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On Behalf of the New York Civil Liberties Union

Before the New York City Council Committees on Criminal Justice and Labor

Regarding the Conditions of New York City Jails

September 17, 2021

The New York Civil Liberties Union (“NYCLU”) thanks the New York City Council Criminal Justice Committee and Labor Committee for holding this important joint hearing on the condition of New York City jails. The NYCLU is the New York affiliate of the American Civil Liberties Union. It is a not-for-profit, non-partisan organization with eight offices throughout the state and more than 180,000 members and supporters. The NYCLU’s mission is to promote and protect the fundamental rights, principles, and values embodied in the Bill of Rights of the U.S. Constitution and the New York Constitution.

The NYCLU is deeply committed to ensuring all humans in custody are treated fairly and humanely. The current conditions at Rikers Island are not only inhumane, they are deadly. 10 people at Rikers have died this year, which is significant increase from previous years.¹ At the joint committee hearing, Public Advocate Jumaane Williams, and several elected officials from state government testified as to the horrific conditions they witnessed at Rikers. Each account noted how incarcerated humans were crammed into tight spaces including showers where there was no space for them to sit, surrounded by dead insects, rodents, and rats. Two Queens lawmakers noted that they saw an incarcerated person try to hang himself, and that they had to call for a corrections officer to prevent the man from completing suicide. The Public Advocate noted that he met a transgender woman that was placed in a cell with men. Numerous lawmakers recounted several incarcerated people approached them because they had not been able to contact a relative, and they wanted the lawmaker to let their relatives know that they are safe.

Likewise, Dr. Robert Cohen, a Board of Corrections member and former Director of Montefiore Rikers Island Health Services echoed many of the observations of elected officials. He also noted that incarcerated people spent days in intake waiting for housing and medical care, and that many are not getting the mental health services that they need, which likely contributed to the record number of completed suicides. He also noted that incidences of unprovoked violence by staff have increased. Department of Corrections Commissioner Vincent Shiraldi also noted the horrific

¹ Jan Ransom, “10 Deaths, Exhausted Guards, Rampant Violence: Why Rikers Is In Crisis,” New York Times. Sept. 15, 2021. Available at: <https://www.nytimes.com/2021/09/15/nyregion/rikers-island-jail.htm>

conditions of the jail, and he remarked how mass absenteeism from corrections officers is a primary contributor to the disfunction and inhumane conditions. On any day, 1600 officers call in sick to work, or they simply do not report for duties.

Of course, news of the deplorable conditions at Rikers is not new. However, as the population of Rikers has ballooned back to pre-pandemic levels, living conditions for those incarcerated have only gotten worse.² It is imperative that city leaders take several actions to remedy this situation.

As a threshold issue, the City Council must ensure that future hearings conform to the requirements and spirit of the Open Meetings Law, and provide sufficient notice – the law requires 72 hours - of the time and place for meetings.³ Due to late changes with virtually no notice for this hearing, it fell short of that standard.

Initially, this hearing was scheduled and publicized on the City Council's website as an in-person hearing at City Hall to take place on September 15 at 10 a.m.⁴ In reliance, advocacy organizations, directly impacted family members, corrections officers and other union members, formerly incarcerated people, and other members of the public made decisions about whether they could attend – and prepare for – the hearing. This included making child care arrangements, and determining whether to take leave from work. While non-English speakers are typically required to request language access services at least 72 hours before virtual hearings, there was no notice of a virtual hearing, so there was no notice as to this requirement.⁵

However, on the afternoon of September 13, this hearing was changed from an in-person hearing, to a virtual hearing to be held on September 15 at 10 a.m. No notice was given to advocates for incarcerated persons. There were no social media post to inform the public of this change. The change was not publicized. As a result, many advocates did not find out about the meeting's change to virtual until the next day, September 14.

Registration to speak at the virtual hearing closed on or before 9:45 a.m. on September 14. This is customary, as many city council hearings require members of the public to register to speak 24 hours before the meeting starts, unlike in-person hearings, where members of the public can register at the time of the hearing.⁶ Registration closed with less than a day of notice. Many people did not even know that the meeting moved to virtual by the time that registration closed. Several advocacy organizations, including the NYCLU, reached out to council staff to urge them to reopen registration for the hearing. Council staff responded to emails politely and expeditiously. However, members of the public were unable to register for the hearing for several hours. The City Council, nor either committee, publicized registration for the meeting being reopened. For a member of the public to know that the online link to register for the hearing reopened, they would have either had to have heard it from a contact, or they would have had to repeatedly check the City Council website during work business hours on a Tuesday. Instructions on the City Council's website noted that non-English speakers needed to send requests for language access at virtual hearings 72 hours before the

² *Id.*

³ *N.Y. Pub. Off. Law § 102(2)*

⁴ Notice, instructions, and registration for all New York City Council hearings is available at <https://council.nyc.gov/testify>

⁵ *Id.*

⁶ *Id.*

hearing, which would have been impossible for this hearing. The totality of circumstances made a Wednesday morning meeting even more inaccessible to the public.

Importantly, both advocates for the rights of incarcerated persons, and advocates for corrections officers scheduled rallies and press conferences outside of City Hall to take place immediately before the hearing. The rallies were to begin at 9 a.m. These rallies were heavily advertised for nearly two weeks. Media advisories were issued. For many members of the public, this would be their only opportunity to be heard on this issue. At the virtual hearing, members of the public – both advocates for incarcerated people and rank and file corrections officers and their advocates - were not called to speak until five hours after the meeting had begun, after elected officials, the BOC, the Department of Corrections (DOC), and law enforcement union leaders were called to speak. However, with little notice, advocates were forced to shorten the press conference and rallies and end them at 9:30, so that members of the media could leave in time to see the beginning of the hearing at 10 a.m. If advocates had more than one day of notice, they could have explored different means of engaging with the press. The short meeting notice deprived them of that opportunity.

Notably, no reason was given as to why less than 72 hours notice was given as to the change in place of the meeting. As of the submission of this testimony, meetings later this month are still scheduled to be in-person. In-person work plans for city employees have not changed. While circumstances of the COVID-19 pandemic may make virtual hearings more desirable, it is imperative that the council follow the Open Meetings Law, and that the City Council also make all reasonable efforts to publicize the time and location of hearings with as much notice as possible.

While public notice is always important, it is even more pressing for this hearing because it concerns a remote jail facility, on an island most New Yorkers will never visit. Incarcerated people have limited access to notify the public of their conditions. They have even less access now, when phone access for incarcerated people is irregular. The DOC Commissioner referred to the conditions at Rikers as a humanitarian crisis. Good government requires making all efforts to enable people to speak.

It is imperative that the city reduce the population of Rikers in order to end the crisis. Mayor de Blasio must use Corrections Law 6A work release to reduce the number of people serving city sentences immediately.⁷ This was done at the beginning of the pandemic to reduce the number of people serving city sentences to less than 100.⁸

Importantly, it is important for city leaders to prevent people from being sent to Rikers from court, especially while conditions there are so egregious. District Attorneys must avoid asking for bail that accused persons cannot afford. Further, District Attorneys and judges must review cases for release.

Ultimately, the crisis at Rikers is a policy decision. In April 2020, there were fewer than 2,800 people at Rikers. Now, there are over 6,000. This has fueled the current crisis that has been a

⁷ Michael Rempel, "COVID-19 and the New York City Jail Population," Center for Court Innovation. Available at: https://www.courtinnovation.org/sites/default/files/media/documents/2020-11/COVID_jail_NYC.pdf

⁸ *Id.*

factor in the needless deaths of 10 people this year, and inhumane conditions for those who remain on Rikers. City leaders can not merely point to Gov. Hochul and the Less is More Act. They must take action themselves.