



TESTIMONY OF:

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My name is Michael Klinger and I am the jail services attorney 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 people and to change laws and systems that perpetuate injustice and inequality. We want to thank the Committee on Criminal Justice and Chair Nurse for inviting us to testify on the critical need to prevent and address sexual assault and harassment in city jails, which directly impacts the thousands of people held in the custody of the New York City Department of Correction, including many represented by BDS.

BDS represents approximately 22,000 people each year who are accused of a crime, facing the removal of their children to the foster system, or challenging deportation. Our staff consists of specialized attorneys, social workers, investigators, paralegals, and administrative staff who are experts in their individual fields. BDS also provides a wide range of additional services for our clients, including civil legal advocacy, assistance with educational needs of our clients or their children, housing, and benefits advocacy, as well as immigration advice and representation.

I. The New York City Department of Correction Has a Chronic Problem with Sexual Assault and Harassment and Oversight Has Failed

Department of Correction (“the Department” or “DOC”) policies assume a jail environment in which abuses are rare and are addressed by staff training, oversight, and discipline when necessary.¹ But the reality in Department facilities on Rikers Island is a system of street-level bureaucracy, vigilante justice, and rampant abuse, ultimately maintaining an environment of

¹ See, e.g., Directive 5011R-A, “Elimination of Sexual Abuse and Sexual Harassment,” Eff. May 31, 2019. Available at <https://www.nyc.gov/site/doc/directives/directives.page>.

persistent violence or fear of violence that undermines the very directives designed to protect the people in the Department’s custody from sexual assault and harassment.

Nearly 60 percent of the 2,000 New York City complaints filed under the Adult Survivors Act in the past year came from the Rose M. Singer Center (RMSC).² The claims arise from allegations of abuse dating from the 1970s through 2023, and together seek nearly \$15 billion in damages from the city.³ Neither the high number of claims nor the amount sought in damages is surprising.

As recently as 2013, a U.S. Department of Justice national survey covering 2011-12 found RMSC to have one of the highest rates of reported sexual victimization by staff in the nation.⁴ A 2015 lawsuit brought by two women who had been detained at RMSC and alleged that they were raped by the same officer resulted in a \$1.2 million settlement in 2017, after the city’s own investigators found that the city had failed to follow critical processes for reporting and investigating claims of sexual abuse required under the Prison Rape Elimination Act (PREA).⁵

Despite its very public history of failures to prevent or punish sexual abuse by Department staff, the Department has faced no meaningful sanctions. The city routinely pays nearly \$40 million annually to settle claims brought against the Department, but those funds come from the city’s general fund rather than the Department’s own budget.⁶ And ordinary oversight mechanisms have failed.⁷

² Jessy Edwards and Samantha Max, “Late-night sex assaults. Invasive searches. The 700+ women alleging abuse at Rikers.”, Gothamist, Mar. 26, 2024, <https://gothamist.com/news/late-night-sex-assaults-invasive-searches-the-700-women-alleging-abuse-at-rikers>. See also, Jessy Edwards, “What Will New York Do to Answer Decades of Rape Claims?”, Vital City, Sept. 24, 2024, <https://www.vitalcitynyc.org/articles/what-will-new-york-do-to-answer-decades-of-rape-claims-rikers-rosies>.

³ Edwards and Max, *supra* n. 2

⁴ Allen J. Beck, Ph.D., Marcus Berzofsky, Dr.P.H., Rachel Caspar, Christopher Krebs, “Sexual Victimization in Prisons and Jails Reported by Inmates, 2011-12, U.S. Department of Justice, Bureau of Justice Statistics (NCJ 241399), May 2013. Available at <https://bjs.ojp.gov/content/pub/pdf/svpjri1112.pdf>. See also, Jessy Edwards, “He was Officer ‘Champagne’ at Rikers. 24 Women accuse him of sexual assault in jail.”, Gothamist, Aug. 6, 2024, <https://gothamist.com/news/he-was-officer-champagne-at-rikers-24-women-accuse-him-of-sexual-assault-in-jail>; Reuven Blau and Kri Blakinger, “A Rikers Officer Had Sex With a Detainee. It Took 7 Years to Fire Him,” The Marshall Project, Nov. 28, 2022, <https://www.themarshallproject.org/2022/11/28/new-york-rikers-officer-sex-fired-detainee-assault-prea>; John H. Tucker, “Rape at Rosie’s: When the bad guys at Rikers are the guards,” New York Intelligencer, June 25, 2018, <https://nymag.com/intelligencer/2018/06/rape-at-rikers.html>.

⁵ See Tucker, *supra* n. 4.

⁶ See Edwards, *supra* n. 2. But see Samantha Max, “Mayor Adams ‘can’t’ say if Rikers has a culture of sexual abuse, despite 700+ lawsuits,” Gothamist, Aug. 7, 2024, <https://gothamist.com/news/mayor-adams-cant-say-if-rikers-has-a-culture-of-sexual-abuse-despite-700-lawsuits> (“Comptroller Brad Lander, who is running against Adams in the upcoming mayoral primary, said the money spent to pay out lawsuits against city agencies should come out of their budgets.”).

⁷ *Id.* (“Mayor Adams has declined to order an independent investigation into the 700 claims. ... The City’s Board of Correction has not held a hearing on federal Prison Rape Elimination Act compliance since 2019, citing a lack of resources. The Department of Investigation could launch a probe into the 700 complaints of sexual assault, but has not announced one. The State Commission of Correction has the authority to issue directives and even close jails,

II. The Department Fails to Protect People in its Custody from Assault and Harassment by Staff

The Department’s Directive 5011R-A, “Elimination of Sexual Abuse and Sexual Harassment,” lays out its “zero-tolerance policy toward all forms of sexual abuse and sexual harassment against any person who works, visits, or is confined in any of its facilities.”⁸ The Directive prohibits Department staff from “engaging in any undue familiarity with inmates or permitting undue familiarity on the part of the inmate toward themselves,” and codifies a “duty to report any sexual abuse or sexual harassment or any information regarding inappropriate relationships between an employee and inmate,” with that duty to report extending to “any allegations, knowledge, or reasonable belief regarding such conduct.”⁹ Any staff person who fails to report such abuse or harassment “is subject to disciplinary action.”¹⁰

But the experiences of so many of the people we represent reveal a wide gap between the promise of the Directive and the impermissible practices of Department staff.¹¹ People in custody report that they are subjected to both sexual harassment and sexual assault by Department staff and that these acts are often well known by multiple Department staff. Yet, staff ignore both abusive behavior as well as their own affirmative duty to report it.

III. The Department’s Failure to Adequately Address Staff Misconduct and its Culture of Brutality Impedes People in Custody from Reporting Abuse

As recently as April of this year, the Federal Monitor appointed as part of the ongoing *Nunez* litigation criticized the Department’s failure to impose formal discipline for misconduct, which contributes to a “toxic culture” and an environment where inadequate jail practices are normalized.¹²

but has been inactive on the issue of Rikers Island since labeling it one of the worst correctional facilities in the state in 2018, specifically calling out its disproportionate rate of sexual abuse.”).

⁸ *Supra*, n.1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ BDS is generally aware of allegations of current and ongoing sexual assault and harassment by Department staff, and for reasons that are examined below (and which are also attributable to the actions of a Department that is incapable of policing itself or enforcing its own policies and procedures), we encourage the Council to review the more than 700 claims referred to above, in Notes 2, 3, 6, and 7, for detailed examples of the types of harassing or assaultive behaviors that characterize the sorts of allegations of which BDS, despite being aware, is unable to discuss in any detail.

¹² *See* Monitor’s Seventeenth Status Rep. at 1, Apr. 18, 2024, ECF No. 706 (“The jails remain dangerous and unsafe, characterized by a pervasive, imminent risk of harm to both people in custody and staff. This risk of harm is caused by pervasive dysfunction in the jails’ management resulting from polycentric and interdependent issues including, but not limited to, a broad failure to utilize sound correctional security practices for even the most basic tasks, limited staff supervision and poor-quality guidance, and a persistent failure to identify misconduct and to apply appropriate accountability.”).

When the people we represent report – in the confidence of their private conversations with counsel – that they have been the victim of sexual harassment or assault by Department staff, they consistently indicate that they are scared to report their allegations. Their experience, as relayed to BDS attorneys, is that any report will trigger a dangerously unprofessional investigation that will fail, in the first instance, to lead to their own safe relocation, away from their abuser. But it will also fail to result in any disciplinary action against that abuser. Our clients expect not to be believed, and instead expect that they would be mocked and subjected to retaliation from the alleged perpetrator or other staff members because of a lack of regard for the confidential nature of their complaint and an apparent belief on the part of staff that they can act with impunity.¹³

The well-known lack of meaningful disciplinary sanctions for Department staff is a marker of the lawless culture maintained by the Department and is indicative of the routine and abject lack of safety, dignity, and order that characterizes life in the jails. It also demonstrates the Department's failure to take seriously the enforcement of federally mandated standards.¹⁴

IV. The Department's Investigations into Alleged Sexual Assaults and Harassment Fail to Meet PREA Standards

The Prison Rape Elimination Act (PREA) establishes national standards to prevent, detect, and respond to sexual assault in prisons and jails, establishes mandatory reporting and data collection on incidents of sexual abuse, requires training for staff on prevention and response, and generally requires a zero-tolerance policy toward sexual violence.¹⁵

PREA only works when jails and prisons function in a professional manner that adheres to best practices. It requires that staff know to a certainty that engaging in sexual harassment or assault of people in their custody will lead to disciplinary action. Once the threat of such discipline becomes merely hypothetical, the chain is broken; staff are less constrained in their actions, and immediately people in custody recognize their loss of agency through any reporting mechanism. Now those people recognize that reporting is more likely to bring them harm than any remedy.

This is the reality on Rikers Island. Not only do our clients confidentially share that they are subjected to sexual harassment and assault, but they also describe acts of anticipatory retaliation by their perpetrators and other staff. They describe being taunted and teased by staff members who know about their abuse, even if they were not directly involved. Notably, these staff members are not escalating these incidents of abuse as required by PREA, but rather punching down on the people in custody. The people we represent also articulate a fear of staff investigators as just another part of a racket designed to threaten and intimidate them into silence.

The reports from the people in custody indicate that, far from implementing PREA and reliable reporting mechanisms, the Department currently operates in a broken feedback loop where rampant sexual harassment and assault exist alongside low numbers of reports. Whatever number

¹³ *See id.*

¹⁴ *See generally*, U.S. Department of Justice, National Standards to Prevent, Detect, and Respond to Prison Rape, 28 C.F.R. § 115 (2012).

¹⁵ *Id.*

of reported incidents of sexual assault or harassment by staff the Department acknowledges receiving, we urge the Council to view that number as an extreme undercount.

V. Conclusion: Council Intervention Is Necessary but Not Sufficient

Today's Council oversight hearing provides an opportunity to understand the layered, systemic failures of the Department, and to contemplate policies to address the Department's culture of brutality and impunity. As a general matter, we do not believe the responsibility for training staff, investigating allegations of abuse, or disciplining staff for abuse can rest with the Department. After nearly 10 years of Monitor reports in *Nunez*, it strains credulity that this Department would be capable of policing itself in any meaningful way.¹⁶

BDS looks forward to continued cooperation with this Committee, with the Council, and with other advocates to address the concerns raised in today's hearing. If you have any questions for us, please feel free to contact us. I can be reached at mklinger@bds.org.

¹⁶ The Department of Investigation (DOI) has an obligation under Directive 5011R-A to determine whether to clear DOC to conduct its own preliminary investigations in cases of alleged sexual abuse and harassment. However, the DOI does not function as an independent agency in such situations; the DOI continues to staff its investigatory teams for investigations of sexual abuse and harassment by Department of Correction staff with Department of Correction officers, presenting an implicit appearance of a conflict of interest.