

OFFICE OF THE MONITOR
NUNEZ, ET AL. V. CITY OF NEW YORK, ET AL.

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May 6, 2020

VIA ECF

The Honorable Laura T. Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10006

Re: Nunez, et al. v. City of New York, et al., 11-cv-5845 (LTS) (JCF)

Dear Judge Swain,

Given the delay in filing the Ninth Monitor's Report (*see* docket 337) and the impact that the dynamic and emergent circumstances relating to COVID-19 is having on the operations within the Department, and may have on the implementation of the *Nunez* reforms, the Monitoring Team believes it is important to provide to the Court relevant information regarding these matters. Our brief update is attached.

Please do not hesitate to reach out should you have any questions or require further follow-up. The Monitoring Team will continue to monitor this situation closely and apprise the Court of any changes that may impact the *Nunez* reforms.

Sincerely,

s/ Steve J. Martin
Steve J. Martin, Monitor

s/ Anna E. Friedberg
Anna E. Friedberg, Deputy Monitor

COVID-19 Update

May 6, 2020

The State of New York has been under a State of Emergency order since March 7, 2020.¹ As it has with all facets of life, the COVID-19 crisis has directly impacted operations at the Department of Correction and has caused a major shift in the way the Department does its work. The pandemic is simply unprecedented in the Monitoring Team's experience in operating and monitoring confinement operations. While the Department has had to implement many changes over the last four years to advance the *Nunez* reforms, the Department is currently facing its most significant challenges to date. This crisis has tested and will continue to challenge all who work for the Department of Correction and Correctional Health Services and will require a Herculean effort to enable the agency to return to its normal operations. The Department's efforts to address these challenges under extraordinary and incredibly stressful conditions must be acknowledged.

The Correction Officers, Captains, Assistant Deputy Wardens, Deputy Wardens, Wardens, Chiefs, and staff from the Quality Assurance and Integrity, Maintenance, Health Affairs, and Programming, as well as the staff from Correctional Health Services are providing invaluable support and making significant personal sacrifices to maintain the operations of the jails while altering many practices related to sanitation and safety. The Monitoring Team remains in close contact with the Executive leadership team, the Strategic Partnership Division, the Complex Litigation Unit, the Nunez Compliance Unit, the Investigations and Trials Division, the E.I.S.S. Division, as well as the Programming and the Training Divisions. In order to support the overall efforts of social distancing, the Department has also transitioned over 900 staff to tele-

¹ See Executive Order No. 202: Declaring a Disaster Emergency in the State of New York (available at <https://www.governor.ny.gov/news/no-202-declaring-disaster-emergency-state-new-york>).

working since this crisis began. Notably, the Department's IT division has ably and quickly responded to these unprecedented technological needs and supported a quick transfer to teleworking.

While operations have certainly been disrupted, the potential impact on the *Nunez* reforms remains to be seen. This crisis has required that new and innovative practices and procedures be developed and implemented in a very short period of time. The Monitoring Team has seen the creation and development of certain initiatives that may serve the Department well into the future, long after this crisis is over. The Department has been working very hard and all divisions across the agency have, to varying degrees, adapted to new and unprecedented circumstances in the face of these uncertain times.

- **Jail Population**

The population in the jails has been drastically reduced since November 1, 2015, the Effective Date of the Consent Judgment. The total population of 3,892 inmates on May 4 represents a 61% reduction in population since the Effective Date of the Consent Judgment and is the lowest DOC population since 1946.² This reduction reflects significant efforts, over many years, by the State, City, Department, and other stakeholders. It is worth noting that in order to reduce the number of people who may be exposed to COVID-19 in the jails, over the past six weeks, the inmate population has been reduced by 29% (from 5,447 on March 16, 2020 to 3,892 on May 4, 2020). To our knowledge, the population reduction achieved by the Department and the City is among the highest reduction in the nation both as a response to COVID-19 and as part of the City's overall criminal justice reforms. Such a significant reduction in the DOC population

² The average daily population was 10,009 inmates in November 2015, 9,454 inmates in December 2016, 8,944 inmates in December 2017, 7,960 inmates in December 2018, 6,341 inmates in December 2017.

will almost certainly have benefits in the overall management of the system, as well as in further advancing the aims of the *Nunez* reforms.

- **COVID-19 Testing & Diagnoses**

As is the case in correctional facilities throughout the country, COVID-19 has had a severe impact on the people who live and work in DOC facilities. Tragically, at least ten DOC staff members (both uniform and civilian) and three individuals in custody have died from COVID-19. As of May 5, 2020, a total of 1,179 DOC staff members (1,105 uniform and 74 civilian staff) have tested positive for COVID-19.³ The City reports that all DOC personnel with symptoms (uniform and civilian staff) have access to COVID-19 testing. As of May 4, 2020, 369 individuals currently incarcerated have tested positive for COVID-19.⁴ The City reports that all vulnerable and/or high-risk inmates and those inmates who are symptomatic, are currently being tested for COVID-19 by Correctional Health Services. The City also reports that Correctional Health Services has expanded COVID-19 testing to any individuals newly admitted into the jails – new female admission testing began last week and new male admission testing began on May 4, 2020. This expansion of testing is necessary, prudent, and important.

- **Department Protocols and Procedures**

The Department, in conjunction with Correctional Health Services, has had to develop and implement a series of protocols and procedures to address COVID-19. Given the potential impact of these changes on the *Nunez* reforms, the Monitoring Team provides a summary of these initiatives below. This information is shared in order to provide the Court context of the

³ As of May 5, 2020, 2,858 DOC staff (uniform and non-uniform) have been cleared to return to work since the pandemic began.

⁴ This number is not cumulative and so it reflects the number of inmates incarcerated as of May 4, 2020 that have tested positive of COVID-19.

standards that have been set. It is important to note that the Monitoring Team has not independently verified that these procedures have been implemented, and it is possible that there may be gaps between the reported standards and the extent to which they are implemented.⁵

- *Prevention Efforts*

The Department reports it has established a series of protocols to create social distancing and to reduce the number of people using congregate spaces. In-person visitation, most in-person court appearances (per court order), and external programming have been temporarily suspended. The Department reports it has established alternatives to preserve these functions including tele-visits, tele-court, and written and electronic programming materials are available to people in custody.

The Department reports that all individuals, including staff, entering any DOC facilities are being screened for flu-like symptoms, including a mandatory temperature screening. The Department also reports that staff and inmates are provided with masks, as well as other PPE, as appropriate. As for sanitation and hygiene in the jails, the Department reports that soap and cleaning supplies are available in every housing area, free of charge. The Quality Assurance and Integrity Division has developed quality assurance and auditing processes to assess the daily presence of soaps, disinfectants, and other sanitation supplies, and assess all sinks are operational in the facilities. The Department also reports that DOC housing units, dayrooms, and common spaces are to be cleaned once daily, as are all transportation vehicles; all shower areas are to be cleaned three times a day; and all telephones and “high-contact” surfaces are to be cleaned every two hours.

⁵ The Monitoring Team is aware of allegations as well as legal proceedings in which there are disputes about the extent to which these protocols and procedures have been implemented as described.

○ *Communication*

Strategies have been implemented to provide frequent, accurate information to those in the jails and to give guidance on best practice. Written guidelines, verbal briefings and visual aids have been distributed and/or displayed in all facilities to encourage adhering to limits on the number of people who congregate in the dayroom, bathrooms, and shower areas at any given time. Each weekday, the Department produces an end-of-day report that advises staff of important information related to COVID-19 and provides encouragement for staff from various agency leaders. The Department also maintains a webpage⁶ that outlines its COVID-19 Action Plan.

○ *Housing*

The Department reports working closely with Correctional Health Services on how best to house individuals in custody to minimize the possibility of the spread of COVID-19 as well as address those individuals who may have been exposed to the virus and/or are exhibiting symptoms. DOC has reopened the Eric M. Taylor Center (a recently closed Facility) in order to house newly admitted individuals showing symptoms of COVID-19, and to expand capacity for the housing of those who are COVID-19 positive. DOC has also created a dedicated intake in the Manhattan Detention Center for individuals *without* COVID-19 symptoms.

⁶ See <https://www1.nyc.gov/site/doc/media/coronavirusap.page>