



**TESTIMONY OF:**

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**Presented before  
The New York City Council Committees on  
Criminal Justice  
and  
Women and Gender Equity**

**Oversight Hearing on The TGNCNBI Task Force Report Update and  
TGNCNBI Individuals in Rikers**

**January 25, 2023**

My name is Lucas Marquez (he/they) and I am the Associate Director of Civil Rights and Law Reform at Brooklyn Defender Services (“BDS”). BDS is a public defense office whose mission is to provide outstanding representation and advocacy free of cost to people facing loss of freedom, family separation, and other serious legal harms by the government. For more than 25 years, BDS has worked, in and out of court, to protect and uphold the rights of individuals and to change laws and systems that perpetuate injustice and inequality. Thousands of the people we represent are detained or incarcerated in the New York City jail system each year while fighting their cases in court or serving a sentence of a year or less upon conviction of a misdemeanor.

We would like to thank the Committees on Criminal Justice and Women and Gender Equity and Chairs Rivera and Cabán for inviting us to testify about the Report of the Transgender, Gender Non-Conforming, Non-Binary, and Intersex Task Force (“the Report” or “the Task Force Report”), and more generally about the experiences of Transgender, Gender Non-Conforming, Non-Binary, and Intersex (“TGNCNBI”) people in New York City jails.

BDS is a member of the TGNCNBI Task Force<sup>1</sup> (“the Task Force”) and stands by the Report’s findings and recommendations.<sup>2</sup> We commend the Council for holding this hearing and for taking steps to enact more humane laws to protect TGNCNBI people incarcerated in Department of Correction (the “Department” or “DOC”) custody, and look forward to continuing our cooperation.

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<sup>1</sup> BDS was a member of the TGNCNBI Task Force at its inception, formerly represented by Kelsey De Avila. I have been a member of the Task Force since December 2022.

<sup>2</sup> See generally, *First Report of the Task Force on Issues Faced by TGNCNBI People in Custody* (hereinafter “the Report” or “Task Force Report”), by Ashe McGovern, Deborah Lolai, Dori Lewis, Kandra Clark, Mik Kinkead, and Shéar Avory, Aug. 15, 2022.

The City Council and relevant stakeholders must recognize that the Department’s entrenched resistance to improving the treatment of TGNCNBI people in custody means it is unable to safely and humanely house TGNCNBI people at all. The city must release people and decarcerate the jails, including all TGNCNBI people.

**A. The Department Must Engage with the Task Force and Substantively Consider the Recommendations Made in the Task Force Report**

The Task Force was created due to the persistent efforts of TGNCNBI people and formerly and currently incarcerated people who forced the Board of Correction (“BOC”) and the City Council to address the systemic abuse and dehumanization that TGNCNBI people face in New York City’s jails. The Task Force, which includes TGNCNBI leaders with lived experience in the city jails, TGNCNBI advocates, and public defenders, represents a substantial, specialized knowledge base for informing the Department’s policies, processes, and competency for TGNCNBI people.

Deep-rooted systems of violence, discrimination, and inaccessible medical care that TGNCNBI people face generally are exacerbated in the criminal legal system and jail environment and take a significant toll on the mental and physical wellbeing of TGNCNBI people in custody. This is particularly the case for Black, Indigenous, and/or People of Color who are TGNCNBI, given the disproportionate rates of targeting, surveillance, and arrest by police and mistreatment within the criminal legal system. As detailed below, the TGNCNBI people BDS represents have suffered and continue to suffer myriad harms, including sexual abuse, suicide attempts, mental health deterioration, inaccessible hormone therapy and medical care, and being forced to hide their true selves for safety, to name a few. These harms are in addition to the inhumane conditions faced by all people in DOC custody. BDS previously submitted testimony to the Committee on Criminal Justice on May 1, 2019 and April 27, 2021, detailing stories of transgender women we represented who faced harassment and assault when housed in men’s facilities due to the convoluted process for requesting housing alternatives and as punitive measures.<sup>3</sup> That those stories remain relevant to today’s hearing demonstrates that the Department is failing to address long-standing and urgent issues.

Nonetheless, the Department has affirmatively chosen not to engage with the extensive and detailed Report the Task Force produced or the sound and reasoned recommendations made therein.<sup>4</sup> Instead, it appears the Department leaders are more interested in stemming the Task Force’s ability to investigate conditions in the jails and to override its mandate.<sup>5</sup> Despite the expertise of the Task Force, the mandate of Local Law 145 establishing the Task Force, and the BOC 2018 Assessment of the Transgender Housing Unit<sup>6</sup> recommending the creation of the Task Force, the Department is now relying on an “internal committee”

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<sup>3</sup> “BDS Testimony before the New York City Council on Criminal Justice and Committee on Women and Gender Equity on Women’s Experiences in City Jails,” Apr. 27, 2021, <https://bds.org/latest/bds-testimony-before-the-new-york-city-council-on-criminal-justice-and-committee-on-women-and-gender-equity-on-womens-experiences-in-city-jails>.

<sup>4</sup> See generally, “NYC Dep’t of Corr. Response to TGNCNBI Task Force Report,” Nov. 14, 2022, <https://www.nyc.gov/assets/boc/downloads/pdf/Jail-Regulations/DOC-TGNCNBI-Task-Force-Report-Response-11-14-22.pdf>.

<sup>5</sup> See “Under Eric Adams, a Rikers Island Unit That Protected Trans Women Has Collapsed,” by George Joseph. The City, Jan. 24, 2023 (hereinafter, “The City Article”), <https://www.thecity.nyc/2023/1/24/23567498/rikers-lgbtq-trans-eric-adams-corrections> (“[I]n the aftermath of the report, the department effectively cut off the task force’s ability to investigate conditions in the jails.”).

<sup>6</sup> NYC BOC, *An Assessment of the Transgender Housing Unit*, Feb. 2018, <https://www1.nyc.gov/assets/boc/downloads/pdf/Reports/BOC-Reports/THU FINAL Feb 2018.pdf>.

to review and update policies.<sup>7</sup> In its recent statement regarding TGNCNBI people to *The City*, the Department focused on fixing “derogatory behavior,” rather than acknowledging the systemic harms in its control that must be remedied—just one example of how out of touch DOC is with the concerns facing the TGNCNBI people in its custody.<sup>8</sup> The Department must not waste the opportunity to engage with the Task Force, provide the Task Force with the necessary access to data, policies, and housing areas, and substantively consider the Task Force’s recommendations. It is, in fact, mandated to do so.

Additionally, we strongly feel that formerly and currently incarcerated people should be appropriately compensated for their time and expertise on the Task Force. Incorporating these voices into the discussion is critical, but far too often we take for granted that people with lived experiences are willing to share their trauma when requested. For those who are willing to come forward and be part of a government initiative, we must do better. We must respect their knowledge, experience, and time and compensate them for role on the Task Force and advocacy on behalf of TGNCNBI people in custody.

## **B. The Department Must Provide a Transparent and Competent Process for Housing People in Alignment with Their Gender**

People must be able to be housed aligned with their gender unless they believe they would be safer elsewhere, and removal from gender-aligned housing should not be a consequence for disciplinary actions. For years, BDS has been advocating that directly impacted people and the advocacy community that supports them must understand the Department’s eligibility criteria for TGNCNBI housing placement, and people should receive a timely response and explanation as to the basis of the housing decision. However, the Department has failed to revise the policies surrounding how TGNCNBI persons in custody request housing that aligns with their gender, specifically Directive 4498, and refused to share any draft version with the Task Force despite a draft being fully vetted in 2021.<sup>9</sup> Furthermore, decisions on housing are made without guidance by trans-competent civilian staff, but rather by DOC officials and officers employing subjective physical criteria or the tired transphobic trope that transgender women “were really just cis men eager to access cis women.”<sup>10</sup>

BDS has seen firsthand how the lack of transparency around the housing application process and the haphazard decisions being made put people in danger and exacerbate mental health issues. The appeal process is also difficult, as it can raise old infractions and tickets, even from prior to transition, that have no bearing on where a person can safely be housed at present. These factors combine to make it incredibly difficult for people in custody and their defense teams to advocate for safe and humane housing and services.

One example, recently highlighted in *The City*,<sup>11</sup> is that of Ms. Harrison, a transgender woman that BDS represents. After twice being assaulted and groped in men’s jails, she requested a housing transfer. While waiting for the Department’s housing determination, she continued to face harassment and threats, such that the correction officers locked her in her cell for her safety for several days and she struggled to get enough food and water; she felt like she was being punished. The stress and isolation lead her to begin

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<sup>7</sup> The City Article, *supra* n.5 (citing comments by Mayor Adams, stating that DOC Commissioner Molina’s efforts on behalf of “TGNBI individuals” includes the launch of “an internal committee to review and update policies so we continue to meet the needs of everyone in [our] custody”).

<sup>8</sup> *Id.*

<sup>9</sup> Task Force Report at 46.

<sup>10</sup> The City Article, *supra* n.5.

<sup>11</sup> *Id.*

cutting herself with the blade of her shaving razor. She was put on suicide watch, but was not transferred units. Ms. Harrison and her BDS attorney repeatedly requested a transfer into West Facility, a medical unit, and DOC's LGBTQ+ Affairs Unit sought to advocate on her behalf. Nonetheless, 12 days after the self-harm occurred, Ms. Harrison was told DOC had denied her transfer request—the next day, desperate to get out of the men's jail, she ingested a handful of batteries. In response, the Department moved her around various men's jails, causing her mental health to worsen: "Thinking about everything I had been going through when I was in the walls here this time around, was kind of taking a toll on me." Ms. Harrison applied for housing at RMSC. Three weeks later without being moved, Ms. Harrison attempted suicide with the blade of another shaving razor:

*"I kept telling them, 'I feel more safer at Rosie's,' but they keep putting me through hell, putting me on these tiers where these men are mistreating me, abusing me, sexually assaulting me," she remembers thinking as she drove in the blade.*<sup>12</sup>

After multiple incidents of self-harm, a suicide attempt, clear indications of mental health issues, and months of abuse and assaults, Ms. Harrison was moved to RMSC and she felt like "a heavy load" was lifted. She felt safer and, importantly, she expressed "I'm being respected as a woman."<sup>13</sup>

Gender-aligned housing is crucial not only for safety, but also for the mental health, emotional well-being, and human connection people need. The Department must provide transparency for how people can apply for gender-aligned housing, how housing decisions are made, and how people can quickly be moved to housing that is aligned with their gender identity. For these reasons, BDS is in support of Res 0458-2023, urging the Council to support passage of the Gender Identity, Respect, Dignity, and Safety Act (GIRDS Act), which addresses the concerns and issues raised by the Report and the lived experiences of many of the people we represent. BDS is also in support of Intro 887-2023, which would impose an important reporting requirement on the Department regarding gender-aligned housing necessary to provide oversight and data on a flawed and hidden process.

With regards to Proposed Legislation Int. 728-22, BDS is a signatory to the recommended revisions made on January 23, 2023 by public defenders, re-entry organizations, and civil rights attorneys working with TGNCNBI people as they navigate the criminal system. While Int. 728, as written, seeks to underscore the continuing need for full implementation and enforcement of protections enshrined in federal legislation under Prison Rape Elimination Act ("PREA") and resulting regulatory requirements, the revisions we support are more comprehensive, following the recommendations of the Task Force. They specify, for example, that people must be afforded opportunities to self-identify as TGNCNBI confidentially and with confidentiality, that the Department must presumptively respect people's gender identity in making housing assignment decisions, and that the personal appraisals of a TGNCNBI person's appearance, along with other irrelevant factors, must not be used to deny that person housing in accordance with their gender identity.

Lastly, TGNCNBI people must have access to regular and dedicated programming in their housing units. In the last two years, the hotline to access the DOC LGBTQ+ Affairs Unit was disabled and people feel abandoned by the failure of the Department to provide specialized and tailored programs, and to ensure check-ins with trans-competent civilian staff.<sup>14</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* (a uniformed staff member, speaking about the LGBTQ+-specific programming stated "Those services and all of the support for staff and persons in custody no longer exist").

### C. The Department Consistently Fails to Provide TGNCNBI People in Custody with Access to Medical Care

The Department has consistently demonstrated an inability to effectively manage its own staff,<sup>15</sup> to enforce its own rules including those implementing the federal standards established by Congress through PREA and subsequently promulgated by the U.S. Department of Justice in corresponding Federal regulations,<sup>16</sup> and generally to provide a minimum level of safety and security for individuals in DOC custody.<sup>17</sup> DOC's failure to meet its mandatory duty to provide people with access to medical care is the subject of ongoing litigation brought by BDS and its co-counsel The Legal Aid Society and the law firm Milbank in *Matter of Agnew, et al. v. New York City Dep't of Corr.*<sup>18</sup> DOC's failure to provide access to medical care has already led to one finding of contempt against the Department.<sup>19</sup> This lack of access to medical and mental health care is coming at a time of continued deterioration of conditions in DOC facilities, the inability of DOC to ensure the safety of people in its custody, and record-breaking loss of life, particularly by suicide.<sup>20</sup> There is a dire urgency now for concrete change.

Given this backdrop, TGNCNBI people in DOC custody continually struggle to access necessary gender-affirming medical and mental health care.<sup>21</sup> For example, people we represent who need hormone therapy

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<sup>15</sup> See, e.g., "Rikers Island staff, cars to undergo drug searches by NYPD, Department of Correction," by Graham Rayman and Elizabeth Keogh, *New York Daily News*, Jan. 18, 2023, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-island-staff-cars-search-20230119-jjiuw4f6a5dgtaqwln04i4lshu-story.html>; "3 Rikers officers accused of covering up inmate assault," by Joseph Konig, *Spectrum News*, Jan. 18, 2023, <https://www.nyl.com/nyc/all-boroughs/public-safety/2023/01/17/3-rikers-officers-charged-in-alleged-inmate-assault-cover-up>; "At Rikers, Piling Up Sick Days While Investigating Sick-Leave Abuse," by Jan Ransom and William K. Rashbaum, *The New York Times*, Jan. 16, 2023, <https://www.nytimes.com/2023/01/16/nyregion/rikers-guards-sick-leave.html>; "Rikers Island officers working 100-plus hours weekly, stuck sleeping in jail's parking lot," by Rich Calder and Matthew Sedacca, *New York Post*, Dec. 24, 2022, <https://nypost.com/2022/12/24/rikers-island-correction-officers-routinely-working-100-plus-hours-a-week/>; "Rikers Has a Deadly Contraband Problem. Are Cargo Pants to Blame?", by Gina Bellafante, *The New York Times*, Dec. 17, 2022, <https://www.nytimes.com/2022/12/17/nyregion/rikers-drug-crisis.html>; "Correction Department fails to manage staffers and how they respond to jail incidents: federal report," by Chelsia Rose Marcius, *New York Daily News*, May 11, 2021, <https://www.nydailynews.com/new-york/ny-correction-department-nyc-jails-federal-monitor-report-20210511-pdwko5mscjea7jajoksivcjj3y-story.html>.

<sup>16</sup> See generally, Task Force Report.

<sup>17</sup> See *Nunez v. City of New York*, 11 Civ. 5845 (LTS) (S.D.N.Y. 2011) and all related documents; see also, "Twelfth Report of the *Nunez* Independent Monitor," filed December 6, 2021 ("The findings in this report bring into sharp focus that despite six years of striving to implement the required practices, the Department's efforts have been unsuccessful in remediating the serious problems that gave rise to the Consent Judgment. Instead, conditions have progressively and substantially worsened.").

<sup>18</sup> See, e.g., *Agnew v. New York City Dep't of Corr.*, Index No. 21-813431 Bronx Co. (2021), Judgment/Order, May 17, 2022 (finding the DOC, by clear and convincing evidence, to be in civil contempt of prior court order dated December 3, 2021, requiring, *inter alia*, that the Department "comply with its duties to provide [incarcerated individuals] with access to sick call and not prohibit or delay them from health services").

<sup>19</sup> *Id.*

<sup>20</sup> See "Second Report and Recommendations on 2022 Deaths in New York City Department of Correction Custody," Board of Correction, Nov. 16, 2022; "Report and Recommendations on 2021 Suicides and Drug-Related Deaths in New York City Department of Correction Custody," Board of Correction, Sept. 12, 2022.

<sup>21</sup> See, e.g., Task Force Report, at 67-69 (Illustrating that, "while delays in medical care are something that affect every person in custody," particularly with respect to non-production by DOC staff to medical appointments, in the case of at least some TGNCNBI individuals, "medical care [is not necessarily] made available even after

regularly report that they miss several weeks of hormone treatment at a time and are delayed in receiving their hormones upon intake. This is not only dangerous and extremely dehumanizing, but takes a toll on a person's mental health and exacerbates safety concerns. For example, a trans woman we represent was initially housed at RMSC, but was uncomfortable remaining there because DOC's failure to provide her regular access her hormone treatments meant that her physical presentation was increasingly at odds with her gender. The physical changes caused by her lack of regular access to treatment made her feel unsafe at RMSC, and because she could not access hormone therapy, she ultimately sought a transfer to a male housing unit, despite the harm to her mental health that she understood would result. This is just one of the many ways in which TGNCNBI people in custody are forced to hide themselves and choose between safety and their mental health.

Access to consistent mental health care is particularly important for TGNCNBI people in custody as not only must they deal with the inherently traumatic nature of incarceration, but they are also forced to navigate a hostile system not designed for them. For Ms. Harrison, the compounding factors of being in a men's jail as a transgender woman, being held in isolation, and denied any agency in the housing process led to self-harm and attempted suicide.<sup>22</sup> Her self-harm was not seen as a serious injury, despite the clear mental health implications. Even as her mental health worsened as the Department transferred her around various men's jails and she felt she was starting to have a mental breakdown, she missed appointments for her psych medications and meetings with social workers. She also missed various appointments for her hormone therapy. This all culminated in a suicide attempt.

#### **D. Task Force Recommendations Demonstrate the Need for Meaningful Reform Across the Criminal Legal System, from Arrest through Reentry**

Improving the process of housing classification and access to TGNCNBI-affirming medical and mental health care represent only part of the broader raft of needed reforms. Those improvements, once made, will only be truly effective when combined with a thorough and thoughtful review of pre-arraignment, arraignment, and reentry processes.

Often, issues with gender-aligned housing start at arraignment. Specifically, the Report suggests that even before a prosecutor drafts a criminal complaint information provided by the arresting officer may undermine any hope for that individual with respect to gender-aligned classification and housing.<sup>23</sup> And even if the arresting officer's own assessment of an individual's gender does not undermine that person's self-identification, because there are no gender marker options for people who identify outside of the "female" or "male" gender binary, the pre-arraignment process presents multiple opportunities for misalignment.<sup>24</sup> The Court will generally rely on the gender marker listed on the criminal complaint and the arresting officer's paperwork, rather than at least giving "serious consideration"<sup>25</sup> to the self-identification of the individual being arraigned, as is required under PREA standards.<sup>26</sup> BDS attorneys have observed that, despite an effort on the part of judges and court staff to be sensitive to pronouns, it is

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production," and concluding that the DOC's reporting on the numbers of individuals subject to non-production, "which do not differentiate around gender identity and expression, show the sheer magnitude of the gap in comprehensive, meaningful TGNCNBI affirming care.").

<sup>22</sup> The City Article, *supra* n.5.

<sup>23</sup> See Task Force Report at 37.

<sup>24</sup> *Id.*

<sup>25</sup> See, e.g., PREA Standard Section 115.42(e) ("A transgender or intersex [person's] own views with respect to his or her own safety shall be given serious consideration").

<sup>26</sup> *Id.*

nevertheless a frequent occurrence that a person's birth name, which may be attached to the case even in situations where they no longer use that name, is the name by which the case is called, and the name that will then follow that person as they proceed in the system.

In addition, TGNCNBI people suffer greater obstacles in accessing alternative housing and treatment programs making it more difficult to be placed in an alternative to detention. The recommendations in the Task Force Report, which importantly call for an overhauling of every system from arraignment through reentry, generally seek to bring humanity to all individuals as they move through the criminal legal system and DOC custody. There are myriad ways in which the systems currently in place fail to account for the lived realities of TGNCNBI people.

To that end, in addition to those discussed in Section B above, BDS supports two additional bills on today's agenda that flow directly from Task Force recommendations:

- Resolution 117-2022 represents an important effort to eliminate strict gender binary options that exclude non-binary and gender non-confirming New Yorkers.
- Intro 831-2022 establishes a citywide resource navigator for women and gender-expansive persons, including in the context of reentry services pivotal to TGNCNBI people.

## **Conclusion**

BDS is grateful to the Committees on Criminal Justice and Women and Gender Equity for hosting this important hearing and continuing to call attention to the horrifying realities that TGNCNBI people in custody face in New York City jails. We ask City Council to hold the Department accountable for its failure to protect TGNCNBI people in its custody and its resistance to meaningful change. We urge councilmembers to continue visiting the jails, without giving prior notice to the Department, and to speak with people throughout the jails to hear firsthand the experiences of TGNCNBI and queer people incarcerated in DOC custody.

Thank you for your time and consideration of our comments. We look forward to continuing to discuss these and other issues that impact people we represent.

If you have any additional questions, please feel free to contact me at [slmarquez@bds.org](mailto:slmarquez@bds.org).