

Casiano v City of New York
2022 NY Slip Op 32857(U)
August 24, 2022
Supreme Court, New York County
Docket Number: Index No. 156814/2022
Judge: Judy H. Kim
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**SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY**

PRESENT: HON. JUDY H. KIM PART 05RCP

Justice

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NIURSHAUN CASIANO

Plaintiff,

- v -

THE CITY OF NEW YORK,

Defendant.

-----X

INDEX NO. 156814/2022

MOTION DATE N/A

MOTION SEQ. NO. 001

**DECISION + ORDER ON
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 2, 4, 5, 6
were read on this motion for DISCOVERY - PRE-ACTION.

Upon the foregoing documents, Petitioner's petition seeking pre-action discovery pursuant to CPLR §3102(c) is granted in part, to the extent forth below:

On August 11, 2022, Petitioner filed the instant petition alleging that on July 21, 2022 or July 22, 2022 at or around 6:45 a.m. while at Rikers Island, in the George R. Vierno Center ("GRVC") in housing area 17A, Mr. Casiano was attacked by multiple people, causing severe injuries, including a punctured lung and perforated bowel (NYSCEF Doc. No. 1 [Petition at ¶9]). Petitioner further alleges that New York City Department of Correction ("NYCDOC") officials negligently failed to protect him from this attack (*Id.* at ¶10).

Petitioner seeks an order directing Respondent the City of New York to preserve and produce the following:

- a. The full names of any NYCDOC employees who were on duty in GRVC in housing area 17A between the hours of 4:30 a.m. and 8:30 a.m. in the morning, on July 21, 2022 and July 22, 2022;
- b. The full names of any NYCDOC employees who were on in GRVC in housing area 17A between the hours of 4:30 a.m. and 8:30 a.m. in the morning, on July

- 21, 2022 and July 22, 2022 and who were present for or responded to the assault on Mr. Casiano;
- c. Any and all video recordings that capture Mr. Casiano, particularly for the date of July 21, 2022 and July 22, 2022, including but not limited to:
- i. Any and all video recordings which capture the altercation involving Mr. Casiano and the other incarcerated people;
 - ii. Any and all video recordings which capture the aftermath of the altercation involving Mr. Casiano, including any medical response;
 - iii. Any and all video recordings of Mr. Casiano's exit from GRVC and Rikers Island.
- d. Any and all video recordings that capture NYCDOC employees responding or not responding to the attack on Mr. Casiano on July 21, 2022 or July 22, 2022;
- e. Any and all documents received from the New York State Department of Corrections Division of Parole or the New York City Department of Probation concerning Mr. Casiano;
- f. Any and all medical evaluations and intake documents for Mr. Casiano;
- g. Any and all log book entries related to Mr. Casiano including but not limited to:
- i. intake post logs;
 - ii. intake new admission tracking log;
 - iii. clinic new admission logs;
 - iv. clinic post logs;
 - v. emergency health care referral log books;
 - vi. housing logbooks;
 - vii. crime scene logbooks;
 - viii. transfer log books;
 - ix. daily/shift log books; and
 - x. supervising officers' log books;
- h. Any and all records maintained by NYCDOC for Mr. Casiano. This includes but is not limited to:
- i. correctional records, including but not limited to custodial and legal files;
 - ii. incident report forms;
 - iii. records on transfers;
 - iv. security risk group/Gang Intelligence Unit records;

- v. search records;
 - vi. disciplinary records;
 - vii. grievance records;
 - viii. requests for medical or mental health attention/appointments;
 - ix. intake records;
 - x. classification records;
 - xi. movement records;
 - xii. placement records;
 - xiii. housing records;
 - xiv. program records;
 - xv. visit records;
 - xvi. escort records;
 - xvii. transport records;
 - xviii. discharge planning records;
 - xix. security records;
 - xx. law enforcement records;
 - xxi. probation and parole records;
 - xxii. Chaplain's Report;
 - xxiii. Incident Photos;
 - xxiv. rehabilitation records; and
 - xxv. medical records – including mental health records;
- i. Any and all investigation records regarding the July 21, 2022 or July 22, 2022 incident in which Mr. Casiano was attacked by other incarcerated people. This includes but is not limited to:
- i. Incarcerated people Statements;
 - ii. Unusual Incident Reports;
 - iii. Incident Reports;
 - iv. Injury to Incarcerated people;
 - v. Audio recordings of witness interviews;
 - vi. Video recordings of witness interviews;
 - vii. Use of force reports and attachments;
 - viii. Investigation reports;
 - ix. Any preliminary reports;
 - x. Any preliminary investigative reports;
 - xi. any video or audio records of location of incident;
 - xii. Correspondence informing the NYCDOC Chain of Command;
 - xiii. Correspondence informing the NYCDOC Investigation Division;
 - xiv. Correspondence informing the New York City Police Department, the Bronx District Attorney's Office, the State Commission of Corrections and/or any other Outside agencies;
 - xv. The complete NYCDOC Investigation Division file inclusive of all reports, case logs, attachments, interview recordings, internal department correspondences regarding the investigation, and

- external correspondences with other agencies regarding the investigation; and
- xvi. The complete NYCDOC Health Affairs file inclusive of all reports, case logs, attachments, interview recordings, internal department correspondences regarding the investigation, and external correspondences with other agencies regarding the investigation;
- j. Any and all disciplinary files and records of NYCDOC personnel in connection with the July 21, 2022 or July 22, 2022 incident in which Mr. Casiano was attacked by another incarcerated people. Including but not limited to:
- i. Personnel disciplinary files;
 - ii. Employee performance services report;
 - iii. Memorandum of complaints against employees;
 - iv. Employee performance service reports;
 - v. Notices of Pleading and Hearings;
 - vi. Overtime Reports; vii. Notices of Suspension;
 - viii. Charges and Specifications; ix. Notices to Appear before the NYCDOC Investigation Division;
 - x. Negotiated Plea Agreements;
 - xi. Probation Agreement Forms; and
 - xii. All records regarding Office of Administrative Trials and Hearing (OATH) trials.
- k. Any and all materials, media, documents, and/or electronically stored information connected with the July 21, 2022 or July 22, 2022 incident in which Mr. Casiano was attacked by another incarcerated people that was not captured by the above-listed items;
- l. The full names of any NYCDOC employees who were suspended in connection with this incident;
- m. The length of the suspension of employees identified in (l);
- n. Justification for returning the employees identified in (l) back to work, if they returned to employment.

DISCUSSION

Respondent does not oppose the portion of the Petition seeking the preservation of the foregoing material and, in fact, has already requested that NYCDOC preserve all of the material listed in the Petition to the extent these items exist and are in the possession of NYCDOC

(NYSCEF Doc. No. 7 [Lynch Affirm. at ¶5]). Accordingly, the Court turns to Petitioner's request that this material be produced as part of pre-action discovery.

"A petition for pre-action discovery should only be granted when the petitioner demonstrates that he has a meritorious cause of action and that the information sought is material and necessary to the actionable wrong" (Uddin v New York City Tr. Auth., 27 AD3d 265, 266 [1st Dept 2006] [internal citations omitted]). "Here, Petitioner is demanding, as pre-suit discovery, functionally all of the ... discovery that it would demand from the City of New York in a potential future action, a purpose which CPLR §3102 is not designed to allow. Petitioner's petition clearly shows that Petitioner is already in possession of the sufficient facts necessary to frame his complaint, except for the identities of the additional possible defendants in the form of the corrections officers and supervisors" involved in NYCDOC's alleged failure to protect Petitioner (Feliciano v The City of New York, 2020 NY Slip Op 32303[U], 3 [Sup Ct, New York County 2020]). Accordingly, the Court concludes that "petitioner is entitled to pre-action discovery of '[t]he full names of any NYCDOC employees who were suspended in connection with this incident'" (Id.; see also Riccio v City of New York 2016 WL 4218626 [Sup Ct, New York County 2016]).

Accordingly, the Petition is granted to the limited extent that it is

ORDERED that Respondents shall direct that all of the documentary evidence set forth in the Petition is preserved, to the extent that it exists; and it is further

ORDERED that Petitioner shall serve a copy of this decision and order, with notice of entry, upon Respondent within five days of the date of this decision and order; and it is further

ORDERED that Respondent shall, within thirty days of such service, disclose the identities of any New York City Department of Correction employees suspended in connection with this incident, and it is further

ORDERED that the petition is denied in all other respects.

This constitutes the decision and order of the Court.

8/24/2022

DATE

CHECK ONE:

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CASE DISPOSED

☐

GRANTED

☐

DENIED

APPLICATION:

☐

SETTLE ORDER

CHECK IF APPROPRIATE:

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

Judy H. Kim
2022082412165144010528053C345AA95889378CE60F6853EC

JUDY H. KIM, J.S.C.