

Bell v Adams
2022 NY Slip Op 31962(U)
June 23, 2022
Supreme Court, New York County
Docket Number: Index No. 151715/2022
Judge: Carol R. Edmead
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. CAROL EDMEAD PART 35

Justice

-----X

RAYMOND BELL,

Plaintiff,

- v -

ERIC ADAMS, NEW YORK CITY DEPARTMENT OF
CORRECTION, LOUIS MOLINA, NEW YORK CITY BOARD
OF CORRECTION, NEW YORK STATE COMMISSION OF
CORRECTION, NEW YORK STATE DEPARTMENT OF
CORRECTIONS AND COMMUNITY SUPERVISION

Defendant.

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INDEX NO. 151715/2022
MOTION DATE 6/15/2022
MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

Upon the foregoing documents and in accordance with the “So-Ordered” Transcript June 15, 2022 (Anne F. Brown, Court Reporter), it is hereby

ORDERED AND ADJUDGED AND DECLARED that the application of Petitioner Raymond Bell by Order to Show Cause seeking, *inter alia*, a preliminary injunction, pursuant to CPLR Section 6311, forbidding the admission of new incarcerated persons to any Rikers detention facility (Motion Seq. 001) is denied in its entirety; and it is further

ORDERED AND ADJUDGED AND DECLARED that the cross-motions of Respondents Eric Adams, New York City Department of Correction, Louis A. Molina, and the New York City Board of Correction (“City Respondents”) and Respondents New York State Commission of Correction and New York State Department of Corrections and Community

Supervision (“State Respondents”) for an order pursuant to CPLR §§ 3211(a)(7) and 7804(f) dismissing the petition for failure to state a claim are granted, and this proceeding is dismissed in its entirety; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for City Respondents shall serve a copy of this Order, along with notice of entry, on all parties within ten (10) days.

MEMORANDUM DECISION

In this hybrid Article 78/declaratory relief proceeding, Petitioner Raymond Bell, on behalf of himself and all others similarly situated, moves by Order to Show Cause (OSC) for an Order:

- (i) Certifying the following class pursuant to CPLR Section 901(a):
 - a. All current and future pre-trial detainees incarcerated in New York City Department of Correction facilities at Rikers Island who have been 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 COVID-19 to those incarcerated at Rikers Island.;
- (ii) Designating Winston & Strawn LLP as class counsel;
- (iii) Issuing an order granting the following remedy:
 - a. restraining Respondents from admitting any new pre-trial detainees to Rikers Island pending resolution of the instant complaint for declaratory relief and Article 78 petition; and
- (iv) Ordering Respondents to provide proof of substantial compliance with the above remedies within one week of its order; and
- (v) Imposing public health and safety measures as appropriate.

(Motion Seq. 001).

Respondents Eric Adams, New York City Department of Correction, Louis A. Molina, and the New York City Board of Correction oppose Motion Seq. 001 in its entirety and cross-move for an order pursuant to CPLR §§ 3211(a)(1), (7) and 7804(f) dismissing the underlying petition for failure to state a cause of action, in that the requested relief would be ultra vires, and the petition is barred by the doctrine of non-justiciability.

Respondents New York State Commission of Correction and New York State Department of Corrections and Community Supervision also oppose and separately cross-move for an order pursuant to CPLR §§ 3211(a)(7) and 7804(f) dismissing the underlying petition and

the action against them on the grounds that the Petition fails to state a claim against them upon which relief may be granted.

BACKGROUND

Petitioner, an individual currently incarcerated at Rikers Island (“Rikers”), commenced this hybrid Article 78/declaratory relief action, on behalf of himself and all others similarly situated (hereinafter referred to as the “putative class”), seeking injunctive relief, declaratory judgments, and mandamus to address the staffing crisis affecting the conditions at Rikers. The Respondents to this action are City Respondents: Eric Adams, the Mayor of New York City responsible for oversight of all city government operations; the New York City Department of Correction (the “City DOC”), the agency responsible for the care and custody of incarcerated persons at Rikers; its commissioner, Louis A. Molina; the New York City Board of Correction (the “City Board”), a non-judicial oversight board created to ensure compliance with conditions of confinement and healthcare at city correctional facilities; and State Respondents: the New York State Commission of Correction (the “State COC”), a three-member commission responsible for promulgating standards for the safe management of New York state correctional facilities, and the New York State Department of Corrections and Community Supervision (the “State DOCCS”), the state agency with control over incarcerated persons in New York state detention facilities.

In the underlying petition, Petitioner seeks (i) declaratory judgments pursuant to CPLR 3001 finding that Respondents’ actions and omissions have violated the constitutional rights of incarcerated persons within their charge, and that in light of Respondents’ current staffing policies, procedures, and oversight methods, the constitutional rights of incarcerated persons at

Rikers cannot be guaranteed; and (ii) an order of mandamus compelling Respondents to, within 30 days of the Court's order, facilitate alternative corrections to their present policies and/or procedures sufficient to remedy the constitutional violations until Respondents have demonstrated to the Court that Effective Staffing¹ has been achieved. Now before the Court is Petitioner's application for a preliminary injunction pursuant to CPLR 6311 restraining Respondents from admitting any new pre-trial detainees to Rikers pending the resolution of the petition.²

The staffing crisis affecting the conditions and inmate safety at Rikers has been well documented over the past decade. In 2012, a class of former and current incarcerated persons at Rikers commenced a federal action in the Southern District of New York, alleging they had been subjected to unlawful treatment by City DOC staff in violation of their rights under both the United States and New York State Constitutions. (*Nunez v City of New York*, 1:11-cv-05845-LTS-JCF [S.D.N.Y.]) After the class's claims were verified by an investigation conducted by the United States Department of Justice, the parties brokered a Consent Judgment approved by the Southern District in October 2015. (*Id.*, ECF 249.) The Consent Judgment mandated, *inter alia*, that the City DOC maintain proper staffing levels; "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.*) The Southern District

¹ Petitioner defines Effective Staffing as (1) an appropriate number of staff for the population detained at Rikers; (2) staff that report to work when they are required to do so; (3) staff that are allocated to appropriate positions for the needs of the population; and (4) staff that perform their work as directed and required; in order to guarantee the constitutional rights of all incarcerated persons at Rikers. (NYSCEF doc No. 1, ¶ 2.)

² In reply, Petitioner clarifies that the injunctive relief seeks a "pausing (of) new increases in the population at Rikers while unconstitutional conditions persist", to be effected by detaining new inmates at alternative facilities. (NYSCEF doc No. 40 at 1.)

appointed Steve J. Martin as an independent federal monitor (the *Nunez* Monitor) to ensure compliance with the Consent Judgment.

Since being appointed, the *Nunez* Monitor has released thirteen reports that have detailed the deteriorating conditions at Rikers. The *Nunez* Monitor's Twelfth Report released December 3, 2021, (the "Twelfth *Nunez* Report")³ found that the City DOC had failed to demonstrate compliance with the requirements of the Consent Judgment. The Twelfth *Nunez* Report described the City DOC's current staffing practices and procedures as ineffective, noting they had resulted in a "persistently dysfunctional system" with substantial percentages of staff members routinely failing to report for work. (*Id.* at 9.) The *Nunez* Monitor detailed several practices caused by insufficient staffing that led to unsafe conditions at Rikers, including: "Inadequate supervision of line Staff and facility leadership who do not possess the requisite expertise and ability to lead, . . . Staffing practices and procedures that have resulted in ineffective deployment across the agency, . . . [and] [l]imited, and extremely delayed, accountability for Staff misconduct." (*Id.* at 11-12.)

On March 16, 2022, after the instant petition was filed, the *Nunez* Monitor released the Thirteenth *Nunez* Report.⁴ The Thirteenth *Nunez* Report found that that conditions at Rikers have continued to decline and describes an atypical rate of violent incidents that is "seven to eight times higher than those observed in other correctional systems." (*Id.* at 15.) In Section II of the Thirteenth *Nunez* Report, entitled "Persistently Unsafe Conditions Caused by Deficient Staffing

³ 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.

⁴ The Thirteenth *Nunez* Report:
<https://storage.courtlistener.com/recap/gov.uscourts.nysd.383754/gov.uscourts.nysd.383754.438.0.pdf>

& Security Practices,” the *Nunez* Monitor explicitly linked the atypical violence rate to the City DOC’s failure to effect sufficient staffing:

“The Department’s facilities are unsafe. The use of force and violence in the jails are inextricably linked to the Department’s mismanagement of staffing and its significant security failures...Incarcerated individuals are under extraordinary stress due to the surrounding chaos and violence in the jails, a disruption in basic services, and because case processing has become unreasonably protracted.”

(*Id.* at 39.)

The Thirteenth *Nunez* Report concluded with several recommendations aimed at accelerating reform at Rikers, including the creation of adequate staffing practices, addressing security practices, and prioritizing the safe management of incarcerated persons and staff accountability.

Related Litigation

As to be expected, the persistent problems detailed by the *Nunez* Monitor have been the subject of extensive litigation, both at the state and federal level, beyond both *Nunez* and the instant proceeding. *In re Agnew v New York City Dep’t of Corrections* is an Article 78 proceeding filed in this Court (Bronx County) where a group of incarcerated persons at Rikers seek mandamus relief directing the City DOC to comply with their medical care obligations, citing to the extensive absenteeism among City DOC staff as the principal reason so many detainees have been denied access to medical care.^{5 6} (*In re Agnew*, Index No. 813431/2021E;

⁵ In *Agnew*, the petitioners sought, and the Court granted, a class certification for “all current and future persons incarcerated in New York City Department of Correction facilities who have been or will be denied access to medical care based on [its] failure to discharge its mandatory duties.”

⁶ Other class actions beyond *Nunez* and *Agnew* include the certified class action *Benjamin v Schiraldi*, 75-cv-0378 (SDNY) (challenging environmental conditions of confinement generally) and two putative class actions, *Azor-El v. City of New York*, 20-cv-022558 (SDNY) (challenging COVID-19 policies and staff shortage exacerbation) and *Dunn v. City of New York*, 21-cv-9012 (SDNY) (conditions of confinement and staff shortage exacerbation).

Petitioner's Memorandum of Law, NYSCEF doc No. 6 at 10). By order dated December 3, 2021, the judge overseeing *Agnew*, the Hon. Elizabeth Taylor, directed the City DOC to:

“comply with its duties under state and local law to provide incarcerated people in New York City jails with access to medical services, ... and to discharge its ministerial duties to safely keep [lawfully committed persons] by providing sufficient security for movement by incarcerated persons to and from health service areas and not prohibiting or delaying incarcerated persons' access to care, appropriate treatment or medical or dental services.”

(*id.*, NYSCEF doc No. 82).

However, on February 1, 2022, the petitioners moved for a civil contempt order against the City DOC based on its violation of the above order, seeking compensatory fines for the number of instances in which detainees missed medical appointments between December 2021 and January 2022 in contravention of Judge Taylor's December 3, 2021 order, along with reasonable attorneys' fees. (*Id.*, NYSCEF doc No. 86.) After finding that petitioners had demonstrated by convincing evidence that the City DOC failed to comply with the prior order, Judge Taylor held a hearing to determine whether the City DOC had put forth a defense to civil contempt. (NYSCEF doc No. 126).

On May 17, 2022, Justice Taylor granted the petitioners' contempt motion in full, holding that the City DOC, while making a good-faith effort at compliance, had nonetheless failed to comply with its duties to provide inmates with access to health services. (*Id.*) Judge Taylor then ordered that, should the City DOC fail to provide “proof of substantial compliance” within 30 days, the City DOC shall pay a compensatory fine of \$100,000 per missed escort to the infirmary from the running of the December 3, 2021 Order through January 2022. (NYSCEF doc No. 126.)

Key Recent Developments in Nunez

During the pendency of this proceeding on April 19, 2022, the U.S. Attorney's Office for the Southern District, an intervening plaintiff in *Nunez*, filed a letter expressing a lack of confidence in the City DOC's ability to remedy the conditions at Rikers, and indicating that it may seek the appointment of a federal receiver:

“The jails are in a state of crisis, inmates and staff are being seriously injured, and action is desperately needed now. Based on our experience over the last six years and the sustained noncompliance with key Consent Judgment provisions and the three subsequent Remedial Orders entered by this Court, our Office is very concerned about whether the Department and City have the ability, expertise, and will to swiftly make the changes necessary to bring true reform to this deeply troubled agency. Absent a commitment to expeditiously make the dramatic systemic reforms identified by the Monitor and to bring in corrections experts from outside the Department to revamp the agency's operations and staffing practices, we will be left with no other option but to seek more aggressive relief, which could involve seeking the appointment of a receiver with independent authority to implement sweeping reforms and to take all necessary actions to comply with the Consent Judgment and Remedial Orders and implement the Monitor Recommendations.”

(Case 1:11-cv-05845-LTS-JCF, Document 444).

On April 21, 2022, the judge overseeing *Nunez*, U.S. District Judge Laura Taylor Swain, issued an order directing the DOC Commissioner to appear at a status conference to discuss the “gravity and urgency of the security situation” outlined by the U.S. Attorney's Office, and “the consequent need for clarity as to the planned changes and implementation thereof.” (*Id.*, Document 446.)

On April 26, 2022, Judge Swain held a conference with Commissioner Molina, the *Nunez* Monitor, and lawyers from the U.S. Attorney's Office in attendance. Judge Swain issued an order giving the City three weeks, until May 17, 2022, to create a revised proposed implementation plan in tandem with the *Nunez* Monitor and set a conference for May 24, 2022 to discuss whether the proposed plan should be adopted by court order (*id.*, Document 451).

On May 17, 2022, the *Nunez* Monitor submitted the City's revised implementation plan (the "Action Plan"), (*id.*, Document 454). The plan contains the following seven core components:

- Initiatives to Address the Immediate Risk of Harm, which includes actions to be taken immediately such as the revamping of the City DOC's leadership structure and improvement of all City DOC staff utilization.
- Citywide Initiatives to Support Reform, which includes strategies to improve the functioning of various adjacent City agencies that impact the City DOC's ability to reform (*e.g.*, ordering agencies to expedite case processing for long-term detained individuals).
- Staffing Practices, which includes the appointment of a Staffing Manager to develop and implement an effective long-term staff management system, and the creation of an electronic system to track staff assignments and status.
- Security Practices, which includes the recent appointment of a Security Operations Manager, an individual with deep expertise in corrections who has been hired to develop initiatives to correct long-standing deficiencies in the City's approach to security and response to incidents.
- Managing People in Custody, which includes the recent appointment of a Classification Manager who has been hired to develop and implement initiatives to properly classify incarcerated persons according to their risk of institutional misconduct, decrease inmate intake time, and manage those who commit violence while in custody.
- Staff Accountability, which includes additional resources to expedite resolutions of cases involving egregious conduct and other disciplinary actions against City DOC staff members.
- Assessment of Compliance and Reporting, which includes a shift to more frequent reporting among all parties to the Southern District about the scope of issues and the progress made therein, so that the court can determine whether the Action Plan is effective and sufficient on an expedited basis.

(*id.* at 11-12).

In contrast to the thirteen previous *Nunez* reports, the *Nunez* Monitor struck a tentatively optimistic tone in his letter to Judge Swain accompanying the Action Plan. The *Nunez* Monitor described the Action Plan as "a well-informed effort to identify specific immediate steps the city

and Department of Correction must take to reduce the risk of harm in the city's jails right now and to lay the groundwork that begins to disentangle the decades of dysfunction and mismanagement that characterizes this agency." (*Id.* at 1.) The *Nunez* Monitor noted that the Action Plan "does not solve the long-standing problems or suddenly create the desired outcomes," but also reasoned that "there is simply no extant mechanism that can achieve immediate reform" given "the level of dysfunction, mismanagement, and decrepit physical plants that exist" requiring a complex and extended remediation process. (*Id.*)

The *Nunez* Monitor stated to Judge Swain that, in light of the Action Plan, which in contrast to previous City efforts, contains specific steps "to confront and unpack the bureaucratic quagmires and unreasonable policies and procedures," a federal receivership was likely not immediately necessary. (*Id.* at 10.) The *Nunez* Monitor argued that federal intervention was not required at this juncture as "an opportunity still exists for the City and Department to exercise their respective authority in overcoming these obstacles *if* they commit, utilize, and dedicate aggressive, vigorous, and creative strategies" to the problems at Rikers, and contended that the Action Plan could ultimately provide "the necessary foundation for sustainable institutional reform." (*Id.* at 5 [emphasis original].)

At the May 24, 2022 conference, the *Nunez* Monitor reiterated his support for the substance of the Action Plan but cautioned that concerns remained regarding the means through which the City DOC could effect the reforms, given the numerous legal, procedural, and contractual barriers that have hamstrung the City in its prior attempts to reform Rikers. The *Nunez* Monitor also recommended that the Action Plan be revised to incorporate mechanisms for concrete measurements of progress so that the court can track whether the Action Plan is working as intended.

Assistant U.S. Attorney Jeffrey Powell, who appeared on behalf of the Southern District, expressed concern that the Action Plan did not include more specific, short-term timelines for action items, and stated that dramatic steps such as executive orders may be required to overcome the barriers detailed by the *Nunez* Monitor. Mr. Powell stated that should the Action Plan fail to lead to concrete improvement in the short term, a receivership may still be necessary. Counsel representing the plaintiff class agreed, stating that the Action Plan did not appear to provide a tenable alternative to receivership given the outstanding issues as to whether, for instance, the City could circumvent laws barring the City from interfering with union contracts and from hiring outside correction units for certain positions. Counsel concluded that the plaintiffs would continue to prepare a receivership application should the Action Plan fail to effect change. Commissioner Molina disputed Mr. Powell and plaintiffs' counsel's characterization of the Action Plan, arguing that there was not a sufficient factual basis for the court to order a receivership at this juncture, and that the City foresaw no legal obstacles to effecting the changes outlined in the Action Plan.

After hearing the parties' arguments, Judge Swain echoed plaintiffs' concern that legal barriers outside the City's control may impact timely implementation of the Action Plan.⁷ Judge Swain then directed the City and the *Nunez* Monitor to further confer with the federal government's input and to submit, by June 10, 2022, a revised Action Plan incorporating mechanisms for real time concrete disclosure and measurements of progress, as well as mechanisms for handling any prospective legal barriers that may arise with respect to the City's

⁷ Judge Swain described the barriers as "state laws, regulations, labor or contractual issues, DOC requirements, procurement issues, [and] contractual issues" and opined that "no commitment on the part of the Commissioner of the City, regardless of how genuine it may be, can overcome some of these entrenched legal measures that will inevitably arise, hence our over-arching concern about the viability of the action plan, if the City and this Department do not have a structure and the authority to manage these." (*See* May 24, 2022 Hearing Transcript at 11-12, l: 14-1.)

reform of Rikers. In the interim, Judge Swain directed the City to continue proceeding with implementing the changes proposed and contemplated by the Action Plan.

On June 10, 2022, the City submitted its revised plan (“the Final Action Plan”) following discussions with the Monitoring Team and the federal government. (*Id.* Document 462). In his letter to Judge Swain accompanying the Final Action Plan, the *Nunez* Monitor reiterated that while concerns remained, the Final Action Plan provides a viable pathway forward that should be implemented immediately. (*Id.*).

Plaintiffs’ counsel submitted a separate letter June 10, 2022, expressing frustration that the Final Action Plan remained overly vague with respect to deadlines and commitments for certain revised policies, and did not commit the City to seeking a waiver of state or local laws to expand its hiring practices. (*Id.*, Document 464) Counsel advised that the plaintiffs did not object to the Final Action Plan being entered by the court but would separately be moving for contempt and for the appointment of a federal receiver. (*Id.*)

On June 14, 2022, Judge Swain issued an order approving and entering the Final Action Plan (NYSCEF doc No. 52).⁸ In light of the City’s representation that it foresaw no legal barriers to implementing the Final Action Plan, Judge Swain denied plaintiffs’ request to move for contempt, but set a conference for November 17, 2022 to discuss whether, based on the City’s (lack of) progress in implementing the Final Action Plan, a motion for contempt is warranted (*id.*).

Procedural History

⁸ City Respondents entered a copy of Judge Swain’s June 14, 2022 Order to the record of this proceeding pursuant to this Court’s directive at oral argument.

The petition now before the Court is the second application filed by Petitioner seeking Court intervention with respect to the crisis at Rikers.

On December 30, 2021, Petitioner filed a petition with the City DOC named as the sole respondent. (the “First Petition”, Index No. 150007/2021). The First Petition did not seek the declaratory relief sought herein, but similarly sought a writ of mandamus against the City DOC, as well as a preliminary injunction “forbidding the admission of new incarcerated persons to Rikers and diverting incarcerated persons to at-home confinement or other facilities,” along with a temporary restraining order (TRO) enjoining the City DOC from admitting new incarcerated persons pending the Court’s determination of the preliminary injunction motion. Petitioner moved by Order to Show Cause for an order certifying Petitioner’s class of current and future Rikers detainees, granting the preliminary injunction and TRO, and compelling the City DOC to provide proof of substantial compliance within one week of the Court’s order. (the “First OSC”, NYSCEF doc No. 3.)

On January 7, 2022, the Court held a Microsoft Teams conference to discuss the First OSC and found that a combination of jurisdictional and procedural issues constrained its ability to take action with respect to the entirety of the relief sought in the First Petition. (NYSCEF doc No. 8.) By Order dated January 7, 2022, the Court held that it lacked jurisdiction to grant the preliminary injunction given that Rikers is currently the only facility available to the City DOC for the detainment of incarcerated persons awaiting trial.⁹ Therefore, an order forbidding the admission of detainees to Rikers would effectively override the orders of this Court’s concurrent

⁹ At the Teams Conference, counsel for the City DOC clarified that there is also a floating barge in the Bronx used to house a limited number of detainees. (NYSCEF doc No. 9 at 23, l: 8-9 [“...the City no longer has borough facilities. All of our detainees are kept on Rikers or we have a barge off the Bronx.”].) Counsel for Petitioner

criminal courts and/or courts of lesser jurisdiction remanding individuals to the City DOC's custody. (*Id.* at 2-3.)

The Court further noted that procedurally, Petitioner erred in naming the City DOC as the sole Respondent, given that the City DOC does not make the determination to detain persons to Rikers but rather does so in effecting the aforementioned orders remanding pre-trial detainees to the City DOC's custody. During the Teams Conference, the City DOC represented that it does not have authority to unilaterally move detainees to other facilities, but rather can do so only with approval from a higher authority. (*Id.* at 3-4.) The Court further held that, *assuming arguendo* it was able to reach the merits of the First OSC, Petitioner's application for injunctive relief was improper as it essentially sought preliminarily the ultimate relief in the First Petition, i.e., an order of mandamus compelling the City DOC to act in response to the crisis at Rikers. (*Id.* at 4-5.)

The Court concluded that while it was mindful of the conditions at Rikers described in the First Petition, it was constrained to "Decline to Sign" the First OSC. The Court dismissed the First Petition without prejudice, affording Petitioner the opportunity to commence a new proceeding remedying the jurisdictional and procedural defects of the First Petition. (*Id.*)

On February 25, 2022, Petitioner commenced the proceeding now before the Court, with Mayor Adams, the City DOC's Commissioner Molina, the City Board, the State COC, and the State DOCCS named as additional respondents. As discussed, the instant petition seeks

acknowledged that the barge was not a tenable alternative to house the entire pretrial detainee population. (*Id.* at 23-24, l: 25-4 ["...the problem is that once someone is remanded to DOC's custody, we are saying that their problem is that they only have one facility, let's put the barge aside, Rikers. So therefore, they have no other option"].) Accordingly, the barge has been discounted by all parties as a viable alternative location.

additional declaratory relief and an order of mandamus compelling Respondents to implement Effective Staffing within 30 days. The same day, Petitioner filed the OSC now before the Court, seeking class certification, a preliminary injunction restraining Respondents from admitting new detainees to Rikers pending resolution of the underlying petition,¹⁰ an order compelling Respondents to provide proof of substantial compliance of the same within one week, and an order “imposing public health and safety measures as appropriate.” (Motion Seq. 001.) While the OCS did not formally seek a TRO, it sought an order enjoining the admission of new pre-trial detainees to Rikers pending the hearing and determination of the motion for a preliminary injunction (“the stay application”).

On March 3, 2022, the Court initialized the OSC, and scheduled a Microsoft Teams Conference on March 15, 2022, to discuss the stay application. (NYSCEF doc No. 10.) The Court’s initialization directed Respondents to file oppositions with respect to the stay application only on or before March 10, 2022.

On March 10, 2022, the City and State Respondents filed oppositions advancing initial arguments against Petitioner’s motion for a preliminary injunction. (NYSCEF doc Nos. 11- 16.) Both the City and State Respondents requested additional time to more fully respond to the merits of Petitioner’s motion.

On March 11, 2022, the Court held another Teams Conference to clarify that the purpose of the March 15, 2022, appearance was to discuss the stay application pending further submissions and an eventual determination on the preliminary injunction motion. During the

¹⁰ In contrast to the First Petition, the preliminary injunction sought herein no longer requests “the diversion of incarcerated persons [at Rikers] to at-home confinement,” but rather seeks to remand incarcerated persons in alternative facilities pending the resolution of the petition.

March 11, 2022, Teams Conference, counsel for Petitioner acknowledged that interimly demanding the cessation of any new pre-trial detainees to Rikers was untenable at this juncture, rendering the stay application moot. Counsel for City and State Respondents advised that in addition to opposing the preliminary injunction, they would both cross-move to dismiss the proceeding in its entirety.

Accordingly, by Interim Order dated March 11, 2022, the Court cancelled the March 15, 2022, appearance and directed the parties to proceed with filing a briefing schedule for further submissions. (NYSCEF doc No. 17.)

On March 15, 2022, the parties stipulated to a briefing schedule on the preliminary injunction motion and Respondents' cross-motions to dismiss, with Petitioner's application for class certification deferred¹¹ pending the Court's determination on the preliminary injunction. (NYSCEF doc No. 18.)

Counsel adjourned their briefing schedule by stipulation dated April 14, 2022. (NYSCEF doc No. 39.) and further adjourned their schedule by stipulation dated May 11, 2022. (NYSCEF doc No. 44). Final submissions were filed May 27, 2022, and oral argument was held June 15, 2022. (NYSCEF doc No. 53.)

Petitioner's Arguments for a Preliminary Injunction

¹¹ Given that the parties stipulated in their briefing schedule that Petitioner is not asking the Court to consider class certification at this juncture (NYSCEF doc No. 18), it is critical to note that the only presently known petitioner to this matter is Raymond Bell. Therefore, the determinations as to the relief sought herein relate **only** to Mr. Bell's individual claims.

Pursuant to CPLR § 6301, Petitioner seeks an order restraining Respondents from admitting any new pre-trial detainees at Rikers pending the resolution of the underlying petition for declaratory and mandamus relief. As discussed *supra*, the injunctive relief Petitioner seeks is premised on his allegation that Respondents' failure to achieve Effective Staffing has created conditions that deprive Petitioner of his State constitutional right to Due Process. As Petitioner recognizes, for this Court to grant the injunctive relief he seeks, he must demonstrate: (1) a likelihood of ultimate success on the merits of his constitutional Due Process claim; (2) the prospect of irreparable injury should the Court withhold the injunctive relief; and (3) that the balance of equities weighs in Petitioner's favor. (*See Doe v Axelrod*, 73 NY2d 748, 750 [1988].) Below, the Court details Petitioner's arguments as to each element.

Petitioner's Likelihood of Success on his Constitutional Due Process claim

Article 1, Section 6 of the New York State Constitution provides, "No person shall be deprived of life, liberty, or property without due process of law." For purposes of determining whether prison conditions violate a pre-trial detainee's Due Process rights, the Court of Appeals has held that the State Constitution requires "a balancing of the harm to the individual resulting from the conditions imposed against the benefit [of the regulation] sought by the government." (*Cooper v Morin*, 49 NY2d 69 [1979].) Subsequent courts have recognized that this balancing test traditionally requires an analysis weighing the harm to a petitioner's health caused by his continued detention against the government's interest in ensuring the pre-trial detainee's presence in court as required for the disposition of his case. (*See People ex rel. Coleman v Brann*, 68 Misc. 3d 204 [Bronx Sup. Ct. 2020].)

To demonstrate the ongoing harm Petitioner faces at Rikers Island, Petitioner borrows from the framework analyzing Federal Due Process claims under the Fourteenth Amendment,

relying extensively on this Court’s decision in *People ex rel. Burse v Schiraldi* (2021 Slip Op. 21351 [New York County Sup. Ct. 2021].) In *Burse*, the Court explained that, to establish a condition-of-confinement claim under the Fourteenth Amendment’s Due Process clause, a pre-trial detainee must satisfy two prongs. The first is that the challenged prison conditions constitute an “objective deprivation” of the right to due process—that is, the challenged conditions pose an unreasonable risk of serious damage to the detainee’s physical and mental health. (*Burse*, 2021 Slip Op at *11.) As to the second prong, the *Burse* Court explained that a petitioner must show government officials acted with “deliberate indifference” to the challenged prison conditions. (*Id.*; see also *Darnell v Pineiro*, 849 F3d 17, 30 [2d Cir. 2017].) Petitioner contends that the conditions at Rikers meet both prongs.

Petitioner alleges that the Effective Staffing crisis at Rikers has forced Petitioner to live in squalid and unsanitary conditions at an increased risk of exposure to COVID-19,¹² to face a persistent risk of violence at the hands of other inmates, and to go without medical attention or basic health care services despite the continued risk of COVID-19¹³ (NYSCEF doc No. 3). Petitioner cites findings from the Twelfth *Nunez* Report that indicate underlying institutional problems at the facility in responding to or controlling prison violence and in adequately protecting detainees and inmates from COVID-19.¹⁴

¹² Petitioner cites both personal knowledge of the conditions and media reports that describe what a New York City Councilperson experienced during visits made to Rikers Island. (See Graham Rayman, Rikers Island Conditions Still Horrific, Say NYC Council Members After Tour, N.Y. DAILY NEWS, Jan. 7, 2022, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-council-visit-20220107-6kz33mvsmvgizcmwyj4grflaxq-story.html>).

¹³ Petitioner cites “DOC internal records” that demonstrate 1,061 instances (out of 7,070) in which an inmate was not brought in for a medical appointment. Petitioner does not cite to the records themselves, but to a New York Post article that mentions an affidavit filed in Bronx County Supreme Court. The article does not name who filed the affidavit or in what court case. (See Gabrielle Fonrouge, NYC DOC officials admit inmates aren’t getting medical care, court records show, NYPOST, Feb. 1, 2022, <https://nypost.com/2022/02/01/nyc-doc-officials-admit-inmates-arent-getting-medical-care-court-records>).

¹⁴ The extent to which the Twelfth *Nunez* Report attributes these institutional problems to the strain that COVID-19 has placed on the City DOC’s staffing levels is difficult to ascertain. The Thirteenth *Nunez* Report, which as noted

In addition, Petitioner cites overcrowded conditions upon entering the Rikers intake area, a lack of quarantine or sanitation procedures for COVID-19-positive inmates, two attacks by other detainees he experienced, and the personal risk he faces from untreated medical conditions, as sources of unreasonable physical danger at Rikers.¹⁵ (NYSCEF doc No. 3 at 3-5; 11-15.) Petitioner further alleges that the Effective Staffing issues have prevented detainees from attending the very court appearances that may lead to their release from the facility and the challenged conditions, leaving detainees awaiting trial in a state of limbo with a lack of access to move their cases forward in the court system.¹⁶ Petitioner argues that the present conditions at Rikers—the untenable living conditions, the documented violence taking place, and the inability to attend medical appointments and court appearances—pose an unreasonable risk of serious damage to Petitioner’s physical and mental health, satisfying the “objective deprivation” prong cited in *Burse*.

Petitioner further argues that he has also satisfied the “deliberate indifference” prong. Despite having actual knowledge of the “deteriorating conditions” at the prison as detailed in the Twelfth (and now, the Thirteenth) *Nunez* Report, Petitioner argues that the City DOC and its Commissioner have failed to take meaningful action. As further evidence of Respondents’ knowledge of the crisis at Rikers, Petitioner also cites to a letter written by Vincent Schiraldi, the City DOC’s former Commissioner, to various public defender and prosecution offices on December 21, 2021, writing that the “data indicates that the risk to the human beings in our

was filed after the instant petition, describes the pandemic as “a crisis on top of a crisis” that “has exacerbated the serious [staffing] issues facing the agency.” (Thirteenth *Nunez* Report, *supra* note 3 at 7-8).

¹⁵ Though Petitioner makes numerous assertions in his Memorandum of Law that are based on personal knowledge of the facility, Petitioner has not submitted an accompanying affidavit.

¹⁶ Petitioner does not explicitly tie this claim to his argument that Respondents have violated his due process rights. However, as discussed *supra*, under the traditional balancing test for violations of pre-trial detainees’ due process rights, the harm associated with prison conditions is measured against the government’s interest in ensuring pre-trial detainees’ presence in court. A finding that the Effective Staffing issues have prevented Petitioner and/or other detainees from making court appearances would thus drastically shift the balance toward Petitioner.

custody are at crisis level” and urging the various offices “to consider every available option to reduce the number of individuals in our jails.” (NYSCEF doc No. 5.)

Along with addressing the failures of the City DOC, Petitioner specifically notes that the City BOC is tasked with establishing minimum standards related to staffing levels and inmate health and yet, as of November 2021, had issued no notices of violation since the beginning of the pandemic.¹⁷ Petitioner similarly argues that the State DOCCS is responsible for minimum standards in all New York State correctional systems, including Rikers, and is required to conduct routine inspections,¹⁸ and that the State COC is required to ensure minimum sanitary conditions for all correctional systems, and has the authority to shut down any facility for noncompliance.¹⁹ Petitioner maintains that the City Board, State DOCCS and State COC, despite knowledge of the conditions at Rikers, have failed in their oversight and standard-setting duties.

Petitioner further alleges that certain Respondents have not only failed to act to rectify the challenged conditions but have enacted recent policies that will only worsen them. Petitioner argues that the current City DOC Commissioner, Louis Molina rolled back restrictions on the City DOC’s “oft-abused sick leave policy”²⁰ so that City DOC officers no longer must show proof of illness to earn a sick day. Petitioner alleges that Commissioner Molina’s policy change will only make it more difficult for those officers at Rikers to provide inmates with the safety and care required by law. Moreover, Petitioner speculates that Mayor Adams’s *Blueprint to End Gun Violence*, announced on January 24, 2022 (and just over month after Commissioner Schiraldi urged the criminal justice community to do everything in its power to reduce the

¹⁷ Petitioner cites to the following article: James Barron, The Jail Oversight Board That Failed to Sound the Alarm, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2021/11/09/nyregion/board-of-corrections-jails-nyc.html>.

¹⁸ Commission of Correction, N.Y., <https://scoc.ny.gov/index.htm>.

¹⁹ See Consolidated Laws of New York, ch. 43, art. 20, § 504.

²⁰ Petitioner does not cite to any official rule changes in the City DOC’s sick leave policy. Petitioner also does not cite to any specific source as to whether the new policy will advance or hinder efforts to effectively staff Rikers.

number of DOC detainees), will likely incarcerate larger numbers of people at Rikers and contribute to the further decaying conditions.

Petitioner concludes that as all Respondents are aware of the crisis and have the power to take action to ameliorate the crisis but have failed to do so, Petitioner likely satisfies the deliberate indifference prong under *Burse*.

The Prospect of Irreparable Injury

Petitioner alleges that he has significant health care needs requiring medical attention, including regular treatment for a gunshot wound suffered prior to his incarceration and an inhaler for asthma, a pre-existing condition that experts have shown acts as a co-morbidity with COVID-19. Given Petitioner's vulnerable condition and Rikers' inability to provide care, Petitioner contends that he is at risk for serious or life-threatening injuries. (NYSCEF doc No. 3 at 24.) Petitioner further argues that the risk of physical injury is ongoing and that the consequences of being attacked by another prisoner or suffering asthma attack are particularly dangerous considering the City DOC did not provide medical attention when Petitioner previously suffered attacks (*id.*) As such, Petitioner maintains that the conditions at Rikers present a prospect of imminent irreparable harm for himself and other similarly situated pre-trial detainees at Rikers.

The Balance of Equities

In arguing that the balance of equities favors Petitioner, Petitioner maintains that the risk of irreparable injury to himself and those similarly situated should be weighed not against Respondents' general interest in detaining individuals that have been remanded to their custody, but rather against Respondents' interest in continuing to admit new incarcerated persons to Rikers specifically. (*Id.* at 26.) To that effect, Petitioner maintains that Respondents' interest is slight: Respondents "must simply determine a way to avoid adding to the constitutional crisis" at

Rikers and Respondents have “the means and practical ability to find alternatives to further incarceration at Rikers during the pendency of this matter” (NYSCEF doc No. 26). Petitioner suggests that Respondents may transfer any incarcerated prisoners to other facilities within New York City boroughs or to those facilities operated by the State, so long as the transfers are conducted in manner consistent with pre-trial detainees’ Sixth Amendment right to present a defense. (NYSCEF doc No. 1 at ¶ 80.)

City Respondents’ Opposition to a Preliminary Injunction

In their opposition papers, City Respondents argue that Petitioner has failed to satisfy any branch of the preliminary injunction standard, and consequently, has not asserted any cognizable grounds on which the Court should grant the requested preliminary injunction. As to specifically how and why Petitioner has failed to meet its burden, City Respondents contend that: (1) Petitioner has not demonstrated a likelihood of success on the merits, as critical underlying facts remain in dispute (NYSCEF doc No. 28 at 12-13); (2) Petitioner’s application ignores the fact that sitting justices of the New York Supreme Court, Criminal Court —and not City Respondents—are responsible for issuing remand orders such that this Court would in effect be issuing a preliminary injunction against a sister court that has the legal authority to issue remand orders (*id.* at 12); (3) Petitioner, as an unvaccinated detainee, has not established the presence of an irreparable harm (*id.* at 16); and (4) the balance of equities favors Respondents given the tremendous logistical problems for the City and the State to find alternative locations to house detainees and the serious delays to detainee cases that would attend the Court’s issuance of the injunction. (*Id.* at 18-19.) Additionally, City Respondents have moved to dismiss the petition for failure to state a cause of action, which the Court addresses *infra*.

State Respondents' Opposition to a Preliminary Injunction

While the opposition of State Respondents is, to a certain extent, premised on the merits of City Respondents' contentions, they present several additional arguments as to why Petitioner is not entitled to the preliminary injunction.²¹ First, State Respondents note that Petitioner has failed to provide any evidentiary affidavits (even his own) or authenticated documents in support of his petition and relies solely on hearsay from media reports that themselves contain hearsay. (NYSCEF doc No. 31 at 15.) State Respondents contend that the petition falls short of providing the type of proof required on a preliminary injunction motion. Second, State Respondents contend that Petitioner has not established a constitutional violation as he fails to show the deliberate-indifference prong as laid out in *People ex rel. Burse v Schiraldi* or that the balancing test of *Cooper v Morin* weighs in his favor. Lastly, State Respondents challenge Petitioner's standing in seeking to prevent future detainees from being taken to Rikers (*id.* at 20). State Respondents emphasize that they are not responsible for administering or enforcing policy in city prison facilities like Rikers (NYSCEF doc No. 31 at 7-10) and therefore, should the Court deny Petitioner's application for preliminary injunction against City Respondents, who are actually responsible for the conditions at Rikers, the Court would have no grounds to issue an injunction solely against State Respondents.

DISCUSSION

A preliminary injunction should only be granted where the party seeking such relief demonstrates: (1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable

²¹ Like City Respondents, State Respondents have moved to dismiss the petition. State Respondents' arguments in favor of dismissal will be discussed *infra*.

injury should the Court withhold the provisional relief; and (3) the balance of equities favors the moving party. (*Doe v Axelrod*, 73 NY2d 748, 750 [1988].) A preliminary injunction is a drastic remedy, whose purpose is not to determine the ultimate rights of the parties but to maintain the status quo until there can be a full hearing on the merits. (*Spectrum Stamford, LLC v 400 Atl. Tit., LLC*, 81 NYS3d 5, 6 [1st Dept 2018].) As such, a movant must demonstrate, on the undisputed facts found in the moving papers, a clear right to the injunction under the law. (*See Koultukis v Philips*, 285 AD2d 433, 435 [1st Dept. 2001]; *Anastasi v Majopon Realty Corp.*, 181 AD2d 706, 707 [2d Dept. 1992].) For the reasons set forth below, Petitioner has not met the requisite criteria for entitlement to a preliminary injunction.

Authority of this Court to Issue the Preliminary Injunction

In the Court's Microsoft Teams conference held for the First Petition, the Court discussed with Petitioner's counsel and the City DOC whether the Court held the authority to issue the injunction against the City DOC to prevent it from admitting detainees into Rikers. (*See* the First OSC "So-Ordered Transcript," Index No. 150007/2022, Doc No. 9). After hearing Petitioner's arguments, the Court concluded that the determination on who is remanded to the custody of the City DOC is made by the courts of concurrent and lesser jurisdiction, including the criminal courts, and not the City DOC. The City DOC then detains the remanded individuals at Rikers to carry out the orders of said courts. Therefore, this Court—were it to grant the preliminary injunction—would essentially be restraining courts of concurrent and lesser jurisdiction (*e.g.*, the criminal court parts) (*Id.* at 9-12.) As such, the Court declined to sign Petitioner's First OSC.

In the instant application, Petitioner raises the same issues but has not ameliorated the Court's concerns.

Section 510.10 (1) of the Criminal Procedure Law, entitled “Securing Order; when required; alternatives available; standard to be applied,” provides that, “When a principal, whose future court attendance at a criminal action or proceeding is or may be required, comes under the control of a court, such court shall... where authorized, fix bail or commit the principal to the custody of the sheriff.” Section 510.10 (1) clearly demonstrates that sitting justices in Criminal Court parts, after they make “an individualized determination that the principal poses a risk of flight to avoid prosecution,” are responsible for issuing orders to remand individuals into the custody of the City DOC.

If § 510.10 demonstrates that the City DOC has no role in originating remand orders, §500 of the New York State Correction Law demonstrates that it may not refuse to take into custody any individual against whom the Criminal Court has issued a remand order. §500-C (2) provides, “In the counties within the city of New York, the city commissioner of corrections shall have custody of the correctional facilities within the jurisdiction of the New York City department of corrections.” §500-C (3) then provides, “Whenever a person is committed to the custody of the sheriff, such commitment shall be deemed to be the custody of the person designated in subdivision one and two of this section.” Lastly, §500-C (4) provides, “the chief administrative officer [in New York City, the commissioner of the City DOC] *shall* receive and safely keep in the county jail of his county each person lawfully committed to his custody” [emphasis added]. These sections remove any City DOC discretion in taking individuals into custody: once an individual has been lawfully ordered into City DOC’s custody by the Criminal Court, it has no choice but to detain said individual.

As noted *supra*, Petitioner, in contrast to the injunctive relief sought in the First Petition, no longer seeks an order enjoining all new admissions to Rikers indefinitely, but rather seeks an order “pausing” the admission of new detainees pending the resolution of the petition. This differentiation, however, is ultimately irrelevant to the Court’s analysis as even a “pausing” of new admissions at Rikers would involve requiring the City DOC to stop detaining (an unknown and unpredictable) number of future detainees at the only facility available to it for an unclear duration of time. Petitioner’s application for a “pause” thus raises the same issues as the original injunctive relief application that this Court plainly found it did not have authority to grant.

Petitioner’s memorandum of law assumes that the City DOC has or can easily find alternative facilities to house detainees such that a Court order affecting intake at Rikers would not interfere with the City DOC’s overall ability to lawfully remand detainees. (*See* NYSCEF doc No. 1 at ¶ 80 [“numerous and obvious alternatives to Respondents’ present policies, practices and/or procedures are available, including: ... transferring persons incarcerated at Rikers to other facilities within New York City boroughs... [and] to those facilities operated by the State”]; NYSCEF doc No. 3 at 26 [“Respondents have the means and practical ability to find alternatives to further incarceration at Rikers during the pendency of this matter”]; NYSCEF doc No. 40 at 9 [“State Department of Corrections and Community Supervision agreed to transfer hundreds of incarcerated persons from DOC custody to DOCCS to ensure ‘the safe incarceration’ of those persons, as DOCCS had ‘adequate housing capacity to offer the City DOC relief.’”]) However, Ada Pressley, in her capacity as Bureau Chief of Facility Operations for the City DOC, has detailed in an affidavit that the City DOC does not have other facilities currently operating to detain all newly arriving inmates given New York City’s ongoing plan to close Rikers in 2027. (NYSCEF doc No. 20 at ¶ 34.) Petitioner has not provided any evidence

refuting Chief Pressley's testimony or indicating that the City DOC in fact has the capacity to divert all newly arriving detainees.

Petitioner's argument that the City DOC has on several occasions transferred individuals to State-run facilities (and therefore can accommodate detainees in other facilities) fails to appreciate the magnitude of the requested injunction. Previous transfers involved just 200 city-sentenced inmates with sentences 90-days or longer and 100 pre-trial detainees, not the large-scale transfer of all newly arriving detainees.²² (*Id.* at ¶ 26). As State Respondents note, the number of future detainees that the City DOC would have to provide alternative housing for is at best speculative but significantly larger than the previous transfers.²³ (NYSCEF doc No. 13 at 8). However, even if the previous transfers indicated a comprehensive ability to house new detainees elsewhere, Petitioner's assertion that diverting future detainees would eliminate any constitutional harm that *present* detainees might be suffering is still mere conjecture. In describing the transfer of detainees as one step toward solving the problems at Rikers, Petitioner notes that the requested transfers must be consistent with Due Process principles and the Sixth Amendment right to attend their trial. (NYSCEF doc No. 1 at 30.) Yet the same pre-trial detainees that the City DOC sent to State-run facilities—the ones that Petitioner cites as an example of how the City DOC can continue its detention policies without using Rikers—were transferred back to City DOC custody after the petitioners therein argued in federal court that the

²² Critically, the transfers at issue involved decisions made by the City DOC and the State DOCCS. The Court did not order and had no part in the transfers. (*See* NYSCEF doc No. 42.)

²³ State Respondents also question Petitioner's standing to seek relief on behalf of a class of speculative persons who have not been detained at Rikers yet. Petitioner's standing is made more suspect, State Respondents argue, as Petitioner seeks a remedy on behalf of this class that would in no way affect his own detention at Rikers. (NYSCEF doc No 13 at 8.)

City DOC had violated their right to Due Process and deprived them of access to the courts.²⁴

(*Id.* at 27; *see Sue Brown v Annucci*, 21-cv-01715 [RA] [SDNY].)

In the Court's view, then, if it granted the preliminary injunction without Respondents having alternative facilities that guarantee all future detainees' requisite constitutional rights, the City DOC would be left to comply with orders that are diametrically opposed to each other. The City DOC could either comply with this Court's order, which would effectively force it to ignore remand orders issued by courts of concurrent and lesser jurisdiction; or it can continue to comply with the orders issued by said courts while attempting to solve the issues plaguing Rikers through the policy tools it has available to it. To have the practical effect of reducing the population at Rikers as Petitioner intends, the requested preliminary injunction would have to be issued against the Office of Court Administration (OCA), courts of concurrent and lesser jurisdictions (including the criminal court and family court parts), as well as the City DOC. Petitioner's memorandum of law is devoid of case law that suggests this Court has the authority to issue such an injunction against OCA and justices of courts of concurrent or lesser jurisdiction. Nor does Petitioner cite a case from the numerous Rikers/COVID-19-related litigations where a detainee has petitioned the Court not simply to release those individuals affected by the pandemic, but to halt Rikers from accepting custody of all future detainees.

Although the Court intimated its position on this issue in the So-Ordered transcript in the First Petition and Respondents have raised the issue in their opposition, Petitioner has not addressed the Court's concern in his moving papers herein. In his reply papers, Petitioner asserts

²⁴ That the subject population eventually opposed their transfer implicates the potential problems arising from a single petitioner requesting a change in Rikers policy, especially when that petitioner is not part of the population that would be transferred.

that City and State Respondents' opposition amounts to an unwillingness to address constitutional rights violations; that together, they could correct the Effective Staffing issues.²⁵ (NYSCEF doc No. 40 at 3-4). By way of example, Petitioner proposes a Phased Plan as one possible avenue by which the Court could order Respondents to address conditions at Rikers (*id.* at 5-6). However, the Phased Plan incorporates the very problem about which the Court has expressed reservations. After an initial Phase One, in which Respondents must find alternative accommodations for new pretrial detainees within 60 days,²⁶ Phase Two provides that the Court would preliminarily enjoin the City DOC from sending persons in their custody to Rikers for a minimum of two months but to be extended as necessary until the Court has resolved the merits of Petitioner's Declaratory Judgment and Article 78 claims. (*Id.*) While Petitioner acknowledges that the Phased Plan is only a demonstration to the Court of one possible proposal, the Phased Plan ultimately fails to accomplish its aim: without the Court's legal authority to issue the requested preliminary injunction, the Phased Plan cannot be considered a viable possibility.

From the Court's perspective, even if it had the authority to grant the injunction, Petitioner's solution to the crisis at Rikers—to find adequate alternative facilities and halt arrivals to Riker until the Court grants his ultimate relief—is really no solution at all: finding or developing new facilities, then transporting and housing all new Rikers detainees there would require a massive undertaking by the City and State Respondents that could not be immediately

²⁵ Petitioner's reply does not address the assertions Chief Pressley advances in her affidavit, which identifies numerous policies that the City DOC has instituted to rectify the conditions at Rikers. While the Court does not opine on the effectiveness of the policy changes or whether they have had any beneficial effect on the prison population, the Court simply notes that Respondents have asserted steps that they are taking to alleviate Petitioner's concerns.

²⁶ Petitioner has not explained his rationale of giving City and State Respondents a 60-day grace period before the preliminary injunction would take effect.

realized,²⁷ especially considering the vast number of administrative codes and regulations with which any new facility must comply to operate as intended. Furthermore, Petitioner has not explained how his solution of finding alternative facilities for future detainees would help solve the City DOC's current Effective Staffing²⁸ crisis or be a better alternative to either the policies that the City DOC has recently implemented to Effectively Staff Rikers²⁹ or to the remediation policies recommended at Rikers by the *Nunez* Monitor.

Lastly, to borrow from the doctrine of non-justiciability,³⁰ the Court is mindful that its role in policy formulation is limited, and it should “abstain from venturing into areas if it is ill-equipped to undertake the responsibility and other branches are far more suited to the task.” (*Jones v Beame*, 45 NY2d 402, 408-409 [1978].) The record here is sparse in terms of the type of policy discussion needed to adequately weigh the appropriateness of halting intake at Rikers. While the Court understands Petitioner's position that reducing Rikers' inmate population may help Respondents address Petitioner's constitutional concerns, the *potential* for the injunctive relief to serve its stated purpose does not compel the Court to grant the injunction. Indeed, precisely the opposite is true: the Court's inability to determine with any certitude the policy ramifications of the injunction is exactly why the Court should not involve itself in the controversies that comprise political questions and value determinations committed to other

²⁷ The magnitude of the challenges that Petitioner's solution poses relative to the brief attention he directs to the issue in his Memorandum of Law is striking to the Court. Petitioner presents no viable alternative to how the City DOC can continue to remand detainees in its custody if it cannot use Rikers.

²⁸ Petitioner's only explanation for how halting new admissions to Riker would alleviate the Effective Staffing crisis is that fewer detainees mean prison guards will be better able to accommodate the needs of the population *at Rikers*. (NYSCEF doc No. 40 at 7 [“the more incarcerated persons admitted to Rikers under the present staffing regime, the more severe the constitutional harms.”]) In addition to being unduly speculative, what is noticeably left out is any attention to how the City DOC would Effectively Staff *the other facilities* that will receive the influx of new detainees.

²⁹ For a full accounting of the steps the City DOC has taken to alleviate the Effective Staffing issues, see City Respondents' Memorandum of Law, NYSCEF doc No. 28 at 14-15 and Ada Pressley's Affidavit, NYSCEF doc No. 20 at ¶ 14-22.

³⁰ As discussed *infra*, Respondents have cross-moved to dismiss the underlying petition based on this doctrine.

branches of government. Here, the political question of where detainees are sent after the courts have issued remand orders has been committed to City and State Respondents. Rather than maintaining the status quo pending a full hearing on the merits, the preliminary injunction at issue would upend the policy determinations of the political branches. (*See Jamie B. v Hernandez*, 274 AD2d 335, 335-336 [1st Dept. 2000] [holding that trial court improvidently granted preliminary injunction where status quo would be undermined by an order “mandating corrective action” prior to full hearing].)

Faced with a lack of authority, the Court declines to issue a preliminary injunction. However, given the gravity of Petitioner’s allegations, the Court will take the further step of addressing the merits of the parties’ arguments as to each prong of the preliminary injunction standard.

Likelihood of Success of Petitioner’s Constitutional Due Process Claim

Petitioner alleges that the Respondents are responsible for Rikers’ Effective Staffing crisis, which has deprived him of safe living conditions, access to medical treatment and health care, and the ability to attend his court hearings. To demonstrate that the harm he faces rises to the level of a state constitutional Due Process violation,³¹ Petitioner principally relies on *People ex rel. Burse v Schiraldi*. (2021 Slip Op. 21351 [New York County Sup. Ct. 2021].) In *Burse*, the Court laid out the standard for a *federal* constitutional due process claim arising from a pretrial detainee’s conditions of confinement. Under the federal standard, a detainee must demonstrate an objective deprivation of the right to due process, i.e. prison conditions pose an unreasonable risk

³¹ Petitioner only asserts a State constitutional violation, not a violation under the United States Constitution.

of serious damage to a detainees physical or mental health, and that prison staff acted with deliberate indifference to the challenged conditions. (*Id.* at 836; *see also Helling v McKinney*, 509 US 25, 31-32 [1993].) In *Matter of People ex rel. Stoughton v Brann*, the First Department wrote that the deliberate indifference prong is satisfied where officials “*recklessly failed to act* with reasonable care to mitigate the risk that the condition posed to the pretrial detainee even though the [officials] knew, or should have known, that the conditions posed an excessive risk to health or safety.” (185 AD3d 521, 552 [1st Dept 2000] [citing *Darnell v Pineiro*, 849 F3d 17, 35 [2d Cir 2017] [emphasis added].)

In contrast to the federal standard, the Court of Appeals in *Cooper v Morin* (49 NY2d at 79) concluded that the Federal Constitution, as interpreted by the Supreme Court, fell short of providing prisoners adequate protection against unduly harsh conditions of confinement and adopted a different test. (*Id.*) That test requires courts to balance the harm to the individual resulting from the conditions imposed against the benefit sought by the government. (*Id.*) While Petitioner cites to *Cooper*, he does not argue constitutional violations using its standard.³² Thus, the Court is only left to analyze Petitioner’s claim using the federal standard. However, under this standard, Petitioner has not demonstrated a state constitutional due process violation.

As an initial matter, the Court is mindful that it must analyze Petitioner’s Due Process claim solely as to the allegations at Rikers that affect his *own* constitutional rights—not to those allegations that relate to Petitioner’s putative class. As discussed *supra*, Petitioner entered a stipulation whereby he agreed to defer class certification until after the Court’s decision in the instant application for preliminary injunction. (NYSCEF doc No. 18). That the Petition uses

³² *Cooper* involved challenges to a specific prison policy related to visitation, and not the general conditions of a prison facility.

language relating to a class does not make it a class proceeding. Without a class certification of similarly situated pre-trial detainees, the Court must focus exclusively on the constitutional harms Petitioner has allegedly suffered. The most important consequence of the stipulation is that, though the Twelfth and Thirteenth *Nunez* Monitor Reports describe unsafe and unsanitary conditions endemic to Rikers, the reports only affect Petitioner's personal claim by implication. None are particular to Petitioner. The same applies to the various media reports Petitioner cites as none specifically relate to the conditions Petitioner personally experienced.³³

Challenging as this is for Petitioner's likelihood of success, the petition's evidence is problematic on another level. Most of the allegations in the petition cite to media reports that are often entirely composed of hearsay, sometimes even hearsay within hearsay. While the Court need not list at length the media reports that contain hearsay, the Court references several representative examples in the footnote below.³⁴ Petitioner's allegations that *are* based on

³³ As discussed *infra*, Petitioner alleges missed medical appointments in line with the *Nunez* Monitor's reports. However, Petitioner relates these claims through the affirmation of his attorney, not through the two *Nunez* Reports.

³⁴ To give a sense of the Petition's hearsay problem, several examples will suffice. The Court notes that, outside the latest *Nunez* Reports, most of Petitioner's articles pre-date the instant application by several months.

- Petitioner cites a New York Daily News article dated October 1, 2021, entitled "Rikers Island Conditions Still Horrific, Say NYC Council Members After Tour." Petitioner then cites a New York City Councilperson who, in the article, "noted the strong smell of urine in an intake area with 10 men crowded together. (NYSCEF doc No. 3 at 3)
- Petitioner quotes an unidentified DOC correction officer who allegedly admitted DOC "does not have the staff to go to the housing areas to pick up the inmates to do...cleaning" in an article from the Marshall Project, entitled "Dispatch from Deadly Rikers Island. (*Id.*)
- A New York Post article, dated October 21, 2021, and entitled "Photos Inside Rikers Island Expose Hellish, Deadly Conditions" is cited for the proposition that "internal records indicate that at least 256 incarcerated persons remain in dangerous and unsanitary intake areas beyond 24 hours because of 'medical delay and 'shortage of the DOC staff.'" Petitioner does not include these internal records. (*Id.* at 4-5)
- Even City DOC policies that Petitioner objects to are only described by media reports. A Queens Daily Eagle article entitled "DOC scales back 'punitive' sick leave policy" is the only reference that describes DOC's change of policy in late December 2021 and early January 2022. A New York Daily News report entitled "Hundreds of Rikers Island Corrections Offices Abused Sick Leave" is cited as evidence that several officers were seen at a party after sick leave absences and therefore the City DOC has lax sick leave policies. (*Id.* at 8)

The Court cites these examples not to cast doubt on severity of the allegations but to say the Court needs more competent proof if it were to order the drastic remedy of a preliminary injunction.

personal experience, including those related to his medical condition and the danger posed by other prisoners (NYSCEF doc No.3 at 12-13), do not rectify the issues referenced above as Petitioner has not put the allegations into an affidavit or affirmation. Rather, the numerous allegations that are included in the Petition and the accompanying memorandums of law are only sworn to by Petitioner's counsel who had no first-hand experience of Petitioner's condition at Rikers. In other words, even Petitioner's personal accounts are related to the Court in inadmissible hearsay form.

To obtain a preliminary injunction, the movant must establish the merits of the underlying claim with convincing evidence through affidavits and other competent proof. (*Faberge International, Inc. v Di Pino*, 109 AD2d 235, 240 [1st Dept 1985]). The Court's insistence that Petitioner establish his allegations through competent proof is not an academic issue, especially regarding those allegations Petitioner makes as to his own conditions of confinement. In seeking a preliminary injunction whose scope extends far beyond his person and would affect perhaps thousands of newly arriving detainees, Petitioner cannot rely on evidence that contains such deficiencies as the Court has laid out, especially where Respondents have raised factual issues through competent proof regarding its policies undertaken to ameliorate the problems at Rikers. To ignore the deficiencies contained in the evidence of only one of the parties would be particularly improvident where that same party is seeking from the Court the extreme remedy of a preliminary injunction "pausing" all admissions to Rikers based on such hearsay. (*See MG W. 100 LLC v St. Michael's Prot. Episcopal Church*, 127 AD.3d 624, 625 [1st Dept. 2015] [holding that plaintiff's reliance on double hearsay statements cannot form the basis for a preliminary injunction]; *400 West 59th Street Partners LLC v Oyolesi*, 2020 NY Slip Op.

34334[U] [Sup. Ct. New York County 2020] [holding allegations in an affirmation where declarant did not have personal knowledge were insufficient to establish likelihood of success]).

Petitioner's extensive reliance on Justice April Newbauer's opinion in *Burse* as substantive support for (1) a state constitutional violation, and (2) a preliminary injunction with a magnitude as significant as the injunction herein, is ill-founded. In *Burse*, a pretrial detainee challenged the legality of his detention at Rikers in a writ of *habeas corpus*, whereby he sought *only his own* release. (*Burse*, 2021 NY Slip Op 21351 at 831, 838.) Before granting the writ for his release, the Court held an evidentiary hearing pursuant to CPLR § 7009 and heard testimony from the detainee as to his confinement.

In concluding that conditions posed an excessive risk to the detainee's health and safety and that prison officials recklessly failed to act as to those dangerous conditions, the *Burse* court mainly relied on two forms of evidence. The first was the detainee's testimony, which revealed he was coerced into participating in a "fight night" on his cell block by other detainees and the prison official on said cell block knew but failed to stop the fights.³⁵ (*Id.* at 835.) The court then distinguished this testimony from that developed in two other recently denied *habeas* petitions (*see People ex rel. Belkin (Perez) v Schiraldi*, Index No. 812951/2021E, and *People ex rel. Rodriquez (Mustafaev) v Schiraldi*, SCID No. 30115-2021), noting that, against the "exaggerated" and "fabricated" evidence in *Perez*, the detainee's fight-night constituted genuine "horrific personal treatment" and that neither of the courts in the other two cases held fact-finding hearings. (*Burse* at 837.) The second form of evidence consisted of the *Nunez* Monitor's

³⁵ The Court noted that the detainee's testimony was corroborated by video surveillance that showed not only the fights, but prison officers doing little to stop them. (*Id.* at 833.) Here, Petitioner has not asserted he participated in any of these fights.

Report that Petitioner has offered here and its findings of serious systemic issues endangering detainees. (*Id.* at 835-836.)

Superimposed, the evidence demonstrated the objective, excessive-risk-of-serious-harm prong. (*Id.*) It is more difficult to ascertain exactly upon what evidence the *Burse* court found that the deliberate indifference prong was satisfied. Certainly, the guards' indifference toward the fight night was the central factor. (*Id.* at 836). It is not clear whether the *Nunez* Monitor's more general findings simply corroborated the petitioner's testimony about the violence he faced or were more instructive in leading the *Burse* court to determine "[petitioner] has conclusively established that DOC failed to act—and continues to fail to act—with reasonable care to mitigate unreasonable risks to his health and safety that were known to the DOC."³⁶ (*Id.*)

After concluding as such, the court wrote that under the detainee's claim, neither the objective prong showing that challenged conditions were sufficiently serious or the "*mens rea*" prong showing deliberate indifference to said conditions require "a showing of unique injury." (*Id.* at 837.) and concluded that "[City DOC] management is the process of planning and organizing to address foreseeable crises, not only of controlling immediate crises. In this case, the lack of management by respondent, and presumably by his superior, was tantamount to deliberate indifference." (*Id.* at 838.) In holding that petitioners need not show unique injury (and therefore general conditions suffice if harmful enough) and that mismanagement or lack of foresight could serve as deliberate indifference, *Burse* touched upon how conditions affecting the

³⁶ On one hand, the *Burse* court cites to the *Nunez* Reports numerous times to substantiate the petitioner's claims of the fight night and general level of violence in his ward. However, separate from the fight night, the court relies on the Reports for findings on staff absenteeism, denial of medical care, and overcrowding in certain intake areas.

population at large might support the specific detainee's *habeas* petition.³⁷ (*Id.* at 837.) But in so doing, *Burse* appears to have distanced itself from an aspect of the deliberate indifference prong recognized by *Perez*: that a *habeas* petitioner, as *Perez* put it, “must meet a burden that would show, not that the conditions are bad, but that the jailers are so indifferent to the conditions that they have turned a blind eye to the seriousness of the conditions.”³⁸ (*Perez*, Index No. 812951/2021E, NYSCEF doc No. 9 at 2.) In essence, *Burse* sidestepped a further discussion on the remedial steps the City DOC had presented therein and, consequentially for the present analysis, the issue of how to incorporate *attempts* to solve the Rikers crisis into the deliberate indifference prong. As will be discussed below, where, as here, a petitioner's allegations do not include a reckless failure to react to events such as a fight night, precisely where deliberate indifference is found is critically important.

The foregoing discussion is meant to situate the instant application and *Burse* in the appropriate context, and more specifically, how the circumstances in which the two petitions arose are vastly different. First, Petitioner has brought a hybrid Article 78/Declaratory Judgment action, not a *habeas* petition. Second, he seeks a preliminary injunction that does not implicate his own detention but rather only that of new detainees (the detainee in *Burse*, as far as the Court can intuit, did not seek a preliminary injunction to address the conditions at Rikers). Third, *Burse* was decided after an evidentiary hearing under CPLR §7009; here, as further discussed *infra*, an evidentiary hearing substantiating Petitioner's claims of his conditions of confinement would not serve a useful purpose given this Court's lack of authority to issue the injunctive relief sought in

³⁷ In holding that a department's mismanagement and lack of foresight could constitute deliberate indifference, the *Burse* court appears to apply a lower, negligence standard as opposed to the recklessness standard that the First Department's holding in *Stoughton* requires. (185 AD3d at 521-522.)

³⁸ In so holding, *Perez* appears to have followed the First Department's recklessness standard set forth in *Stoughton*.

the first place. In this respect, then, given Petitioner's evidence and the deficiencies therein,³⁹ this case more analogously tracks the *habeas* decision in *Perez* than *Burse*.

Lastly, but along the same line, in contrast to the evidence put forth by the *Burse* petitioner that showed Rikers guards ignoring the 'fight nights' being run in the prison, which essentially amounted to a 'recklessly failure to act' (*Stoughton*, 185 AD3d at 552), Petitioner's evidence, even if taken as reliable, constitutes more of an indictment of Respondents' inability to find the policy levers to solve Rikers' overarching problems than one of indifference or failure to act.⁴⁰ Petitioner's inability to plead facts that indicate Respondents recklessly failed to act as to dangers *specific* to himself lends support for this reading of the petition. Nowhere does Petitioner allege that officers had actual knowledge that he was attacked by other inmates but let it continue,⁴¹ or that they knew he needed medical care but refused to provide it. (*See* NYSCEF doc No. 3 at 6.) Furthermore, it bears repeating: the Court, without an affidavit from Petitioner himself, remains firmly in the dark as to the seriousness of the injuries suffered during his detention. Although he mentions being attacked by other inmates on two occasions with no officers present, Petitioner describes neither the incidents nor his injuries beyond contending that they could have had life-threatening consequences due to his pre-existing head injury. (*Id.*)

While Petitioner argues that the City and State Respondents have not solved the alleged Effective

³⁹ The Court notes that the same hearsay problems plaguing Petitioner's evidence apply to *Perez*. *Perez* also related his personal claims to that court without any sworn document, only through counsel's affirmations.

⁴⁰ Throughout his moving papers, Petitioner questions the efficacy of policies that Respondents have deployed to resolve the staffing issues at issue. However, the fact that new policies are being deployed in the first place indicates that Respondents are not acting completely indifferently to the conditions. Moreover, the dispute as to the efficacy of City DOC policy represents factual issues that weigh against granting the preliminary injunction. (*See Jamie B. v Hernandez*, 274 AD2d at 335-336 [holding motion court erred in issuing a preliminary injunction where "fact issues abound," including whether a shortage of adequate detention facilities for juvenile housing was temporary or longer lasting and whether alternative housing could be arranged for].)

⁴¹ Petitioner does allege that he was attacked, and no officers intervened, but does not detail whether officers were present and had actual knowledge yet let the attack continue.

Staffing crisis, he has not presented a case in which City and State Respondents have recklessly *ignored* the conditions in the prison. (See Chief Pressley’s Affirmation, NYSCEF doc No. 20 at ¶¶ 14-21.)

Considered collectively, then, such different circumstances in which *Burse* and the instant application arose limit the usefulness of using *Burse* as a guide to whether the Court should issue the injunction. *Burse*’s application here is even more proscribed when analyzed in conjunction with *People Ex. Rel. Osias v Schiraldi*, another *habeas* decision issued by Justice Newbauer. There, Justice Newbauer held that the petitioner detainee Osias, in citing the *Nunez* Reports, “mainly relies on the overall conditions at Rikers Island to support his deliberate indifference claim,” and such reliance did not “meet his burden of demonstrating DOC has acted with deliberate indifference.” (NYSCEF doc No. 36 at 4.) Specifically, she found “Osias’ remaining allegations relate to recreation time, food supply, and housing and bathroom conditions are too general to rise to the level of deliberate indifference.” (*Id.*) Critically, Justice Newbauer’s *Osias* decision, dated January 28, 2022, just over one month after *Burse*, represents a declination to extend any further *Burse*’s deliberate indifference rationale—either as to a particular instance of guards ignoring dangerous conditions or the more general conditions of confinement—to a case, where, like here, a petitioner has not pled *specific, personal* facts as demonstrably egregious as those in *Burse*. Simply put, Petitioner’s reliance on *Burse* is strained on multiple fronts: first, Petitioner has not plead an instance like fight night in which guards knew and then ignored dangers to his person; second, *Burse*’s holding has limited application where a petitioner has not plead this type of harm and does not seek his own release; and lastly, *Osias* and *Perez*, both of which considered the unsafe/unsanitary conditions but found no deliberate indifference, are just as authoritative, if not more so, to the instant application.

The Court writes separately to note that where parties have raised issues of fact as to the movant's likelihood of success on a preliminary injunction motion, traditionally an evidentiary hearing would be warranted before a determination can be made on the merits of injunctive relief. However, as the First Department has clearly articulated, trial courts, in exercising their sound discretion, may find that a hearing is not mandated in instances where it is clear from the parties' moving papers that the motion should be denied on grounds other than the disputed factual issues, e.g., where the court has no power to issue the injunction or the movant has not clearly demonstrated the other elements of the preliminary injunction standard. (*See 1234 Broadway LLC v West Side SRO Law Project*, 86 AD3d 18, 23-24 [1st Dept 2011]; *see also* 1996 Advisory Comm Notes CPLR 6312 ["The Court, however, is by no means obligated in every instance to call such hearing. If the disputes of fact are not material or substantial, the court may resolve the motion on the papers alone. The Court may also deny a motion despite issues of fact if it is apparent that the plaintiff has not met the burden of proof."])

Here, the Court by no means wishes to be dismissive of the depth and scope of the issues plaguing Rikers but finds the factual disputes regarding the severity of the Petitioner's allegations immaterial to Petitioner's requested injunctive relief. To reiterate, the Court does not have the authority to issue the requested injunction and any evidentiary hearing as to Petitioner's Due Process claim would not change that. Furthermore, Petitioner's failure to provide an affidavit to the Court personally attesting to the allegations in the petition means that he has not presented evidence that could be built upon or developed at a hearing. Presented with the right case, *i.e.*, where Petitioner has submitted an affirmation (with the understanding that the facts asserted therein would be taken as true) and the requested injunctive relief is within this Court's power to grant, the Court would proceed with an evidentiary hearing. However, that is not the

case that has been presented to the Court. Given that Petitioner has not asserted his constitutional claims through competent proof and seeks relief the Court lacks authority to grant, an evidentiary hearing would serve no useful purpose.

Consequently, in the context of this proceeding, Petitioner has not submitted evidence sufficient to demonstrate a likelihood of success on the merits as to his constitutional due process claim.

Irreparable Harm

The Court is further constrained from providing Petitioner with the preliminary injunction as he has not demonstrated he will suffer an irreparable injury absent an injunction diverting all new detainees from Rikers. A fundamental aspect of the irreparable harm prong is that a petitioner must demonstrate he or she will necessarily suffer injury should the court decline to order the injunction. (*Housing Works, Inc. v City of New York*, 255 AD2d 209, 213 [1st Dept 1998].) Applied here, Petitioner's argument fails in two respects. First, Petitioner is not among the class of detainees who would directly benefit from halting new detainees to Rikers. As Petitioner is already at Rikers and has not argued for his own transfer out of Rikers, the terms of his incarceration would be unaffected. Consequently, the only benefits that would flow to Petitioner would be at least once removed from the injunction and even then, only indirectly through positive ripple effects with respect to Effective Staffing that might accompany a decrease in the prison's population.

This is precisely the second reason Petitioner has not satisfied the irreparable harm prong: any indirect benefits that might impact him are (from a liberal interpretation of Petitioner's

moving papers) remote and speculative. Petitioner has not described in any detail how stopping admissions will prevent further constitutional harm. The only real explanation given is that, to quote Petitioner, “the more incarcerated persons admitted to Rikers under the present staffing regime, the more severe the constitutional harms.” (NYSCEF doc No. 40 at 8.) However, this assertion is conclusory and not substantiated.⁴²

While the Court is highly mindful of Petitioner’s concerns about the conditions at Rikers, Petitioner has not demonstrated an adequate nexus between the threat of irreparable injury and the provisional remedy sought here.

Balance of the Equities

Petitioner argues that the balance of equities weighs in his favor: the risk of grave, possibly life-threatening injuries and continuing due process violations outweigh the City DOC’s interest in continuing to admit new incarcerated persons. However, Petitioner’s framing of the balances of equities as constitutional harm versus “administrative hardships” on Respondents does not advance his cause, as the Court has already explained how he has not demonstrated either a constitutional violation or an irreparable harm that will be prevented through the preliminary injunction. Even so, Petitioner’s argument reduces the challenges to City and State Respondents of finding alternative facilities to negligible proportions. To the Court, the fact that the City DOC does not have the administrative capacity to facilitate the transfer of all new

⁴² Petitioner reiterated the conclusory allegation that a larger detainee population automatically leads to more dangerous conditions at oral argument (*See* NYSCEF doc No. 53 at 13, l: 3-10 [“...the problem with an effective staffing crisis is that you make the situation worse with each new body that you add to Rikers Island. And in the present case, over the last six months, there’s been a 17 percent increase of the number of people at Rikers. The situation is getting worse day on day”]).

detainees—even if given the sixty days as described by Petitioner’s Phased Plan—means an overwhelming burden would be placed on Respondents.

Petitioner has not made a showing, outside conjecture, that diverting all new detainees would avoid any constitutional injuries. To appreciate the significant and drastic administrative response that would be needed to comply with the requested injunction does not amount to the Court conceding “administrative concerns outweigh the constitutional rights of incarcerated persons,” as Petitioner argues. (NYSCEF doc No. 40 at 20). Rather, the Court merely finds that Petitioner has not shown that the preliminary relief sought would alleviate all constitutional violations sufficient to overcome the direct burden on Respondents. Petitioner’s balance of equities argument also ignores the costs to other detainees who might prefer to be detained at Rikers rather than other State-facilities. As the federal court case *Sue Brown v Annucci*, 21-cv-01715 (RA) (SDNY), demonstrates, detainees do not uniformly prefer facilities other than Rikers. Were the Court to grant the preliminary relief detainees who may prefer to be closer to family members and loved ones or to where their court hearings will be conducted would have their preferences forestalled by an injunction sought by a Petitioner who does not have a proverbial horse in the race.

Based on the foregoing, the Court concludes that *assuming arguendo* it had the authority to grant the injunctive relief sought, Petitioner’s application for a preliminary injunction would nevertheless be denied in its entirety.

City and State Respondents’ Cross-Motion to Dismiss the Petition

In addition to opposing to the instant motion for injunctive relief, City and State Respondents also both cross-move pursuant to CPLR 3211(a)(7) and 7804(f) to dismiss the

underlying petition for failing to state a cause of action. It bears repeating that the hybrid petition seeks the following declaratory and Article 78 mandamus relief:

1. a declaratory judgment, pursuant to CPLR § 3001, that Respondents' actions and omissions, described herein, have violated and continue to violate the constitutional rights of the incarcerated persons within their charge;
2. a declaratory judgment, pursuant to CPLR § 3001, that, in light of Respondents' current staffing policies, procedures, and oversight methods, the constitutional rights of incarcerated persons at Rikers cannot be guaranteed;
3. an order compelling Respondents to facilitate alternative corrections to their present policies, and/or procedures, as the case may be, sufficient to remedy the constitutional violations against pre-trial detainees discussed herein, including but not limited to such alternatives described herein, until Respondents have demonstrated to the Court that Effective Staffing has been achieved;
4. an order compelling Respondents to comply with this Court's order to facilitate alternatives as discussed above within 30 days of entry of that order.

City and State Respondents both argue that the petition is non-justiciable as it improperly seeks a writ of mandamus compelling the City DOC to allocate its resources and staff in a certain manner, effectively replacing the City DOC's managerial discretion with that of the Court, and further argue that the declaratory relief sought adds no viability to the petition. City Respondents additionally argue, as they do in opposition to Petitioner's application for preliminary injunction, that the petition fails to state a claim as it essentially seeks the *ultra vires* relief of an order enjoining the City DOC from carrying out orders of the City's criminal court system. State Respondents further argue that the petition fails to state a claim against them as they have no authority to compel the City DOC to take the requested action, and that the City DOC is not reliant on State Respondents' approval to reform conditions at Rikers.

Petitioner opposes the cross-motion, arguing that City and State Respondents mischaracterize the relief sought in the underlying petition, and that the petition is justiciable and clearly states a cause of action.

On a motion to dismiss pursuant to CPLR 3211(a)(7) and 7804(f), “only the petition is considered, all of its allegations are deemed true, and the petitioner is accorded the benefit of every possible [favorable] inference.” (*Matter of Brown v. Foster*, 73 AD3d 917, 918, [2010]; see *Matter of Johnson v. County of Orange*, 138 A.D.3d 850, 850–851, [2016].) Dismissal of the petition is warranted if the petitioner “fails to assert facts in support of an element of the claim, or if the factual allegations and inferences to be drawn from them do not allow for an enforceable right of recovery.” (*Connaughton v Chipotle Mexican Grill, Inc.*, 29 NY3d 137, 142 [2017].) Allegations consisting of “bare legal conclusions” are not entitled to consideration. (*Id.* [citation omitted].) However, the question of “[w]hether a plaintiff can ultimately establish its allegations is not part of the calculus in determining a motion to dismiss.” (*EBC I, Inc. v. Goldman, Sachs & Co.*, 5 NY3d 11, 19 [2005].) Rather, the Court must determine whether the factual allegations “fit within any cognizable legal theory” sufficient to state a claim. (*Leon v Martinez*, 84 NY2d 83 [1994].)

Dismissal of the Petition Against State Respondents

The Court first writes to address State Respondents’ cross-motion seeking to dismiss the petition as against them. State Respondents argue that dismissal is warranted as the petition speculates as to the scope of their responsibilities related to the crisis at Rikers but fails to properly state a claim against them. (*See In re Mooney*, 179 AD3d 426, 427 [1st Dept 2020] [dismissing an Article 78 petition against the New York City Transit Authority based on conclusory allegations for failure to state a claim].)

As discussed *supra*, the State DOCCS is the state agency with control over incarcerated persons in New York state detention facilities, and the State COC is a three-member commission responsible for promulgating standards for the safe management of New York state correctional

facilities. State Respondents argue that Petitioner makes conclusory assertions as to the scope of their duties related to Rikers but does not establish that either the State DOC or State COC is responsible for the conditions at Rikers or has failed to perform one of its mandated duties.⁴³

The State DOCCS is responsible for the confinement and rehabilitation of the individuals under custody at New York State facilities and is responsible for safe and secure conditions of confinement at said facilities. As State Respondents articulate, under New York's "bipartite corrections system," the State DOCCS is responsible for the custody of incarcerated individuals serving felony sentences in State facilities, while local entities (*i.e.*, the City DOC) are responsible for pretrial detainees and individuals serving non-felony sentences. (*See Ayers v Coughlin*, 72 NY2d 346, 349 [1988].) Under Correction Law § 500-c, administration of local facilities is the responsibility of the administrator, whether a county sheriff or the City DOC's Commissioner. The conditions of confinement also lie with the local administrator. (*See Howell v McGinity*, 129 AD2d 60, 66-67 [2nd Dept 1987].) Therefore, the conditions of custody of a pretrial detainee at a City DOC facility such as Rikers are the exclusive responsibility of the county sheriff or City DOC Commissioner. (*Id.*) State Respondents thus conclude that the State DOCCS is not a proper party to this proceeding.

Petitioner maintains that the State DOCCS is a necessary party here as the relief sought likely includes the use of facilities under the State DOCCS' control as alternative temporary housing for pretrial detainees while the conditions at Rikers are being rectified. Petitioner cites to the example of a group of female inmates who were temporarily transferred in 2021 from Rikers

⁴³ In his petition, Petitioner does allege that State Respondents have failed to monitor and inspect the conditions at Rikers, and therefore have not promulgated policies preventing constitutional violations. However, that argument was not further developed in his papers.

to the State DOCCS' Bedford Hills facility. However, as Petitioner himself notes, the 2021 transfer was effected pursuant to Correction Law § 504 (2), which provides, in pertinent part:

“Where the jail in a county becomes unfit or unsafe for the confinement of some or all of the inmates due to an inmate disturbance or other extraordinary circumstances, including but not limited to a natural disaster, unanticipated deficiencies in the structural integrity of a facility or the inability to provide one or more inmates with essential services such as medical care, upon the request of the municipal official as defined in subdivision four of section forty of this chapter and no other suitable place within the county nor the jail of any other county is immediately available to house some or all of the inmates, the commissioner of corrections and community supervision may, in his or her sole discretion, make available, upon such terms and conditions as he or she may deem appropriate, all or any part of a state correctional institution for the confinement of some or all of such inmates as an adjunct to the county jail for a period not to exceed thirty days.”

In *Howell, supra*, the Second Department held that transfers under Correction Law § 504 do not “anticipate any participation by the judiciary” and that the determination to seek a substitute jail for a pretrial detainee lies exclusively with the local administrator. (129 AD2d at 65-66.) Therefore, it is the obligation of the City DOC to make a transfer request for its pretrial detainees, and the State DOCCS is obligated to consider the request if one of its facilities is requested to receive the transfer. Although Correction Law § 504 provides for the potential involvement of the State DOCCS should transfers be requested, it does not provide a basis for why the State DOCCS is a *necessary respondent* to the instant petition, given that the State DOCCS is obligated to consider transfer requests to its facilities regardless of whether it is a party to this action. Given that the City DOC is empowered to make such transfer requests at any point, independent of the instant proceeding, the involvement of the State DOCCS is not necessary in this lawsuit.

The State COC is a three-member commission that “promulgates minimum standards for the management of correctional facilities”; “evaluates, investigates and oversees local and state correctional facilities and police lock-ups”; and “assists in developing new correctional

facilities.”⁴⁴ While the State COC has authority to conduct inspections and investigations and may close state facilities that are found to be inadequate, it is primarily an advisory group with “no direct power to control or direct the customs and policies of the facilities.” (*Brody v McMahon*, 684 F.Supp. 354, 356-57 [NDNY 1988], *aff’d* 862 F.2d 304 [2d Cir. 1988].) Although the State COC promulgates rules, the only enforcement mechanism at its disposal for noncompliance with rules is to commence an enforcement action in this court pursuant to NY Correction Law § 46 (“Upon the failure of [a facility] to comply with the rule, regulation or law the commission may apply to the supreme court for an order directed to such person requiring compliance with such rule, regulation or law”).⁴⁵

Petitioner argues that, notwithstanding the State COC’s limited enforcement power, it has “abdicated its duty to develop sufficient correctional policies” and has “failed its duty to conduct inspections” to uncover the conditions at Rikers. However, the duties identified by Petitioner are all inherently discretionary

A writ of mandamus is a judicial command that compels a state body or officer to perform a duty that it is required by law to perform. It is black letter law that only ministerial acts that involve no exercise of judgment or discretion may be compelled by mandamus; a party may not use mandamus to compel an agency to perform a discretionary act that involves the exercise of reasoned judgment. (*See All. to End Chickens as Kaporos v New York City Police Dep’t*, 152 AD3d 113, 117 [1st Dept 2017] [“Mandamus is not available to compel an officer or body to reach a particular outcome with respect to a decision that turns on the exercise of discretion or

⁴⁴ See: <https://scoc.ny.gov/about.htm>.

⁴⁵ At oral argument, the Court stated that State Respondents’ counsel’s description of the State COC’s duties made the agency’s oversight sound “almost...perfunctory”. Counsel clarified that the State COC is a “quasi-legislative” agency that can promulgate rules and conduct inspections but has no “direct enforcement authority” against City jails based on their failure to comply with its directives. (NYSCEF doc No. 53 at 22, l: 19 and at 24, l: 1-10.) The Court here notes that the fact that the agency’s duties are discretionary does not make them cursory.

judgment. In other words, mandamus will lie to compel a body to perform a mandated duty, not how that duty shall be performed.”)]

The Court of Appeals has made it clear that an agency’s determination on whether to conduct an investigation is wholly within its discretion and judgment. (*See Matter of Mullen v Axelrod*, 74 NY2d 580 [1989].) Petitioner cites to no authority requiring the State COC to conduct investigations on a mandated regular basis or in response to specific events, which would render the act of commencing an investigation ministerial.⁴⁶ (“A ministerial act is best described as one that is mandated by some rule, law or other standard and typically involves a compulsory result. Discretionary acts, on the other hand, are not mandated and involve the exercise of reasoned judgment, which could typically produce different acceptable results.”) (*All. To End Chickens*, 152 AD 3d at 117; *citing New York Civ. Liberties Union v State of New York*, 4 NY3d 175, 184 [2005].) Therefore, an order compelling the State COC to investigate would constitute an improper writ of mandamus. Furthermore, the mandamus relief sought by Petitioner does not even include an investigation by the State COC.⁴⁷

Petitioner also does not seek to compel the State COC to promulgate specific rules related to the conditions at Rikers, which, as a quasi-legislative act subject to the State COC’s judgment, would also be improper in the context of mandamus. Even *assuming arguendo* that Petitioner sought to compel the State COC to issue rules related to Rikers and the Court deemed the relief to be proper, the State COC would nevertheless be required to commence a separate enforcement action directing the City DOC to comply with the rules given its limited enforcement authority.

⁴⁶ At oral argument, Petitioner argued that the numerous allegations in the petition related to the conditions at Rikers should have triggered the State COC to investigate. (NYSCEF doc No. 53 at 28, l: 11-14 [“... We have cited, for example- I’ll just give one set of allegations related to intake conditions. And people piled on top of one another”].) However, Petitioner did not indicate that a specific request to investigate was ever made.

⁴⁷ Petitioner also does not explain how an investigation by the State COC would not be duplicative of the ongoing investigations conducted by the *Nunez* Monitor.

(See NY Correction Law § 46.) As discussed *infra*, the mandamus relief actually sought by Petitioner entirely pertains to remediation of the conditions at Rikers. Given that the State COC has no independent authority over the City DOC's day-to-day operations of Rikers, and the City DOC is not required to seek the State COC's approval before implementing reforms at Rikers, the State COC's presence in this proceeding is unwarranted.⁴⁸

As Petitioner has made conclusory assertions regarding the scope of State Respondents' duties but has asserted no viable claim against them for mandamus relief, the Court finds that both State Respondents are not proper parties to this proceeding and Petitioner has failed to properly state a claim against them. Consequently, State Respondents' cross-motion for an order dismissing this proceeding against them is granted.

The Justiciability of the Petition as against City Respondents

The Court now writes to address the dispute between the remaining City Respondents and Petitioner as to whether the petition presents a justiciable controversy.

As a preliminary matter, City Respondents argue that the instant petition does not fit within the proper contours of an Article 78 proceeding,⁴⁹ given that the petition does not challenge any specific policies or determinations of City Respondents as arbitrary and capricious or otherwise contrary to law under CPLR 7803(3), nor do they seek an order compelling City Respondents to comply with a singular, discrete duty enjoined upon them under 7803(1). Rather, the petition seeks an order compelling City Respondents to "implement a broad remedial plan"

⁴⁸ To the extent Petitioner argues that the State COC's involvement may be required with a transfer request, the Court reiterates that, like the State DOCCS, the State COC is not required to be a party to this action to comply with its obligations under Correction Law § 504.

⁴⁹ City Respondents suggested at oral argument that the proceeding should have instead been brought as a Section 1983 Civil Rights action. (NYSCEF doc No. 53 at 16, l: 13.)

that would require far reaching court intervention beyond a typical Article 78 summary proceeding that is resolved on the papers before the Court. (NYSCEF doc No. 46 at 3-4.)⁵⁰

The Court finds that at bottom, City Respondents are correct that this petition does not fit within the contours of the base level standard for an Article 78 proceeding. While the petition details the (undisputed) staffing crisis that has affected Rikers, the petition does not challenge any specific policies as arbitrary and capricious, irrational, or otherwise contrary to law; rather, the petition challenges the *effectiveness* of City Respondents' policies in totality.⁵¹ However, this action has morphed from an Article 78 proceeding seeking injunctive relief into a hybrid action seeking a finding that City Respondents' failure to carry out their duties has violated the constitutional rights of Petitioner and those similarly situated, a contention that *is* disputed by City Respondents. Therefore, outdistancing the fact that the base arbitrary and capricious or contrary to law standard of an Article 78 is not necessarily present herein, the Court must take a comprehensive look at the broader issues raised to determine whether the instant hybrid petition presents a justiciable controversy.

As discussed *supra*, given that the remedy of mandamus is only available for ministerial acts, petitions that seek to direct agencies to perform duties in a certain manner may be subject to dismissal on the ground of non-justiciability. The notion of justiciability derives from the doctrine of separation of powers and the courts' disinclination to be perceived as overseeing the discretionary affairs of the political branches of government. (*See Matter of Abrams v. New York City Tr. Auth.*, 39 NY2d 990, 992 [1976].) The courts' disinclination is based on the well-

⁵⁰ City Respondents differentiate *Agnew* as a proper Article 78 proceeding, given that petitioners therein sought an order compelling the City DOC to comply with its obligations under specific statutes and regulations related to medical care and sick call, *e.g.* Administrative Code of the City of New York (NYC Admin. Code) § 9-108 (c) and Rules for the City of New York Board of Correction. (40 RCNY) § 3-02 (c) (4).

⁵¹ At oral argument, the Court noted that the petition challenges, for instance, the City DOC's sick leave policy, not as contrary to law but as "contrary to effective management." (NYSCEF doc No. 53 at 39, l: 15.)

established notion that the State of New York, like the federal government, includes the separation of the executive, legislative and judicial branches, and requires that each branch of government be free from interference in the lawful discharge of duties by other branches. (*See e.g., Matter of New York State Inspection, Security and Law Enforcement Employees, District Council 82, AFSCME, AFL-CIO v. Cuomo*, 64 NY2d 233, 238-240 [1984].) As a policy matter, even apart from principles of subject matter jurisdiction, a court will “abstain from venturing into areas if it is ill-equipped to undertake the responsibility and other branches are far more suited to the task.” (*Jones v Beame*, 45 NY2d 402, 408-409 [1978].) This is particularly true in cases that involve political questions, which involve “those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the legislative and executive branches.” (16A Am Jur 2d, Constitutional Law § 268.)

The Court of Appeals articulated the criteria for a justiciable controversy in *Klostermann v Cuomo* (61 NY2d 525 [1984]), an action commenced by a group of mentally ill persons in New York State institutions seeking declaratory relief and mandamus and claiming that their constitutional and statutory rights were violated.⁵² Plaintiffs argued that the State failed to provide them with “appropriate residential placement, supervision, and care” upon release from their respective facilities, violating the State Mental Hygiene Law as well as the fifth, eighth, and fourteenth amendments of the U.S. Constitution. (*Id.* at 532.) Defendants moved to dismiss on the grounds that matter was nonjusticiable, given that the question of treating the mentally ill involved allocation of resources that were within the competence of the executive and legislative

⁵² Plaintiffs were two separate groups from separate psychiatric facilities that initially commenced two separate actions, *Klostermann v Cuomo* and *Joanne S. v Carey*. The two actions were consolidated given the overlapping nature of the claims sought by both groups. (*Id.* at 534.)

branches. (*Id.* at 533.) Plaintiffs appealed after Defendants' motion was granted by the Special Term and upheld by the Appellate Division.

The Court of Appeals reversed, concluding that the issues raised by plaintiffs could be properly considered. The court opined that “the line separating the justiciable from the nonjusticiable has been subtle” and that “the paramount concern is that the judiciary not undertake tasks that the other branches are better suited to perform.” (*Id.* at 535.) The court proceeded to contrast the instant controversy with that of a recent case, *Bowen v St Bd. Of Social Welfare* (25 NY2d 402 [1978]), that involved a challenge to the same state policy deinstitutionalizing care of the mentally ill presently at issue. *Bowen* was deemed to be nonjusticiable as plaintiffs “sought to litigate the wisdom of the State's policy, which involved the conflicting views of experts as to what constituted the better course of treatment.” (*Id.* at 407-408.) However, the *Bowen* court held that while it would not become involved in the instant attempts to weigh and select policies, violation of state policies may be addressed “in recognized separately litigable matters brought to enforce them.” (*Id.* at 409.) The Court of Appeals concluded that this was one such matter:

“The instant cases raise the precise situation that was contemplated in *Bowen*. Plaintiffs are individuals who claim that they hold certain rights under the pertinent statutes and are seeking to enforce those rights. In effect, they assert that the Legislature has mandated certain programs and that the executive branch has failed to deliver the services. The appropriate forum to determine the respective rights and obligations of the parties is in the judicial branch. . . . [T]here is nothing inherent in plaintiffs' attempts to seek a declaration and enforcement of their rights that renders the controversy nonjusticiable. They do not wish to controvert the wisdom of any program. Instead, they ask only that the program be effected in the manner that it was legislated.”
(61 NY2d at 536-7).

In contrast to *Klostermann, Matter of New York State Inspection, supra*, presented a controversy where the Court of Appeals reached the opposite conclusion. The court heard a

petition from a class of correctional services employees who objected to the scheduled closing of a Long Island correctional facility. (*Matter of New York State Inspection*, 64 NY2d at 238), The petitioners argued that the State’s plan to convert the facility to a medium security facility violated their statutory right to a safe workplace. The Court of Appeals held that while the doctrine of justiciability is “perhaps the most significant and least comprehended limitation upon the judicial power.” (*Id.*) the instant petition was clearly nonjusticiable. The Court of Appeals noted that the responsibility for administering the State correctional system, including making decisions to close or convert facilities, was clearly vested in the Commissioner of Correctional Services, a political appointee of the Governor, pursuant to the State’s Correction Law.

Relying on its earlier holding in *Klosterman*, the Court of Appeals recognized that the judiciary has power to declare the rights of a class of individuals. Nevertheless, the court held that “the statutory right to a safe workplace may not be enforced by means of a remedy at law which would require the Judiciary to preempt the exercise of discretion by the executive branch of government” and that the petitioners asserted no violations of other rights that were proper for judicial review. (*Id.* at 240.) Therefore, the court concluded that “the manner by which the State addresses complex societal and governmental issues is a subject left to the discretion of the political branches of government.” (*Id.*) Accordingly, the court dismissed the petition, holding that any consideration of policy matters that “have demonstrably and textually been committed to a coordinate, political branch of government” would constitute an *ultra vires* act “absent extraordinary or emergency circumstances.” (*Id.* [citation omitted].)

In *Roberts v. Health & Hosps. Corp.*, 87 AD3d 311, 317 (1st Dept 2011), a case relied on by City Respondents, petitioners challenged staffing determinations in the public hospital system and argued that the safety of employees would be at risk because of lack of an adequate health

and safety plan. Petitioners claimed that the hospital system's decision to abolish one third of its carpentry staff and hire private contractors violated the Merit and Fitness Clause of the New York Constitution, as well as the hospital system's duty to maintain its facilities in a safe condition pursuant to various New York Health Law provisions. The First Department held that the petition "clearly presents a non-justiciable controversy" as "[n]either the petitioners nor the courts should be permitted to substitute their judgment for the discretionary management of public business by public officials, as neither have been lawfully charged with that responsibility." (*Id.* at 326.)

In evaluating whether the petition was subject to dismissal, the First Department noted that with respect to petitioners' claims, "it is the province of the Judicial branch to define, and safeguard, rights provided by the New York State Constitution, and order redress for violation of them." (*Id.* at 324, citing *Campaign for Fiscal Equity v State of New York*, 100 NY2d 893, 925 [2003].) Nevertheless, the First Department found that as the legislature designated the hospital system discretion to determine employee numbers, the system's decisions regarding staffing levels were beyond judicial review. Furthermore, the petitioners failed to identify any specific regulation or provision of the Public Health Law requiring the hospital system to maintain staff at a certain level. With respect to petitioners' claims that the determination would create an unsafe workplace environment, the First Department held that the claims, in addition to being overly speculative, were also nonjusticiable under *Matter of New York State Inspection*. The First Department concluded by noting that the petitioners, "however sincerely motivated, may not interpose themselves and the courts into the management and operation of public enterprises." (*Id.* at 326.)

City Respondents argue that as with *Roberts*, Petitioner’s instant challenge to the City DOC’s staffing policies and allocation of resources is predicated on general claims of mismanagement and, thus, inappropriate in the Article 78 context. However, Petitioner argues that City Respondents mischaracterize his petition as a general critique of the way Rikers is being operated, when his actual claim is that the way Rikers is being operated has resulted in violations of the constitutional rights of those detained therein.⁵³

As Petitioner argues in opposition, *Roberts* is distinguishable from the instant matter as it involved no allegation of individual constitutional rights. As quoted *supra*, the *Roberts* court fully articulated that the Judiciary may order redress for violation of rights safeguarded by the state constitution and further opined that “[w]hen [the courts] review the acts of the Legislature and the Executive, *we do so to protect rights*, not make policy.” (*Id.* at 324 [emphasis added].) However, while the petitioners asserted the hospital system’s staffing decision violated the state constitution’s Merit and Fitness clause and potentially violated certain statutory requirements to a safe workplace, the petitioners asserted no violations of *individual* constitutional rights.⁵⁴

Stokes v City of Mount Vernon (2015 WL 4710259, SDNY 2015), a federal action cited by Petitioner, further establishes that *Roberts*’ holding does not pertain to cases involving alleged violations of individual constitutional rights. In *Stokes*, a plaintiff hired as an Inspector General for Mount Vernon’s City Council sued the city of Mount Vernon and individual Council members on the City’s Board of Estimate (“BOE”) after the Council passed an amendment drastically reducing his salary, a demotion that plaintiff argued was politically motivated after fallout related to one of his investigations of a city comptroller. Plaintiff argued, *inter alia*, that

⁵³ Although as discussed, the petition is not supported by credible proof substantiating its allegations, the Court deems all allegations true for the purpose of evaluating the cross-motion to dismiss.

⁵⁴ Neither *Roberts* nor *Matter of New York State Inspection* alleged a violation of the employees’ individual constitutional rights.

the demotion violated his due process rights. Defendants, relying on *Roberts*, argued that the Court could not submit its judgment for that of the BOE and the City Council, and the dispute was thus nonjusticiable under the political question doctrine.

The Southern District rejected this argument, holding that, “[h]ere, plaintiff has alleged violations of his constitutional rights... the Court has generally refused to hold that an individual’s claims of personal injury present nonjusticiable political questions.” (*Id.* at *5.) The court quoted a law review article on the political question doctrine to underscore the longstanding history of this distinction: “*Marbury v Madison* distinguished political questions ... which the courts could not hear, from those involving individual rights, which they emphatically should. The distinction is intuitively sound—no one would doubt that courts are expert at remedying individual wrongs, and it is scarcely more controversial to point out that judicial review makes the judiciary a natural agent to protect constitutional guarantees against the tyranny of the majority.” (The Harvard Law Review Association, *The Political Question Doctrine, Executive Deference, and Foreign Relations*, 122 HARV. L.REV. 1193, 1200 [2009].) The court concluded that the nature of plaintiff’s claims against the City of Mount Vernon presented a justiciable controversy.

More recently, the First Department reiterated that disputes are not *per se* nonjusticiable even when they involve questions of policy decisions and allocations of resources. In *Center for Independence of the Disabled v Metropolitan Transportation Authority* (184 AD3d 197 [2020]), a group of plaintiffs with mobility impairments brought a putative class action against the City and its transit system, arguing that the subway system’s lack of accessibility violated their rights under the New York City Human Rights Law (NYCHRL). Defendants moved to dismiss arguing, *inter alia*, that the relief sought, which included the judicial imposition of a remedial

plan to eliminate discrimination, rendered the case nonjusticiable. The First Department rejected this argument, holding that determinations of justiciability must be made on a case-by-case basis, and where, as here, plaintiffs seek to enforce rights afforded to them by the NYCHRL, those claims are justiciable. (*Id.* at 208.) In doing so, the First Department relied on *Klosterman* for the proposition that plaintiffs are not precluded from seeking judicial intervention with respect to a declaration and enforcement of rights. (*Id.*) The court further held that the requested relief of a remedial plan was not improper, given that “a court can direct the State to prepare plans and programs to provide suitable treatment, which would also necessarily require the expenditure of funds, but not dictate the specific manner in which such plans and programs operate.” (*Id.* at 209.)

Guided by the above caselaw, this Court finds that while certain aspects of the instant petition are nonjusticiable, Petitioner’s allegations that his due process rights have been violated by the conditions at Rikers present a justiciable controversy. As the Court discussed in its denial of Petitioner’s preliminary injunction application, the fact that Rikers is the facility designated to house pretrial detainees remanded by New York City’s criminal court system is nonjusticiable. The City has authorized and empowered the City DOC to house and detain those remanded to its custody, subject to the City DOC’s managerial and executory discretion. (*See* Chapter 25 of the New York City Charter, §623.) The fact that the City DOC is obligated to carry out its duties at the only facility available⁵⁵ to it is nonjusticiable and therefore, applications to move all detainees out of Rikers present a political question that this Court is precluded from weighing in on. As City Respondents note, general criticisms regarding the day-to-day operations at Rikers

⁵⁵ As discussed *supra*, the City DOC also operates a facility located on a floating barge in the Bronx, but Petitioner has acknowledged that the barge is not a viable location for *all* detainees.

are improper in an Article 78 petition, given that such oversight is reserved for the legislature and agencies such as the City BOC.⁵⁶

Notwithstanding the foregoing, however, Petitioner's central claim in this proceeding is an allegation that the staffing failures at Rikers have violated his constitutional due process rights and those of the putative class he purports to represent. Therefore, Petitioner has brought a "separately litigable matter" to enforce rights that is distinct from a general request that the Court modify the way the City DOC operates its facilities. Petitioner does not seek to dictate the specific way the City DOC operates Rikers, but rather seeks an order compelling the City DOC to remedy conditions at Rikers to prevent further constitutional harm. The Court concludes that while Rikers' existence as the facility for pretrial detainees managed by the City DOC is a nonjusticiable political question, the conditions at Rikers are justiciable to the extent said conditions are violating the constitutional rights of those entrusted in the City DOC's care. Therefore, the Court proceeds to address Petitioner's claims for mandamus and declaratory relief.⁵⁷

Petitioner's Article 78 Application for Mandamus Relief

Petitioner seeks an order of mandamus "compelling Respondents to facilitate alternative corrections to their present policies, and/or procedures, as the case may be, sufficient to remedy the constitutional violations against pre-trial detainees discussed herein, including but not limited

⁵⁶ At oral argument, City Respondents' counsel explained that the City BOC is the City's version of the State COC "that promulgates minimum standards and operating regulations" and conducts monthly meetings with all stakeholders in the City's criminal justice system, including the Commissioner, the unions, and the defender groups, to discuss all the issues at Rikers. (NYSCEF doc No. 53 at 31-32, 1: 12-25, 1-25.)

⁵⁷ The Court notes that City Respondents' additional argument that the petition improperly seeks the *ultra vires* relief of requiring the City DOC "to stop accepting persons into custody" is unsupported. Petitioner's application for injunctive relief directing the City DOC to detain newly incarcerated persons at alternative facilities has now been denied by this Court. More critically, given that the preliminary relief was only sought on a temporary basis pending the outcome of the declaratory and mandamus relief directing Respondents to ameliorate the alleged unconstitutional conditions at Rikers, it cannot be described as the "ultimate relief" in this matter.

to such alternatives described herein, until Respondents have demonstrated to the Court that Effective Staffing has been achieved.” Petitioner also requests that the Court direct Respondents to facilitate said alternatives within thirty (30) days of its Order.

While City Respondents maintain that mandamus relief would improperly interfere with the City DOC’s discretionary authority to operate Rikers, the instant petition includes various allegations that the City Respondents have breached their black-letter legal duty to safely house Petitioner and provide proper health care, and to ensure that Petitioner’s due process constitutional rights are not violated while Petitioner is detained in the City DOC’s custody.

As discussed extensively in its evaluation of Petitioner’s preliminary injunction application, Petitioner alleges that the City DOC has violated his constitutional rights by forcing him to live in conditions that objectively deprive him of his right to due process and have acted with deliberate indifference as to said conditions. In addition, Petitioner cites numerous City Charter requirements that he alleges have been violated. For instance, Title 40, Chapter 3 of the Rules of the City of New York sets out the minimum, specific standards for healthcare at Rikers, which include “medical and dental diagnosis, treatment and appropriate follow-up care consistent with professional standards” and “management and administration of emergency medical and dental care.” RCNY § 3-01(b)(1)-(2). Additionally, § 3-02 dictates the minimum standards for access to care for incarcerated persons under the City DOC’s supervision. These standards guarantee, *inter alia*, that no “inmate’s access to any health care service... be denied,” that any “correctional personnel who knows or has reason to believe that an inmate may be in need of health services shall promptly notify the medical staff,” and “staffing levels in the jail clinics, jail infirmaries and prison hospital wards shall be adequate in numbers and types to insure that all standards described here are met.” (*Id.*)

Given that Petitioner alleges the staffing crisis has caused him to live in squalid and unsanitary conditions at an increased risk of exposure to COVID-19, to face persistent risk of violence at the hands of other inmates, and to go without medical attention or basic health care services, including various missed appointments, Petitioner's allegations, if true, establish that City Respondents have failed in performing their obligations both pursuant to the State Constitution and City Charter. Additionally, Petitioner does not ask that this Court substitute its expertise for that of City Respondents and dictate how the specific policies and procedures must be changed, but rather asks the Court to compel City Respondents to come up with their own remediation plan. Mandamus may be used to "compel acts that officials are duty-bound to perform, regardless of whether they may exercise their discretion in doing so." (*Klostermann, supra*, at 540.) Therefore, Petitioner's application for an order compelling City Respondents to remedy conditional violations does not constitute an improper claim for discretionary relief, but rather an application to compel City Respondents to use their discretion to comply, conduct, and perform duties to which they have a legal obligation.

The Court's evaluation of Petitioner's mandamus claim, however, does not end with its determination that City Respondents may be properly compelled to remediate the conditions at Rikers. It is well settled that mandamus is a drastic and extraordinary remedy that shall only be granted when there is no other adequate remedy available. (*See Walsh v LaGuardia*, 269 NY2d 437 [1936].) In seeking mandamus, "[t]he burden is thrown on the applicant for the order to demonstrate the necessity and the propriety of its use. Even then the court may consider by way of defense the hardship and injustice to the defendant, the conduct of the applicant and the interest of third persons. Although the order is classed as a legal remedy, equitable principles largely control its issuance." (*Newman v Smith*, 263 AD85, 87 (1st Dept 1941), *aff'd*, 289 NY

545 [1942].) Even after a petitioner has satisfied his burden in demonstrating the necessity of the relief, it is still within the court's discretion to determine whether the order should be granted or withheld. (*Id.*)

As discussed extensively in the background of this Decision, the *Nunez* action commenced by a group of Rikers detainees challenging the facility's conditions and staffing practices as unconstitutional has been ongoing in the Southern District for the past decade. As of the date of this Decision, City Respondents are now subject to the Final Action Plan, a multi-faceted remedial plan that is aimed at remedying the very conditions and crises engulfing Rikers that are the subject of this petition.

Petitioner contends that *Nunez* "evidences the need for drastic court intervention" outside what has heretofore been proposed, and in that way, the relief sought in *Nunez* "is not duplicative of that sought here." (NYSCEF doc No. 40 at 19-20.) On this point, Petitioner intimated at oral argument that *Nunez* is solely focused on violence at Rikers and does not address the petition's allegations with respect to, for example, missed medical appointments and court dates.⁵⁸ The Court finds this position to be unsupported. While it recognizes that there is no application in *Nunez* similar to Petitioner's (now denied) request to temporarily enjoin new detainees from being admitted to Rikers, Petitioner does not develop in his papers how *Nunez* is not duplicative of the *ultimate* relief sought in his petition. As now discussed *ad nauseum*, Petitioner's constitutional claims are premised on the harms resulting from the Effective Staffing Crisis, i.e., the physical violence suffered at the hands of other detainees, the lack of access to health care, and the missed court appointments. To say, then, that the ultimate relief requested here—a plan

⁵⁸ See NYSCEF doc No. 53 at 11, l: 1-11 ("...*Nunez* was focused on violence...the remedy does not address the effective staffing crises in total. And it certainly does not address specifically the effects of that crisis that we've outlined in our petition...the constitutional violations that we are so focused on").

to ameliorate the violence and give access to medical/court appointments—is not duplicative of other ongoing litigation would be to circumscribe the ultimate purpose of the *Nunez* Final Action Plan and the contempt order issued by Judge Taylor in *Agnew*, which, it bears repeating, includes Petitioner as a class member and is specifically focused on detainee medical care.

In point of fact, the Final Action Plan, in recognizing the degree to which some of Rikers’ problems are linked to staffing shortages, details how the City DOC will (1) deploy its staff more effectively to priority areas so as to ensure the safety of incarcerated persons, (2) address staff absenteeism, (3) improve the operation of City DOC’s Health Management Division, and (4) design new security practices to address Rikers staff’s overreliance on use-of-force tactics and Emergency Response Teams (*See generally* NYSCEF doc No. 52.) For example, the Final Action Plan requires the City DOC to evaluate, within 120 days, all uniform staff currently out sick on leave in order to identify those staff who must return to work, and/or to make any referrals to the Department of Investigation for potential criminal proceedings. (*Id.* at 4.) Additionally, the Final Action Plan requires the City DOC to implement a plan to significantly reduce the use of what’s called the Medically Modified/Restricted Duty Status and eliminate the abuse of this designation within 60 Days. (*Id.* at 3.) The foregoing examples are just two of many envisioned policy reforms taken from the Final Action Plan’s Section A, entitled “Immediate Initiatives to Address Harm.” Section B envisions citywide initiatives to changes hiring and recruitment practices; Section C incorporates proposals to changes to Staffing Practices within Rikers, such as how the City DOC deploys staff in different units and how officers are supervised; Section D, entitled “Security Practices,” addresses reliance on use-of-force tactics outlined in the *Nunez* Monitor’s 12th and 13th Reports; and Section G provides mechanisms by which the Court can assess the effectiveness of the Action Plan in November 2022.

The Court's recitation of these aspects of the Final Action Plan is intended to demonstrate the overlap between *Nunez* and the requested relief in the instant action. In Petitioner's proposed Phased Plan (*see* NYSCEF doc No. 40 at 3), Phase Three requires that, upon the Court's determination that constitutional rights have been violated, "Respondents will act to devise an approach that will end the Effective Staffing Crisis." In Phase Four, Petitioner envisions that the preliminary injunction will be lifted "upon a demonstration that Respondents have implemented an approach that will end the Effective Staffing Crisis." (*Id.*) As far as the Court can deduce, the Phased Plan appears duplicative of Final Action Plan, both with respect to how the City DOC plans to effectuate new staffing policies and how the Court should monitor the implementation and progress of the policies. In tandem with the *Nunez* Final Action Plan, City Respondents are also subject to the order issued in *Agnew*⁵⁹ directing them to provide petitioners with full access to sick care and health services and provide proof of compliance with the same. City Respondents will be subject to a compensatory fine based on their failure to comply. As such, when *Nunez* and *Agnew* are viewed comprehensively, the instant action is essentially duplicative.

Additionally, the current procedure of *Nunez* underscores the futility of an order from this Court directing City Respondents to ameliorate the conditions in the relatively short 60-day time frame proposed by Petitioner, given that all *Nunez* parties, including the Monitor, the federal government, and the plaintiffs' counsel, agree that reformation cannot occur in mere months and will be a complex, extended process that may potentially require the involvement of outside actors to overcome potential legal obstacles.⁶⁰ Additionally, as City Respondents noted at oral argument, Judge Swain's determination to allow the City five months to successfully implement

⁵⁹ Petitioner herein is also a member of the *Agnew* class. (NYSCEF doc No. 28 at 11).

⁶⁰ Petitioner has also set forth no basis for why City Respondents would be able to implement a mandamus order from this Court any more effectively than they would the Final Action Plan.

the Final Action Plan before considering a receivership reflects a disinclination on the part of the judiciary to micromanage the operations at Rikers.

In light of the foregoing developments, this Court finds that it would be an improvident exercise of judicial discretion to issue a separate mandamus order directing City Respondents to address the conditions at Rikers.⁶¹ While it is necessarily speculative that the Final Action Plan will be any more successful than the previous plans issued, given it is not the first, second, or fifth plan for addressing the myriad of problems at Rikers, and there is similarly no guarantee that City Respondents will fully comply with their obligations under Judge Taylor's contempt order in *Agnew*, the Court is nonetheless disinclined to tread on the orders Judge Swain has issued under *Nunez* and Judge Taylor has issued in *Agnew*. In the Court's view, separate, overlapping orders from state and federal courts would only add to the confusion and red tape bureaucracy that have derailed reform efforts at Rikers over the last several years.⁶² Furthermore, Judge Swain has already directed in her June 14, 2022 Order that should the City be unable to properly implement the Final Action Plan within the next five months, that she will revisit the prospect of a federal receivership.⁶³

⁶¹ As with litigation generally, Article 78 proceedings are subject to dismissal on the grounds that they are duplicative and may lead to inconsistent results. (*See Kaminowitz v Bd. of Ed.*, 257 AD2d 440, 440 [1st Dept. 1999]).

⁶² As City Respondents point out in reply, an order of mandamus in the instant petition would require far reaching discovery, unusual in an Article 78 proceeding, to ascertain the violations of constitutional rights across Rikers' detainee population. (NYSCEF doc No. 46 at 7). In contrast, in *Nunez*, both Judge Swain and the *Nunez* Monitor have already been interposed in Rikers and the DOC's efforts for several years, and there is no impediment to the immediate implementation of the Final Action Plan.

⁶³ During the week of June 18, 2022, days after Judge Swain entered the Final Action Plan, three detainees died at Rikers due to alleged inadequate supervision (*See* Jonah E. Bromwich and Jan Ransom, 3 *N.Y.C. Detainees Die in Less Than a Week, Bringing Year's Total to 9*, NYTIMES, June 22, 2022, <https://www.nytimes.com/2022/06/22/nyregion/rikers-inmate-deaths.html>). While this tragic development underscores the continued and immediate crises at Rikers, it does not alter the legal conclusions reached herein, and it is a matter of discretion for Judge Swain to determine whether the appointment of an independent monitor should be revisited prior to November 2022.

At bottom, Petitioner cannot demonstrate the “necessity and propriety” of a mandamus order from this Court directing City Respondents to ameliorate the conditions and staffing crisis at Rikers when City Respondents are already subject to the Final Action Plan and may be subject to a forthcoming federal receivership should they fail to demonstrate compliance, and are also subject to the contempt order issued by Judge Taylor in *Agnew*.

Therefore, the Court concludes that, notwithstanding the justiciable controversy presented and City Respondents’ obligations to remediate the conditions at Rikers, it would be an improvident exercise of discretion to grant the mandamus relief sought herein.

Petitioner’s Application for a Declaratory Judgment

In addition to rendering the mandamus relief moot, the current developments at Rikers under *Nunez* and *Agnew* also render Petitioner’s application for declaratory relief unnecessary.

Petitioner seeks a declaratory judgment declaring (1) that Respondents’ actions and omissions, described herein, have violated and continue to violate the constitutional rights of the incarcerated persons within their charge, and (2) that, in light of Respondents’ current staffing policies, procedures, and oversight methods, the constitutional rights of incarcerated persons at Rikers cannot be guaranteed.

Declaratory judgments are a means to establish the respective legal rights of the parties to a justiciable controversy (CPLR 3001; *see generally* 43 N.Y. Jur.2d Declaratory Judgments §§ 4, 22). While issues of fact may be addressed and resolved in the context of a declaratory judgment action (*see* Siegel, N.Y. Prac. § 436, at 739, citing *Rockland Power & Light Co. v City of New York*, 289 N.Y. 45, 43 [1942]), the point and the purpose of the relief is to declare the respective legal rights of the parties based on a given set of facts, not to declare findings of fact. (*Thome v Alexander & Louisa Calder Found.*, 70 A.D.3d 88, 99–100 [1st Dept 2009].) “The general

purpose of the declaratory judgment is to serve some practical end in quieting or stabilizing an uncertain or disputed jural relation either as to present or prospective obligations.” (*James v. Alderton Dock Yards*, 256 NY 298, 305 [1931]; *see also* Siegel, N.Y. Prac. § 436, at 738 [4th ed.].)

Similar to mandamus relief, a Court has discretion to issue declaratory judgments only when they would serve a useful purpose (*See James*, *supra*, at 305 [“A declaratory judgment, while discretionary with the court, is nevertheless dependent upon facts and circumstances rendering it useful and necessary”]; *See also Rockland Power & Light Co. v. City of New York*, 289 N.Y. 45, 50–51, 43 N.E.2d 803, 806 (1942) “[A declaratory judgment’s] discretionary and extraordinary power is properly invoked only where resort to ordinary actions or proceedings would not afford adequate relief”].) As such, declaratory judgments are unnecessary “where a full and adequate remedy is already provided.” (*Id.*) When declaratory judgments are unnecessary, they should not be employed. (*Id.*)

Here, Petitioner’s papers are silent as to what useful purpose would be served by the declaratory relief sought. More critically, as discussed, the issues of the conditions at Rikers and any potential violations of pretrial detainees’ constitutional rights are being comprehensively redressed in the ongoing *Nunez* action. Given that “the primary purpose of declaratory judgments is to adjudicate the parties’ rights before a ‘wrong’ actually occurs in the hope that later litigation will be unnecessary” (*Klostermann*, *supra*, at 538), and here, numerous litigations commenced to address the conditions at Rikers are underway, Petitioner is constrained from arguing that declaratory relief would serve its intended purpose.

The Court stresses that its evaluation of Petitioner’s declaratory relief application should in no way be construed as a cavalier dismissal of the crisis at Rikers affecting the rights of those

detained therein. However, the Court is constrained to deny the application under the guiding caselaw, as declaratory relief here serves no useful purpose towards the resolution of said crisis.

To conclude, while Petitioner has presented a justiciable controversy subject to review under CPLR Article 78, the cross-motion of City Respondents to dismiss the instant petition must nevertheless be granted as the ultimate relief sought by Petitioner herein is duplicative of the *Nunez* action and overlaps with the orders issued therein.

The Court finds that this Petition was not the proper vehicle to address and redress the structural and systemic dysfunction at Rikers. And, more than an attempt to “work around” such factors as the City procurement guidelines and rules, the collective bargaining agreements, and union rules is needed.

CONCLUSION

Based on the foregoing and in accordance with the “So-Ordered” Transcript June 15, 2022 (Anne F. Brown, Court Reporter), it is hereby

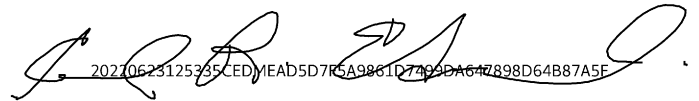
ORDERED AND ADJUDGED AND DECLARED that the application of Petitioner Raymond Bell by Order to Show Cause seeking, *inter alia*, a preliminary injunction, pursuant to CPLR Section 6311, forbidding the admission of new incarcerated persons to any Rikers detention facility (Motion Seq. 001) is denied in its entirety; and it is further

ORDERED AND ADJUDGED AND DECLARED that the cross-motions of Respondents Eric Adams, New York City Department of Correction, Louis A. Molina, and the New York City Board of Correction (“City Respondents”) and Respondents New York State Commission of Correction and New York State Department of Corrections and Community Supervision (“State Respondents”) for an order pursuant to CPLR §§ 3211(a)(7) and 7804(f)

dismissing the petition for failure to state a claim are granted, and this proceeding is dismissed in its entirety; and it is further

ORDERED that the Clerk of the Court shall enter judgment accordingly; and it is further

ORDERED that counsel for City Respondents shall serve a copy of this Order, along with notice of entry, on all parties within ten (10) days.



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6/23/2022

DATE

CAROL EDMEAD, J.S.C.

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE