, sir.
 13 Q. Have you had any conversations
 14 with your uncle Malik Riaz after October 6,
 15 2018?
 16 A. No, sir.
 17 MR. KAIM: Just note my
 18 objection to the last question.
 19 Q. I am showing you what has been
 20 marked as Exhibit 9.
 21 Do you see that on your screen,
 22 sir?
 23 A. Yes, sir.
 24 Q. Do you know what that is a
 25 picture of?

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1 N. HUSSAIN
 2 A. My uncle, I think.
 3 Q. Which one is your uncle?
 4 A. I think all the way to the
 5 right.
 6 Q. Do you know who else is in the
 7 photograph?
 8 A. No, sir.
 9 Q. Is your father in this
 10 photograph?
 11 A. I don't see it, sir.
 12 Q. The two other gentlemen that
 13 are in the photograph, can you make out who
 14 they are or do you know who they are?
 15 A. No, sir.
 16 Q. At the top of the photograph,
 17 it says Malik Shahid Hussain.
 18 Do you see that?
 19 A. Yes, sir.
 20 Q. Is that your father?
 21 A. I mean, there are a lot of
 22 Malik Shahid Hussains. I mean, that is my
 23 father's name, but it is not spelled
 24 correctly, sir.
 25 Q. Is his name spelled with an E

Page 77

1 N. HUSSAIN
 2 instead of an I? In other words, it is
 3 S-h-a-h-e-d?
 4 A. Yes, sir. That's how it is
 5 spelled.
 6 Q. This does not appear to be your
 7 father in the middle of this picture here.
 8 Is that fair to say?
 9 A. I don't think so.
 10 Q. Do you know a company that goes
 11 by the name TAFS?
 12 A. No, sir.
 13 Q. Do you know if your father runs
 14 a company called TAFS Developers Private
 15 Limited?
 16 A. No, sir.
 17 Q. You have not heard of your
 18 father being the owner or the operator of
 19 TAFS?
 20 A. No, sir.
 21 Q. Let me show you what has been
 22 marked as Exhibit 5.
 23 Do you see that on your screen?
 24 A. Yes, sir.
 25 Q. Have you ever seen this

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1 N. HUSSAIN
 2 document before? It is a two-page
 3 document.
 4 A. No, sir.
 5 Q. On the second page, it states,
 6 "Mr. Malik Shahed Hussain, the chief
 7 executive of TAFS."
 8 Do you see that?
 9 A. Yes, sir. I see that.
 10 Q. Did you ever hear or were you
 11 ever told that your father was the chief
 12 executive of TAFS, T-A-F-S?
 13 A. No, sir.
 14 Q. Were you ever told that your
 15 uncle Malik Riaz was the owner or operator
 16 of TAFS?
 17 THE WITNESS: Can you repeat
 18 that one more time, sir?
 19 Q. Were you ever told or did you
 20 ever learn that your uncle Malik Riaz was
 21 the owner or operator of the company TAFS?
 22 A. No, sir.
 23 Q. On page 1 of Exhibit 5, it
 24 mentions that the company has headquarters
 25 in New York and has undertaken a number of

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1 N. HUSSAIN
 2 projects. It mentions a limousine
 3 transport service and ownership of the
 4 Hotel Crest in New York.
 5 Were you ever aware of a
 6 company by the name of TAFS or anyone who
 7 owns the company TAFS being involved in the
 8 ownership of the Crest Inn Motel?
 9 A. No, sir.
 10 MR. LEMARCHE: I don't have any
 11 further questions at this time,
 12 Mr. Hussain. Thank you.
 13 MR. SHECHTMAN: Mr. Hussain,
 14 Paul Shechtman. I represent your
 15 uncle. I have no questions and I
 16 thank you for participating in the
 17 deposition.
 18 THE WITNESS: Yes, sir.
 19 MR. KAIM: Counselors on mute,
 20 there is ten more minutes. Speak now
 21 if you have any questions, otherwise,
 22 we will end the deposition in a
 23 minute. Okay?
 24 THE VIDEOGRAPHER: Counsel, if
 25 there are no further questions or

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1 N. HUSSAIN
 2 stipulations or objections, I will
 3 conclude the video recording for this
 4 proceeding.
 5 MR. SHECHTMAN: The only thing
 6 I want to ask is first to thank you
 7 and also to thank the stenographer.
 8 Do you have a sense of when the
 9 transcript will be available?
 10 THE STENOGRAPHER: Can we go
 11 off the record, please?
 12 MR. SHECHTMAN: I am happy to
 13 go off the record.
 14 THE VIDEOGRAPHER: Can I wrap
 15 the video, Counselor? Is that
 16 acceptable?
 17 MR. SHECHTMAN: Thank you.
 18 THE VIDEOGRAPHER: This
 19 concludes the video recorded virtual
 20 remote deposition of Nauman Hussain
 21 taken by the plaintiffs on Friday,
 22 February 11, 2022. The time is 11:54
 23 a.m. Eastern Standard Time, and we
 24 are going off the record.
 25 * * *

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1 N. HUSSAIN
 2 (Whereupon, at 11:54 A.M., the
 3 Examination of this witness was
 4 concluded.)
 5
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1 N. HUSSAIN
 2 D E C L A R A T I O N
 3
 4 I hereby certify that having been
 5 first duly sworn to testify to the truth, I
 6 gave the above testimony.
 7
 8 I FURTHER CERTIFY that the foregoing
 9 transcript is a true and correct transcript
 10 of the testimony given by me at the time
 11 and place specified hereinbefore.
 12
 13
 14
 15 _____
 16 NAUMAN HUSSAIN
 17
 18 Subscribed and sworn to before me
 19 this ____ day of _____, 20__.
 20
 21
 22 _____
 23 NOTARY PUBLIC
 24
 25

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1 N. HUSSAIN
 2 E X H I B I T S
 3
 4 PLAINTIFF'S EXHIBITS
 5 EXHIBIT EXHIBIT
 6 NUMBER DESCRIPTION PAGE
 7 Exh 1 Commercial Lease (2 pages) 5
 8 Exh 2 Power of Attorney (1 page) 5
 9 Exh 3 N.Y. Warranty Deed (11 pages) 5
 10 Exh 4 Photograph 5
 11 Exh 5 Website info. (2 pages) 5
 12 Exh 6 Picture of driver's license 5
 13 Exh 7 Property Condition Disclosure
 14 Statement (10 pages) 5
 15 Exh 8 Special Power of Attorney 5
 16 Exh 9 Photograph 5
 17
 18 (Exhibits retained by the Court Reporter.)
 19
 20
 21 I N D E X
 22
 23 EXAMINATION BY PAGE
 24 Mr. LaMarche 7
 25
 INFORMATION AND/OR DOCUMENTS REQUESTED
 INFORMATION AND/OR DOCUMENTS PAGE
 (None)
 QUESTIONS MARKED FOR RULINGS
 PAGE LINE QUESTION
 (None)

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1 N. HUSSAIN
 2 C E R T I F I C A T E
 3
 4 STATE OF NEW YORK)
 5 : SS.:
 6 COUNTY OF NASSAU)
 7
 8 I, LAURA ANZELONE, a Notary Public
 9 for and within the State of New York, do
 10 hereby certify:
 11 That the witness whose examination is
 12 hereinbefore set forth was duly sworn and
 13 that such examination is a true record of
 14 the testimony given by that witness.
 15 I further certify that I am not
 16 related to any of the parties to this
 17 action by blood or by marriage and that I
 18 am in no way interested in the outcome of
 19 this matter.
 20 IN WITNESS WHEREOF, I have hereunto
 21 set my hand this 14th day of February 2022.
 22

 23 LAURA ANZELONE
 24
 25

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1 ERRATA SHEET
 2 VERITEXT/NEW YORK REPORTING, LLC
 3 CASE NAME: In Re Schoharie Limousine Crash
 4 DATE OF DEPOSITION: 2/11/2022
 5 WITNESSES' NAME: Nauman Hussain
 6
 7
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 20
 21
 22 _____
 23 Nauman Hussain
 24 SUBSCRIBED AND SWORN TO BEFORE ME
 25 THIS ____ DAY OF _____, 20__.

 (NOTARY PUBLIC) MY COMMISSION EXPIRES:

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New York Code
Civil Practice Law and Rules
Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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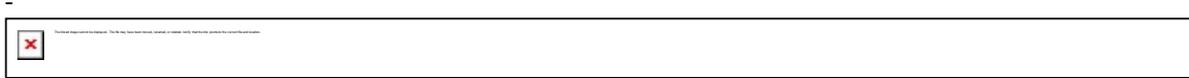
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Chad Seigel

From: Joe Tacopina
Sent: Tuesday, August 16, 2022 3:27 PM
To: Hon. Peter A. Lynch
Cc: susan.mallery@co.schoharie.ny.us; LKINDLON@kindlonlaw.com; Thomas Garner; Stehle Hetman; Jaime Montarello; Lauren Clemenzi; Chad Seigel
Subject: Re: People v. Nauman Hussein - Schoharie County Court Appearance - August 24, 2022 @ 9:30 a.m.

Thank you your Honor. I am adding my partner , Chad Seigel to the email chain as he was part of the on the record proceedings.



On Aug 16, 2022, at 9:22 PM, Hon. Peter A. Lynch <plynch@nycourts.gov> wrote:

Counsel:

Please be advised that I have been assigned to take over Judge Bartlett's criminal caseload due to his retirement. I would like to bring the following issue to your immediate attention.

Distinct from the issue of whether there has been compliance with the interim probation orders and conditions, a separate issue must be addressed. Paragraph 3 of the plea agreement calls for an interim probation term of 2 years (see also, Plea Transcript p. 15-16). At the time of the plea, DA Mallery made the following statement:

“ He will have **one year probation** which will be **extended on consent for another year**, during which, **as a special condition thereof and as part of a treatment plan**, Mr. Hussain shall perform a total on one thousand hours of community service, within whatever county he may reside. Such community service must be **approved by the Court** and shall be completed in increments of 125 hours every three months.” (Plea Tr. p. 3; emphasis added).

I note the Orders and Conditions of interim probation specifically provide that drug court treatment is N/A. At issue is whether the so-called special condition “treatment plan” comports with the requirement of CPL 390.30 (6) (a).

CPL 390.30 (6) (a) provides:

“In any case where the court determines that a defendant is eligible for a sentence of probation, the court, after consultation with the prosecutor and upon the consent of the defendant, may adjourn the sentencing to a specified date and order that the defendant be placed on interim probation supervision. **In no event may the sentencing be adjourned for a period exceeding one year from the date the conviction is entered, except that upon good cause shown, the court may, upon the defendant’s consent, extend the period for an additional one year where the defendant has agreed to and is still participating in a treatment program in connection with a court designated a treatment court by the chief administrator of the courts.** When ordering that the defendant be placed on interim probation supervision, the court shall impose all of the conditions relating to supervision specified in subdivision three of [section 65.10 of the penal law](#) and the court may impose any or all of the conditions relating to conduct and rehabilitation specified in subdivisions two, four, five and five-a of section 65.10 of such law. The defendant must receive a written copy of any such conditions at the time he or she is placed on interim probation supervision. The defendant’s record of compliance with such conditions, as well as any other relevant information, shall be included in the presentence report, or updated presentence report, prepared pursuant to this section, and the court must consider such record and information when pronouncing sentence. If a defendant satisfactorily completes a term of interim probation supervision, he or she shall receive credit for the time served under the period of interim probation supervision toward any probation sentence that is subsequently imposed in that case.” (emphasis added)

It is manifest that the community service labeled treatment plan in the plea agreement does not constitute participation in a **“treatment program in connection with a court designated a treatment court by the chief administrator of the courts.”** Please be prepared to address the issue of whether there is any legal basis to extend the interim probation term in the first instance.

Following oral argument on August 24, 2022, I will make a determination of whether the interim probation can be extended. Since the plea was on September 2, 2021 if I do not authorize the interim probation extension, sentencing will take place on August 31, 2022 @ 10:00 a.m. Kindly adjust your schedules accordingly. Peter A. Lynch, J.S.C.

1 THE COURT: Nauman Hussain. Are you Mr.
2 Hussain?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Good morning.

5 THE DEFENDANT: Good morning.

6 THE COURT: Counsel, do you want to put your
7 appearances on the record, please.

8 MS. MALLERY: Yes, Your Honor. District
9 Attorney, Susan Mallery.

10 MR. KINDLON: And Lee Kindlon on behalf of
11 the defendant. Good morning.

12 THE COURT: Okay. So the record should
13 reflect that on September 2, 2021, the defendant had pled
14 guilty to 20 counts, Counts Twenty-One through Forty of
15 the indictment, Criminally Negligent Homicide. He was
16 placed on an Order of Interim Probation by Judge Bartlett
17 that date.

18 In reviewing the control date, which is today
19 on that interim probation, I reviewed the plea agreement
20 and the orders and conditions of interim probation and an
21 issue caught my attention which I forwarded via e-mail to
22 the parties to alert them on August 16, 2022 concerning
23 the language of Criminal Procedure Law Section
24 390.30 (6) (a).

25 And specifically, the statute provides that

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SENIOR COURT REPORTER
518-453-6999

1 the interim probation period should be one year, no more
2 than one year, except upon good cause shown that the
3 Court would have the authority on defendant's consent
4 which he already consented to in the plea agreement to
5 extend that period for an additional one year where the
6 defendant has agreed to and is still participating in a
7 treatment program in connection with a Court-designated
8 treatment court by the Chief Administrator of the Courts.

9 And as I pointed out to counsel, the orders
10 and conditions of probation essentially provide for
11 community service and that the defendant is not engaged
12 in a treatment court that I know of.

13 So as I indicated to the parties, I want to
14 hear argument from you as to whether or not there is any
15 lawful basis to extend the interim probation term for an
16 additional year. I certainly recognize that in the
17 written plea agreement between the parties and approved
18 on the record by Judge Bartlett back on September 2,
19 2021, that the parties contemplated a two-year interim
20 probation period with the good cause requirement being
21 necessary to extend the term for that additional year.

22 So I put it on for today to hear from you
23 both. Ms. Mallery.

24 MS. MALLERY: Thank you, Your Honor. The
25 People will acknowledge the interim probation report

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SENIOR COURT REPORTER
518-453-6999

1 filed by the Schoharie County Probation Department. Mr.
2 Hussain is not only in compliance but has exceeded the
3 requirements that were placed on him. So the People do
4 not have good cause to extend it and would concede this
5 matter is to be sentenced, I believe the Court had
6 indicated on the 31st of August.

7 The People are prepared, if the Court and
8 counsel are prepared, to proceed with sentencing. We
9 would just ask for -- I would ask to approach the Court
10 to ask some procedural questions.

11 THE COURT: Okay. Before we get there, Mr.
12 Kindlon.

13 MR. KINDLON: Thank you very much, Your
14 Honor. We would concede the Court's point.

15 THE COURT: Okay. So the interim probation
16 period is not extended by consent of the parties, as Ms.
17 Mallery has indicated. I did also receive the interim
18 report. It does appear that you have been in compliance
19 with the conditions.

20 So consequently, I am scheduling sentencing
21 for August 31, 2022 at 10:00 a.m. When you leave here
22 today, Mr. Hussain, you are to report to the Probation
23 Department to cooperate with them in the preparation of
24 the presentence investigation report.

25 And counsel, do you want to approach?

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1 MS. MALLERY: Yes, Judge.

2 (Whereupon, a discussion was had at the
3 Bench off the stenographic record.)

4 THE COURT: Okay. So Mr. Garner, my law
5 clerk, has just confirmed that he spoke with the
6 Probation Department today. Mr. Hussain, you do not need
7 to report there today, but you do need to report here for
8 sentencing on August 31, 2022 at 10:00 a.m. That
9 concludes the proceeding.

10 (Proceedings concluded.)

11 * * * * *

12

13 C E R T I F I C A T I O N

14

15 I, **TERESA L. ARDIA**, Shorthand Reporter and Notary
16 Public within and for the State of New York, do hereby
17 CERTIFY that the foregoing record taken by me at the time
18 and place noted in the heading hereof is a true and
19 accurate transcript of same, to the best of my ability
20 and belief.

21 *Theresa L Ardia*

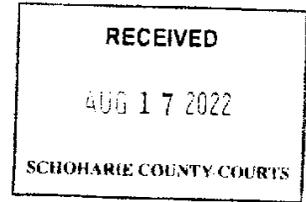
22 THERESA L. ARDIA, CSR, CRR, RPR, RMR

23

24 Dated: September 4, 2022.

25

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SENIOR COURT REPORTER
518-453-6999



In the Matter of

Nauman Hussain, Probationer

Docket # 2019-33

Court Report

On or about 09/02/2021, the defendant was sentenced to Interim Supervision by this court consequence to his conviction of

Original Statute Description

- Criminally Negligent Homicide

and was ordered to abide by certain enumerated conditions as attached hereto and made a part hereof, to expire on 09/01/2023.

SUMMARY OF SUPERVISION

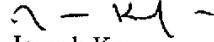
Mr. Hussain continues to reside at 3 Broom Shop Ln. Apt 312 in Latham with his girlfriend and brother. He owns and operates his own marketing and consulting company, Begum Agency. He travels frequently for work purposes.

Hussain was ordered to complete 1000 hours of community service during his time on Interim Supervision. To date he has completed 538 hours. He has completed these hours with the City of Albany Department of Recreation and the Regional Food Bank of NENY. He reports that he is looking into doing additional hours at the Troy Boys and Girls Club. He is currently in compliance with having 125 hours of community service completed per quarter and is on track to have the 1000 hours completed by the end of his Interim supervision in September 2023.

Mr. Hussain is currently being supervised as a low-risk offender and reports to the Probation Department monthly as directed. A urine drug screen completed on 7/26/22 was negative for all substances. He has maintained overall compliance with his Order and Conditions of Interim Probation.

Aa Mr. Hussain continues to reside out of Schoharie County, appropriate transfer request documentation has been completed and forwarded to the Court for consideration.

Respectfully submitted,



Joseph Kenyon
Probation Officer

Dated: 08/17/2022 09:00 AM

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STATE OF NEW YORK
COUNTY COURT COUNTY OF SCHOHARIE

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

NAUMAN HUSSAIN,

Defendant.

SENTENCING

BEFORE: HONORABLE PETER A. LYNCH
Supreme Court Justice

APPEARANCES:

For the People: SUSAN J. MALLERY, ESQ. District Attorney
Schoharie County

For Defendant: LAW OFFICES OF TACOPINA & SEIGEL
BY: CHAD SEIGEL, ESQ.

-and-

THE KINDLON LAW FIRM, PLLC
BY: LEE C. KINDLON, ESQ.

NAUMAN HUSSAIN, Defendant, In Person.

TRANSCRIPT OF PROCEEDINGS in the above matter
taken in Schoharie County Courthouse, 290 Main Street,
Schoharie, New York, on Wednesday, August 31, 2022.

REPORTED BY: THERESA L. ARDIA, CSR, CRR, RPR, RMR
Senior Court Reporter

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1 THE COURT: The People of the State of New
2 York against Nauman Hussain.

3 Okay. This is the People of the State of New
4 York against Nauman Hussain. Are you Nauman Hussain,
5 sir?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Okay. Counsel, do you want to
8 put your appearances on the record, please.

9 MR. SEIGEL: Thank you, Your Honor. Good
10 morning. For Mr. Hussain, Chad Seigel from Tacopina,
11 Seigel & DeOreo accompanied by co-counsel, Lee Kindlon.

12 MR. KINDLON: Good morning, Your Honor.

13 MS. MALLERY: District Attorney, Susan
14 Mallery.

15 THE COURT: Before we begin this
16 proceeding -- you can have a seat.

17 MR. SEIGEL: Thank you.

18 THE COURT: The matter is scheduled for
19 sentencing and I have received a number of written
20 requests from the media to both record this by audio and
21 video. And the Court will recognize Mr. Dan Levy who is
22 in the courtroom as a representative of the media.

23 And Mr. Levy, would you come on down here so
24 we can hear you and can you tell us the basis for the
25 media request?

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1 MR. LEVY: Well, I should -- first of all,
2 Your Honor, thank you for the opportunity. I should
3 probably first tell you that I'm probably biased because
4 I think in a free and open society, media cameras should
5 always be allowed inside a courtroom in most cases.

6 In more than 30 years of journalism, very few
7 cases have garnered more interest, more publicity than
8 this one. There are many people in the community, you've
9 see many family members are here today to witness what
10 happens inside this courtroom. Many other people with a
11 lot of interest are not able to be here and they have a
12 right to see what's going on in a courtroom that they pay
13 for.

14 They have a right to see what's happening
15 with the Judge whose salary they pay, with the District
16 Attorney whose salary they pay. And I say this with due
17 respect; it's not up to me to ask you why our cameras
18 should be in the courtroom. With all due respect, it's
19 up to the Court to tell us why the cameras should not be
20 in here.

21 THE COURT: Let me ask you this. The
22 proposal here, there are a number of requests. Are there
23 television cameras proposed? How many cameras are
24 proposed?

25 MR. LEVY: If I had to guess, there's

1 probably four TV stations that are represented here, at
2 least four that I know of.

3 THE COURT: Is there a pooling agreement
4 amongst the media?

5 MR. LEVY: No polling --

6 THE COURT: Pooling.

7 MR. LEVY: Pooling, yes, none has been spoken
8 about and no agreement has been reached as far as I know.

9 THE COURT: And cameras outside the courtroom
10 there?

11 MR. LEVY: That's my understanding, outside
12 the courtroom.

13 THE COURT: And how many are there?

14 MR. LEVY: It's my understanding there are at
15 least four.

16 THE COURT: Okay. Well, one of the problems
17 is that no more than two camera operators shall be
18 permitted in any one proceeding under Section 131.6 of
19 the Rules of the Chief Judge, subdivision (a)(1).

20 So if I grant this application, I'm going to
21 limit it to two cameras. You all are going to have to go
22 out in the hallway and determine whose cameras are going
23 to be used. And I am directing that there be a pooling
24 agreement and shared coverage.

25 MR. LEVY: Understood. We deal with that

1 often.

2 THE COURT: Okay, all right. So do the
3 People wish to be heard on this application?

4 MS. MALLERY: Your Honor, I did have an
5 opportunity to speak with the families of the victims
6 this morning and they have no opposition. They have no
7 opposition.

8 THE COURT: Okay. Mr. Seigel and/or Mr.
9 Kindlon.

10 MR. SEIGEL: We have no opposition, Your
11 Honor.

12 THE COURT: Okay. Then, the application is
13 granted. Dan, what I'd like you to do is go out and talk
14 to whatever the camera operators are. Pick two, because
15 the rules only allow two. But also, I am directing that
16 because there are a number of individuals here who are
17 going to be speaking on behalf of their deceased family
18 members that at no time will the cameras be allowed to
19 pan in on the individual as they are giving their
20 testimony.

21 And so when the camera operators come in, you
22 can tell them that, but I'm going to tell them again. So
23 what we're going to do, right now, we'll take like a
24 five-minute break and I'll allow you with the camera
25 individuals to get set up. Where did you propose to put

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1 the cameras?

2 MR. LEVY: Well, assuming that impact
3 statements will be --

4 THE COURT: Impact statements are going to be
5 given --

6 MR. LEVY: Oh, from that podium?

7 THE COURT: I'm thinking you could set up
8 your camera in front of the jury box directed this way.

9 MR. LEVY: Yeah, I hope we wouldn't be in
10 anyone's way there.

11 THE COURT: All right. So we're going to
12 take a five-minute break, ladies and gentlemen, to allow
13 the media to get set up and then we will begin the
14 process.

15 MR. LEVY: Thank you, Your Honor.

16 (Whereupon, a short break was taken.)

17 THE COURT: Back on the record. Just to
18 clarify a point, I'm going to allow two video cameras and
19 one still camera.

20 MR. SEIGEL: Okay, thank you.

21 THE COURT: We're on the record. There are
22 two cameramen in here. As I've just indicated on the
23 record before you came in here, I'm going to allow you to
24 film the proceedings with both video and audio. There
25 are going to be a number of individuals who are speaking

1 on behalf of the victims who will be giving statements
2 from the podium. You are not to pan in on those
3 individuals at all. Okay?

4 CAMERA OPERATOR: May we record audio?

5 THE COURT: Yes, audio.

6 CAMERA OPERATOR: And there is one person who
7 should be up shortly.

8 (Pause in proceedings.)

9 THE COURT: Okay, sir. So you're the still
10 photographer; is that correct?

11 UNIDENTIFIED MALE: That would be true.

12 THE COURT: Who are you?

13 UNIDENTIFIED MALE: I'm with Associated
14 Press.

15 THE COURT: Okay. So as I just indicated to
16 the cameramen, you can take pictures of the proceedings.
17 You may not take pictures of the family members of the
18 victims who will be giving statements from the podium
19 over here. Do you understand that?

20 UNIDENTIFIED MALE: I do, correct.

21 THE COURT: Okay, very good. Okay. So this
22 is the matter of the People versus Nauman Hussain.
23 Counsel, you've already put your appearances on the
24 record. The record should reflect that on September 2,
25 2021, the defendant entered a guilty plea to Counts

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1 Twenty-One through Forty of the indictment in full
2 satisfaction of the indictment, each count consisting of
3 the charge of Criminally Negligent Homicide in violation
4 of Penal Law Section 125.10, each a class E felony.

5 Now, at the time of the plea, the plea
6 transcript indicated, and there was a plea agreement
7 signed by the parties that I'll be talking about at
8 length during this proceeding which contemplated a
9 two-year period of interim probation.

10 Last week, on the 24th, I made a ruling that
11 the interim probation would not be extended, because the
12 statute did not allow for the extension of an interim
13 probation period unless the defendant were actively being
14 treated in a treatment court and that the community
15 service provision of the interim probation order and
16 conditions did not satisfy that provision of the statute.

17 So consequently, I advised the parties that
18 the sentencing would go forward today. Now, counsel, I
19 did receive a presentence investigation report, which I
20 had my staff e-mail to all the parties.

21 And Ms. Mallery, did you receive that?

22 MS. MALLERY: We did, Your Honor.

23 THE COURT: Counsel, did you receive the
24 presentence investigation report?

25 MR. SEIGEL: We did, Your Honor.

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1 THE COURT: Okay. Well, at an appropriate
2 time, I'm going to allow you to comment on that report.
3 Now, in the meantime, before the defense comments, the
4 defense certainly has the right to hear the comments made
5 by the various members of the families of the victims.
6 And I did receive, and we did address this issue last
7 week, I had indicated that I considered the fact that the
8 family members had given statements at the time of the
9 plea; that, in my view, was an open and continuous
10 request to give statements.

11 The fact that the members of the families
12 gave statements at the time of the plea does not end the
13 matter for purposes of sentencing. They do have the
14 right to make a statement.

15 Now, Ms. Mallery, you have provided to me and
16 counsel a list of individuals who would like to give a
17 statement either on their own behalf or their family
18 members' behalf or have asked you to read a statement.
19 So what I'm going -- and the last e-mail I received was
20 August 30th, yesterday, at 12:31 p.m. Has that been
21 updated at all?

22 MS. MALLERY: It has, Your Honor. This
23 morning, we would like to substitute Jill
24 Richardson-Perez. She would like to read. She is the
25 mother of Matthew Coons. And it's my understanding that

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1 Bethany King, the third -- the fourth name down will not
2 be reading. Is that still accurate?

3 THE COURT: Bethany King will not be reading
4 and Jill Richardson-Perez will be.

5 MS. MALLERY: That is correct.

6 THE COURT: Okay, all right. So for the
7 members of the families that are going to be giving
8 statements, I'm going to ask that Ms. Mallery call you up
9 one at a time, there is a podium set up for you. Please
10 bear in mind that if you're going to read a statement,
11 invariably, individuals read statements very quickly.
12 And Theresa is an excellent court reporter, but she has
13 to keep up with you, because everything that is said
14 during this proceeding, including any statements made by
15 family members, becomes part of the record of this
16 proceeding. So take your time.

17 And Ms. Mallery, you may call your first
18 witness.

19 MS. MALLERY: Yes, Your Honor. I'm going to
20 assign that task to the crime victims advocate, Dawn, who
21 is here and she will call them.

22 THE COURT: Dawn. And what is your name?

23 MS. BRYDEN: Kim Bryden, B-r-y-d-e-n.

24 THE COURT: Okay, go ahead.

25 MS. BRYDEN: The first speaker will be Sheila

1 McGarvey, M-c-G-a-r-v-e-y, mother of Shane McGowan.

2 THE COURT: Okay.

3 MS. MCGARVEY: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MS. MCGARVEY: My name is Sheila McGarvey. I
6 am the mother of Shane McGowan and the mother-in-law of
7 Erin Vertucci McGowan who were two of the twenty people
8 killed in the Schoharie limo crash on October 6, 2018.

9 I want you to know that the 17 young people
10 killed in the crash were the best this world has to give.
11 They were not the kind of people who operated on the
12 fringes of society and had a total disregard for the law
13 but, rather, they lived their lives to the fullest as
14 law-abiding citizens unlike this person before us today.

15 He is guilty of 20 counts of Criminally
16 Negligent Homicide. We all gave our victim statements
17 about a year ago, but I ask you: Does anyone really care
18 or want to hear about the impact of the loss of my son,
19 Shane, and his wife, Erin?

20 They were a beautiful, loving couple just
21 married four months prior to being killed as the result
22 of deceitful business practices. Does anyone really care
23 about our pain, my pain, the endless tears and sleepless
24 nights? Probably not. No one really wants to hear that.
25 Yet, we, the survivors, have to go on every day without

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1 our loved ones.

2 I know my family cares. I'm here with my
3 brother, James, and his wife, Linda, my brother, Sean,
4 from Switzerland. Many of Shane's friends are married
5 now and have had their first or expecting their second
6 child and when I see them, I'm happy for their joy but
7 wonder what it would have been like for Shane and Erin.

8 Shane had called me on his way home from work
9 on October 5th and was excited as he was just approved
10 for a mortgage and the possibility of having a child in
11 the near future.

12 But this man, this narcissistic man, evil,
13 vile excuse of a man, took all that away from Shane and
14 Erin, from me, Shane's father, Shane's brothers, Colin
15 and Aaron, my family, Erin's mom and her family and
16 friends.

17 One could say this was a horrific accident,
18 but this was no accident. This man knowingly, willingly
19 and deceitfully removed that out-of-service sticker for
20 whatever reason the sticker was on the car, on the limo.
21 Why? Because he had a total disregard for the law and
22 operated his business on the fringes of the law and was
23 allowed many special favors by so many.

24 Why? Because he saw the opportunity to make
25 a few hundred dollars and take advantage of just people

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1 looking for a replacement vehicle at the last minute.
2 Too bad they didn't read all the negative reviews about
3 his business, about the disrepair of his cars and the
4 filth of your cars.

5 My son, Shane, didn't even have a seat in the
6 limo. He sat on some makeshift barrel or can. If only
7 you were a decent, law-abiding businessman and dedicated
8 a fraction of the money to your business instead of
9 paying your high-priced lawyers, your bodyguards. What
10 is that about, bodyguards?

11 Had you done so, 20 people more than likely
12 would be living their lives today. But you learned from
13 the worst. Your father was a deceitful businessperson.
14 Oh, yes, he graduated to the dubious honor of an F.B.I.
15 informant. And your brother, he ran a welfare motel into
16 the ground subsequently shut down by the Department of
17 Health. And now, he is here as a law-abiding citizen,
18 right?

19 He committed -- he did 500-plus hours of
20 community service. He made sure right after the crash
21 all his fines were paid. And since September 1st, 2nd,
22 you have been walking the line. You now have some
23 guidance in your high-priced attorneys advising you to
24 keep your nose clean. I guess you were no longer fanning
25 your hundred dollar bills in front of your friends in

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1 nightclubs.

2 I just respectfully request that this Court
3 is not ruled by this man, this criminal. I thought the
4 Court could deny his ability to leave this area and I
5 found out earlier that the Court does not have that
6 authority, that that's up to the probation officers, but
7 this is clearly a joke.

8 After killing 20 innocent people, why should
9 he be allowed to go on and live his life with his
10 girlfriend? All I can say is the generosity of some
11 women as to asking, where is your family?

12 He took life from my son and his wife, Erin,
13 and 18 others. He will get lost in the abyss of the
14 probationary system in New York State. He is not to be
15 trusted. Don't forget, he tried to flee this area after
16 the crash and was stopped by the troopers, found with
17 several thousand dollars and his passport.

18 In conclusion, the only thing I would like to
19 say is I remind everyone in this court he was convicted
20 of 20 counts of Criminally Negligent Homicide. Of those
21 20 people, he killed a grandfather, he killed mothers,
22 fathers, daughters, sons, husbands, wives, friends and,
23 in that, including four sisters, the four King girls, two
24 brothers, Axel and Rich, two newlywed couples, one of
25 which was my son and his wife, Erin, cousins, my

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1 of all, where he could manipulate how I feel and what we
2 had instead of doing the right job and abiding by New
3 York State Transportation regulations.

4 "He deliberately falsified documents with the
5 New York State Motor Vehicle, regulations that would have
6 protected the victims. He should be in jail. At the
7 very least, he deserves to remain on electronic
8 monitoring. He gets to continue his life; these 20
9 victims do not." Thank you, Your Honor.

10 THE COURT: Thank you.

11 MS. BRYDEN: Next will be Jeri Bursese,
12 J-e-r-i, last name B-u-r-s-e-s-e, stepmother of Savannah
13 Bursese.

14 MS. BURSESE: My name is Jerilyn Bursese, and
15 I was lucky enough to be Savannah's stepmother. I have
16 two beautiful stepdaughters and a son as well. But I'm
17 not here to lament how Savannah's death has affected my
18 family's life. It would be too painful for me to get
19 through and it was heart-wrenching enough listening to
20 the impact statements that we all heard last summer a
21 year ago.

22 I'm here to talk about the elephant in the
23 room. Since the day of this accident, it has been one
24 kick to the gut after another. The shock, the disbelief,
25 the broken dreams each of us have been forced to face.

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1 It hasn't been enough, apparently. The many meetings
2 where we gathered listening to the District Attorney,
3 Susan Mallery, telling us how she was going to fight for
4 our loved ones was painful enough. Just being in the
5 room with these grieving families is heartbreaking. Only
6 to find out years later, Mr. Hussain was offered a plea
7 deal that entailed him getting only five years of
8 probation. This decision, once again, has ripped open
9 our wounds.

10 The call we received just this past week from
11 our lawyer who explained to us that it's been discussed
12 and decided they are no longer going to file any charges
13 towards the DMV or the DOT for reasons I couldn't explain
14 if I had to. Are you kidding me? Another kick to the
15 gut. They, too, will see zero repercussions or
16 accountability for their lack of diligence.

17 I do acknowledge we were thrown a bone with
18 Kevin Crissins (phonetic) help. Some of our state
19 legislators got together and wrote some new limo safety
20 regulations into the law so that other people like the
21 Hussains can't put a deathtrap limo on the road again
22 and, for that, we are grateful.

23 However, they are just regulations and they
24 need to be overseen and enforced, and we saw how well
25 that worked for the DMV and DOT. And, here, we are four

1 years later and no one has been accountable for this
2 horrific crash. No one. Our furry grows daily. It
3 grows, fed by the lack of accountability and the lack of
4 responsibility.

5 We have asked for nothing more than justice
6 and we have been denied all but the most basic glimpse.
7 It is performative at best and it mocks our pain. I am a
8 woman of faith and I know when my time comes, I'll get to
9 see Savannah and tell her how much I've missed her and
10 how much she's missed.

11 I also know this: None of you could possibly
12 know how we are feeling, not because you haven't lost or
13 experienced the death of a child, God forbid, or a parent
14 or a sibling or a spouse, but because not one of you is
15 able to look us in the eye and tell us justice was
16 served. Thank you.

17 THE COURT: Thank you.

18 MS. BRYDEN: Next will be Jill
19 Richardson-Perez, mother of Matthew Coons.

20 MS. RICHARDSON-PEREZ: Good morning.

21 THE COURT: Good morning.

22 MS. RICHARDSON-PEREZ: Thank you, Your Honor,
23 for the time for this, I do appreciate it. I know we
24 spoke a year ago. This will be a little different and a
25 little short this time. I have very little to say I do

1 want to thank all the parents that spoke this morning,
2 because everything that they said was true and I agree
3 with everything that has been spoken. Jeri, I thank you.

4 Nauman Hussain, if you could just take a
5 minute and look my way. This was Matthew and Savannah.
6 And I know my daughter spoke. You had the acquaintance
7 of Matthew and my daughter, Ashley, at one point. I miss
8 them so much. This was at my wedding a few years back
9 and I always hoped that I would be at their wedding.

10 These are the people lost that day. They
11 meant the world to all of us and we miss them so. Of all
12 the things that have transpired in the mere four years, I
13 have rode that roller coaster like everyone in this room
14 and I have felt emotions come and go and up and down and
15 I have traveled through this chaos trying to understand
16 and wrap my mind around it and this puzzle of pieces
17 fitting together, trying to understand why this happened.

18 And I know there are so many pieces that had
19 this happened or that happened or not happened. But I
20 know the bottom line is, Nauman, if you had taken care of
21 one of those pieces along the line, this would not have
22 happened. And I am hoping and expecting at some point
23 today there will be time when you will speak and there is
24 one thing, one small piece, that I am hoping for because
25 I have not heard it yet, and it may not close even the

1 tiniest bit of this broken heart, my son, my huge, tall,
2 muscular, beautiful, wonderful, giving, loving son and
3 his girlfriend and so many of their friends went into
4 that limousine whole and beautiful, and my son came out
5 shredded and shattered in pieces with body organs
6 expelled from his body.

7 I miss my son so much and I miss Savannah and
8 I miss Diesel, and it sure would do me a bit of good to
9 hear "I'm sorry", and that's all I have to say today.

10 THE COURT: Thank you.

11 MS. RICHARDSON-PEREZ: Thank you, Your Honor.

12 MS. BRYDEN: The final statement will be read
13 by DA Mallery on behalf of Lynne's daughter, Erin
14 McGowan.

15 MS. MALLERY: And Lynne's name is spelled
16 L-y-n-n-e, last name Seprivivo, S-e-p-r-i-v-i-v-o.

17 "I want you to know I find it incredibly
18 difficult to live without my daughter, Erin, in my life.
19 I still cannot look at her pictures without breaking
20 down. There is a gaping hole in our family that can
21 never be filled. I am surviving the loss of my precious
22 child, but at what cost? My heart is forever broken and
23 I feel little joy in my survival. My granddaughter will
24 never know her beautiful aunt that she shared her
25 birthday with. Her sisters now have to live with only

1 memories. I watched my daughter get married in the same
2 church where I held her funeral four months later. So
3 much unnecessary and painful loss." Thank you.

4 THE COURT: All right. Now, with respect to
5 the presentence investigation report, counsel, are there
6 any objections or exceptions that you would like to place
7 on the record?

8 MR. SEIGEL: No, Your Honor.

9 THE COURT: Okay. Ms. Mallery, do you wish
10 to be heard?

11 MS. MALLERY: Your Honor, I just ask that the
12 Court accept the plea agreement that we outlined a year
13 ago. It is my understanding that there are no legal good
14 cause for any extension of the interim probation and,
15 thus, we request that the Court sentence the defendant
16 pursuant to that agreement. Thank you.

17 THE COURT: Counsel.

18 MR. SEIGEL: Your Honor, we would simply join
19 in that request. I do feel compelled to say this: The
20 probation report does say that this is a tragedy that Mr.
21 Hussain will have to live with for the rest of his life.
22 Lest anyone here think otherwise, that's a burden that
23 weighs on him heavily, very much so. I hear words of the
24 family members who have spoken with grace and with
25 courage with respect to this tragedy and none of us here

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1 can even fathom the loss that they've experienced. But I
2 do want to note that the reason justifying the sentence
3 that's been agreed to by the People and by the Court
4 after extensive investigation --

5 THE COURT: Well, let's hold on a second.
6 The plea agreement is between the parties.

7 MR. SEIGEL: Yes, Your Honor.

8 THE COURT: It was part of the plea
9 proceeding, so let's make that clear.

10 MR. SEIGEL: Very well, Your Honor, of
11 course. The simple fact, Your Honor, is all I want to
12 note for everyone here who's in attendance, those who
13 will have an opportunity to view this later is that all
14 of the compelling and mitigating circumstances justifying
15 the sentence has been set forth in the plea agreement,
16 and that's open for the public to view.

17 And for those reasons, Your Honor, we simply
18 join in the People's request and ask the Court to impose
19 the sentence of five years probation with credit for the
20 one year of interim probation that's been served so far
21 without incident, Your Honor. Thank you.

22 THE COURT: Mr. Hussain, do you wish to say
23 anything?

24 MR. SEIGEL: Your Honor, if I just may on Mr.
25 Hussain's behalf. He has expressed to us he's grateful

1 Homicide based on the defendant's failure to perceive a
2 risk (in contrast to his conscious disregard thereof)."

3 I note for the record that the first 20
4 counts of the indictment were Manslaughter in the Second
5 Degree under Penal Law Section 125.15(1). Recklessly
6 causing the death is the essence of that charge.

7 Under Penal Law Section 15.05(3), it's the
8 definition of reckless which, in essence, is when an
9 individual is aware of and consciously disregards a
10 substantial and unjustifiable risk that such result will
11 occur.

12 The Criminally Negligent Homicide counts,
13 which were Counts Twenty-One through Forty, the
14 definition of criminal negligence, Penal Law Section
15 15.05(4), in essence, is when an individual "fails to
16 perceive a substantial and unjustifiable risk".

17 The essence of the plea agreement that was
18 signed by the parties and incorporated into the plea
19 proceeding last year is fundamentally flawed. It is not
20 based on truth. And frankly, I found it interesting that
21 one of the most compelling pieces of evidence that would
22 likely occur in a trial is buried in a footnote at page
23 4.

24 I talked about the buccal swab application
25 and Judge Bartlett's decision in 2019 where Judge

1 I am the Sentencing Court and it is my determination that
2 governs this sentencing -- the inherent inconsistency of
3 proffering a plea agreement under a premise and a thesis
4 of failure to perceive the risk when the record
5 demonstrates that there was an actual removal of the
6 out-of-service sticker renders this plea agreement that
7 was negotiated by the parties, not by me, completely
8 disingenuous and unacceptable to this Court.

9 I will tell you this: I am not going to
10 abide by the plea agreement.

11 (Applause.)

12 THE COURT: I'm going to give the defense an
13 opportunity to think about the next step that they would
14 like to take in this proceeding. If I go forward with
15 sentencing today, it would be my intent to sentence the
16 defendant to an indeterminate term of prison with a
17 maximum term of one year and -- excuse me, four years,
18 and a minimum term of one and a third years.

19 In view of the fact that that sentence that I
20 would impose if this sentencing goes forward today is
21 inconsistent with the plea agreement between the parties,
22 which was recognized by the Court at the time of the
23 plea, I would first have to give the defense an
24 opportunity to move to vacate the plea.

25 Under People versus Farrar, F-a-r-r-a-r, at

1 52 N.Y.2d 302, the Court of Appeals has made it
2 abundantly clear that it would be inherently unfair to an
3 individual to proffer a proposed sentence at the time of
4 the plea and basically change the term at the time of the
5 sentence.

6 However, if the defense does not want to go
7 forward with the plea today and if they choose to move to
8 vacate the plea, I will grant that motion and restore
9 this case to the trial calendar and schedule a trial date
10 accordingly.

11 So for purposes of the defense, they have to
12 make a choice and counsel has to be given an opportunity
13 to discuss this choice with their client. And it really
14 comes down to this: Do they or do they not move to
15 vacate the plea?

16 If the defense elects not to move to vacate
17 the plea, then I will go forward with sentencing today in
18 the manner that I have set forth. If the defense chooses
19 to move to vacate the plea, I will grant that application
20 and schedule this case for trial.

21 I'm going to give the defense -- right now,
22 it's about seven minutes to 12:00. I'm going to give the
23 defense until 12:15. We'll take a break. They can use
24 the room in the back of the courtroom. There's a
25 conference room back there. At 12:15, I'll re-call the

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1 case and I will hear from the defense as to what you
2 would like to do.

3 So right now, we are --

4 MR. SEIGEL: Your Honor. I'll wait for the
5 opportunity to speak. I don't mean to interrupt. I did
6 want to say something before we break momentarily, but
7 whenever I have an opportunity.

8 THE COURT: And what would you like to say?

9 MR. SEIGEL: Two things, Your Honor. First,
10 I understand the Court's decision and its reasoning with
11 respect to the circumstances related to the sticker. But
12 I think what's significant to note, and I don't think
13 there's any dispute by the parties with regards to with
14 the law enforcement that investigated it, is that that
15 sticker had nothing to do whatsoever --

16 THE COURT: I read the footnote of the plea
17 agreement, counsel. I am completely unimpressed.

18 MR. SEIGEL: So the fact of the matter is,
19 Your Honor, that in order for the defendant, I know the
20 Court's aware of this, to be guilty of recklessness --

21 THE COURT: All right, counsel. I understand
22 the difference between the two.

23 MR. SEIGEL: Okay.

24 THE COURT: The Court is in recess until
25 12:15. And at that time, you have one thing to decide.

1 Are you going to make a motion to vacate the plea; yes or
2 no?

3 MR. SEIGEL: Your Honor --

4 THE COURT: That concludes -- we are taking a
5 break. You may use the back chambers to discuss the
6 matter with your client.

7 MR. SEIGEL: Your Honor --

8 THE COURT: Do you understand me?

9 MR. SEIGEL: Okay.

10 THE COURT: Okay. Court's in recess.

11 (Whereupon, at 11:56 a.m., a break was
12 taken.)

13 * * *

14 (Whereupon, at 12:15 p.m., the following
15 proceedings were resumed:)

16 THE COURT: The record should reflect that we
17 have resumed. It is 12:15. And for some inexplicable
18 reason, none of the attorneys are in the courtroom. So I
19 guess we will have to wait.

20 (Pause in proceedings.)

21 THE COURT: Officer, would you knock on the
22 door and tell them to come out?

23 DEPUTY: Judge is on the Bench.

24 THE COURT: Okay. So the record should
25 reflect we are back in session. All counsel are present.

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1 prior engagement.

2 THE COURT: Well, Mr. Seigel can try the
3 case.

4 MR. SEIGEL: Your Honor, co-counsel with me
5 has been throughout this entire matter; as lead counsel
6 in the case, Mr. Tacopina, who, at present, isn't even
7 aware of these circumstances. I tried to reach him.
8 He's out of the country. That being said, Your Honor,
9 it's important for Mr. --

10 THE COURT: My question was, which has not
11 been answered, were there any outstanding suppression
12 hearings that need to be scheduled?

13 MR. KINDLON: I was trying to address your
14 points in order first.

15 THE COURT: Why don't you answer that one
16 first?

17 MR. KINDLON: So, Judge, it's many years
18 since we've had an opportunity to review the file. You
19 know, we were prepared today for sentencing, not to try
20 the case.

21 THE COURT: Yeah, okay. Well, you should
22 know whether or not there were suppression hearings
23 requested and whether or not they were conducted.

24 MR. KINDLON: Your Honor, we did have a
25 series of suppression hearings already decided upon. So

1 the case was, you know, again --

2 THE COURT: Okay, I'm going to set this
3 matter -- hold on a second. I'm going to set this matter
4 down for control purposes on September 14th at 10:00 a.m.
5 At that point in time, we'll be in a position to address
6 what, if any, hearings need to be scheduled.

7 I will require an affidavit of engagement and
8 if, in fact, that trial in Albany is already going to go
9 forward. I don't know if it's going to go forward or
10 not, but I can say that when I give you a trial date in
11 this case, it will go forward.

12 So we'll address the trial date status and
13 the hearing date status on September 14th, 2022 at 10:00
14 a.m.

15 With respect to your client's status, his
16 pending status, at the time that he was initially
17 released under supervision of probation, was the passport
18 surrendered to the Probation Department?

19 MR. KINDLON: Your Honor, the passport was
20 surrendered and, in fact, it had expired. So surrendered
21 an expired passport at the time. He has not taken steps
22 to renew the passport, so he doesn't have one.

23 THE COURT: I'm going to direct that Mr.
24 Hussain report to the Probation Department today. He's
25 released on his own recognizance; or was there bail set?

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1 MR. KINDLON: Your Honor, under the old bail
2 statutes, bail had been set in which he was one hundred
3 percent compliant.

4 THE COURT: Okay. And what was that amount?

5 MR. KINDLON: Judge, off the top of my head,
6 I think it was one-fifty (phonetic) cash or bond, which
7 he made, but he's been working under the auspices of
8 probation supervision since his arrest in 2018.

9 THE COURT: Okay. Does he have a GPS
10 monitor?

11 MR. KINDLON: No, Judge.

12 THE COURT: Okay. I'm going to continue his
13 release on bail, whatever that amount was, under the
14 supervision of probation. He's to report there today and
15 he is to have a GPS monitor installed on his person.

16 Okay. So you have an existing release under
17 supervision of probation order, but I am directing that
18 he report there, I am directing that a GPS monitoring
19 device be installed.

20 That concludes today's proceeding. We will
21 resume on September 14th at 10:00 a.m. Court stands in
22 recess.

23 (Proceedings concluded.)

24 * * * * *

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C E R T I F I C A T I O N

I, **THERESA L. ARDIA**, Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

Theresa L Ardia

THERESA L. ARDIA, CSR, CRR, RPR, RMR

Dated: September 5, 2022.

THERESA L. ARDIA, CSR, CRR, RPR, RMR
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Chad Seigel

From: Hon. Peter A. Lynch <plynch@nycourts.gov>
Sent: Friday, September 2, 2022 3:16 PM
To: lkindlon@kindlon.com; Joe Tacopina; Chad Seigel; susan.mallery@co.schoharie.ny.us
Cc: Thomas Garner; Lauren Clemenzi; April L Schmick; Sheila Hall; Bobbe Jo Armlin; Stehle Hetman; Jaime Montarello
Subject: People v. Nauman Hussain Schoharie County Indictment No. 2019-33 - Control date September 14, 2022 @ 10:00 a.m.

Counsel

Please be advised as follows:

1. I have scheduled the **jury trial date certain on Monday, October 31, 2022 @ 10:00 a.m.**; and
2. On September 14, 2022, I will conduct the Sandoval/Molineux hearing; and
3. On September 14, 2022, I will also address the parameters of jury selection, as well as the Antomarchi waiver;
4. The People are required to file the Certificate of Compliance in accord with CPL 245.35 (4) and 245.50 (1) on or before September 14, 2022; and
5. Defendant's obligation to file a Certificate of Compliance is governed by CPL 245.50 (2).

Kindly adjust your schedules accordingly. Peter A. Lynch, J.S.C.

**SCHOHARIE COUNTY DISTRICT ATTORNEY
SUSAN J. MALLERY, ESQ.**

**Public Safety Facility
157 Steadman Way, P.O. Box 129
Howes Cave, New York 12092
Tel. (518) 295-2272; Fax (518) 295-2273
susan.mallery@co.schoharie.ny.us**

**Evan R. Lane, Esq.
Assistant District Attorney**

**Stephen C. Goble, Esq.
Assistant District Attorney**

September 7, 2022

Hon. Peter A. Lynch
Schoharie County Court
P.O. Box 669
Schoharie, New York 12157

Re: People v. Nauman Hussain, Ind. #2019-33

Dear Judge Lynch:

I am in receipt of your email dated September 2, 2022 scheduling a Sandoval/Molineux hearing for September 14, 2022 and requiring the People file a Certificate of Compliance by September 14, 2022.

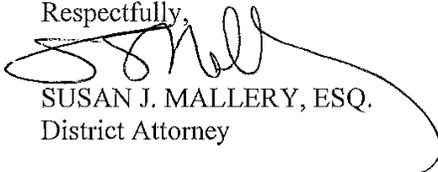
The Schoharie County District Attorney's office employs myself, one full time Assistant District Attorney and a part-time Assistant District Attorney. We have one legal assistant (who is getting married and taking her honeymoon in the next two weeks) and one administrative staff member. We are currently short a part-time Assistant District Attorney position. We do not have an investigator. I have reached out to our County Attorney and Board of Supervisors to discuss using the ADA unfilled salary to hire a Special Prosecutor to assist me with this case. I have also reached out to the New York State Prosecutor's Training Institute, who is assisting me in contacting other resources to obtain legal assistance. However, this requires time.

Our legal assistant who scanned and tracked the information and documents regarding this matter has retired. There are tens of thousands of documents that must be reviewed and organized again. The Special Assistant District Attorney, who previously assisted me, resigned his position to obtain different employment. I am currently preparing for a homicide trial which commences on September 19, 2022. I am preparing the certificates of compliance for three defendants in another homicide matter. I am answering a motion to vacate the plea of a 5th homicide case, and I am currently reviewing a 6th homicide investigation, in addition to carrying out my budget responsibilities (due this week) and other administrative duties, while also attempting to meet other pending cases' deadlines. Thus, I am going to need additional time on the Hussain matter to review the thousands and thousands of documents to prepare a certificate of compliance, gather evidence

for our Molineux issues which is extremely important in this matter and cannot be rushed. The second batch of discovery to the defense was over 10,000 documents. All discovery must be reviewed, witnesses must be located and addresses must be updated. I am in the process of reaching out to our experts to negotiate contracts and obtain the necessary financing to retain the witnesses as this matter was not included in our budget due to the plea agreement. Disciplinary records for the numerous police officers who assisted on this matter must also be updated. Gathering any additional Brady material will take additional time as the witness list alone is extensive.

These tasks will require at least three months of uninterrupted time. It certainly cannot be completed in just six days.

Respectfully,



SUSAN J. MALLERY, ESQ.
District Attorney

Cc: Lee Kindlon, Esq.
Chad Seigel, Esq.
Joseph Tacopina, Esq.
Thomas F. Garner, Esq., Associate Court Attorney/Law Clerk

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STATE OF NEW YORK
COUNTY COURT COUNTY OF SCHOHARIE

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

NAUMAN HUSSAIN,

Defendant.

BEFORE: HONORABLE PETER A. LYNCH
Supreme Court Justice

APPEARANCES:

For the People: SUSAN J. MALLERY, ESQ. District Attorney
Schoharie County

For Defendant: LAW OFFICES OF TACOPINA & SEIGEL
BY: CHAD SEIGEL, ESQ. - virtually
-and-
THE KINDLON LAW FIRM, PLLC
BY: LEE C. KINDLON, ESQ. - virtually

NAUMAN HUSSAIN, Defendant, In Person.

TRANSCRIPT OF PROCEEDINGS in the above matter
taken in Schoharie County Courthouse, 290 Main Street,
Schoharie, New York, on Wednesday, September 14, 2022.

REPORTED BY: THERESA L. ARDIA, CSR, CRR, RPR, RMR
Senior Court Reporter

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1 THE COURT: We're call the going to call the
2 case of the People versus Nauman Hussain. Mr. Hussain,
3 you can have a seat at the front table here. I note I
4 have received requests from both of your attorneys, Chad
5 Seigel and Lee Kindlon, to appear virtually due to other
6 commitments. I assume Mr. Kindlon, I see Mr. Kindlon. I
7 do not see Chad. Lee, can you hear me?

8 MR. KINDLON: Yes, I can, Your Honor.

9 THE COURT: Is Chad going to be appearing?

10 MR. KINDLON: It's my understanding he is,
11 Your Honor. Let me send him a message.

12 THE COURT: Well, while you're doing that, as
13 a matter of protocol, the first thing I'd like to address
14 is that I received a request from the Times Union to do
15 audiotape of the proceedings and to use still
16 photography. Is there anyone here from the Times Union?

17 MR. RULISON: Yes, Your Honor.

18 THE COURT: Yes. Are you Larry Rulison?

19 MR. RULISON: Yes, I am.

20 THE COURT: Come on up so I can hear you.
21 Can you tell me why you would like to cover this
22 proceeding as a matter of public interest?

23 MR. RULISON: Your Honor, the Times Union
24 believes that transparency is in the best interest of the
25 defense, the prosecution and the public because this is a

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1 case of substantial interest to the region and community
2 and that the legal system runs best when it is most
3 transparent. Thank you.

4 THE COURT: Okay. Ms. Mallery, do you have
5 any response to the request for the media coverage?

6 MS. MALLERY: The People have no position.

7 THE COURT: Mr. Kindlon, do you have any
8 response?

9 MR. KINDLON: No position, Your Honor. I
10 leave it to the Court.

11 THE COURT: Okay, the application is granted.
12 I don't know if you need to set up anything.

13 MR. RULISON: No.

14 THE COURT: All right.

15 MR. RULISON: Thank you, Your Honor.

16 (Pause in proceedings.)

17 THE COURT: Lee, I'm going to start, but I'd
18 like to see if Chad is going to be on.

19 MR. KINDLON: Yes, Your Honor, I've sent him
20 a message. I've not heard.

21 Your Honor, his response is he's waiting to
22 be let in.

23 THE CLERK: Mr. Kindlon, can you ask him to
24 disconnect and try reconnecting? We're going to send him
25 another link.

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1 MR. KINDLON: Yes, of course. Message sent.

2 (Pause in proceedings.)

3 THE COURT: Okay. Lee, I need to have a
4 resolution of this like now. Can you reach out to Chad
5 and see if he's getting on?

6 MR. KINDLON: Yes, sir. Your Honor, the only
7 other thing I can think of is because I have this little
8 spare room, I have a series of electronic devices. If I
9 could maybe bring him up on FaceTime to kind of three-way
10 the call.

11 THE COURT: That would be okay, because I'm
12 going to be scheduling the trial and I need to make sure
13 that I'm not going to run into, you know, potential
14 conflicts in scheduling.

15 MR. KINDLON: Yes, sir. Let me try that.

16 (Pause in proceedings.)

17 MR. KINDLON: Your Honor, I was able to
18 arrange and, you know, I've got two computers staring at
19 one another and Chad is on one, the Court is on the
20 other.

21 THE COURT: So Chad can hear?

22 MR. SEIGEL: I can.

23 THE COURT: Okay, we're all set. All right.
24 So as you all know, my scheduling or attempt to schedule
25 a date-certain trial date ran into conflicts with

1 previously scheduled trials. And Mr. Kindlon, you have
2 filed an Affidavit of Engagement listing a number of
3 trials.

4 The first date that I had selected was
5 12/5/22. You were already engaged. Next, I looked at
6 the possibility of trial for October 31 of this year.
7 You were also heavily engaged in trial. And so because
8 those cases were already previously scheduled and of
9 significance with the respective individuals' in those
10 cases liberty interest at issue, I let the parties know
11 that I was not going to require that the trial start on
12 those dates.

13 But with that said, it's also fundamentally
14 clear, I did also receive a letter from the District
15 Attorney's Office indicating the need to also have some
16 additional time to prepare the case for trial. So here's
17 what I would like to do.

18 First of all, I'm going to let you know I am
19 retaining jurisdiction of this case. This case is
20 scheduled for trial May 1, 2023. That essentially gives
21 everyone six months or so to get this case ready for
22 trial. Now, I'm setting that date. But I want to know,
23 Mr. Kindlon, do you have a date certain on a case on May
24 1, 2023?

25 MR. KINDLON: Your Honor, the farthest case I

1 have in the future date certain is April 17th, 2023.
2 It's a federal court case. It should only be a couple of
3 days. So I am free on May 1.

4 THE COURT: How about Chad?

5 MR. KINDLON: Your Honor, they are free as
6 well.

7 THE COURT: DA?

8 MS. MALLERY: Yes, Your Honor. Thank you.

9 THE COURT: So date certain for the trial is
10 May 1, 2023 at 10:00 a.m. I am letting the parties know
11 that there will be no further adjournments. So if you
12 have any potential conflicts, then you need to resolve
13 that conflict, arrange your schedules accordingly and be
14 ready to start on May 1, 2023.

15 I'm going to schedule the Sandoval/Molineux
16 hearing on April 10 of 2023 at 10:00 a.m. Susan, do you
17 have any potential conflict with that date?

18 MS. MALLERY: No, sir.

19 THE COURT: Lee.

20 MR. KINDLON: April --

21 THE COURT: April 10, 2023.

22 MR. KINDLON: Nothing, Your Honor. Thank
23 you.

24 THE COURT: Okay. How about Chad?

25 MR. KINDLON: They're fine with that date,

1 Your Honor.

2 THE COURT: So the Sandoval/Molineux hearing
3 will take place on that date. I will also go over the
4 jury selection process that I will be implementing. I'll
5 also be reviewing various procedural items and also the
6 Antommerchi waiver.

7 Now, next order of business. Since this case
8 is now four years old, it'll be about four and a half
9 years old by the time it goes to trial, I am not
10 insensitive to the issue that there had been a previous
11 plea of guilty on September 2, 2021. And of course, as
12 you all know, I advised you on August 31, 2022 that the
13 plea agreement that had been entered into by the parties
14 was unacceptable to me and I allowed the defense an
15 opportunity to move to withdraw the plea, which I
16 granted.

17 With that said, as a matter of a pretrial
18 evidentiary ruling that you all need to know about as you
19 prepare for this trial, any statement that the defendant
20 made at the time of the plea on 9/2/21, any statement
21 made by the defendant to the probation department in the
22 context of his pretrial supervision, any statement made
23 by the defendant in any of the public speaking events
24 that he engaged in as part of the community service that
25 was part of that plea agreement and any statement made by

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1 the defendant in any civil proceeding between September
2 2, 2021 and August 31, 2022 is not admissible as direct
3 evidence upon the trial of this action and it is also not
4 admissible for impeachment purposes. I think you all
5 need to know that pretrial ruling as you prepare this
6 case for trial.

7 With respect to the parties' respective
8 obligations to file their Certificates of Compliance,
9 both the People as well as the defense, I'm not going to
10 make any determination at this point, but you need to
11 proceed accordingly. And under no circumstances will
12 this trial be delayed by any failure on the part of
13 either party to meaningfully engage in the pretrial
14 discovery process and the timely filing of Certificates
15 of Compliance.

16 So with that said, and I also note for the
17 record that while Mr. Kindlon and Mr. Seigel are
18 appearing virtually, Mr. Hussain is appearing in person
19 in the courtroom as well as the District Attorney's
20 Office.

21 Ms. Mallery, is there anything else that you
22 would like to put on the record today?

23 MS. MALLERY: No, Your Honor, but I'm
24 assuming any pretrial orders shall continue.

25 THE COURT: Correct. Mr. Kindlon, is there

1 anything that you would like to put on the record?

2 MR. KINDLON: Not at this time, Your Honor.

3 Thank you.

4 THE COURT: Anything Chad would like to say?

5 MR. KINDLON: No, Your Honor. He's all set.

6 THE COURT: Okay, that concludes the
7 proceeding. Thank you.

8 (Proceedings concluded.)

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C E R T I F I C A T I O N

I, **THERESA L. ARDIA**, Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

Theresa L Ardia

THERESA L. ARDIA, CSR, CRR, RPR, RMR

Dated: September 14, 2022.

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**ADMINISTRATIVE ORDER OF THE
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS**

Pursuant to the authority vested in me, and upon consultation with and by consent of the Honorable Elizabeth A. Garry, Presiding Justice of the Appellate Division, Third Department, I hereby amend the 2022 Annual Order for the Third Judicial Department, revising the 2022 Judicial Assignments for the Third Judicial District, by confirming the designations and assignments set forth in Exhibit A attached hereto, and by substituting revised pages 9, 20, 24, 25, 26, and 27 (Exhibit B) of that Annual Order.



Chief Administrative Judge of the Courts

Dated: July⁹, 2022

AO/156/2022

Exhibit A

Summary of Amendments to the 2022 Annual Order of the
Third Judicial District,
Third Judicial Department
July 19, 2022

- Page 9: Under Judges Designated Youth Part Judges, Schoharie County, removed Hon. George R. Bartlett, III and added Hon. Peter A. Lynch.
- Page 20: Under Schoharie County, added Supreme Court Justice Trial Term Assignments, Peter A. Lynch, Trial Part, Terms 7-13; amended Acting Supreme Court Justices Trial Term Assignments, George R. Bartlett III from Terms 1-13 to Terms 1-6; added Terms of the Supreme Court for the Empaneling of Grand Juries, Term 8, Friday July 22, 2022 and Term 10, Friday September 30, 2022, assigned to Peter A. Lynch; and removed Term 8, Friday July 22, 2022 and Term 10, Friday September 30, 2022, from the Terms of the County Court for the Empaneling of Grand Juries assigned to George R. Bartlett III.
- Page 24: Under Judges Designated to Hear Applications for Appointment of Special Prosecutors Pursuant to County Law Section 701 and 22 NYCRR 200.15, Schoharie County, removed George R. Bartlett III and added Peter A. Lynch.
- Page 25: Under Judges Authorized to Issue Blood Seizure Orders Pursuant to Section 1194(3)(d)(6) of the Vehicle and Traffic Law and Section 49(4)(d)(10) of the Navigation Law, Schoharie County, removed George R. Bartlett III; updated James H. Ferreira** as the assigned Judge; and added Gerald W. Connolly* as the Back-up Judge.
- Page 26: Under Judges Designated to Hear Judicial Diversion Cases Pursuant to CPL 216, Schoharie County, removed George R. Bartlett, III and added Charles M. Tailleir.
- Page 27: Under Judges Designated to Hear Applications for Involuntary Isolation and Quarantine of Persons with Communicable Diseases Pursuant to 10 NYCRR § 2.2, Schoharie County, removed George R. Bartlett III*.

Exhibit B

2022 JUDGES DESIGNATED YOUTH PART JUDGES

Albany County:	Youth Part Judge:	Hon. Sherri J. Brooks-Morton
	Backup Judge:	Hon. Richard Rivera
	Youth Part Trial Judge:	Hon. Andra L. Ackerman
Columbia County:	Youth Part Judges/Trial Judges:	Hon. Richard M. Koweek Hon. Jonathan D. Nichols
Greene County:	Youth Part Judge/Trial Judge:	Hon. Charles M. Tailleux
	Backup Judge:	Hon. Terry J. Wilhelm
Rensselaer County:	Youth Part Judge/Trial Judge:	Hon. Jennifer G. Sober
	Backup Judge:	Hon. Debra J. Young
Schoharie County:	Youth Part Judge/Trial Judge:	Hon. Peter A. Lynch
Sullivan County:	Youth Part Judge/Trial Judge:	Hon. Mark M. Meddaugh
	Backup Judge:	Hon. E. Danielle Jose-Decker
Ulster County:	Youth Part Judge/Trial Judge:	Hon. Bryan E. Rounds
	Backup Judge:	Hon. Keri E. Savona

SCHOHARIE COUNTY

2022 Judicial Assignments

SUPREME COURT - IAS JUDGES

George R. Bartlett III*

James H. Ferreira**

Paul V. Morgan, Jr.***

*Full-time Acting Supreme Court Justice assigned to Integrated Domestic Violence Part

**Full-time Acting Supreme Court Justice

***Acting Supreme Court Justice with MHL Art. 81 Guardianship Part

Supreme Court Justice Trial Term Assignments

Judge	Part	Terms Assigned
Peter A. Lynch	Trial Part	Terms 7-13

Acting Supreme Court Justices Trial Term Assignments

Judge	Part	Terms Assigned
George R. Bartlett III	Trial Part	Terms 1-6
James H. Ferreira	Trial Part	Terms 3, 7, 11

Terms of the Supreme Court for the Empaneling of Grand Juries

Term 8	Friday July 22, 2022	Peter A. Lynch
Term 10	Friday September 30, 2022	Peter A. Lynch

COUNTY, FAMILY & SURROGATE'S COURTS JUDGE

George R. Bartlett III*

*Acting Supreme Court Justice

Terms of the County Court for the Empaneling of Grand Juries

Term 1	Friday January 14, 2022	George R. Bartlett III
Term 4	Friday April 1, 2022	George R. Bartlett III

**2022 THIRD JUDICIAL DISTRICT SUPERIOR COURT JUDGES
DESIGNATED TO HEAR APPLICATIONS FOR APPOINTMENT OF
SPECIAL PROSECUTORS PURSUANT TO
COUNTY LAW SECTION 701 AND 22 NYCRR 200.15**

Albany County	Andra L. Ackerman William T. Little Roger D. McDonough* Gerald W. Connolly**
Columbia County	Jonathan D. Nichols Richard M. Koweek Richard L. Mott Gerald W. Connolly**
Greene County	Charles M. Tailleux Terry J. Wilhelm Richard L. Mott Gerald W. Connolly**
Rensselaer County	Debra J. Young Jennifer G. Sober Richard J. McNally, Jr. Gerald W. Connolly**
Schoharie County	Peter A. Lynch James Ferreira* Gerald W. Connolly**
Sullivan County	James R. Farrell Stephan Schick Gerald W. Connolly**
Ulster County	Bryan E. Rounds James P. Gilpatric Gerald W. Connolly**

*Acting Supreme Court Justice

**Administrative Judge, Third Judicial District

**2022 THIRD JUDICIAL DISTRICT ASSIGNMENTS OF JUDGES
 AUTHORIZED TO ISSUE BLOOD SEIZURE ORDERS PURSUANT TO
 SECTION 1194(3)(d)(6) OF THE VEHICLE AND TRAFFIC LAW AND
 SECTION
 49(4)(d)(10) OF THE NAVIGATION LAW**

COUNTY	JUDGE(S)	BACK-UP JUDGE
Albany	Andra L. Ackerman <u>or</u> William T. Little	Gerald W. Connolly*
Columbia	Jonathan D. Nichols <u>or</u> Richard M. Koweek	Richard L. Mott
Greene	Charles M. Tailleux <u>or</u> Terry J. Wilhelm	Adam W. Silverman**
Rensselaer	Debra J. Young <u>or</u> Jennifer G. Sober	Patrick McGrath
Schoharie	James H. Ferreira**	Gerald W. Connolly*
Sullivan	James R. Farrell	Stephan G. Schick
Ulster	Bryan E. Rounds	Julian D. Schreibman

If none of the assigned judges is available, appropriate application may be made to any Supreme Court Justice or County Judge within the judicial district.

*Administrative Judge, Third Judicial District

**Acting Supreme Court Justice

**2022 THIRD DISTRICT JUDGES DESIGNATED TO HEAR JUDICIAL
DIVERSION
CASES PURSUANT TO CPL 216**

COUNTY	TYPE	JUDGE
Albany	Superior Court for Drug Treatment Pursuant to part 143	Gerald W. Connolly*
Columbia	Superior Court for Drug Treatment Pursuant to part 143	Jonathan D. Nichols
Greene	Superior Court for Drug Treatment Pursuant to part 143	Charles M. Tailleir
Rensselaer	Superior Court for Drug Treatment Pursuant to part 143	Debra J. Young
Schoharie	Superior Court for Drug Treatment Pursuant to part 143	Charles M. Tailleir
Sullivan	Superior Court for Drug Treatment Pursuant to part 143	Stephan G. Schick
Ulster	Superior Court for Drug Treatment Pursuant to part 143	Lawrence E. Ball

*Administrative Judge and Acting Supreme Court Justice in charge of the Albany County HUB Drug Treatment Court.

**2022 THIRD DISTRICT SUPREME COURT JUSTICES DESIGNATED TO
HEAR
APPLICATIONS FOR INVOLUNTARY ISOLATION AND
QUARANTINE OF PERSONS WITH COMMUNICABLE DISEASES
PURSUANT TO 10 NYCRR § 2.2**

Albany County	Kimberly O'Connor* Christina L. Ryba Peter A. Lynch
Columbia County	Richard L. Mott Jonathan D. Nichols*
Greene County	Richard L. Mott Adam W. Silverman*
Rensselaer County	Adam W. Silverman* Henry F. Zwack* Richard J. McNally, Jr.
Schoharie County	James H. Ferreira*
Sullivan County	Stephan G. Schick Julian D. Schreibman
Ulster County	Kevin R. Bryant David Gandin James P. Gilpatric Julian D. Schreibman

*Acting Supreme Court Justice

If none of the assigned judges is available, appropriate application may be made to any Supreme Court Justice.

Chad Seigel

From: Lee Kindlon <lkindlon@kindlon.com>
Sent: Tuesday, October 25, 2022 3:40 PM
To: Chad Seigel
Subject: Fwd: Administrative Order - Schoharie County

Lee C. Kindlon, Esq.
The Kindlon Law Firm, PLLC
69 Columbia Street
Albany, NY 12210
(518) 434-1493 phone
(518) 935-9336 fax
www.Kindlon.com

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Begin forwarded message:

From: Paula Barna-Tetrault <pbarnatet@nycourts.gov>
Subject: RE: Administrative Order - Schoharie County
Date: October 25, 2022 at 3:22:33 PM EDT
To: Lee Kindlon <lkindlon@kindlon.com>
Cc: "Hon. Peter A. Lynch" <plynch@nycourts.gov>, Christy Bass <cbass@nycourts.gov>

Hello Mr. Kindlon – as of this date, no formal order has been issued regarding the Schoharie County case, People v. Nauman Hussain.

Paula M. Barna Tetrault
Sr. Management Analyst
3rd District Administrative Office
2500 Pond View – Ste 210
Castleton-on-Hudson, NY 12033
518-285-8300

From: Lee Kindlon <lkindlon@kindlon.com>
Sent: Monday, October 24, 2022 7:44 PM
To: Paula Barna-Tetrault <pbarnatet@nycourts.gov>
Subject: Re: Administrative Order - Schoharie County

Hi,

Any luck finding the order?

Lee C. Kindlon, Esq.
The Kindlon Law Firm, PLLC
69 Columbia Street
Albany, NY 12210
(518) 434-1493 phone
(518) 935-9336 fax
www.Kindlon.com

Please be CAREFUL when clicking links or opening attachments from external senders.



SCHOHARIE COUNTY
Department of Probation and Community Corrections
PO Box 157
157 Steadman Way
Howes Cave, New York 12092
Tel: (518) 295-2274 Fax: (518) 295-2275

Denise Minton
Director of Probation

October 21, 2022

Honorable Peter A. Lynch
Schoharie County Court Judge
PO Box 669
Schoharie, New York 12157

RE: People vs. Nauman Hussain

Dear Judge Lynch,

This memo is being written regarding pretrial defendant Nauman Hussain who was ordered by Your Honor on 8/31/2022, to have a GPS device installed.

This department installed the GPS unit on 8/31/2022. In accordance with CPL 510.40 (4)(d) which states that a "pretrial principal ordered onto electronic monitoring shall only have the device on for a maximum period of 60 days" the probation department will need to remove the GPS bracelet from Mr. Hussain on 10/31/2022. Unless the order is renewed after it is explained in writing or on the record the reason for the renewal and continued GPS monitoring.

Nauman Hussain has been compliant with his GPS contract and pretrial conditions to date.

Unless the probation department receives an order extending the order for GPS, we will be deinstalling Mr. Hussain's bracelet on 10/31/2022.

This is for Your Honor's review and consideration.

Respectfully,

Dawn Zuefle
Probation Assistant

cc: Hon. Susan Mallery, District Attorney
Lee Kindlon, Chad Seigel, Joseph Tacopina, Esq.

1 THE COURT: Okay. This is the matter of the
2 People versus Nauman Hussain. I note Mr. Hussain is
3 present. Counsel, would you put your respective
4 appearances on the record, please.

5 MS. MALLERY: Yes, Judge. District Attorney
6 Susan Mallery.

7 MR. KINDLON: Good morning, Your Honor. Lee
8 Kindlon on behalf of Mr. Hussain, who sits to my left.

9 THE COURT: Okay. You may all recall that
10 the Probation Department sent a letter to me, copied to
11 you, indicating that the GPS monitoring device was
12 limited for a period of 60 days, expiring October 31, and
13 I put the matter on today to address that issue under CPL
14 510.40(4)(d). I also received a motion by Mr. Kindlon
15 yesterday seeking to have the least restrictive measures
16 imposed and eliminating the GPS monitoring.

17 So Mr. Kindlon, because you made the motion,
18 I would like to give you an opportunity to be heard on
19 the record as to why you think the GPS monitoring should
20 be removed as a condition of your client's release. Go
21 ahead.

22 MR. KINDLON: Thank you, Your Honor. And
23 again, I was going to send the e-mail last night, I
24 apologize to the clerk. I realize all the courts I go
25 to, everybody's got different filing systems, and some

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SENIOR COURT REPORTER
518-453-6999

1 are more informal than others. I apologize for not doing
2 a more formal one.

3 However, after receiving the memo from
4 probation last week that said very clearly that it's been
5 60 days and they don't have good cause to extend the
6 electronic monitoring for Mr. Hussain, I wanted to
7 make --

8 THE COURT: Well, they don't have a court
9 order extending it, but go ahead.

10 MR. KINDLON: Correct, Your Honor. There's
11 no court order in there. There was no mention in that
12 memo from Probation any demonstration of good cause to
13 extend his electronic monitoring. And I thought I just
14 wanted to add some things to the record; that is, Mr.
15 Hussain has been released since October 2018 on \$150,000
16 cash bond with the Bernardos. I've talked to the
17 Bernardos a number of times about this. The bond is
18 still there, it's still good and they're still happy with
19 it being out there and existing.

20 Mr. Hussain has been released under the
21 supervision of Probation since his original arraignment
22 in Cobleskill Town Court, now more than four years ago.
23 As I said in the motion, as we've said in this courtroom
24 a bunch of times, he has been an exemplary probationer.
25 He has, even through COVID, reported to Probation on

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 SENIOR COURT REPORTER
 518-453-6999

1 time, never missed a meeting; he's drug and alcohol-free.
2 He has, obviously, during the year of interim probation
3 more than complied with the terms and conditions of that
4 interim probation, and that is all the community service
5 we've mentioned in the past.

6 Your Honor, something else, of course, it
7 feels like it's forever ago, but with bail reform having
8 been put in place in 2020 -- right?

9 THE COURT: January.

10 MS. MALLERY: January 1, 2020. I've got that
11 date memorized.

12 MR. KINDLON: (Continuing) -- there have been
13 significant reforms and, now, the measure is the standard
14 of the least restrictive means to guarantee my client's
15 return to court.

16 Your Honor, Mr. Hussain has been, as he was
17 this morning, in court every time before me. I have,
18 still to this day, almost daily contact with either Mr.
19 Hussain or his brother, Harris, who joins us here in the
20 courtroom today. He has no passport.

21 Frankly, Your Honor, given the, we'll call
22 it, notoriety of this case, Mr. Hussain at this point
23 barely leaves his house. And Your Honor, I think that
24 his performance over the past four years is a perfect
25 demonstration that Nauman will return to court given all

1 the restrictions put on him, and I think electronic
2 monitoring is in excess of what is necessary to guarantee
3 his return to court. Thank you very much, sir.

4 THE COURT: Okay. Ms. Mallery, do you wish
5 to be heard?

6 MS. MALLERY: Briefly, Your Honor. Thank
7 you. I do understand the restrictions that the Bail
8 Reform Law and Section 510.40 puts on us, but I do want
9 the Court to have a little of the background for the
10 reasons why we felt that bail was so important in this
11 case. And I understand that, and I don't think there's
12 any argument with the fact, Mr. Hussain has been to
13 court, he is in contact here.

14 But I think some of the reasons as to why we
15 have seen a complete change in behavior from his past, if
16 you look at the past where there was no bail or bond for
17 \$150,000, no electronic monitoring, something as simple
18 as traffic offenses, he had over forty suspensions and I
19 believe it was like eight failures to pay. That's simple
20 traffic where he disregarded the orders of the Court and
21 had his license suspended.

22 And I know that Traffic Court is
23 insignificant, but it shows a disregard for authority and
24 the court system. We also looked to an old conviction in
25 2014 where he was initially charged with false

1 impersonation. He impersonated his brother, upon
2 information and belief, and was convicted for Obstruction
3 of Government Administration.

4 I understand the age of these cases, but it
5 shows a propensity of disregarding the Court order that I
6 feel that the bond of \$150,000 and I feel the electronic
7 monitoring is helping him get here and do what he is
8 supposed to do.

9 It is also a compromise, Your Honor, because
10 Mr. Hussain has a hobby that takes him traveling and we
11 were very concerned --

12 THE COURT: Has a hobby?

13 MS. MALLERY: A hobby.

14 THE COURT: What would that be?

15 MS. MALLERY: Paintball. He's I think, an
16 avid paintball competitor where he would travel around
17 the U.S. As a prosecutor, we were fearful that he would
18 not appear in court. That was a huge concern for us.
19 And a compromise is having that GPS monitoring, because
20 we could, under 510.40, restrict him to just the Capital
21 District, if the Court grants that. And part of the
22 reason why he is not restricted to Saratoga, Albany, was
23 he has that GPS monitoring on him.

24 And so I feel that it is a compromise that
25 allows him to do, I think -- it is in the probation

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1 presentence investigation that he travels for work doing
2 consulting. And to have someone who has that
3 availability to travel with these serious charges; the
4 fact that he was born in Pakistan, his father, we
5 believe, is in Pakistan, he has an uncle who is
6 well-known and extremely wealthy that could subsidize and
7 finance him leaving the country; the fact he has changed
8 identities with his brother, these were things we were
9 very concerned about. And we sought that \$150,000 bond
10 and the GPS, and I just wanted the Court to have the
11 background.

12 I don't take any opposition. He has appeared
13 in each and every court. There is not one court
14 appearance he hasn't been here in a timely fashion. But
15 I feel that there's a cost if he did not show and that's
16 that \$150,000 bond and that GPS. And I feel strongly
17 that that has kept him here and doing what he's required
18 to do. Thank you.

19 THE COURT: What's the burden of the GPS?

20 MS. MALLERY: You mean to him?

21 THE COURT: Yes.

22 MS. MALLERY: Your Honor, I don't see it as a
23 burden. It's not like the prosecution gets reports. The
24 only reports we get is through the Court saying that he's
25 in compliance. I feel that that is not an intrusive

1 method and that does contract him to make sure he is not
2 leaving the country and if he left the country, we would
3 have notice.

4 THE COURT: What circumstances, if any, have
5 changed since the bail amount was set at \$150,000 as far
6 as this case goes?

7 MS. MALLERY: Well, initially, I think the
8 gravity, initially, it was done when there was one charge
9 of, I believe it was, Criminally Neglect Homicide. There
10 are now forty charges and they are significantly higher.
11 We're looking at C felony, twenty counts that has been
12 added to the initial \$150,000 bond posted. But an
13 indictment is the short answer, Your Honor.

14 THE COURT: Okay.

15 MR. KINDLON: Thank you, Your Honor. Mr.
16 Hussain was arraigned in this Court by Judge Bartlett
17 upon the indictment, which did have those forty counts.
18 Bail was continued at \$150,000 --

19 THE COURT: By Judge Bartlett?

20 MR. KINDLON: Yes, sir.

21 THE COURT: Right. So what's changed since
22 then? What are the change in circumstances that would
23 cause me to revisit the \$150,000 bail?

24 MR. KINDLON: Judge, actually, we're
25 completely content with the Court keeping in place the

1 \$150,000 bail. That, again, we understand, is in place.
2 We're not asking for that to be removed.

3 THE COURT: You're seeking simply the removal
4 of the GPS.

5 MR. KINDLON: To take the bracelet off.

6 THE COURT: What's the burden on your client?

7 MR. KINDLON: Well, with respect to the
8 Court's question, I'm not sure that that's listed in the
9 statute in terms of a determining factor.

10 THE COURT: I'm asking a question.

11 MR. KINDLON: I understand. What's the
12 burden? He's got to walk around with a scarlet letter
13 on. An ankle monitor, a GPS ankle monitor, is a sign of,
14 you know, everybody knows something must be up if he's
15 got this thing on him. I think that's a significant
16 burden. I think it takes away from the presumption that
17 he's innocent in the community.

18 I think that he has had it since October of
19 2018 through September 1 of 2021 and there's never been a
20 demonstration that he needed it. All the things that Ms.
21 Mallery listed in terms of old traffic infractions or
22 convictions in 2014 were known to Ms. Mallery and I when
23 the initial bail amount was set in Cobleskill in 2018.

24 And you know, as I listed in the memo I sent
25 to the Court last night, although it's increased from one

1 charge to forty, there is certainly an understanding of
2 the gravamen of this case when, in the original felony
3 complaint, the names of twenty people were listed. And
4 so there was never a misunderstanding about what we were
5 dealing with on day one that suddenly changed as the case
6 wore on. Again, we knew what we were dealing with then.

7 But Your Honor, again, I don't think that a
8 sufficient record has been made over the past 60 days to
9 justify his continued electronic monitoring as he is in
10 full compliance with the Court's orders with probation.
11 Again, we have no problem keeping that bail monetary
12 amount in place for the duration of the case.

13 THE COURT: Ms. Mallery, what were the
14 circumstances of the initial detainer of Mr. Hussain?

15 MS. MALLERY: The initial was the one
16 count --

17 THE COURT: No, no. The actual circumstances
18 when he was taken into custody.

19 MS. MALLERY: Well, at that time, Your Honor,
20 he, his brother and his girlfriend, Melissa Bell, were in
21 a vehicle. It appeared that they were leaving the area,
22 that they were getting ready to leave the state.

23 THE COURT: What made that appearance?

24 MS. MALLERY: The vehicle was packed. They
25 had, not like a full household of items but they had

1 items of travel, a duffel bag or suitcase, I can't
2 recall. But they were packed to leave for an extended
3 period of time. That caused concern to the New York
4 State Police that inquired and made the arrest.

5 THE COURT: Were those facts and
6 circumstances brought to the attention of Judge Bartlett
7 when he continued the bail at \$150,000?

8 MS. MALLERY: He was aware of those
9 circumstances.

10 THE COURT: And he continued the GPS
11 monitoring?

12 MS. MALLERY: Yes, Your Honor.

13 MR. KINDLON: Judge, if I may.

14 THE COURT: Yes.

15 MR. KINDLON: I think that there's again some
16 background that needs to be made clear to Your Honor. I
17 remember that day better than most of my legal career.
18 It was just a few days after the accident and Mr. Hussain
19 had not yet been arrested or charged with anything and,
20 yet, both Mr. Hussain, his brother, the people he loves,
21 the death threats were significant.

22 And he and I -- and I've been clear about
23 this on the record a number of times, I'm not disclosing
24 anything that I haven't done in the past. But he and I
25 had discussed whether or not he should leave town,

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1 because he'd already hired counsel. It was our
2 understanding the investigation was going to be ongoing.
3 Based upon my experience with how these accident
4 investigations go, it could have been months before he
5 had been arrested.

6 But he was in constant contact with me. I
7 was in constant contact with the District Attorney's
8 Office and, frankly, with the New York State Police
9 Trooper Barracks out in Princetown who seemed to be
10 leading the investigation at the time.

11 When he was pulled over and arrested on the
12 side of the road, he was on his way to a Dunkin Donuts
13 with his family and he was going to return home.

14 The other well-known kind of fact that's in
15 the background here was because the death threats were so
16 serious and substantial, there was a trooper who was
17 posted outside Mr. Hussain's house twenty-four hours a
18 day, seven days a week.

19 THE COURT: How long was that?

20 MR. KINDLON: Well, I think the accident
21 happened on a weekend and he was arrested on a Wednesday.
22 I had reported the death threats coming in not only to
23 myself but also to my client to Ms. Mallery and also
24 to -- is it Lieutenant Fancher?

25 MS. MALLERY: Senior Investigator.

1 MR. KINDLON: (Continuing) -- Senior
2 Investigator Fancher who's with the New York State Police
3 in Princetown. And they re-post the trooper outside the
4 house.

5 THE COURT: What is the significance that
6 your client was born in Pakistan and has family in
7 Pakistan?

8 MR. KINDLON: Honestly, Judge, I think it's
9 irrelevant.

10 THE COURT: You think it's what?

11 MR. KINDLON: Irrelevant. He's a U.S.
12 citizen. He doesn't have a passport. He has not had a
13 passport since before this case started. It actually
14 expired and he's been ordered never to get a new one.

15 The periphery of this case has always
16 involved these allegations that, you know, there's these
17 dark forces that lurk in a different country to which
18 he's connected. But this young man that sits next to me,
19 I mean, he grew up in Latham. He went to CBA for a
20 while. He eventually got his GED, because he left. But
21 he's as much of the Capital District as you or I or Ms.
22 Mallery.

23 So you know, the fact that he has relatives
24 in Pakistan is as relevant as the fact that I've got
25 ancient relatives in Ireland. The two things in terms of

1 his return to court have no relation to one another.

2 THE COURT: I just wanted to give you an
3 opportunity to address that issue.

4 MR. KINDLON: I appreciate that, Your Honor.

5 MS. MALLERY: If I may respond. Having, you
6 know, the obligation, the duty to go through some of the
7 discovery we have, we have learned through text messaging
8 that he has been to Pakistan. The PSI does say he has a
9 dual citizenship with Pakistan. I've learned he has a
10 cousin, at least one cousin, that they were corresponding
11 with. So he does have relatives in Pakistan, Your Honor.

12 And I do acknowledge, again, I don't think he
13 would argue with the facts, the facts are what the facts
14 are, but there is that significant risk that he can get
15 on a jet and leave and go to Pakistan. That is why the
16 GPS is so critical in this case.

17 MR. KINDLON: Judge, if I may. I'm sorry. I
18 may have been, I admit this openly, really openly,
19 factually wrong about something I want to make clear.

20 THE COURT: Okay.

21 MR. KINDLON: My client's telling me -- so
22 many things have happened in this case. I apologize I
23 got this wrong. He's telling me that an additional three
24 hundred thousand dollar bond was placed on him by Judge
25 Bartlett upon arraignment in this court.

1 THE COURT: Well, I wasn't here at that
2 point. Obviously, you all should know what the status
3 is.

4 MR. KINDLON: Again, Your Honor, if that's
5 true, then is that --

6 THE CLERK: It is true.

7 MR. KINDLON: There, we go.

8 THE CLERK: It's in the securing order.

9 THE COURT: Okay.

10 MR. KINDLON: And I apologize. I mean, I
11 misled the Court, but I misled the Court, perhaps, to the
12 defense's own detriment. So I would say then, Your
13 Honor, that a 450 --

14 THE COURT: So I have two bonds, 150 and 300.

15 MR. KINDLON: Yes, sir.

16 THE COURT: They have a total of \$450,000 in
17 bonds.

18 MR. KINDLON: So that, I would say, changed a
19 \$450,000 bond.

20 THE COURT: But that was from --

21 MR. KINDLON: 2019.

22 MS. MALLERY: It was indicted '19.

23 THE COURT: Okay. And we are three years
24 later. Okay. Anything else?

25 MR. KINDLON: No, Judge.

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SENIOR COURT REPORTER
518-453-6999

1 THE COURT: Okay. Obviously, this case has
2 had a change in the landscape. Your client has entered a
3 not guilty plea. He is entitled to the presumption of
4 innocence in this case, and this case is simply scheduled
5 for trial beginning on May 1 of 2023.

6 You may recall I was trying to get an earlier
7 trial date, because this case was essentially four years
8 old. My proposal for 12/5 was not acceptable, because
9 the defense is already scheduled for trial and my
10 suggestion for October 31 was also equally not available
11 due to scheduling conflicts.

12 May 1 is the earliest trial date that I can
13 set based on those conflicts and, frankly, it'll be here
14 very soon. Under 510.40(4)(d) of the Criminal Procedure
15 Law, the maximum period for the electronic monitoring is
16 60 days and may be renewed for such period after notice
17 and an opportunity to be heard as well as a de novo
18 individualized determination in accord with this
19 subdivision.

20 So that's why I put this matter on the record
21 today and counsel have had an opportunity to be heard.
22 Counsel is not challenging the status of the bonds that
23 have been posted but, rather, the application today is
24 limited to whether or not to extend the GPS monitoring.
25 To be blunt, under all the facts and circumstances in

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1 this case, I do think that the GPS monitoring is a
2 necessary element to assure the Court that the defendant
3 will continue to make all scheduled appearances in this
4 case. I've listened to the arguments on both accounts.

5 I do note that up to August 31, 2022, the
6 defendant's appearances in this case were predicated on a
7 potential plea agreement that I vacated. I do note that
8 I continued the GPS monitoring and this case is going to
9 go to trial. There are significant risks of flight when
10 any individual is exposed to a trial of this magnitude.

11 The history of essentially not reporting to
12 matters, as counsel pointed out a moment ago, Vehicle &
13 Traffic infractions, which pale in comparison to the
14 significance of this case, do indicate to me that the
15 defendant is a flight risk.

16 I am going to continue the GPS monitoring as
17 a condition of the defendant's continued release. I am
18 going to issue a securing order today to that effect.
19 The GPS monitoring will be conducted by the Schoharie
20 County Probation Department and the defendant is to
21 continue to report weekly, not to leave the State of New
22 York and must be required to appear in court when
23 scheduled.

24 As I had indicated to counsel via e-mail sent
25 by Tom Garner, law clerk for Chambers, on September 15,

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1 2022, the next scheduled appearance here is Wednesday,
2 December 21, 2022, and we're going to make that at 9:30
3 a.m.

4 The purpose of that appearance on December 21
5 will be to address the status of the GPS monitoring, once
6 again, as well as to address the status of the People's
7 compliance with the filing of a Certificate of Compliance
8 in accord with 245.50. And I note that notwithstanding
9 the fact that these charges involve Manslaughter in the
10 Second Degree and Criminally Negligent Homicide and that
11 the time restraints under CPL Section 30.30, subdivisions
12 1 and 2, are not applicable; subdivision 5 of 30.30 are
13 applicable. So we'll review that status at that time.

14 And you may recall that on September 14,
15 2022, I had directed that the People complete the filing
16 of the Certificate of Compliance no later than March 1,
17 2023. I don't think there will be any excuse not to have
18 this case ready for trial so that we can begin on May 1,
19 2023.

20 The record should reflect I am issuing the
21 securing order under those conditions. I'll have the
22 Clerk of the Court distribute the order to the parties.
23 And that concludes today's appearance.

24 MR. KINDLON: Your Honor, if I may. Please
25 note my exception to the Court's ruling.

1 THE COURT: Okay.

2 MR. KINDLON: We expect to appeal.

3 THE COURT: I'm sorry. What?

4 MR. KINDLON: We expect to appeal the Court's
5 decision, so we'd like our exception noted.

6 THE COURT: You certainly have the right to
7 make an exception. And if you seek to file an appeal,
8 you have to do it in the appropriate way, and okay.

9 MS. MALLERY: I just wanted to be clear. The
10 \$450,000 bond continues?

11 THE COURT: Absolutely.

12 MS. MALLERY: Thank you, Judge.

13 (Proceedings concluded at 10:00 a.m.)

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C E R T I F I C A T I O N

I, **THERESA L. ARDIA**, Certified Shorthand Reporter and Notary Public within and for the State of New York, do hereby CERTIFY that the foregoing record taken by me at the time and place noted in the heading hereof is a true and accurate transcript of same, to the best of my ability and belief.

Theresa L Ardia

THERESA L. ARDIA, CSR, CRR, RPR, RMR

Dated: October 26, 2022.

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Democrat & Chronicle

NEWS

Judge nixes no-prison deal in 2018 limo crash that killed 20

Michael Hill

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A judge rejected a plea agreement that would have meant no prison time for the operator of a limousine company involved in a crash that killed 20 people in upstate New York. Wednesday's turnabout drew applause and tears from victims' relatives and plunged limo company boss Nauman Hussain into legal uncertainty.

State Supreme Court Justice Peter Lynch, who was not presiding over the case when the deal was reached a year ago in Hussain's case, called the agreement "fundamentally flawed."

It would have spared Hussain prison time, angering the families of the people killed when brake failure sent a stretch limo full of birthday revelers hurtling down a hill in 2018.

The judge's rejection caught lawyers and relatives off-guard. Family members who, moments earlier, were testifying about their grief and anger over no one being accountable for the deadly crash clapped and dabbed their eyes after the judge's announcement.

"I can't even put into words how I feel. Totally unexpected. Thank God," said Jill Richardson-Perez, the mother of limo crash victim Matthew Coons, while leaving court. "I'm in a better place now."

Kevin Cushing, who lost his son Patrick in the crash, said the families "have a hope for a bit of justice to be served in the future, where we didn't have any justice served in the past."

Defense attorney Chad Seigel said they were "shocked" and that the judge's move was "unheard of."

Hussain, who operated Prestige Limousine, had been charged with 20 counts each of criminally negligent homicide and second-degree manslaughter in what was the deadliest U.S. transportation disaster in a decade.

The agreement had called for Hussain to plead guilty only to the homicide counts, resulting five years of probation and 1,000 hours of community service. Lawyers for both sides said last year the plea agreement assured a resolution in a case that would have faced an uncertain outcome if presented to a jury.

Lynch noted that a state Department of Transportation out-of-service sticker had been placed on the limousine a month before the crash. State police recovered the sticker from Hussain's personal car after his arrest. Prosecutors have argued that Hussain took the sticker off the limo's windshield so that he could use it for more jobs.

To the judge, Hussain's actions showed he knew the risk of putting the limousine on the road the day of the crash, and a guilty plea to only criminally negligent homicide does not reflect that. Second-degree manslaughter charges are filed when a defendant is accused of being aware of the risk of death and disregarding it. Lynch called the deal "completely disingenuous and unacceptable to this court."

Lynch gave Hussain's lawyers the choice of accepting a sentence of 1 1/3 to four years in prison or withdrawing his guilty plea. They chose the latter.

Seigel said afterward that the DOT sticker had "absolutely nothing to do with defective brakes."

Families grieve a year after crash 20 people died in a horrific limo crash. A year later, loved ones talk about life and loss

Could it have been prevented? One year later: How a porous system led to limo crash that killed 20 people in Schoharie

"Collectively, we made a decision that it would be in the best of all all involved — not only our client, but the members of the community — to put this matter behind them. A little monkey wrench was thrown in that," Seigel said. "So the judge forced our hand and we're ready for trial."

District Attorney Susan Mallery left court without commenting.

Hussain, who sat with his head lowered for much of the proceeding, declined comment afterward.

While the National Transportation Safety Board concluded the crash was likely caused by Prestige Limousine's "egregious disregard for safety" that resulted in brake failure, the board said ineffective state oversight contributed.

Attorneys for Hussain say he tried to maintain the limousine and relied on what he was told by state officials and a repair shop that inspected it.

Axel Steenburg rented the 2001 Ford Excursion limousine for wife Amy's 30th birthday on Oct. 6, 2018. The party group, ranging in age from 24 to 34, included Axel's brother, Amy's three sisters and two of their husbands, and close friends.

En route to a brewery, the limo's brakes failed on a downhill stretch of road in Schoharie, west of Albany. The vehicle blew through a stop sign at over 100 mph (160 kph) and crashed into a small ravine.

The crash killed the limo driver, 17 passengers, and two bystanders outside the store.

Mallery's office has said Hussain allowed passengers to ride in the limo despite having received "multiple notices of violations" from the state and having been told repairs were inadequate. State police said the vehicle should have been taken out of service because of brake problems identified in an inspection a month before the crash.

The next court date has been set for Sept. 14. Hussain, who had completed a year of interim probation, was allowed to leave the court, but the judge ordered he be subject to GPS monitoring.

Lynch revealed his decision only after several relatives spoke about their enduring pain and sense of loss. Sheila McGarvey told the court that her 30-year-old son Shane McGowan was just beginning his life with new wife, Erin McGowan, who was also riding in the limo.

"I call out my son Shane's name all the time," McGarvey said, "but no one answers."