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Sent via email

December 3, 2020

Jennifer Jones Austin, Esq.
Chair
The New York City Board of Correction
1 Centre Street, Room 2213
New York, NY 10007

Re: Request for Immediate Action to Manage COVID-19 Outbreak in New York City Jails

Dear Chair Jones Austin and Members of the Board:

The Board of Correction has played a pivotal role in protecting people incarcerated and working in New York City's jails throughout the COVID-19 pandemic. The Board's call for decarceration in March¹ made plain the need for action from City Hall and other criminal justice actors. BOC reports have been the most reliable and detailed sources of information about conditions in the jails in a perilous time. It is clear that the efforts of the Board and its staff have saved lives.

We now face another outbreak of COVID-19 in New York City Department of Correction ("DOC" or "the Department") facilities, and the Board must act now to protect the health and safety of incarcerated people and jail staff. As we describe below, the population has risen to nearly pre-pandemic levels, and data strongly suggests that there is now significant in-jail transmission. A resurgence in the jails once again disproportionately impacts black and brown people in custody.² The experience from last spring tells us what is likely to come next: escalating infection rates and avoidable deaths.

The City has not acted strongly enough in the face of these increasingly dangerous conditions, despite escalating warnings from advocates, Board Members, and other leaders that a resurgence of COVID-19 in the jails was imminent. The City's actions appear to ignore both hard-earned lessons from the spring and evolving scientific consensus about COVID-19 infection management. The

¹ Letter from Board of Correction Interim Chair Jacqueline Sherman to New York City Criminal Justice Leaders, March 21, 2020, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/News/covid-19/Letter-from-BOC-re-NYC-Jails-and-COVID-19-2020-03-21.pdf> (last visited December 2, 2020).

² See New York City Board of Correction Weekly COVID-19 Update, *Week of November 21 – November 27*, THE NEW YORK CITY BOARD OF CORRECTION, *available at* <https://www1.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-11-21-11-27-20.pdf> (last visited December 2, 2020) (see p.10, revealing that 685 of the 731 people in COVID-designated housing units, or 93.7%, are Black, Black Hispanic, Hispanic, or White Hispanic).

people in the New York City jails should not pay the price for these failures. We know that the Board, like many City agencies, is facing serious resource challenges due to the pandemic. But we implore the Board to once again use its chartered position of access and authority to curb this resurgence of the virus. As the Board knows well, lives hang in the balance.

The Newest Data about COVID-19 in the City Jails is Alarming

The data the Board published on December 1 about COVID-19 in the city jails commands an urgent response. The most recent BOC Weekly Report is page after page of astonishing data:

- For months, there have been one or two seemingly isolated reported infections among DOC and CHS staff each week. The new report reveals *31 new staff infections in one week*.³
- On November 7, there were only seven housing areas with COVID-19 designations in which 96 people were housed.⁴ By November 27, there were *33 COVID-designated units housing 759 people*.⁵
- In just one week, the number of people in exposed housing units more than tripled.⁶ The problem has reached nearly all facilities: where previously, the only facilities with COVID-19 designated housing units were MDC, AMKC, and WF,⁷ there are now exposures or active infections in MDC, AMKC, VCBC, GRVC, OBCC, RNDC, and WF.⁸
- CHS reporting shows us that reported active infections among people in custody increased exponentially in the last two weeks, from 2 active infections on November 17⁹ to 18 on November 29.¹⁰

Steadily adding more fuel to the tinderbox, the population in the jails has risen rapidly in recent months and is now comparable to pre-pandemic levels. As of November 27, the total population in DOC was 4,805 people—the same population as in late March, which the City acknowledged was too dangerous, necessitating decarceration.¹¹ And DOC continues to create perilously high density levels in housing areas, in flagrant violation of public health standards: 66% of dorm units and 60% of cell units remain above 50% of capacity, and *34.5% of units exceed 75% of capacity*.¹² Of the ten

³ BOC Weekly Report: November 21 – November 27, *supra*, at p.13.

⁴ New York City Board of Correction Weekly COVID-19 Update, *Week of November 7 – November 13*, THE NEW YORK CITY BOARD OF CORRECTION, available at <https://www1.nyc.gov/assets/boc/downloads/pdf/covid-19/BOC-Weekly-Report-11-7-11-13-20.pdf> (last visited December 2, 2020) (pp.18, 20).

⁵ BOC Weekly Report: November 21 – November 27, *supra*, at pp.18, 20.

⁶ *Id.* at p.20.

⁷ BOC Weekly Report: November 7 – November 13, *supra*, at p.18, fn.3.

⁸ BOC Weekly Report: November 21 – November 27, *supra*, at p.18, fn.3.

⁹ Correctional Health Services (CHS) COVID-19 Data Snapshot: November 17, 2020, CORRECTIONAL HEALTH SERVICES, available at <https://hhinternet.blob.core.windows.net/uploads/2020/11/CHS-COVID-19-data-snapshot-20201118.pdf> (last visited December 2, 2020).

¹⁰ Correctional Health Services (CHS) COVID-19 Data Snapshot: November 29, 2020, CORRECTIONAL HEALTH SERVICES, available at <https://hhinternet.blob.core.windows.net/uploads/2020/11/CHS-COVID-19-data-snapshot-20201130.pdf> (last visited December 2, 2020).

¹¹ BOC Weekly Report: November 21 – November 27, *supra*, at pp.4, 5.

¹² *Id.* at pp.25, 27.

facilities in operation as of November 27, seven of them have units at or above 90% capacity, with units at six facilities at 100% of capacity.¹³ Operating facilities in this manner as an outbreak surges within the jails and in the broader community is unacceptably dangerous.

The Board Must Act to Address the COVID-19 Outbreak in DOC

Every City leader must now act; the Board's leadership is again critical. There is no regularly scheduled BOC public meeting until January 12, 2021. The people incarcerated in the New York City jails, and the families and communities of which they are a part, cannot wait until then for Board action. We ask that the Board immediately schedule a special public hearing in December to address the COVID-19 outbreak in the city jails. The hearing should encompass every important issue affecting the people who work and are detained in the jails, including: decarceration efforts, density of housing areas, the lack of routine, mass testing for staff and people in custody, patient and staff education, availability of PPE and medical care, and plans for vaccine distribution. The powers and duties delegated to the Board by our City Charter are unique and must be marshalled to meet this immediate threat.

We thank you for your work, and we look forward to speaking with you further to address these urgent concerns.

Very best regards,

/s/

Kayla Simpson
Staff Attorney
Veronica Vela
Supervising Attorney
Mary Lynne Werlwas
Director

cc: Commissioner Cynthia Brann, New York City Department of Correction
Heidi Grossman, General Counsel New York City Department of Correction
Dr. Patricia Yang, Senior Vice President, Correctional Health Services
Dr. Ross MacDonald, Chief Medical Officer, Correctional Health Services
Deanna Logan, Acting General Counsel, Mayor's Office of Criminal Justice

¹³ *Id.* at p.28.