



**Brooklyn Defender Services**  
177 Livingston St, 7<sup>th</sup> Fl  
Brooklyn, NY 11201

Tel (718) 254-0700  
Fax (718) 254-0897

**TESTIMONY OF:**

**Michael Klinger**  
**Jail Services Attorney**

**BROOKLYN DEFENDER SERVICES**

**Presented before**

**The New York City Council Committee on Health**

**Oversight - Protecting New Yorkers from Heat and Air Quality Emergencies**

**September 27, 2023**

My name is Michael Klinger. I am a Jail Services Attorney at Brooklyn Defender Services (BDS). We thank Chair Schulman, Speaker Adams, and the Committee on Health for the opportunity to testify on the topic of protecting New Yorkers from heat and air quality emergencies.

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. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields.

In addition to zealous legal defense, BDS provides a wide range of services to address the causes and consequences of legal system involvement. We have built a practice around supporting people who are detained pretrial to mitigate the burdens and trauma created by confinement and to protect our clients from collateral consequences. Through our jail-based programming, we are able to advocate for our clients to access services they are entitled to such as medical care and educational access. Additionally, our established presence in New York City jails allows us to monitor and document the conditions New Yorkers encounter when incarcerated and advocate for the basic human rights, health, and safety of our clients and other incarcerated people. Furthermore, many of the people that we serve live in heavily policed and highly surveilled communities.

This past summer, New Yorkers were forced not only to find ways to stay cool during record-breaking heat, but also to navigate multiple weeks of historically poor air quality. These conditions

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acutely harm the people held in Department of Correction (“DOC” or “Department”) facilities who depend on the Department and the city for nearly every aspect of their health, safety, and security. The city must ensure that in providing guidance and assistance related to heat and air quality emergencies, it is affirmatively considering and protecting the people in its custody.

## Heat Emergencies

The city jails have long struggled to maintain safe temperatures, whether during the cold of winter or the heat of summer.<sup>1</sup> Every summer people in DOC custody report excessively hot housing units, lack of access to clean clothes, and an inability to access methods for cooling. Despite the fact that the Department issues on its website information regarding how it intends to protect the health and safety of incarcerated people during extreme heat, generally referred to as a “heat action plan,”<sup>2</sup> year after year those plans are not implemented consistently or effectively, exposing already-vulnerable people to extreme and dangerous conditions.<sup>3</sup>

The 2023 plan includes provisions to keep people cool by providing “[a]t least two industrial-sized fans ... in non-air-conditioned housing units,” delivering ice “regularly during the hottest hours of the day and every [two] hours to individuals in housing areas that do not have air conditioning,” maintaining “[o]ne shower station per non air-conditioned housing area ... as a cool shower station to encourage individuals to take cool showers,” “monitor[ing] people in custody for signs of heat-related illness,” and in cases where the ambient temperature exceeds 80 degrees in air-conditioned areas, temporarily relocating heat-sensitive individuals to areas below 80 degrees “if the AC cannot be repaired in a timely manner.”<sup>4</sup>

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<sup>1</sup> See, e.g., Graham Rayman, *Two Rikers jails lose heat four days after NYC certified systems fully functioning; steam line rupture blamed*, Daily News (Oct. 27, 2022), available at <https://www.nydailynews.com/2022/10/27/two-rikers-jails-lose-heat-four-days-after-nyc-certified-systems-fully-functioning-steam-line-rupture-blamed/>; see also reports from 2014 and 2019: Alisa Roth, *Do Heat-Sensitive Inmates Have a Right to Air Conditioning?*, NPR (Jul. 24, 2014), available at <https://www.nhpr.org/national/2014-07-24/hot-prisons-could-be-deadly-for-u-s-inmates-advocates-warn>; Rosa Goldensohn and Reuven Blau, *Sweltering City Jail Cells Need Air Conditioning, Says Board of Correction*, The City (Jul. 23, 2019), available at <https://www.thecity.nyc/justice/2019/7/23/21210932/sweltering-city-jail-cells-need-air-conditioning-says-board-of-correction>; Chelsea Rose Marcus, *Some Rikers Island Inmates had no AC during heat wave, Legal Aid says*, Daily News (Jul. 23, 2019), available at <https://www.nydailynews.com/2019/07/23/some-rikers-island-inmates-had-no-ac-during-heat-wave-legal-aid-says/>.

<sup>2</sup> The Department posted its public plans to manage the summer heat in 2022 online under the unifying title, “Heat Action Plan,” which remains available on its website. See Department of Correction, *Heat Action Plan* (hereinafter “2022 Heat Plan”), available at <https://www.nyc.gov/site/doc/media/doc-heat-plan.page>. Its nearly-identical 2023 plan appeared less prominently, no longer identified as “Heat Action Plan,” on the Department website under “News Releases and Other Information,” then by following a link to a “Warm Weather Protocol,” finally landing on a page entitled “Heat Sensitivity & Housing.” See Department of Correction, *Heat Sensitivity & Housing* (hereinafter “2023 Heat Sensitivity & Housing”), available at [https://www.nyc.gov/site/doc/media/heat\\_sensitivity.page](https://www.nyc.gov/site/doc/media/heat_sensitivity.page). While the 2023 plans imply some progress has been made since 2022, they show that the Department housed only 56% of people in custody in air-conditioned units in both years. *Id.*

<sup>3</sup> See, e.g., Liz Donovan, *As Conditions at Rikers Reach Crisis Levels, Concerns About Heat Persist*, City Limits (Sept. 13, 2021), available at <https://citylimits.org/2021/09/13/as-conditions-at-rikers-reach-crisis-levels-concerns-about-heat-persist/>.

<sup>4</sup> See 2023 Heat Sensitivity & Housing, *supra* n. 2.

Nonetheless, this past summer, which featured record heat and dire warnings from local officials,<sup>5</sup> BDS heard repeatedly from clients about housing units where, in addition to no working air conditioning, there were fewer than two working fans (or, in some cases, none at all), no regular provision of ice, and in the case of at least one housing unit at the newly re-opened Otis Bantum Correctional Center, showers that delivered only scalding hot water, rather than the promised relief of cold-water showers.<sup>6</sup>

During the early-September heat wave New York City experienced, BDS learned that intake dorm 5 Main in the Eric M. Taylor Center had no working air conditioning and only one fan for the entire unit. At Mod 3 Lower South in the Robert N. Davoren Center (“RNDC”), which BDS understands is a dorm specifically designated for people with heat sensitivity, there was no working air conditioning and there were no working fans during that same September heat wave. A person we represent housed in a heat-sensitive dorm at RNDC waited approximately five hours after briefly losing consciousness before DOC brought him to the medical clinic, despite knowing he suffers from heat sensitivity, a heart condition, and a recent history of fainting.<sup>7</sup>

In short, far from meeting the assurances of its own heat action plans and despite the increasing predictability of New York’s dangerously hot summer weather, the Department routinely fails to

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<sup>5</sup> Delger Erdenesanaa, *Earth’s Hottest August on Record Followed a Record-Breaking June and July*, The New York Times (Sept. 21, 2023), available at <https://www.nytimes.com/2023/09/21/climate/hottest-august-on-record.html>; see also, Estefania Hernandez, *New York City under Heat Advisory amid ‘extreme heat’*, Spectrum News (Jul. 28, 2023), available at <https://ny1.com/nyc/all-boroughs/weather/2023/07/28/new-york-city-under-heat-advisory-amid-extreme-heat/> (“[New York City Emergency Management Commissioner Zach Iscol] encouraged New Yorkers to stay indoors with air conditioning,” and said, “We have an [Air Quality Index] of 108, which is unhealthy for sensitive groups, so that’s children, older adults, people with respiratory and heart conditions, due to ozone, not due to wildfires.”); Christopher Bonanos, *On New York’s First 110-Degree Summer Day, What Will Break First?*, Curbed New York (Jul. 28, 2023), available at <https://www.curbed.com/2023/07/new-york-infrastructure-climate-hottest-days.html>; David Lazar, Patrick Adcroft and Spectrum News Staff, *Excessive Heat Warning issued for New York City through Friday*, Spectrum News (Jul. 27, 2023), available at <https://ny1.com/nyc/all-boroughs/weather/2023/07/26/new-york-city-heat-wave-thursday-friday-saturday-excessive-heat-warning-heat-advisory-national-weather-service-department-of-parks-and-recreation/> (“With extreme heat bearing down on the city, Mayor Eric Adams on Thursday urged New Yorkers to take the hot weather seriously, calling it a ‘climate disaster’ capable of deadly consequences.”); Natalie O’Neill, *Dangerous heat wave will scorch NYC with hottest July in three years*, New York Post (Jul. 27, 2023), available at <https://nypost.com/2023/07/27/dangerous-heatwave-will-scorch-nyc-with-hottest-july-on-record-in-years/> (“The National Weather Service issued an excessive heat warning for the city Thursday as temperatures were forecast to hit an oppressive high of 95 — and feel ‘in excess of 102,’ said Fox Weather meteorologist Brian Mastro.”).

<sup>6</sup> *Supra* at n. 4 and accompanying text.

<sup>7</sup> The Department’s consistent failures to connect people in its custody to medical services is pervasive in the jails and in reports from BDS clients, and not limited to circumstances featuring extreme heat. In *In re Agnew v. New York City Dept. of Correction*, brought by individuals represented by Brooklyn Defender Services, The Legal Aid Society, and Millbank LLP, The Supreme Court of the State of New York County of The Bronx found in December 2021 that the Department has failed to provide access to medical care for incarcerated New Yorkers in the City Jails. *Agnew*, No. 813431-2021E, 2021 WL 6104121 (N.Y. Sup. Ct. Dec. 03, 2021). The case is still active, with the Plaintiffs arguing that the Department is in contempt of Court orders requiring it to provide basic access to medical care for people in the City jails. See, e.g., *Agnew v. New York City Dep’t of Correction*, 217 A.D.3d 490, 191 N.Y.S.3d 45 (2023).

provide basic protections necessary to keep people cool, safe, and healthy, even after identifying particular people as heat sensitive.

## Air Quality Emergencies

This past summer also saw frightening air quality conditions and advisories, due primarily to harmful and intense smoke from Canadian wildfires, with various agencies and officials urging people throughout the New York Metropolitan Area and beyond to take precautions ranging from remaining indoors to closing and sealing windows and wearing well-fitting N95 or KN95 masks.<sup>8</sup>

However, people we serve consistently reported that no such precautions were available in the jails. Instead, they reported that during the worst of the air pollution conditions they were unable to close windows to the outdoors, unable to mitigate the smell of smoke indoors, did not have access to masks upon request, and in many cases had difficulty accessing medical attention for breathing and asthma-related complaints.

Additionally, for people in the custody of DOC, the anomalous season of smoke-filled skies was not the only air quality concern in the jails this summer, and particularly not for people with medical vulnerabilities including asthma and various heart and lung conditions. That is because the Department routinely deploys so-called “Chemical Agents,”<sup>9</sup> which threaten everyone who comes into contact while not wearing protective clothing and equipment, and which pose particular and grave risks to medically vulnerable people. The Department’s directives address these risks and the need to provide protections,<sup>10</sup> but the Department fails to implement these safeguards after deploying chemical agents in enclosed and densely populated housing units.

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<sup>8</sup> See, e.g., New York State Department of Environmental Conservation, June 7, 2023, Air Quality Health Advisory Issued for Long Island, New York City Metro, Lower Hudson Valley, Upper Hudson Valley, Eastern Lake Ontario, Central New York and Western New York [Press Release], available at <https://www.dec.ny.gov/press/127840.html>; New York City Public Advocate Jumaane D. Williams, Jun. 8, 2023, Stay Safe, NYC! June 2023 Air Quality Health Advisory [Press Release], available at <https://www.pubadvocate.nyc.gov/blog/2023/06/08/stay-safe-nyc-air-quality-health-advisory/> (“Remain indoors as much as possible. Close the windows in your home and ensure they are sealed. Wear a high quality, well-fitting mask, such as an N95 or a KN95, when outdoors. One day use is recommended; after one day, discard the mask. ... If you need to go outside, prioritize eye protection. Consider wearing protective eyewear, like goggles or wraparound glasses or sunglasses. If available, use air purifiers indoors for at least 48 hours (HEPA filters recommended). Humidifiers can also help capture air particles....”).

<sup>9</sup> See, e.g., Special Report by the Nunez Independent Monitor, July 10, 2023 at 25-26, 36-37, 39, 50, available at <https://tillidgroup.com/wp-content/uploads/2023/07/2023-07-10-Monitors-Report.pdf> (Describing multiple examples of problematic staff use of chemical agents, and citing “[p]oor staff practice was revealed in numerous events that involved staff ... deploying chemical agents in excessive amounts and at unsafe distance....”).

<sup>10</sup> See Department of Correction Directive 5006R-D (1/31/08), “Use of Force,” which requires, among other things, that Department staff “confer[] with a medical care staff member prior to the use of force to gather pertinent information about the inmate’s medical condition and mental health status to ensure that there are no issues that contraindicate the application of any specific type of force (e.g., clearance for the use of chemical agents....)” Directive 5006R-D at p. 9 of 27; see also, *id.* at 16 of 27 (“Whenever a chemical agent or other use of force, as defined by this Directive, is used against an Inmate, the Tour Commander or supervisor assigned by the Tour Commander shall, as soon as possible, ensure that the inmate and injured Staff are afforded examination by medical

BDS clients routinely report that once exposed to chemical agents, they either never receive decontamination and medical attention, or they must wait an extremely long time, sometimes as long as a period of days or even weeks. Furthermore, the people we represent report that sprayed surfaces are rarely, if ever, decontaminated, so the residual chemical agents continue to affect anyone who touches those surfaces—walls, beds and bedding, clothing, tables, and chairs, etc.—for days and weeks following the initial deployment of the chemical agent. One particularly vulnerable client reported that, although he has never been the intended target of the sprays, officers have sprayed him with chemical agents on multiple occasions when they responded to alleged disturbances in his housing unit. In every instance, he has been left struggling to breathe and coughing up blood. Twice this past summer, it took the Department more than one week to bring him to receive medical attention following such incidents of chemical exposure.

The Department is failing to follow its own directives with respect to mitigating the dangerous and lingering effects of chemical sprays. It is also failing to provide emergency medical care to those people whose existing vulnerabilities leave them gasping for breath after the Department sprays them.

## **Conclusion**

We appreciate the Council’s attention to the issues around heat and air quality emergencies in city buildings, and its consideration of the needs of the New Yorkers in the custody of the Department of Correction, whose safety and security is entirely and solely under the control of the city. If you have any questions, please feel free to contact me at [mklinger@bds.org](mailto:mklinger@bds.org).

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staff to determine the extent of injuries, if any, and provided proper medical attention if needed.”); Department of Correction Directive 4510R-E (7/27/07), “Chemical Agents,” generally requiring that people who have been exposed to such agents “shall shower or wash in cool water,” and after completing such “decontamination,” the area supervisor “shall ensure that prompt medical attention is given to the individual(s) affected by the dispensing of the chemical agents.” Importantly, the Directive requires that, “[u]nder no circumstances shall the subject(s) remain in the contaminated area for a period exceeding five (5) minutes after the hand-held aerosol application.” Directive 4510R-E at 13 of 19.