

CRITICAL RESISTANCE NEW YORK CITY

New York City Council Committee on Fire and Criminal Justice Services RE: Oversight Hearing on Progress in Closing Rikers Island December 4, 2017

Good afternoon. My name is Carrie Smith and I am a member of the New York City Chapter of Critical Resistance. Thank you to Chair Crowley and to the members and staff of the Committee on Fire and Criminal Justice Services for the opportunity to testify today.

Critical Resistance is a national organization with local chapters across the country carrying out projects and campaigns to build healthy, self-determined communities. For more than two decades, we have organized to move jurisdictions away from expanding systems of imprisonment by advocating for the transfer of construction funding towards community investments. We pay particular attention to the construction of new jails, and have led multiple community-based campaigns against jail expansion, including in the South Bronx, and, more recently, in San Francisco. In all our work, we aim to stop the harmful reliance on imprisonment and policing through the upbuilding of community power.

I. Overview

On March 31, 2017, Mayor Bill de Blasio announced that he would support a ten-year plan to close down Rikers Island. Two days later, on April 2, a commission created by the Council Speaker in March 2016 released their 149-page report outlining steps to closing Rikers. That plan called for cutting the daily jail population in half and “replacing” Rikers with a “smaller system of state-of-the-art jails” spread across the city. Mayor de Blasio responded with his own report on June 22nd, with many alarming pieces including a plan to identify and develop sites for new jails.

In this political moment, it is critical that we embrace the opportunity to not only shut down Rikers Island, but to also follow through on real, transformative opportunities for the people of New York. With our testimony today we urge the Council to move energy and resources away from new forms of imprisonment and toward what the people of New York want and need:

- Shut down Rikers Island now;
- Do not reopen, expand, renovate, or build borough jails; and
- Invest in meaningful solutions and prioritize community-led alternatives.

II. Shut Down Rikers Island Now

At the most basic level, it is unacceptable to allocate public funds for the renovation of Rikers, and thus divert those funds away from our communities, when the end goal is to shut these facilities down. The Fiscal 2018 Authorized Commitment Plan includes \$1.6 billion for the DOC, millions of dollars of which are allocated for improving and updating the infrastructure of

Rikers Island.¹ This contradicts claims that closing down Rikers Island is a true priority. It is especially concerning that, in addition to squandering money on facilities that are slated for closure, the city is preparing to utilize public funds to increase the number of people employed by the DOC at the same time as it announces initiatives to shrink the city's jail population. We do not need to grow the Department if our goal is to reduce the number of people locked up in NYC.

City officials are applauding the recent graduation of the largest academy class in DOC history² and making plans for the construction of a new \$100 million CO training academy³ while constantly being reminded that DOC staff violence and abuse is inherent to the power dynamics of the system. As one example, the *Nunez* Monitoring Team reported in October that “the cultural dynamic that permeates” interactions between staff and people locked up at Rikers are “quite simply a consequence of Staff actions and behaviors that too often engender, nurture, and encourage confrontation.”⁴ This is *not* where we need to funnel the city's money: into jails we want to close and an abusive agency that should be shrinking along with the jail population.

In an effort to strengthen our collective vision of a just New York, Critical Resistance New York City has been working with imprisoned organizers to collaborate on a response to this political development. Many people have shared first-hand accounts of the horrifying conditions and inhumane treatment they experienced on Rikers Island to make clear that the need to shut down Rikers is urgent.

Sheldon, who is currently imprisoned at Fishkill Correctional Facility shared with us the dehumanizing conditions of Rikers:

Rikers Island was one of the most insidious and barbaric places in which I have ever set my feet. [It] was and is simply an evil place and by the time an individual leaves there, to either go to a state prison or, if fortunate enough, to be exonerated or to make bail, [he has] already been so traumatized and socialized into a culture of violence and debauchery that it takes quite a bit of effort to regain [his] former self and sense of humanity.

Daniel, who is currently imprisoned at Marcy Correctional Facility, describes how Rikers and other jails work to degrade people's mental health and physical wellbeing:

Rikers Island has become a place to warehouse human beings under inhumane conditions. With the unfortunate suicide of Kalief Browder— [who was] arrested at 16, innocent and forced to endure three years of torture on Rikers Island—the spotlight has been put on the failings of the judiciary system and the barbaric violence that happens on Rikers. His death was the result of the trauma he experienced in addition to a lack of

¹ “Adopted Adopted Capital Commitment Plan Fiscal Year 2018,” New York City Mayor's Office of Management and Budget (November 4, 2017), <http://www1.nyc.gov/assets/omb/downloads/pdf/ccp-11-17a.pdf>.

² “New York City Department of Correction Graduates Largest Academy Class Ever”, New York City Department of Correction (November 29, 2017), http://www1.nyc.gov/assets/doc/downloads/press-release/November_2017_Graduation_Press_Release.pdf.

³ “Report to the Committee on Finance and the Committee on Fire and Criminal Justice Services on the Fiscal 2018 Executive Budget for Department of Correction,” The Council of the City of New York (May 8, 2017), <http://council.nyc.gov/budget/wp-content/uploads/sites/54/2017/03/072-DOC-exec.pdf>.

⁴ “Fourth Report of the Nunez Federal Monitor,” The Nunez Monitoring Team (October 10, 2017), <https://apps.npr.org/documents/document.html?id=4173501-Fourth-Monitor-Report-as-Filed-Nunez>.

adequate mental health care. Rikers Island is a horrendous affront to the humanity and conscience of the people of New York City.

The innumerable accounts we have received from people directly impacted by Rikers and the DOC, along with reports like those issued by the *Nunez* Monitoring Team (quoted above) tell us that jails are inseparable from horrible, inhumane conditions. Simply closing Rikers Island will not end the Department's culture of dehumanization. An effective approach to shifting this culture would be to use the upwards of \$247,000 a year spent to jail a single person for community investments that serve to meet people's needs.⁵

III. No Borough Jails

There is no need to replace Rikers or rearrange the capacity of the New York City jail system to accommodate its closure. Jails prohibit people from having their basic needs met while also causing immeasurable trauma and harm – and in some instances, death.⁶ Jails siphon funds that could otherwise remedy the City's scarcity of affordable housing, lack of access to medical care or treatment, and inequities in the public education system. Jails do not and cannot support our communities nor make them safe.

We understand that there is political momentum underway to reopen or utilize the space occupied by the long-shuttered Queens House.⁷ Replacing Rikers by building new jails or reopening old sites will serve to perpetuate the horrific reality of Rikers. As a national organization working with imprisoned organizers across the country, we are well aware that the horror of jail is not unique to Rikers Island but rather inherent to all jails and all other forms of imprisonment. Brooklyn⁸ and Manhattan House⁹, while currently (though inexplicably) absent from this conversation, routinely violate city jail standards and carryout multi-day lockdowns where imprisoned people are denied their basic rights and prevented visits, showers, health services, and out-of-cell time.¹⁰ A jail closure plan that lacks the ultimate goal of decarceration through reducing policing and ending pre-trial detention will only lead to greater community trauma and devastation, and divert resources away from life sustaining initiatives.

The Mayor's *Smaller, Safer, Fairer* roadmap sets out to halve NYC's daily jail population in five years but does little to reduce the number of people who ultimately cycle through the jail system. Rather than creating an ever-faster revolving door to move people in and out of jail, we urge you to consider changes that will stop people from being forced into jail in the first place. There are concrete steps that the city can take today to stop the reliance on jail:

⁵ "A More Just City," Independent Commission on New York City Criminal Justice and Incarceration Reform (April 2, 2017), <http://www.ncsc.org/~media/C056A0513F0C4D34B779E875CBD2472B.ashx>.

⁶ It was reported by the Board of Correction in November that six people have died while in DOC custody thus far in 2017, *See* New York City Board of Correction, "NYC Board of Correction (November 14, 2017) 9AM" (November 15, 2017), <https://youtu.be/YPgLUZh6uzU?t=732>.

⁷ Erin Durkin, "Queens City Council members support site for new jail in their borough during Rikers shutdown plan" (October 1, 2017), <http://www.nydailynews.com/news/politics/queens-pols-support-site-new-jail-borough-article-1.3534882>.

⁸ New York City Department of Correction, "Emergency Declaration: Brooklyn Detention Complex," (March 23, 2017), <http://www1.nyc.gov/assets/boc/downloads/pdf/News/2017.03.23%20-%20DOC%20Emergency%20Declaration.pdf>.

⁹ New York City Department of Correction (March 24, 2017), <http://www1.nyc.gov/assets/boc/downloads/pdf/News/2017.03.24%20-%20DOC%20Emergency%20Variance%20-%20MDC%20Lockdown%203.24.17.pdf>.

¹⁰ New York City Board of Correction, "September 13, 2016 - Public Meeting Minutes," <http://www1.nyc.gov/assets/boc/downloads/pdf/Meetings/September-13-2016/Board%20Minutes%209.13.16%20-%20FINAL.pdf>

A. End Cash Bail:

In 2016, 72% of all people imprisoned on Rikers were incarcerated because they were unable to post bail at arraignment. Half of those that could not post bail had bail set at \$5,000 or less.¹¹ According to the Brooklyn Community Bail Fund, every year 45,000 people are incarcerated in New York City because they are unable to post bail.¹²

Prosecutorial action plays a role in driving the size of the jail population and prosecutors can recommend to the judge that people be released without conditions. Judges currently set bail in 29% of cases, where only 8% of people are able to post bail at arraignment.¹³ A review of 10 years of bail research found that pretrial detention “significantly increased the likelihood of a jail or prison sentence, in addition to raising the likelihood of being convicted in the first place.”¹⁴ Community bail funds have already proven that cash bail is discriminatory and doesn’t serve a purpose.

B. End City Sentencing:

When faced with the horror of Rikers, people frequently plead guilty to so-called “low-level offenses” and receive short jail sentences. The Mayor’s Office of Criminal Justice (MOCJ) reports that this population often experiences repeat returns to jail.¹⁵ On an average day in 2016 about a quarter of all city-sentenced people were sentenced for drug-related convictions and the average length of stay was 63 days.¹⁶ Jail stays bring real material consequences to the people of New York, jeopardizing their employment, housing, family and community relationships, health and mental health. Ending city sentencing would reduce the jail population now and reduce the number of people admitted and readmitted overall.

C. Curtail the Scope of the NYPD:

By reducing the headcount of the NYPD and ending broken windows and community policing the city can reduce the more than 674,000 yearly reported police encounters¹⁷ that potentially lead to jail admission. In FY 2016 the city funded an increase of 1,300 NYPD officers – ultimately costing the people of New York \$170 million. We must commit to rolling back the power and size of the police. Community policing cannot remedy things like the cost of living or houselessness, but rather works to temporarily displace people and deepen inequalities within and between communities. The city must instead provide resources for community-created and community-focused solutions to harm and violence for everyone, especially within communities of color, which have been perpetually targeted by policing and criminalization.

¹¹ The City of New York Independent Budget Office (May 16, 2017), <https://www.courthousenews.com/wp-content/uploads/2017/05/IBO-bail.pdf>.

¹² Brooklyn Community Bail Fund, <https://brooklynbailfund.org/>.

¹³ Mayor’s Office of Criminal Justice, “The Jail Population: Recent declines and opportunities for further reductions” (June 22, 2017), https://rikers.wpengine.com/wp-content/uploads/Justice-Brief_Jail-Population_.pdf.

¹⁴ Mary T. Philips, “A Decade Of Bail Research In New York City,” (August 2012), <http://www.nycja.org/library.php>.

¹⁵ Mayor’s Office of Criminal Justice, “The Jail Population: Recent declines and opportunities for further reductions”

¹⁶ City of New York Independent Budget Office, “Sentenced to Time in a City Jail: For What Offenses and How Long?” (September 14, 2017), <http://ibo.nyc.ny.us/cgi-park2/2017/09/sentenced-to-time-in-a-city-jail-for-what-offenses-and-how-long/>.

¹⁷ Mayor’s Office of Criminal Justice, “The Jail Population: Recent declines and opportunities for further reductions”

D. Stop Using Jail as a Substitute for Mental Health Supports:

Of the current jail population, 42% of people have a confirmed mental health diagnosis,¹⁸ an increase from 2014's reported 38% and 2009's 29%.¹⁹ According to the Mayor's Task Force on Behavioral Health and the Criminal Justice System, many people with behavioral health needs are forced into multiple, costly, short stays in jail over the course of their lives – for example, in 2014 this task force found that 400 people with mental health diagnoses had each been admitted to jail more than 18 times in a five year period.²⁰ New York must divert public health issues away from the criminal justice system by expanding and sufficiently funding community-based programs for people with mental health and substance use needs. The isolation and violence of jail has been shown to exacerbate or create new mental health needs. There is no such thing as therapeutic treatment in jail, and the city must not continue to rely on expanding systems inside of jails to respond to people with behavioral health needs.

E. End Youth Imprisonment:

In 2014 the *Nunez* settlement found “alarming evidence of unnecessary and excessive use of force” against young people on Rikers Island, “as well as systematic failure to protect them from violence,” and kickstarted a series of youth-focused reforms.²¹ Yet, the violence of Rikers Island only adds to a long list of horrors inherent in the criminalization of young people in New York and only proves that we should stop all youth imprisonment. After a 15-year-old died in custody as a result of staff violence, the Justice Department uncovered incidents at juvenile residential centers in New York of staff breaking bones and knocking out teeth for infractions such as talking in line or taking dessert from the cafeteria.²² Even in NYC public schools, there are stories of students, including students with significant mental health challenges, being handcuffed and forcibly transported to the emergency room – in one reported case, a student was shot with a Taser gun in a school lunchroom.²³ The criminalization of young people in and out of school cannot continue. Obvious steps such as refusing renovations to Crossroads and Horizon will stop the one-time spending of \$170 million and removing the NYPD from public schools will save the Department of Education \$229 million a year. That public money can be better spent on what young people are asking for, such as supportive educational programs, mental health services, accessible and trained guidance counselors and social workers, and culturally responsive public school curriculums.²⁴

¹⁸ Mayor's Office of Criminal Justice, “The Jail Population: Recent declines and opportunities for further reductions”

¹⁹ Mayor's Task Force on Behavioral Health and the Criminal Justice System, “Action Plan” (2014), <http://www1.nyc.gov/assets/criminaljustice/downloads/pdfs/annual-report-complete.pdf>.

²⁰ Mayor's Task Force on Behavioral Health and the Criminal Justice System, “Action Plan”

²¹ U.S. Attorney's Office Southern District of New York, “Department Of Justice Takes Legal Action To Address Pattern And Practice Of Excessive Force And Violence At Rikers Island Jails That Violates The Constitutional Rights Of Young Male Inmates” (December 18, 2014), <https://www.justice.gov/usao-sdny/pr/department-justice-takes-legal-action-address-pattern-and-practice-excessive-force-and>.

²² Nicholas Confessore, “4 Youth Prisons in New York Used Excessive Force” (August 24, 2009), <http://www.nytimes.com/2009/08/25/nyregion/25juvenile.html>.

²³ Advocates for Children of New York, “Children in Crisis: Police Responses to Students in Emotional Distress” (November 2017), http://www.advocatesforchildren.org/sites/default/files/library/children_in_crisis.pdf?pt=1.

²⁴ Urban Youth Collaborative, “The \$746 Million A Year School-to-Prison Pipeline: The Ineffective, Discriminatory, and Costly Process of Criminalizing New York City Students” (April 2017), http://populardemocracy.org/sites/default/files/STPP_layout_web_final.pdf.

IV. Towards a Jail-Free NYC

Efforts to transform jail into mutually respectful and rehabilitative spaces that are a part of our communities are misguided and counter to the harmful reality of imprisonment. We must divert public funds from the DOC in order to support life-sustaining resources that empower the people of New York. Critical Resistance and the imprisoned organizers with whom we work recognize that funds are needed elsewhere, for initiatives that do not include punishment or monitoring.

The city must:

- A. Prioritize access to mental health supports and treatment;
- B. Fund affordable and stable housing opportunities for all people;
- C. Fund substance use programs that do not mandate interaction with police or imprisonment;
- D. Fully fund education including community and city colleges; and
- E. Support re-entry programs and voluntary services for people coming home from jail and prison.

In addition to ensuring all people have access to these resources and support systems, we need to build and magnify community-led solutions to conflict, harm, and violence that will increase community stability and meet people's needs. Approaches to violence prevention and intervention must be guided by the knowledge held by people closest to and most impacted by violence and responses need to be situated in the very spaces and places where violence occurs.²⁵

The landscape of restorative intervention is growing throughout the country; communities are developing their own strategies to address violence and the systems that produce it through accountability processes and sustainable, transformative responses to harm. "Harm free zones," developed by a coalition of New York community-based organizations including Critical Resistance, are constituted by a set of principles and practices that challenge state violence, intimate violence, and community violence. This project has developed tools that enable communities to confront violence and conflict in ways that transform instances of harm into opportunities for healing and growth. This is one model of many that enables people to initiate community investment and community strength.

Conclusion

We know that Rikers Island and all jails stand in the way of guaranteeing community safety and self-determination. Now is the time to divest from the inequitable and harmful systems that have led to the calls to close Rikers Island.

Thank you again for the opportunity to testify before you today.

²⁵ "Creative Interventions Toolkit: A Practical Guide to Stop Interpersonal Violence," (2012), <http://www.creative-interventions.org/wp-content/uploads/2012/06/CI-Toolkit-Complete-Pre-Release-Version-06.2012-.pdf>.