Police Dep't v. Nongpanga

OATH Index No. 1530/26, mem. dec. (Mar. 31, 2026)

Petitioner established compliance with the dual notice requirement of the *Krimstock* Order, probable cause for the arrest, a likelihood of success at a civil forfeiture proceeding, and that releasing the vehicle poses a heightened risk to the public. Petitioner may retain respondent's vehicle pending a civil forfeiture proceeding.

NEW YORK CITY OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS

In the Matter of
POLICE DEPARTMENT
Petitioner
- against -
GREGOIRE NONGPANGA
Respondent

MEMORANDUM DECISION

MICHAEL D. TURILLI, *Administrative Law Judge*

Petitioner, the Police Department, brought this proceeding to determine its right to retain a vehicle seized as the alleged instrumentality of a crime pursuant to section 14-140 of the Administrative Code. Respondent, Gregoire Nongpanga, is the titled owner of the vehicle. This proceeding is mandated by *Krimstock v. Kelly*, 2007 U.S. Dist. LEXIS 82612 (S.D.N.Y. Sept. 27, 2007) [3d amended order and judgment] (the "*Krimstock* Order"). *See generally Krimstock v. Kelly*, 306 F.3d 40 (2d Cir. 2002), *cert. denied*, 539 U.S. 969 (2003); *County of Nassau v. Canavan*, 1 N.Y.3d 134 (2003).

Petitioner seized the vehicle, a gray 2018 Toyota RAV4, following respondent's arrest on February 6, 2026, for driving while intoxicated, criminal possession of a forged instrument, and other charges (Pet. Exs. 2, 4, 7, 9). Petitioner received respondent's demand for a hearing on February 27, 2026 (Pet. Exs. 1, 2). The hearing was held remotely by videoconference on March 26, 2026. Petitioner relied upon documentary and video evidence. Respondent offered documentary evidence and testified on his own behalf through a French interpreter.

For the reasons set forth below, I find that petitioner may retain the vehicle pending a civil forfeiture proceeding.

ANALYSIS

Petitioner seeks to retain the seized vehicle as the instrumentality of a crime pending the outcome of its civil forfeiture action. To prevail, petitioner is required to prove by a preponderance of the evidence that: (i) probable cause existed for the arrest resulting in the vehicle's seizure; (ii) it is likely that petitioner will prevail in a civil action for forfeiture of the vehicle; and (iii) it is necessary that the vehicle remain impounded either to protect the public safety or to ensure its availability for a judgment of forfeiture. *Krimstock*, 2007 U.S. Dist. at *2; *Canavan*, 1 N.Y.3d at 144-45. Due process requires an "initial testing of the merits of the City's case," not "exhaustive evidentiary battles that might threaten to duplicate the eventual forfeiture hearing." *Krimstock*, 306 F.3d at 69-70; *see Canavan*, 1 N.Y.3d at 144-45 n.3 (hearing is intended to establish "the validity, or at least the probable validity, of the underlying claim") (citation omitted).

At the hearing, petitioner relied upon an arrest report, complaint report, criminal court complaint, and property invoice relating to respondent's arrest (Pet. Exs. 4-7). According to these records, Officer Jaiden Bonet observed respondent operating a gray 2018 Toyota RAV4 with Georgia license plate S2501843 on February 6, 2026, at approximately 1:30 a.m., near the intersection of Bruckner Boulevard and East Tremont Avenue in the Bronx (Pet. Exs. 4-6). The officer observed respondent asleep behind the steering wheel while stopped at a red light (Pet. Exs. 4-6). The officer also observed that respondent had a strong smell of alcohol, slurred speech, and bloodshot watery eyes, and saw multiple empty beer bottles in the vehicle (Pet. Exs. 4-6). A chemical test analysis of respondent's breath was administered at the 45th precinct and respondent's blood alcohol content was .16 percent (Pet. Exs. 4-6). The criminal court complaint, signed and sworn by Officer Bonet, stated that respondent also had a forged license plate affixed to the vehicle, "in that said license plate was printed on multipurpose printer paper and placed onto a piece of cardboard, was a photocopy, and missing the necessary gold emblem" (Pet. Ex. 6). Respondent was arrested for criminal possession of a forged instrument in the third degree, driving while intoxicated, and driving while ability impaired by the consumption of alcohol (Pet. Exs. 4, 9). Respondent was arraigned in Bronx County Criminal Court on February 6, 2026, and charged with criminal possession of a forged instrument in the third degree and operating a motor vehicle while under the influence of alcohol or drugs (Pet. Exs. 6, 9). *See* Penal Law § 170.20; Veh. & Traf. Law § 1192(1), (2), (3) (Lexis 2026).

According to a repository inquiry from the New York State Division of Criminal Justice Services, respondent was previously convicted of an infraction for driving while ability impaired by the consumption of alcohol on September 27, 2022 (Pet. Ex. 9). The conviction related to an

incident on February 3, 2022 (*Id.*). According to the arrest report for that incident, police officers responded to the scene of a vehicle collision and observed respondent seated behind the steering wheel of a 2015 Toyota Camry with an open beer bottle in the front seat cup holder and strongly smelling of alcohol (Pet. Ex. 10). At the 45th precinct, respondent "did blow a .2 on the CMI Intoxilyzer 9000" (*Id.*). Respondent pled guilty and was sentenced to a conditional discharge, $300 fine, and 90-day license suspension (Pet. Ex. 9).

Respondent testified that he was born in the Ivory Coast and now lives in New York City. His primary language is French, and he also speaks two other languages used in the Ivory Coast. He is not fluent in English and does not understand it well. When attending court proceedings or signing important documents, he needs a French interpreter. Respondent is the titled owner of the vehicle and testified that the police seized his vehicle on February 6, 2026 (Pet. Ex. 8). The police officer at the precinct provided him with a document to sign regarding his vehicle, but he did not sign it because he did not understand the document. He did not understand what the police officer said about the document but knew that it related to his vehicle because he understood the word "car." The police officer did not speak French, did not provide him with a French translation of the document, and did not offer interpretation services. He later received documents from the police in the mail and shared them with his criminal defense attorney, who helped him fill out the vehicle retention hearing form with assistance of a French interpreter. Respondent acknowledged that he had a New York State driver license and took the test for his license in English.

On rebuttal, petitioner presented a vehicle seizure form, an affidavit of mailing, and a video recording from a body worn camera (Pet. Exs. 11-13). The vehicle seizure form states that the 2018 Toyota vouchered under Property Clerk Invoice No. 2001580148 was seized from respondent in connection with his arrest on February 6, 2026 (Pet. Ex. 11). The form is in English and sets forth respondent's right to a retention hearing (*Id.*). Under "Acknowledgment of Service," Officer Bonet signed the form at 5:38 a.m. and checked the box entitled "Defendant Refused Signature" (*Id.*). On the affidavit of mailing, Police Administrative Aide Jessica Jackson swore that she mailed a copy of the notice of right to retention hearing to respondent on February 9, 2026 (Pet. Ex. 13). The two-minute-long video recording, which begins at 5:36 a.m. on February 6, 2026, shows an officer walking through a police precinct with a partially-completed vehicle seizure form in hand (Pet. Ex. 12). The officer walks through a door, removes respondent from a holding cell, and stands at a table, at which point respondent's name is visible on the form (*Id.*). The officer tells respondent that the form is for his vehicle, which has been vouchered for forfeiture due to his arrest for driving while intoxicated (*Id.*). The officer asks respondent if he wants to sign

the form, and respondent replies, with limited English proficiency, that he does not want to sign the form (*Id.*). After speaking with respondent for about a minute, the officer can be seen checking the box entitled "Defendant Refused Signature" (*Id.*).

The *Krimstock* Order imposes an unambiguous dual notice requirement:

> Notice of the right to a hearing will be provided at the time of seizure by attaching to the voucher already provided to the person from whom a vehicle is seized a notice, in English and Spanish, as set forth below. A copy of which notice will also be sent by mail to the registered and/or titled owner of the vehicle within five business days after the seizure.

Krimstock, 2007 U.S. Dist. at *3-4. The requirement must be strictly construed and when challenged, petitioner must show that it complied with its notice obligations. *Police Dep't v. Brooks*, OATH Index No. 1745/13, mem. dec. at 2 (Mar. 29, 2013). The dual notice requirement "is not an empty formality" and "[t]he purpose of the *Krimstock* Order, to provide clear notice of rights and ensure the availability of prompt preliminary hearings, is undermined by [the] failure to comply with its notice obligations." *Police Dep't v. Ruiz*, OATH Index No. 1440/07, mem. dec. at 3-4 (Mar. 27, 2007); *see also Police Dep't v. Caban*, OATH Index No. 107/07, mem. dec. at 5 (July 14, 2006).

This tribunal has consistently held that seized vehicles must be returned where petitioner has failed to comply with the notice requirements of the *Krimstock* Order. *See Police Dep't v. Cristy*, OATH Index No. 2335/25, mem. dec. at 4-5 (June 10, 2025) (directing release of vehicle where the evidence did not establish that respondent was served with notice at the time of his arrest or served by mail); *Police Dep't v. Coulanges*, OATH Index No. 2494/19, mem. dec. at 4-5 (June 14, 2019) (directing release of vehicle where the evidence did not establish that respondent was served with notice at the time of his arrest and the service by mail was untimely); *Police Dep't v. Murray*, OATH Index No. 1631/06, mem. dec. at 3-5 (Apr. 25, 2006) (granting motion to dismiss where petitioner failed to timely serve the registered owner of the vehicle with notice by mail).

It was undisputed that respondent was provided with notice of his right to a retention hearing in English at the time of his arrest on Friday, February 6, 2026, and mailed a copy on Monday, February 9, 2026. The form signed by the police officer and the video recording from the officer's body worn camera established that the notice was provided to respondent at the 45th precinct with respect to his seized vehicle. The affidavit of mailing established that the notice was then mailed to respondent within five business days of the seizure. Respondent admitted that he was provided with the document at the precinct and later received the document by mail.

Respondent argued that such notice, provided only in English, did not comply with the

requirements of the *Krimstock* Order because it did not clearly notify him of his rights in his primary language. Respondent's primary language is French and he testified with the assistance of a French interpreter at the hearing. I credited respondent's testimony that he is not fluent in English but understood that the form related to his seized vehicle. This tribunal has found noncompliance with the requirements of the *Krimstock* Order where notice of the right to a retention hearing was provided only in English to individuals whose primary language was Spanish. *See Police Dep't v. Rios*, OATH Index No. 1377/18, mem. dec. at 5 (Jan. 18, 2018) (finding that petitioner failed to serve respondent, who was not proficient in English, with notice of his right to a retention hearing in Spanish at the time of his arrest and therefore did not comply with the notice requirements of the *Krimstock* Order); *Police Dep't v. Ramirez*, OATH Index No. 2418/07, mem. dec. at 7 (July 16, 2007) (finding that petitioner failed to serve respondent, whose primary language was Spanish, with notice of his right to a retention hearing in both English and Spanish); *Police Dep't v. Rosario-Jiminez*, OATH Index No. 2235/07, mem. dec. at 3 (July 3, 2007) (finding that respondent did not receive timely and complete notice written in Spanish, her primary language, and was not properly advised of her rights under the *Krimstock* Order).

The language requirements for notice under the *Krimstock* Order, however, are unambiguous and are limited to English and Spanish. *See Ramirez*, OATH 2418/07 at 7 ("The *Krimstock* Order's requirement of bilingual notice . . . is a safeguard designed to assure that the right to a hearing is promptly communicated to those individuals whose primary language may be Spanish."). The terms of the *Krimstock* Order cannot be construed to require that notice be provided in the primary language of the driver or owner of the vehicle. Contrary to respondent's argument, this tribunal's decisions in *Rios* and *Ramirez* do not stand for the broader proposition that notice must be provided in primary languages other than English and Spanish. Those decisions were limited to Spanish-speaking individuals who did not receive notice in Spanish as expressly required by the *Krimstock* Order.

Respondent further argued that the failure to provide notice in French violated section 23-1102 of the Administrative Code. That statute requires covered agencies to "provide language access services for all designated citywide languages," including "identifying and translating . . . those documents most commonly distributed to the public that contain or elicit important and necessary information regarding the provision of basic city services" or "enforcement of the laws and rules enforced by such agency." Admin. Code § 23-1102(a) (Lexis 2026). Covered agencies are further required to "develop and implement an agency-specific language access implementation plan," which for "emergency service providers shall include provision for their

requirements to be implemented to the degree practicable." Admin. Code § 23-1102(b). Pursuant to this law, petitioner published its Language Access Implementation Plan in 2024 (Resp. Ex. A). According to the plan, French was designated by the City of New York as one of the 10 most commonly used languages (*Id.* at 4). With respect to translation of written materials, the plan states: "Of the Department forms that contain sections for the members of public to complete, most must be referenced later by other parties, including clerical staff, investigators, court staff, etc. which makes completion of these forms in an [limited English proficient] person's primary language impractical" (*Id.* at 8). The plan lists six documents that have been determined by petitioner to be "most commonly distributed" and have been translated into the 10 most commonly spoken languages (*Id.*). The vehicle seizure form with the notice of right to a retention hearing is not listed among them.

Even assuming that the failure to translate the retention hearing notice violated section 23-1102 of the Administrative Code, which is far from established on this record, there is no basis to conclude that such a violation would require the release of the vehicle under the *Krimstock* Order. To be clear, this tribunal recognizes the importance of ensuring access to justice for individuals with limited English proficiency. Indeed, this tribunal publishes information regarding vehicle seizure cases on its website in multiple languages, including French.[1] However, the express terms of the *Krimstock* Order only require notice in English and Spanish. Therefore, the failure of petitioner to provide respondent with notice in his primary language of French did not violate the terms of the *Krimstock* Order and does not provide a basis for release of the vehicle. Respondent's motion to dismiss the petition for inadequate notice is denied.

To establish the first prong of the *Krimstock* Order, petitioner must prove both reasonable suspicion for the initial stop of the vehicle and probable cause for the resulting arrest. *See Police Dep't v. Arthurs*, OATH Index No. 1261/19, mem. dec. at 2 (Jan. 30, 2019). A police officer may stop and approach an automobile "to enforce traffic regulations or when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime." *People v. Robinson*, 97 N.Y.2d 341, 351 (2001). The record reflects that Officer Bonet observed respondent asleep behind the steering wheel while the vehicle was stopped at a red light on a public roadway with the engine running at approximately 1:30 a.m. on February 6, 2026. He observed that there were multiple empty beer bottles in the vehicle and that respondent had slurred speech, bloodshot watery eyes, and a strong smell of alcohol.

[1] Office of Admin. Trials & Hearings, Case Types & Guides, https://www.nyc.gov/site/oath/trials/case-types-guides.page#vehicle-seizure (last visited Mar. 31, 2026).

According to a breathalyzer test administered at the precinct, respondent's blood alcohol content was .16 percent. The unrebutted evidence established that the police had a proper basis to stop respondent's vehicle and probable cause to arrest respondent for driving while intoxicated.[2] *See Police Dep't v. Brown*, OATH Index No. 1241/25, mem. dec. at 3-4 (Jan. 28, 2025) (finding probable cause for the driver's arrest based on undisputed evidence of his "inebriated state at the time of his arrest" and the presence of open beer containers in the vehicle); *Police Dep't v. Garcia*, OATH Index No. 2427/13, mem. dec. at 3 (July 3, 2013) (finding that police officer's observation of the driver asleep behind the wheel of her vehicle in the middle of a street with the engine running provided a "sufficient basis to approach the vehicle" and that breathalyzer results showing blood alcohol at twice the legal limit provided probable cause to arrest); *Police Dep't v. Saban*, OATH Index No. 273/07, mem. dec. at 2-3 (Aug. 16, 2006) (finding sufficient evidence to support the first *Krimstock* prong where the driver was stopped after being observed asleep at an intersection with the engine running, and then arrested based on the officer's observation of the driver's "bloodshot eyes, disoriented behavior, and the smell of alcohol of his breath," together with bottles of beer in the vehicle).

The evidence also established that petitioner is likely to prevail in a forfeiture action since the seized vehicle was used as the instrumentality of a crime. *See Police Dep't v. Ricci*, OATH Index No. 1404/06, mem. dec. at 3 (Mar. 20, 2006); Admin. Code § 14-140(e)(1) (Lexis 2026). Petitioner's proof that respondent drove his vehicle while intoxicated was sufficient to demonstrate that respondent used the vehicle as an instrumentality of a crime. *See Brown*, OATH 1241/25 at 4 (operating a vehicle while intoxicated demonstrated that the vehicle was used as the instrumentality of a crime); *see also Police Dep't v. Carino*, OATH Index No. 541/12, mem. dec. at 8 (Oct. 6, 2011).

To satisfy the *Krimstock* Order's third prong, petitioner must show that release of the vehicle presents a heightened risk to public safety. *Police Dep't v. Dookwa*, OATH Index No. 2395/14, mem. dec. at 17 (June 18, 2014); *Police Dep't v. McFarland*, OATH Index No. 1124/04, mem. dec. at 3 (Feb. 24, 2004). This can be established by the circumstances of the offense or the

[2] Petitioner requested that an adverse inference be drawn from respondent's failure to testify about the incident underlying his arrest. However, an adverse inference is not warranted on this record, where petitioner's documentary evidence regarding respondent's operation of the vehicle while intoxicated was unrefuted. *See Police Dep't v. Pichardo*, OATH Index No. 913/23, mem. dec. at 5-6 (Nov. 15, 2022) ("[A]n adverse inference may be drawn, in the discretion of the administrative law judge, where a litigant refuses to testify and invokes the Fifth Amendment," but the "inference relates only to the question of contradicting or corroborating evidence already in the case."); *see also Police Dep't v. Cortes*, OATH Index No. 150/26, mem. dec. at 9 (Aug. 27, 2025) (finding "no reason" to draw an adverse inference where respondent's evidence did not contradict petitioner's case).

respondent's background. *See Police Dep't v. Mason*, OATH Index No. 282/21, mem. dec. at 3 (Sept. 15, 2020). Driving while intoxicated is the type of crime that may demonstrate a heightened risk to public safety, and this tribunal has found a heightened risk in cases where the driver's blood alcohol content far exceeds the legal limit of .08 percent. *See Brown*, 1241/25 at 5-6 (finding a heightened risk to public safety based on the driver's blood alcohol content of 0.182 percent); *Police Dep't v. Rodriguez-Toribio*, OATH Index No. 302/10, mem. dec. at 3-4 (Aug. 7, 2009) (finding a heightened risk based on the driver's blood alcohol content of 0.176 percent); *see also Carino*, OATH 541/12 at 9 ("While there is no bright line rule, this tribunal has generally found that an alcohol content over twice that of the legal limit is enough on its own to show heightened risk, while lesser blood alcohol readings have been deemed insufficient."); *cf. Police Dep't v. Velez*, OATH Index No. 2663/15, mem. dec. at 8 (July 10, 2015) (finding that the driver's blood alcohol content of .137 percent was insufficient to establish heightened risk).

Respondent's blood alcohol content was .16 percent, or twice the legal limit, at the time of his arrest. This represents a significant degree of intoxication and is sufficient, by itself, to establish a heightened risk to public safety. The risk to public safety, however, is further aggravated by respondent's conviction four years ago for driving while ability impaired by the consumption of alcohol. *See Garcia*, OATH 2427/13 at 5 (finding a heightened risk to the public safety based on the driver's "significant" blood alcohol content of .166 percent at the time of her arrest and two prior convictions with respect to drunk and impaired driving within five years). Although respondent pled guilty to an infraction rather than a crime, the prior conviction under section 1192(1) of the Vehicle and Traffic Law is troubling and demonstrates a lack of appreciation for the danger of drinking and driving. *See Police Dep't v. Cornejo*, OATH Index No. 1608/13, mem. dec. at 9-10 (Mar. 22, 2013) (finding heightened risk to public safety based on prior conviction for the infraction of driving while impaired); *Police Dep't v. Mahoney*, OATH Index No. 589/07, mem. dec. at 2-3 (Sept. 26, 2006) (same). Moreover, the arrest report for the prior incident showed that respondent's blood alcohol content was .20 percent at the time and that he had been involved in a vehicle collision.

Considering all of these circumstances, I find that releasing respondent's vehicle would pose a heightened risk to public safety.

ORDER

Petitioner may retain respondent's vehicle pending a civil forfeiture proceeding.

Michael D. Turilli
Administrative Law Judge

March 31, 2026

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