

EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

MARK NUNEZ, et al.,
Plaintiffs,
v.
CITY OF NEW YORK, et al.,
Defendants.

11 Civ. 5845 (LTS)(JCF)

UNITED STATES OF AMERICA,
Plaintiff-Intervenor,
v.
CITY OF NEW YORK and NEW YORK CITY
DEPARTMENT OF CORRECTION,
Defendants.

***AMICI CURIAE* BRIEF OF FORMER NEW YORK CITY OFFICIALS IN SUPPORT OF
APPOINTMENT OF A RECEIVER**

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STATEMENT OF INTEREST

Amici curiae are former New York City officials with extensive experience in public service and navigating the practical and political realities of that public service. They include **Stan Brezenoff**, former first deputy mayor of the City of New York with oversight over the operations of City agencies, including the Department of Corrections (the “DOC” or “Department”); **Gladys Carrion**, the former commissioner of city agencies Community Development and the Administration for Children’s Services and the state agency Office for Children and Family Services; **Elizabeth Glazer**, the former Mayor’s advisor on Rikers Island and former New York State Deputy Secretary for Public Safety with oversight of the state’s criminal justice agencies, including the state prison system and the State Commission on Corrections with oversight of the state’s jails, including the New York City jails; **Michael Jacobson**, the former Commissioner of the DOC, as well as a former top-ranking official in the Office of Management and Budget with oversight of the DOC budget; **Martha King**, former executive director of the Board of Correction, the oversight entity for DOC and former adviser to the first deputy mayor with responsibility for overseeing policy, budget and operations in DOC; and **Sarena Townsend**, former deputy commissioner for investigations and trials at DOC, responsible for accountability within the department and relations with city agencies with interests in conditions in the jails.

Amici have been motivated through their careers by an abiding faith in the ability of the City’s government to perform effectively and to serve the best interests of the City’s inhabitants. However, having dedicated significant portions of their careers to public service in New York City government, *amici* are all too familiar with the myriad ways—short of the threat of termination—a Mayor can stymie an employee’s effectiveness and otherwise frustrate an employee to the point of quitting. As New York City former public servants, *amici* have a wealth of experience and insight

into the inner workings of City government and the various ways a Mayor can (and does) influence and sometimes hinder the effectiveness of public servants. Their experiences highlight the complexities and political dynamics that can make it challenging for commissioners and other officials to perform their duties effectively and independently. Specifically, the *amici* have observed and experienced firsthand the wide range of levers by which political pressures are exerted on City officials. Their extensive experience as public servants makes clear the innumerable ways a Mayor can apply power and pressure on subordinates within City government and how such pressure extends well-beyond the blunt tool of termination or removal from office.¹

Amicus Brezenoff served as President of New York City Health and Hospitals Corporation from 1981 to 1984 under Mayor Ed Koch, governing the world's largest non-federal health care system. Mr. Brezenoff became the City's Deputy Mayor for Operations in 1984 and served as First Deputy Mayor from 1985 to 1990. Mr. Brezenoff then served as Executive Director of the Port Authority.

Amicus Carrion served as Commissioner of New York City's Community Development Agency under Mayor David Dinkins, leading antipoverty efforts by restructuring the Community Actions Programs. She additionally served as commissioner of the Office of Children and Family Services, overseeing New York State's child welfare, early childhood care and juvenile justice systems. In January 2014, Carrion was appointed Commissioner of the New York City Administration for Children's Services, a role she served in until March 2020, where she was charged with providing child welfare, early childhood care and juvenile justice services to the City's most vulnerable children and families.

¹ No party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person other than the *amici curiae* contributed money that was intended to fund preparing or submitting this brief.

Amicus Glazer headed the New York City Mayor’s Office of Criminal Justice from 2014 to 2020, where she served as the Mayor’s criminal justice adviser. Previously, as the New York State Governor’s Deputy Secretary for Public Safety from 2011 to 2013, she oversaw nine criminal justice agencies, including Corrections, Parole and the State Commission of Corrections, the oversight body of the state’s jails, including Rikers. She has served as the First Deputy Commissioner in the New York City Department of Investigation and earlier as an Assistant United States Attorney in the Southern District of New York, where she led successively the Organized Crime, Violent Gangs and Crime Control Units.

Amicus Jacobson’s public service career began in the New York City Office of Management and Budget, where he worked from 1984 to 1992, eventually becoming deputy budget director. He then served as the New York City probation commissioner from 1992 to 1996 and as the New York City correction commissioner from 1995 to 1998, focusing on reforming the City’s correctional facilities. He was the President of the Vera Institute of Justice from 2005-2013.

Amicus King was the Executive Director of the New York City Board of Correction (the “BOC”) from July 2015 through July 2019 and, as part of that role, oversaw production of dozens of reports and audits on violence, health care, services, visiting, grievances, restrictive housing and other conditions and supervised hundreds of investigations into complaints and appeals from people in custody. Prior to that role, Ms. King was an adviser on criminal justice and corrections policy to New York City’s first deputy mayor from approximately January 2014 through June 2015. In this capacity, she met with DOC and jail health care staff on a regular basis to address policy priorities and implementation progress and challenges.

*Amicus Townsend*² was the Deputy Commissioner of the Investigation Division and the Trials Division at the New York City Department of Correction between 2016 and 2022. In that role, she oversaw the investigation into all staff misconduct in the New York City jails, and disciplined staff when they violated administrative or criminal laws, either on or off-duty. In her position as the head of internal oversight, Amici Townsend worked hand in hand with external oversight partners like the New York City Department of Investigation, the Southern and Eastern Districts of New York, the city's District Attorney Offices, the New York State Attorney General, the Board of Correction and the New York State Commission of Correction. Prior to her position with the Department, Amicus Townsend served as Deputy Bureau Chief in the Kings County District Attorney's Office, where she prosecuted crime in Brooklyn for a decade.

SUMMARY OF ARGUMENT

The ways that power and pressure can be and are exerted on subordinates within City government by the Mayor are innumerable and go well-beyond the blunt tool of termination or removal from office. The *amici* have observed and experienced firsthand the wide range of levers by which political pressures are exerted on City officials. Their extensive experience as public servants makes clear the innumerable ways a Mayor can apply power and pressure on subordinates within City government and how such pressure extends well-beyond the blunt tool of termination or removal from office.

Through the exercise of his levers of power, which are far from limited to termination of employees, the Mayor continuously influences and controls City officials to act in accordance with the demands of City Hall. For example, the Mayor controls (1) the City's operations, which allows the Mayor—if so motivated—to disrupt the daily operations of city agencies through frequent and

² After leaving the City's employ, as part of her private legal practice, Ms. Townsend has served as a paid consulting expert for counsel to the Plaintiff Class.

demanding meetings, requiring advance notice and approval of policy decisions, and directing audits that consume agency resources and generate adverse publicity; (2) personnel decisions, exerting influence over hiring and firing decisions within City agencies; and (3) the City’s budget and exercises that control on at least an annual basis, and in each quarter through a new financial plan, to determine who, what, and to what extent an agency is funded. As a result, officials like the DOC Commissioner are never truly independent from the Mayor and the political pressures of City government, regardless of whether such officials can be removed from office or are given additional responsibilities with a different line of command.

The City’s proposal—*i.e.*, that Commissioner Lynelle Maginley-Liddie would receive an additional “Compliance Director” title and not be subject to removal by the Mayor for a five-year term (the “City’s Proposal”)—ignores that reality. *See* generally Dkt. 811-12. The City’s Proposal would only (if at all) provide the *illusion* of independence from the Mayor. In reality, under the City’s Proposal, the individual charged with addressing matters related to safety and use of force within the DOC would without question remain subject to the immense political powers of City Hall and thus would continue to lack independence from the Mayor and such political influences. In other words, the City’s Proposal would maintain the untenable *status quo*.

ARGUMENT

I. **REMOVING THE THREAT OF TERMINATION DOES NOT ELIMINATE CITY OFFICIALS’ EXPOSURE TO POLITICAL PRESSURES AND OTHER POWER DYNAMICS.**

Fundamentally, the City’s Proposal ignores that termination is not the only way, or even the most direct way, that a Mayor exerts influence over the City’s agencies and the people who run them. The City’s Proposal to confer the powers of a receiver on the current Commissioner by adding an additional title of “Compliance Officer” answerable to the Court, and by securing a five-

year term during which time the Commissioner / Compliance Officer would be immune from dismissal fails to recognize the real-world dynamics within which a receiver must operate. This Rube Goldberg construction signals—in name and in structure—to the Department, to other City agencies and to the multiple entities outside the Department and the City’s organizational structure who are important to the operations of the Department, that the receiver is subordinate to—not independent of—the Mayor, his government and the political forces that inevitably and always are present in government.³ Simply put, if adopted, the practical effect of the City’s Proposal would result in the “continued insistence” which this Court has acknowledged, “that compliance with the Court’s orders would only lead to confrontation and delay,” (Dkt. 803 at 55), and which, to date has stymied the best efforts of two mayors and five commissioners (since the Consent Decree was signed) to fix the issues driving the horrendous and untamed violence in the City’s jails. Accordingly, the City’s Proposal will not result in an *independent* receiver; instead, the Commissioner / Compliance Officer will remain subject to the overwhelming political and other power dynamics of New York City government, and will continue to fail to rectify the unconstitutional conditions within the New York jails.

On paper the governance of the City of New York is set out by charter (the “Charter”). The Mayor is given broad executive powers, among them to appoint deputy mayors and commissioners, to set the city’s budget, and negotiate its union contracts. *See* N.Y.C. Charter §§ 3–19. This is what is called a “strong mayoralty” model whereby the key levers of government power rest in the Mayor’s office. While these broad powers can promote good governance and consistency of policies across city agencies, these powers can be, and not infrequently are,

³ Indeed, because under the City’s Proposal, the Commissioner / Compliance Officer would remain subject to the Mayor’s influence, she would also be subject to the forces who have historically exerted political control over the Mayor, such as the various unions that represent DOC personnel. *See generally* Dkt. 642 at 8–10 (providing examples of how the correction officers’ union has exerted pressure over commissioners and top deputies).

employed to block initiatives that the Mayor disfavors. While termination of a commissioner may be the bluntest of ways to exert control over that individual, there are countless other levers that are employed on a daily basis to ensure that subordinates carry out the directives of the Mayor. A Mayor unhappy with the Compliance Director's proposals could use some or all of these levers to stymie all reform efforts, all while the Compliance Director would maintain her job without threat of termination.

A. *The Mayor Controls City Employees' Attention and Resources.*

If the Mayor disagrees with policy decisions that the Commissioner and its staff are implementing, the Mayor can put sand in the Department's gears through innumerable methods until the Commissioner changes course. These include, among other methods, (a) exerting control over personnel decisions within the DOC, including by directing the Commissioner to hire individuals associated with City Hall; (b) declining to approve contracts for goods services entered into by the DOC; (c) directing other City agencies and commissioners to be non-responsive to DOC requests for support or assistance; and (d) exercising control over lawsuits pending against the Department and its personnel; (e) calling for disruptive meetings "on demand" (or scheduling daily meetings) between the Commissioner and her key operational staff and City Hall personnel to report on and justify DOC actions; (f) demanding advance notice and pre-approval of any policy decisions that would have political implications or would generate press interest; (g) directing audits by the Department of Investigation that demand DOC personnel time and attention and that can generate adverse publicity; and (h) calling on political allies on the City Council to initiate Council hearings and to request extensive documentary information. At bottom, these tactics could

result in the Compliance Director determining that she is not empowered to make decisions absent express mayoral approval.⁴

The above examples are not meant to be exhaustive; indeed, it would be *impossible* to list all of the ways in which the Mayor can exert pressure of City employees without resorting to termination. Instead, these examples merely illustrate the many ways to control and distract a commissioner, short of a threat of termination. In other words, while the City's Proposal indicates that the mayor would not have the ability to terminate the Commissioner / Compliance Officer, the Mayor would retain the power to make that person's job literally impossible if the Mayor disagreed with the Commissioner / Compliance Officer's policy and operational decisions.

B. *The Mayor Controls the City's Purse Strings.*

The Mayor controls the City's budget. The Mayor is required by Charter to propose an executive budget each year. *See* N.Y.C. Charter § 225(a) ("The mayor shall each year . . . prepare and submit to the council a preliminary budget and an executive budget each of which shall present a complete financial plan for the city and its agencies for the ensuing fiscal year."). While the City Council ultimately must pass the budget, the power lies with the Mayor in the first instance to decide who and what gets funded and to what degree. The budget year starts on July 1 and each quarter the mayor may adjust spending, another opportunity to exercise power over his agencies. *See* N.Y.C. Charter § 226.⁵

⁴ *See, e.g.*, Melissa Russo, *Sewell Speculation: Claims of Micromanager Mayor Follow NYPD Commissioner's Resignation*, NBC New York (June 14, 2023), <https://www.nbcnewyork.com/news/local/sewell-speculation-claims-of-micromanager-mayor-following-nypd-commissioners-resignation/4420644/>; Dan Rivoli, *Police Experts Weigh in on Mayor Adams' role in NYPD*, Spectrum News 1 (Aug. 31, 2023), <https://ny1.com/nyc/all-boroughs/politics/2023/09/01/police-experts-weigh-in-on-mayor-adams--role-in-nypd/>; Greg B. Smith, *et al*, *Scandal-Scarred Deputy Mayor Cuts Commissioner Out of Loop to Meet With Police Brass*, The City (Sept. 29, 2022), <https://www.thecity.nyc/2022/09/29/philip-banks-keechant-sewell-nypd/>.

⁵ *See also Understanding New York City's Budget: A Guide*, N.Y.C. Independent Budget Office, <https://www.ibo.nyc.ny.us/iboreports/understandingthebudget.pdf>.

A mayor's control over the City's budget to block changes in an agency can be bald. For example, this past year the Adams' administration slashed the budget of the Department of Investigation (the "DOI") following the indictment of the Mayor—an investigation in which DOI had played a large role.⁶ These budget cuts can even be done without notice, and without public or institutional support, regardless of the consequences. The Adams' administration has already done that to the DOC when in May 2023, Mayor Adams cut \$17 million worth of programs, essentially eliminating all resources for education, reentry services and life skills training for detainees on Rikers Island.⁷

As the Mayor's 2023 actions exemplify, this critical lever allows the Mayor to exert immense power and influence over the Commissioner and DOC as the Mayor's control over the budget extends to funding for infrastructure projects (including funding for urgently needed improvements for the decrepit Department facilities) and the funding for key Department positions, among other budget items, without which funding, the Commissioner would be inhibited from carrying out her duties whether as Commissioner or as "compliance officer."

CONCLUSION

The City's Proposal does not provide for "compliance with the court's orders" by persons who are not "answerable principally to political authorities." Dkt. 803 at 55. To the contrary, the Mayor would continue to be able to assert immense political pressure over the proposed

⁶ See Katie Honan, *City's Top Watchdog Hounded by Budget Cuts and Staffing Shortages* (Mar. 7, 2023), <https://www.thecity.nyc/2023/03/07/departments-investigation-budget-cuts-staff-shortages/>.

⁷ See Maya Kaufman, *et al.*, *Adams' Budget Cuts Hit Rikers Island*, Politico (May 16, 2023), <https://www.politico.com/newsletters/new-york-playbook/2023/05/16/rikers-program-is-latest-victim-of-mayors-budget-cuts-00097090>; Jacob Kaye, *Jail Programming Suffers a Year After DOC Cut Nonprofit Contract*, Queens Daily Eagle (May 20, 2024), <https://queenseagle.com/all/2024/5/20/jail-programming-suffers-a-year-after-doc-cut-nonprofit-contract>.

Commissioner / Compliance Director, ensuring that such individual lacked any meaningful independence.

Dated: February 7, 2025

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