

**Testimony before the
New York City Council
Committee on Criminal Justice
Chair Carlina Rivera**

By

**Louis A. Molina, Commissioner
NYC Department of Correction**

December 13, 2022

Good afternoon, Chair Rivera, and members of the Committee on Criminal Justice. I am Louis Molina, Commissioner of the Department of Correction. I am joined today by the Department's General Counsel, Paul Shechtman. Thank you for the opportunity to share the progress that the Department has made under the Action Plan, which was developed with the Federal Monitor.

As you undoubtedly know, on June 14, 2022, the federal court in the *Nunez* litigation ordered the City to adopt and comply with an Action Plan that had been negotiated with the Federal Monitor and the parties in that litigation. The Action Plan is just what its name suggests: a catalogue of significant remedial actions that the City, and in particular the Department of Correction, should take to ensure that individuals in the Department's custody, as well as our staff, have a safe and humane environment.

Most recently, on November 17th, the City and the Department appeared before the federal court, Judge Laura Swain, for a status conference with respect to progress on the Action Plan. At the conference, the plaintiffs' counsel, but not the U.S. Attorney's Office, asked Judge

Swain for permission to file a motion for the Court to impose a federal receivership. The judge denied the request. In doing so, she recognized that while much work remains to be done to improve conditions on Rikers Island, the Department has demonstrated that meaningful progress has been made and has shown its commitment to reform. We next return to court on April 27th. At that time, I have every intention of presenting a picture of continued progress toward undoing the years of mismanagement and neglect that have made an Action Plan necessary.

Let me now tell you some of the things that have been accomplished:

- Earlier this year, we implemented a Violence Reduction Plan at the Robert N. Davoren Center, where we house individuals under the age of 22. We blended gangs in housing units, expanded searches for weapons and other contraband, added staff, and increased and enhanced programming. The results have been dramatic. Slashings and stabbings at the facility have decreased 85 percent comparing November 2021 to November 2022. This past month, there were only three such incidents at the facility. We are expanding our Violence Reduction Plan to other facilities, starting with the George R. Vierno Center, which houses our most violent-prone individuals. It is still a work in progress, but one we are committed to.
- In consultation with the Monitoring Team, we are working to design and implement a restrictive housing plan to manage incarcerated individuals who have engaged in serious acts of violence and pose a heightened security risk to the safety of other persons in custody and to staff. As I have testified before, the response cannot be solitary confinement. That is illegal and inhumane. However, there must be some

consequences when an individual seriously harms another individual or a staff member. You have likely read recent newspaper accounts of an incident in which an officer was stabbed at least 15 times in the back of his head, and another incident in which an officer was punched during a search operation for contraband, resulting in lacerations to his head. Perpetrators of such violence, whether on staff or other incarcerated individuals, cannot be allowed to remain in general population in the aftermath of such incidents.

- Between January and November, conducted 79 tactical search operations (TSOs) and recovered roughly 1,500 weapons. TSOs are a basic and sound correctional practice, which the Department had all but abandoned before I became Commissioner. Only by conducting regular and thorough searches can we keep our jails safe.
- In addition, more than 700 new state-of-the-art cell doors have been installed. Once closed and locked, the doors cannot be easily manipulated. The fact that we had cell doors that could easily be manipulated is clear evidence of the neglect that long existed on the Island.
- In recent months, the Department has appointed more than 30 new leaders, many from outside the City of New York, bringing diverse perspectives from all over the country. That includes a Senior Deputy Commissioner, 10 Deputy Commissioners and 6 Associate Commissioners. Many of these men and women have broad experience in corrections and law enforcement. They bring new vision and fresh ideas to the Department. Let me highlight just one those new leaders. In October,

Joseph Dempsey joined us as Senior Deputy Commissioner of Operations. SDC Dempsey comes to us with more than three decades of experience with the Los Angeles County Sheriff's Department, where he oversaw 3 jail facilities and 2,500 employees. He exemplifies the type of people we are bringing on to support our new initiatives.

- We have recently received authorization from Judge Swain to hire candidates from outside the Department's rank and file to manage our facilities. The Monitor recommended this approach, and we are now moving forward on it. I want to make clear that seeking outside candidates does not lessen my appreciation for our current Wardens and Acting Wardens or diminish my respect for the hard work that they have done. But this authorization allows me more flexibility in hiring and can only make us better.
- We have taken measures to return officers from sick leave to facility posts and to promote staff accountability. When I came into office just 11 months ago, the average daily sick percentage was 26.1 percent. Through our relentless efforts to bring our workforce back to the facilities, we have been able to reduce that number down to only 11.8 percent, and we aren't stopping there. The average daily MMR3 percentage – those staff who are unable to interact with incarcerated individuals – has declined more than 20 percent. This is a clear indication that the measures we have adopted are having their desired effect.
- We have also imposed discipline where it has been warranted. Almost 500 staff have been suspended this year, which far surpasses the number for the prior two

calendar years, and 180 staff have been terminated. And we are significantly reducing the backlog of disciplinary cases.

This is just some of what has been accomplished. Let me be clear, we have much more to do, and we will do it. A federal receiver is not the answer. The answer is strong City leadership and unwavering commitment to reform. I am immensely proud of the men and women who come to work everyday for the Department of Correction, in what is undoubtedly the most demanding job in City service. We are the Boldest. We want safe and humane facilities for our City and have taken substantial steps towards getting there. I am pleased to answer your questions.

New York City Council Committee on Criminal Justice

Public Hearing Concerning the Rikers Island Complex

Testimony of Michael McQuillan 12/13/2022

Michael McQuillan is my name. I am proud to be Council Member Hanif's constituent and to serve in Council Member Restler's district on the Brooklyn Heights Synagogue's Social Action Committee. Thank you both for speaking out at past Close Rikers rallies.

I chaired the NYPD Training Advisory Council's Race Subcommittee in the aftermath of the Eric Garner killing and that experience with racial injustice, policy research and a rigid political bureaucracy informs what I have come to say to support the Katal Center's Close Rikers Campaign.

We have long known, factually and statistically, that conditions in the Rikers Island jail complex constitute a human rights emergency. This Council three years ago voted 36 to 13 to close the complex over time. That was a mandate for action. Former Chief Judge Jonathan Lippman's Independent Commission on Criminal Justice and Incarceration *five years ago* endorsed closing Rikers. That, too, was a mandate.

Yet 6000 detainees, twice the intended capacity, still interminably await their day in court, their Constitutional rights to prompt trials a farce. Many there sleep in close proximity on tiled floors

in shower stalls. All risk intentional or inadvertent violence, the abuse of solitary confinement, and ignored injury or illness.

“I just came out of Rikers,” Jimmy’s plaintive voice informed me. He added that “they beat me,” as I by reflex offered money for a meal that I innately knew was not what he deserved. “If had a thousand dollars and you said that you had been on Rikers Island I would give you half,” he claimed. His teary pleading eyes burned holes in my heart. I want my eyes as if lasers beams to pass that searing sense to you.

You must hold Mayor Adams and his Corrections Commissioner accountable for the Rikers emergency, to accelerate implementation of the three year old closing plan, to divest from the punishment culture and invest in meeting human needs for affordable housing, meaningful jobs and adequate nourishing food.

Kalief Browder suffered in solitary confinement for two of his three years in detention. Trauma caused him at 22 years old to take his own life. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 other persons have died on Rikers this year. God forbid that there be 19 and 20. Kalief Browder, accused of stealing a backpack, steadfast in asserting his innocence, sacrificed himself for the moral principle.

How many others plead falsely to guilt, ruining futures for themselves and their families, to release themselves from Hell? Will this Committee and the Council at large act by every

conceivable means as Angels of Mercy to save them? Close Rikers. Divest from its inherent brutality. Invest in services that meet human needs. I conclude my Conscience Call.

Thanks for your attention.

**The Bronx
Defenders**

**Redefining
public
defense**

New York City Council Hearing

Committee on Criminal Justice

Oversight: Nunez Compliance and DOC Action Plan, Int. 0589, Int. 0806

Written Testimony of The Bronx Defenders

by Tahanee Dunn

I. Introduction

Good morning, Chair Rivera and Committee Members. My name is Tahanee Dunn and I am the director of the Prisoners' Rights Project at The Bronx Defenders¹. Thank you for the opportunity to testify before you today, and for the committee's continued efforts to address the crisis in our city jails. Just days after a 19th person was killed by our jails, attention to this crisis could not be more urgent.

Since the inception of the Nunez Consent Judgment seven years ago, the Department's progress has been painfully incremental. Countless reports from the Nunez monitor team continue to illustrate a deep-rooted culture of dysfunction and violence as well as an unreasonable resistance to essential action needed to effectuate meaningful change. The City's Action Plan was ordered by the Court on June 14, 2022. Six months later, the Monitor asserts "[t]he conditions in the jail remain dangerously unsafe and the Monitoring Teams remains gravely concerned about the alarming number of in-custody deaths, violence among people in custody, lack of an effective restrictive housing model, and various facets of the Department's use of force practices and operational practices."¹ The Monitor goes on to say, "Decades of mismanagement have created a deep-seated culture that is steeped in poor practices, illogical procedures, and little accountability for the humane treatment of people in custody."²

¹ The Bronx Defenders is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change

DOC and the City have been given lifeline after lifeline, each time at the expense of the lives of the people in their custody and care. Every public hearing is saturated with DOC testimony about policies and procedures, actions plans and pilot programs, yet dysfunction and chaos in the jails persist, abuses of power permeate through the Department ranks, accountability amongst uniform staff remains an anomaly. There are real life tangible consequences for those in DOC custody, such as unreasonable and frequent uses of lock downs, denial of access to medical and mental health care, the constant disruption of basic services, perpetual and unchecked due process and constitutional violations, prolonged separation from community and loved ones, increased exposure to violence and trauma, the perpetuation of abusive power paradigms within the uniformed ranks, an overall unprofessional, apathetic and harmful approach to the job, and of course, tragically, in-custody deaths.

Legislators and courts have allowed DOC and the City to conflate the existence of policies with progress. But progress must be measured by compliance, which, unfortunately remains a far-fetched reality due to the litany of problems within DOC and the ongoing abuse of emergency executive orders.

We urge the Council to take every measure possible to *both* mitigate the harm that people in custody continue to experience, as well as do everything in their power to reduce the city jail population, including but not limited to:

- **Amend and pass Int. 0806 to meaningfully include District Attorney participation in order to ensure actionable decarceration;**
- **Vote on and pass Int. 0549 to finally end solitary confinement and**
- **Support an alternative management of the city jails, as DOC has proven incapable of engaging in meaningful change to ensure the safety of those in their custody.**

Defenders, justice-impacted people, and other advocates have come before this Council, the Board of Correction, and many other City stakeholders countless times now to highlight the urgency of keeping people out of our city jails, and to share the horrendous experiences of our clients in custody. Years have gone by since Rikers Island was deemed a humanitarian crisis, and we have seen very little change.

II. Amend and pass Int. 0806 to meaningfully include District Attorney participation, in order to ensure actionable decarceration

We commend Chair Rivera for introducing legislation that aims to decarcerate, and believe Int. 0806 should be passed once amended. District Attorneys (DAs) and judges hold the keys that lock people into cages on Rikers Island, so there is no meaningful decarceration without them as part of the conversation. The current bill language states that the population review teams should make “reasonable efforts” to include DAs and the Office of Court Administration (OCA) in the population review teams, but the bill language should instead direct them to participate without the option to decline. DA consent is a critical, and often deciding, factor in whether someone can be released, but district attorney practices have been largely unchanged by the horrific conditions on Rikers Island, as illustrated by the rising jail population over the past few years. DAs must be directed to engage in this important conversation, not only

to push them to acknowledge the horrific conditions people endure when bail is set, but also to ensure that there is accountability and action tied to recommendations made by the population review teams. Additionally, requiring them to engage in the population review work will be essential to understanding larger patterns around who is languishing in jail pre-trial, and why. In order to make progress with this initiative, representatives from the Mayor's Office of Criminal Justice (MOCJ) must work directly with DAs, judges, and defenders, as well as probation representatives, to arrive at these recommendations. Without DAs and judges represented in the population review teams, the recommendations are unlikely to be effective in moving those individuals out of our jails.

III. Vote on and pass Int. 0549 to finally end solitary confinement

We have allowed the harms of isolation to be inflicted on people in custody for far too long. We must guarantee access to counsel in the disciplinary process, and categorically and completely ban inhumane isolation practices—all of which will be accomplished by passing Int. 0549. Despite the well-known and deadly harms of solitary confinement and the benefits of alternative forms of separation, DOC continues to inflict solitary confinement by many different names. While the last Mayor promised to end solitary, and the current DOC Commissioner vowed to implement real alternatives involving full days actually out-of-cell, the jails continue to lock people in solitary confinement 23+ hours a day, for extended periods of time. Being locked alone in a two-foot extension of the cell is not “out of cell” time. Mental health experts have said this form of solitary will cause the same harm as other forms. These practices also violate the HALT Solitary Confinement Law, state law binding on New York City.

There is widespread support for the City Council to finally end solitary in New York City. A veto-proof supermajority of the City Council currently cosponsors Intro. No. 549. Speaker Adrienne Adams has been a leader in the push to end solitary and is a cosponsor and has urged passage of Intro. No. 549. Hundreds of leading civil rights, racial justice, and human rights organizations urged New York City to fully end solitary confinement. A supermajority of the previous City Council supported ending solitary confinement. Every member of the NYC federal House delegation has urged NYC to fully end solitary. 74 state legislators said DOC's operations violate the HALT Solitary Law and urged Council action.

IV. Support an alternative management of the city jails, as the Department of Correction (DOC) has proven incapable of engaging in meaningful change to ensure the safety of those in their custody.

We firmly believe that decarceration remains the most effective way to address the abhorrent conditions at Rikers and to effect systemic change, and we will continue to work towards that long-term goal. In the meantime, however, DOC is simply unable and unwilling to take meaningful steps towards addressing the humanitarian crisis it has created and perpetuated. Our clients suffer every day, and that is unacceptable.

To name only one of the long list of human rights violations, people in custody are currently subject to lockdowns that can extend for days. During these lockdowns, people do not have access to phones; they do not have access to showers which forces them to take bird baths

(a method of bathing by using the toilet water); they do not have any out-of-cell time, and the provision of food during is inconsistent and scarce. Many of our clients have shared with us that during these lockdowns, they often go hungry. These illegal lockdowns effectively create similar conditions to those in solitary confinement.

Receivership is not a long-term solution to the systemic failures of our carceral system, but something must be done immediately to mitigate the harms of the dangerous environment that DOC has created. Every day that DOC continues to manage the jails is a day that nearly 6000 lives are at risk.

V. Conclusion

Right now, the City must act to both alleviate the suffering of those currently in city custody *and* continue to take steps towards emptying the jails. We appreciate the Council's continued efforts to intervene in this crisis, and we welcome continued conversation about how to protect the lives of those in custody currently, and ensure Rikers Island closes as soon as possible.



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Courtney Bryan. Director

**Center for Court Innovation
New York City Council
Committee on Criminal Justice
December 13, 2022**

I am Daniel Ades, the Director of New York Legal Policy at the Center for Court Innovation (“the Center”), and I’m here to testify regarding Introduction 806 in relation to the establishment of population review teams.

I want to begin by commending you, Chair Rivera, for your leadership in introducing this bill and trying to come up with something the city desperately needs: a path to 3300. I share your belief that jail population review is an essential tool, and I am speaking both as a representative of the Center and from extensive firsthand experience. I was a public defender in Brooklyn for almost nine years. As you know, I was counsel to the Committee on Public Safety at the time Council passed legislation to ensure the closure of Rikers Island. I served briefly at the Department of Correction during the last administration and saw with my own eyes the incredible challenges the city faces in managing its jails. Since joining the Center for Court Innovation, I have been actively working to adapt the concept of population review teams to a city as large and complex as New York.

The Center wholeheartedly agrees with the underlying premise of the bill – that we should be asking a simple question about every person who is waiting for their trial on Rikers Island: does this individual really need to be there? That question may mean different things for different people. Is there somewhere else this person can live safely, with appropriate supports in place, while waiting for their trial? Is there a community-based treatment program that can safely treat and monitor this person, and ensure their return to court? If not, what can we do now to resolve their criminal case fairly, before this person has spent years in Rikers waiting for trial? The constitutional presumption of innocence requires us to think twice about each of the thousands of people who are spending months and years in jail without being convicted of the alleged crime, and to take steps in individual cases to find something better than indefinite pretrial detention.

The Center has successfully implemented population review teams in smaller jurisdictions across the country, like Toledo and St. Louis. However, we have some concerns with the Intro 806’s attempt to replicate the same model here in New York. These concerns include both the inability to guarantee participation of critical decisionmakers - namely, the presiding judge and the district attorney - and the logistical challenges in convening all the people who are directly familiar with the facts of all the cases that would be reviewed.

Instead, the Center has been developing a new model that can work within our court structure. Jail population review works essentially by getting critical information about the case in front of the people who can make an informed decision at the earliest possible date. Recognizing the challenge in getting the right stakeholders in a room, our model is designed to bring the room - the information - to the stakeholders, in court, which after all is where cases need to get resolved, no matter how they are resolved.

Turning back to the legislation, the Center would fully support a bill that requires the city to create and fund a jail population review system that is focused on the right review criteria rather than the participants, utilizes and expands the city's rich network of programming and community resources, and leverages existing data and research capacity. While the Center thinks some structural changes are necessary to Introduction 806, we again thank you for your leadership on this issue, and we look forward to continuing our work with you and your office to make jail population review in New York City a reality.



PROTECTING KIDS. PROVIDING HOPE.

Testimony before the New York City Council Committee on Criminal Justice Oversight - Nunez Compliance: DOC's Action Plan Progress Update, December 13, 2022

My name is Daniele Gerard and I am a senior staff attorney at Children's Rights – a national advocate for youth in state systems. We are also a member of the New York City Jails Action Coalition. Our experience with adolescents and young adults in foster care and juvenile justice systems often brings us in contact with young adult and youth corrections policy, as our clients are disproportionately represented in young adult and juvenile correction facilities. We advocate for young adults incarcerated on Rikers Island and call for immediate decarceration of the City's jails.

Deaths continue to mount on Rikers, correctional officers are still not showing up for work, and people have been going without showers or food and are left in their cells for hours on end every day. Young adults are particularly susceptible to these stressors of confinement.

Incarceration on Rikers has become a death sentence. Yet another person in Department of Correction custody died two days ago – Edgardo Mejias – the 19th in 2022. Among the people who have died in custody this year, one was 24 and one was 25 years old. The Mayor should call on judges, prosecutors, and police to stop sending people to what is the largest penal colony/mental institution in the country, the majority of whose residents suffer with mental illness and nearly all of whom are people of color who have not even been tried.

We heard at the beginning of today's hearing that staff absenteeism is double pre-pandemic rates. Railroad workers get no paid sick leave at all, yet COBA members get to abuse theirs with impunity.

The use of force rate and rates of fights remain unacceptably high for young adults.¹ Under the consent decree, staff is mandated to intervene to prevent fights and assaults, and to de-escalate confrontations.² Yet the *Nunez* Monitor reports that the team cannot even assess whether the Department consistently assigns officers and captains to the same housing units day-to-day until "the Department has a coherent structure for assigning, tracking and scheduling staff."³ Equally critical, access to programming, education, recreation, and medical and mental health treatment is woefully inadequate.

Less than two months ago, the *Nunez* Monitor noted that "[d]ecades of mismanagement have created a deep-seated culture that is steeped in poor practices, illogical procedures, and little accountability for the humane treatment of people in custody," which means that "nearly every facet of the jails' operations, procedures and practices needs to be dismantled and

¹ 10/28/22 *Second Status Report on DOC's Action Plan by the Nunez Independent Monitor* at 171.

² 10/28/22 *Second Status Report on DOC's Action Plan by the Nunez Independent Monitor* at 171.

³ 10/28/22 *Second Status Report on DOC's Action Plan by the Nunez Independent Monitor* at 172.

reconstituted.”⁴ The Monitor also pointed out that “[t]he conditions in the jail remain dangerously unsafe and the monitoring team remains gravely concerned about the alarming number of in-custody deaths, violence among people in custody, lack of an effective restrictive housing model, and various facets of the department’s use of force practices and operational practices.”⁵

This is no way to treat our fellow New Yorkers, especially at a yearly cost per person of more than \$500,000. It was alarming to hear that the Commissioner does not believe that Rikers can close as legally required due to its ever-increasing population. That is why the Council should pass Intro. 806 to establish jail population review teams.

Rikers must be closed, community resources, including supportive affordable housing, ramped up and fully funded, and decarceration begun in earnest.

Thank you for the opportunity to testify today.

Sincerely,



Daniele Gerard
Senior Staff Attorney
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⁴ 10/28/22 *Second Status Report on DOC’s Action Plan by the Nunez Independent Monitor* at 3.

⁵ 10/28/22 *Second Status Report on DOC’s Action Plan by the Nunez Independent Monitor* at 1.



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December 13, 2022

via Email: NYC Council Criminal Justice Committee; NYC Council Speaker Adams;
Committee Chair Council Member Carlina Rivera,

cc: Council Criminal Justice Committee Members; NYC Council staff; Council Member
Gale Brewer

Ref: December 13, 2022 NYC Criminal Justice Committee Hearing on:

- I. **[T2022-2373 Oversight - Nunez Compliance: DOC's Action Plan Progress Update; Int 0589-2022](#)**
- II. **Reporting on medical care and outcomes for incarcerated pregnant persons and;**
- III. **[Int 0806-2022 Establishment of borough-based population review teams](#)[Int 0356-2022](#)**

Dear Speaker Adams, Criminal Justice Committee Chair Members, Council Member
Gale Brewer and Committee Chair Rivera:

- I. **[T2022-2373 Oversight - Nunez Compliance: DOC's Action Plan Progress Update](#) **Background:** It's heartbreaking to sit through these Criminal Justice Committee hearings and listen to the busy-work questions asked of the New York City Department of Corrections, it's Commissioner, Louis Molina, and Staff about the death of Edgardo Mejias without anyone even bothering to ask if the DOC's mysterious Rikers inter-agency task force has taken-up any of the recommendations of the May 2022¹ and subsequent**

¹ BOARD OF CORRECTION CITY OF NEW YORK: "February & March 2022 Deaths in DOC Custody: Report and Recommendations: May 9, 2022:"
<https://www.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/deaths-report-and-chs-response-2022-202203.pdf>

Board of Correction September 2022 Death Reports.² It's heartbreaking the Council continues to ignore the importance of having the New York City Board of Correction [BOC] present at its oversight hearings.

It felt very as if the Council is protecting the Mayor and DOC by not drilling-down to get answers about what is going on with the Rikers inter-agency task force. Brendan McGuire, Co-Chair of the Task Force, wasn't even required to attend the hearing! How can we know anything about the “DOC Action Plan” –ostensibly the reason for the 12/13/22 Criminal Justice Committee Hearing–when the drafters of the plan aren’t required to show up and answer to/for their work? As per Brendan McGuire’s OWN statements at the June 28, 2022 City Council hearing the ONLY work of the Interagency task force is to DRAFT THE ACTION PLAN and IMPLEMENT IT:”

“As co-chair of this task force I am I take seriously my obligation to work with the Law Department and Department of Correction to keep all the member agencies focused on our ultimate objective: the efficient and complete implementation of the ‘Action Plan.’”³

If the Task Force’s only objective is to write and implement the Action Plan why wasn’t anyone from the Task Force, even its co-chair, Brendan McGuire, required to attend the December 13, 2022 hearing and answer for the Task Force’s work? How is it possible the City Council would allow this absence?

Why hasn't the concept of the Rikers Interagency Task Force having privilege ever been challenged? It's purely an imaginary conceit: Judge Swain didn't approve of DOC using the task force as an excuse to cloak its data and planning and oversight in darkness. This precedent, if not challenged now, will spill-over into other NYC agencies and committees. **I promise you this ploy will become a never-ending miasma for transparency and answerability and undoubtedly be a boon for tyrannical Mayoral control over City Agencies for decades to come. You must stand up and challenge this abuse of power now. DO not allow Chair Rivera to just swallow this conceit wholesale and allow Molina’s/McGuire’s slick maneuvering to go unchecked. You are creating a blueprint for Mayor Adams and future NYC Mayors to use to control information and oversight responsibility/ies that belong/s to the Council and to the public.**

² BOARD OF CORRECTION CITY OF NEW YORK: “Report and Recommendations on 2021 Suicides and Drug-Related Deaths in New York City Department of Correction Custody:” September 12, 2022 <https://www.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2021-suicides-and-drug-related-deaths-report-and-chs-response.pdf>

³ Mayor’s Council Brendan McGuire, NYC Council Criminal Justice Rikers Inter Agency Task Force Oversight Hearing: June 28, 2022; <https://www.youtube.com/watch?v=TXMiubffM1U>; [00:10:08 -:00:10:30].

The council, and specifically the leadership of the criminal justice committee, is complicit in allowing the DOC to operate under a veil of secrecy by not challenging this notion of privilege directly to the the Mayor's office; by not sending a letter to Judge Swaine alerting her to the DOC's abuse of the court process to avoid oversight and; by not supporting almost year-long efforts by the BOC to attain data, to obtain responses from the DOC about its Death Report Recommendations and; to end the abusive EEOs.

- A. **BOC Death Report Recommendations:** Commish Molina was never asked yesterday on December 13, 2022 if he would consider the BOC Death Report recommendations from the May 2022 BOC death report or the September 2022 Death Report. At the few BOC hearings he bothered to appear at this year he has refused to comment on whether or not he would implement any of the findings nor if they have been addressed by the work of the task force.

It's incredulous that the Chair of the Criminal Justice Committee didn't bother to ask even simple questions gleaned from the short 14 page May 2022 report such as: "was there a direct line of communication between the Unit Officers responding to Edgardo Mejias' deadly overdose on Rikers island on Sunday December 11, 2022 or did the emergency sent out from Mr. Mejias' unit first get escalated to a supervisor or secondary officer before Correctional Health Services [CHS]/ emergency medical personnel were alerted as per the May 2022 BOC Death Report Recommendation #5???:

"To avoid delays or miscommunication between the "A" post officer and medical staff in the clinic, CHS and DOC should set up a dedicated direct phone line for medical emergencies that does not rely on information being relayed through multiple staff to reach the medical r⁴response team..."

Even CHS agreed with the BOC that the multiple layers of personnel involved in passing medical emergencies to CHS could be improved. Here is Patsy Yang's response (CHS Director) to this BOC Feb 2022 Death Report recommendation:

"CHS routinely tracks and evaluates its emergency response times and welcomes suggestions for DOC streamlining of its notification of medical emergencies to its own staff and to CHS."⁵

⁴ BOARD OF CORRECTION CITY OF NEW YORK: "February & March 2022 Deaths in DOC Custody: Report and Recommendations: May 9, 2022:" page 8:
<https://www.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/deaths-report-and-chs-response-2022-202203.pdf>

⁵ BOARD OF CORRECTION CITY OF NEW YORK: "February & March 2022 Deaths in DOC Custody: Report and Recommendations: May 9, 2022:" page 4 of CHS Appended Response to BOC Report;
<https://www.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/deaths-report-and-chs-response-2022-202203.pdf>

But since Feb when the report was published we still haven't a clue if DOC has

streamlined its process of  : and no one bothered to grill Commissioner Molina about it yesterday or in the June 28, 2022 hearing; or ever. **Maybe Edgardo Mejias and others would be alive today if the DOC hadn't been allowed by the NYC City Council Criminal Justice Committee to continue to run the work of the Task Force inside a dark star chamber without any tangible accountability.**

B: [UOF] Use of Force Data:

As the Mayor's Emergency Executive Orders [EEOs] linger-on for over a year suspending all minimum standards we have nary any accurate reporting of Use of Force numbers throughout each individual jail on Rikers: we only have general all-island reporting and reporting from RNDCC. Why hasn't the Council objected? Why hasn't the Council demanded this data that has been requested and promised by Molina over and over by and to the BOC and the CJ Committee? It's easy to hide spiked UOF numbers in other Rikers facilities by only providing all-island averages! Nunez was originally about DOC being the cause of violence on Rikers: just because they haven't followed the court orders required as a result of that litigation doesn't give DOC reason to cloak all of its reporting to the community, to the council and to the BOC in secrecy. This data is public data! I heard a lot of words yesterday but very few were meaningful.

II. Int 0589-2022 Reporting on medical care and outcomes for incarcerated pregnant persons;

While reporting bills are always a good idea from the DOC, let's try to get accurate and timely DOC reporting for the bills already legislated by the City Council for data from the department. Local Law 21 which requires Sexual Assault and Harassment data on a bi-annual basis from the DOC was due on July 1 of this year and still after the 90-day grace-period for this reporting deadline passed on September 28, 2022 the DOC has neglected to post a report. Further, the last report the DOC produced in early 2022 is missing over 15 of the requirements and there are other large issues with the way DOC has chosen to "interpret" the reporting laws issued by the NYC Council. Please take a moment to review my analysis of the DOC's recent non-compliance with Local Law 21 that I prepared for the NYC's Compliance Unit Chief, Malcolm Butehorn.⁶

Overall the text of the bill is confusing and when I tried to craft the required tables into an excel spreadsheet the results weren't optimal. As always I suggest the NYC Council mock up a spreadsheet of exactly how it wishes the machine-readable portions of this bill to appear in the output of the reporting by DOC and include it as an appendix

⁶ "Local Law 21 DOC sex abuse reporting to NYC Council Oversight/reporting issues:" Kelly Grace Price; Close Rosie's; November 9, 2022; https://docs.google.com/document/d/14UW7kOtkPLrzM-EPWlwDamEZ43hDT3dNLe_4PLZCLwg/edit

in the bill package so that DOC has to use the exact template provided when publishing its compliance reports with the local law.

III. Int 0806-2022 Establishment of borough-based population review teams Int 0356-2022: This is a great law and we support it but I suggest the Council imbue these committees with subpoena power in case the DOC doesn't provide proper data to the committee in the future.

I appreciate the chance to share my thoughts with the committee and I look forward to a sea-change in the posture of the committee towards the Interagency task force's privilege assertions. People are dying because of the Council's lack of oversight and this is not an exaggeration. You have blood on your hands.



Kelly Grace Price

Ft George, Manhattan

December 13, 2022



New York City Council
Committee on Criminal Justice

Re: Oversight – Nunez Compliance: DOC’s Action Plan Progress Update
Testimony of the Corporation for Supportive Housing (CSH)

December 13, 2022

Chair Rivera and Committee members:

My name is Cassondra Warney, and I am a Senior Program Manager at the Corporation for Supportive Housing (CSH). I am here to talk about how the Adam’s Administration and City Council need to focus on de-incarceration strategies to help address the humanitarian crisis at Rikers Island. And this needs to happen immediately.

CSH’s mission is to advance solutions that use housing as a platform to deliver services, improve the lives of the most vulnerable people, and build healthy communities. We have been working in NYC as a supportive housing intermediary for over 30 years.

I’ll remind the members of this committee that earlier this year, the largest-known NYC survey found that New Yorkers see affordable housing and reducing homelessness as key to public safety. I’ll repeat – affordable housing is key to public safety. And to #CloseRikers, supportive housing, which combines affordable housing and individualized, voluntary services, is an important action step.

In February, my team at released a Rikers supportive [analysis](#) that this City included in its 2022 budget request, where we found several thousand people on Island – approximately people in a given year – are experiencing homelessness struggle with ongoing behavioral health needs. **It the City \$1.4 billion to**



CSH housing Council that Rikers 2,589 and costs

incarcerate this group of people annually whereas supportive housing as an intervention would cost just \$108M.

When released from incarceration, these community members struggle to find adequate support, cycle through crisis systems (including shelter and emergency departments), and likely return to Rikers Island. This group needs an intervention of supportive housing. We know from our national efforts and evidenced-back research that supportive housing is a solution that successfully de-incarcerates, ends homelessness, makes communities safer, and improves health outcomes, especially for those with behavioral health needs.

It is important to note that:

- City Council formally requested the Adams’ administration add \$28.4M to the existing funding dedicated to supportive housing for the justice-impacted, and this was not incorporated in Mayor Adams’ budget.
- Through the Borough-based Jail Plan Points of Agreement in 2019, City leadership agreed to expand Justice Involved Supportive Housing (JISH), which has not yet happened.

Today I wanted to elevate two essential budgetary and policy elements that can be changed by Mayor Adams – without city council legislation -- to help de-incarcerate Rikers Island.

The first: Expand rates for Justice-Involved Supportive Housing (JISH) to the rates already provided to NYC 15/15 Young Adults:

JISH is currently the only designated supportive housing program for people leaving Rikers Island, and there are only 120 apartments available. DOHMH has put forth an RFP to increase units to 500, however due to the contracts rates being too low, there have been minimal bids since 2019.

- Match the existing 120 JISH units and future awards with the rates already being provided to NYC 15/15 Young Adults. *Currently, providers only receive \$10,000 in services per person, compared to \$20,699K for scattered and \$25,596K for congregate for NYC 15/15.* I am also attaching a 2 pager that gives Committee members a history of JISH and a more specific breakdown of this request.

The second: Ensure people leaving Rikers who have severe behavioral health needs and facing homelessness are eligible for the City's primary supportive housing program:

Currently, to be eligible for the City's newest supportive housing, NYC 15/15, a person must be chronically homeless. The definition is modeled after HUD's chronically homeless definition, excluding anyone who has been incarcerated for more than 90 days. Last January, the average length of stay for the general population was 222 days. For the Brad H population, it was 357 days. Clearly most people incarcerated at Rikers that could be eligible are made ineligible by the length of their stay. Also, please note, NYC 15/15 leverages city funding, NOT federal funding, thus any changes can be made by City Leadership and are not tied to any federal requirements.

- Our request, which Chair Rivera's office is working on legislation for, would have the city count incarceration time as part of the homeless definition for NYC 15 /15. HRA is the city agency that oversees this program. This change is essential in making sure some of our city's MOST VULNERABLE residents who have severe behavioral health issues, are facing homelessness and cycling through traumatic incarceration, can access the resources they need to stabilize in our communities. It is also an essential policy change to allow the City to use supportive housing as a de-incarceration strategy.

We need to see immediate action to de-incarcerate Rikers Island and get people who are incarcerated out of the unsafe, deadly environment that it is. We ask City Council to do all in your power to hold Mayor Adams' Administration accountable, and for his leadership to use administrative powers to take meaningful action in community investment. Community investment is how we improve public safety for our City, and it's a big piece of #ClosingRikers.

Please reach out with questions you or other City Council members may have to Lauren Velez, Associate Director of New York at the CSH Metro Team (646-592-2228; Lauren.Velez@csh.org).

CSH greatly appreciates your time and attention on this critical matter.

Looking Forward,

Cassandra Warney
Senior Program Manager, Metro Team, CSH

cassandra.warney@csh.org

**Data Collaborative for Justice Testimony
New York City Council
Committee on Criminal Justice
Oversight – Nunez Compliance: DOC’s Action Plan Progress Update
December 13, 2022**

*Thank you to Chair Rivera and esteemed members of the Committee on Criminal Justice for holding this critical hearing on Nunez compliance and related legislation. We are writing in strong support of Int. No. 806 regarding the establishment of **Population Review Teams**. Staff at our institute have previously [written about](#) how this model might work in New York City. As recently as last month, we [recommended](#) that New York State’s next chief judge authorize and encourage court participation in such an initiative. We applaud Council sponsors for their leadership.*

Background: A Rising Jail Population

Since reaching a historic low watermark of 3,809 people held on April 29, 2020, New York City’s daily jail population has been rising. Currently, the population stands at close to 5,900 people, about 84% of whom are held before trial on unaffordable bail or a remand order. The Nunez monitor recently [emphasized](#) that the current population is too high for the Department of Correction to carry out safe and humane jail management. [City law](#) requires closing the jails on Rikers Island by August 31, 2027 under a plan that anticipates a daily population of 3,300 or fewer people. [Three recent reports](#) have offered achievable strategies for meeting this objective. While not a cure-all, Population Review Teams are one such strategy that can make a significant difference.

The Promise of Population Review Teams

Piloted in jurisdictions [around the country](#), Population Review Teams (PRTs) in New York City could bring together senior officials from all relevant stakeholder agencies to advance several key purposes:

- 1. Community Release:** Discuss the specific cases of people who may be unnecessarily jailed and formulate plans for their release, including the simple act of reflecting that bail has proven unaffordable and should be lowered, or taking advantage of the City’s vast array of social service providers as an alternative to detention—potentially involving supervised release, housing assistance, mental health treatment, or other court-ordered services.
- 2. Case Resolution:** Problem-solve to cut through case processing bottlenecks impacting people held at Rikers for prolonged periods to reach an appropriate case disposition.
- 3. Research and Reform:** Monitor jail trends and serve as a regular forum for data-driven interagency conversations that yield new policies to reverse jail population increases or address inhumane [jail conditions](#) on an ongoing basis.

- 4. Mutual Accountability:** Foster a culture of shared responsibility for overincarceration and the ongoing human rights crisis at Rikers Island, and a practice of absorbing, respecting, and acting on input from other critical players.

By including representatives empowered to make decisions on behalf of their agencies, PRTs can overcome bureaucratic obstacles that so often impede justice. By convening agency representatives who have decision-making authority, sound decisions could lead to someone's prompt release, as opposed to relying solely on the attorneys present at court dates, who may need supervisory approval before they can act. PRTs can reach a consensus beforehand, leaving the court players with clear guidance and no excuse for further delay.

In a [rigorous evaluation](#), the St. Louis County PRT significantly reduced the jail population. A separate [multisite evaluation](#) found small (though positive) effects in three sites. If more cases had been reviewed, the effects might have been greater, since the evaluation found that nearly half of all cases that were considered by the PRT went on to be released.

Strengths of the Proposed Legislation

A legislative solution guarantees the establishment of Population Review Teams, locking-in the potential benefits. The proposed bill adeptly covers all key essentials:

- **Membership:** Int. No. 806 expressly requires key city agencies to participate, including Correctional Health Services (CHS), which could advise on the cases of people with either chronic medical conditions or mental health needs better served in the community. While the City may not be able to legally mandate District Attorney and court participation, it is unlikely these players would universally shun a group that included the named stakeholders.
- **Meeting Frequency:** Int. No 806 sets a twice monthly meeting frequency and wisely hedges against shoddy preparation by explicitly requiring dissemination of those individuals to be considered for release one week in advance of each meeting.
- **Data Accountability:** Int. No. 806 requires public reporting of numbers of people reviewed, recommended for release, and actually released, with a breakout by type of decision-maker. The latter provision would enable determining how often courts, parole agencies, the Department of Correction, or other entities, respectively, take action traceable to the PRT.

Possible Changes to Improve the Bill

To be clear, we believe that as written now, the legislation would make important progress, and we support it. Possible tweaks could include the following:

- **Criteria:** The legislation could pre-specify minimum criteria that would automatically lead a case to be considered. A report we coauthored with the Lippman Commission in 2021 proposed [PRT criteria](#).¹ Several especially compelling factors include: (1) ages 55 and up; (2) flagged by CHS for a serious medical condition; (3) unable to pay comparatively low bail

¹ Michael Rempel and Krystal Rodriguez, respectively the director and policy director of the Data Collaborative for Justice, previously led the jail reform team at the Center for Court Innovation while coauthoring the report cited.

(e.g., \$5,000 or less); and (4) already held before trial for 180 days on a felony or 90 days on a misdemeanor (i.e., exceeding state and national standards for resolving cases).

- **Expanded Participation:** Additional required representation could include community service providers, formerly incarcerated individuals, and state parole (while recognizing that the City can only seek but not mandate participation by the state parole agency).
- **PRT Focused on Women and Gender Expansive People:** Given their specialized needs, legislation could mandate a separate citywide PRT for women and gender expansive people's cases, as the Data Collaborative for Justice recommended in this [recent report](#) whose partners included the Lippman Commission and Women's Community Justice Association.

Conclusion

PRTs provide an invaluable forum for all relevant players to communicate openly—promoting shared ownership of the humanitarian crisis at Rikers Island and of the urgent need to release more people from its dangerous and far-too-often deadly conditions.

For more information: *Please contact Michael Rempel (mrempel@jjay.cuny.edu) or Krystal Rodriguez (krrodriguez@jjay.cuny.edu) of the Data Collaborative for Justice at John Jay College.*

A MORE JUST NYC

Independent Commission on NYC Criminal Justice and Incarceration Reform

Testimony of Zachary Katznelson, Executive Director

New York City Council Criminal Justice Committee

December 13, 2022

Good afternoon. I am Zachary Katznelson, Executive Director of the Independent Commission on New York City Criminal Justice and Incarceration Reform, often known as the Lippman Commission after our chair, former Chief Judge of the State of New York Jonathan Lippman. Thank you for holding this hearing and for the opportunity to testify.

I would like to focus on three steps the Council can take to safely lower the Rikers population, which we believe is essential to reducing violence in the jails – and to increasing safety on our streets: advancing Intro. 806, expanding electronic monitoring, and expanding access to supportive housing.

Last year, our Commission and the Center for Court Innovation developed a [Blueprint](#) of tried and tested policies and practices to safely lower the NYC jail population. This included methods to prevent crime, speed up resolution of criminal cases, and ensure safer, better outcomes for people at Rikers, including less recidivism.

Intro. 806 takes up one of those recommendations: the establishment of Population Review Teams. The idea is simple but effective. For any case that isn't moving swiftly to resolution, bring the key players together and get people to honestly assess how to best address the person charged with a crime. The teams ask if the person can be safely released, with monitoring, conditions, and support, or if their cases can be resolved once and for all. With an average pre-trial stay at Rikers of over 280 days, we cannot just wait for the court process to wend its way through. We look forward to working with you, Chair Rivera, and your staff to ensure the strongest bill possible passes. Thank you for pushing this forward.

Electronic monitoring can also play an important role in further reducing the jail population. Right now, there are only 180 electronic monitoring bracelets available throughout New York City for a pre-trial population of over 5,000 people. They are all being used. But Judges have already found 400 additional people can safely be released with monitoring. If no bracelets are available, some of those people will end up in Rikers.

Finally, as the Council knows, in 2019 the City committed to adding 380 supportive housing units dedicated to people cycling in and out of Rikers. Not one of those apartments has come online because the City didn't provide enough money for non-profits to operate them. Please press the Administration to increase the amount that will be paid and to reissue the RFP as soon as possible. Please also work with the Admin to change the City's rule that after 90 days in Rikers, someone is no longer considered homeless – and thus is ineligible for supportive housing. Thank you for the chance to testify.



New York City Council Committee on Criminal Justice

December 13, 2022
1:00 p.m.

Oversight: Nunez Compliance: DOC's Action Plan Progress Update

Int 589 - A Local Law to amend the administrative code of the city of New York, in relation to reporting on medical care and outcomes for incarcerated pregnant persons.

Int 806 - A Local Law to amend the administrative code of the city of New York in relation to the establishment of jail population review teams.

Testimony of
The Legal Aid Society

Mary Lynne Werlwas
David Billingsley
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Kayla Simpson
Prisoners' Rights Project
The Legal Aid Society
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CHAIRMAN RIVERA and MEMBERS AND STAFF OF THE COMMITTEE:

As counsel for the Plaintiff class in *Nuñez v. City of New York*,¹ the Legal Aid Society thanks the Committee for holding this hearing to assess the Department of Correction's progress towards remedying the constitutional violations in that case and changing the culture of violence and impunity that has for too long dominated Rikers Island. The stakes are dire, with incarcerated people experiencing injuries on a daily basis and far too many dying avoidable deaths, creating an on-going humanitarian crisis that has made New York City's jail system a national embarrassment. We also applaud the Councilmembers for introducing legislation to curb the reflexive over-use of incarceration and to bring transparency and accountability to the critical jail function of providing medical care.

Over seven years ago, DOC promised to change its use of force practices, supervise staff, and protect the safety of people incarcerated in the jails. They have utterly failed: the jails are in far worse condition in 2022 in material respects than they were when the *Nunez* Court entered the Consent Judgment. Uses of force remain rampant with few consequences; meaningful staff discipline is absent or takes years to resolve; and security failures abound in jails effectively left unsupervised. As we detail below, four different commissioners and several court orders, including the "Action Plan," have not remedied these entrenched problems. Continued reliance on those proven *ineffective* measures is poor governance and costs lives. This crisis demands urgent, unfettered extraordinary action, and for that reason, the *Nunez* plaintiffs believe appointment of a federal receiver, with the authority and resources to take the bold steps the City refuses to do, is necessary.

Suffering and Death are Worse Today Than at the Time the Court Ordered Relief.

The most recent *Nunez* Monitor's report, dated October 28, 2022, shows that incarcerated people face more deadly and pervasive harm now than they did when the Court first entered the Consent Judgment in 2015. Second Status Report on DOC's Action Plan by the *Nunez* Independent Monitor ("Oct. 28 Report"), Dkt. 472, at 60-70. In particular, brutality by uniformed staff occurs at catastrophically high rates: staff have used force against incarcerated people 5,135 times in the first nine months of this year alone. *Id.* at 60. Controlled for population, the resultant rate of 10.24 uses of force per 100 people in custody vastly exceeds the 3.96 rate from 2016. *Id.* When force is used in 2022, it more often results in serious injuries than in 2016. *Id.* at 62. Moreover, the Monitor cited the prevalence of "avoidable, unnecessary and excessive uses of force," (*id.* at 61) and the astonishing number of use of force incidents that occur where staff had violated basic duties such as locking cell doors or properly applying restraints. *Id.* at 106 & n.97.

¹ *Nuñez v. City of New York et. al.*, 11-cv-5845 (LTS) (SDNY).

Alarming, the Monitor reports that the jails still are “without sufficient staff to provide adequate safety and access to services.” *Id.* at 32. Each day, “a significant portion of the Department’s workforce is out sick or on modified duty” and on a “daily basis, some housing unit posts continue to not have any staff assigned to them ... and staff regularly work overtime (at least double, if not triple shifts).” *Id.* The Monitor further reports that staff abandon their housing posts, leaving incarcerated people without supervision and requiring staff performing other essential duties such as facilitating recreation or other services to cover these posts. *Id.*

These failures lead not only to injury, but to death. At the time the federal court adopted the City’s “Action Plan”, six incarcerated people had died this year; under the Action Plan, 12 more died. Dkt. 472, Appendix at x-xi.² The circumstances of so many of these deaths directly stem from non-compliance with the *Nunez* orders, such as failures to follow the suicide prevention protocol, unstaffed posts, staff on medically-monitored status failing to intervene, failure to round, and failure to improve supervision and basic security practices.³ That these deaths have occurred despite the unprecedented scrutiny of the jails evidences the intractability of the City’s failures, and the incapacity of the current administration to safely hold people in the jails.

The Path to the Patently Inadequate “Action Plan”

Since the inception of the Consent Judgment, the Monitor has found that the City has failed to substantially comply with the core provisions of that order, including requirements to implement the use of force directive; conduct timely, fair and unbiased investigations of uses of force; discipline staff for misconduct with timely and effective sanctions; and follow basic security practices to protect incarcerated people under the age of 19. *See, e.g.*, Dkt. 350, at 2. The Court has sought to redress the City’s non-compliance with four successive orders. First, the Court entered a Remedial Order on August 14, 2020 to “address...on-going non-compliance” (Dkt. 350), but that order still achieved little traction in the core areas of non-compliance. Following the Monitor’s reports of immediate danger and chaos in the jails in 2021 and our request for immediate court intervention (Dkts. 378, 380, 387), the Court entered the Second Remedial Order targeting discrete operational practices causing danger and violence in the facilities, including overstays in intake areas, suicide prevention, basic security protocols, and revamping facility leadership (Dkt. 398) and a Third Remedial Order requiring hiring a disciplinary manager and accelerating a subset of discipline cases (Dkt. 424). But these orders also failed to abate the non-compliance with core requirements of the Consent Judgment, because the City did not obey them. *See, e.g.*, Dkt. 438, at 44 (“The Monitoring Team is

² The October 28, 2022 Monitor Report reported only 11 such deaths under the Action Plan, as Mr. Gilberto Garcia died in custody three days after the Monitor filed that report. Ransom, Jan and Jonah Bromwich, *Tracking the Deaths in New York City’s Jail System*, The New York Times (November 4, 2022), <https://www.nytimes.com/article/rikers-deaths-jail.html>.

³ See First Remedial Order (Dkt. 350) at § A ¶ 1, A ¶ 2, A ¶ 4; Second Remedial Order (Dkt. 398) at ¶¶ 1(i)(a), 1.i.b; Action Plan (Dkt. 465) at §§ A ¶1(d), A ¶ 3(a), C ¶ 3, D ¶ 2.

disappointed to report that the initiatives required by the Second Remedial Order...to address dire and emergent conditions in the jails and the Department's persistent Non-Compliance with the requirements of the Consent Judgment have largely fallen flat.”).

In March 2022, the Nunez Monitor delivered a blistering special report on the on-going crisis in the jails with several discrete recommendations for immediate action. In response, the City drafted the “Action Plan” – a loose set of vague bureaucratic commitments requiring few concrete actions and few timelines. Even the Monitor concluded that this Action Plan’s unreasonably long timelines “in no way do justice to the gravity of the situation [but]... represent the best the City and Department have reported they can do at this juncture.” Monitor Letter to Court, June 10, 2022 (Dkt. 462) at 2. The Monitor cautioned that, in addition to following the Action Plan, the City “must bring all resources to bear to...eliminate any constraints that are inhibiting the City and Department from fully addressing the Monitoring Team’s recommendations,” and “immediately and aggressively remove all barriers to implementation of initiatives that are necessary to bring safety and stability to the jails. **Given the daily risk of harm to incarcerated individuals and staff, nothing less should be tolerated.**” Monitor Report, April 20, 2022 (Dkt. 445) at 7, 9 (emphasis supplied).

The City’s Performance under the “Action Plan” Shows Regression or Stalled Progress in Key Areas

Despite the relatively low bar set by the Action Plan, which the City drafted to give itself maximum leeway for compliance, the Monitor’s October 28 report shows that the City did not *even* comply with the critical parts of the Action Plan—let alone “immediately and aggressively” resolve obstacles to reform. It did not hire any assistant commissioners to work with wardens, thus leaving the jail facilities and line staff unsupervised (Dkt. 472, at 15-16); did not hire civilians to work in places long-identified as appropriate for civilianized roles, so as to free up uniformed staff to fully staff the many empty posts in the jails (Dkt. 472, at 14); and did not complete development of a restrictive housing model (Dkt. 472, at 92-93). In addition, not only did the City fail to follow the Action Plan’s requirements that it cap stays in intake pens to 24 hours, and track compliance, but Board of Correction documents demonstrated DOC actually tampered with the evidence of compliance.⁴

Nor did the City’s Action Plan remedy the violations of the Court’s orders on other fronts. For example:

⁴ A Board of Correction memorandum noted that “Board staff observed and documented a pattern of data manipulation to DOC’s Intake Dashboard. Specifically, Board staff documented 16 instances where Department staff retroactively changed a person’s “In Custody Start Time,” in what appears to be an effort to obscure or “cure” 24-hour housing violations. Memorandum from Board Staff to Amanda Masters (July 5, 2022), at 1.

- Over 1,000 use of force incidents are pending investigation, and nearly 93% of full investigations closed in the previous period were excessively long, in violation of ¶ VII.9(a) of the Consent Judgment.
- The average caseload of Full ID investigators increased from 23 to 28 cases from July 2021 to July 2022, despite the requirement of caseload caps set forth in § B ¶ 3 of the First Remedial Order. Dkt. 472, at 136-140.
- Over 1,100 disciplinary cases in which DOC found misconduct related to uses of force had yet to be adjudicated (*id.* at 152).
- Despite the Monitor’s long-repeated encouragement for the Department to use suspensions as a close-in-time accountability tool (*see* Dkt. 472, at 150)—and in the face of extraordinary rates of force and increased severity of injury (*supra*)—Defendants have decreased the number of use of force-related suspensions in 2022 as compared to prior years. Dkt. 472, Appendix at vii.
- The Monitor found that “the number of suicides, and the different circumstances in which they occurred, strongly suggest that additional steps to strengthen practices for preventing, identifying, and addressing the risk of suicide beyond the policy updates and staff messaging that occurred via the Second Remedial Order and the Action Plan are necessary.” *Id.* at 28.
- Not only has the Department remained non-compliant with the requirement to minimize unnecessary uses of force by emergency response teams like the Emergency Services Unit, the nucleus of the culture of violence this action seeks to dismantle, but under the current administration, the E.S.U. began using tasers on incarcerated people for the first time since 2017. *Id.* at 118-119.

In sum, the Action Plan has not succeeded in bringing about the kind of bold, dramatic changes that are needed to reverse the City’s years of non-compliance with the Court orders.

Case Study: The Failure of the Action Plan and Remedial Orders to Ensure Adequate Facility Leadership and Supervision

The inadequacy of the *Nunez* remedial processes, including the Action Plan, are demonstrated starkly by a closer examination of the efforts to improve basic facility leadership in the jails. The Monitor has identified the shortcomings of uniformed facility leadership—wardens, deputy wardens, and assistant deputy wardens--as a barrier to reform for at least three and a half years. See Seventh Monitor Report (Dkt. 327) at 16-17, 19, 23; Eleventh Monitor Report (Dkt. 368) at 8-10. The failure of these leaders to dismantle the violent culture in the

facilities is central to the City’s longstanding inability to cure the constitutional violations in *Nunez*—indeed, many requirements of the Court’s four remedial orders are targeted at correcting entrenched supervision failures in the facilities. Yet not only does DOC still lack an adequate and accountable supervisory structure, but the October 28 Monitor Report describes DOC moving **backwards** in key respects.

For example, in response to the findings that line staff were left unsupervised in the jails, the Action Plan requires DOC to assign more Captains to facilities and “substantially *increase* the number of Assistant Deputy Wardens” (Dkt. 350, § A ¶ 4) to supervise these captains. Yet the number of Captains and ADWs has *declined* since last year: whereas in January 2021 the Department had 80 ADWs and 523 Captains in facilities and court commands, by June 2022 those numbers were 49 and 474 respectively. Dkt. 472, at 112-115.

And while DOC makes much of the fact that it is currently promoting approximately 25 Captains to ADW positions—thereby exacerbating the shortage of captains- the net gain is minimal, as they also are promoting approximately 7 ADWs to Deputy Wardens. Yet DOC offers no reasonable plan for fixing this daisy-chain of shortage of supervisors in any reasonable time. Instead, they point to the status quo of their collective bargaining agreements or civil service laws for cover—the exact strategy that caused non-compliance in the first place, and the opposite of the “aggressive and immediate” action the Monitor demanded in April. *See supra*.

Moreover, the October 28 Monitor’s Report contained the astonishing admission that, even though line staff were working double or triple shifts amid dangerous conditions, DOC did not assign Deputy Wardens or other leaders in the facilities in evenings, weekends or holidays except in limited numbers. *Id.* at 37. Put differently, ten months into this administration, it was only *beginning* to *assess* whether to schedule leaders on the same shifts as line staff.

DOC also fails to hold the supervisors they *do* have accountable for performing their jobs incompetently. For example, the Monitor states that facility leaders continue to conduct “*patently* biased, unreasonable, or inadequate” use of force reviews (Dkt. 472, at 107, emphasis in original)—expressly prohibited by the First Remedial Order § A ¶ 1(i) (Dkt. 350). That Order also requires DOC to take disciplinary or corrective actions when leaders do conduct “biased, unreasonable and inadequate” reviews (*id.* at ¶ 1(ii)), but there is no evidence the Department has done so. Indeed, the City informs us that in 2022, it has initiated no discipline – formal or informal – against any personnel above the rank of ADW in connection with their obligations under the Court’s orders.

The City’s principal plan for redressing this supervisory vacuum was simply to seek authority to hire some new wardens externally (Dkt. 475, at 2): that with such authority, the Department might replace some indeterminate number of the current wardens with external hires at some indeterminate time; and that if hired, these new wardens might bring skills that trickle

down to the Deputy Wardens and lower supervisory ranks. While expanding the hiring pool is necessary, this entirely speculative chain of reasoning is not a plan, let alone a plan that can yield results in a reasonable time.

Indeed, the extraordinarily long and burdensome process leading to the City's expansion of a warden hiring pool illustrates the *failures* of the current remedial process to ensure progress in any meaningful time. The Monitor formally recommended 19 months ago that DOC expand the pool of potential wardens and Deputy Wardens to include correction professionals from other jurisdictions. (11th Report, Dkt. 368, at 10, 15). DOC objected, arguing that such hiring might be inconsistent with certain state and local laws. This was a red herring, as federal law provides a mechanism for relief from such state and local laws in order to ensure compliance with the federal constitution (18 U.S.C. § 3626(a)(1)(b)), yet the City refused to seek such relief. The Second Remedial Order came closest, directing the City to confer with relevant state officials and other stakeholders about how those barriers might be overcome. Dkt. 350. Yet again, rather than seeking the relief from the court, DOC proposed an utterly unworkable substitute of hiring new civilian leaders to share responsibility with wardens. The fundamental flaws of such a structure were plain from the moment it was proposed. Plaintiffs objected, and so too did the Monitoring Team—Deputy Monitor Anna Friedberg noted in the May 24, 2022 court conference, “The record is clear that leadership in the facilities are lacking and the workaround developed is simply insufficient at this stage.” Transcript of May 24, 2022 Court Conference (Dkt. No. 460) at 18:19-21. In a letter describing the Action Plan, the Monitor stated that expanding the warden applicant pool was “*necessary* to ensure the success of the reform effort.” Letter to Court, June 10, 2022 (Dkt. 462), at 3 (emphasis supplied).

Nonetheless, the Action Plan incorporated this non-solution, and the City was obligated to hire the new civilian leaders. Dkt. 465, § A(3)(b)(ii)(2)(b). **But as the October 28 Report shows, the City did not even implement its own plan, and did not hire a single civilian leader meant to serve in this warden-adjacent role.** Dkt. 472, at 15-16. Only after the Plaintiffs in *Nunez* informed the Court of their intention to file a motion for appointment of a receiver, and after 18 months of recommendations and significant expenditure of party and judicial resources, did the City finally agree to seek a court order to hire wardens outside the Department. This obviously necessary step took over a year and a half to simply *initiate*. Notably, the City refuses to seek the same tool to address the shortage of Deputy Wardens—who, unlike wardens, are represented by a labor union—notwithstanding the Monitor's prior recommendation that they do so and its command to aggressively remove *all* barriers to relief. Dkt. 368, at 15. This is not a sustainable model for resolving the many *more* obstacles to compliance that the City has failed to redress, and that continue to harm incarcerated people every day.

The status quo cannot continue.

Time and again, DOC has announced new plans, programs, or promises for reform, most recently with their vague and facially inadequate “Action Plan,” but such plans are rarely implemented with fidelity, frequently jettisoned, and, most critically, demonstrably unable to achieve results in a reasonable time. DOC consistently resists making reforms that the Monitor deems necessary until enormous pressure from the Monitor and Court requires them to do so; and even then, when confronted with the objectively poor results, pleads for more time for measures to “trickle down” and actually change staff practice and protect people in the jails. It is too late for such a bureaucratic slow-walk: too late not only for the 18 people who died while plans were trickling down, but for the thousands of people in custody and thousands of jail staff working in poorly supervised jails whose safety requires urgent, immediate, bold action.

Our experience as *Nunez* counsel, and counsel for incarcerated people in several other class actions redressing different constitutional violations—failures in sanitation and fire safety,⁵ denial of education to high school students in custody,⁶ and access to medical care,⁷ to name a few—have lead us to the conclusion that more time and more resources invested in the same failed processes will not succeed. People in the New York City jails are being subjected to grave and immediate harm by the City’s persistent refusal to follow court orders, and its demonstrated unwillingness to take the significant or bold action that is necessary. In these extraordinary circumstances, we believe that appointment of a receiver with the power and duty to take robust and timely action where Defendants will not, without protracted motion practice before the court, is a necessary remedy to ensure compliance.

Legislation

Int 589: The Legal Aid Society fully supports Int 589, the measure to require the Department of Correction to provide information on medical care and outcomes for people who are pregnant while incarcerated. Ensuring reproductive health and pre- and peri-natal care during incarceration is critical for the health of the parent and child. This bill allows for quality assurance to assess the needs for further resources for pregnant people, and provides crucial information on the experience of vulnerable people in the City jails.

Int. 806: The Legal Aid Society thanks the Council for its efforts to create additional avenues of release for individuals languishing on Rikers Island. Decarceration is necessary—for the present abatement of the ongoing humanitarian crisis at the facility, and for the future we have ordained: a New York City without Rikers Island by 2027. Commissioner Molina’s recent

⁵ *Benjamin v. Schiraldi*, 75 Civ. 3073 (S.D.N.Y.).

⁶ *Handberry, et al. v. Thompson, et al.*, 96 Civ. 6161 (S.D.N.Y.).

⁷ *Agnew, et al. v. New York City Dep’t of Correction*, Index No. 813431/2021E (N.Y. Sup. Ct., Bx. Cty.).

testimony predicting that Rikers' population will rise to 7,000 has highlighted the urgent need for action in order to have any hope of accomplishing either goal.

Int. 806, a measure to establish borough-based jail population review teams for the purpose of making release recommendations, may prove to be one such action. However, additional clarity on the bill's scope and the inclusion of safeguards to protect confidential and privileged information is needed.

As an initial matter, the class of individuals impacted is unclear. Rikers houses people whose cases are in both pre- and post-conviction postures. To maximize effectiveness, this release mechanism should be universally available.

The type of information required for the teams' review, and concomitant limitations on appropriate use, should also be made explicit. As a public defense provider, we would have grave concerns about the disclosure of privileged and confidential case information, particularly where criminal proceedings are ongoing. Beyond the concerns for our clients' privacy, such disclosures risk undermining their safety and the integrity of the legal process.

Lastly, further clarity is needed on the scope of the review teams' communications with the court and other entities capable of ordering release. It is imperative that new avenues of release supplement, rather than undercut, already existing efforts. For instance, a decision not to recommend release subsequently reported to the court would devastate current and future release advocacy undertaken by the individual's attorney. This tension could be avoided by limiting communications solely to affirmative recommendations for release.

Int. 806 reflects the Council's commitment to our shared goal of decarcerating Rikers. Additional clarification can ensure the measure achieves its stated purpose without violating our clients' privacy or undermining pre-existing mechanisms for release.



Testimony from the New York Jewish Coalition for Criminal Justice Reform
Before the New York City Council Committee on Criminal Justice
December 13, 2022

The [New York Jewish Coalition for Criminal Justice Reform](#) appreciates this hearing and the opportunity to address the inhumane conditions at Rikers Island and the reforms necessary for its permanent closure. Our Coalition consists of 26 member organizations across New York City that share a commitment to educating and activating the Jewish community to advocate for criminal justice reform and reimagine public safety. We believe that Rikers Island is a moral blight on our City and more of a threat to public safety than a solution.

This past April our Coalition organized a group of 13 clergy and Jewish leaders to visit Rikers Island and meet with Commissioner Molina. As part of this visit we toured a mental health unit at the Anna M. Kross Center. What we witnessed was the antithesis of a therapeutic environment. The unit contained 40 beds in 3 rows, with less than 3 feet between each bed and no space to store personal belongings. There was no programming or counseling whatsoever; the only engagement provided was two televisions in the day room. When we arrived at noon many of the men were in bed, listless. The news reports from Rikers Island typically focus on the violence, disrepair and fatalities. What we witnessed was a different kind of suffering. Here were many of the city's most vulnerable, isolated and neglected with no privacy, no engagement, no purpose, and no hope.

None of the men in that unit had actually been found guilty in a court of law. Like almost 90% of those detained at Rikers, they were awaiting trial, often unable to afford bail. Most were Black and Latinx. The average time in custody pretrial for people with mental illness is now approaching a full year. We spoke with one man who told us, with tears in his eyes, that he had been there for four years waiting for a trial.

The scope of the problems on Rikers go beyond any one agency and the cost is clear: human life. 19 people incarcerated in City jails have died in 2022. Mothers and fathers have lost their sons, and children have lost their parents while they were in the care and custody of New York City. We are deeply concerned about the current conditions at Rikers, including the levels of violence and the lack of adequate access to medical care, heat, recreation, worship services and the courts. Officers and civilian staff are put at risk every day. Our concerns are grounded in our Jewish values as a people who believe in the power of human dignity, repentance, and forgiveness.

We call upon our leaders to close the jails on Rikers Island as soon as possible. For this to happen, we recognize that in addition to opening the borough based jails, we must also address the intertwined crises of mental health and affordable housing. It is of utmost importance that our city acts now to increase the availability of mental health treatment and supportive and transitional housing to address the imbalance between availability and demand. This imbalance leaves many New Yorkers on the streets and as the winter grows nearer, this is unacceptable. We also know that a lack of support following release increases the likelihood of recidivism, a situation in which no one wins.

As we work towards closing Rikers, we urge the City to do everything it can to protect the lives of those currently in custody and ensure the safety of the DOC staff. For example, the Council should fully exercise its powers to appoint members to the Board of Correction, which is an important tool for safety and compliance.

The holiday of Hanukkah, which begins on Sunday evening, celebrates the rededication of the Temple in Jerusalem following its desecration. Let that be a reminder to us to rededicate ourselves and our efforts to end the inhumanity, suffering and injustice perpetuated in New York City's name.



Testimony of

Christopher Boyle
Director of Data Research and Policy

Rachel Sznajderman
Corrections Specialist

New York County Defender Services

Oversight Hearing on *Nunez* Compliance: DOC's Action Plan Progress Update

December 13, 2022

My name is Christopher Boyle and I am the Director of Data Research and Policy at New York County Defender Services, a public defender office in Manhattan that every year represents thousands of indigent New Yorkers accused of crimes. Part of my responsibilities include supervising a team of Corrections Specialists, who advocate for NYCDS's incarcerated clients. One of our Corrections Specialists, Rachel Sznajderman, contributed to drafting this testimony. Thank you to Chair Rivera and the Criminal Justice Committee for holding this hearing and allowing me the opportunity to testify today.

I. Monitor's Report

The most recent *Nunez* Monitor's report went to great lengths to praise Commissioner Molina and the Department of Correction on the efforts made to turn Rikers around. In doing so, the Monitor tried to assure the public and the parties in the lawsuit that in his short tenure, Commissioner Molina had managed to make significant progress in minimizing its dysfunction, despite the fact that 19 people have died on Rikers Island in the last year - the highest death count since 2013, when the population was double what it is today. The monitor also emphasized that, while the data might make it seem like Rikers Island is a chaotic and violent hellscape that threatens the lives of those who are forced to live and work there on a daily basis, the data simply cannot be trusted. Finally, the monitor claimed, inexplicably, that people in custody are quite comfortable with their conditions, and that they're mostly just frustrated because they are lacking a few basic necessities; namely, clean clothing, access to recreation and the ability to go outside and see sunlight, and access to hygiene products.

Yet, the monitor's and Department's claims of significant improvement are belied by their own justification for continued emergency intervention and suspension of the Minimum Standards, which we outline below.

II. Emergency Executive Orders

Since the beginning of Mayor Adams' term on January 1st, 2022, his administration has renewed several emergency executive orders (EEOs) every five days, which suspend the [Board of Corrections' rules and minimum standards](#). These EEOs were renewed most recently over the weekend, on December 11th. The ability of this administration to repeatedly renew these EEOs rests on the assumption that the city and the Department are in a state of emergency, due to the Department's failure to adequately staff posts in the jails. To quote Mayor Adams in [EEO 285](#), issued two days ago, "the Department of Correction's (DOC's) staffing levels continue to contribute to a rise in unrest and disorder and create a serious risk to the necessary maintenance and delivery of sanitary conditions; access to basic services including showers, meals, visitation, religious services, commissary, and recreation."

The EEOs are as follows:

1. [EEO 241](#) - Originally issued on 9/15/21, declared a "state of emergency" on Rikers Island due to a lack of staffed posts in the jail. Suspended BOC minimum standards to allow for the commingling of young adults, placement of young adults in Enhanced Supervision Housing (ESH), creation of Housing Unit 2B in GRVC to be used for "safety and security purposes."
2. [EEO 279](#) - Originally issued on 11/1/21. Suspended BOC minimum standards regarding involuntary lock-ins, allowing for detainees to be locked in their cells without sufficient justification. Suspended BOC minimum standards regarding law library, preventing detainees from their right to access the law library. Suspended BOC minimum standards regarding the Risk Management Accountability System (RMAS), depriving detainees of their right to due process, procedural justice, and access to counsel in disciplinary hearings.
3. [EEO 297](#) - Originally issued 11/23/21. Allowed for the continuation of ESH and Punitive Segregation (PS) until RMAS was put into place.
4. [EEO 7](#) - Originally issued 1/9/2022. Suspended the creation of deescalation units, which are meant to replace involuntary lock-ins after detainee incidents.
5. [EEO 66](#) - Originally issued 3/29/22. Allowed for the creation of "safety and security" units in NIC.

The existence of each of these EEOs rests on the notion that the Department remains in a state of crisis so acute that it justifies the use of emergency authority. This notion is in complete contrast to the claims made by the Monitor in its recent report and the Department in this hearing. If the Action Plan rollout has been so successful in RNDC, why continue EEO 241, which allows young adults to be placed in punitive housing? In fact, why would we need ESH at all, as EEO 297 is what allows ESH to continue in the first place? If conditions are so significantly improving, then we eagerly await the closing of the punitive segregation unit being operated in NIC, Unit 3B, which can only remain open through the issuance of EEO 66. Finally, based on the progress that is allegedly being made, we expect EEO 241, which allows involuntary lock-ins, will be repealed immediately. We look forward to no longer hearing that our clients are being forcibly locked in their cells for hours on end without explanation. Finally, we expect to be soon able to finally offer legal representation to our clients in their disciplinary hearings, which will begin when EEO 279, suspending the implementation of the RMAS, is lifted. When we can at last represent our

clients and extend the due process protections they are entitled to under RMAS, they will be able to avoid entering coercive plea deals that result in their lengthy stays in punitive housing.

III. Conclusion

The Monitor's report on the conditions of Rikers Island stand in direct contradiction to the claims made by the Department in its near-weekly justification of the use of Emergency Executive Orders. The Department cannot simultaneously claim that the Department has made great leaps forward while also claiming it remains in such an extreme state of crisis that it cannot adhere to basic minimum standards. We strongly urge the Council to publicly support receivership, based on the Department's own accounts of crisis and dysfunction within its facilities, which accord with our observations.

In addition, we strongly support Intro 589 and Intro 806, bills that will help significantly lower the jail population. These are timely and necessary bills, as each day that people continue to live behind the walls of Rikers Island presents the likelihood of dire and deathly consequences.

If there are any questions about this testimony, please contact me at cboyle@nycds.org.



PUBLIC ADVOCATE FOR THE CITY OF NEW YORK

Jumaane D. Williams

**STATEMENT OF PUBLIC ADVOCATE JUMAANE D. WILLIAMS
TO THE NEW YORK CITY COUNCIL COMMITTEE ON CRIMINAL JUSTICE
DECEMBER 13, 2022**

Good afternoon,

My name is Jumaane D. Williams and I am the Public Advocate for the City of New York. I would like to thank Chair Rivera and the members of the Committee on Criminal Justice for holding this important hearing.

In 2011, a group of people incarcerated at Rikers by the New York City Department of Correction (DOC) filed a lawsuit—*Nunez, et al. v. City of New York, et al.*, or just “Nunez”—in the District Court for the Southern District of New York. They alleged that correction officers often took incarcerated people into areas of the jail that were out of view of video cameras and beat them, resulting in injuries including broken bones, concussions, and other emergency conditions requiring hospitalization and surgery. To cover up the misconduct, the officers falsified records or fabricated disciplinary charges.

Four years later, this lawsuit resulted in a court-appointed federal monitor for Rikers Island, with the goal of creating a safer environment for both the incarcerated people there and staff. But that clearly did not fix the dangerous and deadly environment we know Rikers to be today: the jail is plagued by crumbling infrastructure, a lack of staff, fights and assaults, slashings and stabbings, missed medical and court appointments, doors that do not lock, frequent overdoses, and nineteen deaths so far this year, with another heartbreaking death just days ago.

Sadly, the current state of Rikers is not surprising. While correction officers work dangerous jobs and need time to recover from injuries, it is clear that there are officers who are misusing sick leave. Chronic staffing shortages caused by officers abusing unlimited sick leave creates a dangerous environment where those incarcerated cannot access services and programming and officers must rely on last-resort measures such as emergency lock-ins and solitary confinement to manage the jail population.

Further, in October, the Legal Aid Society alleged that DOC has been tampering with intake information that is used to monitor compliance with the Nunez ruling. We do not know if this was an isolated incident or an indication of chronic falsifying of records to skirt the requirements set by the federal monitor.

Since 2015, NYC taxpayers have spent more than \$18 million on the federal monitor, Steve J. Martin and his team, who have failed to reform any significant part of life at Rikers. This price tag does not include the specially created unit within DOC that provides information to the monitor and ensures compliance with his mandates. Martin has in fact argued in his most recent report that the “problems [at Rikers] are so deeply entrenched and complicated that no single

person, power, or authority will be able to fix them on the rapid schedule that the gravity of the problems demand.”¹

This begs the question: where do we go from here? It is clear that Rikers and DOC needs a dramatic change in its culture. Correction officers must come back to work, and we need a concrete plan from Commissioner Molina and DOC leadership to hold accountable officers that abuse sick leave, falsify records, and use excessive force. We must end harmful practices that make jails less safe, including and especially solitary confinement. And the city as a whole must commit to decarceration, moving from historically punitive approaches to justice to restorative justice practices and alternatives to incarceration.

We have spent enough time waiting for the federal monitor to improve the conditions at Rikers Island. It is time to explore other measures, including whether a federal receivership of the jail is necessary to end the cycle of violence and death. Last month, the court ruled that we should give Commissioner Molina more time to implement his plan for the jail. The court will review the progress made in April, and I hope to work closely with the administration and the City Council to ensure that there is positive progress made in that time. DOC and the city must also commit to the 2027 timeline that the prior administration agreed to close the jail on Rikers Island.² Receivership should push us to take this as a final, critical moment for change. It should not be viewed as keeping the status quo, as we know that that does not work, and it should not mean the city should stop collaboratively to figure out what is needed to make our jails humane and respectful of the dignity of those incarcerated in them.

Thank you.

¹ https://www.nyc.gov/assets/doc/downloads/pdf/2022-10-28_Second_Status_Report_Action_Plan.pdf

² <https://www.cityandstateny.com/politics/2022/11/timeline-closure-rikers-island/376662/>

Testimony to the City Council Committee on Criminal Justice

Tuesday December 13, 2022

Submitted by Sarita Daftary



Freedom
Agenda

Thank you Chair Rivera, and Council Members, for the opportunity to testify today. I'm a Co-Director of Freedom Agenda. Our members are survivors of Rikers, people who've endured the torture of Rikers along with their loved ones, and people whose family members were killed by the combined of disorder and cruelty that governs Rikers. Everything we've heard today confirms things that they and most of this Council already know - closing Rikers is the ultimate and necessary solution to end the human rights crisis that is Rikers Island, and the immediate solution is to decarcerate.

I want to start today by **expressing our strong support for Intro 806** to establish Jail Population Review teams. The Monitor suggested in their most recent report that (p. 101) "various stakeholders to work together to address the long delays in case processing times described in this report in order to reduce the length of stay among people incarcerated in DOC's jails and/or to maximize the use of jail diversion options" and noted that "A comparable level of haste [to that seen at the onset of COVID-19] is required to limit exposure to and relieve pressure on the jails." When asked about their efforts to review cases and consider alternatives, the administration has said they meet with the District Attorneys weekly. That is simply not enough. The District Attorneys are only providing the information they want to provide, and they have shown, by the fact that they continue to send people into this hellhole, that they are not self-motivated to reduce incarceration. Jail population review teams could bring together the necessary stakeholders – including public defenders and Correctional Health Services – to quickly identify effective alternatives for people in DOC custody. This could not be more urgent. No one comes out of Rikers better, especially now, and this year, 19 people did not come out of Rikers alive.

We think Intro 806 could be further strengthened by requiring that the teams make their review criteria public, and including representatives from DOH and service providers on the teams, including people with lived experience of incarceration. With this legislation passed, the next step will be for the Council to ensure that there is adequate funding for the resources that will make it more possible to divert more people – including supportive housing.

We additionally support Intro 589, though we hope that with Population Review Teams in place, we hope there will be very pregnant people incarcerated.

We also want to focus the Council's attention on the genesis of the *Nunez* case, which DOC has tried to obscure. DOC is determined to seed and spread the lie that the horrific levels of violence at Rikers start with and are maintained by incarcerated people, and they propose solutions that focus on further restricting the rights of people in their custody. But the Federal government did not sue New York City because Rikers was a generally violent place. They sued New York City because guards were using excessive force against people in their custody – for example, striking them in the head, and punching people who were in restraints. And no one was holding them accountable for doing it. That fundamental reality has not changed. In fact, the Monitor's report noted that the

rate of Use of Force incidents resulting in a serious injury to people in custody is nearly **10 times higher** than the start of the consent decree, and nearly 20% higher than a year ago. This is a story of guards violently abusing people in their custody. Do not let DOC tell you otherwise.

Given that reality, the Council should do everything within your legislative and budgetary power to limit the number of people exposed to that environment, and to protect the rights of people in DOC custody.

- The Council should pass Intro 549 to end solitary confinement
- The Council should introduce legislation to protect the right to receive mail directly. DOC is currently seeking BOC permission to make changes that would end direct mail and packages.
- The Council should immediately fill its two vacancies on the Board of Correction
- The Council should ensure adequate resources for the Board of Correction - increasing their budget to at least 1% of DOC's budget.

Michelle Feldman
Director of Policy and Campaigns
Women's Community Justice Association

New York City Council Committee on Criminal Justice
Testimony in Support of Intro 589 & Intro 806

Good afternoon, Chair Rivera and members of the committee. My name is Michelle Feldman and I am the Policy and Campaigns Director of Women's Community Justice Association. We are a non-profit community-based organization that is dedicated to ending mass incarceration of women and gender-expansive people in New York.

WCJA leads the #BEYONDrosies campaign, and our main priority is to decarcerate mothers, daughters and sisters at the Rose M. Singer Center on Rikers Island. In April 2020, at the height of the pandemic, there were 149 women and gender-expansive people at Rosie's. Today that number has jumped to 366. The city is moving in the wrong direction and these bills are part of the answer in reversing this trend. **That is why we strongly support Intro 589 and Intro 806.**

Intro 589 would help ensure that pregnant women receive proper medical care while in jail. However, the reality is that pregnant women should not be in jail. Studies show that pregnant incarcerated women have higher rates of poor outcomes, such as miscarriage, preterm infants, and infants who are small for their gestational age, compared to women in the general population.¹ The stress and trauma of incarceration is not conducive to a safe and healthy pregnancy.

There are safe alternative programs like our sister organization SHERO which has served women before and after birth and provides them with resources that they and their children need to thrive. Stephanie Harris, one of SHERO's pregnant participants, described her experience at Rikers in 2018. "My baby and I almost died there," she said. "I have sleep apnea and wasn't allowed to bring the machine that gives me oxygen. Twice I was sent to the hospital. The doctors said my baby and I were in danger and needed the sleep apnea machine and other care. But when I went back to Rosie's I wasn't given any of the medical help I needed.

Luckily, the courts eventually allowed Stephanie to participate in SHERO, a transitional housing program that diverts women from Rikers. She gave birth to a healthy daughter named Egypt, and mother and child thrived in their new environment.

In 2019, Illinois law set a state policy against jailing women who are pregnant. New York should consider similar measures to protect mothers and children.

¹ <https://www.publichealth.columbia.edu/public-health-now/news/forced-give-birth-alone-how-prisons-and-jails-neglect-pregnant-people-who-are-incarcerated>

Intro 806 to establish borough-based population review teams is in line with the recommendations in our *Path to Under 100* report, which was co-authored by the Lippman Commission and released in June to provide a roadmap to decrease the population of women and gender-expansive people in New York City jails. Given that women and gender-expansive people are a vulnerable population, we called for these teams to begin by reviewing cases at the Rose M. Singer Center.

This legislation would include important stakeholders, but it is missing a key component—representatives from the justice-impacted community. It is important for those who have experienced incarceration to have a seat at the table and be able to weigh in on possible diversion and alternatives for individuals at Rikers. We encourage an amendment to the bill to include justice-impacted people in the review and recommendation process.

WCJA would also like to thank Chair Rivera and Council Member Caban for introducing Intro 831 that would establish a citywide Women's Resource Navigator to more efficiently connect women and gender-expansive people with alternatives to incarceration, transitional housing and reentry services. We hope the committee will continue its commitment to supporting women on Rikers with this legislation.

Thank you for taking action to protect and decarcerate the mothers, daughters, and sisters at the Rose M. Singer Center on Rikers, and we encourage the committee to vote in support of these bills.

From: Joyce Silver <thevoiceofjoyce@earthlink.net>
Sent: Friday, December 16, 2022 1:56 PM
To: Testimony
Subject: [EXTERNAL] Close Rikers Island

To whom it may concern,

On 12/13/22, I listened to members of the Community , Katal, Dept of Corrections and City Council members describe the inmate experiences on Rikers Island. Clearly, with an underserved, growing incarcerated community, no one is benefiting.

We don't know the ratio of the inmate population to corrections officer staffing.

We do know the incarcerated population is living in overcrowded, filthy conditions, has limited access to healthcare, education, rehabilitation and family support.

There have been 19 suicides committed there this year.

What is to be done? How many people were meant to reside comfortably at Rikers?

First, I'd invest in a software program that identifies and separates the categories of offenses and offenders.

6000 people, with the right software, can be categorized within one week or less .

Those with minor crimes, require due process immediately. Set up speedy systems for a designated judge to preside. Minor offenses don't require jail time or bail, they require a hearing and Community Service. Education? Social services & healthcare.

1000+ are at Rikers with Mental illnesses. This is a Community problem, requiring healthcare, social services, special housing, perhaps, not jail.

You can reduce the population of Rikers Island almost immediately by understanding your incarcerated population.

Screen for weapons and penalize guards for allowing them and drugs into the system.

Provide healthcare. If you can't provide healthcare, allow those serving time for minor offenses out into the Community or use an electronic monitor for those considered moderately dangerous.

Jail is not a warehouse, it should be used judiciously for violent crimes or offenses that threaten the Community or a family. Crisis intervention training is needed in and out of the Rikers Island community.

Non violent offenses don't require bail, they require healthcare, community service and social services.

The population of Rikers can, with management, be closed. There is a need for a Federal Monitor with strict guidelines for closure. The current administration and the Dept of Corrections only see The Rikers Island Population expanding. This is unacceptable.

If your mandate is to Close Rikers Island. Do it in a timely manner with skilled professionals looking at the problem and following recommendations, for alleviating the degradation of human beings warehoused there.

At this time the warehousing of people at Rikers Island, negates their Constitutional Rights.

They're not getting due process in a timely manner.

They're not allowed to vote.

Do they have free speech ?

How many other Rights under the Constitution are they losing?

Close Rikers Island and restore dignity to the human beings who were incarcerated there and to the Correction officers who are overwhelmed.

Thank you for allowing me to give my testimony. I'm not an expert or specialist on incarnation procedures. I respect human life!

Most sincerely,

Joyce Silver

Speaking for the Katal Organization &

TheVoiceOfJoyce.me

Sent from my iPhone

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: MARGE IVES

Address: 72 PONDFIELD RD W. BRONXVILLE NY

I represent: KATAL

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12/13/22

(PLEASE PRINT)

Name: Chaplain Dr. Victoria A. Phillips

Address: 99 Wall St. Ste 813 NY NY 10005

I represent: Sails Action Coalition

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

[]

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12/13/22

(PLEASE PRINT)

Name: Michael McQuillan

Address: Albemarle Road, Brooklyn NY 11218

I represent: Brooklyn Heights Synagogue Social Action Committee

Address: 4 Katal Center Close Rikers Campaign

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 0806/0549 Res. No. _____

in favor in opposition

Date: 12/13/22

(PLEASE PRINT)

Name: Tahaneé Dunn

Address: 360 E 161st Street, Bronx, NY 10451

I represent: Bronx Defenders

Address: same as above

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 12/13/22

(PLEASE PRINT)

Name: Alice Fontier

Address: 317 Lenox, 10th Fl NY NY 10029

I represent: NDS Harlem

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: _____

(PLEASE PRINT)

Name: HERBERT SWEAT

Address: E. Miller Ave, Garden City N.Y.

I represent: Veteran Treatment Court

Address: 100 Centur ST, MAA.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 806-2022 Res. No. _____

in favor in opposition

Date: 12/13/22

(PLEASE PRINT)

Name: Christopher Boyle

Address: 100 William Street

I represent: New York County Defender Services

Address: 100 William Street

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 589+806 Res. No. _____

in favor in opposition

Date: 12/13/2022

(PLEASE PRINT)

Name: Carlos Castellanos

Address: NYC Health + Hospitals /

I represent: Correctional Health Services

Address: _____

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 589+806 Res. No. _____

in favor in opposition

Date: 12/13/22

(PLEASE PRINT)

Name: Louis A. Molina, Commissioner

Address: 7520 Astoria Blvd

I represent: Dept. of Correction

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 589+806 Res. No. _____

in favor in opposition

Date: 12/13/22

(PLEASE PRINT)

Name: Paul Shechtman, General Counsel

Address: 7570 Astoria Blvd

I represent: Dept. of Correction

Address: _____

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 589+806 Res. No. _____

in favor in opposition

Date: 12/13/2022

(PLEASE PRINT)

Name: Jeanette Merrill

Address: _____

I represent: NYC Health + Hospitals /

Address: Correctional Health Services

Please complete this card and return to the Sergeant-at-Arms