

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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ASSOCIATION OF MOTOR VEHICLE TRIAL  
ATTORNEYS, INC., ABDUL BASHER and MOISES  
SOTO,

**AFFIRMATION**

*Plaintiffs-Petitioners,*

900856-21

-against-

NEW YORK STATE DEPARTMENT OF MOTOR  
VEHICLES, MARK J.F. SCHROEDER, in his official  
capacity as the Commissioner of the New York State  
Department of Motor Vehicles, NEW YORK STATE  
DEPARTMENT OF MOTOR VEHICLES, TRAFFIC  
VIOLATIONS BUREAU

*Defendants-Respondents.*

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BUSHRA VAHDAT, an attorney admitted to practice in the State of New York, affirms  
under penalty of perjury:

1. I am employed by the New York State Department of Motor Vehicles (“DMV”),  
as the Supervising Administrative Law Judge. I oversee Safety Hearings throughout New York  
State and oversee the Traffic Violations Bureau (“TVB”). I have held this position for 10 years.  
My duties as Supervising Administrative Law Judge in regard to TVB include managing eight  
TVB hearing locations in New York City: Brooklyn South, Brooklyn North, Bronx, Manhattan  
South, Manhattan North, Richmond, Queens South and Queens North. My duties include  
overseeing the Senior Administrative Law Judges and hearings at each location.

2. I am fully familiar with the facts and circumstances set forth below based upon my  
personal knowledge, review of records made and maintained by DMV in the regular course of

business, communication with DMV employees involved in this matter and personal knowledge of DMV procedures.

3. I make this affirmation in support Respondents' answer and motion to dismiss and in opposition to Petitioner's request for a preliminary injunction.

4. The TVB was created in 1970, by Article 2-A of the Vehicle and Traffic Law to adjudicate traffic violations in the five boroughs of New York City. The pertinent regulations are Part 121 of the Commissioner's Rules, 15 NYCRR Part 121.

5. Prior to the onset of the COVID-19 pandemic, TVB offices held approximately 800,000 hearings per year, with approximately 850,000 being held in 2019. Hearings were usually held by having a hearing room full of motorists, witnesses, attorneys and police officers waiting for their cases to be called. When a case is called, the appropriate parties approach the ALJ. Typically, TVB offices would have upwards of 20 people in the hearing room at a time, with another 50 people in the waiting area.

6. Due to the COVID-19 pandemic, continuing with this model for adjudicating hearings would be of great risk to all involved. Due to the risks posed to participants of in-person TVB hearings, the TVB offices shut down on March 18, 2020.

7. The closure lead to an extreme backlog of hearings. Approximately 150,000 hearings had to be cancelled.

8. In order to reopen hearings, we made extraordinary efforts to reopen safely as soon as possible by implementing a plan to have only one case in a hearing room at a time, meaning that just one motorist, the motorist's attorney, and witnesses would be in the hearing room with

the ALJ and a clerk. These are in-person hearings, except for the police officer, who appears telephonically.

9. The ranks of the New York City Police Department were hit hard by the pandemic. With officers out due to COVID-19 and extremely high demand in NYC for officers, the NYPD asked DMV if their officers could appear remotely. This would free the officers' time for additional duties, protect the officers from exposures, and protect our hearing locations from any infection the officers might have contracted. In order to accommodate the NYPD and protect our offices and the public, we agreed to allow the officers to appear by telephone.

10. We made arrangements that documentation concerning an alleged violation was to be faxed to TVB prior to the hearing, where the ALJ would then present the officer's notes, the ticket or other documents to the other parties where germane to a hearing.

11. Because of these safety precautions, we could schedule only 35% of the number of cases we would typically schedule before the pandemic. At present, the TVB can hear approximately 700 contested hearings each day, as opposed to 2,000 pre-pandemic. As such, hearings for many motorists had to be rescheduled.

12. We held our first hearings with the officers present by telephone on July 17, 2020. To date, we have held approximately 90,000 hearings with an officer appearing by telephone.

13. In order to make the community aware of our new procedures and engage in public outreach to the stakeholders, we invited all known defense attorneys to a WebEx meeting on July 15, 2020. Members of the Association of Motor Vehicle Trial Attorneys ("AMVTA") attended that meeting.

14. At that meeting I explained our new procedure for the police officers, who would

appear telephonically.

15. We held a second WebEx meeting on July 30, 2020, again to perform outreach to the community.

16. At this meeting, I explained, among other things, how TVB was setting up a virtual waiting room for attorneys and motorists so they would not have to wait in our hearing rooms and waiting areas. I also discussed DMV's consideration of transitioning to entirely virtual hearings.

17. I later learned that a member of AMVTA had secretly recorded the WebEx meeting without DMV's permission or otherwise notifying DMV of the intent to record the meeting. The transcript proffered by Petitioners, is not a document prepared by DMV or based upon a recording of the meeting prepared by DMV. Therefore, DMV cannot attest to its authenticity.

18. At the onset of the pandemic, DMV began examining whether TVB hearings could be conducted by virtual means, however, it was determined that it could not be done without additional funding for video-conferencing hardware, technology and services.<sup>1</sup> On July 17, 2020, DMV submitted a request to the New York State Division of Budget for federal COVID-19 relief funding for investing in a transition to virtual hearings. The Division of Budget approved this request on October 5, 2020. This funding enabled DMV to make a substantial investment in video-conferencing hardware, technologies, and contracts for video-conferencing services in order to transition to virtual hearings. DMV contracted with a private vendor to provide services for video-conferencing through Cisco Systems' WebEx platform. This is the same platform that the New York State Workers' Compensation Board had used with success for virtual hearings for several years.

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<sup>1</sup> In fact, DMV had considered transitioning to virtual hearings on several occasions in years prior, but costs had continually proved to be prohibitive.

19. All participants to a virtual hearing access the hearing by logging in to a portal. The procedure remains the same as in a regular in-person hearing, except that the parties appear by video. Motorists may attend from their personal computer or mobile device; attorneys may attend from their offices; police officers may attend from their offices; and our ALJs will appear by video.

20. After motorists and their attorneys log in, they are placed in a virtual waiting room until the ALJ calls the case.

21. When the case is ready to be heard, the ALJ calls the case from the virtual hearing room and proceeds with the hearing, taking testimony from the motorist and the officer.

22. I am informed by counsel that Petitioners allege they will not be able to review the original copies of an officer's notes or ticket during a virtual hearing.

23. Prior to a virtual hearing, the police officer will forward to the ALJ digital copies of the ticket, their notes, and any other evidence. The ALJ will be able to present these records to the motorist and their counsel if the ALJ determines it to be appropriate based upon the circumstances of the hearing. For example, if a record is admitted into evidence, the ALJ will be able to present the record on the screen so that the motorist and their counsel can review it.

24. DMV has implemented a rollout schedule for transitioning all TVB offices to virtual hearings. The transition began with Queens North as a pilot location on February 24, 2021. In the first week in Queens North, we successfully held 200 virtual hearings. The tentative dates for transitioning the other TVB offices are: Bronx - 3/18/21, Brooklyn South 3/23/2021; Richmond - 3/30/21; Manhattan North - 4/6/21; Queens South - 4/13/21; Manhattan South - 4/20/21; and Brooklyn North - 4/20/21. If no problems or delays are encountered, full implementation will be complete by the end of April.

25. Once a TVB office has transitioned to virtual hearings, police officers will no longer testify by telephone and will testify only by video-conference.

26. I am informed by counsel that Petitioners allege that the TVB regulations (15 NYCRR Part 121 *et seq.*) require hearings to be in-person and prohibit virtual hearings.

27. The TVB regulations were created in the 1970s, when ‘virtual hearings’ could not have been contemplated or foreseen. As such, the regulations were written for the only conceivable type of hearing at that time, an in-person hearing at a DMV office. The Department interprets the regulations to permit hearings to be conducted by video-conference or other virtual means. The Department interprets 15 NYCRR Part 123.7 to permit a police officer to attend through technological means, including by telephone or video-conference. The Department interprets 15 NYCRR Part 124.4(a) to permit the ALJ to hear testimony from witnesses by technological means, including by telephone or video-conference. The requirement of calling a witness “to the dais” was meant to give instruction that pertinent parties will be called forth from the group assembled in the hearing room to present their case and/or testify. DMV interprets this and any similar language in the TVB regulations to include a ‘virtual’ dais, and to not be a requirement, as Petitioners advance, that TVB hearings must be held in-person and not virtually. As with in-person hearings, the ALJ will call participants from a virtual waiting area to appear before the ALJ. The regulation does not in any way constrain DMV to require a physical in-person appearance. Calling an officer, motorist or witness to appear virtually before an ALJ complies with the regulations.

28. I am informed by counsel that Petitioners allege they will not be able to cross-examine the police officer. This is untrue. Petitioners or their counsel will be able to cross-examine the police officer through the video-conference. The TVB regulations protect a motorist’s right to

confrontation, and DMV endeavors to ensure that right is protected by permitting cross-examination by virtual means. *See* 15 NYCRR Parts 124.1, 124.4(a), (c).

29. I am informed by counsel that Petitioners allege they have not received adequate notice of their virtual hearings.

30. Motorists scheduled for a virtual hearing receive a hearing notice at least three weeks in advance of the hearing. The notice will identify the date and time of the hearing, the matter to be heard, and include instructions for participating virtually. Attached hereto as Exhibit A is a true and correct copy of a sample hearing notice. Attorneys of record are also provided the instructions.

31. Additionally, the DMV website provides information about virtual hearings, <https://dmv.ny.gov/virtual-hearings>. The page includes links to User Guides for Motorists, Attorneys/Representatives, and Witnesses/Interpreters. Step by step instructions guide Motorists in how to connect to their virtual hearing.

32. The hearing notice sent to Petitioner Moises Soto for a virtual hearing was sent in error, as virtual hearings were not yet taking place. His hearing of January 27, 2021 was adjourned. I reviewed our database which shows that his hearing was rescheduled to November 1, 2021 and will be held virtually. He will receive a new hearing notice with instructions on how to appear virtually.

33. Likewise, the hearing notice sent to Petitioner Abdul Basher for a virtual hearing was sent in error, as virtual hearings were not yet taking place. I reviewed our database which shows that his hearing was rescheduled to November 16, 2021 and will be held virtually. He, too, will receive a new hearing notice with instructions on how to appear virtually.

34. Transitioning to virtual hearings will provide many benefits.

35. First and foremost, it will greatly mitigate any risk of COVID-19 exposure to all participants.

36. Additionally, a transition to virtual hearings may permit DMV to consolidate TVB offices, permitting DMV to reduce the cost of expensive leases.

37. Virtual hearings will also result in increased safety and security at our TVB offices. Our TVB offices and courtrooms are large and have, at times, presented security concerns. There have been many incidents where members of our staff, as well as members of the public, have been threatened or harassed by motorists or other members of the public. Virtual hearings provide a safer environment as far fewer individuals passing through TVB offices. Reduced security needs coupled with the potential consolidation of TVB offices will result in savings to taxpayers as DMV will be able to reduce the amount it expends contracting for security services in its offices.

38. Similarly related, an ALJ will have an easier time maintaining control over a virtual hearing, as there would be no external distractions. A virtual hearing also allows an ALJ to focus solely on the hearing before him/her and control and share submitted evidence. The ability to submit documentary evidence in advance has caused some parties (law enforcement, attorneys and motorists) to be better prepared for our hearings. From an administrative standpoint, virtual hearings eliminate unnecessary ex-parte conversations/issues – which would sometimes happen in the hallways or in-between hearings. All communications between the ALJ, attorneys, and law enforcement will be on the WebEx hearing, which are individually recorded.

39. Virtual hearings will provide further taxpayer savings by reducing the burden imposed by TVB hearings upon law enforcement, who will no longer need to physically travel and



wait in TVB offices to be present for TVB hearings, and will instead be able to attend to their other duties.

40. Moreover, motorists and attorneys will realize many benefits through virtual hearings. Motorists and their attorneys will no longer need to take additional time to travel to a TVB, wait in a waiting room, and then wait in a smaller hearing room to attend their hearing before travelling home. This will be particularly beneficial to motorists who would have to overcome work obligations, childcare needs, and travel/transportation hurdles in order to attend an in-person hearing. Virtual hearings will also provide motorists additional privacy, as hearings will no longer be held in the presence of other motorists.

41. Virtual hearings will also greatly reduce the need for adjournments. Many times, cases are adjourned due to a party's limitation (again work, childcare or travel concerns), weather conditions (snow), DMV staff issues (staffing shortages), and other emergency situations (pandemics). The use of virtual hearings also eliminates the geographical limits between our TVB offices. Currently, if a TVB office encounters a staffing shortage, we try to adjust accordingly, but are sometimes forced to reduce dockets by adjourning cases. With the use of virtual hearings, we can easily assign cases across the different TVB offices. The removal of geographical limitations has already proven to be a great benefit with our Safety Hearing Bureau cases. We have been conducting Safety Hearing Bureau ("SHB") hearings virtually since last July. From this experience we have learned, that while there was some initial hesitancy, the benefits of using virtual hearings have been embraced by both the DMV (ALJs and SHB staff) and the parties.

42. If DMV is prevented from transitioning to virtual hearings, DMV and motorists will be profoundly harmed.

43. As an initial matter, the benefits of COVID-19 exposure mitigation, reduced expenses, increased security, and time savings outlined above will not be realized.

44. Moreover, if DMV must continue with in-person hearings while following protocols to mitigate COVID-19 exposure, DMV will only be able to hear 35% of its usual caseload based upon the current resources it has available. As such, it will take approximately two to three years to hear the same number of cases DMV would ordinarily hear, which is approximately 800,000 per year. To continue to hear the same number of hearings in the current circumstances imposed by COVID-19, DMV would have to undertake astronomical costs to provide for additional facilities and staff.

45. Motorists would be negatively impacted because they will not be able to have their traffic infractions resolved in a timely manner.

46. In addition, the delay would impose a significant administrative burden and cost upon DMV, and also reduce DMV's revenue through the delayed collection of traffic fines.

47. DMV has made a substantial investment in video technology and equipment to transition to virtual hearings. If DMV is prohibited from conducting virtual hearings, or required to conduct a substantial portion of TVB hearings in-person, much of this investment will be wasted.

48. Moreover, the public will be harmed because DMV will not be able to timely and efficiently enforce the VTL and remove dangerous drivers from the streets of New York City through license suspensions and revocations imposed after TVB hearings.

49. The preference of a few motorists and their attorneys to continue with in-person hearings cannot outweigh the mitigation of COVID-19 exposure, increased security, cost savings

to taxpayers, and substantial time savings to all parties involved, which will be realized by transitioning to virtual hearings.

Dated: March 19, 2021, New York

*Bushra Vahdat*

Bushra Vahdat

*Exhibit*

*A*

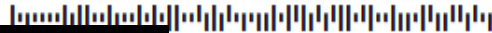
## Notice of Scheduled Hearing – Notice # 02

Department of  
Motor Vehicles

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

NOTICE OF SCHEDULED HEARING

11/18/20



POSTAL ID: 290013700

THIS NOTICE REPLACES ANY PREVIOUSLY SCHEDULED DATES FOR THE TICKETS LISTED BELOW.

YOUR NOT GUILTY PLEA IS ON FILE. YOUR HEARING WILL BE HEARD BY:

QUEENS NORTH TRAFFIC VIOLATION BUREAU  
30-56 WHITESTONE EXPY 2ND FLOOR  
FLUSHING, NY 11354

DATE OF HEARING: 08/31/21  
TIME OF HEARING: 8:30 AM

THIS HEARING WILL BE HELD REMOTELY. BELOW YOU WILL FIND INSTRUCTIONS TO ATTEND YOUR HEARING REMOTELY VIA A VIDEO CONFERENCE OR TO SUBMIT A STATEMENT IN PLACE OF PERSONAL APPEARANCE (SIPOPA).

TICKET #	VIOLATION DESCRIPTION	VIOL DATE	REASON
B20N009985	SPEED IN ZONE 31+	09/13/20	NOT GUILTY PLEA

TO APPEAR FOR THIS HEARING REMOTELY VIA VIDEO CONFERENCE, PLEASE VISIT [DMV.NY.GOV/VIRTUAL-HEARINGS](https://dmv.ny.gov/virtual-hearings) FOR INFORMATION AND INSTRUCTIONS. IF YOU CANNOT ATTEND REMOTELY YOU MUST SUBMIT A SIPOPA.

TO SUBMIT A SIPOPA, COMPLETE THE ENCLOSED AA-53.2 FORM AND MAIL IT TO THE ADDRESS ABOVE OR VISIT [NYS DMV.CUSTHELP.COM/APP/VO/SIPOPA](https://nysdmv.custhelp.com/app/vo/sipopa) TO SUBMIT THE STATEMENT ONLINE. YOU MUST SUBMIT YOUR SIPOPA AT LEAST 2 WEEKS PRIOR TO YOUR HEARING DATE.

IMPORTANT - YOU WILL NEED INFORMATION FROM THIS NOTICE AND YOUR PHOTO ID TO CHECK IN FOR YOUR HEARING.

IF YOU DO NOT APPEAR FOR THIS HEARING OR SUBMIT A SIPOPA YOUR DRIVER LICENSE OR PRIVILEGE TO DRIVE IN NEW YORK STATE WILL BE SUSPENDED. IF SUSPENDED, YOU WILL HAVE TO PAY A \$70 SUSPENSION TERMINATION FEE IN ADDITION TO ALL OTHER FINES AND PENALTIES BEFORE YOUR LICENSE OR DRIVING PRIVILEGES WILL BE RESTORED, REGARDLESS OF WHETHER OR NOT YOU ARE FOUND GUILTY OF THE CHARGE.

IF YOU WISH TO CHANGE YOUR PLEA TO GUILTY AND PAY THE FINE AND SURCHARGE FOR THIS TICKET, YOU MAY BE ELIGIBLE TO PAY IT WITH A CREDIT CARD ON-LINE AT: [DMV.NY.GOV/EPLEAD](https://dmv.ny.gov/eplead)

## Notice of Scheduled Hearing – Immediate Suspension – Notice # 2S

Department of  
Motor Vehicles

6 EMPIRE STATE PLAZA, ALBANY, NY 12228

NOTICE OF SCHEDULED HEARING

11/18/20



POSTAL ID: 290015103

THIS NOTICE REPLACES ANY PREVIOUSLY SCHEDULED DATES FOR THE TICKETS LISTED BELOW.

YOUR NOT GUILTY PLEA IS ON FILE. YOUR HEARING WILL BE HEARD BY:

BRONX TRAFFIC VIOLATION BUREAU  
696 EAST FORDHAM ROAD  
BRONX, NY 10458DATE OF HEARING: 12/10/20  
TIME OF HEARING: 2:30 PM

THIS HEARING WILL BE HELD REMOTELY. BELOW YOU WILL FIND INSTRUCTIONS TO ATTEND YOUR HEARING REMOTELY VIA A VIDEO CONFERENCE OR TO SUBMIT A STATEMENT IN PLACE OF PERSONAL APPEARANCE (SIPOPA).

TICKET #	VIOLATION DESCRIPTION	VIOL DATE	REASON
ABD2806790	UNREG MOT VEH < 60DA	09/11/17	SUSPENSION IN EFFECT
ABD2806801	OPERATE W/O INSURANC	09/11/17	SUSPENSION IN EFFECT

TO APPEAR FOR THIS HEARING REMOTELY VIA VIDEO CONFERENCE, PLEASE VISIT [DMV.NY.GOV/VIRTUAL-HEARINGS](http://DMV.NY.GOV/VIRTUAL-HEARINGS) FOR INFORMATION AND INSTRUCTIONS. IF YOU CANNOT ATTEND REMOTELY YOU MUST SUBMIT A SIPOPA.TO SUBMIT A SIPOPA, COMPLETE THE ENCLOSED AA-53.2 FORM AND MAIL IT TO THE ADDRESS ABOVE OR VISIT [NYS DMV.CUSTHELP.COM/APF/VO/SIPOPA](http://NYS DMV.CUSTHELP.COM/APF/VO/SIPOPA) TO SUBMIT THE STATEMENT ONLINE. YOU MUST SUBMIT YOUR SIPOPA AT LEAST 2 WEEKS PRIOR TO YOUR HEARING DATE.

IMPORTANT - YOU WILL NEED INFORMATION FROM THIS NOTICE AND YOUR PHOTO ID TO CHECK IN FOR YOUR HEARING.

YOUR LICENSE OR PRIVILEGE TO OPERATE A MOTOR VEHICLE IN NEW YORK STATE HAS BEEN SUSPENDED. THIS SUSPENSION IS AUTHORIZED BY THE NEW YORK STATE VEHICLE AND TRAFFIC LAW. YOU WILL HAVE TO PAY A \$70 SUSPENSION TERMINATION FEE IN ADDITION TO ALL OTHER FINES AND PENALTIES BEFORE YOUR LICENSE OR DRIVING PRIVILEGES WILL BE RESTORED, REGARDLESS OF WHETHER OR NOT YOU ARE FOUND GUILTY OF THE CHARGE.

IF YOU WISH TO CHANGE YOUR PLEA TO GUILTY AND PAY THE FINE AND SURCHARGE FOR THIS TICKET, YOU MAY BE ELIGIBLE TO PAY IT WITH A CREDIT CARD ON-LINE AT: [DMV.NY.GOV/EPLEAD](http://DMV.NY.GOV/EPLEAD)