

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X
	:
MARK NUNEZ, et al.,	:
	:
Plaintiffs,	:
	:
- against -	: 11 Civ. 5845 (LTS)(JCF)
	:
CITY OF NEW YORK, et al.,	: NOTICE OF MOTION
	:
Defendants.	:
	:
-----	X
	:
UNITED STATES OF AMERICA,	:
	:
Plaintiff-Intervenor,	:
	:
- against -	:
	:
CITY OF NEW YORK and NEW YORK CITY	:
DEPARTMENT OF CORRECTION,	:
	:
Defendants.	:
-----	X

PLEASE TAKE NOTICE that, upon the Declaration of Mary Lynne Werlwas dated November 17, 2023 and the exhibits annexed thereto, the Declaration of Michael Jacobson dated November 15, 2023, the Declaration of Carlton James dated November 10, 2023, the Declaration of James Bradley dated November 9, 2023, the Declaration of Andre Brown dated November 9, 2023, the Declaration of Joseph Myers dated November 9, 2023, the Declaration of Joshua Gonzalez dated November 9, 2023, the Declaration of Gilson Garcia dated November 9, 2023, the proposed findings of facts and the accompanying memorandum of law, and the letter submitted by the United States dated November 17, 2023, the Plaintiff Class and the United States, by their undersigned counsel, will move this Court, before the Honorable Laura Taylor

Swain, United States District Judge for the United States District Court for the Southern District of New York, located at 500 Pearl Street, New York, New York, for (i) an order holding Defendants in civil contempt of Court for their failure to comply with the below provisions of the specified Court orders; and (ii) the appointment of a receiver with the responsibility and authority to take all necessary steps to promptly achieve Substantial Compliance (defined in Section XX, ¶ 18 of the Consent Judgment) with these orders, and entry of the proposed Order Appointing a Receiver accompanying this Motion:

- A. Consent Judgment, § IV, ¶ 1: Implement New Use of Force Directive
- B. Consent Judgment, § VII, ¶ 1: Thorough, Timely, Objective Investigations
- C. Consent Judgment, § VII, ¶ 9(a): Timeliness of Full ID Investigations
- D. Consent Judgment, § VII, ¶ 11: ID Staffing
- E. Consent Judgment, § VIII, ¶ 1: Appropriate and Meaningful Discipline
- F. Second Remedial Order, ¶1(i)(a): Interim Security Plan
- G. Action Plan, § A, ¶1(d): Improved Routine Tours
- H. Action Plan, § D, ¶ 2(a), (d), (e), and (f): Improved Security Initiatives
- I. First Remedial Order, § A, ¶ 2: Facility Leadership Responsibilities
- J. First Remedial Order, § A, ¶ 4: Supervision of Captains
- K. Action Plan, § C, ¶ 3(ii), (iii): Increased Assignment and Improved Supervision of Captains
- L. Action Plan, § C, ¶ 3, (v), (vi), (vii): Improved and Maximized Deployment of Staff
- M. First Remedial Order, § A, ¶ 6: Facility Emergency Response Teams
- N. Consent Judgment § XV, ¶ 1: Prevent Fights/Assaults (Safety and Supervision of Inmates Under the Age of 19) – *18-year-olds*

O. Consent Judgment § XV, ¶ 12: Direct Supervision (Safety and Supervision of Inmates Under the Age of 19) – *18-year-olds*

P. Consent Judgment § XV, ¶ 17: Consistent Assignment of Staff (Safety and Supervision of Inmates Under the Age of 19) – *18-year-olds*

Q. First Remedial Order, § D, ¶ 1: Consistent Staff Assignment and Leadership

R. First Remedial Order, § D, ¶ 3; 3(i): Reinforcement of Direct Supervision

Counsel for the Plaintiff Class and the United States certify that they have used their best efforts to resolve informally the matters raised in this Motion. Counsel for the Plaintiff Class sent Defendants a notice of non-compliance on July 24, 2023. Defendants responded on August 23, 2023, disputing that they were in non-compliance with the identified provisions of the Consent Judgment and other Court orders. Counsel continued to engage in good faith negotiations as required by ¶ XXI.2 of the Consent Judgment, including by meeting on September 7, 2023 and September 8, 2023, but have not been able to resolve the dispute regarding non-compliance. *See* Dkt. 570.

PLEASE TAKE FURTHER NOTICE that, in accordance with this Court’s Order of August 11, 2023, Defendants shall file their opposition to this Motion by January 16, 2024, and Plaintiffs shall file their reply by February 15, 2024.

Dated: November 17, 2023
New York, New York

THE LEGAL AID SOCIETY

By: /s/ Mary Lynne Werlwas
Mary Lynne Werlwas
Katherine Haas
Kayla Simpson
Corey Stoughton
199 Water Street, 6th Floor
New York, New York, 10038
Telephone: (212) 577-3530
mlwerlwas@legal-aid.org

EMERY CELLI BRINCKERHOFF
ABADY WARD & MAAZEL LLP

By: /s/ Jonathan S. Abady
Jonathan S. Abady
Debra L. Greenberger
Vasudha Talla
Sana Mayat
600 Fifth Avenue, 10th Floor
New York, New York, 10020
Telephone: (212) 763-5000
jabady@ecbawm.com

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/ Jeffrey K. Powell
JEFFREY K. POWELL
LARA K. ESHKENAZI
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2706/2758
jeffrey.powell@usdoj.gov
lara.eshkenazi@usdoj.gov