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Via email

September 4, 2020

Commissioner Cynthia Brann
New York City Department of Correction
75-20 Astoria Blvd.
East Elmhurst, NY 11370

Elizabeth Glazer
Mayor's Office of Criminal Justice
1 Centre Street
New York, NY 10007

Re: Staff Failure to Adhere to COVID-19 Mask Protocols in New York City Jails

Dear Commissioner Brann and Ms. Glazer:

Attorneys at The Legal Aid Society report concerns about numerous, recent failures to adhere to basic COVID-19 protocols in New York City jails, which they observed during in-person legal visits and videoconferences. Specifically, Legal Aid staff describe an ongoing, widespread failure by New York City Department of Correction (“the Department” or “DOC”) staff to wear masks properly, if at all, and practice social distancing. The Mayor,¹ the First Lady of New York City Chirlane McCray,² and public health authorities³ have made clear that masks are an essential component of the strategy to control the spread of COVID-19 and prevent outbreaks as fall approaches. The Centers for Disease Control and Prevention (“CDC”) emphasized in July that based on “the latest science... face coverings are a critical tool in the fight against COVID-19 that could reduce the spread of the disease, *particularly when used universally within communities.*”⁴ The reports we received describe serious risks to health and safety that must be abated immediately.

As you know, compliance with health and safety protocols by staff, who are able to move among different facilities and between the jails and their communities, is critical if we are to avoid a second wave of COVID-19. Since the beginning of the pandemic, public health experts have identified staff members within congregate settings such as jails and nursing homes as a particular risk in COVID-19 transmission. In the California prison system, the court-appointed federal receiver warned that “staff [were] the main vector for spreading COVID-19 in the state prisons.”⁵ The New York State Department of Health identified staff as the driver of spread within New York nursing

¹ @NYCMayor, Twitter (Aug. 29, 2020), <https://twitter.com/NYCMayor/status/1299767552424448000> (Quoting @nycgov, Twitter, Aug. 29, 2020: “Don’t be stupid. Wear a face covering.”).

² @NYCFirstLady, Twitter (Sept. 1, 2020), <https://twitter.com/NYCFirstLady/status/1300933855130644481> (“Remember your face coverings! Do not wear it around your chin or below your nose—wear it so that it covers your mouth and nose.”)

³ CDC Newsroom Releases, *CDC calls on Americans to wear masks to prevent COVID-19 spread*, July 14, 2020. Available at <https://www.cdc.gov/media/releases/2020/p0714-americans-to-wear-masks.html>.

⁴ *Id.*, emphasis added.

⁵ *Plata et al v. Newsom et al*, 4.01-cv-01351-JST (N.D. Cal), Joint Statement, ECF No. 3345 at 3. Available at <https://rbgg.com/wp-content/uploads/3345-Plata-Joint-CMC.pdf>.

homes.⁶ A July study from Yale and UCLA faculty highlighted the particular risk of spread when nursing home staff work across different facilities and populations.⁷ Because DOC staff pose a documented risk of transmitting COVID-19 to one another and people confined in city jails, it is essential that they consistently and properly wear masks and adhere to all other COVID-19 protocols.

Despite these warnings from public health experts, Legal Aid Attorneys who have participated in videoconferences and in-person legal visits to DOC facilities describe a persistent failure of DOC staff to wear masks and follow COVID-19 protocols. My staff reports that this problem extends across multiple facilities in the borough jails and on Rikers Island, and that it has occurred for months. Reports from just the past four weeks include:

- Early August, VCBC: during a videoconference, the attorney could see multiple staff members in the background, and none were wearing masks.
- Mid-August, MDC: an attorney attempted to visit a client in person. The officer working the security checkpoint, who has contact with all persons wishing to enter the facility, wore his mask under his chin with his nose and mouth fully exposed. In a ten minute period, the attorney witnessed three additional officers come through security—two wearing masks under their chins with their noses and mouths fully exposed, and one wearing no mask at all. The attorney felt unsafe and left.
- Mid-August, RNDC: during her entire visit to Rikers Island, the attorney saw only two officers wearing their masks properly—the desk officer at the entrance to RNDC on her way in, and the bus driver for the trip to the facility. Every other officer she saw was not wearing their mask properly, if at all, including the two desk officers at the Samuel Perry Reception building, the officer who collected her visitor pass on her way out, the RNDC desk officer on the way out, and at least five officers with whom she rode the bus to RNDC. The attorney reported that she was on Rikers Island for hours, and saw no cleaning or sanitation take place.
- Mid-August, AMKC: during a videoconference, the attorney saw an officer open the door to the booth where her client was sitting—a small, confined space—with the officer’s mask below her nose and mouth.
- Late August, MDC: an attorney visited a client in person, and saw that most staff were wearing masks under their chins, with their noses and mouths fully exposed. During the time he was there, he did not see anyone wiping or disinfecting.

⁶ West, Melanie Grayce, *Staff Spread Coronavirus at New York Nursing Homes, Study Says*, The Wall Street Journal, July 6, 2020. Available at <https://www.wsj.com/articles/staff-spread-coronavirus-at-new-york-nursing-homes-study-says-11594070427>.

⁷ See Chen, K., Chevalier, J., Long, E., *Nursing Home Staff Networks and COVID-19*, July 22, 2020. Available at https://www.anderson.ucla.edu/faculty_pages/keith.chen/papers/WP_Nursing_Home_Networks_and_COVID19.pdf.

- Late August, RNDC: during a videoconference, the attorney could see multiple staff members in the background, and none were wearing masks.
- Late August, AMKC: an attorney visited a client in person, and saw that most staff were wearing masks under their chins, with their noses and mouths fully exposed. On the bus to AMKC, the officers riding the bus with him were not wearing masks at all. During the time he was there, he did not see anyone wiping or disinfecting surfaces.
- This week, VCBC: during a videoconference, the attorney could see multiple staff members in the background, and none were wearing masks.
- This week, NIC: during a videoconference, the attorney could see multiple staff members in the background, and none were wearing masks.
- Late last week and this week, RNDC and AMKC: an attorney visited clients in person on different days. He observed many officers on the buses and in the facilities not wearing any masks at all. He was disturbed that there appeared to be no limit to the amount of people riding the transport buses, noting over a dozen on the buses he rode, making social distancing impossible. He said that only a person who was an “extreme risk taker” would consider going to Rikers Island at this point, and that it was a “horror show” for incarcerated people, staff, and visitors alike.
- This week, VCBC: during a videoconference, the attorney could see two staff members sitting at the desk behind her client. One staff member was wearing the mask below her chin, with her nose and mouth fully exposed, and the other was not wearing a mask.
- This week, RNDC: during a videoconference, the attorney observed that the officer who escorted her client from the booth was not wearing a mask.

One detailed report from this week is particularly telling. An attorney visited a client in person at GRVC a few days ago. He noted that the officer sitting at the Samuel Perry reception turnstile was wearing a mask improperly, with his nose exposed. The attorney then watched while six officers, one by one, walked through the turnstile—one with his mask under his chin, five with no masks at all. While he waited for the 4B bus to GRVC, he saw that the vast majority of people waiting for the bus had no masks. He was incredulous to see that two officers were going from bus to bus ensuring that the “masks required” signs were posted, *but they themselves were not wearing masks*. As he watched other buses come and go, he noticed that the majority of people entering and exiting the buses wore no masks. When his bus arrived, the driver exited wearing no mask. A new driver and 4 passengers boarded past the “mask required” sign, none wearing masks. The attorney and the 4 unmasked passengers then entered GRVC, walking past more “masks required” signs. The COVID-19 screening table was positioned in such a way as to make social distancing impossible, staffed by a captain who was wearing a mask primarily down around his neck and another officer

who had no mask. During the hours that the attorney was in the waiting area at the entrance of the facility, he was never more than four feet away from other people, and was frequently closer. The entry desk officer wore a mask with her nose exposed. As the attorney waited, he saw six captains: only two wore masks properly the entire time he watched them, and three wore no masks at all. He saw approximately 30 officers, contractors, non-uniformed staff, and medical personnel enter or exit the facility wearing masks under their chin or not at all. He saw only eight total people properly wearing masks during the hours he spent at GRVC that day.

These reports illustrate that the staff mask noncompliance in DOC facilities is widespread and unrelenting, and highlights a failure to enforce a protocol critical to the health and safety of our clients.

Public health authorities are unanimous: we must remain vigilant against COVID-19, because the danger is not behind us. The New York Times recently described how “epidemiologists, public health officials and infectious disease specialists said New York owed its current success in large part to how New Yorkers reacted to the [outbreak in April],” emphasizing the importance of social distancing and “strong” adherence to mask protocols.⁸ As those same experts brace for an “all but inevitable” resurgence,⁹ sustained compliance with those same measures is critical to protect all New Yorkers. There is emerging science about the potential for re-infection, serving as a warning that we should not rely on immunity to protect us indefinitely.¹⁰ And as we consider the dangers of a second wave, we know that people in custody are particularly vulnerable to outbreaks—indeed, a recent study of detention facilities in which broad, mass testing was conducted revealed a COVID-19 prevalence that was 12 times higher than previously believed based on cases identified through testing only persons with symptoms.¹¹

DOC staff are tasked with the wellbeing of the people in Department custody—people who cannot control the environment of the jail nor the conduct of their jailers. When urging every American to meet their “responsibility” to wear masks in July, CDC Director Dr. Robert Redfield stressed that “face coverings are one of the most powerful weapons we have to slow and stop the spread of the disease—particularly when used universally in a community setting.”¹² He noted that “we are not defenseless against COVID-19”¹³—but when DOC staff refuse to wear masks and DOC leadership does not adequately enforce mask requirements, that defense is stripped from our clients. It is unconscionable.

⁸ Goodman, J.D., *New York Has Tamed the Virus. Can It Hold Off a Second Wave?*, The New York Times, Aug. 17, 2020. Available at <https://www.nytimes.com/2020/08/17/nyregion/coronavirus-second-wave-nyc.html>.

⁹ *Id.*

¹⁰ Kai-Wang To, Kelvin, et al. *COVID-19 re-infection by a phylogenetically distinct SARS-coronavirus-2 strain confirmed by whole genome sequencing*, *Clinical Infection Diseases*, Aug. 25, 2020. Available at <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa1275/5897019>.

¹¹ Hagan, L., Williams S., Spaulding A., et al. *Mass Testing for SARS-CoV-2 in 16 Prisons and Jails—Six Jurisdictions, United States, April-May 2020*, *MMWR Morb Mortal Wkly Rep* 2020; 69:1139-1143. Available at https://www.cdc.gov/mmwr/volumes/69/wr/mm6933a3.htm?s_cid=mm6933a3_w#suggestedcitation.

¹² *CDC calls on Americans to wear masks to prevent COVID-19 spread, supra.*

¹³ *Id.*

Further, the risk is not limited to the vulnerable persons in custody. Should a second wave of cases hit Rikers Island, staff members who do not practice proper protocols to prevent transmission will inevitably place their communities at heightened risk.

The basic failures to adhere to COVID-19 mask and social distancing protocols reported by our staff could have been avoided with oversight and accountability. Given the danger, they must be remedied immediately. We therefore ask that, no later than Friday, September 11, 2020, the Department inform us of the following:

1. Are DOC and civilian staff required to properly wear masks at all times while they are in DOC facilities? What directive, rule, operations order or other policy documents this requirement?
2. How have the rules concerning mask wearing and social distancing been communicated to staff?
3. How will the Department reinforce to staff at all levels the critical importance of wearing masks at all times while in Department facilities, utilizing methods beyond signs and teletypes?
4. Will the Department take immediate corrective action, including appropriate discipline, when staff fail to adhere to mask requirements and other COVID-19 protocols? What specific form will such corrective action take?
5. Have any Department staff been disciplined or faced other corrective action for failures to adhere to mask requirements and other COVID-19 protocols? What discipline or corrective action was implemented, and when?
6. Does the Department regularly audit staff compliance with mask requirements and other COVID-19 protocols? If not, will the Department begin doing so, and what will be the structure of those audits? Will the Department commit to sharing those audits with elected officials, the Board of Correction, and the public?

The City's failure to ensure that its employees abide by basic protocols such as the requirement to wear masks causes us grave concern about whether DOC is implementing all COVID-19 protocols with fidelity. As the country and the world struggle to contain and mitigate the COVID-19 pandemic and New York faces the potential for a second wave, it remains abundantly clear that the unsafe, unsanitary New York City jail setting is not capable of adequately protecting people in custody from contracting this virus. We continue to urge state and local authorities to release our vulnerable clients. But if they must remain in these inherently dangerous custodial environments, the City must take basic and humane steps to prevent suffering and loss of life.

We look forward to your response.

Justice in Every Borough.

Regards,

/s/

Justine Luongo
Attorney-in-Charge
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cc: Heidi Grossman, DOC General Counsel
Brenda Cooke, DOC Chief of Staff
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