

WRITTEN TESTIMONY OF:

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Presented before
The New York City Board of Correction
Dwayne C. Sampson, Chair

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My name is Michael Klinger and I am a Jail Service Attorney in the Civil Rights and Law Reform unit 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 thank the Board of Correction for the opportunity to submit testimony today.

We urge the Board to continue listening to the people who have been incarcerated in New York City jails and their families, as well as the many advocacy groups who rely on these public meetings to address and inform the Board about the conditions that people at Rikers are suffering and how that impacts our communities in New York City.

Opposition to the Public Meeting Frequency Resolution

At the March 14, 2023 meeting, the Board plans to introduce and vote on a Resolution proposing that the Board reduce the number of Board meeting each year by three, *i.e.*, holding only six regular bi-monthly meetings each calendar year. BDS is opposed to this proposed change.

The conditions for detainees in city jails remain dangerously unsafe. In the 2022 calendar year, 19 people died in custody.¹ More than seven years of reports by the Federal Monitor in *Nunez* show a devastating

¹ See “19 People Have Died from New York City Jails in 2022,” by Erica Bryant, Vera. Dec. 12, 2022, <https://www.vera.org/news/nyc-jail-deaths-2022>.

trend of increasingly unsafe practices and conditions in the jails,² such that even if recent indications may show a reduction in, for example, staff absenteeism, the jails are still dangerously malfunctioning.³

At the same time, the Department is increasingly seeking to skirt necessary oversight, whether by the Board,⁴ the City Council,⁵ or the Comptroller's office.⁶ Whether it's withholding crucial video access from the Board and then erroneously and vilely blaming BOC members and staff for not visiting the jails, resisting any coordination with the TGNCNBI Task Force even at the behest of City Council members and insulting members of the task force even while transgender women are continually being mis-housed and suffering harassment and assaults in NYC jails, or contracting a massive surveillance program with a notoriously bad actor, Securus, that would result in the tracking of nearly all personal written and oral communications.⁷

In the case of the Department's requests for continuing variances to alter the ways in which people in custody receive mail and packages, BDS previously submitted comments in opposition and has joined with LatinoJustice PRLDEF, Bronx Defenders, the Neighborhood Defender Service of Harlem, and New York County Defenders in highlighting the several ways in which the variances are vulnerable to legal challenge as arbitrary and capricious, as well as violative of proper rulemaking procedures under the City Administrative Procedure Act (CAPA). But the issue of the variances also underscores the heightened need for robust oversight from the Board.

² See generally Reports of the Monitor's in *Nunez v. City of New York*, 11 Civ. 5845 (S. D. N. Y., 2011), <https://www.nyc.gov/site/doc/media/nunez-reports.page>.

³ See also "Second Status Report on DOC's Action Plan by the *Nunez* Independent Monitor," filed Oct. 28, 2022 ("The conditions in the jail remain dangerously unsafe and the Monitoring Team remains gravely concerned about the alarming number of in-custody deaths, violence among people in custody, lack of an effective restrictive housing model, and various facets of the Department's use of force practices and operational practices."), https://www.nyc.gov/assets/doc/downloads/pdf/2022-10-28_Second_Status_Report_Action_Plan.pdf.

⁴ See Nick Pinto, *NYC Jails Commissioner Revoked Watchdog's Camera Access for Making His Department Look Bad*, Hell Gate, (Feb. 23, 2023), <https://hellgatenyc.com/jails-commissioner-revoked-camera-access-for-making-his-department-look-bad>; see also Graham Rayman, *Correction Department officials skip NYC oversight meeting*, New York Daily News, (Oct. 18, 2022), <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-correction-department-officials-no-show-20221018-gvprnwktffhejd7qcsptudib4q-story.html>.

⁵ See Giulia McDonnell Nieto Del Rio, *Department of Corrections [sic] Questioned About Collaboration with ICE at New York City Council Hearing*, Documented, (Feb. 17, 2023) ("Excerpts of [] emails, revealed during questioning by Council member Shahana Hanif, the Chair of the Immigration Committee, disclosed that despite New York City laws limiting DOC collaboration with ICE, DOC has still been cooperating with — and at times going out of their way — to coordinate with immigration authorities."), <https://documentedny.com/2023/02/17/early-arrival-doc-ice-new-york-city-council/>.

⁶ See Graham Rayman, *NYC comptroller questions no-bid jail contract as Correction commissioner touts positive Rikers steps*, New York Daily News, (Jan. 10, 2023), <https://www.nydailynews.com/new-york/nyc-crime/ny-mail-package-ban-rikers-island-jails-20230111-xbxbquta4je3niro4jb2urqpcq-story.html>.

⁷ *Id.*; see also, Matt Katz, *Coming soon to NYC jails: Electronic surveillance, fees to text loved ones*, Gothamist, (Feb. 13, 2023), <https://gothamist.com/news/coming-soon-to-nyc-jails-electronic-surveillance-fees-to-text-loved-ones>.



In both avoiding the public rulemaking process that the Department's sweeping change to mail and packages requires under CAPA, and circumventing the routine contracting practices that would otherwise provide a measure of transparency and oversight by the Comptroller's office, the Department's secrecy raises questions about its motivations and decision making. Those questions are answerable in this forum.

The Board has a vital role made even more critical by a Department determined to act without oversight and to say whatever it needs to appear compliant. Holding public meetings is even more important, now that the Department has taken steps to drastically, improperly, and unilaterally curtail the Board's ready access to video monitoring feeds from DOC facilities.⁸

Under these circumstances, where the conditions in the jails are neither safe for people detained there nor satisfactory for those who work there, and where the Department appears determined to flout not only this Board's authority, but city laws, now is not the time to reduce the frequency of Board meetings and to limit the number of public comments. Rather, it is critical that the Board use every opportunity within its authority to hold DOC accountable and monitor the conditions in the city's jails.

Opposition to the Limiting of Public Comment at the March 14 Meeting of the Board

BDS also writes to express its concern regarding the Board's new policy of limiting public comments at meetings, particularly in conjunction with its plan to hold fewer meetings. The Board's communication in advance of the last two scheduled meetings announced that only "elected officials and the first six people to sign-up for each comment period (first three in-person and first three online) will be allowed to testify" (emphasis in original). The Board's communication indicated that this limitation was intended to "ensure that we maximize the limited time in the meeting space," noting pointedly that the meeting had "a full agenda with three separate public comment periods."

BDS believes that such a limitation on public comment represents a step backward for the Board, which has done a commendable job in recent years of accommodating comment from members of the public and incarcerated people. The Board's public meetings have become a critical opportunity for individuals—particularly formerly incarcerated people and family members that are most impacted by the criminal legal system and the Department of Correction's mismanagement of the city's jails—to speak and be heard. It is also a crucial opportunity for advocates to be able to respond—in real time—to the Department's statements, statements which—as this Board knows—skim over the actual conditions at the jail and are caustic towards oversight.

Lastly, to whatever extent the Board's decision to limit public comment is driven by a desire to effectively administer a full agenda, we submit that such a concern militates, instead, for more frequent public Board meetings, not fewer.

If you have any additional questions, please feel free to contact me at mklinger@bds.org.

⁸ See *supra*, n. 4. This decision by the Department contravenes its own responsibilities under the City Charter, notwithstanding the Commissioner's unexplained and erroneous assertion that the decision would in some way bring the Department into compliance with that document.