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To be argued by
Lindsey E. Smith (15 Minutes)

New York Supreme Court

APPELLATE DIVISION — FIRST DEPARTMENT

JARRETT ALLEN, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,

Plaintiff-Appellant

v.

THE CITY OF NEW YORK; JESSICA TISCH, COMMISSIONER OF THE NEW YORK CITY POLICE DEPARTMENT, IN HER OFFICIAL CAPACITY; AND JUDITH R. HARRISON, ASSISTANT CHIEF IN THE CRIMINAL JUSTICE SECTION OF THE NEW YORK CITY POLICE DEPARTMENT, IN HER OFFICIAL CAPACITY,

Defendants-Respondents.

Appellate Division Case No. 2025-06122
New York County Clerk's Index No. 452962/2024

BRIEF FOR PLAINTIFF-APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES....III

PRELIMINARY STATEMENT....1

STATEMENT OF THE CASE....4

Arraignments Are a Critical Stage of Criminal Proceedings During Which Judges Conduct Factfinding and Make Decisions About Defendants' Guilt, Liberty, and Property....4

By Written Policy and in Practice, the NYPD Handcuffs Nearly All Defendants at Arraignment, Claiming It Has Sole Discretion to Make Arraignment Handcuffing Decisions....6

Routine and Unjustified Handcuffing at Arraignment Harms New Yorkers....9

Plaintiff-Appellant Jarrett Allen and the Putative Class....10

Procedural History....12

The Lower Court's Decision....13

STANDARD OF REVIEW....14

ARGUMENT....16

I. The Lower Court Incorrectly Held That Mr. Allen Did Not Have Standing or a Ripe Claim on Behalf of Himself and the Proposed Class....16

A. Mr. Allen Had Standing for Injunctive Relief Because the Complaint Alleged That He Would Be Immediately Harmed by Defendants-Respondents' Undisputed Policy....17

B. The Lower Court Erroneously Conflated the Legal Standards for Standing and Mootness, and Mr. Allen's Claims Remain Justiciable Under Well-Recognized Exceptions to Mootness. .23

II. Mr. Allen's Complaint States a Claim That the NYPD's Policy of Routinely Handcuffing New Yorkers at Arraignment Absent Any Individualized Judicial Finding of Necessity Violates His, and the Proposed Class's, Due Process Rights....28

A. Mr. Allen's Complaint States a Cognizable Cause of Action that the NYPD's Restraint Policy Violates His and the Proposed Class's Due Process Rights as Outlined in *People v Best*....28

B. The Lower Court Failed to Credit the Complaint's Allegations and Reached Legal Conclusions that Improperly Narrow the Scope of *Best*.....36

III. Mr. Allen Is Entitled to Summary Judgment Because the Lower Court Applied the Wrong Standard to His Conversion Motion and the Undisputed Material Facts Prove Defendants-Respondents' Restraint Policy Violates Due Process.....42

CONCLUSION.....48

PRINTING SPECIFICATION STATEMENT.....50

STATEMENT PURSUANT TO CPLR § 5531.....51

TABLE OF AUTHORITIES

Cases

19th Street Associates v State, 172 AD2d 380 [1st Dept 1991]..... 44, 45
Anderson v Liberty Lobby, Inc., 477 US 242 [1986].....46
Bell v Wolfish, 441 US 520 [1979].....38
Boryszewski v Brydges, 37 NY2d 361 [1975] 17
Caronia v Philip Morris USA, 22 NY3d 439 [2013].....20
City of New York v Maul, 14 NY3d 499 [2010].....26
City of New York v Maul, 59 AD3d 187 [1st Dept 2009] 26, 27
Comer v Cisneros, 37 F3d 775 [2d Cir 1994].....26
Consolidated Restaurant Operations v Westport Insurance Corp., 205 AD3d 76 [1st Dept 2022], *affd* 41 NY3d 415 [2024].....15
Consolidated Restaurant Operations v Westport Insurance Corp., 41 NY3d 415 [2024] 15, 28
Deck v Missouri, 544 US 622 [2007] 29, 33, 34, 41
Elsky v Hearst Corp., 232 AD2d 310 [1st Dept 1996] 43
Fossella v Adams, 225 AD3d 98 [2d Dept 2024], *affd as modified* 44 NY3d 258 [2025] 15, 18
Four Seasons Hotels v Vinnik, 127 AD2d 310 [1st Dept 1987] 4, 42, 43
Gerstein v Pugh, 420 US 103 [1975].....27
Gonzalez v Annucci, 32 NY3d 461 [2018] 25
Hurrell-Harring v State, 15 NY3d 8 [2010]..... 3, 34, 35, 47
Klostermann v Cuomo, 61 NY2d 525 [1984].....19
Leon v Martinez, 84 NY2d 83 [1994]..... passim
Lino v City of New York, 101 AD3d 552 [1st Dept 2012] 21

Matter of Assn. for a Better Long Island v New York State Department of Environmental Conservation, 23 NY3d 1 [2014] 17
Matter of Crawford v Ally, 197 AD3d 27 [1st Dept 2021] 24, 25
Matter of Dairylea Cooperative v Walkley, 38 NY2d 6 [1975] 17
Matter of Hearst Corp. v Clyne, 50 NY2d 707 [1980] 24
Matter of State of New York v Calhoun, 106 AD3d 1470 [4th Dept 2013] 22
McKinnon v Bell Security, 268 AD2d 220 [1st Dept 2000] 43
Newcomb v Middle Country Central School District, 28 NY3d 455 [2016] 15
Pacheco v Jabalera, 214 AD3d 516 [1st Dept 2023] 46
People ex rel. Maxian on Behalf of Roundtree v Brown, 77 NY2d 422 [1991] 27
People v Alexander, 127 AD3d 1429 [3d Dept 2015] 45
People v Ambroise, 161 AD3d 584 [1st Dept 2018] 6, 40
People v Ashline, 124 AD3d 1258 [4th Dept 2015] 30, 39, 47
People v Barnes, 96 AD3d 1579 [4th Dept 2012] 29
People v Best, 19 NY3d 739 [2012] ..... passim
People v Cain, 209 AD3d 124 [3d Dept 2022] 30, 39, 46, 47
People v Clyde, 18 NY3d 145 [2011] 29, 32
People v Conceicao, 26 NY3d 375 [2015] 6, 40
People v Cruz, 17 NY3d 941 [2011] 32, 38, 45
People v Fuller, 57 NY2d 152 [1982] 25
People v Goldston, 126 AD3d 1175 [3d Dept 2015] 31
People v Grasso, 50 AD3d 535 [1st Dept 2008] 46
People v L.D., 60 Misc 3d 729 [Sup Ct, NY County 2018] 40, 41
People v Mosher, 226 AD3d 1260 [3d Dept 2024], *lv denied* 42 NY3d 929 ..... 32, 38, 45
People v Neu, 124 AD2d 885 [3d Dept 1986] 37
People v Recor, 209 AD2d 831 [3d Dept 1994], *affd* 87 NY2d 933 [1996] 39

People v Russell, 80 Misc 3d 1144 [Sup Ct, Queens County 2023] 6
People v Thiessen, 76 NY2d 816 [1990] 15, 43
People v. Hamlett, 80 Misc 3d 303 [Crim Ct, Queens County 2023] 33, 34, 35
People v. Hoebich, 42 Misc 3d 128[A], 2013 NY Slip Op 52151[U] [App Term, 2d Dept 2013]..... passim
Police Benevolent Assn. of New York State Troopers v Division of New York State Police, 29 AD3d 68 [3d Dept 2006] 18, 19, 21
Rapid-American Corp. v Olympic Tower Associates, 157 AD2d 589 [1st Dept 1990].....45
Salazar v King, 822 F3d 61 [2d Cir 2016].....26
Saratoga County Chamber of Commerce v Pataki, 100 NY2d 801 [2003] 3, 17
Security Pacific National Bank v Evans, 31 AD3d 278 [1st Dept 2006] 17
Sikh Forum, Inc. v Saluja, 227 AD3d 1024 [2d Dept 2024] 18
Society of Plastics Industry v County of Suffolk, 77 NY2d 761 [1991].....17
Sokoloff v Harriman Estates Development Corp., 96 NY2d 409 [2001] 15, 28
Stevens v New York State Division of Criminal Justice Services., 40 NY3d 505 [2023] 18
Swinton v Safir, 93 NY2d 758 [1999]..... 20, 21
Vega v State, 140 AD3d 1608 [4th Dept 2016].....30
Voss v Netherlands Insurance Co., 22 NY3d 728 [2014].....46
Waterways Development Corp. v Lavalle, 28 AD3d 539 [2d Dept 2006].....22
Wells Fargo Bank Minnesota v Mastropaolo, 42 AD3d 239 [2d Dept 2007] .. 13, 23
Wiesen v New York University, 304 AD2d 459 [1st Dept 2003] 42
Zuckerman v City of New York, 49 NY2d 557 [1980] 46

Statutes

CPL 1.20..... 35, 47
CPL 140.20.....27

CPL 170.30.....5
CPL 170.40.....5
CPL 210.15.....5
CPL 220.10.....6
CPL 220.30.....6
CPL 340.20.....6
CPL 510.10..... 5, 40
CPL 530.40.....5
CPLR 3001.....22
CPLR 3026.....28
CPLR 3211..... passim
CPLR 3212.....46
CPLR 901.....26
Family Court Act 162-a 8

Other Authorities

New York City Charter § 434 7

Constitutional Provisions

NY Const art. I, § 6 ..... 1, 29

PRELIMINARY STATEMENT

New Yorkers accused of crimes have the due process right to be free from restraints in criminal proceedings before a judge or jury, unless a judge first makes an individualized finding that restraints are necessary (NY Const art I, § 6; *People v Best*, 19 NY3d 739 [2012]). But the New York City Police Department's (NYPD) arraignment restraint policy requires that its officers handcuff every person accused of a crime at the beginning of their arraignment. The policy gives officers full discretion to keep a person handcuffed throughout the arraignment without ever obtaining approval from a judge. The NYPD's arbitrary and unexplained use of restraints paints accused people as untrustworthy and dangerous in their first criminal court appearance, where their liberty is at stake. In enacting this policy, the NYPD unilaterally deprives hundreds of people, every day, of their due process rights.

Plaintiff-Appellant Jarrett Allen filed this lawsuit while in NYPD custody, awaiting his arraignment at New York County Criminal Court. Mr. Allen, a 24-year-old African-American New Yorker from Harlem, had never been arrested before, and was charged with a low-level offense that was not bail-eligible. He learned through counsel of the NYPD's policy of handcuffing every person at arraignment, and he knew that the NYPD would imminently handcuff him, unilaterally, without any finding of necessity from a judge. He did not want to be humiliated, demeaned,

and made to look guilty and dangerous in front of the judge and the courtroom's public gallery. And he did not want this unconstitutional policy to harm the hundreds of other New Yorkers arraigned daily. While awaiting arraignment in a holding cell, Mr. Allen brought this lawsuit through his attorneys, on behalf of himself and a putative class, to enjoin the NYPD's arraignment restraint policy. But the lower court, in a decision full of analytical errors as to both procedural issues and the merits of his claims, denied Mr. Allen and the putative class any relief and dismissed the suit.

First, the lower court erroneously held that Mr. Allen had neither standing nor a ripe claim for the declaratory and injunctive relief he sought. Ignoring that the very purpose of injunctive and declaratory relief is to protect against future harm, the lower court, relying on inapposite cases, held that Mr. Allen would not have had standing until after his constitutional rights were violated to sue to prevent such a violation. Then, acknowledging that Mr. Allen faced the imminent harm of being handcuffed at arraignment, the lower court found that he also lacked standing because his harm was over before he could benefit from a remedy. But this analysis conflates standing and mootness, and Mr. Allen's claims, as well as the putative class claims, meet well-recognized exceptions to mootness. The lower court's analysis of standing, ripeness, and mootness, if upheld, would erect "an impenetrable barrier to any judicial scrutiny" of the NYPD's arraignment restraint policy, and it would close

the courthouse door to many future challenges seeking to prevent unconstitutional government action (*see Saratoga Cty. Chamber of Com. v Pataki*, 100 NY2d 801, 814 [2003] [internal quotations omitted]). That outcome would be fundamentally inconsistent with New York's prudential and permissive standing doctrines, and this Court should reverse and hold that Mr. Allen has standing and ripe claims for injunctive and declaratory relief.

Next, the lower court improperly analyzed the merits, failing to credit the complaint's allegations as it was obligated to do on a motion to dismiss. Mr. Allen's complaint contains factual allegations showing how the NYPD's arraignment restraint policy implicates all three of *Best*'s core concerns—that it leads to unconscious bias by judges; interferes with the defense; and offends the dignity of the judicial process—all in the context of a "critical stage" of criminal proceedings where the judge must make important factual determinations (*Hurrell-Harring v State*, 15 NY3d 8, 20-21 [2010]). But on Defendants' motion to dismiss, the lower court ignored many of these facts and substituted its own assumptions that "arraignment is not a factfinding proceeding," that the NYPD is not responsible for its own handcuffing policy, and that handcuffing at arraignment does not harm criminal defendants. It also improperly construed and narrowed the Court of Appeals' holding in *Best*. Based on these errors, the court concluded that Plaintiff-Appellant's complaint failed to state a due process claim. This Court should reverse

and deny Defendants-Respondents' motion to dismiss.

Finally, because Mr. Allen's claim involves only an issue of law "fully appreciated and argued by both sides," he moved to convert the motion to dismiss to summary judgment (*Four Seasons Hotels v Vinnik*, 127 AD2d 310, 320 [1st Dept 1987]). But the lower court applied an incorrect legal standard to deny conversion. Mr. Allen asks this Court to reverse, convert the motion to dismiss to summary judgment, and grant summary judgment in his favor.

STATEMENT OF THE CASE

Arraignments Are a Critical Stage of Criminal Proceedings During Which Judges Conduct Factfinding and Make Decisions About Defendants' Guilt, Liberty, and Property.

Arraignment is the first proceeding in a criminal case in New York State (R.94 [Complaint ¶ 13]). At arraignment, the person accused of a crime appears before a judge for the first time, and the judge is required to make a series of decisions that may seriously impact their liberty and property interests (R.94 [Complaint ¶¶ 13-14]).

At arraignment, a judge may convict a person of a crime and sentence them; dismiss all charges against the person; remand the person to jail; order that the person be subjected to supervised release or electronic monitoring; or make a decision about the person's right to remain in their home (R.94-95 [Complaint ¶¶ 13-18]). If the judge remands the person or sets unaffordable bail, the person will be sent to the

dangerous confines of Rikers Island, where they may miss work, rent payments, or child custody court dates, compounding the harm caused by the loss of liberty (R.94-95 [Complaint ¶ 16]). Non-bail-eligible cases also carry serious potential consequences: a judge can order a person arrested and even jailed for missing supervised release meetings or letting their electronic monitoring bracelet battery fall too low (R.95 [Complaint ¶ 17]).

Judges cannot make these decisions on the law alone. Rather, the law requires that judges make factual determinations from the arraignment bench, including the following:

- For bail-eligible cases, the judge conducts a full-fledged bail hearing at arraignment, applying the statutory factors to the facts of the case (R.94 [Complaint ¶ 15]; *see* CPL 530.40). For non-bail-eligible cases, the judge must still issue a securing order and determine what conditions, if any, are necessary to ensure the defendant's return to court (R.95 [Complaint ¶ 17]; *see* CPL 210.15[6]; 510.10[1]).

- If the defendant moves to dismiss the case, the judge must examine the accusatory instrument and consider whether dismissal is warranted (R.94 [Complaint ¶ 14]; CPL 170.30). On a motion to dismiss in the interest of justice, for example, the judge must "examine and consider" any "relevant fact" supporting dismissal (*see* CPL 170.40[1][j]).

- When prosecutors seek an order of protection, the arraignment judge makes relevant factual determinations when deciding whether to issue the order and whether it should be a limited order or full stay-away order. These orders of protection can result in serious deprivation of the defendant's property interest in their home, or of their ability to associate with their family (R.95 [Complaint ¶ 18]).

- When a defendant wants to plead guilty, the judge must make a factual assessment about whether the plea is knowing and voluntary (R.94

[Complaint ¶ 14]; *e.g. People v Ambroise*, 161 AD3d 584 [1st Dept 2018]; *People v Conceicao*, 26 NY3d 375, 382 [2015]). If the defendant pleads guilty, the judge must determine an appropriate sentence or assess whether the sentence offered by the prosecutor is appropriate (R.94 [Complaint ¶ 14]; CPL 220.10[3], [4]; 220.30; 340.20[1]).

People accused of crimes are in view of the judge while entering the courtroom and during their arraignment while the judge is making the above findings of facts and decisions about their case (R.95-96, 102-103 [Complaint ¶¶ 20, 51]).

By Written Policy and in Practice, the NYPD Handcuffs Nearly All Defendants at Arraignment, Claiming It Has Sole Discretion to Make Arraignment Handcuffing Decisions.

The NYPD has physical and legal custody of the people it arrests throughout the arraignment process until a judge orders release or remand (*People v Russell*, 80 Misc 3d 1144, 1147 [Sup Ct, Queens County 2023]; R.95 [Complaint ¶ 19]). The NYPD's policy of restraining people in its custody during arraignment is laid out in an undisputed written policy document, signed by Defendant-Respondent Judith Harrison, Assistant Chief of the NYPD's Criminal Justice Bureau (R.331-33 [Smith aff, Mar. 18, 2025, exhibit C: *NYPD Commanding Officer's Memo*, *Criminal Justice Bureau*, "*Prisoner Restraints and Court Arraignments*," May 22, 2024] [hereinafter Policy]; R.96-98 [Complaint ¶¶ 24-35]). Defendant-Respondent Jessica Tisch has final policymaking authority over the arraignment restraint policy, and Defendant-Respondent City of New York is responsible for the NYPD's policy, practice, and compliance with the law (R.93 [Complaint ¶¶ 10-11]); R.579-82 [so-ordered

stipulation substituting Defendant-Respondent Jessica Tisch for initial defendant Thomas G. Donlon, both in their official capacities]; New York City Charter § 434). The arraignment restraint policy instructs the NYPD to place restraints on people in its custody from their entry into the courtroom. The policy divides arraignment into two stages and does not require court approval of handcuffing at any point in either stage (R.331-33 [Policy]; R.97 [Complaint ¶¶ 28-29]).

In the first stage, the "walk-up stage," people accused of crimes enter the courtroom and walk up to the arraignment podium or table (R.331-33 [Policy]; *see* R.95-96 [Complaint ¶¶ 20-21]). During this stage, the NYPD arraignment restraint policy requires that its officers handcuff all defendants, "absent exceptional circumstances," "with their hands behind their back," and it mandates that "handcuffs should only be removed at or after the moment the prisoner appears in person before the judge and is present at the arraignment table/podium" (R.331-33 [Policy]; R.97 [Complaint ¶ 28]).

In the second stage, the "podium stage," people accused of crimes stand before the judge at the podium or table until the arraignment is concluded (R.331-33 [Policy]; *see* R.97 [Complaint ¶ 28]). In the podium stage, the NYPD arraignment restraint policy mandates that officers "may only . . . exercise discretion . . . to remove the handcuffs or keep them on during the court arraignment" after the officer "escorts a handcuffed prisoner to the arraignment table/podium to appear before the

judge/court" (R.331-33 [Policy]; R.97 [Complaint ¶ 28]). The NYPD policy gives officers discretion "to remove the handcuffs or keep them on during the court arraignment," listing 13 nonexclusive factors the officer may consider (R.331-33 [Policy]; R.97-98 [Complaint ¶¶ 28-30]).

At no point does this policy direct officers to seek an individualized judicial finding of necessity, or any court approval, to restrain defendants (R.331-33 [Policy]; R.97-98 [Complaint ¶¶ 29, 34]). It does not instruct officers to provide an individualized justification for a judge to consider (R.331-33 [Policy]; R.97-98 [Complaint ¶¶ 29, 34]). Nor does it contemplate judicial involvement of any kind, or instruct officers what to do if ordered by a judge to remove restraints (R.331-33 [Policy]; R.97-98 [Complaint ¶¶ 29, 34]). Instead, it vests the power to handcuff solely in the individual NYPD officer (R.331-33 [Policy]; R.95-99 [Complaint ¶¶ 19-36]).

The result of this policy of unfettered NYPD discretion is near-universal arraignment handcuffing, leading to arbitrary outcomes (R.98 [Complaint ¶ 31]). For example, people like Mr. Allen, arraigned on non-bail-eligible offenses, are handcuffed during their arraignments only to be released into the public courtroom minutes later because the judge cannot impose pretrial detention (R.98 [Complaint ¶¶ 32-33]). Likewise, by statute, children arraigned in Family Court cannot legally be handcuffed without an individual judicial reason (Family Ct Act 162-a). But if

those same children are brought to arraignments at night or on the weekend, when Family Court is closed, the NYPD's policy is to handcuff them universally (R.102 [Complaint ¶¶ 48-49]).

Mr. Allen brings this lawsuit to challenge the NYPD's policy and practice of handcuffing every defendant throughout their arraignment, while the judge as factfinder makes critical decisions about their case (R.95-99 [Complaint ¶¶ 19-36]; *see* R.93 [Complaint ¶¶ 10-12]).

Routine and Unjustified Handcuffing at Arraignment Harms New Yorkers.

Bringing a person before the court and the public with their hands cuffed behind their back at arraignment sends a message to those in the courtroom that the person is likely untrustworthy, dangerous, and a flight risk (R.99 [Complaint ¶ 37]). This implicit messaging influences judges as they make arraignment decisions, including crucial decisions about whether a person can be trusted to return to court, and whether to impose a full order of protection for a complainant or witness, which may deprive a defendant of their property right to their home (R.99-100 [Complaint ¶¶ 38-39]).

Handcuffing at arraignment also directly interferes with the rights of people accused of crimes to participate in their defense (R.100 [Complaint ¶ 40]). A handcuffed person cannot tap their attorney or gesture to get their attention, interfering with private communication (R.100 [Complaint ¶ 40]). They cannot

accept and review key documents from their attorney while on the record to correct errors or call the attorney's attention to important points (R.100 [Complaint ¶ 41]). Nor can they sign documents like HIPAA forms, delaying their attorney's ability to prepare a medical-based defense, particularly if they are jailed pending trial (R.100 [Complaint ¶ 40]).

No less impactful are the humiliation and stigma of being publicly handcuffed, against the backdrop of New York criminal courts' "demeaning cattle-call culture" (R.100-02 [Complaint ¶¶ 42-49]). Disabled defendants are routinely handcuffed to their wheelchairs or crutches, children are routinely handcuffed when doing so would be prohibited in Family Court, and people whose belts have been confiscated by NYPD are forced to rely on their attorneys to hold up their pants (R.101-02 [Complaint ¶¶ 45-49]). The vast majority of people experiencing this dehumanizing treatment are Black and Hispanic New Yorkers (R.101 [Complaint ¶ 44]).

Plaintiff-Appellant Jarrett Allen and the Putative Class

The NYPD arrested Plaintiff-Appellant Jarrett Allen on October 30, 2024 and transported him to New York County Criminal Court to be arraigned (R.102 [Complaint ¶ 50]). Through his attorneys, he filed this lawsuit on behalf of himself and a proposed class on October 31, 2024 at 10:26 p.m., according to the clerk's stamp, while he was in the holding area of New York County Criminal Court waiting to be arraigned (R.93, 102-103 [Complaint ¶¶ 9, 51]).

The NYPD's arraignment restraint policy was in effect at the time of filing and remains in effect to this day (R.97 [Complaint ¶¶ 27-29]; R.331-33 [Policy]; *see* R.219, 221-22). At the time this lawsuit was filed, Mr. Allen was minutes away from being subjected to the policy (R.102 [Complaint ¶ 51]; R. 301). Mr. Allen feared the imminent harms of being viewed as violent and dangerous by the judge, court personnel, and the public by being handcuffed without reason during his arraignment (R.103-104 [Complaint ¶¶ 54-55; R.297]). The policy directed that NYPD officers escort Mr. Allen into the courtroom in handcuffs and up to the arraignment podium/table in front of the judge during the "walk-up stage" (R.331-33 [Policy]; R.96 [Complaint ¶ 21]). It also directed that NYPD officers had the authority to decide whether to keep Mr. Allen in handcuffs, without any individualized, on-the-record determination by the judge that handcuffing was necessary (R.331-33 [Policy]; R.96 [Complaint ¶ 24]). The NYPD did in fact handcuff Mr. Allen during both the walk-up and the podium stage of his arraignment with no explanation or request for the judge's approval (R.297, 301, 326-30). Mr. Allen was arraigned at approximately 10:53 p.m. on October 31, 2024 (R.301).

Mr. Allen filed his case on behalf of himself and a putative class of "all people who are or will be handcuffed by the NYPD at their criminal court arraignment in New York City based on the NYPD's arraignment restraint policy" (R.104 [Complaint ¶ 56]). On any given day, the proposed class will include approximately

388 people who will be arrested by the NYPD, subject to the restraint policy when they are arraigned in criminal court, and face the same injuries suffered by Mr. Allen (R.331-33 [Policy]; R.104-05 [Complaint ¶¶ 13, 56-57]; R.119, 134-68).

Procedural History

Mr. Allen filed this case on October 31, 2024 on behalf of himself and a proposed class of "all people who are or will be handcuffed by the NYPD at their criminal court arraignment in New York City based on the NYPD's arraignment restraint policy" (R.104 [Complaint ¶ 56]). On November 8, 2024, he moved for certification of a class of the hundreds of people daily arrested by the NYPD and subjected to, and harmed by, its arraignment restraint policy and practice (R.108-109). The lower court set a return date of March 25, 2025 for the motion for class certification, with a deadline of March 18, 2025 for opposition to the motion (R.582). Defendants-Respondents did not file an opposition to class certification by this date. The lower court denied the motion for class certification as moot on July 3, 2025 when it dismissed the case (R.26 [Decision at 9]).

The City and police Defendants-Respondents moved to dismiss Plaintiff-Appellant's complaint under CPLR 3211(a)(2), (7), and (10) on February 5, 2025 (R.183-84). On March 18, 2025, Plaintiff-Appellant opposed the motion to dismiss. Based on the urgency of the issue and the single legal claim resting on undisputed facts, Mr. Allen also cross-moved for conversion of the motion to dismiss into a

motion for summary judgment pursuant to CPLR 3211(c) and for summary judgment in favor of himself and the proposed class (R.260-61). Defendants filed a reply and opposition to the cross-motion to convert on March 24, 2025 (R.560-78). Oral argument took place on April 29, 2025 (R.36).

On July 3, 2025, the lower court issued two identical Decisions and Orders denying Plaintiff-Appellant's motion to convert to summary judgment and granting defendants' motion to dismiss (R.18-26, 27-35 [Decision]). The lower court also denied as moot Plaintiff-Appellant's motion for class certification and a related defense motion to stay the motion for class certification (R.26 [Decision at 9]). Finally, the court found the remaining arguments "unpersuasive or moot in light of the determinations herein" (R.26 [Decision at 9]).

Plaintiff-Appellant timely filed notice of appeal from both Decisions on July 31, 2025 (R.3-17) and timely served notice of appeal on August 1, 2025 (R.583).

The Lower Court's Decision

The lower court dismissed Mr. Allen's complaint for lack of standing and a ripe claim.[1] The court held that Mr. Allen did not have standing or a ripe claim because the future harm he alleged was not an "injury in fact," and because Mr. Allen

[1] Defendants incorrectly brought their motion to dismiss for lack of standing and ripeness under CPLR 3211(a)(2), "lack of subject matter jurisdiction" (R.20 [Decision at 3]; R.220). However, motions to dismiss for lack of standing are properly brought under CPLR 3211(a)(3), capacity, not (a)(2) (*e.g. Wells Fargo Bank Minn. v Mastropaolo*, 42 AD3d 239, 242 [2d Dept 2007]).

could not benefit from a remedy since "the arraignment was completed before his case was assigned to a jurist" (R.21-22 [Decision at 4-5]). The court stated that these "defects could potentially be cured by amendment" because Mr. Allen "ultimately remained handcuffed at arraignment" (R.22 [Decision at 5]).

Then, assuming *arguendo* that Mr. Allen amended his complaint as described, the lower court found that Mr. Allen's complaint failed to state a cause of action (R.22-23 [Decision at 5-6]). It held that the due process right described in *People v. Best* does not apply to arraignments because arraignment "is not a factfinding proceeding," because the NYPD is not responsible for arraignment handcuffing, and because there is a "lack of prejudice" to defendants who are handcuffed as they begin their arraignment (R.22-26 [Decision at 5-9]).

Finally, the lower court denied Mr. Allen's motion to convert the motion to dismiss to a motion for summary judgment under CPLR 3211(c), and to grant summary judgment to him and the proposed class. Conversion, the court held, "is not appropriate here because the notice requirement has not been satisfied and because the parties' submissions do not evidence that they deliberately charted a summary judgment course" (R.21 [Decision at 4] [internal quotations omitted]).

STANDARD OF REVIEW

This Court must review the dismissal of a complaint based on a "pre-answer motion to dismiss" *de novo* (*Consolidated Rest. Operations v Westport Ins. Corp.*,

205 AD3d 76, 81 [1st Dept 2022], *affd* 41 NY3d 415 [2024]). On a motion to dismiss pursuant to CPLR 3211, the Court must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" (*Leon v Martinez*, 84 NY2d 83, 87-88 [1994]); *see also Sokoloff v Harriman Estates Dev. Corp*., 96 NY2d 409, 414 [2001] [courts "must" follow *Leon*'s approach]). And it must deny the motion to dismiss if the complaint's "four corners" contain factual allegations that "taken together manifest any cause of action cognizable at law" (*Consolidated Rest. Operations*, 41 NY3d at 425 [hereinafter *Consolidated II*]). On a motion to dismiss pursuant to CPLR 3211(a)(3), the burden of proof is on the moving defendant to "establish, prima facie, the plaintiff's lack of standing as a matter of law" (*Fossella v Adams*, 225 AD3d 98, 108-09 [2d Dept 2024] [internal quotations omitted], *affd as modified* 44 NY3d 258 [2025]).

Whether to convert a motion to dismiss to summary judgment is typically within the lower court's discretion (*see* CPLR 3211[c]). But this Court "must" vacate that decision and "tak[e] appropriate corrective action" where the lower court abused its discretion as a matter of law by applying "an incorrect legal standard" (*People v Thiessen*, 76 NY2d 816, 818 n [1990]; *see also Newcomb v Middle Country Cent. Sch. Dist.*, 28 NY3d 455, 460, 466-67 [2016] [finding that the lower court "abuse[d] its discretion as a matter of law" in denying petitioner's motion for leave to serve a

late notice of claim where it applied an incorrect standard of proof]).

ARGUMENT

I. THE LOWER COURT INCORRECTLY HELD THAT MR. ALLEN DID NOT HAVE STANDING OR A RIPE CLAIM ON BEHALF OF HIMSELF AND THE PROPOSED CLASS.

The lower court erroneously held that Mr. Allen did not have standing or a ripe claim because he sought to prevent a future harm, even though this harm was imminent and reasonably certain, satisfying the injury-in-fact requirement to bring declaratory and injunctive actions. The court went on to state that Mr. Allen also lacked standing because the harm to him was over before he could benefit from a remedy. This analysis improperly conflates mootness and standing. Mr. Allen's claim is not moot because his individual claim is quintessentially likely to repeat, evades review, and is substantial and important; and his class claim relates back to the time of filing, satisfying well-recognized exceptions to mootness.

The lower court's analysis of standing, ripeness, and mootness, would, if upheld, require that a person's constitutional rights be violated before they could sue to prevent such violations. This outcome is inconsistent with New York's broad and permissive standing doctrine and would close the courthouse door to many future constitutional challenges to unlawful government policies by narrowing well-established injury-in-fact requirements.

A. Mr. Allen Had Standing for Injunctive Relief Because the Complaint Alleged That He Would Be Immediately Harmed by Defendants-Respondents' Undisputed Policy.

Standing in New York courts is a prudential, not jurisdictional, inquiry (*Security Pac. Natl. Bank v Evans*, 31 AD3d 278, 280 [1st Dept 2006]). When assessing standing, courts have a "duty [] to open rather than close the door to the courthouse" (*Saratoga Cty. Chamber of Com. v Pataki*, 100 NY2d 801, 814 [2003]). Standing principles should not be applied "in an overly restrictive manner where the result would be to completely shield a particular action from judicial review" (*Matter of Assn. for a Better Long Is. v N.Y. State Dept. of Envtl. Conservation*, 23 NY3d 1, 6 [2014]). Instead, "[a] fundamental tenet of our system of remedies is that when a government agency seeks to act in a manner adversely affecting a party, judicial review of that action may be had" (*Matter of Dairylea Coop. v Walkley*, 38 NY2d 6, 10 [1975]; *see Boryszewski v Brydges*, 37 NY2d 361, 364 [1975] [courts should recognize standing when denial "would be in effect to erect an impenetrable barrier to any judicial scrutiny"], *superseded by statute on other grounds*). Standing generally requires a plaintiff to show "an injury in fact—an actual legal stake in the matter being adjudicated—[to] ensure[] that the party seeking review has some concrete interest in prosecuting the action" (*Soc'y of Plastics Indus. v Cty. of Suffolk*, 77 NY2d 761, 772 [1991]).

Here, to prevail on their motion to dismiss for lack of standing, Defendants-Respondents were required to prove that Mr. Allen and the proposed class did not face a risk of future harm at the time the lawsuit was filed (*Fossella*, 225 AD3d at 108-09 [burden of proof is on moving defendant to "establish, prima facie, the plaintiff's lack of standing as a matter of law"] [internal quotations omitted], *affd as modified* 44 NY3d; *Sikh Forum, Inc. v Saluja*, 227 AD3d 1024, 1025 [2d Dept 2024] [same]). They did not meet this high bar.

The lower court erroneously held that Mr. Allen did not have standing because his injury-in-fact was based on future harm (R.22 [Decision at 5] ["[T]he risk of potential harm alleged by Plaintiff relies entirely on a prediction regarding whether and how the NYPD's Policy would be applied to him at arraignment. . . . Therefore, as pled, Plaintiff's claims are not ripe and he lacks standing."]). Standing for injunctive relief may be based on harm that is "potential and in the future as long as it is reasonably certain that the harm will occur if the challenged action is permitted to continue" (*Police Benevolent Assn. of N.Y. State Troopers v Division of N.Y. State Police*, 29 AD3d 68 [3d Dept 2006]; *Stevens v N.Y. State Div. of Crim. Just. Servs.*, 40 NY3d 505, 515 [2023] [plaintiffs whose brothers' DNA was stored in New York DNA databank had standing to sue for injunctive relief based on heightened risk of being identified and targeted for police scrutiny, though no arrest or targeting had taken place]). And declaratory relief, like injunctive relief, is forward-looking and

may well be based on allegations of future harm: "The primary purpose of declaratory judgments is to adjudicate the parties' rights before a 'wrong' actually occurs in the hope that later litigation will be unnecessary" (*Klostermann v Cuomo*, 61 NY2d 525, 538 [1984]).

The constitutional injury Mr. Allen sought to prevent when he filed this lawsuit was imminent, concrete, and reasonably certain. As his complaint alleged, he was in NYPD custody and minutes away from arraignment (R.102 [Complaint ¶ 51]). The "challenged action" in this litigation is the NYPD's undisputed policy of handcuffing arrestees with their hands behind their back as they walk into the courtroom and begin their arraignment, and keeping them handcuffed throughout their arraignment (unless an officer chooses to uncuff them), with no individualized judicial finding of necessity (R.97-99 [Complaint ¶¶ 27-36]). Mr. Allen expected to be—and in fact, was—subjected to the NYPD's undisputed policy and practice, and handcuffed for the duration of his arraignment, without any individualized judicial determination of necessity (R.102 [Complaint ¶ 51]; *see* R.128, 297; R.331-33 [Policy]). Thus, he had standing to commence this action and ask the lower court to enjoin and declare unconstitutional the "imminent and reasonably certain" harm of being subjected to the NYPD's arraignment handcuffing policy, as he awaited his arraignment (*Police Benevolent Assn.*, 29 AD3d at 70).

In reaching its erroneous conclusion that Mr. Allen's imminent handcuffing

pursuant to NYPD policy was too speculative an injury-in-fact, the lower court relied on legally and factually inapposite cases that do not even include the word "standing." First, the court relied on *Caronia v Philip Morris USA*, a case about whether New York law supports a tort cause of action for medical monitoring for former smokers (22 NY3d 439, 446 [2013]). The court quoted *Caronia* for the proposition that "[g]enerally, '[a] threat of future harm is insufficient to impose liability against a defendant in a tort context'" (R.22 [Decision at 5]). But *Caronia* does not make this statement "generally." The language quoted by the lower court referred to the requirement that a plaintiff show physical harm to support a negligence tort for money damages, in evaluating whether to establish a new cause of action for medical monitoring (*Caronia*, 22 NY3d at 446). Claims for injunctive and declaratory relief against constitutional violations have no corresponding physical or past harm requirement. The analysis in *Caronia* therefore does not bear on whether Mr. Allen had standing to seek injunctive and declaratory relief against unconstitutional state action.

The lower court also relied on *Swinton v Safir*, a case that, like *Caronia*, does not analyze standing for injunctive and declaratory relief (93 NY2d 758 [1999]). *Swinton* was an appeal from an Article 78 proceeding about a fired police officer's administrative right to a name-clearing hearing, and it analyzed whether the petitioner had met the required three elements of a claim entirely distinct from Mr.

Allen's: a "stigma-plus" procedural due process cause of action under the federal constitution (*id.* at 764 [defining elements of claim as defamatory government action, loss of employment, and dissemination of stigmatizing material]). The Court of Appeals did not analyze petitioner's standing to bring that claim, and the lower court's reliance on this case in analyzing Mr. Allen's standing is misplaced. Nevertheless, in granting relief to the petitioner based on a *likelihood* of dissemination of the challenged material, *Swinton* is instructive in holding that "proof of a likelihood of the occurrence of a threatened deprivation of constitutional rights is sufficient to justify prospective or preventive remedies . . . without awaiting actual injury" (*id.* at 765). But instead of applying this principle to Mr. Allen, who did show such a "likelihood" of threatened deprivation, the lower court describes future-harm cases as "extraordinarily rare" (R.22 [Decision at 5]). This characterization of prospective remedies as "rare" appears nowhere in *Swinton* or the other cases the lower court cites, *Police Benevolent Assn.* (29 AD3d) and *Lino v City of New York* (101 AD3d 552 [1st Dept 2012]), both cases in which courts found standing for injunctive relief based on allegations of future harm that would be caused by the challenged action. As in *Swinton*, *PBA*, and *Lino*, here action had been taken by Defendants-Respondents—Mr. Allen was arrested, and the NYPD had an unconstitutional arraignment restraint policy in place that applied to all arrested New Yorkers at arraignment. This policy was certainly going to deprive Mr. Allen of his

right to due process, and *Swinton* supports his standing to challenge the policy.

In addition to holding that Mr. Allen lacked standing to bring his claims, the lower court also wrongly concluded that Mr. Allen's cause of action for declaratory relief was not ripe at the time of filing. To establish a claim for declaratory relief, a plaintiff must allege a justiciable controversy "involv[ing] a present, rather than hypothetical, contingent or remote, prejudice to the plaintiff. The dispute must be real, definite, substantial, and sufficiently matured so as to be ripe for judicial determination" (*Waterways Dev. Corp. v Lavalle*, 28 AD3d 539, 540 [2d Dept 2006]; CPLR 3001).

Mr. Allen's claim for declaratory relief is ripe because the complaint alleged an actual controversy among the parties about their legal rights and duties with concrete, imminent consequences (R.93, 95-99, 102-104 [Complaint ¶¶ 8, 19-36, 50-55, 57]); *see e.g. Matter of State of New York v Calhoun*, 106 AD3d 1470, 1472 [4th Dept 2013] [an action is ripe if the case will affect legal obligations of parties, not simply serve as hypothetical advice]). A declaratory judgment in Mr. Allen's favor would require Defendants-Respondents to change the NYPD's undisputed arraignment handcuffing policy and practice. Because the parties disagree on whether the due process protection against routine and unexplained restraints as articulated in *People v Best* applies at arraignment, and because at the time of filing Mr. Allen was minutes away from being subjected to such restraints, and a proposed

class of people continues to be subjected to the policy daily, there was at filing, and remains, a justiciable controversy that requires a court's judgment.

Finally, even under its own erroneous legal standard, the lower court should have found that Mr. Allen had standing and ripe claims. The lower court's decision states that the "defect[]" of not alleging past harm "could potentially be cured by amendment" because Mr. Allen "ultimately remained handcuffed at arraignment" (R.22 [Decision at 5]). But this fact was already in the record when the court considered the motion to dismiss, via affirmation, affidavit, and documentary evidence (R.128, 297, 326-30). And where plaintiffs have submitted additional facts after filing their complaint, courts "may freely consider" those submissions to "remedy any defects in the complaint" (*Leon*, 84 NY2d at 88).

B. The Lower Court Erroneously Conflated the Legal Standards for Standing and Mootness, and Mr. Allen's Claims Remain Justiciable Under Well-Recognized Exceptions to Mootness.

While on the one hand finding that Mr. Allen lacked standing because his injury-in-fact had not yet occurred, the lower court also held that Mr. Allen lacked standing because his arraignment was so imminent at the time of filing that he would not benefit from the remedy he sought (R.22 [Decision at 5]). But whether a plaintiff can benefit from their suit after it is filed is a question of mootness, not standing (*see Wells Fargo Bank Minn.*, 42 AD3d at 242 [standing is assessed at the time the case is commenced, not after]). And under two well-recognized exceptions to mootness,

Mr. Allen can continue to pursue his claims, for himself and for the benefit of the hundreds of people each day who are handcuffed at arraignments in violation of their due process rights.[2]

In *Matter of Hearst Corp. v Clyne*, the Court of Appeals identified the circumstances under which a plaintiff may continue pursuing his individual legal claim even if it would otherwise be moot due to a change in circumstances after filing (50 NY2d 707 [1980]). The *Hearst* mootness exception applies when there is a "likelihood of repetition" of the harm "either between the parties or among other members of the public," when the claim deals with a "phenomenon typically evading review" due to its short timeframe, and when the claim raises "significant or important questions not previously passed upon" (*id.* at 714-15; *but see Matter of Crawford v Ally*, 197 AD3d 27, 33 [1st Dept 2021] ["[T]he Court of Appeals has indicated that, if the issue is substantial, novelty is not a requirement of the mootness exception."]).

Mr. Allen's claim meets all three *Hearst* factors. First, he challenges an NYPD policy and practice that is certain to continue violating other defendants' constitutional rights, because it is applied to hundreds of people every day across

[2] The lower court misstates Plaintiff-Appellant's position as "argu[ing] that the relation-back and mootness exception doctrines resolve any questions of ripeness and standing" (R.21 [Decision at 4]). That is incorrect. Plaintiff-Appellant argued affirmatively in his papers and at oral argument that he and the class have standing and a ripe claim (R.283-84; R.47-48).

New York City during their arraignments (R.93, 95-99, 104 [Complaint ¶¶ 13, 19-36, 57]). When an alleged violation is based on governmental policy, it is not just likely, but certain to be repeated among other parties (*Crawford*, 197 AD3d at 32 [applying mootness exception to review challenge to policy of Bronx Criminal Court]; *see People v Fuller*, 57 NY2d 152, 156 n 2 [1982] [finding mootness exception proper when issue is "almost certain to affect a very large number of cases on a continuing basis"]). Second, the constitutional violation of routine and unexplained handcuffing typically evades review because it lasts, most frequently, a matter of minutes. New York courts have found that phenomena lasting as long as several months are sufficiently temporary to meet the exception (*e.g. Crawford*, 197 AD3d at 32 [one-to-two month temporary order of protection short enough to evade review]; *Gonzalez v Annucci*, 32 NY3d 461, 471 [2018] [six-month maximum placement in residential treatment facility short enough to evade review]). Third, the issue of unjustified handcuffing during a criminal proceeding is significant and important, implicating a core constitutional right. As the Second Department, Appellate Term held in *People v Hoebich*, a constitutional challenge to routine handcuffing at a probation revocation hearing, the challenge met the mootness exception because of its "importance to the criminal justice system" (42 Misc 3d 128[A], 2013 NY Slip Op 52151[U], *1 [App Term, 2d Dept 2013]).

Mr. Allen's claim on behalf of the putative class of individuals who will be

subjected to the NYPD's arraignment handcuffing policy is also exempt from mootness based on the "relation back" doctrine. Even if a putative class representative's individual claim becomes moot, he may still pursue his claim on behalf of the class because that class claim "relates back" to the time of filing (*Salazar v King*, 822 F3d 61, 73 [2d Cir 2016]; *see City of New York v Maul*, 59 AD3d 187, 191 [1st Dept 2009] [hereinafter *Maul I*] [holding that class claims based on inherently temporary circumstances are not moot where "there is no guarantee that future cases will not likewise become moot"]; *City of New York v Maul*, 14 NY3d 499, 510-11 [2010] [hereinafter *Maul II*] [affirming lower court and looking to federal jurisprudence in CPLR 901 class action analysis]). The relation back doctrine preserves inherently transitory class claims where a "court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires" (*Comer v Cisneros*, 37 F3d 775, 799 [2d Cir 1994] [internal quotations omitted]).

Mr. Allen's class claim against the routine but short-lasting harm of arraignment handcuffing is precisely the type of inherently transitory claim the relation back rule protects. Here, as in *Comer*, the court did not have time to rule on class certification before Mr. Allen's individual claim expired because he was arraigned minutes after filing his class action complaint. And as in *Maul*, other class members who seek relief will face the same obstacle of a quickly-expiring claim,

because arraignments must take place within 24 hours of arrest (*see People ex rel. Maxian on Behalf of Roundtree v Brown*, 77 NY2d 422, 424 [1991]; CPL 140.20[1]; *see* R.94 [Complaint ¶¶ 13-14]). The vulnerable position of those subject to this policy also supports relation back in this case. Class members are arrestees, confined in NYPD custody. They do not have access to friends, family, legal research, or counsel. Many are youth or children (R.101-02, 104 [Complaint ¶¶ 47, 56-57]). As this Court has previously held, relation back is especially appropriate where "[t]he people who have the most interest . . . are among the most disadvantaged found in society" (*Maul I*, 59 AD3d at 192; *see Gerstein v Pugh*, 420 US 103, 110 n 11 [1975] [class representatives represented by public defenders could continue prosecuting pretrial detention case though harm to them had ended; assessing mootness under more rigorous federal rule]).

Making access to timely relief a prerequisite to standing, as the lower court suggests, would render the wealth of cases applying the mootness exceptions meaningless. It would also give government actors carte blanche to violate New Yorkers' rights over nights and weekends, when no court is available to immediately intervene. Standing and mootness rules do not permit such a carveout, and this Court should find that Mr. Allen and the putative class have standing and ripe claims for declaratory and injunctive relief.

II. MR. ALLEN'S COMPLAINT STATES A CLAIM THAT THE NYPD'S POLICY OF ROUTINELY HANDCUFFING NEW YORKERS AT ARRAIGNMENT ABSENT ANY INDIVIDUALIZED JUDICIAL FINDING OF NECESSITY VIOLATES HIS, AND THE PROPOSED CLASS'S, DUE PROCESS RIGHTS.

Under well-established law, courts must "accept the facts as alleged in the complaint as true, accord plaintiffs the benefit of every possible favorable inference, and determine only whether the facts as alleged fit within any cognizable legal theory" when evaluating a motion to dismiss under CPLR 3211(a)(7) (*Leon*, 84 NY2d at 87-88; *see also Sokoloff*, 96 NY2d at 414 [courts "must" follow *Leon*'s approach]; CPLR 3026 ["Pleadings shall be liberally construed."]). Because the "four corners" of Mr. Allen's complaint contain factual allegations that "taken together manifest [a due process] cause of action cognizable at law," this Court must deny Defendants-Respondents' motion to dismiss (*see Consolidated II*, 41 NY3d at 425). The lower court's decision, which is entitled to no deference, shows that it failed to accept the complaint's allegations as true and accord Mr. Allen's complaint the benefit of favorable inferences, despite its obligation to do so, and that it improperly narrowed the scope of appellate precedent.

A. Mr. Allen's Complaint States a Cognizable Cause of Action that the NYPD's Restraint Policy Violates His and the Proposed Class's Due Process Rights as Outlined in *People v Best.*

The Court of Appeals first recognized in the context of jury trials that, under

the New York State Constitution's due process protections, "[a] defendant has the right to be free of visible shackles, unless there has been a case-specific, on-the-record finding of necessity" (*People v Clyde*, 18 NY3d 145, 153 [2011]; *see* NY Const art I, § 6). In 2012, the Court of Appeals then held that the right equally applies when the factfinder is a judge (*People v Best*, 19 NY3d 739, 743-44 [2012]).[3] After all, "judges are human, and the sight of a defendant in restraints may unconsciously influence even a judicial factfinder" (*id.* at 744). The Court's ruling in *Best* extended beyond trials to all criminal proceedings: the Court held that "[a] trial court that restrains a defendant during *criminal proceedings* must state a particularized reason for doing so on the record" (*id.* at 743 [emphasis added]; *see People v Barnes*, 96 AD3d 1579, 1579 [4th Dept 2012] [judge must inquire and make a finding of necessity before a defendant is restrained]). Indeed, the *Best* Court found that it could not "ignore the way the image of a handcuffed or shackled defendant affects the public's perception of that person and of *criminal proceedings generally*" (19 NY3d at 744 [emphasis added]).

The *Best* Court applied due process protections from restraints to criminal proceedings generally because it found that the same fundamental legal principles

[3] In so holding, *Best* explicitly rejected the narrower federal rule that due process only limits the use of restraints before a jury (*see Deck v Missouri*, 544 US 622, 630-33 [2007]). As the *Best* Court writes: "The People contend that the rule of *Deck*, *Clyde* and [*Cruz*] is inapplicable to defendant's case because he was tried by the court rather than by a jury. We see no basis for such a distinction" (19 NY3d at 743-44).

that supported those protections before a jury apply when people accused of crimes are restrained before a judge (*id.* at 743-44). Putting a person in restraints during a criminal proceeding without the safeguard of an individualized judicial finding of necessity is unconstitutional because it undermines "three fundamental legal principles: (1) preserving the presumption of innocence to which every criminal defendant is entitled; (2) ensuring that the defendant is able to participate meaningfully in his or her defense; and (3) maintaining the dignity of the judicial process" (*id.* [internal quotation marks and citations omitted]). The Court found that "[t]he routine and unexplained use of visible restraints does violence to each of these principles, essential pillars of a fair and civilized criminal justice system that are no less implicated when the factfinder is the trial judge rather than a jury" (*id.* at 744).

Since *Best*, New York's courts have routinely applied its holding to pre- and post-trial stages of criminal proceedings, including in the context of pre-trial suppression hearings (*People v Ashline*, 124 AD3d 1258, 1259 [4th Dept 2015]), pre-trial grand jury proceedings (*People v Cain*, 209 AD3d 124, 126 [3d Dept 2022]), post-trial probation revocation hearings (*Hoebich*, 42 Misc 3d 128(A)), and involuntary detention hearings (*Vega v State*, 140 AD3d 1608, 1609 [4th Dept 2016]). Far from cabining *Best* to the moment in which guilt or innocence is adjudicated, the case law reflects the reality that liberty interests are at stake throughout criminal proceedings—and that all manner of criminal proceedings bear

heavily on that adjudication. Following *Best*, "[t]he general rule prohibiting handcuffing and shackling of defendants in court, absent a case-specific, on-the-record finding of necessity, applies to nonjury trials and to criminal proceedings" (*Hoebich*, 42 Misc 3d 128(A) at *1 [internal quotations omitted] [citing *Best* among other cases]).[4]

Plaintiff-Appellant's complaint contains factual allegations that state a cognizable due process cause of action under *Best*. As alleged in the complaint, the NYPD's arraignment handcuffing policy requires the routine and unexplained use of visible restraints on people accused of crimes at arraignments (R.96-99 [Complaint ¶¶ 21-36]). Under the restraint policy, the NYPD requires that its officers handcuff all people accused of crimes "with their hands behind their back," and it mandates that "handcuffs should only be removed at or after the moment the prisoner appears in person before the judge and is present at the arraignment table/podium" (the "walk-up stage") (R.331-33 [Policy]; R.97 [Complaint ¶¶ 28]). The policy further mandates that officers "*may only* . . . *exercise discretion* . . . to remove the

[4] In the only intermediate appellate decision to have questioned whether due process prohibits routine, unjustified shackling at any point in a criminal proceeding outside the trial itself, the Third Department expressed skepticism of the Fourth Department's conclusion in *Ashline* that the right extends to pretrial suppression hearings (*People v Goldston*, 126 AD3d 1175, 1178 [3d Dept 2015]). But the *Goldston* court found no constitutional violation in any case because the court below followed *Best*'s due process rule. Not "blindly acquiesc[ing] to the securing deputy's representation that defendant was a 'security risk,'" the lower court "made its own independent assessment as to whether shackling . . . was required" during a pre-trial suppression hearing (*Goldston*, 126 AD3d at 1178).

handcuffs or keep them on during the court arraignment" after the officer "escorts a *handcuffed* prisoner to the arraignment table/podium to appear before the judge/court" (R.331-33 [Policy] [emphasis in original]). The complaint also alleged that the restraints are visible, including allegations that defendants in New York City are visible to the judge when being arraigned; that Mr. Allen would also be visible to the arraigning judge; and that the policy requires cuffing *all* defendants with their hands behind their backs, a posture associated with being handcuffed (R.91, 92, 95-96, 102 [Complaint ¶¶ 2, 6, 20-21, 51]); *see People v Mosher*, 226 AD3d 1260, 1262 [3d Dept 2024] [holding that restraints are "visible" so long as there is a mere "possibility" that the factfinder saw or could "infer that defendant had been" restrained], *lv denied* 42 NY3d 929; *People v Cruz*, 17 NY3d 941, 944 [2011] [constitutional violation where, absent an independent determination of necessity of restraints, record did not establish factfinder could not infer defendant was shackled]). Thus, as alleged in the complaint (R.95-96, 101, 102 [Complaint ¶¶ 20-21, 46, 51]), the NYPD indiscriminately and routinely uses visible handcuffs on all people accused of crimes at their arraignments and grants their officers sole discretion to keep people handcuffed for the arraignment's duration with no "'case-specific, on-the-record finding of necessity'" by a judge (*Hoebich*, 42 Misc 3d 128(A) at *1, *quoting Clyde*, 18 NY3d at 153).

Plaintiff-Appellant's complaint also alleges facts showing that the routine and unexplained use of restraints at arraignments does violence to the three fundamental legal principles at issue in *Best*. First, as the *Best* Court found, restraints undercut "the presumption of innocence to which every criminal defendant is entitled" and introduce bias on the part of the factfinder (19 NY3d at 744). The complaint alleged that arraignment judges must make a number of critical factfinding decisions, including fact-intensive bail determinations, assessments of whether an order of protection is needed and whether it will deprive the defendant of their property, and whether a plea is voluntary and knowing (R.94-95 [Complaint ¶¶ 13-18]). And as a matter of law, restraints "'almost inevitably affect[] adversely' the 'perception'" of the accused person, a concern relevant whenever a factfinder is making decisions (*People v. Hamlett*, 80 Misc 3d 303, 307 [Crim Ct, Queens County 2023], *quoting Deck v Missouri*, 544 US 622, 630-33 [2007]). "[T]he sight of a defendant in restraints may unconsciously influence even a judicial factfinder" (*Best*, 19 NY3d at 744; *see id.* at 746 [Lippman, C.J., dissenting as to whether the due process violation of unexplained restraints, identified by the majority opinion, was harmless error] ["Visible shackles give the impression to any trier of fact that [the accused] person is violent, a miscreant, and cannot be trusted."]). As made clear by appellate courts applying *Best*, the presumption of innocence may be undermined throughout

criminal proceedings, not only at the guilt-or-innocence stage (which may itself be implicated at arraignments should a plea be under consideration).

Second, *Best* found that restraints undermine the accused person's ability "to participate meaningfully in his or her defense" (19 NY3d at 743-44). As alleged in the complaint, restraints at arraignment interfere with a defendant's ability to participate in their own defense and can cause serious psychological harm (R.100-102 [Complaint ¶¶ 41-47]). By law, restraints "diminish[] [the] right" to participate in one's defense by "interfer[ing] with the accused's ability to communicate with his lawyer" (*Hamlett*, 80 Misc 3d at 308, *quoting Deck*, 544 US at 631). They also "bear on a person's faculties" and "tend to confuse and embarrass" them, thereby "abridg[ing]" their exercise of the right to counsel (*Hamlett*, 80 Misc 3d at 308 [internal quotations and citations omitted]; *see Best*, 19 NY3d at 744 [finding that restraints make it more difficult for the accused person to advocate for themselves in court]). Again, the harm *Best* seeks to prevent is not limited to moments when guilt is adjudicated. Rather, interference with a defense "at critical stages," which includes arraignment, can "caus[e] grave and irreparable injury" even to people "who will not be convicted" of any crime (*Hurrell-Harring v. State*, 15 NY3d 8, 27 [2010]).

Finally, *Best* found that restraints undermine "the dignity of the judicial process," and it cautioned that courts cannot "ignore the way the image of a

handcuffed or shackled defendant affects the public's perception of that person and of criminal proceedings generally" (19 NY3d at 743-44). As the *Hamlett* court aptly put it, "there is not likely to be much public confidence in a criminal courtroom that indiscriminately hauls out a line of people of color, convicted of nothing, bound at the wrists" (80 Misc 3d at 310). The complaint alleged arraignments are open to the public, and more than 80% of the people NYPD arrests and indiscriminately handcuffs in New York City are Black and Hispanic, resulting in the exact harms that *Hamlett* and *Best* identify (R.100-101, 103 [Complaint ¶¶ 42-44, 55]).

Thus, as the complaint makes clear, the NYPD's restraint policy violates Plaintiff-Appellant's due process rights under *Best*. Because arraignments are criminal proceedings, the due process protections in *Best* squarely apply to arraignments. And as the first stage in a criminal action, arraignments are not only "criminal proceedings" (CPL 1.20[18]; *see* CPL 1.20[9]), but a "critical stage" that may affect "a defendant's basic liberty and due process interests" (*Hurrell-Harring*, 15 NY3d at 20-21). Arraignments involve the regular adjudication of "pretrial liberty interests" and give rise to consequences "both direct and collateral," including "loss of employment and housing, and inability to support and care for particularly needy dependents" (*id.*; R.94-95 [Complaint ¶¶ 14-18]). These significant interests at stake underscore the harmful consequences to people accused of crimes when they are subject to routine and unexplained restraints.

B. The Lower Court Failed to Credit the Complaint's Allegations and Reached Legal Conclusions that Improperly Narrow the Scope of *Best.*

In its decision, the lower court dismissed Plaintiff-Appellant's complaint because it failed to credit the complaint's allegations as true, despite its obligation to do so (*Leon*, 84 NY2d at 87-88). The lower court's dismissal is also premised on several wrong legal conclusions that improperly narrow *Best*'s scope because they directly contradict *Best* and its progeny.

To start, the lower court failed to credit the complaint's allegations that the NYPD's restraint policy injures Plaintiff-Appellant and the proposed class because it affords its officers the sole authority to handcuff a defendant and decide whether to keep them handcuffed for the duration of their arraignment (R.25 [Decision at 8]; R.91-93, 95-97 [Complaint ¶¶ 1, 3, 8, 10-12, 19-29]). Indeed, Defendants-Respondents take the position that police officers "decid[ing] whether and when to restrain persons in custody at arraignments . . . is a fundamental responsibility of law enforcement" (R.231).[5] Despite this, the lower court found that the NYPD was not

[5] (*See also* R.218 ["[T]he purpose of this lawsuit is to deprive New York City Police Officers of their authority to exercise discretion to restrain persons in their custody. . . . Constitutional law does not support a judgment from this Court enjoining police officers from exercising discretion to restrain arrestees at arraignments nor mandating criminal court judges make such determinations instead."]; R.221 ["Defendants must emphasize that police officers have the authority to make arrests on probable cause and make determinations about when and how to restrain persons in custody, including at arraignments."])

Likewise, at oral argument, Defendants-Respondents' counsel repeated their position that handcuffing is the domain of police officers (not judges): handcuffing is up to "the discretion that is exercised by these individual police officers" (R.61 [Tr 26:6-7]); "it is the police officer making

"solely responsible" for the results of its policy, because the arraignments take place before a court, and it shielded the NYPD from any accountability when it found that a criminal defendant's only recourse is to challenge the criminal court's actions in a direct criminal appeal (R.24, 26 [Decision at 7, 9]). In so holding, the lower court failed to credit the complaint's allegations that the NYPD's policy interferes with judicial decisionmaking because officers bring every person into the public courtroom to stand before the factfinder already handcuffed, without first seeking judicial permission, causing each person harm (R.95-96, 97 [Complaint ¶¶ 20-21, 29]).[6]

The lower court next held that "the need to ensure courtroom security and safety for all individuals in the courtroom" at arraignments justifies NYPD's policy of handcuffing everyone (R.26 [Decision at 9]). But such generalized "safety concerns" have been explicitly rejected by appellate courts applying *Best* as insufficient justification for restraints (*see e.g. Hoebich*, 42 Misc 3d 128(A) at *1-2 [rejecting "security reasons" as a justification for restraints]; *Mosher*, 226 AD3d at

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the decision" about "whether or not that individual should have been restrained" (R.62 [Tr. 27:2-8]); and "[t]he police officers have the discretion under constitutional law as probable cause" to handcuff, or not, a person in their custody (R.80 [Tr. 45:17-18]).

[6] In assessing whether the NYPD is the cause of the violation of Mr. Allen's rights, the lower court notes that Mr. Allen does not allege he will ask the court to direct the NYPD to remove his handcuffs (R.26 [Decision at 9]). But the case law imposes no requirement that defendants ask for relief from unconstitutional restraints to preserve an objection (*see People v Neu*, 124 AD2d 885, 886 [3d Dept 1986] ["[t]he fact that a defendant fails to request [a jury charge to disregard his restraints] is of no significance" to the determination of constitutionality of those restraints]).

1262 [rejecting "fluid circumstances" and serious charges as a justification for shackling defendants because the "[r]outine shackling of defendants as a matter of policy . . . runs afoul of due process"], *lv denied* 42 NY3d; *Cruz*, 17 NY3d at 943 [rejecting fact that "'problems' in courtrooms had 'risen dramatically over the last few years'" as a justification for restraints] [quoting lower court]). Thus, *Best*'s progeny has already foreclosed the lower court's erroneous legal conclusion.

The lower court then held that "the right to an individualized court determination regarding restraint" is not "implicated at arraignment as a matter of course" (R.23 [Decision at 6]). In reaching this conclusion, the lower court relied on *Bell v Wolfish*, a federal case dealing with pretrial detainees' conditions of confinement for the proposition that the "presumption of innocence" does not apply to criminal defendants pre-trial, and reasoned from that language that *Best* only applies at "guilt phases" of a criminal proceeding (R.23-24 [Decision at 6-7, 7 n 1], *citing Bell*, 441 US 520, 533 [1979]). The lower court's reliance on *Bell* is wrong. First, *Best* explicitly holds that the New York due process rule against unjustified restraints is broader than the corresponding federal one, which only limits restraints before a jury (19 NY3d at 744 ["The People contend that the rule of *Deck*, *Clyde* and [*Cruz*] is inapplicable to defendant's case because he was tried by the court rather than by a jury. We see no basis for such a distinction."]; *compare* R.24 [Decision at 7 n 1], citing *Deck* and *Clyde* for its analysis of the meaning of the presumption of

innocence). Second, appellate courts apply *Best* consistently to pre-trial defendants, making clear that under the New York State Constitution, restraints undermine the "presumption of innocence" at a multitude of criminal proceedings, not only at the guilt-or-innocence stage (*see e.g. Ashline*, 124 AD3d at 1259 [pre-trial suppression hearing]; *Cain*, 209 AD3d at 126 [pre-trial grand jury proceedings]).

Rather than acknowledging that *Best* applies beyond the adjudication of guilt, the lower court instead redefines grand jury testimony, probation revocation hearings, and a CPL 440 hearing on ineffective assistance of counsel as "other guilt phases" (R.23 [Decision at 6]).[7] This baseless distinction arbitrarily narrows *Best* to exclude arraignments from *Best*'s application to all "criminal proceedings" and breaks with the holdings of appellate courts in the state. The lower court's decision also disregards the fact that arraignments are far *more* likely to include a "guilt phase" than many of the other proceedings to which *Best* has already been applied. Unlike grand jury testimony, probation revocation, or ineffective assistance hearings, arraignments include guilty pleas, sentencing, and dismissals with some frequency (R.94 [Complaint ¶¶ 14-15]). Indeed, Mr. Allen's arraignment included a guilty plea and sentencing (R.94, 103 [Complaint ¶¶ 14, 53]); R.297, 302).

[7] A probation revocation hearing, for example, is by law specifically disqualified from being a "guilt" phase; rather, it is "a criminal proceeding brought for the purpose of determining if the defendant's subsequent acts violated the conditions of his sentence, not whether the acts constituted a crime" (*People v Recor*, 209 AD2d 831, 832 [3d Dept 1994], *affd* 87 NY2d 933 [1996]).

Next, the lower court improperly rejected Mr. Allen's allegations that arraignments include factfinding sufficient to implicate *Best*'s concerns with factfinder bias (R.24 [Decision at 7]; R.94-95 [Complaint ¶¶ 13-18]). That arraignments involve factfinding is well established. For example, at arraignment, the judge must "make an individualized determination" about the defendant's "risk of flight to avoid prosecution" based on a list of factual considerations and set a minimally restrictive securing order on that basis (CPL 510.10[1]; *see* R.94-95 [Complaint ¶¶ 13-17]; R.277). And when a plea allocution is conducted at arraignment, as in Mr. Allen's case, a judge must assess the voluntariness of the plea and the person's capacity to enter into it (R.94 [Complaint ¶ 14]; *see* R.277; *see e.g. Ambroise*, 161 AD3d; *Conceicao*, 26 NY3d at 382). Instead of crediting these allegations, the lower court substituted its own conclusion that an arraignment "is not a factfinding proceeding and statements made at arraignment are generally not admissible at trial" (R.24 [Decision at 7]). The only authority the court cites for this proposition is *People v L.D.* (60 Misc 3d 729 [Sup Ct, NY County 2018]). But *L.D.* does not state that an arraignment is not a factfinding proceeding, nor does it hold that arraignment statements are inadmissible. On the contrary, it states that "[m]ost of the relevant authority *permits* entry of arraignment minutes to impeach the defendant's trial testimony, but this application seeks to allow vicarious admissions

as part of the People's prima facie case," which was not permitted (*id*. at 730 [emphasis added]).

Finally, the lower court also concludes that there is a "lack of prejudice to the criminal defendant" being handcuffed during the walk-up stage, without citation to law or the complaint (R.26 [Decision at 9]). But as *Best* explained, absent an on-the-record, individualized justification from the court, "the defendant need not demonstrate actual prejudice to make out a due process violation" (19 N.Y.3d at 743, *quoting Deck*, 544 US at 635). By limiting its inquiry to prejudice, the lower court's analysis of the NYPD's policy fails to grapple with *Best*'s reasoning. Further, the lower court fails to even analyze the second and third fundamental due process principles that routine and unexplained visible restraints "do[] violence" to: the defendant's ability to meaningfully participate in their defense, and maintaining the dignity of the judicial process (R.23-24 [Decision at 6-7]; *Best*, 19 NY3d at 744).

The complaint alleged a "cognizable legal claim" that Defendants-Respondents have a policy of violating the due process rights of New Yorkers including Mr. Allen and the proposed class. The lower court was duty-bound to afford Mr. Allen "every possible favorable inference" in assessing his claim (*Leon*, 84 NY2d at 87-88). But it failed to do so here. This Court should reverse and deny Defendants-Respondents' motion to dismiss. This Court should also reinstate Mr. Allen's motion for class certification, as it was improperly dismissed as moot.

III. MR. ALLEN IS ENTITLED TO SUMMARY JUDGMENT BECAUSE THE LOWER COURT APPLIED THE WRONG STANDARD TO HIS CONVERSION MOTION AND THE UNDISPUTED MATERIAL FACTS PROVE DEFENDANTS-RESPONDENTS' RESTRAINT POLICY VIOLATES DUE PROCESS.

Mr. Allen asks this Court to reverse the lower court's denial of his motion to convert the motion to dismiss to summary judgment, grant his conversion motion, and grant summary judgment in his favor.

Under CPLR 3211(c), a court may convert a motion to dismiss to a motion for summary judgment after providing notice to the parties (*see Four Seasons Hotels v Vinnik*, 127 AD2d 310, 320 [1st Dept 1987] [explaining that "[s]uch notice must come directly from the court"]). But there are "three exceptions to the requirement of notice": (1) "the action involves no issues of fact, but only issues of law fully appreciated and argued by both sides;" (2) both parties request that the motion to dismiss be treated as a summary judgment motion; or (3) the parties "lay[] bare their proof and deliberately chart[] a summary judgment course" (*id*. at 320-21; *see also Wiesen v New York Univ.*, 304 AD2d 459, 460 [1st Dept 2003] [same]).

Here, the lower court improperly narrowed the legal bases for conversion when it found that "[c]onversion is appropriate *only* where the parties' evidentiary submissions clearly indicate that they deliberately charted a summary judgment course" (R.21 [Decision at 4] [emphasis added] [internal quotations omitted]). That

error led the lower court to wrongly conclude that "[c]onversion is not appropriate here because the notice requirement has not been satisfied and because the parties' submissions do not evidence that they deliberately charted a summary judgment course" (R.21 [Decision at 4] [internal quotations omitted]). Because the lower court applied "an incorrect legal standard" when deciding Mr. Allen's conversion motion, it abused its discretion as a matter of law, and this Court must reverse and take "corrective action" (*Thiessen*, 76 NY2d at 818 n; *see e.g. McKinnon v Bell Sec.*, 268 AD2d 220, 221 [1st Dept 2000] [reversing, on the law, the lower court's grant of summary judgment where the lower court "applied the wrong legal standard"]).

Applying the correct legal standard, this Court can convert Defendants-Respondents' motion to dismiss to one for summary judgment when any one of the exceptions to the notice requirements is met (*see e.g. Elsky v Hearst Corp.*, 232 AD2d 310, 310 [1st Dept 1996] [reversing the lower court's decision to deny conversion and converting to summary judgment because the case satisfied the third exception]). And it should convert to summary judgment because this case meets the first exception: it only involves an issue of law "fully appreciated and argued by both sides" (*Four Seasons Hotels*, 127 AD2d at 320).

As Mr. Allen argued before the lower court, this case presents the pure legal question of whether the NYPD's undisputed arraignment restraint policy violates his, and the proposed class's, due process rights under the New York State

Constitution (R.93, 104, 105 [Complaint ¶¶ 8, 57, 60]; R.21 [Decision at 4]). Defendants-Respondents acknowledged that question in their memorandum of law in support of their motion to dismiss as whether "the Restraint Policy, as applied to [Mr. Allen], violated his due process rights under the NYS constitution, or that the Restraint Policy on its face violates the NYS constitution" (R.221; *see also* R.231 ["Plaintiff's lawsuit essentially challenges the Restraint Policy as . . . unconstitutional"]; R.231 n 10 ["The crux of this lawsuit – really – is that Plaintiff and his attorneys do not think police officers should have the discretion to decide whether and when to restrain persons in custody at arraignments."]). And they argued their side of the question, claiming (incorrectly) in their motion and reply that "the New York State Court of Appeals [] already rejected Plaintiffs argument that handcuffing defendants *pre*-trial, when in police custody at arraignments, violates their constitutional right to a fair trial" (R.220; *see also* R. 233 ["Precedent . . . makes clear that Plaintiff has no constitutional right to be free of restraints at an arraignment."]; R.566 [stating on reply that "[t]he New York State Court of Appeals has decided that handcuffing individuals in police custody at their arraignments does not violate their right to a fair trial"]; R.574 [same]). Faced with similar cases, this Court has repeatedly approved conversion to summary judgment (*see e.g. 19th St. Assoc. v State*, 172 AD2d 380, 380 [1st Dept 1991] [affirming conversion to summary judgment "because the action involves no issues of material fact, but only

issues of law fully appreciated and argued by both sides, specifically the constitutionality of Chapter 473"]; *Rapid-Am. Corp. v Olympic Tower Assoc.*, 157 AD2d 589, 590 [1st Dept 1990] [same]).

Defendants-Respondents' argument that conversion is inappropriate here because Mr. Allen must show the height of the judge's bench in every courtroom, along with the height of every arraignment table or podium, to establish each judge's sight line to a person's restraints is unavailing (R.237-38, 570). As this Court has held, a defendant's attempt to raise "purported issues of fact" that are "legally immaterial to the constitutionality of" a challenged policy does not make conversion inappropriate (*19th St. Assoc.*, 172 AD2d at 380-381). Here, proof that an individual factfinder physically sees someone's restraints at the arraignment table or podium is legally immaterial because courts routinely find due process violations so long as there is a mere "possibility" that the factfinder saw or could "infer that defendant had been" restrained (*Mosher*, 226 AD3d at 1262; *see Cruz*, 17 NY3d at 944 [constitutional error where factfinder could infer defendant was shackled]; *see also id.* at 946 [Lippman, J., concurring] ["The introduction of a physical restraint into a criminal trial *unavoidably risks its discovery*."] [emphasis added]; *People v Alexander*, 127 AD3d 1429, 1432 [3d Dept 2015] [no error where there was "no reasonable possibility" that the factfinder could "infer that defendant's legs were restrained"]).

Because the NYPD restraint policy requires its officers escort all people accused of crimes with their hands cuffed behind their back "to the arraignment table/podium to appear before the judge" (R.331-33 [Policy]), judges can both *see* that people like Mr. Allen are handcuffed when officers escort them to the table/podium and *infer* that they are handcuffed because they appear before judges with their hands restrained behind their backs, unable to use their hands in the "customary" manner to communicate openness and trustworthiness (*see Cain*, 209 AD3d at 126-127 [explaining that "the inability to show one's hands" due to restraints "may connote or communicate that one is not trustworthy"]).

With conversion being appropriate here, this Court should next grant summary judgment in Mr. Allen's favor. To win summary judgment, a party must establish "a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issues of fact" (*Voss v Netherlands Ins. Co.*, 22 NY3d 728, 734 [2014] [internal quotations omitted]; *see* CPLR 3212[b]). Facts are material if they "might affect the outcome of the suit under the governing law" (*People v Grasso*, 50 AD3d 535, 545 [1st Dept 2008], *quoting Anderson v Liberty Lobby, Inc.*, 477 US 242, 248 [1986]). The burden then shifts to the non-moving party to identify a triable issue of fact (*Zuckerman v City of New York*, 49 NY2d 557, 562 [1980]; *Pacheco v Jabalera*, 214 AD3d 516, 517 [1st Dept 2023]).

Here, the undisputed material facts demonstrate that the NYPD's restraint policy requires officers to handcuff all members of the putative class at their arraignments and vests sole discretion in its officers to keep them handcuffed for the arraignment's duration with no case-specific, on-the-record judicial finding of necessity (R.331-33 [Policy]). Defendants-Respondents admit this policy is in effect (R.219, 221-222).[8] This policy violates Plaintiff-Appellant's due process rights under well-established precedent (*see supra* Section II.A). As discussed above, *Best* holds that due process prohibits restraints during a "criminal proceeding" without an individualized judicial finding of necessity (19 NY3d at 744). Arraignments are a critical stage of a criminal proceeding implicating the three fundamental legal principles of *Best*, and appellate courts have broadly applied *Best* to pre-trial criminal proceedings (*see supra* Section II.A; CPL 1.20[9], [18]; *Hurrell-Harring*, 15 NY3d at 20-21; *Ashline*, 124 AD3d at 1259 [applying *Best* to pre-trial suppression hearings]; *Cain*, 209 AD3d at 126 [applying *Best* to pre-trial grand jury proceedings]). These decisions applying *Best* reflect a wide understanding among appellate courts that "[t]he general rule prohibiting handcuffing and shackling of defendants in court, absent a case-specific, on-the-record finding of necessity, applies to nonjury trials and to criminal proceedings" (*Hoebich*, 42 Misc 3d 128(A)

[8] Indeed, Mr. Allen's Statement of Undisputed Material Facts largely cites to Defendants-Respondents' restraint policy, as well as to statutory provisions governing arraignments and the NYPD, which, likewise, "Defendants do not dispute" (R.568).

at *1 [internal quotations omitted] [citing *Best* among other cases]. Because it is undisputed that the NYPD's restraint policy mandates the "routine and unexplained use of visible restraints" at arraignments, the policy violates *Best*'s rule prohibiting such restraints at a criminal proceeding absent a case-specific, on-the-record judicial finding of necessity, and this Court should grant summary judgment in Mr. Allen's favor (*see Best*, 19 NY3d at 743-744).

CONCLUSION

For the foregoing reasons, Mr. Allen requests that this Court vacate the lower court's decision and order dismissing his case, convert Defendants-Respondents' motion to dismiss into a motion for summary judgment, enter summary judgment in favor of Mr. Allen, and reinstate his motion for class certification.

Dated: January 31, 2025
New York, N.Y.

Respectfully submitted,

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PRINTING SPECIFICATION STATEMENT

I hereby certify pursuant to 22 NYCRR 1250.8(j) that the foregoing brief was prepared on a computer using Microsoft Word using 14-point Times New Roman proportionally spaced typeface, double-spaced, with 12-point single-spaced footnotes and 14-point single-spaced block quotations. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of pages containing the table of contents, tables of citations, this Statement, and the Statement Pursuant to CPLR § 5531, is 11,868.

Dated: January 30, 2026

/s/ *Lindsey E Smith*
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STATEMENT PURSUANT TO CPLR § 5531

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION—FIRST DEPARTMENT

Jarrett Allen, on behalf of himself and all others similarly situated, *Plaintiff-Appellant*, v. THE CITY OF NEW YORK; Jessica Tisch, Commissioner of the New York City Police Department, in her official capacity; and Judith R. Harrison, Assistant Chief in the Criminal Justice Section of the New York City Police Department, in her official capacity, *Defendants-Respondents*.	Appellate Division Case No. 2025-06122 County of New York Index No. 452962/2024

1. The index number in the Court below is 452962/2024.
2. The full name of the original plaintiff is Jarrett Allen. The full names of the original defendants are The City of New York; Thomas G. Donlon, Interim Police Commissioner for the City of New York, in his official capacity; and Judith R. Harrison, Assistant Chief in the Criminal Justice Section of the New York City Police Department, in her official capacity. On January 10, 2024, Jessica Tisch, Commissioner of the New York City Police Department, was substituted for Thomas G. Donlon by the Honorable Hasa A. Kingo.
3. This action was commenced in the Supreme Court, New York County.

4. This action was commenced by the filing of the complaint on October 31, 2024. The pleadings were served on defendants Donlon and Harrison on November 4, 2024, and on defendant City of New York November 7, 2024.
5. Plaintiff-Appellant brought this proceeding on behalf of himself and a proposed class seeking injunctive and declaratory relief to end the New York City Police Department's policy of universal handcuffing of New Yorkers at criminal court arraignments with no individualized judicial finding of necessity, in violation of their New York state due process rights.
6. The appeal is from two Decisions and Orders of the Honorable Hasa A. Kingo, J.S.C., Supreme Court, New York County, dated July 3, 2025 and entered in the office of the New York County Clerk on July 7, 2025, which dismissed Plaintiff-Appellant's complaint, denied his motion to convert the motion to dismiss to a motion for summary judgment, and denied as moot his motion for class certification.
7. The appeal is being taken on a fully reproduced record.