



The Freedom  
to Write

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Prison and Justice Writing  
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### PEN America Prison and Justice Writing Response to DOCCS Proposal

My name is Moira Marquis and I am writing on behalf of PEN America, a national nonprofit organization, based in New York City, that for 100 years has supported freedom of expression, including through advocacy for First Amendment rights. PEN America's decades of work with writers and aspiring writers in U.S. prisons has demonstrated the restorative power of literature for people inside. PEN America thanks the BOC for the opportunity to make a public comment on the DOC's mail variance request. We believe these variance requests represent an unjustifiable and unnecessary action, and we question the necessity of such sweeping and invasive measures which would limit the access to literature and reading materials for everyone detained or incarcerated there.

What is lacking from this proposal is evidence that the DOC's proposed strategy is necessary and will work. As part of the effort to curb contraband entering through the mail, several states, including the federal BOP<sup>1</sup>, now scan original mail and then print copies of the scans. Despite this, there have been no decreases in drugs and contraband, according to the Marshall Project.<sup>2</sup> Instead, the evidence appears to indicate that these policies do nothing to address the main source of drugs in prisons--"low-paid employees and understaffed facilities."<sup>3</sup>

Make no mistake: this requested variance will deeply impact the Rikers population--the mail variance request will cut people off from hand-written letters from family and friends, a crucial source of expression and connection to the outside world. And the package variance request will similarly cut

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<sup>1</sup> Lauren Gill, "Federal Prisons' Switch to Scanning Mail is a Surveillance Nightmare," *The Intercept*, September 26, 2021, <https://theintercept.com/2021/09/26/surveillance-privacy-prisons-mail-scan/>

<sup>2</sup> Keri Blakinger, "Texas Prisons Stopped In-Person Visits and Limited Mail. Drugs Got in Anyway." *The Marshall Project*, March 29, 2021. <https://www.themarshallproject.org/2021/03/29/texas-prisons-stopped-in-person-visits-and-limited-mail-drugs-got-in-anyway>

<sup>3</sup> Leah Wang, "Mail scanning: A harsh and exploitative new trend in prisons," *Prison Policy Initiative*, November 17, 2022, <https://www.prisonpolicy.org/blog/2022/11/17/mail-scanning/>

people off from books delivered for free by nonprofit groups, friends and families, reading circles, faith groups, and others. It will force families of incarcerated people to spend money sending their loved ones books that they may already own, an additional financial burden at a time when families are struggling with rising inflation and the lingering economic effects of the pandemic.

New York has tried this tactic before--and the citizens of New York have been very clear that they disapprove. In 2018, New York State DOCCS proposed a "Secure Vendor Program" which would have required all packages to be sent from six private companies only. Within days, Governor Andrew Cuomo personally rescinded the proposal, after public outcry.<sup>4</sup>

However, a revised version of this same policy (directive 4911A) was put into place for several NY State prisons.<sup>5</sup> Policies that have limited peoples' access has not had the effect of limiting illegal substances inside<sup>6</sup> Continuing to limit people's access to reading materials, despite lack of evidence that these tactics work, seems more punitive than practical.

DOCs routinely justify privatizing prison services, such as mail screening, by claiming to save public funds. This logic was used to justify the former contract with Securus for phone calls in New York City's prisons and jails which generated \$5 million for the city and \$2.5 million per year for Securus every year.<sup>7</sup> These costs were born by incarcerated people.<sup>8</sup> The Vera Institute has shown that facilities who have instituted scanned mail charge incarcerated people to access these scans.<sup>9</sup> This is a barrier to access for people we know are poor.

Scanning all mail also raises important questions about DOCs' and the BOP's practices of data collection and surveillance, especially where scanning and copying services have been outsourced to private, out-of-state companies.<sup>10</sup> What accountability do these corporations have to

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<sup>4</sup> Wang, Vivian. "Cuomo Halts a Controversial Prison Package Policy." *The New York Times*, 12 Jan. 2018, <https://www.nytimes.com/2018/01/12/nyregion/prison-package-policy-suspended.html>.

<sup>5</sup> Brown, Emily. "New York Prisons Set to Ban Most Packages from Family and Friends." *New York Focus*, 12 May 2022, <https://www.nysfocus.com/2022/05/12/prisons-ban-care-packages/>.

<sup>6</sup> George Joseph and Reuven Blau. "When Visitors Were Banned From Rikers Island, Even More Drugs Showed Up." *The City*, 9 February 2022, <https://www.thecity.nyc/2022/2/9/22926241/when-visitors-were-banned-from-rikers-island-even-more-drugs-showed-up>

<sup>7</sup> "New York City Intro 0741-2018: Telephone Services to Inmates." Fines and Fees Justice Center, <https://finesandfeesjusticecenter.org/articles/new-york-city-intro-0741-jail-phone-fees/>.

<sup>8</sup> *The New York City Council - File #: Int 0741-2018*, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3466474&GUID=5FF0CADF-72F8-464F-A240-08A015650E7A>.

<sup>9</sup> Nazish Dholakia, "More and More Prisons are Banning Mail" Vera Institute, March 1, 2022, <https://www.vera.org/news/more-and-more-prisons-are-banning-mail>

<sup>10</sup> Mia Armstrong, "Is This What Prison Mail Looks Like Now?" *Slate*, December 5, 2018, <https://slate.com/technology/2018/12/pennsylvania-prison-scanned-mail-smart-communications.html>

the privacy of the people incarcerated who, in the case of those held at Rikers, have not even been convicted?

In this meeting, we expect the DOC to present sufficient evidence to support the extraordinary step of stripping the population of Rikers of a primary venue for access to reading materials and ability to communicate with those on the outside.. We expect the DOC to clearly articulate why other measures are insufficient, particularly given that studies have shown that the majority of contraband enters prisons through employees—not the mail. Something this sweeping and invasive, especially for people who have not yet been convicted of a crime, needs to be a step of last resort. Given this, we expect the BOC to hold a very high bar for the evidence that would substantiate the necessity of this proposal.