



NYCLU

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**Testimony of the New York Civil Liberties Union
Before City Council Subcommittee on Landmarks, Public Siting and Maritime Uses
Regarding the Land Use Permit Applications for the Borough-Based Jail System
Submitted by the New York City Department of Correction and the Mayor’s Office of
Criminal Justice**

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The New York Civil Liberties Union (NYCLU) respectfully submits the following testimony in support of the City’s pursuit to close the Rikers Island jail complex. Given the well-documented horrors and affronts to countless individuals’ rights, liberties, families, and lives that have occurred at Rikers, it is an understatement to say that the complex should have been closed generations ago. Yet despite savage abuse and rampant violence, the City has permitted the 400-acre island to warehouse tens of thousands of people for decades in egregiously inhumane ways. We therefore call for members of City Council to vote in favor of closing Rikers. However, we call on members of City Council to ensure that the plan to open four smaller jails is coupled with a meaningful commitment from the City to address the persistent use of violence and isolation by the Department of Correction (“DOC”). We specifically ask the members of City Council to issue a mandate for the City (the Mayor’s Office of Criminal Justice and DOC) to plan and guarantee that the City will not use the land for the proposed jails to maintain the same use-of-force rate and isolation practices that they are using today.

I. Introduction

The NYCLU, an affiliate of the American Civil Liberties Union (ACLU), is a not-for-profit, non-partisan organization with eight offices throughout New York State and approximately 160,000 members and supporters. The NYCLU’s mission is to defend and promote civil liberties and civil rights. We work to ensure that the core values and principles of equality, liberty, and due process are more fully and consistently realized in the lives of all New Yorkers. In pursuit of these principles we fight for the dignity of all people, with particular attention to the pervasive and persistent harms of racism.

We are deeply committed to ensuring equal protection of the law and realizing the promise that every New Yorker be treated fairly and humanely, which is why we call on City Council to

raise as areas of substantive concern the DOC's historic use of violence and isolation as primary tools for discipline and order. In no way are we suggesting to delay the vote. But with this vote, members of City Council have the opportunity to transform the way we treat people who have been accused and convicted of crimes and must do everything in its power to not permit the City to simply replicate the dangerous culture of Rikers in four smaller facilities.

II. Reduced Jail Bed Capacity

The NYCLU applauds the Mayor's commitment to decarceration, but we welcome plans to further reduce the jail bed capacity given the future projections for the reduced population. When Mayor de Blasio first took office, Rikers' average daily population was 11,089; this past July, the average daily population was 7,290.¹ Given the upcoming implementation of the state pretrial reforms, the City anticipates that the population will fall below 4,000 by the time the new jails are built. This commitment to a reduced bed capacity rightly recognizes the proven ways to keep people safe through investments in rehabilitative services, community programs, court diversion and other alternatives to incarceration. Because there is scant evidence that incarcerating people increases public safety, the plan makes clear that the City must divorce itself from policies that long justified the existence of a city jail that once held approximately 22,000 people.

III. Violence

Unlike the City's decarceration efforts, efforts to decrease the rate of violence on Rikers Island have failed, cementing a culture of violence that risks spreading to the four smaller jails. In 2014, the United States Department of Justice found a pattern and practice of excessive force and violence at Rikers that the United States Attorney's Office for the Southern District of New York described as a "deep-seated culture," particularly pervasive with the adolescent population.² Violence remains on a steady incline despite many recent efforts: DOC's 14-Point Anti-Violence Plan;³ the placement of a federal monitor who was tasked to monitor use-of-force incidents and to make recommendations as part of a consent judgment;⁴ and the Board of Correction's ("BOC") ongoing oversight and investigatory efforts. From 2008 to 2017, despite a significant decline in

¹ NYC Smaller, Safer, Fairer: A Roadmap to Closing Rikers Island, Status Report (last visited Sept. 3, 2019), <https://rikers.cityofnewyork.us/>.

² See Statement by U.S. Attorney Office for the Southern District of New York re: *Nunez v. City of New York*, 11 Civ. 5845 (LTS)(JCF) (June 22, 2015), <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-finds-pattern-and-practice-excessive-force-and-violence-nyc-jails>.

³ NYC Mayor de Blasio, Commissioner Ponte Announce 14-Point Rikers Anti-Violence Agenda <https://www1.nyc.gov/office-of-the-mayor/news/166-15/mayor-de-blasio-commissioner-ponte-14-point-rikers-anti-violence-agenda#/0>.

⁴ See Terms of the *Nunez* Consent Judgment, <https://www.justice.gov/usao-sdny/file/479956/download>.

the DOC population, the number of injuries to people in DOC custody increased 101% from 15,629 in 2008 to 31,368 in 2017.⁵ From 2016 to 2018, the office managing the health and mental health services on Rikers, NYC Health + Hospitals' Correctional Health Services ("CHS"), found that the rate of serious injuries slightly declined from an average of 9.73 per 1,000 inmates in 2016 (June.—Dec.) to an average 7.48 per 1,000 inmates in 2018 (Jan.—Sept.). But the BOC found that the DOC was underreporting serious injuries, consistently reporting 80% fewer serious injuries than CHS. DOC's investigation process for injuries is "plagued by delays, poor accountability, and incomplete reviews."⁶

In its seventh report, the federal court monitor in the *Nunez* consent judgment⁷ reported that the number of use-of-force ("UOF") incidents by DOC continued to rise, reaching its highest level in December 2018. This increasing rate of violence is a continuing violation of the *Nunez* settlement, and comes even as the population of Rikers is steadily decreasing. Although the DOC contends the population left is smaller but more dangerous and merits such UOF rates, the *Nunez* monitor found that the DOC has failed to impact the factors identified that would lower its UOF rate.⁸

IV. Isolation

We also have serious concerns about the expanding use of isolation at Rikers. The DOC continues to expand the use of isolation despite increased scrutiny, rules and regulations, and isolation attributable tragedies happening to those most vulnerable to severe injuries, such as young adults under 22, and those who have serious medical issues. In 2015, the BOC issued a package of rules limiting the use of isolation.⁹ However, since the promulgation of these rules, the DOC has repeatedly taken steps to avoid compliance.

In 2015, the DOC increased transfers of individuals 21 and younger, which allowed the DOC to circumvent the rules and regulations forbidding the placement of adolescents and young adults in punitive segregation. In 2018, the DOC transferred at least 10 young men, eight of whom were sent to punitive segregation in a jail in Albany.¹⁰ Many suspect that these transfers of young

⁵ NYC BOC Report 3 (Jan. 2019), <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/2019.01.07%20-%20BOC%20Serious%20Injury%20Report%20-%20Final.pdf>.

⁶ *Id.* at 4.

⁷ Seventh Monitor Report in *Nunez v. City of New York et. al.*, 11-cv-5845 (Apr. 18, 2019), https://www1.nyc.gov/assets/doc/downloads/pdf/7th_Monitor_Report.pdf.

⁸ BOC Report, *supra* note 5, at 14.

⁹ First, the BOC prohibited the placement of 16- to 21-year-olds in punitive segregation, where people are locked in their cells for twenty-three hours of the day. Second, the BOC prohibited the placement 19- to 21-year-olds in enhanced supervision housing ("ESH"), which permits 17 hours of isolation. Third, the BOC limited the amount of time an adult aged over 21 can spend in solitary confinement to a maximum of 30 consecutive days.

¹⁰ Rosa Goldensohn, *With Rikers closure still years off, de Blasio backs away from young adult reforms*, Politico New York (Sept. 6, 2018), <https://www.politico.com/states/new->

detainees stand as a way for DOC to curb the ban on punitive segregation for adolescents and young adults.

Since the ESH ban for young adults was passed, the DOC has continuously requested and received variances from the BOC to waive its compliance with this requirement at least five times. Today, therefore, the DOC can send detainees between ages 18 and 21 to ESH. In the ESH unit, young adults are sometimes restrained to desks for all out-of-cell activities and receive 30-day reviews to assess whether they can be moved to a less restrictive setting. Despite the DOC's steps to track, monitor, and evaluate ESH, in practice, most young adults in ESH are spending nearly all day locked in their cells rather than the minimum 7 hours provided for under the ESH Standards. Nearly all young adults in ESH have no-contact visit restrictions imposed for the duration of their time in DOC custody, and very few young adults have progressed to less restrictive housing assignments. Locking young people in cages for 23 hours a day with no human contact is not just cruel; it is a form of torture. It does not reduce violence or promote jail safety. It simply inflicts permanent damage on developing minds too young to be beyond repair. The case of Kalief Browder, a teenager who spent two of the three years awaiting trial in solitary confinement at Rikers Island, more than proved the dangers associated with prolonged isolation. After prosecutors discovered they had no valid case against him, he was released but later committed suicide in 2015.

More recently, Layleen Polanco, a 27-year-old transgender woman, died in some form of solitary confinement, even though the DOC and a doctor, who cleared her to be placed in solitary, knew she had a seizure disorder. The city medical examiner's office reported that Polanco's cause of death was due to a seizure. Although the City disputes that Layleen was in punitive segregation when she died, the fact remains that she was in some form of isolation or restrictive housing that made her vulnerable to severe injury.

If the City is allowing the DOC to routinely pursue ways to curb the limited rules and regulations that already exist, there is nothing to assure us that the smaller jails will not result in even more proactive tactics pursued by the DOC to ramp up isolation (in all of its forms) and, consequently, jail attributable deaths.

V. Conclusion

As members of the City Council, you share in the responsibility to ensure that the long overdue closure of Rikers jail complex happens, but you cannot leave the DOC's current use of violence and isolation untouched in overseeing the City's jail plan. We are members of the Mayor's Justice Implementation Task Force—tasked with the effort to help the City to change Rikers' culture—and unfortunately have observed firsthand how the City continuously casts a blind eye

york/albany/story/2018/09/05/with-rikers-closure-still-years-off-de-blasio-backs-away-from-young-adult-reforms-594152.

on the DOC's enhanced use of isolation and escalating use of violence. If you do not confront and dismantle the culture of violence and isolated confinement at Rikers Island, you are doomed to replicate its culture in four borough-based jails. The NYCLU urges you to close the Rikers Island complex – but to do so in tandem with a mandate and plan for the four proposed jails to avoid the culture of violence and isolation that pervade Rikers.

We thank the committee for the opportunity to testify on these important matters.