



SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX, I.A.S. PART 2

Matter of JOSEPF AGNEW, ANTHONY GANG,
TYRONE GREENE and KAMER REID,

Petitioners,

Index No. 813431-2021E

For a judgment under Article 78 of the rules of the Civil
Practice Law and Rules

-against-

JUDGMENT/ORDER

Present:
HON. ELIZABETH A. TAYLOR

NEW YORK CITY DEPARTMENT OF CORRECTION,
Respondent.

The following papers numbered 1 to ___ read on this motion, _____

	PAPERS NUMBERED (NYSCEF Conf. Notice #s)
No On Calendar of	
Notice of Motion-Order to Show Cause - Exhibits and Affidavits Annexed-----	2-5,7-69, 70-74
Answering Affidavit and Exhibits-----	75
Replying Affidavit and Exhibits-----	_____
Affidavit-----	_____
Pleadings -- Exhibit-----	_____
Stipulation -- Referee's Report --Minutes-----	_____
Filed papers-----	6, 76, 77, 78, 79, 80

In compliance with this Part's rules, the above enumerated working copies, bearing the NYSCEF Confirmation Notice, were submitted directly to chambers for the court's review. Upon the foregoing papers and due deliberation thereof, the Judgment/Order on this motion is as follows:

Order to show cause pursuant to CPLR 901(a) and 7803(1) for an order: 1) certifying petitioners' class as all current and future persons incarcerated in New York City Department of Correction facilities who have been or will be denied access to medical care based on the New York City Department of Correction's failure to discharge its mandatory duties under New York City Administrative Code § 9-108(c), Correction Law § 500-c(4), and the Rules of the City of New York 40 §§3-02(b)(4), (c)(1), (c)(2)(i), and (c)(4); 2) Designating The Legal Aid Society, Brooklyn Defender Services, and Milbank LLP as class counsel; and 3) Issuing an order compelling the Respondent to comply with its duties under state and local law to provide incarcerated

people in New York City jails with access to medical services, and to: a) discharge its ministerial duties to provide all putative class members with access to sick call on weekdays, excluding holidays, and to make sick call available at each facility to all persons in custody a minimum of five days per week within 24 hours of a request or at the next regularly scheduled sick-call; and b) discharge its ministerial duties to safely keep in the New York City jails each person lawfully committed to its custody by providing sufficient security for movement by incarcerated persons to and from health service areas and not prohibiting or delaying incarcerated persons' access to care, appropriate treatment, or medical or dental services, is granted based upon the record before this court.

Petitioners' proposed orders are signed simultaneously with this order.

The foregoing shall constitute the judgment and order of this court.

Dated: DEC 03 2021



J.S.C.

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

Matter of JOSEPH AGNEW, ANTHONY GANG,
TYRONE GREENE and KAMER REID,

On behalf of themselves and all others similarly situated,

Petitioners,

**PROPOSED ORDER
GRANTING CLASS
CERTIFICATION**

For a judgment under Article 78 of the Civil Practice
Law and Rules

--against--

NEW YORK CITY DEPARTMENT OF
CORRECTION,

Index No. 813431/2021E

Respondent.

ORDER CERTIFYING CLASS AND GRANTING RELATED RELIEF

This matter having been submitted to the Court on Petitioners' motion for an order pursuant to CPLR Article 9:

1. Certifying a class defined as:

All current and future people incarcerated in New York City Department of Correction facilities who have been or will be denied access to medical care based on Respondent's failure to discharge its ministerial duties (the Class).

2. Designating Plaintiffs Joseph Agnew, Anthony Gang, Tyrone Greene, and Kamer Reid as lead Petitioners and class representatives; and

3. Appointing The Legal Aid Society (Legal Aid), Brooklyn Defender Services (Brooklyn Defenders), and Milbank LLP (Milbank) as class counsel.

The Court having read and considered all of the papers filed in support of and in opposition to the motion, the Court finds that:

1. The Class is so numerous that joinder of all members is impracticable;

2. Questions of law or fact common to the Class predominate over any questions affecting only individual members;
3. Petitioners' claims are typical of the claims of the Class;
4. Petitioners and proposed class counsel Legal Aid, Brooklyn Defenders, and Milbank will fairly and adequately protect the interests of the Class; and
5. A class action is superior to other available methods for the fair and efficient adjudication of the controversy in that:
 1. Class members have a limited interest in individually controlling the prosecution of separate actions and those who wish to pursue their claims independently will be able to opt out of this action in order to do so;
 2. It would be impractical and inefficient for the parties to prosecute and defend separate actions;
 3. The PARTIES HAVE ^{INFORMED THE COURT THAT NO} other pending litigation concerning the same issues ^{IS/ARE PENDING;}
 4. It is highly desirable to concentrate the litigation in this forum; and
 5. The Court perceives no serious difficulties in managing this action and believes that the parties and the Court are equipped to handle issues as they arise.

A

 J.S.C.

Accordingly, the Court hereby orders as follows:

1. That Petitioners may maintain this action as a class action;
2. The certified Class consists of all current and future people incarcerated in New York City Department of Correction facilities who have been or will be denied access to medical care based on Respondent's failure to discharge its ministerial duties.

3. Petitioners Joseph Agnew, Anthony Gang, Tyrone Greene, and Kamer Reid are designated lead Petitioners and class representatives;

4. Legal Aid, Brooklyn Defenders, and Milbank are appointed as Class Counsel;

5. The parties shall negotiate an agreed form of notice of this class action, and methods through which Respondents will distribute such notice to class members in their custody, within three (3) days of this order.

IT IS SO ORDERED.

Date: **DEC 03 2021**



Hon. Elizabeth A. Taylor
Justice of the Supreme Court

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

Matter of JOSEPH AGNEW, ANTHONY GANG,
TYRONE GREENE and KAMER REID,

On behalf of themselves and all others similarly
situated,

Petitioners,

For a judgment under Article 78 of the Civil Practice
Law and Rules

--against--

NEW YORK CITY DEPARTMENT OF
CORRECTION,

Index No. 813431 /2021

Mot. Seq. No. 1

Respondent.

ORDER GRANTING THE PETITIONERS' MANDAMUS RELIEF

Having reviewed the papers supporting Petitioners' Article 78 mandamus to compel and the papers filed in opposition, and having considered the arguments made at the hearing on this matter; this Court hereby

FINDS AND ORDERS:

1. That Petitioners have demonstrated that Respondent New York City Department of Correction has failed to comply with its nondiscretionary duties regarding Petitioners' access to medical care and have demonstrated that a mandamus order is warranted;
2. Respondent to immediately comply with its duties to:
 - a. Provide Petitioners' with access to sick call on weekdays, excluding holidays, and to make sick call available at each facility to all persons in DOC custody a minimum

of five days per week within 24 hours of a request, or at the next regularly scheduled sick call, whichever is first;

b. Safely keep in the New York City jails each person lawfully committed to his custody by providing sufficient security for the movement of incarcerated persons to and from health services, and by not prohibiting or delaying incarcerated persons' access to care, appropriate treatment, or medical or dental services.

2. Respondent shall provide proof of substantial compliance with these duties within one week of this order;

CONTACT THE COURT TO ARRANGE A VIRTUAL APPEARANCE

3. If Respondent has failed to show such proof, the parties shall before this Court on February 3, 2022 to address Petitioners' request for alternative relief.

JA
J.S.C.

SO ORDERED.

DATED: DEC 03 2021

JA

Justice of the Supreme Court

HON. ELIZABETH TAYLOR