New York City Jails Action Coalition
c/o Urban Justice Center
40 Rector Street, 9th floor
New York, NY 10006

BY EMAIL

July 8, 2015

Stanley Brezenoff, Chair
Members of the Board of Correction
51 Chambers Street, Room 923
New York, NY 10007

Dear Chair Brezenoff and Members of the Board:

The NYC Jails Action Coalition (JAC) strongly opposes the Department of Correction (DOC) emergency variance request dated June 12, 2015. With this request, the Department steadfastly persists in its wrong-headed approach to addressing violent conduct. Whether 22 or 200 people are subjected to this potentially indefinite isolation, they are human beings, most likely pre-trial detainees, and should not be placed in toxic conditions that are known to have life-altering consequences to human health and well-being. This Board must not condone the use of torture of *any* person incarcerated in NYC jails.

The seven-day release from solitary confinement was implemented to ameliorate the devastating impact of 23-hour isolation. The Board must not toss this protection aside. If granted, DOC would have no limit on punitive segregation. DOC would be able to extend the 30-day isolation limit (which already exceeds the United Nations standard), *and* be able to keep individuals in indefinite detention (§ 1-17(d)(3) already allows for the extension of solitary confinement placement beyond 60 days).

The use of isolation does not reduce violent conduct. In May 2015, the Vera Institute of Justice reported that the belief that solitary confinement deters misbehavior and violence is one of the ten common misconceptions about solitary confinement. "Subjecting incarcerated people to the severe conditions of segregated housing and treating them as the 'worst of the worst' can lead them to become more, not less, violent."[1] Rather than persisting in its reliance on this ineffective punishment, DOC must adopt a disciplinary system that provides humane consequences for misconduct, a grievance system that actually functions to resolve problems identified by incarcerated individuals, and secure housing areas where people who need to be removed from

[1] *Solitary Confinement: Common Misconceptions and Emerging Safe Alternatives*, Vera Institute of Justice, May 2015, available at http://www.vera.org/sites/default/files/resources/downloads/solitary-confinement-misconceptions-safe-alternatives-report_1.pdf.

general population are allowed out-of-cell time and programming targeted at addressing aggression and violence.

DOC now asserts that the Enhanced Supervision Housing Unit (ESHU) is not a secure housing area that can serve as an alternative to 23-hour isolation. This is contrary to what DOC asserted in its request to create the ESHU. In its October 22, 2014 letter to the Board, the Department proposed the restrictive ESHU, which allows for only 7 hours of lockout time daily, as a means "to control the activities of the most violent inmates." DOC was clear in its intent "to use enhanced supervision for the inmate posing the most direct security threats" and presented the ESHU as necessary for individuals who are released from punitive segregation:

> At present, the Department is compelled by several of the BOC's Minimum Standards for Correctional Facilities to allow even the most violent inmates to intermingle freely with the general population in the jails. Even if the inmate receives an extensive period of punitive segregation following a serious assault, he or she is thereafter free to return to business as usual upon release. As this practice clearly isn't working, we accordingly ask that the applicable variances immediately be issue to allow us to respond to the current emergency.

See October 22, 2014 DOC letter to the BOC at p. 2. DOC presented ESHU as a housing area where the most violent incarcerated individuals could be placed after serving a punitive segregation sentence. If in fact ESHU is not operating to achieve these goals, the Board should amend its rules and disallow reduced out-of-cell time in the ESHU.

The solution to the problem of violent conduct by those temporarily released from solitary confinement is not to eliminate the 7-day release period but to reduce the amount of time that a person can be isolated at all. Isolation only serves to make some people more aggressive. The Board should restrict the 23-hour isolation to 15 days, or ban its use entirely, to prevent the development of increased hostility and other effects of punitive practices. DOC must do the work necessary to transform punitive segregation areas into secure housing areas in which out-of-cell time, programming, and incentives for good behavior are offered. The continued use of harmful isolation fails to engage individuals in pro-social behavior and to develop skills for resolving conflict without reliance on violence. Solitary confinement is a form of violence; the perpetration of violence to stop violence is never successful. The DOC must stop relying on punitive segregation in the NYC jails.

The DOC variance request makes many factual claims without substantiating the basis for the claims. There is ample reason for questioning these claims.[2] DOC has a documented history of

[2] The *Nunez* complaint documents six examples of assaults by staff that DOC falsely claimed were assaults perpetrated by the incarcerated person. *Nunez v. City of New York*, 11 Civ. 5845, amended complaint, filed May 24, 2012. Five of the eleven named plaintiffs were sentenced to punitive segregation for purportedly assaulting the staff who beat them. The Department of Justice (DOJ) investigation report documents "[u]se of force reports in which staff allege that the inmate instigated the altercation by punching or hitting the officer, often allegedly in the face or head and for 'no reason,' 'out of nowhere,' 'spontaneously,' or 'without provocation.' But then the officer has no reported injuries . . ." Department of Justice, *CRIPA Investigation of the New York City Department of Correction Jails on Rikers Island*,

attributing assaults on staff as violence perpetrated by incarcerated individuals, falsely reporting about incidents, and covering up facts indicating that the violence was initiated by DOC staff.[3] In its letter, DOC claims that "approximately 22" people engaged in violence during the seven-day out-of-cell period. Before relying on this assertion, the Board and/or Board staff should interview the individuals, view all video recordings, and compare the information to the DOC staff reports.

The Board should also investigate other restrictive housing areas that DOC currently operates. Units in NIC, GMDC, BKDC, and potentially elsewhere have escaped scrutiny because DOC purports that residents of these units are allowed the requisite lockout time. These units operate much differently than other general population units. The Board should ascertain whether these units are in compliance with the Minimum Standards. If they are, they may serve as alternative housing areas for people who are at risk for violence during the 7-day release period. If they are not, the Board must require compliance and carefully monitor *all* restrictive housing areas before granting a request to roll-back the current reforms.

We urge the Board to stand firm in its commitment to ending torture in the NYC jails by rejecting the emergency variance request.

Sincerely,

NYC Jails Action Coalition Members

cc: Martha King, Executive Director

August 2014, p. 5, available at http://www.justice.gov/sites/default/files/usao-sdny/legacy/2015/03/25/SDNY%20Rikers%20Report.pdf. The DOJ notes that "[w]hile unprovoked assaults by inmates on staff certainly may occur, according to our consultant, they are rare in other jurisdictions." *Id.*

[3] The DOJ uncovered a pervasive pattern of false and inaccurate reporting about uses of force and questioned the overall reliability of data being used to justify the expansion of segregation (*Id.* at p. 25).