

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

MADELINE FELICIANO, temporary guardian of  
NICHOLAS FELICIANO,

Petitioner,

v.

The City of New York,

Respondent.

Index No. \_\_\_\_\_

**VERIFIED PETITION FOR PRE-  
ACTION DISCOVERY AND  
PRESERVATION**

MADELINE FELICIANO, temporary guardian of NICHOLAS FELICIANO, by her attorney David B. Rankin of Beldock Levine & Hoffman, LLP, alleges the following as her Petition seeking to compel pre-action discovery and preservation pursuant to Civil Procedure Law and Rules (“C.P.L.R.”) § 3102(c).

**Nature of the Proceeding**

1. This special proceeding arises from the violations of Nicholas Feliciano’s (“Mr. Feliciano”) civil rights by the City of New York (“City”).
2. The respondents violated Mr. Feliciano’s rights and negligently caused him catastrophic injury.
3. No previous application for the relief requested herein has been made by petitioner, and this action is not on a trial calendar.

**Parties**

4. Petitioner resides in the State of New York.
5. Respondent City is a municipal corporation duly incorporated and existing pursuant to the laws of the State of New York. It is authorized by law to maintain a

correction department (“NYCDOC”) which act as its agent in the area of law enforcement and corrections for which it is ultimately responsible. Respondent the City assumes the risks incidental to the maintenance of a police force and correctional services, and the employment of police and corrections officers, as said risk attaches to the public consumers of the services provided by them.

6. The Respondent the City’s principle place of business is in New York County.

### **Venue**

7. Venue is properly laid before this Court pursuant to C.P.L.R. § 503(c) as the defendants’ principle place of business is in the County of New York.

### **Statement of Facts**

8. Mr. Feliciano’s rights were violated when he was catastrophically injured on November 27, 2019 while at Rikers Island.

9. On information and belief, Mr. Feliciano attempted suicide while at Rikers Island in the custody of NYCDOC.

10. The New York Times reported that Mr. Feliciano’s suicide attempt was captured on a video feed monitored by officers.

11. A camera documented officers’ inaction. For seven minutes, guards looked in on Mr. Feliciano while he tried to hang himself but did not enter the cell.

12. A NYCDOC document described Mr. Feliciano’s suicide attempt as him, “preform[ing] a manipulative gesture by tying his intuitional uniform shirt around his neck...”

13. The New York Times reported that approximately a week prior, another inmate, Mr. Richards-Bailey, had used the same hook in an attempt to hang himself in the same cell. The hook had not been removed.<sup>1</sup>

14. The NYCDOC suspended five correction officers for 30 days and a captain who did not respond to Mr. Feliciano.

15. These NYCDOC officers have returned to work.

16. Mr. Feliciano has been hospitalized since the incident.

17. Mr. Feliciano has limited vocal functions, cannot stand independently, nor can he feed himself.

18. Petitioners intend to file a lawsuit against the City of New York, and others involved in the incident for, inter alia, Fourth and Fourteenth Amendment violations, as well as correlating state law negligence claims.

19. This Petitioner seeks an Order for the production of the following:

- a. The full names of any NYCDOC employees who were suspended in connection with this incident;
- b. The length of the suspension of employees identified in (a);
- c. Justification for returning the employees identified in (a) back to work on modified duty;
- d. The full names of any NYCDOC employees who were on duty at the intake area of George R. Verno Center ("GRVC") at approximately 11:30 pm on November 27, 2019;
- e. Any and all video recordings that capture Mr. Feliciano, particularly for the date of November 27, 2019, including but not limited to:

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<sup>1</sup> <https://www.nytimes.com/2019/12/12/nyregion/nicholas-feliciano-rikers-suicide.html>

- i. Any and all video recordings which capture the altercation involving Mr. Alfonso Martinez and Mr. Feliciano a previously in the day at Robert N. Davoren Complex (“RNDC”);
  - ii. Any and all video recordings which reflect Mr. Feliciano’s transfer from RNDC to GRVC;
  - iii. Any and all videos which reflect Mr. Feliciano’s time at GRVC;
  - iv. Any and all videos which record the intake area of GRVC while Mr. Feliciano was present;
  - v. Any and all videos which record the cell 11 or any cell which housed Mr. Feliciano;
  - vi. Any and all video recordings of Mr. Feliciano’s exit from GRVC and Rikers Island.
- f. Any and all video recordings that capture NYCDOC employees responding or not responding to Mr. Feliciano on November 27, 2019, particularly during the time surrounding his suicide attempt;
- g. Any and all documentation related to the suicide attempt of Angel Richards-Bailey on or around November 21, 2019, in the intake area of GRVC including but not limited to:
  - i. Names of the NYCDOC personnel who were on duty near the incident of Angel Richards-Bailey’s suicide attempt;
  - ii. Work orders submitted, if any, to remove the metal piece or hook which Mr. Richards-Bailey used to facilitate his suicide attempt;
  - iii. Photos of the metal piece or hook which Mr. Richards-Bailey used to facilitate his suicide attempt;
  - iv. Investigation records related to the suicide attempt of Mr. Richards-Bailey;
  - v. Videos of the holding cell and surrounding area at or around Mr. Angel Richards-Bailey’s suicide attempt and the subsequent resuscitation efforts given to Mr. Richards-Bailey.
- h. Any and all documents received from the New York State Department of Corrections Division of Parole or the New York City Department of Probation concerning Nicholas Feliciano.
- i. Any and all medical evaluations and intake documents for Nicholas Feliciano.

- j. Any and all log book entries, including but not limited to:
  - i. intake post logs;
  - ii. intake new admission tracking log;
  - iii. clinic new admission logs;
  - iv. clinic post logs;
  - v. emergency health care referral log books;
  - vi. housing logbooks;
  - vii. crime scene logbooks;
  - viii. transfer log books;
  - ix. daily/shift log books; and
  - x. supervising officers' log books.
  
- k. Any and all records maintained by NYCDOC on Mr. Feliciano. This includes but is not limited to:
  - i. correctional records, including but not limited to custodial and legal files;
  - ii. incident report forms;
  - iii. records on transfers, including Mr. Feliciano's transfer from RNDC to GRVC;
  - iv. security risk group/ Gang Intelligence Unit records;
  - v. search records;
  - vi. disciplinary records;
  - vii. grievance records;
  - viii. requests for medical or mental health attention/appointments;
  - ix. intake records;
  - x. classification records, including the Arraignment and Classification Risk Screening Form and Suicide Prevention Screening Guidelines;
  - xi. movement records;
  - xii. placement records;
  - xiii. housing records;
  - xiv. program records;
  - xv. visit records;
  - xvi. escort records;
  - xvii. transport records;
  - xviii. discharge planning records;
  - xix. security records;
  - xx. law enforcement records;
  - xxi. probation and parole records;
  - xxii. Chaplain's Report;

- xxiii. Incident Photos;
- xxiv. rehabilitation records; and
- xxv. medical records – including mental health records.

l. Any and all investigation records regarding the November 27, 2019 incident in which Mr. Feliciano attempted to take his own life. This includes but is not limited to:

- i. Inmate Statements;
- ii. Unusual Incident Reports;
- iii. Incident Reports;
- iv. Injury to Inmate;
- v. Audio recordings of witness interviews;
- vi. Video recordings of witness interviews;
- vii. Use of force reports and attachments;
- viii. Investigation reports;
- ix. Any preliminary reports;
- x. Any preliminary investigative reports;
- xi. any video or audio records of location of incident;
- xii. Correspondence informing the NYCDOC Chain of Command;
- xiii. Correspondence informing the NYCDOC Investigation Division;
- xiv. Correspondence informing the New York City Police Department, the Bronx District Attorney's Office, the State Commission of Corrections and/or any other Outside agencies;
- xv. The complete NYCDOC Investigation Division file inclusive of all reports, case logs, attachments, interview recordings, internal department correspondences regarding the investigation, and external correspondences with other agencies regarding the investigation; and
- xvi. The complete NYCDOC Health Affairs file inclusive of all reports, case logs, attachments, interview recordings, internal department correspondences regarding the investigation, and external correspondences with other agencies regarding the investigation.

m. Any and all disciplinary files and records of NYCDOC personnel in connection with the November 27, 2019 incident in which Mr. Feliciano attempted to take his own life. Including but not limited to:

- i. Personnel disciplinary files;
- ii. Employee performance services report;

- iii. Memorandum of complaints against employees;
- iv. Employee performance service reports;
- v. Notices of Pleading and Hearings;
- vi. Overtime Reports;
- vii. Notices of Suspension;
- viii. Charges and Specifications;
- ix. Notices to Appear before the NYCDOC Investigation Division;
- x. Negotiated Plea Agreements;
- xi. Probation Agreement Forms; and
- xii. All records regarding Office of Administrative Trials and Hearing (OATH) trials.

n. Any and all materials, media, documents, and/or electronically stored information connected with the November 27, 2019 incident in which Mr. Feliciano attempted to take his own life that was not captured by the above-listed items.

### **Argument**

20. Petitioner has stated a claim and is therefore entitled to pre-action disclosures and an order to preserve information.

### **PRODUCTION OF EVIDENCE**

21. Pursuant to C.P.L.R. § 3102(c), the Court may order the disclosure or order the preservation of materials in order “to aid in bringing [an] action.”

22. Courts applying this provision have routinely granted disclosure of the identity of respondents, to aid the petitioner in bringing an action against them. See Stewart v. New York City Transit Authority, 112 A.D.2d 939, 940 (2nd Dep’t 1985) (granting the petitioners’ request for pre-action discovery because, inter alia, “the requested information was necessary to identify prospective defendants”); Rosenberg v. Brooklyn Union Gas Co., 80 A.D.2d 834 (2nd Dep’t 1981)(“Since petitioners have demonstrated that a cause of action exists, C.P.L.R. § 3102(c) would authorize pre-action discovery to allow them to

frame their complaint and obtain the identity of prospective defendants.”) See also Bumpus v. N.Y.C. Trans. Auth., 66 A.D. 3d 26, 33 (2nd Dep’t 2009).

23. Petitioner seeks to identify the officers involved, as well as the supervisory officers and officers who failed to intervene, and/or who have knowledge of the incident.

24. The information sought will allow identification of potential defendants, as well as determine the form or forms which the action should take. See Stewart v. N.Y.C. Trans. Auth., 112 A.D.2d 939, 940 (2nd Dep’t 1985) (“it is well established that disclosure ‘to aid in bringing an action’ (C.P.L.R. § 3102(c)) authorizes discovery to allow plaintiff to frame a complaint and to obtain the identity of the prospective defendants.”)

25. Without the identities of the individuals who were involved in the incident and the video, we will not know who we need to proceed against, nor will we know what claims to lodge.

26. The petitioner requires the production of the video. We require this information to determine who was responsible for the care of Mr. Feliciano, and who failed in that responsibility.

27. Additionally, records of witnesses to the incident may allow petitioner to locate witnesses that could not otherwise be located.

28. Pre-action discovery is especially necessary here because the person who had the best information on how to frame a complaint is unable to communicate. The responsible parties must not be allowed to have their tortuous behavior hinder the prosecution of a civil action.

### PRESERVATION OF EVIDENCE

29. C.P.L.R. § 3102(c) provides for pre-action discovery in order to “preserve information.”

30. Courts have repeatedly granted orders for the preservation of evidence where the possibility that evidence will be lost has been shown. See Application of Loria, 98 A.D.2d 989, 989 (4th Dep’t 1983) (ordering preservation of evidence related to police officer’s shooting of the petitioner); O’Grady v. City of New York, 164 Misc.2d 171, 175-76 (Sup. Ct. N.Y. Cty. 1995) (ordering respondent to preserve and produce for inspection documents relevant to petitioner’s proposed cause of action because “broad discovery should be afforded to plaintiffs in civil rights and discrimination actions in New York”); Spraggins v. Current Cab Corp., 127 Misc.2d 774 (Sup. Ct. N.Y. Cty. 1985) (ordering preservation of physical evidence from auto collision because, “[g]iven the broad scope of C.P.L.R. § 3102(c) and its intended purpose to preserve ‘information’ . . . the statute clearly, by its language, anticipates the preservation of more than just testimony.”)

31. Petitioners face imminent and irreparable harm should this Order be denied and in the event of spoliation, or destruction of the enumerated evidence.

32. In particular, any video evidence stands to be deleted or lost within a very short timeframe.

33. In the matter of Mercado v. The City of New York, Index Number 17888 / 2013, Kings County Supreme Court November 1, 2013, litigated by the undersigned, was a similar pre-action discovery in which a Preservation Order was entered and numerous videos and logbooks were found not preserved. Therefore, we require an affidavit

indicating who the preservation order was delivered to in order to properly hold the defendants accountable, should they not fully preserve all the relevant evidence.

34. WHEREAS no party would be prejudiced by this Court ordering the preservation of information and production of evidence referred to in the Order to Show Cause, and,

35. WHEREAS petitioner has made a good faith attempt to notify the respondents of the time, date and place of the instant application in order to provide respondents an opportunity to appear in response to the instant application. See 22 N.Y.C.R.R. § 202.7(f).

Dated: February 20, 2020  
New York, New York

Respectfully submitted,

BELDOCK LEVINE & HOFFMAN, LLP  
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By: \_\_\_\_\_

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**ATTORNEY'S VERIFICATION**

I, David B. Rankin, an attorney duly admitted to practice before the Courts of the State of New York, affirm the following to be true under the penalties of perjury:

- 1) I am the attorney of record for the petitioner, MADELINE FELICIANO.
- 2) I have read the annexed Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are alleged upon information and belief, and as to those matters, I believe them to be true. My beliefs, as to those matters therein not stated upon knowledge, are based upon facts, records, other pertinent information contained in my files.
- 3) This verification is made by me because Plaintiff does not reside in the County where I maintain my offices.

Dated: February 20, 2020  
New York, New York

Respectfully submitted,

BELDOCK LEVINE & HOFFMAN, LLP  
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