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Sent via email

December 4, 2020

The Honorable Bill de Blasio
Mayor of New York City
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New York, NY 10007

Deanna Logan
Acting General Counsel, MOCJ
City Hall
New York, NY 10007

Commissioner Cynthia Brann
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Cyrus R. Vance, Jr.
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Melinda Katz
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Darcel Clark
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Michael McMahon
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Re: Request for Immediate Action to Manage COVID-19 Outbreak in New York
City Jails

Dear Mayor de Blasio, Commissioner Brann, Mr. Vance, Mr. Gonzalez, Ms. Katz, Mr. Clark and Mr. McMahon:

As leaders of New York City's criminal legal system, we call on you to prioritize the immediate release of New Yorkers especially vulnerable to COVID-19 from local jails as new data shows the pandemic resurging. In the late spring and early summer, your efforts to reduce the jail population played a pivotal role in halting the trajectory of the pandemic. But those steps happened too late to prevent the explosion of the virus within the jails and save the lives and health of many people incarcerated and working there. New York should not repeat that catastrophic error by delaying the release of vulnerable people or requiring them once again to resort to costly and unnecessary litigation to compel the City to protect them from imminent harm.

We now face another outbreak of COVID-19 in New York City Department of Correction (“DOC” or “the Department”) facilities requiring immediate action to protect the health and safety of incarcerated people and jail staff. As we describe below, the population has risen to nearly pre-pandemic levels, and data strongly suggests that there is now significant in-jail transmission. A resurgence in the jails once again disproportionately impacts black and brown people in custody.¹ The experience from last spring tells us what is likely to come next: escalating infection rates and avoidable deaths.

The City has not acted strongly enough in the face of these increasingly dangerous conditions, despite escalating warnings from advocates, the Board of Correction (“BOC”), and other leaders that a resurgence of COVID-19 in the jails was imminent. The City’s actions appear to ignore both hard-earned lessons from the spring and evolving scientific consensus about COVID-19 infection management. The people in the New York City jails should not pay the price for these failures. Lives hang in the balance.

The Newest Data about COVID-19 in the City Jails is Alarming

The data BOC published on December 1 about COVID-19 in the city jails commands an urgent response. The most recent BOC Weekly Report is page after page of astonishing data:

- For months, there have been one or two seemingly isolated reported infections among DOC and CHS staff each week. The new report reveals *31 new staff infections in one week*.²
- On November 7, there were only seven housing areas with COVID-19 designations in which 96 people were housed.³ By November 27, there were *33 COVID-designated units housing 759 people*.⁴
- In just one week, the number of people in exposed housing units more than tripled.⁵ The problem has reached nearly all facilities: where previously, the only facilities with COVID-19 designated housing units were MDC, AMKC, and WF,⁶ there are now exposures or active infections in MDC, AMKC, VCBC, GRVC, OBCC, RNDC, and WF.⁷

¹ See New York City Board of Correction Weekly COVID-19 Update, *Week of November 21 – November 27*, THE NEW YORK CITY BOARD OF CORRECTION, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-11-21-11-27-20.pdf> (last visited December 2, 2020) (see p.10, revealing that 685 of the 731 people in COVID-designated housing units, or 93.7%, are Black, Black Hispanic, Hispanic, or White Hispanic).

² BOC Weekly Report: November 21 – November 27, *supra*, at p.13.

³ New York City Board of Correction Weekly COVID-19 Update, *Week of November 7 – November 13*, THE NEW YORK CITY BOARD OF CORRECTION, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-11-7-11-13-20.pdf> (last visited December 2, 2020) (pp.18, 20).

⁴ BOC Weekly Report: November 21 – November 27, *supra*, at pp.18, 20.

⁵ *Id.* at p.20.

⁶ BOC Weekly Report: November 7 – November 13, *supra*, at p.18, fn.3.

⁷ BOC Weekly Report: November 21 – November 27, *supra*, at p.18, fn.3.

- CHS reporting shows us that reported active infections among people in custody increased exponentially in the last two weeks, from 2 active infections on November 17⁸ to 18 on November 29.⁹

Steadily adding more fuel to the tinderbox, the population in the jails has risen rapidly in recent months and is now comparable to pre-pandemic levels. As of November 27, the total population in DOC was 4,805 people—the same population as in late March, which the City acknowledged was too dangerous, necessitating decarceration.¹⁰ And DOC continues to create perilously high density levels in housing areas, in flagrant violation of public health standards: 66% of dorm units and 60% of cell units remain above 50% of capacity, and 34.5% of units exceed 75% of capacity.¹¹ Of the ten facilities in operation as of November 27, seven of them have units at or above 90% capacity, with units at six facilities at 100% of capacity.¹² Operating facilities in this manner as an outbreak surges within the jails and in the broader community is unacceptably dangerous.

The City Must Act to Address the COVID-19 Outbreak in DOC

Every City leader must now act to prevent a repeat of the unacceptable rate of COVID-19 infection New York’s jails saw in the earlier part of this year. Both national¹³ and local¹⁴ surveys of releases from correctional settings in response to COVID-19 dangers reveal that those releases did not result in increased dangers to public safety. Indeed, Mayor de Blasio confirmed during a July press conference that he disagreed with the NYPD assessment that people released for pandemic-related reasons were to blame for an uptick in violence, saying, “I do not believe that the folks who were released from Rikers for health reasons are the central reality here... I don’t believe that at all, and I’m the person who authorized that release.”¹⁵

We ask that the Mayor reinstate and expand his commitment to release people currently serving sentences in the city’s jails; that district attorneys work with defender organizations to consent to the release of vulnerable people currently held on bail; and correctional officials facilitate these processes by identifying people currently incarcerated who are medically vulnerable to serious health consequences should they contract COVID-19. As you know, these efforts – combined with

⁸ Correctional Health Services (CHS) COVID-19 Data Snapshot: November 17, 2020, CORRECTIONAL HEALTH SERVICES, available at <https://hhinternet.blob.core.windows.net/uploads/2020/11/CHS-COVID-19-data-snapshot-20201118.pdf> (last visited December 2, 2020).

⁹ Correctional Health Services (CHS) COVID-19 Data Snapshot: November 29, 2020, CORRECTIONAL HEALTH SERVICES, available at <https://hhinternet.blob.core.windows.net/uploads/2020/11/CHS-COVID-19-data-snapshot-20201130.pdf> (last visited December 2, 2020).

¹⁰BOC Weekly Report: November 21 – November 27, *supra*, at pp.4, 5.

¹¹ *Id.* at pp.25, 27.

¹² *Id.* at p.28.

¹³ *Decarceration and Crime During COVID-19*, THE AMERICAN CIVIL LIBERTIES UNION, July 27, 2020, available at <https://www.aclu.org/news/smart-justice/decarceration-and-crime-during-covid-19/> (last visited December 3, 2020).

¹⁴ Pereira, Sydney. *Data Contradicts NYPD’s Claim that Bail Reform and COVID-Releases Drove Shooting Spike*, GOTHAMIST, July 9, 2020, available at <https://gothamist.com/news/data-contradicts-nypds-claim-bail-reform-and-covid-releases-drove-shooting-spike> (last visited December 3, 2020).

¹⁵ *Id.*

defender organizations' litigation efforts to push releases further and faster – resulted in the release of more than 1,500 people in a matter of weeks and were critical to reversing the trajectory of the virus in city jails.¹⁶ Similar results are required now, but faster to avoid the scale of the tragedy New York experienced in the spring and summer.

We look forward to your swift response to this call and stand ready to cooperate in any manner necessary to address these urgent concerns.

Very best regards,



Mary Lynne Werlwas

Tina Luongo
Attorney-in-Charge, Criminal Defense Practice
Corey Stoughton
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Mary Lynne Werlwas
Director, Prisoner Rights Project

cc: Jennifer Jones-Austin, Chair New York City Board of Correction
Heidi Grossman, General Counsel New York City Department of Correction
Council Speaker Corey Johnson, New York City Council
Council Member Keith Powers, Chair, Committee on Criminal Justice

¹⁶ Rebecca Rosenberg, *More than 1500 NYC inmates have been released in coronavirus crisis*, N.Y. POST, Apr. 10, 2020 (available at <https://nypost.com/2020/04/10/more-than-1500-nyc-inmates-have-been-released-amid-coronavirus-crisis/>).