

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

Matter of RAYMOND BELL,	)	Index No.
	)	
On behalf of himself and all others similarly situated,	)	
	)	
Petitioners,	)	<b>VERIFIED PETITION – ARTICLE 78 MANDAMUS TO COMPEL</b>
	)	
-against-	)	
	)	
NEW YORK CITY DEPARTMENT OF CORRECTION,	)	
	)	
Respondent.	)	

Petitioner Raymond Bell, on behalf of himself and all others similarly situated, by his attorneys, for his verified petition for a Motion to Compel pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR), alleges as follows:

**PRELIMINARY STATEMENT**

1. The concurrence of the Omicron variant and the ongoing New York City Department of Correction (“DOC”) staff shortage has created a crisis at Rikers Island. Due to the staff shortage, pre-trial detainees are commonly stuffed in overcrowded intake areas for days, even weeks, longer than what is legally mandated. Even once they leave intake for housing units, they find themselves without protective masks – regardless of whether they request them. And when a pre-trial detainee tests positive for COVID-19, the undermanned DOC staff are left unable to prevent further contamination. As a result, multiple detainees have died of COVID-19, while rates of infection

have begun to skyrocket. On December 29, 2021, “[t]he U.S. set a one-day record of nearly half a million cases” of COVID-19.<sup>1</sup>

### ***Staff Shortages as Reported by the Nunez Monitor***

2. Rikers Island has, for some time, been notoriously unsafe for incarcerated persons, and as a result, the facility has been scrutinized in Court numerous times in recent years. One such case resulted in the appointment of an independent monitor (the “Nunez Monitor”) to oversee certain mandates the DOC was ordered to follow.<sup>2</sup>

3. On December 6, 2021, the Nunez Monitor concluded that “conditions [at Rikers have] been deteriorating along a new trajectory . . . [and] have progressively and substantially worsened.”<sup>3</sup> Recently, on a single day, roughly 1,600 DOC staff members called out sick (19% of the total workforce) and another 100 “simply [did] not show[] up for work (*i.e.*, AWOL).”<sup>4</sup> Without sufficient staff, detainees find themselves increasingly vulnerable to infection by COVID-19 and exposed to inhumane conditions.

---

<sup>1</sup> *Covid Live Updates: Incoming Mayor to Keep N.Y.C.’s Private-Sector Vaccine Mandate*, N.Y. TIMES (Dec. 30, 2021, 12:12PM), <https://www.nytimes.com/live/2021/12/30/world/omicron-covid-vaccine-tests>.

<sup>2</sup> *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF (S.D.N.Y.). *Nunez* began in 2012, when a class of former and current Rikers incarcerated-plaintiffs alleged that they had been subject to continuous brutal and unlawful beatings by uniformed DOC staff, violating their rights under the United States Constitution and New York State Constitution. *See* Amended Complaint, *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF (S.D.N.Y. May 24, 2012), ECF 15. In 2014, the United States Department of Justice intervened after a multi-year internal investigation confirmed the veracity of these claims. United States’ Proposed Complaint-In-Intervention, *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF (S.D.N.Y. Dec. 18, 2014), ECF 178. By the following year, the *Nunez* parties brokered a consent agreement, which was ultimately approved by the Court. Consent Judgment, *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF (S.D.N.Y. Oct. 21, 2015), ECF 249. The Consent Judgment mandated, among other things, that the DOC maintain an adequate ratio between incarcerated persons and staff; “develop and maintain a comprehensive staff recruitment program . . . and keep the Department competitive with surrounding law enforcement and correctional agencies;” and supervise “[y]oung inmates . . . at all times in a manner that protects them from an unreasonable risk of harm.” *Id.* To ensure that these provisions were followed, the SDNY appointed Steve J. Martin (the “Nunez Monitor”) as an independent monitor. *Id.* at 51.

<sup>3</sup> Twelfth Report of the *Nunez* Independent Monitor, *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF (S.D.N.Y. Dec. 6, 2021), ECF 431.

<sup>4</sup> *Id.* at 33.

4. Reports by the media have confirmed the impact of the staff shortage at Rikers. Images published by the *New York Post* show at least 26 men stuffed body-to-body inside of a single cell while being processed for intake because there are insufficient staff members to process them in a timely fashion.<sup>5</sup> Due to a lack of space, detainees are often left to sleep on intake unit floors, “sullied with rotten food, maggots, urine, feces, and blood.”<sup>6</sup> In the intake units, incarcerated persons are not sufficiently fed; the conditions are riddled with vomit from those incarcerated persons who are detoxing; and incarcerated persons are not given access to their medications.<sup>7</sup> And because intake is not designed for longer stays, detainees forced to stay beyond the 24-hour legal mandate find themselves without access to showers, toilets, and sinks.<sup>8</sup> In fact, it is common for detainees to languish in intake for days, even weeks.<sup>9</sup>

5. Once pre-trial detainees leave intake for their assigned housing units, they see little improvement in their living conditions. DOC staff routinely abandon their assigned posts without relief or permission,<sup>10</sup> leaving said detainees to fend for themselves and be at risk of violence from other incarcerated persons.

6. Despite the pandemic raging through Rikers, proper preventative COVID-19 protocols are not followed. When an incarcerated person does test positive, he is not removed from his dormitory

---

<sup>5</sup> See Gabrielle Fonrouge, *Photos Inside Rikers Island Expose Hellish, Deadly Conditions*, N.Y. POST, Oct. 21, 2021, <https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-deadly-conditions/>.

<sup>6</sup> *Id.*

<sup>7</sup> Bliss Broyard & Lisa Riordan Seville, *Rikers: The Obituaries*, N.Y. MAG., Dec. 27, 2021, <https://nymag.com/intelligencer/article/rikers-inmates-died-2021.html>.

<sup>8</sup> See Beth Schwartzapfel, *Dispatch from Deadly Rikers Island: “It Looks Like a Slave Ship in There”*, MARSHALL PROJECT, Oct. 5, 2021, <https://www.themarshallproject.org/2021/10/05/dispatch-from-deadly-rikers-island-it-looks-like-a-slave-ship-in-there#:~:text=When%20I%20got%20to%20Rikers%2C%20I%20was%20in%20the,way%20up%20to%20the%20bars>.

<sup>9</sup> See Michael R. Sisak, *NYC’s Rikers Island Jail Spirals into Chaos Amid Pandemic*, Associated Press, Sept. 16, 2021, <https://apnews.com/article/kathy-hochul-health-prisons-new-york-new-york-city-da3d6f8334946cf2cc3eb2bac60538a2>.

<sup>10</sup> *Id.*

or quarantined away from his fellow incarcerated persons. Instead, the staff merely attempt to seclude the dormitory from other Rikers facilities. During this seclusion, all incarcerated persons – including the incarcerated persons who tested positive – are free to walk amongst the dorm’s population without any notice of who is infected. Furthermore, incarcerated persons who have jobs outside of their unit and who have been exposed to the infected incarcerated person – including those incarcerated persons who staff the visiting area and mess hall – continue to leave their housing units to perform those jobs. Thus, the DOC’s own quarantine procedures are woefully incomplete and inadequate, putting incarcerated persons throughout the infected incarcerated person’s dormitory – as well as throughout the facility – at grave risk.

7. Additionally, other incarcerated persons who are locked in with incarcerated persons who have contracted COVID-19 do not routinely receive COVID-19 tests, so they are not given sufficient information to know whether they themselves have been infected.

8. For those incarcerated persons who suffer from preexisting conditions associated with a higher risk of severe COVID-19 symptoms, the DOC makes no attempt to protect them from the general population. And masks are only available for use during visitation hours – not within the dormitories, even when an infected incarcerated person is known to be within the housing unit.

9. The *Nunez* Monitor has concluded that the requirements set forth in the court-mandated Consent Judgment “assume a crucial and basic level of capability, competence, and adherence to foundational corrections practices that the Department simply lacks.”<sup>11</sup> In all, the *Nunez* Monitor

---

<sup>11</sup> Twelfth Report of the *Nunez* Independent Monitor at 8, *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF (S.D.N.Y. Dec. 6, 2021), ECF 431.

found that the Department “has been unable to fully implement and institutionalize the remedial measures” to improve the conditions at Rikers.<sup>12</sup>

### *Omicron*

10. The Omicron variant of COVID-19 spreads faster than its predecessors.<sup>13</sup> Currently, it is sweeping across the United States, causing an increase in the number of new cases to heights not seen since the peak infection rate in January 2021.<sup>14</sup> Specifically, as of December 27, 2021, more than 240,000 new cases per day are being reported, an increase of **105%** over the previous fourteen days.<sup>15</sup> On December 29, 2021, “[t]he U.S. set a one-day record of nearly half a million cases.”<sup>16</sup>

11. New York City has been one of the hardest hit areas in this recent wave of infections, with 20,665 new cases on average per day as of December 27, representing an increase of **587%** over the previous fourteen days.<sup>17</sup> Hospitalization rates in the city increased as much as 12% in one day.<sup>18</sup>

12. This COVID-19 wildfire in the surrounding community is reflected in the infection rates among incarcerated persons at Rikers Island. Indeed, the DOC itself recognized that, as of December 21, 2021, the rate of COVID-19 infections among incarcerated persons at Rikers Island had surged from approximately 1% to over 17% in just ten days.<sup>19</sup> On December 28, this number

---

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Omicron Variant: What You Need to Know*, CENTER FOR DISEASE CONTROL AND PREVENTION (Dec. 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>.

<sup>14</sup> *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/covid-cases.html> (last visited Dec. 30, 2021).

<sup>15</sup> *Id.*

<sup>16</sup> *Covid Live Updates: Incoming Mayor to Keep N.Y.C.'s Private-Sector Vaccine Mandate*, N.Y. TIMES (last updated December 30, 2021), <https://www.nytimes.com/live/2021/12/30/world/omicron-covid-vaccine-tests>.

<sup>17</sup> *Tracking Coronavirus in New York City, N.Y.*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/new-york-city-new-york-covid-cases.html> (last visited Dec. 30, 2021).

<sup>18</sup> *NY COVID Hospitalizations Rise 12% in a Day as Omicron Surge Deepens*, NBC 4 N.Y. (Dec. 28, 2021), <https://www.nbcnewyork.com/news/coronavirus/ny-covid-hospitalizations-rise-12-in-a-day-as-omicron-surge-deepens/3470352/>.

<sup>19</sup> Mark Morales, *Inmates at NYC's Rikers Island jail in the midst of 'emerging crisis' related to Omicron surg*, CNN (Dec. 22, 2021, 5:47PM EST), <https://www.cnn.com/2021/12/22/us/omicron-surge-rikers-jail/index.html>.

went up to 26%, which only includes the detainees who have been tested.<sup>20</sup> Petitioner Bell has already noticed his fellow incarcerated persons increasingly displaying associated symptoms, including numerous incarcerated persons who are coughing.

### ***DOC Staffing Crisis & the Commissioner's Letter***

13. At the same time, despite the City's mandate to require DOC staff members to get vaccinated, hundreds of DOC staff members remain unvaccinated, while others remain reluctant to show up at a workplace where an outbreak is ongoing.<sup>21</sup> On December 4, 2021, it was reported that at least 17% of all DOC staff continued to refuse the vaccine,<sup>22</sup> 9% of whom have applied for medical or religious exemptions while continuing to report to work.<sup>23</sup> Nevertheless, with the variant surging and with the need to quarantine any staff member who tests positive, a worsening staff shortage is inevitable.<sup>24</sup> This will only aggravate the existing inhumane conditions at Rikers, as DOC staff are necessary to (i) process incarcerated persons through intake in a timely fashion; (ii) escort incarcerated persons to medical services for any COVID-related treatment or other medical issues; (iii) staff the housing units to prevent violence among incarcerated persons; and (iv) escort incarcerated persons to court hearings and legal appointments. With the present staffing crisis, Rikers has already seen a fundamental breakdown of safety and access to medical care for incarcerated persons, which would continue to deteriorate if additional staff members are not present.

---

<sup>20</sup> Vincent Schiraldi (@VinSchiraldi), TWITTER (Dec. 30, 2021, 7:20AM), <https://twitter.com/VinSchiraldi/status/1476528598953730049>.

<sup>21</sup> Jake Offenhartz, *Hundreds Of Correction Officers Defy New Vaccine Mandate, Compounding Staff Crisis On Rikers*, THE GOTHAMIST (Dec. 1, 2021), <https://gothamist.com/news/hundreds-correction-officers-defy-new-vaccine-mandate-compounding-staff-crisis-rikers>.

<sup>22</sup> Rich Calder, *Hundreds of DOC officers put on leave for refusing COVID jab*, CNN (Dec. 4, 2021, 12:01PM EST), <https://nypost.com/2021/12/04/over-500-nyc-doc-officers-on-leave-for-refusing-covid-vaccine/>.

<sup>23</sup> *Id.*

<sup>24</sup> See Fonrouge, *supra* note 5.

14. On December 21, 2021, DOC Commissioner Vincent Schiraldi responded to this growing crisis by writing a letter to New York City public defender and prosecutor offices, pleading with them to request the “courts to similarly consider every available option to reduce the number of individuals in our jails,” including “seeking supervised release in more cases or identifying cases that can be resolved with modifications to sentence length or requesting compassionate release for individuals who are at higher risk due to underlying medical conditions.”<sup>25</sup>

15. Petitioner Raymond Bell therefore requests an Article 78 Mandamus to Compel the DOC to act in light of the inhumane conditions at Rikers Island that violate Art. 1, § 6 of the New York State Constitution. Specifically, Petitioner requests: (1) a preliminary injunction, pursuant to New York Civil Practice Law and Rules (CPLR) § 6311, forbidding the admission of new incarcerated persons to any Rikers Island detention facility, and the diversion of incarcerated persons to at home confinement or other facilities as appropriate in light of the exacerbated conditions caused by COVID-19, the ongoing staffing crisis, and the inhumane conditions at Rikers; and (2) a temporary restraining order, pursuant to CPLR § 6313(a), preserving the status quo pending the Court’s determination of the preliminary injunction motion by enjoining the DOC from admitting new incarcerated persons to any Rikers Island detention facility, and requiring the diversion of incarcerated persons to at home confinement or other facilities as appropriate in light of the exacerbated conditions caused by COVID-19, the ongoing staffing crisis, and the inhumane conditions at Rikers.

---

<sup>25</sup> The letter is attached as exhibit A. *See* Letter from Vincent Schiraldi, Comm’r, Dep’t of Corr., to N.Y.C. Prosecution and Pub. Def. Cmtys. (Dec. 21, 2021) [hereinafter “Ex. A”].

## **THE PARTIES**

16. Petitioner Raymond Bell, on behalf of himself and all others similarly situated, is a 27-year-old pre-trial detainee man currently housed at Rikers Island. He is not vaccinated and has asthma and other underlying health conditions due to a serious brain injury that make him especially vulnerable to COVID-19 based on CDC criteria.<sup>26</sup>

## **JURISDICTION**

17. This action is brought pursuant to Art. 1, § 6 of the New York State Constitution. This Court has subject matter jurisdiction under Art. 6, § 7 of the New York State Constitution. This Court has jurisdiction pursuant to CPLR § 6301 to grant declaratory and injunctive relief necessary to implement the relief requested herein.

## **VENUE**

18. Venue in this Court is proper pursuant to CPLR §§ 503 and 505.

## **STATEMENT OF FACTS**

### **I. Staffing Issues at Rikers Island**

19. Serious staffing issues existed at Rikers Island even prior to the outbreak of the Omicron variant. The *Nunez* Monitor's December 6, 2021 report noted significant staff absenteeism in 2021.<sup>27</sup> In fact, the Special Monitor reported that "on any given day in October 2021, an average of approximately 80 posts went unmanned – including posts in which Staff directly supervise and facilitate services for people in custody."<sup>28</sup>

---

<sup>26</sup> See *People with Certain Medical Conditions*, CENTER FOR DISEASE CONTROL AND PREVENTION (Dec. 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

<sup>27</sup> Twelfth Report of the *Nunez* Independent Monitor at 33, *Nunez v. City of New York*, 1:11-cv-05845-LTS-JCF (S.D.N.Y. Dec. 6, 2021), ECF 431.

<sup>28</sup> *Id.*



20. As a result of the ongoing staff shortage at Rikers Island, many pre-trial detainees have been held together for extended periods of time. While New York City regulations mandate that intake take no more than 24 hours, the staff shortages have resulted in twenty-plus incarcerated persons being packed to an intake cell for days or even weeks.<sup>29</sup> For example, upon entrance to Rikers Island, Petitioner Bell was forced to sit in an overcrowded intake area for four-to-five days, where he was left to sleep on the floor.

21. Due to the ongoing staffing shortage, detainees with COVID-19 often languish in the intake area next to their fellow incarcerated persons for long periods of time. While in intake, Petitioner Bell was forced to sit in the same intake unit with another incarcerated person, who had COVID-19 and complained of symptoms for 24 hours, before the infected incarcerated person was transferred to another unit.

22. Due to the ongoing staffing shortage, Rikers Island additionally lacks sufficient personnel to implement effective COVID-19 protocols that prevent further contamination. When a detainee tests positive, DOC staff often mandate a lockdown in the relevant housing unit without removing the detainee who tested positive – thus, prolonging exposure to the virus for those placed in the same housing unit with the COVID positive incarcerated person. Indeed, Petitioner Bell was confined with COVID positive detainees on multiple occasions while residing in his assigned dorm. This was especially dangerous for him because Petitioner Bell suffers from multiple preexisting conditions associated with a higher risk of severe COVID-19, including asthma and a traumatic brain injury.

---

<sup>29</sup> See Michael R. Sisak, *NYC's Rikers Island Jail Spirals into Chaos Amid Pandemic*, ASSOCIATED PRESS, Sept. 16, 2021, <https://apnews.com/article/kathy-hochul-health-prisons-new-york-new-york-city-da3d6f8334946cf2cc3eb2bac60538a2>.

23. The staffing and protocols at Rikers are inadequate to maintain safety amidst the COVID-19 pandemic. On information and belief, there is a lack of testing within the jail; a lack of access to basic sanitary equipment, including masks, to help protect the detainees from contracting the virus; and a lack of staffing sufficient to facilitate quarantining or other appropriate responses to the COVID-19 virus, including ensuring that those who need medical care who are COVID positive receive it or that facilities housing COVID positive incarcerated persons are sufficiently sanitized. As a result, at least four detainees have contracted and subsequently died from the virus.<sup>30</sup> And the virus is now spreading exponentially among the vastly unvaccinated incarcerated person population.

## II. Commissioner Schiraldi's December 21, 2021 Letter

24. In his December 21 letter, Commissioner Schiraldi, the highest-ranking employee of the DOC, pleaded with public defenders and prosecutors to implore the courts to use “every available option to reduce the number of individuals in our jails.”<sup>31</sup>

25. Indeed, Commissioner Schiraldi noted that the rates of COVID-19 infections had surged in the ten days prior to December 21, 2021, from approximately 1% to over 17%, and admitted that “only 45% of [the] incarcerated population has received one shot of the vaccine, and only 38% is fully vaccinated.”<sup>32</sup> As of December 29, 2021, over 26% of incarcerated persons who had been tested were found to have contracted COVID.<sup>33</sup> In fact, the Commissioner admits that “all

---

<sup>30</sup> Jan Ransom, *Rikers Death Pushes Toll in N.Y.C. Jails to 13 This Year*, N.Y. TIMES (Oct. 15, 2021), [nytimes.com/2021/10/15/nyregion/rikers-death-toll.html](https://www.nytimes.com/2021/10/15/nyregion/rikers-death-toll.html); Michael Herzenberg, *Report Finds Three Rikers Detainees Who Died of COVID-19 Were Held in Packed Dorms*, SPECTRUM NEWS NY1 (Mar. 8, 2021), <https://www.nyl.com/nyc/all-boroughs/news/2021/03/08/report-finds-three-rikers-detainees-who-died-of-covid-19-were-held-in-packed-dorms>.

<sup>31</sup> See Ex. A.

<sup>32</sup> *Id.*

<sup>33</sup> Vincent Schiraldi (@VinSchiraldi), TWITTER (Dec. 30, 2021, 7:20AM), <https://twitter.com/VinSchiraldi/status/1476528598953730049>.

indications suggest that our jail population faces an equal or greater level of risk from COVID now as it did at the start of the pandemic.”<sup>34</sup>

26. The DOC has restricted incarcerated persons’ rights in a purported effort to stem the catastrophic rise in infections. For example, congregation services and in-person visitation have recently been canceled, along with the issuance of “additional movement protocols” and “reductions in programming.”<sup>35</sup> But the Commissioner concedes that the cancellation of these “basic services” has exacerbated the “unprecedented levels of tension, anxiety, and violence in the jails” that were already present in light of “two years of COVID” and the ongoing “staffing crisis.”<sup>36</sup>

27. The DOC has now expressly called for outside help. The Commissioner asks the “courts to . . . consider every available option to reduce the number of individuals in our jails,” including “seeking supervised release in more cases or identifying cases that can be resolved with modifications to sentence length or requesting compassionate release for individuals who are at higher risk due to underlying medical conditions.”<sup>37</sup>

28. Judicial intervention is required to improve the conditions of incarceration, prevent future pre-trial detainees from suffering violations to their rights protected under the New York State Constitution, and lessen the risk of serious illness or the deaths of individuals incarcerated at Rikers Island. Incarcerated persons awaiting trial who are accused of non-violent offenses, and other incarcerated persons for whom release is reasonable under the extraordinary circumstances of the COVID-19 pandemic, including those incarcerated persons whose underlying health conditions

---

<sup>34</sup> See Ex. A.

<sup>35</sup> See *id.*

<sup>36</sup> See *id.*

<sup>37</sup> See *id.*

cause them to be at greater risk for grave consequences from COVID-19, should be released promptly to home confinement. Others should be transferred to alternate facilities where adequate preventive and treatment measures can be provided. Immediate improvements to the Rikers testing, tracing, treatment, sanitation, isolation, and other health-related conditions of confinement must be put into effect for all who remain.

### III. Incarcerated Persons Are Placed in Overcrowded and Unsanitary Areas That Make COVID-Safe Protocols Impossible

29. Recent images published by the *New York Post* show as many as 26 men crammed on top of one another inside of a single cell while being processed for intake.<sup>38</sup> This severe overcrowding stems from the DOC's staffing crisis and causes incarcerated persons to be held in close proximity to each other for extended periods of time, as there are insufficient staff members to process incarcerated persons in a timely fashion. In response, incarcerated persons have been observed using communal bags toilets, while being denied access to meals, medication, phones, and transportation to court.<sup>39</sup> Lawmakers who toured the Rikers complex in September 2021 confirmed these findings.<sup>40</sup>

30. City regulations mandate that these intake cells house incarcerated persons for no more than 24 hours.<sup>41</sup> Yet, at least 256 incarcerated persons remained in these dangerous and unsanitary intake areas beyond the legal limit between June and late September 2021 because of "medical delay" and "shortage of DOC staff."<sup>42</sup>

---

<sup>38</sup> See Gabrielle Fonrouge, *Photos Inside Rikers Island Expose Hellish, Deadly Conditions*, N.Y. POST, Oct. 21, 2021, <https://nypost.com/2021/10/21/photos-inside-rikers-island-expose-hellish-deadly-conditions/>.

<sup>39</sup> See Deanna Paul, *Rikers Island Conditions Spiral Out of Control for Inmates and Officers*, WALL ST. J., Sept. 19, 2021, <https://www.wsj.com/articles/rikers-island-conditions-spiral-out-of-control-for-inmates-and-officers-11632063601>.

<sup>40</sup> See Sisak, *supra* note 9.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

31. These unsanitary and crowded conditions are especially problematic considering the prevalence of the Omicron variant, which is more contagious than other COVID-19 strains,<sup>43</sup> as incarcerated persons are languishing in these conditions alongside others who are potentially COVID positive.

32. As of December 22, 2021, according to the DOC and Community Supervision, nearly 8,000 Rikers incarcerated persons have been infected with COVID-19 to date since the start of the pandemic.<sup>44</sup> As of December 29, 2021, the rate of infection at Rikers was up to 26%.<sup>45</sup>

33. As the Commissioner has conceded, the DOC cannot adequately protect its incarcerated persons or its staff from this brewing outbreak, and has had to cut other “basic services,” including worship services.<sup>46</sup>

#### **IV. Incarcerated Persons with Preexisting Conditions are Given Inadequate Protection**

34. The DOC continues to provide insufficient care to those incarcerated persons who suffer from preexisting conditions associated with a higher risk of severe COVID-19.<sup>47</sup>

35. Petitioner Bell is one such incarcerated person. Because of a gunshot wound to his head, fluids excessively gather in his skull. Doctors have informed Bell that, to remain alive, those fluids must be routinely drained and he must avoid further physical contact to his head. During his incarceration, Bell has not received such necessary treatment.

---

<sup>43</sup> *Omicron Variant: What You Need to Know*, CENTER FOR DISEASE CONTROL AND PREVENTION (Dec. 20, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/variants/omicron-variant.html>.

<sup>44</sup> Alexandra Hutzler, *Rikers Island Ends Crisis-Ridden Year With Soaring COVID Positivity Rate Amid Omicron Wave*, NEWSWEEK, Dec. 22, 2021, <https://www.newsweek.com/rikers-island-ends-crisis-ridden-year-soaring-covid-positivity-rate-amid-omicron-wave-1662170>.

<sup>45</sup> Vincent Schiraldi (@VinSchiraldi), TWITTER (Dec. 30, 2021, 7:20AM), <https://twitter.com/VinSchiraldi/status/1476528598953730049>.

<sup>46</sup> See Ex. A.

<sup>47</sup> See *People with Certain Medical Conditions*, CENTER FOR DISEASE CONTROL AND PREVENTION (Dec. 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

36. Despite being told of his preexisting conditions, the DOC has done nothing to protect Petitioner Bell from suffering loss of life and, indeed, has placed him at further risk. To date, Bell has yet to have his skull properly drained and as such, suffers from continuous migraines. He has also yet to receive any physical therapy, despite his doctor mandating it. When Bell complained to the DOC's medical unit of his condition, he was told that he "should just die". When Bell first arrived at Rikers Island, the DOC left him in an overcrowded intake area surrounded by incarcerated persons charged with violent crimes. Bell reports being unable to sleep over the course of his stay at intake (4-5 days) out of fear that another detainee would strike him in the head – killing him. He was also placed in intake with at least one person who had COVID-19. Since leaving intake, Bell has been attacked on two occasions by fellow incarcerated persons, which could have life threatening consequences in light of his head injury. Yet, because of the ongoing DOC staffing shortage, no staff member appropriately intervened.

37. Because it is not DOC practice to separate incarcerated persons with preexisting conditions from other incarcerated persons who could have COVID-19, Bell was placed in a housing unit with a large number of potential Omicron carriers. Worse, Bell was placed in a cell next to another incarcerated person who had contracted COVID. He has noticed the DOC staff numbers dwindle as more of its members test positive for COVID and refuse the vaccine.

38. When incarcerated persons have severe medical issues, including grave symptoms of COVID-19, the DOC often shows indifference to their plight. Indeed, four incarcerated persons have already passed away from COVID while in Rikers custody.

39. Bell recounts that, in December 2021, a fellow incarcerated person who was 55 years old had been continuously complaining of his worsening medical condition. He was ignored by DOC staff. The incarcerated person eventually collapsed as a result, cracking his skull on the ground, as

Bell and other incarcerated persons looked on. DOC Medical took two hours to respond to the incident. By then, the incarcerated person had died. This story has been corroborated by the press.<sup>48</sup>

40. Petitioner Bell has suffered from asthma since he was a child. To address his asthma, Petitioner Bell has requested masks and an inhaler. However, Petitioner Bell reports that *no incarcerated person in his facility is provided with a mask outside of visitation hours*. Moreover, it took the DOC five months to provide Petitioner Bell with an inhaler. During that time, he suffered an asthma attack. It is well-documented that numerous pre-existing conditions, including asthma, act as a co-morbidity with COVID-19, substantially increasing the likelihood of severe illness or death if COVID-19 is contracted.<sup>49</sup> Petitioner Bell's vulnerable condition in light of his brain injury that has not been sufficiently treated also continues to put him at substantial risk from grave consequences were he to get COVID-19.

### CLASS ACTION ALLEGATIONS

41. Petitioner incorporates by reference into this Petition, as if fully set forth herein, the Memorandum of Law in Support of Petitioner's Article 78 Mandamus to Compel Petition, including all facts alleged and arguments contained therein.
42. Petitioner brings this Article 78 Mandamus to Compel as a class action pursuant to Article 9 of the CPLR.
43. Petitioner Raymond Bell seeks to represent himself and a putative class of similarly situated individuals consisting of all current and future pre-trial detainees incarcerated in New York City Department of Correction facilities at Rikers Island who have been

---

<sup>48</sup> Jan Ransom, *On Rikers, Brooklyn Man Becomes Latest Detainee to Die in Custody*, N.Y. TIMES, Dec. 15, 2021, <https://www.nytimes.com/2021/12/15/nyregion/rikers-island-deaths.html>.

<sup>49</sup> *People with Certain Medical Conditions*, CENTER FOR DISEASE CONTROL AND PREVENTION (Dec. 14, 2021), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html>.

or will be denied their due process rights under the New York State Constitution based on the New York City Department of Correction's failure to manage the present and ongoing Department of Correction staffing shortage and the spread of the Omicron variant to those incarcerated at Rikers Island.

44. All five requirements of CPLR § 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. 55<sup>th</sup> St. Assoc., L.P.*, 24 NY3D 382, 399 (2014). Approximately 4500 potential class members are incarcerated in the custody of the DOC at Rikers Island at the time of filing. Upon information and belief, all or a large percentage of individuals in DOC custody are class members because of Omicron's high contagiousness and DOC's widespread failure to provide adequate staffing to address its ongoing spread. 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 Respondent's failure to manage its ongoing staffing shortage and the spread of the Omicron variant to those incarcerated at Rikers Island violate class members' due process rights under Art. 1, § 6 of the New York State Constitution.
  - c. *Typicality*. The claims of Petitioner Raymond Bell are typical of the putative class. The mandamus claim of Petitioner Bell is the same as the claim of the putative class members because it arises from the same failure of Respondent to manage the ongoing staffing problem and the rise of the Omicron variant.



- d. *Adequacy of Representation.* Named Petitioner Raymond Bell will protect the interests of the putative class fairly and adequately because he faces significant harm from DOC's failure to adequately staff Rikers Island and prevent the spread of the Omicron variant due to his preexisting conditions. His interest is not antagonistic to those of other class members. Putative class counsel has been continuously recognized for the quality of his legal representation and has many years of experience in complex 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.

**COUNT I – VIOLATION OF DUE PROCESS PURSUANT TO ARTICLE I, § 6 OF THE  
NEW YORK STATE CONSTITUTION**

45. Petitioner incorporates by reference the allegations contained in the preceding paragraphs as if set forth fully herein.

46. Art. 1, § 6 of the New York State Constitution provides: “No person shall be deprived of life, liberty or property without due process of law.”

47. The practices, policies, acts, and omissions alleged in this Complaint are in violation of Art. 1, § 6 of the New York State Constitution in that they deprive petitioner of his right to be free from deprivation of liberty without due process of law. If appropriate injunctive relief that is necessary to correct the unconstitutional conditions of confinement is not granted, the harms suffered will be irreparable, as the unconstitutional policies, practices and conditions will continue to exist for the foreseeable future.

**PRAYER FOR RELIEF**

1. Wherefore, petitioners request the following relief:
2. A Mandamus to Compel pursuant to Article 78.
3. A preliminary injunction, pursuant to New York Civil Practice Law and Rules (“CPLR”) § 6311, forbidding the admission of new incarcerated persons to any Rikers Island detention facility, and the diversion of incarcerated persons to at home confinement or other sufficiently staffed facilities as appropriate in light of the exacerbated conditions caused by COVID-19, the ongoing staffing crisis, and the inhumane conditions at Rikers; and
4. A temporary restraining order, pursuant to CPLR § 6313(a), preserving the status quo pending the Court’s determination of the preliminary injunction motion by enjoining the Department of Corrections from admitting new incarcerated persons to any Rikers Island detention facility, and requiring the diversion of incarcerated persons to at home confinement or other facilities as appropriate in light of the exacerbated conditions caused by COVID-19, the ongoing staffing crisis, and the inhumane conditions at Rikers.
5. All other appropriate relief as the Court deems just and proper.

Dated: New York, New York  
December 30, 2021

*/s/Krishnan Padmanabhan*  
**WINSTON & STRAWN LLP**  
Krishnan Padmanabhan  
Alexandra Kushner  
Evan Miller  
Sean Anderson  
200 Park Avenue  
New York, NY 10166  
Tel.: 212-294-6700  
*Attorneys for Petitioners*

**VERIFICATION**

Krishnan Padmanabhan affirms under penalty of perjury and in accordance with CPLR § 2106 that, pursuant to CPLR § 3020(d)(3), I am the attorney for petitioner in this matter, that petitioner is not in the County where I have my office, that I have read the annexed Verified Petition and that I am familiar with the facts alleged herein, which I know to be true, except as to those matters alleged upon information and belief, which matters I believe to be true. My knowledge comes from my representation of petitioner with respect to the issues presented in this special proceeding.

Dated: New York, New York  
December 30, 2021

*/s/Krishnan Padmanabhan*  
**WINSTON & STRAWN LLP**  
Krishnan Padmanabhan  
Alexandra Kushner  
Evan Miller  
Sean Anderson  
200 Park Avenue  
New York, NY 10166  
Tel.: 212-294-6700  
*Attorneys for Petitioners*