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At IAS Part 2 of the Supreme Court of the State of New York, held in and for the County of Bronx, at the Courthouse, 851 Grand Concourse, Bronx, New York 10451 on this 6th day of October, 2021.

P R E S E N T: HON. Elizabeth A. Taylor, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX

Matter of JOSEPH AGNEW, ANTHONY GANG,
TYRONE GREENE and KAMER REID,

On behalf of themselves and all others similarly
situated,

Petitioners,

For a judgment under Article 78 of the Civil Practice
Law and Rules

--against--

NEW YORK CITY DEPARTMENT OF
CORRECTION,

Respondent.

~~PROPOSED~~ ORDER TO
SHOW CAUSE

ARTICLE 78 MANDAMUS
TO COMPEL AND
CLASS CERTIFICATION

Index No. 813431/2021e

Mot. Seq. No. 1

Upon the annexed and verified petition of Joseph Agnew, Anthony Gang, Tyrone Greene and Kamer Reid, dated October 4, 2021, the Memorandum of Law in Support of Article 78 Mandamus to Compel Petition and Motion for Class Certification, dated October 4, 2021, and all other pleadings and proceedings herein,

LET Respondent New York City Department of Correction show cause before this Court ^{VIA VIRTUAL CONFERENCE} at Part 2, Room 710 thereof to be held at the Courthouse located at 851 Grand Concourse, Bronx, New York 10451, on NOVEMBER 18, at 11:30 a.m./p.m., or as soon thereafter as counsel can be heard, why a judgment should not be made and entered:

1064

1. Certifying the following class pursuant to C.P.L.R. § 901 (a):

All current and future persons incarcerated in New York City Department of Correction facilities who have been or will be denied access to medical care based on the New York City Department of Correction's failure to discharge its mandatory duties under New York City Administrative Code § 9-108 (c), Correction Law § 500-c (4), and the Rules of the City of New York 40 §§ 3-02 (b) (4), (c) (1), (c) (2) (i), and (c) (4);

2. Designating The Legal Aid Society, Brooklyn Defender Services, and Milbank LLP as class counsel;

3. Issuing an order compelling the Respondent to comply with its duties under state and local law to provide incarcerated people in New York City jails with access to medical services, and to:

- a. Discharge its ministerial duties to provide all putative class members with access to sick call on weekdays, excluding holidays, and to make sick call available at each facility to all persons in custody a minimum of five days per week within 24 hours of a request or at the next regularly scheduled sick-call; and
- b. Discharge its ministerial duties to safely keep in the New York City jails each person lawfully committed to its custody by providing sufficient security for movement by incarcerated persons to and from health service areas and not prohibiting or delaying incarcerated persons' access to care, appropriate treatment, or medical or dental services;

4. Ordering Respondent to provide proof of substantial compliance with such nondiscretionary duties within one week of its order;

5. Imposing public health and safety measures as appropriate; and

6. Granting such other and further relief as the Court deems just and proper.

SUFFICIENT CAUSE BEING ALLEGED THEREFOR, it is

ORDERED that the filing fee is waived pursuant to C.P.L.R. § 1101 (e).

ORDERED that service of a copy of this order to show cause and the papers upon which it is based by ~~electronic mail~~ ^{personal service} to the New York City Corporation Counsel at

ORDERED, that service of a copy the petition, all filed papers, including this order together with all papers submitted in support of this motion, shall be made by October 14, 2021 upon the New York City Corporation Counsel, on behalf of respondent New York City Department of Corrections, by in hand delivery to any person authorized to accept service. Movants shall file proof of such service on or before October 14, 2021. It is further,

ORDERED, that any opposition papers shall be filed and served (if the parties have not consented to e-filing) upon petitioner's counsel (movant to provide address) by overnight mail on or before October 29, 2021; and any reply papers shall be filed and served upon respondents counsel (if the parties have not consented to e-filing), by overnight mail on or before November 5, 2021. "Working copies" (bound and submitted as per this court's part rules) of the **order to show cause**, and any **opposition** and **reply papers**, along with the respective proofs of service, shall be sent by overnight mail to: Justice Elizabeth A. Taylor, 851 Grand Concourse, Bronx, N.Y. 10451 by November 5, 2021. It is noted that the Motion Support office is not receiving papers at this time. It is further,

ORDERED, that the parties shall appear in the virtual courtroom on November 18, 2021 at 11:30 a.m. *via* Microsoft Teams. No later than November 10, 2021, the parties shall email Bronx-SCET@nycourts.gov to obtain the Microsoft Teams invitation for the appearance. Within the email, include: 1) your name and the name of the party you represent; 2) the caption (name of the case) and index number; and 3) the return date of the order to show cause (November 18, 2021 at 11:30 a.m.). You will not

receive the Microsoft Teams invitation, if you do not provide the requested information.

This email is not used for other communications. Failure to comply with the above may result in the denial of the order to show cause or the order to show cause being submitted on default. It is further,

ORDERED, that a virtual appearance on the return date of the order to show cause is mandatory. Failure to appear at the virtual conference on November 18, 2021 at 11:30 a.m. may result in a default order, including but not limited to the denial of the motion or the submission of the motion on default.

Enter,



Elizabeth A. Taylor
Justice of the Supreme Court