

SUPPLEMENTAL AFFIDAVIT OF KELSEY DE AVILA

State of New York)
County of Kings) ss.:

I, Kelsey De Avila, being duly sworn, depose and say that:

1. I am the Project Director of Jail Services at Brooklyn Defender Services (“BDS”). I am a licensed master social worker and have worked on the BDS Jail Services team since 2014.
2. BDS is a full-service public defender 501(c)(3) organization that provides multi-disciplinary and client-centered criminal defense, family defense, immigration, and civil legal services, along with social work and advocacy support. BDS represents hundreds of individuals detained or incarcerated in New York City’s jails at any time.
3. BDS’s Jail Services team provides direct advocacy to people BDS represents who are detained or incarcerated. The team is comprised of two social workers, including myself, and two advocates, as well as rotating social work interns. Members of the Jail Services staff typically conduct visits to New York City jails on an almost daily basis.
4. As the Project Director of Jail Services, I oversee the Jail Services team, partner with other BDS staff including attorneys and social workers in our Criminal Defense Practice, coordinate the collection and tracking of jail conditions, and routinely convey the concerns of BDS and the people we represent to the New York City Department of Correction (“DOC” or the “Department”), Correctional Health Services (“CHS”), and the New York City Board of Correction (“BOC”). My team and I also regularly testify at BOC and New York City Council hearings on issues related to the conditions of the City’s jails, and I have testified before the New York State Assembly.
5. Over my seven years on the BDS Jail Services team, I have personally visited every DOC

facility in New York City dozens if not hundreds of times.

6. The BDS Jail Services project has two central functions: (A) direct advocacy to facilitate access to services for detained or incarcerated individuals who BDS represents; and (B) general monitoring of jail conditions.
7. In our direct advocacy role, we assist incarcerated individuals who BDS represents with safety concerns and advocating for access to critical services, including medical and mental health care and treatment.
8. Historically, in our monitoring role, we have been on-site at DOC facilities at least three days per week. Since the beginning of the pandemic, we have maintained a regular presence in the jails, either through weekly- or semi-weekly in-person visits this past year or more-than-daily phone and video conference meetings with people we represent. I have personally visited DOC facilities dozens of times since June 2021.
9. We monitor our own personal observations from our site visits, as well as the concerns and observations of the people we represent and their lawyers and social workers. In our monitoring role, we work closely with other advocates, defender organizations, and coalitions. We use our first-hand experiences to educate the public directly and through the media, and to advocate with DOC, CHS, BOC, and the New York City Council, as well as other elected officials.
10. As part of my role as Project Director of Jail Services, I am in close contact with other advocates. In particular, I am in close contact with the advocates who do this work at other legal service providers, specifically the Legal Aid Society, the Bronx Defenders, Neighborhood Defender Services, and New York County Defender Services. I understand that the experiences of the people they represent are substantially similar to the experiences

described by the people BDS represents and BDS staff.

11. I previously submitted a declaration, signed October 2, 2021, in this litigation as part of the petitioners' original filing. *See* Affidavit of Kelsey De Avila, No. 813431/2021E, NYSCEF Doc. 4. This declaration provides updates since my October 2, 2021 declaration.
12. This declaration is based on my personal knowledge, gathered through my own experiences and conversations with my team, people we represent, BDS staff, staff within the DOC facilities, employees of CHS and the BOC, as well as a review of publicly available records and examination of medical records of people we represent.

Increasing Need for Medical Care

13. After COVID-19 spread through the City's jails last spring, officials worked to reduce the number of people in DOC custody. As a result, by the end of April 2020, the population had fallen to 3,832¹ from around 5,500 in mid-March.² Yet, these efforts were not pursued on a continuing basis, and since late 2020 the population has steadily increased, surpassing the pre-pandemic population. Today approximately 5,500 people are in DOC custody—just as many as before the COVID-19 pandemic began.³
14. The rate of infection from COVID-19 has also skyrocketed in recent weeks, as a result of the densely populated jail conditions, the failure of DOC staff to effectively test and isolate people who are infected, and the highly contagious Omicron variant.

¹ NYC Board of Correction Daily Covid-19 Update, Wednesday, April 29, 2020, available at https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Public_Reports/Board%20of%20Correction%20Daily%20Public%20Report_4_29_2020.pdf.

² City Jail Population Drops Below 4,000 for First Time Since 1946, Office of the Mayor (Apr. 21, 2020), <https://www1.nyc.gov/office-of-the-mayor/news/278-20/city-jail-population-drops-below-4-000-first-time-since-1946>.

³ The Board of Corrections reported a total population of 5,465 on January 14, 2022. *See* NYC Board of Correction Weekly Covid-19 Updates, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-01-08-01-14-22.pdf>.

Difficulties Faced by People in DOC Facilities to Accessing Medical Care

15. Accessing medical services inside DOC facilities is approximately as difficult now as it was when I filed my declaration in October. Although individual people may be able to access medical care, my team and I have not seen any improvement in the overall system of accessing medical care since the petitioners filed this litigation. This observation is based on the number and content of reports we receive, feedback we receive from CHS and DOC to specific requests regarding health care, our individual observations, conversations with other BDS staff and our outside partners, and broad monitoring of trends.
16. My team continues to speak, on weekly or often daily basis, with many people who, despite repeated requests, are unable to obtain medical attention or face enormous delays in accessing care or medication.
17. For example, one person we represent has been suffering from an infected tooth for over eleven months. The infection causes severe pain, bleeding, and leaking pus, all of which cause him difficulty eating and sleeping. He has been consistently asking for medical attention through the CHS hotline and by constantly asking officers in his unit, and my team has made several medical referrals to CHS seeking dental care on his behalf. Despite CHS scheduling numerous dental appointments for him over the past ten months, DOC did not produce him to appointments. Since early December when this Court issued an order in this case, DOC has failed to produce him to at least five medical appointments, including one dental appointment. After nearly a year of constant requests and multiple missed appointments, DOC finally produced him to one appointment, where he learned that because the infection had not been treated soon enough it will now require extensive treatment.
18. Similarly, another person we represent has been struggling to access dental care for over

eight months to address a tooth infection that has become larger and more painful over time. He has difficulty eating and sleeping because of the severe pain he's experiencing. Despite repeated requests, DOC's failure to produce him has resulted in numerous missed dental appointments, including appointments for dental surgery. CHS has also ordered treatment for him at the podiatry clinic for painful plantar warts that make it difficult for him to walk but he has not been produced to those appointments. Since this Court's Order, DOC failed to produce him to at least seven appointments, including four dental surgery appointments and one appointment at the podiatry clinic.

19. The difficulties accessing care extend to chronic health challenges as well. Another person we represent requires daily medications to manage HIV and mental health diagnoses, some of which CHS has ordered he be brought to the clinic to receive. Because DOC frequently does not provide an escort to take him to the clinic, he is often forced to go without necessary medication. He similarly does not have regular access to medications that he is supposed to receive in his housing area.
20. Urgent and emergency care is similarly delayed because of DOC's failure to bring people to the clinic. For instance, one person we represent suffered a large burn in early January 2022 and CHS ordered that he be brought to the clinic daily to receive wound care, including antibiotic ointment and fresh bandages. DOC frequently does not produce him to these appointments for days at a time and the wound has not healed.
21. We hear reports like those detailed above every day. We take extensive efforts to investigate reports and confirm facts in order to effectively advocate for improved access to medical care. These are just a few representative examples of the types of barriers to medical services people continue to face every day inside DOC facilities.

Ongoing Barriers to Accessing Medical Care


22. There are currently two primary ways people seek medical services: telling a correctional officer that they need to go to the clinic or calling the CHS hotline from their unit. In recent months, most people have no option but to call the CHS hotline because there are often no correctional staff in the actual units.
23. Those people who do manage to ask a correctional officer to take them to the clinic are often ignored or told they must wait for an escort. In many cases, no escort ever arrives. At least a few times a week, we hear from people we represent who have been explicitly told by officers that they will not be taken to the clinic because there is no escort available.
24. Calling the CHS hotline is itself difficult if not impossible in many cases. People held in restrictive housing units often do not have access to phones from inside their locked cells and requests to be provided a phone or let out to call are typically ignored or go unanswered. Even in general population units, officers sometimes deny people access to the phones as a punitive measure. In some units, gang members control the phones and demand forms of payment before providing access or do not allow any access. Also, phones do not always work. Even if all the phones are working, people have had to wait hours to use a phone, as there are typically about three phones available for a unit of approximately fifty people.
25. Even those people who manage to call and are told they will be added to the list and brought to the clinic are frequently never transported by DOC, nor are they provided on-site medical care.
26. We continue to hear from people who DOC claims “refused” to attend a scheduled or requested medical appointment but who, in fact, did not actually refuse. In many of these cases, people have put in numerous requests for medical care and even asked my team to


advocate on their behalf. Frequently, DOC claims they refused but when we speak with them, they confirm that they were never told of an appointment and no officer ever appeared to escort them to the clinic. In the last month, I would estimate that my team has spoken with more than ten people who DOC claims refused to go to medical but later confirmed that they were never offered that opportunity.

- 27. The increasing population and spread of COVID, coupled with the pre-existing barriers to accessing medical care, make it difficult or even impossible for most people to readily access the medical services that they need.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 30, 2022
Brooklyn, New York


Kelsey De Avila
Brooklyn Defender Services


SONIA MARQUEZ
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 02MA6378369
Qualified in Kings County
Commission Expires July 23, 2022