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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

REPLY BRIEF FOR PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

Plaintiff-Appellant Jarrett Allen brought this case to assert his and the proposed class's due process right to appear free and unrestrained at their criminal court arraignments, absent an individualized judicial finding that it was necessary to restrain them. *People v Best* explains that the New York State Constitution secures this right at *all* criminal proceedings. Despite *Best*'s holding, the lower court erroneously dismissed Mr. Allen's claim that the New York City Police Department's ("NYPD's") arraignment handcuffing policy, which orders NYPD officers to handcuff all criminal defendants in front of the arraignment judge and the public without any individualized judicial finding, violates the due process rights of criminal defendants.

In their opposing brief, Defendants-Respondents repeat the same errors as the lower court. Defendants-Respondents improperly narrow *Best* and its progeny in order to carve arraignments out of its protections. In doing so, they reject *Best*'s plain language, New York appellate case law applying *Best* to varied facts, and *Hurrell-Harring v State*'s holding that arraignment is a "critical stage" of criminal proceedings. Instead, Defendants-Respondents urge reliance on non-binding and inapplicable federal and state cases to limit *Best*'s holding to non-arraignment "guilt or penalty phases" or certain "factfinding" proceedings. They also make unsupported factual claims that conflict with the allegations in Mr. Allen's complaint

showing that arraignment judges make significant decisions that impact defendants' liberty and case outcomes, and that handcuffing implicates those decisions, a defendant's ability to defend themselves, and basic courtroom dignity.

Next, Defendants-Respondents claim the NYPD is not responsible for unconstitutional handcuffing because a judge can decide to remove handcuffs mid-arraignment, disregarding that appellate case law requires a judicial finding of necessity *before* a defendant is restrained. This backward reading of *Best* would empower the NYPD to freely violate defendants' rights until a judge stops them, and it ignores the constitutional harm that is already completed when a person begins their arraignment before the factfinder in unnecessary restraints. Defendants-Respondents then argue that not violating Mr. Allen's and the proposed class's rights would be impractical. This argument is contradicted by the facts alleged in the complaint, unsupported by case law, and ultimately irrelevant to the determination of whether the complaint states a claim that the NYPD's policy violates the New York Constitution.

Finally, Defendants-Respondents attempt to sidestep the lower court's egregious procedural errors, contending that its holding that Mr. Allen did not have standing was merely an "observ[ation]," and ignoring the court's ruling on ripeness. And Defendants-Respondents repeat the lower court's mistake and advocate for the wrong legal standard to be applied to Mr. Allen's motion for conversion from motion

to dismiss to summary judgment.

Mr. Allen asks this Court to reinstate his complaint, convert Defendants-Respondents' motion to dismiss to one for summary judgment, grant summary judgment in his favor, and reinstate his motion for class certification.

ARGUMENT

I. MR. ALLEN'S COMPLAINT STATES A CLAIM UNDER *PEOPLE V BEST* THAT THE NYPD'S ARRAIGNMENT HANDCUFFING POLICY VIOLATES DUE PROCESS, AND DEFENDANTS-RESPONDENTS' ATTEMPTS TO NARROW *BEST* AND ITS PROGENY FAIL.

In *People v Best*, the Court of Appeals held that under the New York State Constitution, due process prohibits restraints during "criminal proceedings" without a prior judicial determination of necessity (19 NY3d 739 [2012]; *see* NY Const art I, § 6). Mr. Allen does not ask this Court to "recognize a new constitutional right," as Defendants-Respondents contend (Br. for Defendants-Respondents ["Resp. Br."] at 21). He asks it to apply the plain language of *Best* to a "critical stage" of "criminal proceeding[s]," arraignment (*Hurrell-Harring v State*, 15 NY3d 8, 27 [2010]), as other appellate courts have applied *Best* and its principles to pretrial suppression hearings and grand jury proceedings, post-trial probation revocation hearings, and hearings to determine if someone should be involuntarily committed for mental health reasons (*People v Ashline*, 124 AD3d 1258, 1259 [4th Dept 2015] [suppression]; *People v Cain*, 209 AD3d 124, 126 [3d Dept 2022] [grand jury];

People v Cavanagh, 245 AD3d 1068, 1070 [3d Dept 2026] [grand jury];[1] *People v Hoebich*, 42 Misc 3d 128[A], 2013 NY Slip Op 52151[U], *1 [App Term, 2d Dept 2013] [probation revocation]; *Vega v State*, 140 AD3d 1608, 1609 [4th Dept 2016] [annual review hearing on involuntary commitment, citing *Ashline*, 124 AD3d]).

Defendants-Respondents, like the lower court, improperly construe and narrow the Court of Appeals' holding in *Best* in an attempt to carve arraignments out of its due process guarantee. They argue that *Best*'s due process protections do not apply to arraignments because *Best* only applies to the guilt and penalty phases of a criminal proceeding, and to certain factfinding decisions that exclude arraignments; and because the three fundamental principles *Best* sought to advance do not apply to arraignments. But their legal arguments fail: *Best*'s holding is not limited to "guilt and penalty" phases of criminal proceedings or to particular factfinding decisions, and all three fundamental legal principles at issue in *Best* are implicated during arraignments.

A. *People v Best* and the Appellate Cases Applying It Do Not Limit *Best*'s Protections to the Guilt and Penalty Phases of a Criminal Proceeding, Nor to Particular Factfinding Decisions.

Defendants-Respondents attempt to carve arraignments out of *Best*'s due

[1] *Cain* and *Cavanagh* explicitly apply *Best* to a pretrial proceeding and thus appear to amend the Third Department's earlier statement in *People v Goldston* finding "no basis" to apply *Best* pretrial (126 AD3d 1175, 1177 [3d Dept 2015]).

process guarantee by focusing on some appellate applications of *Best* and ignoring others, and by relying on inapposite federal case law, to argue that *Best* is limited to particular factfinding proceedings during which guilt, innocence, or penalties are adjudicated (*e.g.* Resp. Br. at 16, 23). Rejecting *Hurrell-Harring*'s definition of arraignment as "critical" (15 NY3d at 27), they instead urge a division between arraignment and other "critical stages" that is unsupported by case law (Resp. Br. at 21 [arguing *Best* protects only "critical hearings that differ significantly from arraignments"]; *id.* at 32 [*Best* only applies at "*other* critical stages," not arraignments] [emphasis added]; *id.* at 23 [arraignment is not a "critical factfinding stage"]).

In making their argument, Defendants-Respondents simply ignore the New York appellate cases that have applied *Best*'s principles beyond primary criminal proceedings involving determinations of guilt or sentencing, for example to post-trial probation revocation hearings, and to mental health involuntary commitment hearings (*Hoebich*, 42 Misc 3d 128(A); *Vega*, 140 AD3d [citing *Ashline*, 124 AD3d]). They also rely on a non-binding federal district court decision about the use of restraints in a hallway outside a courtroom (Resp. Br. at 15, citing *Hopp v Burt*, No. 03-10153, 2007 WL 162248, at *9-10 [ED Mich. Jan. 16, 2007]). By contrast, Mr. Allen is challenging the NYPD's "routine and unexplained use of visible restraints" during arraignments in criminal courtrooms, when defendants are in view

of judges who are making critical determinations as to their liberty (*see Best*, 19 NY3d at 744). *Hopp* and the federal cases it discusses, involving "brief" and "inadvertent" mistakes in which jurors have observed a defendant in restraints, do not bear on the constitutionality of the NYPD's policy under New York law (*Hopp*, 2007 WL 162248, at *9-10).[2] And while *Best*'s holding relied on principles first articulated in the federal context in *Deck v Missouri* (544 US 622 [2007]), *Best* broadened New York's constitutional protections beyond the Supreme Court's holding in *Deck*, applying those principles to "criminal proceedings generally," and finding, unlike some federal courts, "no basis for . . . a distinction" between proceedings in front of a judge and proceedings in front of a jury when it comes to the constitutionality of restraints (*Best*, 19 NY3d at 743-44).[3]

Defendants-Respondents further attempt to cabin *Best*'s holding to certain "critical factfinding" decisions, even though *Best* and the appellate decisions interpreting *Best* do not contain any such limitations (Resp. Br. at 23). They argue

[2] Defendants also cite to similarly factually inapposite state appellate division cases, *People v Farless* (245 AD2d 878, 879 [3d Dept 1997]) and *People v Turner* (157 AD3d 421, 422 [1st Dept 2018]), which deal with whether to overturn an individual criminal conviction or reverse a denied mistrial motion where a juror or some prospective jurors may have briefly and inadvertently been exposed to the sight of the defendant in restraints (Resp. Br. at 31).

[3] Throughout their brief, Defendants-Respondents ask this Court to presume that judges can "disregard such irrelevancies" as implicit bias (Resp. Br. at 22; *see id.* at 15-16). This argument is rooted in inapplicable federal case law that judges at arraignments are less susceptible than jurors to bias from viewing a defendant in restraints—a distinction that *Best* has explicitly rejected (19 NY3d at 743-44).

that *Best*'s protections apply only to stages "during which guilt and penalties are typically determined on disputed evidence" (Resp. Br. at 16), or to "assessments of credibility" (Resp. Br. at 23), and that arraignments are not encompassed in these categories. These arbitrary characterizations as to *Best*'s applicability are rooted neither in any case law analyzing *Best*, nor in the facts Plaintiff-Appellant's complaint has alleged regarding arraignment proceedings. The complaint alleges that a number of critical factfinding decisions *are* made by arraignment judges, including fact-intensive bail determinations, assessments of whether an order of protection is required and whether it will deprive defendants of property, and assessments as to whether a plea is knowing and voluntary (R.94-95 [Complaint ¶¶ 13-18]). The first of *Best*'s underlying rationales—safeguarding the presumption of innocence from bias on the part of the factfinder when seeing a person in unexplained restraints—is implicated in all of these factfinding determinations (*see Best*, 19 NY3d at 744).

Finally, Defendants-Respondents argue that arraignment does not "implicate the defendant's right to a meaningful defense" and that an arraignment judge's "critical" determinations do not "concern guilt" or "affect sentencing" (Resp. Br. at 19, 23). In fact, authority shows a direct correlation between pretrial detention decisions made at arraignments and increased conviction rates and sentence lengths,

including in New York City in particular.[4] And as Mr. Allen's complaint alleges, 14% of cases are resolved at arraignments, many with convictions and sentences, others with dismissals (R.94 [Complaint ¶ 14]). Therefore, even under Defendants-Respondents' improperly constrained reading of *Best*, arraignments "concern guilt," involve "assessments of credibility," and "affect sentencing" (*see* Resp. Br. at 23).

B. All Three Fundamental Principles Underlying *People v Best*'s Holding Apply to Arraignments.

Defendants-Respondents next advance cursory arguments that the three fundamental legal principles *Best* sought to safeguard—the presumption of innocence, the ability to participate meaningfully in one's defense, and the dignity of the court—are "only tenuously implicated" at arraignments (Resp. Br. at 16). These arguments fail.

First, Defendants-Respondents contend that *Best* does not apply to arraignments because, they claim, the presumption of innocence is not at issue in pretrial proceedings (Resp. Br. at 18-19). But in New York, the presumption of

[4] *E.g. ODonnell v Harris County*, 251 F Supp 3d 1052 [SD Tex 2017] [noting that rigorous study of hundreds of thousands of cases found that detained defendants were 25% more likely to be convicted and 43% more likely to be sentenced to jail than defendants who were released pretrial], *affd as modified* 882 F3d 528 [5th Cir 2018], *affd as modified* 892 F3d 147 [5th Cir 2018]; Talmadge v Houser, No. 322CV00202SLGMMS, 2023 WL 8458199, at *1 n.1 [D. Alaska Sept. 11, 2023] [citing study of New York City arraignments that found pretrial detention increased probability that a felony defendant would be convicted by at least 13%, and had significant effects for misdemeanor cases, because of detainees accepting plea deals more frequently; that prosecutors were less likely to reduce charges against detained defendants; and that detention increased minimum sentence length].

innocence protects defendants even before arraignment (*People ex rel. Maxian on Behalf of Roundtree v Brown*, 164 AD2d 56, 63 [1st Dept 1990] [presumption of innocence underlies the limitation on the length of pre-arraignment detention], *affd* 77 NY2d 422 [1991]). New York appellate courts have also repeatedly applied *Best* to pretrial proceedings, indicating that the "presumption of innocence" as used in *Best* relates to a defendant's due process rights throughout a criminal case (*e.g. Ashline*, 124 AD3d at 1259 [pretrial suppression hearing]; *Cain*, 209 AD3d at 126 [pretrial grand jury proceedings]). Defendants-Respondents improperly rely, as the lower court did, on *Bell v Wolfish*—a federal case about the scrutiny required as to pretrial detainees' conditions of confinement, which has nothing to do with a pretrial defendant's due process rights in court during a criminal proceeding—to advance their argument that the presumption of innocence is not implicated at arraignments (Resp. Br. at 19, quoting *Bell*, 441 US 520 [1979]). They also cite to two other inapposite cases: *United States v Zhang* (55 F4th 141 [2d Cir 2022]), which analyzes whether the presumption of innocence impacts a particular factor under the federal bail statute; and *Bursac v Suozzi* (22 Misc 3d 328 [Sup Ct, Nassau County 2008]), a New York trial court case that preceded *Best* and had nothing to do with restraints during criminal proceedings. As discussed *supra* IA, the presumption of innocence is implicated in the numerous factfinding determinations and important decisions

about a person's liberty that occur at arraignment proceedings.

Second, Defendants-Respondents argue that "arraignment does not implicate the defendant's right to a meaningful defense" (Resp. Br. at 19). They base this argument on two cases in which post-conviction courts found that the absence of counsel at arraignments did not require overturning defendants' convictions (Resp. Br. at 19-20, citing *People v Combs*, 19 AD2d 639, 639 [2d Dept 1963] and *People v Green*, 48 AD3d 1057 [4th Dept 2008]). But the Court of Appeals has since made clear in *Hurrell-Harring* that arraignment is a "critical stage" of criminal proceedings that implicates "a defendant's basic liberty and due process interests" and at which the right to counsel is "fully implicated" (15 NY3d at 20-21 ["[n]or is there merit to defendants' suggestion that the Sixth Amendment right to counsel is not yet fully implicated" at arraignment]). The right to a meaningful defense is therefore certainly implicated at arraignments, and Defendants-Respondents altogether fail, as the lower court also did, to address *Best*'s concern with how restraints harm a person's ability "to participate meaningfully in his or her defense" (*Best*, 19 NY3d at 744) and how they "diminish[] [the] right" by "interfer[ing] with the accused's ability to communicate with his lawyer" (*People v Hamlett*, 80 Misc. 3d 303, 304 n.2 [Crim Ct, Queens County 2023]).

Finally, Defendants-Respondents conclude, with no legal argument, that *Best*'s concern with "the dignity of the judicial process" is "not offended" by the

NYPD's routine and unexplained handcuffing of defendants during their arraignment proceedings (Resp. Br. at 20). In so doing, they improperly introduce their own, often conflicting, factual characterizations[5] of arraignments, rather than applying the law to Plaintiff-Appellant's factual allegations about the NYPD's arraignment restraint policy and New York City arraignment proceedings (*see Leon v Martinez*, 84 NY2d 83, 87-88 [1994] [on motion to dismiss, court must "accept the facts as alleged in the complaint as true"]). The routine use of handcuffs at arraignments "undermine[s the] symbolic yet concrete objectives" of maintaining courtrooms that reflect the import and seriousness of the proceedings, inspiring public confidence, and demonstrating "the gravity with which Americans consider any deprivation of an individual's liberty" (*Hamlett*, 80 Misc 3d at 309, quoting *Deck*, 544 US at 631). "[T]here 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" (*Hamlett*, 80 Misc 3d at 310).

II. MR. ALLEN ADEQUATELY PLEADS THAT THE NYPD IS RESPONSIBLE FOR VIOLATING THE DUE PROCESS RIGHTS OF EACH PERSON IT HANDCUFFS AT ARRAIGNMENTS.

The lower court erred when it found that the NYPD was not responsible for

[5] Defendants-Respondents alternately describe arraignments as a transition from "the chaos of an arrest to the calm and dignified courtroom" (Resp. Br. at 20); as risky and dangerous (*id.* at 32-34); and as a "cut-and-dried," "nuts-and-bolts," "brief, preliminary hearing" (*id.* at 16, 22, 20).

handcuffing people at their arraignments because the NYPD's policy does not "supersede[] the court's role or prevent[] the court from making an individualized determination regarding restraint" (R.26 [Decision at 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, 99-102 [Complaint ¶¶ 20-21, 29, 27-49]). Defendants-Respondents now claim that "nothing about NYPD's policy interferes with the court's authority to decide whether a criminal defendant should *remain* handcuffed during arraignment" (Resp. Br. at 12-13 [emphasis added]; *see also id.* at 24-27). But that claim flips the court's role from preventing the "routine and unexplained use of visible restraints" (*see Best*, 19 NY3d at 744), to tolerating it so long as a court can remove the restraints after the harm has been done. Both *Best* and its progeny reject this backward view of due process.

The NYPD's policy requires that its officers handcuff all defendants "with their hands behind their back" when they walk them up to the arraignment judge. (R.331-33 [Policy]; *see also* R.97 [Complaint ¶ 28]). This walk-up stage of the criminal proceeding is "when the criminal docket has been called and the officer is escorting the arrestee to the podium" (Resp. Br. at 6; *see also* Brief of Plaintiff-

Appellant ["App. Br."] at 7).[6] The NYPD's policy further 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]). As a result of the NYPD's policy, every criminal defendant in New York City appears before their arraignment judge and the courtroom public in handcuffs to start their arraignment proceeding.[7]

Best protects the rights of criminal defendants to be free of visible restraints "unless there has been a case-specific, on-the-record finding of necessity" to guard against implicit bias formed as a matter of first impression (19 NY3d at 743-45, quoting *People v Clyde*, 18 NY3d 145, 153 [2011]). Indeed, the *Best* Court explained that "the sight of a defendant in restraints may unconsciously influence even a judicial factfinder," and "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). Following *Best*, appellate courts have consistently held that a judicial

[6] Although Defendants-Respondents discuss the NYPD's policy of handcuffing people when they are transported to and around courthouses at length (Resp. Br. at 28-30), Mr. Allen has not challenged any period of handcuffing apart from when the NYPD walks up the defendant up to the arraignment podium/table in view of the factfinder and when the handcuffed defendant stands at the podium/table in view of the factfinder (*see* R.95-97 [Complaint ¶¶ 20-21, 28]; App. Br. at 7 [describing policy from entry into courtroom]).

[7] Despite Defendants-Respondents' attempt to downplay the challenged policy's significance by describing it as mere "guidance" (Resp. Br. at 2-3), the policy, which describes itself as a "directive" whose "dictates are [to be] followed," makes clear that handcuffing is mandatory at the walk-up stage, and, as alleged in the complaint, all but expressly so at the podium (R.331-33 [Policy]; R.95-99 [Complaint ¶¶ 20-36]).

determination that restraints are necessary is required *before* the defendant is brought before the factfinder in restraints, not as a remedy after the fact (*see People v Barnes*, 96 AD3d 1579, 1579 [4th Dept 2012] [rejecting court's "post hoc explanation" of its reasons for ordering the defendant to wear a stun belt and shackles, as a judicial finding of necessity is required "*before*" a defendant is restrained], quoting *People v Buchanan*, 13 NY3d 1, 4 [2009] [emphasis in *Barnes*]; *People v Cain*, 209 AD3d 124, 125-26 [3d Dept 2022] [requiring an on-the-record explanation from the prosecutor *before* the defendant appears in restraints before the grand jury]).

Given the above precedent, Defendants-Respondents' argument and the lower court's holding are wrong that the NYPD's policy is blameless because courts can order a defendant's handcuffs removed partway through the criminal proceeding. The NYPD's universal handcuffing policy circumvents the very judicial decisionmaking that could protect defendants' rights because it deprives defendants of the opportunity for a judicial ruling on the necessity of handcuffing *before* the judge (and the public) views the defendant in handcuffs and forms a first impression. As Mr. Allen affirms, "the NYPD officer handcuffed [him] behind [his] back" and "led [him] to the podium in front of the judge" (R.297 [Allen aff ¶ 10]). A judge's after-the-fact decision to remove his or anyone else's handcuffs at the arraignment podium does not undo the already-completed constitutional violation. Nor does it cure the factfinder's first impression of a defendant's guilt and dangerousness, the

public's impression of the defendant and the arraignment proceeding, and the dignity and representational harms to the defendant (*see e.g.* R.297 [Allen aff ¶ 16] [discussing the humiliation and pain Mr. Allen experienced from his unjustified handcuffing at his arraignment]). Thus, the NYPD's policy of bypassing the courts and mandating the "routine and unexplained use of visible restraints" for all criminal defendants at their arraignment (*see Best*, 19 NY3d at 744) is precisely why it bears responsibility for violating Mr. Allen and the proposed class's due process rights.[8]

Defendants-Respondents' remaining arguments to absolve the NYPD of responsibility similarly fail. First, they argue that their policy doesn't cause any harm as judges can simply "remain impartial" after seeing the defendant in handcuffs because courts have held that if a juror briefly sees a defendant in restraints, that does not require automatic reversal of a criminal conviction (Resp. Br. at 31 [citing cases]). But the cases they cite for this proposition only relate to whether a criminal conviction should be overturned, or a denial of a motion for mistrial reversed, after a juror or venirepersons "brief[ly]" and "inadvertent[ly]" saw a defendant in handcuffs outside the courtroom—not whether a constitutional violation has occurred (Resp. Br. at 31, citing *People v Farless*, 245 AD2d 878, 879 [3d Dept

[8] Defendants-Respondents claim that "only a practice of *selective* handcuffing" introduces bias to the factfinder (Resp. Br. at 32), but this is yet another attempt to rewrite *Best*, which instead says that the "routine and unexplained use of visible restraints does violence to . . . [the] essential pillars of a fair and civilized criminal justice system" (19 NY3d at 744).

1997] and *People v Turner*, 157 AD3d 421, 422 [1st Dept 2018]). They say nothing about whether it is constitutional to intentionally and routinely handcuff defendants before the factfinder during a criminal proceeding, which is an entirely different question from whether a criminal conviction should be reversed (*see People v Crimmins*, 36 NY2d 230, 237, 240-41 [1975]). Indeed, the *Best* Court found that the unexplained handcuffing of the defendant *both* violated the defendant's constitutional rights *and* constituted harmless error that did not warrant reversal of the individual criminal conviction (19 NY3d at 744-45).[9] Because Mr. Allen does not seek the reversal of any criminal conviction here, Defendants-Respondents' reliance on *Farless* and *Turner* is irrelevant to Mr. Allen's due process challenge to the NYPD's handcuffing policy.[10]

Second, Defendants-Respondents' claim that it would be impractical for the NYPD to secure prior judicial permission for handcuffing to avoid violating criminal defendants' constitutional rights (*see* Resp. Br. at 28, 30) also misses the mark. As an initial matter, the NYPD's professed practical concerns are irrelevant to whether

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[9] The lower court incorrectly says *Clyde* characterizes shackling as a mere "evidentiary" error (R.23 [Decision at 6]), and Defendants-Respondents repeat this error (Resp. Br. at 14). In fact, *Clyde* made clear that unjustified restraints are "constitutional error;" it then separately addressed a different evidentiary error by the trial court (18 NY3d at 149, 154-55).

[10] Defendants-Respondents incorrectly rely on *United States v Wiley* (103 F4th 575, 576 n.6 [9th Cir 2024]) to suggest handcuffs are "not inherently prejudicial unless they impermissibly suggest guilt" (Resp. Br. at 31). *Wiley*, to the contrary, makes clear that although an *ankle monitor* is not inherently prejudicial, handcuffs are more akin to "literal shackles" that inherently prejudice a factfinder against a defendant (103 F4th at 576 n.6).

Mr. Allen's complaint states a cause of action (*Leon*, 84 NY2d at 87-88 [on a motion to dismiss for failure to state a cause of action, the court must "determine only whether the facts as alleged fit within any cognizable legal theory"]; *see also Consolidated Restaurant Operations v Westport Ins. Co.*, 41 NY3d 415 [2024] [the court must look to the "four corners" of the complaint to determine whether the factual allegations "manifest any cause of action cognizable at law"] [internal quotation marks omitted]). In any event, the NYPD's practical concerns are nothing more than a strawman. Defendants-Respondents claim, for example, that NYPD officers cannot communicate to a judge their reasons why a defendant should be restrained because they are "not a party to the criminal proceeding" (Resp. Br. at 12). But both *People v Gonzalez* and *People v Cruz*, which are cited in Defendants-Respondents' brief (Resp. Br. at 25-26), make clear, law enforcement and correctional officers can and do communicate with courts about the manner of production of persons in their custody (*Gonzalez*, 115 AD2d 899, 901 [3d Dept 1985] [correction officers communicated their "recommendation that defendant be shackled" to the judge]; *Cruz*, 17 NY3d 941, 943-44 [2011] [shackling "recommended to [the judge] by [their] security staff"]). Just as correction officers and court security staff communicate to a judge, whether directly or through the prosecutor, why they believe a defendant should be handcuffed at a criminal proceeding, the NYPD can and must do the same. And unless they obtain that

individualized judicial finding of necessity authorizing handcuffs, the NYPD must bring a defendant before the judge and the courtroom public unrestrained.[11] The NYPD may find it more administratively convenient to handcuff all defendants at their arraignment, but "[m]ere administrative convenience does not justify an impediment which so seriously undermines the exercise of a constitutional right" (*People v Taub*, 37 NY2d 530, 534 [1975] [rejecting administrative convenience as a justification and striking down, on free speech grounds, city ordinance against using sound amplification on public streets]).

Finally, Defendants-Respondents concede that "generalized safety concerns are not enough to justify handcuffing," but then proceed to argue that the handcuffing of all defendants is justified because they "may present unknown risks" (Resp. Br. at 32). Beyond the lack of logical consistency in Defendants-Respondents' position, appellate courts applying *Best* have consistently rejected the argument that mass handcuffing is justified by generalized risks (*see e.g. Hoebich*, 42 Misc 3d 128(A) at *1-2 [rejecting "security reasons" as a justification for restraints]; *People v Mosher*, 226 AD3d 1260, 1262 [3d Dept 2024] [rejecting fluid circumstances and

[11] Defendants-Respondents' claim that the arraignment judge lacks jurisdiction to decide whether to restrain the defendant before the defendant is at the arraignment podium also lacks merit (Resp. Br. at 29-30). But the arraignment judge has jurisdiction once the accusatory instrument is filed with the court (CPL 1.20[17]; CPL 100.05). Thus, the NYPD can simply seek a pre-arraignment bench conference to make its arguments for handcuffing, and the arraignment judge can make a decision based on the information provided and announce its decision and reasoning on the record once the case is called.

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 929; *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]). As in those cases, this Court should reject generalized safety concerns as a justification for the mass, routine violation of criminal defendants' constitutional rights.

III. THE LOWER COURT'S HOLDING THAT MR. ALLEN DOES NOT HAVE STANDING OR A RIPE CLAIM IS EGREGIOUSLY WRONG, AND DEFENDANTS-RESPONDENTS DO NOT ATTEMPT TO DEFEND IT.

In their opposition, Defendants-Respondents do not attempt to defend the lower court's holding that Mr. Allen did not have standing or a ripe claim because he sought to prevent a future harm. They instead recast the lower court's decision that Mr. Allen lacks standing as merely an "observ[ation]," while dodging the court's decision on ripeness entirely (Resp. Br. at 34, 36). Defendants-Respondents' failure to provide any defense of either decision is no surprise. As detailed in Plaintiff-Appellant's main brief, the lower court's standing and ripeness decisions are egregiously wrong and, if permitted to stand, would upend longstanding precedent and preclude future plaintiffs from ever bringing claims for injunctive and declaratory relief when faced with a similar "imminent and reasonably certain" harm

(*see* App. Br. at 16).

Defendants-Respondents argue that the lower court did not dismiss Mr. Allen's claim for lack of standing because it "merely observed" that, after the arraignment concluded, he could no longer benefit from relief (Resp. Br. at 34).[12] But the lower court's decision states clearly: "[T]he factual allegations as pled do not establish . . . that Plaintiff has standing to bring this action," and "as pled, . . . he lacks standing" (R.12-13 [Decision at 4-5]). Standing is a threshold determination (*Matter of Assn. for a Better Long Is. v N.Y. State Dept. of Envtl. Conservation*, 23 NY3d 1, 6 [2014]), which the lower court acknowledged serves to "present [the] court with a dispute that is capable of judicial resolution" (R.12 [Decision at 4], quoting *Sec. Pac. Natl. Bank v Evans*, 31 AD3d 278, 279 [1st Dept 2006]).

Defendants-Respondents' assertion that the lower court glossed over standing to rule directly on whether the complaint states a cause of action has no support in the lower court's decision (*see* Resp. Br. at 36-37). Indeed, the lower court only decided whether the complaint presented a cause of action after "[a]ssuming, arguendo, that the court were to consider" it (R.13 [Decision at 5]). Thus, by the

[12] Defendants-Respondents also claim, without elaboration, that "there are serious questions about whether the complaint should have been dismissed on mootness grounds" (Resp. Br. at 34). But they do not actually argue that Plaintiff-Appellant's case is moot (*id.* at 34-37). As set forth in Mr. Allen's main brief (App. Br. at 23-27), the lower court erroneously conflated the legal standards for standing and mootness, and Mr. Allen's claims remain justiciable under the well-recognized exceptions to mootness articulated in *Matter of Hearst Corp. v Clyne* (50 NY2d 707 [1980]).

lower court's own account, it decided whether the complaint states a cause of action for argument's sake, not (as Defendants-Respondents claim) as its lone reason for dismissing the complaint.

IV. THE LOWER COURT APPLIED THE WRONG STANDARD TO MR. ALLEN'S CONVERSION MOTION, AND DEFENDANTS-RESPONDENTS REPEAT THE SAME ERROR.

In their opposition, Defendants-Respondents commit the same error as the lower court when they improperly narrow the legal basis for converting a motion to dismiss to a summary judgment motion. They argue that the lower court properly exercised its discretion to decline to convert the motion to dismiss into a summary judgment motion because a court has discretion to convert the motion "upon adequate notice to the parties, CPLR 3211[c], *but only where* the parties' submissions clearly indicate that they are deliberately charting a summary judgment course" (Resp. Br. at 37 [internal quotation marks omitted] [emphasis added]). Defendants-Respondents cite *Mihlovan v Grozavu* (72 NY2d 506, 508 [1988]) for this assertion, but *Mihlovan* does not support it. Rather, *Mihlovan* reinforces the correct rule that conversion to summary judgment is proper where the court provides adequate notice to the parties or where the parties "had otherwise received 'adequate notice'" because one of the three exceptions to court-issued notice is met: (1) the parties expressly seek summary judgment, (2) the parties submit facts and arguments clearly indicating that they are deliberately charting a summary judgment course, *or* (3) the

case involves a purely legal question rather than any issues of fact (*id.* at 508; *see also Four Seasons Hotels v Vinnik*, 127 AD2d 310, 320-321 [1st Dept 1987]).

Like Defendants-Respondents, the lower court applied an incorrect legal standard and, as a result, wrongly concluded 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.12 [Decision at 4] [internal quotation marks omitted]). But this case is appropriate for conversion because it only involves an issue of law "fully appreciated and argued by both sides" (*Four Seasons Hotels*, 127 AD2d at 320; *see also* App. Br. at 43-46 [explaining the legal arguments appreciated and argued by both sides]). Indeed, the NYPD concedes that it "raised purely legal arguments in its motion to dismiss" (Resp. Br. at 39).[13] Thus, this Court should reverse the lower court, convert the motion to dismiss into one for summary judgment, and grant summary judgment in his favor for the reasons stated in Mr. Allen's main brief (*see* App. Br. at 16-48).

[13] Defendants-Respondents concede that their motion to dismiss raises pure legal arguments, but they also claim that their argument in their motion to dismiss that Mr. Allen failed to join a necessary party is a "fact-intensive question[]" (Resp. Br. at 38-39). But the case they cite offers *no* support for that proposition (*id.*, citing *L-3 Communications Corp. v SafeNet, Inc.*, 45 AD3d 1 [1st Dept 2007]). Their attempt to raise "purported issues of fact" from a well-established question of law does not make conversion inappropriate (*see 19th St. Assoc. v State*, 172 AD2d 380, 380-81 [1st Dept 1991]).

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.

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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, and this Statement, is 5595.

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