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. _____/2024 **VERIFIED PETITION**

I, Nwamaka Ejebe, an attorney duly licensed to practice law in the State of New York, and counsel for Petitioners, hereby verify and affirm, under the penalties of perjury, that the following is true and accurate upon information, belief, and personal knowledge:

PRELIMINARY STATEMENT

1. The New York City Council and Public Advocate bring this legal challenge to stop a clear abuse of power by Mayor Eric Adams. After more than forty Council members overrode the Mayor's veto of the Council's bill banning solitary confinement—overwhelmingly rejecting the Mayor's own backward-looking policy preferences about jail conditions—the Mayor then did something no New York City mayor has ever done: he declared that the passage of the Council's law over his veto was an "emergency" requiring the new law's indefinite suspension. That brazen and petulant response is not only unprecedented, it is illegal. Losing a policy debate with the Council is not an emergency, and the Mayor cannot use his "emergency powers" to usurp the Council's policymaking authority.

2. After engaging in extensive research and inquiry, and after receiving input and testimony from numerous impacted New Yorkers, the Council and the Office of the Public Advocate found that solitary confinement and similar severe restrictions of movement in the City's jails were inhumane and dangerous. These findings echoed correctional research proving that severe restrictions, whether as punishment or for any other reason, inflict devastating mental health consequences that inevitably lead to violence, disruptions, and often life-long mental health struggles.

3. After years of deliberation, on December 20, 2023, the Council passed Local Law 42, attached as Exhibit A, by a vote of 39 to 7. This law bans solitary confinement and similar severe restrictions of movement, grants incarcerated people basic due process protections during disciplinary hearings, improves medical, mental health, and educational services to those in restrictive housing, and imposes reporting requirements to ensure the law is followed. After Mayor Adams vetoed the bill in early 2024, the Council voted to override the Mayor's veto on January 30, 2024, by a vote of 42 to 9.

4. Local Law 42 gave the Mayor, and the New York City Department of Correction, which manages Rikers Island, 180 days to implement the law, and it instructed the New York City Board of Correction, which develops rules and policies for the Department of Correction, to engage in the rule-making process as needed to implement the law. The Board of Correction followed Local Law 42, and, on June 25, 2024, it adopted rules that incorporated Local Law 42's requirements into the existing minimum standards for the City's jails.

5. The Mayor, however, chose to ignore multiple parts of Local Law 42, including the law's limits on severe restrictive confinement, indiscriminate use of handcuffs and other restraints, and due process protections in disciplinary actions. He invoked his emergency powers

and declared a perpetual state of emergency. He entered two emergency orders suspending the local law, Emergency Executive Order No. 624 and Emergency Executive Order No. 625 (collectively, the "Emergency Orders"), attached as Exhibits B and C, respectively. These have been renewed periodically since Local Law 42 was to go into effect. What he could not do through a veto, Mayor Adams did through a sham emergency declaration.

6. This Article 78 petition seeks judicial intervention and an order finding that these two emergency orders are outside the scope of the Mayor's authority and an abuse of his emergency powers. No other mayor in the City's history has ever used these emergency powers as an end-run around a local law, and a finding otherwise—that the Mayor can override a super-majority of Council members—would set a dangerous precedent. In our system of government, there is a balance of powers between the legislature that makes laws and the executive who executes them. Council members, and their votes, represent the will of the people. The Mayor cannot disregard a local law just because he disagrees with the Council's well-deliberated policy choices.

THE PARTIES

7. Petitioner the New York City Council (the "Council") is the legislative body for the City of New York. The Council is vested with the legislative power of the City. Subject only to the constraints of the City Charter and state and federal law, the Council has the power to adopt local laws that it deems appropriate for the good rule and government of the City; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the City and its inhabitants; and to effectuate the purposes and provisions of the City Charter. N.Y.C. Charter §§ 21, 28. The Council's principal place of business is City Hall, New York County, New York 10007.

8. Petitioner Public Advocate Jumaane D. Williams (the "Public Advocate"), an independently elected official, is the advocate for the citizens of the City of New York. He is a non-voting member of the Council and an ex efficio member of all of its committees, with the right to introduce and sponsor legislation. N.Y.C. Charter § 24. The Public Advocate also serves as an ombudsman for City government, providing oversight for City agencies, reviewing and investigating citizens' complaints about City services, assessing whether City agencies are responsive to the public, and recommending improvements when they fail to provide effective services. The Public Advocate's principal place of business is David N. Dinkins Municipal Building, 1 Centre Street, 15th Floor North, New York County, New York 10007.

9. Respondent Mayor Eric Adams (the "Mayor"), in his official capacity, is the chief executive officer of the City of New York. N.Y.C. Charter § 3. The Mayor is required to implement the laws of the City of New York, and he is responsible for the effectiveness and integrity of City government operations. That responsibility requires him to establish and maintain necessary and appropriate policies and procedures for the operation of City agencies. This includes implementing effective systems of internal control by each agency and unit under the Mayor's jurisdiction, including the Department of Correction. The Mayor's principal place of business is City Hall, New York County, New York 10007.

RELEVANT NON-PARTIES

10. Non-party agency the New York City Department of Correction (the "DOC" or "the Department") runs all the City's jails and is responsible for the care and custody of people ordered to be held by the courts while awaiting trial or who are convicted and sentenced to one year or less of incarceration. Rikers Island is the Department's main base of operation with 10 separate jails within the complex. DOC also plays a central role in closing Rikers Island and opening borough-based jails to replace it, by 2027.

11. Non-party the New York City Board of Correction is a board with oversight over DOC. The board is composed of nine people, chosen by the Mayor, the Council, and presiding justices of the Appellate Division of the Supreme Court for the First and Second Judicial Departments. Current board members include a doctor, a formerly incarcerated person, a former correction officer, and a retired judge. The Board of Correction has the power to inspect the City's jails, including on Rikers Island, and the power to prepare proposals, studies and reports for the Mayor. The Board is also responsible for developing minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under in the City's jails. The Board is required to promulgate minimum standards in rules and regulations, after giving the Mayor and DOC Commissioner an opportunity to review and comment on the proposed standards.

12. Non-party Federal Monitor Steven Martin ("*Nunez* Monitor") was appointed by Chief Judge Laura Swain in *Nunez v. N.Y.C. Department of Correction, et al.*, 11-cv-05845 (S.D.N.Y.)—a class-action lawsuit brought in 2011 on behalf of current and future incarcerated individuals held in DOC jails. The class action alleged that the Department used excessive force against those in its custody. Pursuant to a 2015 consent decree, DOC is required to implement certain policies and meet certain goals. The process is overseen by the *Nunez* Monitor, who has numerous reporting obligations and certain advisory powers. The *Nunez* Monitor's more than eight years of involvement has not yielded any meaningful decrease in violence at Rikers.

13. In November 2024, with incidents of violence at shocking levels and with DOC in violation of numerous court orders, Chief Judge Swain held DOC in contempt of court and directed the parties to prepare plans for a receivership. In her order finding DOC in contempt, she found that it was "alarming and unacceptable" that, although nine years has passed since the

parties first agreed that the "perilous conditions" in the Rikers Island jails were unconstitutional, "the level of unconstitutional danger has not improved for the people who live and work in the jails." She further concluded that "neither clear reporting from the Monitoring Team nor binding Court orders have been enough to activate the transformational change required."[1]

JURISDICTION AND VENUE

14. This Court has subject-matter jurisdiction to decide this Petition pursuant to Section 7803 of the CPLR and general original jurisdiction in law and equity as provided in Article VI, Section 7(a) of the New York State Constitution.

15. Venue is proper in New York County Supreme Court pursuant to CPLR 504(c), 506(b), and 7804(b) because Petitioners brings their claims against the Mayor of New York City for actions taken in New York County, and because the Mayor's principal offices are in New York City.

THE LONG HISTORY OF SOLITARY CONFINEMENT AND PUNITIVE SEGREGATION AT RIKERS ISLAND

16. Over the last few decades, punitive segregation, where people are locked in their cells for all but very limited periods of time for alleged rule violations, was common in City jails. Until recently, it was routine for incarcerated people to be punished with severely restrictive housing, sometimes for years at a time.

17. Severely restricted confinement remains pervasive at Rikers Island today. This type of confinement, even for several hours, can cause damage to an incarcerated person's mental health, as explained in the letter attached as Exhibit D, from Professors Bandy Lee, M.D., M.Div. and James Gilligan, M.D. A 2014 study of New York City jails, for example, found that

[1] *Nunez v. N.Y.C. Department of Correction, et al.*, 11-cv-05845 (S.D.N.Y.) Doc. No. 803, at 52.

people in custody who were placed in punitive segregation committed self-harm at disproportionately high rates.[2]

18. Restrictive confinement is not a remedy that works better the more you use it. In fact, the opposite is true: research shows that solitary confinement has hardly any individual or general deterrence effect on violent behavior or misconduct.[3] Experts who have examined the effects of solitary confinement on incarcerated people have concluded that these restrictions are psychological damaging and are more likely to cause violence than prevent it.[4]

19. Recently, public policy around the country has started to catch up with the applicable research. States that have decreased the use of solitary confinement, such as Illinois, Colorado, Mississippi and Maine, have seen corresponding reductions in assaults and other violent behavior.[5] Attitudes about solitary confinement have evolved within New York City in recent years. This shift was fueled by several high-profile examples of the dangers of punitive segregation at Rikers Island.

20. Kalief Browder—a teenager detained for approximately three years awaiting trial for allegedly stealing a backpack and whose case was ultimately dismissed—spent over two years in solitary confinement on Rikers Island. He attempted suicide at least twice while in

[2] Fatos Kaba, et. al, *Solitary confinement and risk of self-harm among jail inmates*, 104 American Journal of Public Health, 442 (2014), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/.

[3] Craig Haney, *Restricting the Use of Solitary Confinement,* 1 Annual Review of Criminology 285, 288 (2018), available at https://www.researchgate.net/profile/Craig_Haney2/publication/320845455_Restricting_the_Use_of_Solitary_Confinement/links/5b61f65a458515c4b2591804/Restricting-the-Use-of-Solitary-Confinement.pdf

[4] Shira Gordon, *Solitary Confinement, Public Safety, and Recidivism*, 47 U. Mich. J. L. Reform 495, 516 (2014), available at https://repository.law.umich.edu/mjlr/vol47/iss2/6/.

[5] The Council of the City of New York, *Committee Report and Briefing Paper of the Justice Division* (Dec. 20, 2023) at 8-9, available at http://on.nyc.gov/4ihAoet.

custody. His depression, fueled by his time in solitary confinement, continued after his release. He hanged himself in 2015.

21. Bradley Ballard was locked in his cell on Rikers Island for six days, while detained on a parole violation for failure to report an address change. He was found dead, naked and covered in feces within his cell in 2013. The City's medical examiner ruled his death a homicide, caused by the shocking neglect.

22. In 2019, Layleen Polanco was sentenced to a disciplinary period of 20 days in solitary confinement on Rikers despite a history of epileptic seizures, several while incarcerated. While in solitary, alone and unmonitored, she died of a seizure.

23. In 2014, the United States Department of Justice found that the City was exposing adolescents to a "risk of serious harm" by locking them in "what amounts to solitary confinement."[6] Based on those findings, DOJ intervened in *Nunez v. City of New York*, the class action lawsuit mentioned above.[7] The *Nunez* consent order focused primarily on staff violence against incarcerated people, but also included provisions prohibiting the City from placing certain people, such as those under 18 years old, in any form of "punitive segregation or isolation."[8] The *Nunez* consent order defined punitive segregation as "segregation of an Inmate from the general population pursuant to a disciplinary sanction imposed after a hearing."[9]

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[6] United States Department of Justice, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island*, at 46 (Aug. 4, 2014), *available at* https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf.

[7] *Nunez v. City of New York*, No. 11 Civ. 5845 (S.D.N.Y.), United States' Proposed Complaint-in-Intervention, dated Dec. 11, 2014, *available at* https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/Nunez%20v.%20City%20of%20New%20York%2C%20et%20al%20US%20Complaint-In-Intervention.pdf.

[8] *Nunez*, Consent Judgment dated Oct. 21, 2015, at 44, *available* at https://www.justice.gov/opa/file/624846/dl.

[9] *Id.* at 4.

24. During the de Blasio administration, the Board of Correction promulgated various rules that attempted to limit the use of solitary confinement in the City's jails. This included, for example, the Board's unanimous decision in early 2015 to eliminate punitive segregation for incarcerated people under the age of 21.[10]

25. In December 2020, following the tragic death of Layleen Polanco, the Council introduced a bill (Intro. No. 2173) that sought to ban solitary confinement in the City's jails. Reporting on the bill, the Council's Committee on Criminal Justice took note of the harms of punitive segregation and the research showing that severe restrictions on incarcerated people are harmful and make jails more dangerous.[11] The Council also held a hearing on December 11, 2020, where advocates, formerly incarcerated people, and other members of the public, made it clear that reform was needed.

26. In 2021, the State Legislature passed the HALT Act. That law restricted the use of "segregated confinement," which it defined as "any form of cell confinement" with fewer than seven hours per day of out-of-cell time. N.Y. Correction Law § 2(23).

27. In 2021, the Board of Correction promulgated new rules that limited the use of solitary confinement and other forms of extreme isolation at Rikers Island. Those rules were intended to address concerns from the public and also to comply with the HALT Act's new requirements.[12] Due to the impacts of COVID-19 and severe staffing shortages, however, Mayor de Blasio suspended these Board of Correction rules, thereby preventing them from going into

[10] New York City Department of Correction, *NYC Board of Correction Unanimously Approves Rules That Will Pave the Way for Meaningful Reform Efforts* (Jan. 13, 2015), available at http://on.nyc.gov/4fiNGFI.

[11] The Council of the City of New York, *Committee Report and Briefing Paper of the Justice Division* (Dec. 20, 2023) at 7-10, available at http://on.nyc.gov/4ihAoet.

[12] The Council of the City of New York, *Committee Report of the Governmental Affairs Division* (Jan. 30, 2024) at 5, available at http://on.nyc.gov/49nfTJf.

effect in November 2021 (*id.* at 6). At the end of 2021, just weeks before taking office as mayor, Eric Adams announced his intention to reverse course on the de Blasio Administration's stated goal of ending solitary confinement in the City's jails.[13]

THE COUNCIL BANS SOLITARY CONFINEMENT AND SIMILAR SEVERE RESTRICTIONS ON RIKERS ISLAND

28. The HALT Act and the 2021 Board of Correction rules did not, however, succeed in eliminating the harsh conditions of solitary confinement on Rikers Island. In June 2022, another bill (Intro. No. 549) was introduced to the Council, banning solitary confinement in City jails and setting standards for the use of restrictive housing and emergency lock-ins—the practice of locking down entire sections of Rikers, thereby confining all those detained within those sections to their cells based on claimed emergencies, ranging from actual danger to mere lack of staffing. The bill had 37 co-sponsors at the time of its introduction.[14] This bill was ultimately passed in 2024 as Local Law 42.[15]

29. By mid-2022, it appeared that neither the Board of Correction's suspended rules nor the State's HALT Act were going to adequately protect Rikers Island detainees from the violence of solitary confinement. As to the HALT Act, it had become clear that DOC's purported "compliance" with the law improperly hinged on the Department's misuse of "cell within a cell" housing to satisfy the law's requirements for *out-of-cell* time.[16] An incarcerated person locked in a cell is let out of the cell, into yet another cell, which DOC claims as out-of-cell time, which they argue technically complies with text of the law, while ignoring the spirit and goals of the

[13] New York Post, *Eric Adams vows to immediately reverse de Blasio ban on solitary confinement* (Dec. 16, 2021), available at https://nypost.com/2021/12/16/eric-adams-to-tap-head-of-las-vegas-jail-system-to-run-nyc-doc/.

[14] Int. No. 549, Plain Language Summary, available at http://on.nyc.gov/4gGJYpJ.

[15] June 16, 2022 Stated Meeting Agenda, available at https://bit.ly/June2022MtgAgenda.

[16] Transcript of the Minutes of the Committee on Criminal Justice (Sep. 28, 2022) at 136, available at http://on.nyc.gov/4gqAmPL.

HALT Act entirely. The Council found this practice repugnant, and later drafted Local Law 42 to ban this practice, ensuring out-of-cell time is actually time outside of a cell, with meaningful contact with other people.

30. On September 28, 2022, the Council held an all-day public hearing on the proposed legislation. The proposals received extensive support from the community. The Council also heard from then DOC Commissioner Louis Molina, DOC General Counsel Paul Shechtman, doctors from Health + Hospitals Correctional Health Services, Correction Officer Benevolent Association President Benny Boscio, and multiple other correction officers and union representatives. At this hearing, the Speaker of the Council shared that she was the daughter of a former correction officer and emphasized the Council's overarching goal of increasing public safety for all.[17] She explained that the public hearing was "the first step" in a "comprehensive and sensible legislative process that gathers input from all stakeholders and is guided by data, evidence, and best practices."[18]

31. The Council, working closely with the Office of the Public Advocate, continued internal deliberations throughout 2023 and also had additional discussions with DOC, the New York City Law Department, and then-Commissioner Louis Molina. On December 8, 2023, the Adams Administration provided a "redline" of the bill along with multiple comments about the provisions in the bill.

32. The bill amendments and committee report addressed each of the areas of disagreement raised by the DOC Commissioner in his September 2022 testimony. In response to the DOC Commissioner's objection to "prohibit[ing] pre-hearing detention,"[19] the amended bill

[17] *Id*. at 17.

[18] *Id*.

[19] *Id*. at 28-29.

eliminated any blanket prohibition and instead set forth detailed "procedures and policies for when a person may be placed [in] pre-hearing temporary restrictive housing."[20] To address the Commissioner's concern about a "right to counsel at DOC disciplinary hearings,"[21] the amended bill made clear that representation at disciplinary hearings could be provided by a lawyer *or* any "law student, paralegal, or [] incarcerated person."[22] As to the Commissioner's views that the bill supposedly incentivized violent conduct and would make it "impossible" for DOC to impose "sanctions" for violent acts within the jails,[23] the Committee Report detailed numerous studies concluding that solitary confinement has "hardly any individual or general deterrence effect on violent behavior and misconduct."[24] The bill amendments also included a 120-day extension of the bill's effective date in order to allow additional time to implement the law.[25]

33. On December 11, 2023, while the bill was being finalized, the Columbia University Center for Justice released a report entitled "Solitary by Many Other Names."[26] This report detailed all the ways that incarcerated people at Rikers are held in harmful conditions that replicate solitary confinement, even if not fitting the traditional definitions of solitary. For example, DOC used decontamination showers—small locked cages with no place to sit—to hold people for purported de-escalation, often for extremely long periods of time. The Council's

[20] The Council of the City of New York, *Committee Report and Briefing Paper of the Justice Division* (Dec. 20, 2023) at 12, available at http://on.nyc.gov/4ihAoet

[21] *S*ep. 28, 2022 Minutes at 29.

[22] Dec. 20, 2023 *Committee Report* at 9-10.

[23] *S*ep. 28, 2022 Minutes at 28.

[24] Dec. 20, 2023 *Committee Report* at 9-10.

[25] *Id*. at 13.

[26] Available at https://centerforjustice.columbia.edu/news/new-report-solitary-many-other-names-report-persistent-and-pervasive-use-solitary-confinement.

solitary confinement bill explicitly banned this practice, among many others, and Columbia University experts strongly encouraged the Council to pass it.

34. On December 20, 2023, the bill passed out of the Criminal Justice Committee and was passed by the full Council, by a vote of 39 to 7. On January 19, 2024, Mayor Adams vetoed the bill.[27] In his veto message, Mayor Adams argued that the bill "would make the City's jails less safe" by purportedly (1) eliminating "any negative consequences" for incarcerated people who commit violent acts, (2) imposing a "prohibition on restraining persons during transportation," and (3) removing DOC's "necessary discretion" in conducting lock-downs by limiting their duration to four hours.[28] On January 30, 2024, the Council overrode the Mayor's veto by a vote of 42 to 9, officially enacting the bill into law, and starting the 180-day deadline to its effective date of implementation.

THE CONDITIONS OF CONFINEMENT AT RIKERS ISLAND HAVE BEEN AND REMAIN UNCONSCIONABLE

35. Local Law 42 was first introduced in 2022. Alarmingly, the inhumane practices at Rikers that this law was passed to end continue to this day.

36. ***Use of Restraints***: Indiscriminate, extended use of restraints at Rikers Island has been common and led to injury and death for many incarcerated at Rikers Island. In 2023, it was reported that excessive use of restraints at Rikers Island led to increased violence among incarcerated individuals. Eight young people at the Rose M. Singer Center facility were shackled to "restraint desks" and slashed by other incarcerated individuals over a two-week period

[27] Mayor's Veto Message, dated Jan. 19, 2024, available at http://on.nyc.gov/4fTtFpn.

[28] *Id.*

according to DOC records.[29] One former DOC official declared that the use of shackles rendered incarcerated persons "sitting ducks."[30]

37. Incidents like these have necessitated limits on the use of restraints. To that end, Local Law 42 bans indiscriminate use of restraints—including handcuffs, shackles, and leg cuffs—by requiring an individualized determination that restraints are employed in the least intrusive way possible, for the least time necessary. Local Law 42 does not ban use of restraints, however, and the Board of Correction regulations specifically provide that the law does not prohibit the routine use of restraints during escort and travel, when needed, even for every incarcerated person in a vehicle.

38. ***Restrictive Confinement***: Local Law 42 requires 14 hours of out-of-cell time. The law also restricts the amount of time people can be restricted in de-escalation confinement after an altercation. The de-escalation units purportedly serve to enhance the safety of incarcerated individuals at Rikers Island after violent incidents, but the units frequently lead to further harms. For example, in 2022, Elijah Muhammed died after spending hours in a "decontamination shower" – locked in a small box after a fight.[31]

39. Decontamination units are used as make-shift jail cells where incarcerated individuals are sometimes confined for hours, and people have "repeatedly been found screaming, injured, and wheeled out on stretchers."[32] As one DOC investigator put it, "It's just

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[29] *See* Reuven Blau, *Eight Rikers Detainees Slashed While Shackled to 'Restraint Desks'*, The City September 18, 2023, available at https://www.thecity.nyc/2023/09/18/eight-rikers-detainees-slashed-shacked-restraint-desks.

[30] *Id.*

[31] *See* Chris Glorioso and Courtney Copenhagen, *Locking Prisoners in Narrow Shower Stalls Called 'Inhumane' at Rikers Island*, July 15, 2022, available at https://www.nbcnewyork.com/investigations/i-team-locking-prisoners-in-narrow-shower-stalls-called-inhumane-at-rikers-island/3777087.

[32] *See* Chris Gelardi, *Why Does Rikers Island Still Lock People in Shower Stalls?*, N.Y. Focus, March 22, 2023, available at https://nysfocus.com/2023/03/22/rikers-island-decontamination-deescalation-unit-shower-cages.

moving them around from one dangerous location to another dangerous location."[33] Brandon Rodriguez hanged himself in a decontamination unit at Rikers Island's new admissions facility.

40. DOC also employed excessively lengthy "emergency" lock-in periods, confining incarcerated people in their cells for extended periods. According to the *Nunez* Monitor, as just one example, there were 122 emergency lock-ins due to use-of-force investigations in the three-month period of April through June 2023.[34] Twenty-seven lock-ins for use-of-force investigations lasted over 24 hours each, while on average lock-ins ranged from two to six hours in length.

41. ***Representation in Disciplinary Hearings***: Local Law 42 and the HALT Act both require some due process protections in disciplinary hearings, including representation by counsel, law students, paralegals, or incarcerated persons. But the HALT Act only provides for representation when someone is going to be confined in their cell for 17 hours a day or more. Local Law 42 is not so limited in large part because DOC claims people will not be restricted in disciplinary confinement for 17 hours a day or longer. But, in reality, incarcerated people on Rikers Island are confined in their cells for at least that long, despite having no representation in the disciplinary hearing.

42. Local Law 42 also requires that, at a disciplinary hearing, an incarcerated person shall have the opportunity to present evidence, cross-examine witnesses, and testify in person. The law also requires DOC to provide at least 48 hours advance notice of the reason for the proposed placement in restrictive housing and of any supporting evidence for such placement.

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[33] *Id.*

[34] *See* DOC Quarterly Emergency Lock-In Report, FY23 Quarter 4 (April 1st - June 30th) at 2, available at https://www.nyc.gov/assets/doc/downloads/pdf/FY23_Q4_Emergency_Lock-In%20Report.pdf. The use of force incidents are broken up by facility in the table and identified as "UOF Investigation."

43. As advocates from the #HALTsolitary Campaign testified at the hearing on the bill that became Local Law 42, "There is a long history of staff abusing solitary confinement and restrictive housing and placing people in abusive confinement settings as retaliation, as cover-ups for staff abuse, for minor petty reasons, or for no reason at all."[35] Christopher Boyle of the New York County Defender Services similarly testified at the hearing that the "Department has decided that our clients are guilty before they have had the chance to defend themselves. Additionally, the lack of adequate due process can have harmful impacts on detainees' criminal cases, as jail disciplinary records are often used against our clients in the criminal sentencing process, and often result in lengthier prison sentences."[36]

THE MAYOR'S ABUSE OF HIS EMERGENCY ORDER POWERS

44. Instead of working on how to safely implement Local Law 42, as required by the City Charter, the Mayor and his Administration began developing different options to avoid their legal obligations. In a March 2024 court filing to Chief Judge Swain, the DOC Commissioner suggested that the Department might move the court for relief because, in its view, Local Law 42 was at "odds with the *Nunez* requirements" and the *Nunez* Monitor had some concerns about how the law could be safely implemented.[37] In June, DOC stated definitively that it would file a motion with Chief Judge Swain in the coming month to suspend the majority of the requirements of Local Law 42 as preempted by the *Nunez* court orders.[38] For this motion, DOC hired five attorneys from the international firm Dechert LLP, which has 1,000 attorneys. DOC's team was

[35] Written testimony of Christopher Boyle on September 28, 2022, available on page 90 of the collected written testimony, available at https://legistar.council.nyc.gov/View.ashx?M=F&ID=11411259&GUID=1DF9CE7C-C6E2-4357-8C1E-11B7977E96AB.

[36] *Id.*

[37] *Nunez* Doc. No. 689-1, at 11.

[38] *Nunez* Doc. No. 724.

led by Andrew J. Levander, the firm's former Chairman.[39] This legal team was more than capable of filing any motion the Mayor or DOC felt necessary, even on a short deadline. In response, the Council passed a resolution empowering the Speaker to defend Local Law 42 against this incoming motion in court.[40] But the Mayor and DOC never filed their promised motion.

45. Instead, a few days after the Council issued its resolution, and the day before Local Law 42 was set to go into effect, the Mayor issued Emergency Executive Orders Nos. 624 and 625, suspending numerous provisions of Local Law 42, including the ones cited above. Instead of seeking relief from Chief Judge Swain, as was clearly his original plan, the Mayor unilaterally issued the Emergency Orders, claiming a perpetual state of emergency.

46. The Mayor has not claimed that these Emergency Orders are necessary to address a current emergency at Rikers Island. Instead, he claims that implementing Local Law 42 would create an emergency. An attorney for the City admitted this fact during oral argument in *Nunez*, when the Plaintiffs argued that the Emergency Orders amounted to an admission that there was an emergency at Rikers Island. Pushing back against this assertion, the City's attorney explained that, "[T]he order [suspending Local Law 42] is necessary in order to avoid impact at the present time of a city law that the mayor and the *Nunez* monitor both agree is very ill-advised for the safety and security of the department. So that's the purpose of the order, your Honor. We don't think it's appropriate to somehow use it against the city."[41]

[39] *Id*.

[40] Res. No. 504-2024, available at https://on.nyc.gov/3Nytsvb.

[41] *Nunez* Oral Argument Transcript (Sep. 25, 2024) at 63, which can be provided to the Court if requested.

THE UNLAWFUL EMERGENCY ORDERS

47. The Mayor's emergency orders declare a state of emergency and then extensively re-write Local Law 42 by suspending, modifying, or replacing nearly all of the policy choices embodied in the law's text. Those policy choices of Local Law 42 address acute harms suffered by incarcerated people and their loved ones, and these choices were enacted through the democratic lawmaking process following a hard-fought policy battle between the Council and Mayor. In the place of the policy choices that prevailed at the conclusion of that policy debate, the Mayor's emergency orders substitute his own policy preferences and priorities—the very ones that the Council rejected when it overrode his veto by a vote of 42 to 9.

48. ***The first emergency order*** is Emergency Executive Order No. 624 ("EEO 624"), and it states that "A state of emergency is hereby declared to exist within the correction facilities operated by DOC because of the imminent effective date of Local Law 42 and the risks to health and safety that implementation of that law at this time and under current circumstances presents." This state of emergency lasts for 30 days and has been renewed four times as of the date of this filing, most recently in Emergency Executive Order No. 697, which is attached as Exhibit E.

49. ***The second emergency order*** is Emergency Executive Order No. 625 ("EEO 625"). Local Law 42 added Section 9-167 to the City's Administrative Code. EEO 625 explicitly suspends portions of Local Law 42 as codified in Section 9-167. This emergency order lasts for five days and has been renewed more than two dozen times as of the date of this filing, most recently in Emergency Executive Order No. 703, attached as Exhibit F.

50. As detailed below, EEO 625 suspends and modifies more than 25 parts of Local Law 42, effectively re-drafting the entire law to conform with policies the Mayor prefers over the Council's democratically-enacted findings. In addition, reports from within Rikers indicate that

even though the Mayor's emergency orders purport to suspend only parts of Local Law 42, DOC has not meaningfully implemented any of the law's provisions. For example, DOC has not followed the law's requirement of quarterly reporting on de-escalation confinement, restrictive housing, or emergency lock-ins.

Expanding Restrictive Confinement

51. EEO 625 rewrites definitions in § 9-167(a) to expand the use of restrictive confinement.

52. Admin. Code § 9-167(a) defines the term "de-escalation confinement" to mean "holding an incarcerated person in a cell immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons." EEO 625 redefines the law to include "where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection."

53. Admin. Code § 9-167(a) defines the term "pre-hearing temporary restrictive housing" to mean "any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place." EEO 625 redefines the law to allow "the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public."

Permitting Solitary Confinement

54. Admin. Code § 9-167(b) bans solitary confinement: "*Ban on solitary confinement.* The department shall not place 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, unless for the purpose of de-escalation confinement or during emergency lock-ins." EEO 625 not only overturns this ban, but it hands the *Nunez* Monitor vast authority to approve placement in solitary confinement, limited only by the narrow strictures of the US Constitution and State law—prohibitions that DOC routinely violates.

Increasing the Isolation of De-Escalation Confinement

55. EEO 625 completely suspends Admin. Code § 9-167(c)(4), which alleviates isolation in restrictive housing by allowing some communication with friends and family, during periods of de-escalation confinement, via "a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility."

56. Section 9-167(c)(5) provides for removal from de-escalation confinement "immediately" after the confined person has "sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others." After EEO 625, this restrictive confinement is now effectively permitted for as long as correction officers want, allowing them to restrain someone until they think it is "practical" to release them, without regard for whether it is actually necessary, or part of sound correctional practices, to keep the incarcerated person restrained.

57. Sections 9-167(c)(6) and (7) stop DOC from using de-escalation confinement as *de facto* solitary confinement by limiting de-escalation to the time it would reasonably take someone to calm down: "The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or

more than 12 hours in any seven-day period." EEO 625 allows the "Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security," or someone "approved by the Monitor" to leave someone in de-escalation indefinitely, in undefined "exceptional circumstances," effectively allowing de-escalation to become a term of solitary confinement. The vague phrase "exceptional circumstances" is not defined and, under the terms of the emergency order, the *Nunez* Monitor could empower wardens, captains, or even correction officers to decide when someone is going to be placed in this solitary confinement. EEO 625 removes all limits to the amount of time someone could be locked in de-escalation confinement, except for limits under State law and US Constitution, neither of which are sufficient.

Permitting Indiscriminate Use of Restraints

58. Section 9-167(e) bans indiscriminate use of restraints. To that end, Paragraph 1 of Section 9-167(e) mandates that DOC "shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons." When restraints are deemed necessary, "only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm." Furthermore, the law prohibits DOC from "engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements."

59. Paragraph 2 of Section 9-167(e) provides that DOC may not "place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others." The law further provides that any "continued use of restraints" must be "reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons."

60. EEO 625 removes almost all these restrictions on the indiscriminate use of restraints, for any amount of time: "Subdivision e is suspended to the extent that it imposes limitations on the DOC's use of restraints." Instead, the only limits are that DOC must use "only the least restrictive form of restraints," and they are not allowed to deliberately "prolong, delay or undermine an individual's escorted movements."

Revoking Due Process Protections

61. Section 9-167(f) gives incarcerated people basic, but important, due process protections. Except in those limited situations where pre-hearing separation is expressly authorized by the law, incarcerated people may not be placed in restrictive housing until a "hearing on such placement is held and the person is found to have committed a violent grade I offense." That hearing must satisfy minimum due process requirements, including a right to representation by a lawyer or advocate, a right to present evidence and cross-examine witnesses, adequate time to prepare for a hearing or request an adjournment, the right to an interpreter in their native language, and the right to have the hearing videotaped if the incarcerated person refuses to attend the hearing. A disposition shall be reached within five business days after the conclusion of the hearing and shall be supported by substantial evidence and documented in writing. And except for the limited pre-hearing separation permitted by Local Law 42, the law prohibits discipline or punishment by DOC unless it is preceded by these basic due process measures: "Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing."

62. EEO 625 allows the *Nunez* Monitor to approve rules that would allow discipline and placement in restrictive housing without any hearing at all, except as required when an incarcerated person is placed in segregated confinement, a type of solitary confinement, pursuant

to the HALT Act. EEO 625 also suspends the incarcerated person's right to cross-examine witnesses, suspends the right to any counsel, suspends the right to know what an incarcerated person is even being accused of, and suspends the right to review evidence before the hearing and even specifically eliminates the right to "adequate time to prepare for a restrictive housing hearing."

Expanding the Use of Restrictive Housing

63. Section 9-167(h) limits the use of restrictive housing, prohibiting unnecessary, damaging confinement in an environment that amounts to *de facto* solitary confinement.

64. EEO 625 effectively removes any restrictions on the use of this restrictive housing if the *Nunez* Monitor approves it, ceding all authority over restrictive housing with no limitations, except as required by the when an incarcerated person is placed in segregated confinement, a type of solitary confinement, pursuant to the HALT Act.

65. Local Law 42 prohibits the Department from placing "an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period." EEO 625 entirely eliminates any restrictions on how long an incarcerated person may be placed in restrictive housing, as defined by DOC.

66. Local Law 42 requires DOC to "meaningfully review" placement within 15 days of placement, to determine "whether the incarcerated person continues to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing." EEO 625 expands the scope of this review, requiring DOC "to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed," because, under EEO 625, people could be held far longer than 30 days.

67. EEO 625 requires DOC to release someone from restrictive housing when this restrictive confinement is no longer necessary: "The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing." EEO625 suspends this provision entirely.

68. Local Law 42 requires DOC to allow people in restrictive housing to have contact with other people, to alleviate the crippling isolation people feel locked in a cell alone: "A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape." EEO 625 suspends this provision entirely.

Reducing Out-of-Cell Time

69. Section 9-167(i) ensures that incarcerated people are allowed out of their cells for a meaningful period of time every day: "All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section." EEO 625

modifies this section to allow the *Nunez* Monitor to reduce the amount of out-of-cell time incarcerated people are afforded.

Permitting Lengthy Emergency Lock-ins

70. Section 9-167(j) prohibits DOC's practice of using emergency lock-ins to lock entire housing units in their cells, for lengthy periods of time, based on claimed emergencies. Local Law 42 prohibits using these mass lock-ins for extended periods of time: "Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible. The department shall lift emergency lock-ins as quickly as possible." During these lock-ins, Local Law 42 gives incarcerated people the ability to call family and seek medical care. EEO 625 suspends these provisions of the law entirely. And the local law requires DOC to immediately tell the public there has been a lock-in, so that family, defense attorneys, and others will know why the incarcerated people affected are not able to attend meetings, court, and family visits. EEO 625 modifies this provision to allow DOC to instead notify the public at some unknown time in the future, whenever it is deemed practical to do so.

71. The remaining section of EEO 625 suspends all the Board of Correction minimum standards that were enacted to implement these sections of Local Law 42 discussed above.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court enter an Order:

(a) Finding the Emergency Orders arbitrary, capricious and contrary to law, the issuance of which is beyond the Mayor's lawful authority;

(b) Vacating the Mayor's Emergency Orders declaring a local state of emergency as result

of Local Law 42 (Order No. 624 and all subsequent renewals); and

(c) Vacating the Mayor's Emergency Orders suspending Local Law 42 (Order No. 625 and all subsequent renewals).

Dated: New York, New York
December 9, 2024

Respectfully submitted,

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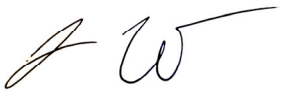

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VERIFICATION

State of New York)
) ss:
County of New York)

NWAMAKA EJEBE, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms, under penalty of perjury pursuant to CPLR § 2106, as follows:

I am Deputy General Counsel for the Council of the City of New York. I am duly admitted to practice law in the Courts of the State of New York. I verify under penalty of perjury that the allegations in the Petition are true to my knowledge, that I believe to be true any matters alleged therein upon information and belief, and that my knowledge is based on my personal knowledge, the books and records of the Council and/or statements made to me by officers or employees thereof.

I affirm this 9th day of December, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Nwamaka Ejebe