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

***Legal Aid Informs Federal Court that City has Failed to Comply with Court Orders to Protect Incarcerated People on Rikers Island***

***Receivership is Necessary to Protect of Thousands of Incarcerated New Yorkers***

(NEW YORK, NY) - **The Legal Aid Society** together with co-counsel Emery Celli Brinckerhoff Abady Ward & Maazel today filed [papers](#) stating that the City's plans to reform the City jails have failed and that a receivership is necessary.

This comes in response to the City's continued inability to comply with the core requirements of the court-ordered relief in [Nunez v. City of New York](#), litigation concerning brutality and excessive force in New York City jails, despite seven years of intensive monitoring and four successive remedial orders. The City's gross non-compliance and patently insufficient plans and promises have failed to abate the suffering that incarcerated New Yorkers face each and every day.

Legal Aid and co-counsel intend to file a motion for contempt and the appointment of a receivership on December 15, 2022.

"The consent judgment was entered more than seven years ago, and to date, the City has not substantially complied with the core provisions of that judgment and the four remedial orders that followed. Years of plans, revised protocols, and recommendations have not corrected the City's intractable failures—subjecting incarcerated New Yorkers to extraordinary suffering, and in far too many instances, death," said **Kayla Simpson, staff attorney with the Prisoners' Rights Project at The Legal Aid Society**. "The violence in the city jails is worse today than at the outset of the lawsuit because the City has persistently failed to follow court orders and protect the people in its custody. We can wait no longer. At this juncture, a receivership is necessary to protect not only our clients' constitutional rights, but their health and safety."

**Background**

In the [Second Status Report](#) released last month by the *Nunez* Independent Monitor on [DOC's Action Plan](#), the Monitor reports that incarcerated New Yorkers face more deadly and pervasive harm now than they did when the [first consent decree](#) was entered more than seven years ago in 2015.

## Department of Correction Use of Force

In particular, the levels of violence that incarcerated New Yorkers suffer at the hands of DOC uniformed staff are catastrophically high. According to the [Second Status Report](#):

- staff used force against incarcerated New Yorkers 5,135 times in the first nine months of this year;
- 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;
- when force is used in 2022, it more often results in serious injuries than in 2016.

The reasons for this persistent resort to violence as a daily management tool have been extensively detailed by the Monitor, reaching almost every area of basic facility and staff management, from the absence of supervisors, basic security incompetence such as posts unattended by officers or doors left unlocked, the collapse of basic jail services due to lack of staff, and DOC's unwillingness to control its Emergency Services Unit (ESU), a "[hyper-confrontational and unprofessional](#)" militarized [outfit](#) charged with responding to crisis situations.

These failures not only contribute to injury, but to death as well. At the time the court ordered the City's Action Plan in June, six New Yorkers had died this year in DOC custody and another 12 since, bringing the total number of City jail-related deaths to [18 for 2022](#), the highest in years.

### Failings Under DOC's Action Plan

In response to DOC's action plan - which essentially mirrors recommendations made by the Monitor in a [special report](#) issued on March, 16, 2022 - the Monitor cautioned DOC that it "must bring all resources to bear to...eliminate any constraints that are inhibiting the City and DOC from fully addressing the Monitoring Team's recommendations."

Furthermore, the Monitor later [stated](#) that the City and DOC must "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."

Despite the relatively low bar set by the Action Plan, the facts reported in the [October 28 Report](#) demonstrate that the City and DOC did not fulfill their April promises — let alone "immediately and aggressively" resolve obstacles to reform. They did not hire assistant commissioners to work with wardens; hire civilians to work in places long-identified as appropriate for civilianized roles; complete development of a restrictive housing model or remedy prior court-order violations.

In example:

- 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 the consent judgment;
- over 1,100 disciplinary cases in which DOC found use of force-related misconduct had yet to be adjudicated and DOC does not substantially comply with the court orders to impose timely or meaningful discipline;
- 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";

- despite the Monitor’s [long-repeated encouragement](#) for DOC to use suspensions as a close-in-time accountability tool — and in the face of extraordinary rates of force and increased severity of injury — DOC has decreased the number of use of force-related suspensions in 2022 as compared to prior years;
- lastly, not only has DOC remained non-compliant with the requirement to minimize unnecessary uses of force by emergency response teams like the E.S.U., 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.

## **Failures to Improve DOC Facility Leadership and Supervision**

The Monitor has identified the shortcomings of facility leadership as a barrier to reform for at [least three and a half years](#). The failure of these leaders to dismantle the violent culture in the facilities is central to DOC’s long-standing inability to cure the constitutional violations in *Nunez*.

For example, despite the requirement that DOC assign more captains to facilities and “substantially increase the number of assistant deputy wardens (ADW) assigned to the facilities” to supervise these captains, the number of captains and ADWs has declined:

- In January 2021, DOC had 80 ADWs and 523 captains in facilities and court commands, by June 2022 those numbers were 49 and 474 respectively.

The [October 28 Report](#) also describes how DOC has not even had deputy wardens in the jails on weekends, an astonishing admission given the reports of line staff working double or triple shifts and the dangerous conditions in the facilities.

While the Department is currently promoting 25 captains to ADW positions, the net gain is minimal, given they also are promoting ADWs to deputy wardens, which will exacerbate the shortage of captains. The City has offered no plan for fixing this daisy-chain of shortage of supervisors other than to maintain the status quo of the ordinary civil service process — 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.

DOC also fails to hold the supervisors they do have accountable for performing their jobs competently. The [October 28 report](#) describes facility leadership continuing to fail to perform basic duties, such as by conducting *“patently biased, unreasonable, or inadequate”* use of force reviews, in violation of the Remedial Order. Yet despite the Order also requiring DOC to take disciplinary or corrective actions when leaders do conduct *“biased, unreasonable and inadequate”* reviews, there is no evidence that DOC has done so.

The City’s principal plan for redressing this supervisory vacuum appears to rest on the proposed expansion of its authority to hire wardens externally: that with such authority, DOC 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 process leading to this proposed expansion of a warden hiring pool illustrates the fundamental difficulty in making progress in any meaningful time under the current structure. The Monitor formally recommended 18 months ago that the City expand the pool of potential wardens and deputy wardens to include correction professionals from other jurisdictions. After months of protracted negotiations, the City objected that such an action would violate state and local laws—but rather than seeking a court order to give them the authority to follow the Monitor’s recommendation, they created a substitute for hiring new civilian leaders to share responsibility with wardens. The fundamental flaws of such a structure were plain from the moment it was

proposed. Legal Aid and co-counsel objected, and so too did the Monitoring Team – nonetheless, the Action Plan incorporated this non-solution.

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. Only now, after 18 months of recommendations and significant expenditure of party and judicial resources, has the City agreed to seek a court order to hire wardens outside of DOC. 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. 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 New Yorkers.

### **Remedial Order Violations With Jail Intake**

The Action Plan and [Second Remedial Order](#) mandated that the City “[p]rocess all incarcerated individuals...through Intake and place them in an assigned housing unit within 24 hours,” and use “a reliable system to track and record the amount of time any incarcerated individual is held in Intake and any instance when an incarcerated individual remains in Intake for more than 24 hours.”

In November 2021, DOC reported zero new admission intake overstays, and the Monitor conveyed this representation in its report. Legal Aid was concerned about the reliability of this representation, as incarcerated clients had reported the contrary.

In subsequent reports, the Monitor and others confirmed several examples of intake overstays. Indeed, the same week the City and DOC proposed their Action Plan, the New York City Board of Correction (BOC) reported significant violations of the 24-hour rule.

BOC documents described in detail cases of individuals [locked in intake shower cages filled with blood and feces](#) – after the Action Plan was already underway. These are plain violations of the requirements of the Action Plan and Second Remedial Order.

More astonishingly, the BOC documents revealed that the Department’s data on intake overstays had been [purposefully manipulated](#).

A BOC memorandum noted that, “Board staff observed and documented a pattern of data manipulation to DOC’s Intake Dashboard. Specifically, Board staff documented [16 instances](#) [over the period of a few days] 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.”

The Monitor alluded to this information in its [October 28 Report](#), positing various excuses for this conduct but concluding it could not say why the data had been altered. The Monitor concluded that at present there is no “reliable data” on intake overstays, and the extent of 24-hour violations “is simply unknown.”

Not only is this an independent violation of a separate provision of the Action Plan and Second Remedial Order’s requirement of a reliable tracking system, but it severely undermines the ability of anyone to rely upon the DOC’s own data about compliance with the court’s orders.

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*The Legal Aid Society exists for one simple yet powerful reason: to ensure that New Yorkers are not denied their right to equal justice because of poverty. For over 145 years, we have protected, defended, and advocated*

*for those who have struggled in silence for far too long. Every day, in every borough, The Legal Aid Society changes the lives of our clients and helps improve our communities. [www.legalaidnyc.org](http://www.legalaidnyc.org)*