
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

**VERIFIED PETITION –
MANDAMUS TO COMPEL**

--against--

NEW YORK CITY DEPARTMENT OF
CORRECTION,

Index No. _____/2021

Respondent.

Petitioners Joseph Agnew, Anthony Gang, Tyrone Greene, and Kamer Reid (collectively, “Petitioners”), by their attorneys, for their verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules, allege as follows:

PRELIMINARY STATEMENT

1. New York City’s jails are in a full-blown humanitarian crisis. Every day, thousands of people confined in New York City’s Department of Correction (DOC or Department) facilities are unable to access medical care, which is critical to their health and safety. This class action petition, brought under Article 78 of the Civil Practice Law and Rules (CPLR §§ 7801 *et seq*) and the laws of New York, challenges the Department’s refusal to perform its legal obligations to provide that access to care. This class of people incarcerated in the Department’s custody seek a mandamus

order compelling the Department to ensure access to medical care for thousands of people whose lives and well-being have been entrusted to the Department.

2. The conditions in DOC facilities are consistently described as “deplorable and nothing short of a humanitarian crisis.”¹ People in the jails suffer serious health conditions that require medical care but are left untreated. Recently, for example, a person reported being stabbed in the eye in a housing unit without staff to escort him to a medical clinic. He had to rely on other incarcerated people to find the keys to open his cell door and help him to the clinic.²

3. There have been at least 12 deaths of people in DOC custody this year, three in the past month alone.³ Because the jails’ conditions meaningfully contributed to these deaths, the jail system’s chief of health care services deemed these deaths “jail attributable.”⁴ At least five people held at Rikers Island died by suicide since November 2020,⁵ and the overall levels of self-

¹ Affirmation of Micaela D. Manley In Support of Article 78 Mandamus to Compel Petition and Motion for Class Certification, (Manley Aff) Exhibit (Ex) 50 (Michael R. Sisak & Michelle L. Price, *12th Inmate dies as New York City’s jail crisis intensifies*, Associated Press [Sept. 22, 2021]).

² Manley Aff Ex 48 (Gloria Pazmino, *Rikers Island detainees expose lack of medical care while in custody*, NY1 [Sept. 21, 2021]).

³ Manley Aff Ex 34 (September 15, 2021 City Council Hearing (September 15 Hearing)) at 00:43:55 (testimony of Commissioner Vincent Schiraldi); Manley Aff Ex 28 (Graham Rayman, *Rikers prisoner dies after NYC jailers wouldn’t take him to court, refused \$1 bail payment – ‘They didn’t listen,’ says anguished mom*, Daily News [Sept. 10, 2021]); Manley Aff Ex 53 (Jose Martinez, *Rikers Island Inmate Becomes 12th Person to Die in Custody This Year*, Complex [Sept. 22, 2021]).

⁴ Manley Aff Ex 27 (Letter from Ross MacDonald, M.D., Chief Medical Officer, Correctional Health Services, to Keith Powers, Chair, Criminal Justice Committee of the New York City Council [Sept. 10, 2021] (MacDonald Letter)).

⁵ Manley Aff Ex 22 (New York City Board of Correction Statement on Recent Suicides in the New York City Jails, Board of Correction [Sept. 1, 2021] (Sept. 1 BOC Statement on Recent Suicides)).

harm have skyrocketed at a rate described by the New York City Board of Correction (BOC or the Board) as “alarming.”⁶

4. Department and City officials concede they are aware of the jail conditions. DOC Commissioner Schiraldi has admitted that the jails are in a state of crisis, stating “the level of disorder here is deeply, deeply troubling.”⁷ And Dr. Ross MacDonald, the chief medical officer for Correctional Health Services (CHS), issued a public statement acknowledging that basic operations have collapsed, stating: “I do not believe the city is capable of safely managing the custody of those it is charged with incarcerating in its jails”⁸ Yet even following those declarations about the extreme crisis in the City’s jails, at least two more people have died in DOC custody.⁹

5. The New York City jail system, under the authority of DOC, has long been recognized as a system rife with such violence and dysfunction, dilapidated infrastructure, lack of basic services, such as air conditioning and space for social services, and “deep-seated culture of violence,”¹⁰ that it created a “toxic environment for everyone”¹¹ could not be fixed; it had to be shut down. A plan to close the DOC facilities on Rikers Island by 2026 was reportedly underway, but it hinged on a significant population reduction.¹² Instead, New York City’s jail population has been rapidly

⁶ *Id.*

⁷ Manley Aff Ex 26 (Bruce Golding, *NYC jails boss admits ‘serious problems’ at Rikers Island*, New York Post [Sept. 9, 2021]).

⁸ Manley Aff Ex 27 (MacDonald Letter).

⁹ See Manley Aff Ex 48.

¹⁰ Manley Aff Ex 2 (Press Release, Department of Justice, Department Of Justice Takes Legal Action To Address Pattern And Practice Of Excessive Force And Violence At Rikers Island Jails That Violates The Constitutional Rights Of Young Male Inmates [Dec. 18, 2014]).

¹¹ Manley Aff Ex 3 (2017 Independent Commission on New York City Criminal Justice and Incarceration Reform Final Report).

¹² See Manley Aff Ex 1 (A Roadmap to Closing Rikers, NYC); Manley Aff Ex 4 (Karen Matthews, *Plan to close notorious Rikers jail complex by 2026 approved*, Associated Press, [Oct. 17, 2019]).

increasing. The challenges of the COVID-19 pandemic—which flourishes in congregate settings like jails—and subsequent months of rampant staff absenteeism and continued and worsening mismanagement and dysfunction, have trapped approximately 6,000 New Yorkers in deteriorated, dangerous facilities where they are deprived of essential, life-sustaining services. The Department’s most egregious failure is its consistent inability to provide access to healthcare for people in its custody.

6. People who are incarcerated in DOC custody rely on correction staff for every basic human necessity—from food to safety to access to medical care—and because of the mass staff absenteeism and departmental mismanagement, those functions have wholly collapsed.

7. The failures by Respondent DOC are numerous and violate fundamental legal rights of those in DOC’s custody, including Petitioners, in myriad ways. But this Petition focuses on just one of these egregious violations: DOC’s abject failure to provide access to medical care to individuals in its custody.

8. Specifically, Petitioners seek an order compelling the Department to discharge mandatory, non-discretionary duties imposed upon it by law to provide access to “sick call” (the DOC system for requesting medical attention) on regular intervals, and to provide for movement of incarcerated individuals to and from health care services, as required by law. Notwithstanding that DOC’s duties are specific and unambiguous, DOC continually refuses to perform them.

9. The Department’s refusal to discharge these duties is a fundamental reason why individuals in DOC custody are being systematically deprived of access to medical care, including treatments that can relieve extreme suffering and reduce the risk of death. Directing DOC to perform these non-discretionary acts—which are “ministerial” under the law (and therefore appropriate for

mandamus relief), but nonetheless vital to the health and safety of all individuals in DOC's care—is a necessary first step in remedying the extreme suffering caused by DOC's unlawful conduct.

PARTIES

10. Petitioners Joseph Agnew, Anthony Gang, Tyrone Greene, and Kamer Reid are all pretrial detainees in the custody of DOC.

11. Respondent the New York City Department of Correction operates 10 jail facilities in New York City, including eight on Rikers Island, for people held in its custody who are awaiting trial, are convicted and sentenced to one year or less of jail time, or are detained pursuant to a parole warrant or sustained violation. The Department is charged with the care of all those held in its custody.

STATEMENT OF FACTS

12. New York City's jails are in a full-blown humanitarian crisis, and after many months of outcry by impacted people and advocates, on September 15, 2021, Mayor de Blasio declared a state of emergency in the City's jails.¹³

13. According to Dr. Ross MacDonald, there has been a collapse in basic jail operations" at DOC.¹⁴ This has resulted the Department's utter failure to ensure access to medical care and essential medication, threatening the lives of about 6,000 individuals in DOC custody every day, while the highly contagious COVID-19 Delta variant spreads silently through the jails at a rate exceeding that of the City.

14. Dr. MacDonald explained that "[u]navailability of staff has resulted in delays in transferring patients to clinics for care, to mental health units, or to the hospital, even when 911

¹³ Manley Aff Ex 37 (Emergency Exec. Order No. 241, Declaration of Local State of Emergency (Emergency Exec. Order No. 241) [Sept. 15, 2021]).

¹⁴ Manley Aff Ex 27 (MacDonald Letter) at 1.

has been activated and EMS has arrived to transport them.”¹⁵

15. Mayor de Blasio noted that “excessive staff absenteeism” is affecting health operations and creating “a serious risk to the necessary maintenance and delivery of sanitary conditions, access to basic services including showers, meals, visitation, religious services, commissary, and recreation; and prompt processing at intake.”¹⁶

16. This failure to make medical care accessible prompted Dr. MacDonald to take the rare step of pleading with the City to seek help to “stabilize a situation that has resulted in death and threatens the health and well-being of everyone who works and resides in city jails.”¹⁷ He explained that “[f]aster intervention is required to minimize further injury, illness, and loss of life.”¹⁸

17. The far-reaching horrors in the jails have also been widely acknowledged, including by the Department. In fact, Commissioner Schiraldi has admitted that conditions are “worse than I imagined,” and that “there are sometimes posts with no staff on them and that makes it extremely difficult for us to provide basic services and maintain the level of safety that our officers, civilian workers and people in custody deserve.”¹⁹

18. The “volatile” and “combustible situation” in Department of Correction facilities is one that Governor Kathy Hochul recently recognized: “no one, no inmate, no corrections officer, no family members that visit, should have to witness the reality of . . . as it is today.”²⁰

¹⁵ *Id.*

¹⁶ Manley Aff Ex 37 (Emergency Exec. Order No. 241) at 1.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Manley Aff Ex 41 (Rebecca Davis O’Brien & Chelsia Rose Marcus, *Hochul Orders Release of 191 Detainees as Rikers Crisis Deepens*, N.Y. Times [Sept. 17, 2021]).

²⁰ Manley Aff Ex 40 (New York Governor Press Release, Governor Hochul Announces Major Actions To Improve Justice and Safety in City Jails [Sept. 17, 2021]).

19. Felipe Franco, speaking on behalf of the Board of Correction, described the facilities as “the worst they have ever been.”²¹

20. Other elected officials agree. Those who toured the jails in mid-September decried the conditions they witnessed, including people “sharing bags as toilet bowls . . . People sleeping in filth and feces,”²² garbage everywhere, and “rotting food with maggots, cockroaches, worms in the showers.”²³ Council Member Daniel Dromm described the scene at Rikers as the most traumatizing he has ever experienced in twelve years of visiting.²⁴

21. These continuously deteriorating conditions also alarmed the *Nuñez* federal monitor, Steve Martin.²⁵ In an August 24, 2021 special report to the court, the Monitor expressed “grave concerns about the conditions and pervasive high level of disorder and chaos in the New York City Jails,” which have “further deteriorated in the past few months” resulting in a “denial of basic services and protections”²⁶ The Monitor reiterated those concerns in following weeks, describing “ongoing dangerous and unsafe conditions”²⁷ and conveying to the court that “[t]he Department has, thus far, failed to effectively address the unsafe conditions that are posing an imminent risk

²¹ Manley Aff Ex 30 (Board of Correction Recorded Meeting [Sept. 14, 2021]) at 15:05.

²² Manley Aff Ex 42 (Lauren Cook & Dan Mannarino, *People sleeping in filth, in feces: Jumanne Williams talks Rikers crisis on both sides of the bars*, PIX11 [Sept. 19, 2021]).

²³ Manley Aff Ex 31 (Emily Gallagher, (@EmilyAssembly), Twitter [Sept. 14, 2021, 10:35 AM]).

²⁴ Manley Aff Ex 38 (Daniel Dromm (@Dromm25), Twitter [Sept. 16, 2021 2:39 PM]).

²⁵ The *Nuñez* independent monitor was appointed by the federal court in 2015 to monitor the implementation of and compliance with the Consent Judgment in the *Nuñez* class action lawsuit in the Southern District of New York. The Consent Judgment, and subsequent Remedial Orders due to persistent noncompliance with the Consent Judgment, seek to address the pattern and practice of excessive and unnecessary force in the city jails and failure to protect populations of people confined therein.

²⁶ Manley Aff Ex 19 (NYSEF Doc No. 378, letter to J. Swain from Steve Martin, in *Nuñez v. City of New York*, US Dist Ct, SD NY, No. 1:11-cv-05845, (August 24 Letter from the *Nuñez* Monitor)) at 3.

²⁷ Manley Aff Ex 24 (NYSEF Doc No. 380 letter to J. Swain from Steve Martin, in *Nuñez v. City of New York*, US Dist Ct, SD NY, No. 1:11-cv-05845) at 1.

of harm to those in custody and Department Staff.”²⁸

22. These systemic failures have resulted in indescribable suffering and at least 12 deaths in 2021, including at least five people who died from suicide.

There Has Been a Complete Breakdown in Access to Medical Care Within DOC Facilities

23. In the past few months, the City’s jails have seen a fundamental breakdown in access to medical care.

24. Medical staff report that people are being deprived of access to medical appointments and are experiencing significant delays in the provision of treatment, if medical treatment is accessible at all.²⁹

25. The Mayor’s September 15, 2021 Emergency Executive Order reported that the crisis within the jails is “affecting health operations, including the availability of escorts to bring patients to the clinic and of DOC personnel to staff the clinics.”³⁰

26. The data are staggering. The number of missed medical appointments has increased dramatically in recent months, even by the Department’s own reporting.

27. The reason for nearly half of these missed appointments is reported by the DOC as “other,” which includes “when an escort is not available.”³¹ In August of this year (the most recent month on record), 4,313 missed appointments were logged as “other”³² compared to just 175 in June of

²⁸ Manley Aff Ex 54 (NYSEF Doc No. 387 letter to J. Swain from Steve Martin, in *Nuñez v. City of New York*, US Dist Ct, SD NY, No. 1:11-cv-05845, (September 23 Letter from the *Nuñez* Monitor)) at 1.

²⁹ Manley Aff Ex 17 (Michael Gartland, *NYC jails medical staff fear for safety, blame staffing shortage: ‘Nobody wants to die at work,’* New York Daily News [Aug. 15, 2021]).

³⁰ Manley Aff Ex 37 (Emergency Exec. Order No. 241) at 1.

³¹ Manley Aff Ex 14 (New York City Department of Correction, Monthly Report on Medical Appointment Non-Production August 2021 (August 2021 DOC Non-Production Report)).

³² *Id.*

last year.³³ The Department began explicitly acknowledging its responsibility for the high rate of missed appointments in its June 2021 Medical Non-Production Report, citing issues with staffing as a source of “the increase in overall non-production numbers.”³⁴

28. The data also show horrendous conditions and inaccessible medical care for those in intake. In August of this year, Otis Bantum Correctional Center (OBCC)—which, until approximately September 21, housed the primary new admissions or intake facility for men on Rikers—had 2,332 appointments missed due to “other,” which includes a lack of escorts.³⁵ By comparison, in January of 2021 that number was 427³⁶ and in June of 2020 it was only 30.³⁷

29. Overall non-production numbers are up as well, including those based on purported “refusals” by the persons in custody to attend their medical appointments. Last summer, July and August of 2020 saw fewer than 2,500 and 3,500, respectively, total instances of reported non-production to medical appointments.³⁸ Yet, these numbers rose dramatically in the months that followed, culminating in 10,964 total medical appointments missed in August 2021, an over 300% increase.³⁹

³³ Manley Aff Ex 8 (New York City Department of Correction, Monthly Report on Medical Appointment Non-Production August 2020 (August 2020 DOC Non-Production Report)); Manley Aff Ex 12 (New York City Department of Correction, Monthly Report on Medical Appointment Non-Production June 2021 (June 2021 DOC Non-Production Report)).

³⁴ Manley Aff Ex 12 (June 2021 DOC Non-Production Report), at 1.

³⁵ Manley Aff Ex 14 (August 2021 DOC Non-Production Report).

³⁶ *Id.*

³⁷ Manley Aff Ex 5 (New York City Department of Correction, Monthly Report on Medical Appointment Non-Production June 2020 (June 2020 DOC Non-Production Report)).

³⁸ Manley Aff Ex 7 (New York City Department of Correction, Monthly Report on Medical Appointment Non-Production July 2020 (July 2020 DOC Non-Production Report)); Manley Aff Ex 8 (August 2020 DOC Non-Production Report).

³⁹ Manley Aff Ex 14 (New York City Department of Correction, Monthly Report on Medical Appointment Non-Production August 2021 (August 2021 DOC Non-Production Report)).

30. Reports of “refusals” increased from about 1700 in the summer of 2020⁴⁰ to around 6,000 in August of this year.⁴¹ This increase in “refusals” is dubious in light of widespread reporting that individuals in custody are desperate to receive access to medical care; it is inconsistent with the experience of Petitioners that individuals in custody, en masse, would be refusing to go to medical appointments in greater numbers today, when the ability to get to such appointments is so scarce. Indeed, the Department has a reported practice of “documenting that a person has refused treatment when they haven’t.”⁴² Correction officers have even “forg[ed] signatures on refusal documents,” according to one news report.⁴³

31. The Department’s crisis in management and staff absenteeism is largely the source of this inaccessible care. People in DOC custody rely on DOC staff for every necessity, including medical care. Because incarcerated people must, in large part, be escorted to services outside of their housing area, including the medical clinic and pharmacy, they rely on DOC staff to provide escorts. When escorts are unavailable, incarcerated individuals simply are not taken to services. This includes services like visitation, laundry, the law library and, critically, medical services.

32. The medical staff in the jails squarely identify DOC’s causal role in the lack of access to medical care for people in DOC custody. In describing the “collapse in basic jail operations” noted above, Dr. MacDonald wrote that “[u]navailability of staff has resulted in delays in transferring patients to clinics for care, to mental health units or to the hospital, even when 911 has been activated and EMS has arrived to transport them . . . [a]s critical jail functions break down, self-

⁴⁰ Manley Aff Ex 5 (June 2020 DOC Non-Production Report); Manley Aff Ex 7 (July 2020 DOC Non-Production Report).

⁴¹ Manley Aff Ex 14 (August 2021 DOC Non-Production Report).

⁴² Manley Aff Ex 20 (Rachel Sherman, *Rikers Staffing Crisis Limits Access to Medical Care*, New York Focus [Aug. 26, 2021]).

⁴³ *Id.*; see also Affidavit of Kelsey De Avila ¶ 26, October 12, 2021, (De Avila Aff).

injury, medical emergencies, use of force and serious injuries all rise.”⁴⁴

33. CHS spokesperson Jeannette Morrill likewise described the source of the problem, saying, “[t]he department’s staffing shortages are affecting health operations, including the availability of escorts to bring patients to the clinic and of DOC personnel to staff the clinics. In response to this shortage, as we’ve prioritized critical services to highest risk patients in response to availability of DOC resources, the number of patients awaiting less critical care has grown.”⁴⁵

34. Councilmember Brad Lander relayed to the City Council how, when he toured DOC facilities on September 13, 2021, medical staff described having a list of 50 people to see that day, “but because there is no one to bring them from their unit to the clinic they are only seeing ten percent of their patients.”⁴⁶ Councilmember Lander also described conversations he had with corrections doctors and health providers who reported that they are not seeing 90 percent of people on their call list every day.⁴⁷

35. Dr. Azmat Hasan, a physician who has worked at Rikers Island for 28 years, told the Daily News “[i]f somebody needs an x-ray, it won’t be done because [incarcerated people need] to go to another building. With a shortage of security staff, they aren’t brought in for follow up—even the sick calls.”⁴⁸

36. Obstruction of access to medical care extends to access to mental health treatment. Self-harm in DOC facilities is at its highest level in the past five years.⁴⁹ The Federal Monitor in *Nuñez*

⁴⁴ Manley Aff Ex 27 (MacDonald Letter) at 1-2.

⁴⁵ Manley Aff Ex 20.

⁴⁶ Manley Aff Ex 34 (September 15 Hearing) at 01:37:46 (testimony of Councilmember Brad Lander).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Manley Aff Ex 25 (George Joseph & Reuven Blau, *Self-Harm Is Exploding In New York City Jails, Internal Numbers Show*, The City [Sept. 7, 2021]).

has documented the heightened level of self-harm and death by suicide and the inadequacy of the Department's protection of people who are at risk of self-harm.⁵⁰ Conditions are so grave that the BOC issued an emergency statement to address the recent suicides in the jails, stating "[f]ive suicides in nine months along with an alarming increase in attempted self-harm signals a crisis for persons in custody and for the New York City Department of Correction."⁵¹

37. As Dr. MacDonald warned in his September 10 letter, "[d]eath and injury are predictable consequences of [the Department's] repeated failures to perform certain essential functions."⁵² He further explained "we have seen breakdowns in basic functions such as failing to provide correctional staff to supervise some housing areas or observe incarcerated people placed on suicide watch."⁵³

38. The lack of staffing in the housing units themselves also puts Petitioners at serious risk by making it more difficult for people to request access to the medical clinic or to the medical staff or to medical care from correction officers directly, and increasing the likelihood that medical emergencies will go unnoticed by Department staff.⁵⁴

39. The increase in population and decrease in available staff has also been affecting the ability of DOC to move newly admitted people out of intake cells and into assigned housing. Intake cells do not contain beds for the individuals in them and are not designed to house people for more than a few hours. DOC is expected to transfer people out of the new admission area and into an assigned

⁵⁰ Manley Aff Ex 19 (August 24 Letter from the *Nuñez* Monitor) at 7; Manley Aff Ex 54 (September 23 Letter from the *Nuñez* Monitor, n 28) at 2.

⁵¹ Manley Aff Ex 22 (Sept. 1 BOC Statement on Recent Suicides).

⁵² Manley Aff Ex 27 (MacDonald Letter).

⁵³ *Id.*

⁵⁴ *E.g.*, De Avila Aff ¶ 28 (describing a unit that went without staffing for weeks, keeping individuals in, essentially, solitary confinement, including individuals with serious medical conditions).

housing area within 24 hours.⁵⁵ Yet, the *Nuñez* monitor described a “disturbing pattern” in DOC intake units, causing people to “languish . . . well beyond 24 hours.”⁵⁶

40. The result has been excessive crowding in those units and a complete failure to provide medical care and life-sustaining medication and treatment. People in crowded intake cells have often not been screened for mental health or communicable diseases. They may be intoxicated or detoxing.⁵⁷

41. The *Nuñez* monitor has also described the “significant delays in providing required medical services” within intake, and failures to provide food and other basic services.⁵⁸ Dr. MacDonald recounted DOC’s “sustained failure to process and house new admissions to the jail within 24 hours, resulting in pervasive problems of overcrowded pens where incarcerated people are held for days on end,” noting that people stuck in intake “spend prolonged periods of time in temporary spaces such as in showers, at times standing in feces.”⁵⁹

42. Elected officials who inspected DOC facilities on September 13 reported seeing filthy, unsanitary housing areas with trash, pests and excrement on surfaces.⁶⁰ Intake areas were consistently described as the most problematic where “dozens of people without masks were

⁵⁵ Just last week, DOC reported the death of Isaabduul Karim, who spent ten days in intake. In response, Mayor De Blasio promised that people would be processed through intake within 24 hours, but provided no explanation for how that would be possible in light of the massive staffing and management problems plaguing DOC. Manley Aff Ex 47 (Ari Ephraim Feldman, *Mayor says Rikers will shorten intake time after latest inmate death*, NY1 [Sept. 21, 2021]).

⁵⁶ Manley Aff Ex 19 (August 24 Letter from the *Nuñez* Monitor) at 4.

⁵⁷ See Manley Aff Ex 17 (Michael Gartland, *NYC jails medical staff fear for safety, blame staffing shortage: ‘Nobody wants to die at work,’* New York Daily News [Aug. 15, 2021]).

⁵⁸ Manley Aff Ex 19 (August 24 Letter from the *Nuñez* Monitor) at 4.

⁵⁹ Manley Aff Ex 27 (MacDonald Letter).

⁶⁰ Manley Aff Ex 39 (Tori B. Powell, *Cockroaches, rotting food, and garbage: Lawmakers say Rikers Island jail conditions are a “public health issue”*, CBS News [Sept. 17, 2021, 12:09 AM]); Manley Aff Ex 19 (August 24 Letter from the *Nuñez* Monitor) at 4.

packed into cells with overflowing toilets, unable to see their lawyers because they have yet to be booked.”⁶¹

43. The result of this breakdown in access to medical care, especially when combined with unsanitary, crowded conditions is incalculable suffering and death. Over the last year, the loss of life that DOC contributed to has been remarkable. Five people have committed suicide in DOC custody since November 2020, compared to no reported suicides at Rikers in 2018, 2019 or most of 2020.⁶²

44. This past year, twelve people have died while in Department custody. Dr. MacDonald referred to the recent deaths in DOC “as jail-attributable, where jail conditions meaningfully contributed to the death.”⁶³ One of these individuals died awaiting transfer to a mental health clinic,⁶⁴ and a health care worker blamed his death on the “acute humanitarian crisis fueled by DOC staff shortages and poor facility management.”⁶⁵ Another individual died after being left alone for 15 hours,⁶⁶ and after making multiple requests for relief that went unanswered.⁶⁷ Another individual complained of stomach pain and repeatedly asked to be taken to the clinic, but DOC consistently failed to provide an escort to ensure he was able to access the necessary medical care. His mother reported that he was stressed about being stuck on Rikers Island because he was not being taken to court, telling her “they aren’t doing what they are supposed to do. Nobody is helping

⁶¹ Manley Aff Ex 33 (Jonah E. Bromwich & Jan Ransom, *10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers Is in Crisis*, N.Y. Times [Sept. 15, 2021]).

⁶² Manley Aff Ex 22 (Sept. 1 BOC Statement on Recent Suicides).

⁶³ Manley Aff Ex 27 (MacDonald Letter).

⁶⁴ Manley Aff Ex 16 (Graham Rayman, *Staten Island detainee hangs himself in NYC jail using t-shirt: sources*, NY Daily News [Aug. 13, 2021]).

⁶⁵ Manley Aff Ex 15 (George Joseph, *Twenty-Five Year Old Detainee Found Dead at Rikers*, The Gothamist [Aug. 12, 2021]).

⁶⁶ Manley Aff Ex 13 (Susan Edelman & Dean Balsamini, *City probing death of Rikers Island inmate after guard left post*, NY Post [July 10, 2021]).

⁶⁷ *Id.*

me. I feel I'm going to be stuck here.”⁶⁸ The last two people to die in DOC custody died within days of each other.

The Staffing Crisis, Including Mass Staff Absenteeism and Mismanagement in the Face of a Rising Jail Population, is Entrenched and Will Not be Quickly Eliminated.

45. The Department's complete inability to manage its staff or overcome massive staff absenteeism in the face of a ballooning population within the jails provides context for the failure to ensure access to medical. In fact, according to Commissioner Schiraldi, “the sole reason for missed [medical] appointments is inadequate staff. [The Department] literally do[es] not have enough staff. There's an officer on a post by herself and no one to bring people to the clinic.”⁶⁹

46. The population of incarcerated people, which was reduced to under four thousand by mid-April 2020 due in large part to decarceration efforts at the height of the pandemic, has increased by nearly 60% since then and is approximately 6,000 today.⁷⁰

47. At the same time, a staggering number of DOC uniformed staff has not been reporting to work; “the level of absenteeism, which has always been relatively high,” grew considerably during March 2020 when the pandemic hit New York City and “reached a crisis level beginning in Spring 2021.”⁷¹

48. This absenteeism consists of officers on authorized sick leave or personal leave plus those who fail to show up for shifts without any notice or authorization and are considered Absent without Leave, or AWOL.

⁶⁸ *Id.*

⁶⁹ Manley Aff Ex 34 (September 15 Hearing) at 01:51:24 (testimony of Commissioner Vincent Schiraldi).

⁷⁰ Manley Aff Ex 29 (New York City Board of Correction Weekly COVID-19 Update, *Week of September 4 – September 10, 2021*) at 5.

⁷¹ Manley Aff Ex 19 (August 24 Letter from the *Nuñez Monitor*) at 4.

49. Prior to early 2020, there was an average of 400-500 staff members out sick on a single day. Now an average day has one third of uniformed staff out sick, AWOL, or on medically modified duty, typically meaning they are unable to work with incarcerated people.⁷²

50. The wave of staff absenteeism is persistent, spanning months. As of July 2021, approximately 1,650 of the approximately 8,500 uniformed staff members were out on sick leave.⁷³ In 2021, there have been 2,304 instances of staff AWOL *each month*, representing a 198% increase from 2020 and a 215% increase from 2019.⁷⁴

51. On September 15, 2021, Commissioner Schiraldi and his staff testified under oath before the New York City Council. During that hearing Dana Wax, Chief of Staff for the DOC, testified that the absenteeism of DOC staff continues to increase. On September 14, 2021, 1,789 uniformed members of service were out on sick leave, with another 727 on medically modified status, 68 out citing a personal emergency, 93 AWOL and 27 out for Family Medical Leave Act (FMLA) related reasons.⁷⁵

52. Corporation Counsel for the City of New York cited the “dramatic rise in AWOL rates since the beginning of this calendar year” in the City’s action filed on September 20, 2021, alleging that “[t]here is no plausible explanation for this dramatic increase across the board other than a concerted effort by correction officers to engage in an unlawful job slowdown through mass absenteeism” and seeking judicial relief against the correction officers’ union for what was characterized as an “illegal job action.”⁷⁶

⁷² Manley Aff Ex 34 (September 15 Hearing) (testimony of Commissioner Vincent Schiraldi).

⁷³ Manley Aff Ex 19 (August 24 Letter from the *Nuñez* Monitor) at 4.

⁷⁴ Manley Aff Ex 43 (NYSCEF Doc No. 2, verified complaint, in *City of New York v Corr. Officers Benevolent Assn., Inc, et al.*, Sup Ct NY County, index No. 453067/2021 (COBA Complaint)) at 7.

⁷⁵ Manley Aff Ex 34 (September 15 Hearing) at 01:35:06 (testimony of Dana Wax).

⁷⁶ Manley Aff Ex 43 (COBA Complaint, n 74) at 7.

53. As a result of this mass absenteeism, the housing units are currently staffed with only one officer, at best, and often no officers on the floor of each unit. Typically, a housing unit has at least an “A” officer behind the plexiglass and a “B” officer on the floor.⁷⁷ On September 14, 2021, there were approximately 70 housing units that did not have a B officer in them.⁷⁸

54. Unstaffed and understaffed housing units have left people confined to the jails, essentially abandoned, and one person explained that the people detained in the facilities are “running the dorm by ourselves,” including by answering the phones.⁷⁹

55. The staff that do come to work face complete mismanagement by the Department, and ultimately, according to the *Nuñez Monitor*, “[t]he staffing issue seems to be one of roster management and deployment versus insufficient numbers of Staff.”⁸⁰ In fact, the monitor has noted that despite the “abnormally high absenteeism, the Department *still* has an extraordinarily large number of Staff to operate the jails.”⁸¹ Yet, “[t]he Department struggles to manage its large number of Staff productively, to deploy them effectively, to supervise them responsibly, and to elevate the base level of skill of its Staff.”⁸² The Monitor reiterated this finding in recent filings, noting that “deployment and management of staff assignments to a specific post within a Facility is convoluted and is the result of decades of mismanagement,” and that failures to “adhere to basic, sound correctional management practices [are] pervasive due to supervisory failures in identifying

⁷⁷ De Avila Aff ¶ 28.

⁷⁸ Manley Aff Ex 34 (September 15 Hearing) at 00:01:09 (testimony of Dana Wax).

⁷⁹ Manley Aff Ex 23 (Graham Rayman, *Two Rikers units go more than 24 hours without guards, 2 Milly says as NYC oversight board raises alarm on jail suicides*, N.Y. Daily News [Sept. 1, 2021]); *see also* De Avila Aff ¶ 28.

⁸⁰ Manley Aff Ex 6 (NYSCEF Doc No. 368, eleventh report of the *Nunez* Independent Monitor, at 6, in *Nuñez v City of New York*, US Dist Ct, SD NY, 1:11-cv-05845, (Eleventh Report from the *Nuñez Monitor*)).

⁸¹ *Id.*

⁸² *Id.*

and addressing them when they occur, leading staff to continue their problematic practices unchecked.”⁸³

56. The way DOC assigns staff to posts is not efficient and results in barriers to providing reliable services—such as access to medical care—on housing units.⁸⁴

57. “In most cases, it appears the Staff and Supervisors on the unit are simply unwilling or unable to accept and execute their core responsibilities, such as to provide basic services and resolve interpersonal conflict.”⁸⁵

The Danger to People Confined in the City’s Jails Are Compounded by the COVID-19 Pandemic

58. For people like Petitioners who are already suffering from a lack of access to care, the added dangers posed by the rising rates of COVID-19, including the new, highly contagious Delta variant, only exacerbate the health risks associated with inaccessible care.

59. The past few weeks have seen a “rapid increase”⁸⁶ in the COVID-19 infection rate in DOC facilities, which have “outpac[ed] the spread in the city” for the first time this year.⁸⁷

⁸³ Manley Aff Ex 19 (August 24 Letter of the *Nuñez* Monitor) at 5-6.

⁸⁴ Manley Aff Ex 6 (Eleventh Report of the *Nuñez* Monitor) at 13.

⁸⁵ *Id.*

⁸⁶ Manley Aff Ex 41 (O’Brien). As of September 17, 2021, 69 people had active infection; by comparison, in all of June and July of this year there were never more than seven infections on any given day. Manley Aff Ex 52 (NYC Board of Correction Weekly Covid-19 Updates, *Week of September 11—September 17, 2021* (Sept. 11-17 BOC Weekly Update)) at 13.

⁸⁷ Manley Aff Ex 27 (MacDonald Letter); *see also* Manley Aff Ex 36 (George Joseph, *COVID is Surging Back Into Rikers and NYC Jails*, Gothamist, [Sept. 15, 2021]) (Patsy Yang, Senior Vice President for Correctional Health Services, informed the City Council on September 15th that the rate of positivity in the jails was higher than in the city). As of September 17, 2021, 69 people had active infection; by comparison, in all of June and July of this year there were never more than seven infections on any given day). Manley Aff Ex 52 (Sept. 11-17 BOC Weekly Update) at 13.

60. Dr. MacDonald explained that “[w]ithout the ability to attend to basic jail operations, we are poorly positioned to control COVID-19 transmission within the jails.”⁸⁸

61. In fact, according to Dr. MacDonald, “in many instances we are not able to transfer newly diagnosed patients to isolation settings for more than 24 hours and sometimes several days after diagnosis.”⁸⁹

62. New York City Board of Correction Member Dr. Robert Cohen has also acknowledged that the rise in cases is directly attributable to “the department’s dysfunction and overcrowding” as “previously effective control mechanisms such as isolation and quarantine [are not] possible.”⁹⁰

63. Even when people in DOC facilities have flu-like symptoms—a known marker of COVID-19 infection—they still have to wait between three and seven days to be seen by a doctor, according to a health provider at Rikers.⁹¹ Delays in access to medical care mean people who report these symptoms are frequently left in their same housing areas without being isolated or quarantined, threatening to expose otherwise healthy people to an active COVID-19 infection.⁹²

64. Despite the risks posed by this deadly virus, the dangers stemming from the widespread lack of access to medical care go far beyond COVID-19. Indeed, Dr. Rachael Bedard, the Director

⁸⁸ Manley Aff Ex 27 (MacDonald Letter); *see also* Manley Aff Ex 36 (George Joseph, *COVID is Surging Back Into Rikers and NYC Jails*, Gothamist [Sept. 15, 2021]) (Patsy Yang, Senior Vice President for Correctional Health Services, informed the City Council on September 15th that the rate of positivity in the jails was higher than in the city. As of September 17, 2021, 69 people had active infection; by comparison, in all of June and July of this year there were never more than seven infections on any given day.); Manley Aff Ex 52 (Sept. 11-17 BOC Weekly Update) at 13.

⁸⁹ *Id.*

⁹⁰ Manley Aff Ex 41 (O’Brien).

⁹¹ Manley Aff Ex 20 (Sherman).

⁹² De Avila Aff ¶¶ 41-43.

of Geriatrics and Complex Care at Rikers, explained that she is “not as panicked about [the] delta [variant] as [she is] about the rest of the ways that people held on Rikers are currently in danger.”⁹³

Named Petitioners Have Been Denied Access to Medical Care in DOC custody

65. Petitioner **JOSEPH AGNEW** is a 23-year-old pretrial detainee who is currently housed at the Otis Bantum Correctional Center (OBCC). He has been in DOC custody since September 13, 2021. Mr. Agnew has suffered from asthma since he was approximately six years old and has had a number of serious asthma attacks that required hospitalization over the course of his life. He relies on an inhaler and uses it approximately four or five days per week. He also has a history of seizures.

66. Several months ago, Mr. Agnew was stabbed in his side. His lung was punctured during an assault and he suffered a collapsed lung. While being treated at the hospital, his doctor advised him not to engage in strenuous activity. His doctor warned him that if he stressed his body too much, his lung could collapse again.

67. During his arrest in September 2021, police officers hit Mr. Agnew with a police vehicle. Afterwards, several police officers threw him to the ground and one officer stepped on the back of his left leg while he was on the ground. The injuries that he suffered included deep bone bruising, a swollen left knee, and numerous scratches. Due to the extreme pain from his injuries, which made it difficult for him to walk, Mr. Agnew attended his arraignment in a wheelchair.

68. While he was in the holding cells in Brooklyn Criminal Court, before getting on the bus to Rikers, correctional officers pushed Mr. Agnew several times, causing him to fall over his wheelchair and onto the ground where he was forced to kneel on his already-swollen knee. Then, upon arriving at Rikers Island, Mr. Agnew was left on a bus in handcuffs for fourteen hours, during

⁹³ Manley Aff Ex 18 (Rachael Bedard, MD (@rachaelbedard), Twitter [Aug. 20, 2021, 8:53 AM]).

which time he was denied access to food, water, a toilet, or medical care.

69. Mr. Agnew remained in intake for six days, during which time he had to sleep on the floor. While in intake, he witnessed two individuals attempt to commit suicide. The intake cell in which Mr. Agnew was kept was sprayed every day of those six days with a chemical agent (a strong pepper spray). On a single one of those days, his cell was sprayed five times. This exposure to a chemical agent aggravated his asthma and he had difficulty breathing. Mr. Agnew also vomited several times after being sprayed. He did not have his inhaler and was denied medical attention despite repeated requests.

70. For the past several weeks of incarceration, Mr. Agnew has been suffering from a pounding headache and continues to have difficulty walking due to his injuries. He still uses a cane to walk. He also continues to have difficulty breathing due to his exposure to a chemical agent and his asthma. He is concerned about these health issues as well as their potential impact on his seizure disorder and his lung, which collapsed only a few months ago.

71. Mr. Agnew seeks to have medical staff evaluate his symptoms, in particular his difficulty breathing, persistent pounding headaches, and pain in his knee that makes it difficult to walk. As of September 23, 2021, he had requested medical attention daily—by calling the CHS hotline and by asking individual DOC officers. Several times after calling the CHS hotline Mr. Agnew was told that a DOC escort would bring him to the clinic, but no escort arrived. When he has asked DOC officers to bring him to the clinic, the DOC officers refuse. One officer told him that in order to get taken to the clinic he would need to get down on the floor, grab his chest and pretend to be having a medical emergency.

72. Since being in DOC custody, he has only been brought to the clinic once, but left shortly afterwards once it was discovered that someone was present in the clinic who had recently tested

positive for COVID-19. He has not seen a medical professional or had a health assessment for the entirety of his incarceration. Further, despite repeatedly requesting an inhaler, Mr. Agnew was not given an inhaler until September 27, 2021, two weeks after arriving on Rikers Island.

73. Petitioner **ANTHONY GANG** is a 23-year-old pretrial detainee who is currently housed at the Anna M. Kross Center (AMKC). Mr. Gang lives with asthma and suffers from an abdominal hernia that developed in the fall of 2020, after he was stabbed. His hernia is painful, particularly when he is eating or lying down. It also has caused gastrointestinal issues and interferes with his sleep.

74. Following a physical examination, CHS determined that Mr. Gang needed a surgery to repair his hernia and made a surgery referral on March 8, 2021. A computed tomography scan performed on March 19 revealed that Mr. Gang had a ventral hernia. The surgery was scheduled for May 4, 2021, but he was never taken to the hospital.

75. Mr. Gang was released from custody on May 19, 2021 but was back in custody on June 21, 2021. Between late June and the end of July, Mr. Gang made several requests for medical attention that went unanswered. On August 1, 2021, CHS again referred Mr. Gang for hernia surgery.

76. Over the course of his incarceration, Mr. Gang has been prescribed Motrin, acetaminophen, and acetaminophen with Codeine for his pain, but his access to pain medications has been limited.

77. While he has been waiting to receive surgery, Mr. Gang's hernia has become larger. Mr. Gang's social worker meets with him regularly and has also noticed his hernia growing appreciably over time.

78. CHS told Mr. Gang that he should return to the clinic for medical attention for his hernia "as needed." However, there have been several times when he has called the CHS hotline but not taken to the medical unit. He has also missed scheduled follow-up medical appointments because

DOC has not produced him to those visits. On at least one occasion, Mr. Gang has been told that no staff member was available to escort him to the clinic.

79. Despite the fact that CHS first referred Mr. Gang for surgery more than six months ago, he has not received the surgery, and it has not been scheduled as far as he knows. He continues to suffer pain and discomfort and asks to be taken to medical care.

80. Petitioner **TYRONE GREENE** is a 47-year-old pretrial detainee who is currently housed at the Robert N. Davoren Complex (RNDC). He suffers from a serious heart condition resulting from clogged arteries and high cholesterol, as well as asthma and prediabetes. Mr. Greene had two heart attacks on February 8, 2021. He was sent to Bellevue Hospital and, on February 9, 2021, underwent cardiac catheterization and had two stents inserted into his heart. On February 10, he was sent back to Rikers Island and was temporarily housed at North Infirmary Command (NIC) in a medical dormitory.

81. Due to his condition, Mr. Greene has medical clearance for being hand-cuffed with his hands in front of his body and exclusion from being pepper sprayed. Because of the stents in his heart, he is not permitted to walk through the magnetometer and instead must be patted down by a DOC officer.

82. Mr. Greene is prescribed Lipitor®, a blood thinner, and Toprol®, a beta-blocker. He is supposed to take the Lipitor®, Toprol® and aspirin daily. While he receives 10-day supplies of aspirin and Lipitor®, he must see medical staff daily to have his vital signs taken and obtain the Toprol®. The Toprol® can only be safely taken after his heart rate and blood pressure have been measured. Failure to monitor his vitals and dispense his medications on schedule and as needed places Mr. Greene at high risk for heart attack, stroke, or aneurysm. Mr. Greene must be able to access medical staff daily to prevent this risk. He should be on a daily callout list and automatically

taken to see medical staff on a regular schedule, but as he is almost never called, he requests medical attention every day. Mr. Greene is frequently denied access by DOC staff. DOC staff often inform him that there is no available staff to escort him to the clinic or that a security event in the facility prevents an escort from bringing him to the clinic.

83. For instance, during the week of September 13, 2021, Mr. Greene was denied access to the medical clinic to have his vitals checked for four out of five days. He was unable to receive his Toprol[®] medication on those days. Every day that Mr. Greene does not receive his medication not only places him at risk for a severe health event but causes him extreme anxiety over this risk.

84. Petitioner **KAMER REID** is a 33-year-old pretrial detainee who is currently housed at the George R. Vierno Center (GRVC). Mr. Reid was stabbed three months ago and has been unable to access post-surgical care, including wound care and pain management. Mr. Reid also requires the use of hearing aids and has several food allergies that are not being accommodated.

85. Kamer Reid was stabbed twice from behind while in DOC custody in June 2021. He was taken to the emergency room of Elmhurst Hospital with a collapsed lung and spent 4-5 days in the intensive care unit with a breathing tube.

86. After being discharged from the hospital, Mr. Reid was returned to Rikers where he spent two days in the GRVC intake area. During his time in intake, Mr. Reid did not have access to any medical personnel. He made requests to see medical staff to check his wounds and provide pain relief but received no medical attention at all.

87. When Mr. Reid was transferred from intake to the Enhanced Supervision Housing (ESH) area in GRVC, he was able to see medical personnel, who provided him with a lidocaine patch and a prescription for Tylenol with Codeine. Medical personnel assured him that he would be moved

from GRVC to a medical dorm at NIC, but he was never moved. Mr. Reid later learned that correction staff had claimed he refused to move to NIC. He had not.

88. When Mr. Reid left intake, he had an open wound on his chest from a chest tube that had been inserted at the hospital. Mr. Reid has not been provided with subsequent lidocaine patches or any wound care since being released from the hospital and while recovering from a stab wound and a collapsed lung. He has not been taken to any appointments for follow-up care.

89. Mr. Reid is allergic to several foods including fish and oats. A few weeks ago, he was given dinner that turned out to have fish in it. His throat began to swell, and he was having trouble breathing. He requested to be seen by medical staff for a medical emergency, but his requests were ignored. He was able to get Benadryl from another incarcerated person and his symptoms subsided. He was not taken to the clinic until noon the next day.

90. Mr. Reid reports that requests for all types of health care, both routine and urgent, are all ignored. Mr. Reid requires hearing aids for both ears. He is missing one and has been asking to visit the ear doctor, to no avail. He has asked to see podiatry after developing fungus under his toenails; this request was similarly ignored. Recently, Mr. Reid experienced significant chest pain and began coughing up blood. He had these symptoms for several days, during which he requested medical attention that he never received.

91. On the rare occasions that Mr. Reid receives a response to his requests for medical attention, it is to tell him that he is “on the list” but he never hears about it again, or he is told he cannot be escorted because he requires a captain escort and one is not available.

CLASS ACTION ALLEGATIONS

92. Petitioners bring this Article 78 mandamus to compel as a class action pursuant to Article 9 of the CPLR.⁹⁴

93. Petitioners seek to represent themselves and a putative class of similarly situated individuals consisting of all current and future people incarcerated in New York City Department of Correction facilities who have been or will be denied access to medical care based on the Respondent's failure to discharge its ministerial duties.

94. All five requirements of CPLR Section 901 (a) are met by the proposed class:

- a. *Numerosity*: Joinder of all putative class members is impracticable because of the size of the class and contextual factors. *See Borden v 400 E. 55th St. Assocs., L.P.*, 24 NY3d 382, 399 (2014). Approximately 6,000 potential class members are incarcerated in the custody of the Department at the time of filing. Upon information and belief, all or a large percentage of individuals in DOC custody are class members because of the high medical needs of the incarcerated population and DOC's widespread failure to provide access. Additional class members will enter Respondent's custody because the incarcerated population is transient.
- b. *Commonality*: The common question of law and fact to be resolved here is: whether the Department has failed to perform its nondiscretionary ministerial duties that ensure access to medical services for all individuals in its custody.
- c. *Typicality*: The claims of the Petitioners are typical of the putative class. The mandamus claim of the Petitioners is the same as the claim of the putative class

⁹⁴ Petitioners hereby incorporate by reference into this Petition, as if fully set forth herein, the Memorandum of Law in Support of Petitioners' Article 78 Mandamus to Compel Petition and Motion for Class Certification, including all facts alleged and argument contained therein.

members because it arises from the same failure of the Respondent to perform its nondiscretionary duties that ensure access to medical services.

- d. *Adequacy of Representation*: Named Petitioners will protect the interests of the putative class fairly and adequately. Named Petitioners face significant harm from DOC's failure to provide access to medical services through its refusal to discharge its ministerial duties and have a strong interest in vigorously pursuing relief on behalf of the proposed class. Their interests are not antagonistic to those of other class members. Putative class counsel has many years of combined experience in complex civil litigation, civil rights, and class action litigation.
- e. *Superiority*: A class action is superior to other available methods for the fair and efficient adjudication of this controversy, and will prevent the imposition of undue financial, administrative, and procedural burdens on the parties and the Court, which individual litigation on these claims would impose. Counsel anticipates no difficulty in the management of this petition as a class action.

JURISDICTION AND VENUE

95. This Court has jurisdiction over this petition pursuant to CPLR Section 7803(1) because Petitioners seek an order to compel Respondent to perform duties that it has failed to perform.

96. Venue is proper in this Court pursuant to CPLR Sections 7804 (b) and 506 (b).

CAUSES OF ACTION

Mandamus to Compel the DOC Pursuant to CPLR Section 7803 (1) for Failure to Provide Access to Medical Care

97. Petitioners incorporate by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

98. NYC Admin. Code § 9-108 (c) states that DOC “shall provide all housing units with access to sick call on weekdays, excluding holidays, and subject to the exclusions set forth in chapter 3 of title 40 of the rules of the city of New York, or exclusions obtained through a variance pursuant to section 3-13 of such rules.”

99. Rule of New York City (RCNY) 40 § 3-02 (c) (1) requires that “Sick-call shall be available at each facility to all inmates at a minimum of five days per week within 24 hours of a request or at the next regularly scheduled sick-call. Sick-call need not be held on City holidays or weekends.”

100. NYC Admin. Code § 9-108 (c) and 40 RCNY § 3-02 (c) (1) impose mandatory, non-discretionary duties to provide access to sick call weekdays, five days per week (excluding holidays) or within 24 hours of a request or at the next regularly scheduled sick-call. DOC does not have the discretion to fail to perform this obligation or to perform it in a different manner or on a different schedule.

101. As set forth herein and upon information and belief, the Department refuses to comply with its nondiscretionary duty to provide individuals in custody with access to sick call in the manner and at the regular intervals specified in NYC Admin. Code § 9-108 (c) and 40 RCNY § 3-02 (c) (1).

102. Correction Law § 500-c (4) provides that the DOC commissioner “shall receive and safely keep in the county jail of his county each person lawfully committed to his custody,” which includes the duty to “provid[e] necessary medical care to inmates,” Bonacquist, McKinney’s Practice Commentaries, N.Y. Correction Law § 501 (2017); *see also id.* § 505 (2021) (“The chief administrative officer of a local correctional facility must ‘receive and safely keep’ all inmates

committed to his custody. Generally, this requires that inmates be provided with necessary medical, dental, and mental health care.” (quoting Correction Law § 500-c (4)).

103. In furtherance of Correction Law § 500-c (4), Rule of New York 40 § 3-02 (c) (4) states that “[t]he Department of Correction shall provide sufficient security for inmate movement to and from health service areas.”

104. In furtherance of Correction Law § 500-c (4), Rules of New York 40 § 3-02 (b) (4) & (c) (2) (i) state that “[c]orrectional personnel shall never prohibit, delay, or cause to prohibit or delay an inmate’s access to care or appropriate treatment” or “an inmate’s access to medical or dental services.”

105. Correction Law § 500-c (4) and Rules of New York 40 §§ 3-02 (b) (4), (c) (2) (i), and (c) (4) impose mandatory, non-discretionary duties to provide sufficient security for movement of incarcerated persons to and from health services areas and prohibits DOC from delaying or denying access to care. DOC does not have the discretion to fail to perform this obligation or to perform it in a different manner or on a different schedule.

106. As set forth herein and upon information and belief, the Department refuses to comply with its nondiscretionary duties to safely keep each person in its custody under Correction Law § 500-c (4) by providing sufficient security for movement of incarcerated persons to and from health

services areas and refraining from delaying or denying access to care as specified in Rules of New York 40 §§ 3-02 (b) (4), (c) (2) (i), and (c) (4).

107. Petitioners have been, and continue to be, aggrieved by Respondents' failure to discharge these ministerial duties, and have suffered, and continue to suffer, harm.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

- a. Certify this Article 78 mandamus proceeding as a class action;
- b. Appoint Petitioners' counsel as counsel for the class;
- c. Issue a mandamus order compelling Respondent to comply with its nondiscretionary duties found in the New York City Administrative Code, Correction Law, and Rules of the City of New York to provide all individuals in its custody access to medical services without delay;
- d. Order Respondent to provide proof of substantial compliance with such nondiscretionary duties within one week of its mandamus order;
- e. If Respondent fails to demonstrate substantial compliance with the Court's mandamus order as required, convert this proceeding into a hybrid Article 78/Habeas corpus proceeding pursuant to CPLR Section 103 (c), notify the district attorneys in each borough of the City of New York of the time and place of the habeas hearing pursuant to CPLR 7009 (a) (3), certify a class of individuals whom the Department of Correction has identified, through its contracted healthcare provider (CHS), as requiring ongoing or specialized care (Specialized Care Class), and require that the Department and the district attorneys show cause pursuant to CPLR 7009 (c) as to why immediate release is not the appropriate remedy for the illegal detention of members of the specialized care class;

- f. Impose public health and safety measures as appropriate; and
- g. Grant such other relief as the Court may deem just and proper.

Dated: October 4, 2021
New York, New York

/s/ Katherine Kelly Fell
Katherine Kelly Fell

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Michael Scerbo
Micaela D. Manley
Mariella Montplaisir Bazan
Chassity Bobbitt

Counsel for Petitioners and the Putative Class

VERIFICATION

STATE OF NEW YORK)

COUNTY OF BRONX)

Joseph Agnew affirms under penalty of perjury:

1. I am a Petitioner in the within proceeding. I make this verification pursuant to N.Y. C.P.L.R. §§ 3020 and 7804(d).
2. I have reviewed the allegations in the Verified Petition that pertain to me and know their contents.
3. The statements in the Verified Petition that pertain to me are true to my own knowledge, or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.

Joseph Agnew

Dated: Bronx, NY
October 1, 2021

Sworn and subscribed to me this
1st day of October, 2021

William A. Lesman
NOTARY PUBLIC

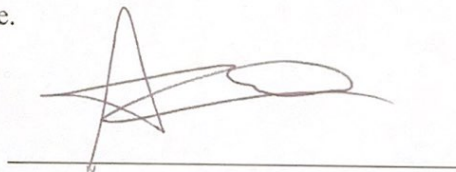
WILLIAM A. LESMAN
Notary Public, State of New York
No. 02LES163195
Qualified in Kings County 23
Commission Expires Mar. 19, 2021

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF BRONX)

Anthony Giang, affirms under penalty of perjury:

1. I am a Petitioner in the within proceeding. I make this verification pursuant to N.Y. C.P.L.R. §§ 3020 and 7804(d).
2. I have reviewed the allegations in the Verified Petition that pertain to me and know their contents.
3. The statements in the Verified Petition that pertain to me are true to my own knowledge, or upon information and belief. As to those statements that are based upon information and belief, I believe those statements to be true.



Dated: Bronx, NY

October 1, 2021

Sworn and subscribed to me this

1st day of October, 2021

William A. Lesman
NOTARY PUBLIC

WILLIAM A. LESMAN
Notary Public, State of New York
No. 02LE6163195
Qualified in Kings County 23
Commission Expires Mar. 19, 2024

VERIFICATION

STATE OF NEW YORK

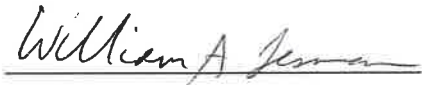
COUNTY OF BRONX

TYRONE GREENE, being duly sworn, states:

1. I am a petitioner in this proceeding.
2. I have read the statements ascribed to me in the foregoing petition.
3. The information therein is true to my own knowledge, except for those statements alleged to be upon information and belief, which I believe to be true.



Sworn to before me this

30th day of September, 2021.

NOTARY PUBLIC

WILLIAM A. LEGMAN
Notary Public, State of New York
No. 021566193195
Qualified in Kings County 23
Commission Expires Mar. 19, 2014

VERIFICATION

STATE OF NEW YORK

COUNTY OF BRONX

Kamer Reid, being duly sworn, states:

1. I am a petitioner in this proceeding.
2. I have read the statements ascribed to me in the foregoing petition.
3. The information therein is true to my own knowledge, except for those statements alleged to be upon information and belief, which I believe to be true.



Sworn to before me this

30th day of September, 2021.William A. Lesman

NOTARY PUBLIC

WILLIAM A. LESMAN
Notary Public, State of New York
No. 02LE6153105
Qualified in Kings County 23
Commission Expires Mar. 19, 2011

VERIFICATION

STATE OF NEW YORK)
KINGS COUNTY) ss

Katherine Kelly Fell, an attorney admitted to the practice of law in the State of New York, affirms under the penalties of perjury:

1. I am an attorney at Milbank LLP.
2. I am an attorney for the Petitioners and am authorized to file this petition for an Article 78 mandamus on their behalf.
3. I have read the foregoing petition and know its contents.
4. The statements in the petition are true to my knowledge, except as to any individual Petitioner allegations, and as to those statements, the relevant Petitioner has submitted a sworn verification; and except as to any statements alleged on information and belief, and as to those statements, I believe them to be true.


Katherine Kelly Fell

Dated: October 4, 2021
New York, NY