



TESTIMONY OF:

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**Presented before**  
**The New York City Council**  
**Committee on Criminal Justice**  
**Oversight Hearing on Violence in City Jails**

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My name is Brooke Menschel. I am the Civil Rights Counsel at Brooklyn Defender Services (“BDS”). I have been engaged in legal advocacy around jail and prison conditions in New York and throughout the Deep South.

BDS provides multi-disciplinary and client-centered criminal, family, and immigration defense, as well as civil legal services, social work support and advocacy, for nearly 30,000 people in Brooklyn every year, thousands of whom are detained or incarcerated in City jails in connection with their criminal cases. We thank the City Council Committee on Criminal Justice, and in particular Chairman Keith Powers for the opportunity to testify about the experiences of the people that we represent who are housed in the City jails, along with the members of the BDS staff who serve them. We also call the Committee’s attention to the Eighth Report (“Report”) filed by the court-appointed monitor in *Nunez v. City of New York et. al*, 11-cv-5845 (LTS), filed this past October, which assess the efforts and progress made by the City and the Department of Corrections (“DOC” or “Department”) to reduce violence in the City’s jails.

Any discussion regarding jail conditions would be incomplete if we did not first address the compulsion toward incarceration rather than community investment in resources that actually improve safety. Pre-trial incarceration, in particular, has long been used as immediate punishment prior to any trial that has served as leverage to extract guilty pleas regardless of culpability. The 2019 bail and discovery reform laws in New York are a critical step to ensuring that, at least in most criminal cases, jails do not serve these improper purposes. Studies show that the vast majority of people released without conditions, or whose bail is paid by a charitable fund, attend all court dates and fulfill all obligations. Pre-trial services, including Supervised

Release and other programs that are well-funded in New York City, are successfully helping ensure that people appear for court without destroying their lives. By contrast, even a relatively short time in jail often derails a person’s livelihood, living arrangements, family obligations, and community ties. Nonetheless, the 2019 laws are now under coordinated and direct political attack and require ongoing support from elected officials in all levels of government. The new laws make our City safer, but these critical gains may be lost if we as a community—including more government leaders—do not join together and support the new laws.

Nevertheless, addressing endemic violence in New York City jails will take more than reducing the population. What is required is dramatic culture change that permeates the Department of Correction and a commitment by City leadership to invest in educational systems, healthcare and treatment facilities, local infrastructure, and the fabric of communities that will ensure all New Yorkers have the opportunity to prosper. The stated goal of creating “a jail system that is smaller, safer, and fairer—one consistent with the overall criminal justice system we are building in New York City, in which crime continues to fall, the jail population drops significantly, and all New Yorkers are treated with dignity”<sup>1</sup> is not only appropriate, it is a necessity. Yet it remains aspirational. This is a significant moment in our City’s history to address the needs of communities devastated by our criminal legal system and mass incarceration. We can start by taking steps to ensure that the City’s jails are not the most violent corners of our community.

### **New York City Jails’ Culture of Violence**

Historically, NYC jails, especially those on Rikers Island, have seen astronomical rates of violence. Countless lawsuits, media reports, and investigations have detailed the violence and abuse that seeps into every corridor of the DOC. The “culture of violence” is well documented. In a 2015 statement announcing the *Nunez* agreement, then-U.S. Attorney Preet Bharara noted that the settlement agreement provided a “comprehensive framework [that] requires the City to implement sweeping operational changes to fix a broken system and dismantle a decades-long culture of violence.”<sup>2</sup>

Nearly five years later—thanks to the voices of directly impacted people, pressure from advocates, oversight of the court-appointed *Nunez* monitor, and the commitment of government officials including members of the City Council—there are indications that progress is possible. Nonetheless, the promised reforms and improved culture continue to elude us. The most recent report issued by the *Nunez* monitor described how much further we still have to go:

The conditions that gave rise to the [*Nunez*] Consent Judgment have not abated since the Effective Date. While the pace of reform is not stagnant and the Department has taken several steps to advance the reforms, the Department has not shown itself capable of devising and implementing effective strategies to fully institutionalize the [required reforms]. . . . Simply put, the system is

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<sup>1</sup> Mayor’s Office of Criminal Justice: <https://criminaljustice.cityofnewyork.us/reports/smaller-safer-fairer-copy/>

<sup>2</sup> Statements of Manhattan U.S. Attorney Preet Bharara and Head of the Civil Rights Division Vanita Gupta on Agreement in Principle Regarding Rikers Island, June 22, 2015, <https://www.justice.gov/usao-sdny/pr/statements-manhattan-us-attorney-preet-bharara-and-head-civil-rights-division-vanita>

overwhelmed. . . . The Department’s efforts during the Eighth Monitoring Period did not initiative a change to the troubling conditions that have existed through the time of the Consent Judgment. . . . This cultural dynamic, which is better described as an occupational ideology, runs counter to modern and professional correctional practice. Ultimately, these failures perpetuate the toxic culture of the Facilities discussed in previous reports.”<sup>3</sup>

Academic literature and court filings are rife with reasons that the troublesome culture persists. The constant theme is that officers and staff rely heavily on physical force, violence, and other trauma-inducing practices as “tools” to control people in their custody, and those practices foster an environment where violence is not just the norm but in fact the preferred method for addressing conflict. The *Nunez* Report alone identifies a range of training, supervision, and accountability factors that contribute to the deficient culture.<sup>4</sup> Notably, the *Nunez* monitor described staff’s inability to manage the people in their charge and a habit of “dehumanizing inmates and exacerbating the use of force via their language, tone, and non-verbal communication.”<sup>5</sup> Similarly, the Department and the Correction Officers Benevolent Association (“COBA”) adamantly oppose limitations on the use of restrictive housing, claiming time and again that it is the most effective means of maintaining safety, security, and order.<sup>6</sup> Studies consistently conclude that isolation induces irrational anger and diminishes impulse control, leads to violent outbursts, and invokes the very behavior it theoretically aims to discourage.<sup>7</sup> Yet because the Department has relied so heavily for so long on isolation as a means to address violence, it is ill-equipped to prioritize more effective methods of discipline and rehabilitation.

The *Nunez* Report details an increase in the use of force by correctional staff, the highest rate since monitoring began.<sup>8</sup> The Department’s efforts to equip staff with de-escalation techniques and compel them to apply their skills have been largely ineffective.<sup>9</sup> Rather than exercising patience, restraint, and common sense, staff too often fuel conflict through belittling name-calling and provocation, then jump at the chance to use violence.<sup>10</sup>

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<sup>3</sup> Eighth Report of the *Nunez* Independent Monitor, No. 11-cv-05845-LTS-JCF, Doc. 332, Oct. 28, 2019, 7, 9, 18 (“*Nunez* Report”) (page numbers correspond to the Electronic Case Filing page number printed in blue on the top of the page).

<sup>4</sup> *Nunez* Report at 7-9.

<sup>5</sup> *Id.* at 7-8.

<sup>6</sup> *See, e.g.* Jose Olivares, Despite Scrutiny, Rikers Island’s ‘Culture of Violence’ Persists, Report Says, Nov. 30, 2017, <https://www.npr.org/2017/11/30/559846083/despite-scrutiny-rikers-islands-culture-of-violence-persists-report-says> (quoting COBA president Elias Husamudeen as denouncing the Board for “tak[ing] away our tools” by limiting the use of restrictive housing for young people “giv[ing] us nothing in place for it”)

<sup>7</sup> *See, e.g., Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, Vera Institute of Justice, May 2015, available at [http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report\\_1.pdf](http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf). (“Subjecting incarcerated people to the severe conditions of segregated housing and treating them as the ‘worst of the worst’ can lead them to become more, not less, violent.”).

<sup>8</sup> *Nunez* Report at 7.

<sup>9</sup> *Id.* at 11-12.

<sup>10</sup> *Cf. generally Nunez* Report.

The frequent and persistent reports from people we represent that staff use pepper spray indiscriminately and without provocation are just one example of this troubling trend. In response to a verbal disagreement with one young person BDS represented, an officer became enraged and took out her pepper spray. When the young man fled the area, the officer unleashed the pepper spray and changes the young man through the mess hall, dousing everyone else in the area. The pepper spray triggered a severe asthma attack which left the young man coughing up blood. He was taken to intake where he waited several hours before receiving medical care. All in response to a verbal disagreement.

More challenging to quantify than any use of force by staff, but arguably more disturbing, is the frequent reports that we receive that staff are complicit in, encourage, and facilitate gang violence. In a recent incident, an officer threatened to move one man into a unit housing rival gang members following a verbal argument. Indeed, shortly after the man was moved, he encountered approximately seven members of a rival gang. Predictably, he was attacked and suffered two deep cuts on his face, requiring several stitches.

### **Treating People with Humanity Would Reduce Violence**

Beyond the most serious cases of physical brutality, stemming the tide of violence in City jails requires addressing the myriad humiliations people endure on a daily basis. As the *Nunez* monitor recognized, “language, tone, and non-verbal communication” can all exacerbate violence.<sup>11</sup> Structural and individual cruelties contribute to an environment rife with tension. For example, most young people are limited to visits devoid of meaningful physical contact—separated by a wide table and plexiglass barrier. Ostensibly a security measure, the separation of young people in crisis from a parent’s loving touch breeds deep resentment and fuels anger. To make matters worse, conversations during visits are often dominated by the humiliating ordeal visitors endure to get through “security procedures” prior to seeing their loved ones.

Other everyday cruelties include officers tightening handcuffs to the point that hands lose their feeling, then twisting the wrists to cause shooting pain while uttering threats of further violence. In restrictive housing and similar high-security units, people rely on officers for their most basic needs. When officers take it upon themselves, which we understand happens regularly, to deprive people of toilet paper, food, showers, recreation, or other human necessities as unofficial retribution for disfavored conduct, people become desperate. That desperation predictably leads to further misbehavior, for which they often suffer further unofficial punishment. As a result, some people turn to gangs for access to basic amenities and, fundamentally, for survival. And in turn, the cycle of violence and isolation becomes more entrenched and more difficult to dismantle.

We cannot reduce violence in the City’s jails or among incarcerated people without first addressing the ways staff practices fuel the broader culture of violence. So long as humiliation remains a celebrated tactic and gangs are manipulated to control or intimidate, violence will remain unabated.

### **Lack of Adequate Supervision and Accountability Mask Abuse and Compound Problems**

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<sup>11</sup> *Nunez* Report at 8.

The Department's promotion, supervision, and investigation practices only reinforce the conclusion that uniformed staff are permitted to brutalize the people in their care with impunity. A major shift in Department culture can only happen when supervisors and management respect the basic human dignity of the people in their care, demonstrate a baseline of professionalism, and ensure accountability among the rank and file. Sadly, this is far from the case right now. The Department's long-standing and consistent failure to meaningfully investigate and hold officers accountable for brutality and misconduct has led to leadership that itself practices—and at the very least condones—those very same abusive tactics.

Visiting the jails, it is far too common to hear supervisors encourage cruelty, disrespect, and violence toward incarcerated people. The people we represent report these experiences on a daily basis. Even more disturbing, perhaps, is the frequency with which supervisors themselves are responsible for unnecessarily escalating conflicts or encouraging subordinates to resort to force quickly and excessively. Once an incident is underway, supervisors sometimes participate in the very acts of brutality they should intervene to prevent. And those who do intervene are largely unsupported as they try to impose accountability on their subordinates. The *Nunez Report* describes the trend and its impact:

Staff engaging in insubordination, including in some instances exhibiting out-of-control behavior and physically assaulting supervisors who attempt to intervene in an inappropriate use of force. That incidents like these are occurring at all, and are not addressed immediately by management, clearly serves to perpetuate an already toxic environment.<sup>12</sup>

Even when supervisors are not involved in an incident, they are routinely complicit in violence by failing to ensure a fair or effective investigation process. Interviews with victims or witnesses of use of force regularly take place within earshot of other people, often including the very Department staff involved in an incident. Officers are known to retaliate against people who report misconduct, both violently and through more subtle means.<sup>13</sup> Many people refuse to provide a full account of an incident in order to protect themselves because they fear retaliation in one form or another. Almost universally, victims and witnesses who come forward to report violence or brutality despite the risk of retribution and discredited without any reason. And rather than intervening to address these deficiencies, supervisors often ignore evidence of collusion and fail to interview victims or witnesses of uses of force themselves. Instead, the regular practice is for supervisors to rubber-stamp the statements of subordinate officers.

While the Department's investigators are purportedly independent, the division is plagued by many of the same deficiencies and itself serves as a rubber stamp on misconduct. Preliminary reviews of allegations are rarely completed in a timely fashion, and the investigations that are completed regularly fail to uncover or address staff misconduct. In rare cases that an investigation finds staff misconduct, discipline is delayed and largely ineffectual, except in certain high-profile cases.<sup>14</sup>

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<sup>12</sup> *Nunez Report* at 8.

<sup>13</sup> We regularly hear reports that officers deny access to commissary or visitation to people who report misconduct.

<sup>14</sup> *See generally Nunez Report* at 48-71.

We urge the Department and City officials to closely review promotions, demand a baseline of professionalism and competence from supervisors, and strictly enforce accountability. With even a semblance of adequate supervision, we believe some of the most egregious incidents could be avoided. In the long-term, it is imperative that management and supervisory staff embrace and demonstrate respect for the dignity of the people in their custody. When misconduct does occur, as it inevitably will in a large, complex system, we must demand accountability and transparency rather than allowing misbehavior to fester and go unpunished.

### **Conclusion**

The Council's focus on violence in the jails is timely. Just last week, the Board of Correction ("Board" or "BOC") concluded its public comment period on restrictive housing rulemaking,<sup>15</sup> and is expected to release revised rules in the coming months. In October, the *Nunez* Report laid out an action plan to improve the culture in the jails. The movement to "close Rikers" is well underway. Law reform has paved a path to reduce the population of the City's jails.

Now is the time for fundamental, systemic change. We have a unique opportunity to not just change policy but also to address the serious systemic and cultural attitudes that lead to widespread violence and dehumanizing treatment of New Yorkers in City custody. Yet it is apparent that without more support for City and Department of Correction leadership, the change desperately needed to shift the "deep seated culture" will continue to drag. For years, the Department has promised impending reform, yet after the *Nunez* Report described little progress, DOC Commissioner Cynthia Brann once again sought to justify the continuing problems, noting that "[m]eaningful reform and culture change take time."<sup>16</sup> While we respect that decades of thinking does not shift overnight, at this point change is long overdue.

The culture inside the jails seems to be getting worse, not better. In response to the *Nunez* monitor's conclusion that "the number of [Use of Force] incidents and rates have continued to climb . . . [and recently reached] their highest levels since the Consent Judgment went into effect,"<sup>17</sup> Mayor De Blasio regrettably minimized the findings.<sup>18</sup>

We urge our City's leaders to read the most recent *Nunez* Report as a call to action. Rather than dismissing the findings and further delaying reforms that would ensure the people we incarcerate are treated safely, fairly, and with dignity, we hope the City will expedite culture change and embrace the monitor's suggestions. People, not facilities, are at the root of the problem. Opacity and misdirection, not facilities, are the root of the problem. Excuses, not facilities, are the root of the problem. Until our leaders demand accountability and transparency, the culture of violence

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<sup>15</sup> BDS is grateful for the numerous members of the City Council, including Chairman Powers and Council Member Rivera, as well as Public Advocate Jumaane Williams, who recently urged the Board to impose strict limits on the use of restrictive housing.

<sup>16</sup> Christopher Robbins, New Report Shows NYC Jails in State of Chaos: 'The System is Overwhelmed,' Gothamist, Oct. 29, 2019, <https://gothamist.com/news/report-shows-how-nyc-jails-have-gotten-even-more-violent-system-overwhelmed>.

<sup>17</sup> *Nunez* Report at 7.

<sup>18</sup> Tr. Mayor de Blasio Appears Live on the Brian Lehrer Show, Nov. 1, 2019, [available at https://www1.nyc.gov/office-of-the-mayor/news/522-19/transcript-mayor-de-blasio-appears-live-the-brian-lehrer-show](https://www1.nyc.gov/office-of-the-mayor/news/522-19/transcript-mayor-de-blasio-appears-live-the-brian-lehrer-show) (cautioning "read[ing] too much into" the report in light of plans to "close down the facilities that have been the root of this problem")

will invade any building we use to incarcerate people. We urge the City Council to lead the charge by:

- Requiring that the plan to close Rikers and expand borough-based jails incorporates policy, training, and supervision reforms that address the ongoing culture of violence inside the Department of Correction;
- Pushing the Department and the City to adopt the recommendations of the *Nunez* monitor, particularly those aimed at fully implementing the Use of Force Directive, improving the investigation process, and enhancing staff discipline and accountability;
- Demanding—through oversight, investigation, and reporting—that the Department no longer answer misbehavior with violence, insubordination with misconduct;
- Insisting that the Department curb its overreliance on chemical spray and other overly harsh restraints and instead prioritize and recognize officers who effectively adopt de-escalation practices;
- Encouraging the Board of Correction to adopt strict rules that limit the use of restrictive housing and replace it with effective, humane discipline strategies
- Supporting efforts by directly impacted people and their advocates to call attention to misconduct and excessive force in the jails; and
- Denouncing—in legislation, media interviews, and public forums, the ongoing cycle of violence festering in the City’s jails.

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BDS is grateful to the Committee on Criminal Justice for hosting this important hearing and continuing to call attention to the troubling state of our City’s jails. 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 contact Kelsey De Avila, Jail Services Project Director, at [kdeavila@bds.org](mailto:kdeavila@bds.org) or me at [bmenschel@bds.org](mailto:bmenschel@bds.org).