



07/31/2023

The Honorable Chief Judge Laura Taylor Swain
U.S. District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez v. the City of New York, Case No. 11 Civ. 5845. Support for the Appointment of Federal Receivership Over New York City Jails

Dear Chief Judge Swain:

On behalf of *Citizens Union of the City of New York*, we write to support the appointment of a federal receiver over the New York City jail system, as relief in *Nunez v. The City of New York*, Case No. 11 Civ. 5845.

We came to support the appointment of a receiver only reluctantly. *Citizens Union* is a 125-year-old good-government organization committed to reforming New York City and State government by fostering accountability, accessibility, transparency, honesty, and the highest ethical standards. An ardent supporter of strengthening municipal home rule, *Citizens Union* has a lengthy record of advocating for New York City to receive more, not less, power to run the city's business.¹ Many the members of our Board and our Policy Committee are former City officials, including high-level officers such as deputy mayors, commissioners, and senior advisors and counsels to the Mayor. We generally support local governments having the power to manage their jurisdictions.

However, it seems clear that the situation in Rikers Island has now reached a full-blown humanitarian crisis that uniquely justifies federal intervention. For decades, New York City has failed to overcome the structural, political, and administrative obstacles that underlie this crisis and significantly mitigate the "culture of violence" at Rikers Island. To protect inmates from extraordinary harm, the city's jail system needs reforms that can only be implemented by an independent, properly empowered outside body—namely a federal receiver.

Despite the best efforts of the Federal Monitor appointed by the Court in 2015 and his work with the Department of Correction to reduce violence on Rikers Island, the situation in City jails has gotten worse by nearly every metric.

¹ See, for example, *Citizens Union*, February 2017, Policy Position in Support of Continued Mayoral Control of New York City Public Schools, available at: https://citizensunion.org/wp-content/uploads/2017/06/CU_Policy_Position_on_Mayoral_Control_of_NYC_Public_Schools_2017_2_.pdf

- Deaths have gone up: 2022 was the deadliest year at Rikers Island in over two decades. Nineteen (19) detainees died in custody, the highest ever rate of death per 1,000 incarcerated individuals. The death rate has more than doubled since the start of the monitoring program.²
- Other violent incidents have sharply increased: According to the Monitor, every safety and violence indicator is substantially higher now than in 2015.³ Slashings and stabbings are outpacing even the previous 1995 peak of violence.⁴
- Use of force worsened: In 2022, there were 7,005 recorded incidents of force, compared with 4,652 in 2016, the first year after the Monitor was appointed. As the Monitor indicates, the rate of use of force is “demonstrably worse” than at the time the monitoring program went into effect, with rates of violence far higher than in other jurisdictions.⁵
- Assaults on staff continued: Last year, 799 assaults on staff were recorded compared to 842 in 2016 despite a reduction in the number of detainees. The monthly rate of assaults increased by more than 60%, from 0.72 in 2016 to 1.18 in 2022.⁶
- Detainees are being denied their right to appear before a judge: In 2022, the Department of Correction failed to deliver over 20% of inmates to their court appointment on time. This failure undercuts the prime purpose of pretrial detention - to ensure the person appears at their court date. When *Nunez* was first filed in 2011, only 2.5% of detainees missed their court appointments.⁷

Seven years after the Monitor’s appointment in 2015 under the federal oversight program, the City is still moving in the wrong direction on nearly all metrics. The Monitor was appointed because of the violent conditions that existed in 2015. A different kind of authority is now needed to save lives.

The problem at Rikers did not originate with this mayoral administration. It is structural and has persisted through many. It does not stem from a lack of resources—the New York City jail system is one of the most well-resourced in the country⁸—or from an increase in crime. Jail population is about half of what it was when the Monitor began his work.

² New York Daily News, March 01, 2023, NYC jail deaths at highest rate since 2000; hundreds have died at Rikers and other lockups over two decades <https://www.nydailynews.com/new-york/nyc-crime/ny-rikers-jail-deaths-spike-bail-reform-20230301-gh42e5t4rzgmrrerzdlierucofy-story.html>; New York Times, July 4, 2023, Tracking the Deaths in the Rikers Island Jail Complex 2022 <https://www.nytimes.com/article/rikers-deaths-jail.html>; Vital City, November 15, 2022, State of the Jails: New York City, <https://www.vitalcitynyc.org/articles/state-of-the-jails-november-2022>

³ Special Report by the Nunez Independent Monitor, July 10, 2023 <https://tillidgroup.com/wp-content/uploads/2023/07/2023-07-10-Monitors-Report.pdf>

⁴ Vital City, November 15, 2022, State of the Jails: New York City, <https://www.vitalcitynyc.org/articles/state-of-the-jails-november-2022>

⁵ Special Report by the Nunez Independent Monitor, July 10, 2023 <https://tillidgroup.com/wp-content/uploads/2023/07/2023-07-10-Monitors-Report.pdf>

⁶ Ibid.

⁷ Dynamic Mayor's Management Report: On-Trial Individuals In Custody Delivered To Court On-Time (%) <https://dmmr.nyc.gov/city-services/public-safety-and-access-to-justice/departement-of-correction/2393>

⁸ The City now spends nearly \$500,000 annually per incarcerated individual and has more uniformed officers serving in jails than it has detainees. Office of the New York City Comptroller Brad Lander, Department of Correction Dashboard <https://comptroller.nyc.gov/services/for-the-public/departement-of-correction-doc/dashboard/>



We believe City administrators lack the administrative and legislative tools or the political leverage and will to use them.

The current mayoral administration has urged this Court to permit it more time to improve conditions and has claimed that it has taken significant steps to reform the correctional system. However, the situation has not improved and by some measures has deteriorated. The pace of reforms, as diligently tracked in the Monitor's Reports, has stagnated. Furthermore, the mayoral administration has taken steps to hinder progress. It has blocked access to camera footage on Rikers Island from the Department of Correction's oversight body, the Board of Correction,⁹ failed to accurately and timely report deaths to the Monitor,¹⁰ stopped notifying the press when an incarcerated person dies in custody,¹¹ and weakened accountability for staff misconduct.¹² These actions signal that, like its predecessors, this administration will also fail in bringing this humanitarian crisis to an end.

Our view is that a federal receiver is necessary to address several obstacles that stand in the way of meaningful structural reform including:

- Overcoming burdensome procurement rules. Current rules inhibit bringing necessary equipment to City jails in a timely manner. It took the Department of Correction 11 months, for example, to procure vests for body-worn cameras, a priority of the Monitor, and crucial locking doors that can prevent violence and disorder in jails could take years to arrive.
- Hiring outside experienced professionals without being bound by city and state civil service rules that require promotion within the ranks of the Department of Correction. While civil service rules are important to tamp down nepotistic hiring practices, where the Department of Correction is concerned, they severely limit the opportunity to put in place new middle and upper management with qualified staff possessing the expertise and commitment to shift the dysfunctional, organizational culture.
- Overcoming sections of union contracts that thwart accountability in the Department. Use of force violations get wrapped in excessively long disciplinary proceedings and despite massive and systematic misuse of officers' unlimited sick leave and absenteeism, investigations rarely end with discipline.
- Providing stability and independence from political pressure. On average, commissioners of correction remain in office for less than three years; the current Commissioner is the 19th since 1989. Their efforts are often influenced by the power of union officials, pressure from elected

⁹ NY1, January 18, 2023, After NY1 investigation, DOC limits access to security video, <https://www.ny1.com/nyc/all-boroughs/public-safety/2023/01/19/after-ny1-investigation--department-of-correction-limits-access-to-security-video>

¹⁰ Special Report of the Nunez Independent Monitor, May 26, 2023,

<https://storage.courtlistener.com/recap/gov.uscourts.nysd.383754/gov.uscourts.nysd.383754.533.0.pdf>

¹¹ The City, May 31, 2023, City Jails No Longer Announcing Deaths Behind Bars Angering Watchdogs, <https://www.thecity.nyc/2023/5/31/23744666/correction-jails-not-announcing-deaths-rikers>

¹² Special Report by the Nunez Independent Monitor, July 10, 2023 <https://tillidgroup.com/wp-content/uploads/2023/07/2023-07-10-Monitors-Report.pdf>



officials, and the shifts and flows of public opinion. Strategy changes every time a new mayor or new commissioner takes the helm.

Meaningful reform under federal stewardship will take time to implement and require the full cooperation and support of the City to succeed, which we expect would be forthcoming. The receiver selected will need to seek the collaboration of all relevant parties in the criminal justice system, especially those necessary to ensure speedy trial proceedings and reduce the length of stay in city jails.

As mentioned, this is an unusual position for Citizens Union. We traditionally support local control of local facilities and services. But the situation on Rikers Island is unprecedented and a different kind of authority is needed there to save lives. In light of the ongoing deaths and violence and the failure over many decades by numerous City administrations to make meaningful reforms to the Department of Correction, Citizens Union believes a federal takeover of the New York City jail system is the best path forward.

Sincerely,

Betsy Gotbaum, *Executive Director*
Alan Rothstein, *Co-Chair of the Policy Committee*

Citizens Union of the City of New York

CC:
New York City Law Department
The Legal Aid Society
U.S. Attorney's Office for the Southern District of New York