

**BETTY LUGO**  
**FOR**  
**QUEENS DISTRICT ATTORNEY**  
**blugoforqda.com**  
**(917) 200-6017; (718) 855-6300**

**5 Boro Defenders Queen DA Survey**

Betty Lugo respectfully submits the following response to the 5 Boro Defenders Queens DA Survey

Dear Candidate: 5 Boro Defenders is a group of New York City public defenders, civil rights attorneys and advocates organizing around the systemic injustices of the criminal legal system. While 5 Boro Defenders will not endorse any candidate in the upcoming race, we do plan to offer our expertise by releasing a report card, as 5 Boro Defenders did in the recent Manhattan and Brooklyn District Attorney races. We will be handing these voter guides out at community forums and distributing it through our partner organizations at <https://www.queens4da.org>. For reference, here is the 5 Boro Defender Voting Guide from the recent Brooklyn District Attorney race: <https://tinyurl.com/5boroReportCard>.

In reviewing your policy papers, websites, statements, and previous survey responses, we have been left with the following questions, and hope that you will complete the following survey to help us better understand your position on various issues facing the next District Attorney of Queens County. We hope to have all survey responses collected by **MARCH 1, 2019**.

Please feel free to reach out to us at [5BoroDefendersQueens@gmail.com](mailto:5BoroDefendersQueens@gmail.com) with any questions.

1. Many candidates in this race have expressed that they will not prosecute for marijuana possession. However, many cases that begin with an “odor of marijuana” lead to additional charges. Practically speaking, police can cite an “odor of marijuana” to justify otherwise unlawful searches. (see: <https://theappeal.org/i-arrested-a-man-on-marijuana-charges-then-he-took-his-own-life/#.XGG0ybK71A.twitter>) Given that context:
  - a. How would you handle cases that begin with either an “odor of marijuana?” or an officer witnessing someone smoking marijuana?

**ANSWER: The United States Constitution 4<sup>th</sup> and 14<sup>th</sup> amendment require that there be “reasonable suspicion” to stop someone and “probable cause” prior to making an arrest. These are known as the Huntley, Mapp and Miranda hearings.**

- b. Specifically, how will you handle cases where a search based on marijuana reveals other contraband items such as weapons, forged credit cards, or other drugs?

**ANSWER: Should the search violate the U.S. Constitution and 4<sup>th</sup> and 14<sup>th</sup> amendments of search and seizure and due process, then the other contraband items must also be precluded and suppressed. This area of the law is probably the most litigated in Criminal cases. Caselaw is specific about “Fruit of the poisonous tree”.**

- c. Will you push for the NYPD to stop engaging with citizens over marijuana alone?

**ANSWER: Yes, especially if the only reason for the stop is the smell of marijuana.**

- 2. Queens County is unique New York City because it encompasses both LaGuardia and JFK airports. Regularly flyers are arrested with firearms at the airport that they legally may carry in their flight’s place of origin, but do not have a permit to carry in New York State. Often these weapons are found when the passenger declares them at TSA or check-in during a flight transfer, or upon leaving New York City to return home. How would you handle these cases? Would you treat them the same or differently as someone who is found in possession of a firearm elsewhere in Queens?

**ANSWER: I will have education, outreach and training of all law enforcement personnel. I will work closely with the Port Authority of New York and New Jersey who regulates the airports and is a quasi governmental agency and any other law enforcement agencies involved to set policies and procedures that respect and provide True Justice for All while maintaining the safety of our communities.**

- 3. One matter that comes before Queens Criminal Court is that of extraditions, where a person is arrested in Queens (often when coming through the airport) on a warrant from another state. Often these are arrest warrants where the person does not even know they are wanted. State law allows a person to be remanded to await the other jurisdiction arriving to take them into custody after the receipt of a Governor’s Warrant (or a waiver by the defendant of such warrant). CPL 570 also allows for a person to be released to attend to the matter in the other jurisdiction themselves, or to have bail set. Currently, almost all defendants are remanded to wait for the other jurisdiction to arrive in Queens to transport them- this can take anywhere from a few days to a month or more. What would be your position on asking for bail, remand, or release in these cases? What factors would you consider in that decision?

**ANSWER: Utmost consideration must be given to the severity of the crime, possibility and risk of flight. A matter must be considered on a case by case basis. The extradition procedures must be reviewed and updated to the current times with utmost respect given to a person's liberty and safety of our community.**

4. CPL 170.55 sets the length of an Adjournment in Contemplation of Dismissal (ACD) at 6 months (1 year for a family offense), unless a shorter time is negotiated with the District Attorney. CPL 170.56, which governs marijuana ACDs, gives a judge discretion to early seal an ACD (with the default as 1 year). An ACD, which is technically an open case, can cause issues at work or with immigration. Would you allow and advocate for short-sealing of ACDs? In what circumstances?

**ANSWER: Yes, consideration will be given to the severity of the crime, immigration and deportation consequences. I will be fair but firm and prosecute with compassion and mercy and consider all factors to provide TRUE JUSTICE FOR ALL. ACD's and dismissals will be seriously considered and reviewed to prevent immigration or work related consequences.**

5. Frequently defendants arrive in Criminal Court with warrants from a summons. An open summons warrant can prevent a person from getting a job, receiving a Desk Appearance Ticket or Summons on a new contact with police, and affect immigration status, as well as cause a person to be brought to court or arraignments by NYPD. In 2017, it was estimated there were 1.7 million open summonses in New York City.
  - a. Would you commit to dismissing open summonses warrants without appearance necessary (such as was done for some summonses in 2017: <https://nypost.com/2017/08/09/new-york-vacates-hundreds-of-thousands-of-summonses/>)? For what category of charges, or with what conditions?

**ANSWER: Yes, I would seriously consider it and have supported both Brooklyn D.A. Eric Gonzalez and Bronx D. A. Darcel in their dismissal of open warrants especially for a myriad of low level offenses. I would also consider a mediation process for low level non violent offenses to keep matters and individuals out of the criminal justice system.**

- b. Would you commit to dismissing summons for those who appear in court, rather than offering an ACD or fine? For what charges? (Frequent summons charges include being in parks after dark, littering, marijuana, failure to pay the subway fare, drinking in public, public urination)?

**ANSWER: Yes.**

6. Currently, it is common for Assistant District Attorneys in Queens to indicate to defense counsel that they are “unable” to outright dismiss cases at arraignments (or later) where evidence has been presented that there has been no crime, or of mitigating circumstances. Instead, they offer an ACD. What would your policy be regarding allowing ADAs to dismiss cases?

**ANSWER: Each case would be carefully reviewed and screened. To expedite matters where it is a low level non violent offense and victimless crime, ACDs would be recommended. True Justice for all requires treating everyone fairly and equally as mandated by the U.S. Constitution. Education and outreach to the Law enforcement community will also be provided to limit charges for low level offenses, non violent and victimless crimes or violations of the law. The protection and safety of the Queens residents is of primary concern.**

7. Would you prosecute the charge of Welfare Fraud? If so, will you prosecute cases where the agency/law enforcement has been aware of or should have been aware of, the alleged fraud, but allowed it to continue until the amounts involve support a felony charge as felonies, misdemeanors, etc? What offers would you make on cases involving welfare fraud, including when a defendant is unable to repay the full amount?

**ANSWER: I will consider all of the facts and circumstances of the charges brought. Welfare Fraud is a serious crime that should be a Federal matter since it involves federal benefits. However, each matter would be reviewed and carefully screened. Old cases that involve poor and low income class population would be given consideration for alternate programs especially when the money cannot be paid back.**

8. Many programs that are currently offered as a condition of sentences or pleas (including Attitudes in Dynamic Driving, the Victim Impact Panel, Anger Management, Drug Treatment, Mental Health Treatment, electronic monitoring devices such as the Right Bac or SCRAM, Ignition Interlock Devices), have fees for attendance or usage. These fees may be hundreds or thousands of dollars, depending on the program or device, and failure to pay for a device or program in full can lead to a violation of a conditional discharge or plea agreement and jail time. How, if at all, would you address the issue of fees and payment for defendants that demonstrate financial hardship or indigence? Will you ensure that all defendants, regardless of poverty, have access to programs?

**ANSWER: A screening process would be implemented and for those who cannot afford the fees, the fees would be waived provided they meet the income requirements.**

9. Convictions for any charge, including violations, include court fees (surcharge, crime victim assistance fee, DNA fee, Vehicle and Traffic Law Fees). These fees are imposed regardless of income, and regardless of whether DNA is taken or there is a “victim” in the case. Fees can total between \$88-350 depending on the conviction or plea. (See <https://finesandfeesjusticecenter.org/articles/new-york-should-re-examine-mandatory-court-fees-imposed-on-individuals-convicted-of-criminal-offenses-and-violations/>) What is your position on court fees and surcharges? Would you advocate for their elimination or other changes?

**ANSWER: Yes, I would carefully review and screen all cases and have a unit to be in charge. While these fees are mandated by the State of New York, and is a legislative concern, careful consideration will be given and where possible surcharges and fees will be waived.**

10. There is currently a community service program operated through the Queens District Attorney’s office. This program has specific partners with which it works, specific time requirements (for instance, service must be during 9-5, with weekend service needing to be authorized by a judge), operates in English, and other limitations. Would you consent to allowing defendants to arrange their own community service at organizations? On felony pleas, misdemeanor pleas, or both? With what limitations or conditions?

**ANSWER: Yes, I will work closely with community groups, nonprofit organizations, religious and faith leaders to assist in providing opportunities for community service during the weekend so that individuals can work, earn a salary and provide for their families during the week. The community relations unit would be in charge of monitoring the completion of the community service with oversight and accountability by the accepted organizations.**

11. You have indicated your support for bail reform. Please describe what your position would be, in as much detail as possible, for the following categories of offenses. (ie, would not ask for cash bail, would ask for cash bail in certain circumstances, etc.)
- a. Non-violent misdemeanors
  - b. “Violent” misdemeanors (including Assault, Menacing, etc.)
  - c. Non-violent felonies
  - d. Violent felonies
  - e. Preferred alternatives to cash bail if true flight risk
  - f. Would you request or support changes in bail conditions if it becomes apparent a defendant cannot pay the bail set?

12. Many jurisdictions have moved towards using electronic monitoring devices in lieu of, or in addition to, cash bail. What is your position on this? In what cases, if any, would you advocate for such a system? For reference, please see:

<https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/09/use-of-electronic-offender-tracking-devices-expands-sharply> ,  
<https://www.themarshallproject.org/records/2280-electronic-monitoring>,  
<https://www.wired.com/story/opinion-ankle-monitors-are-another-kind-of-jail>.

**ANSWER: I would consider it especially to eliminate cash bail. However, if an electronic device is used, there should be no charge to those who cannot afford to pay. The company who provides the electronic device would have to discount the device according to income.**

13. Queens currently has a number of court parts devoted to treatment of specific categories of defendants at both the Criminal Court and Supreme Court levels, including mental health court, drug treatment court, veterans court, and human trafficking court. The criminal procedure law also allows for diversion of certain felonies. Currently, some categories of charge, such as domestic violence or any charge involving sexual touching or action, are prohibited by the District Attorney and Court policy from being sent to these parts, even if a defendant would be otherwise eligible. In some cases, a previous conviction for one of these charges makes a defendant ineligible for treatment court part (even if the current case is not the same category of charge) or previous participation in a treatment court part may prevent treatment from being reoffered. What would be your policy on eligibility of defendants and cases for these parts? How, if at all, do you plan to utilize these court parts or make recommendations for cases to be sent to them?

14. Will you charge crimes committed at schools, by students? For instance, fights between students, drug possession at school, disorderly conduct, etc? In what circumstances or on what charges will you dismiss these cases without prosecution? What, if any, specific charges would you decline to prosecute if committed by students at school? What, if any, diversion programs would you offer or require for such cases?

**ANSWER: Diversion programs would be offered where necessary. Where crimes involve violent offenses with serious injuries or sex cases, they will be prosecuted with consideration given to all of the facts and circumstances.**

15. New York's Raise the Age Law provides for removal to Family Court cases where a defendant is charged with a felony while 16 (include 17 year olds as of Fall 2019), and in some cases for Juvenile Offenders, where a defendant under the age of 16 has been charged in Supreme Court. What would be your policy on consenting to removal to Family Court? In what circumstances would you refuse to consent to removal? Would

you advocate for changes to the law to allow other categories of cases to be removed or to originate in Family Court(for instance, cases for defendants up to 18 or another age, misdemeanors, VTL cases)? What, if any, charges would you refuse to prosecute for defendants under the age of 18?

**ANSWER: Education and outreach to the community and law enforcement community, judges attorneys and criminal justice programs will be given on a bi-weekly basis. Where the matter involves a non-violent offense careful review and screening would be given and consent to removal to Family Court would be given. Where serious crimes and violent offenses and sex offenses are involved, removal would be carefully considered especially when the victim is a risk of greater harm. The effects and safety of our society and the residents of Queens are of utmost priority.**

16. In many cases, full orders of protection are issued at arraignments for witnesses, including complaining witnesses who may be family of the defendant. Orders of protection can prevent a person from working, seeing their children, or returning home. Would you agree to get written confirmation from witnesses that they desire a full order of protection before asking for one, or to agree to reduce an order to a limited order of protection/no order of protection if you do not receive such confirmation by the first court date, or if the witness requests the change? Will you consent to changes in an order of protection, such as at a complaining witnesses' request, even if a defendant is not agreeing to accept a plea offer?

**ANSWER: a QUALIFIED Order of Protection would be considered where the safety of the victim is protected.**

17. The Immigrant Defense Project has documented a significant increase in ICE arrests in New York State, including a significant increase in arrests at Courthouses across the city. In Queens, ICE has become a regular fixture of the Courthouse, routinely making arrests in and around the Courthouse, sometimes with the assistance of Court Officers. (See <https://www.immigrantdefenseproject.org/ice-courts-nys> ) On one occasion, ICE attempted to arrest a person who had completed services in the Human Trafficking diversion court, and whose case was set to be dismissed. Some District Attorneys have joined the call to prevent ICE from entering courthouses. The current Queens DA has not. What is your position on ICE in courthouses? What steps, if any, will you commit to taking when ICE is present in the courthouse (excusing defendants, dismissing cases, directing staff to walk-out, etc)?

**ANSWER: New York is a sanctuary City, as such ICE should not be permitted to make arrests of people inside or near the Courthouses. As Queens District Attorney, I would**

**implement a policy that forbids arrests of people inside or near the Courthouse. I would also have meetings and discussions with Court Officers Unions, Office of Court Administration and the Homeland Security as to my policy and how it should be enforced.**

18. You may be familiar with the NYPD's new policies about requesting DNA from family members of "suspects", those stopped by the police (including juveniles), and others. What is your position on this, and what, if any, role do you see your office playing in advocating for or against this policy? For reference:

<https://www.nydailynews.com/opinion/ny-oped-the-nypds-new-dna-dragnet-20190206-story.html>

**ANSWER: I disagree with taking DNA of family members. The family of a person who has been charged with a crime is not responsible for that person's actions. I believe this is in violation of the U.S. Constitution and should be prohibited.**

19. The New York Legislature is currently considering legislation to change the discovery laws (so-called "blindfold discovery"), including S1716/A1431. What is your position on this bill? What parts of it do you agree with or disagree with?

**ANSWER: I am in favor of "Open Discovery" which is supported by the U.S. Constitution and assists the prosecution and defense in reaching a prompt resolution.**

20. Do you support "discovery by stipulation" or "open file discovery"? If elected, would you be prepared to sign a formal agreement on what would be included in such discovery? What would you include or exclude from open file discovery? Would you agree to open file discovery on misdemeanors, felonies, or both?

21. What is your position in regards to Brady information? The Brady standard for disclosure is notoriously difficult to interpret, even in good faith, and even harder for courts to enforce. Will you commit to turning over all *relevant* information in a case, regardless of whether it is Brady material? Where a prosecutor decides to withhold relevant information, will you require prosecutors to file a disclosure form, listing the evidence that is not being disclosed and the specified reason why such information is being withheld (similar to civil discovery laws)? Will you consent to judicial, *in camera*, review of such evidence?

**ANSWER: All Brady material, material that is favorable to the defense, MUST be exchanged pursuant to the U.S. Constitution.**

22. What will be your policy on prosecutions involving NYPD or other law enforcement officers as defendants? How, if at all, will you prosecute or discourage police corruption

and perjury? Will you endorse the use of a special prosecutor in cases involving serious injury or death during an encounter with law enforcement officers?

**ANSWER: Education and oversight of the Law enforcement community and NYPD is required.**

**A special prosecutor would be requested where necessary involving serious injury.**

23. Civil Rights Law-50 A currently prohibits public disclosure of records relating to police misconduct. Public Defenders and Bar Associations, including the New York City Bar, have called for the repeal of 50-A (<https://www.nycbar.org/media-listing/media/detail/city-bar-urges-repeal-of-civil-rights-law-50-a-to-allow-public-disclosure-of-police-records-relating-to-police-misconduct>). What is your position on CRL-50A, and how would you handle the disclosure of records of police misconduct?

**ANSWER: Where properly requested and necessary for the effective and responsible prosecution of a legitimate crime, the public disclosure of police misconduct would be supported and would be exchanged on an “In Camera” and “Confidential” basis with the utmost safety and protection of the parties involved.**

24. Being elected Queens District Attorney requires managing a large office of more than 300 employees, a large budget, negotiating and interacting with the defense bar, defender organizations, media, OCA, legislators, and the Judges and staff of the Queens courthouse. Please describe your experience in the following areas. We are also interested in any plans to compensate for a lack of experience in a particular category.

a. Criminal Justice

**ANSWER: I have been involved with the criminal justice system practically all of my life. I was born in Elmhurst Queens and raised in Bedford Stuyvesant-Williamsburg Brooklyn in the early 60s and 70s. During this time, I observed first hand my family members and the people in my community being arrested and mistreated by law enforcement, I also observed my own community as victims of crimes and mistreated and misunderstood because of their ethnicity and language. The disparity in the treatment of diverse communities was apparent to me from a very young age.**

**I have translated for many victims of crimes, defendants and people charged with crimes and violations throughout my young adult years since 14 years old and to this date. Translating and advocating for my community with different City Agencies, especially the Criminal Courts and NYPD and federal government is the reason I went to law school and**

led me to work as a District Attorney in College, Law School and as a young lawyer. I have always wanted to be the District Attorney and have been inspired by many including Justice Sonia Sotomayor, Judge Edwin Torres, Elizabeth Holzman, Denis Dillon, Robert Morgenthau and others.

I have worked as an interpreter for Judge M. Andrew Dwyer in Troy, New York in a Homicide trial (1982) when Court interpreters were not yet mandated by OCA. I was the first Women of Latino descent to work as an Assistant District Attorney in Nassau County under Denis Dillon. I worked in the Special Narcotics Bureau of the Manhattan District Attorney's office under the supervision of now Chief Judge Dora Irizarry and E.D.N.Y District Court Judge Sterling Johnson under D.A. Robert Morgenthau. I worked at the Albany County District Attorney's office and worked closely with NYS State Police and the Night Court Judges in the prosecution of DWI and offenses with its jurisdiction.

On a policy basis, I am involved in every aspect of the criminal justice system from the victims, defendant's communities, politicians and non profit and community organization perspectives. I have incorporated, founded and have been on the board of many organizations that involve diversity and inclusion of all communities from chambers of commerce, society's, churches and religious organizations. I understand how to advocate for an idea or program that will assist the criminal justice system as it continues to develop and reform.

b. Trial Experience/Practice of Law

**ANSWER:** I am an experienced prosecutor and trial attorney. I have been an attorney for over 35 years and throughout those years I have been involved with litigating complex matters in State and Federal Courts including handling appeals of these matters. As a law firm, we made new law in the Southern District of New York on R.I.C.O. matters in R.C.M Executive Gallery Corp. v. Rols Capital, Co. involving the Usury and illegal interest and abuse of small businesses in New York. We litigated the Acevedo, et. al v. Cypress Hills Cemetery Case, et. al. involving the burial of human remains in construction debris. These two cases were increasingly a matter for the NYS Attorney General's office to handle but since they did not get involved, my firm litigated these cases and made new law representing the victims who suffered as a result.

We continue to represent individuals and organizations who are taken advantage of and where the law is not properly applied to their defense.

c. Management/Supervision of Personnel

**ANSWER: I have managed my office Pacheco & Lugo, PLLC the first Hispanic Women Owned law firm for the past 27 years. I have assisted in the management and supervision of personnel since I was 16 years old as a Homework Helper after school and at the local Lamstons, for my mother's small businesses including real estate and Avon Leader and saleslady. While attending Brooklyn College full time, I worked full time as an Administrative Assistant for Berk Trade School where I assisted in setting of curricula for the First Spanish language trade school in New York and was also an officer of two College organizations. As the leader of Bar Associations, past president of Puerto Rican Bar Association (2000 members); Regional President, Hispanic National Bar Association, New York State Bar Association Leader, Vice Chair of the Trial Lawyers Section and founder advisor to other Bar Associations.**

d. Administrative management (budgets, policy, etc)

**ANSWER: I have been an administrator, Managing Partner of my law firm for the past 27 years. I have supervised employees and board members as President of two bar associations and reviewed their budgets as well as requesting funds from individuals and entities to increase funds available to the organization. I have mentored many college, law school and high school students.**

e. Policy work/advocacy

**ANSWER: I have represented and been the founder of many non profits, community organizations, societies, religious and faith based organizations and chambers of commerce where I have assisted with implementing and advising on policy and advocating on their behalf for programs and funding for their respective groups.**

**I am a recognized Bar Association Leader and have advocated for the legal profession for policies as an active member of the NYSBA Federal Initiatives Committee, Legal Aid Society, Civil Gideon and other legal representation for those who cannot afford a lawyer but deserve DUE PROCESS. I am a member of the NYSBA House of Delegates, Vice Chair of the Trial Lawyers Section, Organizer of Bar Leaders for Puerto Rico, Past ABA Unaccompanied Minors Working Group, Immigration Section and Past President of the Albany Law School Alumni Association. I am a Past President of the Puerto Rican Bar Association, Past Regional President of the Hispanic National Bar Association, advisor to Women's Bar Association and Counsel for the Latino Court Officers Society and Hispanic Society of EMS, Port Authority Police, HNLEANY and others.**

25. Please describe a plan for what changes in training, policy, personnel, etc, that you would make in your first 30 days in office. In your first six months? What *public* benchmarks

could the Queens community look to at the one year mark, and at the four year mark, to see how you have changed the Queens District Attorney's office?

**ANSWER: The Queens District Attorney's office must reflect the diversity of the community it serves. I would review every employee's background and qualifications and set up a Transition Team to interview all currently working in the offices and to fill new positions. Careful weight and consideration would be given to diversity and inclusiveness with respect to senior qualifications and commitment to follow the policy I will implement. Review of outside vendors, law enforcement personnel, clerical and non attorney staff would also be carefully reviewed as well with regard to diversity, inclusiveness and qualifications. Promotion opportunities would be open to all.**

**I expect that within the One Year mark, the office would be at minimum 35% diverse representing the true and rich diversity of the wonderful County of Queens.**

**Career fairs, and outreach programs to high school, colleges, law schools and with particular attention to groups that have been underrepresented in the legal profession and the criminal justice community so that they can learn about the office and make it "career friendly" to have all communities apply and be considered for employment.**

Thank you very much for the opportunity to respond to this Five Boro Questionnaire, especially for your interest in improving the criminal justice system. I look forward to working with you and all interested in improving the criminal justice system.

Should you require any further information and have any further questions, please contact me at (917) 200-6017 [bettylugoforqda.com](http://bettylugoforqda.com)

Very truly yours,

s/ *Betty Lugo*

Betty Lugo