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*****FOR IMMEDIATE RELEASE*****

***Legal Aid, Brooklyn Defender Services and Milbank File Class Action Lawsuit
Against DOC to Secure Incarcerated Clients' Access to Medical Care***

***Litigation Will Seek Releases from Custody Should DOC Persist in Its Failure to
Provide Access to Medical Care***

(NEW YORK, NY) - **The Legal Aid Society, Brooklyn Defender Services and Milbank LLP** filed a class action lawsuit this morning in Bronx Supreme Court against the New York City Department of Correction (DOC) over its failure to provide incarcerated New Yorkers access to medical care in the City jails.

The lawsuit, which comes amidst widespread acknowledgment of a total breakdown in City jail operations, seeks an order compelling DOC to comply with its basic legal obligations pursuant to state and local law to provide all individuals in its custody access to medical care without delay.

However, if DOC is unable to meet its obligation to fulfill a basic function of operating a jail system -- a task that is fundamental but is largely out of reach for the Department in the current crisis -- the petitioners will ask the court to release a group of incarcerated people facing particularly grave medical consequences in order to address the threat to health and lives currently posed by the breakdown in access to basic medical care and dangerous conditions in the jails.

“New York City’s jails are in a full-blown humanitarian crisis, resulting in indescribable suffering and at least twelve deaths in 2021, including at least five people who died from suicide,” said **Veronica Vela, Supervising Attorney with The Legal Aid Society Prisoners’ Rights project**. “DOC can no longer deprive our clients of their right to medical care, and if the Department is unable to guarantee that right, then the court must immediately consider releasing people.”

“Every minute, thousands of people are suffering in life-threatening conditions in New York City’s jails: people forced to sleep on floors covered in feces and urine, given food that is moldy or covered in maggots, wearing the same underwear for weeks at a time, confined inside without a breath of fresh air for months on end, the list of horrors goes on and on,” said **Brooke Menschel, Director, Civil Rights and Law Reform at Brooklyn Defender Services**. “Particularly at risk is the health, safety and well-being of people who depend on DOC to provide access to critical, life-sustaining prescription medication or medical treatment and those whose cries go

unanswered during medical emergencies. DOC must immediately ensure people in its custody can access medical care, or we will ask the court to release people so that they can attend to pressing medical needs.”

“People’s lives are at stake,” said **Milbank Litigation partner Sean Murphy**. “The pervasive and systemic problems at Rikers are intolerable, and the filing of this lawsuit is an important first step at ensuring prisoners get access to critical healthcare they are currently being denied.”

One of the many people deeply impacted by the crisis is Petitioner J.A., a 23-year-old who has been in DOC custody since September 13, 2021. He has long suffered from asthma and has had a number of serious asthma attacks throughout his life requiring hospitalization. J.A. also has a history of seizures.

Several months ago, J.A. was stabbed in his side. His lung was punctured and collapsed as a result. While being treated at the hospital, his doctor advised him not to engage in strenuous activity. His doctor warned him that if he stressed his body too much, his lung could collapse again.

During his arrest in September, police officers hit J.A. with a police vehicle. After a few NYPD officers threw him to the ground and one officer stepped on the back of his left leg while he was on the ground. The injuries that he suffered included deep bone bruising, a swollen left knee, and numerous scratches. Due to the pain from his injuries, which made it difficult for him to walk, J.A. attended his arraignment in a wheelchair.

When J.A. arrived at Rikers Island, he was left on a bus in handcuffs for fourteen hours, during which time he was denied access to food, water, a toilet, and medical care.

He then remained in intake for six days, where he had to sleep on the floor the entire time. Each day in intake, J.A.’s cell was sprayed with a strong pepper spray. One day, his cell was sprayed five times. This exposure to pepper spray aggravated his asthma and he had difficulty breathing. J.A. also vomited several times after being sprayed. He did not have his inhaler, and was denied medical attention despite requesting it. For the past several weeks of incarceration, J.A. has been suffering from a pounding headache and continues to have difficulty walking due to his injuries. He also continues to have difficulty breathing due to his exposure to pepper spray and his asthma. He still uses a cane to walk. He is concerned about these health issues as well as their potential impact on his seizure disorder and his lung, which had collapsed only a few months earlier.

As of September 23, 2021, J.A. had requested medical attention daily—by calling the Correctional Health Services (CHS) hotline and by asking individual DOC officers. Several times after calling the CHS hotline J.A. was told that a DOC escort would bring him to the clinic, but no escort arrived. When he asks DOC officers to bring him to the clinic, the DOC officers refuse. One officer told him that in order to get taken to the clinic he would need to get down on the floor, grab his chest and pretend to be having a medical emergency.

Since being in DOC custody, J.A. has only been brought to the clinic once, but left shortly afterwards once it was discovered that someone was present in the clinic who had recently tested positive for COVID-19. He has not received medical treatment or a health assessment for the entirety of his incarceration. Further, despite repeatedly requesting an inhaler, J.A. was not given an inhaler until September 27, 2021, two weeks after arriving on Rikers Island.

Background

The conditions in the jails have been described as “deplorable and nothing short of a humanitarian crisis.” By failing to provide access to medical care to individuals in its custody, DOC has broken well-established local laws and failed to fulfill its duties. And this failure has directly contributed to immeasurable suffering and the 12 deaths of persons in custody this year, three in the past month alone.

The jail system’s chief of health care services himself has stated that these deaths are “jail attributable” because of the jail’s conditions. People under suicide watch who should have been under constant supervision were left alone by DOC staff who abandoned their posts. At least five people being held at Rikers are believed to have died

by suicide since November 2020, and the overall levels of self-harm among those imprisoned have increased at a rate described by the New York City Board of Correction as “alarming.”

Other people have suffered from serious health conditions and were in need of treatment, but they were left to fend for themselves. Last week, for example, a person reported being stabbed in the eye in a housing unit without staff to escort him to a medical clinic. He had to rely on other incarcerated people to find the keys to open his cell door and help him to the clinic.

DOC Commissioner Schiraldi himself has admitted that the jails are in a state of crisis, stating “the level of disorder here is deeply, deeply troubling.” Ross MacDonald, the chief medical officer for Correctional Health Services, recently issued a public statement stating “today I do not believe the city is capable of safely managing the custody of those it is charged with incarcerating in its jails...”

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Brooklyn Defender Services (BDS) is a public defender organization serving tens of thousands of Brooklyn residents each year since 1996. Our mission is to provide high-quality and client-centered criminal, family, and immigration legal representation, as well as civil legal services, social work support and advocacy for people who cannot afford an attorney. www.bds.org

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