



January 6, 2023

New York City Board of Correction  
2 Lafayette Street  
Suite 1221  
New York, NY 10007  
SENT VIA EMAIL

**Re: Department of Correction’s Variance Request Regarding Mail**

Dear New York City Board of Correction:

We write to express our grave concern and stark opposition to the request for variance proposed by the Department of Correction to Board Minimum Standards § 1-11(e)(1)(i) and 1-12(a). Over the past 25 years, New York County Defender Services has represented more than 300,000 New Yorkers accused of crimes in Manhattan Criminal and Supreme Courts. In addition to direct legal representation, we also provide social worker and specialized paralegal support to our incarcerated clients. That experience advocating for the rights of our incarcerated clients is the foundation of our opposition.

If granted, the variance will only further alienate and dehumanize those forced to live in captivity on Rikers Island. Especially concerning is the Department’s decision to partner with a historically corrupt company that has breached the privacy of accused people and their attorneys across New York City and beyond. Most importantly, the proposed plan will fail at its purported goal: ending the drug crisis currently plaguing Rikers Island. For these reasons, NYCDS urges the Board to deny the Department’s variance request.

I. This variance will fail to protect people incarcerated in city jails from drug overdose

Commissioner Molina continually justifies the proposed variance as a necessary tool to curb the flow of drugs into Rikers Island. However, there is no evidence to suggest that this costly, dehumanizing, and privacy-breaching new policy will succeed in achieving that purpose. On the contrary, the experiences of other jurisdictions suggest that denying people access to mail may in fact lead to an increase in mental health crises, substance use, and overdose.

Department officials cite anecdotal evidence of drugs entering through mail and packages as their core justification for this intrusive new policy. Based on these anecdotes, and without providing any data that might actually corroborate them, the Commissioner draws the unsupported conclusion that this is the manner by which “most” drugs enter the jail.<sup>1</sup> Such a bald and

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<sup>1</sup> During the City Council hearing on October 25, 2022, Commissioner Molina stated conclusively of the presence of fentanyl in Rikers: “The short answer is that most of it enters in letters and packages laced with fentanyl.” *See*

unsubstantiated assertion cannot reasonably provide the justification for a policy as harmful as the one proposed.

The experiences of other jurisdictions that have enacted mail bans show that these policies do not help curb the flow of drugs into jails. In Missouri, physical mail was banned beginning July 1, 2022. Yet in the months after the ban went into effect, there was an increase in the number of overdoses.<sup>2</sup> In 2020, Texas prisons restricted incoming mail into its facilities purportedly to curb the flow of drugs, while also banning in-person visits as a COVID precaution. Despite these measures, the number of reported drug incidents remained the same.<sup>3</sup> In Pennsylvania, after restricting mail in prisons in 2018,<sup>4</sup> positive drug tests were three times higher in 2020.<sup>5</sup>

Similar impacts were observed here in New York during the height of COVID, when all in-person visits from friends and family were banned. From April 2020 through May 2021 jail officers and staff were the only people coming in and out of the facilities. Nonetheless, the amount of drugs seized in city jails was more than double that seized during the same period from 2018 to 2019.<sup>6</sup> The undeniable implication of this fact is that Corrections Officers are active participants in the influx of drugs into Rikers.

That Corrections Officers are a steady source of drugs in Rikers is no secret. Officers have testified to this fact under oath<sup>7</sup> and criminal charges have been brought against officers who have been caught in such activity.<sup>8</sup> Commissioner Molina himself has acknowledged that this is one source of the flow of drugs into Rikers. However, in his rhetoric, he continually minimizes the reality of this CO complicity. Worse, in his actions he has facilitated CO participation in the Rikers drug trade. He did this when he inexplicably allowed COs to revert to the practice of wearing cargo pants. This was an unwarranted change to a rule that went into effect under former Commissioner Shiraldi's leadership with the specific goal of preventing contraband from entering the jail.<sup>9</sup>

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Reuvan Blau, *City Jails Move to Digitize Mail, Which Led Other Lockups Into Legal Fights*, The City (Nov. 4, 2022), <https://www.thecity.nyc/2022/11/4/23439318/city-jails-could-digitize-mail-other-lockups-legal-fights>.

<sup>2</sup> Ryan Krull, *Overdoses Rise in Missouri Prisons Despite Strict New Mail Policy*, Riverfront Times (Oct. 17, 2022), <https://www.riverfronttimes.com/news/overdoses-rise-in-missouri-prisons-despite-strict-new-mail-policy-38708405>.

<sup>3</sup> *Texas Prisons Stopped In-Person Visits & Limited Mail. Drugs Got in Anyway*, The Marshall Project (Mar. 29, 2021), <https://www.themarshallproject.org/2021/03/29/texas-prisons-stopped-in-person-visits-and-limited-mail-drugs-got-in-anyway>.

<sup>4</sup> *Pennsylvania Prison Officials Change Mail Handling After Drug-Related Illnesses*, NPR (Sep. 5, 2018), <https://www.npr.org/2018/09/05/644973472/pennsylvania-prison-officials-ban-inmate-mail-in-response-to-drug-related-illnes>.

<sup>5</sup> *Drug Interdiction Performance Measures*, Pennsylvania DOC (Aug. 2020), <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/Drug-Interdiction-Indicators.pdf>.

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

<sup>7</sup> John Annese, *Corrupt ex-Rikers guard gives stunning account of smuggling drugs for inmate to sell*, NY Daily News (Nov. 28, 2022), <https://www.nydailynews.com/new-york/nyc-crime/ny-how-rikers-guard-smuggled-drugs-into-jail-20221128-e3t634atjffatjgtyjgtszrttu-story.html>.

<sup>8</sup> Stephen Rex Brown, *Correction officers, staffers took bribes to smuggle scalpels, phones, drugs into NYC jails, say feds*, NY Daily News (May 26, 2021), <https://www.nydailynews.com/new-york/ny-correction-officers-contraband-bust-20210526-gfb3q5o7uzfp5nhf2reclul2ghu-story.html>.

<sup>9</sup> <https://www.thecity.nyc/2022/2/17/22940048/cargo-hold-nyc-jails-official-asked-to-ease-dress-code-established-to-block-smuggling>

For those of us who work directly with people trying to survive the trauma of incarceration, it is no surprise that removing visits and mail or reducing or eliminating programming, as has been the case during the pandemic, only worsens mental health conditions and makes people more vulnerable to substance use and overdose. A seemingly effective way to curb the supply of drugs in the jail is to reduce demand. And that can only be done by providing people with the support, attention, programming, and care that they need to manage the depression and anxiety that takes hold for anyone surviving in a setting like Rikers Island.

II. This variance will introduce yet another form of pernicious surveillance into the jails and reward a company with a deeply problematic track record.

People in custody are already subjected to more invasive and pernicious forms of surveillance than the rest of us in the New York community. This surveillance is not limited to those in Rikers; it also extends to those back home in the community who simply wish to communicate with a loved one on the inside. Specifically, all phone communications between individuals in Rikers and their loved ones are already being recorded, creating a cache of stored data. In addition to the actual content of each phone call being stored and disseminated to law enforcement groups and prosecutors' offices, voice print data<sup>10</sup> and location data<sup>11</sup> for all of those participating in phone calls between Rikers and the outside world are collected. For those who wish to hear the voice of their detained loved one, there is no genuine choice or ability to opt out of this surveillance and data machine.

Now the only private form of critical communication between loved ones that exists is at risk of devolving into yet another opportunity to surveil an already over-surveilled subsection of our citizenry. By digitizing and uploading the contents of all postal mail, every such communication becomes a potential source of data collection. Worse yet, the Department has indicated its intention to contract with Securus Technologies to provide this service should the variance be approved. This is particularly troubling given Securus's disreputable track-record both here in New York and across the country.

Securus was responsible for the massive privacy breach in which thousands of privileged attorney-client phone calls were recorded and disseminated to prosecutors right here in New York City.<sup>12</sup> This breach was no anomaly. Securus has been responsible for precisely the same kind of breach in more than seven other states over the past decade, resulting in multiple lawsuits.<sup>13</sup>

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<sup>10</sup> See George Joseph, Debbie Nathan, *Prisons Across the U.S. are Quietly Building Databases of Inmates' Voice Prints*, THE INTERCEPT (Jan. 30, 2019), <https://theintercept.com/2019/01/30/prison-voice-prints-databases-securus/>.

<sup>11</sup> See Jennifer Valentino-DeVries, *Service Meant to Monitor Inmates' Calls Could Track You, Too*, NEW YORK TIMES (May 10, 2018), <https://www.nytimes.com/2018/05/10/technology/cellphone-tracking-law-enforcement.html>.

<sup>12</sup> Noah Goldberg and John Annese, *NYC Correction contractor recorded thousands more lawyer-client jail phone calls than first reported; could jeopardize court cases*, NY Daily News (Dec. 30, 2021), <https://www.nydailynews.com/new-york/nyc-crime/ny-audit-shows-doc-listened-in-on-even-more-lawyer-inmate-calls-20211230-zni5qacdhjaozok7rdmwyg2wsm-story.html>.

<sup>13</sup> Ella Fassier, *Prison Phone Companies Are Recording Attorney-Client Calls Across the US*, VICE (Dec. 13, 2021), <https://www.vice.com/en/article/7kbbey/prison-phone-companies-are-recording-attorney-client-calls-across-the-us>.

Nor is recording attorney-client phone calls the only egregious misconduct by Securus. There are a great many examples of ethically dubious behavior by this company. The company has exploited the captive market of incarcerated people and their loved ones by charging exorbitant call rates.<sup>14</sup> They have been sued for engaging in a price-fixing scheme with one of the only other meaningful competitors in the market.<sup>15</sup> And they have been censured and fined for outright lying to the FCC during its acquisition by Platinum Equities.<sup>16</sup> This resulted in the FCC Commissioner calling Securus “a company that has shown it is willing to operate on the bleeding edge of legality when it comes to this agency’s rules.”<sup>17</sup>

Despite this track record demonstrating a complete lack of corporate responsibility, the Department plans to vastly extend its contract with Securus if the mail variance is approved. It is concerning that the Department would consider rewarding Securus with this expansion (presumably without employing a competitive bidding process or proper procurement procedures), and even more concerning that this unscrupulous company would now be entrusted with even more sensitive and personal data from thousands of New Yorkers.

### III. The proposed variance will have a detrimental impact on the health and well-being of people in custody and the community at large

On a most basic human level, the importance of receiving physical mail while incarcerated cannot be overstated. Maintaining contact with family, friends, and loved ones is vital for these people. While phone minutes are limited and in-person visits are onerous treks confined by visiting schedules, USPS mail is the one unlimited, cost-effective way for people to maintain ties with their loved ones. The value of such contact is unmatched. It is a way to hold onto a loved one even while separated from them. There is tremendous value in holding a letter in their hand, taping a photograph to their wall, or feeling the crayon of their child's drawing. These are simple yet powerful human joys that the DOC is now seeking to destroy.

Stripping incarcerated people of this right is more than just dehumanizing and cruel, it will also have negative impacts on safety in the jail and public safety in the community at large. Maintaining contact with families and loved ones has been shown to have a direct, positive impact on the health and well-being of incarcerated individuals, on their behavior while in custody, and on their success upon reentering the community after their release.<sup>18</sup> Curtailing the ability to maintain these connections in the way the Department proposes can only serve to create greater

<sup>14</sup> Leah Sakala, *Securus agrees that it's ripping customers off via outrageous prison phone fees*, PRISON POLICY INITIATIVE (Jun. 11, 2013), <https://www.prisonpolicy.org/blog/2013/06/11/securus-fees/>.

<sup>15</sup> *Albert v Global Tel\*Link Corp.*, 2021 US Dist LEXIS 188394 [D Md Sep. 30, 2021, Civil Action No. 20-cv-01936-LKG], available at <https://www.classaction.org/media/albert-et-al-v-global-tel-link-corp-et-al.pdf>.

<sup>16</sup> Press Release, *FCC Fines Securus \$1.7M, Resolving Investigation Over Misleading Info*, FEDERAL COMMUNICATIONS COMMISSION (Oct. 30, 2017), <https://www.fcc.gov/document/fcc-fines-securus-17m-resolving-investigation-over-misleading-info>.

<sup>17</sup> Clyburn Statement, “Securus Agrees to Pay \$1.7 Million Civil Penalty,” FCC (Oct. 30, 2017), <https://www.fcc.gov/document/securus-agrees-pay-17-million-civil-penalty/clyburn-statement>.

<sup>18</sup> Leah Wang, *Research roundup: The positive impacts of family contact for incarcerated people and their families*, Prison Policy Initiative (Dec. 21, 2021), [https://www.prisonpolicy.org/blog/2021/12/21/family\\_contact/](https://www.prisonpolicy.org/blog/2021/12/21/family_contact/).

instability within the jail as well as upon individuals' eventual return and reintegration into their communities back home.

#### IV. Conclusion

DOC's variance request should be denied. Simply put and viewed from every angle, it is bad public policy. It will have a negative impact on conditions in the jail and on public safety overall. It will impair a crucial tie between incarcerated individuals and their support system, ties that are directly linked to healthier individuals inside the jail as well as upon their release.

It will add a tremendous cost to the city while rewarding Securus Technologies, a company that already has a history of violating the precious rights of New York City's incarcerated population. This would be another toxic breach of the privacy rights of individuals both in Rikers as well as individuals at home in the community, expanding the surveillance specifically of New York communities that are already over-surveilled and over-policed, and that are disproportionately communities of color. And for all of these vast harms that this proposed variance would inflict on our communities, it will also fail to achieve its one purported goal of curbing the flow of drugs into Rikers Island.

BOC cannot let New York City be the next jurisdiction to jump on the bandwagon of a "prison policy du jour" that has no identifiable data to support its efficacy. New York County Defender Services urges the Board to reject the Department of Correction's variance request.

Sincerely,

Sergio De La Pava  
Legal Director