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

Jarrett Allen, on behalf of himself and all others similarly situated, Plaintiff, 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.	Index No. 452962/2024 (Hon. H. Kingo, JSC)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S CROSS MOTION TO CONVERT TO SUMMARY JUDGMENT AND IN OPPOSITION TO THE DEFENDANTS' MOTION TO DISMISS

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PRELIMINARY STATEMENT

In New York City, legally innocent people like Plaintiff Jarrett Allen are routinely brought before an arraignment judge in handcuffs. 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 doing so, the NYPD unilaterally deprives people like Mr. Allen of their state due process right to appear in criminal court unrestrained, absent an individualized, judicial finding that restraints are necessary.

This Court should convert the defendants' motion to dismiss to a summary judgment motion and grant summary judgment for Mr. Allen and the putative class because this case presents a pure legal question. The material facts do not require discovery and are not in dispute. Defendants themselves produced the NYPD's arraignment restraint policy, and they cannot dispute that Mr. Allen was subjected to it. And the Court of Appeals established, in *People v Best*, that the routine and unexplained use of restraints at criminal proceedings violates the New York State Constitution's due process protections (19 NY3d 739 [2012]).

This Court should also deny defendants' motion to dismiss as meritless. Defendants misstate the standing and ripeness standards, evade binding case law that supports the complaint's cause of action, claim with no basis that this plenary action should have been brought as an Article 78 special proceeding, and presume that the Office of Court Administration (OCA) is a necessary party despite law and evidence to the contrary.

FACTUAL BACKGROUND

Arraignment is the first stage of a criminal case in New York State (Rule 202.8(G) Statement of Undisputed Material Facts ["Facts"] ¶ 1). 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 (Facts ¶¶ 1-5).

A criminal case may end at arraignment with dismissal or conviction (Facts ¶ 2). The judge may dismiss criminal charges if the complaint is defective or in the interest of justice (Facts ¶ 2). The judge may offer, accept, or reject a plea agreement. Upon conviction, the judge may impose a criminal sentence or noncriminal disposition (Facts ¶ 2).

If the case is not resolved at arraignment, the judge makes consequential decisions about what, if any, restrictions are necessary to impose on the person's pre-trial liberty to ensure their return to court (Facts ¶¶ 3-5). If the charged offense is bail-eligible, the arraignment must include a bail hearing where the judge must decide whether to set bail and in what amount and form, or whether to remand the person to the custody of the Department of Correction pending trial (Facts ¶ 3). Even a short period of detention may cost the person their job, housing, or ability to support their dependents (*Hurrell-Harring v State*, 15 NY3d 8, 20-21 [2010]).

If the accused person is not jailed pending trial, the arraignment judge may decide to restrict their liberty in other ways, including ordering electronic location monitoring, home detention, restrictions on travel, or participation in programs like supervised release requiring regular visits with a social worker (Facts ¶ 4). All of these restrictions carry the threat of arrest and jail for noncompliance (Facts ¶ 4).

The arraignment judge can impose a no-contact order prohibiting the accused person from having any contact with another person (Facts ¶ 5). A no-contact order may force the accused

person out of their home or job or away from their children (*see Crawford v Ally*, 197 AD3d 27 [1st Dept 2021]).

The NYPD's Arraignment Restraint Policy

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]; Facts ¶ 10). The NYPD's policy of restraining people in its custody during arraignment is laid out in an undisputed arraignment restraint policy, signed by Defendant Judith Harrison, Assistant Chief of the NYPD's Criminal Justice Bureau (Facts ¶¶ 13-14; Aff of Lindsey Smith, Mar. 18, 2025, Ex. C). Defendant Jessica Tisch has final policymaking authority over the arraignment restraint policy, and Defendant City of New York is responsible for NYPD's policy, practice, and compliance with the law (Facts ¶¶ 11-12). 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 (Facts ¶¶ 14-23).

In the first stage, the "walk-up stage," people accused of crimes enter the courtroom and walk up to the arraignment podium or table (Facts ¶¶ 16-19). 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" (Facts ¶¶ 16-17).

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 (Facts ¶¶ 18-20). 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" (Facts ¶ 18). 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 (Facts ¶ 19).

At no point does this policy direct officers to seek an individualized judicial finding of necessity, or any court approval, to restrain defendants (Facts ¶ 20). It does not instruct officers to provide an individualized justification for a judge to consider (Facts ¶ 20). Nor does it contemplate judicial involvement of any kind, or instruct officers what to do if ordered by a judge to remove restraints (Facts ¶ 20). Instead, it vests the power to handcuff solely in the individual NYPD officer (Facts ¶¶ 10, 16-20).

Plaintiff Jarrett Allen and the Putative Plaintiff Class

Jarrett Allen was arrested on October 30, 2024 and transported to New York County Criminal Court by the NYPD to be arraigned (Facts ¶¶ 26-27). Through his attorneys, he filed this lawsuit on behalf of himself and a putative class on October 31, 2024 at 10:26 p.m. while he was in the holding area of New York County Criminal Court awaiting his arraignment (Facts ¶ 30).[1]

The NYPD's arraignment restraint policy was in effect at the time of filing and remains in effect to this day (Facts ¶ 32). At the time this lawsuit was filed, Mr. Allen was minutes away from being subjected to the policy (Facts ¶¶ 30-31). 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" (Facts ¶¶ 16-17). 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 (Facts ¶¶ 18-20). The NYPD did in

[1] Defendants misstate that Mr. Allen "filed the complaint, dated October 31, 2024, on November 1, 2024" (NYSCEF Doc No. 32 at 3). As the clerk's stamp indicates, the complaint was filed on October 31, 2024 at 10:26 p.m. (Facts ¶ 30).

fact handcuff Mr. Allen during both the walk-up and the podium stage of his arraignment, and no officer explained why or requested the judge's approval (Facts ¶¶ 33-35). Mr. Allen was arraigned at approximately 10:53 p.m. on October 31, 2024 (Facts ¶ 31).

The putative class includes "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" (NY St Cts Elec Filing [NYSCEF] Doc No. 7, Mem of Law in Support of Plaintiff's Mot for Class Certification at 5). 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 (Facts ¶¶ 7, 23, 32).

ARGUMENT

Plaintiff Jarrett Allen and the putative class (collectively "plaintiffs") are entitled to summary judgment because the undisputed facts prove that the NYPD's arraignment restraint policy violates the due process rights of every person arraigned before a New York City criminal court. Under CPLR 3211(c), this Court may convert a motion to dismiss (pre- or post-answer) to a motion for summary judgment where, as here, the case involves only an issue of law with no material factual disputes (*see Mihlovan v Grozavu*, 72 NY2d 506, 508 (1988) [conversion to summary judgment would be appropriate where "the case involved a purely legal question rather than any issues of fact"]; *Four Seasons Hotels v Vinnik,* 127 AD2d 310, 319-20 [1st Dept 1987] ["CPLR 3211[c] treatment can avail, and be requested by, the pleader . . . provided there is. . . a motion to dismiss that the court, on notice, can convert"]).

To obtain summary judgment, plaintiffs 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 quotation marks 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 unilaterally handcuffs plaintiffs at their arraignments and vests sole discretion in its officers to keep plaintiffs handcuffed for the arraignment's duration, violating plaintiffs' due process rights under well-established precedent.

Defendants move under CPLR 3211(a)(2), (7), and (10) to dismiss plaintiffs' complaint for lack of subject matter jurisdiction, failure to state a cause of action, and for not including a necessary party (NYSCEF Doc No. 32, Defs' Mem at 3). On this motion, 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] [citations omitted]). The Court should deny defendants' motion because Mr. Allen had standing when he brought this action and his suit is ripe, conferring the Court with jurisdiction; the complaint states a cause of action that defendants' arraignment restraint policy violates plaintiffs' due process rights; and defendants' remaining arguments that the entire court system is a necessary party and that this action is untimely are baseless.

I. THIS CASE PRESENTS A PURELY LEGAL QUESTION THAT THIS COURT CAN AND SHOULD RESOLVE VIA SUMMARY JUDGMENT UNDER CPLR 3211(C).

This Court can and should use its authority under CPLR 3211(c) to convert the defendants' motion to dismiss to a summary judgment motion because this case presents a pure legal question. As the First Department explained, courts may convert a pre-answer motion to dismiss where the

plaintiff requests it and where, as here, "the action involves no issues of fact, but only issues of law fully appreciated and argued by both sides" (*Four Seasons Hotels*, 127 AD2d at 319; *see Few Spirits v UB Distribs., LLC*, 192 AD3d 418, 418 [1st Dept 2021] [affirming lower court decision to convert a motion to dismiss to summary judgment "because plaintiff requested such treatment and the motion presented only issues of law and not issues of fact"]). Here, converting defendants' motion to dismiss to a summary judgment motion is appropriate because plaintiffs request conversion and this case presents a pure legal question: whether the NYPD's undisputed arraignment restraint policy violates the plaintiffs' due process rights under the New York State Constitution.

The legal question at stake in this case is clear to both sides. Under the NYPD's arraignment restraint policy, the NYPD has sole discretion to handcuff people at arraignments. Plaintiffs claim that the NYPD's policy violates the Court of Appeals' holding in *People v Best* that the New York Constitution's Due Process Clause prohibits restraining people accused of crimes during criminal proceedings absent an individualized judicial finding of necessity. Defendants concede that this case rests on one legal issue: "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" (NYSCEF Doc No. 32 at 14 n.10). Defendants further acknowledge that the merits of Mr. Allen's lawsuit involve whether "the Restraint Policy, as applied to him, violated his due process rights under the NYS constitution, or that the Restraint Policy on its face violates the NYS constitution" (*id.* at 4). Thus, as defendants fully appreciate, plaintiffs' case rests on a single legal claim that the NYPD's arraignment restraint policy is unconstitutional because it confers to police officers the discretion to restrain someone at arraignments, when due process instead requires that the use of restraints be supported by an

individualized *judicial* determination of necessity. As a result, this Court can and should resolve the claim at this stage of the proceedings.[2]

Conversion will also serve the "laudatory purposes of summary judgment" to promote "efficient case resolution" by preventing unnecessary and costly discovery in a lawsuit that hinges on an undisputed document (*Dunham v Hilco Constr. Co.*, 89 NY2d 425, 429 [1996]).

II. PLAINTIFFS ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE THE UNDISPUTED FACTS PROVE THAT THE NYPD'S ARRAIGNMENT RESTRAINT POLICY VIOLATES DUE PROCESS.

The right to be free from unnecessary bodily restraints is core to the New York State Constitution's due process protections. The Court of Appeals first recognized in the context of jury trials that, under state constitutional law, "[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]). 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]). 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*" (*id.* at 744 [emphasis added]).

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

[2] Plaintiffs respectfully request this Court formally notify the defendants that it will convert their motion to a summary judgment motion (*see Four Seasons Hotels*, 127 AD2d at 319-20).

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*, courts have applied its holding to pre- and post-trial stages of criminal proceedings. 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. Courts have applied *Best* 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 (*People v Hoebich*, 42 Misc 3d 128(A) at *1 [App Term 2d Dept 2013]), and involuntary detention hearings (*Vega v State*, 140 AD3d 1608, 1609 [4th Dept 2016]). These decisions reflect a wide understanding among appellate courts that, 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"[3]

[3] The only appellate decision to question whether these protections applied to pretrial hearings noted that the question did not matter in the case before it because the lower court complied with *Best*'s protections. Rather than "blindly acquiesc[ing] to the securing deputy's representation that defendant was a 'security risk,'" the Court "made its own independent assessment as to whether shackling defendant was required" (*People v Goldston*, 126 AD3d 1175, 1178 [3d Dept 2015]).

(*Hoebich*, 42 Misc 3d 128(A) at *1 [internal quotation marks omitted] [citing *Best* among other cases]). As one court recently noted, this general rule has deep historical roots dating back centuries (*People v Hamlett*, 80 Misc 3d 303, 304 n.2 [Crim Ct, Queens County 2023]). In *Hamlett*, the criminal court explained that, under the common law rule, "shackling defendant[s] during arraignment . . . [was] reversible error" (*id.* [quotation and citation omitted]), and it noted several centuries-old treatises prohibited the shackling of defendants at arraignment under English law (*id.*). Based on this history, *Best*, and post-*Best* appellate cases, the court concluded that "the law requires that a court conduct an individualized analysis of actual necessity before imposing shackles in a public courtroom" (*id*. at 311).[4]

A. *Best* Squarely Applies to Arraignments Because Arraignments Are Criminal Proceedings.

It is undisputed that arraignments are criminal proceedings. The Criminal Procedure Law defines "criminal proceeding" as "any proceeding which (a) constitutes a part of a criminal action or (b) occurs in a criminal court and is related to a prospective, pending or completed criminal action, either of this state or of any other jurisdiction, or involves a criminal investigation" (CPL 1.20[18]; *see* CPL 1.20[9]). As the first stage in a criminal action, arraignments are "criminal proceedings."

Indeed, the Court of Appeals has held that an arraignment is not only a criminal proceeding, but a "critical stage" that may affect "a defendant's basic liberty and due process interests"

[4] While ignoring directly on-point state cases, defendants instead incorrectly claim that a non-binding federal case, *Carzoglio v Paul*, resolves this issue in their favor. *Carzoglio* analyzed whether handcuffing a person being transported through courthouse hallways (and not in a courtroom or during a "criminal proceeding") violated his federal right to self-representation (2024 US Dist LEXIS 32635 [SDNY]). Mr. Allen makes no such claim here.

Likewise, the Supreme Court's broad statement in *Bell v Wolfish* limiting the applicability of the presumption of innocence in *federal* due process claims regarding jail conditions does not override much more recent and relevant *state* due process cases establishing that restraints harm the presumption of innocence as a matter of law, and in a variety of criminal proceedings other than trial itself (441 US 520 [1979]; NYSCEF Doc No. 32 at 16. New York's constitutional protections are distinct from, and often broader than, those of the federal constitution (*see People v P.J. Video*, 68 NY2d 296, 302-03 [1986]).

(*Hurrell-Harring*, 15 NY3d at 20-21). Arraignment involves the regular adjudication of "pretrial liberty interests" and gives rise to consequences "both direct and collateral," including "loss of employment and housing, and inability to support and care for particularly needy dependents" (*id.*). Arraignment also requires factfinding. 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 (Facts ¶¶ 3-5; CPL 510.10[1]; *see also Crawford*, 197 AD3d at 33-34 [evidentiary hearing required when order of protection may result in property deprivation]). 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 (Facts ¶¶ 3, 36; *e.g. People v Ambroise*, 161 AD3d 584 [1st Dept 2018]; *People v Conceicao*, 26 NY3d 375, 382 [2015]).

Because arraignments are criminal proceedings, the due process protections in *Best* squarely apply to arraignments. The fact that arraignments are also "critical stages" of criminal proceedings, implicating serious liberty interests, underscores the harmful consequences to people accused of crimes when they are subject to routine and unexplained restraints.

B. The NYPD's Arraignment Restraint Policy Requires the Routine and Unexplained Use of Visible Restraints at Arraignments.

It is undisputed that the NYPD's arraignment restraint policy requires the routine and unexplained use of visible restraints on people accused of crimes at arraignments. 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" (Facts ¶ 17). The policy further 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" (Facts ¶ 18). Thus, pursuant to their policy, the NYPD indiscriminately and routinely handcuffs all people accused of crimes at their arraignments and grants their officers sole discretion to keep people handcuffed for the arraignment's duration without having to explain why handcuffs are necessary or obtain the judge's approval (Facts ¶¶ 10, 16-20). Indeed, in Mr. Allen's case, NYPD officers failed to explain why he was handcuffed or why they kept him handcuffed throughout the arraignment without requesting the judge's permission (Facts ¶ 35).

Defendants' position that routine and unexplained restraints are only prohibited if there is proof an individual factfinder physically sees them is totally unsupported by the case law (NYSCEF Doc No. 32 at 20-21). 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 (*People v Mosher*, 226 AD3d 1260, 1262 [3d Dept 2024]; *see People v Cruz*, 17 NY3d 941, 944 [2011] [constitutional error where factfinder could infer defendant was shackled]; *cf. 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 NYPD officers, as a matter of policy, escort all people accused of crimes with their hands cuffed behind their back "to the arraignment table/podium to appear before the judge" (Facts ¶ 18), 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 126-27 [explaining that "the inability to show one's hands" due to restraints "may connote or communicate that one is not trustworthy"]).

C. The NYPD's Arraignment Restraint Policy Mandates Exactly What *Best* and Due Process Prohibit, and "Does Violence To" the Three Fundamental Legal Principles Underlying *Best*.

The NYPD's "routine and unexplained use of visible restraints" at arraignments violates *Best*'s rule prohibiting such restraints at a criminal proceeding absent a case-specific, on-the-record judicial finding of necessity (*Best*, 19 NY3d at 743-44). And it "does violence" to each of the three fundamental legal principles underpinning the need for these due process protections at criminal proceedings.

First, restraints undercut "the presumption of innocence to which every criminal defendant is entitled" and introduce bias on the part of the factfinder (*id.*). As a matter of law, restraints "'almost inevitably affect[] adversely' the 'perception'" of the accused person (*Hamlett*, 80 Misc 3d at 307, quoting *Deck v Missouri*, 544 U.S. 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 ["Visible shackles give the impression to any trier of fact that [the accused] person is violent, a miscreant, and cannot be trusted."] [Lippman, C.J., dissenting as to whether the due process violation of unexplained restraints, identified by the majority opinion, was harmless error]). 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, restraints undermine the accused person's ability "to participate meaningfully in his or her defense" (*Best*, 19 NY3d at 743-44). They "diminish[] [the] right" by "interfer[ing] with the accused's ability to communicate with his lawyer" (*Hamlett*, 80 Misc 3d at 664, quoting *Deck*, 544 U.S. 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 664 [internal quotations and citations omitted]; *see Best*, 19 NY3d at 744 [noting that the "psychological impact on the defendant of being continually restrained at the order of the individual who will ultimately determine his or her guilt" makes it more difficult for the accused person to advocate for themselves in court]).

Finally, restraints undermine "the dignity of the judicial process" (*Best*, 19 NY3d at 743-44). 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 U.S. at 631]). Rather, "[a]nyone who attends any of our proceedings must perceive the courtroom as a place where justice is fairly administered regarding persons presumed innocent" (*Hamlett*, 80 Misc 3d at 309; *see Best*, 19 NY3d at 744 ["Nor should we ignore the way the image of a handcuffed or shackled defendant affects the public's perception of that person and of criminal proceedings generally."]).

The fact that the NYPD's policy mostly harms Black and Hispanic New Yorkers further degrades the dignity of the courts. More than 80% of the people NYPD arrests in New York City are Black and Hispanic (Facts ¶ 25). A prior Chief Judge of the New York Court of Appeals noted the city's courts have a "dehumanizing" and "demeaning cattle-call culture," creating a "second-class system of justice for people of color" (Facts ¶ 24). "[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).

III. THE COURT SHOULD DENY DEFENDANTS' MOTION TO DISMISS BECAUSE MR. ALLEN HAS STANDING AND HIS CASE IS RIPE, THE COMPLAINT STATES A CAUSE OF ACTION, AND DEFENDANTS' REMAINING ARGUMENTS ARE MERITLESS.

Defendants move under CPLR 3211(a)(2), (7), and (10) to dismiss plaintiffs' complaint for lack of subject matter jurisdiction, failure to state a cause of action, and for not including a necessary party (NYSCEF Doc No. 32 at 3). In support of its motion, defendants argue that (1) Mr. Allen's case is not ripe because it depends on a future event; (2) Mr. Allen lacks standing because his injury depends on a future event; (3) the complaint fails to state a cause of action; (4) the lawsuit should have been brought as an Article 78 special proceeding instead of this plenary action and, as such, it is untimely; and (5) the lawsuit fails to join OCA as a party (NYSCEF Doc No. 32 at 3-4, 9-22). As discussed below, none of these arguments have merit.

First, defendants' argument that this suit is not ripe for declaratory judgment because it depends on a future event is wrong (*see* NYSCEF Doc No. 32 at 9-10). Under the ripeness doctrine, a court has the power to issue decisions that can actually affect the legal rights, obligations, or conduct of the parties, rather than serving as hypothetical advice (*State v Calhoun*, 106 AD3d 1470, 1472 [4th Dept 2013]; CPLR 3001). A claim is not ripe if the anticipated harm is based on a speculative "future event beyond control of the parties which may never occur" (*Cuomo v Long Is. Light. Co.*, 71 NY2d 349, 354 [1988] [internal quotation marks omitted]; *Church of St. Paul & St. Andrew v Barwick*, 67 NY2d 510, 520 [1986] ["If the anticipated harm is insignificant, remote or contingent the controversy is not ripe." (internal quotation marks omitted)], *cert denied* 479 US 985 [1986]). But when the anticipated harm is concrete and "sufficiently direct and immediate," then the controversy is ripe for review (*Church of St. Paul*, 67 NY2d at 520).

Here, Mr. Allen's complaint easily meets the ripeness requirement because it alleges that Mr. Allen was "awaiting arraignment in New York County Criminal Court, where, according to the

NYPD's policy, he will *imminently* be escorted into the courtroom in handcuffs and appear handcuffed in front of the judge at the arraignment podium or table" with no individual judicial finding of necessity (NYSCEF Doc No. 1, Complaint ¶ 51 [emphasis added]; *cf. Hollandale Apts. & Health Club v Bonesteel*, 173 AD3d 55, 60 [3d Dept 2019] [action nonjusticiable because complaint failed to allege that any "harm was impending"]). Mr. Allen filed this suit at 10:26 p.m. on October 31, 2024 and, when he was arraigned at approximately 10:53 p.m. that same night, the NYPD did in fact escort him into the courtroom in handcuffs and kept him in handcuffs in front of the judge throughout the arraignment until his plea was complete (Facts ¶¶ 30-35).

Second, defendants' argument that Mr. Allen lacks standing to bring this action because it alleges "future harm at arraignment" is equally wrong (*see* NYSCEF Doc No. 32 at 11). An anticipated injury does not confer standing if "it is predicated upon a series of events that may not come to pass" (*Schulz v Cuomo*, 133 AD3d 945, 947 [3d Dept 2015] [finding no standing where injury depended on the results of several future elections]). But standing 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 NY State Troopers, Inc. v Div. of NY State Police*, 29 AD3d 68, 70 [3d Dept 2006]). As discussed above, the complaint alleges that, pursuant to NYPD policy, Mr. Allen will imminently face the harm of being forced to appear in handcuffs before the arraignment judge with no individual judicial finding of necessity (NYSCEF Doc No. 1 at ¶ 51), and within half an hour of filing this suit, the NYPD did in fact bring him before the arraignment judge in handcuffs (Facts ¶¶ 30-35). Thus, he has standing to pursue this action (*see Police Benevolent Assn.*, 29 AD3d at 70 [standing established where plaintiffs "have alleged circumstances in which actual harm is imminent and reasonably certain"]).

Though Mr. Allen has already been injured by the arraignment restraint policy, this Court retains the power to adjudicate his individual and class claims under the relation-back and mootness exception doctrines. Mr. Allen's claim on behalf of the putative class is not moot because his claim as class representative was not moot when filed, and now relates back to the time of filing for mootness purposes (*Salazar v King*, 822 F3d 61, 73 [2d Cir 2016]; *see City of New York v Maul*, 14 NY3d 499, 511 [2010] [looking to federal jurisprudence in CPLR 901 analysis]). The "relating 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 quotation marks omitted]). Because defendants in New York must be arraigned within 24 hours of arrest (*see* NYSCEF Doc No. 32 at 15), this challenge to the NYPD's arraignment restraint policy is inherently transitory as no court can resolve a class certification motion in such a short period.

In addition, Mr. Allen's individual claim is not moot because there is a "(1) a likelihood of repetition, either between the parties or *among other members of the public*" that the NYPD will again handcuff people at arraignments pursuant to its policy; the 24-hour arraignment rule makes challenges to the NYPD's arraignment restraint policy "(2) a phenomenon typically evading review; and" this case presents (3) "significant or important questions not previously passed on, i.e., substantial and novel issues" (*Matter of Hearst Corp. v Clyne*, 50 NY2d 707, 714-15 [1980] [emphasis added]; *see also Gerstein v Pugh*, 420 US 103, 110 n.11 [1975] [pretrial custody class action challenge not moot under more demanding federal standard given the fleeting nature of pretrial custody, the certainty that an ongoing class of people was suffering the alleged deprivation, and that the attorney was a public defender whom the Court could assume had other clients with a live interest]). As the Second Department, Appellate Term held in *Hoebich*, the constitutionality

of handcuffing a defendant during a criminal court proceeding, even if the injury has passed, is "not academic, as it is of importance to the criminal justice system" (42 Misc 3d 128(A) at *1).

Third, defendants' argument that the complaint does not state a cause of action is baseless. This 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*, 84 NY2d at 87-88). The complaint alleges that the NYPD has a policy of handcuffing all defendants when escorting them to the arraignment podium/table in front of the judge and giving officers discretion to keep them handcuffed for the arraignment's duration without having to explain why or ask for approval from the judge (*see generally* NYSCEF Doc No. 1). As explained above, under well-established New York case law, handcuffing a person accused of a crime at a criminal proceeding absent an individualized judicial finding of necessity violates due process and harms people like Mr. Allen and the putative class.[5] The complaint's allegations clearly "manifest a[] cause of action cognizable at law" (*511 W. 232nd Owners Corp. v Jennifer Realty Co.*, 98 NY2d 144, 152 [2002] [citations omitted]).

Fourth, defendants' argument that this plenary action is untimely because it should have been brought as an Article 78 special proceeding within four months of the effective date of the policy is meritless (*see* NYSCEF Doc No. 32 at 13-15). New York courts routinely consider legal challenges to NYPD policies like this one via plenary actions, rather than special proceedings (*e.g.*, *Douglas v City of New York*, 79 Misc 3d 496, 498 [Sup Ct, NY County 2023] [challenging NYPD's policy of detaining people before issuing them appearance tickets on both statutory and constitutional grounds]; *People v Aviles*, 28 NY3d 497 [2016] [challenging NYPD's policy of not

[5] Defendants' argument that the complaint must show that the judge "will see" the handcuffs has no support in the law and contradicts appellate courts' practice of finding constitutional error were there is even a "possibility" that the factfinder saw or could "infer that defendant had been" restrained (*Mosher*, 226 AD3d at 1262; *see supra* Section II).

offering field sobriety tests to non-English speakers]; *R.C. v City of New York*, 64 Misc 3d 368 [Sup Ct, NY County 2019] [challenging NYPD's policy and practice of using sealed records]).

The CPLR also explicitly prohibits the dismissal of any civil proceeding "solely because" it was brought as an action, rather than a special proceeding (CPLR 103[c]). Defendants' argument that this case should be dismissed because it was brought over four months after the policy's effective date is especially inappropriate because the NYPD did not make this policy public when issued, and in fact has *still* not made it available to the public on its website (Facts ¶ 15). Nor would Mr. Allen have had standing to bring this lawsuit before his own arraignment was imminent. In any case, defendants waive any timeliness objection in the next paragraph when they concede that, if brought as an Article 78, "the proceeding would have been timely commenced the following day" after Mr. Allen's arrest on October 30, 2024 (NYSCEF Doc No. 32 at 15). The complaint was, in fact, filed the day after Mr. Allen's arrest (Facts ¶¶ 26, 30; NYSCEF Doc No. 1).

Fifth, defendants' argument that OCA is a necessary party because OCA's uniformed personnel provide security in courtrooms and OCA "will be impacted by" any relief in this case is meritless (*see* NYSCEF Doc No. 32 at 12-13).[6] Under the CPLR, OCA would only be a necessary party if this Court could not grant "complete relief" without it or if OCA might be "inequitably affected by a judgment" (CPLR 1001[a]). The NYPD has legal and physical custody of the people it arrests and transports to arraignments until a judge issues a securing order (*Russell*, 80 Misc 3d at 1147; Facts ¶ 10). As a result, this Court can grant complete relief by ordering the NYPD to change its restraint policy, and OCA will not be inequitably affected by such relief.

[6] Dismissal due to failure to join a necessary party is "a last resort" (Siegel, New York Practice § 133 [6th ed]).

CONCLUSION

Plaintiff respectfully requests that the Court deny defendants' motion to dismiss, convert the motion to a motion for summary judgment pursuant to CPLR 3211(c), give notice of such treatment, and grant summary judgment in his favor, as well as summary judgment in favor of the putative class upon resolution of the class certification motion (NYSCEF Doc No. 7).

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New York, N.Y.

Respectfully submitted,

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WORD COUNT CERTIFICATION

I, Lindsey E. Smith, certify that this document complies with Uniform Court Rule § 202.8-b. This document contains 6,925 words, exclusive of the caption, table of contents, table of authorities, and signature. In making this certification, I have relied on Microsoft Word's word count function.

/s/ Lindsey E. Smith

LINDSEY E. SMITH