

Statement before the
New York City Council

Committee on Fire and Criminal Justice Services
Elizabeth Crowley, Chairperson

By Heidi Grossman, Deputy Commissioner of Legal Matters
NYC Department of Correction

November 14, 2016

Good morning, Chair Crowley and members of the Fire and Criminal Justice Services committee. I am Heidi Grossman, the Deputy Commissioner of Legal Matters for the New York City Department of Correction.

The purpose of today's hearing is to examine the implementation of the Nunez settlement. The Nunez Consent Judgment was approved by the Court just over a year ago, with an Effective Date of November 1, 2015. Since the judgment went into effect, the independent monitor has issued two reports detailing the significant progress the Department has made in implementing the Consent Judgment, and assessing the Department's level of compliance. Each of these reports, which were released on May 31, 2016 and on October 31, 2016, is publicly available. We are pleased to report that the Department has achieved in compliance ratings of the provisions evaluated by the Monitor. While we have a long way to go, we cannot emphasize enough how proud we are of our accomplishments so far.

To start, it is important to clarify what Nunez is. Nunez is not just about force. It is about all the systems within the Department that impact on force. The primary goals of the Consent Judgment are to reduce unnecessary or excessive force by staff against inmates and to reduce inmate violence. Provisions of the Consent Judgment address use of force and inmate violence both directly and indirectly, and cover a range of areas from inmate housing plans and classification through use of force policy, training, and investigations.

As you are all aware, since Commissioner Ponte came to the Department in 2014, the agency has been undergoing a significant transformation. The Consent Judgment went into effect a year and a half into Commissioner Ponte's tenure, so it is impossible to discuss the Consent Judgment requirements without discussing the reform efforts that were already underway.

The Commissioner began his tenure by conducting a thorough assessment of the Department's needs, including a comprehensive survey of staff. This assessment informed the 14-Point Anti-Violence Reform Agenda

(or 14-Point Plan), which has been discussed at a number of previous hearings. The 14-Point Plan focuses on reducing violence, both directly and through culture change. The initiative includes:

Directly reducing violence and force by

- Keeping contraband out of the jails,
- Expanding camera coverage, and
- Redefining first-line incident responses,

Addressing underlying causes of violence by

- Offering effective programming,
- Improving custody management process,
- Creating a new classification and housing strategy,
- Creating a well-defined supply distribution process, and
- Raising facilities to a state of good repair,

Supporting staff by

- Redefining the Investigations Division,
- Improving leadership development and culture,
- Designing a recruiting, hiring, and staff selection plan,
- Designing a performance management plan,
- Implementing operational performance metrics, and
- Expanding targeted training.

These reform efforts are aligned with and reflected throughout the text of the Nunez Consent Judgment, which directly addresses fourteen specific areas: use of force policy, use of force reporting and tracking, use of force investigations, anonymous reporting system, risk management, safety and supervision of inmates under the age of nineteen, housing plan for inmates under the age of eighteen, staff discipline and accountability, staff recruitment and selection, screening and assignment of staff, training, arrests of inmates, and inmate discipline, and video surveillance.

In many instances, the Department's new policies and programs were incorporated into the Consent Judgment itself. We agreed to this because the policies and programs represent sound correctional practice. Both the 14-Point Plan and the Consent Judgment guide the Department's efforts at reforming culture, restoring trust and confidence in the Department, and improving safety for both staff and inmates. In guiding the Department through its reform efforts, we aspire to be a leader in this field like we once were. I will now highlight a few of these areas of focus now.

Use of Force

A key element of the reform agenda was achieved with the development of the revised Use of Force Policy, which is also the overarching goal of the Nunez consent judgment. The Department has always had a Use of Force directive governing when officers are permitted to use force and how use of force incidents should be documented. The Department's goal is always to reduce violence and ensure staff and inmate safety; the overarching principles of the old policy remain in effect. The revised policy provides additional guidance to officers when confronted with a situation where force may be necessary. This revised policy will support appropriate use of force and also support the objective to resolve situations without physical force whenever possible.

Implementing the new Use of Force Policy requires the Department to train staff on the differences between the new and old policies, and to provide them with the additional physical skills they need in order to implement the new concepts. These physical skills will enable officers to restrain violent inmates while at the same time minimizing injuries to themselves, the inmates, and any bystanders.

Given the importance of properly implementing the new Use of Force Policy, the Department and the Monitor agreed that the Consent Judgment's goals would best be accomplished by fully training staff on the policy and on appropriate defensive tactics before the new policy takes effect. The same holds true regarding the revisions to the disciplinary guidelines identified in the Consent Judgment. These should go into effect after all staff receive their training. Staff are being trained now. The new policy is scheduled to go into effect on September 27, 2017, with the disciplinary guidelines following a month later on October 27, 2017.

Even before the Consent Judgment went into effect, the Department was committed to reducing uses of force within our facilities in order to create a safer environment for both staff and inmates. The policy has two goals: first, to reduce the frequency of use of force and second, to ensure that when force is required, staff use the least injurious, most effective methods possible to address the situation. Since the beginning of this administration, we have seen positive improvement across the levels of force and violence. For the first time since 2011, overall uses of force and overall assaults on staff are now trending downward. Most importantly, uses of force resulting in serious injuries are down 37% from 2015, assaults on staff overall are down 16%, and assaults on staff resulting in serious injuries are down 34%. These significant decreases have been achieved while reducing the use of punitive segregation by 85%.

Use of force must be reported and tracked and mechanisms to do so are part of the Consent Judgment. The Department is committed to accurately tracking use of force and other reportable incidents. Officers have always been required to document each use of force incident they are involved in or witness. This has not changed under the new policy. The Department takes seriously any potentially unreported use of force incident,

and fully investigates such allegations when they are brought to our attention. Further, we have made reporting misconduct, including excessive use of force, or corruption in our facilities easier, by creating the Anonymous Reporting System to allow staff to anonymously report use of force policy violations to the Investigations Division.

Though the new use of force policy is not yet in effect, we have implemented a number of measures already, such as creating interim tracking systems, expanding the Investigations Division, and increasing the scope of Investigations Division incident reviews. Consistent with the 14 Point Anti-Violence Reform Agenda and the Consent Judgment, the Department is redefining the Investigations Division by, among other things, increasing the speed of information gathering in order to reduce the backlog of open investigations and ensure professional integrity across the agency.

Risk Management

The Department is committed to developing procedures to better understand and address the type of force officers use. To that end, the Department has developed several new processes for collecting, understanding, and evaluating the use of force which go beyond the specific requirements of the Consent Judgment and demonstrate our commitment to reform. "Risk Management" is not just about focusing on use of force, but on the myriad internal and external factors that can impact the performance of the Department's staff. This includes, but is not limited to, personal and work-related stress, overtime, and the amount of time spent working with our most challenging inmate populations. A comprehensive risk management approach must consider all of these factors, and the myriad potential solutions, in order to support the Department's efforts to bring about a culture of safety.

Inmates Under the Age of Nineteen

One of the most important changes that the Commissioner implemented when coming to the Department was recognizing that different populations need to be managed differently. Effective management strategies must address populations' needs, especially young inmates.

Previously, the Department managed the different populations in a basically uniform manner, regardless of age or other need. We have moved away from this one-size-fits-all approach and now tailor our management strategy for various inmate populations. By managing inmates appropriate to their needs, we create a safer environment for everyone.

Adolescents

The adolescent population, sixteen and seventeen year olds, was one of the first populations identified by the Commissioner as needing a new approach. Soon after coming to the Department, he sent staff around the

country to learn best practices from adult and juvenile systems and implement them here. Within eight months of the Commissioner's tenure, housing area sizes were reduced from thirty-three to fifteen, staffing was increased to one officer for every fifteen inmates, programming was expanded, and punitive segregation was eliminated and replaced with therapeutic alternatives. Again, the Department agreed to incorporate many of the Department's adolescent reforms into the Nunez Consent Judgment, including the staffing ratios, maximum housing area sizes, and the elimination of punitive segregation—because they represent good correctional practice.

Young Adults

As it does with adolescents, the Nunez Consent Judgment also directly addresses the management of eighteen year olds, but the Department has gone well beyond these requirements. The Department has created a new housing cohort of Young Adults – those aged eighteen through twenty-one. The Department is voluntarily extending the standards codified by the Nunez Consent Judgment for eighteen year olds to the nineteen, twenty, and twenty-one year olds.

Expanded Recruiting & Training

Staff are the most important component of the Department's success. Since the beginning of Commissioner Ponte's tenure, the Department has developed a recruitment, hiring, and staff selection plan to attract the most qualified candidates, ensuring a steady pipeline of top-quality recruits who can be trained and mentored into quality officers.

The Department is hiring record numbers of recruits, with each recent recruit class larger than the next. The Department graduated 592 recruits in December 2015, 618 in May 2016, and 711 in November 2016. A record 1,200 recruits will enter the Academy next month. At the same time, we are also providing more training to current staff, to give them the best tools possible to do their jobs. From August 2014 through the present, nearly 3,000 correction officers, or about one third of our current officer corps, completed one or more new trainings involving de-escalation techniques. The Department has provided specialized training for staff working with special populations such as the mentally ill and adolescents, and is training officers in state of the art defensive tactics.

Several of the new recruit and in-service training curricula being given are incorporated into the Nunez Consent Judgment, including:

- S.T.A.R.T. ("Specialized Tactics and Responsible Techniques") Training, which includes Use of Force Policy and Defensive Tactics,
- Crisis Intervention and Conflict Resolution,

- Young Inmate Management Training, which includes Direct Supervision and Safe Crisis Management,
- Probe Team Tactics, and
- Cell Extraction.

To ensure that all staff get the best training possible, the Department requires more hours of training than the Consent Judgment requires, and also requires additional training, such as PREA and Crisis Intervention Training, that is not required by Nunez.

Staff Recruitment, Selection, Screening, and Assignment

Since the beginning of Commissioner Ponte's tenure, we have developed a recruitment, hiring, and staff selection plan to attract the most qualified candidates to the Department. We are ensuring a steady pipeline of top-quality recruits who can be trained and mentored into quality officers. For example, we have raised our hiring standards to match those of other law enforcement agencies, like the NYPD.

To ensure that everyone has equal opportunity for promotions and special assignments, the Department is committed to implementing a screening process that applies equally to all staff, and that makes performance standards clear and fair. The new screening process will also consider whether staff has the training necessary for assignment to certain specialized units. This ensures both staff and inmate safety, by making sure that officers are equipped to deal with the unique needs and challenges associated with some of our most difficult inmate populations.

Video Surveillance

Another big focus of the 14 Point Anti-Violence Reform Agenda has been expanding camera coverage throughout the jails. The additional video surveillance will help make our facilities safer for everyone. Further, the increased video surveillance is already making a difference for the Department's Investigations Division; this year approximately 69% of use of force incidents were captured in whole or in part on video, meaning ID has access to clear, objective evidence of incidents under investigation which in turn leads to faster case closings.

The Department agreed to the terms of the Nunez Consent Decree because they aligned with the 14-Point Anti-Violence Reform Agenda that was already underway. The Consent Decree and the 14-Point Plan are designed to achieve the same goals: ensuring safety, reducing violence, and changing the Department's culture.

The Department is early in the reform implementation process. Meaningful reform takes time, but we are seeing the impact of the efforts we have made. There is still significant improvement to be made, but with the continued effort of our staff, the Department will succeed to become the leader in corrections that we strive to be.

Thank you for the opportunity to testify today and for your continued support. We are happy to answer any questions that you may have.

TESTIMONY OF COBA PRESIDENT ELIAS
HUSAMUDEEN BEFORE THE
NEW YORK CITY COUNCIL
FIRE AND CRIMINAL JUSTICE SERVICES
COMMITTEE

Hon. Elizabeth Crowley
Chairwoman

November 14, 2016

Good morning Chairwoman Crowley and members of the Committee. My name is Elias Husamudeen. I am President of the Correction Officers' Benevolent Association, the second-largest law enforcement union in the City of New York, whose members provide care, custody, and control of over 9,000 inmates in the nation's second largest jail system.

Following the announcement of the Nunez Settlement in June of 2015, nearly a year and half later, we are still facing an eruption of jail violence in jail facilities on Rikers Island, as well as in the borough jails. In fact, the level of jail violence continues to increase even as the inmate population drops to its lowest level in over 30 years. As noted in a report from the Comptroller's office from last year, "the administration keeps pouring money into the problem without seeing any real results or improvements." The COBA couldn't agree more.

Since we last testified before this committee in September, numerous correction officers have been viciously assaulted by inmates causing severe injuries including slashings to the face and head, broken jaws, and trauma to other parts of the body. Also, since our last appearance before this committee, many inmates have been maimed by other inmates as a result of extremely violent gang-related assaults. To illustrate the severity of these incidents, I refer you to the pictures I have brought with me today. These pictures have not been altered or photo shopped. They are quite real and they were taken immediately after the victims were attacked. There is a saying that a picture speaks a thousand words, so by that measure these pictures speak volumes about how dangerous the city's jails are and that the danger does not discriminate from threats to staff or threats to inmates. No matter which side of the bars your family is on we all deserve to be safe.

We have continued to bring these issues to light in the media, to the Board of Correction, and to the City Council. We continue to sound the alarm on the epidemic of violence and we continue

to propose thoughtful policy proposals that, if implemented, would greatly enhance our war on crime in the city's jails. I will touch on those proposals in a moment. But our question today to each member of this oversight committee is what have you done? That is the question on the minds of our members and their families. What has each of you done to make the jails safer for everyone? If you are disturbed or angered by the images I just showed you, the question is what are you doing specifically to address these problems that clearly are not going away any time soon? We are happy to attend these hearings and outline our members concerns and put a face of the culture of jail violence, but with all due respect, these hearings are quite simply a waste of time and the concerns expressed at these hearings ring hollow if this body does nothing between now and the next hearing to make the jails safer for both staff and inmates alike. To that end, on behalf of the 9,000 correction officers and their families, I am asking each of you today to specifically state what you intend to do to make sure at the next hearing I don't come before you with new images depicting the victims of jail violence. We are your constituents too and we deserve answers, as does the public.

The Nunez settlement is a 63 page agreement that calls for over a dozen of jail reforms. It is the Department's job to report on the agency's implementation of this settlement and it is our understanding that the majority of the reforms proposed won't be fully implemented until next September.

Let's take a look at the recent elimination of punitive segregation for 18-21 year old inmates. As you may or may not be aware, inmates ages 18 to 21 make up from 10% to 12% of the city jail population but commit about 30% of the violence. Since the Correction Department eliminated punitive segregation for 16-17 year old inmates a year ago, what have we seen? Slashings and stabbings at the city jails increased 21.3% from fiscal 2015 to fiscal 2016. And since this past

January, over 620 correction officers have been assaulted mostly by inmates aged 21 and under. Do any members of this committee honestly believe that eliminating punitive segregation for the other most violent inmate population is really going to reverse these numbers? Are we just going to sit idly by and wait for an inmate under 21 and part of a gang, to kill a correction officer or another inmate, or even a visitor before we finally acknowledge that the administration is actually contributing to the jail violence epidemic rather than eliminating it?

Ending Punitive Segregation is another way of saying it is open season on correction officers and an invitation for inmates to increase their terrorist attacks on correction officers, civilians, and other inmates. This administration continues to put their desire to be "first in the nation" instead of being the smartest in the nation, when it comes to ensuring the safety of staff and inmates alike.

The most recent assaults on correction officers were committed by inmates in this age group and they are routinely assaulted by this population. Maybe other states haven't completely ended punitive segregation yet because they are not in denial about the violence caused by this population. Ending punitive segregation will only cripple our officers' ability to fight crime in the jails and to protect themselves from being assaulted.

COBA is acutely aware of the importance of reducing crime and our members are on the front lines of crime fighting in the city's jail system. In the past year alone, we have intercepted hundreds of weapons from entering our jail facilities, infiltrated the most dangerous inmate gangs, and interceded in vicious inmate on inmate attacks, and many times prevented inmates from literally killing one another. Just last month, two correction officers assigned to the Otis M. Bantum Center, one of the largest jails on Rikers Island, were the victims of an inmate's attempt

to assault another inmate. While the inmates involved were protected, ultimately it was two correction officers who were sent to the emergency room to be treated for their injuries. The incident at OBCC is not an anomaly. In fact it is quite the norm. Violence is not only a reality but the dramatic increase in violence has morphed into a full blown crime wave that you, the City Council cannot ignore.

Furthermore, while the administration favors the cherry picking approach of only examining a couple facilities where assaults on staff declined slightly, the reality is that well over 600 correction officers were assaulted just within the last year. That is a staggering number and certainly not a measurement that reflects that crime is down by any measure in our jails.

A fourteen point plan heavy on programs and light on safety and security will never turn around these numbers and it will not create the real results that might make it into a City Hall media talking point. Nor will a fourteen point plan heal the wounds of the officers who were so viciously slashed, stabbed, and beaten and will likely wear these scars for the rest of their lives.

Our members are wounded, spread thin, and increasingly being called on to do much more with virtually no support. How does the biggest city in the nation turn its backs on over 9,000 men and women, fathers and mothers, sisters and brothers, sons and daughters, and ask them to put themselves in harm's way to keep this city safe when the city fails miserably to keep them safe? If there was ever a tale of two cities, it could not be more evident than in its two approaches to crime fighting. In one approach, with the NYPD, every possible tool is provided to police officers to their precinct commanders. Their academy is cutting edge with the latest technology and new legislation is regularly passed by this Council to give them the resources they need to protect themselves in their fight on crime. But that's simply not the reality in the other approach

to the city's fight on crime. When it comes to the crime wave we see in the jails, we could not be less adequately equipped, more under staffed and more poorly trained to deal with the inmates we face each and every day.

Since Fiscal 2011, the Department has experienced a steady increase in the percentage of inmates with a mental health diagnosis. Currently comprising 42 percent of DOC's population, this group requires more access to health services and often, in the case of those with a serious diagnosis (10.9 percent), special housing. The bottom line is mentally ill inmates who are prone to violent behavior should and need to be in a mental health facility but the city's broken criminal justice system simply can't make that happen.

At a recent talk at New York Law School's "City Law" breakfast ' Commissioner Ponte admitted to New York City running the largest mental health hospital on the East Coast.

With the largest mental health institution on the East Coast, why is it that the mentally ill inmates are not being diagnosed and appropriately housed in a mental health facility where illness may be treated? The mental health staff at the DOC (whether Corizon or HHC) has been unable to grapple with these most violent inmates - unrealistically expecting minimally trained Correction Officers rather than mental health professionals to handle this troubled population.

The Department has failed to address the re-occurring problem of repeat assaultive inmates.

While we applaud Bronx DA Darcel Clark for her office's vigorous efforts to indict and re-arrest inmates and visitors who commit crime inside the jails, these noble actions will not make the jails safer if the Department continues to return these inmates to the scene of their crime. For this reason, we have and continue to call for the removal of inmates who assault correction officers

from the custody of DOC and to be instead housed in another jurisdiction. Our demand for a change in jurisdiction for housing these repeat offenders is not made because our members do not want to perform their sworn duties of providing care, custody, and control of inmates. We are not unwilling to adapt to new jail reform strategies. We are making this demand because the Department's policies continue to create a dangerous environment, which as I have already stated, has gotten even worse. There is a precedent to this policy. The Department has in the past, on an ad hoc basis, sent particularly violent inmates to other jurisdictions for specific reasons. All we are saying is that given the jail violence data available, it would be only logical to adopt a more consistent policy for removing the worst of the worst and place them in a jail jurisdiction where punitive segregation actually exists, since punitive segregation has been eliminated in New York.

So for the reasons outlined above, the COBA is urging this Council to demand that this Mayoral administration applies the same priority, resources, and tools to our war on crime inside the jails, as they do to the public war on crime. Unless the administration adopts one uniform strategy to fighting crime on the street and behind bars, there can be no victory for public safety.

Furthermore, this City cannot continue to apply the same approaches to the systematic problems that are deeply embedded in the city's jail system.

There is a long train of justice that delivers the thousands of inmates to our jails each and every day. That train makes numerous stops along the way, before the crimes are committed, after crimes are committed and prosecuted, before and after sentencing, and finally while inmates are awaiting sentencing. Many of those passengers on that train are mentally ill and should be re-directed to proper mental health facilities to receive proper treatment, not the jails. Many of those

passengers are homeless and should be given job training and shelter, not sent to the city's jails. Many of those passengers are young, first-time, low level offenders and should be provided with alternatives to incarceration. Our society, beginning with this City Council, needs to start looking at how to address those issues on the first stops of the criminal justice train before it arrives at Rikers Island. Until that happens, we will continue to return to these hearings, discussing the tragic victims of jail violence and the inept polices of this Department that has failed them.

At this point, I am happy to answer any questions you may have. But before I do, I return to the opening of my remarks and respectfully request each member of this committee to state on the record what you have done since the last hearing to make the jails safer and to also state what you intend to do moving forward, to make the jails safer? Thank you.



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New York City Council

Committee on Fire and Criminal Justice Services

**Oversight Hearing:
Examining the Implementation of the *Nunez* Settlement in the
City Jails**

**City Hall
November 14, 2016
New York, New York**

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Introduction

We submit this testimony on behalf of The Legal Aid Society, and thank Chair Elizabeth S. Crowley and the Committee on Fire and Criminal Justice Services for paying close attention to the City's progress in implementing the reforms that it agreed would reduce violence in our City jails.

The Legal Aid Society is counsel for the plaintiff class in *Nunez v. City of New York*, which resulted in a consent judgment entered on October 21, 2015 that requires the City to implement wide ranging reforms to redress its longstanding unconstitutional pattern of abuse of prisoners by Department of Correction staff. We are also the nation's oldest and largest provider of legal services to low-income families and individuals, and through our Prisoners' Rights Project (PRP), often the first agency to whom prisoners and their families report abuse in the jails. Each week PRP receives and investigates numerous requests for assistance from individuals incarcerated in the City jails, their families, and their defense lawyers from the Criminal Defense Practice and elsewhere. Our daily contact with those in the criminal justice system, and our decades of experience in addressing abuse and violence in the City jails, inform our remarks today.

The City Must Devote Adequate Resources to Training Staff to Ensure Public Safety

As *Nunez* counsel, we have been heartened by the intensity and quality of the effort that we have seen the Department has undertaken to develop the training programs required by the *Nunez* consent judgment. The consent judgment's requirements are robust, comprehensive and resource-intensive, requiring the Department to provide thousands of staff with a variety of new training programs. But we remain deeply concerned about whether the City has been willing to devote the resources the Department needs to roll out its very promising new training programs, . such as the provision of adequate training space or facilities to engage in the practical, hands-on exercises that use of force training requires. If the training program is delayed or unduly drawn out, the pace of reform may falter, and even worse, the cultural shift that we seek to achieve through the training may fail to gain enough momentum to take hold. The sooner staff can receive the benefit of this training, and be provided with new tools and techniques of professional correctional management, the sooner the promise of reform can be seen on the ground

However, we also wish to caution against the invocation of *Nunez* as a justification for ill-considered ventures such as the debacle that was the Department's reported \$1.2 million contract with a training vendor the "US Corrections Special Operation Group." See "City Probes Contract to Train Rikers Officers,": Wall Street Journal, August 30, 2016 (<http://www.wsj.com/articles/city-probes-contract-to-train-rikers-officers-1472566643>). The racist and pugilistic public propaganda by that entity and its principal Joseph Garcia made clear that it had no beneficial role to play in changing the culture of hostility and violence in the Department. Nor was the Department forthcoming about the extent of its engagement with this contractor, who was providing the Department's historically deeply troubled Emergency Services Unit with paramilitary style training, before he apparently

abandoned performance of his contract abruptly amid reports that the New York City Department of Investigation was probing the contract. See “Rikers Vendor Under Fire Has Gone MIA,” New York Post, September 19, 2016 (<http://nypost.com/2016/09/19/rikers-island-vendor-under-fire-has-gone-mia/>). Unquestionably, the Department needs and will benefit from resources outside of our City to provide technical expertise and training, including as part of the *Nunez* process. But the consent judgment should not be trotted out as the Department’s go-to defense for introducing potentially destabilizing weaponry, or hostile ideology, to the jails.

Patterns of Brutality against Prisoners at Rikers Island Have Continued.

Recently, the court-appointed monitor in *Nunez* filed the copiously detailed Second Report of the *Nunez* Independent Monitor. (*Nunez v. City of New York*, S.D.N.Y., 11-civ-5845 (LTS)(JCF), filed October 31, 2016). The Monitor’s Report provides a window into how the Department of Correction’s practices compare to its rhetoric about reform in the jails. And what we see through that window is that, more than two years into Commissioner Ponte’s tenure and a year after the landmark *Nunez* settlement, the pattern of staff brutality against prisoners has shown some progress in reducing injury but otherwise shows little evidence of change.

First, the overall use of force rate is a record high, despite a declining prisoner population. This belies any claim that staff have been chilled from using force when it is necessary out of fear of discipline. It also calls into question the Department’s oft-made public claims of having reduced the absurdly high rates of use of force in the jails.

Nor have the gains that were made late last fall, when the number of staff and inmates injured in use of force incidents went down considerably, been sustained. In fact, the prevalence of injuries to staff and inmates increased in 2016 and now is higher than when the Consent Judgment was filed.

More disturbingly, the *patterns* of force that have long characterized brutality in the City jails appear unabated. We note that the Monitor’s information at this juncture in large part reflects *preliminary* information that may be refined upon further examination. We highly encourage policy-makers to require the Department to provide complete and accurate information about these incidents to inform a proper policy response. But the “[P]reliminary Reviews (including review of video) revealed too many incidents which appeared to be unnecessary, excessive, unnecessary/excessive, **and/or for the sole purpose of inflicting punishment.**” Monitor Report, at 11.

We share the concerns expressed by the Monitor that the preliminary information from use of force incidents shows the continued use of “head strikes,” or blows to the face and head, that have long been the hallmark of excessive force in our City jails. There is simply *no* excuse for the City to be continuing this dangerous practice that has long been addressed by its use of force policies, and that simply should have been severely curtailed by now.

It is also deeply concerning that the Monitor continued to identify likely instances of use of force against inmates who were restrained—yet still subjected to force. As the Monitor reported:

[T]he number of incidents involving head strikes and force on restrained Inmates is high. The Monitor reviewed approximately 1,700 Preliminary Reviews of use of force incidents in this Monitoring Period and identified approximately 235 use of force incidents that involved a blow or strike to the head and approximately 300 use of force incidents that involved inmates in restraints. **The frequency of this type of Staff response alone could suggest that Staff too frequently resort to force as a means to address all levels of resistance, including resistance in the form of non-compliance with a direct order, irrespective of the immediacy or seriousness of that resistance.** (Report at 10-11).

In addition, the Monitor noted other patterns of great concern, such as the apparently high frequency of unnecessary uses of chemical agents. This is corroborated by the many complaints to our office that staff have been misusing chemical agents, often using potent crowd control agents on individuals, or excessively or unnecessarily spraying inmates when no force at all was warranted.

We have yet to see in the Department's public statements adequate evidence of how it seeks to address these *systemic* patterns in use of force that have been deeply entrenched in the Department's culture for years. Absent a significant managerial effort to identify patterns and practices in which abuse occurs, there is little chance of significant improvement.

We are deeply concerned about the lack of progress reported in implementing the consent judgment' requirements that the Department develop systems to inform supervisors of staff use of force patterns and identify potentially problematic patterns through an Early Warning System. The Department now claims that development of an Early Warning System will take *five years* -- because they wish to fold it into some other computer program they seek to use for other purposes. In our view, this represents a wholly head-in-the-sand approach to liability, and is not consistent with the aims or requirements of *Nunez*.

West Facility Has Become an Illegal De Facto Solitary Confinement Facility

An important observation is that the highest rate of use of force incidents has occurred at the West Facility, which the Board of Correction found last month was in violation of the minimum standards for treatment of inmates. The West Facility, which historically has housed inmates with contagious diseases, has become the Department's rogue substitute for punitive segregation, where inmates with a wide variety of treatment needs are held in illegal isolated confinement. The Department has been wholly opaque in

response to inquiries about its plans for this facility and the conditions under which inmates are held.

Given this lack of transparency and due process, and the wholly illegal nature of the Department's operation of West, it is of deep concern that the highest rate of use of force (that is, uses of force per a given number of inmates) was at West Facility in the last monitoring period. As the Monitor correctly noted, the very small number of inmates held at West means that such a rate calculation may not have the significance in that facility that it would for a larger one with a greater sample of inmates. Certainly one must look behind mere statistics to understand the use of force practices there. But it cannot be ignored that the highest rate of use of force is occurring in the very same facility whose conditions have most recently been found to violate the law. We believe it is imperative for the Department to explain the use of force incidents that are occurring in this too often overlooked facility.

Conclusions: Lasting Reform Requires Commitment and Transparency

The Nunez consent judgment sets forth a multi-layered, ambitious yet achievable path to reforming the longstanding abuse of prisoners at Rikers Island. It enshrines the results of careful consideration of operational and logistical challenges, and provides for flexibility in meeting those challenges. It would be folly to expect genuine reform of such an entrenched pattern of constitutional violations to be cured in very short order. True reform of the culture of violence that gave rise to *Nunez* will take time. But it also takes a commitment by the leadership of the Department—not only the central office, but also the wardens and deputy wardens of the facilities. Without this supervisory commitment to accountability and change, reform will not occur.

But nor do we believe that reform will occur if the Department does not engage the stakeholders in a transparent, open discussion of the facts underlying violence in the jails, so that their claims of success can be verified and their challenges identified and resolved. In our experience, secrecy on the part of jailers bodes poorly for the safety of prisoners. The *Nunez* lawsuit and subsequent reforms addresses literally life and death matters for the thousands of New Yorkers who await their trial or serve their misdemeanor sentences at Rikers Island. We applaud the City Council's efforts in gaining information about their treatment, and about the status of the reforms meant to ensure greater safety for inmates and staff alike in the jails. We hope the Council will continue this important oversight of this process.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

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Name: Faisal ZOUHBI

Address: 364 Decker Ave, Staten Island NY 10302

I represent: Assistant Deputy Wardens / Deputy Wardens Assoc

Address: 364 Decker Ave, Staten Island NY 10302

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Name: Thomas Farrell

Address: _____

I represent: COBA

Address: _____

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Appearance Card

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Name: Victoria Phillips

Address: 40 Rector St

I represent: myself, Jails Action Center

Address: _____

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Name: Kelly Grace Price

Address: 534 W 137th St #7

I represent: Jails Action Coalition

Address: 40 Rector St, 9th Fl

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Name: Elias HUSAMUDEEN

Address: _____

I represent: Correction Officers Benevolent

Address: ASSOC

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Name: Mary Lynne Werlwas + Zachary

Address: 199 Water St. Katznelown

I represent: Legal Aid Society

Address: 199 Water St

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Name: DC. Errol Toulan, Jr.

Address: Deputy Commissioner, Operations

I represent: DOC

Address: _____

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Name: Gregory Kuczinski

Address: Deputy Commissioner, Investigations

I represent: DOC

Address: _____

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Name: Winette Saunders

Address: Deputy Commissioner, Youthful

I represent: Offender Programming

Address: DOC

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Name: JEFF THAMKITTIKASEM

Address: CHIEF OF STAFF

I represent: DOC

Address: _____

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Name: Joseph Ponte

Address: Commissioner

I represent: DOC

Address: _____

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Name: Heidi Grossman

Address: Deputy Commissioner, Legal

I represent: Affairs

Address: DOC

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