Index No. 161499/2024

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

THE COUNCIL OF THE CITY OF NEW YORK
AND THE NEW YORK CITY PUBLIC ADVOCATE,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

—against—

MAYOR ERIC ADAMS, IN HIS OFFICIAL CAPACITY AS THE MAYOR OF THE CITY OF NEW YORK,

Respondents.

BRIEF OF AMICI CURIAE THE BRONX DEFENDERS, BROOKLYN DEFENDER SERVICES, NEIGHBORHOOD DEFENDER SERVICES OF HARLEM, NEW YORK COUNTY DEFENDER SERVICES, AND QUEENS DEFENDERS

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PRELIMINARY STATEMENT

Cody Brennan,[1] currently incarcerated in solitary confinement on Rikers Island, spends almost twenty-four hours a day in total lockdown alone in a small cage. Department of Corrections ("DOC") officers regularly use chemical spray and enhanced restraints on Mr. Brennan, both of which trigger his severe asthma. During the asthma attacks caused by DOC's treatment, he has suffered convulsions and even lost consciousness. Mr. Brennan's story is horrific, but not unusual. Countless New Yorkers, including people *amici* represent, are presently incarcerated in the abusive and torturous conditions that DOC's policies—and failures—have created.

In December 2023, the New York City Council passed Local Law 42 ("LL42") to ban many abusive DOC practices—most importantly solitary confinement—that have created these conditions. New York City, Local Law No. 42 (Jan. 30, 2024). LL42 passed by an overwhelming majority, overriding a veto from Mayor Eric Adams. On the eve of LL42's effective date, however, Mayor Adams declared that the law "pose[d] a direct threat to the safety of incarcerated individuals and staff in DOC facilities" and took improper, unilateral action to prevent its implementation. Purporting to use his authority under New York Executive Law § 24, Mayor Adams issued a series of emergency executive orders (collectively, the "EEOs") suspending or dramatically modifying virtually all of LL42's substantive provisions. *See, e.g.*, Office of the Mayor of the City of New York, Emergency Executive Order Nos. 624, 625 (July 27, 2024).

But it is the EEOs, not LL42, which directly threaten the safety of incarcerated people and DOC staff. The practices LL42 bans do not prevent violence. They *are* violent, and they contribute to additional violence and trauma in the city's jails. The City Council concluded as much in

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[1] *Amici* present the stories of their currently and recently incarcerated clients in this brief based on their direct interviews with those people as well as medical records, legal briefing, and other advocacy activities. *Amici* use pseudonyms throughout.

passing LL42, and it did so in response to many years of historic advocacy exposing the horrors of Rikers Island, which were previously shielded from public scrutiny and accountability.

Amici submit this brief to emphasize that the people *amici* represent—and all other people incarcerated in the city's jails—continue to experience the serious trauma caused by the abusive DOC practices LL42 was meant to eradicate. Solitary confinement, which DOC continues to use, creates devastating physical and mental health outcomes, including death, and only serves to compound the mental health crisis in the city's jails. *Amicus* client Jaime Villareal was locked in his cell with an inoperable toilet for approximately ten to twelve days straight for no stated reason at all. Weston Rivera spent approximately a month and a half locked down nearly twenty-four hours a day ostensibly in medical isolation despite having been medically cleared for release from isolation after just five days. And Myron Daniels was recently placed in solitary confinement in RESH—Rikers's notorious Rose M. Singer Enhanced Supervision Housing unit, primarily used to punish those who have allegedly committed infractions—pursuant to a hearing that lacked due process protections. Indeed, when Mr. Daniels was later rearrested and charged with criminal offenses related to the same incident, standard due process protections applicable in criminal court produced a dismissal of all charges. The trauma and physical harm these abusive practices cause make it more difficult for these incarcerated people to work with their legal teams to defend against their charges.

The passage of LL42 represented a rare moment in which people incarcerated on Rikers Island (many of them represented by *amici*) spoke up about the horrors they experience—many of them doing so while in the custody of the very power they sought to hold accountable—and the democratic system responded. Their voices have now been silenced—and the violence against them perpetuated—by a single undemocratic stroke of the mayor's pen.

The policy debate over LL42 has ended. Mayor Adams lost. His refusal to implement LL42—not the law itself—directly threatens the safety and well-being of *amici*'s clients and perverts the proper separation of powers in New York City. This Court should grant the petition and invalidate the EEOs.

STATEMENT OF INTERESTS OF *AMICI CURIAE*

The Bronx Defenders, Brooklyn Defender Services ("BDS"), Neighborhood Defender Service of Harlem ("NDS"), New York County Defender Services ("NYCDS"), and Queens Defenders are not-for-profit public defender offices that provide multidisciplinary legal services, social work, and advocacy support to low-income New Yorkers. As public defenders, *amici* collectively represent hundreds of thousands of people each year charged in New York City's criminal courts, including thousands each year who are detained or incarcerated in the New York City jail system while they fight their cases in court or serve a sentence of a year or less. The majority of the people *amici* represent are Black and brown New Yorkers from under-resourced neighborhoods. As public defenders, *amici* have unique insight and experience regarding the humanitarian crisis unfolding at DOC jails.

ARGUMENT

LL42, passed by an overwhelming majority of the City Council, bans all forms of solitary confinement, LL42 §§ 1(b)-(d), (i), (j), and the abuse of restraints, *id.* § 1(e), in the city's jails, and establishes fundamental due process protections for determinations related to an incarcerated person's housing placement, *id.* § 1(f). LL42 represents an appropriate legislative response to epidemic suffering and violence in New York City's jails—a law instantiating a moment of courageous democratic participation by incarcerated people, whose voices have now been nullified by

the mayor's undemocratic orders. LL42 is needed now more than ever because, as firsthand accounts from *amici*'s clients demonstrate, DOC continues to use the same violent practices that LL42 bans. It is no answer, as the EEOs claim, to say that these practices are necessary to address violence in the city's jails; the City Council—the arm of our city's government tasked with making that assessment—expressly concluded otherwise.

I. LL42 represents an appropriate legislative policy response to the grave harm DOC's practices inflict on people in New York City jails.

The City Council rightly concluded that the practices LL42 bans not only do not prevent violence, but in fact are inhumane, inflict needless suffering, and further destabilize DOC's already chaotic and violent jails. Indeed, the City Council heard harrowing stories from people presently or formerly incarcerated in the city's jails that place a human face on the cost of these practices. Joining them were public defenders, doctors, scholars, corrections experts, and human rights advocates who urged New York City to reject torture and abolish solitary confinement. LL42 therefore represents a rare moment in which the voices of the people directly impacted by incarceration were heard as part of the democratic process. The EEOs disregard their experiences and effectively erase their participation.

Numerous stories shared with the City Council during the passage of LL42 highlight the denial of basic humanity and social isolation that define solitary confinement. Andre Ward, a formerly incarcerated person, described it as "simply torture by another name." *September 28, 2022 Hearing on Int 0549-2022 Before New York City Council Committee on Criminal Justice*, 2022-2023 Leg. Sess. 265 (N.Y. 2022) ("September 2022 Hearing") (statement of Associate Vice President Andre Ward, David Rothenberg Center for Public Policy). Another person incarcerated at Rikers described it as "mentally draining" and "physical torture." *Id.* at 310 (statement of legal intern Fleming Smith, Urban Justice Center). Five Mualimm-ak, another formerly incarcerated

person, told the City Council that these practices are "torture" and "perpetual punishment." *Id*. at 269.

Countless stories before the City Council drew attention specifically to how solitary confinement led to self-harm and other manifestations of mental illness. Candy, a formerly incarcerated person, testified that she would try to die by suicide every day while in solitary confinement, going as far as breaking light fixtures to have access to sharp glass or stockpiling pills for an overdose. *Id.* at 153-54. Natasha White told the Council that women were self-mutilating "just to get a trip to the infirmary or just to see a doctor." *Id*. at 299. Anthony Dixon, too, saw the effects of solitary confinement as it led his best friend to suicide after just three weeks. *Id*. at 258. Dixon also knew of another individual who "cut[] himself" due to solitary confinement. *Id*.

The City Council also heard stories about how people are denied due process after receiving infractions. One person stated, "I have not received a single hearing in over two years, despite spending more than nine months in restrictive housing and several 30-day periods in solitary confinement. The [corrections officers] falsely claimed that I refused a hearing." *September 28, 2022 Hearing Testimony on Int 0549-2022 Before New York City Council Committee on Criminal Justice*, 2022-2023 Leg. Sess. 147 (N.Y. 2022). Another person stated, "I was supposed to have a[] [] hearing to explain why they put me [in restrictive housing], but I never had a hearing . . . . Two months after the incident, I was just given a disposition that I was guilty, but I'd never been to a hearing." *Id.* at 154-55. A third individual said that he experienced a seizure and corrections officers claimed he lashed out and punched a captain, leading to his solitary confinement placement. *Id.* at 128. Although there was a hearing scheduled to determine if this individual should be placed in solitary confinement, "[DOC staff] never even let [him] go to the hearing." *Id.*

The City Council also heard how restraints were abused in New York City jails. One person stated that "[p]eople in solitary are always shackled, even when showering. The shackles make me feel like I'm an animal." *Id*. at 135. Another person stated that they were placed in a cell without a toilet, bed, or blanket and that they were "left . . . shackled for a full week." *Id*. at 148. And the way restraints are used often inflicts pain directly. As another incarcerated person said, "I was left cuffed in a very uncomfortable position in my cell for hours." *Id*. at 125. Similarly, another person told a story about how "five or six officers came into my room, fought me to the ground, punched and kicked me in the face, put me in handcuffs so tight they hurt, and continued to strike me while I was defenseless." *Id*. at 134.

These harrowing accounts and others made clear that the abuse commonplace on Rikers Island continues to affect people long after they are released. Five Mualimm-ak stated that he still lives with the impact of solitary confinement on his life, so much so that he became legally disabled under Social Security. September 2022 Hearing, at 269-70. Candy said that "[solitary confinement] did nothing but give [her] nightmares" and that even seven years post-release, she has not slept "in two days because [she is] afraid to go to sleep because of the nightmares." *Id.* at 155-56. Anthony Dixon said "[individuals placed in solitary confinement] are permanently damaged by [solitary confinement]." *Id.* at 259. Councilmember Riley added his own personal experience with solitary confinement's long-lasting effects: "I personally know a couple of people who have been in solitary confinement, and it has really, really affected their lives, including my father." *December 12, 2022 Stated Meeting Before New York City Council*, 2022-2023 Leg. Sess. 78 (N.Y. 2022).

These stories, all of which were before the City Council when passing LL42 by an overwhelming majority, represent a moment of democratic participation by some of the city's most

vulnerable citizens: those who are or have been held against their will in the city's own custody. That the City Council responded to those voices is a laudable feature of our city's democratic structure. The mayor's EEOs, in contrast, silence those voices and pervert the balance of power in our democratic system. And, even more urgently, the EEOs allow these violent practices to continue in the city's jails, as *amici* are uniquely positioned to relay to the Court via firsthand stories from their clients.

II. The suspension of LL42 means that DOC continues to use practices that the City Council concluded have no place in the city's jails.

Mayor Adams's ongoing unlawful suspension of LL42 means that DOC has taken no steps to implement its provisions. The very practices LL42 bans have persisted in the city's jails since its passage, perpetuating cycles of trauma in contravention of the democratic process enshrined in the City Council's policy response. *Amici* are in a unique position to emphasize that, as a result of the trauma caused by these abusive practices, incarcerated people's ability to work with their legal teams and participate in their own defense has been critically hindered by the mayor's EEOs.

A. DOC claims it no longer uses solitary confinement, but firsthand stories demonstrate its practices are functionally solitary confinement.

In testimony before the City Council, then-DOC Commissioner Louis Molina stated that DOC defines solitary confinement as "keeping an individual in a very small cell for 23 hours a day with very [little to] no human contact with other persons and, at best, maybe you will get one hour a day out of that cell for hygiene," and declared that solitary confinement "does not exist" in New York City's jails. September 2022 Hearing at 60-61, 68. Firsthand stories from the people *amici* represent demonstrate that DOC presently uses housing practices that amount to solitary confinement, including arbitrary lockdowns, RESH, inappropriate medical isolation, and infirmary ward cages. To ensure the true elimination of all such practices in the city's jails, LL42 creates a clear definition of solitary confinement as "any placement of an incarcerated person in a cell, other than

at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for count not to exceed two hours in any 24-hour period" and separately requires that all incarcerated people "have access to at least 14 out-of-cell hours every day" except under very specific circumstances. LL42 §§ 1(b)-(d), (i), (j).

1. Emergency lock-ins and deadlocking

DOC's unregulated use of emergency lock-ins as well as its unofficial practice of "deadlocking" specific people punitively amounts to functional solitary inflicted with no notice or process. As Justyna Rzewinski, former Correctional Health Services ("CHS") Associate Director of Mental Health at the George R. Vierno Center ("GRVC") at Rikers testified to the Board of Correction on October 8, 2024, deadlocking is a "widespread practice" at Rikers whereby "patients who are severely mentally ill are locked in [their cells] for weeks and weeks without access to medications." NYC Board of Correction, *2024-10-08 – NYC Board of Correction Public Meeting*, YouTube, at 23:30-56 (Oct. 8, 2024) https://www.youtube.com/watch?v=mT9njFKspXI. Rzewinski witnessed deadlocked patients "smear[ing] feces all over themselves and their cells" and "sit[ting] in their cells almost catatonic with flies and maggots and feces all over." *Id.* at 23:56-24:10. "DOC would often turn off the water in their cells to prevent them from flooding, which meant they could no longer flush their toilets and the toilets would eventually overflow with sewage and spill on the floors. This is how these individuals woke up, went to sleep, and ate the meals that were delivered to them through a slot three times a day." *Id.* at 24:10-28. Moreover, the people who were deadlocked were typically "the ones who were lower functioning . . . [and] many had cognitive and developmental disabilities." *Id.* at 25:18-30.

According to Rzewinski, this practice was arbitrary:

> The type of behavior or infraction that would trigger a deadlock varied depending on the day and the [corrections officers] on duty, but it usually entailed the individual acting out in some way, typically

> by raising their voice, banging on the wall, or disrespecting the officers. Sometimes all it took was a person in custody looking at the [corrections officer] in a weird way.

Id. at 24:48-25:15.

Corrections officers often deadlock specific individuals for arbitrary and retaliatory reasons without issuing a formal citation.

> The officers knew not to document on paper who was deadlocked or why, so most of the time very few people actually knew what was the underlying reason for the punishment. Still, the [corrections officers] had a system of tagging the individuals who were deadlocked so that no one would let them out. For these individuals, the [corrections officers] would place a white tag on their cell number in the control panel . . . that could remotely unlock any door in the unit. [Corrections officers] all knew not to unlock any door with this white tag even if they didn't know why or how long the individual ha[d] been locked in.

Id. at 25:43-26:18.

LL42 would prevent corrections officers from arbitrarily deadlocking individuals or locking down entire units for unnecessarily long periods of time. First, it requires a determination by DOC senior leadership that a lockdown "is necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated persons or staff" before one can occur. LL42 § 1(j)(1). Second, it requires immediate notice to the public of a lockdown via the DOC website. *Id.* § 1(j)(3). Third, it requires DOC to produce and publish a detailed incident report for each such lockdown. *Id.* § (1)(j)(4).

Amici's clients' stories underscore the need for LL42's protections. Earlier this year Jaime Villareal was deadlocked in his cell for approximately ten to twelve days. During this time, the water to Mr. Villareal's cell was shut off. With the toilet inoperable, his cell filled with flies and a foul odor. His meals were delivered under the door because the doors in his unit have no meal

slots, and he remained locked in twenty-four hours a day with no lock-out (*i.e.*, release from one's cell) for any reason.

Mr. Villareal's mental health deteriorated, and he became desperate. To get the attention of staff, Mr. Villareal resorted to self-harm: he cut himself and showed his injuries to the corrections officers on the unit. No officers responded. Eventually, a captain released him from his deadlock. That captain told him the deadlocking he experienced was not proper and had been the result of corrections officers operating outside of protocol without knowledge of leadership, but Mr. Villareal is not aware of any disciplinary action.

Cory Sanders has experienced multiple, days-long lockdowns in his general population unit on Rikers Island. Most recently, Mr. Sanders endured a four-day lockdown, during which neither Mr. Sanders nor any other person in custody in his unit was allowed to leave their cells. Mr. Sanders never received a formal explanation for why the unit was locked down or when the lockdown would end.

During the lockdown, Mr. Sanders's unit had no access to showers or recreational time, received none of their regular medication (to Mr. Sanders's knowledge), received only limited and sometimes rotten food delivered to their cells, and did not receive mail. The phone call function on every tablet in the unit was disabled, preventing Mr. Sanders and others in the unit from calling not only family and friends, but also medical staff in the facility. Mr. Sanders experienced panic upon realizing that someone in his unit could have a heart attack or some other urgent medical concern and there would be no way to call for help.

After four straight days locked in his cell under these conditions, Mr. Sanders was getting desperate. He requested urgent medical assistance and was denied repeatedly. Only when Mr. Sanders told officers that he intended to harm himself was he finally permitted to see CHS staff

for a mental health call. Upon returning to his cell from that visit, however, Mr. Sanders discovered that one of the corrections officers had broken his tablet. Mr. Sanders is now unable to make outgoing calls, even once the phone call capability was restored to tablets on his unit.

For Mr. Sanders, these lock-ins amount to torture. Mr. Sanders's already fragile mental health suffers when his entire universe is confined to what he describes as the "small-ass square" of his cell. He feels stressed and overwhelmed when he cannot communicate with the outside world. He bears witness to the extremely deleterious effect these lock-ins have on others in his unit as well. In his words: "This is why people kill themselves."

Chris Brady has experienced emergency lock-ins while housed in multiple units. Usually a security team would come in, and all incarcerated people would be strip searched and ordered out of their cells, which were searched. They would then be locked back in their cells with no access to showers, programming, commissary, linen exchanges, recreation, library, phone calls, or family and counsel visits. Mr. Brady frequently did not receive his daily medications during these lockdowns. He tries to handle his anxiety during lockdowns on his own, because even if he requests mental health attention, he will not be taken to clinic during a lockdown.

2. RESH

The current RESH facility—DOC's main form of restrictive housing, primarily used to punish those who have allegedly committed infractions—also amounts to solitary by another name. According to Duncan Marks, who is currently housed on RESH Level 2 and previously spent time on RESH Level 1,[2] RESH feels "like those slave ships." Mr. Marks described a recent

[2] RESH primarily operates on two levels: the more restrictive Level 1, where most people sent to RESH are first placed, and the less restrictive Level 2, to which DOC claims it moves incarcerated people after a certain amount of time spent on Level 1.

period of roughly five days in which he was locked in a RESH Level 1 cell with no recreation or other lock-out.

Even when allowed out of his RESH Level 1 cell, Mr. Marks would remain isolated and caged. Mr. Marks describes the limited available out-of-cell time—less than four hours a day if/when he was offered it—as spent shackled to a chair outside of his cell. Mr. Marks often refused that purported "out-of-cell" time because he "felt like that was for animals." In the evenings, Mr. Marks had the option of leaving his cell to instead get locked in a separate one-man cage. Mr. Marks describes RESH Level 2 as similarly restrictive if at least providing "a bit more freedom." There, Mr. Marks receives about four hours of out-of-cell time once a day.

Even when out-of-cell time is offered on either level, however, Mr. Marks has to undergo an onerous and degrading search process to access it. He often views the process as simply not worth it. On Level 1, when, if ever, Mr. Marks was able to catch the attention of a corrections officer to request his out-of-cell time, officers would then handcuff him, strip search him, and bring him out into the communal space to get dressed. They would then re-cuff him and either shackle him to a chair or place him in the one-man cage. The same process applies in his current placement on Level 2, although at least there Mr. Marks is not re-cuffed after being searched.

The harm of solitary confinement in RESH, compounded by the indifference of corrections officers, endangers the lives of people housed there. According to Mr. Marks, "If someone was in the process of killing themselves, no one would know." Brenton Graves suffers from epilepsy but was placed in RESH despite BOC minimum standards that should have excluded him from such a placement. He was placed in a cell without a camera, and corrections officers failed to monitor him. He then had multiple seizures alone in his cell, and urinated on himself, without receiving any response or help from DOC. In another egregious incident, Myron Daniels's RESH cell lit on

fire when someone threw a lit piece of paper through the door slot. The corrections officers did not respond to Mr. Daniels's calls or let him out, and he believed that they were just going to leave him in there to die. Mr. Daniels was eventually able to put the fire out, but not before it spread to his bedding and other items. If he had not been able to put it out, Mr. Daniels believes he would have been seriously injured or killed.

3. CDU Medical Isolation

DOC's inappropriate use of purported medical isolation also amounts to solitary confinement. Weston Rivera spent approximately a month and a half in nearly total lockdown as an ostensible medical isolation despite a documented lack of necessity. Mr. Rivera originally needed surgery shortly after he entered DOC custody and contracted COVID-19 while in the hospital. As a result, after his surgery Mr. Rivera was originally housed in the Communicable Disease Unit ("CDU") but tested negative for Covid-19 shortly after arriving in the unit. He nevertheless remained in CDU isolation, a form of "stealth solitary confinement" which continues despite a 2023 settlement agreement compensating those held in it, for roughly a month and a half. *See* Second Amended Complaint, *Miller v. City of New York*, No. 21-cv-02616, Dkt. 37; Stipulation, *Miller v. City of New York*, No. 21-cv-02616, Dkt. 85.

While in CDU, Mr. Rivera spent twenty-three to twenty-four hours a day in total lockdown. He was dependent on corrections officers for everything, including getting water to drink. If they did not feel like helping him, he received no help. He was also denied the ability to attend religious services because of his placement. Without access to services or any social interaction his depression and anxiety worsened, and Mr. Rivera contemplated suicide. Mr. Rivera repeatedly requested a mental health medication he received in the community, but his requests were ignored. Mr. Rivera described CDU isolation as "torture, it's like being in the box" and said "[i]t's sickening that people have to go through this." He heard other people in the unit having breakdowns. People

who were previously silent for weeks would snap and start shouting incoherently for hours at a time.

While in the CDU, DOC caused Mr. Rivera to miss two surgery appointments for a separate injury. Because DOC failed to ensure access to his scheduled surgery, Mr. Rivera's injury remained untreated, and he was in significant pain while trying to cope with the mental health impacts of solitary confinement.

4. NIC Cages

The North Infirmary Command ("NIC") cages similarly amount to solitary by another name. Cody Brennan is housed in the NIC 3A unit. The living spaces in this unit consist of a cell-within-a-cell. The outer layer is a cage constructed with metal grating with diamond-shaped openings too small for hands or arms to pass through. Inside that cage is a smaller cell enclosure, with more standard metal bars. Both the inner cell and outer cage have a door and can be locked. Mr. Brennan reports that this housing unit provides next to no privacy for himself and other occupants. He can see clearly into his neighbors' cells and hear them, just as they can see and hear him.

Mr. Brennan spends virtually all of his time alone in this cage, reporting that he is only out approximately an hour a day for recreation and to shower. Mr. Brennan often goes hours without seeing DOC staff—even when an individual housed in the cell next to his was placed on suicide watch and was required to be under frequent observation. Mr. Brennan summed up the difficulty he and others face in getting help or attention in crises: "If I'm on the floor and can't breathe, *maybe* they'll come. Maybe."

Marcel Higgins's experience in the NIC cages resembles Mr. Brennan's. Mr. Higgins has spent several stretches of time isolated in the NIC cages. In NIC, Mr. Higgins was confined to a filthy cell that lacked natural light for twenty-three to twenty-four hours a day. During this time, Mr. Higgins was denied programming, congregate services, and religious services. The only time

Mr. Higgins was allowed to leave the cage was to shower or attend recreation—both of which also took place in cages. Mr. Higgins's NIC cage was surrounded by mesh fencing and a layer of plexiglass. As a result of his time in the NIC cages, Mr. Higgins's mental health has suffered. He has described feeling angry, overwhelmed, distraught, anxious, paranoid, and, at times, dangerous to himself. Mr. Higgins feels trapped and that he is living like a "caged animal."

Although Mr. Brennan and Mr. Higgins spent virtually all of their time alone in NIC cages, DOC does not classify their placements as "solitary confinement." Nevertheless, NIC cages bear all the hallmarks—and mental health challenges—of solitary confinement. LL42 would ban the practices that led to these horrific experiences.

B. DOC presently refuses to provide basic due process protections, further exacerbating the trauma and violence restrictive housing systems create.

Due to the suspension of LL42 by Mayor Adams's EEOs, people *amici* represent have been denied due process protections in relation to their housing placements. Some clients have been deprived of due process protections during hearings related to their housing status. Even more alarming, other clients have been placed in restrictive housing with no semblance of process at all. Subsection (f) of LL42, if properly implemented, would establish due process protections in all such instances.

The story of Myron Daniels makes clear how necessary due process protections are to these proceedings. Mr. Daniels was recently placed in RESH pursuant to a hearing that lacked sufficient due process, but when Mr. Daniels was later rearrested and charged with offenses related to the same incident, standard due process protections applicable in criminal court produced a dismissal of those charges.

Mr. Daniels was present in July 2024 when an officer deployed chemical spray on a group of people and hit him in the head with a metal baton. Mr. Daniels then defensively pushed the

officer away. Medical staff who later examined Mr. Daniels told him that if he had continued getting hit he could have gone blind in his left eye. Mr. Daniels still gets headaches from these injuries.

After the altercation, Mr. Daniels was placed in RESH. Due process protections were virtually non-existent in the subsequent hearing. Mr. Daniels did not receive a record of his infraction until one week after the hearing was held—in his absence—and two days after the disposition of the infraction. The related paperwork falsely states that Mr. Daniels refused to sign the notice of infraction. The primary corrections officer involved in the events neither attended the hearing nor filed a statement or report. Nevertheless, Mr. Daniels was found guilty of the infraction.

Due process issues also arose with respect to Mr. Daniels's retention in RESH. After spending thirty days on RESH Level 1, Mr. Daniels was moved to the less restrictive RESH Level 2. When Mr. Daniels was attacked in his cell and defended himself, he was sent back to the more restrictive RESH Level 1 without receiving any hearing or review. He then spent another thirty days on RESH Level 1.

In contrast, when Mr. Daniels was rearrested and charged with offenses related to the same incident in criminal court—where due process protections applied—the charges were dismissed. The prosecution was unable to obtain a sworn verification of the allegations, nor did it turn over any evidence—likely because prosecutors were unable to identify any evidence to corroborate the allegations that Mr. Daniels assaulted an officer (rather than himself being assaulted). Nevertheless, because of the sham disciplinary hearing process in DOC and lack of accountability for the corrections officers who assaulted him, Mr. Daniels spent nearly four months in RESH.[3]

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[3] Such sham disciplinary hearings can also have severe consequences for a person's criminal proceedings, including sentencing enhancements or denial of access to programs in lieu of incarceration.

Bradley Travis recently had a similar experience. In May, Mr. Travis was accused of having another incarcerated person's tablet. He was immediately placed in RESH. The adjudication of Mr. Travis's alleged offense was riddled with due process violations. Mr. Travis never received his infraction prior to the hearing, nor did he receive the disposition after the hearing. Mr. Travis was denied the opportunity to attend his hearing, and paperwork falsely said he refused to attend.[4] Mr. Travis was denied the ability to review documentary and physical evidence introduced at the hearing, and the hearing was not tape recorded. Mr. Travis was found guilty of the offense. Mr. Travis then filed a grievance and appeal related to the infraction and guilty finding. Because of his placement in RESH, however, Mr. Travis was also unable to access the law library in time to properly engage with the grievance and appeal he filed.[5]

Similarly, Kyle McKay has documented mental health diagnoses that should preclude his placement in any type of isolation housing. Nevertheless, Mr. McKay was recently placed in RESH for approximately thirty days. Mr. McKay was not given a ticket before his hearing and was not provided with counsel.

Other clients have been placed in such restrictive forms of housing with no form of process at all whatsoever. Jonah Booth witnessed a fight between people in custody and pulled his friend, an older man, from out of the fight because he was getting badly beaten up. Mr. Booth took his friend to the bathroom to help him clean himself up. Officers came to the bathroom and sprayed

[4] Subsection (f)(1)(viii) of LL42 would require such purported refusals to be videotaped.

[5] During a hearing for a separate infraction related to contraband in March, Mr. Travis requested witnesses when he appeared at the hearing but was denied the ability to present them. The paperwork from that hearing falsely states that Mr. Travis did not request any witnesses.

both Mr. Booth and his friend with chemical spray. The officers then rounded up both of them—and a number of other people from the unit—and placed them in RESH.[6]

After a week of pleading with the security captain to look into his situation, Mr. Booth was removed from RESH and placed in a high security housing area in GRVC. Mr. Booth was never given a ticket, never had a hearing, and never received a disposition. Nevertheless, Mr. Booth's security classification went from low to high, and a captain began escorting him at all times—likely meaning he was listed as requiring enhanced restraints. Neither Mr. Booth nor his attorney received any notification of this enhanced restraint designation.

Marcos Guzman has spent months advocating for appropriate housing and challenging his high security classification in the absence of due process. Mr. Guzman is elderly and has multiple disabilities. Upon his original admission to Rikers, Mr. Guzman was moved from facility to facility, housed in the general population, and officers repeatedly failed to bring him to his medical appointments. During previous periods of incarceration Mr. Guzman had been housed at NIC—but not in the NIC cages—due to his health issues, and his counsel again requested that Mr. Guzman be housed there.

In response, DOC informed Mr. Guzman's counsel that he could not be housed at NIC because he was subject to an order requiring the use of enhanced restraints. Mr. Guzman then appealed the enhanced restraints determination and succeeded, but he was still not moved to NIC. He continues to have an extremely high security classification without explanation. Mr. Guzman does not qualify for an enhanced restraints order under any of the justifications laid out in DOC's

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[6] During the time Mr. Booth spent in RESH he was kept in his cell around the clock and was only allowed to leave to take one shower every other day. He had no access to the law library, nor did he get routine access to the phone—he was able to use the phone just one time during that week because he convinced another person incarcerated in RESH to beg the corrections officer for phone time on his behalf.

rules; nevertheless, he remains ineligible for the housing placement he needs to manage his health issues for reasons that DOC has not made clear to Mr. Guzman. Counsel has spoken with DOC leadership in every facility at which Mr. Guzman has resided since arriving at Rikers. Counsel has also contacted Constituent Services, CHS Patient Relations, and two different Deputy Wardens of Security. No one has been able to provide counsel with any explanation for Mr. Guzman's high security classification.

Similarly, Jordan Hoffman was originally supposed to be on RESH Level 1 for a thirty-day period before moving to the less restrictive RESH Level 2. After a corrections officer claimed an incident occurred between him and Mr. Hoffman, Mr. Hoffman was told he would be kept on Level 1 for thirty additional days. Mr. Hoffman should have had—but never received—a disciplinary hearing where he could have challenged the allegations that extended his time on Level 1. Mr. Hoffman felt frustrated and hopeless because he had no idea when or if he would be moved to Level 2. Mr. Hoffman ultimately spent approximately sixty-four days on RESH Level 1.

Cody Brennan's placement in the NIC cages was also bereft of process. Mr. Brennan never had a hearing regarding this placement, and never had an opportunity to contest the findings or evidence supporting the decision that he be placed there or to offer contrary evidence. Mr. Brennan was simply moved to the NIC cages and then later provided a piece of paper that claimed he had somehow "waived" his hearing, which was inaccurate. Mr. Brennan's counsel was not notified, nor was Mr. Brennan or his counsel given an opportunity to contest that placement after the fact. LL42 would have ensured that each of these people received the benefit of a hearing with due process protections before being placed in such restrictive housing.

C. Firsthand stories demonstrate that DOC presently abuses restraints in ways that traumatize incarcerated people in the city's jails.

DOC staff regularly fail to make individualized determinations that specific restraint methods are necessary, often restraining people in ways that violate documented guidelines for managing that person's medical conditions or otherwise leaving people restrained for far longer than is conceivably necessary. Subsection (e) of LL42 would eliminate these practices by requiring an officer to make individualized determinations as to the use of restraints and to use the least restrictive restraints possible.

Cody Brennan has been subjected multiple times to abuse of restraints in ways that have exacerbated his existing mental and physical health issues. Mr. Brennan suffers from asthma and has severe asthma attacks when he encounters chemical spray or when subjected to rear-cuffing and mitts, which make it harder for him to breathe.

Despite his documented medical condition and a standing no-mitt and no-rear cuff order, Mr. Brennan is regularly subjected to these practices. While residing in the NIC cages recently, Mr. Brennan was subjected to such violence when he refused a strip search in his cell. Officers demanded Mr. Brennan turn around to rear cuff him, and then sprayed Mr. Brennan with chemical spray from behind. Mr. Brennan suffered convulsions, difficulty breathing, and chest pains as a result. He lost consciousness during the attack. Mr. Brennan was also put in enhanced restraints following the spray.

Mr. Brennan was then thrown into a locked decontamination shower[7] for multiple hours, where hot water poured down on him roughly every five minutes and scalded his already burning skin. Mr. Brennan reported that he lost consciousness again while in the shower. Mr. Brennan

[7] Subsections (e)(7)(a) and (b) of LL42 prohibit the use or maintenance of any such locked decontamination showers for precisely this reason.

could not change the temperature of the water, nor could he escape. When Mr. Brennan was finally released and returned to his cell several hours later, his cell had not been cleaned and the chemical agent from the earlier attack had gotten into his sheets and remained in a bright orange stain on the walls. Mr. Brennan had no choice but to attempt to clean his cell with tissue paper and water, which had limited impact on the oil-based spray. Unsurprisingly, Mr. Brennan was not able to remove the residue. He woke up several times that night from his lungs burning and had to be careful not to touch the walls of his cell for days afterward due to the remaining spray.

Incidents like these cause Mr. Brennan and others like him to live in constant fear. Mr. Brennan is afraid of the officers on his unit who show no concern for his documented medical condition and the procedures in place for managing them. He is afraid of triggering his asthma, a concern over which he has little control given his situation and the behavior of the officers on his unit. He hates being placed in mitts and other physical restraints, including being handcuffed during video conferences with his attorneys. Mr. Brennan sometimes refuses to leave his cell to avoid being restrained, which impedes his ability to receive much needed medication and other medical treatment. LL42 would ensure no other person has an experience like Mr. Brennan's or others shared in this brief.

CONCLUSION

For the foregoing reasons, we urge the Court to grant the petition and invalidate the EEOs.

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Respectfully submitted,

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

THE COUNCIL OF THE CITY OF NEW YORK and THE NEW YORK CITY PUBLIC ADVOCATE, Petitioners, For a Judgment Under Article 78 of the Civil Practice Law and Rules, -against- MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York, Respondent.	Index No. 161499/2024

CERTIFICATE OF WORD COUNT COMPLIANCE

As a member of Selendy Gay PLLC, I hereby certify that this brief is in compliance with New York Court Rule 202.8-B(a). The foregoing document was prepared using Microsoft Word, and the document contains 6,837 words exclusive of the caption, table of contents, table of authorities, and signature block as calculated by the application's word counting function.

Dated: New York, New York
December 13, 2024

/s/ Corey Stoughton
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