



August 26, 2021

Gov. Kathleen C. Hochul

Mayor Bill de Blasio

Commissioner Anthony Annucci

Commissioner Vincent Schiraldi

Dear Governor Hochul, Mayor de Blasio, Commissioner Annucci, and Commissioner Schiraldi:

We write to address the humanitarian crisis unfolding in the New York City jails and urge you to protect health and lives by immediately removing people from this dangerous environment.

The jails simply cannot house people safely. In addition to the increasing spread of COVID-19, a mass wave of staff absenteeism has created an extraordinarily dangerous disruption to both security and basic services for people in custody. For this reason, among many other complex factors, the New York City Department of Correction (“DOC”) cannot presently maintain basic levels of health, safety and security in the jails. Incarcerated people are locked in housing areas for days with no food, showers, access to lawyers or medical visits. They are not being protected from violence. Tragically, these conditions have led to the deaths of people in custody, mostly recently, a young man by the name of Brandon Rodriguez, and will predictably lead to more deaths as well as serious injuries, sustained declines in health, and long-term trauma.<sup>1</sup>

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<sup>1</sup> Bromwich, Jonathan and Ransom, Jan. An ‘Absolute Emergency’ at Rikers Island as Violence Increases, N.Y. Times, August 24, 2021, available at <https://www.nytimes.com/2021/08/24/nyregion/rikers-island-emergency-chaos.html>

Earlier this week, the court-appointed monitor in the *Nuñez*<sup>2</sup> federal class action sounded the alarm, detailing the “pervasive high level of disorder and chaos” in the jails.<sup>3</sup> The Monitor stated that, “as of the end of July 2021, the Department reported that of the approximately 8,500 uniformed staff members, approximately 1,650 were out on sick leave and another 1,400 were medically monitored (in most cases meaning they may not work with incarcerated people).” In addition, the Monitor reported that “staff failed to report to another 2,300 shifts they were expected to work,” in other words, AWOLing. As a result, “there is a manifest risk of serious harm to both detainees and staff, which in turn, generates high levels of fear among both groups, with each accusing the other of exacerbating already challenging conditions.”

Medical personnel in the jails have also reported that DOC’s operational failures are preventing clinicians from providing medical treatment to people in custody, because DOC staff responsible for bringing people to a medical clinic, or to the prison wards in hospitals, are simply absent.<sup>4</sup> Medical staff also report that the intake areas are extremely dangerous. Even getting food is a problem: a nurse said that last week, the intake unit held 40 people overnight on benches without providing any meals.<sup>5</sup>

Most troubling, there has been a sharp increase in deaths in the jails. In all of 2020—in a global pandemic—there were seven reported deaths in custody.<sup>6</sup> In 2021, so far, there have been at least eight, an extraordinary rate for any carceral facility.

DOC’s operational failures are exacerbated by the jails’ bloated population. In 2020, Rikers experienced the lowest population since WWII, due to a combination of bail reform and decarceration efforts necessitated by COVID-19. Since then, the population has rebounded to pre-COVID conditions and continues to grow.

Shrinking this population is necessary both to end this humanitarian crisis and to prevent the unconscionable intentional placement of people into a dangerous environment. Decarceration during the height of the COVID-19 pandemic, when the jails were unsafe because of a different set of emergency conditions, saved lives. The current crisis poses no less lethal a threat than the pandemic of 2020. Decarceration is not only a humanitarian imperative, but a matter of racial justice: of the nearly 6,000 people incarcerated in city jails, 58.9% are Black and more than 89% are non-

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<sup>2</sup> *Nuñez v. City of New York* is a case brought by the Prisoners’ Rights Project of the Legal Aid Society and the United States Department of Justice to address unconstitutional brutality in the city jails. The court-appointed Monitor produces reports every six months assessing the City’s compliance with the Consent Judgment—and subsequent Remedial Order—entered in the case.

<sup>3</sup> Letter from Steve J. Martin, Monitor, and staff to United States District Judge Laura T. Swain, August 24, 2021, available at [2021-08-24-Letter-to-Court-re-Conditions-FINAL.pdf \(tillidgroup.com\)](https://www.tillidgroup.com/2021-08-24-Letter-to-Court-re-Conditions-FINAL.pdf)

<sup>4</sup> Gartland, Michael. *NYC jails medical staff fear for safety, blame staffing shortage: ‘Nobody wants to die at work,’* NEW YORK DAILY NEWS, August 15, 2021, available at <https://www.nydailynews.com/news/politics/new-york-elections-government/ny-rikers-island-department-of-correction-nurses-doctors-20210815-7afhpb2tdzddljecuoutygmzc4-story.html>.

<sup>5</sup> Rayman, Graham. *NYC rapper 2 Milly’s ordeal in Rikers Island’s summer of hell: Brutal heat, few beds, no water — and sympathy for correction officers,* New York Daily News, August 24, 2021, available at <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-conditions-poor-staff-shortage-20210824-q7oxvbmldr5go3cig7jeddrum5q-story.html>

<sup>6</sup> Ransom, Jan. *‘Disorder and Chaos’ in N.Y.C. Jails as Pandemic Recedes,* THE NEW YORK TIMES, June 19, 2021, available at <https://www.nytimes.com/2021/06/19/nyregion/rikers-island-chaos-suicides.html>.

white.<sup>7</sup> Failing to take seriously the threat to those individuals' health, safety and lives and, indeed, deliberately continuing to send them into an environment of uncontrolled danger, perpetuates the most malignant strains of this country's racist legacy.

With this in mind, we urge you to take the following steps without delay:

- First, we ask you to work with us to urge prosecutors and judges to use their discretion to both reduce the number of people sent to jail and release people currently held in the city jails. Prosecutors and judges' willingness to decarcerate saved lives at the height of the pandemic and a similar will is necessary in the present extraordinary circumstances. We also urge Commissioner Schiraldi to brief the chief administrative judges and five New York City District Attorneys as to the horrific conditions in city jails and urge increased scrutiny around bail requests/bail setting and any other prosecutorial/judicial action that increases the current DOC population.
- Second, as the Mayor did during the first wave of the pandemic, he should exercise the power conferred by Correction Law Article 6-A to grant work release to people serving sentences in city jails. The Mayor's prior intervention resulted in a meaningful reduction in the jail population, removing people from congregate settings as infections spiked.
- Third, the Mayor must take all available measures to address the staff absenteeism and end all triple and quadruple shifts by correction officers.
- Fourth, the Governor should immediately sign the "Less Is More Act" (S1144 Benjamin /A5576 Forrest), a bill that would overhaul New York's punitive parole revocation system. Of immediate relevance, Less Is More would eliminate mandatory detention in cases where people were charged with violating their parole and dramatically limit incarceration as a sanction for any technical violation of parole.<sup>8</sup> To ensure these tools are immediately applied to this crisis situation, Acting Commissioner Annucci should exercise his discretion to operationalize Less Is More immediately and lift the parole violation warrants for those people currently in city custody. As of August 25, there were 269 people in city jails who were only charged with technical violations of parole and were not charged with any new crime.<sup>9</sup> The passage of Less is More by the New York State legislature was vindication of the principle that the over-incarceration of people on parole was bad public policy; to continue to house people who would be released under that bill in the current unsafe environment is beyond unjustifiable.

The city jails are in the throes of a historic crisis. To prevent further harm to people's health, and to save lives, we urge you to act swiftly and decisively to reduce the jail population. We stand ready to assist in any way we can.

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<sup>7</sup> People in Jail in New York City, Daily Snapshot, Vera Institute of Justice, available at <https://greaterjusticenyc.org/nycjail/>.

<sup>8</sup> [https://www.westlaw.com/Document/I8BED7C31C9E611EB91D2FCE0ABDCE685/View/FullText.html?transitionType=Default&contextData=\(sc.Default\)&VR=3.0&RS=cblt1.0](https://www.westlaw.com/Document/I8BED7C31C9E611EB91D2FCE0ABDCE685/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0)

<sup>9</sup> New York City Board of Correction, Weekly COVID-19 Update, Week of August 7 – August 13, 2021, available at [New York City Board of Correction Weekly COVID-19 Update \(nyc.gov\)](https://www.nyc.gov/newsroom/2021/08/13/new-york-city-board-of-correction-weekly-covid-19-update)

Sincerely,

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