



October 15, 2021

Hon. Michael A. McMahon
Richmond County District Attorney
Richmond County District Attorney's Office
130 Stuyvesant Place
Staten Island, NY 10301

Re: Urgently Needed Steps to Address the Crisis at Rikers Island

Dear District Attorney McMahon,

We are writing as chairpersons of several criminal justice-related New York City Bar Association committees to urge in the strongest possible terms that you take the following steps without delay to help address the ongoing crisis at Rikers Island: (1) seek the release of as many people as possible who are currently incarcerated pretrial for cases your office is prosecuting; (2) promulgate new rules to require that assistant district attorneys in your office take all necessary steps to ensure fewer people are incarcerated pretrial going forward; and (3) recommend and negotiate non-incarceratory sentences rather than city jail sentences. Four percent of the average daily population of those held in the city's jails were arraigned in Staten Island.¹

We urge you to seek the release of as many people as possible by recommending the least restrictive means of ensuring return to court. Release should also be considered for those charged with violent crimes or who have been convicted of violent criminal charges in the past: research is clear that even those accused of violent crimes very rarely commit new crimes when they are released pretrial. You should do your utmost to ensure that individuals be released on their own recognizance, to services tailored to their individual needs, to supervised release, or, if necessary, to electronic monitoring rather than requesting bail. If bail is set, your assistant district attorneys should ask that at least one form is a partially secured or unsecured personal or appearance bond, in accordance with state law.²

¹ New York City Department of Correction Population Demographic Report, FY21 Q4 (April 1 – June 30, 2021), <https://www1.nyc.gov/assets/doc/downloads/pdf/FINAL%20Population%20Demographics%20Report%20LL%208%20-%20FY21%20Q4.pdf>. (all websites last visited Oct. 15, 2021).

² N.Y. Crim. Proc. Law §520.10(2)(b).

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 25,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

We also urge you to immediately instruct all assistant district attorneys in your office not to request bail in an amount a defendant cannot afford to pay or in a form that is inaccessible to them. Unaffordable bail constitutes de facto remand for low-income individuals, violating the spirit of the bail statute as well as the guarantees of due process, equal protection, and no excessive bail.³ Given the extreme crisis at Rikers, it is obvious that any person who could afford to pay their bail would quickly do so; those who cannot afford bail should not be sentenced to die for their poverty while awaiting trial.

Twelve people have already died this year at Rikers, and conditions there remain dire. The staff at Rikers have sounded the alarm. On September 10, Ross McDonald, Chief Medical Officer at the Correctional Health Services – the city agency charged with providing medical care at Rikers—stated, “In 2021, we have witnessed a collapse in basic jail operations, such that today I do not believe the city is capable of safely managing the custody of those it is charged with incarcerating in its jails, nor maintaining the safety of those who work there.”⁴ In late August, Dr. Robert Cohen, a member of the New York City Board of Correction, an independent body that monitors the jails, stated that “[e]very person they send to jail is at great risk of harm and death.”⁵ Currently, the collapse of test and trace protocols for COVID-19 at Rikers have resulted in the quarantine of 20% of its population.⁶

After touring the jail complex last month, several elected officials were left aghast, describing “a horror house of abuse and neglect”⁷ where feces flowed from toilets onto floors, people slept without cots or bedding, and many went unfed and without basic medical care.⁸ And after years of reporting a culture of violence, “unprofessional conduct and hyper-confrontational

³ *Stack v. Boyle*, 342 U.S. 1, 4 (1951) (“Th[e] traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.”).

⁴ Gloria Pazmino, “Rikers chief medical officer: Jail needs ‘outside help’,” NY1, Sept. 10, 2021, <https://www.ny1.com/nyc/all-boroughs/politics/2021/09/11/rikers-island-chief-jails-medical-officer-says-nyc-cannot-safely-manage-it>. (all websites last visited Oct. 14, 2021).

⁵ Jonah E. Bromwich and Jan Ransom, “An ‘Absolute Emergency’ at Rikers Island as Violence Increases,” New York Times, Published Aug. 24, 2021, Updated Oct. 11, 2021, <https://www.nytimes.com/2021/08/24/nyregion/rikers-island-emergency-chaos.html>.

⁶ Jake Offenhartz, “Staff Shortages Leave 20% Of Rikers Detainees Under Quarantine, Slowing Decarceration Efforts,” Gothamist, Sept. 30, 2021, https://gothamist.com/news/staff-shortages-leave-20-rikers-detainees-under-quarantine-slowing-decarceration-efforts?mc_cid=29cb939e7f&mc_eid=938333dc98.

⁷ Assembly Member Emily Gallagher, [@EmilyAssembly]. “I want to share more about what I witnessed at Rikers Island yesterday. We broke into groups to inspect different parts of the sprawling facility. I spent several hours at the Otis Bantum Correctional Center.” (Thread). Twitter, Sept. 14, 2021, <https://twitter.com/EmilyAssembly/status/1437787192903049238>.

⁸ Rep. Alexandria Ocasio-Cortez, [@RepAOC]. “The conditions at Rikers Island are a humanitarian crisis. We, along with @RepJerryNadler, @RepBowman and @NydiaVelazquez, strongly believe that Rikers should be immediately decarcerated and shut down. Read our letter to @GovKathyHochul and @NYCMayor.” Twitter, Sept. 21, 2021, <https://twitter.com/RepAOC/status/1440369091374583809>.

behavior by staff,”⁹ a court-appointed federal monitor explained that conditions on Rikers “have further deteriorated in the past few months with a steady increase in serious use of force incidents, a disturbing rise in the level of security lapses and unchecked breaches and failures of basic security protocols, and instances of inadequate supervision, all of which are compounded by staffing challenges.”¹⁰ Even the primary goal of bail – to ensure that defendants appear in court – is not being met, as the Department of Correction more and more frequently fails to produce incarcerated individuals for court dates, further slowing down court processes.

Absent immediate strong action by your office, this catastrophe will only worsen. We believe your taking the following actions together with District Attorneys in the other New York City counties can quickly and safely bring this terrifying health, safety, and human dignity crisis to an end:

- (1) Immediately review all cases involving a detained individual, and work with defense counsel to seek dismissals, release, or non-incarcerative pleas;
- (2) Propose affordable bail amounts in the few cases necessitating bail, by employing independent assessment tools such as an Ability to Pay Calculator;¹¹
- (3) Work with the Office of Court Administration to establish dedicated courtrooms in each borough for judges to review detained individuals’ cases daily and grant release whenever possible;
- (4) Engage the Department of Correction to facilitate cases’ speedy resolution by increasing video conferencing capacity at Rikers housing units so that people may attend court virtually;¹²
- (5) Encourage the Mayor and City Council to fund existing social service providers to establish pop-up sites at the entrance to Rikers Island, so that, upon release, people have access to basic needs like food; Metrocards; and assistance with housing, treatment, and public benefits that will help them safely regain a footing in their communities and return to court.

As District Attorney of Richmond County, you have real power to help ameliorate this crisis and prevent further inhumane incarceration, serious injury, and death.

⁹ Ninth Report of the Nunez Independent Monitor, Ninth Monitoring Period (July 1, 2019 through December 31, 2019), May 29, 2020, <https://www1.nyc.gov/assets/doc/downloads/pdf/9thMonitorsReport052920AsFiled.pdf>.

¹⁰ Graham Rayman, “Conditions at Rikers Island continuing to deteriorate, federal monitor says,” NY Daily News, Aug. 24, 2021, <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-monitor-chaos-20210824-zvaltgam45bjrjfti7bckgptna-story.html>.

¹¹ Insha Rahman, “Bail Assessment Pilot: ATP Bail Calculator,” Vera Institute of Justice, <https://www.vera.org/projects/bail-assessment-pilot/atp-calculator>; see also Fines, Fees, and Financial Burdens, Center for Court Innovation, <https://www.courtinnovation.org/fines-fees>.

¹² Many incarcerated New Yorkers cannot attend court hearings in person or virtually because staff shortages continue to hinder transit to court or on-island virtual booths.

Rikers Island and people detained there are now in a crisis far beyond anything experienced at the height of the pandemic. We call upon you to take swift and sweeping action to release as many people as possible who are currently incarcerated pretrial for cases your office is prosecuting. We also urge you to promulgate new rules for assistant district attorneys in your office, to ensure that they take all steps necessary to ensure that – going forward – fewer people are incarcerated pretrial. Finally, we strongly recommend that you seek and negotiate non-incarceratory sentences rather than city jail sentences for every person who is or could be sent to Rikers. Failing to act during this extraordinary health and humanitarian crisis simply means that more people may die.

Respectfully,

Stephanie Holmes /s/

Stephanie Holmes, Secretary
Corrections & Community Reentry Committee

Terri Rosenblatt /s/

Terri Rosenblatt, Chair
Criminal Courts Committee

Tess Cohen /s/

Tess Cohen, Chair
Criminal Justice Operations Committee

Jullian Harris-Calvin /s/

Jullian Harris-Calvin, Co-Chair
Mass Incarceration Task Force

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