Status Report by the *Nunez* Independent Monitor

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INTRODUCTION

This report is intended to provide the Court with an update on the Monitoring Team's assessment of Local Law 42 of 2024 ("Local Law 42" or "LL42"). A copy of LL42 is attached as Appendix A of this report. The Monitoring Team has been actively working to fully understand the impact of LL42 and any potential conflicts with the *Nunez* Court Orders while balancing other responsibilities including routine monitoring and facilitating the work related to the proposed remedial relief. Since the summer of 2024, the Monitoring Team has engaged extensively with the City and Department, convened multiple meetings with various stakeholders, and has received supplemental information from the Department, the Parties, and counsel for the City Council.

Many of LL42's requirements have a significant impact on several fundamental operations within the New York City jails, affecting both the individuals in custody and staff. Specifically, the requirements for using restraints will involve interactions with every person in the Department's custody, sometimes multiple times per day. Other regulations directly influence security operations, including the rules for de-escalation confinement and emergency lock-ins. Although these measures are used less frequently than restraints, the Department employs them to address specific, imminent threats to individuals' safety, with some situations being more complex than others. In some cases, resolving a threat may require action on multiple fronts uniquely tailored to both the individual(s) and the situation, and managerial discretion is essential to assess and mitigate the risk of harm. Finally, housing individuals who have committed serious acts of violence is arguably one of the most complicated practices in any correctional system. This complexity arises from the interpersonal dynamics involved and the extreme safety risks these individuals pose to other persons in custody and staff. To varying degrees, the regulations

of LL42 directly impact on the requirements of the *Nunez* Court Orders and, in some cases, implicate procedures that require the Monitor's approval. These issues are explored in greater detail in this report.

BACKGROUND ON LOCAL LAW 42

The City Council passed Local Law 42 on December 20, 2023. The Mayor of New York subsequently vetoed the bill on January 19, 2024, but it was signed into law by the City Council on January 30, 2024, overriding the Mayor's veto. LL42 amends the New York City Administrative Code by banning the use of solitary confinement, imposing 14 hours of mandatory out-of-cell time for all incarcerated individuals, setting additional requirements for the use of restrictive housing, de-escalation, emergency lock-ins, and restraints, and imposing specific conditions for special housing units (*e.g.,* mental health units, contagious disease units, protective custody units, housing for people who are transgender or gender non-conforming, and housing to promote school attendance).

In early January 2024, pursuant to the *Nunez* Court Orders,[1] the Commissioner requested the Monitoring Team's advice and feedback on how the requirements of LL42 might impact the Department's ability to comply with the *Nunez* Court Orders. On January 12, 2024, the Monitoring Team provided its initial assessment of LL42's implications for the City's and Department's efforts to address the unsafe conditions in the jails, protect individuals from harm,

[1] *See* Consent Judgment, § XX, ¶¶ 24 and 25 and June 13, 2023 Order (dkt. 550), § I, ¶ 5. Combined, these provisions: (1) permit the Department to request the Monitor provide technical assistance or consultation on the Department's efforts to implement the requirements of the *Nunez* Court Orders, (2) permit the Department to request the Monitor provide a written response to a request regarding the Department's compliance with the *Nunez* Court Orders, and (3) requires the Department to proactively consult with the Monitor on any policies or procedures that relate to the compliance with the *Nunez* Court Orders and to obtain the Monitor's feedback on these initiatives. The Monitor has addressed similar issues in the past. *See, for example,* Monitor's March 5, 2018 Report (dkt. 309), Monitor's October 31, 2018 Letter to the Court (dkt. 319), and Monitor's June 30, 2022 Report (dkt. 467) at pgs. 22-27.

and implement sound correctional practices, all of which are necessary to comply with the *Nunez* Court Orders. A copy of the Monitor's January 12, 2024 Letter is attached as Appendix C of this report.

In late May/early June 2024, the Department advised the Monitoring Team (and subsequently the Parties to the *Nunez* litigation) that it was considering seeking relief from LL42's requirements via the Court in the *Nunez* matter, given the Department's concerns that LL42's requirements may impede the Department's ability to comply with several key areas of the *Nunez* Court Orders. Likewise, the City advised the Court of its intentions in a letter dated June 5, 2024 (dkt. 724). Following the City's submission of this letter, the Monitoring Team and the *Nunez* Parties met and conferred in June 2024. In July 2024, the Commissioner sought updated guidance and feedback from the Monitoring Team pursuant to the *Nunez* Court Orders,[2] on how the requirements of LL42 might impact the Department's ability to comply with the *Nunez* Court Orders. A copy of the Monitor's July 17, 2024 letter is attached to this report as Appendix D. On July 22, 2024, the City filed a status report with the Court regarding its concerns related to the implementation of LL42 (dkt. 758). The status report included a declaration from Commissioner Lynelle Maginley-Liddie regarding her belief about "the deleterious effects that many of the provisions of Local Law 42 would have on the operations of the Department if they went into effect. Put simply, there would be an increase in violence and transportation of incarcerated individuals to court would become virtually impossible, among other adverse consequences." Declaration of Lynelle Maginley-Liddie, ¶ 2 (dkt. 758).

[2] *Id.*

On July 27, 2024, the Mayor issued Emergency Executive Orders ("EEO") suspending the implementation of certain provisions of LL42. A copy of the EEOs is attached as Appendix F. The EEOs remain in effect as of the filing of this report.

Since the summer of 2024, the Court has directed the Monitoring Team to engage in focused analytical work, to meet and confer with the Defendants and the Parties about these issues, and to provide multiple status updates.[3] The Monitoring Team updated the Court on the work to assess the intersection between LL42 and the *Nunez* Court Orders on October 24, 2024 (dkt. 789) and November 22, 2024 (dkt. 802).

On December 9, 2024, counsel for the City Council brought an Article 78 motion in state court seeking the following relief related to LL42:

(1) Finding the Emergency Orders 624 and 625, and all subsequent renewals of those Orders, arbitrary, capricious and contrary to law, the issuance of which is beyond the Mayor's lawful authority;

(2) Vacating the Mayor's Emergency Orders declaring a local state of emergency as result of Local Law 42 (Order No. 624 and all subsequent renewals); and

(3) Vacating the Mayor's Emergency Orders suspending Local Law 42 (Order No. 625 and all subsequent renewals).

This motion practice is still pending in state court with briefing expected to be completed in March 2025. The Monitoring Team has continued its analysis of LL42, among other duties, since the Monitor's November 22, 2024 Report. This report is intended to capture all work completed to date.

[3] *See* the Court's June 7, 2024 Order (dkt. 726), July 23, 2024 Order (dkt. 759), July 25, 2024 Order (dkt. 761), and October 25, 2024 Order (dkt. 791).

<u>MONITORING TEAM'S FRAMEWORK FOR EVALUATING LOCAL LAW 42</u>

The evaluation of LL42 requires thoughtful consideration, given the impact these requirements have on many facets of the jail operations and the intersection with many provisions of the *Nunez* Court Orders. To that end, the Monitoring Team's evaluation of LL42 includes the following overarching considerations.

- *<u>Requirements of the Nunez Court Orders</u>*. The requirements of the *Nunez* Court Orders are at the forefront of the evaluation of LL42's requirements. At their core, the *Nunez* Court Orders require the Department to have a "constitutionally sufficient level of safety for those who live and work on Rikers Island."[4] A variety of provisions in the Court Orders relate directly to various security protocols and procedures. In some cases, the Court has also required the Department to seek the Monitor's approval before it can implement certain security procedures and protocols. A non-exhaustive list of these requirements is included in Appendix B of this report.
- *<u>Protecting Individuals in Custody from Harm</u>*. A jail environment presents various potentially harmful situations, and Defendants have a duty to take action to prevent or minimize the impact of these situations to the best of their abilities. Given the requirements in LL42, due consideration of the impact of certain practices on individuals' safety and well-being is necessary, including how certain practices may impact the risk of harm one presents to oneself, as well as to potential victims, both other individuals in custody and staff. The evaluation of LL42's requirements must be focused on how they may support the overarching goal of protecting individuals from harm, which includes

[4] *See* Court's November 27, 2024 Order (dkt. 803) at pg. 54.

consideration of how implementing these requirements *in practice* will advance or impede the ability to protect individuals from harm.

- *Expertise in Correctional Practice & DOC Practices*. The Monitoring Team's assessment of LL42's regulations and requirements is grounded in the Monitoring Team's expertise in correctional practice and its extensive experience with correctional management and security protocols in facilities throughout the country. Collectively, the Monitoring Team has over 100 years of experience working and reforming both adult and juvenile systems nationwide. The intensive monitoring required by the *Nunez* Court Orders has also provided the team with deep insights and expertise into the Department's operations.
- *Department's Capacity and Limitations*. The Monitoring Team also considers the Department's current abilities and aptitude when assessing the impact of LL42's requirements. The practicality and feasibility of implementing a specific practice in *this* jail system at this time and the likely outcomes must be evaluated, as discussed in the next section. The Monitoring Team has provided the Court with an extensive record on the Department's dysfunction and limitations in managing a system that is consistent with sound correctional practice. The Monitor's Reports in this case have repeatedly found that the Department lacks the foundation to support the basic reforms required by the *Nunez* Court Orders.[5]

The Monitoring Team has repeatedly highlighted that the Department is tangled in a web of polycentric problems that, both individually and collectively, impede the prospect of meaningful reform. Specifically, staffing problems—stemming from absenteeism and

[5] *See* Monitor's March 16, 2022 Report (dkt. 438) at pg. 4; Monitor's June 8, 2023 Report (dkt. 541) at pg. 13; Monitor's November 22, 2024 Report (dkt. 802) at pg. 309.

inefficient personnel deployment—render the system incapable of providing staff in sufficient numbers to safely supervise a cadre of high-risk individuals with few restrictions on their movement and the ability to congregate in groups. Being able to safely supervise high-risk individuals in an open setting with few restrictions is also unrealistic in a system where staff members do not follow and adhere to basic security practices consistently. Staff failures to secure cell doors and security gates, to remain on post, and to enforce basic rules routinely contribute to violent incidents. Furthermore, staff often respond to tense interpersonal situations with hyper-confrontational behavior, contributing to the use of unnecessary and excessive force. Finally, the system remains incapable of adequately coaching and guiding staff to improve skill mastery and to apply timely and proportional staff discipline when warranted. The practical reality of the Department must be acknowledged and addressed at the forefront of any major change or reform effort.

- *Sound Correctional Practices*. The *Nunez* Court Orders require the Department to design and implement policies, programs, and protocols that align with sound correctional practices.[6] This standard is crucial for ensuring the safety, integrity, and effectiveness of the Department's approach to managing people in custody. Adhering to sound practices is

[6] *See* Monitor's May 31, 2016 Report (dkt. 269) at pg. 3; Monitor's October 31, 2016 Report (dkt. 291) at pg. 10; Monitor's April 3, 2017 Report (dkt. 295) at pg. 11; Monitor's October 10, 2017 Report (dkt. 305) at pg. 2; Monitor's April 18, 2018 Report (dkt. 311) at pgs. 2, 25-26; Monitor's October 17, 2018 Report (dkt. 317) at pg. 2; Monitor's April 18, 2019 Report (dkt. 327) at pg. 2; Monitor's October 28, 2019 Report (dkt. 332) at pg. 2; Monitor's May 29, 2020 Report (dkt. 341) at pgs. 2-3; Monitor's October 23, 2020 Report (dkt. 360) at pgs. 2-3; Monitor's December 1, 2021 Letter (dkt. 429) at pg. 7; Monitor's December 6, 2021 Report (dkt. 431) at pg. 8; Monitor's March 16, 2022 Report (dkt. 438) at pgs. 2-3; Monitor's April 20, 2022 Report (dkt. 445) at pgs. 7-8; Monitor's June 30, 2022 Report (dkt. 467) at pgs. 3, 7, 26; Monitor's October 28, 2022 Report (dkt. 472) at pgs. 6-7, 79, 88-89; Monitor's April 3, 2023 Report (dkt. 517) at pgs. 2-3, 40; Monitor's July 10, 2023 Report (dkt. 557) at pgs. 72, 73-74; Monitor's November 8, 2023 Report (dkt. 595) at pg. 28; Monitor's November 30, 2023 Report (dkt. 616) at pg. 24; Monitor's February 26, 2024 Letter (dkt. 679) at pg. 8; Monitor's April 18, 2024 Report (dkt. 706) at pg. 10; Monitor's June 27, 2024 Report (dkt. 735) at pg. 2; and Monitor's November 22, 2024 Report (dkt. 802) at pgs. 192, 256.

essential for minimizing risks, improving outcomes, and establishing a solid foundation for the Department's mandate to operate safe facilities for persons in custody and staff. In the complex and often perilous environment of jails, adhering to established standards is vital to begin to achieve consistency and quality in operations. This is particularly important for this Department, where the core foundational elements of safe jail operations have been so deficient. While the reform effort will necessarily require change and innovation, the guiding principle for the agency must first be to develop a foundation of basic, sound correctional practices. Until this foundation is established, further reforms and more ambitious changes to the basic operations of the jail will not be able to take hold.

- *Managerial Discretion*. As part of sound correctional practice, it is important for procedures to include specific requirements and safeguards. However, operators must always have sufficient discretion to manage situations where some degree of latitude and judgment are necessary to safely manage immediate safety and security threats. For example, simply setting a timeline for when a restriction must end does not necessarily mean that the threat underlying the need for the restriction has been successfully abated. In correctional environments, where various interpersonal dynamics pose a risk of violence or retaliation, it is essential to manage these risks appropriately. Managers' discretion and decision-making should not be constrained by arbitrarily imposed time limits, as such constraints may endanger others. Safeguards are necessary to ensure that practices are not abused, but strictly eliminating discretion when it is necessary can actually cause harm rather than reduce it.

- *Underlying Basis for Regulations*. The underlying principles and program models that inform the regulations are critical to understanding the basis for the regulations and whether they may have the intended impact. Innovations from other settings are valuable and can inspire new approaches to persistent issues, but it is crucial to develop solutions specifically tailored to the adult jail environment **and** the relevant target population. Innovations cannot simply be transplanted from one setting or population to another in a piecemeal fashion without recognizing and accommodating the significant differences in the interpersonal and institution-specific dynamics and environments where these programs or practices must operate.
- *Input from Stakeholders*. To inform its evaluation, the Monitoring Team has engaged the City and the Department and has also received input from counsel for the Plaintiff Class and the Southern District of New York. Counsel for the City Council has also shared information with the Monitoring Team, including a letter from Drs. Gilligan and Lee (which was also appended as Exhibit D to the City Council's Article 78 motion and provided as Appendix G in this report).
  - *Department Leadership*. The input from Department leadership who are charged with implementing the law is a critical factor. Whether the Department believes it can safely implement specific requirements must be heavily considered. On July 22, 2024, Defendants reported to the Court it "also [has] serious concerns about the negative effects on public safety that many of the provisions of Local Law 42 would have on operation of the City's jails and routine transportation of incarcerated individuals if they were to be implemented at this time. These concerns are discussed in detail in a July 22, 2024 Declaration of DOC

Commissioner Lynelle Maginley-Liddie." *See* Appendix E. The Monitoring Team has been actively engaged in discussing the operational impact of LL42 and Defendants have reported to the Monitoring Team that its position regarding Local Law 42 remains the same as it did in its July 22, 2024 submission to the Court.

- *Additional Expertise*. The Monitoring Team has also consulted with additional experts, including Dr. James Austin.[7] Dr. Austin has also been working as a consultant with the Department and has also developed an understanding of the Department's operations.

ORGANIZATION OF THE REPORT

This report includes a section on each of the four key correctional tools regulated by LL42: (1) Solitary confinement and restricted housing, (2) De-Escalation Confinement, (3) Emergency Lock-Ins, and (4) Restraints. In each section, a summary of the generally accepted practice is provided, followed by a description of the requirements of LL42 and then an explanation of the Monitoring Team's concerns about the impact of certain requirements of LL42 on DOC's operations. The report concludes with recommended next steps.

The report also includes a number of appendices, which are listed below:

- Appendix A: Local Law 42
- Appendix B: Summary of Relevant *Nunez* Provisions
- Appendix C: Monitor's January 12, 2024 Letter to Commissioner Maginley-Liddie

[7] Dr. Austin has worked to designed and evaluated restrictive housing programs in many correctional systems for both plaintiffs and defendants, including the Federal Bureau of Prisons, the states of Ohio, Illinois, Mississippi, Colorado, California, New Mexico, Kentucky, Rhode Islan, and the local California jails of Sacramento, Santa Clara, San Joaquin, and Alameda counties. The goal of Dr. Austin's work has been to eliminate solitary confinement, increase out of cell time, increase access to rehabilitative programs, reduce the number of people assigned to restrictive housing, and reduce the level of violence in these systems.

- Appendix D: Monitor's July 17, 2024 Letter to Commissioner Maginley-Liddie
- Appendix E: The City's July 22, 2024 Letter to the Court
- Appendix F: Mayor's Emergency Executive Orders 624, 625, 735 & 736
- Appendix G: The City Council's Article 78 Motion

ELIMINATING SOLITARY CONFINEMENT AND DEVELOPING ALTERNATIVE PROGRAMS

This section first discusses the generally accepted practice for managing individuals following serious acts of violence and those who otherwise pose an unreasonable and demonstrable risk to safety and security. This includes how these practices are defined, the harms and status of solitary confinement in the United States and how restricted housing models are being used to address the risks posed by those who engage in acts of violence while in custody. The section goes on to discuss efforts to reduce the use of solitary confinement in other jurisdictions and program models cited as the basis for the programs in LL42. Next, the Department's efforts to eliminate solitary confinement (known as "Punitive Segregation") and to manage individuals who commit acts of violence while in custody are summarized. This section ends with a discussion of the impact of LL42's requirements on the Department's operations, including the specific requirements of the law and the operational concerns that they create.

MANAGING INDIVIDUALS FOLLOWING SERIOUS ACTS OF VIOLENCE AND THOSE WHO POSE A RISK TO SAFETY AND SECURITY

A crucial element of ensuring the safety and well-being of both individuals in custody and staff in correctional facilities is the implementation of a reliable, safe, and effective response to serious interpersonal violence and a safe housing strategy for those who otherwise pose an unreasonable and demonstrable risk to safety and security. Because of the risks they pose, these individuals must be supervised differently from those in the general population. Separating violent individuals from the general population, minimizing their opportunity to harm others, properly managing congregate time out-of-cell, and limiting out-of-cell time are standard and

sound correctional practices, provided these limitations are reasonably related to reducing the potential for harm.

The population of any correctional facility includes a proportion of individuals who are challenging and unpredictable, some of whom have extensive histories of assaultive behavior, both in the community and while in custody. Concentrating on people with known propensities for violence or who otherwise pose an unreasonable safety risk in one location requires an approach with unique security enhancements, particularly during time spent in congregate activities, and underscores the importance of sound security practices in programs of this type. The approach must recognize the substantial and sometimes life-threatening harm already inflicted and the mandate to prevent further victimization. Protecting other people in custody and staff from violence necessitates specialized management for these individuals.

In this Department, serious violence occurs with an unacceptable level of frequency, and properly managing these individuals is a crucial priority for ensuring safety in the jails. The following incidents exemplify the serious dangers posed by certain individuals in custody and highlight the challenges of maintaining safety within the City's jails. These incidents also illustrate the consequences that can occur when placing such individuals in settings with limited restrictions. In other words, when the restrictions are improperly calibrated to the risks presented by an actively and/or persistently violent individual, real serious harm can and does often ensue, as evidenced by the following examples:

> ***Incident Example 1****: On February 6, 2024, in a mental observation housing unit at GRVC, a person in custody violently attacked another individual in custody in an unprovoked assault. While the victim was working in the pantry area, the perpetrator entered and suddenly stabbed the victim multiple times, pinning him against the wall. The*

victim sustained over 25 stab wounds and required emergency hospitalization. The attacker had a well-documented history of extreme violence in custody, having been involved in 39 reportable incidents, including five prior stabbings, three slashings, and two assaults resulting in serious injuries. He also had 18 recorded uses of force with staff and was found in possession of contraband on multiple occasions.

Incident Example 2: *On October 16, 2024, at OBCC, a staff member was seriously injured when a person in custody launched a surprise attack using a sharpened weapon. The incident began when an officer attempted to break up a fight between people in custody, deploying chemical agents to end the assault. As the officer worked to separate the individuals, the perpetrator approached from behind and slashed the officer's neck and ear. Despite the officer's attempts to disengage, the assailant continued to pursue him. Additional officers intervened, deploying chemical agents and physical force to subdue the perpetrator. The officer sustained multiple injuries, including deep lacerations to his right earlobe and neck, linear abrasions to his scalp, and required medical treatment at Mt. Sinai Hospital. Another officer suffered injuries to his knee, hip, and shoulder.*

Incident Example 3: *On November 3, 2024, at RNDC, a person in custody violently assaulted a staff member following a dispute over his cell being locked. The incident escalated when the person in custody aggressively approached an officer, ignoring verbal commands to maintain distance. When another person in custody attempted to pull the perpetrator back, he resisted and proceeded to strike the officer in the face. The force of the blow resulted in a facial laceration, fractures to the orbital floor and maxillary*

sinus, and nasal bleeding. Additional officers arrived to contain the situation, deploying chemical agents and restraining the assailant. The attack triggered further disorder, with other people in custody becoming disruptive, requiring additional security measures to restore order.

Designing and implementing a strategy to house perpetrators of this level of violence is challenging. Balance must be achieved between offering meaningful human contact and delivering rehabilitative services to reduce the likelihood of subsequent violence on the one hand, and on the other, imposing security protocols that will adequately protect staff and other persons in custody from the risk of violence these individuals pose, and to protect those individuals who committed a serious act of violence from becoming the victim of retaliatory violence.

Background on Solitary Confinement

The conditions of confinement in any correctional facility exist on a continuum, ranging from the least restrictive setting of "general population" to the most restrictive one of "solitary confinement." Between these two are various distinctions regarding the level of supervision and freedom of movement for individuals in custody, including celled versus dormitory housing, escorted versus unescorted movement, on-unit programming versus off-unit programming, and differences in the number of hours spent outside the cell.

In many systems throughout the country, individuals who engage in a range of misconduct are placed in solitary confinement. While there is no single definition of solitary confinement,[8] all research and systems with which the Monitoring Team has experience describe

[8] A precise, standard definition of solitary confinement is difficult to pinpoint. Appendix C provides definitions of solitary confinement from various reputable sources. While there is no consensus on the exact number of hours one

the practice of solitary confinement as a housing strategy where an individual is out of their cell for 4 hours or less per day over an extended period of time. As discussed later in this report, LL42's definition of solitary confinement is considerably more expansive than that found in the generally accepted practice. For the purposes of this report, the Monitoring Team's discussion of solitary confinement utilizes the generally accepted definition (i.e., 4 hours or less out-of-cell time per day).

Research has found a significant adverse impact of solitary confinement on the physical and psychological well-being of individuals placed in these conditions, particularly those with pre-existing mental health conditions.[9] There is general agreement in the published research and among many practitioners on the need to reduce the number of people subjected to the harsh conditions of solitary confinement (i.e., offering only 4 hours of out-of-cell time or less per day with no meaningful human interaction). However, other research in this area has identified some important contours. Some researchers have suggested that the adverse effects of solitary confinement are more nuanced and must be contextualized.[10] These researchers explain that the applicability of research on the severe adverse effects of solitary confinement depends a great deal on factors such as the degree of social isolation, level of deprivation, duration, physical

must be confined to a cell in order to be considered "in solitary confinement," the range of restrictions makes it clear that the general consensus is that those in solitary are confined to their cells for an extensive period of time, well beyond the 10 hours that incarcerated individuals are typically restricted to their cells overnight. Its hallmark is the deprivation of meaningful, positive human interaction.

[9] Haney, C. (2018). Restricting the use of solitary confinement. *Annual Review of Criminology*, 1, 285–310, *Available at* https://www.annualreviews.org/content/journals/10.1146/annurev-criminol-032317-092326; and Grassian, S. (2006) Psychiatric effects of solitary confinement. *Washington University Journal of Law and Policy, Volume* 22, Issue 1, 324-383. *Available at* https://openscholarship.wustl.edu/cgi/viewcontent.cgi?article=1362&context=law_journal_law_policy.

[10] Gendreau and Labrecque (2018). *The effects of administrative segregation: A lesson in knowledge cumulation.* In Wooldredge, J. and Smith, P. Eds, The Oxford Handbook of Prisons and Imprisonment. New York, NY: Oxford University Press; and O'Keefe et al (2010). *One Year Longitudinal Study of the Psychological Effects of Administrative Segregation.* Colorado Springs, CO: Colorado Department of Corrections.

conditions, access to mental health and other programming, and the nature of relationships between staff and people in custody.[11] It is therefore crucial to understand the specific components of any housing program when assessing its potential for adverse effects.

Solitary confinement, as defined in the generally accepted practice, and restrictive housing are *not* synonymous, and efforts to establish operational requirements and limitations must recognize the distinction. The term "solitary confinement" is intended to capture conditions where a person is locked in a cell for at least 20 hours per day without any meaningful human interaction, programming, or services for an extended period of time. In contrast, restrictive housing provides more out-of-cell time than solitary confinement (although less than what is available to the general population) and permits opportunities for meaningful human contact and small-group interactions with other people in custody.

Efforts to Eliminate Solitary Confinement through Restrictive Housing Alternatives

Given the potential harm that may be inflicted upon people in custody through extended isolation, many jurisdictions have worked to eliminate the practice of restricting an individual's time out-of-cell to less than 4 hours and to reduce the number of people placed in these settings. This has been accomplished by creating new restricted housing programs that impose fewer restrictions on out-of-cell time and that offer access to programming, services, and meaningful human interaction. The Monitoring Team is not aware of any correctional system in the country that has eliminated *both* solitary confinement and all other restrictions on out-of-cell time for individuals who have recently committed serious acts of violence.

[11] Kapoor, R. and R. Trestman (2016). Mental health effects of restrictive housing. *Restrictive Housing in the U.S.: Issues, Challenges and Future Directions.* Washington, D.C.: National Institute of Justice. *Available at:* https://www.ojp.gov/pdffiles1/nij/250315.pdf.

Restrictive housing, when properly designed, includes specific components aimed at mitigating the negative effects of isolation, especially the absence of meaningful human interaction. In fact, the most recent guidance from the National Institute of Justice on *Restrictive Housing in the U.S.* (2016) indicates that "when used for relatively short periods and under reasonable conditions of confinement, managing violent individuals in some form of restricted housing may avoid the harms of solitary confinement."[12] In other words, ending the practice of solitary confinement (i.e., 4 hours of out-of-cell time per day or less) does not mean that all restrictions on out-of-cell time must *also* be eliminated. Recognizing this difference and developing corresponding regulations is essential.

Restricted housing does involve *restrictions.* The guiding principle to the development of restrictive housing is that the limitations must be reasonably related to reducing the risk of subsequent violence. For example, limiting out-of-cell time may be used to reduce the number of individuals in common spaces at any one time, to permit those with serious interpersonal disputes to be separated, and to allow officers to provide vigilant supervision of a smaller number of individuals. In other words, reducing out-of-cell time enhances staff control over the environment, improves surveillance, and reduces unsupervised interactions. This maintains the goal of allowing meaningful human interaction while reducing the risk of potential harm to those in custody, the staff supervising them, and the staff providing programming, health care services, and other services. Reasonably limiting out-of-cell time not only serves critical safety and security imperatives, such as minimizing opportunities for further acts of violence, and also

[12] Smith, P. (2016). Toward an understanding of "what works" in segregation: Implementing correctional programming and re-entry-focused services in restrictive housing units. *Restrictive Housing in the U.S.: Issues, Challenges and Future Directions.* Washington, D.C.: National Institute of Justice. *Available at:* https://www.ojp.gov/pdffiles1/nij/250315.pdf.

provides a graduated incentive for inducing rule-abiding behavior by returning a compliant individual to the general population where greater freedom is afforded.

When the risk of continued interpersonal violence is particularly acute, procedures may also be necessary to limit individuals' freedom of movement during congregate activity out of their cells through the use of fixed mechanical restraints. Other security precautions are also required to minimize risk, including enhanced staffing ratios, more frequent personal and cell searches, and limited access to other facility spaces. In the context of restricted housing, where individuals are placed after engaging in serious violent behavior or when they pose a demonstrable risk of harm to safety and security, limiting out-of-cell time and applying enhanced security protocols reflect sound correctional practice and are necessary to protect potential victims from harm.

In addition to more limited out-of-cell time and enhanced security protocols, opportunities for meaningful interpersonal interaction and access to rehabilitative services *must be afforded* and must be grounded in evidence-based practice. Guidance from the U.S. Department of Justice and the National Institute of Justice on the use of restricted housing promotes the use of individualized plans to facilitate each individual's return to the general population and regular reviews by a multi-disciplinary committee that includes input from mental health professionals.[13] Overall, restricted housing programs can both reduce the adverse

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[13] U.S. Department of Justice (2016). Report and Recommendations Concerning the Use of Restrictive Housing. Washington, D.C.: Author. Available at: https://www.justice.gov/archives/dag/report-and-recommendations-concerning-use-restrictive-housing#:~:text=For%20every%20inmate%20in%20restrictive,other%20inmates%2C%20or%20the%20public, and Smith, P. (2016). Toward an understanding of "what works" in segregation: Implementing correctional programming and re-entry-focused services in restrictive housing units. *Restrictive Housing in the U.S.: Issues, Challenges and Future Directions.* Washington, D.C.: National Institute of Justice. *Available at: https://www.ojp.gov/pdffiles1/nij/250315.pdf.*

consequences associated with more extreme isolation (i.e., 4 hours out-of-cell per day or less) and can also reduce the risk of subsequent violence.[14]

To facilitate program engagement, restricted housing programs often include additional security procedures, including the use of certain types of enhanced restraints. Enhanced restraints are discussed broadly in the Restraints section of this report. Enhanced restraints utilized in restricted housing may also include fixed restraints such as a restraint desk or restraint table, where an individual's hands or legs are secured to the desk/table, limiting their range of motion. Desks may also be enclosed in chain-link fencing to prevent physical access to others in a congregate setting. Fixed restraints must be used judiciously, only with those with a propensity for violent behavior and for whom less restrictive measures would be insufficient to protect others from harm. Without such restraints, these individuals' access to programming and services would be limited to one-on-one interactions, often with the individual remaining in the cell and the provider attempting to communicate from outside the cell. Utilizing a restraint desk allows for engagement in a small group format safely and offers an important opportunity for meaningful human interaction. Enhanced security measures like these should be implemented only in response to legitimate safety concerns and not as a form of punishment. The use of enhanced restraints is typically determined through an adjudicative process, often combined with an adjudication for housing restrictions, including out-of-cell time.

One of the most common innovations in the development of restricted housing programs is to limit the number of people who may be placed in restricted settings by establishing narrow

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[14] The National Institute of Justice's 2016 report *Restrictive Housing in the U.S.: Issues, Challenges and Future Directions* noted that "restrictive housing units can be managed in a manner that allows for the delivery of intensive interventions to inmates in need of services for a successful transition into the general population of offenders."[14]National Institute of Justice (2016). *Restrictive Housing in the U.S.: Issues, Challenges and Future Directions*. Washington, D.C.: Author, p.336. *Available at:* https://www.ojp.gov/pdffiles1/nij/250315.pdf.

criteria for eligible infractions or circumstances that warrant their placement, such as by limiting the types of misconduct that qualify for placement so that only those who commit violent acts are eligible. This narrowing of the "on ramp" guards against the overuse of restrictive settings for less serious infractions, which is one of the many concerns about the use of solitary confinement. [15] Procedures for placement in restricted housing must ensure transparency in the reason for placement, must provide an opportunity for the person in custody to be heard, and must occur in a timely and efficient manner given the potential security risks posed by the individual's behavior.

The length of exposure to any intervention—like restricted housing—must be guided by the principal to apply restrictions no longer than necessary to abate the risk of harm. However, this does not mean that the length of stay must be as short as possible; instead, the length of stay must be reasonably determined to achieve the objective of reducing the risk of subsequent violence. In particular, the length of stay should be sufficient for the program interventions (e.g., cognitive behavioral therapy or other evidence-based curriculum) to be delivered at the proper dosage. The length of stay in restricted housing must also be sufficient to afford a legitimate assessment of the individual's willingness and capability to refrain from violence when interacting with other people in custody and staff. Throughout an individual's stay in restricted housing, regular reviews of their conduct are needed to recognize progress or to encourage and motivate prosocial behavior. The outcome of this cycle of service delivery and review should be the foundation of any determination regarding an individual's readiness to reintegrate into the

[15] Labrecque, R. et al. (2021). Reforming solitary confinement: the development, implementation, and processes of a restrictive housing step down reentry program in Oregon. *Health and Justice* 9:23. https://doi.org/10.1186/s40352-021-00151-9; Smith, P. (2016). Toward an understanding of "what works" in segregation: Implementing correctional programming and re-entry-focused services in restrictive housing units. *Restrictive Housing in the U.S.: Issues, Challenges and Future Directions.* Washington, D.C.: National Institute of Justice. *Available at: https://www.ojp.gov/pdffiles1/nij/250315.pdf*.

general population or another less restrictive setting. Some individuals may quickly demonstrate their readiness to reintegrate safely, but others may resist or remain unable to change their behavior for protracted periods of time and thus may require more patience, adjustments to the mode of interaction and type of intervention, and multiple cycles of review and intervention. Overall, the length of stay must be uniquely calibrated to the individual's readiness, and thus the duration required for safe transfer to the general population will not be the same for everyone placed in restricted housing.

Alternative Program Models to Reduce the Use of Solitary Confinement

Several jurisdictions have developed restricted housing program models in order to reduce their use of solitary confinement. These programs include restrictions on out-of-cell time compared to the general population but afford more time out-of-cell than was permitted under solitary confinement. The restricted housing program models also include programming and a variety of services for those placed in them. The conditions and restrictions vary across jurisdictions, including factors like housing type, movement, whether programming is on-unit or off-unit, and the number of hours people in custody spend out of their cells. Overall, these programs have aligned the conditions of the housing units with the level of risk a person in custody poses while addressing the dangers associated with lengthy periods of extreme isolation. In all correctional systems known to the Monitoring Team, individuals at low risk of institutional violence are afforded greater freedom and more privileges in the general population. Conversely, those at high risk of institutional violence are housed in units with more restrictions and closer supervision. Such a continuum is essential for balancing individual freedom with the need to protect others from harm.

In each of the systems with which the Monitoring Team is familiar, alternative programs used to reduce the reliance on solitary confinement continue to restrict individuals' out-of-cell time.[16] Among these jurisdictions are the following four systems, which the City Council reported it evaluated as it developed Local Law 42:[17]

- In Cook County, Illinois, after eliminating solitary confinement, disruptive incarcerated individuals were placed in a "Special Management Unit" where they spent time in open rooms or yards with other people in custody *for up to eight hours at a time* under direct supervision from correctional staff.[18]
- The State of Colorado reformed its use of solitary confinement by creating a Management Control Comprehensive (MCC) designation, which offers several restricted housing programs for designated violent infractions. *During the 4 to 6 hours per day out-of-cell*, the programs provide passive recreation, outdoor recreation, and rehabilitative and educational services in a small group setting.[19]
- The State of Maine reduced its use of solitary confinement but did not eliminate it. "Solitary confinement is no longer the default punishment at the Maine State Prison, but rather it is the punishment of last resort when no other option is

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[16] In addition, see Labrecque, R. et al. (2021). Reforming solitary confinement: the development, implementation, and processes of a restrictive housing step down reentry program in Oregon. *Health and Justice* 9:23. https://doi.org/10.1186/s40352-021-00151-9; and Cloud et al. (2021). 'We just need to open the door': A case study of the quest to end solitary confinement in North Dakota. *Health and Justice,* 9:28. *Available at*: https://healthandjusticejournal.biomedcentral.com/articles/10.1186/s40352-021-00155-5

[17] Council of the City of New York, *Committee Report of the Governmental Affairs Division December 20, 2023*, p. 8-9.

[18] Sheriff Tom Dart, My Jail Stopped Using Solitary Confinement: Here's Why (April 2019), *Washington Post*, available at https://www.washingtonpost.com/opinions/my-jail-stopped-using-solitary-confinement-it-should-be-eliminated-everywhere/2019/04/04/f06da502-5230-11e9-88a1-ed346f0ec94f_story.html, as cited by the Council of the City of New York, *Committee Report of the Governmental Affairs Division December 20, 2023.*

[19] Colorado Department of Corrections, Office of Planning and Analysis. (2024). *SB 11-176 and HB 23-1013 Annual Report; Administrative Segregation for Colorado Inmates.* Available at: https://spl.cde.state.co.us/artemis/crserials/cr126internet/cr1262023internet.pdf

adequate." Special Management Units ("SMU"), which house those in Administrative Control Units and Disciplinary Segregation, are still used for those who commit the most serious offenses and those who pose a threat to the safety of others in a less restrictive status. Maine successfully reduced the number of people in the SMU between 2010 and 2012 and improved certain conditions (e.g., permitting access to radios, televisions, reading material, and some group interaction via recreation and counseling). [20] However, those in Disciplinary Segregation are permitted *only 2 hours out-of-cell per day*.[21]

- In 2022, the State of Massachusetts replaced its restricted housing units with a new program, the Behavioral Assessment Unit ("BAU"), which houses those removed from the general population due to unacceptable risks to facility safety and operations. In these programs, individuals are offered *at least three hours of out-of-cell time each day* and are provided with programming only via tablets and packets, not in-person group sessions.[22]
- A number of restricted housing programs were developed in response to litigation in order to transition away from solitary confinement. These programs continue to limit out-of-cell time and narrow the criteria under which an individual can be placed in these settings. These include the California Department of Corrections

[20] Heiden, Z. (2013). *Change is Possible: A Case Study of Solitary Confinement Reform in Maine*. Portland, ME: ACLU Maine. Available at: https://assets.aclu.org/live/uploads/publications/aclu_solitary_report_webversion.pdf

[21] Maine Department of Corrections. *Policy 15.2 Disciplinary Segregation* Status. Last revised: September 27, 2022. Available at: https://www.maine.gov/corrections/sites/maine.gov.corrections/files/inline-files/49876476_0.pdf.

[22] Massachusetts Department of Correction, Behavior Assessment Unit Monthly. Available at: https://www.mass.gov/lists/behavior-assessment-unit-bau-monthly.

and Rehabilitation (20 hours out-of-cell per week)[23]; the Rhode Island Department of Corrections (3-4 hours out-of-cell per day)[24]; the Alameda County Sheriff (CA) (2-3 hours out-of-cell per day)[25]; the Santa Clara County (CA) jail (7-14 hours out-of-cell per week)[26]; and the Sacramento, CA jail (7-17 hours out-of-cell per week)[27].

The City Council's Committee Report and Drs. Gilligan and Lee's letter to the City Council identified three programs as potential alternatives to solitary confinement that could address individuals following serious acts of violence—the Resolve to Stop the Violence Project (RSVP), Merle Cooper and the Department's Clinical Alternatives to Punitive Segregation (CAPS). While laudable programs, as discussed in more detail below, not all of these programs were designed to respond to individuals who engaged in serious acts of violence while incarcerated, and so their applicability as models in this context is limited. Both RSVP and Merle Cooper have different target populations; their program designs reflect that core difference, and both programs *exclude* those who have recently engaged in serious violence while in custody. The CAPS program, while designed to address those who engaged in institutional misconduct, selects a specific subset of those individuals, those with serious mental illnesses. These differences prevent the program models from being *directly* exported to address the population who engage in serious violence in this Department.

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[23] Holden, L. "California moves to reform solitary confinement rules," *The Sacramento Bee*, October 17, 2023. Available at: https://www.corrections1.com/solitary-confinement/articles/calif-moves-to-reform-solitary-confinement-rules-wWj7Amwb0u0zof2j/

[24] Rhode Island Department of Corrections Policy #12.28 DOC "Restorative Housing Program", Attachment 1.

[25] Babu v County of Alameda *Consent Decree*, 5:18-cv-07677-NC, dkt 266-1, ¶ III.D.1.a.(i) and III.D.1.b.(i).

[26] Chavez v County of Santa Clara *Remedial Plan*, 1:15-cv-05277-RMI, dkt. 109-1, ¶ VII.E.3.(b)

[27] Mays v County of Sacramento *Remedial Plan*, 2:18-cv-02081-TLN-KJN, dkt. 85-1, Attachment A ¶ VIII.E.3.b.(ii) and VIII.E.3.(c).(a).

- The Merle Cooper program was a program operated in a New York State prison and targeted those who were convicted of and incarcerated for violent offenses. It was not designed to address those who have engaged in serious violence while incarcerated.[28] Although some of the behaviors may be similar, the dynamics and risks to other individuals in custody differ significantly. Participation in the program was voluntary, and individuals had to admit guilt for their committing offense(s). Participants were held in dormitory settings or double-celled, and some cell doors were left unlocked at night. While the Merle Cooper program appears to have had a positive impact on its participants, their circumstances and dynamics are quite different from those who commit serious violence against others while in custody.
- The RSVP program operates in the San Francisco, CA jail and targets those convicted of violent offenses in the community to reduce their risk of recidivism. It does not target those who commit serious violence in the jail; in fact, it explicitly excludes various categories of people in custody who are typically responsible for violence in jails, including those involved in street gangs and those with other high-security issues. Notably, those in administrative separation are not permitted to participate in RSVP due to their recent violent and assaultive behavior. Participation in the program is voluntary, and the program's primary aim is to reduce the risk of recidivism after release rather than to address institutional violence directly. These differences in target population and exclusions mean that the reported positive impact on violence reduction cannot simply be

[28] Correctional Association of New York (n.d.). *Clinton Correctional Facility: 2012-2014.* Author: New York, NY. pgs.56-63. Available at: https://drive.google.com/file/d/1DXcZOz7cKKTsUUj2HkU5XmQvNJgmVTvM/view.

generalized as a likely impact on those who commit serious institutional violence.[29] It is important to note that the San Francisco jail maintains units for disciplinary separation, administrative management, and/or administrative separation, all of which provide minimal out-of-cell time (e.g., individuals in administrative separation only receive *one hour of out-of-cell time* per day).

- The Department's Clinical Alternative to Punitive Segregation (CAPS) serves those with serious mental illnesses (SMI) who engage in serious institutional misconduct. The program is designed to offer a full range of therapeutic interventions and activities for these individuals (e.g., group and individual therapy, art therapy, medication counseling, etc.) and is supposed to be richly staffed by mental health clinicians, treatment aids, therapists, and psychiatric providers, along with DOC uniform staff. Both the Department and published research have reported positive outcomes among participants (e.g., fewer uses of force and lower rates of self-harm compared to other types of housing units).[30] These benefits likely flow from the tailoring of the intervention to the needs of the SMI population, specifically the behavioral challenges related to their psychiatric symptoms. However, the specific interventions utilized by the rich complement of clinical staff in CAPS is not necessarily tailored to the needs of a target population with a different profile. The antecedents of violent behavior among those who are not mentally ill are driven by other factors, particularly SRG-related conflict.

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[29] Moreover, the National Institute of Justice's Crime Solutions website rates the program's effectiveness as "inconclusive." This is due to a lack of evidence for a definitive rating, with only one study published in a peer-reviewed journal which raised concerns about program fidelity. *See* https://crimesolutions.ojp.gov/rated-programs and https://crimesolutions.ojp.gov/rated-programs/inconclusive-programs-list.

[30] Homer Venters et al., "From Punishment to Treatment: The "Clinical Alternative to Punitive Segregation" (CAPS) Program in New York City Jails," International Journal of Environmental Research and Public Health 13, no. 2 (February 2016): 182, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4772202/ and New York City Department of Correction, CAPS and PACE Backgrounder, https://www.nyc.gov/site/doc/media/caps.page .

All of these programs have features that are instructive for program design. And while the interventions have reportedly benefited their participants, the substantial differences in their target populations mean they cannot be directly or broadly applied to the needs and security challenges posed by those who commit serious acts of violence while in custody. Programs designed to reduce recidivism, those serving individuals with serious mental illnesses, and policies that have proven effective in the juvenile justice system cannot simply be imported into a jail setting that is struggling to control institutional violence among adults. While a proper staffing complement and structured environment are, of course, essential for a successful restricted housing program, differences in the size of the target populations/number of housing units needed and the number/type of staff available are important contextual factors that cannot be ignored. In short, program models from other jurisdictions and other settings inspire innovation but must also be specifically tailored to address the unique circumstances surrounding institutional violence in the NYC jail system.

Nationwide, important advances have been made to develop programs that work to eliminate the harmful effects of isolating individuals in a cell for 20 hours or more hours per day. Individuals who engage in serious acts of violence can be safely managed in settings that permit more out-of-cell time than traditionally offered in solitary confinement. As the Monitoring Team has observed in its work throughout the nation and as various jurisdictions have demonstrated, certain restrictions and other requirements are necessary to operate a safe jail system. The Monitoring Team is not aware of any jurisdiction in the country that permits individuals who have committed serious acts of violence while incarcerated to have the same out-of-cell time as those in the general population.

History of DOC's Efforts to Eliminate Solitary Confinement and to Manage Individuals Who Commit Serious Acts of Violence While in Custody

Beginning in 2013, the Department began its journey to eliminate its practice of "Punitive Segregation" or "PSeg," which was the Department's name for solitary confinement. Individuals found guilty of a broad range of infractions were sentenced to periods of up to 90 days and were housed in single cells for 23 hours per day, with no access to rehabilitative programming and significantly restricted visitation and recreation. The Department gradually eliminated the use of PSeg for various subsets of incarcerated individuals: in 2013, PSeg was prohibited for seriously mentally ill individuals; in 2014, PSeg was prohibited for adolescents aged 16- and 17- years-old; in 2016, PSeg was prohibited for all incarcerated individuals aged 21 and younger; and in 2019, PSeg was abolished entirely.[31]

Since 2013, when the Department began its effort to abolish solitary confinement, it has created various forms of restricted housing but has struggled to implement them effectively. Although PSeg was eliminated "on paper," the Department's efforts to develop alternative programs for those who commit serious, violent rule infractions have been plagued by poor program implementation and have, at times, resulted in incarcerated individuals experiencing conditions that were not substantially different from PSeg.[32]

The Department's alternative program models aim to limit the harms that accompany extreme forms of isolation by increasing out-of-cell time, promoting social interaction, and offering more rehabilitative programming. The Department's implementation struggles stem from its well-documented problems in implementing the most fundamental aspects of sound

[31] Declaration of Lynelle Maginley-Liddie, submitted 7/22/24, dkt. 758-1.

[32] See Monitor's June 30, 2022 Report (dkt. 467) at pg. 21; Monitor's October 5, 2023 Report (dkt. 581)at pgs. 6-7.

correctional practice; however, this does not indicate that the program models themselves are inherently flawed.

New York State passed the Humane Alternatives to Long-Term Solitary Confinement Act, or "HALT Act," on April 1, 2021. The law recognizes correctional facilities have a legitimate need to operate housing units that restrict individuals' freedom and movement to safely manage those with a high propensity for violence. The Act limits the duration of "segregated confinement," defined as more than seven hours per day in a cell, to no more than 15 days. In addition, HALT permits the use of programs offering only seven hours of out-of-cell time per day. The Department's own initiatives, requirements from the Board of Correction, and HALT have guided the Department's efforts to create alternatives to solitary confinement by designing programs that provide access to programming and services while limiting out-of-cell time to less than what is provided to the general population.

For example, the Risk Management Accountability System (RMAS), codified in the BOC's Restrictive Housing Final Rule on June 8, 2021, was designed to provide accountability for institutional violence. It provided for a range of programming and services and limited out-of-cell time to 10 hours per day. However, the Department never implemented RMAS due in part to the Monitoring Team's finding that the Department's inability to properly implement the program would create significant safety risks to incarcerated people and staff.[33] The Monitoring Team's concerns were based on findings that the Department was not prepared to or capable of implementing the model (i.e., concerns about leadership, staff selection and training, and their lack of skill in proactive supervision and basic security practices, and the Department's history of hasty and ill-planned implementation) along with concerns about RMAS's design, particularly

[33] Monitor's June 30, 2022 Report, pgs. 22-27.

that the regulations did not require people in custody to engage in programming in order to progress to less restrictive settings. At the Monitoring Team's suggestion, the Department hired Dr. James Austin, a consultant with expertise in restricted housing models to assist with the development of a program model that would address the need for an effective response to people who commit serious violence while in custody and who, along with the Monitoring Team, could guide the planning and early implementation of the program. The Action Plan includes a requirement to manage incarcerated individuals following serious incidents of violence (Action Plan §E. ¶ 4) and requires the strategy to comply with the HALT Act, to reflect sound correctional practice, and to be approved by the Monitor.

In March 2023, the Department implemented the program—a revitalized Enhanced Supervision Housing program ("ESH," now called "RESH" because of its location in the RMSC facility) that provides for both programming and extended recreation periods and that limits out-of-cell time to 7 hours per day. RESH has two levels: Level 1, in which individuals' movements are restricted during out-of-cell time via restraint desks and where individuals recreate in individual pens, and Level 2, in which individuals have freedom of movement during congregate activities and may participate in congregate outdoor recreation. During their 7 hours out-of-cell per day, individuals in both Levels may access structured programming led by a Program Counselor or community vendor for 4 hours and are afforded 3 hours of recreation. Each person must meet individualized programming requirements and remain infraction-free to promote to a less restrictive setting (i.e., from Level 1 to Level 2 and from Level 2 to the general population). Each individual's progress is assessed every 15 days, and individuals are eligible to be promoted to a less restrictive setting every 30 days.

The program design is sound and incorporates many features found in jurisdictions that have successfully reduced their reliance on extended solitary confinement. The Department's early implementation of the program was fraught with problems, as detailed in the Monitor's April 18, 2024 Report (dkt.706). However, since the appointment of a capable leader in December 2023 who has a strong understanding of effective security practices, the operation of RESH has significantly improved. Despite this progress, problems remain, particularly with regard to staffing and the proper execution of various security protocols essential for safely managing individuals who engage in serious violence (e.g., conducting searches, properly positioning staff, and properly securing restraint devices). While the rates of use of force and violence have decreased during the program's 15-month tenure, they remain higher than the average within the Department due, in part, to the program's heavy concentration of people who frequently resort to violence in their interactions with staff and other people in custody. The Department and the Monitoring Team continually assess both the factors contributing to the program's improvement and the ongoing challenges, working to enhance the program's implementation further.[34]

In summary, the Department's transition from its legacy practice of solitary confinement, known as PSeg, to a more viable alternative that mirrors elements found in generally accepted correctional practice, RESH, has proceeded slowly and has faced numerous challenges.[35] The new program model aims to limit the harms that accompany extreme forms of isolation by increasing out-of-cell time, promoting social interaction, and offering rehabilitative programming. The Department's implementation struggles stem from the Department's well-

[34] Monitor's November 22, 2024 Report (dkt. 802), pgs. 28-34.

[35] See, also, Monitor's April 18, 2024 Report (dkt. 706), pgs. 48 to 49 regarding the use of NIC and involuntary protective custody.

documented problems in implementing the most fundamental aspects of sound correctional practice; however, this does not indicate that the program model itself is inherently flawed.

IMPACT OF LL42'S REQUIREMENTS ON THE DOC'S OPERATIONS

The Monitoring Team appreciates the principles underlying the requirements of LL42 and its overarching goal of improving the conditions of confinement in the NYC jails. Importantly, LL42 seeks to eliminate solitary confinement (§ 9-167 (b)). The law defines solitary confinement as "any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period" (§ 9-167 (a)). The law goes on to state that "All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section" (§ 9-167 (i)(1)).

Relatedly, restricted housing is defined as "any housing area that separates incarcerated persons from the general jail population on the basis of security concerns or discipline, or a housing area that poses restrictions on programs, services, interactions with other persons or conditions of confinement."[36] (§ 9-167 (a)). LL42 requires a large number of procedures for placement in restrictive housing, some of which appear to be lengthy and complicated (§ 9-167 (f)). They include the right to representation by legal counsel or advocate (§ 9-167 (f)(1)(i)), the right to present evidence and cross-examine witnesses (§ 9-167 (f)(1)(ii)), the right to 48-hours' notice of the reason for the proposed placement and the supporting evidence (§ 9-167 (f)(1)(v)),

[36] LL42's definition of restrictive housing specifically "excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health, including placement in a contagious disease unit; (2) transgender or gender non-conforming; (3) in need of voluntary protective custody; or (4) housed in a designated location for the purpose of school attendance" (§9-167 (a)).

and adequate time to prepare for the hearing and the requirement to grant reasonable requests for adjournment (§ 9-167 (f)(1)(vi)), among others.

Within restricted housing settings, LL42 has specific requirements for the use of enhanced restraints: "A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction" (§ 9-167(h)(4)). The requirements are further explained as follows: "Incarcerated persons may congregate with others and move about their housing area freely during out-of-cell time…" (§ 9-167(i)(2)). In other words, devices commonly used in restricted housing settings, such as restraint desks, gates, or other barriers, are prohibited during small group programming with individuals admitted to restricted housing programs. The law also requires the Department to "utilize programming that addresses the unique needs of those in restricted housing, [including]…core educational programming…evidence-based therapeutic interventions and restorative justice programs…[that] follow best practices for violence interruption" (§ 9-167 (h)(5)).

In terms of the individual's length of stay in restricted housing, LL42 requires an individual to be removed from restricted housing if the individual "has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days" (§9-167 (h)(3). Furthermore, the law states that "in all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement" (§ 9-167 (h)(3). The law also stipulates that

"the department shall not place an incarcerated person in restrictive housing for longer than necessary and for nor more than a total of 60 days in any 12 month period" (§9-167 (h)(1).

While the Monitoring Team appreciates LL42's apparent intent to ensure that solitary confinement is in fact eliminated and that alternative programs are appropriately designed, the Monitoring Team has grave concerns that some of LL42's requirements will have the unintended impact of increasing the risk of harm in the jails rather than reducing it, as described in more detail below.

- *Definition of Solitary Confinement*: LL42's definition of solitary confinement is not aligned with any definition of solitary confinement in the field, as illustrated by the chart containing definitions of solitary confinement provided in Appendix C of this report. While there is no standard definition of solitary confinement, there are common parameters, which include limiting out-of-cell time to between 1 and 4 hours per day for prolonged periods, affording little human contact and no congregate engagement, and denying access to programming. Notably, one of the most frequently cited definitions, the United Nations' "Mandela Rules," defines solitary confinement as an approach where individuals are limited to 2 hours out-of-cell per day.[37] LL42's definition of solitary confinement goes well beyond that and appears to conflate solitary confinement with attempts to limit out-of-cell time more generally. In other words, in this instance, LL42's definition alters the generally accepted standard of 4 hours to 14 hours of out-of-cell time, which represents a 350% increase over standard correctional practice. The elimination of the use of solitary confinement must be addressed separately from other

[37] *See*, UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 17 December 2015, A/RES/70/175, Rules 43 and 44 available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf

requirements regarding limitations on out-of-cell time. It is important for the definition of solitary confinement to comport with the standard description of the practice in order to disentangle it from other correctional tools, such as restrictive housing, that are critical and necessary in responding to serious acts of violence and for the safety of the jails.

- *Universal Out of Cell Time*. LL42 requires ***all*** incarcerated individuals to have the same out-of-cell time. The only minor exceptions to this rule are for de-escalation confinement and emergency lock-ins, which are limited to 4 hours per incident (along with additional restrictions discussed in more detail in the respective sections below). A global approach to out-of-cell time for all individuals in custody significantly endangers both persons in custody and staff and is not consistent with sound correctional practice. Those with a demonstrated propensity for serious violence must be supervised in a manner that is safe and effectively mitigates the risk of harm they pose to others. Some reduction in out-of-cell time to less than 14 hours per day, with appropriate safeguards, is a necessary tool in a correctional setting. The prohibition of any restriction on out-of-cell time for those who engage in serious acts of violence has never been imposed in any correctional system in the country with which the Monitoring Team has had experience. Permitting unrestricted and barrier-free out-of-cell time for 14 hours for those individuals in a congregate setting is counter to the most basic safety and security imperatives which seek to minimize opportunities for the commission of further acts of violence. Such a profound deviation from standard correctional practice will permit congregate, interpersonal and barrier-free interaction for virtually all waking hours of the day, thereby negating the most basic correctional imperative to minimize opportunities for committing violence upon other people in custody or correctional staff. The Department must be able to supervise and

manage those with a demonstrated propensity for serious violence in a manner that effectively mitigates the risk of harm they pose to others. More specifically, some limitations on out-of-cell time (e.g., such as the standards set by HALT) are appropriate in this situation and do not constitute solitary confinement. The Monitoring Team does not believe that the prohibitions on restricting out-of-cell time as imposed by LL42 permit the safe operation of the jails and will only exacerbate the current dangerous conditions.

- *Procedures for Placement in Restricted Housing*. Placement procedures are necessary to ensure that only those individuals who meet certain, narrow criteria are admitted to restricted housing and to ensure due process. LL42 imposes a number of procedures for placement, some of which appear to be protracted and complicated. They involve significant procedural steps that create opportunities for potential delay by those who commit acts of violence, preventing the Department from addressing their behavior in a timely and effective manner, thereby impeding the safe operation of the jails and exacerbating the current dangerous conditions.
- *Time Frames for Discharge from Restrictive Housing*. LL42's time-based criteria for the use of restricted housing do not account for the fact that some individuals may continue to engage in violent misconduct or otherwise demonstrate that they remain a risk to safety and security. Additionally, LL42's time limits are incongruent with the time required to properly implement an evidence-based program curriculum aimed at teaching skills that can reduce the likelihood of subsequent violence, which is also a requirement of the law.

[38] None of the evidence-based curricula with which the Monitoring Team is familiar can be completed within the proposed 15/30-day maximum length of stay in restrictive housing. The time-based criteria also eliminate any incentive for individuals to engage in pro-social behavior or programming, as the passage of time will permit their release. The Monitoring Team is not aware of any basis for these time limitations given the conditions in restricted housing (e.g., they permit far more out-of-cell time, programming and meaningful interaction than traditional solitary confinement).[39] LL42's requirements hinder the development of appropriate responses to serious violent behavior by mandating discharge from the program or preventing readmission under certain conditions. While controls are essential to mitigate the possibility that individuals remain in restricted housing when it is no longer necessary, implementing LL42's time-based criteria would preclude the program's ability to safely manage individuals following serious acts of violence. Accordingly, the Monitoring Team does not believe that the mandatory time frames for discharge and readmission as imposed by LL42 will permit the safe operation of the jails and would only exacerbate the current dangerous conditions.

- *Prohibitions on Certain Types of Enhanced Restraints*. LL42's requirements for restricted housing prohibit the use of restraint desks and other barriers in congregate settings. The violent propensities of those in RESH necessitate security enhancements to minimize the risk of further violence while in the program. The number of violent attacks that have occurred during RESH's 15-month tenure illustrates that a high risk of harm remains,

[38] *See* Monitor's June 30, 2022 Report at pg. 25 which includes a discussion regarding the inability to address behavior change with set time periods for graduation.

[39] Notably, many of the models presented as the basis for LL42 do not have any limitation on the length of stay.

even when individuals are placed in restrictive settings. Furthermore, the ability to provide small group programming and meaningful human interaction—and to do so safely via the use of enhanced restraints—is one of the elements that allow restrictive housing to avoid the adverse consequences associated with solitary confinement. The Department is mandated to provide safe environments and to protect all individuals in custody from an unreasonable risk of harm, including those in restricted housing.

CONCLUSION

While LL42 works to eliminate solitary confinement and, theoretically, permits restrictive housing, in practice, the Law does not permit the Department the necessary discretion to develop a viable restrictive housing model. First, LL42 does not permit any restriction on out-of-cell time for individuals placed in restrictive housing, which is counter to standard correctional practice and eliminates an important incentive for prosocial conduct. Second, LL42 sets arbitrary timeframes for discharge from restrictive housing (e.g., an individual must be removed from the unit if the individual "has not engaged in behavior that presents a specific, significant, and imminent threat" in a 15-day period and must be discharged within 30 days, with no exceptions regardless of the individual's behavior) that do not account for whether an individual continues to pose a risk of harm to others' safety and that are at odds with the ability to deliver evidence-based programming. Third, the required procedures for placement in restricted housing are protracted, including significant procedural requirements that provide myriad opportunities for undue delay by the perpetrator of violence before the Department can act to address the underlying conduct. Finally, the Law prohibits the use of standard enhanced restraints that permit safe programming in a congregate setting, providing an important pathway to meaningful human interaction and violence reduction. In short, the constraints this Law places on the design of a

restrictive housing model would eliminate many of the elements required for a safe strategy for managing those who engage in serious violence or who otherwise pose a demonstrable threat to safety and ultimately, would further exacerbate the jails' unsafe conditions. The Monitoring Team's recommendations for next steps are outlined in the Conclusion section of this Report.

RESTRAINTS

Various restraint devices are used to limit the range of motion of a person's hands, arms, and legs in correctional settings. This reduces the risk of violent behavior or escape and protects others in the vicinity of an agitated person and those with a known propensity for violent behavior.

GENERALLY ACCEPTED PRACTICE & DOC'S POLICIES

Restraints are generally of two types, routine restraints and enhanced restraints. Generally accepted practices for each type are discussed separately below.

- *Routine Restraints*

Common devices used for routine restraints include handcuffs or flex cuffs, waist chains, and leg shackles. Routine restraints are standard practice in jails and prisons and are applied numerous times daily for a variety of well-established safety and security reasons. Depending on an individual's movement, they may be placed in restraints multiple times in a single day or on multiple days in a row. Within a facility, restraints are routinely applied immediately following an assault or a use of physical force in order to maintain control of the individual(s) and when escorting agitated individuals to different locations within the facility, such as a clinic for medical care after an incident or to intake for rehousing). In these situations, restraints are routinely utilized to control the movement of the agitated person so that they cannot inflict harm on escort staff or other people in custody they may encounter during escort.

Restraints are also routinely used when transporting people in custody beyond a facility's perimeter, such as to another facility, court appearances, or the hospital. During such transport, the goals of access and efficiency require groups of individuals to be transferred together on the same bus, regardless of custody level, interpersonal disputes, or violence risk. While some

individuals on the bus may not pose an immediate threat, safety and security procedures require defaulting to the highest security measure for all passengers to prevent potential violence among them and to minimize the risk of escape. It is particularly important that restrained individuals are not in close proximity to unrestrained individuals, as a restrained person cannot protect themselves from potential aggression. Accordingly, all individuals in a transport vehicle must be restrained to protect everyone's safety.

When using routine restraints, staff members do not need to obtain authorization from a supervisor or medical staff before, during, or after the application of the routine restraints, as this is part of the expected safety protocol in a correctional facility. Facilities do not systematically track the use of routine restraints. While the use of routine restraints may be reported in certain situations (for example, a use of force may also mention the application of restraints), the use of routine restraints is not independently tracked in a manner that can be aggregated or monitored. Such tracking of a standard routine security practice would be both unnecessary and burdensome.

The Department's restraint policy reflects generally accepted practices for using routine restraints, particularly that they can be utilized at the officer's discretion under certain circumstances without additional protocol. As discussed above, staff discretion in using routine restraints based on the circumstances of an event is critical to the safe operation of the jails. The Monitor approved this approach in 2016 when the restraint policy was approved pursuant to the *Nunez* Court Orders.[40]

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[40] *See* Monitor's October 31, 2016 Report (dkt. 291) at pgs. 30 to 31.

- *Enhanced Restraints*

To enhance safety for people in custody and staff, additional security measures, sometimes referred to as "enhanced restraints," are utilized for specific incarcerated individuals following their involvement in serious acts of violence. Typical measures include restraining such individuals with an established and documented propensity for violence during all movements outside their cells and/or to facility locations off the housing unit by using security mitts or handcuff safety covers to prevent tampering with the device. Some jurisdictions utilize soft programmatic restraints, such as body cuffs, where individuals' hands and legs are secured using webbed straps to inhibit their movement when in a congregate setting. The Department's policy for providing due process for the use of enhanced restraints aligns with the generally accepted correctional practice.

IMPACT OF LL42'S REQUIREMENTS ON DOC'S OPERATIONS FOR USING RESTRAINTS

The overarching principles underlying LL42's requirements related to restraints are consistent with sound correctional practice. In particular, LL42 requires that "only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm." Further, "[t]he department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements." These are practical requirements and are also consistent with the *Nunez* Court Orders and the restraint policy approved by the Monitor in 2016.

LL42 defines restraints as "any object, device or equipment that impedes movement of hands, legs, or any other part of the body." (§ 9-167(a)). Because no distinction is made between the two types of restraints, this definition appears to capture the application of both routine and

enhanced restraints.[41] Similarly, LL42 includes several procedural requirements related to the use of restraints, which, as defined, would require the same process for both routine and enhanced restraints. First, the law requires that the use of restraints may only occur if "an individual determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons" (§ 9-167 (e)(1)). This means that each and every application of restraints—both routine and enhanced—requires an individualized determination of an imminent risk of injury before the restraints can be applied.

Further, to continue the use of restraints after two consecutive days, LL42 requires a hearing "to determine if the continued use of restraints is necessary for the safety of others." (§ 9-167(e)(2)). Notably, the standard for the initial application of restraints (i.e., an individualized determination) and the standard for continued use (i.e., a hearing) are not the same. The requirement for a *hearing* applies to the use of both routine and enhanced restraints to the extent they are utilized on an individual for two or more consecutive days. The hearing requirements imposed by BOC regulations (§ 6-27 (m), requiring compliance with 40 RCNY § 6-23) grant the right to 48-hour notice of the hearing (§ 6-23 (c)(1)), the right to legal representation (§ 6-23 (d)(6)(i)), the right to appear at the hearing (§ 6-23 (d)(6)(ii)), the right to present evidence and call witnesses (§ 6-23 (d)(6)(iv)), the right to review evidence 48 hours prior to the hearing (§ 6-23 (d)(6)(v)(A)), and the right to appeal the decision (§ 6-23 (h)(1)), among others. Additionally, "[a]ny continued use of restraints must be reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven consecutive days" (§ 9-167(e)(2)). In summary, in order to utilize either routine or enhanced restraints on the same

[41] See Board of Correction regulations § 6-27 (a)(3) and (b) regarding routine use of restraints.

individual for more than two days in a row, LL42 requires the Department to hold a hearing with significant procedural and due process requirements and to review their continued use on a daily basis thereafter and prohibits the use of restraints for more than seven consecutive days.

LL42 also includes specific provisions related to restraints for individuals under the age of 22 (i.e., 18- to 21-year-old incarcerated individuals, termed "Young Adults"). For this age group, the law limits the use of restraints. Restraints are not permitted with this age group except in the following circumstances "(i) during transportation in and out of a facility, provided that during transportation no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons." (§ 9-167 (e)(1)). As drafted, it appears that the Department is prohibited from utilizing any type of enhanced restraints on individuals under the age of 22.

For the reasons outlined below, the Monitoring Team is concerned that some of these requirements are inconsistent with sound correctional practice, burdensome, and, most important, will have the unintended impact of increasing the risk of harm in the jails rather than reducing it. While the Monitoring Team's evaluation of these requirements is ongoing, a non-exhaustive list of the major issues that raise concerns is provided below:

- *Procedural Requirements for the Use of Routine Restraints*. As discussed above, given that the law's definition of restraints includes *all* restraints, LL42 includes multiple procedural requirements related to the use of *routine* restraints. LL42 requires an individualized assessment of each individual's characteristics at the initial application of the routine restraints and requires a hearing for their continued use. Generally accepted practice for the use of *routine* restraints, as discussed above, requires an

assessment of the specific *circumstances* of a given situation, such as safely transporting a group of people in custody in a vehicle[42] or safely escorting an agitated person, rather than a particular *individual's characteristics* at a specific moment.[43] The standard applied by LL42 ("restraints are necessary to prevent an imminent risk of self-injury or *injury* to other persons," § 9-167 (e)(1); emphasis added) is not aligned with standard correctional practice (i.e., more broadly defined as a risk of *harm* or escape).

Furthermore, in order to actually implement these requirements, the Department would need to document every use of routine restraints and the outcome of each individual determination. Such documentation would be necessary in order to monitor compliance with these requirements and to determine if the use of routine restraints would trigger the requirement for a hearing. This would require tracking potentially thousands of routine restraint applications each day, an unnecessarily burdensome task.

The fact that this process creates situations where routine restraints may not be applied to certain individuals because they do not meet the LL42 standards is also dangerous and negatively impacts jail operations in many ways, including a need for additional staff and other safety and logistical problems (e.g., separate buses for those who cannot be restrained and those who are restrained). The Monitoring Team is unaware of any jurisdiction in the country that requires a similar procedure for the application of routine restraints, for either the initial application or for their continued

[42] LL42 does not require an individualized determination for use of routine restraints for individuals under the age of 22. The basis for this distinction between those under the age of 22 and those above the age of 22 is unknown.

[43] The concerns outlined here also apply to LL42's specific requirement that escorts for individuals under the age of 22 require an individualized determination.

use. [44] These procedural requirements are excessive and create a burdensome bureaucracy that compromises the safe and efficient operation of the jails.

- *Standard for Enhanced Restraints*. The standard and process for the use of enhanced restraints also raises questions of efficacy. It is important to note that enhanced restraints are used in situations where a serious incident has occurred, the potential for harm to self or others is elevated, and/or the individual has a known, established propensity for violent behavior. While some level of due process is necessary, the requirements of LL42 and the corresponding BOC regulations create timelines and situations that are not operationally feasible (e.g. the hearing for the use of enhanced restraints must occur after 2 days of continuous use while the notice for such a hearing must be 48 hours). Further, there are concerns that certain requirements may create unnecessary delay in the adjudication of these matters. Accordingly, as designed this only creates dangerous situations in which the process for the use of enhanced restraints is unnecessarily bureaucratic and impedes the ability to utilize enhanced restraints safely to protect others from harm.
- *Prohibition of Enhanced Restraints for Individuals Under the Age of 22*. The prohibition of the use of all enhanced restraints for individuals under the age of 22 raises serious concerns. Generally accepted practice allows for the use of certain types of enhanced restraints—such as front cuffing, security mitts or handcuff protective covers—in cases where individuals have engaged in violent conduct or otherwise pose an ongoing threat to safety, regardless of their age. The prohibition against the use of enhanced restraints for a

[44] The requirements are particularly impractical for routine restraints because in order to comply with the regulations for the hearing, the individual and their advocate must be provided 48 hours' notice of the hearing. In practice, this means that notice would be required at the time of the initial application in order to meet the 48-hour timeline. In other words, notice would need to be provided upon every initial application of routine restraints in case routine restraints were to be needed for more than two days.

specific age group, regardless of the individual's behavior, propensity for violence, or the immediate circumstances is dangerous and does not enable the Department to transport such individuals in a safe and secure manner.

CONCLUSION

The well-intentioned goals of LL42—ensuring that restraints are used minimally and with appropriate process—must be carefully considered along with the operational realities of maintaining safety and security in correctional facilities. While procedural safeguards for the use of enhanced restraints are necessary, imposing the same stringent requirements on routine restraints creates an impractical bureaucratic burden. The fact that the law does not differentiate between routine and enhanced restraints complicates daily operations and introduces unnecessary risks, potentially making the jails less secure rather than safer. Additionally, the blanket prohibition of enhanced restraints for individuals under 22 overlooks the reality that violent behavior is not exclusive to older people in custody and may impede the ability to protect both staff and incarcerated individuals. Effective correctional policy must balance oversight with pragmatism, ensuring that necessary security measures remain functional while upholding the rights and dignity of those in custody. If reforms are to be effective, they must be guided by the realities of sound correctional management rather than by a rigid framework that may ultimately undermine the collective goal of safety in the jails. The Monitoring Team's recommendations for next steps are outlined in the Conclusion section of this Report.

De-Escalation Confinement

When an individual poses an imminent threat to another person's safety or engages in violent conduct, they must be separated from other people in custody and de-escalated until they can safely return to a housing unit.

Generally Accepted Practice

De-escalation confinement (which generally occurs in a cell) is an essential behavior management tool for quickly addressing situations in which violence has already occurred or there is a need to prevent a further act of violence. When an individual is agitated to the point of posing an imminent threat to another person's safety or has already caused physical harm, it is crucial to separate them from others. This separation removes the individual from potential victims, helps staff to restore control in the environment, mitigates the risk of retaliation by others, and provides the individual with time and space to de-escalate so that they can safely return to their environment.

The guiding principle for determining whether the individual has, in fact, de-escalated and can safely return to the housing unit, is to ensure that the individual does not pose an imminent risk of harm. This is why the de-escalation process is typically interactive—it is designed to enable corrections staff and medical/mental health clinicians to identify the source of the individual's distress, to help them regain emotional and behavioral control, and ultimately determine whether the risk of harm has diminished. The time needed for the risk of harm to subside depends on both the individual—some people have better-developed coping skills for managing emotional distress than others—as well as the specific circumstances of the incident, as some situations cause a higher level of distress than others. Accordingly, there is no predetermined, uniform time period for de-escalation; instead, it must be tailored to the unique

circumstances of both the individual and the situation. As the duration of a de-escalation event increases (e.g., beyond 3 or 4 hours) safeguards may be put in place, such as requiring another staff member or mental health clinician to attempt to engage with the person or requiring a level of review and authorization by someone higher up the chain of command.

Impact of LL42's Requirements on DOC's Operation of De-Escalation Confinement

The Monitoring Team appreciates LL42's focus on ensuring that de-escalation confinement is utilized for the least amount of time necessary and under appropriate circumstances. LL42 defines de-escalation confinement as "holding an incarcerated person in a cell immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons" (§ 9-167 (a)). LL42 prohibits the process of de-escalation from occurring in intake or decontamination showers (§ 9-167 (c)(1)) and imposes various requirements for monitoring those in de-escalation (§ 9-167 (c)(2) and (3)). These protocols are aligned with the generally accepted practice.

However, LL42 requires "[t]he maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement" (§ 9-167(c)(6)). Further, LL42 places further limits on the use of the tool by requiring that "Under no circumstances may the department place a person in de-escalation confinement for more than four hours in any 24-hour period, or more than 12 hours in any seven-day period" (§ 9-167(c)(6)). Finally, LL42 permits that "[t]hroughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility" (§ 9-167(c)(4)).

The Monitoring Team is deeply concerned about several of LL42's requirements for de-escalation including:

- *Standard for Using De-escalation*. LL42 limits the use of de-escalation confinement to situations "following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons." The *serious physical injury* standard is overly narrow and nearly impossible to predict and thus is not useful as a standard for determining when de-escalation is necessary.[45] The generally accepted practice is a standard of greater utility: when an individual poses an imminent *risk of harm* to another person's safety. The LL42 standard creates situations in which an individual who should be placed in de-escalation may not be because they do not meet the heightened standard. That is unsafe for them and others and thus serves to create, rather than mitigate, a dangerous situation.
- *Arbitrary Time Limits*. LL42's maximum allowable duration of four hours, without regard for the prevailing circumstances or individual differences in agitation, does not reflect the reality of situations where individuals pose an imminent risk of harm to others. The time required to alleviate the risk must be determined on a case-by-case basis. Some people need more time to calm down, and certain situations cause heightened levels of distress thus, the potential risk of harm may remain even after the 4-hour time limit. Establishing an arbitrary maximum duration—regardless of the

[45] The potential for injury depends on various factors, including the level of aggression, obstacles in the path toward the intended victim, the presence of a weapon, and staff proximity and ability to intervene. Similarly, the extent to which the injury inflicted is serious is influenced by additional factors, such as the accuracy of a punch, stab, or swipe, the positioning of both the perpetrator and the victim at the moment of impact, and to some degree, misfortune.

amount of time—places staff in an untenable position, particularly from a correctional management perspective. Legitimate exceptions to the strict 4-hour timeline can and will arise. While appropriate safeguards are necessary to ensure that the de-escalation event extends no longer than necessary, individualized decisions are essential to ensure that de-escalation placement does, in fact, de-escalate the individual. The release decision cannot be based on a predetermined time limit because it can create unsafe and dangerous conditions. The decision, instead, must be based on whether the risk of harm has been properly addressed.

- *Limitations on Readmission to De-Escalation Confinement*. LL42 prohibits placing an individual in de-escalation confinement for more than 12 hours within any 7-day period. This does not account for the reality that individuals who struggle to manage stress or resolve interpersonal conflicts, as well as those who suffer from mental illnesses that make emotional regulation difficult, can escalate to dangerous levels more than once in a week—and even multiple times within the same day. Imposing an arbitrary limit on the frequency of de-escalation confinement removes the use of this important tool for those people in custody who may need it the most. Such limits would expose other incarcerated individuals and staff to an unreasonable risk of harm and could put the individual at risk of retaliation from others in the unit.
- *Access to Items During De-escalation*. LL42's requirement for universal access to communication devices such as tablets or telephones during de-escalation poses serious security and management concerns.[46] While allowing some individuals to use a

[46] The Monitoring Team previously raised concerns that LL42 § 9-167(c)(1) could be read to require individuals in de-escalation to have access to shaving equipment during the period of de-escalation. *See* Appendix C at pg.9 and 10. Upon further evaluation of LL42, and consultation with the City Law Department, it is the Monitoring Team's

telephone to speak with a trusted family member or friend may help alleviate their agitation, access to these communication devices should be determined on an individual basis. Telephone access can be misused to plan retaliation or engage in other actions that would further disrupt the facility's safe operation. As such, access could undercut the overall purpose of de-escalation, which is to understand the source of the problem and assist the individuals involved in returning to a state where they can safely reintegrate into the population without posing a risk of harm to others.

CONCLUSION

The predetermined, inflexible and arbitrary time limits on the duration of de-escalation, the prohibition that prevents using the tool each time it becomes necessary, and the universal access to communication devices attempt to apply a "one-size-fits-all" protocol to situations that must be calibrated to the needs of the individual in de-escalation and the broader situation that escalated them. These requirements do not allow for the wide array of factors that must be incorporated into the decision to use and discontinue de-escalation confinement. Correctional managers must have the discretion to use de-escalation confinement absent arbitrary and absolute requirements that disregard the manager's reasoned, informed judgment about how to best abate the risk of harm. The Monitoring Team's recommendations for next steps are outlined in the Conclusion section of this Report.

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understanding that the law is not be interpreted to require the Department to provide shaving equipment to individuals while in de-escalation.

EMERGENCY LOCK-IN

Emergency lock-ins are used to respond to safety threats such as serious assaults on staff, serious group assaults on people in custody, serious safety breaches (e.g., attempted escape, searches in which a large number of weapons are seized), credible intelligence that a planned assault is imminent, lost keys or tools, and other emergencies. Emergency lock-ins can occur for one specific housing unit, several units, or the entire facility, depending on the scope of the issues that must be addressed and the level of the security threat. As such, emergency lock-ins are a necessary and critical operational tool in a correctional setting.

GENERALLY ACCEPTED PRACTICE

The purpose of emergency lock-ins is to *prevent further harm*, to restore order and to abate conditions that have a reasonable likelihood of endangering people in custody and staff. During a lock-in, facility managers may need to determine who was involved in the incident (both directly and indirectly), search for contraband or weapons, and inspect the physical plant to identify damage requiring repair and make such repairs. In some situations, a crime scene may need to be secured to preserve evidence. When the key tasks have been completed, facility managers should lift the lock-in promptly.

During an emergency lock-in, all people in custody housed in the immediate area are confined to their cells (or beds, if in a dormitory), and normal operations are suspended. If the event or intelligence suggests that the disruption may spread to other areas of the facility, broader lockdowns may be necessary. Basic facility operations such as meal service, visitations, and programmatic activities are necessarily impacted by lock-ins. It is incumbent upon facility managers to address the factors necessitating the lock-in expeditiously, to make contingency

plans for delivering services if the lock-in may be protracted, and to ensure normal operations resume as quickly as possible.

IMPACT OF LL42'S REQUIREMENTS FOR DOC'S OPERATIONS OF EMERGENCY LOCK-INS

The law defines emergency lock-ins as "a department-wide emergency lock-in, a facility emergency lock-in, a housing area emergency lock-in or a partial facility emergency lock-in as defined in section 9-155" and imposes several requirements for their use.

Of utmost concern, LL42 limits the duration: "[s]uch lock-ins may not last more than four hours" (§ 9-167(j)(1)). While appropriate limitations on the use of emergency lock-ins are necessary, the Monitoring Team is deeply concerned that LL42 limits the duration of emergency lock-ins to a maximum of 4 hours without exception and without regard for the prevailing circumstances and conditions. While an emergency lock-in may be completed within four hours, there is no basis to suggest it can *always* be completed within this arbitrary time frame.[47] The potential risk of harm may remain even after the 4-hour time limit. Establishing an arbitrary maximum duration—regardless of what the amount of time is—places staff in an untenable position, particularly from a correctional management perspective. Legitimate exceptions to the strict 4-hour timeline can and will arise. While safeguards should be put in place to ensure that an emergency lock-in is as short as possible and of the narrowest scope, the Department must have the flexibility to exceed the maximum duration for legitimate reasons. Ending an emergency lock-in before the risk of harm has been abated is dangerous. Accordingly, the appropriate standard for ensuring whether the emergency lock-in can be lifted must be based on a

[47] The Monitoring Team is not aware of any basis, rooted in sound correctional practice, that all emergency lock-ins can and must be completed within 4 hours and none has been provided to the Monitoring Team. Further, the Monitoring Team is not aware of any system in American corrections that requires emergency lock-ins to be completed within 4 hours.

particularized assessment and not simply on the passage of time. As a result, implementation of this arbitrary standard is dangerous and plainly undermines sound security practices.

LL42 also imposes several requirements that could paradoxically extend the lock-in's duration and/or impede a return to safe operations. These include requirements for: visual and aural observation of *all* individuals every 15 minutes, universal access to a tablet or communication device (§ 9-167 (j)(2)), and immediate notice of the emergency lock-in to the public (§ 9-167 (j)(3)). The issue with all three requirements is that they must occur in all situations. In each case, there are situations where such an approach is appropriate. It is standard for most observations to occur every 30 minutes unless specific situations for certain individuals require more frequent observation. Fifteen-minute observations are time and staff intensive and can easily divert focus from addressing and ultimately lifting the lock-in. As for access to tablets or communication devices, there may be various security or logistical reasons that access to such devices may not be appropriate. Finally, immediate notification of emergency lock-ins can present various logistical and security challenges. All three of these requirements improperly impede a manager's discretion about what the safest course of action may be.

CONCLUSION

An absolute, inflexible, and arbitrary time limit to complete emergency lock-ins forecloses the application of reasoned, informed judgment by a corrections manager and requires application of a "one size fits all" standard to every situation. The on-the-scene correctional manager must be given the discretion to, in good faith, make that determination absent an arbitrary and absolute requirement to release the people in custody. Similarly, requirements for more frequent observations, universal tablet access, and immediate public notification undercut the overall goal for a safe, efficient resolution of the issues that necessitated the lock-in. These

propositions are troubling because every situation warranting the imposition of an emergency lock-in is subject to a diverse array of contributing factors that must be incorporated into a release decision. Those factors must be considered and will inform whether the decision to release people in custody at any given time will either minimize the potential for further harm or aggravate the potential for further harm. The Monitoring Team's recommendations for next steps are outlined in the Conclusion section of this Report.

CONCLUSION

The Monitoring Team has carefully evaluated and deliberated the many factors related to Local Law 42 and its implication for DOC's operations. Undoubtedly, the goal and intent of Local Law 42 aim to support improved practice within DOC. In some cases, the provisions are laudable, consistent with sound correctional practice, and support the overall reform effort.

However, the Monitoring Team has grave concerns about the implementation of certain problematic sections of LL42 that are described in detail in this report. The Monitoring Team's concerns center around the universal application of certain requirements that inherently require discretion or that impose heightened standards that are impractical or unsafe to operationalize. It is why the LL42 requirements highlighted by the Monitoring Team, without necessary modifications, are inconsistent with sound correctional practice, do not serve to enhance the safety in the jails, and will only exacerbate the already dangerous conditions. In the words of Thomas Edison, "[a] good intention, with a bad approach, often leads to a poor result." That is unfortunately the case with certain provisions of LL42. Accordingly, implementation of these provisions, as currently designed, would undermine the very purpose of the *Nunez* Court Orders, which is for the Department to provide a "constitutionally sufficient level of safety for those who live and work on Rikers Island"[48] and would impede the Department's compliance with the *Nunez* Court Orders. To the extent that the Monitor is required to approve or direct certain DOC practices that include the problematic components of LL42, the Monitor will not approve or direct such practices absent modifications to those requirements for the reasons stated in this Report. *See also* Appendix B of this Report.

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[48] *See* Court's November 27, 2024 Order (dkt. 803) at pg. 54.

As for a pathway forward and to ensure that LL42's requirements meet the "constitutionally sufficient level of safety," additional work is necessary to identify and develop the contours of what necessary and narrowly tailored exceptions could be utilized to address the problematic provisions of LL42 identified in this report and to determine what protocols and procedures are consistent with the requirements of the *Nunez* Court Orders and, where required, would permit the Monitor to make a determination on what may be approved. This will require deliberate and thoughtful consideration and input, when needed, from the Department, the Parties, and other stakeholders as appropriate. It is imperative that Department leadership charged with implementing these requirements must be fully engaged in this process. Clearly, the resolution of the remedial relief before the Court will also have an impact on this matter as it will potentially alter the leadership structure of the agency. Given the magnitude and complexity of the issues outlined in this report, resolution on the remedial relief is necessary before the Monitor can render a final determination regarding the nuanced issues related to LL42. Of course, this assessment will continue pending resolution of the issue, but it is premature for the Monitor to finalize these findings before the Court renders its decision on the remedial relief.

Given the competing and complex issues currently before the Court, the Monitoring Team makes two recommendations to the Court:

First, given the current conditions in the jails and the unsafe and dangerous conditions presented by the implementation of the specific provisions of LL42 outlined in this report, the Monitoring Team recommends that implementation of these specific problematic provisions does not occur pending resolution of the legal issues raised by the Monitoring Team's findings. Until the legal issues discussed herein are fully resolved, the Monitor recommends that the Court and

the Parties determine the appropriate legal pathway necessary to mitigate the potential for harm posed by these provisions.

Second, following the Court's determination of the remedial relief, the Monitoring Team recommends that the Court direct the Monitor, within 30 days, to provide the Court with a timeline for finalizing the Monitoring Team's specific recommendations for how to address the problematic provisions of LL42 outlined that are necessary, narrowly tailored, consistent with sound correctional practice, and permit the safe operation of the jails.

APPENDIX A:
LOCAL LAW 42

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2024

No. 42

Introduced by the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers, Bottcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new section 9-167 to read as follows:

§ 9-167 Solitary confinement. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Advocate. The term "advocate" means a person who is a law student, paralegal, or an incarcerated person.

Cell. The term "cell" means any room, area or space that is not a shared space conducive to meaningful, regular and congregate social interaction among many people in a group setting, where an individual is held for any purpose.

De-escalation confinement. The term "de-escalation confinement" means holding an incarcerated person in a cell immediately following an incident where the person has caused

physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons.

Emergency lock-in. The term "emergency lock-in" means a department-wide emergency lock-in, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility emergency lock-in as defined in section 9-155.

Out-of-cell. The term "out-of-cell" means being in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction and activity or being in any space during the time of carrying out medical treatment, individual one-on-one counseling, an attorney visit or court appearance.

Pre-hearing temporary restrictive housing. The term "pre-hearing temporary restrictive housing" means any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place.

Restraints. For the purposes of this section, the term "restraints" means any object, device or equipment that impedes movement of hands, legs, or any other part of the body.

Restrictive housing. The term "restrictive housing" means any housing area that separates incarcerated persons from the general jail population on the basis of security concerns or discipline, or a housing area that poses restrictions on programs, services, interactions with other incarcerated persons or other conditions of confinement. This definition excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health,

including placement in a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary protective custody, or (4) housed in a designated location for the purpose of school attendance.

Solitary confinement. The term "solitary confinement" means any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.

Suicide prevention aide. For the purposes of this section, the term "suicide prevention aide" means a person in custody who has been trained to identify unusual and/or suicidal behavior.

Violent grade I offense. The term "violent grade I offense" shall have the same meaning as defined by the rules of the department of correction as of January 1, 2022.

b. Ban on solitary confinement. The department shall not place an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose of de-escalation confinement or during emergency lock-ins.

c. De-escalation confinement. The department's uses of de-escalation confinement shall comply with the following provisions:

1. De-escalation confinement shall not be located in intake areas and shall not take place in decontamination showers. Spaces used for de-escalation confinement must, at a minimum, have the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and be maintained in accordance with the personal hygiene and space requirements set forth in such sections;

2. Department staff must regularly monitor a person in de-escalation confinement and engage in continuous crisis intervention and de-escalation to support the person's health and well-being,

attempt de-escalation, work toward a person's release from de-escalation confinement and determine whether it is necessary to continue to hold such person in such confinement;

3. The department shall conduct visual and aural observation of each person in de-escalation confinement every 15 minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Suicide prevention aides may conduct check-ins with a person in de-escalation confinement at least every 15 minutes and refer any health concerns to department staff who will get medical or mental health staff to treat any reported immediate health needs. No suicide prevention aide shall face any retaliation or other harm for carrying out their role;

4. Throughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility;

5. A person shall be removed from de-escalation confinement immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others;

6. The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or more than 12 hours in any seven-day period; and

7. In circumstances permitted in subdivision g of this section, the department may transfer a person from de-escalation confinement to pre-hearing temporary restrictive housing.

(a) The department shall not place any incarcerated person in a locked decontamination shower nor in any other locked space in any facility that does not have, at a minimum, the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and maintained in accordance with the personal hygiene and space requirements as set forth in such sections.

(b) The department shall not maintain any locked decontamination showers. Any other locked spaces in any facility for holding incarcerated people must at least have the features specified in and maintained in accordance with the personal hygiene and space requirements set forth in 40 RCNY § 1-03 and § 1-04.

d. Reporting on de-escalation confinement. For each instance an incarcerated person is placed in de-escalation confinement as described in subdivision c of this section, the department shall prepare an incident report that includes a detailed description of why isolation was necessary to de-escalate an immediate conflict and the length of time the incarcerated person was placed in such confinement. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the preceding quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting such reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's website, a report with data for the preceding quarter on the total number of people placed in such confinement, disaggregated by race, age, gender identity and mental health treatment level, as well as the total number of people held in such confinement disaggregated by whether confinement lasted less than one hour, between one and two hours, between two and three hours, and between three and four hours.

e. Use of restraints. 1. The department shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons. In such instances, only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm. Restraints shall not be used on an incarcerated person under the age of 22 except in the following circumstances: (i) during transportation in and out of a facility, provided that during transportation no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

2. The department shall not place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Such hearing shall comply with the rules of the board of correction as described in paragraph 1 of subdivision f of this section. Any continued use of restraints must be reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven consecutive days.

f. Restrictive housing hearing. Except as provided in subdivision g of this section, the department shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person is found to have committed a violent grade I offense. Any required hearing regarding placement of a person into restrictive housing shall comply with rules to be established by the board of correction.

1. The board of correction shall establish rules for restrictive housing hearings that shall, at a minimum, include the following provisions:

(i) An incarcerated person shall have the right to be represented by their legal counsel or advocate;

(ii) An incarcerated person shall have the right to present evidence and cross-examine witnesses;

(iii) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record;

(iv) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record;

(v) The department shall provide the incarcerated person and their legal counsel or advocate written notice of the reason for proposed placement in restrictive housing and any supporting evidence for such placement, no later than 48 hours prior to the restrictive housing hearing;

(vi) The department shall provide the legal counsel or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments;

(vii) An incarcerated person shall have the right to an interpreter in their native language if the person does not understand or is unable to communicate in English. The department shall take reasonable steps to provide such interpreter;

(viii) A refusal by an incarcerated person to attend any restrictive housing hearings must be videotaped and made part of the hearing record;

(ix) If the incarcerated person is excluded or removed from a restrictive housing hearing because it is determined that such person's presence will jeopardize the safety of themselves or others or security of the facility, the basis for such exclusion must be documented in the hearing record;

(x) A restrictive housing disposition shall be reached within five business days after the conclusion of the hearing. Such disposition must be supported by substantial evidence, shall be documented in writing, and must contain the following information: a finding of guilty or not guilty, a summary of each witness's testimony and whether their testimony was credited or rejected with the reasons thereof, the evidence relied upon by the hearing officer in reaching their finding, and the sanction imposed, if any; and

(xi) A written copy of the hearing disposition shall be provided to the incarcerated person and their counsel or advocate within 24 hours of the determination.

2. Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing.

g. Pre-hearing temporary restrictive housing. In exceptional circumstances, the department may place a person in pre-hearing temporary restrictive housing prior to conducting a restrictive housing hearing as required by subdivision f of this section.

1. Such placement shall only occur upon written approval of the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security. Such written approval shall include: the basis for a reasonable belief that the incarcerated person has committed a violent grade I offense, and whether such person has caused

serious physical injury or poses a specific and significant risk of imminent serious physical injury to staff or other incarcerated persons.

2. A restrictive housing hearing shall occur as soon as reasonably practicable following placement in pre-hearing temporary restrictive housing, and must occur within five days of such placement, unless the person placed in such restrictive housing seeks a postponement of such hearing.

3. If a person is found guilty at a restrictive housing hearing, time spent in pre-hearing temporary restrictive housing prior to such hearing determination shall be deducted from any sentence of restrictive housing and such time shall count toward the time limits in restrictive housing.

4. Pre-hearing temporary restrictive housing shall comply with all requirements for restrictive housing, including but not limited to those established in subdivision h of this section.

5. During the first day of placement in pre-hearing temporary restrictive housing, department staff must regularly monitor the person and engage in continuous crisis intervention and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive housing and determine whether it is necessary to continue to hold the person in pre-hearing temporary restrictive housing.

h. Restrictive housing regulations. The department's use of restrictive housing must comply with the following provisions:

1. The department shall not place an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period.

2. Within 15 days of placement of an incarcerated person in restrictive housing, the department shall meaningfully review such placement to determine whether the incarcerated person continues

to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing. If an individual is not discharged from restrictive housing after review, the department shall provide in writing to the incarcerated person: (i) the reasons for the determination that such person must remain in restrictive housing and (ii) any recommended program, treatment, service, or corrective action. The department shall provide the incarcerated person access to such available programs, treatment and services.

3. The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing.

4. A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape.

5. The department shall utilize programming that addresses the unique needs of those in restrictive housing. The department shall provide persons in restrictive housing with access to core educational and other programming comparable to core programs in the general population. The department shall also provide persons in restrictive housing access to evidence-based

therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be individualized and trauma-informed, include positive incentive behavior modification models, and follow best practices for violence interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation techniques, conflict resolution, the use of force policy, and related topics to address the unique needs of those in restrictive housing units.

6. The department shall use positive incentives to encourage good behavior in restrictive housing units and may use disciplinary sanctions only as a last resort in response to behavior presenting a serious and evident danger to oneself or others after other measures have not alleviated such behavior.

7. All housing for medical or mental health support provided to persons recommended to receive such support by the entity providing and,or overseeing correctional medical and mental health, including placement in contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance, shall comply with subdivisions (b), (c), (e), (i), (j) and (k) of this section and paragraphs 4, 5, and 6 of this subdivision.

8. For purposes of contagious disease units, after a referral from health care staff, a person may be held in a medical unit overseen by health care staff, for as limited a time as medically necessary as exclusively determined by health care staff, in the least restrictive environment that is medically appropriate. Individuals in a contagious disease unit must have comparable access as individuals incarcerated in the general population to phone calls, emails, visits, and programming done in a manner consistent with the medical and mental health treatment being received, such as at a physical distance determined appropriate by medical or mental health staff.

Such access must be comparable to access provided to persons incarcerated outside of restrictive housing units.

9. Reporting on restrictive housing. For each instance a disciplinary charge that could result in restrictive housing is dismissed or an incarcerated individual is found not guilty of the disciplinary charge, the department shall prepare an incident report that includes a description of the disciplinary charge and the reasons for the dismissal or not guilty determination. For each instance an incarcerated person is placed in restrictive housing, the department shall prepare an incident report that includes a detailed description of the behavior that resulted in placement in restrictive housing and why restrictive housing was necessary to address such behavior, including if a person was placed in pre-hearing temporary restrictive housing and the reasons why the situation met the requirements in paragraph 1 of subdivision g of this section. For each instance in which confinement in restrictive housing is continued after a 15-day review of an incarcerated person's placement in restrictive housing, the department shall prepare an incident report as to why the person was not discharged, including a detailed description of how the person continued to present a specific, significant and imminent threat to the safety and security of the facility if housed outside restrictive housing and what program, treatment, service, and/or corrective action was required before discharge. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the prior quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting the reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's website, a report with data for the preceding quarter

on the total number of people placed in restrictive housing during that time period, disaggregated by race, age, gender identity, mental health treatment level and length of time in restrictive housing, and data on all disposition outcomes of all restrictive housing hearing during such time period, disaggregated by charge, race, age, gender identity and mental health treatment level.

i. Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section.

2. Incarcerated persons may congregate with others and move about their housing area freely during out-of-cell time and have access to education and programming pursuant to section 9-110 of the administrative code.

j. Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership with responsibility for the operations of security for a facility determines that such lock-in is necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated persons or staff. Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible. The department shall lift emergency lock-ins as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security shall review such lock-ins at least every hour. Such lock-ins may not last more than four hours.

2. Throughout an emergency lock-in, the department shall conduct visual and aural observation of every person locked in every fifteen (15) minutes, shall refer any health concerns

to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Throughout an emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency lock-in, each person locked in shall have access to a tablet or other device that allows the person to make phone calls both outside of the facility and to medical staff in the facility.

3. The department shall immediately provide notice to the public on its website of an emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits or court appearances.

4. For each instance an emergency lock-in is imposed, the department shall prepare an incident report that includes:

(a) A description of why the lock-in was necessary to investigate or de-escalate an emergency, including the ways in which it posed a threat of specific, significant and imminent harm;

(b) A description of how other less restrictive measures were exhausted;

(c) The number of people held in lock-in;

(d) The length of lock-in;

(e) The areas affected and the reasons such areas were subject to the emergency lock-in;

(f) The medical and mental health services affected, the number of scheduled medical and or mental health appointments missed and requests that were denied;

(g) Whether visits, counsel visits or court appearances were affected;

(h) What programs, if any, were affected;

(i) All actions taken during the lock-in to resolve and address the lock-in; and

(j) The number of staff diverted for the lock-in.

Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the preceding quarter and shall post all such reports on the department's website with any identifying information redacted. Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction a report on the total number of lock-ins occurring during the preceding quarter, the areas affected by each such lock-in, the length of each such lock-in and number of incarcerated people subject to each such lock-in, disaggregated by race, age, gender identity, mental health treatment level and length of time in cell confinement.

k. Incarcerated persons under the age of 22 shall receive access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.

§ 2. This local law takes effect 180 days after it becomes law. The board of correction shall take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties necessary to effectuate this section before such date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 20, 2023, disapproved by the Mayor on January 19, 2024 and repassed by the Council on January 30, 2024 and said law is adopted notwithstanding the objection of the Mayor.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 42 of 2024, Council Int. No. 549-A of 2022) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, disapproved by the Mayor, and repassed by the City Council.

SPENCER FISHER, Acting Corporation Counsel.

APPENDIX B: SUMMARY OF RELEVANT *NUNEZ* PROVISIONS

Implementing certain provisions of LL42, as explained in this report would undermine the very purpose of the *Nunez* Court Orders, which is for the Department to provide a "constitutionally sufficient level of safety for those who live and work on Rikers Island." This document identifies certain specific provisions of the *Nunez* Court Orders that are implicated by LL42's requirements. This is not an exhaustive list of all potentially relevant provisions related to the *Nunez* Court Orders.

- **Management of Incarcerated Individuals Following Serious Incidents of Violence**: The *Nunez* Court Orders include a number of requirements related to the Management of Incarcerated Individuals Following Serious Incidents of Violence, including:
    - Action Plan, § E, ¶ 4 *Management of Incarcerated Individuals Following Serious Incidents of Violence*;
    - Second Remedial Order ¶ 1(i)(e) *Immediate Security Protocols—Post-Incident Management*;
    - Action Plan, § D, ¶ 2(h) *Improved Security Protocols—Post-Incident Management Protocol*.
  - **Approval of the Monitor**: The Monitor must approve the Management strategy of Incarcerated Individuals Following Serious Incidents of Violence. *See* Action Plan, § E, ¶ 4.
  - **Direction of the Monitor**: The Monitor may direct the Department to refine the initiative(s) related to Post-Incident Management Protocol (Action Plan, § D, ¶ 2(h)), among other security initiatives, to ensure compliance with the *Nunez* Court

Orders. *See* Action Plan, § D, ¶ 3. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **Restraints and Escorts**: The *Nunez* Court Orders include a number of requirements related to the use of restraints and escort procedures, including:
    - Consent Judgment, § IV, ¶ 3(p) *Use of Force Policy—Restraints*;
    - Second Remedial Order ¶ 1(i)(a) *Security Plan (escorted movement with restraints when required)*;
    - Action Plan, § D, ¶ 2(a) *Improved Security Initiatives—Security Plan*;
    - Action Plan, § D, ¶ 2(f) *Improved Security Initiatives—Escort Techniques*;
    - August 10, 2023 Order, § I, ¶ 3 *Revise Escort Procedures.*
  - **Approval of the Monitor**: The Monitor must approve the Department's policies and procedures on restraints and escorts. *See* Consent Judgment, § IV, ¶ 3(p) and August 10, 2023 Order, § I, ¶ 3.
  - **Direction of the Monitor**: The Monitor may direct the Department to refine the initiative(s) regarding the use of restraints and escorted movement (Action Plan § D, ¶ 2(a) and (f))), among other security initiatives, to ensure compliance with the *Nunez* Court Orders. *See* Action Plan, § D, ¶ 3. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.
- **De-escalation**: The *Nunez* Court Orders include a number of requirements related to the use of de-escalation, including:
    - First Remedial Order, § A, ¶ 3 *Revised De-escalation Protocol*;

        - Action Plan, § D, ¶ 2 (b) *Improved Security Initiatives* (first sentence);
        - Action Plan § E, ¶ (4) *Management of Incarcerated Individuals Following Serious Incidents of Violence*.
    - **Approval of the Monitor**: The Monitor must approve the policies and procedures for de-escalation. *See* First Remedial Order, § A, ¶ 3 and Action Plan § E, (4).
    - **Direction of the Monitor**: The Monitor may direct the Department to refine the initiative(s) regarding the use of de-escalation (Action Plan § D, ¶ 2(b)), among other security initiatives, to ensure compliance with the *Nunez* Court Orders. *See* Action Plan, § D, ¶ 3. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **Emergency Lock-Ins**: The *Nunez* Court Orders include requirements related to the use of emergency lock-ins, including:
    - August 10, 2023 Order, § I, ¶ 4 *Lock-in and Lock-out Procedures.*
    - **Approval of the Monitor**: The Monitor must approve the lock-in policies and procedures. *See* August 10, 2023 Order, § I, ¶ 4

APPENDIX C: MONITOR'S JANUARY 12, 2024 LETTER TO COMMISSIONER MAGINLEY-LIDDIE

Introduction

The City Council passed Council Bill 549-A on December 20, 2023. The bill seeks to ban the use of solitary confinement and set standards for the use of restrictive housing, de-escalation, emergency lock-ins, the use of restraints and housing special populations (*e.g.,* mental health units, contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance). A copy of the bill is included as Appendix A.

The Commissioner of the Department of Correction, pursuant to the *Nunez* Court Orders,[1] requested that the Monitoring Team advise and provide feedback to the Department on how the requirements of this bill may impact the Department's ability to comply with the *Nunez* Court Orders. This document provides the Monitoring Team's assessment of the implications this bill will have on the City's and Department's efforts to address the unsafe conditions in the jails, protect individuals from harm, and implement sound correctional practices all of which are necessary to comply with the *Nunez* Court Orders.

Summary and Discussion of Council Bill 549-A

Council Bill 549-A is a well-intentioned effort to ensure that no person in the Department's custody is subjected to solitary confinement. This bill also includes a significant number of operational requirements that go beyond eliminating solitary confinement and that would impact the day-to-day management of the City's jails. The majority of these provisions directly relate to requirements of the *Nunez* Court Orders in which the Department is required to consult[2] and seek the Monitor's approval on many issues including, but not limited to, matters relating to security practices,[3] the use of restraints,[4] escorts,[5] lock-in and lock-out time,[6] de-

[1] *See*, Consent Judgment, § XX, ¶¶ 24 and 25 and June 13, 2023 Order, § I, ¶ 5.

[2] Consultation with the Monitor is required by over 80 provisions in the *Nunez* Court Orders. Consultation is also required by the Court's June 13, 2023 Order, § I, ¶ 5.

[3] *See* Action Plan § D, ¶ 3 in which the Monitor may direct the Department to refine certain security initiatives to ensure compliance with security requirements of the Action Plan.

[4] *See* Consent Judgment, § IV, ¶ 3(p).

[5] *See* Action Plan, § D, ¶ 2(f) and August 10, 2023 Order, § I, ¶ 3.

[6] *See* August 10, 2023 Order, § I, ¶ 4.

escalation,[7] initial management following a serious act of violence[8] and subsequent housing strategies.[9]

The Monitoring Team believes that eliminating solitary confinement is necessary and important. However, the Monitoring Team has deep concerns about many of the bill's provisions related to the use of restrictive housing, de-escalation, emergency lock-ins, and the use of restraints and escort procedures. Many of the provisions, as currently drafted, could inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff. Consequently, this could impede the Department's ability to comply with the *Nunez* Court Orders. These issues are described in detail below. Further, a listing of the provisions from the *Nunez* Court Orders that are immediately impacted by Council Bill 549-A, as well as the implications and related concerns to the Monitor's work, is included as Appendix B.

Managing Individuals Following Serious Acts of Violence

When evaluating the contents of the bill, important background and context are necessary to understand how individuals are managed following serious acts of violence. The Monitoring Team has repeatedly and consistently reported that the City and Department must have targeted initiatives to address the underlying causes of violence, protect individuals from harm, and ensure that staff use sound correctional practices. An essential component of the effort to ensure the safety and well-being of people in custody and staff working in correctional facilities is having a reliable, safe, and effective response to serious interpersonal violence. Those who engage in serious violence while in custody must be supervised in manner that is ***different*** from that used for the general population. Separating violent individuals from the general population, properly managing congregate time out-of-cell, and limiting out-of-cell time are standard and sound correctional practice, as long as the limitations are reasonably related to the reduction of harm. In this context, reducing out-of-cell time to less than 14 hours per day is necessary to protect individuals from harm and reflects sound correctional practice. The Department must be able to effectively separate those who have engaged in serious acts of violence from potential

[7] *See* First Remedial Order, § A, ¶ 3 and Action Plan, § D, ¶ 2(b).

[8] *See* Second Remedial Order ¶ 1(i)(e), Action Plan, § D, ¶ 2(h)

[9] *See* Action Plan, § E, ¶ 4.

victims and, to some degree, limit their freedom of movement when they are engaged in congregate activity outside their cells. Reduced out-of-cell time increases staff's ability to control the environment, improves surveillance, minimizes unsupervised interactions, permits people with interpersonal conflicts to be separated within a single housing unit, and allows staff to better manage out-of-cell activities because fewer individuals are congregating at one time. The Department must also provide the necessary structure and supervision to ensure the safety of the individuals housed in a restrictive setting and should provide rehabilitative services that decrease the likelihood of the individual committing subsequent violent acts.

It must be emphasized that solitary confinement and restrictive housing are not the same and thus their operational requirements and constraints must be different. Outlined below are the distinctions between the two housing models.

- Solitary confinement limits out-of-cell time from between 1 to 4 hours a day,[10] for prolonged periods of time (e.g. 15 days or more), affords little human contact and no congregate engagement, and does not provide access to programming.
- Restrictive housing programs include some restrictions on out-of-cell time and other privileges (e.g. limited commissary funds) in comparison to that afforded to the general population but *do not* involve the type of social deprivation that is characteristic of solitary confinement and, as a result, does not place detainees at risk of the significant psychological and physiological deterioration that is associated with solitary confinement.

Given the high level of serious violence in the New York City jails and the high risk of harm faced daily by both those in custody and staff, the Department must be able to operate a restrictive housing program. The goal of restrictive housing programs is to provide safe forms of congregate engagement for those who have committed serious acts of violence while in custody, without placing those housed in general population settings at risk of harm. Such a program clearly must be both well-designed and properly implemented. The distinction between restrictive housing programs and solitary confinement is worth repeating. Restrictive housing enables the Department to safely manage violence-prone individuals in a congregate setting

[10] There is no standard definition of solitary confinement. Appendix C includes a summary of definitions of solitary confinement from various reputable sources.

wherein they also retain some access to privileges and programming; while solitary confinement seeks to manage individuals through complete isolation and severe and onerous restrictions.

New York is at the forefront of the nation's efforts to develop restrictive housing models as alternatives to solitary confinement. Restrictive housing models in correctional settings are still relatively new as only a few jurisdictions have attempted to *wholly eliminate* solitary confinement. Restrictive housing models offer alternatives to solitary confinement appropriately balancing the need to preserve order in the general population with the well-being of violence-prone individuals. Viewed on a continuum, there is a point between solitary confinement and general population housing that can accommodate both interests.

The Monitoring Team conducted a review of restrictive housing practices from across the United States (many of these programs have been cited by the City Council and other stakeholders in various public forums as promising alternatives to reduce the reliance on solitary confinement).[11] This review included programs in the following jurisdictions: Alameda County, Cook County Illinois, Colorado, Mississippi, Maine, Nebraska, New York state, and Washington D.C. These programs vary considerably with regard to the qualifying infractions, methods of referral and placement in the units, exclusions, use of isolation, privileges afforded, the role of programming and frequency with which an individual is reviewed. However, one component that was consistent across all programs with which the Monitoring Team is familiar is that they **all** include limitations on out-of-cell time that are more restrictive than that afforded to the general population.[12]

The complexity of developing appropriate restrictive housing programs cannot be overstated—programs for people with known propensities for serious violence who are

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[11] *See* "A Local Law to amend the administrative code of the city of New York in relation to banning solitary confinement in city jails," Committee Report of the Governmental Affairs Division, New York City Council, September 28, 2022, at pg. 15.; and Statement of Basis and Purpose for Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities, Board of Correction for the City of New York, March 5, 2021, at pg. 24.

[12] For instance, restrictive housing models in Colorado and Cook County, Illinois have been at the forefront of eliminating solitary confinement *and* developing viable alternative housing programs. These two jurisdictions have been held up as models for reforms to DOC practice. It must be noted the restrictive housing programs in these jurisdictions only permit 4 hours out-of-cell per day, with no limit on the duration that an individual may be housed in such a program, and restraint desks are used for any congregate out-of-cell time. Further, Colorado permits out-of-cell time to be revoked for 7 days as an immediate consequence for subsequent misconduct.

concentrated in a specific location necessitate unique and essential security requirements, particularly during time spent out-of-cell in congregate activities. It is also critical to provide programming and services that focus on reducing the risk of subsequent violence, which requires collaboration among multiple divisions and agencies.

Evaluation of Provisions of City Council Bill 549-A

The members of the Monitoring Team have over 100 years of experience in correctional management and have also been at the forefront of the national effort to reduce and eliminate the use of solitary confinement in adult and juvenile systems. As such, the Monitoring Team is well positioned to evaluate the requirements of this bill and its impact on the Department's ability to address the requirements of the *Nunez* Court Orders and to advance the necessary reforms in the City's jails.

While Council Bill 549-A includes certain important requirements, such as eliminating solitary confinement, many of the provisions of Council Bill 549-A do not provide the City or Department the necessary discretion to safely respond to the immediate aftermath of a serious act of violence, create undue restrictions on management following serious acts of violence as well as on the use of restraints and escorted movement. Further, many of these requirements are not consistent with sound correctional practice or support the overall goal of protection from harm. Outlined below is a summary of the provisions in the bill that create the greatest concerns to safety and impact on the *Nunez* Court Orders. This is not intended to be an exhaustive list of the potential impact of the bill's many requirements.

- **Definition of Solitary Confinement**. The definition of solitary confinement in this bill is not aligned with any definition of solitary confinement known to the Monitoring Team. While there is no standard definition of solitary confinement, there are common parameters which include limiting out-of-cell time from 1 to 4 hours a day, for prolonged periods of time, affording little human contact and no congregate engagement, and denying access to programming. Notably, one of the most frequently cited definitions, the United Nations' "Mandela Rules," defines solitary confinement as an approach where individuals are limited to 2 hours out-of-cell per day *and* deems the

use of solitary confinement for more than 15 days as torture.[13] The definition of solitary confinement in this bill appears to conflate solitary confinement with attempts to address out-of-cell time more generally. Eliminating solitary confinement must be addressed separately from any provisions regarding alternatives to such practice, such as restrictive housing models. It is important the definition of solitary confinement comport with the standard description of that practice to disentangle this practice from others, such as restrictive housing, that are critical and necessary in responding to serious acts of violence. A list of definitions of solitary confinement from a number of reputable sources is provided in Appendix C.

- **Out-of-Cell Time**. The bill requires that, in each 24-hour period, ***all*** incarcerated individuals must be afforded 14 hours out-of-cell with no restraints or barriers to physical contact with other persons in custody. The two minor exceptions (de-escalation confinement and emergency lock-ins) are limited to 4 hours and so they do not provide the meaningful distinction to this out-of-cell requirement that is needed. **A global approach to out-of-cell time for all individuals in custody significantly endangers both persons in custody and staff and is not consistent with sound correctional practice.** Those with a demonstrated propensity for serious violence must be supervised in a manner that is safe and effectively mitigates the risk of harm they pose to others. Some reduction in out-of-cell time to less than 14 hours per day, with appropriate safeguards, is necessary. For instance, seven hours out-of-cell time in a congregate setting may be appropriate in some cases and *does not* constitute solitary confinement under any correctional standard with which the Monitoring Team is familiar. Limitations on the 14 hours out-of-cell (such as limitations of seven to 10 hours) would, however, minimize the opportunity for violent and/or predatory individuals to visit harm on other persons in custody and staff. Without question, the Department must be permitted some degree of flexibility in order for it to be able to safely manage individuals following serious acts of violence and to protect potential victims, both other incarcerated persons and staff. In fact, the Monitoring Team

[13] *See*, UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 17 December 2015, A/RES/70/175, Rules 43 and 44 available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf

suggested that such a violence control strategy was necessary to address the current dangerous conditions in the Monitor's November 8, 2023 Report at pgs. 23-24.

- **Restrictive Housing Model**. While Council Bill 549-A describes its alternative housing models as "restrictive housing," it does not appear to actually create or include any discernible restrictions. First, the bill does not permit graduated out-of-cell time for the individuals placed in restrictive housing, which eliminates an important incentive for prosocial conduct. Second, the bill sets arbitrary timeframes for discharge from restrictive housing (e.g., an individual must be removed from the unit if the individual "has not engaged in behavior that presents a specific, significant, and imminent threat" in a 15-day period and must be discharged within 30 days, with no exceptions regardless of the individual's behavior) that do not account for whether an individual continues to pose a risk of harm to others' safety. Third, the required procedures relating to placement on these units are protracted, including significant procedural requirements that provide myriad opportunities for undue delay by the perpetrator of violence before the Department can act to address the underlying conduct. Further, during the time in which this placement decision is being made, the bill includes an impractical standard for pre-hearing detention that could permit the perpetrator of serious violence to remain in general population while awaiting a determination for placement in restrictive housing. Finally, the programming requirements for restrictive housing are at odds with the reality of evidence-based practice. None of the evidence-based curricula with which the Monitoring Team is familiar can be completed within the proposed 15/30-day maximum length of stay in restrictive housing.[14] The constraints this bill places on the design of a restrictive housing model create or exacerbate unsafe conditions because the bill does not permit adequate opportunity for separating those who engage in serious violence from potential victims, which is not consistent with sound correctional practice and support the overall goal of protection from harm.
- **De-Escalation Confinement and Emergency Lock-ins**. Council Bill 549-A limits the duration of de-escalation confinement and emergency lock-in to 4 hours in a 24-hour

[14] *See* Monitor's June 30, 2022 Report at pg. 25 which includes a discussion regarding the inability to address behavior change with set time periods for graduation.

period, without exception. It is unclear how this 4-hour standard was determined as the Monitoring Team is not aware of any evidence that de-escalation or the need for emergency lock-in will *always* be resolved in this set time period. While the imminent risk of harm these practices are intended to address *may be* abated in 4 hours, in the Monitoring Team's experience, that is not always the case for each individual or scenario. The goal of these management tools is to de-escalate an individual who has committed a serious act of violence, not a minor infraction, and to mitigate broader risks to other persons in custody or staff triggered by a serious incident that requires a temporary lock-in. Ensuring the individual has de-escalated or the situation that created the need for a lock-in has been addressed must be the guiding principle, not simply an arbitrary passage of time. The 4-hour maximum duration for de-escalation and emergency lock-in provides no flexibility to address a continued risk of harm. Setting an arbitrary time period within which de-escalation and emergency lock-ins must conclude is not sound correctional practice and can create or exacerbate unsafe conditions. The guiding principle for concluding the use of de-escalation and emergency lock-ins must be the extent to which the risk of harm has been abated and safe operations can resume and therefore some degree of flexibility in the duration to conclude these practices is critical and necessary.

  - The bill contains specific requirements for de-escalation. Some are important, such as requiring that de-escalation does not occur in decontamination showers, but others do not appear to be relevant to the goal of de-escalating an individual following a serious event, such as requiring that the perpetrator of violence must have access to shaving equipment during the de-escalation period. De-escalation occurs when staff constructively engage with the individual to ensure the threat to others has abated. Permitting unfettered access to things such as the telephone (another requirement in the bill) could facilitate dangerous access to individuals who may perpetuate the threat to others' safety rather than reduce it.

- **Use of Restraints and Escorts**. Council Bill 549-A sets a standard for the use of *any* restraints requiring the presence of an imminent risk of harm, which is more restrictive than any standard with which the Monitoring Team has experience. While such a standard does not appear appropriate in many cases, it is further unclear how this

standard could even be operationalized. Of greatest concern is that the bill does not differentiate between the *routine* use of restraints and the use of *enhanced* restraints. The requirements for the use of routine restraints (e.g., the use of restraints for escorts such as transportation to court or movement within the facility) are burdensome, not operationally feasible, and are not aligned with sound correctional practice. Therefore, these restrictions and requirements will in all likelihood create or exacerbate the unsafe conditions. The requirements for using routine restraints also create situations in which one individual may be placed in restraints while others are not, thus placing that individual at unnecessary risk of harm and creating additional complications for staff in trying to manage such a system. Further, while additional procedures are necessary to determine the use of *enhanced* restraints, the standards promulgated in the bill and the process for the evaluating the use of enhanced restraints are burdensome, complicated, and appear to create undue delay, all of which will impede their proper use and potentially create additional risk of harm within the jails. Finally, the bill includes separate requirements for the use of restraints for adults versus individuals under the age of 22 and exceptions for that population that are not permitted for adults (e.g., regarding transportation, it is unclear why individuals under 22 may be restrained when being transported to Court, but adults cannot without meeting a high standard). There does not appear to be any basis for such a distinction, particularly since it is both routine and consistent with sound correctional practice to restrain individuals during transportation to Court and elsewhere. In summary, the bill places unnecessary restrictions on the use of routine restraints and creates overly burdensome procedural hurdles for the use of enhanced restraints, both of which are at odds with sound correctional practice and will potentially increase the risk of harm for detainees and staff.

This bill must also be evaluated through the lens of the current conditions in the City's jails. A myriad of dysfunctional practices and management problems have plagued the City's and Department's management and operation of the jails, as the Monitoring Team has thoroughly documented. The Department remains unable to consistently implement and sustain basic security practices or to manage the jails safely and effectively. Requiring the Department to

implement the provisions of Council Bill 549-A discussed above, particularly given the bill's deficiencies, will only exacerbate the current dysfunction, will impede the goals of promoting the use of sound correctional practices and enhancing jail safety, and impact the Department's ability to comply with the *Nunez* Court Orders.

In summary, Council Bill 549-A includes absolute prohibitions in areas where at least some discretion is necessary, contains requirements that are both vague and ambiguous, contains multiple internal inconsistencies, and sets standards that are not consistent with sound correctional practice. These issues directly impact various Department policies and procedures addressed by the *Nunez* Court Orders and which require the Monitor's approval. In particular, the Monitor must approve procedures regarding managing individuals following serious acts of violence,[15] de-escalation protocols,[16] emergency lock-in protocols,[17] the use of restraints and escorts,[18] and security practices.[19] The Monitor will not approve policies and procedures that include the problematic requirements outlined above because they do not reflect sound correctional practice and would further exacerbate the extant unsafe conditions. Consequently, the Monitoring Team must reiterate its concern that the bill's requirements, as discussed herein, will create situations that will impair, if not prevent, the Department from being able to comply with the *Nunez* Court Orders. An assessment of the impact on the *Nunez* Court Orders is included in Appendix B.

Conclusion

The Monitoring Team fully supports the effort to eliminate the practice of solitary confinement. Banning the practice of solitary confinement is an important expression of the value the City places on all of its residents. The goal is laudable and is one we support. Accordingly, the Monitoring Team recommends that the Department immediately ensure that solitary confinement[20] is eliminated in Department policy and practice. This includes

[15] *See* Second Remedial Order ¶ 1(i)(e), Action Plan, § D, ¶ 2(h).

[16] *See* First Remedial Order, § A, ¶ 3 and Action Plan, § D, ¶ 2(b).

[17] *See* August 10, 2023 Order, § I, ¶ 4.

[18] *See* Consent Judgment, § IV, ¶ 3(p), Action Plan, § D, ¶ 2(f), and August 10, 2023 Order, § I, ¶ 3.

[19] *See* Action Plan § D, ¶ 3 in which the Monitor may direct the Department to refine certain security initiatives to ensure compliance with security requirements of the Action Plan.

[20] As discussed above, and demonstrated in Appendix C, no standard definition of solitary confinement exists. For purposes of this recommendation, the Monitoring Team recommends the most inclusive

eliminating the use of cells in NIC with extended alcoves, and any other cells or housing units that contain similar physical properties, that do not permit adequate congregate engagement and access to programming. Further, the Department must ensure that decontamination showers may not be locked or utilized for de-escalation or any other form of confinement.

The Monitoring Team strongly believes, based on its many years of experience and expertise, that the various operational requirements and constraints that accompany the elimination of solitary confinement in Council Bill 549-A will likely exacerbate the already dangerous conditions in the jails, intensify the risk of harm to both persons in custody and Department staff, and would seriously impede the City's and Department's ability to achieve compliance with the requirements of the *Nunez* Court Orders. As such, the Monitoring Team recommends significant revisions to Council Bill 549-A are necessary to address the issues outlined in this document and to support the overall goal of managing a safe and humane jail system and advancing the reforms of the *Nunez* Court Orders.

definition of solitary confinement is adopted which would prohibit the confinement of individuals for 20 hours or more a day.

Appendix A to Monitor's January 12, 2024 Letter

Appendix A – Council Bill 549-A – Passed December 20, 2023

By the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers, Bottcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Be it enacted by the Council as follows:

1 Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new
2 section 9-167 to read as follows:
3 § 9-167 Solitary confinement. a. Definitions. For the purposes of this section, the following
4 terms have the following meanings:
5 Advocate. The term "advocate" means a person who is a law student, paralegal, or an
6 incarcerated person.
7 Cell. The term "cell" means any room, area or space that is not a shared space conducive
8 to meaningful, regular and congregate social interaction among many people in a group setting,
9 where an individual is held for any purpose.
10 De-escalation confinement. The term "de-escalation confinement" means holding an
11 incarcerated person in a cell immediately following an incident where the person has caused
12 physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or
13 other incarcerated persons.
14 Emergency lock-in. The term "emergency lock-in" means a department-wide emergency
15 lock-in, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility
16 emergency lock-in as defined in section 9-155.

1 Out-of-cell. The term "out-of-cell" means being in a space outside of, and in an area away
2 from a cell, in a group setting with other people all in the same shared space without physical
3 barriers separating such people that is conducive to meaningful and regular social interaction and
4 activity or being in any space during the time of carrying out medical treatment, individual one-
5 on-one counseling, an attorney visit or court appearance.
6 Pre-hearing temporary restrictive housing. The term "pre-hearing temporary restrictive
7 housing" means any restrictive housing designated for incarcerated persons who continue to pose
8 a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated
9 persons after a period of de-escalation confinement has exceeded time limits established by this
10 section and prior to a hearing for recommended placement in restrictive housing has taken place.
11 Restraints. For the purposes of this section, the term "restraints" means any object, device
12 or equipment that impedes movement of hands, legs, or any other part of the body.
13 Restrictive housing. The term "restrictive housing" means any housing area that separates
14 incarcerated persons from the general jail population on the basis of security concerns or discipline,
15 or a housing area that poses restrictions on programs, services, interactions with other incarcerated
16 persons or other conditions of confinement. This definition excludes housing designated for
17 incarcerated persons who are: (1) in need of medical or mental health support as determined by
18 the entity providing or overseeing correctional medical and mental health, including placement in
19 a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary
20 protective custody, or (4) housed in a designated location for the purpose of school attendance.
21 Solitary confinement. The term "solitary confinement" means any placement of an
22 incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours
23 in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.

1 Suicide prevention aide. For the purposes of this section, the term "suicide prevention aide"
2 means a person in custody who has been trained to identify unusual and/or suicidal behavior.
3 Violent grade I offense. The term "violent grade I offense" shall have the same meaning as
4 defined by the rules of the department of correction as of January 1, 2022.
5 b. Ban on solitary confinement. The department shall not place an incarcerated person in a
6 cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period
7 or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose
8 of de-escalation confinement or during emergency lock-ins.
9 c. De-escalation confinement. The department's uses of de-escalation confinement shall
10 comply with the following provisions:
11 1. De-escalation confinement shall not be located in intake areas and shall not take place
12 in decontamination showers. Spaces used for de-escalation confinement must, at a minimum, have
13 the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and
14 be maintained in accordance with the personal hygiene and space requirements set forth in such
15 sections;
16 2. Department staff must regularly monitor a person in de-escalation confinement and
17 engage in continuous crisis intervention and de-escalation to support the person's health and well-
18 being, attempt de-escalation, work toward a person's release from de-escalation confinement and
19 determine whether it is necessary to continue to hold such person in such confinement;
20 3. The department shall conduct visual and aural observation of each person in de-
21 escalation confinement every 15 minutes, shall refer any health concerns to medical or mental
22 health staff, and shall bring any person displaying any indications of any need for medical
23 documentation, observation, or treatment to the medical clinic. Suicide prevention aides may

1 conduct check-ins with a person in de-escalation confinement at least every 15 minutes and refer
2 any health concerns to department staff who will get medical or mental health staff to treat any
3 reported immediate health needs. No suicide prevention aide shall face any retaliation or other
4 harm for carrying out their role;
5 4. Throughout de-escalation confinement, a person shall have access to a tablet or device
6 that allows such person to make phone calls outside of the facility and to medical staff in the
7 facility;
8 5. A person shall be removed from de-escalation confinement immediately following when
9 such person has sufficiently gained control and no longer poses a significant risk of imminent
10 serious physical injury to themselves or others;
11 6. The maximum duration a person can be held in de-escalation confinement shall not
12 exceed four hours immediately following the incident precipitating such person's placement in
13 such confinement. Under no circumstances may the department place a person in de-escalation
14 confinement for more than four hours total in any 24-hour period, or more than 12 hours in any
15 seven-day period; and
16 7. In circumstances permitted in subdivision g of this section, the department may transfer
17 a person from de-escalation confinement to pre-hearing temporary restrictive housing.
18 (a) The department shall not place any incarcerated person in a locked decontamination
19 shower nor in any other locked space in any facility that does not have, at a minimum, the features
20 specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and maintained
21 in accordance with the personal hygiene and space requirements as set forth in such sections.
22 (b) The department shall not maintain any locked decontamination showers. Any other
23 locked spaces in any facility for holding incarcerated people must at least have the features

1 specified in and maintained in accordance with the personal hygiene and space requirements set
2 forth in 40 RCNY § 1-03 and § 1-04.
3 d. Reporting on de-escalation confinement. For each instance an incarcerated person is
4 placed in de-escalation confinement as described in subdivision c of this section, the department
5 shall prepare an incident report that includes a detailed description of why isolation was necessary
6 to de-escalate an immediate conflict and the length of time the incarcerated person was placed in
7 such confinement. Beginning on July 15, 2024, and within 15 days of the end of each subsequent
8 quarter, the department shall provide the speaker of the council and the board of correction all such
9 reports for the preceding quarter and post all such reports on the department's website. The
10 department shall redact all personally identifying information prior to posting such reports on the
11 department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent
12 quarter, the department shall provide to the speaker of the council and the board of correction, and
13 post on the department's website, a report with data for the preceding quarter on the total number
14 of people placed in such confinement, disaggregated by race, age, gender identity and mental
15 health treatment level, as well as the total number of people held in such confinement
16 disaggregated by whether confinement lasted less than one hour, between one and two hours,
17 between two and three hours, and between three and four hours.
18 e. Use of restraints. 1. The department shall not place an incarcerated person in restraints
19 unless an individualized determination is made that restraints are necessary to prevent an imminent
20 risk of self-injury or injury to other persons. In such instances, only the least restrictive form of
21 restraints may be used and may be used no longer than is necessary to abate such imminent harm.
22 Restraints shall not be used on an incarcerated person under the age of 22 except in the following
23 circumstances: (i) during transportation in and out of a facility, provided that during transportation

1 no person shall be secured to an immovable object; and (ii) during escorted movement within a
2 facility to and from out-of-cell activities where an individualized determination is made that
3 restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The
4 department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine
5 an individual's escorted movements.

6 2. The department shall not place an incarcerated person in restraints beyond the use of
7 restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing
8 is held to determine if the continued use of restraints is necessary for the safety of others. Such
9 hearing shall comply with the rules of the board of correction as described in paragraph 1 of
10 subdivision f of this section. Any continued use of restraints must be reviewed by the department
11 on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury
12 to other persons. Continued use of restraints may only be authorized for seven consecutive days.

13 f. Restrictive housing hearing. Except as provided in subdivision g of this section, the
14 department shall not place an incarcerated person in restrictive housing until a hearing on such
15 placement is held and the person is found to have committed a violent grade I offense. Any required
16 hearing regarding placement of a person into restrictive housing shall comply with rules to be
17 established by the board of correction.

18 1. The board of correction shall establish rules for restrictive housing hearings that shall,
19 at a minimum, include the following provisions:

20 (i) An incarcerated person shall have the right to be represented by their legal counsel or
21 advocate;

22 (ii) An incarcerated person shall have the right to present evidence and cross-examine
23 witnesses;

1 (iii) Witnesses shall testify in person at the hearing unless the witnesses' presence would
2 jeopardize the safety of themselves or others or security of the facility. If a witness is excluded
3 from testifying in person, the basis for the exclusion shall be documented in the hearing record;
4 (iv) If a witness refuses to provide testimony at the hearing, the department must provide
5 the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be
6 included as part of the hearing record;
7 (v) The department shall provide the incarcerated person and their legal counsel or
8 advocate written notice of the reason for proposed placement in restrictive housing and any
9 supporting evidence for such placement, no later than 48 hours prior to the restrictive housing
10 hearing;
11 (vi) The department shall provide the legal counsel or advocate adequate time to prepare
12 for such hearings and shall grant reasonable requests for adjournments;
13 (vii) An incarcerated person shall have the right to an interpreter in their native language if
14 the person does not understand or is unable to communicate in English. The department shall take
15 reasonable steps to provide such interpreter;
16 (viii) A refusal by an incarcerated person to attend any restrictive housing hearings must
17 be videotaped and made part of the hearing record;
18 (ix) If the incarcerated person is excluded or removed from a restrictive housing hearing
19 because it is determined that such person's presence will jeopardize the safety of themselves or
20 others or security of the facility, the basis for such exclusion must be documented in the hearing
21 record;
22 (x) A restrictive housing disposition shall be reached within five business days after the
23 conclusion of the hearing. Such disposition must be supported by substantial evidence, shall be

1 documented in writing, and must contain the following information: a finding of guilty or not
2 guilty, a summary of each witness's testimony and whether their testimony was credited or rejected
3 with the reasons thereof, the evidence relied upon by the hearing officer in reaching their finding,
4 and the sanction imposed, if any; and
5 (xi) A written copy of the hearing disposition shall be provided to the incarcerated person
6 and their counsel or advocate within 24 hours of the determination.
7 2. Failure to comply with any of the provisions described in paragraph 1 of this subdivision,
8 or as established by board of correction rule, shall constitute a due process violation warranting
9 dismissal of the matter that led to the hearing.
10 g. Pre-hearing temporary restrictive housing. In exceptional circumstances, the department
11 may place a person in pre-hearing temporary restrictive housing prior to conducting a restrictive
12 housing hearing as required by subdivision f of this section.
13 1. Such placement shall only occur upon written approval of the Commissioner or a Deputy
14 Commissioner, or another equivalent member of department senior leadership over the operations
15 of security. Such written approval shall include: the basis for a reasonable belief that the
16 incarcerated person has committed a violent grade I offense, and whether such person has caused
17 serious physical injury or poses a specific and significant risk of imminent serious physical injury
18 to staff or other incarcerated persons.
19 2. A restrictive housing hearing shall occur as soon as reasonably practicable following
20 placement in pre-hearing temporary restrictive housing, and must occur within five days of such
21 placement, unless the person placed in such restrictive housing seeks a postponement of such
22 hearing.

1 3. If a person is found guilty at a restrictive housing hearing, time spent in pre-hearing
2 temporary restrictive housing prior to such hearing determination shall be deducted from any
3 sentence of restrictive housing and such time shall count toward the time limits in restrictive
4 housing.
5 4. Pre-hearing temporary restrictive housing shall comply with all requirements for
6 restrictive housing, including but not limited to those established in subdivision h of this section.
7 5. During the first day of placement in pre-hearing temporary restrictive housing,
8 department staff must regularly monitor the person and engage in continuous crisis intervention
9 and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive
10 housing and determine whether it is necessary to continue to hold the person in pre-hearing
11 temporary restrictive housing.
12 h. Restrictive housing regulations. The department's use of restrictive housing must
13 comply with the following provisions:
14 1. The department shall not place an incarcerated person in restrictive housing for longer
15 than necessary and for no more than a total of 60 days in any 12 month period.
16 2. Within 15 days of placement of an incarcerated person in restrictive housing, the
17 department shall meaningfully review such placement to determine whether the incarcerated
18 person continues to present a specific, significant and imminent threat to the safety and security of
19 other persons if housed outside restrictive housing. If an individual is not discharged from
20 restrictive housing after review, the department shall provide in writing to the incarcerated person:
21 (i) the reasons for the determination that such person must remain in restrictive housing and (ii)
22 any recommended program, treatment, service, or corrective action. The department shall provide
23 the incarcerated person access to such available programs, treatment and services.

1 3. The department shall discharge an incarcerated person from restrictive housing if such
2 person has not engaged in behavior that presents a specific, significant, and imminent threat to the
3 safety and security of themselves or other persons during the preceding 15 days. In all
4 circumstances, the department shall discharge an incarcerated person from restrictive housing
5 within 30 days after their initial placement in such housing.
6 4. A person placed in restrictive housing must have interaction with other people and access
7 to congregate programming and amenities comparable to those housed outside restrictive housing,
8 including access to at least seven hours per day of out-of-cell congregate programming or activities
9 with groups of people in a group setting all in the same shared space without physical barriers
10 separating such people that is conducive to meaningful and regular social interaction. If a person
11 voluntarily chooses not to participate in congregate programming, they shall be offered access to
12 comparable individual programming. A decision to voluntarily decline to participate in congregate
13 programming must be done in writing or by videotape.
14 5. The department shall utilize programming that addresses the unique needs of those in
15 restrictive housing. The department shall provide persons in restrictive housing with access to core
16 educational and other programming comparable to core programs in the general population. The
17 department shall also provide persons in restrictive housing access to evidence-based therapeutic
18 interventions and restorative justice programs aimed at addressing the conduct resulting in their
19 placement in restrictive housing. Such programs shall be individualized and trauma-informed,
20 include positive incentive behavior modification models, and follow best practices for violence
21 interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation
22 techniques, conflict resolution, the use of force policy, and related topics to address the unique
23 needs of those in restrictive housing units.

1 6. The department shall use positive incentives to encourage good behavior in restrictive
2 housing units and may use disciplinary sanctions only as a last resort in response to behavior
3 presenting a serious and evident danger to oneself or others after other measures have not alleviated
4 such behavior.
5 7. All housing for medical or mental health support provided to persons recommended to
6 receive such support by the entity providing and,or overseeing correctional medical and mental
7 health, including placement in contagious disease units, housing for people who are transgender
8 or gender non-conforming, housing for voluntary protective custody, and housing for purposes of
9 school attendance, shall comply with subdivisions (b), (c), (e), (i), (j) and (k) of this section and
10 paragraphs 4, 5, and 6 of this subdivision.
11 8. For purposes of contagious disease units, after a referral from health care staff, a person
12 may be held in a medical unit overseen by health care staff, for as limited a time as medically
13 necessary as exclusively determined by health care staff, in the least restrictive environment that
14 is medically appropriate. Individuals in a contagious disease unit must have comparable access as
15 individuals incarcerated in the general population to phone calls, emails, visits, and programming
16 done in a manner consistent with the medical and mental health treatment being received, such as
17 at a physical distance determined appropriate by medical or mental health staff.Such access must
18 be comparable to access provided to persons incarcerated outside of restrictive housing units.
19 9. Reporting on restrictive housing. For each instance a disciplinary charge that could result
20 in restrictive housing is dismissed or an incarcerated individual is found not guilty of the
21 disciplinary charge, the department shall prepare an incident report that includes a description of
22 the disciplinary charge and the reasons for the dismissal or not guilty determination. For each
23 instance an incarcerated person is placed in restrictive housing, the department shall prepare an

1 incident report that includes a detailed description of the behavior that resulted in placement in
2 restrictive housing and why restrictive housing was necessary to address such behavior, including
3 if a person was placed in pre-hearing temporary restrictive housing and the reasons why the
4 situation met the requirements in paragraph 1 of subdivision g of this section. For each instance in
5 which confinement in restrictive housing is continued after a 15-day review of an incarcerated
6 person's placement in restrictive housing, the department shall prepare an incident report as to why
7 the person was not discharged, including a detailed description of how the person continued to
8 present a specific, significant and imminent threat to the safety and security of the facility if housed
9 outside restrictive housing and what program, treatment, service, and/or corrective action was
10 required before discharge. Beginning on July 15, 2024, and within 15 days of the end of each
11 subsequent quarter, the department shall provide the speaker of the council and the board of
12 correction all such reports for the prior quarter and post all such reports on the department's
13 website. The department shall redact all personally identifying information prior to posting the
14 reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of
15 each subsequent quarter, the department shall provide to the speaker of the council and the board
16 of correction, and post on the department's website, a report with data for the preceding quarter on
17 the total number of people placed in restrictive housing during that time period, disaggregated by
18 race, age, gender identity, mental health treatment level and length of time in restrictive housing,
19 and data on all disposition outcomes of all restrictive housing hearing during such time period,
20 disaggregated by charge, race, age, gender identity and mental health treatment level.

21 i. Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell
22 hours every day except while in de-escalation confinement pursuant to subdivision c of this section
23 and during emergency lock-ins pursuant to subdivision j of this section.

1 2. Incarcerated persons may congregate with others and move about their housing area
2 freely during out-of-cell time and have access to education and programming pursuant to section
3 9-110 of the administrative code.
4 j. Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner,
5 a Deputy Commissioner, or another equivalent member of department senior leadership with
6 responsibility for the operations of security for a facility determines that such lock-in is necessary
7 to de-escalate an emergency that poses a threat of specific, significant and imminent harm to
8 incarcerated persons or staff. Emergency lock-ins may only be used when there are no less
9 restrictive means available to address an emergency circumstance and only as a last resort after
10 exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as
11 possible and limited number of people as possible. The department shall lift emergency lock-ins
12 as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member
13 of department senior leadership over the operations of security shall review such lock-ins at least
14 every hour. Such lock-ins may not last more than four hours.
15 2. Throughout an emergency lock-in, the department shall conduct visual and aural
16 observation of every person locked in every fifteen (15) minutes, shall refer any health concerns
17 to medical or mental health staff, and shall bring any person displaying any indications of any need
18 for medical documentation, observation, or treatment to the medical clinic. Throughout an
19 emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency
20 lock-in, each person locked in shall have access to a tablet or other device that allows the person
21 to make phone calls both outside of the facility and to medical staff in the facility.

1 3. The department shall immediately provide notice to the public on its website of an
2 emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits
3 or court appearances.
4 4. For each instance an emergency lock-in is imposed, the department shall prepare an
5 incident report that includes:
6 (a) A description of why the lock-in was necessary to investigate or de-escalate an
7 emergency, including the ways in which it posed a threat of specific, significant and imminent
8 harm;
9 (b) A description of how other less restrictive measures were exhausted;
10 (c) The number of people held in lock-in;
11 (d) The length of lock-in;
12 (e) The areas affected and the reasons such areas were subject to the emergency lock-in;
13 (f) The medical and mental health services affected, the number of scheduled medical and
14 or mental health appointments missed and requests that were denied;
15 (g) Whether visits, counsel visits or court appearances were affected;
16 (h) What programs, if any, were affected;
17 (i) All actions taken during the lock-in to resolve and address the lock-in; and
18 (j) The number of staff diverted for the lock-in.
19 Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the
20 department shall provide the speaker of the council and the board of correction all such reports for
21 the preceding quarter and shall post all such reports on the department's website with any
22 identifying information redacted. Beginning July 15, 2024, and within 15 days of the end of each
23 subsequent quarter, the department shall provide to the speaker of the council and the board of

1 correction a report on the total number of lock-ins occurring during the preceding quarter, the areas
2 affected by each such lock-in, the length of each such lock-in and number of incarcerated people
3 subject to each such lock-in, disaggregated by race, age, gender identity, mental health treatment
4 level and length of time in cell confinement.
5 k. Incarcerated persons under the age of 22 shall receive access to trauma-informed, age-
6 appropriate programming and services on a consistent, regular basis.
7 § 2. This local law takes effect 180 days after it becomes law. The board of correction shall
8 take any actions necessary for the implementation of this local law, including the promulgation of
9 rules relating to procedures and penalties necessary to effectuate this section before such date.
10

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Appendix B to Monitor's January 12, 2024 Letter

Appendix B - *Nunez* Implications of the City Council Bill 549-A

This document provides an assessment of the implications of Bill 549-A to the *Nunez* Court Orders. This document identifies areas where Bill 549-A may diverge from the requirements of the Nunez Court Orders. This document is intended to be evaluated in conjunction with the Monitoring Team's analysis of the bill provided in the main document. This is not intended to be an exhaustive list.

- **Management of Incarcerated Individuals Following Serious Incidents of Violence**: The provisions of the bill include requirements that will not permit DOC to safely and adequately manage those incarcerated individuals that have engaged in serious acts of violence and pose a heightened security risk to the safety of other incarcerated individuals and staff, are not consistent with sound correctional practice, and do not permit adequate protections from harm.
  - The requirements of Bill 549-A do not comply with:
    - Action Plan, § E, ¶ 4 *Management of Incarcerated Individuals Following Serious Incidents of Violence*;
    - Second Remedial Order ¶ 1(i)(e) *Immediate Security Protocols—Post-Incident Management*;
    - Action Plan, § D, ¶ 2(h) *Improved Security Protocols—Post-Incident Management Protocol*.
  - Approval of the Monitor:
    - Action Plan, § E, ¶ 4 requires the approval of the Monitor. The Monitor cannot approve any programs by the Department related to the management of incarcerated individuals following serious incidents of violence that include the problematic requirements of Bill 549-A because they are not consistent with sound correctional practice and are unsafe.
  - Direction of the Monitor:
    - If a Post-Incident Management Protocol (Action Plan, § D, ¶ 2(h)) were to be developed incorporating the problematic requirements of Bill 549-A, the Monitor, pursuant to Action Plan § D, ¶ 3 (*Consultation & Direction of the Monitor*), will require and direct the Department to, among other requirements, ensure the individual is separated from other potential victims until they no longer pose a security threat, ensure that these programs place some limitation on out-of-cell time that differs from that afforded to the general population, and ensure that continued placement in the housing unit is based on the individual's engagement in programming and an assessment of their continued risk of harm. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **Restraints and Escorts**: The provisions of the bill include requirements that do not reflect the proper use of restraints or escort procedures and are not consistent with sound correctional practice and do not permit adequate protections from harm.

- The requirements of 549-A do not comply with:
  - Consent Judgment, § IV, ¶ 3(p) *Use of Force Policy—Restraints*;
  - Second Remedial Order ¶ 1(i)(a) *Security Plan (escorted movement with restraints when required)*;
  - Action Plan, § D, ¶ 2(a) *Improved Security Initiatives—Security Plan*;
  - Action Plan, § D, ¶ 2(f) *Improved Security Initiatives—Escort Techniques*;
  - August 10, 2023 Order, § I, ¶ 3 *Revise Escort Procedures.*
- Approval of the Monitor:
  - Consent Judgment, § IV, ¶ 3(p) and August 10, 2023 Order, § I, ¶ 3 require the approval of the Monitor. The Monitor cannot approve the use of restraints or escorted movement that include the problematic requirements of Bill 549-A because they are not consistent with sound correctional practice and are unsafe.
- Direction of the Monitor:
  - If the use of restraints and escorted movement (Action Plan § D, ¶ 2(a) and (f)) were to be developed incorporating the requirements of Bill 549-A, the Monitor, pursuant to Action Plan § D, ¶ 3 (*Consultation & Direction of the Monitor*), will require and direct the Department to, among other things, ensure proper use of routine restraints, ensure that there is a distinction between the use of routine and enhanced restraints, ensure that reasonable and sound correctional standards for the use of restraints are imposed, and ensure that an individual in restraints is not placed in a vulnerable situation with individuals who are not in restraints. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **De-escalation**: The provisions of the bill include requirements that reflect (a) arbitrary limitations on the use of de-escalation, (b) conditions that are not conducive to the de-escalation, and (c) do not promote adequate protections from harm.
  - The requirements of 549-A do not comply with:
    - First Remedial Order, § A, ¶ 3 *Revised De-escalation Protocol*;
    - Action Plan, § D, ¶ 2 (b) *Improved Security Initiatives* (first sentence);
    - Action Plan § E, ¶ (4) *Management of Incarcerated Individuals Following Serious Incidents of Violence,* and therefore cannot be approved by the Monitor.
  - Approval of the Monitor:
    - First Remedial Order, § A, ¶ 3 and Action Plan § E, (4) require the approval of the Monitor. The Monitor cannot approve the use a de-escalation protocol that includes the problematic requirements of Bill 549-

A because they are not consistent with sound correctional practice and are unsafe.

- Direction of the Monitor:
  - If the use of de-escalation protocols (Action Plan, § D, ¶ 2 (b)) were to be developed incorporating the requirements of Bill 549-A, the Monitor, pursuant to Action Plan § D, ¶ 3 (*Consultation & Direction of the Monitor*), will require and direct the Department to, among other things, (a) set reasonable limitations on de-escalation which can be extended beyond 4 hours should there be a continuing risk of imminent harm and (b) ensure the conditions of the de-escalation unit do not pose a risk of harm to the individual or others. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **Emergency Lock-Ins**: The provisions of the bill include requirements that reflect arbitrary limitations on the use of emergency lock-ins create dangerous and unsafe conditions and are not consistent with sound correctional practice and do not permit adequate protections from harm.
  - The requirements of 549-A do not comply with:
    - August 10, 2023 Order, § I, ¶ 4 *Lock-in and Lock-out Procedures.*
  - Approval of the Monitor:
    - August 10, 2023 Order, § I, ¶ 4 requires the approval of the Monitor. The Monitor cannot approve the emergency lock-in procedures that include the problematic requirements of Bill 549-A because they are not consistent with sound correctional practice and are unsafe.

Appendix C to Monitor's January 12, 2024 Letter

Appendix C – Definitions of Solitary Confinement

The chart below contains a number of definitions of solitary confinement from various reputable sources. There is no universal, standard definition of solitary confinement, and the practice can be described by various different names (including restrictive housing). However, it is critical to note that the term solitary confinement includes three basic elements regardless of how it is labeled: (1) confinement in cell for 20-24 hours, (2) for prolonged periods of time (e.g. 15 days), (3) affords little human contact and no congregate engagement, and (4) does not provide access to programming.

Source	Definition
UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) : resolution / adopted by the General Assembly*, Dec. 17 2015, A/RES/70/175, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf	"Rule 43: 1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell; (d) Corporal punishment or the reduction of a prisoner's diet or drinking water; (e) Collective punishment. 2. Instruments of restraint shall never be applied as a sanction for disciplinary offences. 3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order." "Rule 44: For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days."
HALT Solitary Confinement Act, N.Y. Consol. Laws, Corr. Law § 2.23	"'Segregated confinement' means the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment. Cell confinement that is implemented due to medical or mental health treatment shall be within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible."
Isolated Confinement Restriction Act, N.J. Rev. Stat. § 30:4-82.7	"'Isolated confinement' means confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction. Isolated confinement shall not include confinement due to a facility-wide or unit-wide lockdown that is required to ensure the safety of inmates and staff. 'Less restrictive intervention' means a placement or conditions of confinement, or both, in the current or an alternative correctional facility, under conditions less restrictive of an inmate's movement, privileges, activities, or social interactions."
Conn. Gen. Stat. § 18-96b(7)	"'Isolated confinement' means any form of confinement of an incarcerated person within a cell, except during a facility-wide health treatment, with less than the following time out of cell: (A) For all incarcerated persons, four hours per day, on and after July 1, 2022; (B) For all incarcerated persons in the general population, four and a half hours per day, on and after October 1, 2022; and (C) For all incarcerated persons in the general population, five hours per day, on and after April 1, 2023"

Source	Definition
Mass. Gen. Laws ch. 127, § 1	"'Restrictive Housing', a housing placement where a prisoner is confined to a cell for more than 22 hours per day; provided, however, that observation for mental health evaluation shall not be considered restrictive housing."
Va. Code. § 53.1-39.2	"'Restorative housing' means special purpose bed assignments operated under maximum security regulations and procedures and utilized for the personal protection or custodial management of an incarcerated person… B. No incarcerated person in a state correctional facility shall be placed in restorative housing unless (i) such incarcerated person requests placement in restorative housing with informed voluntary consent, (ii) such incarcerated person needs such confinement for his own protection, (iii) there is a need to prevent an imminent threat of physical harm to the incarcerated person or another person; or (iv) such person's behavior threatens the orderly operation of the facility, provided that: 1. When an incarcerated person makes a request to be placed in restorative housing for his own protection, the facility shall bear the burden of establishing a basis for refusing the request; 2. An incarcerated person who is in restorative housing for his own protection based on his request or with his informed voluntary consent may opt out of restorative housing by voluntarily removing his consent to remain in restorative housing by providing informed voluntary refusal; 3. An incarcerated person placed in restorative housing for his own protection (i) shall receive similar opportunities for activities, movement, and social interaction, taking into account his safety and the safety of others, as are provided to incarcerated persons in the general population of the facility and (ii) his placement shall be reviewed for assignment into protective custody; 4. An incarcerated person who has been placed in restorative housing for his own protection and is subject to removal from such confinement, not by his own request, shall be provided with a timely and meaningful opportunity to contest the removal; and 5. An incarcerated person who has been placed in restorative housing shall be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day aimed at promoting personal development or addressing underlying causes of problematic behavior, which may include recreation in a congregate setting, unless exceptional circumstances mean that doing so would create significant and unreasonable risk to the safety and security of other incarcerated persons, the staff, or the facility."
Colo. Rev. Stat. § 17-26-302 and § 17-26-303	§ 17-26-302 (6): "'Restrictive housing' means the state of being involuntarily confined in one's cell for approximately twenty-two hours per day or more with very limited out-of-cell time, movement, or meaningful human interaction whether pursuant to disciplinary, administrative, or classification action." § 17-26-303 (i)(II): "If a local jail wants to hold an individual placed in restrictive housing pursuant to subsection (2)(a) of this section for more than fifteen days in a thirty-day period, the local jail must obtain a written court order. A court shall grant the court order if the court finds by clear and convincing evidence that: (A) The individual poses an imminent danger to himself or herself or others; (B) No

Source	Definition
	alternative less-restrictive placement is available; (C) The jail has exhausted all other placement alternatives; and (D) No other options exist, including release from custody.”
Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rec(2006)2, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809ee581	“60.6.a *Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact*, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison.” [emphasis added]
Alison Shames et al., Solitary Confinement: Common Misconceptions and Emerging Alternatives, Vera Institute of Justice (May 2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf	“All prisons and many jails in the United States use some form of solitary confinement. Whatever the label, the experience for the person is the same—confinement in an isolated cell (alone or with a cellmate) for an average of 23 hours a day with limited human interaction, little constructive activity, and in an environment that ensures maximum control over the individual. When sources cited in this report refer to the practice as solitary confinement, the authors do as well. Otherwise, consistent with American Bar Association standards, ‘segregated housing’ is used as the generic term for the practice.”
Am. Academy of Child & Adolescent Psychiatry, Juvenile Justice Reform Comm., *Solitary Confinement of Juvenile Offenders* (Apr. 2012), https://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx	“Solitary confinement is defined as the placement of an incarcerated individual in a locked room or cell with minimal or no contact with people other than staff of the correctional facility. It is used as a form of discipline or punishment…Solitary confinement should be distinguished from brief interventions such as "time out," which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure, the use of which is governed by federal, state and local laws and subject to regulations developed by the Joint Commission, CARF and supported by the National Commission of Correctional Healthcare (NCHHC), the American Correctional Association (ACA) and other accrediting entities. The Joint Commission states that seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective. The Joint Commission specifically prohibits the use of seclusion "as a means of coercion, discipline, convenience or staff retaliation." A lack of resources should never be a rationale for solitary confinement.”

Source	Definition
Am. Civ. Liberties Union, *The Dangerous Overuse of Solitary Confinement in the United States* (Aug. 2014), https://www.aclu.org/publications/dangerous-overuse-solitary-confinement-united-states	"Solitary confinement is the practice of placing a person alone in a cell for 22 to 24 hours a day with little human contact or interaction; reduced or no natural light; restriction or denial of reading material, television, radios or other property; severe constraints on visitation; and the inability to participate in group activities, including eating with others. While some specific conditions of solitary confinement may differ among institutions, generally the prisoner spends 23 hours a day alone in a small cell with a solid steel door, a bunk, a toilet, and a sink."
Am. Civ. Liberties Union of Maine, *Change is Possible: A Case Study of Solitary Confinement Reform in Maine* (March 2023), https://www.aclumaine.org/sites/default/files/field_documents/aclu_solitary_report_webversion.pdf	"Solitary confinement is the practice of isolating a prisoner in a cell for 22-24 hours per day, with extremely limited human contact; reduced (sometimes nonexistent) natural lighting; severe restrictions on reading material, televisions, radios, or other physical property that approximates contact with the outside world; restrictions or prohibitions on visitation; and denial of access to group activities, including group meals, religious services, and therapy sessions."
Amnesty Int'l., *Solitary Confinement in the USA* (Nov. 2013), https://www.amnesty.org/en/documents/amr51/076/2013/en/	"Amnesty International uses the terms 'solitary confinement' and 'isolation' to refer to prisoners who are confined to cells for 22-24 hours a day with minimal contact with other human beings, including guards and prison staff."
Andreea Matei, *Solitary Confinement in US Prisons*, Urban Institute (Aug. 2022), https://www.urban.org/sites/default/files/2022-08/Solitary%20Confinement%20in%20the%20US.pdf	"Although solitary confinement differs between institutions, it is commonly defined as the isolation of a person in a cell for an average of 22 or more hours a day… People in solitary are typically allowed to leave their cells only to shower and for one hour of recreation and are separated during both from the general prison population."
Ass'n. for the Prevention of Torture, Solitary Confinement, https://www.apt.ch/knowledge-hub/dfd/solitary-confinement [last visited 1/10/24]	"Solitary confinement consists in keeping an inmate alone in a cell for over 22 hours a day. Because of the harmful effect on the person's physical and mental well-being, solitary confinement should only be used in exceptional circumstances. It should be strictly supervised and used only for a limited period of time."
Int'l. Psychological Trauma Symposium, *The Istanbul Statement on the Use and Effects of Solitary Confinement* (Dec. 9, 2007),	"Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The

Source	Definition
https://www.solitaryconfinement.org/_files/ugd/f33fff_74566ecc98974f8598ca852e854a50cd.pdf	reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic."
Nat'l. Comm'n. on Corr. Health Care, *Position Statement: Solitary Confinement* (Apr. 2016), https://www.ncchc.org/wp-content/uploads/Solitary-Confinement-Isolation.pdf	"Solitary confinement is the housing of an adult or juvenile with minimal to rare meaningful contact with other individuals. Those in solitary confinement often experience sensory deprivation and are offered few or no educational, vocational, or rehabilitative programs. Different jurisdictions refer to solitary confinement by a variety of terms, such as isolation; administrative, protective, or disciplinary segregation; permanent lockdown; maximum security; supermax; security housing; special housing; intensive management; and restrictive housing units. Regardless of the term used, an individual who is deprived of meaningful contact with others is considered to be in solitary confinement."
Penal Reform Int'l., Solitary Confinement, https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/ [last visited 1/10/24]	"While there is no universally agreed definition of solitary confinement – often also called 'segregation', 'isolation', 'lockdown' or 'super-max' – it is commonly understood to be the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day, and allowed only minimal meaningful interaction with others."
Ryan Labrecque, *The Effect of Solitary Confinement on Institutional Misconduct: A Longitudinal Evaluation* (2015), https://www.ojp.gov/pdffiles1/nij/grants/249013.pdf	"Although the physical conditions and routines of SC vary by setting and situation, the practice typically includes 22-23 hour a day lockdown with few physical amenities and treatment services made available to inmates… By comparison, inmates living in the general prison population have greater access to various activities (i.e., programming, recreation), which affords them a degree of meaningful social interaction."
Ryan Sakoda and Jessica Simes, *Solitary Confinement and the U.S. Prison Boom*, 32(1) Criminal Justice Policy Review, 1 (2019)	"A particularly harsh form of captivity, solitary confinement involves confining an individual to a prison cell for 22 to 24 hours a day and isolating them from the prison's general population. Individuals in solitary confinement have highly restricted access to visitation, phone calls, showers, programs, and free movement outdoors."
Sharon Shalev, *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology (2008), https://www.solitaryconfinement.org/_files/ugd/f33fff_18782e47330740b28985c5fe33c92378.pdf?index=true	"For the purpose of the Sourcebook, solitary confinement is defined as a form of confinement where prisoners spend 22 to 24 hours a day alone in their cell in separation from each other."
Solitary Watch, Solitary Confinement in the United States:	"Solitary confinement is the practice of isolating people in closed cells for as much as 24 hours a day, virtually free of human contact, for periods of time ranging from days to decades."

Source	Definition
The Facts, https://solitarywatch.org/facts/faq/ [last visited 1/10/24]	
U.S. Dep't. of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Executive Summary* (Jan. 2016), https://www.justice.gov/archives/dag/file/815551/download	"The most recognizable term for inmate segregation—'solitary confinement'—is disfavored by correctional officials, in part because it conjures a specific, and in some cases misleading, image of the practice. Not all segregation is truly 'solitary,' at least in the traditional sense of the word. Many prison systems, including the Bureau, often house two segregated inmates together in the same cell, a practice known as 'double-celling.' To avoid this confusion, the Report adopts the more general terms, "restrictive housing" and 'segregation.' For the purposes of this Report, we define 'restrictive housing' as any type of detention that involves three basic elements: • Removal from the general inmate population, whether voluntary or involuntary; • Placement in a locked room or cell, whether alone or with another inmate; and • Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more."
World Med. Ass'n. Statement on Solitary Confinement (Sep. 28, 2020), https://www.wma.net/policies-post/wma-statement-on-solitary-confinement/	"Solitary confinement is a form of confinement used in detention settings where individuals are separated from the general detained population and held alone in a separate cell or room for upwards of 22 hours a day. Jurisdictions may use a range of different terms to refer to the process (such as segregation, separation, isolation or removal from association) and the conditions and environment can vary from place to place. However, it may be defined or implemented, solitary confinement is characterised by complete social isolation; a lack of meaningful contact; and reduced activity and environmental stimuli… Solitary confinement can be distinguished from other brief interventions when individuals must be separated as an immediate response to violent or disruptive behaviour or where a person must be isolated to protect themselves or others. These interventions should take place in a non-solitary confinement environment."

APPENDIX D: MONITOR'S JULY 17, 2024 LETTER TO COMMISSIONER MAGINLEY-LIDDIE

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

Steve J. Martin
Monitor

Anna E. Friedberg
Deputy Monitor

1+1 646 895 6567 | afriedberg@tillidgroup.com

July 17, 2024

Via Email

Commissioner Lynelle Maginley-Liddie
Department of Correction
75-20 Astoria Boulevard, Suite 350
East Elmhurst, NY 11370

Dear Commissioner Maginley-Liddie,

We write in response to your request, pursuant to the *Nunez* Court Orders,[1] for updated advice and feedback from the Monitoring Team on how the requirements of Local Law 42 ("LL42") may impact the Department's ability to comply with the *Nunez* Court Orders. This letter shares some additional advice and feedback since the Monitoring Team's January 12, 2024 letter, but as described below, we believe further consultation is necessary in order to create a more detailed framework for considering LL42's implications for the *Nunez* Court Orders.

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[1] *See*, Consent Judgment, § XX, ¶¶ 24 and 25 and June 13, 2023 Order, § I, ¶ 5. Combined, these provisions: (1) permit the Department to request the Monitor provide technical assistance or consultation on the Department's efforts to implement the requirements of the *Nunez* Court Orders, (2) permit the Department to request the Monitor provide a written response to a request regarding the Department's compliance with the *Nunez* Court Orders, and (3) requires the Department to proactively consult with the Monitor on any policies or procedures that relate to the compliance with the *Nunez* Court Orders in order to obtain the Monitor's feedback on these initiatives. The Monitor has addressed similar issues in the past. *See*, for example, the Monitor's March 5, 2018 Report (dkt. 309), the Monitor's October 31, 2018 (dkt. 319) letter to the Court, and the Monitor's June 30, 2022 Report (dkt. 467) at pgs. 22 to 27.

Collectively, the Monitoring Team has over 100 years' experience in developing *safe* alternatives to solitary confinement and in helping jurisdictions to formulate reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings. The Monitoring Team also has extensive expertise and understanding of the Department's operations. As you know, the *Nunez* Court Orders require the Monitor to approve policies that impact on a variety of issues, many of which are affected by the various requirements of LL42. The Monitoring Team believes more detailed discussions are necessary before the Monitor can make any final determinations regarding which policies and procedures required by LL42 (and the corresponding Board of Correction rules that were recently passed) would or would not receive Monitor approval as required by the *Nunez* Court Orders.

This letter first includes background on LL42, followed by a candid assessment of the current limitations that, in our view, indicate that attempting to implement LL42 at this time would be ill-advised as it would be dangerous and would subject incarcerated individuals and staff to further risk of harm. Next, this letter addresses potential conflicts between LL42 and the *Nunez* Court Orders and advises that further analysis is needed to provide a fulsome account of each of LL42's requirements that may conflict with the Monitoring Team's expert opinions regarding sound correctional practice, facility safety, and management of persistently violent detainees. Finally, the letter recommends next steps for addressing any potential conflicts and potential motion practice before the Court.

<u>*Background*</u>

The City Council passed Local Law 42 on December 20, 2023. The bill was subsequently vetoed by the Mayor of New York on January 19, 2024, but was then signed into law by the City

Council on January 30, 2024, overriding the Mayor's veto. LL42 bans the use of solitary confinement, imposes 14-hours of mandatory out of cell time for all incarcerated individuals, and sets additional requirements for the use of restrictive housing, de-escalation, emergency lock-ins, and restraints and specific conditions for special housing units (*e.g.,* mental health units, contagious disease units, housing for people who are transgender or gender non-conforming, protective custody units, and housing to promote school attendance). The implementation deadline for LL42 is July 28, 2024.

In early January 2024, pursuant to the *Nunez* Court Orders,[2] you requested the Monitoring Team's advice and feedback on how the requirements of LL42 may impact the Department's ability to comply with the *Nunez* Court Orders. On January 12, 2024, the Monitoring Team provided its assessment of LL42's implications for the City's and Department's efforts to address the unsafe conditions in the jails, to protect individuals from harm, and to implement sound correctional practices, all of which are necessary to comply with the *Nunez* Court Orders. Subsequently, the Monitoring Team has had multiple discussions with your office and other Department officials regarding these matters.

In late May/early June 2024, the Department advised the Monitoring Team (and subsequently the Parties to the *Nunez* litigation) that it was considering seeking relief from LL42's requirements via the Court in the *Nunez* matter given the Department's concerns that LL42's requirements may impede the Department's ability to comply with the *Nunez* Court Orders in a number of key areas. Likewise, the City advised the Court of its intentions in a letter dated June 5, 2024 (dkt. 724). Following the submission of the City's letter to the Court, the

[2] *Id.*

Monitoring Team and the *Nunez* Parties met and conferred on June 18, 2024. Subsequently, the Monitoring Team has had numerous discussions with the Department and representatives for the Plaintiff Class and the Southern District of New York regarding these matters.[3]

Summary of Local Law 42 & Department's Ability to Implement Local Law 42

Local Law 42 is a well-intentioned effort to ensure that no person in the Department's custody is subjected to solitary confinement.[4] Eliminating solitary confinement is unquestionably necessary and important for ensuring the humane treatment of people in custody. LL42 also includes many operational requirements that go beyond eliminating solitary confinement. Moreover, LL42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually result in an increased risk of harm to other incarcerated individuals and staff. The Monitoring Team has grave concerns about the Department's ability to safely implement LL42, particularly given the timeline. Among these concerns are:

1. **Eliminates Essential and Critical Managerial Discretion.** An overarching concern of the Monitoring Team is that the requirements of LL42 impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary. For

[3] Lawyers for the City Council have scheduled a meeting with the Monitoring Team that will take place in the coming days.

[4] For purposes of this communication, the Monitoring Team adopts the United Nations definition of solitary confinement as 22 hours or more per day without meaningful human contact. *See*, the United Nations Standard Minimum Rules for Treatment of Prisoners, Rule 44.

example, unqualified release from de-escalation confinement in 4 hours; a universal 4-hour limitation on emergency lock-ins; and a requirement that, "in all circumstances" the Department must discharge an incarcerated person from restrictive housing within 30 days. Other provisions in LL42 are ostensibly intended to provide safeguards to those placed in restrictive housing, but absolutely bar correctional managers from exercising necessary discretion to address the risk of harm that may be present to the incarcerated individual in question, other incarcerated individuals, and staff. There is simply no question that situations arise in correctional settings where an immediate risk of harm must be addressed regardless of arbitrarily imposed limitations that preclude management from addressing the immediate security threat. In application, these provisions that preclude any discretion will in some instances put other incarcerated individuals and staff at greater risk of harm.

2. **Lack of a Proper Foundation to Support Implementation**. The Monitor's Reports to date have repeatedly found that the Department does not have the necessary foundation to support the *basic* reforms required by the *Nunez* Court Orders. Without reliable adherence to basic security practices, robust protocols for properly deploying and supervising staff, strategies to appropriately manage the incarcerated population, and effective staff accountability, the Department is at present not equipped to safely implement LL42.

3. **Truncated Implementation Timeline**. As the current state of compliance with the *Nunez* Court Orders has brought into stark relief, simply articulating a set of requirements does not create the capacity to properly implement those requirements. In the Monitoring Team's experience, it is not uncommon for jurisdictions to need a

considerable amount of time to lay the groundwork to develop and implement more complex reforms. For example, the Use of Force Directive required by the Consent Judgment was finalized over a year before it was implemented in order to ensure that ancillary supports were properly prepared, and that staff received necessary training on any resulting changes to procedures. Even with a lengthy implementation timeline, the Department has struggled to properly implement the Use of Force Directive's requirements. Whether preparing to implement a court-ordered requirement or a new law, the planning tasks remain the same: evaluating the operational impact, updating policies and procedures, updating the physical plant, determining the necessary staffing complement, developing training materials, and providing training to thousands of staff, all of which must occur before the changes in practice actually go into effect. Rules supporting LL42's implementation were passed by the Board of Correction on June 25, 2024, just one month before LL42 is scheduled to go into effect. As noted above, the Department does not have the requisite foundation to undertake most of the necessary planning tasks, and attempting to do so in just one month's time all but guarantees that the planning will not be as comprehensive or thoughtful as the scope and magnitude of the changes require. Further, the necessary training simply cannot be developed and deployed within such a time frame. The Monitoring Team has long advised that attempting to make significant changes within unreasonable time frames does not support the development of sustainable reforms and often creates a greater risk of harm.

4. **The Department is Not Prepared**. Given the Department's lack of foundation to implement LL42 and the truncated timeline for implementation outlined above,

unsurprisingly, the Department's leadership has reported the Department is not ready to implement this law. More specifically, the Department has not developed the necessary policies, procedures or training to support the requirements of LL42 and thus is not in a secure position to attempt implementation. The fact that those who operate the facilities state they are unprepared and also believe certain aspects of LL42 to be unsafe cannot be ignored, and only serves to further heighten the Monitoring Team's concerns regarding the ongoing risk of harm and the safety of those in the Department's custody and those working in the Department's facilities.

Although the nuances in each jurisdiction differ, the universal reality is that increasing facility safety is a complicated endeavor rife with potential pitfalls. When efforts to reform practices are subject to unreasonably short and absolute timelines and include other requirements that may run counter to standard and sound correctional practice, well-intended reforms can lead to unintended consequences that jeopardize, rather than protect, the safety of incarcerated individuals and staff. Under the current conditions and level of readiness, attempting to implement a complex law that fundamentally changes many of the Department's standard practices and that requires changes that conflict with standard sound correctional practices would increase the risk of harm to incarcerated individuals and staff and therefore would be dangerous for those incarcerated and work in the jails.

LL42's Potential Conflicts with Nunez Requirements

Under the *Nunez* Court Orders, the Department has an obligation to implement sound correctional practices and to obtain the Monitor's approval of key policies and procedures. This

includes requirements related to security practices,[5] the use of restraints,[6] escorts,[7] lock-in and lock-out time,[8] de-escalation,[9] initial procedures following a serious act of violence[10] and subsequent housing strategies.[11]

The question of whether the Department can implement LL42 safely and comply with the *Nunez* Court Orders is of the utmost importance because of the direct impact on the safety of all those incarcerated and working in the jails. With respect to the elimination of solitary confinement, the Department reports that it does not utilize solitary confinement (i.e., 22 hours or more per day in a locked cell and without meaningful human contact), but a number of the provisions in LL42 would drastically alter many of the Department's practices. For instance, several of LL42's requirements would impact the Department's core strategy for addressing violent misconduct—its restrictive housing program. Furthermore, the Department routinely utilizes practices (e.g., restraint, de-escalation, mental health units, protective custody, to name a few) that currently include requirements aligned with standard sound correctional practice but that differ from the requirements of LL42, in some cases significantly and dangerously. Certain programs and practices currently in use or that are under development at the Department would require significant alteration, or in some instances would need to be eliminated, as a result of the requirements of LL42.

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[5] *See* Action Plan § D, ¶ 3 in which the Monitor may direct the Department to refine certain security initiatives to ensure compliance with security requirements of the Action Plan.

[6] *See* Consent Judgment, § IV, ¶ 3(p).

[7] *See* Action Plan, § D, ¶ 2(f) and August 10, 2023 Order, § I, ¶ 3.

[8] *See* August 10, 2023 Order, § I, ¶ 4.

[9] *See* First Remedial Order, § A, ¶ 3 and Action Plan, § D, ¶ 2(b).

[10] *See* Second Remedial Order ¶ 1(i)(e), Action Plan, § D, ¶ 2(h)

[11] *See* Action Plan, § E, ¶ 4.

In January 2024, the Monitoring Team provided the Department with a list of potential conflicts between the requirements of LL42 and the requirements of *Nunez* Court Orders, stressing that implementing LL42's requirements could undercut the Department's ability to achieve compliance in *Nunez*. Given the breadth and complexity of LL42's requirements, extensive consultation with, and ultimately approval from, the Monitor is necessary in order to ensure that the Department's approach to satisfying the *Nunez* requirements is aligned with sound correctional practice. [12]

Recently, the City and the Department engaged the Monitoring Team to explore these issues and potential conflicts in more detail. Fully understanding LL42's requirements and the BOC's respective rules (which were only just passed) in each of the areas listed above (and others that the Monitoring Team may yet identify) and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking. Each facet is complex and nuanced and must be dissected among those with operational expertise and experience with advancing reform in order to determine where conflicts may exist. If LL42 requires a certain practice that the Monitor determines is not consistent with the requirements of the *Nunez* Court Orders (e.g. the practice is not consistent with sound correctional practice or creates heightened risk of harm), the Monitor may not approve the relevant Department policy, and thus the Department will remain out of compliance with the relevant aspect of the *Nunez* Court Orders.

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[12] Consultation with the Monitor is required by over 80 provisions in the *Nunez* Court Orders. Consultation is also required by the Court's June 13, 2023 Order, § I, ¶ 5.

Recommended Next Steps

The work to identify the practices at issue has started, but extensive discussion and additional time are needed to complete this assessment. The Department and the Monitoring Team must continue to work to identify the requirements of LL42 that, if implemented, may conflict with the *Nunez* Court Orders. Once a more detailed framework of the LL42 requirements that conflict with the *Nunez* Court Orders has been created, the *Nunez* Parties, counsel for the City Council, and the Monitoring Team must meet and confer to determine how to best address the divergence. Given the complexity of the task and the fact that the practices at issue have a direct impact on facility safety, the process must go forward using a detailed, methodical approach. This process will take time in order to arrive at decisions that are grounded in sound correctional expertise and that navigate the complex jurisdictional issues. In addition, several other important legal matters are currently pending before the Court that require the attention of the Department, the *Nunez* Parties, and the Monitoring Team, which must be recognized and accounted for as part of this process.[13] Accordingly, the Monitoring Team recommends that the work outlined in this letter is undertaken between now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice.

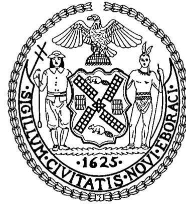
We look forward to working with you and your team on these important matters.

Sincerely,

s/ Steve J. Martin
Steve J. Martin, *Monitor*
Anna E. Friedberg, *Deputy Monitor*

[13] For example, the Court has directed the Parties and the Monitoring Team to meet and confer in late August and early September on matters related to the Motion for Contempt. *See* July 11, 2024 Court Order (dkt. 751).

APPENDIX E:
THE CITY'S JULY 22, 2024 LETTER TO THE COURT



THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

MURIEL GOODE-TRUFANT
Acting Corporation Counsel

SHERYL NEUFELD
Chief Assistant for Regulatory Law and Policy
Phone: 212-356-2207
sneufeld@law.nyc.gov

July 22, 2024

BY ECF
Honorable Laura Taylor Swain
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Nunez, et al. v. City of New York et al.*
11 Civ. 05845 (LTS)

Dear Chief Judge Swain:

Defendants submit this letter to provide a status update to Your Honor with regard to Local Law 42 of 2024 ("Local Law 42" or "LL42") which amends the New York City Administrative Code concerning de-escalation confinement of incarcerated individuals, the use of restraints on incarcerated individuals, requirements for restrictive housing programs, and requirements for emergency lock-ins. Defendants first provided an update to the Court regarding Local Law 42 in a letter dated June 5, 2024 (Dkt. 724).

In the June 5 letter, Defendants noted that because many of the requirements of Local Law 42 conflict with aspects of the Orders issued by this Court in the above-referenced case, we intended to move for an Order suspending the requirements of Local Law 42 until such time as the Monitor in this matter approves New York City Department of Correction ("DOC" or "the Department") policies and programs addressing those requirements. Defendants also noted their intent to meet and confer with counsel for the Nunez parties in advance of filing the motion.

While not noted in the June 5 letter, Defendants also have serious concerns about the negative effects on public safety that many of the provisions of Local Law 42 would have on operation of the City's jails and routine transportation of incarcerated individuals if they were to be implemented at this time. These concerns are discussed in detail in a July 22, 2024 Declaration of DOC Commissioner Lynelle Maginley-Liddie, appended hereto as Exhibit A. As noted in the Declaration, as well in correspondence from the Monitoring Team to the Commissioner in both a January 12, 2024 letter (appended hereto as Exhibit B) and a July 17, 2024 letter (appended hereto

as Exhibit C), the Monitoring Team also has concerns about implementing many of the requirements of Local Law 42 at this time, stating in the July 17 letter that "[t]he question of whether the Department can implement LL42 safely and comply with the Nunez Court Orders is of the utmost importance because of the direct impact on the safety of all those incarcerated and working in the jails" (Exhibit C at 8) and, further, that "attempting to implement LL42 at this time would be ill-advised as it would be dangerous and would subject incarcerated individuals and staff to further risk of harm" (Exhibit C at 2). See, also, id. at 7 (repeating that attempting to implement Local Law 42 right now "would be dangerous" for those incarcerated and working in the jails).

On June 7, 2024 Your Honor endorsed Defendants' June 5 letter and directed that the meet and confer process take place (Dkt. 726). The first meet and confer between the Nunez parties and the Monitoring Team took place on June 18, 2024. Subsequent to that meet and confer, Defendants had additional conversations with the Monitoring Team and also engaged in conversations with counsel for the New York City Council.

The Monitoring Team noted these developments in their July 3, 2024 status update to the Court (Dkt. 744), and further noted that in light of the discussions taking place and the need for further work between the Monitoring Team and the Department, as well as for further discussions with the parties, Defendants would not be filing their proposed motion in advance of the July 9 conference. Following the July 9 conference, Defendants have had additional conversations with the Monitoring Team as well as with counsel for the City Council. In addition, following the July 9 conference, and as noted above, on July 17, 2024 the Monitor provided additional advice and feedback to the DOC Commissioner in response to her request for updated information from the Monitoring Team about how the requirements of Local Law 42 may impact the Department and its ability to comply with the Court's Orders in this case.

Among other things, in the July 17 letter, the Monitoring Team sets forth proposed next steps for the Department to work with the Monitoring Team to create a more detailed framework of the Local Law 42 requirements that conflict with Nunez Court Orders, and then engage in further discussions with the Nunez parties, counsel for the City Council and the Monitoring Team to determine how best to address the conflicts. As the Monitoring Team states: "[g]iven the complexity of the task and the fact that the practices at issue have a direct impact on facility safety, the process must go forward using a detailed, methodical approach," and recommends that this work is undertaken between now and October 24, 2024. Exhibit C at 10.

As a result, Defendants now ask the Court to endorse the Monitoring Team's proposal for continuing work on this issue, which includes the filing of a status update with the Court regarding any progress made and the necessity for motion practice. Defendants propose to file that update with the Court by the close of business on Friday, October 25, 2024.

Defendants appreciate the Court's consideration of this request.

Respectfully submitted,

s/ Sheryl Neufeld

Sheryl Neufeld

Exhibit A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MARK NUNEZ, et. al,

Plaintiffs,

DECLARATION OF LYNELLE MAGINLEY-LIDDIE

Index No. 11 Civ. 5845 (LTS)(JCF)

-against-

CITY OF NEW YORK, ET AL.,

Defendants.

--- x

UNITED STATES OF AMERICA,

Plaintiff-Intervenor,

-against-

CITY OF NEW YORK and NEW YORK CITY DEPARTMENT OF CORRECTION,

Defendants.

-- x

LYNELLE MAGINLEY-LIDDIE declares, under penalty of perjury and pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am the Commissioner of the New York City Department of Correction ("the Department"), having been appointed by Mayor Eric Adams on December 8, 2023. As Commissioner, I oversee the care, custody, and control of the Department's pre-trial detainees and city-sentenced individuals.

2. I am also an attorney with 13 years of legal experience. I have been with the Department since 2015, first as a lawyer in its Legal Division from 2015 to 2018, then as Deputy General Counsel from 2018-2020, then as acting Senior Deputy Commissioner and Chief Diversity Officer in 2020, and finally as First Deputy Commissioner from 2021 until my appointment as Commissioner. I know the Department, its policies and leaders, and am committed to creating a safe and humane environment for all those in our care and our staff.

3. In this Declaration, I address the deleterious effects that many of the provisions of Local Law 42 would have on the operations of the Department if they went into effect. Put simply, there would be an increase in violence and transportation of incarcerated individuals to court would become virtually impossible, among other adverse consequences. See Monitor Report, dated January 12, 2024 ("January Monitor Rpt.") at 2 (many provisions of the new law could "undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody"); see also Monitor's July 17, 2024 letter at 7 ("attempting to implement a complex law that fundamentally changes many of the Department's standard practices and that requires changes that conflict with standard sound correctional practices would increase the risk of harm to incarcerated individuals and to staff and therefore would be dangerous

for those incarcerated and work[ing] in the jails").[1] Implementing these provisions would thwart our commitment to achieving the goals of the Nunez decree.

A. Local Law 42 and Solitary Confinement

4. Local Law 42 purports to "ban[] solitary confinement in city jails," but it goes far beyond that description. Solitary confinement is generally defined as "22 hours or more a day without meaningful human contact." See The United Nations Standard Minimum Rules for Treatment of Prisoners, Rule 44. In sharp contrast, Local Law 42 defines "solitary confinement" as "any placement of an incarcerated individual in a cell, other than at night for sleeping, for a period not to exceed eight hours in any 24-hour period or during the day for a [head] count not to exceed two hours in any 24-hour period." New York City Administrative Code ("Admin. Code") §9-167(a). That means that, under the new Law, if an individual is not permitted 14 hours of out-of-cell time each day (24-8-2=14), they are being held in "solitary confinement." See January Monitor Rpt. at 5 ("[t]he definition of solitary confinement in this bill is not aligned with any definition of solitary confinement known to the Monitoring Team").

5. As conventionally defined, the Department has not practiced solitary confinement since 2019. The relevant timeline is this: Prior to 2013, the Department employed solitary confinement (then called punitive segregation) with sentences up to 90 days for even minor offenses. There were as many as 600 individuals in solitary confinement on any given day. In 2013, the Department eliminated solitary confinement for seriously mentally ill individuals, and in 2014 for adolescents.

[1] "January Monitor Rpt." refers to the Monitor's feedback on "how [Local Law 42] may impact with the Department's ability to comply with the Nunez Court Orders," and Monitor's July 17, 2024 letter refers to the Monitor's letter to me of that date. The two submissions are attached as Exhibits B and C to the letter of Sheryl Neufeld filed with the Court on July 22, 2024. The January Monitor Report is also available at Sundance Oliver v. NYC Dep't of Corr., Index No. 73381/23 (Ex. C). There are provisions in Local Law 42 that are not objectionable and do not conflict with the Court's Orders in Nunez. My Declaration focuses only on the conflicting provisions that jeopardize the safety of our facilities and the public.

In 2016, the ban was extended to all individuals 21 or younger. In 2019, solitary confinement was eliminated entirely.

6. The Department was not alone in practicing solitary confinement for as long as it did. Correction leaders throughout the country deserve criticism for not recognizing its harmful effects far sooner. But those who voted for Local Law 42 in the belief that they were banning solitary confinement in City jails were five years too late.

7. Currently, individuals in general population in our facilities are allowed out of their cells for 14 hours each day. (Today, 3,698 individuals of our population of 6,421 individuals live in dormitories without cells.) Those 14 hours are between 5:00 a.m. and 9:00 p.m., two hours of which are in-cell time during the count—i.e., when officers conduct a head count to ensure that everyone is accounted for. This headcount is for the safety of the people in our care, the safety of our staff and the safety of the general public. Without these counts, we would not have a systemized way to be aware of attempted escapes or escapes in real time.

8. Notably, 14 hours out-of-cell time for general population is considerably more than in other cities: Chicago allows six hours; Philadelphia, five; and Washington D.C., five. Our quarrel, however, is not with a rule requiring 14-hours out-of-cell-time for general population. Rather, it is with an inflexible 14-hour rule that would prevent us from operating any less-than-14-hours special program, including a restrictive housing unit for individuals who have been found guilty of slashing or stabbing another individual or assaulting staff. As discussed below, the Department now operates such a program in which out-of-cell time is seven hours.

B. Restrictive Housing ("ESH")

9. Since the complete elimination of solitary confinement in 2019, the Department has operated restrictive housing programs for individuals who were found to have committed violent acts. Out-of-cell time in the units has always been less than 14 hours.

10. In 2022, the Board of Correction adopted a new minimum standard requiring the Department to implement a Risk Management and Accountability System ("RMAS") intended to replace the Department's then-existing restrictive housing program. Out-of-cell time in RMAS was to be 10 hours in Level I (the more restrictive level) and 12 hours in level II, and the total time in restrictive housing was set at 28 days. In their June 30, 2022 Report [ECF Docket No. 467], the Monitoring Team recognized the need for a "housing and management strategy that will safely and adequately manage those incarcerated individuals that have engaged in serious acts of violence," but opposed the implementation of RMAS. Id. at 22 ("[t]he Monitoring Team's collective 100 years of experience in correctional management . . . has led to a consensus that proceeding with RMAS . . . is not prudent and produces significant safety concerns"). Among other concerns, the Monitoring Team noted that "people in RMAS [would] have an abundance of unstructured free time which is a well-known precursor to violence." Id. at 24. The Team also opined that "the expected length of stay of 28 days [was] not sufficient for the type of behavioral change envisioned by the program model." The Report recommended that the Department work with its security consultant, Dr. James Austin, to "creat[e] a program model to address this requirement of the Action Plan." Id. ("[t]he Monitoring Team intends to work closely with the Department and Dr. Austin on the development of a program that can ultimately be approved by the Monitor"). RMAS did not go into effect.

11. In July 2022, in close consultation with the Monitor and Dr. Austin, the Department established an Enhanced Supervision Housing Program ("ESH"), located first in the George R. Vierno Center and now in the Rose M. Singer Center. The program houses individuals who have been found guilty after a disciplinary hearing of committing a violent offense, typically a slashing or stabbing or assault on staff. ESH consists of two levels, Level I and Level II, which are located in separate housing units and differ in restrictions. For example, in Level I (but not Level II), when individuals are out of cell, they are restrained – principally with leg restraints affixed to a programming desk – for the safety of others in the unit, as well as staff and program providers.[2] The normal progression is Level I (most restrictive) for a 30-day period; Level II (less restrictive) for a 30-day period; and then the individual returns to general population housing. Stays can be longer if an individual commits an additional act of violence while in ESH or otherwise fails to comply with the requirements of the program.

12. Both levels of ESH allow for seven hours out-of-cell time each day, at least one hour of which is outdoor recreation, weather permitting. (An individual may also be housed in Pre-Hearing Detention ("PHD") for no more than seven days pending a disciplinary hearing to determine eligibility for ESH; out-of-cell time in PHD is also seven hours.) In both levels of ESH, individuals receive programming aimed at facilitating rehabilitation and addressing the root causes of violence with the goal of safely returning them to general population housing.

13. At present, twenty-two individuals are in PHD, 87 are in Level I and 55 are in Level II.

[2] Anyone in ESH Level I is limited to $25 per week of commissary for personal hygiene products only; individuals in general population can spend $125 per week on any available product.

14. The ESH program is essential to the safe operation of our facilities. Acts of violence must have consequences, or they will increase. Seven hours out-of-cell time (half that in general population) is a meaningful sanction and not inhumane. See January Monitor Rpt. at 4 ("one component that was consistent across all [restrictive housing programs] with which the Monitoring Team is familiar is that all include limitations on out-of-cell time that are more restrictive than that afforded in general population"). The required programming is designed to facilitate rehabilitation and reinforce the message that violent behavior is unacceptable. If Local Law 42 goes into effect, the Department would be forced to eliminate the ESH program.

15. That is not the only way in which Local Law 42 would prevent the Department from operating an effective ESH program. The Law states that any "restrictive housing" – defined as "any housing area that separates incarcerated individuals from the general jail population on the basis of security concerns or discipline," Admin. Code § 9-167(a) – may not extend beyond 15 days "if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or others during the preceding 15 days." Admin. Code § 9-167(h). Suffice it to say, 15 days is far too short a period to allow for meaningful rehabilitative programming. See January Monitor Rpt. at 7 ("the [Law's] programming requirement for restrictive housing are at odds with the reality of evidence-based practice"). Programming would just get started when it would have to stop.

16. Even that does not tell the full story. Under Local Law 42, an individual may be held in "prehearing temporary restrictive housing" pending a disciplinary hearing to determine if restrictive housing placement is warranted. The hearing must be held within five days of placement in pre-hearing restrictive housing unless the individual requests a postponement. Significantly, the individual has a right to be represented "by their legal counsel" at the hearing, a right that all but

guarantees frequent requests for postponements.[3] And the hearing officer has five days after the conclusion of the hearing to reach a disposition. Admin. Code § 9-167(g). Because the time in pre-hearing restrictive housing counts toward the 15-day total, the 15 days will often run before the individual is placed in restrictive housing.

17. Local Law 42 provides that "[i]n all circumstances, the Department shall discharge an incarcerated person within 30 days after the initial placement in [restrictive] housing." Admin Code § 9-167(h)(2). Despite our best efforts, individuals in ESH commit violent acts. If an individual in ESH were to slash another individual on day 29, they would have to be returned to general population the next day. Doing so would put others at risk.

18. Finally, it bears emphasis that under the new Law, restrictive housing is actually <u>not</u> restrictive. Not only is out-of-cell time 14 hours, the same as in general population housing, but individuals in restrictive housing "must have interaction with people and access to congregate programming and amenities" comparable to those in general population, and they must be provided "positive incentives" to encourage good behavior. Admin. Code § 9-167(h)(4),(6). That means that individuals in restrictive housing would have <u>more</u> privileges than those in general population, which would not help to deter violence.

19. The Department also operates a Separation Status Housing Unit in which out-of-cell time is less than 14-hours each day. Separation Status Housing is used in those rare instances when a body scan reveals that an individual has secreted a weapon or drugs on their person and the individual refuses to relinquish the item. In such circumstances, the individual is removed from

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[3] The Department now allows an individual to have a facilitator at the hearing, typically, a coordinator from the law library. Due process does not require the presence of an individual's "legal counsel." <u>See</u> <u>Wolff</u> v. <u>McDonell</u>, 418 U.S. 539, 570 (1974). Requiring a lawyer is a recipe for delay. <u>See</u> Monitor's Rpt. at 7 ("[t]he required procedures relating to placement on these units are protracted, including significant procedural requirements that provide myriad opportunities for undue delay . . . before the Department can act to address the underlying conduct").

general population and housed in a unit where they are separated from other individuals until they are cooperative, or the weapon is excreted. They are not in a "shared space conducive to . . . congregate interaction." See Admin. Code §9-167(a) (a cell is any space "that is not a shared space conducive to meaningful, regular, and congregate interaction"). Accordingly, the Department could not operate a Separation Status Housing Unit if Local Law 42 were in effect.

20. Importantly, the Separation Status Housing Unit involves few individuals and short stays. In 2024 thus far, there have been 58 placements in Separation Status for an average length of stay of 3.2 days. Every effort is made to ensure that the stay is as short as possible. Each morning, the individual is offered the opportunity to rescan to demonstrate that the item has passed or to relinquish it. Individuals have access to telephone service, and clinical staff make daily rounds. Attorney visits are also available.

21. If Separation Status Housing were eliminated, the Department would be hamstrung. We would have to allow individuals who we know have secreted a weapon to remain in general population where they could use the weapon to inflict harm or pass it to another individual for that purpose. Moreover, the existence of Separation Status Housing sends a clear message that the item will eventually be recovered and that surrendering it and returning to general population is the better course.

22. It also bears note that when an individual is in the courthouse and waiting for their case to be called, they are held in what Local Law 42 considers a cell. Other individuals are typically held with them, but the space is not "conducive to meaningful regular, and congregate social interaction." Because of lengthy court calendars, holding time is often several hours. That would run afoul of the new Law. Similarly, each day, some 50 individuals are newly admitted to Rikers Island. They go through an intake process during which they are kept in large holding cells. By

court order, the Department has 24 hours to complete the intake process, which includes medical screening and mental health evaluation. (Individuals are not placed in a housing unit until the screenings are completed.) Unless the time in an intake holding cell is somehow considered out-of-cell time, the Department would not be able to run intake as it does.

23. One other important point: As I informed the Court in my March 2024 Declaration [ECF Docket No. 689-1], the Department is in the process of establishing two other special housing units in which out-of-cell time would be less than 14 hours. Both are being developed in conjunction with the Monitor and Dr. Austin. The first would be a unit for individuals who commit violent acts but are excluded from ESH because they have a serious mental illness. The new unit, in which Correctional Health Services ("CHS") would be our partner, would house such individuals and provide a heightened level of treatment and security. As much as 20 percent of our population suffers from a serious mental illness, and many are violence prone. These individuals require increased attention if our City is to be safe and they are to have more productive lives.

24. The second unit would be for individuals with a history of violence whose presence in general population would create certain danger for staff and people in our care. At present, for example, there are some 85 individuals in general population who have committed three or more slashings/stabbings. If we are going to reduce violence, as we must, these individuals need to be in housing units with greater staffing levels and less out-of-cell time.[4]

25. The Monitor has expressed support for both of these programs, but we have not proceeded with their implementation because Local Law 42 would prohibit them.

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[4] Local Law 42 provides that an individual cannot be placed in restrictive housing for more than 60 days in a 12-month period. Admin. Code § 9-167(h)(l). This limitation also impairs the Department's ability to design a restrictive housing program for violent recidivists.

C. Emergency Lock-Ins

26. Local Law 42 defines an "emergency lock-in" as a response to a facility emergency or a housing area emergency that requires locking individuals in their cells for an extended period of time. Admin. Code § 9-167(a). The Department employs such lock-ins after violent incidents and during searches. Much of what Local Law 42 requires with respect to emergency lock-ins is already Department policy. Lock-ins are confined to as narrow an area and to as limited number of people as possible. But the new Law limits emergency lock-ins to "[no] more than four hours," which is unworkable. Admin. Code § 9-167(j)(1).

27. Many emergency lock-ins take less than four hours before control is restored. Others, however, last longer. For example, if there is a slashing in which an individual is seriously injured, the housing area may become a crime scene, and no one will be allowed out of cell until an investigation is completed. More than four hours may be required. See January Monitor Rpt. at 8 ("[t]he guiding principle . . . must be the extent to which . . . safe operations can resume and therefore some degree of flexibility in duration . . . is critical and necessary").

28. The new Law also requires that, during an emergency lock-in, individuals "have access to a tablet or other device that allows [them] to make calls both outside the facility and to medical staff in the facility." Admin. Code § 9-167(j)(2). Currently, for security reasons, the Department does not allow telephone access during a lock-in. If rival gangs clash in a housing unit, an individual with access to a telephone could communicate with fellow gang members in other units (he could call a friend on the outside and "patch-in" another incarcerated individual), and the violence could easily spread. Telephone access during emergency lock-ins is not sound correctional practice. See January Monitor Rpt. at 8 ("[permitting unfettered access to . . . the

telephone could facilitate dangerous access to individuals who may perpetuate the threat to others' safety rather than reduce it").

29. As noted above, the Department employs lock-ins during searches. Local Law 42 would prohibit that use. (Under the law, an emergency lock-in is necessary only to "deescalate an emergency that poses a specific, significant and imminent harm to incarcerated persons or staff." Admin. Code § 9-167(j)(1).) Unannounced searches are an essential tool to eliminate weapons and other contraband from our facilities. During my time as Commissioner, I have encouraged more such searches, not less. If lock-ins cannot occur during searches, the result would be no searches or searches that are accompanied by chaos.

D. De-escalation Confinement

30. The Department currently uses de-escalation confinement for the purpose of calming disruptive individuals, for the safety of victimized individuals, and for decontaminating individuals after exposure to a chemical agent. Under current Department policy, only individual cells may be used for de-escalation purposes, and any placement in a de-escalation cell may not exceed six hours absent extraordinary circumstances. A stay of more than four hours cannot occur without authorization from senior staff. [5]

31. Local Law 42 provides that de-escalation confinement cannot exceed "four hours total in any 24-hour period." Admin. Code § 9-167(c)(7). As a general rule, that is a limitation the Department can, and does, comply with. But circumstances arise in which a longer stay is necessary. As noted, after a violent fight, the participants are often held in de-escalation cells for

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[5] Local Law 42 states that the Department "shall not maintain any locked decontamination showers." We already abide by that policy.

purposes of decontamination and to be seen by medical staff before being placed in a housing unit. Here, as with emergency lock-ins, an inflexible four-hour rule is not sound policy. See January Monitor Rpt. at 8 ("[t]he 4-hour maximum duration for de-escalation . . . provides no flexibility to address a continued risk of harm . . . and can create or exacerbate unsafe conditions").

32. Local Law 42 provides that an individual must be removed from de-escalation confinement "immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others." Admin. Code § 9-167(c)(5)(emphasis added). Our policy is not to hold an individual in de-escalation housing longer than necessary. Sometimes, however, an individual may be ready for removal, but another safe housing unit has yet to be identified. "Immediately" does not allow for sound correctional management.

33. Local Law 42 requires that a person in "de-escalation confinement" have access to a device that allows such person to make phone calls outside the facility." Admin. Code § 9-167(c)(4). As discussed above with respect to emergency lock-ins, this is not sound correctional policy. An individual in a de-escalation cell who has engaged in a violent fight should not be able to telephone their confederates to spread the word. De-escalation is a cooling off period, and telephone access could turn up the heat.

E. Restraints

34. Local Law 42 would significantly limit our use of restraints. Generally, restraints are not routinely used during regular movement within a facility. Under current Department policy, handcuffs are employed when an individual is transported off of Rikers Island for any purpose (e.g., to court or a hospital). Enhanced restraints, including handcuffs and leg restraints are

employed whenever an individual with a history of violence is escorted from their housing unit to another location in the facility (e.g., a medical clinic or recreation) or to court.

35. Local Law 42 would change all that. The Law's restraints provisions dictate the following: an individual cannot be placed in restraints "unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self injury or injury to another person." In addition, restraints may not be used on an individual under the age of 22 except during transportation in and out of a facility and during "escorted movement within a facility where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons." Admin. Code § 9-167(e). And restraints cannot be used on "two consecutive days" until a hearing is held to determine if their use is necessary for the safety of others. The hearing, it appears, must include the full panoply of rights, including the right to be represented by one's legal counsel or advocate. Also, the continued use of restraints must be reviewed daily and discontinued when there is no longer an imminent risk of self injury or injury to other persons and, in any event, after seven consecutive days. See January Monitor Rpt. at 9 (the Law "places unnecessary restrictions on the use of routine restraints and creates overly burdensome procedural hurdles for the use of enhanced restraints . . . and will potentially increase the risk of harm for detainees and staff").[6]

36. To understand what this would mean, take the example of an incarcerated individual who seriously assaults an officer sending the officer to the hospital. After the assault, can the Department restrain the individual when they are escorted from his housing area to a clinic for their daily medication? Under the law, restraints can be employed only if an individualized

[6] Under the Law, individuals under 22 may be restrained during transportation, but those 22 and over may be restrained only if they meet the "imminent" harm standard. 9-167e. That distinction is hard to fathom. See January Monitor Rpt. at 9.

determination is made that they are necessary to prevent "imminent" harm and apparently not on two consecutive days until a hearing is held and then not for more than seven consecutive days. The issue, of course, is the definition of an "imminent" risk. If an individual stabs another individual on Monday, do they pose an "imminent" risk of injury to another person on Thursday? If an individual seriously assaults a staff member on day 1, do they pose an "imminent" risk to staff on day 30? Our officers are rightly called the "Boldest," but asking them to escort violent individuals unrestrained is asking too much.

37. Local Law 42's restraint provisions would also prevent us from transporting individuals to court in a safe and timely manner. Each day, the Department transports some 500 individuals to courthouses in the five boroughs on as many as 25 buses, many holding up to 28 individuals. Individuals with a history of violence are restrained with handcuffs and leg restraints and in separate compartments. Others are handcuffed in pairs, one individual to another. If the Department were required to show that each transported individual poses an imminent risk of harm to others before restraints could be applied, the burden would be insurmountable.

38. I could not ask our officers to transport individuals unrestrained to court or the hospital. Absent restraints, our choices would be limited. The Department could either (i) equip each bus with separate compartments or (ii) use video conferencing for court appearances as we did during the pandemic. The former option would be prohibitively expensive. We would need many more buses and have to install separate compartments in each bus. Moreover, it would likely run afoul of the new Law's limit on in-cell time. (The trip to Staten Island from Rikers Island, for example, can take 1 ½ hours or more.) The latter option – video conference—would do a serious disservice to the court system and to incarcerated individuals. And it would still leave us with the problem of transporting new admissions from court to Rikers Island after their arraignment. Neither option is

workable, but nor is transporting 28 individuals, most of whom are charged with violent crimes, by bus to a courthouse unrestrained. The danger here is not just to other incarcerated individuals and staff but to the public at large.[7]

39. Imagine the chaos that would ensue if the New York City Police Department, New York State Office of Court Administration, and New York City Administration for Children's Services could not apply restraints when transporting individuals to and from precincts, courthouses, and within the courtroom. It would have a significant impact on public safety; it would not be asked of them.

40. Finally, it bears note that the Local Law 42 allows the use of restraints only to prevent imminent harm. The risk of escape is not deemed a valid consideration. If an individual has escaped (or attempted to escape), they cannot be restrained thereafter as they move through a facility or outside it unless they pose an imminent risk of harm to others. That, too, is not sound correctional practice.

F. Monitor's Approval / Conflict

41. If both Local Law 42 and the Nunez Court Orders were in effect, the Department would be in an inescapable bind. Under the Court's Orders in the Nunez case, the Department cannot modify its policies on restrictive housing, de-escalation units, emergency lock-ins and restraints without submitting the modification to the Monitor and waiting for his approval. Yet Local Law 42, if implemented, would radically modify our policies in those areas without the Monitor's approval. Indeed, I am virtually certain that the Monitor would not approve those provisions if the issue were

[7] When an individual is in an "outpost hospital" (one not operated by DOC), they are restrained to the hospital bed for the protection of medical staff and to prevent escape.

put directly to him. See January Monitor Rpt. at 10 ("[t]he Monitor will not approve policies and procedures that include the problematic requirements [in the law] because they do not reflect sound correctional practice and would exacerbate the extant unsafe conditions"). As a result, the Department must either comply with Local Law 42 and violate the Nunez Court Orders or comply with the Nunez Court Orders and violate Local Law 42. No agency should be put in that position.

G. Conclusion

42. In January 2024, I wrote each member of City Council expressing many of the concerns addressed in this Declaration. My letter went unheeded. If the Department still practiced solitary confinement, a law ending it would be a welcomed development. But solitary confinement, under any conventional definition, is no longer employed in New York City jails. What Local Law 42 actually does must not be allowed to occur. In the words of the Monitor, it "seriously impede[s] the City's and Department's ability to achieve compliance with the requirements of the Nunez Court Orders." January Monitor Rpt. at 11. At a time when the Department is working tirelessly to achieve a safe and humane jail system, implementation of many of Local Law 42's provisions would derail us.

LYNELLE MAGINLEY-LIDDIE

Dated: New York, New York
July 22, 2024

Exhibit B

Introduction

The City Council passed Council Bill 549-A on December 20, 2023. The bill seeks to ban the use of solitary confinement and set standards for the use of restrictive housing, de-escalation, emergency lock-ins, the use of restraints and housing special populations (*e.g.,* mental health units, contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance). A copy of the bill is included as Appendix A.

The Commissioner of the Department of Correction, pursuant to the *Nunez* Court Orders,[1] requested that the Monitoring Team advise and provide feedback to the Department on how the requirements of this bill may impact the Department's ability to comply with the *Nunez* Court Orders. This document provides the Monitoring Team's assessment of the implications this bill will have on the City's and Department's efforts to address the unsafe conditions in the jails, protect individuals from harm, and implement sound correctional practices all of which are necessary to comply with the *Nunez* Court Orders.

Summary and Discussion of Council Bill 549-A

Council Bill 549-A is a well-intentioned effort to ensure that no person in the Department's custody is subjected to solitary confinement. This bill also includes a significant number of operational requirements that go beyond eliminating solitary confinement and that would impact the day-to-day management of the City's jails. The majority of these provisions directly relate to requirements of the *Nunez* Court Orders in which the Department is required to consult[2] and seek the Monitor's approval on many issues including, but not limited to, matters relating to security practices,[3] the use of restraints,[4] escorts,[5] lock-in and lock-out time,[6] de-

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[1] *See*, Consent Judgment, § XX, ¶¶ 24 and 25 and June 13, 2023 Order, § I, ¶ 5.

[2] Consultation with the Monitor is required by over 80 provisions in the *Nunez* Court Orders. Consultation is also required by the Court's June 13, 2023 Order, § I, ¶ 5.

[3] *See* Action Plan § D, ¶ 3 in which the Monitor may direct the Department to refine certain security initiatives to ensure compliance with security requirements of the Action Plan.

[4] *See* Consent Judgment, § IV, ¶ 3(p).

[5] *See* Action Plan, § D, ¶ 2(f) and August 10, 2023 Order, § I, ¶ 3.

[6] *See* August 10, 2023 Order, § I, ¶ 4.

escalation,[7] initial management following a serious act of violence[8] and subsequent housing strategies.[9]

The Monitoring Team believes that eliminating solitary confinement is necessary and important. However, the Monitoring Team has deep concerns about many of the bill's provisions related to the use of restrictive housing, de-escalation, emergency lock-ins, and the use of restraints and escort procedures. Many of the provisions, as currently drafted, could inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff. Consequently, this could impede the Department's ability to comply with the *Nunez* Court Orders. These issues are described in detail below. Further, a listing of the provisions from the *Nunez* Court Orders that are immediately impacted by Council Bill 549-A, as well as the implications and related concerns to the Monitor's work, is included as Appendix B.

Managing Individuals Following Serious Acts of Violence

When evaluating the contents of the bill, important background and context are necessary to understand how individuals are managed following serious acts of violence. The Monitoring Team has repeatedly and consistently reported that the City and Department must have targeted initiatives to address the underlying causes of violence, protect individuals from harm, and ensure that staff use sound correctional practices. An essential component of the effort to ensure the safety and well-being of people in custody and staff working in correctional facilities is having a reliable, safe, and effective response to serious interpersonal violence. Those who engage in serious violence while in custody must be supervised in manner that is ***different*** from that used for the general population. Separating violent individuals from the general population, properly managing congregate time out-of-cell, and limiting out-of-cell time are standard and sound correctional practice, as long as the limitations are reasonably related to the reduction of harm. In this context, reducing out-of-cell time to less than 14 hours per day is necessary to protect individuals from harm and reflects sound correctional practice. The Department must be able to effectively separate those who have engaged in serious acts of violence from potential

[7] *See* First Remedial Order, § A, ¶ 3 and Action Plan, § D, ¶ 2(b).

[8] *See* Second Remedial Order ¶ 1(i)(e), Action Plan, § D, ¶ 2(h)

[9] *See* Action Plan, § E, ¶ 4.

victims and, to some degree, limit their freedom of movement when they are engaged in congregate activity outside their cells. Reduced out-of-cell time increases staff's ability to control the environment, improves surveillance, minimizes unsupervised interactions, permits people with interpersonal conflicts to be separated within a single housing unit, and allows staff to better manage out-of-cell activities because fewer individuals are congregating at one time. The Department must also provide the necessary structure and supervision to ensure the safety of the individuals housed in a restrictive setting and should provide rehabilitative services that decrease the likelihood of the individual committing subsequent violent acts.

It must be emphasized that solitary confinement and restrictive housing are not the same and thus their operational requirements and constraints must be different. Outlined below are the distinctions between the two housing models.

- Solitary confinement limits out-of-cell time from between 1 to 4 hours a day,[10] for prolonged periods of time (e.g. 15 days or more), affords little human contact and no congregate engagement, and does not provide access to programming.
- Restrictive housing programs include some restrictions on out-of-cell time and other privileges (e.g. limited commissary funds) in comparison to that afforded to the general population but *do not* involve the type of social deprivation that is characteristic of solitary confinement and, as a result, does not place detainees at risk of the significant psychological and physiological deterioration that is associated with solitary confinement.

Given the high level of serious violence in the New York City jails and the high risk of harm faced daily by both those in custody and staff, the Department must be able to operate a restrictive housing program. The goal of restrictive housing programs is to provide safe forms of congregate engagement for those who have committed serious acts of violence while in custody, without placing those housed in general population settings at risk of harm. Such a program clearly must be both well-designed and properly implemented. The distinction between restrictive housing programs and solitary confinement is worth repeating. Restrictive housing enables the Department to safely manage violence-prone individuals in a congregate setting

[10] There is no standard definition of solitary confinement. Appendix C includes a summary of definitions of solitary confinement from various reputable sources.

wherein they also retain some access to privileges and programming; while solitary confinement seeks to manage individuals through complete isolation and severe and onerous restrictions.

New York is at the forefront of the nation's efforts to develop restrictive housing models as alternatives to solitary confinement. Restrictive housing models in correctional settings are still relatively new as only a few jurisdictions have attempted to *wholly eliminate* solitary confinement. Restrictive housing models offer alternatives to solitary confinement appropriately balancing the need to preserve order in the general population with the well-being of violence-prone individuals. Viewed on a continuum, there is a point between solitary confinement and general population housing that can accommodate both interests.

The Monitoring Team conducted a review of restrictive housing practices from across the United States (many of these programs have been cited by the City Council and other stakeholders in various public forums as promising alternatives to reduce the reliance on solitary confinement).[11] This review included programs in the following jurisdictions: Alameda County, Cook County Illinois, Colorado, Mississippi, Maine, Nebraska, New York state, and Washington D.C. These programs vary considerably with regard to the qualifying infractions, methods of referral and placement in the units, exclusions, use of isolation, privileges afforded, the role of programming and frequency with which an individual is reviewed. However, one component that was consistent across all programs with which the Monitoring Team is familiar is that they **all** include limitations on out-of-cell time that are more restrictive than that afforded to the general population.[12]

The complexity of developing appropriate restrictive housing programs cannot be overstated—programs for people with known propensities for serious violence who are

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[11] *See* "A Local Law to amend the administrative code of the city of New York in relation to banning solitary confinement in city jails," Committee Report of the Governmental Affairs Division, New York City Council, September 28, 2022, at pg. 15.; and Statement of Basis and Purpose for Notice of Rulemaking Concerning Restrictive Housing in Correctional Facilities, Board of Correction for the City of New York, March 5, 2021, at pg. 24.

[12] For instance, restrictive housing models in Colorado and Cook County, Illinois have been at the forefront of eliminating solitary confinement *and* developing viable alternative housing programs. These two jurisdictions have been held up as models for reforms to DOC practice. It must be noted the restrictive housing programs in these jurisdictions only permit 4 hours out-of-cell per day, with no limit on the duration that an individual may be housed in such a program, and restraint desks are used for any congregate out-of-cell time. Further, Colorado permits out-of-cell time to be revoked for 7 days as an immediate consequence for subsequent misconduct.

concentrated in a specific location necessitate unique and essential security requirements, particularly during time spent out-of-cell in congregate activities. It is also critical to provide programming and services that focus on reducing the risk of subsequent violence, which requires collaboration among multiple divisions and agencies.

Evaluation of Provisions of City Council Bill 549-A

The members of the Monitoring Team have over 100 years of experience in correctional management and have also been at the forefront of the national effort to reduce and eliminate the use of solitary confinement in adult and juvenile systems. As such, the Monitoring Team is well positioned to evaluate the requirements of this bill and its impact on the Department's ability to address the requirements of the *Nunez* Court Orders and to advance the necessary reforms in the City's jails.

While Council Bill 549-A includes certain important requirements, such as eliminating solitary confinement, many of the provisions of Council Bill 549-A do not provide the City or Department the necessary discretion to safely respond to the immediate aftermath of a serious act of violence, create undue restrictions on management following serious acts of violence as well as on the use of restraints and escorted movement. Further, many of these requirements are not consistent with sound correctional practice or support the overall goal of protection from harm. Outlined below is a summary of the provisions in the bill that create the greatest concerns to safety and impact on the *Nunez* Court Orders. This is not intended to be an exhaustive list of the potential impact of the bill's many requirements.

- **Definition of Solitary Confinement**. The definition of solitary confinement in this bill is not aligned with any definition of solitary confinement known to the Monitoring Team. While there is no standard definition of solitary confinement, there are common parameters which include limiting out-of-cell time from 1 to 4 hours a day, for prolonged periods of time, affording little human contact and no congregate engagement, and denying access to programming. Notably, one of the most frequently cited definitions, the United Nations' "Mandela Rules," defines solitary confinement as an approach where individuals are limited to 2 hours out-of-cell per day *and* deems the

use of solitary confinement for more than 15 days as torture.[13] The definition of solitary confinement in this bill appears to conflate solitary confinement with attempts to address out-of-cell time more generally. Eliminating solitary confinement must be addressed separately from any provisions regarding alternatives to such practice, such as restrictive housing models. It is important the definition of solitary confinement comport with the standard description of that practice to disentangle this practice from others, such as restrictive housing, that are critical and necessary in responding to serious acts of violence. A list of definitions of solitary confinement from a number of reputable sources is provided in Appendix C.

- **Out-of-Cell Time**. The bill requires that, in each 24-hour period, ***all*** incarcerated individuals must be afforded 14 hours out-of-cell with no restraints or barriers to physical contact with other persons in custody. The two minor exceptions (de-escalation confinement and emergency lock-ins) are limited to 4 hours and so they do not provide the meaningful distinction to this out-of-cell requirement that is needed. **A global approach to out-of-cell time for all individuals in custody significantly endangers both persons in custody and staff and is not consistent with sound correctional practice.** Those with a demonstrated propensity for serious violence must be supervised in a manner that is safe and effectively mitigates the risk of harm they pose to others. Some reduction in out-of-cell time to less than 14 hours per day, with appropriate safeguards, is necessary. For instance, seven hours out-of-cell time in a congregate setting may be appropriate in some cases and *does not* constitute solitary confinement under any correctional standard with which the Monitoring Team is familiar. Limitations on the 14 hours out-of-cell (such as limitations of seven to 10 hours) would, however, minimize the opportunity for violent and/or predatory individuals to visit harm on other persons in custody and staff. Without question, the Department must be permitted some degree of flexibility in order for it to be able to safely manage individuals following serious acts of violence and to protect potential victims, both other incarcerated persons and staff. In fact, the Monitoring Team

[13] *See*, UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules): resolution / adopted by the General Assembly*, 17 December 2015, A/RES/70/175, Rules 43 and 44 available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf

suggested that such a violence control strategy was necessary to address the current dangerous conditions in the Monitor's November 8, 2023 Report at pgs. 23-24.

- **Restrictive Housing Model**. While Council Bill 549-A describes its alternative housing models as "restrictive housing," it does not appear to actually create or include any discernible restrictions. First, the bill does not permit graduated out-of-cell time for the individuals placed in restrictive housing, which eliminates an important incentive for prosocial conduct. Second, the bill sets arbitrary timeframes for discharge from restrictive housing (e.g., an individual must be removed from the unit if the individual "has not engaged in behavior that presents a specific, significant, and imminent threat" in a 15-day period and must be discharged within 30 days, with no exceptions regardless of the individual's behavior) that do not account for whether an individual continues to pose a risk of harm to others' safety. Third, the required procedures relating to placement on these units are protracted, including significant procedural requirements that provide myriad opportunities for undue delay by the perpetrator of violence before the Department can act to address the underlying conduct. Further, during the time in which this placement decision is being made, the bill includes an impractical standard for pre-hearing detention that could permit the perpetrator of serious violence to remain in general population while awaiting a determination for placement in restrictive housing. Finally, the programming requirements for restrictive housing are at odds with the reality of evidence-based practice. None of the evidence-based curricula with which the Monitoring Team is familiar can be completed within the proposed 15/30-day maximum length of stay in restrictive housing.[14] The constraints this bill places on the design of a restrictive housing model create or exacerbate unsafe conditions because the bill does not permit adequate opportunity for separating those who engage in serious violence from potential victims, which is not consistent with sound correctional practice and support the overall goal of protection from harm.
- **De-Escalation Confinement and Emergency Lock-ins**. Council Bill 549-A limits the duration of de-escalation confinement and emergency lock-in to 4 hours in a 24-hour

[14] *See* Monitor's June 30, 2022 Report at pg. 25 which includes a discussion regarding the inability to address behavior change with set time periods for graduation.

period, without exception. It is unclear how this 4-hour standard was determined as the Monitoring Team is not aware of any evidence that de-escalation or the need for emergency lock-in will *always* be resolved in this set time period. While the imminent risk of harm these practices are intended to address *may be* abated in 4 hours, in the Monitoring Team's experience, that is not always the case for each individual or scenario. The goal of these management tools is to de-escalate an individual who has committed a serious act of violence, not a minor infraction, and to mitigate broader risks to other persons in custody or staff triggered by a serious incident that requires a temporary lock-in. Ensuring the individual has de-escalated or the situation that created the need for a lock-in has been addressed must be the guiding principle, not simply an arbitrary passage of time. The 4-hour maximum duration for de-escalation and emergency lock-in provides no flexibility to address a continued risk of harm. Setting an arbitrary time period within which de-escalation and emergency lock-ins must conclude is not sound correctional practice and can create or exacerbate unsafe conditions. The guiding principle for concluding the use of de-escalation and emergency lock-ins must be the extent to which the risk of harm has been abated and safe operations can resume and therefore some degree of flexibility in the duration to conclude these practices is critical and necessary.

    - The bill contains specific requirements for de-escalation. Some are important, such as requiring that de-escalation does not occur in decontamination showers, but others do not appear to be relevant to the goal of de-escalating an individual following a serious event, such as requiring that the perpetrator of violence must have access to shaving equipment during the de-escalation period. De-escalation occurs when staff constructively engage with the individual to ensure the threat to others has abated. Permitting unfettered access to things such as the telephone (another requirement in the bill) could facilitate dangerous access to individuals who may perpetuate the threat to others' safety rather than reduce it.

- **Use of Restraints and Escorts.** Council Bill 549-A sets a standard for the use of *any* restraints requiring the presence of an imminent risk of harm, which is more restrictive than any standard with which the Monitoring Team has experience. While such a standard does not appear appropriate in many cases, it is further unclear how this

standard could even be operationalized. Of greatest concern is that the bill does not differentiate between the *routine* use of restraints and the use of *enhanced* restraints. The requirements for the use of routine restraints (e.g., the use of restraints for escorts such as transportation to court or movement within the facility) are burdensome, not operationally feasible, and are not aligned with sound correctional practice. Therefore, these restrictions and requirements will in all likelihood create or exacerbate the unsafe conditions. The requirements for using routine restraints also create situations in which one individual may be placed in restraints while others are not, thus placing that individual at unnecessary risk of harm and creating additional complications for staff in trying to manage such a system. Further, while additional procedures are necessary to determine the use of *enhanced* restraints, the standards promulgated in the bill and the process for the evaluating the use of enhanced restraints are burdensome, complicated, and appear to create undue delay, all of which will impede their proper use and potentially create additional risk of harm within the jails. Finally, the bill includes separate requirements for the use of restraints for adults versus individuals under the age of 22 and exceptions for that population that are not permitted for adults (e.g., regarding transportation, it is unclear why individuals under 22 may be restrained when being transported to Court, but adults cannot without meeting a high standard). There does not appear to be any basis for such a distinction, particularly since it is both routine and consistent with sound correctional practice to restrain individuals during transportation to Court and elsewhere. In summary, the bill places unnecessary restrictions on the use of routine restraints and creates overly burdensome procedural hurdles for the use of enhanced restraints, both of which are at odds with sound correctional practice and will potentially increase the risk of harm for detainees and staff.

This bill must also be evaluated through the lens of the current conditions in the City's jails. A myriad of dysfunctional practices and management problems have plagued the City's and Department's management and operation of the jails, as the Monitoring Team has thoroughly documented. The Department remains unable to consistently implement and sustain basic security practices or to manage the jails safely and effectively. Requiring the Department to

implement the provisions of Council Bill 549-A discussed above, particularly given the bill's deficiencies, will only exacerbate the current dysfunction, will impede the goals of promoting the use of sound correctional practices and enhancing jail safety, and impact the Department's ability to comply with the *Nunez* Court Orders.

In summary, Council Bill 549-A includes absolute prohibitions in areas where at least some discretion is necessary, contains requirements that are both vague and ambiguous, contains multiple internal inconsistencies, and sets standards that are not consistent with sound correctional practice. These issues directly impact various Department policies and procedures addressed by the *Nunez* Court Orders and which require the Monitor's approval. In particular, the Monitor must approve procedures regarding managing individuals following serious acts of violence,[15] de-escalation protocols,[16] emergency lock-in protocols,[17] the use of restraints and escorts,[18] and security practices.[19] The Monitor will not approve policies and procedures that include the problematic requirements outlined above because they do not reflect sound correctional practice and would further exacerbate the extant unsafe conditions. Consequently, the Monitoring Team must reiterate its concern that the bill's requirements, as discussed herein, will create situations that will impair, if not prevent, the Department from being able to comply with the *Nunez* Court Orders. An assessment of the impact on the *Nunez* Court Orders is included in Appendix B.

Conclusion

The Monitoring Team fully supports the effort to eliminate the practice of solitary confinement. Banning the practice of solitary confinement is an important expression of the value the City places on all of its residents. The goal is laudable and is one we support. Accordingly, the Monitoring Team recommends that the Department immediately ensure that solitary confinement[20] is eliminated in Department policy and practice. This includes

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[15] *See* Second Remedial Order ¶ 1(i)(e), Action Plan, § D, ¶ 2(h).

[16] *See* First Remedial Order, § A, ¶ 3 and Action Plan, § D, ¶ 2(b).

[17] *See* August 10, 2023 Order, § I, ¶ 4.

[18] *See* Consent Judgment, § IV, ¶ 3(p), Action Plan, § D, ¶ 2(f), and August 10, 2023 Order, § I, ¶ 3.

[19] *See* Action Plan § D, ¶ 3 in which the Monitor may direct the Department to refine certain security initiatives to ensure compliance with security requirements of the Action Plan.

[20] As discussed above, and demonstrated in Appendix C, no standard definition of solitary confinement exists. For purposes of this recommendation, the Monitoring Team recommends the most inclusive

eliminating the use of cells in NIC with extended alcoves, and any other cells or housing units that contain similar physical properties, that do not permit adequate congregate engagement and access to programming. Further, the Department must ensure that decontamination showers may not be locked or utilized for de-escalation or any other form of confinement.

The Monitoring Team strongly believes, based on its many years of experience and expertise, that the various operational requirements and constraints that accompany the elimination of solitary confinement in Council Bill 549-A will likely exacerbate the already dangerous conditions in the jails, intensify the risk of harm to both persons in custody and Department staff, and would seriously impede the City's and Department's ability to achieve compliance with the requirements of the *Nunez* Court Orders. As such, the Monitoring Team recommends significant revisions to Council Bill 549-A are necessary to address the issues outlined in this document and to support the overall goal of managing a safe and humane jail system and advancing the reforms of the *Nunez* Court Orders.

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definition of solitary confinement is adopted which would prohibit the confinement of individuals for 20 hours or more a day.

Appendix XXX – Council Bill 549-A – Passed December 20, 2023

By the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers, Bottcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President)

A Local Law to amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Be it enacted by the Council as follows:

1 Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new
2 section 9-167 to read as follows:
3 § 9-167 Solitary confinement. a. Definitions. For the purposes of this section, the following
4 terms have the following meanings:
5 Advocate. The term "advocate" means a person who is a law student, paralegal, or an
6 incarcerated person.
7 Cell. The term "cell" means any room, area or space that is not a shared space conducive
8 to meaningful, regular and congregate social interaction among many people in a group setting,
9 where an individual is held for any purpose.
10 De-escalation confinement. The term "de-escalation confinement" means holding an
11 incarcerated person in a cell immediately following an incident where the person has caused
12 physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or
13 other incarcerated persons.
14 Emergency lock-in. The term "emergency lock-in" means a department-wide emergency
15 lock-in, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility
16 emergency lock-in as defined in section 9-155.

Out-of-cell. The term "out-of-cell" means being in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction and activity or being in any space during the time of carrying out medical treatment, individual one-on-one counseling, an attorney visit or court appearance.

Pre-hearing temporary restrictive housing. The term "pre-hearing temporary restrictive housing" means any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place.

Restraints. For the purposes of this section, the term "restraints" means any object, device or equipment that impedes movement of hands, legs, or any other part of the body.

Restrictive housing. The term "restrictive housing" means any housing area that separates incarcerated persons from the general jail population on the basis of security concerns or discipline, or a housing area that poses restrictions on programs, services, interactions with other incarcerated persons or other conditions of confinement. This definition excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health, including placement in a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary protective custody, or (4) housed in a designated location for the purpose of school attendance.

Solitary confinement. The term "solitary confinement" means any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.

1 Suicide prevention aide. For the purposes of this section, the term "suicide prevention aide"
2 means a person in custody who has been trained to identify unusual and/or suicidal behavior.
3 Violent grade I offense. The term "violent grade I offense" shall have the same meaning as
4 defined by the rules of the department of correction as of January 1, 2022.
5 b. Ban on solitary confinement. The department shall not place an incarcerated person in a
6 cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period
7 or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose
8 of de-escalation confinement or during emergency lock-ins.
9 c. De-escalation confinement. The department's uses of de-escalation confinement shall
10 comply with the following provisions:
11 1. De-escalation confinement shall not be located in intake areas and shall not take place
12 in decontamination showers. Spaces used for de-escalation confinement must, at a minimum, have
13 the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and
14 be maintained in accordance with the personal hygiene and space requirements set forth in such
15 sections;
16 2. Department staff must regularly monitor a person in de-escalation confinement and
17 engage in continuous crisis intervention and de-escalation to support the person's health and well-
18 being, attempt de-escalation, work toward a person's release from de-escalation confinement and
19 determine whether it is necessary to continue to hold such person in such confinement;
20 3. The department shall conduct visual and aural observation of each person in de-
21 escalation confinement every 15 minutes, shall refer any health concerns to medical or mental
22 health staff, and shall bring any person displaying any indications of any need for medical
23 documentation, observation, or treatment to the medical clinic. Suicide prevention aides may

conduct check-ins with a person in de-escalation confinement at least every 15 minutes and refer any health concerns to department staff who will get medical or mental health staff to treat any reported immediate health needs. No suicide prevention aide shall face any retaliation or other harm for carrying out their role;

4. Throughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility;

5. A person shall be removed from de-escalation confinement immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others;

6. The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or more than 12 hours in any seven-day period; and

7. In circumstances permitted in subdivision g of this section, the department may transfer a person from de-escalation confinement to pre-hearing temporary restrictive housing.

(a) The department shall not place any incarcerated person in a locked decontamination shower nor in any other locked space in any facility that does not have, at a minimum, the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and maintained in accordance with the personal hygiene and space requirements as set forth in such sections.

(b) The department shall not maintain any locked decontamination showers. Any other locked spaces in any facility for holding incarcerated people must at least have the features

1 specified in and maintained in accordance with the personal hygiene and space requirements set
2 forth in 40 RCNY § 1-03 and § 1-04.
3 d. Reporting on de-escalation confinement. For each instance an incarcerated person is
4 placed in de-escalation confinement as described in subdivision c of this section, the department
5 shall prepare an incident report that includes a detailed description of why isolation was necessary
6 to de-escalate an immediate conflict and the length of time the incarcerated person was placed in
7 such confinement. Beginning on July 15, 2024, and within 15 days of the end of each subsequent
8 quarter, the department shall provide the speaker of the council and the board of correction all such
9 reports for the preceding quarter and post all such reports on the department's website. The
10 department shall redact all personally identifying information prior to posting such reports on the
11 department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent
12 quarter, the department shall provide to the speaker of the council and the board of correction, and
13 post on the department's website, a report with data for the preceding quarter on the total number
14 of people placed in such confinement, disaggregated by race, age, gender identity and mental
15 health treatment level, as well as the total number of people held in such confinement
16 disaggregated by whether confinement lasted less than one hour, between one and two hours,
17 between two and three hours, and between three and four hours.
18 e. Use of restraints. 1. The department shall not place an incarcerated person in restraints
19 unless an individualized determination is made that restraints are necessary to prevent an imminent
20 risk of self-injury or injury to other persons. In such instances, only the least restrictive form of
21 restraints may be used and may be used no longer than is necessary to abate such imminent harm.
22 Restraints shall not be used on an incarcerated person under the age of 22 except in the following
23 circumstances: (i) during transportation in and out of a facility, provided that during transportation

no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

2. The department shall not place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Such hearing shall comply with the rules of the board of correction as described in paragraph 1 of subdivision f of this section. Any continued use of restraints must be reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven consecutive days.

f. Restrictive housing hearing. Except as provided in subdivision g of this section, the department shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person is found to have committed a violent grade I offense. Any required hearing regarding placement of a person into restrictive housing shall comply with rules to be established by the board of correction.

1. The board of correction shall establish rules for restrictive housing hearings that shall, at a minimum, include the following provisions:

(i) An incarcerated person shall have the right to be represented by their legal counsel or advocate;

(ii) An incarcerated person shall have the right to present evidence and cross-examine witnesses;

(iii) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record;

(iv) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record;

(v) The department shall provide the incarcerated person and their legal counsel or advocate written notice of the reason for proposed placement in restrictive housing and any supporting evidence for such placement, no later than 48 hours prior to the restrictive housing hearing;

(vi) The department shall provide the legal counsel or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments;

(vii) An incarcerated person shall have the right to an interpreter in their native language if the person does not understand or is unable to communicate in English. The department shall take reasonable steps to provide such interpreter;

(viii) A refusal by an incarcerated person to attend any restrictive housing hearings must be videotaped and made part of the hearing record;

(ix) If the incarcerated person is excluded or removed from a restrictive housing hearing because it is determined that such person's presence will jeopardize the safety of themselves or others or security of the facility, the basis for such exclusion must be documented in the hearing record;

(x) A restrictive housing disposition shall be reached within five business days after the conclusion of the hearing. Such disposition must be supported by substantial evidence, shall be

documented in writing, and must contain the following information: a finding of guilty or not guilty, a summary of each witness's testimony and whether their testimony was credited or rejected with the reasons thereof, the evidence relied upon by the hearing officer in reaching their finding, and the sanction imposed, if any; and

(xi) A written copy of the hearing disposition shall be provided to the incarcerated person and their counsel or advocate within 24 hours of the determination.

2. Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing.

g. Pre-hearing temporary restrictive housing. In exceptional circumstances, the department may place a person in pre-hearing temporary restrictive housing prior to conducting a restrictive housing hearing as required by subdivision f of this section.

1. Such placement shall only occur upon written approval of the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security. Such written approval shall include: the basis for a reasonable belief that the incarcerated person has committed a violent grade I offense, and whether such person has caused serious physical injury or poses a specific and significant risk of imminent serious physical injury to staff or other incarcerated persons.

2. A restrictive housing hearing shall occur as soon as reasonably practicable following placement in pre-hearing temporary restrictive housing, and must occur within five days of such placement, unless the person placed in such restrictive housing seeks a postponement of such hearing.

3. If a person is found guilty at a restrictive housing hearing, time spent in pre-hearing temporary restrictive housing prior to such hearing determination shall be deducted from any sentence of restrictive housing and such time shall count toward the time limits in restrictive housing.

4. Pre-hearing temporary restrictive housing shall comply with all requirements for restrictive housing, including but not limited to those established in subdivision h of this section.

5. During the first day of placement in pre-hearing temporary restrictive housing, department staff must regularly monitor the person and engage in continuous crisis intervention and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive housing and determine whether it is necessary to continue to hold the person in pre-hearing temporary restrictive housing.

h. Restrictive housing regulations. The department's use of restrictive housing must comply with the following provisions:

1. The department shall not place an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period.

2. Within 15 days of placement of an incarcerated person in restrictive housing, the department shall meaningfully review such placement to determine whether the incarcerated person continues to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing. If an individual is not discharged from restrictive housing after review, the department shall provide in writing to the incarcerated person: (i) the reasons for the determination that such person must remain in restrictive housing and (ii) any recommended program, treatment, service, or corrective action. The department shall provide the incarcerated person access to such available programs, treatment and services.

3. The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing.

4. A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape.

5. The department shall utilize programming that addresses the unique needs of those in restrictive housing. The department shall provide persons in restrictive housing with access to core educational and other programming comparable to core programs in the general population. The department shall also provide persons in restrictive housing access to evidence-based therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be individualized and trauma-informed, include positive incentive behavior modification models, and follow best practices for violence interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation techniques, conflict resolution, the use of force policy, and related topics to address the unique needs of those in restrictive housing units.

6. The department shall use positive incentives to encourage good behavior in restrictive housing units and may use disciplinary sanctions only as a last resort in response to behavior presenting a serious and evident danger to oneself or others after other measures have not alleviated such behavior.

7. All housing for medical or mental health support provided to persons recommended to receive such support by the entity providing and,or overseeing correctional medical and mental health, including placement in contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance, shall comply with subdivisions (b), (c), (e), (i), (j) and (k) of this section and paragraphs 4, 5, and 6 of this subdivision.

8. For purposes of contagious disease units, after a referral from health care staff, a person may be held in a medical unit overseen by health care staff, for as limited a time as medically necessary as exclusively determined by health care staff, in the least restrictive environment that is medically appropriate. Individuals in a contagious disease unit must have comparable access as individuals incarcerated in the general population to phone calls, emails, visits, and programming done in a manner consistent with the medical and mental health treatment being received, such as at a physical distance determined appropriate by medical or mental health staff.Such access must be comparable to access provided to persons incarcerated outside of restrictive housing units.

9. Reporting on restrictive housing. For each instance a disciplinary charge that could result in restrictive housing is dismissed or an incarcerated individual is found not guilty of the disciplinary charge, the department shall prepare an incident report that includes a description of the disciplinary charge and the reasons for the dismissal or not guilty determination. For each instance an incarcerated person is placed in restrictive housing, the department shall prepare an

1 incident report that includes a detailed description of the behavior that resulted in placement in
2 restrictive housing and why restrictive housing was necessary to address such behavior, including
3 if a person was placed in pre-hearing temporary restrictive housing and the reasons why the
4 situation met the requirements in paragraph 1 of subdivision g of this section. For each instance in
5 which confinement in restrictive housing is continued after a 15-day review of an incarcerated
6 person's placement in restrictive housing, the department shall prepare an incident report as to why
7 the person was not discharged, including a detailed description of how the person continued to
8 present a specific, significant and imminent threat to the safety and security of the facility if housed
9 outside restrictive housing and what program, treatment, service, and/or corrective action was
10 required before discharge. Beginning on July 15, 2024, and within 15 days of the end of each
11 subsequent quarter, the department shall provide the speaker of the council and the board of
12 correction all such reports for the prior quarter and post all such reports on the department's
13 website. The department shall redact all personally identifying information prior to posting the
14 reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of
15 each subsequent quarter, the department shall provide to the speaker of the council and the board
16 of correction, and post on the department's website, a report with data for the preceding quarter on
17 the total number of people placed in restrictive housing during that time period, disaggregated by
18 race, age, gender identity, mental health treatment level and length of time in restrictive housing,
19 and data on all disposition outcomes of all restrictive housing hearing during such time period,
20 disaggregated by charge, race, age, gender identity and mental health treatment level.

21 i. Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell
22 hours every day except while in de-escalation confinement pursuant to subdivision c of this section
23 and during emergency lock-ins pursuant to subdivision j of this section.

1 2. Incarcerated persons may congregate with others and move about their housing area
2 freely during out-of-cell time and have access to education and programming pursuant to section
3 9-110 of the administrative code.
4 j. Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner,
5 a Deputy Commissioner, or another equivalent member of department senior leadership with
6 responsibility for the operations of security for a facility determines that such lock-in is necessary
7 to de-escalate an emergency that poses a threat of specific, significant and imminent harm to
8 incarcerated persons or staff. Emergency lock-ins may only be used when there are no less
9 restrictive means available to address an emergency circumstance and only as a last resort after
10 exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as
11 possible and limited number of people as possible. The department shall lift emergency lock-ins
12 as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member
13 of department senior leadership over the operations of security shall review such lock-ins at least
14 every hour. Such lock-ins may not last more than four hours.
15 2. Throughout an emergency lock-in, the department shall conduct visual and aural
16 observation of every person locked in every fifteen (15) minutes, shall refer any health concerns
17 to medical or mental health staff, and shall bring any person displaying any indications of any need
18 for medical documentation, observation, or treatment to the medical clinic. Throughout an
19 emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency
20 lock-in, each person locked in shall have access to a tablet or other device that allows the person
21 to make phone calls both outside of the facility and to medical staff in the facility.

1 3. The department shall immediately provide notice to the public on its website of an
2 emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits
3 or court appearances.
4 4. For each instance an emergency lock-in is imposed, the department shall prepare an
5 incident report that includes:
6 (a) A description of why the lock-in was necessary to investigate or de-escalate an
7 emergency, including the ways in which it posed a threat of specific, significant and imminent
8 harm;
9 (b) A description of how other less restrictive measures were exhausted;
10 (c) The number of people held in lock-in;
11 (d) The length of lock-in;
12 (e) The areas affected and the reasons such areas were subject to the emergency lock-in;
13 (f) The medical and mental health services affected, the number of scheduled medical and
14 or mental health appointments missed and requests that were denied;
15 (g) Whether visits, counsel visits or court appearances were affected;
16 (h) What programs, if any, were affected;
17 (i) All actions taken during the lock-in to resolve and address the lock-in; and
18 (j) The number of staff diverted for the lock-in.
19 Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the
20 department shall provide the speaker of the council and the board of correction all such reports for
21 the preceding quarter and shall post all such reports on the department's website with any
22 identifying information redacted. Beginning July 15, 2024, and within 15 days of the end of each
23 subsequent quarter, the department shall provide to the speaker of the council and the board of

1 correction a report on the total number of lock-ins occurring during the preceding quarter, the areas
2 affected by each such lock-in, the length of each such lock-in and number of incarcerated people
3 subject to each such lock-in, disaggregated by race, age, gender identity, mental health treatment
4 level and length of time in cell confinement.
5 k. Incarcerated persons under the age of 22 shall receive access to trauma-informed, age-
6 appropriate programming and services on a consistent, regular basis.
7 § 2. This local law takes effect 180 days after it becomes law. The board of correction shall
8 take any actions necessary for the implementation of this local law, including the promulgation of
9 rules relating to procedures and penalties necessary to effectuate this section before such date.
10

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<u>Appendix B - *Nunez* Implications of the City Council Bill 549-A</u>

This document provides an assessment of the implications of Bill 549-A to the *Nunez* Court Orders. This document identifies areas where Bill 549-A may diverge from the requirements of the Nunez Court Orders. This document is intended to be evaluated in conjunction with the Monitoring Team's analysis of the bill provided in the main document. This is not intended to be an exhaustive list.

- **<u>Management of Incarcerated Individuals Following Serious Incidents of Violence</u>**: The provisions of the bill include requirements that will not permit DOC to safely and adequately manage those incarcerated individuals that have engaged in serious acts of violence and pose a heightened security risk to the safety of other incarcerated individuals and staff, are not consistent with sound correctional practice, and do not permit adequate protections from harm.
    - The requirements of Bill 549-A do not comply with:
        - Action Plan, § E, ¶ 4 *Management of Incarcerated Individuals Following Serious Incidents of Violence*;
        - Second Remedial Order ¶ 1(i)(e) *Immediate Security Protocols—Post-Incident Management*;
        - Action Plan, § D, ¶ 2(h) *Improved Security Protocols—Post-Incident Management Protocol.*
    - Approval of the Monitor:
        - Action Plan, § E, ¶ 4 requires the approval of the Monitor. The Monitor cannot approve any programs by the Department related to the management of incarcerated individuals following serious incidents of violence that include the problematic requirements of Bill 549-A because they are not consistent with sound correctional practice and are unsafe.
    - Direction of the Monitor:
        - If a Post-Incident Management Protocol (Action Plan, § D, ¶ 2(h)) were to be developed incorporating the problematic requirements of Bill 549-A, the Monitor, pursuant to Action Plan § D, ¶ 3 (*Consultation & Direction of the Monitor*), will require and direct the Department to, among other requirements, ensure the individual is separated from other potential victims until they no longer pose a security threat, ensure that these programs place some limitation on out-of-cell time that differs from that afforded to the general population, and ensure that continued placement in the housing unit is based on the individual's engagement in programming and an assessment of their continued risk of harm. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.
- **<u>Restraints and Escorts</u>**: The provisions of the bill include requirements that do not reflect the proper use of restraints or escort procedures and are not consistent with sound correctional practice and do not permit adequate protections from harm.

- The requirements of 549-A do not comply with:
  - Consent Judgment, § IV, ¶ 3(p) *Use of Force Policy—Restraints*;
  - Second Remedial Order ¶ 1(i)(a) *Security Plan (escorted movement with restraints when required)*;
  - Action Plan, § D, ¶ 2(a) *Improved Security Initiatives—Security Plan*;
  - Action Plan, § D, ¶ 2(f) *Improved Security Initiatives—Escort Techniques*;
  - August 10, 2023 Order, § I, ¶ 3 *Revise Escort Procedures.*
- Approval of the Monitor:
  - Consent Judgment, § IV, ¶ 3(p) and August 10, 2023 Order, § I, ¶ 3 require the approval of the Monitor. The Monitor cannot approve the use of restraints or escorted movement that include the problematic requirements of Bill 549-A because they are not consistent with sound correctional practice and are unsafe.
- Direction of the Monitor:
  - If the use of restraints and escorted movement (Action Plan § D, ¶ 2(a) and (f)) were to be developed incorporating the requirements of Bill 549-A, the Monitor, pursuant to Action Plan § D, ¶ 3 (*Consultation & Direction of the Monitor*), will require and direct the Department to, among other things, ensure proper use of routine restraints, ensure that there is a distinction between the use of routine and enhanced restraints, ensure that reasonable and sound correctional standards for the use of restraints are imposed, and ensure that an individual in restraints is not placed in a vulnerable situation with individuals who are not in restraints. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **De-escalation**: The provisions of the bill include requirements that reflect (a) arbitrary limitations on the use of de-escalation, (b) conditions that are not conducive to the de-escalation, and (c) do not promote adequate protections from harm.
  - The requirements of 549-A do not comply with:
    - First Remedial Order, § A, ¶ 3 *Revised De-escalation Protocol*;
    - Action Plan, § D, ¶ 2 (b) *Improved Security Initiatives* (first sentence);
    - Action Plan § E, ¶ (4) *Management of Incarcerated Individuals Following Serious Incidents of Violence,* and therefore cannot be approved by the Monitor.
  - Approval of the Monitor:
    - First Remedial Order, § A, ¶ 3 and Action Plan § E, (4) require the approval of the Monitor. The Monitor cannot approve the use a de-escalation protocol that includes the problematic requirements of Bill 549-

A because they are not consistent with sound correctional practice and are unsafe.

- Direction of the Monitor:
  - If the use of de-escalation protocols (Action Plan, § D, ¶ 2 (b)) were to be developed incorporating the requirements of Bill 549-A, the Monitor, pursuant to Action Plan § D, ¶ 3 (*Consultation & Direction of the Monitor*), will require and direct the Department to, among other things, (a) set reasonable limitations on de-escalation which can be extended beyond 4 hours should there be a continuing risk of imminent harm and (b) ensure the conditions of the de-escalation unit do not pose a risk of harm to the individual or others. Pursuant to Action Plan § D, ¶ 3, the Department must implement the requirements from the Monitor.

- **Emergency Lock-Ins**: The provisions of the bill include requirements that reflect arbitrary limitations on the use of emergency lock-ins create dangerous and unsafe conditions and are not consistent with sound correctional practice and do not permit adequate protections from harm.
  - The requirements of 549-A do not comply with:
    - August 10, 2023 Order, § I, ¶ 4 *Lock-in and Lock-out Procedures.*
  - Approval of the Monitor:
    - August 10, 2023 Order, § I, ¶ 4 requires the approval of the Monitor. The Monitor cannot approve the emergency lock-in procedures that include the problematic requirements of Bill 549-A because they are not consistent with sound correctional practice and are unsafe.

Appendix C – Definitions of Solitary Confinement

The chart below contains a number of definitions of solitary confinement from various reputable sources. There is no universal, standard definition of solitary confinement, and the practice can be described by various different names (including restrictive housing). However, it is critical to note that the term solitary confinement includes three basic elements regardless of how it is labeled: (1) confinement in cell for 20-24 hours, (2) for prolonged periods of time (e.g. 15 days), (3) affords little human contact and no congregate engagement, and (4) does not provide access to programming.

Source	Definition
UN General Assembly, *United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) : resolution / adopted by the General Assembly*, Dec. 17 2015, A/RES/70/175, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/443/41/PDF/N1544341.pdf	"Rule 43: 1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited: (a) Indefinite solitary confinement; (b) Prolonged solitary confinement; (c) Placement of a prisoner in a dark or constantly lit cell; (d) Corporal punishment or the reduction of a prisoner's diet or drinking water; (e) Collective punishment. 2. Instruments of restraint shall never be applied as a sanction for disciplinary offences. 3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order." "Rule 44: For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days."
HALT Solitary Confinement Act, N.Y. Consol. Laws, Corr. Law § 2.23	"'Segregated confinement' means the confinement of an incarcerated individual in any form of cell confinement for more than seventeen hours a day other than in a facility-wide emergency or for the purpose of providing medical or mental health treatment. Cell confinement that is implemented due to medical or mental health treatment shall be within a clinical area in the correctional facility or in as close proximity to a medical or mental health unit as possible."
Isolated Confinement Restriction Act, N.J. Rev. Stat. § 30:4-82.7	"'Isolated confinement' means confinement of an inmate in a correctional facility, pursuant to disciplinary, administrative, protective, investigative, medical, or other classification, in a cell or similarly confined holding or living space, alone or with other inmates, for approximately 20 hours or more per day in a State correctional facility or 22 hours or more per day in a county correctional facility, with severely restricted activity, movement, and social interaction. Isolated confinement shall not include confinement due to a facility-wide or unit-wide lockdown that is required to ensure the safety of inmates and staff. 'Less restrictive intervention' means a placement or conditions of confinement, or both, in the current or an alternative correctional facility, under conditions less restrictive of an inmate's movement, privileges, activities, or social interactions."
Conn. Gen. Stat. § 18-96b(7)	"'Isolated confinement' means any form of confinement of an incarcerated person within a cell, except during a facility-wide health treatment, with less than the following time out of cell: (A) For all incarcerated persons, four hours per day, on and after July 1, 2022; (B) For all incarcerated persons in the general population, four and a half hours per day, on and after October 1, 2022; and (C) For all incarcerated persons in the general population, five hours per day, on and after April 1, 2023"

Source	Definition
Mass. Gen. Laws ch. 127, § 1	"'Restrictive Housing', a housing placement where a prisoner is confined to a cell for more than 22 hours per day; provided, however, that observation for mental health evaluation shall not be considered restrictive housing."
Va. Code. § 53.1-39.2	"'Restorative housing' means special purpose bed assignments operated under maximum security regulations and procedures and utilized for the personal protection or custodial management of an incarcerated person… B. No incarcerated person in a state correctional facility shall be placed in restorative housing unless (i) such incarcerated person requests placement in restorative housing with informed voluntary consent, (ii) such incarcerated person needs such confinement for his own protection, (iii) there is a need to prevent an imminent threat of physical harm to the incarcerated person or another person; or (iv) such person's behavior threatens the orderly operation of the facility, provided that: 1. When an incarcerated person makes a request to be placed in restorative housing for his own protection, the facility shall bear the burden of establishing a basis for refusing the request; 2. An incarcerated person who is in restorative housing for his own protection based on his request or with his informed voluntary consent may opt out of restorative housing by voluntarily removing his consent to remain in restorative housing by providing informed voluntary refusal; 3. An incarcerated person placed in restorative housing for his own protection (i) shall receive similar opportunities for activities, movement, and social interaction, taking into account his safety and the safety of others, as are provided to incarcerated persons in the general population of the facility and (ii) his placement shall be reviewed for assignment into protective custody; 4. An incarcerated person who has been placed in restorative housing for his own protection and is subject to removal from such confinement, not by his own request, shall be provided with a timely and meaningful opportunity to contest the removal; and 5. An incarcerated person who has been placed in restorative housing shall be offered a minimum of four hours of out-of-cell programmatic interventions or other congregate activities per day aimed at promoting personal development or addressing underlying causes of problematic behavior, which may include recreation in a congregate setting, unless exceptional circumstances mean that doing so would create significant and unreasonable risk to the safety and security of other incarcerated persons, the staff, or the facility."
Colo. Rev. Stat. § 17-26-302 and § 17-26-303	§ 17-26-302 (6): "'Restrictive housing' means the state of being involuntarily confined in one's cell for approximately twenty-two hours per day or more with very limited out-of-cell time, movement, or meaningful human interaction whether pursuant to disciplinary, administrative, or classification action." § 17-26-303 (i)(II): "If a local jail wants to hold an individual placed in restrictive housing pursuant to subsection (2)(a) of this section for more than fifteen days in a thirty-day period, the local jail must obtain a written court order. A court shall grant the court order if the court finds by clear and convincing evidence that: (A) The individual poses an imminent danger to himself or herself or others; (B) No

Source	Definition
	alternative less-restrictive placement is available; (C) The jail has exhausted all other placement alternatives; and (D) No other options exist, including release from custody."
Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rec(2006)2, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016809ee581	"60.6.a *Solitary confinement, that is the confinement of a prisoner for more than 22 hours a day without meaningful human contact*, shall never be imposed on children, pregnant women, breastfeeding mothers or parents with infants in prison." [emphasis added]
Alison Shames et al., Solitary Confinement: Common Misconceptions and Emerging Alternatives, Vera Institute of Justice (May 2015), https://www.vera.org/downloads/publications/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf	"All prisons and many jails in the United States use some form of solitary confinement. Whatever the label, the experience for the person is the same—confinement in an isolated cell (alone or with a cellmate) for an average of 23 hours a day with limited human interaction, little constructive activity, and in an environment that ensures maximum control over the individual. When sources cited in this report refer to the practice as solitary confinement, the authors do as well. Otherwise, consistent with American Bar Association standards, 'segregated housing' is used as the generic term for the practice."
Am. Academy of Child & Adolescent Psychiatry, Juvenile Justice Reform Comm., *Solitary Confinement of Juvenile Offenders* (Apr. 2012), https://www.aacap.org/AACAP/Policy_Statements/2012/Solitary_Confinement_of_Juvenile_Offenders.aspx	"Solitary confinement is defined as the placement of an incarcerated individual in a locked room or cell with minimal or no contact with people other than staff of the correctional facility. It is used as a form of discipline or punishment…Solitary confinement should be distinguished from brief interventions such as "time out," which may be used as a component of a behavioral treatment program in facilities serving children and/or adolescents, or seclusion, which is a short term emergency procedure, the use of which is governed by federal, state and local laws and subject to regulations developed by the Joint Commission, CARF and supported by the National Commission of Correctional Healthcare (NCHHC), the American Correctional Association (ACA) and other accrediting entities. The Joint Commission states that seclusion should only be used for the least amount of time possible for the immediate physical protection of an individual, in situations where less restrictive interventions have proven ineffective. The Joint Commission specifically prohibits the use of seclusion "as a means of coercion, discipline, convenience or staff retaliation." A lack of resources should never be a rationale for solitary confinement."

Source	Definition
Am. Civ. Liberties Union, *The Dangerous Overuse of Solitary Confinement in the United States* (Aug. 2014), https://www.aclu.org/publications/dangerous-overuse-solitary-confinement-united-states	"Solitary confinement is the practice of placing a person alone in a cell for 22 to 24 hours a day with little human contact or interaction; reduced or no natural light; restriction or denial of reading material, television, radios or other property; severe constraints on visitation; and the inability to participate in group activities, including eating with others. While some specific conditions of solitary confinement may differ among institutions, generally the prisoner spends 23 hours a day alone in a small cell with a solid steel door, a bunk, a toilet, and a sink."
Am. Civ. Liberties Union of Maine, *Change is Possible: A Case Study of Solitary Confinement Reform in Maine* (March 2023), https://www.aclumaine.org/sites/default/files/field_documents/aclu_solitary_report_webversion.pdf	"Solitary confinement is the practice of isolating a prisoner in a cell for 22-24 hours per day, with extremely limited human contact; reduced (sometimes nonexistent) natural lighting; severe restrictions on reading material, televisions, radios, or other physical property that approximates contact with the outside world; restrictions or prohibitions on visitation; and denial of access to group activities, including group meals, religious services, and therapy sessions."
Amnesty Int'l., *Solitary Confinement in the USA* (Nov. 2013), https://www.amnesty.org/en/documents/amr51/076/2013/en/	"Amnesty International uses the terms 'solitary confinement' and 'isolation' to refer to prisoners who are confined to cells for 22-24 hours a day with minimal contact with other human beings, including guards and prison staff."
Andreea Matei, *Solitary Confinement in US Prisons*, Urban Institute (Aug. 2022), https://www.urban.org/sites/default/files/2022-08/Solitary%20Confinement%20in%20the%20US.pdf	"Although solitary confinement differs between institutions, it is commonly defined as the isolation of a person in a cell for an average of 22 or more hours a day… People in solitary are typically allowed to leave their cells only to shower and for one hour of recreation and are separated during both from the general prison population."
Ass'n. for the Prevention of Torture, Solitary Confinement, https://www.apt.ch/knowledge-hub/dfd/solitary-confinement [last visited 1/10/24]	"Solitary confinement consists in keeping an inmate alone in a cell for over 22 hours a day. Because of the harmful effect on the person's physical and mental well-being, solitary confinement should only be used in exceptional circumstances. It should be strictly supervised and used only for a limited period of time."
Int'l. Psychological Trauma Symposium, *The Istanbul Statement on the Use and Effects of Solitary Confinement* (Dec. 9, 2007),	"Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The

Source	Definition
https://www.solitaryconfinement.org/_files/ugd/f33fff_74566ecc98974f8598ca852e854a50cd.pdf	reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social contacts are seldom freely chosen, are generally monotonous, and are often not empathetic."
Nat'l. Comm'n. on Corr. Health Care, *Position Statement: Solitary Confinement* (Apr. 2016), https://www.ncchc.org/wp-content/uploads/Solitary-Confinement-Isolation.pdf	"Solitary confinement is the housing of an adult or juvenile with minimal to rare meaningful contact with other individuals. Those in solitary confinement often experience sensory deprivation and are offered few or no educational, vocational, or rehabilitative programs. Different jurisdictions refer to solitary confinement by a variety of terms, such as isolation; administrative, protective, or disciplinary segregation; permanent lockdown; maximum security; supermax; security housing; special housing; intensive management; and restrictive housing units. Regardless of the term used, an individual who is deprived of meaningful contact with others is considered to be in solitary confinement."
Penal Reform Int'l., Solitary Confinement, https://www.penalreform.org/issues/prison-conditions/key-facts/solitary-confinement/ [last visited 1/10/24]	"While there is no universally agreed definition of solitary confinement – often also called 'segregation', 'isolation', 'lockdown' or 'super-max' – it is commonly understood to be the physical isolation of individuals who are confined to their cells for 22 to 24 hours a day, and allowed only minimal meaningful interaction with others."
Ryan Labrecque, *The Effect of Solitary Confinement on Institutional Misconduct: A Longitudinal Evaluation* (2015), https://www.ojp.gov/pdffiles1/nij/grants/249013.pdf	"Although the physical conditions and routines of SC vary by setting and situation, the practice typically includes 22-23 hour a day lockdown with few physical amenities and treatment services made available to inmates… By comparison, inmates living in the general prison population have greater access to various activities (i.e., programming, recreation), which affords them a degree of meaningful social interaction."
Ryan Sakoda and Jessica Simes, *Solitary Confinement and the U.S. Prison Boom*, 32(1) Criminal Justice Policy Review, 1 (2019)	"A particularly harsh form of captivity, solitary confinement involves confining an individual to a prison cell for 22 to 24 hours a day and isolating them from the prison's general population. Individuals in solitary confinement have highly restricted access to visitation, phone calls, showers, programs, and free movement outdoors."
Sharon Shalev, *A Sourcebook on Solitary Confinement*, Mannheim Centre for Criminology (2008), https://www.solitaryconfinement.org/_files/ugd/f33fff_18782e47330740b28985c5fe33c92378.pdf?index=true	"For the purpose of the Sourcebook, solitary confinement is defined as a form of confinement where prisoners spend 22 to 24 hours a day alone in their cell in separation from each other."
Solitary Watch, Solitary Confinement in the United States:	"Solitary confinement is the practice of isolating people in closed cells for as much as 24 hours a day, virtually free of human contact, for periods of time ranging from days to decades."

Source	Definition
The Facts, https://solitarywatch.org/facts/faq/ [last visited 1/10/24]	
U.S. Dep't. of Justice, *Report and Recommendations Concerning the Use of Restrictive Housing: Executive Summary* (Jan. 2016), https://www.justice.gov/archives/dag/file/815551/download	"The most recognizable term for inmate segregation—'solitary confinement'—is disfavored by correctional officials, in part because it conjures a specific, and in some cases misleading, image of the practice. Not all segregation is truly 'solitary,' at least in the traditional sense of the word. Many prison systems, including the Bureau, often house two segregated inmates together in the same cell, a practice known as 'double-celling.' To avoid this confusion, the Report adopts the more general terms, "restrictive housing" and 'segregation.' For the purposes of this Report, we define 'restrictive housing' as any type of detention that involves three basic elements: • Removal from the general inmate population, whether voluntary or involuntary; • Placement in a locked room or cell, whether alone or with another inmate; and • Inability to leave the room or cell for the vast majority of the day, typically 22 hours or more."
World Med. Ass'n. Statement on Solitary Confinement (Sep. 28, 2020), https://www.wma.net/policies-post/wma-statement-on-solitary-confinement/	"Solitary confinement is a form of confinement used in detention settings where individuals are separated from the general detained population and held alone in a separate cell or room for upwards of 22 hours a day. Jurisdictions may use a range of different terms to refer to the process (such as segregation, separation, isolation or removal from association) and the conditions and environment can vary from place to place. However, it may be defined or implemented, solitary confinement is characterised by complete social isolation; a lack of meaningful contact; and reduced activity and environmental stimuli… Solitary confinement can be distinguished from other brief interventions when individuals must be separated as an immediate response to violent or disruptive behaviour or where a person must be isolated to protect themselves or others. These interventions should take place in a non-solitary confinement environment."

Exhibit C

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

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July 17, 2024

Via Email

Commissioner Lynelle Maginley-Liddie
Department of Correction
75-20 Astoria Boulevard, Suite 350
East Elmhurst, NY 11370

Dear Commissioner Maginley-Liddie,

We write in response to your request, pursuant to the *Nunez* Court Orders,[1] for updated advice and feedback from the Monitoring Team on how the requirements of Local Law 42 ("LL42") may impact the Department's ability to comply with the *Nunez* Court Orders. This letter shares some additional advice and feedback since the Monitoring Team's January 12, 2024 letter, but as described below, we believe further consultation is necessary in order to create a more detailed framework for considering LL42's implications for the *Nunez* Court Orders.

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[1] *See*, Consent Judgment, § XX, ¶¶ 24 and 25 and June 13, 2023 Order, § I, ¶ 5. Combined, these provisions: (1) permit the Department to request the Monitor provide technical assistance or consultation on the Department's efforts to implement the requirements of the *Nunez* Court Orders, (2) permit the Department to request the Monitor provide a written response to a request regarding the Department's compliance with the *Nunez* Court Orders, and (3) requires the Department to proactively consult with the Monitor on any policies or procedures that relate to the compliance with the *Nunez* Court Orders in order to obtain the Monitor's feedback on these initiatives. The Monitor has addressed similar issues in the past. *See*, for example, the Monitor's March 5, 2018 Report (dkt. 309), the Monitor's October 31, 2018 (dkt. 319) letter to the Court, and the Monitor's June 30, 2022 Report (dkt. 467) at pgs. 22 to 27.

Collectively, the Monitoring Team has over 100 years' experience in developing *safe* alternatives to solitary confinement and in helping jurisdictions to formulate reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings. The Monitoring Team also has extensive expertise and understanding of the Department's operations. As you know, the *Nunez* Court Orders require the Monitor to approve policies that impact on a variety of issues, many of which are affected by the various requirements of LL42. The Monitoring Team believes more detailed discussions are necessary before the Monitor can make any final determinations regarding which policies and procedures required by LL42 (and the corresponding Board of Correction rules that were recently passed) would or would not receive Monitor approval as required by the *Nunez* Court Orders.

This letter first includes background on LL42, followed by a candid assessment of the current limitations that, in our view, indicate that attempting to implement LL42 at this time would be ill-advised as it would be dangerous and would subject incarcerated individuals and staff to further risk of harm. Next, this letter addresses potential conflicts between LL42 and the *Nunez* Court Orders and advises that further analysis is needed to provide a fulsome account of each of LL42's requirements that may conflict with the Monitoring Team's expert opinions regarding sound correctional practice, facility safety, and management of persistently violent detainees. Finally, the letter recommends next steps for addressing any potential conflicts and potential motion practice before the Court.

Background

The City Council passed Local Law 42 on December 20, 2023. The bill was subsequently vetoed by the Mayor of New York on January 19, 2024, but was then signed into law by the City

Council on January 30, 2024, overriding the Mayor's veto. LL42 bans the use of solitary confinement, imposes 14-hours of mandatory out of cell time for all incarcerated individuals, and sets additional requirements for the use of restrictive housing, de-escalation, emergency lock-ins, and restraints and specific conditions for special housing units (*e.g.,* mental health units, contagious disease units, housing for people who are transgender or gender non-conforming, protective custody units, and housing to promote school attendance). The implementation deadline for LL42 is July 28, 2024.

In early January 2024, pursuant to the *Nunez* Court Orders,[2] you requested the Monitoring Team's advice and feedback on how the requirements of LL42 may impact the Department's ability to comply with the *Nunez* Court Orders. On January 12, 2024, the Monitoring Team provided its assessment of LL42's implications for the City's and Department's efforts to address the unsafe conditions in the jails, to protect individuals from harm, and to implement sound correctional practices, all of which are necessary to comply with the *Nunez* Court Orders. Subsequently, the Monitoring Team has had multiple discussions with your office and other Department officials regarding these matters.

In late May/early June 2024, the Department advised the Monitoring Team (and subsequently the Parties to the *Nunez* litigation) that it was considering seeking relief from LL42's requirements via the Court in the *Nunez* matter given the Department's concerns that LL42's requirements may impede the Department's ability to comply with the *Nunez* Court Orders in a number of key areas. Likewise, the City advised the Court of its intentions in a letter dated June 5, 2024 (dkt. 724). Following the submission of the City's letter to the Court, the

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[2] *Id.*

Monitoring Team and the *Nunez* Parties met and conferred on June 18, 2024. Subsequently, the Monitoring Team has had numerous discussions with the Department and representatives for the Plaintiff Class and the Southern District of New York regarding these matters.[3]

Summary of Local Law 42 & Department's Ability to Implement Local Law 42

Local Law 42 is a well-intentioned effort to ensure that no person in the Department's custody is subjected to solitary confinement.[4] Eliminating solitary confinement is unquestionably necessary and important for ensuring the humane treatment of people in custody. LL42 also includes many operational requirements that go beyond eliminating solitary confinement. Moreover, LL42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually result in an increased risk of harm to other incarcerated individuals and staff. The Monitoring Team has grave concerns about the Department's ability to safely implement LL42, particularly given the timeline. Among these concerns are:

1. **Eliminates Essential and Critical Managerial Discretion.** An overarching concern of the Monitoring Team is that the requirements of LL42 impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary. For

[3] Lawyers for the City Council have scheduled a meeting with the Monitoring Team that will take place in the coming days.

[4] For purposes of this communication, the Monitoring Team adopts the United Nations definition of solitary confinement as 22 hours or more per day without meaningful human contact. *See*, the United Nations Standard Minimum Rules for Treatment of Prisoners, Rule 44.

example, unqualified release from de-escalation confinement in 4 hours; a universal 4-hour limitation on emergency lock-ins; and a requirement that, "in all circumstances" the Department must discharge an incarcerated person from restrictive housing within 30 days. Other provisions in LL42 are ostensibly intended to provide safeguards to those placed in restrictive housing, but absolutely bar correctional managers from exercising necessary discretion to address the risk of harm that may be present to the incarcerated individual in question, other incarcerated individuals, and staff. There is simply no question that situations arise in correctional settings where an immediate risk of harm must be addressed regardless of arbitrarily imposed limitations that preclude management from addressing the immediate security threat. In application, these provisions that preclude any discretion will in some instances put other incarcerated individuals and staff at greater risk of harm.

2. **Lack of a Proper Foundation to Support Implementation**. The Monitor's Reports to date have repeatedly found that the Department does not have the necessary foundation to support the *basic* reforms required by the *Nunez* Court Orders. Without reliable adherence to basic security practices, robust protocols for properly deploying and supervising staff, strategies to appropriately manage the incarcerated population, and effective staff accountability, the Department is at present not equipped to safely implement LL42.

3. **Truncated Implementation Timeline**. As the current state of compliance with the *Nunez* Court Orders has brought into stark relief, simply articulating a set of requirements does not create the capacity to properly implement those requirements. In the Monitoring Team's experience, it is not uncommon for jurisdictions to need a

considerable amount of time to lay the groundwork to develop and implement more complex reforms. For example, the Use of Force Directive required by the Consent Judgment was finalized over a year before it was implemented in order to ensure that ancillary supports were properly prepared, and that staff received necessary training on any resulting changes to procedures. Even with a lengthy implementation timeline, the Department has struggled to properly implement the Use of Force Directive's requirements. Whether preparing to implement a court-ordered requirement or a new law, the planning tasks remain the same: evaluating the operational impact, updating policies and procedures, updating the physical plant, determining the necessary staffing complement, developing training materials, and providing training to thousands of staff, all of which must occur before the changes in practice actually go into effect. Rules supporting LL42's implementation were passed by the Board of Correction on June 25, 2024, just one month before LL42 is scheduled to go into effect. As noted above, the Department does not have the requisite foundation to undertake most of the necessary planning tasks, and attempting to do so in just one month's time all but guarantees that the planning will not be as comprehensive or thoughtful as the scope and magnitude of the changes require. Further, the necessary training simply cannot be developed and deployed within such a time frame. The Monitoring Team has long advised that attempting to make significant changes within unreasonable time frames does not support the development of sustainable reforms and often creates a greater risk of harm.

4. **The Department is Not Prepared**. Given the Department's lack of foundation to implement LL42 and the truncated timeline for implementation outlined above,

unsurprisingly, the Department's leadership has reported the Department is not ready to implement this law. More specifically, the Department has not developed the necessary policies, procedures or training to support the requirements of LL42 and thus is not in a secure position to attempt implementation. The fact that those who operate the facilities state they are unprepared and also believe certain aspects of LL42 to be unsafe cannot be ignored, and only serves to further heighten the Monitoring Team's concerns regarding the ongoing risk of harm and the safety of those in the Department's custody and those working in the Department's facilities.

Although the nuances in each jurisdiction differ, the universal reality is that increasing facility safety is a complicated endeavor rife with potential pitfalls. When efforts to reform practices are subject to unreasonably short and absolute timelines and include other requirements that may run counter to standard and sound correctional practice, well-intended reforms can lead to unintended consequences that jeopardize, rather than protect, the safety of incarcerated individuals and staff. Under the current conditions and level of readiness, attempting to implement a complex law that fundamentally changes many of the Department's standard practices and that requires changes that conflict with standard sound correctional practices would increase the risk of harm to incarcerated individuals and staff and therefore would be dangerous for those incarcerated and work in the jails.

LL42's Potential Conflicts with Nunez Requirements

Under the *Nunez* Court Orders, the Department has an obligation to implement sound correctional practices and to obtain the Monitor's approval of key policies and procedures. This

includes requirements related to security practices,[5] the use of restraints,[6] escorts,[7] lock-in and lock-out time,[8] de-escalation,[9] initial procedures following a serious act of violence[10] and subsequent housing strategies.[11]

The question of whether the Department can implement LL42 safely and comply with the *Nunez* Court Orders is of the utmost importance because of the direct impact on the safety of all those incarcerated and working in the jails. With respect to the elimination of solitary confinement, the Department reports that it does not utilize solitary confinement (i.e., 22 hours or more per day in a locked cell and without meaningful human contact), but a number of the provisions in LL42 would drastically alter many of the Department's practices. For instance, several of LL42's requirements would impact the Department's core strategy for addressing violent misconduct—its restrictive housing program. Furthermore, the Department routinely utilizes practices (e.g., restraint, de-escalation, mental health units, protective custody, to name a few) that currently include requirements aligned with standard sound correctional practice but that differ from the requirements of LL42, in some cases significantly and dangerously. Certain programs and practices currently in use or that are under development at the Department would require significant alteration, or in some instances would need to be eliminated, as a result of the requirements of LL42.

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[5] *See* Action Plan § D, ¶ 3 in which the Monitor may direct the Department to refine certain security initiatives to ensure compliance with security requirements of the Action Plan.

[6] *See* Consent Judgment, § IV, ¶ 3(p).

[7] *See* Action Plan, § D, ¶ 2(f) and August 10, 2023 Order, § I, ¶ 3.

[8] *See* August 10, 2023 Order, § I, ¶ 4.

[9] *See* First Remedial Order, § A, ¶ 3 and Action Plan, § D, ¶ 2(b).

[10] *See* Second Remedial Order ¶ 1(i)(e), Action Plan, § D, ¶ 2(h)

[11] *See* Action Plan, § E, ¶ 4.

In January 2024, the Monitoring Team provided the Department with a list of potential conflicts between the requirements of LL42 and the requirements of *Nunez* Court Orders, stressing that implementing LL42's requirements could undercut the Department's ability to achieve compliance in *Nunez*. Given the breadth and complexity of LL42's requirements, extensive consultation with, and ultimately approval from, the Monitor is necessary in order to ensure that the Department's approach to satisfying the *Nunez* requirements is aligned with sound correctional practice. [12]

Recently, the City and the Department engaged the Monitoring Team to explore these issues and potential conflicts in more detail. Fully understanding LL42's requirements and the BOC's respective rules (which were only just passed) in each of the areas listed above (and others that the Monitoring Team may yet identify) and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking. Each facet is complex and nuanced and must be dissected among those with operational expertise and experience with advancing reform in order to determine where conflicts may exist. If LL42 requires a certain practice that the Monitor determines is not consistent with the requirements of the *Nunez* Court Orders (e.g. the practice is not consistent with sound correctional practice or creates heightened risk of harm), the Monitor may not approve the relevant Department policy, and thus the Department will remain out of compliance with the relevant aspect of the *Nunez* Court Orders.

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[12] Consultation with the Monitor is required by over 80 provisions in the *Nunez* Court Orders. Consultation is also required by the Court's June 13, 2023 Order, § I, ¶ 5.

Recommended Next Steps

The work to identify the practices at issue has started, but extensive discussion and additional time are needed to complete this assessment. The Department and the Monitoring Team must continue to work to identify the requirements of LL42 that, if implemented, may conflict with the *Nunez* Court Orders. Once a more detailed framework of the LL42 requirements that conflict with the *Nunez* Court Orders has been created, the *Nunez* Parties, counsel for the City Council, and the Monitoring Team must meet and confer to determine how to best address the divergence. Given the complexity of the task and the fact that the practices at issue have a direct impact on facility safety, the process must go forward using a detailed, methodical approach. This process will take time in order to arrive at decisions that are grounded in sound correctional expertise and that navigate the complex jurisdictional issues. In addition, several other important legal matters are currently pending before the Court that require the attention of the Department, the *Nunez* Parties, and the Monitoring Team, which must be recognized and accounted for as part of this process.[13] Accordingly, the Monitoring Team recommends that the work outlined in this letter is undertaken between now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice.

We look forward to working with you and your team on these important matters.

Sincerely,

s/ Steve J. Martin
Steve J. Martin, *Monitor*
Anna E. Friedberg, *Deputy Monitor*

[13] For example, the Court has directed the Parties and the Monitoring Team to meet and confer in late August and early September on matters related to the Motion for Contempt. *See* July 11, 2024 Court Order (dkt. 751).

APPENDIX F:
MAYOR'S EMERGENCY EXECUTIVE ORDERS 624, 625, 735 & 736

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

EMERGENCY EXECUTIVE ORDER NO. 624

July 27, 2024

DECLARATION OF LOCAL STATE OF EMERGENCY

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York,* 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, the New York City Council ("City Council") has enacted Local Law 42 of 2024, as codified in the Administrative Code of the City of New York at section 9-167 ("Local Law 42"), which is to take effect on July 28, 2024; and

WHEREAS, Local Law 42 severely limits the use of restrictive housing, de-escalation confinement, restraints in movement and transportation, and emergency lock-ins, among other things, for persons in the custody of DOC, and significantly impacts operational procedures regarding, among other things, the management and housing of individuals following serious acts of violence; and

WHEREAS, prior to the passage of Local Law 42, DOC testified before City Council, conveying that terms of the proposed local law conflicted with the *Nunez* Court Orders with which DOC must comply and would remove key tools necessary to mitigate the risk of violence in DOC facilities, endanger DOC staff and persons in custody, and likely result in an increase in violence in DOC facilities; and

WHEREAS, on December 20, 2023, notwithstanding DOC's testimony and public safety concerns, the City Council voted to pass Local Law 42; and

WHEREAS, pursuant to the *Nunez* Court Orders, on January 5, 2024, DOC requested that the Monitor advise and provide feedback to DOC on how the requirements of Local Law 42 would impact DOC's ability to comply with the *Nunez* Court Orders; and

WHEREAS, on January 12, 2024, the Monitor expressed deep concerns about the proposed local law and assessed that implementing Local Law 42 "could impede the Department's ability to comply with the *Nunez* Court Orders," and "inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff" [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at p. 2]; and

WHEREAS, on January 19, 2024, the Mayor vetoed Local Law 42, citing the serious public safety concerns previously identified by DOC and the Monitor;

WHEREAS, despite DOC's good faith engagement with the City Council, on January 30, 2024, the City Council voted to override the Mayor's veto of Local Law 42; and

WHEREAS, on June 5, 2024, DOC, through its attorneys at the New York City Law Department, advised the Honorable Judge Laura T. Swain, Chief Judge of the United States District Court for the Southern District of New York, who is the judge presiding over *Nunez*, that because many of the requirements of Local Law 42 conflict with aspects of the *Nunez* Court Orders, the City intended to move for an order suspending the requirements of Local Law 42 until such time as the Monitor approves DOC policies and programs addressing those requirements. The letter also noted DOC's intent to meet and confer with counsel for the *Nunez* parties in advance of filing the motion [*see* 11 CV 5845 (SDNY) Dkt. No. 724]. On June 7, 2024, Judge Swain endorsed the June 5 letter and directed the parties to meet and confer [*see* 11 CV 5845 (SDNY) Dkt. No. 726]; and

WHEREAS, on June 25, 2024, pursuant to Local Law 42, the New York City Board of Correction ("BOC") adopted rules relating to the implementation of the law; and

WHEREAS, in addition to a meet and confer that took place with the *Nunez* parties, DOC met and conferred with the City Council on several occasions in an effort to reach an agreement to temporarily stay, or to extend outward, the effective date of Local Law 42 in order to allow for further consultation between the *Nunez* parties, the Monitor and the City Council regarding the intersection between Local Law 42 and the City's obligations under the *Nunez* Court Orders; and

WHEREAS, despite these efforts, and despite the existence of the *Nunez* Court Orders, on July 15, 2024, the City Council informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, on July 17, 2024, the Monitor assessed Local Law 42 and wrote to DOC [*see* 11 CV 5845 (SDNY) Dkt. No. 758-3]:

- That "attempting to implement L[ocal] L[aw] 42 at this time … would be dangerous and would subject incarcerated individuals and staff to further risk of harm" [Dkt. No. 758-3 at p. 2]; and that

- L[ocal] L[aw] 42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually result in an increased risk of harm to other incarcerated individuals and staff" [Dkt. No. 758-3 at p. 4]; and that

- "the requirements of [. . . Local Law 42] impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary" [Dkt. No. 758-3 at p. 4, emphasis in original]; and that

- DOC is "at present not equipped to safely implement" Local Law 42; that the "truncated implementation timeline" for the significant changes required by Local Law 42 is "unreasonable"; and that the prospect of a rushed implementation of the Law "further heightens" concerns about the associated "risk of harm and the safety of those in the Department's custody and those working in the Department's facilities;" [Dkt. No. 758-3 at pgs. 5-6]; and that

- Local Law 42 would "drastically alter . . . [and] impact the Department's core strategy for addressing violent misconduct—its restrictive housing program" [Dkt. No. 758-3 at p. 8]; and that

- implementing the law as-is would "require[] changes that conflict with standard sound correctional practices … and therefore would be dangerous for those incarcerated and [who] work in the jails" [Dkt. No. 758-3 at p. 7]; and that

- approval from the Monitor "is necessary" because Local Law 42's requirements otherwise "could undercut the Department's ability to achieve compliance in *Nunez*" [Dkt. No. 758-3 at p. 9]; and that

- in the expert view of the Monitoring Team—which has "over 100 years' experience" in formulating "reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings"—additional time and careful work are needed to evaluate which requirements of Local Law 42 could be implemented without violating the *Nunez* Court Orders [Dkt. No. 758-3 at p. 2, 10]; and that

- the task of "[f]ully understanding [. . . the Law's] requirements and the BOC's respective rules (which were only just passed) . . . and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking"; and

WHEREAS, the Monitor therefore proposed:

- that, following the conclusion of the Monitor's analysis, the parties to the *Nunez* litigation, along with the Monitor and the counsel for the City Council, "must meet and confer" to determine how best to address any divergence between the requirements of the *Nunez* Court Orders and Local Law 42 [Dkt. No. 758-3 at pgs. 9-10]; and

- that given that "the practices at issue have a direct impact on facility safety," the Monitor recommends that such work be undertaken between "now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice" [Dkt. No. 758-3 at p. 10]; and

WHEREAS, DOC Commissioner Maginley-Liddie set forth to the *Nunez* Court, in a 17-page, detailed declaration dated July 22, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 758-1] why and how Local Law 42, if implemented as-is and at this time, would pose immediate dangers to public safety, including by:

- preventing DOC from transporting individuals to courts or hospitals in a safe manner because Local Law 42 places insurmountable burdens on DOC's ability to restrain incarcerated individuals during transport [Dkt. No. 758-1 at para. 34-40]; and

- preventing DOC from escorting individuals through jail, court, hospital and other public facilities in a safe manner Local Law 42 places insurmountable burdens on DOC's ability to use restraints during escorts [*id.*]; and

- preventing DOC and courthouse personnel from holding persons in custody at courthouses during lengthy court calendars that exceed several hours [Dkt. No. 758-1 at para. 22]; and

- preventing DOC from operating the Enhanced Supervision Housing Program, developed in close consultation with the Monitor for those individuals who have been found guilty after a disciplinary hearing of committing a violent offense, typically a slashing or stabbing or assault on staff [Dkt. No. 758-1 at para. 11-18]; and

- preventing DOC from holding restrictive housing hearings expeditiously by imposing additional requirements for such hearings that are likely to lead to delays in the completion of hearings and in placement of individuals [Dkt. No. 758-1 at para. 15-16]; and

- preventing DOC from providing adequate rehabilitative programming by limiting the time in such housing to 15 days as a general rule [Dkt. No. 758-1 at para. 15]; and

- preventing DOC from operating its Separation Status Housing Unit, which is used in those rare instances when a body scan reveals that an individual has secreted a weapon or drugs on their person and the individual refuses to relinquish the item [Dkt. No. 758-1 at para. 19-21]; and

- preventing DOC from exercising necessary discretion to maintain public safety during facility emergencies and housing area emergencies, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of emergency lock-ins to four hours and inflexibly mandates that individuals in custody be allowed to make phone calls during emergency lock-ins notwithstanding that such telephone access threatens to facilitate gang activity and violence within and outside the jails and poses significant safety and security risks [Dkt. No. 758-1 at para. 26-28]; and

- preventing DOC from employing lock-ins during searches, which undermines DOC's ability to perform safe and effective unannounced searches of the facilities, thereby eliminating an essential tool for DOC to rid its facilities of weapons and other contraband [Dkt. No. 758-1 at para. 29]; and

- preventing DOC from exercising necessary discretion in using effective de-escalation practices for the purpose of calming disruptive individuals and victims of violence, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of de-escalation confinement to four hours, even though circumstances sometimes arise in which a longer stay is necessary for safety, and it inflexibly mandates that persons in de-escalation confinement be allowed to make phone calls outside the facility, notwithstanding that it is dangerous and unsound correctional policy for a person who has engaged in a violent fight, particularly if the fight is gang-related, to be able to telephone their confederates to spread the word [Dkt. No. 758-1 at para. 30-33]; and

WHEREAS, Local Law 42 imposes significant other procedural requirements relating to the placement of individuals in restrictive housing and other jail operations that would pose a direct threat to the safety of incarcerated individuals and staff in DOC facilities and would, in the Monitor's assessment, "provide myriad opportunities for undue delay by the perpetrator of violence" before the Department could act to address the underlying conduct [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at 7], including procedural requirements that: restrict the use of de-escalation confinement in a manner that would prevent DOC from placing an individual in de-escalation confinement for their own protection when they have been the victim of a violent incident; prevent DOC from operating a safe and effective restrictive housing program by mandating an inflexible 14-hour out-of-cell requirement and limiting restrictive housing to no more than 30 consecutive days and no more than 60 days within any 12-month period; require DOC to immediately alert the public that a facility is on lock-down, notwithstanding that such a procedure would pose a significant threat to security in the facility; and require that an incarcerated individual be allowed to cross-examine witnesses during restrictive housing hearings, notwithstanding that such a procedure could place witnesses in danger; and

WHEREAS, DOC Commissioner Maginley-Liddie's declaration further states that DOC would be in an "inescapable bind" if Local Law 42 were to take effect at this time because

"[u]nder the Court's Orders in the *Nunez* case, [DOC] cannot modify its policies on restrictive housing, de-escalation units, emergency lock-ins and restraints without submitting the modification to the Monitor and waiting for his approval. Yet Local Law 42, if implemented, would radically modify our policies in those areas without the Monitor's approval" and in a manner that is dangerous [Dkt. No. 758-1 at para. 41]; and

WHEREAS, on July 22, 2024 DOC, through its attorneys at the New York City Law Department, sent a letter to Judge Swain, providing a status update on the work that had been taking place regarding Local Law 42 since the June 5 letter referenced above and attaching the assessments by both the Monitor and DOC Commissioner of the dangers of implementing Local Law 42 [*see* 11 CV 5845 (SDNY) Dkt. No. 758], and on July 23, 2024 Judge Swain endorsed the July 22 letter and directed the *Nunez* Defendants and the Monitoring Team to continue their focused analytical work concerning compliance with Local Law 42, as outlined in the July 17, 2024 letter from the Monitoring Team, and further directed the *Nunez* Defendants to file a status update regarding this work by October 25, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 759]; and

WHEREAS, on July 23, 2024, DOC again reached out to the City Council to ask that the City Council stay the effective date of Local Law 42 until these serious issues could be resolved, but in response to an inquiry from legal counsel to DOC, the City Council again informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, certain sections of Title 40 of the Rules of the City of New York have already been suspended by Emergency Executive Order No. 279, dated November 1, 2021, and remain suspended pursuant to subsequent renewals of such Emergency Executive Order; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, to avert immediate dangers to public safety for the limited period while the Monitoring Team completes their work as directed by Judge Swain, and until DOC is in a position to meet both its obligations under the *Nunez* Court Orders and Local Law 42;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. State of Emergency. A state of emergency is hereby declared to exist within the correction facilities operated by DOC because of the imminent effective date of Local Law 42 and the risks to health and safety that implementation of that law at this time and under current circumstances presents.

§ 2. The State of Emergency shall remain in effect for a period not to exceed thirty days or until rescinded, whichever occurs first. Additional declarations to extend the State of Emergency for additional periods not to exceed thirty days will be issued if needed.

§ 3. This Executive Order shall take effect immediately.

Eric Adams
Mayor

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

EMERGENCY EXECUTIVE ORDER NO. 625

July 27, 2024

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York,* 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, the New York City Council ("City Council") has enacted Local Law 42 of 2024, as codified in the Administrative Code of the City of New York at section 9-167 ("Local Law 42"), which is to take effect on July 28, 2024; and

WHEREAS, Local Law 42 severely limits the use of restrictive housing, de-escalation confinement, restraints in movement and transportation, and emergency lock-ins, among other things, for persons in the custody of DOC, and significantly impacts operational procedures regarding, among other things, the management and housing of individuals following serious acts of violence; and

WHEREAS, prior to the passage of Local Law 42, DOC testified before City Council, conveying that terms of the proposed local law conflicted with the *Nunez* Court Orders with which DOC must comply and would remove key tools necessary to mitigate the risk of violence in DOC facilities, endanger DOC staff and persons in custody, and likely result in an increase in violence in DOC facilities; and

WHEREAS, on December 20, 2023, notwithstanding DOC's testimony and public safety concerns, the City Council voted to pass Local Law 42; and

WHEREAS, pursuant to the *Nunez* Court Orders, on January 5, 2024, DOC requested that the Monitor advise and provide feedback to DOC on how the requirements of Local Law 42 would impact DOC's ability to comply with the *Nunez* Court Orders; and

WHEREAS, on January 12, 2024, the Monitor expressed deep concerns about the proposed local law and assessed that implementing Local Law 42 "could impede the Department's ability to comply with the *Nunez* Court Orders," and "inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff" [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at p. 2]; and

WHEREAS, on January 19, 2024, the Mayor vetoed Local Law 42, citing the serious public safety concerns previously identified by DOC and the Monitor;

WHEREAS, despite DOC's good faith engagement with the City Council, on January 30, 2024, the City Council voted to override the Mayor's veto of Local Law 42; and

WHEREAS, on June 5, 2024, DOC, through its attorneys at the New York City Law Department, advised the Honorable Judge Laura T. Swain, Chief Judge of the United States District Court for the Southern District of New York, who is the judge presiding over *Nunez*, that because many of the requirements of Local Law 42 conflict with aspects of the *Nunez* Court Orders, the City intended to move for an order suspending the requirements of Local Law 42 until such time as the Monitor approves DOC policies and programs addressing those requirements. The letter also noted DOC's intent to meet and confer with counsel for the *Nunez* parties in advance of filing the motion [*see* 11 CV 5845 (SDNY) Dkt. No. 724]. On June 7, 2024, Judge Swain endorsed the June 5 letter and directed the parties to meet and confer [*see* 11 CV 5845 (SDNY) Dkt. No. 726]; and

WHEREAS, on June 25, 2024, pursuant to Local Law 42, the New York City Board of Correction ("BOC") adopted rules relating to the implementation of the law; and

WHEREAS, in addition to a meet and confer that took place with the *Nunez* parties, DOC met and conferred with the City Council on several occasions in an effort to reach an agreement to temporarily stay, or to extend outward, the effective date of Local Law 42 in order to allow for further consultation between the *Nunez* parties, the Monitor and the City Council regarding the intersection between Local Law 42 and the City's obligations under the *Nunez* Court Orders; and

WHEREAS, despite these efforts, and despite the existence of the *Nunez* Court Orders, on July 15, 2024, the City Council informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, on July 17, 2024, the Monitor assessed Local Law 42 and wrote to DOC [*see* 11 CV 5845 (SDNY) Dkt. No. 758-3]:

- That "attempting to implement L[ocal] L[aw] 42 at this time … would be dangerous and would subject incarcerated individuals and staff to further risk of harm" [Dkt. No. 758-3 at p. 2]; and that

- L[ocal] L[aw] 42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually

result in an increased risk of harm to other incarcerated individuals and staff" [Dkt. No. 758-3 at p. 4]; and that

- "the requirements of [. . . Local Law 42] impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary" [Dkt. No. 758-3 at p. 4, emphasis in original]; and that

- DOC is "at present not equipped to safely implement" Local Law 42; that the "truncated implementation timeline" for the significant changes required by Local Law 42 is "unreasonable"; and that the prospect of a rushed implementation of the Law "further heightens" concerns about the associated "risk of harm and the safety of those in the Department's custody and those working in the Department's facilities;" [Dkt. No. 758-3 at pgs. 5-6]; and that

- Local Law 42 would "drastically alter . . . [and] impact the Department's core strategy for addressing violent misconduct—its restrictive housing program" [Dkt. No. 758-3 at p. 8]; and that

- implementing the law as-is would "require[] changes that conflict with standard sound correctional practices ... and therefore would be dangerous for those incarcerated and [who] work in the jails" [Dkt. No. 758-3 at p. 7]; and that

- approval from the Monitor "is necessary" because Local Law 42's requirements otherwise "could undercut the Department's ability to achieve compliance in *Nunez*" [Dkt. No. 758-3 at p. 9]; and that

- in the expert view of the Monitoring Team—which has "over 100 years' experience" in formulating "reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings"—additional time and careful work are needed to evaluate which requirements of Local Law 42 could be implemented without violating the *Nunez* Court Orders [Dkt. No. 758-3 at p. 2, 10]; and that

- the task of "[f]ully understanding [. . . the Law's] requirements and the BOC's respective rules (which were only just passed) . . . and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking"; and

WHEREAS, the Monitor therefore proposed:

- that, following the conclusion of the Monitor's analysis, the parties to the *Nunez* litigation, along with the Monitor and the counsel for the City Council, "must meet and confer" to determine how best to address any divergence between the

requirements of the *Nunez* Court Orders and Local Law 42 [Dkt. No. 758-3 at pgs. 9-10]; and

- that given that "the practices at issue have a direct impact on facility safety," the Monitor recommends that such work be undertaken between "now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice" [Dkt. No. 758-3 at p. 10]; and

WHEREAS, DOC Commissioner Maginley-Liddie set forth to the *Nunez* Court, in a 17-page, detailed declaration dated July 22, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 758-1] why and how Local Law 42, if implemented as-is and at this time, would pose immediate dangers to public safety, including by:

- preventing DOC from transporting individuals to courts or hospitals in a safe manner because Local Law 42 places insurmountable burdens on DOC's ability to restrain incarcerated individuals during transport [Dkt. No. 758-1 at para. 34-40]; and

- preventing DOC from escorting individuals through jail, court, hospital and other public facilities in a safe manner Local Law 42 places insurmountable burdens on DOC's ability to use restraints during escorts [*id.*]; and

- preventing DOC and courthouse personnel from holding persons in custody at courthouses during lengthy court calendars that exceed several hours [Dkt. No. 758-1 at para. 22]; and

- preventing DOC from operating the Enhanced Supervision Housing Program, developed in close consultation with the Monitor for those individuals who have been found guilty after a disciplinary hearing of committing a violent offense, typically a slashing or stabbing or assault on staff [Dkt. No. 758-1 at para. 11-18]; and

- preventing DOC from holding restrictive housing hearings expeditiously by imposing additional requirements for such hearings that are likely to lead to delays in the completion of hearings and in placement of individuals [Dkt. No. 758-1 at para. 15-16]; and

- preventing DOC from providing adequate rehabilitative programming by limiting the time in such housing to 15 days as a general rule [Dkt. No. 758-1 at para. 15]; and

- preventing DOC from operating its Separation Status Housing Unit, which is used in those rare instances when a body scan reveals that an individual has secreted a weapon or drugs on their person and the individual refuses to relinquish the item [Dkt. No. 758-1 at para. 19-21]; and

- preventing DOC from exercising necessary discretion to maintain public safety during facility emergencies and housing area emergencies, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of emergency lock-ins to four hours and inflexibly mandates that individuals in custody be allowed to make phone calls during emergency lock-ins notwithstanding that such telephone access threatens to facilitate gang activity and violence within and outside the jails and poses significant safety and security risks [Dkt. No. 758-1 at para. 26-28]; and

- preventing DOC from employing lock-ins during searches, which undermines DOC's ability to perform safe and effective unannounced searches of the facilities, thereby eliminating an essential tool for DOC to rid its facilities of weapons and other contraband [Dkt. No. 758-1 at para. 29]; and

- preventing DOC from exercising necessary discretion in using effective de-escalation practices for the purpose of calming disruptive individuals and victims of violence, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of de-escalation confinement to four hours, even though circumstances sometimes arise in which a longer stay is necessary for safety, and it inflexibly mandates that persons in de-escalation confinement be allowed to make phone calls outside the facility, notwithstanding that it is dangerous and unsound correctional policy for a person who has engaged in a violent fight, particularly if the fight is gang-related, to be able to telephone their confederates to spread the word [Dkt. No. 758-1 at para. 30-33]; and

WHEREAS, Local Law 42 imposes significant other procedural requirements relating to the placement of individuals in restrictive housing and other jail operations that would pose a direct threat to the safety of incarcerated individuals and staff in DOC facilities and would, in the Monitor's assessment, "provide myriad opportunities for undue delay by the perpetrator of violence" before the Department could act to address the underlying conduct [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at 7], including procedural requirements that: restrict the use of de-escalation confinement in a manner that would prevent DOC from placing an individual in de-escalation confinement for their own protection when they have been the victim of a violent incident; prevent DOC from operating a safe and effective restrictive housing program by mandating an inflexible 14-hour out-of-cell requirement and limiting restrictive housing to no more than 30 consecutive days and no more than 60 days within any 12-month period; require DOC to immediately alert the public that a facility is on lock-down, notwithstanding that such a procedure would pose a significant threat to security in the facility; and require that an incarcerated individual be allowed to cross-examine witnesses during restrictive housing hearings, notwithstanding that such a procedure could place witnesses in danger; and

WHEREAS, DOC Commissioner Maginley-Liddie's declaration further states that DOC would be in an "inescapable bind" if Local Law 42 were to take effect at this time because "[u]nder the Court's Orders in the *Nunez* case, [DOC] cannot modify its policies on restrictive housing, de-escalation units, emergency lock-ins and restraints without submitting the modification to the Monitor and waiting for his approval. Yet Local Law 42, if implemented, would radically modify our policies in those areas without the Monitor's approval" and in a manner that is dangerous [Dkt. No. 758-1 at para. 41]; and

WHEREAS, on July 22, 2024 DOC, through its attorneys at the New York City Law Department, sent a letter to Judge Swain, providing a status update on the work that had been taking place regarding Local Law 42 since the June 5 letter referenced above and attaching the assessments by both the Monitor and DOC Commissioner of the dangers of implementing Local Law 42 [*see* 11 CV 5845 (SDNY) Dkt. No. 758], and on July 23, 2024 Judge Swain endorsed the July 22 letter and directed the *Nunez* Defendants and the Monitoring Team to continue their focused analytical work concerning compliance with Local Law 42, as outlined in the July 17, 2024 letter from the Monitoring Team, and further directed the *Nunez* Defendants to file a status update regarding this work by October 25, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 759]; and

WHEREAS, on July 23, 2024, DOC again reached out to the City Council to ask that the City Council stay the effective date of Local Law 42 until these serious issues could be resolved, but in response to an inquiry from legal counsel to DOC, the City Council again informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, certain sections of Title 40 of the Rules of the City of New York have already been suspended by Emergency Executive Order No. 279, dated November 1, 2021, and remain suspended pursuant to subsequent renewals of such Emergency Executive Order; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, to avert immediate dangers to public safety for the limited period while the Monitoring Team completes their work as directed by Judge Swain, and until DOC is in a position to meet both its obligations under the *Nunez* Court Orders and Local Law 42; and

WHEREAS, on July 27, 2024, I issued Emergency Executive Order No. 624, and declared a state of emergency to exist within the correction facilities operated by the DOC, and such declaration remains in effect;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct that beginning on July 28, 2024, the following provisions of section 9-167 of the Administrative Code of the City of New York are suspended or modified as indicated:

a. The definition of the term "de-escalation confinement" set forth in subdivision a is modified to allow the use of "de-escalation confinement" where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.

b. The definition of the term "pre-hearing temporary restrictive housing" set forth in subdivision a is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.

c. Subdivision b is modified to allow the DOC to place an incarcerated person in a cell in accordance with any restrictive housing program approved by the Monitor.

d. Paragraph 4 of subdivision c is suspended.

e. Paragraph 5 of subdivision c is modified to require that the DOC remove a person from de-escalation confinement as soon as practicable when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.

f. The first sentence of paragraph 6 of subdivision c is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor.

g. The second sentence of paragraph 6 of subdivision c is suspended to remove the daily and weekly limits on de-escalation confinement.

h. Subdivision e is suspended to the extent that it imposes limitations on the DOC's use of restraints, provided that this suspension shall not affect the requirements of subdivision e that only the least restrictive form of restraints may be used and that the DOC is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor.

j. Subparagraph (i) of paragraph 1 of subdivision f is suspended.

k. Subparagraph (ii) of paragraph 1 of subdivision f is modified to provide that an incarcerated person shall not be allowed to cross examine witnesses, but shall be allowed to submit questions to be asked of witnesses and to respond to testimony of witnesses.

l. Subparagraph (v) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for an incarcerated person written notice of the reason for a proposed restrictive housing placement and to the extent it requires the DOC to provide evidence supporting the incarcerated person's placement in restrictive housing in advance of the hearing.

m. Subparagraph (vi) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for the incarcerated person adequate time to prepare for a restrictive housing hearing, provided however, that the DOC shall provide the incarcerated person adequate time to review the evidence presented, including adjourning the hearing, if needed.

n. The first sentence of subdivision h is modified to allow the DOC to use restrictive housing that complies with policies approved by the Monitor.

o. Paragraph 1 of subdivision h is suspended to the extent that it prohibits the DOC from placing an incarcerated person in restrictive housing for more than a total of 60 days in any 12 month period.

p. Paragraph 2 of subdivision h is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.

q. Paragraph 3 of subdivision h is suspended.

r. Paragraph 4 of subdivision h is suspended.

s. Paragraph 6 of subdivision h is modified to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.

t. Paragraph 1 of subdivision i is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.

u. Paragraph 1 of subdivision j is modified to allow the DOC to employ emergency lock-ins during searches and to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

v. The second sentence of paragraph 2 of subdivision j is suspended.

w. Paragraph 3 of subdivision j is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.

§ 2. I hereby direct that beginning on July 28, 2024, the following provisions of Title 40 of the Rules of the City of New York are suspended or modified as indicated:

a. Paragraph 2 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.

b. Paragraph 3 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.

c. Paragraph 2 of subdivision b of section 1-05 is modified to add an exception for restrictive housing programs approved by the Monitor.

d. The definition of the term "de-escalation confinement" set forth in section 6-03 is modified to allow the use of "de-escalation confinement" where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.

e. The definition of the term "pre-hearing temporary restrictive housing" set forth in section 6-03 is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.

f. Subdivision a of section 6-05 is modified to the extent necessary to allow the use of de-escalation confinement in circumstances allowed pursuant to section 1 of this emergency order.

g. Subdivision h of section 6-05 is suspended.

h. Subdivision j of section 6-05 is modified to provide that a person shall be removed from de-escalation confinement as soon as practicable following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.

i. Paragraph 1 of subdivision j of section 6-05 is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor and to remove the daily and weekly limits on de-escalation confinement so as to allow holding an individual in de-escalation confinement when required by current circumstances, regardless of whether the

individual was recently held in de-escalation confinement as a result of prior circumstances.

j. Subdivision a of section 6-06 is modified to allow the DOC to employ emergency lock-ins during searches.

k. Subdivision e of section 6-06 is modified to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

l. Subdivision g of section 6-06 is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.

m. Subdivision i of section 6-06 is suspended to the extent that it prohibits an emergency lock-in lasting more than four hours.

n. Subdivision k of section 6-06 is suspended.

o. Subdivision a of section 6-10 is modified to provide that the restriction does not apply to confinement in a restrictive housing program approved by the Monitor.

p. Section 6-13 is suspended.

q. Section 6-14 is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.

r. Section 6-15 is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.

s. Subdivision c of section 6-16 is suspended.

t. Subdivision d of section 6-16 is suspended.

u. Subdivision j of section 6-16 is suspended to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.

v. Subdivision b of section 6-19 is suspended.

w. Subdivision f of section 6-19 is suspended to the extent it requires more hours of programming than the number of hours approved by the Monitor.

x. Paragraph 3 of subdivision a of section 6-27 is suspended to the extent it requires an individualized determination regarding use of restraints.

y. The first and second sentences of subdivision b of section 6-27 are suspended.

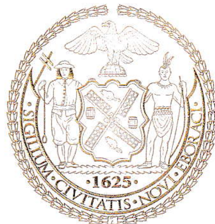
z. Subdivision d of section 6-27 is suspended to the extent that it imposes a limit on the time period for which restraints can be used.

aa. Subdivision l of section 6-27 is suspended.

bb. Subdivision m of section 6-27 is suspended.

§ 3. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Eric Adams
Mayor



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 735

January 28, 2025

WHEREAS, on September 2, 2021, the federal monitor in the *Nunez* use-of-force class action stated that steps must be taken immediately to address the conditions in the New York City jails; and

WHEREAS, on June 14, 2022, the federal court in *Nunez* approved the *Nunez* Action Plan, which "represents a way to move forward with concrete measures now to address the ongoing crisis at Rikers Island"; and

WHEREAS, although there has been improvement in excessive staff absenteeism, extraordinarily high rates of attrition due to staff retirements and other departures continue to seriously affect the Department of Correction's (DOC's) staffing levels and create a serious risk to DOC's ability to carry out the safety and security measures required for the maintenance of sanitary conditions; and access to basic services, including showers, meals, visitation, religious services, commissary, and recreation; and

WHEREAS, this Order is given to prioritize compliance with the *Nunez* Action Plan and to address the effects of DOC's staffing levels, the conditions at DOC facilities, and health operations; and

WHEREAS, additional reasons for requiring the measures continued in this Order are set forth in Emergency Executive Order No. 140 of 2022, Emergency Executive Order No. 579 of 2024, and Emergency Executive Order 623 of 2024; and

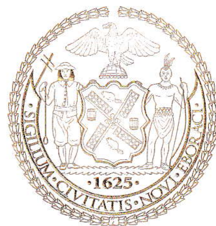
WHEREAS, the state of emergency existing within DOC facilities, first declared in Emergency Executive Order No. 241, dated September 15, 2021, and extended by subsequent orders, remains in effect;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct that section 2 of Emergency Executive Order No. 732, dated January 23, 2025, is extended for five (5) days.

§ 2. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Eric Adams
Mayor



THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 736

January 28, 2025

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York,* 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as by transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, on July 27, 2024, I issued Emergency Executive Order No. 624, and declared a state of emergency to exist within the correction facilities operated by the DOC, and such declaration remains in effect; and

WHEREAS, additional reasons for requiring the measures continued in this Order are set forth in Emergency Executive Order No. 625, dated July 27, 2024, and Emergency Executive Order 682, dated October 30, 2024; and

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct section 2 of Emergency Executive Order No. 733, dated January 23, 2025 is extended for five (5) days.

§ 2. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Eric Adams
Mayor

APPENDIX G:
THE CITY COUNCIL'S ARTICLE 78 MOTION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE COUNCIL OF THE CITY OF NEW YORK and THE NEW YORK CITY PUBLIC ADVOCATE,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

-against-

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York,

Respondent.

Index No. ______/2024

VERIFIED PETITION

I, Nwamaka Ejebe, an attorney duly licensed to practice law in the State of New York, and counsel for Petitioners, hereby verify and affirm, under the penalties of perjury, that the following is true and accurate upon information, belief, and personal knowledge:

PRELIMINARY STATEMENT

1. The New York City Council and Public Advocate bring this legal challenge to stop a clear abuse of power by Mayor Eric Adams. After more than forty Council members overrode the Mayor's veto of the Council's bill banning solitary confinement—overwhelmingly rejecting the Mayor's own backward-looking policy preferences about jail conditions—the Mayor then did something no New York City mayor has ever done: he declared that the passage of the Council's law over his veto was an "emergency" requiring the new law's indefinite suspension. That brazen and petulant response is not only unprecedented, it is illegal. Losing a policy debate with the Council is not an emergency, and the Mayor cannot use his "emergency powers" to usurp the Council's policymaking authority.

2. After engaging in extensive research and inquiry, and after receiving input and testimony from numerous impacted New Yorkers, the Council and the Office of the Public Advocate found that solitary confinement and similar severe restrictions of movement in the City's jails were inhumane and dangerous. These findings echoed correctional research proving that severe restrictions, whether as punishment or for any other reason, inflict devastating mental health consequences that inevitably lead to violence, disruptions, and often life-long mental health struggles.

3. After years of deliberation, on December 20, 2023, the Council passed Local Law 42, attached as Exhibit A, by a vote of 39 to 7. This law bans solitary confinement and similar severe restrictions of movement, grants incarcerated people basic due process protections during disciplinary hearings, improves medical, mental health, and educational services to those in restrictive housing, and imposes reporting requirements to ensure the law is followed. After Mayor Adams vetoed the bill in early 2024, the Council voted to override the Mayor's veto on January 30, 2024, by a vote of 42 to 9.

4. Local Law 42 gave the Mayor, and the New York City Department of Correction, which manages Rikers Island, 180 days to implement the law, and it instructed the New York City Board of Correction, which develops rules and policies for the Department of Correction, to engage in the rule-making process as needed to implement the law. The Board of Correction followed Local Law 42, and, on June 25, 2024, it adopted rules that incorporated Local Law 42's requirements into the existing minimum standards for the City's jails.

5. The Mayor, however, chose to ignore multiple parts of Local Law 42, including the law's limits on severe restrictive confinement, indiscriminate use of handcuffs and other restraints, and due process protections in disciplinary actions. He invoked his emergency powers

and declared a perpetual state of emergency. He entered two emergency orders suspending the local law, Emergency Executive Order No. 624 and Emergency Executive Order No. 625 (collectively, the "Emergency Orders"), attached as Exhibits B and C, respectively. These have been renewed periodically since Local Law 42 was to go into effect. What he could not do through a veto, Mayor Adams did through a sham emergency declaration.

6. This Article 78 petition seeks judicial intervention and an order finding that these two emergency orders are outside the scope of the Mayor's authority and an abuse of his emergency powers. No other mayor in the City's history has ever used these emergency powers as an end-run around a local law, and a finding otherwise—that the Mayor can override a super-majority of Council members—would set a dangerous precedent. In our system of government, there is a balance of powers between the legislature that makes laws and the executive who executes them. Council members, and their votes, represent the will of the people. The Mayor cannot disregard a local law just because he disagrees with the Council's well-deliberated policy choices.

THE PARTIES

7. Petitioner the New York City Council (the "Council") is the legislative body for the City of New York. The Council is vested with the legislative power of the City. Subject only to the constraints of the City Charter and state and federal law, the Council has the power to adopt local laws that it deems appropriate for the good rule and government of the City; for the order, protection and government of persons and property; for the preservation of the public health, comfort, peace and prosperity of the City and its inhabitants; and to effectuate the purposes and provisions of the City Charter. N.Y.C. Charter §§ 21, 28. The Council's principal place of business is City Hall, New York County, New York 10007.

8. Petitioner Public Advocate Jumaane D. Williams (the "Public Advocate"), an independently elected official, is the advocate for the citizens of the City of New York. He is a non-voting member of the Council and an ex efficio member of all of its committees, with the right to introduce and sponsor legislation. N.Y.C. Charter § 24. The Public Advocate also serves as an ombudsman for City government, providing oversight for City agencies, reviewing and investigating citizens' complaints about City services, assessing whether City agencies are responsive to the public, and recommending improvements when they fail to provide effective services. The Public Advocate's principal place of business is David N. Dinkins Municipal Building, 1 Centre Street, 15th Floor North, New York County, New York 10007.

9. Respondent Mayor Eric Adams (the "Mayor"), in his official capacity, is the chief executive officer of the City of New York. N.Y.C. Charter § 3. The Mayor is required to implement the laws of the City of New York, and he is responsible for the effectiveness and integrity of City government operations. That responsibility requires him to establish and maintain necessary and appropriate policies and procedures for the operation of City agencies. This includes implementing effective systems of internal control by each agency and unit under the Mayor's jurisdiction, including the Department of Correction. The Mayor's principal place of business is City Hall, New York County, New York 10007.

RELEVANT NON-PARTIES

10. Non-party agency the New York City Department of Correction (the "DOC" or "the Department") runs all the City's jails and is responsible for the care and custody of people ordered to be held by the courts while awaiting trial or who are convicted and sentenced to one year or less of incarceration. Rikers Island is the Department's main base of operation with 10 separate jails within the complex. DOC also plays a central role in closing Rikers Island and opening borough-based jails to replace it, by 2027.

11. Non-party the New York City Board of Correction is a board with oversight over DOC. The board is composed of nine people, chosen by the Mayor, the Council, and presiding justices of the Appellate Division of the Supreme Court for the First and Second Judicial Departments. Current board members include a doctor, a formerly incarcerated person, a former correction officer, and a retired judge. The Board of Correction has the power to inspect the City's jails, including on Rikers Island, and the power to prepare proposals, studies and reports for the Mayor. The Board is also responsible for developing minimum standards for the care, custody, correction, treatment, supervision, and discipline of all persons held or confined under in the City's jails. The Board is required to promulgate minimum standards in rules and regulations, after giving the Mayor and DOC Commissioner an opportunity to review and comment on the proposed standards.

12. Non-party Federal Monitor Steven Martin ("*Nunez* Monitor") was appointed by Chief Judge Laura Swain in *Nunez v. N.Y.C. Department of Correction, et al.*, 11-cv-05845 (S.D.N.Y.)—a class-action lawsuit brought in 2011 on behalf of current and future incarcerated individuals held in DOC jails. The class action alleged that the Department used excessive force against those in its custody. Pursuant to a 2015 consent decree, DOC is required to implement certain policies and meet certain goals. The process is overseen by the *Nunez* Monitor, who has numerous reporting obligations and certain advisory powers. The *Nunez* Monitor's more than eight years of involvement has not yielded any meaningful decrease in violence at Rikers.

13. In November 2024, with incidents of violence at shocking levels and with DOC in violation of numerous court orders, Chief Judge Swain held DOC in contempt of court and directed the parties to prepare plans for a receivership. In her order finding DOC in contempt, she found that it was "alarming and unacceptable" that, although nine years has passed since the

parties first agreed that the "perilous conditions" in the Rikers Island jails were unconstitutional, "the level of unconstitutional danger has not improved for the people who live and work in the jails." She further concluded that "neither clear reporting from the Monitoring Team nor binding Court orders have been enough to activate the transformational change required."[1]

JURISDICTION AND VENUE

14. This Court has subject-matter jurisdiction to decide this Petition pursuant to Section 7803 of the CPLR and general original jurisdiction in law and equity as provided in Article VI, Section 7(a) of the New York State Constitution.

15. Venue is proper in New York County Supreme Court pursuant to CPLR 504(c), 506(b), and 7804(b) because Petitioners brings their claims against the Mayor of New York City for actions taken in New York County, and because the Mayor's principal offices are in New York City.

THE LONG HISTORY OF SOLITARY CONFINEMENT AND PUNITIVE SEGREGATION AT RIKERS ISLAND

16. Over the last few decades, punitive segregation, where people are locked in their cells for all but very limited periods of time for alleged rule violations, was common in City jails. Until recently, it was routine for incarcerated people to be punished with severely restrictive housing, sometimes for years at a time.

17. Severely restricted confinement remains pervasive at Rikers Island today. This type of confinement, even for several hours, can cause damage to an incarcerated person's mental health, as explained in the letter attached as Exhibit D, from Professors Bandy Lee, M.D., M.Div. and James Gilligan, M.D. A 2014 study of New York City jails, for example, found that

[1] *Nunez v. N.Y.C. Department of Correction, et al.*, 11-cv-05845 (S.D.N.Y.) Doc. No. 803, at 52.

people in custody who were placed in punitive segregation committed self-harm at disproportionately high rates.[2]

18. Restrictive confinement is not a remedy that works better the more you use it. In fact, the opposite is true: research shows that solitary confinement has hardly any individual or general deterrence effect on violent behavior or misconduct.[3] Experts who have examined the effects of solitary confinement on incarcerated people have concluded that these restrictions are psychological damaging and are more likely to cause violence than prevent it.[4]

19. Recently, public policy around the country has started to catch up with the applicable research. States that have decreased the use of solitary confinement, such as Illinois, Colorado, Mississippi and Maine, have seen corresponding reductions in assaults and other violent behavior.[5] Attitudes about solitary confinement have evolved within New York City in recent years. This shift was fueled by several high-profile examples of the dangers of punitive segregation at Rikers Island.

20. Kalief Browder—a teenager detained for approximately three years awaiting trial for allegedly stealing a backpack and whose case was ultimately dismissed—spent over two years in solitary confinement on Rikers Island. He attempted suicide at least twice while in

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[2] Fatos Kaba, et. al, *Solitary confinement and risk of self-harm among jail inmates*, 104 American Journal of Public Health, 442 (2014), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/.

[3] Craig Haney, *Restricting the Use of Solitary Confinement,* 1 Annual Review of Criminology 285, 288 (2018), available at https://www.researchgate.net/profile/Craig_Haney2/publication/320845455_Restricting_the_Use_of_Solitary_Confinement/links/5b61f65a458515c4b2591804/Restricting-the-Use-of-Solitary-Confinement.pdf

[4] Shira Gordon, *Solitary Confinement, Public Safety, and Recidivism*, 47 U. Mich. J. L. Reform 495, 516 (2014), available at https://repository.law.umich.edu/mjlr/vol47/iss2/6/.

[5] The Council of the City of New York, *Committee Report and Briefing Paper of the Justice Division* (Dec. 20, 2023) at 8-9, available at http://on.nyc.gov/4ihAoet.

custody. His depression, fueled by his time in solitary confinement, continued after his release. He hanged himself in 2015.

21. Bradley Ballard was locked in his cell on Rikers Island for six days, while detained on a parole violation for failure to report an address change. He was found dead, naked and covered in feces within his cell in 2013. The City's medical examiner ruled his death a homicide, caused by the shocking neglect.

22. In 2019, Layleen Polanco was sentenced to a disciplinary period of 20 days in solitary confinement on Rikers despite a history of epileptic seizures, several while incarcerated. While in solitary, alone and unmonitored, she died of a seizure.

23. In 2014, the United States Department of Justice found that the City was exposing adolescents to a "risk of serious harm" by locking them in "what amounts to solitary confinement."[6] Based on those findings, DOJ intervened in *Nunez v. City of New York*, the class action lawsuit mentioned above.[7] The *Nunez* consent order focused primarily on staff violence against incarcerated people, but also included provisions prohibiting the City from placing certain people, such as those under 18 years old, in any form of "punitive segregation or isolation."[8] The *Nunez* consent order defined punitive segregation as "segregation of an Inmate from the general population pursuant to a disciplinary sanction imposed after a hearing."[9]

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[6] United States Department of Justice, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island*, at 46 (Aug. 4, 2014), *available at* https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf.

[7] *Nunez v. City of New York*, No. 11 Civ. 5845 (S.D.N.Y.), United States' Proposed Complaint-in-Intervention, dated Dec. 11, 2014, *available at* https://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/Nunez%20v.%20City%20of%20New%20York%2C%20et%20al%20US%20Complaint-In-Intervention.pdf.

[8] *Nunez*, Consent Judgment dated Oct. 21, 2015, at 44, *available* at https://www.justice.gov/opa/file/624846/dl.

[9] *Id.* at 4.

24. During the de Blasio administration, the Board of Correction promulgated various rules that attempted to limit the use of solitary confinement in the City's jails. This included, for example, the Board's unanimous decision in early 2015 to eliminate punitive segregation for incarcerated people under the age of 21.[10]

25. In December 2020, following the tragic death of Layleen Polanco, the Council introduced a bill (Intro. No. 2173) that sought to ban solitary confinement in the City's jails. Reporting on the bill, the Council's Committee on Criminal Justice took note of the harms of punitive segregation and the research showing that severe restrictions on incarcerated people are harmful and make jails more dangerous.[11] The Council also held a hearing on December 11, 2020, where advocates, formerly incarcerated people, and other members of the public, made it clear that reform was needed.

26. In 2021, the State Legislature passed the HALT Act. That law restricted the use of "segregated confinement," which it defined as "any form of cell confinement" with fewer than seven hours per day of out-of-cell time. N.Y. Correction Law § 2(23).

27. In 2021, the Board of Correction promulgated new rules that limited the use of solitary confinement and other forms of extreme isolation at Rikers Island. Those rules were intended to address concerns from the public and also to comply with the HALT Act's new requirements.[12] Due to the impacts of COVID-19 and severe staffing shortages, however, Mayor de Blasio suspended these Board of Correction rules, thereby preventing them from going into

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[10] New York City Department of Correction, *NYC Board of Correction Unanimously Approves Rules That Will Pave the Way for Meaningful Reform Efforts* (Jan. 13, 2015), available at http://on.nyc.gov/4fiNGFI.

[11] The Council of the City of New York, *Committee Report and Briefing Paper of the Justice Division* (Dec. 20, 2023) at 7-10, available at http://on.nyc.gov/4ihAoet.

[12] The Council of the City of New York, *Committee Report of the Governmental Affairs Division* (Jan. 30, 2024) at 5, available at http://on.nyc.gov/49nfTJf.

effect in November 2021 (*id.* at 6). At the end of 2021, just weeks before taking office as mayor, Eric Adams announced his intention to reverse course on the de Blasio Administration's stated goal of ending solitary confinement in the City's jails.[13]

THE COUNCIL BANS SOLITARY CONFINEMENT AND SIMILAR SEVERE RESTRICTIONS ON RIKERS ISLAND

28. The HALT Act and the 2021 Board of Correction rules did not, however, succeed in eliminating the harsh conditions of solitary confinement on Rikers Island. In June 2022, another bill (Intro. No. 549) was introduced to the Council, banning solitary confinement in City jails and setting standards for the use of restrictive housing and emergency lock-ins—the practice of locking down entire sections of Rikers, thereby confining all those detained within those sections to their cells based on claimed emergencies, ranging from actual danger to mere lack of staffing. The bill had 37 co-sponsors at the time of its introduction.[14] This bill was ultimately passed in 2024 as Local Law 42.[15]

29. By mid-2022, it appeared that neither the Board of Correction's suspended rules nor the State's HALT Act were going to adequately protect Rikers Island detainees from the violence of solitary confinement. As to the HALT Act, it had become clear that DOC's purported "compliance" with the law improperly hinged on the Department's misuse of "cell within a cell" housing to satisfy the law's requirements for *out-of-cell* time.[16] An incarcerated person locked in a cell is let out of the cell, into yet another cell, which DOC claims as out-of-cell time, which they argue technically complies with text of the law, while ignoring the spirit and goals of the

[13] New York Post, *Eric Adams vows to immediately reverse de Blasio ban on solitary confinement* (Dec. 16, 2021), available at https://nypost.com/2021/12/16/eric-adams-to-tap-head-of-las-vegas-jail-system-to-run-nyc-doc/.

[14] Int. No. 549, Plain Language Summary, available at http://on.nyc.gov/4gGJYpJ.

[15] June 16, 2022 Stated Meeting Agenda, available at https://bit.ly/June2022MtgAgenda.

[16] Transcript of the Minutes of the Committee on Criminal Justice (Sep. 28, 2022) at 136, available at http://on.nyc.gov/4gqAmPL.

HALT Act entirely. The Council found this practice repugnant, and later drafted Local Law 42 to ban this practice, ensuring out-of-cell time is actually time outside of a cell, with meaningful contact with other people.

30. On September 28, 2022, the Council held an all-day public hearing on the proposed legislation. The proposals received extensive support from the community. The Council also heard from then DOC Commissioner Louis Molina, DOC General Counsel Paul Shechtman, doctors from Health + Hospitals Correctional Health Services, Correction Officer Benevolent Association President Benny Boscio, and multiple other correction officers and union representatives. At this hearing, the Speaker of the Council shared that she was the daughter of a former correction officer and emphasized the Council's overarching goal of increasing public safety for all.[17] She explained that the public hearing was "the first step" in a "comprehensive and sensible legislative process that gathers input from all stakeholders and is guided by data, evidence, and best practices."[18]

31. The Council, working closely with the Office of the Public Advocate, continued internal deliberations throughout 2023 and also had additional discussions with DOC, the New York City Law Department, and then-Commissioner Louis Molina. On December 8, 2023, the Adams Administration provided a "redline" of the bill along with multiple comments about the provisions in the bill.

32. The bill amendments and committee report addressed each of the areas of disagreement raised by the DOC Commissioner in his September 2022 testimony. In response to the DOC Commissioner's objection to "prohibit[ing] pre-hearing detention,"[19] the amended bill

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[17] *Id*. at 17.

[18] *Id*.

[19] *Id*. at 28-29.

eliminated any blanket prohibition and instead set forth detailed "procedures and policies for when a person may be placed [in] pre-hearing temporary restrictive housing."[20] To address the Commissioner's concern about a "right to counsel at DOC disciplinary hearings,"[21] the amended bill made clear that representation at disciplinary hearings could be provided by a lawyer *or* any "law student, paralegal, or [] incarcerated person."[22] As to the Commissioner's views that the bill supposedly incentivized violent conduct and would make it "impossible" for DOC to impose "sanctions" for violent acts within the jails,[23] the Committee Report detailed numerous studies concluding that solitary confinement has "hardly any individual or general deterrence effect on violent behavior and misconduct."[24] The bill amendments also included a 120-day extension of the bill's effective date in order to allow additional time to implement the law.[25]

33. On December 11, 2023, while the bill was being finalized, the Columbia University Center for Justice released a report entitled "Solitary by Many Other Names."[26] This report detailed all the ways that incarcerated people at Rikers are held in harmful conditions that replicate solitary confinement, even if not fitting the traditional definitions of solitary. For example, DOC used decontamination showers—small locked cages with no place to sit—to hold people for purported de-escalation, often for extremely long periods of time. The Council's

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[20] The Council of the City of New York, *Committee Report and Briefing Paper of the Justice Division* (Dec. 20, 2023) at 12, available at http://on.nyc.gov/4ihAoet

[21] *Sep*. 28, 2022 Minutes at 29.

[22] Dec. 20, 2023 *Committee Report* at 9-10.

[23] *Sep*. 28, 2022 Minutes at 28.

[24] Dec. 20, 2023 *Committee Report* at 9-10.

[25] *Id*. at 13.

[26] Available at https://centerforjustice.columbia.edu/news/new-report-solitary-many-other-names-report-persistent-and-pervasive-use-solitary-confinement.

solitary confinement bill explicitly banned this practice, among many others, and Columbia University experts strongly encouraged the Council to pass it.

34. On December 20, 2023, the bill passed out of the Criminal Justice Committee and was passed by the full Council, by a vote of 39 to 7. On January 19, 2024, Mayor Adams vetoed the bill.[27] In his veto message, Mayor Adams argued that the bill "would make the City's jails less safe" by purportedly (1) eliminating "any negative consequences" for incarcerated people who commit violent acts, (2) imposing a "prohibition on restraining persons during transportation," and (3) removing DOC's "necessary discretion" in conducting lock-downs by limiting their duration to four hours.[28] On January 30, 2024, the Council overrode the Mayor's veto by a vote of 42 to 9, officially enacting the bill into law, and starting the 180-day deadline to its effective date of implementation.

THE CONDITIONS OF CONFINEMENT AT RIKERS ISLAND HAVE BEEN AND REMAIN UNCONSCIONABLE

35. Local Law 42 was first introduced in 2022. Alarmingly, the inhumane practices at Rikers that this law was passed to end continue to this day.

36. ***Use of Restraints***: Indiscriminate, extended use of restraints at Rikers Island has been common and led to injury and death for many incarcerated at Rikers Island. In 2023, it was reported that excessive use of restraints at Rikers Island led to increased violence among incarcerated individuals. Eight young people at the Rose M. Singer Center facility were shackled to "restraint desks" and slashed by other incarcerated individuals over a two-week period

[27] Mayor's Veto Message, dated Jan. 19, 2024, available at http://on.nyc.gov/4fTtFpn.

[28] *Id.*

according to DOC records.[29] One former DOC official declared that the use of shackles rendered incarcerated persons "sitting ducks."[30]

37. Incidents like these have necessitated limits on the use of restraints. To that end, Local Law 42 bans indiscriminate use of restraints—including handcuffs, shackles, and leg cuffs—by requiring an individualized determination that restraints are employed in the least intrusive way possible, for the least time necessary. Local Law 42 does not ban use of restraints, however, and the Board of Correction regulations specifically provide that the law does not prohibit the routine use of restraints during escort and travel, when needed, even for every incarcerated person in a vehicle.

38. ***Restrictive Confinement***: Local Law 42 requires 14 hours of out-of-cell time. The law also restricts the amount of time people can be restricted in de-escalation confinement after an altercation. The de-escalation units purportedly serve to enhance the safety of incarcerated individuals at Rikers Island after violent incidents, but the units frequently lead to further harms. For example, in 2022, Elijah Muhammed died after spending hours in a "decontamination shower" – locked in a small box after a fight. [31]

39. Decontamination units are used as make-shift jail cells where incarcerated individuals are sometimes confined for hours, and people have "repeatedly been found screaming, injured, and wheeled out on stretchers."[32] As one DOC investigator put it, "It's just

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[29] *See* Reuven Blau, *Eight Rikers Detainees Slashed While Shackled to 'Restraint Desks'*, The City September 18, 2023, available at https://www.thecity.nyc/2023/09/18/eight-rikers-detainees-slashed-shacked-restraint-desks.

[30] *Id.*

[31] *See* Chris Glorioso and Courtney Copenhagen, *Locking Prisoners in Narrow Shower Stalls Called 'Inhumane' at Rikers Island*, July 15, 2022, available at https://www.nbcnewyork.com/investigations/i-team-locking-prisoners-in-narrow-shower-stalls-called-inhumane-at-rikers-island/3777087.

[32] *See* Chris Gelardi, *Why Does Rikers Island Still Lock People in Shower Stalls?*, N.Y. Focus, March 22, 2023, available at https://nysfocus.com/2023/03/22/rikers-island-decontamination-deescalation-unit-shower-cages.

moving them around from one dangerous location to another dangerous location."[33] Brandon Rodriguez hanged himself in a decontamination unit at Rikers Island's new admissions facility.

40. DOC also employed excessively lengthy "emergency" lock-in periods, confining incarcerated people in their cells for extended periods. According to the *Nunez* Monitor, as just one example, there were 122 emergency lock-ins due to use-of-force investigations in the three-month period of April through June 2023.[34] Twenty-seven lock-ins for use-of-force investigations lasted over 24 hours each, while on average lock-ins ranged from two to six hours in length.

41. ***Representation in Disciplinary Hearings***: Local Law 42 and the HALT Act both require some due process protections in disciplinary hearings, including representation by counsel, law students, paralegals, or incarcerated persons. But the HALT Act only provides for representation when someone is going to be confined in their cell for 17 hours a day or more. Local Law 42 is not so limited in large part because DOC claims people will not be restricted in disciplinary confinement for 17 hours a day or longer. But, in reality, incarcerated people on Rikers Island are confined in their cells for at least that long, despite having no representation in the disciplinary hearing.

42. Local Law 42 also requires that, at a disciplinary hearing, an incarcerated person shall have the opportunity to present evidence, cross-examine witnesses, and testify in person. The law also requires DOC to provide at least 48 hours advance notice of the reason for the proposed placement in restrictive housing and of any supporting evidence for such placement.

[33] *Id.*

[34] *See* DOC Quarterly Emergency Lock-In Report, FY23 Quarter 4 (April 1st - June 30th) at 2, available at https://www.nyc.gov/assets/doc/downloads/pdf/FY23_Q4_Emergency_Lock-In%20Report.pdf. The use of force incidents are broken up by facility in the table and identified as "UOF Investigation."

43. As advocates from the #HALTsolitary Campaign testified at the hearing on the bill that became Local Law 42, "There is a long history of staff abusing solitary confinement and restrictive housing and placing people in abusive confinement settings as retaliation, as cover-ups for staff abuse, for minor petty reasons, or for no reason at all."[35] Christopher Boyle of the New York County Defender Services similarly testified at the hearing that the "Department has decided that our clients are guilty before they have had the chance to defend themselves. Additionally, the lack of adequate due process can have harmful impacts on detainees' criminal cases, as jail disciplinary records are often used against our clients in the criminal sentencing process, and often result in lengthier prison sentences."[36]

THE MAYOR'S ABUSE OF HIS EMERGENCY ORDER POWERS

44. Instead of working on how to safely implement Local Law 42, as required by the City Charter, the Mayor and his Administration began developing different options to avoid their legal obligations. In a March 2024 court filing to Chief Judge Swain, the DOC Commissioner suggested that the Department might move the court for relief because, in its view, Local Law 42 was at "odds with the *Nunez* requirements" and the *Nunez* Monitor had some concerns about how the law could be safely implemented.[37] In June, DOC stated definitively that it would file a motion with Chief Judge Swain in the coming month to suspend the majority of the requirements of Local Law 42 as preempted by the *Nunez* court orders.[38] For this motion, DOC hired five attorneys from the international firm Dechert LLP, which has 1,000 attorneys. DOC's team was

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[35] Written testimony of Christopher Boyle on September 28, 2022, available on page 90 of the collected written testimony, available at https://legistar.council.nyc.gov/View.ashx?M=F&ID=11411259&GUID=1DF9CE7C-C6E2-4357-8C1E-11B7977E96AB.

[36] *Id*.

[37] *Nunez* Doc. No. 689-1, at 11.

[38] *Nunez* Doc. No. 724.

led by Andrew J. Levander, the firm's former Chairman.[39] This legal team was more than capable of filing any motion the Mayor or DOC felt necessary, even on a short deadline. In response, the Council passed a resolution empowering the Speaker to defend Local Law 42 against this incoming motion in court.[40] But the Mayor and DOC never filed their promised motion.

45. Instead, a few days after the Council issued its resolution, and the day before Local Law 42 was set to go into effect, the Mayor issued Emergency Executive Orders Nos. 624 and 625, suspending numerous provisions of Local Law 42, including the ones cited above. Instead of seeking relief from Chief Judge Swain, as was clearly his original plan, the Mayor unilaterally issued the Emergency Orders, claiming a perpetual state of emergency.

46. The Mayor has not claimed that these Emergency Orders are necessary to address a current emergency at Rikers Island. Instead, he claims that implementing Local Law 42 would create an emergency. An attorney for the City admitted this fact during oral argument in *Nunez*, when the Plaintiffs argued that the Emergency Orders amounted to an admission that there was an emergency at Rikers Island. Pushing back against this assertion, the City's attorney explained that, "[T]he order [suspending Local Law 42] is necessary in order to avoid impact at the present time of a city law that the mayor and the *Nunez* monitor both agree is very ill-advised for the safety and security of the department. So that's the purpose of the order, your Honor. We don't think it's appropriate to somehow use it against the city."[41]

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[39] *Id*.

[40] Res. No. 504-2024, available at https://on.nyc.gov/3Nytsvb.

[41] *Nunez* Oral Argument Transcript (Sep. 25, 2024) at 63, which can be provided to the Court if requested.

THE UNLAWFUL EMERGENCY ORDERS

47. The Mayor's emergency orders declare a state of emergency and then extensively re-write Local Law 42 by suspending, modifying, or replacing nearly all of the policy choices embodied in the law's text. Those policy choices of Local Law 42 address acute harms suffered by incarcerated people and their loved ones, and these choices were enacted through the democratic lawmaking process following a hard-fought policy battle between the Council and Mayor. In the place of the policy choices that prevailed at the conclusion of that policy debate, the Mayor's emergency orders substitute his own policy preferences and priorities—the very ones that the Council rejected when it overrode his veto by a vote of 42 to 9.

48. ***The first emergency order*** is Emergency Executive Order No. 624 ("EEO 624"), and it states that "A state of emergency is hereby declared to exist within the correction facilities operated by DOC because of the imminent effective date of Local Law 42 and the risks to health and safety that implementation of that law at this time and under current circumstances presents." This state of emergency lasts for 30 days and has been renewed four times as of the date of this filing, most recently in Emergency Executive Order No. 697, which is attached as Exhibit E.

49. ***The second emergency order*** is Emergency Executive Order No. 625 ("EEO 625"). Local Law 42 added Section 9-167 to the City's Administrative Code. EEO 625 explicitly suspends portions of Local Law 42 as codified in Section 9-167. This emergency order lasts for five days and has been renewed more than two dozen times as of the date of this filing, most recently in Emergency Executive Order No. 703, attached as Exhibit F.

50. As detailed below, EEO 625 suspends and modifies more than 25 parts of Local Law 42, effectively re-drafting the entire law to conform with policies the Mayor prefers over the Council's democratically-enacted findings. In addition, reports from within Rikers indicate that

even though the Mayor's emergency orders purport to suspend only parts of Local Law 42, DOC has not meaningfully implemented any of the law's provisions. For example, DOC has not followed the law's requirement of quarterly reporting on de-escalation confinement, restrictive housing, or emergency lock-ins.

Expanding Restrictive Confinement

51. EEO 625 rewrites definitions in § 9-167(a) to expand the use of restrictive confinement.

52. Admin. Code § 9-167(a) defines the term "de-escalation confinement" to mean "holding an incarcerated person in a cell immediately following an incident where the person has caused physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons." EEO 625 redefines the law to include "where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection."

53. Admin. Code § 9-167(a) defines the term "pre-hearing temporary restrictive housing" to mean "any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place." EEO 625 redefines the law to allow "the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public."

Permitting Solitary Confinement

54. Admin. Code § 9-167(b) bans solitary confinement: "*Ban on solitary confinement.* The department shall not place an incarcerated person in a cell, other than at night

for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose of de-escalation confinement or during emergency lock-ins." EEO 625 not only overturns this ban, but it hands the *Nunez* Monitor vast authority to approve placement in solitary confinement, limited only by the narrow strictures of the US Constitution and State law—prohibitions that DOC routinely violates.

Increasing the Isolation of De-Escalation Confinement

55. EEO 625 completely suspends Admin. Code § 9-167(c)(4), which alleviates isolation in restrictive housing by allowing some communication with friends and family, during periods of de-escalation confinement, via "a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility."

56. Section 9-167(c)(5) provides for removal from de-escalation confinement "immediately" after the confined person has "sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others." After EEO 625, this restrictive confinement is now effectively permitted for as long as correction officers want, allowing them to restrain someone until they think it is "practical" to release them, without regard for whether it is actually necessary, or part of sound correctional practices, to keep the incarcerated person restrained.

57. Sections 9-167(c)(6) and (7) stop DOC from using de-escalation confinement as *de facto* solitary confinement by limiting de-escalation to the time it would reasonably take someone to calm down: "The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or

more than 12 hours in any seven-day period." EEO 625 allows the "Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security," or someone "approved by the Monitor" to leave someone in de-escalation indefinitely, in undefined "exceptional circumstances," effectively allowing de-escalation to become a term of solitary confinement. The vague phrase "exceptional circumstances" is not defined and, under the terms of the emergency order, the *Nunez* Monitor could empower wardens, captains, or even correction officers to decide when someone is going to be placed in this solitary confinement. EEO 625 removes all limits to the amount of time someone could be locked in de-escalation confinement, except for limits under State law and US Constitution, neither of which are sufficient.

Permitting Indiscriminate Use of Restraints

58. Section 9-167(e) bans indiscriminate use of restraints. To that end, Paragraph 1 of Section 9-167(e) mandates that DOC "shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons." When restraints are deemed necessary, "only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm." Furthermore, the law prohibits DOC from "engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements."

59. Paragraph 2 of Section 9-167(e) provides that DOC may not "place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others." The law further provides that any "continued use of restraints" must be "reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons."

60. EEO 625 removes almost all these restrictions on the indiscriminate use of restraints, for any amount of time: “Subdivision e is suspended to the extent that it imposes limitations on the DOC’s use of restraints.” Instead, the only limits are that DOC must use “only the least restrictive form of restraints,” and they are not allowed to deliberately “prolong, delay or undermine an individual’s escorted movements.”

Revoking Due Process Protections

61. Section 9-167(f) gives incarcerated people basic, but important, due process protections. Except in those limited situations where pre-hearing separation is expressly authorized by the law, incarcerated people may not be placed in restrictive housing until a “hearing on such placement is held and the person is found to have committed a violent grade I offense.” That hearing must satisfy minimum due process requirements, including a right to representation by a lawyer or advocate, a right to present evidence and cross-examine witnesses, adequate time to prepare for a hearing or request an adjournment, the right to an interpreter in their native language, and the right to have the hearing videotaped if the incarcerated person refuses to attend the hearing. A disposition shall be reached within five business days after the conclusion of the hearing and shall be supported by substantial evidence and documented in writing. And except for the limited pre-hearing separation permitted by Local Law 42, the law prohibits discipline or punishment by DOC unless it is preceded by these basic due process measures: “Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing.”

62. EEO 625 allows the *Nunez* Monitor to approve rules that would allow discipline and placement in restrictive housing without any hearing at all, except as required when an incarcerated person is placed in segregated confinement, a type of solitary confinement, pursuant

to the HALT Act. EEO 625 also suspends the incarcerated person's right to cross-examine witnesses, suspends the right to any counsel, suspends the right to know what an incarcerated person is even being accused of, and suspends the right to review evidence before the hearing and even specifically eliminates the right to "adequate time to prepare for a restrictive housing hearing."

Expanding the Use of Restrictive Housing

63. Section 9-167(h) limits the use of restrictive housing, prohibiting unnecessary, damaging confinement in an environment that amounts to *de facto* solitary confinement.

64. EEO 625 effectively removes any restrictions on the use of this restrictive housing if the *Nunez* Monitor approves it, ceding all authority over restrictive housing with no limitations, except as required by the when an incarcerated person is placed in segregated confinement, a type of solitary confinement, pursuant to the HALT Act.

65. Local Law 42 prohibits the Department from placing "an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period." EEO 625 entirely eliminates any restrictions on how long an incarcerated person may be placed in restrictive housing, as defined by DOC.

66. Local Law 42 requires DOC to "meaningfully review" placement within 15 days of placement, to determine "whether the incarcerated person continues to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing." EEO 625 expands the scope of this review, requiring DOC "to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed," because, under EEO 625, people could be held far longer than 30 days.

67. EEO 625 requires DOC to release someone from restrictive housing when this restrictive confinement is no longer necessary: "The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing." EEO625 suspends this provision entirely.

68. Local Law 42 requires DOC to allow people in restrictive housing to have contact with other people, to alleviate the crippling isolation people feel locked in a cell alone: "A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape." EEO 625 suspends this provision entirely.

Reducing Out-of-Cell Time

69. Section 9-167(i) ensures that incarcerated people are allowed out of their cells for a meaningful period of time every day: "All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section." EEO 625

modifies this section to allow the *Nunez* Monitor to reduce the amount of out-of-cell time incarcerated people are afforded.

Permitting Lengthy Emergency Lock-ins

70. Section 9-167(j) prohibits DOC's practice of using emergency lock-ins to lock entire housing units in their cells, for lengthy periods of time, based on claimed emergencies. Local Law 42 prohibits using these mass lock-ins for extended periods of time: "Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible. The department shall lift emergency lock-ins as quickly as possible." During these lock-ins, Local Law 42 gives incarcerated people the ability to call family and seek medical care. EEO 625 suspends these provisions of the law entirely. And the local law requires DOC to immediately tell the public there has been a lock-in, so that family, defense attorneys, and others will know why the incarcerated people affected are not able to attend meetings, court, and family visits. EEO 625 modifies this provision to allow DOC to instead notify the public at some unknown time in the future, whenever it is deemed practical to do so.

71. The remaining section of EEO 625 suspends all the Board of Correction minimum standards that were enacted to implement these sections of Local Law 42 discussed above.

REQUEST FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court enter an Order:

(a) Finding the Emergency Orders arbitrary, capricious and contrary to law, the issuance of which is beyond the Mayor's lawful authority;

(b) Vacating the Mayor's Emergency Orders declaring a local state of emergency as result

of Local Law 42 (Order No. 624 and all subsequent renewals); and

(c) Vacating the Mayor's Emergency Orders suspending Local Law 42 (Order No. 625 and all subsequent renewals).

Dated: New York, New York
December 9, 2024

Respectfully submitted,

OFFICE OF THE GENERAL COUNSEL FOR THE NEW YORK CITY COUNCIL

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VERIFICATION

State of New York)
) ss:
County of New York)

NWAMAKA EJEBE, an attorney duly admitted to practice before the Courts of the State of New York, hereby affirms, under penalty of perjury pursuant to CPLR § 2106, as follows:

I am Deputy General Counsel for the Council of the City of New York. I am duly admitted to practice law in the Courts of the State of New York. I verify under penalty of perjury that the allegations in the Petition are true to my knowledge, that I believe to be true any matters alleged therein upon information and belief, and that my knowledge is based on my personal knowledge, the books and records of the Council and/or statements made to me by officers or employees thereof.

I affirm this 9th day of December, 2024, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

____
Nwamaka Ejebe

Exhibit A

LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2024

No. 42

Introduced by the Public Advocate (Mr. Williams) and Council Members Rivera, Cabán, Hudson, Won, Restler, Hanif, Avilés, Nurse, Sanchez, Narcisse, Krishnan, Abreu, Louis, Farías, De La Rosa, Ung, Ossé, Gutiérrez, Richardson Jordan, Joseph, Brannan, Menin, Schulman, Barron, Moya, Williams, Powers, Marte, Stevens, Brooks-Powers, Bottcher, Dinowitz, Ayala, Riley, Feliz, Brewer and The Speaker (Council Member Adams) (by request of the Brooklyn Borough President).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to banning solitary confinement in city jails and establishing standards for the use of restrictive housing and emergency lock-ins

Be it enacted by the Council as follows:

Section 1. Chapter 1 of title 9 of the administrative code is amended by adding a new section 9-167 to read as follows:

§ 9-167 Solitary confinement. a. Definitions. For the purposes of this section, the following terms have the following meanings:

Advocate. The term "advocate" means a person who is a law student, paralegal, or an incarcerated person.

Cell. The term "cell" means any room, area or space that is not a shared space conducive to meaningful, regular and congregate social interaction among many people in a group setting, where an individual is held for any purpose.

De-escalation confinement. The term "de-escalation confinement" means holding an incarcerated person in a cell immediately following an incident where the person has caused

physical injury or poses a specific risk of imminent serious physical injury to staff, themselves or other incarcerated persons.

Emergency lock-in. The term "emergency lock-in" means a department-wide emergency lock-in, a facility emergency lock-in, a housing area emergency lock-in, or a partial facility emergency lock-in as defined in section 9-155.

Out-of-cell. The term "out-of-cell" means being in a space outside of, and in an area away from a cell, in a group setting with other people all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction and activity or being in any space during the time of carrying out medical treatment, individual one-on-one counseling, an attorney visit or court appearance.

Pre-hearing temporary restrictive housing. The term "pre-hearing temporary restrictive housing" means any restrictive housing designated for incarcerated persons who continue to pose a specific risk of imminent serious physical injury to staff, themselves, or other incarcerated persons after a period of de-escalation confinement has exceeded time limits established by this section and prior to a hearing for recommended placement in restrictive housing has taken place.

Restraints. For the purposes of this section, the term "restraints" means any object, device or equipment that impedes movement of hands, legs, or any other part of the body.

Restrictive housing. The term "restrictive housing" means any housing area that separates incarcerated persons from the general jail population on the basis of security concerns or discipline, or a housing area that poses restrictions on programs, services, interactions with other incarcerated persons or other conditions of confinement. This definition excludes housing designated for incarcerated persons who are: (1) in need of medical or mental health support as determined by the entity providing or overseeing correctional medical and mental health,

including placement in a contagious disease unit, (2) transgender or gender non-conforming, (3) in need of voluntary protective custody, or (4) housed in a designated location for the purpose of school attendance.

Solitary confinement. The term "solitary confinement" means any placement of an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for a count not to exceed two hours in any 24-hour period.

Suicide prevention aide. For the purposes of this section, the term "suicide prevention aide" means a person in custody who has been trained to identify unusual and/or suicidal behavior.

Violent grade I offense. The term "violent grade I offense" shall have the same meaning as defined by the rules of the department of correction as of January 1, 2022.

b. Ban on solitary confinement. The department shall not place an incarcerated person in a cell, other than at night for sleeping for a period not to exceed eight hours in any 24-hour period or during the day for count not to exceed two hours in any 24-hour period, unless for the purpose of de-escalation confinement or during emergency lock-ins.

c. De-escalation confinement. The department's uses of de-escalation confinement shall comply with the following provisions:

1. De-escalation confinement shall not be located in intake areas and shall not take place in decontamination showers. Spaces used for de-escalation confinement must, at a minimum, have the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and be maintained in accordance with the personal hygiene and space requirements set forth in such sections;

2. Department staff must regularly monitor a person in de-escalation confinement and engage in continuous crisis intervention and de-escalation to support the person's health and well-being,

attempt de-escalation, work toward a person's release from de-escalation confinement and determine whether it is necessary to continue to hold such person in such confinement;

3. The department shall conduct visual and aural observation of each person in de-escalation confinement every 15 minutes, shall refer any health concerns to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Suicide prevention aides may conduct check-ins with a person in de-escalation confinement at least every 15 minutes and refer any health concerns to department staff who will get medical or mental health staff to treat any reported immediate health needs. No suicide prevention aide shall face any retaliation or other harm for carrying out their role;

4. Throughout de-escalation confinement, a person shall have access to a tablet or device that allows such person to make phone calls outside of the facility and to medical staff in the facility;

5. A person shall be removed from de-escalation confinement immediately following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others;

6. The maximum duration a person can be held in de-escalation confinement shall not exceed four hours immediately following the incident precipitating such person's placement in such confinement. Under no circumstances may the department place a person in de-escalation confinement for more than four hours total in any 24-hour period, or more than 12 hours in any seven-day period; and

7. In circumstances permitted in subdivision g of this section, the department may transfer a person from de-escalation confinement to pre-hearing temporary restrictive housing.

(a) The department shall not place any incarcerated person in a locked decontamination shower nor in any other locked space in any facility that does not have, at a minimum, the features specified in sections 1-03 and 1-04 of title 40 of the rules of the city of New York and maintained in accordance with the personal hygiene and space requirements as set forth in such sections.

(b) The department shall not maintain any locked decontamination showers. Any other locked spaces in any facility for holding incarcerated people must at least have the features specified in and maintained in accordance with the personal hygiene and space requirements set forth in 40 RCNY § 1-03 and § 1-04.

d. Reporting on de-escalation confinement. For each instance an incarcerated person is placed in de-escalation confinement as described in subdivision c of this section, the department shall prepare an incident report that includes a detailed description of why isolation was necessary to de-escalate an immediate conflict and the length of time the incarcerated person was placed in such confinement. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the preceding quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting such reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's website, a report with data for the preceding quarter on the total number of people placed in such confinement, disaggregated by race, age, gender identity and mental health treatment level, as well as the total number of people held in such confinement disaggregated by whether confinement lasted less than one hour, between one and two hours, between two and three hours, and between three and four hours.

e. Use of restraints. 1. The department shall not place an incarcerated person in restraints unless an individualized determination is made that restraints are necessary to prevent an imminent risk of self-injury or injury to other persons. In such instances, only the least restrictive form of restraints may be used and may be used no longer than is necessary to abate such imminent harm. Restraints shall not be used on an incarcerated person under the age of 22 except in the following circumstances: (i) during transportation in and out of a facility, provided that during transportation no person shall be secured to an immovable object; and (ii) during escorted movement within a facility to and from out-of-cell activities where an individualized determination is made that restraints are necessary to prevent an immediate risk of self-injury or injury to other persons. The department is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

2. The department shall not place an incarcerated person in restraints beyond the use of restraints described in paragraph 1 of this subdivision, or on two consecutive days, until a hearing is held to determine if the continued use of restraints is necessary for the safety of others. Such hearing shall comply with the rules of the board of correction as described in paragraph 1 of subdivision f of this section. Any continued use of restraints must be reviewed by the department on a daily basis and discontinued once there is no longer an imminent risk of self-injury or injury to other persons. Continued use of restraints may only be authorized for seven consecutive days.

f. Restrictive housing hearing. Except as provided in subdivision g of this section, the department shall not place an incarcerated person in restrictive housing until a hearing on such placement is held and the person is found to have committed a violent grade I offense. Any required hearing regarding placement of a person into restrictive housing shall comply with rules to be established by the board of correction.

1. The board of correction shall establish rules for restrictive housing hearings that shall, at a minimum, include the following provisions:

(i) An incarcerated person shall have the right to be represented by their legal counsel or advocate;

(ii) An incarcerated person shall have the right to present evidence and cross-examine witnesses;

(iii) Witnesses shall testify in person at the hearing unless the witnesses' presence would jeopardize the safety of themselves or others or security of the facility. If a witness is excluded from testifying in person, the basis for the exclusion shall be documented in the hearing record;

(iv) If a witness refuses to provide testimony at the hearing, the department must provide the basis for the witness's refusal, videotape such refusal, or obtain a signed refusal form, to be included as part of the hearing record;

(v) The department shall provide the incarcerated person and their legal counsel or advocate written notice of the reason for proposed placement in restrictive housing and any supporting evidence for such placement, no later than 48 hours prior to the restrictive housing hearing;

(vi) The department shall provide the legal counsel or advocate adequate time to prepare for such hearings and shall grant reasonable requests for adjournments;

(vii) An incarcerated person shall have the right to an interpreter in their native language if the person does not understand or is unable to communicate in English. The department shall take reasonable steps to provide such interpreter;

(viii) A refusal by an incarcerated person to attend any restrictive housing hearings must be videotaped and made part of the hearing record;

(ix) If the incarcerated person is excluded or removed from a restrictive housing hearing because it is determined that such person's presence will jeopardize the safety of themselves or others or security of the facility, the basis for such exclusion must be documented in the hearing record;

(x) A restrictive housing disposition shall be reached within five business days after the conclusion of the hearing. Such disposition must be supported by substantial evidence, shall be documented in writing, and must contain the following information: a finding of guilty or not guilty, a summary of each witness's testimony and whether their testimony was credited or rejected with the reasons thereof, the evidence relied upon by the hearing officer in reaching their finding, and the sanction imposed, if any; and

(xi) A written copy of the hearing disposition shall be provided to the incarcerated person and their counsel or advocate within 24 hours of the determination.

2. Failure to comply with any of the provisions described in paragraph 1 of this subdivision, or as established by board of correction rule, shall constitute a due process violation warranting dismissal of the matter that led to the hearing.

g. Pre-hearing temporary restrictive housing. In exceptional circumstances, the department may place a person in pre-hearing temporary restrictive housing prior to conducting a restrictive housing hearing as required by subdivision f of this section.

1. Such placement shall only occur upon written approval of the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security. Such written approval shall include: the basis for a reasonable belief that the incarcerated person has committed a violent grade I offense, and whether such person has caused

serious physical injury or poses a specific and significant risk of imminent serious physical injury to staff or other incarcerated persons.

2. A restrictive housing hearing shall occur as soon as reasonably practicable following placement in pre-hearing temporary restrictive housing, and must occur within five days of such placement, unless the person placed in such restrictive housing seeks a postponement of such hearing.

3. If a person is found guilty at a restrictive housing hearing, time spent in pre-hearing temporary restrictive housing prior to such hearing determination shall be deducted from any sentence of restrictive housing and such time shall count toward the time limits in restrictive housing.

4. Pre-hearing temporary restrictive housing shall comply with all requirements for restrictive housing, including but not limited to those established in subdivision h of this section.

5. During the first day of placement in pre-hearing temporary restrictive housing, department staff must regularly monitor the person and engage in continuous crisis intervention and attempt de-escalation, work toward a person's release from pre-hearing temporary restrictive housing and determine whether it is necessary to continue to hold the person in pre-hearing temporary restrictive housing.

h. Restrictive housing regulations. The department's use of restrictive housing must comply with the following provisions:

1. The department shall not place an incarcerated person in restrictive housing for longer than necessary and for no more than a total of 60 days in any 12 month period.

2. Within 15 days of placement of an incarcerated person in restrictive housing, the department shall meaningfully review such placement to determine whether the incarcerated person continues

to present a specific, significant and imminent threat to the safety and security of other persons if housed outside restrictive housing. If an individual is not discharged from restrictive housing after review, the department shall provide in writing to the incarcerated person: (i) the reasons for the determination that such person must remain in restrictive housing and (ii) any recommended program, treatment, service, or corrective action. The department shall provide the incarcerated person access to such available programs, treatment and services.

3. The department shall discharge an incarcerated person from restrictive housing if such person has not engaged in behavior that presents a specific, significant, and imminent threat to the safety and security of themselves or other persons during the preceding 15 days. In all circumstances, the department shall discharge an incarcerated person from restrictive housing within 30 days after their initial placement in such housing.

4. A person placed in restrictive housing must have interaction with other people and access to congregate programming and amenities comparable to those housed outside restrictive housing, including access to at least seven hours per day of out-of-cell congregate programming or activities with groups of people in a group setting all in the same shared space without physical barriers separating such people that is conducive to meaningful and regular social interaction. If a person voluntarily chooses not to participate in congregate programming, they shall be offered access to comparable individual programming. A decision to voluntarily decline to participate in congregate programming must be done in writing or by videotape.

5. The department shall utilize programming that addresses the unique needs of those in restrictive housing. The department shall provide persons in restrictive housing with access to core educational and other programming comparable to core programs in the general population. The department shall also provide persons in restrictive housing access to evidence-based

therapeutic interventions and restorative justice programs aimed at addressing the conduct resulting in their placement in restrictive housing. Such programs shall be individualized and trauma-informed, include positive incentive behavior modification models, and follow best practices for violence interruption. Staff that routinely interact with incarcerated persons must be trained in de-escalation techniques, conflict resolution, the use of force policy, and related topics to address the unique needs of those in restrictive housing units.

6. The department shall use positive incentives to encourage good behavior in restrictive housing units and may use disciplinary sanctions only as a last resort in response to behavior presenting a serious and evident danger to oneself or others after other measures have not alleviated such behavior.

7. All housing for medical or mental health support provided to persons recommended to receive such support by the entity providing and,or overseeing correctional medical and mental health, including placement in contagious disease units, housing for people who are transgender or gender non-conforming, housing for voluntary protective custody, and housing for purposes of school attendance, shall comply with subdivisions (b), (c), (e), (i), (j) and (k) of this section and paragraphs 4, 5, and 6 of this subdivision.

8. For purposes of contagious disease units, after a referral from health care staff, a person may be held in a medical unit overseen by health care staff, for as limited a time as medically necessary as exclusively determined by health care staff, in the least restrictive environment that is medically appropriate. Individuals in a contagious disease unit must have comparable access as individuals incarcerated in the general population to phone calls, emails, visits, and programming done in a manner consistent with the medical and mental health treatment being received, such as at a physical distance determined appropriate by medical or mental health staff.

Such access must be comparable to access provided to persons incarcerated outside of restrictive housing units.

9. Reporting on restrictive housing. For each instance a disciplinary charge that could result in restrictive housing is dismissed or an incarcerated individual is found not guilty of the disciplinary charge, the department shall prepare an incident report that includes a description of the disciplinary charge and the reasons for the dismissal or not guilty determination. For each instance an incarcerated person is placed in restrictive housing, the department shall prepare an incident report that includes a detailed description of the behavior that resulted in placement in restrictive housing and why restrictive housing was necessary to address such behavior, including if a person was placed in pre-hearing temporary restrictive housing and the reasons why the situation met the requirements in paragraph 1 of subdivision g of this section. For each instance in which confinement in restrictive housing is continued after a 15-day review of an incarcerated person's placement in restrictive housing, the department shall prepare an incident report as to why the person was not discharged, including a detailed description of how the person continued to present a specific, significant and imminent threat to the safety and security of the facility if housed outside restrictive housing and what program, treatment, service, and/or corrective action was required before discharge. Beginning on July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the prior quarter and post all such reports on the department's website. The department shall redact all personally identifying information prior to posting the reports on the department's website. Beginning July 31, 2024, and within 30 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction, and post on the department's website, a report with data for the preceding quarter

on the total number of people placed in restrictive housing during that time period, disaggregated by race, age, gender identity, mental health treatment level and length of time in restrictive housing, and data on all disposition outcomes of all restrictive housing hearing during such time period, disaggregated by charge, race, age, gender identity and mental health treatment level.

i. Out-of-cell time. 1. All incarcerated persons must have access to at least 14 out-of-cell hours every day except while in de-escalation confinement pursuant to subdivision c of this section and during emergency lock-ins pursuant to subdivision j of this section.

2. Incarcerated persons may congregate with others and move about their housing area freely during out-of-cell time and have access to education and programming pursuant to section 9-110 of the administrative code.

j. Emergency lock-ins. 1. Emergency lock-ins may only be used when the Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership with responsibility for the operations of security for a facility determines that such lock-in is necessary to de-escalate an emergency that poses a threat of specific, significant and imminent harm to incarcerated persons or staff. Emergency lock-ins may only be used when there are no less restrictive means available to address an emergency circumstance and only as a last resort after exhausting less restrictive measures. Emergency lock-ins must be confined to as narrow an area as possible and limited number of people as possible. The department shall lift emergency lock-ins as quickly as possible. The Commissioner, a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security shall review such lock-ins at least every hour. Such lock-ins may not last more than four hours.

2. Throughout an emergency lock-in, the department shall conduct visual and aural observation of every person locked in every fifteen (15) minutes, shall refer any health concerns

to medical or mental health staff, and shall bring any person displaying any indications of any need for medical documentation, observation, or treatment to the medical clinic. Throughout an emergency lock-in, other than in a department-wide emergency lock-in or a facility emergency lock-in, each person locked in shall have access to a tablet or other device that allows the person to make phone calls both outside of the facility and to medical staff in the facility.

3. The department shall immediately provide notice to the public on its website of an emergency lock-in, including information on any restrictions on visits, phone calls, counsel visits or court appearances.

4. For each instance an emergency lock-in is imposed, the department shall prepare an incident report that includes:

(a) A description of why the lock-in was necessary to investigate or de-escalate an emergency, including the ways in which it posed a threat of specific, significant and imminent harm;

(b) A description of how other less restrictive measures were exhausted;

(c) The number of people held in lock-in;

(d) The length of lock-in;

(e) The areas affected and the reasons such areas were subject to the emergency lock-in;

(f) The medical and mental health services affected, the number of scheduled medical and or mental health appointments missed and requests that were denied;

(g) Whether visits, counsel visits or court appearances were affected;

(h) What programs, if any, were affected;

(i) All actions taken during the lock-in to resolve and address the lock-in; and

(j) The number of staff diverted for the lock-in.

Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide the speaker of the council and the board of correction all such reports for the preceding quarter and shall post all such reports on the department's website with any identifying information redacted. Beginning July 15, 2024, and within 15 days of the end of each subsequent quarter, the department shall provide to the speaker of the council and the board of correction a report on the total number of lock-ins occurring during the preceding quarter, the areas affected by each such lock-in, the length of each such lock-in and number of incarcerated people subject to each such lock-in, disaggregated by race, age, gender identity, mental health treatment level and length of time in cell confinement.

k. Incarcerated persons under the age of 22 shall receive access to trauma-informed, age-appropriate programming and services on a consistent, regular basis.

§ 2. This local law takes effect 180 days after it becomes law. The board of correction shall take any actions necessary for the implementation of this local law, including the promulgation of rules relating to procedures and penalties necessary to effectuate this section before such date.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on December 20, 2023, disapproved by the Mayor on January 19, 2024 and repassed by the Council on January 30, 2024 and said law is adopted notwithstanding the objection of the Mayor.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 42 of 2024, Council Int. No. 549-A of 2022) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council, disapproved by the Mayor, and repassed by the City Council**.**

SPENCER FISHER, Acting Corporation Counsel.

Exhibit B

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

EMERGENCY EXECUTIVE ORDER NO. 624

July 27, 2024

DECLARATION OF LOCAL STATE OF EMERGENCY

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York,* 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, the New York City Council ("City Council") has enacted Local Law 42 of 2024, as codified in the Administrative Code of the City of New York at section 9-167 ("Local Law 42"), which is to take effect on July 28, 2024; and

WHEREAS, Local Law 42 severely limits the use of restrictive housing, de-escalation confinement, restraints in movement and transportation, and emergency lock-ins, among other things, for persons in the custody of DOC, and significantly impacts operational procedures regarding, among other things, the management and housing of individuals following serious acts of violence; and

WHEREAS, prior to the passage of Local Law 42, DOC testified before City Council, conveying that terms of the proposed local law conflicted with the *Nunez* Court Orders with which DOC must comply and would remove key tools necessary to mitigate the risk of violence in DOC facilities, endanger DOC staff and persons in custody, and likely result in an increase in violence in DOC facilities; and

WHEREAS, on December 20, 2023, notwithstanding DOC's testimony and public safety concerns, the City Council voted to pass Local Law 42; and

WHEREAS, pursuant to the *Nunez* Court Orders, on January 5, 2024, DOC requested that the Monitor advise and provide feedback to DOC on how the requirements of Local Law 42 would impact DOC's ability to comply with the *Nunez* Court Orders; and

WHEREAS, on January 12, 2024, the Monitor expressed deep concerns about the proposed local law and assessed that implementing Local Law 42 "could impede the Department's ability to comply with the *Nunez* Court Orders," and "inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff" [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at p. 2]; and

WHEREAS, on January 19, 2024, the Mayor vetoed Local Law 42, citing the serious public safety concerns previously identified by DOC and the Monitor;

WHEREAS, despite DOC's good faith engagement with the City Council, on January 30, 2024, the City Council voted to override the Mayor's veto of Local Law 42; and

WHEREAS, on June 5, 2024, DOC, through its attorneys at the New York City Law Department, advised the Honorable Judge Laura T. Swain, Chief Judge of the United States District Court for the Southern District of New York, who is the judge presiding over *Nunez*, that because many of the requirements of Local Law 42 conflict with aspects of the *Nunez* Court Orders, the City intended to move for an order suspending the requirements of Local Law 42 until such time as the Monitor approves DOC policies and programs addressing those requirements. The letter also noted DOC's intent to meet and confer with counsel for the *Nunez* parties in advance of filing the motion [*see* 11 CV 5845 (SDNY) Dkt. No. 724]. On June 7, 2024, Judge Swain endorsed the June 5 letter and directed the parties to meet and confer [*see* 11 CV 5845 (SDNY) Dkt. No. 726]; and

WHEREAS, on June 25, 2024, pursuant to Local Law 42, the New York City Board of Correction ("BOC") adopted rules relating to the implementation of the law; and

WHEREAS, in addition to a meet and confer that took place with the *Nunez* parties, DOC met and conferred with the City Council on several occasions in an effort to reach an agreement to temporarily stay, or to extend outward, the effective date of Local Law 42 in order to allow for further consultation between the *Nunez* parties, the Monitor and the City Council regarding the intersection between Local Law 42 and the City's obligations under the *Nunez* Court Orders; and

WHEREAS, despite these efforts, and despite the existence of the *Nunez* Court Orders, on July 15, 2024, the City Council informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, on July 17, 2024, the Monitor assessed Local Law 42 and wrote to DOC [*see* 11 CV 5845 (SDNY) Dkt. No. 758-3]:

- That "attempting to implement L[ocal] L[aw] 42 at this time … would be dangerous and would subject incarcerated individuals and staff to further risk of harm" [Dkt. No. 758-3 at p. 2]; and that

- L[ocal] L[aw] 42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually result in an increased risk of harm to other incarcerated individuals and staff" [Dkt. No. 758-3 at p. 4]; and that

- "the requirements of [. . . Local Law 42] impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary" [Dkt. No. 758-3 at p. 4, emphasis in original]; and that

- DOC is "at present not equipped to safely implement" Local Law 42; that the "truncated implementation timeline" for the significant changes required by Local Law 42 is "unreasonable"; and that the prospect of a rushed implementation of the Law "further heightens" concerns about the associated "risk of harm and the safety of those in the Department's custody and those working in the Department's facilities;" [Dkt. No. 758-3 at pgs. 5-6]; and that

- Local Law 42 would "drastically alter . . . [and} impact the Department's core strategy for addressing violent misconduct—its restrictive housing program" [Dkt. No. 758-3 at p. 8]; and that

- implementing the law as-is would "require[] changes that conflict with standard sound correctional practices ... and therefore would be dangerous for those incarcerated and [who] work in the jails" [Dkt. No. 758-3 at p. 7]; and that

- approval from the Monitor "is necessary" because Local Law 42's requirements otherwise "could undercut the Department's ability to achieve compliance in *Nunez*" [Dkt. No. 758-3 at p. 9]; and that

- in the expert view of the Monitoring Team—which has "over 100 years' experience" in formulating "reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings"—additional time and careful work are needed to evaluate which requirements of Local Law 42 could be implemented without violating the *Nunez* Court Orders [Dkt. No. 758-3 at p. 2, 10]; and that

- the task of "[f]ully understanding [. . . the Law's] requirements and the BOC's respective rules (which were only just passed) . . . and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking"; and

WHEREAS, the Monitor therefore proposed:

- that, following the conclusion of the Monitor's analysis, the parties to the *Nunez* litigation, along with the Monitor and the counsel for the City Council, "must meet and confer" to determine how best to address any divergence between the requirements of the *Nunez* Court Orders and Local Law 42 [Dkt. No. 758-3 at pgs. 9-10]; and

- that given that "the practices at issue have a direct impact on facility safety," the Monitor recommends that such work be undertaken between "now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice" [Dkt. No. 758-3 at p. 10]; and

WHEREAS, DOC Commissioner Maginley-Liddie set forth to the *Nunez* Court, in a 17-page, detailed declaration dated July 22, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 758-1] why and how Local Law 42, if implemented as-is and at this time, would pose immediate dangers to public safety, including by:

- preventing DOC from transporting individuals to courts or hospitals in a safe manner because Local Law 42 places insurmountable burdens on DOC's ability to restrain incarcerated individuals during transport [Dkt. No. 758-1 at para. 34-40]; and

- preventing DOC from escorting individuals through jail, court, hospital and other public facilities in a safe manner Local Law 42 places insurmountable burdens on DOC's ability to use restraints during escorts [*id.*]; and

- preventing DOC and courthouse personnel from holding persons in custody at courthouses during lengthy court calendars that exceed several hours [Dkt. No. 758-1 at para. 22]; and

- preventing DOC from operating the Enhanced Supervision Housing Program, developed in close consultation with the Monitor for those individuals who have been found guilty after a disciplinary hearing of committing a violent offense, typically a slashing or stabbing or assault on staff [Dkt. No. 758-1 at para. 11-18]; and

- preventing DOC from holding restrictive housing hearings expeditiously by imposing additional requirements for such hearings that are likely to lead to delays in the completion of hearings and in placement of individuals [Dkt. No. 758-1 at para. 15-16]; and

- preventing DOC from providing adequate rehabilitative programming by limiting the time in such housing to 15 days as a general rule [Dkt. No. 758-1 at para. 15]; and

- preventing DOC from operating its Separation Status Housing Unit, which is used in those rare instances when a body scan reveals that an individual has secreted a weapon or drugs on their person and the individual refuses to relinquish the item [Dkt. No. 758-1 at para. 19-21]; and

- preventing DOC from exercising necessary discretion to maintain public safety during facility emergencies and housing area emergencies, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of emergency lock-ins to four hours and inflexibly mandates that individuals in custody be allowed to make phone calls during emergency lock-ins notwithstanding that such telephone access threatens to facilitate gang activity and violence within and outside the jails and poses significant safety and security risks [Dkt. No. 758-1 at para. 26-28]; and

- preventing DOC from employing lock-ins during searches, which undermines DOC's ability to perform safe and effective unannounced searches of the facilities, thereby eliminating an essential tool for DOC to rid its facilities of weapons and other contraband [Dkt. No. 758-1 at para. 29]; and

- preventing DOC from exercising necessary discretion in using effective de-escalation practices for the purpose of calming disruptive individuals and victims of violence, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of de-escalation confinement to four hours, even though circumstances sometimes arise in which a longer stay is necessary for safety, and it inflexibly mandates that persons in de-escalation confinement be allowed to make phone calls outside the facility, notwithstanding that it is dangerous and unsound correctional policy for a person who has engaged in a violent fight, particularly if the fight is gang-related, to be able to telephone their confederates to spread the word [Dkt. No. 758-1 at para. 30-33]; and

WHEREAS, Local Law 42 imposes significant other procedural requirements relating to the placement of individuals in restrictive housing and other jail operations that would pose a direct threat to the safety of incarcerated individuals and staff in DOC facilities and would, in the Monitor's assessment, "provide myriad opportunities for undue delay by the perpetrator of violence" before the Department could act to address the underlying conduct [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at 7], including procedural requirements that: restrict the use of de-escalation confinement in a manner that would prevent DOC from placing an individual in de-escalation confinement for their own protection when they have been the victim of a violent incident; prevent DOC from operating a safe and effective restrictive housing program by mandating an inflexible 14-hour out-of-cell requirement and limiting restrictive housing to no more than 30 consecutive days and no more than 60 days within any 12-month period; require DOC to immediately alert the public that a facility is on lock-down, notwithstanding that such a procedure would pose a significant threat to security in the facility; and require that an incarcerated individual be allowed to cross-examine witnesses during restrictive housing hearings, notwithstanding that such a procedure could place witnesses in danger; and

WHEREAS, DOC Commissioner Maginley-Liddie's declaration further states that DOC would be in an "inescapable bind" if Local Law 42 were to take effect at this time because

"[u]nder the Court's Orders in the *Nunez* case, [DOC] cannot modify its policies on restrictive housing, de-escalation units, emergency lock-ins and restraints without submitting the modification to the Monitor and waiting for his approval. Yet Local Law 42, if implemented, would radically modify our policies in those areas without the Monitor's approval" and in a manner that is dangerous [Dkt. No. 758-1 at para. 41]; and

WHEREAS, on July 22, 2024 DOC, through its attorneys at the New York City Law Department, sent a letter to Judge Swain, providing a status update on the work that had been taking place regarding Local Law 42 since the June 5 letter referenced above and attaching the assessments by both the Monitor and DOC Commissioner of the dangers of implementing Local Law 42 [*see* 11 CV 5845 (SDNY) Dkt. No. 758], and on July 23, 2024 Judge Swain endorsed the July 22 letter and directed the *Nunez* Defendants and the Monitoring Team to continue their focused analytical work concerning compliance with Local Law 42, as outlined in the July 17, 2024 letter from the Monitoring Team, and further directed the *Nunez* Defendants to file a status update regarding this work by October 25, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 759]; and

WHEREAS, on July 23, 2024, DOC again reached out to the City Council to ask that the City Council stay the effective date of Local Law 42 until these serious issues could be resolved, but in response to an inquiry from legal counsel to DOC, the City Council again informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, certain sections of Title 40 of the Rules of the City of New York have already been suspended by Emergency Executive Order No. 279, dated November 1, 2021, and remain suspended pursuant to subsequent renewals of such Emergency Executive Order; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, to avert immediate dangers to public safety for the limited period while the Monitoring Team completes their work as directed by Judge Swain, and until DOC is in a position to meet both its obligations under the *Nunez* Court Orders and Local Law 42;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. State of Emergency. A state of emergency is hereby declared to exist within the correction facilities operated by DOC because of the imminent effective date of Local Law 42 and the risks to health and safety that implementation of that law at this time and under current circumstances presents.

§ 2. The State of Emergency shall remain in effect for a period not to exceed thirty days or until rescinded, whichever occurs first. Additional declarations to extend the State of Emergency for additional periods not to exceed thirty days will be issued if needed.

§ 3. This Executive Order shall take effect immediately.

Eric Adams
Mayor

Exhibit C

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, NY 10007

EMERGENCY EXECUTIVE ORDER NO. 625

July 27, 2024

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York,* 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, the New York City Council ("City Council") has enacted Local Law 42 of 2024, as codified in the Administrative Code of the City of New York at section 9-167 ("Local Law 42"), which is to take effect on July 28, 2024; and

WHEREAS, Local Law 42 severely limits the use of restrictive housing, de-escalation confinement, restraints in movement and transportation, and emergency lock-ins, among other things, for persons in the custody of DOC, and significantly impacts operational procedures regarding, among other things, the management and housing of individuals following serious acts of violence; and

WHEREAS, prior to the passage of Local Law 42, DOC testified before City Council, conveying that terms of the proposed local law conflicted with the *Nunez* Court Orders with which DOC must comply and would remove key tools necessary to mitigate the risk of violence in DOC facilities, endanger DOC staff and persons in custody, and likely result in an increase in violence in DOC facilities; and

WHEREAS, on December 20, 2023, notwithstanding DOC's testimony and public safety concerns, the City Council voted to pass Local Law 42; and

WHEREAS, pursuant to the *Nunez* Court Orders, on January 5, 2024, DOC requested that the Monitor advise and provide feedback to DOC on how the requirements of Local Law 42 would impact DOC's ability to comply with the *Nunez* Court Orders; and

WHEREAS, on January 12, 2024, the Monitor expressed deep concerns about the proposed local law and assessed that implementing Local Law 42 "could impede the Department's ability to comply with the *Nunez* Court Orders," and "inadvertently undermine the overall goals of protecting individuals from harm, promoting sound correctional practice and improving safety for those in custody and jail staff" [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at p. 2]; and

WHEREAS, on January 19, 2024, the Mayor vetoed Local Law 42, citing the serious public safety concerns previously identified by DOC and the Monitor;

WHEREAS, despite DOC's good faith engagement with the City Council, on January 30, 2024, the City Council voted to override the Mayor's veto of Local Law 42; and

WHEREAS, on June 5, 2024, DOC, through its attorneys at the New York City Law Department, advised the Honorable Judge Laura T. Swain, Chief Judge of the United States District Court for the Southern District of New York, who is the judge presiding over *Nunez*, that because many of the requirements of Local Law 42 conflict with aspects of the *Nunez* Court Orders, the City intended to move for an order suspending the requirements of Local Law 42 until such time as the Monitor approves DOC policies and programs addressing those requirements. The letter also noted DOC's intent to meet and confer with counsel for the *Nunez* parties in advance of filing the motion [*see* 11 CV 5845 (SDNY) Dkt. No. 724]. On June 7, 2024, Judge Swain endorsed the June 5 letter and directed the parties to meet and confer [*see* 11 CV 5845 (SDNY) Dkt. No. 726]; and

WHEREAS, on June 25, 2024, pursuant to Local Law 42, the New York City Board of Correction ("BOC") adopted rules relating to the implementation of the law; and

WHEREAS, in addition to a meet and confer that took place with the *Nunez* parties, DOC met and conferred with the City Council on several occasions in an effort to reach an agreement to temporarily stay, or to extend outward, the effective date of Local Law 42 in order to allow for further consultation between the *Nunez* parties, the Monitor and the City Council regarding the intersection between Local Law 42 and the City's obligations under the *Nunez* Court Orders; and

WHEREAS, despite these efforts, and despite the existence of the *Nunez* Court Orders, on July 15, 2024, the City Council informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, on July 17, 2024, the Monitor assessed Local Law 42 and wrote to DOC [*see* 11 CV 5845 (SDNY) Dkt. No. 758-3]:

- That "attempting to implement L[ocal] L[aw] 42 at this time … would be dangerous and would subject incarcerated individuals and staff to further risk of harm" [Dkt. No. 758-3 at p. 2]; and that

- L[ocal] L[aw] 42 includes unprecedented provisions regarding the management of incarcerated individuals following serious acts of violence and eliminates necessary discretion by correctional management in a manner that could actually

result in an increased risk of harm to other incarcerated individuals and staff" [Dkt. No. 758-3 at p. 4]; and that

- "the requirements of [. . . Local Law 42] impose absolute prohibitions on correctional management that remove all discretion in a number of particularized circumstances where *some* degree of latitude and discretion in judgement to manage immediate threats to security are in fact necessary" [Dkt. No. 758-3 at p. 4, emphasis in original]; and that

- DOC is "at present not equipped to safely implement" Local Law 42; that the "truncated implementation timeline" for the significant changes required by Local Law 42 is "unreasonable"; and that the prospect of a rushed implementation of the Law "further heightens" concerns about the associated "risk of harm and the safety of those in the Department's custody and those working in the Department's facilities;" [Dkt. No. 758-3 at pgs. 5-6]; and that

- Local Law 42 would "drastically alter . . . [and] impact the Department's core strategy for addressing violent misconduct—its restrictive housing program" [Dkt. No. 758-3 at p. 8]; and that

- implementing the law as-is would "require[] changes that conflict with standard sound correctional practices ... and therefore would be dangerous for those incarcerated and [who] work in the jails" [Dkt. No. 758-3 at p. 7]; and that

- approval from the Monitor "is necessary" because Local Law 42's requirements otherwise "could undercut the Department's ability to achieve compliance in *Nunez*" [Dkt. No. 758-3 at p. 9]; and that

- in the expert view of the Monitoring Team—which has "over 100 years' experience" in formulating "reasonable operational practices that ensure adequate protection from harm for incarcerated individuals and staff who work in carceral settings"—additional time and careful work are needed to evaluate which requirements of Local Law 42 could be implemented without violating the *Nunez* Court Orders [Dkt. No. 758-3 at p. 2, 10]; and that

- the task of "[f]ully understanding [. . . the Law's] requirements and the BOC's respective rules (which were only just passed) . . . and then comparing them to the respective requirements of the *Nunez* Court Orders is an exceedingly complicated undertaking"; and

WHEREAS, the Monitor therefore proposed:

- that, following the conclusion of the Monitor's analysis, the parties to the *Nunez* litigation, along with the Monitor and the counsel for the City Council, "must meet and confer" to determine how best to address any divergence between the

requirements of the *Nunez* Court Orders and Local Law 42 [Dkt. No. 758-3 at pgs. 9-10]; and

- that given that "the practices at issue have a direct impact on facility safety," the Monitor recommends that such work be undertaken between "now and October 24, 2024, at which time the Court can be updated on the status of these issues and the necessity for any potential motion practice" [Dkt. No. 758-3 at p. 10]; and

WHEREAS, DOC Commissioner Maginley-Liddie set forth to the *Nunez* Court, in a 17-page, detailed declaration dated July 22, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 758-1] why and how Local Law 42, if implemented as-is and at this time, would pose immediate dangers to public safety, including by:

- preventing DOC from transporting individuals to courts or hospitals in a safe manner because Local Law 42 places insurmountable burdens on DOC's ability to restrain incarcerated individuals during transport [Dkt. No. 758-1 at para. 34-40]; and

- preventing DOC from escorting individuals through jail, court, hospital and other public facilities in a safe manner Local Law 42 places insurmountable burdens on DOC's ability to use restraints during escorts [*id.*]; and

- preventing DOC and courthouse personnel from holding persons in custody at courthouses during lengthy court calendars that exceed several hours [Dkt. No. 758-1 at para. 22]; and

- preventing DOC from operating the Enhanced Supervision Housing Program, developed in close consultation with the Monitor for those individuals who have been found guilty after a disciplinary hearing of committing a violent offense, typically a slashing or stabbing or assault on staff [Dkt. No. 758-1 at para. 11-18]; and

- preventing DOC from holding restrictive housing hearings expeditiously by imposing additional requirements for such hearings that are likely to lead to delays in the completion of hearings and in placement of individuals [Dkt. No. 758-1 at para. 15-16]; and

- preventing DOC from providing adequate rehabilitative programming by limiting the time in such housing to 15 days as a general rule [Dkt. No. 758-1 at para. 15]; and

- preventing DOC from operating its Separation Status Housing Unit, which is used in those rare instances when a body scan reveals that an individual has secreted a weapon or drugs on their person and the individual refuses to relinquish the item [Dkt. No. 758-1 at para. 19-21]; and

- preventing DOC from exercising necessary discretion to maintain public safety during facility emergencies and housing area emergencies, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of emergency lock-ins to four hours and inflexibly mandates that individuals in custody be allowed to make phone calls during emergency lock-ins notwithstanding that such telephone access threatens to facilitate gang activity and violence within and outside the jails and poses significant safety and security risks [Dkt. No. 758-1 at para. 26-28]; and

- preventing DOC from employing lock-ins during searches, which undermines DOC's ability to perform safe and effective unannounced searches of the facilities, thereby eliminating an essential tool for DOC to rid its facilities of weapons and other contraband [Dkt. No. 758-1 at para. 29]; and

- preventing DOC from exercising necessary discretion in using effective de-escalation practices for the purpose of calming disruptive individuals and victims of violence, in that Local Law 42 inflexibly and arbitrarily restricts the maximum duration of de-escalation confinement to four hours, even though circumstances sometimes arise in which a longer stay is necessary for safety, and it inflexibly mandates that persons in de-escalation confinement be allowed to make phone calls outside the facility, notwithstanding that it is dangerous and unsound correctional policy for a person who has engaged in a violent fight, particularly if the fight is gang-related, to be able to telephone their confederates to spread the word [Dkt. No. 758-1 at para. 30-33]; and

WHEREAS, Local Law 42 imposes significant other procedural requirements relating to the placement of individuals in restrictive housing and other jail operations that would pose a direct threat to the safety of incarcerated individuals and staff in DOC facilities and would, in the Monitor's assessment, "provide myriad opportunities for undue delay by the perpetrator of violence" before the Department could act to address the underlying conduct [*see* 11 CV 5845 (SDNY) Dkt. No. 758-2 at 7], including procedural requirements that: restrict the use of de-escalation confinement in a manner that would prevent DOC from placing an individual in de-escalation confinement for their own protection when they have been the victim of a violent incident; prevent DOC from operating a safe and effective restrictive housing program by mandating an inflexible 14-hour out-of-cell requirement and limiting restrictive housing to no more than 30 consecutive days and no more than 60 days within any 12-month period; require DOC to immediately alert the public that a facility is on lock-down, notwithstanding that such a procedure would pose a significant threat to security in the facility; and require that an incarcerated individual be allowed to cross-examine witnesses during restrictive housing hearings, notwithstanding that such a procedure could place witnesses in danger; and

WHEREAS, DOC Commissioner Maginley-Liddie's declaration further states that DOC would be in an "inescapable bind" if Local Law 42 were to take effect at this time because "[u]nder the Court's Orders in the *Nunez* case, [DOC] cannot modify its policies on restrictive housing, de-escalation units, emergency lock-ins and restraints without submitting the modification to the Monitor and waiting for his approval. Yet Local Law 42, if implemented, would radically modify our policies in those areas without the Monitor's approval" and in a manner that is dangerous [Dkt. No. 758-1 at para. 41]; and

WHEREAS, on July 22, 2024 DOC, through its attorneys at the New York City Law Department, sent a letter to Judge Swain, providing a status update on the work that had been taking place regarding Local Law 42 since the June 5 letter referenced above and attaching the assessments by both the Monitor and DOC Commissioner of the dangers of implementing Local Law 42 [*see* 11 CV 5845 (SDNY) Dkt. No. 758], and on July 23, 2024 Judge Swain endorsed the July 22 letter and directed the *Nunez* Defendants and the Monitoring Team to continue their focused analytical work concerning compliance with Local Law 42, as outlined in the July 17, 2024 letter from the Monitoring Team, and further directed the *Nunez* Defendants to file a status update regarding this work by October 25, 2024 [*see* 11 CV 5845 (SDNY) Dkt. No. 759]; and

WHEREAS, on July 23, 2024, DOC again reached out to the City Council to ask that the City Council stay the effective date of Local Law 42 until these serious issues could be resolved, but in response to an inquiry from legal counsel to DOC, the City Council again informed DOC that it would not agree to any stay of the effective date of Local Law 42; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, certain sections of Title 40 of the Rules of the City of New York have already been suspended by Emergency Executive Order No. 279, dated November 1, 2021, and remain suspended pursuant to subsequent renewals of such Emergency Executive Order; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, to avert immediate dangers to public safety for the limited period while the Monitoring Team completes their work as directed by Judge Swain, and until DOC is in a position to meet both its obligations under the *Nunez* Court Orders and Local Law 42; and

WHEREAS, on July 27, 2024, I issued Emergency Executive Order No. 624, and declared a state of emergency to exist within the correction facilities operated by the DOC, and such declaration remains in effect;

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct that beginning on July 28, 2024, the following provisions of section 9-167 of the Administrative Code of the City of New York are suspended or modified as indicated:

a. The definition of the term "de-escalation confinement" set forth in subdivision a is modified to allow the use of "de-escalation confinement" where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.

b. The definition of the term "pre-hearing temporary restrictive housing" set forth in subdivision a is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.

c. Subdivision b is modified to allow the DOC to place an incarcerated person in a cell in accordance with any restrictive housing program approved by the Monitor.

d. Paragraph 4 of subdivision c is suspended.

e. Paragraph 5 of subdivision c is modified to require that the DOC remove a person from de-escalation confinement as soon as practicable when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.

f. The first sentence of paragraph 6 of subdivision c is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor.

g. The second sentence of paragraph 6 of subdivision c is suspended to remove the daily and weekly limits on de-escalation confinement.

h. Subdivision e is suspended to the extent that it imposes limitations on the DOC's use of restraints, provided that this suspension shall not affect the requirements of subdivision e that only the least restrictive form of restraints may be used and that the DOC is prohibited from engaging in attempts to unnecessarily prolong, delay or undermine an individual's escorted movements.

i. Subdivision f is modified to allow the department to place an individual in restrictive housing without a hearing in circumstances approved by the Monitor.

j. Subparagraph (i) of paragraph 1 of subdivision f is suspended.

k. Subparagraph (ii) of paragraph 1 of subdivision f is modified to provide that an incarcerated person shall not be allowed to cross examine witnesses, but shall be allowed to submit questions to be asked of witnesses and to respond to testimony of witnesses.

l. Subparagraph (v) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for an incarcerated person written notice of the reason for a proposed restrictive housing placement and to the extent it requires the DOC to provide evidence supporting the incarcerated person's placement in restrictive housing in advance of the hearing.

m. Subparagraph (vi) of paragraph 1 of subdivision f is suspended to the extent that it requires the DOC to provide the legal counsel or advocate for the incarcerated person adequate time to prepare for a restrictive housing hearing, provided however, that the DOC shall provide the incarcerated person adequate time to review the evidence presented, including adjourning the hearing, if needed.

n. The first sentence of subdivision h is modified to allow the DOC to use restrictive housing that complies with policies approved by the Monitor.

o. Paragraph 1 of subdivision h is suspended to the extent that it prohibits the DOC from placing an incarcerated person in restrictive housing for more than a total of 60 days in any 12 month period.

p. Paragraph 2 of subdivision h is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.

q. Paragraph 3 of subdivision h is suspended.

r. Paragraph 4 of subdivision h is suspended.

s. Paragraph 6 of subdivision h is modified to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.

t. Paragraph 1 of subdivision i is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.

u. Paragraph 1 of subdivision j is modified to allow the DOC to employ emergency lock-ins during searches and to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

v. The second sentence of paragraph 2 of subdivision j is suspended.

w. Paragraph 3 of subdivision j is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.

§ 2. I hereby direct that beginning on July 28, 2024, the following provisions of Title 40 of the Rules of the City of New York are suspended or modified as indicated:

a. Paragraph 2 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.

b. Paragraph 3 of subdivision a of section 1-05 is suspended to the extent it would apply to de-escalation confinement, during emergency lock-ins, and with respect to any restrictive housing program approved by the Monitor.

c. Paragraph 2 of subdivision b of section 1-05 is modified to add an exception for restrictive housing programs approved by the Monitor.

d. The definition of the term "de-escalation confinement" set forth in section 6-03 is modified to allow the use of "de-escalation confinement" where an incarcerated person poses a specific risk of imminent serious physical injury to the public, or where the person requires short term separation for their own protection.

e. The definition of the term "pre-hearing temporary restrictive housing" set forth in section 6-03 is modified to allow the use of pre-hearing temporary restrictive housing based on the risk of imminent serious physical injury to staff, the incarcerated person, other incarcerated persons or to the public.

f. Subdivision a of section 6-05 is modified to the extent necessary to allow the use of de-escalation confinement in circumstances allowed pursuant to section 1 of this emergency order.

g. Subdivision h of section 6-05 is suspended.

h. Subdivision j of section 6-05 is modified to provide that a person shall be removed from de-escalation confinement as soon as practicable following when such person has sufficiently gained control and no longer poses a significant risk of imminent serious physical injury to themselves or others.

i. Paragraph 1 of subdivision j of section 6-05 is modified to allow the DOC to hold a person in de-escalation confinement for more than four hours in exceptional circumstances as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security, or as approved by the Monitor and to remove the daily and weekly limits on de-escalation confinement so as to allow holding an individual in de-escalation confinement when required by current circumstances, regardless of whether the

individual was recently held in de-escalation confinement as a result of prior circumstances.

j. Subdivision a of section 6-06 is modified to allow the DOC to employ emergency lock-ins during searches.

k. Subdivision e of section 6-06 is modified to allow emergency lock-ins to last more than four hours when necessary to protect the safety of individuals in custody and DOC staff, as determined by the Commissioner or a Deputy Commissioner, or another equivalent member of department senior leadership over the operations of security.

l. Subdivision g of section 6-06 is suspended to the extent that it requires the DOC to immediately notify the public of an emergency lock-in and modified to provide that the DOC shall, as soon as practicable, provide notice to the public on its website of the existence of circumstances at a facility that could result in restrictions on visits, phone calls, counsel visits or court appearances.

m. Subdivision i of section 6-06 is suspended to the extent that it prohibits an emergency lock-in lasting more than four hours.

n. Subdivision k of section 6-06 is suspended.

o. Subdivision a of section 6-10 is modified to provide that the restriction does not apply to confinement in a restrictive housing program approved by the Monitor.

p. Section 6-13 is suspended.

q. Section 6-14 is modified to require the DOC to review each incarcerated person's placement in restrictive housing every 15 days to determine whether the individual has complied with the program's requirements and whether their status should be changed. The individual shall be present during the review, unless the review committee determines that safety concerns preclude their presence, and shall be promptly informed of its outcome.

r. Section 6-15 is modified to allow the DOC to limit out-of-cell time pursuant to a restrictive housing program approved by the Monitor.

s. Subdivision c of section 6-16 is suspended.

t. Subdivision d of section 6-16 is suspended.

u. Subdivision j of section 6-16 is suspended to provide that the DOC may use disciplinary sanctions only as a last resort in response to behavior that is not in compliance with program requirements.

v. Subdivision b of section 6-19 is suspended.

w. Subdivision f of section 6-19 is suspended to the extent it requires more hours of programming than the number of hours approved by the Monitor.

x. Paragraph 3 of subdivision a of section 6-27 is suspended to the extent it requires an individualized determination regarding use of restraints.

y. The first and second sentences of subdivision b of section 6-27 are suspended.

z. Subdivision d of section 6-27 is suspended to the extent that it imposes a limit on the time period for which restraints can be used.

aa. Subdivision l of section 6-27 is suspended.

bb. Subdivision m of section 6-27 is suspended.

§ 3. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Eric Adams
Mayor

Exhibit D

October 18, 2024

Dear City Council:

We are writing as mental health professionals who have specialized for the past several decades in studying the causes and prevention of violence (especially lethal violence, meaning homicide and suicide) among those in prisons and jails, and in the communities from which they come and to which most of them return. We are sending this to you in order to explain why implementation of New York City Local Law 42 would decrease the amount of violence in both of these settings – the jails and the City. We believe, on the basis of unusually extensive experience in designing and implementing violence prevention programs, that implementing Local Law 42 would be an important step toward *decreasing* violence, and thus improving the health and safety not only of those incarcerated in New York City's jails, and of those who work in them, but even more extensively, in New York City as a whole.

Local Law 42's provisions draw on best practices from innumerable jurisdictions and decades of evidence from proven interventions that show that making the type of changes required under Local Law 42 and utilizing an alternative approach can dramatically reduce violence and other detrimental health outcomes, such as the precipitation of psychotic symptoms such as hallucinations and delusions.

Background on Our Experiences and Expertise

We provide this letter based on our professional experiences. Senior author Dr. James Gilligan has over 55 years of experience as a psychiatrist, and has designed, directed, and participated in therapeutic and research programs aimed at discovering the causes of violence and the methods of preventing it in prisons, jails, and communities throughout the United States and around the world since 1967. In 1977, he became the director of the Institute of Law and Psychiatry at McLean Hospital, the main psychiatric teaching and research hospital of the Harvard Medical School. As a result of state and federal court decisions, that appointment led to his becoming the Medical Director of the Massachusetts prison mental hospital for the "criminally insane" (people diagnosed with mental illness and assessed to be violent), and then the clinical director of the Prison Mental Health Service for the entire Massachusetts prison system, until 1992, as a result of which he designed and directed programs that reduced war-zone levels of lethal violence within those prisons to zero for a year at a time. He then helped to organize highly successful violence-reduction programs, such as "the Boston Miracle," in which a tripling of the youth homicide rate was reduced to zero for more than two years. Then, he was chair of the Committee on Prevention of President Clinton's unprecedentedly successful National Campaign Against Youth Violence (in which youth homicides that had been increasing during every previous year dramatically decreased during every following year), and served in a similar capacity for Tony Blair in the U.K., Kofi Annan, the Secretary-General of the United Nations (concerning violence against children, on a world-wide basis), the World Health Organization (which adopted his model of the primary, secondary and tertiary prevention of violence on a global scale), the World Court in the Hague, which agreed with his diagnosis of the mass rapes in the Balkan wars of the 1990s as tactics of warfare and hence crimes and crimes against humanity, rather than simply as individual crimes of rape; and as a consultant to the World Economic Forum's Committee on Negotiation and Conflict

Resolution. His innovative, award-winning violence prevention efforts in jails and in the community have been replicated in the San Francisco County Jails, the State of California, Massachusetts, New York State, Poland, New Zealand, Singapore, and other countries around the world.

As an example of Dr. Gilligan's work, prior to his running the prison mental health program for the Massachusetts prisons, they were in a war-zone level of epidemic of violence. One maximum security prison held 600 people, with a homicide a month and a suicide every six weeks throughout the entire decade of the 1970's. By the time that decade ended, in 10 years, this 600-man prison had had 200 violent deaths. In the rest of the prisons of Massachusetts, they had had an epidemic of riots, mass rapes, hostage-taking incidents, fire-setting, mutilations of other people, self-mutilations—every form of violence one could imagine—throughout that system. People were being put in solitary confinement, including sometimes for years at a time.

That is when the Massachusetts Supreme Court and a federal court in Boston, the U.S. District Court, ordered the State Department of Correction to allow a team from Harvard Medical School into the prisons to provide mental health care as a means of violence prevention. What the courts had concluded from their investigations was that much of this violence was a product of undiagnosed and untreated major psychopathology. Some of this preceded the actual incarceration of many of the individuals, but much had occurred after incarceration, because of the pathogenic conditions within the prisons. He immediately created psychiatric emergency rooms at every prison, and also provided long-term psychotherapy and mental health clinics for ongoing long-term treatment. They provided 24-hours-a-day, 7-days-a-week contact availability. This was the days before cell phones, but there were beepers. So they could be called at any time of day or night if there was an emergency. There was a dramatically successful reduction in the violence rate in those prisons. During his time working in the Massachusetts prisons, they did not have a single death from a hostage incident. The prisons went from an average of dozens of murders and suicides per year in the whole prison system to zero for a year at a time. They then experienced one or two such tragedies in any given year, but then again had none for another year's time.

Junior author Dr. Bandy Lee is a forensic psychiatrist and expert on violence who taught at Yale School of Medicine and Yale Law School for seventeen years, before transferring to the Harvard Program in Psychiatry and the Law. She is currently president of the World Mental Health Coalition, cofounder of the Violence Prevention Institute, and project group leader for the World Health Organization (WHO) Violence Prevention Alliance. She served as director of research for the Center for the Study of Violence, as well as co-founded and directed Yale's Violence and Health Working Group at the MacMillan Center for International Studies. She consulted with governments on prison reform and community violence prevention, such as in New York, Connecticut, Massachusetts, Alabama, California, Ireland, and France. She is a past fellow of the National Institute of Mental Health and recipient of the National Research Service Award. She helped evaluate and propagate a San Francisco-based program that placed 60 violent men in an open dormitory with intensive programming, which reduced in-jail violence rates to zero and effectuated a reduction in violent recidivism by up to 83% in the first year out of jail. She also coauthored with Dr. Gilligan a 2013 report to the NYC Board of Correction that initiated some successful initial reforms replacing solitary with more effective behavioral management. She authored a widely-used, authoritative textbook, *Violence* (Lee, 2019), 17 edited scholarly books

and journal special issues, over 100 scientific articles and chapters, and over 300 opinion articles in outlets such as the *Guardian*, the *New York Times*, the *Boston Globe*, the *Independent*, and *Politico*. In addition to the WHO, she has served as an expert consultant for the United Nations, UNESCO, and the World Economic Forum.

The Harms of Solitary Confinement and the Need for Local Law 42's Four Hour Limit on Solitary

Because of the extremely detrimental medical and psychological impacts of solitary confinement, Local Law 42's four-hour limit on solitary confinement for purposes of de-escalation and emergency lock-ins can be almost guaranteed to have highly positive effects on the health and safety of everyone involved, both people incarcerated and staff. There is now abundant evidence that solitary confinement causes both violent behavior and mental illness. This was already evident over 180 years ago, when Charles Dickens, upon visiting the Eastern State Penitentiary in Philadelphia, called it: "slow and daily tampering with the mysteries of the brain … immeasurably worse than any torture of the body." More recently, both Nelson Mandela and John McCain have said that being placed in solitary confinement was more unbearable to them than any of the physical tortures to which their jailors subjected them (including having bones broken).

Mounting research shows that even short periods of time in isolation, sometimes no more than a day or two, or even hours at a time, can have severely detrimental effects both on mental health symptoms and on resulting behavioral outcomes. This is consistent with our combined experience as psychiatrists who have spent many decades specializing in treating people who have engaged in violence. Everything we have discovered about human nature, from the anatomy and physiology of the brain, to decades of research on human psychological development from infancy to adulthood, confirms the fact that Aristotle was correct 2400 years ago when he said that an essential characteristic of human nature is that humans are "social animals." That is, both our personalities and our brains are designed from birth to interact with other people, and when we lose that capacity, or are deprived of it, we lose our humanity, meaning our ability to live as humans among other humans (hence, homicide, suicide, mental illness, etc.). To which we could add that the shaping of brain structure, which continues well into a person's twenties and thirties, not to mention continually changing connections after that, make continuing social input critical to health and survival. Multiple experiments over the past seventy years have shown that social isolation and sensory deprivation can also induce psychotic symptoms, such as hallucinations and delusions, even in individuals with no past histories of mental illness.

Depriving people of social interaction and sensory stimulation, therefore, has been shown experimentally and clinically to increase suicidal and homicidal behavior. Like other studies that have shown that people in solitary confinement are between five[1] to six[2] times more likely to die

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[1] HALT Solitary Campaign, The Walls Are Closing In on Me: Suicide and Self-Harm in New York State's Solitary Confinement Units, 2015–2019, May 2020, http://nycaic.org/wp-content/uploads/2020/05/The-Walls-Are-Closing-In-On-Me_For-Distribution.pdf.

[2] Fatos Kaba, et. al., Solitary Confinement and Risk of Self-Harm Among Jail Inmates, Am J Public Health. 2014 March; 104(3): 442–447, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/.

by suicide and seven[3] to twelve times[4] more likely to engage in acts of self-harm and suicide attempts, a recent report by the Department of Justice Office of the Inspector General documented that nearly half of all suicides in Bureau of Prisons custody took place in solitary confinement, at a rate six times higher than the rest of the prison population.[5]

Because of these harmful and counterproductive impacts of solitary, eliminating solitary altogether or at least placing a four-hour limit on solitary as required by Local Law 42 will improve health and safety. While there is no definitive reason that four hours itself is exactly the right amount of time, especially given individual variation, it is known that even hours of solitary confinement can cause severe harm. Under Local Law 42, people can still be locked in at night for eight hours at night (for sleep) and two additional hours during the day for count. But our point is that there is overwhelming evidence of the necessity for limiting solitary confinement during waking hours to a minimum.

Adult mental health settings provide a useful example of how ending solitary confinement beyond minutes or a small number of hours at a systemic level can achieve positive health and safety outcomes. For years and decades, often labeled "seclusion", solitary confinement was a widespread practice in adult mental health institutions. Because of the harms to health and safety of those solitary confinement practices, mental health hospitals have rightfully moved away from its use, with positive impacts on health and safety. For example, in Pennsylvania, in the 1990s, the state's mental hospitals dramatically restricted the use of seclusion to very few incidents with an average length of just over 1 hour, and in the 2000s they reduced it even further to the point of fully eliminating it. As a result, there has been no use of seclusion in PA hospitals since 2013.[6] The reductions in the use of seclusion, as well as reductions in the use of restraints, were correlated with *fewer* assaults by patients.[7]

Similarly, in youth detention facilities, solitary confinement – often referred to as "room confinement" or "seclusion" – was once a widespread practice. Yet, more and more jurisdictions across the country have been limiting solitary to minutes or hours at a time. As an example, the federal First Step Act – passed by both houses of the federal Congress and signed by the

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[3] Fatos Kaba, et. al., Solitary Confinement and Risk of Self-Harm Among Jail Inmates, Am J Public Health. 2014 March; 104(3): 442–447, https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3953781/.

[4] HALT Solitary Campaign, The Walls Are Closing In on Me: Suicide and Self-Harm in New York State's Solitary Confinement Units, 2015–2019, May 2020, http://nycaic.org/wp-content/uploads/2020/05/The-Walls-Are-Closing-In-On-Me_For-Distribution.pdf.

[5] U.S. Dep't of Justice Office of the Inspector Gen., Evaluation of Issues Surrounding Inmate Deaths in Federal Bureau of Prisons Institutions (Feb. 15, 2024), https://oig.justice.gov/reports/evaluation-issues-surrounding-inmate-deaths-federal-bureau-prisons-institutions; Restricted Housing, Bureau of Prisons Statistics, April 11, 2024, https://www.bop.gov/about/statistics/statistics_inmate_shu.jsp.

[6] Gregory Smith et al., "Pennsylvania State Hospital System's Seclusion and Restraint Reduction Program," Psychiatric Services 56, no. 9 (September 2005): 1115–1122, https://ps.psychiatryonline.org/doi/epdf/10.1176/appi.ps.56.9.1115; Christina Sterner, Pennsylvania Office of Mental Health and Substance Use Services, Pennsylvania State Hospital Risk Management Summary and Indicator Report, November 2019, 11, https://www.dhs.pa.gov/docs/For-Providers/Documents/State%20Hospital%20Risk%20Management%20Report/PA_RMSummaryRpt_November19.pdf.

[7] *Id.*

Republican president – fully banned the use of solitary/room confinement in youth facilities.[8] That law defined room confinement as the "involuntary placement … alone in a cell, room, or other area for any reason", and the Act banned such solitary confinement in all circumstances other than for up to a maximum of 30 *minutes* in instances where there was a risk of self-harm and up to a maximum of three hours in instances where there was a risk of harm to others.[9] This law follows best practices among leading experts and other jurisdictions. For example, the American Bar Association has urged an absolute maximum of four hours of such confinement for young people.[10] Similarly, the leading expert on youth facility monitoring and assessments, the Juvenile Detention Alternatives Initiative (supported by the Annie E. Casey Foundation and in more than 250 sites in 39 states), has also said for a number of years that there should be an absolute maximum of four hours on such confinement because of the harm solitary/isolation can cause.[11] In line with these laws and standards, various jurisdictions have limited solitary in practice in youth settings to time measured in hours or less. For example, Colorado has reduced room confinement to the point of having an average duration of roughly one hour (with a dramatic reduction in the number of times a person is placed in room confinement) and Massachusetts has an average duration of less than 40 minutes, with positive impacts on safety and well-being.[12]

An oft-cited program, the Missouri model in youth facilities, focuses on a holistic rehabilitative approach,[13] and any use of solitary confinement is limited in practice to – at most – one to two hours.[14] According to the 17-year former director of the Missouri Division of Youth Services, Mark Steward, "The Missouri Approach works. In my state, there are lower levels of violence and better recidivism rates than in most juvenile justice systems in the country. More than 90% of the youth who have been served through Missouri's juvenile justice system do not re-enter the juvenile system or enter adult prisons…. Since Missouri adopted this model – which is still used today – youth are 4 ½ times less likely to be assaulted and staff are 13 times less likely to be assaulted, compared with other states."[15] Of note, the system in Missouri was not always the way that it was, but required a dramatically re-invented approach to bring about change. As the former director stated, Missouri's system "was plagued by violence and suicides in a horrific prison-like environment. The conditions were so bad that in the 1960s, a juvenile judge in St. Louis refused

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[8] S 3747, First Step Act of 2018 (US Congress), https://www.congress.gov/bill/115th-congress/senate-bill/3747/text#tociddf565a43-5d49-48a4-9f05-011eb4e57668.

[9] *Id*.

[10] American Bar Association, Resolution 112E, August 2017, https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/juvenile_solitary_confinment_112e.authcheckdam.pdf.

[11] Juvenile Detention Alternatives Initiative, Juvenile Detention Facility Assessment: 2014 Update, 2014, 192, https://assets.aecf.org/ m/resourcedoc/aecf-juveniledetentionfacilityassessment-2014.pdf#page=103.

[12] Stop Solitary for Kids, Not in Isolation: How to Reduce Room Confinement While Increasing Safety in Youth Facilities, June 2019, https://www.stopsolitaryforkids.org/wp-content/uploads/2019/06/Not-In-Isolation-Final.pdf.

[13] Mark D. Steward, The Missi Approach to Juvenile Justice Would Work Here Too, If Louisiana Would Give It A Real Chance, NOLASep. 29, 2022, https://www.nola.com/opinions/article_71537246-4012-11ed-8cb8-e7e18c99f9eb.html.

[14] Missouri, Juvenile Justice Practices, 2016, http://www.jjgps.org/juvenile-justice-services/missouri#solitary-confinement.

[15] Mark D. Steward, The Missi Approach to Juvenile Justice Would Work Here Too, If Louisiana Would Give It A Real Chance, NOLASep. 29, 2022, https://www.nola.com/opinions/article_71537246-4012-11ed-8cb8-e7e18c99f9eb.html.

to send youth into Missouri's juvenile justice system."[16] Because Missouri's approach has been proven to better support people, and to drastically reduce violence both within facilities and after people return home, various jurisdictions around the country have replicated it.[17]

Solitary Confinement *Causes* Violence; It Does Not Reduce Violence

Solitary confinement, in addition to being inhumane and deadly, is counterproductive as a way to manage out-of-control behavior. From our decades of experiences working with people who are incarcerated, rather than reducing violence in prisons, jails, or outside communities after a person is released, solitary is a form of violence in itself that causes individuals to become much more likely to engage in behavioral violence as a result of worsened mental symptoms, anger, rage, impulse control issues, loss of identity, confusion, or delirium-like states that result directly from social isolation and sensory deprivation. The more severely people are punished, and the more isolation they have imposed on them, the more violent they become (on average). This vicious cycle keeps incarcerated people and jail staff in a chronic state of war with one another, and increases violence in incarcerated people after they are released into the community.

To illustrate some of what we have learned about the effects of solitary confinement on violence, we will mention the following two examples. When Dr. Gilligan was still working only in the prison mental hospital, a man in one of the regular prisons, who was in prison for a non-violent crime, repeatedly disobeyed enough "orders" from correction officers (concerning non-violent issues) that they punished him more and more severely, until he was finally placed in solitary confinement, where after two years in solitary he had "max'ed out" his prison sentence, so he was released, without any help from a parole system, to the community. Within two days of his release, he had killed one M.I.T. student and attempted to kill another, who had picked him up as a hitch-hiker. When one of the older, wiser and more humane correction officers learned of this outcome, he commented, "You can lock a dog in a closet for a month – but I don't want to be the one who is standing at the door when you let him out."

By way of contrast, when Dr. Gilligan became director of mental health programs for all of the state's prisons, he was asked by correction officers to help them understand and deal with a man in the maximum-security prison who was in solitary confinement, and who, whenever they let him out of his cell for his required one hour of out-of-cell time per day, he would try to attack them, essentially "going berserk." He did have a history of violent crime, but not of mental illness. When Dr. Gilligan interviewed him, Dr. Gilligan discovered that because of his placement in solitary confinement he was suffering from delusions of persecution (he thought the correction officers were planning to kill him) and hallucinations (confirming the delusions). So Dr. Gilligan petitioned the local district court to transfer him to the prison mental hospital, where he was housed in a residential setting, not an isolation cell, and was treated with respect by people who asked him what was troubling him, and what they could do for him. His delusions and hallucinations disappeared, he neither committed nor threatened any more violence, he seemed perfectly rational, and he engaged in constructive work activities in the hospital – even writing Dr. Gilligan a thank-you note for getting him out of solitary confinement (which was clearly what had provoked his psychotic symptoms).

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[16] *Id.*
[17] *Id.*

We are not suggesting that solitary confinement alone produces the amount of violence that our prisons and jails have been experiencing since we invented the modern prison system a little more than two centuries ago. What we are saying is that eliminating solitary confinement dramatically reduces the amount of violence, not only in prisons and jails, but also in the community, after those subjected to solitary are released from prison or jail.

The Benefits of Alternatives to Solitary Confinement Involving Access to 14 Hours of Daily Out-of-Cell Time, with Programming and Engagement

The evidence is very clear that utilizing alternative interventions that are literally the exact opposite of solitary confinement, and involve full days of real out-of-cell time with intensive programming and engagement, are much more effective at reducing violence and improving people's health. That is why Local Law 42's provisions requiring 14 hours of daily out-of-cell time, with group programming and engagement, will have tremendous positive impacts on health and safety.

Beginning in 1997, we designed a violence-prevention experiment in jails of the City and County of San Francisco with people who had engaged in serious violence, including physical and sexual assaults and domestic and other violent acts. Among other improvements, we eliminated the use of solitary confinement and initiated an intervention involving full days of out-of-cell group programming and engagement.

When these plans were announced, many correction officers petitioned to be transferred to another jail, because they were convinced that this would lead to riots in which incarcerated persons and correction officers would be killed. In fact, when implemented the rate of in-house violence became zero for up to a year at a time. As a result, correction officers then began to request to be transferred back into that jail, because it had become the safest place in the whole correctional system, not just for those who have been incarcerated but also for correction officers.

The secret was that instead of relying on solitary confinement as the means of preventing violence, we provided intensive, structured educational and psychotherapeutic programming 12 hours a day, six days a week – with no need for solitary confinement at all. Programs included intensive group psychotherapy focused on the ways in which conventional male role definitions (e.g., male supremacy, homophobia, etc.) stimulate violent behavior; exposure to victims of violence and their families who recounted the suffering this had caused them (a dramatically successful means of engendering the capacity for empathy); and many other programs designed to help them realize how their "strategies for living" had not been working for them, and had destroyed relationships that they actually wanted. This program was more expensive than an ordinary jail, of course, because of the intensive programming, but we were able to show that it actually saved the taxpayers $4 for every $1 spent on it, because the rate of re-incarceration (recidivism) was 83% lower than it was among those in an ordinary jail program; and few things are more expensive than keeping a person in jail. ("A year in jail would pay for a year in Yale.")

What was the result? The rate of violent assaults within the jail dropped from 44 per 100 incarcerated persons per year, prior to the introduction of the new program, to literally *zero* during the first full year the program was in operation, while it continued at a comparable rate of 50 per

year among a "control group" of incarcerated persons in an ordinary jail. The control group was identical to the experimental group in terms of age, ethnicity, education and most other demographic characteristics, except for the fact that the experimental group was actually five to six times *more* likely to be in the jail because of a violent crime, or a crime "against a person," so that their total non-violence in the jail was even more remarkable. And the program participants' rate of arrests for new violent crimes after release from the jail was 83% lower than it was in the control group, despite the fact that they had much higher histories of previous violent crimes than the control group did.

This experiment in violence prevention (without any solitary confinement) was so successful that it won a major national prize from the Ash Institute at Harvard's Kennedy School of Government, in a competition with some 800 other nominees from every state in the country, for "innovations in American governance."

We have helped design/seen similar success in:

- Massachusetts
- The City of Boston
- California
- San Francisco
- New York State
- Poland
- New Zealand
- Singapore
- France
- Ireland

Experiences similar to our own have been documented. In New York City jails themselves, it has been documented that the CAPS (Clinical Alternatives to Punitive Segregation) program, as it originally operated in the New York City jails, was an alternative to solitary for people with significant mental health needs that is based on therapeutic approaches rather than punitive ones or isolation, and involved full 14-hour days out of cell with programming and engagement.[18] "CAPS is designed to offer a full range of therapeutic activities and interventions for these patients, including individual and group therapy, art therapy, medication counseling and community meetings."[19] CAPS as originally operated showed significant reductions in violence and self-injury. Similarly, the PACE (Program to Accelerate Clinical Effectiveness) program, while not a disciplinary unit, as originally operated was an intervention involving full 14-hour days out of cell with group programming and engagement that more successfully treated people with serious mental health concerns and reduced violence. The DOC website states that incarcerated individuals "in CAPS and PACE are involved in fewer Use of Force incidents and show lower rates of self-

[18] Homer Venters et al., "From Punishment to Treatment: The "Clinical Alternative to Punitive Segregation" (CAPS) Program in New York City Jails," International Journal of Environmental Research and Public Health 13, no. 2 (February 2016): 182, available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4772202/.
[19] *Id.*

harm than similar [incarcerated individuals] in other housing" and that there "has been a 72% decrease in assaults on staff in CAPS; and a 63% decrease in assaults on staff in PACE."[20]

Similarly, the Merle Cooper program,[21] which operated in New York State between 1977 and 2013, was meant for people at high risk of recidivism, and involved people being fully separated from the rest of the prison population.[22] Yet, it was operated as the opposite of solitary – with full days out of cell, programming, peer led programming, and even the ability to earn the right to not be locked in at night. The program had positive outcomes on violence, and was praised by staff, administrators, and participants over years and decades.[23]

According to the Correctional Association of NY, at the time the program was still operating with over 200 participants in 2012, *"participants in the program live in a therapeutic community completely separate from the general population and live in double cells, dorms, or single cells. When people first enter the program, they begin living in the doubles, then work their way into the dorms, and finally into the single cells. The doors to the cells are not locked at night, and the living areas have kitchens with stoves and refrigerators, creating an environment that provides for more freedom and more personal responsibility….*

…The core components of the Merle Cooper program are therapy and group discussion aimed at helping participants to address their past problematic behavior and develop new skills and abilities to be successful in general population and back home in their communities upon release….Apart from the Merle Cooper-specific programmatic components, like the small groups and community meetings, Merle Cooper participants have access to the core programs available in general population, including academic classes, vocational courses, ASAT, and transitional services….In addition to the DOCCS-run programs, Merle Cooper provides much greater opportunities for peer-led classes…At the time of our visit, participants in the program ran the following classes: 12 steps, anger management, assertiveness training, change group, family and parenting, houses of healing, life skills, Stop the Abuse Cycle (STAC), understanding addiction, work ethics, and GED reviews in both English and math."[24]

The Need for Utilizing New York City Jails' Standard 14 Hours of Out-of-Cell Time

In our professional opinion, ensuring that all people in New York City's jails, including people in restrictive housing, have access to 14 hours of daily out-of-cell time, is particularly important to be most effective in preventing and reducing violence. Since 14 hours of daily out-of-cell time is the general minimum standard for all people in the jails, that should be the minimum for people in alternatives to solitary. Particularly in light of the history of New York City's jails utilizing various

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[20] New York City Department of Correction, CAPS and PACE Backgrounder, https://www.nyc.gov/site/doc/media/caps.page.

[21] Jerome Wright, "These Programs Work Better Than Solitary Confinement," Albany Times Union, January 20, 2022, https://www.timesunion.com/opinion/article/Commentary-These-programs-work-better-than-14990190.php.

[22] Clinton Correctional Facility, Correctional Association of New York, 2012-2014, https://drive.google.com/file/d/1DXcZOz7cKKTsUUj2HkU5XmQvNJgmVTvM/view.

[23] *Id.*

[24] *Id.*

forms of solitary confinement by another name,[25] and in order to avoid creating an environment based on punishment and deprivation and instead creating an environment focused on rehabilitation and transformation, the standard level of out-of-cell time should apply to everyone. There is no evidence that limiting out-of-cell time further would have any positive impacts, whereas premising a unit on restrictions and deprivation can have harmful and counterproductive consequences on safety and, as discussed above, having more time when people are locked in can cause devastating harm and worsen safety.

The Need for Time Limits on Restrictive Housing

Even without limiting the amount of out-of-cell time, the use of restrictive housing as a response to disciplinary violations inherently creates a punitive environment and conditions that are potentially ripe for abuse, again particularly because of the history of New York City's jails utilizing various forms of solitary confinement by many other names. In our professional opinion again, the time limits on the use of restrictive housing are thus appropriate and important in order to protect against people being kept in a potentially punitive and abusive environment. Although no specific studies have shown the "optimal" length of solitary confinement, studies show that even hours can have long-term detrimental effects both psychologically and neurologically. We would encourage the Department of Correction not only to develop RSVP-like interventions for these alternative restrictive housing units, but also to develop RSVP-like interventions that are not as a result of discipline or punishment but instead are utilized in general population units and thus under Local Law 42 could operate without time limits. Ultimately, we believe such RSVP-like interventions should be the way in which the entire jail system operates.

The Need for Restrictions on the Use of Restraints

As noted above, experience in mental health institutions shows that reducing or eliminating the use of restraints improves safety and reduces violence, rather than the opposite. De-escalation techniques as well as other forms of engagement have been proven to be far more effective in hospitals and other institutional settings so as to decrease the need for restraints, sometimes by as much as 90%. Our experience in the correctional setting has been similar. Shackling people or chaining people to a desk during out-of-cell time does not create the type of therapeutic environment required to be effective at actually reducing violence. Other methods of engagement and positive reinforcement have been shown to be far more effective in developing behavioral restraint and preventing violence, as RSVP-like programs have shown. While Local Law 42 does allow restraints to be used when individualized determinations are made as to their necessity, such use of restraints should be kept to a bare minimum and we would even encourage less use of restraints than allowed in Local Law 42.

[25] Columbia University Center for Justice, Solitary By Many Other Names: A Report on the Persistent and Pervasive Use of Solitary Confinement in New York City Jails, Dec. 2023, https://centerforjustice.columbia.edu/sites/default/files/content/Solitary%20By%20Many%20Other%20Names%20Report%20Final.pdf.

Conclusion

Continuing with the failed policies and practices that have caused so much violence, suffering, and death in New York City's jails cannot and will not make anyone safer – neither those incarcerated themselves, nor officers or civilian staff, nor people in the neighborhoods to which these individuals return. With the enactment of Local Law 42, New York City can take a critical opportunity to finally move away from these failed approaches and instead follow successful models, like the RSVP Program in San Francisco jails, which involves full days of out-of-cell group programming and led to a precipitous drop in violence. We have witnessed the utilization of an alternative approach, like that contained in Local Law 42, lead to dramatic reductions in violence – in Massachusetts, in San Francisco, in other states, and in other countries around the world. Local Law 42 presents an opportunity to do the same, and we hope – for the sake of the people living and working in the jails, as well as those in the city as a whole – that New York City Department of Correction will fully implement the law.

Thank you for your consideration.

Sincerely,

Bandy Lee, M.D., M.Div.
President, World Mental Health Coalition
Co-Founder, Violence Prevention Institute
Harvard Program in Psychiatry and the Law

James Gilligan, M.D.
Clinical Professor of Psychiatry, School of Medicine
Adjunct Professor, School of Law
New York University

Exhibit E

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 697

November 24, 2024

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York,* 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, on July 27, 2024, I issued Emergency Executive Order No. 624, and declared a state of emergency to exist within the correction facilities operated by the DOC, and such declaration remains in effect;

WHEREAS, additional reasons for requiring the measures continued in this Order are set forth in Emergency Executive Order No. 625, dated July 27, 2024; and

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct that the State of Emergency declared in Emergency Executive Order No. 624, dated July 27, 2024, and extended by subsequent orders, is extended for thirty (30) days.

§ 2. I hereby direct that section 1 of Emergency Executive Order No. 694, dated November 19, 2024 is extended for five (5) days

§ 3. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Eric Adams
Mayor

Exhibit F

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EMERGENCY EXECUTIVE ORDER NO. 703

December 4, 2024

WHEREAS, it is of utmost importance to protect the health and safety of all persons in the custody of the Department of Correction ("DOC"), and of all officers and persons who work in the City of New York jails and who transport persons in custody to court and other facilities, and the public; and

WHEREAS, over 80 provisions in the various Court Orders entered in *Nunez v. City of New York*, 11 CV 5845 (SDNY), require DOC to consult with, and seek the approval of, the *Nunez* Monitor ("Monitor") prior to implementing or amending policies on issues, including but not limited to, matters relating to security practices, the use of restraints, escorts, emergency lock-ins, de-escalation, confinement management of incarcerated individuals following serious acts of violence and subsequent housing strategies, and DOC may be held in contempt of court and sanctioned if it fails to appropriately consult with and obtain approval from the Monitor regarding policies in these areas; and

WHEREAS, as fully detailed in Emergency Executive Order 579 of 2024, DOC is already experiencing a significant staffing crisis, which poses a serious risk to the health, safety, and security of all people in custody and to DOC personnel; and

WHEREAS, attempting to comply with many of the provisions of Local Law 42 and the new BOC regulations, such as by transporting individuals to court without restraints, would require a massive increase in staff and other resources, which are not available; and

WHEREAS, even if DOC had such additional staffing and resources, that still would not obviate the direct threat to public safety posed by certain provisions of Local Law 42, nor would it obviate the fact that the Monitor has yet to approve implementation of those provisions as required by the *Nunez* Orders, nor would it obviate the fact that additional time would be needed to safely implement those provisions of Local Law 42 eventually approved by the Monitor, because, as the Monitor has expressly cautioned, the safe implementation of any new requirement or reform in DOC facilities requires planning time to "evaluat[e] the operational impact, update[e] policies and procedures, updat[e] the physical plant, determin[e] the necessary staffing complement, develop[] training materials, and provid[e] training to thousands of staff, all of which must occur before the changes in practice actually go into effect" [11 CV 5845 (SDNY) Dkt No. 758-3 at p. 61]; and

WHEREAS, on July 27, 2024, I issued Emergency Executive Order No. 624, and declared a state of emergency to exist within the correction facilities operated by the DOC, and such declaration remains in effect; and

WHEREAS, additional reasons for requiring the measures continued in this Order are set forth in Emergency Executive Order No. 625, dated July 27, 2024, and Emergency Executive Order 682, dated October 30, 2024; and

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

Section 1. I hereby direct section 1 of Emergency Executive Order No. 670, dated November 29, 2024 is extended for five (5) days.

§ 2. This Emergency Executive Order shall take effect immediately and shall remain in effect for five (5) days unless it is terminated or modified at an earlier date.

Eric Adams
Mayor

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE COUNCIL OF THE CITY OF NEW YORK and THE NEW YORK CITY PUBLIC ADVOCATE,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

-against-

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York,

Respondent.

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PETITIONERS' MEMORANDUM OF LAW

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PRELIMINARY STATEMENT

This proceeding raises a simple legal question: after New Yorkers' elected representatives have rejected the mayor's policy preferences by passing a law over his veto, can the mayor use special emergency powers to unilaterally suspend that law? The answer is clearly no. Because we live in a democracy, policy disputes are appropriately resolved by the democratic lawmaking process—not by the iron-fisted will of a single chief executive.

In early 2024, Mayor Eric Adams lost a long, hard-fought policy debate over solitary confinement. Following careful consultation with experts and consideration of best practices, data and evidence, the New York City Council and the Public Advocate concluded that our City's jails would be safer and more humane without any solitary confinement. Mayor Adams, on the other hand, embraced the status quo of outdated practices employed at Rikers Island. After years of legislative deliberation, public hearings, and bill amendments, the Council enacted its solitary confinement ban, Local Law 42, over the Mayor's veto. In response, Mayor Adams did not implement Local Law 42, nor did he challenge the law's validity in court. Instead, he did something no New York City mayor has ever done: he declared that the *local law itself* created a state of emergency, and he unilaterally suspended the law on that ground.

This Article 78 challenge asks the Court to do just one thing: to vacate the Mayor's unlawful, anti-democratic emergency orders in which he unilaterally suspended the jail-conditions law that the Council duly passed over his veto. State law makes clear that a mayor's emergency powers are reserved for *actual emergencies*—situations where the mayor needs to act swiftly to respond to a disaster that the legislative body does not have time to address. Here, we have exactly the opposite scenario: the Council, a co-equal branch of government, passed Local Law 42 after a deliberative process in which it weighed each of the Mayor's putative objections to the bill.

When it passed Local Law 42, the Council was well aware of Rikers' long history and current state of fostering extreme violence. The Council was well aware of staffing shortages, attrition, and the grievous harms faced by correctional staff each day. The Council was well aware of the City's inadequate reentry and recidivism outcomes, and how they harm incarcerated people, staff, and our communities more broadly. Indeed, the Council determined back in 2019 that the permanent solution to those harms and threats posed by Rikers' jails was to close the facilities. Consistent with that broader goal, the Council passed Local Law 42, not in spite of our jails' enduring problems but *because of them*. After the Council rejected the Mayor's policy preferences, he could not then impose them by fiat.

There are at least four separate reasons that the Mayor's suspension of Local Law 42 is illegal under the state emergency-powers law that governs these matters. Any one of these failings requires the Court to invalidate the Mayor's illegal emergency orders. *First*, the passage of Local Law 42 does not constitute an emergency under the emergency-powers law: a duly-enacted local law is not a "disaster, riot, catastrophe or other public emergency," and the Mayor's insistence that his policy disagreement with a co-equal branch of government qualifies as an "emergency" is a clear misapplication of state law. *Second*, there is no rational basis for the Mayor's finding that Local Law 42's enactment "imperils" public safety. *Third*, the Mayor's suspension of Local Law 42 failed to meet specific statutory mandates for the suspension of local laws, including that the suspension be narrowly tailored to the purported emergency. *Fourth*, the Mayor's emergency orders violate both the intent of state law and the City Charter's separation of powers.

The Mayor's unilateral suspension of Local Law 42 silences the voices of millions of New Yorkers whose elected representatives voted, overwhelmingly, to put an end to the deadly violence of solitary confinement. It silences of the voices of advocates, incarcerated people, and community

members who fought so hard for the law's passage. And it makes a mockery of the democratic lawmaking process and our system of checks and balances. It is unfathomable that Albany lawmakers intended this result when they passed the state law that governs mayors' emergency powers. And left in place, the Mayor's illegal suspension of Local Law 42 sets a dangerous precedent for future mayors to abuse their emergency powers when they are dissatisfied with the outcome of lawful democratic processes and have lost a policy debate.

LEGAL AND FACTUAL BACKGROUND

This petition presents a purely legal dispute about whether Mayor Adams has legal authority, under the guise of "emergency" orders, to unilaterally suspend a local law that the Council enacted over his failed veto. The legal framework forbidding this executive overreach is detailed below, along with pertinent facts regarding the Council's deliberative legislative response to the grievous harms of solitary confinement in Department of Correction ("DOC") jails, culminating in the passage of Local Law 42, by a vote of 42 to 9, over the Mayor's veto.

A. The City Charter's separation of powers: The Council makes policy choices and the executive branch implements them

The Council is the "sole legislative branch" of our City's government. *N.Y. Statewide Coal. of Hisp. Chambers of Com. v. N.Y.C. Dep't of Health & Mental Hygiene*, 23 N.Y.3d 681, 693 (2014); N.Y.C. Charter § 21.[1] Under our Charter, the entire "legislative power of the city" is vested in the Council. *Id.* Our Charter is "unequivocal[]" on this point. *Id.* The Charter empowers the Council with wide ranging power to adopt local laws for the "good rule and government of the city," the "order, protection and government of persons and property," and the "preservation of the public health, comfort, peace and prosperity of the city and its inhabitants." N.Y.C. Charter § 28.

[1] Pursuant to N.Y.C. Charter § 22, the Council consists of fifty-one council members and the public advocate, who serves as a non-voting member.

Under this framework, only the legislature can pass legislation: "[N]o matter how well-intentioned his actions may be, the Mayor may not unlawfully infringe upon the legislative powers reserved to the City Council." *Under 21 v. City of N.Y.*, 65 N.Y.2d 344, 358 (1985). The clear separation of our City's legislative and executive branches mandates that "no one branch be allowed to arrogate unto itself powers residing entirely in another branch." *Roberts v. Health & Hosps. Corp.*, 87 A.D.3d 311, 322 (1st Dep't 2011) (quoting *Under 21*, 65 N.Y.2d at 358).

In this stark division of powers, the "balancing of relative harm, benefit and convenience" is "peculiarly a legislative function" that belongs to the Council. *See Congregation Beth Israel W. Side Jewish Ctr. v. Board of Estimate*, 285 A.D. 629, 635 (1st Dep't 1955). It is the legislative body's job, not the Mayor's, to address "social problems" by making "value judgments entailing difficult and complex choices between broad policy goals." *Greater N.Y. Taxi Ass'n v. N.Y.C. Taxi & Limousine Comm'n*, 25 N.Y.3d 600, 610 (2015) (cleaned up). A mayor "impermissibl[y] infringe[s]" upon the Council's legislative power when, instead of "implementing a legislative policy" of the Council, he puts in place "a new policy not embraced by the City Council." *Under 21*, 65 N.Y.2d at 358 (1985).

B. The Mayor's limited authority to temporarily suspend local laws on an emergency basis

The purpose of emergency executive powers is "simple": they exist to "temporarily enhance executive power during unexpected crises that are moving too fast for [legislative bodies] to respond."[2] Courts have long recognized that New York State's emergency powers law—which

[2] Brennan Center for Justice, *Emergency Powers*, available at https://www.brennancenter.org/issues/bolster-checks-balances/executive-power/emergency-powers, archived at https://web.archive.org/web/20241204163047/https://www.brennancenter.org/issues/bolster-checks-balances/executive-power/; *see* John A. Ferejohn and Pasquale Pasquino, *The Law of the Exception: A Typology of Emergency Powers*, 2 Int'l J. Const. L. 210, 212 (2004).

governs the Mayor's issuance of emergency orders here—follows that settled framework. *See, e.g.*, *Prospect v. Cohalan*, 109 A.D.2d 210, 217-18 (2d Dep't 1985), *aff'd*, 65 N.Y.2d 867 (1985). When there is no time for deliberation, the executive branch may act unilaterally to respond to the emergency; but when there is time for the legislative branch to act, the executive cannot—beyond a successful veto—unilaterally overrule the legislature's policy choices.

Consistent with these principles, the State's emergency powers law gives mayors "the power to respond to a local disaster or the immediate threat of a disaster." *Id.* at 217-18 (citing Exec. L. §§ 24(1), 25, 26, 29-b). That targeted delegation of mayoral authority is one of necessity: "in emergency situations prompt and immediate unilateral action is necessary to preserve and protect life and property, the accomplishment of which would be frustrated if left to a deliberative body such as a [local] legislature." *Id.* This delegation of mayoral power enables a quick, nimble response when there is no time for a "deliberative" one. *Id.*

In contrast, state law authorizes local legislative bodies to address disaster preparedness and response on a longer time horizon. *Id.* (citing Exec. L. § 23(1)). To that end, state law makes clear that "the process of planning for a disaster" requires "a deliberative body, such as a [local] legislature," to gather and synthesize "relevant information from a multitude of sources," including impacted New Yorkers, agencies, the executive, community groups, and the public at large. *Id.* (citing Exec. L. § 23(5)).

Under the Executive Law, a mayor may issue emergency executive orders only if he finds that "the public safety is imperiled" by "a disaster, rioting, catastrophe, or similar public emergency" or by the "reasonable apprehension of immediate danger" of one of those enumerated emergencies. Exec. L. § 24(1). The Executive Law defines a "disaster" as the "occurrence or imminent, impending or urgent threat of wide spread or severe damage, injury, or loss of life or property"

resulting from "any natural or man-made causes." Exec. L. § 20(2)(a). That definition includes an illustrative list of occurrences that constitute disasters. The illustrative list is cabined to disease outbreaks, weather and climate-related disasters (*e.g.*, floods and hurricanes), other natural disasters (*e.g.*, earthquakes), and a narrow list of man-made emergencies such as malicious attacks and accidents that result in immediate, true emergencies, such as terrorism, explosions, and nuclear releases. *Id.*

Section 24 also describes the types of emergency actions a mayor may take to address an emergency. These include the targeted, temporary measures that one would typically expect a mayor to take in response to a natural disaster, pandemic, terrorist attack, or other sudden crisis: closing certain streets and places of assembly, suspending alcohol and firearms sales, imposing curfew, and opening emergency shelters. Exec. L. § 24(1)(a) to (f).

The Executive Law similarly provides that, when responding to an emergency, the mayor may suspend "part or all" of any local law to the extent that that local law "may prevent, hinder, or delay necessary action in coping with a disaster or recovery therefrom." Exec. L. § 24(1)(g). But the Executive Law places numerous limits on that authority. These limits include that any mayoral suspension of a local law must:

- be "reasonably necessary to the disaster effort," Exec. L. § 24(1)(g)(ii);
- "safeguard" the "health and welfare of the public," *id.*;
- provide for the "minimum deviation from the requirements" of the local law, "consistent with the disaster action deemed necessary," *id.* § 24(1)(g)(v);
- be accompanied by both (i) a mayoral determination that "the disaster is beyond the capacity of local government to meet adequately" and (ii) a request from the mayor for state assistance, *id.* §§ 24(1)(g) and (7), unless the governor herself has declared a state disaster emergency; and
- last no longer than five days, except that such an order may be renewed for additional five-day periods, *id.* § 24(1)(g)(i).

Even if a mayor's emergency order suspending a local law meets each of these exacting criteria, the State Legislature may nevertheless "terminate" the mayor's emergency order, via resolution, "at any time." *Id.* § 24(8).

C. The Council's law addressing the violence of solitary confinement, which the Mayor unsuccessfully vetoed

There is now a broad scientific consensus that prolonged isolation during incarceration can lead to self-harm, suicide, serious psychological distress, hallucinations, and paranoia (Petition ¶¶ 17-18). Over the past decades, advocacy efforts by impacted community members, an unmistakable scientific consensus, and numerous tragic deaths caused by solitary confinement have collectively spurred increased public awareness of its harms. This has led, in turn, to various efforts to reduce or eliminate solitary confinement in prisons and jails, including the Council's enactment of Local Law 42. That arc of progress is detailed at length in the Verified Petition (*id.* ¶¶ 16-34).

In June 2022, the Public Advocate introduced the bill at issue in this proceeding: a bill to ban solitary confinement in the City's jails that was ultimately enacted, as amended, as Local Law 42 (Petition ¶ 28). That bill, known as Intro. No. 549, had 37 co-sponsors at the time of its introduction in June 2022 (*id.*). Dozens of supporters and opponents of the bill, including the DOC Commissioner, offered written and oral testimony at an all-day public hearing in September 2022 (*id.* ¶ 30).

Over the next 15 months, Council staff revised the bill text and met with key stakeholders, including DOC officials, to discuss the legislation (Petition ¶ 31). This engagement yielded 11 substantive amendments to the bill, including a 120-day extension of the bill's effective date in order to allow additional time to implement the law (*see* Petition ¶ 32). The bill amendments and committee report addressed each of the areas of disagreement raised by the DOC Commissioner

in his September 2022 testimony. In response to the DOC Commissioner's objection to "'prohibit[ing] pre-hearing detention,'" the amended bill eliminated any blanket prohibition and instead set forth detailed "'procedures and policies'" governing the use of pre-hearing restrictive housing (*id.* ¶ 32 (quoting Hearing Transcript and Committee Report)). To address the Commissioner's concern about a "'right to counsel at DOC disciplinary hearings,'" the amended bill made clear that representation at disciplinary hearings could be provided by a lawyer *or* any law student, paralegal, or incarcerated person (*id.* (quoting Hearing Transcript)). As to the Commissioner's views that the bill supposedly incentivized violent conduct and would make it "'impossible'" for DOC to impose "'sanctions'" for violent acts within the jails, the Committee Report detailed numerous studies concluding that solitary confinement has "'hardly any individual or general deterrence effect on violent behavior and misconduct'" (*id.* (quoting Hearing Transcript and Committee Report)).

On December 20, 2023, the Council passed the bill, by a vote of 39 to 7. Mayor Adams vetoed the bill in January 2024 (Petition ¶ 34). In his veto message, he argued that the bill "would make the City's jails less safe" by purportedly (1) eliminating "any negative consequences" for incarcerated people who commit violent acts, (2) imposing a "prohibition on restraining persons during transportation," and (3) removing DOC's "necessary discretion" in conducting lock-downs by limiting their duration to four hours (*id.*).

Ten days later, the Council rejected the Mayor's objections to the law, voting 42 to 9 to enact the law over his veto (Petition ¶ 34). In June 2024, the Board of Correction—DOC's independent oversight board composed of nine appointed board members, including former correctional staff and formerly incarcerated people—adopted rules implementing Local Law 42's requirements (*id.* ¶¶ 4, 11).

D. The Mayor's decision to bypass Chief Judge Swain and issue unprecedented executive orders nullifying the Council's duly-enacted local law

During the 180-day period in which the Administration was given time to implement the law, the Mayor did not take any discernable steps to implement the law. Instead, the Mayor signaled that he would seek judicial relief from Chief Judge Laura Swain, the federal judge presiding over *Nunez v. City of N.Y.*, No. 11 Civ. 5845 (S.D.N.Y.), a constitutional challenge to conditions of confinement at Rikers. DOC informed Chief Judge Swain that it believed Local Law 42 conflicted with court orders she had issued in that case requiring, among other things, a court-appointed monitor's approval of certain security measures (Petition ¶ 44 (citing *Nunez* Doc. No. 724)). Arguing that Local Law 42 was federally preempted by Chief Judge Swain's orders, DOC told the chief judge in a June 2024 letter that it planned to file a motion asking her to issue "an Order suspending the requirements of Local Law 42" (*Nunez* Doc. No. 724). In response, the Council prepared for a court battle over the proper scope of the monitor's authority and whether Local Law 42 was truly preempted by federal court orders. To that end, the Council passed a resolution authorizing the Speaker to "engage in legal action on behalf of the Council to defend Local Law 42" (Res. No. 504-2024, *available at* https://on.nyc.gov/3Nytsvb; Petition ¶ 44).

But Mayor Adams and DOC never filed their promised motion with Chief Judge Swain. Instead, the Mayor took matters into his own hands: he suspended Local Law 42 himself. In doing so, he became the *first mayor* in our City's history to issue an emergency order to prevent the implementation of a local law that passed over his veto (Petition ¶¶ 1, 44).

On July 27, 2024, one day before Local Law 42's effective date, Mayor Adams suspended Local Law 42. He declared a "state of emergency" within DOC facilities "because of the imminent effective date of Local Law 42 and the risks to health and safety that implementation of that law at this time and under current circumstances presents" (Petition, Exhibit B (Emergency Executive

Order ("EEO") 624), at 7). He then issued an emergency executive order that suspended or modified 28 provisions of Local Law 42 (*see* Petition, Exhibit C (EEO 625); Petition ¶¶ 49-71). The Mayor's declaration of emergency raised the same putative public-safety objections that the Mayor raised in his veto message and DOC officials presented during the public hearing on the bill (*see* EEO 624 at 1).

The declaration of emergency also summarized some of the *Nunez* monitor's initial reactions to Local Law 42, which the monitor had communicated to DOC in a letter that DOC filed with Chief Judge Swain (*Nunez* Doc. No. 758-3; *see* EEO 624 at 2). That letter made clear that "more detailed discussions are necessary before the Monitor can make any final determinations regarding which policies and procedures" in Local Law 42 would receive the monitor's ultimate support (*Nunez* Doc. No. 758-3, at 2). The monitor still has not issued any final determinations. His next update to Chief Judge Swain is due in early 2025.

The Mayor has extended his declaration of emergency every 30 days, and has extended his order suspending Local Law 42 every five days, up through the current date.

STANDARD OF REVIEW

Article 78 gives courts the power to invalidate, annul, or enjoin unlawful executive orders. *E.g.*, *Prospect*, 109 A.D.2d at 214-19 (affirming lower court's annulment of executive order under Article 78); *Armer v. City of N.Y.*, No. 156328/2022, 2023 N.Y. Misc. LEXIS 3896, *19 (N.Y. Sup. Ct.. Aug. 1, 2023) (enjoining municipality from enforcing emergency executive order in Article 78 proceeding); *Herkert v. State*, 81 Misc. 3d 526, 536 (N.Y. Sup. Ct. 2023) (same). In an Article 78 challenge to an executive order, the core question is a straightforward one: is the challenged order unlawful or arbitrary and capricious? *See, e.g.*, C.P.L.R. §§ 7803(2) and (3); *Herkert*, 81 Misc. 3d at 536. Here, as detailed below, the Mayor's emergency executive orders are illegal and arbitrary.

ARGUMENT

THE MAYOR'S EMERGENCY ORDERS VIOLATE THE EXECUTIVE LAW AND UNLAWFULLY USURP THE COUNCIL'S POLICYMAKING AUTHORITY

The Executive Law gives mayors emergency authority to suspend local laws. But the Executive Law was not meant to enable autocracy. To that end, Executive Law § 24 imposes numerous strict requirements that must be met before a mayor may issue an emergency executive order that unilaterally suspends a local law.

Mayor Adams' emergency orders violate the Executive Law in at least four separate ways. *First*, the Mayor's unilateral suspension of Local Law 42 was not premised on any "disaster, rioting, catastrophe, or similar public emergency" as those terms are defined by the Executive Law. Exec. L. §§ 20, 24(1). *Second*, there is no rational basis for the Mayor's finding that public safety is imperiled by the law going into effect. Exec. L. §§ 20, 24(1). *Third*, the Mayor failed to meet the multiple enumerated requirements for the suspension of a local law, including that any suspension provide for the "minimum deviation" from the requirements of the local law. Exec. L. § 24(1)(g)(v). *Fourth*, an overbroad interpretation of the Executive Law that enables these sorts of emergency orders runs headlong into both the intent of the Executive Law and the City Charter's separation of powers.

Any one of these four failings, standing alone, renders the Mayor's emergency orders unlawful and invalid.

A. An overridden veto is not an emergency.

Emergency powers may only be exercised in the face of "disaster, rioting, catastrophe, or similar public emergency." Exec. L. § 24(1). But when Mayor Adams declared a state of emergency and suspended Local Law 42, he identified no imminent emergency that required a swift, unilateral response. Instead, the purported "emergency" was the impending "effective date

of Local Law 42" and the supposed "risks" posed by the purposeful implementation of that local law (EEO 624 at 7). But neither of those things constitute a "disaster, rioting, catastrophe, or similar public emergency," as a matter of law. Exec. L. § 24(1). Because this core threshold requirement of the Executive Law has not been met, the Mayor's declaration of emergency and accompanying suspension of Local Law 42 are illegal and invalid.

Neither the passage of a local law nor the consequences anticipated by the law's opponents constitute a "disaster, rioting, catastrophe, or similar public emergency" under the Executive Law. The text, structure and purpose of the Executive Law compel this conclusion for a variety of reasons.

First, courts have found that the Executive Law gives mayors the power to engage in "prompt and immediate unilateral action" when there is no time for "a deliberative body such as a [local] legislature" to respond. *Prospect v. Cohalan*, 109 A.D.2d 210, 217-18 (2d Dep't 1985) (citing Exec. L. §§ 24(1), 25, 26, 29-b), *aff'd*, 65 N.Y.2d 867 (1985). Indeed, the mayor's broad but temporary emergency powers are necessary *because* "emergency situations" require "prompt and immediate unilateral action … to preserve and protect life and property." *Id.* If prompt and immediate unilateral action is not *necessary*, and the situation can instead be addressed by a legislative body, then it is not a "disaster" or "emergency" for the purposes of the Executive Law. *See id.* For that reason alone, deliberative legislation action and its immediate consequences are not a "disaster" or "emergency" sufficient to enable emergency executive measures, as a matter of law.

Second, the plain text of the Executive Law confirms that duly-enacted legislation and its purported consequences are not a "disaster" or "emergency" under the statute. The Executive Law mandates that a mayor's emergency suspension of a local law must be "reasonably necessary to

the disaster effort." Exec. L. § 24(1)(g)(ii). This requirement—and, in particular, the phrase "disaster effort"—makes no sense if the supposed "disaster" is the enactment of a local law. A local law is not a "disaster effort"; it is something that must be done via the democratic lawmaking process. Simply put, the Executive Law's clear requirement that any suspension of a local law be "reasonably necessary to the disaster effort" cannot be squared with the Mayor's unprecedented position that the passage of a local law may itself constitute a disaster.

Third, the Executive Law's detailed definition of "disaster" does not, by its plain text, include the passage of a local law or the law's purported implementation risks. Exec. L. § 20(2)(a) (defining "disaster"). The statutory definition includes a long list of illustrative examples of events that count as "disasters." *Id.* That list consists entirely of disease outbreaks, weather and climate-related disasters (*e.g.*, floods and hurricanes), other natural disasters (*e.g.*, earthquakes), and a narrow set of man-made disasters such as malicious attacks and accidents that result in immediate, true emergencies: terrorism, cyber events, explosions, radiological accidents, bridge failure or collapse, and nuclear, chemical, biological, or bacteriological releases. Exec. L. § 20(2)(a).

None of the statute's examples even remotely resemble the enactment and implementation of a local law over a mayor's veto. That's because the State Legislature did not intend for mayors to be able to declare that the passage of a duly-enacted local law constitutes an emergency. For that reason, the definition of disaster cannot be reasonably read to apply to the facts here. And any contrary interpretation of the statutory definition of disaster would violate clear Appellate Division precedent, because it would impermissibly excise the list of illustrative examples from the statutory text. *Avella v. City of N.Y.,* 131 A.D.3d 77, 85 and n.* (1st Dep't 2015) ("specific examples" listed in the statutory text must inform the statute's meaning; to ignore an illustrative list of examples in a statute's text is to improperly read them out of the law entirely), *aff'd*, 29 N.Y.3d

425 (2017); *see Makhani v. Kiesel*, 211 A.D.3d 132, 145 (1st Dep't 2022) (list of examples limits statute's meaning); *Bissonnette v. LePage Bakeries Park St., LLC*, 601 U.S. 246, 255 (2024) (same); *see generally Skanska USA Bldg. Inc. v Atlantic Yards B2 Owner, LLC*, 146 A.D.3d 1, 9 (1st Dep't 2016) (statutes must be "construed so as to give meaning to each word").

For these reasons, courts have repeatedly declined to read the word "disaster" so broadly as to sweep in societal or institutional problems that bear no resemblance to the kind of disasters listed in the Executive Law. In *Herkert*, the court held that a "massive influx of migrant asylum seekers" is not a "disaster" under Executive Law. *Herkert v. State*, 81 Misc. 3d 526, 534 (N.Y. Sup. Ct. 2023). In *Armer*, the court held that the economic impacts of COVID-19 similarly do not support the exercise of emergency powers under Executive Law. *Armer v. City of N.Y.*, No. 156328/2022, 2023 N.Y. Misc. LEXIS 3896, *10-13 (N.Y. Sup. Ct.. Aug. 1, 2023). The Mayor appealed neither of those decisions enjoining his emergency orders, and instead abandoned the emergency actions challenged in those two cases.

Mayor Adams will likely point to Mayor de Blasio's 2021 emergency order to argue that mayors can properly suspend solitary confinement policies based on a possibility of danger or violence. That argument misses two crucial differences between Mayor de Blasio's emergency suspension of Board of Correction rules and Mayor Adams' suspension of a duly enacted local law. *First*—and most importantly—de Blasio modified an executive branch rule, not a legislative enactment. Mayors and Commissioners routinely do exactly that, by either emergency order or emergency rulemaking. *Second*, the basis for de Blasio's emergency order was an extrinsic development—a staffing crisis—that had not been addressed in the rulemaking process. Here, in contrast, Mayor Adams' emergency declarations rely on jail conditions and policy objections that were known to the Council, and which informed the Council's policymaking decisions, throughout

the legislative process. Mayor Adams cannot now wield those same concerns—considered and rejected by the Council—to suspend the very law that the Council ultimately enacted, over his veto, at the conclusion of that deliberative lawmaking process.

Finally, as detailed further below, reading the Executive Law to permit emergency orders like the Mayor's suspension of Local Law 42 would effectively enable a mayoral "super-veto" over any laws that touch on issues of public safety, thereby fundamentally reshaping our system of checks and balances and the separation of powers between the City's executive and legislative branches (Section D, *infra*). There is no evidence that the State Legislature intended that radical, anti-democratic result (*id.*). Indeed, if the Mayor is allowed to ignore a law he does not like throughout the time he was required to implement it, and then claim that having to follow the law is an emergency, he could unilaterally and extrajudicially veto any number of laws he disagrees with (*id.*).

For all of these reasons, the "the imminent effective date of Local Law 42" and the supposed "risks" posed by implementation of that local law are not a "disaster, rioting, catastrophe, or similar public emergency" for the purposes of Section 24 of the Executive Law. The Mayor's emergency orders are therefore unlawful and invalid.

B. There is no rational basis for the Mayor to find that public safety is imperiled by Local Law 42.

Mayors may issue emergency executive orders only upon "a finding by the [mayor] that the public safety is imperiled" by an actual or impending emergency. Exec. L. § 24(1). Here, there is no rational basis for the Mayor to have made a finding that public safety is "imperiled."

The Mayor's executive orders cite various purported risks of implementing Local Law 42, including that the law, once fully implemented, requires DOC to make changes to many of its existing security practices (*e.g.*, EEO 625 at 4-5). By "preventing" DOC from maintaining the

status quo, the Mayor asserts, full and immediate implementation of Local Law 42 would imperil public safety (*id.* at 4). This mayoral finding of "imperiled" public safety lacks a rational basis for two reasons.

First, the Mayor's finding of "imperiled" public safety is foreclosed as a matter of law, because the Mayor's public safety concerns were already addressed, and rejected, in the democratic lawmaking process. The City's lawmakers considered the harms inflicted by solitary confinement, they considered the input of numerous correctional experts, and they considered the Mayor's unsubstantiated belief that Local Law 42's policies would increase violence on Rikers by eliminating "negative consequences," limiting the use of restraints, and capping the duration of lock-downs (Petition ¶ 34 (quoting Mayor's Veto Message)). After hearing those concerns, the Council made the numerous policy choices embodied in the text of the law that they passed over the Mayor's veto. The law on the books reflects our elected leaders' conclusion that the policies of Local Law 42 best serve the public safety goals of the millions of New Yorkers who they represent. And that legislative determination regarding public safety forecloses, as a matter of law, any mayoral "finding" that Local Law 42 imperils public safety. *See Turner Broad. Sys. v. FCC*, 520 U.S. 180, 195 (1997) (courts must give "substantial deference to the predictive judgments" of legislatures).

The Mayor will undoubtedly argue—yet again—that he and his experts have the better view of "sound correctional policy" (EEO 625 at 5), and that the Council and its experts' findings, conclusions and priorities are "silly."[3] But that battle of experts is already over: it happened in the

[3] Michael Gartland, *Mayor Adams slams Council solitary confinement ban: "This is silly,"* N.Y. Daily News (Sept. 13, 2022), available at https://www.nydailynews.com/2022/09/13/mayor-adams-slams-council-solitary-confinement-ban-this-is-silly/.

democratic halls of our local legislature, and the Mayor's phalanx lost. And while it bears emphasis that ample evidence and research support the Council's policy choices (*see, e.g.,* Petition, Exhibit D), the courtroom is decidedly not the place to relitigate that policy debate.

Second, and wholly separate from that policy debate, the Mayor's own words and actions prove that Local Law 42 poses no imminent threat to public safety. This is because, even under the Mayor's view of the world, the law will not have any on-the-ground impacts until it is actually implemented by DOC. And by the Mayor's own account, that cannot happen without federal court involvement.

At the threshold, Local Law 42 is not self-executing; it must be implemented. And reports from within Rikers indicate that even though the Mayor's emergency orders purport to suspend only *parts* of Local Law 42, DOC has not meaningfully implemented *any* of the law's provisions. For example, DOC has not followed the law's requirement of quarterly reporting on de-escalation confinement, restrictive housing, or emergency lock-ins. This Court's annulment of the Mayor's emergency orders would not cause the law to be implemented automatically, as DOC's past intransigence shows. Rather, dissolving the Mayor's emergency orders is just one step in enabling the implementation process to move forward.

Furthermore, the Mayor's own position is that the disputed provisions of Local Law 42 cannot go into effect because they conflict with the *Nunez* court's orders (*Nunez* Doc. No. 724). Although the Council vigorously disputes the Mayor's legal position on that issue, the Council recognizes the Mayor's *ability* to argue his position before Chief Judge Swain in *Nunez*—something he said he would do in June 2024, but never did. Again, if *this* Court appropriately vacates the Mayor's unlawful emergency orders, Local Law 42 will not be automatically

implemented. Instead, Mayor Adams will most likely then litigate his federal preemption arguments before Chief Judge Swain in *Nunez*.

And all of this explains why the Mayor waited a full 179 days after the local law's passage to issue his emergency orders. The law itself poses no imminent threat to public safety, even under the Mayor's view of things; if it did, he certainly would have acted sooner. He did not, because Local Law 42 going into effect does not "imperil" public safety. For all of these reasons, there is no rational basis for the Mayor's contrary finding, and his executive orders are invalid as a result.

C. The emergency orders violate at least two other statutory requirements for the mayoral suspension of local laws.

In addition to the failings detailed above, the Mayor's emergency orders violate at least two statutory requirements that are specific to mayoral orders that suspend local laws.

First, a local emergency order that suspends all or part of a local law must "provide for the minimum deviation from the requirements of the local law … consistent with the disaster action deemed necessary." Exec. L. § 24(1)(g)(v). The Mayor's emergency orders fail to satisfy that requirement because the emergency orders suspend parts of Local Law 42 that have no reasonable connection to the purported emergency identified by the Mayor. For example, the emergency orders suspend the law's due process protections for incarcerated people facing disciplinary punishments, but there is no connection between that portion of the suspended law and any public-safety concern identified in the emergency orders. The emergency orders also violate this requirement for the independent reason described above: the emergency orders are unnecessary to address the purported "emergency"—and thus not narrowly tailored to the emergency—because Local Law 42 is not self-executing and, even by the Mayor's account, a federal court should decide whether any parts of the law conflict with Chief Judge Swain's court orders (Section B, *supra*).

Second, to suspend a local law based on a local declaration of emergency, the Mayor must determine that "the disaster is beyond the capacity of local government to meet adequately" and ask the governor for assistance. Exec. L. §§ 24(1)(g) and (7). Upon information and belief, the Mayor has not satisfied this requirement. The Mayor's emergency orders make no assertion that the purported "disaster" is "beyond the capacity of local government to meet adequately"—and, of course, any such claim would be directly at odds with the Mayor's statements made in opposition to a receivership in the *Nunez* litigation (*e.g.*, *Nunez* Doc. No. 688, at 33, 36). Nor do the Mayor's emergency orders indicate that the Mayor has asked the governor for assistance, as the Executive Law requires. The executive orders are unlawful and invalid on this basis as well.

D. It would violate the intent of the Executive Law and core separation-of-powers principles to allow emergency orders like these to stand.

Finally, the Court should invalidate the Mayor's emergency orders because the Executive Law cannot be reasonably read to enable Mayor Adams to use his "emergency" powers to nullify a duly-enacted law that passed over his veto. The granting of such powers would constitute a radical reshaping of the separation of powers in New York City, and there is no evidence that the State Legislature intended to give mayors such broad powers when it enacted the Executive Law's emergency powers provisions.

There is nothing unusual or extraordinary about the disaster-response provisions of our state's Executive Law. Like similar laws around the country, New York's law serves to "temporarily enhance executive power during unexpected crises that are moving too fast for [the legislature] to respond."[4] As the Appellate Division has explained, "deliberative" bodies like

[4] Brennan Center for Justice, *Emergency Powers*, available at https://www.brennancenter.org/issues/bolster-checks-balances/executive-power/emergency-powers.

legislatures are generally ill-equipped to act in a "prompt and immediate" manner; and this necessitates that mayors have "the power to respond" in situations where "prompt and immediate unilateral action is necessary to preserve and protect life and property." *Prospect v. Cohalan*, 109 A.D.2d 210, 217-18 (2d Dep't 1985), *aff'd*, 65 N.Y.2d 867 (1985). At the same time, the Executive Law leaves long-term disaster planning and response in the hands of local legislatures. *Id.*

Those respective duties in the face of disaster are consistent with the traditional separation of powers between the executive and legislative branches. The Council is vested with the entire "legislative power of the city." *N.Y. Statewide Coal. of Hisp. Chambers of Com.*, 23 N.Y.3d at 693. And the Council is thus responsible for addressing enduring societal problems via "value judgments entail[ing] difficult and complex choices between broad policy goals." *Id.* at 698. The Mayor, in turn, must "implement[]" the "legislative policy" of the Council's duly-enacted laws. *Under 21 v. City of N.Y.*, 65 N.Y.2d 344, 358 (1985).

If these bedrock principles are taken seriously, it is impossible to interpret the Executive Law to enable a mayor to do what Mayor Adams has done here: to declare that the passage of local law constitutes an "emergency" necessitating the unilateral suspension of that very law. Allowing these executive orders to stand would amount to endorsing a mayoral "super-veto" over any local laws that touch on issues of public safety.

For example, the Council's 2020 diaphragm-compression law criminalized the type of police restraint that killed George Floyd, but many law enforcement officials claimed the law threatened public safety by "plac[ing] in harm's way both [police] officers and the public whom officers are sworn and trained to protect."[5] Under the Mayor's theory, the diaphragm-compression

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[5] Affidavit of Ronald R. Pierone (August 20, 2020), filed at https://iapps.courts.state.ny.us/nyscef/ViewDocument?docIndex=ThwAvm_PLUS_Evjx4Bo1kG1zIvA==.

law's supposed threat to public safety would be sufficient to enable *any* mayor to unilaterally suspend that duly-enacted law via emergency executive order, at any time. Such a misreading of the Executive Law would fundamentally shift the balance of power within City government by giving mayors a "super-veto" over local laws regarding public safety. Had the Legislature intended that radical result, it surely would have said so. *See Haar v. Nationwide Mut. Fire Ins. Co.*, 34 N.Y.3d 224, 231 (2019) (legislative bodies "do not hide elephants in mouseholes"). Nothing in the Executive Law's text or its history remotely suggests that this was the Legislature's intent.

Hard-fought policy debates are supposed to be resolved through the democratic lawmaking process, not in emergency executive orders. *See Greater N.Y. Taxi Ass'n v. N.Y.C. Taxi & Limousine Comm'n*, 25 N.Y.3d 600, 610 (2015). Any major legislative action has opponents who claim the local law's implementation will harm them. Under our democratic system, the redress for those aggrieved groups is either to (1) get the bill voted down or vetoed; (2) get the law amended or repealed via the regular democratic process; or (3) seek redress from the courts by establishing that the local law is substantively invalid, for example because it violates their constitutional rights or is preempted.

The Mayor seeks to blaze a new, fourth path to undo local laws: a unilateral emergency order, renewed in perpetuity, to effectively veto a law he does not like. A review of every emergency order issued by New York City mayors since 1970 uncovered no analogous use of the power. No mayor has done this before, for good reason—such an order plainly violates the Executive Law and undermines the Council's role as a co-equal branch of City government. The Mayor is free to challenge the validity of Local Law 42 in the appropriate forum; and he has promised to do so before Chief Judge Swain in *Nunez*. But he cannot use invalid executive orders to forestall proper adjudication of the merits of Local Law 42.

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By wielding emergency powers to replace the Council's policy choices and priorities with his own, the Mayor has unlawfully usurped the Council's legislative authority. That anti-democratic power grab violates the separation of powers enshrined in both the City Charter and the State Constitution. *See, e.g.*, *Ellicott Group, LLC v. State of N.Y. Exec. Dept. Off. of Gen. Servs.*, 85 A.D.3d 48, 53 (4th Dep't 2011) (executive branch must not "usurp[] the role of the legislative body); *Under 21*, 65 N.Y.2d at 358 (a mayor "impermissibl[y] infringe[s]" upon the Council's legislative power when he puts in place "a new policy not embraced by the City Council").

New Yorkers, through their elected representatives, have overwhelmingly demanded a stark break from our jail system's inhumane past. New Yorkers are not naive, nor is the Council: we all know that the violence and brutality of Rikers Island cannot be fixed overnight. But the work of implementing Local Law 42 cannot begin in earnest until this Court lifts the Mayor's emergency orders, which put up an unnecessary and illegal roadblock to doing the hard work of eliminating solitary confinement, once and for all, in our City's jails.

CONCLUSION

The Court should grant the Petition and vacate the Mayor's unlawful executive orders.

Dated: December 9, 2024
New York, New York

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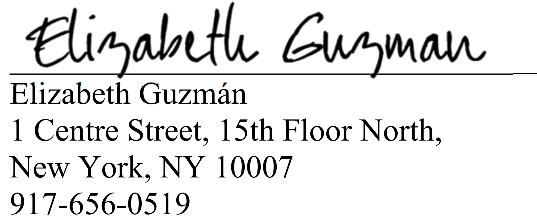

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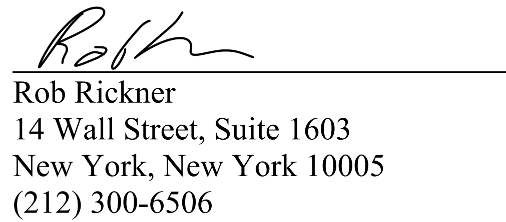

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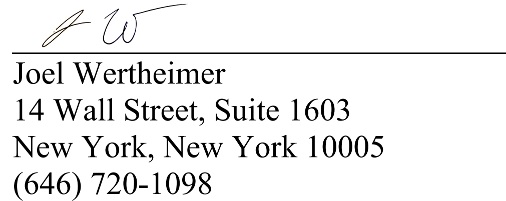

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CERTIFICATION OF COMPLIANCE WITH UNIFORM CIVIL RULE 202.8-b

I certify that this document, excluding any caption, table of contents, table of authorities, and signature block, contains 6,914 words, according to the word count feature of the word-processing system used to prepare the document.

Rob Rickner

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THE COUNCIL OF THE CITY OF NEW YORK and THE NEW YORK CITY PUBLIC ADVOCATE,

Petitioners,

For a Judgment Under Article 78 of the Civil Practice Law and Rules,

-against-

MAYOR ERIC ADAMS, in his official capacity as Mayor of the City of New York,

Respondent.

Index No. ______/2024

NOTICE OF PETITION

PLEASE TAKE NOTICE that upon the attached Verified Petition, dated and sworn on December 9, 2024, and all exhibits attached thereto, Petitioners will move this Court on January 8, 2025, at 10:00 a.m., or as soon thereafter as counsel can be heard, at the Courthouse located at 60 Centre Street, New York, New York, in the Motion Support Courtroom, IAS Part Room 130, for an Order and Judgment granting the following relief to Petitioner:

(1) Finding the Emergency Orders 624 and 625, and all subsequent renewals of those Orders, arbitrary, capricious and contrary to law, the issuance of which is beyond the Mayor's lawful authority;

(2) Vacating the Mayor's Emergency Orders declaring a local state of emergency as result of Local Law 42 (Order No. 624 and all subsequent renewals); and

(3) Vacating the Mayor's Emergency Orders suspending Local Law 42 (Order No. 625 and all subsequent renewals).

PLEASE TAKE FURTHER NOTICE THAT, pursuant to CPLR § 7804, an answer must be served at least five (5) days prior to the return date of this Petition.

Dated: New York, New York
December 9, 2024

Respectfully submitted,

RICKNER PLLC

By:
Rob Rickner

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